SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

INC. VILLAGE OF FLORAL PARK, NEW YORK,	**TRIAL/IAS PART 3**
	INDEX NO. 612399/19
Plaintiff(s),	
	MOTION SEQUENCE
- against -	**NO. 1 & 2 & 3 & 4 & 5**
NEW YORK STATE URBAN DEVELOPMENT CORP., et al.,	**MOTION SUBMISSION DATE: January 7, 2020**
Defendant(s).	

The following papers read on this motion:

Notice of Motion	**XXX**
Notice of Cross Motion	**XX**

Sequence 001. Application by THE INCORPORATED VILLAGE OF FLORAL PARK, NEW YORK, for an Order and Judgment pursuant to CPLR Article 78, CPLR §3001, and CPLR §408:

(1) annulling the determination of respondent/defendant EMPIRE STATE DEVELOPMENT approving the Belmont Park Redevelopment Project as arbitrary and capricious, without a rational basis, and in violation of the New York State Environmental Quality Review Act;

(2) annulling respondent/defendant NEW YORK STATE FRANCHISE OVERSIGHT BOARD's approvals and authorizations in relation to the project;

(3) directing respondent/defendant EMPIRE STATE DEVELOPMENT to issue an amended Draft Environmental Impact Statement;

(4) directing respondent/defendant EMPIRE STATE DEVELOPMENT to issue a Supplemental Environmental Impact Statement with respect to new project elements;

(5) declaring respondent/defendant EMPIRE STATE DEVELOPMENT's approval null and void as ultra vires for failure to comply with the UDC Act's statutory mandate and based on an illegitimate RFP process;

(6) declaring respondent/defendant EMPIRE STATE DEVELOPMENT violated Open Meetings Law in transacting public business in private with respect to the Project;

(7) granting petitioner/plaintiff leave to conduct discovery in connection with its Open Meetings Law claim pursuant to CPLR §408;

(8) awarding petitioner/plaintiff costs and reasonable attorneys' fees with respect to the Open Meetings Law claim;

(9) enjoining respondents/defendants from taking any actions in furtherance of the development and construction of the project until the appropriate environmental review has been completed.

Sequence 002. Cross-motion by respondent/defendant the NEW YORK STATE FRANCHISE OVERSIGHT BOARD for a judgment: (1) dismissing this action as against the FOB under CPLR §3211(1) on the basis of documentary evidence; or (2) dismissing this action under CPLR §3211(7) for failing to state a cause of action.

Sequence 003. Cross-motion by respondent/defendant NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE STATE DEVELOPMENT for an order pursuant to CPLR §§3211(a)(1) and (7) as well as CPLR §7804(f) dismissing the Petition against the respondent.

Sequence 004. Motion by petitioner/plaintiff for an Order granting petitioner/plaintiff a preliminary injunction, pursuant to CPLR §§6301, 6311, and 7805: enjoining respondents/ defendants URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE STATE DEVELOPMENT, NEW YORK STATE FRANCHISE OVERSIGHT BOARD, and NEW YORK ARENA PARTNERS, LLC from initiating and/or continuing construction of the Belmont Park Redevelopment Project or taking any action pursuant to the approvals granted by respondents/defendants NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE STATE DEVELOPMENT CORPORATION and NEW YORK STATE FRANCHISE OVERSIGHT BOARD for the Project that:

i. adversely impacts petitioner/plaintiff and/or its residents or property owners, including but not limited to (a) prohibiting utilization of the eastern portion of the Belmont Park's North Lot as a staging area for Project construction vehicles and/or New York Racing Association support operations or vehicles; (b) prohibiting Project construction related truck traffic from utilizing Plainfield Avenue in the Village; and (c) prohibiting sheet pile driving at the·Project site; and/or

ii. is irreversible or incapable of restoration to the site's original condition;

