

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

In the Matter of Application of Residents of the City of
Glen Cove, et. al.,

TRIAL / IAS PART 35
NASSAU COUNTY

DAVID BERG, et. al.,

Action No. 1

Petitioner-Plaintiffs,

Index No. 9704/15

For a Judgment in the Nature of Mandamus to Review
Pursuant to Article 78 of the Civil Practice Law and
SEQRA And For a Declaratory Judgment Pursuant to
Section 3001 of the Civil Practice Law and Rule and
SEQRA,

- against -

The Planning Board of the City of Glen Cove, et.
al.,

Respondent-Defendant.

INCORPORATED VILLAGE OF SEA CLIFF, et. al.,

Action No. 2

Third Party Plaintiff,

Index No. 9706/15

For a Judgment Pursuant to Article 78 of the CPLR,
Declaratory Judgment Pursuant to Section 3001 of
the CPLR Injunctive Relief and Contract Breach

Motion Sequence No. 001

- against -

PLANNING BOARD OF THE CITY OF GLEN
COVE, et. al.,

Third Party Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits 1, 2

Answering Affidavits	3, 4, 5, 6, 7
Replying Affidavits	_____
Briefs: Plaintiff's / Petitioner's	8
Defendant's / Respondent's	_____

The petitioners-plaintiffs the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff seek (index number 9706/15, sequence 001) pursuant to CPLR Article 78 an order and judgment annulling the Planning Board's October 6, 2015 determination of the respondent Planning Board of the City of Glen Cove, and pursuant to CPLR 3001 a declaratory judgment for injunctive relief and contract breach. The Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff maintain the determination was not made in accordance with lawful procedure, and was affected by an error in law or was arbitrary and capacious or an abuse of discretion. The Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff claim the Planning Board of the City of Glen Cove failed to comply with the State Environmental Quality Review Act and its implementing regulations by failing to take a "hard look" at key areas of environmental concern relating to the amended master development plan.

The respondents-defendants Planning Board of the City of Glen Cove, City of Glen Cove, Glen Cove City Council, Planning Board of the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency

oppose this hybrid Article 78 proceeding/action, and move (sequence 003, in Supreme Court, Nassau County index number 9704/15) pursuant to CPLR 3211(a) and CPLR 7804(f) for an order of dismissal, or in the alternative CPLR 3212 for an order granting summary judgment dismissing the third through fifteenth causes of action set forth in the petition by the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff. The Planning Board of the City of Glen Cove, City of Glen Cove, Glen Cove City Council, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency seek: (i) dismissing on objections in point of law the first, second and ninth causes of action set forth in the amended combined verified petition and complaint dated December 7, 2015 because the claims are barred for lack of standing, the applicable statute of limitations and a failure to exhaust administrative remedies; (ii) dismissing the third through fifteenth causes of action set forth in the Incorporated Village of Sea Cliff petition because the claims are fail to state a cause of action upon which can be granted, documentary evidence, lack of standing, statute of limitations and estoppel, laches, waiver, release and ratification and acquiescence, or in the alternative granting the Planning Board of the City of Glen Cove, City of Glen Cove, Glen Cove City Council, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency summary judgment against the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff on the third through fifteenth causes of action; (iii)

dismissing the first through the twelfth and eighteen causes of action; (iv) dismissing the thirteenth through seventeenth and twenty second causes of action, in whole or in part the claims are barred for lack of standing, the applicable statute of limitations and a failure to exhaust administrative remedies.

The City of Glen Cove, Glen Cove City Council, Planning Board of the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency undertook a plan to transform land consisting of primarily vacant, industrial, open space and parkland along the north side of the Glen Cove Creek waterfront. The proposed project is now called the Garvies Point Mixed-Use Waterfront Development Project. Various things were undertaken, including but not limited to applications for approval of the development, zoning the area from industrial to a MW-3 zoning district, a land development contract, a conceptual site plan for the project site, classifying the action under the State Environmental Quality Review Act, successive amendments to the land development contract, special use permit processing, an environmental impact statement, a planned unit development plan and State Environmental Quality Review Act findings.

