

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

CITY OF RYE; JOSEPH A. SACK and
RICHARD MECCA,

Petitioners,

v.

WESTCHESTER COUNTY BOARD OF
LEGISLATORS and WESTCHESTER
COUNTY PLANNING DEPARTMENT,

Respondents.

Case No.: _____

Hon.

**PETITIONERS' MEMORANDUM OF
LAW IN SUPPORT OF ARTICLE 78
PETITION**

Petitioners, City of Rye (“Rye”), Joseph A. Sack and Richard Mecca respectfully submit this Memorandum of Law in support of their petition for judgment pursuant to Article 78 and Section 3001 of the New York Civil Practice Laws and Rules (“CPLR”).

PRELIMINARY STATEMENT

Petitioners maintain that Respondents, Westchester County Board of Legislators (“County Legislature”) and the Westchester County Planning Department (“Planning Department”)(collectively the County Legislature and the Planning Department are referred to as “Respondents”), acted in a manner that was arbitrary and capricious and in violation of lawful procedure when they began to implement their comprehensive plan to redevelop approximately 300 acres on the Long Island Sound wholly within Rye which is known as Rye Playland Park (“Rye Playland”). Petitioners seek judgment on three independent grounds, any one of which is legally sufficient to grant this Petition. First, Respondents embarked upon a long-range plan to redevelop Rye Playland, engaged a private developer and authorized bonds all while treating the redevelopment of Rye Playland as a comprehensive and integrated plan. But when the time came to examine potential environmental impacts, Respondents impermissibly segmented the

plan and limited their environmental review to certain select development and redevelopment activities in violation of the New York State Environmental Quality Review Act, Section 8-0101 *et seq.* (“SEQRA”) of the Environmental Conservation Law (“ECL”) and SEQRA’s implementing regulations, 6 NYCRR Section 617 *et seq.* (“Part 617”). Second, when making their determination of whether or not even the few activities that they examined could potentially have significant adverse impacts, Respondent Planning Department conducted an incomplete examination; failed to take the required hard look at the consequences of redeveloping Rye Playland; ignored related activities and cumulative impacts and disregarded their own preliminary (*albeit* incomplete) environmental assessment. Based upon this flawed analysis, and without providing Respondents notice or an opportunity to comment, the Planning Department concluded that there were no potential adverse impacts. The County Legislature eventually adopted and published that implausible conclusion. Finally, disregarding the important role that Rye must play in decision-making concerning the proposed plans for Rye Playland, Respondents failed to engage in the coordinated intergovernmental review mandated by SEQRA.

By segmenting the SEQRA analysis, ignoring impacts and failing to coordinate with the host community, Respondents avoided any meaningful analysis, public scrutiny or consideration of the full impacts associated with redeveloping Rye Playland such as increased traffic, noise, solid waste, water use and wastewater. Indeed, Respondents engaged in precisely the sort of constricted governmental decision-making that SEQRA is designed to prevent. Accordingly, this Court should grant judgment for Petitioners annulling Respondents’ unlawful actions.

FACTS

Petitioners respectfully refer the Court to the Verified Petition, the Verifications of Joseph A. Sack; Richard Mecca and Kristen K. Wilson and the Affirmation of Edward F. McTiernan in Support of Article 78 Petition and the exhibits annexed to those documents.¹ The facts in this matter are briefly summarized below.

A. Rye

Petitioner, Rye is a municipal corporation and political subdivision of New York State duly organized and existing under the laws of New York State. Rye's mission is to promote, protect and improve the quality of life in the city by protecting and where possible enhancing the environment.

For more than thirty years Rye has consistently asserted that it has a role in reviewing and approving any plan for the redevelopment of Rye Playland. For example, Rye announced its concerns about the potential for redevelopment in 1985 when it adopted its master Development Plan. Ex. C at 41. Rye renewed its claim to being involved in the redevelopment of Rye Playland in 1991 when it adopted a Local Waterfront Revitalization Program ("LWRP")² that specifically outlines local community issues and concerns regarding any potential redevelopment of Rye Playlands. Moreover, in 2014 Rye formally sought to be designated lead agency for the SEQRA review of a proposed new field house and athletic complex at Rye Playland. Ex. D.

