

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COLUMBIA

In the Matter of the Application of

SUMMIT LAKE CONSERVATION GROUP, LLC,
PETER FENIELLO, ESTHER LUCIA ARIAS, JULIA
SEDLOCK, SALLY BAKER, JOSEPH R. MIRANDA,
GEORGE R. BREHM, JR., EILEEN ORDU, KAREN
SCHOEMER, CAROLYN STERN, KATE MARTINO,
JOHN GOURLAY, and MARK FIELDING,

VERIFIED PETITION

Index No.:

Petitioners,

For a Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules
-against-

VILLAGE OF PHILMONT, VILLAGE OF PHILMONT
PLANNING BOARD, VILLAGE OF PHILMONT BOARD
OF TRUSTEES and CLOVER REACH PARTNERS LLC,

Respondents,

Petitioners Summit Lake Conservation Group, LLC (the “Group”), Peter Feniello, Esther Lucia Arias, Julia Sedlock, Sally Baker, Joseph R. Miranda, George R. Brehm, Jr., Eileen Ordu, Karen Schoemer, Carolyn Stern, Kate Martino, John Gourlay, and Mark Fielding, (hereinafter referred to as “Petitioners”) by and through their Attorneys, Whiteman Osterman & Hanna LLP, by and for their Verified Petition allege as follows:

PRELIMINARY STATEMENT

1. This CPLR Article 78 proceeding seeks to annul determinations by Respondent, the Planning Board of the Village of Philmont (the “Planning Board”), (1) issuing a negative declaration of significance pursuant to the State Environmental Quality Review Act (“SEQRA”) and (2) granting preliminary subdivision approval in connection with the Woods Subdivision

development (the “Project”), located at Summit Street, Village of Philmont, Columbia County, New York and further, pursuant to Town Law § 282, to enjoin Respondents from undertaking any further efforts to review or grant approvals or permits with regard to the Project.

2. Respondent Planning Board’s determinations to grant preliminary subdivision approval (the “Approval”) to Clover Reach Partners LLC (“Clover Reach” or “Applicant”) and to issue a negative determination of significance (the “Negative Declaration”) were made in violation of both the procedural and substantive mandates of the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations at 6 NYCRR Part 617, as well as the NYS Fire Code, NYS Village Law and Village of Philmont Laws.

3. The Approval was granted, and the Negative Declaration was approved at the Planning Board’s August 3, 2022 meeting. The minutes from the Planning Board’s August 3, 2022 meeting were filed with the Village Clerk on August 11, 2022. A written Resolution memorializing the Approval after-the-fact was filed with the Village Clerk on September 1, 2022.

4. Respondent’s determination to grant the Approval to the Applicant and issue the Negative Declaration for the Project was arbitrary and capricious, illegal and not supported by substantial evidence as more fully set forth herein. For the following reasons, the Court should annul the Resolutions.

THE PARTIES

5. Petitioner Summit Lake Conservation Group, LLC is a domestic limited liability company duly organized and existing under the laws of the State of New York with a mailing address of P.O. Box 436, Philmont, New York, 12565.

6. According to its bylaws, The Group was formed for the purpose of advocating for the protection of the environment in the Village of Philmont generally, and the area in and around

Summit Lake in particular, including but not limited to the vision and goals of the adopted Brownfields Opportunity Area plan (the “BOA”). A copy of the organization’s bylaws is attached as **Exhibit A**.

7. Petitioners Peter Feniello and Esther Lucia Arias are natural persons and own property immediately abutting the Woods Subdivision located and known as lots 113.14-1-1, 113.18-1-2, 113.18-1-3, & 123.-1-9 in the Village of Philmont, and adjoining Town of Claverack, Columbia County, New York. As such, they are property owners and taxpayers directly adjacent to the proposed Project.

8. Petitioners Feniello and Arias own and operate a working farm with hay fields. Petitioners Feniello and Arias are concerned that the Woods Subdivision access road is too narrow, in violation of the NYS Fire Code, with steep grades. These violations will impair and/or inhibit emergency service providers access to the Woods Subdivision. Accordingly, Petitioners Feniello and Arias have grave concern that if the Project is allowed to proceed it will result in fire damage and/or destruction to their adjoining property. Petitioners Feniello and Arias are also members of the Group.

9. Petitioner Julia Sedlock is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 9 Ark Street (Tax Map No. 113.9-2-72) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer residing within close proximity to the proposed development project. Ms. Sedlock is a member of the Group.

10. Petitioner Sally Baker is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 6 Band Street, Stop 2, (Tax Map No. 113.9-3-77.2) in the Village of Philmont, Columbia County, New York. As such, she is a property

owner and taxpayer residing within close proximity to the proposed development project. In addition, Ms. Baker is a member of the Group and on the Board of Directors of PBInc.¹

11. Petitioner Joseph R. Miranda is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 6 Lake Side Drive, (Tax Map No. 113.13-2-19) in the Village of Philmont, Columbia County, New York. As such, he is a property owner and taxpayer with residing within close proximity to the proposed development project. Joseph R. Miranda is a member of the Group.

