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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
ENVIRONMENTAL CLAIMS PART
NINTH JUDICIAL DISTRICT, COUNTY OF ORANGE

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In the Matter of the Application of

VILLAGE OF KIRYAS JOEL, NEW YORK, MAYOR ABRAHAM WIEDER, VILLAGE ADMINISTRATOR GEDALYE SZEGEDIN, VILLAGE TRUSTEE JACOB FREUND, VILLAGE TRUSTEE SAMUEL LANDAU, VILLAGE TRUSTEE JACOB REISMAN, each in his official capacity as on officer of the Village of Kiryas Joel, ROSE UNGAR, DAVID UNGAR, MOSES WITRIOL, ATKINS BROTHERS ASSOCIATES, INC., BURDOCK REALTY ASSOCIATES, INC., COMMANDEER REALTY ASSOCIATES, INC., DILIGENT REALTY ASSOCIATES, INC., and "JOHN DOES and JANE DOES" "1" through "250" as residents of Woodbury of Orthodox Jewish origin living in Western Woodbury,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules.

-against-

VILLAGE OF WOODBURY, NEW YORK, and VILLAGE OF WOODBURY BOARD OF TRUSTEES,

Respondents-Defendants.

-and-

TOWN OF WOODBURY, NEW YORK, VILLAGE OF WOODBURY PLANNING BOARD, and GARY THOMASBERGER, as the Village of Woodbury Building/Zoning Inspector and Code Enforcement Officer,

Defendants.

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DECISION, ORDER & JUDGMENT

Index No.: 9655/11

Fully Submitted: 11/18/13

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NICOLAI, J.,

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NICOLAI, J.,

The following documents numbered 1 to 156 were read on (1) these motions by Respondents-Defendants, Village of Woodbury, New York (hereafter, the "Village"), Village of Woodbury Board of Trustees, and Defendant, Gary Thomasberger (collectively hereafter, the "Village Respondents") for an order pursuant to section 3024(b) of the Civil Practice Law and Rules striking portions of the pleadings, and an order pursuant to CPLR 7804(f) and 3211(a)(1), (a)(2), (a)(3), (a)(5) and (a)(7) dismissing the Verified Petition-Complaint (hereafter, the "Petition"), and (2) the merits of the Petition as against all Respondents-Defendants and the answering[1] Defendants:

Notice of Petition - Petition - Exhibits - Affirmation - Affidavits - Exhibits - Memorandum of Law	1 - 30
Notice of Motion (Village Respondents) - Affirmation - Exhibits - Affidavits - Exhibits - Answer and Objections in Point of Law (Village Respondents) - Memorandum of Law	31 - 46
Verified Answer and Affirmative Defenses (Defendant, Town of Woodbury, New York) - Objections in Point of Law - Affirmation - Exhibits	47 - 61
Reply Affirmation (Petitioners-Plaintiffs) - Exhibits - Memorandum of Law (in reply and support of Petition and opposition to motion of Village Respondents) - Exhibits - Affidavit	62 - 71
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Supplemental Affirmation (Petitioners-Plaintiffs) - Exhibits - Affidavit	150-153
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Upon consideration of the foregoing, and for the following reasons, the Court will treat the pleadings, motions and submissions as motions for summary judgment, and the Petition is granted in part and denied in part as follows:

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[1] Defendant, Village of Woodbury Planning Board, is not among the parties who made the instant motions, but is among the parties named in the Answer and Objections in Point of Law served and filed by the Village Respondents.

Factual and Procedural Background

Defendant, Town of Woodbury, New York (hereafter, the "Town"), is a municipality located in the County of Orange. In 2004, the Town commenced the comprehensive planning process pursuant to its authority under article 16 of the Town Law. The Town Board of the Town of Woodbury (hereafter, "Town Board") declared itself lead agency for the purpose of conducting an environmental review under article 8 of the Environmental Conservation Law (also known as the State Environmental Quality Review Act [hereafter, "SEQRA"]), and engaged Saratoga Associates to perform analyses and studies, and prepare a draft comprehensive plan for the Town Board to consider. Saratoga Associates prepared and forwarded to the Town Board a Draft Comprehensive Plan for the Town dated October 14, 2005 (hereafter, the "Town DCP")(Exhibit 3 in the Record). Saratoga Associates also prepared and forwarded to the Town Board a Draft Generic Environmental Impact Statement dated October 31, 2005 (hereafter, the "2005 DGEIS")(Exhibit 4 in the Record), concerning potential environmental impacts associated with the Town DCP. In December 2005, the Town Board forwarded the Town DCP and 2005 DGEIS to the Orange County Planning Department for review (hereafter "the Planning Department") .

In August 2006, before the Town Board completed its SEQRA review, the Village of Woodbury (hereafter the "Village") was incorporated as a separate municipality, the boundaries of which are coterminous with the boundaries of the Town except for those portions of the Town that fall within the Village of Harriman. In June 2007, the Village agreed to assume the Town's zoning and planning functions within the Village's boundaries, including the comprehensive planning process begun in 2004. Respondent-Defendant, Village of Woodbury Board of Trustees (hereafter, the "Village Board"), adopted the Town DCP and designated the Village as lead agency in place of the Town Board for the purpose of conducting the SEQRA review. Saratoga Associates prepared and forwarded to the Village Board a Draft Comprehensive Plan for the Village (hereafter, the "Village DCP")(Exhibit 4 to the Petition). In November 2008, following public hearing and comment on the Village DCP, the Village Board designated the adoption thereof as a Type I action and issued a positive declaration under SEQRA, thereby mandating the preparation of an environmental impact statement.

On April 30, 2009, the Village Board accepted a Preliminary Draft Generic Environmental Impact Statement (hereafter, "2009 DGEIS")(Exhibit 26 in the Record), concerning potential environmental impacts associated with the Village DCP and proposed amendments to the Village zoning law (hereafter, "Zoning Amendments"). On January 26, 2010, the Village Board issued a Positive Declaration (Exhibit 38 in the Record). On February 16, 2010, the Village Board submitted the Village DCP and proposed Zoning Amendments to the Planning Department. On February 23, 2010, the Village Board commenced a public hearing that was continued to March 9, 2010, then followed by a public comment period.

On July 27, 2010, before the Village completed its SEQRA review, the Village Board declared itself lead agency and issued a full environmental assessment form in connection with another proposal to amend the Village zoning law (Full Environmental Assessment Form [hereafter, "EAF"](Exhibit 11 to the Petition). The proposed set of amendments contemplated in the EAF would add to the zoning law the definition of a "place of worship," regulations concerning the use of land for a place of worship and the designation of districts in which said use would be permitted "by special permit and site plan approval of the Planning Board" (*see* Village of Woodbury, Local Law No. 1 of 2010)(Exhibit 13 to the Petition). The proposal also included amendments to the zoning map (*see* Village of Woodbury, Introductory Law No. 2 of 2010)(Exhibit 7 to the Petition). This proposed set of amendments was referred to as the "Religious Land Use Local Law" (hereafter, "RLULL"; *see* EAF at 1). On September 28, 2010, the Village Board issued a notice that it had determined that enactment of the RLULL would not have a significant adverse impact on the environment (*see* Negative Declaration [hereafter, "RLULL/Neg Dec"])(Exhibit 47 in the Record).

