

FOR CONSIDERATION

July 15, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Radisson Community

REQUEST FOR: Determination that the Northwest Family YMCA is a Community Facility Within the Meaning of the Radisson General Project Plan

In early 2008, the Planning Board of the Town of Lysander (“Planning Board”) requested ESDC’s opinion concerning the allowable use of the parcel at Drakes Landing Road and N.Y.S. Route 31 within the Radisson Community. The Northwest Family YMCA (“YMCA”) had applied to the Planning Board for Site Plan Approval of a proposed facility on this site that is designated “Residential” on the Radisson Land Use Plan. The Radisson General Project Plan (“GPP”), however, states that certain Permitted Uses such as “Community Facilities” are allowed under this use designation provided they are approved by ESDC or its designee.

ESDC responded to the Planning Board in a January 8, 2008 letter that the YMCA is a Community Facility and therefore an allowable use on this Residential parcel and in compliance with the GPP. ESDC’s letter only addressed itself to allowable use, not to approval of specific building characteristics such as siting, building code compliance and parking requirements, approval of which is the Town’s responsibility. The letter was intended to allow the Planning Board to proceed with its review of the proposed site plan and building pursuant to the Town of Lysander Zoning Code and State Environmental Quality Review Act (“SEQRA”).

A group of Radisson residents who live in the vicinity of the proposed YMCA site sued ESDC and the YMCA under Article 78 of the Civil Practice Law and Rules (the article generally governing judicial review of administrative agency actions), asserting two main causes of action. These were that ESDC failed to support and substantiate a basis for its original determination that a YMCA was a “Community Facility” and not a “Commercial” building as the petitioners claimed and that ESDC failed to comply with SEQRA by not considering potential adverse environmental impacts from the project. ESDC’s in-house legal team along with the New York State Attorney General’s Office defended the lawsuit, and three of the four causes of action (including the alleged failure to follow SEQRA) were dismissed. However, the petitioners prevailed on their “unsubstantiated determination” claim, resulting in a March 10, 2010 decision and April 7, 2010 order from Onondaga Supreme Court Justice Anthony J. Paris that vacated and

annulled the original ESDC determination. The matter was remanded to ESDC to reevaluate the issue and to set forth a rational basis for its reconsidered determination. The question to be determined is whether a YMCA is a “Community Facility” within the meaning of the GPP, based on a public hearing and a review of the Radisson Community Association’s “Mission Statement,” insofar as that statement sets forth a description of the meaning of the term “community.”

In the interim, the Planning Board has tabled its evaluation of the YMCA’s building project until this second determination by ESDC is made.

Background

The Radisson Community is subject to several layers of development controls and regulation, including the Radisson GPP which is an ESDC document and the Town of Lysander Planned Unit Development District section of its Town Code, commonly referred to as PUD zoning. The Radisson GPP does not override the Lysander PUD regulations and in order to be erected, any proposed structure in Radisson requires site plan approval by the Town Planning Board as well as a Town building permit.

Radisson’s 1971 GPP provided the framework for a balanced New Community consisting of housing, industrial and commercial development and related public and community facilities to serve such a population. Although Radisson had definite boundaries, the Introduction to the GPP states that “...development will be designed to integrate the New Community into the Town of Lysander and other existing governmental and service jurisdictions.” To address concerns that Radisson would strain Town services, the GPP outlined facilities for its residents.

Development of Radisson as well as the surrounding area was slower than originally predicted. This pace and changes to the surrounding road system necessitated certain changes which resulted in Amendment No. 3 to the GPP adopted by the UDC Directors on July 17, 1986 and affirmed with modification on July 16, 1987. Before such approval, this amendment was subject to public hearings and reviewed in accordance with SEQRA regulations.

The definition and location of Community Facilities was just one facet of Amendment No. 3. In the original 1971 GPP, Community Facilities was a separate use category with locations indicated on the Land Use Plan. The 1987 GPP Amendment No. 3, Community Facilities are permitted as “Special Uses” within each use category—i.e., industrial, residential and office/service, commercial/retail. Radisson’s development history indicated that such facilities were already integrated with other uses such as the day care center in the Industrial Park and the RCA office, community center and pool in the residential area.

