

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT HON. F. Dana Winslow
JUSTICE OF THE SUPREME COURT

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RICHARD A. BRUMMEL,
15 Laurel Lane
East Hills, N.Y. 11577,

Petitioner

For a Judgement Pursuant to Article 78, and Sections 6311
and 6313 of the Civil Practice Law and Rules ("CPLR")

-against-

THE VILLAGE OF NORTH HILLS, N.Y.,
1 Shelter Rock Road
North Hills, N.Y. 11576
(516) 627-3451,

MIDTOWN NORTH HILLS LLC,
C/O RXR CO REALTY LLC
625 RXR PLAZA
UNIONDALE, NEW YORK, 11556
(516) 506-6000,

X-CELL REALTHY ASSOCIATES III LLC,
a/k/a X-CELL III REALTY ASSOCIATES LLC,
2110 NORTHERN BOULEVARD
MANHASSET, NEW YORK, 11030
(516) 627-8700

Index Number

1
Order to Show Cause
with Injunctive Relief
in Article 78
Special Proceeding

Respondents and Necessary Parties

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Upon reading and filing the annexed verified Petition of Richard Brummel, verified the JANUARY day of December, 2014, and the Exhibits, Affidavits, and Memorandum of Law annexed thereto;

Let the Respondents or their attorneys show cause before this Court at IAS Part Room thereof at the Courthouse located at 100 Supreme Court Drive, Mineola NY on the 8th day of JANUARY 2014 at 9:30 o'clock in the Fore noon or as soon as the parties to this proceeding may be heard why an order should not be entered, providing the following relief:

Why an order should not be entered:

(1) Ordering the Village of North Hills (hereinafter "the Village") to undertake a thorough "hard look" inquiry, and issue a reasoned finding under the State Environmental Quality Review Act (SEQRA) on the necessity that a Supplemental Environmental Impact Statement (SEIS) be undertaken with respect to the Draft- and Final-Environmental Impact Statements (DEIS and FEIS) compiled in 2005 and 2006 by Midtown North Hills LLC (which as a related entity of RXR Realty is hereinafter designated "RXR") and based upon which the Village of North Hills voted to approve development plans in 2006 and 2013 with respect to the forest-land and appurtenant land of approximately 17 acres variously known as 85 Long Island Expressway South Service Road a/k/a Powerhouse Road, or Section 8, Block A, Lots 892, 893, 897B, 897C, and 889 on the Nassau County Land and Tax Map (hereinafter the "RXR tract"), or the lands subject to the Village Case No. 12-11a;

(2) Enjoining the Village from issuing, and rescinding any already issued building permit, tree removal permit, or any other authorization to RXR or its agents, assigns, or any other entity to in any way disturb, damage, degrade or otherwise change the land, natural vegetation, wildlife or other attributes of the RXR tract, unless and until the

Village shall have made a lawful determination regarding the SEIS, and followed all relevant laws, rules and regulations with respect to the SEQRA process of environmental review pursuant thereto;

(2) Enjoining the Village from issuing any building permit, tree removal permit, or any other authorization to X-Cell Realty Associates III LLC, a/k/a X-Cell III Realty Associates LLC (hereinafter "X-Cell") or its agents, assigns, or any other entity to in any way disturb, damage, degrade or otherwise change the land, natural vegetation, wildlife or other attributes of the tract of forest and appurtenant land of approximately 8.5 acres at the southeast corner of the Long Island Expressway Service South Rd. at New Hyde Park Rd., sometimes designated 3400 New Hyde Park Rd., also known as Section 8, Block A, lots 880 and 881 on the Nassau County Land and Tax Map, and on which X-Cell received Village approval in 1997 and 2008 to build an office complex (hereinafter the "X-Cell tract"), under the Village Case No. 08-19bt, unless and until the Village shall have made a lawful determination regarding the SEIS aforementioned, and followed all relevant laws, rules and regulations with respect to the SEQRA process of environmental review pursuant thereto;

(3) Requiring the aforementioned SEIS inquiry to fully inquire as to the reasonably relevant new or changed circumstances with respect to adverse environmental impacts caused upon all SEQRA-designated environmental attributes by the development of both the RXR and X-Cell tracts taken together as a unified ecological entity;

(4) Vacating those parts of the Village "Decision" approved on December 18, 2013 with respect to the RXR development at the RXR tract (hereinafter the "RXR project") that purport to make findings with respect to the environmental impact(s) of the RXR project under SEQRA or otherwise, and those that purport to reject the necessity for an SEIS with respect thereto, or otherwise;

(5) Vacating those parts of the Village Board of Trustees (hereinafter "Village Board") vote of November 4, 2013 purporting to make findings with respect to the environmental impact(s) of the RXR project under SEQRA or otherwise, and which purport to reject the necessity of an SEIS with respect to the RXR project or otherwise;

(6) Nullifying all grants of incentive zoning allowances to RXR and X-Cell due to failure to obtain jurisdiction;

