SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

In the Matter of

NATHAN HALE NATURE PRESERVE, INC., PAUL C. THOMSON III, KIM E. THOMSON, STACY PINTO, PAUL WADKOVSKY and KAREN WADKOVSKY,

Petitioners-Plaintiffs,

- for a Judgment pursuant to Article 78 of the CPLR-

TOWN OF HUNTINGTON PLANNING BOARD, THE INCORPORATED VILLAGE OF HUNTINGTON BAY and VINEYARD BAY LLC a/k/a VINEYARD BAY ESTATES LLC,

Respondents-Defendants.

Index No._____

SUMMONS AND COMPLAINT/PETITION

PLEASE TAKE NOTICE that upon the accompanying Verified Petition of NATHAN HALE NATURE PRESERVE, INC., PAUL C. THOMSON III, KIM E. THOMSON, STACY PINTO, PAUL WADKOVSKY and KAREN WADKOVSKY against the TOWN OF HUNTINGTON PLANNING BOARD (the "Planning Board"), THE INCORPORATED VILLAGE OF HUNTINGTON BAY (the "Village") and VINEYARD BAY, LLC a/k/a VINEYARD BAY ESTATES LLC ("Vineyard Bay" or the "Applicant"), an application will be made, by the above Petitioners, to the Suffolk County Supreme Court, at an IAS Part thereof, before the Justice assigned thereto, to be held at the Courthouse located at One Court Street, Riverhead, New York, 11901, on the 8th day of May, 2024, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") granting the following relief:

(1) annulling and setting aside the Respondent Planning Board's resolution dated February 21, 2024, and filed with the Huntington Town Clerk on February 26, 2024 (the "Resolution"), which granted Respondent Vineyard Bay Estates preliminary approval of the subdivision and subdivision map because said Resolution is contrary to law, unsupported by evidence, arbitrary and capricious, irrational, made in violation of lawful procedures, and an abuse of discretion; and

(2) annulling and setting aside the Planning Board's February 21, 2024 SEQRA determination of significance (the "negative declaration"); and
(3) enjoining the Respondents from taking any action to advance or further the Application or the proposed development of the Subject Property; and
(4) awarding Petitioners reasonable costs and attorneys' fees and such other and further relief as the Court deems just, equitable and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 7804 et seq., any answer to the Verified Article 78 Petition, and any supporting affidavits, together with a certified copy of the Record of the administrative proceedings at issue before the Planning Board from which this proceeding arises (the "Certified Record"), must be served upon the undersigned and filed at least five (5) days prior to the return date hereof; and

PLEASE TAKE FURTHER NOTICE that Petitioners reserve the right to file, after the Certified Record is served and filed, an opening Memorandum of Law in support of the Verified Petition and a reply memorandum of law in further support of the Verified Petition; and

PLEASE TAKE FURTHER NOTICE that the County of Suffolk is designated as the place of trial and hearing on the basis of the location in said County of the subject real property and the principal office of some or all of the Respondents; and

PLEASE TAKE FURTHER NOTICE YOU ARE HEREBY SUMMONED to answer the plenary claims withing the Verified Petition/Complaint annexed hereto for Declaratory Judgment and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanding in the Complaint.

Dated: Sayville, New York
March 27, 2024

PERILLO HILL LLP

Timothy Hill

By: _____
Timothy Hill, Esq.
Attorneys for Petitioners
285 West Main Street, Suite 203
Sayville, New York 11782
(631) 582-9422

To: Town of Huntington Planning Board
Town Hall
100 Main Street
Huntington, New York 11743

Vineyard Bay LLC a/k/a Vineyard Bay Estates LLC
157 E. Main Street
Huntington, New York 11743

The Incorporated Village of Huntington Bay
244 Vinyard Road
Huntington Bay, New York 11743

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VERIFIED PETITION AND COMPLAINT

Petitioners-Plaintiffs, NATHAN HALE NATURE PRESERVE, INC., PAUL C. THOMSON III, KIM E. THOMSON, STACY PINTO, PAUL WADKOVSKY and KAREN WADKOVSKY (hereinafter "Petitioners"), as and for their Verified Petition against TOWN OF HUNTINGTON PLANNING BOARD, THE INCORPORATED VILLAGE OF HUNTINGTON BAY and VINEYARD BAY LLC a/k/a VINEYARD BAY ESTATES LLC (hereinafter "Respondents"), respectfully allege as follows:

NATURE OF THE ACTION

1. This hybrid proceeding/action is brought pursuant to Article 78 of the CPLR and CPLR §3001 (declaratory judgment) and concerns the determination of the Town of Huntington Planning Board ("Planning Board") granting preliminary subdivision approval of the Preliminary Map of Vineyard Bay Estates (on the application of Respondent Vineyard Bay LLC a/k/a Vineyard

Bay Estates LLC) (hereinafter the "Applicant" or "Vineyard Bay"), as set forth in the Planning Board's resolution dated February 21, 2024, which was filed in the Office of the Town Clerk on February 26, 2024 (the "Resolution"). *See Resolution, Exhibit A.*

2. The Article 78 portion of the proceeding seeks judicial review and annulment of the Resolution on the grounds that the preliminary subdivision approval is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis and contrary to the Town's own laws and procedures. The proceeding seeks additional Article 78 relief annulling the Planning Board's SEQRA determination of significance, i.e., its issuance of a negative declaration, because it too is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis and contrary to the Town's own laws and procedures. Finally, the action seeks declarations that SEQRA was not complied with, that the Planning Board acted ultra vires in granting variance relief and in issuing a determination as concerns real property which lies partially within the boundaries of the neighboring Incorporated Village of Huntington Bay (the "Village").

3. The application and approval at issue in this proceeding concerns a proposed eight (8) lot subdivision of certain real property located at 78 Bay Avenue and 211 Vineyard Road, within the Town of Huntington (identified as parcels 0400-033.00-01.00-001.000 and 002.000 and 0402-006.00-01.00-007.000 on the Suffolk County Tax Map) (the "Subject Property"). The Subject Property is located on the east side of Bay Avenue through to the west side of Vineyard Road in the Hamlet of Halesite. The Subject Property is located in part in the Town of Huntington and in part in the Incorporated Village of Huntington Bay..

4. The entirety of the Subject Property constitutes a "Hillside Area" specifically designated for specialized environmental, density, and development regulation under the Town's

duly enacted Steep Slopes Conservation Law (sometimes hereinafter the "Slopes Law"), as set forth in Article X of the Town of Huntington Town Code (within Chapter 198 thereof, i.e., the zoning code). Pursuant to the Slopes Law, any property with average slopes in excess of 10% are deemed to be "Hillside Areas" and subject to the regulation. Here, the entirety of the Subject Property has an average slope in excess of 25% .