Specifically, the Residential Land Use Controls under (2) Permitted Uses, Section C states, “Special uses—community facilities, approved by UDC or its designee as primary project developer, including but not limited to:

- Community services such as day care center, nursing homes, etc.

- Religious institutions and their related uses.
- Recreational uses/open space, both public and private.
- Community offices, libraries, fire stations, municipal office buildings, etc.
- Neighborhood commercial uses such as convenience retail shops when existing in conjunction with a Community Facility (public or quasi-public).”

Public Hearing Comments

The duly-noticed public hearing was held on May 12, 2010 from 6pm to 9:50pm at the Baker High School auditorium in Baldwinsville, New York, and the written comment period was held open until the close of business on June 14, 2010. At the hearing 52 people spoke and subsequently 73 written comments¹ were received. With few exceptions, most speakers and writers thought the YMCA would be an asset at Radisson and observed that the organization did valuable work, would be well-used and provided needed services. The main issues revolved around location and community character:

Supporters of the proposed location claimed that the YMCA was a community facility by virtue of the programs and services it offered and that the location provided visibility and easy access for both Radisson residents and those of the surrounding area.

Opponents to the proposed location were concerned about increased traffic and a change in character of the neighborhood as a result of what they called a commercial, not a community facility, by virtue of its proposed size and scale as well as its serving a larger community than just Radisson.

The majority of speakers at the public hearing supported the YMCA in Radisson at the proposed location by a factor slightly greater than 4 to 1 (43 for, 9 against). Written comments were more evenly divided, with 38 for and 35 against. The main comments can be summarized as follows:

<u>Supporters</u>	<u>Opponents</u>
YMCA is a Community Facility within the meaning of the GPP because its programs and services cater to a wide range of groups such as the elderly, youth, and disadvantaged. Besides its many support services and groups, it	YMCA is too large to be a Community Facility within the meaning of the GPP and will change the character of the residential area. GPP addressed needs of Radisson residents only.

¹ In addition, Families for ...REAL, a group that opposes the location of the YMCA, sent copies of 12 letters that were sent to the Planning Board during February and March 2010 and not during the public hearing period; half the letters were from people who had either spoken at the public hearing or had sent written comments.

provides health and fitness facilities such as swimming pools and educational programs.

Location will serve both Radisson and others in the surrounding community; easily accessible via walkways and visible from NYS Route 31. If in the Corporate Park, everyone would have to drive to it.

YMCA should be relocated to the Corporate Park because of its size and potential traffic issues and because it will serve a wider community than Radisson.

Once building is erected, problems won't be as bad as people fear—if what has happened at other locations can be a guide.

Traffic and noise will be severe problems—problems getting out of Oak Brook development during rush hour and in an emergency.

The YMCA will enhance, not ruin real estate values.

YMCA will negatively affect real estate values.

The YMCA provides employment opportunities for locals—youth and adults. Many volunteer possibilities.

Petition against the location of the proposed YMCA was signed by nearly 900 Radisson residents

Will be a “green” building, built to LEED standards.

The large building and parking area will destroy many acres of vacant land/wildlife.

Supporters' statements at the hearing and in written submissions

Proponents stated that the YMCA was definitely a Community Facility because of the varied services that the YMCA provides such as youth and family programs, support for those with disabilities, as well as their scholarship program and services that are not readily available nearby. There were testimonials as to how the YMCA in other areas had changed their lives by teaching children to swim, providing employment opportunities, creating support groups for cancer survivors, military families and for those trying to stay healthy.

Those in favor of the proposed location appreciated that many Radisson residents would not need a car to get to the facility but could bike or walk there through the pathway system or

local roads. The location at the southern edge of Radisson near a state highway allows it to be visible to the surrounding community, and people from outside Radisson would not have to travel through Radisson to get to it. It was mentioned that the truck traffic in the Corporate Park made that location too dangerous for children to walk or bike there on their own and that they would have to be driven to such a facility. Many of the supporters use YMCA facilities in other parts of the county and the proposed location would be closer to home and therefore more convenient for them.

