

STATE OF NEW YORK
SUPREME COURT MONTGOMERY COUNTY

HEIDELBERG MATERIALS NORTHEAST – NY LLC,

Plaintiff-Petitioner,

-against-

TOWN OF ST. JOHNSVILLE and TOWN BOARD
of the TOWN OF ST. JOHNSVILLE,

Defendants-Respondents.

**VERIFIED PETITION
& COMPLAINT**

Index No. _____

Plaintiff-Petitioner Heidelberg Materials Northeast – NY LLC (“Heidelberg” or “Plaintiff-Petitioner”) by its attorneys Fogel & Brown, P.C., for its Verified Petition and Complaint alleges and states as follows:

PRELIMINARY STATEMENT

1. Plaintiff-Petitioner commences this combined Article 78 and Declaratory Judgment Action against the Town of St. Johnsville (“Town”) and the Town of St. Johnsville Town Board (“Town Board”) seeking to annul Local Law No. 2 of 2024 (“LL 2-2024”) adopted by the Town Board on June 11, 2024, and filed with the New York State Department of State on June 25, 2024, which purports to regulate Plaintiff-Petitioner’s mining operations permitted by the New York State Department of Environmental Conservation (“NYSDEC”) located at 7904 State Route 5 in the Town known as the St. Johnsville Quarry. A copy of LL 2-2024 is annexed hereto and made part hereof as **Exhibit A**.

2. LL 2-2024 is unlawful to the extent that it purports to regulate where mining operations can occur in the Town’s zoning districts without reference to a written, published zoning map denoting the location of the actual zoning districts. The lack of a written, published

zoning map renders LL 2-2024 unconstitutional because it does not provide Plaintiff-Petitioner with sufficient due process and notice to determine whether, and how, its properties in the Town which comprise the St. Johnsville Quarry are regulated by LL 2-2024 because it cannot determine what zoning district(s) its properties are located in.

3. Since all zoning is in derogation of common law and property rights, it is imperative that the Town provide appropriate notice to landowners, including Plaintiff-Petitioner, as to exactly which zoning district(s) a given property is in, so that landowners, including Plaintiff-Petitioner, can understand how LL 2-2024 may apply to the use of their property.

4. Instead of an actual written, published zoning map, the Town purports to rely on a “virtual map” with zoning districts purportedly existing in a “virtual world”. However, a “virtual map” is not legal or enforceable due to its lack of specificity and inability for Plaintiff-Petitioner to decipher what zoning districts its property is located in, and by extension, how the use of its properties may be regulated by the Town Land Use Law and LL 2-2024.

5. On numerous occasions leading up to the enactment of LL 2-2024, Plaintiff-Petitioner brought these issues to the Town’s attention in writing, in conversations with Town Board officials, and in person at Town Board meetings, and requested confirmation as to what zoning district(s) Plaintiff-Petitioner’s property was located within so that it could understand how it may be regulated under LL 2-2024. Plaintiff-Petitioner further urged the Town to develop and publish (on notice to Plaintiff-Petitioner) an actual written, physical zoning map denoting the location of zoning districts *prior to* enacting LL 2-2024.

6. Despite the Town not being able to tell Plaintiff-Petitioner what zoning district(s) its properties were located in, the Town ignored Plaintiff-Petitioner’s requests that the Town develop a written, physical zoning map, prior to enacting LL 2-2024. As such, Plaintiff-Petitioner

is left with no alternative but to commence this litigation since it cannot determine with any reasonable degree of certainty what zoning districts its property is in and, therefore, how it is purportedly regulated under LL 2-2024.

7. In addition to the constitutional infirmities discussed above, by enacting LL 2-2024 the Town Board: (i) completely ignored its procedural and substantive obligations under the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8 (“SEQRA”); (ii) failed to comply with procedural and substantive requirements in the legislative process, including failing to refer LL 2-2024 to the Montgomery County Planning Board as required by New York State General Municipal Law; and (iii) included provisions in LL 2-2024 that are superseded by the New York State Mined Land Reclamation Law, Environmental Conservation Law, Article 23, Title 27 (“MLRL”).

