SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of

NEIGHBORS FOR A TRUE OASIS, ELIZABETH PIPERNO, BRIAN PIPERNO, BARBARA SELVIN, CRAIG WERLE, EVA KIRSHENBLATT, JASON KIRSHENBLATT, ROSA FUSCHETTO, JOANNA TELACKA, WOJCIECH TELACKI, KATHERINE WEINSTEIN, E. ROSS WEINSTEIN, DISA KAPP, JOHN KAPP, SHOKO TOYAMA, YOSHIYUKI TOYAMA, GALINA SUCKIEL, KEVIN SUCKIEL, JACQUELINE POZAN, DONN POZAN, TAYLOR WEINSTEIN, ERIC WEINSTEIN, SUZANNE MUELLER, MARK MCCARRON, BONITA UTZIG, and GREGORY UTZIG,

Petitioners/Plaintiffs,

For a Judgment Pursuant to Article 78 of the CPLR, and for a Declaratory Judgment Pursuant to Section 3001 of the CPLR,

-against-

VILLAGE OF PORT WASHINGTON NORTH, ROBERT WEITZNER, in his capacity as Mayor of the Village, STEVEN COHEN, ANDREA SCHEFF, MATTHEW KEPKE, and MICHAEL MALATINO, each in the capacity as a Trustee of the Village, PLANNING BOARD OF THE VILLAGE OF PORT WASHINGTON NORTH, SCOTT BAXTER, in his capacity as Chairman of the Planning Board, STEVEN COHEN, KEITH KINDLER, SCOTT BROMBERG, GERALD STERN, and MICHAEL PELTZ, each in the capacity as a Member of the Planning Board,

Respondents/Defendants.

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Index No. 609509/2024

VERIFIED PETITION AND COMPLANT

Petitioners-plaintiffs, Neighbors for a True Oasis ("True Oasis"), Elizabeth & Brian Piperno, Barbara Selvin & Craig Werle, Eva & Jason Kirshenblatt, Rosa Fuschetto, Joanna Telacka & Wojciech Telacki, Katherine & E. Ross Weinstein, Disa & John Kapp, Shoko &

Yoshiyuki Toyama, Galina & Kevin Suckiel, Jacqueline & Donn Pozan, Taylor & Eric Weinstein, Suzanne Mueller & Mark McCarron, and Bonita & Gregory Utzig (collectively, the "Neighbors"; and together with True Oasis, the "Petitioners"), for their Verified Petition and Complaint ("Petition"), by their attorney, Abramson Brooks LLP, allege as follows:

NATURE OF PROCEEDING

Introduction

1. Respondent-Defendant Village of Port Washington North (the "Village) intends to sell or otherwise transfer certain real property it owns – approximately 7.45 acres of forested open space long-ago designated as park area and identified on the Land and Tax Map of Nassau County as Section 4, Block 28, Lot 82 (formerly Section 4, Block J, Lot 755) (the "Park Area") – to a private developer.

2. The proposed alienation of the Park Area not only violates the Public Trust Doctrine, but also breaches a Declaration of Covenants and Restrictions that by its express language runs with entirety of the land that constitutes the Park Area.

3. Furthermore, the private developer's site plan calls for decimating the Park Area's native trees, grasses, and wildlife to build an exclusive private residential community packed with 44 townhomes (the "Site Plan").

4. Notwithstanding that the destruction of trees violates the Village Code, and without the required environmental review and analysis, Respondent-Defendant Planning Board of the Village (the "Planning Board") recently voted to recommend that the Village's Board of Trustees – *i.e.,* its Mayor and Trustees (the "Village Board") – approve the Site Plan.

5. The Site Plan's proposed transformation and development of the Park Area violates the Petitioners' rights to "clean air and water, and a healthful environment"; rights now

enshrined in the Bill of Rights of the New York State Constitution, Article I, Section 19 (the "Environmental Rights Amendment").

6. Consequently, the Neighbors – residents of Port Washington whose property abuts or is close proximity to the Park Area – established True Oasis, and now come before this Court collectively as Petitioners to prevent the Village from alienating the Park Area, so that it may be preserved for the express purpose that the Village acquired it: "permanent open space."

Relief Sought

7. Accordingly, in this hybrid Article 78 Proceeding/Declaratory Judgment Action, Petitioners respectfully request the Court grant their Petition in all respects, including without limitation:

a. vacating and/or annulling the April 30, 2024, vote of the Planning Board, and the resulting referral decision filed with the Village Clerk on May 13, 2024, that recommends the Village Board approve the Site Plan (the "Referral Decision"), on the grounds the Planning Board failed to consider whether the Site Plan violates Petitioners' state constitutional rights under the Environmental Rights Amendment;

b. vacating and/or annulling the April 30, 2024, vote of the Planning Board, and the resulting Referral Decision, on the grounds the Planning Board's decision was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion;

c. declaring that the Site Plan approved by the Planning Board violates the Environmental Rights Amendment, in that it will deprive the Neighbors (and other residents who live in close proximity to the Park Area) of their constitutional right to clean air and water, and a healthful environment;

