

**East End Prop. Co. #1 LLC v Town Bd.
of Town of Brookhaven**

2008 NY Slip Op 30082(U)

January 2, 2008

Supreme Court, Suffolk County

Docket Number: 0017956/2007

Judge: Jeffrey Arlen Spinner

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**SUPREME COURT OF THE STATE OF NEW YORK
IAS PART XXI - COUNTY OF SUFFOLK**

PRESENT:

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

EAST END PROPERTY COMPANY #1 LLC, MARK KASPIEV, JOHN McCONNELL, JOHAN McCONNELL, DONALD SEUBERT, PATRICIA SEUBERT, FRANCESCA HURLEY, MICHAEL HURLEY, LAURENCE EINUS, EMILY KARLOVITS, STEPHEN HENRY, THE YAPHANK TAXPAYERS AND CIVIC ASSOCIATION, INC and SOUTH YAPHANK CIVIC ASSOCIATION,

Petitioners-Plaintiffs,

- against -

TOWN BOARD OF THE TOWN OF BROOKHAVEN, PLANNING BOARD OF THE TOWN OF BROOKHAVEN, THE TOWN OF BROOKHAVEN and CAITHNESS LONG ISLAND, LLC,

Respondents-Defendants,

- and -

LONG ISLAND POWER AUTHORITY,

Additional Respondent-Defendant.
(CPLR 1001[A])

INDEX NO. **2007-17956**

MOTION SEQ. NO.: 001 - CASEDISP
ORIG. MOTION DATE: 07/11/07

MOTION SEQ. NO.: 002 - Mot D
ORIG. MOTION DATE: 07/18/07

MOTION SEQ. NO.: 003 - Mot D
ORIG. MOTION DATE: 07/25/07

MOTION SEQ. NO.: 004 - Mot D
ORIG. MOTION DATE: 07/25/07

FINAL SUBMIT DATE: 08/15/07

UPON the following papers numbered 1 to 337 read on these Motions:

- Petitioners-Plaintiffs' Order to Show Cause & Petition-Complaint **(001)** (Pages 1-104 & Exhibits 1-3, A-H & A-B);
- Respondent-Defendant CAITHNESS' Opposition (Pages 105-146 & Exhibits A-O);
- Respondent-Defendant BROOKHAVEN's Opposition (Pages 147-154);
- Respondent-Defendant LIPA's Opposition (Pages 155-169 & Exhibits A-C);
- Respondent-Defendant BROOKHAVEN's Answer (Pages 170-200 & Exhibits 1-3);
- Respondent-Defendant LIPA's Answer (Pages 201-240);
- Petitioners-Plaintiffs' Reply (Pages 241-275 & Exhibits A-I);
- Respondent-Defendant LIPA's Motion **(002)** (Pages 276-292);
- Respondent-Defendant BROOKHAVEN's Motion **(003)** (Pages 293-298 & Exhibits A-D);
- Respondent-Defendant CAITHNESS' Motion **(004)** (Pages 299-337 & Exhibits A-J);

it is,

ORDERED, that the application Petitioners-Plaintiffs **(001)** is hereby denied in all respects, the Petition-Complaint is hereby dismissed and the action disposed; and the applications of LIPA **(002)**, BROOK-

HAVEN (003) & CAITHNESS (004) are hereby dismissed as moot, in light of this Court's decision regarding Petitioners-Plaintiffs' application herein.

Petitioners-Plaintiffs move this Court (001) for an Order and Judgment:

- a. On the First Claim for Relief, pursuant to CPLR Article 78, cancelling, annulling and invalidating a certain Resolution of Respondent-Defendant BROOKHAVEN TOWN BOARD granted on June 5, 2007, pursuant to SEQRA (State Environmental Quality Review Act, ECL § 8-101, *et seq*), by adopting a SEQRA Finding Statement for a proposed 350 megawatt electrical generating plant, to be constructed by Respondent-Defendant CAITHNESS, on an approximately 96 acre parcel located in the Hamlet of Yaphank, Town of Brookhaven, New York (the Caithness Project) (herein after the SEQRA Resolution);
- b. Upon the Second Claim for Relief, pursuant to CPLR Article 78, cancelling, annulling and invalidating a certain Resolution of Respondent-Defendant BROOKHAVEN TOWN BOARD dated June 5, 2007, which, *inter alia*, approved the Caithness Project and substantial variances and waivers from established zoning requirements (herein after the Zoning Resolution);
- c. Upon the Third Claim for Relief, pursuant to CPLR Article 78, cancelling, annulling and invalidating all other Resolutions, actions and authorizations granted by Respondents-Defendants BROOKHAVEN TOWN BOARD and/or PLANNING BOARD for the purpose of authorizing and implementing the Caithness Project;
- d. Upon the Fourth Claim for Relief, pursuant to CPLR 7805, staying enforcement of the SEQRA Resolution, and enjoining and restraining Respondents-Defendants CAITHNESS and LIPA from proceeding with any additional construction or development of the Caithness Project pursuant to the Resolutions challenged herein;
- e. Upon the Fifth Claim for Relief/Cause of Action, pursuant to CPLR 3001, granting a judgment in favor of Petitioners-Plaintiffs declaring such other matters with respect to the lawfulness of the procedures undertaken, the adoption of, the effectiveness, and implementation of the SEQRA Resolution, the Zoning Resolution, and all other actions and authorizations granted by Respondents-Defendants BROOKHAVEN with reference to the Caithness Project as may be required to fully adjudicate the claims and controversies recited herein;
- f. Granting Petitioners-Plaintiffs the costs and disbursements of this proceeding.

Petitioners-Plaintiffs' above cited application by Order to Show Cause is filed upon their Petition-Complaint, which sets forth the above stated Claims for Relief, as follows:

1. The First Claim for Relief alleges Respondent-Defendant BROOKHAVEN TOWN BOARD violated the requirements of law and Decisions, because the environmental record before it was identical to that upon which it had previously refused to adopt identical SEQRA Findings on June 6, 2006, and upon which it purported to reverse its decision and approve the same SEQRA Findings on July 26, 2006, and again on June 5, 2007, therefore making their adoption of the SEQRA Resolution regarding the Caithness Project arbitrary, capricious and illegal, necessitating it be cancelled, annulled and declared of no force and effect, in that no change in the Caithness Project nor its environmental impacts were set forth, nor any other rationale for reaching a different result;
2. The Second Claim for Relief alleges that, by reason of the foregoing, Respondent-Defendant BROOKHAVEN TOWN BOARD's adoption of the Zoning Resolution on June 5, 2007, which approved the Special Permit, Variances and Waivers for the Caithness Project, must also be cancelled, annulled, declared arbitrary and capricious and invalidated upon the same grounds;
3. The Third Claim for Relief alleges any Site Plan Resolution adopted by Respondent-Defendant BROOK-

HAVEN PLANNING BOARD granting approval for the Caithness Project must be annulled, declared arbitrary, capricious, unlawful, void and of no further effect upon the same grounds;

- 4 . The Fourth Claim for Relief alleges that, pursuant to CPLR 7805, the Court should stay further actions or substantial construction activities, enjoining Respondents-Defendants from conducting any further construction thereof;
- 5 . The Fifth Claim for Relief alleges, by reason of the foregoing, a justiciable controversy has arisen, and currently exists, concerning the lawfulness of the SEQRA, Zoning and Site Plan Resolutions, and the procedures and proceedings upon which same are based, and therefore the Court should grant a Judgment, pursuant to CPLR 3001, as may be necessary in order to fully and fairly adjudicate all claims, controversies and disagreements of the parties concerning such Resolutions;
- 6 . The Sixth Claim for Relief alleges to reserve Petitioners-Plaintiffs' full appellate rights to the Decisions, reasserting their prior claims in a prior action, herein, and seeking to have Respondents-Defendants BROOKHAVEN's 2007 Resolutions declared annulled.

