

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; WESTCHESTER COUNTY
PLANNING DEPARTMENT and
STANDARD AMUSEMENTS LLC,

Respondents.

Index No.: 61197/2016

Hon.

**FIRST AMENDED ARTICLE 78
VERIFIED PETITION**

Petitioners, City of Rye (“Rye”) and Joseph A. Sack and Richard Mecca, by and through their undersigned attorneys, for their Verified Petition in this proceeding, allege as follows:

NATURE OF THIS PROCEEDING

1. Petitioners bring this proceeding pursuant to Article 78 and Section 3001 of the New York Civil Practice Law and Rules (“CPLR”) based upon 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 NYCRR Section 617 *et seq.* (“Part 617”). As a threshold matter, Petitioners seek judicial review of the Westchester County Board of Legislators (“County Legislature”) and the Westchester County Planning Department (“Planning Department”)(collectively the County Legislature and the Planning Department are referred to as the “Westchester Respondents”) impermissible segmentation when analyzing the environmental impacts of their long-term redevelopment plan for Rye Playland Park in the City of Rye, Westchester County, New York (“Rye Playland”). By segmenting this project, Westchester Respondents limited their environmental review to short term impacts of

certain select development and redevelopment activities while ignoring both related activities and the inevitable long term and cumulative impacts associated with their overall plan. By segmenting this project Westchester Respondents also avoided any analysis, public scrutiny, or consideration of local interests related to the increased traffic, noise, solid waste, water use and wastewater caused by their overall redevelopment plan.

2. Petitioners also seek a judgment annulling and setting aside final determinations by Respondent, County Legislature that funding extensive development and redevelopment at Rye Playland does not have the potential to cause significant adverse environmental impacts. The Westchester Respondents arrived at this final determination despite their factual findings concerning the intensity of the development and sensitive location of these planned activities. Indeed, Respondent Planning Department found that these activities involve, *inter alia*, soil disruption and excavation impacting over 20 acres; replacing a 23 acre parking lot and construction of a new utility building together with replacement or rehabilitation of numerous structures. The Westchester Respondents' own analysis found that these development activities will generate unspecified volumes of waste, truck traffic and noise. Moreover, Respondent Planning Department determined that these activities will occur in a location which is: a Critical Environmental Area (as designated by Westchester County); a designated Coastal Area and Coastal Erosion Hazard Area; within a state and federally recognized Local Waterfront Revitalization Program ("LWRP") area; historically designated; adjacent to federal and State designated wetlands and other waterbodies and within the 100 year floodplain.

3. Finally, Westchester Respondents violated the procedural requirements of SEQRA by ignoring mandatory intergovernmental coordination requirements.

4. SEQRA imposes legally enforceable environmental review requirements on Respondents. As set forth below, and in the affidavits and memorandum of law submitted in support of this Petition, Westchester Respondents failed to comply with these requirements when they committed to fund extensive development and redevelopment at Rye Playland.

THE PARTIES

5. Petitioner, Rye is a municipal corporation and political subdivision of New York State duly organized and existing under the laws of New York State. Rye was initially incorporated as a village in 1904. In 1940, the Legislature approved the Rye City Charter which was then adopted by the residents and on January 1, 1942, Rye became a city. Rye's mission is to promote, protect and improve the quality of life in the city by protecting and where possible enhancing the environment.

6. Petitioner Joseph A. Sack is a resident and homeowner of Rye who regularly visits the shoreline in Rye and takes advantage of the unique recreational activities and scenic opportunities presently available to residents of a coastal city on Long Island Sound. Due to the proximity of Mr. Sack's home to Rye Playland, in an already extensively developed area, Mr. Sack will be impacted by both the construction, development and redevelopment activities recently approved by Respondents and any increased traffic, noise, solid waste, water use and wastewater generated by Respondents' overall plan to maximize the use of Rye Playland.

7. Petitioner Richard Mecca is a resident and homeowner of Rye who regularly visits the shoreline in Rye and takes advantage of the unique recreational activities and scenic opportunities available to residents of a coastal city on Long Island Sound. Mr. Mecca's home is approximately 150 feet from Rye Playland, in an already extensively developed area. Mr. Mecca

can already see lights from Rye Playland, and experiences illegal overflow parking in front of his house from Rye Playland. Mr. Mecca will be directly impacted by both the construction, development and redevelopment activities recently approved by Respondents and any increased traffic, noise, solid waste, water use and wastewater generated by Respondents' overall plan to maximize the use of Rye Playland.

8. Upon information and belief, Respondent County Legislature is the duly constituted legislative body of the County of Westchester, a county corporation duly organized and existing under the laws of New York State.

9. Upon information and belief, Respondent Planning Department is a planning body created by Westchester County pursuant to General Municipal Law Section 239-c.

10. Upon information and belief, Respondent Standard Amusements LLC is a for profit Delaware limited liability corporation with its offices at 767 Fifth Avenue, New York, New York ("Standard Amusements").

11. Respondents County Legislature and Planning Department are both "agencies" within the meaning of SEQRA. Part 617.2(c).

