

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. GEORGE R. PECK
JUSTICE**

-----X **TRIAL/IAS PART 25**
**GLENN K. DENTON and BRIDGET K. DENTON,
KATHLEEN J. DUVAL, FRANCIS P. SCALLY and
FAY E. SCALLY,**

Plaintiff,

Index No. 5290-2015

- against -

Mot. Seq. 001 & 002

**TOWN OF OYSTER BAY , TOWN BOARD by
SUPERVISOR JOHN VENDITTO, BEECHWOOD
POB LLC, and PLAINVIEW PROPERTIES SPE LLC,**

Defendant.

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The Verified Petition and Verified Supplemental Petition, brought by Order to Show Cause, in the above captioned special proceeding, initially seeks leave, pursuant to Rule 3025(d) [sic] to file the subject Verified Supplemental Verified Petition, in the form annexed to the moving papers. That application is granted. Furthermore, the requested relief prayed for is denied in all respects. Such relief is enumerated by the following:

1. Declaring the votes of the Town of Oyster Bay ("the Town") Town Board of May 12, 2015, approving the rezoning, subdivision, and site plan for the property know as Country Pointe at Plainview located at Round Swamp Road and Old Country Road in Old Bethpage and Plainview, N.Y., void and in violation of the State Environmental Quality Review Act ("SEQRA"), and annulling such votes and enjoining the parties from undertaking any action arising therefrom that

would permit or cause damage or alteration in any way to the land and wildlife at the site of the property; and

2. Declaring the vote of the Town Board of February 2, 2015, approving the SEQRA Findings Statement for the project known as Country Pointe at Plainview void due to violations of SEQRA, and annulling the SEQRA Findings Statement and enjoining the parties from undertaking any action arising therefrom that would permit or cause damage or alteration in any way to the land and wildlife at the site of the property; and

3. Annulling the approval of the Draft Environmental Impact Statement and Final Environmental Impact Statement in the said project; and

4. Enjoining the Respondents Town of Oyster Bay from issuing any permits or other such permissions that would allow the Respondents, their agents or related companies to in any way damage or alter in any way the land and wildlife at the site of the Country Pointe at Plainview property; and

Furthermore, the requested relief seeks annulment for any permits or permission upon the grounds that :

A. Petitioners received after the Verified Petition was filed with this Court a disclosure in response to a Freedom of Information Law ("FOIL") request submitted to the Town of Oyster Bay before the Verified Petition was filed of a graphical representation of the Site Plan as approved by the Town of Oyster Bay Town Board, and such Site Plan contained information material to Petitioners' case that is incorporated in the Verified Supplemental Petition.

B. As established by the newly-disclosed Site Plan and as also established previously by evidence presented in the Verified Petition, the Town of Oyster Bay unlawfully segmented the SEQRA review of the Country Pointe at Plainview project by deferring review of clearly stated plans to remove additional forested land to construct additional athletic fields; and

C. The Town of Oyster Bay unlawfully segmented the SEQRA review of the Country Pointe at Plainview project by deferring review of clearly stated plans to have the developers design, arrange and pay for the construction of new lanes of traffic in nearby and surrounding roads and highways; and

D. The newly-disclosed Site Plan demonstrates that the Town of Oyster Bay failed to take a “hard look” at the issue of habitat loss because it failed to account for approximately 15 acres of forest that is counted in the SEQRA review as “preserved,” but is on the contrary fully intended to be cleared and destroyed to build athletic fields as shown by the approved Site Plan, as well as indicated less specifically in various passages quoted in the Verified Petition; and

E. The Town of Oyster Bay unlawfully failed to take a “hard look” at the impact of the Country Pointe at Plainview project on wildlife by among other things failing to account for the actual quantity of wildlife inhabiting the forests, meadows and brushland that presently occupy large areas of the property and mischaracterizing the nature of the habitat present and the amount to be preserved; and

F. The Town of Oyster Bay unlawfully failed to take a “hard look” at the impact of the Country Pointe at Plainview project on wildlife habitat by among other things using inconsistent numerical measurements and categorizations of land on the site; counting as preserved land forests that are actually intended to be cut down within the foreseeable future; failing to clearly and accurately account for such wildlife habitat as it is present on the property; vastly overstating the percentage of natural wildlife habitat that will be preserved; and falsely mischaracterizing the capacity of the existing lands to function as wildlife habitat; and

G. The Town of Oyster Bay unlawfully failed to take a “hard look” at the impact of the Country Pointe at Plainview project on the use and enjoyment of neighboring properties because the review of the visual “buffer” designed to protect the neighboring properties omitted effective “simulations” needed to evaluate the effect of the buffer; used simulations that lacked analytical substance; ignored the effect of a planned fitness path to be constructed in the buffer; failed to account for off-leaf conditions; and inconsistently represented the goals and capacities of the buffer.

