

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In The Matter Of The Application Of

SENECA MEADOWS, INC.

Petitioner-Plaintiff,

- vs -

TOWN OF SENECA FALLS and
TOWN OF SENECA FALLS TOWN BOARD

Respondents-Defendants,

For a judgment pursuant to Article 78 of the Civil
Practice Laws and Rules and CPLR 3001.

**VERIFIED PETITION/
COMPLAINT**

Index No.

Hon. Daniel J. Doyle

Oral Argument
Requested

Petitioner-Plaintiff Seneca Meadows, Inc. ("SMI"), by its attorneys, Nixon Peabody LLP, alleges as follows upon information and belief for its Article 78 Petition/Complaint against Respondents-Defendants the Town of Seneca Falls (the "Town") and the Town of Seneca Falls Town Board (the "Town Board") herein:

INTRODUCTION

1. This is a combined CPLR Article 78 proceeding and declaratory judgment action challenging Local Law #3 of 2016 entitled "Waste Disposal Law" (the "Local Law").
2. The Town Board adopted the Local Law on December 6, 2016.
3. On February 3, 2017, SMI timely filed a CPLR Article 78 proceeding and declaratory judgment action challenging the Local Law (the "Original Proceeding").
4. On May 5, 2017, while the Original Proceeding was pending, the Town Board adopted Local Law #2 of 2017 repealing the Local Law.

5. Following the Local Law's repeal, SMI no longer had a justiciable controversy upon which to ground the Original Action and, accordingly, filed a voluntary discontinuance without prejudice on June 14, 2017.

6. On June 7, 2017 Waterloo Contractors, Inc., an affiliate of Waterloo Container, filed an Article 78 petition challenging the adoption of Local Law #2 of 2017 repealing the Local Law.

7. On September 13, 2017, Hon. William F. Kocher, Acting Supreme Court Justice, issued a decision stating that Local Law #2 was annulled.

8. On October 16, 2017, Judge Kocher entered an Order implementing his September 13, 2017 decision.

9. Upon information and belief, the Order caused the Local Law to be reinstated.

10. Now, upon SMI suffering a concrete injury as a result of the reenactment of the Local Law, and again having a justiciable controversy, SMI brings this combined CPLR Article 78 proceeding and declaratory judgment action because: (i) the Town Board failed to comply with the State Environmental Quality Review Act ("SEQR") in connection with the Local Law; (ii) the Town Board allowed a biased member of the Town Board to participate in the vote originally adopting the Local Law; and (iii) the Local Law violates SMI's substantive due process rights.

PARTIES

11. SMI is a corporation organized under the laws of the State of New York with offices at 1786 Salcman Road, Waterloo, NY 13165.

12. The Town is a municipal corporation of the State of New York existing by reason of and pursuant to the laws of the State of New York. The Town Board is a town board

organized under the laws of the State of New York with offices at 130 Ovid Street, Seneca Falls, NY 13148.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this combined CPLR Article 78 proceeding and declaratory judgment action pursuant to CPLR 506(b), 7804(b), and 3001.

14. Venue in the County of Seneca is proper pursuant to CPLR 504 and 506(b) because it is the county where the Town and the Town Board are situated, and where the material events of this proceeding took place.

PETITIONER

15. SMI operates a solid waste management facility at property it owns located at 1786 Salcman Road, Waterloo, NY 13165 (the "Facility") within the Town.

16. SMI opposes the Local Law since it jeopardizes the ongoing operation of the Facility.

17. The Local Law includes factual "Findings" that relate directly to SMI's operations and their alleged negative impacts on the Town, including but not limited to, air and water pollution, odors, traffic, noise and dust. These Findings are not factually or scientifically supported or accurate. In addition, the language of the Local Law lacks the necessary clarity to provide assurance that provisions contained therein will not negatively impact SMI prior to the year 2025.

THE LOCAL LAW

18. The concept of a local law regulating solid waste disposal first surfaced at the Town Board's regular April 5, 2016 meeting when attorney Douglas Zamelis, representing Waterloo Container (a neighbor of SMI and an active supporter of opponents of SMI), provided

the Town Board with a draft proposed local law that would ban solid waste management facilities in the Town and restrict existing solid waste management facilities (of which SMI's Facility is the only such facility) despite the existence of a provision of the Town Code that already regulates the operations of solid waste management facilities (Chapter 185. Landfills).

19. The Local Law was first proposed by Town Board member Annette Lutz on May 3, 2016 at a regular Town Board meeting (the "First Draft"). Board member Lutz is a co-owner and employee of Waterloo Container. A copy of the First Draft (then styled "Local Law #7") is attached as Exhibit 1.