5. The Vineyard Bay Respondents herein are developers and were vocal opponents of the Steep Slopes Conservation Law when it was proposed and enacted in 2005. As such, they were acutely aware of same prior to their purchase of the Subject Property and knowingly chose to purchase same subject to the enhanced zoning restrictions imposed by the Slopes Law.[1]

6. The legislative intent of the Slopes Law as expressly stated in Town Code Section 198-60 is specifically intended to protect and safeguard scenic landscapes and vegetation such as the land where the development is proposed for the Vineyard Bay Estates subdivision. The intent section of the Code provides as follows:

> **198-60 Legislative Intent:**
>
> It is the intention of the Huntington Town Board to protect and safeguard scenic landscapes and the vegetative features of steeply-sloped lands throughout the Town of Huntington. The Board recognizes that development in hillside areas disrupts the aesthetic and scenic qualities of these sites and adversely impacts surrounding properties by disrupting the surrounding natural vegetation and wildlife habitat, increasing the risk of stormwater runoff, flooding, surface erosion, sudden slope failure and soil movement. This legislation seeks to establish specific regulations for development and density outside conventional zoning controls by which the

[1] "'Steep slope' measure raises developers' temps," L.I. Business News, July 15, 2006 (https://libn.com/2005/07/15/steep-slope-measure-raises-developers-temps/) (last visited 3/26/24) (also citing the Town's spokesman Don McKay as stating "Huntington is just trying to preserve its way of life by preserving its scenic hillsides. When developers remove ancient trees and fragile vegetation, it's more than just ugly; it causes erosion that causes the domino effect of unstable hillsides and rainwater runoff....*** It seems that previous generations of developers knew better than to erect homes on hillsides, McKay said. 'If the land is so OK to build on, why didn't they build on this property 30 years ago?" he asked. McKay believes developers are taking whatever open land is left and that's why this problem is emerging.'").

adverse impacts to adjoining properties and steep slopes will be ameliorated to the greatest extent possible not only during development of these sites but thereafter.

7. The Resolution approving the subdivision and preliminary map must be annulled due to multiple significant procedural and substantive defects, including fatal defects for which no amount of deference could sustain the wholly unlawful, improper and erroneous determination.

8. First, although the lone application before the Planning Board purported to be an application brought pursuant to Town Law §276, the Planning Board failed to hold or conduct a public hearing in compliance with and as required by Town Law §276. Town Law §276 provides that a lawful public hearing is required, and any determination made upon an application without conducting such a hearing is a nullity and is void *ab initio*. The Resolution at issue herein is such a nullity since no Town Law §276 public hearing was ever conducted.

9. Town Law §276 provides that a public hearing may only take place *after* a determination of significance (*i.e.* either a positive or negative declaration under SEQRA[2]) has been made by the lead agency. Here, the Planning Board, designated as lead agency, did not make its SEQRA determination of significance until February 21, 2024, the very *same day* it passed the Resolution.

10. Separate and apart from the above, the entire process of any proceedings before the Planning Board was excessively accommodating to the Applicant and unnecessarily hostile to the public.

11. The SEQRA determination is itself defective and must be annulled because the Planning Board did not take a "hard look" at the environmental issues prior to issuing its determination, did not identify all areas of environmental concern and did not make a reasoned elaboration for the basis of its determination. Further, the Planning Board's SEQRA determination

[2] State Environmental Quality Review Act ("SEQRA").

was not based upon public input and no hearing was held or noticed for SEQRA purposes. The determination was dated and signed the same day that the planning department staff memo and recommendation was received and accepted without any comment or changes, and thus apparently without meaningful, or any, review thereof by the Planning Board. Indeed, the SEQRA determination appears to have been made after the Planning Board had already determined to grant the subdivision approval (and indeed well after the Board had already published on the Town website a draft resolution granting such approval). It is telling that the Planning Board made no mention of SEQRA during its conducting of the October 11, 2023 and February 21, 2024 Planning Board Meetings, during which no public commentary or questions were permitted.

12. Aside from being without jurisdiction or authority, the Planning Board's implicit or implied (or explicit) grants of variance relief or zoning "modifications" were done without notice that such relief (whether it be a setback relaxation or a height relaxation or otherwise) was even being considered by the Planning Board and was done without due consideration as required by statute.

13. In addition, this proceeding/action also seeks a declaratory judgment that the Planning Board failed to take the requisite "hard look" or otherwise comply with the procedural and substantive requirements of the State Environmental Quality Review Act (SEQRA) and directing that this requirement be properly undertaken and completed.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this proceeding pursuant to Article 78 of the CPLR, Article 30 of the CPLR, the Town Law of the State of New York, and 6 N.Y.C.R.R. Part 617, et seq.

15. Venue is proper in the Court pursuant to CPLR 506(b).

THE PARTIES

16. Petitioner, Nathan Hale Nature Preserve, Inc., ("NHNP") is a Not-For-Profit Corporation with a principal address of 120 Main Street, Huntington New York 11743, New York incorporated by residents of the Town of Huntington, Suffolk County, New York, with the purpose of protecting the Town of Huntington's environment through the advancement of the enforcement of environmental laws, rules and regulations.

17. NHNP has duly authorized the commencement of this lawsuit.

18. Petitioners, Paul C. Thomson III and Kim E. Thomson, husband and wife (collectively "Thomson") reside at 81 Bay Avenue, Halesite, New York 11743, within the Town of Huntington. Their residence is located within 500 feet of the Subject Property.

19. Petitioner Stacy Pinto ("Pinto") resides at 77 Bay Avenue, Halesite, within the Town of Huntington. Her residence is located within 500 feet of the Subject Property.

20. Petitioner Paul Wadkowsky and Karen Wadkowsky, husband and wife (collectively "Wadkowsky"), reside at 1 Harborcrest Court, Halesite, New York 11743, within the Town of Huntington. Their residence is located within 500 feet of the Subject Property.

21. The individually named Petitioners' premises are in close proximity to the subject application and, therefore, are adversely affected both in actual fact and as a matter of legal presumption by the unlawful and arbitrary preliminary plat approval, and by the SEQRA violations attendant to same. *See e.g., Matter of Gernatt Asphalt Products v. Town of Sardinia,* 87 N.Y.2d 668, 687 (1996); *Stephens v. Gordon*, 202 A.D.2d 437, 438 (2d Dep't 1994). In any event, they are particularly harmed by the water drainage issues, environmental, traffic and aesthetic impacts which will result from the development proposed as per the approved preliminary site plan. Indeed, the Petitioners' asserted injuries within the zone of interests sought to be protected by both

the Slopes Law and by SEQRA. Finally, Petitioners, given their proximity to the Subject Property and their specifically affected interests, will suffer direct harm and injury that is different from that of the public at large should the project be constructed as designed.

22. Petitioners are additionally aggrieved, *inter alia,* pursuant to Section 198-64(E) of the Town of Huntington Town Code.

23. At all times relevant to this Proceeding, Respondent Vineyard Bay LLC a/k/a Vineyard Bay Estates LLC ("Vineyard Bay" or "Applicant") is and has been a New York Limited Liability Company authorized to do business in the State of New York with principal offices located at 157 E, Main Street, Huntington, New York 11743. Vineyard Bay is the owner of the Subject Property and the applicant for the preliminary subdivision approval granted in the Aat issue Resolution.

24. Respondent Town of Huntington Planning Board (the "Planning Board") is a duly constituted Board of the Town of Huntington which is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York with offices at 100 Main Street, Huntington, New York 11743.

25. Respondent Incorporated Village of Huntington Bay is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York with offices at 244 Vineyard Road, Huntington Bay, New York 11743 (the "Village"). The Village is named herein because part of the Subject Property lies within the boundaries of the Village.

