

Matter of Herbst v Town of Mamaroneck

2025 NY Slip Op 30579(U)

January 7, 2025

Supreme Court, Westchester County

Docket Number: Index No. 59167/2024

Judge: Gretchen Walsh

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the matter of the Application of
ROBERT S. HERBST, KEVIN M. CROWE, JUDITH H.
DARSKY, RUTH GYURE, and JACOB LEVITT,

Petitioners/plaintiffs

Index No. 59167/2024
Motion Seq. No. 4
DECISION & ORDER

-against-

TOWN OF MAMARONECK, THE TOWN BOARD OF
THE TOWN OF MAMARONECK, JAINE ELKIND ENEY
IN HER OFFICIAL CAPACITY AS TOWN SUPERVISOR
OF THE TOWN OF MAMRONECK, SABRINA FIDDELMAN,
JEFFREY KING, ROBIN NICHINSKY, AND ABBY KATZ,
IN THEIR OFFICIAL CAPACITIES AS PRESENT AND PAST
MEMBERS OF THE TOWN BOARD OF THE TOWN OF
MAMARONECK, and MEREDITH S. ROBSON, IN HER
OFFICIAL CAPACITY AS TOWN ADMINISTRATOR OF
THE TOWN OF MAMARONECK

Respondents/defendants.

for a Judgment and Order under Article 78 and Section 3001 of
the Civil Practice Law and Rules

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WALSH, J.

The following e-filed documents, listed in NYSCEF under document numbers 64-74, were read on this motion by Defendant-Respondents the Town of Mamaroneck (“Mamaroneck” or the “Town”), the Town Board of the Town (the “Town Board”), Jaine Elkind Eney in her official capacity as Town Supervisor of the Town (“Eney”), Sabrina Fiddelman, Jeffrey King, Robin Nichinsky, and Abby Katz, in their official capacities as present and past members of the Town Board of the Town (“Board Members”), and Meredith S. Robson, in her official capacity as Town Administrator of the Town (“Robson”) (together “Defendant-Respondents,” “Defendants,” or “Respondents”) for an order pursuant to CPLR 7804(f) and CPLR 3211(a)(7) dismissing the Amended Petition. Plaintiff-Petitioners Robert S. Herbst (“Herbst”), Kevin M. Crowe (“Crowe”),

Judith H. Darsky (“Darsky”), Ruth Gyure (“Gyure”), and Jacob Levitt (“Levitt”) (together “Plaintiffs,” “Petitioners,” or “Plaintiff-Petitioners”).

Upon the foregoing papers and for the reasons stated herein, Defendant-Respondents’ motion shall be denied.

RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND

In this hybrid Article 78/Declaratory Judgment proceeding, Plaintiff-Petitioners challenge the implementation of Local Law 10-2023 (the “Tree Law”) by Defendant-Respondents.

By Amended Petition dated March 29, 2024 (the “Amended Petition”), Petitioners seek an order: (1) “[a]nulling the tree law under CPLR §§ 3001, 7803[3], and 7806, on the ground that it was arbitrary and capricious, an abuse of discretion, not based on facts, irrational, and affected by errors of fact and law”; (2) “[a]nnulling the Town’s negative SEQRA declaration concerning the tree law, under CPLR §§ 3001, 7803[3], and 7806, on the basis that it was made in violation of lawful procedure, arbitrary and capricious, an abuse of discretion, not based on facts, affected by errors of fact and law, and was not made in good faith”; (3) “[d]eclaring the tree law null and void, under CPLR § 3001, because it violates the Town of Mamaroneck Waterfront Revitalization Law (§ 234 et seq.), in that the Town did not submit the proposed law to the Planning Board for consistency review, as required under that law”; (4) “[d]eclaring the tree law null and void under CPLR § 3001 because the Town’s exempting itself from coverage under the law violated the Public Trust Doctrine and the Charter of the Forest”; (5) “[d]eclaring the tree law null and void under CPLR § 3001 because it violated the New York Public Officers Law § 100 et seq. (“Open Meetings Law”) due to the Town’s refusal to post, publish or make available the proposed tree law before its work session in violation of Public Officers Law § 103(e), thus preventing the public and residents of the Town from being ‘fully aware of and able to observe the performance of [their] public officials’”; and (6) “[a]warding reasonable attorney’s fees and litigation costs as allowed under New York Public Officers Law § 89” (NYSCEF Doc. No. 1 [Amended Petition] at 51-52).

At the center of this controversy is Local Law No. 10-2023 (the “Tree Law”). The purpose of the Tree Law is outlined in Section 1 –

The Town Board finds and declares that the preservation of trees, as defined herein, within the Town is necessary to protect the health, safety and general welfare of the Town because trees provide shade, impede soil erosion, aid water absorption and retention, inhibit excess runoff and flooding, enhance air quality, offer a natural barrier to noise, provide a natural habitat for wildlife, provide screening, enhance property values and add to the aesthetic quality of the community. However, the Town Board also recognizes that property owners have the right to develop, use and enjoy their properties and that sometimes trees must be removed in order property owners to be able to achieve full enjoyment of their property. This law strikes a balance between the rights of property owners and the maintenance of trees within the Town (NYSCEF Doc. No. 38 at § 207-1).

The Tree Law further states that “[a] person shall be allowed to remove a regulated tree [i.e., a dead tree, a hazardous tree, a replacement tree or a tree with a diameter at breast height of six

inches or more] within the unincorporated area of the Town only if a tree removal permit for the removal of such tree shall have been issued” (*id.* at § 207-3). The Mamaroneck Tree Law permits the following activities by right: “[r]emoval of any tree that is not a regulated tree provided the tree is located on property owned by the person removing it or is being removed with the consent of the property owner”; and “[r]outine care and maintenance[defined as] [p]running of less than 25% of the crown of a regulated tree during any twelve-month period” (*id.* at § 207-4). The Tree Law “absolutely” prohibits the removal of a tree within a public right-of-way or on Town-owned property without the Town’s permission and the causing of any injury to a tree such that it is likely to become dead or hazardous (*id.*). The Tree Law also provides that, over the course of any twelve month period: (1) “[n]o more than 10 regulated trees can be removed from any lot having an area of 20,000 square feet or more”; (2) “[n]o more than 8 regulated trees can be removed from any lot having an area greater than 7,500 square feet but less than 20,000 square feet”; and (3) “[n]o more than 4 regulated trees can be removed from any lot having an area of 7,500 square feet or less” (*id.*). An applicant may only remove more trees than allotted during such a twelve-month period upon a demonstration “to the satisfaction of the Environmental Planner that one or more of the [following] criteria exists”: (1) the presence of a tree which “might endanger the owner of the property or members of that person’s family or their personal property or members of the public or their personal property”; (2) where the trees’ health may be “endangered by an approved cut or fill of the property where such tree is located”; (3) where the tree “is dead or substantially diseased” or (4) where the tree “substantially interfere[s] with a permitted use of the property” (*id.*).

