

Alicia R. Legland
Associate
Direct Dial: 518.433.2416
alegland@hodgsonruss.com



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VIA ELECTRONIC MAIL/HAND DELIVERY

Town of New Lebanon
Planning Board
14755 Route 22
New Lebanon, NY 12125

Re: Tilden Commons

To: Members of the Planning Board

Our firm represents Tilden Project LLC (Applicant) in connection with its efforts to develop Tilden Commons (the Project) on Route 20 in the Town of New Lebanon (Town). This letter is in response to the comments of Keane & Beane P.C., attorneys for the New Lebanon Central School District (District), dated September 10, 2025 (the Letter).

I. It is Not Legally Permissible for the Planning Board to Consider Potential Economic Impacts to the District, Real or Imagined, when reviewing the Full Environmental Assessment Form (FEAF) Part 2.

The District's attorney erroneously states that it is the Applicant's responsibility to provide a financial analysis of the potential fiscal impact on the District from the inclusion of additional students potentially residing at Tilden Commons, and that the Planning Board "must" consider this analysis when completing the FEAF Part 2. This is legally incorrect for several reasons.

1. Financial impacts to a school district are *not* environmental impacts to be reviewed as part of the FEAF Part 2 required under the State Environmental Quality Review Act (SEQRA).

The Planning Board, as Lead Agency under SEQRA, is required to determine the significance of the Project, which it will do by reviewing the FEAF Part I and preparing the FEAF Part 2. Section 617.7(c) of the SEQRA regulations provides the criteria for determining significance of a proposed action. Although this list is not exhaustive, it is critical that none of these criteria relate, *even remotely*, to fiscal impacts on a local school district. These criteria are:

- A substantial adverse change in existing *air quality*, ground or surface *water quality* or quantity, *traffic or noise* levels; a substantial increase in *solid waste* production; a substantial increase in potential for *erosion, flooding, leaching or drainage* problems
- The removal or destruction of large quantities of *vegetation or fauna*; substantial interference with the movement of any resident or migratory *fish or wildlife species*; impacts on a significant *habitat* area; substantial adverse impacts on a *threatened or*

endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources

- The impairment of the environmental characteristics of a Critical Environmental Area
- The creation of a material conflict with a community's current plans or goals as officially approved or adopted
- The impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character
- A major change in the use of either the quantity or type of energy
- The creation of a hazard to human health
- A substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses
- The encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action
- The creation of a material demand for other actions that would result in one of the above consequences
- Changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment
- Two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the [above] criteria

6 NYCRR § 617.7(c)(1) (emphasis added).

The New York State Department of Environmental Conservation's (NYSDEC's) SEQRA Handbook also specifically addresses this issue, in direct contradiction to the inaccurate claims of the District's attorney. The SEQRA Handbook states that a determination of significance may not be based on economic costs and social impacts, but instead, must be based on impacts to physical conditions. See NYS DEP'T OF ENVTL. CONSERV., *The SEQRA Handbook* (4th Ed. 2020) at 85 (“**34. May determinations of significance be based on economic costs and social impacts? No.** A determination of significance is based on the regulatory criteria relating to environmental significance as set out in 617.7(c). Also, the definition of ‘environment’ set out in 617.2(l) includes ‘physical conditions’ that will be affected by a proposed action. For instance, impacts to physical conditions related to community character would include noise, aesthetics, and traffic, and are properly ‘environmental’. However, potential impacts relating to lowered real estate values, or net jobs created, would be considered economic alone, not environmental.”) (emphasis added); see also *Valhalla Union Free School Dist. v. Bd. of Legislators of County of Westchester*, 183 A.D.2d 771 (2d Dep’t 1992). Indeed, the Planning Board’s basis of a determination of significance on the purported fiscal impacts to the District, whether accurate or not, would be impermissible per the NYSDEC’s own SEQRA guidance.

Further, the District’s attorney is also under the mistaken impression that because Subsection (b) to FEAF Part 2, Item 18 (“Consistency with Community Character”) asks whether “[t]he proposed action may create a demand for additional community services (e.g. schools,

police and fire)[,]” that this allows the Planning Board to impermissibly consider financial impacts to the District. That is incorrect. First, the Project is fully consistent with the community character of this area of the Town, as described more fully in our letter to the Planning Board dated July 2, 2025. The Project is a specially permitted use under the local zoning law, which represents a legislative finding that the permitted use is in harmony with the Town’s zoning plans and will not negatively impact the neighborhood; the Project is proposed to be located in the commercial center of Town; the Project was intentionally designed to be consistent with the architectural style of the Town; and the Project fulfills the Town’s goals as stated in its Comprehensive Plan for a grocery store and affordable housing. The process for completing the FEAF Part 2 only requires answering the subsections where the lead agency answers “Yes” to the larger question. Here, the Planning Board would not reach this subsection because the Project is consistent with community character.

