STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

DESIREE DAWLEY, JAMES DAWLEY, LYNN BARBUTO, ROBERT BARBUTO, SHIRLEY DAWLEY, JAMES DAWLEY JR., DAVID SCHOONMAKER, HUBERT SCHOONMAKER, SANDRA PICCHI, MATTHEW D. NEARPASS, AMY NEARPASS, JASON GARRETT, DIANE GARRETT, DONALD GARRETT, CINDI DAWLEY, DAVID DAWLEY, KYLE DAWLEY, MARGARET WORDEN, RICHARD WORDEN, RAY GARRETT, WILLIAM B. SWEITZER, KAREN SWEITZER, MARILYN BARNER, FRANK BARNER, BRUCE F. GRIGGS, ANDREW WORDEN, JOLYNN WORDEN, JAMES NEARPASS, ASTRID NEARPASS, TODD WORDEN, LAURA WORDEN, JOHN NEARPASS, COLLEEN NEARPASS, SHAUN LILLY, BRITTANY LILLY, RICHARD BARNER, BETTY J. SMITH, RUSSELL SMITH, JONATHAN MORELLI, JANE MORELLI, CATHERINE STRONG, CHARLES VANARSDALE, ROY MANTELLI, MARY MANTELLI, RICHARD MEADE, MARK BELLAMY, THOMAS AVERY, MARK NEARPASS, NICHOLE NEARPASS, CATHY DAVIS, SCOTT DAVIS, HAROLD ABBOTT, JONATHAN DAWLEY, KEITH DAWLEY, LAMAY GILROY, JAMES PATSOS, HELLEN PATSOS,

Plaintiffs

vs

Index No. 48154

THE TOWN OF TYRE, THE TOWN BOARD OF THE TOWN OF TYRE, RONALD F. MCGREEVEY, AS TOWN SUPERVISOR OF THE TOWN OF TYRE, WHITETAIL 414, LLC, ROBERT C. SEEM AS PLANNING BOARD CHAIRMAN OF THE TOWN OF TYRE, AND SENECA COUNTY BOARD OF SUPERVISORS,

Defendants.

PRESENT: Bond Schneck and King
(Thomas Smith, Esq. of Counsel)
Counsel for Town of Tyre

Harris Beach, PLLC
(H. Todd Bullard, Esq. of Counsel)
Counsel for Whitetail 414, LLC

Mario J Fratto, Esq.
Counsel for Plaintiffs

MEMORANDUM-DECISION AND ORDER

W. Patrick Falvey, Acting J. S. C.

Following oral argument on April 24, 2014 on defendants' CPLR §3211 motions to dismiss, the court in an oral decision from the bench granted defendant County's motion to dismiss as against the County; denied plaintiffs' request for a preliminary injunction; determined that the defendants' first motion to dismiss the complaint is abated as moot; determined that the court will consider all papers submitted in regard to the first motion to dismiss the first complaint in determining the motion to dismiss the amended complaint; determined that the plaintiffs have standing to bring this action; and converted the remaining defendants' motions to that for summary judgment, pursuant to CPLR 3211[c]. The remaining parties were given until May 1, 2014 to provide their summary judgment motion papers, defendants' answers to the plaintiffs' amended complaint, and any affidavits or other papers in support of their positions. The court also required the Town of Tyre defendants to provide a certified record, and a complete copy of the Town Code. Plaintiffs were given until May 5, 2014 to submit a reply, if any, to the answers.

Plaintiffs have sued the Town defendants and Whitetail 414 LLC (Whitetail) alleging

improper enactment of a "Planned Unit Development" (PUD) Law by the Town Board.

Plaintiffs allege certain actions by the Town defendants in facilitating the development of a parcel of agricultural real property on Route 414 between Chase Road and Thruway Exit 41 (Project) and in passing Local Law #1 of 2014 (PUD Law) were fraudulent, corrupt, in violation of the Town's Comprehensive Plan of 2014 (2014 Plan), New York and Town of Tyre laws, rules and ordinances, including Public Officers Law §§103, 105 and 108 and Town Law §§264, 265 and 272-a. Plaintiffs assert four causes of action in the amended complaint:

1. The PUD Law is against the general welfare of the community; its enactment was an arbitrary and capricious act of the Town Board, with no foundation in law or fact, contrary to the Town laws, and contrary to the Town's Comprehensive Plan of 2014; made without legitimate criteria; amounts to spot zoning since it effectively converts agriculturally zoned real estate; and the law is not for the general welfare of the community, but for the benefit of a commercial developer.
2. Defendants' actions in approving the PUD law were fraudulent and negligent.
3. The manner in which the PUD law was enacted violated open government, and ethics rules, regulations and procedures, and the public notice for the hearing on the PUD law was improper, contrary to laws, rules, regulations and ordinances of the Town and New York State.
4. The defendants violated laws, rules, regulations and ordinances in the approval of the PUD Law, did not promote and protect to the fullest extent permissible the environment of the Town, and its public health, safety, convenience, comfort, prosperity and general welfare, and the PUD Law is inconsistent with the objectives of the 2014 Plan.

During the oral argument of the motion to dismiss on April 24, 2014, the court questioned the parties concerning the February 2, 2014 notice in the Finger Lakes Times of the public hearing scheduled for February 20, 2014. On the court's review of the notice, it did not appear to state the place where the February 20, 2014 public hearing was to take place. The plaintiffs had in their amended complaint made allegations that the notice of the first public hearing was insufficient, but had not specifically asserted that this second notice was insufficient, and so at oral argument April 24th asked to amend the complaint to make such assertions regarding the February 2, 2014 notice.

The court notes that CPLR §3025[a] provides that: "A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it." This provision has been interpreted to allow an amendment as of right of a complaint where a defendant has made a CPLR §3211 motion to dismiss "since the defendant's motion to answer the complaint, also extended the plaintiff's time to amend the complaint." Johnson v Spence, 286 AD 2d 481, 483 (2nd Dept 2001). See also CPLR §3211[f].

"Where a party moves to dismiss under CPLR §3211[a]... CPLR §3211[f] extends the time to serve a responsive pleading and, in conjunction with CPLR §3025[a], will also extend the time of the pleading party (in this case the plaintiffs) to amend as of right." 5 Weinstein-Korn-Miller, NY Civ Prac, ¶3025.06 [2d ed].

The court notes that CPLR §3025[b] provides that: "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court...Leave shall be freely given upon such terms as may be just

including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Additionally, CPLR §3025[c] provides "The court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just including the granting of costs and continuances."

The court brought this matter to the parties' attention, because it appears that the issue of adequate notice of a public hearing prior to enactment of a zoning ordinance has no statute of limitations, but may be asserted at any time after such legislation is enacted. See, for example Town of Lima v Slocum, 38 AD 2d 503 (4th Dept 1972), where the court in 1972 took up the issue of sufficiency of notice regarding a Town Zoning Ordinance enacted in 1961, more than a decade after its enactment. See also Coutant v Town of Poughkeepsie, 69 AD 2d 506 (2nd Dept 1979) where the court entertained a declaratory judgment action commenced in 1976 seeking an order declaring that a zoning ordinance enacted in 1956 was invalid for numerous grounds, including insufficient notice of the public hearing held prior to enactment.

The court notes that the Town defendants have addressed this issue in their papers submitted after the April 24th argument. Thus here, in the interest of judicial economy, and to promptly bring the issue to a resolution, the court will grant the plaintiffs' motion to amend the complaint to assert a claim of inadequacy of the February 2, 2014 notice.

Defendant Whitetail 414 LLC (Whitetail) moves for summary judgment dismissing the action against it, supported by a memorandum of law and affidavit in support. Whitetail has also submitted its answer to the complaint, with affirmative defenses.

The court hereby grants Whitetail's motion to dismiss the complaint as against Whitetail. Plaintiffs cannot, and have not stated a cognizable claim against Whitetail, nor are there any questions of fact that would make denial of Whitetail's summary judgment motion appropriate. As Whitetail argues, CPLR §3001 provides the statutory framework for a declaratory judgment action, and authorizes a court to declare the rights and obligations of the parties to a justiciable controversy. A justiciable controversy must be based on present facts, not potential or speculative assertions. Here, the controversy before the court is essentially whether the Town of Tyre properly enacted the PUD Law. While Whitetail is interested in this controversy, it is not an entity whose actions can be declared by this court to be valid or invalid regarding the enactment of the PUD Law, because it is not the municipality that enacted the law. And, Whitetail similarly is not an appropriate defendant to the Article 78 aspects of this matter, if any, again, since it is not a body or officer as defined in CPLR §7802[a].

The Town defendants move for summary judgment dismissing the action against it, and have provided their answer with affirmative defenses to the complaint.