Based upon all the papers submitted for this Court’s consideration, the Court makes the following findings of fact:

The real property that is the subject matter of the instant special proceeding is a certain 143.25 acre parcel located at the southwest corner of the intersection of Old Country Road and Round Swamp Road in the hamlet of Plainview/Old Bethpage, Town of Oyster Bay, State of New York known and designated on the Land and Tax Map of the County of Nassau as Section

47, Block E, Lots 747B, 747D, 747E, 748A and 748D. The subject real property is located approximately 4,207.55 feet along the westerly side of Round Swamp Road and approximately 2,670.29 feet along the southerly side of Old Country Road.

The Petitioners, Glenn K. Denton and Bridget K. Denton, reside at 1257 Round Swamp Road, Old Bethpage, New York 11804. Their property is approximately 160 feet from the end of the proposed screening buffer located on the westerly side of Round Swamp Road.

The Petitioners Francis P. Scally and Faye E. Scally, reside at 1 Locust Road, Old Bethpage, New York 11804. Their property is approximately 160 feet from the end of the proposed screening buffer located on the westerly side of Round Swamp Road.

The Petitioner Kathleen J. Duval, resides at 1251 Round Swamp Road, Old Bethpage, New York 11804. Her property is approximately 185.745 feet from the proposed screening buffer located on the westerly side of Round Swamp Road.

The aforesaid residences of the Petitioners are all located along the easterly side of Round Swamp Road.

The Respondent, Town Board of the Town of Oyster Bay, i/s/h/a Town of Oyster Bay Town Board by Supervisor John Venditto, is the governing body of the Town of Oyster Bay (“Town”), a municipal corporation as such term is defined by the New York State General Municipal Law Section 2.

The Respondent, Beechwood POB LLC, a Delaware Limited Liability Company which is authorized to do business in the State or New York, is the contract vendee of the subject real property and sponsor of Country Point at Plainview.

The Respondent, Plainview Properties SPE LLC, is a Delaware Limited Liability Company which is authorized to do business in the State of New York, is the fee owner of the subject real property.

Prior to 1999, the subject property was owned by the County of Nassau and was used as the “Nassau East Office Complex.” On this site were a set of buildings and parking lots situated among trees, grass fields, forested lands and athletic fields.

The subject property was privately acquired after a public process involving the Town of Oyster Bay, which resulted in the imposition of covenants and restrictions on the future use of

the property as a condition for sale.

In about 2003, the private owners sought changes in zoning to accommodate residential and commercial units. These plans were withdrawn without final action thereon in 2006.

By a Verified Petition, dated May 11, 2011, Plainview Properties, SPE LLC and Beechwood POB LLC, the Respondents herein, requested of the Town Board of the Town of Oyster Bay, the Respondents herein (1) rezoning of a portion of the subject 143.25 acre property from R1-1A Residence (“R1-1A”) and Office Building (“OB”) to RMF-16 Multi-Family Residence (“RMF-16”), R5C-25 Multi-Family Senior Citizen Residence (“RSC-25”) and General Business (“GB”) while retaining a portion of the site in the existing R1-1A and OB districts; (2) site plan approval for the portion of the subject property to be rezoned, including mixed, multi-family uses in the RMF-16 zoned area, price controlled senior housing in the RSC-25 zoned area, and commercial uses in the GB zoned area; (3) dedication of land to the Town of Oyster Bay for open space and recreation uses, pursuant to the covenants and restrictions adopted in 1998 in connection with the prior rezoning approval for the subject property which created the existing OB district; and (4) recession of the 1998 covenants and restrictions, and the establishment of new covenants and restrictions specific to the proposed development.