Sequence 005. Motion by proposed intervenors/petitioners, Bellerose Terrace Civic Association, Sheila Moriarity, as President of Bellerose Terrace Civic Association and individually as a resident of Bellerose Terrace, Michael Moriarity, individually as a resident of Bellerose Terrace, Olga Ponce, individually as a resident of Bellerose Terrace, James Littlefield, individually as a resident of Bellerose Terrace, Rose Nacineik, individually as a resident of Bellerose Terrace, and Kelly Craig, as a resident of Bellerose Terrace, all of whom are members of the Bellerose Terrace Civic Association, for an Order:

(a) pursuant to CPLR §§1013 and 7802(d) in favor of the proposed intervenors/petitioners to intervene in the above captioned proceeding, while adopting the Verified Petition and Complaint, dated September 9, 2019 and legal submissions of the VILLAGE OF FLORAL PARK as its own due to the commonality of fact and law and because proposed intervenors/ petitioners are interested persons; and

(b) granting petitioner/plaintiff's Article 78 petition/complaint and the relief sought therein in its entirety.

In this hybrid declaratory judgment action and Article 78 proceeding, THE INCORPORATED VILLAGE OF FLORAL PARK, NEW YORK (the "VILLAGE") seeks to vacate the determination of respondents/defendants, which approved a real estate development project at the Belmont Park racetrack complex, involving the construction of a sports arena to serve as the new home of the New York Islanders, NHL hockey team.

Belmont Park is an approximately 430-acre site located on the border of Nassau and Queens Counties that has been operated as a thoroughbred horse racing facility since 1905. Respondent/defendant the NEW YORK STATE FRANCHISE OVERSIGHT BOARD ("FOB") was created by statute in 2008 to manage the state's ownership of Belmont Park and other racetracks in New York. See New York Racing, Pari-Mutuel Wagering and

Breeding Law ("Racing Law") §212. Non-party the New York Racing Association, Inc. ("NYRA") is a not-for-profit corporation that operated the racing facility at Belmont Park under a franchise from the State and a lease from FOB for Belmont Park dated September 12, 2008.

The lease provided that two under-utilized parcels of land at Belmont could be recaptured and leased, licensed, or sold to a third party for development purposes. In 2012, FOB passed a Resolution authorizing the URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT ("ESD") to issue a request for proposals ("RFP") for development of the two under-utilized parcels.

In November 2016, Christopher Kay, the then president and chief executive officer of NYRA, circulated a proposed plan for the development of Belmont Park to the chairman of the FOB, as well as several other New York State officials (the "2016 NYRA Plan"). The 2016 NYRA Plan contemplated the development of the under-utilized parcels to include a sports arena that would be the future home of the Islanders hockey team, a hotel, and a retail complex. It also contemplated certain upgrades to and expansion of NYRA's existing racetrack facilities.

In 2017, the FOB determined that the 2012 RFP should be closed and that a new RFP should be issued. On July 28, 2017, FOB adopted a resolution requesting that ESD issue a new RFP for the re-development of the two under-utilized parcels. ESD issued an RFP on July 31, 2017 (the "2017 RFP"). Three proposals were submitted, one of which was withdrawn.

NEW YORK ARENA PARTNERS LLC, ("NYAP") submitted a proposal for redevelopment of the Belmont Park site, known as the Belmont Park Redevelopment Civic and Land Use Improvement Project (the "Project"). The Project contemplated the development of two parcels, totaling approximately 43 acres, to include, among other things: a 19,000 seat arena, as a venue for Islanders games as well as other sporting and entertainment events, a 250-room hotel, an office building, a community center and a retail, dining and entertainment complex.

On December 19, 2017, ESD conditionally designated NYAP as the developer on the Project, subject to, among other things, completion of the requisite environmental review pursuant to the New State Environmental Quality Review Act ("SEQRA"). In February 2018, ESD issued a notice of intent to act as the lead agency for SEQRA review of the proposed development.

