

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X Index No.
OPERATION STOMP and TANYA LUKASIK, EUGENE
GOLDFARB and EDITH AMERRATA, individually and as
members of Operation STOMP,

Petitioners,

VERIFIED PETITION

- against -

NASSAU COUNTY, COUNTY EXECUTIVE EDWARD
P. MANGANO, and NASSAU COUNTY DEPARTMENT
OF PUBLIC WORKS, TRI-STATE PAVING, LLC,
and LASER INDUSTRIES, INC.,

Respondents,

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Petitioners, complaining of the Respondents, by their attorneys, Law Office of Frederick
Eisenbud, as and for their Verified Petition, respectfully show to this Court and allege:

NATURE OF PROCEEDING

1. This is an Article 78 proceeding, pursuant to Sections 7803(1) and 7803(3) of the CPLR, to challenge the municipal Respondents' actions which will result in the destruction of approximately 200 healthy, mature trees along South Oyster Bay Road, on the ground that no environmental review pursuant to the State Environmental Quality Review Act ("SEQRA") was performed prior to awarding the road rehabilitation contracts for the work and no effort was made to consider the numerous adverse impacts of these actions.
2. In the very short time since mid-September, when Petitioners first learned of the project, more than 55 of these trees have already been removed by the Respondent contractors retained by the County.

3. In addition, the Petition shows that this project must be viewed in the context of other recent County road projects that have already resulted in massive and indiscriminate removal of mature trees along County roads as well as future anticipated similar County road projects, and that no such work can proceed without proper SEQRA review of the cumulative impact of all reasonably related County road projects.

THE PARTIES

4. Petitioner Operation STOMP (“Save Trees Over More Pavement”) is an unincorporated not-for-profit association of citizens in the County of Nassau whose primary immediate purpose is to stop the destruction of approximately 200 mature trees that are between 30 and 70 feet tall that grow along South Oyster Bay Road in Syosset, Plainview, Hicksville and Bethpage. Petitioners also wish to protect other mature trees that grow along County roads and that may be slated for destruction as part of the County’s road improvement projects.
5. Members join Operation STOMP by demonstrating their interest in the organization’s goals. Members sign petitions, write letters to government officials, appear and speak at public meetings and demonstrations, and work to inform the general public about the value of the trees along County roads.
6. Members of Operation STOMP who reside on County roads or in close proximity to these roads enjoy the benefits that these mature trees provide, including but not limited to shade, impeding soil erosion, aiding in water absorption and retention, inhibiting excess runoff and flooding, enhancing air quality by absorbing carbon dioxide and releasing oxygen, mitigating noise, providing screening, conserving energy, enhancing property values and adding to the aesthetic quality and character of the community.

7. Members of Operation STOMP share the organization's belief that mature trees must be preserved whenever alternatives to their destruction exist, and that no contract that contemplates the destruction of the trees should be awarded without first undertaking environmental review pursuant to SEQRA.
8. Membership in Operation STOMP is open to all persons subscribing to the organization's purposes. To date, 1,407 people have demonstrated their support for the organization's purposes by signing a petition urging the County Executive and the Commissioner of NCDPW to stop the excessive removal of trees along South Oyster Bay Road and to work with the community to establish a more environmentally friendly plan that will preserve mature trees whenever possible. Many have also participated in public protests organized by Operation STOMP to raise public awareness of the problem.
9. Petitioner TANYA LUKASIK is the Director of Operation STOMP. She resides at 55 Briggs Street, Hicksville, New York in close proximity to South Oyster Bay Road. Ms. Lukasik frequently walks and drives along South Oyster Bay Road in the area impacted by the contracts that were issued by the County. Her affidavit is attached hereto.
10. Petitioner EUGENE GOLDFARB is also a member of Operation STOMP. He resides at 22 Underhill Avenue, Syosset, New York. The backyard of his property abuts South Oyster Bay Road. At least three of the trees marked for destruction are located within 500 feet of his home. His affidavit is attached hereto.
11. Petitioner EDITH AMMERATA is a member of Operation STOMP and a 60 year resident of Hicksville, New York. The backyard of her property abuts South Oyster Bay Road. The tree on her sidewalk has been marked for removal by Respondents. Her affidavit is attached hereto.

