SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-00617

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, NOWAK, AND KEANE, JJ.

IN THE MATTER OF DANIEL M. HOEFLER,
JOANNE M. HOEFLER, LISA M. MILES,
DANIEL H. MCCLUNG, TARA S. MCCLUNG,
PETITIONERS-APPELLANTS,
ET AL., PETITIONERS,

V MEMORANDUM AND ORDER

TOWN OF POMPEY PLANNING BOARD, PALLADINO FARMS,
LLC, AND HILL COUNTRY FARM BREWERY, LLC,
DOING BUSINESS AS HERITAGE HILL BREWERY,
RESPONDENTS-RESPONDENTS.

MANCUSO BRIGHTMAN PLLC, ROCHESTER (JOHN A. MANCUSO OF COUNSEL), FOR PETITIONERS-APPELLANTS DANIEL M. HOEFLER, JOANNE M. HOEFLER, LISA M. MILES, DANIEL H. MCCLUNG, AND TARA S. MCCLUNG.

HARRIS BEACH MURTHA CULLINA PLLC, SYRACUSE (BRIAN D. GINSBERG OF COUNSEL), FOR RESPONDENT-RESPONDENT TOWN OF POMPEY PLANNING BOARD.

Appeal from a judgment (denominated order and judgment) of the Supreme Court, Onondaga County (Gerard J. Neri, J.), entered March 25, 2024, in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Respondents Palladino Farms, LLC and Hill Country Farm Brewery, LLC, doing business as Heritage Hill Brewery (Palladino respondents) applied for site plan review of their proposal to further develop their property by constructing a 10,000-square-foot addition to an existing barn for the purpose of operating a meat processing facility (project). The application for the project was reviewed by respondent Town of Pompey Planning Board (Planning Board) over the course of several meetings, one of which allowed for comment from the public. Following the public hearing, the Planning Board adopted a resolution that contained a negative declaration pursuant to the State Environmental Quality Review Act ([SEQRA] ECL art 8), classifying the project as an unlisted action, and determining that it would not have any significant adverse environmental impact. The resolution also approved the Palladino respondents' site plan application.

Petitioners commenced this CPLR article 78 proceeding seeking,

inter alia, to annul the Planning Board's negative declaration and site plan approval based on alleged violations of SEQRA, including that the Planning Board failed to comply with the substantive requirements of SEQRA in issuing its negative declaration. Petitioners-appellants (petitioners) now appeal from a judgment that dismissed the petition in its entirety, and we affirm.

Petitioners contend that the Planning Board erred in classifying the project as an unlisted action inasmuch as 6 NYCRR 617.4 (b) (6) (iii) applied to render the project a type 1 action requiring the preparation of a full environmental assessment form. Petitioners further contend that the Planning Board erred in issuing a conditional negative declaration inasmuch as it failed to comply with the requirements of 6 NYCRR 617.7 (d). Those specific contentions were not raised in the petition, and they are therefore unpreserved for our review (*see Matter of Cameron Transp. Corp. v New York State Dept. of Health*, 197 AD3d 884, 887 [4th Dept 2021]; *Matter of Cornell v Annucci*, 173 AD3d 1760, 1761 [4th Dept 2019]). We have no discretionary authority to reach unpreserved contentions in a CPLR article 78 proceeding such as this one (*see Matter of Khan v New York State Dept. of Health*, 96 NY2d 879, 880 [2001]; *Cameron Transp. Corp.*, 197 AD3d at 887; *Matter of Barnes v Venettozzi*, 135 AD3d 1250, 1251 [3d Dept 2016]).

We reject petitioners' contention that the Planning Board failed to comply with the requirements of SEQRA in issuing a negative declaration. Our review of the SEQRA determination "is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination was affected by an error of law or was arbitrary and capricious or [was] an abuse of discretion" (*Akpan v Koch*, 75 NY2d 561, 570 [1990] [internal quotation marks omitted]; *see Matter of United Ref. Co. of Pa. v Town of Amherst*, 173 AD3d 1810, 1812 [4th Dept 2019], *lv denied* 34 NY3d 913 [2020]). With respect to the substantive determination, judicial review "is limited to whether the agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination" (*Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 231-232 [2007] [internal quotation marks omitted]; *see Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417 [1986]). To that end, "an agency's substantive obligations under SEQRA must be viewed in light of a rule of reason. Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a [final environmental impact statement] will satisfy the substantive requirements of SEQRA" (*Jackson*, 67 NY2d at 417 [internal quotation marks omitted]).

Here, we conclude that the Planning Board complied with its substantive obligations under SEQRA when it issued a negative declaration inasmuch as it took the requisite " 'hard look' " at the relevant environmental factors, including noise, lighting, wastewater, and parking considerations, and "made a 'reasoned elaboration' of the basis for its determination" (*id.*; *see Matter of Renew 81 for All v New York State Dept. of Transp.*, 224 AD3d 1273, 1274-1275 [4th Dept

2024]; *Matter of Coalition for Cobbs Hill v City of Rochester*, 194 AD3d 1428, 1432 [4th Dept 2021]). To the extent that petitioners assert that the Planning Board failed to comply with its SEQRA obligations because it segmented its environmental review with respect to the issue of parking, that contention is unpreserved for our review, and we have no discretionary authority to reach it (*see Cameron Transp. Corp.*, 197 AD3d at 887).

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court