

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHAUTAUQUA

In the Matter of the Application of

THE COMMITTEE TO PRESERVE THE HISTORIC
CHAUTAUQUA AMPHITHEATER,
STEPHEN DAVIES, CAROLYN CLOSE GROHMAN,
TODD R. MINNIGH, HARRIET R. MINNIGH, and
JUDITH E. HOWELL,

VERIFIED PETITION

Petitioners,

Index No. _____

For a Judgment pursuant to CPLR Art. 78 & CPLR 3001

Date Filed: _____

- against -

BOARD OF TRUSTEES OF THE CHAUTAUQUA
INSTITUTION,
CODE ENFORCEMENT OFFICER FOR THE
TOWN OF CHAUTAUQUA, and
TOWN BOARD OF THE TOWN OF CHAUTAUQUA,

Assigned to:

Hon. Frank A. Sedita III, JSC

Respondents.

Petitioners The Committee to Preserve the Historic Chautauqua Amphitheater, Stephen Davies, Carolyn Close Grohman, Todd R. Minnigh, Harriet R. Minnigh, and Judith E. Howell, by their attorney, Arthur J. Giacalone, for their verified petition against respondents, respectfully allege and state:

INTRODUCTION

1. The Chautauqua Amphitheater is described as “*the physical, functional and spiritual heart of the Chautauqua Institution*” by New York State’s Deputy Commissioner for Historic Preservation, Ruth L. Pierpont, who aptly explained the national significance of the nineteenth-century structure in a December 2014 letter to respondent Board of Trustees of the Chautauqua Institution:

... The century-old amphitheater is especially significant because it was purposely designed to meet the needs of the community for a meeting space and because of the multitude of significant individuals who have taken its stage. Franklin D. Roosevelt's "I HATE WAR" speech in 1936 is only one example of the momentous discourses that have moved legions of listeners. The building embodies the very idea of a Chautauqua, a community that gathers together, and bears witness to the community's long and inspiring history.

[Attached hereto as **Exhibit A** is a copy of Deputy Commissioner Pierpont's December 4, 2014 letter to respondent Board of Trustees of the Chautauqua Institution.]

2. The Chautauqua Amphitheater's prominent role in American history was succinctly stated in documentation used to support the successful campaign to list the Chautauqua Institution grounds in the National Register of Historic Places:

... Few podiums in this country have held such a distinguished group of speakers and performers.

[Attached hereto as **Exhibit B** is an excerpt from the U.S. Department of the Interior National Park Service's National Register of Historic Places Registration Form pertaining to the Chautauqua Institution Historic District.]

3. When news was disseminated in the fall of 2014 by petitioner The Committee to Preserve the Historic Chautauqua Amphitheater (hereinafter, at times referred to as "Committee to Preserve") and other concerned citizens regarding respondent Board of Trustees of the Chautauqua Institution's plans to demolish the Chautauqua Amphitheater and build a larger replacement, the National Historic Trust, a privately funded nonprofit organization that works to save America's historic places, named the Chautauqua Amphitheater a "National Treasure," and placed the Amp on its 2015 list of "Most Endangered Places," expressing the following:

The Chautauqua Amphitheater is the heart of a National Historic Landmark District located 70 miles southwest of Buffalo, NY. Internationally

recognized as a forum for American culture and history, the Amp has hosted a wide range of leaders, activists, and artists over its 122-year history. FDR delivered his "I Hate War" speech there in August of 1936. William Jennings Bryan, Susan B. Anthony, Thurgood Marshall, and Bobby Kennedy all walked its boards, as did Ella Fitzgerald, Lionel Hampton, Marian Anderson, Susan B. Anthony, Van Cliburn, Amelia Earhart, Booker T. Washington, Bill and Hillary Clinton, and Sandra Day O'Connor, to name a few.

[Attached hereto as **Exhibit C** are excerpts obtained from the official website of the National Trust for Historic Preservation regarding its January 27, 2015 naming of the Amp as a "National Treasure," and inclusion of the Amp on its "11 Most Endangered Places 2015."]

4. Despite the historic significance of the Amp, respondent Board of Trustees issued a press release dated December 30, 2015 announcing that it had voted that day to proceed with plans to demolish the historic Amp (except the Massey Organ loft) and proceed with what it characterizes as "the construction of a renewed Amphitheater," and subsequently disseminated a newsletter, dated January 13, 2016, stating that it had obtained the required permits from the Town of Chautauqua on January 6, 2016 to begin pre-season demolition and construction work for the "renewed Amphitheater project," and that the pre-season construction plan "will kick off on Feb. 1." [Attached hereto as **Exhibit D** is a copy of the aforementioned December 30, 2015 press release and January 13, 2016 newsletter.]