d. declaring that the Park Area is a Public Trust, in that it was offered in dedication to, and accepted by, the Village on the express condition that shall be and remain "permanent open space";

e. declaring that a certain Declaration of Covenants and Restrictions made by the Village is a valid and enforceable agreement pursuant to which the Village must maintain the Park Area as "permanent open space," that Planning Board approval of the Site Plan breached said Declaration, and that Petitioners are entitled to specific performance of said Declaration;

f. imposing a constructive trust over the Park Area, in that a fiduciary relationship exists between the Board of Trustees of the Village and residents of the Village, a promise was made to keep the Park Area as permanent open space, the Planning Board approval paves the way for a transfer of the Park Area in breach of that promise;

g. enjoining respondent-defendant Village from (i) approving the Site Plan and/or issuing building permits authorizing implementation of the Site Plan, (ii) altering the character of the Park Area such that it no longer remains permanent open space, and/or (iii) alienating all or any portion of the Park Area without compliance with and completion of all proper process;

h. declaring that petitioner-plaintiff Elizabeth Piperno (and, as appropriate, Brian Piperno) acquired by adverse possession title to a portion of the Park Area;

i. awarding Petitioners their costs (including attorneys' fees); and

j. awarding Petitioners such other and further relief as the Court deems just and proper.

PARTIES

8. Petitioner-plaintiff True Oasis is an unincorporated as]sociation comprised of the Neighbors.

9. Petitioners-plaintiffs Elizabeth and Brian Piperno are individuals who own and reside at the real property known generally as 52 Valley Road, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

10. Petitioners-plaintiffs Barbara Selvin and Craig Werle are individuals who own and reside at the real property known generally as 4 Glamford Avenue, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

11. Petitioners-plaintiffs Eva and Jason Kirshenblatt are individuals who own and reside at the real property known generally as 6 Glamford Avenue, Port Washington, New York, which said property abuts the Park Area, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

12. Petitioner-plaintiff Rosa Fuschetto is an individual who owns and resides at the real property known generally as 10 Glamford Avenue, Port Washington, New York, which said property abuts the Park Area, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

13. Petitioners-plaintiffs Joanna Telacka and Wojciech Telacki are individuals who own and reside at the real property known generally as 14 Glamford Avenue, Port Washington,

New York, which said property abuts the Park Area, and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

14. Petitioners-plaintiffs Katherine and E. Ross Weinstein are individuals who own and reside at the real property known generally as 18 Glamford Avenue, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

15. Petitioners-plaintiffs Disa and John Kapp are individuals who own and reside at the real property known generally as 20 Glamford Avenue, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

16. Petitioners-plaintiffs Shoko and Yoshiyuki Toyama are individuals who own and reside at the real property known generally as 28 Glamford Avenue, Port Washington, New York, which said property is in close proximity to the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

17. Petitioners-plaintiffs Galina and Kevin Suckiel are individuals who own and reside at the real property known generally as 32 Glamford Avenue, Port Washington, New York, which said property lies in close proximity to the Park Area, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

18. Petitioners-plaintiffs Jacqueline and Donn Pozan are individuals who own and reside at the real property known generally as 88 Radcliff Avenue, Port Washington, New York, which said property abuts the Park Area, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

19. Petitioners-plaintiffs Taylor and Eric Weinstein are individuals who own and reside at the real property known generally as 92 Radcliff Avenue, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

20. Petitioners-plaintiffs Suzanne Mueller and Mark McCarron are individuals who own and reside at the real property known generally as 96 Radcliff Avenue, Port Washington, New York, which said property abuts the Park Area and includes a parcel within the Village on which they pay Village tax, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

21. Petitioners-plaintiffs Bonita and Gregory Utzig are individuals who own and reside at the real property known generally as One Ann Place, Port Washington, New York, which said property lies in close proximity to the Park Area, and who will be adversely affected by the approval and/or implementation of the Site Plan, as well as by the resulting decimation of the Park Area.

22. Upon information and belief, respondent-defendant Village is an incorporated village is a municipal corporation duly organized and formed pursuant to the laws of the State of New York, having a principal office at 3 Pleasant Avenue, Port Washington, New York.

23. Upon information and belief, respondent-defendant Robert Weitzner is an individual residing in the Village who serves as Mayor of the Village.

24. Upon information and belief, respondent-defendant Steven Cohen is an individual residing in the Village who serves as a Trustee of the Village.

25. Upon information and belief, respondent-defendant Andrea Scheff is an individual residing in the Village who serves as a Trustee of the Village.

26. Upon information and belief, respondent-defendant Matthew Kepke is an individual residing in the Village who serves as a Trustee of the Village.

27. Upon information and belief, respondent-defendant Michael Malatino is an individual residing in the Village who serves as a Trustee of the Village.

28. Upon information and belief, respondent-defendant Planning Board is a municipal agency duly organized and formed pursuant to the laws of the State of New York, having a principal office at 3 Pleasant Avenue, Port Washington, New York.

29. Upon information and belief, respondent-defendant Scott Baxter is an individual residing in the Village who serves as chairman] of the Planning Board.

