STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In the Matter of the Application of
SENECA MEADOWS, INC.,

Petitioner-Plaintiff,

DECISION, ORDER and JUDGMENT

vs

TOWN OF SENECA FALLS,
TOWN OF SENECA FALLS TOWN BOARD,
CONCERNED CITIZENS OF SENECA COUNTY, INC.,
and DIXIE C. LEMMON,

Index # 51652

Respondents-Defendants,

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

<u>Appearances:</u>

Scott M. Turner, Esq., Richard A. McGuirk, Esq., Amy L. Reichart, Esq., Eric M. Ferrante, Esq., NIXON PEABODY, LLP, for Petitioner-Plaintiff
David K. Hou, Esq., Boylan Code, LLP, for Respondents-Defendants Town of Seneca Falls and Town of Seneca Falls Town Board
Douglas H. Zamelis, Esq., The Law Office of Douglas H. Zamelis, for Respondents-Defendants Concerned Citizens of Seneca County, Inc., and Dixie C. Lemmon

Daniel J. Doyle, J.,

In this Article 78/ declaratory judgment proceeding Petitioner-Plaintiff Seneca Meadows, Inc. (hereinafter "SMI"), operator of a solid waste management facility within the Town of Seneca Falls, seeks to invalidate a local law adopted by

Respondent-Defendant Town of Seneca Falls Town Board (hereinafter "Town Board") on December 6, 2016, which would, in sum and substance, require SMI to close its facility on a future date.

The existence of the landfill, its benefits and its disadvantages, have been debated in the Town of Seneca Falls for a number of years. In 2016 the Town Board considered the local law at issue herein, and pursuant to its obligations under the relevant environmental regulations, was required to assess the environmental impacts of the local law, i.e., closing the landfill.

The average citizen would likely believe that any such assessment would be quickly done, and believe the obvious result of closing a landfill would be positive benefits in the community (from an environmental perspective). However, the relevant laws and regulations required the Town Board to take a "hard look" to determine all possible environmental impacts, and an assessment as to "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".[1] Here, that assessment was not done by the Town Board as it failed to take a hard look at possible environmental issues

[1] 6 NYCRR 617.7(c)(2).

from closure of the landfill (such as the environmental impact of where the Town of Seneca Falls, and the surrounding communities, will send their garbage), and instead determined, without reasoned elaboration, that the local law would not have any significant, adverse environmental impacts.

SMI has moved for summary judgment on the 1st cause of action contained in their Petition- Complaint which alleged that the Town Board failed to comply with SEQRA (ECL §§ 8-101 *et seq.*; 6 NYCRR § 617 *et. seq.*) in failing to take this "hard look" and in adopting the local law. For the reasons that follow, the motion is GRANTED.

Relevant Facts

SMI operates a waste disposal facility in Seneca County and has commenced this combined Article 78 and plenary action seeking to challenge Seneca Falls Local Law #3 of 2016 ("Local Law #3"), which, among other things, prohibits waste disposal facilities in the Town of Seneca Falls and permits existing waste disposal facilities in the Town of Seneca Falls to continue to operate until December 31, 2025. The Town of Seneca Falls enacted Local Law #3 in December 2016, and it was filed with the Department of State on December 30, 2016.[2] SMI now moves for partial summary

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[2] Subsequent to the passage of Local Law #3 of 2016, the Town of Seneca Falls Town Board enacted Local Law No. 2 of 2017 which rescinded Local Law # 3 of 2016. On October 16, 2017, Justice William F. Kocher invalidated Local Law No. 2 of 2017.

judgment[3], arguing: (1) the Town Board failed to take the requisite "hard look" at the environmental impacts of the local law prior to adopting the Negative Declaration, and (2) as the Negative Declaration was drafted by an "interested party" it must be declared null and void, and thus the local law is invalid.