12. Respondent Nassau County elected to adopt an alternative form of government established by State legislation in or about 1936, and the County acquired local legislative powers under a State-drafted Charter and Administrative Code pursuant to article IX, § 2 of the 1938 State Constitution (see L 1936, ch 879; L 1937, ch 618, §§ 150-153; L 1939, ch 700, §§ 1-2; Nassau County Charter §§ 150-153).
13. Respondent County Executive Edward P. Mangano is the chief executive officer of the County of Nassau, with powers set out in Article II of the Nassau County Charter. The County Executive has the duty, *inter alia*, “to supervise, direct, and control, subject to the provisions of the act, the administration of all departments, offices and functions of the county government.” On information and belief, the County Executive approved the bids selected by the Department of Public Works for the challenged project.
14. Respondent Nassau County Department of Public Works (“NCDPW”) is an agency of the Nassau County. NCDPW is duly authorized and receives its powers from Article XII of the Nassau County Charter. The Department of Public Works has exclusive charge and supervision of the design, construction, repair, maintenance and cleaning of all streets and bridges under the jurisdiction of the county and is responsible for all trees, hedges and shrubbery between property lines on county roads. On information and belief, NCDPW was the SEQRA lead agency with regard to the decision authorizing the removal of trees along South Oyster Bay Road.
15. On information and belief, Respondent Tri-State Paving, LLC is a domestic Limited Liability Company and has a principal place of business at 377 Carlls Path, Deer Park, New York 11729. Tri-State Paving, LLC was awarded the contract for Rehabilitation of South Oyster Bay Road Phase 1 (Contract No. H61587-38A) and the contract for Resurfacing

Various County Roads Improvements to South Oyster Bay Road Phase 2 (Contract No. H61587-39G), and said contracts were signed on or before August 6, 2014. Tri-State Paving, LLC is a necessary party to this proceeding because, if the Petition is granted, the validity and/or implementation of its contracts with the County will be affected.

16. On information and belief, Respondent Laser Industries, Inc. is a New York domestic corporation that has a principal place of business located at 1775 Route 25, Ridge, New York 11961. Laser Industries, Inc. was awarded the contract for “Rehabilitation of South Oyster Bay Road Phase 3 (Contract No. H61587-40G), and said contract was signed on or before August 6, 2014. Laser Industries, Inc. is a necessary party to this proceeding because, if the Petition is granted, the validity and/or implementation of its contracts with the County will be affected.

A. The Contracts

17. The trees which Petitioners seek to protect are being destroyed pursuant to three contracts solicited by, issued or approved by the County Respondents. On information and belief, the Notice to Bidders of each contract required that sealed proposals be received by the Nassau County Executive on or before specified dates. Each Notice to Bidders was ordered by County Executive Edward P. Mangano and William J. Muller, Clerk of the Legislature.
18. NCDPW Solicitation H61587-38A sought proposals for the “Rehabilitation of South Oyster Bay Road: Phase 1” from north of the Long Island Rail Road in Bethpage to the south side of Old Country Road in Plainview. On information and belief, on or about July 30, 2014, the Commissioner of NCDPW notified Tri-State Paving, LLC that it was

awarded the contract, and that the winning bidder had to appear at NCDPW no later than August 6, 2014 to execute the contract. See Exhibit 3.

19. NCDPW Solicitation H61587-39G sought proposals for the “Rehabilitation of South Oyster Bay Road – Phase 2” from north of Old Country Road in Plainview to the south side of Woodbury Road in Hicksville.” On information and belief, on or about July 30, 2014, the Commissioner of NCDPW notified Tri-state Paving, LLC that it was awarded the contract, and that the winning bidder had to appear at NCDPW no later than August 6, 2014 to execute the contract. See Exhibit 3.
20. NCDPW Solicitation H61587-40G sought proposals for “Resurfacing of Various County Roads Phase 40” from Woodbury Road in Hicksville to the South Service Road of the Long Island Expressway in Syosset. On information and belief, on or about July 30, 2014, the Commissioner of NCDPW notified Laser Industries, Inc. that it was awarded the contract, and that the winning bidder had to appear at NCDPW no later than August 6, 2014 to execute the contract. See Exhibit 3
21. Each of the three solicitations described the work identically except that the thickness of the asphalt concrete to be applied varied from 1” to 1 ½”: “The work includes asphalt pavement removal, 1” [or 1 1.2”] asphalt concrete Type 1ARA Overlay, removal and replacement of deteriorated pavement, repair of joints, replacement of pavement markings and traffic loops, removal of trees, removal and replacement of concrete sidewalks and concrete curbs and other incidental work.”
22. On information and belief, there is no mention of replanting in the contract documents.

