

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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CONCERNED CITIZENS FOR THE HUDSON VALLEY, INDEX NO.
LEONARD BERGER, ROBERT and ELAINE TITO,
SUSAN and JERRY EZRA, ALISON and NICK GALLO, **VERIFIED**
JOAN DONATO, **PETITION**
Petitioners,

v.

TOWN OF GOSHEN, TOWN OF GOSHEN PLANNING
BOARD, MERLIN ENTERTAINMENT GROUPS US
HOLDINGS, INC., FINI BROTHERS, GOSHEN LAND-
OWNER LLC, BRIAN AND JOAN MARIE CAREY and
PC RESERVOIR LLC

Respondents.

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PRELIMINARY STATEMENT

This is a challenge brought by neighboring property owners and the organization they and others formed to study and ultimately oppose respondent Merlin's effort to radically transform their community and Town through the construction and operation of a massive amusement park intended to serve the Northeastern part of the United States.

As is set forth further herein, the actions set forth herein by the Town of Goshen, finalized on October 23, 2017, represent a radical departure from Goshen's zoning law and comprehensive plan, foisted upon the Town by a major

corporation supported by ambitious politicians from both political parties inured in a pay to play culture which elevates their own aspirations over the best interests of their constituencies.

As the actions of Respondent boards were arbitrary, capricious and contrary to law, they should be annulled.

I. PARTIES

1. Petitioner Concerned Citizens for the Hudson Valley (CC4HV) is a not-for-profit corporation incorporated in the State of New York. Its primary organizational purpose is to advocate for the preservation and sensible development of open space in the Mid-Hudson Valley and to study and, if deemed by its members warranted, oppose, through legal recourse, development proposals which pose a threat to the region's physical environment and way of life. See, Miele Affidavit.

2. Beginning in the summer 2016 and through today, petitioner CC4HV has hired and retained consultants and legal counsel to review respondent Merlin's submission to insure compliance with the laws of the State of New York and the Town of Goshen. Id.

3. Beginning in the summer 2016 and through today, petitioner CC4HV, acting through its members, has attended every Town Planning Board and Town

Board meeting, as well as the meetings of the Orange County IDA and other governmental entities involved in the review and approval/disapproval of the Legoland project. Id.

4. Beginning in the summer 2016 and through today, petitioner CC4HV members has met weekly to discuss the latest developments with regard to the Legoland project. Id.

5. Beginning in the summer 2016 and through today, through its members, consultants and counsel, CC4HV submitted public comments to the Planning Board and the Town Board explaining in detail the flaws in the scoping document, the first iteration of the DEIS, the DEIS and the FEIS and publicly advocated for each of the positions more fully set forth in this Petition. Id.

6. Petitioner CC4HV has dues-paying members, including numerous members who live within the zone of injury associated with the proposed Legoland development. Id.

7. By resolution consistent with its by-laws, petitioner CC4HV's Board of Directors has approved its participation as a petitioner in this proceeding on its own behalf and on behalf of its members, including those who live proximate to the proposed site and have particularized injuries arising from both the proposed construction and potential operation of the amusement park. Id.

8. Petitioner Leonard Berger resides at 2 Redwood Drive, at its intersection with Wedgewood Drive. He and his wife, Joan, own the parcel identified by section-block and lot numbers 27-4-1, which is identified as an adjoining owner to the Legoland project on official town records.

9. Petitioner Berger's backyard property line measures about 207 feet and is in direct contact with the proposed Legoland properties. Pink contractors' tapes have already been placed as highly visible markers on trees near his property line to delineate the property boundaries.

10. Petitioner Berger will be particularly impacted by the sounds of construction vehicles, earth-movers, blasting activities as substantial landforms are re-configured, tree-clearing and wood-chipping, amusement-park operational noises such as roller coasters, and the noises made by trucks and other vehicles entering and leaving the proposed site's "back of house" areas via the Redwood Drive/Wedgewood Drive route. This noise will be compounded by Legoland's proposed use of fireworks throughout its six month operating season which will make it extremely unpleasant for him and members of his family to be outdoors in his yard or his deck.

11. Respondent Merlin's approved site plan will cause the construction of a retaining wall to support a huge parking lot. Looking from his property, petitioner

Berger will see a very tall solid manmade structure several stories high, extending from the northeast to the southwest, situated roughly one and a half city blocks from his back door. Additionally, Legoland's proposed hotel on the site, situated to the northeast, will further degrade his view-shed and diminish his aesthetic appreciation of his property. The proposed tall parking structure will put Berger's house into shadow earlier in the day (thereby shortening petitioner's "day-length") due to the height of the structure itself and in contravention of New York State Town Law § 263, which requires "provision for, so far as conditions may permit, the accommodations of solar energy systems and equipment and access to sunlight necessary therefore."

12. Petitioner Berger's wife suffers from Seasonal Affective Disorder (SAD). Shorter days worsen her symptoms and cause her intense migraine headaches which will be exacerbated by the diminution in light caused by the proximate structure, causing additional stress for petitioner Berger.

13. Petitioner Berger is a science educator interested in astronomy. The constantly-lighted facility at Legoland will effectively destroy his view of the night sky to the north and to the west from his home. Additionally, the increased light pollution will interfere with his ability to sleep at night.

14. The severely increased local air pollution due to the variety and number of vehicles will have a predictably negative effect on petitioner Berger's own health, since he suffers from a number of chronic lung conditions and regularly treats with a pulmonologist. This air pollution will not come only from car exhaust, but also from particulate matter (dust) being spread outward and upwards into the air by construction activities, and by the day-to-day operation of Legoland. Such air pollution will cause substantial anxiety as well to petitioner Berger who fears its impact in exacerbating his chronic lung conditions.

15. Likewise, petitioner Berger utilizes a private well on his property which provides fresh and pure drinking water. This well will likely be adversely affected by activities at the Legoland site, since dangerous chemicals used at the site for various purposes are likely to leach into the ground and then into his well. In addition, rainwater running downhill through the newly paved parking areas will predictably have the same effect, transporting automotive fluids, gasoline, lubricants, solvents, melting salts and other substances down off the high parking lot and into Berger's well, to say nothing of the drainage into natural watershed bodies such as the Black Meadow Creek and/or the Otterkill which have been part of the natural environment Berger has long enjoyed and which will be irrevocably destroyed by the Legoland project.

16. The disruption to local habitats immediately proximate to petitioner Berger's property will displace bats and cause a higher population of mosquitoes and other insects, creating a very real health threat (encephalitis and other diseases and discomforts). Displaced deer will more likely cross petitioner Berger's property, increasing their exposures to ticks and tick-borne diseases (Lyme, Ehrlichiosis, Babesiosis, Anaplasmosis, Powassan, Rocky Mountain Spotted Fever).

17. Petitioner Berger will also experience additional aesthetic damage by and through the clear-cutting of 150 acres of nearby woods; these never will be restored during his lifetime, depriving him of current and future opportunities for quiet, solitude, recreation and spiritual renewal which opportunities he regularly exercises.

18. Petitioner Berger's dog behaves abnormally in reaction to such sounds to the point where anti-anxiety medications have been prescribed to it around Fourth of July. This would occur on a regular basis, causing pecuniary expense to Berger.

19. As petitioner Berger's property is located so close to the proposed Legoland site, it is also predictable that its value will decrease due to the impacts

of the aforementioned externalities on their lands, causing him actual pecuniary loss.

20. Petitioners Robert and Elaine Tito reside at 21 Cherrywood Drive, Goshen, NY 10924, also known as section-block lot 27-3-4, owners recognized as “adjoining owners” to the Legoland site on official Town records.

21. Petitioners Tito will suffer the following impacts as a direct result of the actions of the respondents: their property values will decrease; their air quality will decline due to the massive number of trucks carrying huge quantities of fill during the Legoland construction process and the massive influx of cars entering and leaving the amusement park; implementation of the site plan will severely diminish their views and aesthetic appreciation of their property; their water supply may be deleteriously affected and cars using the emergency exit will exit onto their roadway, causing congestion, additional air pollution and noise.

23. Petitioners Susan and Jerry Ezra [hereinafter “the Ezras”] are residents of 6 Redwood Drive, Arcadia Hills, Town of Goshen and live approximately 1000 feet from the proposed site for nearly 44 years.

