SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of :

LENA BODIN, LYNDA GELLIS, LAURIE GESSNER, JOHN PORTA, CHONOCH LUDMIR, CHEDVA LUDMIR, SANDRA SOLOMON, WILLIAM ABRAMSKY, BARBARA ABRAMSKY, ELF LAWRENCE AHEARN, HILLCREST FIRE COMPANY No. 1, BARRON WALL, SUSAN HITO SHAPIRO, as Executor for the Estate of SONYA SHAPIRO, and SUSAN HITO SHAPIRO, as Executor for the Estate of MILTON B. SHAPIRO,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the CPLR,

- against -

THE PLANNING BOARD OF THE TOWN OF RAMAPO, THE TOWN BOARD OF THE TOWN OF RAMAPO, THE TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC, 46-52 WADSWORTH TERRACE CORP., NEWFIELDS ESTATES, INC., SCENIC DEVELOPMENT SM, LLC, and KEY BANK NATIONAL ASSOCIATION,

Respondents-Defendants.

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Index No: 322/116
(Walsh, J.)

NOTICE OF VERIFIED AMENDED ARTICLE 78 PETITION AND COMPLAINT

PLEASE TAKE NOTICE, that upon the annexed Verified Amended Article 78 Petition and Complaint, verified on the 29th day of September 2016, and all affidavits and exhibits annexed thereto, and upon all prior proceedings, an application will be made to the Supreme Court of the State of New York, County of Rockland, 1 South Main Street, New City, New York 10956 on the 28th day of October 2016, at 9:30 A.M., or as soon thereafter as counsel can be heard, for a judgment granting the relief requested in the Petition as follows:

(1) annulling, vacating and setting aside four (4) determinations of the Planning Board of the Town of Ramapo, which were filed with the Town Clerk of the Town of Ramapo on January 28, 2016, in connection with applications for the Patrick Farm Project (the

"Project") sponsored by Scenic Development and Scenic Development LLC (the "Applicant") for:

(a) Revised Final Subdivision Approval for a Project Entitled Patrick Farm Subdivision (the "Revised Final Plat Approval");

(b) Revised Final Site Plan Approval for a Project entitled Patrick Farms Condominiums (the "Revised Condominium Site Plan Approval");

(c) Final Site Plan Approval for a Project Entitled Patrick Farm Volunteer Housing (the "Revised Volunteer Housing Site Plan Approval," collectively, with the Final Plat Approval and the Condominium Site Plan Approval, the "Subject Decisions"); andz

(d) Findings Statement under the State Environmental Quality Review Act ("SEQRA");

(2) compelling Respondents to engage in review of the Project's potential impacts in complete conformance with the requirements of the Town Code;

(3) compelling Respondents to engage in lawful SEQRA review of the Project's potential environmental impacts; enjoining Respondents, or any of their agents or assigns, from conducting any demolition, site preparation, and/or development activities whatsoever on the Site until they have complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

(4) enjoining the Planning Board and/or other Town agencies and/or officials from issuing any approvals or permits in connection with the Site until it has complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

(5) awarding Petitioners the costs and disbursements of this action; and

(6) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804(c) of the Civil Practice Laws and Rules ("CPLR"), a Verified Answer and supporting affidavits, if any, must be served at least five (5) days before the return date of this application and that, pursuant to CPLR Section 7804(c), Respondents are directed to file a certified copy of the proceedings to be considered herein.

Dated: White Plains, New York
September 29, 2016

Respectfully submitted,
ZARIN & STEINMETZ

By: _____

Daniel M. Richmond, Esq.
Attorneys for Petitioners
81 Main Street, Suite 415
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To: Janice Gittleman, Esq.
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Attorney for Respondents
Four Executive Boulevard
Suite 100
Suffern, New York 10901

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------x

In the Matter of :

LENA BODIN, LYNDA GELLIS, LAURIE GESSNER, JOHN PORTA, CHONOCH LUDMIR, CHEDVA LUDMIR, SANDRA SOLOMON, WILLIAM ABRAMSKY, BARBARA ABRAMSKY, ELF LAWRENCE AHEARN, HILLCREST FIRE COMPANY No. 1, BARRON WALL, SUSAN HITO SHAPIRO, as Executor for the Estate of SONYA SHAPIRO, and SUSAN HITO SHAPIRO, as Executor for the Estate of MILTON B. SHAPIRO,

Petitioners-Plaintiffs,

Index No: 322/116
(Walsh, J.)

SUMMONS

For a Judgment pursuant to Article 78 of the CPLR,

- against -

THE PLANNING BOARD OF THE TOWN OF RAMAPO, THE TOWN BOARD OF THE TOWN OF RAMAPO, THE TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC, 46-52 WADSWORTH TERRACE CORP., NEWFIELDS ESTATES, INC., SCENIC DEVELOPMENT SM, LLC, and KEY BANK NATIONAL ASSOCIATION,

Respondents-Defendants.

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To the Above Named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Amended Complaint in this action and to serve a copy of your Answer, or, if the Verified Amended Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiffs' attorneys within 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).

In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: White Plains, New York
September 29, 2016

Respectfully submitted,
ZARIN & STEINMETZ

By: _____

Daniel M. Richmond, Esq.
Attorneys for Petitioners/Plaintiffs
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(914) 682-7800

To: Janice Gittleman, Esq.
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Terry Rice, Esq.
Attorney for Respondents
Four Executive Boulevard
Suite 100
Suffern, New York 10901

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

In the Matter of	
LENA BODIN, LYNDA GELLIS, LAURIE GESSNER, JOHN PORTA, CHONOCH LUDMIR, CHEDVA LUDMIR, SANDRA SOLOMON, WILLIAM ABRAMSKY, BARBARA ABRAMSKY, ELF LAWRENCE AHEARN, HILLCREST FIRE COMPANY No. 1, BARRON WALL, SUSAN HITO SHAPIRO, as Executor for the Estate of SONYA SHAPIRO, and SUSAN HITO SHAPIRO, as Executor for the Estate of MILTON B. SHAPIRO,	Index No: 322/116 (Walsh, J.)
Petitioners-Plaintiffs,	**AMENDED VERIFIED ARTICLE 78 PETITION AND COMPLAINT**
For a Judgment pursuant to Article 78 of the CPLR,	
- against -	
THE PLANNING BOARD OF THE TOWN OF RAMAPO, THE TOWN BOARD OF THE TOWN OF RAMAPO, THE TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC, 46-52 WADSWORTH TERRACE CORP., NEWFIELDS ESTATES, INC., SCENIC DEVELOPMENT SM, LLC, and KEY BANK NATIONAL ASSOCIATION,	
Respondents-Defendants.	

Petitioners-Plaintiffs LENA BODIN, LYNDA GELLIS, LAURIE GESSNER, JOHN PORTA, CHONOCH LUDMIR, CHEDVA LUDMIR, SANDRA SOLOMON, WILLIAM ABRAMSKY, BARBARA ABRAMSKY, ELF LAWRENCE AHEARN, HILLCREST FIRE COMPANY No. 1, BARON WALL, and SUSAN HITO SHAPIRO, as Executor for the Estates of SONYA and MILTON B. SHAPIRO ("Petitioners"), by their attorneys, Zarin & Steinmetz, as and for its Verified Amended Petition and Complaint herein, respectfully allege, as follows:

SUMMARY OF ACTION

1. Petitioners should not have to commence legal action every two (2) years just to get the Town of Ramapo ("Town") Planning Board to lawfully and rationally undertake its review responsibilities for the proposed Patrick Farm development project (the "Project"), in connection with real property located on the east side of Route 202, 0 feet south of Route 306, which is known and designated on the Ramapo Tax Map as Sections 32.11-1-12, 32.11-1-13, 32.11-1-14, 32.11-1-16, 32.11-1-2, 32.11-1-3, 32.11-1-4, and 32.14-2-3 (the "Site").

2. Petitioners only seek to have the Planning Board rationally discharge its most basic duties under both the Town Code and the New York State Environmental Quality Review Act ("SEQRA") to ensure that the Project's impacts are commensurate with the Site's constraints and that the Project will not otherwise significantly adversely impact the Petitioners.

3. Yet, once again, Petitioners find themselves compelled to resort to legal redress because, despite the fact that the Rockland County Supreme Court, Justice Thomas E. Walsh III presiding, has already *twice* found fault with the Planning Board's review of the Project, the Planning Board, once again, engaged in a hasty and ill-considered review of the Project, failing to rationally address critical areas of environmental concern, including with respect to wetlands, public drinking water supplies, substantial alteration of scenic views along designated scenic roadways, community character, and public safety.

4. Thus, Petitioners commence this proceeding pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR") to annul, vacate and set aside three (3) Decisions issued by the Planning Board, which were filed with the Town Clerk on January 28, 2016, in connection with applications for the Project by Scenic Development and Scenic Development LLC (the "Applicant") for: (i) Revised Final Subdivision Approval for a Project

Entitled Patrick Farm Subdivision (the "Revised Final Plat Approval"); (ii) Revised Final Site Plan Approval for a Project entitled Patrick Farms Condominiums (the "Revised Condominium Site Plan Approval"); and (iii) Final Site Plan Approval for a Project Entitled Patrick Farm Volunteer Housing (the "Revised Volunteer Housing Site Plan Approval," collectively, with the Final Plat Approval and the Condominium Site Plan Approval, the "Subject Decisions").

5. Petitioners are also challenging the Planning Board's SEQRA Findings Statement, prepared by Tim Miller Assocs., which, upon information and belief, were also filed with the Town Clerk on January 28, 2016 (the "SEQRA Findings"). Copies of the Subject Decisions and the SEQRA Findings are annexed hereto as Exhibit "A."

6. Petitioners are also challenging the Planning Board's and the Town Board's respective refusal to rescind their determinations respecting the Project despite the fact, that as set forth in a letter to both Boards, dated September 1, 2016 (the "September 1st Letter"), it has become apparent that their respective determinations were premised on significant misinformation, including:

(a) On July 15, 2016, the New York State Department of State ("DOS") issued a finding that the Town of Ramapo "is not administering and enforcing the State Uniform Fire Prevention and Building Code (the 'Uniform Code') in accordance with minimum standards." The deficiencies highlighted by the DOS letter establish that the Planning Board's refusal to address the ongoing concerns of the Fire Company was irrational. Moreover, the DOS Letter calls into question the Planning Board's reliance on the review done by Town Fire Inspector, Adam Peltz;

(b) The United States Environmental Protection Agency ("EPA") confirmed in writing in April 2016, after the Boards' respective actions for the Project, that the entire Patrick Farm overlies the EPA Sole Source aquifer – contrary to the findings contained in the Boards' respective SEQRA determinations.

(c) Two (2) hydrogeologists have submitted testimony confirming the EPA's findings and highlighting the critical hydraulic connection between the on-site wetlands and the Federal Sole Source Aquifer, as well as a New York State Primary Aquifer.

(d) In March 2016, which, again, was after the actions of the respective Boards, the Applicant confirmed Petitioners' contention that there is at least an 8.26 acre increase in the wetlands on-Site, as compared to the 6.44 acre increase considered by the Boards. As such, it is now beyond dispute that your Boards underestimated the amount of on-site federal wetlands when they adopted the Findings Addenda, which formed the basis of the Approvals.

(e) Application paperwork, upon which the actions of the respective Boards were based, is inaccurate. The affidavit of ownership for one of the lots, for example, is signed on behalf of a corporation that was dissolved in 2012, and required corporate ownership disclosures for all lots are missing.

(f) A Rockland County Department of Health ("RCDOH") Letter states that for population impacts "[a]ll calculations should be based on the number of bedrooms for each residential structure." This letter should be read in conjunction with the Planning Board's failure to follow the Town's own definition of bedroom in determining population and population impacts.

(Copy of the September 1st Letter, and the correspondence and other documentation cited therein, is annexed hereto as Exhibit "G".)

7. By way of background, the Applicant's efforts to overdevelop the Site in disregard of its limitations, and the Town's acquiescence to this course, have spawned multiple legal proceedings.

8. Over 3½ years ago, Justice Walsh annulled the Planning Board's approvals for the Project for failure to follow legal review requirements. See In re Bodin, et al. v. Planning Board of the Town of Ramapo, et al., Index No. 149/12 (Sup. Ct. Rockland Co. Sept. 10, 2012) (the "2012 Bodin Decision," copy annexed hereto as Exhibit "B") and In re Shapiro et al. v. Planning Board of the Town of Ramapo et al., Index No. 159/12 (Sup. Ct. Rockland Co. Sept. 10, 2012) (the "2012 Shapiro Decision," copy annexed hereto as Exhibit "C").

9. On remand, however, the Planning Board once again gave short shrift to the Project's environmental impacts, including ignoring incontestable proof that the Applicant's representations that the wetlands on the Site had been properly mapped were false.

10. In fact, when issuing their prior approvals and land use decisions, the Town Board and Planning Board knew or should have known that the amount of federal wetlands were grossly misrepresented by the Applicant.

11. These Boards ignored the warnings of the Town's own engineer that "[d]uring a site visit, the presence of wetlands was apparent which are not shown on the plan" and that the Applicant refused to get a Jurisdictional Determination from the Army Corps of Engineers ("ACOE") because it "all but admitted [that it] knows there are acres of additional wetlands on the site."

12. The Town Board and Planning Board also ignored the many experts who confirmed the Town Engineer's warnings and who also attested to the fact, and provided supporting evidence, that Applicant and its consultants had submitted incomplete and inaccurate wetland mapping.

13. As such, approximately two (2) years after the Rockland Supreme Court remanded the Project back to the Planning Board, Justice Walsh, once again, was compelled to remand the Project back to the Board, this time to, *inter alia*, address the Project's flawed wetlands delineation. See In re Bodin, et al. v. Planning Board of Ramapo, et al., Index No. 726/13 (Sup. Ct. Rockland Co. May 14, 2014) (the "2014 Bodin Decision," copy annexed hereto as Exhibit "D") and In re Shapiro, et al. v. Planning Board of the Ramapo, et al., Index No. 753/13 (Sup. Ct. Rockland Co. May 14, 2014) (the "2014 Shapiro Decision," copy annexed hereto as Exhibit "E").

14. One would think that, having twice been directed by the Court to rationally and legally review the Project, the Planning Board, at long last, would.

15. Unfortunately, in blatant disregard for, among other things, the tremendous waste of judicial resources their recalcitrant behavior causes, the Applicant and the Planning Board, once again, studiously avoided grappling with the Project's impacts, much less formulate rational means for avoiding or mitigating these impacts, as required by law.