30. Upon information and belief, respondent-defendant Steven Cohen is an individual residing in the Village who serves as a member of the Planning Board.

31. Upon information and belief, respondent-defendant Keith Kindler is an individual residing in the Village who serves as a member of the Planning Board.

32. Upon information and belief, respondent-defendant Scott Bromberg is an individual residing in the Village who serves as a member of the Planning Board.

33. Upon information and belief, respondent-defendant Gerald Stern is an individual residing in the Village who serves as a member of the Planning Board.

34. Upon information and belief, respondent-defendant Michael Peltz is an individual residing in the Village who serves as a member of the Planning Board.

FACTUAL BACKGROUND

Introduction

35. The Village Board recently issued a public notice, dated May 14, 2024 (the "Public Notice"), stating that it will hold a public hearing on May 30, 2024, to consider the application of a private developer, New Oasis Development LLC ("New Oasis"), to approve a Site Plan that will transform the Park Area from forested open space into an exclusive private residential community packed with 44 townhomes and paved with asphalt (the "New Oasis Application"). A true and correct copy of the Public Notice is annexed hereto as Exhibit 1.

36. According to the Public Notice, on April 30, 2024, the Planning Board held a public hearing on the New Oasis Application (the "Planning Board Hearing"). A true and correct copy of the Planning Board Hearing transcript ("Apr. 30 Tr.") is annexed hereto as Exhibit 2.

37. At the end of the Public Hearing, the Planning Board, in a single vote, took four distinct actions: (i) "reapproving the 2018 subdivision approval"; (ii) approving the [revised] Site Plan; (iii) approving the issuance of a Steep Slope Permit; and (iv) and "readopt[ing] the [SEQRA] negative declaration that was previously issued [in 2008]. *See* Apr. 30 Tr. at 70:19-22, 71:19-72:9, & 72:19-73:10.

38. Thereafter, the Planning Board filed its Referral Decision with the Village Clerk on May 13, 2024. Site. *See* Ex. 1.[1] A true and correct copy of the Referral Decision is annexed hereto as Exhibit 3.

[1] Upon information and belief, the Village Board referred the New Oasis Application to the Planning Board. *See* Code of the Village of Port Washington North (the "Code") § 137-2.C.

39. In the Referral Decision, the Planning Board (i) recommends approval of the New Oasis Application by the Village Board, (ii) states that a Steep Slope permit shall be issued, and (iii) re-adopts its own 2018 subdivision approval. *See* Referral Decision at p.3.[2]

The History of the Park Area Becoming "Permanent Open Space"

40. Upon information and belief, until approximately two decades ago, the Park Area was the northern portion of a 40.9-acre tract of land (the "Dallas Property") owned by Dallas Realty Company ("Dallas").

41. Upon information and belief, at least as far back as the 1960s, the Dallas Property was unimproved and vacant, covered with heavy forest and vegetation.

42. Upon information and belief, in or about 1998, a private developer, Sandy Hollow Associates LLC ("Sandy Hollow"), contracted with Dallas to purchase the Dallas Property.

43. Upon information and belief, Dallas (as fee owner) and Sandy Hollow (as contract vendee), thereafter applied for an amendment to the Village Zoning Code that would rezone the Dallas Property into a newly-established "Senior Citizen Housing District" and allow Sandy Hollow to build a 327-unit senior residential planned unit development to be known as "Mill Pond Acres."

44. Upon information and belief, on or about July 5, 2000, the Planning Board declared itself "lead agency" under the State Environmental Quality Review Act ("SEQRA") and conducted a coordinated review of the Sandy Hollow application.

[2] Although the Referral Decision mentions the 2008 SEQRA Negative Declaration and (in passing) the discussion of it at the Public Hearing (*see id.* at pp.1-2), the Referral Decision, apparently by inadvertence, omits from its "referral" paragraph the fact that the Planning Board voted to "re-adopt" the 2008 Negative Declaration. *See id.* at p.3.

45. Upon information and belief, a public hearing was held on Sandy Hollow's draft environmental impact statement ("DEIS"), at which many Village residents expressed concerns over the proposed development of the entire Dallas Property, including and especially about the loss of open space, and the impacts on wildlife and avian species.

46. Upon information and belief, in an apparent effort to address those concerns, the Village determined that Sandy Hollow should revise its plan such it would deed eight (8) acres in the northern portion of the Dallas Property (the "Dedicated Parcel") to the Village for use as "permanent open space."

47. This concession was incorporated into the Final Environmental Impact Statement ("FEIS"), adopted in its entirety by the Village, which stated in no less than 30 separate places that the Dedicated Parcel would remain permanent open space in order to mitigate the effects of the Mill Pond Acres development, including construction-related noise, on neighboring residents, wildlife and avian species, and to satisfy open space requirements.

48. On February 28, 2002, the Village issued its Findings Statement as required by SEQRA (the "Findings"). The Finding stated that the proposed Mill Pond Acres project would have a significant adverse impact in that it would eliminate most of the forest and vegetation, which provided a habitat for wildlife and birds.