Rye's long-term concern about redevelopment of Rye Playlands is hardly surprising. After all, Rye Playland is wholly within Rye and decisions about its redevelopment will

¹ Unless otherwise indicated, citations to "Ex. __ at __" refer to the true and accurate copies of documents and page numbers (when relevant) that are attached to the Affirmation of Edward F. McTiernan in Support of Article 78 Petition.

² Rye's LWRP was approved by the New York State Secretary of State and incorporated into and became an enforceable element of New York State's Coastal Zone Management Program ("CMP"). See Executive Law §§ 42-916 and 919 and 16 USC §§ 1456(c)(1)(A).

inevitably have local impacts that will uniquely affect Rye's existing community character (*e.g.*, traffic, parking and local flooding) and may create a demand for additional community services (*e.g.*, police, fire and EMT).

B. Petitioners Sack and Mecca

Petitioners Sack and Mecca are residents of Rye who own homes near Rye Playland. They regularly visit the shoreline in Rye and take advantage of the unique recreational activities and scenic opportunities presently available to residents of a coastal city on Long Island Sound. Because of their proximity (Petitioner Mecca's home is only 150 feet from Rye Playland), Petitioners Sack and Mecca will be adversely impacted any increase in traffic, noise, solid waste or flooding caused by Respondents' redevelopment of Rye Playland.

C. Respondents' Comprehensive Plan for Redeveloping Rye Playland

On or about August 27, 2010, Respondent County Legislature publically announced a request for proposals ("RFP") to redevelop all, or substantially all, of Rye Playland to "unlock the full recreational and entertainment value of the property . . ." Ex. A at 1. According to Respondent, the "purpose of this solicitation is to . . . redevelop Rye Playland in a way that maximizes its resources and location . . ." *Id.* at page 3.

After considering the responses to the RFP, Respondent County Legislature eventually engaged Standard Amusements, LLC ("Standard Amusements") as the designated operator of all or substantially all of Rye Playland. Respondent County Legislature and Standard Amusements negotiated, executed and delivered an agreement dated August 10, 2015, as amended, which governs the redevelopment and operation of Rye Playland (the "Agreement"). Ex. B. Shortly after engaging Standard Amusements, Respondent County Legislature began to plan for all of

the interrelated activities necessary to redevelop Rye Playland to its maximum potential as mandated by the Agreement. *See* Ex. I.

Respondents continued to work on finalizing their plans and securing financing and by the spring of 2016, Respondents had fully committed themselves to the redevelopment of Rye Playland in accordance with the Agreement. On or about April 11, 2016, various committees of Respondent County Legislature, recommended Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126 which improperly excluded numerous redevelopment activities planned for Rye Playland from SEQRA review. Ex. H. On May 3, 2016, Respondent County Legislature completed the process by approving Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126. *Id.*

D. Respondents' Improper SEQRA Review

On January 6, 2016, without providing notice or an opportunity to comment to Petitioners, the County Planning Department prepared an Environmental Assessment Form ("EAF"). Ex. J. The EAF prepared by Respondent Planning Department was a "full EAF" and included both Parts 1 and 2 as well as a Determination of Significance form (commonly referred to as "EAF Part 3"). *Id.* Based upon the analysis in the EAF, Respondent Planning Department (also without providing notice or an opportunity to comment to Petitioners) advised Respondent County Legislature that it need only consider certain select elements of the comprehensive redevelopment plan when analyzing that plan under SEQRA. Ex. I.

Acting upon the self-serving SEQRA analysis performed by the Planning Department, Respondent County Legislature acting through various committees and subcommittees authorized bonds for the redevelopment of Rye Playland. On May 6, 2016, Respondent County Legislature went further and adopted the Negative Declaration (meaning that no Environmental

Impact Statement would be prepared) for the redevelopment of Rye Playland and on July 22, 2016 belatedly served the Negative Declaration on Rye. Ex. L. Finally on July 27, 2016 Respondents published its formal notice of a Determination of Significance in the Department of Environmental Conservation's ("DEC") Environmental Notice Bulletin ("ENB"). Ex. M.