The SEQRA Process for the Subject Application

Following the submission of the hereinabove described Petition, the Department of Environmental Resources, Division of Town Environmental Quality Review (the “TEQR Division”) on behalf of the Town Board, circulated correspondence, dated May 31, 2011, along with an Environmental Assessment Form (the “EAF”) prepared by Plainview Properties, SPE LLC and Beechwood POB LLC (the “Applicants”) to other involved agencies and interested parties. This correspondence, among other things, sought to determine the agencies’ interest in assuming lead agency responsibilities for the Proposed Action and requested comments. None of the recipients of this correspondence expressed an interest in serving as lead agency, thereby allowing the Town Board to proceed as lead agency with a coordinated review pursuant to 6 NYCRR §617.6(b)(3) of the State Environmental Quality Review Act (“SEQRA”) regulations.

By Inter-Departmental Memo dated December 29, 2011, the TEQR Division recommended that the Town Board issue a Positive Declaration, based on information in the EAF and other application documents received from the Applicants.

By Resolution #80-2012, adopted on January 17, 2012, the Town Board issued a Positive Declaration, indicating that the Proposed Action had the potential to result in significant adverse environmental impacts, and requiring that review of the Proposed Action proceed with the preparation of a Draft Environmental Impact Statement (the "DEIS") pursuant to 6 NYCRR §617.7(a)(1), §617.7(b) and §617.7(c) of the SEQRA regulations.

Public scoping was conducted for the Proposed Action, pursuant to 6 NYCRR §617.8 of the SEQRA regulations, with the first step entailing preparation by the Applicants of a preliminary Draft Scope. The preliminary Draft was reviewed by Cashin Spinelli & Ferretti, LLC ("CSF") the Town's primary SEQRA consultant, and, based on comments resulting from that review, the Draft Scope was revised before being issued for public review and comment pursuant to 6 NYCRR §617.8(b) of the SEQRA regulations. Correspondence from the TEQR Division, dated February 22, 2012, transmitted the Draft Scope to involved agencies and interested parties, and also provided notification regarding the scheduling of a public scoping session.

A public scoping session was held by the TEQR Division on March 13, 2012, which started at approximately 7:10 p.m. and was concluded at 8:03 p.m. Written comments regarding the Draft Scope were accepted until March 23, 2012. Based on testimony at the public scoping session and written comments received, the Draft Scope was revised to produce the Final Scope, which provided a detailed outline of the information and analyses to be included in the DEIS. The Final Scope was distributed to involved agencies and interested parties via correspondence from the TEQR Division dated May 29, 2012, pursuant to 6 NYCRR §617.8(f) of the SEQRA regulations.

The Applicants prepared a preliminary DEIS document, dated November 2012, which was submitted to the TEQR Division. CSF reviewed this DEIS submission and provided comments regarding same by Memorandum to the TEQR Division dated December 12, 2012. The TEQR Division, by correspondence of that same date, forwarded these comments to the Applicants.

The Applicants submitted to the TEQR Division a revised preliminary DEIS document, dated February 2013. CSF reviewed this DEIS submission and provided comments regarding same by Memorandum to the TEQR Division dated February 19, 2013. The TEQR Division, by correspondence of that same date, forwarded these comments to the Applicants.

The Applicants made further revisions to the preliminary DEIS and submitted same, dated March 2013, to the TEQR Division. CSF reviewed this DEIS submission and determined that it appeared to comply with the requirements of the SEQRA regulations, at 6 NYCRR §617.9(a)(2), with respect to completeness for the purposes of commencing public review. By correspondence to the TEQR Division dated March 25, 2013, CSF recommended acceptance of the DEIS; and by Inter-Departmental Memo of the same date, the TEQR Division conveyed CSF's recommendation to the Town Board and various other Town agencies.

By Resolution #264-2013, adopted on April 9, 2013, the Town Board accepted the DEIS, and directed that the TEQR Division distribute the DEIS for the purposes of commencing public review of same in accordance with 6 NYCRR §617.9(a)(3) of the SEQRA regulations. The Town Board also set April 29, 2013 as the date of the public hearing on the DEIS, pursuant to 6 NYCRR §617.9(a)(4) of the SEQRA regulations, in conjunction with the Town Board's hearing on the proposed change of zone and site plan.