Responding to the question of compliance with the GPP and the intent of Radisson, two people at the public hearing who are familiar with its history spoke. A long-time Radisson resident (since almost its inception) presented the first land use map and Final Planning Report. This plan detailed specific uses and showed that community facilities were sprinkled throughout Radisson and next to other uses including Residential, Educational and Open Space. In fact, an area defined as “Major Community Facility” on the 1971 Land Use Map is very close in location to the proposed YMCA site and adjacent to residential uses. That Radisson was based upon the integration of different uses—rather than the separation of uses—was confirmed.

A former Radisson Community Association (“RCA”) Executive Director testified that the YMCA does not duplicate its facilities, but would bring more services to Radisson, potentially alleviating the RCA from providing more amenities which would increase homeowner assessments. He stated that RCA funds for additional facilities, especially for fitness purposes, were and are scarce and that he personally sought to attract private entities to Radisson. A 1987 letter from the RCA to UDC that outlined the RCA’s long-range community facilities and open space needs was submitted to be part of the record. Although most of the facilities were to be provided by either the RCA or UDC for Radisson use, some were clearly to be used by a wider community such as a community library and community chapel. In addition, a “community health and fitness center (may be commercially operated by outside agency)” was envisioned. The long-range plans were created with an eye toward operational costs which are paid with resident assessments; an outside organization’s provision of some amenities would alleviate on-going maintenance costs.

A 1997/98 Radisson survey indicated a need to improve recreation, health and fitness facilities and opportunities for youth. The RCA board directed this Executive Director to approach Gold’s Gym or other outside agencies. When an agreement could not be reached after affordability became an issue which precluded everyone in Radisson benefitting, the RCA board directed him to reach out to the YMCA because of its policy of serving all income groups, a concept that reflected Radisson itself. The Drakes Landing site was proposed as a potential site because it was adjacent to a park and school site and would create a campus of activities on the community’s periphery but within Radisson. RCA presented the site to YMCA board, but it was looking at different sites at the time.

YMCA board members spoke about the multi-year search for a site. Before it bought its present site from a residential developer, one of the other sites the YMCA was looking at was at the financially-troubled Baldwinville Ice Arena on Sixty Road where some YMCA facilities were located. The site, however, lacks visibility and easy access. The president of the ice rink

stated that the rink is now profitable and has recently expanded. There is no room for another facility at the site because of the adjacent wetlands.

Proponents stated that existing YMCA's encountered opposition to their locations, however fears abated when they were built and operational, and assumed problems such as increased traffic proved not to be problems. Other comments addressed concern that Radisson youth had few places to go after school and that the YMCA had programs for them as well as youth employment opportunities.

Proponents also stated that the building would be "green," built to LEED-certification standards.

Opponents' statements at the hearing and in written submissions

The opponents' main concerns were potential traffic problems and change in character of the area. They cited that the increase in traffic would make waits at the traffic signal at Drakes Landing Road and N.Y.S. Route 31 longer, especially for Oak Brook subdivision residents directly across from the site. The southern-most road to that subdivision is only a few car-lengths from the state highway, making left-hand turns from that street difficult during morning rush hours without the YMCA. There were fears that the new facility would exacerbate the situation. The increased traffic would create a dangerous situation, especially if cars would park on the street impeding visibility.

Many of those opposing the proposed YMCA location stated that the building was a Commercial building and not a Community Facility based upon the proposed size, potential materials, parking needs and associated lighting. That the facility was intended to serve a wider area than just Radisson precluded its being considered a Community Facility under the GPP which they contended only addressed facilities to accommodate Radisson residents. Because of these reasons, many of the opponents to the proposed YMCA location thought that the facility should be built in the Radisson Corporate Park. These residents asserted that the size and the potential number of daily visitors meant that the building would be a source of lights and noise. The size meant that much land would be disturbed, endangering wildlife and trees.

In addition, some who moved into the subdivision across the street from the proposed YMCA site were assured that the site would be solely residential, with no other uses allowed. Lower property values were predicted. Opponents also cited the RCA's role in enforcing covenants at Radisson.

