

TOWN EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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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; LAURAIN 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

PETITION

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.

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Petitioners, by their attorney, Ruskin Moscou Faltischek, P.C., as and for their Petition
pursuant to Article 4 and Article 78 of the C.P.L.R., allege as follows:

NATURE OF PROCEEDINGS

1. In the northeast portion of the Town of Smithtown, along historic Route 25A, there are approximately 48 acres of undeveloped land commonly known as the Flowerfield Fairgrounds. This undeveloped land is contained within a lot owned by respondents Gyrodyne, LLC and Gyrodyne Company of America, Inc. (collectively "Gyrodyne"). The area is located within a mile of Stony Brook Harbor and on its northwest border is the Avalon Nature Preserve, 216 acres of fields, forests, and wetlands.
2. Toward the southwest of the property is Mills Pond and Mills Cemetery. A portion of the lot is located within the Mills Pond Historic District, which contains a number of historic structures and is listed in the National Register of Historic Places. The lot borders Route 25A, a designated historic corridor, and is serviced by two narrow roads. The overall character of the surrounding area is open space, intermixed with historical structures and residential homes. The area is a low density break from the more developed hamlet of St. James and the Three Village area located in the Town of Brookhaven.
3. Yet, based on an EIS which utterly fails to comply with the requirements of New York State Environmental Quality Review Act ("SEQRA"), a subdivision was approved by the respondent Town of Smithtown Planning Board ("Planning Board"), allowing the shoehorning of a massive commercial development consisting of a hotel, an assisted living facility, two office buildings, and a sewage treatment plant. The Planning Board gave its approval without debate, although numerous residents, as well as the Supervisor of the Town of Brookhaven and Mayor of the Village of the Head of the Harbor, expressed opposition to the project.
4. As fully explained below, among the most serious deficiencies in the SEQRA review is that the impact of the development on the character of the surrounding community is

not examined. Instead, the EIS baldly asserts that the development will be consistent with the existing land use in the area. However, there are no hotels, assisted living facilities, office building, sewage treatment plants -- or similar structures -- in the area. The failure to address this fundamental issue in and of itself means that the respondents failed to undertake the required hard look at the project's environmental impacts when approving the subdivision and requires the preparation of a Supplemental EIS.

5. Other deficiencies in the SEQRA review include: the use of outdated traffic data which contradicts prior representations by Gyrodyne as to the increase in traffic caused by development; the failure to examine the cumulative impact of the development in light of other potential projects in the immediate vicinity; the failure to consider the impact of the development, including the construction of a sewage treatment plant, on Stony Brook Harbor; not examining possible detrimental effects on historic structures, and other deficiencies set forth below.

6. Simply put, and as also explained below, because the development was favored by certain officials of the Town of Smithtown, the Planning Board did not fulfill the required environmental review but instead pushed through the approval of the subdivision without any discussion whatsoever. Accordingly, this Article 78 proceeding has been brought against the Town of Smithtown ("Town"), the Planning Board, the members of the Planning Board in their official capacities, and Gyrodyne because respondents' adoption of the SEQRA findings statement and approval of the subdivision was an abuse of discretion, arbitrary and capricious, violated lawful procedure and was affected by an error of law. For the reasons set forth below, and in the accompanying memorandum of law, the approval of the SEQRA findings statement

and the subdivision should be annulled, and the respondents directed to undertake a Supplemental EIS to address the deficiencies in the SEQRA review.

PARTIES

7. Petitioner Incorporated Village of Head of the Harbor is a New York municipal corporation located in Suffolk County, New York, whose boundaries are immediately north of the Gyrodyne property.

8. Petitioner St. James - Head of the Harbor Neighborhood Preservation Coalition, Inc. ("Coalition") is a duly formed not-for-profit corporation consisting of members of the community directly adjacent to or nearby the Gyrodyne property.

9. Petitioner Judith Ogden resides at 654 North Country Road, St. James, New York which is approximately 600' from the Gyrodyne property and she is the President of the Coalition.

10. Petitioners George L. Fitzpatrick and Karen P. Fitzpatrick reside at 15 Ashleigh Drive, St. James, New York, which is approximately 1250' from the Gyrodyne property and are members of the Coalition.

11. Petitioners Mara Matkovic and Nicholas Stark reside at 8 Victoria Court, Head of the Harbor, New York, which is approximately 1.5 miles from the Gyrodyne property.

12. Petitioner David Kelemen resides at 171 Mills Pond Road, St James, New York, which is immediately adjacent to the Gyrodyne property.

13. Petitioners Alyson Hope Svatek, Thomas James Svatek, and Tristan Cole Svatek reside at 9 Farm Road, Head of the Harbor, New York, 11780, which is approximately 1.1 miles from the Gyrodyne property.

14. Petitioners Gerald Duff and Leonna Duff reside at 1541 Stony Brook Road, Stony Brook, New York, which is approximately 0.25 miles from the north end of the Gyrodyne property, and whose house that was built in 1680 is on the National Register of Historic Places.

15. Petitioners Dave Kassay and Lauraine Kassay reside at 151 Mills Pond Road, St James, New York, 11780, which is immediately adjacent to the Gyrodyne property.

16. Petitioner Harry Poole resides at 2 Peter Court, St. James, New York, which is approximately 1400' feet from the Gyrodyne property.

17. Petitioners Scot and Kathy Vella reside at 5 Peter Court, St. James, New York, which is approximately 1400' from the Gyrodyne property.'

18. Petitioner Michael Sassone resides at 142 Mills Pond Road, St. James, New York, which is approximately 1100' from the Gyrodyne property.

19. Petitioner Louise Sassone resides at 122 Mills Pond Road, St. James, New York, which is approximately 0.36 of a mile from the Gyrodyne property.

20. Petitioner Rose Napolitano resides at 1280 North Country Road, Stony Brook, New York, 11790, which is adjacent to the Gyrodyne property.

21. Petitioner Charles Shutka and Margaret Shutka reside at 5 Hitherbrook Road, Head of the Harbor, New York, which is approximately 0.7 mile from the Gyrodyne property.

22. Petitioner Collette Porciello resides at 5 High Hedges Court, Head of the Harbor, New York, which is approximately 1250' from the Gyrodyne property.

23. Petitioner Benjamin Robinson resides at 64 Mills Pond Road, St. James, New York, which is approximately 0.64 of a mile from the Gyrodyne property.

24. Each of the individual petitioners reside directly adjacent to or are in close proximity to the Gyrodyne property and suffer special damages as a result. The petitioners will

be adversely impacted by heavy congestion of the roads where they live, and suffer harm from the lack of open space and the change in the character of their community. As a result of the close proximity to the Gyrodyne property these damages are different and more severe than the harm to the general population.

25. The Village of Head of the Harbor suffers special damages because of its close proximity to the Gyrodyne property including the change in character of the village because of the development.

26. Respondent the Town and Planning Board are municipal entities with a place of business located at 99 W. Main Street, Smithtown, New York.

27. Respondents Barbara DeSorbe, William Marchesi, Desmond Ryan, Thomas Unverzagt and Rick Lanese are members of the Planning Board.

28. Respondents Town, Planning Board, and the individual members of the Planning Board are bodies or officers as defined under C.P.L.R. §7802.

29. Respondent Gyrodyne is the owner of the lot of land on Route 25A in the Town of Smithtown, New York.

BACKGROUND AND FACTS

Gyrodyne Property

30. Gyrodyne is a former defense contractor and now describes itself as a publicly owned commercial property owner. *See* Website, Exhibit 1. Initially, Gyrodyne owned land that straddled the border between the Town of Brookhaven and the Town of Smithtown. That land consisted of approximately 308 acres.

31. In or about 2010, the State of New York took by eminent domain approximately 245 acres of the property to be included into the SUNY Stony Brook campus.

32. The remaining 63 acres in the Town of Smithtown consists of buildings and improvements, and approximately 48 undeveloped acres that are commonly referred to as the Flowerfield Fairgrounds.

33. The parcel is bordered on the north, east and west by New York Route 25A, Stony Brook Road and Mills Pond Road, all two-lane residential country roads with few houses in the area. The south of the property is bordered by the property now owned by Stony Brook University.

34. Across Route 25A to the north is the Avalon Nature Preserve, a 216 acre preserve that runs to Stony Brook Harbor. West of the property is Mill Pond and Mill Cemetery. A map of the area is attached as Exhibit 2.

35. As mentioned above, to the southeast of the property is SUNY Stony Brook campus, and south of the property is a residential development of single-family homes.

36. Across Route 25A to the north is the Village of Head of the Harbor, an all residential village. The lot is situated between the hamlet of St. James and the Three Village area in the Town of Brookhaven.

37. The lot is part of an area that is rural or undeveloped in nature. The lot provides a buffer between the more highly developed hamlet of St. James, and the Three Village area. See Photographs, Exhibit 3.

The Proposed Project

38. Gyrodyne has proposed to develop the property by subdividing it into nine lots to accommodate a hotel, assisted living facility, two office buildings and a sewage treatment plant. In 2020, Town of Smithtown Supervisor Edward Wehrheim stated that the project was a

concentration of his focus and the development was critical in his opinion. See Article, Exhibit 4.

The proposed subdivision map is attached as Exhibit 5.