5. Petitioners bring this CPLR Article 78 proceeding to ask the Court for the following relief:

A. Annul and set aside any and all permits issued by respondent Code Enforcement Officer for the Town of Chautauqua to, or on behalf of, respondent Board of

Trustees of the Chautauqua Institution in furtherance of its plans to demolish the Chautauqua Amphitheater and construct a replacement facility, including, without limitation, the following demolition permit and building permit issued, upon information and belief, on or about December 31, 2015:

(1) Permit No. 2015-0241, described as, “Phase 1, Demolition of Amp, rear of house and site work.”

(2) Permit No. 2015-0242, described as, “Phase 1, footers and foundation, drilled piers and caissons & soldier piles at Organ Chamber.”

[Attached hereto as **Exhibit E** is a copy of the aforementioned permits.]

B. Permanently enjoin respondent Board of Trustees of the Chautauqua Institution its employees, contractors, agents and assigns, from commencing and/or continuing the demolition and/or the "physical alteration", as that term is defined at 6 NYCRR 617.2(ab), of the Chautauqua Amphitheater, or any portion thereof, and/or the "physical alteration", as that term is defined at 6 NYCRR 617.2(ab), of the premises of the Chautauqua Institution in the Town of Chautauqua, State of New York, in furtherance of the proposed project to demolish the Chautauqua Amphitheater and to construct a replacement facility, unless and until respondents Code Enforcement Officer and Town Board of the Town of Chautauqua fully comply with the letter and spirit of all applicable state and local laws and regulations, including, without limitation, the following:

(1) Chapter 141 of the Town Code of the Town of Chautauqua, entitled “Waterfront Consistency,” and the Chautauqua Lake Waterfront Revitalization Program (hereinafter, “LWRP”);

(2) The State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder at 6 NYCRR Part 617 (hereinafter, “SEQRA”); and

(3) The applicable portions of Chapter 143 of the Town Code of the Town of Chautauqua, entitled “Zoning,” including, without limitation, Section 143-79 (Building permits), Section 143-181 (Demolition permits), and Article XVIII (Site Plan Review).

C. Such other and appropriate relief as to the Court appears just and proper.

PARTIES

6(A). Petitioner, The Committee to Preserve the Historic Chautauqua Amphitheater, is an unincorporated group of Chautauqua Institution property owners, renters and residents, architects, planners, and other individuals, organized for the purpose of preserving the Amp through the sharing of information at its website – <http://www.SaveTheAmp.org> – launched in September 2014, and by partnering with organizations such as The National Trust for Historic Preservation, Preservation League of New York State, Preservation Buffalo Niagara, Landmark Society of Western New York, Pittsburgh History and Landmarks Foundation, and Preservation Erie, having an office for the conducting of business in Kings County.

6(B). Petitioner, Stephen Davies, is a member of the Executive Committee of petitioner Committee to Preserve, has been an owner for approximately 6 years of a home at the Chautauqua Institution, known as 22 Ames Avenue, located approximately 950 feet from the Amp, and, as an owner of such property, is a voting member of the Chautauqua Institution, and has a permanent residence in Kings County, New York.

6(C). Petitioner, Carolyn Close Grohman, has been an owner for approximately 21 years of two co-op units, apartments 14 and 18, at 33 Miller (Paul Manor Apartments) at the Chautauqua Institution, located approximately 600 feet from the Amp, residing during Chautauqua's nine-week summer season in one of the units, and, as an owner of such property, is a voting member of the Chautauqua Institution, having a permanent residence in Monroe County, New York.

6(D). Petitioner, Todd R. Minnigh, has been an owner for approximately 20 years of a home at the Chautauqua Institution, known as 24 South, located approximately 100 feet from the Amp, residing in his Chautauqua home for five weeks of the summer season, and, as an owner of such real property, is a voting member of the Chautauqua Institution, having a permanent residence in Monroe County, New York.

6(E). Petitioner, Harriet R. Minnigh, has been an owner for approximately 30 years of a home at the Chautauqua Institution, known as 26 South Terrace, located approximately 80 feet from the Amp, and, as an owner of such real property, is a voting member of the Chautauqua Institution, residing year-round in her Chautauqua Institution residence, Town of Chautauqua, County of Chautauqua.