The Tree Law next outlines the permit application process (§§ 207-6; 207-8) and the policies for tree replacement (§ 207-7). The Tree Law also provides for a “Tree Planting Fund,” funded by “payments from applicants who cannot satisfy tree replacement requirements” and “the payment of any fine” imposed by the Tree Planting Fund, as well as donations (*id.*). The “[a]mounts on deposit in the Tree Planting Fund [are to] be used for the sole purpose of planting and maintaining Town owned trees, shrubs, and other permanent plant materials and other applicable landscaping projects on Town-owned property” (*id.*). The remainder of the Tree Law establishes the procedure for tree removal permits (§ 207-10; § 207-11), the procedure for the suspension or revocation of such permits (§ 207-12), appeal of such determinations (§ 207-15), penalties for violations (§ 207-17), and the phase-in of the Tree Law (§ 207-18).

THE PARTIES

A. Robert S. Herbst

Herbst has “been a resident of [the Town] since 1964 . . . [and has] been the owner of [a] house at 76 North Chatworth Avenue [the “Herbst Home”] since April 1992 and [has] lived there continuously since August 1992” (NYSCEF Doc. No. 5 at 1-3 [the “Herbst Aff.”] at ¶ 1). Herbst states that his “nextdoor [sic] neighbor to the south at 72 North Chatsworth Avenue, without notice or warning to [him], cut down a healthy approximately 100 year old tree [the ‘First 100 Year Old Tree’]” in or about the fall of 2019 (Herbst Aff. at ¶ 2). Herbst explains the First 100 year Old Tree provided shade for his home, as well as the aesthetic value of its canopy which “provided a home

and food source to numerous birds and insects” (*id.*). Herbst asserts that another neighbor, “located at 55 Lookout Circle, without notice or warning to [him], cut down seven (7) healthy more than 60 foot high conifers [the ‘Seven Conifers’]” (*id.* at ¶ 3). Herbst states that the Seven Conifers provided wind-break, shade and privacy for his property, as well as a home and food source to numerous birds and insects (*id.*). Without the Seven Conifers, Herbst asserts “[he] can see all the way to across the other side of the street at Lookout Circle” (*id.*). Herbst states that the Seven Conifers were removed during over the course of a Sunday and Monday in August during pristine weather, and thus he and his family “were deprived of the use and enjoyment of [their] backyard” due to the cacophony of noise from equipment used in the tree removal (*id.*). Herbst explains that his southern neighbor, at 70 North Chatworth Avenue, “cut down a healthy approximately 100 year old tree [the ‘Second 100 Year Old Tree’]” which “shaded the side yard and south side of [the Herbst Home]” and which “also had a full canopy which was aesthetically pleasing and provided a home and food source to numerous birds and insects” (*id.* at ¶ 5).

Herbst explains that sunlight radiates onto the Herbst Home and the surrounding property due to the removal of the shade provided by the First and Second 100 Year Old Trees, which has resulted in trim peeling and the purchase of more sun tolerant plants, as well as the resulting expenditures therein (*id.* at ¶ 6). Herbst explains that his property is no longer visited by the diverse set of birds and insects that visited his property prior to the removal of the First and Second 100 Year Old Trees and the Seven Conifers, and that his sleep is now disturbed by the moonlight which was once blocked by these trees (*id.*). Herbst states that as a result of the removal of the Seven Conifers, “the east side of [the Herbst Home] now receives more sun and wind” and that he “was forced to incur the expense of having the trees on [his] property trimmed to make them more wind tolerant” (*id.* at ¶ 7). Herbst states that the ecosystem of the yard on his property has “shifted from mossy to less attractive heat loving crabgrass” (*id.*). Herbst also states, “[c]oincidentally,” the Herbst Home was infested with mice for the first time, which necessitated expense for an exterminator (*id.*). Herbst states that he has also found that his neighbor at 80 North Chatsworth Avenue has experienced flooding in the basement and backyard of his home following rainstorms “which did not happen prior to the [removal of the Seven Conifers]” (*id.*).

Herbst states that he wrote an email on September 29, 2023 to the Supervisor and Board of the Town (the “September 29, 2023 email”) (*id.* at ¶ 8). Herbst states that in his September 29, 2023 email, he: (1) complained about the cutting of the Seven Conifers; (2) explained the negative consequences to the Herbst Home, the Town, and the local environment as a result of “unregulated tree destruction”; and (3) urged for the passage of a “Tree Code to protect the trees,” making suggestions as to what that should include (*id.* at ¶ 9). Herbst explains that he is an Eagle Scout, an experienced outdoorsman and former Scout leader, and that accordingly, he has “appreciated the beauty of trees as part of nature and worked for their conservation” since he was a boy, “understand[ing] the important role trees play in the environment, ranging from their function in the atmospheric and water cycles, providing food and shelter to animals and other organisms, and countering the effects of climate change . . . [through the absorption of] greenhouse gas carbon dioxide, [as well as] provid[ing] shade, and otherwise cool[ing] the local environment” (*id.*). Herbst sets forth the negative impacts the “destruction of trees in the Town” and the resultant “loss of beauty and the benefits [trees provide]” have had on him personally, such as “lowered stress and feelings of anxiety, decreased risk of depression, lowered blood pressure, and the formation of new connections in the brain,” and asserts he is being directly harmed by the new Tree Law

because of such losses (*id.* at ¶ 10). Herbst explains that he has walked his dog almost daily through Memorial Park (the “Park”), located in the Town, with that experience closely connected to Park’s locust trees (the “Locust Trees”) (*id.* at ¶ 11). Herbst states that the north edge of the Park’s tennis court is bordered by weeds and thin grass since the removal of the Locust Trees in or around the Spring of 2023 and that he is “dismayed, saddened and harmed by the loss of [his] enjoyment of the [L]ocust [T]rees and [is] reminded of that loss every time [he] walks through the Park” (*id.*). Herbst ends his affirmation explaining that, “[a]s a taxpayer of the Town, [he is] dismayed, saddened, and harmed by the Town’s apparent failure to pursue the contractor who cut through the roots for damages” (*id.*).