At the request of local civic representatives, the date of the public hearing was postponed to February 4, 2014, in order to allow additional time for review of the DEIS and preparation of commentary regarding same. The hearing was convened at approximately 7:00 p.m. on February 4, 2014 and was adjourned at 3:05 a.m. on the following day. All persons wishing to be heard were provided the opportunity to do so. Only one (1) of the Petitioners herein (Glenn K. Denton) spoke at this public hearing. His comments were limited to the size of the proposed community.

The notice announcing the February 4, 2014 rescheduled hearing date set February 28, 2014 as the close date for the submission of written comments. However, at the adjournment of the hearing on the morning of February 5, 2014, the Town Board extended this deadline to 60 days thereafter, or until April 6, 2014.

The Applicants were provided with copies of the transcript of the February 4-5, 2014 public hearing and written comments regarding the DEIS, including a number of submissions

which were received after the April 6, 2014 deadline. Based on review of these documents, the Applicants prepared a comprehensive summary of substantive comments, pursuant to 6 NYCRR §617.9(b)(8) of the SEQRA regulations. This comment summary was reviewed by CSF and, in consultation with the TEQR Division, no revisions were deemed necessary.

The Applicants prepared a preliminary Final Environmental Impact Statement (“FEIS”) document, dated November 2014, which was submitted to the TEQR Division. This document included proposed responses to substantive comments received in regard to the DEIS, as well as a description and analysis of an amended development proposal which included a reduction in the number of residential units (to 792 units, as compared to 890 units in the DEIS plan) and an increase in the width of the buffer to be provided along the westerly side of Round Swamp Road (from 100 feet to 125 feet), among other changes.

By Memorandum dated December 8, 2014, CSF provided comments on the Applicants’ November 2014 FEIS submission, which comments were hand delivered to the Applicants.

The Applicants submitted to the TEQR Division a revised preliminary FEIS document, dated January 2015. CSF’s review revealed that this document appeared to comply with the requirements of the SEQRA regulations, at 6 NYCRR §617.9(b)(8), with respect to completeness. The Applicants stated, *inter alia*, in the FEIS that:

“The applicant will not be developing the fields nor determining the use of the fields. As part of the proposed action, 44 acres of the subject property (which includes existing recreational fields as well as the undeveloped corner of the property at the intersection of Round Swamp Road and Old Country Road) will be dedicated to the Town of Oyster Bay. The Town of Oyster Bay will then work with the interested parties and the community to determine the best use of the property.”

Furthermore, set forth in the FEIS:

“The wildlife section of the ecological assessment (see Sections 3.3 and 4.3 of the DEIS) was prepared to customary procedures for a DEIS and pursuant to the procedures outlined in the Final Scope promulgated by the Town

Board for the Country Point at Plainview DEIS. Comprehensive resources utilized as part of this investigation included habitat assessments and species observations from various field inspections of the subject property conducted during multiple seasons over the course of 21 years from (1991 to 2012), including multiple field inspections conducted in 2010 and 2012. Furthermore, according to the customary DEIS procedure, government agency data bases and records for the subject property and vicinity were reviewed and summarized in the ecological assessment, including:

- United States Fish and Wildlife Service (USFWS) Federally Listed Species records
- The NYSDEC New York State Breeding Bird Atlas database
- The NYSDEC Amphibian and Reptile Atlas Project database
- The NYSDEC Environmental Resource Mapper database
- The NYSDEC New York Nature Explorer database
- NYNHP rare/protected species and community records
- ECNYS ecological community descriptions

Accordingly, the wildlife assessment for the DEIS was prepared based upon an analysis of the proposed action with respect to the habitats and observed/expected species identified from extensive field inspections conducted over the course of three decades, as well as from a comprehensive review of government agency resources. As such, the wildlife impact assessment was conducted in a manner consistent with the customary procedures for a DEIS including the procedures outlined in the Final Scope promulgated by the Town Board for the Country Point at Plainview DEIS.”

By correspondence to the TEQR Division dated January 22, 2015, CSF recommended acceptance of the FEIS; and by Inter-Departmental Memo dated January 23, 2015, the TEQR Division conveyed CSF's recommendation to the Town Board and various other Town agencies.

