SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

FOOD INDUSTRY ALLIANCE OF
NEW YORK STATE, INC.

Plaintiff/Petitioner,

-against-

THE VILLAGE OF HASTINGS-ON-HUDSON and
THE BOARD OF TRUSTEES OF THE VILLAGE
OF HASTINGS-ON-HUDSON,

Defendants/Respondents.

Index No. 3372/2014

DEFENDANTS/RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION

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PRELIMINARY STATEMENT

The Petitioner/Plaintiff Food Industry Alliance of New York State, Inc. ("Petitioner"), an industry group representing grocery stores, raises three grounds for annulling the Defendant/Respondent Village of Hastings-on-Hudson's ("the Village") and its Board of Trustees' ("the Board") Local Law No. 2 of 2014 ("the Local Law") barring retailers from distributing plastic retail shopping bags.[1] None of its grounds, whether based on constitutional claims, preemption, or the State Environmental Quality Review Act ("SEQRA"), is viable. Accordingly this Court should declare that the Local Law is valid and dismiss the Petitioner's Article 78 claims.

The response to Petitioner's preemption claim is straightforward. New York Environmental Conservation Law Article 27, the state statute upon which the Petitioner bases its preemption claim, includes an express and limited preemption clause. Therefore, this Court does not need to look any further than the state statute itself to discern the breadth of the preemption. The state statute preempts laws pertaining solely to plastic bag **recycling**. The Local Law does not pertain to plastic bag recycling, but rather bars the distribution of plastic bags. Therefore, the Local Law is not preempted by the state law. Petitioner's arguments concerning field preemption and conflict preemption should be disregarded as inapplicable to this case given the express preemption clause in the state statute.

The Petitioner lacks standing to assert its Article 78 claim that the Local Law does not comply with the procedural and substantive provisions of SEQRA. It is well settled that a petitioner trade association must show a specific and unique environmental harm to one of its

[1] The Local Law also prohibits the distribution of certain expanded polystyrene, commonly known by the trade name "Styrofoam", containers.

members that is not suffered by the public at large to bring a SEQRA claim. Here, Petitioner fails to assert a unique environmental harm. A review of the Petition and underlying record makes clear that Petitioner's member A&P's concerns are essentially economic in nature. Alleged economic harm is not a cognizable basis to bring a SEQRA claim. Further, even if the A&P had standing, they are not a party to this proceeding, and the facts alleged do not provide standing to the Petitioner to raise SEQRA claims. However, if this Court does review those arguments it will find that SEQRA was fully complied with both procedurally and substantively by the Board in issuing a negative declaration.

Finally, Petitioner does not come anywhere near meeting the heavy burden of proving that the Local Law is arbitrary and unconstitutional. Respondents have ample evidence that there is a litter problem within the Village caused by discarded retail plastic shopping bags affecting both the Village and its adjacent waters and that the Local Law banning the distribution of these bags will alleviate that problem. Therefore, the Local Law is reasonably related to an identifiable problem that falls within the scope of the municipality's police powers.

STATEMENT OF FACTS

On March 4, 2014, at a regular meeting of the Board, Jean Hamerman, a member of the Village of Hasting-on-Hudson's Conservation Commission, a seven-member volunteer body that advises the Board of Trustees and Village Manager on issues relating to sustainability and the environment, proposed legislation to ban the distribution of single use plastic bags and certain expanded polystyrene containers at retail stores (Return of Record 34-35). She noted that the City of Rye, the Village of Mamaroneck, and the Village of Larchmont all passed similar laws proscribing the distribution of plastic bags. The ban on expanded polystyrene was inspired by a

New York City law. She noted that the proposed ban would not eliminate laundry, refuse and newspaper bags as such bags are difficult to substitute.

After Ms. Hamerman concluded, Costanza Zordan, also of the Conservation Commission, spoke to both the local and global effects of plastic bags. She submitted pictures taken by her daughter as part of a program at the Greenburgh Nature Center whereby students were encouraged to take as many photographs of stray plastic bags as they could in two hours. R.O.R. 35) A petition signed by 150 community members was submitted (R.O.R. 5-15) There was also discussion of the ban on expanded polystyrene. (R.O.R. 39)

At the conclusion of the proponents' comments, Trustee Jennings noted that the purpose of the legislation was 1) to curb the litter problem caused by single use plastic bags and 2) to get people to alter their behavior and switch to reusable bags. He expressed hope that the plastic bag ban would spark a gradual change in behavior that would allow the elimination of paper bags to become feasible. (R.O.R. 41) Several minor alterations to the proposed law were suggested by the Board prior to the scheduling of a public hearing.

On March 18, 2014, at the next regular meeting, the proponents put forward a revised proposed Local Law. (R.O.R. 84-85) The Board scheduled a public hearing and provided additional notice to local merchants. (R.O.R. 111)

Sofia Zordan and Gretchen Bogan, high school students, spoke at the public hearing held on April 23, 2014. Sofia is the daughter of Costanza Zordan and had participated in the "One Camera Two Hours" project referenced above (R.O.R. 189) She noted that, although she spent only one hour taking pictures, she photographed sixty plastic bags littering the Village. Brayden Cohen of Edgemont, a sustainability educator and specialist and the organizer of the "One Camera Two Hours" initiative spoke to the global impacts of plastic bag use. (R.O.R. 191-192

He also noted that Washington D.C. and Ireland greatly reduced their plastic bag consumption, 60% and 90% respectively, as a result of similar bans. He noted that the long term goal of his work is to encourage the use of reusable bags. Several other proponents of the ban spoke, citing surveys indicating that reusable bag use increased 62% in San Jose, California following a similar ban and submitting a study showing the beneficial environmental effects from said ban. (R.O.R. 233) An owner of a local restaurant spoke in favor of the measure, despite his opinion that it would add some costs to his business. (R.O.R. 192) Catherine Parker, a Westchester County Legislator and supporter of the ban, stated that the county's method of disposing of plastic bags is to burn them. (R.O.R. 202) The public comments in favor of the adoption of the Local Law were extensive, and we respectfully refer this Court to the full transcript of the public hearing (R.O.R. 187-207).