Another proposal before the Village Board was the addition to the zoning law of the definition of "ridge preservation view corridor," the designation of "all areas with a natural elevation above mean sea level of 600 feet . . . as 'critical environmental areas' pursuant to the State Environmental Quality Review Act" and restrictions and standards concerning the development of land located in any such area within the Village (*see* Village of Woodbury, Introductory Local Law No. 1 of 2010)(Exhibit 7 to the Petition at 13, 16-17). This proposed set of amendments was referred to as the Ridge Preservation Overlay District (hereafter, "RPOD"; *see* Petition at 46). Neither the EAF nor the RLULL/Neg Dec include any reference to the RPOD.

On January 25, 2011, Turner Miller Group submitted to the Village a final generic environmental impact statement, concerning potential environmental impacts associated with the Village DCP and proposed amendments to the Village zoning law (*see* Village of Woodbury Comprehensive Plan Update And Associated Zoning Amendments Final Generic Environmental Impact Statement [hereafter, "2011 FGEIS"])(Exhibit 51 in the Record). A public hearing was held on March 22, 2011, then followed by a public comment period. Revisions to the 2011 FGEIS were submitted to the Village on April 26, 2011. On May 10, 2011, the Village Board accepted the 2011 FGEIS as complete.

On June 14, 2011, inter alia, the Village Board adopted (1) a findings statement based on the 2011 FGEIS and "concluded that all identified environmental impacts of the proposed Action will be avoided or minimized to the greatest extent practicable," (2) the comprehensive plan (hereafter, "Village CP") and, (3) the amendments to the zoning law and zoning map associated with the Village CP including the Zoning Amendments, the RLUL and the RPOD[3] which amendments were identified as "Local Law 3 of 2011" and "Local Law 4 of 2011," respectively (*see* minutes of the Village Board Meeting held at Town Hall on June 14, 2011at 6:30 PM, [hereafter, "6/14/11 Resolution"])(Exhibit 63 in the Record). The instant special proceeding/action was commenced by filing the Notice of Petition, Petition and supporting papers with the Orange County Clerk on October 14, 2011.

Petitioner-Plaintiff, Village of Kiryas Joel (hereafter, "VOKJ"), is a municipal corporation in the Town of Monroe located adjacent to the western boundaries of the Village, and is alleged to also own property located within the Village within the R-2A zoning district (*see* Petition at ¶12). Petitioner-Plaintiff, Abraham Wieder (hereafter, "Wieder"), is the Mayor of VOKJ (*see* Petition at ¶15). Petitioner-Plaintiff, Gedalye Szegedin (hereafter, "Szegedin"), is the Village Administrator and Village Clerk of VOKJ (*see* Petition at ¶16). Petitioner-Plaintiffs, Moses Goldstein (hereafter, "Goldstein"), Jacob Freund (hereafter, "Freund"), Samuel Landau (hereafter, "Landau") and Jacob Reisman (hereafter, "Reisman"), are Trustees of VOKJ (*see* Petition at ¶¶17-20). VOKJ, Wieder, Szegedin, Goldstein, Freund, Landau and Reisman will collectively be referred to hereafter as VOKJ

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[3] The RPOD is codified as section 310-13, in the Village of Woodbury Zoning Code (hereafter, "Village Code").

or the "VOKJ Petitioners."

Petitioner-Plaintiff, Rose Ungar, owns property and is a resident of the Village (see Petition at ¶22), and Petitioners, David Ungar and Moses Witriol, are residents of the Village (*see* Petition at ¶¶23, 24). Rose Ungar, David Ungar and Moses Witriol (collectively hereafter, the "Individual Petitioners") are members of the Hasidic Jewish community. Petitioner-Plaintiff, Atkins Brothers Associates, LLC (hereafter, "Atkins") is a domestic limited liability company and owns property located within the Village within the R-2A zoning district (*see* Petition at ¶26), and Petitioners, Amazon Realty Associates, Inc. (hereafter, "Amazon"), Burdock Realty Associates, Inc. (hereafter, "Burdock"), Commandeer Realty Associates, Inc. (hereafter, "Commandeer") and Diligent Realty Associates, Inc. (hereafter, "Diligent"), are domestic business corporations and own real property located within the Village within the R-2A zoning district (*see* Petition at ¶¶27-30). Atkins, Amazon, Burdock, Commandeer and Diligent (collectively hereafter, the "Corporate Petitioners") desire to construct on their properties a development(s) suitable for residents of the Hasidic Jewish community.

There is a large, expanding Hasidic Jewish community located within VOKJ, near its border with the Village. Petitioners state that in order to comply with the tenets of their religion, members of their community are prohibited from using vehicles on the Sabbath and Jewish holy days, and consequently reside in areas with integrated schools, synagogues, shuls, mikvas, and other religious facilities that residents can reach on foot. Petitioners also point out that because Hasidic Jewish communities are congregational by nature and individual families tend to be large, residents of such communities require multi-family housing with individual units that can accommodate eight or more people. Petitioners allege that the enactments at issue prohibit the construction anywhere in the Village and particularly in the geographic areas near its border with VOKJ of such high-density, multi-family, and walkable developments, thereby effectively, if not intentionally, discriminating against and violating the rights of members of VOKJ and the greater Hasidic Jewish community.

The Petition pleads eighteen causes of action. In the first and second causes of action Petitioners-Plaintiffs (hereafter, "Petitioners") seek relief pursuant to CPLR article 78 for a judgment annulling the Village CP and the Zoning Amendments alleging that the Village Board failed to comply with SEQRA in adopting them (hereafter, the "SEQRA Claims"). In the remaining causes

of action Petitioners seek relief pursuant to CPLR 3001 for a judgment declaring the Village CP and Zoning Amendments, the RPOD and the RLUL, invalid as allegedly unconstitutional or otherwise in contravention of state or federal law.

On August 9, 2012, the Town served upon Petitioners an answer to the Petition (*see* Verified Answer and Affirmative Defenses to Verified Petition and Complaint [hereafter, the "Town Answer"], with supporting papers and affidavit of service). The Village Respondents interposed the instant motions by notice of motion dated August 27, 2012 , on which date the Village Respondents and Defendant, Village of Woodbury Planning Board (hereafter, "Planning Board"), also served upon Petitioners an answer to the Petition (*see* Answer and Objections in Point of Law [hereafter, the "Village Answer"], with supporting papers and affidavit of service). On October 16, 2012, Petitioners served upon all movants and answering parties an affirmation in opposition to the instant motions and reply to the answers (*see* Reply Affirmation of Robert S. Rosborough IV, with affidavit of service). On October 26, 2012, the Village Respondents served upon Petitioners an affirmation in reply to Petitioners' opposition to the instant motions (*see* Reply Affirmation of John G. Stepanovich, with affidavit of service).

The Petition and motions were deemed fully submitted on November 18, 2013, upon submission of affirmations and affidavits in response to the Court's directive (*see* Petitioners' Affirmation of Michael G. Sterthous [hereafter, "Sterthous Affirmation"], with affidavit of service, and Village Respondents' Affidavit of Kristen O'Donnell [hereafter, "O'Donnell Affidavit"], with affidavit of service).[3]

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[3]In the instant matter, Petitioners seek judgments pursuant to both article 78 and section 3001 of the CPLR. The Village Respondents elected to respond to the Petition by simultaneously serving and filing both a Motion to Dismiss under CPLR 3211(a)(1), (2), (3), (5) and (7), and an Answer. Because this response was arguably prohibited by CPLR 7804(f), on October 31, 2012, during a conference call with the Part's court attorney-referee, the parties agreed that this Court should deem the matter fully submitted and determine it on its merits and that, in doing so, the Court would consider all papers submitted in support of, opposition to and reply to the Petition as well as the Village's dismissal motion.