JURISDICTION AND VENUE

12. Pursuant to CPLR § 7804(b) the Westchester County Supreme Court has jurisdiction over this Article 78 Petition.

13. Pursuant to CPLR §§ 504 and 506(b), venue is proper in Westchester County Supreme Court because all of the SEQRA determinations complained of occurred in this county, the

material events took place in this county and the principal office of the Westchester Respondents are in this county.

SUMMARY OF SEQRA SUBSTANTIVE AND PROCEDURAL REQUIREMENTS

14. SEQRA requires that all agencies - including local governments - determine whether their actions may have a significant effect on the environment. ECL § 8-0103 and Part 617.1(c). This determination must be made before the agency commits to act. ECL § 8-0109(2).

15. Agency actions include “activities supported in whole or in part through contracts, grants, subsidies, loans or other forms of funding assistance.” ECL § 8-0105(4). Agency actions further include any non-ministerial decisions “that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that: . . . involve funding by an agency [that] . . . commit the agency to a definite course of future decisions. . .” Part 617.2(b).

16. “Segmentation means the division of the environmental review of an action such that various activities or stages are addressed . . . as though they were independent, unrelated activities, needing individual determinations of significance.” Part 617.2(ag).

17. Segmentation of a project into separate activities or steps is generally prohibited, even for the initial determination of significance. Part 617.3(g).

18. To avoid segmentation 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.” Part 617.7(c)2.

19. SEQRA also requires intergovernmental coordination. “As early as possible in an agency’s formulation of an action it proposes to undertake . . . it must: . . . [d]etermine whether the action may involve one or more other agencies.” Part 617.6(a)(1).

20. The designation of a lead agency is the initial procedural step in the SEQRA process. The lead agency makes the determination of whether the proposed action will have a significant effect on the environment and has the principal responsibility for complying with SEQRA. ECL § 8-0111(6).

21. “For all Type I actions . . . a lead agency must be established prior to a determination of significance.” Part 617.6(b)(2)(i).

22. If an agency considering a Type I action determines that the action may involve one or more other agencies, it must notify those agencies “as soon as possible [and] transmit Part 1 of the EAF [Environmental Assessment Form] . . . to all involved agencies and notify them that a lead agency must be agreed upon.” Part 617.6(b)(3)(i).

23. All involved agencies are allowed at least thirty days to consult and attempt to agree upon a lead agency. Part 617.6(B)(5).

24. SEQRA established a mechanism to select a lead agency where the involved agencies cannot agree. ECL § 8-0111 and Part 617.(6)(b).

25. Regardless of whether the lead agency is designated by agreement or dispute resolution is necessary “a lead agency must be established prior to a determination of environmental significance.” Part 617.6(b)(2).

26. The determination of environmental significance is the initial substantive step in the SEQRA process and results in the preparation of an Environmental Impact Statement (“EIS”) unless the lead agency issues a Negative Declaration finding that there are no significant adverse environmental impacts. ECL § 8-0109(2) and Part 617.7(a)(1).

27. When making a determination of significance, full consideration must be given to “any long-range plan of which the action under consideration is a part . . .” Part 617.7(g)(2).

28. Moreover, for purposes of determining significance, “the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including simultaneous or subsequent actions . . .” Part 617.7(g)(2).

29. SEQRA separates agency action into three major groups: Type I, Type II and “Unlisted.” A Type I action ‘carries with it the presumption that it is likely to have a significant effect on the environment and may require the preparation of an EIS.’ Part 617.12(a)(1). An EIS must be prepared whenever any proposed action “may include the potential for at least one significant environmental effect.” Part 617.6(g)(1)(i).

30. Any action which involves “physical alteration of 10 acres” or more is a Type I action. Part 617.4(b)(6)(i).

31. Any action that is planned to occur “wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district . . . that is listed on the National Register of Historic Places” is a Type I action. Part 617.4(b)(9). Moreover, any action that “exceeds 25 percent of any threshold . . . [in Part 617.4] occurring wholly or partially within

or substantially contiguous to any publicly owned or operated parkland . . .” is also a Type I action.

32. If after coordination with all other involved agencies, the lead agency properly concludes that the record establishes that the action does not have the potential to cause adverse environmental impact it issues a Negative Declaration. Negative Declarations must be filed “with the chief executive officer of the political subdivision in which the action will be principally located.” 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”). Part 617.12(c)(1). Like all SEQRA requirements, filing of a Negative Declaration with the chief executive officer of the municipality where the action will be located and publication in the ENB must proceed “with minimum procedural and administrative delay.” Part 617.3(h).

FACTS¹

Historic Ownership and Operation of Rye Playland

33. Rye Playland consists of approximately 280 acres owned by Westchester County wholly within the municipal boundaries of Rye. Ex. A at 6.

34. Seven of the rides at Rye Playland and several of its art deco buildings are designated as National Historic Landmarks. Ex. A at 1.

¹ Unless otherwise indicated, citations to “Ex. ___ at ___” refer to the true and accurate copies of documents and page numbers (when relevant) that are attached to the Affirmation of Edward F. McTiernan in Support of Article 78 Petition (Exhibits A through M) or the Supplemental Affirmation of Edward F. McTiernan in Support of First Amended Article 78 Verified Petition (Exhibit N).

