

**DECISION AND ORDER**

To commence the statutory period for appeals as of right under CPLR 5515[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  
IAS PART, WESTCHESTER COUNTY**

**Present: Hon. Francis A. Nicolai  
Justice of the Supreme Court**

**FILED  
JUN 16 2011  
TIMOTHY C. IDONE  
COUNTY CLERK  
COUNTY OF WESTCHESTER**

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THE VILLAGE OF CHESTNUT RIDGE, THE VILLAGE OF MONTEBELLO, THE VILLAGE OF POMONA, THE VILLAGE OF WESLEY HILLS, MILTON B. SHAPIRO and DR. SONYA SHAPIRO,

Petitioners/Plaintiffs,

-against-

INDEX NO. 16876/2004  
MOTION DATE: 4/12/11

THE TOWN OF RAMAPO, THE TOWN BOARD OF THE TOWN OF RAMAPO, THE PLANNING BOARD OF THE TOWN OF RAMAPO, YESHIVA CHOFETZ CHAIM OF RADIN, SCENIC DEVELOPMENT, LLC, and THE BOARD OF APPEALS OF THE TOWN OF RAMAPO and MOSDOS CHOFETZ CHAIM, INC.,

Respondents/Defendants.

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Nicolai, J.:

The following documents, numbered 1 to 39, were read on Petitioners' Order to Show Cause, pursuant to CPLR §5104 and Judiciary Law §753, to hold Respondents Planning Board of the Town of Ramapo (hereinafter "Planning Board") and Town of Ramapo (hereinafter "The Town") in Contempt of this Court's Judgment and Modified TRO as incorporated into the Judgment:

	<u>Numbered</u>
Order to Show Cause/Affirmation/ Exhibits 1-8	1-10
Affirmation in Opposition of Mosdos Chofetz Chaim, Inc./Exhibits A-B	11-13
Letters on Behalf of Mosdos Chofetz Chaim, Inc. Dated March 10 and 24, 2011	14-15
Affirmation in Opposition for Town of Ramapo/ Exhibit 1 Affidavit/Exhibits 1-2/Memorandum of Law	16-21
Affirmation in Opposition for Town of Ramapo Planning Board/Affirmation/Exhibits A-D	22-27
Reply Affirmation/Exhibits A-B	28-30
Petitioners' Letter dated March 28, 2011	31
Transcript of Proceedings dated March 29, 2011	32
Petitioners' Supplemental Memorandum of Law/ Exhibit A	33-34
Supplemental Affirmation in Opposition for Mosdos Chofetz Chaim, Inc.	35
Corrected Supplemental Memorandum of Law in Opposition of Respondent Planning Board	36
Town of Ramapo's Supplemental Memorandum Of Law in Opposition	37
Petitioners' letter dated April 13, 2011	38
Letter of Town of Ramapo, dated April 15, 2011	39

The above-captioned matter involves ongoing litigation concerning Respondent Mosdos Chofetz Chaim, Inc.'s application for site plan approval for adult student housing on the property known as the "Nike Site" in the Town of Ramapo (hereinafter "the Mosdos Project").

Petitioners brought the instant Order to Show Cause, seeking (1) to hold Respondents Town of Ramapo and the Town Planning Board (collectively "Town Respondents") in contempt for the wilful violation of this Court's Judgment dated February 18, 2010, filed and entered on March 1, 2010 (the Judgment), and this Court's Temporary Restraining Order dated September 11, 2007 (the September TRO), as modified on August 25, 2009 (the August Modification) and as further modified on October 26, 2009 (collectively, "the Modified TRO"), which were incorporated into

the Judgment; (2) assessing civil contempt fines against the Town Respondents; and (3) compelling compliance with the Judgment and Modified TRO, including nullification of any and all Certificates of Occupancy or Use issued by the Town permitting the occupation of the subject site in excess of sixteen units. Specifically, pursuant to Judiciary Law § 753<sup>1</sup> and CPLR§5014,<sup>2</sup> Petitioners seek to hold Respondent Planning Board in contempt for adopting a negative declaration in violation of that portion of the Judgment requiring preparation of an EIS. They seek to hold Respondent Town in contempt for violating the Modified TRO by their subsequent issuance of Temporary Certificates of Occupancy beyond the authorized sixteen units.