Discussion

The standard for determining a fully submitted article 78 proceeding is the same as that for summary judgment in a plenary action (*see Matter of Bahar v Schwartzreich*, 204 AD2d 441, 443 [2d Dept 1994]), "requiring the court to decide the matter 'upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised'" (CPLR 409[b] [other internal citations omitted]); *Matter of Kurr v Black*, 55 AD3d 82, 86 [1st Dept 2008]). In a hybrid article 78 proceeding/declaratory judgment action, each portion is governed by separate procedural rules and the court may not use the same summary procedure to determine a cause of action for declaratory judgment (*see Matter of 24 Franklin Ave. R.E. Corp. v Heaship* ("*Heaship I*"), 74 AD3d 980, 980-981 [2d Dept 2010]; *Matter of 24 Franklin Ave. R.E. Corp. v Heaship*, 101 AD3d 1034 [2d Dept 2012] [clarifying on appeal after remittal, that the determination of a plea for an order declaring a local law invalid is governed by the procedural rules for a plenary action, and not an article 78 proceeding, regardless of the alleged grounds of such invalidity]). Consequently, determination of Petitioners' declaratory judgment causes of action is governed by the procedural rules applicable to plenary actions generally.

However, pursuant to CPLR 3211(c), "[w]hether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion [made under 3211(a) or (b)] as a motion for summary judgment." A court need not provide notice of its intent where the dismissal motion "was made after issue had been joined, and the parties clearly charted a summary judgment course by laying bare their proof and submitting documentary evidence and evidentiary affidavits" (*see Hopper v McCollum*, 65 AD3d 669, 670 [2d Dept 2009] [internal citations omitted]; *see also Hamlet at Willow Creek Dev. Co., LLC v Northeast Land Dev. Corp.*, 64 AD3d 85, 99 [2d Dept 2009]; *lv dismissed* 13 NY3d 900 [2009]. Here, the Village Answer was filed simultaneously with the Village's Motion to Dismiss and, on October 31, 2012, the Village Respondents agreed to a summary disposition of the entire proceeding/action. Therefore, the Court determined it appropriate to treat the Village Respondents' motion to dismiss, and the Town's Answer and submissions in support thereof, as motions for summary judgment on the declaratory judgment causes of action as well.

Indeed, while the Village Respondents had not sought summary judgment in their notice of motion, Petitioners had alleged in opposition to the Village's motion that it should be treated "as one for summary judgment pursuant to CPLR 3211(c) and 3212" (*see* Reply Affirmation of Robert S. Rosborough IV at ¶5), to which the Village Respondents had objected but stated, "should this Court wish to consider Summary Judgment, it is to the [Village Respondents] to whom Summary Judgment should be granted" (*see* Memorandum of Law In Reply to Petitioners Opposition to the Motion by Respondents at 5). The Town did not make a formal motion to dismiss, but the first three of the four affirmative defenses pled in the Town's Answer could have been raised in such a motion under CPLR 3211(a)(7), (5) and (3), respectively, and the Town also agreed to a summary disposition of the entire proceeding/action, by dismissal or otherwise, based on such affirmative defenses.[4]

Thus, issue had been joined when the Village's formal motion and before the Town's de facto motion to dismiss were made, and all of the parties agreed that the merits of the entire matter should be determined on their submissions. Those submissions consist of attorney affirmations, witness affidavits, legal memoranda and extensive documentary evidence, including the Record of the administrative and legislative proceedings and enactments at issue. Upon consideration of all of said submissions, the Court has determined that there are no issues of fact, only issues of law which the parties fully briefed and argued. Therefore, the parties have clearly charted a summary judgment course and it is appropriate for the Court to treat their pleadings, dismissal motions and submissions as motions for summary judgment without prior notice of its intent (*see F & T Mgt. & Parking Corp. v Flushing Plumbing Supply Co.*, 68 AD3d 920, 923 [2d Dept 2009], *lv denied* 15 NY3d 702 [2010]; *Hopper v McCollum*, 65 AD3d at 670).

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[4] Although the Town's Answer alleges that "Defendant hereby demands a hearing as to the disputed issues of fact raised herein" (Town's Answer at ¶160), that demand refers only to Petitioners' article 78 claims. To the extent that the Town's Answer purports to demand a hearing or trial on Petitioners' claims for "declaratory relief pursuant to CPLR § 410 and Article 40 of the CPLR" (*id.*), the demand is unavailing because the procedural rules in article 40, including section 410, govern special proceedings, not plenary actions for declaratory judgment (*see Heaship I, supra*). In any event, both demands were superceded by the October 31, 2012 agreement.

The First and Second Causes of Action

In the first cause of action, Petitioners contend that the Village Board failed in several respects "to strictly comply with SEQRA procedural mandates" (*see* Petition at 32). In the second cause of action, Petitioners contend that the Village Board failed in several respects "to strictly comply with SEQRA substantive mandates" (*Id.* at 35). The Respondents-Defendants contend that the Petitioners lack standing to assert a challenge under SEQRA.

Standing

To establish standing to challenge administrative action, a petitioner must demonstrate that as a result of such action it would sustain a direct injury which is within the zone of interests promoted or protected by the statutory provision pursuant to which the action was undertaken, and that the harm the petitioner will suffer from such injury is different in some way from that suffered by the public at large (*see Society of Plastics Indus., Inc. v County of Suffolk*, 77 NY2d 761, 772-775 [1991]). Consequently, to establish standing to maintain a claim under SEQRA, a petitioner must demonstrate that the injury he, she or it has sustained or may sustain is "environmental" in nature (*see Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433 [1990].

An owner of property that is the subject of a zoning change enacted in purported compliance with SEQRA is presumed to have sustained an environmental injury and to have suffered harm different from that suffered by the public at large (*see Matter of Har Enters. v Town of Brookhaven*, 74 NY2d 524, 528-529 [1989]; *see also Land Master Montg I, LLC v Town of Montgomery*, 13 Misc 3d 870, 876 [Sup Ct, Orange County 2006] [holding that petitioners had standing to maintain SEQRA challenge to adoption of comprehensive plan and related zoning laws, "by virtue of their status as property owners subject to the challenged zoning changes"], *affd* 54 AD3d 408 [2d Dept 2008], *affd* 11 NY3d 864 [2008]). An owner of property unaffected by the zoning change is not entitled to the presumption (*see Matter of Assn. for a Better Long Is. v New York State Dept. of Envtl. Conservation*, 97 AD3d 1085, 1086 [3d Dept 2012], *lv granted* 20 NY3d 852 [2012]).

Respondents argue that by their terms, neither the Village CP nor the Zoning Amendments change the zoning of any of the properties of which the Individual Petitioners or Corporate Petitioners are owners or residents. Thus, the Respondents assert that the Individual Petitioners and Corporation Petitioners are not entitled to this presumption.

However, a petitioner whose property is located in close proximity to the site of the project to which the challenged action relates is the beneficiary of a different presumption – to wit, that it is adversely affected thereby – and, accordingly, need not allege a specific, or non-public, harm (*see Matter of Long Island Pine Barrens Socy. v Planning Bd. of the Town of Brookhaven*, 213 AD2d 484, 485 [2d Dept 1995]). In response to this Court's directive, Petitioners and the Village Respondents have submitted maps depicting the geographic locations of the properties within the boundaries of the Village that are owned by the Individual Petitioners and the Corporate Petitioners, and the distances of those properties from the nearest parcel affected by the Zoning Amendments and the RPOD (*see* Sterthous Affirmation, Exhibits 1 and 2, and O'Donnell Affidavit, Exhibit A). Based upon said submissions, Petitioners have established that the properties owned by the Individual Petitioners and the Corporate Petitioners are sufficiently close in proximity to parcels affected by the Zoning Amendments and the RPOD for them to benefit from the presumption that they are adversely affected by those enactments. Therefore, the Individual Petitioners and the Corporate Petitioners have standing to maintain the first and second causes of action.