24. Petitioners Ezras’ bedroom faces what is now a forested vista which will be filled with bright lights and noise from the amusement park respondent Merlin intends to build.

25. Petitioners Ezras' peace and quiet will be replaced by a noisy neighbor whose presence will predictably diminish the value of their home.

26. Petitioners Alison and Nick Gallo [hereinafter "Petitioners Gallo"] have resided at 8 Redwood Drive, Lot # 27-4-4, since Oct. 1973. Their property borders the Legoland site on the south and west sides for approximately 300'.

27. Construction of the amusement park will greatly diminish Petitioners' Gallo quality of life. The blasting, rock crushing, cement plant operation and reconfiguring 2 million cubic yards of soil, will release carcinogenic silica into the air. Along with the noise caused by this construction, this release will greatly diminish the use and value of their property.

28. Petitioners Gallo are retired seniors who do not go to work each day and will be forced to endure this noise 7 days a week, 12 hrs a day for between two and five years.

29. Petitioners Gallo do not have air conditioning and will not be able to open windows in warm weather.

30. At present, petitioners Gallo use their backyard, with pool and patio extensively. Along with our friends and family, including their 1 1/2 year old granddaughter, they will no longer be able to enjoy this.

31. Contiguous to petitioners Gallo property, respondent Merlin intends to clear-cut one hundred and fifty acres of wooded forest unless enjoined and ultimately disallowed from so proceeding, Merlin will construct a parking lot for 5,000 cars and buses within 1,000' of the Gallos' home. This parking area, along with a road for hotel guest parking and supply and service trucks, will be built on 40' of fill. Air, noise and light pollution will be emitted from this area and due to the height of the road headlights from cars and trucks will shine into our bedroom windows, further interfering with, and diminishing, petitioners Gallos' enjoyment of their property.

32. Petitioners Gallo also will be adversely affected when herbicides and pesticides used to maintain the park further pollute the air, soil and water. They fear that drinking water drawn from Arcadia Hills wells, situated on the properties Merlin seeks to acquire from the Town of Goshen, will be affected.

33. Petitioners Gallo also daily actively appreciate the tremendous biodiversity which is part of their environment; the proposed project will kill innumerable plants, insects and animals, destroying this biodiversity.

34. As a consequence of these numerous adverse affects, the proposed project will greatly devalue petitioners Gallo most substantial asset, their home and adjoining property.

35. Petitioners Gallo have experienced substantial stress to their daily lives due to the Planning and Town Board's cavalier disregard of the Town's Comprehensive Plan, which honored the unique and environmentally fragile areas which Merlin seeks to destroy, and the associated Town zoning law which implemented that Comprehensive Plan.

36. Petitioner Joan Donato [hereinafter "Donato"] resides at 2 Gumwood Drive, also in the Arcadia Hills sub-division which is contiguous to the proposed Legoland development.

37. Petitioner Donato has resided with her family for 27 years at her home on Gumwood Drive.

38. Due to the extent of the construction activity followed by the millions of annual visitors and the proposed display of fireworks during the summer, Legoland's construction and operation will destroy petitioner Donato's peace and tranquility.

39. The increased lighting required to illuminate the "largest Legoland park in the country" will cause ongoing day-to-day disturbance to petitioner Donato and interfere with the enjoyment of her property.

40. Proximate to her home, planned access roads will cause a significant increase in truck traffic and/or emergency vehicles, which will endanger petitioner Donato who regularly walks these streets which have no sidewalks.

41. Since petitioner Donato has resided in Arcadia Hills, water supply has been a constant problem. The development in which she lives has experienced numerous water restrictions, especially during the summer months.

42. Parts of the Arcadia Hills development are in the flood zone, deemed as such by the Town of Goshen. In extremely heavy rains and/or snowmelts, water runoff poses a threat to her home. Legoland proposes to cut hundreds of acres of trees and clear and blacktop land, which is elevated above the area where petitioner Donato lives. This land has absorbed substantial quantities of water during flood events and protects her home from flooding. Proceeding with this project will cause additional water without these absorptive areas, increasing flooding the anxiety about flooding for petitioner Donato.

43. Petitioner Donato actively enjoys watching the sunset from her living room window; on warm evenings, she and her family sit outside and count the stars that illuminate the sky. Her ability to enjoy the beauty of this landscape from her home will forever be destroyed if Legoland is allowed to build as proposed.

44. Respondent Town of Goshen is a municipal corporation located within the County of Orange. It may sue and be sued. Within the last 120 days, the Town of Goshen adopted Local Laws 5 and 6 which amended the Town's Comprehensive Plan and its Zoning Law to enable the development of Legoland as proposed in the Town by respondent Merlin Entertainment Groups US Holdings,

Inc. [hereinafter “Merlin”]. As explained below, said amendments were at cross-purposes with the Comprehensive Plan and the Town Zoning Law and the Town Board engaged in arbitrary and capricious spot zoning in approving these changes. And, as said approvals occurred absent the conduct of a Generic Environmental Impact Statement [hereinafter “GEIS”] with respect to the quantum of property subject to the new overlay district, it was further illegal and contrary to law.

45. Respondent Town of Goshen Planning Board is an instrumentality of the Town of Goshen which may sue and be sued. On August 17, 2017, it adopted a SEQR findings statement which permitted the Legoland project to proceed and on October 23, 2017, it filed with the Town Clerk a resolution approving respondent Merlin’s site plan, issuing a special use permit and allowing massive clear-cutting. Approval of the FEIS and the later actions occurred through a segmented process which failed to study the project’s cumulative impacts and made impossible the Planning Board’s taking the required “hard look” at the project’s impacts.

46. Respondent Merlin Entertainment Groups US Holdings, Inc. [hereinafter “Merlin”] is the applicant who benefited from the comprehensive plan and zoning amendments referenced above and proposed and gained approval for the FEIS and the site plan herein challenged. It may sue and be sued and is doing business within this County.

47. Respondents Town of Goshen, Fini Brothers, Goshen Landowner LLC, Brian and Joan Marie Carey and PC Reservoir LLC all own real property which has been sold or optioned to Merlin, as the project sponsor and, as such, are, or may be, necessary parties to and in this action.

II. JURISDICTION

48. As petitioners claim respondents Town of Goshen Planning Board and Town Board have engaged in arbitrary and capricious acts or omissions contrary to law, this Court has jurisdiction to hear and resolve this matter pursuant to Article 78 of the CPLR. As the other parties hereto are, or may be, necessary parties to this appeal, this Honorable Court has jurisdiction to enter any orders necessary to resolution of this matter.

III. STATEMENT OF FACTS

A. THE TOWN'S COMPREHENSIVE PLAN & ZONING CODE

49. On January 12, 2009, the Town of Goshen published a Comprehensive Plan Update which modernized its 2004 Comprehensive Plan. See, Exhibit 1 to Fink Affidavit for Updated Comprehensive Plan.

50. The document's goals and objectives were stated as follows, "The foundation of this Comprehensive Plan is the recognition that the Town must both preserve its fragile and beautiful rural environment and provide for the needs of its

people. To ignore either of these goals, or to pursue one at the expense of the other, is to fundamentally misunderstand what this plan is all about. The goals of open space and environmental preservation must be pursued at the same time as the goals of providing appropriate rural development involving diverse housing opportunities, supporting local businesses, especially in the Village of Goshen Center, and addressing adequate Town infrastructure and facilities.”

51. According to the Town’s Comprehensive Plan, the RU zone is meant “to promote agriculture and open space and rural uses and to guide residential development so that it protects large blocks of the Town’s open space.” Id. p. 30.

52. The Comprehensive Plan establishes seven goals and objectives: “1. Protect and enhance the agricultural and rural character of the Town; 2. Support existing village center and foster town clusters; 3. Provide a range of housing alternatives that will meet the housing needs for a range of socio-economic groups; 4. Develop a strong and balanced economic base; 5. Protect and enhance open space and public space; 6. Ensure a development pattern that will provide for sustainable water use and 7. Encourage appropriately sited development and protect environmental assets.” Id.