20. The Town proposed a public hearing on the First Draft only 35 days after the First Draft was initially made available to the public and SMI.

21. SMI requested an adjournment of the June 7, 2016 public hearing on the First Draft to allow sufficient time for review of the language of the First Draft and for the preparation and submission of comments. A copy of SMI's May 20, 2016 request is attached as Exhibit 2.

22. Having previously postponed the scheduled public hearing, the Town Board at its regular August 2, 2016 meeting voted to reschedule the public hearing to September 28, 2016.

23. By letter dated August 4, 2016, SMI requested that the public hearing be rescheduled until mid-October to give SMI the requisite time to prepare.

24. At its September 14, 2016 Special Meeting, the Town converted the September 28, 2016 public hearing on the First Draft into a public forum.

25. Representatives of SMI appeared at the September 28, 2016 public forum and provided testimony demonstrating that the factual and technical Findings contained in the First Draft were not factually or scientifically supported or accurate.

26. In addition to SMI, other interested parties and residents of the Town communicated their opposition to the First Draft.

A. Public Hearing

27. It was not until a Town Board meeting on November 10, 2016 that the Town Board again discussed the proposed Local Law.

28. At that meeting, Board member Lutz made a motion to schedule a public hearing on the Local Law for November 30, 2016.

29. The version of the Local Law provided to the public after the November 10, 2016 Town Board meeting had been significantly amended from the First Draft considered by the public at the September 28, 2016 public forum. A copy of the Local Law is attached as Exhibit 3.

30. Because of the significant changes made to the First Draft, SMI requested an adjournment of the November 30, 2016 public hearing date (which allowed only twenty-days, including the Thanksgiving holiday) for the public and SMI to review the changes to the Local Law from the First Draft and prepare comments. A copy of SMI's request is attached as Exhibit 4.

31. The Town ignored the request for an adjournment and held the public hearing on November 30, 2016.

32. Representatives of SMI once again appeared and provided testimony challenging the factual and technical Findings of the Local Law. In addition, SMI submitted robust written comments demonstrating that the Findings of the Local Law were not factually or scientifically supported or accurate. Documents supporting SMI's testimony were delivered to the Town

Clerk prior to the public hearing. A copy of SMI's comments on the Local Law and supporting documents is attached as Exhibit 5.

33. In addition to SMI, other interested parties and residents of the Town communicated their opposition to the Local Law.

B. The SEQR "Review"

34. After all public comment had been received, and apparently without having notified any other member of the Town Board of her intent, Board member Lutz produced an Environmental Assessment Form and Negative Declaration.

35. Board member Lutz stated that the Environmental Assessment Form and Negative Declaration had been prepared by Waterloo Container's attorney Mr. Zamelis, not the Town attorney. As noted previously, Board member Lutz is a co-owner and employee of Waterloo Container.

36. It was apparent that the other Town Board members had not only never seen these documents before, but that they were completely unaware of their substantive contents or legal import.

37. After blindsiding not only her fellow Town Board members, but also those in attendance at the public hearing, Board member Lutz proceeded to read the Environmental Assessment Form and instruct the Town Board as to the next steps for undertaking the SEQR review of the Local Law, all the while receiving direction from Waterloo Container's attorney Mr. Zamelis who had moved from the back of the room to a prominent front seat.

38. After reading the Environmental Assessment Form to the remainder of the Town Board, Board member Lutz proceeded to read a resolution adopting a Negative Declaration. It

was obvious that the remainder of the Town Board had never seen or considered the resolution before it was handed to them moments before.

39. Board member Lutz then moved for a vote to adopt the Negative Declaration, despite the fact that not a single member of the Town Board, other than herself, had previously seen or considered the Negative Declaration.

40. The Town Board then voted to adopt the Negative Declaration after having only mere minutes to consider the substantive issues contained therein.

41. In conducting its SEQR review, the Town Board was required to take a “hard look” at the relevant areas of environmental concern prior to adopting the Local Law.

42. However, it is difficult to conceive of how the Town Board could have complied with this key element of SEQR when their alleged “hard look” occurred for no more than ten minutes.

C. Board Member Lutz’s Bias

43. On March 21, 2016, Board member Lutz was appointed to the Town Board.

44. Both before and after Board member Lutz’s appointment, she has displayed actual bias towards SMI by engaging in actions to oppose SMI and its operations.

45. As noted previously, Board member Lutz is a co-owner and employee of Waterloo Container, which is a neighbor of SMI and which has been an active supporter of opponents of SMI.

