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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF SENECA MEADOWS,

Appellant,

-against-

NO. 125

TOWN OF SENECA FALLS,

Respondents.

20 Eagle Street
Albany, New York
November 20, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE CAITLIN J. HALLIGAN
PRESIDING JUSTICE MARTIN SHULMAN

Appearances:

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Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: The last case on today's
2 calendar is Matter of Seneca Meadows v. Town of Seneca
3 Falls, and we are delighted to be joined by our colleague
4 from the Appellate Division, First Department, the
5 Honorable Martin Shulman.

6 MR. REYNOLDS: May it please the court, Bill
7 Reynolds, on behalf of Seneca Meadows. I would
8 respectfully request to reserve three minutes for rebuttal.

9 CHIEF JUDGE WILSON: Three minutes. Yep.

10 MR. REYNOLDS: Thank you, Your Honor.

11 Seneca Meadows is a landfill that has been
12 operating in the town of Seneca Falls for decades. It is
13 the largest landfill in the state by far. Accepted nearly
14 2.2 million tons of municipal solid waste in 2018.

15 I would quote the State Department of
16 Environmental Conservation, which has described such
17 facilities as critical to the proper management of waste
18 generated in the state. Almost one quarter of the
19 municipal solid waste disposed of in the state in 2018 was
20 disposed of - - -

21 JUDGE RIVERA: What interest - - - I'm sorry.
22 What interests of the company is affected by, let's go with
23 it for one moment - - - a violation of SEQRA? As you have
24 described the violation.

25 MR. REYNOLDS: Your Honor, the - - - this law

1 directly targets Seneca Meadows for closure. So the - - -

2 JUDGE RIVERA: Well, it - - -

3 MR. REYNOLDS: - - - goal of the law is - - -

4 JUDGE RIVERA: No. It just means you can't have
5 any more landfills, right? You just can't have these waste
6 disposal operations.

7 MR. REYNOLDS: And that is what the company does,
8 Your Honor.

9 JUDGE RIVERA: I mean, the January 1, someone
10 else can't come in and open one.

11 MR. REYNOLDS: It means that Seneca Meadows would
12 have to close.

13 JUDGE RIVERA: Well, you're - - - you happen to
14 have one, but it applies across the board. You're not
15 unique in that way.

16 MR. REYNOLDS: We are unique in the Town of
17 Seneca Falls. Your Honor, there is no other solid waste
18 facility in the Town of Seneca Falls.

19 JUDGE RIVERA: But you agree what they've decided
20 is we don't want any of these kinds of waste management
21 companies. Right? We don't want this on - - - in our - -
22 - within our boundaries.

23 MR. REYNOLDS: That is true, Your Honor. That is
24 exactly the same as - - -

25 JUDGE RIVERA: It could be you. It could be

1 anybody else.

2 MR. REYNOLDS: Well, except that in this case,
3 there was no one else. There was no other facility
4 discussed. There was no other facility in existence - - -

5 JUDGE RIVERA: And because of the way they've
6 written the law, no one will come after you.

7 MR. REYNOLDS: That is true, Your Honor. But
8 there was no other facility at the time that the local law
9 was passed or considered.

10 JUDGE RIVERA: Well, is it your position that
11 they could never pass such a law?

12 MR. REYNOLDS: Not that they could never pass it,
13 but they have to comply with SEQRA to pass it. They - - -
14 and they didn't remotely - - -

15 JUDGE RIVERA: I'm saying, what interests of your
16 client is affected by not going through the SEQRA process?
17 Because SEQRA is about environmental concerns, right?

18 MR. REYNOLDS: That is absolutely - - -

19 JUDGE RIVERA: I mean, you may have other claims
20 - - -

21 MR. REYNOLDS: Absolutely, Your Honor.

22 JUDGE RIVERA: - - - and you've asserted them and
23 then stipulated them, right? You stipulated - - - withdrew
24 them?

25 So what's the environmental interest?

1 MR. REYNOLDS: Well, as this court held in Har
2 Enterprises and Gernatt Asphalt, when a property owner is
3 directly targeted by government action, then the property
4 owner, like Seneca Meadows - - -

5 JUDGE RIVERA: Yes.

6 MR. REYNOLDS: - - - has standing to assert a
7 claim under SEQRA.

8 JUDGE RIVERA: Well, you are unique this way,
9 right?

10 MR. REYNOLDS: We're the only one.

11 JUDGE RIVERA: You are unique this way that your
12 use of the property is an environmental - - - raises
13 environmental issues in itself, as opposed to just a
14 property owner who just has property.