With regard to VOKJ's standing to maintain the SEQRA Claims, it is clear that "[a] municipality is limited to asserting rights that are its own and is not permitted to assert the collective individual rights of its residents" (*Matter of Vil. of Chestnut Ridge v Town of Ramapo*, 45 AD3d 74, 91 [2d Dept 2007] (internal citations omitted), *appeal dismissed*, 12 NY3d 793 [2009], 15 NY3d 817 [2010]). Thus, to have standing to challenge its neighbor's failure to comply with SEQRA, a municipal entity must articulate a specific municipal interest in the potential environmental impacts of the action at issue, which interest can be established in several ways (*id.* at 91).

A municipality may have a specific municipal interest based upon the same considerations and principles upon which a member of the public would have standing (*id.*, at 86). Therefore, in its capacity as an owner of property, a municipality may have the same standing and is subject to the same burdens "as an[y other] interested property owner facing injury in fact"(*see Matter of County of Orange v Vil. of Kiryas Joel*, 44 AD3d 765, 767 [2d Dept 2007]). In the Petition,

Petitioners allege that, like the Individual Petitioners and the Corporate Petitioners, VOKJ owns property in the Village (*see* Petition at ¶12). However, on the Record before this Court, Petitioners have not identified the property owned by VOKJ located in the Village and/or in close proximity to any parcels affected by the enactments challenged in this proceeding. Therefore, VOKJ has not demonstrated entitlement to the benefit of the ownership presumption or the close proximity presumption.

Aside from standing based on ownership, a municipality that is an "involved agency" within the meaning of 6 NYCRR 617.2(s) has a specific municipal interest sufficient of itself to confer standing to challenge compliance with SEQRA (*see Chestnut Ridge v Ramapo*, 45 AD3d at 91-92). VOKJ was not identified as an involved agency during the environmental review that culminated in the adoption of the Village CP and the Zoning Amendments. Petitioners have not alleged that VOKJ should have been so identified but have alleged that it is an "interested agency" within the meaning of 6 NYCRR 617.2(t). Generally, "interested agency" status is not sufficient of itself to confer standing under SEQRA (*see Chestnut Ridge v Ramapo*, 45 AD3d at 86) [holding that the right of a neighboring municipality that is an "interested agency," but not an "involved agency," to challenge a SEQRA determination is the same but no greater than that of any other interested party]).

However, a municipality has standing under SEQRA where the potential environmental impacts of the challenged action may adversely affect the ability of that municipality to provide or maintain public facilities or services (*see Matter of Town of Coeymans v City of Albany*, 284 AD2d 830, 833 [3d Dept 2001]), or when necessary "to protect [its] unique governmental authority to define [its] community character" (*Chestnut Ridge*, 45 AD3d at 93-95; *see also Village of Pomona v Town of Ramapo*, 94 AD3d 1103, 1105-1106 [2d Dept 2012]). Here, Petitioners allege that the failure of the Village CP and Zoning Amendments to provide for adequate high-density, multi-family, walkable developments within the Village's borders will compel members of the Hasidic Jewish community who might have resided in such developments to settle instead in VOKJ, thereby overburdening its public facilities. Petitioners further argue that standing is necessary to protect VOKJ's unique governmental authority to define its community character. This Court agrees. VOKJ, an interested party, has standing under SEQRA to maintain the challenge which may adversely affect its ability to provide or maintain public facilities or services (*see Matter of Town of*

Coeymans v City of Albany, 284 AD2d 830, 833 [3d Dept 2001]) and to protect its unique governmental authority to define its community character (*see Chestnut Ridge*, 45 AD3d at 93-95; *see also Village of Pomona v Town of Ramapo*, 94 AD3d 1103, 1105-1106 [2d Dept 2012]). Therefore, VOKJ has standing to maintain the first and second causes of action.

The Merits of the First Cause of Action

In the first cause of action, Petitioners contend that the Village CP and the Zoning Amendments "must be declared null and void" (*see* Petition at ¶140) because the Village Board failed "to Strictly Comply with SEQRA Procedural Mandates" (*id.* at 32).

As the Court of Appeals has said:

> The mandate that agencies implement SEQRA's procedural mechanisms to the "fullest extent possible" reflects the Legislature's view that the substance of SEQRA cannot be achieved without its procedure, and that departures from SEQRA's procedural mechanisms thwart the purposes of the statute. Thus, it is clear that strict, not substantial, compliance is required.

(Matter of King v Saratoga County Bd. of Supervisors, 89 NY2d 341, 347 [1996]; *see also Matter of Baker v Village of Elmsford*, 70 AD3d 181, 189-190 [2d Dept 2009] (holding that "[l]iteral compliance with both the letter and spirit of SEQRA . . . is required").

The Village Board failed to strictly comply with SEQRA's procedural mechanisms. Pursuant to 6 NYCRR 617.6(a), "(1) [f]or Type I actions, a full EAF . . . must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF . . . . The lead agency is responsible for preparing Part 2 and, as needed, Part 3." Pursuant to 6 NYCRR 617.7(b), "[f]or all Type I . . . actions the lead agency making a determination of significance must [among other things,] (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." It is undisputed that no EAF was used to determine the significance of the Village CP or the Zoning Amendments. Consequently, the Village Board also could not have reviewed an EAF in making said determination. Therefore, the Village Board failed to strictly comply with either of those procedural mechanisms.

An action approved or undertaken without such strict compliance must be annulled (*see*

Matter of New York City Coalition to End Lead Poisoning v Vallone, 100 NY2d 337, 348 [2003]; *Matter of Yellow Lantern Kampground v Cortlandville*, 279 AD2d 6, 12 [3d Dept 2000]). Therefore, the first cause of action seeking annulment of the Village CP and Zoning Amendments is granted.

The Merits of the Second Cause of Action

In the second cause of action, Petitioners contend, inter alia, that the Village CP and the Zoning Amendments "must be declared null and void" (*see* Petition at ¶157), because "the Village Board failed to take the requisite SEQRA hard look" (*id.* at 35).

Upon a claim that an agency determination does not satisfy SEQRA substantively, a court "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 (source of quoted language and other internal citations omitted)" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417 [1986]). If the record establishes that "the agency has failed to take the required hard look . . . its action will be annulled as arbitrary and capricious" (*Matter of Troy Sand & Gravel Co. v Town of Nassau*, 82 AD3d 1377, 1378 [3d Dept 2011]).

The Village Board failed to fulfill its obligation as lead agency to take a hard look at the relevant areas of environmental concern. Pursuant to 6 NYCRR 617.9(b)(5), "all draft EIS must include . . . (v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor[, including] the no action alternative." Literal compliance with this requirement is mandated (*see Matter of Rye Town/King Civic Assn. v Town of Rye*, 82 AD2d 474, 480-481 [2d Dept 1981], *appeal dismissed* 56 NY2d 508 [1982]). Thus, a lead agency "must consider a reasonable range of alternatives to the specific project" under review (*Matter of Town of Dryden v Tompkins County Bd. of Representatives*, 78 NY2d 331, 334 [1991]), and a discussion of such alternatives must be included in the draft EIS (*see Webster Assoc. v Town of Webster*, 59 NY2d 220, 227-228 [1983] [holding that failure to include discussion of alternatives in draft EIS was not cured simply by including the discussion in the final EIS]).

