SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS** **PART** **IAS MOTION 5**

Justice

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INDEX NO. 161578/2018

MOTION SEQ. NO. 001

NORTHERN MANHATTAN IS NOT FOR SALE, MIGUEL CRUZ, MARIEME BOCKMAN, DAIREN MERCEDES, PEARL YOW, MICHELLE KOHUT, on her own behalf and on behalf of her minor daughter, R.K., NIURKA De JESUS, on her own behalf and on behalf of her minor son, E.D., CELIN RODRIGUEZ, LUIS ALMONTE, GUNTHER and RUTH BECHHOFER, JAMES K. WILSON, IVAN YEUNG, PHILIP SIMPSON, and MARIEBEL NUNEZ,

Petitioners,

DECISION + ORDER ON MOTION

- v -

CITY OF NEW YORK,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 70, 71, 82

were read on this motion to/for **ARTICLE 78**.

Petitioners commenced this Article 78 proceeding challenging the environmental reviews conducted for the Inwood rezoning project asserting that said reviews were facially incomplete thus, invalidating the adoption of the Inwood rezoning plan.

In an environmental review action under Article 78, a court must determine whether a governmental agency's determination was made in violation of a lawful procedure, affected by an error of law, was arbitrary and capricious, or was an abuse of discretion. (See CPLR § 7803[3]). The court is not to substitute judgment or "weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA." (*Jackson v NY State Urban Dev. Corp.*, 67 NY2d 400 [1986]). What the court may do is determine whether the procedure was lawful and whether the agency identified relevant areas of environmental concern, took a "hard look" at them, and made a reasoned elaboration of the basis or its determination. (*Id*, citing *Aldrich v Pattison*, 107 AD2d 258 [2d Dept 1985] and *Coalition against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

The Office of the Deputy Mayor for Housing and Economic Development (ODMHED) served as the lead agency responsible for coordinating the identification and study of salient environmental and socio-economic issues implicated by the proposed rezoning of the Inwood area of Manhattan. As such, the Inwood rezoning project was subject to a public review process which would facilitate the identification of prominent issues involving the proposed rezoning.

This public review process falls under the City's Uniform Land Use Review Procedure (ULURP). As part of ULURP, the rezoning was also reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review Act (CEQRA).

With respect to ULURP review, the Inwood rezoning was reviewed in 2017 and 2018 by Manhattan Community Board 12's various committees. On February 22, 2018, at the conclusion of a public hearing regarding same, Community Board 12 recommended disapproval of the rezoning, with modifications. Thereafter, the Inwood rezoning was reviewed by the Manhattan Borough President whose office conducted research and solicited community feedback prior to holding its public hearing on the proposed rezoning. On April 26, 2018, the Borough President recommended disapproval of the rezoning, with modifications. Next, the City Planning Commission reviewed the land use applications pertaining to the Inwood rezoning, held a public hearing, and on May 9, 2018 approved the land use applications for the rezoning plan. Lastly, the rezoning plan was submitted to the New York City Council for review. The Council held a public hearing on July 10, 2018. On August 2, 2018, the Council's subcommittee on Zoning and Franchises and its committee on Land Use both voted to approve rezoning, with modifications. Upon review of the proposed modifications, the City Planning Commission confirmed by letter dated August 6, 2018, that the City Council's modifications did not raise any land use or environmental issues warranting further review. Finally, on August 8, 2018, the City Council approved the Inwood rezoning, with modifications.

In tandem, pursuant to the requirements of SEQRA/CEQRA, ODMHED prepared an Environmental Assessment Statement (EAS) to identify areas where the rezoning may result in significant environmental impacts. The EAS determined that potential for significant adverse impacts existed. Thus, ODMHED prepared and issued a Draft Environmental Impact Statement (DEIS). The DEIS and corresponding ULURP applications were subject to public review and comment and on May 9, 2018, a public hearing was conducted by the City Planning Commission. Comments and proposed modifications were considered, and some were included in the Final Environmental Impact Statement (FEIS) which was completed on June 14, 2018. Ultimately, on October 17, 2018, the Office of the Deputy Mayor for Housing and Economic Development released a Statement of Findings as required by state and city law.