15 MR. REYNOLDS: Yes. And again, Your Honor, we
16 are the only - - -

17 JUDGE RIVERA: I'm just saying does that matter?
18 Does it make a difference that the use of this property is
19 one that in and of itself raises environmental concerns?

20 MR. REYNOLDS: It does, Your Honor. Because - -
21 - first of all, because that's why the town board was
22 required to comply with SEQRA in passing the law, which
23 they didn't do.

24 JUDGE RIVERA: So I'm saying then passing a law
25 that prohibits that use, how would that ever violate SEQRA?

1 MR. REYNOLDS: Well - - -

2 JUDGE RIVERA: Or, I'm sorry. How would that in
3 any way suggest that there are environmental concerns that
4 would be subject to a SEQRA analysis?

5 MR. REYNOLDS: Well, because there are huge
6 environmental concerns in - - -

7 JUDGE RIVERA: Okay.

8 MR. REYNOLDS: - - - implicated in this local
9 law. Because as I was mentioning - - -

10 JUDGE RIVERA: Did you present those? Did you
11 raise those as interests for your client?

12 MR. REYNOLDS: We did - - - I'm sorry, Your
13 Honor. Did we or can we?

14 JUDGE RIVERA: Did you? No, did you? Or you had
15 - - - we have the record that we have, so.

16 MR. REYNOLDS: Yes. On the record, Your Honor.
17 Yes. It was raised and cited in our brief that Seneca
18 Meadows did say to the board that if you close this
19 facility, waste will likely have to be transported a longer
20 distance and that that will increase greenhouse gas
21 emissions, which has obviously - - -

22 JUDGE HALLIGAN: If we were to agree with you on
23 standing, why should we go ahead and reach the merits
24 instead of sending it back to the Appellate Division?

25 MR. REYNOLDS: Your Honor, I would suggest that

1 the court should reach the merits - - -

2 JUDGE HALLIGAN: But why? Usually we would - - -
3 we would allow the Appellate Division the first opportunity
4 to consider a merits question, I think.

5 MR. REYNOLDS: And this court, of course, can do
6 either one - - -

7 JUDGE HALLIGAN: Right.

8 MR. REYNOLDS: - - - in its discretion.

9 JUDGE HALLIGAN: But why are you suggesting that
10 we should?

11 MR. REYNOLDS: Because it's a pure question of
12 law. There's - - - the record was stipulated.

13 JUDGE HALLIGAN: But that's about our power, I
14 think. But is there a reason why you think that would be
15 particularly appropriate here?

16 MR. REYNOLDS: Well, in this case, I mean, this
17 litigation has been going on now for over eight years. The
18 local law is stayed by this court pending the outcome of
19 this appeal but is scheduled, otherwise, to go into effect
20 at the beginning of January in just a matter of six weeks.

21 If the court exercises its discretion to assess
22 the SEQRA issue - - - which is a pure question of law,
23 there's no factual findings involved, it's a stipulated
24 factual record - - - then that would bring this litigation
25 to a close. And I believe that the intervenors also

1 suggested that same. That they would request the court - -
2 -

3 JUDGE HALLIGAN: So basically some combination of
4 efficiency and expediency?

5 MR. REYNOLDS: Exactly, Your Honor. Yes.

6 Without trampling on any fact finding or
7 discretionary issues that would be reserved for a lower
8 court.

9 JUDGE SHULMAN: Are you concerned in any way with
10 the limitation defense issue at all?

11 MR. REYNOLDS: Well, I would say, Your Honor,
12 first of all, as we addressed in our briefing. First of
13 all, the court can see that the board itself, the town
14 board that passed this local law, is not here. They are
15 not defending their law at this - - - they have not
16 defended it for years. They don't argue that SEQRA was
17 complied with.

18 With respect to the limitations defense, Your
19 Honor, that is a personal defense. It belongs to the
20 board, not to the intervenors. It belongs to a defendant
21 or a respondent. The - - - we never sued the intervenors.
22 The intervenors voluntarily chose to join the litigation.

23 So the limitations defense is not properly raised
24 by the intervenors here. It would have been raised by the
25 board, but they've abandoned that defense and any other

1 defense because they're not litigating this case anymore
2 before this court.