Opponents of the ban spoke as well. First, an owner of a local liquor store stated that paper bags would be inconvenient for his customers, bottles of liquor may break, and would be detrimental to his business. (R.O.R. 190) Later, several persons representing the interest of the local A&P grocery store spoke against the ban as well. Joseph Madden, an attorney for the Petitioner herein, raised several legal objections to the proposed law, which issues are summarized in the Petition and Petitioner's Memorandum of Law in this proceeding. (R.O.R. 193-194) Jay Peltz, General Counsel for the Food Industry Alliance of New York State, focused his comments on an allegedly significant adverse environmental impact on climate change, truck traffic, and landfills resulting from the ban on single use recyclable bags in the 8,000 resident Village.[2] Finally, he stated that plastic bags are less expensive than paper bags and spoke to the

[2] The errors and biases contained in the Petitioner's studies were pointed out both at the hearings and in later communications to and among the Board. (*see eg.* R.O.R. 203-204, 298, 346) For example, the LA study upon

A&P's economic interests. (R.O.R. 194-198) The district manager of A&P also spoke to the economic effects of the ban. (R.O.R. 198-199)

At a second public hearing on May 6, 2014, Mr. Peltz reiterated his opposition to the ban and proposed that the Village enter into an agreement with an entity by the name of MY ECO in order to promote the use of reusable bags. (R.O.R. 303-304) A representative of MY ECO was contacted by a member of the Conservation Commission and stated that MY ECO's programs are not suitable for a Village the size of Hastings. (R.O.R. 344) A proponent of the ban spoke and noted that he had never had to chase a paper or reusable bag down the street. (R.O.R. 304) The public hearing was then closed, but the Trustees made clear that they would consider additional written communications from the public prior to making their determination of significance. (R.O.R. 305) During the regular meeting that night, the Board made several inquiries to Mr. Peltz regarding MY ECO. Among the questions was why he was now promoting the reusable bags his store sells and was suggesting that the Village come to a deal with MY ECO to promote reusable bags when he previously argued that these bags carry diseases. Mr. Peltz responded that My ECO's bags and the bags sold at the A&P were made of plastic, and not cloth, and thus carried less risk of disease. (R.O.R. 325) He was apparently unaware that in the instance he mentioned where a norovirus outbreak had occurred through contact with a reusable bag, the bag was made of plastic. (R.O.R.347)

On May 16, 2014, after consideration of all the the relevant issues, the Board unanimously approved the Negative Declaration and passed the Local Law. (R.O.R. 353-357)

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which the Petitioner heavily relies was found to be an industry-backed, widely discredited survey with an extremely limited sample that the author himself would not stand behind. (R.O.R. 298)

ARGUMENT

I. THE PETITIONER HAS NOT MET ITS BURDEN TO SHOW BEYOND A REASONABLE DOUBT THAT THERE IS NO RATIONAL RELATIONSHIP BETWEEN THE LEGISLATION AND THE PUBLIC INTEREST

A. The Petitioner bears a heavy burden of proof when attacking the constitutionality of a local law.

Legislative enactments and local laws are presumptively valid. *See, Matter of Van Berkel v. Power*, 16 N.Y.2d 37, 40, 261 N.Y.S.2d 876, 209 N.E.2d 539 (1965); *Korotun v. Incorporated Vil. of Bayville*, 26 A.D.3d 311, 312–313, 809 N.Y.S.2d 533 (2d Dep't 2006). Therefore, Petitioner bears a heavy burden of proof.

In *Ricketts v. City of New York*, 181 2d 838, 841-42, 688 N.Y.S. 2d 418 (Sup Ct. NY County 1999), the Court described that presumption, and the concomitant burden, as follows:

> A local law is clothed with the presumption of constitutionality. An attack on such a law carries a heavy burden. *41 Kew Gardens Road Associates v. Tyburski*, 70 N.Y.2d 325, 520 N.Y.S.2d 544, 514 N.E.2d 1114 (1987). To overcome this heavy burden, movant **must establish beyond a reasonable doubt that there is no rational relationship between the legislation and the public interest,** even in the absence of relevant legislative findings. *Town of North Hempstead v. Exxon Corp.*, 53 N.Y.2d 747, 439 N.Y.S.2d 342, 421 N.E.2d 834 (1981). (emphasis supplied)

See also, MHC Greenwood Village NY, LLC v. County of Suffolk, 58 A.D.3d 735, 874 N.Y.S.2d 135 (2d Dep't. 2009)*; Gabrielli v. Town of New Paltz,* 116 A.D. 3d 1315, 984 N.Y.S. 2d 468 (3d Dep't 2014)(unconstitutionality must be established beyond a reasonable doubt).

The Court went on to state that there is a presumption that the legislative body investigated the problem it seeks to solve through legislation.

> While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt and **only as a last resort should courts strike down legislation on the ground of unconstitutionality**. The ordinance may not be arbitrary. It must

> be reasonably related to some manifest evil which however need only be reasonably apprehended. It is also presumed that the legislative body investigated and found the existence of a situation showing or indicating the need for or desirability of the ordinance, **and, if any stated facts known to be assumed, justifies the disputed measure this Court's power of inquiry ends.** (emphasis supplied).

Ricketts v. City of New York, supra at 842.

The mere existence of evidence or public hearing testimony against the proposed law is insufficient to carry that heavy burden of proof. In *Town of North Hempstead v. Exxon Corp.*, 53 N.Y.2d 747, 748 (1981), the Court of Appeals stated: "It bears emphasis that . . . the mere presence of empirical evidence that casts doubt upon the existence of the hazards sought to be alleviated by the legislation is not conclusive proof of irrationality. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463–465, 101 S.Ct. 715, 723–724, 66 L.Ed.2d 659 (1981). **So long as there is evidence that the question is at least debatable, the legislative judgment is not irrational** (*id.*)." (emphasis supplied). As further discussed below, in this case the indisputable issue of litter in the Village alone more than satisfies this standard. The Board had a rational basis for the Local Law.