35. Rye Playland is not a passive recreation area, rather it includes approximately 30 acres devoted to rides, games and food attractions; 23 acres of parking; 12 acres used for an ice casino; a large decorative fountain; an arcade plaza with numerous game booths and kiosks, a bar as well as a full service restaurant. To maximize the commercial activity the bar and restaurant at Rye Playland can be accessed directly from the boardwalk without otherwise entering the park. Ex. A at 6.

36. Rye Playland is expressly excluded from the definition of “park” contained in Section 765.01(28) of the Westchester County Code of Ordinances.

37. 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 Rye Playland has been operated by Westchester County, and upon information and belief, Respondents intend to redevelop Rye Playland so that a commercial third-party, Respondent Standard Amusements, will become the operator starting in 2017 season. Ex. B at 42 and Ex. N at 6 through 10.

Rye’s Planning, Zoning Requirements Apply to Rye Playland

38. Pursuant to Section 10 of the New York Municipal Home Rule Law, Rye duly adopted a master Development Plan in 1985 and comprehensive zoning and building codes. Rye’s master plan, zoning and building codes were adopted “for the purpose of promoting the health, safety and general welfare of the City of Rye and for the protection and enhancement of the physical environment.” To protect these environmental resources, the Development Plan states that “regulatory methods, including site plan review, environmental impact statements and

zoning, should be diligently employed to insure preservation and high quality development.” Ex. C at 48.

39. Land development and redevelopment within the municipal boundaries of Rye are subject to the Code of the City of Rye including without limitation:

- Chapter 53 - Architectural Review;
- Chapter 73 - Coastal Zone Management Waterfront Consistency Review;
- Chapter 174 - Storm water Management;
- Chapter 195 - Wetlands and Watercourses, and
- Chapter 197 Zoning.

Rye’s Local Waterfront Revitalization Program Apply to Any Development at Rye Playland

40. Rye offers its residents and visitors long stretches of shoreline with scenic vistas of Long Island Sound. Rye also has a large town beach and several natural areas on the shoreline of Long Island Sound. In an effort to augment its traditional zoning and planning, and further protect and enhance the environment, in 1991 Rye duly adopted a Local Waterfront Revitalization Program (“LWRP”).

41. 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.

42. In accordance with 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. Ex. D. 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. (“Actions directly undertaken

by state agencies within the coastal area including grants, loans or other funding assistance . . . shall be consistent with approved . . .” LWRPs.)

43. 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. Ex. D.

44. Once the federal government concurs with the incorporation of an LWRP into the state CMP, federal agency actions must also be consistent with the approved addition to the CMP. Coastal Zone Management Act, 16 USC §§ 1451 to 1466 at § 1456(c)(1)(A) (“Each 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.”)

45. Rye Playland is located in the WR, Waterfront Recreation, zoning district duly established by Rye in 1991 as part of the Rye Waterfront Revitalization Program.

46. Land development and redevelopment within the municipal boundaries of Rye including all state actions and all federal agency actions are subject to Rye’s LWRP.

Planned Redevelopment of Rye Playland

47. On or about August 27, 2010, Respondent County Legislature publically announced a request for proposals (“RFP”) to redevelop all, or substantially all, of Rye Playland to “unlock the full recreational and entertainment value of the property . . .” Ex. A at 1. According to

Respondent, the “purpose of this solicitation is to . . . redevelop Rye Playland in a way that maximizes its resources and location . . .” *Id.* at page 3.

48. In furtherance of its plan to redevelop Rye Playland in a way that maximizes its resources, in October 2012, Respondent County Legislature announced that based upon the RFP, it had selected Sustainable Rye Playland Inc. (“SPI”) a non-profit corporation to manage and operate Rye Playland.

49. Upon information and belief, throughout 2013 and 2014, Respondents and SPI negotiated various agreements calling for plans to redevelop significant portions of Rye Playland.

50. In the fall of 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.

51. On March 20, 1994, Rye wrote to Respondent County Legislature seeking either coordinated SEQRA review of the Field House Development or for Rye to be designated lead agency. Ex. E.

52. Respondent County Legislature refused to reconsider its decision to designate itself lead agency for the Field House Development and proceeded without coordinated SEQRA review. Faced with Respondent’s unexcused failure to conduct the coordinated review mandated

by SEQRA, on May 16, 2014, Rye invoked its right, provided for in ECL § 8-0111(6), to have the Commissioner of the Department of Environmental Conservation designate a lead agency. Rye's May 16, 2014 petition noted that because Respondents were attempting to increase patronage at Rye Playland the potential existed for significant local impacts including traffic; parking; local flooding; noise and lighting spill over into adjacent residential neighborhoods. Ex. F.

53. Eventually, Respondent County Legislature abandoned the Field House Development and Rye agreed to withdraw its lead agency dispute without prejudice.