The TRO and The Judgment:

On September 11, 2007, during the pendency of Article 78 proceedings to annul certain actions of the Town Respondents, this Court granted Petitioners' application for a temporary restraining order prohibiting the Town Respondents from issuing any certificates of occupancy for the partially-constructed Mosdos development (the September TRO). On August 25, 2009,

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<sup>1</sup> Judiciary Law §753(A)(1) authorizes a court of record to "punish, by fine and imprisonment, or either, a neglect or violation of duty or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded or prejudiced" in the enumerated list of cases, including disobedience to a lawful mandate of the court.

<sup>2</sup> CPLR §5104 provides that "any interlocutory or final judgment or order or any part thereof \* \* \* may be enforced by serving a certified copy of the judgment or order upon the party or other person required thereby or by law to obey it and, if he refuses or willfully neglects to obey it, by punishing him for a contempt of court." Respondent Mosdos contends that Petitioners violated CPLR §5104 because they failed to serve Respondents with a "certified copy" of the Judgment and Order at the core of this contempt proceeding. However, this technical defect may be disregarded where, as here, the Town Respondents, against whom this contempt application is asserted, do not raise this issue nor dispute that they had actual notice of the entry of the Judgment and Modified TRO and fully participated in every stage of the proceedings (*Campanella v Campanella*, 152 AD2d 190, 194 [2d Dept 1989]; *People v Magee*, 102 Misc2d 345, 348-349 [Sup Ct, NY Cty 1979]).

in the “August Modification,” this Court modified the September TRO by permitting Respondent Mosdos to apply for certificates of occupancy for sixteen units upon an undertaking in the amount of \$75,000. By Modified TRO dated October 26, 2009, as is pertinent here, the Court further enjoined the Town Respondents, among other things, from (1) granting any further approvals pursuant to and/or in connection with the Town’s Adult Student Housing Law (“ASHL”); and (2) issuing any Certificates of Occupancy for any structure erected in connection with the Mosdos project on the Nike site, and from issuing any further permits as to any other site pursuant to and/or in connection with the ASHL. In the October 26, 2009 Modified TRO, this Court ruled that

[t]he use of the synagogue building on the site is limited to use by the 16 families currently in residence on the site. This residence by the 16 families was permitted by this Court’s modification order solely as a temporary emergency measure for families without a home, and the use of the synagogue is likewise limited to only the 16 families permitted to reside there.

Thereafter, by Judgment dated February 18, 2010, filed and entered March 1, 2010 (hereinafter “the Judgment”), which incorporated the above Modified TROs, this Court granted Petitioners’ Petition to the extent that it challenged, under SEQRA, the Town’s issuance of a negative declaration by Respondent Planning Board in connection with the Mosdos Project (Order to Show Cause, Exhibit 1, Judgment). The Court granted that portion of the Petition on the ground that Respondent “Planning Board failed to identify all relevant areas of environmental concern, failed to take the required ‘hard look’ at those areas of environmental concern and failed to make a written ‘reasoned elaboration’ of the basis for its determination” with respect to the Mosdos Project” (*id.* at 4). The Court specifically identified two areas of concern - a potential traffic issue and a community character issue - that the Town Board had failed to adequately

address, and which required preparation of an EIS (Order to Show Cause, Exh. 1, Dec and Order, at 17). The Court additionally “Ordered, Adjudged and Decreed that the Mosdos Negative Declaration is hereby annulled, *and the matter is remitted back to the Planning Board for preparation of an Environmental Impact Statement in accordance with SEQRA.*” (*Id.*, Judgment, at 5 [emphasis supplied]).

With respect to the alleged contempt based on the directives contained in the Judgment, Petitioner claims that Respondent Planning Board is in contempt of the italicized language quoted above, which directed Respondent Planning Board to prepare an Environmental Impact Statement (EIS). It is undisputed that the Planning Board did not prepare an EIS but instead held a public hearing<sup>3</sup> and proceeded to issue a negative declaration.<sup>4</sup> Respondent Town acknowledges that, “notwithstanding the automatic stay of CPLR §5519,”

[t]he Board did undertake further proceedings relative to the Nike Site application in accordance with SEQRA. \* \* \* [T]he Board conducted a public hearing, where the applicants and their opponents had an opportunity to submit evidence, which they did. The Board specifically considered the issues that the Court had identified as requiring additional consideration and: (i) adopted a negative resolution for the Nike Site development; (ii) adopted resolutions approving the final site plan for the Nike Site; and (iii) granted the application for a special permit for the Nike Site” (Town of Ramapo’s Memorandum of Law in Opposition, p. 2; Mallia Affidavit, ¶5).