6(F). Petitioner, Judith E. Howell, has been an owner for approximately 38 years of a home at the Chautauqua Institution, known as 27 South Terrace, located approximately 25 feet from the Amp, residing in her Chautauqua home for approximately eleven weeks a year, and, as an owner of such real property, is a voting member of the Chautauqua Institution, with a permanent residence in Trinity, Florida.

7(A). Respondent, Board of Trustees of the Chautauqua Institution, pursuant to the charter and by-laws of the Chautauqua Institution, exercises the government and

control of Chautauqua Institution, having an office for the conducting of business in Chautauqua County at One Ames Avenue, Chautauqua, New York 14722.

7(B), Respondent, Code Enforcement Officer for the Town of Chautauqua, is, pursuant to Chapter 74 (Fire Prevention and Building Construction), Section 74-3, of the Town Code of the Town of Chautauqua, an officer of the Town of Chautauqua, empowered to administer and enforce all provisions of said Chapter, having an office for the conducting of business at 2 Academy Street, Mayville, New York, County of Chautauqua.

7(C). Respondent, Town Board of the Town of Chautauqua, is the town board of the Town of Chautauqua in Chautauqua County, State of New York, possessing the powers and duties of a town board pursuant to the laws of the State of New York, with an office for the conducting of business at 2 Academy Street, Mayville, New York, County of Chautauqua.

PETITIONERS' STANDING

8. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 7(C) of this petition, with the same force and effect as if set forth here at length.

9. The New York Court of Appeals has long recognized a two-prong test for an individual who wishes to establish standing to challenge governmental action regarding land use, zoning and SEQRA issues: that the injury of which he or she complains falls within the “zone of interests” or concerns sought to be promoted or protected, and that he or she would suffer direct harm, injury that is in some way different from the public at large. See, for example, Society of Plastics Industry, Inc. v. County of Suffolk, 77 NY2d

761, 773, 570 NYS2d 778 (1991); Mobil Oil Corporation v. Syracuse IDA, 76 NY2d 428, 443, 559 NYS2d 947, 950 (1990).

10. New York's courts apply the legal principle that a presumption of standing exists in land use and environmental cases for a property owner or resident who is either adjacent to or in close proximity of a challenged project. Society of Plastics, *supra*, 77 NY2d at 779; LaDelfa v. Village of Mt. Morris, 213 AD2d 1024, 1025, 625 NYS2d 117, 118 (4th Dept. 1995); Michalak v. ZBA of Town of Pomfret, 286 AD2d 906, 731 NYS2d 129 (4th Dept. 2001).

11. However, as our State's highest court has recently held, owning or residing in a residence in close proximity to a challenged project is not an indispensable element of standing in every land use and environmental action:

We hold that a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing under the State Environmental Quality Review Act (SEQRA) to challenge government actions that threaten that resource. ..

Save The Pine Bush. v. Common Council of the City of Albany, 13 NY3d 297, 301, 305 (2009) (individuals who repeatedly use a unique resource “for recreation and to study and enjoy” meet the Society of Plastics test by showing that the threatened harm complained of will affect them differently from “the public at large”); also see, Clean Water Advocates of New York v. NYS Dept. of Environmental Conservation, 103 AD3d 1006, 1008-1009 (3rd Dept. 2013) (Citing Save the Pine Bush, the Third Dept. states, “It is now settled that standing to assert a claim based upon an impact upon a natural or cultural resource “requir[es] a demonstration that a[n individual's] use of a resource is more than that of the general public.”).

12. The “zone of interests” of Chapter 141 of the Town Code of the Town of Chautauqua (“Waterfront Consistency”), the Chautauqua Lake Waterfront Revitalization Program (hereinafter, “LWRP”), and SEQRA each includes the protection and preservation of historic resources.

13. According to Section 141-2(B) of Chapter 141 of the Town of Chautauqua Waterfront Consistency Law, the “purpose of this chapter is to provide a framework for agencies of the Town of Chautauqua to *consider the policies and purpose contained in the Chautauqua Lake Local Waterfront Revitalization Program [LWRP]* when reviewing applications for actions ... in the waterfront area, and to *assure that such actions are consistent therewith.*” Town Code, Section 141-2(B). [Emphasis added.]