12. Petitioner George R. Brehm, Jr. is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 10 Lake Side Drive, (Tax Map No. 113.13-2-20) in the Village of Philmont, Columbia County, New York. As such, he is a property owner and taxpayer with residing within close proximity to the proposed development project. George R. Brehm is a member of the Group.

13. Petitioner Eileen Ordu is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 7 Summit Street, (Tax Map No. 113.13-1-41) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. Eileen Ordu is a member of the Group.

14. Petitioner Karen Schoemer is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 11 Prospect Street, (Tax Map No. 113.9-1-68) in the Village of Philmont, Columbia County, New York. As such, she is a property owner

¹ PBInc. Is an organization that assisted the Village in the preparation of the BOA, and therefore is intimately familiar with its terms, goals and objectives.

and taxpayer with residing within close proximity to the proposed development project. Karen Schoemer is a member of the Group.

15. Petitioner Carolyn Stern is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 133 Main Street, in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Ms. Stern is a member of the Group and on the Board of Directors of PBInc.

16. Petitioner Kate Martino is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 19 Eagle Street, in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Ms. Martino is a member of the Group and on the Board of Directors of PBInc.

17. Petitioner John Gourlay is a natural person and is a member of the Group and on the Board of Directors of PBInc.

18. Petitioner Mark Fielding is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 3 Lake Side Drive, (Tax Map No. 113.13-2-29) in the Village of Philmont, Columbia County, New York. As such, he is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Mr. Fielding is a member of the Group.

19. Individual Petitioners have standing in this action/proceeding as property owners that are directly and uniquely impacted by Respondents' unlawful determinations to approve the Project in a manner that is distinct from other Village of Philmont residents.

20. These Individual Petitioners also have an interest in preserving the BOA, Summit Lake and the distinctive viewshed that will be irreparably destroyed by the Woods Subdivision, distinct from that of the public at large. A copy of the BOA plan is attached as **Exhibit B**.

21. Further, as individuals who reside in close proximity to the Project, individual Petitioners are directly impacted by Respondents' unlawful determinations as the owners of property in the immediate vicinity of the Project whose residences may be at risk of damage and/or destruction of their property as a result of a fire.

22. The Group further has standing as an organization devoted specifically to the protection of the environment in the Village of Philmont generally, and in the area in and around Summit Lake in particular, including but not limited to the vision and goals of the BOA plan.

23. Petitioners interests are further within the zone of interests intended to be protected by SEQRA, namely, that the environmental impacts of a government action—in this case the arbitrary granting of a SEQRA Negative Declaration and the premature and substantively deficient grant of a preliminary plat application—are fully considered, weighed, and balanced with social, economic, and other considerations. See Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 414-415 (1986). See also Matter of Reed v Village of Philmont Planning Bd., 34 AD3d 1034, 1036 (3d Dept 2006) (upholding standing for petitioners “immediately adjacent to the subdivision property”).

24. Respondent Village of Philmont (the “Village”) is a municipal corporation of the State of New York with offices at 124 Main Street, Philmont, New York.

25. Respondent Planning Board of the Village of Philmont (the “Planning Board”) is a board of the Village of Philmont duly constituted and existing pursuant to the Village Law of the State of New York.

26. Respondent Village of Philmont Board of Trustees (the “BOT”) is a municipal is a board of the Village of Philmont duly constituted and existing pursuant to the Village Law of the State of New York.

27. Respondent Clover Reach Partners LLC (“Clover Reach” or the “Applicant”) is a foreign limited liability company registered in the State of Georgia with a business address of 41 Bender Boulevard, Ghent, New York which transacts business within the State of New York.

28. Respondent Clover Reach Partners LLC is the identified owner and developer of certain parcel of real property located and known as the Woods Subdivision in the Village of Philmont (the “Site” or “Project Site”) and the Applicant before the Planning Board for subdivision approval related to the development of the Project Site.

29. Petitioners brings this action because as abutting and adjacent property owners and neighbors to the proposed subdivision, their use and enjoyment of their residential home will be severely and adversely affected, injured and damaged by the construction and operation of the 16-lot residential subdivision. Further, as members of an organization specifically devoted to advocating for the protection of the environment, including but not limited to the vision and goals of the BOA, Petitioners interests in such advocacy will be harmed by the Planning Board’s unlawful actions that are inconsistent with those goals.

30. Respondent Planning Board's failure to comply with the law when issuing its Negative Declaration and Approval for the Project threatens to deprive Petitioners of their right to fully use and enjoy their residential property and has and will damage and injure the Petitioners' legal, economic, environmental, and public health rights that will be compromised by the construction of and future use of the proposed subdivision.

31. Petitioners with properties located on Lake Side Drive and Band Street represent a

tightknit community that supports the lake as a natural resource for all Philmont residents and visitors. Petitioners tend a community garden, loan out kayaks and canoes, teach neighborhood teens how to fish and maintain the community center and playground as a spot for families, all on a volunteer basis.