Petitioners assert that as a part of the public review process detailed above, Unified Inwood (UI)[1] submitted comments identifying issues it believed were critical and required review. However, the DEIS failed to address the issues submitted by UI and as a result, UI requested that each issue be reviewed in the FEIS. According to petitioners, the FEIS, released in June 2018, also failed to address the issues raised by UI. Thus, at the public hearing held by the City Council in July 2018, UI submitted written testimony demonstrating the deficiencies in the FEIS, along with alternatives to rezoning. Despite same, in August 2018, the Inwood rezoning plan was ultimately approved, with modifications, by the City Council.

[1] Unified Inwood is a constituent organization of Northern Manhattan is Not for Sale. UI prepared and submitted the comments on the Draft Scope of Work and Draft Environmental Impact Statement for the Inwood rezoning. Northern Manhattan is Not for Sale is an unincorporated association made up of individuals and organizations including Inwood Preservations, Save Inwood Library, Faith in New York, and the Inwood Legal Action Campaign.

Petitioners now seek judicial review, not to challenge the substantive conclusions reached by entities which performed the reviews, but instead to contend that the review process was incomplete. Specifically, petitioners assert that the review process failed to take a hard look at the socio-economic consequences of the proposed rezoning as required by SEQRA/CEQRA, particularly the concerns raised by UI which include the impact of the rezoning on preferential rents and on fostering or increasing residential displacement; the racial impact of rezoning/residential displacement; the impact of the rezoning on minority and women-owned businesses; the deviation between predictions of the impact of prior rezoning and actual results; the social impact of the loss of the community's library; the impact caused by the rezoning on emergency response times/response times of first responders; the cumulative impacts of the rezoning and other major land use events impacting the community; and finally, the speculative purchases of residential buildings in Inwood preceding and coincident to the rezoning. Petitioners avow that respondent's failure to take a hard look at these eight salient issues is in violation of SEQRA/CEQRA invalidating the adoption of the rezoning and rendering said adoption illegal, arbitrary and capricious. Petitioners further aver that the City Council's resolution was premature and contrary to law as it adopted rezoning on August 8, 2018, two months prior to the lead agency issuing its Statement of Findings. Accordingly, petitioners seek an order annulling the resolutions of the New York City Council adopting the Inwood rezoning and remanding the matter to the lead agency for a study of the eight issues raised.

Respondent opposes the petition arguing that it did in fact take the requisite hard look at the relevant areas of environmental concerns and that City Council and OHMHED properly issued respective Statements of Findings pursuant to SEQRA/CEQRA.

In support of its contentions in opposition, respondent avers that the current Inwood rezoning plan has changed from its initial proposal and is the result of extensive public participation, reviews, feedback, comments and modifications from the Community Board, the Manhattan Borough President and the City Council over a three-year period. Respondent emphasizes that many of the modifications made by Community Board 12 and the Borough President were incorporated in the Inwood rezoning which was approved by City Council. Respondent further argues that the FEIS was prepared with the guidance of the CEQRA Technical Manual and thus, should be upheld and further, that petitioners' disagreement with the City's methodology fails to meet the burden of establishing that the review was arbitrary and capricious. Specifically, respondent asserts that it was not required to perform analyses that have no practice, guidance, or basis in SEQRA/CEQRA. As such, respondent concedes that it did not analyze the eight issues raised by petitioners asserting that such analyses are not required by the CEQRA Technical Manual, not required under SEQRA/CEQRA, or are irrelevant.

Respondent maintains that pursuant to 6 NYCRR Section 617.11(a), OHMHED was required to issue its statement prior to taking action and that inasmuch as it issued its Statement of Findings prior to implementing rezoning, OHMHED's actions were proper. Further, as the City Council, an involved agency, issued findings along with its decision to approve the rezoning, its actions are also in conformity with Section 617.11 and thus, should be upheld.