14. The Town Board’s intention in enacting Chapter 141 is expressed as follows at Section 141-2(C):

It is *the intention* of the Town of Chautauqua to preserve, enhance and use the natural and man-made resources of the unique waterfront areas of the Town in a coordinated and comprehensive manner, to *ensure a proper balance between such natural resources and the accommodation of population growth and economic development. This chapter is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing* loss of fish and wildlife, diminution of open space areas or public access to the waterfront, erosion of shoreline, losses due to flooding, erosion and sedimentation, impairment of water quality, *impairment of scenic, cultural or historic resources*, and permanent adverse changes to ecological systems. [Emphasis added.]

Town Code, Section 141-2(C).

15. As provided at Section 141-5 of the Town Code, actions to be undertaken within the waterfront area are to be evaluated for consistency with the policies and standards set forth in the Chautauqua Lake LWRP, which, upon information and belief, was approved by respondent Town Board on March 10, 2008, and the New York State Department of State on March 16, 2011.

16. Section 141-5 mandates that the proposed action “shall be consistent with” the thirteen policies found in the LWRP and at Section 141-5, the second of which states: **“Preserve historic resources of the waterfront area of Chautauqua Lake. (Policy 2).”** [See LWRP, Section III, p. 5.]

17. The nine municipalities adjoining Chautauqua Lake who have adopted the Chautauqua Lake LWRP, including respondent Town Board, expressly recognized the Amp as one of “the primary historic resources” within their communities by including the Chautauqua Amphitheater on its list of “Chautauqua Lake Communities Sites of Historic Significance.” [See LWRP, Section II, p. 44.]

18. The LWRP, in expressing standards to follow when implementing “Policy 2,” calls on the participating communities to **“Maximize preservation and retention of historic resources.”** [See LWRP, Section III, p. 6.]

[Attached hereto as **Exhibit F** are pertinent excerpts from the LWRP and, for the convenience of the Court, a copy of Chapter 141 of the Town Code.]

19. SEQRA also has a broad “zone of interest” that extends to the protection of resources of historic significance.

20. The legislative purpose expressed in the SEQRA statute is expansive: *“to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources.”* ECL §§ 8-0101, 8-0103[6]. Accordingly, SEQRA defines “environment” broadly to go beyond physical conditions to include socio-economic concerns, and, expressly, “resources of historic or aesthetic significance” and “existing community or neighborhood character”:

“Environment” means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, *resources of agricultural, archaeological, historic or aesthetic significance*, existing patterns of population concentration, distribution or growth, *existing community or neighborhood character*, and human health. [Emphasis added.]

6 NYCRR 6 17.2(1); also see, *e.g.*, Chinese Staff and Workers Assoc. v. City of New York, 68 NY2d 359, 365-366, 509 NYS2d 499, 503 (1986) ("It is clear from the express terms of the statute and the regulations that environment is broadly defined.").

21. Furthermore, our State's highest court has held that a lead agency must be concerned with the impact of a proposed project on non-physical aspects of the environment included within SEQRA's definition of environment "with or without a separate impact on the physical environment". See Chinese Staff v. City of New York, 68 NY2d 359, 365-366, 509 NYS2d 499, 503 (1986).

22. For the following reasons, each of the individually-named petitioners believes that he or she would suffer direct harm if respondent Board of Trustees is allowed to demolish the historic Amp that is different from the injury to the public at large:

A. Petitioner Steven Davies has a BA in Environmental Studies and a Masters in Architecture, and for almost 40 years has held a senior leadership role in Project for Public Spaces, an organization that works with communities all around the world to create vital, human-centered places. The Amp's historic role as the center of the Chautauqua community is so central to his professional and personal interests that he selected Chautauqua as a place to make a significant investment of time and money. By doing so, he is able to use the Amp on a daily basis during his six weeks of summer vacation to personally observe and study how it functions as the community's physical,

functional, and spiritual heart. Steven Davies' passion for the Amp is so strong that he helped to organize, and continues to further the purpose, of petitioner Committee to Preserve.