B. Lack of Notice to the Public

23. On information and belief, no member of the public, including those residents who reside or work on or in close proximity to South Oyster Bay Road in Syosset, were made aware of the solicitations or the resulting contracts until work began on the contracts on or shortly after September 11, 2014.
24. In response to inquiries made to Nassau County Legislator Rosemarie Walker's office, Operation STOMP received a letter dated September 11, 2014 on NCDPW letterhead, addressed "Dear Resident" and signed by Commissioner of NCDPW Shila Shah-Gavnoudias. See Exhibit 2. This letter states that "Nassau County is on the verge of beginning a major road improvement project along South Oyster Bay Road. " In addition, the letter states that, "During reconstruction of the sidewalks and curbs, the root system of the many existing trees along South Oyster Bay Road will be severely damaged. Damaged or insufficient root systems lead to weakened trees of which many will eventually die. This will pose a serious safety risk for anyone in close proximity to the tree. For this reason many trees along the project will need to be removed." The letter goes on to say, however, that "Nassau County government believes that trees are a vital part of the local landscape and therefore **a tree replacement program will follow the road improvement project.**" (emphasis in the original)
25. Thus far, Operation STOMP has not been able to identify anyone living or working along or adjacent to the affected area of South Oyster Bay Road who received the letter in Exhibit 2 or received a personal visit from anyone acting on behalf of Respondents to inform them of the work and the removal of trees that was to take place.

26. On information and belief, the public first learned that trees along South Oyster Bay Road would be destroyed during the week of September 11, 2014, when the trees along both sides of this street were marked with a white "X". Removal of the trees began immediately thereafter.
27. On information and belief, a total of approximately 200 mature trees are located along the relevant portions of South Oyster Bay Road. See Exhibit 1.
28. To date, over 55 of the 200 trees have been removed. See Affidavit of Tanya Lukasik and Exhibit 1.

C. Improper SEQRA Classification

29. On information and belief, prior to soliciting bids, the NCDPW had to prepare a Request to Initiate form. With regard to SEQRA, this form requires the preparer to check that the action is either a SEQRA Type II Action, or that an Environmental Assessment Form or Supplemental Environmental Documentation is required.
30. Annexed as Exhibit 4 are three Request to Initiate forms related to the work in question on South Oyster Bay Road. It is not clear who actually filled out the SEQRA portion of Exhibit 4, but the preparer checked that the action is a SEQRA Type II Action, meaning that no environmental review is required.
31. On information and belief, the award of the contracts to improve roads, sidewalks and curbs and remove trees in and along South Oyster Bay Road is an Unlisted Action within the meaning of SEQRA. See attached Affirmation of Lilia Factor.
32. On information and belief, prior to awarding the Contract, NCDPW did not prepare or cause to be prepared an Environmental Assessment Form.

33. On information and belief, prior to awarding the Contract, Respondents did not identify potential adverse environmental impacts from the proposed work, specifically, from the removal of so many large and healthy trees, did not consider the cumulative effect of other related projects on County roads, did not take a hard look at these potential adverse environmental impacts, and did not make a written determination whether any such adverse environmental impacts may be significant.

AS AND FOR A FIRST CLAIM FOR RELIEF

**(CPLR §7803(1): Failure to Perform a Duty Enjoined Upon Respondents by Law)
(CPLR § 7803[3] – Determination Affected by Errors of Law,
Arbitrary and Capricious, Abuse of Discretion)**

Violation of Duty to Comply With SEQRA Prior to Awarding the Contracts

34. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 33 of this Petition with the same force and effect as if specifically set forth herein.
35. Respondents were required to strictly comply with the procedural requirements of SEQRA prior to awarding contracts which included removing trees along portions of South Oyster Bay Road.
36. The procedural requirements of SEQRA must be strictly complied with and substantial compliance will not suffice. The remedy for failing to strictly comply with the procedural requirements of SEQRA is that the action will be deemed null and void.
37. The municipal Respondents violated SEQRA by failing to undertake proper environmental review of the proposed actions and by entering into contracts prior to such review.
38. The municipal Respondents' actions and decisions permitting or directing or contracting to remove trees in violation of SEQRA should be declared null and void, and all Respondents should be enjoined from taking any further action that may damage the trees in the areas

subject to County road improvement projects until such time as the County and NCDPW complete a thorough environmental review of such projects and adopts appropriate measures to mitigate any adverse environmental impacts to the maximum extent practicable.

