

SUPREME COURT OF THE STATE OF NEW YORK
RENSSELAER COUNTY

JESSICA BENNETT

Index No. _____

Petitioner,

Against

TROY CITY COUNCIL

Respondent.

Petitioners, Jessica Bennett, by their attorneys, PACE ENVIRONMENTAL LITIGATION CLINIC, for their verified petition in this N.Y. C.P.L.R. Article 78 proceeding, respectfully allege and state:

PRELIMINARY STATEMENT

1. This matter arises from the Troy City Council’s (“Respondent”) impermissible decision to rezone Tax Map Parcel Number 70.64-1-1 on 2nd Avenue in North Troy contrary to illegal spot zoning laws (the “Rezoning Decision”). In addition, the Rezoning Decision is not in accordance with the *Realize Troy* City Comprehensive Plan and is inconsistent with the City’s own local law for “P Planned Development” districts. Finally, in making the Rezoning Decision, the Respondent improperly issued and relied on a negative declaration under the State Environmental Review Act (“SEQRA”), which ignored or disregarded multiple potential significant and adverse impacts associated with the Rezoning Decision and the underlying project.
2. On May 21st, 2020, during a planning committee workshop, local developer Kevin Vandenburg presented a project idea for three multi-family apartment buildings

containing a total of 231 apartments on approximately ten acres of property (Parcel 70.64-1-1) in the City of Troy. See Environmental Design Partnership, LLC., *Expanded Environmental Assessment Report*, 2 (2021), <https://www.troyny.gov/wp-content/uploads/2021/10/CCEExpandedEnvironmentalAssessmentReport.pdf>.

3. On August 27th, 2020, the City Council Planning Committee voted on a resolution for referral to Troy Planning Commission for a recommendation on the request for rezoning Tax Map Parcel Number 70.64-1-1 from “R1” (single family, detached) to “P” (planned development) for the proposed apartment project.
4. On January 28th, 2021, the Troy Planning Commission, after being sent a full Environmental Assessment Form (“EAF”), defining the whole development project and the rezoning action, recommended against the rezoning.
5. On May 11th, 2021, a resolution was passed to initiate State Environmental Quality Review (“SEQR”) for the proposed rezoning on parcel 70.64-1-1. The rezoning action was then considered a Type I action under SEQRA. A Type I action is “an action or class of actions that is more likely to have a significant adverse impact on the environment than other actions or classes of actions” New York State Department of Environmental Conservation, *The SEQR Handbook*, 15, (2020), https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf. A Type I action carries with it “a presumption that it is more likely than an Unlisted action to have a significant adverse impact on the environment and may require an EIS.” *Id.* A Type I action requires a submission of a full EAF to the lead agency in order for the lead agency to make a determination of significance. *Id.*

6. On June 3rd, 2021, the Troy City Council passed a resolution declaring the City Council as lead agency.
7. On May 5th, 2022, despite that this was a Type I action, the Troy City Council issued a negative declaration on the rezone pursuant to the development (the “Negative Declaration”), finding that the project involved no potential significant adverse environmental impacts. *See* Negative Declaration, annexed hereto as Exhibit A.
8. On June 3rd, 2022, a resolution was passed by the Troy City Council to effectively rezone Tax Map Parcel Number 70.64-1-1 from “R1” (single family, detached) to “P” (planned development) for the proposed apartment project (the “Rezoning Decision”).
9. Despite various public comments from environmental groups, lawyers, and other experts raising significant and still unresolved issues relating to the potential significant impacts of the rezoning and the site development itself, the Troy City Council passed the resolution for the rezoning of Tax Map Parcel 70.64-1-1. The Troy City Council’s actions are illegal spot zoning. The Troy City Council also declared a Negative Declaration (annexed hereto as Exhibit A) with regards to the potential significant impacts of both the rezoning and the site development.
10. This Article 78 proceeding is brought to challenge and set aside the action to the Rezoning Decision and vacate the negative declaration because both are arbitrary, capricious, and contrary to law.
11. The Rezoning Decision constitutes illegal spot zoning and therefore the decision is arbitrary, capricious, and contrary to law. Additionally, the Rezoning Decision is arbitrary, capricious, and contrary to law because such action is highly inconsistent with

and would violate several key provisions of the Realize Troy Comprehensive Plan (the “Comprehensive Plan” or the “Plan”) and the Troy City Code.

12. The Rezoning Decision is illegal spot zoning for the following reasons:

- a. The proposed use of Parcel 70.64-1-1 is not compatible with the uses of the surrounding parcels.
- b. The rezoning is not consistent with the City of Troy’s *Realize Troy* Comprehensive Plan.
- c. There is evidence linked to the likelihood of harm to surrounding properties
- d. The Troy City Council disregarded the advice and recommendations made by professional planning staff (the Troy Planning Commission) to not rezone Parcel 70.64-1-1.
- e. There are existing, available, and suitable parcels for this proposed multi-family apartment complex project.

13. With respect to the Negative Declaration, the Troy City Council did not identify the relevant areas of environmental concern, did not make the requisite “hard look” at potential environmental consequences of the rezoning, and did not make a reasoned elaboration of the basis for its determination, thus making a decision that was arbitrary, capricious, and contrary to law.

14. Various adverse significant impacts that provide enough basis for a positive declaration by the Troy City Council include:

- a. Significant adverse impacts to the archaeological and historical significance of the parcel.

- b. Significant adverse impacts to water quality and air quality as well as the increase of noise pollution and flooding risks.
- c. Significant adverse impacts relating to the increase of population density risks
- d. Significant adverse impacts resulting from the destruction of forest and destruction of habitat for potentially threatened species and state-rare species.
- e. Significant adverse impacts relating to substantial changes to the parcel not in accordance with community plans.