8. As a result, Plaintiff-Petitioner respectfully requests that LL 2-2024 be annulled.

9. Plaintiff-Petitioner also seeks a declaration that it has established nonconforming use rights that allows it to engage in mining at its St. Johnsville Quarry, including all lands being held as the future reserves of the St. Johnsville Quarry, notwithstanding the Town’s enactment of LL 2-2024.

PARTIES

10. Plaintiff-Petitioner Heidelberg Materials Northeast – NY LLC is a duly organized domestic limited liability company registered with the New York State Department of State with a principal office at 4800 Jamesville Road, P.O. Box 513, Jamesville, New York 13078.

11. Defendant-Respondent Town of St. Johnsville is a municipal corporation of the State of New York located in Montgomery County with offices at 7431 State Highway 5, St. Johnsville, New York 13452.

12. Upon information and belief, Defendant-Respondent Town Board of the Town of St. Johnsville, is the legislative body of the Town, formed pursuant to the laws of the State of New York, whose address is 7431 State Highway 5, St. Johnsville, New York 13452.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to New York Civil Practice Law and Rules (“CPLR”) Article 78 and CPLR § 3001.

14. This Court has personal jurisdiction over Defendants-Respondents under CPLR § 301.

15. Venue lies in the Supreme Court, Montgomery County, pursuant to CPLR § 504 and § 506(b) because the actions and determinations complained of took place in the Town of St. Johnsville which is located in Montgomery County.

16. The time within which to commence this action and proceeding has not expired.

17. Plaintiff-Petitioner does not have any other adequate remedy at law.

18. No previous application has been made to any court for the relief requested herein.

BACKGROUND

The St. Johnsville Quarry

19. Since the 1960s, Heidelberg and its predecessors-in-interest have operated a mining operation located at 7904 State Route 5 in the Town known as the St. Johnsville Quarry.

20. The total acreage of the property that comprises the St. Johnsville Quarry, including the location of current operations and adjacent lands being held as future reserves, is 392 acres.

21. The St. Johnsville Quarry is comprised of several contiguous parcels that were acquired over time as they became available for purchase some of which are being held as future reserve lands.

22. The St. Johnsville Quarry operates in accordance with a mining permit issued by NYSDEC pursuant to the MLRL (NYSDEC # 4-2738-00004/00001). A copy of the current NYSDEC mining permit for the St. Johnsville Quarry is attached hereto and made part hereof as **Exhibit B**.

23. The mineral reserves at the St. Johnsville Quarry produce high-quality New York State Department of Transportation (“DOT”) approved aggregate for use in road construction, as well as being used in the hot-mix asphalt plant located at the Quarry that is used to pave roads in the Town and surrounding areas.

24. In order for the St. Johnsville Quarry to continue producing needed construction aggregate materials to meet the needs of its customers, including local towns, villages and counties, New York State and other governmental agencies, it is necessary for it to access mineral reserves on lands that it has held for decades as future reserve lands, which contain the future inventory of the business.

Heidelberg’s Application to Modify its Mining Permit for the St. Johnsville Quarry

25. On or about June 1, 2022, Plaintiff-Petitioner submitted an application to NYSDEC to include approximately 38.5 acres of adjacent lands being held as future reserves in its mining permit to continue mining operations at the St. Johnsville Quarry (the “Modification Application”).

26. Since June 2022 and for the more than two years prior to the enactment of LL 2-2024, the Modification Application has undergone an extensive, comprehensive, and exhaustive review and comment process by NYSDEC staff, including NYSDEC’s mined land reclamation and water use specialists, permitting personnel and environmental analysts.

27. In support of the Modification Application, multiple studies have been conducted by Plaintiff-Petitioner and by consultants engaged by Plaintiff-Petitioner. These studies have been

submitted to NYSDEC as necessary to obtain the modified mining permit from NYSDEC, which includes, but are not limited to, the comprehensive analysis and study of issues relating to groundwater, noise, visual resources, cultural resources and surface water.

