Land Use Law Case Law Update

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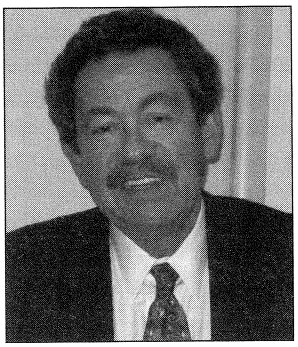


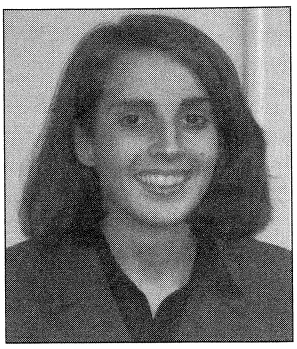
This quarter's cases bring little in the way of blockbuster rulings, but they do address a number of timely and interesting issues. Continuing its recent line of land use and SEQRA cases, the Third Department, correctly reading and applying the literal language of Town Law § 276(5), held that a planning board which adopts a SEQRA negative declaration may not hold a public hearing on the underlying application until such negative declaration has been adopted; a rule which is rarely, if ever, observed in practice. If nothing else, this case is a call to the Legislature to consider reviewing and rationalizing the way SEQRA interacts with municipal zoning law.

In the other cases discussed in this Update we learn that a project's potential to incite terrorists' wrath is not, as a matter of law, a potential environmental impact to be assessed under SEQRA, and we are treated to a succinct review of the law pertaining to SEQRA standing as applied to a number of petitioners/plaintiffs bearing different relationships to a single project. All in all, an interesting, if not an earth-shattering, quarter in the annals of land use law.

1. Subdivision Review Process

In *Kittredge v. Planning Board of the Town of Liberty*,[1] the Third Department held, among other things, that when a planning board acts as lead agency under the State Environmental Quality Review Act ("SEQRA")[2] in the review of an application for subdivision approval and adopts a negative declaration under SEQRA in connection with that application, it must adopt that determination before it holds a public hearing on the preliminary plat.

In *Kittredge*, respondent CR Menderis, LLC ("Menderis") owned a 143.2-arce parcel of property in the Town of Liberty, Sullivan County, which it wanted to subdivide into 27 single-family residential lots. In furtherance of that plan, it made an application for subdivision approval to the Planning Board of the Town of Liberty (the "Planning Board"). The Planning Board and its consultants provided Menderis with comments on the proposed subdivision and Menderis revised the subdivision plat in accordance with those comments. After the revisions were complete, Menderis submitted



the amended preliminary plat, along with a long Environmental Assessment Form and supporting documentation to the Planning Board.[3]

In August and September of 2006, before issuing a determination of significance under SEQRA for the application, the Planning Board held a public hearing on the preliminary plat. During the hearing, several members of the community voiced their concerns regarding, among other things, the environmental impacts of the proposed subdivision and the Planning Board required Menderis to further study the potential impacts raised during the public hearing. Although the public hearing on Menderis's application was closed in September of 2006, the Board continued its review of Menderis's application, reviewing studies prepared in response to the comments raised during the public hearing. In February of 2007 the Planning Board issued a negative declaration and in March 2007, apparently without holding another public hearing, it granted Menderis preliminary plat approval.[4]

Petitioners, opponents of the subdivision, brought an Article 78 proceeding seeking a determination that the Planning Board, as lead agency, did not take a hard look at the relevant areas of environmental concern during the SEQRA review of the application. Specifically, petitioners argued that the Planning Board did not take the requisite hard look at the subdivision's potential to impact wildlife, wetlands and stormwater pollution. The petitioners further argued that the Planning Board's procedure in approving the preliminary plat was flawed because even though it held a public hearing on Menderis's application, the public hearing was improperly held before the Planning Board issued a negative declaration under SEQRA.[5]