The summary judgment motion is supported by affirmation of attorney Robbins, affidavit of Supervisor McGreevy, affidavit of Planning Board Chairman Seem and affidavit of Town Clerk Sutterby. The Town defendants have also provided a certified record of the proceedings, a copy of the Town of Tyre Zoning Law with zoning map, a memorandum of law, and have by reference included for the court's consideration all papers submitted in their CPLR §3211 motion to dismiss.

Essentially, the Town defendants seek to show that the plaintiffs are unable to prove that the PUD Law was enacted in an arbitrary and capricious manner, or that the law is contrary to the

2014 Plan, or amounts to spot zoning for the benefit of Whitetail, all as alleged in the first cause of action of the amended complaint. The Town further seeks to show that their approval of the PUD Law was not fraudulent or negligent, nor that the PUD Law was enacted in violation of open government laws, and public notice requirements, all as alleged in plaintiffs' second and third causes of action. The Town asserts that the plaintiffs are unable to prove that the enactment of the PUD Law does not protect the health, safety and environment of the Town as alleged in the plaintiffs' fourth cause of action.

Plaintiffs in response to the Town's motion assert that there are questions of fact, and so the court should deny summary judgment. In the alternative, plaintiffs seek summary judgment declaring the PUD Law void due to deficiencies in the notices of the two public hearings.

In their memorandum of law the plaintiffs argue that the PUD Law is contrary to the zoning laws of the Town, specifically §4.402 which requires that before a special use permit be granted, the planning board make a finding that the proposed use will not prevent the orderly and reasonable use of adjacent properties, that the site is particularly suitable for the location of the proposed use in the community, and that the proposed use will comply with all other regulations and laws applicable to such use. The Tyre Zoning Law at §2.205 provides that "In their interpretation and application, the provisions of this Law shall be held to be minimum requirements, adopted for the promotion of the public health, safety and the general welfare. Wherever the requirements of this law are in conflict with the requirements of any other lawfully adopted rules, regulations, laws, or ordinances, the most restrictive, or that imposing the higher standards shall govern." Thus, Plaintiffs argue the PUD Law having no such requirements, is less stringent than the Town Zoning Laws.

Plaintiffs also assert that the PUD Law provides for no appeal process, such as Tyre Zoning Law §§8.801-8.805 provide. In addition, plaintiffs state that under the PUD Law the Town Board has sole discretion and there is no appeal process.

Plaintiffs also argue that the PUD Law is spot zoning, because there is a discrepancy between the Environmental Assessment Form (EAF) pertaining to the PUD Law which states that it will apply only to agricultural land (Record Tab 30 at 3), but the EAF for the Comprehensive Plan says it applies to all four zones.[1]

Plaintiffs assert that, as for the notices of the public hearings, the first notice was insufficient because it failed to explain what a planned unit development is, and a layman would not know. They state that the case cited by defendant Town, Crepeau v ZBA of Cambridge, 195 AD 2d 919 (3rd Dept 1993), does not support the Town's position because there the court held that a subsequent faulty notice was not dispositive because all the petitioners in that matter had an opportunity to be heard at an initial meeting.

Plaintiffs argue that the controversy is ripe for review because the future event, in this case consideration of Whitetail's application for a PUD for a casino, is in the control of the Town. Jones v Town of Carroll, 57 AD 3d 1379 (4th Dept 2008).

Turning first to the notice of public hearing issue, the court must determine if the Town complied with Town Law §264(1) which requires that a public hearing be held before the town may enact zoning legislation. "No such regulations, restrictions or boundaries shall become effective until after a public hearing in relation thereto, at which the public shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be

[1] The law as enacted applies to all districts in the Town.

published in a paper of general circulation in such town." Town Law §264(1). Additionally, Town Law §130 provides for public hearings regarding town ordinances in general, and requires that the town clerk give notice of a public hearing by publication in a newspaper circulating in the town "specifying the time when and the place where such hearing will be held, and in general terms describing the proposed ordinance."

"The sufficiency of the notice is tested by whether it fairly apprises the public of the fundamental character of the proposed zoning change. It should not mislead interested parties into foregoing attendance at the public hearing. A notice that describes the proposed change with reasonable precision will satisfy these purposes of the notice requirement. Gernatt Asphalt Prods. v Town of Sardinia, 87 NY 2d 668, 678 (1996).

