

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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CAMILLO M. SANTOMERO and  
DENISE C.R. SANTOMERO,

*Plaintiffs/Petitioners,*

**VERIFIED COMPLAINT  
AND PETITION**

*- against -*

*Index No.:*

THE TOWN OF BEDFORD and  
THE TOWN BOARD OF THE TOWN OF BEDFORD,

*Assigned Judge:*

*Defendants/Respondents.*

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Plaintiffs/Petitioners, Camillo M. Santomero and Denise C.R. Santomero (“Plaintiffs/Petitioners”), by their attorneys Shamberg Marwell Hollis Andreyck & Laidlaw, P.C., as and for their Complaint and Petition, allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs/Petitioners bring this combined declaratory judgment action pursuant to CPLR 3001 and a proceeding pursuant to CPLR Article 78 seeking a Judgment: (a) invalidating and setting aside Local Law No. 1 of 2017 (the “Local Law”) as an overbroad and vague law enacted in violation of the due process clause of the Constitutions both of the United States and New York State; (b) annulling and setting aside as arbitrary and capricious and contrary to law the Town Board’s adoption of the Survey of Historic Buildings (“the Survey”) that designates as “historic” and subject to regulation under the Local Law a total of 595 properties located outside of two existing historic districts in the Town; (c) annulling and setting aside as arbitrary and capricious and contrary to law the Town Board’s designation of Plaintiffs/Petitioners’ real property as a historic building subject to regulation under the Local Law; (d) annulling and setting aside the Local Law as arbitrary and capricious and contrary to law for failure of the

Town Board to conduct a complete environmental review in accordance with the State Environmental Quality Review Act ("SEQRA") prior to enactment of the Local Law; (e) granting to Plaintiffs/Petitioners their reasonable attorneys' fees and costs and disbursements of this action/proceeding; and (f) granting such other and further relief as this Court may deem necessary.

2. Venue is proper in this Court pursuant to CPLR § 503(c) and CPLR § 506(b).

3. This action/proceeding is timely as it is brought within the six-year statute of limitations generally applicable to declaratory judgment actions pursuant to CPLR § 213(1) and within the four-month statute of limitations applicable to special proceedings against a municipal body pursuant to CPLR § 217.

#### THE PARTIES

4. Plaintiffs/Petitioners Denise C.R. and Camillo M. Santomero are the owners of certain real property consisting of approximately 26-acres and the improvements thereon located at 393 Guard Hill Road, within the Town of Bedford, and identified on the Town of Bedford Tax Assessment Map as Section 83.8, Block 1, Lot 1 ("the Property").

5. Upon information and belief, Defendant/Respondent, the Town of Bedford ("the Town"), is a municipal corporation duly organized and existing under the laws of the State of New York.

6. Upon information and belief, Defendant/Respondent, the Town Board of the Town of Bedford, the properly constituted legislative branch of the Town of Bedford, consists, at present, of only Supervisor Chris Burdick, Councilwoman Lee V. A. Roberts, Councilman Don B. Scott, and Councilwoman MaryAnn Carr.

## BACKGROUND

7. Upon information and belief, the Town of Bedford was incorporated in the eighteenth century and many of its properties have some historic value.

8. There are two delineated historic districts in the Town – Bedford Village Historic District and Katonah Historic District – which are regulated by Chapter 71, Articles I and II of the Town of Bedford Code (“the Code”). Alterations or additions to buildings within those districts are reviewed by separate Commissions for each district.

9. Despite the existence of those regulations and commissions, in or around 2002, the Town sought to add an individual landmarking law to further regulate properties outside of these historic districts.

10. In 2002, the Town Board adopted the first version of the Town’s historic buildings law entitled “Historic Dwelling Preservation Law” by Local Law No. 3-2002 filed on October 1, 2002. That law defined a “historic dwelling” as “[a] dwelling classified as one which (1) was built prior to the year 1900, or (2) is listed on the National Register of Historic Places.” A copy of that local law is attached hereto as **Exhibit A**.

11. Thereafter, the Town Board reconsidered certain provisions and adopted a revised version entitled “Historic Building Preservation Law” by Local Law No. 1-2003 filed on March 18, 2003. This Local Law repealed the previous Local Law. Copies of the Local Law and the Resolution adopting same are attached hereto as **Exhibit B**.