A petition containing 879 signatures that were gathered in July 2008 against the location of the YMCA was presented at the public hearing. The petition states that the YMCA should be located in the Commercial/Industrial park not in the Residential location. Specifically:

We believe that our children will be at risk with the increased traffic flow. It is also our opinion that the infrastructure will conflict with our residential environment and therefore, will NOT enhance both our property values and lifestyles. We believe there are commercial/industrial sites within Radisson that are appropriate for this type of operation;

locations that will NOT conflict with residential neighborhoods. We are asking the Town of Lysander to reject the proposed location at Route 31 and Drakes Landing and instead support a more appropriate location within the community.

Radisson Community Association and Common Property

Judge Paris' ruling also cited the "Radisson Community Mission Statement and Purpose" with language that describes the homeowners association, the RCA. As defined on both the ESDC and RCA websites, the RCA is a Not-For-Profit Corporation formed for the primary purpose of promoting the health, safety, welfare, education, recreation and cultural enrichment of owners/members and residents of Radisson. Additionally, the RCA is obligated to preserve, protect and enhance certain lands and facilities set aside for the common use and enjoyment of the owners/members and residents of the community (Common Property). Facilities such as Oberon Center, tennis courts, Kerri Hornaday Memorial Park and the walkways fall under this category. Annual assessments are charged to operate and maintain these various recreational amenities, services and programs the RCA owns and provides.

The RCA's role is guided by the Radisson Declaration which also outlines the obligations and voting rights of its members. Many Radisson amenities and community facilities such as recreation and open space, walkways, tennis courts and tot lots, among others, have been built by either ESDC, private residential developers or the RCA for the enjoyment of Radisson residents. All RCA-owned property becomes Common Property, however, not all existing Community Facilities are owned by the RCA and are therefore not Common Property. The existing health care facilities, the Town of Lysander municipal offices, Child Time Child Care, Inc., and the Belgium Cold Springs Fire Department for example, are precedents for non-RCA-owned community facilities as defined in the GPP. Some are open to the public for a fee, all serve Radisson as well as the larger surrounding community.

Common Property may or may not be restricted for use to Radisson residents. For example, to use the pool at the Oberon Center one needs to be either a Radisson resident or a guest. However, Common Property owned by the RCA such as the walkways, ponds and open areas and parks is open to resident and non-resident alike. A March 22, 2010 letter from Thomas J. DeSain, RCA President, to Jeffery Dack, states that the RCA has opted not to restrict use of RCA property which would require a "hall monitor" approach in which Radisson ID tags would be needed in order to walk on the paths or to use park and open space facilities.

Each resident and building owner (person or entity) of a completed building (residential, industrial, commercial and private community facility) becomes a member of the RCA. Private or quasi-private community facility entities were envisioned and are allowed under the Radisson Declaration and are Class C Members. Only completed buildings evidenced by a Certificate of Compliance are controlled by the RCA. Upon final residential site plan or subdivision approval by the Town of Lysander, the approved site plan or tract map is filed with the County of Onondaga and an amendment to the Offering Plan outlining the proposed development and specifics of resale is filed with the Office of the New York State Attorney General. Residential property is sold in accordance with the approved Offering Plan. The definition of a "Lot" in the

Radisson Declaration is “any plot or parcel of land shown upon any filed or recorded map or plat of the Property.” Lots are designated by the developer on “final site plans.” Because no site plan has yet been approved, no site plan has been filed and therefore no Offering Plan amendment with respect to development of this property has been made.

The RCA has stated that it will remain neutral concerning the location of the YMCA. It believes the residents are split and a position for or against will unfairly represent one group over another. In addition, it has no role in this issue. It only becomes involved in buildings when they are completed through the filing of a Certificate of Compliance and has no authority or jurisdiction with respect to initial construction.

Evaluation of whether the YMCA is a Community Facility

The basis of Radisson’s planning as described the GPP and the Town’s Zoning Code is that uses are expected to be mixed. Each land use at Radisson allows for “Special Uses,” including “Community Facilities.” The question posed by the Town Planning Board and Judge Paris’ decision is whether the proposed YMCA is a Community Facility within the meaning of the Radisson GPP and thus an allowable use at its proposed site at Drakes Landing Road and N.Y.S Route 31. ESDC did not sell the land to the YMCA and has no responsibility to determine its future locations. ESDC’s sole role was to evaluate the conformance of use with its GPP.