RELEVANT BACKGROUND

A. The Administrative Proceedings

26. Respondent Vineyard Bay, the owners (by relatively recent purchase) and developers of the Subject Property submitted an "application for preliminary approval of a

proposed subdivision of Subject Property into eight lots to the Planning Board, inclusive of a map or plat of the layout as then proposed (designated the "Map of Vineyard Bay Estates"). The application is dated April 4, 2022 (but was curiously notarized on April 1, 2022) and is indicated in the Resolution to have been received by the Planning Board on June 1, 2022 (the "Application"). *See Resolution, Exhibit A, p.1.*

27. The Application expressly denotes that it was *not* being submitted pursuant to Town Law 278 as a cluster development. This is significant because it makes explicit that the authority of a planning board to make modifications of zoning laws that exists solely in connection with applications made pursuant to Town Law §278 does not exist for the purposes of or apply to the Vineyard Bay Estates Application and proposal.

28. The legal notice the Planning Board caused to be published one week prior to the August 2, 2023 meeting of the Planning Board stated that the "Planning Board will hold a public hearing pursuant to Section 276 of the New York State Town Law, at which time interested persons may appear and will be heard, before action is taken on the plat known as Vineyard Bay Estates."

29. The notice thus confirms that the Planning Board understood that the Application was made pursuant to Town Law §276 and its review of same was subject to and governed by Town Law §276.

30. The notice is defectively vague as it fails to provide notice of the nature of what was being requested by the application. The only description of what was before the Planning Board was some unspecified "action [to be] taken on the plat." This is effectively no notice at all. The notice provides no indication whatsoever that what was to be considered at the hearing was an application for a subdivision. Nor does it indicate that the Application concerned the Steep Slopes Conservation Law and involved requests for variance relief and/or zoning modifications.

And, to be sure, the notice most certainly did not indicate that the hearing was for the purposes of SEQRA review or was an opportunity for public input into any SEQRA review, investigation or determination.

31. At the time of the August 2, 2023 "public hearing," no SEQRA review had been conducted and no determination of significance or negative or positive declaration had been issued.

32. The proceedings conducted by the Planning Board on August 2, 2023, relating to the Vineyard Bay Estates proposal, did not constitute a "public hearing" within the meaning of, or for the purposes of compliance with the requirements of Town Law §276. Indeed, no Town Law §276 public hearing was ever conducted by the Planning Board in connection with the Application.

33. At the August 2, 2023 hearing, members of the Planning Board, and even the Applicant's counsel, made numerous express assurances to the members of the public who appeared to voice their concerns about the proposal (despite the inadequate notice) that this was merely a preliminary discussion and that they would have the opportunity to be heard again.

34. As just one example, one Planning Board member explicitly volunteered in response to and in an attempt to allay the palpable concerns of the public that was just hearing about the proposal for the first time, that "I would like to assure the people that are attending here, as well as the people that may be viewing it, the dynamic is that things are cumulative like this. So it isn't like whatever you did today, that's the end of it. We're going to have an environmental review study."

35. In communications regarding the August 2, 2023 hearing, the proceedings were frequently referenced as a "preliminary hearing." A *preliminary* hearing, however, is substantively different from a "public hearing on an application for *preliminary* approval." In the former, the adjective "preliminary" modifies and describes the hearing; in the latter, the adjective

"preliminary" modifies and describes the approval being sought—"preliminary approval" or "preliminary plat approval" being a term of art with a discrete legal meaning in this land use context (as distinguished from a "final plat approval"). This is not mere semantics as Town Law §276 requires a public hearing on an application for such preliminary approval; a requirement that was not satisfied herein. The references to the August 2, 2023 proceedings as a "preliminary hearing" conveyed the message to the public that this was merely the beginning or preliminary phase and that a further hearing or hearings would take place, which message was, as noted, affirmatively emphasized by both the Board and Applicant's counsel on the record on August 2, 2023.

36. Despite these assurances, there was never any other public hearing held in connection with the Application. Rather, Petitioners and other members of the public were expressly prohibited from making public comments and were excluded from any active participation in the further proceedings conducted by the Planning Board.

37. The August 2, 2023 hearing concluded with the Board's Chairperson announcing that the hearing was "closed." However, there was no motion to close the hearing, nor obviously, was there any "second" of the required motion to close. As a result, the Board did not vote to close that hearing.

38. Nevertheless, at a subsequent meeting (not hearing) of the Planning Board on October 11, 2023, the Applicant presented revised plans and had colloquy with the Board regarding same.

39. At the October 2, 2023 meeting of the Planning Board, the Board adamantly refused to allow anyone from the public to be heard, even though the Applicant had revised its plan and was given the opportunity to present and discuss those revisions with the Planning Board.

40. While the submission and apparent acceptance of the revised plans would appear to reflect a re-opening of the record, and the live presentation by the Applicant would appear to reflect a re-opening of the public hearing, the Board strictly enforced the "closed" status of the August 2, 2023 hearing and refused any public comment, despite the fact that the plans were changed and that applicant was afforded further opportunity to speak and engage the Board.

41. It is patently unfair that the record and hearing (and again none of this constitutes a valid public hearing pursuant to Town Law §276 in any case) were reopened for the Applicant but not for the public. The self-serving announcement by the Applicant, agreed with by the Planning Board, that the revised plans resolved all of the public's concerns was insultingly inaccurate when made and remains completely absurd. The Board's blind crediting of that misrepresentation is indefensible. The *public* should have been able to have been heard on the issue of the extent to which, if any, *the public's concerns* have or have not been addressed. Likewise, the Planning Department's own concerns were plainly not ameliorated.

42. Given that the August 2, 2023 hearing was not a public hearing for Town Law §276 purposes(because it took place without a SEQRA determination of significance having been made), the Board compounded and continued their error by allowing the Applicant to unilaterally revise the Application and enjoy another appearance before the Board, all still without any SEQRA determination having been made.

43. Upon information and belief, no referral was made to either the County of Suffolk pursuant to General Municipal Law §239-m following the Applicant's substantial revision of its proposal, nor to the Village of Huntington Bay. As noted above, the Application and proposed map were revised and amended on multiple occasions including as late as November 17, 2023.

Thus, the Board failed to submit to the County a full statement of the proposed action in violation of law.

44. Such referrals were required because the changes made by the Applicant to the proposed subdivision following the August 2, 2023 hearing were material and substantial. Indeed, in its attempted defense of its determination, the Board, by its Resolution, emphasizes its contention (wholly unsupported) that these changes addressed all of the issues raised by the public and/or the Planning Department. By virtue of this declaration (albeit wholly erroneous) of what these revisions accomplished, the Planning Board thereby acknowledged the materiality and substantiality of the changes.

45. Petitioners deny that the changes addressed their concerns or ameliorated the negative impacts of the proposal. However, there is no dispute that there was no further public hearing conducted by the Board following the submission of the revised plans. Worse, the Applicant was permitted to go on the record and make a further presentation to the Board and to make further representations (conclusory, unsupported, unilateral and unchecked) about the proposal, its impacts, and about the extent to which it addressed the valid concerns of the public. And, despite re-opening the door for the Applicant, the Board, at the same time, aggressively refused to allow any public comment whatsoever. The Board augmented this error by itself passively and unquestioningly accepting all of the Applicant's representations.

46. Prior to the Planning Board's February 21, 2024 meeting and approval of the preliminary subdivision map/plan, Petitioners requested both an adjournment of the meeting and a reopening of the record to address the procedural and substantive deficiencies in the review process. These requests were made in good faith not only to address the Petitioners' concerns, but to afford the Board the opportunity to pause and avoid proceeding with a clearly defective and

void process. The requests were ignored and thus denied without basis. The Board simply plowed ahead to memorialize the predetermined outcome.