39. With regards to the proposed lots, Lots 1 and 2 would continue with their existing light industrial use buildings.

40. For what is designated Lot 3, its intended use is for overflow parking for the developments on the other lots.

41. On Lot 4, a 150 room hotel with conference facilities is proposed.

42. On Lots 5 and 6, a 130,000 square feet of medical office, general office or technical office space is proposed.

43. On lots 7 and 8 a 220 unit assisted living facility is proposed.

44. In connection with the subdivision application, Gyrodyne submitted a Draft Environmental Statement ("DEIS") dated November 2019 prepared by Cameron Engineering & Associates, LLP. Exhibit 6. A Final Environmental Impact Statement ("FEIS") dated December 2020 and filed in March 2021 addresses comments made to the DEIS. Exhibit 7. The FEIS and DEIS are sometimes collectively referred to below as the EIS.

Procedural History

45. On March 30, 2022, the Planning Board met and adopted a findings statement under SEQRA ("Findings Statement"). Exhibit 8. The Findings Statement improperly states that the Gyrodyne project should be viewed with more "flexibility" than other projects in the Town. See Exhibit 8, Page 7.

46. On that same date, a public hearing was held on the adoption of the subdivision, which is a final determination although site plan approval will be required for each lot before building can occur. Over thirty residents spoke in opposition to the subdivision, and numerous

written comments were submitted to the Planning Board. Among those speaking against the project were the Supervisor of the Town of Brookhaven and the Mayor of the Village of the Head of the Harbor.

47. Immediately at the end of the public comment period, and without any discussion whatsoever, the subdivision was approved. At the end of the meeting, without a motion, the Planning Board then ended the public participation, and upon information and belief, met privately.

48. This Petition is filed within thirty (30) days of the adoption of the Findings Statement and approval of the subdivision.

The Approval Of The Findings Statement And Subdivision Should Be Annulled

49. As set forth below and in the accompanying Affidavit of John W. Pavacic (Exhibit 9 hereto), the EIS and the resulting Findings Statement were deficient in numerous ways and the Planning Board did not undertake the required hard look before approving the subdivision.

a. *Impact on Neighborhood Characteristics*

50. Environmental Conservation Law Section 8-0109 sets forth what is required in a DEIS and includes the impacts of action which may have a significant effect on the environment. 6 N.Y.C.R.R. 617.7(c)(i) provides an illustrative list of criteria to be considered when determining whether an action may have a significant adverse impact on the environment, and subsection (v) specifically provides that the impairment of an existing community or neighborhood character is an indicator of significant adverse impact of a proposed action. In addition, as set forth in the accompanying memorandum of law, New York Courts have

consistently held that the impact on existing community character is a relevant and important concern in an environmental analysis.

51. The EIS submitted in support of the project is fatally flawed because it does not consider the project's impact on the character of the historic, undeveloped, and residential nature of the community. Nowhere in the EIS is there any discussion as to whether this substantial development will be detrimental to the overall character of the neighborhood, nor are there discussions on what efforts can be made to mitigate these impacts.

52. The EIS does recognize that there has been a visioning report prepared by the Town of Brookhaven regarding the Route 25A corridor, but then makes no effort to address the concerns raised in the report. The EIS then says that traffic and visual impacts will be "minor" and "the proposed subdivision is consistent with the surrounding land use." DEIS Section 12.2. This is absurd.

53. There is no hotel or assisted living facility in the neighborhood. There are no office buildings in the area. The area does not have a sewage treatment plant. The EIS does not reference any such structures or similar buildings. How could the proposed development be "consistent with the surrounding land use" which is undeveloped, open area with historical structures intermixed within residential communities?

54. The Findings Statement is similarly silent as to the impact of the development on the character of the surrounding neighborhood. The Findings Statement does not even mention the character of the surrounding community, which includes residential homes, open space and historic structures. In other words while the Findings Statement tries to address specific issues, it does not see the forest from the trees.

55. This failure to consider the impact on the character of the residential community is in and of itself fatal to the approval of the Findings Statement and subdivision. As explained in the accompanying memorandum of law, while SEQRA is not meant to require any particular decision on an application, it does require the decision making body to take a “hard look” at major environmental concerns. Here no hard look, nor any look at all, was given to the most basic environmental concern raised by this project, its impact on the overall character of the surrounding community.

b. *Traffic*

56. As fully set forth in detail in the report of Steven Schneider, PE attached as Exhibit 10 hereto (“Schneider Report”). The traffic study utilized for the EIS is seriously flawed. Critically, traffic study is based on outdated 2017 data. This fact alone should require a Supplemental EIS to use current traffic data.

57. In addition, while the traffic study references certain potential developments and acknowledges their potential impact on traffic, the study does not follow up as to whether these developments occurred.

58. Further, in only a few short paragraphs, the traffic study asserts that the massive increase in traffic caused by the development can be cured by the installation of traffic signals and turning lanes without any elaboration.

59. Worse yet, during the 2010 condemnation proceeding of 245 acres of the Gyrodyne property, Gyrodyne’s traffic expert testified that the highest and best use was not commercial development, but residential. Gyrodyne argued that if commercial development occurred, traffic would increase by 3,206%. See Decision, Exhibit 11.

60. In addition, Gyrodyne's own appraisal and planning experts testified that the property is not suitable for commercial development and that "getting traffic on and off the property is a problem for the site". While this testimony related to the 245 acres taken in 2010, they are no less applicable to the subject property that is serviced by two extremely narrow roads. Additionally, these opinions were based on traffic conditions existing in 2005. If the roads could not handle the increase in traffic caused by commercial development then, how could they handle it now?

61. Gyrodyne now contends that the development will "only" generate an increase of 61% in traffic. This discrepancy is not explained and as stated in the Schneider Report even this increase will have a tremendous impact on the local road system that is geared for residential traffic.

62. Respondents also assert that the number of trips on 25A will be limited. How additional traffic on Route 25A can be limited is not explained.

63. Accordingly, a Supplemental EIS should be prepared utilizing current data, otherwise the true traffic impact cannot be considered in deciding to approve the subdivision.

c. *Impact on Water Resources*

64. The proposed project includes a sewage treatment plant for the wastewater generated by the development. However, the Town has made clear, and as referenced in the Findings Statement, there is the intention to connect piping to transfer waste from the St. James business district to the sewage treatment plant at the Gyrodyne property. Findings Statement pp. 8-9.

65. Initially, the EIS does not consider the *2020 Suffolk County Subwatersheds Wastewater Plan* (SWP). Exhibit 12. According to the SWP, Stony Brook Harbor is an

impacted embayment with high levels of nitrogen and is identified as a high priority area for nitrogen reduction. Yet, the EIS admits that the volume of sanitary flow will increase due to the proposed development and that the resultant nitrogen will only slightly decrease when the sewage treatment plant is completed.

66. Accordingly, the development does not comply with the SWP recommendations to reduce the current amount of nitrogen in Stony Brook Harbor by 37% which would require the sanitary flow from Gyrodyne to decrease by 37%, otherwise nitrogen traveling to Stony Brook Harbor will remain at levels that will endanger the viability of the harbor. This impact is not addressed by the EIS or Findings Statement.

67. Further, this impact is compounded by the fact that the proposed location of the sewage treatment plant is in a rapid transit watershed near Stony Brook Harbor and will be magnified by the fact that Stony Brook Harbor is poorly flushed due to the gyre in Smithtown Bay that prevents dispersal of the nitrogen load for an additional four (4) days as determined by SUNY Stony Brook. This retention results in the largest hypoxic dead zone east of New York City and requires further study. *See* Letter from Town of Brookhaven Supervisor Edward Romaine dated April 13, 2021, Exhibit 13.

68. In addition, the EIS does not address how to mitigate the significant amounts of pharmaceuticals that will be contained in the sanitary effluent from patients and residents in the proposed medical offices and assisted living facility. It is generally accepted that current sewage treatment technologies are not effective at removing pharmaceuticals in the wastewater stream. More significantly, the EIS ignores the potential for doubling the projected sanitary flow due to the real possibility of the St. James business district connecting and sending the sanitary effluent to the proposed sewage treatment plant.

69. Further, potential mitigating steps were not considered, including:

- i. How and who will monitor and enforce the requirement that the maximum daily wastewater flow/hydraulic load for the entire site will be limited to 87,591 gallons per day.
- ii. Remedies to be employed if exceedances of the daily discharge levels occur.
- iii. Specific measures to be implemented to ensure that on-site nitrogen-loading levels do not increase above the existing levels currently generated at the Gyrodyne property along with a specific numerical nitrogen-loading threshold that is not to be exceeded, how these activities will be monitored and enforced and remedies to be employed if exceedances of the nitrogen loading levels occur.
- iv. Specific measures to ensure that all existing uses on the Gyrodyne property will connect to the new sewage treatment plant within 6 months of commencement of its operation and will abandon all on-site individual septic systems.

70. Finally, Gyrodyne has been duplicitous in offering to connect the St. James commercial district and process its sanitary effluent of approximately another 79,000 gallons per day, but not addressing the impact of the connection in the EIS. It is obvious that the groundwater and surface water issues associated with realization of the Gyrodyne project are more complicated than analyzed in the EIS. The protection of Stony Brook Harbor requires a “hard look” and honest analysis of impacts from the proposed sewage treatment plant, and a Supplemental EIS should be required.

d. *Cumulative Impact*

71. The EIS lacks a truly adequate, sufficient and detailed comprehensive cumulative impact analysis. This deficiency was first apparent in the DEIS but was continued through the FEIS and the Findings Statement as well.