Second, even if the Planning Board answered “Yes,” and reached this subsection (b), fiscal impacts to the District would still not be a relevant consideration for the Planning Board. As stated, when making a determination of significance, the Planning Board must consider potential environmental impacts, *i.e.*, potential impacts to physical conditions from the Project, *not* solely economic or social impacts. This subsection (b) *could be* relevant in a situation where a proposed project requires the local fire department to expand its firehouse, or build a new one, to be able to support any fire response needs of the proposed project, thereby creating a potential tangible impact to the environment (*e.g.*, the new firehouse would need an additional water supply, it would increase the electric load, it would need a new ingress/egress point from the road, etc.). This subsection (b) would *not* be relevant in a situation where a proposed action would require the local fire department to hire an additional firefighter to meet the increased needs of the department from the proposed project. The District’s allegations that the Project would increase the number of students, thereby having a fiscal impact on the District, such as the need for more teachers, would fall into that second category. It is *not* creating an environmental impact, as there is no physical condition being impacted. The District does not need to build a new school, which would generate various physical impacts, because of the potential increase of students as a result of the Project. The District’s concerns are purely financial. Thus, if the Planning Board reaches this subsection (b), it would be required to check “No or small impact may occur.”

2. The Planning Board is not legally authorized under Article 16 of New York Town Law to consider financial impacts to the District, whether plausible or not.

New York Town Law Article 16, titled “Zoning and Planning,” is the State law that empowers municipalities to enact zoning laws and regulate land uses within the municipal boundaries. The State granted local town boards the authority to enact local laws to govern zoning and land use, including the authority to

regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes[.]

N.Y. Town Law § 261 (McKinney 2013) (emphasis added). Notably, there is nothing related to financial impacts of a school district within the ambit of this delegated zoning authority.

The State delegates this zoning power to local town boards, which in turn create other local boards, like planning boards and zoning boards of appeal. Once created, the town boards delegate this zoning power to such boards (*e.g.*, the authority to grant variances to a zoning board of appeals and the authority to grant special use permits to a planning board). As such, the Planning Board only has the authority enumerated under Article 16 of New York Town law, as delegated to it from the Town Board. *See* N.Y. Town Law § 271(1) (“The town board of each town is hereby authorized by local law or ordinance, to create a planning board ...”).

There is nothing in New York Town Law Article 16, or the local town code enacted by the Town of New Lebanon Town Board, that authorizes the Planning Board to consider fiscal impacts to the District when exercising its purely delegated authority to review applications for special use permits and site plan approval.

3. The District’s concerns stem from the possibility that the Applicant may seek a Payment in Lieu of Taxes (PILOT) agreement with the Town, which is far too speculative a concern upon which to base a determination of significance.

When determining significance of a proposed action, the lead agency should not address potential impacts that are too speculative. *See Village of Chestnut Ridge v. Town of Ramapo*, 99 A.D.3d 918 (2d Dep’t 2012) (holding that consideration of speculative environmental consequences is improper during SEQRA review); *Chinese Staff and Workers Ass’n v. Burden*, 88 A.D.3d 425, 433 (1st Dep’t 2011), *affd.* 19 N.Y.3d 922 (2012) (It is neither arbitrary and capricious nor a violation of environmental laws for a lead agency “to ignore speculative environmental consequences which might arise”); *see also* NYS DEP’T OF ENVTL. CONSERV., *The SEQRA Handbook* (4th Ed. 2020) at 5, 79-80 (“The court decisions have also stated that not every conceivable impact needs to be considered—*speculative impacts may be ignored* ... If a potential impact is too speculative, it should not be addressed ... an environmental assessment must be limited to impacts that are probable, not speculative ... As with direct impacts, assessment of cumulative impacts should be limited to consideration of reasonably foreseeable impacts, not speculative ones.”) (emphasis added).

As such, it would be impermissible under New York case law and the NYSDEC’s own SEQRA guidance to base its determination of significance on alleged financial impacts to the District from the Applicant seeking a PILOT, which is entirely speculative at this point.

II. Even if it was Appropriate for the Planning Board to Consider Economic Impacts to the District under SEQRA, which it is not, there are No Negative Impacts on the District that Will Result from the Project.