The Third Department held that the Planning Board met its obligations under SEQRA to take a hard look at the project's potential to impact wetlands and stormwater pollution, but did not meet its obligations with regard to wildlife.[6] Specifically, the Court held that the Planning Board's reliance on two letters from the New York State Department of Environmental Conservation which advised the applicant that the Department did not have any records regarding wildlife on the property, but then cautioned the applicant not to

rely on those letters as conclusive evidence of the existence (or non-existence) of protected wildlife and a report describing that the property was formerly agricultural land in the process of reverting back to woodland without an explanation as to why that was relevant in the context of wildlife, was not sufficient to satisfy the hard look standard. Accordingly, the Court vacated the Board's SEQRA determination based on its failure to take a hard look at the project's impact on wildlife.[7]

Additionally (although arguably in *dictum*), the Court agreed with petitioners' claims that the procedure before the Planning Board was flawed because the Planning Board held a public hearing on Menderis's preliminary plat before it issued a negative declaration under SEQRA, and thus failed to hold the public hearing at the time required by Town Law § 276(5)(d)(i)(1)[8] and Liberty Town Code § 130-13(D)(3)(a)(1), which require the Planning Board to hold a public hearing on a preliminary plat after it issues a negative declaration[9] or files a notice of completion[10] under SEQRA.[11]

The Court relied on the language of Town Law § 276(5)(d)(i) and the corresponding provision of the Liberty Town Code, along with Town Law § 276(5)(c),[12] to support its holding that a public hearing on a preliminary plat must be held within 62 days *after* the clerk of the Planning Board receives a complete preliminary plat and that a preliminary plat is not complete until either a negative declaration or a notice of completion under SEQRA is filed.[13] The Court, in further support of its holding, cites the fact that the SEQRA statutes and regulations do not require a public hearing at the determination of significance phase of SEQRA review.[14]

This case shows once again that in the realm of land use law, strict adherence to statutorily prescribed procedure is absolutely necessary. Thus, in the wake of this decision, municipal boards and applicants must think carefully about scheduling a public hearing on an application. A municipal board, acting as an approving board and lead agency under SEQRA, will have to acknowledge, as the Third Department did, that SEQRA does not include a public comment component at the determination of significance phase of review and wait to open a public hearing on a subdivision application until after it makes a determination of significance. Alternatively, if the board wishes (as has essentially become the practice) to include the public in the determination of significance phase of SEQRA, it will have to either hold two public hearings—one pre-determination of significance and one post-determination of significance—or open a public hearing with multiple sessions, making a determination of significance at one session and then considering and deciding upon the substantive application at a separate, subsequent session. As odd as this result appears, there is little question that this is the correct result, given the plain, clear and unambiguous language of Town Law § 276(5)(d)(i)(1).

2. Constitutionality of Zoning Provisions

a. Zoning District Regulations

In *BLF Associates, LLC v. Town of Hempstead*,[15] the Second Department invalidated as *ultra vires* a zoning ordinance adopted by the Town of Hempstead which specifically dictated the type of development that must occur on a property. This case presents an egregious example of a town attempting to "acquire" by use of its zoning ordinance that which it could not afford (or chose not) to purchase.

In *BLF Associates, LLC*, the property that was the subject of the litigation was a 17-acre parcel of property in the Town of Hempstead, Nassau County, which had been owned and used by the U.S. Army as an Army Reserve facility. In 1996 the Army closed the facility and, pursuant to the federal Base Closure and Realignment Act of 1990, sought to convey the property.[16] Pursuant to the Base Closure and Realignment Act, the Town had preference in acquiring the property and established a committee to determine how it might use the property. The committee adopted a Reuse Plan and Technical Report (the "Reuse Plan") which contemplated "a specific mixed-use development limited to 34 single-family homes with a price cap, 40 senior dwellings and a community recreational facility," which the Town intended to be a deed restriction in the sale of the property.[17]

Ultimately, the Town decided not to purchase the Property and plaintiff—BLF Associates, LLC ("BLF")—was the successful bidder for the property, taking title in November of 2005 without any contractual or deed restriction related to the Reuse Plan.[18] However, prior to BLF's purchase in November, in April of 2005 the Town adopted Article XXXVIII of the Town's Building Zone Ordinance which created a zoning district applicable only to the property, which essentially implemented the Reuse Plan and dictated the number and type (form of ownership) of dwelling units that could be developed on the property and, *inter alia*, required BLF to construct the specific community recreation facilities contemplated in the Reuse Plan on the property.[19]