47. At all times relevant herein, the actions of the Planning Board violated those provisions of the Open Meetings Law (*see* N.Y. Pub. Of. L. § 103) which provide that a public body that maintains and regularly updates a website, such as the Planning Board here, must make available on said website all of the materials relating to a matter upon which that body is deliberating prior to any hearing or meeting relating to such matters.

48. With the only purported public hearing having taken place in August 2023 (invalid for reasons set forth above), the Planning Board's process reflected the antithesis of transparency. The advancement of the Application played out over the next six months in a shroud of darkness in a process that the public was literally locked out from either participating in or even knowing about. Six months after the lone and void hearing, the pre-packaged determinations were issued together with the disclosure, for the first time, of certain and limited supporting materials that had been withheld from public access and, in any case, could not possibly be addressed or responded to by the public whose ability to be heard had been long ago impermissibly foreclosed.

49. On February 21, 2024, in its Resolution of even date, the Board approved the Applicant's preliminary site plan and issued a negative declaration. *See Exhibit A.*

50. The Resolution granted preliminary approval to "the Preliminary Map of Vineyard Bay Estates, dated January 11, 2022, revised November 17, 2023 and received on December 5, 2023." *See Exhibit A.*

51. The February 21, 2024 Resolution was filed with the Town Clerk on February 26, 2024. *See Exhibit A.*

B. The Resolution Violates Town Law §276.

52. Town Law §276 expressly notes that the time periods prescribed therein "are specifically intended to provide the planning board *and the public* adequate time for review..." *See id.* (emphasis added). Here, the Planning Board's Resolution is in complete violation of the time periods and other requirements of Town Law §276, and the Board's inverted sequencing of the required processes, worked to *deprive* the public of adequate time or opportunity for meaningful review.

53. There was never a lawful hearing pursuant to Town Law §276 on the preliminary plat approval.

54. The purported "public hearing" held before the Planning Board on August 2, 2023 does not constitute a public hearing within the meaning of Town Law §276. This hearing was scheduled, conducted, and closed prior to the Board making any SEQRA determination. The Planning Board's SEQRA determination of significance, i.e., its negative declaration, was made on February 21, 2024, the same day the Board approved the preliminary subdivision plat, and some six months after the hearing.

55. Pursuant to Town Law §276, a public hearing is required in order for a planning board to issue such preliminary approval.

56. Pursuant to Town Law §276, that public hearing can only take place after the lead agency makes its SEQRA determination of significance.

57. Town Law §276 provides that:

> A preliminary plat shall not be considered *complete until a negative declaration has been filed* or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall *begin* upon the filing of such a negative declaration or such notice of completion.

(Emphasis added).

58. Here, at the time the public hearing was conducted, neither a negative declaration nor a notice of completion had been filed.

59. The Resolution is thus a nullity as a matter of law. *See Kitterage v. Planning Bd. of Town of Liberty*, 57 A.D.3 1336, 1338-40 (3d Dep't 2008).

60. Applying Town Law §276, the Court in *Kitterage* held as follows:

> We also agree with the petitioner's contention that the Board improperly failed to hold a public hearing regarding the subdivision after it issued its negative declaration....
>
> ***
>
> ... a public hearing [must] be held within 62 days *after* a complete preliminary plat is received by the clerk of the planning board.
>
> ***
>
> Town Law § 276 establishes a procedural structure for the review of subdivision plats, including provisions for coordination with other agencies by setting time limits in conjunction with SEQRA procedures.... In circumstances where no draft environmental impact statement (hereinafter EIS) is required, Town Law § 276 (5)(c) provides that "the time periods for review of a preliminary plat shall begin upon filing of a negative declaration." Common sense dictates that a hearing not be held on the preliminary plat until the plat is deemed complete, which occurs when a negative declaration is filed (*see* Town Law § 276 [5][c]).
>
> ***
>
> Since the Board here failed to hold the requisite hearing, its approval of [the] preliminary subdivision plat was contrary to law and must be vacated (*see* CPLR 7803).

See id.

61. It should also be noted that official guidance from New York State regarding SEQRA review directs as follows in response to the question presented:

> Can a planning board reviewing a subdivision wait until the close of the public hearing to determine whether to require and EIS?

> No. The SEQRA regulations provide that no application for funding or approval of an action is complete until a negative declaration has been issued or a draft EIS has been accepted by the lead agency. Since the public hearing should not be held until the application is complete, the SEQRA determination on whether to require an EIS *by necessity precedes the public hearing on the application.*

See New York State Div. of Local Government Services, STATE ENVMT'L QUALITY REVIEW ACT FREQUENTLY ASKED QUESTIONS FOR LOCAL OFFICIALS, p.16-17 (2023).[3] (emphasis added); see also *Matter of Save Sag Harbor v. Vil. of Sag Harbor*, 78 Misc 3d 1225[A], 2023 NY Slip Op 50347[U], *2 (Sup Ct, Suffolk County 2023). In Save Sag Harbor, this Court instructively held:

> Clearly, the record in this instance indicates a de minimis, incomplete environmental review was undertaken at the same time (if not after) the decision was made to adopt the subject Local Laws. While the Court notes that a Negative Declaration allows for a limited environmental review, it does not change the fact that it must be done before the zoning law is adopted. ... such a practice *runs the risk that the cart is placed in front of the horse*. This is especially true if the agency formally finalizes the paperwork on its environmental review without recorded discussion and after adopting its legislative policy. In such an instance, the SEQRA requirement that environmental review must come first is violated.

C. <u>The Resolution Fails to Apply the Slopes Law</u>[4]

62. It bears repeating that the Slopes Law expressly recites that it was enacted specifically to "protect and safeguard scenic landscapes and the vegetative features of steeply-sloped lands" and in recognition of the fact that "development in hillside areas disrupts the aesthetic and scenic qualities of these sites and adversely impacts surrounding properties by disrupting the surrounding natural vegetation and wildlife habitat, increasing the risk of stormwater runoff, flooding, surface erosion, sudden slope failure and soil movement." *See* Town Code §198-60.

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[3] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://dos.ny.gov/system/files/documents/2023/01/seqr-faq-for-local-officials_0.pdf (last visited March 24, 2024).

[4] *See* Town Code §§198-60 et seq. (Article X of the Chapter 198).

63. Pursuant to the Slopes Law, §198-61(A), no "subdivision shall be approved ... if any portion of the property is a Hillside Area until the provisions of this Article have been applied."

64. Applying the yield analysis under the Slopes Law as provided in Town Code §198-63(B), this parcel **is limited to a two parcel subdivision**. While an alternate method for yield analysis and calculation exists under §198-63(D) that restricts development to the "flat area" while prohibiting any development in the hillside area, there is nothing on the face of this Application that indicates the applicant has elected to invoke or proceed under §198-63(D), nor is §198-63(D) referenced anywhere in the proposed Resolution. Indeed, the applicant's presentation offers the impression that they are voluntarily and magnanimously agreeing to set aside and conserve a large portion of the parcel. But if they are proceeding under §198-63(D), and again that it not stated by them nor acknowledged by the Board, that is not a voluntary concession since development in that area would be and is prohibited.

65. In any case, the implied rationale that building eight houses on eight lots in the relatively flat areas is better than building two houses on parcels that partially involve the hillside area presents a false binary. The Planning Board is not constrained to pick one or the other. There are other alternatives including simply denying preliminary plat approval.

