

**Minutes of the
TROY CITY COUNCIL
REGULAR MEETING
June 3, 2021
7:00 P.M.**

Due to the COVID-19 crisis, this meeting was held remotely via videoconference.

The meeting was called to order at 7:10 p.m. by Council President Mantello.

Pledge of Allegiance

Good News: Commendations were given to

Roll Call: The roll being called, the following answered to their names: Council Member Gulli, Council Member Ashe-McPherson, Council Member Steele, Council Member Cummings, Council Member Zalewski, Council Member McDermott, Council President Mantello, Chair.

In attendance were Mayor Patrick Madden, Deputy Mayor Monica Kurzejeski, Corporation Counsel Richard T. Morrissey, Comptroller Andrew Piotrowski, and Commissioner of Planning & Economic Development Steven Strichman.

Council Member Zalewski made a motion to dispense with the reading of the minutes of the prior meeting and approve as posted. Motion passed 7 ayes, 0 nos.

Public Forum:

The following individuals spoke regarding Resolution 35 and/or Ordinance 38:

- | | |
|----------------------|------------------------|
| • Adam Frelin | • Leo Matteo Bachinger |
| • Dan Phiffer | • Rhea Drysdale |
| • Grace Nichols | • Geri De Seve |
| • Daniel Morrissey | • Russell Ziemba |
| • James Kruegler | • Sarah Pezdek |
| • Jennifer Schulaner | • Sean Mickey Dobbin |
| • Dara Silbermann | • Steven Smith |
| • Jessica Bennett | • Victoria Christof |
| • Keith Hirokawa | • Zachary Davis |
| • Kylie Spinelli | |

The following individuals submitted written comments, which are appended to these minutes:

- | | |
|-----------------------------|----------------------------------|
| • Alexander Hanse | • Ellie Irons |
| • Angela Beallor | • Leo Matteo Bachinger |
| • Anita Sanchez | • The Friends of the Mahicantuck |
| • Carolyn and Laszlo Bardos | • Grace Nichols |
| • Colie Collen | • Hana van der Kolk |
| • Elizabeth Rodriguez | • Keith Hirokawa |

- Jennifer Schulaner
- Jessica Bennett
- John Raup
- Josh Maxson
- Mickey Dobbin
- Patrick Kiley
- Kristoph DiMaria
- Rhea Drysdale
- Sean Rowe
- Barb Nelson
- Bonney Hartley

33. Ordinance Amending Chapters 234 & 247 Of The Troy City Code (Council Member Cummings) (At The Request Of The Administration)

Ordinance passed 5 ayes, 2 nos (Ashe-McPherson, Mantello), 0 abstentions.

34. Ordinance Amending The 2021 Special Grants Fund Budget (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

35. Ordinance Authorizing The City Of Troy To Accept Grant Funding From The Division Of Criminal Justice Services For Police Equipment And Amending The 2021 General Fund Budget To Appropriate Funding From Said Grant (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

36. Ordinance Declaring One Hundred Used Self Contained Breathing Apparatus (“SCBA”) Air Cylinders Surplus City Property And Authorizing The Comptroller To Sell The Used SCBA Cylinders For One Hundred Dollars Each (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

37. Ordinance Transferring Funds Within The 2021 General Fund Budget (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

38. Ordinance Amending The Special Revenue Budget To Accept A NYS Homeland Security Grant For The Purpose Of Purchasing Radios And Related Equipment (Council President Mantello) (At The Request Of The Administration)

Cummings made a motion to add Section 2: “The Police and Fire Department shall not encrypt their radio "Talk Groups" used for dispatching emergency response, until and unless the following conditions are met:

- a. A system is developed for public disclosure of incident response information in real-time.
- b. A policy and process is developed and approved allowing for access to police scanner audio feeds by independent and accredited media individuals and organizations, as well as oversight organizations such as the PORB.”

Motion failed 3 ayes, 4 nos (Gulli, Ashe-McPherson, McDermott, Mantello). Ordinance passed 7 ayes, 0 nos, 0 abstentions.

39. Ordinance Amending The Capital Projects Fund Budget (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

40. An Ordinance Adding Chapter 274 (“Vehicles, Off-Road”) To The Code Of The City Of Troy To Prohibit The Illegal Operation Of Off-Road Vehicles In The City (Council Member Gulli, Council Member Ashe McPherson, Council Member Zalewski, Council President Mantello)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

42. Ordinance Amending The 2021 General Fund Budget (Council President Mantello) (At The Request Of The Administration)

Ordinance withdrawn by Administration.

43. Ordinance Amending The 2021 Special Revenue Fund Budget (Council President Mantello) (At The Request Of The Administration)

Ordinance passed 7 ayes, 0 nos, 0 abstentions.

44. Ordinance Authorizing And Directing Sales Of City Owned Real Property By The Proposal Sale Application Method (Council President Mantello) (At The Request Of The Administration)

Mantello made a motion to remove tax parcel 80.48-8-14 from the list. Motion passed 7 ayes, 0 nos. Ordinance passed 7 ayes, 0 nos, 0 abstentions.

35. Resolution Declaring The Troy City Council “Lead Agency” For Review Under The State Environmental Quality Review Act (“SEQRA”) Of A Request To Rezone And Proposal To Develop Tax Parcel Number 70.64-1-1 (Council Member Gulli) (At The Request Of The Administration)

Resolution passed 4 ayes, 3 nos (Cummings, Zalewski, Mantello), 0 abstentions.

36. Bond Resolution Of The City Of Troy, New York, Authorizing The Issuance Of \$5,430,955 Serial Bonds To Finance The Reconstruction Of Various Streets In The City (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

37. Resolution Determining That Proposed Action Is A Type II Action For Purposes Of The New York State Environmental Quality Review Act (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

38. Resolution Determining That Proposed Action Is A Type II Action For Purposes Of The New York State Environmental Quality Review Act (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

39. Bond Resolution Of The City Of Troy, New York, Authorizing The Issuance Of \$8,250,000 Serial Bonds To Finance The Street Lighting Replacement Projects (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

40. Resolution Adopting The Congress Street Bridge Study (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

41. Resolution Proclaiming June 2021 To Be Graduates' Month & Designating Saturday, June 5th At 11 Am As The Second Annual Graduates (All Levels) City-Wide Car Parade (Council President Mantello, Council Member Ashe McPherson)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

42. Resolution Recognizing June 2021 As Pride Month In the City Of Troy (Council Member Zalewski, Council President Mantello)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

43. Resolution Appointing A Commissioner Of Deeds For The City Of Troy (Council President Mantello)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

45. Resolution Authorizing The Mayor To Enter Into An Agreement With RKG Associates Inc To Perform The Analysis Of Impediments To Fair Housing Choice Required By The US Department Of Housing And Urban Development (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

46. Resolution Of Troy City Council Recognizing Juneteenth (Council Member Steele, Council President Mantello)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

47. Resolution Authorizing The Mayor To Enter Into An Amendment Of The Agreement With Chazen Companies For Further Design And Construction Phase Services For The City Of Troy Riverwalk Trail (Council President Mantello) (At The Request Of The Administration)

Resolution passed 7 ayes, 0 nos, 0 abstentions.

Adjournment

The meeting adjourned at 10:57 p.m.

A video recording of this meeting is on file at the City Clerk's office.

Written Public Comments

Relations between the community and the Troy Police Department have been on a precipitous slope in the past few years. Instead of making strides to strengthen a relationship that is essential to the health and well-being of our individual neighborhoods and city-wide community as a whole, Chief Owens appears to have doubled-down on the cloistering of the Troy Police Department, with millions of dollars in taxpayer-funded increases to the TPD budget as well as exceptional expenditures to hire additional officers and equipment documented every single year, with the consent of the City Council. I ask the members of the Council to consider what impact these budgetary increases and equipment and personnel expenditures have resulted in in our communities—our urban areas are swarmed with police cars and usually six or more officers responding to calls that do not result in any actionable law enforcement, serving only to disrupt the overwhelming amount of law-abiding citizens in their day-to-day actions walking and driving through North Central, South Central, South Troy. Analyzing data on crime reporting TPD themselves voluntarily reports to the FBI, there has been no statistically significant change in the levels of violent crime and crime in general in the city of Troy, even with millions of dollars in increased expenditures. I implore you, Members of the City Council, to consider why we appropriate almost 25% of the city's over \$80 million dollar budget to a department who's own executive, Chief Owens, himself has stated that the crime in the city is a problem not created by the police, and cannot be solved by the police. I strongly urge you to consider his own words when he asks for increased funding for new officers, new equipment, and the acceptance of grants for the Troy Police Department. What good are increased expenditures providing to the citizens of Troy?

Case in point is Ordinance 38—a New York State Department of Homeland Security grant awarded to the City of Troy for radio communications equipment and training. The grant was awarded to bolster TPD's counterterrorism activities and communication capacities. I would be shocked to discover our small upstate city of under 50,000 residents is some hotbed of terrorist activity. One must take at face value Chief Owens' own statements that he intends to encrypt ALL police communications in the City, and that this funding will facilitate the purchasing of this equipment.

Troy Police Department is currently being sued by the New York State Civil Liberties Union to release records involving misconduct and disciplinary action by its sworn officers—individuals who are public servants, and who's records should be legally made available to the public at request after the repeal of the state civil rides code statute 50-a. If the Troy Police Department is unwilling to abide by the law and comply with requests made by the individuals it claims to serve, how is providing them more funding for equipment designed to obscure their actions from the public defensible?

The citizens of Troy who are served by the Troy Police Department cannot do anything to increase transparency of a government agency—that change must come from within, namely, from Chief Owens himself and the rules and regulations that govern the actions of the public servants that compose the Troy Police Department.

I implore the members of the Council to thoroughly examine Chief Owens plans for increasing transparency and accountability to the public and most importantly the Councilmembers themselves, who have authority over the Police Department. If there is not an actionable plan to increase transparency within TPD, the Council must vote “no” on Ordinance 38 and withhold

additional funding and future budgetary expenditures until the actions the Troy Police Department take on Troy citizens and residents are able to be governed by civilian oversight and monitored to ensure that the rights of every single citizen in the city are protected and upheld.