Passage of the Local Law

The idea for a local law limiting SMI's use of their landfill was initially proposed by Douglas Zamelis, counsel for Waterloo Containers (a local business adjacent to the landfill) and Respondent-Defendant Concerned Citizens of Seneca County, Inc., at the April 5, 2016 Seneca Falls Town Board Meeting.[4] At the May 3, 2016 Town Board Meeting Mr. Zamelis again urged the Town Board to consider proposing the local law to ban landfills. Town Board Member Annette Lutz then

[3] SMI moves for summary judgment on its first cause of action- that the Town Board failed to comply with the requirements of SEQRA. The Court rejects Respondent-Defendant Concerned Citizens of Seneca County, Inc.'s argument that the Court cannot grant a summary judgment motion as to first cause of action in the Petition. CPLR Rule 409 states "[t]he court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment." Here, the parties stipulated that the factual record was complete and that the "parties will not submit any further proofs". (*See* Stipulation and Order dated February, 2023 at ¶ 4.) As the record is complete, and SMI has moved for summary judgment on its underlying action, summary judgment is appropriate. (*Parker v. Town of Alexandria*, 138 AD3d 1467 [4th Dept. 2016].)

[4] April 5, 2016 Seneca Falls Town Board Minutes.

introduced a local law which would impact the landfill, and a public hearing was scheduled for June 7, 2016.[5]

The public hearing was rescheduled to September 28, 2016.[6] After the public hearing, the proposed local law was modified and on November 10, 2016, Town Board Member Lutz introduced the revised local law. The proposed local law was denominated "Local Law #3- 2016" (the local law at issue herein) and a public hearing was scheduled for November 30, 2016.[7]

On November 30, 2016, the public hearing was conducted. Thirty-four (34) speakers made comments in favor of, or against, the proposed local law.[8] The first speaker was Supervisor Gregory Lazzaro (who normally chaired the Town Board) who stated he would not be participating. After his comments, he left the hearing

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[5] May 3, 2016 Seneca Falls Town Board Minutes.
[6] See Verified Petition/ Complaint at ¶ 22; Respondent-Defendant Town of Seneca Falls Answer at ¶ 22.
[7] November 10, 2016 Senecan Falls Town Board Minutes.
[8] In a Decision and Order dated November 14, 2022, the Court held that as the Minutes from the November 30, 2016 Town Board Meeting were insufficient to determine what occurred when the Town Board Members considered the Environmental Assessment Form and Negative Declaration, an evidentiary hearing would be conducted. Thereafter, in lieu of a hearing, the parties stipulated to expand the record to include video recordings of the proceedings. The recordings for the November 30, 2016 meetings are here:
Part I: www.youtube.com/watch?v=qaGtxkm_Sio
Part II: www.youtube.com/watch?v=7DVAeeVfhi8
The recording from the December 6, 2016 Seneca Falls Town Board meeting is here: www.youtube.com/watch?v=17pMF7KY2Is

room.[9] At the conclusion of the public hearing, Patrick Morrell, the Attorney for the Town, made two observations. First, that the local law was subject to review under SEQRA; and second, that this review "is required to be in writing" and it was not before the Board "at this time".[10]

Town Board Member Lutz immediately responded informing her other Board Members that she has "Parts I and II of a short environmental assessment form [hereinafter "EAF"[11]]" that she then provided to the other Town Board Members.[12] The Town Board concedes "on information and belief" that the EAF was prepared by Ms. Lutz (and/ or her counsel) and that the "other members of the Town Board had not previously discussed or considered the proposed EAF prior to their consideration of it at the November 30, 2016 Town Board Meeting."[13] Counsel for

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[9] The record is unclear as to whether Supervisor Lazzaro was aware that Town Board Member Lutz would introduce the proposed EAF at this meeting. He was replaced by the Deputy Supervisor who presided over the meeting.

[10] These comments begin at 4:08:53 on Part I of the video of the proceedings.

[11] "Environmental assessment form (EAF) means a form used by an agency to assist it in determining the environmental significance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment." (6 NYCRR § 617.2[m]; see also 6 NYCRR § 617.20, Appendix B.)

