

**SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU  
PRESENT THE HON. GEORGE R. PECK, J.S.C.**

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GLENN K. DENTON and BRIDGET K. DENTON,  
KATHLEEN J. DUVAL, FRANCIS P. SCALLY and  
FAY E. SCALLY,

*Petitioners pro se,*

*-against-*

TOWN OF OYSTER BAY TOWN BOARD BY  
SUPERVISOR JOHN VENDITTO, BEECHWOOD POB LLC,  
PLAINVIEW PROPERTIES SPE LLC,

*Respondents and Necessary Parties*

RICHARD A. BRUMMEL,

*Intervenor,*

For relief per New York Civil Procedure Law and Rules ("CPLR") Section 1012 (a)(2) and  
CPLR 7802(d)

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STATE OF NEW YORK, COUNTY OF NASSAU SS:

RICHARD A. BRUMMEL, residing at 15 Laurel Lane, East Hills, N.Y. 11577, being duly  
sworn, deposes and states:

**Introduction**

1. This matter is a special proceeding, filed in June, 2015 and decided in December, 2015, seeking to vacate various actions by the Respondent Town of Oyster Bay with respect to the Country Pointe at Plainview development project ("the Project") due to violations of the State Environmental Quality Review Act ("SEQRA").
2. Richard A. Brummel, hereinafter "Intervenor-applicant", seeks by this application to intervene in this matter and become a Petitioner in order to prosecute an appeal of the Court's Decision, among other possible actions.

3. As described below, Intervenor-applicant has developed a strong connection with and enjoyment of the woods and other natural features at the 143.5 acre Site planned for substantial destruction by the Project as approved in May, 2015. As such Intervenor-applicant has "standing" in environmental legal matters related to the property.
4. The facts as alleged herein with respect to the Project and the SEQRA review thereof are incorporated herein by reference from the Petition, Supplemental Petition, and Reply in the underlying special proceeding; and reference is further made to the Memorandum of Law in Support of the Reply in the underlying proceeding as to matters of law.
5. Intervenor-applicant was intimately involved in this special proceeding and worked with the Petitioners to file and prosecute their case.
6. Several Petitioners in this matter have told Intervenor-applicant they will not pursue the matter to an appeal after an adverse decision was rendered by this Court over one month ago, and Intervenor-applicant believes that therefore his interests are not being adequately protected absent his own intervention, under the rules of Civil Procedure Law and Rules ("CPLR") Sections 1012 (a)(2) and 7802(d).

## **Facts**

### **Use and Enjoyment of the Site**

7. Intervenor-applicant is a 55-year-old native of East Hills, N.Y. who returned to his hometown in about 2009, and became active in environmental causes first in East Hills and then across Nassau County.
8. East Hills is approximately 12 miles and 15 minutes from the planned Country Pointe Plainview Site (hereinafter "the Site").

9. Intervenor-applicant became aware of the proposed development in or about April 2014 and visited the Site at that time.
10. Intervenor-applicant was awed by the empty old government buildings and the dense forests around the Site, and has taken numerous photos since then (Exhibit 1).
11. The entire Site is open and accessible, crossed by roads that are freely used by the public; there are leased public athletic fields with parking lots; and the woods and brushland along Old Country Road and Round Swamp Road are fully visible, and open to access without signage or fencing along most of their lengths. There are some signs stating that various grassy areas around the empty buildings are private property, but it is entirely possible to see and enjoy the woods and brushland of the entire Site without entering into the private-property portions.
12. Intervenor-applicant attended the sole hearing on the State Environmental Quality Review Act (SEQRA) review sponsored by the Town of Oyster Bay on February 4, 2015 and spent roughly two hours there, speaking to some opponents and a local community organizer.
13. Intervenor-applicant later submitted extensive written testimony identifying shortcoming in the Draft Environmental Impact Statement ("DEIS") which testimony was incorporated and addressed in the Final Environmental Impact Statement ("FEIS") (Exhibit 2).
14. In or around June 2015, Intervenor-applicant went door-to-door speaking to residents of Old Bethpage seeking support to contest the SEQRA review in court, and Intervenor-applicant thereby met the present Petitioners.
15. Intervenor-applicant met with the presents Petitioners on several occasions and worked with them to draft the Article 78 Petition, the Supplemental Petition, and the various

supporting papers in the present case.

