

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

In the Matter of

RICHARD WOLOSZYN, AMANDA SMITH,
RITA FORAN, TINA MAJEWSKI, CARLO
CERVONI, and AMERICAN HORIZONS GROUP, LLC

VERIFIED PETITION

Petitioners,

Index No.:

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

Date Filed:

-against-

VILLAGE OF ENDICOTT, and
BOARD OF TRUSTEES OF THE
VILLAGE OF ENDICOTT,

Respondents.

Petitioners Richard Woloszyn, Amanda Smith, Rita Foran, Tina Majewski, Carlo Cervoni, and American Horizons Group, LLC (collectively, "Petitioners"), by and through their attorneys Braymer Law, PLLC, for their verified petition herein allege as follows:

PRELIMINARY STATEMENT

1. This is an Article 78 proceeding seeking to annul, vacate and set aside the decisions by Respondent Board of Trustees of the Village of Endicott ("Village Board") to issue a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and to amend the Village zoning code to expand the uses allowed in the Village's industrial zoning district to permit waste recycling facilities.

2. At a meeting on May 7, 2020, held online, in the midst of the greatest, worldwide pandemic in 100 years, the Village Board adopted a zoning amendment that applies to all lands in the industrial zoning district in the Village of Endicott.

3. With tremendous public opposition, and a formal protest petition having been submitted to the Village Board, the Village Board adopted the zoning change with a vote of 3 in favor and 2 opposed.

4. The purpose of the zoning amendment was to allow for a specific project to be sited in the Village, in an area known as the Huron Campus, which is classified as an Industrial Zoning District.

5. The specific project for which there are plans to site in the Huron Campus is a proposed battery recycling and incineration facility, proposed by SungEel MCC Americas LLC ("SungEel"), that would process spent lithium-ion rechargeable batteries to extract the metals from the batteries by disassembling the batteries, heating the batteries in a rotary kiln furnace, and shredding and grinding the batteries to powder. The powder is then shipped to a SungEel facility in South Korea for further processing and separation to obtain the metals of interest.

6. In its haste to pass the zoning amendment, the majority of the Village Board pressed forward with the proposal even though the COVID-19 pandemic shut down in-person public meetings.

7. Moreover, the Village Board's haste to pass the proposed zoning amendment resulted in the Village Board failing to satisfy mandatory procedural requirements.

8. Finally, the Village Board failed to undergo the required environmental assessment that should have taken place for a proposal such as this that has the potential to result in significant adverse environmental impacts.

9. Therefore, the amendment to the Village code must be annulled because it was not adopted in accordance with the law.

10. Moreover, the amendment must be annulled because the Village Board failed to comply with SEQRA in its purported environmental review of the proposed zoning amendment.

11. In summary, the Village Board's adoption of the zoning amendment was arbitrary and capricious, irrational, and affected by an error of law.

12. Petitioners are, therefore, entitled to annulment of the Village Board's amendment to the zoning code.

PARTIES

13. Petitioner Richard Woloszyn owns property located at 26 Robble Avenue in the Village of Endicott. Petitioner Woloszyn's property is located in a residential neighborhood directly adjacent to the Industrial Zoning District, and directly adjacent to the site of the proposed SungEel facility. To be clear, there is no distance between the property that Petitioner Woloszyn owns and the adjoining Industrial Zoning District. Petitioner Woloszyn has pre-existing medical conditions and is concerned about his health, and the health of his children who stay with him bi weekends, as a result of the zoning amendment allowing waste recycling facilities to be sited directly adjacent to his home.

14. Petitioner Amanda Smith owns property located at 12 Cornell Avenue in the Village of Endicott. Petitioner Smith's property is located in a residential neighborhood, approximately 176 feet from the Industrial Zoning District, and approximately 176 feet from the site of the proposed SungEel facility. Petitioner Smith is concerned about the health and safety of herself and her three young children who play in the grass, and swim in the pool, in their backyard.

She is concerned about the air emissions from new waste recycling facilities, as well as the risk of fires and explosions from such facilities, including the safety risks from lithium-ion battery recycling. Petitioner Smith is also concerned about the traffic and safety risks associated with heavy trucks coming into the Village with waste materials to be recycled.

15. Petitioner Rita Foran owns property located at 21 Arthur Avenue in the Village of Endicott. Petitioner Foran's property is located in a residential neighborhood approximately 300 feet from the Industrial Zoning District. Petitioner's building has an air ventilation system installed due to the contamination from the former industrial complex at the Huron Campus. See ¶ 20, infra. Petitioner Foran successfully grieved the tax assessment of her property because surrounding home prices were falling. She is concerned that waste recycling facilities in the Industrial Zoning District will cause negative impacts on the neighborhood where her property is located and further devalue her property.

