

SUPREME COURT OF THE STATE OF NEW YORK
ROCKLAND COUNTY

In the Matter of the Application of
LENA BODIN,
LYNDA GELLIS,
LAURIE GESSNER,
NANCY KENT,
SHERYL SANTI LUKS,
BARBARA PICASO,
GERARD PICASO,
JOHN PORTA,
JORDAN RUDES,
NANCY DANIELLE RUDES
ROBERT SOLOMON,
SANDRA SOLOMON,
JOHN THORNBURG,
EDITH THORNBURG and
ANNE WILLIAMS,

VERIFIED PETITION-
COMPLAINT

Index No.:

Petitioners-Plaintiffs,

v.

TOWN OF RAMAPO, NEW YORK,
PLANNING BOARD OF THE TOWN OF
RAMAPO, NEW YORK,
TOWN OF CLARKSTOWN, NEW YORK and
SCENIC DEVELOPMENT, LLC,

Respondents-Defendants.

Petitioners-Plaintiffs, by and through their attorneys, Tabner, Ryan and Keniry, LLP, allege, upon information and belief, as follows:

1. This hybrid proceeding-action arises from the January 6, 2011 decision (“Decision”) of the Planning Board of the Town of Ramapo (“Planning Board”) granting the application for preliminary subdivision approval for a project entitled Patrick Farm Subdivision (“Subdivision”). The proposed Subdivision would significantly alter forever the character of the

community and transform Patrick Farm, which is currently mostly undeveloped land, into a gigantic, sprawling and super-densely-packed subdivision with nearly five hundred homes, over four hundred of which would be multi-family buildings. These homes would lie along a number of winding roads with steep grades.

2. In approving the Subdivision, the Planning Board abdicated its responsibilities under both the Town Law and the State Environmental Quality Review Act (“SEQRA”), set out in Article Eight of the Environmental Conservation Law and its implementing regulations. Among other deficiencies, the Planning Board erroneously found that a supplemental Environmental Impact Statement (“EIS”) was not required. Instead, the Planning Board ignored evidence before it that a supplemental EIS was necessary. Moreover, the Planning Board failed to address a number of defects in the Subdivision application, including defects identified and described by municipal departments, among other things. In short, the Decision was arbitrary and capricious and should be reversed pursuant to Article 78 of the Civil Practice Law and Rules.

3. The Decision was unlawful for the additional reason that the subject property constitutes public lands of the Town of Clarkstown, which alienated the property to Respondent-Defendant Scenic Development, LLC, without approval of the State Legislature. Accordingly, the underlying conveyance of the property, as well as the Subdivision approval, is null and void.

PARTIES

4. Petitioner-Plaintiff Lena Bodin resides at, and owns the property at, 40 Scenic Dr, Suffern New York 10901, tax lot number 32.14-2-4, in the Town of Ramapo, County of Rockland.

5. Petitioner-Plaintiff Lynda Gellis resides at, and owns the property at, 623 Route 306, Pomona, New York 10901, tax lot number 32-11-1-8-0-0, in the Town of Ramapo, County of Rockland.

6. Petitioner-Plaintiff Laurie Gessner resides at, and owns the property at, 627 Route 306, Pomona, New York 10901, tax lot number 32-11-1-7, in the Town of Ramapo, County of Rockland.

7. Petitioner-Plaintiff Nancy Kent resides at, and owns the property at, 30 Scenic Drive, Suffern, New York 10901, tax lot number 32.15-2-5, in the Town of Ramapo, County of Rockland.

8. Petitioners-Plaintiffs Gerard Picaso and Barbara Picaso reside at, and own the property at, 16 Hidden Valley Drive, Suffern, New York 10901, tax lot 32.15-1-47, in the Town of Ramapo, County of Rockland.

9. Petitioner-Plaintiff John Porta resides at, and owns the property at, 19 Hidden Valley Drive, Pomona, New York 10901, tax lot number 32.15-1-51, in the Town of Ramapo, County of Rockland.