PARTIES

15. Jessica Bennett is a resident of Troy, New York and currently lives immediately adjacent to where the proposed multi-family apartment complex project will be built. Jessica Bennett is the co-founder of the Friends of the Mahicantuck and is a community organizer who helps preserve woodlands within the City of Troy.
16. The Friends of the Mahicantuck is a broad community coalition dedicated to the protection and preservation of Troy's last untouched waterfront forest and indigenous cultural site with national significance. Friends of the Mahicantuck, *Overview: We Are the Friends of the Mahicantuck, Who We Are*, (last visited June 21, 2022), <http://www.friendsofthemahicantuck.org/who-we-are/>). The Friends of the Mahicantuck work with a broad group of local, regional and statewide organizations, partners, indigenous groups, community advocacy groups and experts in order to preserve Troy's waterfront land. *Id.*
17. The Respondent Troy City Council operates from and has its offices at 433 River Street, Troy, NY 12180. The City Council works with the Executive Branch to enact laws and

pass other legislation that serves as a framework for the ongoing operation of city business. City of Troy, *City Council*, Troy City Council, (last visited June 21, 2022), <https://www.troyny.gov/government/city-council/>. The Troy City Council designated itself as the lead agency for purposes of the SEQRA process and made determinations on the Rezoning Decision and the Negative Declaration related to the apartment complex project that give rise to this Article 78 proceeding.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to N.Y. C.P.L.R. Article 78 § 7803 to review the decision of the Troy City Council to the Rezoning Decision and the Negative Declaration. Judicial review is detailed within C.P.L.R. Article 78 § 7803 which gives the Court authority to grant relief sought by petitioner.
19. Venue in Rensselaer County is proper. Per C.P.L.R. § 506(b), venue is proper where “material events” that had given rise to the action at hand took place. The relevant parcel (Parcel 70.64-1-1) is within Rensselaer County and in the City of Troy. The land within the parcel and the surrounding areas adjacent to this parcel will be affected by the rezoning decision and the negative declaration decision made by the Troy City Council, which are all located in Rensselaer County. The potential and likely environmental impacts and change in character of this part of the City of Troy will all occur in Rensselaer County.

PETITIONER’S STANDING

1. Jessica Bennett is a resident of the City of Troy and lives immediately adjacent to where the proposed multi-family apartment complex project would be built. Jessica Bennett resides at

1009 Second Avenue, Troy, New York and can observe the property of the proposed apartment project site from her home. *See* Affidavit of Jessica Bennett annexed hereto as Exhibit B.

20. Jessica Bennett enjoys the view of the serene landscape and enjoys living next to a forest that is considered a significant archaeological and historical site. *See Id.* Jessica Bennett can see the forest from her porch, and frequently watches the different species of animals from her porch. *See Id.* Jessica Bennett also frequently walks through this forest and paddles up to the shore of the forest when kayaking on the Hudson River. *See Id.*
21. If the proposed apartment project were to be built, Jessica Bennett would worry about the destruction of eleven acres of wildlife habitat and the possibility of nuisance animals wandering onto her property. Jessica Bennett is also concerned with the flooding of neighboring properties and the increase in temperature of the area due to the reduced green space and the increase in pavement. *See Id.* Lastly, Jessica Bennett is concerned about the destruction of important archeological sites that are found within this parcel of land. *See Id.* Thus, the proposed project would negatively impact the aesthetic, environmental, and archeological interests of Jessica Bennett.
22. A favorable result in this matter would remedy these concerns. An order from the Court vacating the decision to rezone Parcel 70.64-1-1 and vacating the negative declaration decision to ensure further environmental review, would allow for the proper consideration of issues raised herein.

STATEMENT OF THE FACTS

23. On May 21st, 2020, during a Troy City Council Planning Committee (“Planning Committee”) workshop, local developer Kevin Vandenburg presented a project idea for three multi-family apartment buildings containing a total of 231 apartments on

approximately ten acres of property (Tax Map Parcel Number 70.64-1-1) in the City of Troy. City of Troy, *Planning Commission Minutes Agenda Archive*, (May 21, 2020), <https://www.troyny.gov/wp-content/uploads/2020/05/Pcagenda052120.pdf>.

24. On August 27th, 2020, the Planning Committee voted on a resolution for referral to Troy Planning Commission (“Planning Commission”) for a recommendation on the request for rezoning Tax Map Parcel Number 70.64-1-1 (“Parcel 70.64-1-1”) from “R1” (single family, detached) to “P” (planned development) for the proposed apartment project. City of Troy, *City Council Agenda & Minutes Archive*, (August 27, 2020),

<https://www.troyny.gov/wp-content/uploads/2020/08/CCPlanningAgenda082720.pdf>.

25. At that point in time, only the rezoning was considered by the Troy City Council before it was sent to the Planning Commission and not the entirety of the potential multi-family apartment complex project. Ten different experts spoke at this August 27th, 2020, meeting to further mention the significant adverse impacts of the proposed multi-family apartment complex project. *Id.*

26. On September 10th, 2020, the Troy City Council voted to refer the issue to the Planning Commission for zoning recommendation citing that the Planning Commission had the experience to review this zoning change request, and determine the suitability of this proposed zoning change, or to request modification to the proposal. City of Troy, *City Council Agenda & Minutes Archive*, (Sept. 10, 2020), <https://www.troyny.gov/wp-content/uploads/2020/09/CCRegularAgenda91020.pdf>.

27. The Troy City Council further determined that the Planning Commission will obtain from the project site developer all studies and information the Commission deems necessary to properly review and analyze the zoning change proposal and to provide the City Council

an informed recommendation as to whether the request should be granted or denied. *See* City of Troy, *City Council Agenda & Minutes Archive*, <https://www.troyny.gov/wp-content/uploads/2020/09/CCRegularAgenda91020.pdf>.

28. A letter was subsequently sent by the Friends of the Mahicantuck, the Center for Climate Communities, and the Schaghticoke First Nations and received by the Troy City Council. These letters outlined various concerns of the archaeological/historical, environmental, economic, and public health concerns with the proposed multi-family apartment complex project. *See* Exhibit G annexed hereto. The letters went in depth with why the project is inconsistent with the City of Troy *Realize Troy* Comprehensive Plan and the Troy City Code, how this project would disturb significant amounts of prehistoric and historic archeological artifacts, and environmental impacts relating to increased run-off pressure, straining of the sewage system, and flood risks associated with the Hudson River.
29. The Planning Commission held two workshops relating to the rezoning of Parcel 70.63-1-1 on November 19th, 2020, and December 29th, 2020. These workshops were public hearings about the rezoning effort and during such workshops, no comments were made in favor of the development. There were public demands for a full Environmental Assessment Form (“EAF”) and demands for looking at the environmental impacts of not only the zoning, but also the future site development project as well. City of Troy, *Planning Commission Minutes Agenda Archive*, (Dec. 29, 2020), <https://www.troyny.gov/wp-content/uploads/2020/12/PCminutes122920DRAFT.pdf>).
30. The Friends of the Mahicantuck sent the Troy Planning Commission an additional report titled *Troy’s Sacred Forest: Its Culture, Ecology, Archaeology, and Significance to the Community*. *See* Exhibit F, annexed hereto. This report is a document detailing the

archaeological significance, ecological significance, ecosystem services and climate change impacts, neighborhood and cultural significance, and economic costs associated with the proposed multi-family apartment complex project. Each section lays out the potential significant and adverse impacts associated with the proposed project.