"It has uniformly been held that notice requirements protect the public interest and, therefore, that reasonably sufficient notice must be given. These requirements are essential, and substantial departures therefrom affect the regularity of the hearing and hence invalidate an ordinance [Cf. Albright v Town of Manlius, 34 AD 2d 419 (4th Dept 1970), mod. 28 NY 2d 108 (1971), reargument denied 29 NY 2d 649 (1971)]. When a substantial departure from such notice requirements is shown, the party attacking the ordinance need not show that he was among those not given notice, that the ordinance would not have passed if proper notice had been given, or any other form of specific prejudice." Town of Lima v Slocum, 38 AD 2d 503 (4th Dept 1972).

The Town argues that plaintiffs that receive actual notice do not have standing to contest a zoning action, citing Snyder Development Co v Town of Amherst, 12 AD 3d 1092 (4th Dept 2004). However, Snyder did not deal with enactment of a zoning ordinance. The other two cases

cited by the Town on this issue, McGrath v Town of North Greenbush, 254 AD 2d 614 (3rd Dept 1998) and Brew v Hess, 124 AD 2d 962 (3rd Dept 1986) are both Third Department cases, and appear to be in conflict with the Fourth Department case of Town of Lima, 38 AD 2d 503. The court concludes that these plaintiffs have standing to object to the public hearing notices published on January 5, 2014 and February 2, 2014.

Here, the notice appeared in the Finger Lakes Times on January 5, 2014 concerning the public hearing held on January 16, 2014 at the Mc Gee Fire Department Building (Record Tab 16). The notice was timely and provided sufficient notice of the date, time and place of the public hearing. The plaintiffs however assert that it was inadequate in explaining what the public meeting was about.

The notice states that the hearing is "regarding proposed Local Law No. 1 of 2014 in relation to enacting new Article 11.A Planned Unit Development." The notice further states the hearing is "for the purpose of hearing public comments on the adoption of a proposed local law to amend the Town of Tyre Zoning Law in relation to enacting new Article 11.A ..." It also states that a copy of the proposed PUD Local Law is available for public review at the Town Clerk's Office, and gives the address, as well as at the town's website where it could also be reviewed.

The court concludes that the notice is not misleading, and while it may have been prudent to include information to show that the proposed law would be effective in the whole town, and not in any particular existing zones and to define a "planned unit development", defendants' proof, being the sign-in sheet at the public hearing on January 16, 2014, showing over 100 people attended the public hearing supports this court's conclusion that the notice was sufficient

to fairly apprise the public of the purpose of the public hearing (Record Tab 21). Further, the notice clearly provided notice that any one could obtain a copy of the proposed law from the Town Clerk's Office and could review it on the town's website, which web address was also stated in the notice. In today's society, the general public is used to accessing information on the internet and the notice as published allowed the public to read the full proposed law via the Town's website.

As for the February 2, 2014 notice, the court concludes that any deficiencies are immaterial, because the second public hearing and notice of it, are not required by Town Law §264, which only requires one such public hearing and one such notice. Thus, the statute was satisfied with the January 5, 2014 notice and January 16, 2014 public hearing.

On review of the pleadings, the record, and the affidavits, the court concludes that the issues before the court are not the type that may be determined via an Article 78 action, but that the declaratory judgment form is the correct method for determining the disputes herein. The plaintiffs seek an order declaring the PUD Law invalid and they ask the court to permanently enjoin the defendants from enforcing the PUD Law. The issues here are not any of those laid out in CPLR §7803 which defines the only questions that may be raised under a CPLR Article 78 proceeding.

Initially, the court concludes that the court may determine the issue of whether the PUD Law is in accordance with the comprehensive plan and whether the PUD Law constitutes spot zoning without a trial on the matter. *Compare* Coutant v Town of Poughkeepsie, 69 AD 2d 506 *with* Peck Slip Associates v City Council of the City of New York, 6 Misc. 3d 510, 519 (Supreme Court New York County 2004). As in Peck Slip, "the comprehensive plan...is easily

recognizable." Here, the comprehensive plan is recognizable from the Town Zoning Law, the Town Zoning Map, and the 2014 Plan.