Here, the Petitioner contends that the legislation was so unreasonable as to constitute a substantive due process violation. The Petitioner's claims are economic in nature. Courts are extremely wary to strike down such legislative acts where they do not affect the most fundamental of rights. "The Supreme Court has cautioned against expansion of the substantive component of the Due Process Clause. To the extent that substantive due process protection exists, it must be confined to the protection of interests central to individual freedom and autonomy. Without minimizing the significance of the plaintiffs' interests, the Court concludes that those interests simply are not sufficiently weighty to warrant their protection under the

substantive due process rubric." *Irwin v. City of New York*, 902 F. Supp. 442, 451 (S.D.N.Y. 1995) [internal citations and quotations omitted] *See also Hertz Corp. v. City of New York*, 1 F.3d 121, 132 (2d Cir. 1993) "Economic regulation need only be rationally related to a legitimate governmental purpose. *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 106–07, 99 S.Ct. 403, 410, 58 L.Ed.2d 361 (1978) (since demise of substantive due process in economic area, due process provides legislative bodies broad scope to experiment with economic problems); *Exxon Corp. v. Governor of Maryland,* 437 U.S. 117, 124, 98 S.Ct. 2207, 2213, 57 L.Ed.2d 91 (1978) (citing *Ferguson v. Skrupa,* 372 U.S. 726, 730–31, 83 S.Ct. 1028, 1031, 10 L.Ed.2d 93 (1963)) (searching scrutiny of economic legislation has long been abandoned; 'vague contours' of due process clause do not permit courts to sit as superlegislature to weigh wisdom of legislation)." Simply put, the Petitioner's claims are economic in nature and do not give rise to a substantive due process claim.

B. Petitioner has not met its heavy burden of showing no rational relationship between the legislation and the public interest.

Setting aside any other basis for the law, the Board's conclusion that the ban on retail distribution of plastic bags and expanded polystyrene would reduce plastic bag and expanded polystyrene litter was rationally based and therefore constitutional. Citizens came to the Board with a concern that there was an abundance of small plastic bags littering their Village. They produced evidence of that litter. They proposed a ban on these plastic bags in order to alleviate this problem. They submitted empirical evidence showing that other communities had seen a reduction in this type of litter due to the passage of bans on plastic and expanded polystyrene. (R.O.R. 233) They provided photographs of small plastic bags strewn throughout the Village. (R.O.R. 224-226) The Board members also relied on their own observations of the abundance of plastic bag litter in the Village. As a result, the Board came to the reasonable conclusion that a

ban on these products would result in less of those products littering their Village and the waters adjacent thereto. The fact that the Petitioner submitted studies to the contrary, the flaws of which were widely discussed (*see* R.O.R. 298, 346), does not render the Board's determination to pass the Local Law so unreasonable as to be a constitutional violation. As noted above, "So long as there is evidence that the question is at least debatable, the legislative judgment is not irrational." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463–465, 101 S.Ct. 715, 723–724, 66 L.Ed.2d 659 (1981).

As is the case in the drafting and passage of any piece of legislation, the Village balanced interests. The fact that they chose not to ban every plastic bag or every piece of plastic in the Village does not render the legislation unconstitutional. The Village chose not to ban certain types of plastic either because there is no adequate substitute or the risk that such plastic would blow away was less. Such determinations are within the Board's discretion. The Petitioner's contention that the law is unconstitutional because it is directed at retailers instead of polluters is misguided.[3] First, the law is directed at stray plastic bags which by their nature are blown about the Village despite the public's best efforts not to litter. Second, there is no constitutional rule that a municipality may use only one method to control litter. Of course, no single piece of legislation will solve a litter problem entirely. Finally, the Petitioner's argument that there can be no rational basis for the Board to conclude that biodegradable bags are preferable to non-biodegradable bags is plainly illogical and requires no further refutation.

[3] The New York State law upon which the Petitioner relies in its preemption argument is also targeted at retailers as opposed to consumers.

II. THE LOCAL PLASTIC BAG BAN IS NOT PREEMPTED BY ARTICLE 27 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW.

Because local ordinances carry a strong presumption of validity, the burden is on the challenger to show that the ordinance is preempted by New York State Environmental Law Article 27. *Matter of Zorn v. Howe*, 276 A.D.2d 51, 56, 716 N.Y.S.2d 128 (3d Dep't.2000).

In *Mayor of the City of New York v. The Council of the City of New York*, 4 Misc 3d 151, 780 N.Y.S. 2d 266 (Supr. Ct. New York Cty 2004), the Court explained that New York recognizes three types of local law preemption: express preemption, field preemption and conflict preemption. *Id* at 156.

This is an unusual preemption claim. Preemption claims are commonly made where the legislature fails to state its intent regarding preemption, leaving the litigants to debate what that intent was. Here, the legislature specified precisely what local legislation would be preempted – local laws regarding plastic bag recycling – yet Petitioner strains to make an argument that there is an open preemption question. Petitioner makes these arguments even though the New York State Department of Environmental Conservation, the very agency charged with promulgating rules in relation to the Article 27 [N.Y. Envtl. Conserv. Law § 27-2711 (McKinney)] and enforcing Article 27 [N.Y. Envtl. Conserv. Law § 71-0201 (McKinney)], has given an award to the proponents of essentially the same local law that the Petitioner now argues that state law preempts.

A. New York State Environmental Law Article 27 does not expressly preempt the Local Law.

The State Legislature included a preemption provision in New York State Environmental Law § 27-2713. Therefore, it is clear that the real issue is whether the Local Law is expressly

preempted. Field preemption and conflict preemption are really irrelevant in this matter. Section § 27-2713 of the New York State Environmental Law entitled "Preemption" reads as follows:

> Jurisdiction in all matters **pertaining to plastic bag recycling** is by this article vested exclusively in the state. Any provision of any Local Law or ordinance, or any rule or regulation promulgated thereto, **governing the recycling of plastic bags** shall, upon the effective date of this title, be preempted. Provided, however, nothing in this section shall preclude a person from coordinating for recycling or reuse the collection of plastic bags. [emphasis supplied]

This comes down to the plain meaning of the sentence: "Jurisdiction in all matters pertaining to plastic bag recycling is by this article vested exclusively in the state." Respondent agrees with Petitioner that the plain meaning is the most important factor in evaluating preclusion. *See Town of Dryden*, 2014 WL 2921399 at 7. Here, the plain meaning limits the preemption to recycling.

