Matter of Andes v Planning Bd. of the Town of Riverhead
2019 NY Slip Op 32455(U)
August 16, 2019
Supreme Court, Suffolk County
Docket Number: 1311/2018
Judge: William G. Ford
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SHORT FORM ORDER **INDEX NO.: 1311/2018**

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY

PRESENT:

HON. WILLIAM G. FORD
JUSTICE OF THE SUPREME COURT

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In the Matter of the Application of

WILLIAM F. ANDES, JR., EVA ANDES, MARTIN SILVER & DALE SILVER,

Petitioners,

For Judgment pursuant to Article 78 of the Civil Practice Law & Rules

-against-

THE PLANNING BOARD OF THE TOWN OF RIVERHEAD, JOHN REEVE, SANDRA REEVE, J&S REEVE SUMMER COTTAGES, LLC. & 18 WHITES LANE LLC.,

Respondents.

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Motions Submit Date: 12/13/18
Mot Conf Held: 05/24/18
Mot Seq 001 Mot D; CASE DISP

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Read on the petitioner's special proceeding commenced under CPLR Article 78, the Court considered the following: Petitioner's Notice of Petition, Verified Petition, Memorandum of Law in Support, Affidavits and other supporting papers; Respondent's Verified Answer with Objections in Point of Law; Certified Administrative Return with Exhibits, Affirmation & Memorandum of Law in Opposition and other opposing papers; Respondent's Affidavit & Memorandum in Opposition and other opposing papers; Petitioner's Reply Affidavit & Memorandum of Law in further support; Respondent's Sur-reply; and Petitioner's Sur-reply; and upon due deliberation and full consideration of the same; it is

ORDERED that the Verified Petition pursuant to CPLR Article 78 seeking an order vacating, annulling or otherwise setting aside respondent Town of Riverhead's Planning Board determination that respondents John & Sandra Reeve, J&S Reeve Summer Cottages LLC& 18 Whites Lane LLC application for minor lot subdivision was granted is **granted in part** as follows; and it is further

ORDERED that petitioner's counsel is hereby directed to serve a copy of this decision and order with notice of entry by overnight mail, return receipt requested on all respondents' counsel forthwith; and it is further

ORDERED that, if applicable, within 30 days of the entry of this decision and order, that

defendant's counsel is also hereby directed to give notice to the Suffolk County Clerk as required by CPLR 8019(c) with a copy of this decision and order and pay any fees should any be required.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

The Court begins acknowledging that this matter is but the latest chapter in a long running dispute amongst the present parties and is only one of several pending litigations in the courts. Given the vast nature and scope of the prior litigation, this Court will endeavor to focus solely on the relevant and material considerations underlying the present petition as regards the environmental protection and zoning claims. Given that backdrop, the relevant facts and circumstances are as follows:

Petitioners are property owners in Aquebogue, Town of Riverhead, County of Suffolk, who are adjoining or adjacent neighbors to respondents John and Sandra Reeve, who individually or by their corporate alter egos J&S Reeve Summer Cottages, LLC and 18 Whites Lane LLC, own property located at 18, 23 & 28 Whites Lane, Aquebogue, New York. Supreme Court has previously set out a comprehensive, thorough and well-reasoned discussion laying out history and context of the Reeve respondents' property ownership, which dates back to 1994 in a series of short-form decisions & orders, some of which are presently pending on appeal to the Appellate Division Second Department (*see e.g.* ***Matter of Andes v Zoning Bd. of Appeals of the Twn. of Riverhead***, Index No. 27305/2010, 2012 NY Slip p 32052(U) [Sup Ct, Suffolk Co Jun 28, 2012][Asher, J. ret.]); ***subsequently vacated & recalled by*** short-form decision & order dated April 16, 2013; and memorandum opinion dated April 17, 2015 in ***Reeve v Bd. of Zoning Appeals of the Twn. of Riverhead***, Index No. 12417/2014.)

