SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK
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In the Matter of

SAVE SAG HARBOR, KATHRYN LEVY, DOUGLAS NEWBY, MAZIAR BEHROOZ, ALASTAIR HAWKER, AJA DEKLEVA COHEN, PETER ACOCELLA, and LAURA GRENNING,

Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

VILLAGE OF SAG HABOR, VILLAGE OF SAG HARBOR BOARD OF TRUSTEES,

Respondents.
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Index No.: 202924/2022

Hon. Stephen Hackeling

PETITIONERS' MEMORANDUM OF LAW
IN SUPPORT OF VERIFIED PETITION

Dated: January __, 2023

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INTRODUCTION

This proceeding, brought pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), seeks to annul, vacate, and set aside the June 14, 2022 decisions by Respondent Village of Sag Harbor Board of Trustees ("Village Board") to adopt Local Laws #11 and #12 amending the Village of Sag Harbor's Village Code. See Verified Petition dated October 13, 2022 ("Petition"). Local Law #12 expands the definition of an apartment building to allow the establishment of three story, mixed use apartment buildings within the Village's Office District and the Village's Business District.

The changes to the Village's Code that were adopted by the Village Board have a detrimental effect on the entire Office District and Business District by permitting residential units with very high density allowances in areas where the Village intended to maintain diverse business, retail, and office uses, while preserving the historic and waterfront resources of the Village. The Village Board adopted changes to the Village Code that create a material conflict with the Village's existing community plans and goals without undertaking a comprehensive planning process. As a result, the zoning changes are arbitrary and capricious. Moreover, the Village Board failed to comply with the State Environmental Quality Review Act ("SEQRA") in its review of the proposed zoning changes. Petitioners request that the Court annul, vacate and set aside Local Laws #11 and #12 because the Village's adoption of these zoning changes was arbitrary and capricious, irrational, and affected by errors of law.

STATEMENT OF FACTS

In 2008, the Village undertook a comprehensive planning process that focused on planning for the heart of the Village's downtown. The Planning Strategies for the Inc. Village of Sag Harbor ("2008 Planning Strategies") recognizes that the Village has a goal of protecting the "commercial shopping district" by, among other things, "maintaining the stability and the diversity of the retail stores currently present along Main Street." The Village sought to permit retail uses within the commercial shopping district that while restricting non-retail uses, including offices. Eventually a new Office District was created outside of the historic Main Street Village Business District for professional offices, banks, personal services and similar uses.

The 2008 Planning Strategies also recommended regulations that would "encourage the development of a certain number of accessory apartments within the Village". p. 79. The accessory apartments could be "part of residential structures", or could be located in apartments on the second and third floors of existing buildings in the Business District. pp. 79-80. There was no recommendation to locate all affordable housing units for the Village within the Business District or Office District, or to create unlimited density for affordable housing units within the Business District or Office District as that would have been contrary to rest of the planning strategies for those districts.

For several months in 2022, members of the Village Board considered changes to the Village's zoning to accommodate more affordable housing. The idea of the construction of a proposed affordable housing project to be located in the Village's Office District at Bridge and Rose Streets ("Subject Property") was made known to the Village Board members in February 2022. See Petition Exhibit D. Indeed, a specific mixed use

housing project idea proposed by Adam Potter for the Subject Property ("Potter Project"), was being contemplated by the Village as it developed its future zoning changes. See Affirmation of Jeffrey L. Bragman submitted simultaneously herewith. The Potter Project is a mixed use development proposal that would contain 108,055 square feet including commercial space, 79 residential units, and 30 parking spaces in the Office District.

The Subject Property for the Potter Project is located in an area of land that has a zoning designation (Office District) that did not allow for the construction of a mixed used affordable housing development project. See Petition ¶__. Notably, the idea for the development of the Subject Property for a mixed use affordable housing development project was not previously part of the comprehensive planning approved by the Village Board in 2008.

The Subject Property is located within areas covered by the [plans]. See Petition ¶___. According to the New York State Department of Environmental Conservation ("DEC"), the Subject Property was a former Superfund site. See Petition ¶__.

Without the benefit of proper planning, or an environmental impact statement ("EIS") to study the best location for a new affordable housing complex or the impacts of such a project on the Village, the Village Board decided to amend the Village Code to allow mixed use affordable housing projects to be developed in the Village's Office District and the Village's Business District. See Local Law #12 §__.