You must not surrender your power of oversight and accountability to our police department. You are the greatest mechanism for change in our city, and the residents you have been elected to represent understand this, and will remember during the upcoming primary and later this year during the general election who stood up to the police in the name of transparency and accountability, and who did not.

I appreciate you taking the time to read my concerns.

Respectfully,

Alexander Hanse
Troy, NY

My name is Alexander Hanse. While I reside in South Central Troy's "Little Italy" neighborhood, I am proud to be a Trojan and recognize the community I belong to extends far beyond the blocks to which my stoop descends.

I am writing you all today to urge you to vote "no" on Resolution 35. While I am not opposed to development within our city, I believe the development at 1011 2nd Ave. is not in the best interest of the residents of Lansingburgh, and Troy as a whole. The property contains one of the last riverfront forests in Troy, and its destruction in the name of residential development would remove a the last reminder of how our riverfront appeared a few short centuries ago before the age of industrialization ate up the habitats that persisted for millennia along the waterfront. The area also serves as a natural barrier for rising riverwaters in our era of climate change, is an undisturbed habitat for countless species of birds, amphibians, reptiles, and other animals, and contains artifacts important to the understanding of the indigenous people and their cultures European colonization displaced and eradicated. There is plenty of underutilized land along the waterfront in Troy that is ripe for redevelopment after being abandoned as industry moved overseas and out of our community. We should not needlessly destroy established habitats simply because we deem them undeveloped.

The City's Planning Commission has been the appointed lead agency for the State Environmental Quality Review act for development projects in the past, and rightfully so—the engineers, architects, lawyers and advocates who make up the Planning Commission are experts who are able to balance the needs of Troy's residents with a vision for its future. The Council should not burden itself by acting as the lead agency when we have an established group who is well-versed in the SEQR process ready to undertake the task.

2021 is an election year—as a resident in District 5, I will be reserving my vote for the candidate who is interested in developing and redeveloping our City in a thoughtful, constructive, and environmentally friendly manner, and not simply someone who rubberstamps all developers who seek approvals in our community. Councilman Zalewski, how will you proceed with this vote?

I thank you for taking the time to read my comments.

Alexander Hanse
Troy, NY

I am writing on the Police Communications issue.

It is a problem to allow technological development to shape policy.

Clearly, this is the first time that most people on City Council have thought at any length about police communications in a broad sense. Now, with a budget proposal to apply Department of Homeland Security funds, the City of Troy and City Council are brought to consider what it might mean for deliberate partial and/or full encryption of the networks, talk channels, etc.

A step back needs to be taken: What has been the current and past policy on communications within the Troy Police Department? Who oversees the process? What is recorded or not recorded? Who has access to it? What is archived and how? Who has access to it? If something needs to be retrieved, who will do that? Can the general public make a request for tape and receive it in a timely manner? How does one know it isn't edited or tampered with? Partially or fully deleted?

Currently, there are encrypted channels. AND often police jump off the talk channels and onto their personal cell phones. What is that about? How is that considered? Who has oversight there? What is recorded or not recorded?

Once encrypted, how will there be oversight? By whom?

Other cities have encrypted only to then decide to go through the process of de-encryption. Journalists have spoken up in other cities demanding access and transparency. Even police officers themselves have spoken up against it.

When the channels go into the dark for the public, there is a grave danger for everyone involved. I would think that a police officer would prefer to keep things out in the public.

Considerations of privacy are crucial. But why are the police the last word on how privacy is protected? Without clear policy, there is no privacy. Your information is there with the police and that is a problem without oversight and transparency.

Currently, the TPD are being sued by a Black police officer for system racism. They are being sued by NYCLU for failure to provide disciplinary records and responding to FOIL requests. Basic information that has been requested has not been provided to us over the past 7 months. There is a problem with access to information. And the possibility of full encryption without public input, without community oversight, without avenues to transparency and accountability, is only going to make it worse.

Where are the other experts on this matter? Technologists? Privacy experts? Security and surveillance experts? Chief Owens is not the last word on this... and City Council is being lazy in accepting it as the last expert word.

It is incredibly problematic that Sidewinder is the one who broke this story. AND POINTS TO THE *COMMUNITY* OVERSIGHT NEEDED! Clearly, a police officer shared this information with Sidewinder. Where is communication happening and not happening? Why is there openness and transparency to Sidewinder and not to you the City Council?

This breeds more and more mistrust.

Please dig into this issue.

Angela Beallor
Troy, NY

Trying to de-encrypt after encrypting

[Decrypting O.C. firefighter radios so the public can listen is taking longer than expected - Oct 2019](#)

Palo Alto - City Council NOT sold on encryption

<https://www.paloaltoonline.com/news/2021/04/06/city-council-not-sold-on-police-radio-encryption>

A journalist speaks out on encryption

[Memo to PA Police Chief Jonsen: What are you hiding from us? And why? - May 2021](#)

Thank you for your questions and engagement on the issue of police communications and encryption last night and last Thursday. I greatly appreciate your willingness to delve into the tech and policy questions.

I am writing now to encourage you to VOTE NO on Resolution 35 at this Thursday's City Council meeting. The resolution is regarding the development of 1011 2nd Avenue. It impacts who will take the lead on the State Environmental Quality Review Act review and scoping process of this project — the City Council or the Planning Commission. It is my understanding that it would be highly unusual for the City Council to take the lead on this. The Planning Commission is much more experienced and skilled at this type of land development review.

This land has historic significance related to former Indigenous inhabitants and continued cultural significance for living Indigenous communities. In addition, it is one of the last remaining undeveloped shorelines of the river.

It is important to take great care in the review of this land. An in-depth, full scale examination, study, and review of the development and its potential impacts.

As dwellers in the city of Troy, we have the opportunity to be stewards of history, culture, trees, and land. It is an opportunity to decide that we will be caretakers as opposed to reckless developers of quickly built housing developments. Look around us — there are so many rapid rise housing projects. Where is the time to really consider what this means for our city and lands?

This project deserves a qualified, independent, experienced agency to lead such a review. Look at the vote on the budget for Police Communications. There is only so much time and attention that can be granted to any given issue. Why is the City Council forced into a quick vote without so much as understanding what a P25 radio system is? It is not fair to the Council and it is not fair to the residents of Troy.

Similarly, it would not be fair to the City Council to ask of you what is not within your purview, not within your time and energy capacities. How much would you need to do to *properly* prepare to be the lead agency on a project like the development of 1011 2nd Ave? It is an impossible task and one that could have tremendous repercussions for the City of Troy, the ecosystem of the Hudson River shoreline— AND it would be an insult to the archaeological and cultural significance of the land.

Many Indigenous groups have written to City council on this... only to be (insultingly) told that they are not residents of Troy and therefore have no right to a voice. That is such a denial of the history of forced removal of Indigenous peoples from this land that **ONLY THEN became Troy. **The Stockbridge-Munsee band of Mohican for instance are NOT HERE but resettled in WISCONSIN because of forced removal. And yet descendants SURVIVE and can claim a historical and cultural significance to this land. That survival is amazing and to be celebrated. Let us honor that and honor this land and history.****

Honoring that in this moment means allowing a more experienced body to take on the research and review process.

All the best,
Angela Beallor
Troy, NY

Hello

I am writing in support of saving the Mahicantuck. Please protect Troy's last native forest and critical Native American cultural site. I strongly urge the protection of the forest and cultural site from destruction and to bring it into long-term preservation. Once it's gone it can never be replaced.

Sincerely,

Anita Sanchez
Amsterdam, NY

We do not support Resolution 35. We urge you to vote against it on June 3.

We do support the city planning commission to act as lead agency in a State Environmental Quality Review. The city council is not the best choice to lead here.

We are asking for a positive declaration. The community should have access to all environmental studies conducted during a SEQR.

Sincerely,

Carolyn and Laszlo Bardos

Troy, NY

I'm writing to support keeping wild the Mahicantuck area at 1011 2nd Ave in Lansingburgh, and against its development for any purpose - certainly not for multiple residences. I do not support Resolution 35, and insist that the Planning Commission remain as Lead Agency for SEQR. Most importantly, I expect and demand a Positive Declaration for this review. City residents deserve to know and have input on these issues.

Thank you for considering my email, and best,

Colie Collen

Troy, NY

I have been watching with interest this development proposal play out for 1011 2nd Avenue. I was pleased that the Planning Board did not grant a variance to change the R-1 Zoning for the property but I still fear the property is at risk. My understanding is that this is an archeologically sensitive site which includes a burial ground. I admit to not understanding if Troy has any laws in place to protect this kind of site and that in the absence of any we may be powerless to save it. If there is any opportunity, this land should be acquired and zoned Conservation.

At this time, I would urge you to have the City Council **not** take on the role of lead agency for the project unless you hire a firm to do the review for you. If you are in a position to declare this a **positive** declaration with respect to SEQR, I would do so.

Thank you for your thoughtful diligent service.

Elizabeth Rodriguez

Troy, NY

I am writing in advance of tonight's meeting to express my continued opposition to re-zoning at 1011 2nd Avenue.

I am writing in particular to express my opposition for resolution 35 declaring City Council lead agency for SEQR. The Planning Commission has always lead on this kind of project in the past, and they should with this one as well.

As I have written in past letters on this topic, the land at 1011 is the last intact forested site along the river, has many environmental and social benefits, and houses sites of Indigenous significance. From what I understand, the developer is seeking to re-zone because it's not as

economically attractive to build single family homes on this land, as it is zoned. His request to rezone provides the city with the opportunity to look deeply at the ramifications of developing the this land, and explore other options for keeping this rich habitat, now so rare in Troy—and all the more valuable with climate change and the biodiversity crisis upon—intact! Making the planning commission lead agency makes this careful look more likely, as they have expertise in this area.

Thank you for your attention to this important land use issue.

