

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

CITY OF RYE; JOSEPH A. SACK and
 RICHARD MECCA,

Petitioners,

v.

WESTCHESTER COUNTY BOARD OF
 LEGISLATORS and WESTCHESTER
 COUNTY PLANNING DEPARTMENT,

Respondents.

Index No.: _____

**AFFIRMATION OF EDWARD F.
 MCTIERNAN IN SUPPORT OF
 ARTICLE 78 PETITION**

EDWARD F. MCTIERNAN, of full legal age and being duly sworn, says:

1. I am an Attorney at Law of the State of New York.
2. I am a Partner at Arnold & Porter, LLP. Arnold & Porter, LLP has been special counsel to the Petitioner, City of Rye ("Rye") since 2014. I am one of the attorneys assigned to represent Petitioners, Rye, Joseph A. Sack and Richard Mecca in this matter and in that capacity I am fully familiar with the facts and circumstances surrounding the violations of the New York State Environmental Quality Review Act, Section 8-0101 *et seq.* ("SEQRA") of the Environmental Conservation Law ("ECL") and SEQRA's implementing regulations, 6 N.Y.C.R.R. Section 617 *et seq.* ("Part 617") by Respondents Westchester County Board of Legislators ("County Legislature") and the Westchester County Planning Department ("Planning Department") when analyzing the environmental impacts of their redevelopment plan for Rye Playland Park in the City of Rye, Westchester County, New York ("Rye Playland") as further set forth in the Verified Petition.

3. I submit this affirmation in support of Petitioners' Verified Petition.
4. Rye Playland is an amusement park wholly within the City of Rye. The County of Westchester owns Rye Playland and Respondents intend to redevelop at least 100 acres and perhaps substantially more of the 280 acres that make-up the Rye Playland. By redeveloping Rye Playland, Respondents intend that to increase attendance and profitability. On or about August 27, 2010, Westchester County Department of Parks, Recreation & Conservation issued a Request for Proposals ("RFP") entitled "Reinventing Playland Park for the 21st Century." The RFP states that Respondents seek to "redevelop Playland Park in a way that maximizes its resources and location. . ." A true and accurate copy of the RFP is attached as Exhibit A.
5. Rye Playland has been operated by a number of different entities. Between 1928 and 1940 Rye Playland was operated by the Westchester County Park Commission. Then from 1940 until 1980 Rye Playland was operated by the Rye Playland Commission, a public benefit corporation. Since 1980, Westchester County has been the operator of Rye Playland. On December 5, 2013, the Westchester County Charter Revision Commission issued a report that considered, *inter alia*, the history of Rye Playland and the possibility of reconstituting a public benefit corporation to operate Rye Playland. A true and accurate copy of the Westchester County Charter Revision Commission is attached as Exhibit B.
6. In 1985, the City of Rye prepared a master Development Plan pursuant to Section 10 of the New York Municipal Home Rule Law. The Development Plan notes that because of its location on Long Island Sound, Rye offers residents and visitors unique recreational opportunities and scenic vistas. To protect these environmental resources, the Development Plan states, at page 48, that "regulatory methods, including site plan review, environmental

impact statements and zoning, should be diligently employed to insure preservation and high quality development.” At page 41, Rye’s Development Plan highlights the importance of preserving the natural and historic features at Rye Playland. A true and accurate copy of the 1985 master Development Plan for the City of Rye is attached as Exhibit C.

7. In an effort to further protect and enhance the environment, and following the recommendation in the Development Plan, in 1991 Rye duly adopted a Local Waterfront Revitalization Program (“LWRP”). Rye’s LWRP is authorized by Article 42 of the New York State Executive Law, the Waterfront Revitalization of Coastal Areas and Inland Waterways Act. On or about June 28, 1991 Rye’s LWRP was approved by the New York State Secretary of State. Based upon the approval of Rye’s LWRP by the New York State Secretary of State, all state actions are required to be consistent with the approved LWRP to the maximum extent practicable. Executive Law §§ 42-916 and 919. Moreover, on October 21, 1991, Rye’s LWRP was incorporated into and became an enforceable element of New York State’s Coastal Zone Management Program (“CMP”), and, pursuant to 15 CFR 923.84(b) the Federal Office of Ocean and Coastal Resource Management concurred on the incorporation of Rye’s LWRP into the CMP. Once the federal government concurs with the incorporation of an LWRP into the state CMP “[e]ach Federal agency action within or outside the coastal zone that affects land or water use or natural resources of a coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” Coastal Zone Management Act, 16 USC §§ 1451 to 1466 at § 1456(c)(1)(A). As a result of the adoption of its LWRP; the approval of the LWRP by the New York State Secretary of State and federal concurrence with the incorporation of the LWRP into the New York CMP, all coastal

development in Rye - including development by state and federal agencies - is subject to the LWRP. A true and accurate copy of October 2, 1991 notice from the New York Register confirming these approvals is attached as Exhibit D.