12. At that point, on March 19, 2003, the definition of “historic building” was expanded, and defined in Section 71-22 of the 2003 Law as:

A dwelling, commercial building, or accessory building which is at least two hundred (200) square feet, and which meets one (1) or more of the following criteria: (1) was built before the year 1900;

or (2) is registered on the National Register of Historic Place, or  
(3) which was constructed after 1900 and is listed on the Survey of  
Historic Buildings (the “Survey”) prepared by the Town.

13. The newly created Survey was not attached to the Law for filing, and upon  
information and belief, was not otherwise distributed to, or served upon, affected property  
owners or made readily available to the general public.

14. The definition of the “Survey” in the 2003 Local Law did not include any specific  
criteria for inclusion, leaving such inclusion within the complete discretion of the Commission,  
comprised of appointed and unelected members.

15. Furthermore, under the 2003 Law, Section 71-24(A)(5), it was the stated  
responsibility of the newly created Historic Building Preservation Commission (“the  
Commission”), and not of the Town Board, “to create, maintain and update the Survey prepared  
by the Town in connection with the adoption of this article.”

16. Upon information and belief, this Survey was prepared without public input or  
participation, and without a formal historic designation process, including but not limited to a  
public hearing relative to the appropriateness of such designation.

17. Upon information and belief, the Survey was maintained by the Town Historian,  
John Stockbridge, who was, and continues to be, the Chair of the Commission.

18. Over the years it became evident that many affected property owners in the Town  
did not know their properties were included on said Survey until the affected property owner  
would make an application to the Town of Bedford for a demolition permit or any other change  
to the building. Further, the existence of such Survey was not made readily known to the  
members of the public, most importantly to those whose properties were affected.

19. In fact, Plaintiffs/Petitioners were not informed of their Property having been included on the Survey, or of its historic designation, when they applied for a building permit for interior renovations in 2006.

20. In or around 2013, the Town Board initiated the process of retaining a professional preservation consultant for the purpose of developing a “historic resources” survey.

21. The Town Board chose to retain Steward Preservation Services LLC and TKS Historic Resources, Inc. to conduct the research and prepare a proposed survey of properties.

22. Between 2013 and 2015, the preservation consultants conducted a “windshield survey” with the Town Historian, followed by a “ground survey” of properties visible from the street, and a review of publicly available information. As stated in the report, “consultants gathered all information during the ground survey from street view and in no case was property trespassed.” A copy of the consultants’ report is attached hereto as **Exhibit C**.

23. Clearly the preparation of the Survey in this manner was flawed as each property could not be properly and fully evaluated, especially where buildings are not clearly visible from the road and were subject to the admitted “windshield survey”.

24. The resulting Draft Survey of Historic Buildings included many more properties than had been affected by the law previously -- approximately 870 in total. The draft Survey contained new proposed classifications for properties of “Individually Significant,” “Contributing,” and “Other Historic Resource (unregulated).” A copy of the Draft Survey is attached hereto as **Exhibit D**.

25. According to that Draft Survey, Plaintiffs/Petitioners’ Property was listed as an “individually significant” property and “[r]ecommended as a potential candidate for local historic significance and as a potential candidate for local significant *[sic]* as an intact example of the

style. It is also listed as a contributing feature of the historic and scenic Guard Hill-Clark-Baldwin Road,” a significant statement given that the criteria seem to be expanded to include the subjective “scenic areas,” not just the historic or aesthetic significance of a building.

26. In or around the beginning of 2016, the Commission sent letters to affected property owners advising them that their properties were being considered for inclusion on the revised Survey. A copy of the Notice is attached hereto as **Exhibit E**.

27. The Commission scheduled informational sessions for February 18, 2016, February 25, 2016, and March 3, 2016. The Town Board also held several work sessions regarding the Law and the Survey.

28. For many property owners, this was the first time that they knew or were made aware of such a Survey and the inclusion of their property on such a list. A significant number of affected property owners expressed public opposition to the new Survey and amendment of the Law. A copy of the Record Review article dated May 6, 2016 reporting on developments is attached hereto as **Exhibit F**.

29. At its May 3, 2016 work session, the Town Board addressed the work of the Commission and recognized that certain residents of the Town were unhappy about the proposed Survey and requested that the Commission clarify the criteria for inclusion on the Survey to reduce the number of properties on the list. The Board also requested that the Commission work to revise the Law to eliminate uncertainty as to its applicability.