At a meeting held on June 14, 2022, the Village Board adopted Local Laws #11 and #12 (and a third local law, Local Law #13, which is not challenged herein). Petitioners challenge those decisions because they are arbitrary and capricious, an abuse of discretion, and affected by errors of law.

ARGUMENT

The Village Board's adoption of Local Laws #11 and #12 amending the Village Code was arbitrary and capricious, an abuse of discretion, and contrary to law. The Village Board failed to comply with SEQRA in its adoption of the Local Laws, and its adoption of the Local Laws was contrary to the Village's existing planning documents. Accordingly, Petitioners respectfully request that this Court issue an order and judgment vacating and annulling the June 2022 determinations of the Village Board adopting the Local Laws at issue herein.

POINT I

PETITIONERS HAVE STANDING

Standing principles are not to be used to insulate the actions of government entities from judicial review. See generally Matter of Sun-Brite Car Wash v. Board. of Zoning & Appeals of Town of N. Hempstead, 69 N.Y.2d 406 (1987). "Standing principles, which are in the end matters of policy, should not be heavy-handed; *in zoning litigation in particular*, it is desirable that land use disputes be resolved on their own merits rather than by preclusive, restrictive standing rules". Id., 69 N.Y.2d at 413. This has been confirmed by the Court of Appeals in recent years, as held in Matter of Sierra Club v. Village of Painted Post, 26 N.Y.3d 301, 311 (2015), in which the Court observed that the Fourth Department had "applied an overly restrictive analysis" to petitioners' standing. In 2014, in modifying a Third Department decision, and finding that petitioners had standing to assert their procedural claims, the Court of Appeals noted that it is "reluctant to apply [standing] principles in an overly restrictive manner where the result

would be to completely shield a particular action from judicial review." Matter of Association for a Better Long Is., Inc. v. New York State Dep't of Envtl. Conservation, 23 N.Y.3d 1, 6 (2014).

Applying those principles to this case, all of the Petitioners have standing to challenge the Village Board's decisions, which should be annulled for the reasons set forth below. See Matter of Youngewirth v. Town of Ramapo Town Bd., 98 A.D.3d 678, 680 (2nd Dept. 2012) (finding that petitioner had standing to challenge illegal spot zoning, and further finding that petitioner "did not need to show actual injury or special damage to establish standing"). Specifically, Petitioner Grenning owns a business and a separate property that are both located *within* the Village's Business District that is the subject of the zoning changes. See Petition ¶¶ 18, 55. Additionally, Petitioners Behrooz, Hawker, Cohen, and Acocella own property that is adjacent to and/or in close proximity to the land that is subject to the zoning changes. See Petition ¶¶ 14-17, 52-54. Petitioners Levy and Newby own property a few blocks from the land that is subject to the zoning changes, and they travel to the downtown area for essential services on a regular basis. See Petition ¶¶ 12-13, 51. Therefore, the Petitioners have "standing to seek judicial review 'without pleading and proving special damage, because adverse effect or aggrievement can be inferred from the proximity'". Ontario Heights Homeowners Ass'n v. Town of Oswego Planning Bd., 77 A.D.3d 1465, 1466 (4th Dept. 2010) (holding that petitioner who "owns property that is 697 feet from the property line of the proposed development and 1,242 feet from the edge of the development" is presumed to have standing).

Moreover, Petitioners, through the Petition, paragraphs 11 to 18 and 47 to 59, and the affidavits and exhibits submitted with the Petition, have provided detailed allegations of "injuries that are 'real and different from the injury most members of the public face'". Sierra Club v. Village of Painted Post, 26 N.Y.3d 301, 311 (2015). The Local Laws will result in negative impacts to the individual Petitioners and their properties from increased traffic and parking near their homes and business, and in the surrounding, narrow streets, increased day-time activity, increased noise, increased stormwater runoff, a reduction to property values, and that the development brought about by the Local Laws will irreparably alter the character of the Village. See Petition ¶¶ xxx; prior affidavits. Thus, the change to the zoning districts will negatively impact the use and enjoyment of the individual Petitioners' properties, and their properties' values, which are inextricably linked to the historic character of the Village, such that they are each entitled to maintain this proceeding to annul the Local Laws challenged herein. See Matter of Veteri v. Zoning Bd. of Appeals of Town of Kent, 202 A.D.3d 975, 980 (2d Dept. 2022) (finding that nearby petitioners' allegations of environmental injuries, as well as "impacts to their properties from increased noise, truck traffic, dust, and pollutants" was sufficient to establish standing); Matter of Lo Lordo v. Bd. of Trustees of Inc. Vill. of Munsey Park, 202 A.D.2d 506 (2d Dept. 1994) (finding that "petitioners' allegations of potential injury are supported by the record" and petitioners have standing).