B. Kevin M. Crowe

Crowe states he had “lived at 65 West Brookside Drive in [the Town] for 32 years, from 1991 to 2023, and now live[s] in the Village of Mamaroneck” (NYSCEF Doc. No. 5 at 7-10 [“Crowe Aff.”] at ¶ 1). Crowe states he lived on Sheldrake River, also known as the Brook, and during his time in that neighborhood he grew to appreciate the “wonderful parklike environment” created by the fauna (*id.*). Crowe explains that “[o]lder, majestic and healthy trees thrive in public areas as well as many residential properties in the Town of Mamaroneck and . . . remind [him of his youth, including] fond memories of enjoyable walks and hikes through forests” and thus believes it is “necessary to do whatever we can to preserve them” (*id.* at ¶ 2). Crowe explains that “[t]rees are one of the main component [sic] that helps bind and hold the other parts together in nature’s masterplan for continuity” (*id.* at ¶ 3). He states that he has witnessed the natural toll on the local tree population, including damages from storms and the susceptibility of trees to local disease and pests (*id.*). Crowe recounts the extensive benefits people receive from trees, including: (1) the provision of shade and cooling of the air; (2) the absorption of extra ground water by their roots, which help to reduce flooding; and (3) their absorption of carbon and oxygenation of the air (*id.*). Crowe explains that he used to take these benefits for granted, assuming that the tree population would increase, but realizes now “that not everyone shares [his] views and that [to those people] trees are sometimes considered an inconvenient thing, not a valuable commodity” (*id.*). Crowe feels compelled to “speak up” on this issue, explaining that he has: (1) previously volunteered to advocate for the preservation of trees; (2) participated in a Town program to replant and maintain the local trees; and (3) made financial donations for several trees to be planted along Sheldrake River, noting several were dedicated in memory of his loved ones (*id.* at ¶ 4). Crowe explains to the Court his satisfaction in “giving the [T]own this wonderful natural resource for present and future generations to enjoy” (*id.*).

Crowe claims that flooding is a recurring issue in the Town, which he became aware of during his time living in the flood-prone area by the brook (*id.* at ¶ 5). Crowe states that he found the proposition at the hearing for the removal of large mature trees for the construction of a swing set “terribly distressing” (*id.*). Crowe asserts that the benefits trees provide in the reduction of runoff and flooding is universally known, and he recounts his experience with the extreme flooding during Hurricane Ida in 2021 in support of his claim that “it is very important to consider all the different ways to mitigate this damage” (*id.*). Crowe asserts it is “safe to say that the loss of the older, mature trees is happening at a faster pace” and submits his strong belief that the Town “has

not fulfilled [its] legal obligation to adequately protect [the] community's trees' (*id.*). Crowe explains that, with his current residency in the Village of Mamaroneck, his situation could be characterized as going "from the frying pan into the fire," noting recent floods and the deaths of two from such flooding (*id.* at ¶ 6). Crowe states that his experiences and knowledge have informed his current "thoughts and distress" regarding the Tree Law, noting his previous "active role in the Town of Mamaroneck Sustainability Collaborative [the 'Collab']" and the Town's declaration of a climate emergency two years ago, which made the Collab an environmental advisor (*id.* at ¶ 7). Crowe asserts that "[w]e are in an emergency and the Town's decision to embrace tree-cutting is painful beyond words," and submits that the Town may still "reverse course and be more stringent about preserving what we have left" (*id.* at ¶¶ 7-8).

C. Judith H. Darsky

Darsky asserts that she grew up "in a household that valued trees and their beneficial effects on . . . all living things," and explains the abundance of trees in the Town was one of the primary factors in her and her late husband's decision to buy their home in Mamaroneck (NYSCEF Doc. No. 5, Pg 11-12 [the "Darsky Aff.,"] at ¶¶ 1-2). Darsky states that she and her late husband had planted twelve trees at the Darsky Home during their time living there, and that these have grown to be "Specimen Trees" (*id.* at ¶ 3). Darsky outlines the benefits of these Specimen Trees, including: (1) their attraction of wildlife, "including insects, birds and small animals of many varieties"; (2) the absorption of carbon dioxide; (3) the production of oxygen; (4) how they "drink" ground water; and (5) the provision of shade – Darsky states these qualities each "enhance our environment and help to slow climate change" (*id.*). Darsky recounts her "months of chemotherapy," during which she "looked forward to reprieves from the hospital during which [she] sat out in [her] yard under one of the huge oak trees, breathing in the oxygen gifted by [her] trees" (*id.* at ¶ 4).

Darsky explains her great distress over the reduction of mature trees in the Town's community, which she asserts is largely due to "the inadequate local tree laws and building code" (*id.* at ¶ 5). Darsky asserts that "the current Town building code does not address the deleterious effect of raising the level of land over roots of mature legacy trees, a practice which deprives the roots of oxygen, and ultimately kills the trees," with the resultant fall-over of those trees "endangering life and property" (*id.* at ¶ 6). Darsky asserts that many trees adjacent to the Myrtle Ave Town tennis courts, which "provided shade to the park and courts for years," have been illegally destroyed, and that it will take the replacement trees years of growth to meet that purpose (*id.* at ¶ 7). Darsky asserts that the significant reduction of the tree canopy over the last 10 years is evident through a walk in the Town, and confirmed by aerial surveys (*id.* at ¶ 8). Darsky explains that she and her fellow residents "greatly miss the shade and ambience that used to [be provided by these trees]" (*id.* at ¶ 9). Darsky notes that there are two trees planted in the Town in memory of her late husband, "one near the Duck Pond planted by his colleagues on the Town Planning Board, and one planted by two friends in Manor Park" (*id.*). Darsky states her desire that the Town "be a Tree City in reality, [and] not just on a framed certificate on the wall" (*id.* at ¶ 10).

D. Ruth Gyure

Gyure explains she is a retired microbial ecologist who has “lived in the Town of Mamaroneck [at 707 Forest Ave.] since August of 1995” (NYSCEF Doc. No. 14-15 [the “Gyure Aff.”]). Gyure states that she “continue[s] to spend a lot of [her] time in the wild, in [her] garden, and observing nature and its processes” (*id.*). Gyure states that she is deeply concerned regarding climate change, particular its effects on seasonal change and the resultant impact on vegetation and wildlife (*id.*). Gyure asserts she sees this firsthand in her maintenance of her “pollinator friendly garden” – by way of example, she states that she raises monarch butterflies each year, and that “[e]ach year[] there are fewer monarchs and less and less habitat for them when they arrive and try to breed,” which she attributes to “[t]heir plant needs . . . slipping out of sync with their migration timing” (*id.*). Gyure asserts that this is just one example, and that “[w]e should take heed and be doing all we can to slow our contributions to climate change” (*id.*).

