

Civics, Village sue Gyrodyne, town

Litigation alleges deficiencies with SEQRA analysis

By David Ambro

Alleging the State Environmental Quality Review Act (SEQRA) was not properly complied with, a lawsuit was filed in New York State Supreme Court Tuesday, April 26 seeking to overturn a March 30 Smithtown Planning Board decision to grant preliminary approval to the Gyrodyne industrial subdivision application.

The lawsuit alleges that the adequate SEQRA review was not undertaken because of a bias on the part of Smithtown town officials who favor the Gyrodyne development.

Gyrodyne has applied to the Town of Smithtown to subdivide 75-acres of land it owns at the southeast corner of North Country Road (Route 25A) and Mills Pond Road in St. James. It is an application that has engendered intense community opposition. The St. James-Head of the Harbor Neighborhood Preservation Coalition was formed two years ago to fight the project. Its spokeswoman is Head of the Harbor Village Trustee Judy Ogden.

The Head of the Harbor Village Board voted 4-1 Wednesday, April 20 to join the coalition in the impending lawsuit. The lawsuit filed Tuesday includes, as the petitioners 23 St. James residents, the coalition, and Head of the Harbor Village, who are represented by E. Christopher Murray of the Uniondale law firm Ruskin Moscou Faltischek, P.C. Named in the suit are the Town of Smithtown, its Planning Board and all of its members, and Gyrodyne.

The Gyrodyne subdivision application was first filed in 2016. It seeks approval to create eight lots for a hotel, assisted living facilities, medical office buildings and a sewage treatment plant. Upon initial review, the Planning Board issued a SEQRA positive declaration, which required that an environmental impact statement (EIS) be undertaken. At its March 20, 2022 meeting, the Planning Board approved the findings statement to accept and conclude the EIS process and then granted preliminary approval of the subdivision application.

In the lawsuit filed Tuesday, the petitioners allege that the EIS “utterly fails” to comply with SEQRA and that the subdivision allows the “shoehorning” of a massive commercial development into the residential neighborhood. “The Planning Board gave its approval without debate, although numerous residents, as well as the supervisor of the Town of Brookhaven [Edward Romaine] and Mayor of the Village of Head of the Harbor [Douglas Dahlgard] expressed opposition to the project,” the lawsuit says.

The lawsuit alleges that the most serious deficiencies in the SEQRA

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TO COURT: Attorney E. Christopher Murray (left) during a press conference at the corner of Mills Pond Road and Route 25A in St. James Tuesday, April 26, where it was announced that the Village of Head of the Harbor, the St. James-Head of the Harbor Neighborhood Preservation Coalition and a group of concerned residents have filed a lawsuit against Gyrodyne, the Town of Smithtown and its Planning Board.

Exploring alternative of Lake Ave. sewer

By David Ambro

During a press conference at the Gyrodyne site in St. James Tuesday, April 26, Head of the Harbor Trustee Judith Ogden disclosed that the Town of Smithtown is exploring alternative options to connect the sewer line on Lake Avenue.

She declined to share details, however government sources have said that the town and Suffolk County are investigating the possibility of connecting the Lake Avenue sewer line to the sewage treatment plant in the Fairfield development to the south.

“The sewage treatment plant was a reason the town was using to explain why there was value in this development. Actually, there are other options and they are being pursued as we speak,” Ms. Ogden said. “We don’t need to have a sewage treatment plant here in order to take care of Lake Avenue when a sewer district is created and the good news is that other options are being explored and it looks like they are going to be very viable ones as well. It’s been talked about a lot.”

Ms. Ogden said the options can’t be disclosed yet but repeated that they are being reviewed and looked at.

As part of its plan for subdivision and development of the 75-acre Gyrodyne property on the southeast corner of North Country Road (Route 25A) and Mills Pond Road, an 87,591-gallon-per-day sewage treatment has been approved by the Smithtown Planning Board. Anticipating approval of the sewage treatment plant at Gyrodyne, in 2020 the town spent \$3.9 million to install a sewer main along Lake Avenue from Patrick’s Way to Moriches Road.