30. At the following Town Board work session on October 18, 2016, Mr. Stockbridge, Chairman of the Commission and Town Historian, recognized the Town Board’s concern about the negative reaction from some Town residents to the new Survey and Law. There was discussion at that time about revising the Law in such a way as to reduce the scope of

the Commission's authority by creating an “as of right” or “exempt” list of activities, and by being more explicit about what is and is not covered by the Law.

31. At the next work session before the Town Board on January 17, 2017, the Commission presented its additional proposed revisions to the Law. A copy of the Town Board Agenda, including an Executive Summary from the Commission, is attached hereto as

**Exhibit G.**

32. On February 15, 2017, the Commission, along with the Town Board members, held an informational session for the public to explain the proposed revisions to the Law. The revised property designations were now referred to as “Tier 1,” “Tier 2,” and “Unregulated Historic Building.” At that time, further concerns and opposition were expressed by members of the public in attendance. The final text of the revised Law was not yet available to the public for review.

33. On or about March 20, 2017, the Town Board held a work session regarding the Commission’s recommendations and proposed revised Law.

34. In a letter to the Town Board dated March 29, 2017, the Commission summarized the proposed Local Law and requested that the Town Board take action to adopt the revised Local Law. A copy of the letter is attached hereto as **Exhibit H.**

35. Counsel for the Town prepared a Memorandum dated March 30, 2017 that referred to the March 20, 2017 work session, summarized the changes to the proposed Law discussed at the work session, and presented a final version of the Local Law, and the Survey, for adoption by the Town Board. A separate Memorandum was also annexed that addressed the tax benefits portion of the Local Law. A copy of the full Memorandum is attached hereto as

**Exhibit I.**

36. Counsel for Plaintiffs/Petitioners submitted letters in opposition to the adoption of the Local Law dated March 20, 2017 and April 12, 2017. Copies of the letters are attached hereto as **Exhibit J**.

37. At the Town Board meeting on April 4, 2017, the Board decided to hold a Public Hearing to consider the adoption of the Local Law at its next Board meeting scheduled for April 18, 2017.

38. The Town Clerk caused a Public Notice, dated April 4, 2017, to be published in the Bedford Pound Ridge Record Review on April 7, 2017. This Notice for the April 18, 2017 Public Hearing did not specifically reference the adoption of the Survey, stating only that the hearing would be on Local Law #1-2017, "to consider revisions to Chapter 71, Article III concerning Historic Building Preservation." A copy of the Public Notice is attached hereto as **Exhibit K**.

39. On April 6, 2017, the Supervisor issued a letter to those whose properties were designated as Tier 1 or Tier 2 on the proposed Survey to advise of the upcoming Public Hearing, referring to each as an "owner of historic property." There was no explanation that, in fact, many of these properties were not included on the Survey as part of the previous version of the Law. A copy of the letter is attached hereto as **Exhibit L**.

40. On April 13, 2017, counsel for the Town issued a Memorandum to the Town Board advising that 14 properties should be eliminated from the Survey due to purported and unidentified "clerical" errors. A copy of that Memorandum is attached hereto as **Exhibit M**.

41. On April 18, 2017, the Town Board held a Public Hearing on Local Law #1-2017. A copy of the meeting minutes of that Public Hearing is attached hereto as **Exhibit N**. The video recording of the Hearing is available for review on the Town of Bedford website at



<http://bedfordny.iqm2.com/Citizens/Calendar.aspx>.

42. The Local Law, as revised, also included the adoption by the Town Board of a Survey of Historic Buildings. Specifically, Section 71-22 (Definitions) of the Local Law defines the Survey as “[a] written inventory of all dwellings, commercial buildings, and accessory buildings located within the Town of Bedford and designated by the Town Board as Historic Buildings in the “Survey of Historical Buildings”, as adopted on April 18, 2017, and amended from time to time pursuant to 71- 25 of this article. The April 18, 2017 inventory adopted by the Town Board as part of this local law is attached hereto and made a part hereof.”

43. The proposed Local Law divides the regulated Historic Buildings on the newly adopted Survey into two major categories: Tier 1 and Tier 2.

44. As listed on the Survey, there are 595 properties that fall into Tier 1 or Tier 2 categories, which properties have an approximate combined one billion dollars based on the Town Board assessment records.

45. Upon information and belief, the decision as to which properties belonged in each category was made entirely by the Commission members and proposed to the Town Board without further review, individualized or general, by Town Board members.