16. Petitioner Tina Majewski owns property located at 106 Harrison Avenue in the Village of Endicott. Petitioner Majewski's property is located in a residential neighborhood approximately 975 feet from the Industrial Zoning District. She is concerned about the impacts of waste recycling facilities on her home.

17. Petitioner Carlo Cervoni owns property located at 701 Franklin Street East in the Village Endicott. Petitioner Cervoni's property is located adjacent to the Industrial Zoning District, and approximately 900 feet from the site of the proposed SungEel facility.

18. Petitioner American Horizons Group, LLC is a domestic corporation with its principal place of business located at 1550 Vestal Parkway East, Vestal, New York 13850. It owns five parcels of property (417 Franklin Street East, 501-503 Franklin Street East, 525 Franklin Street East, 531 Franklin Street East, 105 ½ Sky Island Drive) in the Village of Endicott that are

in close proximity, as close as 60 feet, to the Industrial Zoning District, and it owns property (105 ½ Sky Island Drive) that is approximately 1200 feet from the site of the proposed SungEel facility.

19. Due to the proximity of their properties to the Industrial Zoning District, each of the Petitioners will be uniquely affected by the change to the zoning for the Industrial Zoning District. The zoning amendment allows an increase in the type and intensity of uses that are permitted on the lands within the Industrial Zoning District. As such, the zoning change will bring increased traffic near their homes and properties and in the surrounding streets, increased day-time activity, air emissions, noise, a reduction to property values, and will irreparably alter the character of the neighborhood. Thus, the amendment to the zoning code, allowing recycling facilities to be sited as-of-right in the Village, will greatly impact the use and enjoyment of Petitioners' property, such that they are each entitled to maintain this proceeding to challenge the Village's zoning amendment.

20. Moreover, by their proximity to the site of the proposed battery recycling and incineration facility, Petitioners will be impacted more by the zoning amendment than the general public.

21. Respondent Village of Endicott is a municipality with a place of business located at 1009 East Main Street, Endicott, New York 13760.

22. Respondent Board of Trustees of the Village of Endicott is the municipal body of the Village that adopted the zoning amendment at issue herein, and has a place of business located at 1009 East Main Street, Endicott, New York 13760.

FACTUAL BACKGROUND

23. The Village's Huron Campus was the site of a former industrial complex where chemicals were spilled that contaminated the groundwater with 1,1,1-trichloroethane (TCA), other

industrial solvents, trichloroethene (TCE); tetrachloroethene (PCE), dichloroethane (DCA), dichloroethene (DCE), methylene chloride, vinyl chloride, and freon 113.¹

24. The groundwater contamination served as a source of soil vapor contamination impacting the air quality in buildings above the groundwater contamination plume.

25. Early plans for the SungEel battery recycling facility were announced in late September 2018.

26. No application has been made to the Village for siting the SungEel facility in the Village.

27. However, in late 2018 and in 2019 applications were submitted to the New York State Department of Environmental Conservation for the proposed SungEel facility.

28. In February 2020, the Village Attorney sent a letter to the New York State Department of Environmental Conservation about the environmental and safety concerns relating to the proposed SungEel facility. The Village Attorney's letter also included a note relaying concerns about the proposed project's compliance with the Village's Zoning Code.

29. According to the Village Attorney's letter, there was a "(1) a lack of transparency with respect [to] DEC's review of project impacts, (2) missing and inconsistent information submitted in the Environmental Assessment Form, (3) defects in the SEQR review process, (4) potentially severe environmental and safety impacts of the project, and (5) a complete lack of consideration of the Village Zoning Laws".

30. Further, the "Village is concerned about the potential environmental impacts of the proposed project", including the "various hazardous materials which will enter the air when

¹ Additional information about the site can be found at <https://www.epa.gov/hwcorrectiveactionsites/hazardous-waste-cleanup-ibm-corporation-endicott-new-york>.

burned”. “Once airborne, these materials may pose a threat to the health and safety of Village residents. The recent fire at the Taylor Recycling Facility highlights these concerns” and “concerns of potential battery leaks”.

31. Despite these major concerns, the Village Mayor thereafter proposed an amendment to the Zoning Code that would facilitate the siting of the SungEel facility, and any other recycling facilities, in the Village’s Industrial Zoning District.

