

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

NOTICE OF MOTION
OF RESPONDENTS
THE VILLAGE OF
PAINTED POST,
PAINTED POST
DEVELOPMENT, LLC
AND SWEPI, LP

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

Index No. 2012-0810

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

Motion by:

Respondents the Village of Painted Post (the
"Village"), Painted Post Development, LLC and
SWEPI, LP (collectively, the "Moving
Respondents").

Date, Time and Place of Hearing:

August 20, 2012, at 9:30 a.m., at the Steuben
County Supreme Court, 3 East Pulteney Square,
Bath, New York 14810.

Supporting Papers:

Verified Answer and Objections in Point of Law,
dated August 3, 2012, the Affidavit of Roswell
Crozier, together with the exhibits attached
thereto, sworn to August 1, 2012, the Affidavit of
Larry E. Smith, together with the exhibits attached
thereto, sworn to August 1, 2012, the Affidavit of
Robert Drew, together with attached exhibits,
sworn to on August 1, 2012, the Affidavit of
William Myles, sworn to on August 2, 2012, the
Affidavit of Anne Names, sworn to on August 1,
2012, the Affidavit of William Gough, sworn to
on August 1, 2012, the accompanying
Memorandum of Law, dated August 3, 2012, and

the Administrative Record on behalf of the Village.

Grounds:

1. The Objections set forth in the District's Verified Answer and Objections in Point of Law;
2. CPLR §§ 7803 and 7804(f) in that the action may not be maintained with respect to the movant under Article 78 of the CPLR;
3. CPLR § 3211(a)(3) in that Petitioner lacks standing to maintain this proceeding;
4. CPLR § 3211(a)(7) in that the action may not be maintained with respect to the movant for failure to state a cause of action; and
5. CPLR § 3212 for summary judgment for the reasons set forth in the documents submitted herewith in that the Village's determination — if any — was not arbitrary and capricious, an abuse of discretion or taken without substantial evidence.

Relief Requested:

1. An Order dismissing the Verified Petition in its entirety with prejudice and/or an Order granting summary judgment to the Moving Respondents in all respects and dismissing with prejudice Petitioner's Verified Petition dated June 22, 2012; and
2. Such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Responding Papers:

Pursuant to CPLR § 2214(b), all answering papers, including cross-motions, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion, and all reply papers, if any, will be served at least one (1) day prior to the return date of this motion.

Dated: August 3, 2012

HARRIS BEACH PLLC

By: 

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John A. Mancuso

Attorneys for Respondents

The Village of Painted Post,

Painted Post Development, LLC and

Swepi, LP

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