Succinctly summarized, the Reeves acquired their property from the White family who tranced their ownership of the property back to the 1930's. Testimony adduced before the Town ZBA, as noted by the courts, established that rental properties, shellfish farming/fishing and boat launching uses were maintained continuous on the property since then to the present time. When the Reeves acquired title or shortly thereafter, the Town filed a request with Suffolk County's Real Property Tax Map Service to subdivide the property, which subsequently was not recognized or disavowed by the Town. Subsequently, the Reeves sought to reconfigure or reconstruct their dock/marina and boat slips and admittedly to expand the same and filed applications for required permitting with the Town, which led to some of the prior litigation.

Additionally, Petitioners have further advised that other litigation involving the parties has been commenced before the Supreme Court entailing claims pursuant to Town Law § 267 to compel the Town of Riverhead to enforce its zoning code vis-à-vis the properties and circumstances at issue here against the Reeve respondents (*see* ***Andes v Town of Riverhead***, Index No. 8742/2016 [Sup Ct, Suffolk Co. Berland, J.]). Given the detailed facts and circumstances laid out therein, this Court takes notice of the same and further presumes the parties and their counsels' familiarity with the same and thus will not belabor the point unnecessarily.

Now before this Court is petitioners' CPLR Article 78 Petition seeking vacatur or annulment of a February 1, 2018 approval by respondent Riverhead Town Planning Board of the Reeve respondents'' minor plot subdivision application. As germane to disposition of this

matter, the Reeves sought to further subdivide their property totaling 2.548 acres into 2 lots: a 1.6-acre parcel and the other a .942-acre parcel housing an additional residential dwelling with attached boat dock. The property is presently sited within Riverhead's RB-40 zoned district which expressly permits single family residential dwellings on 40,000 square foot lots. As outlined previously by the courts, present on the Reeves' property were several prior nonconforming uses including a boat dock with slips, a commercial shellfish (oyster) business, rental summer cottages (conforming uses but not conforming as to dimensional requirements).

Previously, the Town Board of Zoning Appeals (ZBA) determined the Reeves' oyster operation, cottages and dock constituted legal preexisting nonconforming uses and issued a letter reflecting the same dated April 11, 2016, which was sustained by the Supreme Court on August 11, 2016. Thereafter, the Town Building Department issued certificates of occupancy and building permits, which subsequently were determined issued in error prompting the Reeves' application for subdivision to legalize the nonconforming uses on their property.

SUMMARY OF THE PARTIES' CONTENTIONS

Presently petitioners argue that the Town Planning Board's grant of the Reeves' application to subdivide was arbitrary, capricious, error of law or in excess of the respondent's authority based on a few separate and distinct grounds. First, petitioners take issue with the Planning Boards classification of the Reeves' requested subdivision as a Type II action under the State Environmental Quality Review Act (SEQRA) 6 NYCRR Part 617 *et seq.* On this point, petitioners claim that the Planning Boards professional staff's internal report advised that the proposed subdivision would have anticipated adverse environmental impact as far as it would permit the Reeves to exceed daily allowable sanitary flow as set out by Suffolk County Department of Health Services guidance. Thus, petitioners believe the Planning Board erroneously classified the minor subdivision under then existing town zoning code as a Type II action requiring no further environmental review. As a result, petitioners seek vacatur and annulment with remand back to the Planning Board for reclassification and preparation of an environmental impact statement (EIS).

Subsequently, the parties submitted absent leave of court, sur-replies advising that in September 2018 Riverhead Town amended its zoning code to add a new section entitled Chapter 2245 "Environmental Quality Review" which under Section 225-12(B)(1) would permit the Planning Board to classify a minor subdivision of 4 lots or less as a Type II action under SEQRA, provided other requirements under Section 225-11 were met. The Planning Board as a result has argued that this has mooted petitioner's SEQRA violation claims on the theory that a subsequent change in law now binds this Court and retroactively applies to the instant application under review. Petitioners for their part concede that the change in law applies and must be considered, but also argue that the other requirements are not met, which are discussed in greater detail below.

Failing that, petitioners also argue that the Planning Board's determination must be vacated and annulled as irrational and otherwise arbitrary and capricious. They claim that the end result of the subdivision was to continue, expand or intensify illegal prior nonconforming uses, which fly in the face of the common law presumption that nonconforming uses as a matter of land use and zoning policy are contemplated to cease and not be maintained. Moreover, petitioners contend that the Planning Board acted in an *ultra vires* manner in usurping the ZBA's

role to interpret the town zoning code by determining that approval of the Reeves' subdivision application did not involve an expansion of prior nonconforming uses. Lastly, they argue that the Board's determination approving subdivision was irrational or otherwise unsupported by zoning code since it called for maintenance of nonconforming uses on the "same lot." Here, petitioners note that the end result of the subdivision calls for the creation of new lots and thus is not expressly code compliant.