Additionally, the document details the ecological and archeological reports that have been conducted on Tax Map Parcel 70.64-1-1.

31. Furthermore, on January 28th, 2021, the Troy Planning Commission voted on their recommendation after being sent a full EAF and a Narrative Description Report of the apartment complex project, which defined the whole development project and the rezoning action. The Planning Commission ultimately recommended against the rezoning where 4 members voted against the rezoning and 1 voted for the rezoning request. City of Troy, *Planning Commission Minutes Agenda Archive*, (Jan. 28, 2021), <https://www.troyny.gov/wp-content/uploads/2021/02/PCminutes012821DRAFTreduced.pdf>.
32. Some Planning Commission members mentioned reasons for voting against the rezoning. City of Troy, *City Council Agenda & Minutes Archive*, 4 (April 27, 2021), <https://www.troyny.gov/wp-content/uploads/2021/04/CCPlanningAgenda042721.pdf>.
The first reason deals with the increased density within that particular area of the City of Troy. More specifically, the increase in human population density in this area would increase traffic and load on utilities. The Planning Commission remarked that this would be more of an issue with regards to apartment buildings when compared to single-family homes.

33. The second reason is the increased load of human activity within Tax Map Parcel 70.64-1-1. Members of the Planning Commission spoke about how they were concerned with the large increase in human activity on this green site that is heavily wooded and a potential site for state-rare species of flora and fauna. *Id.*
34. Lastly, the members of the Planning Commission were concerned that the apartment building project that would result from the rezoning would almost certainly interfere with the archaeological sites. *Id.* Members of the Planning Commission further stated there is potential for the development of single-family homes that would avoid the important archaeological sites, but an apartment complex would have great difficulty in doing so. *Id.*
35. On April 27th, 2021, the Planning Commissioner, Steven Strichman, presented the Planning Commission's findings to the Troy City Council. Strichman said the Planning Commission was merely not recommending for the rezone, when in reality there were serious concerns by the Planning Commission on the potential rezoning of this parcel. The mischaracterizations by the Planning Commissioner were raised by various members of the public.
36. Additionally, on the August 27th, 2021, meeting, there was an introduction of a resolution to declare Troy City Council as the lead agency for the request for rezoning. This resolution was withdrawn by the end of the meeting because of issues with the Environmental Assessment Form. This withdrawal of the resolution to declare Troy City Council as lead agency was a result of the Friends of the Mahicantuck and other public commenters contesting the completeness of the Environmental Assessment Form. The lack of signatures and filled out portions of the Environmental Assessment Form, as well

as the public comments against having this particular form used for a determination of significance, directed the Troy City Council to withdraw the resolution.

37. On May 11th, 2021, the Troy City Council passed a resolution to initiate State Environmental Quality Review (“SEQR”) for the proposed rezoning on parcel 70.64-1-1. City of Troy, *City Council Agenda & Minutes Archive*, (May 11, 2021), <https://www.troyny.gov/wp-content/uploads/2021/05/CCPlanningAgenda051121.pdf>

Subsequently, the rezoning action was then considered a Type I action under the State Environmental Quality Review Act (“SEQRA”).

38. On June 3rd, 2021, the Troy City Council passed a resolution declaring the City Council as lead agency. City of Troy, *City Council Agenda & Minutes Archive*, (June 3, 2021), <https://www.troyny.gov/wp-content/uploads/2021/08/CCRegularMinutes060321.pdf>.

There were various public comments that urged the Troy City Council to not serve as lead agency and instead have the Planning Commission deal with the State Environmental Review Quality Act (“SEQRA”) process. These comments resulted from the public knowledge that the Planning Commission has dealt with the SEQRA process before whereas the Troy City Council does not have the same kind of experience and has ultimately never completed a State Environmental Quality Review (“SEQR”) analysis.

Id. at 6, 10, 11.

39. On July 8th, 2021, thirty-five organizations signed and sent a coalition letter to the Troy City Council to demand a positive declaration with regards to the rezoning request. These organizations signed onto a report outlining five key potentially significant adverse impacts that would result in a Positive Declaration and further environmental review through an Environmental Impact Statement. City of Troy, *City Council Agenda &*

Minutes Archive, at 5 (July 8, 2021), <https://www.troyny.gov/wp-content/uploads/2021/08/CCRegularMinutes070821.pdf>. In addition, a protest petition

signed by various City of Troy residents who live directly adjacent to the proposed multi-family apartment complex project was sent to the Troy City Council asking the City Council members to vote against the rezoning and oppose the proposed apartment complex project. City of Troy, *City Council Agenda & Minutes Archive*, at 12 (July 8, 2021), <https://www.troyny.gov/wp-content/uploads/2021/08/CCRegularMinutes070821.pdf>.

40. On April 21st, 2022, the City Council Finance Committee introduced and passed a resolution issuing a negative declaration at its Finance Committee meeting. This was done through an agenda amendment that was produced and amended three days prior to the meeting. This amendment to the agenda gave the public an incredibly short amount of time to obtain the knowledge that this determination of significance would occur at such a meeting, thus giving the public a short time to prepare for public comment on the issue.
41. Some citizens of Troy raised issues with whether this agenda amendment was properly noticed. Other Troy citizens raised objections to the Finance Committee being the appropriate committee to declare a determination of significance for the rezoning request since the Planning Commission was the committee that dealt with the request beforehand. The agenda amendment occurring right before the meeting and the determination of significance declaration by the Finance Committee allowed for a limited public response which made it more difficult to comment on the determination of significance before it was granted a vote by the finance committee.

42. On May 5th, 2022, the Troy City Council issued a negative declaration on the rezone pursuant to the development. City of Troy, *City Council Agenda & Minutes Archive*, (May 5, 2022), <https://www.troyny.gov/wp-content/uploads/2022/05/05-05-Finance-Agenda-Revised-2.pdf>. The Troy City Council stated that the development project will not have significant adverse impacts on the environment and that a draft Environmental Impact Statement will not be necessary. *Id* at 163.
43. On June 3rd, 2022, the Troy City Council passed the Rezoning Decision to rezone Tax Map Parcel Number 70.64-1-1 from “R1” (single family, detached) to “P” (planned development) for the proposed apartment project. City of Troy, *City Council Agenda & Minutes Archive*, (June 3, 2022), <https://www.troyny.gov/wp-content/uploads/2022/06/CC0602RegularMinutess.pdf>. This resolution was passed despite the Planning Commission’s recommendation against the rezoning and the hundreds of Troy citizens, organizational groups, experts, and lawyers who have provided information as to why this proposed apartment complex project would have significant adverse impacts and the rezoning request to build this project would be inconsistent with the *Realize Troy* Comprehensive Plan and the Troy City Code.