[12] These comments begin at 4:09:37 on Part I of the video of the proceedings. A copy of the EAF and Negative Declaration is attached as Exhibit A to the Affirmation of David K. Hou, Esq., counsel for Respondent-Defendants Town of Seneca Falls and Town of Seneca Falls Town Board, dated September 1, 2022. The last page of the EAF (Part 3- Determination of Significance) is missing.

[13] Affirmation of David K. Hou, Esq., counsel for Respondent-Defendants Town of Seneca Falls and Town of Seneca Falls Town Board, dated September 1, 2022, at ¶ 5.

Respondent-Defendant Concerned Citizens of Seneca County, Inc., Douglas Zamelis, admits that he was the "original drafter of Local Law #3" and "at the request of [Town Board Member] Ms. Annette Lutz, [he] also prepared a proposed, draft SEQRA Environmental Assessment Form ("EAF"), and a proposed, draft SEQRA Negative Declaration" with the understanding the Town Board had the ability to modify same.[14]

After the EAF was provided to the other Town Board Members, Ms. Lutz proceeded to read Part I of the EAF and Part II of the EAF, noting that all the eleven (11) questions are "answered 'no'".[15] She then made a motion to adopt the EAF, which was seconded by another Town Board Member.[16]

Thereafter it appears there was confusion among the Board Members on how to proceed. Mr. Morrell advised the Town Board Members that "what you are being asked. . . is whether or not the action will have a significant, adverse impact on the environment based upon the action of the Town Board", and that if the Town Board adopts Part II of the EAF it is determining there are no significant, adverse environmental impacts should the local law be adopted.[17]

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[14] Affirmation of Douglas H. Zamelis, Esq., dated August 26, 2022 at ¶ 4.
[15] The comments begin at 4:10:05 and conclude at 4:12:57 on Part I of the video of the proceedings.
[16] *Id.* at 4:13:00 to 4:13:24.
[17] *Id.* at 4:14:50 to 4:16:14.

Mr. Morrell was then asked by the Deputy Supervisor “we can do this ourselves?” to which he informed the Town Board that “nobody else can do it” and that the Town Board should designate itself as the “lead agency”[18] under SEQRA by separate resolution.[19]

Ms. Lutz then commented that the EAF is stating that there was no environmental impact, and an environmental attorney was present “that could clarify any questions that someone would have”.[20]

No Town Board Member asked any questions, and there was no further discussion. Instead, one Town Board Member (Town Board Member Sarratori) indicated she was “still reading everything” and the video shows her reviewing what appears to the proposed EAF.[21] After she concluded her review, the motion to approve the EAF was voted on and adopted with a vote of 3-1.

Thereafter, the Town Board passed a resolution declaring itself the “lead agency” under SEQRA. Town Board Member Lutz then announced that she had a

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[18] “Lead agency means an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required.” (6 NYCRR § 617.2[v].)

[19] *Id.* at 4:16:24 to 4:17:04.

[20] *Id.* at 4:18:28 to 4:19:02.

[21] *Id.* at 4:19:38 to 4:20:18.

Negative Declaration[22] which she provided to the other Town Board Members. She then read the Negative Declaration.[23] She then moved for the Town Board to pass the resolution. There was no discussion, although Town Board Member Sarratori again paused the proceedings as she read the Negative Declaration. The motion to approve the Negative Declaration passed with a vote of 3-1.

On December 6, 2016, the Town Board adopted the local law by a vote of 4-1.

Allegations Regarding Town Board Member Annette Lutz

Town Board Member Annette Lutz was employed by Waterloo Container, a local business adjacent to the landfill operated by SMI.[24] Ms. Lutz was a well-known opponent to the landfill and was appointed to the Town Board to fill a previous

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[22] "Negative declaration means a written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A negative declaration may also be a conditioned negative declaration as defined in subdivision (h) of this section. Negative declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part." (6 NYCRR § 617.2[z].)

[23] *Id.* at 4:21:50 to 4:31:38.