Respondent Planning Board attempts to justify its failure to “prepare an EIS” pursuant to

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<sup>3</sup> Petitioner disputes the propriety of the hearing.

<sup>4</sup> The submissions before this Court establish that the Town Respondents initially complied with this Court’s directive, and issued a Positive Declaration (Zarin Reply Affirmation, ¶4; Haspel Affirmation, Exhibit B, Transcript dated February 28, 2011 at 40). However, they concededly thereafter reversed course and rescinded the Positive Declaration (Carey Affirmation, ¶12). On February 28, 2011, the Planning Board conducted a public hearing and “issued a negative declaration for the Nike Site, adopted resolutions approving the final site development plan and granted the application for a special permit for the Nike Site” (Mallia Affidavit, ¶5; *see* Klein Affidavit, Exhibits A-B; Carey Affirmation, ¶¶9-10). The Town thereafter issued Certificates of Occupancy for the entire Site and Project.

the terms of the Court's judgment on two grounds: (1) the Court's Judgment did not require it to issue a positive declaration and prepare an EIS; and (2) the Court had no authority to require the Planning Board to issue a positive declaration and prepare an EIS.

Specifically, the Planning Board contends that this Court, sitting in review of the prior negative declaration, was only authorized to direct the Planning Board to re-conduct their review and again determine whether issuance of an EIS was warranted. Pointing to language in the Court's decision establishing the standard of review of a negative declaration, the Planning Board argues that this Court did not intend to - and could not - substitute its own judgment for that of the Planning Board by directing the Planning Board to prepare an EIS.

Contrary to Respondent Planning Board's first contention,<sup>5</sup> the plain language of this Court's Judgment mandated "preparation of an EIS." In so ruling, this Court relied upon authority of the Appellate Division, Second Department, which held that (1) SEQRA *mandates* the preparation of an EIS when the proposed project *may* include the potential for at least one significant environmental effect; (2) because of the word "may," the threshold for requiring preparation of an EIS is relatively low; and (3) where, as here, the court finds that the proposed project "may" include the potential for at least one significant adverse environmental impact, the Court may properly require preparation of an EIS (*Matter of Uprose v Power Auth. of State of New York*, 285 AD2d 603 [2d Dept 2001], *lv denied* 97 NY2d 605). In fact, in *Matter of Omni Partners v County of Nassau* (237 AD2d 440, 442 [2d Dept 1997]), the Second Department

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<sup>5</sup> Respondent Mosdos Chofetz Chaim, Inc., an entity that is not the subject of this contempt proceeding, but claims an interest in the outcome, similarly contends that "this Court determined that there was an insufficient record for the issuance of a Negative Declaration and remitted the matter back to the Planning Board *for further study*" (Haspel Affirmation in Opposition, ¶7 [emphasis supplied]).

modified a Judgment of Supreme Court by adding a provision directing the Nassau County Planning Commission to issue a positive declaration and remitted the matter to the Planning Commission for preparation of an EIS, which is precisely the relief granted here. Having identified a potential traffic issue (a prior “F” grade at the nearby intersection and car-stacking issues) and a potential community character issue (an exemption on the site for buffer requirements and increased density proposed by the project in a low-density area), which Respondent Planning Board had not adequately addressed, this Court found that the proposed project “may” include the potential for at least two significant adverse environmental impacts and therefore directed Respondent Planning Board to prepare an EIS under *Matter of Uprose (supra)*.

To be sure, the propriety of this Court’s order directing Respondent Planning Board to “prepare an EIS” is the subject of appellate review (Sweeney Affirmation, ¶¶ 1-3). However, it is well-settled that a party may be held in contempt for its “disobedience to a lawful judicial order expressing an unequivocal mandate, no matter how erroneous” (*Manes v Manes*, 248 AD2d 516, 516 [2d Dept 1998], *appeal dismissed* 92 NY2d 947). In other words, a party is “not at liberty to disregard [a judgment or order] where at the time it was issued, that [judgment or order] was facially valid and sufficiently clear [citations omitted] and the court had jurisdiction over the matter” (*Skripek v Skripek*, 239 AD2d 488, 489 [2d Dept 1997]).