THE NEGATIVE DECLARATION DECISION

44. The Negative Declaration is contrary to the various potential significant and adverse impacts that the rezoning and the apartment project development would create. Significant potential adverse impacts include disruptions to the archeological and historical significance of the area, water quality risks, air quality risks, noise pollution risks, flooding risks, increase in the population density and the impacts associated with

such increase, and the destruction of forest and state-rare species within Parcel 70.64-1-1.

Therefore, due to these potential significant adverse impacts, and the need for further environmental review, the decision to declare a negative declaration was arbitrary, capricious, and contrary to law.

45. More specifically, the Troy City Council's disregard for a careful analysis of the local law in the light of SEQRA while comparing with the criteria set forth in 6 NYCRR 617.11 (a) (1)-(11), makes any decision by the Troy City Council with regards to the negative declaration of the rezoned Parcel 70.64-1-1 arbitrary, capricious and contrary to law.

46. Archaeological and Historical Significance

- a. Researchers conducted various studies on Parcel 70.64-1-1 relating to the archaeological and historical significance of the land. Such researchers have concluded in those reports that the land in question is of high historical and archaeological significance. Hetty Jo Brumbach, *A Quarry/Workshop and Processing Station on The Hudson River in Pleasantdale, New York*, *Archeology of Eastern North America*, 59-83 (1987); Jonathan Lothrop, Adrian Burke, Susan Winchell-Sweeney, and Gilles Gauthier, *Coupling Lithic Sourcing with Least Cost Path Analysis to Model Paleoindian Pathways in Northeastern North America*, *American Antiquity*, 462- 484 (2018). The parcel of land contains an eligible site under the National Register of Historic Places due to its archaeological significance and found artifacts, which is admitted by the Troy City Council.

- b. Many of the artifacts found are of cultural significance to the Mahican peoples and other artifacts range to prehistoric times. This land was used by the Mahican people as a quarry for tool making, was identified as an area where semi-permanent and permanent settlements of the Mahican people resided, and according to a 2002 United States Environmental Protection Agency Study, this area has a strong indication for native burial sites. Environmental Protection Agency, *Responsiveness Summary Hudson River PCBs Site Record of Decision*, Appendix C (2002), <https://www3.epa.gov/hudson/ResponsivenessSummary.pdf>.
- c. Indigenous burial sites were uncovered at another site that was part of the larger archaeological complex. The Lansingburgh Historical Society, *Native American Burials*, <https://lansingburghhistoricalsocietyarchives.org/lansingburgh-cemeteries/native-american-burials/?fbclid=IwAR1x1x8WFOntASYAFA-Cq0YfiHQpXrxfyX9n13EHPqy5gXH6Spb9wpUXcE>. These burial sites are located less than two hundred feet south of the project site. *Id.* The project site and the site of the burials are part of the same larger archaeological complex. This raises the potential for burial sites on the project location at 1011 2nd Avenue.
- d. Moreover, the New York State Department of Environmental Conservation (NYSDEC) stated in a letter to the Troy City Council saying the project site is located within an area of potential historical or archaeological significance. *See* New York State Department of Environmental Conservation, *Lead Agency Coordination Response Second Avenue Apartments*, 2 (2021), <https://www.troyny.gov/wp->

[content/uploads/2021/08/CCDECResponse061521.pdf](#). Also, the NYSDEC stated that if permits are required by the Department, consultation with the New York State Office of Parks, Recreation, and Historic Preservation is required in or to better evaluate the projects impacts on these resources. *Id.*

- e. The project site, if constructed, would severely damage the archeological and historical significance of this area. This is contrary to the eleven factors that a city legislature must consider when trying to figure out if there will be a significant impact resulting from a Type I action (*See* 6 NYCRR 617.11 (a) (1)-(11).) More specifically, New York State law says that “the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character,” is considered a significant impact. *See* 6 NYCRR 617.11 (a) (5). Considering the various studies conducted on this land that suggests the land is of major historical and archeological significance, the Troy City Council’s decision in declaring a negative declaration and citing no significant impacts was arbitrary, capricious and without a factual basis.

47. Water Quality, Air Quality, Noise Pollution, and Flooding Risks

- a. The increased population would be expected to lead to a proportionate increase in solid waste production. The total mass of contaminants released to the Hudson River would similarly increase during combined sewer overflow events, and associated decrease in surface water quality. Additionally, the project site, being right on the shore of the Hudson River, could potentially pose significant impacts due to the nearby GE Superfund Site and could lead to the potential release of contaminants contained in the soils. *See* New York State Department of

Environmental Conservation, *Lead Agency Coordination Response Second Avenue Apartments*, 2 (2021), <https://www.troy.ny.gov/wp-content/uploads/2021/08/CCDECResponse061521.pdf>. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action, including the potential release of contaminants (due to the status of the river being a Superfund Site) contained in the Hudson River sediment associated with the installation, construction and use/operation of proposed docks.

- b. Air Quality will be negatively impacted, both directly and indirectly. The increased traffic associated with the development will diametrically impact the air quality of this neighborhood. Additionally, the loss of trees and natural space will further exacerbate air quality loss. The Nature Conservancy, *Planting Healthy Air*, 24 (2016), https://www.nature.org/content/dam/tnc/nature/en/documents/20160825_PHA_Report_Final.pdf.
- c. Currently zoned as R1, the rezoning will significantly increase noise levels due to increased population density, increased traffic, and the loss of green space as a natural noise shield; this will significantly disrupt the character, but also public health of the otherwise characteristically quiet neighborhood.
- d. The negative declaration states the “Project will not have any moderate to large impacts on flooding.” See negative declaration at 6, annexed hereto by Exhibit A. The project further states that “while the Property is located within a designated floodway or the 100- or 500-year floodplain, no development is proposed in those

areas.” *Id.* However, this is incorrect as the project proposes construction of a dock with 40 boat slips that is located within said area. *See* Narrative Description Report at 32, annexed hereto as Exhibit C. The City of Troy itself produced a future flood risk overlay map that shows the majority of the site covered. City of Troy, *Chapter 285: Land Use and Development Ordinance*, Recode Troy, at 165 (Jan. 12, 2022), https://www.recode-troy.com/files/ugd/fea6f4_60df3ffc6c6b4659bde0ba70dc29fbcd.pdf. Therefore, more studies need to be completed with regards to the flooding impacts and the potential significant adverse impacts associated with this project in the event of severe flooding.