53. To meet the fourth goal, the plan sought a “diverse economic base” and permitted “small-scale neighborhood commercial use by special permit.” The Plan

explicitly recommended “against” the development of large scale retail operations occupying more than 50,000 square feet and operating on business models which depend on high sales volume. Id. at 64.

54. In support of the update to the Town’s Comprehensive Plan, the Town completed a Generic Environmental Impact Statement. See, Exhibit 2 to Fink Affidavit.

55. In the GEIS, comments from the public are listed, including one from Mary Israelski, a local realtor, who commented, “In the Comprehensive Plan, Goal #5 should include the preservation of dense and/or mature forest land. Forests are scarce in the Town of Goshen, and trees enable better air quality. Forests must be considered a primary resource and preserved through less density and smaller building envelopes...” Id., p. 46.

56. The response noted that the Town Board “has added the following objective to Goal #5 in the Updated Town of Goshen Comprehensive Plan: “Preserve the Town’s mature forests to the greatest extent practicable.” Id.

57. Another comment considered by the authors of the GEIS related to “air pollution,” as follows, “What are the impacts and mitigation measures regarding air pollution?” The GEIS responded, “As stated in the DGEIS, the Town of Goshen is part of the Poughkeepsie Moderate Ozone Non-Attainment Area and the

NY-NJ-Ct Severe Non-Attainment area for particulate matter. Adoption of the revised Comprehensive Plan and proposed Code amendments would not result in potentially significant impacts to existing air quality within the area. The revised Comprehensive Plan and proposed Code amendments aim to reduce the density and intensity of development in the Town and target new growth toward the Town's existing Village centers and into cluster developments in an attempt to encourage pedestrian activity and the reduction of car dependency. Adoption of the revised Comprehensive Plan will not result in an increase in overall air quality emissions in the Town. Implementation of revised policies and actions are designed to protect and improve air quality in the Town of Goshen and, therefore, no mitigation measures are proposed or required. Id., p. 129 [emphasis added].

58. By and through Local Law 5 of 2016, adopted the following year, the Town of Goshen Town Board amended the Comprehensive Plan by adding to Goal and Objective, 1.2 the following language “and diversifying its Town-wide economic base, including attracting tourism/related businesses at location that can accommodate local and non-local tourists.” See, Exhibit 3 to Fink Affidavit.

59. By and through the same Local Law, the Town Board added to Section 3.1 Goal 4 the following language, “including providing tourism/recreation business opportunities along State Route 17.” Id.

60. By and through the same Local Law, the Town Board amended section 5.0(2) of the Comprehensive Plan by adding to this pre-existing language, “It is recommended that the location of this area, adjacent to the Village of Goshen makes it suitable for Rural (RU) residential development,” the words “or commercial tourism/recreation uses because of its close access to Route 17.” The same paragraph continued, “This change is recommended to avoid uses with a highway or heavy traffic orientation adjacent to an approval residential development in the Village of Goshen and proposed development in the Town of Goshen,” to which the 2017 amendment added, “except if such uses incorporate sufficient buffers and other mitigation.” Finally, the same paragraph read [before amendment], “This area has a steeper gradient and a portion of the area also contains a substantial wetland and is therefore better suited for low-density residential development” to which the amendment incongruously added this language, “or a commercial tourism/recreation facility that are designed to accommodate to a reasonable extent the natural contours of the land and the protection of the wetland area.” Id.

61. Chapter 97 of the Town of Goshen Laws memorializes the Town’s zoning and is intended to implement its Comprehensive Plan. See, Exhibit 4 to Fink Affidavit.

62. Section 97-2, entitled “**Introduction and user guide,**” includes section A.4 which states, “Most of the undeveloped land in the Town is located in the RU district. Article IV covers the range of development options that are available to landowners in that district, including small-scale development, open space development, and conservation density development. The purpose of providing this range of options is to give maximum flexibility and choice to landowners while protecting the Town’s special character.” Id.

63. Section 97-2 A.(5) of the Town zoning code notes that “Article V covers “overlay” districts, which are designed primarily to protect special resources from inappropriate development and to maintain the Town’s scenic character. The provisions of these districts apply in addition to those of the “underlying” land use district. The Aquifer Overlay (AQ) District is particularly important because it establishes densities that are based upon limitations in the Town’s groundwater resources.” Id.

64. Section 97-2 B. is entitled “How to use this chapter” and states, “Landowners and others who use this chapter are encouraged to meet with the Building Inspector to discuss how this chapter applies to their property. **For any large scale development (a large business or a development of several homes), it is also a good idea to consult with the Town’s Comprehensive Plan to**

understand how to make a proposed development fit within the Town’s vision of its future.” Id. (emphasis added).

65. Section 97-2 B. also contains “the usual” sequence for a developer, concluding with (7): “If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in section 97-69) or a zoning amendment from the Town Board (as provided in section 97-79). These options should be discussed with the Building Inspector before they are pursued. **Any zoning amendment must be consistent with the Comprehensive Plan.**” Id. (emphasis added).

66. Section 97-3 notes that the Town zoning law is enacted...in conformance with the Town of Goshen Comprehensive Plan, to advance the goals of the Comprehensive Plan, to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics and the general welfare” and for other “specific purposes” which include, but are not limited to, these:

“A. To conserve the natural resources and rural character of the Town by encouraging development in appropriate locations and by limiting building in areas where it would conflict with the Town’s predominantly rural and pattern and scale of settlement;

- B. To protect the Town's fragile and threatened groundwater resources;
- C. To encourage the continuation of profitable agriculture, to protect farmland from incompatible development, and to avoid regulating agricultural uses in a manner that unreasonably regulates farm structures or farming practices;
- D. To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as along the Wallkill River and its tributaries, in aquifer and aquifer recharge areas, and on steep slopes, erodible soils, wetlands and their buffers, floodplains, active farmlands, and other designated open space resources;
- E. In recognition of Goshen's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, natural terrain, existing and potential recreation areas, waterways, ground and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, and to maintain environmentally significant open space in its predominantly undeveloped state, in order to preserve the open and rural character of the Town which enhance the Town's quality of life and the economic value of its property." Id.

67. The Town Zoning Law includes different classifications, including the RU district. Id.

68. According to section 97-8 A.(1) of the Town’s zoning code, “The purpose of this district is to promote agriculture and compatible open space and rural uses and to guide residential development so that it protects large blocks of the Town’s open space.” Id.

69. The zoning law notes that “**most of the developable land in the Town of Goshen is located in the RU District. The Town therefore has a vital interest in seeing that this land is either protected from development or developed in a manner that is consistent with the goals of the Comprehensive Plan.**” (emphasis added). Id. sec. 97-18(A).

70. The zoning law explains the purpose of Article IV entitled “Development Options in RU District,” as particularly pertinent hereto as follows:

(1) Offer a variety of options to landowners who wish to develop tracts of land in the Town of Goshen;

(2) Ensure that development projects **do not damage the quantity or quality of the Town’s groundwater supplies, protect the Town’s environmental resources and scenic views, preserve significant tracts of intact open space land, maintain the Town’s predominantly rural appearance, conform to the natural terrain to the greatest extent practicable, and provide a range of**

housing options that meets the need for affordable housing in the Town and region;

(3) Encourage the creation of safe and sociable neighborhoods in which **alternatives to the automobile are viable means of transportation;**

(4) Maintain **property values of land proposed for development as well as existing homes adjoining such land...** Id. [emphases added].

71. The town zoning law contains a very detailed and precise set of formulae for the development of housing in RU zoned areas, employing a “conservation analysis” to “open space development”. Id.

72. In such cases, “at least 50% of the total acreage will be preserved by conservation easement,” “roads shall follow the contour of the land and minimize cutting and filling” and “impervious surfaces” shall be strictly limited to 10% of the parcels, a percentage “deemed critical [to] maintain[ing] environmental integrity.” Id. at sec. 97-20(B)(5), (C)(1) & (F).

73. By and through Local Law 6, the Town Board amended the Town Zoning Law adopting a new “Commercial Recreation Overlay District,” intended to “allow commercial recreation and tourism development opportunities in the Town along State Route 17.” See, Exhibit 5 to Fink Affidavit for Local Law 6.

74. Under Local law 6, the Planning Board was authorized to issue a special permit and site plan approval for any such newly allowed use. Id.