Further, their interests in having their respective property values, quality of life, character of the community, and environmental concerns protected from the adverse effects of the Project are "within the zone of interest to be protected by the statute[s]"

involve in this case. Matter of Sun-Brite Car Wash. v. Board. of Zoning & Appeals of Town of N. Hempstead, 69 N.Y.2d 406, 412 (1987).

Finally, the organizational petitioner, Petitioner Save Sag Harbor, has standing….

Organizations as petitioners have standing when three elements are met:

> In the area of associational or organizational standing, the applicable principles are embodied in three requirements (see, Matter of Dental Socy. v Carey, 61 NY2d 330). First, if an association or organization is the petitioner, the key determination to be made is whether *one or more of its members would have standing to sue*; standing cannot be achieved merely by multiplying the persons a group purports to represent. Second, an *association must demonstrate that the interests it asserts are germane to its purposes* so as to satisfy the court that it is an appropriate representative of those interests. Third, it must be evident that *neither the asserted claim nor the appropriate relief requires the participation of the individual members*. These requirements ensure that the requisite injury is established and that the organization is the proper party to seek redress for that injury. Society of Plastics Industry, Inc. v. County. of Suffolk, Id, at 775 (1991) (emphasis added).

First, Petitioner Save Sag Harbor's members have standing to sue. Individual Petitioners xxxx are members of Save Sag Harbor who are negatively impacted by the zoning changes adopted by the Village Board. Second, the Local Laws challenged herein negatively affect Save Sag Harbor's mission to preserve the character of the Village and a sense of place created by that character. Therefore, the interests that it asserts in this proceeding are germane to the organization's purposes. Third, Save Sag Harbor is an appropriate representative of its members' interests, and the relief requested herein (annulment of the Local Laws) does not require the participation of the organization's individual members. Therefore, Petitioner Save Sag Harbor has standing to commence this proceeding because it meets the three elements of the test for organizational standing. See Matter of West Branch Conservation Assn. v. Town of Ramapo, 284 A.D.2d 401, 402 (2d Dept. 2001), amended, 301 A.D.2d 4850 (2d Dept. 2003) (finding that "an

association dedicated to preserving and protecting the [environment] within the subject area" had standing); see also Matter of Long Is. Pine Barrens Soc'y, Inc. v. Cent. Pine Barrens Joint Plan. & Policy Comm'n, 138 A.D.3d 996, 997 (2d Dept. 2016).

Once the Court finds that even one of the Petitioners "has standing, it is not necessary for the Court to reach the issue of whether any of the remaining Petitioners have standing". Jeffrey v. Ryan, 37 M.3d 1204(A) *4 (Sup. Ct. Broome Co. 2012, Lebous, J.). Here, at least one of the Petitioners has demonstrated standing, so the Court should review the merits of this proceeding. See Sierra Club v. Village of Painted Post, 26 N.Y.3d at 311.

POINT II

THE LOCAL LAWS SHOULD BE ANNULLED BECAUSE THE VILLAGE BOARD VIOLATED SEQRA

In reviewing municipal board decisions, the Court must ensure that the board's decision-making follows the strict letter and spirit of SEQRA in their environmental reviews. See ECL Article 8. "The mandate that agencies implement SEQRA's procedural mechanisms to the 'fullest extent possible' reflects the Legislature's view that the substance of SEQRA cannot be achieved without its procedure, and that departures from SEQRA's procedural mechanisms thwart the purposes of the statute. Thus, it is clear that strict, not substantial, compliance is required." King v. Saratoga Cty. Bd. of Sup'rs, 89 N.Y.2d 341, 347 (1996). Failure to achieve strict compliance with SEQRA requires annulment of an agency's decision-making.