Respondent-Defendant LIPA moves this Court (**002**) for an Order, pursuant to CPLR 3211(a) (1), (3) and (7), dismissing Petitioners-Plaintiffs' Fifth and Sixth Claims for Relief asserted in the Combined Article 78 Petition and Complaint in the above captioned action, on the grounds that Petitioners-Plaintiffs' claims are disproved by documentary evidence, they lack legal capacity to sue and the pleadings fail to state a cause of action.

Respondents-Defendants BROOKHAVEN move this Court (**003**) for an Order, pursuant to CPLR 3211(a) (1), (3) and (7), dismissing the Fifth and Sixth Claims for Relief contained in Petitioners-Plaintiffs' Combined Verified Petition and Complaint.

Respondent-Defendant CAITHNESS moves this Court (**004**) for an Order, pursuant to CPLR 3211(a) (1), (3) and (7), dismissing the Fifth Claim for Relief contained in Petitioners-Plaintiffs' Combined Verified Petition and Complaint dated June 12, 2007, dismissing the Sixth Claim for Relief therein to the extent it seeks declaratory or other relief apart from CPLR Article 78.

INCORPORATION OF RECORDS OF PRIOR PROCEEDINGS:

For the purposes of clarity and information, **ONLY**, the Court hereby incorporates herein the full records of the two prior proceedings regarding this matter, under Suffolk County Index Numbers 2006-23201 and 2006-29596, including all submissions made and decisions rendered in said matters.

INTRODUCTION:

As in the last proceeding involving this matter, under Index Number 2006-23201, this is a "hybrid" action, seeking relief by way of a special proceeding pursuant to CPLR Article 78, as well as a declaratory judgment pursuant to CPLR Article 30, § 3001, and injunctive relief. Petitioners-Plaintiffs seek a review of the actions of Respondents-Defendants, most particularly Respondents-Defendants BROOKHAVEN. Petitioners-Plaintiffs seek to have said review invalidate, declare unlawful, arbitrary and capricious, annul, void and in all respects render of no force and effect, the actions of Respondents-Defendants, culminating in adoption of two resolutions by Respondent-Defendant BROOKHAVEN TOWN BOARD on June 5, 2007, regarding approvals of a SEQRA determination and a special use permit for a 350 megawatt electric generating plant

in the Hamlet of Yaphank, Town of Brookhaven, County of Suffolk and State of New York, known herein as the Caithness Project.

STATEMENT OF FACTS:

Respondent-Defendant LIPA selected Respondent-Defendant CAITHNESS to provide a state-of-the-art electric generating facility, which Respondent-Defendant CAITHNESS proposes to construct on a 15 acre portion of a 96 acre parcel, located as identified herein above, said land being zoned "L-1", light industry by Respondents-Defendants BROOKHAVEN prior to any action herein; said 15 acre portion being located within an Empire Development Zone, also established prior to any action taken herein.

Respondent-Defendant LIPA took on the status of "lead agency", pursuant to SEQRA [6 NYCRR § 617.2(u)], in order to perform a review of the potential environmental impacts of construction and operation of such a facility, prior to selection of the present site. After it was chosen, Respondents-Defendants BROOKHAVEN worked with Respondent-Defendant LIPA, as an "involved agency", to scope the Environmental Impact Statement, that process being concluded on December 4, 2005, after which several of the Petitioners-Plaintiffs herein instituted the Nassau Action against several of the Respondents-Defendants herein, regarding said SEQRA process. That litigation did not, and could not, include Respondents-Defendants BROOKHAVEN. During that time, Respondents-Defendants LIPA and BROOKHAVEN began negotiating a Community Benefits Package which consisted principally of Payment-In-Lieu-Of-Taxes (PILOTs).

The L-1 zoning district of Respondents-Defendants BROOKHAVEN only permits electric generating facilities by the granting of a special permit by Respondent-Defendant BROOKHAVEN TOWN BOARD, subject to criteria set forth in various sections of the Town Code. Pursuant to § 85-31 of said Town Code, Respondent-Defendant CAITHNESS applied for such special permit, with requests for variances from certain requirements within that zoning district, including an exhaust stack height of 170 feet (exceeding the Town Code imposed limitation of 125 feet) and a building height of 80 feet (exceeding the Town Code imposed limitation of 50 feet).

