

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of

THE APPLICATION OF RICHARD SYMS and
EVE SYMS,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules Annulling the Determination of the Town Board of the Town of Amenia Exempting a Proposed Municipal Cellular tower from Local Zoning Laws,

- against -

TOWN BOARD OF THE TOWN OF AMENIA,

Respondent.

In the Matter of

THE APPLICATION OF RICHARD SYMS and
EVE SYMS,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules Annulling the Determination of the Town Board of the Town of Amenia Issuing a Negative Declaration concerning a "Municipal Tower"

- against -

DECISION/ORDER

INDEX NO. 5002/2002

TOWN BOARD OF THE TOWN OF AMENIA,

Respondent.

DOLAN, J., Acting Supreme Court Justice

The following papers were considered in connection with the applications of petitioners, consolidated by Stipulation and Order of this Court dated March 17, 2003, for an Order annulling determinations of respondent exempting a proposed municipal telecommunications tower from local zoning laws and issuing a negative declaration pursuant to the State Environmental Quality Review Act.

<u>Papers</u>	<u>Numbered</u>
Notice of Petitioner (6/14/02), verified Petition and Exhibit	1
Verified Answer (8/8/02)	2
Lejeune Affidavit (8/30/02) with Exhibit	3
Certified Record of Proceedings (8/30/02) with Exhibits	4
Respondent's Memorandum of Law	5
Reply with Affidavit, Affirmation and Exhibits (10/17/02)	6
Petitioners' Memorandum of Law	7
Notice of Petition (10/17/02), Verified Petition with Exhibit	8
Verified Answer (12/30/02)	9
Lejeune Affidavit (12/30/02)	10
Certified Record of Proceedings (1/6/03) with Exhibits	11
Respondent's Memorandum of Law	12
Affirmation with Exhibits (3/31/03)	13

Petitioners have commenced two CPLR Article 78 proceedings against respondent which seek to annul determinations made by respondent which exempted a proposed municipal telecommunications tower from local zoning laws and issued a negative declaration pursuant to the State Environmental Quality Review Act.

A subsequent application for a temporary injunction staying all construction activity in furtherance of the construction of the subject telecommunications tower, commenced via an Order to Show Cause, was resolved by the parties during an April 9,

2003 appearance before this Court and, therefore, is not part of the matters being reviewed by this Court at this time.

At the outset, a reviewing court in a CPLR Article 78 proceeding may not substitute its judgment for that of the local Town Board, “unless it clearly appears to be arbitrary, capricious, or contrary to the law.” Matter of Unal v. Peterson, 261 AD2d 551(2d Dept., 1999), app.den. 94 NY2d 760 (2000). See also, Matter of Hannafey v. Board of Trustees of Village of Malverne, 294 AD2d 365 (2d Dept., 2002); Matter of McKennett v. Hines, 289 AD2d 246 (2d Dept., 2001); and Matter of Baker v. Brownlie, 248 AD2d 527, 528-529 (2d Dept., 1998).

This same standard applies to State Environmental Quality Review Act (SEQRA) determinations. Matter of Gordon v. Rush, 299 AD2d 20,30 (2d Dept., 2002) and Matter of Village of Tarrytown v. Planning Board of Village of Sleepy Hollow, 292 AD2d 617, 619 (2d Dept., 2002).

Upon a careful review of all of the papers and proceedings herein, this Court finds that petitioners have failed to meet this heavy burden on either petition and, as a result, both of them must be dismissed.

In reaching this determination, the Court finds that the Town Board appropriately and properly applied the eight factor test set forth by the Court of Appeals in Matter of County of Monroe, 72 NY2d 338 (1988) in balancing public interests prior to exempting the proposed municipal telecommunications tower from local zoning laws.

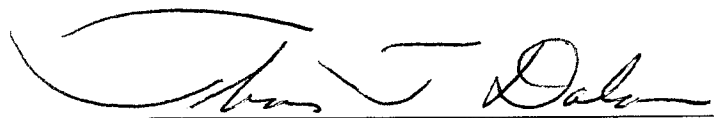
Further, prior to issuing its SEQRA negative declaration, the Town Board “identified the relevant areas of environmental concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination. Matter of Village of Tarrytown v. Planning Board of Village of Sleepy Hollow, supra at 619 (and cases cited therein).

This Court finds petitioners’ arguments which are based upon the Respondent Town’s Telecommunications law to be unpersuasive and irrelevant under all of the facts and circumstances of these two matters. Indeed, it would appear from a fair reading of this record that the primary factor behind these petitions is petitioners’ concern that the placement of this cellular tower, on Town property where a water tank already sits, will somehow negatively impact their plans for a proposed residential subdivision near the existing water tank and proposed cellular tower site. These petitions are based more upon speculation than upon fact. As such, they may not succeed.

Accordingly, both CPLR Article 78 petitions herein are dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: May 7, 2003
Poughkeepsie, NY



Hon. Thomas J. Dolan
Acting Justice Supreme Court

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