

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

**PROJECT:** Designation of lead agency for the review of a proposed change of zone and subdivision of approximately 48 acres in the Town of Queensbury, Warren County

**INVOLVED AGENCIES:** Town of Queensbury, Town Board  
Town of Queensbury, Planning Board  
Region 5 Office, New York State Department of  
Environmental Conservation  
New York State Department of Health

This decision to designate the Town of Queensbury Town Board as lead agency for the conduct of an environmental review under the State Environmental Quality Review (SEQR) process is made pursuant to Article 8 of the Environmental Conservation Law and 6NYCRR 617. I find that the Town of Queensbury Town Board has the broadest jurisdiction with respect to the action and is responsible for making the fundamental land use decision.

The proposed project is the application of Charles Diehl to rezone a 48-acre parcel from Suburban Residential - 1 acre minimum lot size to Suburban Residential - 20,000 square feet minimum lot size to allow for the construction of a 100-unit residential subdivision in the Town of Queensbury, Warren County.

The Town of Queensbury Town Board and the Town of Queensbury Planning Board have both indicated their desire to act as lead agency for the SEQR review. I encourage agencies from the same municipality to resolve these internal disputes without my involvement. In this case, both agencies have documented their unsuccessful efforts to reach an agreement.

In resolving a dispute about lead agency, I am guided by the three criteria listed in order of importance in paragraph 6NYCRR 617.6(e)(5). These are: (1) whether the anticipated impacts are primarily of local, regional or statewide significance; (2) which agency has the broadest powers for investigation of potential impacts; and (3) which agency has the greatest ability to provide a thorough environmental assessment of the proposed action.

The project involves the construction of 100 units of low income housing on a site that is presently zoned to allow a maximum of 48 units. The site is located in an aquifer recharge area. A subsurface waste disposal system is proposed. In addition to impacts regarding density and water quality, there are the other impacts such as traffic and land use that are typical to residential subdivisions. Since these impacts are primarily local in nature and both of the agencies are local boards, the anticipated impacts will be equal for both agencies.

The next criterion to consider in this dispute is the breadth of jurisdiction. In order for the project to be constructed as proposed, the applicant must obtain a zone change from the Town Board. In considering the zone change, the Town Board will have to assess the need for low income housing in the Town of Queensbury versus the potential impacts from allowing a doubling of the density and its attendant potential impacts on traffic and groundwater quality. The decision on zoning must be addressed before any subsequent decision related to construction at the site can be assessed. The importance of the zoning decision and the potential for that decision to modify or affect subsequent decision making at the site points to the Town Board as the most appropriate involved agency to serve as lead agency.

The third criterion relates to the capacity of an agency to provide for a thorough environmental assessment of the action. Both the Town Board and the Planning Board possess the necessary staff or have access to the necessary staff in order to conduct a thorough environmental review.

I conclude, based on the facts presented, that the Town of Queensbury Town Board best serves the function of lead agency for conduct of the environmental review for the Diehl application due to its responsibility for making the fundamental land use decision.

This decision does not in any manner limit or minimize the responsibility of all other involved agencies to review the proposed action and to assist the Town Board in completion of the environmental review process. The issues raised by the Planning Board and the Warren County Planning Board must be considered by the Town Board in making their determination under SEQR.

Dated: Aug. 30, 1991  
Albany, New York

/s/  
Thomas C. Jorling Commissioner

## **Distribution of Copies**

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