Accordingly, to the extent that the Respondent Planning Board contends that it could not be held in contempt of this Court’s Judgment because the Court improperly substituted its judgment for that of the Planning Board and directed the preparation of an EIS, the argument lacks force. It also constitutes an admission of their willful disobedience of this Order.

Respondent Planning Board has failed to establish that they were excused from obedience of the Judgment and the TROs because the Court either lacked jurisdiction over the matter or that the judgment “was void on its face” (*Sigmoil Resources, M.V. v Vittorio Lecca Ducagini Duca di Guevara Suardo Fabbri*, 228 AD2d 335, 336-337 [1<sup>st</sup> Dept 1996]). Plainly, “a party’s reliance upon “its good-faith belief that an order is defective, misguided or erroneous is an insufficient basis upon which it may then unilaterally disregard such order” (*id.* at 336). As Petitioners contend, the pertinent inquiry on this contempt application is not whether the relief issued was appropriate, which is the proper subject of appeal, but rather whether Respondents wilfully disregarded the clear legal mandates of this Court (Reply Affirmation, ¶41). This Court finds that they did, by clear and convincing evidence contained in these submissions, including Respondent Planning Board’s admissions concerning the belief that this Court’s directive to prepare an EIS was made without authority, and the well-documented issuance and reversal of the Planning Board’s positive declaration, and subsequent issuance of a negative declaration. A Planning Board may be held in contempt for its “failure to follow the clear and unambiguous directive” of the Court (*Matter of Mamaroneck Beach & Yacht Club v Fraioli*, 12 Misc3d 1023, 1036 [Sup Ct Westch Cty 2006]), a finding appropriately based here on the Planning Board’s choice to issue a negative declaration after this Court’s issuance of a contrary directive.

With respect to the alleged contempt based upon issuance of certificates of occupancy in violation of the temporary restraining orders, Respondent Town claims that it cannot be held in violation of the Modified TRO, since that Order applied only until “determination of this matter.” According to Respondent Town, there was nothing further to be determined once this Court issued the February 18, 2010 Judgment. The subject language of that Judgment provides:

ORDERED, ADJUDGED AND DECREED that only insofar as it relates to the Nike site, the TRO issued on September 11, 2007, as modified by the August 25 Order, and further modified upon reargument by the October 26 Order, *shall remain in effect until final determination of this matter, subject to further order of this Court or the Appellate Division in the event of an appeal*, and conditioned upon the posting of an undertaking in the amount of \$75,000 by an insurance company as surety as set forth in the October 26 Order (the “Undertaking”) [italics supplied].

(Not of Mot, Exhibit 1, Judgment dated February 18, 2010, at 5). Contrary to the Town’s contentions, the Judgment clearly directed that the TRO “remain in effect” beyond the date of the Judgment itself and “until final determination of this matter.” Otherwise, the TRO would have been expressly lifted by the terms of the Judgment. The Judgment directed the continuation of the process pursuant to SEQRA, namely, remittal to the Planning Board for preparation of an EIS and all that accompanies such preparation and review.

Tellingly, utterly refuting their claims that the requirements of this Court’s Judgment and Orders were “vague” and “ambiguous,” (Town of Ramapo’s Memorandum of Law, at 5, 8), Respondents undeniably understood *both* that this Court’s Judgment required preparation of an EIS, and that the TRO remained in effect after the Court’s issuance of the February 18, 2010 Judgment, since in perfecting their appeal, they identified as issues for appellate review: (1) this Court’s annulment of the negative declaration and remittal “to the Planning Board for preparation of an Environmental Impact Statement in accordance with SEQRA,” and (2) this Court’s failure “to permanently and unconditionally vacate the entire temporary restraining order issued on September 11, 2007 that, as modified, to the extent it enjoins the Town from taking certain actions including granting certain approvals, permits and certificates” (Town of Ramapo’s Memorandum of Law, p. 2). Accordingly, the Town Respondents have failed to substantiate

their claim that the TRO was lifted upon this Court's issuance of the subject Judgment. In fact, based on all of the foregoing, they have further effectively admitted on these papers, and in their statement of the issues on appeal to the Appellate Division, that their violation of both the Judgment and the temporary stay was knowing and willful, satisfying this Court that the clear and convincing evidence standard has been met, and obviating the need for any hearing in this regard (*Quantum Heating Servs, Inc. v Austern*, 100 AD2d 843, 844 [2d Dept 1984]).