66. Further, it is uncontroverted that the Town's "Steep Slope Law" applies to the Subject Property. Applying the yield analysis under the Steep Slope Law (Town Code §198-63(B)) the Subject Property *is limited to a two-parcel subdivision* and not an eight-parcel subdivision as is sought by Vineyard Bay.

67. Although an alternate method for yield analysis and calculation exists under Town Code § 198-63(D), that restricts development to the "flat areas" while prohibiting any development of the hillside or sloped areas. There is nothing on the face of the Application indicating that

Vineyard Bay has elected to invoke or proceed under §198-63(D), nor is §198-63(D) referenced or considered anywhere in the Resolution. As such, there is no indication that the Board even considered that section of the Code or conducted any investigation of analysis pursuant to same. The Applicant's misleading representations to the Board offer the impression that Applicant is magnanimously and voluntarily offering to set aside and conserve a portion of the Subject Property when in actuality if Applicant was proceeding under § 198-63(D) it was required to not develop that area. To the extent that the Board considered this supposed "voluntary concession" in arriving at its Determination, it is inappropriate.

68. Indeed, the publicly available record does not include or reflect that the Town's Engineering Division or its Planning & Environmental Department have sufficiently vetted or independently confirmed any of the premises on which the Applicant's proposal is based. For example, other than relying on a topographical survey from a third party, how does the Planning Board satisfy itself that all the development proposed is restricted to the Subject Property's "flat areas" of less than 10% average slope? Or that the slop of the "flat areas" for the entity of such areas as are being assigned for the lot area purposes, are in fact less than 10%? The Board does not. Nor is there any indication that the Board has confirmed any of the engineering provided to it concerning the structural stability of the retaining walls proposed. It cannot be controverted that if either the retaining walls or the proposed drainage system fail in any regard, given the steep slope here, the results could be catastrophic. The record shows that the Board has insufficient information (and as such insufficient evidence and no rational basis) to evaluate the structural integrity or the future performance of the drainage plan and retaining walls that are not only proposed but upon which the entire proposed subdivision relies.

69. Significantly, the plans before the Board are misleading as to the height of the retaining walls proposed (reflecting neither the drop off behind them nor the berm on top). The true height and width of the walls is thus not indicated thereon. The required width of the base of the walls may either be (or need to be) wider than shown. This "unknown" is relevant not only the structural stability but also to the issue of subdivision layout and yield, and it impacts not only the Subject Property and its development, but also all of the nearby properties. Nor is there any representation as to the global stability of the wall system. Indeed, the Board did not even have before it an as-built rendering of the walls (or the project) or even an elevation drawing. This precluded any actual evaluation of the aesthetic impact of the proposed development and its large wall system (or any consideration of the impact or change in the neighborhood or community). It also impaired the Board's ability to weigh the need for variance relief attendant to the proposed development. The fact that the Board did not have this information before it prior to issuing its Resolution is irrational.

70. On or about June 10, 2021, the Town's Senior Environmental Planner prepared an Environmental Review Division Memorandum ("Memo"). This Memo identifies a number of environmental issues presented by the proposed development of the Subject Property.

71. The Department of Planning issued a further environmental review memorandum on November 8, 2023, limited solely to that 1.84 acre portion of the Subject Property that is located in the Incorporated Village of Huntington Bay and is the subject of the convoluted future hypothetical contingency of being dedicated to the Town. The emphasis on conservation and preservation in the November 8, 2023 memorandum cannot be reconciled with, and renders irrational, the invasive and extensive clearing, development and alteration approved by the Planning Board's Resolution for other parts of the same parcel.

72. Town Code §198-64(K)(5) (B) limits the maximum allowable square footage of retaining walls for individual building lots.

73. Retaining walls greater than four (4) feet and less than or equal to five (5) feet in height shall be located at least five (5) feet from property lines, and those greater than five (5) feet in height shall be located at least ten (10) feet from the property lines.

74. The Town of Huntington determines the maximum allowable square footage of retaining walls based on the applicant's submission of a "Retaining Wall Calculation Sheet."

75. Vineyard Bay, LLC did not submit the required "Retaining Wall Calculation Sheet;" Upon information and belief based on the extreme hillside slopes, the proposed subdivision for all lots exceed the maximum square footage of retaining walls permitted under the Code, thus requiring a variance from the ZBA.

D. Failure to Comply with SEQRA

76. SEQRA's fundamental premise is that governmental agencies must give a "hard look" at the environmental consequences of its development decisions. Environmental review procedures require literal, strict compliance. SEQRA's primary purpose is to inject environmental considerations into governmental planning *at the earliest possible time*. See *Matter of Save Sag Harbor v. Vil. of Sag Harbor*, 78 Misc 3d 1225[A], 2023 NY Slip Op 50347[U], *2 (Sup Ct, Suffolk County 2023).

77. Here again, the admonitions of this Court in *Save Sag Harbor*, although dealing with a zoning amendment rather than subdivision approval, are highly instructive to the matter at bar. *See id.* ("environmental review was undertaken at the same time (if not after) the decision was made to adopt the subject Local Laws. While the Court notes that a Negative Declaration allows for a limited environmental review, it does not change the fact that it must be done before

the zoning law is adopted. ... such a practice runs the risk that the cart is placed in front of the horse. *This is especially true if the agency formally finalizes the paperwork on its environmental review without recorded discussion and after adopting its legislative policy. In such an instance, the SEQRA requirement that environmental review must come first is violated"*) (emphasis added).

78. The Planning Board announced its negative declaration within and at the same time as it approved the preliminary plat (February 21, 2024): a clear violation of Town Law §276.

79. The Negative Declaration issued by the Board as lead agency could not have incorporated or considered public input (as is required by SEQRA) since the August 2, 2023 public hearing was not noticed as a SEQRA hearing and because the negative declaration the Board ultimately issued was only issued after Board review of the Application was completed (and a Resolution granting the application had already been prepared) and the public hearing was long-declared closed.

80. The SEQRA determination of significance purports to be supported by a staff memo from the Town's Planning Department.

81. This is problematic for several obvious reasons. First, the Planning Board, not the Planning Department, was designated lead agency. The Planning Board, however, completely delegated this function to the Planning Department.

82. The Planning Department's preparation and completion of the EAF is dated and signed by the Planner on February 21, 2024. This is the same date that the Planning Board Chairperson appears to have endorsed same by a scribble suggesting his signature. And, most significantly, this is the same date that the Planning Board voted to issue the negative declaration together with its preliminary approval of the subdivision plat. It is not possible that the members

of the Planning Board conducted any meaningful review of the SEQRA issues given the timing of these concurrent actions. *See Matter of Munash v. Town Bd. of E. Hampton*, 297 A.D.2d 345, 347 (2d Dept 2002) (vacating negative declaration and directing issuance of positive declaration where Town Board issued its negative declaration on the same day it received its consulting experts' reports).

83. In addition, given that Vineyard Bay's Application concerns a SEQRA Unlisted action—with extreme and predominate sloping defining the parcel, together with an aggressive design proposal involving substantial excavation, the installation of retaining walls, extensive clearing, the disturbance of wildlife, as well as complex drainage and grading issues—an environmental impact study should have been required. The Applicant's self-serving representation that the revised design mitigates all impacts could not possibly be a rational basis, nor one with any evidentiary support, for the Board to ignore its responsibility to consider potential impacts under SEQRA or obviate its obligation to take the requisite "hard look." Here there has been no "hard look" as is required to make an appropriate SEQRA determination.