The 2009 DGEIS includes a discussion of what it terms, the "HIGHER DENSITY ALTERNATIVE" (2009 DGEIS at 4.1, and the "NO ACTION ALTERNATIVE" (*id.* at 4.5). The Higher Density Alternative discussion assumes development as of right of "two dwelling units per acre" in all areas that would have been classified R2-A and R3-A under the proposed Zoning Amends, which "would result in approximately 4,000 dwelling units more than might occur under current planned density (900 v. 5,000)" (*Id.* at 4.1). However, the 2009 DGEIS does not include any discussion indicating that the Village Board considered other feasible alternatives – such as, for example, higher density development within R2-A and/or R3-A zoning districts by special use permit or the creation of smaller higher density, as of right zoning districts located within or adjacent to the proposed boundaries of the planned R2-A or R3-A districts. Such omission establishes that the Village Board failed to take the required hard look. Therefore, the second cause of action seeking annulment of the Village CP and Zoning Amendments is granted.

The Third Cause of Action

In the third cause of action, Petitioners allege that the Village CP and the Village Board's adoption thereof violate section 7-722 of the Village Law because it "wholly fails to consider the needs of all residents of [the Village], including the Village's Hasidic Jewish population" (*see* Petition at ¶171). Pursuant to article 7 of the Village Law, village boards of trustees are empowered to regulate by local laws the use of land within their borders "[f]or the purpose of promoting the health, safety, morals, or the general welfare of the community" (*see* Village Law 7-700). Included therein is the power to prepare and adopt a village comprehensive plan (*see* Village Law 7-722[1]), but a village is not required to do so (*see* Village Law 7-722[1][h]). Thus, Petitioners' contention that the Village CP violates section 7-722 is without statutory support (*see Mc Gann v Inc. Vil. of Old Westbury*, 256 AD2d 556, 557 [2d Dept 1998]). Therefore, while annulment of the Village CP is warranted on other grounds as set forth herein, the third cause of action is denied.

The Fourth Cause of Action

In the fourth cause of action, Petitioners contend that the Village CP and the Zoning

Amendments constitute unconstitutional exclusionary zoning (*see* Petition at ¶201). In support of this claim, Petitioners allege that the Village CP and Zoning Amendments prohibit members of the Hasidic Jewish community from residing in the Village; in other words, because members of the community are required by the tenets of their religion to reside in high-density, multi-family, walkable developments, the Village's failure to zone land located near its border with VOKJ to permit such developments as of right is exclusionary.

The test for determining whether a local law, or other action undertaken pursuant to the powers bestowed under Village Law article 7 constitutes unconstitutional exclusionary zoning is (1) whether the municipality has provided a properly balanced and well ordered plan for the community, and (2) whether consideration was given to regional housing needs and requirements (*see Berenson v Town of New Castle*, 38 NY2d 102, 110-111 [1975]). "A zoning ordinance enacted for a statutorily permitted purpose will be invalidated only if it is demonstrated that it actually was enacted for an improper purpose or if it was enacted without giving proper regard to local and regional housing needs and has an exclusionary effect" (*Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville*, 51 NY2d 338, 345 [1980]).

On the Record before this Court, Petitioners have demonstrated that the Village CP and/or the Zoning Amendments has the effect of exclusionary zoning. While neither document contains any language or provision expressly prohibiting members of the Hasidic Jewish community from residing in the Village, it is clear that if such was not enacted for an improper purpose, the Village CP and the Zoning Amendments were enacted without giving proper regard to local and regional housing needs of the Hasidic Jewish community and will have an exclusionary effect (*see Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville*, 51 NY2d 338 at 345; *see also Allen v Town of N. Hempstead*, 103 AD2d 144 [2d Dept 1984] [holding that durational residency requirement for proposed affordable senior citizen housing district, and comments made by town officials in support thereof, evinced an actual purpose to improperly exclude non-resident senior citizens of low and moderate income], *appeal withdrawn* 63 NY2d 944 [1984]). Notably, no zoning for high density, multi-family housing is proposed in the westernmost part of the Village, bordering VOKJ. While a municipality is not required to permit affordable housing in every zoning district or geographical area within its borders, and the failure to do so within any particular area or district does not in itself constitute an exclusionary zoning practice (*see Asian Americans for Equality v Koch*, 72 NY2d 121,

133-134 [1988]; *Suffolk Interreligious Coalition on Hous. v Town of Brookhaven*, 176 AD2d 936, 937-938 [2d Dept 1991]), *lv denied* 80 NY2d 757 [1992]), the Village CP and Zoning Amendments would eliminate high density, multi-family zoning from the area in question (*see Continental Bldg. Co. v Town of N. Salem*, 211 AD2d 88, 92-93 [3d Dept 1995], *appeal dismissed, lv denied*, 86 NY2d818 [1995][holding that zoning ordinance that drastically reduced area in which multi-family development would be permitted actually was enacted for exclusionary purpose]).

Respondents' argument that since the majority of the Village's land mass has been zoned for single family residences on large lots before the incorporation of both the Village and VOKJ, the Village CP and Zoning Amendments is not exclusionary is unavailing (*see Land Master Montg I, LLC v Town of Montgomery*, 13 Misc3d 870, 878 [Sup Ct, Orange County 2006][holding that comprehensive plan and zoning ordinances were exclusionary on their face because the elimination of dedicated multi-family districts contemplated therein "constitute a marked departure from the prior zoning structure"]). While the majority of the Village's land mass is zoned for single family residences on large lots, high density, multi-family development is permitted in the Workforce Housing Overlay District,[5] which encompasses the Light Commercial and Hamlet Business districts, which are located in and around the two hamlets, and the Transit Village Zoning District.[6] Thus, the Village CP and Zoning Amendments constitute a departure from the prior zoning structure which permits high density, multi-family development (*see Land Master Montg I, LLC v Town of Montgomery*, 13 Misc3d at 878).

Further, Respondents did not provide a properly balanced and well ordered plan for the community to satisfy the first prong of the test set forth in *Berenson* (*see Berenson v Town of New Castle*, 38 NY2d at 110-111). Moreover, even if the first prong of the *Berenson* test was met, it has not been shown that the Village Board considered regional housing needs and requirements. Petitioners cite several documents, including: the *Orange County Comprehensive Plan* (hereafter, the "OCCP"(Exhibit 19 to the Petition), *A Three-County Regional Housing Needs Assessment: Orange, Dutchess and Ulster Counties 2006 to 2020* (hereafter, the "3-County Study")(Exhibit 9 to the Petition), and the *Southeast Orange County Land Use Study* (hereafter, the "SOCLUS")(Exhibit

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[5] The Workforce Housing Overlay District is codified as Village Code 310-31.2.

[6] The Transit Village Zoning District is codified as Village Code 310-31.3.

14 to the Petition). Such studies and analyses may constitute evidence informing a court's determination of whether regional housing needs have been considered (*see, e.g., North Shore Unit. Universalist Socy. v Incorporated Vil. of Upper Brookville*, 110 AD2d 123, 126-128 [2d Dept 1985]; *Allen v Town of N. Hempstead*, 103 AD2d 144, 149 [2d Dept 1984]). The crux of each of the studies and analyses is that there is a regional affordable housing shortage which would be best addressed by increasing multi-family development in and around the region's cities, village centers, hamlets and transportation centers. Therefore, the fourth cause of action is granted.