75. As part of the newly approved overlay district, a plethora of new uses are permitted on the property to be acquired by Merlin, including aquariums, museums, theatres, motorized rides, food stands, hotels with or without conference space, restaurants. Id.

76. Section 4 of Local Law 6 entitled “Expiration,” stated: “This Commercial Recreation Overlay District shall terminate and cease to exist without further action by the Town Board if the Town Planning Board does not approval a special permit and site plan for a Commercial Recreation Facility within six (6) months of the effective date of this local law or, if so approved the Commercial Recreation Facility is thereafter abandoned.” Id.

B. LEGOLAND COMES TO GOSHEN

77. In the fall 2015, having been rebuked in its efforts to locate a new amusement park in other communities outside of New York City, Merlin Entertainment toured Orange County with members of the Orange County Partnership and the County Executive. See, Miele Affidavit, para. 2.

78. According to the County Executive, they looked at sites throughout the County and decided they wanted to develop a massive amusement park on a site

straddling the Towns of Goshen and Chester and the Village of Chester, adjacent to Route 17. Id. at para. 3.

79. That site was then primarily zoned RU, for “Rural District.” Id. para. 4.

80. At the time Merlin identified its preferred property in the Town of Goshen, the Town zoning law prohibited “amusement parks...and related activities” in all its zoning districts. See, Exhibit 4 to Fink Affidavit, section 97-109(C)(1).

81. At the time Merlin identified lands in Goshen for its amusement park, another developer had an option agreement for approximately 300 acres subsumed within the larger site Merlin had identified. See, Exhibit 1 to Sussman Affirmation, Minutes of April 25, 2016 Meeting of the Town of Goshen Board

82. These minutes of the Town Board’s work session reflect that developer Scott Leyton appeared before the Board to discuss changing the zoning from RU to HM on the Harriman Drive site so as to allow 383 residences and 100,000 square feet of commercial on 272 acres. Id.

83. The minutes note that, in 2009, the Town had replaced the HM zone with HR or Hamlet Residential to allow the creation of adjoining residential neighborhoods at the traditional scale and density typically found in rural hamlets and villages. On the other hand, the minutes reflect, the purpose of the RU district

is “to promote agriculture and compatible uses and to guide residential development so that it protects large blocks of the Town’s open space.” Id.

84. Board members then made comments on the proposed zone change: Councilman Ken Newbold stated that “Hamlets are not a good idea for the Town of Goshen.” Councilman George Lyons concurred and expressed concern about the lack of water and the outdated sewer lined to adequately supply the proposed density and the unsuitability of the roads for the anticipated amount of traffic. Supervisor Doug Bloomfield then stated that “[b]ringing in more traffic is a deterrent to the way of life. Water has always been an issue. We don’t have an overabundance of water.” Councilman John VanderMolen also opposed the proposed zone change due to the projected traffic and the fifth councilman, Melissa Gallo, expressed “concern[ed] with the availability of water to 300+ units.” Supervisor Bloomfield summarized the general consensus of the Board members is not to change the zoning; “the request is turned down.” Id.

85. Meanwhile, Merlin was resolving option agreements with the owners of some 520 acres which, as noted, subsumed the land mass identified by the rejected developer.

86. In May 2016, Orange County Executive Steve Neuhaus announced that Merlin had identified the Goshen parcels as its preferred location for a major

amusement park. See, Exhibit 2 to Sussman Affirmation for news coverage of this announcement.

87. At the time of this announcement and for the preceding decades, the Town's zoning law banned all such amusement parks in every zoning classification and this use was not permitted in the Town under any circumstances. See, Exhibit 4 to Fink Affidavit.

88. The Town zoning law explicitly reflected the community's comprehensive plan, itself the culmination of a careful process involving community members who, aided by Planning experts, had studied the entire Town and determined that the area proposed for Legoland was environmentally fragile and should not be subject to intense development of any sort. See, Fink Report.

89. In its initial presentation to the Town of Goshen, Legoland proposed to initially develop 153 of the 523 acres it intended to purchase. It proposed a 2,000 foot buffer between the park and the nearest residence on Arcadia Hills. It stated that a 1000 foot buffer will exist between the parking lot and the nearest residence and assured that this buffer will remain in place to protect wetlands. Legoland announced that it expected 1.5 to 2 million visitors/year, an average of 10,000 visitors/day. On busy days, it stated, 20,000 visitors were to be expected. The parking lot was to contain 5,000 spaces, 3,000 of which it anticipated would be

occupied on an average day. The park hours will be 10 am to 8 pm in the high season and 10 am to 6 pm in the shorter season.

C. **LEGOLAND IS ACCORDED SPECIAL TREATMENT**

90. Typically, when a developer seeks Planning Board approval for any form of development inconsistent with its Town's zoning, the Board refers the sponsor to either the Town Board for consideration of a zoning change or to the Zoning Board of Appeals for a variance. See, Andrews Affidavit, para. 8 and Fink Affidavit.

91. The Town of Goshen zoning law controls Town Board review of applications for zone changes. See, Exhibit 4 to Fink Affidavit, sec. 97-79.

92. This law required the Town Board to refer the proposed zone change to the Planning Board "for report thereon prior to public hearing," See, Exhibit 4 to Fink Affidavit, sec. 97-79(B)(2), and contemplates a report on any such proposal by the Planning Board within 45 days of the referral.

93. A zone change involving more than 25 acres, as here, is a Type 1 activity which requires SEQR. See, Exhibit 3 to Sussman Affirmation for SEQR Handbook [2010 edition], p. 182.

94. The Board “with primary responsibility for making the zoning decision” is “responsible for the conduct of SEQR” when a zoning change is being considered. Id. at 183.

95. Town Law sec. 272-a requires that all town land use regulations must be accordance with a Town’s comprehensive plan.

96. Amendments to a comprehensive plan are a Type 1 Action under SEQRA and require SEQRA review. See, Exhibit 3 to Sussman Affirmation at 182.

97. “[T]he generic EIS is the most appropriate way to analyze the environmental effects of a comprehensive plan. The generic EIS is specifically designed to analyze actions that call for a series of subsequent actions like a comprehensive plan.” Id. at 181.

98. Where, as here, an applicant seeks a zoning change from a Town Board, “the impacts of both the rezoning and the specific development must be considered in determining the environmental impacts.” Id. at 183.

99. Where certain lands subject to re-zoning are to be developed and the owner has or claims to have no present plan for part of the land, “the lead agency should conceptually review the potential impacts for the maximum development that be realized on the rezoned parcel of land.” Id. at 184.

100. Where a zoning change may result in significant impacts, the lead agency should require the project sponsor to prepare a generic EIS which analyzes the impacts of the proposed zoning change. Id. at 184.

101. On June 13, 2016, Merlin submitted an application for subdivision, special permit and site plan approval for an amusement park and resort on approximately 150 acres of a 521.95 acre site along Harriman Drive within the Town of Goshen. See, Exhibit 4 to Sussman Affirmation for letter from Dominic Cordisco, Esq. to Town of Goshen Planning Board.

102. The site Merlin identified for its proposed amusement park consists of fifteen tax parcels including nine town-owned parcels.

103. The Town Board and Planning Board attorney at the time of the application was Richard Golden, Esq., the former Orange County Attorney [hereinafter “Mr. Golden”].

104. Mr. Golden’s billing records were provided to CC4HV through a Freedom of Information Act request. See, Exhibit 5 to Sussman Affirmation.

105. Mr. Golden’s records show substantial coordination in advance of the Merlin application between him, as attorney for the boards which would have to approve the applicant’s plans, and the applicant’s representatives. Id.

106. This orchestration reflected illegal pre-judgment of the proposal as is further explained below.

107. Before the submission of this application, by his own records, Town Board and Planning Board counsel Mr. Golden was in discussion with the applicant's attorney concerning "various issues related to *expedited review* of Applicant's proposed zone change and site plan/special permit review." [emphasis supplied]. See, Exhibit 5 to Sussman Affirmation for Golden billing records.

108. Indeed, well before the applicant even submitted his application, his attorney had numerous conversations with Mr. Golden about fast-tracking approval for the project. Id.