10. Petitioners-Plaintiffs Jordan Rudes and Nancy Danielle Rudes reside at, and own the property at, 60 Saw Mill Road, New City, New York 10956, in the Town of Clarkstown, County of Rockland, and have done so since 1989.

11. Petitioner-Plaintiff Sheryl Santi Luks resides at, and owns the property at, 641 Route 306, Pomona, New York 10901, tax lot 32-11-1-5-0-0, in the Town of Ramapo, County of Rockland.

12. Petitioners-Plaintiffs Robert Solomon and Sandra Solomon reside at, and own the property at, 28 Scenic Drive, Suffern, New York 10901, tax lot number 32-15-2-6-0-0, in the Town of Ramapo, County of Rockland. They have owned the property since 1989.

13. Petitioners-Plaintiffs John and Edith Thornburg reside at, and own the property at, 13 Hidden Valley Drive, Pomona, New York 10901, tax lot number 32.15-1-2, in the Town of Ramapo, County of Rockland.

14. Petitioner-Plaintiff Anne Williams resides at, and own the property at, 1 Cottage Lane, Suffern, New York 10901, tax lot number 32.07-1-28-0-0, in the Town of Ramapo, County of Rockland.

15. Respondent-Defendant Town of Ramapo, New York is an incorporated town and municipal corporation of the State of New York and is located in the County of Rockland, State of New York.

16. Respondent-Defendant Planning Board of the Town of Ramapo (“Planning Board”) is an appointed board governing planning for the Town of Ramapo, New York.

17. Respondent-Defendant Town of Clarkstown, New York is an incorporated town and municipal corporation of the State of New York and is located in the County of Rockland, State of New York.

18. Upon information and belief, Respondent-Defendant Scenic Development, LLC (“Scenic”) is a limited liability corporation organized under the laws of the State of New York, having offices at 404 East Route 59, Nanuet, New York 10954 and 3 Ashel Lane, Monsey, New York 10952 and is the owner of a number of parcels in the Town of Ramapo, including the parcels comprising Patrick Farm, as described herein.

FACTUAL BACKGROUND

A. The Town of Clarkstown's Acquisition and Sale of the Patrick Farm Property

19. On or about August 7, 1996, the Town of Clarkstown adopted resolutions authorizing the acquisition of the Patrick Farm “and the construction of a Town golf course facility thereon.” (Copies of Resolutions 685-1996, 686A-1996 are attached as Exhibit A, hereto.) Indeed, a condition of the Contract of Sale to Clarkstown, dated September 3, 1996, was a preliminary plan demonstrating development of the property as a golf course. (A copy of the contract of sale is attached as Exhibit B, hereto.)

20. The Town of Clarkstown acquired Patrick Farm for a public purpose, namely, use as a public golf course.

21. Over the succeeding five years, the Town of Clarkstown processed a site plan before the Town of Ramapo Planning Board to obtain necessary approvals for the proposed municipal public golf course. (A copy of a September 6, 1996 Journal News article is attached as Exhibit C, hereto.)

22. The Town Board of Clarkstown, for example, voted to obtain funding and accept donations, (Resolutions 1146-1996, 764-1997), to retain and pay significant sums to surveyors, engineers, planners in the development of the public golf course (Resolutions 1087-1996, 30-1997, 31-1997), and to purchase additional property adjacent to Patrick Farm for the Town of Clarkstown Golf Course (Resolutions 897-1997, 898-1997). (Copies of Resolutions 1146-1996, 764-1997, 1087-1996, 30-1997, 31-1997, 897-1997, 898-1997 are attached as Exhibit D, hereto.)

23. On or about June 17, 2001, however, the Town of Clarkstown authorized the sale of Patrick Farm to Scenic Properties, LLC, a private developer, for \$7,050,000.00, without its

having obtained the required authorization of the New York State Legislature for alienation of public land. (A copy of Resolution 549-2001 is attached as Exhibit E, hereto.)