72. The EIS and Findings Statement are improperly dismissive of comments made regarding the need for an adequate cumulative impact analysis, instead of ensuring that the requisite “hard look” has been undertaken as required by SEQRA. During the SEQRA process it was implied that in order to conduct a cumulative impact review, formal development applications must first have been publicly proposed for adjacent and nearby parcels. This is inaccurate.

73. A cumulative impact analysis should consider the development potential of all adjacent undeveloped and underdeveloped parcels, as well as those non-adjacent parcels that have a meaningful proximity to the subject site, whether or not actual development applications have been submitted. During the SEQRA process, the zoning, size and other characteristics of adjacent and proximate parcels could have been utilized to determine potential future cumulative impacts, especially synergistic and incremental impacts, within a specific radius of the Gyrodyne project site, but there was a failure to do so. See Exhibit 9, ¶ 6.

74. During the public comment period, there were numerous comments of potential cumulative impacts and the lack of analysis in the EIS. Projects were identified including: to the immediate east the build out of the Stony Brook Research and Development Park; to the immediate west the potential for an assisted living facility; to the immediate northeast, a planned senior living “resort”; and the pending site of the BB-GG Farmland.

75. These concerns were dismissed as too speculative, but Benchmark, a developer, has already approached the Town Planning Department about building a senior living facility on the parcel to the immediate west. Further, the cumulative impact methodology described above has been successfully utilized and applied in other towns on Long Island, so the respondents are capable of ensuring these steps are taken.

76. And, the analysis of cumulative impacts is all the more important here because the EIS appears to be intended to serve as a generic EIS. The DEIS states that the proposed action “is not a formal plan” but a “comprehensive guide for future development potential”. DEIS 1-2. Accordingly, some consideration should have been given to the future development potential.

e. *Displacement of Existing Businesses*

77. As explained in the accompanying memorandum of law, in assessing the environmental impacts of a proposed action, the deciding body should examine any impacts or displacement of local businesses. Neither the Planning Board, nor the EIS examined the impact of the predicted displacement of office tenants as a result of the Gyrodyne project.

78. Although the DEIS recognizing one of the adverse impacts associated with the proposed office space, the EIS does not examine this impact other than to admit 130,000 square feet of medical office space will displace from relocating tenants from Stony Brook Medical Center and downtown business district.

79. Accordingly, the approval of the Findings Statement and subdivision should be annulled and a Supplemental EIS should be prepared to address this issue.

f. *Historic and Cultural Resources*

80. A portion of the Gyrodyne Property is located in the Mills Pond Historic District, which is listed in the National Register of Historic Places. In addition, Rout 25A has been

designated as an Historic Corridor. See DEIS 16.1; see also March 29, 2021 Letter from The Ward Melville Heritage Organization, Exhibit 14.

81. A number of historical structures are adjacent to the property including the Jackson/Rogers House at 155 Mills Pond Road, O'Donnell/Newton House 159 Mills Pond Road, L'Hommedieu House 161 B Mills Pond Road, Powell House 163 Mills Pond Road, Baily/Baily/Papdakos House, Corner of Mills Pond Road. *See* Photographs, Exhibit 15.

82. There are also two archeological sites on the property: Mills Pond prehistoric site and the Mills-Smith House historic site, and a stairway to intact cellar deposits has been discovered on the property.

83. Although the presence and existence of these historic elements is acknowledged in the EIS, no plan has been put forth to ensure the continued maintenance and repair of the historic structures nor the perpetual protection of the integrity of the historic district.

84. No plan has been formulated to:

- i. Require the preparation and submittal to the Town of annual architectural and engineering reports on the status of the structures.
- ii. Describe the measures the applicant will undertake to stabilize, repair, maintain and ultimately restore the historic structures while ensuring their historic integrity and monitoring by the Town to ensure these measures are implemented.
- iii. Describe specific design features, including height limits, building architecture, signs, lighting, etc., that will be required of the project to minimize potential impacts of the development on the Historic District.

85. Instead, the EIS simply relies on a buffer along the property's boundaries as if that solves all problems. No real effort is made to address how the project and the inevitable

traffic will affect the historic buildings and the historic area. Accordingly, the EIS is clearly inadequate for the Planning Board to take a hard look at the potential damage of this historic area.

86. As for the Findings Statement, it relies on an existing “vegetation-covered chain link fence” on the property that will be retained “except for approximately 106 linear feet . . . which may be disturbed”. Findings Statement, P. 6. The Findings Statement also acknowledges that a new access road with two five feet high ground monument-style signs will be constructed within the historical area. The Findings Statement goes on to argue that the historic designations do not include any specific development restrictions.

87. This is simply inadequate when considering a massive development in an area with numerous historical structures. To say that a chain link fence – even if covered with vegetation – is sufficient mitigation to protect these structures hardly complies with the respondents’ obligation to examine and consider if this type of development is appropriate given the areas substantial historic character, or even if sufficient mitigation steps can be taken.

g. *Open Space*

88. In regards to Open Space, there continues to be a misapplication of that term to include the 13.5 acres of “Managed Landscape” to be established on the project site. As set forth in the Pavacic Affidavit, actively maintained areas, such as lawn and landscaped areas, are not generally included in a formal “open space” definition. Areas that are not formally dedicated to or covenanted as open space are suspect, especially if the applicant is proposing to count land-banked parking as open space.

89. Although statements have been made that public access will be provided to open space areas on the project site, including walking and nature trails, no mechanism for formally ensuring public access is provided, especially if the interior roads are private.

90. Further, the project does not comply with the provisions of the Town of Smithtown's Draft Comprehensive Plan (Exhibit 16). That Plan recommends that developments should be concentrated in the Town's business districts, and that open space should be maximized in the areas between these areas. The proposed development is exactly the opposite, it eliminates open space between the hamlet of St. James and the Town's border.

91. Until these open space issues are adequately addressed, the Planning Board should not have adopted the Findings Statement but should have required the preparation of a Supplemental EIS to address these deficiencies.

h. *Native Plants*

92. During the SEQRA process, reference continued to be made to the fact that "*additional supplemental plantings, consisting solely of native plant species, will be provided in the existing buffer*". However, in the Findings Statement the specific parameters for native plantings that should be applied are not outlined. The Town should include a requirement that a sufficient minimum number of woody native trees and shrubs be utilized as herbaceous plants do not provide significant visual buffering.

93. Furthermore, the Findings Statement does not provide a listing of the specific native species to be used, minimum plant sizes (for woody species in gallons or caliper), spacing requirements and planting seasons (e.g. specific fall or spring planting periods) and replacement requirements (e.g. applicant to guarantee survival of at least 85% of all supplemental plantings for a three-year period commencing on the date of installation of last plant).

94. Until these Native Plant issues are adequately addressed, the Findings Statement and subdivision should not have been approved.

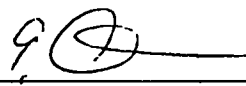
Conclusion and Request for Relief

95. Respondents are attempting to proceed with a massive project with serious environmental impacts without undertaking the required environmental hard look. Such basic steps as considering the impact on the character of the neighborhood and utilizing current traffic data was not done.

96. Accordingly, the approval of the Findings Statement and subdivision should be annulled, and respondents directed to undertake a Supplemental EIS to correct the deficiencies set forth above.

Dated: Uniondale, New York
April 25, 2022

RUSKIN MOSCOU FALTISCHEK, P.C.

By: 

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TOWN EXHIBIT 2



TOWN EXHIBIT 3

**MINUTES OF THE MEETING OF
THE BOARD OF TRUSTEES
WEDNESDAY, APRIL 20, 2022**

A meeting of the Board of Trustees of the Incorporated Village of Head-of-the-Harbor was held on Wednesday, April 20, 2022 at 7 PM at the Village Hall located at 500 North Country Rd., St. James, NY 11780. Those present were the following members Mayor Douglas A. Dahlgard, Deputy Mayor Daniel W. White, Trustees Judith C. Ogden, L. Gordon Van Vechten and Trustee Jeffrey D. Fischer. Also in attendance Village Administrator/Clerk, Margaret O'Keefe; Building Inspector, Robert O'Shea; Police Chief, Charles M. Lohmann; Village Attorney, Anthony S. Guardino (late arrival 8:15 PM); Village Treasurer, Patricia Mulderig and Co-Counsel, Philip Butler. Members of the public were requested to sign-in.

