

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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

Index No.: 608051/2022

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

**NOTICE OF OBJECTIONS
IN POINT OF LAW AND
MOTION TO DISMISS**

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.

PLEASE TAKE NOTICE that upon the Notice of Petition, dated April 25, 2022, the Verified Petition, dated and verified April 25, 2022 (“Petition”), the Affirmation of J. Timothy Shea, Jr., affirmed June 14, 2022, and the Memorandum of Law in Support of Objections in Point of Law and Motion to Dismiss, dated June 14, 2022, together with all papers and exhibits forming parts thereof, and all other pleadings, papers and proceedings herein, Respondents Gyrodyne, LLC and Gyrodyne Company of America, Inc. (collectively, “Gyrodyne”), by and through their

attorneys, Certilman Balin Adler & Hyman, LLP, will move this Court, IAS/Trial Part 50, at the Courthouse thereof located at 1 Court Street, Room A-362, Riverhead, New York 11901, on July 12, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, pursuant to CPLR § 7804(f) and CPLR 3211(a)(1) and (7), for an order and judgment:

1. Dismissing the Petition entirely because the Petitioners lack standing;
2. Alternatively, dismissing the Petition entirely because the Petitioners' claims are refuted by the documentary evidence and fail to state a claim; and
3. Granting such other and further relief as is just, proper and equitable.

Dated: June 14, 2022
Hauppauge, New York

CERTILMAN BALIN ADLER & HYMAN, LLP

By: _____

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TO: All Counsel of Record (via NYSCEF)