

43 A.D.3d 1374, 844 N.Y.S.2d 530, 2007 N.Y. Slip
Op. 07177

****1** In the Matter of Southwest Ogden
Neighborhood Association et al., Appellants, et al.,
Petitioner

v

Town of Ogden Planning Board, Respondent.
Ferne Richardson et al., Nonparty Respondents.

Supreme Court, Appellate Division, Fourth
Department, New York
06-03162, 1018
September 28, 2007

CITE TITLE AS: Matter of Southwest Ogden
Neighborhood Assn. v Town of Ogden Planning
Bd.

HEADNOTE

Limitation of Actions
30-Day Statute of Limitations

Underberg & Kessler LLP, Rochester (Ronald G. Hull of
counsel), for petitioners-appellants.
Daniel G. Schum, Town Attorney, Spencerport, for
respondent-respondent.
Fix Spindelman Brovitz & Goldman, P.C., Fairport
(Reuben Ortenberg of counsel), for respondents.

Appeal from a judgment (denominated order and
judgment) of the Supreme Court, Monroe County (Evelyn
Frazee, J.), entered October 23, 2006 in a proceeding
pursuant to CPLR article 78. The judgment, inter alia,
dismissed the petition with prejudice.

It is hereby ordered that the judgment so appealed from be
and the same hereby is unanimously modified on the law
by providing that the petition is dismissed without
prejudice and as modified the judgment is affirmed

without costs.

Memorandum: Petitioners commenced this CPLR article
78 proceeding challenging the determination of
respondent Town of Ogden Planning Board (Planning
Board) that no environmental impact statement is required
with respect to a residential subdivision project proposed
by nonparty respondents Ferne Richardson, the property
owner, and Euler Road Properties, LLC (Euler), the
developer. We conclude that Supreme Court properly
granted the motion of Richardson and Euler and the
Planning Board's cross motion to dismiss the petition but
erred in doing so on the merits. Although dismissal of the
petition was required based on petitioners' failure to join
Richardson and Euler as necessary parties (*see generally*
CPLR 1001 [a]; *Matter of East Bayside Homeowners*
Assn., Inc. v Chin, 12 AD3d 370, 371 [2004], *lv denied* 4
NY3d 704 [2005]; *Matter of Spence v Cahill*, 300 AD2d
992, 992-993 [2002], *lv denied* 1 NY3d 508 [2004]), we
agree with petitioners that the statute of limitations has
not expired with respect to Richardson and Euler and thus
that the petition should have been dismissed without
prejudice (*cf. **2 Spence*, 300 AD2d at 993). The 30-day
statute of limitations for challenging the subdivision
proposal on State Environmental Quality Review Act
([SEQRA] ECL art 8) grounds will not be triggered until
the Planning Board files the preliminary plat approval
(*see Town Law § 282; Matter of Long Is. Pine Barrens*
Soc'y. v Planning Bd. of Town of Brookhaven, 78 NY2d
608, 613-614 [1991]; *see also Matter of Eadie v Town Bd.*
of Town of N. Greenbush, 7 NY3d 306, 317 [2006];
Matter of North Country Citizens for Responsible Growth,
Inc. v Town of Potsdam Planning Bd., 39 AD3d 1098,
1102-1103 [2007]; *cf. Stop-The-Barge v Cahill*, 1 NY3d
218, 223-224 [2003]), and the Planning Board's SEQRA
determination is not yet ripe for judicial review (*see*
***1375** *Matter of Young v Board of Trustees of Vil. of*
Blasdell, 221 AD2d 975, 977 [1995], *affd* 89 NY2d 846
[1996]). We therefore modify the judgment accordingly.
In light of our determination, we do not consider
petitioners' remaining contentions. Present—Scudder,
P.J., Hurlbutt, Gorski, Centra and Green, JJ.

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