On October 6, 2015, the Planning Board of the City of Glen Cove met, and resolved that (1) the amended plan will not result in any new potential significant adverse environmental impacts that were not studied previously during the prior State Environmental Quality Review Act process; (2) no additional supplemental environmental review is required under the State Environmental Quality Review Act; (3) the amended

PUD plan master development plan meets the zoning criteria contained in the City of Glen Cove Code § 280-73.2(C)(3)(b); (4) the buildings at the westernmost portion of the development closest to the Incorporated Village of Sea Cliff views are larger under the amended master plan as compared to block A under the prior approved plan has numerous design advantages including enhanced visual corridors, including improved views from Hempstead Harbor and Sea Cliff; (5) the proposed amended plan is an aesthetic improvement to the previously approved plan; (6) the visual renderings submitted by RXR Glen Isle Partners LLC improve the view sheds from Hempstead Harbor and Sea Cliff; (7) approved the amended PUD master development plan as shown on the filed plans; and (8) denied the request by the Incorporated Village of Sea Cliff for a supplemental environmental impact statement and consideration of an agreement entered in 2000 between the Incorporated Village of Sea Cliff, the City of Glen Cove, the Glen Cove Industrial Development Agency and the North Shore Environmental Alliance which set forth the parameters and limitations of any development along the Glen Cove Creek waterfront. The petitioners-plaintiffs seek to vacate that determination on the grounds that it was adopted in violation of the State Environmental Quality Review Act § 8-0101 et seq., and its implementing regulations 6 N.Y.C.R.R. Part 617.

The petitioners-plaintiffs contended that given the scale, reorientation, revised massing, widening of the façade directly facing the Incorporated Village of Sea Cliff, dramatic effect on the views from various points in Sea Cliff to the Glen Cove Creek, Hempstead Harbor and Garvies Point Preserve, aesthetic impact on the Incorporated

Village of Sea Cliff, significant impact on the Incorporated Village of Sea Cliff community character, violation of the terms of the agreement and the refusal to abide by the terms of the agreement, the Planning Board of the City of Glen Cove failed to conduct a proper study of the environmental impacts of the proposed action. The petitioners-plaintiffs assert the respondents, and more particularly the Planning Board of the City of Glen Cove, failed to comply with the State Environmental Quality Review Act and its regulations in connection with the October 6, 2015 determination in approving the amended plan unit development (PUD) master development plan and subdivision. The petitioners-plaintiffs seek relief based on the breach of the 2000 agreement by the City of Glen Cove and the Glen Cove Industrial Development Agency. The petitioners-plaintiffs aver the Incorporated Village of Sea Cliff is entitled to specific performance of the 2000 agreement, injunctive relief prohibiting the City of Glen Cove, any of its agencies, boards, departments, officers or employees and all of the respondents-defendants from taking any action in violation of the terms of the 2000 agreement. The petitioners-plaintiffs asseverate that includes, but not limited to conveying the property to RXR Glen Isle Partners LLC or any successor, taking any actions in furtherance of any current approvals, taking any new actions to further effectuate and process the current development approval. The petitioners-plaintiffs add that includes a declaration that (a) the 2000 agreement is enforceable, (b) the City of Glen Cove and the Glen Cove Industrial Development Agency violated the 2000 agreement, (c) the City of Glen Cove and the Glen Cove Industrial Development Agency, must abide by the terms of the 2000 agreement and (d) the

approvals of the project development by the Planning Board of the City of Glen Cove and the Glen Cove Industrial Development Agency in 2011 and 2015 are violations of the 2000 agreement.