3 JUDGE SHULMAN: So therefore, it - - - there's no
4 basis to bring up the August 2021 decision at all?

5 MR. REYNOLDS: Yes. We - - -

6 JUDGE SHULMAN: As a nonfinal order?

7 MR. REYNOLDS: Well, yes. And we also - - -
8 would also argue, yes, Your Honor, that it is also not
9 reviewable by this court under C.P.L.R. 5501(b) and this
10 court's Gilroy decision.

11 The clear language of the statute and of that
12 decision indicate that the earlier nonfinal order is not
13 reviewable. So we would argue it's not reviewable, and
14 even if it were reviewable by this court, the intervenors
15 can't raise it because it belongs to the board. It's a
16 personal defense belonging to the board, not to the
17 intervenors.

18 And again, I raise the points about the
19 significance of Seneca Meadows, of the landfill, as a
20 cornerstone of the state's environmental infrastructure.
21 It performs a huge public service by disposing of so much
22 waste in a state-of-the-art facility that is highly
23 regulated. And closing such a facility, as the local law
24 purports to do, raises serious and major environmental
25 questions that affect the entire state. For example, I

1 mean, to begin with, the facility doesn't generate the
2 waste that it disposes of. The waste is generated by the
3 state's economy, the state's citizens. The waste will
4 continue to be generated next week, next year - - -

5 JUDGE RIVERA: So then your position is they
6 could never close this?

7 MR. REYNOLDS: Not at all, Your Honor.

8 JUDGE RIVERA: They could never close this and
9 they could never pass a similar law, even if they went
10 through a SEQRA process?

11 MR. REYNOLDS: No, it would be - - - they could,
12 Your Honor, but they would have to comply with SEQRA. They
13 would have to address the concern - - -

14 JUDGE RIVERA: But I - - - it seems that you're
15 arguing the merits and arguing that the environmental
16 impact would be completely negative. That is to say,
17 adverse. I should say adverse, if, indeed, they prohibited
18 having this kind of facility on the property?

19 MR. REYNOLDS: Well, I would personally argue
20 that, yes, the overall environmental effects would be
21 adverse. If the facility were closed, it would be an
22 environmental catastrophe for the state, in my opinion.

23 But the important point for - - -

24 JUDGE RIVERA: You recognize that they might go
25 through a SEQRA process and reach a different conclusion?

1 MR. REYNOLDS: Absolutely, Your Honor. The point
2 is that they didn't.

3 JUDGE RIVERA: So we - - - but so we don't need
4 to reach that right now, do we?

5 MR. REYNOLDS: The court certainly doesn't need
6 to - - -

7 JUDGE RIVERA: Okay.

8 MR. REYNOLDS: - - - make a judgment about
9 whether it would or would not be a good thing for the
10 environment. The requirement of SEQRA is that the board
11 had to do that. The board had to ask those questions and
12 take a hard look at them.

13 JUDGE HALLIGAN: Do you know if there's a plan in
14 place if it's closed as of the end of the calendar year? I
15 realize you may not know that, but perhaps you do.

16 MR. REYNOLDS: To my knowledge, there's no plan
17 in place.

18 JUDGE HALLIGAN: Presumably, there would be a lot
19 of waste to be disposed of, I take it?

20 MR. REYNOLDS: Yes, Your Honor. And that's one
21 of the reasons why we point out that it would be a calamity
22 in terms of public policy, because to my knowledge, there
23 is no public plan in place. There certainly is nothing in
24 the record for - - - that the board has done or that the
25 town has done to ascertain what would happen.

1 I mean, when we talk about 2.2 million tons - - -

2 JUDGE RIVERA: They had nine years, didn't come
3 up with a plan?

4 MR. REYNOLDS: The board hasn't in nine years. I
5 don't believe so, Your Honor.

6 JUDGE RIVERA: But if the law was in place, the
7 business didn't think it might need a plan for how it would
8 close down without an environmental catastrophe?

9 MR. REYNOLDS: Oh, no, my client can't - - - my
10 client can close if necessary. My client's able to stop
11 accepting waste, but it's not my client's responsibility to
12 determine what will happen. That would implicate - - -

13 JUDGE RIVERA: To the waste that's currently
14 there?

15 MR. REYNOLDS: Yes.

16 JUDGE RIVERA: Is that what you mean?

17 MR. REYNOLDS: We wouldn't be able to fix that
18 problem. We would simply be forced to shut our doors.
19 Then there would be hundreds of trucks - - -

20 JUDGE RIVERA: Might you be in violation of
21 federal or state law if you did not do anything with that
22 waste and just left it there?