(7) Otherwise suspending all Village approvals of zoning incentives, site plans, subdivision approvals, or other actions subject to SEQRA, that are currently outstanding with respect to the RXR and X-Cell projects pending the Village determinations with respect to the necessity of one or more SEIS's, and the consequent compliance with all relevant laws, rules and regulations with respect to the SEQRA process of environmental review pursuant thereto;

(8) Enjoining the Village from undertaking any further approvals of zoning incentives, site plans, subdivision approvals, or other actions subject to SEQRA with respect to the RXR and X-Cell projects pending the Village determinations with respect for a need for one or more SEIS's, and the consequent compliance with all relevant laws, rules and regulations with respect to the SEQRA process of environmental review pursuant thereto;;

(9) Enjoining RXR, its agents assigns, successors or other parties, from in any way disturbing, damaging, degrading or otherwise changing the land, natural vegetation, wildlife or other attributes of the tract of forest and appurtenant land at the RXR tract beyond what they have already done or caused to occur;

(10) Enjoining X-Cell, its agents assigns, successors or other parties, from in any way disturbing, damaging, degrading or otherwise changing the land, natural vegetation, wildlife or other attributes of the tract of forest and appurtenant land at the X-Cell tract,

beyond what they have already done or caused to occur;

(11) Enjoining the Village or other parties from in any way disturbing, damaging, degrading or otherwise changing the land, natural vegetation, wildlife or other attributes of the tract of forest and appurtenant land at the RXR and X-Cell tract absent full SEQRA compliance under the supervision of the Court, beyond what they have already done or caused to occur;

(12) Ordering the Village to undertake no action with respect to the RXR project unless and until it makes a lawful finding under SEQRA, with respect to proposed revisions in the Site plan and Subdivision plan, as regards whether or not a significant adverse environmental impact will occur therefrom;

(13) Ordering Respondents to stay all action with respect to the aforementioned RXR and X-Cell projects and tracts of land, where such action would have the effect of destroying, degrading, or otherwise altering the natural flora and fauna thereon, beyond what has already occurred;

(14) Granting such other relief as this Court deems just and proper,

Upon the grounds that: (1) the Village failed to undertake the required "hard look " inquiry into the necessity of an SEIS with respect to the RXR DEIS and FEIS and the development project related thereto; (2) the Village failed to make determinations of environmental significance with respect to the revised RXR "site plan and subdivision approvals" in connection with the RXR Amendment of 2013; (3) the Village failed to issue a "reasoned elaboration" in a "determination of significance" with respect to the Environmental Assessment Form filed by RXR in June, 2013; (4) the Village failed to undertake the necessary Generic Environmental Impact Statement (GEIS) or issue a "reasoned elaboration" in a "determination of significance" under SEQRA why said GEIS was not required for its R-3 and C-1A Incentive Zoning programs, and thus failed to

obtain jurisdiction therefor under NY Village Law; (5) the Village decisions and "actions" of 2008 that are currently in force with respect to the X-Cell project relied on the same RXR DEIS and FEIS, and were thus identically situated with respect to the necessity of revision by the same SEIS process and inquiry related thereto; (6) the consideration of environmental impacts arising only from "changes" in the RXR project without regard the impacts of the overall project and the environmental significance thereof, and the failure to link approval of the changes to the resulting activation of the entire project, constitute impermissible segmentation of the SEQRA review; and (7) the interconnected ecological system and physical connection of the two tracts on which the X-Cell and RXR projects are located requires that inquiries with respect to environmental impacts of either one fully incorporate the impacts and inter-connections of both, but the Village has failed to do so, including by failing to inquire adequately into the necessity of an SEIS.

Sufficient grounds having been show it is hereby

ORDERED, that pending the hearing and ~~determination~~ of this special proceeding Respondents, and their related parties or successors, are hereby restrained (see CPLR 6311, 6313) from

(a) causing or permitting to be caused any disturbance, damage, degradation, or other alteration in the present natural condition of flora and fauna on the RXR and X-Cell tracts; and ~~THE VILLAGE WILL ISSUE A STOP WORK ORDER OR ITS EQUIVALENT~~

(b) taking any further governmental action upon land-use matters with respect to the RXR and X-Cell tracts; the land, natural vegetation, wildlife or other attributes of the tract of forest and appurtenant land; and it is further

~~ORDERED, that Respondents shall serve upon Petitioner their Answers, supporting affidavits and other supporting papers, if any, at least _____ () days prior to the return date hereof, and a Reply, together with supporting papers, shall be served _____~~

() days before the return date.

SC SUFFICIENT CAUSE BEING ALLEGED THEREFOR, ~~personal~~ ^{present to} service pursuant to ~~CPLR~~ CPLR 311 of this order to show cause, together with the Verified Petition and all exhibits and affidavits annexed thereto, and the Memorandum of Law in Support upon which this order is granted, upon the Village of North Hills, N.Y., Midtown North Hills LLC, and X-Cell Realty III LLC a/k/a X-Cell III Realty LLC on or before the 6th day of January 2014 shall be deemed good and sufficient service thereof.

An affidavit or other proof of service shall be presented to this Court on or before the return date directed in the second paragraph of this order.

No prior application has been made for the relief sought herein to this or any other Court.

ENTER

[Signature]
J.S.C.