



Thomas S. West  
Direct Dial: (518) 641-0501  
Direct Facsimile: (518) 615-1501  
E-Mail: [twest@westfirmlaw.com](mailto:twest@westfirmlaw.com)  
Admitted in New York and Pennsylvania

January 17, 2019

**VIA HAND DELIVERY  
& FIRST CLASS MAIL**

City of Utica Planning Board  
c/o Department of Urban & Economic Development  
1 Kennedy Plaza  
Utica, New York 13502

**Re: Failure to Address Cumulative Impacts from the Nexus Center and Other Fatal Defects in the Draft Environmental Impact Statement (“DEIS”), dated November 2018, on the Integrated Health Campus (“IHC”) Proposed by Mohawk Valley Health System (“MVHS”)**

Dear City of Utica Planning Board:

Given the 22 million dollars that is now ear-marked in the 2019-2020 proposed New York State budget for the Nexus Center, we submit this letter on behalf of our clients, Mr. Brett Truett and #NoHospitalDowntown, to supplement our earlier comments detailing the fatal flaws in the DEIS provided by MVHS relative to the IHC.

While the Planning Board seemingly is pressing ahead to ram-rod the IHC project through to fruition, it cannot do so lawfully absent full procedural and substantive compliance with the New York State Environmental Quality Review Act (“SEQRA”). SEQRA requires that the environmental impact statement evaluate all reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts. ECL 8-0109(2); 6 NYCRR 617.9(b)(5)(iii)(a). The DEIS for the IHC, however, fails to consider cumulative impacts from the Nexus Center, and this, among other things, renders the DEIS fatally defective. *See generally*, DEIS, Section 5 and 8.2; *see also Sun Co., Inc. v. City of Syracuse Industrial Dev. Agency*, 209 A.D.2d 34 (4<sup>th</sup> Dep’t 1995).

The DEIS attempts to bypass consideration of the Nexus Center, asserting that the project is currently speculative and therefore need not be addressed in the DEIS. This is most certainly *not* the case, however. Plainly, the 22 million dollars that is now ear-marked for the Nexus Center in the 2019-2020 New York State budget demonstrates that this project is far from being speculative; rather, this project is in the process of being funded, making it is one step closer to reality. Accordingly, this underscores our earlier comments that the DEIS is fatally flawed for, among other reasons, failure to consider as cumulative impacts the impacts associated with the Nexus Center (including, but not limited to, traffic/transportation, waste water/storm water, noise). *See, e.g., Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193, 206-07 (1987) (finding

that the failure to consider cumulative impacts of other pending projects for the subject area violated SEQRA and invalidated ordinance approving the requested zoning change).

Furthermore, aside from the DEIS's failure to consider the Nexus Center, the DEIS is fatally flawed on the additional ground that it was released prior to completion of the required state law process regarding protection of historic resources, including the identification of measures to avoid or mitigate MVHS's proposed broad-scale destruction of numerous significant historic resources. The DEIS documents that, pursuant to article 14 of the New York State Parks, Recreation and Historic Preservation Law ("PRHPL"): (1) consultation with the New York State Office of Parks, Recreation and Historic Preservation (also known as the State Historic Preservation Office) ("SHPO") is in progress, but has not concluded; (2) more investigation is necessary (including subsurface testing); and (3) no letter of resolution has yet been obtained. *See generally*, DEIS, Section 3.6 and Appendix E (correspondence from SHPO, dated June 18, 2018, and July 17, 2018; correspondence from O'Brien & Gere, dated August 16, 2018). The DEIS also documents that MVHS is attempting to bypass SEQRA's requirement that practicable avoidance and mitigation measures be evaluated in a *public* forum (subject to public scrutiny and opportunity for comment) *prior* to decision-making. *See* Appendix E, Letter from O'Brien & Gere, dated August 16, 2018. Instead, MVHS proposes to identify mitigation after-the-fact, such as supplying to SHPO pictures of the historic buildings that MVHS plans to demolish. This is simply not how SEQRA works.

SEQRA requires meaningful evaluation of environmental impacts and mitigation in the DEIS, *as part of the public review process*; and historical, archeological, architectural and aesthetic resources are expressly considered part of the environment and are protected under SEQRA. *See* ECL 8-0105(6), ECL 8-0109(1), (2), (8); 6 NYCRR 617.7(c)(1)(v); 6 NYCRR 617.9(b)(5)(iii), (iv); *see also Orchards Assocs. v. Planning Bd. of Town of N. Salem*, 114 A.D.2d 850 (2d Dep't 1985). Given that the DEIS, itself, acknowledges that it does not contain the data necessary for full evaluation of impacts to historic/archaeological resources and mitigation as to same, the DEIS is fatally defective on its face, both procedurally and substantively.

Given these circumstances – namely, multiple fatal defects in the DEIS– we once again respectfully request the Planning Board to re-open the DEIS process to properly address both of these issues and re-notice for public input a revised, complete DEIS that accounts for these matters, as is required under SEQRA. *See* 6 NYCRR 617.9(a)(7)(i) & (iii).

Very truly yours,

  
Thomas S. West