16. Unsurprisingly to Petitioners, following remand after the 2014 Bodin and Shapiro Decisions, the Applicant's "re-investigation" of wetlands on the Site that are regulated by the Army Corps of Engineers ("ACOE"), showed, as Petitioners had long alleged, substantially more wetlands than either the Applicant or the Planning Board had ever recognized.

17. In fact, the newly disclosed wetlands were precisely in the areas previously identified by Petitioners as missing wetlands.

18. By the Applicant's own admission, there are 6.44 acres more -- or approximately 35% more -- wetlands "within the area of development" on the Site than either it or the Board had previously acknowledged.

19. This admission, however, still underreports to the Planning Board the actual amount of the new wetlands that were revealed in ACOE Jurisdictional Determination.

20. Lot-by-lot calculations in the Applicant's subdivision plat yield an even higher amount of federal wetlands within the area of development. (Affidavit of Stephen M. Gross, sworn to Dec. 21, 2015 ("Gross Aff.," copy annexed hereto), ¶ 26.)[1]

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[1] The Gross Affidavit was provided to the Planning Board by Petitioners. Mr. Gross has 35 years of experience in land use and environmental assessment, including 30 years of experience in field delineation and the assessment of wetlands under federal, state, and municipal regulatory schemes. (See Gross Aff., ¶¶ 1-2.)

21. "When the amount of wetland within each individual lot is added together the resulting total just within the proposed lots is 28.15 acres, not the 24.89 acres represented in the Findings Addendum." (Id.)

22. These discrepancies in existing wetland acreage are the result of the information provided by the Applicant in different parts of its most recent submission, and the direct and indirect adverse impacts to these newly designated federal wetlands and waters, can only be resolved with supplemental environmental review. (See Gross Aff., ¶¶ 25-27).

23. As Petitioners explained to the Planning Board, the Applicant continues to improperly disclose to the Planning Board the true amount of the difference in the wetlands from that which was previously disclosed and that considered during the subject environmental review.

24. In addition, despite Petitioners admonitions, the Planning Board refused to even consider the Project's impacts on wetland buffer and upland areas, which perform critical environmental functions and which the Board was required to consider under the Town Code.

25. Because of these basic analytic flaws, the Planning Board lacked the necessary empirical foundation for its simplistic and erroneous conclusion that, because the Project was slightly modified following the Applicant's new ACOE wetland mapping, the Project would have fewer environmental impacts.

26. In fact, inasmuch as the Project now indisputably adjoins a greater amount of wetlands than previously recognized (and almost certainly even more than the Planning Board recognized), the Project's wetland disturbance has increased.

27. Moreover, the Planning Board completely failed to account for the Project's potential impacts on an Aquifer that provides drinking water for thousands.

28. Instead, the Planning Board relied on the Applicant's erroneous representation that the Site does not overlie the Mahwah River Valley Aquifer.

29. In fact, as Petitioners explained to the Planning Board the report relied on by the applicants to support this gross misstatement was based on outdated information and new updated United States Geological Survey ("USGS") GIS maps indisputably show that portions of the Site do, in fact, overlie the Mahwah River Valley Aquifer.

30. In addition, the Site comprises a substantial portion of the watershed and recharge area directly east of the Aquifer and headwaters of the Mahwah River and is in the protected area identified in the Town's Aquifer Protection Zone Map.

31. Similarly, in adopting the subject SEQRA findings the Planning Board failed to rationally analyze the Project's full range of impacts by relying on unjustifiably low projections of the number of people who would live at the Site, to the detriment of the environment and public safety.

32. While the Board's analysis was premised on the assumption that each condominium unit would only have four (4) bedrooms, the Applicant's own architectural plans for the condominium townhouses show that each unit would effectively have at least seven (7) bedrooms pursuant to the Town Code's own definition of the term "bedroom", as well as very large basements, which could easily be converted to additional bedrooms or even accessory apartments.

33. The Planning Board also improperly granted the Subject Decisions without first requiring the Applicant to fulfill the requirements of the conditional zone change applicable to the Site.

34. Accordingly, the Town Board and the Planning Board ignored their fundamental legal responsibilities, including:

a) SEQRA: The Town Board and the Planning Board, again, shirked their responsibilities under the State Environmental Quality Review Act ("SEQRA") to issue Findings that reflect a rational consideration of the Project's impact on areas that fall within the Boards' respective jurisdictions under State and Town law. See 6 N.Y.C.R.R. § 617.11(c).

b) Site Plan Review Law: The Planning Board, again, failed to fulfill its basic duty under Town Code Section 376-91 to ensure that the Project "will not represent significant impact on the environment or result in a waste of the land and other natural resources of the Town" and to otherwise "take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the prospective occupants of the proposed development and of the immediate neighborhood in particular."

c) Aquifer Protection Law: The Planning Board's violation of the Town's Aquifer Protection Law was even worse than its previous transgressions because this time it did not even acknowledge the fact that the Site overlies a critical Aquifer, which the Project will adversely impact.

d) Failure To Implement Conditions of Site Rezoning: The rezoning of portions of the Site to the higher density MR-8 was conditioned upon the Applicant's fulfillment of several conditions, which the Planning Board failed to implement.

e) Violation of Scenic Roads Law: The Planning Board failed, inter alia, to fulfill its obligation under the Law to require that "the important scenic and natural features of the site will be substantially preserved" or that "[e]xisting vegetation shall be preserved to the maximum extent possible. In fact, the approved plans indicate that the majority of the Site will in fact be clearcut, re-graded and permanently disturbed.

f) Planning Board Lacked Jurisdiction To Grant Subject Final Plat Approval: The Planning Board lacked jurisdiction under the Town's Subdivision Regulations to even consider, much less review and approve, the Applicant's Final Subdivision Plat because the Applicant's Preliminary Plat Approval has long since expired. The Applicant was required by the Town's Subdivision Regulations to resubmit a new plat for preliminary approval before the Planning Board can lawfully grant Final Subdivision Plat Approval.

35. For these and other reasons, the Court, respectfully, should vacate the Subject Decisions and both the Town Board's and the Planning Board's SEQRA Findings.

THE PARTIES

36. Petitioner-Plaintiff Lena Bodin resides at 40 Scenic Drive, Suffern, New York 10901, in the Town of Ramapo, County of Rockland.

37. Bodin's property is directly adjacent to the Site. She would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

38. Moreover, the Columbia Gas pipeline is approximately 400' from Bodin's property. Respondents' failure to resolve the fire safety issues relating to the Project, particularly in relation to the Columbia Gas pipeline, could adversely impact her.

39. Bodin obtains potable water from United Water. There is a groundwater protection zone adjacent to the Site established by Rockland County for two of United Water's groundwater supply fields. Respondents' failure to resolve issues relating to Aquifer and wetland protection could also adversely impact Bodin.

40. Respondents' failure to properly consider the Project's impacts on newly disclosed wetlands and buffer areas on the Patrick Farm Site could also particularly impact Bodin, as there is a stream on Bodin's property that connects to streams/wetland areas on the Patrick Farm site. Improper wetland delineation, which may cause improper filling of wetland areas, and the Board's failure to consider wetland buffer impacts, could exacerbate the backup flooding that now regularly occurs on the Bodin property.

41. Petitioner-Plaintiff Lynda Gellis resides at, and owns the property at, 623 Route 306, Suffern, New York 10901, tax lot number 32-11-1-8-0-0, in the Town of Ramapo, County of Rockland.

42. Gellis' property is directly adjacent to the Site and located within the Town's Scenic Road District. She would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

43. Gellis would be directly and uniquely impacted by the Project, including because she draws water from a private well, which could be adversely impacted as the result of Respondents' failure to address issues relating to Aquifer, groundwater and wetland protection.

44. Petitioner-Plaintiff Laurie Gessner resides at, and owns the property at, 627 Route 306, Suffern, New York 10901, tax lot 32-11-1-5-7, in the Town of Ramapo, County of Rockland.

45. Gessner's property is within 500' of the Site and located within the Town's Scenic Road District. She would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

46. She would also be directly and uniquely impacted by the Project, including because she draws water from a private well, which could be adversely impacted as the result of Respondents' failure to resolve issue relating to aquifer, groundwater and wetland protection.

47. Gessner's property would also be adversely impacted by the Project's adverse, unstudied aesthetic and visual impacts, particularly from the proposed Volunteer Housing Site Plan, which is in close proximity and would be obtrusively visible from her property.

48. Gessner could also be adversely impacted by Respondents' failure to rationally consider traffic impacts relating to the Project in light of their failure to rationally project the Project population.

49. Petitioner-Plaintiff John Porta resides at, and owns the property at, 19 Hidden Valley Drive, Suffern, New York 10901, tax lot number 32.15-1-51, in the Town of Ramapo, County of Rockland.

50. Porta's property is directly adjacent to the Site. He would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

51. Porta would be directly and uniquely impacted by the Project, including because he draws water from a private well, which could be adversely impacted as the result of Respondents' failure to resolve issues relating to Aquifer, groundwater, and wetland protection.

52. Porta also would be adversely impacted by the Project's unstudied, adverse aesthetic impacts.

53. Petitioners-Plaintiff Sandra Solomon reside at, and own the property at, 28 Scenic Drive, Suffern, New York 10901, tax lot number 32-15-2-6-0-0, in the Town of Ramapo, County of Rockland.

54. Solomon's property is directly adjacent to the Site. She would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

55. Solomon also receives water from United Water. Respondents' failure to address, much less to resolve, the issues relating to the Aquifer, groundwater, and wetland protection could adversely impact her water supply.

56. Upon information and belief, Respondents' failure to properly consider the Project's impacts on newly disclosed wetlands and buffer areas could particularly impact Solomon, as a stream that runs alongside and on their property backs up and overflows on their property because the stream no longer flows freely at the Patrick Farm.

57. Petitioners-Plaintiffs Chonoch and Chedva Ludmir reside at, and own the property at, 38 Scenic Drive, Suffern, New York 10901, tax lot number 32.14-2-5, in the Town of Ramapo, County of Rockland.

58. The Ludmirs' property is directly adjacent to the Site. The Ludmirs would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts.

59. The Ludmirs also receive water from United Water. Respondents' failure to address, much less to resolve, the issues relating to the Aquifer, groundwater, and wetland protection could adversely impact their water supply.

60. Upon information and belief, Respondents' failure to properly consider the Project's impacts on newly disclosed wetlands and buffer areas on the Site could particularly impact the Ludmirs.

61. Petitioner-Plaintiffs William and Barbara Abramsky reside at 4 Cottage Lane, Suffern, New York 10901, tax lot number 32.07-1-16, in the Town of Ramapo, County of Rockland.

62. The Abramskys would be directly and uniquely impacted by the Project, including as the result of the Project's unstudied, adverse aesthetic and increased population impacts

63. The Abramskys draw water from a private well, which could be adversely impacted as the result of Respondents' failure to resolve issues relating to Aquifer, groundwater, and wetland protection.

64. The Abramskys could also be adversely impacted by Respondents' failure to consider flooding impacts relating to the Project.

65. Petitioner-Plaintiff Elf Ahearn resides at 236 Haverstraw Road, Montebello, New York 10901, tax lot number 48.13-1-18, in the Town of Ramapo, County of Rockland.

66. Ahearn's property is located west of the Site along Route 202 (also known as Haverstraw Road), downstream and across from the Mahwah River.

67. Ahearn has previously witnessed and suffered the impacts of flooding from the Mahwah River.

68. Ahearn could be adversely impacted by the Project, including, in particular, its ill-considered wetland impacts, which could greatly exacerbate the downstream flooding.

69. Petitioner-Plaintiff Hillcrest Fire Company No. 1, is a fire and emergency response organization that protects over 10,000 residences and businesses in an area of about thirty-six (36) square miles, the largest fire district in Rockland County.

70. Hillcrest Fire Company No. 1's main offices are located at 300 North Main Street, Spring Valley, NY 10977.

71. Hillcrest Fire Company No. 1 also has a fire station that directly abuts the Site, at 631 Route 306 Suffern, New York 10901.

72. Hillcrest Fire Company No. 1 would be directly and uniquely impacted by the Project, including because of the Respondents' failure to properly assess population projections for the Project, which could seriously compromise Hillcrest Fire Company No. 1's ability to respond to emergencies at the Site.

73. Hillcrest Fire Company No. 1 would also be adversely and uniquely impacted by Respondents' failure to resolve issues relating to vehicular access, the natural gas pipeline located on the Project site, water pressure, and the design of the Project's proposed dwellings.

74. Hillcrest Fire Company No. 1 would be the "first-responder" in the case of an emergency at any of the Project's proposed dwellings.

75. The Respondents' failure to address the critical issues outlined above could compromise Hillcrest Fire Company No. 1's ability to respond to emergencies at the Project Site, and endanger residents, visitors, and responders from Hillcrest Fire Company No. 1.

76. Petitioner-Plaintiff Barron Wall resides at 926 Haverstraw Road, Suffern, New York, 5 Prosperity Drive, Suffern, New York, Tax Lot 32.17-2-7, in the Town of Ramapo, County of Rockland.

77. Wall's property is across Route 202 from the Site and just downstream along the Mahwah River.

78. Wall's only egress from her property is via a bridge over the Mahwah River, which has already failed in prior recent floods, completely stranding the prior owner.

79. Wall could be directly and uniquely impacted by the Project, in particular in connection with the wetland and flooding issues that could arise as the result of Respondents' failure to analyze and mitigate all wetland impacts associated with the Project.

80. Petitioner Susan Hito Shapiro is the Executor for the Estate of Milton B. Shapiro and the Estate of Sonya Shapiro (the "Estate"), which own the property and home located at 34-36 Scenic Drive, Suffern, NY 10901, ("Estate Property") 89/32-15-2-4, where the Shapiros resided for over 44 years.

81. Dr. Sonya and Milton Shapiro died on May 19, 2014 and October 20, 2015, respectively.

82. The Estate Property is located within thirty feet (30') of the Site and within 200 feet of wetlands that are at issue.

83. The Appellate Division has twice held that the Shapiros had standing to raise Article 78 challenges regarding environmental matters on the Patrick Farm, and that due to the Estate's proximity to the Patrick Farm Site, the Shapiros were not required to allege particularized harm (See Shapiro v Town of Ramapo, 98 A.D.3d 675 (2d Dept .2012) and Chestnut Ridge v Town of Ramapo, 45 A.D.3d 74 (2d Dept. 2007).