If the sewer main is to be connected to the Gyrodyne sewer treatment plant, the capacity will have to be increased by 79,000 gallons per day, to a total of 116,600 gallons per day. While Gyrodyne officials have

expressed support for connecting the Lake Avenue main to the sewer plant, it was not part of the environmental impact statement (EIS) required to comply with the State Environmental Quality Review Act (SEQRA) and it was not included in the approval granted by the Suffolk County Sewer Agency.

According to sources familiar with the situation, there is an expectation that connecting the buildings on Lake Avenue to the sewer main will result in revitalization of downtown St. James by allowing both second and third story apartments and expanded density of ground-floor business use. Sources have said that town officials have grown impatient and even uncertain about the prospect of connecting Lake Avenue to the Gyrodyne property, which has caused them to look elsewhere.

There has been some talk of building a sewer plant near Middle County Road (Route 25) in Smithtown for downtown Smithtown sewers, but that plan is far into the future and will be costly. The other option has been to connect the Lake Avenue main to the sewer plant at the Fairfield at St. James condominium site on Moriches Road just east of Route 347. There is already a sewer plant on the property which is old and in need of upgrading.

The thought among some government officials is that it can be upgraded and expanded to also treat the capacity from the Lake Avenue main. Town, county and Fairfield representatives have held preliminary discussions about the proposal, according to sources.

Though Ms. Ogden did not disclose the location of the option being explored for the Lake Avenue connection, she shared some clues. “We can’t discuss them yet but they are being reviewed and looked at,” she said. “They will be further towards the center of the Island, further back and possibly partnering with others that already exist.”

Citizen advocates announce lawsuit to ‘save St. James’

By David Ambro

Litigants who filed a lawsuit in New York State Supreme Court this week against the Town of Smithtown and its Planning Board challenging its approval of the Gyrodyne commercial subdivision held a press conference at the 75-acre site Tuesday, April 26 to announce that the litigation had been filed.

There were 16 people at Tuesday’s press conference, some of them litigants, others elected officials and concerned residents. Speakers included St. James resident and attorney Joseph Bollhofer and Head of the Harbor Trustee Judy Ogden, who lives 600 feet from the proposed development site, both founding members of the St. James-Head of the Harbor Neighborhood Preservation Coalition formed two years ago to fight the Gyrodyne development plan. Other speakers were Brookhaven Councilman Jonathan Kornreich, and E. Christopher Murray, the attorney from the Uniondale law firm, Ruskin Moscou Faltichek, PC., who is representing the litigants.

During his remarks, Mr. Murray outlined the allegations in the lawsuit (see related story, left) and said it asks the court to require that a supplemental environmental impact statement (SEIS) be prepared to address alleged deficiencies in the original environmental impact statement (EIS) prepared by Gyrodyne. He said the hope is that additional information that can be gleaned from the SEIS will result in the Planning Board reconsidering its March 30 approval of the Gyrodyne application.

Mr. Murray said the development plan will undoubtedly have an impact on the living environment of the community, yet the Planning Board did not take the “hard look” at that impact, which is required by the New York State Environmental Quality Review Act (SEQRA). “They simply failed to follow the rules required of them,” he said. “They just simply glossed over the potential impact on the people who live around here and the people who live in the Village of Head of the Harbor.”

Mr. Murray also expressed during the press conference Tuesday confidence in the litigation that has been commenced. “I think we are right on the law and I think such an important development needs to be reviewed thoroughly and properly, and that’s why we’re here today.”