Pledge of Allegiance

1. Mayor – Douglas A. Dahlgard

- Minutes of March 16, 2022 at 7:00 PM meeting of the Board of Trustees were presented. It was, upon motion by Deputy Mayor White, second by Trustee Van Vechten, abstention by Trustee Fischer and adopted (4-0-1):
RESOLUTION #007-22
RESOLVED, to adopt the minutes of the above meeting as presented.
- Minutes of March 21, 2022 at 7:00 PM meeting of the Board of Trustees were presented. It was, upon motion by Deputy Mayor White, second by Trustee Ogden, abstention by Trustee Van Vechten and Trustee Fischer and adopted (3-0-2):
RESOLUTION #008-22
RESOLVED, to adopt the minutes of the above meeting as presented.
- Minutes of April 6, 2022 at 7:00 PM meeting of the Board of Trustees were presented. It was, upon motion by Trustee Fischer, second by Deputy Mayor White, abstention by Trustee Van Vechten and Trustee Ogden and adopted (3-0-2):
RESOLUTION #009-22
RESOLVED, to adopt the minutes of the above meeting as presented.
- It was, upon motion by Trustee Fischer, second by Trustee Van Vechten, and unanimously adopted:
RESOLUTION #010-22
WHEREAS, Suffolk Cable of Smithtown, Inc. (Cablevision), will file a franchise renewal application with the New York State Public Service Commission (PSC) to continue to provide cable services to the Village of Head of the Harbor, and
WHEREAS, the Board of Trustees of the Village of Head of the Harbor will be in receipt of this application, and
WHEREAS, the Board of Trustees of the Village of Head of the Harbor set Wednesday, May 18, 2022 at 7:00 PM as the date of the public hearing to be held at 500 North Country Rd., St. James, NY 11780 for the purpose of receiving comments from Village residents as to the performance of Suffolk Cable of Smithtown, who is requesting a ten (10) year franchise renewal agreement and for public inspection and questioning of the franchise agreement and all relevant documents, which may be inspected at the office of the Village Clerk at 500 North Country Rd., St. James, NY 11780, and further,
BE IT RESOLVED, that the Village Clerk place a notice in the officially designated local publication and post the meeting notice in all other appropriate places.
- Lease Agreement tabled.
- It was, upon motion by Trustee Van Vechten, second by Trustee Ogden, and unanimously adopted:

RESOLUTION #011-22 (deemed read into the record in its entirety)**VILLAGE OF HEAD OF THE HARBOR
BOARD OF TRUSTEES****RESOLUTION ACCEPTING DEDICATION OF VACANT REAL PROPERTY AT THE
INTERSECTION OF STONY BROOK ROAD, SHORE ROAD, AND HITHER BROOK ROAD
IN THE VILLAGE OF HEAD OF THE HARBOR**

WHEREAS, Robert E. Hansen, Jr. ("Grantor") is fee title owner of certain vacant, unimproved land forming a triangle within the intersection of Stony Brook Road, Shore Road, and Hither Brook Road in the Village of Head of the Harbor, said premises being further known as District 801, Section 002.000, Block 01.00, Lot 023.000 on the Suffolk County Tax Map (the "Premises"); and

WHEREAS, the Premises is an undevelopable lot that cannot be put to any viable private purpose; and

WHEREAS, Grantor has offered to convey the Premises to the Village of Head of the Harbor, without condition and free of consideration; and

WHEREAS, Village Law § 1-102 [2] authorizes the Village, by and through its Board of Trustees, to accept the conveyance of real property to the Village; and

WHEREAS, the Village desires to obtain fee title to the Premises for public purposes, including, but not limited to, road maintenance; and

WHEREAS, Grantor has presented an original deed and tax forms to the Village, which have been reviewed by the Village Attorney and confirmed to be in recordable form; and

WHEREAS, the acceptance of dedication of the Premises is a Type II (Exempt) Action for purposes of the State Environmental Quality Review Act and its implementing regulations (SEQRA), and accordingly, no environmental review is required and no environmental impact statement shall be prepared.

NOW THEREFORE, BE IT RESOLVED, that the Board of Trustees of the Village of Head of the Harbor finds that it shall be in the best interests of the Village and its residents for the Village to obtain fee title to the Premises; and be it

FURTHER RESOLVED, that the Board of Trustees hereby consents to the Village's acceptance of Grantor's offer of dedication of the Premises to the Village; and be it

FURTHER RESOLVED, that the Mayor is hereby authorized and directed to accept the deed and tax forms on the Village's behalf, and to take such other and further actions as are necessary to consummate the conveyance of the Premises to the Village and the recording of the deed in the Office of the Suffolk County Clerk.

WHEREUPON, on motion by Trustee Van Vechten, seconded by Trustee Ogden, the foregoing resolution was duly adopted at a duly noticed meeting of the Board of Trustees held on April 20, 2022, with the members of the Board voting as follows:

Douglas A. Dahlgard, Mayor	AYE
Daniel W. White, Deputy Mayor	AYE
Judith C. Ogden, Trustee	AYE
L. Gordon Van Vechten, Trustee	AYE
Jeffrey D. Fischer, Trustee	AYE

Filed in the Office of the Village Clerk on the 20 day of April, 2022.



Margaret O'Keefe, Village Clerk

- It was, upon motion by Trustee Fischer, second by Trustee Van Vechten, and unanimously adopted:
RESOLUTION #012-22
WHEREAS, the website hosting and maintenance is currently provided by DNT Technologies, and
WHEREAS, the Board of Trustees acknowledges DNT Technologies expertise and professionalism,
THEREFORE, BE IT RESOLVED, that the Board of Trustees authorize Mayor Dahlgard to execute the renewal contract dated April 8, 2022 which will be effective from April 1, 2022 through March 31, 2023 in the total amount of \$4,000.00. Said total includes one-time charge of \$1,500.00 for redesign.
BE IT FURTHER RESOLVED, to authorize and direct the village treasurer to release payment in full.
- It was, upon motion by Trustee Ogden, second by Deputy Mayor White, and unanimously adopted:
RESOLUTION #013-22
WHEREAS, on April 6, 2022 the Board of Trustees reaffirmed the annual agreement for engineering services with Daniel Falasco P.E., and
WHEREAS, the term of the contract does not align with the Board of Trustees organizational year,
BE IT RESOLVED, to amend said agreement to have an effective date of April 1, 2022 through March 31, 2023, and
BE IT FURTHER RESOLVED, to extend the 2021/2022 contract to March 31, 2022.
- It was, upon motion by Trustee Van Vechten, second by Trustee Fischer, and unanimously adopted:
RESOLUTION #014-22
WHEREAS, the Village of Head of the Harbor has previously determined a need to contract for the removal and replacement of roofing at Village Hall,
BE IT RESOLVED, by the Board of Trustees of the Village of Head of the Harbor, in the County of Suffolk, State of New York, that it authorizes Daniel Falasco, Village Engineer and Robert O'Shea, Building Inspector to prepare and solicit bids for the removal and replacement of roofing at Village Hall, 500 North Country Rd., St. James, NY 11780.
- It was, upon motion by Deputy Mayor White, second by Trustee Fischer, and unanimously adopted:
RESOLUTION #015-22
WHEREAS, it has been previously determined that a portion of the HVAC system at Village Hall is in need of emergency repair, and
WHEREAS, due to the conditions caused by the COVID-19 pandemic and the emergency status of this repair, quote #5326 dated April 14, 2022, option #1 in the amount of \$9,100.00 from B & R Plumbing of LI Inc., has been reviewed by the Board of Trustees,
BE IT RESOLVED, to authorize and direct Mayor Dahlgard to accept the quote with B & R Plumbing and Heating of LI, Inc., and
BE IT FURTHER RESOLVED, to authorize and direct the village clerk of schedule the repair immediately.
 - Thanks to the efforts of our village clerk and highway department, Head of the Harbor has achieved Tree City designation for the third year. This program was meant to be supported by our Tree Board, if any residents are interested in volunteering, please call Mayor Dahlgard.
 - Mayor and Trustees wishes to congratulate Trustee Ogden for her successful work to educate our community and to gather grass roots support to oppose the proposed Gyrodyne Development at Flowerfield. Judy has worked tirelessly for several years on the project and has organized a coalition of support and has recently proposed a compromise plan that has been accepted. Such plan will result in additional open space at Flowerfield for the benefit of the entire community.

2. Financials – Patricia Mulderig, Treasurer:

- It was, upon motion by Trustee Fischer, second by Trustee Van Vechten, and unanimously adopted:
RESOLUTION #016-22

RESOLVED, to adopt Abstracts #127625 through and including #127638 in the total amount of \$36,360.22 paid from the General Fund.

- It was, upon motion by Trustee Van Vechten, second by Trustee Fischer, and unanimously adopted:
RESOLUTION #017-22

RESOLVED, to adopt Abstract TA #198 & 199 in the total amount of \$7,805.00 to be paid from the Trust & Agency Fund. Release of the Gatham & Bennett LLP payment to be held until the corresponding TA account has received sufficient funds.

- It was, upon motion by Trustee Van Vechten, second by Trustee Fischer, and unanimously adopted:
RESOLUTION #018-22

WHEREAS, the Village is eligible for receipt of funds from the Federal government associated with the ARPA (American Rescue Plan Act) Coronavirus Local Fiscal Recovery Fund, and

WHEREAS, on August 18, 2021 the Trustees designated Village Treasurer, Patricia Mulderig as the Point of Contact and Authorized Representative for Reporting,

THEREFORE, BE IT RESOLVED, the Board of Trustees authorizes and directs the use of funds be reported as follows:

Police Guns & Tasers	\$12,000
Roof Repair (includes partial repair of \$16,000)	\$81,000
Air Conditioning	\$ 9,000
Software	\$40,000
Highway Data Internet Line	\$10,000

- It was, upon motion by Trustee Fischer, second by Trustee Van Vechten, and unanimously adopted:
RESOLUTION #019-22

Adjustments to tax assessments received from the Town of Smithtown subsequent to the acceptance of the tax rolls.