84. In any event, a stream that runs alongside the Estate Property that is directly connected to newly delineated wetlands.

85. Respondents' failure to properly consider the Project's impacts on newly disclosed wetlands and buffer areas directly and uniquely impacts the Estate, which, upon information and belief, could suffer flooding.

86. The Estate would also suffer adverse, unmitigated community character and increased population impacts as the result of the Project.

87. Respondent/Defendant, the Planning Board of the Town of Ramapo (the "Planning Board"), is a land use review agency established by the Town Board, with offices at Town Hall, 237 Route 59, Suffern, New York 10901.

88. Respondent/Defendant, the Town Board of the Town of Ramapo (the "Town Board"), is the elected body of the Town, with offices at Town Hall, 237 Route 59, Suffern, New York 10901.

89. Respondent/Defendant, the Town of Ramapo (the "Town"), is a duly organized municipality existing by and under the laws of the State of New York, with offices at 237 Route 59, Suffern, New York 10901.

90. Upon information and belief, Respondent-Defendant Scenic Development, LLC ("Scenic") is a limited liability company organized under the laws of the State of New York, having offices at 404 East Route 59, Nanuet, New York 10954 and 3 Ashel Lane, Monsey, New York 10952, and is the Applicant underlying the Subject Decisions.

91. Upon information and belief, Respondent-Defendant 46-52 Wadsworth Terrace Corp. is an inactive domestic business corporation, which has offices at 451 Broadway, Brooklyn, New York 11211, is listed in official records as the owner of parcels in the Town, including some or all of the parcels comprising the Site.

92. Upon information and belief, Respondent-Defendant Newfield Estates Inc. is a domestic business corporation organized under the laws of the State of New York, with a service address of 30 Park Avenue, Monsey, New York, 10952, a mailing address of P.O. Box 1047, Monsey, New York 10952, and offices at 28 Ashel Lane, Monsey, New York 10952, is the owner of parcels in the Town, including some or all of the parcels comprising the Site.

93. Upon information and belief, Respondent-Defendant Scenic Development SM LLC is a limited liability company organized under the laws of the State of New York, having offices at 3 Ashel Lane, Monsey, New York 10952, is an applicant for the Project and is the owner of some or all of the parcels comprising the Site.

94. Upon information and belief, Respondent-Defendant KeyBank National Association ("Keybank"), which has offices located at 66 South Pearl Street, Albany, New York 12207, has a mortgage interest on the Site.

95. On or about December 30, 2015, KeyBank was granted summary judgment on its motion to foreclose against the Applicant. (See Keybank Nat'l Ass'n v. Scenic Dev. SM LLC, et al., Index No. 034663/2014 (Sup. Ct. Rockland Co. Dec. 30, 2015) (Loehr, J.) (copy annexed hereto as Exhibit "F").

JURISDICTION

96. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents/Defendants in this matter.

97. Pursuant to CPLR Section 506(b), venue is proper in this Court. The determinations complained of were made and the material events took place in the County of Rockland, which is situated within the Ninth Judicial District.

98. While Petitioners' challenges to the 2011 and 2013 Planning Board Decisions raised some of the same issues as are being raised herein, no prior application for this or any similar relief with respect to the Subject Decisions or the Planning Board's SEQRA Findings has been made to this or any other Court.

STATEMENT OF FACTS

The Site

99. The Patrick Farm subdivision is approximately 197 acres of mostly forest, bushland, and wetlands, located on the east side of route 202, 0 feet south of Route 306, which is

known and designated on the Ramapo Tax map as Sections 32.11-1-2, 32.11-1-3, 32.11-1-4, 32.11-1-12, 32.11-1-13, 32.11-1-14, 32.11-1-16 and Section 32.14-2-3.[2]

100. The Site overlies the Ramapo-Mahwah Aquifer, a protected Sole Source Aquifer ("SSA") designated by the United States Environmental Protect Agency ("EPA"), 57 Fed. Reg. 39201 (August 28, 1992).

101. The Aquifer is also designated a "Primary Water Supply Aquifer" by the New York State Department of Environmental Conservation ("DEC") and the New York Department of Health, and provides drinking water for most of Rockland County and parts of northern New Jersey.

102. Patrick Farm lies at the headwaters of the Mahwah River, which has been the source of significant downstream flooding, and includes two of its designated tributaries, as well as other on-site streams flowing towards the Mahwah River.

103. The Site is adjacent to a Rockland County established groundwater protection zone for at least two of United Water's groundwater well fields that provide public drinking water.

104. Due to its importance and location within the Ramapo-SSA protection zone, overlaying the recharge fields and headwaters of the Ramapo-Mahwah SSA, the EPA has identified the Site as an Environmentally Sensitive Area ("ESA"), it is included within the Town's Conservation Development overlay, and substantial portions of the Site are included in the Town's Aquifer and Well Field Protection Zone and Scenic Road District.

Town's Comprehensive Plan Places
Site In A Conservation Development Overlay

105. In January 2004, the Town adopted a Comprehensive Plan.

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[2] In the original SEQRA Findings and the Town board's recent adoption of a Findings Addendum on September 17, 2015 the Site is listed as 208.5 acres and includes Lot 32.11-1-15.

106. Although Plan recommended the downzoning of the majority of Patrick Farm from R-80 (approximately one home per two acres) to R-40 (approximately one home per acre), it included the site within a "Conservation Development" overlay, requiring "conservation techniques aimed at protecting environmental resources."

107. The Comprehensive Plan also recommended that sites over the Ramapo-Mahwah Aquifer, like the Patrick Farm, be included in a "Special Resource Overlay Zoning" district.

108. The Comprehensive Plan called for Patrick Farm to remain low density, in order to protect the ESA and SSA, noting the aquifer's sensitivity to contamination and its importance to drinking water supplies.

109. The Comprehensive Plan further recommends "where the Town Board decides that rezoning low-density residential areas...is warranted to meet housing needs... it should do so in a manner that retains the low-density suburban character of the area. Consistent with this would be rezoning a property from the R-40 to the R-25 district (i.e., not the R-15 or R-15C District which allow two-and three-family dwellings at a considerably higher overall density)" and certainly not the MR-8 designation that the Town Board ultimately approved in the Zone Change.

Scenic Applies for Zone Change and Amendment To Town's Comprehensive Plan To Accommodate its High Density Housing Proposal

110. Scenic, which purchased the land in 2002, originally planned to build 139 single-family homes on the site.

111. In 2004, ACOE issued a Cease and Desist Order against Scenic for unauthorized filling and disturbance of waters of the United States on Patrick Farm.

112. On or about February 1, 2007, ACOE closed the Cease and Desist Order.

113. On or about May 5, 2008, Scenic abandoned its plans for 139 homes and instead submitted an application to the Town Board to amend the Comprehensive Plan and approve a zone change allowing for a 497 high density housing development, including 314 townhouses with 4-6 bedrooms, 72 condominium units, 24 rental apartments, and 87 single-family homes on the Site.

114. To accommodate this dense Project, the Applicant requested that approximately 63 acres of the Site be rezoned from R-40 to MR-8 (Multi-family-8 homes per acre).

115. Substantial portions of the Site, including the Project's high-density multi-family housing, are included in the Town's Scenic Road Overlay District, and in the Town's Aquifer and Well Field Protection Zone.

116. In May of 2008, the Town Board declared itself Lead Agency in connection with the Amendment to the Comprehensive Plan and Rezoning Application submitted by Applicant.

117. On June 25, 2008, the Lead Agency adopted a Final Scoping Document ("Final Scoping") "to serve as the foundation for the identification of all potentially significant adverse impacts" associated with the Project.

118. Under "Wetlands" the Final Scoping required the Applicant to include in the Environmental Impact Statement ("EIS") the "[l]ocation and description of all wetlands, wetland buffers, and watercourses...These are to include Federal, State and local wetlands and the connections of the various wetlands should be shown to protect the overall integrity of the wetlands infrastructure", and to "[d]elineate and flag the boundary of all State and Federal

Jurisdictional Wetlands .... [b]oundaries to be confirmed by the permit agencies." (See Final Scoping Document).

119. The April 15, 2009 DEIS states: "As the Lead Agency, the Town of Ramapo Town Board has primary responsibility for review of this application and for determining its conformity with Town regulations. The following reviews, permit and approvals would be necessary to implement the action: Federal U.S. Army Corps of Engineer Nationwide Permit and 'Wetlands Jurisdictional Determination' ('ACOE JD')." (DEIS, at 1-42 and 2-17.)

The Town Board's SEQRA Review, Approval Of An Amendment To The Town's Comprehensive Plan And Zone Change From R-40 To MR-8

120. On January 25, 2010, the Town Board adopted a Findings Statement pursuant to SEQRA (the "Town Board's SEQRA Findings). It "attests to the fact" that the DEIS was prepared "in accordance with a scoping outline adopted by the Town Board", despite the fact that ACOE's confirmation of the federal wetlands boundaries was clearly missing. It also incorrectly finds that the Project "will not impact any ACOE wetlands and ACOE 'waters of the United States'".

121. In addition, the Town Board's SEQRA Findings also inaccurately states that "[n]o disturbance is proposed for the wetland communities on site."

122. On the same date, the Town Board overrode various Rockland County Planning Department General Municipal Law comments; and amended the Town's Comprehensive Plan and adopted the zone change from R-40 to MR-8 as requested by Applicant.

123. Estate Petitioners challenged the SEQRA Findings, the Amendments to the Comprehensive Plan and Zone Change approval, which is now on appeal.

124. For years, Petitioners have contended that the Town had erroneously approved the Applicant's EIS as complete and accurate, even though the EIS omitted a required ACOE Jurisdictional Determination.

Planning Board Improperly Approves Preliminary Subdivision In 2011

125. The Applicant submitted a Preliminary Subdivision, Preliminary Condominium Site Plan and Preliminary volunteer Housing Site Plan in June, 2010.

126. On January 6, 2011, the Planning Board approved the Preliminary Subdivision and they amended this decision on March 8, 2010.

127. Petitioners challenged the Preliminary Subdivision approval, which is now on Appeal.

Planning Board Improperly Approves Project In 2011

128. In what has become a recurring pattern, the Planning Board engaged in an unseemly rush to approve the Project in 2011.

129. The Applicant submitted three (3) substantial development plans to the Planning Board on or about November 9, 2011.

130. The Planning Board unreasonably set a Public Hearing for the Subject Decisions on or about December 13, 2011, which gave affected agencies and members of the public little real opportunity to review the submissions.

131. In its comments to the Town, its own planning consultant made a point of noting "the limited time allotted for review of a project of this size." (Memorandum to Anthony Mallia, Town Director of Building, Planning & Zoning from John F. Lange, Senior Associate for Planning, Frederick P. Clark Associates, Inc., dated Nov. 17, 2011 ("November 17th Town Planner Memo."), at 2.)

132. Members of the affected public also expressed concern about the extremely abbreviated opportunity the Planning Board afforded for comment on the subject Site Plan and Final Plat determinations.

133. The Board, for example, was advised that "[t]here has not been sufficient time for the public to obtain all the public records related to this application and more importantly, there has not been adequate time for the public to be able to read and prepare comments for the public hearing." (Letter to Planning Board from Deborah Munitz, Ramapo Organized for Sustainability and a Safe Aquifer ("ROSA"), dated December 14, 2011 (the "December 14th ROSA Letter".)

134. "The fact that ROSA and individual citizens have been pouring over incomplete submissions only hours before a public hearing is totally unreasonable and a violation of the public trust." (December 14th ROSA Letter.)

135. Moreover, throughout the underlying proceedings, the Planning Board would only afford affected members of the public three (3) minutes to speak on three (3) extremely large and complex records involving voluminous documentation.

136. The Planning Board, however, refused to extend the Hearing to allow for deliberate review of the subject Site Plan and Final Plat determinations.

It Was Evident In 2011 That There Were More Wetlands On The Site Than The Applicant Or The Planning Board Acknowledged

137. Petitioners made extensive submissions and requested that all prior records be made part of the Administrative Record for the Planning Board to consider during its Hearings on the 2011 Decisions documenting that the wetlands on the Site were more extensive than either the Applicant or the Planning Board acknowledged.

138. Petitioners highlighted to the Planning Board the post-SEQRA Site visit of the Town's Engineer, Ed Moran, and his conclusion that there were unmapped wetlands:

> During a site visit, the presence of wetlands was apparent which are not shown on the plan. A wetlands specialist should be sent out for a current delineation. A wetlands delineation map should be created showing flagged points. This will then have to be certified by the appropriate agencies.

(Letter to Town Community Design Review Committee from Ed Moran, Town Engineer, dated July 12, 2010.)

139. Petitioners also provided proof from the Town Engineer that this omission was intentional: "The applicant is adamant that he'll fight us if we insist on a new delineation from the Corp and all but admitted to me that it's because he knows there are acres of additional wetlands on the site." (Electronic Mail to Naomi Handell, ACOE from Ed Moran, Town Engineer, April 12, 2010.)

140. Petitioners provided substantial proof to corroborate the Town Engineer's conclusion that Applicants had omitted wetlands from its wetland mapping.

141. For example, Petitioners submitted the Affidavit of Andrew Willingham, P.E., which established that the wetlands on the Site had been delineated "in crude, incomplete, and inaccurate fashion," such that "the project's environmental impacts have not been properly assessed and the Applicant ha[d] not shown that the project meets the Town of Ramapo's basic zoning requirements." (Affidavit of Andrew Willingham, P.E., sworn to April 20, 2011, at ¶6.)

142. It is incredible that 5 years later, Petitioners still need to make the same point.

143. Willingham's analysis was corroborated by analysis provided by the senior wetland consultant at Copeland Environmental LLC. (See Kim Copenhaver, Copeland

Environmental LLC, "Aquatic Resource Review of the Patrick Farm Proposed Residential Development," Dec. 5, 2011 ("Aquatic Resource Review").)

144. The Copenhaver Aquatic Resource Review raised multiple deficiencies relating to the Applicant's wetland delineation of the Site.

145. The Aquatic Resource Review, for example, pointed out that the wetland delineation did not appear to have been flagged, and that there was no surveyed wetland boundary.

146. "Direct impact and indirect impacts to protected aquatic resources cannot be assessed accurately without clearly flagged and surveyed aquatic resource boundaries." (Aquatic Resource Review at 2.)

147. The Planning Board was also advised that "[t]here are no wetlands shown along the majority of the riparian areas associated with the streams on site," which is "highly unlikely." (Aquatic Resource Review at 2.)