AS AND FOR A SECOND CLAIM FOR RELIEF

**(CPLR §7803(1): Failure to Perform a Duty Enjoined Upon Respondents by Law)
(CPLR § 7803[3] – Determination Affected by Errors of Law,
Arbitrary and Capricious, Abuse of Discretion)**

Unlawful Delegation of SEQRA Lead Agency Duties

39. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 38 of this Petition with the same force and effect as if specifically set forth herein.
40. On information and belief, either County Executive Mangano or the NCDPW was the SEQRA lead agency with regard to the approval of the three South Oyster Bay Road contracts.
41. The lead agency may not delegate the authority to make a SEQRA determination to third parties.
42. On information and belief, the determination that the solicitation of the Contracts, which included removal of trees, was a Type II SEQRA Action was not made by the SEQRA lead agency.
43. The municipal Respondents' actions and decisions permitting or directing or contracting to remove trees in violation of SEQRA should be declared null and void, and all Respondents should be enjoined from taking any further action that may damage the trees in the areas subject to County road improvement projects until such time as the

County and NCDPW complete a thorough environmental review of such projects and adopt appropriate measures to mitigate any adverse environmental impacts to the maximum extent practicable.

AS AND FOR A THIRD CLAIM FOR RELIEF

**(CPLR §7803(1): Failure to Perform a Duty Enjoined Upon Respondents by Law)
(CPLR § 7803[3] – Determination Affected by Errors of Law,
Arbitrary and Capricious, Abuse of Discretion)**

Failure of Lead Agency to Consider Reasonably Related Impacts and Impermissible Segmentation

44. Petitioners' repeat and reallege each and every allegation set forth in paragraphs 1 through 43 of this Petition with the same force and effect as if specifically set forth herein.
45. On information and belief, on or about and between 2011 and 2014, the County conducted road improvement projects on other County roads which, which resulted in the removal of hundreds of mature and healthy trees. The most recent of these actions took place in Seaford in or about August 2014. See Exhibit 8.
46. On information and belief, Respondents intend to continue with the policy of indiscriminate tree removal on future road projects.
47. In order to determine whether the South Oyster Bay Road project may have at least one significant adverse impact on the environment, the SEQRA lead agency for the South Oyster Bay contracts was required to consider the criteria set out at 6 NYCRR § 617.7(c)(1)(i-xii).
48. Further, "For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts,

including other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part;”. 6 NYCRR §617.7(2).

49. The failure to take a hard look at the cumulative impact of tree removal on South Oyster Bay Road along with the impact of past County Road rehabilitation projects which have already removed hundreds of mature trees and future County Road rehabilitation projects that will remove many more, constitutes improper segmentation under 6 NYCRR § 617.3(g)(1).
50. Prior to awarding the South Oyster Bay Road rehabilitation contracts, the municipal Respondents should have prepared a Generic Environmental Impact Statement to examine the cumulative impact of removing large numbers of mature trees along County roads and either not replacing them or replacing them with saplings. See Exhibits 1 and 5 and the affidavit of Mr. Oberlander, an arborist, attached hereto.
51. The municipal Respondents’ actions and decisions permitting or directing or contracting to remove trees in violation of SEQRA should be declared null and void, and all Respondents should be enjoined from taking any further action that may damage the trees in the areas subject to County road improvement projects until such time as the County and NCDPW complete a thorough environmental review of such projects and adopt appropriate measures to mitigate any adverse environmental impacts to the maximum extent practicable.
52. In addition, the municipal Respondents should be enjoined from granting any future contracts for rehabilitation of County roads that include removal of mature trees along said roads until they examine the “reasonably related long-term, short-term, direct, indirect and cumulative impacts” that will arise from said contracts.

53. No prior request for the relief requested herein has been made.

WHEREFORE, the petition should be granted and judgment should be entered in favor of the Petitioners:

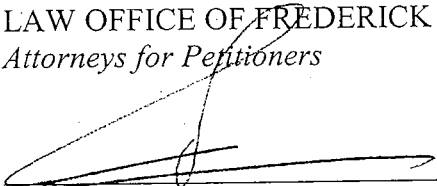
1) declaring the that the municipal Respondents' actions and decisions permitting or directing or contracting to remove trees in violation of SEQRA to be null and void;

2) enjoining all Respondents from taking any further action that may damage the trees in the areas subject to County road improvement projects until such time as the County and NCDPW complete a thorough environmental review of such projects, including their cumulative impacts, and adopt appropriate measures to mitigate any adverse environmental impacts to the maximum extent practicable.

3) awarding Petitioners reasonable attorneys fees and the cost of these proceedings, and such other relief as the Court may deem fair and just.

Dated: October 10, 2014
Commack, New York

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