54. Upon information and belief, on June 15, 2015, Respondent County Legislature authorized an agreement with Standard Amusement. The basic arrangement was that upon the approval of Respondent County Legislature, Westchester County would undertake or finance numerous capital improvements and other redevelopment activities and once these activities were complete, or substantially complete, Standard Amusement would operate Rye Playland and pay various fees to Westchester County. Ex. N.

55. Upon information and belief, Respondent County Legislature and Standard Amusements, negotiated, executed and delivered an agreement dated August 10, 2015, concerning the redevelopment and operation of Rye Playland (the "Agreement"). Ex. G.

56. Upon information and belief, on or about May 3, 2016, Respondent County Legislature and Standard Amusements, negotiated, executed and delivered a restated and amended and agreement dated May 3, 2016, which governs the redevelopment and operation of Rye Playland (the "Amended Agreement"). Ex. N.

57. The Amended Agreement controls and requires that all work undertaken in connection with such restorations, renovations and improvements shall be “carried out in conformity with all applicable . . . local laws, rules and regulations, orders and ordinances and other legal requirements . . .” Ex. N. at 13.

58. The Amended Agreement memorializes Respondents’ long-term *albeit* preliminary plan for redeveloping Rye Playland and to comply with local requirements.

59. The Amended Agreement reflects Respondents’ overall integrated plan for undertaking various tasks or work to redevelop Rye Playland to its maximum potential and profitability. According to the Agreement, the capital budget for these tasks or work items totals \$27,750,000. *Id.* at Schedule C-1.

60. Upon information and belief, in 2016 Respondent County Legislature acting through various committees developed a comprehensive, *albeit* preliminary, plan for all of the interrelated activities necessary to redevelop Rye Playland to its maximum potential.

Respondent’s preliminary planning activities included, but are not limited to:

- Adoption of Act 2015-100 that authorized Respondent County Legislature to execute the Agreement including 15 tasks or work items to further the redevelopment of Rye Playland to its maximum potential (approved by Respondent on June 15, 2015);
- Preparation of an analysis by Respondent Westchester County Planning Commission of the overall requirements to comply with the Agreement and implement the 15 tasks or work items necessary to redevelop of Rye Playland which was memorialized in a memorandum, and
- Preparing amendments to the Agreement.
- On or about April 11, 2016, various committees of Respondent County Legislature, recommended adopted of 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, the County Executive (Acting) approved Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126. Ex. H.

Respondents Segmented The SEQRA Process

61. Upon information and belief, following execution of the Agreement in August 2015 and without providing Petitioners notice or an opportunity to be heard, Respondent Planning Department initiated an analysis of the various interrelated activities required to redevelop Rye Playland contained in the Agreement. This analysis was discussed and memorialized in a memorandum dated January 7, 2016. Ex. I.

62. Upon information and belief, based upon the SEQRA analysis of the fifteen interrelated redevelopment activities considered in the January 7, 2016 memorandum, Respondent County Legislature proceeded towards finalizing its plan to redevelop Rye Playland. On or about April 11, 2016 Respondent County Legislature, acting through various committees, ratified the SEQRA analysis adopted by Respondent Planning Department and recommended amending the County Capital Budget and formally adopting Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126 authorizing the issuance of bonds to fund the redevelopment activities mandated by the Agreement. On May 3, 2016 these proposals were formally adopted and the Amended Agreement was also approved and executed. Ex. H and Ex. N.

63. Despite the fact that all of these activities were included in a single long-range plan for redevelopment as outlined in the Agreement (and later ratified by the Amended Agreement), on January 7, 2016, without providing Petitioners notice or an opportunity to comment, Respondent Planning Department advised Respondent County Legislature that, when considered as

independent actions, the following elements of the comprehensive redevelopment plan individually qualified as SEQRA Type II actions:

- Upgrades to Various Rides and Components
- Storm Reconstruction
- Colonnade Rehabilitation
- Tower Rehabilitation
- Shoreline Improvements
- Structural Restoration - Arcades
- Structural Restoration - Bathrooms
- Structural Restoration - Employee Area
- Structural Restoration - Food Structures
- Switchgear Building
- Fire Suppression System
- Administration Building Rehabilitation

(These twelve activities are hereinafter collectively referred to as the “Alleged Restoration Activities.”)

64. Upon information and belief, Respondent Planning Department’s determination that the Alleged Restoration Activities constituted SEQRA Type II actions intentionally ignored the long-range, comprehensive redevelopment plan memorialized in the Agreement and later incorporated into the Amended Agreement of which the Alleged Restoration Activities are an integral part.

65. Respondent Planning Department determination that the Alleged Restoration Activities constituted SEQRA Type II actions also failed to consider the fact that several, and perhaps all, of these activities are wholly or partially within, or substantially contiguous to, historic buildings structure and facilities listed on the National Register of Historic Places which, pursuant to Part 617.4(b)(9) have substantially lower threshold for significance.

66. Respondent Planning Department's January 7, 2016 analysis concluding that the Alleged Restoration Activities when, considered individually, should be classified as Type II actions ignored the SEQRA rules applicable to public parkland found in Part 617.4(b)(10).