49. These Findings, which were amended on March 11, 2002, include the following statements, each of which demonstrates conclusively the Park Area was to be offered in dedication to, and accepted by the Village as, "permanent open space."

> [T]he Applicant [Sandy Hollow] has agreed to include certain other restrictions/obligations in a declaration of covenants and restrictions (the "Restrictive Covenant") to be filed in connection with the proposed development. Beyond the restriction that each unit must be occupied solely by persons 62 and older and the spouses of such persons, ***the Restrictive Covenant will also***

provide for the 8.0-acre set aside that the Applicant has agreed to provide as permanent open space. That commitment exceeds the requirement contained in the Village Zoning Code that the Applicant provide three percent of the land (or an equivalent sum of money), ***to be dedicated as Village parkland*** in new developments.

…

The JAC Study also listed waterfront preservation and beautification as the "highest priority" for the Village, and ***noted the beneficial attributes of open space or a park within the Village***. (JAC Study at 4,6.) ***The proposed development is consistent with that goal because the Applicant has agreed to preserve over 8.0 acres of the Site as undisturbed, public open space***. …

…

The agreement by the Applicant to set aside.8.0 acres of the 40.1-acre Site ***for permanent open space serves the goals of the Village to provide open space within the Village***. ...

…

It has been determined that ***the Site supports ninety-three avian species***, divided into three general categories: breeding birds, winter residents, and migrant/ vagrant birds. Based on direct observations, 31 breeding birds were observed on-Site. An additional 18 breeding bird species are expected to utilize the Site based on data collected from other avian surveys. Up to 38 species of birds are expected winter residents of the Site. This includes 23 species of birds that are also considered as breeding birds and year-round residents, and are included in the breeding bird section. The only potential winter resident that is ***a Species of Special Concern is the sharp-shinned hawk (Accipiter striatus)***.

The Site is located along the mid-Atlantic flyway, an important migratory bird pathway along the eastern coast of North America. The Site serves as a migratory "rest-stop" along the northern shore of Nassau County. The only migratory species that is also a State listed Species of Special Concern that could utilize the Site based on habitats present is the golden-winged warbler *(Vermivora chrysoptera)*. Of the four species of birds that are likely to use the Site at a vagrant level, only ***the osprey (Pandion haliaetus) is considered a Species of Special Concern***.

…

Under the revised, 250-unit plan [for Mill Pond Acres], approximately 75 percent of the contiguous forest overstory from the surrounding urban setting will be removed to construct the project, reduced from 88 percent under the prior plan. Although the woodland is not unique, this remains ***a significant, adverse impact***.

Fragmentation of the remaining overstory is lessened by the inclusion of the 8.0-acre northern portion of the Site as permanent open space and the increase of natural, vegetative buffers around the perimeter of the Site (except the main access road), ***which will result in the preservation of 14.8 acres of habitat***, or 37% of the building footprint after construction.

…

In addition, the impact on woodlands and vegetation will be further reduced through ***the 8.0 acre set aside of the northern portion of the Site [i.e., the Park Area] as permanent open space***. ***Th[is] northern portion of the Site is historically the least disturbed portion of the Site and therefore has the highest ecological value***. ***With the set aside [of the Park Area]*** and the increased buffer (around Mill Pond Acres], a total of 14.8 acres ***will be reserved for habitat*** following completion of the [Mill Pond Acres] project. The ***main components of this natural open space are a contiguous woodland block encompassing 8.0 acres at the northern end of the Site*** **[*i.e.*, *the Park Area*]** and an additional 6.8 acres that result from the [increased buffer]. Together ***these two areas of woodland space will benefit native wildlife species***. …

…

In addition, ***the 8.0-acre set aside at the northern end of the property as permanent open space*** and the widening of the buffer to 50 feet around the entire project footprint (except main access road) will further mitigate impacts on interior avian species. As noted previously, ***the 8.0-acre area to be reserved [i.e., the Park Area] is the least disturbed area on the property and the highest quality habitat located on the Site***. ***It is to be left undisturbed as permanent open space***, with measures taken to limit disturbance to the Site.

…

… ***8.0 acres of the Site [i.e., the Park Area, will be set aside] as permanent open space for the Village.***

…

… The JAC Study, however, identified the acquisition of public open space as a priority for the Village. (JAC Study at 6.)

…

As part of the proposed [Mill Pond Acres] senior housing development, the Applicant has agreed to ***set aside 8.0 acres of the Site as permanent open space***. ***That agreement will be provided for in a Restrictive Covenant for the Site***.

…

The revised plan for the proposed development, in addition to the 8.0 acres as permanent community open space, provides approximately 19 acres of landscaped area for a total of approximately 27 acres of the Site as open space. …

The Village Board finds that approval of the rezoning and the proposed [Mill Pond Acres] senior housing development will have a beneficial impact on open space and recreation ***because it will set aside 8.0 acres of the 40.1 acre Site as permanent open space for the Village*** and thus exceeds the goals for acquisition of open space identified in the JAC Study. Moreover, the 8.0 set aside is that portion of the property that borders existing residential uses.