Respondent Planning Board responds that its SEQRA Type II classification under then existing law, and now as amended is proper, arguing that the Reeves' application for minor subdivision had little environmental impact. Further, they dispute petitioners' claims that the prior nonconforming uses were expanded or intensified. Thus, they insist that Planning Board's determination was rational, supported by substantial evidence and not arbitrary or capricious. The Board contends that the classification of the subdivision application under SEQRA, and its approval under town zoning code were ministerial functions. Moreover, they note that the approval was made expressly conditional on the fulfillment by the Reeves of conditions subsequent concerning building permits and certificates of occupancy. The Board also argues that the petitioners lack standing to sue and that the petition should be dismissed as a matter of law on that ground alone. Lastly, respondents contend that the Petition is not ripe for judicial review on the ground that petitioners have failed to exhaust their administrative remedies, namely seek an appeal from the ZBA.

STANDARD OF REVIEW

A. General Article 78 Standard

Consideration of the Petition and the arguments for and against begin with the Court's recognition that in a CPLR article 78 proceeding, the court's review is limited to the arguments and record actually adduced before the agency (***Kaufman v Inc. Vil. of Kings Point***, 52 AD3d 604, 607, 860 NYS2d 573, 576 [2d Dept 2008]). 'A local planning board has broad discretion in reaching its determination on applications ... and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion' " (***Fildon, LLC v Planning Bd. of Inc. Vil. of Hempstead***, 164 AD3d 501, 502-03, 83 NYS3d 505, 507 [2d Dept 2018]). " When reviewing the determinations of a local planning board, courts consider substantial evidence only to determine whether the record contains sufficient evidence to support the rationality of the [b]oard's determination " ***Id.*** Thus, "[i]n applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis" (***Manning ex rel. Suffolk County Ct. Employees Ass'n v New York State-Unified Ct. Sys.***, 153 AD3d 623, 624, 60 NYS3d 251, 253 [2d Dept 2017]; *see also* ***Perry v Brennan***, 153 AD3d 522, 524, 60 NYS3d 214, 217 [2d Dept 2017], *lv to appeal denied sub nom.* ***Perry v Patricia A. Brennan Qualified Personal Residence Tr.***, 31 NY3d 902 [2018][the sole question before the court under Article 78's arbitrary and capricious standard is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion]). Put differently then, the court will substitute its judgment for that of a planning board only when "the determination was affected by an error of law, or was arbitrary and capricious or an abuse of discretion, or was irrational." Thus review of a planning board's determination, entails consideration of substantial evidence to determine whether the record contains sufficient evidence to support the rationality of the Board's determination (***Ostojic v Gee***, 130 AD3d 927, 928-29, 14 NYS3d 117, 119 [2d Dept 2015]).

Though, courts are reminded that under instances where the issue involves pure legal interpretation of statutory terms, deference is not required (***Nowak v Town of Southampton***, 2017-04242, 2019 WL 3436629, at *2 [2d Dept July 31, 2019]).

B. SEQRA Standard

Judicial review of an agency determination under SEQRA is limited to determining whether the challenged determination was affected by an error of law, or was arbitrary and capricious, an abuse of discretion, or the product of a violation of lawful procedure (***Peterson v Planning Bd. of City of Poughkeepsie***, 163 AD3d 577, 578-79, 80 NYS3d 395, 397 [2d Dept 2018]). Therefore, courts may review the record to determine 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. ***Id.*** It has also been said that for motion courts, "[I]t is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively" (***St. James Antiochian Orthodox Church v Town of Hyde Park Planning Bd.***, 132 AD3d 687, 687-88, 17 NYS3d 481, 483 [2d Dept 2015]; *accord* ***Comm. to Stop Airport Expansion v Wilkinson***, 126 AD3d 788, 789, 5 NYS3d 274, 276 [2d Dept 2015]).