148. Again, it is incredible that 5 years later, Petitioners are compelled to make these same points.

In 2011, Planning Board Also Failed To Rationally Consider Project's Impacts On The Impacted Aquifer

149. Petitioners also advised the Planning Board that its Site Plan Review in connection with its 2011 Decisions failed to comply with the Town's Aquifer Protection Law.

150. Then, as now, in granting the subject Site Plan Approval, the Planning Board failed to Review the Project's Regulated Activities under the Aquifer Protection Law including, for example, its automobile parking and underground storage.

151. As such, in granting the 2011 Decisions, the Planning Board failed to address the potential for the Project's Regulated Activities to degrade public drinking water

supplies through the introduction of petroleum products from automobiles, as it was required to by the Aquifer Protection Law.

152. Incredibly, the Planning Board's handling of this issue has actually gotten worse, because now it will not even acknowledge that the Site resides over and adjacent to the critical Mahwah River Valley Aquifer.

Petitioners Raise Significant Public Health, Safety & Welfare Concerns In 2011

153. Petitioners also expressed significant concerns to the Planning Board about fire safety issues relating to the Project in connection with the 2011 Decisions relating to site planning issues and the fact that the Columbia Gas pipeline runs through the Site.

154. As events in Rockland County have shown, residential development in close proximity to gas pipelines poses significant inherent risks to the public health, safety, and general welfare. See Steve Lieberman et al., "2 Firemen Burned in Gas Explosion," The Journal News, Jan. 17, 2012, at A1; see also Akiko Matsuda & Laura Incalcaterra, "Blast uncovers loophole," The Journal News, Jan. 20, 2012, at 1A; Laura Incalcaterra et al., "Probes focus on gas blast at house," The Journal News, Jan. 19, 2012, at 1A; Laura Incalcaterra, "Dig started without OK, O & R says," The Journal News, Jan. 18, 2012, at 1A.

155. Fire Safety officials and volunteer fire fighters expressed significant concerns about the Project.

156. The Town's Chief Fire Inspector, for example, stated that "[a]fter the gas transmission line disaster in California, and additional more recent gas line explosions, the distance to dwellings from the gas line should be increased, if possible." (Memorandum to Anthony Mallia, Director of Building, Planning & Zoning, from Thomas Buckley, Jr., Chief Fire Inspector, re: Patrick Farm Subdivision, dated Nov. 1, 2011.)

157. Similarly, Hillcrest Fire Company No. 1, which is a volunteer firefighting unit with a firehouse located immediately adjacent to the Site, advised that "[a]fter a meeting [with the Applicant's Consultant] that took place earlier this month, it became apparent that we have major concerns with the project as designed as it pertains to fire and safety." (Letter to Town C.D.R.C., carbon copy to Planning Board Chair, from Chief Lloyd Hovelman, Hillcrest Fire Company No. 1, received by Town Nov. 17, 2011.)

158. The Hillcrest Fire Company No. 1's consultant also expressed concerns about the location of dwelling units in such close proximity to the Columbia Gas pipeline, stating that "[y]ou need to keep in mind that the radiant heat from a high-pressure gas leak may be a challenge that exceeds the FD's resources to deal with, even with extensive mutual aid." (Letter to Chief Lloyd Hovelman, Hillcrest Fire Company No. 1, from Alfred J. Longhitano, P.E., dated December 20, 2011 ("December 20th Longhitano Letter"), at 2.)

159. The Hillcrest Fire Company No. 1's consultant noted that "[t]he radiant heat [from a pipeline fire] can be lethal as much as 1500 feet away." (December 20th Longhitano Letter, at 2.)

160. The Rockland County Office of Fire and Emergency Services, reporting on a Meeting with the Applicant's Consultant, and the Hillcrest Fire Company No. 1, stated that "[t]he general consensus at this meeting was that the recommendations that the Ramapo Chiefs made were being ignored and that the concerns that the Hillcrest Line Officers currently have regarding the Patrick Farms Subdivision are not being addressed." (Letter to Leonard Jackson & Associates, carbon copy to Planning Board, from Gordon Wren, Jr., Director, Rockland County Office of Fire and Emergency Services, dated Dec. 8, 2011 ("December 8th Rockland County Office of Fire and Emergency Services Letter").)

161. Again, incredibly, notwithstanding two adverse Court Decisions, the Planning Board continues to ignore the Project's clear potential significant adverse impacts and, 5 years later, Petitioners are compelled to reiterate these same points.

Planning Board Issues The Illegal 2011 Decisions

162. Notwithstanding the multiple outstanding issues, the Planning Board closed the Public Hearing on the 2011 Decisions on December 14, 2011, and left a brief window, until December 21, 2011, for the submission of written comments.

163. The Planning Board irrationally and arbitrarily issued the Subject Decisions at its December 27, 2011 Meeting.

164. The Subject Decisions were filed in the Office of the Town Clerk on December 28, 2011.

Petitioners Compelled To Commence Legal Challenge To 2011 Decisions

165. Because they stood to be directly and terribly impacted by the adverse impacts posed by the Project approved by the Planning Board in its 2011 Decisions, Petitioners were compelled to seek legal redress.

166. By Verified Petition and Complaint, dated January 26, 2012, and by Amended Verified Petition and Complaint, dated February 14, 2012, Petitioners duly commenced a legal challenge to the 2011 Planning Board Decisions.

Court Annuls 2011 Decisions

167. Following briefing and argument before the Court, the Court annulled the 2011 Planning Board Decisions in the 2012 Bodin Decision (copy annexed hereto as Exhibit "B") and in a decision in the 2012 Shapiro Decision (Copy annexed hereto as Exhibit "C").

168. The Court annulled the 2011 Planning Board Decisions because the Town's practice of having Site Plans reviewed by the C.D.R.C. after final approval conflicted with "the letter of the law, which is consistent with good planning principles, [] that design review not be deferred, and that the Planning Board have the benefit of design review before considering final approval." (2012 Bodin Decision, slip op. at 5.)

169. Additionally the Court annulled the 2011 Planning Board Decisions because Planning Board failed to implement conditions precedent to placement of MR-8 zoning on the Site, holding that the "Planning Board should have made control of common areas by a homeowners association a condition of final approval." (2012 Shapiro Decision, slip op. at 6)

170. Because the Court did not accept certain other claims raised by Petitioners, Petitioners have respectfully filed a Notice of Appeal in connection with the 2012 Bodin and 2012 Shapiro Decisions.

On Remand, In 2013, The Planning Board Continues To Fail To Conduct Rational Analysis

171. Following the 2012 Bodin Decision, the Applicant submitted a new Final Subdivision Application because it "ha[d] been advised that the New York State Supreme Court annulled the Patrick Farm Subdivision Approval pending review by the Town of Ramapo Architectural Review Board and reconsideration by the Town of Ramapo Planning Board." (See Leonard Jackson Associates, Narrative Summary: Patrick Farm Subdivision, dated Feb. 7, 2013, at 1.)

172. The Applicant also sought new approval of the Project's Site Plans.

173. A complete set of Petitioners' papers filed in connection with the 2012 Bodin Decision were included in the Planning Board's Administrative Record.

174. At a Public Hearing on the Applicant's new application, on or about January 16, 2013, Petitioners and others advised the Planning Board that it still lacked the empirical information that it needed to make rational decisions.

175. In fact, as Petitioners noted, the gaps in the Planning Board's empirical record had become even more glaring since the 2011 Decisions because it had become even more obvious that the Applicant had not properly mapped the wetlands on the Site.

176. The United States Army Corps of Engineers ("ACOE") stated in no uncertain terms, by letter dated January 7, 2013, that ACOE had never made a Jurisdictional Determination.

177. That is to say, that despite the Applicant's representations to the contrary, ACOE made it unambiguously clear before the Planning Board issued the 2013 Decisions, that the scope of federally regulated wetlands on the Site was unknown since it had never issued a Jurisdictional Determination.

178. Without complete information on the scope of federally regulated wetlands on the Site, the Planning Board had no rational basis to fulfill its review responsibilities under the Town Code and SEQRA.

179. Moreover, the New York State Department of Environmental Conservation ("DEC") had specifically advised the Applicant, in a letter that was copied to the Planning Board, that it required an ACOE Jurisdictional Determination for "the full scope of the project as currently proposed." (Letter to Applicant from DEC, dated Jan. 3, 2013.)

180. In addition to this correspondence, other evidence, including Affidavit testimony previously presented by Petitioners and the information provided by the Town's own engineer also showed that the Project's wetland impacts had not been fully analyzed.

181. At the January 16th Public Hearing, Planning Board Members appeared uncomfortable with the Project and the information that had received it connection with it.

182. Consequently, the Board required additional information pertaining to issues including, but not limited to, ACOE review of the Project.

183. The Hillcrest Fire Department also advised the Planning Board that it still lacked critical information pertaining to public, health, safety, and welfare.

184. By letter dated January 29, 2013, the Hillcrest Fire Department advised the Planning Board that it "vehemently opposes the Planning Board taking any action to approve the proposed site plan and subdivision for the Patrick Farm without first addressing our concerns regarding fire protection issues for the proposed development."

185. The Fire Department expressed comprehensive comments on the Project's fire safety flaws, including relating to the Columbia Gas Pipeline, the need for wider access roads, and the potential for increased occupation of the Project.

186. The Planning Board never received complete or accurate information about these or other issues affecting the Project prior to issuing its 2013 Decisions.

187. Notwithstanding the multiple outstanding issues, the Planning Board closed the Public Hearing on the 2013 Decisions without resolving the critical issues raised by Petitioners and others.

188. The Planning Board irrationally and arbitrarily issued the 2013 Decisions, which are dated March 22, 2013, and which were filed in the Office of the Town Clerk on March 22, 2013.

Petitioners Commence A Legal Challenge To The 2013 Decisions

189. Because of the harm directly posed to them by the Planning Board's continuing failure to rationally address the Project impacts, Petitioners were, again, compelled to seek legal redress.

190. By Verified Petitions and Complaints, dated April 19, 2013 (Bodin III), and April 22, 2013 (Shapiro IV), Petitioners duly commenced legal challenges to the 2013 Planning Board Decisions.

Even After It Becomes Beyond Dispute That The Applicant Had Not Completely Mapped The Site's Wetlands, The Planning Board Adheres to Its Irrational 2013 Decisions

191. Subsequent to Petitioners filing of the Petition challenging the 2013 Planning Board Decisions, it became even more apparent that the Applicant's representations that it had completely mapped the wetlands on the Site were not true.

192. By Letter dated May 16, 2013, ACOE explicitly confirmed that, in reality, it had never "reviewed and accepted the delineation shown by the Applicant's professionals."

193. In fact, the May 16, 2013 ACOE Letter states that the Applicant did not call to ACOE's attention construction "which appears to involve potential fill in waters of the United States on the Patrick Farm Site." (See May 16th ACOE Letter at 1 (emphasis added).)

194. Accordingly, Petitioners requested that the Planning Board rescind the 2013 Decisions in light of the May 16, 2013 ACOE Letter.

195. Petitioners had every reason to expect that the Board would agree to their request to avoid wasting scarce judicial resources since the May 16th ACOE Letter made it indisputable that the Planning Board lacked the necessary empirical evidence for its 2013 Decisions.

Court Suspends 2013 Decisions

196. Surprisingly (or, perhaps, unfortunately unsurprisingly), the Planning Board rejected Petitioners' request that it rescind the 2013 Decisions in light of the May 16th ACOE Letter.

197. Accordingly, Petitioners were compelled to amend their claims, and duly served and filed an Amended Verified Petition and Complaint, dated July 12, 2013.

198. Petitioners' allegations included the now obvious fact that the Planning Board had improperly acted before all the wetlands on the Site had been mapped.

199. Incredibly, the Applicant continued to argue that there was no issue affecting the Planning Board's wetland analysis, despite ACOE's clear confirmation that wetlands on the Site that were subject to its jurisdiction had never been delineated.

200. The Applicant argued, for example, that an ACOE Jurisdictional Determination was just a technicality, and even went so far as to assert "the ACOE's May 16, 2013 letter does not constitute a repudiation of the delineation relied upon by the Town Board." (See Affidavit of Mark A. Chertok, dated January 31, 2014.)

201. Following briefing and argument before the Court, the Court suspended the 2013 Planning Board Decisions in the 2014 Bodin Decision (copy annexed hereto as Exhibit "D") & 2014 Shapiro Decision (copy annexed hereto as Exhibit "E")

202. As the Court held, "[i]t is clear now, if it was not before, that the ACOE ha[d] not issued a formal jurisdictional determination for the Patrick Farm development in its current form" (2014 Bodin Decision, at 5; see also 2014 Shapiro Decision, at 5.)

203. Accordingly, the Court suspended the approvals given by the 2013 Decisions, and, again, remitted the Project back to the Planning Board "for its consideration of whether the approvals should be confirmed, rescinded, or conditioned in any way." (Id. at 7.)

Once Again, On Remand, The Planning Board Continues To Fail To Conduct Rational Analysis

204. It would have been reasonable to assume that, having twice had its review of the Project faulted by the Court, the Planning Board would have proceeded only once it was finally assured that all of the Project's impacts had been identified, addressed, and avoided or mitigated as the law requires.

205. Again, Petitioners respectfully submit that when and if the Planning Board were ever to undertake the analysis required by the Town Code and SEQRA, the Board would significantly reduce and/or modify the Project to more rationally comport with the Site's constraints.

206. That is to say, if the Planning Board had the information the Town Code and SEQRA required that it possess when making its determinations here, it could, and rationally would, have required substantive changes to the proposed layout and Site Plans.

207. Disappointingly, however, the Planning Board continued to evade its legal responsibilities in its most recent review of the Project.

Continuing Failure To Account For All Wetlands On-Site

208. By the applicant's own admission in the Findings Addendum, the Applicant had previously accounted for only 18.45 acres of wetlands.

209. Following remand from the 2014 f and Shapiro Decisions, by the Applicant's own admission, its reinvestigation confirmed that, there were 6.44 acres more -- or

approximately 35% more -- wetlands on the Site than the Board had previously recognized. (Gross Aff., ¶ 24.)

210. As Petitioners advised the Planning Board, however, the Applicant continued to misrepresent the amount of newly discovered wetlands on the Site. (Gross Aff., ¶¶ 24-28.)