28. There has been extensive field work performed to support the Modification Application, including but not limited to drilling additional bedrock monitoring wells, advancing multiple auger holes, land surveying activities, measurement and monitoring of water levels in observation wells, analysis of surface waters, water and soil sampling, wetlands delineations, study of cultural resources, and the comprehensive study of the wildlife, aquatic and terrestrial properties of the site.

29. From the time of the Modification Application on June 1, 2022, and for the more than two years prior to the Town Board's adoption of LL 2-2024, these studies and plans have been made available to the Town in its role as an Involved Agency under SEQRA.

30. Since June 1, 2022, the Modification Application has been the subject of extensive environmental review by NYSDEC and Heidelberg's team of consultants, including geologists, engineers, wildlife experts, wetland experts and archeologists.

31. Between June 1, 2022, and prior to passage of LL 2-2024, NYSDEC has required numerous studies, reports, sampling, testing and analysis as part of its review of the Modification Application.

32. The reports and studies submitted to NYSDEC as part of the Modification Application include, among others:

- a. A comprehensive Mined Land Use Plan consisting of both a narrative and graphic description of the mining and reclamation of the property in accordance with the MLRL and its implementing regulations set forth in 6 NYCRR Parts 420-422, which describes the existing conditions at and in the vicinity of the St. Johnsville Quarry, how the

- mineral reserves will be mined, how potential environmental impacts will be avoided or mitigated and how the mined area will be reclaimed;
- b. Noise Impact Assessment Studies to examine any potential noise impacts from mining operations at the St. Johnsville Quarry, which included measurement of existing, pre-mining ambient sound levels, measurement of mining equipment planned to be used at the mine, assessment of sound levels expected at nearby receptors, assessment of truck traffic on the proposed entrance road and design and assessment of mitigation measures to avoid or mitigate potential noise impacts;
 - c. Visual Analysis to examine any potential visual impacts from mining operations;
 - d. Wetlands, Wildlife and Vegetation Study that identifies the types of plants and animals and types of cover types and ecosystems at and in the vicinity of the property and assesses the potential impact to rare, threatened and endangered species;
 - e. Wetlands delineation and approved wetlands delineation maps of both State and Federal wetlands on the property;
 - f. Soil and water analyses;
 - g. Hydrogeologic Study, including drilling additional bedrock wells, using monitoring well data collection for several years, which identified the existing groundwater and surface features, users and elevations, assessed potential impacts to water quality and quantity and concluded the mine as designed will not have adverse impacts to the groundwater;
 - h. Stormwater Pollution Prevention Plan ("SWPPP") that identifies, mitigates and avoids all potential impacts to surface water;
 - i. Traffic Study and entrance road sight distance evaluation, which assessed potential impacts of mine traffic on the nearby roads and intersections;
 - j. Full Environmental Assessment Form;
 - k. Mining Permit Application;
 - l. Cultural Resources Surveys that assessed the potential impact to any cultural and historical resources at and in the vicinity of the property;
 - m. Archeological Investigation;
 - n. Numerous letters, reports and maps prepared by Heidelberg's consultants and submitted to NYSDEC; and,
 - o. Edited and updated versions of the above as required by NYSDEC.

33. The NYSDEC process for the Modification Application has been ongoing since June 1, 2022, more than two years prior to the enactment of LL 2-2024 and continues to the present.

The Town's Adoption of LL 2-2024

34. Upon information and belief, after a small vocal minority of residents of the Town learned of Plaintiff-Petitioner's Modification Application and upon the suggestion and urging of the NYSDEC, the Town began to consider amendments to the Town Land Use Law to target

Plaintiff-Petitioner's mining operations at its St. Johnsville Quarry, and in particular, the future reserve lands included in the Modification Application. A copy of the Town's Land Use Law is annexed hereto and made part hereof as **Exhibit C**.

35. Upon learning of the Town's intention to enact a local law purporting to regulate mining operations in the Town, Plaintiff-Petitioner engaged in discussions with the Town to ensure that any such law recognize the historical rights secured by Plaintiff-Petitioner to engage in mining operations at the St. Johnsville Quarry, including its future reserve lands, and that any such law comply with the requirements of the MLRL. Plaintiff-Petitioner also urged the Town to enact an actual written, physical zoning map *prior to* enacting any such mining law because it was impossible based on the Town's current "virtual zoning map" to know which zoning district(s) its properties were located in and, therefore, how it would be regulated under any such mining law enactment.