23 MR. REYNOLDS: Well, it would be - - - I think
24 what would happen is that on January 1st, 2026, the doors
25 would be closed. And then we're talking about a process.

1 The disposal of waste involves hundreds of - - -

2 JUDGE RIVERA: I have just - - - so I don't know
3 the answer. I just don't know under federal and state law
4 if you can just walk away and leave it there.

5 MR. REYNOLDS: Well - - -

6 JUDGE RIVERA: That's my point.

7 MR. REYNOLDS: Well, there - - - there's a
8 closure process that's environmentally required if the
9 landfill were to close permanently. There's a closure
10 process that we would have to undertake at that point.

11 But the issue about if the local law goes into
12 effect, there are haulers all over the state that bring
13 their waste to a facility, a landfill to be disposed of.
14 If the landfill is just closed, then there's hundreds of
15 trailer trucks out there every day that have to find some
16 other place to take their waste.

17 And it doesn't appear from the New York State
18 Solid Waste Management Plan that there is capacity in New
19 York State to take the rest of that waste. And this just
20 simply wasn't looked at for even one second by the board.

21 I see that my time for this section has expired,
22 so I'll reserve for rebuttal.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. REYNOLDS: Thank you.

25 MR. ROSBOROUGH: Good afternoon, Robert



1 Rosborough, Whiteman Osterman & Hanna on behalf of the
2 respondents.

3 Let me start with the timeliness issue.

4 JUDGE HALLIGAN: Can I ask you actually on
5 standing how you get around - - -

6 MR. ROSBOROUGH: Yeah.

7 JUDGE HALLIGAN: - - - Har?

8 MR. ROSBOROUGH: We get around Har, because what
9 Har and Gernatt did was acknowledge that under this court's
10 two-part standing test, a landowner that is subject to the
11 regulation gets a presumption that they will suffer
12 environmental harm.

13 That's what Har and Gernatt both say. That owner
14 is presumed to suffer harm as a result of the fact that
15 their property is regulated. That presumption is not an
16 irrebuttable one, however. This court has never held that
17 it is.

18 JUDGE HALLIGAN: Point us to examples where a
19 property owner subject to a regulation lacks standing to
20 challenge that?

21 MR. ROSBOROUGH: I think in this instance it
22 would - - -

23 JUDGE HALLIGAN: No, I mean, in other cases where
24 we have held or maybe the federal courts have held - - - I
25 realize different set of rules - - - that a property owner

1 who is subject to a regulation lacks standing to challenge
2 that regulation.

3 MR. ROSBOROUGH: There are a number of situations
4 where you have townwide regulations and the property owners
5 cannot - - -

6 JUDGE HALLIGAN: I'm just asking. Sorry, I don't
7 mean to cut you off.

8 MR. ROSBOROUGH: Sure.

9 JUDGE HALLIGAN: But I'm just asking if there are
10 any cases in particular that you could point us to where a
11 court has concluded that or particularly the Appellate
12 Division or this court.

13 MR. ROSBOROUGH: I can't remember names off the
14 top of my head, but what I can tell you is sort of the
15 principles.

16 The principles are in order to establish
17 standing, the property owner has to show concrete harm
18 different than the public at large. When you have a town
19 wide-law that applies to everyone in the town, to have
20 standing - - -

21 JUDGE HALLIGAN: Is that true only - - - if there
22 are only one or two or three entities that may be subject
23 to that, even if it's written on its face as a generally
24 applicable law?

25 MR. ROSBOROUGH: It is. It is. Because Har and

1 Gernatt didn't change this court's standing test. What
2 they did is introduce the presumption that they will suffer
3 environmental harm.

4 JUDGE HALLIGAN: It just seems - - - the reason
5 I'm pressing you on it is, it - - - it seems to me
6 generally the case that property owners have the capacity
7 to come into court and challenge a statute, could be as
8 arbitrary and capricious; could be with respect to SEQRA;
9 could be that it's a regulatory taking something like that,
10 and so it seems to me an unusual result to say a property
11 owner can't do that.

12 MR. ROSBOROUGH: I think generally that's
13 correct. Generally, a property owner who is presumed to
14 suffer environmental harm will have standing. What we have
15 here is a unique situation where SMI has told the court in
16 all of its allegations, its harm is economic and economic
17 alone. And that's what the Appellate Division majority
18 held. It looked through the allegations of the petition,
19 and the allegations of the petition are we're concerned
20 about the operations of our facility continuing to exist.

