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South Oyster Bay Rd. Set for More Destruction:
Statement of Environmental Activist Richard Brummel
on South Oyster Bay Road Court Decision of 10-23-14

I read the decision by Justice R. Bruce Cozzens Jr. in the South Oyster Bay Road matter issued today. I have provided some behind-the-scenes assistance in this case in various ways, and I have followed it closely.

I am both surprised and dismayed that Justice Cozzens took such a textbook case under the State Environmental Quality Review Act (SEQRA) and ruled in a manner diametrically at odds with the language of the law, and the basics of the law's history.

Not surprisingly Justice Cozzens cited no prior court case to support his ruling!

Further he tacitly denied the petitioners the opportunity for either a hearing as they requested on their preliminary injunction, or the chance to respond in writing to the arguments of Nassau and its contractors.

In fact Nassau used numerous documents to argue its case that had been concealed from the petitioners and other interested parties, and which they therefore had no chance to respond to.

Justice Cozzens argued that because the removal of about 200 mature healthy trees along South Oyster Bay Road -- broadly opposed by residents -- is being performed in connection with a highway project, an exemption in the SEQRA environmental-review law for street re-paving is applicable.

But there is no exemption in the law for tree-removals; the only exemption is for "maintenance of existing landscaping or natural growth" (6 NYCRR 617.5 (c)(6)).

The law specifically exempts " repaving of existing highways" but does not add into that exemption other acts.The law, SEQRA, has been said to require "strict construction" by repeated court rulings, meaning that the law means exactly what it says, a point apparently lost on Justice Cozzens and his staff.

In fact the removal of the trees on the road -- which covers Plainview, Syosset and Bethpage -- was said to relate not to the highways at all, but to the sidewalks and "ADA compliance" according to the arguments of Nassau attorney Pablo Fernandez.

In any case the model program adopted by Los Angeles -- and documented at length by the American Public Works Association -- (http://www.apwa.net/Resources/Reporter/Articles/2006/4/Innovative-sidewalk-repair-in-the-City-of-Los-Angeles) demonstrates that whatever the need to repair infrastructure, the urban tree canopy can and should be preserved by enlightened engineers.

Nassau's practices are not only unlawful in ignoring their duties under SEQRA, but also foolish and unnecessarily destructive.

Justice Cozzens' decision is a profound embarrassment to the court.

But it only compounds the farcical nature of this case which ricocheted among four different justices in Nassau in over two days last week because an acting justice -- a county judge -- felt that his secretary's receipt of a laudatory voicemail compromised his impartiality.

Taken in light of Nassau County's recent win in Nassau Supreme Court in the Christopher Morley Park air-stripper case -- also brought by citizens to protect the environment -- there appears a frankly troubling pattern in the Supreme Court in Mineola, one of favoritism, cowardice and lawlessness.

If Acting Justice Brandveen, who earlier recused himself, felt a phone call led to bias, certainly two cocked-up rulings in Nassau County's favor certainly suggest "bias" in a far more convincing manner. Next time it might be appropriate for the entire Nassau court to recuse itself.

I have already registered a complaint with court administrators over the initial handling of this case. I will elevate my concerns at this point. I am urging the petitioners to appeal and have offered assistance.

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