…

The rezoning and approval of the proposed senior housing development will require clearance of a substantial portion of the Site, with the exception of the 8.0- acre set aside …. The 8.0-acre set aside [*i.e.*, the Park Area] is located proximate to the surrounding single-family residential uses and thus will reduce any adverse visual impact to those residences.

…

The Village Board finds that the revised plan, ***which includes an 8.0-acre set aside at the northern end of the Site*** and a fifty-foot buffer with fencing along the Site's perimeter, will not cause any significant adverse visual impacts.

…

… The rezoning proposed [for the Mill Pond Acres] senior housing project, on the other hand, ***will include the preservation of 8.0 acres of the Site as public open space at no cost to the Village***.

…

> … The zoning amendment also enables the Village to achieve its goal of obtaining open space within the Village because the Applicant has agreed to ***set aside 8.0 acres of the 40.1 acre Site [i.e., the Park Area] as permanent open space*** ….
>
> …
>
> The aforementioned significant, adverse impacts on woodlands and vegetation will be mitigated, to the maximum extent practicable, by the following measures: (1) maintaining a natural, 50-foot buffer along the perimeter of the [Mill Pond Acres] property; (2) ***providing an 8.0-acre set aside of the northern portion of the Site as permanent open space***, which is the least disturbed portion of the Site ….

See Findings at pp. 9, 10, 24-27, 41, 44-45, 48-49, 54-55 (emphases added). A true and correct copy of the Findings (as submitted by the Village in a separate and unrelated judicial proceeding) is annexed hereto as Exhibit 4.

50. As indicated repeatedly in the Findings, Sandy Hollow agreed to convey the Dedicated Parcel to the Village for use as permanent open space.

51. Thereafter, on or about March 14, 2002, the Village Board of Trustees adopted the zoning amendment and approved Sandy Hollow's application to rezone the Dallas Property.

52. On or about that same date, upon information and belief, the Village required Sandy Hollow to execute a Declaration of Covenants and Restrictions (the "Restrictive Declaration"), restricting the use of the land, including the Park Area.

53. Specifically, as regards the Dedicated Parcel, the Restrictive Declaration states:

> 3. Upon the rezoning of the Premises from an Economic Development A District to a Senior Citizen Housing District, substantially as set forth in Bill 8E of 2000 of the Village of Port Washington North, a copy of which is annexed to this declaration as Exhibit B (the "Bill"), OWNER agrees:
>
> …
>
> (c) OWNER [Sandy Hollow] shall complete construction of the Project … in accordance with the site plan prepared by

Cameron Engineering & Associates, LLP, dated January 2002, as may be approved by the Planning Board of the VILLAGE, a copy of which is annexed to this Declaration as Exhibit C (the "Site Plan"), and subject to any changes or modifications of the Site Plan that may hereafter be approved by the Planning Board of the VILLAGE, ***provided such changes and modifications … do not eliminate the eight-acre parcel at the northern end of the Premises as permanent open space***; and do not reduce the minimum fifty-foot buffer between all exterior property lines and all residential buildings.

…

7. Title to the northerly portion of the Premises containing approximately eight (8) acres of land, less so much thereof as shall be conveyed to the abutting homeowners to resolve adverse possession claims (the total of such land to be conveyed to the abutting homeowners shall not exceed 0.60 acres, and ***in no event shall less than 7.40 acres be offered for dedication to the VILLAGE, as more fully set forth below), as shown on the Site Plan (the "Park Area")***, shall be irrevocably offered for dedication to the VILLAGE by bargain and sale deed, with covenant against grantor's acts and without consideration.

8. The conveyance shall be in fee simple absolute, without any mortgages or other liens, and subject to:

…

(c) A reservation in favor of OWNER [Sandy Hollow], its successors and assigns of a perpetual easement for egress and ingress by pedestrians and emergency vehicles ***over the Park Area*** to and from and abutting public streets, upon which easement a paved or gravel/crushed stone road shall be constructed, repaired, replaced, reconstructed and maintained by OWNER, its successors and assigns, together with a perpetual easement to install, maintain, operate, replace, alter and abandon in place any and all pipes, conduits, sleeves, manholes, poles and similar installations pertaining to any utilities for water, gas, electric, telephone, communications or similar systems servicing the Premises.

…

This Declaration ***shall be a covenant running with the land*** and ***shall be binding upon the parties, their heirs, transferees, grantees, successors, and assigns***. …

See Restrictive Declaration §§ 3(c), 7, 8(c) & 10 (emphases added). A true and correct copy of the Restrictive Declaration is annexed hereto as Exhibit 5. For the convenience of the Court, a true and correct copy of the Mill Pond Acres site plan referenced in and annexed as "Exhibit C" to the Restrictive Declaration is separately annexed hereto as Exhibit 6.[3]

54. Upon information and belief, Sandy Hollow thereafter applied for subdivision approval from the Planning Board; the Planning Board adopted the Amended SEQRA Findings in their entirety; and final subdivision approval and site plan approval subsequently were issued for the Mill Pond Acres project.