Sincerely,

Ellie Irons
Troy NY

In this letter, I see myself forced to be direct and clear.

Passing Resolution 35 to initiate SEQR is not only premature — it 1) knowingly undermines SEQR; 2) accepts limiting the participation opportunities for the community members most vulnerable to the impacts of the development, and 3) will come at the expense of the public's welfare that SEQR and DEC CP 29 requirements are designed to protect.

The underlying application is incomplete in ways that impede the SEQR review. The gaps are glaring in their lack on detail and concrete plans and make it impossible to fully identify, consider and properly analyze all potential negative impacts to the community.

This lack of information is nothing less than a obfuscation of key aspects of the proposed development subject to this SEQR. This blinds you, blinds the public and blinds SEQR.

The Friends of the Mahicantuck's letter "Notice Insufficiently Complete/Incomplete Application" from May 28 makes this explicit.

Additionally, the application is missing written Enhanced Public Participation Plan — mandated by DEC CP 29 for any project in a designated EJ Area that requires a SPDES permit.

This adds an infraction on participation and outreach requirements to the most vulnerable members of the community to the undermining of SEQR.

The consequences were addressed in the Friends of the Mahicantuck's letter "DEC CP 29 EJ" from May 28. The applicability of CP 29 and its requirements were explained in the second letter.

In these written submissions to the council and the record, the Friends of the Mahicantuck explained in great details why both (a full application and written outreach plan) are necessary **prior** to initiating SEQR.

You were made aware of these shortcomings with ample time for consideration.

SEQR is the most important tool to prevent negative impacts to the public, city and its natural and historical resources.

Initiating it now, without a proper application and the written outreach plan, is dangerously negligent, undermines SEQR — and in consequence will infringe the preservation and protection of public health, safety and wellbeing.

Initiating SEQR on this basis rushes the process to the benefit and profit of the applicant and at the expense of the public interest and welfare.

The vote tomorrow is a test.

It will determine whether you are committed to holding the applicant accountable to the process, or whether you are committed to knowingly tolerate cutting corners and taking shortcuts in the best process we have available to mitigate negative impacts and prevent harm to your constituents.

Sincerely,

Leo Matteo Bachinger, PhD
Round Lake, NY

Complementing to our previous letter (regarding DEC CP 29, DEC CP 42 and the importance of outreach measures), we submit the attached letter to the record.

In this letter, we state that acting on Resolution 35 to initiate SEQR is premature as the underlying application continues to remain incomplete, as expressed in our presentation during the Planning Committee meeting on May 11, 2021.

This letter complements our previous request (which asked you to not act on Resolution 35 until a written outreach plan is submitted) and extends it by requesting you not act on Res 35 until the entire application pursuant to the Second Avenue Apartments project is completed, corrected and resubmitted by the applicant.

If a SPDES permit is required for this project, this has to include a written Enhanced Participation Plan as specified in DEC CP 29.

Thank you for your consideration,

The Friends of the Mahicantuck
www.save1011.org
FriendsOfTheMahicantuck@gmail.com

[attachment is below]

We submit this letter to bring to your attention significant insufficiencies that render the underlying application to Resolution 35 incomplete. Acting on Resolution 35 to initiate SEQR is therefore premature until a complete application has been submitted by the applicant.

The City Council as receiving agency for this application is responsible to ensure all application materials are complete and meet submission/application requirements established in local law, agency regulations and guidelines, and other applicable rules and guidelines in such ways that adequate information is provided for all involved agencies to meaningfully participate in SEQR.

Specifically, it is your responsibility as receiving agency to ensure that the application material is sufficiently complete to provide all involved agencies with the ability to meaningfully participate in SEQR **before** initiating SEQR:

As such, acting on Resolution 35 to initiate SEQR is premature until the applicant Kevin Vandenburg corrected and resubmitted his application.

Below, we highlight exemplarily six particularly significant insufficiencies in the applicant's submission. This list is not complete and merely is intended to provide sufficient information to show the application's insufficiency. It is the responsibility of the applicant and the receiving agency to ensure the submission of a complete application.

Based on the information provided, we hold that the City Council acting on Resolution 35 is premature, as the underlying application remains incomplete. As receiving agency, the City Council instead should require the applicant to resubmit his application material prior to any further action.

Thank you for your consideration

The Friends of Mahicantuck
www.save1011.org
FriendsOfTheMahicantuck@gmail.com

1. The application does not provide sufficient information to evaluate stormwater runoff impacts.

Whereas the project narrative describes a “post construction stormwater management” infrastructure, the plans do not provide details about this infrastructure. The best information available for an analysis is provided in site plans as yellow circles labeled “stormwater”. The insufficient detail has already been addressed in an analysis by Dr. Kruegler. This analysis was introduced to the record in December 2020 and resubmitted to the record at the May 11, 2021 Planning Committee meeting. In this analysis, Dr. Kruegler concludes:

“The fact that the Hydro model could not be calibrated contributed some uncertainty to the analysis, but a lack of necessary details in the Development Plan made it impossible to perform a more quantitative assessment, let alone to rigorously evaluate such an assessment. For example, the Development Plan states (pages 4-5[1]) that stormwater management mechanisms such as “bioretention basins” and “stormwater ponds” would be incorporated into the Project Area, and that proposed development “would be designed so that the total site runoff of stormwater will be less than or equal to existing conditions and in conformance with NYSDEC storm water

permit 15-00-002”. This is the full extent of details offered in the Development Plan regarding stormwater management infrastructure, however. At no point is any of this infrastructure described in terms of the specific performance criteria required by the latest iteration of the aforementioned NYSDEC stormwater permit[7] and the New York State Stormwater Management Design Manual[8]. These performance criteria would provide the information necessary to quantitatively evaluate if the proposed development in the Development Plan is feasible and practical for the Project Area.”

This underscores the utter insufficiency of the information provided in the application to allow for adequate analysis in SEQR.

2. The application does not provide clear information on SPDES permit requirements.

Of related concern is the project applications’ inconclusiveness regarding required permits, especially SPDES. This is of particular significance as, if SPDES permits are required, the provisions of DEC CP-29 apply for this project and a written Enhanced Participation Plan is needed to complete the application material.

3. The EAF remains incomplete and/or contains insufficiently accurate information.

The EAF, as a critical basis for any initial determination of significance, does not provide full information. This particularly pertains to construction and relevant aspects. Here are some (non-comprehensive) examples:

- Government approvals, Funding or Sponsorship: Actual or projected application dates are not provided.
- Section C.3 — c. Requested zone change to P Planned Development does not support the proposed development plans (density, number of units, general nature of proposed project is stated as residential whereas P is primarily designed for mixed uses).
- Section D.1 — g. Applicant states no non-residential construction is proposed. However the project proposes the construction of a marina and club house.
- Section D.2. — b. Volume of excavation material is not stated.
- D.2. — b Questions ii and v are not filled out.
- EAF states no blasting required, however D.2 a. - vii states maximum depth of excavations as 30ft which impacts the bedrock on this site.

4. Insufficient information for adequate Site Plan Review under SEQR

One of the most substantive aspects of the SEQR for the proposed action in the EAF regards the impacts of the proposed development project itself. This makes adequate site plans a critical instrument in the review. Amongst others, adequate information must be provided to enable a thorough site plan review that can illuminate critical questions regarding impacts on aspects such as: neighborhood character, noise and view impacts, shading impacts, marina construction and operation impacts on the Hudson River, etc.

The City of Troy has a clear framework and submission requirements pursuant to adequate site plan reviews, which are posted on the Planning Commission’s web page. The submitted “project narrative” and other supporting application materials do not come close to meeting the site plan

review submission requirements and lack critical information necessary for a complete and thorough SEQR review.

The provided project narrative does not provide critical information on this project, such as (for example): a) proposed lot coverage of green space, pavement and buildings; b) type of construction (brick, steel, wood...); c) clear siting of the buildings (multiple building location variations are provided); d) the location of all fences, curbs, poles, fences buildings etc. must be provided in the site plans; e) plans need to include a landscaping plan that clearly shows the location of all remaining vegetation as well as type and location of all proposed plantings; f) parking plans need to be full and complete; etc.

The plans also do not include concept drawings that would allow for the assessment of consistency with neighborhood character and other visual impacts of the project.

5. No meaningful information to evaluate the impacts regarding the construction of a marina/boat launch is provided.

The project proposes the construction of a marina/boat dock with a capacity for 40 ships/boats. However, the current plans do not provide **any** specifics on the construction, including materials, need for dredging, and anticipated impacts on the Hudson River as a federally regulated inland waterway. This makes it impossible to assess and evaluate the impacts of this project. This is particularly concerning given the Department for Environmental Conservation's principal involvement and permitting authority of any action impacting the Hudson River.

6. Insufficient information on topographic alteration (including blasting) impacts

The current project narrative details substantive topographical changes to the site including the construction of underground parking facilities. As highlighted in the archaeological report, some portions of this property include exposed bedrock while substantial parts of the property have only marginal topsoil covering of the bedrock. A geologist who spoke at a previous meeting called into question the applicant's statement that no blasting to construct the proposed project is needed. At the same time, the project narrative does not provide any clear and sufficient geological analysis based on specific construction plans, stating "a field survey was completed by MJ but was not furnished to Insite Northeast at the time of this Narrative Report. A more detailed analysis of topography and vegetation will be provided once the field survey information is made available." Additionally, limited drawings of grade changes associated with the project are provided as "reference only" and hence do not reflect actual proposed plans. As such, it is impossible to assess any construction, scraping and blasting impacts associated with this project. This is of significant concern, as it will also strongly limit the impact and mitigation need assessments performed by SHPO during this SEQR.

We are submitting a detailed letter in regard to Enhanced Participation and Outreach needs in relation to DEC CP 29 and DEC CP 42, as attached.

We also want to make you aware that the application materials, as currently submitted by the applicant, **do not** adequately clarify the stormwater management infrastructure proposed for this development. This is highly problematic for two reasons:

- the application and project plans do not allow for an adequate review and analysis of significant impacts pertaining to stormwater runoff impacts during SEQRA.
- the application and project plans in their current form do provide insufficient information to determine if SPDES permits will be required.