On March 9, 2006 and April 25, 2006, public hearings regarding said application were held by Respondent-Defendant BROOKHAVEN TOWN BOARD, each allegedly lasting about five hours. Presentations were made by representatives of Respondents-Defendants LIPA and CAITHNESS, and testimony was taken in opposition (including several Petitioners-Plaintiffs herein) and in support. Further presentations, discussions and comments continued through several other meetings and work sessions of Respondent-Defendant BROOKHAVEN TOWN BOARD, with resolutions approving the SEQRA determination and special permit being carried forward on said Respondent-Defendant's Agenda throughout this time period.

On June 6, 2006, with all the members of Respondent-Defendant BROOKHAVEN TOWN BOARD present, the resolution approving the SEQRA determination, as set forth in the FEIS adopted by Respondent-Defendant LIPA, was voted upon, with four members voting no, and three voting yes. On July 25, 2006, Respondent-Defendant BROOKHAVEN TOWN BOARD passed a number of resolutions regarding the Caithness Project, including:

1. Resolution by Councilwoman Walsh, seconded by Councilwoman Kepert, pursuant to Town Board Rules of Procedure, Article II, Section 3, Subsection A5, to waive the 90 day requirement before

reintroduction of the SEQRA Resolution of June 6, 2006, for acceptance and adoption of the Findings Statements: adopted by a vote of 5-2;

2. Resolution by Councilwoman Walsh, seconded by Councilwoman Kepert, to accept the SEQRA Resolution of June 6, 2006, for acceptance and adoption of the Findings Statements, which was adopted by a vote of 5-2 after a Motion to Table, by Councilman McCarrick, seconded by Councilwoman Bissonette: defeated by a vote of 2-5;
3. Resolution by Councilwoman Kepert, seconded by Councilman Fiore-Rosenfeld, to take out of order from the Decision Pending Agenda, the resolution to approve the special permit application for the Caithness Project, with variances and waivers: adopted by a vote of 5-2;
4. Resolution by Councilwoman Kepert, seconded by Councilman Fiore-Rosenfeld, to approve the special permit application for the Caithness Project, with variances and waivers: adopted by a vote of 5-2;

Councilwoman Walsh, who moved the waiver of the 90 day rule and the reconsideration of the SEQRA resolution that had been previously defeated, had voted against approval of said resolution at the June 6, 2006 meeting of Respondent-Defendant BROOKHAVEN TOWN BOARD, and therefore having been on the prior prevailing side was a proper party to make said motions.

On September 25, 2006, the Planning Board of Respondent-Defendant BROOKHAVEN, premised upon the Special Permit approval of the Respondent-Defendant BROOKHAVEN TOWN BOARD, adopted a Resolution approving the Site Plan for the Caithness project, with numerous covenants and conditions to be met.

In August of 2006 Petitioners-Plaintiffs herein instituted their prior action (Index Number 2006-23201) against Respondents-Defendants herein, except Respondent-Defendant BROOKHAVEN PLANNING BOARD, against whom they filed a separate action in October, 2006 (Index Number 2006-29596). In rendering the decisions in those actions, this Court found that, absent a record rendering an explanation for its change of determination regarding the prior refusal to adopt the SEQRA Resolution, Respondent-Defendant BROOKHAVEN TOWN BOARD's subsequent July 25, 2006 adoption of a SEQRA Resolution identical to the one previously defeated on June 6, 2006, was arbitrary, capricious, unlawful, invalid and of no force or effect. This, in turn, invalidated Respondent-Defendant BROOKHAVEN TOWN BOARD's adoption of the prior Special Permit Resolution in July 25, 2006, and the subsequent adoption by Respondent-Defendant BROOKHAVEN PLANNING BOARD, on September 25, 2006, of the prior Site Plan Resolution, as they were predicated on the July 25, 2006 invalid SEQRA Resolution.