Mr. Bollhofer said the decision to file the lawsuit against the Smithtown government was not made lightly. He said that he and the other litigants love the town they live in and that the government has done a good job managing the town, but that the

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Allegations in suit aimed at environmental review

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review is that the impact of the development on the character of the surrounding community is not examined. “Instead, the EIS boldly asserts that the development will be consistent with the existing land use in the area. However, there are no hotels, assisted living facilities, office buildings, sewage treatment plants—or similar structures—in the area,” the lawsuit alleges. “The failure to address this fundamental issue in and of itself means that the respondents failed to undertake the required hard look at the project’s environmental impacts when approving the subdivision and requires the preparation of a supplemental EIS.”

The lawsuit also alleges that Gyrodyne: used outdated data that fails to adequately analyze the traffic impact the development plan will have on the community; failed to examine cumulative impacts of the development in light of other potential projects in the immediate vicinity; failed to consider the impact of development and the sewage treatment plant on nearby Stony Brook Harbor; and did not examine possible detrimental effects on historic structures adjacent to the site, all of which are required by SEQRA.

“Simply put,” the lawsuit says, “because the development was favored by certain officials of the Town of Smithtown, the Planning Board did not fulfill the required environmental review but instead pushed through the approval of the subdivision without any discussion whatsoever.”

The lawsuit alleges that the March 30 approval of the SEQRA findings statement by the Planning Board and preliminary approval of the subdivision was “an abuse of discretion, arbitrary and capricious, violated lawful procedure and was affected by an error of law.” The lawsuit asks that the March 30 decisions of the Planning Board be annulled by the court and that the town be directed to undertake a supplemental EIS to address the deficiencies in the SEQRA review.

“It is unfortunate that this legal action is necessary, but the community has made clear for over a year that if the Smithtown Planning Board were to move forward to approve Gyrodyne’s massive plan based on a defective environmental review, we would have no choice but to challenge their actions in court,” Trustee Ogden said. “We will demand an environmental review that meets the requirements of state law, while continuing our work towards the compromise plan, a common sense solution to the Gyrodyne problem that is in the best interest of both the company and the community.”

The Gyrodyne development plan calls for a three-story hotel, 250 assisted living housing units, 175,000-square-feet of office space, parking for over 2,000 vehicles, and an 87,591-gallon-per-day sewage treatment plant. The town hopes to connect a sewer main on Lake Avenue that was installed for \$3.9 million in 2020 to the Gyrodyne sewer plant, though it would have to be expanded beyond the 87,591-gallon-per-day capacity to accommodate the Lake Avenue main.

“Gyrodyne has been duplicitous in offering to connect the St. James

commercial district and process its sanitary effluent of approximately another 79,000 gallons per day, but not addressing the impact of the connection in the EIS,” the lawsuit alleges. “It is obvious that the groundwater and surface water issues associated with realization of the Gyrodyne project are more complicated than analyzed in the EIS. The protection of Stony Brook Harbor requires a ‘hard look’ and honest analysis of impacts from the proposed sewage treatment plant, and a Supplemental EIS should be required.”

The Coalition alleges that the bulk of development being proposed in the Gyrodyne subdivision will be in the Mills Pond Historic District, which was approved in 1973 by the federal government for inclusion on the National Register of Historic Places. The coalition has proposed a compromise plan that will have development clustered on already

developed sections of the site and preserve open space for public recreational purposes, including hiking and equestrian events.

“The beauty of the Compromise Plan is that it would require relatively minor changes to Gyrodyne’s subdivision proposal but would address many of the community’s most serious concerns, avoiding the possibility of costly litigation that could tie the property up for years,” Ms. Ogden said. “While this lawsuit is necessary to ensure an environmental review that complies with the law, a solution to the Gyrodyne problem is in sight. The Coalition looks forward to working with the Town of Smithtown, the Village of Head of the Harbor, and Gyrodyne to finalize the details of the Compromise Plan that the community can support.”

According to the Coalition, Suffolk County Legislator Robert Trotta (R-Fort Salonga), who represents the district that includes the Gyrodyne

site, neighboring County Legislator Kara Hahn (D-East Setauket), Assemblyman Steve Englebright (D-Stony Brook) and Brookhaven Supervisor Ed Romaine all support the compromise plan.