RESOLVED, to authorize and direct the village treasurer to refund the taxes as per the successful grievances in the amount of \$590.73 as noted below:

8	9200	2	2	1.4	Susan Brennan & Eric Stubbs	4 Robin Hill Lane, SJ	4-Apr-22	23-Feb-22	9258	8510	(748)	153.27
9	17000	3	3	2.7	Joseph & Kelly Bolhofer	3 Fox Meadow Ln, SJ	4-Apr-22	10-Mar-22	16080	14000	(1,080)	221.20
10	17	2	2	3.1	William Anderson	5 Evan Court, SJ	4-Apr-22	9-Feb-22	21755	20700	(1,055)	216.17
ASSESSMENT ADJUSTMENTS - APRIL 20, 2022										(2,883)	590.73	

3. Highway Department – Judith Ogden:

- The date selection for Arbor Day has been tabled.

4. Building Inspector – Bob O'Shea:

- It was, upon motion by Trustee Fischer, second by Deputy Mayor White, and unanimously adopted:
RESOLUTION #020-22

WHEREAS, per Trustees resolution on May 6, 2020, in accordance with Chapter 131 of the Village Code, Asplundh Construction LLC, contracted by PSEG, made deposits of a performance surety and a maintenance bond in conjunction with the road-opening permit #1946, and

WHEREAS, the Building Inspector, Robert O'Shea; Village Engineer, Daniel Falasco and Highway Crew Leader, Frank Prinzevalli have approved of the restoration work performed and requests the Board approve the release of said funds,

BE IT RESOLVED, to authorize and direct the village treasurer to release the \$500.00 maintenance bond placed on deposit by Asplundh Construction, LLC.

- Several permits issued.
- Architectural Review Board has three applications pending.
- Planning Board approved one subdivision and is reviewing several site plans.
- Zoning Board of Appeals denied one application.

4. Police Department – Chief Charles M. Lohmann:

- Saddle Road discussion regarding traffic control measures. Chief Lohmann to review the request of installation of speed signs on Saddle Road.
- Application for grant moving forward.

Trustee Ogden

- Discussion regarding Town of Smithtown application for Gyrodyne. Much discussion ensued. Counsel Philip Butler recused himself from any discuss due to potential conflicts of interest. Further discussion ensued between the Board and the public. Arrival of Anthony Guardino - no comments were made by Mr. Guardino due to his previously disclosed potential of conflicts of interest. Board and public discussion continued.
- A motion was made by Deputy Mayor White to move to executive session, second by Mayor Dahlgard and voted upon as follows:

Mayor Dahlgard	AYE
Deputy Mayor White	AYE
Judith C. Ogden, Trustee	NAY
L. Gordan Van Vechten, Trustee	NAY
Jeffrey D. Fischer, Trustee	NAY

The motion did not pass.

- The following was resolution was Mayor Dahlgard, second by Trustee Fischer, and adopted (4-1-0):
RESOLUTION #022-22

BOARD OF TRUSTEES**INCORPORATED VILLAGE OF HEAD OF THE HARBOR**

**RESOLUTION REGARDING PARTICIPATION IN LITIGATION TO PROTECT THE
INTERESTS OF THE VILLAGE CONSISTENT WITH SECTION 165 OF THE
HEAD OF THE HARBOR VILLAGE CODE**

WHEREAS, the Village of Head of the Harbor was established in 1928 in order to protect the unique rural character and historic resources that continue to provide significant benefits to the community and its citizens; and

WHEREAS, the Village includes numerous vulnerable and irreplaceable environmental and historic assets, including Stony Brook Harbor, the Route 25A North Shore Heritage Corridor/ Long Island Heritage Trail and the Mills Pond National Historic District; and

WHEREAS, the Board of Trustees of the Village of Head of the Harbor has enacted Section 165 of the Village Code, which requires that the natural beauty, scenic vistas and historic character of the Village should be preserved to the maximum extent, compatible with the general welfare of Village residents; and

WHEREAS, these assets have been recognized by the New York State and the United States of America as being of statewide and national importance, and designated as such through official actions of the state and federal government; and

WHEREAS, the general character of the Village and the quality of life of its residents can be threatened and significantly impaired as a result of actions and approvals by other levels of government which do not adequately consider the interests of the Village or protect those assets; and

WHEREAS, such approvals can permanently alter the rural character of the Village, create significant new traffic volumes, and negatively impact environmental resources, driving down property values in the Village; and

WHEREAS, the Village has participated in review processes administered by other levels of government of development proposals which if approved would permanently alter the character of the Village, contrary to the intent of the Village Code, and to the significant detriment of Village residents; and

WHEREAS, in instances where the interests of the Village are not adequately considered, and the process does not meet the minimum requirements of New York State Town Law or the State Environmental Quality Review Act (SEQRA), it may be necessary for the Village to assert the interests of the Village and its residents through litigation to ensure that its interests are protected; and

WHEREAS, residents of the Village have made financial contributions to a fund created to ensure that any such litigation will not be a financial burden or expense to the Village, based on representations by Village officials that the Village would become a petitioner in litigation to overturn an approval of the Gyrodyne subdivision application as long as the Village is not financially responsible for the cost of the litigation,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees acknowledges the financial support of Village residents who have contributed to a fund created to ensure that any litigation entered into by the Village to protect the rural character of the Village is not an expense or financial burden to the Village, and be it

FURTHER RESOLVED, that the Board of Trustees does hereby authorize the Village to be a named petitioner in any litigation that may become necessary to challenge the review and approval of the subdivision application by Gyrodyne, so long as the Village is not financially responsible for the cost of the litigation.

On motion by ~~Trustee~~ Mayor Dahlgard, seconded by Trustee Fischer ^(m),
the foregoing resolution was adopted by vote as follows:

Douglas A. Dahlgard, Mayor	- Aye
Daniel W. White, Deputy Mayor	- Nay
Judith C. Ogden, Trustee	- Aye
L. Gordon Van Vechten, Trustee	- Aye
Jeffrey D. Fischer, Trustee	- Aye

Dated: Head of the Harbor, New York

April 2^d, 2022

Filed in the Office of the Village Clerk on the 2^d day of April, 2022

Margaret Keefe

It was, upon motion by Mayor Dahlgard, second by Deputy Mayor White and unanimously adopted, to enter into Executive Session to discuss personnel and potential litigation. No action taken.

- It was, upon motion by Deputy Mayor White, second by Trustee Van Vechten, and unanimously adopted: **RESOLUTION #023-22**
RESOLVED, to authorize and direct the village treasurer to accept the tax payment for the parcel known as SCTM # 7. 1. 12.5 as paid-in-full without penalty.

It was, upon motion by Trustee Fischer, second by Trustee Van Vechten and unanimously adopted, to move back to public session.

- It was, upon motion by Deputy Mayor White, second by Trustee Fischer, and unanimously adopted: **RESOLUTION #024-22** (Deemed read into the record in its entirety)

**VILLAGE OF HEAD OF THE HARBOR
BOARD OF TRUSTEES**

**RESOLUTION DECLARING THE GLOCK .40 CALIBER HANDGUNS PREVIOUSLY
PURCHASED BY THE VILLAGE AND REGISTERED TO INDIVIDUAL POLICE OFFICERS
OF THE HEAD OF THE HARBOR POLICE DEPARTMENT TO BE SURPLUS AND
AUTHORIZING SAID POLICE OFFICERS TO PURCHASE SAID HANDGUNS**

WHEREAS, the Board of Trustees of the Village of Head of the Harbor ("Board of Trustees") recently purchased new Glock 9MM handguns to replace the Glock .40 caliber handguns that were previously registered to each police officer of the Village of Head of the Harbor Police Department ("Department") following a National Instant Criminal Background Check System (NICS) background check initiated by a licensed firearms dealer; and

WHEREAS, upon the delivery of the new Glock 9MM handguns, the Glock .40 caliber handguns will no longer be needed by the Department;

WHEREAS, AmChar Wholesale Inc, the distributor of the new Glock 9MM handguns, has agreed to issue a credit to the Village in the amount of \$235.00 for each Glock .40 caliber handgun that is traded in; and

WHEREAS, several police officers of the Department have expressed an interest in purchasing the Glock .40 caliber handgun that is currently registered to them for \$235.00, which is the same amount as the credit that the distributor has agreed to issue to the Village for each handgun traded in; and

WHEREAS, upon the delivery of the new Glock 9MM handguns to the police officers of the Department, the Board of Trustees has no objection to each police officer purchasing the Glock .40 caliber handgun that is currently registered to them.


NOW THEREFORE, BE IT RESOLVED, that upon the delivery of the new Glock 9MM handguns to the police officers of the Department, the Glock .40 Caliber handguns previously purchased by the Village shall be deemed surplus.

BE IT FURTHER RESOLVED, that the Board of Trustees hereby authorizes each police officer of the Department to purchase the Glock .40 caliber handgun that is currently registered to them at a cost of \$235.00.