Gyure explains that she “enjoy[s] all the trails and protected areas in Westchester and surrounding areas,” but explains that “having those lands is not a substitute for protecting ecological integrity in our suburban environment” (*id.*). Gyure asserts that the landscape has changed in stunning fashion, from a “beautiful, wooded neighborhood with wild spaces along the river, huge mature trees on most properties, and modest sized homes” into a neighborhood with “huge homes being built on small lots and a treescape substantially altered by loss of trees and non-manicured space” (*id.*). Gyure states that she “no longer hears choruses of insects at night,” nor sees “katydids on the window screens,” and “hardly see[s] bats anymore”, asserting that “the small mammal populations are all but eliminated” (*id.*).

Ruth explains how she has been harmed by these changes. First, regarding emotional well-being, she states that the loss of local ecological integrity has led to a resultant reduction of wildlife and plant diversity in the area which “increases [her] anxiety and [her] sadness about the future of our children who will have to grow up without a strong connection to and understanding of the importance of the natural world,” values which she finds extremely important. Regarding her health, she states that the loss of trees and increase of construction, blowing and mowing leads to her breathing in “particulate matter which has a cumulative effect” (*id.*). She states that she does not have air-conditioning and leaves her windows open during warm weather, demonstrating unhealthy dark colored soot accumulation (*id.*). Ruth states that her topsoil was washed away and her garage was damaged by Hurricane Ida (*id.*). She states that “[p]roperty washes away in the driveway . . . [while] [o]ther people’s property ends up on [her [property]]” (*id.*). Ruth explains that, while engineering changes in the reservoir have mitigated some of the flooding concerns, “engineering is not the sole answer” (*id.*). She asserts that “[u]pstream development and the slow steady continued de-greening of [the] community is a major cause of continued flooding” given the enormous role of mature tree roots “in land stabilization and water absorption” (*id.*). Ruth provides her perspective that this “value has seemingly been ignored . . . as these trees come down at the whim of property owners without consequence” (*id.*). As to the loss of property value, Ruth asserts no one wishes to live in an area with such flooding concerns, and states that “whereas before [her] home was considered an affordable, attractive domicile in a vibrant green neighborhood” she now fears “it is only seen as a tear down property for developers” (*id.*). Finally, as to a loss of a sense of community shared responsible, Ruth states she has “lost trust in [the]

Town as a steward of [Ecological integrity] in the interest of development and tax base desires” (*id.*).

E. Jacob Levitt

Levitt states he is a “dermatologist, nature lover and licensed New York State wildlife rehabilitator in the Town” and has “lived in [the Town] for [his] entire life, both at 16 Stonewall Lane and now at 8 Stonewall Lane” (NYSCEF Doc. No. 5 16-19 [“Levitt Aff.”] at ¶ 1). Levitt explains that neighbors on either side of 16 Stonewall Lane clearcut their properties, with new houses built upon a change of ownership, and that this clearcut “was painful to watch and impossible to stop as the tree law provided no protection for the healthy trees” (*id.*). Levitt asserts that the clearcutting by the resident at 18 Stonewall Lane, including the cutting of two large oak trees on the 18 Stonewall Lane property, resulted in two large oak trees on his property – 16 Stonewall lane – falling due to wind (*id.*). Levitt asserts that “the four trees grew up in symbiosis together and were now victims to our human property divisions” (*id.*). Levitt asserts that the Town removed “a healthy oak tree at the request of the neighbor,” which puts the “sister tree” at risk of falling due to wind (*id.*). Levitt states that the clearcutting of these properties has left his backyard completely flooded, which has weakened the trees’ root systems and resulted in a giant maple tree falling in the course of a wind event (*id.*). Levitt recounts the “long list of ecological benefits” provided to the Town by its trees, including: (1) “flood water absorption”; (2) “O2 production”; (3) “CO2 sequestration”; (4) “provision of shade”; (5) “wind protection”; and (6) “animal habitat” (*id.* at ¶ 2). Levitt explains that the animal habitats provided by trees are particularly important to him due to the “inordinate amounts of time [he has spent] rehabilitating animals who become orphaned or injured due to loss of habitat” (*id.*). Levitt explains that he derives “health benefits from the peacefulness of breathing fresh air and walking amongst the nature of [the Town’s] streets, which is a proven stress reliever with long term benefits to mental and cardiac health” (*id.*).

F. Respondents

Respondent Town is a municipal corporation in Westchester County. Respondent Town Board is a municipal organization and the legislative body of the Town with final approval authority over local code changes. Elkind Eney is the Town Supervisor for the Town Board. Sabrina Fiddelman, Jeffrey King, Robin Nichinsky and Abby Katz are named as Defendants/Respondents in this action based upon their passage of the Tree Law as Town Board members. Town Administrator Meredith Robson is named based upon her signing of the SEQRA declaration.

THE PARTIES’ CONTENTIONS

A. Respondents’ Contentions in Support of Their Motion

In support of their motion to dismiss, Respondents submit: (1) an affirmation of William Maker, Jr., Esq. dated September 26, 2024 (NYSCEF Doc. No. 65 [the “Maker Aff.”]), together with attached exhibits (NYSCEF Doc. Nos. 66-70); and (2) a memorandum of law in support (NYSCEF Doc. No. 71 [“Defs’ Mem. Law”]).

Following a background explanation and justification of the Tree Law (Defs' Mem. Law at 1-4), Respondents move to their primary legal argument on their motion to dismiss – i.e., that Petitioners lack standing to maintain this current action. Respondents argue that standing is a threshold requirement for any party seeking to challenge a governmental action, and that “[t]o establish standing, ‘the petitioner must show that it would suffer direct injury, [i.e.] injury that is in some way different in kind or degree from that of the public at large’” (*id.* at 4 [citations omitted]).