After receipt of this Court's May 22, 2007 decisions in the prior proceedings, Respondent-Defendant BROOKHAVEN TOWN BOARD passed a Resolution adopting a SEQRA Findings Statement (SEQRA Resolution) on June 5, 2007, which, unlike the July 25, 2006 SEQRA Resolution, included language setting forth its explanation for its determination on June 5, 2007, contrary to its prior determination on June 6, 2006. Thereafter, at the same meeting, Respondent-Defendant BROOKHAVEN TOWN BOARD passed a new Special Permit Resolution, predicated upon their new SEQRA Resolution, and at a later date Respondent-Defendant BROOKHAVEN PLANNING BOARD passed a new Site Plan Resolution. Subsequently, Petitioners-Plaintiffs instituted this new hybrid action, as set forth herein above.

As this Court has repeatedly stated in prior decisions, it should be noted that it is well settled law in the State of New York that a Court may not substitute its own judgment for that of the reviewing board (*see: Janiak*

v. Planning Board of the Town of Greenville, 159 AD2d 574, 552 NYS2d 436 [2nd Dept], *appeal denied*, 76 NY2d 707, 560 NYS2d 989, 561 NE2d 889 [1990]; *Mascony Transport and Ferry Service v. Richmond*, 71 AD2d 896, 419 NYS2d 628 [2nd Dept 1979], *aff'd*, 49 NY2d 969, 428 NYS2d 948, 406 NE2d 803 [1980]). Therefore, if the decision rendered by the reviewing board is within the scope of the authority delegated to it, the Court may not interfere and annul it, unless said decision is arbitrary, capricious or unlawful (*see, Castle Properties Co. v. Ackerson*, 163 AD2d 785, 558 NYS2d 334 [3rd Dept 1990]).

THE NEW SEQRA RESOLUTION:

In regard to the First Claim for Relief in the instant Petition-Complaint, and subparagraph (a) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, the Court recites herein several instances of specific language of the prior decision of May 22, 2007, under Index Number 2006-23201 (*East End Property v Town of Brookhaven*, 15 Misc3d 1138(A), 841 NYS2d 819, 2007 WL 1519037, 2007 NY SlipOp 51032 [2007]), that sets the parameters of said prior decision, concisely:

As regards the Fifth Claim for Relief in said prior action:

“That leaves this Court confronted with the inescapable fact that the transcript submitted by Respondents-Defendants BROOKHAVEN and BROOKHAVEN TOWN BOARD demonstrates that the SEQRA Resolution was brought up in the public session of the July 25, 2006 meeting, was properly reintroduced by a waiver of the Rules of Procedure, but then adopted with the same language, absent an explanation in the SEQRA Resolution for the adoption (as opposed to the prior denial), and without any discussion on the record prior to said adoption. This does not meet the standards set forth clearly herein above, as promulgated by both the Appellate Division and Court of Appeals, and thus fails to meet the standard of literal compliance with both the letter and spirit of SEQRA.

Therefore, the Fifth Claim for Relief must be granted, solely to the extent that the adoption of the SEQRA Resolution by re-vote of Respondent-Defendant BROOKHAVEN TOWN BOARD, devoid of the requisite explanation for reaching the different result (passage as opposed to rejection), renders said action arbitrary and capricious, resulting in the declaration of said SEQRA Resolution null, void and of no force and effect, and requiring, pursuant to Article 78, that it be remanded to Respondent-Defendant BROOKHAVEN TOWN BOARD for proper action.”

As regards the Sixth Claim for Relief in said prior action:

“The issues of SEQRA, generally, including the FEIS, were all disposed of by the decision rendered in the Nassau Action, as stated herein above. The issue of the Special Permit Resolution was disposed of by the decision herein above, to the extent of Petitioners-Plaintiffs standing to challenge same. The Nassau Action granted them standing to challenge the SEQRA procedures, while ruling against them on the specifics, but that same grant of standing allowed them to challenge the instant and separate SEQRA actions of Respondents-Defendants BROOKHAVEN and BROOKHAVEN TOWN BOARD, and the manner of adoption by Respondent-Defendant BROOKHAVEN TOWN BOARD of the SEQRA Resolution.