GPP Compliance

The GPP Land Use Controls are cast in terms of permitted “uses,” not permitted “buildings.” Indeed, the list of examples of uses enumerated above does not indicate building size or materials or whether users are restricted to Radisson residents. In fact size or scale are never mentioned in the GPP. The sole criteria is “use,” with illustrated cases outlining those non-residential uses within the residential use category that are permitted.

Town site plan review of Radisson buildings takes into consideration the Town Code and the Radisson Design Guidelines in determining a building’s materials, location, number of parking spaces, and fire and health safety features, among other issues. At Radisson, for instance, building size is determined by the setbacks from lot lines and parking requirements not proposed square footage. During site plan review in accordance with state regulations, the Town analyses environmental impacts including such issues as site disturbance, drainage, traffic generation and patterns, along with landscaping, lighting, and signage. Site plan approvals are only given after the Town has complied with its obligations under SEQRA that a project has no significant negative effect on the environment.

Analysis of Comments

After listening to and/or reading the over 120 comments received during the 30 day public hearing period and having reviewed the RCA Mission Statement and the history of the GPP, ESDC staff has concluded that the YMCA’s mission and services define it as a Community Facility within the permitted uses under the Radisson GPP. A majority of comments support this position, as does the language of the GPP itself. The GPP’s language “approved by UDC or its

designee as primary project developer” gives ESDC the authority to assess compliance. No modification to the GPP is required.

Services of proposed facility

The YMCA’s members and supporters stressed the community outreach and social service nature of the organization and the functions of its proposed facility. Although it does provide recreation and fitness facilities, it also conducts daycare, social support groups (military, cancer, youth, day care, etc), volunteer opportunities and other community services which are clearly within the GPP definition of community facilities.

As a result of the public hearing, it was confirmed that the YMCA is a charitable not-for-profit organization, provides community, educational and recreational services and is open to the general public for a fee, which is sometimes waived for those in need. These functions fit squarely within the definitions of the “Special Uses” subcategory of “Permitted Uses” in residential (as well as Industrial and Commercial) areas under the Radisson GPP. Its recreation programs fit within the above definition of “Recreational uses/open space, both public and private.” Its child care, youth and education programs fit within the definition of “community services such as daycare center, nursing homes...”

In addition to supporting the YMCA programs that focus on the youth, teens and elderly, many speakers stressed the ease of pedestrian and/or bike access through Radisson’s pathway system and local roads to the proposed site, although others worried that non-resident YMCA patrons would use Radisson facilities. Some parents worried that a location in the Corporate Park meant that walking or biking to a facility there would be precluded and all patrons would have to drive because of potential conflicts with trucks.

Does “Community” in the GPP refer only to Radisson and not surrounding community?

The crux of the question before the Court and now ESDC was the definition of the word “community” in the phrase “community facility.” Did “community” mean the Radisson Community or did “community” define the services provided, i.e., a social service oriented facility, the traditional meaning of this phrase?

There is no language of the GPP that restricts usage of facilities to Radisson residents. Radisson is not a gated community and facilities, especially those privately-owned, are available to non-residents. The GPP definitions of Community Facility indicate functions, not users. Despite being located in Radisson, no one would suggest that the fire department not respond to an emergency in an adjacent area. While there is language in the GPP stating that community facilities would reflect the needs of the Radisson Community and would grow with the community, restrictions with respect to private or quasi-private providers are not mentioned. In fact, GPP language encourages the integration of Radisson with the surrounding area and institutions.

Common Property, defined as property controlled and maintained by the RCA for the benefit of its members who are assessed for its upkeep, is not the only property that can be

considered Community Facilities. Although the present board of the RCA has taken a neutral stand on this issue, previous boards felt that the proposed site would suit the YMCA and in fact had reached out to the institution in the past to interest it in the site. The past board of the RCA noted that the proposed YMCA site is not nestled in a purely residential enclave. The proposed location is adjacent to Kerri Hornaday Memorial Park and the site reserved for a school.