67. On January 6, 2016, without providing notice or an opportunity to comment to Petitioners, Respondent Planning Department prepared an Environmental Assessment Form ("EAF"). Ex. J.

68. The January 6, 2016 EAF prepared by Respondent Planning Department was a "full EAF" and included both Parts 1 and 2 as well as a Determination of Significance form (commonly referred to as "EAF Part 3").

69. In the January 7, 2016 memorandum, and based upon the same analysis, Respondent Planning Department (also without providing notice or an opportunity to comment to Petitioners) advised Respondent County Legislature that the following elements of the comprehensive redevelopment plan constituted SEQRA Type I actions:

- Site Improvements (including pool demolition)
- Parking lot improvements (including a new storm water drainage system)
- Demolition, relocation and reconstruction of Games Row.

(These three activities are hereinafter collectively referred to as the "Development Activities.")

70. The Alleged Redevelopment Activities and the Development Activities are interrelated components of a single comprehensive plan to redevelop Rye Playland as memorialized in the Agreement and Amended Agreement.

71. Upon information and belief, when preparing the EAF Respondents attempted to minimize the environmentally harmful consequences of their overall plan to redevelop Rye Playland, thereby making it more palatable to the community and when preparing the EAF, Respondent Planning Department, intentionally failed to consider either the Alleged Redevelopment Activities or the long-term, short-term, direct, indirect and cumulative impacts, associated with the comprehensive redevelopment plan memorialized in the Agreement and Amended Agreement.

72. Of the fifteen interrelated redevelopment activities that Respondent Planning Department concluded were required by the Agreement and later by the Amended Agreement, the analysis in the EAF was arbitrarily limited to the three Development Activities that Respondent designated SEQRA Type I actions.

73. The EAF fails to give full consideration to Respondents “long-range plan of which the action under consideration is a part . . .” in violation of Part 617.7(g)(2).

74. When preparing the EAF Westchester Respondents failed to consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including simultaneous or subsequent actions in violation of Part 617.7(g)(2).

75. The EAF fails to consider any of the Alleged Restoration Activities.

76. When preparing the EAF, Westchester Respondents failed to properly identify the Alleged Restoration Activities as “related actions” as required by Part 617.3(g)(1).

77. When preparing the EAF, Westchester Respondents arbitrarily failed to consider the relationship between the Development Activities considered in the EAF and the long term and

cumulative impacts associated with the overall plan to increase attendance and profitability by redeveloping Rye Playland.

78. Westchester Respondents have improperly and illegally segmented their overall plan for the redevelopment of Rye Playland in violation of SEQRA.

Respondents Made SEQRA Findings Without A Complete Record

79. The EAF mentions but fails to provide details about, or otherwise take a hard look at, the following activities:

- Reconstruction and reconfiguration of the main 23 acre parking lot (featuring 2,084 paved spaces) including
- Relocating the parking lot entrance
- Installing “improved” lighting
- Installing a new surface water drainage system;
- Repaving the bathhouse area which is located in the shoreline portion of Rye Playland near the Long Island Sound;
- Rebuilding the amusement area, including removal of the existing miniature goal course and building new infrastructure for food and merchandise booths and vendors;
- Replacement of a Olympic size swimming pool with a “large plaza area” and
- Demolition and replacement of “Games Row.” Ex. J.

80. Without mentioning, analyzing or considering any actual environmental features, qualities or services provided by any of the natural areas near the Development Activities, the EAF merely notes that the Development Activities will occur in locations that are:

- Within a Critical Environmental Area (as designated by Westchester County)
- Part of a designated Coastal Area and Coastal Erosion Hazard Area
- Subject to a state and federally recognized LWRP;
- On a site with designated historic landmarks;
- On a site adjacent to federal and State designated wetlands and other waterbodies, and
- Within the 100 year floodplain.

81. The presence of historic buildings, structures and facilities listed on the National Register of Historic Places at Rye Playland required that when evaluating the potential impacts of the Development Activities, Westchester Respondents must apply substantially lower thresholds and criteria. Part 617.5(b)(9). The EAF mentions but fails to provide details about, or otherwise take a hard look at how the Development Activities could potentially impact these historic buildings, structures and facilities. Ex. J.

82. To meet their burden for a finding of negative significance and issuance of a Negative Declaration, Westchester Respondents needed to take a hard look at and provide a reasoned elaboration of the potential impacts of the Development Activities, including potential impacts on “land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population contribution, distribution, or growth, and existing community or neighborhood character.” ECL § 8-0105.6. Even when limited to the Development Activities, Westchester Respondents’ cursory EAF fails to meet this burden.

83. Despite the intensity of the Development Activities, the proximity of so many important and recognized natural and historic features and the legal presumptions that actions such as the Development Activities require preparation of a full EIS - a presumption that the Legislature included in both SEQRA and the Coastal Hazard Area Act - the EAF implausibly concludes that the Development Activities will have no potential adverse impacts. Ex. J, Part 3 at 2.