[24] The parties dispute whether Ms. Lutz (who is now deceased) was a co-owner of Waterloo Containers, Inc. SMI attaches an excerpt from the Waterloo Containers website arguing it establishes she was a co-owner. A review of that webpage (assuming it is in admissible form) does not allow that inference. Additionally, Respondent-Defendant Concerned Citizens of Seneca County, Inc. provides an affidavit from William C. Lutz wherein he states that he was the sole owner of Waterloo Contractors, Inc. and the d/b/a Waterloo Container Company and his wife, Annette Lutz, did not own any shares or other ownership interest during the time the local law was being proposed and considered. (Affidavit of William C. Lutz, dated December 20, 2019, attached as Exhibit B to the Affirmation of Douglas H. Zamelis, Esq., dated August 26, 2022). It is not reasonably disputed that Ms. Lutz was employed by Waterloo Containers, but SMI has failed to establish that she was an owner or had an ownership interest.

vacancy. During Town Board meetings, Ms. Lutz made statements indicating that she believed the landfill contributed or caused her health problems. At the time she proposed the local law, she had lost the election to remain on the Town Board.

Conclusions of Law

Petitioner's Standing

Respondent-Defendant Concerned Citizens of Seneca County, Inc. argues that SMI does not have standing to challenge the Town Board's actions in adopting the EAF and Negative Declaration.[25] The Court rejects this argument.

"In deciding whether an owner has standing to ask a court to review SEQRA compliance, the question is whether it has a significant interest in having the mandates of SEQRA enforced. An owner's interest in the project may be so substantial and its connection to it so direct or intimate as to give it standing without the necessity of demonstrating the likelihood of resultant environmental harm. For even though such an owner cannot presently demonstrate an adverse environmental effect, it nevertheless has a legally cognizable interest in being assured that the decision makers, before proceeding, have considered all of the

[25] In a prior Order dated September 16, 2022, the Court granted Respondent-Defendant Concerned Citizens of Seneca County, Inc.'s motion to amend their Answer to add an additional objection in point of law/ affirmative defense that Petitioner-Plaintiff Seneca Meadows, Inc. did not have standing.

potential environmental consequences, taken the required "hard look", and made the necessary "reasoned elaboration" of the basis for their determination." (*Har Enterprises v. Town of Brookhaven*, 74 NY2d 524, 529 [1989].) Here, it is not reasonably questioned that SMI, as owner of the property, has the requisite standing for purposes of challenging the Town Board's adoption of the EAF and issuance of the Negative Declaration.[26] (*Id.*; *see also Tupper v. City of Syracuse*, 71 AD3d 1460 [4th Dept. 2010]; *Skenesborough Stone, Inc. v. Vill. of Whitehall*, 229 AD2d 780 [3rd Dept. 1996]; *Patterson Materials Corp. v. Town of Pawling*, 221 AD2d 608, 609 [2nd Dept. 1995]: "The plaintiff is a land owner whose right to utilize its property in furtherance of its business has potentially been adversely affected by the enactment of the local laws. As such, the plaintiff has a legally cognizable interest in being assured that the defendants satisfied SEQRA and need not allege a specific environmental harm to be entitled to standing to raise a SEQRA challenge [citations omitted].")

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[26] It is not relevant that SMI's interest is largely financial – to continue operating its landfill. "That petitioner concededly has an economic interest in the outcome does not negate the standing that it otherwise has by virtue of its status as owner of the property (*see, Matter of Sun-Brite Car Wash v Board of Zoning & Appeals*, 69 NY2d, at 415, supra; *Cord Meyer Dev. Co. v Bell Bay Drugs*, 20 NY2d 211, 215-216)." (*Har Enterprises v. Town of Brookhaven, supra* at 530.)

Respondent Town Board Failed to Take the Requisite "Hard Look"

SMI alleges that Respondent Town of Seneca Falls Town Board failed to take the requisite "hard look" at whether the local law would have significant environmental impacts.