Here, the Village Board's decisions must be annulled because the legislative and judicial mandates that require "strict, not substantial, compliance" with SEQRA were not

met in this case. King v. Saratoga Cty. Bd. of Sup'rs, 89 N.Y.2d 341, 347 (1996). Prior to adoption of the Local Laws, the Village Board failed to review the EAF Part 1, prepare Parts 2 and 3 of the EAF, take a "hard look" at the potential environmental impacts, or make a determination of significance[1] at a public meeting, which is a violation of Public Officers Law § 103(a). See Petition First Cause of Action. "Because SEQRA requires strict adherence to its procedural requirements, the [agency's] failure to comply with those procedural requirements cannot be deemed harmless". Pyramid Co. of Watertown v. Planning Bd. of Town of Watertown, 24 A.D.3d 1312, 1313 (4th Dept. 2005).

Moreover, it is unreasonable, and arbitrary and capricious, to conclude that SEQRA review of the Local Laws should not have included a review of the proposed Potter Project when the record shows that it will be developed pursuant to the Local Laws adopted by the Village Board. Therefore, the Village Board's failure to include the proposed mixed use development project in its SEQRA review violates the letter and spirit of SEQRA, and its decisions must be annulled.

A. The Village Board Violated SEQRA and Public Officers Law

An important preliminary matter is that the Village Board did not undertake a SEQRA review of the environmental impacts of the Local Laws. The transcripts of the meetings of the Village Board detail the motions that were passed by the Village Board to adopt the Local Laws, but there was nothing in the transcript (or the minutes of the meeting)

[1] Yet another failure by the Village Board is that no determination of significance was published in the New York State Department of Environmental Conservation's Environmental Notice Bulletin, as required by the SEQRA regulations for a Type 1 action such as this one. See 6 NYCRR § 617.12(c)(1).

reflecting that a SEQRA review of the Local Laws was undertaken by the Village Board at any time. A reference to SEQRA is mentioned only once, in a brief passing, by the Village Attorney. R. xxxx (quoting Elizabeth Vail). Failing to conduct the SEQRA review is a plain and undeniable violation of SEQRA; the Village Board's failure to comply with SEQRA is standalone grounds for annulment of the Local Laws. xxxx.

While there is a SEQRA form in the Record, there is nothing in the Record demonstrating that the Trustees of the Village Board completed this form at a public meeting. In fact, Parts 2 and 3 of the EAF were not completed by the Trustees of the Village Board during a public meeting. According to the documentation in the Record, the Village Board's consultant filled out the EAF, and then the Village Mayor signed Part 3 of the EAF in July 2022, *after* passage of the Local Laws in violation of SEQRA, which requires SEQRA review *prior* to an agency taking an action such as the adoption of Local Laws. See 6 NYCRR § 617.3. If the Village Board claims that the completion of Parts 2 and 3 of the EAF was undertaken by the Trustees of the Village Board, then the alleged SEQRA review by the Village Board was conducted in a nonpublic meeting in violation of Public Officers Law § 103(a).

B. The Village Board Failed to Take a Hard Look at the Impacts

As lead agency for a SEQRA review, the agency must take a "hard look" at potential, relevant environmental impacts of a proposed action. 6 NYCRR § 617 xxxx. If there is the potential for even "one significant adverse environmental impact" resulting from an agency's proposed action, then a positive declaration must be issued and an environmental impact statement must be prepared. 6 NYCRR § 617.7(a). Notably,

SEQRA Type 1 actions, such as this one, carry with them a presumption that there will be at least one significant adverse environmental impact, requiring the preparation of an EIS to study the impacts and determine ways to avoid or mitigate those impacts.

As shown in the Petition's First Cause of Action, the Village Board failed in its duty to take a "hard look" at the relevant environmental impacts of its action of adopting the Local Laws. The Village Board did not satisfy its SEQRA obligations by simply having its consultants write a report about the general environmental impacts of the Local Laws. The Village Board itself should have assessed the specific environmental impacts that are a direct consequence of the Local Laws, including the proposed construction of affordable housing projects on the lands subject to the Local Laws. See Teich v. Buchheit, 221 A.D.2d 452, 454 (2d Dept 1995) (annulling determination because board did not consider the action's impacts in the context of the larger overall plan of which the project was a part).

