

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

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Index Number
5290/15

**Verified Supplemental
Petition in Support of
Order to Show Cause**

Petitioners pro se,

For Judgements and an Order Pursuant to Article 78, Section 6313
(Temporary Restraining Order), and Section 6311 (Preliminary Injunction)
of the Civil Practice Law and Rules ("CPLR")

-against-

TOWN OF OYSTER BAY TOWN BOARD BY
SUPERVISOR JOHN VENDITTO,
Town Hall
54 Audrey Avenue
Oyster Bay, N.Y. 11771

BEECHWOOD POB LLC,
200 Robbins Lane
Jericho, N.Y. 11753

PLAINVIEW PROPERTIES SPE LLC,
1600 Old Country Road, Suite 101
Plainview, N.Y. 11803

Respondents and Necessary Parties

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Exhibits

- 1 FOIL Request and Reply
- 2 Sketches of baseball diamonds and soccer fields in approved final Site Plan
- 3 Satellite-based acreage measurements of two areas of planned athletic fields
- 4 Affidavit of Richard Brummel

Preliminary Remarks

1. This article 78 special proceeding seeks to annul the rezoning, site plan, and subdivision approvals granted by Respondent Town of Oyster Bay to the Country Pointe at Plainview project, and to annul the environmental review under the State Environmental Quality Review Act ("SEQRA"), because of flaws in the environmental review that render such review deeply flawed and insufficient as a matter of law.
2. Based on a Freedom of Information Law ("FOIL") request submitted prior to the filing of the original verified petition (Exhibit 1, Exhibit 4), Petitioners obtained from Respondent Town of Oyster Bay (hereinafter the "Town") a copy of the project site plan as approved by the Oyster Bay Town Board (hereinafter the "Town Board") on May 12, 2015.
3. Because there is material information contained in the Site Plan that was not available to the Petitioners prior to the filing of this special proceeding the Petitioners by this supplemental petition seek to incorporate that newly available material into the special proceeding.
4. In the verified petition Petitioners detailed the manner in which the Town unlawfully "segmented" its review of the Country Pointe at Plainview development (hereinafter the "Development") by omitting from the review any consideration of the environmental impacts of the planned construction of additional soccer fields through the clearing of woodlands they claimed as preserved wildlife habitat elsewhere in their review.

5. The Site Plan as approved by the Town Board provides overwhelming additional evidence of the full intention and clear plan to virtually obliterate at least approximately ten acres of forest being "dedicated" to the Town and claimed by it as preserved wildlife habitat.
6. Because the environmental impacts of this element of the Development project were not considered in the environmental review, the review was "segmented".
7. But in addition, because the forest was evidently counted as being 'preserved' as a manner of mitigating the environmental impacts on the Development, the new evidence demonstrates that the supposed "hard look" required to be taken at environmental impacts was, in yet another key area, deeply flawed and insufficient.

Jurisdiction

8. Jurisdiction in this special proceeding is the Supreme Court, County of Nassau, for the reasons set out in the verified petition and incorporated herein by reference.

Parties

9. The parties in this special proceeding are as described in the verified petition (¶¶ 9-16) and those paragraphs are incorporated herein by reference.

Facts

10. The facts of the matter are set out in the original verified petition and incorporated herein by reference.
11. The additional facts to be introduced by this supplemental petition are as follows.

12. On May 12, 2015 the Town approved among other things a Site Plan for the Development.
13. This Site Plan as approved was sought by Richard Brummel at the Town Clerk's office on June 5, 2015 and was disclosed by the Town Clerk's office on about June 20, 2015 (Exhibit 1), ten days after the verified petition was filed.
14. The Site Plan contains a graphical representation of the planned houses, stores, buffers, and other features of the Development.
15. 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 (Exhibit 2).
16. The sporting fields are situated on a portion of the site designated as land to be "dedicated" to the Town.
17. This land is represented as preserved forest in the Draft Environmental Impact Statement (hereinafter "DEIS "), as indicated in Figure 27A "Post-Construction Ecological Communities", DEIS p. 213, Exhibit 9 of the original verified petition.
18. There is no discussion in the environmental review of the diminution of preserved forest, meadow and brushland for the purpose of the construction of the soccer fields.
19. To the contrary the forest, that is spared destruction in the initial construction plans -- for the housing, stores and related undertakings -- appears to all be counted in the preserved total of acreage.
20. It is not possible however to fully evaluate the counting of such remaining

forests because as noted in the verified petition the Town and developers have failed to provide any clear or verifiable inventorying of the forest and other area they claim will be preserved (§ 146 *ff.*)