21 The affirmation of Kyle Black does the same
22 thing. We're concerned about our ten-million-dollar
23 investment in our facility and all of the equipment that we
24 have. And when a party comes into court and says, I have
25 suffered concrete harm, and my harm is different, and the

1 way it's different is that I have all these investments
2 that I'm going to lose, that doesn't fall within the zone
3 of interest for a SEQRA claim.

4 Now, it could certainly suffice for a substantive
5 due process claim or a different type of claim. But for
6 SEQRA in particular, whether it's under Mobil Oil Corp. or
7 Dairylea Corporation, this court has held that you have to
8 satisfy a zone within - - - an interest within the zone of
9 interest. And SMI has said that they don't. Their
10 interest is economic only.

11 So we take them at their word. When their
12 interest is economic - - -

13 JUDGE RIVERA: So is your position they're not -
14 - - they don't get the - - - what you've called the
15 presumption that Har recognized?

16 MR. ROSBOROUGH: They initially - - -

17 JUDGE RIVERA: Or they're not targeted? Or what
18 - - - what is your position on that?

19 MR. ROSBOROUGH: The presumption arises because
20 they're subject to the regulation.

21 JUDGE RIVERA: Uh-huh.

22 MR. ROSBOROUGH: But that's not an irrebuttable
23 presumption. And here their own allegations rebutted that
24 presumption that they would suffer some environmental harm
25 as a result of it.

1 JUDGE RIVERA: I see. So you say they do fit
2 under harm because they're a property owner that would
3 otherwise be affected, but they themselves have presented
4 the effect as solely economic, which then takes it out of
5 Har?

6 MR. ROSBOROUGH: Correct. And in Har - - -

7 JUDGE GARCIA: I don't see that in Har.

8 MR. ROSBOROUGH: Well in Har, this court - - - or
9 in Gernatt in particular, this court says we are not
10 delineating now what the sufficient nexus might be, and
11 this is a case where you're going to need to further
12 clarify what that sufficient nexus is and wherever that
13 line is drawn, I think. Because the allegations here are
14 solely economic harm that does not fall within SEQRA's zone
15 of interest test under any decision that this court has
16 ever held, or any decision of the Appellate Division that I
17 found.

18 JUDGE HALLIGAN: Are you aware of any cases in
19 the appellate divisions or in this court where someone
20 subject to SEQRA because they're the property owner has
21 been denied standing?

22 MR. ROSBOROUGH: I'm not. I'm not.

23 JUDGE HALLIGAN: So we would be breaking new
24 ground in that respect?

25 MR. ROSBOROUGH: Well, in Mobil Oil the - - -

1 that property owner, this court held, would suffer only
2 economic harm and was denied standing. They were part of
3 the phased development of that area.

4 JUDGE GARCIA: But I really don't understand this
5 presumption point when the language in both of those cases
6 is - - - you know, "that the owner of property that is
7 subject to rezoning need not allege the likelihood of
8 environmental harm."

9 MR. ROSBOROUGH: Right.

10 JUDGE GARCIA: And you're saying here he didn't
11 allege the likelihood of environmental harm, he only
12 alleged economic harm.

13 MR. ROSBOROUGH: Well, what I'm saying is that
14 the presumption arises because of who they are. But - - -

15 JUDGE GARCIA: But if these cases - - -

16 MR. ROSBOROUGH: - - - the standing - - -

17 JUDGE GARCIA: - - - say you don't have to allege
18 environmental harm, and your response to that is but they
19 didn't allege environmental harm.

20 MR. ROSBOROUGH: My response is that in a case
21 like this, that presumption to show standing is part of
22 their claim.

23 JUDGE GARCIA: Is there anything in those two
24 cases that you see the language presumption?

25 MR. ROSBOROUGH: There is.

1 JUDGE GARCIA: Because I read it as, "Where the
2 challenge is to the SEQRA review undertaken as part of a
3 zoning enactment, the owner of property that is subject to
4 rezoning need not allege the likelihood of environmental
5 harm."

