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# The Smithtown News

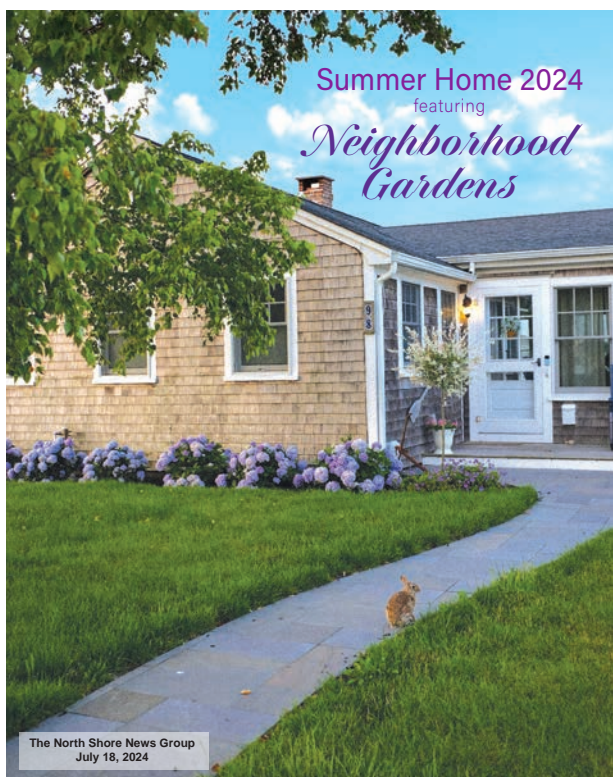
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## INSIDE



**GAME PLAN:** After the Smithtown Town Board meeting Tuesday, July 16, Town Attorney Matthew Jakubowski (left) talks to St. James residents, including St. James-Head of the Harbor Neighborhood Preservation Coalition spokeswoman and Head of the Harbor Trustee Judy Ogden, about the legal strategy related to the lawsuit over the assisted living facility proposed for the historic nine-acre Bull Run Farm property. **See story, page 7.**

-David Ambro photo

# School trustee indemnified, defended

By David Ambro

The Smithtown School Board voted unanimously July 9 to conditionally indemnify Trustee Matthew Gribbin and provide him with legal defense for a petition filed with the New York State Education Department (SED) seeking his removal from his elected office as a school board trustee.

Lame duck trustees Stacy Murphy and Karen Wontrobski-Riccardi served Mr. Gribbin with the petitions for his removal at the last meeting of their three-year term on June 25. They were defeated in the May 21 election by Trustees Dana Fritch and

Emily Cianci, and the June 25 meeting was their last one on the board.

The petition alleges that Mr. Gribbin disclosed discussions in a closed-door executive session about physical education teachers also coaching athletic teams. The incident was the subject of an internal investigation by mediation attorney Philip Maier of Manhattan; his findings and investigative report are available on the school district website, smithtown.k12.ny.us. To access the report go to the "Board of Education" drop-down menu and then to the "Presentations and Reports" and a pdf version of the investigative report and a summary by Mr. Maier is available.

Unsatisfied with the outcome of the internal investigation, Ms. Murphy and Ms. Wontrobski-Riccardi filed petitions with SED for Mr. Gribbin's removal from the board. Ms. Wontrobski-Riccardi served Mr. Gribbin with copies of the petitions at the June 25 meeting.

At the July 9 meeting, the school board approved a retainer agreement with the law firm of Silverman & Associates, LLP, of White Plains, to represent

Mr. Gribbin. According to the resolution approved by the board, Mr. Gribbin requested legal defense from the district in each of the petitions against him. "There are allegations in each legal action that may arise from the performance of the above-referenced board member's duties and responsibilities within the scope of his position on the Board of Education," says the resolution.

The board agreed to defend and indemnify Mr. Gribbin on the condition that Commissioner of Education Dr. Betty Rosa awards a "Certificate of Good Faith" based on her findings related to the petitions. The school board reserves the right to decline the defense provision if Commissioner Rosa finds against Mr. Gribbin.

At the July 9 meeting before the school board voted on the resolution, Mr. Gribbin spoke about the petitions seeking his removal. "This has happened all too often, but looking forward, I am confident and hopeful that this is the last one," he said about the contentious political situation on the previous school board, the term of which ended June 30, and

(Continued on page 12)

# Battle lines debated over Bull Run lawsuit

By David Ambro

A group of St. James residents attended the Smithtown Town Board meeting, Tuesday, July 16, and urged the board to hold the requisite public hearing and deny the application to build a two-story assisted living facility on the historic Bull Run Farm site.

The nine-acre site is on the west side of Mills Pond Road just south of Route 25A in a bucolic section of St. James. The Elderkin family has sold one of the lots on the nine-acre farm and is in contract to sell the other two lots to developer Fran Amicizia of Fort Salonga. Amicizia applied to the town on November 18, 2022 to build a 90-room, 97-bed, two-story, 69,614-square-foot assisted living facility on the site with a 15,000-gallon-per-day sewage treatment plant on the property.

The application engendered intense community opposition. As a result, on April 20, 2023, the Smithtown Town Board changed the town code to prohibit assisted living facilities' residential zoning categories, which include the Bull Run property. The legislation approved by the town board rendered the Amicizia application moot.

On March 13, 2024, Mr. Amicizia's development company, Mills Pond Group,



**THE GOOD FIGHT:** St. James homeowner Michael Sassone (left) speaks opposes to an assisted living facility at Bull Run Farm at the Smithtown Town Board meeting Tuesday, July 16. After the meeting ,Town Attorney Matthew Jakubowski (above) speaks with residents about the town's legal strategy.

and several residents related to the Elderkin family, alleging they have been denied a chance to live in the proposed property, filed a federal lawsuit against the town and several of its officials. The lawsuit alleges that the town

failed to process the pending development application. It seeks court approval of the project and a minimum of \$478,309 in monetary damages.

The St. James/Head of the Harbor Neighborhood

Preservation Coalition, which has led the opposition to the proposed assisted living facility, has opined that it would be in the town's best interest in its defense of the federal lawsuit if it holds a public hearing and

formally denies the Amicizia application.

The town board disagrees with the strategy proposed by the residents and intends to fight a lawsuit in federal court based on its actions thus far.

(Continued on page 9)

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Residents at the July 16 Smithtown town Board meeting to oppose the assisted living facility at Bull Run Farm raise their hands.

# Bull Run Farm litigation strategy debated

(Continued from page 7)

The town contends that it would not be wise to hold a public hearing and deny the application at this late date.

Several St. James residents addressed the town board during the public participation portion of the town board meeting Tuesday.

Robert Rostron, a homeowner on Great Oak Road in St. James near the Bull Run site, said he is among those who feel it would be in the town's best interest to hold the requisite public hearing and deny the Mills Pond assisted living application. He also asked that the town board meet with area residents to discuss the case and the strategy moving forward to make them feel more comfortable about the direction the town is taking.

Mr. Rostron told the town board that he is not opposed to assisted living and that his parents are getting to the age where they might live in such a facility. He added, though, that it has to be constructed in the appropriate place. One of the speakers proposed the vacant AMF Bowling Alley building on Landing Avenue.

Another Great Oak Road homeowner, Steven Ochs,

echoed many of Mr. Rostron's remarks. During his remarks, he asked for a show of hands from the audience to indicate who was there about the assisted living project. More than half of the overflow crowd put their hands up, the other half there to oppose the Kings Park freight train yard (see related story, page 3) or to speak about a variety of unrelated issues.

Michael Sassone told the town board that he lives on Mills Pond Road adjacent to the Bull Run Farm property. He accused the developer of trying to use a legal loophole to manipulate the project through. "I think what gets me the most is the lack of moral fiber and the greed that this builder is presenting to us," said Mr. Sassone. "To allow this is crazy."

Mr. Sassone said the town board had already acted in the community's best interest when the code was changed to prohibit the application. "I just don't know why we have to fight this anymore with this guy," he said.

Mr. Sassone said he has lived in Smithtown all his life. He said development is destroying the town and urged the board to preserve this property.

After the public session, Supervisor Edward Wehrheim said the town board members are unable to comment on the matter because it is in litigation, but he said Town Attorney Matthew Jakubowski would remain available after the meeting to discuss the litigation with the residents.

About a half dozen St. James homeowners huddled around Mr. Jakubowski after the meeting to discuss the federal lawsuit and the town's strategy. He urged the residents to trust him and the town board and that they have done everything in their best interests.

He told this reporter that the session with the residents was off the record. Later, however, he provided **The Smithtown News** with a copy of the town's 16-page July 10 response to the Amicizia federal lawsuit.

According to the town's response, written by Mr. Jakubowski, the town did not discriminate against Mr. Amicizia or Mills Pond because a use variance would have been required for an assisted living facility under the previous town code. "Without any change in the town code, there was then no statutorily compliant pathway

to permit an assisted living facility in any location in the town," says the Jakubowski brief.

According to Mr. Jakubowski, he identified the deficiency in the town code related to assisted living facilities in October 2019, and in August 2020 legislation was drafted to correct the code. He said that because the town was in the process of updating its more than half-century-old master plan, the board decided not to change the code until that work was completed.

In the meantime, Mr. Jakubowski said that given the proliferation of assisted living facilities in the town, the board sought to clarify the code by providing a clear authorization for assisted living facilities, and more clearly, distinguish between adult homes, assisted living facilities, hospitals and nursing homes. "And, in doing so, it became evident during the comprehensive planning review process that the scope and impact of assisted living facilities in residential districts could have a consequent adverse impact on residential neighborhoods, so their unintended treatment as permitted uses in

residential districts needed to be addressed through clarifying legislation," says the Jakubowski brief.

That led the town board to pass legislation in April 2023 prohibiting assisted living facilities in residential zone classification, including Bull Run.

Mr. Jakubowski denies in his brief that the law change is discriminatory to Mr. Amicizia and that he says that it was not adopted based on perceived harm and generalized fears. "Simply put, the law was adopted in accord with New York State law, and there was no exigent adoption as plaintiffs assert," he writes.

He also denies that the town delayed the Amicizia application. "No Town action caused a delay in considering the application or the scheduling of a hearing. All actions taken by the Town were consistent with typical application review timing and pre-submission requirements," the Jakubowski brief says.

"For all of the reasons outlined in the accompanying memorandum of law, this court should deny the plaintiff's motion for a preliminary injunction," concludes the Jakubowski brief.

# Save the Sound opposed to Iroquois Pipeline compressor upgrades

(Continued from page 3)

to Con Ed's portfolio," writes Ms. Roberts to DEC. "Without evaluating the impact of these pending actions and before National Grid has even filed its long-term plan, DPS concludes that the ExC Project is necessary. This conclusion is unwarranted and premature."

"For these reasons, Save the Sound respectfully urges DEC to find that there is no compelling justification for the ExC Project or, at a minimum, to defer a final

finding of justification until more information becomes available. If DEC determines that the ExC Project is justified, Save the Sound urges it to require additional evaluation of mitigation measures, particularly the proposed measure to reduce the Project's 20-year contract term," writes Ms. Roberts in her five-page letter to DEC, a copy of which is available on the Save the Sound website, savethesound.org or email **The Smithtown News** at info@smithtownnews.com.

According to the FERC environmental analysis of the project, the new compressors will provide for the transmission of 62,500 dekatherms per day from Waddington to Con Ed through the spur and 62,500 dekatherms per day through Northport to South Commack for National Grid, which can be used to power the Northport power plant. In an environmental analysis of the project, the FERC staff determined that approval of the project will

not constitute a major federal action significantly affecting the quality of the human environment. It recommends site-specific mitigation measures at the four locations where the compressors are being expanded.

"The proposed project will enable Iroquois to provide up to 125,000 Dth/d of firm transportation service, 100% of the project's capacity, to Con Edison and National Grid, which we find sufficient to demonstrate a need for the project," writes FERC

Chairman Richard Glick in a 52-page March 25, 2022 decision approving the ExC project. "Further, the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and will have minimal impacts on the interests of landowners and surrounding communities. Additionally, as noted above, the project is an environmentally acceptable action."

The four other FERC commissioners concurred.