211. For example, on the map certified by ACOE there are 1.82 acres of riparian wetlands, which were not previously delineated and should have been part of Table 1 – Wetland Comparison Table - of the Findings Addendum presented to Town Board and the Planning Board.

212. As such, the Applicant underreported the increase in the newly delineated wetlands in comparisons to previous submissions (i.e., it was an increase of at least 8.26 acres, which is a 45% increase).

213. Moreover, lot-by-lot calculations in the Applicant's subdivision plat show an even higher amount of wetlands within the area of development.

214. When the amount of wetland within each individual lot is added together the resulting total within the proposed lots is 28.15 acres, which is 9.7 acres more than originally disclosed, an increase of 53%. (See Bulk Table Comparison submitted by Deborah Munitz; see also Gross Aff. ¶ 28).

215. Again the applicant underreports the increase for the purposes of SEQRA and only showed 24.89 acres of total wetlands in the Findings Addendum adopted by the Town Board, which the Planning Board relied upon for its SEQRA Findings. (See Town Board Findings Addendum Table 1).

216. These discrepancies in existing wetland acreage is the result of the information provided by the Applicant in different parts of its current submission.

217. The direct and indirect adverse impacts to these newly designated federal wetlands and waters, can only be resolved formally with supplemental environmental review. (See Gross Aff., ¶¶ 25-27).

218. Under Town Code Section 237-6, a wetland is not limited to only federal and state delineated wetlands but to any "area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as 'hydrophytic vegetation.'"

219. Under this Town Code definition, when areas of submergent or emergent vegetation within the identified stream/tributary corridors and the wetland pond are added, there is an increase of 14.02 acres or over 76% over the 18.45 acres originally identified during the SEQRA review and in the DEIS and FEIS. (See Gross Aff. ¶¶ 27-28).

Continuing Failure To Address Wetland Buffer Impacts

220. As Petitioners also advised the Planning Board, it lacked the requisite objective factual basis it needed to act because the Town Board's analysis failed to account for the Project's potential significant adverse impacts on wetlands and wetland buffer and upland areas.

221. The Planning Board irrationally accepted at face value the Applicant's representations in the Findings Addendum, which were prepared by the same consultant that submitted the prior inaccurate wetland information.

222. Moreover, the Planning Board, comprised of two (2) new members, made its decision to immediately adopt its SEQRA Findings without any analysis or review of the new testimony submitted in writing challenging the accuracy of the Findings Addendum and requesting supplemental review.

223. Impacts to wetlands and their buffers are squarely within the Planning Board's jurisdiction pursuant to the Town Code. (See Town Code § 376-91(E) (obligating the Planning Board, *inter alia*, to ensure that the Project will not adversely impact natural resources and otherwise be in harmony with the natural environment).)

224. Even if wetland buffer impacts did not fit squarely with the regulatory jurisdiction under the Town Code, the Planning Board would still be obligated to consider such impacts as an area of environmental concern under SEQRA.

225. As the Court of Appeals has clearly held, SEQRA review and individual agency permitting processes are "distinct avenues of environmental review." Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d 219, 851 N.Y.S.2d 76, 83 (2007).

226. Thus, even if an area of environmental concern does not fit within a specific permitting scheme, this does not relieve agencies of their obligation to the implications of impacts to such areas of environmental concern.

227. Accordingly, the Planning Board was obligated by SEQRA to assess the Project's wetland buffer impacts.

228. As explained in the accompanying Affidavit of Stephen Gross, "[e]ssentially all wetland benefits are dependent upon and inseparable from the condition of the surrounding upland areas, regardless of whether they are regulated as a 'wetland buffer' or 'adjacent area' by any interested agency." (Gross Aff., ¶ 15.)

229. Surrounding upland areas perform innumerable environmental functions, including, but not limited to, preventing and/or mitigating "the disturbance to wetlands by removing stormwater-carried sediments, binding dissolved nutrients, and removing contaminants from both stormwater and groundwater through plant uptake and biological breakdown." (Gross Aff., ¶ 16.)

230. As such, impacts to upland areas affect the wetlands to which they are connected. Indeed, the Project's impacts on wetland buffer areas pose a variety of significant adverse environmental impacts:

> "The impact of the project upon wetland disturbance from the grading, clearing, and converting of the adjacent upland area will therefore likely include, but will not be limited to, increased sedimentation, increased nutrient loading, increased fluctuation in temperatures, driving a number of wildlife species from the wetland, and the possible "extinction" of one or multiple wildlife species from the wetland.

(Gross Aff., ¶ 23.)

231. Without considering impacts to buffer areas at the Project Site, the Planning Board could not rationally assess wetland impacts or other impacts the Project may have on natural resources.

Continuing Failure To Address Project's Impacts
On Aquifer, Which Provides Drinking Water To The Public

232. The SEQRA Findings presented to the Planning Board by the Applicant incorrectly rely on the mistaken statement in the Town Board's SEQRA Addendum that "the Patrick Farm Site does not overlie the Mahwah River Valley aquifer as identified by the USGS and NYSDOH." (See SEQRA Findings Addendum, prepared by Tim Miller Assocs., dated September 17, 2015, adopted by Town Board on September 17, 2015 ("Town Board Findings Addendum"), at 3.)

233. As Petitioners advised the Planning Board, in fact, USGS GIS maps indisputably show that the northwestern portion of the Site overlies the Mahwah River Valley Aquifer, which is one of just seventeen (17) aquifers in New York State. (Affidavit of Paul Rubin, sworn to Dec. 18, 2015 ("Rubin Aff.," copy annexed hereto), ¶¶ 16-17.)[3]

234. In fact, the Site comprises a substantial portion of the watershed and recharge area directly east of the Mahwah River Valley Aquifer and headwaters of the Mahwah River. (Rubin Aff., ¶ 10.)

235. The Applicant's Environmental Assessment Form ("EAF") submitted during SEQRA unequivocally states the Patrick Farm is location over primary, sole source aquifer. (See EAF at response to Question 9.)

236. United Water states that the Site is within the "designated Ramapo Sole Source Aquifer".

237. Moreover, upon information and belief, the Town has not amended its official Aquifer Protection Zone Map, which is relevant under the Aquifer Protection Law as to the extent of the protected Aquifer and the areas regulated under the law.

238. Upon information and belief, the Town's official Aquifer Protection Zone Map still shows substantial portions of this Site are in the regulated area of the Aquifer Protection Law which was established to protect the Aquifer, recharge areas and public drinking water wells all of which are relevant to this Site.

239. The Town Board's erroneous conclusion that the Site is not on top of the Aquifer, which the Planning Board improperly relied upon, was apparently prompted by the

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[3] Petitioners provided the Planning Board with the Rubin Affidavit. Rubin is a hydrogeologist, hydrologist and geologist with thirty-four (34) years of professional experience, with specialized experience in both surface water and groundwater hydrology. (See Rubin Aff., ¶¶ 1-2 & resume accompanying the Rubin Affidavit.)

Applicant's use of older maps, which the USGS subsequently corrected. (Rubin Aff., ¶¶ 17-19 & 23.)

240. Moreover, subsequent field reconnaissance by the USGS clearly shows that much of the Site is mantled by permeable sediments, which readily provide recharge and groundwater flow to the Mahwah River Valley Aquifer. (Rubin Aff., ¶ 19.)

241. In reality, the entire Site warrants protection, including because significant portions of it provide recharge to the groundwater flow system and Aquifer. (Rubin Aff., ¶¶ 19-22.)

242. The large-scale development contemplated by the Project would significantly alter the natural recharge and groundwater flow within the Project area. (Rubin Aff., ¶ 7.)

243. Moreover, the Project would change natural recharge to the Mahwah River Valley Aquifer, would alter the subsurface flow of groundwater to existing water supply wells, and would greatly increase the risk of groundwater contamination. (Id.)

244. The Planning Board did not consider any of this information, either, in issuing its Findings Addendum.

245. On December 23, 2015, Petitioners filed an amended Article 78 Petition challenging the Town Boards Findings Addendum of September 17, 2015, which is the first time this incorrect finding was adopted by a Town Board.

Project Modifications May Actually
Result In Increased Impacts

246. The Planning Board also mistakenly relied upon the Town Board's simplistic and erroneous conclusion that "the change in the wetland delineation and the redesign

of the Patrick Farm project . . . . decreases potential environmental impacts." (See SEQRA Findings at 2.)

247. The Planning Board lacked the requisite objective factual basis to make this determination, including for the reasons set forth above.

248. Moreover, even with a decreased lot count and the relocation of certain structures, the Project still places units directly at the edge of wetland resources, and may actually locate development in areas where it will have a greater impact upon wetland resources. (Gross Aff., ¶ 34.)

249. In fact, inasmuch as the proposed development indisputably adjoins a greater amount of wetlands than previously recognized (and almost certainly impacts even more than the Town Board recognized in its Findings Addendum), the Project's wetland disturbance has increased. (Gross Aff., ¶ 34.)

Failure To Recognize That The Applicant's Submissions Showed That The Project Would Have A Much Larger Population -- And, As A Corollary, More Impacts – Than Stated

250. The Planning Board also failed to rationally project the number of people who will be living at the Site under the current plans, which raises troubling issues relating to public health, safety, and general welfare, including relating to fire safety and the ability to provide emergency services.

251. It is evident that the Town Board, which the Planning Board erroneously relied upon, "grossly underestimated" the number of residents who would reside in the Project. (Gross Aff., ¶ 38.)

252. The Town Board's analysis, which the Planning Board relied upon, was erroneously premised on the assumption that each unit only would have four (4) bedrooms. (Gross Aff., ¶ 40.)

253. The Town Code, however, defines a "bedroom" to be "[a]ny habitable space in excess of 100 square feet, other than a living room, dining room, bathroom, hallway or kitchen." (Town Code, § 376-5.)

254. On the only floor plans provided by the Applicant for the Project's 299 town houses, there are four rooms labeled "bedroom" plus other rooms that are each at least 100 square feet and, thus, meet the definition of a "bedroom" under Ramapo's Zoning Code. (See Floor Plans for Proposed Residences-6 Unit Bldg. Patrick Farms Town House (A)).

255. In particular, the plans submitted by the Applicant during the Project's architectural review show, in addition to the four rooms identified as a "bedroom" on the third floor, multiple other rooms that are not listed as "bedrooms" but which clearly meet the Town Code definition of "bedroom" including: a play room on the second floor, a guest room, and an exercise/computer room on the first floor.

256. Accordingly, there are at least seven (7) "bedrooms" pursuant to Town Code in each town house, as opposed to the four (4) bedrooms disclosed during the Project's SEQRA review.

257. Moreover, there is a large room, well exceeding the 100 square foot minimum, labeled "family room," which would also meet the definition of bedroom under the Town Code, technically constituting an eighth bedroom.

258. Thus, in reality, the architectural plans for the condominium townhouses show that each unit effectively has at least seven (7) bedrooms under Town Code Section 376-5,

as well as very large basements, which could easily be converted to additional bedrooms or even accessory apartments. (Gross Aff., ¶ 42; see also Affidavit of Peter Gessner, President of the Hillcrest Fire Department, sworn to Dec. 18, 2015 ("Gessner Aff.," copy annexed hereto), ¶¶ 5-10 & 31-55 (discussing how population "projections in the [Town Board's SEQRA] Findings Addendum completely fail to address the facts revealed by the Project's post-SEQRA architectural review" (emphasis added).)

259. As the Rockland County Department of Health specifically advised the Applicant, however, "[a]ll calculations should be based on the number of bedrooms for each residential structure and be consistent with architectural plans if they are available." (Letter to Leonard Jackson, P.E. from Samuel Rulli, P.E., Senior Public Health Engineer, dated Oct. 8, 2013 (emphasis added).)

260. As explained by the President of the Hillcrest Fire Department, Peter Gessner, "[p]roper population and occupancy projections, along with Project design, are the linchpins and necessary for proper fire safety and emergency planning in order to protect life and property." (Gessner Aff., ¶ 4.)

261. Higher population projections implicate a number of issues that the Board needs to consider, including, but not limited to, rational fire safety planning and precautions, staffing and equipment requirements for emergency services, water demand, availability, and sizing, and access issues, which are of extreme concern for a Project that effectively only has one point of ingress. (See Gross Aff., ¶ 11-15.)

262. By law, the Planning Board should have taken steps to keep the population at the Site to levels that emergency services can safely manage, including, ensuring that basements are not converted to dwelling units.

263. Had the Planning Board properly considered population based on the Applicant's architectural plan and the Town Code, it could have reduced the number of units or the number of floors within each unit.

264. This would have allowed the Project to forgo "excess" units and/or bedrooms (i.e., the ones that would host populations that the SEQRA documentation did not account for) and, thereby allowed development further away from the gas pipeline and wetlands and required substantially less tree clear cutting, as well as increasing road widths as requested by the Fire Department.

265. As the Hillcrest Fire Department advised the Board, the ceiling height in the basements can and should be "reduced slightly so that they are below the minimum required for habitable space." (Letter to Planning Board from John G. Erzen, Chief of Department, Hillcrest Fire Co. No. 1., dated Jan. 16, 2016.)

266. "This slight reduction in height would still allow basements to be used for heating, electrical, storage, etc., but not for apartments." (Id.)

267. Also, by way of example, the Planning Board could and should have required the Applicant to place deed restrictions on the lots it indicates would be used for single-family homes to prevent them from being used for multiple dwellings. (Id. at 1-2.)

Planning Board Issues The
Subject Decisions And SEQRA Findings

268. Rather than addressing the fundamental issues raised by Petitioners and others, the Planning Board once again rushed through its review and avoided grappling with the critical issues posed by the Project.

269. Indeed, once again, it allowed the affected public only three (3) minutes each to speak, which is patently insufficient for such a large Project.

270. The public did not have an opportunity to review submissions filed just before or during the public hearing and in fact some agencies, such as the NYSDEC and ACOE had not even made comments on this new application. For this latter reason the CDRC advised the applicant that they were not ready for planning board approval.

271. Notwithstanding the multiple outstanding issues, on or about January 26, 2016, the Planning Board closed the Public Hearing on the Subject Decisions and adopted SEQRA Findings without addressing and/or resolving the critical issues raised by Petitioners and others.

272. The Planning Board also irrationally and arbitrarily issued the Subject Decisions, which were filed in the Office of the Town Clerk on January 28, 2016.

Even After It Becomes Apparent That The Town Board And The Planning Board Acted Based Upon Significant Misinformation, The Boards Fail To Take Corrective Action

273. As set forth in Petitioners' September 1st Letter to the Town Board and Planning Board, both Boards' respective actions for the Project were premised upon significant misinformation.

