

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D13626  
W/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 2, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
MARK C. DILLON, JJ.

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2004-11084

DECISION & ORDER

In the Matter of Cherie Ingraham, et al., appellants,  
v Planning Board of Town of Southeast, et al.,  
respondents.

(Index No. 4026/04)

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McMillan, Constabile, Maker and Perone, LLP, Larchmont, N.Y. (William Maker, Jr., of counsel), for appellants.

Stephens & Charbonneau, Brewster, N.Y. (Willis H. Stephens, Jr., of counsel), for respondent Planning Board of Town of Southeast.

Keane & Beane, P.C., White Plains, N.Y. (Judson K. Siebert, Edward J. Phillips, and Richard L. O'Rourke of counsel), for respondent Gilckenhaus Brewster Development, Inc.

In a proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of the Town of Southeast, dated February 23, 2004, which conditionally granted the application of Glickenhau Brewster Development, Inc., for approval of a final subdivision plat, the petitioners appeal from a judgment of the Supreme Court, Westchester County (Nicolai, J.), entered November 8, 2004, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, with one bill of costs, the petition is granted, and the determination is annulled.

January 30, 2007

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MATTER OF INGRAHAM v PLANNING BOARD OF TOWN OF SOUTHEAST

The petitioners commenced this proceeding to review a determination of the Planning Board of the Town of Southeast (hereinafter the Planning Board) which conditionally granted an application by Glickenhau Brewster Development, Inc. (hereinafter Glickenhau), for approval of a final subdivision plat. The petitioners argued, inter alia, that the grant violated various local subdivision regulations. Although the Supreme Court properly denied the petition on such grounds (*see Matter of Halperin v City of New Rochelle*, 24 AD3d 768), the Planning Board's determination nonetheless must be annulled. The conditional final plat approval was premised upon, inter alia, the Planning Board's related determination, dated April 14, 2003, that it had taken the requisite "hard look" at the environmental impacts of the project as lead agency for purposes of environmental review pursuant to the State Environmental Quality Review Act (ECL art. 8, hereinafter SEQRA). However, in a prior appeal, decided while the appeal at bar was pending, this Court annulled the Planning Board's SEQRA determination and remitted the matter to the Planning Board for the preparation and circulation of a supplemental environmental impact statement (*see Matter of Riverkeeper v Planning Bd. of Town of Southeast*, 32 AD3d 431). Thus, the determination granting conditional final plat approval must be annulled (*see Matter of Doremus v Town of Oyster Bay*, 274 AD2d 390, 395; *Glen Head-Glenwood Landing Civic Council v Town of Oyster Bay*, 88 AD2d 484, 493-494).

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court