36. During the Town Board's public comment period held prior to its enactment of LL 2-2024, Plaintiff-Petitioner, through its attorneys Fogel & Brown, P.C., submitted written comments on the proposed mining law, noting: (1) that any such mining law should not be enacted until the Town adopts a written, physical zoning map so that Plaintiff-Petitioner could determine with certainty what provisions of the mining law applied to them; (2) that the draft law did not properly recognize the full extent of Plaintiff-Petitioner's preexisting nonconforming use rights at the St. Johnsville Quarry; and (3) that certain provisions of the law were superseded by the MLRL. Copies of the letters submitted to the Town Board by Plaintiff-Petitioner's counsel are attached hereto and made part here of as **Exhibit D**.

37. While the Town Board did make certain technical changes to the draft law to address certain of Plaintiff-Petitioner's comments, ultimately the changes did not address the

fundamental, constitutional problems associated with the proposed mining law raised in Plaintiff-Petitioner's comment letters.

38. Despite the continued objections of Plaintiff-Petitioner to the proposed mining law, and its many attempts to collaborate with the Town, on June 11, 2024, the Town Board voted to adopt LL 2-2024. LL 2-2024 purportedly became effective upon its filing with the New York State Department of State on June 25, 2024.

AS AND FOR A FIRST CAUSE OF ACTION

Unlawful, Unconstitutional Zoning

(Declaratory Judgment)

39. Plaintiff-Petitioner repeats and realleges the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

40. LL 2-2024 purports to regulate mining in the Town based on what zoning district(s) properties are located in. However, there is no written, published Town zoning map which can be reviewed to confirm what zoning district(s) any property, such as that owned by Plaintiff-Petitioner, is actually located in.

41. LL 2-2024 is unlawful to the extent that it purports to regulate where mining operations can occur in the Town without reference to a written, published zoning map which renders the law unconstitutionally vague and does not provide property owners, such as Plaintiff-Petitioner, with sufficient due process and notice to determine how their properties are regulated by LL 2-2024.

42. Since all zoning is in derogation of common law and property rights, it is imperative and a constitutional requirement, that the Town provide appropriate notice to landowners, including Plaintiff-Petitioner, as to exactly which zoning district(s) a given property is in, so that

landowners, including Plaintiff-Petitioner can understand how LL 2-2024 will apply to the use of their property.

43. Instead of an actual written, published zoning map, the Town purports to rely on a “virtual map” with zoning districts purportedly existing in a “virtual world”. However, a “virtual map” is not legal or enforceable due to its lack of specificity and inability for Plaintiff-Petitioner to decipher what zoning district(s) its property is located in. Therefore, Plaintiff-Petitioner cannot determine with any degree of certainty how LL 2-2024 applies.

44. On numerous occasions leading up to the enactment of LL 2-2024, Plaintiff-Petitioner brought this issue to the Town’s attention and requested confirmation as to what zoning district Plaintiff-Petitioner’s property was located within so that it could understand how it may be regulated under LL 2-2024 and further urged the Town to develop and publish (on notice to Plaintiff-Petitioner) *prior to* enacting LL 2-2024. These requests were ignored by the Town.

45. The Town itself has admitted that it is not able to tell Plaintiff-Petitioner what zoning district(s) its properties were located in based on the “virtual map.” Despite that fact, the Town ignored Plaintiff-Petitioner’s requests *prior to* enacting LL 2-2024.

46. As such, Plaintiff-Petitioner is left with no alternative but to commence this litigation since it cannot determine with any reasonable degree of certainty what zoning district(s) its property is in, and, therefore how its operations will be regulated by LL 2-2024.

47. For the aforesaid reasons, LL 2-2024 should be annulled.

AS AND FOR A SECOND CAUSE OF ACTION*Plaintiff-Petitioner Has Established a Non-Conforming Use on the Property*

(Declaratory Judgment)

48. Plaintiff-Petitioner repeats and realleges the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

49. The St. Johnsville Quarry has been in existence since the 1960s and has continuously engaged in substantial quarrying operations since that time.