ESD issued a Draft Environmental Impact Statement (the "DEIS") in December 2018. After a period of public comment and revision of the NYAP proposal, ESD issued a Final Environmental Impact Statement ("FEIS") on July 22, 2019. FOB adopted the findings of the FEIS at a meeting on August 13, 2019. At the same meeting, FOB adopted five resolutions, including a resolution to confirm the designation of NYAP as the developer for the Project.

On September 9, 2019, the VILLAGE filed the instant Petition challenging the approval of the Project, predicated upon allegations that the approvals were in violation of the requirements of SEQRA, Urban Development Corporation Act ("UDC Act") and the Open Meetings Law. The VILLAGE seeks the annulment of the approvals and other related relief.

The petition/complaint asserts ten causes of action:

FIRST (Article 78): that ESD failed to take a hard look at the potential traffic impacts of the Project in violation of SEQRA;

SECOND (Article 78): that ESD violated SEQRA in failing to take a hard look at Project modifications and to prepare a required supplemental environmental impact statement ("SEIS");

THIRD (Article 78): that ESD violated SEQRA's procedures in omitting the "no retail village" alternative from the DEIS and failing to take the required hard look at this alternative;

FOURTH (Article 78): that ESD impermissibly segmented its environmental review of the proposed Belmont redevelopment from NYRA's planned Belmont Park expansion in violation of SEQRA;

FIFTH (Article 78): that ESD's complete disregard of near universal local criticism of the project's size violated its basic statutory mandate to give "primary consideration to local needs and desires" under the UDC Act;

SIXTH (Declaratory Judgment): that ESD exceeded its statutory authority to override local planning and zoning codes;

SEVENTH (Declaratory Judgment): that the proposed Belmont re-development is an irrational act as it is inconsistent with the Nassau County Comprehensive Plan and the Elmont Vision Plan;

EIGHTH (Article 78): that ESD violated required UCS Act procedures before voting to override local planning and zoning codes;

NINTH (Declaratory Judgment): that ESD violated New York State Law by engaging in an RFP process with a predetermined outcome;

TENTH (Article 78): that ESD violated Open Meetings Law by transacting public business in private with respect to the Project.

Respondent/defendant ESD opposes the petition, and cross-moves to dismiss the Petition/ Complaint in its entirety pursuant to CPLR §§ 3211(a) (1) and (7). Respondent/defendant FOB also opposes the petition, and cross-moves to dismiss the NINTH Cause of Action, which is the only cause of action applicable to FOB. Subsequent to the respective filings, the VILLAGE withdrew its EIGHTH and TENTH causes of action. The remaining causes of action shall be considered in sequence, in accordance with the applicable standard of review.

First Cause of Action.

The FIRST cause of action asserts that ESD violated SEQRA in failing to take a "hard look" at the potential traffic impacts of the Project. According to the VILLAGE, the ESD's traffic analysis was flawed, and

failed to address the project's significant unmitigated impacts both on the adjacent Cross Island Parkway ("CIP") and in local communities.

The VILLAGE's main challenges (among others) include claims that:

(1) The traffic analysis included in the DEIS was seriously flawed because it failed to include critical safety data required to allow reviewers to fully assess the credibility of the traffic study.

(2) The DEIS wrongly identified 6:30-7:30 as the peak period for Project related traffic (based upon the unproven assumption that Islanders games will start at 7:30 instead of 7:00, as they had in the past), thereby under-counting the background traffic conditions, and understating the traffic impact. The DEIS also failed to assess Project related impacts to the evening peak hour commute (identified as 6:00-7:00).

(3) The DEIS Traffic Study underestimated traffic impacts to local streets. The VILLAGE's expert projects that, due to the CIP's inability to accommodate the increase in traffic associated with the Project, a greater percentage of the total site traffic (than was assumed in the DEIS) will be re-routed through local communities. This impact will be exacerbated by the widespread use of traffic applications like Waze and Google Maps that will further divert drivers onto local roadways.