84. It must be emphatically stated that if either the retaining walls or drainage systems failed in any regard, the results could be catastrophic. There is insufficient information by which to evaluate the structural integrity or future performance of the 200 foot long retaining walls that are not only proposed but upon which the entire concept of the subdivision is premised.

85. The plans appear misleading insofar as the height of the retaining walls as indicated failed to reflect the berm on top which they are designed to be located and the drop-off behind them (making the real delta or effective wall height closer to 20 feet). The true height and width of the walls is not indicated. The required width of the base of the walls may either be or need to be wider than indicated. This is relevant not only to the question of structural stability, but also

goes to the issue of the subdivision layout and yield and, importantly, goes to the Applicant's credibility. In some cases, the plans already call for relaxation of the 10-foot setback requirements for the retaining walls to be set off from the lot lines or the boundary of the preserved hillside area. If a wider base or footing is involved, the profile of the wall may in fact be invading the restricted area. Further, there is no excavation plan, but the depth and width of the excavation to accommodate this aggressive design will be massive.

86. No representation is made by the Applicant as to the global stability of the wall systems. The integrity of a manufactured or predesigned wall system can only be evaluated as incorporated into the actual place of installation, accounting for the slopes and topography at every such location.

87. Critically, there is no as-built rendering of the walls or project, or even elevation drawings, provided by the applicant. This precludes review of the aesthetic impact of the project. It is of little comfort that a certain portion of the parcel is being conserved when the "cost" of such conservation is a large wall system that negatively transforms the area.

88. The Application involves proposed development that will necessarily require variance relief from the Zoning Board of Appeals. The Planning Board failed to coordinate with the ZBA or other Town agencies in violation of SEQRA.

89. Although the Resolution fails to offer any elaboration or basis for the issuance of the negative declaration, it appends parts 2 and 3 of an Environmental Assessment Form (EAF) as purportedly completed by the lead agency. *See Exhibit A* .

90. The Board answers five of the questions on the EAF in the affirmative ('yes") as to the potential for environmental impact (impact on land, impact on groundwater, impact on plants and animals, impact on energy, impact on noise, odor, and light). Despite these affirmative

responses, the Planning Board fails to complete, and leaves blank the required subpart questions for each of those five categories of acknowledged impact wherein a designation of either "no or small impact" or "moderate to large impact" should be indicated. *See Exhibit A.*

91. Although the EAF attached a narrative description, this narrative does not sufficiently address the subpart questions. Indeed, the purpose of the narrative is largely to further the improper practice of crediting the future efficacy of proposed and theoretical mitigations measures as sufficiently resolving what it otherwise acknowledged to be adverse environmental impacts. The EAF state in conclusory fashion that the project "has been designed to effectively mitigate potential impacts." *See id,.*

92. The EAF's "no" response to other questions on the EAF are wholly irrational and unsupported. There is no basis for the EAF to indicate that the proposal has no potential effect on surface water, flooding, aesthetic resources, open space, critical environmental areas or consistency with community plans or community character. Here again, the entirety of the Subject Property is a Hillside Area within the meaning of the Slopes Law. The Slopes Law's statement of purpose acknowledges and seeks to protect these very concerns and impacts arising from such development as is proposed by the Application. Nor can these determinations be rationally reconciled with the Planning Department's own expressed concerns regarding environmental impacts and issues. *See id.*

93. The EAF admits that 3.51 acres of forest, including at least some 202 trees, will be "disturbed" – actually destroyed and forever lost – and that another .65 acres of land will be converted into impervious surface area. *See id.*

94. The EAF's discussion regarding consistency with community character is likewise characteristic of a completely arbitrary, capricious, and irrational decisional process. The

discussion offers no description of the existing community character and fails to identify any comparators at all, let alone an example of dense development on a steep slope supported by extensive erection of retaining walls. *See id.*

95. The Board did not take a "hard look" at the environmental issues prior to issuing its negative determination, nor did it identify all, or substantively address any, areas of environmental concern, nor did it make a reasoned elaboration for the basis of its determination.

96. Indeed, given the Town's clearly expressed policies and stated purpose for its Steep Slopes Law (Huntington Town Code, Chapter 198, Article X), and the aggressive proposal by the Applicant for a major subdivision on a Hillside Area involving extensive excavation and construction of large retaining walls, the Board's issuance of a negative declaration was incontrovertibly improper and made without any rational justification. The action was Unlisted for purposes of SEQRA, as it did not fall within any Type II classification that would exempt it from further environmental analysis. It should have been treated as something akin to a Type I action or in any case been made subject to genuine, comprehensive environmental impact analysis.

97. The Resolution defends the negative declaration by suggesting that all of the potential impacts are addressed by various mitigation requirements that are being imposed as conditions of the plat approval. However, by this very statement the Board acknowledges and admits that the proposal will have significant environmental impacts in the absence of the as yet unimplemented and untested mitigation measures. A negative declaration cannot issue where it is premised entirely on an assumption that known and acknowledged environmental impacts will be ameliorated by future mitigation efforts.

98. Rather, if that is the case, the proper course is for the Planning Board to issue a "conditioner negative declaration" pursuant to 6 N.Y.C.R.R. Sec. 617.2(h). A conditioned

negative declaration (CND) means a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in section 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result.

99. Notably, however, the Planning Board did not issue a conditioned negative declaration. Such a declaration would have required, appropriately, notice of the CND and a minimum 30-day public comment period.

100. Indeed, the EAF form expressly directs that "for Conditional Negative Declarations, identify the specific conditions imposed that will modify the proposed action so that no adverse environmental impacts will result." *See Exhibit A.*

101. The Planning Board does expressly rely on the impositions of specified conditions to mitigate the acknowledged impacts. Improperly, however, it simply issued a negative declaration rather than a conditional negative declaration as required by its own express reliance on those conditions (without which the Board would have been required to issue a positive declaration).

E. <u>Additional Threshold Defects Rendering the Resolution Null and Void</u>

102. The Resolution is unlawful and must be deemed null and void because the Planning Board lacks authority and jurisdiction as a matter of law under Town Law §276(1) to approve a subdivision or subdivision map that includes or covers land within an incorporated village. Pursuant to said statute, the Town Board could only have, and here Huntington in fact has only, authorized and empowered the Planning Board to approve preliminary plats of lots "within that that part of the town outside the limits of any incorporated village." The Planning Board thus

never had legal authority to approve the instant application which involved land (indeed 1.84 acres of land) located with the Incorporated Village of Huntington Bay.

103. It is perhaps for this reason that, in a move both cumbersome and sly but in any case, unlawful, the Applicants attempted an end-run around the law. The instant Application (and the Planning Board Resolution that appears to have been willing to accommodate all such strained efforts to approve same) purports to propose a dedication the portion of parcel to be subdivided that lies within the Village of Huntington Bay to the Town of Huntington. This would require Town Board acceptance of the dedication, to say nothing of the fact that the Village appears to have been left wholly in the dark. But this too cute maneuver fails in any case to cure the defect because even if the dubious dedication were completed, that would only place *title* in the Town; it would *not* change the geographic or jurisdictional bounds and limits of either the Town or the Village. Thus, the land itself will remain within the limits of the Village and thereby deprives the Town's Planning Board of jurisdiction or authority to approve a subdivision involving such land.