16. Since the first time Intervenor-applicant visited the Site and took in the rich and diverse natural terrain and wildlife there, Intervenor-applicant has visited the Site and walked through it approximately fifteen times, or roughly once a month, except during the depth of winter months.
17. Intervenor-applicant spends more time in the natural area of the Site than in any other natural area due to his concern for its pending destruction as well as his appreciation for its unique character.
18. While some forests Intervenor-applicant is acquainted with exist in the Site of the Nassau County Museum near his home, in Roslyn, and in Christopher Morley Park in Manhasset./North Hills, Intervenor-applicant has been struck by the diversity of the natural habitats at the Site and its fascinating historical background.
19. Indeed Intervenor-applicant has seen hobbyists photographing the buildings on the Site and otherwise enjoying the ghost-town feel of the property, intermingled with the natural environment.
20. The deep rich shrub-land along the public sidewalk on Old Country Road presents particularly interesting conglomerations of vegetation that are identified in the DEIS as "successional shrubland" and "successional old field". A video of that section posted on a Facebook page dedicated to opposing the project received over 100 visits in several days.
21. Each time Intervenor-applicant visits the Site, walks on the sidewalks and public thoroughfares around the Site, he feels renewed and refreshed. Intervenor-applicant is inspired by the vigorous wildlife, mostly birds being visible during daylight, and is charmed by the shy rabbits on the grass around some of the empty buildings.
22. Along Round Swamp Road there is a rich and varied forest that contains towering trees

interspersed with conifers -- an unusual formation identified in the DEIS as "successional southern hardwoods".

23. Intervenor-applicant has also been immensely active rallying support for a change in the Project through press releases, web-pages and announcements on his website, Planet-in-Peril.org, a Facebook page, and various funding pages to support the legal effort (Exhibit 7).
24. The destruction of large portions of the Site as planned for development will significantly harm Intervenor-applicant's enjoyment of the Site, and cause him to abandon his visits.
25. Almost every area he values will be destroyed -- cleared and levelled -- as currently documented in public plans regarding the Country Pointe Plainview development.
26. In fact the impending destruction unless it can be stopped pending a renewed environmental review already causes Intervenor-applicant distress foreboding, and deep dismay.
27. In the manners enumerated above, Intervenor-applicant uses and enjoys the subject Site and will suffer harm that use and enjoyment of a unique piece of former public property and an unusual ecological resource not far from his home.

### **Petitioners Are Not Moving to Reverse The Adverse Decision**

28. Intervenor-applicant has made several email and telephone inquiries to the Petitioners indicating his interest in knowing their position on pursuing an appeal or other effort to reverse the Court's December 2 and December 15, 2015 rulings against them (Exhibit 3).
29. Intervenor-applicant is familiar with the extensive legal and factual arguments made by Petitioners that they enjoy standing based on their use and enjoyment and proximity to the Site, they should not be denied standing because their testimony on the SEQRA issues raised is not on the present record, and the SEQRA review was deeply flawed and

insufficient as a matter of law.

30. One Petitioner speaking for himself and his wife wrote an email stating they do not wish to continue in the case (Exhibit 4).
31. Intervenor-applicant spoke to Bridget Denton on December 18, 2015 and she said she and her husband were thinking about what to do. No further decision has been provided by them.
32. As for Kathy DuVal, Intervenor-applicant sent an email to all the Petitioners including Ms. DuVal on December 16, 2015 urging quick action to reverse the Decision and asking for an indication of their intent but heard nothing back. On January 5, 2016 Intervenor-applicant sent a further email to the Petitioners including Ms. DuVal and heard nothing back.
33. The evidence is clear that inasmuch as the Petitioners have taken to acting as a group (Exhibit 5) they will not go forward with the case inasmuch as the Scallys have stopped their efforts.