(4) The DEIS purported to rely on a Traffic Management Plan ("TMP") to mitigate Project related traffic impacts, but the TMP was not included in the DEIS. Rather, it was promised for future development, thus depriving the public of an opportunity for meaningful review. Further, the mitigation plan ultimately presented in the FEIS was inadequate.

(5) The DEIS lacked any credible assessment of the Project's impacts on emergency services response times. In understating Project related traffic congestion on local streets, the DEIS's conclusions regarding other traffic impacts, such as those on emergency response times, were significantly flawed.

(6) The DEIS's assessment of project construction traffic impacts was also flawed since it failed to consider the concurrent impacts of the Project and the planned multi-year work at rail bridges and grade-crossings along the main line of the LIRR.

According to the VILLAGE, the FEIS failed to address the deficiencies in the DEIS's assessment of traffic impacts.

In opposition to the claims of the VILLAGE, ESD maintains that the DEIS included an extensive and detailed traffic study that used conservative assumptions and was prepared in accordance with standard and accepted practices employed in SEQRA environmental reviews. Moreover, the methodologies and procedures

used in the preparation of the traffic studies were reviewed and approved by the New York State Department of Transportation, New York City Department of Transportation, and the Nassau County Department of Public Works. The raw data behind the traffic study was not required to be included in the DEIS, but, in any event, it was handed to the VILLAGE Mayor almost two months prior to the close of the public comment period on the DEIS.

With respect to the TMP, ESD asserts that the elements of the TMP were identified and discussed in detail in the DEIS, and have continued to be refined since then to mitigate Project related impacts to the maximum extent practicable. The FEIS includes further detail on the TMP measures, and includes a draft TMP, which specifies how the TMP will continue to be monitored and refined in consultation with stakeholders prior to the opening of the Project. Further, the TMP includes a draft monitoring plan to be used to evaluate the effectiveness of the TMP components, allowing for adjustments if necessary following Project implementation. In ESD's view, providing for continued modification and adjustment is not tantamount to improperly deferring consideration until the future, but rather provides a mechanism to further optimize traffic mitigation measures.

ESD's submissions describe, in abundant detail, the transportation analysis undertaken to determine the effects of the Project on vehicular traffic on the local street network. A comprehensive review of the scope of the traffic studies, the specific methodologies used therein and the conclusions reached, is set forth in ESD's Memorandum of Law (with citation to the record), and in the Affidavit of Erik Metzger, Chief of Transportation Systems for VHB (an engineering and environmental consulting firm), who was responsible for preparing the transportation assessments in the DEIS and FEIS.

On the record presented, the Court finds that ESD adequately addresses each of the VILLAGE's claims regarding the purported flaws in the EIS's traffic analysis. ESD demonstrates that the traffic studies did, in fact, take into account the factors they are accused of disregarding, but reached different conclusions with respect to the extent of the impact or the efficacy of mitigation.

As to the discrepancy in the peak periods, ESD maintains that the DEIS's traffic analysis correctly identified the peak period for Project related traffic based upon evidence that hockey games will, in the future, be scheduled for 7:30 to minimize overlap with the evening rush hour. This period was chosen for assessment because it presented the worst case scenario for an adverse impact on traffic. SEQRA does not require an analysis of a condition that would result in lesser impacts than the reasonable worst-case scenario.

Based upon the foregoing, the Court finds that ESD took the requisite "hard look" at the potential traffic impacts of the Project. In taking a hard look, ESD was only required to thoroughly analyze the identified relevant areas of environmental concern. It was not required to consider every conceivable environmental impact, mitigating measure or alternative, and it was not required to reach any particular result or conclusion. 6 NYCRR § 617.7(b)(3); *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417 (1986). The respondents' approval of the Project based upon the traffic studies and analyses cited in the DEIS and FEIS is supported by a

rational basis. Accordingly, the Court must defer to the agency's judgment. See *Matter of Peckham v Calogero*, 12 NY3d 424, 431 (2009); *Gramercy North Assoc. v Biderman*, 169 AD2d 345, 349 (1st Dept. 1991).