55. Sandy Hollow conveyed title to the Dedicated Parcel to the Village as required under the Declaration, by deed dated May 3, 2005. At that time, the Dedicated Parcel was identified on the Tax Map as Section 4, Block J, Lot 754.

The Village Creates and Conveys Boundary Lots to Glamford and Radcliff Property Owners

56. As anticipated in the Restrictive Declaration, after taking title to the Dedication Parcel, the Dedication Parcel was "subdivided," creating twelve new tax lots along the eastern and northern edge of the Dedication Parcel (collectively, the "Boundary Lots"), and a new tax lot that became the Park Area.

57. Consistent with and in furtherance of the Restrictive Declaration, beginning in or about 2005, the Boundary Lots were offered to certain owners of properties on Glamford Avenue and Radcliff Avenue abutting the Dedication Parcel, including many of the Neighbors or their predecessors in title (collectively, the "Boundary Lot Neighbors").

[3] At that time, the Dedicated Parcel (including the Park Area) was a portion of the lot identified on the Tax Map as Section 4, Block J, Lot 748.

58. Those Boundary Lots now are identified on the Tax Map as Section 4, Block 28, Lots 60 through 63, and 65, 67, 69, 71, 73, 75, 77, 79 (and were formerly known as Section 4, Block J, Lots 756 through 767).

59. As anticipated in the Restrictive Declaration, the area of the Boundary Lots, in aggregate, is approximately 0.55 acres, making the Park Area approximately 7.45 acres. *See* Restrictive Declaration § 7.

60. All the Boundary Lots are situated within the Village.

61. Accordingly, the Boundary Lot Neighbors pay taxes to the Village.

The Park Area Provides Clean Air and a Healthful Environment for the Neighbors

62. All properties on Glamford Avenue and Radcliff Avenue that abut the Park Area (the "Park Area Adjacent Lots"), including the Park Area Adjacent Lots owned by Neighbors, enjoy uninterrupted views of the expansive, unbroken, woodlands that constitute the Park Area.

63. The trees that constitute that woodland provide shade for and, therefore, cool the Park Area Adjacent Lots, including those owned by the Neighbors.

64. Furthermore, those same trees play a critical role in providing clean air and a healthful environment to all the Neighbors (and others) through natural processes that "absorb" gaseous pollutants such as sulfur dioxide, nitrogen dioxide, and carbon monoxide, and that temporarily "trap" airborne particulate matter. *See* "Air Pollution Removal by Urban Forests," United States National Park Service, June 21, 2022.

65. As recognized by the Village in the Findings issued for the Mill Pond Acres project, those same woodlands provide critical habitat for animal and avian species. *See* Ex. 4.

66. That, too, contributes to a healthful environment for the Neighbors, and others.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Planning Board – Environmental Rights Amendment)

67. The allegations in paragraphs 1 through 66 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

68. In evaluating the Site Plan from the perspective of environmental impact, and in deciding to recommend that the Village Board approve the New Oasis Application, the Planning Board relied upon the 2008 SEQRA review.

69. As a matter of law, however, since the addition of the Environmental Rights Amendment to the New York State Constitution, a SEQRA review is legally insufficient.

70. The Planning Board must review the proposed action to determine whether its potential environmental impact complies with (or violates) the more demanding standards imposed by the Environmental Rights Amendment; specifically, that the proposed action does not violate the rights of the Neighbors (or others) to "clean air and water, and a healthful environment."

71. Upon information and belief, in evaluating the Site Plan from the perspective of environmental impact, and in deciding to recommend that the Village Board approve the New Oasis Application, the Planning Board failed to give any, let alone sufficient, consideration to the potential impact of the Site Plan on the constitutional rights of the Neighbors and, more broadly, all those who live in close proximity to the Park Area, set forth in the Environmental Rights Amendment.

72. Furthermore, the Village has an affirmative duty to analyze the impact of the Site Plan on those constitutional rights, especially where, as here, the Village borders a recognized Potential Environmental Justice Area. *See* NYSDEC Potential Environmental Justice Area Map, Port Washington, New York, a true and correct copy of which is annexed hereto as Exhibit 7.

73. Consequently, the final decision of the Planning Board as set forth in the Referral Decision violates the Environmental Rights Amendment.

74. Accordingly, the Referral Decision, and the vote upon which it is based, must be declared unconstitutional and, therefore, be vacated and annulled.

AS AND FOR A SECOND CAUSE OF ACTION
(Article 78 – Planning Board – SEQRA)

75. The allegations in paragraphs 1 through 74 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

76. The Planning Board conducted the SEQRA review in or about March 2008, and issued a "Negative Declaration."

77. Despite the passage of more than 16 years, the Planning Board readopted its Negative Declaration.

78. The Planning Board did so by reasoning that there were no meaningful changes to the ***Site Plan***.

79. The Planning Board, however, failed to consider any of the meaningful changes external to the Site Plan.

80. For example, the Planning Board failed to consider increases since 2008 in: (a) the number, size, and height of trees within the Park Area; (b) the wildlife and avian species within the Park Area; (c) the population of the Village of Port Washington North (the "Village") and greater Port Washington; and/or (d) vehicular traffic, especially given the transition to working-from-home, as well as the explosion of delivery services such as Amazon, Door Dash, and Uber Eats, during and since the Covid pandemic).