32. The area surrounding the proposed Project, including Petitioners' homes and farms is environmentally sensitive. Bald eagles, osprey, kingfishers, great blue herons, green herons, and a variety of songbirds can be regularly seen here. Fish are plentiful in the lake, including bass and pickerel. Several species of environmental concern make their home in the woodlands above the lake Petitioners enjoy Summit Lake and the area surrounding the proposed Project on a daily basis. Views from the Lake and Lake Side Drive to the forested adjoining hillside are spectacular and have been this way forever.

33. If the Approval remains in effect, Petitioners will be negatively impacted, including through decreased property values, diminished views, increased traffic around their properties, permanent changes to their views, changes the character of the neighborhood (into a commercialized resort community), increased use and congestion on the Lake, and harm to the functioning of wetlands in and around their Properties.

34. Some of the Individual Petitioners own property and have resided for decades on the southeast side of Summit Lake and have enjoyed the natural beauty and views of the pristine forested hill surrounding the Lake. If the Approval remains in effect, Petitioners viewshed will be negatively changed forever. As a result, their property values will be decreased, and the character of the neighborhood will be negatively impacted.

35. Attached as **Exhibit C** is a map which shows the Petitioners properties that abut and/or are in close proximity to the Woods Subdivision.

STATEMENT OF FACTS

36. On or about November 1, 2021, the Applicant submitted an application to the Village of Philmont for a Major Subdivision called the Woods Subdivision involving a 20.27 acre site of vacant and forested land (the “Site”) for the development of sixteen (16) residential lots and associated roads and infrastructure.

37. The Site is located on a pristine, forested hill overlooking Summit Lake, a publicly owned and maintained recreational parkland with public trails that traverse to and from it. Views from the Lake and property abutting the Lake of the beautiful hillside are part of the community character and would be forever altered by the subdivision.

38. The Site is bounded by residential lots and farmland to the south and west (many of which are owned by the Petitioners), Summit Lake and wooded Village-owned land to the north, and undeveloped wooded land to the east.

39. Access to the Project would be provided via a two-way road from Summit Street, cut through the pristine forest, which then converts to a one-way loop road along and cut into the hillside. The road, according to the subdivision plans, will have varying steep grades up to 9.15% uphill and 9.9% downhill.

40. Because the proposed homes would be located on the hillside, the grades for the driveways are even steeper than the proposed road and violate the Zoning Law as described below.

41. The Applicant appeared before the Planning Board on January 18, 2022 and the Planning Board determined to act as SEQRA lead agency.

42. At the March 16, 2022 Planning Board meeting, the Planning Board prematurely and contrary to the NYS Village Law as described below, made a motion to deem the application complete and scheduled a public hearing for April 2022.

43. The public hearing on the subdivision application was held in May 2022, and was closed in June 2022. The hearing was commenced before the preliminary plat application was complete, depriving Petitioners of the ability to review and comment on a complete application. Indeed, as noted in the Planning Board’s resolution granting the Approval, the Planning Board continued receiving additional information through the date of the Planning Board’s August 3, 2022 meeting, for instance, “final restrictive covenants being send [sic] by email by Paul M. Freeman, Esq. dated August 3, 2022.” (Exhibit E at 4). Neither the initial restrictive covenants nor the final restrictive covenants were made public.

44. The Planning Board met on August 3, 2022, Completed part 2 of the Environmental Assessment Form, and—despite the fact that there was no public hearing convened pursuant to the Village Law after the Preliminary Plat Approval application was complete—immediately adopted the Approval. A copy of the Planning Board Minutes are attached as **Exhibit D** hereto. A copy of the Resolution, prepared and adopted after the fact and filed in the Village Clerk’s Office on September 1, 2022, is attached as **Exhibit E** hereto.

45. The Planning Board filed the Minutes of its August 3, 2022 meeting with the Village Clerk on August 11, 2022. (Bjelke Aff. at ¶¶ ____).

46. Petitioners seek to annul the Planning Board Resolution granting the Approval because such action is contrary to provisions of the Philmont Village Code, NYS Village Law and such action is contrary to duties enjoined upon it by law, in excess of jurisdiction, in violation of lawful procedure, arbitrary and capricious and an abuse of discretion.

THE BROWNFIELD OPPORTUNITY AREA (“BOA”)

47. During the public hearings, Petitioners raised numerous specific land use and environmental claims relative to significant resulting adverse impacts of the Woods Subdivision

on wildlife, traffic, visual impacts, community character, including violation of the terms of the BOA, among others.

48. The BOA was adopted by the Village Board pursuant to General Municipal Law 970-R. The BOA program is intended to assist a municipality reach its redevelopment goals for areas with the BOA.

49. The BOA underwent four years of review with community stakeholders providing input on the future development and redevelopment of the Village. The BOA encompasses virtually the entire Village, including the Woods Subdivision.

50. Here, the Village made prior commitments to the future redevelopment goals of the Village, including the including the unanimous vote by the Village Trustees on July 9, 2018, to “apply for the designation of the SLWBOA to the Department of State.”

51. Additionally, in his letter to the NY Secretary of State dated August 8, 2018, former Mayor Clarence Speed requested consideration for the designation, stating that “the Nomination appropriately **reflects the community priorities [and] presents an attainable and realistic plan to promote redevelopment.**”

52. The designation was approved in May 2019 and confirmed in a letter from Secretary of State Rossana Rosado on July 25, 2019.