46. Under the proposed Local Law, a property is characterized as a Tier 1 Historic Building if it:

- (a) was constructed in 1900 or earlier and is substantially intact; or
- (b) is listed on the National Register of Historic Places; or
- (c) exemplifies or possesses special character, or historic or aesthetic interest of value as part of the political, economic or social history of Bedford, with particular attention to properties that are representative of significant aspects of local history such as those associated with:
  - [1] the relocation of old Katonah or the Katonah Land Company,
  - or

[2] the agrarian past e. g., small farm houses, barns and outbuildings, characteristic proximity to the roads, or  
[3] the late 19th century or early 20th century estate periods; or  
(d) is identified with persons or events significant in local, state or national history; or  
(e) embodies the distinguishing characteristics of a type, period or method of construction or design style or is representative of the work of a known designer, architect or builder, or  
(f) represents an established and familiar feature of the community by virtue of its undue location or singular physical characteristic.

47. There are 251 Tier 1 properties listed on the Survey as adopted by the Town Board on April 18, 2017.

48. A property is characterized as a Tier 2 Historic Building if it is:  
  
of historic or architectural importance to the Town of Bedford, but of lesser significance or less intact than Tier 1 Historic Buildings, including properties that make a distinctive contribution to the overall historic and visual character of Bedford by virtue of location on a historic road or in a historic neighborhood.

49. There are 344 Tier 2 properties listed on the Survey as adopted by the Town Board on April 18, 2017.

50. Pursuant to Section 71-26 of the Local Law, all Tier 1 property owners seeking a permit for demolition or “substantial alteration” of the historic building must undergo a review before the Commission.

51. As set forth in revised Section 71-22 (Definition), the term “Demolition” is defined as “[t]he destruction, disassembly, replacement or relocation of more than 50% of the total exterior wall surface or more than 50% of the total structural frame of a Historic Building, or any actions that result in the above over a 5-year period” while the term “Substantial Alteration” is defined as “[t]he significant removal or alteration of historic form, material or details of a Tier 1 Historic Building's exterior, including the construction of additions that are

taller than the Historic Building, or that align with or protrude forward of the wall plane of a primary facade. Actions defined as As-of-Right actions are not considered Substantial Alterations.”

52. Significantly, the Commission may, in its discretion, determine that a “permit should not be issued,” thereby preventing the property owner from altering their property as proposed. See Section 71-26(E).

53. The Local Law also included a new procedure for amendments to the Survey in Section 71-25 by which the Commission could recommend inclusion of additional properties to the Survey, with the requirement that the Town Board fix a time to hold a public hearing on the proposed addition of the property or properties, with sufficient notice to the owner or owners. According to this procedure, the Town Board is required to pass a resolution either approving or disapproving the proposed addition to the Survey.

54. The aforementioned process set forth in the Local Law is the very process that the Town Board failed to follow in establishing the original Survey under the 2003 Law, and again under the revised Local Law in 2017.

55. The same Section 71-25 also provides for a procedure by which a property owner may appeal the inclusion of a property on the Survey or the assigned category to the Commission, and that the Town Board *may* thereafter hold a hearing to approve such an amendment.

56. After comment from the public at the Public Hearing on April 18, 2017, including vocal opposition to the adoption of the Local Law, the Town Board resolved to close the public hearing to consider the adoption of the proposed Local Law.

57. On motion by Supervisor Burdick, and seconded by Board member Scott, the Town Board unanimously resolved to adopt the Full Environmental Assessment Form and issued a Negative Declaration pursuant to SEQRA, concluding that “the proposed amendments will not have a significant adverse impact on the environment, would not prohibit development or redevelopment of the buildings recognized under the legislation but would ensure that any work would preserve the historical nature of the buildings and the immediate area and protect significant historic resources in the Town of Bedford.” *See Exhibit N.*

58. The full Environmental Assessment Form prepared for the Local Law stated in a conclusory fashion, and without analysis, that the Local Law would not result in any significant impacts on the environment. The cursory SEQRA review is manifested in Part 2 of the EAF, on which the box for each and every impact is checked off with a “No,” and Part 3 of the EAF, which consists of an overview of the proposed Local Law and a conclusion that the law would not result in a significant effect on the environment. A copy of the EAF is attached hereto as **Exhibit O.**

59. Following the SEQRA determination, the Town Board resolved to adopt the Local Law, with a vote of 3 to 1, with Councilman Scott voting against the adoption of the proposed Local Law. *See Exhibit N.*

60. Again, the Town Board adopted formally the Survey of Historic Building as part of the adoption of the Local Law. The Survey was annexed to the adopted amendments to Chapter 71, Article III of the Code.

