

McCaffrey v Planning Bd. of the Town of E. Hampton
2012 NY Slip Op 31681(U)
June 20, 2012
Sup Ct, Suffolk County
Docket Number: 2010-10491
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

COPY

**MARY ANN McCAFFREY, HOLLY WHITMORE
and STEVEN THOMAS,**

Petitioners,

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules

- against -

**PLANNING BOARD OF THE TOWN OF EAST
HAMPTON and 55 WAINSCOTT HOLLOW ROAD
LLC,**

Respondents.

INDEX NO.:	2010-10491
MTN SEQ NO:	001-CASE DISP
ORIG MTN DATE:	04/23/10
MTN SEQ NO:	002-CASE DISP
ORIG MTN DATE:	04/23/10
MTN SEQ NO:	003-CASE DISP
ORIG MTN DATE:	04/23/10
FINAL MTN DATE:	04/25/12

UPON the following papers numbered 1-8 read on the Petition:

- Petition [001] (Paper 1);
- Respondent BOARD's Cross-Motion [002] (Papers 2-3);
- Respondent WAINSCOTT's Motion [003] and supporting papers (Papers 4-5);
- Petitioners' Opposition (Paper 6);
- Respondent WAINSCOTT's Reply (Paper 7);
- Petitioners' Sur-Reply (Paper 8)

it is,

ORDERED, that Petitioners' application is hereby denied and Respondents' applications are hereby granted to the extent set forth herein below.

Petitioners move this Court [001] for an Order annulling, reversing and vacating the determinations made by the Respondent BOARD pursuant to the New York State Environmental Quality Review Act rules and regulations.

Respondent BOARD moves [002] for an Order dismissing the Petition on the grounds that (1) the Petition is barred by the applicable statute of limitations; and (2) even if timely, the Petition fails to state a cause of action under SEQRA.

Respondent WAINSCOTT moves this Court [003] for an Order dismissing the Petition on the grounds that (1) the proceeding is time barred by the applicable statute of limitations; and (2) the Petition fails to state a cognizable claim for relief under SEQRA.

For the purposes of clarity and information only, the Court hereby incorporates herein the full

(PR)

records of a prior proceeding regarding this matter, captioned *In the Matter of the Application of 55 Wainscott Hollow LLC v Planning Board of the Town of East Hampton*, Index No.: 2009-49444, including all submissions made and decisions rendered in said matters.

Petitioners allege they are owners of parcels of land that either abut or are in close proximity to the parcel owned by Respondent WAINSCOTT ("subject parcel" or "parcel") and with an address of 55 Wainscott Hollow Road, Hamlet of Wainscott, Town of East Hampton, County of Suffolk, State of New York, said parcel consisting of a total lot area of 1,740,416 square feet, or approximately 40 acres, and designated on the Suffolk County Tax Map as parcel numbered 300-197-4-2.1. The northeastern portion of the subject parcel is adjacent to a higher-density residential development of relatively small parcels fronting on Sayres Path ("Sayres Path development"), while the southwestern portion along Wainscott Hollow Road was improved with numerous residential and agricultural structures, some of which having been demolished.

The remainder of the subject parcel consists of vacant agricultural lands of prime soils, connected on both its northwestern and southeastern sides to other vacant agricultural lands, such that the central/northern vacant portion of the subject parcel forms part of a larger tract of vacant agricultural lands that runs in a generally northwest-to-southeast direction, in the area between Wainscott Hollow Road and Sayres Path. The subject parcel is zoned A5 for residential use, and located in the Agricultural Overlay District.

Prior to May 6, 2005, the bulk of the parcel was located in the "A2" Residential zoning district of the Town of East Hampton ("Town"), which required a minimum of 84,000 square feet (approximately 2 acres) of lot area for each single-family residential building lot. On May 6, 2005, the Town Board adopted a new Comprehensive Plan and zoning code amendments, resulting in "upzoning" of the parcel to "A5" Residence District, which requires a minimum of 200,000 square feet (approximately five acres) of lot area for each residential building lot.

In addition to the upzoning of the subject parcel, the 2005 Comprehensive Plan and zoning code amendments also upzoned the other properties, to the northwest and southeast of the parcel, that form the contiguous tract of vacant agricultural lands, as described above.

Unlike the subject parcel and the other vacant agricultural lands that were upzoned, the properties in the Sayres Path development were left unchanged and subject to their prior high-density residential district designations of "A" and "B" Residence Districts, requiring only 40,000 square feet (less than one acre) and 20,000 square feet (less than a half-acre) of lot area, respectively, for each single-family building lot.