The second point regarding SPDES permitting is especially critical in regards to the applicability of DEC CP 29: Once a SPDES permit is needed, CP 29 is not longer a recommended framework but a requirement enforced by the DEC.

For this reason alone, **the City Council should not act on Resolution 35 until adequate plans are submitted as part of the application** and comply with the guidelines of the Planning Commission for site plan review submissions

Please refer to our attached letter for further details and clarifications.

Sincerely,

The Friends of the Mahicantuck

www.Save1011.org

FriendsOfTheMahicantuck@gmail.com

[attachment is below]

We are submitting this letter to the record, as we urge you strongly to **insist on the submission of a meaningful written Enhanced Public Participation Plan** by the developer, in regards to the proposed development at 1011 2nd Avenue, **PRIOR TO ACTING ON RESOLUTION 35**

We do so in the context of the developer's clear pattern of dismissing the public's concerns, Native American rights and interests, and at times actively jeopardizing the integrity of archaeo-sensitive sites. We hold that this lack of interest in engaging with members of the public and especially Native American leaders and community members — while within the right of the developer — makes utterly clear that is time for the City of Troy to ask the applicant for an enhanced participation plan as soon as possible.

In this letter we provide some clarification regarding DEC CP-29, DEC CP-42 and their frameworks for additional participation, outreach and safeguard measures in permitting and review processes regarding

- a) Environmental Justice Areas
- b) Contact, Cooperation, and Consultation with Indian Nations

We also point out that the application underlying Resolution 35 provides insufficient information on key aspects of the development, including stormwater management plans and associated SPDES permit requirements. This is relevant, as once a DEC SPDES permit is required DEC CP-29 is not longer a recommended framework but a requirement enforced through the DEC.

Additionally, we highlight our concern over several instances where the applicant and/or his representatives displayed a striking lack of interest in proactive outreach to the local

communities in the designated Environmental Justice Areas as well as to Native American Nations and communities.

After a year of lack of deference, dismissal, and at times active jeopardizing of native american cultural resources, it is time for the City of Troy to insist on the developer to provide meaningful participation and engagement of the public — and DEC CP 29 as well as DEC CP 42 provide explicit means and tools to do so NOW.

In the light of the developer’s conduct over the last year, the significance of potential adverse impacts on the Environmental Justice Area, and the explicit threat to a Native American cultural site, we *urge* you to take action now and ask the applicant to submit a thorough and meaningful outreach and enhanced participation plan PRIOR to initiation of SEQR via Res. 35 — in order to provide an effective engagement and participation throughout this important review.

Applicability of DEC CP-29 & SPDES

DEC CP-29 will most likely apply as a *requirement* for this project in relation to necessary SPDES permit requirements. As clarified in correspondence with the DEC, the provisions of DEC CP 29 apply especially when — for example — a SPDES permit is needed.

However, the application materials are not entirely clear regarding the need for SPDES permits. This is due to significantly lacking detail on stormwater management plans and related missing information in the applicant’s project narrative and supporting documents. The current plans, however, do strongly indicate the requirement for such permits.

As such, at a minimum, **the City of Troy should request an updated and detailed application material that clarifies the developer’s stormwater management plans before acting on Res. 35.**

In general the applicant’s site plans should comply with the Planning Commission’s submission requirements for site plan reviews as a site plan review is subject to this SEQR review. This must be done before SEQR is initiated through acting on Resolution 35.

DEC - CP 29 — Safeguards against Environmental Injustices

Commissioner’s Policy 29 (CP 29) was issued to address “the lack of meaningful public participation by minority or low-income communities in the permit process; the unavailability or inaccessibility of certain information to the public early in the permit process; and the failure of the permit process to address disproportionate adverse environmental impacts on minority and low-income communities”.

The policy is written to provide protections, additional participation opportunities, and additional safeguards to the most vulnerable members of our community. For this purpose, the DEC has mapped — in an extensive and well thought out process — specific areas of particular concern regarding Environmental Justice.

The land at 1011 2nd Avenue lies squarely in such a “designated Environmental Justice Area”. Additionally, the proposed development project for this site directly impacts the rights, history and cultural resources of Native American peoples. Along with CP 42 this policy is a critical tool to prevent injustices.

This means that, as the City of Troy embarks on the review and subsequent permitting process for this development proposal, special caution, sensitivity and outreach are required of both the City of Troy as well as applicant Kevin Vandenburg.

The policy is clear that its principles apply in terms of recommended frameworks — and potentially as required frameworks, should SPDES apply. In general, the policy applies where DEC is acting as lead agency. **It also *explicitly* specifies that, where the DEC is not acting as lead agency in SEQR, the DEC shall implement the policy’s “procedures to the extent permitted by law” — which includes for example SPDES permitting. Elsewhere, this policy should be explicitly understood as a recommended framework for engagement available to the City of Troy as a tool for enhanced participation.**

In the SEQR and permitting processes for this development project the DEC is listed as an involved agency in the full EAF submitted and signed by the applicant. Given that the DEC will play an important role in this review and the subsequent issuance of permits, it would be wise for the City of Troy to ask for the written Enhanced Participation Plan to complete the application prior to initiating SEQR.

DEC CP- 42 — Additional Outreach and Consultation Requirements with Native Nations

Additionally, as you are perhaps well aware, there are existing outreach and consultation requirements regarding Native American Nations, established in several policies and legal frameworks. This includes — next to DEC CP-42 — amongst others: the State Historic Preservation Act, National Historic Preservation Act, ECL Article 8, Native American Graves Protection and Repatriation Act.

The site at 1011 2nd Avenue is of extraordinary cultural, historic and archaeological significance. The documented history at this site, reaching back to 1500-3000 B.C., makes this site National Register eligible — underscoring the *national* significance of this site. This should make this site a treasure for the City of Troy and its protection a priority.

For Native American leaders and members of the indigenous communities, this site is not merely an archaeological site, it is a living cultural site. This has been made explicit in several public and written comments by Native American leaders of the Stockbridge Munsee, Schaghticoke First Nations, Mohawk, and Ramapo peoples.

With the significance of this site come additional and extensive consultation, cooperation and outreach requirements that complement and further extend and complement the outreach procedures in DEC CP 29.

The need for consultation and engagement is clear, and the City of Troy should insist on its proper and well-thought out implementation. A written Enhanced Participation Plan is the bare minimum the City of Troy should insist on.

LACK OF ENGAGEMENT AND DISMISSAL OF CONCERNS BY THE DEVELOPER

This clearly established need for additional outreach measures is contrasted by the developer’s lack of initiative for outreach and engagement and displayed lack of deference towards Native American leaders and the cultural artifacts at the site.

We raise our concerns in the context of the developer’s continuous dismissal, jeopardizing — and at times: insult — of environmental justice issues, Native American rights and peoples, and the integrity of the archaeo-sensitive sites at the project location. What becomes explicit is a clear pattern of disregard, dismissal and at times active jeopardizing of this cultural site and the impacted communities.

The developer and/or his representatives:

- Ignored the recommendations of the Planning Commissioner

In May 2020, at a public workshop during a Planning Commission meeting, the Planning Commissioner urged the developer to engage with and consult with Native American leaders early on and as soon as possible. This urgent recommendation by the Planning Commissioner remains ignored and unaddressed by the developer — and we have not seen any effort to contact Native American leaders to this date.

- Repeatedly dismissed/downplayed/ignored Native American rights, interests and responsibilities to preserve the cultural significance of the site

Repeatedly, we have heard the developer and his representatives exhibit a dismissive stance towards Native American leaders — with some of them expressing their insult over his and others’ conduct over the last year. For example, on August 27, 2020, Kevin Vandenburg dismissed a Native American leader (along with non-resident experts) who spoke at that meeting as “not really from here”, implying their comments should not have relevance to the Committee and the record. At this same meeting he said “unfortunately I saw it [the land] first” and continued to reiterate: “I am from here” — statements that reflect ill on the developer; that are tone deaf and sit unwell in context of the Native American leader who spoke prior to this statement, and the Native American site this issue regards. Similarly, we heard comments by participants in the public meetings — including members of the council — referring to Native Americans as “those indians”, and had to register the use of similarly insulting language to this kind.

- Repeatedly downplayed and misrepresented Environmental Justice concerns and safeguards.

We have heard representatives of the developer refer to Environmental Justice and associated safeguards as “scary sounding” and sow them downplay safeguards to some “additional public posting requirements” — displaying an utter lack of seriousness when it comes to protecting vulnerable members of our communities. This stance, repeatedly displayed by representatives of the developer and the developer himself — for example during meetings on January 28 and on May 11 — fit well into a clear pattern of dismissing the importance of engaging meaningfully with the concerned public.

- Actively jeopardized the integrity of Native American archeo-sensitive sites

Starting with a Planning Commission workshop on November 11, 2020, the developer and his representatives repeatedly and actively jeopardized the integrity of archaeo-sensitive sites and contained cultural artifacts through the public disclosure of their precise locations at the site. We have repeatedly warned that this is jeopardizing the sites to no avail. It is common practice — and in some cases a legal requirement — to protect archaeo-sensitive sites by withholding the public disclosure of such locations. This is established, for example, in §307103 of the National Historic Preservation Act, the Secretary of the Interior’s Standards for Archaeological

Documentation, Section 14.09 of the New York State Historic Preservation Act, and the policy of the New York State Historic Preservation Office.

- Threatened to withhold cultural artifacts from Native Americans

On May 11, during the Planning Committee meeting, the developer and his representatives chose to use the cultural significance of the Native American site at 1011 2nd Avenue to issue a threat to the public. Quoting John Romeo on behalf of the developer: “With a project such as proposed we would undergo a recovery process and anything that is valuable could be turned over to the Native American peoples ... If it was private land for a single family residential house as is the current zoning it would just mean someone’s back yard and nobody would have access to it”. This of course ignores that the same study, recovery and avoidance requirements apply in both cases, and instead issues essentially an implicit threat to withhold or destroy (via encapsulation) access to a Native American cultural site and cultural artifacts.