On motion by Trustee White, second by Trustee Fischer, the Board of Trustees adopted the foregoing resolution at a duly noticed public meeting held on April 20, 2022, upon the following vote:

Douglas A. Dahlgard, Mayor	Aye
Daniel W. White, Deputy Mayor	Aye
Judith C. Ogden, Trustee	Aye
L. Gordon Van Vechten, Trustee	Aye
Jeffrey D. Fischer, Trustee	Aye

Filed in the Office of the Village Clerk on the 20 day of April 2022.


Margaret O'Keefe, Village Clerk
Village of Head of the Harbor

There being no other matters to be brought before the Board; it was, upon motion by Deputy Mayor White, second by Trustee Fischer and unanimously adopted, to adjourn the meeting at 9:37 PM.

Respectfully Submitted,

Margaret O'Keefe
Village Administrator/Clerk

TOWN EXHIBIT 4

NYSCEF DOC. NO. 190:

DEANNA VARRICCHIO**RECEIVER OF TAXES**99 WEST MAIN STREET
SMITHTOWN, NY 11787**STATEMENT OF REAL PROPERTY TAXES**DECEMBER 1, 2021 THRU NOVEMBER 30, 2022 TAX LEVY
TOWN OF SMITHTOWN, SUFFOLK COUNTY, NEW YORK
TAXABLE STATUS DATE MARCH 1, 2021
TAXES BECOME A LIEN DECEMBER 1, 2021
***SEE "IMPORTANT NOTICE" ON REVERSE SIDE
www.smithtownny.gov

RECEIVED BY NYSCEF 06/09/2022

MON-FRI 9:00 A.M. TO 4:30 P.M.

(see reverse)

PHONE 631-360-7610

NOTE: TAXES ARE PAYABLE BY CHECK, CASH, OR CREDIT CARD.
CHECKS WILL BE ACCEPTED SUBJECT TO COLLECTION FOR WHICH
THIS OFFICE ASSUMES NO RESPONSIBILITY. WINDOW PAYMENTS
LIMITED TO 5 BILLS. PLEASE ISSUE A SEPARATE CHECK FOR EACH
PARCEL. ***NO CASH BY MAIL ACCEPTEDIF PROPERTY HAS BEEN SOLD OR TRANSFERRED AFTER MARCH 1, 2021, PLEASE
FORWARD BILL TO NEW OWNER, OR RETURN TO THIS OFFICE WITH NEW NAME.IF THE WORD "ARREARS" IS PRINTED HERE,
SEE NOTICE OF ARREARS ON REVERSE SIDE**TAX BILLING ADDRESS**OGDEN'S DESIGN & PLANTING
650 NORTH COUNTRY RD
ST. JAMES, NY 11780**BILL
NUMBER** 312-9ESTIMATED STATE-AID
COUNTY \$318,304,995.00
TOWN \$8,246,056.00
SCHOOL \$47,470,528.00INDICATE OWNER'S PERMANENT ADDRESS
CHANGE ON BACK OF STUBDESCRIPTION OF PROPERTY
5.-2-34.20
KUSICK FARM
LOT 1 #9483**PROPERTY LOCATION**

654 NORTH COUNTRY RD

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2021

OGDEN ST. JAMES HOLDING CO
COMSEOGUE RD
SETAUKET, NY 11733

DIST.	SUFFOLK COUNTY TAX MAP NUMBER	SECT.	BLOCK	LOT	EXEMPTION DESCRIPTION	EXEMPTION CODE	TAXABLE VALUE	FULL VALUE OF EXEMPTION
0801	005.000	0002	034.020		AGR-INDAPP	41730	2,197	196,161
TYPE	ACREAGE	TAX CODE	ROLL SECTION					
210	2.96	73	1					

TAX SEARCH & BANK	SELF PAY	SCHOOL CODE	SWIS CODE	LAND ASSESSMENT	TOTAL ASSESSMENT + UNIFORM % OF VALUE = FULL VALUE OF PARCEL
MTG. NO.		473401	473401	2,220	6,865 + 1.12% = 612,946

LEVY DESCRIPTION	TOTAL DISTRICT LEVY	% OF CHANGE OVER LAST YEAR	TAXABLE ASSESSED VALUE BEFORE ACCOUNTING FOR STAR	TAX RATE PER \$1000	AMOUNT SAVED BY EXEMPTIONS	TAX AMOUNT
SMITHTOWN SCH DIST	204,580,004	1.8%	4,668.00	1716.4540	\$3,771.05	\$8,012.41
SUFFOLK CTY GEN	54,287,099	0.0%	4,668.00	12.9070	\$28.36	\$60.25
DISTRICT COURT	14,513,302	0.0%	4,668.00	6.6730	\$14.66	\$31.15
SUFF COLLEGE TAX	54,287,099	0.0%	4,668.00	1.4120	\$3.10	\$6.59
TOWN WIDE	29,367,132	4.9%	4,668.00	118.6580	\$260.69	\$553.90
HIGHWAY II III IV	5,405,760	0.5%	4,668.00	21.8420	\$47.99	\$101.96
NYS REAL PROP TAX	3,088,685	36.3%	4,668.00	12.4910	\$27.44	\$58.31
NYS MTA	115,726	-5.7%	4,668.00	0.4680	\$1.03	\$2.18
OUT OF CTY TUIT TAX	1,198,364	-5.9%	4,668.00	4.8420	\$10.64	\$22.60
ST JAMES FIRE DIST	3,013,515	24.8%	6,865.00	120.8460		\$829.61
SMITHTOWN LIBRARY	15,472,267	2.0%	6,865.00	61.3290		\$421.02
ARTERIAL HWY LIGHTS	791,731	7.1%	6,865.00	3.0620		\$21.02
WASTE MGMT. 1 FAM						\$595.96

NOTE: This year's STAR tax savings generally may not exceed last year's by more than 2%.

FIRST HALF TAX	SECOND HALF TAX	TOTAL TAX
\$5,358.48	\$5,358.48	\$10,716.96

DUE DEC. 1, 2021.
PAYABLE WITHOUT PENALTY TO JAN. 10, 2022.
SEE REVERSE SIDE FOR PENALTY SCHEDULE

PAYABLE WITHOUT PENALTY TO MAY 31, 2022.
SEE REVERSE SIDE FOR PENALTY SCHEDULE & COUNTY COMPTROLLER'S NOTICE.

THIS TOTAL TAX MAY BE PAID IN ONE OR TWO INSTALLMENTS.

PAYMENT	AMOUNT	DATE	RECEIPT NO.	HOW PAID	TOTAL SMITHTOWN TAXES =	\$655.86
1ST HALF	5,358.48	12/13/21	19055	echeck		

THIS IS A DUPLICATE BILL

THIS IS A DUPLICATE BILL

Entire bill is required for a receipt

SECOND PAYMENT ()
PAYABLE WITHOUT PENALTY
TO MAY 31, 2022 MAY BE
PAID WITH FIRST PAYMENT

WHEN PAYING BY MAIL, DETACH FOR 2nd HALF PAYMENT (RETURN BOTH STUBS FOR TOTAL PAYMENT)

TOWN OF SMITHTOWN

2021-2022 TAX LEVY

MAKE FUNDS PAYABLE TO: DEANNA VARRICCHIO, RECEIVER OF TAXES

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2021

OGDEN ST. JAMES HOLDING CO
COMSEOGUE RD
SETAUKET, NY 11733

SUFFOLK COUNTY TAX MAP ID NUMBER

DIST SEC BLOCK LOT
0801 005.000 0002 034.020

SECOND HALF DUE

FULL PAYMENT

PAYER (OTHER THAN OWNER)

312-9

BILL NUMBER

**Smithtown Town Board**99 West Main Street
Smithtown, NY 11787**ADOPTED****RESOLUTION 2022-391**Meeting: 04/21/22 02:00 PM
Department: Town Attorney
Category: Conveyance of Property
Prepared By: Lisa Sinacore
Initiator: Matthew Jakubowski
Sponsors:
DOC ID: 20321**Conveyance of Portion of Lizetta Street****DESCRIPTION**

The conveyance of a portion of Lizetta Street, a paper street appearing on the "Map of Samoset Park Section No. 3" from Sisto Rotondi & Sons, Inc. to the Town of Smithtown.

PURPOSE

To facilitate the abandonment of a portion of Lizetta Street.