109. And, in the same time period, Mr. Golden conversed with the County Executive, already a major public booster, about the project. Id. and Exhibit 2 to Sussman Affirmation for news articles in which the County Executive immediately championed the project, before any reviews had been initiated, let alone completed.

110. On June 6, 2016, before the application was filed, Mr. Golden's billing records show discussion with applicant's attorney regarding "various approval issues and SEQRA." See, Exhibit 5 to Sussman Affirmation.

111. After the application was filed, the same billing records demonstrate the close coordination between the applicant, the Town Board and the Planning Board, both represented as they were by the same counsel. Id.

112. Rather than refer Merlin to either the Town Board or the ZBA [typically the developer's choice] and despite the fact that the Town zoning code prohibited the use Merlin sought to develop, the Planning Board consented to consider its application to site a major amusement park on 522 acres of the most environmentally sensitive land in the Town. See, Exhibit 6 to Sussman Affirmation.

113. On or about June 16, 2016, the Planning Board, already acting as lead agency for SEQR purposes, voted a positive declaration under SEQR. Id.

114. The Planning Board proceeded to consider the Legoland proposal as if the land it wished to use was properly zoned for the proposed development and as if the Town was not then governed by a diametrically opposed comprehensive plan and zoning law.

115. So proceeding was unprecedented and violated basic principles of zoning and planning. See, Affidavits of Andrews and Fink.

116. In so proceeding, the Planning Board engaged in pre-judgment that the Town Board would adopt the very significant amendments to the Town zoning law and comprehensive plan allowing this project to proceed.

117. Likewise, before respondent Merlin had presented its case for, let alone received, either a zone change or variance, it sought a PILOT from the County's Industrial Development Agency [hereinafter "IDA"], whose Board of Directors was dominated by persons associated with the County Executive and the Orange County Partnership. See, Affidavit of Christine Miele.

118. Before the conduct of the scoping session which marks the commencement of public review of a project, on July 13, 2016, the Town's attorney, Mr. Golden, coordinated the submission of a letter of support from the Town of Goshen for the PILOT Merlin sought from the County IDA. See, Exhibit 5 to Sussman Affirmation for Golden billing record for 7/13/16.

119. Such pre-judgment was confirmed months later when before any vote was taken by the Planning Board on the proposal, Town Supervisor Bloomfield refused to re-appoint to the Planning Board Reynell Andrews, who had served for eighteen years and whose wife, an elected Town official, had expressed concerns about the Legoland project. See, Andrews Affidavit.

120. In December 2016, respondent Merlin demanded that the Town remove Andrews from the Planning Board because of his wife's activities. See, Exhibit 7 to Sussman Affirmation.

121. Merlin also sought judicial removal of Mr. Andrews from the Board, concerned that he might oppose its proposal. See, Exhibit 8 to Sussman Affirmation.

122. And, citing the views of the Planning Board Chairman, Supervisor Bloomfield did not re-appoint Andrews to the Board, a very rare departure from the principle that members who were prepared to continue serving would be so reappointed. See, Andrews Affidavit.

123. As the Planning Board was considering Legoland's application, the Town Board considered changes to the Town Zoning law and the Town's comprehensive plan. Local Laws 5 and 6 were both proposed in July 2016 and discussed at the scoping session held the next month.

124. While only it could adopt these changes, in contravention of clear guidance from the DEC, the Town Board did not declare itself lead agency for either purpose, delegating this function to the Planning Board. See, Fink Affidavit.

**D. THE TOWN REFUSED COUNTY PLANNING COMMISSIONER
CHURCH'S SUGGESTION THAT IT CONDUCT A GEIS
AND STUDY CUMULATIVE IMPACT**

125. In August 2016, the Town Board and Planning Board held a joint scoping session for the project Merlin proposed to build on 142 of the 520 acres it intended to purchase. See, Miele Affidavit.

126. Before the scoping session, on July 29, 2016, Orange County Planning Commissioner, David Church, advised the Planning Board as follows: “Of significant concern is the cumulative impact of current and anticipated traffic along and feeding the Route 17 corridor with or without the various development proposals in active or anticipated review. This should includes trends analysis that can be provided by this office (based on our traffic modeling for the County Transportation Council) and by NYSDOT. The cumulative effect of this project, the Montreign Casino in Sullivan County, proposed Amy’s Kitchen/Science of the Soul events, and future proposed projects along this corridor may warrant major infrastructure and/or transit improvements to Route 17/future I-86.” See, Exhibit 9 to Sussman Affirmation.

127. Highlighting the out-of-sequence review being engaged in by Goshen, Church further noted, “A zoning change appears necessary to accommodate this project. It is of utmost importance that the DEIS demonstrate consistency with Town of Goshen and Orange County development policies as espoused in the Town of Goshen and OC Comprehensive plans. To date, no zoning amendment application has been submitted to this office under NYS GML 239.” Id.

128. Church also suggested that the applicant prepare “a clear fiscal impact analysis that relates short and long term fiscal contributions to the Town, County and region against any fiscal costs, subsidies and incentives expected or provided.” Id.

E. THE TOWN REJECTS COMMUNITY DEMANDS FOR A GEIS

129. At the afore-referenced scoping session, members of the community and counsel for petitioner CC4HV noted that the Town was proceeding in a sequentially-flawed manner, to wit, the Town first needed to perform a Generic Environmental Impact Statement [GEIS] to determine the impact of altering the zoning for the 520 acres which were to be included in the spot zoning Merlin supported and were the Town to approve this spot zoning, the Planning Board should then consider the site plan submitted by the applicant. See, Miele Affidavit.

130. The Town rejected this approach and, to this day, the applicant has never been required to submit, and no agency of the Town ever performed, a GEIS to assess the overall impact of the zoning change since approved by the Town Board. Id.

F. OBVIOUS INADEQUACIES OF THE DEIS DO NOT PRECLUDE TOWN PLANNING BOARD CERTIFICATION OF ITS COMPLETENESS

131. After conducting two scoping sessions, the Planning Board agreed that, in its Draft Environmental Impact Study, the applicant would have to study the various externalities associated with its project, including impacts on water, traffic, sewer, noise, public health and associated socio-economic impacts, like the impact of the project on public safety, the capacity of local housing resources to absorb those expected to work both building and operating Legoland and the availability of emergency medical and firematic services. See, Exhibit 10 to Sussman Affirmation for scoping document.

132. The Planning Board also recognized that the applicant was responsible for conducting what is commonly known as “cumulative impacts,” that is how its project would combine with other currently proposed projects in the region to affect the aforementioned areas and others. Id.

133. According to the controlling SEQR handbook, “cumulative impacts occur when multiple actions affect the same resources. These impacts can occur when the incremental or increased impacts of an action, or actions, are added to other, past, present and reasonably foreseeable future actions. Cumulative impacts can result from a single action or from a number of individually minor but collectively significant actions taking place over a period of time. Cumulative impacts do not have to be associated with one sponsor or applicant. They may

include indirect or secondary impacts, long term impacts and synergistic effects.”

See, Exhibit 3 to Sussman Affirmation for SEQR Handbook at 83.

134. Cumulative impacts must be assessed when actions are proposed, or can be foreseen as likely, to take place simultaneously or sequentially in a way that the combined impacts may be significant. Id. at 83.

135. In October 2016, only two months after the scoping session, the applicant claimed that it had completed its DEIS and produced a 7,621 page document See, Andrews Affidavit.

136. State law requires that the Planning Board review the DEIS and, when appropriate, issue a certificate of completion, signifying that the proponent has studied each of the issues raised in the scoping document. See, Fink Affidavit.

137. The Planning Board initially determined that the applicant had failed to qualify for a certificate of completion. See, Miele Affidavit.

138. However, less than a month later, the applicant returned, now claiming to have completed its DEIS. Id.

139. Despite obvious infirmities in the document which petitioners and their representatives amply demonstrated in comments thereafter submitted, the Planning Board promptly issued the requested certificate of completion, allowing

the release of the DEIS for the first time and the conduct of public hearings. See, Miele Affidavit.

140. Affected Town residents then filed an Article 78 proceeding seeking to annul the certificate of completion and cause further and different SEQR review of the Legoland project.

141. The residents' Article 78 proceeding was supported by substantial expert opinion supporting petitioners' substantive points. See, Exhibit 11 to Sussman Affirmations for expert Affidavits then submitted.

