

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In the Matter of the Application of:

SENECA MEADOWS, INC.

Petitioner-Plaintiff

v.

TOWN OF SENECA FALLS, TOWN OF SENECA
FALLS TOWN BOARD, DIXIE D. LEMMON AND
CONCERNED CITIZENS OF SENECA COUNTY

Respondents-Defendants

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules and CPLR 3001

AFFIRMATION IN
SUPPORT OF MOTION
TO DISMISS

Index No.: 51652

Hon. Daniel J. Doyle

Douglas H. Zamelis, an attorney in good standing admitted to practice before all courts of the State of New York, hereby affirms the following is true under penalties of perjury:

1. I maintain my office for the practice of law at 7629A State Highway 80, Cooperstown, New York, I am the attorney for Dixie Lemmon and Concerned Citizens of Seneca County, Inc. (“Intervenors”), I am familiar with the facts and circumstances of this matter, and I respectfully submit this affirmation in support of Intervenors’ motion to dismiss this proceeding/action on the grounds that the procedural claims asserted are time-barred, and because the remaining claims are subject to a defense based on documentary evidence and/or fail to state a cause of action.
2. I was first engaged by Concerned Citizens of Seneca County, Inc. (“CCSC”) in 2010 in connection with the grass-roots, citizens group’s efforts to preserve and protect the environment in Seneca County.
3. As counsel to CCSC over the past decade, I have investigated, researched, and become familiar with the facilities, operations, authorizations and approvals of Seneca

Meadows, Inc. (“SMI”) in connection with its solid waste disposal facility in the Town of Seneca Falls (the “Town”) which, according to the New York State Department of Environmental Conservation (“NYSDEC”), is the largest active landfill in the State of New York.

4. Since 2010 I have visited the Town and Waterloo on dozens of occasions for meetings with clients, document reviews, public meetings, and court appearances, and I have experienced first-hand the impacts of waste disposal activities in the Town, particularly the offensive and obnoxious odors, truck traffic, noise and dust.
5. In 2016, CCSC tasked me with identifying potential solutions to the environmental crises resulting from waste disposal activities in the Town.
6. I first researched whether or not the Seneca Falls Town Board (the “Town Board”) could amend the Town of Seneca Falls Code (the “Town Code”) to change the zoning classification of lands currently zoned to allow waste disposal in order to render SMI’s facility a non-conforming use and prevent it from further expanding its waste disposal facilities.
7. I eventually found and read the Court of Appeals’ decision in *Jones v. Town of Carroll*, 15 N.Y.3d 139 (2010) which held that landfills, like mining operations, enjoy special treatment as non-confirming uses and can expand, and I determined that amending the Town Code would provide no relief or resolution to the good people of Seneca County.
8. Upon Shepardizing the Court of Appeals’ decision in *Jones*, I came across the subsequent decision of the Appellate Division, Fourth Department, in *Jones v. Town of Carroll*, 122 A.D.3d 1234 (4th Dept. 2014) where, after its unsuccessful attempt to zone out waste disposal facilities, the Town of Carroll had adopted a town-wide, police

power law prohibiting waste disposal facilities in the town, while allowing existing facilities to continue to accept waste until their current state issued solid waste management facility permits expired.