53. Pursuant to the BOA, the Village has received over \$700,000 to date that has been used for the preparation of the BOA Nomination (completed in March 2018 with 1st round of competitive DOS funding), followed by a 2nd round of competitive DOS funding received December 2019. This includes funds for BOA Predevelopment Activities for sites located on the Summit Lake waterfront owned by the Village, and a Work Plan that includes “the preparation of an intermunicipal Watershed Management Plan as a Local Waterfront Revitalization Program

inclusive of Summit Lake and its approx. 14,656 acres (22.9 square miles) of the Agawamuck Creek watershed feeding Summit Lake in a partnership with the Towns of Claverack, Hillsdale, Ghent, and Austerlitz located in the watershed. The intent is to develop management recommendations for improving water quality and restoring critical natural resources throughout the watershed, identify measures to address invasive species, and incorporate information identified in the watershed analysis (e.g. waterways, stormwater runoff, invasive species, onsite wastewater treatment systems, road weather management best practices, watershed data compilation and baseline monitoring.)” A copy of the BOA Work Plan is attached hereto as **Exhibit F**.

54. “As part of the plan, the community will prepare watershed characteristics, produce a watershed map, analyze local laws, provide recommendations, and prepare an implementation plan to improve water quality throughout the Agawamuck Creek watershed and enhance the revitalization of Summit Lake, waterfront, and the village downtown.” (See Exhibit F at 1).

55. The BOA finds Summit Lake to be a “critical public amenity” and a central catalyst for the plan. The planning process enabled the Village of Philmont—with high levels of community participation—to articulate a clear vision, goals, and strategies for redevelopment of Brownfield sites and broader community revitalization. (See Exhibit B at 10).

56. Notably, the introduction of the Implementation Plan section of the BOA states “The Village of Philmont has made a substantial commitment to the community, property owners and other stakeholders by undertaking this effort. In order for this strong commitment to have a positive impact, it is critical for recommended actions be implemented.” (Exhibit B at 167).

57. This report, (Summit Lake and Its Watercourse: a New York State Brownfield Opportunity Areas (BOA) Step 2 Nomination), is a long-term planning initiative that establishes

a strategy for reinvestment in core areas surrounding the Summit Lake, downtown Philmont, and the vacant mills. (Exhibit B).

58. Regarding the Woods Subdivision land, the BOA provides that the “southeast quadrant of the study area is principally defined by the steep sloped areas that border Summit Lake. **This area was incorporated for both its special visual character and the need to protect the hillside from deforestation.**” (Exhibit B at 31).

59. The Woods Subdivision’s adjacency to the Summit Lake conservation area implicates it in several areas of concern that are addressed by currently funded BOA activities, specifically the protection of the water quality of Summit Lake and the Agawamuck Watershed via the creation of a Watershed Management Plan (to include a Lake Protection Ordinance informed by DOS coastal policy; see <https://dos.ny.gov/state-coastal-management-program>), and the establishment of the Village of Philmont Historic District, which includes Summit Lake **and its historic viewshed** (see PARKS Resource Evaluation https://www.dec.ny.gov/docs/permits_ej_operations_pdf/visualpolicydep002.pdf. (describing the historic significance of Summit Lake, and the DEC Policy on Visual and Aesthetic Impacts)). Both areas of concern would be considered as part of the zoning reassessment that is included in the current village contract with the state.

60. Pursuant to NY General Municipal Law 970-R(2)(b)(7) “potential remediation strategies ... and other public or private measures needed to stimulate investment, promote revitalization, support job growth... and enhance community health and environmental conditions and achieve environmental justice.”

61. Further, pursuant to NY General Municipal Law 970-R(2)(c)(5) “areas with known or suspended brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization **or the siting of public amenities.**”

62. The BOA is in essence the Village’s Comprehensive Plan. Unlike other BOA locations, the intent of the Philmont BOA is the revitalization of the *entire* village, while also identifying specific areas of greatest potential impact to focus investment, and calling for reassessment of all Village Zoning Districts, including Hamlet II (where the Woods property is located).

63. Yet, during the Planning Board’s July public hearing, the Planning Board’s attorney stated that the project site was not within the BOA. Not only was and is this plainly incorrect, but the Planning Board thereafter relied on this misstatement, and the Applicant’s misguided statement, when considering adverse impacts on community character, and adverse visual impacts of the development in relation to the BOA and the “historic viewshed,” which are enormous.

64. Disavowing that the Woods Subdivision is within the BOA boundary is no small error. In doing so, the Planning Board denied and arbitrarily disregarded the community comments and signed community petitions submitted regarding community character. It also disregarded the BOA community plan. This plan had previously been adopted under SEQRA following thorough review and consideration accompanied by substantial community participation including over 600 public comments.