THE NEED FOR MEANINGFUL OUTREACH, CONSULTATION AND ENGAGEMENT

The City of Troy should live up to its responsibility to prevent harm and provide meaningful participation for the most vulnerable members in our community, as they live in a designated Environmental Justice Area, as well as the responsibility to involve meaningfully Native American leaders and community members.

You should do so, not merely based on whether the law requires it or not; you should do so not just because DEC CP 29 provides you with an explicit framework for doing so;

You should do so grounded in a moral, political and historical *obligation and responsibility*.

The provisions of DEC CP 29 and DEC CP 42 provide meaningful — if only minimal and not ideal — frameworks for such engagements, while offering you the means to request — *at the minimum* — a meaningful outreach plan following the minimum requirements established in DEC CP 29. In case SPDES permits are required, as the current application strongly suggests, this plan is indeed a requirement.

Given the significance of the stakes involved in this development proposal and the associated SEQR and permitting processes, the City of Troy and the City Council as receiving agency should insist on this plan PRIOR to initiation of SEQR.

This appears additionally important given the developer’s conduct over the last year — including a consistent pattern of jeopardizing archaeological and cultural resources; the implicit threat of their destruction/withholding in case he does not get his way, and the repeated dismissal of the public, its concerns and the legitimacy of Native American interests and rights in this matter.

Delaying this matter any further — to be addressed a later time or by waiting for the developer’s initiative, after a year of inaction and refusal — strikes us as short-sighted and reckless.

Thank you for your consideration.

The Friends of the Mahicantuck

I have attended, virtually, several meetings of the Planning Commission of Troy deliberating about the rezoning of the 11 acres of land along the Hudson that the community seeks to protect. I attended one Troy City Council meeting on the same question.

In reviewing the options the region has for assigning a lead agency for the SEQR process, I notice that the Planning Board has more experience with these procedures and more time to devote to any one project. In comparison, the Troy City Council is simply overstretched and unable to review the level of information it must to conduct a SEQR process. Even in Guilderland, when a major project is proposed, the Planning Board, not the general meeting of the Town Board, will conduct the SEQR process; there is no way it can work otherwise, and I must say, even in the hands of the Planning Board, it didn't work very well for the most recent deliberation on the expansion of Pyramid Corporation into the Pine Bush. Judge Lynch actually recommended that the Planning Board involve the NYSDEC in its deliberations.

I would say that this situation is similar. The Planning Board can be the lead agency with the close input of the NYSDEC and the State Historic Preservation Office. Or if Troy does not have the resources, they should cede to the NYSDEC, the authority on environmental law, if not always the best decision maker, depending on the situation.

But if Troy wants to keep the decisions in the hands of representatives of the Troy Community, it should choose the Planning Board which can take the time that is needed to accommodate public comment, can appropriately organize and make available all documents and handle the detailed notification requirements of both SEQR and the Environmental Justice Area special rules.

The project proposed by Vandenburg, a developer who has not bought any land but holds development rights at the moment, is one the public feels strongly about because its impact is far larger than even its size. It proposed to level a cliff, erect a tall building, take down a significant portion of a forest and relocate an archaeological site, while also including a large and environmentally unjustly treated community, some of whom have traditionally used the land whether with sustainable practices for thousands of years or with dirt bikes for the past few years, in the deliberations. The developers must fairly consider not only the impacts on the historical and prehistoric record the rezoning would destroy, but also on the Hudson River and the creek flowing into it. They must find out how birds, fish, mammals, invertebrates, plants and all other life forms will react to this massive change. They then need to find out how the shadows will affect the community and the river and figure out the viewscape from both sides of the river. Then they need to assess the effects on microclimate of putting so much concrete there. They need to analyze and delineate any dumping on the site and let us know about the wetlands on site. They need to comment on the direct and indirect effects of such development on the surrounding community, including the introduction of very dangerous traffic conditions to an already busy road.

Obviously, such a project needs **an Environmental Impact Statement** to fact find, analyze and summarize the issues enumerated above. No EAF is adequate to contemplate rezoning such a unique piece of land in the middle of fairly dense pre-existing residential development. The disruption to the surrounding community of just trying to build a foundation on such land would be ferocious. It would also be a crime against the people of New York State who have a right to

their history. We have a right to know how ancient peoples harvested stone in a sustainable way to forge tools. We have a right to know and celebrate the villages, gatherings and trade relationships between tribes, pre-contact. New York State as a whole has largely ignored, neglected and destroyed evidence of pre-contact Civilizations, but the ignorant attitudes which discounted the pre colonial peoples and cultures of Turtle Island, are slowly but surely, themselves, becoming history.

There is a renewed interest and identification with traditional pre-American culture in this country. As we get older, we come to value the truly ancient heritage we have, rather than only notice the moment a modern nation state emerged from the genocide of the People of the Mahicantuck.

With this in mind, I would like to propose that we, the residents of the Capital District, the same people who halted major construction for Dutch pottery, the same people who erected giant Dutch shoes all over Albany, and the same people who have permitted the development of the entire coastline of Troy, take a moment to consider this opportunity to mitigate the history of aggressive attitudes towards the culture and history of native peoples.

There is precedent. Why in California, which has a very bloody history with respect to the colonization of northern tribes through frank murder and seizure of land, the government recognized that crimes had been committed against native archaeological sites and they resolved to do something about it through the courts. Some territory owned by logging companies was returned to the Tribes as mitigation. Rather than assigning it to one tribe, which would be difficult given the complex history of the land itself, the land was set aside as the Sinkyone Intertribal Wilderness. It is one of the most successful experiments in waging peace with native peoples in California.

*“The InterTribal Sinkyone Wilderness Council was founded by Tribes in Mendocino and Lake counties in December 1986 as the first-ever intertribal cultural land protection organization. The Sinkyone Council grew from the deep intergenerational connections of Indian peoples with this sacred place, and from the inspiring efforts of environmental activists, Tribal community members and others to halt logging of Sinkyone’s remnant old growth rainforest, protect declining salmon and other native species, promote healing, and re-vitalize the Tribes’ cultural relationships with lands and waters of the Sinkyone region. To find out more, read [Return of the Sinkyone](#) in the *Sierra* magazine.”*

Please take the time to peruse the website of the intertribal Sinkyone Wilderness Council at: <https://sinkyone.org/achievements>

The Return of the Sinkyone is attached to this email.

Some issues that concern me:

The description of the project includes a plan for below ground parking. While gasoline, ethylene glycol and oil are all bad for the environment, the idea that they’d be both below and above ground where both groundwater and runoff are likely to be impacted by their presence wherever cars are parked, is of great concern for a project located on the Hudson River.

I am also concerned that 50 feet high is quite high. The Shadow will impact the river and therefore the fish. It will also impact the neighbors.

I am concerned about the introduction of impermeable surfaces on one of the last fully natural surfaces leading up the River. How will future generations know the River if we do not allow some natural sections of the Riverfront to be free from development?

I am most concerned about a Middle to Late Archaic archaeological site which contains the remains of a uniquely intertribal river culture which informs the entire economic, political and social structure of New York State to the present era. We are the children of the peoples who hunted sturgeon, built canoes from tree bark and bound it with spruce root, patching the boats with pitch from pine. Our culture is the descendant of cultures who had a sustainable quarry that did not destroy a cliff in its production of tools. Our culture proceeds from the land upon which people practiced advanced agroforestry and a powerful herbal medicine. This is OUR heritage and we, collectively, have a right to it.

We should pay a fair price to the owners of the land, but we should save this spot for generations to come.

My work with Save the Pine Bush has taught me the value of preservation of undeveloped lands located in residential communities.

The continuing existence of the Pine Bush did not only save endangered and threatened species in a community of 70 rare species now identified, it also saved the records of pre-colonial presence and the techniques of native forestry including the practice of controlled burns. Nationwide people are still learning from the Pine Bush and will be for generations to come. Doesn't Troy deserve to protect their own Pine Bush type treasures? Doesn't Troy deserve a natural monument to their own biological and cultural richness?

Thank you for your consideration of these points.

Grace Nichols
Save the Pine Bush
Berne, NY

I am writing to express my strong opposition to Resolution 35, which would nominate the city council to be lead agency in the state environmental review (SEQR). Instead, I support the planning commission being the lead agency. Most importantly, I expect and demand a Positive Declaration for SEQR in order for the community to have access to and input on all of the studies required for SEQR.

It may come as no surprise that I oppose Resolution 35 and demand a positive declaration for SEQR because I am deeply concerned about the potential development of 1011 2nd Ave in Troy. I am a home owner and tax payer in the City of Troy, but a city that doesn't protect wild waterfront lands and lands with historical significance to indigenous peoples just isn't somewhere I want to live.

Please use your power towards a thriving and healthy future for Troy!

Thank you for your consideration and your service.

Sincerely,

Hana van der Kolk
Troy, NY 12180

Re: Second Avenue Rezone Request/ SEQRA Lead Agency

Best Practices for a transparent, inclusive and equitable land use process

My name is Keith Hirokawa. I live ...in Wynantskill, NY. I am a local resident who regularly uses the Hudson River along Troy's waterfront. I am a law professor with specific interests in land use, cultural resources and environmental quality. In addition, I have attended the public hearings in the above-referenced matter before the Planning Commission and the City Council Planning Committee. I submit this letter regarding New York State Department of Environmental Conservation (DEC) Policy 29 and its relevance to this matter.

A few weeks ago, at the Troy City Council hearing on the Vandenburg rezone proposal, there was a bit of unstructured and confusing dialogue about DEC Policy 29. This Policy is specifically aimed at protecting vulnerable and historically disadvantaged communities. Known as the Environmental Justice and Permitting Policy, Policy 29 "provides guidance for incorporating environmental justice concerns" into permitting review, including under the State Environmental Quality Review Act (SEQRA).