These actions of the Respondent Planning Board, in issuing a negative declaration in direct violation of this Court's directive to prepare an EIS, and of the Respondent Town in issuing certificates of occupancy over this Court's temporary restraining order enjoining such activity, was calculated to, and actually did, defeat, impair, impede or prejudice the rights or remedies of Petitioners (Judiciary Law §770). Accordingly, Petitioners have established all of the elements of a contempt required by Judiciary Law §753 and CPLR §5104.

Effect of CPLR §5519 Stay upon Contempt Proceedings:

Having determined that Respondents Town and the Planning Board knowingly and willfully acted in direct violation of this Court's directives, the remaining question for this Court is whether this Court may hold the Respondents in contempt in light of the automatic stay of enforcement pursuant to CPLR §5519(a) pending Respondents' appeal to the Appellate Division. The Court adjourned this Order to Show Cause to accept oral argument and written submissions on this point. Having heard oral argument and considered the papers submitted by all parties on the effect of the stay on this contempt proceeding, this Court has determined that it is not prevented from making a determination on this contempt application.

Specifically, pursuant to CPLR §5519(a)(1), a notice of appeal stays all proceedings

against a municipal party “to enforce the judgment or order appealed from” pending resolution of an appeal. The purpose of this automatic stay “is to maintain the status quo between the litigants pending the appeal and to prevent one side from benefitting from the order or judgment” while the losing party appeals (*Lopez v New York City Hous. Auth.*, 178 Misc2d 719 [Civ Ct NY Cty 1998]). Respondents contend that the automatic stay provision precludes Petitioner’s instant contempt application, which is in the nature of an enforcement proceeding. Petitioners contend that the automatic stay does not authorize Respondents to disregard the Judgment. Petitioners further claim that because of the stay of enforcement, the Town Respondents could not be compelled to carry out this Court’s directives, but if the Town Respondents proceeded with any action, it had to be consistent with the Court’s Judgment and Orders.

As Petitioners argue, by virtue of the stay afforded by CPLR §5519(a)(1), the Town Respondents cannot be compelled to undertake an executory directive in the Judgment or Orders of this Court (*Pokoik v Dept of Health Servs. of County of Suffolk*, 220 AD2d 13, 15 [2d Dept 1996]). In other words, Petitioners cannot use the contempt proceeding or other enforcement measures to compel Respondents to do those executory acts directed by this Court’s Judgment and Orders, such as preparing the EIS, pending appellate review (*Hicks v Schoetz*, 261 AD2d 944 [4<sup>th</sup> Dept 1999]). However, section 5519(a)(1) does not stay enforcement of prohibitory directives in this Court’s judgments or orders, which compel inaction; nor does it otherwise operate to authorize the municipal respondents to take any actions that alter the *status quo* that exists upon entry of the Judgment and Orders (*State of New York v Town of Haverstraw*, 219 AD2d 64, 66 [2d Dept 1996]).

As Petitioners contend, while the municipal respondents may take actions in voluntary

compliance with the Court's directives, notwithstanding the stay, they cannot act as if the case had returned to its pre-Judgment status and take actions contradictory to the Judgment or Order of the Court (*Pokoik*, 220 AD2d at 15, *supra*). Plainly, "[a] motion decided by an order does not become undecided and the declaratory provisions of a judgment are not undeclared when a governmental party serves a notice of appeal therefrom" (*id.*). Indeed, in analyzing the question under predecessor statutes, the Court of Appeals held that such stay "did not affect the validity or effect of the judgment pending the appeal, so far as it bore upon and restrained the action of the [respondents] \* \* \*. *It did not absolve them from the duty of obedience, and permit them to do that which the judgment absolutely prohibited, and the doing of which would \* \* \* cause irreparable mischief \* \* \**" (*The Sixth Avenue Railroad Co v The Gilbert Elevated Railroad Co.*, 71 NY 430, 432 [1877] [emphasis supplied]; *see also New York Mail & Newspaper Transp. Co. v Shea*, 30 App Div 374, 375-376 [2d Dept 1898]).