142. Supreme Court denied prior petitioners' request for a stay of the conduct of public hearings on the allegedly incomplete DEIS and ultimately held that prior petitioners' Article 78 was premature as the Town had rendered no final decision on Legoland. See, Exhibit 12 to Sussman Affirmation.

143. Permitted to proceed with the release of the DEIS, the Planning Board scheduled a required public hearing concerning the DEIS for mid-December 2016 and established a comment period for the submission of written comments.

144. Petitioners attach hereto the written comments submitted by their consultants following release of the DEIS and incorporate those comments herein. See, Exhibit 13 to Sussman Affirmation.

145. Taken together, these comments noted substantial infirmities in the DEIS, noting, *inter alia*, the inadequacies of the traffic studies conducted and presented in the DEIS, the absence of a showing that Legoland could access adequate water supply for the project without threatening the extant Village water supply, the absence of a cost-benefit analysis for the project and a plethora of unreviewed environmental issues relating to the impacts of the proposed development on threatened/ endangered species, wetland and other fragile ecosystems. Id.

146. Taken together, these comments also noted the absence of a GEIS with respect to the 230 acres left open for development pursuant to the new commercial-recreation overlay and the absence of any cumulative impact analysis in the DEIS. Id.

147. On December 15, 2016, the New York State Department of Transportation recommended that the Planning Board not accept the applicant's DEIS because it was patently inadequate. See, Exhibit 14 to Sussman Affirmation.

148. Amongst its reasons, the Department noted, "The Department recommends that DEIS not be accepted and further data be collected and reviewed. The most critical comments address the following: 1. The FEIS [sic] document does not include any mitigation work off of the site. This is a critical flaw because

the mitigations of the development must be in the same DEIS document as the development.” Id.

149. The Department continued, “If the “flyover” alternative is selected, the “flyover” needs to be designed consistent with the interstate standards not precluding this section of highway from being designated as an interstate.” Id.

150. Further, “The Department requests that the traffic study be expanded to the intersection of I-84 and I-87, Route 17 and I-97, Route 17 and I-84 and Route 17M and I-84.” Id.

151. On January 17, 2017, long after the Town Planning Board deemed the DEIS complete, the County Planning Commissioner, David Church, provided his agency’s mandatory review pursuant to General Municipal Law section 239-1, m and n. See, Exhibit 15 to Sussman Affirmation.

152. Amongst other deficiencies with the DEIS, Mr. Church noted: “the proposed site will require a considerable amount of cut and fill,” but that the DEIS failed to indicate the percentages of land Legoland proposes to disturb within each of the three slope categories; the DEIS did not propose or show any buffer protecting the Otter Creek, a NYS DEC class C stream and a tributary to the Moodna Creek flowing to the Hudson River; the DEIS did not show how the proposed emergency road would cross the Otterkill River and associated wetlands;

the proposed site plan would create 77.41 acres of impervious area but did not provide satisfactory assurances regarding stormwater management; the applicant's traffic impact study was "difficult to follow and navigate through"; comparisons made with other resorts unhelpful in determining likely trip generation; the DEIS failed to identify or properly define "peak hour"; the applicant failed to study "the environmental impact attributable to the construction of new NYS Route 17 interchange to accommodate traffic" though, Church notes, "this infrastructure option has received a high level of public interest[.]"; the applicant failed to study cumulative traffic impacts, specifically noting "Science of the Soul events," "to the west of this proposal which will bring thousands of visitors and added traffic to Goshen." Id.

G. THE LONGSTANDING COMPREHENSIVE PLAN IS COMPROMISED

153. As the Planning Board awaited first the DEIS and then the FEIS, the Town Board crafted and released proposed changes to the Town zoning law which, if adopted, would allow Merlin to take advantage of the new zoning overlay district to construct a high density amusement park on highly environmentally sensitive land, squarely contradicting the limitations upon that land imposed by the 2004 Comprehensive Plan and continued in the 2009 Update to the Comprehensive Plan. See, Miele and Fink Affidavits.

154. The overlay district was proposed to cover 520 acres of land, that is, only the lands being purchased by Merlin, though the DEIS studied the impact of the current proposal, on only about 140 acres of land. See, Fink Affidavit.

155. The Town Board did not convene a citizens' group to review and make recommendations for alterations, if any, to the Town comprehensive plan, the procedure both commonly followed and followed by the Town of Goshen in developing its prior comprehensive plans. See, Fink Affidavit.

156. Rather, it had its counsel draft revisions to the Comprehensive Plan which would radically alter the extant plan to enable the specific project under review to proceed. See, Fink Affidavit.

157. Nor as in 2009 did the Town conduct a GEIS to study the potential impacts of the proposed changes to its comprehensive plan. See, Fink Affidavit.

158. The 2017 revisions to the Comprehensive Plan elevated one aspect of the comprehensive plan, economic development, and subordinated all the other values which the community had embraced in developing the plan. See, Fink Affidavit.

H. THE PLANNING BOARD IGNORES STRONG PUBLIC
CRITICISM AND ADOPTS THE FEIS DESPITE
OBVIOUS DEFICIENCIES

159. Following release of the DEIS, public response was furious and hundreds of residents submitted substantive comments which, in summary, advanced the following claims:

- a. The Planning Board failed to require the applicant to perform a GEIS;
- b. The Planning Board failed to require the applicant to study cumulative impacts;
- c. The applicant failed to properly account for the impacts of its project on traffic and water supply, the need for additional public resources in the areas of police and fire protection and the devastating effects of its development on the fragile eco-system on the lands to be clear-cut;
- d. The proposal contravened the Town's well-thought out and balanced comprehensive plan;
- e. The proposal contravened the Town's zoning and needed spot zoning to gain approval.

160. Following receipt of the community's comments on the DEIS, including those from experts retained by petitioners, the applicant submitted its

Final Environmental Impact Study [FEIS]. See, Exhibit 16 to Sussman Affidavit.

161. That study was replete with the same deficiencies earlier identified: it failed to identify, study or attempt to mitigate cumulative impacts, essentially ignoring them entirely; it failed to recognize the need for a GEIS to review how the undeveloped and undedicated portion of the re-zoned site might be developed and the impacts deriving therefrom; it failed to take a hard look at whether the applicant had secured sufficient water resources to develop the property without significant adverse effects on other local water users reliant on the same supply sources; it failed to properly study the public health impacts associated with the increases in ambient pollution associated with the site development and use; it failed to study the actual traffic impacts from its own site or to propose mitigation measures which would effectually resolve the major projected traffic impacts this project contributed to; it failed to address the costs associated with its developments, particularly for police and firemanic resources needed to safeguard life and property; it failed to consider whether local housing resources, including the availability of affordable housing, could accommodate the anticipated low-paying work force Merlin acknowledged would be required to operate its amusement park; it failed to adequately assess the impacts of the increased population deriving from the project upon local

schools; it failed to assess the impact of its construction and development on local property values; it failed to account for the substantial noise and pollution its construction and operation would cause for those living in Arcadia Hills, a housing development immediately proximate to it; and its failed to account for the loss of agricultural lands within a New York State Agricultural District. See, Fink Affidavit and attached report.

162. Moreover, the FEIS used, for comparative purposes, other Merlin amusement parks which are situated in different countries and are not similarly-situated to this site. See, Fink Affidavit.

163. Following receipt of the FEIS, the Planning Board did not convene an additional public hearing, but did accept written comments from members of the public. See, Miele Affidavit.

164. These comments, including those submitted by petitioners' planning expert, Theodore Fink, explained these deficiencies in the project and questioned each of the principal findings in the FEIS, as well as the inadequate mitigation measures proposed therein. See, Exhibit 17 to Sussman Affirmation for Fink submission to Planning Board following release of FEIS.

165. Meanwhile, following the Planning Board's receipt of the FEIS, the Town Board passed Local Law 6 changing the Town's zoning law by

establishing a Commercial/Recreation Overlay District which would enable Merlin alone to advantage itself of the change. See, Exhibit 5 to Fink Affidavit.

166. The Board required that any developer making use of the change would have to initiate construction within 6 months or the new zoning overlay would lapse and be unavailable. Id.