The relevant procedures an agency must follow in determining the significance of a proposed action are outlined in 6 NYCRR § 617.7. Relevant herein, subdivision (b) states:

> (b) For all Type I and Unlisted actions the lead agency making a determination of significance must:
>
> (1) consider the action as defined in sections 617.2(b) and 617.3(g) of this Part;
>
> (2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;
>
> (3) **thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment**; and
>
> (4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

(6 NYCRR § 617.7(b), emphasis added.)

As noted by the Court of Appeals in *Jackson v. New York State Urb. Dev. Corp.* (67 NY2d 400, 417 [1986]): "...[C]ourts may, first, review the agency procedures to

determine whether they were lawful. Second, we may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination (citations omitted).")

This Court's review of the Town Board's decision is not to determine whether the decision to issue a negative declaration was "correct", only that the Town Board appropriately followed the relevant procedures in assessing areas of possible environmental concern. As the Court of Appeals observed in *Jackson v. New York State Urban Development Corp. supra*:

> First, an agency's substantive obligations under SEQRA must be viewed in light of a rule of reason. "Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA" (*Aldrich v. Pattison*, 107 A.D.2d 258, 266, 486 N.Y.S.2d 23, *supra; Coalition Against Lincoln W. v. City of New York*, 94 A.D.2d 483, 491, 465 N.Y.S.2d 170, affd. 60 N.Y.2d 805, 469 N.Y.S.2d 689, 457 N.E.2d 795, supra). The degree of detail with which each factor must be discussed obviously will vary with the circumstances and nature of the proposal (*see, Webster Assoc. v. Town of Webster*, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431, 451 N.E.2d 189). Second, the Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives (*see, e.g.*, ECL 8–0109[8]). Nothing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence (*Aldrich v. Pattison*, 107 A.D.2d 258, 267, 486 N.Y.S.2d 23, *supra; see also, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 555, 98 S.Ct. 1197, 1217, 55 L.Ed.2d 460).

(*Jackson v. New York State Urban Development Corp.* 67 NY2d at 417.)

Here, after a review of the Town Board Meeting Minutes, the video record of the proceedings, and the undisputed factual submissions, the Court concludes that there was neither a "hard look" at the relevant areas of environmental concern, nor a "reasoned elaboration" for the Town Board's decision to adopt the EAF and issue the Negative Declaration.[27]

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[27] Notably absent from the Town Board's consideration of the EAF and Negative Declaration was any discussion as to whether adoption of the local law was properly classified as an "Unlisted" or "Type I" action. Although the text of the adopted Negative Declaration declares the adoption of the local law is "an Unlisted Action as defined by 6 NYCRR Section 617.2(ak)" [*see* 6 NYCRR § 617.2[al], amended effective January 1, 2019] this issue was not mentioned by any Town Board Members. Importantly, it is not clear that the Town Board, as "lead agency", considered whether the local law was properly classified as a Type I or Unlisted action. (6 NYCRR § 617.6.) Given the fact that this was not mentioned at the Town Board Meeting, and that none of the Town Board Members had assisted Ms. Lutz in the preparation of the EAF and Negative Declaration, it must be assumed that the Town Board Members (other than Ms. Lutz) were not aware of their obligation to make this determination before proceeding with the Short EAF. Furthermore, although the Town Board denominated the local law as an Unlisted action arguing that it was proceeding pursuant to its police powers (as opposed to zoning authority), arguably the local law – which would prohibit solid waste management facilities in the entire Town of Seneca Falls – would be a Type I action. (*See* 6 NYCRR 617.4[a][1]; [b][1]; [b][2]; *see also Centerville's Concerned Citizens v. Town Bd. of Town of Centerville*, 56 AD3d 1129, 1130 [4th Dept. 2008]: "The action at issue herein would change the allowable use within the entire Town and thus is properly classified as a type I action (*see generally Matter of Gernatt Asphalt Prods. v Town of Sardinia*, 87 NY2d 668, 689-690 [1996]; *Patterson Materials Corp. v Town of Pawling*, 264 AD2d 510 [1999], *lv denied* 95 NY2d 754 [2000]). "For Type I actions, a full EAF . . . must be used to determine the significance of such actions" (6 NYCRR 617.6 [a] [2]).")