B. Petitioner Carolyn Close Grohman, an octogenarian and retired Presbyterian pastor, not only maintains a residence in close proximity to the Chautauqua Amphitheater, she is immersed in activities at the Amp multiple times a day during the nine weeks a year she spends at Chautauqua. Her activities include rehearsals in the choir loft or choir room (in the back part of the Amp) and performances as a member of the Motet Choir in the choir loft every weekday, as well as participation in worship services in the Amp both mornings and evenings. At times, she serves as the liturgist in the weekday worship service, leading the worship service on stage. She also attends all the "ordinary events" - lectures and concerts and other evening programs. Her appreciation of the Amp's unique value extends to its historic authenticity and amazing acoustics, both of which she believes would be lost if the amphitheater is demolished. During the sixty years that she has experienced the Amp, she has personally heard and seen many notable performers, preachers, and lecturers on the Amp's historic stage, including, for example: Van Cliburn; Alexander Gavrylyuk; Pete Seeger; John Denver; Peter, Paul, and Mary; Carol Burnett; Ethel Merman; Victor Borge; Judy Collins; Garrison Keillor; the Beach Boys; the Four Freshman; Straight No Chaser; Tony Campolo; Barbara Brown Taylor; Jim Forbes; Barbara Lundblad; Sister Joan Chittister; Karen Armstrong; Otis Moss III; Bill Clinton; Hillary Clinton; Al Gore; Jane Goodall; David McCullough; Doris Kerns Goodwin; Roger Rosenblatt; Alan Alda; Jim Lehrer;

David Brooks; Charlie Rose; Tom Brokaw; Ruth Bader Ginsburg; Sandra Day O'Connor; Ken Burns; and many others too numerous to mention.

C. Petitioners Judith Howell, Harriet Minnigh, and Todd Minnigh each own property and reside in very close proximity to the Amp, that is, within approximately 25' to 100' of both the rear of the amphitheater and a well-utilized red bridge that presently services pedestrian, bicycle, and wheel-chair traffic on a very steep incline. It is their understanding that the bridge that will also be removed, at least temporarily, as part of the demolition and reconstruction project. Removal of the bridge will have a significant and adverse impact on their neighborhood's character as the flow of traffic on South Terrace will be drastically altered as, for example, children who cross the bridge to go to and from Chautauqua's day camp and club facilities several times each weekday will be compelled to travel up and down the steep hill and into the heavier traffic pattern at the foot of the hill. Similar to their co-petitioners, Steven Davies and Carolyn Close Grohman, petitioners Judith Howell, Harriet Minnigh, and Todd Minnigh frequently use the Amp during the summer season. Additionally, the location of their respective residences in such close proximity to proposed demolition and construction activities at the Amp will result in other types of potential harm different from what may be incurred by the public generally – that also fall within the zone of interest of SEQRA and zoning and building codes, such as: blasting during construction may damage their century-old houses; plans to blast to bedrock may impact the water table resulting in water issues that do not presently exist; and, removal of mature trees will adversely impact the neighborhood by eliminating their beneficial qualities, such as the provision of shade, the buffering of noise, and the stabilizing of soil on the steep hillside.

FOR PETITIONERS' FIRST CLAIM – *Failure to conduct the determination mandated by the Chapter 141 and the LWRP*

23. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 22 of this petition, with the same force and effect as if set forth here at length.

24. Upon information and belief, on March 16, 2011, the Chautauqua Lake LWRP was approved by the New York State Department of State, and remains in existence today, thereby placing into effect the substantive provisions of Chapter 141 (Waterfront Consistency) of the Town of Chautauqua Code. [See Town Code, Section 141-1(D).]

25. The grounds of the Chautauqua Institution, including the site of the Chautauqua Amphitheater, fall within the waterfront revitalization area delineated within the Town of Chautauqua in the Chautauqua Lake LWRP. [A map depicting the Town of Chautauqua's waterfront revitalization area can be found at the third page of the document attached hereto as **Exhibit F.**]

26. Respondent Board of Trustees' proposed demolition of the Amp and construction of a replacement facility constitutes an "action" under the Town of Chautauqua's Waterfront Consistency Law, that is, a project or physical activity that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that requires one or more new or modified approvals from an agency, that is, demolition or building permits from respondent Code Enforcement Officer of the Town of Chautauqua. [See definitions of "action" and "agency" at Section 141-3 of Chapter 141.]

27. For the following reasons, the proposed project to demolish the Amp and construct a replacement facility [hereinafter, “the Amp project”] does not constitute a “minor action” excepted from the Waterfront Consistency Law’s definition of “action”:

A. The Amp project does not constitute “maintenance or repair involving no substantial changes in an existing structure or facility.”

B. The Amp project does not constitute “replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes”:

(1) In a letter dated August 29, 2015, a copy of which is attached hereto as **Exhibit G**, respondent Board of Trustees’ President, Thomas M. Becker, explains to Chautauqua Institution property owners that the Amp project does not constitute rehabilitation of the existing Amp, and is intended to meet strategic and program goals that go well beyond the “in kind” replacement or reconstruction of the existing structure, or the mere upgrading of the building to meet building or fire codes.