8. In late 2013, Rye became aware of a proposal then under active consideration by Respondent County Legislature for the construction of a 95,000 square foot field house, artificial turf fields and other improvements at Rye Playland (the 'Field House Development'). At that time Respondent County Legislature indicated that it intended to designate itself lead agency for SEQRA purposes and, upon information and belief, intended to issue a Negative Declaration for the Field House Development. On March 20, 2014, counsel for Rye wrote to Respondent County Legislature seeking either coordinated SEQRA review of the Field House Development or for Rye to be designated lead agency. A true and accurate copy of March 20, 2014 letter from Rye's counsel is attached as Exhibit E.
9. Respondents refused to acknowledge Rye's interest in the proposed Field House Development and on May 16, 2014 counsel for Rye was compelled to formally petition the Commissioner of the Department of Environmental Conservation ("DEC"), pursuant to ECL § 8-0111 and 6 N.Y.C.R.R. Part 617.(6)(b) to designate Rye as the lead agency for SEQRA review of this project. In support of its petition to DEC, Rye noted that Respondents' 2014 plan "seeks to significantly increase patronage at Rye Playland, which will attract considerably more vehicular traffic . . . [t]his raises concern that spillover parking and traffic would occur on the local streets . . . [and] may also cause more local flooding; it may generate considerable noise (potentially at early and late hours of the day); and the lighting may spill over into the adjacent residential neighborhoods." Respondents have ignored these same "intrinsically local concerns" when advancing the latest redevelopment proposal for Rye

Playland. A true and accurate copy of the May 16, 2014 petition to DEC is attached as Exhibit F.

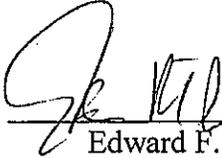
10. Projects are deemed ‘related’ for SEQRA purposes when the sponsoring agency’s plans, in and of themselves, provide a sufficiently cohesive framework for cumulative impact review. The decisive factor a larger plan for development. Matter of North Fork Env’tl. Council v. Janoski, 601 N.Y.S.2d 178, 179 (2nd Dep’t 1993). The Playland Management Agreement (“Agreement”) between Westchester County and Standard Amusements, Inc. provides the larger framework for cumulative impact review and evidences Respondents’ larger redevelopment plan for Rye Playland. Petitioners are endeavoring to obtain any amendments; nevertheless a true and accurate copy of the initial Agreement is attached as Exhibit G.
11. On or about April 11, 2016, Respondent County Legislature, acting through various committees recommended Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126 which improperly excluded numerous redevelopment activities planned for Rye Playland from SEQRA review. On May 3, 2016, Respondent County Legislature, again relying upon the flawed SEQRA analysis, completed the process by approving Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126. A true and accurate copy of these resolutions is attached as Exhibit H.
12. SEQRA requires that when determining whether an action could have a significant impact, the agency “must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including simultaneous or subsequent actions which are . . . included in any long-range plan of which the action under consideration is a part.” 6 N.Y.C.R.R. Part 617.7(c)2. Respondent Westchester County Planning Department ignored this requirement

when it initiated an analysis of the various interrelated activities required to redevelop Rye Playland as contractually mandated by the Agreement. Respondents' flawed analysis was discussed and memorialized in a memorandum dated January 7, 2016. A true and accurate copy of this memorandum is attached as Exhibit I.

13. On January 6, 2016, Respondent Planning Department prepared an Environmental Assessment Form ("EAF"). The January 6, 2016 EAF was based upon the flawed analysis in the January 7, 2016 memorandum and violated SEQRA by failing to consider related long-term, short-term, direct, indirect and cumulative impacts. In addition, the impacts that were identified in the EAF were not properly or fully analyzed. A true and accurate copy of Respondents' EAF is attached as Exhibit J.
14. Respondent Planning Department's January 7, 2016 EAF included a negative finding of significance (a "Negative Declaration"). A Negative Declaration must be filed "with the chief executive officer of the political subdivision in which the action will be principally located." 6 N.Y.C.R.R. Part 617.12(b)(1)(i). Moreover, notice that an agency has issued a negative declaration must be published in the Environmental Notice Bulletin ("ENB"). 6 N.Y.C.R.R. Part 617.12(c)(1). Despite these requirements, on July 18, 2016, it was necessary for counsel for Rye to write to Respondents because until that time Rye had not received notice of the EAF or Negative Declaration. A true and accurate copy of the July 18, 2016 letter from Rye's counsel is attached as Exhibit K.
15. Two days after Rye's letter, on July 22, 2016, Respondents finally sent a copy of the Negative Declaration (prepared on January 6, 2016 and ratified on May 2, 2016) to Rye. A true and accurate copy of the July 22, 2016 transmittal letter is attached as Exhibit L.

16. Notice that an agency has issued a negative declaration must be published in the Environmental Notice Bulletin (“ENB”). 6 N.Y.C.R.R Part 617.12(c)(1). Like all SEQRA requirements, publication in the ENB must proceed “with minimum procedural and administrative delay.” 6 N.Y.C.R.R Part 617.3(h). On July 27, 2016 Respondents finally announced that they had issued a determination of significance (made on January 6, 2016 and ratified on May 2, 2016) by publishing notice in the ENB. A true and accurate copy of the July 27, 2016 ENB notice is attached as Exhibit M.

I hereby swear and affirm the above under penalty of perjury this 10th day of August, 2016.



Edward F. McTiernan

New York, New York