

STATE OF NEW YORK
SUPREME COURT : COUNTY OF SENECA

DAGMAR NEARPAAS,
765 Black Brook Road
Tyre, New York 13148

DESIREE DAWLEY and JAMES DAWLEY,
1938 Chase Road
Tyre, New York 13148

Index No. _____

Plaintiffs,

-vs-

TOWN OF TYRE, TOWN OF TYRE TOWN BOARD,
RONALD F. MCGREEVY AS TOWN SUPERVISOR
OF THE TOWN OF TYRE,
1907 West Tyre Road
Seneca Falls, New York 13148

WHITETAILE 414, LLC,
111 Eighth Avenue
New York, New York 10011

WILMORITE, INC.,
1265 Scottsville Road
Rochester, New York 14624-5177

Defendants.

SUMMONS

TO DEFENDANT(S):

YOU ARE SUMMONED to appear in this action by serving your answer to the complaint on the Plaintiffs' attorney within the time limits stated below.

Seneca County is designated as the county where this action will be tried, because one or more of the parties to this action resides in that county. If this action is based upon a consumer credit transaction, that county is designated because one or more of the defendants resides in that county or because the transaction sued upon occurred in that county.


TIME LIMITS TO ANSWER:

- (1) If this summons is served by delivery to you personally within New York State, you must answer the complaint within TWENTY (20) days after such delivery.
- (2) If this summons is not served by delivery to you personally within New York State, and not served pursuant to CPLR § 312-a, you must answer the complaint within THIRTY (30) days after service is complete.
- (3) If this summons is served pursuant to CPLR § 312-a, see accompanying STATEMENT OF SERVICE BY MAIL for time limits to answer.

IF YOU FAIL TO ANSWER THE COMPLAINT within the time stated, judgment will be entered against you for the relief demanded in the complaint.

Dated: April 3, 2015
Buffalo, New York

HODGSON RUSS LLP
Attorneys for Plaintiffs

By: 
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF SENECA

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JAMES DAWLEY

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Plaintiffs,

-vs-

TOWN OF TYRE, TOWN OF TYRE TOWN BOARD,
RONALD F. MCGREEVY AS TOWN SUPERVISOR
OF THE TOWN OF TYRE, WHITETAIL 414, LLC,
and WILMORITE, INC.

Defendants.

COMPLAINT

Plaintiffs, by their attorneys Hodgson Russ LLP, for their Complaint, allege as follows:

PRELIMINARY STATEMENT

Plaintiffs, who are residents of the Town of Tyre, bring this action seeking a declaratory judgment invalidating, as void against public policy and unenforceable, Town of Tyre Local Law No. 3 of 2014, which is the product of: (1) illegal contract zoning and (2) illegal spot zoning. Local Law No. 3 of 2014 amended the Town of Tyre Zoning Map to allow for the development of the Wilmorite Casino and Resort (the "Casino Project"). The rezoning under Local Law No. 3 of 2014 is entirely inconsistent with the Town's Comprehensive Development Plan, and is the result of a *quid pro quo* in which the developer agreed to pay the Town in excess of \$2 million annually in exchange for the Town surrendering its future legislative authority, and

a favorable re-zoning determination for the site of the Casino Project. New York law expressly forbids these practices and requires this Court to void the local law.

PARTIES

1. Plaintiff Desiree Dawley owns property at 1938 Chase Road in the Town of Tyre, County of Seneca, State of New York. Her property is located near the site of the Casino Project.

2. Plaintiff James Dawley owns property at 1938 Chase Road, in the Town of Tyre, County of Seneca, State of New York. His property is located near the site of the Casino Project.

3. Plaintiff Dagmar Nearpaas owns property at 765 Black Brook Road, in the Town of Tyre, County of Seneca, State of New York. Her property is located near the site of the Casino Project.

4. Upon information and belief, Defendant the Town of Tyre (the “Town”) is a municipal corporation duly organized and existing pursuant to the laws of the State of New York, located within the County of Seneca.

5. Upon information and belief, Defendant Ronald F. McGreevy (“McGreevy”) resides at 1907 West Tyre Road, in Seneca Falls, County of Seneca, State of New York. McGreevy was and is the Town Supervisor of The Town at all times relevant to this action.