After closing on the property, BLF commenced this action seeking a declaratory judgment that Article XXXVIII is *ultra vires*, void and unconstitutional, and seeking to enjoin the enforcement of that ordinance against it and for damages.[20]

The Town argued that BLF could not complain about the constitutionality of Article XXXVIII since it purchased the property after the legislation was enacted. The Court rejected this argument, finding that the purchase of property with knowledge of a zoning restriction applicable to the property does not bar the purchaser from challenging the constitutional validity of the regulation.[21]

The Supreme Court, Nassau County, recognizing that towns have no inherent authority to adopt and enforce zoning regulations and are confined to the authority granted to them in the zoning enabling legislation of the Town Law, invalidated Article XXXVIII as *ultra vires*; the Second Department affirmed.[22] In its opinion, the Second Department stated that

> The statement of legislative purpose in Article XXXVIII acknowledges that it was enacted in order to implement the Reuse Plan for the property. The re-zoning of property for implementation of a specific project which the Town had intended to construct if it acquired the property is not a consideration or purpose embodied in the enabling act. . . . Furthermore, while Town Law §§ 261 and 262 empower the Town to regulate and restrict lot sizes and permitted uses, there is nothing in these sections which empowers the Town to create a zoning ordinance that specifies the exact number and type of dwelling allowed.
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> Nor do the applicable enabling statutes purport to allow the enactment of a zoning ordinance that requires construction of a 9,000-square foot community recreational facility, with specified amenities, on no fewer than 1.25 acres of land. Zoning ordinances may go no further than determining what may or may not be built, and that Article XXXVIII is unnecessarily and excessively restrictive leads us to conclude that it was not enacted for legitimate zoning purposes. . . . Moreover, and contrary to the Town's contention, the provisions of Article XXXVIII that require the recreational facility to be owned by a homeowners' association and that the senior citizen dwellings be cooperative units are clearly ultra vires and void. It is a "fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it." . . .[23]

This decision is an important reminder that although the zoning enabling legislation provides broad powers to municipal governments to control the use of land, that power is not unlimited and actions that go beyond the scope of that power will be annulled by the New York courts, specifically in cases where a zoning ordinance tries to mandate rather than regulate certain development and where it attempts to regulate form of ownership rather than use.

b. Non-Conforming Use Amortization

In *Suffolk Asphalt Supply, Inc. v. Board of Trustees of the Village of Westhampton Beach*,[24] the Second Department succinctly sets forth the standard applicable when determining the constitutionality of a non-conforming use amortization provision in a zoning ordinance.

In *Suffolk Asphalt Supply, Inc.*, the plaintiff was the owner of an asphalt plant in the Village of Westhampton Beach. The asphalt plant was constructed in 1945, at which time it was apparently a permitted use of the property. In 1985, the Village enacted legislation which made the use of the property as an asphalt plant a non-conforming use.[25] Plaintiff purchased the asphalt plant in 1994 and has operated it as such since that time. In 2000, the Village Board of Trustees adopted legislation which required non-conforming asphalt plants in the Village to either close within one year or obtain an a extension, the maximum duration of which was five years, from the Village's Zoning Board of Appeals. The plaintiff applied immediately to the Zoning Board of Appeals and received the five-year extension and brought this action challenging the legislation on the grounds that the law imposing the asphalt plant amortization schedule was unconstitutional because, among other things, the amortization period included in that legislation was too short.[26] After commencing the action, the plaintiff moved for summary judgment on this issue.

In analyzing the plaintiff's claim that the amortization period in the challenged legislation was impermissibly short, the Second Department set forth the law as follows:

> The validity of an amortization period depends on its reasonableness. We have avoided any fixed formula for determining what constitutes a reasonable period. Instead, we have held that an amortization period is presumed valid, and the owner must carry the heavy burden of overcoming that presumption by demonstrating that the loss suffered is so substantial that it outweighs the public benefit to be gained by the exercise of the police power . . . .