The purpose of the Local Laws is to allow for future development of affordable housing projects. The Record demonstrates that the Village Board sought to encourage the development of affordable housing that is combined with commercial uses on the street level in the Village's downtown. R. xxx. There can be no question that the future construction of a proposed mixed use affordable housing project is a directly related, subsequent action stemming from the Local Laws. Therefore, the Village Board was required to review the potential environmental impacts from the development of a mixed use affordable housing development project. See Bergami v. Town Bd. of Town of Rotterdam, 97 A.D.3d 1018, 1022 (3d Dept. 2012) (annulling rezoning because the board

"failed to take the requisite hard look at the environmental impacts of development of the subject property for commercial use").

Instead, the Village Board failed to take a hard look at the complete impacts of its action. As stated earlier, the Village Board itself did not review the EAF Part 1, prepare Parts 2 and 3 of the EAF, take a "hard look" at the potential environmental impacts, or make a determination of significance. In the EAF Part 2 completed by the Village Board's consultant, "No" is checked on the form for several categories, falsely asserting that there would be no impacts whatsoever on community plans, human health, and open space and recreation. Xxx. The Village Board's consultant also claimed in the EAF Part 2 that there would be "no to small" impacts on every other relevant area of environmental concern, including but not limited to impacts on land, surface water, groundwater, flooding, aesthetic resources, historic and archaeological resources, critical environmental areas, transportation, energy, noise/odor/light, and community character, among other resource categories marked as experiencing no impact.

Claiming that these resources would not be impacted at all by the Village Board's adoption of the Local Laws that facilitate the development of mixed use affordable housing development projects demonstrates that the Village Board failed in its duty to identify and analyze the relevant potential adverse environmental impacts of its action. See 6 NYCRR § 617.7(b); see also Adirondack Historical Ass'n v. Vill. of Lake Placid/Lake Placid Vill., Inc., 161 A.D.3d 1256, 1259 (3d Dept. 2018) (annulling board's decision where the board provided a "negative response to the question on the EAF" despite clear concerns). By simply checking "No" on nearly every single impact question on Part 2 of the EAF, the Village Board failed "to satisfy the SEQRA's requirements of identifying the relevant areas

of environmental concern, taking a hard look at them and making a reasoned elaboration for its determination of non-significance". Corrini v. Vill. Of Scarsdale, 1 Misc. 3d 907(A) *9 (Sup. Ct. Westchester Co. 2003).

For instance, the land affected by the zoning changes are located within areas containing or adjacent to the Peconic Bay and Environs Critical Environmental Area. The area is also located within a Federal Emergency Management Agency ("FEMA") flood zone, and within the Village's Tidal Flood Overlay zone, and is prone to significant flooding from normal rain events. See Petition Exhibit I (photographs of the Bridge Street/Rose Street area after a rainstorm on or about October 5, 2022). The area is also subject to devastating flooding during severe weather events such as Superstorm Sandy. See Affidavit of Maziar Behrooz and photos annexed thereto. Portions of the area subject to the Local Laws that are not connected to the Village's sewer system and are developed can have negative impacts on groundwater. Even in areas serviced by the sewer system, the sewer system has the potential to cause discharges of pollutants to the Village's waters.

The area is also included within the Village's designated Historic District, and has been the subject of community plans to maintain the historic and attractive character of the Village. See Petition ¶¶ 21-33 (discussing the 2008 Planning Strategies, the Waterfront Planning Study, and the Local Waterfront Revitalization Program). The Village also has persistent and significant problems related to transportation (e.g., traffic congestion) and parking that would be exacerbated by the increased density of development created by the Local Laws. Local Law #12 allows for a "15± fold increase in the maximum unit density" of residential units in the Office District by reducing the density from 7,260 square feet of

lot area per dwelling unit to 500 square feet of lot area per dwelling unit. See Petition Exhibit J (EAF Part 3 with attachment (p. 4).

