To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. PAUL I. MARX, J.S.C.

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In the Matter of the Application of

CITIZENS UNITED TO PROTECT OUR NEIGHBORHOOD-HILLCREST, OLEG FILCIDOR, LOURDES VERAS, ELIZABETH TASH, ROBERT MICHEAL MILLER, GARY WREN and GAIL MOGGIO,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules,

-against-

THE TOWN OF RAMAPO, MONSEY LUMBER & SUPPLY INC., UNION COLLINS REALTY CORP./UNION COLLINS REALTY INC., and CHRISTA LYNN LLC,

Respondents-Defendants.

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Index No.: 034913/2020
Action No. 1

DECISION AND ORDER

In the Matter of the Application of

CITIZENS UNITED TO PROTECT OUR NEIGHBORHOOD-HILLCREST, OLGA FILCIDOR, LOURDES VERAS, ELIZABETH TASH, and ROBERT MICHEAL MILLER,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules,

-against-

THE TOWN OF RAMAPO, TOWN BOARD

Index No.: 036709/2021
Action No. 2

OF TOWN OF RAMAPO, TOWN OF RAMAPO PLANNING BOARD, MONSEY LUMBER & SUPPLY INC., UNION-COLLINS REALTY CORP./UNION COLLINS REALTY INC., and CHRISTA LYNN LLC,

Respondents-Defendants.
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In Action No. 1, *Citizens United to Protect Our Neighborhood-Hillcrest, et al. v The Town of Ramapo, et al.*, Index No. 034913/2020, the papers filed electronically on NYSCEF and numbered as Doc ## 354-380, 382, 385-396 and 399 were read on: (1) the motion of Respondents Monsey Lumber & Supply Inc., Union Collins Realty Corp./Union Collins Realty Inc., and Christa Lynn LLC (collectively "Applicant Respondents") to reargue and/or renew and, upon reargument and renewal, vacatur of the portion of the Order and Judgment dated February 22, 2023 ("Order and Judgment"), which remitted this matter to the Town Board for further proceedings (Motion # 5); (2) the motion of Respondents Town of Ramapo ("Town") and Town Board of the Town of Ramapo ("Town Board") (collectively "Town Respondents")[1] (a) to reargue and/or renew the Order and Judgment and for vacatur and a declaration that no further review by the Town Board is required; (b) for an award of attorney's fees and costs, and (c) for such other relief as the Court deems just, proper or equitable (Motion # 6); (3) Petitioners' cross-motion to (a) reargue and renew the Order and Judgment, whereby Petitioners seek an order remitting the proceeding to the Town Board to conduct a coordinated environmental review of Applicant Respondents' rezoning proposal and their application for site plan and subdivision approval, and related relief; (b) amend the caption to (i) remove Gail Moggio, who is deceased; (ii) remove Gary Wren who has moved, and (iii) correct a typographical error to reflect that "Oleg" Filcidor should be "Olga" Filcidor; (c) recover the costs, disbursements and attorney's fees incurred in this proceeding; and (d) such other relief as the Court deems just, proper or equitable (Motion # 7); and (4) Petitioners' cross-motion motion to reargue the Order

[1] Petitioners named the Town Board (¶ 22) as a Respondent in their Verified Article 78 Petition and Complaint (Doc # 7), along with the Town of Ramapo (¶ 21), but they inadvertently omitted the Town Board from the caption. As Petitioners' motion to amend demonstrates, this was not their only oversight.

and Judgment, seeking the same relief sought in its other cross-motion to reargue (Motion # 8). Petitioners separately cross-move in response to the motions to reargue and renew by the Applicant Respondents and the Town Respondents.

In Action No. 2, *Citizens United to Protect Our Neighborhood-Hillcrest, et al. v The Town of Ramapo, et al.*, Index No. 036709/2021, the papers filed electronically on NYSCEF and numbered as Doc ## 254-279 were read on the motions[2] of Petitioners (1) to reargue and renew the Court's Decision and Order dated January 17, 2023, and upon reargument, deny the motions to dismiss brought by Respondents-Defendants The Town of Ramapo, The Town Board of Town of Ramapo, Town of Ramapo Planning Board, Monsey Lumber & Supply Inc., Union Collins Realty Corp./Union Collins Realty Inc., Pascack Estates LLC, and Christa Lynn LLC; and for such other and further relief as the Court deems just and proper (Motions ## 5 and 6).

Upon reading the foregoing papers, it is ORDERED that all motions in Action No. 1 and Action No. 2 are consolidated for review and disposed as follows.