61. Upon information and belief, the Local Law with the survey appended was submitted to the Secretary of State for filing the day following the Public Hearing -- April 19, 2017. A copy is attached hereto as **Exhibit P.**

62. Plaintiffs/Petitioners' Property is listed as a Tier 1 historic building on the adopted Survey.

63. After the adoption of the Local Law, Plaintiffs/Petitioners attempted to appeal the determination to the Town Board by letter dated May 3, 2017 citing the procedure set forth in Section 71-26 of the Local Law. Plaintiffs/Petitioners argued that further proceedings before the Commission would be futile as the Commission had finalized the Survey shortly before its adoption by the Town Board. A copy of that letter is attached hereto as **Exhibit Q**.

64. In response, the Town Attorney incorrectly advised counsel for Plaintiffs/Petitioners that the proper course of action was first to request a review of the historic designation by the Commission. A copy of the letter is attached hereto as **Exhibit R**.

65. It is also noteworthy that, following adoption of the Local Law, approximately eighty (80) affected property owners sought to challenge and appeal the historic designation of their properties on the Survey as adopted by the Town Board. Copies of some of the appeal letters are attached hereto as **Exhibit S**.

**AS AND FOR A FIRST CAUSE OF ACTION, FOR  
A JUDGMENT INVALIDATING AND SETTING ASIDE THE LOCAL LAW  
AS UNCONSTITUTIONALLY OVERBROAD, VAGUE, AND ADOPTED  
IN VIOLATION OF DUE PROCESS PROTECTIONS**

66. Plaintiffs/Petitioners repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 65 above as if more fully set forth herein.

Substantive Due Process

67. A local law is deemed unreasonable and constitutes a deprivation of property without due process of law under the New York State and United States Constitution when (1) it is not enacted in furtherance of a legitimate governmental purpose; or (2) there is no "reasonable

relation between the end sought to be achieved by the regulation and the means used to achieve that end.” See e.g. *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 498 N.Y.S.2d 128 (1985).

68. The first prong of the test is not in dispute since the adoption of regulations for the purpose of landmark and historic preservation has long been accepted practice in New York State. See, e.g., *Soc’y for Ethical Culture in City of N.Y. v. Spatt*, 51 N.Y.2d 449, 434 N.Y.S.2d 932 (1980) (“a government may reasonably restrict an owner in the use of his property for the cultural and aesthetic benefit of the community”).

69. However, the means that the Town Board has chosen to achieve the goal of preservation are not reasonable and do not achieve a legitimate governmental purpose.

70. In other words, just because a building may have some historic association, or is aesthetically pleasing, does not mean that there is a reason to impose greater restrictions on changes that the property owner can make to that building than would be imposed on a building not on the Survey and subject to the Local Law.

71. Thus, despite the Commission’s efforts to refine the criteria for identifying Tier 1 and Tier 2 historic buildings, the Local Law remains impermissibly overbroad and over-inclusive in that it regulates a vast number of properties using vague criteria, much more than necessary to advance the purpose of historic preservation.

72. Initially, while there are clear guidelines within the Local Law for a Tier 1 historic building, such as the property being constructed prior to 1900, or a property listed on the National Register of Historic Places, or one that is associated with the relocation of old Katonah, there are other criteria that are so broad that it is difficult to imagine any building within the Town, other than perhaps brand new construction, that would not fall under the statutory rubric.

73. For example, one stand-alone criterion for inclusion is that a building is “identified with persons or events significant in local, state or national history.” There is no time frame specified for “history” and so, conceivably, a property could be found to be Tier 1 because it was a dwelling of a presently famous person or celebrity, of which there are many in the Town, that otherwise has no architectural significance or value. Also, perhaps simply hiring a famous architect to work on an otherwise exempt property could result in a finding of significance.

74. Another stand-alone criterion for inclusion as Tier 1 is that the building “embodies the distinguishing characteristics of a type, period or method of construction or design style or is representative of the work of a known designer, architect or builder.” Again, with this broad description and without an applicable time frame, many non-historic buildings would fall into this category, even ones that are newly constructed but emulate a particular historic style.

