

EXHIBIT 9

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; GEORGE 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.

**AFFIDAVIT IN
SUPPORT OF
ARTICLE 78
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.

----- X
STATE OF NEW YORK)
)ss.:
COUNTY OF SUFFOLK)

JOHN W. PAVACIC, being duly sworn, deposes and states:

I. I submit this affidavit in support of the petition to annul the approval of a findings
statement and subdivision for the property owned by Gyrodyne LLC and Gyrodyne Company of
America, Inc. (collectively "Gyrodyne").

2. My career includes serving more than 35 years in public service, primarily in the areas of environmental protection, environmental analysis, land use, planning and open space preservation. This included serving in various capacities in the Town of Brookhaven Division of Environmental Protection, New York State Department of Environmental Conservation, Suffolk County Department of Parks, Recreation and Conservation, and, most recently, with the Central Pine Barrens Joint Planning and Policy Commission. In the course of my tenure, I was responsible for or oversaw the preparation and review of countless documents prepared in accordance with the New York State Environmental Quality Review Act ("SEQRA"). This has included Declarations of Significance, Environmental Impact Statements and Findings, so I am quite familiar with the content and substance SEQRA requires that these written materials contain, in addition to the mandates of their associated review. In addition, throughout my career I have lectured widely on the application of SEQRA. Attached as Exhibit A is a copy of my curriculum vitae.

3. It is in my professional opinion the EIS prepared for the development of the property owned by Gyrodyne is wholly deficient. Initially, nowhere in the EIS is there any discussion as to the impact on the neighborhood characteristics of the Village of Head of the Harbor and other areas surrounding the property. This deficiency in and of itself requires that the Findings Statement and subdivision approval be annulled, and a Supplemental DEIS be prepared.

4. In addition, one of the most glaring deficiencies of the Gyrodyne environmental impact review process was its lack of a truly adequate, sufficient and detailed comprehensive cumulative impacts analysis. This deficiency was first apparent in the DEIS but has been continued and sustained through the FEIS and Findings Statement as well.

5. The FEIS and Findings Statement are improperly dismissive of comments made regarding the need for an adequate cumulative impacts 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 a fallacy.

6. A good cumulative impact analysis will consider the development potential of all adjacent underdeveloped and overdeveloped 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 Gyrodyne 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 project site. However, there was a failure to do so.

7. The cumulative impact methodology I have described has been successfully utilized and applied in other towns on Long Island, so the Town of Smithtown should certainly be capable of ensuring that this is accomplished. Until that occurs, the Planning Board should not have adopted a Findings Statement, but instead require that a Supplemental Environmental Impact Statement be prepared to address this cumulative impact issue as well as other deficiencies in the Gyrodyne SEQRA process.

Traffic

8. As has been stated during the Gyrodyne review process, New York State Route 25A, the main thoroughfare adjacent to the Gyrodyne parcel, is severely constrained in its right of way and its capacity to accommodate significant and meaningful traffic mitigation, such as

road widening, in response to traffic impacts generated by the project. Therefore, without project changes that significantly reduce traffic generation, it can be expected that significant adverse traffic impacts will remain, even after mitigation.

9. Furthermore, the traffic counts used as the basis of the DEIS and FEIS traffic analysis were conducted in 2017, more than 4 years ago, and are therefore significantly outdated. Factors such as the impacts of the COVID-19 pandemic and its effects on traffic patterns have not been adequately considered nor have the potential traffic factors generated by the Brookhaven Town side of the project, as well as those from Stony Brook University. Finally, the exclusion of the 6 am to 7 am time-period from traffic counts may have missed local school traffic, including that generated by educators, students and parents.

10. For the project, it has been proposed that limits on the maximum hourly trips generated by the Gyrodyne project would be established and then enforced. However, a number of issues with this process have been highlighted and include:

- a. Who will determine these limits and how?
- b. Who will be responsible for determining and enforcing these limits on both State and Town roads?
- c. How frequently will traffic counts and analyses be performed to ensure that the project is not exceeding these limits?
- d. If exceedances of these trip limits are detected how will they be addressed?

11. For all of these reasons, in lieu of adopting SEQRA Findings, the Town Planning Board should require that a Supplemental Environmental Impact Statement be prepared to address these traffic impact deficiencies in the Gyrodyne SEQRA process.

Segmentation

12. This project involves a number of steps which include the subdivision of the site into multiple lots and then the subsequent development of those individual lots. Section 617.3(g) of the SEQRA regulations states that “*Considering only a part or segment of an action is contrary to the intent of SEQRA*”. This is what is known as segmentation.

13. In order to avoid the occurrence of segmentation, the SEQRA regulations require Environmental Impact Statements to address “... *each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse environmental impacts*”.

14. The Findings Statement does not contain the level of specificity SEQRA mandates, including specific and enforceable conditions, to ensure that the future site-specific actions generated by this project, individual site plans, are considered now.

Historic and Cultural Resources

15. As was demonstrated during the review of the project, a significant portion of the project site is located in a National Historic District and contains several National Register historic structures. Although there has finally been an acknowledgment about the presence and existence of these historic elements, 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 and the viewscape of which it is part.

16. No plan has been formulated to:
- a. Require the preparation and submittal to the Town of annual architectural and engineering reports on the status of the structures.
 - b. 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.

- c. Describe specific design features, including height limits, building architecture, signs, lighting, etc., that will be required of the project to minimize potential impacts of any future Gyrodyne development proposals on the Historic District.

Open Space

17. 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. 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.

18. 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.

19. Until these Open Space issues are adequately addressed, the Planning Board should require a Supplemental Environmental Impact Statement to address these deficiencies.

Native Plants

20. During the SEQRA process, references continued to be made to the fact that *“additional supplemental plantings, consisting solely of native plant species, will be provided in the existing buffer”*

21. In its Findings Statement, the Town should have outlined the specific parameters for native plantings that should be applied to every subsequent site plan. This should include a

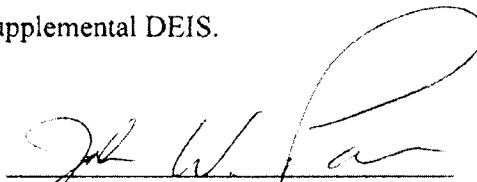
requirement that a sufficient minimum number of woody native trees and shrubs be utilized as herbaceous plants do not provide significant visual buffering. Furthermore, the Findings should provide a listing of the specific native species to be used, minimum plant sizes (for woody species in gallons or caliper), spacing requirements, 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).

Sewage

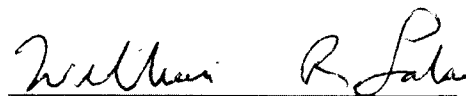
22. The findings do not adequately address a number of factors including:
 - a. How and who will monitor and enforce the requirement that the maximum daily wastewater flow/hydraulic load for the entire site will be limited to 87,591 gallons per day.
 - b. Remedies to be employed if exceedances of the daily discharge levels occur.
 - c. 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.
 - d. 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.

CONCLUSION

23. For the reasons set forth above, and in the accompanying Verified Petition and Memorandum of Law, the approval of the Findings Statement and subdivision should be annulled, and respondents directed to undertake a supplemental DEIS.


JOHN W. PAVACIC

Sworn to before me this
25 day of April, 2022



Notary Public

State of New York
County of Suffolk

971918

WILLIAM R. SALAS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SA6378690
Qualified in Suffolk County 22
Commission Expires July 30, 2022