BACKGROUND

Action No. 1

The Article 78 Petition and Complaint in Action No. 1 seeks review of three Town Board Resolutions and Town of Ramapo Local Law No. 2-2020,[3] which were passed and enacted, respectively, by the Town Board at its meeting held on February 26, 2020, to dispose of the applications of the Applicant Respondents to amend the zoning and Comprehensive Plan for the

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[2] Petitioners submitted two identical Notices of Motion, which state that they are moving to reargue and renew as to the Court's Decision and Order dated January 17, 2023. The Affirmation of Susan H. Shapiro (Doc # 256) is inconsistent as to what Petitioners seek to renew. At paragraph 3, counsel asks the Court to "consider the Court Decision and Order of September 23, 2022, which denied consolidation of Action Nos. 1 and 2." Ms. Shapiro states in paragraph 44-48 that renewal is based upon the Court having overlooked the Administrative Record (Doc ## 152-170) and Petitioners' submissions filed as documents numbered 216 through 235 in rendering its decision on Respondents' motions to dismiss.

[3] The three challenged resolutions are: Resolution 2020-155, which adopted a Findings Statement under the New York State Environmental Quality Review Act ("SEQRA"), Environmental Conservation Law § 8-0101 et seq., and implementing regulations, 6 NYCRR 617.1 et seq.; Resolution 2020-156, which amended the Town's Comprehensive Plan; and Resolution 2020-157, which changed the zoning designation of certain parcels of land within the project site from R-15 (single family dwellings limited, four per acre) to MR-12 (multi-family dwellings, twelve per acre). Local Law 2020-157 amended the Town of Ramapo zoning map to change the zoning for the Pascack Ridge site from R-15 to MR-12. Doc # 71.

parcels comprising the Pascack Ridge site. The applicants (Respondent Monsey Lumber/Union Collins Realty and non-party 171 North Pascack Road Corp.) requested a zoning change from R-15 to MR-12 to allow for the development of multifamily units at a density of 12 dwelling units per acre on the Pascack Ridge site. The Town Board granted the application, rezoned the parcels and revised its Comprehensive Plan and zoning map accordingly ("Town Board Actions").

Petitioners commenced this hybrid proceeding, alleging seven causes of action by which they sought to annul and vacate the Town Board Actions. Pursuant to Respondents' motions to dismiss, the Court granted the motion as to Petitioners' Second and Seventh Causes of Action.

Petitioners' remaining causes of action allege that the Town Board improperly conducted its review under the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law,[4] procedurally and substantively, "including failing to identify involved agencies and coordinate review with those agencies from the start, not identifying all of the environmental constraints on the property, and not analyzing the impact of increasing density on the ridge portion of the site, as well as the impacts of the additional density transferred to that portion of the site from other environmentally constrained portions of the site." Petition at ¶ 9. Petitioners alleged that the Town Board insulated its SEQRA review from the comments of permitting agencies by designating itself as the only Involved Agency, and by failing to conduct a full coordinated review of the proposed action, which involved rezoning to allow for a specific site plan. *Id.* at ¶ 11. Petitioners alleged that the Town Board Actions "will result in a significant change to community character, increase segregation, [result in a] large increase in density, with all its associated adverse impacts of increased flooding and traffic, as well as poorly planned housing leading, among other things, to a massive disruption of community aesthetic character." *Id.* at ¶ 14. Petitioners alleged that the Town Board failed to comply with certain provisions of Town Law which required public hearings.

By Order and Judgment dated February 22, 2023, the Court disposed of Petitioners' Petition and Complaint (First, and Third through Sixth, Causes of Action) by granting the Petition in part, and remitting the matter to the Town Board for "(1) correction of the procedural

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[4] The regulations that implement SEQRA are contained in 6 NYCRR Part 617.

deficiencies involving its failure to properly identify the action as rezoning and specific site plan review and to identify the involved agencies when it accepted the DEIS, in particular to treat RCDA as an involved agency, and to solicit comments from the agency; and (2) to conduct a thorough evaluation of less dense zoning as a reasonable alternative to MR-12 zoning." The Court determined that, in light of its remittal to the Town Board, it need not reach the Sixth Cause of Action, which raised issues regarding the Town Board's alleged failure to comply with public hearing requirements in making its determination.

All parties now seek to reargue the Order and Judgment, and Petitioners, additionally, seek to amend the caption of their Petition and Complaint. Applicant Respondents move to reargue and/or renew and, upon reargument and renewal, vacate the portion of the Order and Judgment which remitted this matter to the Town Board to correct certain procedural and substantive deficiencies in its SEQRA review (Motion # 5).

Town Respondents move to reargue and/or renew[5] the Order and Judgment and, upon reargument and renewal: (a) vacate remittal to the Town Board for further review with a declaration finding (i) that the Town Board treated the Rockland County Drainage Agency and other interested agencies as involved agencies and afforded those agencies and the public a full and fair opportunity to bring their issues to the Town Board's attention, and finding that any irregularity was harmless error; (ii) that no further review by the Town Board of a specific site plan is required; and (iii) that the Town Board considered the environmental impacts of a less dense MR-8 zoning alternative and modified the scope and scale of the proposed rezoning to provide further environmental mitigation to adjoining residential areas and the Pascack Brook; (b) vacate the portion of the Order and Judgment holding that the Court need not reach a decision on the Sixth Cause of Action; finding instead that the Town Board need not conduct an additional hearing and was responsive to Petitioners' requests; and (c) award Respondent Town the costs, disbursements and attorneys' fees incurred herein, and such other relief as the Court deems just, proper or equitable (Motion # 6).