75. For these reasons, the Local Law must be invalidated as unconstitutionally overbroad, and thus unable to achieve the legitimate purpose of preservation. *See, e.g., People v. Golb*, 23 N.Y.3d 455, 991 N.Y.S.2d 792 (2014).

76. With respect to the Survey in particular, it was generated by the consultants as an initial list of resources following a mostly visual review of the properties in the Town, as well as a review of the existing Survey, and substantial input from the Commission itself. However, the list was subsequently revised by the Commission in order to fit arguably the vague criteria under the Law.

77. It is submitted that many of the properties on the Survey included properties that have only a tenuous connection to history, along with those with only minor historic, aesthetic, or cultural significance.

78. Furthermore, both the Local Law and the Survey itself fail to pass the void for vagueness test and are, therefore, unconstitutional.

79. In order to avoid a finding of vagueness, the statute in question must give adequate notice as to the conduct that is prohibited, and must provide for clear enforcement standards. *See, e.g., Turner v. Municipal Code Violations Bureau of City of Rochester*, 122 A.D.3d 1376, 997 N.Y.S.2d 876 (4th Dept. 2014).

80. Here, the Survey does not differentiate the various buildings on each designated type of property, nor does it identify the reasons why each property is designated as Tier 1 or Tier 2. Instead, the Survey simply identifies the property as a whole and lists its designation.

81. As a result, the property owner does not have any way to distinguish which portion of the property may be demolished until an application is made for a permit, and has no way of knowing why the property was included on the Survey in the first place until an application is made for review to the Commission. Similarly, the Building Inspector or code enforcement officer has no way to know whether an alteration or demolition has occurred in violation of the Law.

82. The Record shows that the Town Board relied entirely on the presentation and recommendation of the Commission as to the selection of properties on the Survey, and did not conduct its own review and/or analysis prior to adopting the Survey.

83. On the basis of all of the foregoing, the Local Law should be annulled and set aside as an enactment not reasonably or substantially related to the purpose it seeks to achieve.



Procedural Due Process

84. The adoption of the Local Law also violated the procedural due process protections guaranteed by the United State Constitution and the Constitution of New York State.

85. It is indisputable that the original 2003 Law, prior to the amendment by Local Law, did not provide an opportunity to affected property owners for a hearing as to the reasons for the inclusion of their properties on the Survey. Furthermore, the Survey was not readily available to the public, and the basis for inclusion on the Survey was not stated.

86. It is also indisputable that the Public Hearing held on April 18, 2017 did not include a discussion and/or analysis of each of the properties on the Survey, nor did it provide for an opportunity for affected property owners to give and receive evidence relative to inclusion on the Survey.

87. Even more significant is that the April 4<sup>th</sup> Public Notice of the hearing did not refer specifically to adoption of the Survey, stating only that the hearing would be on Local Law #1-2017, "to consider revisions to Chapter 71, Article III concerning Historic Building Preservation." There was no indication that the hearing was intended to allow the affected property owners an opportunity to challenge the historic designation of their respective properties on the Survey.

88. While there were informal information sessions held by the Commission and the Town regarding the revised Survey and revised Law, and letters were sent to property owners advising them of their property's designation under the revised Law, there was no opportunity for a separate formal hearing before the Town Board as to the inclusion of each property on the revised Survey.

89. The Law impermissibly shifts the burden to the property owner to challenge the designation only after the Survey has been adopted, not before, as is required by the respective Constitutions.

90. Finally, the Law itself provides for a proper notice procedure to add properties to the Survey in the future, a procedure that the Town Board glaringly failed to follow when it adopted the revised Survey.

91. Thus, despite all of the time and consideration taken in drafting the Law, the Town Board's failure to hold individual sessions for each property on the Survey renders the adoption of the Local Law unconstitutional.

92. On the basis of the foregoing, the Local Law should be invalidated as its enactment failed to ensure the protection of the property rights of all those property owners whose properties were included on the Survey without due process of law.

**AS AND FOR A SECOND CAUSE OF ACTION,  
FOR A JUDGMENT ANNULING AND SETTING ASIDE THE TOWN  
BOARD'S ADOPTION OF THE SURVEY OF HISTORIC BUILDINGS  
AS ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW**

93. Plaintiffs/Petitioners repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 92 above as if more fully set forth herein.