6 So it seems in that case, what have you come
7 forward with to say that it isn't?

8 MR. ROSBOROUGH: And this is Har in the first
9 paragraph. It says "petitioner" - - - or "We hold that
10 whereas here the very subject of the proposed action is
11 petitioner's property, petitioner is presumptively
12 adversely affected by the" - - -

13 JUDGE RIVERA: I'm sorry. Where are you?

14 MR. ROSBOROUGH: This is Matter of Har - - -

15 JUDGE RIVERA: Yeah.

16 MR. ROSBOROUGH: - - - at page 526.

17 JUDGE HALLIGAN: And where do you see in Har the
18 notion that the presumption can be rebutted?

19 MR. ROSBOROUGH: I don't see it in Har.

20 JUDGE HALLIGAN: Okay. So you're asking us to
21 read into the word "presumptively" that you could make a
22 showing you're the property owner, but in what
23 circumstances are you then - - - do you not have standing,
24 under your theory?

25 MR. ROSBOROUGH: Under the circumstance - - -

1 well, what this court is asked to do in this case is
2 clarify where that line is drawn, that there's a - - -

3 JUDGE HALLIGAN: I'm asking what you - - -

4 MR. ROSBOROUGH: - - - there's a sufficient
5 nexus.

6 JUDGE HALLIGAN: - - - what you think it - - - I
7 take it you're arguing that Har tells us that the property
8 owner presumptively has standing, but presumptively means
9 not always, and the presumption can be rebutted. Yes?

10 MR. ROSBOROUGH: Correct.

11 JUDGE HALLIGAN: Okay. And what would be
12 sufficient to rebut the presumption, in your view, if we
13 were to agree with you? One could read "presumptively" to
14 simply be shorthand for saying property owner has standing
15 without having to allege environmental harm.

16 But if we read it as you're suggesting, what
17 would be sufficient?

18 MR. ROSBOROUGH: What would be sufficient is what
19 we have here, and what this court held in Mobil Oil, when
20 the allegations of the petitioner itself, who is
21 challenging the law, are solely economic harm. Not we're
22 concerned about - - - you know, where the trucks might go
23 or where the air emissions might be increased.

24 Because that was never alleged in this case.
25 Wasn't alleged by it at all. What SMI has done now is

1 tried to pull a ten-second statement.

2 JUDGE CANNATARO: Counsel, since Har seems to
3 clarify that the interest doesn't necessarily have to be
4 environmental for a property owner, and since you're
5 suggesting that economic is not good enough, can I just ask
6 you what's left? Can you speculate what a property owner
7 might allege that's not environmental and that's not
8 economic, but might be viable?

9 MR. ROSBOROUGH: I think what it would be is - -
10 - say, for example, in this case, DEC had granted a renewal
11 permit beyond 2025 when this law would go into effect.

12 JUDGE CANNATARO: So they had like a regulatory
13 interest?

14 MR. ROSBOROUGH: They would have a regulatory
15 interest in continuing under that permit. That would be
16 sufficient to challenge the law.

17 What we don't have - - - but we don't have that
18 here. And if I might move - - - you know, to the
19 timeliness issue that I'd like to talk about a little bit.

20 The issue we have here is in - - -

21 JUDGE HALLIGAN: But - - - just sorry, to - - -
22 to hold you for one minute on Har.

23 MR. ROSBOROUGH: Sure.

24 JUDGE HALLIGAN: So Har says that an owner's
25 interest may be so substantial - - - it's explaining why

1 the owner might not need to show environmental harm. And
2 says, "So even though such an owner cannot presently
3 demonstrate an adverse environmental effect, it has a
4 legally cognizable interest in being assured that the
5 decision-makers have considered all of the potential
6 consequences, taken the requisite hard look, and made the
7 requisite reasoned elaboration"?

8 I just don't see there some notion that there's a
9 rebuttable presumption and we should look at I'm not sure
10 what. You - - - I don't think - - - maybe, are you telling
11 us that they must show environmental harm?

12 MR. ROSBOROUGH: No. I'm saying - - -

13 JUDGE HALLIGAN: What else?

14 MR. ROSBOROUGH: So what I'm saying, and I think
15 this is what the court held in Gernatt, or at least my
16 reading of Gernatt is.

17 In Gernatt you had a property owner who had
18 applied for a permit to mine and the town zoned - - - or
19 said that's no longer a permissible use. As a result that
20 was a legally sufficient cognizable interest because it
21 wasn't just economic. It was interest in that regulatory
22 approval that they were looking for. That was a sufficient
23 harm to bring - - -

24 JUDGE HALLIGAN: So a permit approval,
25 environmental harm, anything else?

1 MR. ROSBOROUGH: That's what I can think of now.

2 JUDGE CANNATARO: Isn't that a pretty small
3 universe? I mean, that would be a vanishingly small
4 universe of eligible property owner challenges. I mean,
5 yes, landfills need permitting, maybe mines need
6 permitting, and some other kinds of business, but there's a
7 lot of property owners who don't have to get permits to use
8 their property.