The Fifth Cause of Action

In the fifth cause of action, Petitioners contend that the RPOD is ultra vires and must be annulled because the restrictions imposed thereby are not substantially related to the public health, safety or welfare (*see* Petition at ¶215). Villages are authorized to enact zoning laws (*see* Village Law 7-700: Statute of Local Governments 10[6]). "Additionally, section 10(1)(ii)(a)(11) of the Municipal Home Rule Law gives . . . villages the power to enact local laws for the 'protection and enhancement of [their] physical and visual environment.'" (*Incorporated Vil. of Nyack v Daytop Vil.*, 78 NY2d 500, 505 [1991]). Thus, "the esthetic enhancement of a particular area" within a municipality is a legitimate governmental objective of a zoning law (*Matter of Cromwell v Ferrier*, 19 NY2d 263, 269 [1967]). A zoning law will not be annulled as ultra vires if it bears a reasonable relationship to a legitimate governmental objective (*see Marcus Assocs. v Town of Huntington*, 45 NY2d 501, 506-508 [1976]).

The stated purpose of the RPOD is to preserve and protect the "ridgelines and hilltops [which] form a scenic background to the developed areas of the Village, softening the visual impact of buildings and giving to the Village a natural and rural atmosphere" (*see* Village Code 310-13(A)(1)). The Record before this Court establishes that the RPOD bears a reasonable relationship to a legitimate governmental objective and its stated purpose. The RPOD is directly related to said objective as it applies only to buildings which may become part of the "scenic background" because they are located above a certain elevation on ridgelines and hilltops (*cf. e.g., Russell v Town of Pittsford*, 94 AD2d 410, 413-414 [4th Dept 1983][holding that ordinance requiring street peddlers to be in constant motion bore no reasonable relationship to stated purpose of "alleviating traffic

congestion . . . and preserving the town's aesthetics"]). Therefore, the fifth cause of action is denied.

The Sixth Cause of Action

In the sixth cause of action, Petitioners contend that the RPOD must be annulled as unconstitutionally vague (*see* Petition at ¶234). "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement" (*Hill v Colorado*, 530 US 703, 732 [2000]; *see also Town of Islip v Caviglia*, 141 AD2d 148, 163 [2d Dept 1988], *affd* 73 NY2d 544 [1989] [applying such "a two-part analysis"]). As a zoning ordinance, the RPOD carries a presumption of constitutionality and Petitioners bear the burden of proof beyond a reasonable doubt in rebutting that presumption (*see North Shore Unit. Universalist Socy. v Incorporated Vil. of Upper Brookville*, 110 AD2d at 124). Moreover, "it is incumbent upon the courts 'to avoid interpreting a statute in a way that would render it unconstitutional if such a construction can be avoided and to uphold the legislation if any uncertainty about its validity exists'" (*Alliance of Am. Insurers v Chu*, 77 NY2d 573, 585 [1991]; *see also Astoria Fed. Sav. & Loan Assn. v State*, 222 AD2d 36, 45 [2d Dept 1996]). In the Record before this Court, Petitioners have not satisfied their burden.

On its face, the RPOD provides people of ordinary intelligence with a reasonable opportunity to understand what it prohibits. Pursuant to Village Code 310-13(B)(1), "[t]he roof of any development in an area having a natural elevation above sea level of 600 feet, to the maximum practical extent, shall not be visible from any designated ridge preservation view corridor, as defined herein, or such structures shall blend into the hillside." Ridge preservation view corridor is defined as "[t]hose state and county roadways designated on the Zoning Map from which development at elevation of 600 feet or higher along ridges and hillsides is visible" (Village Code 310-2[B]). Subsections 310-13(B)(2) through (4) impose restrictions on building materials and roof slopes for visible structures in order that they satisfy the requirement that they blend into the hillside. Subsections 310-13(B)(5) imposes restrictions on the cutting and removal of trees that may be visible from a view corridor.

These provisions set out the criteria by which a person seeking to build a structure may

determine whether any part of said structure would fall within the RPOD's proscriptions. The language is objective (*cf. e.g., People v New York Trap Rock Corp.*, 57 NY2d 371, 381 [1982] [holding that subjective terms used in noise ordinance did not provide adequate notice of the conduct prohibited thereby]) and specific (*cf. e.g., Russell v Town of Pittsford*, 94 AD2d 410, 414 [4th Dept 1983] [holding that street peddlers ordinance was also impermissibly vague because phrase used to describe prohibited conduct was "subject to various interpretations"]). Petitioners complain that the RPOD fails "to clearly identify the properties in [the Village] that are actually subject to its restrictions." (Petition at ¶234). However, in combination with the Zoning Map, the RPOD provides points from which the operative views may be ascertained and the visibility of potential structures may be calculated with respect to any property located in the village. While the RPOD could have been better drafted,[7] the possibility that compliance may require some effort on the part of an applicant does not render a zoning ordinance impermissibly vague (*see Clements v Village of Morristown*, 298 AD2d 777, 778 [3d Dept 2002] [holding that the challenging party bears the burden of demonstrating that he could not have understood the statutory language]).

The RPOD does not authorize or encourage arbitrary and discriminatory enforcement. Village Code 310-13(C) sets out the criteria which the Planning Board must consider "[i]n making its decision regarding the visibility and compatibility of proposed structures" (*see* Village Code 310-13[C][1]-[4]). In conjunction with the precise restrictions and standards imposed by subsection 310-13(B), these criteria effectively eliminate the risk of arbitrary or discriminatory enforcement (*cf. e.g., People v New York Trap Rock Corp.*, 57 NY2d 371, 381 [1982] [holding that "[o]verall, . . . the pervasive nature of its catchall effect" made noise ordinance "a ready candidate for *ad hoc* and discriminatory enforcement"]; *Bakery Salvage Corp. v City of Buffalo*, 175 AD2d 608, 610 [4th Dept 1991] [holding that offensive odor ordinance lacked adequate enforcement standards despite enumerated criteria because of "imprecise definition" of prohibited conduct].

Therefore, Petitioners have failed to satisfy their burden of proof to rebut the presumption of constitutionality of the RPOD beyond a reasonable doubt by demonstrating that on its face, it is impermissibly vague. Therefore, while annulled on other grounds as set forth herein, the sixth cause

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[7] For example, Village Code 310-13(B)(1) does not indicate an elevation point above a view corridor from which visibility is to be calculated (*see, e.g., Cumney v Board of Trustees of Village of Grand View, NY*, 660 F3d 612, 621 [2d Cir 2011] [holding that view-obstruction ordinance did not provide adequate notice because, among other defects, it failed to describe elevation point from which the height of a building must be measured]).

of action is denied.

The Seventh Cause of Action

In the seventh cause of action, Petitioners contend that the RPOD must be annulled because regulation of the scenic views from the New York State Thruway and State Route 32 is preempted by section 349-bb of the Highway Law[8] (*see* Petition at ¶¶238-243). Local governments "cannot adopt laws that are inconsistent with the Constitution or with any general law of the State" (*Incorporated Vil. of Nyack v Daytop Vil., Inc.*, 78 NY2d at 505). "Thus, the power of local governments to enact laws is subject to the fundamental limitation of the preemption doctrine. Broadly speaking, State preemption occurs in one of two ways – first, when a local government adopts a law that directly conflicts with a State statute and second, when a local government legislates in a field for which the State Legislature has assumed full regulatory responsibility" (*DJL Rest. Corp. v City of New York*, 96 NY2d 91, 95 [2001][internal citations omitted]).