6. Upon information and belief, Defendant the Town Board of The Town of Tyre (the “Town Board”), is the legislative body of The Town of Tyre, organized and existing pursuant to New York Town Law.

7. Upon information and belief, Defendant Whitetail 414, LLC, (“Whitetail” or the “Company”) was and is a New York State corporation doing business in the State of New York, with principal corporate address of 1265 Scottsville Road, Rochester, New York 14624. Whitetail is an interested party to this action.

8. Upon information and belief, Defendant Wilmorite, Inc. (“Wilmorite”) is a New York State corporation doing business in the State of New York, with a principal corporate address of 1265 Scottsville Road, Rochester, New York 14624. Wilmorite is an interested party to this action.

VENUE

9. Venue is proper in New York State Supreme Court, Seneca County, pursuant to CPLR § 504(1) because the Town, its officers, and governing bodies are located within Seneca County.

FACTUAL BACKGROUND

A. The Rural, Agricultural Town Paves The Way For A Massive Casino Project That Will Radically Alter The Character Of The Community

10. Tyre is the smallest of ten towns in Seneca County, New York, and is predominantly a rural, agricultural community.

11. Located within the Town is the 6,000-acre Montezuma National Wildlife Refuge, which is a breeding ground for migratory birds and endangered and threatened wildlife.

12. The majority of Town residents who answered a recent Town survey want the Town to remain as it is — a quiet, rural, agricultural community.

13. In January, 2014, the Town Board adopted Local Law No. 1 of 2014 (“Local Law No. 1”), authorizing Planned Unit Development (“PUD”) zoning districts within the Town.

14. Local Law No. 1 provided the procedural mechanism for planned unit development projects in the Town and requires not only the approval of a specific project plan, but an amendment to the Town’s zoning map, creating a PUD District.

15. By doing so, the Town Board no longer needed to zone the area within the PUD District as agricultural, residential, commercial, and industrial. Instead, the Town Board need only approve a development plan (*e.g.*, a casino and resort plan), and that development plan becomes the zoning for the area within the PUD.

16. The Town Board’s passage of Local Law No. 1 was for the sole purpose of allowing for the development of the Wilmorite Casino and Resort.

B. The Company Applies For Approval Of Its Casino Project And Agrees To The Terms Of An Contract With The Town

17. On March 20, 2014, the Company and Wilmorite applied to the Town under the newly created PUD procedures for a 195,000 sq. ft. gambling casino, a 256,000 sq. ft. hotel, a six-story parking garage for approximately 1,000 vehicles, and surface parking for approximately 2,300 vehicles, together with roads, driveways, and other associated facilities (the “Casino Project”).

18. The site of the Casino Project is located in the Town and within five miles of the Montezuma National Wildlife Refuge.

19. The Casino Project required a rezoning of approximately *85 acres* of agricultural land to a PUD District, together with the approval of a development plan.

20. After the application, but before the Town Board voted to rezone the property where the Casino Project would be built, the Town (through McGreevy), the Company, and Wilmorite began negotiating, and agreed to, the terms of a Host Community Agreement (the “HCA”).

21. Notably, the HCA requires the Company to, among other things, pay the Town at least \$2 million annually beginning in 2016.

C. The Town Approves The Casino Project And The HCA, The Terms Of Which Had Already Been Negotiated And Agreed To

22. On June 12, 2014, less than three months after the Company and Wilmorite applied for approval of the Casino Project, the Town Board, by resolution:

- a. Passed Local Law No. 3 of 2014 (“Local Law No. 3”), which, among other things: (i) amends the Town’s Zoning Law and Map to change the designation for the Casino Project site from Agricultural use to a PUD District; and (ii) permits within that PUD District a casino complex and accessory uses;
- b. Approved the Company’s development plan for the Casino Project;
- c. Issued a Negative Declaration under SEQRA for the Casino Project, finding that the Casino Project would not create any significant adverse impacts; and
- d. Approved and adopted the terms of the HCA.

23. Notably, the June 12, 2014 Town Board resolution approving the HCA states that the Town Supervisor McGreevy, with the help of legal counsel, had already “negotiated” the HCA with the Company.