Respondents next illustrate their point by comparing this case to other cases where standing was found lacking. Respondents first reference a 2020 decision by the Appellate Division, Second Department wherein the Appellate Division “concluded that homeowners lacked standing to upset [] a negative declaration under the State Environmental Quality Review Act and [] the ordinance amending the zoning ordinance to allow for senior citizen housing because the injuries to the homeowners alleged were not a direct harm to them” – instead the alleged harm was identical to “whatever ‘injury’ the general public would sustain” (*id.*, citing *Matter of Vasser v City of New Rochelle*, 180 AD3d 691 [2d Dept 2020], *lv denied* 35 NY3d 910 [2020]). Respondents reference another Second Department case where the Appellate Division denied the Sierra Club standing to challenge a local law regarding the construction of a parking lot “because ‘the petitioner failed to establish that its members would suffer an injury that is in some way different in kind or degree from that of the public at large as a result of the project’” (Defs' Mem. Law at 4-5, quoting *Matter of Sierra Club v Town of North Castle*, 200 AD3d 694, 694 [2d Dept 2021]). Next respondents point to a Third Department decision in which the Court found that property owners within the Kingston Stockade Historic District “lacked standing to challenge actions taken by the Common Council for the City of Kingston for the redevelopment of that district because their allegations of harm fell ‘short of the required showing that petitioners will suffer some unique non-conjectural harm’” (Defs' Mem. Law at 5, quoting *Matter of 61 Crown Street, LLC v City of Kingston Common Council*, 221 AD3d 1090, 1093 [3d Dept 2023]).

Respondents assert that, like the petitioners in these referenced cases, Petitioners here have not demonstrated they will “encounter any specific harm from the amended Tree Law that others in the unincorporated area of the Town or members of the general public will not also face” (Defs' Mem. Law at 5). Respondents question whether any harm has been demonstrated, arguing that “the controls instituted by the amended Tree Law” indicate otherwise, specifically: (1) “[e]xpanding the law’s range to include all parcels in Town”; (2) “the limit on the number of trees that can be removed in any twelve month period”; and (3) the requirement that the number of replacement trees exceed the number of trees that are taken down” (*id.* at 5-6).

Respondents state that the “common thread among the petitioners is their avowed love of trees” but that this “is not a sufficient basis to confer standing” (*id.* at 6). Referencing Herbst’s invocation of the trees cut on adjoining properties, Respondents assert that those “same events could and undoubtedly have happened to homeowners in other parts of the Town” and that “[t]here is nothing about the Herbst experience that sets him apart from the experience of other residents” (*id.*). Respondents further assert that it is “noteworthy” that the properties cited by Herbst – specifically: 72 North Chatworth Avenue; 55 Lookout Circle; and 70 North Chatworth Avenue –

“are all less than 20,000 square feet” and involved tree removal between 2019 and 2021 (*id.*). Thus, Respondents claim, “[w]hen those trees were removed the then [in-effect] tree law was not triggered” and that, had these removals occurred in 2024, the property owners “would have been required to obtain a tree permit and to plant replacement trees, or if on-site planting was problematic, to contribute to the Town’s Tree Fund” (*id.*). Regarding Herbst’s reference, via an additional affidavit, to the April 28, 2024 removal of a tree on the 45 Lookout Circle property on April 10, 2024, Respondents assert that, while the Tree law was in effect at the time, “45 Lookout was not subject to it . . . because it is less than 7,501 square feet in size,” although, starting in March of 2025, removal of trees on 45 Lookout Circle would require the tree permit, replacement trees or a possible payment to the tree fund (*id.* at 6-7). Respondents assert that, while Mr. Herbst is entitled to his frustration that he “may not live to see the expanded tree canopy in Town,” “the Town Board has taken a long term view By requiring replacement trees at a greater than 1:1 ratio on all lots in the unincorporated area where trees are removed, the number of trees in the Town is destined to grow geometrically over time” (*id.* at 7). Regarding Herbst’s walks through Memorial Park, the Respondents note that, at an April 10, 2024 meeting, the Town Board awarded a bid for the planting of one-hundred-ten (110) trees throughout the unincorporated area, including ten in the park, which Respondents assert “evidences the Town Board’s commitment to the Town’s trees” (*id.*).

Respondents assert that the other Petitioners provide similar sentimental opinions, alongside “speculative, unsubstantiated and conclusory allegations about flooding, climate and insect life” (*id.*). Respondents assert that such submissions “do not meet the criteria for standing” as “they do not constitute the particularized, personal harm that a challenger to a municipal action must possess in order to be able to prosecute a proceeding contesting such action” (*id.* at 8). Respondents conclude their legal argument by asserting that the Petitioners’ passion “is not a substitute for the requirement that they show harm that is unique to them, which is something that they have not done, and cannot do” (*id.*). Respondents request that, if the Court determines that some Petitioners have standing, the Amended Petition nevertheless “should be dismissed as to Kevin Crowe because he does not reside in the unincorporated area of the Town of Mamaroneck which is the only area where the Tree Law applies” (*id.* at 8-9).

B. Petitioners’ Contentions in Opposition

In opposition to Respondents’ motion to dismiss, Petitioners submit a memorandum of law in opposition (NYSCEF Doc. No. 73 [“Plfs’ Opp. Mem.”]). Petitioners first attempt to correct what they characterize as false representations of the new Tree Law by Respondents (Plfs’ Opp. Mem. at 2). Petitioners state that this misrepresentation is a likely attempt to “give a more favorable view of the law than might otherwise be gleaned . . . and to set the stage for later, when it suggests that these supposedly tree-friendly provisions ameliorate any harm to petitioners and mandate [the] finding that they lack standing” (*id.* at 3).

Petitioners state that Respondents have “set[] out a single legal standard,” in effect contending that Herbst, Gyure, Levitt, Crowe and Darsky must demonstrate they would suffer direct harm – “i.e., that they have the burden of proof on the issue of standing” (*id.* at 3-4). Petitioners assert that this proposition is incorrect, however, as “[i]n a hybrid proceeding and

action, separate procedural rules apply to those causes of action which are asserted pursuant to CPLR article 78 and those . . . for declaratory relief” (*id.* at 4 [citations omitted]). Petitioners assert that, while they bear the burden of proof as to their standing in the Article 78 petition, the burden is reversed in the declaratory-judgment portion of this action (*id.*). Petitioners assert that, “[b]ecause the Town has raised the issue of standing in a pre-answer motion to dismiss, *it* must establish petitioners’ lack of standing” (*id.* [emphasis in original]). Petitioners assert that their allegations establish their standing to bring the Article 78 claims and, moreover, those allegations sufficiently raise a question of fact such that the Respondents have failed to carry their burden in the declaratory-judgment action as to lack of standing (*id.*).