Petitioner alleges that New York State has preempted any legislation concerning the distribution of plastic bags and their disposal. This is incorrect. New York State has expressly preempted a much smaller area, to wit: "all matters pertaining to plastic bag **recycling**". *See*, New York State Environmental Law Section 27-2713 [emphasis supplied]. Here, the Local Law does not pertain to plastic bag recycling and thus it is not preempted by Article 27 of the New York State Environmental Law. The broadening phrase "all matters pertaining to" modifies the words "plastic bag recycling". Thus, contrary to Petitioner's argument, the fact that the legislators used a comprehensive phrase such as "all matters pertaining to" does not expand the subject matter beyond plastic bag recycling to the total regulation of plastic bags, as argued by Petitioner. The plain meaning of the state statute would be completely tortured if this Court were to find that the State has expressly preempted all regulation of disposable plastic bags, as urged by Petitioner on page 7 of its Memorandum of Law, as opposed to the recycling of plastic bags.

Petitioner mistakenly contends that in *Ames v. Smoot*, 98 A.D. 2d 216, 219 (2d Dep't 1983), the Second Department "held that a state environmental statute with an identical preemption clause as the one at issue here preempted the villages' power to ban aerial spraying." Petitioner's Memorandum of Law, page 9. In *Ames, supra*, there was no specific preemption provision. Rather, the Court found an intent to preempt in part from the language in NYECL 33-0303, subdivision 1, which reads as follows: "Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, is by this article vested exclusively in the commissioner." Except for the phrase "all matters pertaining to" this is much different language. That statute covered four areas – distribution, sale, use and transportation – and it called for exclusive jurisdiction by the state. This is not comparable to the specific limited preemption provision at issue here. The preemption clause in New York State Environmental Law § 27-2713 does not extend to the distribution or sale of plastic bags but only to recycling.

Although this Court need look no further than the clear meaning of the text, the legislative history supports the clear meaning of the statute. The second sentence of the preemption clause, "Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing the recycling of plastic bags shall, upon the effective date of this title, be preempted," concerned local laws that were in existence in 2008 and is not applicable to this lawsuit. The legislative history makes clear that the state legislators considered the issue of whether there should be a "carve-out" for New York City's then existing recycling law. (See Exhibit A to the Affidavit of Patricia W. Gurahian) but ultimately concluded that a uniform law with respect to recycling was appropriate. Nowhere is it indicated that the preemption was intended to extend to issues beyond recycling and in particular bans on the distribution of plastic bags. The letter from national retail chain Target, highlighted on page 13 of Petitioner's

memorandum of law, states that Target was concerned with "**varying plastic bag recycling laws** with a myriad of requirements." (Id.) (emphasis supplied). Thus local recycling laws were the only laws preempted.

Finally, in 2013, the New York State Department of Environmental Conservation awarded the Southampton Advocates for the Village Environment its Excellence Award for establishing the first municipal program to prohibit single use plastic, grocery-sized shopping bags. (Gurahian Exhibit B) Clearly, the rulemaking and enforcement authority for New York State Environmental Law Article 27 did not find that a local plastics ban is preempted by or inconsistent with that statute. Further, other municipalities within the State have adopted similar bans. (Gurahian Exhibit C)

B. The State Legislature did not intend to preempt the entire field of plastic bag distribution and disposal.

In determining whether the state legislature intended to preempt the entire field of plastic bag distribution and disposal, this Court need not go further than an examination of the specific preemption provision discussed above. In *Vango Media, Inc. v. City of New York*, 24 F. 3d 68 (2d Cir. 1994), a Second Circuit Panel reviewing the issue of federal preemption of state law quoted *Malone v. White Motor Corp.*, 435 U.S. 497 505, 98 S. Ct. 1185, 1190 (1978) regarding the issue of legislation that has a provision explicitly addressing preemption as a "reliable indicium of congressional intent with respect to state authority." The panel went on to state that "there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation because Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted." *Id.* quoting *California Fed. Sav & Loan Assoc v. Guerra*, 479 U.S. 272, 282 (1987).

Petitioner states without legislative support that the State law is a "comprehensive statute completely occupying the field concerning plastic bags." In order to preempt local laws, a State law must preempt the "entire field" of law. *Vatore v. Comm'r of Consumer Affairs of the City of New York*, 634 N.E. 2d 959, 959 (1994). "[T[hat the state and local laws touch upon the same area is insufficient to support a determination that the State has preempted the entire field of regulation in a given area. . ." *Inc. Village of Nyack v. Daytop Village, Inc.* 583 N.E. 2d 928 (1991). The simple fact that two laws touch on the same broad issue is not evidence of preemption; there must also be evidence that the State has occupied the entire field to the exclusion of the local law; *Wholesale Laundry Board of Trade v. City of New York*, 17 A.D. 3d 327, 234 N.Y.S. 862 aff'd 12 N.Y. 2d 998, 239 N.Y.S. 2D 128 (1963). While both the ECL and the Local Law relate to plastic shopping bags, the state law only regulates recycling of such plastic bags not the entire field of plastic bag regulation. The Local Law does not affect the recycling process and is therefore not preempted. Furthermore, it has nothing to do with plastic bag disposal. It merely effects distribution.

Again, the words of the preemption clause are limited to recycling. It is axiomatic that when construing a statute, the plain meaning of the words chosen by the legislators must be given effect. *See, Vango Media, Inc. v. City of New York*, 24 F. 3d 68, 74 (2d Cir. 1994),

C. Nothing in the Local Law conflicts with state law.

This is not a conflict preemption case where a local law prohibits what a state law explicitly allows or where state law prohibits what local law explicitly allows. The crux of conflict preemption is where there is a "head-on collision" between the ordinance and state statute. *Chwick v. Mulvey*, 81 A.D. 3d 151, 915 N.Y.S. 2d 578 (2d Dep't 2010). This is not a comprehensive local law in substantial conflict with a comprehensive state law. State preemption

law recognizes an exception for a local law of general application tangential to the state law. *Mayor of City of New York, supra* at 162. Further, the legislative intent of both laws is consistent. The state law on recycling remains in effect in Hastings and has not been altered or modified by the Hastings law on the issuance of plastic bags

As noted, the Local Law does not speak to recycling. A local law is deemed inconsistent and preempted by state law if it imposes additional restrictions on activity permitted under state law, because those restrictions inhibit the operation of the state's general law; *Mayor of City of New York, supra* at 159. Here, no additional restrictions are placed on the state's recycling law by banning the use of certain plastic bags within the Village. The A&P is free to keep recycling bins in its store or not, whichever it chooses.

