

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

INCORPORATED VILLAGE OF HEAD OF THE HARBOR, ST. JAMES – HEAD OF THE HARBOR NEIGHBORHOOD PRESERVATION COALITION, INC., JUDITH OGDEN, GEORGE L. FITZPATRICK, KAREN P. FITZPATRICK, MARA MATKOVIC, NICHOLAS STARK, DAVID KELEMEN, ALYSON HOPE SVATEK, THOMAS JAMES SVATEK, TRISTAN COLE SVATEK, GERALD DUFF, LEONNA DUFF, DAVE KASSAY, LAURINE KASSAY, HARRY POOLE, SCOT VELLA, KATHY VELLA, MICHAEL SASSONE, LOUISE SASSONE, ROSE NAPOLITANO, CHARLES SHUTKA, MARGARET SHUTKA, COLLETTE PORCIELLO and BENJAMIN ROBINSON,

Index No.: 608051/2022

Assigned Justice:
Hon. Martha Luft, J.S.C.

**REPLY AFFIRMATION
IN SUPPORT**

Petitioners,

-against-

TOWN OF SMITHTOWN, TOWN OF SMITHTOWN PLANNING BOARD, BARBARA DESORBE, in her official capacity as Chairperson of the Town of Smithtown Planning Board, WILLIAM MARCHESI, in his official capacity as a member of the Town of Smithtown Planning Board, DESMOND RYAN, in his official capacity as a member of the Town of Smithtown Planning Board, THOMAS UNVERZAGT, in his official capacity as a member of the Town of Smithtown Planning Board, RICK LANESE, in his official capacity as a member of the Town of Smithtown Planning Board, GYRODYNE, LLC and GYRODYNE COMPANY OF AMERICA, INC.,

Respondents.

I, J. Timothy Shea, Jr., Esq., duly admitted to practice law before the Courts of the State of New York, hereby affirm under penalties of perjury:

1. I am a Partner with Certilman Balin Adler & Hyman, LLP, attorneys for Respondents Gyrodyne, LLC and Gyrodyne Company of America, Inc. (collectively, “Gyrodyne”), and, as such, I am fully familiar with the content and materials described herein.
2. I make this reply affirmation in further support of Gyrodyne’s objections in point

of law against and motion to dismiss, pursuant to CPLR 7804(f) and CPLR 3211(a)(1) and (7), respectively, (“Motion”), the above-named Petitioners’ Petition, dated and verified April 25, 2022 (“Petition”),¹ on the grounds the Petitioners lack standing and their allegations are refuted by the documentary evidence and fail to state a claim.

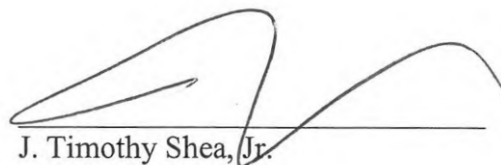
3. For the sake of brevity and judicial economy, I hereby incorporate by reference the full content of Gyrodyne’s Reply Memorandum of Law in Further Support of its Motion (“Reply Memorandum”), submitted herewith, and introduce the following exhibits, which support Gyrodyne’s Motion and which are cited in Gyrodyne’s Reply Memorandum:

Exhibit A Transcript of the Town of Smithtown Planning Board’s hearing on
March 30, 2022

¹ The Petition is filed as [NYSCEF Doc. No. 1](#).

WHEREFORE, for the reasons set forth in Gyrodyne's papers in support of its Motion, as well as arguments made by Respondents Town of Smithtown, Town of Smithtown Planning Board, and members of the Town of Smithtown Planning Board, I respectfully request the Court issue an order and judgment dismissing the Petition entirely and granting such other and further relief as is just, proper and equitable.

Dated: July 12, 2022
Hauppauge, NY 11788



J. Timothy Shea, Jr.