

March 15, 2024

To: The Town Board of Huntington

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From: Paul Thomson, 81 Bay Avenue, Halesite, NY 11743-1206 [committee@nathanhalenaturepreserve.org](mailto:committee@nathanhalenaturepreserve.org)

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**Re: Vineyard Bay Estates subdivision**

Town Supervisor Smyth and Town Board Members,

I want to again thank you for the courtesies extended to me during Tuesday's Town Board Meeting.

Attached please find the public comments that I, in part, shared with you on March 12<sup>th</sup> and respectfully request be made part of the public record. The text has been revised to include additional information for your consideration that I believe clarifies the points and concerns that I wanted to share with you.

Sincerely,



## **TOWN OF HUNTINGTON – MARCH 12, 2024 BOARD MEETING – PUBLIC COMMENTS**

I am Paul Thomson. My wife Kim and I live on Bay Avenue in Halesite, directly across from the two steeply sloped, undeveloped lots acquired in 2020 by the developers of the proposed Vineyard Bay Estates subdivision. That property is naturally populated with many hundreds of historic old-growth trees and thousands of specimen Rhododendrons and Azaleas propagated and planted by prior owners over the past century.

Also in attendance today, are fellow Nathan Hale Nature Preserve members and other neighborhood and community supporters. Other civic groups are supporting our efforts, and we are now working with HARC and many others to gain a better understanding of the opaque processes that are, and have been, in place in our Town government that negatively impact our communities' efforts to secure preservation of open spaces and steep sloped properties.

Civic support was instrumental in securing the TOH's Environmental Open Space + Parks Advisory ("EOSPA") Committee's authorization to the purchase the land for the establishment of a nature preserve for community use and preservation in perpetuity. During our presentation, a representative of the North Shore Land Alliance characterized this property as being "the lungs" of Halesite. We were very proud that the Town's EOSPA Committee approved our petition to have the Town acquire the last, pristine, old forest parcels that exist in Halesite. Regrettably, although the Petition was approved, the owners/developers reportedly refused the overture to sell without consideration of any particulars.

The 8-acre, two parcels were purchased in 2020 for \$825K – a sum that reflects the beneficial and important impact of the existing Town steep slope law, expressly intended to protect such parcels from development. Nearly four passed before the Huntington Town Planning Board held its initial, preliminary public hearing on this subdivision in August of 2023, where public comments were allowed but limited to 3 minutes. Those in attendance were uniformed about the developers' extensive plans, but were able to express many and very substantive concerns and ask questions about the plans at that "Preliminary" – and only – "Public Hearing." The developers' counsel was invited by the Chair to "address the concerns of the public."

Responsive to those preliminary concerns, the following was stated on the public record by that attorney:

*Members of the general public may not appreciate, but we are in the midst of doing an environmental review pursuant to the New York State Environmental Quality Review Act ("SEQRA"). This Board is mandated as lead agency to do that. That environmental review is coordinated with all internal agencies of the town of Huntington and all external agencies that may have something to say about the project, whether it be the school district, a fire district, a water district, or any other town or county agency that has jurisdiction.*

The Planning Board next met in October, and then again in late February, but would not allow community members to speak. At the February meeting, the Planning Board passed a Resolution, filed with the Town Clerk on February 26, 2024, that gave preliminary approval of the Preliminary Map of Vineyard Bay Estates subdivision filed by the developers. Importantly, the Resolution also included findings that: (a) the requirements of the New York State Environmental Quality Review Act ("SEQRA") have been met for the planned subdivision development; and (b) there will be no significant environmental impacts. Having made those findings, the Planning Board approved the issuance of a Negative Declaration of SEQRA investigation of the proposed subdivision, stating that the decision to do so was based upon the Planning Board's review of the environmental assessment data submitted by the developers and the regulations.

We have attempted to learn about the processes and procedures that are mandated to investigate and thoroughly consider any proposed development of steeply sloped, and environmentally important and sensitive, open space properties in our Town. We are informed that the Town Zoning Board of Appeals ("ZBA"), as an involved agency – not an internal agency – is required to be involved in the approval process in all steep slope development projects. It is an uncontroverted fact that as proposed, the subdivision project requires steep slope relief. That fact was graphically depicted by the developers' engineering firm's August 10, 2020 Overall Steep Slope Analysis (prepared a month prior to acquiring the steeply sloped parcels), that determined the average slope over the entire subdivision parcel was 25.19%. That Analysis shows that 235,422 square feet of the overall parcels' 345,262 square feet – 68.19% of the subject property – is sloped terrain. And appears that the 2020 analysis was not revised when one of the Vineyard Road proposed lots (Lot 8 on the Analysis) was removed from the calculus when it was recently converted to

a “conservation easement.” What was, and is, readily apparent is the fact the ZBA’s involvement was required from the outset of the application process.