9. I noted in the Fourth Department's decision in *Jones v. Town of Carroll* that the Court recognized the distinction between zoning laws and police power laws, and that the Court refused to apply estoppel to the Town of Carroll and its town-wide police power law.
10. I further noted that in its 2014 *Jones v. Town of Carroll* decision, the Fourth Department referenced the two-part test for substantive due process claims in the land use context established by the Court of Appeals in *Glacial Aggregates LLC v Town of Yorkshire*, 14 N.Y.3d 127 (2010), *Matter of Raynor v Landmark Chrysler*, 18 N.Y.3d 48 (2011), and *Bower Assocs. v. Town of Pleasant Valley*, 2 N.Y.3d 617 (2004), which test requires that a due process challenger must: 1) establish a vested right; and 2) prove beyond a reasonable doubt that the challenged legislation bears no rational relation to the evil it is intended to address.
11. I didn't consider at the time whether SMI could prove a claim of vested rights, but I recognized that if the Town could adopt a town-wide police power law prohibiting further waste disposal modeled on the Town of Carroll's law, any challenger would have to prove beyond a reasonable doubt that a local law prohibiting waste disposal bore no rational relation to the many adverse impacts from waste disposal being suffered in and around the Town, and which I had personally experienced first-hand.
12. I then contacted Paul V. Webb, Jr., Esq., Town Attorney for the Town of Carroll, to find out whether the Town of Carroll's waste disposal law was still in effect, which he

confirmed, and to obtain a copy of the Town of Carroll's waste disposal law, a copy of which is attached herewith as Exhibit "A".

13. I then prepared a draft waste disposal law modeled closely on the Town of Carroll's waste disposal law, but tailored to the Town of Seneca Falls, and I otherwise borrowed the remainder of the structure and much of the text from the Town of Carroll's waste disposal law, knowing the law had been challenged up to the Appellate Division and was still in effect.
14. The version of the draft waste disposal law I prepared on behalf of CCSC was mis-numbered "Local Law #7 of 2016", and just like the Town of Carroll's waste disposal law, the draft law I prepared allowed waste disposal facilities to continue to operate only through the term of their current permits (see Affirmation of Scott M. Turner, affirmed November 22, 2019, Exh. "1" to Exh. "A").
15. At the Town Board's April 5, 2016 meeting, I passed out copies of the draft waste disposal law I prepared on behalf of CCSC, and explained to the Town Board that it had the authority to consider, and if it found appropriate, adopt the local law or one similar to it.
16. At the Town Board's May 3, 2016 meeting and in accordance with the Municipal Home Rule Law, Town Board Member Annette Lutz formally introduced the draft Seneca Falls waste disposal law.
17. The Town Board resolved to hold a public hearing on the proposed waste disposal law, but adjourned the hearing, upon information and belief, specifically at SMI's request.
18. At its September 16, 2016 meeting, the Town Board received extensive testimony on the proposed waste disposal law from advocates and opponents thereto.

19. Presumably in response to public comments, the Town Board, upon information and belief, forwarded the proposed waste disposal law to its special counsel, Boylan Code LLP, and special counsel amended and revised the proposed waste disposal law to, among other things, properly rename it Local Law #3 of 2016 (“Local Law #3”), and include a provision allowing existing solid waste management facilities in the Town to operate until 2025.
20. Proposed Local Law #3, as amended and revised by special counsel, was discussed at the Town Board’s meeting on November 10, 2016.
21. The Town Board held a duly noticed public hearing on proposed Local Law #3 on November 30, 2016 at which advocates and opponents of the proposed law testified for or against the law, respectively.
22. Following the close of the November 30, 2016 public hearing, the Town Board reviewed, completed and accepted an Environmental Assessment Form for the proposed local law, and a proposed resolution issuing a Negative Declaration under the State Environmental Quality Review Act (“SEQRA”) was read out loud in its entirety by Town Board Member Lutz before being voted on and adopted by the Town Board.
23. As set forth in the accompanying Affidavit of William C. Lutz, at no time during the relevant period did Town Board Member Annette Lutz own any stock in Waterloo Contractors, Inc. d/b/a Waterloo Container Company.
24. Local Law #3 was filed by the New York State Department of State on December 30, 2016, as evidenced by Exhibit “B” attached hereto.
25. At or around this time, I learned that SMI had for years been filing written odor complaints with NYSDEC and the Town, and I obtained pursuant to the Freedom of

Information Law access to thousands of written odor complaint reports from 2014 through 2017 prepared by SMI and filed with NYSDEC.