9 MR. ROSBOROUGH: Correct.

10 JUDGE CANNATARO: And you seem to be counting
11 them all out of Har's standing.

12 MR. ROSBOROUGH: I think that - - -

13 JUDGE RIVERA: Can I ask, if they can't bring it,
14 who could bring a SEQRA challenge?

15 MR. ROSBOROUGH: In this - - -

16 JUDGE RIVERA: A different property owner that
17 doesn't have a waste management business on their property?
18 I mean, who would be able to bring it?

19 MR. ROSBOROUGH: Who would - - -

20 JUDGE RIVERA: Because Har is obviously concerned
21 with the fact that then no one may be able to bring it. It
22 does say - - - this is at the end of 529, "To adopt the
23 rule urged by respondent", which sound - - - sounds
24 somewhat like your rule - - - "and deny standing absent an
25 allegation that the owner will suffer some adverse



1 environmental consequence, would insulate decisions such as
2 this from judicial review, a result clearly contrary to the
3 public interest."

4 And so who else would be able to make the SEQRA
5 challenge?

6 MR. ROSBOROUGH: I think there may be some other
7 property owner close to the - - - you know, the property
8 that would be able to bring a challenge to - - - on some
9 environmental basis, for example.

10 CHIEF JUDGE WILSON: There won't be as many
11 trucks running by my house anymore?

12 MR. ROSBOROUGH: It - - - that's at least an
13 allegation of some environmental consequence.

14 We have none here under - - -

15 JUDGE RIVERA: There wouldn't be a negative
16 environmental constantly, right?

17 JUDGE CANNATARO: Yeah, right, who's going to - -
18 -

19 MR. ROSBOROUGH: But that's - - - right.

20 JUDGE RIVERA: And it seems not quite to be the
21 public interest the court is concerned with?

22 MR. ROSBOROUGH: Sure. And - - - and let me - -
23 -

24 JUDGE HALLIGAN: That - - - that may be - - -

25 MR. ROSBOROUGH: - - - let me move - - -



1 JUDGE HALLIGAN: That may be concerning because
2 if that's right, and the environmental consequence is
3 perhaps positive because there are no trucks, I'm not sure
4 we've identified someone who could bring a challenge. And
5 usually, I think, with a major governmental action someone
6 who is affected, there's someone who can challenge that.

7 So who here could challenge this if not the
8 property owner?

9 MR. ROSBOROUGH: I think there may be someone,
10 but I'd like to spend a little bit more. I think, you
11 know, at this point, I feel like I've lost the panel, so
12 I'm going to move on to something else, if I might.

13 JUDGE RIVERA: Making the wrong assumption there.
14 Okay.

15 MR. ROSBOROUGH: So I think that if - - - first
16 if we deal with SEQRA, I think SEQRA is very
17 straightforward here. This is the matter of Gernatt
18 situation.

19 In Gernatt you had the same type of land-use
20 regulation. The board introduced it in July. One week
21 later adopted an EAF. And a month later adopted the law
22 after a public hearing and a negative declaration.

23 This court specifically held that the rush to do
24 that was not - - - did not make it legally infirm. What we
25 have here, in contrast, is a seven-month review where this

1 law was introduced in May. It was supposed to be a public
2 hearing in June. It was put off to July. It was then put
3 off to September. We had nineteen hours of testimony in
4 front of - - -

5 JUDGE CANNATARO: And to ask you a question that
6 your adversary was asked. Why shouldn't we let the lower
7 courts sort this out first?

8 MR. ROSBOROUGH: I think the answer is the record
9 here is sufficient. And for - - - as a matter of judicial
10 economy, it can be addressed now before the law goes into
11 effect, to give certainty to the parties.

12 And if I might, in the last minute that I have, I
13 don't think you have to reach any of this. This proceeding
14 is untimely, and this court has the authority and scope of
15 review to address it.