24. In fact, at the same time the Town Board passed these Resolutions on June 12, 2014, it had already agreed to the terms of an already-drafted HCA with the Company and Wilmorite.

25. Additionally, the resolution in which the Town Board issued a Negative Declarative under SEQRA for the Casino Project expressly references the HCA and states that the Town had already “negotiated” it.

26. On June 18, 2014 — less than one week after the Town’s approval of the Casino Project — the Town, the Company, and Wilmorite signed the HCA.

27. Copies of the HCA produced by the Town under a Freedom of Information request demonstrate that the HCA and its terms were already in place and agreed upon June 10, 2014 — two days before the Town Board passed Local Law No. 3, approved the Company’s development plan for the Casino Project, and issued a Negative Declaration under SEQRA for the Casino Project.

28. The PUD rezoning permitted under Local Law No. 1 and, subsequently, Local Law No. 3 was created specifically and exclusively for the benefit of the Company and Wilmorite — not the general public. The Town Board acknowledged this when, just four months after rezoning the Casino Project site under Local Law No. 3, the Town imposed a Town-wide moratorium on development.

29. In particular, on October 16, 2014, the Town Board approved Local Law No. 5 of 2015 (“Local Law No. 5”) imposing a Town-wide moratorium prohibiting the issuance of a zoning permit for any multi-family residential, commercial, or industrial use and/or structure (unless the Town Board grants a use variance and the applicant demonstrates entitlement to a zoning permit under the Town’s Zoning law).

D. The Town Bargained Away Its Legislative Authority In Exchange For Payouts Under The HCA, Which Includes Another Illegal Giveaway To The Company

30. The stated purpose of the HCA is for the Company, which is developing a Casino Project within the Town, to demonstrate that it is in compliance with Section 1316 of the gaming economic Development Act of 2013 (the “Gaming Act”). Section 1316 requires the Company, in order to receive a gaming license, to demonstrate that it has engaged in impact mitigation with the Town.

31. In reality, the HCA was a *quid pro quo* for the Town Board’s: (1) passage of Local Law No. 3; (2) approval of the Company’s Casino development plan; and, (3) issuance of a Negative Declaration for the Casino Project under SEQRA.

32. The HCA states that, to mitigate the impacts of the Casino Project, the Company agrees to pay the Town a direct impact fee of \$2 million per year, beginning in 2016. That amount may grow beginning in 2018, if the annual gaming revenues that the Town receives from New York State are greater than \$2 million.

33. Additionally, the Company will pay the town \$104,000 in 2015 and no more than \$200,000 per year thereafter for additional fire department services. The Company also must pay the Seneca County Sheriff’s Department an amount equal to the average annual salary and benefits of a deputy (currently, an estimated \$100,000). It must also, among other things, build a six-story fire training facility for a local fire department.

34. The HCA also includes additional special treatment, in the form of an another giveaway, for the personal benefit of the Company.

35. In particular, the HCA states that the Company may apply to the Seneca County Industrial Development Agency (the “IDA”) for a PILOT tax agreement for the Casino Project. The HCA requires that: “[t]he Town supports the Company entering into a Tax Agreement, provided the Tax Agreement shall include the following terms” These terms include: (1) a provision for defaults; (2) an expiration date; (3) exemptions from the Tax Agreement for special district charges, levies or assessments such as fire protection district, sewer district, or water district; (4) customary lender protections; and (5) securitization of the Company’s obligations in the Tax Agreement through a mortgage.

36. Under the HCA, the Company is required to provide the Town with a copy of the Tax Agreement for the Town’s “review and approval.” However “such approval [is] not to be unreasonably withheld, conditioned, or delayed.”

E. The Rezoning Of The Agricultural Site Of The Casino Project Under Local Law No. 3 Seriously Upsets The Town’s Use Balance As It Is Completely At Odds With The Town’s 2014 Comprehensive Plan

37. The Casino Project, as permitted under Local Law No. 3, is the largest development project in Town history.

38. The Casino Project is expected to be constructed over two years in a currently rural, secluded, agricultural, and residential area located within a County-adopted, State-certified Agricultural District.