E. Harm to Petitioners

By failing to recognize Rye's strong interest in Rye Playland and the proper role that Rye should play as the host community and as a governmental agency involved with development, Respondents decided to proceed with a redevelopment plan that fails to reflect local community concerns. By improperly segmenting the SEQRA review of the redevelopment, and then ignoring or downplaying state and federally recognized environmental protections and historic designations, Respondents have also avoided any analysis, public scrutiny, or consideration of local interests unique to Rye related to the increased traffic, noise (especially late in the day), lighting, solid waste, local street flooding water use and wastewater caused by their overall redevelopment plan.

These impacts will be especially acute for Petitioners Sack and Mecca., who live in close proximity to Rye Playland. For example, Petitioner Mecca already experiences impacts from overflow lighting and illegal parking due to Rye Playland. If left unexamined and unmitigated, redevelopment which increases attendance and patronage at Rye Playland will only exacerbate these impacts on Petitioners.

LEGAL ARGUMENT

POINT I
SEQRA STANDARD OF REVIEW

When reviewing governmental action under SEQRA, a court must decide whether the agency has complied with all of SEQRA's procedural requirements and then applied the now

familiar ‘hard look’ test. Jackson v. New York State Urban Dev. Corp., 67 NY2d 400, 417 (1986). The reviewing court must ensure that the agency took a “hard look” at all of the “relevant areas of environmental inquiry” and provided a “reasoned elaboration” of the basis for any determinations. *Id.* In the seminal Jackson case, the Court of Appeals summed up the SEQRA standard of review as follows: “Court review, while supervisory only, insures that agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process.” *Id.* at 503. Of particular relevance here, when reviewing determinations of significance, the ‘hard look’ test has been uniformly interpreted to mean:

1. Did the agency identify the relevant areas of potential environmental concern?
2. Did the agency take a “hard look” at each of the areas?
3. Did the agency provide a ‘reasoned elaboration of the basis for its determinations?

This three-part test, first articulated in H.O.M.E.S. v. New York State Urban Development Corp., 418 N.Y.S.2d 827 (4th Dept. 1979), was endorsed by the Court of Appeals in Chinese Staff & Workers’ Ass’n v. Burden, 19 N.Y.3d 922 (2012) and has been codified at 6 N.Y.C.R.R. Part 617.7(b)(3).

For all of the reasons discussed below, by improperly segmenting their project, ignoring their own preliminary findings and failing to conduct coordinated review, Respondents failed to follow the applicable procedures and did not take the requisite ‘hard look’ at their comprehensive redevelopment proposal.

POINT II
RESPONDENTS ENGAGED IN IMPREMISSABLE SEGMENTATION

SEQRA was adopted in 1975 and for the past forty-one years has consistently been applied to ensure that environmental considerations are fully incorporated into state and local government decision-making at the earliest possible stage. ECL § 8-0103. *See generally Coca-Cola Bottling Co. v. Board of Estimate of the City of New York*, 72 N.Y. 2d 674 (1988). At its core, SEQRA requires that all agencies - including local governments - determine whether their actions may have a significant effect on the environment. ECL § 8-0103 and Part 617.1(c). This determination must be made before the agency commits to act. ECL § 8-0109(2).

The SEQRA statute defines agency actions to include “activities supported in whole or in part through contracts, grants, subsidies, loans or other forms of funding assistance.” ECL § 8-0105(4). The applicable regulatory definitions make clear that ‘action’ includes any agency decisions “that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that . . . involve funding by an agency [that] . . . commit the agency to a definite course of future decisions . . .” Part 617.2(b). Moreover, the regulatory definition of action includes “agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.” *Id.*

To ensure that environmental considerations are properly incorporated into decision-making SEQRA requires that all activities related to a specific proposed action must generally be considered together. Otherwise significant cumulative adverse impacts would be overlooked by an agency examining only small or individualized segments of an overall plan of action.