At a minimum, a "hard look" as to the areas of possible environmental concerns and a "reasoned elaboration" of the basis to issue a Negative Declaration requires more than what occurred here. "[A]n agency, acting as a rational decision maker, must have conducted an investigation and reasonably exercised its discretion so as to make a reasoned elaboration as to the effect of a proposed action on a particular environmental concern (*see, H.O.M.E.S. v New York State Urban Dev. Corp.*, 69 AD2d, at 231, supra). Thus, while a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors." (*Akpan v. Koch*, 75 NY2d 561, 571 [1990].)

Significant to the analysis is the fact that the EAF and Negative Declaration were not prepared by the Town Board or its staff, nor were those documents reviewed by the Town Board prior to the November 10, 2016 meeting.[28] Indeed, the

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[28] The Court rejects SMI's argument that Ms. Lutz was an "interested party" such that her preparation of the EAF and Negative Declaration are *ipso facto* grounds for invalidation. SMI has failed to establish that Ms. Lutz had an ownership interest in Waterloo Containers, or even that the continued operation of the landfill had an adverse economic impact on Waterloo Containers. (*See Matter of Byer v. Town of Poestenkill*, 232 AD2d 851 [3rd Dept. 1996].) Her statements during Town Board meetings may have expressed a bias against SMI and the landfill, but that alone does not render her an interested party requiring invalidation of the EAF and Negative Declaration. Her personal interests in seeking to close the landfill are insufficient to support an inference of a conflict of interest necessitating a finding that she was without authority to act on matters related to the landfill.

only fair conclusion from the record below is that the EAF and Negative Declaration were prepared by counsel for Ms. Lutz and the other Town Board Members were not aware Ms. Lutz would be introducing those documents at the November 10, 2016 meeting and they had no prior knowledge of their contents. Indeed, the Town Attorney stated immediately prior to Ms. Lutz introducing the EAF, that the local law was subject to review under SEQRA and the review "is required to be in writing" and it was not before the Board "at this time". Additionally, it is clear from the video of the proceedings that the other Town Board Members were seeing the EAF and Negative Declaration for the first time (these facts are conceded by the Town Board). (*See e.g., Gernatt Asphalt Prod., Inc. v. Town of Sardinia*, 87 NY2d 668 [1996]: "With respect to the actual review of the Environmental Assessment Form, petitioner does not contend that the Town Board did not complete the form in relation to the proposed amendments to the Zoning Ordinance--the gravamen of its argument is that the review was conducted too quickly to be valid. The record reveals **that at a work session of the full Town Board, it reviewed and answered all of the questions posed on the Full Environmental Assessment Form** (citations omitted). That the Board answered all the questions in the negative, and that it was able to do so quickly, does not establish that its review was inadequate as a matter of law." *Id.* at 669, emphasis added.)

That fact alone is not dispositive. Had the Town Board Members engaged in the requisite hard look and reasoned elaboration at the board meeting, the adoption of the EAF and Negative Declaration would be valid. Instead, there was no discussion at all. After Town Board Member Lutz read the contents of the EAF, the Town Board Members engaged in no reasoned elaboration. Indeed, one Board Member (Sarratori) took the time to read the contents of the EAF, but it does not appear that the other Board Members did so or were even aware of its contents. At best, the Town Board satisfied 6 NYCRR § 617.7(b)(2) in that they reviewed the EAF (in that they presumably listened as it was read to them by Ms. Lutz), but the record establishes they failed to "thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment" as required by § 617.7(b)(3).

Furthermore, the EAF was deficient. Part I of the EAF, Project Information, requires that should the preparer answer question 1[29] in the affirmative, they must "attach a narrative description of the intent of the proposed action **and the environmental resources that may be affected in the municipality** and proceed to Part 2". (6 NYCRR § 617.20- Short Environmental Assessment Form

[29] "1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?" (6 NYCRR § 617.20.)