Second Cause of Action.

The SECOND cause of action asserts that ESD violated SEQRA in failing to take a hard look at Project modifications and to prepare an SEIS. According to the VILLAGE, ESD introduced major new elements to the Project in the FEIS. Although characterized as "mitigation" measures, in the VILLAGE's view, these could cause significant environmental impacts which required assessment and supplemental environmental review. See 6 NYCRR § 617.9(a)(7)(i); *Mobil Oil Corp. v City of Syracuse Indus. Dev. Agency*, 224 AD2d 15 (4th Dept. 1996). Moreover, the VILLAGE asserts, insofar as the agency did not prepare an SEIS, it was required to provide a reasoned elaboration for its decision, which must have a rational basis. See *Develop Don't Destroy (Brooklyn), Inc. v Empire State Dev. Corp.*, 94 AD3d 508, 511(1st Dept. 2012).

The Project modifications complained of include: (i) the TMP; (ii) the introduction of the new LIRR Elmont Train Station; and (iii) the potential need to store two 30,000 liquified petroleum gas (LPG) tanks on the property for use by the Project.

As discussed above, the VILLAGE objects to the introduction of the TMP in the FEIS. The VILLAGE also criticizes it substantively. Among other things, the TMP proposes a "Use Alternate Route" strategy to encourage existing traffic on the CIP to seek alternate routes. While the TMP projects that up to 10% of the existing traffic on the CIP will be diverted by these measures, in the VILLAGE's view, the FEIS fails to undertake any assessment or analysis of what alternate routes will be utilized by this diverted traffic, the extent to which those alternate routes have the capacity to handle the projected diverted traffic, or the degree to which these alternate routes will be adversely impacted by the diverted traffic.

With respect to the impact of the new LIRR station, the VILLAGE raises numerous issues, including: (i) the inadequate measure of its overall mitigation effect on traffic; (ii) the lack of a mitigation strategy to be employed in the time period before the new station is fully operational; (iii) the suboptimal location of the station, by reason of its distance from the proposed arena and retail complex and its proximity to a school sports field and playground, as well as the failure to consider alternative locations; and (iv) the adverse impact on the residential neighbors that will abut the new station. According to the VILLAGE, these issues were not adequately addressed by the FEIS, nor made subject to appropriate environmental review and public scrutiny.

Finally, the VILLAGE objects to the Project modification which would allow NYAP to store two 30,000 LPG tanks on the property. The need to rely upon LPG was based upon the unavailability of natural gas, due to moratorium on processing new applications for service imposed by National Grid. The VILLAGE contends that

this prospect was known long before issuance of the FEIS, but ESD and NYAP introduced the LPG tank alternative for the first time in the FEIS, precluding public review and comment. According to the VILLAGE, ESD failed to consider the impacts of LPG storage on the safety of neighboring populations in the residential areas near the storage area and along delivery routes, including the risk of a catastrophic accident at the site or along the delivery routes, as it is required to do under SEQRA. ESD also failed to address the factors pertinent to the permitting requirements under the New York Environmental Conservation Law.

ESD responds generally that no SEIS was necessary, because the changes to the Project and additional mitigation identified in the FEIS did not result in new significant adverse impacts. Rather, ESD argues, those measures ameliorate significant impacts. See generally 6 NYCRR § 617.9(a)(7)(I); *Matter of Riverkeeper*, 9 N.Y.3d 219, 231 (2007). In fact, ESD notes, additional TMP measures and the addition of the new Elmont LIRR station were requested in hearings on the DEIS by multiple members of the public, elected officials, and the expert transportation agencies reviewing the traffic study.

With respect to the TMP in particular, ESD states that between the issuance of the DEIS and the FEIS, and in response to requests by the expert transportation agencies, NYAP, ESD and their consultants developed a detailed draft TMP for review and comment by those agencies. The draft 72-page TMP presented in the FEIS went into greater detail on the measures outlined in the DEIS. The FEIS also included a table showing in a quantitative fashion how the TMP would reduce impacts from the Project, and not result in any significant adverse impacts that were not previously identified and discussed in the DEIS.