“Considering only a part or segment of an action is contrary to the intent of SEQRA.” Part 617.3(g)(1). “Segmentation means the division of the environmental review of an action such that various activities or stages are addressed . . . as though they were independent, unrelated

activities, needing individual determinations of significance.” Part 617.2(ag). SEQRA requires that reasonably related long-term, short-term and cumulative effects, including simultaneous or subsequent actions, which make up a long range plan, or which are likely to be undertaken in furtherance of that plan, must be analyzed together. Matter of Long Is. Pine Barrens Socy. v. Planning Bd. of Town of Brookhaven, 80 N.Y.2d 500, 512–513 (1992). Town of Blooming Grove v. County of Orange, 959 N.Y.S.2d 265 (2d Dep’t 2013), *leave to appeal denied* 969 N.Y.S.2d 443 (2013)(it is improper to segment the SERQA review of parts of “an integrated and cumulative development plan sharing a common purpose”). “The regulations which prohibit segmentation are designed to guard against a distortion of the approval process by preventing a project with potentially significant environmental effects from being split into two or more smaller projects, each falling below the threshold requiring full-blown review. In addition, certain activities may not be excluded from the definition of a project for the purpose of making it appear that adverse environmental impacts have been minimized to circumvent the detailed review called for under SEQRA.” Matter of Mitchel Maidman et al. v. Incorporated Village of Sands Point, 738 N.Y.S.2d 362, 364 (2d Dep’t 2002)(internal citations omitted).

Nevertheless, segmentation is often preferred by project developers because it “excludes certain activities from the definition of his project for the purpose of keeping to a minimum its environmentally harmful consequence, thereby making it more palatable to the reviewing agency and community.” Schultz v. Jorling, 563 N.Y.S.2d 876, 879 (3rd Dep’t 1990), *see also* Long Island Pine Barrens Society, Inc. v. Planning Board of Town of Brookhaven, 611 N.Y.S.2d 917 (2d Dep’t 1994). Despite its popularity with developers, with few exceptions not relevant here, SEQRA prohibits segmentation.³

³ Permissible segmentation tends to involve independent phases of a proposed activity that may be presently known only on a conceptual level or that are independently planned. *See e.g.*

Moreover, if the lead agency “believes that circumstances warrant a segmented review, it must clearly state in its determination of significance . . . the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.” Part 617.3(g)(1). Respondents’ EAF says nothing about the reasons warranting segmented review, provides no showing that a segmented review of the redevelopment of Rye Playland is no less protective of the environment and fails to mention any related activities. Indeed, the Respondents’ have yet to acknowledge that they have engaged in segmentation.

New York courts have vigorously applied the rule against segmentation. The leading case from the Court of Appeals is Village of Westbury v. Department of Transportation, 75 NY2d 62 (1989). In Village of Westbury, the municipality challenged a negative declaration issued by the Department of Transportation (“DOT”) after completion of a SEQRA assessment that examined the reconstruction of ramps on Meadowbrook Parkway but failed to consider DOT’s plan to widen nearby lanes on Northern State Parkway. Westbury claimed that by segmenting the ramp reconstruction and widening project, DOT failed to consider cumulative environmental impacts. The Suffolk County Supreme Court dismissed the petition. *Id.* at 65. However, the Court of Appeals disagreed and concluded that because these two projects were planned together, would be implemented at, or about, the same time, in close proximity to one another and were intended to solve a single problem, it was improper to segment the SEQRA review. Of particular relevance here, the analysis in Village of Westbury has been applied to annul negative declarations for, *inter alia*, a county redevelopment authority’s initial phase of a

Forman v. Trustees of State University of New York, 757 N.Y.S.2d 180 (4th Dep’t 2003)(negative declaration upheld for free standing dormitory that was not contiguous; had independent funding, were considered in separate planning documents and were not functionally interdependent). None of these factors are present in this case.

lakeside industrial development that was part of a larger redevelopment plan, Sun Co., Inc. (R&M) v. City of Syracuse Indus. Development Agency 625 NYS2d 371 (2nd Dep't 1995); a park project that only considered the most immediate activities even though the ultimate development plan included additional features, Farrington Close Condominium v. Incorporated Village of Southampton, 613 N.Y.S.2d 257 (2nd Dep't 1994) and a city's segmentation of a plan with a private developer to create and use athletic fields and construct ancillary buildings and access roads in a city park, Citywide Council on High Schools v. Franchise & Concession Review Committee of the City of New York, Index No. 107463/09 (Sup. Ct. N.Y. Co. Dec 29, 2009). The "existence of a larger plan for development" is "the decisive factor" in the segmentation analysis. Sun Co., supra at 48. "Projects may be deemed 'related' when municipalities' plans, in and of themselves, provide a sufficiently cohesive framework for mandatory cumulative impact review. The decisive factor is the existence of a 'larger plan' for development, not the proposed projects' common geographical base." Matter of North Fork Envtl. Council v. Janoski, 601 N.Y.S.2d 178, 179 (2nd Dep't 1993)(internal citations omitted).