- e. Studies have established that developments, such as the proposed, and the associated displacement of natural waterfront and channelization significantly increase river flood risks downstream. Xi Chen, Dingbao Wang, Fuqiang Tian, and Murugesu Sivapalan, *From channelization to restoration: Sociohydrologic modeling with changing community preferences in the Kissimmee River Basin, Florida*, *Water Resour. Res.*, (2016). Therefore, this area upstream of the entire city, protects the city from flooding directly (as a buffer flood zone for flooding) and indirectly by preventing runoff and maintaining the integrity of the riverbank. The development of the site in the proposed form would thus, significantly interfere with the ability of this land to absorb runoff and protect the city from river pollution and flooding.
- f. The SEQR regulations state that “a substantial adverse change in existing air quality, water quality or noise levels; a substantial increase in solid waste

production; a substantial increase in potential for erosion, flooding or drainage problems,” constitutes a significant impact. (6 NYCRR 617.11 (a) (1)).

Therefore, due to the outlined risks above, the development of the apartment project would cause a substantial change in things like water quality, air quality, flooding risks, etc, thus, having a significant adverse impact on the area and a need for further environmental review.

48. Increasing Population Density Risks

- a. The SEQR regulations state that, “the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such a place absent the action,” can constitute a potential significant impact. (6 NYCRR 617.11 (a) (3)). Developing three, 4-story multi-family apartment buildings with a mix of one and two bedroom apartments and a total of 220-240 residential units on Second Avenue will significantly increase, encourage, and attract a large number of people to this area that it currently does not receive.
- b. The proposed action would change the suburban character into a medium to high density neighborhood and introduce three four-story buildings in height where no vegetation of comparable height is proposed in the current development plans. *See* Narrative Description Report at 3, annexed hereto as Exhibit C. Thereby, the action would lead to an increase in population and development density of at least three to five times the current population and development density and would introduce associated residential traffic and traffic related to the circulation of

goods that are currently unmitigated by the action, in addition to the identified increase in tourism and recreational activity.

49. Destruction of Forest and Potentially Threatened and State-Rare Species Habitat

- a. The SEQR regulations state that “the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; or substantial adverse effects on a threatened or endangered species of animal or plant, or the habitat of such a species” constitutes as a potential significant impact. (6 NYCRR 617.11 (a) (2)).
- b. Here, explained in the Troy City Council’s negative declaration, annexed hereto as Exhibit A, the excavation of the site will result in the removal of more than one thousand tons of natural material including most of the forest and trees on this parcel of land. This would be considered the removal of large quantities of vegetation or fauna and would need further environmental analysis to truly understand the extent of the environmental impacts of this action.
- c. Additionally, within the parcel, there are rare species of plants that would ultimately be destroyed and removed due to the construction of the apartment complex. The construction of the apartment complex would have an impact on an important habitat area which is considered a potential significant impact by New York State law. To further elaborate, an ecological study completed in 2021 stated that the parcel represented the 28th most important rare plant site in Rensselaer County and 5th most important site in the Town of Schaghticoke (the parcel is located in both this county and portion of the parcel is within the Town

of Schaghticoke). *See* Ecological Report, annexed hereto as Exhibit D. The report states that 34 county-rare plant taxa are concentrated within Parcel 70.64-1-1 making this parcel the third most important plant site in the City of Troy. *Id.* Five of the state-rare plants are among the rarest plants in the county. *Id.*

- d. Additionally, the proposed action will result in potentially significant negative impacts on a bat population impacted by white nose syndrome, including potentially present federally and state protected *Myotis* species. While the presence of *myotis* species could not be confirmed with complete certainty, their presence is strongly indicated by the collected data. *See* Initial Acoustic Survey of the Bats of the Mahicantuck, annexed hereto as Exhibit E. Therefore, further study is required especially since the data provides clear evidence that the presence of *Myotis* bats is likely to be living on this parcel. This satisfies the threshold of potential significant negative impact in SEQR, and a positive declaration is therefore required for further environmental review.
- e. Moreover, the New York State Department of Conservation identifies the project location as a likely site for imperiled mussels, requiring mussel surveys if the action impacts their habitat in the Hudson River. *See* New York State Department of Environmental Conservation, *Lead Agency Coordination Response Second Avenue Apartments*, 2 (2021), <https://www.troyny.gov/wp-content/uploads/2021/08/CCDECResponse061521.pdf>. Impacts relate to the installation, construction and use/operation of a boat dock with 40 boat slips, as identified as part of the proposed action in the EAF. Therefore, there must be

further study with an Environmental Impact Statement to see whether these mussel habitats will be displaced due to the proposed project.

50. Substantial Changes to Community Plans

- a. The SEQR regulations state that “the creation of a material conflict with a community's existing plans or goals as officially approved or adopted” can constitute a potential significant impact (6 NYCRR 617.11 (a) (4)). As seen within the zoning claim, there are various significant changes that would conflict with a community’s existing plans or goals that have been previously approved by the Troy City Legislature.

THE REZONING DECISION

51. This Rezoning Decision constitutes illegal spot zoning due to its benefit of the owner of Parcel 70.64-1-1 and to the detriment of other owners in the surrounding areas. Additionally, the rezoning would be highly inconsistent with and would violate several key provisions of the Realize Troy Comprehensive Plan that had been previously adopted by the Troy City Council in 2018.
52. Here, the lack of accounting for compatibility with the surrounding uses, consistency with the City’s comprehensive land use plan, likelihood of harm to surrounding properties, recommendations of professional planning staff, and availability and suitability of other parcels by the Troy City Council makes this rezoning decision illegal spot zoning. Thus, this decision by the Troy City Council with regards to the rezoning of this parcel is arbitrary, capricious and contrary to law.
53. **The Proposed Use of Parcel 70.64-1-1 is Not Compatible with Surrounding Uses**

- a. Here, all of the surrounding properties are used as single-family residences — i.e., an “R1” zoning designation — while the proposed rezoning would permit for the property to be used for an “apartment complex with six 3-story buildings sitting atop covered parking spaces — resulting in a Planned Development or “P” zoning classification for the property. City of Troy, New York, *Official Zoning Map*, <https://www.troyny.gov/wp-content/uploads/2017/01/troyzoningmap.pdf>; see also Narrative Description Report at 239, annexed hereto as Exhibit C (“three multi-family buildings, associated parking, stormwater management, site amenities and utilities”).
- b. While the existing use of surrounding properties and the proposed use of the property are both residential, several material differences exist between these two distinct types of residential uses. Undoubtedly, single-family residences — even a neighborhood of them — are categorically different from several large multi-family structures containing hundreds of units. First, the population density in the given geographical areas is substantially greater for large multi-family, residential structures, such as what is being proposed. Second, the structures themselves change the character of the area, as they are different in almost all respects from single-family houses. Third, the utility and other ancillary services that are necessary for such an increased density inherently differ from those associated with a single-family neighborhood. Therefore, even though both uses are residential, it would be illogical, arbitrary, and superficial to conclude that both are compatible on this ground because it would overlook the actual differences between the two uses.