(2) As depicted in a graphic entitled “Existing Building Section w/ Proposed Outline” [also included as part of **Exhibit G** attached hereto], the proposed reconstructed Amp – outline in red - is substantially larger than the existing Amp.

(3) Consistent with the aforementioned graphic, respondent Board of Trustees’ President, Thomas M. Becker, in a letter dated December 2, 2014 [also included as part of **Exhibit G** attached hereto], listed the “primary objectives” of the proposed Amp project, reflecting, among other

features, an increase in capacity of 727, a 50 percent reduction in the number of columns, and an increase of nearly 10,000 square feet in the size of the “back-of-house” facilities.

C. The approvals required for the Amp project constitute the exercise of discretionary decision-making authority by a Town of Chautauqua agency that go beyond “official acts of a ministerial nature involving no exercise of discretion, including building permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code”:

(1) Pursuant to Section 74-3(A)(2) of the Town of Chautauqua Town Code, the authority of respondent Code Enforcement Officer to approve demolition and building permits includes the power to include in such permits “such terms and conditions as the Code Enforcement Officer may determine to be appropriate,” and, for that reason, such authority extends beyond “acts of a ministerial nature” and cannot be properly described as “building permits where issuance is predicated solely on the applicant’s compliance or noncompliance with the relevant local building code.”

(2) As a result of the extensive nature of the Amp project, respondent Town Board of the Town of Chautauqua approved a motion at its December 14, 2015 regular town board meeting to expend “up to \$27,000” to retain an engineer to assist respondent Code Enforcement Officer in reviewing the Amp project plans. [Attached hereto as **Exhibit H** is a copy of respondent Town Board’s December 14, 2015 meeting minutes.]

28. Upon information and belief, prior to the issuance of the demolition and building permits attached hereto as **Exhibit E**, neither respondent Code Enforcement Officer, nor respondent Town Board of the Town of Chautauqua, took any steps to treat the proposed Amp project as an action under the Town's Waterfront Consistency Law.

29. Upon information and belief, prior to the issuance of the demolition and building permits attached hereto as **Exhibit E**, neither respondent Code Enforcement Officer, nor respondent Town Board of the Town of Chautauqua, made a determination that the proposed Amp project "is consistent with the LWRP policy standards and conditions" set forth in Section 141-5 of the Waterfront Consistency Law, as mandated by Section 141-4(A) of said law.

30. The requirements of the Town of Chautauqua's Waterfront Consistency Law were not complied with prior to issuance of the aforementioned demolition and building permits by respondent Code Enforcement Officer despite the following facts:

A. "Policy 2" of thirteen policies in the LWRP and Chapter 141 states: **"Preserve historic resources of the waterfront area of Chautauqua Lake."** [See LWRP, Section III, p. 5.]

B. The nine municipalities adjoining Chautauqua Lake who have adopted the Chautauqua Lake LWRP, including respondent Town Board, expressly recognized the Amp as one of "the primary historic resources" within their communities by including the Chautauqua Amphitheater on its list of "Chautauqua Lake Communities Sites of Historic Significance." [See LWRP, Section II, p. 44.]

C. The LWRP, in expressing standards to follow when implementing “Policy 2,” calls on the participating communities to “**Maximize preservation and retention of historic resources.**” [See LWRP, Section III, p. 6.]

31. By approving the December 31, 2015 demolition permit and building permit without first complying with the requirements of Chapter 141 of the Town Code, respondents Code Enforcement Officer and/or Town Board failed to perform a duty enjoined upon them by law, proceeded without or in excess of their jurisdiction, and rendered a determination that is contrary to law, arbitrary and capricious, and/or an abuse of discretion.

32. Petitioners have no adequate remedy at law.

FOR PETITIONERS’ SECOND CLAIM – *SEQRA* violations

33. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 32 of this petition, with the same force and effect as if set forth here at length.

34. Through its enactment of the SEQRA, our State Legislature has made protection of the environment one of New York’s “foremost policy concerns” and an “affirmative obligation” of every governmental agency. [See, E.F.S. Ventures Corp. v. Foster, 71 NY2d 359, 526 NYS2d 56, 62 (1988).]

