

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,

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.

Index No.: 608051/2022

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

AFFIRMATION IN SUPPORT

I, J. Timothy Shea, Jr., Esq., duly admitted to practice law before the Courts of the State of New York, hereby affirm under penalties of perjury:

1. I am a Partner with Certilman Balin Adler & Hyman, LLP, attorneys for Respondents Gyrodyne, LLC and Gyrodyne Company of America, Inc. (collectively, “Gyrodyne”) and, as such, I am fully familiar with the content and materials described herein.

2. I make this affirmation in support of Gyrodyne's objections in point of law against and motion to dismiss, pursuant to CPLR 7804(f) and CPLR 3211(a)(1) and (7), respectively, ("Motion"), the above-named Petitioners' Petition, dated and verified April 25, 2022 ("Petition"),¹ on the grounds the Petitioners lack standing and their allegations are refuted by the documentary evidence and fail to state a claim.

3. For the sake of brevity and judicial economy, I hereby incorporate by reference the full content of Gyrodyne's Memorandum of Law in Support of Its Motion to Dismiss ("Moving Memorandum"), submitted herewith, and introduce the following exhibits, which support Gyrodyne's Motion and which are cited in Gyrodyne's Moving Memorandum:

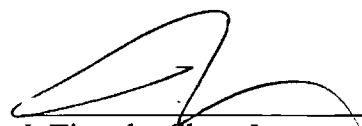
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| Exhibit A | Draft Environmental Impact Statement, prepared by Cameron Engineering & Associates, LLP, dated November 2019 |
| Exhibit B | Final Environmental Impact Statement, prepared by Cameron Engineering & Associates, LLP, dated December 2020 |
| Exhibit C | Environmental Assessment Form, dated December 1, 2017 |
| Exhibit D | SEQRA Positive Declaration and Notice of Scoping, dated May 9, 2018 |
| Exhibit E | Final Scope for the DEIS, dated July 7, 2018 |
| Exhibit F | Smithtown Environmental Protection Director Memorandum dated September 16, 2021 |
| Exhibit G | Smithtown Planning Board Resolution No. 14-2022, together with SEQRA Findings Statement, dated March 30, 2022 |
| Exhibit H | Smithtown Planning Board Resolution No. 15-2022 |
| Exhibit I | Smithtown Planning Board's letter dated September 22, 2016, describing the resolution dated September 21, 2016 |

¹ The Petition is filed as [NYSCEF Doc. No. 1](#).

4. I also affirm, upon information and belief, that no application for a senior living facility on a nearby parcel for which a developed “approached” the Town of Smithtown, as alleged in Paragraph 75 of the Petition, was ever submitted.

WHEREFORE, for the reasons set forth herein and in Gyrodyne’s Moving Memorandum, incorporated herein, I respectfully request the Court grant Gyrodyne’s Motion and issue an order and judgment dismissing the Petition entirely and granting such other and further relief as is just, proper and equitable.

Dated: June 14, 2022
Hauppauge, New York



J. Timothy Shea, Jr.