24. The Town of Clarkstown thereafter entered into a contract of sale dated July 2, 2001. (A copy of the Contract of Sale is attached as Exhibit F, hereto.) The deed conveying the property pursuant to the contract was recorded on November 16, 2001.

25. At no time has the Town of Clarkstown obtained any permission, consent or authorization from the New York State Legislature permitting such sale.

B. Scenic's Application and the Environmental Impact Statement

26. In or around 2008, Scenic assembled a plan to develop Patrick Farm. The development would consist of approximately 208.5 acres. Scenic proposed a development of Patrick Farm into 497 housing units, consisting of 314 townhouses, 72 condominium units, 24 rental apartments and 87 single family homes. The development is intended for the north-central area of the Town of Ramapo.

27. On or about May 5, 2008, Scenic submitted an application to the Town of Ramapo in connection with its proposed development of Patrick Farm. Specifically, Scenic sought relief to further its plan to develop a significant portion of the property as multi-family housing. These included (a) a change of the zoning designation from R-40 to MR-8 zoning for certain lots totaling approximately 61.3 acres of certain areas of Patrick Farm; and (b) an amendment of the town's Comprehensive Plan to provide that the portion of the property subject to the new MR-8 zoning designation would be suitable for multi-family development.

28. The Town Board adopted a Final Scoping Document pursuant to SEQRA on or about June 26, 2008.

29. A Draft Environmental Impact Statement (“DEIS”) for the proposed zoning change was prepared and was accepted on April 29, 2009 by the Town Board. Public hearings on the DEIS were held on June 4 and 8, 2009, and written comments were accepted until July 23, 2009.

30. On or about July 24, 2009, the Rockland County Planning Department issued its General Municipal Law Review (“GML”) on the amendments to the Ramapo Comprehensive Plan and Zoning Map, which raised multiple and significant objections to the proposed amendment to the Comprehensive Plan.

31. On or about January 2, 2010, by resolution No 2010-56, the Town Board accepted as complete the Final Environmental Impact Statement (“FEIS”) for the zone change. The FEIS did not encompass the amendment to the Comprehensive Plan, among other things.

32. On or about January 25, 2010, the Town Board (a) adopted the written Findings Statement with respect to the proposed zone change; (b) amended the Comprehensive Plan to change 61 acres of the Patrick Farm from R-40 to MR-8 and overrode the General Municipal Law review dated July 24, 2009; and (c) granted Scenic’s petition to amend the Town Zoning Map subject to certain conditions, and it enacted said amendment as Local Law 1-2010. (Copies of Resolutions 2010-98, 2010-99 and 2010-100 are attached as Exhibit G, hereto. A copy of the Findings Statement is attached as Exhibit H, hereto.).

C. The Subdivision Application and Review

33. With the zoning changes necessary for the intended multi-family development complete, Scenic proceeded with its application for preliminary subdivision approval. On or about March 26, 2010, Scenic submitted applications to the Town of Ramapo Planning Board for

(a) sketch plat approval for a proposed 89-lot subdivision; (b) a site plan approval for a proposed 24-unit rental housing development; and (c) a site plan approval for a proposed 314-unit townhouse development.

34. The Planning Board held hearings on Scenic's application on or about September 7, October 25 and November 29, 2010.

35. The Planning Board approved Scenic's application for preliminary subdivision and rendered the Decision on January 6, 2011. (A copy of the Decision is attached as Exhibit I, hereto.) (Petitioners-Plaintiffs have added page numbers to the Decision for purposes of reference.)

36. The Town Law, the applicable Town Code, the Town's Aquifer Law (Local Law 8-2004), the Town's Comprehensive Plan and other statutes and regulations impose a number of requirements upon a planning board in the review and approval of subdivision applications, including, among others, that any subdivision approval be supported by a rational basis and substantial evidence and that a planning board comply with the provisions of SEQRA.