By Resolution #56-2015, adopted on February 3, 2015, the Town Board accepted the FEIS for filing and directed that the TEQR Division distribute the FEIS in accordance with 6 NYCRR §617.9(a)(6) and §617.9(b)(8) of the SEQRA regulations.

Subsequent to the issuance of the FEIS, the Town engaged in discussions with the Applicants to identify possible additional modifications to the Proposed Action to provide enhanced mitigation. This resulted in a proposed amended site plan (the "Final Plan"), which included further reduction of the overall residential yield (to 750 units) and increase in the amount of open space and recreational land to be dedicated to the Town (to approximately 59 acres, from approximately 44 acres in the plans presented in the DEIS and FEIS), among other changes.

CSF prepared a draft recommended Findings Statement based on the FEIS (which included the DEIS, by reference) and proposed Final Plan which considered zoning and land use, traffic, ecological resources, including existing flora and fauna, topography and soils, groundwater, public services and visual resources. The recommended Findings Statement was forwarded for consideration by the Town Board via Inter-Departmental Memo from the TEQR Division dated March 17, 2015. The Findings Statement was adopted by the Town Board on March 24, 2015, by Resolution #177-2015, which also directed that the TEQR Division undertake distribution of same in accordance with 6 NYCRR §617.11 of the SEQRA regulations. Adoption and distribution of the Findings Statement, which contains a summary of the information presented in the DEIS and FEIS, as well as certain conclusions required under 6 NYCRR §617.11(d) of the SEQRA regulations, completed the SEQRA process for the Subject Application.

On May 12, 2015 the Town approved among other things a project site plan for Country Point at Plainview. The site plan contains a graphical representation of the planned houses, stores, buffers, and other features of the development. Among the features illustrated are clear outlines of numerous sporting fields on the western portion of the site. Among the types of

sporting fields are both large and “junior” soccer fields and baseball diamonds. The sporting fields are situated on a portion of the site designated as land to be “dedicated” to the Town.

The Petitioners herein challenge the hereinabove described SEQRA process on the following grounds:

(i) The Town unlawfully segmented the environmental review process by deferring questions of planned additional construction in its “dedicated” forest and field tract as well as plans to construct additional highway lanes around the property;

(ii) The Town failed to take a “hard look” at the impacts on wildlife and natural habitat because its review of the issues resulted in documents that “cooked the numbers, obfuscated important ecological measurements and contained contradictory data, among other issues; and

(iii) The Town failed to take a “hard look” at the visual impact on the neighboring residents because its analysis of the planned Round Swamp Road “buffer” lacked analytical rigor, ignored important practical questions, omitted important visual analysis, and left open key questions regarding plans to clear part of the central area of the buffer.

The standing of a party to seek judicial review of a particular claim or controversy is a jurisdictional threshold matter that must be resolved by the Court before the merits of the application are reached (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761 [1991]).

This Court finds that the Petitioners herein lack standing to assert their claim in the instant special proceeding in that the hereinabove outlined challenges of the Petitioners relating to compliance with the New York State Environmental Quality Review Act (Article 8 of the New York Environmental Conservation Law) were never raised or presented to the Town (*see Aldrich v Pattison*, 107 AD2d 258, 271 [2d Dept 1985]). The Petitioners, Bridget K. Denton, Kathleen J. Duval, Francis P. Scally and Fay E. Scally did not appear at any time before the Town Board (*see O’Brien v Barnes Bldg. Co.*, 85 Misc 2d 424 [Sup. Ct. Suffolk Co. 1974], *aff’d sub. nom. O’Brien v Biggane*, 48 AD2d 1018 [2d Dept 1975]) and the Petitioners have failed to meet their burden of showing that the hereinabove described actions, determinations and decision of the Town will in fact have a harmful effect upon them (*see Matter of Concerned Taxpayers of Stony Point v Town of Stony Point*, 28 AD3d 657 [2d Dept 2006]; *Dairylea Cooperative, Inc. v*

Walkley, 38 NY2d 6 at 9 [1975]). The previously mentioned public statement by Glenn Denton is insufficient in detail to preserve this issue.

Notwithstanding that this Court herewith finds as a matter of law that the Petitioners, individually and collectively, lack standing to commence or maintain the instant proceeding, the Court will address the Petitioners' hereinabove set forth challenges to the lead agency's SEQRA review.