AS AND FOR A FIRST CAUSE OF ACTION

**THE SUBDIVISION FAILED TO COMPLY WITH THE VILLAGE'S
ZONING LAW AND STREETS AND SIDEWALKS LAW,
REQUIRING THE SUBDIVISION APPROVAL TO BE ANNULLED**

65. Pursuant to the Village of Philmont Subdivision Regulations §130-18(A)(3); and §130-18(B)(1)(c)(4), subdivisions are required to comply with the provisions of the Zoning Law including Chapter 127 (Street and Sidewalks). Relevant provisions of the Subdivision Regulations and Zoning Law are attached as **Exhibit G**.

66. The proposed Project fails to comply with both, and the Planning Board's approval must therefore be annulled.

A. Village Zoning Law §160-13(L) Violation – Maximum Driveway Grades

67. The Zoning Law regulates the grades for construction of new driveways and provides:

§160-13(L) Driveways.

(3) Driveway grades. (a) **The maximum grade for any new driveway accessory to a single-family dwelling and connecting its off-street parking area to a street shall be 10%**, except where it can be demonstrated to the satisfaction of the Planning Board that, because of practical difficulty or unreasonable hardship affecting a particular property, the construction of a driveway grade is the minimum increase required; provided, however, that in no case shall such driveway grade be permitted to exceed 15%.

68. Of the sixteen proposed driveways within the Woods Subdivision, only one complies with this requirement. The Subdivision notes provide:

DRIVEWAY GRADES	
LOT #	GRADE (%)
1	12.0
2	14.3
3	11.0
4	15.4
5	13.0
6	12.4
7	14.9
8	13.0
9	12.6
10	13.0
11	11.0
12	9.0
13	14.8
14	12.0
15	16.0
16	12.0

69. This violation was acknowledged in a letter from George Smith, Senior Engineering Project Manager at CPL to the Planning Board on February 15, 2022. A copy of the letter is attached at **Exhibit H** hereto.

70. The Planning Board made no determination, nor provided any decision or basis in its preliminary subdivision approval as to whether there were practical difficulties or unreasonable hardships affecting any of the sixteen properties at issue, as would be required under the Zoning Law.

71. Moreover, Lot 15 proposes a driveway with a 16% grade which the Zoning Law prohibits and could not even qualify for the practical difficulty and/or unnecessary hardship standard.

72. The Planning Board’s determination to grant the Approval with driveway grades in excess of the maximum authorized in the Zoning Law was arbitrary, capricious and illegal and should be annulled.

B. Chapter 127 Village Streets and Sidewalks Law Violation – Minimum Road Right-of-Way Width

73. Pursuant to the Village’s Streets and Sidewalks Law, a minimum proposed right-of-way width for new roads in the Village is fifty feet. The relevant provision provides:

§127-11 - Right of Way Width

The developer shall dedicate to the Village of Philmont a minimum right-of-way width of 50 feet for straight rights-of-way...

74. The Woods Subdivision violates §127-11 because the proposed right-of way within the subdivision is “2 rods or 33 feet” in width. A Copy of the Revised Preliminary Plat Submission is attached hereto at **Exhibit I**.

75. The Planning Board’s determination to grant subdivision approval with deficient and inadequate road rights-of-way, less than the minimum required in the Village’s Streets and Sidewalks Law was arbitrary, capricious and illegal and should be annulled.

AS AND FOR A SECOND CAUSE OF ACTION

THE PLANNING BOARD VIOLATED THE PROCEDURAL REQUIREMENTS OF NEW YORK STATE TOWN LAW WHEN IT APPROVED THE WOODS SUBDIVISION

76. The Planning Board violated the procedural requirements of New York State Village Law because it failed conduct the mandatory public hearing on a complete subdivision application.

77. Pursuant to Village Law 7-728(5)(d)(i)(1), when considering a major subdivision

application, the Planning Board is required to conduct a public hearing on a complete preliminary plat application, and a complete application includes the prior completion of SEQRA with a negative declaration. It states:

If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board.

78. In Kittredge v. Planning Board of the Town of Liberty, 57 AD3d 1336, reviewing an identical provision of the NYS Town Law, the Third Department found:

Town Law § 276 establishes a procedural structure for the review of subdivision plats, including provisions for coordination with other agencies by setting time limits in conjunction with SEQRA procedures. In circumstances where no draft environmental impact statement (hereinafter EIS) is required, Town Law § 276(5)(c) provides that “[t]he time periods for review of a preliminary plat shall begin upon filing of [a] negative declaration.” **Common sense dictates that a hearing not be held on the preliminary plat until the plat is deemed complete, which occurs when a negative declaration is filed.** Notably, where, unlike here, a planning board has determined that an EIS is required, any public hearing on the draft EIS must be held jointly with the required public hearing on the preliminary plat, and the notice period for the public hearing on the preliminary plat depends upon whether a hearing will also be held on an EIS—all of which necessarily implies that the planning board must make an initial SEQRA determination before the public hearing is held.

Matter of Kittredge v Planning Bd. of Town of Liberty, 57 AD3d 1336, 1339-1340 (3d Dept 2008).

79. Similarly, the Philmont Code § 130-8(F) provides for the conducting of a public hearing on the “complete preliminary plat application” by the Planning Board.