Literal compliance with the letter and spirit of SEQRA is required, and substantial compliance with SEQRA is not sufficient to discharge an agency's responsibility under the act (***Stony Brook Vil. v Reilly***, 299 AD2d 481, 483, 750 NYS2d 126, 128 [2d Dept 2002], *as amended* [Jan. 9, 2003]). Thus, a petitioner prevailing in a proceeding pursuant to CPLR article 78 challenging a SEQRA determination is entitled to have that determination annulled (***Zutt v State***, 99 AD3d 85, 102, 949 NYS2d 402, 415 [2d Dept 2012]).

SEQRA's procedural requirements are described as follows:

> SEQRA "mandates the preparation of an EIS when a proposed project 'may have a significant effect on the environment.' " Because the operative word triggering the requirement of an EIS is 'may', there is a relatively low threshold for the preparation of an EIS" (***Vil. of Tarrytown v Planning Bd. of Vil. of Sleepy Hollow***, 292 AD2d 617, 619, 741 NYS2d 44, 48 [2d Dept 2002]). In furtherance of and to further "promote the Legislature's goals, and to provide an informational tool to aid in the decision-making process, SEQRA requires agencies to prepare an EIS 'on any *action* they propose or approve which may have a significant effect on the environment." "[SEQRA] broadly defines the term 'action' to include projects or activities that the agency either directly undertakes or funds, policy and procedure-making and *the issuance of permits*, licenses or leases." When undertaking an action, a governmental agency must initially determine whether a proposed action "may have a significant effect on the environment." "If no significant effect is found, the lead agency may issue a 'negative declaration,' identifying areas of environmental concern, and providing a reasoned elaboration explaining why the proposed action will not significantly affect the environment". However, "[i]f the lead agency determines that there may be significant environmental impact, it must see to it that a EIS is prepared, which fully evaluates the potential environmental effects, assesses mitigation measures, and considers alternatives to the proposed action." To assist agencies in determining whether a proposed action may have a

> significant effect on the environment, SEQRA directs the DEC to promulgate regulations identifying, "[a]ctions or classes of actions that are likely to require preparation of environmental impact statements," and "[a]ctions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements" (ECL 8–0113[2][c]). In furtherance of this mandate, the DEC classifies actions as Type I, Type II, or Unlisted. "[A] Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS" (6 NYCRR 617.4[a][1]). Type II "actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under [SEQRA]" (6 NYCRR 617.5[a]). "[A]ll remaining actions are classified as 'unlisted' actions"

(*see generally* ***Sierra Club v Martens***, 158 AD3d 169, 174-76, 69 NYS3d 84, 89-90 [2d Dept 2018][internal citations omitted])

DISCUSSION

A. Standing

Since respondents have raised as objections in point of law in their respective answers to the petition, as well as have briefed substantively the issue of standing in their related memoranda of law, the Court will address that jurisdictional defense and objection first. Speaking generally, respondents' objection essentially argues that to the extent that the Planning Board's SEQRA determination was rational and substantially supported by the administrative record before the Court, then there was no adverse environmental impact sufficient enough to warrant preparation of an EIS under SEQRA. Following from there, they then argue without sufficient environmental harm, petitioners, both adjoining/adjacent neighbors or property owners along the creek abutting the Reeves property and dock, cannot claim a specific injury in fact above and beyond the public's generalized grievances concerning the subdivision.

In response, petitioners rely on and point to the Board' professional staff report which indicate *inter alia* that the proposed subdivision would concentrate the prior nonconforming uses to a smaller parcel that would likely exceed allowable sanitary flow under Suffolk County's Sanitary Code, and thus meet with denial under that the County Health Department's review. Therefore, petitioners argue to the extent they are neighbors or adjacent property owners, the subdivision had the prospect of altering groundwater or introducing additional pollution, thus satisfying the injury in fact requirement. Furthermore, they rely on established law for the proposition that adjacent property owners are presumed to have standing in a zoning Article 78.