Although the proposed subdivision plan envisions that parts of the planned retaining walls will include heights in excess of 7-feet and lengths of up to 200 feet (two-thirds the length of a football field) behind proposed lots on Vineyard Road, our engineering experts believe that parts of the walls will have to be much higher (closer to 20 feet) and will require a large excavation and the removal of trees, vegetation and earth in the “conservation area” that the plans do not account for. Even as projected by the developers, the retaining walls exceed the total square footage and height allowed for retaining walls under Town code. And, again as proposed, the developers were, and are, required to obtain ZBA approval for the steep slope relief as part of the mandated approval process. Lastly, we have been further informed that, despite steep slope, the ZBA was not notified that the Planning Board would be acting as the lead agency on the proposed subdivision project, nor was it – or is it – an involved agency in review of this steep slope project. As a result of these procedural infirmities, the Planning Board did not involve the ZBA in a coordinated review as required by SEQRA.

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Before turning to the relief we request of Town Board action, it is also very important to note that a part of the February Resolution addressed tree removal from these natural parcels:

... the existing forested area covers 7.72 acres of the parcel. The proposed action would disturb 3.51 acres [or 45%] of the property, resulting in the removal of 3.51 acres of forested area. Of the 354 trees inventoried, approximately 202 trees will be removed ... 152 trees greater than 8 inches in caliper within and up to 20 feet outside the limit of clearing shown on the plan.

Many of the trees marked to be “disturbed” are very large, mature oak trees with canopies towering as much as 100 feet above the ground. Destruction of these trees would create a major loss of habitat for wild birds including owls, osprey and eagles, as well as long-eared bats, deer, foxes and other wildlife and cause serious erosion concerns.

What’s extremely puzzling – and merits further investigation – is that the Negative SEQRA Declaration and tree removal plan was approved by the Planning Board despite being informed in a June 10, 2021 Memorandum from the Town's own Senior Environmental Planner:

The [tree] canopy species likely represent an example of coastal oak-hickory forest... The state rarity rank of this ecological community is S3, which means that it is vulnerable to disappearing from New York due to rarity or other factors. According to the New York Natural Heritage Program (NYNHP) "There are less than 10 documented occurrences statewide." ... The NYNHP development recommendations for this ecological community state, "Fragmentation of coastal forests should be avoided. It is also important to maintain connectivity with adjacent natural communities, not only to allow nutrient flow and seed dispersal, but to allow animals to move between them seasonally. Strive to minimize fragmentation of large forest blocks by focusing development on forest edges."

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This afternoon, NHNP is following up upon, and giving voice to, requests made in our February 20, 2024 written submission to the Town Board, copies of which were also provided to the Town Planning Board. In that communication, we requested that the Town Board investigate what is happening regarding the Planning Board’s consideration of this proposed subdivision plan and to give direction to the Town Planning Board responsive to its recent actions. Additionally, counsel representing the Nathan Hale Nature Preserve, forwarded written communications, advising of “procedural defects regarding the sequencing of the public hearings and the [mandated] SEQRA review.” Those letters also noted “the absence of sufficient information upon which either the public or this Board could possibly make any informed decisions.” As such, “it is imperative that th[e Planning] Board take this opportunity to pause and correct these defects rather than blindly plowing ahead.” At the February 21<sup>st</sup> meeting, and before taking up the developers’ Resolution, the Planning Board Chair confirmed that it had received these three written communications. At that meeting, the Planning Board approved a Resolution that disregarded Nathan Hale Nature Preserve’s requests for relief. Since the Resolution was filed with the Town Clerk on February 26<sup>th</sup>, the Town Board has yet to respond to, or act upon, our requests.

Today, after further reflection, and with the additional constructive input from land-use counsel and other experts, we respectfully ask the Town Board to favorably consider and record a motion to:

1. Order that the Planning Board vacate its findings that: (a) the requirements of the New York State Environmental Quality Review Act (“SEQRA”) have been met for the proposed subdivision and that there will be no significant

environmental impacts; and (b) a Negative Declaration is appropriate based upon the Planning Board's review of the environmental assessment data submitted and the regulations, both of which were set forth in the Resolution filed with the Town Clerk's office on February 26, 2024

2. Order the Planning Board to undertake a comprehensive, objective and independent expert assessment of all environmental, safety, land, water, wildlife, flora and fauna and air issues associated of the proposed subdivision as mandated by SEQRA;

3. Order that the Planning Board of the Town of Huntington vacate its preliminary approval of the Preliminary Map of Vineyard Bay Estates dated January 11, 2022, revised November 17, 2003 and received December 5, 2023 as was set forth in its Resolution filed with the Town Clerk's office on February 26, 2024; and

4. Require that the Planning Board instruct the owners/developers to immediately undertake the development of architectural renderings of the project with detailed depictions of the proposed houses, as situated on their proposed sites, along with showing the true heights and lengths of any proposed retaining walls that must be constructed to insure the safety and integrity of the property's steep slopes. Details as to the cubic yards estimates of excavated earth and fill needed are required as is the source and type of fill.

The Nathan Hale Nature Preserve is prepared to initiate litigation by timely filing an Article 78 Proceeding to protect its and the community's interests in the property that the Town Planning Board has given preliminary approval to be developed into a subdivision. Town officials must follow the laws of the Town and by not following the laws of the Town, its citizens, like us, are forced to take the Town to court. Please save all the time and very considerable expenses by simply restarting the application process over by approving the motion we propose herein.

Respectfully submitted,