The odd manifestation of the situation at hand is that, although lacking standing to challenge the Special Permit Resolution, as determined herein above, their success in challenging the manner of adoption of the SEQRA Resolution, as determined pursuant to the immediately prior Claim for

Relief, serves to annul the Special Permit Resolution, as it cannot stand without a properly adopted SEQRA Resolution.

Furthermore, in the related action against Respondent-Defendant BROOKHAVEN's Planning Board, while Petitioners-Plaintiffs lack standing to challenge same pursuant to their failure to demonstrate they are within the zone of interest or suffer injury different from the general public, their right to challenge pursuant to SEQRA, and the resultant nullification of Respondent-Defendant BROOKHAVEN TOWN BOARD's action, deprives the Planning Board of the ability to take action to approve the site plan, for lack of a properly adopted Special Permit, and therefore renders the actions of Respondent-Defendant BROOKHAVEN's Planning Board a nullity, void and of no force and effect."

Furthermore, this Court was very clear in said prior decision as to the scope of action necessary to correct the prior error, and the record, regarding this matter, setting forth the following language therein:

"This Court further notes that compliance with these requirements is not onerous. It is further well settled that the Courts in New York have accorded great deference to the explanations offered by boards for their contrary determinations under similar circumstances, as well as to changes in policy (See, *Hawryluk v Zoning Board of Appeals of the Town of Huntington*, 173 AD2d 826, 571 NYS2d 53 [2 Dept 1991]; *Ciampa v Hudson*, 158 AD2d 925, 551 NYS2d 89 [4 Dept 1990]; *Pesek v Hitchcock*, 156 AD2d 690, 549 NYS2d 164 [2 Dept 1989]; *Knight v Amelkin*, *supra*). The Appellate Division, Second Department, recently confirmed that the Courts will generally defer to the explanation for reaching a different result on similar facts, sustaining the determination because a rational explanation for reaching the different result on similar facts was provided (See, *Berk v McMahon*, 29 AD3d 902, 814 NYS2d 753 [2 Dept 2006], *citing Knight v Amelkin*, *supra*)."

In rendering this decision, this Court will defer to the explanation of Respondents-Defendants BROOKHAVEN for reaching a different result, sustaining its determination because a rational explanation for reaching the different result was provided. As noted above, New York Courts accord great deference to the explanations offered by boards for their contrary determinations under similar circumstances, and this Court finds that Respondents-Defendants have adequately met that standard.

Therefore, the First Request for Relief must be dismissed.

THE NEW ZONING RESOLUTION:

In regard to the Second Claim for Relief in the instant Petition-Complaint, and subparagraph (b) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, the Court notes that in the May 22, 2007 prior ruling (*East End Property v Town of Brookhaven*, 15 Misc3d 1138(A), 841 NYS2d 819, 2007 WL 1519037, 2007 NY SlipOp 51032 [2007]), it was clearly set forth that Petitioners-Plaintiffs has no standing to challenge the Zoning Resolution therein, as stated in the following language of said decision:

"In order to demonstrate standing, Petitioners-Plaintiffs must show that they will suffer a harm that is in some manner different than the harm the public may generally suffer, and that their alleged injuries fall within the zone of interest sought to be promoted or protected by the statute under which the municipality acted (See, *Society of Plastics Industry v County of Suffolk*, *supra*; *Rediker v Zoning Board of Appeals of the Town of Philipstown*, 280 AD2d 548, 721 NYS2d 77 [2 Dept