Three years later, in 2008, in response to a proliferation of large houses being constructed in East Hampton, which was claimed to negatively affect neighbors and the visual character of the neighborhoods, the Town Board adopted a zoning code change setting maximum "gross floor area" limits for single-family residences in proportion to the size of the lot, and thereby assuring that new construction would be more compatible with the scale and character of existing development.

Accordingly, Local Law No. 12 of 2008 added a subsection 10 to § 255-11-67(A)(10) of the Town Code, which provides, *inter alia*, that "[T]he gross floor area of a single-family residence may not exceed 12% of the lot area plus 1,600 square feet," up to a maximum of 20,000 square feet ("Notwithstanding any prior provision to the contrary, no single-family residence may exceed 20,000 square feet.")

On February 15, 2008, Wainscott submitted an application for site plan approval to the Respondent Board, pursuant to §255-6-30(A)(6) of the Town Code, because the project involved "a parcel having a lot area of 10 acres or more and located wholly or partly within the Agricultural Overlay District."

The Town Code established six Overlay Districts to apply uniform land use regulations to specific categories of land sharing certain important characteristics, to reasonably control and, to the extent possible, to prevent the unnecessary loss of those currently open lands within the Town containing large and contiguous areas of prime agricultural soils. According to the Town Code, the Board's role was to ensure that 70% of the parcel's prime soils were still preserved upon the approval of Respondent Wainscott's site plan application. The Wainscott application proposed demolition and removal of all existing structures, and the construction of a 14,566 square foot single-family home with an attached garage, a tennis court, a pool, and a 160 square-foot pool house with porch.

Under the proposal, the total building lot coverage would be reduced, due to the demolition of the existing structures, with the new structures grouped along the Wainscott Hollow Road portion of the parcel, leaving the remainder of the property as vacant agricultural lands. As a result, the proposed structures would comprise less total area of the subject parcel along Wainscott Hollow Road as compared to the more scattered existing structures, creating a wider expanse of public views from Wainscott Hollow Road of the vacant agricultural lands remaining on the parcel.

In its Site Plan Initial Evaluation, dated February 20, 2008, the Planning Department characterized the subject parcel as contained within the Town Community Preservation Fund List, Recommended Scenic Area of Statewide Significance, New York State Agricultural District, and Town's Agricultural Overlay District.

The Planning Department, without objection to the size of the proposed residence, advised that "*the current proposed location for the project will not impact a significant amount of the prime agricultural soils. As a result, the Planning Department does not object outright to the current proposal but feels that both the Board and the applicant should consider re-locating the proposed structures. At the very least, the Board should consider requiring that all structures be moved closer to Wainscott Hollow Rd. as this would result in less intrusion into the areas of prime soils.*" Accordingly, the Planning Department recommended that the Board discuss these issues with the applicant and "*form a consensus on the best location for the residence and its accompanying structures.*" The Planning Department further recommended that the Board assume lead agency status pursuant to SEQRA.

On March 5, 2008, the Board held its first public work session on Wainscott's application, during which the Board and Wainscott's attorney agreed to relocate the proposed residence toward the southeast corner the property. Some of the Board members inquired whether the Board could direct Wainscott to reduce the size of the proposed dwelling. It was concluded that the size of the project was of no consequence to the site plan review pending before the Board because, being less than 20,000 square feet requirement, or even less than 15,000 square feet, it complied with restrictions contained in the Town Code.

The Board members also expressed a desire to review the actual plans for a subdivision of the parcel before deciding the outcome of Wainscott's application. Wainscott's attorney, however, informed the Board that there was no finalized/existing development plan for the parcel, other than the application for a single family residence currently under review.

While the Board acknowledged that none of the existing buildings, for which Wainscott held valid demolition permits, were officially declared historic, and their preservation was not part of Wainscott's application, it nevertheless proposed that Wainscott attempt to retain the Edward's House, requesting that a local historian opine as to its historic value. Wainscott was amenable to that request.

By letter dated March 6, 2008, the Board informed Wainscott that, *inter alia*, it assumed the lead agency status pursuant to SEQRA, and that it would prefer the location of the proposed residence to be moved further south and away from the agricultural soils. The letter did not contain any objections or comments regarding the size of the proposed structures, nor did it request a plan of a future subdivision as a pre-condition to the continuation or approval of the pending site plan review. Wainscott complied with the Board's request and relocated the proposed house toward the southeast corner of the property. In addition to moving the proposed structures, Wainscott also grouped the accessory structures, placing them directly behind the dwelling, minimizing impact on vista of the agricultural lands.