Petitioners cross-move to reargue and renew and seek to (a) remit to the Town Board to conduct a coordinated SEQRA review of Applicant Respondents' land use proposal, which

[5] The motions do not set forth a basis for renewal. CPLR 2221(3)(f) requires that where both a renewal and reargument are sought, they must be separately identified and supported. Neither Applicant Respondents nor Town Respondents have done this.

encompasses amendment of Comprehensive Plan and zoning and site plan and subdivision approval; (b) "[r]emit to the Town Board to provide notice and draft scoping to all Involved Agencies with permitting authority for land use development applications encompassed in the coordinated review"; (c) vacate the portion of the February 2023 Decision and Order which dismissed the First Cause of Action. Petitioners move to amend the caption to (d) remove Gail Moggio, who is deceased; (e) remove Gary Wren who has moved, and (f) correct a typographical error to reflect that "Oleg" Filcidor should be "Olga" Filcidor; (g) recover the costs, disbursements and attorney's fees incurred in this proceeding; and (h) such other relief as the Court deems just, proper or equitable (Motion ## 7 and 8).[6]

Action No. 2

Action No. 2 is a hybrid Article 78 proceeding and declaratory judgment action brought by Petitioners Citizens United to Protect Our Neighborhood-Hillcrest ("CUPON") and individual Petitioners Olga Filcidor, Lourdes Veras, Elizabeth Tash, and Robert Michael Miller (collectively "Petitioners"). Petitioners, the same ones as in Action No. 1, challenge the Town of Ramapo Planning Board's decision on the application of Respondent-Defendants Monsey Lumber & Supply Inc., Union-Collins Realty Corp./Union Collins Realty Inc., 171 No. Pascack Road Corp., and Christa Lynn LLC (collectively referred to herein as "Applicant Respondents") for site plan and subdivision map approval for the Pascack Ridge project. Petitioners allege that the Planning Board violated SEQRA by improperly relying upon the Town Board's prior SEQRA review, which was conducted in connection with an amendment of the Town's Comprehensive Plan and rezoning of the parcels which comprise the Pascack Ridge project site, which they challenge in Action No. 1.

Petitioners alleged eleven causes of action by which they sought to annul and vacate the Planning Board's Action. Petitioners alleged that the Planning Board violated SEQRA by failing to conduct "its own environmental review to consider specific environmental impacts of the proposed subdivision and site plan, which were raised but not considered by the Town Board" in

[6] Petitioners filed four Notices of Motion in connection with their motions (Doc ## 254, 255, 266, and 267), the first of the notices are curiously designated "Notice of Motion (Amended)" (Doc ## 254 and 255). The later notices are simply designated "Notice of Motion" (Doc ## 266 and 267). All the notices are identical. This was quite confusing.

making its determination to amend the Comprehensive Plan and rezoning of the Pascack Ridge site. Verified Article 78 Petition and Complaint ("Petition") at ¶ 104, Doc # 2. Petitioners alleged that the Planning Board was not listed as an "Involved Agency" by the Town in its SEQRA review, thus, the Planning Board could not rely on the Town Board's SEQRA review. *Id.* at ¶¶ 97-107. Petitioners alleged that the Planning Board violated Town Law §§ 274, 276 and 277 in issuing approval of Applicant Respondents' application, without declaring itself Lead Agency and conducting an environmental review of the site plan. Petitioners alleged that the Planning Board failed to comply with the Town's Subdivision Regulations (§376-10-60) and Site Plan Development Review Regulations (§367-600-610). Petitioners seek declaratory judgment and an award of costs and disbursements, as well as reasonable legal fees and expenses.

By Decision and Order dated January 17, 2023, the Court denied the branch of Respondents' motions to dismiss the Petition and Complaint based on standing and on failure to exhaust administrative remedies; granted the branch of the motions to dismiss the First through Third and Seventh Causes of Action and declared that the Planning Board properly relied upon the Town Board's Environmental Impact Statement ("EIS") in conducting its review of the application by Applicant Respondents for site plan and subdivision plat approval for the Pascack Ridge Project, and was not required to conduct further SEQRA review; denied the branch of the motions to dismiss a portion of the Eighth Cause of Action as duplicative; and ordered Respondents to serve and file any additional papers in support of their Answers, addressing Petitioners' Fourth through Sixth, and Eighth through Eleventh Causes of Action on the merits.

As the instant motions seek reargument and renewal of prior decisions of the Court, further familiarity with the background of these proceedings is presumed.

DISCUSSION

In Action No. 1, all Respondents move to reargue or renew the Order and Judgment, contending that the Court overlooked critical facts and law and seeking to vacate remittal to the Town Board. The Town Respondents go one step further to ask the Court to affirmatively declare that the Town Board treated "the Rockland County Drainage Agency and other interested agencies as involved agencies and afforded those agencies and the public a full and fair opportunity to bring their issues to the Town Board's attention, and finding that any irregularity was harmless error; (ii) that no further review by the Town Board of a specific site plan is

required; and (iii) that the Town Board considered the environmental impacts of a less dense MR-8 zoning alternative and modified the scope and scale of the proposed rezoning to provide further environmental mitigation to adjoining residential areas and the Pascack Brook; (b) vacate the portion of the Order and Judgment holding that the Court need not reach a decision on the Sixth Cause of Action; finding instead that the Town Board need not conduct an additional hearing and was responsive to Petitioners' requests". The Town Respondents also seek an award of attorney's fees.