Again, the error in Petitioner's analysis is that it starts with the unsupported premise that the State has preempted the broader field of plastic bag use as opposed to only recycling.

III. THE PETITIONER LACKS STANDING TO BRING ITS SEQRA CLAIMS

The Petition does not adequately plead standing. Under the heading "Parties", the Petition states that the Petitioner Food Industry Alliance of New York State, Inc. is a trade association made up of approximately 850 corporate members. One member of the group, A&P, operates a supermarket in Hastings-on-Hudson. The Petitioner's mission is to advance and protect the interests of its membership in state and local legislative and regulatory activities. (Gurahian Exhibit D) Nowhere in its mission statement is there any mention of the environment or improving the environment. A review of the Petitioner's website makes it clear that the Petitioner was formed to advance the economic interests of its members. It is well settled that to qualify for standing to raise a SEQRA challenge, a party must demonstrate that it will suffer an injury that is environmental and not solely economic in nature. *See Matter of Gernatt Asphalt Prods. v. Town*

of Sardinia, 87 N.Y. 2D 668, 687, 642 N.Y.S. 2D 164 (1996); *Matter of Mobil Oil Corp. v. Syracuse Indus. Dev. Agency*, 76 N.Y. 2D 428, 433, 559 N.Y.S.2d 947 (1990).

Standing, when challenged, must be considered at the outset of any litigation and a threshold determination made. *Matter of Dairylea Coop. v. Walkley*, 38 N.Y.2d 6, 9, 377 N.Y.S. 2D 451 (1975). The burden of establishing standing to raise a claim is on the party seeking review. *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 769, 573 N.E.2d 1034 (1991) It is not a mere pleading requirement but an indispensable part of the Petitioner's case and each element must be supported and Petitioner bears the burden of proof on each element. *Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 N.Y.3d 297, 918 N.E.2d 917 (2009)

Preliminarily it must be noted that the presence of an issue of public concern is insufficient to provide standing. This is especially important in SEQRA challenges where organizations and "groups whose interest was primarily economic or non-environmental, would use the process to generate delay and interference." *Chu v. New York State Urban Development Corp.*, 13 Misc. 3d 1229(A), 831 N.Y.S.3d 352 (Sup. Ct. NY Cty 2006). The Court of Appeals has stated: "Courts surely do provide a forum for airing issues of vital public concern, but so do public hearings and publicly elected legislatures, . . .By contrast to those forums, a litigant must establish its standing in order to seek judicial review." *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 769, 573 N.E.2d 1034 (1991). Standing requires a plaintiff to allege injury to a legal interest derived from common or statutory law. *Soc'y of Plastic Indus., Inc., supra* at 772. Here, Petitioner has failed to allege a legal interest.

In a case with very similar issues and facts, the Court of Appeals cautions against the extension of standing in SEQRA cases to special interest groups who would misuse SEQRA for

their own economic interests and those of their members. *Soc'y of Plastic Indus., Inc., supra* at 774, the Court of Appeals denied standing to a nationwide plastics industry group to assert SEQRA claims when challenging the prohibition of the use of certain plastics in retail food establishments. The organization based its standing argument on the fact that one of its corporate members had offices in the county where the legislation was passed.

> [T]he requirement that a petitioner's injury fall within the concerns the Legislature sought to advance or protect by the statute assures that groups whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes. This is particularly meaningful in SEQRA litigation, where challenges unrelated to environmental concerns can generate interminable delay and interference with crucial governmental projects. We have recognized the danger of allowing special interest groups or pressure groups, motivated by economic self-interests, to misuse SEQRA for such purpose. [internal citations and quotations omitted]

A review of the record and the Petition clearly shows that the Petitioner's interest is economic. In paragraph 88 of the Petition, John Ryan, District Manager of A&P Supermarkets is quoted as making the following statement at the public hearing:

> [w]e just recently, a year ago, had a plastic ban in the Village of Mamaroneck. Our Mamaroneck **store was impacted significantly with revenue and sales.** The gentleman from the liquor store was voicing that concern. It is a real concern and it not talked about a lot. When I say significant, it is significant. (emphasis supplied)

Clearly, the heart of Petitioner's concern is that the A&P will suffer a financial loss if the ban is imposed.

In *Chatham Towers, Inc. v. Bloomberg,* 6 Misc. 3d 814, 819, 793 N.Y.S. 2Dd 670 (Sup. Ct. NY Cty 2004), the Court stated: "Standing to challenge governmental action under State Environmental Quality Review Act (SEQRA) requires showing that: (1) plaintiff will suffer environmental and not solely economic injury that is in some way different from that of public at

large, and (2) alleged injury falls within zone of interest sought to be protected or promoted by statute under which governmental action was taken." *See also Saratoga Lake Protection and Improvement Dist. v. Department of Public Works of the City of Saratoga*, 11 Misc. 3d 780, 809 N.Y.S. 2D 874 (Sup. Ct., Saratoga Cty 2004).