32. A public hearing was held, via an online format, on the proposed zoning amendment on May 5, 2020.

33. There were numerous public concerns raised by dozens of people at the public hearing. Nearly every single one of the 56 commenters were against the proposed zoning amendment.

34. The Village Board also received a petition signed by over 2,000 people who were opposed to the zoning amendment.

35. Despite all of these concerns, and all of the public opposition, and without waiting for a complete package to be sent to the County, as required by NYS General Municipal Law, the Village Board pushed forward with a vote on the proposed zoning amendment at the May 7, 2020 meeting. See First Cause of Action, *infra*.

36. The Village Board also failed to send the required notices to all of the local municipalities. See Second Cause of Action, *infra*.

37. Prior to the May 7, 2020 meeting of the Village Board, a protest petition pursuant to NYS Village Law § 7-708 was filed by landowners opposed to the proposed zoning amendment.

38. Without waiting for any analysis about whether the protest petition was sufficient to require a supermajority vote, the majority of the Village Board pushed forward with a vote on the proposed zoning amendment.

39. The Village Board decided to hold off on filing the zoning amendment with the Department of State while an analysis of the protest petition was performed. The analysis of the protest petition was completed in September 2020, and the local law adopting the zoning amendment was filed on or about September 27, 2020.

40. Additionally, although required to do so by its own zoning code, the Village Board did not wait for a report from the Village's Planning Board about the proposed zoning amendment. See Third Cause of Action, *infra*.

41. The zoning amendment also failed to comply with the criteria set forth in the Zoning Code for adopting zoning changes. See Fourth Cause of Action, *infra*.

42. The Village Board proceeded with a perfunctory and inadequate SEQRA review of the proposed zoning amendment, without considering the impacts of the proposed SungEel facility that relies upon the zoning amendment in order to be a permissible use in the Village. See Fifth Cause of Action, *infra*.

43. Ignoring the related long-term consequences of the zoning amendment was an abrogation of Village Board's duty to review the entirety of the impacts of its action, was arbitrary and capricious, and its zoning amendment must be annulled so that a proper review takes place.

44. Finally, the zoning amendment is irrational and constitutes illegal spot zoning for the benefit of a single entity. See Sixth Cause of Action, *infra*.

45. Accordingly, the zoning amendment must be annulled as set forth below.

AS AND FOR A FIRST CAUSE OF ACTION:

**FAILURE TO COMPLY WITH THE NYS GENERAL MUNICIPAL
LAW § 239-m REQUIRES ANNULLMENT OF THE ZONING AMENDMENT**

46. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

47. The zoning amendment must be annulled because the Village Board failed to submit a complete package to the County for its review.

48. When considering a zoning amendment, a local municipality must forward the language of the proposed amendment, and supporting documentation, to the County for its review of the proposal.

49. According to NYS General Municipal Law § 239-m, the referral package to the County must include:

“all materials required by and submitted to the referring body as an application on a proposed action, **including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act**”.

50. The completed environmental assessment form refers to the form that the municipality completes as part of its SEQRA review.

51. The SEQRA Environmental Assessment Form (“EAF”) contains three separate parts that are used to describe the different aspects of the proposal, identify the areas of potential environmental impacts, and analyze the significance of the adverse environmental impacts.

52. Here, the Village sent to the County an incomplete package of materials that did not include the “completed environmental assessment form and all other materials required . . . to make its determination of significance” pursuant to SEQRA. General Municipal Law § 239-m.

53. The County received the language of the proposed amendment, and a draft of Part 1 of the EAF, but it did not receive the completed EAF or the “other materials” that the Village Board used in making its SEQRA determination of significance. General Municipal Law § 239-m.

54. In fact, the County issued its determination on April 16, 2020, prior to the Village Board even completing Part 1 of the EAF.

55. The Village Board did not complete Part 1 of the EAF, regarding the basic aspects of the proposal, until the May 7, 2020 meeting of the Village Board.

56. The Village Board did not complete Parts 2 and 3 of the EAF, regarding the significance of the potential environmental impacts of the proposal, until the May 7, 2020 meeting of the Village Board.

57. Consequently, the County could not have had the completed EAF when it issued its determination back in mid-April.

58. Moreover, at the May 7, 2020 meeting, the Village Board had before it numerous maps, documents, and other correspondence that it relied upon in making its determination of significance pursuant to SEQRA.

59. Those maps, additional documents and correspondence were not sent to the County as part of the GML § 239-m referral package.