First, regarding standing as to the Article 78 claim, Petitioners assert that a movant maintains the burden of establishing its injury-in-fact as well as demonstrating that “‘asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated’” (*id.* at 5 [citations omitted]). This injury, or harm, must be: (1) specific to the individual(s) alleging it; and (2) while not necessarily unique, different in kind and/or degree from the general public (*id.*). Petitioners assert that these requirements are not to be applied in an overly restrictive manner such that the result completely shields a given action from judicial review (*id.*). They state that petitioners may establish standing in an action asserting environmental injury through a demonstration the subject law or action will result in direct harm to them “‘in their use and enjoyment of the affected natural resources’” (*id.* at 6, quoting *Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 304 [2009]). Discussing the “seminal” case of *Save the Pine Bush*, Petitioners state that the Court of Appeals found the petitioners therein had standing to challenge the “proposed construction of a hotel close to a preserve that was home to rare plants, animals, and insects” (*id.*). Petitioners argue that in that case, the movants used the preserve for both educational and recreational purposes, and, despite not living nearby, the Court found that they had standing with the critical finding that the petitioners had alleged “repeated not rare or isolated use” of the preserve – thus, the petitioners demonstrated the complained-of harm “would affect them differently from ‘the public at large’” (*id.* [citations omitted]). The Court found that injury to aesthetic and environmental well-being could be enough to establish standing in such a proceeding (*id.*). Petitioners point to a similar case, *Lujan v Defenders of Wildlife* (504 US 555 [1992]), where the United States Supreme Court found that “‘the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for the purpose of standing’” (*id.*, quoting *Lujan*, 504 US at 562-563).

Petitioners further assert that New York courts have found petitioners had standing to assert environmental challenges where their “recreational activities were likely to be affected by a development project or who were worried about how the project might affect the natural resource that they used and enjoyed” (*id.* at 7). These include: (1) the case of *Friends of the Shawangunks v Town of Gardiner Plan. Bd.* (224 AD3d 961 [3d Dept 2024]), in which the Appellate Division determined that members of an environmental conservation advocacy group had standing to challenge a plan to build a residence on a protected area on the Shawangunk Ridge given alleged harm to petitioners’ recreational interests and emotional well-being; (2) the case of *Druyan v Vill. Bd. of Trustees of Vil. of Cayuga Heights* (33 Misc. 3d 1203[A] [Sup Ct, Tompkins County 2011], *lv dismissed* 96 AD3d 1207 [3d Dept 2012]), in which the Tompkins County Supreme Court found standing to challenge a local deer population reduction plan given petitioners’ showing that they frequented areas inhabited by deer; (3) the case of *Shinnecock Neighbors v Town of Southampton*

(53 Misc 3d 874 [Sup Ct, Suffolk County 2016]), where a member of a group of petitioners challenging re-zoning laws near the Shinnecock Canal was found to have standing given her frequent visits to the canal and its place as a subject of her artwork; and (4) the case of *Allison v New York City Landmarks Pres. Commn.* (35 Misc 3d 500 [Sup Ct, New York County 2011]) where the trial court found that a petitioner had standing given his occupation as an architect who gave student tours of a subject building, which was deemed equivalent to the use of the preserve in *Save the Pine Bush* (*id.* at 7-8). Petitioners assert their “allegations are similar to those made by the petitioners in *Save the Pine Bush* and these cases” as “the new law affects petitioners’ enjoyment of [the trees] in their neighbors’ yards, on the street, and in the town generally, [given that] petitioners find value in these trees, and their being cut down causes petitioners significant pain” (*id.* at 8). Petitioners explain that, on a CPLR 7804(f) motion to dismiss, the allegations made in the petition, complaint and supporting affidavits are to be deemed true and afforded the benefit of every favorable inference (*id.* at 8-9).

After summarizing the allegations contained in Petitioners’ affidavits (*id.* at 9-14), Petitioners assert that the “allegations suffice to establish their standing to bring their Article 78 petition” given their “uncommon love for trees” and their understanding of trees’ environmental importance (*id.* at 15). Petitioners assert that they “[a]ll believe that the new tree law is misguided and will result in more mature trees being cut down because the law makes clear that the Town places no value on mature trees,” which they assert is supported by the appearance of “tree-canopy expert Andrew Reinmann” at a public hearing on the law where he “urged the Town not to end its (already limited) protection of trees on town property . . . [which] [t]he Town refused” (*id.*). Contrary to Respondents’ assertions that the alleged harm herein is identical to the general population, Petitioners assert that both the love for trees and the distress at their removal, possessed by each Petitioner individually, is “specific to each of them and . . . ‘very different in kind or degree from the public at large’” (*id.* [citations omitted]). They claim that putting aside this Court’s preference for deciding dispute based upon the merits, the facts presented in this case require a determination of standing based upon Petitioners’ “decades-long (in most cases, life-long) love for trees and for the habitats that mature trees create for other species; their intense attachments to them; and their reasonable beliefs that they will be injured by the new law, as it will further tree-cutting” (*id.*).

Petitioners characterize Respondents’ standing arguments as “unsound” (*id.* at 16). They claim that four of the five cases on which Respondents rely are distinguishable as they do not involve any strong affinity for a natural resource and negative emotional reaction to its disturbance; instead, four involve proposed construction projects, and that the fact that the *Sierra Club* case involved an environmental group does not mean that it resembles this case (*id.*). Petitioners state that the fifth case cited, *Citizens United to Protect Our Neighborhoods v Village of Chestnut Ridge, New York* (98 F4th 386 [2d Cir 2024]) “is hard to even relate to this case” given that it is not an Article 78 proceeding, nor a New York State case, and thus “different standing rules apply” (*id.* at 17). Petitioners note that Respondents do not cite *Save the Pine Bush*, which they assert is “the controlling case in this area and the case that lays out the necessary analysis” (*id.*). Petitioners argue that Respondents acknowledge Petitioners’ love of trees, but nevertheless “claim[] that they are no different from anyone else” (*id.*).