REVIEW:

Matthew Jakubowski	Completed	04/14/2022 3:43 PM
Edward R. Wehrheim	Completed	04/14/2022 3:49 PM
Town Board	Completed	04/21/2022 2:00 PM

**Smithtown Town Board**99 West Main Street
Smithtown, NY 11787**ADOPTED****RESOLUTION 2022-391**Meeting: 04/21/22 02:00 PM
Department: Town Attorney
Category: Conveyance of Property
Prepared By: Lisa Sinacore
Initiator: Matthew Jakubowski
Sponsors:
DOC ID: 20321

The following resolution was offered by the Town Board en masse:

WHEREAS, pursuant to a condition stated on "Map of Samoset Park Section No. 3" Map File No. 4809, filed on March 10, 1967, Sisto Rotondi irrevocably offered to cede title to that portion of Lizetta Street appearing on the aforementioned map for purposes of dedication of same to the Town of Smithtown; and

WHEREAS, on March 23, 1967, Sisto Rotondi deeded all of his right, title and interest to Lots 48, 46, 45 and 44 appearing on Map File No. 4809, to Sisto Rotondi & Sons, Inc., said deed having been recorded on March 28, 1967 at Liber 6131 Page 110, and said deed having reserved to Sisto Rotondi & Sons, Inc. rights to the westerly ½ of Lizetta Street adjoining lot 48 (Liber 6422 Page 438), lot 46 (Liber 6661 Page 165), lot 45 (Liber 6733 page 571) and lot 44 (Liber 7402 page 530), subject to covenants, restrictions and easements to Suffolk County Water Authority (Liber 5773 Page 1) and New York Telephone agreement (Liber 6184 Page 269); and

WHEREAS, Sisto Rotondi & Sons, Inc., now seeks to transfer all of its right, title and interest in the westerly ½ of Lizetta Street adjoining Lots 48, 46, 45 and 44 on the aforementioned Map File No. 4809, to the Town of Smithtown for the purposes of facilitating the abandonment of the portion of Lizetta Street appearing on "Map of Samoset Park Section No. 3" Map File No. 4809; and

WHEREAS, the Town of Smithtown installed, owns and maintains drainage structures throughout the length of Lizetta Street as it appears on "Map of Samoset Park Section No. 3" and reserves the right of access at all times for the update, maintenance and service of said facilities; and

WHEREAS, the Town Board intends to accept the aforesaid conveyance of real property, as more particularly described below;

NOW THEREFORE, BE IT RESOLVED, that the Town Board hereby accepts the conveyance of the real property described below and consents to the filing with the Office of the Suffolk County Clerk of a quitclaim deed on a form approved by the Town Attorney.

PROPERTY DESCRIPTION

ALL that certain plot, piece and parcel of land situate, lying and being at Smithtown, Town of Smithtown, County of Suffolk and State of New York, known as part of Lizetta Street, as shown on a certain map entitled *Map of Samosett Park, Section 3* filed in the Office of the Suffolk County Clerk's Office on March 10, 1967 as Map No. 4809, which part of Lizetta Street is bounded and described as follows:

Resolution 2022-391

Meeting of April 21, 2022

BEGINNING at the corner formed by the southerly side of Hurtin Boulevard with the westerly side of Lizetta Street, said point being 145.00 feet easterly from the northerly end of a line connecting the easterly side of Pia Boulevard (Barnes Street) with the southerly side of Hurtin Boulevard;

RUNNING THENCE along the Southerly side of Hurtin Boulevard, North 45 degrees 50 minutes 40 seconds East a distance of 25.00 feet;

THENCE along the center line of Lizetta Street, South 44 degrees 09 minutes 20 seconds East 360.00 feet to a point;

THENCE from said point South 45 degrees 50 minutes 40 seconds West a distance of 25 feet to the Westerly side of Lizetta Street;

THENCE along the Westerly side of Lizetta Street, North 44 degrees 09 minutes 20 seconds West a distance of 360.00 feet to the southerly side of Hurtin Boulevard at the point or place of BEGINNING.

Dated: April 21, 2022

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Edward R. Wehrheim, Supervisor
SECONDER:	Thomas J. McCarthy, Councilman
AYES:	Wehrheim, McCarthy, Nowick, Inzerillo, Lohmann

TOWN EXHIBIT 5

NYSCEF DOC. NO. 39

RECEIVED NYSCEF: 06/09/2022

MAKE FUNDS PAYABLE TO:

DEANNA VARRICCHIO

RECEIVER OF TAXES

99 WEST MAIN STREET
SMITHTOWN, NY 11787**STATEMENT OF REAL PROPERTY TAXES**DECEMBER 1, 2021 THRU NOVEMBER 30, 2022 TAX LEVY
TOWN OF SMITHTOWN, SUFFOLK COUNTY, NEW YORK

TAXABLE STATUS DATE MARCH 1, 2021

TAXES BECOME A LIEN DECEMBER 1, 2021

***SEE "IMPORTANT NOTICE" ON REVERSE SIDE

www.smithtownny.gov

OFFICE PAYMENT HOURS

MON-FRI 9:00 A.M. TO 4:30 P.M.

*SEE REVERSE

PHONE 631-360-7610

NOTE: TAXES ARE PAYABLE BY CHECK, CASH, OR CREDIT CARD.
CHECKS WILL BE ACCEPTED SUBJECT TO COLLECTION FOR WHICH
THIS OFFICE ASSUMES NO RESPONSIBILITY. WINDOW PAYMENTS
LIMITED TO 3 BILLS. PLEASE ISSUE A SEPARATE CHECK FOR EACH
PARCEL. TWO CASH BY MAIL ACCEPTED.IF PROPERTY HAS BEEN SOLD OR TRANSFERRED AFTER MARCH 1, 2021, PLEASE
FORWARD BILL TO NEW OWNER, OR RETURN TO THIS OFFICE WITH NEW NAME.IF THE WORD "ARREARS" IS PRINTED HERE,
SEE NOTICE OF APPEALS ON REVERSE SIDE

TAX BILLING ADDRESS

**BILL
NUMBER** 10404-2ESTIMATED STATE-AID
COUNTY \$318,304,995.00
TOWN \$8,246,056.00
SCHOOL \$47,470,528.00INDICATE OWNER'S PERMANENT ADDRESS
CHANGE ON BACK OF STUB

40.-2-6

R B ELDERKIN J D MOONEY
J D MOONEY MILLS PONDPROPERTY LOCATION
161 MILLS POND RD

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2021

KELEMEN DAVID T
DRAYZEN SARAH B
161 MILLS POND RD
ST JAMES, NY 11780

DIST	SUFFOLK COUNTY TAX MAP NUMBER	LOT	EXEMPTION DESCRIPTION	EXEMPTION CODE	TAXABLE VALUE	FULL VALUE OF EXEMPTION
0800	040.000 0002	006.000				
TYPE	ACREAGE	TAX CODE	ROLL SECTION			
210	0.51	76	1			

TAX SEARCH & BANK	08-	SCHOOL CODE	SWIS CODE	LAND ASSESSMENT	TOTAL ASSESSMENT - UNIFORM	% OF VALUE	FULL VALUE OF PARCEL
MTG. NO.		473401	473489	225	4,830	1.12%	431,250

LEVY DESCRIPTION	TOTAL DISTRICT LEVY	% OF CHANGE OVER LAST YEAR	TAXABLE ASSESSED VALUE BEFORE ACCOUNTING FOR STAR	TAX RATE PER \$1000	AMOUNT SAVED BY EXEMPTIONS	TAX AMOUNT
SMITHTOWN SCH DIST	204,580,004	1.8%	4,830.00	1716.4540		\$8,290.47
SUFFOLK CTY GEN	54,287,099	0.0%	4,830.00	12.9070		\$62.34
DISTRICT COURT	14,513,302	0.0%	4,830.00	6.6730		\$32.23
COUNTY POLICE	619,515,204	0.0%	4,830.00	283.5310		\$1,369.45
SUFF COLLEGE TAX	54,287,099	0.0%	4,830.00	1.4120		\$6.82
TOWN WIDE	29,367,132	4.9%	4,830.00	118.6580		\$573.12
TOWN (EXCL VLGS)	5,352,948	3.3%	4,830.00	23.3540		\$112.80
HIGHWAY I (EX VILL)	17,993,600	-0.4%	4,830.00	78.5030		\$379.17
HIGHWAY II III IV	5,405,760	0.5%	4,830.00	21.8420		\$105.50
NYS REAL PROP TAX	3,088,685	36.3%	4,830.00	12.4910		\$60.33
NYS REAL PROP PD	400,184	33.8%	4,830.00	1.7100		\$8.26
NYS MTA	115,726	-5.7%	4,830.00	0.4680		\$2.26
NYS MTA PD	117,253	10.9%	4,830.00	0.5010		\$2.42
OUT OF CTY TUIT TAX	1,198,364	-5.9%	4,830.00	4.8420		\$23.39
ST JAMES FIRE DIST	3,013,515	24.8%	4,830.00	120.8460		\$583.69
SMITHTOWN LIBRARY	15,472,267	2.0%	4,830.00	61.3290		\$296.22
STREET LIGHTING DIST	1,220,825	7.2%	4,830.00	5.0910		\$24.59
ARTERIAL HWY LIGHTS	791,731	7.1%	4,830.00	3.0620		\$14.79
ST JAMES WATER DIST	76,475	-66.2%	4,830.00	3.7700		\$18.21
WASTE MGMT. 1 FAM						\$505.66

An estimated STAR check has been or will be mailed to you by the NYS Tax Department. Any overpayment or underpayment can be reconciled on your next tax return or STAR credit check. If you have any questions please call the NYS Tax Department at 518-457-2036.

NOTE: This year's STAR tax savings generally may not exceed last year's by more than 2%.

FIRST HALF TAX	\$6,235.86	SECOND HALF TAX	\$6,235.86	TOTAL TAX	\$12,471.72
DUE DEC. 1, 2021 PAYABLE WITHOUT PENALTY TO JAN. 10, 2022 SEE REVERSE SIDE FOR PENALTY SCHEDULE		PAYABLE WITHOUT PENALTY TO MAY 31, 2022 SEE REVERSE SIDE FOR PENALTY SCHEDULE & COUNTY COMPTROLLER'S NOTICE		THIS TOTAL TAX MAY BE PAID IN ONE OR TWO INSTALLMENTS.	