The RPOD does not directly conflict with the Scenic Byways Program. "[C]onflict preemption occurs when a local law prohibits what a state law explicitly allows, or when a state law prohibits what a local law explicitly allows" (*Matter of Chwick v Mulvey*, 81 AD3d 161, 168 [2d Dept 2010]). There is nothing that the Scenic Byways Program or the RPOD explicitly allow which is prohibited by the other. The Scenic Byways Program is concerned with the condition, appearance and esthetic value of the highways that comprise certain portions of the State highway system – i.e., the roadways themself – and the rights-of-way attendant thereto; there is no mention of ridgelines or hilltops that may be near or which could be viewed from said highways (*see* Highway Law §349-aa). Arguably, the structural proscriptions imposed by the RPOD would be implicitly allowed by Highway Law §349-bb because the State statute is silent as to the specific subjects of those proscriptions. "However, the mere fact that the Legislature's silence appears to allow an act that a local law prohibits does not automatically invoke the preemption doctrine" (*Matter of Chwick v Mulvey*, 81 AD3d at 168).

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[8] Section 349-bb is part of article XII-C of the Highway Law, also known as the New York State Scenic Byways Program (hereafter, the "Scenic Byways Program").

The RPOD is not concerned with a field in which the State Legislature has assumed full regulatory responsibility.

> Field preemption applies under any of three different scenarios. First, an express statement in the state statute explicitly avers that it preempts all local laws on the same subject matter. Second, a declaration of state policy evinces the intent of the Legislature to preempt local laws on the same subject matter. And third, the Legislature's enactment of a comprehensive and detailed regulatory scheme in an area in controversy is deemed to demonstrate an intent to preempt local laws.

(*Id.*, 81 AD3d at 169-170 [internal citations omitted]).

The instant situation does not fall into any of the three scenarios. There is no express statement in Highway Law article XII-C explicitly averring that the Scenic Byways Program preempts any local law, there is no declaration of State policy in article XII-C evincing such an intent, and the State Legislature has not enacted a regulatory scheme that would demonstrate such an intent. According to Highway Law §349-aa, the legislative intent in establishing the Scenic Byways Program is "to guide and coordinate the activities of state agencies, local governments and not-for-profit organizations in order to create a comprehensive program that will better serve the public interest." But the interests served by the program created thereby do not entail the views of ridgelines and hillsides located within the boundaries of local municipalities (*see generally* Highway Law §349-aa). In other words, the Scenic Byways Program and the RPOD are not concerned with the same subject matter. Nor is the RPOD preempted because the roadways from which the visibility of structures regulated thereby is calculated include State highways (*see DJL Rest. Corp. v City of New York*, 96 NY2d 91, 97 [2001] [holding that "State statutes do not necessarily preempt local laws having only a 'tangential' impact on the State's interests"]).

In sum, the RPOD does not conflict with and is not otherwise preempted by Highway Law §349-bb or the Scenic Byways Program. Therefore, although annulled on other grounds as set forth herein, the seventh cause of action is denied.

The Eighth Cause of Action

In the eighth cause of action, Petitioners contend that the Village CP, RLUL and Zoning Amendments must be annulled because in adopting them, the Village Board did not comply with the

provisions of sections 239-l and 239-m of the General Municipal Law (*see* Petition at ¶¶253-261). The purpose of those provisions is "to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction" (General Municipal Law §239-l[2]). In furtherance of said purpose, a village that is considering such an action , and "which is located in a county which has a county planning agency . . . shall, before taking final action . . . [,]refer the same to such county planning agency" (General Municipal Law §239-m[2]). The county planning agency "shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon . . . [,]to report its recommendations to the referring body" (General Municipal Law §239-m[4][b]). "Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency" (General Municipal Law §239-m[6]). The failure to comply with the referral provisions of said statutes is a jurisdictional defect that renders the action taken invalid (*see Matter of Ernalex Constr. Realty Corp. v City of Glen Cove*, 256 AD2d 336, 338 [2d Dept 1998]).

It is undisputed that the Village DCP, RLULI and Zoning Amendments constituted proposed actions as to which referral to the Planning Department was required and that the Village Board referred the Village DCP and Zoning Amendments to the Planning Department. Petitioners allege that the Village Board did not refer the RLULI, that the referral upon which the Planning Department reported its recommendations did not constitute a "full statement of such proposed action[s]" as that term is defined in section 239-m(1)(c), and that the Village Board did not file a report of its final actions with the Planning Department.

It is established in the Record that the referral complied with General Municipal Law §239-m. Nor was the Village Board required to make an additional referral after receiving the Planning Department's response; the Planning Department did not identify any problems with the proposed actions or recommend any measures that might be taken to comply therewith and there were no post-response revisions to any of the proposed actions that rendered them so substantially different than were embraced within and reflected by the original referral, as to require a second referral (*see Matter of Benson Point Realty Corp. v Town of E. Hampton*, 62 AD3d 989, 992 [2d Dept 2009], *lv dismissed* 13 NY3d 788 [2009]). A second referral was not required because the original referral and the Planning Department's review and response arguably satisfied the statutory purpose of

General Municipal Law 239-l and 239-m.

However, Respondents do not contravene Petitioners' allegations that the Village Board did not file with the Planning Department a timely report of its final actions as required under General Municipal Law 239-m(6), and there is no evidence that such a report was ever filed. Therefore, the eighth cause of action is granted.

The Ninth Cause of Action

In the ninth cause of action, Petitioners contend that the Zoning Amendments must be annulled because, "[u]pon information and belief, the Village Board substantially revised the Zoning Amendments less than seven days prior to their final passage and, therefore, it violated the procedural safeguards of the Municipal Home Rule Law" (Petition at ¶266). Pursuant to section 20(4) of the Municipal Home Rule Law, "[n]o local law shall be passed until it shall have been in its final form and either (a) upon the desks or table of the members at least seven calendar days . . .prior to its final passage, or (b) mailed to each of them . . . at least ten calendar days . . . prior to its final passage" (*see also Matter of Carpenter v Laube*, 109 AD3d 1018 [2d Dept 2013]). However, the Record does not contain sufficient information to substantiate Petitioners' contention that the Village Board violated the seven-day requirement (*cf. Matter of Tyler v Niagra County Legislature*, 175 AD2d 676 [4th Dept 1991]). Therefore, although annulled on other grounds as set forth herein, the ninth cause of action is denied.

The Twelfth, Thirteenth and Fourteenth Causes of Action

In the twelfth, thirteenth and fourteenth causes of action, Petitioners contend that the RLULL must be annulled because (1) it unlawfully delegates legislative power to the Planning Board (Petition at ¶¶300-302), (2) violates the rights of the Individual Petitioners and Corporate Petitioners to due process of law (Petition at ¶¶309-310) and, (3) is unconstitutionally vague (Petition at ¶¶320-323). The RLULL carries a presumption of constitutionality and Petitioners bear the burden of proof beyond a reasonable doubt in rebutting that presumption (*see North Shore Unit. Universalist Socy. v Incorporated Vil. of Upper Brookville*, 110 AD2d at 124).