As demonstrated by these environmental concerns, the Local Laws subject to challenge herein have the potential to cause any number of readily apparent significant adverse impacts due to the proposed zoning changes that dramatically increase the intensity of uses within the affected locations. Given this information regarding the potential impacts that would result from the adoption of the Local Laws, it was not rational to claim in Part 2 of the EAF that the proposed Local Laws would have no potentially significant adverse impact on any of the areas of environmental concern. Therefore, the Village Board's failure to take a "hard look" at the impacts of the proposed Local Laws is a violation of SEQRA and resulted in arbitrary and capricious determinations that must be annulled. See Shapiro v. Planning Bd. of Town of Ramapo, 155 A.D.3d 741, 744 (2d Dept. 2017) (annulling board's negative declaration because it did not take a "hard look" or "make a reasoned elaboration"); Prand Corp. v. Town Bd. of Town of E. Hampton, 78 A.D.3d 1057, 1060 (2d Dept. 2010) (annulling decision because the "Town Board issued a negative declaration without taking the requisite 'hard look' at these relevant environmental criteria"); Avy v. Town of Amenia, 27 A.D.3d 557, 559 (2d Dept. 2006); Purchase Environmental Protective Association, Inc. v. Strati, 163 A.D.2d 596, 597 (2d Dept. 1990).

C. The Village Board Failed to Comply with SEQRA by Engaging in Illegal Segmentation

In conducting its SEQRA review, the lead agency must consider its action and it "must consider reasonably related long-term, short-term, direct, indirect and cumulative

impacts, including other simultaneous or subsequent actions". 6 NYCRR § 617.7(c)(2). The lead agency is not permitted to segment the review of an action into smaller parts to avoid evaluating the cumulative impacts of a proposed action.

Here, the Village Board's attempt to delay reviewing the related subsequent impacts of the Local Laws, and to defer its obligations to a future review of a specific proposed project, is a classic example of impermissible segmentation of an action's impacts, in violation of SEQRA. See MYC New York Marina, L.L.C. v. Town Bd. of Town of East Hampton, et al., 17 M.3d 751, 761 (Sup. Ct. Suffolk Co. 2007). Despite the EAF Part 1 striking out the sections regarding a development project, the Mayor had acknowledged prior to the formal adoption of the Local Laws, there *is* a specific project being contemplated for proposal as a result of the zoning changes. Xxxx.

The specific project is the so-called "Potter Project" that is a mixed use development that contains 108,055 square feet including commercial space, 79 residential units, and 30 parking spaces in the Village Office District. The Mayor and the Village Board Members knew that Adam Potter owned lands located at Bridge and Rose Streets that he was proposing to develop into a mixed use project that would contain affordable housing units. Xxxx. The parameters of that potential development project are sufficiently known such that the potential adverse environmental impacts should have been identified and considered by the Village Board in making the SEQRA determination of significance. Accordingly, the Village Board is required to consider the impacts resulting from the potential Potter Project.

The impacts of the Potter Project include the potential for significant adverse impacts to flooding, aesthetics, historic resources, community character, traffic, noise,

lights, groundwater, and open space resources. In addition, the proposal for constructing the Potter Project includes demolishing four existing properties that contribute to the historic character of the Village's Historic District. See Petition Exhibit K (Historic District info from the National Register of Historic Places).

Moreover, the location of the proposed Conifer Development project is the site of an Inactive Hazardous Waste, subject to ongoing monitoring relating to the remaining contamination in the soil. Xxxx. Therefore, the site has the potential to create significant adverse impacts on human health, groundwater, and other concerns from disturbing the currently contained contamination.

The Village Board considered none of these impacts, and it failed to weigh whether any of these impacts from the proposed Potter Project would result in a significant adverse impact, nor whether these impacts could be mitigated during the process of adopting the Local Laws. Therefore, the Village Board's failed to comply with SEQRA and its decisions adopting the Local Laws were arbitrary, capricious and affected by an error of law.

POINT III

THE LOCAL LAWS CONFLICT WITH THE VILLAGE'S PLANNING DOCUMENTS AND ARE NOT PART OF A WELL-CONSIDERED PLAN

The requirement that zoning designations conform to a "well-considered" or "comprehensive plan" is nearly universal. Udell v. Haas, 21 N.Y.2d 463, 469 (1968). "The thought behind the requirement is that consideration must be given to the needs of the community as a whole," and thus, "[i]n exercising their zoning powers, the local

authorities must act for the benefit of the community as a whole." Udell v. Haas, 21 N.Y.2d at 469.