During the hearing, the applicant's counsel and members of the public disputed the applicability of DEC Policy 29 to the City's zoning amendment process. Given that DEC Policy 29 was not intended to "create any right or benefit, substantive or procedural, enforceable by law or by equity," I believe the disagreement was not particularly constructive. However, given the meaning and intent behind DEC Policy 29, I strongly urge the City to incorporate the Policy's recommended process into Troy's SEQRA review.

A few preliminary matters are needed to understand the relevance of DEC Policy 29 to the matter presently before the Troy City Council. First, DEC Policy 29 does not add substantially to the duties otherwise shouldered by the City in this regulatory process. Even without the guidance in DEC Policy 29, the City is required to implement the informational and public participation procedures under

SEQRA. The Policy simply clarifies how a lead agency might perform its duties *well* under SEQRA, particularly with respect to communities that have historically been left out of and excluded from public processes (which is particularly relevant where those same communities are the ones directly affected by the development decision).

As you know, at issue is the request for a rezone of the applicant's property from R-1 (a zoning designation which is consistent with the zoning and development in the existing neighborhood) to the more intensive and flexible standards in the P zoning designation, together with a proposal to develop over 220 residential units in a 3-building apartment complex. Whether the City

Council takes on the responsibilities as lead agency or passes them on to the Planning Commission, SEQRA compliance already includes analyzing the impacts of this decision on the affected environmental justice communities in Troy.

DEC Policy 29 does not change this process. Instead, it provides guidance on how to effectively gather the relevant information and secure the participation of communities that have been historically excluded from this process. Section V.D of DEC Policy 29 provides that where (like here) an environmental justice community has been identified, the development applicant shall think deeply about how to communicate with the affected community. Cognizant of the history of exclusion of environmental justice communities from participation in such matters, the Policy recommends a “written public participation plan” that identifies the relevant stakeholders, identifies the intended outreach and notice methods (in a language and format accessible to the community), schedules public informational meetings at accessible times and locations, and provides for access to relevant documents. Sections 2 and 3 then identify, and not ignore, the manner and progress of those communications, including some discussion of how those communications have affected the development plans. We can think of the guidance in DEC Policy 29 as “best practices” for making sure that all affected residents who need to be heard are heard.

Second, we need to stay focused on the stakes. DEC Policy 29 was designed to serve the public welfare in response to a very specific, otherwise unaddressed problem. As you are likely aware, the zoning power bears a history checkered with acts of flagrant and unintentional racial discrimination. In many communities, the goals of suburban development and “preserv[ing] a more favorable environment in which to rear children,”¹ lay alongside such “goals” as preventing the movement of “colored people” into “finer residential districts.”² Multi-family homes, often the only homes available to low-income Black families, were written off as “parasites” and zoned into unsightly and unsafe industrial zones.³ Even then, Black residents were often turned away from particular neighborhoods and home ownership opportunities. For example, in 1949, in Dearborn Michigan, residents concerned about the “racial problem” of an integrated public housing project argued that, because of the “nature of the territory” — an industrial area — the Housing Commission should veto the project.⁴ Black Americans pursuing the fundamental American promise of homeownership were thus left confined to “slum” areas, to which too many zoning authorities were happy to relocate hazardous waste dumps and

1 *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

2 Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 49 (2017).

3 *Euclid*, 272 U.S. at 394; see Rothstein, *The Color of Law* at 49-50.

4 David M.P. Freund, *Colored Property: State Policy & White Racial Politics in Suburban America*, 294-95 (2010).

incinerators.⁵ In many communities, then, the zoning power became the power to transform the suburban picket fence into an impregnable wall — leaving Black Americans standing outside, without access to justice and silenced and unrepresented by the very government elected to serve them.

5 See Rothstein, *The Color of Law* at 55 (noting the percentage of minorities living near incinerators in the 1980s was 89 percent higher than the national median).

DEC Policy 29 accounts for this embarrassing zoning history and promotes the creation of a more equitable community by making the lead agency responsive to the needs of *all* residents. Importantly, mapping done pursuant to the Policy already tells us why the Policy is needed. In contrast to the past, we know for a fact that the decision before the City Council will impact communities of color, economically disadvantaged communities, and people who have historically and unquestionably been stripped of political power and participation in the governance process. We cannot pretend that the affected communities do not exist. They do exist. They exist in Troy, and they exist at the location under consideration by the City Council.

We know this because the DEC has mapped “Environmental Justice Areas” in a very public way. This mapping was not done to appease protestors or quell political dissent. The mapping was done to raise awareness of the fact that such communities have been left out of the City’s calculation of the “public welfare” in the past. The mapping was done to make sure that same treatment is not repeated today and into the future. As this disparate treatment shows, we cannot be sure that the City’s action will truly benefit the public if these environmental justice communities are not considered, their participation not guaranteed, and their interests not prioritized.

In sum, DEC has provided an example of how SEQRA should work in a community. It is not perfect, but it is designed to garner the actual, meaningful participation of the affected communities. Because participation in governmental processes and institutions in these communities has been historically minimal - in large part because of actions and policies of the government itself - DEC’s Environmental Justice policy provides processes that guarantee inclusion in the decisionmaking process. The DEC model creates a floor below which a governmental entity should not tread. Among other things, the Environmental Justice Area floor includes a front-end awareness that people – here, Troy residents – must be heard. To ensure the participation of affected communities, the DEC policy identifies a key tool – an enhanced public participation plan, designed by the City and applicant - that informs the community of the ways in which they can participate and makes an affirmative attempt to reach out and seek that participation.

From the applicant, you are likely to hear continued opposition to the City’s recognition of these local residents. From the applicant, you are likely to hear continued opposition to the ways that DEC Policy 29 might affect its economic interests. Specifically, reaching out to underrepresented communities can be an involved, frustrating process for a developer, especially in light of the distrust that has resulted from decades (centuries?) of governmental mistreatment. However, in contrast to the approach of the applicant’s representative, whose testimony indicated that he was not aware of DEC Policy 29 and “had to look it up,” this City has the opportunity to consider these communities under Policy 29 and give them their due. DEC Policy 29 reflects the need to be inclusive and equitable, and DEC’s Environmental Justice mapping has identified this vulnerable area for enhanced participation.

Without laying blame or pointing fingers, I believe it is reasonable to assume that Troy has played some role in making DEC Policy 29 important. The historical background for DEC Policy 29 itself represents the fabric of justice, both for Troy and for other local governments of New York. The guidance provided in DEC Policy 29 makes sure that the right people and communities can be heard. It is not onerous or new, but it does reflect what needs to be done to protect the public welfare of Troy residents.

Perhaps the easiest way to address the environmental justice challenges in this matter is to be clear and transparent. If the City Council chooses not to facilitate participation of the historically vulnerable communities otherwise protected by DEC Policy, I would ask the City Council to say so in a clear, unequivocal statement. On the other hand, the City can choose to hear from and include these historically underprivileged, underrepresented communities and ensure that the mistakes of the past are not repeated in Troy today.

I appreciate your attention to this matter.

Sincerely

Keith Hirokawa

My name is Jennifer Schulaner. I live ...in Troy. I am a homeowner and also a Landlord, and I have lived on this block going on 21 years. Please submit my written comments as part of the Public Record in regards to the Building Proposal for 240 apartments to be built in Lansingburgh on Troy's last remaining forest on the Hudson River.

Following this process has been a steep learning curve for me personally. I am strongly advocating and imploring that the Troy City Council Amend Resolution 35 in order to fully explore potential and significant environmental impacts related to a project of this size and scope. And for the community to participate, learn and study in depth the Archeological and cultural significance of this land first inhabited by the Mahicantuck People and to their descendants in the present.

It is imperative that a "Positive Declaration" be imposed in order to thoroughly study potential impacts to be expected from a project of this size. It is also Imperative that an Agency with expertise in SEQR, i.e. The Planning Commission, DEC or SHPO, take the lead. It would be unfair and reckless for the City Council to be named the Lead Agent for this process, as the Council Members are Part-time, have no expertise in this area and they are facing re-election this November. By designating one of the above-named Agency's the Citizens of Troy will be assured that there will be expertise and continuity through this process.

Respectfully Submitted,

Jennifer Schulaner

I am writing to share my opposition to Resolution 35 and the declaration of City Council for Lead Agency for the SEQR process for 1011 2nd Ave. I support the Planning Commission for Lead Agency, as they have been lead agency for numerous SEQR projects like this one and have the time, resources and expertise to thoroughly examine this issue.

Additionally, I advocate for and expect a Positive Declaration for this SEQR and insist on the full transparency that a POS DEC ensures.

Thank you for your consideration of this matter.

Jessica Bennett
Troy, NY

PLEASE TELL THE CITY:

1. THE PUBLIC EXPECTS A "POS DEC" AND PUBLIC SCOPING PROCESS

The City of Troy was made aware of significant potential environmental impacts expected for this development project. This includes threats to

- archeo-sensitive areas
- Native American cultural resources and sites
- ecological resources and ecosystem services
- community and neighborhood character
- storm surge and stormwater runoff impacts
- traffic impacts, and more.

It is important to study these potential impacts thoroughly and with a public scoping process. Who would not want the public's input and participation on such an important matter?

Once a "lead agency" is established, the public expects a **“Positive Declaration”** (pos dec). **The City Council should amend Res. 35 to express that it expects a "pos dec" for this State Environmental Quality Review (SEQR) once a lead agency has been established.**

2. THE CITY COUNCIL SHOULD NOT TAKE THE LEAD ON THIS REVIEW

The Planning Commission acted dozens if not hundreds of times as lead agency for SEQR reviews and scoping process over the last years; the City Council had close to NO previously experience in leading reviews of this complexity and scale. **WHY GABLE WITH A PROCESS THAT IS MEANT TO PROTECT THE PUBLIC?**

The City Council reaffirmed in a September vote the commission has the better expertise and qualification to conduct reviews on matters of rezoning. What changed, other than the Commission's recommendation **AGAINST** the rezoning in January?