- c. Lastly, it should be noted that the proposed rezoning would classify the property as a planned development area — i.e., an “P” zoning designation (Proposed Resolution). However, in the context of the geographical boundaries of the City, no other planned development area is in close proximity to the property, which also means that the proposed rezoning is inconsistent with uses on surrounding areas. City of Troy, New York, *Official Zoning Map*, <https://www.troyny.gov/wp-content/uploads/2017/01/troyzoningmap.pdf>. The closest area classified as planned development is separated from the property by several city blocks and several differently zoned areas. Accordingly, the proposed rezoning would not be compatible with uses of surrounding properties, especially considering the majority of those properties are used as single-family residences and the proposed use for the property would entail several large, densely packed apartment buildings. Thus, the first factor in the spot zoning analysis supports that the proposed rezoning is spot zoning.

54. The Rezoning is Not Consistent with the City of Troy’s Realize Troy Comprehensive Plan and The Likelihood of Harm to Surrounding Properties.

- a. Goal 1 and Goal 6 of the Comprehensive Plan make clear that high density, multi-family residential use should not occur on the property. Specifically, the property is located in a “Low-Rise Residential Area” that should only entail “low-density” residential uses. City of Troy, New York, *Realize Troy Comprehensive Plan*, at 28, 61 (2018), <https://www.troyny.gov/wp-content/uploads/2019/09/RealizeTroyComprehensivePlanMay2018.pdf>. High to mid-density residential use should occur closer to the City Center, even if not

within its boundaries (see *id.* at 28, 61-62, 64). Indeed, the Plan explicitly provides:

The City of Troy is largely built out. Opportunities for change, development, growth and community revitalization will need to occur within developed areas, through intensification or infill development. Infill can support improvements to public transit as well as walking and cycling infrastructure. It can also revitalize neighborhoods and areas of the city that contain brownfield and greyfield sites. Infill development makes use of existing structures and infrastructure and is therefore considered a more sustainable city-building approach compared to continued outward expansion which has occurred in the counties of the Capital District.

(*Id.* at 61)

- b. Furthermore, Goal 1 clearly provides that residential use should be directed toward the City Center, which is specifically identified as a “key area for residential growth” (*id.* at 29 (emphasis added)). Certainly, doing so would mitigate the “high vacancy rates [that] are also contributing to neighborhood destabilization,” which is an important objective emphasized throughout the Plan (*id.* at 11).
- c. Therefore, the proposed rezoning would further contribute to the “built out” residential model that the Plan emphatically seeks to avoid, as the property, in fact, is located on the periphery of the City’s boundaries. See City of Troy, New York, *Official Zoning Map*, <https://www.troyny.gov/wp-content/uploads/2017/01/troyzoningmap.pdf>. In other words, the proposed rezoning would be the antithesis of the “compact growth” that is prioritized in the Plan, including directing residential development away from “key” areas. Thus, the proposed rezoning is inconsistent with these two goals of the Comprehensive Plan.

- d. The proposed rezoning is inconsistent with Goal 4 and Goal 5 of the Comprehensive Plan in the following three crucial ways: (1) it decreases access to important open spaces and nature-based recreational resources, including the Hudson River and its shoreline; (2) it is detrimental to the environmental and ecological health of the area; and (3) it would not only threaten, but would completely eviscerate an irreplaceable historical and cultural site.
- e. First, increased access to open space and nature-based recreation is a critical goal and theme weaved throughout the Comprehensive Plan. Specifically, it is highlighted by the following provisions: Troy's 7.5 miles of waterfront along the Hudson River also represents a *significant open space and recreational asset*. However, much of the waterfront is currently inaccessible to the public. City of Troy, New York, *Realize Troy Comprehensive Plan*, at 15 (2018), <https://www.troyny.gov/wp-content/uploads/2019/09/RealizeTroyComprehensivePlanMay2018.pdf>. (Emphasis added). With very few exceptions, notably at Riverfront Park, Troy's waterfront is not visible, and the city turns its back to the river. North of the downtown, *much of the waterfront is occupied by private residential uses and there are few opportunities to experience the waterfront*. (*Id.* at 18) Transforming the river's edge into a series of unique waterfront places each with a distinct role to play in the future of Troy's economy is a *tremendous opportunity* to bolster the city as a whole. (*Id.* at 18) (emphasis added). A city's open space network and the variety of its

recreational and cultural offerings contribute *significantly* to a community's *quality of life*, overall *health* and *competitive advantage* within the region. (*Id.* at 51) (emphasis added). Public streets that end at the water's edge will be transformed into waterfront lobbies for improved enjoyment and access to the waterfront. (*Id.* at 52).

- f. Accordingly, increasing and protecting — rather than forfeiting — open spaces and nature-based recreational spaces is a clear and resounding priority and goal under the Plan, including, in particular, increasing access to the Hudson River. *Indeed, one explicit goal is to “[r]econnect Lansingburgh visually and physically to the Hudson River shoreline”* (*Id.* at 36) (emphasis added). The proposed rezoning, however, would completely contravene these clear goals and priorities under the Plan by leading to more “waterfront [being] occupied by private residential uses” and thereby further limiting “opportunities to experience the waterfront.” Even more importantly, aside from being inconsistent with the Plan, the proposed rezoning would be a deliberate step towards decreasing the “quality of life” and “overall health” of the community.
- g. Second, with respect to environmental and ecological integrity, the Plan yet again includes unambiguous language that prioritizes this as a goal. Indeed, Goal 4 is titled “Preserve and Showcase the City’s Parks, Open Spaces and Cultural Assets.” *Id.* at 51. Additionally, the Plan includes, inter alia, the following passages: The majority of the Hudson River shoreline south of the Collar City Bridge has been channelized, which has

interrupted or removed natural ecosystems. Due to this activity, sediment from the Hudson River is no longer deposited on the banks, and *limited habitat is available for fish and wildlife species*. (Comprehensive Plan at 16) (emphasis added). Existing ecological resources including wetlands and shoreline habitat *shall be protected*, preserved and *enhanced*. (*Id.* at 58) (emphasis added). For new development with frontage on the waterfront that is 500 square feet or greater, the City of Troy will require the submission of a construction management plan that demonstrates that the development *will not compromise* the Hudson riverbank. (*Id.*) (emphasis added).