Both Boards' SEQRA Determinations Based On Misinformation Concerning the Site's Aquifers

274. The conclusions in the Boards' SEQRA determinations that the Patrick Farm Site does not overlie the Mahwah River Valley aquifer" has since been clearly contradicted by the EPA, which is the Federal agency that defined the boundaries of the Federal Ramapo Mahwah Sole Source Aquifer ("SSA").

275. The EPA has confirmed that the *entire* site is over this SSA.

276. After the Findings Addenda were adopted by your Boards, on April 11, 2016, the Director of EPA's Clean Water Division, Region 2 confirmed that the entire Patrick

Farm "is well within the eastern portion of the Ramapo Sole Source Aquifer." (See emails from EPA and maps provided, attached to the September 1st Letter.)

277. When the EPA designated the Ramapo SSA, the EPA found that it is a "sole source of drinking water for the aquifer service area; there are no viable alternative drinking water sources of sufficient supply; and, if contamination were to occur, it would pose a significant hazard to the public health." (See Federal Register, Vol. 57, No. 168, Aug. 28, 1992, p. 39201, attached to the September 1st Letter.)

278. In addition, at least 14.7 acres of the Site overlies the New York State Ramapo-Mahwah Primary Aquifer ("Ramapo Primary Aquifer"), which was designated a Primary Water Supply Aquifer in 1990. (See N.Y.S. D.E.C. Division of Water Technical & Operational Guidance Series ("TOGS") 2.1.3, dated October 23, 1990; see also Affidavit of Paul A. Rubin, Hydrogeologist, Hydrologist and Geologist, and President of HydroQuest, dated June 24, 2016 (the "Rubin Aff.," copy attached as Exhibit "D" to the September 1st Letter, ¶¶ 5-14.)

279. Primary Water Supply Aquifers are "[h]ighly productive aquifers presently being utilized as sources of water supply for major municipal water supply systems." (TOGS, 2.1.3 p. 2.)

280. As explained in the Rubin Affidavit, the Patrick Farm overlies not just one, but two aquifers used for public drinking water supplies. (Rubin Aff., ¶¶10-26.)

The Boards' Respective Failures To Recognize The Site's Aquifers Resulted In Flawed Analysis of the Project's Impact On Wetlands That Are Hydraulically Connected to These Aquifers

281. As discussed more fully in the Affidavits of hydrogeologists Paul Rubin and Katherine Beinkafner, which were attached to the September 1st Letter, new evidence makes clear that the Patrick Farm wetland system, whose recognized boundaries were increased

significantly after the ACOE JD was finally obtained[4] (the "Western Wetlands System"), overlies the Federal Ramapo SSA ("SSA") and is hydraulically connected to and recharges the SSA, as well a NYS Primary Aquifer (See Exhibits D and E to the September 1st Letter).

282. The Rubin Affidavit details and confirms the hydraulic connection between the Western Wetland System and the two underlying aquifers used for public water supply.

283. An affidavit from hydrogeologist Katherine Beinkafner corroborates Mr. Rubin's expert opinion.

284. The Rubin Affidavit details multiple pathways of hydraulic connectivity as follows:

a. Vertical Hydraulic Connectivity to SSA: The Site impacts the Aquifers through a vertical connection between the wetlands and the SSA through unconsolidated and partially stratified surficial deposits overlying bedrock that are present beneath the wetland pond system and provide recharge (i.e., infiltration) downward into the underlying bedrock of the SSA used by residents in the area. (See Rubin Aff., ¶¶ 27-a, 28-48);

b. SSA Bedrock to Primary Aquifer: The SSA directly underlying and hydraulically connected to the Western Wetland System is also hydraulically connected to the Primary Aquifer by fractures that connect the SSA bedrock aquifer to the Ramapo Primary Aquifer. (See Rubin Aff., ¶¶ 27-b, 49-54);

c. SSA Shallow Groundwater Flow: Shallow subsurface flow from the Site recharges both the underlying SSA and the down-gradient Primary Aquifer used for public water supply, constituting a critical hydraulic connection between the wetlands and the Aquifers on the Site. (See Rubin Aff. ¶¶ 21, 27-c, 52-54); and

d. Surface Water Flow: The mapped wetland areas in the western Project are hydraulically contiguous and connected with the central ponded wetland, all of which funnel streamflow directly down-gradient to the Primary Aquifer which is used for public water supply. (See Rubin Aff., ¶ 27-d, 55-56.)

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[4] It was not until the Applicant finally sought the long-missing Jurisdictional Determination from the United States Army Corps of Engineers ("ACOE JD") that the magnitude of missing wetlands was disclosed. The Town's engineer confirmed in writing that the Applicant would "fight" obtaining an ACOE JD and "all but admitted" that it was "because he knows there are acres of additional wetlands on the site." (See previously submitted email from Ed Moran to ACOE dated April 12, 2010).

285. Due to the erroneous aquifer findings in the Board's respective SEQRA determinations, the Town Board, and subsequently the Planning Board, respectfully, could not have taken the "hard look" required by SEQRA at the relationship of the Site's wetlands and the Aquifers underlying the Site.

286. Had the Town Board provided notice of the proposed Findings Addendum and allowed an opportunity for public review, this egregious error could have been substantially avoided.

Deficiencies In Application

287. The updated Application dated, December 2, 2015 (the "Application", annexed to the September 1st Letter as Exhibit "F"), as well as prior Applications, upon which the approval was granted, misrepresent the ownership of a portion of the Site.

288. Moreover, the Application was incomplete with respect to required disclosure information relating to corporate ownership for all portions of the Site.

Purported Owner Of Lot Is A Dissolved Corporation

289. The identified owner of one of the lots making up the Patrick Farm Site is a corporation that no longer existed at the time of the Application.

290. The Application states that lot 7 (32.11-1-12) is owned by "Forty Six-Fifty Two Wadsworth Terrace Corp." (See Application, p. 4 – "Affidavit of Ownership & Owner's Consent Affidavit Patrick Farm SUBDIVISION Tax Lots" – Item #2.)

291. "Forty Six-Fifty Two Wadsworth Terrace Corp.," however, does not appear ever to have been listed by the Department of State as a corporation – active or inactive.

292. A corporation identified as 46-52 Wadsworth Terrace Corp., and listed on the deed for this lot, was dissolved by proclamation on June 12, 2012, which was well before the Application was filed. (See Exhibit "H" to the September 1st Letter.)

293. A corporation dissolved by proclamation or otherwise can "carry on no business except for the purpose of winding up its affairs" N.Y. Bus. Corp. L §1005(a)(1). Inasmuch as the Application was filed on behalf of an owner that legally does not exist, respectfully, the Application is flawed *ab initio*.

294. The filing of an Application on behalf of a non-existent corporation is not a mere technicality. Rather it raises basic issues relating to the application, such as what entity would be responsible for implementing the conditions required by the respective Boards.

Application Is Fundamentally Incomplete

295. The Affidavit of Ownership form requires that, if the owner is a corporation, all shareholders of 5% or more be identified:

> If owner is a corporation, fill in the office held by deponent and name of corporation, and provide a list of all directors, officers and stockholders owning more than 5% of any class of stock.

(See Exhibit "F" to the September 1st Letter.)

296. This information, however, has neither been supplied on this Application nor any prior Application as required by §21.B.2 and §23.A.8 of the Subdivision Regulations of the Town of Ramapo.

297. Again, this omission is not a mere technicality, but, instead, raises basic issues relating to the Application, such as what entity would be responsible for implementing the conditions required by your respective Boards

298. Moreover, within the Application there are numerous blanks in the ownership paperwork that are indicated as being required on the application.[5]

Erroneous Method For Determining Project Population Count

299. While the Planning Board had before it all information it needed to make a rational and lawful projection of the Project's anticipated population, correspondence from the RCDOH highlights the impropriety of the Board's ultimate miscalculation on this point. (Copy of RCDOH Letter attached to September 1st letter as Exhibit G)

300. Here, the criteria set forth in the Town Code should be used for calculating population and related environmental impacts of this population.

301. The Town Zoning Code System §376-6(15) defines "bedroom" as "any habitable space in excess of 100 square feet, other than a living room, dining room, bathroom, hallway or kitchen."

302. Under that definition, the floor plans submitted during post-SEQRA architectural review reveal that the townhouses have at least seven (7) bedrooms.

303. During the SEQRA review, the Developer used a four-bedroom estimate for these units.

304. This underestimation of bedrooms not only impacts the population estimate but also undermines the findings with respect to impacts of that population including, but not limited to, water, sewer, and traffic.

305. A new population estimate is included in the Findings Addenda adopted by the Town Board and the Planning Board.

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[5] For example, the dates that the land was acquired are missing, as well as the liber and page of each conveyance as required on each owner affidavit; there are multiple Affidavits of Ownership in the Application (for example, see Exhibit F instructions on page 2 and ownership affidavit on page 6).

306. It was arbitrary, capricious and irrational for the Boards to reconsider the projected population using some of the newly provided post-SEQRA information (i.e., a slight reduction in the number of units in the new plans) but not all of the new information that would impact the re-estimation of population.

307. Specifically, it was irrational to ignore the Town's statutory definition of "bedroom" and the architectural review floor plans that were submitted during the Court's mandated architectural review.

Recent Action By The State And The Disciplinary Action Against The Fire Inspector That Reviewed The Plans Underscore the Need For Rational Consideration Of Fire Safety Concerns, Including Those Raised By The Hillcrest Fire Company

308. On July 15, 2016, the DOS issued a finding that the Town of Ramapo is "is not administering and enforcing the State Uniform Fire Prevention and Building Code (the "Uniform Code") in accordance with minimum standards." (See Exhibit "A" to the September 1st Letter.)

309. The deficiencies highlighted by the DOS letter call into question the Planning Board's irrational refusal to address the ongoing concerns of the Fire Company as well as the review done by Town Fire Inspector, Adam Peltz.

310. Again, upon information and belief, Mr. Peltz was subject to disciplinary action, which included a suspension and a demotion, in connection with his fire safety reviews. (See Exhibit "B" to the September 1st Letter.)2

311. The Hillcrest Fire Company has raised a myriad of concerns over time regarding the safety of the Patrick Farm residents and all first responders.

312. Examples of these concerns include, but are not limited to: plan details (i.e., building spacing, access roads, insufficient parking, construction details, maneuverability);

population concerns; concerns regarding future lot and basement conversions and accessory apartments (as referenced on architectural plans); appropriate deed restrictions, and; the presence of the high pressure gas pipeline bisecting the entire project without federally recommended buffers and guidelines.

313. In March of 2015, the prior Fire Inspector, Tom Buckley, raised at least ten (10) different fire safety concerns related to the post-ACOE JD plans.

314. When Mr. Peltz prepared his January 7, 2016 review for the C.D.R.C., however, he issued a mere one line statement "I have reviewed the plans for the above site and have no comments at this time."

315. Mr. Peltz did not address any of the open comments from the prior Town Fire Inspector or the Fire Company. (See Exhibit "I" to the September 1st Letter.)

316. Upon information and belief, during a pre-disciplinary investigation, Mr. Peltz admitted to signing off on inspections that he never actually conducted.

317. Regardless, Mr. Peltz's so-called review of this complex and expansive Project is woefully deficient, suggesting an extreme lack of actual review, and, as such, cannot be relied upon.

318. Additionally, in light of recent evidence concerning post-approval conduct by other developers in the Town,[6] the Planning Board should have re-considered the Fire Company's requests to attach deed restrictions to the Project to insure that individual townhouses (including their basements) are not subdivided to allow for additional apartments and that lots approved for single family homes are not converted to other uses.

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[6] We understand, for example, that in April 2016, the Town was advised that the developer of a previously approved project, known as Viola Estates, was not constructed according to the Site Plan. Rather, the Viola Estates developer was adding basements and/or accessory apartments to the single-family units that had been approved. (See Exhibit "J" to the September 1st Letter.)

319. Here, the architectural plans submitted clearly refer to an "ACCESSORY APT" (emphasis in original).

320. While the Planning Board has not approved accessory apartments as part of this Project, it should exercise its authority to prohibit such conversions that could double (or more) the population of this Project, especially where population density has been a major concern since the initial SEQRA review.

Applicant Confirms That Both Boards' Relied Upon Erroneous Wetland Calculations

321. An Affidavit submitted by the Applicant in connection with ROSA's challenge to the Town Board's Findings Addendum states that, as the result of the Court mandated United States Army Corps of Engineers ("ACOE") wetlands delineation, there are actually 8.26 acres of additional wetlands on the Site, rather than the 6.44 acres of additional wetlands considered by the Boards in connection with the subject Approvals. (See Affidavit of Greg Fleisher, sworn to March 10, 2016, ¶ 10 (affirming that "[t]he increase to th[e] number [of ACOE regulated wetlands on-Site] based on the 2014 ACOE [Jurisdictional Determination] is 8.26 acres (6.44 acres of principal wetland and 1.82 acres of riparian wetland); compare Town of Ramapo Memorandum of Law, dated March 3, 2016, at 7 (stating that Applicant's 2015 applications were "[b]ased upon the 6.44 acre increase in wetlands" recognized to be on-Site) (relevant pages of both the Fleisher Affirmation and the Town Memorandum of Law are annexed to the September 1st Letter as Exhibit "K").)

322. As such, the Applicant has confirmed ROSA's contention that the Boards' respective determinations on the Project were premised on a nearly two (2) acre undercounting of the wetlands on-site. Respectfully, this fact alone should justify reconsideration, and, ultimately, rescission, of the Approvals.

AS AND FOR A FIRST CAUSE OF ACTION
(Violation of SEQRA -- Failure to Take a "Hard Look")

323. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 271 of this Verified Petition as if fully stated herein.

324. SEQRA requires that all governmental agencies identify the relevant areas of environmental concern associated with their contemplated actions, and take a "hard look" at them.

325. Where, as here, an environmental impact statement ("EIS") has been prepared for a project, every agency with discretionary approval authority relating to an action -- i.e., each "Involved Agency" -- must issue its own SEQRA Findings before it can issue any approval relating to the subject matter of the EIS. 6 N.Y.C.R.R. § 617.11(c).

326. This is a reflection of the fact that, as set forth in the regulations implementing SEQRA, "SEQR does not change the existing jurisdiction of agencies." 6 N.Y.C.R.R. § 617.3(b).