84. Westchester Respondents’ EAF and Negative Declaration are incomplete.

85. The Amended Agreement includes a list of “five projects that are either new or contain scope changes . . .” Ex. N at Schedule K. Upon information and belief, “new” projects

identified in Schedule K to the Amended Agreement were not part of the original August 2015' Agreement and any "changes in scope" identified in Schedule K to the Amended Agreement are activities that are significantly or materially different from activities or projects that were part of the Agreement in August 2015. Ex. N at Schedule K.

86. Upon information and belief, Westchester Respondents' EAF and Negative Declaration were prepared in January 2016 and did not consider the "new" projects or "changes in scope" identified in Schedule K to the Amended Agreement and the Westchester Respondents have not supplemented their EAF or Negative Declaration or otherwise complied with SEQRA in connection with the five projects that are either new or contain scope changes.

87. Westchester Respondents prepared the EAF on or about January 6, 2016. Ex. J.

88. Westchester Respondents failed to transmit Part 1 of the EAF to Rye "as soon as possible" as required by Part 617.6(b)(3).

89. Westchester Respondents also failed to promptly notify Rye that it intended to act as lead agency as required by Part 617.6(b)(3).

90. Westchester Respondent's EAF Part 3 included a Negative Declaration that was signed and purportedly "issued" on January 6, 2016 by the Director of Environmental Planning on behalf of Respondent County Legislature.

91. On May 3, 2016, pursuant to Resolution 52-2016, Respondent County Legislature took action committing itself to the redevelopment plan set forth in the Amended Agreement by adopting the EAF Part 3 as their SEQRA Negative Declaration for the Development Activities.

Ex. H.

92. On July 18, 2016 Counsel for Rye notified Respondents that Rye had recently become aware that Respondent County Legislature had, without notice to Rye, designated itself as lead agency and issued a Negative Declaration for the Development Activities. Ex. K.

93. On or about July 22, 2016, Westchester Respondents for the first time, belatedly mailed a copy of the EAF and Negative Declaration to Rye. Ex. L. At or about that time Westchester Respondents also arranged for notice to be published in the ENB and that long-overdue notice appeared on July 27, 2016. Ex. M.

94. By delaying notice to Rye for more than seven months after preparing the EAF, nearly four months after authorizing bonds to fund the Alleged Restoration Activities and more than two months after authorizing the Negative Declaration, (thereby satisfying the last precondition to commencing the redevelopment of Rye Playland), Westchester Respondents failed to engage in timely intergovernmental coordination mandated by SEQRA and failed to provide Respondents reasonable notice or a timely opportunity to be heard.

95. As a result of Westchester Respondents' failure to engage in any intergovernmental coordination possible detriment local impacts to Rye Playland's neighbors such as Joseph A. Sack and Richard Mecca were never considered.

Adverse Impacts on Petitioners

96. Upon information and belief, by improperly segmenting their project, Respondents intend to redevelop Rye Playland to the maximum extent possible and to increase attendance and profitability while avoiding any analysis, or public scrutiny, of the increased traffic, noise, solid waste, water use and wastewater or other impacts to Rye resulting from their overall redevelopment plan.

97. Westchester Respondents' improper and illegal segmentation, arbitrary and capricious findings in their EAF and Negative Declaration and their failure to properly engage in coordinated SEQRA review have materially diminished Rye's ability to promote, protect and improve the quality of life for its residents and to protect and, where possible, enhance the environment.

98. Despite the requirement in the Amended Agreement that all work restorations, renovations and improvements at Rye Playland be "carried out in conformity with all applicable . . . local laws, rules and regulations and other legal requirements . . ." Respondents failed to comply with, or even consider, Rye's planning and zoning codes and comprehensive LWRP when advancing their long-term redevelopment plan. Respondents' actions have violated Rye's city code and undermined Rye's efforts and plans to enhance and promote its status as a coastal city on Long Island Sound by protecting natural resources through application of its codes and regulations governing development.

99. Westchester Respondents' action have injured Petitioner Joseph A. Sack by committing Respondents to a course of action that will result in increased traffic, noise, solid waste, water use and run-off and that will reduce his ability to enjoy the environment and his community. Due to the proximity of Mr. Sack's home to Rye Playland, he will be directly and adversely impacted by any adverse environmental impacts such as congestion, noise, light and storm water run-off.

100. Westchester Respondents' actions have injured Petitioner Richard Mecca by committing Respondents to a course of action that will result in increased traffic, noise, solid waste, water use and run-off that will reduce his ability to enjoy the environment and his

community. Because Mr. Mecca's home is only 150 feet from Rye Playland, he will be directly and adversely impacted by any adverse environmental impacts such as congestion, noise, light and storm water run-off.

FIRST CAUSE OF ACTION
SEQRA VIOLATION: WESTCHESTER RESPONDENTS HAVE
ARBITRARY AND CAPRICIOUSLY DEFINED THE ACTION AND OTHERWISE
IMPROPERLY SEGMENTED THE
SEQRA REVIEW OF POTENTIAL SIGNIFIANCE

101. Petitioner repeats and realleges each of the allegations set forth in paragraphs 1 to 100 above as if fully set forth herein.

102. The redevelopment of Rye Playland is an action "supported . . . in part through contracts, grants, subsidies, loans or other sources of funding from . . ." Respondent County Legislature and is therefore an action subject to SEQRA. ECL § 8-0105(4).