81. Similarly, the Planning Board failed to consider the Site Plan's adverse impacts on climate change caused by increased greenhouse gas emissions (during and after construction),

the deforestation of the Park Area, and the creation of "heat islands" through the extensive paving of the Park Area Public Hearing was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.

82. Incredibly, the Planning Board apparently made no inquiry into, let alone an analysis of, the potential impact of the New Oasis Application on the already oversized classes at Guggenheim Elementary School. The Planning Board's failure on this basic issue is inexplicable, given that one major change in the Site Plan is that five (5) of the townhomes – townhomes that are more than 3,000 square feet and, therefore, can accommodate sizeable families with school-aged children – no longer are "age restricted" on initial purchase.

83. And for those children, given that the Site Plan provides only a single means of ingress and egress, and that it is located at the intersection of Valley Road and Avenue C – a blind curve – where will the bus stop be located for those children?

84. Consequently, the Planning Board failed to fulfill their obligations as the "lead agency" under SEQRA.

85. Accordingly, the Referral Decision, and the vote upon which it is based, must be vacated and/or annulled.

AS AND FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment – Planning Board – Environmental Rights Amendment)

86. The allegations in paragraphs 1 through 85 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

87. The Site Plan, if implemented, will decimate the Park Area in that it will transform open space into a heavily-paved residential community packed with 44 townhomes, requiring the removal of native trees and grasses, and protracted construction work.

88. The construction-related noise, the decimation of the woodlands and the habitat it provides, will infringe on constitution right of the Neighbors, and all others who live in close proximity of the Park Area, to "clean air" and "a healthful environment."

89. Consequently, the Site Plan violates the Environmental Rights Amendment.

90. Accordingly, the Planning Board approval of the Site Plan must be vacated and/or annulled as unconstitutional.

AS AND FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment – Public Trust Doctrine)

91. The allegations in paragraphs 1 through 90 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

92. The Park Area was offered in dedication to, and accepted by, the Village as "permanent open space."

93. "Permanent open space" is *de facto*, if not *de jure*, "parkland."

94. Furthermore, the Village is on record as stating the Park Area exceeded the requirement of an applicant to offer a percentage of a proposed development "as parkland." *See* Findings (Ex. 4) at p.3.

95. As a matter of law, therefore, the Park Area is a Public Trust, and the Village may not alienate it without full compliance with and completion of all proper process.

96. The Village has not complied with any, let alone, proper process.

97. Consequently, the Village may not alienate the Park Area.

98. Accordingly, the Planning Board approval of the Site Plan must be vacated and/or annulled.

AS AND FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment – Constructive Trust)

99. The allegations in paragraphs 1 through 98 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

100. The Village Board owe fiduciary duties to Village residents, including the Boundary Lot Neighbors.

101. The Findings and the Restrictive Declaration, and subsequent Village documents, demonstrate the Village made a promise to Village residents, including the Boundary Lot Neighbors, that the Park Area would remain "permanent open space."

102. The Planning Board approval of the Site Plan supports the transfer and development of the Park Area and, therefore, is a breach of the Village's promise.

103. The Village Board and the Planning Board will be enriched by the approval and implementation of the Site Plan, including through new offices.

104. The enrichment of the Village Board and Planning Board comes at the expense of the Boundary Lot Neighbors (and others), specifically in the loss of the Park Area and the benefits derived therefrom.

105. Consequently, the Boundary Lot Neighbors are entitled to the imposition of a constructive trust over the Park Area.

106. Accordingly, the Planning Board approval of the Site Plan must be vacated and/or annulled.

AS AND FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment – Specific Performance)

107. The allegations in paragraphs 1 through 106 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

108. The Restrictive Declaration is a valid enforceable agreement pursuant to which the Village is obligated to maintain the Park Area as "permanent open space."

109. The Neighbors, including the Boundary Lot Neighbors, are intended third-party beneficiaries of the Restrictive Declaration.

110. The Planning Board approval of the Site Plan is a breach of the Restrictive Declaration.

111. Consequently, the Boundary Lot Neighbors are entitled to specific performance by the Village of its obligations under the Restrictive Declartion.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment – Injunction)

112. The allegations in paragraphs 1 through 111 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

113. The Neighbors will suffer irreparable harm if the New Oasis Application is approved and the Site Plan is implemented.

114. The Neighbors have no adequate remedy at law to prevent that harm.

115. Accordingly, the Neighbors are entitled to injunctive relief preventing the Village Board from approving the New Oasis Application and/or the Village from issuing building permits necessary to implement the Site Plan.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Declaratory Judgment – Adverse Possession)

116. The allegations in paragraphs 1 through 115 are repeated, realleged, and incorporated here by reference with the same force and effect as though set forth at length.

117. Petitioner-plaintiff Elizabeth Piperno ("Liz") is the owner of the real property known generally as 52 Valley Road, Port Washington, NY (the "Piperno Property"), where she lives with her husband, Brian, and their school-aged children.