The new location of the proposed residence was approved by the Board during its July 9, 2008 work session, without objection, wherein Robert Schaeffer, a Board member, remarked that he was satisfied with its new location, stating: "*I am quite happy how the building has been moved further this way, which we have requested.*"

Following the work session, by letter dated July 10, 2008, the Board requested that Wainscott submit revised drainage and grading plans, and a plan to control storm water runoff for the new location. Wainscott satisfactorily complied with all requests. By letter dated September 11, 2009, the consulting engineer hired to review Wainscott's application informed the Board that Wainscott's site and drainage plans were acceptable.

After evaluating the new location of the proposed residence and the receipt of the engineer's report, the Planning Department advised the Board in its September 12, 2008 Memorandum that the new location of the proposed residence would not prevent a future subdivision from preserving the 70% of prime agricultural soils on the parcel required by the Town Code, and that as a result, no significant negative impact to the agricultural resources of the parcel was

anticipated, by stating the following: *“the proposed location of the new residence will not prevent a future subdivision from preserving the requisite 70% of prime agricultural soils on the property. Therefore, a significant negative impact to the agricultural resources of the property is not anticipated.”*

During the following 14 months of review, the Board remained satisfied with the proposed residence being sited in the southeast corner of the parcel, as they had requested, and with which Wainscott had complied. The Board also continued discussing with Wainscott the feasibility and legal implications of their suggestion of leaving the Edward’s House in its present location, and the preservation of the exiting trees along Wainscott Hollow Road.

Some of the owners of the adjacent parcels requested that the Board order Wainscott to remove the trees it had recently planted along the property line abutting the Sayres Path development, because they effectively blocked their farm views/private vista of Wainscott’s farmland, which they have been enjoying for many years. The Board declined the request, stating that there was no legislation, local or state, preventing the planting of trees on a private residential lot in an agricultural district, and that the trees planted by Wainscott only affected private vista, as opposed to public vista, the latter being defined as pertaining to or affecting a population or a community as a whole, and thereby afforded greater protection.

By memorandum dated January 26, 2009, the Planning Department advised the Board that Wainscott’s application was a Type II Action under SEQRA, and that a lead agency declaration from the Board was not required; that, according to the soil map submitted by Wainscott, the percentage of agricultural soils on the property that would remain undeveloped, **constituting?** *“90% of the existing prime agricultural soils”*; and further that, under those circumstances, *“an open space subdivision could still be designed with the required 70% (of prime soil) reserved area.”* The Planning Department also recommended that the Board review the annexed survey of the subject parcel, and *“decide whether the location and size of the currently proposed single-family residence would necessarily preclude an appropriately designed open-space subdivision from being planned for this lot at a future date.”* (emphasis added)

As to the Edward’s House, the Planning Department noted that the conversion of the Edward’s House into an accessory structure was not feasible, and that the two remaining options for Wainscott were either to request a variance from the Zoning Board of Appeals or to re-locate the structure to another site. The Board has subsequently adopted the Type II classification for Petitioner’s application during its February 4, 2009 work session.

Throughout the pendency of the application, the Board has received numerous written submissions from members of the public opposing the granting of the application. Likewise, during the public hearing held on August 19, 2009, most of the comments received from the public were in opposition to the project.

The majority of the comments reflected the desire to have the Board conduct a full environmental review under SEQRA of an open space subdivision, which would include clustered, smaller lots. The Court notes that, pursuant to the Town Code, this would involve the

clustering of approximately eight (8) residences, and that the clustering of more than 8, and/or smaller lots, would be a violation of the Town Code.

The opposition alleged that any development of the subject parcel may directly or indirectly degrade the prime agricultural soils (which, the Court notes, they failed to substantiate), stating that it would necessitate a Type I Action, and likewise, any alteration of the Edward's House would also constitute a Type I Action, since the structure had a local historic significance. The Court notes that as the Edward's House has no such official designation, this cannot be the case, and no such requirement could be so imposed.

Another issue raised by the opposition was that of segmentation under SEQRA. Because the issue of how to subdivide the subject parcel has been frequently discussed during the review process, the Board was urged to stop reviewing the pending application, and to require Wainscott to submit a formal open space subdivision of the parcel, in order to avoid the approval process by taking a piece-meal approach, leading to segmentation. The Court notes that the Board's determination that a 70% reserved area could later be accomplished during a subdivision had already addressed this concern, negating any possible claim of segmentation.