SEQRA/CEQRA requires agencies to "determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is

determined that the action may have a significant adverse impact, prepare or request an environmental impact statement." (See 6 NYCRR § 617.1.) If the agency determines that the environmental impact is not significant, it issues a "negative declaration." This regulation further states that its intention is for a suitable balance of social, economic, and environmental factors to be incorporated into the planning and decision-making processes of state, regional, and local agencies and not for environmental factors to be the sole consideration in decision-making. *Id.* Compliance with SEQRA/CEQRA requires agencies to take a "hard look" at environmental consequences and that information be considered which would lend itself to a reasoned conclusion, however, agencies are not required to consider every possible alternative. (See *Coalition against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

Here, respondent argues that its use of the CEQRA manual implicitly establishes its compliance with its obligation to take a hard look at the environmental consequences to the proposed Inwood rezoning. While respondent, in opposition to the instant petition, provides further insight into why it believes each issue raised by UI was not subject to review, respondent failed to review those issues as part of its DEIS and FEIS and thus, fails to dispute that the issues raised may have an adverse impact on the Inwood environment. Instead, respondent argues that it is not required to identify or address every conceivable environmental impact.

While it is accurate that respondent is not called to identify or address every conceivable environmental impact, the public review process exists to allow the residents of the community, who will ultimately reap the benefits and/or consequences of the proposal, to have meaningful involvement in the process and provide the agency with feedback regarding important issues to be reviewed in order to determine, what if any, environmental impact implementation of the proposed plan will have. Here, UI did just that, yet respondent concedes that the issues raised by UI were not considered and thus, any potential significant adverse impact regarding the issues raised remain unknown.

For example, UI asked respondent to consider the impact caused by the rezoning on emergency response times/response times of first responders. In opposition, respondent argues that, using the CEQRA manual as a guide, it analyzed the potential impact on "community facilities such as police, fire, and hospital services" and separately analyzed the anticipated impact to traffic. However, respondent asserts that "secondary effects of traffic, such as effects on emergency response time" were not analyzed as same was not explicitly recommended by the CEQRA manual. This argument, and the similar arguments advanced by respondent in response to each issue raised by UI, is misguided as the Court of Appeals has stated that "only a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers constitutes a rule or regulation" and inasmuch as the CEQRA manual is a guideline, not a rule or regulation requiring such strict compliance, it does not meet this standard. (See *Roman Catholic Diocese v New York State Dep't of Health*, 66 NY2d 948 [1985]). To this point, language in the technical manual indicates that a lead agency should use the document to assist it in reaching its "discretionary agency decision." It further states that the methodologies it provides generally are appropriate but that they "are not required by CEQRA" because some projects may "require different or additional analyses." (Technical Manual, Introduction-1). Additionally, chapter three of the manual also notes that the lead agency should "consider public policy and public comments in

addition to the technical studies" to further evaluate the impacts of the project. (Technical Manual, Introduction to the Technical Guidance, 3-2). This language wholly conflicts with respondent's arguments and instead supports the rationale that the public review process should be taken with due regard and the comments derived therefrom should be appropriately considered. As respondent conducted a brief review of the issues raised by UI in opposition to this motion, the same could have been done in the DEIS and/or FEIS. Hence, as respondent admittedly failed to take a hard look at the relevant areas of concern identified by the public and thus, failed to provide a reasoned elaboration of the basis for its determination of each one, the court finds it has not fully complied with SEQRA.

Furthermore, as to respondent's argument that the City Council issued its decision and findings pursuant to 6 NYCRR Section 617.11(a) and thus, its decision should stand, the court finds this argument unavailing as the Council's findings and resolutions could only be based upon what was presented to it. Such that if the lead agency had not issued its statement of findings prior to the resolutions passed by the Council, then the Council was not provided the opportunity to review the most recent and relevant information, rendering its process of review incomplete, superficial, and arguably, a nullity. Based upon the foregoing, it is hereby

ORDERED and ADJUDGED that the petition is granted, the resolutions of the New York City Council adopting the Inwood rezoning is annulled, and it is further

ORDERED and ADJUDGED that the matter is remanded to lead agency The Office of the Deputy Mayor for Housing and Economic Development for a study of the eight issues raised by Unified Inwood and; it is further

ORDERED that any relief not expressly addressed herein has nonetheless been considered and is denied.

December 16, 2019

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE