STATE OF NEW YORK
SUPREME COURT COUNTY OF ORANGE

In the Matter

TUXEDO LAND TRUST, INC, THOMAS WILSON,
MARY F. GRAETZER, ROBERT RENNIE
MCQUILKIN, JR., PETER REGNA,
TORNE VALLEY PRESERVATION ASSOCIATION
AND PATRICIA WOOTERS,

Petitioners-Plaintiffs

For a Judgment Pursuant to Article 78 of the
CPLR and a Declaratory Judgment Pursuant to
Section 3001 of the CPLR

-against-

THE TOWN OF TUXEDO, THE TOWN BOARD OF
THE TOWN OF TUXEDO, THE PLANNING BOARD
OF THE TOWN OF TUXEDO, DAVID MAIKISCH,
AS BUILDING INSPECTOR OF THE TOWN OF
TUXEDO, AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

SUMMONS

Index No.: 2010 013675
RJI No.:

DEC 22 PM 2:14
ORIGINAL FILED
FILED
ORANGE COUNTY CLERK
2010 DEC 22 P 2:08

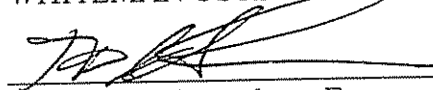
TO THE ABOVE NAMED RESPONDENTS-DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Petitioner/Plaintiff's attorney a response to the verified petition and complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the amended verified petition and complaint.

Venue in this matter has been designated in Orange County, New York because it is located in the judicial district in which Respondents-Defendants rendered the challenged decisions.

DATED: December 22, 2010
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: 
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON, MARY F. GRAETZER, ROBERT RENNIE MCQUILKIN, JR., PETER REGNA, TORNE VALLEY PRESERVATION ASSOCIATION AND PATRICIA WOOTERS,

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Respondents-Defendants.

VERIFIED PETITION AND COMPLAINT

Index No. 2010 013675

RJI No.

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2010 DEC 22 P 2:08

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ORANGE COUNTY
SUPREME & COUNTY COURT
GOSHEN, N.Y.
2010 DEC 22 PM 2:55

Petitioners/Plaintiffs Tuxedo Land Trust, Inc, Thomas Wilson, Mary F. Graetzer, Robert Rennie McQuilkin, Jr., Peter Regna, Torne Valley Preservation Association and Patricia Wooters, (hereinafter referred to as "Petitioners") by and through their undersigned counsel, for their Verified Petition and Complaint allege as follows:

INTRODUCTION

1. This is a combined declaratory judgment action and CPLR Article 78 proceeding seeking to annul determinations by Respondent, Town Board of the Town of Tuxedo, to adopt Local Law #4 of 2010 and Local Law #5 of 2010, and approve the Amended and Restated

Resolution Granting Special Permit and Preliminary Plan Approval to Tuxedo Reserve and the Findings Statement, and to enjoin Respondents from undertaking any further efforts to review or grant approvals or permits with regard to the Tuxedo Reserve project.

2. Respondents' determinations to adopt Local Law #4 of 2010 and Local Law #5 of 2010, and to approve the Amended and Restated Resolution Granting Special Permit and Preliminary Plan Approval to Tuxedo Reserve and the Findings Statement were made in violation of both the procedural and substantive mandates of the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617. A copy of which is attached hereto as Exhibit A.

3. Respondents' determination to adopt Local Law #4 of 2010 and Local Law #5 of 2010, and approve the Amended and Restated Resolution Granting Special Permit and Preliminary Plan Approval to Tuxedo Reserve has also been made in violation of several provisions of the Environmental Conservation Law, Public Officers Law, General Municipal Law, Town Law and Municipal Home Rule Law.

4. Respondents' determination to adopt Local Law #4 of 2010 and Local Law #5 of 2010, and to approve the Amended and Restated Resolution Granting Special Permit and Preliminary Plan Approval to Tuxedo Reserve and the Findings Statement was arbitrary and capricious, illegal and not supported by substantial evidence.

THE PARTIES

5. Petitioner Tuxedo Land Trust, Inc., ("Land Trust") is a not-for-profit corporation duly organized and existing under the laws of the State of New York with a mailing address of P.O. Box 332, Tuxedo, New York. According to its bylaws, the Land Trust was formed for the

purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

6. Petitioner Thomas Wilson is natural person, has been and continues to own property located at 24 Pine Hill Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York, and resides at said premises. Petitioner Wilson is a managing director of the Land Trust. As such, he is a property owner and taxpayer with a family in the Town of Tuxedo residing in close proximity to the proposed development project.

7. Petitioner Mary F. Graetzer is natural person, has been and continues to own property located at 17 Ridge Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York, and resides at said premises. Petitioner Graetzer is a member of the Land Trust. As such, she is a property owner and taxpayer with a family in the Town of Tuxedo residing in close proximity to the proposed development project.

8. Petitioner Robert Rennie McQuilkin, Jr. is natural person, has been and continues to own property located at 82 Circuit Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York, and resides at said premises. Petitioner McQuilkin is a member of the Land Trust. As such, he is a property owner and taxpayer with a family in the Town of Tuxedo residing in close proximity to the proposed development project.

9. Petitioner Peter J. Regna is natural person, has been and continues to own property located at 117 West Lake Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York, and resides at said premises. Petitioner Regna is a contributor to the Land Trust. As such, he is a property owner and taxpayer with a family in the Town of Tuxedo residing in close proximity to the proposed development project.

10. Petitioner Torne Valley Preservation Association ("TVPA") is a not-for-profit corporation duly organized and existing under the laws of the State of New York with a mailing address at P.O. Box 765, Hillburn, New York. According to its bylaws, TVPA exists to raise awareness and advocate for the protection and preservation of the Ramapo Highlands and the Ramapo River Watershed.

11. Petitioner Patricia Wooters is natural person, has been and continues to own property located at 19 Mansfield Place in the Village of Suffern, New York, and resides at said premises. Petitioner Wooters is a member of the Land Trust and TVPA. As such, she is a property owner and organizational member that will be adversely impacted by the proposed development project.

12. Individual Petitioners have standing in this action/proceeding as property owners that are directly and uniquely impacted by Respondents' unlawful determinations to approve the Project in a manner that is unique from other Town of Tuxedo residents. These interests are also within the zone of interests intended to be protected by SEQRA.

13. Upon information and belief, Respondent Town of Tuxedo (the "Town") is a municipal corporation of the State of New York with offices at One Temple Drive, Tuxedo, New York.

14. Upon information and belief, Respondent Town Board of the Town of Tuxedo (the "Town Board") is a board of the Town of Tuxedo, State of New York, duly constituted and existing pursuant to, among other things, the New York State Town Law.

15. Upon information and belief, Respondent Planning Board of the Town of Tuxedo (the "Planning Board") is a board of the Town of Tuxedo duly constituted and existing pursuant to, among other things, Section 271 of the Town Law of the State of New York.

16. Upon information and belief, at all relevant times herein, Respondent David Maikisch Building Inspector of the Town of Tuxedo is an agent of the Town of Tuxedo charged with the responsibility and duty to review building permit applications for compliance with the Tuxedo Town Code (i.e., Zoning Law) and issuance of zoning/building permits.

17. Upon information and belief, Respondent Tuxedo Reserve Owner, LLC ("Reserve Owner" or the "Applicant") is the identified owner and developer of certain parcel or parcels of real property located and known as the Tuxedo Reserve in the Town of Tuxedo (the "Site" or "Project Site") and the Applicant before the Town Board and Planning Board for various land use approvals related to the development of the Project Site (the "Project").

18. Upon information and belief, Reserve Owner states that its headquarters are located at 60 Columbus Circle, New York, New York.

19. The massive 2,339-acre Project Site (defined below) is located within very close proximity of the Petitioners' homes. As a result of Petitioners proximate location to the Project Site, they and their families will bear the direct brunt of the proposed development proposed by Respondent Reserve Owner and will suffer environmental impacts different from those suffered by the public at large should the Reserve Owner Project proceed, including traffic congestion, insufficient water supply, sewer capacity, air pollution, noise and many others. Among other things, the Reserve Owner Project will result in degradation in the level of service at intersections that serve petitioners' property, potentially overload the sewer system that serves Petitioners' property, and a drain on the water supply that serves Petitioners' property to an extent that there will be insufficient pressure and volume for fire suppression and lack of potable drinking water.

BACKGROUND

Summary of Petition

20. This Article 78 proceeding challenges the environmental determinations of the Town Board related to the Reserve Owner Project, which proposes transforming approximately 2339 acres (including land identified for stormwater management and access road purposes located in the Village of Sloatsburg) of pristine forested mountainous land, and located over a sole source aquifer, into 103,000 square feet of commercial space with 30,000 square feet of addition retail shopping area, hundreds of residential buildings and acres of impervious surface area for parking and a new transportation system. The Project also involves the construction of a new sewer treatment system somewhere in the Town.

21. Specifically, Petitioners challenge the Respondent Town Board's procedural and substantive compliance with SEQRA, including the sufficiency of the Draft Supplemental Environmental Impact Statement ("DSEIS"), Final Supplemental Environmental Impact Statement ("FSEIS") and Findings Statement. In addition, Petitioners seek to annul the issuance of an Amended Special Permit, approval of an Amended Preliminary Plan, Zoning Law amendments adopted in furtherance thereof and seeks injunctive relief preventing the Building Inspector and Planning Board from issuing permits and approvals in furtherance of the aforementioned approvals.

22. As alleged more fully in the paragraphs below, the record of the proceedings before the Town Board is marked by grave departures from the lawful requirements of SEQRA and by a rush to a pre-determined finality that compromised the integrity of the environmental review. For reasons only the Town Board can explain, it was willing to accept as complete a DSEIS that lacked or otherwise disregarded involved agency and public comment and input regarding both its

scope and content, and in fact foreclosed such comment, and to defer until some future, unspecified date the development and review of appropriate mitigation measures for acknowledged, serious environmental impacts. These are clear violations of SEQRA.

Project Site

23. The proposed Project Site is situated within the Highlands Preservation Area, an area specifically designated by law as "an area of exceptionally sensitive natural resource value that includes watershed protection and other environmentally sensitive lands where stringent protection policies are to be implemented". Highlands Act 2004, 118 Stat 2375.

24. The goal of the Preservation Area, as set forth in the Highlands Regional Master Plan, is to protect "to the maximum extent possible" contiguous areas of land including forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat. See, Regional Master Plan 2008, p. 37.

25. A biodiversity map prepared by the NYSDEC indicates two areas in New York State possess a uniquely high diversity of plant and animal species. These are the Shawangunk Mountains in Ulster County and the Sterling Forest area in Orange County. The Project Site is considered part of the Sterling Forest biome.

26. New York State has placed a high value on the great biodiversity of this forest, in part using it as the justification for the purchase of more than 17,000 acres to create the Sterling Forest State Park.

27. Two hundred and ninety-six acres on the Project Site exist as unfragmented forest bordering directly on lands of the Sterling Forest State Park.

28. The Project site also lies adjacent and is within the Tuxedo Lake watershed, a Class AA drinking waterbody which supplies drinking water to the Village of Tuxedo Park, encompasses Mountain Lake, a State mapped wetland, and is within the Ramapo River watershed, the site of a federally designated sole source aquifer.

Prior Approvals

29. Upon information and belief, in 2004, the Town Board approved a Special Permit and Preliminary Plan consisting of 1,195 housing units and 266,000 square feet of non-residential use covering 2,376 acres of land (the "2004 Project").

30. Upon information and belief, in 2007, the Town Board approved a modification to the 2004 Project to add 4.8 acres as part of the Site and in 2008 to further change the layout and design of the 2004 Project. Each time, it appears that the Town Board issued a SEQRA negative declaration of environmental significance.

Current Application

31. Upon information and belief, on or about August, 2008, Reserve Owner filed yet another application for the Project in its current format with the Town Board. The 2008 application presented a completely different project than previously considered and approved and amended by the Town Board.

32. The new development scheme for the 2008 Project was as follows:

- Phase 1 – 731 residential units (282 single family units; 252 townhouses and multi-family units and 197 "active" adult units) and the 103,000 square feet retail shopping area;
- Phase 2 – 227 residential units (200 single family units and 27 townhouses
- Phase 3 – 237 residential units (223 single family units and 14 townhouses)

33. The Project thus proposed a total project development significantly different from the 2004 Project, in terms of layout, number and type of proposed housing (single family versus multi-family) and an increase in the amount of "larger retail" development.

34. Phase 1 of the 2008 Project proposed development of the Southern Tract, and for the first time, Reserve Owner proposed development of approximately 32 acres in a natural forested area as part of known as Mountain Lake for the development of single family units, community building, parking lot and associated infrastructure, including the new recreational use of the Mountain Lake with boathouse.

35. The current Project, which is the subject of this challenge, proposed major modifications to the 2004 Project to, among other things, i) allow the Reserve Owner to increase the amount of commercial development to a total of 103,000 square feet in the Southern Tract, ii) alter the type, location and mix of owner-occupied single family homes, multi-family units and active senior housing units in violation of the limits established in the prior approval, and iii) develop 32-acres within a new development area, previously proposed as permanent open space under the 2004 Project .

SEQRA Review of Current Application

A. Improper Environmental Assessment Form

36. The Town's determination to adopt Local Law #4 of 2010 and Local Law #5 of 2010, and approve the Amended and Restated Resolution Granting Special Permit and Preliminary Plan Approval to Tuxedo Reserve are "actions" subject to the requirements of SEQRA.

37. Upon information and belief, the Project is a Type I action.

38. Upon information and belief, the Town Board, acted as the SEQRA lead agency over a coordinated review of the Project.

39. SEQRA requires the use of a full Environmental Assessment Form ("EAF") for the review of Type I actions to determine the significance of potential environmental impacts. 6 NYCRR 617.6(a)(1).

40. The current application lacked the requisite SEQRA full EAF to effectuate the significant changes to the 2004 Project.

41. Upon information and belief, instead of providing the required full EAF, Reserve Owner submitted a "Technical Memorandum" to the Town regarding its changes to the 2004 Project.

42. There is no provision in SEQRA authorizing the substitution of a "Technical Memorandum" for a full EAF to commence the review of potential environmental impacts of a proposed project.

43. SEQRA also requires the reviewing agency to provide copies of the EAF and the application to all involved agencies for their review and consideration and consent to the Town Board acting as Lead Agency. 6 NYCRR § 617.6[b][3][i]. Upon information and belief, the Town Board failed to distribute the EAF and application to other involved agencies, declare its intent to act as SEQRA Lead Agency, or provide any opportunity for the other involved agencies to consider that role.

44. Upon information and belief, it was the Planning Board, not the Town Board that commenced the SEQRA review of the "Technical Memorandum" by conducting "workshops" to determine the significance of the environmental impacts of the Project. The "workshops" were closed sessions where the Planning Board discussed the "Technical Memorandum" with Reserve Owner but other involved agencies and members of the public were never afforded an opportunity to address the Planning Board.

B. Inadequate Scoping

45. Upon information and belief, on April 14, 2009, the Planning Board issued a recommendation to the Town Board to adopt the "Technical Memorandum" including a proposed limited scope for a DSEIS.

46. Upon information and belief, these Planning Board "workshops" resulted in the negotiation of a final scope for a Draft Supplement Environmental Impact Statement ("DSEIS") between the Planning Board and the Applicant without any opportunity for input by other involved agencies or the public.

47. Upon information and belief, on June 22, 2009, the Town Board, , adopted a resolution confirming the Planning Board's deficient recommendation and required Reserve Owner to prepare a DSEIS limited solely to the few environmental topics identified. Without the benefit of any involved agency or public input, the Town Board adopted a limited scope and eliminated several areas of potential adverse environmental impact from further SEQRA review.

48. A determination to forego the formal scoping process under SEQRA may be made only by the lead agency. 6 NYCRR 617.8.

49. When a scope is prepared, the lead agency must follow the procedures set forth in 6 NYCRR 617.8, including an opportunity for involved agency and public input.

C. Improper Determination of Significance

50. Upon information and belief, neither the Town Board nor Planning Board ever prepared, filed or published a SEQRA determination of significance or complied with the formal scoping procedures for the DSEIS.

51. Upon information and belief, the "Technical Memorandum" declared, without documented evidence, that the 2008 Project would not result in significant impacts to threatened or endangered species, air quality, visual, historic or cultural resources, traffic, water and sewer or noise, despite the fact that appropriate studies associated with the new proposed changes to the 2004 Project had not been completed in these areas.

52. The general theme utilized by Reserve Owner as evidence that there would be no significant adverse impacts as a result of the 2008 Project was that, since the number of dwelling units remained unchanged from the 2004 Project and there would be less clearing, more protected

area would be available. This unsupported conclusion that there would, therefore, be no significant adverse environmental impacts is stated throughout the EIS's.

53. This unsupported statement by the Applicant, which was effectively adopted by the Town Board, does not constitute a "statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity and reasonable likelihood of their occurrence." See, 6 NYCRR 617.9(b)(5)(iii).

54. Upon information and belief, Reserve Owner prepared the DSEIS limited to the environmental issues it negotiated with the Planning Board and that were blindly accepted by the Town Board without input from other involved agencies or the public.

55. Upon information and belief, the Town Board, accepted the DSEIS regarding the limited environmental topics on or about September 14, 2009 and scheduled a public hearing for October 26, 2009.

D. *Insufficient Public Notice and Hearings*

56. On September 30, 2009, notice of the public hearing regarding the DSEIS was published in the NYSDEC Environmental Notice Bulletin. The notice was defective for a number of reasons.

57. Upon information and belief, the Town Board failed to properly and timely publish notice of the public hearing in a newspaper of general circulation.

58. Upon information and belief, the Town Board also failed to provide notice to several involved or interested agencies, including the Town of Tuxedo Zoning Board of Appeals, the Orange County Planning Department, Village of Tuxedo Park, New York State Department of

Health, New York State Department of Transportation, Office of Parks Recreation and Historic Preservation and New York State Department of Environmental Conservation.

59. Upon information and belief, the notice failed to accurately and completely describe the full breadth of the public hearings in that it failed to disclose that the Town Board sought to consolidate five required public hearings in relation to the 2008 Project on October 26, 2009 concerning: 1) the DSEIS; 2) the amendment to the Special Permit, 3) the amendment to the Preliminary Plan; 4) Local Law 6 of 2009 and 5) Local Law __ of 2009.

60. The transcript discloses that it was only at the hearing itself that the Supervisor advised the public that....

> This is a combined public hearing, public comment, with respect to the Draft Supplemental Environmental Impact Statement, a Local Law amending Local Law 4-A, and a Local Law Amending the zoning map of the Tuxedo Reserve. With respect to the SEQR hearing, we would like to remind you this is a hearing on a Draft Supplemental Environmental Impact Statement. Therefore the comments should be addressed to the impacts of these projects, these changes, that are done on the SDEIS.
>
> This is not a hearing to reopen the environmental review of the entire Tuxedo Reserve Project, and particularly those aspects of the project which have not been changed....
>
> and you will have three minutes to speak... and the hearing will be stopped no later than ... 10:00 p.m.
>
> A copy of the October 26, 2009 public hearing transcript is attached as Exhibit B.

61. Petitioners, and members and representatives of Petitioner Land Trust attended the public hearing and raised concerns regarding significant environmental impacts of the 2008 Project. Specifically, despite the inadequate and insufficient notice, the Town Board was alerted to the numerous deficiencies in the amendment to the Special Permit and Preliminary Plan, the

Local Laws and the SDEIS relating to, among other things, traffic, air quality, endangered species, cultural resources, stormwater management, wetlands, water and sewer services and segmentation, many of which had direct impacts on Petitioners' property and other activities in which they participated.

62. During the course of the public hearing, the Supervisor, repeatedly curtailed the ability of the public to address the Town Board regarding their concerns regarding the SDEIS and the impacts to result from the Project.

63. At the end of the public hearing the Supervisor indicated the hearing would be "continued" until November 23, 2009.

64. The Notice of Public Hearing for the second public hearing was also inadequate to provide notice to the public as to what was being considered by the Town Board. A copy of the Notice of Public Hearing is attached as Exhibit C. The notice stated that a public hearing would be held regarding:

> A local law entitled "Tuxedo Reserve Rezoning", which local law is intended to cause the zoning for the Tuxedo Reserve Planned Integrated Development to be consistent with certain changes proposed by the developer to its Special Permit and Preliminary Plan. A complete copy of the Introductory Local Law is available for inspection at the Town Clerk's Office and at the Town website, www.tuxedogov.org. Now therefore, pursuant to 20 of the Municipal Home Rule Law, the Tuxedo Town Board will hold a public hearing on the aforementioned Introductory Local Law at the Town Hall,... on Monday November 23, 2009 at 7:30 pm, or as soon thereafter as the business of the Board permits, at which time all persons interested therein shall be heard.

65. Upon information and belief, the notice is wholly inadequate to provide an average person notice that the multi-purpose public hearing actually involved two local laws, an amendment to the Special Permit, an amendment to a Preliminary Plan and, importantly the over 1000 page DSEIS.

66. An opportunity to comment on the DSEIS was not even mentioned in the public notice.

67. Moreover, contrary to what was published in the notice, there was no "local law entitled 'Tuxedo Reserve Rezoning'"; rather there were two different local laws neither of which were entitled "Tuxedo Reserve Rezoning"

68. Upon information and belief, the Town Board failed to properly publish notice of the public hearing regarding consideration of Local Laws as required by the Municipal Home Rule Law and/or the Town Law.

69. Upon information and belief, the second public hearing was conducted on November 23, 2009.

70. Once again, despite the myriad of topics to be considered at the hearing, the Supervisor limited speakers to three minutes. A copy of the November 23, 2009 Public Hearing Transcript is attached hereto as Exhibit D.

71. The three minute limitation frustrated the public's ability to provide appropriate comments on: 1) the over 1,000 page DSEIS; 2) the proposed amendments to the Special Permit; 3) Local Law #5 of 2009; 4) Local Law #__ of 2009, and 5) the Preliminary Plan amendments.

72. At the end of this public hearing, the Town Board mislead the public through statements of the Supervisor that there would be additional opportunity for public comments as follows:

> SUPERVISOR DOLAN: Like I said before, this is not the end of the public comment part. This is the end of the public comment on these three individual items. When we get to the next phase of the project we can have another public hearing. This is not the end of the public comment part, it's the beginning of the public comment part. I think people have to really clearly understand that.

We can open it up again.

***

FROM THE FLOOR: A lot of us would feel a lot better if we could have some sort of assurance from you that after any workshop on the Smart Code, when we were all able to absorb more about what that means, there would be a period or a form for the public to express their opinions on that subject.

SUPERVISOR DOLAN: Okay.

COUNCILPERSON DARLING: I have no problem.

COUNCILPERSON SPIVAK: I think we may have more questions than answers after the workshop so that would be very reasonable. .

FROM THE FLOOR: I think what is being said about the Smart Code is there are a lot of questions, and people may want to make additional comments. They want to be sure that those comments get into the public hearing which is contemplated by SEQRA process.

SUPERVISOR DOLAN: The Smart Code is not even being addressed in this part of the public comment.

We can't even make any decision on the Smart Code; it's not part of what we're making a determination on tonight. I'm saying to you this is not the last opportunity.

Public hearing transcript at 81-93.

73. The comments of the Supervisor were misleading in nature in that a further public hearing was promised so that the public might continue to meaningfully participate in the process, particularly regarding the Smart Code, yet he represented that the Smart Code was not a consideration of the Town Board for purposes of the public hearing. The "Smart Code" was a proposed appendix to the amendment of the Special Permit.

74. Petitioners were also deprived of a second public hearing regarding fiscal impacts, as promised.

75. At the end of the public hearing, counsel for Reserve Owner advised the Board that Reserve Owner would like to take the next steps in the plan process and urged the Board to close the public hearing without providing the public any further opportunity for comment.

76. Despite its earlier representation that future public comment would be entertained, the Town Board then voted to close the public hearing regarding all topics, including the Smart Code.

77. Upon information and belief, the Town Board thereafter did not accept further public comment regarding its SEQRA review of the 2008 Project.

E. Inadequate DSEIS

78. The Town Board received numerous comment letters regarding the 2008 Project from involved agencies, Petitioners and other environmental experts detailing the substantive failings of the DSEIS and, more particularly, the significant adverse environmental impacts arising from conversion of forested land into the proposed 2008 Project that were either not identified or not adequately evaluated. A copy of the comment letters are attached as Exhibit E.

79. Among the substantial environmental impacts that were pointed out to the Town Board in the DSEIS comment letters as either ignored entirely or grossly under-evaluated were: (1) absence of any air quality analysis; (2) absence of any design for the 2008 Project stormwater system and absence of any discussion of the impact of the 2008 Project on the Town's water system; (3) absence of any design details for the Project sewer system and the impact on the Town's sanitary sewer system, especially in light of the documented fact that system is currently overloaded; (4) impact to acknowledged federal and state wetlands on the Site; (5) impact to

threatened and endangered species and species of special concern in New York, given the fact that the Applicant's own reports indicated such species are located on or about the Project Site; (6) impacts and lack of any analysis regarding endangered and threatened plant species; (7) traffic related impacts, since the traffic report found significant degradation in the levels of service at certain intersections in the traffic corridor; (8) no analysis of the potential growth inducing aspects of the 2008 Project, in particular the development of a new sewer treatment facility and its potential to induce additional growth; and (9) absence of any analysis of impacts on cultural/archeological resources.

80. Another of the primary areas of concern raised by the public was the inclusion of a document as part of the Special Permit entitled the "Smart Code".

F. Problematic Smart Code

81. As noted above, despite its promises at the public hearing, the Town Board failed to provide an opportunity for the public to comment on the "Smart Code."

82. The 63-page "Smart Code" is an invention of Reserve Owner.

83. The "Smart Code" is not part of the Town Code, the Zoning Law, or any other legislation adopted by the Town Board.

84. The "Smart Code" is an appendix to the amendment to the Special Permit issued by the Town Board in connection with the Project.

85. In conflict with other provisions of the Town's Zoning Law and Town Code, the "Smart Code" provides new and different standards, such as lot, bulk and area requirements, construction of roads and streets and off-street parking requirements for development of the 2008

Project, as opposed to current Zoning Law requirements for development of a Planned Integrated Development ("PID") in the Town.

86. For instance, the Smart Code purports to dictate new and different design standards from the existing Zoning Law required to be reviewed and approved by the Town's Architectural Board and review of new streets by the Town Superintendent of Highways.

87. Under the existing PID law that Reserve Owner contends applies or seeks to apply to the Project, there are no provisions authorizing the Town Board to delegate or defer its approval authority of PID's, including but not limited to, the design of the PID, to the Planning Board.

88. Under the existing PID law, the Planning Board possesses no "waiver" authority of any of the existing design standards.

89. Under the existing PID law, during site plan review, the Planning Board is required to refer all changes to the PID Preliminary Plan back to the Town Board for its review and approval of such changes.

90. According to the approval process contemplated in the PID law, an applicant is required to submit an application for "concept approval" with the Town Board. The Town Board must either approve or reject the concept plan, prior to the filing of a preliminary plan with the Planning Board. Zoning Law §98-23(G)(2).

91. Upon information and belief, Reserve Owner never applied for concept approval and the Town Board never approved or rejected a concept plan, both in violation of the Zoning Law requirements.

92. Upon concept approval of the PID Special Permit, a preliminary site plan must then be filed with the Planning Board with detailed information regarding the project. Zoning Law §98-23(G)(3).

93. The Planning Board "shall review the preliminary plan and its related documents and shall ... render either a favorable or unfavorable report to the Town Board." Zoning Law §98-23(G)(3)(b).

94. The Town Board is required to conduct a public legislative hearing "in accordance with the procedures established under §264 and 265 of the Town Law of the State of New York . . ." Zoning Law §98-23(G)(4).

95. Town Law §264 and §265 concern changes in the Zoning Law for towns in New York.

96. After such legislative public hearing, the Town Board is required to issue "its decision" regarding the planned integrated development special permit. Zoning Law §98-23(g)(4)(c).

97. Upon approval of the PID Special Permit, a preliminary site plan must then be filed with the Planning Board with detailed information regarding the project. Zoning Law §98-23(G)(5)(a).

98. Regarding changes to a preliminary site plan, Zoning Law §98-23 (G)(5)(b) provides:

> Requests for changes in the Preliminary Plan. If in the course of site development plan review it becomes apparent that certain elements which have been approved by the Town Board are not feasible, the Planning Board may resubmit to the Town Board its recommendations and the reasons for requesting the changes; and upon approval of the Town Board, a change to the preliminary plan may be made.

99. This intricate interplay between the Planning Board and the Town Board in the PID process, as specified under the Tuxedo Zoning Law, requires final approval of such changes to be made by the Town Board.

100. The "Smart Code" substantially changes the review process for review and approval of PID developments in the Town.

101. The "Smart Code" is an appendix to a special permit, not a zoning law of the Town, and illegally divests the Planning Board of its lawful requirement to bring elements of a preliminary plan that are not feasible, to the Town Board for its review and approval of such change. Zoning Law §98-23 (G)(5)(b)

102. The Town Board may not delegate its authority, or change the provisions of the Town's Zoning Law, in such a fashion.

103. The "Smart Code," in dereliction of the Zoning Law of the Town of Tuxedo, improperly shifts away important functions reserved to the Town Board relative to the design of a PID.

104. The "Smart Code" authorizes the Planning Board to waive "design standards." Therefore, PID requirements of the Tuxedo Zoning Law, approved by the Town Board in conceptual and preliminary form, and may now be "waived" by the Planning Board through the provisions of the Smart Code, without subsequent approval or oversight by the Town Board.

105. The Town Board illegally delegated to the Planning Board legislative authority reserved to the Town Board through issuance of a Special Permit which incorporates the Smart Code.

106. Stated differently, approval of the "Smart Code" permits the Related Owner to circumvent the Town Board in the future even if the fundamentals of its Preliminary Plan changes.

107. The Supplemental Final Environmental Impact Statement also suggests that the Tuxedo Zoning Board of Appeals ("ZBA") possesses the ability to grant "area variances" to the "Smart Code."

108. The ZBA has no authority under the N.Y. Town Law or Tuxedo Zoning Law to grant area variances to design standards contained in an appendix to a Special Permit. Nevertheless, the SFEIS states:

> Once a lot has been improved according to an approved subdivision plat or site plan and a building permit, then **any future modifications or waivers to the Smart Code would require issuance of area variances by the Town's Zoning Board of Appeals** pursuant to the Town's Zoning Law and applicable state laws. Language will be inserted into the special permit to explicitly conform the respective jurisdiction of the Planning Board and the Zoning Board of Appeals to grant waivers and modification to the Smart Code.

SFEIS p. 3.2-10.

109. Creating such a fundamental change in the Zoning Law in this manner is contrary to New York State law.

Inadequate Supplemental Final Environmental Impact Statement

110. Notwithstanding public and agency comments that the DSEIS was incomplete, the Town Board accepted a Supplemental Final Environmental Impact Statement ("FSEIS") on or about November 8, 2010.

111. The SFEIS ignored numerous new significant adverse environmental impacts that were identified in public and agency comments on the SDEIS.

112. Contrary to the requirements of SEQRA, the FSEIS contained substantial new information in addition to that provided in the SDEIS. Inclusion of this material in the FSEIS rather than the DSEIS precluded the public and involved agencies from full and fair opportunity to review and comment and deprived the Town Board of the benefit of such input.

113. It was unlawful for the Town Board to utilize the FSEIS as a means to correct critical deficiencies in the DSEIS.

114. Project changes in the SFEIS included: reduction in the building footprint in the Mountain Lake area and shifting their location (while keeping the same number of buildings); elimination of "flag lots"; the installation of a detention/recharge basin in the Village of Sloatsburg and development of an alternative for sewage, including a 500,000 GPD new facility.

New Information Requiring Supplemental Review

115. In response to public and agency comment regarding the incompleteness of the DSEIS, , Reserve Owner and the Town Board included new studies and significant changes to the Project but without providing the public and involved agencies with an opportunity to review and comment, all in violation of SEQRA.

116. The Town Board obtained two new reports from its own consultants regarding the market and financial analysis, a primary concern raised on comments in the DSEIS. For instance, significant concerns had been raised regarding cost involved with new road maintenance, stormwater basin maintenance, water and sewer, impact on the school district finances, and maintenance of retaining walls.

117. Though the Town Board promised that an opportunity for additional public input would be provided on this topic, the public and involved agencies were not provided an opportunity to review and provide input regarding these new reports. Such newly provided information warranted completion of a supplemental EIS pursuant to SEQRA, 6 NYCRR 617.9(a)(7).

118. Significant and substantial changes to the development in the Mountain Lake area were also made. Such changes include a new road system, and again shifting the development pattern in this area, impacts which in this environmentally sensitive area were not previously reviewed. Such changes to the proposed Project warranted completion of a supplemental EIS pursuant to SEQRA, 6 NYCRR 617.9(a)(7).

119. A new stormwater management basin that is intended to serve the majority of the Project development area was newly proposed in the FSEIS to be constructed on the "Sloatsburg parcel." This Project change was never identified nor adequately analyzed or addressed in the SDEIS.[1] The SFEIS essentially states that the new basin will be constructed to new NYSDEC standards without any further analysis. The plans and calculations for such a large retention basin that would be located on the Sloatsburg portion of the Site have not yet been submitted. Deferral of review of potential environmental impacts of such a Project change violates the mandates of SEQRA.

120. In fact, Reserve Owner refused to analyze this parcel because "the land is outside and unrelated" to the 2008 Project. "That land is part of the overall Tuxedo Reserve Project only in the sense that access road and certain drainage basins for the Project are located on that property." The Village of Sloatsburg will be required to approve a subdivision and therefore it will examine the environmental impacts. Even though it would be physically located outside the Town, it is still the responsibility of the Town Board as lead agency under SEQRA to fully review the plans and calculations for this stormwater management feature, not only from the perspective

1 In fact, Reserve Owner refused to analyze this parcel because "the land is outside and unrelated" to the 2008 Project. "That land is part of the overall Tuxedo Reserve Project only in the sense that access road and certain drainage basins for the Project are located on that property." The Village of Sloatsburg will be required to approve a subdivision and therefore it will examine the environmental impacts. Even though it would be physically located outside the Town, it is still the responsibility of the Town Board as lead agency under SEQRA to fully review the plans and calculations for this stormwater management feature, not only from the perspective of ensuring that it is adequate to handle the stormwater generated by the 2008 project, but also the lead agency is charged with assessing the potential impacts resulting from the construction of the feature itself.

of ensuring that it is adequate to handle the stormwater generated by the 2008 project, but also the lead agency is charged with assessing the potential impacts resulting from the construction of the feature itself.

121. In addition, development of a new 500,000 GPD sewer treatment plant in the Town of Tuxedo to replace the existing facility has been proposed for the first time in the FSEIS. There is no analysis of the potential significant adverse environmental impacts of such a new large treatment plant in the SDEIS, including but not limited to the potential significant additional growth potential it may bring to the area.

122. The necessary details regarding these important Project changes and the potential adverse environmental impacts likely to result therefrom have been deferred to long after the SEQRA process has closed. These are critical, significant changes to the Project that could result in new adverse impacts that have not yet been considered and should have been fully analyzed and subject to public review in a supplemental EIS.

<u>New Mountain Lake Development Activity</u>

123. As detailed above, a significant change to the 2004 Project proposed by the 2008 Project was construction in a new 32-acre area of the Project Site that had never been proposed for development previously. In fact, that area was designated for conservation purpose as preserved open space.

124. As part of the 2008 Project, Reserve Owner sought to relocate a significant portion of the 2004 Project from one area of the Site to this formerly preserved Mountain Lake area

without any rational basis or scientific analysis of the resulting potential adverse environmental impacts.

125. In the DSEIS, Reserve Owner suggested that opening this new 32-acre area to development might allow preservation of some unnamed and unidentified vernal pools to be protected in another unidentified area of the Site.

126. In the SFEIS, Reserve Owner continued to suggest, without a rational or scientific basis, that there would be no significant adverse environmental impacts as a result of this substantial change in the development scheme because the number of dwelling units remained the same and additional land would be available for preservation.

127. Such rationale fails to meet the required SEQRA "hard look" test to examine the potential significant adverse environmental impacts. This unsupported statement does not constitute a "statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and reasonable likelihood of their occurrence." 6 NYCRR 617.9(b)(5)(iii).

128. Despite the identification of significant adverse impacts by the public and involved agencies, Reserve Owner also proposed recreational use of Mountain Lake, a regulated NYSDEC waterbody, with a boathouse/recreation area, development within the 100-foot buffer area surrounding wetlands in that area, and new roads that blocked an identified migratory corridor in connection with the new proposed development of these additional lands.

129. Though Reserve Owner subsequently abandoned only the boathouse/recreational use of Mountain Lake, public and agency comment identified many significant adverse environmental impacts as a result of the new 32-acre development at Mountain Lake, including:

- Fragmentation of critical Timber Rattlesnake and Copperhead snake habitat
- Blocking an important wildlife corridor, including a corridor for the Timber Rattlesnake and Copperhead snake.
- Development within NYSDEC regulated areas around Mountain Lake.

130. The SFEIS's perfunctory response to these important issues was an acknowledgement that "existing natural habitat would be altered and some converted," however "since approximately 76% of the Project Site will remain undeveloped and areas of existing habitats will be preserved under post-development condition, significant impacts to the regional populations of any resident or transient species utilizing the Project Site are not expected." SFEIS at 3.5-26.

131. However, the FSEIS fails to provide any legitimate detail supporting its bald justification of potential significant impacts to these areas. The simple replacement with other unidentified land fails to address the significant adverse environmental impacts of the 2008 Project and fails to constitute a "hard look" at potential significant adverse environmental impacts.

132. In response to comments identifying habitat fragmentation and cutting off migratory corridors of protected species, the SFEIS contains the conclusory statement "Providing open space corridors to direct wildlife species through development areas has been shown to be an effective means of enabling wildlife species to traverse through areas of development". Id. No study or other reference is provided to support such contention.

133. The new Mountain Lake development area is proposed within a very close distance to a confirmed Copperhead snake den. The copperhead snake is a New York State "moderately

rare" species. Reserve Owner failed to identify the location of the Copperhead Snake den in the SDEIS. It was only after the close of the public comment period that an additional investigation was conducted that confirmed the location of the den in close proximity to the new Mountain Lake development area.

134. As a result of the new investigation, the SFEIS states:

> The den is located within a portion of the Southern Tract ... The Final Proposed Modifications increases the distance between this den and the nearest residence by at least 150 feet from approximately 350 feet under the 2004 plan to greater than 500 feet. The residences in closest proximity to this den under both plans are sited generally to the south of its location. The Mountain Lake lots with their lot lines closest to this den, those on the east side of Lower Mountain Lake Road on the loop south of Mountain Lake, would be approximately 1,100 feet distant. The proposed water tower would be roughly 640 feet from the den as measured from the den site to the end of the proposed access road. The lots proposed along the road leading to the water tower would be no closer than roughly 670 feet to the copperhead den. The closest point of disturbance (a point along Upper Mountain Lake Road) would be approximately 340 feet way from the den; equivalent to the distance under the 2009 Proposed Modifications; the Final Proposed Modifications would not result in any encroachments closer to the copperhead den than previously proposed. Additionally, the Final Proposed Modifications would not encroach on such critical copperhead habitat features as sunny/exposed rock outcrops essential for post-emergence basking or gestation.
>
> The following steps shall be undertaken to avoid all disturbances to the den and nearby potential copperhead basking areas: (1) construction of the water tower shall be at times that would not interfere with copperhead basking or migration; (2) fencing and barriers shall be erected in a manner to direct snakes away from the water tower site and from residential development; and 3) additional wildlife tunnels shall be evaluated and installed under proposed roadways to assure that sufficient migration pathways are maintained between the den and nearby wetlands. It should also be noted that the Project design already incorporates sustainability and best management practices to minimize impacts to wildlife including wildlife tunnels under the existing roadways (See Figures 5-7 through 5-9 of the DSEIS).

SFEIS 3.5-46

135. None of this information was made available at the time of the public and agency review of the SDEIS. Accordingly, no one, including the NYSDEC, was provided an

opportunity to consider and assess the adequacy of the FSEIS statements relative to potential impacts to the copperhead snake or any proposed mitigation measures. Again, without this opportunity, the lead agency was left to rely solely on unsupported representations by the Applicant.

136. In the current context of the FSEIS, there are no studies or other valid documentation that the measures identified will mitigate the acknowledged potential significant adverse environmental impact to these species. None of these measures have been afforded any public review and input as required by SEQRA.

137. Significantly, the FSEIS is an admission by Reserve Owner that "critical copperhead habitat features as sunny/exposed rock outcrops essential for post-emergence basking or gestation" are in the immediate vicinity and that houses, excluding the backyards of the property, will be situated as close as 500 feet in proximity to the snake den.

138. Another critically important fact is the acknowledgement by Reserve Owner that Copperhead Snakes and Timber Rattlesnakes, a state threatened species, tend to cohabitate. When such potential for an adverse impact is identified, it is incumbent on the lead agency to thoroughly analyze such impacts and all reasonable alternatives.

139. Rather than performing the required studies and analysis for the impacts to Timber Rattlesnakes from the 2008 Project. The Applicant instead relied solely on outdated studies conducted in 1995 and 1998 to support its conclusion of the lack of any presence of Timber Rattlesnakes on the Southern Tract.

140. In 2007, it was reported that a worker for Reserve Owner killed, cooked and ate a Timber Rattlesnake on the Southern Tract. FSEIS Response 5-34.[2]

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2 Response 5-34 erroneously states that additional rattlesnake study was conducted on the Southern Tract in 2003 and 2010. These studies were conducted on the *Northern* Tract and there is no record of any additional current studies on

141. This incident clearly confirms the use of the Project Site by this threatened species, and calls into question the studies that were completed a decade earlier and the Applicant's continued reliance thereon and clearly demonstrates that the Town Board's continued reliance thereon was arbitrary and capricious.

142. The Town Board, in violation of SEQRA, declined to require any additional study as part of the DSEIS. In addition, once presented with new information in the FSEIS regarding the presence of the Timber Rattlesnake on the Project Site, the Town Board still failed to require the preparation of a supplemental EIS on the Timber Rattlesnake impacts.

143. Moving development to the doorstep of a known snake den, and constricting habitat corridors for threatened species and NYS Species of Greatest Conservation Need, has never been the subject of an adequate review and it is not possible for the Town Board to have taken a "hard look" at this important issue.

144. Responding that other, undevelopable land somewhere in the area will be preserved is not a sufficient a "hard look" under SEQRA. The "hard look" test required an expert report to credibly assess and determine that the elimination by constriction of an acknowledged wildlife corridor will not result in significant adverse environmental impacts to certain wildlife, including the protected Timber Rattlesnake.

Inadequate Assessment of Cultural Resources and New Information

145. Reserve Owner readily admits that the Project, in particular the proposed new development of the Mountain Lake area, will result in "further changes" to the Area of Potential Effect (on cultural resources), yet it has deferred its examination of potential significant adverse

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the Southern Tract.

environmental impacts with regard to cultural resources in this new area of disturbance, relying instead on future testing during construction pursuant to a 2001 Memorandum of Understanding with the NYS Office of Parks, Recreation and Historic Preservation ("OPRHP").

146. Pursuant to SEQRA, the Town Board, as SEQRA Lead Agency, may not defer its review of potentially significant adverse environmental impacts to a later date, or delegate review and development of mitigation measures to other agencies.

147. The Town Board is required to examine such potential archeological impacts of the 2008 Project regardless of whether the terms of a purported MOU, are or are not in effect.

148. On July 26, 2010, OPRHP issued a letter identifying the numerous deficiencies with the SDEIS. The letter states:

- "A primary area of concern is the potential presence of rockshelters which may contain important cultural sites.... the SEIS seems to suggest that all concerns have been addressed... however [even Reserve Owner's consultant work] serves to illustrate that concerns remain".

- "A second issue regarding rockshelters is the SEIS claim that a 'Disturbed rockshelters would never qualify for further levels of recognition"... **This statement is not correct.**"

- "[Regarding the Continental Road], [o]ur concern would be more with the road itself, documenting its location and construction methods in any areas where it may be impacted. It seems from the SEIS that changes in the proposed development may result in **damage to portions of the road not previously considered**, and we would suggest that details of that work be provided so that potential impacts can be assessed".

- "...We have yet to receive and review details on how identified sites will be avoided"... the applicant will continue to consult with [OPRHP] on possible impacts to those sites as more detailed plans are developed... [OPRHP] recommends that the town be well aware of this need and include compliance with that need to continue consultation as part of any approval it may give for the project."

149. Reserve Owner skirts the issue of potential adverse impacts on cultural resources and OPRHP's comments in the SFEIS.

150. First, Response 4.1 erroneously states that the Area of Potential Effect (APE) is that portion of the project site subject to **direct** impacts. However, Reserve Owner was informed in writing by OPRHP that the APE also includes areas of **indirect** impact, such as nearby rockshelters that may be now exposed to an increased probability of vandalism. The SFEIS expressly acknowledges in comments by the Applicant's own consultant (Comment 4.13) that three identified rockshelters within areas that would be indirectly impacted have not been investigated.

151. Second, the SFEIS defers any analysis of the impacts to cultural features to a site plan approval stage, long after the current SEQRA process has been closed and the proposed action has been approved.

152. Finally, the SDEIS and SFEIS contain inadequate analysis of potential impacts to the Continental/Courderoy Road.

153. The dendrochronological analysis relied upon in this statement was conducted by Carol Griggs of the Cornell University Dendrochronology Lab, and was attached to the FFEIS Appendix H.

154. However, the SFEIS fails to acknowledge a subsequent corrected report by Carol Griggs that vacates her original conclusions, specifically citing the failure of the Reserve Owner's consultants to provide full and complete information critical to her analysis. The subsequent report specifically concludes that the road cannot date from the late 20th century or early 21st century.

155. While the existence of the second report is briefly acknowledged in the SFEIS (See SFEIS page 3.4-7) as a letter received by OPRHP from Carol Griggs, this second corrected report

is not included in Appendix H with the SFEIS with the first report, nor is its content disclosed anywhere in the SFEIS.

156. The 2008 Project proposes destruction of a portion of the Continental Road without the requisite "hard look" at this important impact or analysis of potential alternatives to such impacts.

157. As a result, the Town Board lacked the necessary information to discharge its SEQRA obligations with respect to important historical or pre-historical resources, the disturbance of which would result in significant environmental impact and thus its Findings with respect to impacts on cultural resources was arbitrary and capricious.

Inadequate Assessment of Wildlife

158. Although areas of the Project Site previously dedicated to open space will now be developed for the 2008 Project, flora and fauna field surveys were not updated.

159. In fact, flora and fauna site surveys were most recently undertaken over the course of only 3 days in 1995 (April 26, May 4 and May 16) and 2 days in 1998 (April 22 and May 7).

160. Expert evidence in the record, provided by a former consultant of Reserve Owner on the Tuxedo Reserve project, establishes the presence of threatened and endangered plant species on the Project Site and that Reserve Owner was advised of such findings.

161. These species, however, were not identified in a general review of vegetation by the Applicant's current consultant, in the SDEIS and it is acknowledged in the SFEIS that "...no plant surveys focused on identifying threatened or endangered species were conducted on the site...."

162. The results of these prior surveys necessitate current survey work in the form a supplemental EIS.

163. More specifically, endangered, threatened and special concern species or habitat indicative of such species was observed on the Site during the survey work in 1995 and 1998.

164. The following species of special concern were observed during the prior surveys: wood turtle and spotted salamander.

165. Habitat indicative of the following species of special concern was also observed: red shouldered hawk and coopers hawk.

166. Habitat indicative of the threatened timber rattlesnake was also observed. It was also acknowledged as part of the prior survey work reports regarding the timber rattlesnake that:

- At least 4 known timber rattlesnake dens exist on adjoining properties;
- The survey undertaken in 1998 was compelled by DEC. The extent of the survey, however, was circumscribed by DEC based upon the Timber Rattlesnake's preferred habitat, existing site conditions and proposed development areas.
- Although no timber rattlesnakes were observed along the limited route, as acknowledged in the October 1999 Draft Supplemental EIS, summertime transient habitat and other migratory ranges of timber rattlesnakes vary between 0.5 and 4.5 miles. Accordingly, "...[i]t is quite possible that the snakes can and do use the property for transient summer habitat;"

167. Since that time, there have been reports of sightings of timber rattlesnakes on the site.

168. There have also likely been relevant updates to other species observed nearby the site. For example, the endangered bog turtle was observed in Orange County in 2005 and the endangered Indiana bat in 2008.

169. There is no documentation in the SDEIS or SFEIS that Reserve Owner conducted any studies regarding potential impacts to other state-rare species likely to occur on the Project Site including the eastern worm snake (Special Concern) and eastern hognose snake (Special Concern), despite Reserve Owner's acknowledgement that they could be located there. See, SFEIS 3.5-34. Such a failure to even identify, much less assess potential impacts to such species violates SEQRA.

170. There have also been relevant regulatory changes with respect to impacts on the State's wildlife. For example, on November 3, 2010, prior to the acceptance of the FSEIS, NYSDEC amended Part 182 of its regulations regarding endangered, threatened and special concern species to provide, in relevant part, that habitat may not be adversely affected.

171. These new regulations should have been considered prior to the adoption of the SFEIS and issuance of a SEQRA Findings Statement, yet these regulatory changes were completely ignored.

172. No additional desktop or site survey work has been undertaken to determine whether and to what extent impacts to endangered, threatened and special concern species or their habitat may arise as a result of the evolution of the natural heritage of the Site or, even assuming the Site conditions remained static over the past 12 years, the transition and exchange of development and open space area.

Failure to Assess Sewage Treatment Plant

173. In the DSEIS, Reserve Owner claimed that the existing Hamlet Sewage Treatment Plant possessed 30,000 GPD excess treatment capacity and that such capacity allowed the

servicing of up to 80 dwelling units before an upgrade is required. This conclusion assumed no other development or connections separate from the Project.

174. Expert analysis of the SDEIS noted that no effluent levels had been provided and that calculations must be provided to analyze the impact of such additional flow on effluent parameters and limitations set forth in the SPDES permit for the treatment plant. The addition of sewer flow from 80 dwelling units without detailed calculations could cause a violation of such standards and a significant adverse impact not only to the proper operation of the treatment plant but also on the receiving waters downstream of the plant's discharge.

175. On January 10, 2010, NYSDEC issued a letter to the Town of Tuxedo confirming these observations that:

- The Department's concerns are the physical age of the plant and the possibility of imminent failure if neglected. As a short term solution, you indicated that the Town has hired a contractor to perform concrete repair work starting this Spring. However, we need to know the long term plan of the Town to either rehabilitate and upgrade the WWTP, or completely eliminate the plant and construct a new larger treatment plant. Considering the condition of the plant and the occasional effluent limit violation, **we cannot approve any additional flow to the plant** unless substantial improvements are made and a schedule to perform the work is submitted to this office.

176. Based on NYSDEC's comments, therefore, no additional flow, including the initial 80 units identified in the DSEIS, could be treated at the plant.

177. In light of this circumstance, Reserve Owner proposed two new alternatives in the FSEIS, one to construct a new 500,000 GPD sewer treatment facility or construct a new sewer line that would connect to the Western Ramapo Wastewater Treatment Plant.

178. Upon information and belief, officials from the Town of Ramapo Sewer District have indicated that it would not authorize the Project to connect to its plant.

179. No environmental analysis of either potential option is contained in the SDEIS or SFEIS. Instead, Reserve Owner once again defers the environmental review to some point in the future with the following statement:

- In addition, the Applicant has agreed that the Town will not issue a building permit until either a plan for the construction of a replacement sewage treatment plant for the Hamlet Plant has been approved by the DEC or approval to hook up to the new Western Ramapo Wastewater Treatment Plant has been issued; and that the Town will not issue a certificate of occupancy until either the replacement sewage treatment plan it constructed or the Project is connected to the new Western Ramapo Wastewater Treatment Plant.

180. Despite the unequivocal statement by the NYSDEC that it will not "approve any additional flow to the plant," by virtue of its acceptance of the SFEIS and Findings, the Town Board appears willing to issue building permits to Reserve Owner if a mere "plan" to reconstruct the treatment plant is offered or if a "hook-up" is approved by another entity without an adequate analysis of potential environmental impacts.

181. Aside from patently frustrating the NYSDEC directive to the Town, without first evaluating all potential significant adverse environmental impacts of either possible option, including growth inducing potential in the Town that a new large-scale treatment plant might cause is arbitrary and capricious and constitutes a violation of SEQRA.

Failure to Assess Stormwater Controls

182. Respondent's evaluation of surface and groundwater impacts in the SDEIS and SFEIS is inadequate and did not comport with SEQRA's "hard look" requirements.

183. Numerous sensitive water bodies, wetlands and aquifers will be adversely impacted by the Project.

184. Specifically, the 2008 Project will result in a new impact to at least 12.5 acres of sensitive land within the Tuxedo Lake watershed.

185. Tuxedo Lake is the Village of Tuxedo's sole drinking water resource.

186. The 2008 Project will also result in a new impact to sensitive land within the Mountain Lake watershed.

187. A primary difference between the approved 2004 Project and the 2008 Project is that the newly proposed Mountain Lake neighborhood is situated directly over a major groundwater-bearing fracture system.

188. In places, this fracture is directly exposed at the surface, allowing a direct point of entry for contaminants to enter the groundwater, and in other places, the fracture opening is covered by only a thin layer of soil, measuring just inches.

189. The Mountain Lake neighborhood would introduce a myriad of contaminants, such as pesticides, herbicides, fertilizers, road salts, heavy metals, and hydrocarbons, that could now easily enter this aquifer. From this point source of potential contamination, the fracture system provides a direct conduit to the Ramapo River in one direction, which is a drinking water supply for hundreds of thousands of people in New York and New Jersey, including the Village of Sloatsburg, and to the Village of Tuxedo Park in the other direction.

190. The new development within the Mountain Lake watershed may be significantly more extensive and entail development activity which has not been analyzed in the DSEIS or FSEIS.

191. The entire Project Site, including the Mountain Lake watershed, is characterized by bedrock fractures which hydrologically connect surface water and ground water / drinking water within the Project Site and surrounding areas.

192. However, stormwater controls for the development activity within the Tuxedo Lake and Mountain Lake watersheds have not been designed or analyzed by the Applicant or considered by the Town Board.

193. In response to this concern, the DSEIS and FSEIS repeatedly avoid this critical issue, simply stating, "The extensive aquifer testing revealed no connection between the shallow and deep aquifer systems."

194. This statement, focusing on the relationship between perched groundwater in places and the deep bedrock aquifer, ignores the issue of the bedrock aquifer recharge points where the fractures are exposed at or near the surface, which is acknowledged in the SDEIS which states, "The ground-water bearing formations underlying the Property receive recharge primarily from infiltrating precipitation. Recharge occurs when and where the precipitation infiltrates through the surficial materials (e.g. overburden, exposed bedrock fractures) and becomes assimilated into the ground-water resource..."

195. This issue is never directly addressed within the SFEIS and, accordingly, the new Mountain Lake development was approved without a "hard look" at this very real potential adverse impact.

196. Instead, Respondents have deferred analysis to the future, stating summarily that stormwater controls will be designed in accordance with NYSDEC standards and providing limited detail regarding some typical stormwater design possibilities.

197. Respondents have also deferred the environmental review of other stormwater controls, including a detention pond proposed to be constructed on land in the Village of Sloatsburg, an apparent significant Project change identified for the first time in the FSEIS, but no

assessment of the Sloatsburg parcel was undertaken, nor an analysis of any of the potential environmental impacts which will result from construction of the detention pond.

198. Respondents have also deferred the development of water quality impact mitigation strategies, compelling water quality monitoring during construction activity but not any meaningful reactionary procedures in the event of an impact.

199. The water quality monitoring will only reveal impacts after adverse impacts have occurred and, presumably, necessitate some form of voluntary reaction by Respondents to a problem they have created if any such further impacts will be controlled.

200. The deferred analysis of impacts and development of mitigation strategies regarding the adverse water quality impacts which will result from the 2008 Project turns the SEQRA process on its head, and is particularly alarming given the geological connections between surface water and groundwater resources on the site, and the sensitivity of the watersheds and drinking water sources involved.

201. Water quality impacts and mitigation strategies have never been adequately analyzed.

202. This failure in the water quality analysis performed by Respondents is of significant concern to the Village of Tuxedo Park given the critical nature of the Tuxedo Lake water supply.

203. This failure is also of significant concern to Petitioners given their reliance on drinking water wells and the presence of connective pathways between surface and groundwater resources.

204. The Project Site will ultimately drain to the Ramapo River, a drinking water resource to thousands of persons in New Jersey who may be adversely impacted by the failures of the environmental review performed in this matter by the Town Board.

Failure to Assess Wetland Impacts

205. Wetlands have not been meaningfully evaluated pursuant to SEQRA.

206. Rather, Reserve Owner's wetland assessment was limited to field verification of wetland boundaries and adjacent areas.

207. Portions of jurisdictional wetlands will be directly impacted by Project development. Vernal pools will also be directly impacted by Project development.

208. The wetlands will also be indirectly impacted as a result of stormwater runoff from the Project.

209. Yet, the functions and values of the wetland complexes which exist throughout the Site have not been analyzed whatsoever.

210. The analysis of wetland and buffer impacts has been impermissibly deferred until Reserve Owner applies to NYSDEC and the U.S. Army Corps of Engineers, well after the completion of SEQRA.

211. Such deferral is improper pursuant to SEQRA and of particular concern here, given the vital habitat which Project Site wetlands provide to wildlife.

Failure to Assess Meaningful Alternatives

212. The failure of the Town Board to examine viable alternatives to avoid potential adverse environmental impacts is a clear violation of SEQRA.

213. SEQRA requires that at least one viable alternative be considered to the proposed action, and that the analysis of alternatives must include "no action." The SDEIS only offers one alternative: the 2004 Project.

Given several changed circumstances since the 2004 Project was approved, this project is no longer a viable alternative.

For example, the 2004 Project proposes significant development up to the boundary of Wetland WO, which had been originally indicated as a federal wetland, requiring no regulated buffer.

214. Since 2004, the NYSDEC has determined that this wetland is an extension of a regulated NYSDEC wetland (SL-25) that was mapped just offsite to the south, and that its regulatory jurisdiction will extend to include the area identified as Wetland WO on the Project Site. As a result of NYSDEC jurisdiction, an additional 100 foot wetland buffer will be applied to the boundary of the wetland effectively eliminating the ability to develop this area as proposed by the 2004 Project.

215. Upon information and belief, NYSDEC confirmed to the Applicant that development in this area would be significantly curtailed.

216. Any acknowledgement of these facts was absent from the DSEIS.

217. The NYSDEC jurisdiction over this wetland effectively renders the 2004 Project as approved to no longer be viable or feasible and therefore not a reasonable alternative examined in the DSEIS.

218. Failure to analyze any other feasible alternatives constitutes a violation of SEQRA.

Improper SEQRA Findings

219. At the Regular Meeting of the Town Board on November 22, 2010, the Board voted to adopt a SEQRA Findings Statement for the Project ("Findings Statement").

220. In addition, at the same time, the Board voted to:

- Grant an amendment to a 2004 Preliminary Plan and 2004 Special Permit;
- Adopt Local Law 4 of 2010 regarding an amendment of the Zoning Map;
- Adopt Local Law 5 of 2010 regarding an amendment of Local Law 4A of 1999, to allow the changing of the approved mix of uses.

221. Without any basis in the record, the Findings Statement certified, among other things, that: "consistent with the social, economic, and other essential considerations from among the reasonable alternatives available, the Proposed Action is one that avoid or minimizes adverse environmental impacts to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable."

222. Upon information and belief, following adoption of the FEIS, the Town Board negotiated several changes to the 2008 Project, including placing housing units in areas previously designated as open space, and providing for a wide four-lane, divided boulevard situated on the side of a sloping hill. The record indicates no analysis of the potential adverse impacts of these changes, and neither was it open to public review. The boulevard, which was requested in the interest of fire safety, in particular poses a much greater environmental impact than the standard roadway that was originally proposed.

223. The Findings Statement did not include any conditions imposed as mitigative measures relative to the potential significant adverse environmental impacts that the Town choose to defer review of and/or delegate to another agency, in violation of SEQRA. As a result, once

the SEQRA process is completed, it is very unlikely that none of these potential adverse environmental impacts will ever be considered or mitigated in the future.

224. In the Special Permit, it is also noted for the first time that Reserve Owner may petition the Town of Tuxedo and Village of Tuxedo Park to annex a certain parcel totaling approximately 43 acres of development to the Village of Tuxedo Park for the purpose of once again changing the type and mix of develop in those parcels. None of these impacts have been the subject of review pursuant to SEQRA.

FIRST CAUSE OF ACTION

(Failure to Strictly Comply with SEQRA Procedural Mandates)

225. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 224, above, as if fully set forth herein.

226. The Town Board failed to comply with mandated SEQRA procedures when it unlawfully a) omitted the preparation and filing of an EAF with the Town to properly commence the environmental review of the 2008 Project pursuant to 6 NYCRR § 617.6[a][2]; b) failed to determine whether the action may involve one or more agencies pursuant to 6 NYCRR § 617.6[a][1][iii]; and c) failed to issue a preliminary classification of the 2008 Project as Type I or unlisted, pursuant to 6 NYCRR §617.6[a][1][iv].

227. The Town Board did not forward the EAF and applications submitted to involved agencies notifying them that a lead agency must be established prior to a determination of significance, in violation of 6 NYCRR § 617.6[b][3][i].

228. The Town Board also unlawfully omitted the preparation, filing, circulation and publication of a positive declaration, thereby depriving public and agencies of advance notice

that SDEIS was being prepared and opportunity to suggest issues to be addressed, in violation of 6 NYCRR §§ 617.6[b][3][ii], 617.12[b][1] and 617.12[c][1].

229. Next, the Town Board unlawfully conducted scoping without an opportunity for public participation in violation of in violation of the procedures mandated by 6 NYCRR §§ 617.8[e].

230. While scoping is an optional process, when the lead agency nevertheless adopts a scope as here, it was required to comply with the procedures set forth at 6 NYCRR §§ 617.6[b][2][ii] & 617.8 and circulate a draft scope to the involved agencies and allow the public an opportunity to comment.

231. The SFEIS clearly acknowledges that the Town Board prepared a scope without complying with the proper SEQRA procedures:

> The resolution of the Town Board **established the scope** for the DSEIS. SEQRA does not require that the Town Board conduct a public hearing or solicit public comment on the scope of the DSEIS. Given the results of the review described above, the Town Board made the discretionary determination that a formal public scoping process was not necessary.

SFEIS Appendix C-79.

232. As a result of Respondents' failure to comply with the strict procedural requirements of SEQRA, either individually or taken as a whole, any subsequent action taken in reliance thereon (including approving the amended Preliminary Plan approval, a Special Permit and the adoption of two Local Laws in furtherance thereof) was and will be illegal, arbitrary and capricious, affected by an error of law, and a violation of SEQRA, and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Project.

SECOND CAUSE OF ACTION

(Failure to Strictly Comply with SEQRA Substantive Mandates)

233. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 232, above, as if fully set forth herein.

234. To comply substantively with SEQRA, the Town Board, as Lead Agency, must identify all relevant areas of environmental concern, take a hard look at any and all direct, indirect, and secondary potential adverse environmental impacts of the action and mitigate the environmental impacts to the maximum extent practicable before undertaking the action.

235. The procedural infirmities in the process noted in the foregoing cause of action ensured that the substantive violations of SEQRA would also not be met.

236. In addition to defining and classifying its action (as described above), Respondents were required to (1) identify all direct, indirect, and secondary potential adverse environmental impacts that may result from its action; (2) thoroughly analyze the relevant impacts; and (3) provide a written reasoned elaboration for the basis of its significance determination, with reference to any supporting documentation.

237. The record is devoid of any indication that Respondent took the required requisite "hard look" at potential adverse environmental impacts associated with the Project including, but not limited to: (a) impacts of the 2008 Project on cultural/archeological resources; (b) impacts of the 2008 Project on flora, fauna and threatened and endangered species and species of special concern; (c) impacts of the 2008 Project on wetlands, waste water treatment plant, alternative analysis, stormwater and water quality impacts; (d) traffic; (e) alternatives; (h) the Mountain Lake land Sloatsburg parcels; (i) fiscal impacts; and (j) mitigative measures.

238. The Town Board also improperly deferred and delegated its review of potential impacts and mitigation measures to other agencies at some future time.

239. The Town Board accepted as complete a DSEIS which failed to provide appropriate technical support or determining whether a particular environmental impact existed, and if so, the degree of the impact in violation of SEQRA, particularly with regard to the Mountain Lake area and the Sloatsburg parcel.

240. The Town Board accepted as complete a DSEIS which lacked the necessary studies, analyses and data to enable the Town Board to determine the existence and extent of any environmental impact, particularly in the area of Mountain Lake area (including a new road to service this area) and the Sloatsburg parcel, new sewer treatment plant water quality impacts, wetlands, and threatened and endangered species and species of special concern.

241. The Town Board failed to the examine, review or develop measures designed to mitigate documented environmental impacts in the area of Mountain Lake area and the Sloatsburg parcel, new sewer treatment plant, water quality impacts, wetlands and threatened and endangered species and species of special concern.

242. The Town Board improperly utilized the FSEIS to correct deficiencies in the DSEIS, include entirely new and often inaccurate information, that frustrated the ability of the public and involved and interested agencies to provide meaningful comments regarding significant adverse environmental impacts of the 2008 Project. When Project changes and new information is presented in the FSEIS for the first time, the Town Board was compelled to require a supplemental EIS pursuant to 6 NYCRR 617.9[a][7].

243. The Town Board failed to take a hard look at the environmental impacts of the Project by deferring to future action by other agencies the study of environmental impacts and the

consideration, identification and implementation of mitigation measures, including those relating to acknowledged environmental impacts such as impacts to wetlands, sufficiency of sewer and water capacity, impacts to cultural and archaeological resources, impacts to endangered species, sufficiency and efficacy of the stormwater detention pond and many others.

244. Because Respondent failed to take the requisite "hard look" at the environmental impacts associated with the Project, its subsequent approvals were illegal, arbitrary and capricious, affected by errors of law, and a violation of SEQRA and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Project.

THIRD CAUSE OF ACTION

(Illegal Segmentation of Environmental Matters)

245. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 244, above, as if fully set forth herein.

246. SEQRA prohibits considering only a part or segment of an action. 6 NYCRR § 617.3[g]. This is known as illegal segmentation.

247. Under SEQRA, "segmentation" is defined as "the division of the environmental review of an action such that various activities or stages are address[ed] . . . as though they were independent, unrelated activities needing individual determinations of significance." 6 NYCRR § 617.2[ag].

248. The regulations implementing SEQRA provide that "actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action. . . . Considering only a part or segment of an action is contrary to the intent of SEQRA" 6 NYCRR § 617.3[g].

249. The proposed action now includes Project components on the Sloatsburg parcel including of the location of an access to the Project Site and a substantial stormwater detention basin. However evaluation of this parcel was not included in the environmental analysis for the 2008 Project.

250. The Town Board failed to perform any environmental analyses of any kind relative to the sufficiency and efficacy of the stormwater detention pond to be located on the Sloatsburg parcel as part of the 2008 Project.

251. The Town Board also impermissibly segmented review of the 2008 Project by deferring to future action by other agencies the study of environmental impacts and the consideration, identification and implementation of mitigation measures, including those relating to acknowledged environmental impacts such as impacts to wetlands, sufficiency of sewer and water capacity, including the impacts associated with a massive new sewer treatment plant, impacts to cultural and archaeological resources, impacts to endangered species and many others.

252. Finally, the Project has undergone numerous amendments over the past decade or more. To date, each of these amendments has been reviewed, in part, in a vacuum. The Town Board's failure to take a complete look at the entire Project, as modified, evidences a pattern of segmentation which violates segmentation under SEQRA.

253. As a result of the foregoing, the Town Board impermissibly segmented its review of the whole action in violation of SEQRA and accordingly the Town Board's subsequent approvals were illegal, arbitrary and capricious, affected by errors of law, and a violation of SEQRA and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Project.

FOURTH CAUSE OF ACTION

(Deficient Findings Statement)

254. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 253, above, as if fully set forth herein.

255. To comply with SEQRA, the Town Board must set forth a reasoned elaboration of the basis of its determination and the basis of its determination must be contained in the record.

256. The Findings Statement adopted by the Town Board lacks substantial evidence in the record, is contradicted by the record of proceedings before the Town Board and is otherwise arbitrary and capricious.

257. The Findings Statement is predicated upon a record that is substantively and procedurally deficient in that it fails, among other things, to fully evaluate the environmental impacts of the 2008 Project and to design, examine, and evaluate appropriate mitigation measures.

258. The Findings Statement is further evidence of the Town Board's failure to take a hard look and its abdication of its responsibilities under SEQRA to mitigate adverse impacts to the maximum extent practicable.

259. As a result of the foregoing, the Findings Statement is arbitrary and capricious, affected by error of law, in violation of lawful procedure, an abuse of discretion, in excess of jurisdiction, and null and void *ab initio*. Accordingly, any action by the Town Board, or other involved agency, based upon such Findings Statement, including its determination to adopt two Local Laws and to grant and amended Preliminary Plan approval and issue an amended Special Permit, is illegal, arbitrary and capricious, affected by errors of law, and a violation of SEQRA and, therefore, must be declared null and void and Respondents should be enjoined from taking any action in furtherance of the Project.

FIFTH CAUSE OF ACTION

(Improper Public Hearing)

260. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 259 above, as though fully set forth herein.

261. The notice of public hearing conducted by the Town Board on October 26, 2009 failed to fairly appraise the public of the nature of the public hearing in violation of Town Law §264 and §265 and was not timely published and/or posted pursuant to applicable law.

262. Upon information and belief, the notice of the October 26, 2009 public hearing was not published in a newspaper of general circulation at least 14 days prior to the hearing as required by SEQRA. Such public hearing was therefore void and of no effect.

263. Upon information and belief, the public hearing purported to concern five separate and distinct Town Board actions: 1) consideration of the DSEIS, 2) consideration of the amended Preliminary Plan, 3) consideration of an amendment to the Special Permit, 4) consideration of Local Law No. 6 of 2009, and 5) consideration of Local Law No. __ of 2009.

264. The legal notice for the October 26, 2009 public hearing, however was woefully insufficient to provide the public with adequate notice of what the Town Board was actually considering.

265. The legal notice regarding the October 26, 2009 public hearing failed to properly advise the public of the nature of the multi-faceted purposes of the public hearing.

266. During the public hearing, public comment was improperly limited to three minutes per speaker to inform the Town Board of their concerns regarding, purportedly, the numerous topics being considered by the Town Board. This equates to 36 seconds per each of the five topics.

267. Such a limitation frustrated the public from meaningfully participating in the review process for the 2008 Project.

268. A second public hearing was subsequently conducted. The legal notice for the public hearing on November 26, 2009 described the scope of the hearing as follows:

- a local law entitled "Tuxedo Reserve Rezoning," which local law is intended to cause the zoning for the Tuxedo Reserve Planned Integrated Development to be consistent with certain changes proposed by the developer to its Special Permit and Preliminary Plan, the Tuxedo Town Board will hold a public hearing on the aforesaid Introductory Local Law at the Town Hall, One Temple Drive, Tuxedo, New York, on Monday, November 23, 2009, at 7:30 p.m.

269. Attached to this said legal notice, was a proposed Local Law which stated:

LOCAL LAW NO. ___

A LOCAL LAW AMENDING THE ZONING MAP OF THE TOWN OF TUXEDO

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF TUXEDO:

Section 1. The lands within Tuxedo Reserve that are in the R-1 zoning district shall be changed to conform to the legal description appended hereto as Exhibit A.

Section 2. The lands within Tuxedo Reserve that are in the R-2 zoning district shall be changed to conform to the legal description appended hereto as Exhibit B.

Section 3. The lands within Tuxedo Reserve that are in the R-4 zoning district shall be changed to conform to the legal description appended hereto as Exhibit A.

Section 4. The lands to be rezoned are depicted on the drawings appended hereto as Exhibit D.

270. A lengthy legal description was attached thereto with maps.

271. Nowhere in the legal notice does it state that the Town Board planned to: 1) consider the DSEIS, 2) consider the amended Preliminary Plan, 3) consider an amendment to the

Special Permit, 4) consider only one of the Local Laws of 2010 (the zoning map change only), which requires invalidation of the determinations to grant all the such approvals.

272. Notwithstanding the illegality of the public notice and lack of notification to the public of the purposes of the hearing, the Board held the Public Hearing November 23, 2009.

273. The Town Supervisor compounded the error specifically stating and misleading the public at the public hearing that the purpose of the public hearing was to consider the DSEIS, to the exclusion of the other matters. The Town Supervisor once again limited public comments to only three minutes thereby frustrating the ability of the public to meaningfully participate in the review process.

274. Similar to the first public hearing, limitation of public speakers to only three minutes to inform the Town Board regarding: 1) consideration of the DSEIS, 2) the amended Preliminary Plan, 3) an amendment to the Special Permit, 4) adoption of Local Law No. 6 of 2009, and 5) adoption of Local Law No. __ of 2009 was arbitrary and capricious.

275. As a result thereof, each Public Hearing was illegal and any and all determinations thereafter to grant Preliminary Plan approval and the amended Special Permit, and associated Local Laws are accordingly arbitrary and capricious, affected by error of law, in violation of lawful procedure, an abuse of discretion, in excess of jurisdiction, and null and void *ab initio*.

SIXTH CAUSE OF ACTION

(Illegal Adoption of Local Laws)

276. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 274 above, as though fully set forth herein.

277. The Town Board purportedly considered two Local Laws of 2009: 1) to amend the Town's Zoning Map, and 2) to amend Section 2 of Local Law #4A of 1998.

278. The Town's website, where the public might review the proposed Local Laws, inconsistently refers to proposed amendments to Local Law #4A of 1998 and Local Law #4A of 1999.

279. The public hearings and notices identified an amendment to Local Law 4A of 1998.

280. The amendments were ultimately adopted by the Town Board in 2010. However, Local Law #5 of 2010, proposes amendment of a completely different Local Law. Specifically, it proposes an amendment of Section 2 of Local Law #4A of 1999 and states as follows:

> AMENDMENT OF LOCAL LAW #4A OF 1999
>
> The following paragraph of Section 2 of Local Law #4A of 1999 is hereby amended to read as follows:
>
> "5. No more than 1,195 residential dwelling units may be constructed on the Tuxedo Reserve planned integrated development of which no more than 180 units shall be rental and no less than ~~866~~ 761 shall be single-family detached and semidetached. An additional 180 dwelling units may be constructed provided those units are constructed for senior citizens and persons in need of congregate care or assisting[3] living."

281. Upon information and belief, the New York State Secretary of State's Office has no record of a "Local Law 4A of 1998" or "Local Law 4A of 1999" ever having been filed by the Town. See, Exhibit F – Local Law 4 of 1998 and Local Law 4 of 1999, as filed in the New York State Secretary of State's Office.

282. All Local Laws adopted by municipalities in New York are required to be filed with the New York State Secretary of State's Office.

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3 It is noted that the actual language contained in the 1999 Local Law stated "assisted" not "assisting" living.

283. The Secretary of State does have a record of Local Law 4 of 1998 entitled "Planned Integrated Development Amendments" that does appear to have applicability in this matter. Section 2 of Local Law 4 of 1998 states in its entirely:

> The pending application for a Planned Integrated Development known as "Tuxedo Reserve" shall be exempt from the Planned Integrated Development regulations in this Local Law and shall continue to be reviewed in accordance with the Planned Integrated Development regulations in effect immediately prior to the adoption of this Local Law. Notwithstanding this provision or anything to the contrary in the Planned Integrated Development regulations in effect immediately prior to the adoption of this Local Law, the Tuxedo Reserve Planned Integrated Development shall be subject to the following specific development standards and limits:
>
> 1. No more than 1,195 residential dwelling units may be constructed on the Tuxedo Reserve Planned Integrated Development of which no more than 180 units shall be rental and no less than 866 shall be single-family detached and semidetached. An additional 180 dwelling units may be constructed provided those units are constructed for senior citizens and persons in need of congregate care or assisted living.
>
> 2. Under no circumstances shall the housing mix in the Tuxedo Reserve Planned Integrated Development be less than the minimum required under 98-23 F.(7) of this Local Law.
>
> 3. Nothing contained herein shall be construed as any approval of the pending application of Tuxedo Reserve. Said application is subject to all applicable environmental and land use processes and approvals.

There is no paragraph 5 in this local law to be amended as purported by Local Law #5 of 2010.

284. The adoption of Local Law 5 of 2010 to amend paragraph 5 of Local Law 4A of 1999 is thus incorrect and in violation of lawful procedure, an abuse of discretion, in excess of jurisdiction, and null and void *ab initio* because 1) there is no validly enacted and filed Local Law

4A of 1999 to be amended, 2) the purported amendment of paragraph 5 is a reference to a nonexistent provision and 3) there was never a public hearing conducted by the Town Board to adopt a Local Law seeking to amend Local Law 4A of 1999.

SEVENTH CAUSE OF ACTION

(Exemption from 1998 Local Law)

285. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 284 above, as though fully set forth herein.

286. Notwithstanding the deficiencies noted in the foregoing cause of action, Section 2 of Local Law 4 of 1998 is binding legislative authority that may not be amended.

287. Section 2 imposed specific limitations upon the "pending application for a Planned Integrated Development known as 'Tuxedo Reserve'" in order for the Town Board to grant the exception from the applicability of the new Planned Integrated Development ("PID") provisions.

288. The 1998 or 1999 Town Board provided explicit parameters required to be met in order for the exemption from the new law to apply to that "pending application."

289. In reliance on that that exemption, upon information and belief, the predecessor to Reserve Owner, obtained certain approvals in 1999 for the "Tuxedo Reserve" project at that time consistent with the specific parameters and limitations set forth in the Local Law.

290. Since 1999, additional land has been acquired by Reserve Owner and added to the former site and proposed for development as part of the 2008 Project. The 2008 Project was not contemplated by the 1998 or 1999 Town Board.

291. The legislation adopted by the Town Board in 1998 or 1999 exempted a specific project to be developed on certain land from the new PID requirements adopted by the Town Board.

292. The 1998 or 1999 legislation did not authorize Reserve Owner to either add or subtract land to the project site being considered by the Town Board at that time.

293. Since there are changes to the project since 1999, including the addition of new lands for development, such changes and new lands are not exempt from the provisions of the new PID regulations which apply to them.

294. As a result thereof, the 1998 or 1999 legislation limits the 2010 Town Board's authority, because it applied to a specific project and specific lands being considered at that time. The substantially alteration with the addition of new lands and Project is not permissible.

295. The Zoning Amendments adopted by the Town Board on November 22, 2010 were, therefore, illegal, and any and all determinations thereafter to grant Preliminary Plan approval and the amended Special Permit are accordingly arbitrary and capricious, affected by error of law, in violation of lawful procedure, an abuse of discretion, in excess of jurisdiction, and null and void *ab initio*.

EIGHTH CAUSE OF ACTION

(Public Officers Law Violations)

296. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 295 above, as though fully set forth herein.

297. Upon information and belief, on September 27, 2010 the full Town Board and Town Planner met and discussed the Project at a Hampton Inn in Princeton, New Jersey.

298. Two additional meetings of the full Town Board to discuss the Project occurred thereafter later in the same day at the Town Hall office of The Township of Robbinsville, New Jersey.

299. The meetings occurred without any formal published notice whatsoever.

300. Despite the lack of notice, Petitioners appeared at each meeting and were denied access to the meetings.

301. In fact, upon information and belief, Petitioners were explicitly told that the meetings were not going to occur, and Town attorneys openly discussed via email correspondence whether they could prohibit Petitioner Wilson from attending.

302. Upon information and belief, after denying Petitioners access to the public meetings, the meetings occurred.

303. Pursuant to section 104 of the Public Officers Law (the "Open Meetings Law"), any meeting of the Town Board shall be publicly noticed and open to the public. If the meeting is scheduled a week in advance, published notice of the meeting date, time and location in the Town's official newspaper is required.

304. Upon information and belief, the September 27, 2010 meetings were scheduled well more than a week in advance, and yet no published notice was provided whatsoever, nor was any attempt made to inform the media of the meeting.

305. Failure to provide notice and prohibiting the public from attending public meetings wherein public business is discussed, such as the Project, violates the Open Meetings Law.

306. Less than sixty days later, without any further public deliberations, the Town Board issued a SEQRA Findings Statement and approved the amendments to the Special Permit and Preliminary Plan and Local Law 4 of 2010 and Local Law 5 of 2010.

307. Petitioner is aggrieved by the violation of the Open Meetings Law by the Town Board because he was denied access to the public meetings, no summary or report of the meetings have been provided to Petitioners or the public, and no legitimate basis to enter executive session to conduct the meeting was ever provided.

308. Accordingly, the subsequent SEQRA Findings Statement and approval of the amendments to the Special Permit and Preliminary Plan and Local Law 4 of 2010 and Local Law 5 of 2010 by the Town Board should be null and void.

NINTH CAUSE OF ACTION

(General Municipal Law Violations)

309. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 308 above, as though fully set forth herein.

310. Upon information and belief, the Town Supervisor, a Town Board member and the Town Planner previously traveled to Florida for the stated purpose of touring a residential project developed by the Applicant.

311. Upon information and belief, the travel included accommodations on a private plane, meals and other accommodations provided at the Applicant's expense.

312. General Municipal Law section 805-a prohibits a municipal officer from receiving any gift, including travel, the value of which is $75.00 or more, under circumstances in which it could reasonably be inferred the gift was intended to influence him or her.

313. The Town of Tuxedo Ethics Code also prohibits such gifts.

314. Given the excessive nature of the travel accommodations provided to the Town Supervisor, Town Board member and Town Planner, the accommodations constitute impermissible gifts within the meaning of section 805-a of the General Municipal Law.

315. General Municipal Law section 805-a(2) provides that

> "[I]n addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

316. Accordingly, the proper remedy would be to declare the amendment to the Special Permit, amendment to the Preliminary Plan, Local Law 4 of 2010 and Local Law 5 of 2010, void pursuant to General Municipal Law section 805-a.

TENTH CAUSE OF ACTION

(Illegal Contract Zoning)

317. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 316 above, as though fully set forth herein.

318. Local Law No. 5 of 2010 and the Amended and Restated Permit seek to limit the authority of future Town Boards and, together, constitute impermissible contract zoning.

319. Local Law No. 5 of 2010 and the Amended and Restated Permit further seeks to exempt Reserve Owner, as owner of the Project Site, from the currently effective provisions of the PID law in the Tuxedo Zoning Law.

320. In exchange for such approvals, the Town Board advised Reserve Owner and Reserve Owner agreed to supply the Town with:

- a 30 year lease on a 3,000 square foot garage to be constructed by Reserve Owner anytime during Phase 1 of the project;
- donation of a sales, marketing and operations center, but subject to Reserve Owner's right to reserve a 1,000 square foot leasehold over the center at the time of donation, and not until 12 years after the issuance of the first certificate of occupancy;
- donation of 44.9 acres to the Town along the Ramapo River, but not until the time of issuance of the first certificate of occupancy;

- a promise to license space to the Town to accommodate up to 200 persons;
- a promise not to seek dedication of certain roads to the Town;
- an extension of time within which financing may be obtained to construct a library on Reserve Owner's property;
- an agreement to the adjustment of the administration and guarantees available under the previously negotiated "Hamlet Revitalization Fund" established by Reserve Owner, including a pledge a $1,000,000 after issuance of the Permit; and
- imposition of restrictive covenants on each of the lots to be created by Reserve Owner, regarding the use of those lots in the future.

321. Numerous other exchanges will also occur, including:

- donation of a 24+ acre parcel to the Village of Tuxedo Park subject to a conservation easement;
- donation of a parcel of land for a future school to the local school district;
- grant of access to the project trail system to the Town and its residents; and an annual $150,000 PILOT payment to the Town for 14 years.

322. Notably, however, unless otherwise stated in the Amended and Restated Permit, the exchanges will occur only <u>after</u> the first building permit is issued to Reserve Owner - thereby enabling Reserve Owner to vest its rights against any potential Zoning Law amendments by future Town Boards.

323. The Town Board also surrendered its enforcement authority in the Amended and Restated Permit, providing that enforcement action may only be taken, and the Amended and Restated Permit may only be revoked, on 30 days advance written notice to Reserve Owner, unless "there is an imminent threat to the health, safety and welfare of the public or the environment."

324. The Amended and Restated Permit also is to be recorded in the chain of title for the property and, by its own terms, "runs with the land."

325. The Town Board illegally contracted away its zoning authority upon the promises made by Reserve Owner.

ELEVENTH CAUSE OF ACTION

(Spot Zoning)

326. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 325 above, as though fully set forth herein.

327. Pursuant to Town Law section 262, Zoning District regulations shall be uniform for all Districts within the Town.

328. By continuing to exempt the Tuxedo Reserve Project Site from the currently applicable current PID regulations, the Town Board has effectuated an inconsistency between its Zoning Districts in violation of Town Law §262.

329. While the old PID law applies to two underlying Zoning Districts which encompass the Tuxedo Reserve Site, the new PID law applies to the portions of these Zoning Districts which underlie adjacent lands as well as the remaining Zoning Districts in the Town.

330. The old and new PID laws are inconsistent.

331. The inconsistency is also heightened, here, through incorporation of the "Smart Code" in the Special Permit issued under the old PID law which creates further inconsistency between the law as applied to the Project Site and all other lands within the Town.

332. Accordingly, Local Law No. 5 of 2010 and the Amended and Restated Permit issued under the old PID law violates Town Law section 262 by creating a special district with different regulations applicable only to the Tuxedo Reserve property.

333. The Town Board has, therefore, also impermissibly spot zoned the Tuxedo Reserve Site by adopting Local Law No. 5 of 2010.

334. Illegal spot zoning occurs when a zoning enactment benefits only an applicant, creating an island of development inconsistent with the remainder of the Town.

335. Here, the application of the old PID Law to the Project site has been done solely to benefit Reserve Owner.

336. For these reasons, Local Law No. 4 of 2010, Local Law No. 5 of 2010 and the Amended and Restated Permit should be annulled.

TWELFTH CAUSE OF ACTION

(Improper Delegation)

337. Petitioners repeat and reallege each allegation set forth in paragraphs 1 through 336 above, as though fully set forth herein.

338. Pursuant to the Zoning Law of the Town of Tuxedo, a successful applicant for a Planned Integrated Development special permit may immediately seek site plan approval and may seek building/zoning permits from the Building Inspector following the issuance of site plan approval.

339. The Building Inspector is empowered to issue such permits for, among other things, the construction, alteration, use, and occupancy of any building, structure and/or land within the Town of Tuxedo.

340. Upon information and belief, Reserve Owner is in the process of applying for site plan approval and thereafter such zoning permits from the Building Inspector of the Town of Tuxedo.

341. Issuance of site plan approval and such zoning permits pursuant to the invalid and unlawful SEQRA Findings Statement, amended Special Permit, amended Preliminary Plan approval and Local Laws granted by the Town Board with respect to the 2008 Project would cause irreparable harm to Petitioners and to the environment, as more fully alleged above.

342. As a result of the foregoing, Petitioners seek permanent injunctive relief, enjoining and restraining the Planning Board and Building Inspector from issuing site plan approval and any and all zoning permits in furtherance of the amended Special Permit, amended Preliminary Plan approval and Local Laws granted on November 22, 2010 and/or from issuing to Reserve Owner any other permits or approvals permitting any site disturbance, grading, construction or construction-related activity to the 2008 Project.