Some members of the opposition also emphasized the incongruity of the size of the proposed residence, and the resultant parcel on which it would be situated in case of subdivision, with the general size of the majority of existing residences and lots within the Wainscott area. They opposed Wainscott's application because its approval would allegedly result in estate-style lots upon a future subdivision, which would be incompatible with much smaller neighboring properties. The Court notes the size of the proposed residence being in compliance with the Town Zoning Code, as amended, said alleged incongruity was therefore being a product of the existing statute, and legal as proposed.

Describing the Board's goal as maintaining consistency with previous farmland developments in the area, the opposition urged the Board not to approve any project which may intrinsically require the creation of large lots, but, instead, to ensure that a future subdivision would follow the previous ones, not only in terms of meeting reserved area requirements, but also in terms of mirroring the general size of the lots therein and the general size of lots within the Wainscott area, all in contravention of the zoning enacted by the Town of East Hampton Town Board, in fact, and therefore in violation of Wainscott's land use rights.

In a post-hearing memorandum, dated September 15, 2009, the Board responded to the comments received from the members of the public.

Regarding the opposition's comments concerning possible degradation of the prime soils due to the construction of the proposed residence, and the request for a full SEQRA review, the Board explained that *"by demonstrating that (well over) the required reserved area percentage can be maintained as part of a potential future open space subdivision; the applicants have clearly demonstrated compliance with [Chapter 193] Code section and have ensured the requisite preservation of agricultural soils."*

The Planning Department reminded the Board that *“the nature of this project, (construction of a single-family residence) clearly places it within SEORA’s Type II.”*

Addressing the opposition’s recommendation to compel Wainscott to submit a formal plan for subdivision, the Planning Department further reminded the Board that the pending site plan review *“represents a Type II Action and that the Board cannot legally require the applicants to submit a subdivision application at this time.”*

As to the Edward’s House, the Planning Board pointed out that the Board had little recourse with which to preserve it, since the building is not formally recognized by Town, State or Federal governments as historically significant, and Wainscott currently holds a demolition permit.

Throughout the review process, the issue of possible future subdivision of the subject parcel has been raised on numerous occasions. In reply, Wainscott stated through its attorney that although the parcel may be divided in the future, it had no plans to do so at this point in time and that no such a plan is legally required to be submitted together with a site plan review application.

After the close of the public comments, the Board further discussed and then voted on Wainscott’s application in its work session on September 23, 2009.

While it was acknowledged that the Board had no discretion to consider the size of a proposed house, as it was not in its jurisdiction, several members nonetheless stated that they would vote against the application because the mass and placement of the proposed home seemed utterly incompatible with the rural and farmland character of the community. As proposed, they noted that the house was not only 7000 square feet bigger than any other house in Wainscott, but it also allegedly obstructed almost the whole view on Wainscott Hollow Road, thereby interfering with public vista, conclusions not supported by the facts herein, and circumstances either enabled by the Town Code, as amended by the Town Board, or resulting from modifications by Wainscott at the direction of the Board.

In essence, the Board concluded that the proposed house, due to its size and the nature of placement, was incompatible with the character of the neighborhood, which the Board was charged with preserving. In fact, the Court notes that said authority is limited by the parameters set forth in the Town Code, which does not support the Board’s conclusions.

Wainscott’s attorney attempted to address these newly-raised concerns regarding the size and the siting of the proposed residence, which has been relocated upon the Board’s written request toward the southeast corner of the parcel, and without objection approved by it during the July 9, 2008 work session, but she was not permitted to do so, the Board taking the position that the public record was already closed.

In the Findings and Determinations of the Board dated November 18, 2009, it denied the application, concluding that the proposed residence in the proposed location “*would result, at the time of subdivision, in an inappropriately sized "estate" style-lot in an area of East Hampton in which there are few lots of this size,*” and it would create “*a large lot of at least five acres, in contrast to the other lots created in the Wainscott area on farmland pursuant to an open space subdivision.*” The Court notes that the Board decided to ignore the fact that the 5 acre lot size is a requirement of minimum lot size by the Town Code in that zoning district.