Turning then to the merits of the issue the court notes: "It is well settled that a zoning amendment enjoys a 'strong presumption of validity' [Morgan v Town of W. Bloomfield, 295 AD 2d 902, 903 (4th Dept 2002); Matter of Rayle v Town of Cato Bd, 295 AD 2d 978, 978 (4th Dept 2002)]." Restuccio v Oswego, 114 AD 3d 1191, 1191 (4th Dept 2014). The Fourth Department held in Restuccio that the defendant City Council's decision to amend the zoning ordinance was in accordance with the City's comprehensive plan, and granted defendant's summary judgment motion to dismiss the complaint. "Thus, where the plaintiff fails to establish a clear conflict with the comprehensive plan, the zoning classification must be upheld." Bergstol v Town of Monroe, 15 AD 3d 324, 325 (2nd Dept 2005), as quoted in Restuccio v Oswego 114 AD 3d 1191, 1192.

Here, pursuant to Town Law §261-a the Town has amended its zoning law to establish planned unit development zoning regulations.

The 2014 Plan noted that the Town had no subdivision regulations and "no means to influence how a major subdivision is established" (Plan pg 8). The 2014 Plan as a recommended action regarding Land Use suggested "enacting site plan review and subdivision regulations to enhance current zoning law" (Plan pg 12).

Noting the results of the Town wide survey, the 2014 Plan summarized: "They felt that disruption (e.g. commercial development or housing development) should be minimal and confined to those areas best suited for development (i.e., the major transportation routes)" (Plan pg 15).

Under the topic "Tax Base and Economic Development" the 2014 Plan asserts as goals "Seek appropriate economic development that reflects the rural nature of Tyre" and "Work with County and State agencies to provide incentives and regulations leading to appropriate development of businesses along the major transportation corridors of the town" (Plan pg 25). The 2014 Plan then made recommended actions regarding economic development including "Develop a generic and composite site plan for the properties in the area of NYS Thruway Exit 41 and the Routes 414 and 318 intersection" (Plan pg 27).

The court notes that it appears that the Town of Tyre is approximately 30 square miles in size, judging from the 2014 Plan's statement that the Montezuma National Wildlife Refuge is 11 square miles in size and occupies nearly one third of the Town (Plan pg 5). The 2014 Plan also observes that commercial development has occurred on 30 acres of agricultural land (Plan pg 5). Looking at the Zoning Map (Plan pg 9) it is clear that commercial development has occurred in only a small part of this Town. The 2014 Plan contemplates future commercial development in the areas near where it has already occurred, in keeping with the results of the survey of residents which showed that 56% felt additional commercial/retail development would be good for Tyre's future (Plan pg 56).

The Town's zoning law was submitted to the court upon the court's request. As the Town asserts, the zoning law had no specific regulations concerning review of development projects in Tyre. The Special Use Permit Process set forth in Article IV of the Zoning Law provides oversight by the planning board for applications seeking land use that are not specifically permitted in a particular zone. However, Article IV does not grant the Planning Board authority to guide the nuts and bolts of the development of a parcel, in the process

commonly known as "site plan review". For example, review by the Town of how much of a lot shall be devoted to buildings vs parking and open space, and whether the proposed development contains adequate drainage, water and sewer, etc. are not addressed in the Zoning Law. The Zoning Law provides for four types of districts; agricultural, residential, business and industrial, and provides a list of uses permitted in each district, stating whether a permit is required, a special permit is required, no permit required or use not permitted, for each potential use in each district. Minimum Lot sizes and set backs are also established for each district, but there are no regulations concerning site plan review for any type of development. Thus, the Town's implementation of the PUD Law addresses this area of concern, as outlined in the 2014 Plan, and while the Plan envisions the continued rural, agricultural nature of the Town, the Plan also envisions some development of the Town, especially around the major roadways.

Therefore, the court concludes that the plaintiffs have failed to establish that the PUD Law is not in accordance with the comprehensive plan, and so the zoning amendment must be upheld. Bergstol v Town of Monroe, 15 AD 3d 324; Restuccio v Oswego 114 AD 3d 1191.

The court has considered the plaintiffs' argument that the PUD Law is in conflict with the Zoning Law, specifically Article IV regarding Special Use Permit procedures and that the Zoning Law §2.205 requires that the most restrictive or highest standard provisions shall govern if there is a conflict in the requirements of the law. The court concludes that this is a matter of interpretation and application of the Town Laws and not a matter that is appropriately before this court at this time. To the extent that the court is determining that the PUD Law is in accordance with the comprehensive plan, the court finds that the provisions of the Zoning Law pointed to by plaintiffs do not overshadow the overarching body of the comprehensive zoning plan of the

Town, which seeks to preserve the rural and agricultural character of the Town, but also seeks to provide for commercial development in the areas near the state highways.