It is well settled that the inquiry of the Court in a special proceeding brought pursuant to CPLR Article 78 is limited to whether the determination of an administrative body or officer was made in a manner set forth by law (*see Khan v N.Y. State Dept. of Health*, 96 NY2d 879 [2001]).

The Court's determination of the aforesaid inquiry is whether a rational basis exists for the agency's actions (*see Matter of Wagschal v Board of Examiners of Bd. of Educ. of City of N.Y.*, 69 NY2d 672 [1986]). The standard of review is whether the agency's determination was arbitrary and capricious or affected by an error of law (*see Ward v City of Long Beach*, 20 NY3d 1042 [2013]). Furthermore, a reviewing court may not substitute its own judgment for that of the administrative body or officer nor may a Court overturn a final determination made by an administrative body or officer unless there is no rational basis for the decision of the administrative body or officer or the act complained of is illegal, arbitrary, capricious or without legal basis (*see Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219 [2007]).

The Town Board did not unlawfully segment the environmental (SEQRA) review process.

The Petitioners contend that the Town Board has improperly "segmented" SEQRA review, with regard to the Country Point at Plainview Project by:

(1) deferring environmental review and investigation of the impacts of allegedly "planned" future clearing or other development, with athletic fields, of certain areas of the subject property that are to be dedicated to the Town;

(2) deferring environmental review of construction of certain highway improvements in and around the subject property, which improvements are actually proposed mitigation for the anticipated and evaluated traffic impacts of the Country Pointe at Plainview Project; and

(3) failing to clearly state that “segmentation” of SEQRA review is occurring and failing to provide reasons supporting such segmented review.

This Court finds and determines that there is no current plan for the Petitioners’ alleged segmented action, the hereinabove described alleged segmented action is speculative and hypothetical, the alleged segmented action and the action from which it has allegedly been segmented have independent utility purposes or significance and that the environmental impacts of the alleged segmented action will be evaluated at a future time. Accordingly, there has been no unlawful segmentation of the SEQRA review that is the subject matter of the instant special proceeding (*see Highview Estates of Orange County, Inc. v Town Board of Town of Montgomery, Orange County*, 101 AD3d 716 [2d Dept 2012]; *see also Saratoga Springs Preservation Foundation v Boff*, 110 AD3d 1326 [2d Dept 2013]).

The Town Board took the required “hard look” at the impacts on wildlife and natural habitat. This Court finds and determines that a fair reading of both of the hereinabove described DEIS and FEIS shows that the required “hard look” was taken with respect to wildlife and natural habitat in that in reaching its conclusions the Town Board identified the relevant areas of environmental concern and made a reasoned elaboration of the basis for its determination. This Court further finds and determines that the Town Board’s hereinabove described review was more than sufficient to constitute a “hard look” at the impacts on wildlife, flora and fauna (*see Eadie v Town Board of Town of North Greenbush*, 7 NY3d 306 [2006]).

The Town Board took the required “hard look” at the visual impact on the neighboring residents. As set forth hereinabove the development of the subject property has been subject to a four (4) year long intensive study and comprehensive environmental impact analysis. The said SEQRA review commenced with the filing of an environmental assessment form dated May 11, 2011 which included a full environmental impact statement “EIS” together with all of the analytical documentation associated with the EIS process.

This Court finds and determines that the ultimate buffer area set forth in the FEIS on the subject site plan exceeds, in all respects, the minimum buffer area that was required in the hereinabove described 1998 covenants and restrictions. Furthermore, not only did the Town

Board thoroughly consider the buffer issue, it caused the buffer areas in the vicinity of the Petitioners' homes to be even further increased.


Accordingly, it is this Court's determination in the instant special proceeding that the Town Board's determination was not arbitrary, capricious or affected by an error in law and was supported by substantial evidence (*see* CPLR section 7803 [3 & 4]); *Brooklyn Bridge Park Legal Defense Fund, Inc. v State Urban Dev. Corp.*, 50 AD3d 1029 [2d Dept 2008]).

Therefore, the instant petition is dismissed.

Settle judgment on notice.

This decision is the Order of the Court. All applications not specifically addressed herein are denied.

Dated: December 15, 2015
Mineola, New York

ENTER: 
HON. GEORGE R. PECK, J.S.C.