> Whether an amortization period is reasonable is a question which must be answered in light of the facts of each particular case. . . . Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use. . . . Factors to be considered in determining reasonableness include "the nature of the business of the property owner, the improvements erected on the land, the character of the neighborhood, and the detriment caused the property owner.". . .
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> Typically, the period of time allowed has been measured for reasonableness by considering whether the owners had adequate time to recoup their investment in the use . . . . While an owner need not be given that period of time necessary to permit him to recoup his investment entirely, the amortization period should not be so short as to result in a substantial loss of his investment. . . .[27]

In light of this legal framework, the Second Department affirmed the Supreme Court, Suffolk County's denial of summary judgment on the grounds that the plaintiff failed to submit any information in its motion papers as to the investment it had in the business and thus there remained a question of fact as to whether the amortization period was reasonable.[28]

3. *Develop Don't Destroy (Brooklyn) v. Urban Development Corporation*

In *Develop Don't Destroy (Brooklyn) v. Urban Development Corporation*,[29] the First Department dismissed the petitioners' challenge to the adequacy of the SEQRA review of Forest City Ratner Companies' ("FCRC") Atlantic Yards project in downtown Brooklyn. Further, the Court upheld the findings of the New York State Urban Development Corporation, doing business as the Empire State Development Corporation ("ESDC"), that an area outside of the initially designated urban renewal area for the project was blighted and thus constituted a "land use improvement project"[30] and a "civic project"[31] under the Urban Development Corporation Act ("UDCA").

By way of background, the Court describes the Atlantic Yards project as a "purportedly transformational mixed-use development on a 22-acre swath of real estate in Brooklyn,"[32] which includes, among other things, 16 high-rise structures, an 18,000-seat arena which is intended to become the new home of the Nets NBA team, thousands of units of housing, hundreds of thousands of square feet of commercial space, and eight acres of open space.[33]

The project is generally located in two areas. The first is an eight-block area of land occupied by subgrade rail yards which was designated as an urban renewal area (called the Atlantic Terminal Urban Renewal Area, or ATURA) since 1968.[34] Another section of the project area spans two to three blocks outside of and adjacent to the ATURA. Although these blocks were not originally slated for redevelopment, they are included in the Atlantic Yards project area and were determined to be blighted by the ESDC and thus the proper area for a "land use improvement project" under the UDCA.[35] Throughout the project's history there has been no dispute that the ATURA area was blighted. In a separate litigation captioned *Goldstein v. Pataki*,[36] the U.S. Court of Appeals for the Second Circuit upheld the blight finding of the non-ATURA project area and any associated condemnations. The First Department's opinion indicates that the ESDC has been a proponent of the project and served as the lead agency for the SEQRA review of the project.[37]

The petitioners challenged the substantive sufficiency of the SEQRA review of the Atlantic Yards project, the propriety of the ESDC's determination that the non-ATURA project area was blighted and thus qualifies as a "land use improvement project" under the UDCA, and the classification of the proposed sports arena as a "civic facility" under the UDCA.[38]

a. Petitioners' SEQRA Claims

With regard to SEQRA, the petitioners argued, among other things, that ESDC's environmental review of the Atlantic Yards project was deficient because (1) the ESDC failed to take a hard look at the relevant areas of environmental concern because it did not consider the risk of a terrorist attack on the project; (2) that the selection of "build years" in the environmental impact statement was incorrect and thus improperly skewed the review of the project; and (3) that the ESDC, as lead agency, failed to adequately consider project alternatives since it did not give due consideration to the non-ATURA area real estate trends in its consideration of project alternatives.[39] The Supreme Court, New York County, rejected petitioners' challenges to the SEQRA review of the Atlantic Yards project, and the First Department affirmed.