60. Without the completed EAF, and without the other materials relied upon by the Village Board, the County did not have a full package of information by which to assess the impacts of the proposed zoning amendment when it conducted its review in April 2020.

61. Since the County did not have the full package of materials from the Village, as required by General Municipal § 239-m, the Village Board's adoption of the zoning amendment failed to comply with the mandatory County referral statute.

62. Additionally, the County's April 16, 2020 report to the Village Board included the following recommendations regarding the proposed local law:

The village should consider adopting supplementary use requirements for recycling facilities that address the following items:

- Special use permit and/or site plan review requirements
- Shredding, smelting, and furnace or incinerator burning
- Disassembling and processing processes
- Compliance with DOT transport guidelines
- Air emissions standards, air pollution control measures and state-of-art standards, and air quality monitoring
- Outdoor storage and stockpiling
- Fire avoidance and suppression systems and emergency plan, including coordination with local and state emergency services, appropriate staff training, and assurances of appropriate emergency services staffing, training and equipment
- Handling and storage facilities
- Hazardous chemical and materials storage, handling, and disposal

63. Since the County made recommendations to amend the local law, the Village Board may "not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof". NYS General Municipal Law § 239-m (5).

64. The Village Board did not adopt any of the supplementary use requirements that were recommended by the County in its April 16, 2020 report to the Village Board.

65. The Village Board simply adopted the zoning amendment allowing recycling facilities as-of-right with no parameters on siting and/or operations whatsoever.

66. As a result of not abiding by the County's recommendations, the Village Board needed a super majority of votes to successfully adopt the zoning amendment.

67. The vote by the Village Board was only a simple majority of the members, so the local law was not successfully adopted in accordance with the “extraordinary vote” provision required by NYS General Municipal Law § 239-m (5).

68. Finally, upon information and belief, the Village failed to file a report of its final action with the County.

69. As such, the Village failed to comply with General Municipal § 239-m (6) in enacting the zoning amendment. See Marcus v. Bd. of Trustees of Vill. of Wesley Hills, 62 A.D.3d 799, 802 (N.Y. App. Div. 2009).

70. Therefore, for all of the reasons set forth in this cause of action, the zoning amendment was arbitrary and capricious, irrational, and affected by an error of law.

71. Accordingly, Petitioners respectfully request that this Court annul the Village Board’s May 7, 2020 zoning amendment.

AS AND FOR A SECOND CAUSE OF ACTION:

**FAILURE TO COMPLY WITH THE NYS VILLAGE LAW § 7-706
REQUIRES ANNULLMENT OF THE ZONING AMENDMENT**

72. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

73. The zoning amendment must be annulled because the Village Board failed to provide the required notice to an adjoining municipality or municipalities.

74. NYS Village Law § 7-706 requires that “written notice of any proposed regulations, restrictions or boundaries of [zoning] districts, including amendments thereto, affecting property within five hundred feet of . . . the boundary of a city, village or town . . . [or] county” must be

sent to the Clerk of such municipality. This requirement “shall be in addition to the requirements” of General Municipal Law § 239. NYS Village Law § 7-706(4).

75. Here, the zoning amendment adopted by the Village Board affected all of the lands within the Industrial Zoning District.

76. Several locations within the Village have the Industrial Zoning District classification.

77. Part of the Industrial Zoning District is located within 500 feet of the boundary of the Town of Union.

78. Upon information and belief, an official written notice of the proposed zoning amendment was not sent to the Town of Union in accordance with NYS Village Law § 7-706.

79. Additionally, one of the locations that is designated as part of the Industrial Zoning District within the Village is located within 500 feet of the boundary of the Town of Vestal.

80. In fact, the boundary of the Town of Vestal adjoins the boundary Village of Endicott (in the middle of the Susquehanna River) near the “Industrial Park” or airport lands, which have the Industrial Zoning District designation.

81. No written notice was given to the Clerk of the Town of Vestal, even though that municipality has property that is located within 500 feet of the Village’s Industrial Zoning District, which is impacted by the zoning amendment.

82. Since the Town of Vestal was not given notice pursuant to NYS Village Law § 7-706, the Village failed to satisfy the legal notice requirements.

83. Therefore, the zoning amendment was arbitrary and capricious, irrational, and affected by an error of law.

84. Accordingly, Petitioners respectfully request that this Court annul the Village Board's May 7, 2020 zoning amendment.