35. Lead agencies are obliged to comply with both “the letter and spirit of the SEQRA review process,” identifying the relevant areas of environmental concern, taking a “hard look” at them, and making a “reasoned elaboration” of the basis for its determination. [See 6 NYCRR 617.7(a) & (b); also see, NYC Coalition to End Lead

Poisoning v. Vallone, 100 NY2d 337, 347-348, 763 NYS2d 530, 537 (2003); LaDelfa v. Village of Mt. Morris, 213 Ad2d 1024, 625 NYS2d 117, 119 (4th Dept. 1995).]

36. The obligation of a Town of Chautauqua agency to make a determination that a proposed project, such as the Amp project, is consistent with the Chautauqua Lake LWRP policy standards and condition prior to approving the project is an “action” under SEQRA triggering a responsibility to comply with the requirements of SEQRA. [See 6 NYCRR 617.2(b)(1)(iii); 617.3(a).]

37. As stated at Section 617.3(a) of the regulations promulgated under SEQRA:

... A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with...

6 NYCRR 617.3(a).

38. “Physical alteration” is defined in the following manner at 6 NYCRR 617.2(ab) of the SEQRA regulations:

(ab) Physical alteration includes, but is not limited to, the following activities: vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, dumping, filling or depositing, discharges to air or water, excavation or trenching, application of pesticides, herbicides, or other chemicals, application of sewage sludge, dredging, flooding, draining or dewatering, paving, construction of buildings, structures or facilities, and extraction, injection or recharge of resources below ground.

6 NYCRR 617.2(ab).

39. Upon information and belief, respondent Board of Trustees of the Chautauqua Institution, its employees, or agents, have commenced “physical alteration” related to the Amp project at the Chautauqua Institution grounds prior to compliance with the provisions of SEQRA, including, without limitation, the cutting down of mature trees in the vicinity of the Amp and along the route construction vehicles will take during the

demolition and/or construction process; stockpiling materials; and, grading and other forms of earthwork.

40. The demolition and construction activities approved in the permits issued by respondent Code Enforcement Officer on December 31, 2015 would also constitute unlawful “physical alteration” related to the proposed Amp project prior to compliance with the provisions of SEQRA. [6 NYCRR 617.3(a); 617.2(ab).]

41. By approving the demolition and building permits relating to the Amp project without first fully complying with its obligations under SEQRA and the regulations promulgated thereunder, respondents Code Enforcement Officer and/or Town Board have failed to perform a duty enjoined upon them by law, proceeded without or in excess of their jurisdiction, and rendered a determination that is contrary to law, arbitrary and capricious, and/or an abuse of discretion.

42. Our State’s highest court has characterized governmental action made without first complying with SEQRA’s mandates as “void” and “unauthorized”:

... We have insisted, therefore, that the statutory environmental review requirements of SEQRA must be met and have held that if they are not the governmental action is void and, in a real sense, unauthorized (citations omitted).

E.F.S. Ventures Corp. v. Foster, 71 NY2d 359, 526 NYS2d 56, 62 (1988).

43. Petitioners have no adequate remedy at law.

REGARDING PRELIMINARY RELIEF

44. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 43 of this petition, with the same force and effect as if set forth here at length.

45. Petitioner seeks preliminary relief from the Court, in the form of both a temporary restraining order and a preliminary injunction, to maintain the status quo during the pendency of this proceeding.

46. As is addressed in greater detail above, respondent Board of Trustees announced in a January 13, 2016 letter [attached hereto as part of **Exhibit D**] that it intends to “kick off” its pre-season construction plans for the Amp project on February 1, 2016, a mere eleven days from the date of this pleading. As is also addressed in greater detail above, respondent Code Enforcement Officer has issued to respondent Board of Trustees the permits it needs to commence “Phase 1” of the demolition and construction project.

47. Furthermore, as is addressed above, pursuant to 6 NYCRR 617.3(a), "A project sponsor may not commence any physical alteration related to an action until the provisions of SEQRA have been complied with." The SEQRA regulations, at 6 NYCRR § 617.2(ab), define "physical alteration" to include, but not be limited to, vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, excavation or trenching, and construction of buildings, structures or facilities.

48. In light of petitioners’ extensive use of the historic Chautauqua Amphitheater, the undisputed status of the Amp as “*the physical, functional and spiritual heart of the Chautauqua Institution,*” and the proximity of petitioners’ Chautauqua Institution properties to the Amp project site, commencement of the demolition process and reconstruction of the Amp facility during the pendency of this proceeding and prior to full compliance with the requirements of the Town’s Waterfront Consistency Law and SEQRA, will produce severe injury to petitioners’ interests.