37. In rendering the Decision, the Planning Board failed to fulfill its fundamental duties under the Town Law and SEQRA, and other laws, rules and regulations.

1. Failure to Comply with SEQRA

38. The Planning Board failed to comply with SEQRA. Once a FEIS has been prepared, a supplemental EIS is required to address significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from (a) changes proposed for the project; (b) newly discovered information; or (c) a change in circumstances related to the project. (6 NYCRR § 617.9(a)(7)(i)(a)-(c).) In that instance, a lead agency must be re-established for the

preparation of a supplemental EIS. (6 NYCRR § 617.6(b)(6).)

39. Here, the Planning Board simply rubber-stamped the Town Board's year-old January 25, 2010 adoption of the Statement of Findings and found, erroneously, that the Subdivision plans before it "are substantially identical to those upon which the Town Board's SEQRA Findings were based and that no new significant environmental issues were raised herein[.]" (Exhibit I at 6 [first and second whereas clauses].)

40. In fact, the Planning Board had before it ample evidence of changes in the proposed project, newly-discovered information and changes in circumstances, including the identification of new significant environmental issues, that required the preparation of a supplemental EIS.

2. Failure to Consider Impact on the Aquifer and Water Quality

41. One issue that the Planning Board overlooked was the impact of the Development on the Ramapo Aquifer and, in particular, the impact upon water quality. The Planning Board ignored evidence that the Subdivision plans failed to comply with the mitigation measures described in the EIS, and it failed to consider new evidence concerning the adverse impact of the Subdivision and the inadequacy of the proposed mitigation measures upon water quality.

42. The Ramapo Aquifer is one of a small number of Primary Water Supply Aquifers in New York State. The aquifer serves over one million persons, including residents of the Town of Ramapo, and it is a sole source aquifer federally protected and serving the residents of New Jersey.

43. In the Decision, the Planning Board acknowledged that "[t]he site is located over the sole source Ramapo Aquifer and as such has been designated in the Town of Ramapo Zoning

Code as a conservation area in which should land uses should be served [sic] by municipal water and sewer to protect the aquifer, as is proposed in this project.”

44. The Planning Board accepted the groundwater mitigation measures that Scenic proposed. The Decision acknowledged that the stormwater management plan was “[i]ntegral to the project[.]” (Exhibit I at 2.) The proposed plan includes ten stormwater basins and four recharge basins that would purportedly handle any stormwater runoff.

45. The Planning Board found that the Subdivision “would not have adverse impacts on surface water and that rooftop runoff would recharge the aquifer located in the vicinity of the property to simulate the aquifer recharge capability of the site similar to undeveloped conditions.” (Exhibit I at 7 [Findings ¶ 1].) In reaching this finding, the Planning Board relied solely upon the testimony of, and materials submitted by, a consultant for Scenic. (Id.)

46. The Planning Board ignored evidence in the record concerning inadequacies in the groundwater mitigation provisions in the sketch plan. In particular, it failed to address the effect of the proposed mitigation measures on water quality.

47. For example, comments submitted by Planit Main Street, Inc. (“Planit Main Street”) verbally on November 29, 2010 and in writing on December 2, 2010 specifically address the issue of water quality. (A copy of the Planit Main Street submission is attached as Exhibit J, hereto.) Planit Main Street cited the apparent inability of the proposed Patrick Farm Groundwater Recharge System to address adequately the quality of the groundwater to be infiltrated into the Ramapo Aquifer. (Exhibit J at 2.)

48. Planit Main Street raised two additional defects with regard to the proposed mitigation measures. First, it noted that the large number of retention basins being proposed

along New York State Route 202 was inconsistent with Scenic's assertion that the proposed infiltration mimics the natural water cycle. Second, it noted the impact of the proposed retention basins upon water quality, citing the proximity of the basins to Route 202. It also raised specific questions on both issues.