50. The total acreage of the property that comprises the St. Johnsville Quarry, including the location of current operations and lands being held for future reserves, is 392 acres.

51. The Quarry is comprised of several contiguous parcels that were acquired over time as they became available for purchase. The Quarry is operated in accordance with a mining permit issued by NYSDEC pursuant to the MLRL (DEC # 4-2738-00004/00001).

52. Plaintiff-Petitioner acquired the property that comprises the St. Johnsville Quarry solely for the purposes of mining and the St. Johnsville Quarry has never been dedicated to any use other than mining during its ownership.

53. As mining operations have continued at the St. Johnsville Quarry and mineral reserves are gradually depleted, operations move into adjacent, un-mined reserves, to be able to continue supplying the region with construction aggregate.

54. As opposed to other uses in which the land is merely incidental to the activities conducted upon it, mining is a consumptive use that contemplates the excavation and sale of the corpus of the land itself over time as an asset and resource for projects such as nearby construction and road maintenance.

55. Overt manifestation of intent to use the property for the purpose of mining is what is required to establish a mining operation as a pre-existing nonconforming use under New York State law.

56. Overt manifestation of intent is shown through the usual indicia of mining, including but not limited to core drillings and testing, development of monitoring wells, preparation of maps and plans such as the mined land use plan and application to NYSDEC for an MLRL permit.

57. Plaintiff-Petitioner has overtly manifested its intent to mine the property that comprises the St. Johnsville Quarry prior to the passage and effective date of LL 2-2024.

58. On or about June 1, 2022, Plaintiff-Petitioner submitted the Modification Application to NYSDEC required pursuant to the MLRL to include approximately 38.5 acres of reserve lands in its mining permit to continue mining operations at the St. Johnsville Quarry.

59. Since June 1, 2022, and for the more than two years prior to the enactment of LL 2-2024, the Modification Application has undergone an extensive comprehensive review by NYSDEC staff, including NYSDEC's mined land reclamation specialists and environmental analysts. Multiple studies have been conducted at the property by consultants engaged by Plaintiff-Petitioner and submitted to DEC as necessary to obtain the modified mining permit from NYSDEC, which includes, but is not limited to, the comprehensive analysis and study of issues relating to groundwater, noise, visual resources, cultural resources and surface water.

60. There has been extensive field work conducted as part of the Modification Application, including but not limited to drilling bedrock wells, advancing of multiple auger holes, surveying area private water wells, measurement and monitoring of water levels in observation

wells, water and soil sampling, wetlands delineations, comprehensive study of the wildlife, aquatic and terrestrial properties of the site.

61. From the time of the Modification Application on June 1, 2022, through the passage of LL 2-2024, these studies and plans have been made available to the Town in its role as an Involved Agency under SEQRA.

62. Plaintiff-Petitioner has overtly manifested its intent to mine the St. Johnsville Quarry to the Town so under New York law a pre-existing nonconforming mining use has been established on the lands that comprise the St. Johnsville Quarry, including the reserve lands included in the Modification Application, prior to LL 2-2024.

63. For the aforesaid reasons, Plaintiff-Petitioner seeks a declaration that it has the right to mine the properties that comprise the St. Johnsville Quarry, including, but not limited to, the future reserve lands included in the Modification Application, as a pre-existing nonconforming use notwithstanding the Town's enactment of LL 2-2024 and any subsequently enacted prohibitory zoning law or amendment.

AS AND FOR A THIRD CAUSE OF ACTION

Failure to Comply with General Municipal Law ("GML") §§ 239-l and 239-m
(Declaratory Judgment)

64. Plaintiff-Petitioner repeats and realleges the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

65. GML § 239-m requires that any town located in a county that has a county planning agency refer a full statement of any proposed adoption or amendment of a zoning ordinance, local law or comprehensive plan to the county planning agency before taking final action on the

proposal, including amendments applying to property within five hundred (500) feet of the boundary of a town or village.