With regard to the ESDC's obligation as lead agency to study the risk of a terrorist attack on the project, the Court held that

> SEQRA contains no provision expressly requiring an EIS to address the risk of terrorism and, indeed, it would not appear that terrorism may ordinarily be viewed as an "environmental impact *of* [a] proposed action" ([citation omitted]) within the statute's purview. We do not, however, find it necessary to determine whether consideration of the prospect of terrorism may ever lie within the scope of the environmental review mandated by the statute, and leave open the possibility that there may be a case in which a proposed action will by its very nature present a significantly elevated risk of terrorism and consequent environmental detriment, i.e., a case in which the risk and its potential adverse environmental impacts may in a real sense be said to stem from the action itself rather than an independent ambient source [citation omitted]. For now, it suffices to observe that the project at issue does not pose extraordinary inherent risks; . . . , but rather the creation of a venue dedicated to routine residential, commercial and recreational purposes [citation omitted]. These latter purposes, even when realized in the form of a major urban development situated at a pre-existing transit hub, do not so clearly increase the risk of terrorism, much less of terror-induced environmental harm, as to render the lead agency's determination not to address terrorism as an environmental impact of the proposed action unreasonable as a matter of law.[40]

Similarly, the Court refused to disturb the lead agency's determination regarding the build years contained in the environmental impact statement since the ESDC, in determining the build years, relied upon detailed construction schedules prepared by FCRC's experienced general contractor and reviewed by its own and independent consultants, and thus its determination as to the build years had a reasonable basis and was not arbitrary and capricious.

With regard to the consideration of alternatives, petitioners argued that the ESDC did not consider whether allowing the established upward trend in the real estate market in the non-ATURA portion of the project to continue uninterrupted would be a better alternative than FCRC's proposed plan for the non-ATURA portion of the project area.[41] The Court rejected that argument, reasoning that the consideration of the project was not limited to a consideration of what would be best for the non-ATURA project area, but rather was a consideration of the entire project area as a whole, and the ESDC's determination that FCRC's proposed project was the preferable project for the entire project area had ample support in the record given the many community benefits it would create, such as affordable housing, transportation hub improvements, and open space amenities both within and beyond the non-ATURA area.[42]

b. Petitioners' UDCA Claims

In addition to the challenges to the SEQRA review of the Atlantic Yards project, the petitioners challenged the ESDC's findings that the project was for the purpose of a "land use improvement project" under the UDCA on the grounds that the non-ATURA portion of the project area was gentrifying and that if left to market forces the area would continue to improve and thus was not "substandard and insanitary" as required for a "land use improvement project" under the UDCA. Before addressing the substance of this challenge, the First Department described the narrowness of the claim before it, given the recent decision by the U.S. Court of Appeals for the Second Circuit in *Goldstein, supra,* confirming the ESDC's authority to use the power of condemnation to acquire properties in the non-ATURA project area for the purposes of the Atlantic Yards redevelopment project. The First Department described the narrow issue before it as follows:

> While petitioners' challenges to the ESDC's findings authorizing the project as one for the public purposes of land use improvement (UDCA 6260[c]) and the provision of civic facilities (UDCA 6260[d]) are not legally precluded by *Goldstein,* post-*Goldstein* petitioners are reduced to arguing that although the uses of the project are sufficiently public to support a justly compensated taking of property within the project footprint by the ESDC through its power of eminent domain, the identical uses will not support redevelopment of the very same property pursuant to the UDCA.[43]

Rejecting the petitioners' claim, the Court, citing the extreme deference that it must show to a legislative determination of policy, held that a public purpose sufficient to support the condemnation of property (such as the Atlantic Yards redevelopment project) is similarly sufficient to support the redevelopment of the same property for the same public purpose. To hold otherwise, the Court reasoned, would not make sense since "[c]ondemnation is not an end in itself, but an instrument for the achievement of a social purpose, here urban redevelopment."[44]

The petitioners' final claim challenged the ESDC's designation of the project as a "civic project" under UDCA § 6260(d) based on the proposed construction of the sports arena within the project area. Petitioners argued that the arena does not constitute a "civic project" because it will be leased to a private professional sports organization for the benefit of private parties. The First Department also rejected this claim, citing precedent for the proposition that a privately owned sports arena can constitute a civic project under the UDCA and further that this facility will satisfy the need for a recreational venue within the project area.[45]

4. SEQRA: Standing

In *Bloodgood v. Town of Huntington*,[46] the Second Department provides a succinct summary of standing to challenge the adoption of a zoning amendment under SEQRA.