[emphasis added].) Presumably this information is required to allow the lead agency (in this case the Town Board) to fully assess the possible environmental impacts of the proposed local law. No such narrative description was attached to the EAF.[30]

In the light most favorable to the Town Board, it appears they simply assumed that closure of the landfill had no obvious environmental impacts. But the SEQRA regulations do not allow lead agencies to assume away their obligations to assess possible environmental harms. As noted by the Appellate Division, Third Department the closure of a landfill may have possible negative, environmental impacts:

> DEC also explicitly explored what would occur if no action were taken and the landfill allowed to close when it ran out of space, which DEC determined would have negative environmental impacts for the simple reason that waste would continue to be generated and need to be placed somewhere. The record provides support for DEC's findings that, in the event of the Colonie landfill's closure, local landfill options would be unable to handle the volume of waste generated and that there would be both increased waste hauling costs borne by localities and environmental impacts to all in the form of increased greenhouse gas emissions generated by the vehicles needed to haul the waste to other landfills hundreds of miles away.

(*Town of Waterford v. New York State Dep't of Env't Conservation*, 187 AD3d 1437, 1443 [3rd Dept. 2020].)

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[30] Respondent-Defendants cannot rely upon the submitted Negative Declaration as justification for the omittance of the required narrative. The Negative Declaration was provided by Town Board Member Lutz after the Town Board adopted the EAF.

It is not the Court's role to answer similar questions relevant to the impacts of the local law requiring closure of SMI's landfill. Instead, the Court must ensure that the proper SEQRA procedures were followed so that the Town Board, as the lead agency, properly identified all the potential environmental impacts the local law would have once implemented.[31] "In reviewing an agency's SEQRA findings, courts accord a lead agency considerable deference, as "it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 416)." (*Keil v. Greenway Heritage Conservancy for Hudson River Valley, Inc.*, 184 AD3d 1048, 1051 [3rd Dept. 2020].) Here, due to the cursory review of the EAF, the Town Board failed in its responsibilities to fully assess the direct and indirect consequences of the local law's potential environmental impacts. Furthermore, the Town Board's conclusory adoption of both the EAF and Negative Declaration was not an adequate substitute for reasoned elaboration that should have occurred. (*See Tupper v. City of Syracuse*, 71 AD3d 1460, 1462 [4th Dept. 2010]: "[c]onclusory statements, 'unsupported by ...

[31] 6 NYCRR 617.7(c)(2) requires lead agencies to assess "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."

data ... will not suffice as a reasoned elaboration for its determination of environmental significance or nonsignificance'" (*Matter of Tonery v. Planning Bd. of Town of Hamlin*, 256 A.D.2d 1097, 1098, 682 N.Y.S.2d 776)." *See also Troy Sand & Gravel Co. v. Town of Nassau*, 82 AD3d 1377 [3rd Dept. 2011].)

In light of the above, the Negative Declaration must be nullified. (*Centerville's Concerned Citizens v. Town Bd. of Town of Centerville*, 56 AD3d 1129, 1130 [4th Dept. 2008]: "We agree with plaintiff that defendant failed to comply with the procedural requirements of SEQRA and, "where a lead agency has failed to comply with SEQRA's mandates, the negative declaration must be nullified" (*Matter of New York City Coalition to End Lead Poisoning v. Vallone*, 100 N.Y.2d 337, 348, 763 N.Y.S.2d 530, 794 N.E.2d 672).")

Finally, as the Town Board failed to follow SEQRA's provisions, the local law must be invalidated. (*Id.*)

Conclusion

The mandates of SEQRA must be strictly followed. (*See City Council of City of Watervliet v. Town Bd. of Town of Colonie*, 3 NY3d 508, 515 [2004]: "The procedures necessary to fulfill SEQRA review are carefully detailed in the statute and its implementing regulations (*see* ECL 8-0101—8-0117; 6 NYCRR part 617; *see also Matter of New York City Coalition to End Lead Poisoning v. Vallone*, 100 N.Y.2d 337,

347–348, 763 N.Y.S.2d 530, 794 N.E.2d 672 [2003]), and we have recognized the need for strict compliance with SEQRA requirements (*Matter of Merson v. McNally*, 90 N.Y.2d 742, 750, 665 N.Y.S.2d 605, 688 N.E.2d 479 [1997]).")