118. Liz purchased the Piperno Property on or about December 21, 2010, at which time, according to the Deed, it was comprised of the parcels identified on the Tax Map as Section 4, Block 28, Lots 49-54 & 63.[4]

119. As shown on both the Tax Map and the Site Plan, Lot 63 shares two borders with the Park Area (Section 4, Block 28, Lot 82), title to which was deeded to the Village prior to the time Liz purchased the Piperno Property.

120. Soon after Liz purchased the Piperno Property, Liz, Brian, and their children occupied a sizeable portion of the Park Area that is contiguous with the "western" boundary of Lot 63 (the "Clearing").

121. They occupied the Clearing because they believed the same to be part of the backyard of the Piperno Property, a belief reasonably held given not only the continuity of the land from Lot 63 onto the Clearing, but also the complete lack of any demarcation or interruption between the two until one reached the existing natural tree line at the "western" edge of the Clearing that appeared to delineate the actual boundary between the backyard of the Piperno Property and the Park Area (the "Tree Line").

122. Since then, Liz, Brian, and their children have made open and notorious, continuous, exclusive, and actual use of the Clearing, and installed a fence around the Clearing along the Tree Line.

[4] Lot 63 (formerly known as "Lot 767") was deeded by the Village to Liz's predecessor in title on or about March 20, 2006.

123. For but one example, more than ten years ago, Liz and Brian installed a massive wooden swing set in the Clearing. To do so, they graded the Clearing, set concrete pedestals onto the ground, and affixed the swing set to the concrete pedestals. Standing some 6-feet high, running some 16-feet long, and comprised of a bench swing, two regular swings, and a slide, even a casual passerby in adjacent portions of the Park Area, or on Valley Road and the Valley Road sidewalk, could not miss seeing this structure.

124. At or about the same time, and perhaps even earlier, Liz and Brian planted an expensive and large Japanese Maple there. As might be imagined, over the course of more than a decade, it has matured significantly, and it stands as a focal point of the Piperno Property backyard. Liz and Brian have placed outdoor furniture under and around that special tree, and the family regularly relaxes and entertains friends there.

125. Accordingly, Liz (and Brian) respectfully request that this Court issue an Order or, as appropriate, Judgement declaring that Liz (and/or they) have acquired title to the Clearing by means of adverse possession.

WHEREFORE, Petitioners, Neighbors for a True Oasis, Elizabeth & Brian Piperno, Barbara Selvin & Craig Werle, Eva & Jason Kirshenblatt, Rosa Fuschetto, Joanna Telacka & Wojciech Telacki, Katherine & E. Ross Weinstein, Disa & John Kapp, Shoko & Yoshiyuki Toyama, Galina & Kevin Suckiel, Jacqueline & Donn Pozan, Taylor & Eric Weinstein, Suzanne Mueller & Mark McCarron, and Bonita & Gregory Utzig, respectfully request the Court grant the Petition in all respects, and enter an Order or, as appropriate, a Judgment in their favor and against all defendants-respondents as follows:

a. vacating and/or annulling the April 30, 2024, vote of the Planning Board, and the resulting referral decision filed with the Village Clerk on May 13, 2024, that

recommends the Village Board approve the Site Plan (the "Referral Decision"), on the grounds the Planning Board failed to consider whether the Site Plan violates Petitioners' state constitutional rights under the Environmental Rights Amendment;

b. vacating and/or annulling the April 30, 2024, vote of the Planning Board, and the resulting Referral Decision, on the grounds the Planning Board's decision was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion;

c. declaring that the Site Plan approved by the Planning Board violates the Environmental Rights Amendment, in that it will deprive the Neighbors (and other residents who live in close proximity to the Park Area) of their constitutional right to clean air and water, and a healthful environment;

d. declaring that the Park Area is a Public Trust, in that it was offered in dedication to, and accepted by, the Village on the express condition that shall be and remain "permanent open space";

e. declaring that a certain Declaration of Covenants and Restrictions made by the Village is a valid and enforceable agreement pursuant to which the Village must maintain the Park Area as "permanent open space," that Planning Board approval of the Site Plan breached said Declaration, and that Petitioners are entitled to specific performance of said Declaration;

f. imposing a constructive trust over the Park Area, in that a fiduciary relationship exists between the Board of Trustees of the Village and residents of the Village, a promise was made to keep the Park Area as permanent open space, the

Planning Board approval paves the way for a transfer of the Park Area in breach of that promise;

g. enjoining respondent-defendant Village from (i) approving the Site Plan and/or issuing building permits authorizing implementation of the Site Plan, (ii) altering the character of the Park Area such that it no longer remains permanent open space, and/or (iii) alienating all or any portion of the Park Area without compliance with and completion of all proper process;

h. declaring that petitioner-plaintiff Elizabeth Piperno (and, as appropriate, Brian Piperno) acquired by adverse possession title to a portion of the Park Area;

i. awarding Petitioners their costs (including attorneys' fees); and

j. awarding Petitioners such other and further relief as the Court deems just and proper.

Dated: Nassau County, NY
May 30, 2024

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