The Town Respondents also claim that, if Petitioners wanted to maintain the status quo, Petitioners were required to avail themselves of the relief available under CPLR §§ 5518 and 5519(c), which permits an application to the Appellate Division to vacate, limit or modify the automatic stay imposed by CPLR §5519(a)(1). However, Petitioners would only have needed such an Order from that Court to vacate, limit or modify the automatic stay had they desired to immediately enforce that portion of the judgment requiring preparation of an EIS, for example. Since they were not seeking to compel any acts by the Respondents that were otherwise prohibited by this Court, and sought only maintenance of the *status quo* - not a change of the status quo - pending appeal, Petitioners were not required to make such application to the Appellate Division (*see State of New York v Town of Haverstraw*, 219 AD2d 64, 66 [2d Dept

1996)). Simply stated, Petitioners already obtained temporary restraining orders that were to remain in effect in this proceeding, which precluded issuance of further certificates of occupancy by Respondents beyond the initial sixteen. There was no need for Petitioners to obtain any further stay from the Appellate Division to obtain that identical relief. By contrast, had Respondents desired to modify the provisions of the TRO precluding them from issuing further certificates of occupancy, the Town Respondents could have availed themselves of the relief afforded by CPLR §5518. Having failed to avail themselves of this relief, Respondents were required by the prohibitory injunctive relief issued by this Court to maintain the status quo.

Manifestly, Respondents here have violated the clear mandates of this Court's Judgment and Orders and have modified the status quo by vacating the positive declaration, reissuing the negative declaration, granting site plan and special permit approvals and issuing temporary certificates of occupancy beyond the sixteen permitted by this Court as an emergency measure. Accordingly, Petitioners are not precluded by CPLR §5519(a) from bringing this contempt proceeding, nor is this Court bound by that section to refrain from granting relief upon Petitioners' contempt application to restore the status quo under the circumstances of this case. Accordingly, based upon the foregoing, it is hereby

ORDERED that Petitioner's application to hold both the Respondent Town and Respondent Planning Board in civil contempt is granted; and it is further

ORDERED that pursuant to Judiciary Law §753 and §773, Respondent Town shall be fined and shall be responsible to pay to Petitioners the amount of Petitioners' reasonable attorneys fees, costs and expenses in connection with this application, for the contempts of the Town agencies involved here; and it is further

ORDERED that the amount of Petitioners' reasonable legal fees, costs and expenses shall be determined at a hearing to be held before this Court on July 22, 2011; and it is further

ORDERED that Respondent Planning Board's failure to comply with this Court's Judgment and the Modified TRO shall be deemed a continuing contempt, and Respondent Town shall be fined for the Planning Board's contempt pursuant to Judiciary Law §753 and §773 in an amount of \$250 per day, to commence on the date of service of a copy of this Order, with Notice of Entry, unless, within 45 days of such service, Respondent Planning Board purges its contempt by nullifying any and all actions relevant hereto taken at the February 28, 2011 Public Hearing, or stemming therefrom, including the issuance of the Negative Declaration, Site Plan Approval and Special Permits and restores the status quo pursuant to this Court's Judgment and Modified TRO; and it is further

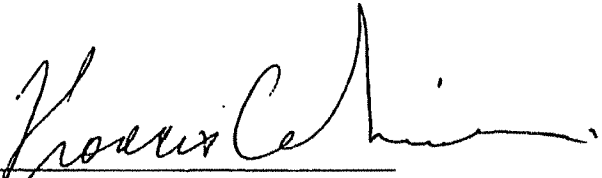
ORDERED that Respondent Town's failure to comply with this Court's Judgment and the Modified TRO shall be deemed a continuing contempt, and Respondent Town shall be fined pursuant to Judiciary Law § 753 and §773 in an amount of \$250 per day to commence on the date of service of a copy of this Order, with Notice of Entry, unless, within 45 days of such service, Respondent Town purges its contempt by nullifying any and all Certificates of Occupancy or Use issued by the Town which permitted the occupation of the subject Nike Site in excess of the sixteen authorized (16) units and by ensuring that all occupied units in excess of the sixteen (16) authorized units are vacated; and it is further

ORDERED that, upon the passage of the requisite 45 days without compliance by either or both Respondent Town and Respondent Planning Board as mandated herein, Petitioners shall notify this Court of Respondents' non-compliance, by affidavit and on notice, upon which this

Court shall set the matter down for a hearing to determine the amount of the fine that has accumulated and what additional sanctions are to be imposed, if any, against the Town.

The foregoing constitutes the Decision and Order of this Court.

Dated: Carmel, New York  
June 15, 2011

  
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Francis A. Nicolai  
Supreme Court Justice

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