The Board determined that the proposed application does not conform to Section 255-60(A) because the “*scenic vista from and along Wainscott-Hollow Road provided by the parcel as it exists is worthy of preservation and the new construction of 'larger, more massive buildings' in the locations proposed by the applicant would impede this vista.*” The Court notes that the Board apparently decided to ignore the fact that the location of the proposed “massive building” was determined at their direction, and that the size of the proposed residence was substantially less than the limit set forth in the Town Code, as amended.

The Board found the “*location for the currently-proposed 'estate- style' residence to be averse to preserving a historic and valuable view of farmland,*” and as such not conforming to Section 255-6-60(G). The Court again notes that the Board apparently decided to ignore the fact that the proposed residence was moved to that location on the parcel at their request.

The Board further determined, in light of the legislative intent and the primary objective of the Local Law No.1-1999, that “*the farmland vista from Wainscot Hollow Road will be negatively impacted by the construction of a large home in a location on the front and near the center of the parcel and that even the reconfiguration of the buildings in that location impedes the existing vista.*” The Board apparently decided to ignore the facts that all construction was within the prior existing construction area, in compliance with the Town Code’s preferences, in order to preserve the agricultural soil quality.

The Board also found that “*the proposed residence could have been situated so as to preserve additional valuable farmland that would be contiguous to the surrounding farmland as well as create a regularly shaped tract of farmland on this parcel.*” Accordingly, the proposed location failed to “*meet the Board's goals with respect to the preservation of large tracts, of contiguous farmland in the event of a future subdivision of this property.*” The Court notes that this is actually in contravention of the requirement of preserving the agricultural soil quality, since it would cause the construction in virgin agricultural soil areas of the subject parcel, instead of keeping it within the prior construction area where multiple buildings had been built.

The Board explained that its approval of the proposed residence currently located “*on the road side of the parcel*” would negatively impact the future of Wainscott, because it would “*force the Board at subdivision to create a lot where lots are normally not encouraged.*” Furthermore, the Board’s approval of the current location would be inconsistent with other subdivisions of

farmland in Wainscott, since in the past new developments were located near other existing residential developments “*in order to preserve the farm views and the availability of contiguous tracts of farmable lands which are required to be preserved as part of a subdivision.*” The Court notes that the Board apparently decided to ignore the fact that the lot size is not only encouraged, but required by the Town Code, as amended, and, again, the residence was located where proposed at their direction and urging.

Specifically, the Board stated that “*the southeast corner of the property would be better suited for the current proposal as opposed to the northeast corner as proposed.*” The Board explained that the proposed site plan places the development in an area that is surrounded by active farming on three sides and the roadway on the fourth. By moving it next to the existing development, the impact on the farmland would be reduced and contiguous farmlands preserved. The Court notes that the Board apparently decided to ignore the fact that the proposed residence, in fact, was located in the southeast corner of the property, where they directed and urged it to be located, and that same cannot be considered a scrivener’s error, since if the residence were proposed to be in the northeast corner of the subject parcel, then it would, in fact, be closer to existing development, but would also be in the midst of and dividing agricultural farmland they are charged with protecting.

So, the Court notes that, as evidenced by the revised site plan/survey submitted by Wainscott to the Board on or about June 25, 2008, the structures proposed by Wainscott are located in close proximity to the property line in the southern corner of the parcel, and not, as stated by the Board, in the “northeast corner,” which is directly adjacent to the Sayres Path development, but in the midst of and dividing contiguous farmland.

Finally, the Board concluded that the “*location of the proposed residence and accessory structures is authoritative in terms of the future development of the parcel,*” therefore, if the Board neglects to insist on the best location for a proposed residence at this point, “*the future development of the parcel may not be successful in preserving both the scenic farmland views the creation of a laudable subdivision in the future.*” The Board apparently ignored the contrary conclusions issued by the Planning Department, and the overwhelming evidence cited herein above.

The Board states in its Findings and Determinations that it “*has taken its legislative directives very seriously in this application*” and yet, in fact, the Board has violated its legislative authority regarding this application, because its conclusions in its Findings and Determinations are in violation of the requirements, parameters and limitations imposed on this subject parcel by the proper authority, the Town Board of the Town of East Hampton.

The Finding and Determinations of the Board were filed with the office of the Town Clerk on November 19, 2009.

In its December 23, 2011 decision, this Court annulled, reversed and set aside the Board's denial of Wainscott's application for site plan approval.