327. The Planning Board was an Involved Agency in the SEQRA review of the Patrick Farm Project.

328. The requirement that each Involved Agency issue SEQRA Findings reflects the critical reality that "SEQR does not change the existing jurisdiction of agencies." See 6 N.Y.C.R.R. § 617.3(b).

329. Thus, the Planning Board's SEQRA Findings should have reflected its "different perspective[] on the information in an EIS *based on [its] particular jurisdiction.*" See Final Generic EIS on the Proposed Amendments to the SEQRA Regulations (N.Y.S. D.E.C. Sept. 6, 1995) at 75 (emphasis added); see also In re E. Tetz & Sons, Inc., 2003 WL 1736444, at *5 (N.Y.S. D.E.C. March 20, 2003) ("An involved agency is not obligated to make the same

findings as the lead agency. *This reflects differing agency perspectives toward balancing various factors.*" (emphasis added)).

330. Here, in the first instance, the Planning Board's SEQRA Finding are fundamentally flawed because, having been prepared by the Applicant, they in themselves constitute an improper delegation by the Planning Board of its review responsibilities under SEQRA.

331. It is axiomatic that agencies conducting SEQRA review cannot abdicate their review responsibilities to consultants or other "outside sources." See Brander v. Town of Warren Town Bd., 18 Misc.3d 477, 847 N.Y.S.2d 450, 457 (Sup. Ct. Onondaga Co. 2007) ("Although a lead agency without environmental expertise to evaluate a project may rely on outside sources and the advice of others in performing its function, it must exercise its critical judgment; the final determination on SEQRA issues must remain with the lead agency principally responsible for approving the project.").

332. The Planning Board's adoption whole cloth of a Findings Statement, which was prepared by the Applicant before the Public Hearing, is, in itself, reversible error.

333. Moreover, the Planning Board's Findings are fatally flawed because they rely on the Town Board's SEQRA Findings, which, for the same reasons as the Planning Board's Findings, fail to address critical areas of concern that fall within the Planning Board's jurisdiction.

334. The Town Board's Findings, which fail to adequately address the impact areas that fall within the Board's jurisdiction, do not provide the Board with the requisite empirical foundation.

335. The Planning Board's SEQRA review required an "*objective factual*

basis," sufficient to allow the Board to rationally assess the impacts that fall within its jurisdiction. See Halperin v. City of New Rochelle, 24 A.D.3d 768, 809 N.Y.S.2d 98, 105 (2d Dept. 2005).

336. As set forth above, however, the Planning Board lacked complete objective factual information with respect to areas including the Project's wetland impacts, impacts on the Mahwah River Valley Aquifer, and other public, health, safety and welfare considerations.

337. The Planning Board should have exercised its authority and its responsibility to "seek additional or supplemental information and analysis concerning the impacts of the proposed action and compliance with its own statutes and regulations." In re Amenia Sand & Gravel, 1997 WL 1879249, at *9 (N.Y. D.E.C. June 16, 1997) (Rulings of the Administrative Law Judge on Party Status and Issues), appeal denied, 1997 WL 628371 (N.Y. D.E.C. Aug. 27, 1997) (Interim Decision of Deputy Commissioner).

338. DEC, which is the primary agency responsible for SEQRA's implementation, counsels that where, as here, an Involved Agency has "concerns [that] have been ignored or inadequately addressed, it should advise the Lead Agency of the same. (N.Y.S. D.E.C., SEQR Handbook, at 67 (3d ed. 2010).)

339. Under these circumstances, "[i]f the involved agency's comments are then disregarded or responded to unsatisfactorily, it may take such deficiencies into account in making its own decision regarding the action which could result in negative SEQR Findings and a denial." (Id.)

340. The Planning Board had special responsibility under SEQRA to ensure

that the Project's environmental impacts were appropriately reviewed, since critical areas of environmental concern fall within its jurisdiction.

341. Pursuant to the Town Code, the Planning Board is specifically and uniquely obligated to ensure that the Project "will not represent significant impact on the environment or result in a waste of the land and other natural resources of the Town," and that it will otherwise "be in harmony with the natural environment," including, but not limited to, "adequate compensatory devices will be prescribed to offset potential significant deterioration resulting from the project." (Town Code § 376-91(E).)

342. The Planning Board, however, could not rationally fulfill this obligation without adequate information on the Project's wetland buffer impacts, impacts on the Aquifer, and potential impacts to endangered species.

343. Of special relevance here, the Second Department has repeatedly recognized the importance of rational SEQRA review, including supplemental review where necessary, when, as here, public drinking water sources are at stake. See Doremus v. Town of Oyster Bay, 274 A.D.2d 390, 711 N.Y.S.2d 390 (2d Dept. 2000); Bryn Mawr Properties, Inc. v. Fries, 160 A.D.2d 1004, 554 N.Y.S.2d 721 (2d Dept. 1990).

344. Similarly, the Planning Board has a special obligation to ensure adequate SEQRA review with respect to traffic access and circulation issues, particularly as they may affect emergency services. (See Town Code §§ 376-91(A) & (B).)

345. Again, pursuant to the Town Code, the Planning Board is specifically and uniquely obligated to ensure "safety considerations" and "safe accessibility," including for emergency services. (See id.)

346. The Planning Board, however, could not fulfill this function without

adequate impact on such basic matters as the likely resident population and number of resident automobiles.

347. The Board should have required supplemental analysis before proceeding to review the Application in order to obtain the objective factual bases necessary it needed to make rational determinations.

348. It was arbitrary and capricious for the Planning Board to act before it had sufficient objective factual information on the Project's impacts.

349. The Planning Board also irrationally allowed critical mitigationmeasures to avoid public review.

350. The Aquifer Report prepared by Town Staff, for example, which is discussed in greater detail below, recognized that the Project required a spill prevention and avoidance plan ("SPAP") for internal combustion powered vehicles.

351. As the Report states, "[i]f a spill were to occur over an area of a soil cut, there would be an increased risk of groundwater contamination."

352. The apparent absence from the Planning Board's Record of a SPAP concerning the heavy machinery and equipment which the Aquifer Report recognizes may be stored onsite is, itself, another SEQRA violation.

353. The Court of Appeals has unambiguously held that "mitigation measures of undisputed importance" cannot escape public review during the SEQRA process. Bronx Comm. for Toxic Free Sch. v. New York City Sch. Const. Auth., 20 N.Y.3d 148, 958 N.Y.S.2d 65, 68-69 (2012).

354. As the Court of Appeals held, "SEQRA is designed to assure that the main

environmental concerns, and the measures taken to mitigate them, are described in a publicly filed document identified as an EIS, as to which the public has a statutorily-required period for review and comment." Id. at 69.

355. The Planning Board's SEQRA Findings should be vacated as being arbitrary and irrational.

356. Because the Planning Board's SEQRA Findings are arbitrary and irrational, the Subject Decisions, which are premised upon them, also must fail.

357. For these and other reasons, the Subject Decisions and SEQRA Findings must be vacated.

AS AND FOR A SECOND CAUSE OF ACTION
(Violation of Town Zoning Code Requirements – Failure To Fulfill Site Development Plan Duties)

358. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 306 of this Verified Petition as if fully stated herein.

359. The Planning Board is obligated on Site Plan review to ensure that "[t]o the greatest possible extent, development will be in harmony with the natural environment and adequate compensatory devices will be prescribed to offset potential significant deterioration resulting from the project." (Town Code § 376-91(E).)

360. The Planning Board is also obligated to consider whether "[t]he design, layout and operational characteristics of the proposed use will not represent significant impact on the environment or result in a waste of the land and other natural resources of the Town." (Town Code § 376-91(E).)

361. As outlined above, the Planning Board was well aware that the Project's environmental impacts had not been completely or rationally considered.

362. As such, the subject Site Plan Decisions fail to reflect rational consideration for the environmental impacts of the Project.

363. Moreover, Section 376-91 of the Town Code requires that "[i]n considering and acting upon site development plans, the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the prospective occupants of the proposed development and of the immediate neighborhood in particular." See also Koncelik v. Planning Bd. of East Hampton, 188 A.D.2d 469, 590 N.Y.S.2d 900, 902 (2d Dept. 1992) (holding that Planning Board had obligation "*to require an adequate means of access for emergency vehicles*" (emphasis added)); Holmes v. Planning Bd. of New Castle, 78 A.D.2d 1, 433 N.Y.S.2d 587, 595 (2d Dept. 1980) (holding that "[n]ot only is traffic congestion a proper subject for concern, it is also a mandated subject of the [Planning B]oard's consideration" on Site Plan review).

364. The Planning Board irrationally failed to take into account significant concerns expressed by emergency service responders, including Hillcrest Fire Company No. 1, concerning the Project.

365. Consequently, the subject Site Plan Decisions fail to reflect rational consideration for the public health, safety, and/or welfare of the potential occupants of the proposed development, as well as residents of the immediate neighborhood.

366. For these and other reasons, the Subject Decisions must be vacated.

AS AND FOR A THIRD CAUSE OF ACTION
(Violation of Town Aquifer and Well Field Protection Zone Law)

367. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 315 of this Verified Petition as if fully stated herein.

368. The Town Aquifer and Well Field Protection Zone Law, Local Law

No. 8-2004 ("Aquifer Protection Law"), establishes an Aquifer and Well Field Protection Zone, which include significant portions of the Site. (Town Code § 96-4.)

369. The Planning Board analysis under the Law was irrationally short-circuited by its erroneous reliance on the Applicant's claim that the Site is not located above the Mahwah River Valley Aquifer.

370. In fact, as set forth above, the Site lies over and adjacent to the Aquifer.

371. The Planning Board otherwise failed to rationally implement the Aquifer Protection Law.

372. The Aquifer Protection Law establishes defined Regulated Activities.

373. Among the Regulated Activities established by the Aquifer Protection Law, which are implicated by the Project, are the "storage of internal combustion vehicles," "hazardous materials," and "underground storage and piping." (Town Code §§ 96-6(a)(2), 6(a)(3), & 6(a)(7).)

374. It is a fundamental canon of statutory construction that laws that are enacted to protect public health and safety are interpreted liberally, and in the manner necessary to attain the result intended.

375. The Ramapo Town Board enacted the Aquifer Protection Law to "prevent[] the introduction to the watershed of materials that pose a threat to the watershed and hence public health and safety." (Town Code § 96-2.)

376. The Town Board specifically expressed concern about petroleum products and byproducts when it enacted the Aquifer Protection Law. (Town Code § 96-2.)

377. United Water advised the Planning Board early in its review of the

Project, to no avail, that "any release of hazardous material [from the Project Site] has a high likelihood of impacting the quality of water at" United Water's groundwater supply well fields. (December 2011 United Water Letter.)

378. The Project, including, in particular, the Condominium Site Planincludes substantial automobile parking, including, but not limited to, surface lots.

379. The "storage of internal combustion vehicles" must be liberallyconstrued to encompass all manner of automobile parking, including, but not limited to, surface parking lots.

380. Notably, the Town Code defines a "Parking Area" to be "[a] lot or part thereof used for the *storage* or parking of motor vehicles, with or without the payment of rent or charges in money and/or other consideration." (Town Code, § 376-5 (emphasis added).)

381. Moreover, the Board's obligation to consider the impacts of the Project's parking areas is further confirmed by the fact that the Aquifer Protection Law also includes "hazardous substances" among the Regulated Activities. (Town Code § 96-6(a)(3).)

382. The Aquifer Protection Law defines "hazardous substances" to mean "[a]ny substance listed pursuant to Article 37 of the New York State Environmental Conservation Law and the Rules and Regulations of the [DEC]." (Town Code § 96-3.)

383. Article 37 of the State Environmental Conservation Law, in turn, directs the DEC Commissioner to promulgate regulations defining hazardous substances. N.Y. Envtl. Conserv. L. § 37-103.

384. The regulations promulgated by the Commissioner define "hazardous

substances" specifically to include "petroleum." 6 N.Y.C.R.R. § 597.1(a)(3)(ix).[7]

385. As such, the Planning Board was obligated to consider issues associated with cars parked at the Project, including potential petroleum leaks.

386. Regulated "underground storage and piping" under the Aquifer Protection Law must be liberally construed to include all underground storage and piping other than for "hazardous substances," which is a Prohibited Activity. (See Aquifer Protection Law, § 96-6(a)(7).)

387. The Project, including, in particular, the Condominium Site Plan Includes underground storage and piping, including, basements and utility lines.

388. Notably, the Aquifer and Well Field Protection Zone Report prepared by the Town Director of Building, Planning and Zoning and the Town Engineer, dated May 20, 2015 ("Aquifer Report"), recognizes that the Project involves both the "storage of internal combustion vehicles" and "[u]nderground storage and piping." (See Town Code § 97-7(b) (establishing Report from the Department of Public Works and Building Inspector as a condition precedent to the Planning Board's review).)

389. More than sixty (60) days have elapsed from the issuance of the Aquifer Report, and no appeal of the Building Inspector's interpretation of the Code was taken. See N.Y. Town L. § 267-a(5)(b).

390. Accordingly, the Building Inspector's interpretation that the Project implicates these two categories of activities is legally final and binding.

391. Regulated Activities, such as the Project's automobile parking and

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[7] The DEC regulations define "petroleum" to mean "oil or petroleum of any kind and in any form including but not limited to oil, *petroleum fuel oil*, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline and kerosene." 6 N.Y.C.R.R. § 597.1(a)(7) (emphasis added).

underground storage, must be reviewed to determine that such activities will not:

a) alter the subsurface flow of groundwater to private wells and existing and potential water supply wells;

b) degrade the quality of groundwater through the introduction of sewage wastes, stormwater runoff, liquid chemicals, petroleum products, dissolved metals or other toxic substances;

c) increase the long term risk of groundwater contamination through the siting, establishment, or expansion of uses which store, transport, or utilize significant quantities of material which is potentially harmful to groundwater quality;

d) increase the long term risk of groundwater contamination of relatively small quantities of material which over a period of time may accumulate in groundwater; or

e) increase the risk of groundwater contamination through the removal of soils, sand, stone, or gravel which provide a protective mantel for groundwater which is part of the geologic deposits comprising the Town's aquifer.

(Town Code, § 96-7(A)(1)-(5) (emphasis added).)

392. Notwithstanding the Aquifer Report's recognition that the Project implicates the "storage of internal combustion vehicles," the Report fails to rationally follow through on this interpretation.

393. The Aquifer Report recognizes that "[d]uring construction, heavy machinery and equipment may be stored onsite," thereby recognizing that this provision is meant to cover internal combustion engines.