With respect to the addition of the new Elmont LIRR station, ESD explains that this was new traffic mitigation measure adopted in response to the myriad comments from members of the public, elected officials, and the expert transportation agencies calling for new and enhanced mass transit options for the Project and the Elmont community. The station's likely environmental impacts were identified, considered and analyzed in the FEIS, including a quantitative assessment of all transportation impacts of the Project with the new LIRR Elmont Station. Moreover, potential impacts were assessed in the areas of land use, zoning, and community character; community facilities and utilities; open space and recreational resources; historic and cultural resources; visual resources; hazardous materials; natural resources; air quality; noise; climate change; construction and socioeconomic conditions. The FEIS concluded that implementation of this mitigation measure would reduce the Project's traffic impacts and would not result in any new unmitigated significant adverse environmental impacts. The Village and members of the public had the opportunity to comment on these conclusions when ESD opened up the FEIS for additional comment. The justification for the location of the station was explained in the response to comments on the FEIS, and reiterated in ESD's brief.

With respect to the LPG storage, EDS notes that National Grid's moratorium occurred between the issuance of the DEIS and the FEIS. The FEIS responded by developing alternative approaches to serve the

Project's energy needs and assessing the potential significant adverse impacts from those alternatives. In the three chapters devoted to the potential utilization of an LPG system, the FEIS did not identify any significant adverse impacts with respect to this proposed system. Moreover, the public was afforded an opportunity to comment on the LPG system. In response thereto, the FEIS advised that the installation and operation of an LPG system would be approved and conducted in accordance with the New York State Fire Code and/or the Nassau County Fire Prevention Ordinance, which each provide a comprehensive regulatory framework for the storage, handling, transportation, and use of LPG. Additionally, trucks delivering LPG to the Project Sites would be subject to the requirements of the State or County fire codes (if applicable), and would not travel through the side streets of Queens. All LPG delivery trucks would be required to use designated truck routes such as Hempstead Avenue and Jamaica Avenue, which are not side streets. In addition, ESD establishes that the storage of LPG is expressly excluded from the permitting requirements of the Enviromental Conservation Law cited in the VILLAGE's brief.

The Court finds that ESD took the requisite "hard look" at the Project modifications, as evidenced by the portions of the record cited in ESD's memorandum of law. Moreover, ESD provided a reasoned elaboration of the basis for its determination that it was not required to prepare an SEIS. See *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast,* 9 NY3d 219, 231-232 (2007); *H.O.M.E.S. v New York State Urban Dev. Corp.*, 69 AD2d 222, 232 (4th Dept. 1979). Accordingly, the Court finds that the claims asserted in this cause of action provide no basis to overturn the Project approvals.

Third Cause of Action.

The VILLAGE claims that ESD violated SEQRA by omitting the "no retail village" alternative from the DEIS and not analyzing this alternative until it was included in the FEIS, which precluded meaningful review and public comment. Further, the Village maintains that the FEIS's assessment of the alternative is inadequate, and skewed to a particular outcome.

ESD maintains that, while the DEIS already included a reasonable range of alternatives, ESD added a "no retail village" option to the FEIS in response to comments from the Village and others. Further, ESD cites tables included in the FEIS which directly compared the number of individual traffic movements, intersections, and highway segments that would have significant adverse traffic impacts for the "no retail village" alternative with those for the Project. Based upon this data, ESD concluded that the "no retail village" alternative would not substantially avoid or reduce traffic-related impacts when compared to the Project. The FEIS addressed the application of mitigation measures with respect to both alternatives. The public had an opportunity to comment on the FEIS, and responses were provided in a Post-FEIS memo.