Here, SMI has established that the Town Board, in adopting the EAF and the Negative Declaration, failed to follow SEQRA's regulations requiring a "hard look" at potential environmental consequences of the local law, and failed to engage in any reasoned elaboration in issuing the Negative Declaration.

The Court is aware that the operation of SMI's landfill is a contentious political issue in the Town of Seneca Falls. The wisdom of the continued existence of the landfill is not the issue before this Court. Presumably, should it be the political will of the citizens of the Town of Seneca Falls to reconsider the adoption of a local law restricting the operation of solid waste landfills in the Town, a local law proposing same will be advanced.

Based upon the foregoing, and the papers submitted herein[32], it is hereby

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[32] Petitioner-Plaintiff's Notice of Motion for Partial Summary Judgment (dated July 27, 2022), Affirmation of Scott M. Turner, Esq. (dated July 22, 2022), with exhibits, in Support of Motion for Partial Summary Judgment, Affidavit of Kyle Black (dated July 25, 2022) in Support of Motion for Partial Summary Judgment, Petitioner-Plaintiff's Memorandum of Law (dated July 27, 2022) in support of Motion for Partial Summary Judgment; Respondent-Defendant Dixie Lemmon and Concerned Citizens of Seneca County, Inc.'s Notice of Cross-Motion for Leave to Amend (dated August 26, 2022), Affidavit of Dixie Lemmon (dated August 18, 2022) in Opposition to Motion for Partial Summary Judgment, Affirmation of Douglas Zemis, Esq. (dated August 26, 2022), with exhibits, in Support of Cross-Motion for Leave to Amend and in Opposition to Motion for Partial Summary Judgment, Respondent-

ORDERED that SENECA MEADOWS, INC.'s motion for partial summary judgment on the First Cause of Action in the Petition/Complaint is GRANTED; and it is further

ADJUDGED and DECLARED that Local Law # 3 [2016] of the Town of Seneca Falls is invalid.

Dated: June 8, 2023

Honorable Daniel J. Doyle, JSC

Defendant Dixie Lemmon and Concerned Citizens of Seneca County, Inc.'s Memorandum of Law (dated August 25, 2022); Affirmation of David K. Hou (dated September 1, 2022), with exhibit; Petitioner-Plaintiff's Reply Memorandum of Law in Further Support of its Motion for Partial Summary Judgment and in Opposition to Intervenors' Cross-Motion for Leave to Amend (dated September 12, 2022); Correspondence to Court from Douglas H. Zamelis, Esq. (dated October 4, 2022); Correspondence to Court from Eric M. Ferrante, Esq. (dated October 5, 2022),with exhibit; Respondent-Defendant Dixie Lemmon and Concerned Citizens of Seneca County, Inc.'s Notice of Motion (dated November 18, 2022) to settle the record, Respondent-Defendant Dixie Lemmon and Concerned Citizens of Seneca County, Inc.'s Memorandum of Law (dated November 18, 2022) in support of their Motion to Settle the Record; Affirmation of Eric M. Ferrante, Esq. (dated March 14, 2023), with exhibits in Support of Motion for Partial Summary Judgment, Petitioner-Plaintiff's Supplemental Memorandum of Law in Further Support of its Motion for Partial Summary Judgment (dated March 14, 2023); Respondent-Defendant Dixie Lemmon and Concerned Citizens of Seneca County, Inc.'s Reply Memorandum of Law (dated April 11, 2023); Petitioner-Plaintiff's Supplemental Reply in Further Support of its Motion for Partial Summary Judgment (dated April 18, 2023).