By way of background, for an individual party to have standing to challenge the adoption of an amendment to a zoning ordinance under SEQRA, the individual challenger must demonstrate that the proposed rezoning will have a harmful effect on him or her, that the harm is different than the harm suffered by the public at large, and that the harm is within the zone of interest protected by SEQRA, in other words, environmental harm.[47] However, when a party challenging the SEQRA review of a proposed zoning amendment owns property that is subject to the amendment, he or she has presumptive standing under SEQRA and is not required to show the likelihood of environmental harm.[48] When the challenger is an organization, it must show, in order to establish standing under SEQRA, that one or more of its members have standing to challenge the SEQRA review of the zoning legislation based on the standards set forth above, that the interest the organization asserts is germane to its purpose, and that neither the claim nor the relief requested requires the participation of individual members of the organization.[49]

With that background in mind, we turn to the facts of *Bloodgood*. In *Bloodgood*, the Town of Huntington enacted new zoning legislation which added "mixed use buildings" as a permitted use in the Town's C-6 General Business District. In its review of this zoning text amendment under SEQRA, the Town Board declared the action to be a Type I action, adopted a negative declaration and then enacted the zoning amendment.[50] The petitioners/plaintiffs, owners of property located in the C-6 General Business District, owners of property located in close proximity to that zoning district, other interested individuals, and the Alliance of the Preservation of Huntington Harbor, challenged the SEQRA review of the adoption of the zoning amendment, arguing that the Town Board failed to take a hard look at the relevant areas of environmental concern in its review of the new legislation under SEQRA.[51]

The Town made a motion to dismiss the petition/complaint on the grounds that the petitioners/plaintiffs lacked standing to maintain the hybrid Article 78 proceeding/ declaratory judgment action. Although the rezoning was challenged by several petitioners/plaintiffs who were situated differently with respect to standing, the lower court held that none had standing to challenge the SEQRA review of the rezoning.[52] The petitioners/plaintiffs appealed, and the Second Department held as follows:

> [Presumptive Standing] The Supreme Court erred in granting that branch of the respondents' motion which was to dismiss the petition-complaint insofar as asserted by Alexander Fusaro and Dennis Garetano for lack of standing. These petitioners-plaintiffs are owners of commercial property within the C-6 General Business District. "[W]here the challenge is to the SEQRA review undertaken as part of a zoning enactment, the owner of property that is the subject of the rezoning need not allege the likelihood of environmental harm" [citations omitted].
>
> [Standing Upon a Showing of Environmental Harm Different from the Public At Large] Likewise, the court erred in granting that branch of the respondents' motion which was to dismiss the petition-complaint insofar as asserted by Robert Sarducci for lack of standing. Given Sarducci's proximity to the C-6 General Business District–50 to 60 feet–and his allegations that Local Law No. 14-2006 will detrimentally impact the Town's sewage and wastewater systems, increase traffic, and negatively impact groundwater, he has the requisite standing to challenge the Town Board's SEQRA determination [citations omitted].
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> [No Standing] However, the Supreme Court correctly granted that branch of the respondents' motion which was to dismiss the petition-complaint insofar as asserted by the remaining individual petitioners-plaintiffs and the Alliance for lack of standing. Unlike Sarducci, the remaining individual petitioners-plaintiffs are not in close proximity to the C-6 General Business District [citations omitted]. Moreover,

> their allegations of environmental impact are in no way different from those of the public at large [citations omitted]. Since the standing of the Alliance hinges on that of the petitioner-plaintiff John D'Esposito, who lacks personal standing, the hybrid proceeding and action insofar as asserted by it was properly dismissed [citations omitted].[53]

Given that this case involves many types of petitioners/plaintiffs—those with presumptive standing, those who made the requisite showing of environmental harm different than the public at large, those who did not have standing because they could not show environmental harm different than the public at large, and an organization—it offers a convenient reference on the principles of standing under SEQRA.