49. Upon information and belief, unless a temporary restraining order is granted pending a hearing for a preliminary injunction, petitioner will suffer immediate and irreparable injury.

50. The appellate courts of this State have repeatedly recognized that, “within the purview of CPLR article 63, an ‘irreparable injury’ is one which may not be compensated by an award of money damages.” See, Lawrence H. Morse, Inc. v. Anson, 185 AD2d 505 (3rd Dept. 1992); Fischer v. Deitsch, 168 AD2d 599 (2nd Dept. 1990); cf. Kugler v. Noble, 94 AD2d 954 (4th Dept. 1083) (“This injury is not irreparable, however, for should the plaintiffs prevail on the trial of the action and obtain a permanent injunction, they may also be awarded damages to compensate them for any loss they may have suffered...”).

51. Failure to preserve a “National Treasure” such as the Amp during the pendency of this proceeding would create a loss to petitioners, the Chautauqua community, and the nation that could not be compensated by the award of money damages or construction of a replacement structure.

52. If the requested preliminary relief is not granted, and respondent Board of Trustees proceeds with its plans to demolish the Amp during the pendency of this proceeding, such actions will tend to render judgment herein ineffectual, and will result in irreparable injury to petitioner.

53. For the reasons stated above, it is clear that respondents Code Enforcement Officer and/or Town Board have failed to strictly comply with the procedural and substantive requirements of the Town’s Waterfront Consistency Law and SEQRA, and, therefore, that petitioners have established the likelihood of success.

54. Upon information and belief, the potential harm to petitioners, to the Chautauqua community, and to the environment if the requested preliminary relief is not granted clearly exceeds any potential harm to respondents of granting the temporary restraining order and preliminary injunction.

WHEREFORE, petitioners demand judgment against respondents as follows:

A. Preliminarily enjoining, during the pendency of this proceeding, respondent Board of Trustees of the Chautauqua Institution, its employees, contractors, agents and assigns, from commencing and/or continuing:

(i) the demolition and/or physical alteration of the Chautauqua Amphitheater, or any portion thereof, located on the premises of the Chautauqua Institution in the Town of Chautauqua, State of New York, including, without limitation, the activities approved by the Town of Chautauqua Building Department in Permit Number 2015-0241 (described as “Phase 1, Demolition of Amp, rear of house and site work”) and Permit Number 2015-0242 (described as “Phase I, footers and foundation, drilled piers and caissons & soldier piles at Organ Chamber”); and

(ii) the "physical alteration", as that term is defined at 6 NYCRR 617.2(ab), of the Chautauqua Amphitheater grounds or any portion of the grounds and premises of the Chautauqua Institution in the Town of Chautauqua, State of New York, in furtherance of respondent Board of Trustees’ proposed project to demolish the Chautauqua Amphitheater and to construct of a replacement facility, including, without limitation, vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, excavation or trenching, and construction of buildings, structures or facilities;

B. Annuling and setting aside any and all permits issued by respondent Code Enforcement Officer for the Town of Chautauqua to, or on behalf of, respondent Board of Trustees of the Chautauqua Institution in furtherance of its plans to demolish the Chautauqua Amphitheater and construct a replacement facility, including, without limitation, the following demolition permit and building permit issued on or about December 31, 2015: (1) Permit No. 2015-0241, described as, "Phase 1, Demolition of Amp, rear of house and site work;" and, (2) Permit No. 2015-0242, described as, "Phase 1, footers and foundation, drilled piers and caissons & soldier piles at Organ Chamber."

C. Permanently enjoining respondent Board of Trustees of the Chautauqua Institution its employees, contractors, agents and assigns, from commencing and/or continuing the demolition and/or the "physical alteration", as that term is defined at 6 NYCRR 617.2(ab), of the Chautauqua Amphitheater, or any portion thereof, and/or the "physical alteration", as that term is defined at 6 NYCRR 617.2(ab), of the premises of the Chautauqua Institution in the Town of Chautauqua, State of New York, in furtherance of the proposed project to demolish the Chautauqua Amphitheater and to construct of a replacement facility, unless and until respondents Code Enforcement Officer and Town Board of the Town of Chautauqua fully comply with the letter and spirit of all applicable state and local laws and regulations, including, without limitation, the following: (1) Chapter 141 of the Town Code of the Town of Chautauqua, entitled "Waterfront Consistency," and the Chautauqua Lake Waterfront Revitalization Program; and, (2) The State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder at 6 NYCRR Part 617; and