In the proceeding at bar, commenced on March 19, 2010, Petitioners do not seek an annulment and reversal of the November 18, 2009 Board's decision *in toto*. Rather, Petitioners only seek an annulment and reversal of that portion of the Board's decision which classified Wainscott's application as Type II, and thus, exempt from SEQRA. According to Petitioners, the Board's erroneous adoption of Type II SEQRA Classification effectively amounted to "segmentation" under SEQRA. The Court notes that this is contrary to law, unsupported by the Record and without any rational basis.

In their respective motions to dismiss, Respondents argue that (1) the Petition is untimely, since SEQRA challenges to site plan resolutions are governed by a 30-day statute of limitations, pursuant to Town Code sec 274(a)11; (2) Petitioners lack the prerequisite standing to sue because they admit not challenging or seeking to overturn the Board's final determination denying Wainscott's application; and (3) that Petitioners failed to state a cognizable cause of action under SEQRA.

Petitioners oppose the dismissal stating, *inter alia*, that this proceeding is governed by a four-month statute of limitations and that their standing, arising from SEQRA itself, is independent of any separate right Petitioners may have to challenge the Board's denial of Wainscott's site plan application.

CPLR 217 (1) provides that "[unless] a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding."

Under Town Law § 274-a(11), an Article 78 proceeding to review a site plan determination of a planning board "shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. "

When, as here, the event that triggers the running of the Statute of Limitations in a proceeding involving alleged SEQRA violations is a final and binding determination for which a specific limitations period less than four months is provided by statute, CPLR 217 requires application of the shorter Statute of Limitations (see: *Matter of Casement v Town of Poughkeepsie Planning Bd*, 162 AD2d 685).

In a proceeding challenging SEQRA determinations, the limitations period commences with the filing of a decision which represents the final and binding determination of SEQRA issues, and thus has an impact upon petitioner (see: *Matter of Haggerty v Planning Bd*, 166 AD2d 791), notwithstanding the fact that such determination may be embodied in preliminary or conditional plan approval (see: *Matter of Long Is Pine Barrens Socy v Planning Bd*, 78 NY2d 608; see also: *Matter of Purchase Envtl Protective Assn v Town Bd*, 207 AD2d 351; *Matter of Crepeau v Zoning Bd of Appeals*, 195 AD2d 919; *Matter of Parker v Town of Gardiner Planning Bd*, 184 AD2d 937; *Matter of Hickey v Planning Bd*, 173 AD2d 1086).

This rule is consonant with the goals of identifying environmental issues and resolving them with finality as early as possible in the planning process (see: *Matter of Long Is Pine Barrens Socy v Planning Bd*, supra, at 615).

Here, the essence of Petitioners' claim concerns the SEQRA review conducted by the Board, which was completed upon the issuance of the negative declaration. The limitations period was triggered by the filing of the denial of Wainscott's application (which also contained the Board's SEQRA determinations) with the office of town clerk on November 19, 2009. This proceeding was not commenced until March 19, 2010 (120 days after said filing), and it must therefore be dismissed as untimely and in violation of the applicable statute of limitations.

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

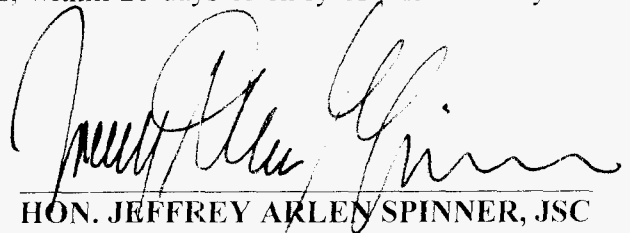
ORDERED, that the above referenced Petition [001], is hereby denied in all respects, the Petition is dismissed and this matter is hereby disposed; it is further

ORDERED, that the above referenced applications [002] and [003] of Respondents are hereby granted to the extent that this Petition is untimely and in violation of the applicable statute of limitations, and therefore the Petition herein is dismissed and this matter is hereby disposed; and it is further

ORDERED, that this Court hereby retains jurisdiction over this proceeding, for all purposes; and it is further

ORDERED, that Counsel for Petitioners is hereby directed to serve a copy on this Order, with Notice of Entry, upon Counsel for all other parties, within 20 days of entry of this Order by the Suffolk County Clerk.

**Dated: Riverhead, New York
June 20, 2012**


HON. JEFFREY ARLEY SPINNER, JSC

<input checked="" type="checkbox"/> FINAL DISPOSITION	<input type="checkbox"/> NON-FINAL DISPOSITION
<input checked="" type="checkbox"/> SCAN	DO NOT SCAN

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