Those objecting to the proposed location state that the YMCA is a commercial building and that there is appropriate land available in the Corporate Park. For whatever reason, during its site-selection process the YMCA preferred the site it bought and rejected the few available locations in the Radisson Corporate Park and those in the surrounding area. It should be noted that the language in the GPP with respect to permitted uses in the Commercial and Industrially-designated areas is nearly identical concerning special uses, such as community offices, libraries, community services and recreational uses as the Residential section. Therefore, if the YMCA had bought land in the Corporate Park, the Planning Board would have had to ask ESDC to approve the Community Facility use in that area. In that instance, ESDC's analysis would have been the same. If the YMCA is a community facility in the Residential area, it's a community facility in the Corporate Park; if it's not a community facility in the Residential area, it's not a community facility in the Corporate Park.

Size and scale of building; traffic and noise issues; disturbance of nature

There is nothing in the language of the GPP that equates use with the size of a building. The GPP, design guidelines and the Town Zoning Code do not contain square footage requirements, but rather performance standards such as setbacks, lot coverage, buffer areas, number of allowable parking spaces, etc. Traffic may be a problem, however there is no way to know if it will be or not except by professional and accurate traffic studies and counts. Again, traffic as well as proposed size and materials of a building, are site plan, not use issues and were not addressed in interpreting the GPP.

Instead, as the Court decision notes, environmental impacts should be addressed by the Town in its SEQRA review. Questions concerning traffic, noise, wildlife disturbance, etc. are issues evaluated during site plan review and under regulations mandated by SEQRA which the Town of Lysander performs. Paradoxically, the lawsuit against ESDC and the YMCA has prevented such analysis from being completed. The parcel in question has been scheduled for development since the inception of Radisson. If a YMCA would not be built on the site, housing would, necessitating the disturbance of the existing landscape.

Environmental Review

ESDC's evaluation of whether a YMCA is a community facility is strictly an issue of determining whether the use complied with its GPP. Section 617.5 (31) of the State Environmental Quality Review Law states that "interpreting an existing code, rule or regulation" is a Type II Action. Determining allowable uses has previously been evaluated during the approval of GPP Amendment No. 3.

Conclusion

While the GPP addresses facilities that will support Radisson and its residents, nowhere in the document are private or semi-private facilities restricted to Radisson residents. Indeed, the Town of Lysander offices, childcare centers as well as the fire station all serve residents of the surrounding area. At the beginning of Radisson, there was concern that the development would burden to the locality and overwhelm its available services and the GPP provided ways that Radisson would provide for itself, not keep others out. There was never an intent for it to be a gated or restricted community. It is accurate that the build-out of Radisson was not as fast nor as dense as initially envisioned; however this has presented certain problems with adapting to the marketplace and providing facilities residents desire but because of the smaller numbers cannot afford. Alternatives to the developer's or the RCA's building support facilities were needed as a result of changed economics.

Determination

In analyzing the above issues and reviewing the public hearing comments, ESDC determines that the YMCA complies with the GPP and that it is an allowable use at the intersection of Drakes Landing Road and N.Y.S. Route 31. The location of the YMCA on this site does not require a modification to the GPP. The Town can proceed with Site Plan Review to address the specific issues that may arise with this facility.

Attachments

Resolution

Map

Public Hearing transcript and written comments

July 15, 2010

RADISSON COMMUNITY (Onondaga County) - Determination that the Northwest Family YMCA is a Community Facility Within the Meaning of the Radisson General Project Plan and Take Related Actions

RESOLVED, that based upon the materials presented to the Directors at this meeting (the "Materials"), the Corporation determines that the Northwest Family YMCA is a Community Facility within the meaning of the Radisson General Project Plan; and be it further

RESOLVED, that the appropriate officers of the Corporation or their designee(s) be, and each of them is hereby is, authorized in the name and on behalf of the Corporation to execute and deliver and affix the seal of the Corporation to all agreements, contracts, deeds, certificates, letters and instruments and to take any such action as they may, in their sole discretion, consider to be necessary or proper to effectuate this determination.