104. Likewise, the Resolution is unlawful and must be deemed null and void because the Planning Board lacks authority and jurisdiction pursuant to Huntington Town Code §198-118(B) to approve a subdivision or subdivision map that includes or covers land within an incorporated village. Town Code §198-118(B), in conformance with Town Law 296(1), *supra*, only confers approval authority for subdivisions involving land outside of incorporated villages.

105. The Resolution is contrary to law and must be annulled as it fails to comply with Town Law §276(5)(b) because the Planning Board has not complied with the provisions of SEQRA. *See discussion at length herein.*

106. To the extent any portion of the Resolution or any action of the Planning Board at issue herein is attempted to be authorized or justified by Town Code §198-11, such Resolution

and/or action remains void since Town Code §198-11 violates and conflicts with Town Law §276, as the state statute confers no modification authority upon a planning board (*compare* Town Law §278, concerning cluster developments, in which such modification authority is conferred). Here, the Application expressly denotes that it is *not* being made pursuant to Town Law §278.

107. The Resolution fails to comply with Town Law §277 because the Planning Board did not require of the Applicant "that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare" nor did it "take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial."

F. The Planning Board Acted *Ultra Vires* and Beyond its Authority in Granting Relief Solely within the Province of the ZBA

108. The Zoning Board of Appeals ("ZBA") has the general power to grant relief by way of variance. Town Code §198-109(D).

109. Article XVII of the Town Code gives the Planning Board specific authority to grant special use permits, but no specific authority to grant variances.

110. Town Code § 274-A(3) gives zoning boards, not planning boards, the authority to grant variances.

111. Town Code §§198-63(G), 198-64(J), and198-65.1(G)(1) dictates that only the ZBA may grant relief.

112. The ZBA has exclusive jurisdiction over any variances required by an application.

113. The Planning Board has usurped the powers specifically delegated to the ZBA. Only the ZBA has the power to issue the required variances as a corollary to the preliminary subdivision approval process.

114. The Steep Slopes Conservation Law (Article X of the Huntington Code, § 198-60 through 198-65.1) repeatedly provides and reaffirms that any variance relief from the provisions of the Slopes Law itself or from the zoning requirements applicable to the proposed parcels or layout of same could only be sought by application made to the Town's Zoning Board. *See, e.g.*, §§198-63(G), 198-64(J), and 198-65.1(G)(1).. *See also* Town Law §267-b(3).

115. Significantly, while Town Law §276 permits a Planning Board to modify the layout of parcels in a subdivision, the approval of Vineyard Bay's plat (as embodied in the Resolution) is predicated on a relaxation of certain dimensional requirements of the Town Zoning Code which would require area variances from the ZBA (which have not been sought or granted). The significant excavation and substantial construction of retaining walls upon which the proposed project relies will additionally require variance relief from the ZBA. Nothing in the publicly available record indicates that the Planning Board has referred or coordinated these matters to or with the ZBA. This is violative of SEQRA's requirement for such coordination and additionally constitutes impermissible segmentation of SEQRA review.

116. Although the Resolution acknowledges that it grants "zoning modifications" (i.e. variances from the Town Zoning Code) it does not set forth the Board's consideration of the criteria required to be considered when granting such relief nor evince that the Board ever engaged in such required consideration. Indeed, the Resolution does not even specify what zoning modifications it was granting.

117. Nevertheless, a review of the plans reveals that the Applicant's own consultant recognized that variance/modification relief would be required with respect to at least the above modifications. Pursuant to the Applicant's plans the proposal requires relaxation of the lot width requirements of the Slope Law §198-63(B) on three of the proposed lots. In addition, the plans reflect that the proposal will require relaxation of the retaining wall footprints as required by §198-64(G), as well as relief from the building footprint requirements of the Town Code.

AS AND FOR A FIRST REQUEST FOR RELIEF PURSUANT TO CPLR ARTICLE 78

118. Petitioners repeat, reiterate and reallege Paragraphs 1 through 117 and incorporate the same herein by reference.

119. Town Law §276 sets forth the requirements for a complete application for a subdivision approval application. A complete application for preliminary plat approval requires that the Planning Board make a determination under SEQRA regarding whether or not the proposed subdivision will have a potentially significant environmental impact.

120. At the time of the August 2, 2023 public hearing on the proposed subdivision, the preliminary plat application was not complete.

121. Town Law § 276 requires that where the Planning Board is the lead agency under SEQRA, the time within which the Planning Board must hold a public hearing on the preliminary plat must be coordinated with any hearings the Planning Board may schedule pursuant to SEQRA.

122. The law provides further that if, as here, the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on the plat must be held within 62 days after the receipt of a complete preliminary plat by the clerk of the Planning Board.

123. Here, there was no public hearing on the proposed subdivision application after the Planning Board issued its negative declaration under SEQRA.

124. The Planning Board failed to comply with the mandatory, non-discretionary mandates of Town Law § 276, which require that a public hearing be held *after* a negative declaration and *before* granting preliminary plat approval.

125. This requirement is both procedural and substantive as evidenced by the fact that the public (nor for that matter the Board) could not possibly have had adequate information at the time of the August 2, 2023 hearing to have an informed exchange or exploration of the issues.

126. Accordingly, the Planning Board's preliminary approval of subdivision plat was contrary to law and the Resolution containing such approval must be annulled.

127. Town Law § 276 is the enabling statute by which the Planning Board is granted the authority (via the Town Board) to approve preliminary subdivision plats.

128. Because the Planning Board was required to hold a public hearing after the negative declaration was issued and before granting preliminary plat approval but failed to do so, there was no legal authority or jurisdiction to issue the Resolution granting preliminary subdivision approval, and thus respondent's resolution is null and void.

129. Here, because the Planning Board failed to conduct a public hearing as required by Town Law §276 (where Town Law §276 is the very statute that empowers the Planning Board to approve such subdivision applications), the Resolution is contrary to law and must be annulled.

130. Wherefore, the Resolution must be annulled.

AS AND FOR A SECOND REQUEST FOR RELIEF PURSUANT TO ARTICLE 78

131. Petitioners repeat, reiterate and reallege Paragraphs 1 through 130 and incorporate the same herein by reference.

132. The Resolution is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis, and contrary to the Town's own laws and procedures.

133. The Resolution is marred by the foregoing defects as detailed above including but not limited to the fact that the Planning Board failed to comply with SEQRA, the Planning Board acted without authority in granting certain variance relief, the Resolution's yield analysis and other purported findings lack an evidentiary basis and failed to follow its own procedures as well as procedural requirements of Town Law.

134. The Resolution must be annulled for the separate independent reason that the Planning Board lacked authority to approve the instant Application with proposes a subdivision involving land located within an incorporated village.

135. Wherefore, the Resolution must be annulled.

AS AND FOR A THIRD REQUEST FOR RELIEF PURSUANT TO CPLR ARTICLE 78

136. Petitioners repeat, reiterate and reallege Paragraphs 1 through 135 and incorporate the same herein by reference.

137. As set forth above, the Respondent Planning Board failed to comply with the substantive and procedural requirements of SEQRA.

138. That the failure to comply with the substantive and procedural requirements of SEQRA was arbitrary, capricious, unreasonable and illegal. *See Matter of Group for the S. Fork v. Wines,* 190 A.D.2d, 794, 795 (2d Dep't 1993); *and* Matter *of Bd. of Cooperative Educational Services v. Colonie*, 268 A.D.2d 838, 840 (3d Dep't 2000).