Pursuant to the RLULL, a place of worship is a special permit use subject to minimum area and setback requirements set forth in the table entitled "Special Permit and Site Plan Approval by Planning Board" in each of the schedules of zoning districts to which the RLULL applies, and the following language appears in the Village Code as a footnote to those requirements:

> The Planning Board shall have discretion to waive any number of these requirements to the extent necessary if certain requirement(s) places a substantial burden on the religious exercise of a person, religious assembly or institution."

The gravamen of Petitioners' allegations in support of these causes of action is that the RLULL delegates to the Planning Board power to grant variances from the zoning laws, which power it could lawfully delegate only to a zoning board of appeals, and that the "substantial burden" criteria pursuant to which such determinations are to be made is both insufficient to limit the Planning Board's discretion and fails to provide potential applicants with a reasonable opportunity to know the circumstances under which the waiver provision will be applied. The Record does not indicate whether any of the Petitioners submitted a site plan or applied for a special use permit or a variance to build a place of worship in the Village. However, "a legal challenge to a local government's delegation of its land use regulatory powers to an administrative agency may properly be reviewed before the complaining party has sought relief from the agency" (*Town of Islip v Zaluk*, 165 AD2d 83, 97 [2d Dept 1991]).

The legislature of a local government may lawfully delegate certain of its powers to an administrative body so long as "[s]tandards are provided which, though stated in general terms are capable of a reasonable application and are sufficient to limit and define the [body's] discretionary powers" (*Matter of Aloe v Dassler*, 278 AD 975 [2d Dept 1951], *affd* 303 NY 878 [1952]). And "the legislative body has considerable latitude in determining the reasonable and practical point of generality in adopting a standard for administrative action" (*Matter of Big Apple Food Vendors' Assn. v Street Vendor Review Panel*, 90 NY2d 402, 407 [1997]). A village board of trustees is

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[4] A place of worship is defined as "[a] building designed or adapted for use by a religious organization for conducting formal religious services or religious assembly on a regular basis." Village Code 310-2. Petitioners contend that the minimum area and setback requirements for the siting of such structures effectively prohibit the use thereof within the tenets of the Hasidic Jewish religion.

empowered to authorize a planning board "to review and approve, approve with modifications or disapprove site plans" (Village Law §7-725-a[2]) and "to grant special use permits" (Village Law 7-§725-b[2]). A village board of trustees is also empowered to authorize a planning board to "waive any requirements for the approval, approval with modifications or disapproval of site plans" (Village Law §7-725-a[5]) and "special use permits" (Village Law §7-725-b[5])(*see also Town of Islip v Zalak*, 165 AD2d at 97-99 [holding that local government may lawfully delegate to a planning board the power to grant area variances]).

Any waiver of requirements by a planning board to which a village government has delegated such powers may be exercised only "in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan" (Village Law §725-a[5]) or "special use permit" (Village Law §725-b[5]); *see, e.g., Town of Islip v Zalak*, 165 AD2d at 98-99; *Dur-Bar Realty Co. v City of Utica*, 57 AD2d 51, 56 [4th Dept 1977], *affd* 44 NY2d 1002 [1978]. Protection of the rights of its citizenry to the free exercise of religion is a legitimate purpose of a local government (*see, e.g., Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Sts. v Amos*, 483 U.S. 327, 335 [1987]) (holding that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions"). On its face, the language utilized in the RLUIL describes a lawful delegation of powers that does not offend due process (*see Brightonian Nursing Home v Daines*, 21 NY3d 570, 575-579 [2013]), and is not unconstitutionally vague. Therefore, although annulled on other grounds as set forth herein, the twelfth, thirteenth and fourteenth causes of action are denied.

The Tenth, Eleventh and Fifteenth through Eighteenth Causes of Action

In the tenth cause of action, Petitioners contend that the Village CP and Zoning Amendments must be annulled because they have imposed a substantial burden on the religious exercise of the Individual Petitioners and the Corporate Petitioners and Woodbury's Hasidic Jewish population

(Petition at ¶276) in violation of section 2000 cc(a) of the United States Code.[10] In the eleventh cause of action Petitioners contend that the RLULL must be annulled because as a result of said law "Hasidic Jewish religious assemblies, institutions or structures will either be totally excluded from the Village or will be unreasonably limited within the Village" (Petition at ¶288), in violation of 42 USCA § 2000cc (b)(3). In the fifteenth through eighteenth causes of action Petitioners contend that the Village CP, RLULL and Zoning Amendments must be annulled because they violate Petitioners' rights to equal protection (Petition at ¶¶336, 366), free exercise of religion (Petition at ¶350), and due process (Petition at ¶378). The gravamen of Petitioners' allegations in support of these causes of action is that the failure to create multi-family districts in which would be permitted as of right the development of communities of sufficient residential density needed to satisfy the unique needs of the Hasidic Jewish community – including the siting of places of worship within such communities – effectively prohibits or makes it prohibitively difficult for members of the Hasidic Jewish community to live and worship in the Village in a manner consistent with their religious beliefs.

The analysis under RLUIPA tracks that of the United States Supreme Court under the First Amendment, so that a land use regulation violates RLUIPA where it is determined that it violates the Free Exercise Clause (*see Chabad Lubovitch of Litchfield County v Borough of Litchfield*, 853 F Supp 2d 214, 222 [D Conn 2012]. Thus, a determination that the Village CP, RLULL and Zoning Amendments violate RLUIPA necessarily entails an interpretation that renders said enactments unconstitutional.

In light of the fact that the Court has addressed those causes of action seeking annulment on non-constitutional grounds of the enactments at issue herein, the Court declines to address the claims raised in the tenth, eleventh and fifteenth through eighteenth causes of action at this time, without prejudice to a renewal of such claims should subsequent litigation ensue.

Accordingly, for the foregoing reasons, it is hereby

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[10] Section 2000cc is part of chapter 21C of the United States Code, otherwise known as the Religious Land Use and Institutionalized Persons Act (hereafter, "RLUIPA").

ORDERED and ADJUDGED that the Petition is granted to the extent that the first, second, fourth, and eighth causes of action are granted, and the third, fifth, sixth, seventh, ninth, twelfth, thirteenth and fourteenth causes of action are denied; and it is further

ORDERED and ADJUDGED that in view of the foregoing, this Court need not reach a determination with respect to the remaining causes of action; and it is

ORDERED and ADJUDGED that the Resolution dated June 14, 2011, of the Village Board of the Village of Woodbury, adopting the Comprehensive Plan for the Village of Woodbury, is annulled, and the Comprehensive Plan for the Village of Woodbury adopted pursuant thereto is declared void and unenforceable; and it is further

ORDERED and ADJUDGED that the Resolution dated June 14, 2011, of the Village Board of the Village of Woodbury, adopting Local Law 3 of 2011, consisting of amendments to Chapter 310 of the Village Code of the Village of Woodbury, is annulled, and the amendments adopted pursuant thereto, with the exception of the amendments adopted and codified as section 310-13 of the Village Code of the Village of Woodbury (otherwise known as the Ridge Preservation Overlay District), are declared void and unenforceable and, it is further

ORDERED and ADJUDGED that the Resolution dated June 14, 2011, of the Village Board of the Village of Woodbury, adopting Local Law 4 of 2011, consisting of amendments to the Zoning Map of the Village of Woodbury, is annulled, and the amendments adopted pursuant thereto, with the exception of the amendments adopted and codified as section 310-13 of the Village Code of the Village of Woodbury (otherwise known as the Ridge Preservation Overlay District), are declared void and unenforceable.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: White Plains, New York
March 19, 2014

ENTER:

HON. FRANCIS A. NICOLAI
Justice of the Supreme Court

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