

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  
(Luff, J.)

Petitioners,

-against-

Attorney's Affirmation in Support of Town's Motion to Dismiss the 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.,

Respondents.

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JENNIFER A. JUENGST, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms under the penalties of perjury:

1. I am an Assistant Town Attorney with the Office of Town Attorney, Matthew V.

Jakubowski, representing the Respondents, Town of Smithtown, Town of Smithtown

Planning Board and its members, Barbara DeSorbe, William Marchesi, Despond Ryan,

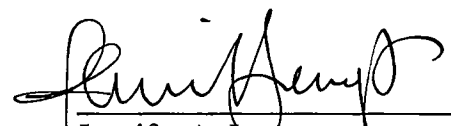
Thomas Unverzagt and Rick Lanese, sued in their official capacity. These respondents are hereinafter referred to collectively as “the Town” or “Town Respondents”.

2. I am familiar with the facts and circumstance of this Article 78 challenge of a preliminary subdivision approval from my review of the verified petition, the records maintained by the Town and my discussions with employees of the Town of Smithtown who were involved in the review of the subdivision application.
3. This affirmation is submitted in support of the Town’s motion to dismiss the verified petition on the ground that none of the individual petitioners can demonstrate the requisite standing to challenge the Town’s determination as evidenced by aerial maps showing distances from the petitioners’ properties to the development area.
4. In addition, the Village of Head of the Harbor is barred as a matter of law from being a party as evidenced by the Village Board of Trustees’ Resolution #02-22 which does not properly authorize the retention of the firm of Ruskin Moscou Faltischek, P.C.; and does not properly authorize the commencement of this Article 78 proceeding against the Town of Smithtown or any of its agencies or officials.
5. Further, the Town respondents submit that petitioner Judith Ogden suffers from a serious conflict of interest that cannot be waived by the Village of Head of the Harbor and as a result she may not serve as a party to this proceeding.
6. Annexed hereto as Town Exhibit 1 is a copy of the verified petition without the voluminous exhibits. Annexed hereto as Town Exhibit 2 is a copy of an aerial map depicting each petitioner’s property and the distance from the development site in the preliminary subdivision (referred to hereinafter as “the Gyrodyne property”). Annexed hereto as Town Exhibit 3 is a copy of the Minutes of the Meeting of the Board of

Trustees, April 20, 2022, including Resolution #022-22. Annexed hereto as Town Exhibit 4 is a copy of the Town Receiver's tax bill for the property located at 654 North Country Road, St. James, New York. Annexed hereto as Town Exhibit 5 is a copy of the Town Receiver's tax bill for the property located at 161 Mills Pond Road, St. James, New York. Annexed hereto as Town Exhibit 6 is a copy of a flyer of the Saint James-Head of the Harbor Neighborhood Preservation Coalition.

7. The legal arguments supporting the Town's motion are contained in the Town's Memorandum of Law submitted herewith and included in the notice of motion.
8. Based upon the foregoing, the verified petition in this proceeding should be dismissed in its entirety as against the Town Respondents.
9. No prior application for the relief sought herein has been made by the Town Respondents.

Dated: Smithtown, New York  
May 31, 2022



Jennifer A. Juengst  
Assistant Town Attorney

**CERTIFICATE OF WORD COUNT**

Index No. 608051/2022

Case: Village of Head of the Harbor et al v. Town of Smithtown et al.

Document title: Attorney's Affirmation in Support of Town Respondent's Motion to Dismiss  
Petition

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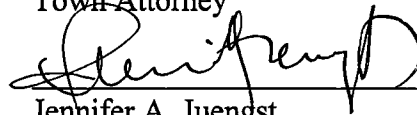
Pursuant to Rule §202.8-b(c) of the Uniform Rules for the Trial Courts, I certify that the accompanying Attorney's Affirmation in Support of Town's Motion to Dismiss Petition which was prepared using Times New Roman 12-point typeface, contains 520 words, excluding the parts of the documents that are exempted by Rule §202.8-b(b). This certificate was prepared in reliance on the word count function of the word processing system (Microsoft Word) used to prepare the document.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2022

Matthew V. Jakubowski  
Town Attorney

By:



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