AS AND FOR A THIRD CAUSE OF ACTION:

**FAILURE TO COMPLY WITH THE VILLAGE CODE § 300-61.3
REQUIRES ANNULLMENT OF THE ZONING AMENDMENT**

85. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

86. The zoning amendment must be annulled because the Village Board failed to comply with the procedural requirements of its own Zoning Code.

87. Village Zoning Code § 300-61.3 states that the "Planning Board must review all proposed Zoning Ordinance text amendments and **prepare a report that evaluates the proposed amendment** in light of adopted plans, the relevant provisions of this Zoning Ordinance and the review criteria of 300-61.7".

88. Here, while the Planning Board did have one meeting where the proposed zoning amendment was discussed, the Planning Board prepared no report about the proposal, and it did not evaluate any of the review criteria.

89. Instead, the Planning Board passed a motion electing "not to recommend approval or denial of the local law due to a lack of information". Motion from the April 16, 2020 meeting of the Planning Board.

90. The Village Board rushed forward with adopting the zoning amendment even though its own Planning Board had not given it a report, had not provided its analysis, and had actually stated that it lacked the information that was needed to issue a report about the criteria for adopting a zoning amendment.

91. Accordingly, the Village Board's adoption of the local law amending the zoning code was premature and violated the Village's Zoning Code.

92. Therefore, the zoning amendment was arbitrary and capricious, irrational, and affected by an error of law.

93. Petitioners respectfully request that this Court annul the Village Board's May 7, 2020 zoning amendment.

AS AND FOR A FOURTH CAUSE OF ACTION:

**FAILURE TO COMPLY WITH THE VILLAGE CODE § 300-61.7
REQUIRES ANNULLMENT OF THE ZONING AMENDMENT**

94. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

95. The zoning amendment must be annulled because the zoning amendment failed to comply with the criteria set forth in the Zoning Code for adopting zoning changes.

96. Village Zoning Code § 300-61.7 states that:

In reviewing and making decisions on Zoning Ordinance text amendments, the Code Enforcement Officer, Planning Board and governing body must consider at least the following criteria:

- A. Whether the proposed Zoning Ordinance text amendment corrects an error or inconsistency in the Zoning Ordinance or meets the challenge of a changing condition;
- B. Whether the proposed Zoning Ordinance text amendment is in substantial conformance with the adopted plans and policies of the municipality; and
- C. Whether the proposed Zoning Ordinance text amendment is in the best interests of the municipality as a whole.

97. Pursuant to the Zoning Code that existed prior to this amendment, recycling facilities were not a permitted use anywhere in the Village. See Zoning Code § 300-22.3 (Table 22-2 listing the uses permitted in the Industrial Zoning District).

98. Moreover, “uses not listed . . . are expressly prohibited”. Zoning Code § 300-22.3(C). Therefore, since recycling facilities were not a listed use, they were “expressly prohibited” in the Industrial Zoning District. Zoning Code § 300-22.3(C).

99. According to statements made by the Village Mayor, the local law amending the zoning code was proposed in order to respond to a changing condition: SungEel sought to site its recycling and incineration facility in the Village, and without this amendment the proposed SungEel facility would not be an allowed use within the Village.

100. The zoning amendment purported to make recycling facilities permitted as of right so that the SungEel facility could be sited in the Huron Campus.

101. While that argument may ostensibly satisfy criteria (A) of Zoning Code § 300-61.7, that basis for changing the zoning code has its own problems (see Sixth Cause of Action, *infra*), so it is questionable whether that element is met, and the other two criteria of the Zoning Code have not been satisfied.

102. First, the local law amending the zoning code is not in “substantial conformance” with the Village’s vision for future planning as set out in the of Union’s Comprehensive Plan.

103. The Comprehensive Plan indicates that the Village’s Industrial zones are meant to be for “mixed use” purposes, like commercial office parks.

104. Heavy industrial uses, like waste recycling facilities, are not in accordance with the “mixed use” purposes envisioned by the Comprehensive Plan.

105. In addition, the local law is not “in the best interests of the municipality” because it does nothing to establish safety standards or establish protections for the Village and its residents.

106. In fact, the local law amending the Zoning Code allows recycling facilities to be permitted as of right, without any restrictions or limitations.

107. The local law added recycling facilities under the “P” category of use for “permitted as-of right” rather than the “SP” category of use for uses that “may be allowed if reviewed and approved in accordance with the special permit procedures contained” in the Zoning Code. Zoning Code § 300-22.3(A), (B).

108. Given that the Village has already experienced past pollution from operations at the Huron Campus that polluted the groundwater and soil in the Village, allowing recycling facilities to be unrestricted permitted uses is not in the “in the best interests of the municipality”.