WHEREFORE, Petitioners respectfully request an Order and Judgment of this Court as follows:

1. Annulling and vacating the all the determinations of the Town Board under SEQRA and its regulations, including those to accept the DSEIS and FSEIS with respect to the Project;

2. Annulling and vacating the determination of this Town Board to adopt the Findings Statement with respect to the Project;

3. Precluding any further action with respect to the Findings Statement, including annulling and vacating any further determinations of the Planning Board with respect to the Project that may be made during the pendency of this proceeding;

4. Annulling and vacating the Resolution of the Town Board, dated November 22, 2010, granting an amended Special Permit and Preliminary Plan approval for the Project, and any other determinations, decisions or order granting same;

5. Annulling and vacating Local Law #4 of 2010 adopted by the Town Board on November 22, 2010, and any other determinations, decisions or order granting same.

6. Annulling and vacating Local Law #5 of 2010 adopted by the Town Board on November 22, 2010, and any other determinations, decisions or order granting same.

7. Declaring Local Law #5 of 2010 adopted by the Town Board on November 22, 2010, purportedly amending Local Law 4A of 1999 for the Project null and void.

8. Declaring Local Law #5 of 2010 adopted by the Town Board on November 22, 2010, purportedly amending the Town Zoning Map for the Project null and void.

9. Declaring the Smart Code approved by the Town Board on November 22, 2010 as part of the amended Special Permit and Preliminary Plan for the Project null and void.

10. Declaring that the Town Board violated the Open Meetings Law and annulling the amended Special Permit and Preliminary Plan for the Project.

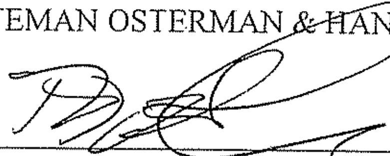
11. Declaring that the Town Board violated General Municipal Law section 805-a and annul the amended Special Permit and Preliminary Plan for the Project.

12. Granting permanent injunctive relief, enjoining and restraining the Planning Board and Building Inspector of the Town of Tuxedo from issuing site plan approval and zoning permits or other permits or approvals permitting any site disturbance, grading, construction or construction-related activity relative to the Project;

13. Granting such other and further relief which to this Court seems just and proper, including the reasonable costs of this proceeding.

DATED: December 22, 2010
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: 

Thomas A. Shepardson, Esq.
Attorneys for Plaintiffs/Petitioners
One Commerce Plaza
Albany, New York 12260
(518) 487-7600

VERIFICATION

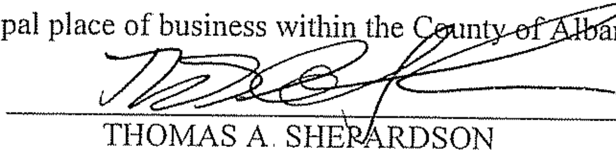
STATE OF NEW YORK)
: ss.
COUNTY OF ALBANY)

THOMAS A. SHEPARDSON, being duly sworn, deposes and says as follows:

1. I am a member of Whiteman Osterman & Hanna LLP, attorneys for Plaintiffs/Petitioners in this matter.

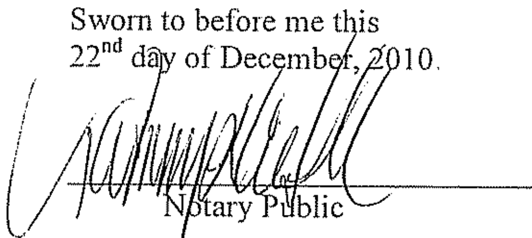
2. I have read the foregoing Verified Petition and Complaint and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and information provided by my clients.

3. The reason why this verification is made by me and not Plaintiffs/Petitioners is that Plaintiffs/Petitioners do not have their principal place of business within the County of Albany.



THOMAS A. SHEPARDSON

Sworn to before me this
22nd day of December, 2010.



Notary Public

TAMMY L. CUMO - SMITH
Notary Public, State of New York
No. 02CU6088647
Qualified in Rensselaer County
Commission Expires March 10 2011

STATE OF NEW YORK
SUPREME COURT COUNTY OF ORANGE

In the Matter

TUXEDO LAND TRUST, INC, THOMAS WILSON, MARY F. GRAETZER, ROBERT RENNIE MCQUILKIN, JR., PETER REGNA, TORNE VALLEY PRESERVATION ASSOCIATION AND PATRICIA WOOTERS,

Petitioners-Plaintiffs

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR.

-against-

THE TOWN OF TUXEDO, THE TOWN BOARD OF THE TOWN OF TUXEDO, THE PLANNING BOARD OF THE TOWN OF TUXEDO, DAVID MAIKISCH, AS BUILDING INSPECTOR OF THE TOWN OF TUXEDO, AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

NOTICE OF PETITION

Index No.: 2010 013675

RJI No.:

2010 DEC 22 PM 2:15
ORANGE COUNTY
SUPREME & COUNTY COURT
GOSHEN, N.Y.

PLEASE TAKE NOTICE, that upon the accompanying Verified Petition and Complaint, dated December 22, 2010, and the exhibits annexed thereto, the Affidavit of Thomas Wilson, sworn to on December 20, 2010, the Affidavit of Mary F. Graetzer, sworn to on December 20, 2010, the Affidavit of Robert Rennie McQuilkin, Jr., sworn to on December 21, 2010, and the Affidavit of Peter Regna, sworn to on December 21, 2010, and the Affidavit of Patricia Wooters, sworn to on December 21, 2010, Petitioners will move this Court on the 18th day of February, 2011, at 10:00 a.m. or as soon thereafter as counsel can be heard for an order and judgment: (1) annulling and vacating all determinations made by Respondent Town Board under the State

Environmental Quality Review Act ("SEQRA") for the Project referenced in the Verified Petition and Complaint; (2) annulling and vacating the SEQRA Findings Statement adopted by the Town Board; (3); annulling and vacating the November 22, 2010 Amended and Restated Resolution Granting Special Permit and Preliminary Plan Approval for the Project; (4) annulling and vacating Local Law #4 of 2010 adopted by the Town Board on November 22, 2010, purportedly amending Local Law 4A of 1999 for the Project; (5) annulling and vacating Local Law #5 of 2010 adopted by the Town Board on November 22, 2010, purportedly amending the Town of Tuxedo Zoning Map for the Project; (6) declaring Local Law #4 of 2010, adopted by the Town Board on November 22, 2010, null and void; (7) declaring the Smart Code approved by the Town Board on November 22, 2010 null and void; (8) declaring that the Town Board violated the Open Meetings Law; (9) declaring that the Town Board violated General Municipal Law § 805-a; (10) preliminarily and permanently enjoining Respondents from taking any further actions on the Project during the pendency of this proceeding; and (11) granting such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §7804(c), an answer and supporting affidavits, if any, shall be served at least five days before the aforesaid return date.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §506(b), Petitioner designates Orange County as the proper place of venue for this proceeding because Orange County is located in the judicial district in which Respondents rendered the challenged determination.

DATED: December 22, 2010
Albany, New York 12260

WHITEMAN OSTERMAN & HANNA LLP

By:

Thomas A. Shepardson, Esq.
Attorneys for Petitioners-Plaintiffs
One Commerce Plaza
Albany, New York 12260
Phone: (518) 487-7600

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON,
MARY F. GRAETZER, ROBERT RENNIE
MCQUILKIN, JR., PETER REGNA,
TORNE VALLEY PRESERVATION ASSOCIATION
AND PATRICIA WOOTERS,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the
CPLR and a Declaratory Judgment Pursuant to
Section 3001 of the CPLR

-against-

THE TOWN BOARD OF THE TOWN OF TUXEDO,
THE PLANNING BOARD OF THE TOWN OF TUXEDO,
DAVID MAIKISCH, AS BUILDING INSPECTOR
OF THE TOWN OF TUXEDO, THE TOWN OF TUXEDO
AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

AFFIDAVIT IN SUPPORT OF VERIFIED PETITION

Index No. 2010 013675
RJI No.

2010 DEC 22 PM 2: 15
ORANGE COUNTY SUPREME & COUNTY COURT GOSHEN, N.Y.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

THOMAS WILSON being duly sworn, deposes and says:

1. I am one of the petitioners in this proceeding, a managing director of Petitioner Tuxedo Land Trust ("TLT") and a Trustee of the Village of Tuxedo Park. As such, I am fully familiar with the facts and circumstances surrounding this proceeding.

2. This affidavit is submitted in support of the Verified Petition and Complaint in this proceeding. This affidavit is also submitted in support of TLT's organizational capacity to represent my interests in this proceeding.

3. TLT exists for the purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

4. TLT has been actively engaged in the Town of Tuxedo's consideration of amendments to the Tuxedo Reserve project.

5. As a member of TLT, and in my individual capacity, I also actively engaged in the Town of Tuxedo's consideration of the project, appearing and speaking at Tuxedo Town Board meetings, workshops and hearings.

6. As I have told the Tuxedo Town Board members, the project will have a direct impact on my quality of life.

7. Since 2001, I have resided with my family at 24 Pine Hill Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York.

8. Our single family, Dutch Colonial home was built in 1926 as a "gardener's cottage" associated with one of the original founding estates built in the 1886 through 1930 era, and is located less than one-quarter mile from the Tuxedo Reserve project site.

9. Our home is situated proximate to the Revolutionary War era Continental Road, parts of which will be adversely affected by the project. My family and I often walk the Continental Road, and have been working toward having the Continental Road and ancillary Corduroy Roads declared as an extension of the Washington-Rochambeau Federal Trail that connects with the Continental Road just a few miles south of our home in Ringwood, New

Jersey.

10. Our home is also connected to the Village of Tuxedo Park water supply. Since the project will entail development, stormwater runoff and possibly pollution within the Tuxedo Lake watershed – the Village's water supply resource – this too is of very serious concern to me and my family.

11. Finally, the project will forever change the historic, quaint character of Tuxedo Park, placing an untold demand on existing roadways, service industries, utilities and the environment.

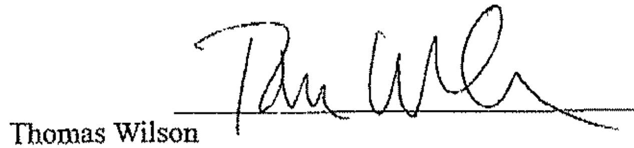
12. As a result of these many impacts, I appeared at and assisted TLT in its efforts during workshops, meetings and hearings advising the Town Board that amendment of the Tuxedo Reserve permit required a careful and methodical assessment of each of these issues.

13. TLT's interests were aligned with my interests in our appearances before the Town during its consideration of the permit amendment, and remain aligned in this proceeding.

14. TLT is an appropriate organizational representative of my interests in this proceeding, having provided expert testimony regarding the adverse environmental and fiscal impacts which will result from amendment of the permit.

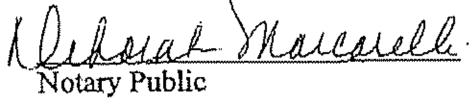
15. Despite the efforts of TLT, and its members, the Town Board has failed to heed our concerns. In fact, the Town Board obstructed many, including TLT's officers, in their attempts to provide meaningful comments on the proposal.

For the reasons set forth above, the Town Board's issuance of SEQRA findings, adoption of local laws and issuance of the amended and restated special permit for the Tuxedo Reserve project should be annulled.



Thomas Wilson

Sworn to before me this 20th day
of December 2010



Notary Public

DEBORAH MARCARELLI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ROCKLAND COUNTY
REG #01MA6185682
MY COMM EXP. APRIL 21, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON, MARY F. GRAETZER, ROBERT RENNIE MCQUILKIN, JR., PETER REGNA, TORNE VALLEY PRESERVATION ASSOCIATION AND PATRICIA WOOTERS,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

-against-

THE TOWN BOARD OF THE TOWN OF TUXEDO, THE PLANNING BOARD OF THE TOWN OF TUXEDO, DAVID MAIKISCH, AS BUILDING INSPECTOR OF THE TOWN OF TUXEDO, THE TOWN OF TUXEDO AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

AFFIDAVIT IN SUPPORT OF VERIFIED PETITION

Index No. 2010 013675
RJI No.

2010 DEC 22 PM 2:15
ORANGE COUNTY SUPREME & COUNTY COURT GOSHEN, N.Y.

STATE OF NEW YORK)

COUNTY OF ORANGE) ss:

MARY F. GRAETZER being duly sworn, deposes and says:

1. I am one of the petitioners in this proceeding, and a member of Petitioner Tuxedo Land Trust ("TLT"). As such, I am fully familiar with the facts and circumstances surrounding this proceeding.

2. This affidavit is submitted in support of the Verified Petition and Complaint in

this proceeding. This affidavit is also submitted in support of TLT's organizational capacity to represent my interests in this proceeding.

3. TLT exists for the purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

4. TLT has been actively engaged in the Town of Tuxedo's consideration of amendments to the Tuxedo Reserve project.

5. As a member of TLT, and in my individual capacity, I also actively engaged in the Town of Tuxedo's consideration of the project, appearing and speaking at Tuxedo Town Board meetings, workshops and hearings.

6. As I have told the Tuxedo Town Board members, the project will have a direct impact on my quality of life.

7. Since 1972, I have resided with my family at 17 Ridge Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York. Presently my daughter, son-in-law and their three children, my grandchildren, and I live in our family home.

8. Our home is situated proximate to the Mountain Lake section of Tuxedo Reserve. My family and I often walk the trails in and around the Tuxedo Reserve project site. The walk to Mountain Lake was a long time favorite when my children were growing up and remains a destination for the newest generation of my family and many others. The Tuxedo Reserve project will severely change the character of the Mountain Lake area, including lands

surrounding my home.

9. Our home is also connected to the Village of Tuxedo Park water supply. Since the project will entail development, stormwater runoff and possibly pollution within the Tuxedo Lake watershed – the Village's water supply resource – this too is of very serious concern to me and my family.

10. Finally, the project will place an untold fiscal demand on George Grant Mason Elementary School, where my grandchildren attend, as well as the Village of Tuxedo Park water and sewer utilities.

11. As a result of these many impacts, I appeared at and supported TLT's efforts during workshops, meetings and hearings advising the Town Board that amendment of the Tuxedo Reserve permit required a careful and methodical assessment of each of these issues.

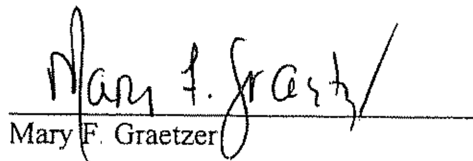
12. TLT's interests were aligned with my interests in our appearances before the Town during its consideration of the permit amendment, and remain aligned in this proceeding.

13. TLT is an appropriate organizational representatives of my interests in this proceeding.

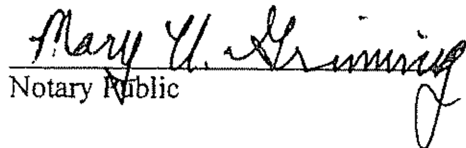
14. Despite the efforts of TLT, and its members, the Town Board has failed to heed our concerns. In fact, the Town Board obstructed many, including TLT's officers, in their attempts to provide meaningful comments on the proposal.