Petitioners move to reargue the Order and Judgment and seek to modify the Court's remittal to the Town Board to require it to conduct a coordinated SEQRA review of the Applicant Respondent Monsey Lumber's proposal to rezone the Pascack Ridge site and its later application for site plan and subdivision approval. Petitioners request that the Town Board be directed to begin its SEQRA review anew with notice to all agencies with approval and permitting authority, and to conduct proper scoping. Petitioners contend that SEQRA review has never been performed for site plan and subdivision; therefore, such review cannot be deemed to be redundant. Petitioners further request that the Court vacate its dismissal of their First Cause of Action.

The Court grants reargument to all parties. "Although a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented (*see Amato v Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2004]), motions for reargument are addressed to the sound discretion of the court, and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision (*see Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc.*, 147 AD3d 1106, 1108 [2017]; *Carrillo v PM Realty Group*, 16 AD3d 611, 611 [2005])." *Coke-Holmes v Holsey Holdings, LLC*, 189 AD3d 1162, 1164 [2nd Dept 2020]. The Court concludes that it misapprehended the facts and law regarding SEQRA review of the Town Board and Planning Board's decisions.

The crux of the dispute regarding the Town Board's SEQRA review, which was later adopted wholesale by the Planning Board, is whether the SEQRA review should have been a coordinated review and whether the governmental agencies with interests and, in particular,

permitting and approval authority over aspects of the proposed project within their jurisdiction should have been incorporated into the review from the start.

The Court answers the issue in the affirmative. In so doing, the Court vacates the portion of the Order and Judgment finding that there was no segmentation, and now holds that the SEQRA review of the proposals by Applicant Respondent Monsey Lumber's and non-party 171 N. Pascack Road to rezone the Pascack Ridge site and amend the Town's Comprehensive Plan to allow development of multi-family housing was segmented.

SEQRA defines "segmentation" as "the division of the environmental review of an action such that various activities or stages are addressed under [SEQRA] as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR 617.2 [ag]; see 6 NYCRR 617.3 [g] [1]. The SEQRA regulations state that it is contrary to the intent of the statute for a lead agency to "[c]onsider[] only a part or segment of an action". 6 NYCRR 617.3 [g] [1]. If, however, it is necessary under the circumstances to conduct a segmented review, the lead agency "must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible." *Id.*

The first signal that a coordinated SEQRA review of rezoning and site plan and subdivision was required was contained in the petitions submitted by the applicants. Respondent Monsey Lumber plainly stated in its petition that it "propose[d] to construct approximately 190 housing units" on its 18.5 acres at the site. Doc # 204 at ¶ 4. The second applicant, 171 N. Pascack Road, petitioned for rezoning to construct 27 housing units on 3.47 acres, which contained three buildings with nine apartment units. Doc # 205 at ¶¶ 1, 4-5. The applicants submitted a conceptual plan of a multi-family housing development.

The SEQR Handbook, 4th Edition, offers the following in connection with a zoning change that is requested by a project sponsor or applicant: "if the zoning change is proposed by a project sponsor in conjunction with a proposal, the impacts of both the rezoning and the specific development must be considered in determining environmental impacts." Handbook at 177. The Handbook actually poses the very question that is at the heart of these proceedings: "Can the environmental review of rezoning be segmented from the environmental review of any

site-specific projects that may come about because of the rezoning?" Handbook at 178. The response to that question begins by asserting that "segmentation is contrary to the intent of SEQR". *Id.* Although the Handbook further states that "[u]nder certain circumstances, however, certain forms of segmentation may be reasonable", it then provides the example of a landowner who requests rezoning to conform to surrounding land, but who has no immediate plan to develop the parcel, as an instance where segmentation is reasonable. *Id.*

Here, it was clear from the start of the process that such circumstances were not present, because Respondent Monsey Lumber, the project sponsor/applicant,[7] declared its intent to construct a multi-family development on the site. Consequently, a coordinated review of both the rezoning and the site plan and subdivision approval should have been undertaken. Critically, the Handbook states that the financial inability or unwillingness of the project sponsor/applicant to give the lead agency details about the project "does not justify a segmented review." *Id.* Instead, the Handbook suggests the following option:

> If the project or the zoning may result in significant impacts, the project sponsor may be required by the lead agency to prepare a generic EIS that analyzes the impacts of the zoning change. The generic EIS should also conceptually analyze the impacts of the proposed development, based on current information and reasonable projections without the need for detailed engineering. If the zoning decision allows the proposed use, a supplemental EIS may be needed to discuss specific impacts of the project in detail. (*Id.*)

In this case, the Town Board did not require the applicants to conduct a generic EIS. Moreover, the Town Board was aware of the applicants' commitment to build a multi-family development, if rezoned and approved to proceed, not only from their rezoning petitions. Respondent Monsey Lumber had previously undertaken to obtain approval to develop the Pascack Ridge site for single family housing, and ultimately abandoned the proposed action as unfeasible. Under these circumstances the type of SEQRA review required was a coordinated review of "the whole action",[8] encompassing both the rezoning actions and site plan and

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[7] "For purposes of SEQR, the term 'project sponsor' and the term 'applicant' are the same." Handbook at 64.

