

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; LAURINE KASSAY; HARRY POOLE; SCOT VELLA; KATHY VELLA; MICHAEL SASSONE; LOUISE SASSONE; ROSE NAPAOLITANO; CHARLES SHUTKA; MARGARET SHUTKA; COLLETTE PORCIELLO; and BENJAMIN ROBINSON,

Index No. 608051/2022

Petitioners,

-against-

TOWN RESPONDENTS’
MOTION TO DISMISS
THE VERIFIED PETITION

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.,

(Luft, J.)

Respondents.

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PLEASE TAKE NOTICE, that upon the annexed affirmation of Jennifer A. Juengst, Esq., dated May 31, 2022, and the exhibits annexed thereto, and the accompanying Memorandum of Law, dated June 1, 2022, and the pleadings and proceedings heretofore had herein, the undersigned will move this court, before the Honorable Martha Luft, J.S.C., at the Courthouse located at 1 Court Street, Riverhead, New York, on Tuesday the 12th day of July,

2022, at 9:30 a.m. of that day, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3211(a)(1), (2) & (3), and CPLR § 7804 dismissing the Article 78 proceeding upon the ground that the petitioners lack standing and capacity, violate state Village Law and General Municipal Law relating to official duties and conflicts of interest, and for such other and further relief as the Court deems just and proper.

This is an Article 78 proceeding challenging the determination of the Town of Smithtown Planning Board to approve a subdivision application to increase the number of lots on real property zoned Light Industry located in the Town of Smithtown.

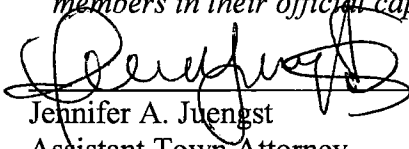
PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: Smithtown, New York
June 1, 2022

Yours, etc.,

MATTHEW V. JAKUBOWSKI
Town Attorney
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*Attorney for Respondents Town of
Smithtown, the Planning Board and its
members in their official capacity*

By:


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