15. As a result, we have joined TLT in this proceeding.

For the reasons set forth above, the Town Board's issuance of SEQRA findings, adoption of local laws and issuance of the amended and restated special permit for the Tuxedo Reserve project should be annulled.


Mary F. Graetzer

Sworn to before me this 20th day
of December 2010


Notary Public

MARY U. GRIMMIG
Notary Public Of The State Of New York
No. 01GR6117100
Qualified In Orange County
Commission Expires October 18, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON, MARY F. GRAETZER, ROBERT RENNIE MCQUILKIN, JR., PETER REGNA, TORNE VALLEY PRESERVATION ASSOCIATION AND PATRICIA WOOTERS,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

-against-

THE TOWN BOARD OF THE TOWN OF TUXEDO, THE PLANNING BOARD OF THE TOWN OF TUXEDO, DAVID MAIKISCH, AS BUILDING INSPECTOR OF THE TOWN OF TUXEDO, THE TOWN OF TUXEDO AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

AFFIDAVIT IN SUPPORT OF VERIFIED PETITION

Index No. 2010 013675
RJI No.

2010 DEC 22 PM 2:15
ORANGE COUNTY
SUPREME & COUNTY COURT
GOSHEN, N.Y.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

ROBERT RENNIE MCQUILKIN, JR. being duly sworn, deposes and says:

1. I am one of the petitioners in this proceeding, and a member of Petitioner Tuxedo Land Trust ("TLT"). As such, I am fully familiar with the facts and circumstances surrounding this proceeding.

2. This affidavit is submitted in support of the Verified Petition and Complaint in this proceeding. This affidavit is also submitted in support of TLT's organizational capacity to represent my interests in this proceeding.

3. TLT exists for the purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

4. TLT has been actively engaged in the Town of Tuxedo's consideration of amendments to the Tuxedo Reserve project.

5. As a member of TLT, and in my individual capacity, I also actively engaged in the Town of Tuxedo's consideration of the project, appearing and speaking at Tuxedo Town Board meetings, workshops and hearings.

6. As I have told the Tuxedo Town Board members, the project will have a direct impact on my quality of life.

7. Since 2006, I have resided with my partner, William Barclay Russell, Jr. at 82 Circuit Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York.

8. Our home is located in the northeast section of the Village, atop Fox Mountain, with views of Eagle and Cairn Mountains.

9. Our home is situated proximate to the Tuxedo Reserve project site. My family and I often walk the trails within and surrounding the project site, observing the diverse wildlife which presently exists here. Development of the project site will fragment the State and private forests which support the area's diversity.

10. Our home is also connected to the Village of Tuxedo Park water supply. Since the project will entail development, stormwater runoff and possibly pollution within the Tuxedo

Lake watershed – the Village's water supply resource – this too is of very serious concern to me and my family.

11. Finally, the project will add significant levels of traffic to already congested roadways we depend upon for work, life and leisure. The project will also forever change the historic, quaint character of Tuxedo Park, placing an untold demand on existing roadways, service industries, utilities and the environment.

12. As a result of these many impacts, I appeared at and assisted TLT in its efforts during workshops, meetings and hearings advising the Town Board that amendment of the Tuxedo Reserve permit required a careful and methodical assessment of each of these issues.

13. TLT's interests were aligned with my interests in our appearances before the Town during its consideration of the permit amendment, and remain aligned in this proceeding.

14. TLT is an appropriate organizational representative of my interests in this proceeding, having providing expert testimony regarding the adverse environmental and fiscal impacts which will result from amendment of the permit.

15 Despite the efforts of TLT, and its members, the Town Board has failed to heed our concerns. In fact, the Town Board obstructed many, including TLT's officers, in their attempts to provide meaningful comments on the proposal.

16. As a result, I have joined TLT in this proceeding.

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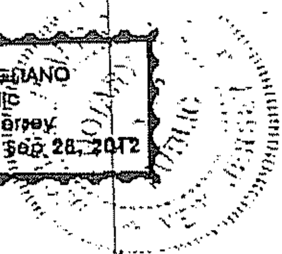
File View

For the reasons set forth above the Town Board's issuance of SEQRA findings, adoption of local laws and issuance of the amended and restated special permit for the Tuxedo Reserve project should be annulled.

Robert Rennie McQuilkin, Jr.

Sworn to before me this 21st day
of December 2010

Notary Public



MICHAEL P APRIGLIANO
Notary Public
State of New Jersey
My Commission Expires Sep 28, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON, MARY F. GRAETZER, ROBERT RENNIE MCQUILKIN, JR., PETER REGNA, TORNE VALLEY PRESERVATION ASSOCIATION AND PATRICIA WOOTERS,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the CPLR and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

-against-

THE TOWN BOARD OF THE TOWN OF TUXEDO, THE PLANNING BOARD OF THE TOWN OF TUXEDO, DAVID MAIKISCH, AS BUILDING INSPECTOR OF THE TOWN OF TUXEDO, THE TOWN OF TUXEDO AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

AFFIDAVIT IN SUPPORT OF VERIFIED PETITION

Index No. 2010 013675

RJI No.

2010 ... PM 2: 15
SUPREME COURT ORANGE COUNTY N.Y.

STATE OF NEW YORK)

COUNTY OF ORANGE) ss:

PETER JAMES REGNA being duly sworn, deposes and says:

1. I am one of the petitioners in this proceeding, and a contributor to Petitioner Tuxedo Land Trust ("TLT"). As such, I am fully familiar with the facts and circumstances surrounding this proceeding.

2. This affidavit is submitted in support of the Verified Petition and Complaint in

this proceeding. This affidavit is also submitted in support of TLT's organizational capacity to represent my interests in this proceeding.

3. TLT exists for the purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

4. TLT has been actively engaged in the Town of Tuxedo's consideration of amendments to the Tuxedo Reserve project.

5. As a member of TLT, and in my individual capacity, I also actively engaged in the Town of Tuxedo's consideration of the project, appearing and speaking at Tuxedo Town Board meetings, workshops and hearings.

6. As I have told the Tuxedo Town Board members, the project will have a direct impact on my quality of life.

7. Since 1976, I have resided at 117 West Lake Road in the Village of Tuxedo Park, Town of Tuxedo, Orange County, New York.

8. Our home is listed on the National Register of Historic Places. The project will forever change the Village's historic character, being listed on the National Register of Historic Places itself, and have an adverse effect on the historic character of my home.

9. Our home is also located adjacent to Tuxedo Lake and nearby the Eagle Mountain Hiking Trail, where views of federal prominence are available. The project will fragment and disrupt the trail network existing within and around the project site, causing irreparable damage to Continental Road and other surrounding Corduroy Roads.

10. My family and I also often boat on Tuxedo Lake, and our home and my business, Aero Tec Laboratories, are connected to the Village of Tuxedo Park water supply. Since the project will entail development, stormwater runoff and possibly groundwater pollution within the Tuxedo Lake watershed – the Village's water supply resource – this too is of very serious concern to me and my family.

11. Finally, the project will forever change the historic, quaint character of Tuxedo Park, placing an untold demand on existing roadways, service industries, utilities and the environment.

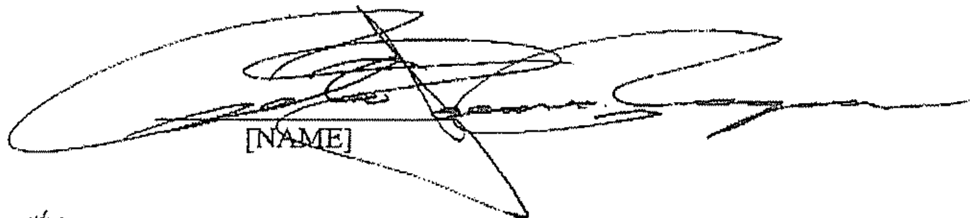
12. Due to our personal concerns, and in our capacity as members of Tuxedo Land Trust, we appeared at and supported Tuxedo Land Trust's efforts during TOWN BOARD MEETINGS, 3 PUBLIC HEARINGS AND SEVERAL WORK SESSIONS, advising the Town Board that amendment of the Tuxedo Reserve permit required a careful and methodical assessment of each of these issues.

13. Tuxedo Land Trust's interests were aligned with my interests in our appearances before the Town during its consideration of the permit amendment, and remain aligned in this proceeding. Tuxedo Land Trust is an appropriate organizational representative of my interests in this proceeding.

14. Despite the efforts of Tuxedo Land Trust and its members, including myself, the Town Board has failed to heed our concerns. In fact, the Town Board obstructed many, including Tuxedo Land Trust's officers, in their attempts to provide meaningful comments on the proposal.

15. As a result, we have joined Tuxedo Land Trust in this proceeding seeking to have the Town Board's issuance of SEQRA findings, adoption of local laws and issuance of the amended and restated special permit for the Tuxedo Reserve project overturned.

Dated: 20 DECEMBER 2010 PETER JAMES REGNA



[NAME]

Sworn to before me this 20th day
of December 2010

INGRID L. JANEIRO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 18, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of

TUXEDO LAND TRUST, INC, THOMAS WILSON,
MARY F. GRAETZER, ROBERT RENNIE
MCQUILKIN, JR., PETER REGNA,
TORNE VALLEY PRESERVATION ASSOCIATION
AND PATRICIA WOOTERS,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the
CPLR and a Declaratory Judgment Pursuant to
Section 3001 of the CPLR

-against-

THE TOWN BOARD OF THE TOWN OF TUXEDO,
THE PLANNING BOARD OF THE TOWN OF TUXEDO,
DAVID MAIKISCH, AS BUILDING INSPECTOR
OF THE TOWN OF TUXEDO, THE TOWN OF TUXEDO
AND TUXEDO RESERVE OWNER, LLC.

Respondents-Defendants.

AFFIDAVIT IN SUPPORT OF VERIFIED PETITION

Index No. 2010 013675
RJI No.

2010 DEC 22 PM 2:15
ORANGE COUNTY
SUPREME & COUNTY COURT
GOSHEN, N.Y.

STATE OF NEW YORK)

COUNTY OF ROCKLAND) ss:

PATRICIA WOOTERS being duly sworn, deposes and says:

1. I am one of the petitioners in this proceeding, the chairperson of Petitioner Torne Valley Preservation Association ("TVPA") and a member of Petitioner Tuxedo Land Trust ("TLT"). As such, I am fully familiar with the facts and circumstances surrounding this

proceeding.

2. This affidavit is submitted in support of the Verified Petition and Complaint in this proceeding. This affidavit is also submitted in support of TVPA's and TLT's organizational capacity to represent my interests in this proceeding.

3. TVPA exists to raise awareness and advocate for the protection and preservation of the Ramapo Highlands and the Ramapo River Watershed.

4. TLT exists for the purpose of conserving the natural resources and preserving the community character in and around Tuxedo Park.

5. Both TVPA and TLT have been actively engaged in the Town of Tuxedo's consideration of amendments to the Tuxedo Reserve project.

6. As a member of both of these organizations, and in my individual capacity, I also actively engaged in the Town of Tuxedo's consideration of the project, appearing and speaking at Tuxedo Town Board meetings, workshops and hearings.

7. As I have told the Tuxedo Town Board members, the project will have a direct impact on my quality of life.

8. I reside with my husband at 19 Mansfield Place, on the corner of East Maple Street and Mansfield Place, in the Village of Suffern. East Maple Street, which fronts along our side yard, runs between the Mahwah and Ramapo Rivers. Our home is a short distance from each of these Rivers, and my husband and I often recreate along each of the Rivers. The Tuxedo

Reserve project will result in a significant stormwater discharge to the Ramapo River, threatening our enjoyment of the River as a result of pollution attributable to the project.

9. Similarly, our home is connected to the Village of Suffern sewer and water service. The Suffern municipal water supply is drawn exclusively from a federally designated sole source aquifer – four wells adjacent to the Ramapo River. Project construction activity, including extensive blasting activity that will be necessary, will expose and create fractures in the bedrock which underlies the site, increasing the frequency and accelerating the rate of connections between stormwater and chemical discharges at the project site and the Village's aquifer.

10. Our home is also a short walk from the Suffern Bear Mountain Hiking Trail in Harriman State Park. My husband and I have hiked there many times, as well as much of the trails in Harriman and Sterling Forest State Parks. A favorite hike is to Claudius Smith's Cave, which overlooks Tuxedo Reserve site. The view consists of a vast forested mountain landscape. Development at the Tuxedo Reserve site will irreparably damage the viewshed at Claudius Smith Cave, a historic site dating back to the Revolutionary War.

11. Our home is also located proximate to the Ramapo Pass, where Routes 17, 283 and 87 converge. Traffic congestion in that area is a frequent problem. Even without the additional traffic form Tuxedo Reserve, overflows onto Route 59 and Route 202 in Suffern frequently occur, causing great congestion on the streets surrounding my home.

12. Finally, the contiguous forested mountain land which surrounds and includes the Tuxedo Reserve site presently serves as a reservoir for wildlife for the New York City metropolitan area. Since I was a child I have appreciated the biodiversity of the area during my frequent excursions within the State Park lands which surround the Tuxedo Reserve site. Tuxedo Reserve would create an urban area out of this precious resource.

13. As a result of these many impacts, I appeared at and supported TVPA's and TLT's efforts during workshops, meetings and hearings advising the Town Board that amendment of the Tuxedo Reserve permit required a careful and methodical assessment of each of these issues.

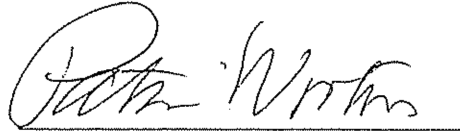
14. TVPA's and TLT's interests were aligned with my interests in our appearances before the Town during its consideration of the permit amendment, and remain aligned in this proceeding.

15. TVPA and TLT are appropriate organizational representatives of my interests in this proceeding.

16. Despite the efforts of TVPA and TLT, and their members, the Town Board has failed to heed our concerns. In fact, the Town Board obstructed many, including TVPA's and TLT's officers, in their attempts to provide meaningful comments on the proposal.

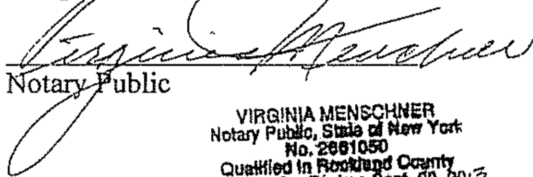
17. As a result, we have joined TVPA and TLT in this proceeding.

For the reasons set forth above, the Town Board's issuance of SEQRA findings, adoption of local laws and issuance of the amended and restated special permit for the Tuxedo Reserve project should be annulled.



Patricia Wooters

Sworn to before me this 21st day
of December 2010



Notary Public

VIRGINIA MENSCHNER
Notary Public, State of New York
No. 2661050
Qualified in Rockland County
Commission Expires Sept. 30, 2013