The Court finds that ESD's consideration of the "no retail village" alternative did not violate SEQRA. In considering and analyzing Project alternatives, "not every conceivable… alternative, need be addressed in order to

meet the agency's responsibility." *Matter of Neville v Koch*, 79 NY2d 416, 425 (1992). A rule of reason applies: the agency must consider a reasonable range of alternatives to the specific project, but the degree of detail required in assessing those alternatives will vary with the circumstances. "Where it appears, as here, that there has been such a reasonable consideration of alternatives, the judicial inquiry is at an end." *Matter of Town of Dryden v Tompkins Country Bd. of Representatives*, 78 N.Y.2d 331, 333-334 (1991).

Fourth Cause of Action.

The VILLAGE maintains that ESD violated SEQRA by segmenting its environmental review of the Project from NYRA's planned Belmont Park expansion. According to the VILLAGE, ESD was required to evaluate the cumulative effect of these two adjacent, related, and concurrent projects, in the context of an overall development plan for Belmont Park.

In response, ESD describes the factors considered and the analysis undertaken to determine that the NYRA improvements should not be deemed part of the Project. Primarily, the FEIS noted the functional independence of the two actions – the approval of one would not commit ESD to approval of the other, and the NYRA improvements could move forward regardless of the outcome of ESD's approval process for the Project. The FEIS concluded that there was no need for them to be completed at the same time and that such overlap might not occur.

Notwithstanding the foregoing, ESD notes, the FEIS did consider the NYRA improvements in its analysis of the Project's potential environmental impacts. The details of this consideration are spelled out in ESD's brief, with citations to the record, and in the affidavit of ESD's environmental planning consultants.

The Court finds that the determination that the two projects were not impermissibly segmented has a rational basis in the record, and the Court finds no basis to disturb it.

Fifth Cause of Action.

The Petition's fifth cause of action alleges that ESD violated section 16(1) of the UDC Act insofar as it ignored local needs and desires by approving a Project that grossly exceeded the scale and magnitude originally contemplated and supported by the local communities.

ESD sets forth, with ample detail and reference to the record, the process it undertook in considering local needs and desires – including a multitude of meetings (with local residents, elected officials, advisory committees, community groups and their leaders), public hearings, and consideration of over 2000 comments on the General Project Plan and FEIS. ESD also cites several examples of changes it made in response to public concerns. Moreover, while noting the vigorous opposition to the Project from the VILLAGE, ESD demonstrates that strong

support was expressed by other local factions, including County government, community groups and elected officials.

On the record presented, the Court does not find that ESD failed to consider local needs and desires in violation of the UDC Act, although not all such needs and desires were met. The ESD could rationally determine that local concerns were heard, addressed, and acted upon where feasible, and that this was consistent with the objectives of the UDC Act.

Sixth Cause of Action.

The VILLAGE alleges that ESD exceeded its statutory authority to override local planning and zoning codes because a different or smaller project could have avoided the need for the overrides or minimized their extent.

It is well settled that the ESD has broad authority under the UDC Act to override local zoning ordinances and regulations where compliance would not be feasible. See *Matter of Waybro Corp. v Board of Estimate of City of NY*, 67 NY2d 349 (1986); *Floyd v New York State Urban Dev. Corp*., 33 N.Y.2d 1 (1973). Here, the General Project Plan adequately sets forth the justification for overriding the local zoning requirements. ESD was not required to tailor the Project to avoid or minimize such overrides. Accordingly, the Court finds that the VILLAGE fails to state a cognizable cause of action, and the claim must be dismissed.

Seventh Cause of Action.

In this cause of action, the VILLAGE alleges that approval of the Project was irrational insofar as the Project is inconsistent with local and regional planning documents, including the 1998 Nassau County Comprehensive Plan and the 2008 Elmont Vision Plan.

In opposition, ESD describes in detail the consideration given to the Nassau County and Elmont plans, the ways in the which the FEIS addressed the plans' concerns, and the manner in which the Project serves the stated objectives of both of these plans. On the record presented, the Court cannot find that ESD's analysis, and ultimate approval of the Project on the basis thererof, was irrational. Accordingly, the Court finds that the VILLAGE has no viable claim under this cause of action.