According to Petitioners, “what the Town calls ‘controls,’ [they], with considerable support from scientists, call environmental degradation” given that the “tiny saplings” planted after the removal of mature trees – if the tiny saplings are planted at all – do not reduce Petitioners’ fears and, instead “exacerbates them,” as do “the large number of trees that can be cut ‘as of right’” in a given year (*id.*). Petitioners claim Respondents misunderstand the purpose of Herbst’s recollection of trees cut by his neighbors and argue that “he is showing . . . how much cutting down those trees has reduced his enjoyment of his home and neighborhood, his sense of place, his feelings of continuity and of assuredness, and his sense of peace,” as well as “decrying . . . that he sought the Town’s assistance [in protecting the local trees] . . . [but] [w]hat [Herbst] got instead was a law that encourages people to cut [trees] down and [does] away with even those neighbor notification provisions that existed” (*id.* at 17-18). Petitioners assert that their allegations regarding environmental impact – specifically “flooding, climate and insect life” are not “speculative, unsubstantiated and conclusory” as contended by Respondents, but, in fact, “[these] assertions about the disastrous consequences of cutting down mature trees are grounded in extensive scientific evidence” as well as county-and-state municipal advice (*id.* at 18). Petitioners further rely on the issuance of Executive Order 14072, which recognized mature forests “as vital to the health, prosperity, and reliance of communities across the nation” (*id.* at 18 [citations omitted]). Petitioners assert that the Town has “turn[ed] its back on science in suggesting that flooding and climate change are unrelated to preserving mature trees” and claim that its depreciation of Gyure’s observations as a scientist regarding reduction of animal life is “not only . . . condescending, it is wrong – personal observations are not ‘conclusory,’ ‘speculative,’ or ‘unsubstantiated’” (*id.* at 18).

Petitioners conclude their legal argument reiterating that “the Town bears the burden of showing plaintiffs['] lack of standing with regard to their declaratory-judgment action” and “[a]ll that plaintiffs[] must do to defeat a claim that they lack[] standing in this regard is to raise a question of fact” (*id.* at 19). Petitioners assert they have sufficiently met this requirement, and thus, “their claims under CPLR 3001 must [] be allowed” (*id.*).

PETITIONERS’ STANDING

“The burden of establishing standing to raise [a SEQRA claim] is on the party seeking review” (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769 [1991]; *see also Citizen’s for St. Patrick’s v City of Watervliet City Council*, 126 AD3d 1159 [3d Dept 2015]). In determining a motion to dismiss based on lack of standing, the Court accepts the allegations of the verified petition and petitioners’ affidavits as true (*Matter of Long Is. Contrs.’ Assn. v Town of Riverhead*, 17 AD3d 590 [2d Dept 2005]). “To establish standing under SEQRA, a petitioner must show (1) an environmental injury that is in some way different from that of the public at large, and (2) that the alleged injury falls within the zone of interests sought to be protected or promoted by SEQRA” (*Matter of Brummel v Town of N. Hempstead Town Bd.*, 145 AD3d 880, 881-882 [2d Dept 2016], *lv denied* 29 NY3d 903 [2017], *cert denied* 138 S Ct 516 [2017]; *quoting Matter of Tuxedo Land Trust, Inc. v Town Bd. of Town of Tuxedo*, 112 AD3d 726, 728 [2d Dept 2013]; *Society of Plastics Indus.*, 77 NY2d at 772; *Matter of Harris v Town Bd. of Town of Riverhead*, 73 AD3d 922 [2d Dept 2010], *lv denied* 15 NY3d 709 [2010]; *Matter of Blue Lawn, Inc. v County of Westchester*, 293 AD2d 532 [2d Dept 2002], *lv denied* 98 NY2d 607 [2002]; *Matter of Long Is. Pine Barrens Socy. v Planning Bd. of Town of Brookhaven*, 213 AD2d 484 [2d Dept 1995]; *Matter of Turner v County*

of Erie, 136 AD3d 1297 [4th Dept 2016], *lv denied* 27 NY3d 906 [2016]). “The injury in fact requirement necessitates a showing that the party has ‘an actual legal stake in the matter being adjudicated’ and has suffered a cognizable harm that is not ‘tenuous,’ ‘ephemeral,’ or ‘conjectural’ but is sufficiently concrete and particularized to warrant judicial intervention” (*Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 50 [2019] [citations omitted]). “In land use matters . . . the plaintiff, for standing purposes, must show that it would suffer direct harm, injury that is in some way different from that of the public at large” (*Society of Plastic Indus.*, 77 NY2d at 774). “Importantly, ‘[p]etitioners must have more than generalized environmental concerns to satisfy that burden and, unlike . . . cases involving zoning issues, there is no presumption of standing to raise a SEQRA or other environmental challenge based on a party’s close proximity alone” (*Hohman v Town of Poestenkill*, 179 AD3d 1172, 1174 [3d Dept 2020], *quoting Matter of Vil. of Woodbury v Seggos*, 154 AD3d 1256, 1258 [3d Dept 2017]). “That more than one person may be harmed does not defeat standing” (*Matter of Sierra Club v Vil. of Painted Post*, 26 NY3d 301, 310 [2015]). “In *Matter of Save the Pine Bush, Inc.* . . . the Court of Appeals held that, in land-use and environmental cases, ‘a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing . . . to challenge government actions that threaten that resource’” (*Matter of Toll Land V Ltd. Partnership v Planning Bd. of Vil. of Tarrytown*, 49 Misc 3d 662, 670 [Sup Ct, Westchester County 2015], *quoting Matter of Save the Pine Bush Inc.*, 13 NY3d at 305)

Herbst, Darksy, Gyure and Levitt have asserted that they individually engage in recreation and various forms of advocacy for the preservation of trees in the Town of Mamaroneck and maintain an appreciation for the local trees, based on their environmental and aesthetic value, that is greater than most members of the public (*see Matter of Toll Land V Ltd. Partnership*, 49 Misc 3d 662; *see also Matter of Save the Pine Bush, Inc.* 13 NY3d 297 [petitioners’ use of the Pine Bush for recreation and studying was sufficient to demonstrate that the threatened harm affected petitioners differently from the public at large]; *Matter of Long Is. Pine Barrens Socy., Inc. v Cent. Pine Barrens Joint Planning & Policy Commn.*, 113 AD3d 853 [2d Dept 2014] [group petitioner established that its member used and enjoyed the Pine Barrens park to a greater degree than most of the general public in both his individual and professional capacity, which conferred standing onto the group as a whole]). In the Court’s view, the foregoing allegations by Petitioners go further than a mere interest in environmental conservation and are sufficient to show an injury-in-fact in the land use matter (*see, e.g., Friends of the Shawangunks*, 223 AD3d 961; *Druyan*, 33 Misc 3d 1203[A]; *Shinnecock Neighbors*, 53 Misc 3d 874). Moreover, the claimed injuries are within SEQRA’s zone of interest, an environmental statute, given the allegation that the Town’s action “will directly harm [Petitioners] in their use and enjoyment of the affected natural resources” (*Society of Plastics Indus., Inc.* 77 NY2d at 776)