“Judicial review of an agency determination under SEQRA is limited to whether the agency procedures were lawful and whether the agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination.”
“In a statutory scheme whose purpose is that the agency decision-makers focus attention on environmental concerns, it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively.” “The agency decision should be annulled only if it is arbitrary, capricious, or unsupported by the evidence”

Joel v Vil. of Woodbury, 138 AD3d 1008, 1011-12 [2d Dept 2016]

This Court reviewed the determination by the Planning Board of the City of Glen Cove, and considered only whether that determination was made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion (*Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400). The Court determines the petitioners-plaintiffs do not satisfy their burden of showing the determination by the Planning Board of the City of Glen Cove was made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion. The challenged determination by the Planning Board of the City of Glen Cove satisfied the requirements under the State Environmental Quality Review Act, and adequately analyzed a reasonable range of options. The determination by the Planning Board of the City of Glen Cove had a rational basis, and was not arbitrary, capricious, or contrary to law (*Auffredou v. Board of Trustees of Village of Cornwall-on-Hudson*, 123 A.D.3d 922 [2d

Dept. 2014]). This Court determines the Planning Board's October 6, 2015 determination of the respondent Planning Board of the City of Glen Cove cannot be annulled, and a declaration cannot be granted to the petitioners-plaintiffs pursuant to CPLR 3001 a declaratory judgment for injunctive relief and contract breach.

“A motion pursuant to CPLR 3211 (a) (1) to dismiss a complaint on the ground that a defense is founded on documentary evidence ‘may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiffs factual allegations, conclusively establishing a defense as a matter of law’ ” [citations omitted] (***Rodolico v Rubin & Licatesi, P.C.***, 114 AD3d 923, 924 [2d Dept 2014]). Here, assertions by the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff that the memorandum of understanding dated October 5, 2000, among Glen Cove Industrial Development Agency, the Incorporated Village of Sea Cliff and the North Shore Environmental Alliance, Inc. is an enforceable agreement or contract violated by the City of Glen Cove, City of Glen Cove, Glen Cove City Council, Planning Board of the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency are misplaced. The documentary evidence proffered by the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency utterly refute the factual allegations in the hybrid proceeding and action, and conclusively establishes a defense as a matter of law. The signatories to the memorandum of understanding were not legally authorized to bind the respective

municipalities. The term limits rule prohibits a municipal body from contractually binding its successors on matters of governance. The memorandum of understanding lacks the essential elements of a contract. The Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff committed laches by never raising the purported noncompliance by the City of Glen Cove at any time during any of the multiple proceedings before the City of Glen Cove relating to the subject project.

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’ ” [citation omitted] (*Weill v E. Sunset Park Realty, LLC*, 101 AD3d 859, 859 [2d Dept 2012]). Here, the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff move for a declaratory judgment for contract breach, and the City of Glen Cove, Glen Cove City Council, Planning Board of the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency move alternatively for summary judgment. The parties appear to request consideration of the evidentiary material submitted by them in consideration of summary judgment. The Court determines that providing the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff the benefit of every possible favorable

inference, and the facts as alleged do not fit within any cognizable legal theory. The City of Glen Cove, Glen Cove City Council, Planning Board of the City of Glen Cove, the Glen Cove Industrial Development Agency and the Glen Cove Community Development Agency show the Incorporated Village of Sea Cliff, Board of Trustees of the Village of Sea Cliff and Bruce Kennedy, individually and as Mayor of the Incorporated Village of Sea Cliff do not have a cause of action.

ORDERED, ADJUDGED and DECREED that so much of the petition-complaint (index number 9706/15, sequence 001) is DENIED seeking pursuant to CPLR Article 78 an order and judgment annulling the Planning Board of the City of Glen Cove's October 6, 2015 determination, it is also,

ORDERED, ADJUDGED and DECREED that so much of the petition-complaint (index number 9706/15, sequence 001) is DENIED seeking pursuant to CPLR 3001 a declaratory judgment for injunctive relief and contract breach.

This will constitute the decision, judgment and order of the Court.

So ordered.

Dated: **August 17, 2016**

E N T E R:

J. S. C.

FINAL DISPOSITION