- h. Therefore, in no uncertain terms, the Plan makes clear that protecting, preserving, and enhancing “[e]xisting ecological resources including wetlands and shoreline habitat” is a requirement — they “*shall be protected, preserved and enhanced*.” In fact, the property here is located in a “New Proposed Coastal Boundary” (*id.* at 60) (emphasis added). Again, however, the proposed rezoning would literally destroy what is likely the last remaining forested tract along the Hudson River. As a result, the proposed rezoning not only would contravene the Plan, but it would be a blatant, undisputable violation of it.
- i. Lastly, but certainly equally as important, the Plan also prioritizes and emphasizes protecting cultural assets, which, again, is reflected in the very title of Goal 4. *Id.* Moreover, the Plan unambiguously provides that “the city must invest in its . . . heritage assets” (*Id.* at 9) (emphasis added).

Rightfully so, the Plan highlights Native American heritage as the very genesis of the city itself; specifically, on page 5, the Plan provides the following:

The City of Troy's first occupants were Native Americans who were drawn to the islands situated at the confluence of the Mohawk and Hudson Rivers due to the fertile farmlands and safe, defensive position this location offered at the intersection of these two waterways.

Id. at 5

- j. In this respect, one concrete objective under the Plan is to secure a UNESCO World Heritage Site Designation for the “historic downtown and its *broader environment*,” which is noted “would elevate Troy nationally as a *world class heritage destination* with the power to significantly *strengthen* the city’s tourism-related economies” (*Id.* at 51) (emphasis added). Here, the cultural and historical significance of the property is detailed at length in the record by those who have direct, in-depth, first-hand knowledge. Given the testimony and record materials from these rightfully concerned citizens, the proposed rezoning would eviscerate one of the most — if not the most — culturally and historically significant sites in the city. Thus, the proposed rezoning would constitute a clear contravention of the Plan in this respect as well.
- k. In sum, the proposed zoning would be in direct contravention of Goal 4 and Goal 5 of the Comprehensive Plan in three critical ways — to wit, foregoing open space and nature based recreational opportunities, compromising the environmental and ecological integrity of the City’s natural resources, and failing to preserve cultural heritage assets. Thus, the

proposed rezoning also is inconsistent with these two goals of the Comprehensive Plan.

55. The Advising and Recommending by Professional Planning Staff to Not Rezone the Area

- a. On January 28th, 2021, the Troy Planning Commission voted against the rezoning after being sent a full EAF and the Narrative Description Report, annexed hereto as Exhibit C, of the apartment complex project, which defined the whole development project and the rezoning action. City of Troy, *Planning Commission Minutes Agenda Archive*, (Jan. 28, 2021), <https://www.troyny.gov/wp-content/uploads/2021/02/PCminutes012821DRAFTreduced.pdf>.
- b. Various concerns were raised by the Planning Commission with regards to the rezoning. City of Troy, *City Council Agenda & Minutes Archive*, 4 (April 27, 2021), <https://www.troyny.gov/wp-content/uploads/2021/04/CCPlanningAgenda042721.pdf>. The first reason deals with the increased density within that particular area of the City of Troy. More specifically, the increase in human population density in this area would increase traffic and load on utilities. *Id.* The Planning Commission remarked that this would be more of an issue with regards to apartment buildings when compared to single-family homes. *Id.* The second reason is the increased load of human activity within Tax Map Parcel 70.64-1-1. Members of the Planning Commission were concerned about the large increase in human activity on this green site that is heavily wooded and a potential site for state-rare species of flora and fauna. *Id.* Lastly, the members of the Planning Commission were concerned that the

apartment building project that would result from the rezoning would almost certainly interfere with the archaeological sites. *Id.* Members of the Planning Commission indicated there is potential for the development of single-family homes that would avoid the important archaeological sites, but an apartment complex would have great difficulty in doing so. *Id.*

- c. Despite the recommendation against the rezoning and the concerns of individual Planning Commission members with regards to the rezoning of Tax Map Parcel 70.64-1-1, the Troy City Council voted in favor of the rezone request.

56. The Availability and Suitability of Other Existing Parcels for the Proposed Apartment Complex Project

- a. Several other parcels are designated for planned development, and there is no legitimate reason why they are not equally available and suitable for the high-density, multi-family uses being proposed. City of Troy, New York, *Official Zoning Map*, <https://www.troyny.gov/wp-content/uploads/2017/01/troyzoningmap.pdf>. In fact, those parcels appear to be more suitable according to the Comprehensive Plan because they are “located along corridors” and/or “are close to a high concentration of services, transit and amenities,” thereby rendering them “Mid Rise” or “High-Rise” residential areas. *Id.*; City of Troy, New York, *Realize Troy Comprehensive Plan*, at 62, 64 (2018), <https://www.troyny.gov/wp-content/uploads/2019/09/RealizeTroyComprehensivePlanMay2018.pdf>. It appears that the only person to whom the property would be more suitable is the option-holder who is requesting the proposed rezoning, which obviously is not a legitimate consideration when determining whether to rezone the property and

indeed is highly indicative of spot zoning. Accordingly, the fifth factor in the spot zoning analysis supports that the proposed rezoning is spot zoning.

57. Lastly, in addition to being highly inconsistent with the Comprehensive Plan, the proposed rezoning also is inconsistent with the City's own local law for "P Planned Development" districts. See Code of the City of Troy, New York, Art. IV, § 285-57 (available at <https://ecode360.com/11133910>) (last visited June 26, 2022) (the "City Code"). Specifically, the proposed rezoning is inconsistent with the City Code in the following respects:

- a. Residential density is "[n]ot to exceed eight units per acre" under § 285-57(D) of the City Code, but the proposed project would consist of approximately 25 units per acre — more than three times what is permitted under the City Code.
- b. The "[m]aximum building height" allowed under § 285-57(E)(3)(f) of the City Code is 40 feet, but the proposed project would entail several structures of approximately 60 feet in height (*See* Narrative Description Report at 4, 5, annexed hereto as Exhibit C).
- c. "To the extent feasible, at least 10% of the total number of dwellings within this District should be in single-family detached structures" under § 285-57(H)(1) of the City Code, but the proposed project would not entail any single-family structures (*See* Narrative Description Report at 4, 5, annexed hereto as Exhibit C).
- d. "Building height, size and design shall be appropriate to the location within the district where proposed" under § 285-57(H)(2) of the City Code, but the proposed project would entail large, three-to-four story, 60-

foot-high, multi-family structures in a location that is currently undeveloped open space that is surrounded by single-family residences (*See* Narrative Description Report at 4, 5, annexed hereto as Exhibit C).