The cases cited by Respondents are distinguishable from this case. First, in *Vasser* (180 AD3d 691), the petitioners failed to demonstrate the direct harm they would face from an amendment of a zoning code for the construction of a senior citizen residence on certain real property where their “residences [were] not adjacent to the subject property, but [were] several streets and building lots away from it and [were] separated from it by another housing complex,” further offering “speculative and unsubstantiated claims of potential harm” (*Vasser*, 180 AD3d at 692). Similarly, in *Matter of Sierra Club* (200 AD3d 694), the petitioner organization attempted to prevent construction of a parking garage but was unable to proffer any allegations of harm that

were in any way different from the public at large, nor allegations which were not conclusory or speculative (*Matter of Sierra Club*, 200 AD3d 694). In *Matter of 61 Crown Street, LLC* (221 AD3d 1090) and *Matter of Quigley v Town of Ulster* (66 AD3d 1295 [3d Dept 2009]), the petitioners were unable to demonstrate any unique harm for purposes of standing based simply on an increased tax burden. The last case cited by Respondents, *Citizens United to Protect Our Neighborhoods* (98 F4th 386) is not an Article 78 proceeding and instead is a federal action applying different standards for standing. Accordingly, each of these cases is distinguishable and not controlling as this case does not involve a specific land use project but the issuance of a municipality-wide code change, and “[p]hysical proximity is not . . . a dispositive factor in establishing injury in fact . . . [as] [q]uality of life issues, such as use and enjoyment of a park [which is invoked in the instant case] can sustain standing” (*Wildmetro, Inc. v New York City Dept. of Parks and Recreation*, 6 Misc 3d 1019[A] [Sup Ct, NY County 2004]). Further, the Court does not agree with Respondents’ characterization that Petitioners’ allegations concerning flooding climate and insect life are speculative, unsubstantiated, or conclusory – these allegations are based in the individual experiences of Petitioners and the assertions as to the environmental consequences of removing trees are such that they cannot be deemed as such, nor have the Respondents proffered any counter argument to any specific claim by Petitioners (see *Matter of Many v Village of Sharon Springs Bd. of Trustees*, 218 AD2d 845 [3d Dept 1995] [petitioner’s allegations of prospective harm regarding the proposed construction of a large warehouse could not be deemed merely speculative or wholly conclusory where respondent did not call into question the specific allegations]; see also *Matter of Save the Pine Bush, Inc.* 13 NY3d at 305 [“the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing”]; *O’Brien v Barnes Bldg. Co., Inc.*, 85 Misc 2d 424, 441 [Sup Ct 1974] [corporate plaintiff found to have standing in an Article 78 proceeding where some of its members “visit and use the [subject] area for aesthetic and recreational enjoyment], *affd sub nom. O’Brien v Biggane*, 48 AD2d 1018 [2d Dept 1975]). As to Crowe individually, his affidavit indicates he no longer lives in the Town of Mamaroneck and the affidavit does not proffer that he is currently engaged in the sort of recreational activities in and around the Town of Mamaroneck as do Herbst, Darsky, Gyure and Levitt. Accordingly, the Court will dismiss the Amended Petition as to Crowe (see *Matter of Save the Pine Bush, Inc. v Planning Bd. of Town of Clifton Park*, 50 AD3d 1296 [3d Dept 2008], *lv denied* 10 NY3d 716 [2008] [petitioner not found to have standing where they were unable to articulate any specific harm that was different in kind or degree from that of the public at large]).

Finally, the Respondents bear the burden of showing Plaintiffs’ lack of standing as it pertains to the declaratory-judgment portion of this hybrid proceeding. ““In a hybrid proceeding and action, separate procedural rules apply to those causes of action which are asserted pursuant to CPLR article 78, on the one hand, and those to recover damages and for declaratory relief, on the other hand”” (*Crown Castle NG E., LLC v City of Rye*, 207 AD3d 624, 626 [2d Dept 2022], *lv denied* 39 NY3d 954 [2022], quoting *Matter of Muller v Zoning Bd. of Appeals Town of Lewisboro*, 192 AD3d 805, 808 [2021], quoting *Matter of Bonacker Prop., LLC v Village of E. Hampton Bd. of Trustees*, 168 AD3d 928, 932 [2019], *lv denied* 33 NY3d 904 [2019]). “[O]n a defendant’s motion to dismiss the complaint based upon the plaintiff’s alleged lack of standing, **the burden is on the moving defendant to establish, prima facie, the plaintiff’s lack of standing.** To defeat a defendant’s motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff’s submission raise a question of fact as to standing” (*Crown Castle NG E., LLC*, 207 AD3d at 626, quoting *Golden Jubilee Realty, LLC*

v Castro, 196 AD3d 680, 682 [2d Dept 2021] [emphasis added]). Here, Respondents have not submitted any evidence, or even any argument, to support the dismissal based on Plaintiff's lack of standing under this standard.

CONCLUSION

Based on the foregoing, and for the reasons set forth above it is hereby

ORDERED that the motion by Respondents Town of Mamaroneck, the Town Board of the Town Of Mamaroneck, Jaine Elkind Eney in her official capacity as Town Supervisor of the Town of Mamroneck, Sabrina Fiddelman, Jeffrey King, Robin Nichinsky, and Abby Katz, in their official capacities as Members of the Town Board of the Town Of Mamaroneck, and Meredith S. Robson, in her official capacity as Town Administrator of the Town of Mamaroneck, is granted to the extent of dismissing Kevin M. Crowe as petitioner, and denied in all other respects; and it is further

ORDERED that Respondents shall serve and file their Answers and the Certified Record of the proceedings within 60 days of the date of this Decision and Order (*i.e.*, filed in NYSCEF with a working copy delivered to Chambers by 4 p.m. on March 10, 2025) and Petitioners shall file their reply within 30 days thereafter (*i.e.*, filed in NYSCEF with a working copy delivered to Chambers by 4 p.m. on April 9, 2025).

The foregoing constitutes the Decision and Order of this Court

Dated: White Plains, New York

January 7, 2025

ENTER


HON. GRETCHEN WALSH, J.S.C.

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