16 JUDGE SINGAS: What gives you the authority,
17 though, to bring that timeliness?

18 MR. ROSBOROUGH: What brings - - -

19 JUDGE SINGAS: As an - - - as an intervenor?

20 MR. ROSBOROUGH: Well - - -

21 JUDGE HALLIGAN: Why isn't he right that it's a
22 personal right and you just don't have it?

23 MR. ROSBOROUGH: Number one, the first time we
24 heard anything about this being a personal right was on
25 their reply brief in this court. It is an unpreserved

1 argument.

2 Number two, the reason why all of the other cases
3 that they cite, the respondent was not allowed to bring a
4 statute of limitations defense was because the municipality
5 had specifically waived it. The municipality put in an
6 answer that didn't raise statute of limitations or
7 otherwise just addressed the merits. Here, the town fully
8 litigated through to the Appellate Division, the statute of
9 limitations issue on their motion to dismiss. We did too.

10 And as a party respondent, we have the equal full
11 panoply of rights that a respondent has. And so because
12 they fully litigated that issue all the way through to the
13 Appellate Division, and again, raised it in their answer on
14 the merits - - - now, granted, they decided for whatever
15 reason, no longer to spend money to litigate the case. But
16 in - - - by raising it and fully litigating it as far as
17 they could have, it is properly preserved and at issue
18 here, and this court has the power to review it.

19 If I might, I would just respectfully request
20 that the court affirm whether on the alternative ground
21 that this case is untimely, or we have satisfied the town
22 board's obligations to comply with SEQRA.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. ROSBOROUGH: Thank you.

25 JUDGE RIVERA: Counsel, is he correct that - - -



1 this is back to the standing - - - that your client took
2 the position that it only had economic adverse consequences
3 as a result of the alleged violation of SEQRA?

4 MR. REYNOLDS: It is correct that our client does
5 not allege specific environmental harm, Your Honor. That
6 is correct.

7 JUDGE RIVERA: It never presented any potential
8 environmental harm?

9 MR. REYNOLDS: Well, I mean, I guess, there's - -
10 -

11 JUDGE RIVERA: Well, I thought there was
12 something in the record.

13 MR. REYNOLDS: Yes. There's - - - so are two
14 pieces to that. Yes, we did say in one of the public
15 hearings, which was not part of the SEQRA process I would
16 mention, because SEQRA was not begun until 10 p.m. on the
17 last meeting with the lame duck board, that - - - when were
18 not actually able to participate in the SEQRA process.

19 But we did say in just the public forums on the
20 local law, we did specifically point out that greenhouse
21 gas emissions would likely be increased if the landfill was
22 closed, because trucks would have to travel a larger - - -
23 or may have to travel a larger distance. The town board
24 did not - - -

25 JUDGE RIVERA: So emissions with respect to the



1 town - - - in the town, or as a general matter?

2 MR. REYNOLDS: As a general matter, which is what
3 the town - - - the board was not allowed to just look at
4 the emissions within the town, but wherever they might
5 reasonably be expected to fall.

6 But again, I would just say, I mean, I think the
7 court has a very good grasp of Har and Gernatt, but Har
8 explicitly said, "we hold that whereas here", and this is
9 on the first page of that opinion, "the very subject of the
10 proposed action is petitioner's property. Petitioner is
11 presumptively affected by the violation of SEQRA
12 requirements and that no such specific allegation is
13 necessary. Meaning, allegation of specific environmental
14 harm."

15 This court couldn't have said it more clearly in
16 Har. Gernatt is on all fours with this case in terms of
17 standing, because Gernatt was a town-wide - - - as this
18 court described, it was a town-wide ordinance, exactly the
19 same. It removed a particular permitted use throughout the
20 town.

21 And as the court said, no one else would be able
22 to challenge this law. I mean, this - - - the whole point
23 that this court says in Har was, "to insulate decisions
24 such as this from judicial review would be a result clearly
25 contrary to the public interest", as was read earlier.

1 On the limitations point. The municipality did
2 argue it before, but they abandoned it. Statute of
3 limitations is a personal defense. It can be waived and
4 abandoned at any point in the proceeding. I'm not aware of
5 any case that says it can't be abandoned at some point
6 along the way, and it was abandoned. The board has
7 abandoned the defense of the local law. It has abandoned
8 any limitations defense that it may have.

9 And if the court doesn't have any other
10 questions, we'll rest on our brief.

11 CHIEF JUDGE WILSON: Thank you.

12 MR. REYNOLDS: Thank you.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Seneca Meadows v. Town of Seneca Falls, No. 125 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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