It is beyond dispute that all of Respondents proposed redevelopment activities will occur at a single site: Rye Playland; within a single municipality: Rye; as part of a single plan: to redevelop Rye Playland. Moreover, all of Respondents' activities at issue in this proceeding are designed to solve a single problem: the underutilization of Rye Playland. *See* Ex. A at 1 through 5. Indeed, throughout 2014 and 2016, when considering the necessity of redeveloping Rye Playland, when negotiating with prospective operators, when adopting budgets and planning to issue bonds, Respondents treated the redevelopment plan as a single integrated undertaking. The record establishes that Respondents' comprehensive plan to redevelop Rye Playland was memorialized in a single agreement. Ex. G. This is precisely the sort of agency decision that

may affect the environment and commit the agency to a definite course of future decisions described in Part 617.2(b)(2). Although Respondents acted through various committees, budget amendments and necessary resolution were all generally discussed and voted upon as a package. *See* Ex. H. However, despite the fact that the Agreement provides a cohesive framework to undertake a review of the cumulative impacts of the redevelopment of Rye Playland, the integrated approach that Respondents used when working on the Agreement and their budget legislation was conveniently cast aside when Respondents undertook SEQRA compliance. Respondents treated each individual element of the redevelopment plan as a separate action for purposes of SEQRA and SEQRA alone.

In Village of Westbury, the Court of Appeals rejected Respondents' approach to SEQRA. Applying that analysis here, this Court should find that Respondents engaged in segmentation which is impermissible under SEQRA precisely because it tends to understate the potential environmental impacts of the comprehensive redevelopment plan for Rye Playland. Accordingly, this Court should annul the EAF and Negative Declaration and Westchester County should be required to start SEQRA over again.

POINT III
RESPONDENTS NEGATIVE DECLARATION IS
ARBITRARY AND CAPRICIOUS

Assuming *arguendo* that it was appropriate for Respondents to examine only a portion of the overall redevelopment plan for Rye Playland (a point that Petitioners vigorously dispute), the limited analysis that Respondents did perform was inadequate and arrived at implausible conclusions that are simply not supported by even the meager record that they compiled to support their actions. Having concluded in the January 6, 2016 EAF that their redevelopment

plan included three SEQRA Type I actions⁴ that will occur in locations that are within a Critical Environmental Area (as designated by Westchester County); part of a designated Coastal Area and Coastal Erosion Hazard Area⁵; subject to a state and federally recognized LWRP; on a site with designated historic landmarks; on a site adjacent to federal and State designated wetlands and other waterbodies, and within the 100 year floodplain, Respondents were obligated to take a hard look at these issues and provide a reasoned elaboration of their conclusions. Ex. J. The EAF and Negative Declaration fall far short of this standard.

When preparing their EAF, Respondents were obligated to “thoroughly analyze” the environmental issues. Part 617.7(b)(3). This analysis is designed to determine if the planned action “may have a significant adverse impact on the environment” and whether preparation of a complete Environmental Impact Statement (“EIS”) examining potential impacts is warranted. *Id.* Because this standard is permissive - *i.e.*, ‘may have’ - the threshold for finding an adverse impact is low. “The threshold at which the requirement that an EIS be prepared is triggered is relatively low; it need only be demonstrated that the action may have a significant effect on the environment.” Chinese Staff and Workers Assn. v. City of New York, 68 N.Y.2d 359, 364–5 (1986); Williamsburg Around the Bridge Block Assn. v. Giuliani, 644 NY2d 252 (1st Dep’t, 1996). Despite these requirements, Respondents’ EAF fails to analyze or consider the impact of the proposed activities on the environment. The EAF makes no reference to any potentially applicable federal, state or local regulatory standards or criteria that might be used to measure

⁴ Each Type I action ‘carries with it the presumption that it is likely to have a significant effect on the environment and may require the preparation of an EIS.’ Part 617.12(a)(1).