39. The Casino Project will create a significant change in community character, as approximately 85 acres of rural, agricultural land will be transformed into a commercial tourist destination with a massive, 195,000 sq. ft. casino, a 256,000 sq. ft. hotel,

multiple restaurants and lounges, and parking for 3,300 vehicles, including a six-story parking garage.

40. The Casino Project seriously upsets the use balance that had been advised and maintained within the Town, as acknowledged by the Town Board's later decision on October 16, 2014 to impose a Town-wide moratorium on development.

41. Construction and operation of the Casino Project represents a severe departure from both the existing characteristics of the location and the Town's 2014 Comprehensive Plan (the "2014 Plan").

42. In fact, the Town, McGreevy, and the Town Board disregarded the 2014 Plan altogether in its approval of Local Law No. 3.

43. For example, the cover of the Town's 2014 Comprehensive Plan (the "2014 Plan") is titled "Planning for a Rural Community in the 21st Century." Page 1 of the 2014 Plan states: "The purpose of the Comprehensive Plan for the Town of Tyre is a careful and deliberate review of the present and reasonably foreseeable needs of the community, whereby the town can adopt a general developmental policy for the community as a whole and amend its zoning law in accordance with that plan."

44. Page 1 of the 2014 Plan also addresses process of preparing the plan: "The Comprehensive Plan for the Town of Tyre represents the culmination of a planning process that began in 2007. The Comprehensive Plan Commission met monthly for more than one year to coordinate the preparation of the Plan."

45. As such, almost seven (7) years were spent developing this carefully thought-out plan.

46. Page 5 of the 2014 Plan addresses land use for the Town of Tyre. The goals are as follows: “A. Retain the rural, agricultural heritage of the Town; B. Identify and manage development in such a way as to preserve farmland and natural resources; C. Support residential development that is consistent with the character of neighboring areas; D. Support commercial and industrial development that is consistent with the character of neighboring areas; E. Build consensus on a vision for land use and design concepts for future development within the town.”

47. Building a \$425 million Casino Project on 85 acres does not even come close to complying with those goals on Page 5 of the 2014 Plan. In fact, page 5 of the 2014 Plan clearly states that “[c]urrent commercial development has utilized 30 acres of agricultural land with an additional 60 acres of potential development.” There is no mention of allowing or even contemplating more commercial development, especially of the magnitude of the Casino Project.

48. Page 8 of the 2014 Plan addresses quality of life issues for the Town of Tyre. Referring to a survey of the Town’s residents, of seventeen quality of life issues that respondents were asked to identify as important or not important to them, second in importance was: “the desire that agriculture and the rural character of the Town (which go hand-in-hand) be maintained, which was confirmed by answers to other questions regarding the continuation of farming (in favor), and conversion of farmland to other uses (against) in the Town.”

49. Clearly, the agricultural and rural character of the Town could not be maintained by constructing the Casino Project in the Town. Furthermore, the construction of the Casino Project would require converting farmland, which the residents are against.

50. Page 10 of the 2014 Plan acknowledges that most comments received in the Town survey “opposed conversion of farmland for business development.”

51. Page 13 of the 2014 Plan addresses Watershed Protection and Environmental Quality of which the stated goals include: “Protect the quality of groundwater,” and “Conserve wildlife habitat.”

52. Both of these goals, on page 13 of the 2014 Plan, would be incompatible with construction of the Casino Project.

53. Furthermore, over 90% of residents within the Town of Tyre are using well water which could be contaminated or otherwise have its quality jeopardized by such large scale construction on agricultural land.

54. Page 15 of the 2014 Plan states that Town residents “felt that disruption (e.g., commercial development or housing development) should be minimal.”

55. Page 17 of the 2014 Plan addresses Agriculture and Farmland. This page clearly states that “Agriculture is Tyre’s main industry and its main land use.” The goals with regards to Agriculture and Farmland are stated as: “A. Enhance the economic climate for agriculture in Tyre by ensuring that future land use regulations encourage farming and ancillary agricultural businesses and discourage uses and regulations that will negatively impact, unduly, the conduct of farming operations; B. *Promote the conservation of productive agricultural land*

in the Town; C. Ensure that residential and commercial development in the Town are consistent with the objectives of Goals A and B.” (emphasis added).