Ninth Cause of Action.

In the ninth cause of action, the VILLAGE alleges that the RFP Process for the Belmont redevelopment had a predetermined outcome in violation of state law requiring a legitimate competitive process. See Racing Law

§212. The VILLAGE refers to series of communications circulating among NYRA and State officials regarding the 2016 NYRA Plan, well before the commencement of the RFP process in 2017. The 2016 NYRA Plan contemplated a 19,000-seat arena for the NY Islanders hockey team, and well as other project elements that were nearly identical to those contained in NYAP's later proposal. According to the VILLAGE, the determination by the FOB to close the 2012 RFP and to request a new RFP, after the "secret" circulation of the 2016 NYRA Plan, evidences that the RFP process commenced in 2017 was a sham, predetermined in NYAP's favor.

With respect to this cause of action, both ESD and FOB submit opposition and cross-motions to dismiss. They argue, primarily, that: (i) the VILLAGE lacks standing to challenge the RFP process; and (ii) the ninth cause of action lacks merit and should be dismissed, whether considered under the standards applicable to Article 78 claims, or those applicable to claims for declaratory judgment. They also assert that, as a municipality and subdivision of the State, the VILLAGE lacks capacity to sue the State or its agencies. See *New York Blue Line Council,*
Inc. v Adirondack Park Agency, 86 AD3d 756, 758 (3d Dep't 2011), *appeal dismissed* 17 NY3d 947 (2015), *lv denied* 18 NY3d 806 (2012).

The Court finds that the VILLAGE lacks standing to sue for alleged improprieties in the RFP process. The VILLAGE has not shown that it has suffered an injury in fact distinct from that of the general public and that the injury alleged is within the zone of interests defined by the governing statute. See *Soc'y. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 771-774 (1991).

The primary concern to be protected by statutes requiring competitive bidding is to invite competition and to prevent favoritism, fraud, and corruption in the bidding process. *Corbett v New York State Thruway Authority*, 204 AD2d 542, 543(2d Dept. 1994). Because the VILLAGE had no direct stake in the outcome of the bidding process (having submitted no bid on the RFP), it did not suffer a direct injury in fact. See *Transactive Corp. v New York State Dept. of Social Services*, 92 NY2d 579, 587 (1998). To the extent that the VILLAGE claims harm arising from the outcome of the bidding process – i.e., the selection of the NYAP proposal – that harm arises from the alleged impact of the resulting proposal on the environment and character of the surrounding community. These concerns do not fall within the zone of interest of a competitive bidding statute. *Corbett*, 204 AD2d at 533.

In view of the Court's determination on standing, the Court need not reach the other grounds for dismissal articulated by the respondents/defendants.

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein. Upon review of the voluminous documentation submitted herewith, and upon consideration of the well-reasoned arguments of the parties, the Court recognizes that the approval of the Project goes against the VILLAGE's legitimate concerns with respect to the scope of the project and the impact on

its residents. Nonetheless, the Court's review is limited to the evaluation of whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. CPLR §7803; *Matter of Pell v Bd. Of Educ. Of Union Free School Dist. No. 1*, 34 NY2d 222, 230 (1974). The Court "may not substitute its judgment for that of an agency, for it is not their role to weigh the desirability of a proposed action, or choose from among alternatives." *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 232 (2007) (internal citations and quotation marks omitted). Having found a rational basis for the determinations challenged herein, the Court's inquiry must end.

Accordingly, the Petition (*Sequence 001*) is ***denied***; and the motions to dismiss the Petition (*Sequence 002, 003*) are ***granted***.

In view of the foregoing, the VILLAGE's motion for a preliminary injunction (*Sequence 004*) and the motion to intervene (*Sequence 005*) have been rendered academic.

Dated: May 11, 2020

_____/s/
Roy S. Mahon, J.S.C.