49. Nowhere in the Decision did the Planning Board consider and assess the impact of the proposed mitigation measures on water quality. Moreover, the Planning Board failed to consider and address either of Planit Main Street's comments and questions relating to the proposed mitigation measures and the impact upon water quality. In particular, the Planning Board failed to consider and assess the proximity of the proposed retention basins to Route 202 (and the likelihood of runoff from the highway) and the possible impact upon water quality.

50. Moreover, the Planning Board failed to ensure compliance with laws and regulations pertaining to water sources and aquifers, including, but not limited to, Local Law 8-2004, in that the Subdivision plan provides for, among other things, untreated stormwater lagoons and seepage and run-off of fertilizers, pesticides and salts.

51. All of these facts established the need for a supplemental EIS to consider the impact on the aquifer and water quality.

52. The Planning Board's Decision finding that no supplemental EIS was necessary was therefore arbitrary and capricious.

3. Deficient Wetlands Certification

53. Similarly, the Planning Board overlooked evidence presented as to the impact of the Subdivision upon wetlands, most critically by failing to require Scenic to submit an updated wetlands map.

54. In a memorandum dated July 12, 2010, the Town of Ramapo Department of Public Works ("DPW") reviewed the plan prepared by Leonard Jackson Associates ("LJA"), last revised on May 24, 2010. (A copy of the July 12, 2010 DPW memorandum is attached as Exhibit K, hereto.) Among many comments, DPW stated that the wetlands certification relied upon in the plan was certified in June 2005 and that a new certified delineation was necessary.

55. Amplifying its concerns, DPW stated that a site visit revealed the presence of wetlands that were not reflected on the existing wetlands delineation:

During a site visit, the presence of wetlands was apparent which are not shown on the plan. A wetlands specialist should be sent out for a current delineation. A wetlands delineation map should be created showing flagged points. This will then have to be certified by the appropriate agencies. More specifically, one of the larger areas that appears to have been missed is partially shown on the NWI map provided within the DEIS and on the town's NWI Thiells, NY map which shows it to be a PFOIE wetland. (Exhibit K at 11.)

56. In an August 12, 2010 response (attached, without attachments, as Exhibit L, hereto), LJA asserted that it had obtained a current delineation validated by the DEC on November 13, 2009 and valid for ten years. (Exhibit L at 11.) While that delineation is signed by a DEC representative and dated November 13, 2009, the delineation validates a delineation conducted on November 18, 2003. (A copy of the November 13, 2009 delineation is attached with Exhibit L, hereto.) The record is devoid of any evidence that the November 13, 2009 delineation captures the wetlands to which DPW referred in its July 12, 2010 memorandum.

57. The record is devoid of any other evidence addressing the lack of a current delineation or DPW's stated concern that the plans failed to take into account wetlands that had been revealed in a site visit.

58. Notwithstanding these defects and this complete lack of evidence, the Planning Board approved the Application. Nowhere in the Decision did the Planning Board address the issues raised by DPW with regard to the lack of any current wetlands delineation.

4. Inadequate Tree Mapping and Survey

59. The Decision acknowledged that the only tree mapping or survey that Scenic provided was a “sample tree survey.” This sample survey was conducted only “within the zone change area,” from which approximately 100 trees were to be harvested.

60. This sample, touching upon a mere one acre, addressed less than .5% of the acreage of the proposed Subdivision. The Decision, moreover, acknowledged that 60% of the zone change area alone (which, as noted above, represents approximately 61.3 acres) is wooded.

61. Moreover, while referring to the sample tree survey, the Decision fails to address the substance of the survey at all. It makes no assessment as to the impact of the extensive tree removal from the site. The Decision simply makes three unrelated, abstract statements. First, it states, “Tree protection measures would be implemented to save trees that exist near the limits of disturbance on the boundaries of the development.” It provides no explanation of these measures and, in the absence of any comprehensive tree survey, it provides no assessment of the adequacy of these measures. Second, it states, “It is estimated that 68.1 acres of existing forest will be preserved.” It provides no assessment of the adequacy of these measures.