[8] The Handbook states that "[p]roposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action should be evaluated as one whole action." Handbook at

subdivision approval. The Handbook states that "[p]roposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action should be evaluated as one whole action." Handbook at 53. As an example of "a complex action that may not be presented or applied for at the same time", the Handbook gives the example of "a series of applications for the same project (zone change, extension of sewer service, subdivision approval) ...". Regarding such action, the Handbook states that "[r]eviewing the "whole action" is an important principle in SEQR; interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions." *Id.* Rezoning was only the first step in the process toward Applicant Respondents' goal of constructing a multi-family housing development on the Pascack Ridge site.

The following factors are provided to guide agencies in determining whether segmentation is occurring, and states that if one or more of the questions presented as factors is answered in the affirmative, segmentation should be a concern.

> • Purpose: Is there a common purpose or goal for each segment?
> • Time: Is there a common reason for each segment being completed at or about the same time?
> • Location: Is there a common geographic location involved?
> • Impacts: Do any of the activities being considered for segmentation share a common impact that may, if the activities are reviewed as one project, result in a potentially significant adverse impact, even if the impacts of single activities are not necessarily significant by themselves?
> • Ownership: Are the different segments under the same or common ownership or control?
> • Common Plan: Is a given segment a component of an identifiable overall plan? Will the initial phase direct the development of subsequent phases or will it preclude or limit the consideration of alternatives in subsequent phases?
> • Utility: Can any of the interrelated phases of various projects be considered functionally dependent on each other?
> • Inducement: Does the approval of one phase or segment commit the agency to approve other phases?

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53. As an example of "a complex action that may not be presented or applied for at the same time", the Handbook gives the example of "a series of applications for the same project (zone change, extension of sewer service, subdivision approval) ...". Regarding such action, the Handbook states that "[r]eviewing the 'whole action' is an important principle in SEQR; interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions." *Id.*

The answer to several of these questions calls for an affirmative response. There was a common purpose or goal to rezone the parcels to allow Applicant Respondents to construct a multi-family development on the site consistent with the changed zoning. Both the Town Board Action and the Planning Board Action concerned the same geographic location. The rezoning action alone raised potentially significant adverse impacts. Both actions concerned property under common ownership and control by the applicants. The applicants identified in their rezoning petitions their overall plan, and the second action to obtain site plan and subdivision approval was undoubtedly affected by the zoning decision, as shown by the Planning Board's adoption of the Town Board's SEQRA without further consideration. Both actions were functionally dependent on each other. It is obvious from the number of "yes" responses to the relevant questions that the Town Board's decision to conduct the rezoning action separate from the site plan and subdivision approval was improper segmentation. Instead, a coordinated review of both phases of the "whole action" was required.

As noted in the Handbook, "[c]ourt decisions on this topic [of segmentation] are very dependent on the specific facts in each case, resulting in a range of outcomes." Handbook at 55. The cases discussed by the Court in the Order and Judgment provided clearer examples of improper segmentation. In particular, *J. Owens Bldg. Co. v Town of Clarkstown*, 128 AD3d 1067, 1068 [2nd Dept 2015]. There, the Town separately considered drainage and storm water management improvements that were proposed in relation to a revitalization project in the Hamlet of West Nyack. The Town sought to condemn the petitioners' property to implement a drainage and storm water management plan that was intended to enable a much larger project that was neither speculative nor hypothetical at that time, yet the Town looked only at the drainage plan. No consideration was given to the environmental impacts of the larger intended project. The Appellate Division held that the Town's action constituted improper segmentation because the revitalization project was not merely speculative or hypothetical. Consequently, the Town could not merely study the drainage portion of the larger project as if were a stand-alone project. Instead, the Town was required to conduct an environmental review of the entire project, or to explain why the segmented review was not less protective of the environment "and to identify and discuss '[r]elated actions ... to the fullest extent possible'." *Id.* at 1069 (citing 6 NYCRR 617.3[g][1]). The Town's failure to articulate its reasons for only reviewing the

drainage portion was held to violate SEQRA. Therefore, the appellate court rejected the Town's findings and returned the matter to the Town Board to conduct a proper review or to articulate a reasoned basis for segmented review with supporting facts. *Id.* at 1069.