Additionally, the court concludes that the enactment of the PUD Law does not amount to spot zoning and was not enacted for the benefit of a single owner for a specific purpose. Little Joseph Realty v Town of Babylon, 52 AD 3d 478 (2d Dept 2008).

Plaintiffs appear to assert that the Town acted fraudulently or negligently in allowing Whitetail to pay for Bond Schoeneck & King's representation of the Town and engineering consultants in regard to the PUD Law and proposed casino issues. Plaintiffs also assert improper use of executive session in regard to hiring the engineering firm at the January 16, 2014 meeting.

Plaintiffs also question the actions of Town Planning Board Chairman Seem in regard to meetings concerning the PUD Law and statements he made to the Planning Board and Town Board regarding the proposed law. The Town Board's actions are also asserted to be fraudulent or negligent in adopting the PUD Law, which Plaintiffs assert was drafted by Whitetail.

The court concludes that the plaintiffs have failed to show that the payment by Whitetail for the Town to hire Bond Schoeneck & King to provide legal advise in regard to enactment of the PUD Law and to hire an engineering firm regarding the PUD Law amounted to fraud or negligence. There is no proof that the Town Board members had any stake in the proposed legislation, other than as legislators.

As for the Town's use of an executive session at the January 16, 2014 meeting, the court concludes that the Town complied with the requirements of the Open Meetings Law (Public Officers Law Article 7). The minutes show that the Board did not take action during the executive session, but returned to the public session to take a vote on hiring an engineering firm.

To establish a claim for fraud, a plaintiff must prove a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages. Leonardi v Cayuga County, 103 AD 3d 1232 (4th Dept 2013).

Additionally CPLR 3016(b) requires that "the circumstances constituting the wrong .. be stated in detail" in the case of a cause of action based on fraud.

Upon review of the pleadings, affidavits, and the record, the court concludes that the defendant Town's motion for summary judgment dismissing the fraud claims should be granted. Any statements Defendant Seem made to the Town Planning Board, to the extent that they influenced the other members' recommendation to the Town Board do not support a fraud claim, because the statements made were essentially statements of opinion, and to the extent that Seem's comments were statements of fact, they are not actionable as regards these plaintiffs. The court also notes that the Town Planning Board's approval was not necessary for enactment of the PUD Law.

Further, to the extent that Defendant Seem made statements to the Town Board, the court finds that they were not actionable fraud, in that he was essentially stating his opinion as to why he would urge the Town Board to adopt the PUD Law and further, the statements are not actionable as regards these plaintiffs.

To the extent the plaintiffs assert a cause of action for negligence, the complaint is dismissed. The plaintiffs have made a bare allegation that the Town defendants were negligent, which is insufficient to support a cause of action for negligence. See NY Jur 2d Negligence §9.

It is therefore hereby ORDERED that the plaintiffs' request for a preliminary injunction and permanent injunction is DENIED;

It is DETERMINED that the defendants' first motion to dismiss the complaint is abated as moot;

It is DETERMINED that the plaintiffs have standing to bring the action;

It is ORDERED that the County of Seneca's motion to dismiss on CPLR §3211(a)(1) and (7) grounds as against the County is GRANTED;

It is DETERMINED that the non-county defendants' motion to dismiss is treated as a motion for summary judgment, and as such, it is hereby

ORDERED that the plaintiffs' motion to amend the amended complaint to assert a claim of inadequacy of the February 2, 2014 notice is GRANTED; and it is further

ORDERED, ADJUDGED AND DECREED that Whitetail's motion to dismiss the plaintiffs' action as against it, is GRANTED; and it is further

ORDERED, ADJUDGED, DECREED AND DECLARED that the PUD Law, Local Law #1 of 2014 was properly enacted, that the notice of the public hearing was sufficient, that the PUD Law is in keeping with the comprehensive plan of the town, and is not spot zoning, and that the actions of the Town defendants in enacting the law were not fraudulent, or negligent; and it is further

ORDERED that any and all other relief requested by any party not specifically granted herein is in all respects DENIED.

No costs are awarded to either party. Submission of an order by the parties is not necessary. The mailing of a copy of this Order and Judgment by this Court shall **not** constitute notice of entry.

THIS CONSTITUTES THE DECISION, JUDGMENT AND ORDER OF THE COURT.

ENTER.

Dated: May 8, 2014

W. Patrick Falvey
Acting Justice Supreme Court
Seneca County