56. Adoption of Local Law No. 3 and the approval of the Casino Project is in direct opposition to those goals. Local Law No. 3 allows for the depletion of agricultural land and negatively impacts, unduly, the conduct of farming operations.

57. Page 19 of the 2014 Plan states: “In the aforementioned Residents’ Survey (Appendix A), 78% encouraged the continuation of farming in the Town; 39% considered it very important or important to maintain farming in the Town vs. 8% who felt it was unimportant. In addition, 68% and 76% of respondents, respectively, said that *conversion of farmland to residential or commercial development should be limited.*” (emphasis added).

58. Page 19 of the 2014 Plan states: “Clearly, agriculture is very important to the economy and quality of life of the Town of Tyre. Also clear is that current residents of the Town prefer that the Town remain rural and consider agriculture very important. The Comprehensive Plan, and resulting regulations pertaining to agriculture and land development should reflect these facts.”

59. This strong language on page 19 of the 2014 Plan is unequivocal that the Plan and resulting regulations should reflect the foregoing facts.

60. Page 19 of the 2014 Plan also addresses “Issues and Opportunities” with regard to Agriculture and Farming: “In general, the major issues regarding the future of farming in any location are farm profitability (keeping farmers in business therefore keeping land in agriculture), land values, and development pressure. *Of these, only development pressure is of*

concern to the planning process. Development pressure can occur locally, but metropolitan areas around Tyre are more important as the commuter range increases. Potential impacts of such suburbanization on agriculture include the direct loss of farmland to housing and industrial development, potentially higher property taxes due to increased demand for municipal services, so-called “nuisance” complaints from farm neighbors who are unfamiliar with, and at times in opposition to, normal, necessary farm operations, and increased opportunity costs due to land speculation, to name a few.” (emphasis added).

61. These concerns on page 19 of the 2014 Plan are clearly exacerbated by the approval of Local Law No. 3 and the construction of the Casino Project.

62. Pages 19-20 of the 2014 Plan state the “Recommended Actions” with regard to the three preceding paragraphs:

- “Develop and implement a Right to Farm Law: Several municipalities have passed local “Right to Farm” laws. Such laws typically establish a town policy in support of farming. These laws also typically include a requirement that purchasers of property in the town must be notified of the policy encouraging farming and that farm practices may include operations that produce odors, noise and other potential annoyances.”
- “Develop and implement Agricultural Protection Zoning: This type of zoning designates farming as the primary, preferred land use. This method can be *effective in limiting non-farm*

development and reducing conflicts between agriculture and non-farm neighbors. It can also protect large areas of farmland at no direct cost to the public.” (emphasis added).

- “Encourage Land Conservation through Conservation Easements: Landowners may place farmland under a permanent conservation easement to be held and monitored by a government agency, private land trust, or other non-profit organization.”

63. Adoption of Law Local No. 3 and construction of the Casino Project clearly contradict the aforementioned recommendations on pages 19-20 of the 2014 Plan.

64. Page 21 of the 2014 Plan addresses “Housing and Residential Neighborhoods.” The pertinent stated goals are: “B) Create an environment where property values are not negatively impacted. C) *Support smart growth that reflects residents’ desire to keep Tyre a rural community.*” (emphasis added).

65. Adoption of Local Law No. 3 and construction of the Casino Project is in direct opposition to these goals on page 21 of the 2014 Plan.

66. Page 23 of the 2014 Plan states that Town of Tyre residents “*overwhelmingly wish to keep Tyre rural and the present zoning law favors that sentiment.*” (emphasis added).

67. Adoption of Local Law No. 3 is clearly contradictory to that sentiment on page 23 of the 2014 Plan.

68. Also mentioned is that the majority of comments received by residents with regard to the survey were directed at keeping Tyre a “rural residential town.” The Town of Tyre will no longer be a “rural residential town” if Lago is constructed.

69. Page 27 of the 2014 Plan addresses “Tax Base and Economic Development.” Clearly stated under “Issues and Opportunities” is as follows: “Further development pressure along Routes 318 and 414 could provide additional strength to the Town’s tax base. *Present zoning law will limit many types of development, but it seems clear that Town’s citizenry is willing to keep development to a minimum on these routes.*” (emphasis added).