Matter of Long Island Pine Barrens Society, Inc. v Town Board of Town of Riverhead, 290 AD2d 448 [2nd Dept 2002], provides another example of improper segmentation. In that case, the town board granted a zoning amendment and site approval for a residential golf course development. The Appellate Division found that the rezoning was an integral part of the town's approval of the entire residential development. The court noted that the applicant prepared the EIS for the project, which the town board accepted, but looked only at the anticipated environmental impacts of the golf course without considering the approximate 333 houses that would be built for the development. While the applicant stated its intention to build the houses along with the golf course, it failed to identify the exact number and location of the houses, which resulted in the environmental impacts of the entire project not being considered. The Appellate Division held that "[t]he Town Board was obligated to consider the environmental concerns raised by the entire project at the time of the rezoning application, and its failure to do so violated SEQR." *Id.* at 449 (citing *Matter of Citizens Concerned for Harlem Val. Envt. v Town Bd. of Town of Amenia*, 264 AD2d 394 [2nd Dept 1999]; 6 NYCRR 617.2 [ag]). The appellate court found that the town board violated SEQRA by failing to consider a "no action" alternative, as well as sufficiently considering "mitigation" measures related to building the golf course by cutting down a large, wooded area.

Riverhead Bus. Imp. Dist. Mgmt. Ass'n, Inc. v Stark, 253 AD2d 752 [2nd Dept 1998], furnishes another example of improper segmentation. The town board in that case enacted a zoning amendment which created a commercial district, but it did not include in its environmental review a proposed shopping center that was to be built on the site. The town board did not have the site plan application when it was considering the zoning amendment. *See also Teich v Buchheit*, 221 AD2d 452, 453 [2nd Dept 1995], which found improper segmentation where a proposed parking lot, which was a significant part of a hospital's long-term to expand, was considered separately from the long-term plans expressed by the hospital in its publications.

Under SEQRA, "[c]oordinated review is the process by which all involved agencies cooperate in one integrated environmental review. Coordinated review has two major elements:

(1) establishing a lead agency, and (2) lead agency consideration of the interests and concerns of involved agencies." Handbook at 56. The project sponsor or applicant has the responsibility to identify the "involved agencies", which "must be provided in Part 1 of the EAF [Environmental Assessment Form]." *Id.* An involved agency is one that "will ultimately make a discretionary decision with respect to some aspect of the whole action." Handbook at 57.

In this case, the crucial procedural errors occurred from the earliest stages. Notably, Respondent Monsey Lumber,[9] failed to identify the agencies which should have been designated in the EAF as "involved agencies" whose interests and concerns should be considered during the a coordinated environmental review.

The procedural errors continued unabated, with the scoping stage in April through June, 2015, the point at which involved and interested agencies are more actively brought into the process. At that point, the proposed action was still described as rezoning and amendment of the Comprehensive Plan, and no designation was made of the involved or interested agencies. Although the applicants' petitions were submitted by Respondent Monsey Lumber on July 26, 2013, and by 171 N. Pascack on April 14, 2014, Part I of the EAF remained incomplete. As late as December 10, 2015, after the Town Board had earlier that year passed a resolution adopting a positive declaration for the proposed action and the Town conducted its "completeness review" of the required Draft Environmental Impact Statement ("DEIS"), the Town Planner notified the Town that Part 1 of the full EAF was missing.

On April 25, 2018, nearly three years later, the Town Board adopted Resolution 2018-257, accepting the DEIS as complete. The DEIS, dated May 2018, listed the Town Board as "Lead Agency". The Action under review was still designated as "Pascack Ridge Comprehensive Plan Amendment & Zone Change". Under "Regulatory Requirements: Required Permits & Approvals", the DEIS stated that the Action "would require the following approvals: Town of Ramapo – Zone Change and Comprehensive Plan Amendment." Doc # 240 at 32. No other agencies with permitting or approval authority were listed. Appended to the Executive Summary was a list titled "Interested Agencies", which stated that "[t]he following agencies are either involved or interested in the outcome of the Proposed Action". *Id.* at 33. The list named

[9] The Court notes that the SEQRA review was performed by Respondent Monsey Lumber, the project sponsor, which is permissible under SEQRA. Handbook at 64-65.

the Commissioner of the New York State Department of Environmental Conservation ("DEC"), East Ramapo Central School District, Town of Clarkstown, Village of Spring Valley, and Rockland County Planning Department and Planning Board. *Id.*

The proposed Action was described in detail in Section 2 of the DEIS:

> The applicant intends to construct multifamily housing on the site. ... Changing the zoning to MR12 will enable an integrated development of multifamily housing, providing 290 housing units. ... The concept indicates a mix of two, three and six-bedroom units. The plan calls for a total of 133 two-bedroom units, 24 three-bedroom units and 133 six-bedroom units at maximum buildout. This bedroom distribution will diversify the Town's housing stock and incorporate energy efficient elements into the project. Three story buildings will consolidate the building footprints and enable 55.4 percent of the site to remain as open space. ..." (*Id.* at 35)

Following the verbal description was a diagram which showed the proposed plan for the site, including several buildings arranged in clusters throughout the site, parking spaces, internal roads, and three ponds. *Id.* at 34-35 (Figure 4 appears between the two numbered pages).