46. Board member Lutz has personally attended and helped organize various events for the sole purpose of opposing the operations of SMI.

47. Board member Lutz's personal self-interest and opposition to SMI also caused her to retain her company's counsel to advise her on how to proceed in assuring passage of the Local Law, which has the potential to negatively impact SMI's operations.

48. It was Board member Lutz who made a motion to propose the Local Law at a Town Board meeting on November 10, 2016, only two days after Board member Lutz had lost her election to continue as a Town Board member following her initial appointment.

49. It was Board member Lutz, upon information and belief, who had her company's counsel draft the Environmental Assessment Form, Negative Declaration, and resolution.

50. And it was Board member Lutz who precipitated a vote to adopt the Environmental Assessment Form and Negative Declaration at the public hearing for the Local Law without allowing her fellow board members to take the requisite "hard look" at the relevant environmental concerns.

51. SMI provided a letter to the Town outlining its concerns regarding Board member Lutz's bias on December 5, 2016 and requesting that she recuse herself. A copy of SMI's correspondence is attached as Exhibit 6. Despite the uncontroverted facts surrounding Board member Lutz's bias against SMI, the Town Board ignored SMI's request.

52. Board member Lutz openly demonstrates her actual bias towards SMI.

53. At a public hearing during discussions about SMI's operations on August 10, 2017, Ms. Lutz claimed that following a diagnosis of Crohn's Disease in 2005 her doctors told her "that a major factor in this disease is environmental, that is my environment was most likely the cause for my body coming down with Crohn's. And that environment was the dump."

54. Ms. Lutz added that in 2011 she “was hit with another health issue, stage 3 breast cancer. I have endured a double mastectomy, chemotherapy, radiation. Was it sheer luck that I was hit with a double whammy?”

55. Finally, at that same public hearing, Ms. Lutz disparaged SMI and argued that SMI’s operations should be shut down.

56. She passionately urged her fellow citizens to “learn from past disasters such as the Love Canal, the central landfill fire or Flint, Michigan. Shut this nightmare down before something just as, if not more, horrific happens here or will you kowtow to this multibillion dollar company that is not even based in New York State and only cares about how high their mountains and bank accounts can get and doesn’t care about those of us who live here and [are] affected by their greed.”

D. Adoption, Repeal, and Reinstatement of the Local Law

57. The Town Board held its next regularly scheduled meeting on December 6, 2016.

58. At the December 6, 2016 Town Board meeting, the Town Board, including Board member Lutz, voted to adopt the Local Law.

59. On May 5, 2017, the Town Board adopted Local Law #2 of 2017 repealing the Local Law.

60. In repealing the Local Law, the Town Board made several findings, including but not limited to that “[r]escinding the Town of Seneca Falls Waste Disposal Law will not de-regulate solid waste management facility operations within the Town of Seneca Falls. Such facilities within New York State will continue to be strictly monitored and inspected in accordance with applicable state and federal regulations.”

61. The Town Board also found that “[t]hrough the NYSDEC had, and continues to have, primary jurisdiction over the regulation of Solid Waste Management Facilities, Chapter 185 of the Seneca Falls Town Code ensured that the Town remained knowledgeable and had local jurisdiction of the siting and operation of potential and operational landfill sites within its municipal limits. Proposed and active Solid Waste Management Facilities are required to obtain a local permit from the Town Board on an annual basis.”

62. On June 7, 2017 Waterloo Contractors, Inc., an affiliate of Waterloo Container, filed an Article 78 petition challenging the adoption of Local Law #2 of 2017 repealing the Local Law. The petition was prepared and filed by none other than Mr. Zamelis, the author of the Environmental Assessment and Negative Declaration that purportedly supported the adoption of the Local Law.

63. On September 13, 2017, Hon. William F. Kocher, Acting Supreme Court Justice, issued a decision stating that Local Law #2 was annulled. A copy of Judge Kocher’s decision is attached as Exhibit 7.

64. On October 16, 2017, Judge Kocher entered an Order implementing his September 13, 2017 decision.

65. Upon information and belief, the Order caused the Local Law to be reinstated. A copy of Justice Kocher’s Order is attached as Exhibit 8.

PROCEDURAL ISSUES

66. SMI has no further administrative remedy.

67. Pursuant to Rule 3217(a)(1) of the New York Civil Practice Law and Rules, SMI voluntarily discontinued without prejudice a prior application for the relief sought in this

to adequately consider the proposed action, thoroughly analyze relevant areas of environmental concern, and make an adequate "reasoned elaboration," as required by 6 N.Y.C.R.R. § 617.7(b).