70. On the other hand, Local Law No. 3 and the Casino Project will not keep development to a minimum, rather it will be the absolute maximum in the form of a \$425 million casino and resort. *The Casino Project would be 20 times larger than all commercial development in the town combined.* This is certainly not the type of development called for in the 2014 Plan.

71. Page 28 of the 2014 Plan addresses “Transportation and Infrastructure.” Goal C is stated as: “*Encourage designated developers to design their sites in planned and concentrated commercial areas that already exist in the Town.*” (emphasis added).

72. The proposed site of the Casino Project was agriculturally zoned land that was not located in the concentrated commercial area that already existed in the Town. As such, the adoption of Local Law No. 3 to allow the construction of the Casino Project is in clear conflict with the 2014 Plan.

73. Furthermore, page 28 of the 2014 Plan goes on to state that 50% of residents are concerned with traffic at “dangerous intersections,” namely “Route 414 at the Thruway interchange,” which is the precise location approved for Casino Project.

74. Page 29 of the 2014 Plan addresses “Traffic Congestion” of which the pertinent part states: “*Traffic congestion and wider roads are inconsistent with the rural character and natural, scenic resource values of the Town.*” (emphasis added).

75. Such traffic congestion addressed on page 29 of the 2014 Plan would be inevitable with an estimated 9,000 visitors daily according to Wilmorite’s own estimates. Additionally, Route 414 would need to be widened from two lanes to four lanes. If wider roads are inconsistent with the rural character of the Town, then construction of the Casino Project is clearly inconsistent with the 2014 Plan.

76. Page 33 of the “2014 Plan addresses “Community Facilities and Services” of which goal A is: “Create a stronger sense of community by residents within Tyre.”

77. Adding over 9,000 visitors a day to this rural town of less than 1,000 people would be totally inconsistent with the aforementioned goal on page 33 of the 2014 Plan. This would mean that less than 10% of the population in the Town on any given day, would be part of the community, thereby converting the rural community into a tourist town.

78. Pages 60-61 of the 2014 Plan address the survey results from Town residents, of which the pertinent part states: “In order of importance, the seven challenges have been ranked by respondents as: 1. Protecting natural resources and water quality; 2. Maintaining agriculture and promotion of farming; 3. Maintaining the rural character and heritage of the

Town; 4. Trying to ascertain public water and sewer for the community; 5. Controlling traffic congestion on highways in the Town; 6. Accommodating residential growth; 7. Accommodating commercial growth.”

79. It is quite clear that a commercial development such as the Casino Project is inconsistent with the sentiment of the town residents and is in direct conflict with six of the seven challenges identified on pages 60-61 of the 2014 Plan.

80. Pages 62-63 of the 2014 Plan address the survey results under “Appendix B.” 94% of Tyre residents felt that the “rural character of the town” was very important or important.

81. Adoption of Local Law No. 3 and construction of the Casino Project completely undermine this sentiment stated on pages 62-63 of the 2014 Plan.

82. Page 65 of the 2014 Plan states that 66% of Tyre residents feel that commercial development should be limited to existing concentrated growth centers in the Town which are currently south of New York State Thruway Exit 41.

83. The approval of Local Law No. 3 converted long-established agricultural land, which is surrounded by equally long-established agricultural land north of New York State Thruway Exit 41, in direct opposition to the will of the people, and entirely inconsistent with the 2014 Plan.

84. Page 67 of the 2014 Plan states that 55% of Town residents are either very concerned or concerned with traffic the intersection of 414 and the New York State Thruway.

85. Page 68 of the 2014 Plan states that 69% of survey respondents have lived in the Town for more than 10 years and that 86% plan to live in the Town in the next 5 years.

AS AND FOR THE FIRST CAUSE OF ACTION
(Declaratory Judgment Regarding Illegal Contract Zoning)

86. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 85 above as if fully set forth herein.

87. The Town, McGreevy, and the Town Board have bargained away their legislative powers to the highest bidder — the Company and Wilmorite — under the guise of public good.