26. Written odor complaint reports attached herewith as Exhibit “C” confirm that during 2014, 2015, 2016, and even continuing into 2017 after the Town Board had adopted and filed Local Law #3, SMI personnel verified that nuisance odors from its waste disposal facility were regularly and repeatedly impacting local schools, retirement homes, government buildings, churches, businesses, and residences in and around the Town.
27. SMI concedes that on February 3, 2017 it timely filed a CPLR Article 78 proceeding and declaratory judgment action challenging Local Law #3.
28. At SMI’s urging, on May 5, 2017 the Town Board adopted Local Law #2 of 2017 (“Local Law #2”) which repealed Local Law #3.
29. On June 14, 2017, SMI concedes that it voluntarily discontinued its timely lawsuit challenging Local Law #3.
30. By Decision and Order dated September 13, 2017 in *Matter of Waterloo Contrs., Inc. v Town of Seneca Falls Town Bd.*, 2017 N.Y. Misc. LEXIS 3540, 2017 NY Slip Op 31977(U)(Sup. Ct. Seneca Co. 2017), this Court annulled and invalidated Local Law #2 for the Town Board’s failure to comply with SEQRA and take a “hard look” at the adverse environmental impacts from repealing Local Law #3, and ordered the Town Board to prepare a Draft Environmental Impact Statement prior to any reconsideration of repealing Local Law #3.
31. When Waterloo Contractors commenced that proceeding, Annette Lutz was no longer a member of the Town Board.

32. This Court's invalidation of Local Law #2 restored Local Law #3 as the law of the Town, and the restoration of Local Law #3 inflicted no new or different harm or injury on SMI that wasn't previously inflicted by its filing on December 30, 2016.
33. News of this Court's September 13, 2017 Decision and Order invalidating Local Law #2 was published on September 19, 2019 in the Finger Lakes Times as evidenced by Exhibit "D" and as shown at https://www.fltimes.com/news/judge-annuls-local-law-for-seqra-violation/article_2021e34b-aac6-5ab2-83d1-7aad84c98f23.html.
34. During my several visits to NYSDEC Region 8 Headquarters in Avon, NY, and my review of the agency's files on SMI, I observed NYSDEC collects and keeps numerous press articles concerning SMI in its files, including articles from the Finger Lakes Times.
35. On October 31, 2017, several weeks after news of the striking down of Local Law #2 by this Court was published in the Finger Lakes Times, NYSDEC renewed SMI's Part 360 solid waste management facility permit for a term of eight years instead of the ten years SMI had applied for, as evidenced by Exhibit "E".
36. The expiration date of 2025 in SMI's renewed Part 360 solid waste management facility permit coincided with the 2025 date in Local Law #3, as well as the 2007 Host Community Agreement entered into between SMI and the Town, a copy of which is attached as Exhibit "F", which provides that:

Seneca Meadows will not operate a solid waste management facility at the site or within the Town of Seneca Falls or seek vertical or lateral expansion of its Facility to treat, store, dispose or transport solid waste after the year 2025 unless and until a new or amended host community agreement is entered into between the Town and Seneca Meadows.

37. Inasmuch as it is not assured but rather is actually doubtful that SMI will receive approvals from the State of New York or the Town to operate its waste disposal facility beyond 2025, SMI's claim of vested rights is unsupported and unpersuasive.
38. SMI purchased a new index number and new Request for Judicial Intervention when it commenced this second hybrid proceeding on November 16, 2017 as evidenced by the eCourts printout attached herewith as Exhibit "G".
39. SMI's claims in the instant proceeding are virtually identical to those asserted in its timely filed Original Proceeding, and SMI alleges herein no new harm or injury not previously alleged in its Original Proceeding.
40. SMI has not alleged and upon information and belief there is no basis for it to allege any fraud or misrepresentation on the part of the Town or the Town Board.

DATED: January 7, 2020
Springfield Center, NY

/s/
DOUGLAS H. ZAMELIS