62. Third, the Decision states, “as illustrated on the Conceptual Landscape Plan, the site will be extensively re-landscaped as part of this project.” At most, the Decision states that with regard to the one acre that was reviewed as part of the sample tree, “the proposed Landscape Plan indicates more than 50 trees will be replanted in the same area.” The Decision,

however, does not address the adequacy of these measures.

63. The Decision's failure in this regard is manifest from the record. A July 19, 2010 report prepared by Frederick P. Clark Associates, Inc. ("Clark") for Alan Simon, Director of Planning and Zoning Administration for the Town of Ramapo, provides a number of comments on the Subdivision plans. (A copy of the July 19, 2010 Clark memorandum is attached as Exhibit M, hereto.) The Clark memorandum notes that "the tree survey provided is just a list and does not depict the actual location of the trees." (Exhibit M at 1.) It requests that a map with tree locations be provided "so that comments on impacts can be fully determined." (*Id.*) The Clark memorandum confirms that the tree survey that Scenic provided was inadequate to assess the environmental impact of the Subdivision.

5. Vague and Indefinite Conditions

64. The Planning Board approved the application for preliminary subdivision approval subject to a number of material and significant conditions, several of which, individually and together, are unlawfully vague and indefinite. For example, one condition merely states, "[a]ppropriate safeguards to mitigate to location of dwellings to gas pipeline." Another condition states, "Compliance with requirements of Columbia Gas." These are the specific conditions upon which the grant of approval was based.

65. With regard to Columbia Gas, the Decision merely states, "The proposed project plans have been forwarded to the Columbia Gas Company for review and any final approval will comply with all of their requirements. Further, despite testimony at the public hearings, there are no federal or state regulations regarding construction in the vicinity of a gas pipeline, which as of yet have not been adopted. The project complies with all applicable Town provisions." (Exhibit

I at 7 [Finding No. 6].)

66. The Decision thus is entirely hinged upon the admitted lack of information and uncertainty as the consent of Columbia Gas to the proposed placement of gas pipelines and that the Subdivision plans will be significantly and materially altered based upon the requirements of Columbia Gas.

67. This not only manifests incredibly poor planning, but also the fact that the Decision is based upon conditions which are admittedly unknown.

68. The record only underscores the impermissible vagueness and uncertainty of the Columbia Gas approvals, if any. For example, the October 29, 2010 letter from Columbia Gas outlines eight pages of specific comments and objections to the proposed pipeline placement on a lot-by-lot basis. Columbia Gas proceeds to outline comments and objections to the proposed placement over road crossings, and noting that it was “unable to comment on the associated utilities to be installed with the road as no further information has been provided in regards to sizes, materials, [and] depths in relationship to the existing pipeline[.]” (A copy of the October 29, 2010 Columbia Gas letter is attached as Exhibit N, hereto.)

69. Most notably, Columbia Gas concludes its October 29 letter by outlining global deficiencies in the information supplied by Scenic and stating that approvals would not be granted until the open issues are resolved:

In addition to the specific items detailed above, we have a number of universal concerns: grading, blasting, landscaping, pavement, utility and equipment crossings. Because very little information was provided regarding Columbia’s pipeline relationship to the proposed utility, driveway, and road crossings, we cannot address those issues. Please bear in mind until all objections have been resolved, Columbia will authorize **no** work within our right of way. (Exhibit M, attachment 2 at 12) (emphasis in original).

70. LJA's response to the Columbia Gas letter is set out in its November 22, 2010 Responses to Comments from October 25, 2010 Public Hearing. (A copy of the November 22, 2010 Responses, without attachments, is attached as Exhibit O, hereto.) LJA's response inaccurately characterizes the Columbia Gas objections as "relatively minor" and fails to address the lack of information cited by Columbia Gas. The LJA response merely states, "The Applicant will comply with all of Columbia's comments." (Exhibit O at 2.) The result is tantamount to the Planning Board's wholesale abdication of its powers to review, determine, and approve a subdivision in all respects compliant with the law.

