

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER'S DETERMINATION
OF
LEAD AGENCY UNDER ARTICLE 8
OF THE
ENVIRONMENTAL CONSERVATION LAW**

Project: Application for a Use Variance to Allow the Construction of a Fireworks Plant Town of Brookhaven

This decision to designate the Town of Brookhaven Zoning Board of Appeals (hereinafter referred to as "Zoning Board of Appeals") as lead agency for the above project is made pursuant to 6 NYCRR 617.6. My determination is based on the conclusion that the Zoning Board of Appeals, because of the broader powers inherent in the review for a use variance, more appropriately meets the criteria enumerated at 6 NYCRR 617.6(d)(1).

The proposed project is the application of the New York Pyrotechnic Company (hereinafter referred to as the "applicant") for a use variance to allow the construction of a fireworks plant on 131 acres of land in the Town of Brookhaven, Suffolk County.

The Zoning Board of Appeals, by a letter dated December 10, 1984, notified all the involved agencies of the application for a use variance by the applicant. The letter stated that it was the intention of the Zoning Board of Appeals to serve as lead agency for the subsequent SEQR review. On December 20, 1984, the Planning Board of the Town of Brookhaven (hereinafter referred to as "the Planning Board") responded that the Planning Board was the more appropriate lead agency.

In light of the inability of the two agencies to agree on lead agency, the applicant in a letter dated January 16, 1985 requested that pursuant to 6 NYCRR 617.6(e), the Commissioner of Environmental Conservation resolve the dispute.

According to 6 NYCRR 617.6(d) in resolving lead agency disputes, I must consider: the location of the anticipated impacts, the breadth of the applicable jurisdictions, and the capability for providing a thorough environmental assessment.

Participation in the lead agency process is predicated upon the existence of a jurisdiction to approve, fund or directly undertake an action. Both agencies possess the necessary jurisdiction: the Zoning Board of Appeals through section 85-18 of the Town of Brookhaven Zoning Code, and the Planning Board through sections 85-58 and 85-428 of the same code.

Since the action will occur within the Town of Brookhaven, the location of the impacts will be identical for both agencies. The ability of the agencies to provide for a thorough environmental assessment is also identical due to the fact that the same staff advises both agencies on the potential environmental impacts of proposed actions. This leaves the comparison of the breadth of review power as the determinant factor in designating the lead agency.

The Zoning Board of Appeals, in reviewing an application for a use variance, must address the fundamental land use question. In arriving at its decision, it must consider all aspects of the project including: the environmental compatibility; the effect on existing or future uses; and the suitability of such district for the location of the proposed use. Inherent in this decision making is the ability to deny, grant, or grant with conditions the application for the use variance. If the Zoning Board of Appeals decided to deny the application, the Planning Board would have no decision regarding the site plan review.

Based upon a careful consideration of all the facts presented, I find that the greater breadth of review powers inherent in the review for a use variance, including the ability to deny the application, makes the Zoning Board of Appeals the agency best suited to be lead agency.

This decision does not or should not mean that the Planning Board should not actively participate in the SEQRA review process. The nature of this project demands that the expertise of that Board be made available to allow the lead agency to make an informed decision on the use variance request.

/s/

Henry G. Williams Commissioner

Dated: Feb. 11, 1985
Albany, New York

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