The Local Laws at issue herein conflict with the Village's planning documents and are contrary to the zoning goals adopted by the Village. The 2008 Planning Strategies recommended that the Village "focus on supporting the retail and shopping trade" in the Village Business District, and to exclude non-retail uses, including offices, from the Business District. The goal was to maintain a pedestrian friendly historic Main Street that defines the Village of Sag Harbor. The 2008 Planning Strategies (p. 67) recommended creating a new zoning district – Office District – for professional offices, financial institutions and other such uses, to provide those uses an "appropriate 'home'" outside of the Village Business District. The Local Laws conflict with these stated goals by concentrating affordable housing units in the Office and Business Districts.

The 2008 Planning Strategies recommended against "the merger of building and spaces to create larger retail spaces that would otherwise reduce diversity in the Village". Petition Exhibit A (2008 Planning Strategies, p. 78). The purpose of preventing consolidation of lots was to "encourage small shops" to exist and thrive. Petition Exhibit A (2008 Planning Strategies, p. 78). Local Law #12 creates a material conflict with the 2008 Planning Strategies by expressing allowing new projects to consolidate or merge lots, owned by separate corporations (as is the case with the proposed Potter Project), that would be considered a "single parcel of land" for purposes of the application. Quoting Local Law #12 (Section 300-11.5[A][3]).

Despite the recommendation to "make significant efforts to expand the parking base in the commercial district" because of the need for more parking downtown

(Petition Exhibit A, 2008 Planning Strategies, p. 87), Local Law #12 eliminated the requirement for off-street parking and left it completely to the discretion of the Village Board to approve a parking plan proposed by the applicant of a mixed use project containing commercial and residential uses pursuant to the new local law.

The Village's Local Waterfront Revitalization Program has an emphasis on maintaining the Village's waterfront resources, protecting properties that are within the flood plain hazard area, maintaining the historic character of the Village, and supporting the development of new commercial and recreational water-enhanced uses. Local Law #12 ignores these objectives by eliminating minimum lot size, allowing mergers of lots, allowing detrimental impacts to the historic character of the Village, and promoting residential uses rather than commercial and recreational water-enhanced uses in the Business District and Office District.

Village Board's decision to adopt Local Laws ## 11 and 12 to amend the zoning for the Business District and Office District is inconsistent with the objectives, purposes and recommendations of the Village's adopted planning policies such as the 2008 Planning Strategies, the Waterfront Planning Study, and the Local Waterfront Revitalization Program. Therefore, Petitioners respectfully request that this Court annul the Local Laws at issue herein. See W. Branch Conservation Ass'n v. Town of Ramapo, 284 A.D.2d 401, 403 (2d Dep't 2001) ("commercial zoning . . . of the subject property was contrary to goals of the Town's Development Plan, which included . . . maintaining the rural residential character of the Town, limiting commercial development to certain defined areas . . . , and discouraging random commercial development").

Here, the Local Laws are not "part of a well-considered and comprehensive plan calculated to serve the general welfare of the community." Cannon v. Murphy, 196 A.D.2d 498, 500 (2d Dept. 1993) (citation omitted). As discussed above, the zoning changes adopted in the Local Laws are contrary to the Village's planning documents, are incompatible with and will adversely impact the surrounding properties, and were principally driven by the prospect of economic benefit projected to result from Mr. Potter's future development of the Potter Project. Accordingly, the Village Board's decision must be annulled because it was arbitrary and capricious, an abuse of discretion, and affected by an error of law.

POINT IV

VILLAGE'S AFFIRMATIVE DEFENSES LACK MERIT

[update TOC to add this point]

Dispute the affirmative defenses in the Village's Answer

CONCLUSION

Petitioners respectfully request that the Court grant a judgment:

A. Annulling, vacating and setting aside the alleged SEQRA determination for the Local Laws;

B. Annulling, vacating and setting aside the June 14, 2022 determinations of the Village Board adopting Local Laws #11 and #12 amending the Village Code;

C. Awarding Petitioners the costs, disbursements, and attorneys' fees incurred in connection with this proceeding, including attorneys' fees pursuant to Public Officers Law § 107; and

D. Awarding Petitioners such other and further relief as this Court shall deem just, proper, or equitable.

Dated: January ___ 2023
Glens Falls, New York

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