The Petition does not specifically allege that Petitioner or its member A&P suffer a threat of injury "different in kind or degree from the public at large" as required in order to assert standing. *Soc'y of Plastic Indus., Inc., supra* at 778; *Mobil Oil Corp. v. Syracuse Industrial Development Agency*, 76 N.Y. 2D 428, 559 N.Y.S. 2D 947 (1990). Instead, in paragraph 184 of the Petition, Petitioner claims that the Local Law is directed at retailers, including A&P, and that it is designed to "regulate the behavior and business practices" of the A&P. Petitioner then states the conclusion that its members, including the A&P will suffer a direct and unique environmental harm. Petitioner does not explain how its members located outside the Village, presumably the other 849 members of this trade organization, are harmed. With regard to the A&P it alleges that the supermarket suffers three areas of harm: (1) it will have to increase its distribution of paper bags and that the increased paper bag use will increase truck shipments thus contributing to pollution, (2) increase in global warming based on the allegation that paper bags biodegrade into carbon monoxide, and to (3) "environmental harm" based on the allegation that plastic grocery bags require 40% less energy than paper bags to manufacture and consume less than 4% of the water needed to make paper bags. It is noted that Petitioner does not allege that any paper bags are actually manufactured in Hastings-on-Hudson and Petitioner does not allege any other harm under the category of "environmental harm". Again, in a very similar case, the Court of Appeals stated:

> Though couched as environmental harms, plaintiff's assertions of injury by and large amount to nothing more than allegations of

> added expense it might have to bear if plastics products were banned and paper products substituted. In this category, for example, are allegations that the Plastics Law, by adding to the County's solid waste stream, will increase disposal, truck traffic, energy and incineration costs. **Assertions that increased paper manufacturing throughout New York State threaten it with added energy consumption, atmospheric pollutants and water-borne wastes are not only largely economic but also ephemeral allegations of harm threatening plaintiff."** *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 777, 573 N.E.2d 1034 (1991) [emphasis supplied]

Further, with regard to pollution from alleged increased truck deliveries, Petitioner does not provide any evidence as to the difference in amount of truck deliveries of plastic bags as compared to paper bags nor does it state how the A&P is being treated differently from the other retail stores in the Village. Further, Petitioner fails to offset the alleged increased paper bag truck deliveries with the elimination of trucks picking up the plastic bag recycling[4]. Even if truck deliveries are increased that impact may be uniquely financial to the A&P but the alleged truck pollution would affect the entire area not just the A&P. The only unique impact of increased truck deliveries is an increased cost to A&P; the A&P would not be the only "person" harmed by the alleged increased pollution from trucks. With regard to an alleged increase in global warming, which allegations are unsupported given the scope of this ban, this is not a harm suffered uniquely by Petitioner or the A&P but would be a harm suffered by the entire Village. Petitioner did not submit an affidavit from the A&P providing proof of an environmental harm different in kind and degree from the public at large or from other retailers in the Village.

Generalized environmental concerns will not suffice and, when no zoning-related issue is involved, there is no presumption of standing to raise a SEQRA challenge based on a party's

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[4] In paragraph 87 of the Petition, the District Manager of A&P Supermarkets is quoted as saying that "**Every day, every week**, we send back plastic to our warehouses. We collect them from the town. We package them, **put them back on our trucks** and send them back for recycling every week, 52 weeks a year." (emphasis supplied).

close proximity alone. *See Matter of Oates v. Village of Watkins Glen*, 290 A.D. 3D 758, 760-61, 736 N.Y.S. 2d 478 (3d Dep't 2002).

Further, there is a three part standard for associational or organizational standing which Petitioner trade association fails to meet with regards to its SEQRA claims. First, it must be established that one of its members has standing to sue. As noted above the A&P does not have standing as it does not suffer a unique environmental harm. Second, the association must demonstrate that the interests it asserts are germane to its purposes; and it must be evident that neither the asserted claim nor the appropriate relief requires the participation of the individual member. *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 775, 573 N.E.2d 1034 (1991)

Even if A&P had standing to sue, this standing does not extend to the Petitioner herein as the alleged environmental concerns are not germane to the Petitioner's general purpose. There is no evidence that Food Alliance of New York State, Inc. is an environmental advocate and that the interest of reducing paper bag use is germane to its purposes. "But here, [Petitioner] is asserting members' rights themselves to be free of any adverse effects a local law might have on their own immediate environment. Such claims would be personal to [Petitioner's] members, and have no relation to the industry-wide purposes represented by the association. Protecting member companies from local conditions, such as the quality of their air and traffic congestion on their roads, cannot be said to be germane to the purposes of this nationwide trade organization." *Soc'y of Plastic Indus., Inc., supra* at 776. Also, as noted above, ephemeral allegations that statewide, nationwide, or global manufacturing of paper will harm the environment is insufficient to confer standing. It is clear that the purpose of the Petitioner is to look after the financial interests of its members. Even if A&P had standing to sue, the asserted claim requires their participation in this

proceeding, and their absence requires this Court dismiss Petitioner's SEQRA claims for lack of standing.

IV. EVEN IF THE PETITIONER HAD STANDING TO ASSERT SEQRA CLAIMS, THESE CLAIMS MUST BE DISMISSED AS THE BOARD SATISFIED THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS OF SEQRA.

A. In completing the short EAF, the Board fully complied with the procedural aspects of SEQRA and provided a reasonable elaboration for its determination that the ban on plastic bag distribution would not have a significant adverse effect on the environment.

In compliance with SEQRA, the Board completed a short form EAF as part of its determination to issue a Negative Declaration. (6 NYCRR § 617.3) (R.O.R. 393) This form contains eleven questions in Part II that are intended to guide the Board in making its determination of significance. As the form itself instructs in Part 2,

> Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?" (R.O.R. 395)

Note that there is no requirement that studies be specifically attached or referenced. Nor is there a requirement that Board provide further elaboration as to how it came to its conclusions that no or small impact may occur as a result of the legislation. The Petitioner is correct in its statement that the Board must "show their work." That's what the EAF is for. According to SEQRA, the Board must "(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) However, the form this elaboration takes varies from case to case. Where there is an adequate record to support the Board's findings, the completion of a short form EAF

is sufficient.[5] In a case decided even before the new short-form EAF was promulgated, the Court held:

> Although it is the preferred practice that the Board set forth more of a reasoned elaboration for the basis of its determinations, this particular record is adequate for us to exercise our supervisory review to determine that the Board strictly complied with SEQRA procedures (*see Matter of Holmes v. Brookhaven Town Planning Bd., supra* at 604, 524 N.Y.S.2d 492), and the degree of detail with which each factor must be discussed varies with the circumstances of each case. Moreover, the Legislature has left the agencies with considerable latitude in determining environmental impacts (*see generally Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 494 N.E.2d 429 [1986]). The wealth of documentation contained in this record sufficiently demonstrates the reasons for respondents' actions. *Ellsworth v. Town of Malta*, 16 A.D.3d 948, 950, 792 N.Y.S.2d 227, 230 (3d Dep't 2005)[6]

As noted below, here the record was more than adequate to support the Village's Negative Declaration.