21. Per satellite analysis, the area comprising the planned athletic fields appears to amount to approximately fifteen acres of forest (Exhibit 3, Exhibit 4).
22. These areas were specifically categorized as preserved forest in the environmental review, as noted *supra*.
23. The Site Plan demonstrates clearly that the athletic fields are not only planned but already designed and laid out.
24. The athletic fields both create an unlawful segmentation of review and reduce the area claimed as remaining woodland.
25. Petitioners in the original petition described the planning and intention of the Town to build new soccer fields (verified petition §§ 38-45).
26. However the approved Site Plan provides incontrovertible evidence of such a clear intention and the fully-approved parameters of it.
27. Petitioners wish to reiterate that the Findings Statement refers specifically and explicitly to the plan to have new soccer fields "constructed" (verified petition § 42).
28. But the Site Plan as approved by the Town Board substantiates this plan, and shows where and with what impact that construction will occur.
29. While the environmental review anticipates additional reviews of matters such as the new soccer fields (see original petition, § 40), it fails to disclose the size extent and location of such new construction.

30. Furthermore the environmental review as approved by the Town Board fails to "clearly state" that such a process of segmentation is occurring, and fails to incorporate "supporting reasons" for it, among other conditions as required by the SEQRA, see 6 NYCRR 617.3(g)(1) (SEQRA implementing regulations).

Laws and Regulations

31. Petitioners refer to the recitation of laws and regulations contained in the original petition, and incorporate such recitation herein by reference.
32. Petitioners reiterate here the prohibition against "segmentation":
33. The "action" affecting the environment is viewed as encompassing not merely the final step of approval or funding, but the entire sequence of steps leading there:

"Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it. Considering only a part or segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible."

(6 NYCRR 617.3 (g), emphasis added)

"Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance."

(6 NYCRR 617.2 (ag), emphasis added)

Concluding Statement

34. This verified supplemental petition provides additional evidence that the Town's

environmental review of this massive development was deeply flawed and ultimately deceptive and inaccurate.

35. A large swath of forest claimed to be preserved to mitigate the impact of the vast denuding of forest, meadow and brushland habitat on the site is in fact planned itself to be removed -- yet no such disclosure is openly made in the SEQRA analysis or the Findings Statement.
36. Whatever intimations are made about the construction of additional athletic fields are vague, disjointed and non-specific; they amount to a series of vague signals designed to assuage concern of local sportsmen while flying under the radar of the environmental review.
37. Such a practice is not only prohibited by SEQRA as both "segmentation" and a failure to make a diligent, transparent, and reliable "hard look" but it is a practice that discredits the rational standard of decision-making required of government conduct in any official proceeding.
38. For the foregoing reasons Petitioners respectfully request this Court to annul the various elements of the SEQRA review and annul the Town's rezoning, site plan approval, and subdivision approval.

Basis for Injunctive Relief

39. Petitioners repeat and incorporate by reference the discussion of the Petitioners' basis for injunctive relief due to irreparable harm, likelihood of success, and the balance of equities as stated in the verified petition, ¶¶ 207-216.
40. Furthermore Petitioners note that the disclosure of the explicit though

unreviewed plan of the Town to destroy an additional approximately 15 acres of forest -- substantially reducing the actual acreage of habitat remaining in direct contradiction to assertions in the Findings Statement and elsewhere -- indicates bad faith that should count against that agency in the balance of equities.

41. The deliberate misstatement of material facts shows a wanton behavior that the "strict compliance" standards repeatedly affirmed by the Courts is designed to deter and punish.
42. Further such blatant errors and falsehoods strongly militate in favor of a likelihood of success by the Petitioners.
43. Finally, the spectre of even more of the paltry remaining woods being destroyed increases the magnitude of the irreparable harm to be done to Petitioners if the project moves forward.
44. For the foregoing reasons Petitioners have fully demonstrated the justice of injunctive relief.
45. This relief requested herein has been requested before in the verified petition in the same matter.