With the council members facing reelections in November, **the City Council should avoid any apparent politicization the SEQR review — and amend Res. 35 to ask the Planning Commission to lead this review instead.**

Respectfully submitted,
John Raup
Troy, NY 12182

There are priority development areas in the direct vicinity of this property. A vacant price chopper as well as several vacant locations across the local Lansingburgh neighborhood are identified as priority and development nodes in the city's comprehensive plan.

As the plan states:

“Troy's high vacancy rates are also contributing to neighborhood destabilization. There are approximately 23,100 housing units in Troy and approximately 2,100 of these units, or 9%, are vacant and unused. Prospective residents are deterred from purchasing homes in neighborhoods

with high vacancy rates as they are perceived as areas with higher crime, and where continued disinvestment may occur. These conditions have resulted in a weak housing market and low housing values compared to the region”.

A rezoning discourages and actively prevents the development of already developed vacant areas with existing infrastructure and public services in place.

The development of this property, and the associated rezoning, stand in conflict with these development needs and undermine soft and smart growth and development.

Accordingly, the rezoning would stand in direct conflict with the provisions and priorities laid out in the Comprehensive Plan, the smart growth development principles established in the Comprehensive Plan, and the New York State Smart Growth Criteria.

ECONOMIC BASELINE CALCULATION — Public Service Cost

The proposed development, and the associated rezoning, are incompatible with the responsibilities and legal requirements that must guide the city council committee and planning commission in their decision — and the requested rezoning can only be denied on economic and legal grounds.

It is the responsibility of the city council to consider a development and a proposed rezoning not only for its legality, but for its impacts on the current residents of the city, the city overall and the interests of the city and its residents.

This development will COST the city money both in the short and long run: Increased public spending for services outweighs the anticipated revenue.

In fact, an increase in tax revenue of approx. \$300,000 is outweighed by an increase in spending needs for public services etc. of about \$800,000.

Some basic math clearly shows that costs substantially outweigh revenue

Anticipated Revenue

Based on comparative data of similar developments in similar locations in Troy we approximate (generously) the anticipated tax revenue for the city with around \$300,000.00

We assess the anticipated tax revenue for the school district (similarly generously) with \$400,000.00.

(Numbers are based on approximated unit value calculations).

Increase in Cost Spending for Public Schools (TROY SCHOOL DISTRICT):

In the state of New York, an average of annually \$22,366 are spent per pupil on the public education system [S4-8]. In Troy this number is closer to \$28,000, but we will use the more conservative state wide average.

A conservative estimate would be 40 new pupils entering the Troy School System — an estimate that is very conservative for 240 apartment units.

This leads to an increased cost spending of \$894,640.

Anticipated Revenue Increase for Troy School District Approx. 400,000
Approximate Cost Increase: Public Service — School Approx. \$894,640
COST TO DISTRICT AS DIRECT RESULT FROM DEVELOPMENT: APPROX. \$498,640

This leads to a shortfall of \$494,000.00

Increase in Costs For City of Troy On the Example of Public Safety Alone:

Public Safety: Estimates for cost increases for the Fire and Police Services are hard to estimate. One way to estimate this is the per capita spending for police services. According to the 2020 proposed Budget, a total of \$40,329,791 will be expended for safety services [S4-9]. This excludes overtime, extraordinary expenditures and other expenditures not listed in the general budget itemization. The population of Troy lies at 49,826 for 2017. This results in a per capita spending of (rounded) \$800. With 240 units, and an conservatively estimated 1.75 persons living in each unit, this leads to a total increase of cost of: $240 \times 800 \times 1.75 = \$336,000.00$

Approximate Revenue for City Approx. \$300,000
Approximate Cost Increase: Public Service — Safety Approx. \$336,000

This leads to an conservatively anticipated increase in cost associated with the development of for public safety alone of \$36,000/year.

This does not incorporate other increased public service costs, such as road maintenance, etc.

There are countless alternative vacant sites in the direct vicinity of this forest: 'It's not as if the council has no other choice. If they move forward with their plans, the city council members yet again will go on the record to show that they value profits for the wealthy more than the interests of the people they are supposed to represent'.

Respectfully submitted,

John Raup
Troy, NY 12182

Greetings. I am a resident of the City of Troy. I vote. I am active in my community, and urge others to vote. Do not ignore my wishes. Your positions as council members depend on representing my will. Specifically, Eileen McDermott as my representative on the council, hear and understand.

I oppose Resolution 35. The Planning Commission have consistently acted as “lead agency” for this kind of project review. The City Council should not assert control and politicize SEQR. SEQR is the best tool available to mitigate harm and negative impacts. The lead agency needs consistency. With elections in November, this consistency would be undermined. A lead agency must be able to act with neutrality — the City Council should be able to advocate for its constituents; acting as lead agency would undermine this ability without further politicizing the SEQR in an election year.

I expect a “pos dec”. Once a lead agency is established, the next step in SEQR is to determine if the project has a potential negative impact. A “pos dec” indicates this potential impact, triggering an extensive public scoping and review process. Given the ecological, archaeological and cultural importance of this land, the public expects a “pos dec”.

The Planning Commission have already recommended against moving forward with development of 1011 2nd Ave. Do not display your corruption so blatantly. The residents of Troy are becoming fed up with this level of unaffordable and unattainable "development" that does not preserve the spirit and nature of the community, and this land is sacred to an indigenous people. Instead of developing this land, the City of Troy could work toward restoring this land to the people who lived here first, and helping to preserve something historic and sacred. Do the right thing for a change.

We will be watching. We will be voting.

Josh Maxson
Troy, NY

I am writing regarding resolution 35, which pertains to building apartment buildings at 1011 2nd Avenue in the northern part of our city. I will try to focus this letter specifically on Resolution 35 and why I believe the SEQR must be completed in full and that the city council does not serve as the lead agency. However I will note that overall I think the plan to build these apartments and destroy this stretch of forest is wholly unnecessary. The area is a unique resource and worth protecting at all costs, as a biological and cultural site its destruction would be a significant blow to what already dwindling resources this city can provide to our residences, who are already facing a lack of green space and nature. Furthermore, like all of our country, our City is located on land stolen from the Indegenious people of this area, who faced hundreds of years of genocide colonial rule that robbed them of their connection and access to their homes. The evidence has already been documented that this area was an important site to the indegenious people, and while we cannot erase the horrors that the history of American settler colonialism inflicted upon the Indegenious communities who lived here, we can do everything in our power now to respect the few remaining traces of connection they have to the lands that are even found within our city.

All this goes back to the SEQR review. I have been working as an Archaeologist in New York State for around 15 years, and understand the importance of SEQR and having it done properly and by agencies with the experience and know-how. As I mentioned above, this land has a connection and impact to all of us both in Troy, the greater region, state and people who lived here in the past, as well as the wildlife who call it home. A properly prepared SEQR process will guarantee all needs and concerns will be addressed in a democratic way. I have seen development, and specifically apartment developments, destroy important and unique archaeological sites, ruining unmeasurable amounts of scientific knowledge and disrespecting the native peoples. I have even seen such projects disturbing and destroying the final resting places of some of our first veterans who died for this nation up in Lake George. I do now want to see this happen in our city.

Furthermore, as a union member and steward, I must point out that a proper SEQR review will bring in more high paying jobs to this project, and will bring in more money to our city.

Therefore, the council must insist on that the submitted SEQR application is complete, with no missing information, that you require a written outreach plan to safeguard the voice of all members of our city, and that the public expects a pos dec. Furthermore, an experienced agency or department, such as the Planning Commission is better suited to be the lead agency for the SEQR process.

Thanks you,
Mickey Dobbin
Troy, NY 12180

I live ...in South Troy and I'm writing to say that I do not support Resolution 35, and I do support the Planning Commission as Lead Agency for SEQR for 1011 2nd Ave. I expect and demand a Positive Declaration for this review.

Thank you,

Patrick Kiley

I am writing once more to oppose Resolution 35 considering approval of the proposed development of 1011 2nd Ave. in Lansingburgh.

The broader community of constituents, including myself, and residents with proximity to this site, have previously shared our concerns regarding this proposed development. We have brought to your attention issues of environmental impact, indigenous land solidarity, infrastructural impact, resident ire, the city's in adherence to their own covenants, the cost to the developer and taxpayers, as well as several other aspects that strongly support opposition of Resolution 35. Please reexamine this evidence in addition to recent developments that further the case for opposition.

I share many of your constituents' concerns with the site review impending as part of this resolution. I urge you to continue holding the Planning Commission as "Lead Agent" for this particular SEQR, and all moving forward. The City Council must reconsider positioning themselves as the lead agency to administer this SEQR. There is no precedent of the City Council ever leading a development review to my knowledge. What is your specific plan and protocol for becoming and maintaining a role as lead agent? How will you specifically inform and include the public in these proposed changes? How will you ensure that each member and the body as a whole are accountable for whatever consequences emerge from your decisions? I think the City Council is making a mistake to experiment with this leadership model with such a contentious development review.

I also capitulate that this is an election year for City Council members. It is quite likely that there will be significant turnover within the council electorate after November. Your duty and responsibility to consistency in the coordination of this review process and others within the city

is paramount to their success. Please consider the likely negative impact to our community if this review becomes lost in the shuffle as several of you exit the City Council next year.

It is my observation that the Planning Commission would be best suited to serve as the lead agency for a major development review of this ilk. They have presided as lead agency over every previous major development like this to my knowledge, and they have the resources to coordinate the review beyond the election cycle. The Planning Commission's focus is a reflection of their expertise in assessing the review's complexities including various impacts and site plan reviews. I also have confidence that they will include the public in an active, transparent way that your constituents will value and residents will appreciate. Please consider continuing to empower those who have already demonstrated their ability to manage these reviews. Shifting the role of lead agency to the City Council does not appear to be the best choice.

Please oppose Resolution 35.

I also want to add that I have received no response from any council member regarding previous communications, questions, and requests for comment. Please respond to this letter – as well as previous letters – through email and/or phone call to Ragliacci@gmail.com and (518) 396-7832 in a timely fashion.