⁵ New York’s Coastal Hazard Area Act, ECL Article 34-0109, provides that “a proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement. . .”

significance. Ex. J. As a result, the EAF makes no effort to demonstrate whether or how the project will comply with any potentially applicable standards.

There are myriad shortcomings in the EAF. These following four examples (in no particular order) illustrate the flaws in the EAF. First, the EAF notes that this project will involve a 3 month construction phase during which operations will occur from 7:30 am to 6:30 pm Monday to Friday and 10:00 am to 5:00 pm on Saturdays. Ex. J Part 1 at 7. The EAF also predicts “increased ambient noise during constructions.”⁶ Ex. J, Part 1 at 8. Then without offering any explanation of how or why, the EAF simply concludes that these 750 hours of construction noise, in a residential neighborhood, adjacent to a designated wildlife preserve, will have little or no impact. Ex. J, Part 2 at 8. Likewise, the EAF identified impacts to Land; Flooding; Historic Resources; Open Space; Critical Environmental Areas and Noise, Odor and Light (Ex. J. Part 1) but in each and every instance the EAF summarily concludes that the impacts will not be material. Ex. J Part 2. In no instance does the EAF provide any explanation of which criteria were used to reach these improbable conclusions. Third, the EAF notes that one of the activities will involve “improved lighting and drainage.” Ex. J Part 1 at 1. As noted by Petitioner Mecca lights from Rye Playland are already visible from his home which is only 150 feet from the park. The EAF contains no quantitative or qualitative analysis of how the “improved lighting” might impact neighbors in this developed residential area like Petitioner Mecca. In lieu of an analysis, the EAF simply contains the bald statement that there will be “no significant adverse impacts . . . and therefore, an environmental impact statement need not be prepared.” Ex. J, Part 3 at 2. Finally, the EAF notes that the anticipated activities will occur in a

⁶ The EAF brazenly notes that this construction and the associated noise will take place during Rye Playland’s “off-season.” Ex. J Part 1 at 8. However, there is no off-season for local residents like Petitioners Sack and Mecca who own homes and reside near Rye Playland.

municipality with a comprehensive land use plan and a LWRP. Ex. J Part 1 at 2. However, the EAF fails to consider these local plans when it summarily announces that the proposed project is not inconsistent with the existing community character. Ex. J Part 2 at 10. Any one of these flaws is fatal - the cumulative impact of these shortcomings renders Respondents' EAF useless.

As noted above, SEQRA's 'hard look' test requires that the agency: 1. Identify the relevant areas of potential environmental concern; 2. Take a "hard look" at each of the areas, and 3. Provide a 'reasoned elaboration' of the basis for its determinations. H.O.M.E.S. v. New York State Urban Development Corp., 418 N.Y.S.2d 827 (4th Dept. 1979) and Part 617.7(b)(3). Even when reviewing the EAF in the light most favorable to Respondents; at best Respondents managed to complete the first part of this three part, cumulative test by merely identifying relevant areas of potential environmental concern. However, Respondents failed to take a 'hard look' at the issues they identified and they provided nothing in the way of justification or elaboration to support the conclusion that there are no potential impacts.

A negative declaration - like the one prepared by Respondents - based upon "bald conclusory statements [that do] not satisfy respondent's obligation to fully analyze the environmental consequences of its contemplated action" must be annulled. Niagara Mohawk Power Corp. v. Green Island Power Authority, 697 N.Y.S.2d 700 (3rd Dep't 1999) *appeal dismissed* 697 NYS2d 700 (3rd Dep't, 1999)