80. A complete application for Preliminary Plat approval requires that the Planning Board make a determination under SEQRA regarding whether or not the proposed subdivision will have a potentially significant environmental impact.

81. The motion made by the Planning Board to deem the application “complete” at its March 16, 2022 meeting, was without effect, illegal, null and void and arbitrary and capricious because the application could not be deemed complete until the SEQRA review process was complete.

82. During the May 2022 and June 2022 public hearings on the proposed subdivision, the Preliminary Plat application was not complete under the Law because no SEQRA determination had been made.

83. This is a significant error as numerous plans and reports and plan changes occurred after the March 16, 2022 motion, including but not limited to the final restrictive covenants.

84. There was no public hearing on the proposed subdivision application for the Woods Subdivision after the Planning Board issued its Negative Declaration under SEQRA on August 3, 2022.

85. In failing to hold such a public hearing Respondent Planning Board failed to perform the duties required of it under Village Law 7-728(5)(d)(i)(1), which requires that a public hearing be held within sixty-two days *after* the issuance of a negative declaration and *before* granting Preliminary Plat approval.

86. In taking such action, therefore, the Planning Board failed to perform a duty enjoined upon it by law, proceeded without or in excess of jurisdiction, acted in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion in granting the preliminary subdivision approval. The Court should therefore declare such action null and void pursuant to Article 78 of the CPLR.

87. The Planning Board failed to comply with the procedural requirements of the Village Law when it issued the Approval, and therefore its determination is arbitrary, capricious

and illegal and should be annulled.

AS AND FOR A THIRD CAUSE OF ACTION

**THE PLANNING BOARD’S APPROVAL OF PRELIMINARY SUBDIVISION
WITH A DEFICIENT ACCESS ROAD WIDTH VIOLATES
THE NEW YORK STATE FIRE CODE AND SHOULD BE ANNULLED**

88. Pursuant the 2020 Fire Code of New York State, the definition of Fire Apparatus Access Road is “A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as a fire lane, public street, private street, parking lot lane and access roadway.”

89. Section 503.2 Specifications, states: Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.8.

90. Section 503.2.1 provides that the dimensions “shall have an unobstructed width of **not less than 20 feet...**, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches...”

91. The Woods Subdivision will contain only a 16-foot-wide pavement width (including two-foot shoulders) in violation of Section 503.2.1 of the Fire Code. The access road is therefore in violation of the NYS Fire Code.

92. The violation of the NYS Fire Code was explicitly raised by a member of the Planning Board, who wrote a letter concerning this significant issue. See a copy of that letter attached as **Exhibit J** hereto.

93. No variance from the NYS Fire Code minimum safety provisions for access roads has been sought or obtained.

94. The Philmont Fire Chief issued a letter dated February 14, 2022 stating:

The Woods Road one way loop illustrated on plan page C-101.1 shows good accessibility for fire apparatus and presents no know

issues for emergency vehicle operations.

95. While the Fire Chief’s opinion regarding “good accessibility” may be well meaning, the Fire Chief does not grant variances from the required minimum requirements of the NYS Fire Code.²

96. Pursuant to 103.3 of the NYS Fire Code:

An application for a variance or a modification of any provision or requirement of Uniform Code shall be in accordance with the provisions of Part 1205.

97. Section 1205.4(a) of the Uniform Code provides:

Each regional board of review shall have the power to vary or modify, in whole or in part, any provision or requirement of the Uniform Code in cases where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted; provided, however, that any such variance or modification shall not substantially adversely affect provisions for health, safety, and security and that equally safe and proper alternatives may be prescribed. Each regional board of review shall also have the power to hear and decide appeals of any order or determination, or the failure within a reasonable time to make an order or determination, of an administrative official charged to enforce or purporting to enforce the Uniform Code.

98. Upon information and belief, the Applicant communicated with a New York State official via email to discuss this project and the applicability of the NYS Fire Code. No such exchanges have been made public however, and it is unclear from the public record who this official was, what authority they had to communicate with the Applicant, and what was

² Nor is it clear that the Fire Chief’s assessment was even based on the final designs included in the preliminary subdivision application presented to the Planning Board on August 3, 2022. Presumably, at the time the Fire Chief rendered his opinion, he was examining the February 1, 2022 submission to the Planning Board, which called for a 22-foot access road. Excerpts of the February 1, 2022 submission are attached at Exhibit K. However, in the preliminary subdivision application approved by the Planning Board on August 3, 2022, the road was narrowed to a total of 16-feet (a 12-foot road with a two-foot shoulder on either side). Relevant excerpts of the updated plan are attached at Exhibit I.

communicated.

99. Upon information and belief, this New York State official made no determination nor issued any opinion that a variance under the NYS Fire Code was not required.

100. The Fire Chief does not have any authority to grant variances from the NYS Fire Code. Therefore, because the proposed road violates the required minimum 20 feet width contained in the NYS Fire Code, the subdivision is in noncompliance and the subdivision approval should be annulled as arbitrary, capricious and illegal.