### **Reasonable Basis for Reversal of Decision**

34. Intervenor-applicant believes that the apparent decision of the Petitioners not to proceed constitutes a failure to adequately pursue the case because the grounds cited in the Decision and Order were fully addressed in the Petition, Supplemental Petition, Reply and Memorandum of Law in Support of the Reply such that the Court's determinations lacked a basis in fact and law.
35. Among other issues, (1) the legal claim that absence (arguably so) of testimony by the Plaintiffs at the hearing stage of the SEQRA review denied them "standing" was an issue fully addressed and refuted in the Reply and Memorandum of Law. Furthermore (2) strong evidence was presented to the Court that the SEQRA review was "segmented" and decisions were concretely taken outside the scope of the review (e.g. the planned athletic fields in the

current fifteen acre forested area) and furthermore the Court failed to hold a "hearing of fact" as requested by Petitioners on that issue if their allegations were in question. Finally (3) it was clear on the record that the purported "visual buffer" was not analyzed in any reliable way and was subject to substantial modification (e.g. the "fitness trail") that was in no way analyzed for its impact on the buffer.

36. Additionally the recent report that the Town Supervisor now believes the SEQRA review was not adequate (Exhibit 6) should provide a basis for the Court to re-open its inquiry into the legal sufficiency of the SEQRA review -- the entire question before the Court in this Article 78 proceeding -- since Supervisor Venditto was the senior Town official ultimately responsible for the SEQRA review.

37. Thus the Petitioners' apparent failure to pursue any of the legal avenues open to all the opponents of the destruction of the environment on the Site as currently planned and approved effectively abandons Intervenor-applicant's legal defense of his interests as outlined in this affidavit, and provides grounds for intervention as provided by CPLR Sections 7802(d) and 1012.

38. Intervenor-applicant will file a Notice of Appeal if granted Intervenor / Petitioner status (Exhibit 7).

### **The Law**

39. CPLR Section 7802(d) states:

(d) Other interested persons. The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene.

40. As more fully described in the accompanying Memorandum of Law, the law has been construed to grant such permission as justified.

41. CPLR Section 1012 provides as follows:

§ 1012. Intervention as of right; notice to attorney-general, city, county, town or village where constitutionality in issue. (a) Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:

1. when a statute of the state confers an absolute right to intervene;
- or
2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment....

42. In the present matter the applicability of the statutes is such that as described Intervenor-applicant is an "interested" person due to his connection to the land at issue and the "representation" of his interests appears on evidence to be "inadequate" inasmuch as no appeal is contemplated by the present Petitioners, so far as Intervenor-applicant has been able to establish.

### **Conclusions**

43. Intervenor-applicant has "standing" to intervene based on his repeated, regular "use and enjoyment" of the Site, a concept that is more fully discussed as a matter of law in the accompanying Memorandum of Law.

44. Petitioner has a strong belief that this matter cannot be fully and fairly adjudicated without an appeal or other review of the Court's Decision and Order of December 15, 2015.

45. Inasmuch as the present Petitioners have not indicated they plan to pursue such a course of action, despite Petitioners repeated requests for them to so indicate, and in fact that two of them have indicated they plan not to pursue any further action, it is clear that only by intervening can Petitioner be assured that timely and diligent defense of his interests is pursued.

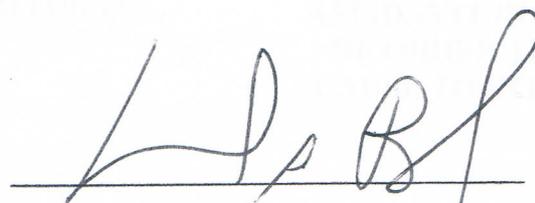
46. Respondents interests would not be improperly prejudiced by Intervenor-applicant's intervention because they have been fully on notice of the issues raised in the original special

proceeding and no further issues are being raised that are not part of the original action or are not properly raised in relation to those issues -- e.g. Supervisor Venditto's change of heart, *supra*, which may properly be subject of a motion to renew based on the arguments already advanced regarding the insufficiency of the SEQRA review as a matter of law.

47. For the foregoing reasons Intervenor-applicant respectfully urges the Court to grant him Intervenor / Petitioner status.

48. The relief sought herein has not been sought previously before this or any other Court.

Nassau County, N.Y.  
January 7, 2016



RICHARD A. BRUMMEL, Intervenor *pro se*  
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N.Y. 11577  
Tel. (516) 238-1646  
Email: rxbrummel@gmail.com

Sworn before me this 7<sup>th</sup> day of January,  
2016

  
NOTARY PUBLIC

SEAN MICHAEL LITTLE  
Notary Public - State of New York  
NO. 01LI6295415  
Qualified in Nassau County  
My Commission Expires Jan 13, 2018