Although these considerations are not appropriate for the Planning Board to consider as part of its determination of significance under SEQRA, if the Planning Board insists on illegally analyzing the fiscal impact of the Project on the District, it must review the following facts.

1. The Applicant intends to pay its full property taxes, which would be calculated under Real Property Tax Law § 581-a, as required by law. And if the Applicant seeks a PILOT agreement with the Town, the PILOT payment would be commensurate with its projected annual property taxes.

Although it is subject to change based on a variety of factors, at present, the Applicant has an income capitalization pro forma that is projecting annual property taxes of \$51,193.97. The grocery store portion of the Project is also currently estimated to generate at least \$10,000.00 in annual property taxes. At over \$60,000.00 in total property taxes, this would make the Project the largest property taxpayer in the entire Town. And, if the Applicant seeks a PILOT, the PILOT payment would be close to, if not the same as, this property tax payment. Based on the Applicant's prior interactions with New York State Homes and Community Renewal (HCR), which will grant the funding for the Project, it is the Applicant's perspective that in a funding application where a PILOT is sought, the closer the proposed PILOT payment is to the calculated property tax payment, the more competitive the application is. Based on the Applicant's experience, HCR sometimes requires PILOTs as a way to provide certainty of the annual property tax expense, for both the project owner and local municipality, rather than a way to avoid paying property taxes or reduce the amount of revenue generated for the municipality. As such, although it is not yet known whether a PILOT will be sought for the Project, the Town can expect to receive a significant amount of annual revenue from the Project in the form of either property taxes or a PILOT payment. There is, therefore, no financial impact to the District.

2. The District was designed for a 13:1 student to teacher ratio, but currently operates with a 9:1 student to teacher ratio.

The District was designed with a 13:1 student to teacher ratio—the State average. Many years ago, the District had over 700 students with a 30:1 student teacher ratio. However, due to consistent decreases in enrollment over the last several years, the District only operates with a 9:1 student teacher ratio. Indeed, the infrastructure of this District exists to accommodate new students and it would be a benefit to a District that has experienced such significant decreased enrollment.

3. The Project could result in increased State aid for the District.

State aid to school districts is based on the average income of district residents, enrollment, and property values. The Town is a lower-than-average income community, but due to some very high-income individuals, the District has a high average income. This means that the District receives less State aid than it ordinarily would. But the Project presents the opportunity for lower income taxpayers to live in the Town, which will bring the average district income down, resulting in the possibility of more State aid to the District. Further, if the Project results in more students in the District, this will increase overall enrollment, thereby further attracting increased State aid for the District.

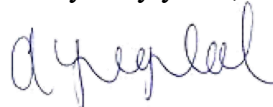
4. The District is invoking its recent budget vote, which did not pass, as evidence of some type of financial crisis that does not exist.

The defeated budget vote was evidence only of a local political problem. Unfortunately, the District has had consistently low turnout for its school budget votes over the last several years. This year, due to low turnout and other political factors, the effort to increase taxes by 15% lost by only a few votes. Realizing this, members of the community became concerned and got engaged, and efforts were made to inform voters about the importance of the District's budget. The second effort passed easily. School districts adapt to changes in enrollment and taxes every year. That is what they do. As a hypothetical, if all the households in town with no school age children moved out of Town, and those homes were replaced with households with school age children, the same increase of students would happen, but none of the Town's boards would have any involvement and the District would just have to adapt—as they are required to do. The District is more than capable of accommodating new students and in any case, they will receive adequate revenue from the Project either in the form of property taxes or a PILOT payment.

We strongly urge the Planning Board to think carefully about the comment letters it has received from the District's attorney. The first letter made grossly inaccurate claims about conflicts of interest that were blatantly incorrect, legally and factually, as no conflicts of interest exists at all. And now, the District's attorney is trying to inappropriately influence the Planning Board to weaponize its review of the potential *physical, environmental impacts* of the Project under SEQRA to pander to the unfounded concerns of the District about its own finances. None of this is appropriate. It appears the District is simply opposed to development in the Town that would bring any new students to its schools, which is a pretty odd stance for a struggling school district to take. One then wonders what the motivations of the District really are here.

We thank you for your consideration of this letter. Please contact me with any questions or concerns.

Very truly yours,



Alicia R. Legland

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cc: Courtney Potter, *Planning Board Clerk*, Town of New Lebanon (*via email*)
Stephanie Ferradino, Esq., *Planning Board Attorney*, Town of New Lebanon (*via email*)
Town of New Lebanon Zoning Board of Appeals (*via email*)
Tilden Project LLC (*via email*)