AS AND FOR A FOURTH CAUSE OF ACTION

ALIENATION OF PARKLAND PROPERTY

101. The Joshua Essig Trail is a public trail located and begins at the top of the old Summit Heights subdivision and leads down the east side of the Woods Subdivision through Village owned parklands to a public dock at Summit Lake, a publicly owned parkland recreation and conservation area.

102. The Village has maintained Summit Lake and lands surrounding the lake, including the trail, as public parkland for many years and has for the past 15 years maintained the public Joshua Essig Trail leading through it.

103. The Woods Subdivision proposes to discontinue and alienate the public parkland and trail and relocate the trail through the Woods development. A map demonstrating the existing and proposed trail paths is attached as **Exhibit L** hereto.

104. Alienation of parkland requires New York State Legislative approval.

105. The Planning Board's approval of the Woods Subdivision violates the prohibition on the alienation of parkland without first obtaining NYS Legislative approval and is therefore arbitrary, capricious and illegal.

106. The Village Board of Trustees supported a community-based project to create the Joshua Essig Trail in 2010. The clearing of brush was completed by a group of young men rising at the Berkshire Farm residency as a Youth Summer Workforce employment project. The trail opened to the public in 2011, and the Village DPW has maintained it by clearing and mowing the trail to keep it pristine for public use and enjoyment.

107. As a part of the trail, a Boy Scout, Joshua Essig, constructed the dock at the lakefront to which the trail leads. This project was also supported by the Village as a Boy Scout Eagle Scout project, and the Village has maintained the dock in good working order since it was opened to the public in 2011.

108. The trail is actively used by Philmont residents, and visitors year-round who report it is one of the most beautiful and tranquil trails they use due to the shade of the trees and native flora adding to the experience of walking the trail where it is currently located.

109. By alienating parkland through subdivision approval without the required approval from the New York State Legislature, Respondent Planning Board acted contrary to law. The Resolutions of the Planning Board should therefore be annulled.

AS AND FOR A FIFTH CAUSE OF ACTION

THE PLANNING BOARD'S NEGATIVE DECLARATION VIOLATED THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW AND ITS REGULATIONS (SEQRA)

110. The Planning Board's determination was based on its misconceived notion that the Woods Subdivision was not within the BOA boundary (*See* Planning Board Attorney Comments, July 2022 Planning Board public hearing meeting;³ Applicant's Letter dated January 10, 2022 attached hereto as **Exhibit M**). The only mention of the BOA in the Planning Board's Resolution

³ A recording of the Planning Board's July 2022 meeting is available here: <https://wavefarm.org/wf/archive/574www>

summarily notes that among the documents reviewed was “A letter dated January 10, 2022, to the Village Mayor and Board addressing the site’s relation to the Village’s Brownfield Opportunity Area. (**Exhibit E** at 3). In reviewing this application, the Planning Board did not adequately consider or take the requisite hard look required by SEQRA of the community-adopted BOA plan by the Village of Philmont Board of Trustees in April 2018.

A. Negative Impact on Adopted Community Plans and Goals

111. SEQRA requires that the Planning Board take a “hard look” and evaluate “conflict with adopted community plans and goals.” Petitioners and community members repeatedly expressed concern about the Woods Subdivision as being in direct conflict with the BOA plan adopted by Village BOT in 2018 and designated by the NYS Secretary of State in 2019. In connection with this application, there were approximately 40 letters, 120 comments, 200 petition signatures filed with the Board.

112. The Planning Board improperly failed to take a hard look and simply relied on misstatements from the Applicant and the Planning Board attorney who capriciously and repeatedly dismissed the concerns with incorrect statements that the Woods Subdivision property is not within the designated BOA boundary, and therefore would have no adverse impact to BOA goals or intent. This misstatement by the Planning Board attorney was omitted from the minutes of the public hearing, but do appear in the recorded version.

113. The Woods Subdivision is clearly within BOA and the BOA expressly found that “southeast quadrant of the study area is principally defined by the steep sloped areas that border Summit Lake. **This area was incorporated for both its special visual character and the need to protect the hillside from deforestation.**” The Woods Subdivision is this property. (See Exhibit B).

114. Clover Reach consistently presented incorrect BOA maps in community and Planning Board presentations, thus misleading the public and the Planning Board about the nature of the BOA boundary.

115. The lands where the Woods Subdivision is proposed was specifically identified for its visual character and need to be protected from deforestation.

116. The Planning Board's approval of the Wood's Subdivision and SEQRA negative declaration, failed to consider the community's adopted plans and goals and is arbitrary and capricious and should be annulled.

B. The Planning Board Failed to Include Covenants Referenced in Resolution as Conditions of Approval

117. At the August 3, 2022 meeting of the Planning Board, the Chairman sought a motion to grant preliminary subdivision approval to the Woods Subdivision "with covenants." (See Exhibit D).

118. However, the Resolution granting preliminary subdivision approval to the Project does not include those covenants as a condition of approval. (See Exhibit E at 5-7). To the contrary, the Resolution merely notes that the Planning Board reviewed certain covenants provided to the Planning Board via email the same day as the meeting (See Exhibit E at 4).⁴

119. The Resolution is silent and fails to contain any condition concerning those covenants.

120. The Resolution, prepared after the Planning Board's August 3, 2022 meeting is therefore arbitrary and capricious because it failed to include the imposition of the required covenants as a condition of the Resolution.