Here, the Board used the Short Environmental Assessment Form promulgated by the DEC. As the form itself states, elaboration beyond the answers in Part 2 is required only where the Board has found that "a moderate to large impact may occur."

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[5] The short form EAF used by the Board was the new form recently promulgated by the DEC for, inter alia, the very purpose of showing the Board's work. As stated in the DEC's response to public comments concerning the new form: "The new Part 2 allows lead agencies to dismiss no impacts or small impacts from further discussion. This allows agencies to follow a three step process, which is to first make a judgment as to whether the impact will not occur or will be small, or will the impact be moderate to large. **If the lead agency determines that the impact will not occur or will be small then no further analysis is required.**" (Gurahian Exhibit G) http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seafrespcom.pdf [emphasis supplied[

[6] Of course, there are instances in which a more detailed explanation why little or no adverse environmental impact will occur. For instance, in New York City Coal. to End Lead Poisoning, Inc. v. Vallone, 100 N.Y.2d 337, 349, 794 N.E.2d 672 (2003), upon which Petitioner heavily relies, New York City passed legislation mandating the removal of lead paid. "Respondents do not dispute that lead dust is a potentially significant health hazard related to remediation efforts and do not claim the negative declaration contains a commentary on this issue." That case dealt with an undertaking that could leave thousands of children sick. As will be discussed below, the level of elaboration necessary in an EAF for such a case is far different from the level required in the case at bar, where the allegations of environmental impact are ephemeral in nature. As noted in the new short-form EAF promulgated in 2012, the relevant question is "Have my responses been reasonable considering the scale and context of the proposed action?"

> For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact . . . Part 3 should also explain how the lead agency determined that the impact may or will not be significant. (R.O.R. 396)

The Petitioner contends that a more detailed elaboration of the Board's findings should have been included, presumably in Part 3. However, as the DEC's SEQRA Workbook makes clear, where the Board has reasonably determined that the proposed action will not result in a moderate to large impact, no information is required other than that provided in Part 2. As stated in the DEC's Environmental Assessment Form Workbook:

> Although it is not a requirement to do so, Part 3 can also be used to explain why a particular impact was deemed to be small, why it may not be significant, or it has already been mitigated.
>
> **If you checked "No or small impact may occur" for ALL eleven questions in Part 2**
>
> Go to the signature box on page four and check the second box indicating that you have determined that the proposed action will not result in any significant adverse environmental impacts. **This will serve as your negative declaration.** Be sure to sign it.
>
> . . . You are not required to complete Part 3, but you may use Part 3 to explain any measures or design elements that have been included by the project sponsor to avoid or reduce impacts, or to explain your rationale for your determining that the impact will not occur or will be small. (Gurahian Exhibit E) [emphasis in original] http://www.dec.ny.gov/permits/90161.html

The Petitioner incorrectly asserts that the Board should have considered their "socioeconomic" objections prior to adopting its Negative Declaration. However, the Petitioner presents no "socioeconomic" claims. Their claims are entirely economic issues dealing with the

effects on particular businesses.[7] Not only are such economic factors excluded from the list of considerations in Part 2, the SEQRA Handbook specifically prohibits the consideration of economic factors when formulating a determination of significance.

> **34. May determinations of significance be based on economic costs and social impacts?**
>
> No. A determination of significance is based on the regulatory criteria relating to environmental significance. If an EIS is required, its primary purpose is to analyze environmental impacts and to identify alternatives and mitigation measures to avoid or lessen those impacts. Since the definition of "environment" includes community character, these impacts are considered environmental. However, potential impacts relating to lowered real estate values, or net jobs created, would be considered economic, not environmental. Social and economic benefits of, and need for, an action must be included in an EIS. Further, in the findings which must be issued after a final EIS is completed, environmental impacts or benefits may be balanced with social and economic considerations. http://www.dec.ny.gov/permits/47716.html (Gurahian Exhibit F p. 18-19)

Finally, the Petitioner is incorrect when it asserts that the short form EAF was procedurally deficient due to a failure to include a "narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality." The Purpose of the proposed legislation, which was included with the EAF, states as follows:

> Non-biodegradable plastic bags often are discarded into the environment and end up polluting our waterway, clogging sewers,

[7] Petitioner contends that Chinese Staff & Workers Ass'n v. City of New York, 68 N.Y.2d 359, 366, 502 N.E.2d 176 (1986) stands for the proposition that socioeconomic factors must be taken into consideration. However, the court there held that the character of the community should have been considered, not pure economic issues affecting particular businesses. "Thus, the impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since the statute includes these concerns as elements of the environment." Ginsburg Dev. Corp. v. Town Bd. of Town of Cortlandt, 150 Misc. 2d 24, 565 N.Y.S.2d 371 (Sup. Ct. Westchester Cty. 1990) dealt with legislation that would result in a dearth of affordable housing. The idea that such a demographic shift will occur due to a change from plastic to paper bags is unreasonable. Putting the word "socio" in front of "economic" does not change the fact that Petitioner's arguments are purely economic in nature. A contrary holding would make almost any regulation arguing affecting anybody economically subject to an EIS.

> endangering marine life and causing unsightly litter. These bags last hundreds of years in landfills and are a potential source of harmful chemicals when they do break down. The intent of this article is to improve the environment in Hastings-on Hudson by encouraging the use of reusable checkout bags and banning the use of plastic bags for retail checkout of purchased goods.

Similar language concerning the intent of the action and environmental resources affected is included in the ban on expanded polystyrene containers.

By virtue of the foregoing, the Negative Declaration issued by the Board fully complied with the procedural requirements of SEQRA. Because the Board found that there is no potential for moderate or large adverse environmental effects, no further elaboration in Part 3 of the EAF was necessary.