94. To the extent that the adoption of the Survey by the Town Board was administrative action rather than a legislative enactment, Plaintiffs/Petitioners submit that it should be annulled and set aside since it was done without proper vetting and in an arbitrary and capricious manner.

95. Here, rather than hold a public hearing on each individual historic building, the Town Board adopted the entire revised inventory of properties “en masse,” without a separate public hearing or an opportunity by the affected property owner and/or the public to review evidence in support or against the designation.

96. The Town Board chose to forego a proper review of the historic significance of each property and simply adopted a procedure to challenge the designation of the properties in the future.

97. The Town’s actions not only violate due process protections, but also contradict the newly adopted procedure set forth in the Local Law itself that ensures there is full vetting when adding properties to the Survey.

98. Further troubling is the fact that the original Survey under the 2003 Law was never publicly vetted, and that the revised Survey adopted along with the instant version of the Local Law again failed to provide for a Public Hearing to consider each affected property prior to that property’s inclusion on the Survey.

99. Thus, the Survey adopted by the Town Board must be annulled and set aside, and the Town Board be directed to follow the procedure set forth in the Local Law for historic designation.

**AS AND FOR A THIRD CAUSE OF ACTION,  
FOR A JUDGMENT ANNULING AND SETTING ASIDE THE TOWN BOARD’S  
HISTORIC DESIGNATION OF PLAINTIFFS/PETITIONERS’ PROPERTY AS  
ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW**

100. Plaintiffs/Petitioners repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 99 above as if more fully set forth herein.

101. Plaintiffs/Petitioners submit that review by this Court of the historic designation of the Property is appropriate since it would be futile to seek review before the Commission, especially considering that the property designations were reviewed and approved by the Commission immediately prior to the adoption of the Survey by the Town Board.

102. The Court of Appeals has held that “exhaustion of administrative remedies is not required where an agency’s action is challenged as beyond its grant of power or when resort to an administrative remedy would be futile.” *See, e.g., Lehigh Portland Cement Company v. NYS Dep’t of Envtl. Conservation*, 87 N.Y.2d 136, 638 N.Y.S.2d 388 (1995).

103. Here, the Commission concluded that the property should be a Tier 1 Historic Building when it updated and revised the Survey, and the Town Board has refused to take action to review the designation without a formal appeal to the Commission.

104. In order to protect Plaintiffs/Petitioners’ rights, counsel for Plaintiffs/Petitioners submitted a letter to the Town Board, dated May 3, 2017, appealing the Tier 1 designation pursuant to Section 71-26 of the Local Law. Notably, the letter was submitted within 30 days of April 18, 2017, the date that the Commission presented the Survey to the Town Board for adoption. *See Exhibit Q*.

105. Nevertheless, the Town Board has refused to set a Public Hearing to consider the requested appeal of the designation.

106. There is no evidence in the record to support a Tier 1 designation of the Property. The Town consultant’s 2015 report points to the Property being designed and built by Mott Schmidt, a respected, but more locally known, 20<sup>th</sup> century architect. The Property had, however, fallen into great disrepair prior to Plaintiffs/Petitioners purchasing it in 2006, and

would not have been salvageable but for Plaintiffs/Petitioners efforts. Now, after Plaintiffs/Petitioners have spent time and effort to rehabilitate their Property, they find themselves restricted from doing certain other alterations absent review by the Commission as required by the Local Law.

107. Thus, Plaintiffs/Petitioners now also seek a determination from this Court that the Tier 1 designation of their Property is arbitrary and capricious, and either directing the Town Board to remove the Property from the Survey, or to hold a public hearing to consider the appropriateness of the designation.

**AS AND FOR A FOURTH CAUSE OF ACTION, THE LOCAL LAW MUST  
BE SET ASIDE FOR FAILURE OF THE TOWN BOARD TO COMPLY  
WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT  
PRIOR TO ENACTMENT OF THE LOCAL LAW**

108. Plaintiffs/Petitioners repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 107 above as if more fully set forth herein.

109. The Town Board did not perform a sufficient analysis under the State Environmental Quality Review Act ("SEQRA") before it concluded that the proposed amendments would "not have a significant adverse impact on the environment" and issued its Negative Declaration.

110. The Town Board's determination was arbitrary and capricious and must be set aside as the SEQRA process employed by the Town Board failed to take a "hard look" at all of the environmental impacts of the Local Law.

111. In Part 2 of the EAF, the Town Board as Lead Agency simply checked off "No" for each and every feasible impact, including "consistency with community plans" and

“consistency with community character.” There was no further discussion or explanation contained within the EAF.