2001]; *Long Island Business Aviation Association, Inc v Town of Babylon*, 29 AD2d 794, 815 NYS2d 217 [2 Dept 2006]). The Courts have ruled that petitioners were not entitled to an inference of injury because they lived within about one-third of a mile, one-half mile, or between 832 to 2,519 feet from the subject property (See, *Olish v Heaney*, 2003 WL 21276342 [NY SupCt]; *Concerned Citizens for Open Space v City of White Plains*, 2003 WL 22283389 [NY SupCt]; *Oates v Village of Watkins Glen*, 290 AD2d 758, 736 NYS2d 478 [3 Dept 2002]), the last matter involving a petitioner who resided within 530 feet from a proposed WalMart super center. The status of neighbor does not automatically entitle one to standing for judicial review in every instance (See, *Sun-Brite Car Wash v Board of Zoning & Appeals of the Town of North Hempstead*, 69 NY2d 414, 515 NYS2d 418, 508 NE2d 130 [1987]). Petitioners-Plaintiffs herein, none of whom live closer than one-half mile, and are not within the required notification area for Special Permit application, pursuant to the Town Code, do not demonstrate they are within the zone of interest, nor that they will suffer an injury different than the public at large, and therefore lack standing to challenge Resolution I adopted by Respondent-Defendant BROOKHAVEN TOWN BOARD regarding approval of the Special Permit, specifically.”

Petitioners-Plaintiffs prevailed in invalidating the Zoning Resolution in the prior action only because the SEQRA Resolution upon which it was predicated was a nullity. The SEQRA Resolution herein is valid, as set forth herein above, and therefore Petitioners-Plaintiffs lack both standing or the ‘odd manifestation’ they benefitted from last time, in order to prevail herein

Therefore, the Second Request for Relief must be dismissed.

THE NEW SITE PLAN RESOLUTION:

In regard to the Third Claim for Relief in the instant Petition-Complaint, and subparagraph (c) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, the Court reiterates that stated herein above, dispositive of the Second Claim for Relief and subparagraph (b) of the relief requested in the Order to Show Cause, as, for the same reasons, Petitioners-Plaintiffs lack both standing or the ‘odd manifestation’ they benefitted from last time, in order to prevail herein

Therefore, the Third Request for Relief must be dismissed.

INJUNCTIVE RELIEF:

In regard to the Fourth Claim for Relief in the instant Petition-Complaint, and subparagraph (d) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, the first three Requests for Relief having been dismissed, there remain no grounds upon which to grant injunctive relief.

Therefore, the Fourth Request for Relief must be dismissed.

DECLARATORY JUDGMENT:

In regard to the Fifth Claim for Relief in the instant Petition-Complaint, and subparagraph (e) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, no justiciable controversy haven arisen, and

none currently existing, concerning the lawfulness of the SEQRA, Zoning and Site Plan Resolutions, and the procedures and proceedings upon which same are based, the Court cannot grant a Judgment, pursuant to CPLR 3001, since none is necessary in order to fully and fairly adjudicate all claims, controversies and disagreements of the parties concerning such Resolutions.

Therefore, the Fifth Request for Relief must be dismissed.

RESERVATION OF APPELLATE RIGHTS:

In regard to the Sixth Claim for Relief in the instant Petition-Complaint, the Court knows of no right to reserve appellate rights, as same is statutory, with strict time limitations that must be observed, this Court lacking the authority to grant relief therefrom.

Therefore, the Sixth Request for Relief must be dismissed.

COSTS AND DISBURSEMENTS:

In regard to subparagraph (f) of the relief requested in Petitioners-Plaintiffs Order to Show Cause herein, said parties having failed to prevail, this is no legitimate claim for costs and reimbursements.

Therefore, the request for costs and disbursements must be dismissed.

RESPONDENTS-DEFENDANTS' MOTIONS:

Respondents-Defendants having brought Motions (002), (003) and (004) to dismiss the Fifth and Sixth Requests for Relief, and same having been dismissed herein above, based on their own lack of sustainability, said Motions are moot, and require no further analysis.


Therefore, Respondents-Defendants' Motions must be dismissed.

For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

ORDERED, that Petitioners-Plaintiffs' Combined Petition-Complaint and Order to Show Cause (001) are hereby denied in all respects, and this action is hereby disposed; and it is further

ORDERED, that Respondents-Defendants Motions (002), (003) and (004) are hereby dismissed as moot.

Dated: Riverhead, New York
January 2, 2008



HON. JEFFREY ARLEN SPINNER, J.S.C.

✓ FINAL DISPOSITION	NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN

TO:

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