139. The Planning Board failed to take the requisite "hard look," failed to identify areas of environmental concern, and failed to provide a reasoned elaboration as to its findings.

140. The lone support for the Planning Board's issuance of a negative declaration is that which is set forth in the EAF. The record reflects that the Planning Board impermissibly delegated its responsibilities as lead agency and failed to conduct any meaningful review of its own. In any case, the findings and rationales contained within the EAF are irrational and without an evidentiary basis.

141. The Planning Board's SEQRA determination failed to consider public input, failed to engage in the required coordination with other involved agencies including, but not limited to, the ZBA, and engaged in improper segmentation—all of which is in direct violation of SEQRA.

142. The negative declaration issued by the Planning Board as lead agency could not have incorporated or considered public input (as is required by SEQRA) since the August 2, 2023 public hearing was not noticed as a SEQRA hearing and because the negative declaration the Planning Board ultimately issued was only issued after Planning Board review of the application was completed (and a Resolution granting the application had already been prepared) and the public hearing long declared closed.

143. That as a result of the failure to comply with the substantive and procedural requirements of SEQRA, the Planning Board's Determination "is void and, in a real sense, unauthorized." *E.F.S. Ventures Corp. v. Foster,* 71 N.Y.2d 359, 371 (1988).

144. Wherefore, the Planning Board's determination of significance, *i.e.* its Negative Declaration, must be annulled.

AS AND FOR A FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

145. Petitioners repeat, reiterate and reallege Paragraphs 1 through 144 and incorporate the same herein by reference.

146. The August 2, 2023 hearing did not constitute a public hearing within the meaning of Town Law §276 and did not satisfy the mandatory requirements thereof.

147. A justiciable controversy exists as to this issue.

148. Petitioners have no adequate remedy at law.

149. Wherefore, Petitioners are entitled to a declaration that no public hearing satisfying the requirements of Town Law § 276 was conducted in connection with the Planning Board's review and processing of the Vineyard Bay Application and that, as a consequence thereof, the Planning Board's February 21, 2024 Resolution granting preliminary subdivision approval is null and void and without force or effect.

AS AND FOR A SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

150. Petitioners repeat, reiterate and reallege Paragraphs 1 through 149 and incorporate the same herein by reference.

151. That as set forth above, the Planning Board was at all times without legal authority or jurisdiction to have granted any variance relief or other modification of the zoning requirement as could be construed to have been granted in the context of its preliminary approval of Vineyard's subdivision or by the terms of the Resolution.

152. A justiciable controversy exists as to this issue.

153. Petitioners have no adequate remedy at law.

154. Wherefore, Petitioners are entitled to a declaration that declaring that the Town of Huntington Planning Board is without lawful jurisdiction to hear applications for, and is without lawful authority to approve or grant, variance relief relaxing or modifying the requirements or provisions of the zoning laws of the Town of Huntington, nor to either explicitly or impliedly approve such variances or modifications in the context of rendering a determination (e.g.,

subdivision) for which the Planning Board may have decisional authority, and a further declaration that any such variance or modification contained within the Resolution is null and void.

AS AND FOR A THIRD CAUSE OF ACTION - INJUNCTIVE RELIEF

155. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through and including 154 above, as if fully set forth herein.

156. Petitioners will suffer irreparable injury in the absence of injunctive relief. The proposed development will forever disfigure the natural landscape, change the character of the neighborhood, cause extreme environmental impacts, and cause pecuniary and other unique harm to Petitioners. The continued advancement of the proposed subdivision, which is void *ab initio* as a matter of law, will itself cause Petitioners significant harm if permitted to continue unnecessarily.

157. Petitioners have no adequate remedy at law.

158. By reason of the foregoing, and pursuant to Article 63 of the CPLR, Petitioners are entitled to entry of an order and judgment preliminarily and permanently enjoining, restraining and prohibiting any further actions based on the Resolution or reliance thereon by any of the Respondents.

WHEREFORE, Petitioners respectfully request that the Court enter judgment:

(a) annulling and setting aside the Planning Board's February 21, 2024 Resolution granting preliminary subdivision approval to Respondent Vineyard Bay; and

(b) annulling and setting aside the Planning Board's February 21, 2024 SEQRA determination of significance (issuance of a negative declaration); and

(c) declaring that no public hearing satisfying the requirements of Town Law §276 was conducted in connection with the Planning Board's review and processing of the Vineyard

Bay Application and that, as a consequence thereof, the Planning Board's February 21, 2024 Resolution granting preliminary subdivision approval is null and void and without force or effect; and

(d) declaring that the Town of Huntington Planning Board is without lawful jurisdiction to hear applications for, and is without lawful authority to approve or grant, variance relief relaxing or modifying the requirements or provisions of the zoning laws of the Town of Huntington, nor to either explicitly or impliedly approve such variances or modifications in the context of rendering a determination (e.g., subdivision) for which the Planning Board may have decisional authority, and further declaring that any such variance or modification contained within the Resolution is null and void; and

(e) enjoining the Respondents from taking any action to advance or further the Application or the proposed development of the Subject Property; and

(f) awarding Petitioners reasonable costs and attorneys' fees and such other and further relief as the Court deems just, equitable and proper.

Dated: Sayville, New York
March 27, 2024

Respectfully submitted,

PERILLO HILL LLP

Timothy Hill

By: _____
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thill@perillohill.com

Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK :
ss.:
COUNTY OF SUFFOLK :

PAUL C. THOMSON III, being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.

PAUL C. THOMSON III

Sworn to before me this
25 day of March, 2024

NOTARY PUBLIC

GEORGE CARL PEZOLD
Notary Public, State of New York
No. 02PE6147343
Qualified in Suffolk County
Commission Expires May 30, 2016

STATE OF NEW YORK :
ss.:
COUNTY OF SUFFOLK :

KIM E. THOMSON, being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.

Kim E. Thomson
KIM E. THOMSON

Sworn to before me this
25th day of March, 2024
George Carl Pezold
NOTARY PUBLIC

GEORGE CARL PEZOLD
Notary Public, State of New York
No. 02PE6147343
Qualified in Suffolk County
Commission Expires May 30, 2026

STATE OF NEW YORK :

ss.:

COUNTY OF SUFFOLK :

Karen Wadkovsky being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.

Print name: Karen Wadkovsky

Karen Wadkovsky

Sworn to before me this
25 day of March, 2024

George Carl Pezold
NOTARY PUBLIC

GEORGE CARL PEZOLD
Notary Public, State of New York
No. 02PE6147343
Qualified In Suffolk County
Commission Expires May 30, 2026

STATE OF NEW YORK :
ss.:
COUNTY OF SUFFOLK :

Paul Wadkovsky, being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.

Paul Wadkovsky

Sworn to before me this
15 day of March, 2024

NOTARY PUBLIC

GEORGE CARL PEZOLD
Notary Public, State of New York
No. 02PE6147343
Qualified in Suffolk County
Commission Expires May 30, 2026

STATE OF NEW YORK :

ss.:

COUNTY OF SUFFOLK :

STACY PINTO, being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.

STACY PINTO

Sworn to before me this
25 day of March, 2024

NOTARY PUBLIC

GEORGE CARL PEZOLD
Notary Public, State of New York
No. 02PE6147343
Qualified in Suffolk County
Commission Expires May 30, 2026