394. The Report offers no rational basis for distinguishing internal combustion engines that power "heavy machinery and equipment" from internal combustion engines that power ordinary passenger cars and other vehicles that it is reasonably foreseeable would be parked on the Project's parking lots.

395. The Report, however, irrationally fails to apply the Standards set forth

under Section 96-7(A) to the internal combustion vehicles that residents can be anticipated to park at the Project.

396. The Aquifer Report's failure to discuss the Standards with respect to parking at the Project is particularly egregious since it recognizes that a SPAP "must be in place" for internal combustion powered vehicles.

397. As the Report states, "[i]f a spill were to occur over an area of a soil cut, there would be an increased risk of groundwater contamination."

398. The apparent absence from the Planning Board's Record of a SPAP concerning the heavy machinery and equipment that the Aquifer Report recognizes may be stored onsite is, itself, improper.

399. Also disturbingly, the Aquifer Report recognizes that construction, including with respect to the installation of piping infrastructure, creates a risk of contamination to the Mahwah Rive Aquifer, but implicitly recognizes that this risk has not been assessed, much less mitigated:

> The installation of utility piping is generally located within proposed roadways. The proposed grading will result in both cuts and fills. *Whenever soils are stripped from a site, the risk of groundwater contamination increases. The level of risk would be determined by the current thickness of the protective mantle and how much of it would be removed for construction of the roads and utilities.*

(Aquifer Report (emphasis added).)

400. In fact, *"[t]he soil mantle over much of the Patrick Farm is thin."*

(Rubin Aff., ¶¶ 10 (emphasis added).)

401. Accordingly, the Aquifer Report tacitly recognizes that the Project poses an elevated contamination risk to the Aquifer.

402. The Planning Board acted illegally by failing to assess, much less

develop and subject to public review, mitigation measures to address this matter. Bronx Committee, 958 N.Y.S.2d at 68-69.

403. In addition to its obligation under the Aquifer Protection Law, as set forth above, the Planning Board has distinct obligations to consider the Project's potential impacts on the Aquifer pursuant to both its Town Code Site Development Plan review responsibilities as well as SEQRA.

404. Again, components of the Project, such as its parking lots and basements, could significantly adversely impact the Mahwah River Aquifer.

405. Again, in addition, as proposed, the Project would compromise the Mahwah River Valley Aquifer, including by altering the integrity and cleansing functions of the soil mantle, which currently exist in its natural state. (Rubin Aff., ¶¶ 8-12.)

406. Once again, the Planning Board could not have rationally fulfilled its responsibility under both the Town Code and SEQRA to assess the Project's impacts on the environment without correct information pertaining to the Project's impacts on the critical Mahwah River Valley Aquifer. See Halperin, 809 N.Y.S.2d at 105; Town Code § 376-91(E).

407. For these and other reasons, the Subject Decisions must be vacated.

AS AND FOR A FOURTH CAUSE OF ACTION
(Failure To Implement Conditions of Site Rezoning)

408. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 356 of this Verified Petition as if fully stated herein.

409. On or about January 25, 2010, the Town Board adopted a Resolution purporting to rezone portions of the Site to MR-8 (Multi-family – maximum 8 units per acre) zoning (the "Rezoning Resolution").

410. The Rezoning Resolution attached important conditions to the rezoning.

411. The conditions attached to the rezoning of a portion of the Site to MR-8 zoning included that the Planning Board "shall approve a plan for the administration of [the rental housing allocated for emergency service workers] as part of its site plan approval process."

412. The conditions attached to the rezoning of portion of the Site to MR-8 zoning also included that the Planning Board "shall approve a plan for the development and sales of [workforce housing] so as to achieve the goal of providing affordability of home ownership."

413. The conditions attached to the rezoning portion of the Site to MR-8 zoning also included that, as a condition of Site Plan or Subdivision approval, the Site would be developed "subject to a coordinated phased construction along with the development of the single family homes to be constructed around its perimeter in a manner similar to that proposed in the FEIS in the construction sectioning plan . . . so as to achieve the desired buffer at the earliest possible stage and to minimize impacts with the surrounding areas."

414. The point of this condition is to have the single-family homes constructed at "earliest reasonably possible stage," to minimize impacts on the neighbors, such as Appellants.

415. The Planning Board failed to effectuate these conditions in the Subject Decisions.

416. For these and other reasons, the Subject Decisions must be vacated.

AS AND FOR A FIFTH CAUSE OF ACTION
(Violation of Town Scenic Road District Law)

417. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 365 of this Verified Petition as if fully stated herein.

418. The Town Scenic Road District Law, Town Code § 215 ("Scenic Road Law"), was adopted by the Town Board to ensure, inter alia, that "[w]here development occurs in sensitive scenic areas ... such development [shall be consistent] with the objective of

maintaining the existing scenic character of such areas to the greatest extent practicable." (Town Code § 215-2.)

419. In adopting the Scenic Road Law, the Town Board found, inter alia, "[t]hat it is desirable to protect panoramic views as well as sensitive natural habitats on the Ramapo Scenic Road District." (Town Code § 215-2(c).)

420. The Scenic Road District includes all property within one thousand (1,000) feet from the center line of certain designated roads, including, Route 202 and Route 306 north of Grandview, which abut the Site. (Town Code § 215-3.)

421. Substantial portions of the Site are located within the Scenic Road District established by the Scenic Road Law. (See maps DEIS 3.4-10 and Figure 1 – Scenic Roads - Route 202 Town of Ramapo, New York, dated April 17, 2013.)

422. The Planning Board must ensure at the time it conducts Site Plan review that such projects conform with regulatory requirements set forth in Sections 4(A)(3) and 4(A)(4) of the Scenic Road Law. (Town Code § 215-4(A)(1).)

4236. In the subject Site Plan Approvals, the Planning Board readopted its prior findings with respect to the Scenic Road Law "with, however, deletion of findings no longer required due to the law's amendment of architectural compatibility and of contiguous tree cutting limits."

424. The Scenic Road Law continues to require that the Planning Board "must find that the important scenic and natural features of the site will be substantially preserved." (Town Code § 215-4(A)(3).)

425. In connection with the requirement to "Substantially Preserve Scenic and Natural Features of the Site," the Planning Board stated on that the "proposed plan preserves a number of substantial areas." (Finding Statement p 23.)

426. This is not the finding required under the Scenic Road Law.

427. Again, by Law, the Planning Board should ensured that "important scenic and natural features of the site will be substantially preserved." (Town Code § 215-4(A)(3).)

428. Moreover, the approved subdivision plans show that the majority of the Site will in fact be clearcut, re-graded and permanently disturbed, and does not provide the "substantial preservation" required in a Scenic Road District.

429. In addition Section 215-4 A(4)(e) of the Law states that "[e]xisting vegetation shall be preserved to the maximum extent possible. Every attempt shall be made to limit cutting so as to maintain native vegetation as a screen for structures as seen from road, parks and other public views within the Ramapo Scenic Road District."

430. The Subjects Decisions, and the development authorized by them, are the antithesis of preserving existing vegetation "to the maximum extent possible" .

431. The fact that the amendment to the Scenic Road Law, currently under challenge, removes the 20,000 sq. ft. clear cutting limitation does not negate the additional standard "Existing vegetation shall be preserved to the maximum extent possible." [8]

432. A simple comparison of the Applicant's "Scenic Road Overlay District on Site Plan" (see DEIS Fig. 3.4-9) and its "Limit of Tree Disturbance" map (DEIS Fig. 3.3-6) demonstrates the sheer magnitude of the massive loss of existing vegetation.

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[8] Certain Petitioners have commenced a legal challenge against the amendment to the Scenic Roads Law with respect to the contiguous clear cutting limitations. Should the lawsuit challenging the amendment succeed, Petitioners respectfully reserve their right to claim a violation of this provision. Similarly, if certain Petitioners succeed in their challenge to the removal of the architectural compatibility finding from the Scenic Road Law, Petitioners reserve the right to claim a violation thereof.

433. In addition, the Applicant concedes that "approximately sixty percent of the zone change area" of the 61 acre MR-8 zone) "is wooded," (DEIS 3.3-20), and that only the trees "around the fringe" of the MR-8 zone "may" be preserved.

434. The SEQRA Findings state "[t]he proposed plan incorporates preservation of existing trees as buffer areas varying in width, generally from 20 to 50 feet wide, within the District." Even this insufficient attempt to preserve has been reduced since that time.

435. Experts and agencies have commented on the lack of compliance with this provision. (See for example: FEIS comment 3.9-12 from the County of Rockland Department of Planning question whether the remaining trees meet the requirement to preserve existing vegetation; and, the Palisades Interstate Park Commission ("PIPC"), concerns regarding screening are reflected in the letter dated January 12, 2016.)

436. PIPC's "main concern is [that] one large block of High density housing will not blend with the existing character of the area." (November 15th PIPC Letter, at 2.)

437. The Scenic Roads District Law also prohibits the "[c]utting of all trees in a single contiguous area exceeding 20,000 square feet." (Town Code § 215-4(A)(4)(f).)

438. For these and other reasons, the Subject Decisions must be vacated.

AS AND FOR A SIXTH CAUSE OF ACTION
(Planning Board Lacked Jurisdiction To Grant Final Plat Approval)

439. Petitioners repeat and reallege paragraphs 1 through 387 as if fully set forth herein.

440. The Planning Board lacked jurisdiction under the Town's Subdivision Regulations to even consider, much less review and approve, the Applicant's Final Subdivision Plat.

441. The Applicant's Preliminary Plat Approval expired, and the Preliminary

Plat is null and void, thus requiring the Applicant to resubmit a new plat for preliminary approval before the Planning Board can lawfully grant Final Subdivision Plat Approval.

442. Section 22 of the Town's Subdivision Regulations, entitled "Tenure of Planning Board approval," provides as follows:

> Within six (6) months of the approval of a preliminary plat, the applicant shall submit the plat in final form. The approval of a *preliminary plat shall be effective for a period of one (1) year*, at the end of which time final approval on the subdivision must have been obtained from the Planning Board although the plat need not be signed and filed with the County Clerk. *Any plat not receiving final approval within the period of time set forth herein shall be null and void* and the developer shall be required to resubmit a new plat for preliminary approval subject to all new zoning restrictions and subdivision regulations. [Amended 1-10-73] (emphasis added).

443. The Applicant failed to obtain Final Subdivision Plat Approval from the Planning Board within the mandatory one-year timeframe prescribed under Section 22 of the Town's Subdivision regulations.

444. The Planning Board granted Preliminary Plat Approval on January 6, 2011.

445. The subject Final Plat Approval was not issued until more than five (5) years later as part of the Subject Decisions.

446. More than one year had lapsed since Preliminary Plat Approval at the time the Planning Board granted the subject Final Plat Approval.

447. The Applicant was required under Section 22 of the Town's Subdivision Regulations to have submitted a new application for preliminary subdivision approval before the Planning Board could lawfully grant the subject Final Plat Approval.

448. The language in the Town's subdivision regulations with respect to the

expiration of Preliminary Plat Approval is mandatory and unambiguous.

449. The Town's regulations are clear that "[a]ny plat not receiving final approval within the [one-year] period of time set forth herein *shall be null and void* and the developer *shall be required to resubmit a new plat for preliminary approval* subject to all new zoning restrictions and subdivision regulations." (Town Subdivision Regulations, § 22.)

450. Accordingly, the Planning Board lacked jurisdiction to grant Final Plat Approval because the Preliminary Plat Approval had expired, and the Preliminary Plat was null and void, pursuant to Section 22 of the Town's Subdivision Regulations.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Planning Board Lacked Jurisdiction To Grant Final Plat Approval)

451. Petitioners respectfully repeat and reallege the allegations set forth in Paragraphs 1 through 399 of this Verified Amended Petition as if fully stated herein.

452. Petitioners provided the Town Board and the Planning Board with the September 1st Letter.

453. The September 1st Letter placed the Town Board and the Planning Board on notice that their respective determinations concerning the Project were premised on substantial misinformation.

454. The September 1st Letter conclusively establishes that the Town Board and the Planning Board's respective determinations concerning the Project lack substantial evidence.

455. Nevertheless, upon information and belief, at its September 29, 2016 Meeting, the Town Board determined not to take any action in response to the September 1st Letter.

456. The Town Attorney's office had previously advised Petitioners' counsel that the Town Board's action in response to the September 1st Letter would be determinative of the Planning Board's response.

457. It was arbitrary and capricious for the Town Board and the Planning Board to not rescind their respective determinations for the Project in light of the information provided in the September 1st Letter.

458. For these and other reasons, the Subject Decisions must be vacated.

WHEREFORE, Petitioners respectfully demand judgment, as follows:

(1) rescinding, annulling, and vacating the Subject Decisions and the Planning Board's SEQRA Findings in their entirety;

(2) compelling Respondents to engage in review of the Project's potential impacts in complete conformance with the requirements of the Town Code;

(3) compelling Respondents to engage in lawful SEQRA review of the Project's potential environmental impacts;

(4) enjoining Respondents, or any of their agents or assigns, from conducting any demolition, site preparation, and/or development activities whatsoever on the Site until they have complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

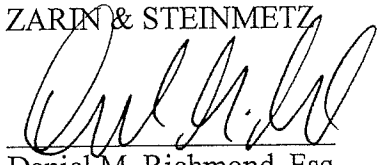
(5) enjoining the Planning Board and/or other Town agencies and/or officials from issuing any approvals or permits in connection with the Site until it has complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

(6) awarding Petitioners the costs and disbursements of this action; and

(7) granting such other and further relief as this Court deems just and proper.

Dated: September 29, 2016
White Plains, New York

ZARIN & STEINMETZ

By: 

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(914) 682-7800

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

DANIEL M. RICHMOND, being duly sworn, deposes and says:

He is a member of the law firm of Zarin & Steinmetz, attorneys for Petitioners. He has read the foregoing Amended Verified Petition and Complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true. Deponent further says that the grounds of his belief as to all matters in the Verified Amended Petition and Complaint not stated to be upon his knowledge are based upon a review of documents and other writings relevant to this action.

The reason why this Verification is made by deponent instead of Petitioners is because Petitioners are not within the County of Westchester, which is the County where deponent has his office.

DANIEL M. RICHMOND

Sworn to before me
this 29th day of September 2016

Notary Public

JODY TAMAR CROSS
Notary Public, State of New York
No. 02CR6078789
Qualified in Westchester County
Commission Expires August 5, 2018