B. The Board's answers to the questions contained in Part 2 of the EAF, along with its Negative Declaration, was neither arbitrary, capricious nor an abuse of discretion.

In assessing an agency's compliance with SEQRA, a court must "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" *Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417, 494 N.E.2d 429 (1986)

As stated in *Akpan v. Koch*, 75 N.Y.2d 561, 570, 554 N.E.2d 53, 57 (1990), "Judicial review of a lead agency's SEQRA determination is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination was affected by an error of law or was arbitrary and capricious or an abuse of discretion." [internal citations and quotations omitted] "Further, generalized community or speculative environmental consequences are insufficient to challenge the Town's environmental review." *Vill. of Chestnut Ridge v. Town of Ramapo*, 99 A.D.3d 918, 925-26, 953 N.Y.S.2d 75, 82-83 (2d Dep't 2012) *leave to appeal dismissed in part, denied in part,* 20 N.Y.3d 1034, 984 N.E.2d 323 (2013)\ "It is

not the role of the court to weigh the desirability of the proposed action or to choose among alternatives, resolve disagreements among experts, or to substitute its judgment for that of the agency." *Chinese Staff & Workers' Ass'n v. Burden*, 88 A.D.3d 425, 429, 932 N.Y.S.2d 1, 3 (1st Dep't 2011) *aff'd sub nom. Chinese Staff v. Burden*, 19 N.Y.3d 922, 973 N.E.2d 1277 (2012) [internal citations and quotations omitted]

The size and scope of the proposed action should be taken into account by courts in their review of a municipality's determination of significance. "An agency's compliance with its substantive SEQRA obligations is governed by a rule of reason and the extent to which particular environmental factors are to be considered varies in accordance with the circumstances and nature of particular proposals." *Akpan v. Koch*, 75 N.Y.2d 561, 570, 554 N.E.2d 53, 57 (1990)

It is vital to keep in mind the scope of this legislation. Hastings-on-Hudson is a village with approximately 8,000 residents. It has one grocery store and several small retailers distributing plastic bags. The legislation at issue deals with limiting the use of expanded polystyrene and plastic bags within that community. The majority of the Petitioner's arguments, both in its Memorandum of Law and at the public hearings, center around the dubious contention that plastic bags are more environmentally friendly than both paper bags and reusable bags. These arguments focused largely on carbon emissions, both from the extra space in delivery trucks and landfills that will allegedly be devoted to paper bags as well as greenhouse gas emissions involved in the production of paper and reusable bags. The Petitioner also contends that methane gas may be released by decomposing paper products.

"An agency's substantive obligations under SEQRA must be viewed in light of a rule of reason in not requiring identification by an agency of every conceivable impact, mitigating measure or alternative." *O'Brien-Dailey v. Town of Lyonsdale,*, 26 Misc. 3d 1228(A), 907

N.Y.S.2d 439 (Sup. Ct. Lewis Cty. 2009) [internal citations and quotations omitted] This is not a proposal to build a power plant. This is not a proposal to build a highway. This is a ban on the use of plastic bags for retail checkout of purchased goods in a small Village. What the Petitioner classifies as a "hunch," the Board's conclusion that this legislation will not have a significant impact on global warming, is more properly termed "common sense." The opponents of the legislative offered no evidence that a ban of this scope would have a moderate or large impact on the environment. As such, the Board's conclusion that the ephemeral concerns would not result in a moderate to large impact was anything but arbitrary and capricious. Not only was the Board's conclusion that the result of this legislation on emissions would be small or nonexistent reasonable, any conclusion that the alleged increased emissions would cause a large or moderate impact on carbon emissions would be patently unreasonable. Respondents are unable to find any case requiring a detailed SEQRA elaboration for carbon emissions for a proposed action of this scope. Even assuming that plastic bags are environmentally friendly (a dubious assumption), considering the scale of this action the Board reasonably concluded that any potential negative impact resulting from the switch from plastic bags to paper or reusable bags would be small or nonexistent. Further, while it is not necessary to prove in the SEQRA analyses that the proposed action will benefit the environment, the elimination or reduction of plastic bag litter and the resultant clogged sewer drains and adjacent waterways would result in a tangible benefit to the community. This is what the Mayor was speaking to when he stated "There is no formal cost-benefit here. It is more seat of the pants, where you realize that the visual litter that comes from plastic bags is not trivial. It is not a made-up thing, it is real . . ."

Even the minimal alleged impacts due to the Village's switch from plastic to paper and reusable bags were called into serious question during the hearing by members of the public. As

such, the Board's conclusion that the macro environmental effects of the ban were insignificant was eminently reasonable, supported by the record, and the result of a hard look by the Board. The Petitioner's concerns regarding these macro effects are ephemeral in nature. *See Soc'y of Plastic Indus., Inc., supra* at 777. During the public hearings, the Petitioner contended that the proposed law would have a harmful effect on the health and safety of Village residents because reusable bags are prone to disease, citing a single instance in which norovirus was transmitted to a group of students through a reusable grocery bag. However, as discussed in the Statement of Facts, the Board realized that this instance involved food left overnight in a plastic reusable bag in a bathroom, and as such would not result in a significant impact on its residents. Finally, they found that Ecoli and staph bacteria transmission is rare and can live on and be transmitted through a myriad of different objects. (R.O.R. 347) Subsequent to their hard look analyses, the Board reasonably concluded that any increased risk associated with the switch from plastic bags to paper and reusable bags would be minimal at worst.

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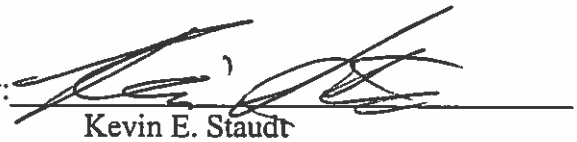
CONCLUSION

By virtue of the foregoing, the Respondents request that this the Verified Complaint and Petition be dismissed in its entirety, that this Court declare the Local Law valid, together with such further relief as this Court deems appropriate.

Dated: White Plains, New York
December 10, 2014

McCULLOUGH, GOLDBERGER & STAUDT, LLP

By: 
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