PAYMENT	AMOUNT	DATE	RECEIPT NO.	HOW PAID	TOTAL SMITHTOWN TAXES =	\$1,170.59
1ST HALF	6,235.86	12/31/21	22136	Check		

THIS IS A DUPLICATE BILL

THIS IS A DUPLICATE BILL

Entire bill is required for a receipt

SECOND PAYMENT ()
PAYABLE WITHOUT PENALTY
TO MAY 31, 2022 MAY BE
PAID WITH FIRST PAYMENT

WHEN PAYING BY MAIL, DETACH FOR 2nd HALF PAYMENT (RETURN BOTH STUBS FOR TOTAL PAYMENT)

TOWN OF SMITHTOWN

2021-2022 TAX LEVY

MAKE FUNDS PAYABLE TO: DEANNA VARRICCHIO, RECEIVER OF TAXES

SUFFOLK COUNTY TAX MAP ID NUMBER

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2021

KELEMEN DAVID T
DRAYZEN SARAH B
161 MILLS POND RD
ST JAMES, NY 11780DIST SEC BLOCK LOT
0800 040.000 0002 006.000

SECOND HALF DUE FULL PAYMENT

PAYER (OTHER THAN OWNER)

6,235.86

12,471.72

10404-2

FIRST PAYMENT ()
DUE DECEMBER 1, 2021
PAYABLE WITHOUT PENALTY
TO JANUARY 10, 2022

WHEN PAYING BY MAIL, DETACH FOR 1st HALF PAYMENT (RETURN BOTH STUBS FOR TOTAL PAYMENT)

TOWN OF SMITHTOWN

2021-2022 TAX LEVY

MAKE FUNDS PAYABLE TO: DEANNA VARRICCHIO, RECEIVER OF TAXES

SUFFOLK COUNTY TAX MAP ID NUMBER

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2021

KELEMEN DAVID T
DRAYZEN SARAH B
161 MILLS POND RD
ST JAMES, NY 11780DIST SEC BLOCK LOT
0800 040.000 0002 006.000

FIRST HALF DUE

PAYER (OTHER THAN OWNER)

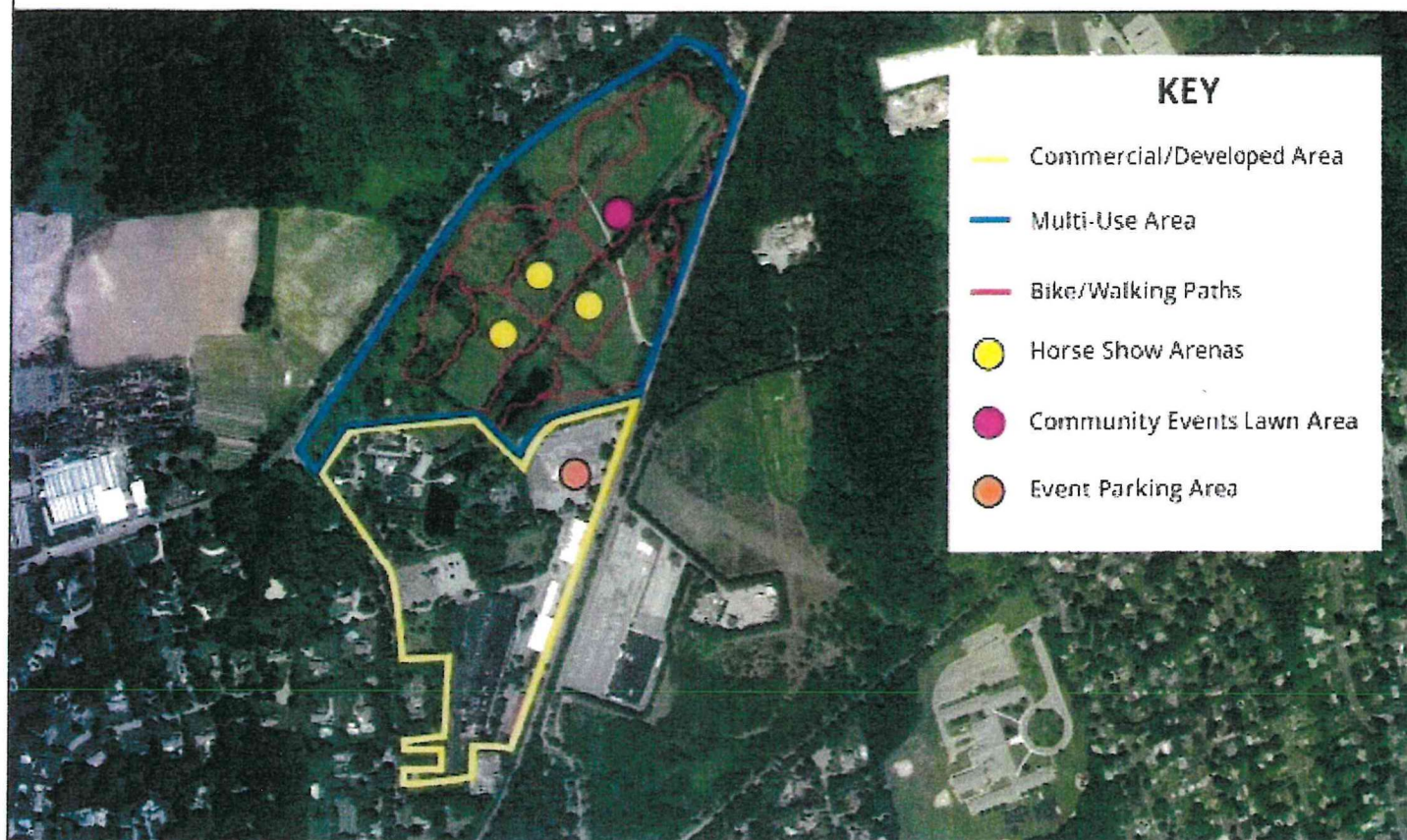
6,235.86

10404-2

TOWN EXHIBIT 6

IT'S NOT A DONE DEAL!

SUPPORT THE NEW GYRODYNE COMPROMISE PLAN!



A **WIN-WIN** plan that will benefit Gyrodyne and the community

- Allow development of all parts of site with existing buildings and parking lots
- Cluster new development away from existing open space areas of the property
- Promote compact, orderly development consistent with smart growth principles
- Reduce traffic impacts that would result from Gyrodyne's sprawling commercial development
 - Save Flowerfield Fairgrounds as open space for use by the community

Town of Smithtown Planning Board Meeting **Wednesday, March 30, at 6pm** via Zoom

PUBLIC HEARING on Gyrodyne preliminary subdivision

Please attend and SAY NO TO THE SUBDIVISION AND YES TO THE COMPROMISE PLAN!



Scan or go to smithtownny.gov for more information



Saint James - Head of the Harbor
NEIGHBORHOOD PRESERVATION COALITION

To donate or learn more: stjameshohnpc.org

COUNTY OF SUFFOLK

INCORPORATED VILLAGE OF
HEAD OF THE HARBOR, ET AL.,

Petitioners,

Index No. 608051/2022
(Luft, J.)

-against-

TOWN OF SMITHTOWN, ET AL.,

Respondents.

TOWN RESPONDENTS' MOTION TO DISMISS THE VERIFIED PETITION

OFFICE OF THE TOWN ATTORNEY

TOWN OF SMITHTOWN

99 WEST MAIN STREET

P.O. Box 9090

SMITHTOWN, NEW YORK 11787

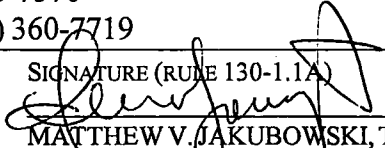
(631) 360-7570

FAX NO. (631) 360-7719

To:

RUSKIN MOSCOU FALTISCEK, P.C.
CERTILMAN BALIN ADLER & HYMAN, LLP
ROBINSON & COLE LLP

SIGNATURE (RULE 130-1.1A)


MATTHEW V. JAKUBOWSKI, TOWN ATTORNEY
BY: JENNIERA A. JUENGST, ASSISTANT TOWN ATTORNEY

ATTORNEYS FOR:

SERVICE OF A COPY OF THE
WITHIN IS HEREBY ADMITTED:

DATED: _____

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRYTHAT THE WITHIN IS A (CERTIFIED) TRUE COPY OF
A DULY ENTERED IN THE OFFICE OF THE CLERK OF
THE WITHIN NAMED COURT ON☐ NOTICE OF SETTLEMENTTHAT AN ORDER _____ OF WHICH THE WITHIN IS A TRUE COPY, WILL BE PRESENTED FOR SETTLEMENT TO THE
HON. _____, ONE OF THE JUDGES OF THE WITHIN NAMED COURT, AT _____, ON _____ AT _____ M.
DATED: SMITHTOWN, NEW YORK _____ YOURS, ETC.
2019

OFFICE OF THE TOWN ATTORNEY

TOWN OF SMITHTOWN

99 WEST MAIN STREET

P.O. Box 9090

SMITHTOWN, N.Y. 11787