71. In the face of the objections by Columbia Gas and its stated concerns about the lack of information provided to it, the Planning Board's approval subject to the stated conditions with regard to the pipelines was unlawful and impermissibly vague.

72. These defects are two-fold. First, they establish the Planning Board's failure to fulfill its SEQRA obligation. Second, they undermine the merits of the Decision. In the face of the defective nature of the conditions devoid of the required description of the objective elements of the Subdivision plan being approved, the Decision was arbitrary and capricious. The conditions are so vague as to render the Planning Board's approval a nullity.

6. Failure to Consider the Impact upon the Viewshed

73. The Planning Board also erred in that it approved the Subdivision without consideration of the impact of the Subdivision upon the viewshed and, in particular, the manner in which the Subdivision plan diverged from what was set out in the FEIS and the Statement of Findings.

74. Planit Main Street, in its report, specifically noted this issue. Among its observations on the issue, it noted that Statement of Findings provided that after construction, the view “would be effectively screened by the undisturbed vegetated area of the project perimeter and by the location of single-family homes along the perimeter of the project site.” (Exhibit J at 4) (quoting from Findings Statement at 22.)

75. Planit Main Street further noted that, in contradiction to this finding, the Subdivision plan called for the removal of 1,080 linear feet of a vegetative buffer, the effect of which would be to “open up views of proposed single-family homes and the entire multi-family condominium complex from NYS Route 202.” (Exhibit J at 4.)

76. Notwithstanding this and other inconsistencies between the Subdivision Plan and the Statement of Findings, the Planning Board failed to request a supplemental EIS or to otherwise consider the impact upon the viewshed.

77. The Planning Board also erred in that the Subdivision plan as approved diverged from FEIS and the Statement of Findings with regard to the preservation visual attributes, including, but not limited to, ridge lines within the proposed development area.

78. In an October 20, 2010 letter, the Palisades Interstate Park Commission (“Commission”) stated that the ridge lines are “highly visible from overlooks along the Suffern-Bear Mountain Trail within Harriman State Park” and that its concerns about the impact upon the ridge lines were addressed in the FEIS. (A copy of the Commission’s October 20, 2010 letter is attached as Exhibit P, hereto.)

79. The Commission continued, however, that “[n]ow that the applicant has moved into the preliminary approval process, we have noted that significant clearing and grading will be

required to develop along the steep slopes of these ridge areas.” The Commission added that “[t]his is a significant digression from the design ideals described in the FEIS[,]” and it requested that Scenic revise the Subdivision plan to conform to those ideals.

80. The Planning Board’s approval of the Subdivision failed to address these concerns by the Commission, including the need for a supplemental EIS.

7. Failure to Ensure Good and Proper Use of the Land

81. The Planning Board also erred in that it approved the Subdivision without consideration of the impact of the Subdivision upon the real property and, in particular, the manner in which the Subdivision plan diverged from what was set out in the FEIS and the Statement of Findings.

82. The Planit Main Street also made observations concerning this issue. Among those observations, it noted how the Subdivision plan, in contradiction to the FEIS and the Statement of Findings, provided for the layout of condominiums close to Old Haverstraw Road, together with substantial clearing that would render the buildings visible to the visible from the road. (Exhibit J at 4.)

83. Notwithstanding this and other inconsistencies between the Subdivision Plan and the Statement of Findings, the Planning Board failed to request a supplemental EIS or to otherwise consider the failure of the Subdivision plan to make good use of the land.

8. Failure to Comply with Subdivision Laws and Regulations

84. The Planning Board also erred in that the Subdivision plat as approved did not comply with applicable laws and regulations with respect to subdivision approval, including, but not limited to, those laws and regulations setting out ‘bulk’ and other requirements.

85. No previous application has been made to this or any Court for the relief request herein.

AS AND FOR A FIRST CLAIM
(Article 78 - Non-Compliance with SEQRA)

86. Petitioners – Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 85, above, as if fully set forth herein.

87. Respondents failed to fulfill their obligations under SEQRA, including, but not limited to, by making an erroneous finding that a supplemental EIS was not required.