88. In exchange for the pre-determined annual payment of at least \$2 million from the Company, as specified under the HCA, the Town, McGreevy, and the Town Board gave an expedited and favorable determination to the Company and Wilmorite in the form of Local Law No 3 — which (a) amends the Town’s Zoning Law and Map to change the designation for the Casino Project’s approximately 85-acre site from Agricultural use to a PUD District; and (b) permits within that PUD District casino complex and accessory uses. Additionally, the Town, McGreevy, and the Town Board simultaneously approved the Company’s development plan for the Casino Project and issued a Negative Declaration under SEQRA for the Casino Project.

89. In approving Local Law No. 3, the Town, McGreevy, and the Town Board rezoned a parcel in a way that seriously upsets the use balance that had been advised and maintained.

90. The aforementioned agreement between the Company and the Town, McGreevy, and the Town Board constitutes illegal contract zoning.

91. The Town's, McGreevy's, and the Town Board's illegal bargaining away of the Town Board's legislative powers is further demonstrated by the provision of the HCA requiring the Town to provide blanket support of an IDA tax agreement for the Company.

92. The Town's, McGreevy's, and the Town Board's illegal contract zoning harms the plaintiffs, who own, and live on, properties either near or adjacent to the site of the Casino Project, in a manner distinct from any harm suffered by the general public.

93. Plaintiffs have no adequate remedy of law and their only relief is the annulment of Local Law No. 3.

94. Plaintiffs are entitled to a declaratory judgment from the Court:

- a) annulling Local Law No. 3 as the product of illegal contract zoning;
- b) restraining defendants, their successors in the office, agents, executors, administrators, devisees, or assigns, from exercising any of the powers, rights or duties under Town of Tyre Local Law No. 3;
- c) annulling the Town's approval of the site plan for the Casino Project, which is based on the rezoning of the Casino Project site under Local Law No. 3.

- d) declaring plaintiffs may have their costs and such other and further relief as the Court may deem just and proper.

**AS AND FOR THE SECOND CAUSE OF ACTION
(Declaratory Judgment Regarding Illegal Spot Zoning)**

95. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 94 above as if fully set forth herein.

96. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 singles out a parcel of land for a use classification totally different from, and incompatible with, that of the surrounding area.

97. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 is inconsistent with — and completely disregards — the Town's 2014 Comprehensive plan.

98. There are no changed circumstances that justify the Town's, McGreevy's, and the Town Board's departure from the Town's 2014 Comprehensive plan.

99. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 is not calculated to serve the general welfare of the community.

100. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 is for the exclusive benefit of the owner(s) of that property.

101. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 is to the detriment of the plaintiffs.

102. In particular, the Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 harms the plaintiffs, who own, and live on, properties either near or adjacent to the Casino Project site, in a manner distinct from any harm suffered by the general public.

103. The Town's, McGreevy's, and the Town Board's rezoning of the site of the Casino Project under Local Law No. 3 constitutes illegal spot zoning.

104. Plaintiffs have no adequate remedy of law and their only relief is the annulment of Local Law No. 3.

105. Plaintiffs are entitled to a declaratory judgment from the Court:

- a) annulling Local Law No. 3 as the product of illegal spot zoning;
- b) restraining defendants, their successors in the office, agents, executors, administrators, devisees, or assigns, from exercising any of the powers, rights or duties under Town of Tyre Local Law No. 3;
- c) annulling the Town's approval of the site plan for the Casino Project, which is based on the rezoning of the Casino Project site under Local Law No. 3; and

- d) declaring plaintiffs may have their costs and such other and further relief as the Court may deem just and proper.

WHEREFORE, plaintiffs ask for a judgment of this Court declaring that: (1) Town of Tyre Local Law No. 3 of 2014 is void and ineffective and without force of law as the product of (a) illegal contract zoning and/or (b) illegal spot zoning; (2) defendants, their successors in the office, agents, executors, administrators, devisees, or assigns, be restrained from exercising any of the powers, rights or duties under Town of Tyre Local Law No. 3 of 2014; (3) the Town's approval of the site plan for the Casino Project — which is based on the rezoning of the Casino Project site under Local Law No. 3 — is annulled; and (4) plaintiffs may have their costs and such other and further relief as the Court may deem just and proper.

Dated: March 31, 2015
Buffalo, New York

HODGSON RUSS LLP
Attorneys for Plaintiffs

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