Respondents seek the Court's imprimatur of what amounts to a confused SEQRA review. Petitioners, for their part, seek the Court's clarification of the Order and Judgment to state that SEQRA review must begin anew as a coordinated review, with designation of, and notice to, all involved and interested agencies.

Neither outcome is entirely satisfactory, and the Court has struggled mightily with these two diametrically opposed approaches to the recognized deficiencies of the SEQRA review that was undertaken by the project sponsor and upheld by the Town Board. On the one hand, nearly ten years have elapsed since the rezoning petitions were filed, environmental review has been performed, and the Town Board entreats the Court to find "no harm, no foul", because the Town is desperate to build multi-family housing to address the needs of its population. On the other hand, Petitioners raise valid objections to the sufficiency of the review.

After lengthy and difficult deliberation, the Court concludes that the procedural requirements of SEQRA, some of which were pointedly ignored by Respondents, have substantive consequences for the type of review that was required, and ultimately, for judicial review of the resulting morass. The involved agencies, one of which was RCDA, should have

been included in a coordinated review of the rezoning action and the site plan and subdivision approval action, which together formed "the whole action". Respondents' contention that RCDA was treated as an involved agency because it was provided with a copy of the DEIS, Final Environmental Impact Statement and Technical Addendum does not bear out.

The July 2018 letter from RCDA, to which Respondents direct the Court's attention, claiming that it was overlooked, does not support their assertion that the agency provided substantive review and comment. To the contrary, the letter is, in this Court's view, emblematic of the confusion sewn by the failure to conduct a coordinated review that put all relevant agencies, in particular a permitting agency such as RCDA, on notice that its review and input was required to make a full and informed decision as to the environmental impacts of the whole action – rezoning to build a large multi-family development on an environmentally sensitive area of the Town of Ramapo. RCDA's confusion is demonstrated in various ways in the letter. First, contrary to the description of the proposed action in the DEIS, RCDA termed the proposal being reviewed by the Town Board as "a comprehensive site development plan and zone change." Doc # 235 at 1. With that as the agency's own definition of the proposed action, the letter stated that RCDA perceived its role "as an interested and involved agency pursuant to SEQRA ...". *Id.* RCDA then stated that the project site was within the agency's jurisdiction and would require a permit from the agency, and that the Full Environmental Assessment Form failed to state that RCDA's approval was required for the site development plan. Finally, the letter advised that the applicant must demonstrate that "the proposed development will have no increase in the rate of stormwater runoff from the project area to the Pascack Brook, a county regulated stream, and will have zero increase in 100-year flood elevation to any other properties." (Doc #235). The letter provided no comment on whether the proposed project, as described in the DEIS, satisfied that requirement. Notably, the letter stated that RCDA has no authority over zone changes, and it ended by advising that the applicant must submit a permit application to the agency. *Id.* With that, RCDA contradicted its earlier description of the proposed action as involving a site plan, and ultimately offered no substantive comments because the proposed action concerned zoning.

SEQRA sets forth a clear path for a lead agency to follow in conducting or overseeing the environmental review of a proposed action. Failure to adhere to the procedural requirements, as this case so amply demonstrates, leads to confusion on the part of the agencies responsible for a

role in such environmental review. When the administrative action comes before a court, its review is then clouded by an inability to assess whether an agency that offered comments or sent a letter after receiving a document produced during the review understood and appreciated that it was actively solicited to fully participate in the review. A court's ability to rely on the administrative record is severely hampered in a case such as this where the court cannot trust that the whole action has been properly and thoroughly reviewed by the interested and involved agencies who are charged with safeguarding SEQRA. Courts do not have the knowledge or expertise to divine whether a proposed project takes into account the environmental conditions and constraints of a particular site. Thus, a clear record, which demonstrates that the procedures were consistently adhered to throughout and proper review was conducted, with the relevant agencies being consulted, is indispensable to a reviewing court. Sadly, that did not occur in this case. Adherence to SEQRA and its required procedures would have obviated the outcome reached by the Court.

The Town Board cannot now reverse engineer the SEQRA review that was performed to characterize it as a coordinated review. The Court previously noted in the Order and Judgment that courts have overlooked the failure to formally name an agency as an involved agency under certain circumstances where, as a practical matter, an agency was involved in environmental review of a project. *See Scenic Hudson, Inc. v Town of Fishkill Town Bd.*, 266 AD2d 462, 464 [2nd Dept 1999] ("We note, in any event, that the DEC was treated as an interested agency by the Town Board, and was given the opportunity to comment on the drafts of the environmental impact statements issued herein. Thus, any failure to designate the DEC as an involved agency was, under the particular circumstances of this case, inconsequential (internal citations omitted)" *lv denied* 94 NY2d 761 [2000]; *Cade v Stapf*, 91 AD3d 1229, 1232 [3rd Dept 2012] ("the failure to include the ZBA as an involved agency under these circumstances was inconsequential for purposes of the Planning Board's SEQRA review"); *King v Cnty. of Monroe*, 255 AD2d 1003, 1004 [4th Dept 1998] ("the failure to identify the Town as an involved agency was not fatal [because it] was fully informed of the environmental studies and reports regarding the proposed project and [its] input and comments on environmental concerns [were solicited]"), *lv denied* 93 NY2d 801 [1999]. Mindful of the requirement of strict adherence to SEQRA, these courts were careful to limit their holding to the facts of the case. In this case, only those agencies which were

deemed "interested agencies" and were sent copies of the DEIS listing them as such, could be viewed as having been solicited for comment. Neither RCDA nor the Town Planning Board were on that list. Simply sending copies of the DEIS or making them available is not what SEQRA contemplates.[10]