109. Accordingly, the Village Board’s adoption of the local law failed to satisfy the criteria in the Village’s Zoning Code for amending the zoning code.

110. Therefore, the zoning amendment was arbitrary and capricious, irrational, and affected by an error of law.

111. Petitioners respectfully request that this Court annul the Village Board’s May 7, 2020 zoning amendment.

AS AND FOR A FIFTH CAUSE OF ACTION:

**FAILURE TO COMPLY WITH SEQRA REQUIRES
ANNULMENT OF THE ZONING AMENDMENT**

112. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

113. The zoning amendment must be annulled because the Village Board failed to comply with SEQRA when it adopted the zoning changes.

114. The Village properly determined that its action to adopt the zoning amendment was a Type I SEQRA action. See 6 NYCRR § 617.6(a)(2).

115. Pursuant to SEQRA regulations, a Type I action carries with it the presumption that it will have a significant adverse impact on the environment. See 6 NYCRR § 617.

116. To make a fully informed determination of significance, the Village Board must review the full environmental assessment form (“EAF”) Part 1 (Part 1 of the EAF is prepared by the applicant or project sponsor), and prepare Parts 2 and 3 of the EAF.

117. Doing so allows the lead agency to “determine that the action may include the potential for at least one significant adverse environmental impact”, or to “determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant”. 6 NYCRR § 617.7(a). This determination – either a positive declaration or a negative declaration – is known as the “determination of significance”. 6 NYCRR § 617.7(b).

118. When making a determination of significance as to a project’s environmental impacts, the lead agency “must” “consider the action” and “review the EAF” for the entire action. 6 NYCRR § 617.7(b).

119. The EAF “is a document developed specifically for SEQR that provides an organized approach to identifying and assessing the information needed by the lead agency as it makes its determination of significance”. SEQRA Handbook, p. 73 (a copy of the SEQRA Handbook is available at <https://www.dec.ny.gov/permits/6188.html>).

120. Here, the action being undertaken by the Village Board was the zoning amendment for the Industrial Zoning District, and as such the Village Board “must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions”. 6 NYCRR § 617.7(c)(2).

121. The reasonably related long-term and direct impacts of the zoning amendment include the fact that waste recycling facilities, including, but not limited to, the SungEel proposal, would be sited in the Village’s Industrial Zoning District.

122. The Industrial Zoning District encompasses several different locations within the Village.

123. In some locations, including the site of proposed SungEel facility, the Industrial Zoning District is in close proximity to residences, parks, and other areas used for public recreation.

124. Notably, in a February 2020 letter to the New York State Department of Environmental Conservation, the Village Attorney raised questions about the “potentially severe environmental and safety impacts of the project” proposed by SungEel. The Village Attorney referenced the Village’s prior experience suffering from pollution, the history of environmental injustices within the Village, the potential threat to the health and safety of Village residents, and the Village’s Aquifer Protection Law.

125. These concerns about SungEel’s proposed facility, as well as the potential for negative impacts from any future waste recycling facilities, must be addressed by the Village Board in its SEQRA review, prior to the adoption of the zoning amendment permitting waste recycling facilities. The analysis of potential negative impacts, prior to the adoption of a proposed law, underpins the purpose of the SEQRA review process.

126. Nevertheless, the Village Board failed to recognize any impacts whatsoever from the local law on **human health, community character, community plans, aesthetic resources, and historic resources**. The majority of the Board elected to mark “No” for these impacts on Part 2 of the EAF.

127. Claiming that these resources would not be impacted at all by the local law under consideration demonstrates that the Village Board failed in its duty to identify and analyze the relevant potential adverse environmental impacts of the zoning amendment. See 6 NYCRR § 617.7(b).

128. For instance, Part 1 of the EAF indicates that there are parks and historic places that potentially would be negatively impacted by the zoning amendment allowing recycling facilities to be sited in the Village.

129. Given this information regarding the change in the type of uses allowed in the Industrial Zoning District, and the acknowledgement in Part 1 that there could potentially be adverse impacts to community and historic resources (such as parks and historic places), it was arbitrary for the Village Board to state in Part 2 of the EAF that the proposed action would have “No” potential impact on “aesthetic resources” (EAF Part 2 #9), “historic resources” (EAF Part 2 #10) and “community character” (EAF Part 2 # 18).

130. The multiple “No” answers in Part 2 of the EAF, regarding areas of concern where potential impacts had been identified, demonstrate that the Village Board failed to take a “hard look” at the relevant areas of concern.