103. SEQRA acknowledges that "[a]ctions commonly consist of a set of activities or steps." Part 617.3(g).

104. Nevertheless, SEQRA requires that "[t]he entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only part of it . . . [c]onsidering only a part or segment of an action is contrary to the intent of SEQRA." *Id.*

105. Between 2010 and 2016 Westchester Respondents engaged in a program to redevelop all or substantially all of Rye Playland to "unlock the full recreational and entertainment value of the property . . . [and] redevelop Rye Playland in a way that maximizes its resources and location." Ex. A at 3. Between 2010 and 2015 when issuing the PRF; negotiating with SPI;

negotiating with Standard Amusements; approving the Amended Agreement and developing various budget resolutions, Westchester Respondents treated the redevelopment program for Rye Playland as an integrated action.

106. By attempting to distinguish between the Alleged Restoration Activities and the Development Activities for purposes of classifying these activities under SEQRA; by failing to consider the Alleged Restoration Activities in the EAF, and by failing to consider the five projects that are either new or contain scope changes and by otherwise failing to consider the full redevelopment plan reflected in the Amended Agreement, Westchester Respondents engaged in impermissible segmentation and are acting in a manner which is in violation of lawful procedures, an error of law and is arbitrary and capricious.

SECOND CAUSE OF ACTION
SEQRA VIOLATION: WESTCHESTER RESPONDENTS' EAF
AND NEGATIVE DECLARATION
ARE ARBITRARY AND CAPRICIOUS

107. Petitioner repeats and realleges each of the allegations set forth in paragraphs 1 to 106 above as if fully set forth herein.

108. Westchester Respondents' EAF and Negative Declaration apply to three interrelated activities each of which by itself is a Type I action. Ex. J at 1.

109. "A Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." Part 617.4(a)(1).

110. Westchester Respondents' EAF concluded that the "project" consisting of three Type I actions would take place in a Coastal Erosion Hazard Area. Ex. J, Part 1 at 2.

111. New York's Coastal Hazard Area Act, ECL Article 34-0109, provides that "a proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement. . ."

112. Westchester Respondents' EAF included mapping that stated that the "project" would take place in a Critical Environmental Area as designated by Westchester County (on January 1, 1990). Ex. J following Part 1, 13.

113. The presence of a Critical Environmental Area is a criterion that, although not dispositive, creates a presumption that an action will have significant adverse impacts. Part 617.7(c)(1)(iii).

114. Westchester Respondent's EAF also identified that the "project" would take place in a LWRA; within a designated Coastal Area and Coastal Erosion Hazard Area; on a site with designated historic landmarks; and would involve construction, excavation and disturbance of approximately 20 acres. Ex. J. at 2-5.

115. The EAF goes on to note that 73% of the project site is poorly drained and contains or is located adjacent to wetlands and other waterbodies and is within the 100 year floodplain. Ex. J at 11.

116. The EAF ignores the historic or aesthetic significance of Rye Playland, and fails to consider the impact of the Development Activities on existing community or neighborhood character in violation of ECL § 8-0105.6.

117. Despite identifying there interrelated Type I actions, and outlining numerous environmentally sensitive areas at, and in the vicinity of, Rye Playland, the EAF fails to identify

even a single potential environmental impact. This implausible conclusion is not supported by the facts outlined in the EAF.

118. By acting based upon the facts set forth in the EAF, by failing to consider the five projects that are either new or contain scope changes; by issuing the Negative Declaration on May 3, 2016 and determining that there are no significant environmental impacts and that an EIS is not necessary, Westchester Respondents are acting in a manner which is in violation of lawful procedures, an error of law and is arbitrary and capricious.

THIRD CAUSE OF ACTION
SEQRA VIOLATION: WESTCHESTER RESPONDENTS FAILURE TO DESIGNATE THE
ALLEGED RESTORATION ACTIVITIES AS TYPE I
IS ARBITRARY AND CAPRICIOUS
AND NOT IN ACCORANCE WITH LAW

119. Petitioner repeats and realleges each of the allegations set forth in paragraphs 1 to 118 above as if fully set forth herein.

120. “A Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” Part 617.4(a)(1).

121. On January 7, 2016, without providing Petitioners notice or an opportunity to comment, Respondent Planning Department advised Respondent County Legislature that, when considered as independent actions, each of the Alleged Restoration Activities individually qualified as SEQRA Type II actions. Ex. I.

122. However, any action that is planned to occur “wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district . . . that is listed on the National Register of Historic Places” is a Type I action. Part 617.4(b)(9).

123. In addition, any action that “exceeds 25 percent of any threshold . . . [in Part 617.4] occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland . . .” is also a Type I action.

124. Westchester Respondents January 7, 2016 determination that the Alleged Restoration Activities qualified as SEQRA Type II actions ignores the provisions of Part 617.4

125. By designating all of the Alleged Restoration Activities as SEQRA Type II actions, Westchester Respondents acted in a manner which is in violation of lawful procedures, an error of law and is arbitrary and capricious.