⁴ Neither the email nor the text of the so-called "final restrictive covenants" were included in the public record.

C. Even Had the Planning Board Included Restrictive Covenants as Conditions of Approval, A Conditional Negative Declaration Would Have Been Impermissible

121. Even had the Planning Board included the aforementioned restrictive covenants as conditions of approval of its Resolution granting preliminary subdivision approval, the Resolutions would still have violated SEQRA as it would have represented an impermissible conditional negative declaration.

122. Pursuant to SEQRA, a conditioned negative declaration for a Type I action, such as the one at issue here, is impermissible.

123. The “final restrictive covenants” which the Planning Board’s attorney received the same day as the Planning Board’s August 3, 2022 meeting purport to address significant potential adverse impacts of the Woods Subdivision raised by the public—in particular, adverse visual impacts. Because they were received the same afternoon as the Approval was granted, the Planning Board could not have taken a hard look or fully evaluated the implications of the covenants. More importantly, the covenants have also been shielded from public scrutiny.

124. These covenants were never made available for public comment. Rather, the covenants were made in a bilateral negotiation between the Planning Board and the Applicant to the exclusion of the public finally received by the Planning Board’s attorney only hours before the Approval was granted.

125. Considering these modifications in the form of covenants—including those relating to the clearing of individual lots—the Planning Board issued a Negative Declaration without considering the need for safeguards that an Environmental Impact Statement (“EIS”) would provide in ensuring the comprehensive evaluation of the subdivision including alternatives.

126. An EIS, being the heart of SEQRA, would have ensured that a thorough review of potential alternatives (including the no action alternative) would have taken place, and would have provided for public discussion and discourse on the covenants, allowing the public to comment and otherwise enlighten the Planning Board with any possible concerns.

127. The grant of a Negative Declaration considering these covenants was therefore tantamount to the grant of a conditioned negative declaration, as those covenants were clearly intended to be conditions precedent to falsely attempt to justify a negative declaration.

128. Such a conditioned negative declaration is not permitted under SEQRA for Type I actions, and as such, the Planning Board's determination was therefore arbitrary and capricious and an abuse of discretion.

D. The Planning Board Further Failed to Take a Hard Look At Resulting Visual and Community Character Impacts

129. From what little is included in the minutes of the Planning Board's August 3, 2022 meeting and the resulting Resolution regarding the "final restrictive covenants," it is understood that those covenants provide guidelines for the amount of tree removal which may occur on the plots encompassed by the Project, as well as restrictions on street parking.

130. Again, the Planning Board's Approval indicates that these final restrictive covenants were only received by the Planning Board the day of the Planning Board's August 3, 2022 meeting at which the Planning Board granted preliminary subdivision approval.

131. The Planning Board's Resolution indicates that on February 15, 2022 and March 16, 2022, the Planning Board was presented with Visual Assessment information consisting of a 3d terrain model from the survey applying photos over the terrain model to demonstrate the project with development, without development, and the pre-existing homes" along with "one Line-of-

Sight Analysis Plan and Profile of Tighe & Bond dated March 15, 2022” and “a conceptual rendering dated March 16, 2022. (Exhibit E at 3).

132. These visual submissions were apparently “deemed acceptable to a majority of the Planning Board members” at a Planning Board meeting on June 21, 2022. (Exhibit E at 4). There is not, however, any explanation why that was the case.

133. Petitioners explained to the Planning Board that the simulations were fraught with errors, subjective, and not to be relied upon. There was no associated report to explain what and how the simulations were prepared.

134. The Planning Board Resolution does not, however, indicate that any of the visual submissions presented to the Planning Board took into account the effect of the August 3, 2022 final restrictive covenants, and in particular what effect permitted tree removal would have on the visual simulations.

135. In failing to do so, the Planning Board failed to take the required “hard look” which it is required to take under SEQRA when considering visual impacts, and the resulting impacts on the character of the community.

136. The Planning Board’s grant of preliminary subdivision approval was, therefore, arbitrary, capricious, and contrary to law and should be annulled.

WHEREFORE, Petitioners respectfully request an Order and Judgment of this Court as follows:

1. Annuling, vacating and declaring void the determination of the Planning Board to issue a SEQRA Negative Declaration with respect to the Woods Subdivision, and alternatively remanding such determination back to the Planning Board for action consistent with this decision requiring Planning Board to act in accord with State Law and the Village’s Laws, forthwith;

2. Annuling, vacating and declaring void the Resolution of the Planning Board granting preliminary Subdivision approval for the Woods Subdivision, and alternatively remanding the such determination back to the Planning Board for action consistent with this decision requiring Planning Board to act in accord with Philmont Village Code forthwith;
3. Granting Petitioners' attorneys' fees and costs, and
4. Granting such other and further relief which this Court deems just and proper.

DATED: September 2, 2022
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: _____
Thomas A. Shepardson, Esq.
Attorneys for Petitioners
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
tshepardson@woh.com