131. Moreover, there is a specific project being proposed by SungEel. Therefore, the parameters of that potential project are sufficiently known so that the potential adverse

environmental impacts should have been identified and considered by the Village Board in making its determination of significance.

132. “For the purpose of determining whether an action may cause [an environmental impact], the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part; (ii) likely to be undertaken as a result thereof; or (iii) dependent thereon.” 6 NYCRR § 617.7 (c)(2).

133. Accordingly, the Village Board is required to consider the impacts resulting from SungEel’s potential project.

134. Nevertheless, the Village Board refused, and failed, to consider the impacts of SungEel’s project in Part 2 of the EAF in its SEQRA review.

135. The potential impacts of the SungEel project include negative impacts to aesthetics, community character, traffic, noise, lights, groundwater, wildlife and plants, open space resources.

136. The Village Board considered none of the above impacts, and failed to weigh whether any of these impacts from SungEel’s project would result in a significant adverse impact, nor whether these impacts could be mitigated as part of the zoning amendment process.

137. In a confused and preordained process, the majority of the Village Board segmented the review of the battery recycling facility from the review of the proposed zoning amendment. The two proposals are reasonably related actions and were required to be considered in conjunction by the Village Board in its SEQRA review.

138. Accordingly, the Village Board’s negative declaration was arbitrary, capricious and affected by an error of law.

139. The Village Board's attempts to defer its review obligations to the New York State Department of Environmental Conservation is contrary to SEQRA, as both impermissible segmentation of the action, and illegal avoidance of the Village Board's duty to review all reasonably foreseeable impacts at the earliest time possible.

140. The Village Board's refusal to consider the adverse impacts of the zoning amendment demonstrates that the Village Board failed to identify in the EAF the relevant potential adverse environmental impacts of its action.

141. As a result, the Village Board failed to take a "hard look" at the relevant areas of environmental concern prior to issuing its negative declaration on the zoning amendment. See New York City Coalition to End Lead Poisoning, Inc. et al. v. Vallone, 100 N.Y.2d 337, 349 (2003).

142. Therefore, the Village Board's determination must be annulled because it was arbitrary and capricious, an abuse of discretion, and affected by an error of law.

AS AND FOR A SIXTH CAUSE OF ACTION:

**THE VILLAGE BOARD ENGAGED IN SPOT ZONING THAT
REQUIRES ANNULLMENT OF THE ZONING AMENDMENT**

143. Petitioners repeat and reallege each of the preceding allegations as if set forth in full herein.

144. The Village Board's zoning amendment is irrational and constitutes illegal spot zoning for the benefit of a single entity.

145. The Village Board's zoning amendment was pursued hastily and not pursuant to a comprehensive plan; in fact, the zoning amendment is contrary to the Comprehensive Plan. See ¶ 100-103; see also First Cause of Action (failure to adopt the prudent recommendations of the

County); Third Cause of Action (no report by the Planning Board about the suitability of adopting the proposed zoning change); Fourth Cause of Action (failure to meet the criteria for adopting the zoning amendment, including failure to conform to adopted planning documents).

146. The zoning amendment allows for recycling facilities to be sited in the Village without any Planning Board review of the proposal.

147. The zoning amendment was advanced to allow the proposed SungEel facility to be sited in the Village's Huron Campus without any additional safeguards or limitations.

148. SungEel's representatives met in private with the Mayor and others about the proposed recycling facility, and ran an aggressive effort to get support for its proposal.

149. The Mayor made ongoing statements in public about her support for SungEel's proposed facility.

150. Additionally, in 2019, SungEel undertook demolition inside the building that it proposes to use for the recycling facility. Litigation between SungEel and the contractor arose as a result of those demolition activities. See M. Cristo, Inc. v. SungEel MCC Americas, LLC (EF2019-265135).

151. Also, State economic development funds were announced for the proposed SungEel facility.

152. It was clear that the zoning amendment was designed to benefit SungEel singularly; SungEel is the sole beneficiary of the zoning amendment because it is the only entity proposing a waste recycling facility at the time of the passage of the amendment.

153. The Village Board's attempt to circumvent the Planning Board review process, and allow SungEel's proposed expansion to be shoehorned into the Huron Campus by changing the allowed uses in the Industrial Zoning District, is arbitrary and capricious, and should be annulled.

154. The Village Board's determination must be annulled because it was arbitrary and capricious, an abuse of discretion, and affected by an error of law.