FOURTH CAUSE OF ACTION
SEQRA VIOLATION: WESTCHESTER RESPONDENTS FAILURE
TO CONDUCT COORDINATED REVIEW IS ARBITRARY AND CAPRICIOUS
AND NOT IN ACCORANCE WITH LAW

126. Petitioner repeats and realleges each of the allegations set forth in paragraphs 1 to 125 above as if fully set forth herein.

127. On January 6, 2016 Respondent Planning Department prepared an EAF for portions of the redevelopment of Rye Playland. Ex. J.

128. On or about January 7, 2016, Respondent Planning Department determined that Respondent County Legislature was considering a SEQRA Type I action.

129. On May 2, 2016, Respondent County Legislature apparently adopted or ratified the SEQRA Negative Declaration contained in the January 6, 2016 EAF.

130. Part 617.6(a)(1) requires that an agency considering any Type 1 action must, as soon as possible, identify and coordinate with any other agency involved with that project.

137. Rye is the only political subdivision where actions to redevelop Rye Playland will be located.
138. A notice that an agency has issued a negative declaration must be promptly published in the Environmental Notice Bulletin (“ENB”). Part 617.12(c)(1).
139. Westchester Respondents prepared the EAF on or about January 6, 2016. Ex. J.
140. Westchester Respondents’ EAF Part 3 included a Negative Declaration had been signed and purportedly “issued” on January 6, 2016 by the Director of Environmental Planning on behalf of Respondent County Legislature. Ex. J, Part 3 at page 2.
141. On May 2, 2016, pursuant to Resolution 52-2016, Respondent County Legislature adopted the SEQRA Negative Declaration for the Development Activities previously determined to be SEQRA Type I actions. Ex. H.
142. On July 18, 2016 Counsel for Rye notified Westchester Respondents that Rye had recently become aware that Respondent County Legislature had, without notice to Rye, designated itself as lead agency and issued a Negative Declaration. Ex. K.
143. On or about July 22, 2016 Counsel for Westchester Respondents mailed a copy of the EAF to Rye. Ex. L. At or about that time Westchester Respondents also arranged for notice to be published in the ENB and that notice appeared on July 27, 2016. Ex. M.
144. Pursuant to Part 617.6(b)(3), Westchester Respondents were obligated to transmit the EAF to Rye “as soon as possible.”

145. Pursuant to Part 617.6(b)(3)(ii), once an agency has made a finding of significance, it “must immediately prepare, file and publish the determination.”

146. By mailing Rye a copy of the January 6, 2016 EAF Part 3 containing the Negative Declaration which it formally adopted on May 2, 2016 on July 27, 2016, and failing to timely publish in the ENB, Westchester Respondents acted in a manner which is in violation of lawful procedures, an error of law and is arbitrary and capricious.

PRIOR APPLICATION

147. No prior application has been made for the relief requested herein.

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that this Court issue a judgment in favor of Petitioners and against Respondents:

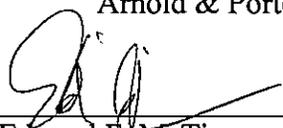
- A. Annuling Westchester Respondents’ EAF;
- B. Annuling Westchester Respondents’ Negative Declaration;
- C. Annuling Resolution 53-2016; Act 118-2016 (Bond) Acts 119, 120, 121, 122, 123-126 and any related amendments thereto;
- D. Directing Respondent County Legislature to engage in coordinated review as required by SEQRA and in consultation with Petitioner Rye;

- E. Such other additional relief as this Court may deem just and proper, and
- F. Granting costs and attorneys expenses and fees in accordance with CPLR §§ 7806 and 8601.

Dated: New York, New York
September 2, 2016

Arnold & Porter LLP

By: _____



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Attorneys for Petitioners: City of Rye; Joseph
Stack and Richard Mecca

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, WESTCHESTER COUNTY
PLANNING DEPARTMENT, and
STANDARD AMUSEMENTS LLC,

Respondents.

Index No.: 61197/2016

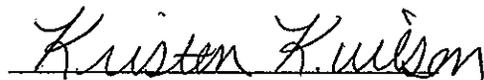
**VERIFICATION OF FIRST AMENDED
ARTICLE 78 PETITION**

KRISTEN K. WILSON of full legal age and being duly sworn, says:

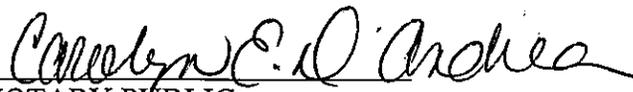
1. I am a Corporation Counsel for the City of Rye.
2. I have reviewed the Article 78 Petition and the First Amended Article 78 Petition in this matter and the statements in the First Amended Article 78 Petition in this matter are true to my knowledge, except as to those statement upon information and belief which I believe to be true.

Dated:

KRISTEN K. WILSON



Sworn to before me
this 27th day of August, 2016


NOTARY PUBLIC

CAROLYN E. D'ANDREA
Notary Public, State of New York
No. 02DE6263301
Qualified in Westchester County
My Commission Expires 6/11/2018

8/11/2016