

Article for Empire State Builder Magazine
SEQR
by Bruce G. Boncke, P.E.

It is sometimes hard to believe that my clients and I have been dealing with the SEQR process for over 23 years. As NYSBA (New York State Builders Association), on behalf of our members, is currently working with officials at NYSDEC to improve the process, this law continues to be one of the major reasons companies, workers and residents are leaving this state.

As a site engineering consultant, I have seen an interesting evolution in the use of this law. In 1975, it started as a well-intentioned tool to help provide that a "suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making process..." Today it is more of a tool utilized by opposition to stop development entirely and for communities to obtain mitigation fees or items, often well beyond the proportionate levels of impact. I have always considered myself and our firm as very environmentally sensitive in our project designs. In the early years of SEQR, I used to enjoy incorporating environmental considerations in the design and analysis of projects. But that was before attorneys realized the employment potential of this law and NIMBYS found that it could stop projects or delay them until hopefully the developer gave up, or went south.

In those early years, I remember an attorney stating that this law could do more for employing attorneys and engineers than actually preserving the environment. Now, today we have attorneys presenting EIS's, instead of engineers, and the majority of case law that eats up time and money revolves around procedures not environmental substance. I can honestly say, as a design professional that the SEQR law has not changed the design of any of our projects in these 23 years. We have had many occasions when the design plans were put on the shelf while we waited for many years of procedural related SEQR law suits to get over then dusted off the plans and built the project as originally designed.

So, what's my point? I am tired of telling prospective developers that I just don't know how long or how much it will take to get them through the SEQR process. Our industry is experiencing a considerable demand for housing including: affordable housing, senior living housing, and apartments. These markets have a particularly difficult time with the SEQR process due to "character of the area" issues and exactions often required by the lead agency. Industries, offices and retail users are trying to expand and create jobs but are finding the available zoned land is shrinking and SEQR exactions are prohibitive. We can normally tell a client exactly how long and how much the local regulatory process will take. Unfortunately, we always have to add the caveat that we don't know what SEQR will do to the process. The theme of our state lottery system is "all you need is a dollar and a dream." As for SEQR, all the opposition needs is \$500 and an attorney to delay and cost the developer important time and money.

At about the 20th anniversary of SEQR some important changes were made to the law in an attempt to improve it. The changes were made effective January 1, 1996, thanks to a long effort that included input from NYSDEC, development and environmental interests, various industries and the public. The modifications gave better definition to the scoping process and the importance of establishing a scope and sticking to it. They also defined parameters for interested parties to suggest areas of impact by putting the burden on them to provide information on why there is a suspected impact. The past practice of NIMBY's just throwing the balls in the air is no longer acceptable. However, few communities are either aware of the changes or want to utilize them. NIMBY oriented communities are constantly adding to scope, not making initial judgements that items are legitimate impact concerns, increasingly using disproportionate "mitigation" fees to overcome their lack of proper capitol project financing and seriously abusing the time frames established in the law. Developers are constantly being asked to stop the SEQR clock or pay the consequence of a bad decision.

In May, NYSBA had an excellent meeting with NYSDEC Commissioner Cahill and SEQR regulatory staff about our concerns. We presented our difficulties with the law and made some suggestions, including:

1. Placing some consequences in the law for communities that do not meet the time schedules.
2. Potential for an Environmental Review Board for conflict resolution of SEQR disputes.
3. Potential for a NYSDEC Administrative procedure for conflict resolution.

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4. Guidance manual and increased education for communities on the January 1996 law modifications.
 5. Monetary consequences for frivolous SEQR actions that damage developers.

While many of the above items have already received some editorial space, NYSBA is working strongly with NYSDEC on putting teeth into the timeframes and increased education for municipalities. NYSDEC is interested in your experiences with the SEQR law so they can better understand our day to day frustrations with it. We would appreciate your time to share both good and bad experiences you have had. Please give Phil (Phil LaRocque, Executive V. P., NYSBA) a call so we can help you format your experience and include it in our future discussions with NYSDEC.