155. Moreover, the Village Board's decision to adopt the zoning amendment was tainted by the appearance of impropriety due to the Mayor and other Village Board members' support for the zoning amendment and the SungEel facility.

156. Considering the circumstances surrounding the adoption of this zoning amendment, and

“[i]n light of the . . . substantial controversy surrounding the matter, it was crucial that the public be assured that the decision would be made by [Village] officials completely free to exercise their best judgment of the public interest, without any suggestion of self-interest or partiality. Anything less would undermine the people's confidence in the legitimacy of the proceedings and the integrity of the municipal government.” Zagoreos v. Conklin, 109 A.D.2d 281, 287–88 (2d Dept. 1985).

157. The Village Board's decision to adopt the zoning amendment under these circumstances must be set aside because the vote was affected by a real or perceived conflict of interest.

158. Accordingly, the zoning amendment must be annulled to restore the public's confidence in the Village Board's ability to properly and fairly handle these important matters.

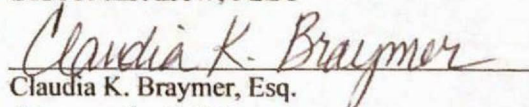
WHEREFORE, Petitioners respectfully request that this Court enter judgment as follows:

1. Annuling, vacating and setting aside the May 7, 2020 SEQRA determination of the Village Board;
2. Annuling, vacating and setting aside the May 7, 2020 determination of the Village Board amending the Zoning Code;
3. Declaring that the Village Board violated the Open Meetings Law, and annulling the Village Board's May 7, 2020 determinations on that basis;
4. Awarding Petitioners costs and attorneys fees pursuant to Public Officers Law § 107;
5. Awarding Petitioners the costs, disbursements, and attorneys' fees incurred in connection with this proceeding; and
6. Awarding Petitioners such other and further relief as this Court shall deem just, proper, or equitable.

Dated: Glens Falls, New York
November 12, 2020

BRAYMER LAW, PLLC

By:



Claudia K. Braymer, Esq.

Attorneys for Petitioners

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Glens Falls, New York 12801

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(518) 882-3252

VERIFICATION

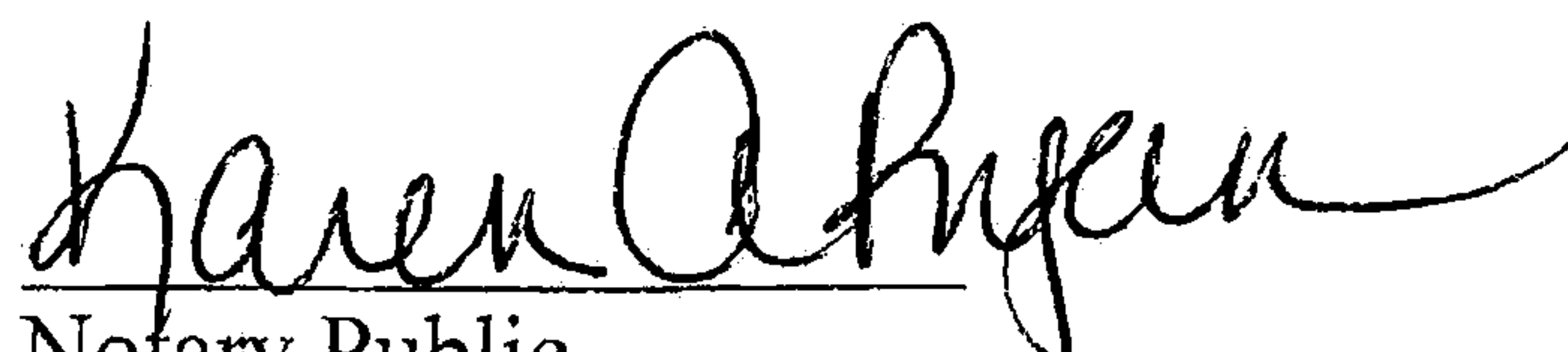
STATE OF NEW YORK)
) ss.:
COUNTY OF BROOME)

Amanda Smith, being duly sworn, deposes and says:

- I am a Petitioner in the above proceeding.
- I have read the foregoing Verified Petition and affirm that the allegations set forth therein are true to my own knowledge, except as to those matters stated to be upon information and belief, and as to those matters, I believe them to be true.


AMANDA SMITH

Sworn to me this 12
day of November, 2020


Notary Public

KAREN A RYAN
Notary Public, State of New York
No: 01RY6120224
Qualified in Broome County
Commission expires December 13, 2020