To establish standing under SEQRA, a petitioner must show (1) an environmental injury that is in some way different from that of the public at large, and (2) that the alleged injury falls within the zone of interests sought to be protected or promoted by SEQRA." Close proximity alone is insufficient to confer standing where there are no zoning issues involved, and general environmental concerns will not suffice (***Shapiro v Torres***, 153 AD3d 835, 836, 60 NYS3d 366, 368 [2d Dept 2017]; *but see* ***Gershon v Cunningham***, 135 AD3d 816, 816-17, 23 NYS3d 345, 346 [2d Dept 2016][in zoning case, on issue of petitioner standing court holds that an allegation of close proximity may give rise to an inference of injury enabling a nearby property owner to

maintain an action without proof of actual injury]).

Here, despite the apparent conflict within the Appellate Division, Second Department concerning whether petitioners' status as an adjoining or adjacent property owners within the zone of harm is alone sufficient for entitlement of a presumption of standing, this Court determines that petitioners have sufficiently pled standing to sue in this proceeding. As their papers have made clear, beyond being neighbors to the Reeves, the Planning Board's own professional staff report indicated a possibility that the proposed subdivision might exceed allowable sanitary flow and density from a Suffolk County Heath Department perspective. It cannot be reasonably argued that sanitary sewage and groundwater protection do not fall within the auspices of environmental protection or within the spirit of SEQRA's policy objectives. Petitioners articulation of anticipated groundwater impact as a result of the subdivision's approval suffice for pleading as this juncture. As a result, respondents' objection in point of law arguing lack of standing is **denied** and the Petition may proceed.

B. Administrative Exhaustion

Dispensing with respondents first threshold objections, it is true that our law generally provides that "one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law" (***Carnelian Farms, LLC v Vil. of Muttontown Bldg. Dept.***, 151 AD3d 845, 846, 56 NYS3d 554, 556 [2d Dept 2017]). Thus, respondents argue that this proceeding should be dismissed as unripe because petitioners have not first sought appeal before the Town ZBA. In response however, petitioners rely on Town Law § 282 for the proposition that under analogous circumstances a direct Article 78 proceeding is proper within 30 days of an adverse determination from the planning board(*see e.g.* ***E. Deane Leonard v Planning Bd. of Town of Union Vale***, 136 AD3d 868, 870, 26 NYS3d 293, 296 [2d Dept 2016][holding that under Town L. § 282 petitioner must commence an Article 78 within 30 days of the filing of any determination of the planning board concerning a plat]).

This Court is not convinced that present proceeding is unripe and thus finds that the administrative exhaustion requirement was not violated. Indeed, it is also the case that "[t]he exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury" (***Pitts v City of New York Off. of Comptroller***, 76 AD3d 633, 906 NYS2d 337, 338 [2d Dept 2010]). For reasons stated below, this Court finds some merit to petitioners' substantive claims and thus this proceeding fits within the narrow exception to the administrative exhaustion doctrine. Accordingly, that aspect of respondents'' opposition and answers is **denied**.

C. SEQRA Violation or Misclassification

As regards petitioners' claims that the Planning Board "failed to take a hard look" under SEQRA in connection with review and approval of the Reeves' subdivision application, the Court first must dispense with respondents' mootness claims. As noted above, respondents argue that petitioners' claims are no longer viable by virtue of subsequent amendment of the town zoning code; after approval of the application but before determination by this Court. They argue this Court is bound to consider the amendment which functionally would permit the

Planning Board to consider and classify the subdivision at issue as a Type II SEQRA action. Petitioners in response contend that respondents oversimplify the matter, while conceding proper consideration and application of the subsequent change in law.

The Court agrees that binding precedent clearly holds that "[a]s a general rule, the court is constrained to decide cases on the law as it exists at the time of the decision (***Temkin v Karagheuzoff***, 34 NY2d 324, 329 [1974]; ***Lawrence School Corp. v Morris***, 167 AD2d 467, 562 NYS2d 707, 708 [2d Dept 1990]; ***D'Agostino Bros. Enterprises, Inc. v Vecchio***, 13 AD3d 369, 370, 786 NYS2d 90, 91 [2d Dept 2004]; ***Rocky Point Dr.-In, L.P. v Town of Brookhaven***, 21 NY3d 729, 736 [2013]). Following form that principle, the doctrine of mootness is typically invoked where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy (***Dreikausen v Zoning Bd. of Appeals of City of Long Beach***, 98 NY2d 165, 172, [2002]).