As the Court of Appeals stated in *King v Saratoga Cnty. Bd. of Sup'rs*, 89 NY2d 341, 347 [1996], "the substance of SEQRA cannot be achieved without its procedure, [hence] departures from SEQRA's procedural mechanisms thwart the purposes of the statute." The Court of Appeals held that "strict, not substantial, compliance is required." *Id.* The reasoning behind the holding was clearly stated: "[a]nything less than strict compliance ... offers an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment." *Id.* at 348. This case is a sad example of what the Court of Appeals cautioned against.

The Court here gives recognition to the stated need of the Town to accommodate its growing population by developing the type of housing it deems to be best suited to meeting that need. However, regardless of the urgency of that need, the Town Board must perform the type of environmental review that SEQRA requires. If not to comply with the law for its own sake, then for the compelling reason which underlies the law, to ensure that the appropriate regulatory bodies have properly and thoroughly vetted a project such as this, in order to safeguard the residents who will occupy the development from the consequences of environmental issues that could have been mitigated or avoided all together.

Accordingly, upon granting reargument, the Court vacates its finding that the Town Board did not engage in segmentation and reaffirms its decision to remit the matter to the Town Board to conduct a coordinated review of the whole action in accordance with SEQRA, beginning at the earliest stage.[11]

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[10] Incredibly, Applicant Respondents claim that "the Town Board *fully* informed RCDA of the environmental studies and reports regarding the Project and solicited its input and comments on environmental concerns, such that the RCDA received virtually the same notification and opportunity to participate in the SEQRA process that an involved agency would have received ...". Affirmation of Daniel Richmond, Esq. at ¶ 50 (Doc # 355) (emphasis added).

[11] Pursuant to the 2018 amendments to the SEQRA regulations, which became effective on January 1, 2019, "scoping was made mandatory, and applicants can no longer skip the EAF and scoping phase by preparing a draft EIS." Handbook at 72.

Petitioners' Motion to Amend

Petitioners seek to amend the Petition to recognize the death of Petitioner Gail Moggio and remove her name from the caption. Petitioners also seek to remove Gary Wren's name from the caption, because he has moved from the area and is no longer impacted by this dispute. Finally, Petitioners seek to amend the caption to correct the name of Olga Fulcidor, which was improperly stated as Oleg. All three amendments to the caption are granted.

Request for Attorney's Fees by Town Respondents and Petitioners

Town Respondents and Petitioners both request attorney's fees in their notices of motion and in the affirmations in support of the motion, however, neither of the parties substantiate their fee requests. "The general rule is that in Article 78 proceedings, 'the prevailing party may not collect [attorneys' fees] from the loser unless an award is authorized by agreement between the parties or by statute or by court rule'." *Dechbery v Cassano*, 157 AD3d 499, 500 [1st Dept 2018] (citing *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986]). There is no indication that there is any basis for a fee award to either party in this case. Accordingly, the attorney's fee requests are denied.

Action No. 2

The motions to reargue in Action No. 2 are granted to the extent that, having found the Town Board's SEQRA review inadequate, the Planning Board's decision predicated upon adoption of the Town Board's review must be annulled. Upon remittal to the Town Board to conduct a coordinated review of both the rezoning and site plan and subdivision actions, the Planning Board will participate as an involved agency.

Accordingly, this matter is returned to the Town Board for correction of the procedural deficiencies involving its failure to properly identify the action as rezoning and site review and to identify the involved and interested agencies and solicit their input and comments.

SUMMARY

It is ORDERED that the motions to reargue in Action No. 1 are granted to the extent that the portion of the Order and Judgment finding that the Town Board did not engage in improper segmentation is vacated, and the matter is remitted to the Town Board to conduct a coordinated SEQRA review of the rezoning and site plan and subdivision actions, as set forth herein; and it is further

ORDERED that Petitioners' motion to amend in Action No. 1 is granted; and it is further

ORDERED that the request by Town Respondents and Petitioners for attorney's fees in Action No. 1 is denied; and it is further

ORDERED that Petitioners' motions to reargue in Action No. 2 are granted to the extent that the Court hereby vacates its Decision and Order dated January 17, 2023, and the Petition and Complaint are dismissed as moot in light of the determination on Action No. 1.

The foregoing constitutes the Order and Judgment of this Court.

Dated: September 6, 2023

ENTER

HON. PAUL I. MARX, J.S.C.