As And For A First Supplemental Cause Of Action

(CPLR Section 7803: Determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or evidenced an abuse of discretion)

The Environmental Review Was Segmented And Therefore Was Arbitrary And Capricious And Should Be Annulled

46. The State Environmental Quality Review Act ("SEQRA") specifically prohibits "segmentation" of the environmental review (6 NYCRR 617.3 (g), 6 NYCRR 617.2 (ag), *supra*).
47. The Site Plan as approved by the Town Board clearly shows that approximately fifteen acres of the site of the Development "dedicated" to the Town and represented as remaining as forest will in fact be levelled for the construction of athletic fields.
48. As described in the original verified petition (original verified petition ¶¶ 40-43) such an arrangement was presented in testimony and documents as essential to placating community organizations who will lose their current athletic fields as a result of the rezoning and approval of the Development.
49. As such the plans were fully known and integral to the planning and approval of the Development.
50. As the new construction was known, integral to the project, clearly planned, destructive of the environment, and not recognized and justified as an instance of "segmentation", the segmentation was unlawful under SEQRA.
51. Furthermore the segmentation deprived the public and the Town Board of the full data needed to evaluate, respond to, and rationally vote on the Development and

its component legal parts, such as the rezoning, site plan, sub-division, and SEQRA review.

52. Thus the segmentation inflicted clear damage to the Petitioners in their interest to preserve the site of the Development as much as possible, and handicapped the Town Board's mandate under SEQRA to choose an alternative that "avoids or minimizes adverse environmental impacts to the maximum extent practicable" (6 NYCRR 617.11 (d)(5)).
53. For the foregoing reasons the approval of the rezoning, subdivision, Site Plan and the environmental review were by the unlawful segmentation made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or evidenced an abuse of discretion and should respectfully be annulled.
54. Petitioners have no other remedy at law.

As And For A Second Supplemental Cause Of Action

(CPLR Section 7803: Determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or evidenced an abuse of discretion)

The Environmental Review Was Distorted By The Knowing False Inclusion As Preserved Forest Of Land Known To Be Planned To Be Cleared For Further Construction And Therefore The Environmental Review Was Arbitrary And Capricious And Lacked A "Hard Look"

55. Respondent Town of Oyster Bay variously claimed that from 37 to 44 acres of "woodland" would be preserved as habitat after the clearing of roughly 70 acres for the Development (verified petition, ¶¶ 148-151).
56. The approved Site Plan listed approximately 8.55 acres in the eastern buffer

along Round Swamp Road, about 10 acres in the area in the southwest corner of the parcel -- also along Round Swamp Road; and about 3 acres in a narrow oblong next to the athletic fields. The total of such parcels is about 22 acres.

57. To reach any of the claimed totals of remaining "woodland" significant portions of the "dedicated" woods, meadow and brushland in the central western portion of the parcel would need to be added to the total preserved space.
58. But given the evidence that at almost all the undeveloped land in that Town-"dedicated" parcel is fully planned to be levelled for athletic fields, it is clear that the claimed preserved land is illusory.
59. As described in the verified petition the Town relies in its Findings Statement on the assertion that 70% of the original "forest" land will be preserved as a mitigating factor for the adverse environmental impacts of the Development on wildlife and habitat (verified petition, ¶ 91 *ff.* ; ¶ 120 *ff.*).
60. If such a figure were true and it was buttressed by fact, it could be asserted the Town took a "hard look" at the issues of wildlife, habitat, and natural landscape and came to the rational decision based on evidence required by SEQRA. But here the contrary is true: Since the numbers never added up for the reasons already outlined in the verified petition (e.g. ¶ 100 *ff.*), and the same numbers are now completely discredited by the incontrovertible new evidence of substantial additional planned construction -- to the tune of clearing 15 acres of forest -- it is manifestly clear that no "hard look" was taken at the reality of the Development's impact on wildlife and habitat.
61. For the foregoing reasons the Court should respectfully annul the Town's

approval of the environmental review (the Draft Environmental Impact Statement ("DEIS"), Final Environmental Impact Statement ("FEIS"), Findings Statements), and the Town's approval of the rezoning, site plan, and subdivision.

62. Petitioners have no other remedy at law.

Prayer for Relief:

For the foregoing reasons Petitioners respectfully request the Court grant an Order:

1. Annuling the SEQRA review as constituted, by annulling the Town Board's approval or acceptance of the Draft Environmental Impact Statement, Final Environmental Impact Statement, Findings Statement in this mater; and

2. Annuling the rezoning, site plan, and subdivision based on the annulled SEQRA review; and

3. Nullifying any permits or other official permissions affecting Country Pointe at Plainview issued by the Town of Oyster Bay;

4. Enjoining the Respondents from in any way damaging or altering the lands, woods, animals or other physical resources and properties on the project site of Country Pointe at Plainview; and

5. Such further relief as to the Court appears just and proper.

Nassau County, N.Y.
July _____, 2015

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(Verified Supplemental Petition, Denton et al. v. Town of Oyster Bay et al., Nassau Index
5290/15, CONTINUED)

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