Endnotes

1. *Kittredge v. Planning Board of the Town of Liberty*, 57 A.D.3d 1336 (3d Dep't 2008).
2. SEQRA, Environmental Conservation Law, Article 8 and 6 N.Y.C.R.R. Part 617.
3. *Id.* at 1336.
4. *Id.* at 1336–1337.
5. *Id.* at 1336–1341.
6. *Id.* at 1337.
7. *Kittredge*, 57 A.D.3d at 1338.
8. Town Law § 276(5)(d)(i)(1) ("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.").
9. A "negative declaration" under SEQRA means "a written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A negative declaration may also be a conditioned negative declaration as defined in subdivision (h) of this section. Negative declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part. 6 N.Y.C.R.R. 617.2(y).
10. A "notice of completion" under SEQRA is a determination by the lead agency that a draft environmental impact statement prepared for an action is adequate in scope and content and is ready for public review. 6 N.Y.C.R.R. 617.9(a)(3).
11. *Kittredge*, 57 A.D.3d at 1338-1339; Town of Liberty Code § 130-13(D)(3)(a)(1) ("Environmental impact statement not required. If the Planning 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 62 days after the receipt of a complete preliminary plat by the Secretary of the Planning Board.").
12. Town Law § 276[5](c) ("Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.").
13. *Kittredge*, 57 A.D.3d at 1338-1339.
14. *Id.* at 1340.
15. *BLF Associates, LLC v. Town of Hempstead*, 870 N.Y.S.2d 422 (2d Dep't 2008).
16. *Id.* at 424.
17. *Id.*
18. *Id.*
19. *Id. at* 424-425.
20. *Id.*
21. *BLF Associates, LLC*, 870 N.Y.S.2d at 426.
22. *Id.* at 425.
23. *Id.* at 426.
24. *Suffolk Asphalt Supply, Inc. v. Board of Trustees of the Village of Westhampton Beach*, 872 N.Y.S.2d 516 (2d Dep't 2009).
25. *Id.* at 517.
26. *Id.* at 517–518.
27. *Id.* at 518.
28. *Suffolk Asphalt Supply, Inc.*, 872 N.Y.S.2d at 518.
29. *Develop Don't Destroy (Brooklyn) v. Urban Development Corp.*, 59 A.D.3d 312, 2009 WL 465770 (1st Dep't 2009).
30. The UDCA defines "land use improvement project" as follows: "A plan or undertaking for the clearance, replanning, reconstruction and rehabilitation or a combination of these and other methods, of a substandard and insanitary area, and for recreational or other facilities incidental or appurtenant thereto, pursuant to and in accordance with article eighteen of the constitution and this act. The terms 'clearance, replanning, reconstruction and rehabilitation' shall include renewal, redevelopment, conservation, restoration or improvement or any combination thereof as well as the testing and reporting of methods and techniques for the arrest, prevention and elimination of slums and blight." UDCA, McKinneys Unconsolidated Laws § 6253(6)(c).
31. The UDCA defines "civic project" as follows: "A project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes." UDCA, McKinneys Unconsolidated Laws § 6253(6)(d).
32. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 1.
33. *Id.*
34. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 2.
35. *Id.*
36. *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008), *cert. denied*, 128 S. Ct. 2964 (2008).
37. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 1.
38. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 2.
39. *Id.* In addition to these claims, petitioners argued that the New York State Public Authorities Control Board ("PACB") should not have approved ESDC's financial participation in the project without issuing findings under SEQRA. The Court dismissed this claim holding that no SEQRA review was necessary for the PACB to approve ESDC's financial participation in the project since "this singular, discrete financial inquiry would not have been usefully informed by the EIS's account of the project's environmental effect and, accordingly, did not trigger an obligation to make environmental findings pursuant to [SEQRA]." *Id.*

40. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 3.
41. *Develop Don't Destroy (Brooklyn)*, 2009 WL 465770 at 4.
42. *Id.*
43. *Id.* at 6.
44. *Id.*
45. *Id.* at 9 (citing *Murphy v. Erie County*, 28 N.Y.2d 80 (1971)).
46. *Bloodgood v. Town of Huntington*, 58 A.D.3d 619 (2d Dep't 2009).
47. *See Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 687 (1996).
48. *Id.*
49. *Society of Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761, 775 (1991); *see also Municipal Lawyer*, Vol. 23, No. 1, p. 9 (Winter 2009) (Land Use Law Case Law Update discussion of *Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 865 N.Y.S.2d 365 (3d Dep't 2008).
50. *Id.* at 621.
51. *Id.*
52. *Id.* at 621–622.
53. *Id.*

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