167. In short, the Town Board sought to change its local law to advantage one and only developer since no other developer could reasonably be expected to gain site plan approval for such a massive project within a six month period.

168. The Town Board also enacted changes to the comprehensive plan intended to satisfy Merlin's interests and needs while ignoring and profoundly distorting the careful balance between development and conservation embraced by the Town and its Board in enacting the comprehensive plan to begin with. See, Exhibit 3 to Fink Affidavit.

169. The Town Board also conditionally permitted the applicant to clear-cut 150 acres of forest before it received approval or major arterial design changes proposed as mitigation measures for the project and before it demonstrated the financial capacity to implement such mitigation measures and complete site plan development. See, Miele Affidavit and Exhibit 17 to Sussman Affirmation for clear-cutting resolution.

170. On August 17, 2017, the Planning Board issued its SEQR findings statement and on October 18, 2017, it provided final approval to Merlin's site plan. See, Exhibit 18 to Sussman Affirmation for SEQR finding statement and Exhibit 17 for resolution approving Merlin's site plan and special use permit.

171. At the time it so proceeded, the applicant proposed major changes to arterial patterns along Route 17, a roadway long slated to be fully converted to I-86. These alterations were without the authority of the Planning Board to approve.

172. At the time it approved the site plan, the applicant had no approval from either State or Federal highway authorities to proceed with the construction of the fly-over which it proposed as a major mitigation measure for traffic congestion.

173. Approval of a major project which is contingent on such state and federal approvals before grant or denial of said approvals is arbitrary and capricious.

174. The findings statement demonstrates that the Planning Board failed to take a hard look at the project and did not address numerous issues petitioners and their experts and representatives had identified since consideration of the project commenced, to wit: the statement failed to identify, study or attempt to

mitigate cumulative impacts, essentially ignoring them entirely; it failed to recognize the need for a GEIS to conceptually review how the undeveloped and undedicated portion of the re-zoned site might be developed and the impacts deriving therefrom; it failed to take a hard look at whether the applicant had secured sufficient water resources to develop the property without significant adverse effects on other local water users reliant on the same supply sources; it failed to properly study the public health impacts associated with the increases in ambient pollution associated with the site development and use; it failed to study the actual traffic impacts from its own site or to propose mitigation measures which would effectually resolve the major projected traffic impacts; it failed to adequately address the costs associated with its developments, particularly for police and firemanic resources needed to safeguard life and property; it failed to consider whether local housing resources, including the availability of affordable housing, could accommodate the anticipated low-paying work force Merlin acknowledged would be required to operate its amusement park; it failed to adequately assess the impacts of the increased population deriving from the project upon local schools; it failed to assess the impact of its construction and development on local property values; it failed to account for the substantial noise and pollution its construction and operation

would cause for those living in Arcadia Hills, a housing development immediately proximate to it. Id.

175. Moreover, the applicant intends to clear-cut some 150 acres of forest and its own experts have confirmed the US Fish and Wildlife Service finding that these forests provide habitat for Indiana bats and Northern long-eared bats, which are endangered and threatened species respectively. See, Exhibit 20 for Letter dated December 19, 2016 from the United States Department of the Interior and Exhibit 21 for report by respondent Merlin's own expert on like issue.

176. The applicant has refused to conduct "bat presence/probable absence surveys" as recommended by the Fish and Wildlife Service in its December 19, 2016 letter. See, Exhibit 21 to Sussman Affirmation.

177. The applicant's own expert from EcolSciences, Inc. has represented that the developer intends to use insecticides and herbicides which pose significant threats to these species and has acknowledged that such pesticides will not be removed by its stormwater system and will therefore flow into and pollute the Otter Kill, already designated as a "Threatened" stream by the DEC. Id.

178. Respondent Merlin intends to purchase water for its project from the Village of Goshen. See, Exhibit 16.

179. There were four village water supply sources identified in the DEIS: two wells and two extant reservoirs, Green Hill and Prospect [also referred to as Goshen]. See, Exhibit 22.

180. The latter reservoir provides the only identified filtration system. Id.

181. The Department of Health has recently required replacement of the current Village water filtration system, having deemed it inadequate and antiquated.

182. Respondent Planning Board failed to independently determine whether the water supply projected by the applicant was adequate to support its project and accepted faulty representations to this effect from respondent Merlin's consultant, Lanc & Tully. See, Exhibit 22 to Sussman Affirmation.

183. In June 2012, the DEC provided a water supply permit to the Village which allowed the Village to pull 1.3 million gallons/day from four sources in non-drought conditions. See, Exhibit 23 to Sussman Affirmation.

184. Historically, drought conditions have been frequent in the Village and Town and have long been recognized in expert reports commissioned to study area water resources. See, Exhibits 24 A, 24 B and 24 C to Sussman Affirmation.

185. Moreover, drought conditions have been publicly discussed and reported for decades. Id.

186. Moreover, these conditions have constrained development and formed a major basis for the recommendations in the 2003-04 Comprehensive Plan to increase lot sizes and limit development in the Town of Goshen. See, Exhibit 24 D to Sussman Affirmation.

187. Consistent with these circumstances, under the operative DEC permit, allowable water draw decreases radically in persistent drought conditions. See, Exhibit 23 to Sussman Affirmation.

188. Available data shows peak demand for village water at 989,000 gallons/day without reference to fire flow.

189. LEGOLAND claims to add peak usage of 255,000 gallons/day based on undocumented English facility usage. See, Exhibit 22 to Sussman Affirmation.

190. The Town's consultant, Farr, suggested a peak Legoland usage at 270,000 gallons/day. See, Exhibit 26 to Sussman Affirmation.

191. The Planning Board did not verify this assumed usage through review of actual metering/bills.

192. Though it fails to address or recognize peak daily demand, Farr's analysis conclusively demonstrates that the Village substantially over-committed when it contracted to meet Merlin's water supply needs: adding the Legoland

projection [of 270,000 gallons/p/d] to the peak water usage reported at 989,000 g/pd, in drought conditions, the Village has insufficient water supply.

193. Adding anticipated village demand of 180,000 g/p/d, the supply of water available to the Village would be far short of demand in a drought circumstance. Id.

194. DEC has permitted Village maximum draw at 1.078 million/gallons when reservoir levels measure -75 inches or less, a reference below the spillway. See, Exhibit 23 to Sussman Affirmation.

195. In short, during a drought condition, the water available to the Village is plainly insufficient for the projected demand. Id. & See, Exhibit 25 for hydrologist Paul Rubin's comments to Planning Board on December 15, 2016

196. Neither the Town Board nor its Planning Board considered the demand likely to arise from use of approximately 220 acres of the rezoned site with respect to which no plans have been submitted. See, Fink Affidavit & Rubin Affidavit.

197. Neither Board prepared a Generic Environmental Impact Statement so as to assess implications for water demand. Id.

198. Likewise, the FEIS does not assess cumulative demand upon village water resources, specifically the Orange County Government Center which has been closed for several years and is reopening currently and other approved/proposed projects planning to use Village water resources. Id.

199. And, as critically, in contracting with Merlin, the Village Board's own resolution, passed on August 9, 2016, concedes, "preliminary studies performed to date relative to available water capacity have indicated, after accounting for full Village build-out, the need to develop additional water capacity to service the anticipated needs of the Project and future Village needs." See, Exhibit 26 to Sussman Affirmation.

200. Indeed, at the time the Village passed this resolution, it acknowledged that it had not yet completed any study of supply: its resolution states, "in order to objectively demonstrate the availability of sufficient resources to provide water and sewer services to the Project, the Village of Goshen *has commenced and will continue to conduct necessary and appropriate studies to demonstrate that, after accounting for full buildout within the Village, that sufficient resources are available to provide the requested service to the Project.*"[emphasis added]. Id.

201. And, the same resolution does not guarantee to Merlin any specific quantum of water. Id.

202. The following month, after passage of this resolution James Farr of Farr Engineering of Port Jervis, reported to the Village Board concerning the village water supply. See, Exhibit 22 to Sussman Affirmation.

