

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SENECA

In the Matter of the Application of: 2016 SEP 12 EP 3-51

SENECA MEADOWS, INC.

SENECA COUNTY
CLERK'S OFFICE
Petitioner-Plaintiff

AFFIRMATION IN
SUPPORT OF MOTION
TO INTERVENE

v.

Index No.: 51652

TOWN OF SENECA FALLS and
TOWN OF SENECA FALLS TOWN BOARD

Hon. Daniel J. Doyle

Respondents-Defendants

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

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 proposed intervenors Dixie C. Lemmon and Concerned Citizens of Seneca County, Inc. ("Intervenors"), I have familiarized myself with the pleading and facts and circumstances of this matter, and I respectfully submit this affirmation in support of the motion of Intervenors to intervene in this proceeding/action.
2. Petitioner-plaintiff Seneca Meadows, Inc. ("SMI") seeks in this hybrid proceeding to annul and invalidate Town of Seneca Falls Local Law #3 of 2016 ("LL#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 2025.
3. SMI owns and operates the Seneca Meadows Landfill located at Salzman Road in the Town of Seneca Falls (the "Dump") which is, upon information and belief, the largest

active such facility in the State of New York, and which causes serious adverse environmental impacts on the communities of Seneca Falls, Waterloo, and others, including but not limited to odors, traffic, dust, litter and vectors, and impacts to the character of those communities.

4. As set forth in her accompanying affidavit, Intervenor Dixie C. Lemmon ("Ms. Lemmon") resides at 1569 North Road, Waterloo, New York, a few hundred yards from SMI's Dump, she constantly and continually endures all the adverse environmental impacts from SMI's Dump in a manner different in kind and degree than the general public at large, and she therefore has a direct interest in minimizing, mitigating, and terminating the adverse environmental impacts from SMI's Dump.
5. Intervenor Concerned Citizens of Seneca County, Inc. ("CCSC") is a domestic not for profit corporation with an address for the service of process at 1892 Seneca Street, Romulus, New York 14541 and which is organized and committed to ensuring that Seneca County's air, soil, water and environment are clean and healthful.
6. Ms. Lemmon is a member and officer of CCSC.
7. Intervenors were parties held to possess legal standing in previous litigation with SMI in this Court involving SMI's Meadow View Mine adjacent to SMI's dump including *Matter of Lemmon v Seneca Meadows, Inc.*, 147 A.D.3d 1348 (4th Dept. 2017), *mot. for lv. to app. den.* 29 N.Y.3d 1108, (2017); and *Lemmon v Seneca Meadows, Inc.*, 46 Misc. 3d 1215(A) (Sup. Ct. Seneca Co., 2015).
8. Intervenors support and applaud LL#3 and have a direct interest in maintaining its validity and enforceability.

9. Upon information and belief and according to the RJI, a copy of which is annexed hereto as Exhibit "A", this hybrid proceeding was commenced by SMI on or about November 15, 2017.
10. According to information from the state court system's "etTrack" system, a printout of which is attached as Exhibit "B", the matter was originally returnable on November 16, 2017, but has been adjourned or continued on five occasions, with the matter currently shown as returnable October 3, 2018.
11. On September 6, 2018, I called the Seneca County Clerk's Office to obtain copies of all pleadings and other papers filed in this proceeding to date, and was informed that no answer or other responsive papers had been filed on behalf of the Town of Seneca Falls or Town of Seneca Falls Town Board (the "Town Respondents").
12. I then called the Seneca County Supreme Court Clerk's office also on September 6 and confirmed that the court clerk's office was in possession of only the notice of motion, eight exhibits, and the verified petition/complaint, but no responsive pleading on behalf of the Town Respondents.
13. For a period of 10 months, the Town Respondents have failed to file a responsive pleading in this hybrid proceeding, and therefore have made no written effort or attempt to defend LL#3.
14. Upon information and belief, a substantial portion of the revenue relied on by Town of Seneca Falls to finance its operating budget is derived from "host community" payments from SMI, which SMI uses to leverage the Town of Seneca Falls and Town of Waterloo Town Boards to great effect.

15. LL#3 allows SMI to continue to operate the Dump until 2025, much to the chagrin of SMI, SMI aggressively opposed the adoption of LL#3, and it now seeks its invalidation and annulment.

16. The Town Respondents are not aggressively defending despite the Article 78 portion of this proceeding being clearly and obviously time barred by the applicable 4-month statute of limitations which expired months prior to the commencement of this matter in November of 2017.

17. The Town Respondents are not aggressively defending the declaratory judgment portion of this matter despite the local law's very strong presumption of constitutionality.

18. I attended the Town of Seneca Falls Town Board meeting on September 4, 2018 and personally observed and heard discussion among town board members concerning the possibility of renegotiating the host community agreement between the Town of Seneca Falls and SMI, and not defending this hybrid proceeding.

19. It is apparent that the Seneca Falls Town Board is afraid of defending this litigation lest it incur the wrath of SMI which may withhold future "host community" payments to the town.

20. The Town Respondents' representation of Intervenors' interest is defending and maintaining the validity and enforceability of LL#3 is inadequate based on the Town Respondents' failure to file a responsive pleading in the 10 months since this proceeding was commenced, and because of SMI's substantial economic leverage over the town.

21. If SMI's petition/complaint herein were to be granted and LL#3 were to be invalidated and annulled, intervenors would be bound by the judgment by having to continue to

endure the substantial adverse environmental impacts from continued operation of the dump past 2025.

22. Intervenors therefore qualify for intervention as of right as per CPLR Section 1012(a)(2).

23. The claims and defenses proposed to be asserted by Intervenors as set forth in the proposed verified answer annexed hereto as Exhibit "C" have common questions of law and fact including but not limited to whether the Article 78 portion of this matter is time barred, and whether SMI can overcome the very strong presumption of constitutionality LL#3 enjoys, and therefore Intervenors should be granted permissive intervention as per CPLR Section 1013.

24. Inasmuch as the Town Respondents have not yet answered and Intervenor's proposed answer is attached as an exhibit hereto, Intervenor's motion to intervene cannot be characterized by any party as untimely.

Affirmed: Springfield Center, New York
September 12, 2018



DOUGLAS H. ZAMELIS, ESQ.