66. GML § 239-m(1)(c) requires that the full statement include a completed environmental assessment form (“EAF”), and all other materials required by the referring body in order to make its determination of significance pursuant to SEQRA and its implementing regulations.

67. The Town is in Montgomery County which has a county planning agency, known as the Montgomery County Planning Board (“Montgomery County Planning”).

68. The property affected by LL 2-2024, which purports to regulate mining throughout the entire Town, necessarily is within five hundred (500) feet of the boundary of other towns and villages.

69. Pursuant to GML § 239-m, the Town Board was required to refer a full statement of LL 2-2024 to Montgomery County Planning before adoption.

70. Upon information and belief, the Town Board did not refer a full statement of LL 2-2024, or any proposed amendments thereto, to Montgomery County Planning before adoption.

71. Additionally, GML § 239-m(6) requires that within thirty (30) days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council.

72. Upon information and belief, the Town Board did not file a report of the final action as to LL 2-2024 with Montgomery County Planning within the required thirty (30) days and, therefore, did not comply with GML § 239-m(6).

73. For the aforesaid reasons, LL 2-2024 is invalid, adopted in violation of lawful procedure, unlawful, void, arbitrary and capricious and *ultra vires*.

AS AND FOR A FOURTH CAUSE OF ACTION*Violations of SEQRA*

(Article 78)

74. Plaintiff-Petitioner repeats and realleges the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

75. Defendants-Respondents were required to, but failed to, comply with SEQRA (ECL Article 8) and its implementing regulations (6 NYCRR Part 617) in the process of adopting LL 2-2024.

76. SEQRA's procedural requirements mandate strict compliance, and anything less will result in annulment of an agency's determination. Literal compliance with the letter and spirit of SEQRA is required and substantial compliance will not suffice.

77. SEQRA requires an agency such as Defendants-Respondents in determining the significance of an action to carefully consider the criteria in the SEQRA implementing regulation 6 NYCRR § 617.7.

78. Zoning law enactments such as LL 2-2024 are actions as defined in SEQRA.

79. Under SEQRA, Defendants-Respondents were required to identify relevant areas of concern, thoroughly analyze those concerns, take a "hard look" and then fully document its findings and a reasoned elaboration for the action prior to enacting LL 2-2024.

80. Defendants-Respondents failed to comply with SEQRA and the implementing regulations prior to enacting LL 2-2024.

81. Defendants-Respondents have not identified the relevant areas of environmental concern, have not thoroughly analyzed the concerns, have not taken the "hard look" required by SEQRA and have failed to provide a reasoned elaboration for their determinations.

82. Upon information and belief, Defendants-Respondents completely failed to conduct any SEQRA review at all prior to enacting LL 2-2024.

83. Pursuant to SEQRA, 6 NYCRR § 617.3, the lead agency must make every reasonable effort to involve other agencies and the public in the SEQRA process.

84. Pursuant to SEQRA, 6 NYCRR § 617.6, for all Type I actions involving more than one agency, a lead agency must be established prior to a determination of significance.

85. Pursuant to SEQRA, 6 NYCRR § 617.6, when an agency proposes to directly undertake or approve a Type I action undergoing coordinated review with other involved agencies, it must, as soon as possible, transmit Part 1 of the EAF completed by the project sponsor, or a draft EIS and a copy of any application it has received to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date the EAF or draft EIS was transmitted to them.

86. Pursuant to SEQRA, 6 NYCRR § 617.4, the adoption of changes in the allowable uses within any zoning district affecting 25 acres or more of a district are Type I actions and carry with them a presumption that they are more likely to have significant adverse environmental impacts and require the preparation of an environmental impact statement (“EIS”).

87. SEQRA requires an agency in determining the significance of an action to carefully consider the criteria in 6 NYCRR § 617.7. SEQRA requires that the lead agency act upon and choose among alternatives that seek to minimize adverse impacts upon not only the natural environment, but also the socio-economic environment to the maximum extent practicable.

88. The lead agency must take a “hard look” at all the factors in 6 NYCRR Part 617. The Town Board, as lead agency, must identify relevant areas of concern, thoroughly analyze those

concerns, and then fully document their findings and a reasoned elaboration for the actions in a positive or negative declaration of impacts from their actions.