203. As if not knowing that six months earlier, the Village Board had approved a resolution to provide water to Merlin, Farr states in his letter to Village

Mayor Kyle Roddey, “It is our understanding that the proposed Legoland project in the Town of Goshen *has requested permission from the Village of Goshen to connect to the Village’s water supply and distribution system. We also understand that the Village is willing to provide these services to the project if there is adequate water supply capacity for the Village’s existing and anticipated needs as well as the Legoland project.*” Id.

204. In fact, without any technical review of conclusive study of supply and demand for its water, six weeks earlier, the Village Board had committed to supplying Legoland with water.

205. Contrary to the analysis presented above, John O’Rourke, the P.E. employed by Legoland, presented a distorted view of the Village demand in his summary of water supply and demand, claiming that the Village demand was 650,000, about 125g/p/d less than represented in Farr’s report as an average, but not peak flow. See, Exhibit 22 to Sussman Affirmation. O’Rourke’s analysis does not account for peak flow at all, understates the demand by Legoland and was distorted. Id.

206. In assessing the DEIS, in early February 2017, petitioners’ then hydrologist, Paul Rubin, submitted a report which crystallized the absence of rigorous analysis which made fatal any conclusions on water supply and demand in

the DEIS and the FEIS. See, Exhibit 13 to Sussman Affirmation for Rubin Report.

207. The FEIS and the approved findings statement fail to adequately account for the safety and security risks posed to the Town and Village of Goshen from the placement of Legoland. See, McLoughlin Affidavit.

208. The affected communities lack the law enforcement infra-structure to provide proper safety and security and these risks are accentuated by the “soft target” nature of an amusement park, the numerous means of available ingress and egress, both controlled and uncontrolled and the absence of any commitment by Merlin to either surveillance techniques or fencing which will significantly mitigate this risk. Id. and Exhibit 28 to Sussman Affirmation for letter from Village Police Chief James Watt.

209. Moreover, the FEIS and the findings statement fail to quantify the costs to the locality of increased policing, emergency medical services and its courts. Id.

210. The DEIS is also fundamentally flawed, as is the Planning Board finding statement, because it fails to properly account for the adverse health effects which will be caused by the substantial increase in air pollution which Legoland will cause both through its construction and operation. See, Wolfson Affidavit.

211. While the FEIS concedes the significant release of particulate matter during construction and operation, it fails to quantify such release or the predictable public health effects. Id.

212. Nor does either the FEIS or the findings statement suggest that the Planning Board or Town Board took a “hard look” at the cumulative health effects deriving from the cumulative effects of shared public resources, namely arterials which will be used by those traveling to a major casino about 20 miles west of Legoland. Id.

213. Said traffic, as well as the emissions projected from the construction and operation of a major power plant now being constructed within 8 miles of Legoland, have not been accounted for in the DEIS or the findings statement. See, Exhibit 29 to Sussman Affidavit for testimony received in April 2017 in Town of Wawayanda Justice Court from Dr. Anthony Ingraffea from Cornell University concerning the release of thousands of tons of toxic substances into the same environment from the planned operation of CPV and Dr. Ingraffea’s CV and Wolfson Affidavit.

214. Respondent Merlin also failed to address the very substantial impacts to habitat, wetlands and local waterways suggested in the Department of Environmental Conservation’s comments on its DEIS dated December 23, 2016. See, Exhibit 30 to Sussman Affirmation.

215. Permitting the project to proceed before judicial resolution of its legality will cause petitioners irreparable harm in that their view shed shall be irretrievably destroyed through the clear cutting of 150 acres of forest; they will be subjected to noise, pollution, inconvenience and the diminution in the quality of their lives which cannot be adequately compensated at law and will suffer substantial and otherwise uncompensated loss of property values.

216. The FEIS does not sufficiently mitigate the substantial environmental effects of the project and its construction and operation will each cause substantial traffic congestion, related air pollution, with concomitant health effects, see, Affidavit of Dr. Robert Wolfson, water shortages, substantial disruptions to the view sheds of petitioners and those otherwise represented by petitioner CC4HV, unregulated noise which will substantially impair the quality of life of the petitioners and those otherwise represented by petitioner CC4HV and a marked diminution in property values through the accretion of these adverse impacts.

217. Moreover, a review of the zoning map shows how out of character Legoland is with the overwhelmingly rural Town of Goshen and how discordant with community character the introduction of a work force of more than 1200 seasonal workers is with the community. See, Exhibit 31 for zoning map.

218. As with many other issues, like the devastating impact its project will have upon the quality of life and aesthetic enjoyment of petitioners, the FEIS and

findings statement ignore the critical socio-economic issues, like the dearth of local affordable housing, and provides no meaningful analysis of these impacts on the affected communities.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

219. Petitioners incorporate paragraphs 1-218 as if fully re-written herein.

220. By failing to conduct or require a GEIS on the impact of its contemplated radical alteration to its Comprehensive Plan and the associated change to its zoning law, the Town Board violated SEQRA, which mandated such a review, and, further arbitrarily and capriciously approved the amendment to its Comprehensive Plan and zone change for the benefit of a single applicant and against the substantial weight of the remaining elements of the Comprehensive Plan.

AS AND FOR A SECOND CAUSE OF ACTION.

221. Petitioners incorporate all prior paragraphs.

222. By allowing a segmented review, by failing to require the applicant to study cumulative impacts in its FEIS and by adopting a Findings Statement which likewise failed to analyze the cumulative impacts of this project on public and private resources affected by this and other contemporaneously

planned and constructed projects which have been approved and are being or will shortly be constructed and which will impact and/or share the same public resources, the Planning Board violated SEQRA and its approval was arbitrary, capricious and contrary to law.

AS AND FOR A THIRD CAUSE OF ACTION

223. Petitioners incorporate all prior paragraphs.

224. By adopting an FEIS which itself failed to take a “hard look” at the effects of construction and operation of Legoland and failed to meaningfully consider alternatives to approval of this project, including the use of other available parcels appropriately zoned for such development, respondent Planning Board acted in an arbitrarily and capricious manner contrary to law.

AS AND FOR A FOURTH CAUSE OF ACTION

225. Petitioners incorporate all prior paragraphs.

226. By engaging in spot zoning when it permitted the parcel in question to be re-zoned in a manner consistent with the Commercial/Recreation Overlay for a six month period, the Town Board violated the laws of the State of New York and acted in an arbitrary and capricious manner.

AS AND FOR A FIFTH CAUSE OF ACTION

227. Petitioners incorporate all prior paragraphs.

228. By amending the Town of Goshen's Comprehensive Plan and zoning law in a manner intended to satisfy the development needs of a single applicant in derogation of the values otherwise embodied therein and by approving the SEQR findings statement and the resolution approving the site plan, issuing the special use permit and allowing massive clear-cutting, the Town Board and the Town of Goshen Planning Board acted with pre-judgment which invalidates these approvals and makes them arbitrary, capricious and contrary to law.

WHEREFORE, this Honorable Court should enter an order vacating and annulling [a] Local Law 5 by which respondent Town of Goshen Town Board arbitrarily and capriciously amended the Town's Comprehensive Plan in a manner contrary to law after impermissibly delegating lead agency status to the Planning Board and without conducting a GEIS, reflecting impermissible pre-judgment toward the interests of respondent Merlin; [b] Local Law 6 by which respondent Town of Goshen Town Board adopted in an arbitrary and capricious manner certain amendments to the Town of Goshen Zoning law after impermissibly delegating lead agency status to the Planning Board and without conducting a GEIS, reflecting impermissible prejudgment toward the interests of respondent

Merlin through the illegal use “spot zoning” and in contravention of the primary goals and purposes of the Town of Goshen’s 2004 Comprehensive Plan, as updated in 2009; [c] the Planning Board’s Findings Statement and its arbitrary and capricious acceptance of respondent Merlin’s FEIS, which failed to take a “hard look” at numerous externalities associated with this site plan and project or engage in cumulative impact analysis and reflected illegal segmentation, and [d] the Planning Board resolution dated October 18, 2017 and filed with the Clerk of the Town of Goshen on October 23, 2017 which arbitrarily and capriciously approved respondent Merlin’s site plan and granted respondent Merlin a special use permit and a conditional permit to allow clear-cutting of 150 acres of forested lands and awarding Petitioners the costs and disbursements incurred in this matter and entering any other relief the interests of law and equity require.

Dated: November 17, 2017

Yours, etc.

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