Thus, in view of prevailing precedent, the Court agrees that for purposes of petitioners' SEQRA claims, the Planning Board could properly consider the subdivision application a Type II SEQRA action, provided other considerations and requirements were met as noted by petitioner. Petitioners argue that under Riverhead Town Code § 225-11(11) "commercial expansion of a preexisting, nonconforming use within any zoning use district" is expressly exempted from classification by the Board as a Type II SEQRA action. The consequence of this being then that the Board would be obligated to prepare an EIS and conduct additional environmental review heretofore lacking.

However, contrary to respondents' claims, the amendment is not in and of itself wholly dispositive of the issues of the day. Petitioners maintain that the consequence of the subdivision application approval was to extend or expand prior nonconforming uses, one of which was a commercial shellfish/oyster fishing/farming operation present on the Reeves' property. The Planning Board's determination conclusorily determined that such prior nonconforming uses would not be expanded, and no review has been had by the Town ZBA to date. Moreover, the administrative return makes clear that the Board's own professional staff considered concentrating the nonconforming uses from 2.548 acres onto 1.63 acres to be in their terms "excessive." Lastly, the report notes that the Reeves' property is adjacent to a "jurisdictional tidal wetland" and would be clearly be subject to additional environmental review. The present record is unclear as whether this took place as a result of the Type II SEQRA classification.

This Court is unconvinced that even under present town zoning code that the Planning Board strictly adhered to SEQRA in rendering its determination on both the classification and approval of the subdivision at issue as the law requires. Petitioners maintain that the Board's determination flies in the face of established precedent calling for an eventual end to all nonconforming uses. On the one hand, it is the law within this department that "nonconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance." "However, the owner must establish that the allegedly pre-existing use [or structure] was legal prior to the enactment of the prohibitive zoning ordinance which purportedly rendered it nonconforming" (***Martinos v Bd. of Zoning Appeals of Town of Brookhaven***, 138 AD3d 859, 860, 29 NYS3d 497, 499 [2d Dept 2016]). On the other hand, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy

favors their reasonable restriction and eventual elimination." Additionally, "in keeping with the sound public policy of eventually extinguishing all nonconforming uses, the courts will enforce a municipality's reasonable circumscription of the right to expand the volume or intensity of a prior nonconforming use" (***Sand Land Corp. v Zoning Bd. of Appeals of Town of Southampton***, 137 AD3d 1289, 1292, 28 NYS3d 405, 408 [2d Dept 2016]). Lastly , an increase in volume or intensity of the same nonconforming use as has occurred on the property for decades is not an expansion of that nonconforming use (***Piesco v Hollihan***, 47 AD3d 938, 940, 849 NYS2d 671, 674 [2d Dept 2008]).

CONCLUSION

In view of all of the above, this Court determines unresolved questions of material fact exists requiring remand to the Planning Board for further proceedings. Petitioners have sufficiently demonstrated that open and unresolved questions concerning whether the Board "took a hard look" under SEQRA in rendering its determination that the Reeves' subdivision application presented a Type II action, even under the now amended town zoning code. The fact that the Board's own staff noted the possibility of disapproval of the subdivision as regards sanitary flow and proximity to tidal wetlands only underscore the necessity for adequate and thorough environmental impact review and analysis, which the Court finds lacking on the present record.

Therefore, the Petition is **granted** to the extent that petitioner's claims that respondent Riverhead Town Planning Board violated SEQRA in misclassifying the respondent Reeves' minor plot subdivision as a Type II action is found persuasive. The remedy this Court then fashions is that the application's approval is **vacated and annulled with remand** to the Planning Board for further proceedings to adequately complete and document environmental impact analysis and review consistent with this decision and order.

Accordingly, petitioners are directed by counsel to settle judgment in accord with this decision and order directing remand of this matter to the respondent Planning Board for further proceedings and considerations under SEQRA as discussed above.

The foregoing constitutes the decision and order of this Court.

Dated: August 16, 2019
Riverhead, New York

WILLIAM G. FORD, J.S.C.

__X__ **FINAL DISPOSITION** _____ **NON-FINAL DISPOSITION**