For more information about the Coalition and the compromise plan visit stjameshohnpc.org.

In the lawsuits conclusion, the petitioners outline the relief they are seeking from the court. “Respondents are attempting to proceed with a massive project with serious environmental impacts without undertaking the required environmental hard look. Such basic steps as considering the impact on the character of the neighborhood and utilizing current traffic data was not done,” it says. “Accordingly, the approval of the Findings Statement and subdivision should be annulled, and respondents directed to undertake a Supplemental EIS to correct the deficiencies set forth above.”

Citizen advocates at site to announce suit

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Gyrodyne approval was a mistake that has to be challenged.

“They’ve made a mistake,” Mr. Bollhofer said. “Unfortunately, they’ve left us with no choice but to commence this litigation.”

He said it is his hope, and that of the litigants and the Coalition, to preserve at least the 42-acres of the site that is currently undeveloped and to come up with a better development plan on the portion of the site that is already developed. He said the preservation plan includes a smaller sewer plant that will be located further from Stony Brook Harbor that is currently being proposed and will, therefore, have less of a negative impact on the water quality in the harbor.

He said the Coalition has been trying to raise money to pay Gyrodyne fair compensation to preserve the open space portion of the property. He said they have undertaken appraisals of the property, though, he declined to disclose the appraised value of the property. “Over the last couple of months it has become our expectation that this is going to become a reality,” he said.

Mr. Bollhofer added, however, that there is a 30-day statute of limitations to file a lawsuit to challenge the Planning Board’s Gyrodyne decision. The Planning Board approved the submission application and State Environmental Quality Review Act (SEQRA) findings March 30, so Mr. Bollhofer said the opponents only have until the end of the month to file litigation in court challenging that decision.

“Keep the faith,” he said.

Ms. Ogden, who refers to the Gyrodyne plan as a proposed “mega development,” said residents have been speaking out for the past two years against the Gyrodyne application, and have been writing letters of opposition to town and county officials. She said the voices of the community have been ignored by government officials.

“The role of government is to

show leadership which represents all the people of the community and to follow a comprehensive plan that steers development in the right direction while preserving and enhancing the nature of our community and natural resources,” Ms. Ogden said. “Sadly, this has not happened here.”

She said the Coalition was formed when it became clear that the voices of the community were not being heard by local government. She said at the March 30 meeting the Planning Board offered no response to the community’s input and had no discussions among themselves about the charges that the plan and environmental review was flawed and deficient. She said the lack of deliberation and deficiencies in the environmental review led to the lawsuit.

“I want the people in our community to know that there are some who hear your concerns. We are fighting the fight. I ask you to join us as we continue to press forward. This is the next step to continue to slow down the process as we continue to engage with private and public officials behind the scenes to find a way to preserve the open space and maintain the character of our community because once it is gone, we can’t get it back,” Ms. Ogden said. “So please join the fight.”

Councilman Kornreich commended the citizen advocates for the work they have done to oppose the Gyrodyne application. He said his district is just on the other side of the Smithtown/Brookhaven town line, adjacent



Judy Ogden discusses the lawsuit at Tuesday’s press conference.

to the Gyrodyne site, and that the development plan is going to have negative impact on the neighboring communities in Brookhaven. He quoted the environmentalist and writer Edward Paul Abbey: “Growth simply for the sake of growth is the ideology of the cancer cell.”

“Living here in the suburbs and seeing unchecked sprawl, it’s time for us to look at a property like this, which has such historical value and environmental and ecological importance, and say enough is enough,” he said. “At what point do we spread this thin veneer of development over every beautiful inch of land that we have in this community?”

Councilman Kornreich said he can’t think of a better site in the area for public acquisition to preserve as open space. “I’ll continue to advocate for that and I’m grateful to all of you for your efforts to protect this property and to protect our community,” he said.