88. As such, Respondents’ approval of the Decision was arbitrary, capricious, not supported by substantial evidence, without a rational basis, an abuse of discretion, made in violation of lawful procedure, affected by error of law, and in excess of jurisdiction.

89. Pursuant to Section 282 of the Town Law and Article 78 of the Civil Practice Law and Rules, the Decision should be declared vacated and declared null and void.

AS AND FOR A SECOND CLAIM
(Article 78 - Non-Compliance with Town Law)

90. Petitioners – Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 85, above, as if fully set forth herein.

91. Respondents failed to fulfill their obligations under Town Law § 276 in rendering the Decision.

92. As such, Respondents’ approval of the Decision was arbitrary, capricious, not supported by substantial evidence, without a rational basis, an abuse of discretion, made in violation of lawful procedure, affected by error of law, and in excess of jurisdiction.

93. Pursuant to Section 282 of the Town Law and Article 78 of the Civil Practice Law and Rules, the Decision should be declared vacated and declared null and void.

AS AND FOR A THIRD CLAIM
(Preliminary Injunction)

94. Petitioners – Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 85, above, as if fully set forth herein.

95. Petitioners – Plaintiffs face immediate harm that is irreparable and cannot be remedied through money damages, as a result of the Decision.

96. Petitioners – Plaintiffs present meritorious claims for the requested relief.

97. The balance of equities heavily favors Petitioners – Plaintiffs.

98. Injunctive relief barring any work on the proposed Subdivision pursuant to the Decision is appropriate.

AS AND FOR A FOURTH CLAIM
(Declaratory Judgment)

99. Petitioners – Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 85, above, as if fully set forth herein.

100. Following the acquisition of the Patrick Farm parcels by the Town of Clarkstown, the property constituted parklands held in public trust.

101. Such parklands could not be alienated in the absence of approval of the New York State Legislature.

102. The Town of Clarkstown, however, alienated the parklands without the approval of the New York State Legislature.

103. Such alienation was illegal and is null and void.

WHEREFORE, Petitioners-Plaintiffs pray that the Court

- (1) On their First Claim, vacate the Decision and declare it null and void;
- (2) On their Second Claim, vacate the Decision and declare it null and void;
- (3) On their Third Claim, issue a preliminary injunction;
- (4) On their Fourth Claim, issue a declaration declaring the alienation of the Patrick Farm property by the Town of Clarkstown to be unlawful, null and void;
- (5) Costs and disbursements; and
- (6) Such other and further relief as the Court deems just and proper.

Dated: February ^{3rd}, 2011.
Albany, New York.

TABNER, RYAN AND KENIRY, LLP



William J. Keniry

Attorneys for Petitioners-Plaintiffs

18 Corporate Woods Boulevard, Suite 8

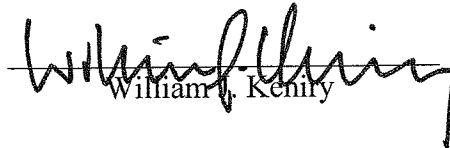
Albany, New York 12211

(518) 465-9500

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

William J. Keniry, being duly sworn, deposes and states that deponent is a member of the law firm of Tabner, Ryan and Keniry, LLP, the attorneys of record for the Plaintiffs; that deponent has read the foregoing Verified Petition-Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. This verification is made by your deponent and not by the Plaintiffs inasmuch as the Plaintiffs are not presently located within the County in which your deponent maintains an office, and such verification is based upon investigations, review of documents, conversations with the Plaintiffs and a review of the law office file, among other things.


William J. Keniry

Sworn to before this
3rd day of February, 2011.



Notary Public-State of New York

APRIL L. SCHMICK
Notary Public, State of New York
Qualified in Saratoga County
No. 01SC6020312
Commission Expires March 1, 2011