- e. “Landscaped open spaces or open areas left in their natural state should be provided at a ratio of not less than 1,000 square feet of open space for every dwelling unit” under § 285-57(H)(4) of the City Code, but it is highly unlikely that a 240-unit project with all of the attendant amenities, utilities, et cetera would be able to achieve this required ratio due to the proposed building sizes. *See* Narrative Description Report at 4, annexed hereto as Exhibit C.
- f. “Where feasible, natural features such as streams, rocks, outcrops, topsoil, trees and shrubs shall be preserved and incorporated in the landscape of the development” under § 285-57(H)(6) of the City Code, but the proposed project would unnecessarily eviscerate many of these features.
58. Therefore, based on the relevant analysis under New York law, it is respectfully submitted that the proposed rezoning would constitute spot zoning. It is also respectfully submitted that this Rezoning Decision would be contrary to existing Troy City Code. Thus, the Rezoning Decision should be vacated immediately as it was arbitrary, capricious, and contrary to law.

AS AND FOR A FIRST CAUSE OF ACTION (ARTICLE 78) - RESPONDENT’S DECISION TO REZONE TAX MAP PARCEL 70.64-1-1 WAS ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW DUE TO SUCH REZONING BEING CONSIDERED ILLEGAL SPOT ZONING AND IS NOT CONSISTENT WITH THE CITY OF TROY’S COMPREHENSIVE PLAN.

59. Petitioner Jessica Bennett, repeats and realleges every allegation contained in the preceding counts of this Verified Petition as if more fully set forth herein.
60. Specifically, as detailed above, Respondent's Rezoning Decision is illegal spot zoning for the following reasons:
- a. The proposed use of Parcel 70.64-1-1 is not compatible with the uses of the surrounding parcels.
 - b. The rezoning is not consistent with the City of Troy's *Realize Troy* Comprehensive Plan.
 - c. There is evidence linked to the likelihood of harm to surrounding properties
 - d. The Troy City Council disregarded the advice and recommendations made by professional planning staff (the Troy Planning Commission) to not rezone Parcel 70.64-1-1.
 - e. There are existing, available, and suitable parcels for this proposed multi-family apartment complex project.

61. Additionally, the Rezoning Decision is contrary to existing Troy City Code.

62. Therefore, Respondent arbitrarily, capriciously, and contrary to law, passed the Rezoning Decision resolution.

AS AND FOR A SECOND CAUSE OF ACTION (ARTICLE 78) - RESPONDENT'S DECISION TO DECLARE A NEGATIVE DECLARATION WITH REGARDS TO THE REZONING OF TAX MAP PARCEL 70.64-1-1 WAS ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW DUE TO VARIOUS SIGNIFICANT ADVERSE IMPACTS THAT WOULD OCCUR AS A RESULT OF THE APARTMENT COMPLEX PROJECT REQUIRING A POSITIVE DECLARATION.

63. Petitioner Jessica Bennett, repeats and realleges each and every allegation contained in the preceding counts of this Verified Petition as if more fully set forth herein.

64. Article 78 of New York’s Civil Practice Law and Rules provides a device for challenging the actions of the Troy City Council in adopting the findings statement Pursuant to the State Environmental Quality Review Act (“SEQRA”), N.Y. Env’tl. Conserv. Law art. 8.

65. Various adverse significant impacts of the Rezoning and the proposed project required a positive declaration by the Troy City Council, including:

- a. Significant adverse impacts to the archaeological and historical significance of the parcel.
- b. Significant adverse impacts to water quality and air quality as well as the increase of noise pollution and flooding risks.
- c. Significant adverse impacts relating to the increase of population density risks
- d. Significant adverse impacts resulting from the destruction of forest and state-rare species.
- e. Significant adverse impacts relating to substantial changes to the parcel not in accordance with community plans.

66. Thus, as detailed above, Respondent, Troy City Council has arbitrarily, capriciously, and contrary to law issued a negative declaration with regards to the rezoning of Parcel 70.64-1-1.

PRAYER FOR RELIEF

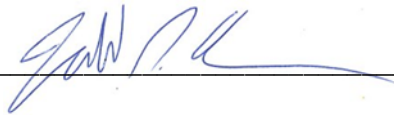
67. **Wherefore**, the Petitioners respectfully demand appropriate judgment from this Court against Respondents as follows:

- a. An order vacating the Troy City Council’s decision to rezone Tax Map Parcel Number 70.64-1-1 as arbitrary, capricious, or contrary to law.

- b. An order vacating the Troy City Council's determination of significance resulting in a negative declaration of a Type I action that was arbitrary, capricious, or contrary to law.
- c. Any further relief that the Court may deem just and proper.

Dated: June 30, 2022
White Plains, NY

Respectfully submitted,

by: 

Todd D. Ommen
Pace Environmental Litigation Clinic
78 North Broadway
White Plains, NY 10603
(914) 422-4343
tommen@law.pace.edu
Attorney for the Petitioners,
Jessica Bennett

VERIFICATION

STATE OF NEW YORK)
) ss:
RENSSELAER COUNTY)

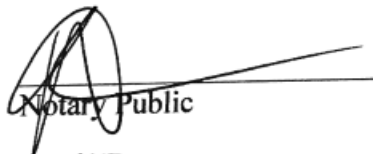
JESSICA BENNETT, being duly sworn, deposes and says:

1. I am PETITIONER, Jessica Bennett
2. I have read the foregoing petition and its factual contents are true to my person knowledge, except as to those matters alleged therein to be upon information and belief, and as to those matters, I believe them to be true.



 Jessica Bennett

Sworn to before me this
30 day of June, 2022



 Notary Public

ANTHONY MOHEN
 Notary Public, State of New York
 No. 02MO6253365
 Qualified in ~~Livingston~~ County
 Commission Expires December 27, 2023
 Rensselaer