Thank you for your time and consideration.

In earnest,
Kristoph DiMaria
Troy, NY 12180

Do you know what system the police department uses?

They mentioned not being aware of anything that connects with data for RMS / CAD systems.

It looks like Mark 43 has a developer API that could easily be programmed for something like a Twitter broadcast: <https://developers.mark43.com/#api-documentation-introduction-title>

And, you might be getting a lot of questions for tonight. Here's the big list just in case no one sent them already, which feels unlikely ;)

1. What was Troy PD's communications policy before encryption?
2. What revisions will be made to Troy PD's communications policy prior to / after encryption?
3. Who decides how and where police officers should communicate now? (We know officers hop on and off channels/talk groups that the public may or may not have access to now. Officers also frequently utilize their cell phones for communication.)
4. If communication is not on a publicly accessible channel, who has access to the communication?
5. If communication is not on a publicly accessible channel, how is this currently archived and reviewed by the department, City or other parties?
6. What kind of communications oversight is Troy PD currently experiencing and by whom?
7. How are communications recorded?
8. How are communications archived?

9. Where are those archives stored?
10. Who has access to archives?
11. Who has access to live vs backup servers where those archives exist?
12. Can those archives be edited or removed? What is the policy for doing so?
13. How can archives be requested by the media?
14. How can archives be requested by the public?
15. Who will manage fulfillment of communications archive requests?
16. Who will approve and touch those archives before they're shared with the media and/or public?
17. What alternatives have been discussed and reviewed to full encryption?
18. What solutions have been discussed and reviewed for making information publicly available in real to near-real time?

Thank you and good luck tonight! I hope we can see a transparent communications policy, determine a trusted oversight process, and identify additional technological solutions before TPD encrypts.

Best,
Rhea Drysdale
Troy, NY

We should take this as an opportunity to be concerned for the following reasons:

1. Police Objective Review Board (PORB)

Troy announced the re-establishment of the PORB in June 2020. A year later and we still don't have an oversight group. Mayor Madden also pushed back on the PORB having subpoena power as "too costly" during negotiations for the final Police Reform & Reinvention Collaborative (PRRC) report. If the PORB ever gets off the ground, what would be the policy for, as Chief Owens calls it, "spot monitoring" police communications?

Archived police communications and a Twitter feed like [@copwatch12180](#) are some of the few tools we have in Troy for police oversight.

2. Use of force & use of deadly force policies

During the Executive Order 203 police reform process, it took months to see a copy of the updated Use of Force and Use of Deadly Force policies--just days before the PRRC Report was released and they didn't fully incorporate the already insufficient "8 Can't Wait" policies Madden claimed as department reforms.

3. Body cam policy

Troy PD supposedly has an updated Body Camera policy they are unable to share with the public even after freedom of information (FOIL) requests for it. In the meantime, officers have already [begun wearing the cameras](#) and the [Times Union](#) reported that school resource officers (SROs) will have body cams in the schools as well as in hospitals and jails.

4. Disclosure of misconduct records

In case you hadn't heard, [NYCLU is suing Troy Police for its noncompliance with their FOIL requests for officer misconduct records](#) now that [50-a](#) no longer protects disciplinary records.

5. Communications policy?

Where are the policy documents for the current and soon-to-be encrypted police communications system?

This is a decision of public concern and one that should be arrived at through exploratory conversation with more “experts” speaking on the matter than Chief Owens. While the privacy of the community is a legitimate concern, our main concern continues to be a lack of oversight and accountability from the Troy Police Department.

The City Council discussed the possibility of creating a credentialing process, where media and members of the public could apply for access to encrypted police scanner audio. *We cannot expect such a process to have any real accountability if police themselves are in control of who can monitor their comms.*

Chief Owens mentioned they have recordings “going back years.” But, this doesn’t tell us the policy for who safeguards these recordings, how they are checked, who has access to them, and how the public or the as-yet-inactive PORB gains access to them.

Thank you again!
Rhea Drysdale
Troy, NY

I was born and raised in Troy, NY and have a deep connection to the surrounding natural areas. I am deeply concerned with RES 35 and what I believe is a violation of preservation to Indigenous historical sites, the unnecessary displacement of wildlife, loss of natural areas affecting the mental health of local residents who enjoy and benefit from green space and the potential health risks that this major development will cause to the local population.

Please do the right thing here and preserve this historic and beneficial natural area so that future generations can participate in and enjoy them as I have.

Thank you
Sean Rowe
Troy, NY

Barb Nelson, AIA, Executive Director, TAP Inc.
[letter attached]

Bonney Hartley, Tribal Historic Preservation Manager, Stockbridge-Munsee Community
[letter attached]



TAP, Inc.
THE COMMUNITY DESIGN CENTER OF NEW YORK'S CAPITAL REGION

June 2, 2021

Dear Troy City Council members;

I ask you to please consider the following points as you decide how to navigate 1011 2nd Avenue through the zoning and planning review process:

TAP has been working to preserve and protect threatened neighborhoods for 50+ years. We maintain that established property owners and residents, taxpayers, deserve to be heard when it comes to what development is appropriate in their neighborhood. They know what will improve or detract from the value of their land and the quality of their life. **Mid rise apartment buildings with acres of open parking are inappropriate in and detrimental to an R-1 zone.**

We inform our clients that the Zoning Ordinance is Troy's established and tested guide for development. We discourage them from pursuing variances except in cases of extreme hardship to a current owner. A potential owner, as in this case, brings hardship upon themselves by planning to develop land in a manner which requires variances. **No use variances are warranted at 1011 2nd.** 20 homes could be built here and sold for a very reasonable profit. No hardship can be proven to support apartment block development .

TAP does not oppose thoughtful development. We believe that Troy's taxbase will and must be improved by population growth and increased urban density. We are working hard to promote the reuse of vacant lots throughout Troy. There are plenty of sites in Troy where the proposed project would be appropriate and welcomed. Some of them with Hudson River Views. **This development does not belong at 1011 2nd Ave.**

TAP knows the SEQRA process. It needs to be managed by an agency experienced in the scoping and review of Environmental Impact Statements. If the council takes lead agency status on this review they run the risk of mis-steps which could expose the city to liabilities. **The Planning Commission should be Lead Agent in the SEQR process.**

TAP is concerned about climate change. Even at the local level, our built environment must be balanced with green and forested space to reduce carbon emissions and maintain healthy air quality. Zoning is one way to promote that balance. R1, R2 and Conservation Zones ensure that green space is preserved in the city limits. **Think global and act local, protect forested land.** You are elected to protect and represent the public. Opposing the development of 1011 2nd Ave is a simple act you can take to protect your city and the planet.

Thank you for you consideration

A handwritten signature in black ink, appearing to read "Barb Nelson", followed by a horizontal line extending to the right.

Barb Nelson, Executive Director

Stockbridge-Munsee Tribal Historic Preservation

*Arvid E. Miller Library Museum
N8510 Mohheconnuck Road
Bowler, WI 54416*

*Extension Office
86 Spring Street
Williamstown, MA 01267*

June 2, 2021

Troy City Council
433 River Street
Troy NY 12180

Re: Resolution 35- Declaring the Troy City Council “Lead Agency” For Review Under the State Environmental Quality Review Act Of A Request To Rezone And Proposal To Develop Tax Parcel Number 70.64-1-1

Dear Troy City Council Members:

I am writing to provide comment regarding the above-referenced item on the June 3, 2021 agenda. I am an enrolled member of the Stockbridge-Munsee Mohican Nation, the people indigenous to the Troy area. Stockbridge-Munsee Mohican Nation is a federally-recognized Tribal Government. Though our Nation has been painfully displaced from the region to a reservation in Wisconsin, our homelands are very much of continuing importance to our culture, identity and future. I moved to Troy in 2014 and at the request of our Tribal Council established our Historic Preservation extension office, which was first on the campus of Sage College downtown and is now located in Williamstown, Massachusetts.

We appreciate the City’s respect and cooperation in the previous consultation regarding the South Troy Industrial Park Road project in agreeing to return the artifacts from the testing on the project to our Nation.

In the capacity of Tribal Historic Preservation Manager, an authorized representative of our Tribal Nation to consult Government-to-Government on such matters, I now respectfully offer our continuing comments on the proposed project at 1011 2nd Avenue (Tax Parcel Number 70.64-1-1):

- Stockbridge-Munsee Mohican Nation would like to reiterate our position that the proposed undertaking at 1011 2nd Avenue would constitute an ***adverse effect*** to a culturally-significant and National Register-eligible historic site. The land holds thousands of years of history of our Mohican ancestors through the contact period. The archaeological significance is demonstrated to be intact and present entirely throughout the landscape, and therefore cannot successfully be mitigated or avoided.

Stockbridge-Munsee Tribal Historic Preservation

*Arvid E. Miller Library Museum
N8510 Mohheconnuck Road
Bowler, WI 54416*

*Extension Office
86 Spring Street
Williamstown, MA 01267*

- We are concerned that it appears the City is not following its Planning Commission's recommendation to not rezone this site and is instead continuing to pursue the undertaking.
- Regarding Resolution 35, we recommend that the New York State Department of Environmental Conservation, the New York State Historic Preservation Office, or the City of Troy Planning Commission are best suited to be lead agency throughout the SEQR process.
- Further, we recommend that the Resolution state that the lead agency will seek a positive declaration and public scoping process on this important matter.

Our Nation routinely engages in the SEQR process throughout our homelands in the *Muhheacannituck*/Hudson Valley and expect to continue to closely consult with our State or Federal partners throughout the actions at the 1011 2nd Ave site as required. We hope that you will see fit to preserve this important cultural landscape of great significance to our heritage as well as New York State history.

If our office may offer any additional perspective on the matter, please do not hesitate to reach out to meet—that is why we are here. My contact information is below. Thank you for your consideration of these comments.

Oneewe,



B. Hartley

Bonney Hartley
Tribal Historic Preservation Manager