75. Upon information and belief, there may be other deficiencies in the SEQR process that will be revealed upon the Town Board's filing of the record of proceedings, such as lack of proper notice, failure to properly designate the lead agency and/or failure to consider one or more significant environmental impacts.

76. Accordingly, the Negative Declaration and review of the Local Law under SEQR were arbitrary and capricious and were approved in violation of SEQR and the SEQR regulations, and therefore the Local Law is illegal because it was not subjected to an adequate environmental review.

77. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

SECOND CAUSE OF ACTION
Bias and/or Conflict of Interest of Ms. Annette Lutz

78. SMI repeats and realleges the allegations set forth in paragraphs 1 through 77 as if fully set forth herein.

79. Prior to the Town Board's votes to adopt the Negative Declaration and the Local Law, Board member Lutz manifested actual bias against SMI and its operations in the Town.

80. Board member Lutz openly demonstrates her actual bias towards SMI in public hearings, in particular by blaming SMI for her health conditions, disparaging SMI, and calling for SMI's operation to be shut down, as previously set forth herein.

81. Board member Lutz's actual bias disqualified her from voting on the Negative Declaration and the Local Law, the adoption of which would have a direct, negative impact on SMI's operations.

82. SMI provided the Town Board with notice of Board member Lutz's bias and requested that she recuse herself from voting, a request that the Town Board ignored.

83. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

THIRD CAUSE OF ACTION
Denial of Substantive Due Process Rights

84. SMI repeats and realleges the allegations set forth in paragraphs 1 through 83 as if fully set forth herein.

85. SMI has a vested property interest to continue its operations in the Town.

86. The Local Law deprives SMI of this property interest by allowing the Town to prevent SMI's operations without legal justification in that the "Findings" and "Purpose" for which it was allegedly passed are not factually or scientifically supported or accurate.

87. The Local Law contains no explanation of the factual bases for the purported "Findings," such as actual studies or evaluations.

88. The record of proceedings will reveal, and SMI's comments on the Local Law highlight, the utter lack of any factual evidence that supports the Local Law's Findings.

89. SMI's comments on the Local Law lay bare the reality that substantial evidence exists that contradicts the Findings, rendering the Local Law arbitrary, capricious and illegal.

90. The Local Law is also impermissibly vague in that it contains provisions related to the potential impact of even minor violations (or alleged violations) of other laws applicable to SMI on SMI's continued ability to operate.

91. The Town utterly failed to recognize SMI's vested property rights in the continued operation of the Facility and to adequately assess the impact of the Local Law on those vested rights.

92. The Town also failed to fully assess the justification for the Findings contained in the Local Law to assess their truth and accuracy and, accordingly, the value of the Local Law in support of a legitimate public purpose.

93. The existing ability of the Town to impose conditions on a solid waste management facility's operation to protect "public health, safety, welfare or the environment" under Town Code Chapter 185 provides the protection needed to address the issues purportedly addressed by the Local Law, particularly those included in the baseless "Findings" and "Purpose" provisions.

94. Accordingly, the adoption of the Local Law constituted a deprivation of SMI's substantive due process rights in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and was arbitrary, capricious and illegal.

95. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

FOURTH CAUSE OF ACTION
Arbitrary, Capricious and/or Illegal Action

96. SMI repeats and realleges the allegations set forth in paragraphs 1 through 95 as if fully set forth herein.

97. Upon information and belief, and/or as may be further determined upon the Town Board's filing of the record of proceedings, the Local Law may otherwise be in violation of other laws, regulations and procedures, including but not limited to additional violations of SMI's constitutional rights, and/or arbitrary and capricious.

WHEREFORE, SMI respectfully requests that the Court grant an Order and Judgment:

- a. Vacating, annulling, and declaring the Local Law null and void as a matter of law;
- b. Awarding SMI its attorneys' fees, costs, and disbursements;

VERIFICATION

STATE OF NEW YORK)

COUNTY OF MONROE)

Scott M. Turner, being duly sworn, deposes and says that he is an attorney for Seneca Meadows, Inc., the Petitioner-Plaintiff herein, with regard to the matters set forth in the Petition-Complaint, that he has read the foregoing Petition-Complaint and knows the contents thereof; and that the same is true to his own personal knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

Scott M. Turner

Sworn to before me this 15th day of
November 2017

Elizabeth A. Smith

Notary Public

ELIZABETH A. SMITH
Notary Public, State of New York
Registration #01SM4866795
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 08/4/2018