POINT IV **RESPONDENTS VIOLATED SEQRA'S MANDATORY PROCEDURES**

SEQRA anticipates that more than one agency might be involved in a project. *See generally* ECL § 8-0111(6). As a result, Part 617.6(a)(1) requires that an agency considering any Type I action must, as soon as possible, identify and coordinate with any other agency involved

with that project. For Type I actions the lead agency must be established, and the coordinated review between all other agencies must occur, “prior to a determination of significance.” ECL § 8-0111(6) and Part 617.6(b)(2)(i). SEQRA precisely prescribes how this coordination should occur: “When an agency proposes to . . . fund or approve a Type I action . . . it must, as soon as possible, transmit Part 1 of the EAF to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date of the EAF.” Part 617.6(b)(3). In this case Respondents recognized that they were considering a Type I activity. Moreover, Respondents’ EAF notes that the site is located in a municipality with a comprehensive land use plan and a LWRP. Nevertheless, Respondents failed to conduct the coordinated review mandated by SERQA.

Further, SERQA mandates that negative declarations must be immediately filed “with the chief executive officer of the political subdivision in which the action will be principally located.” Part 617.12(b)(1)(i).⁷ In addition, notice that an agency has issued a negative declaration must be promptly published in the ENB. Part 617.12(c)(1). Respondent’s EAF Part 3 included a Negative Declaration that had been signed and purportedly “issued” on January 6, 2016 by the Director of Environmental Planning on behalf of the County Legislature. On May 2, 2016, Respondent County Legislature adopted the SEQRA Negative Declaration challenged here. Yet Respondents waited until July 22, 2016 before contacting Rye. The announcement of their findings did not appear in the ENB until July 27, 2016. This protracted and unexcused delay violates the letter and the spirit of SEQRA’s requirement for prompt filing and notice of determinations of significance.

⁷ Rye is the only political subdivision where redevelopment activities at Rye Playland will be located.

Respondents' acts and omissions are especially egregious because in the fall of 2013, Rye had formally invoked its right, provided for in ECL § 8-0111(6), to have the Commissioner of the Department of Environmental Conservation designate a lead agency for a proposal then under active consideration by Respondent County Legislature for the construction of a 95,000 square foot field house, artificial turf fields and other improvements at Rye Playland (the 'Field House Development'). Ex. E. At that time Respondent County Legislature indicated that it intended to designate itself lead agency for SEQRA purposes. Faced with Respondents' impending approval of the Field House Development, on March 20, 2014 Rye wrote to Respondent County Legislature seeking either coordinated SEQRA review or for Rye to be designated lead agency. Ex. E. Eventually Rye formally petitioned DEC to be designated 'lead agency;' for the Field House Development citing local concerns about the potential for this proposal to have adverse impacts on traffic; parking; local flooding; noise and lighting spill over into adjacent residential neighborhoods. Ex. F at 2. Although the Field House Development was abandoned, based upon these events, Respondents knew or should have known that Rye desired to be involved with the redevelopment of Rye Playland. Nevertheless, Respondents failed to take Rye's concerns about the Field House Development seriously because they have yet again ignored the potential local impacts of their redevelopment plan on traffic; parking; local flooding; noise and lighting spill over into adjacent residential neighborhoods.

Although exceptions can be made on a case-by-case basis, the Court of Appeals has stated that "strict compliance with SEQRA is not a meaningless hurdle." New York City Coalition to End Lead Poisoning v. Vallone, 763 N.Y.S.2d 530, 535 (2003)(quoting King v. Saratoga Bd of Supervisors, 653 N.Y.S2d 233 (1996)). Moreover, the Court of Appeals has required courts to strictly apply SEQRA to guarantee that agencies confront environmental

concerns prior to agency action. *Id.* at 537. *See also Lorberbaum v. Pearl*, 581 N.Y.S2d 488 (3rd Dep't 1992)(reversing Supreme Court's conclusion that agency's failure to properly classify a project as Type I was harmless error where agency had completed the necessary "hard look" because Type I classification included procedural requirements that were overlooked.) Therefore, based upon Respondents unexcused failure to comply with SEQRA's procedural requirements, this Court should annul the EAF and Negative Declaration.

CONCLUSION

For all of the foregoing reasons, and on the basis of the accompanying Verified Petition, affidavits and administrative record, this Court should ensure that Respondents comply with SEQRA by annulling their EAF; Negative Declaration; Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126 and ordering Respondents to engage in a coordinated review with Rye before acting on any plan to redevelop Rye Playland.

Dated: New York, New York
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