89. The Town Board in adopting LL 2-2024 did not comply with the substantive and procedural requirements of SEQRA.

90. The adoption of LL 2-2024 is a Type I action under SEQRA since it involves the adoption of changes in the allowable uses within a zoning district affecting 25 acres or more of the district, and as such, there is a presumption that it requires an EIS.

91. Defendants-Respondents did not prepare an EIS for the Type I action of adopting LL 2-2024.

92. Furthermore, upon information and belief, Defendants-Respondents failed to make every reasonable effort to involve other agencies and the public.

93. Upon information and belief, Defendants-Respondents failed to include the public, other agencies or other appropriate entities or government bodies in the SEQRA process, to identify agencies or government bodies that should have been involved or to properly conduct a coordinated review.

94. Pursuant to SEQRA, 6 NYCRR § 617.12, a Type I negative declaration, conditioned negative declaration, positive declaration, notice of completion of an EIS, EIS notice of hearing and findings must be filed with: (i) the chief executive officer of the political subdivision in which the action will be principally located; (ii) the lead agency; (iii) all involved agencies; and (iv) any person who has requested a copy. A copy, in electronic or printed format, of the EIS must be sent to the DEC, Division of Environmental Permits, 625 Broadway, Albany, NY 12233-1750. A notice of hearing must be published, at least 14 days in advance of the hearing dates, in a newspaper of general circulation in the area of the potential impacts of the action. Notice of a

negative declaration must be incorporated once into any other subsequent notice required by law. Printed filings and public notices shall clearly indicate the address of the website at which such filings are posted.

95. Upon information and belief, Defendants-Respondents have not complied with all of the aforesaid requirements of SEQRA prior to enacting LL 2-2024.

96. Based on all the foregoing, LL 2-2024 should be annulled and should be declared in violation of SEQRA, invalid, void *ab initio*, irrational, unlawful, arbitrary and capricious and *ultra vires*.

AS AND FOR A FIFTH CAUSE OF ACTION

MLRL Preemption

97. Plaintiff-Petitioner repeats and realleges the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

98. Environmental Conservation Law, Article 23, Title 27 codifies the State Mined Land Reclamation Law (“MLRL”).

99. Pursuant to ECL § 23-2703(2), the State has superseded local laws regulating mining operations under the MLRL, with very limited exceptions.

100. Sections II.C (C)(2) of LL 2-2024, attempts to regulate mining operations regulated under the MLRL.

101. Specifically, Sections II.C(2)(A), II.C(2)(b), II.C(2)(d) and II.C(2)(e) of LL 2-2024, purport to regulate blasting activities, setbacks, operation of machinery or equipment used in mining operators, fencing and signage, and hours of operation, which regulate the specifics of mining operations regulated under the MLRL.

102. LL 2-2024 is therefore illegal and preempted by the MLRL and null and void.

PRAYER FOR RELIEF

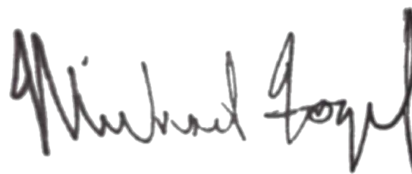
WHEREFORE, Plaintiff-Petitioner respectfully requests an order and judgment of this Court:

A. With respect to the First, Third, Fourth and Fifth Cause of Actions, annulling LL 2-2024;

B. With respect to the Second Cause of Action, declaring Plaintiff-Petitioner has the right to mine the St. Johnsville Quarry, including its future reserve lands, as a pre-existing nonconforming use under LL 2-2024 and any subsequently enacted prohibitory zoning law or amendment; and,

C. Granting Plaintiff-Petitioner such other and further relief as the Court deems just and proper.

Dated: October 4, 2024
Syracuse, New York



Michael A. Fogel, Esq.
FOGEL & BROWN, P.C.
Attorney for Plaintiff-Petitioner
120 Madison Street, Suite 1620
Syracuse, New York 13202
Tel: (315) 399-4343

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF PHILADELPHIA)

David Cassalene

Lia R. Beslanovits
Notary Public