112. In Part 3 of the EAF, the Town Board simply attached an overview of the proposed amendments.

113. There was no discussion of potential impacts on community character during the SEQRA review, or any discussion of socio-economic considerations or aesthetics contained within the EAF.

114. The Town Board also failed to consider how this Local Law limits development beyond the applicable zoning, or that it may prevent the full and best use of the affected property.

115. While the Town Board states in a conclusory fashion that there would be no impact on development or redevelopment of the properties, that is, in fact, misleading since under the Local Law the Commission is authorized to prohibit the issuance of a permit for demolition and/or substantial alteration of a designated historic building.

116. It is established that an agency must consider all of the potential environmental impacts of the action, not just the physical impacts. *See, e.g., Chinese Staff & Workers Ass’n v. City of N.Y.*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986). Furthermore, a SEQRA negative declaration must be annulled where the responses in an EAF are misleading and fail “to provide an adequate basis for the Board's adoption of a negative declaration.” *Corrini v. Village of Scarsdale*, 1 Misc.3d 907, 781 N.Y.S.2d 623 (Sup. Ct. 2003).

117. Thus, by failing to take a hard look at the potential impacts of the adoption of the Local Law, including impacts on each of the properties on the Survey, the Town Board acted in an arbitrary and capricious manner.

118. Thus, the SEQRA review and conclusions of the Town Board must be reversed, annulled, and set aside, and the adoption of the Local Law on the basis of those faulty conclusions must be invalidated.

**WHEREFORE**, Plaintiffs/Petitioners respectfully request judgment, pursuant to Article 78 and Section 3001 of the Civil Practice Law and Rules:

(1) Declaring that the Local Law is unconstitutional as it is overbroad, vague, and deprives those property owners whose properties are listed on the Survey of their property rights without due process of law; and/or

(2) Annuling and setting aside as arbitrary and capricious and contrary to law the Local Law, and specifically the adoption of the Survey; and/or

(3) Annuling and setting aside as arbitrary and capricious and contrary to law the historic designation of Plaintiffs/Petitioner's Property; and/or

(4) Annuling and setting aside the Town Board's negative declaration pursuant to SEQRA as arbitrary and capricious and contrary to law for failure of the Town Board to conduct a proper environmental impact review prior to enactment of the Local Law; and

(5) Granting to Plaintiffs/Petitioners their reasonable attorneys' fees and costs and disbursements of this action/proceeding; and

(6) Granting such other and further relief as the Court deems just and appropriate under the circumstances.

Dated: August 11, 2017  
Mount Kisco, New York



CAMILLO M. SANTOMERO



DENISE C.R. SANTOMERO

Dated: August 11, 2017  
Mount Kisco, New York

SHAMBERG MARWELL HOLLIS  
ANDREYCAK & LAIDLAW, P.C.

By: 

P. Daniel Hollis, III

*Attorneys for Plaintiffs/Petitioners*

55 Smith Avenue

Mount Kisco, New York 10549

(914) 666-5600

[pdhollis@smhal.com](mailto:pdhollis@smhal.com)




## VERIFICATION

STATE OF NEW YORK                    )  
   ) s.s.:  
 COUNTY OF WESTCHESTER        )

CAMILLO M. SANTOMERO, being duly sworn, deposes and says: I am one of the Plaintiffs/Petitioners in the action herein; I have read the foregoing Verified Petition and Complaint and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

  
 Camillo M. Santomero

Sworn to before me this  
 11<sup>th</sup> day of August, 2017

  
 Notary Public


P. DANIEL HOLLIS III  
 NOTARY PUBLIC, State of New York  
 No. 60-1839675  
 Qualified in Westchester County  
 Commission Expires July 31, 2021

STATE OF NEW YORK                    )  
   ) s.s.:  
 COUNTY OF WESTCHESTER        )

DENISE C.R. SANTOMERO, being duly sworn, deposes and says: I am one of the Plaintiffs/Petitioners in the action herein; I have read the foregoing Verified Petition and Complaint and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

  
 Denise C.R. Santomero

Sworn to before me this  
 11<sup>th</sup> day of August, 2017

  
 Notary Public

P. DANIEL HOLLIS III  
 NOTARY PUBLIC, State of New York  
 No. 60-1839675  
 Qualified in Westchester County  
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