

SUPREME COURT OF THE STATE OF NEW YORK  
ENVIRONMENTAL CLAIMS PART  
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of  
GINA VON EIFF AND SUZANNE MCCRORY,

Petitioners,

**NOTICE OF  
PETITION**

For a Judgment Pursuant to Article 78 of the CPLR

--against--

INDEX NO: 15- 1533-15  
ASSIGNED JUDGE:  
Hon. Joan Lefkowitz

VILLAGE OF MAMARONECK BOARD OF  
TRUSTEES and

ANDRES BERMUDEZ-HALLSTROM, in his  
capacity as former trustee of the Village of Mamaroneck

Respondents.

-----X

PLEASE TAKE NOTICE that upon the Verified Petition and its exhibits and upon the affidavit of Suzanne McCrory, sworn to on March 7, 2015, and its exhibits, and upon all the proceedings heretofore had herein, the Petitioners will make an application before the Environmental Claims Part of the Supreme Court, Westchester County, at the courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, on April 24, 2015 at 9:30 am or as soon thereafter at such date, time and location as such Justice shall determine, and as counsel can be heard, for an judgment repealing Village of Mamaroneck Local Law 18-2014 and for other such relief as this court may consider right and just.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 7804(e), the Village of Mamaroneck Board of Trustees is required to file an Answer herein and certified

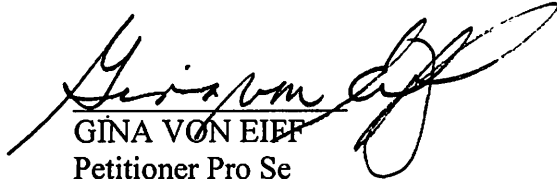
RECEIVED  
MAR 10 2015  
TIMOTHY C. IDONI  
COUNTY CLERK  
NTY OF WESTCHESTER

RECEIVED  
MAR 17 2015  
VILLAGE OF MAMARONECK  
NEW YORK

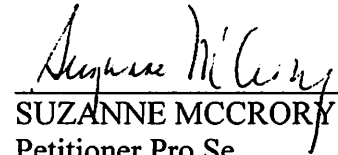
transcript of the record of their proceedings and the same shall be served upon Petitioners at least five (5) days before the return date of this Verified Petition.

The venue of this Special Proceeding is Westchester County, where the Village of Mamaroneck is located and where Petitioners reside.

Dated: Mamaroneck, New York  
March 9, 2015



GINA VON EIEF  
Petitioner Pro Se  
220 Jefferson Avenue  
Mamaroneck, NY 10543  
914-698-2450



SUZANNE MCCRORY  
Petitioner Pro Se  
720 The Crescent  
Mamaroneck, NY 10543  
914-698-5686

TO:

Clerk of the Village of Mamaroneck

Andres Bermudez-Hallstrom

SUPREME COURT OF THE STATE OF NEW YORK  
ENVIRONMENTAL CLAIMS PART  
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of  
GINA VON EIFF AND SUZANNE MCCRORY,

Petitioners,

**PETITION**

For a Judgment Pursuant to Article 78 of the CPLR

--against--

INDEX NO: 15- 1533 -15  
ASSIGNED JUDGE:  
Hon. Joan Lefkowitz

VILLAGE OF MAMARONECK BOARD OF  
TRUSTEES and

ANDRES BERMUDEZ-HALLSTROM, in his  
capacity as former trustee of the Village of Mamaroneck

Respondents.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petition of GINA VON EIFF and SUZANNE MCCRORY in this proceeding, under and pursuant to New York Civil Practice Laws and Rules (CPLR) Article 78, to review and annul Village of Mamaroneck Local Law 18-2014 that promotes high-density redevelopment through a Transit-Oriented Development (TOD) incentive zoning scheme involving 35 acres. Petitioners seek judicial review of the negative declaration that there will be no significant adverse environmental impacts from this Type I action despite the uncontested facts that the re-zoning will permit hundreds of additional dwelling units in an already-crowded neighborhood that is located in a floodplain, that is directly above a

highly-productive aquifer, that adjoins two impaired rivers, and that includes a Superfund site and a federally mapped wetland.

The Village of Mamaroneck Board of Trustees adopted this incentive zoning law by a vote of 3-1, without preparing an environmental impact statement (EIS) to evaluate the potential significant adverse impacts from the re-zoning action on the aquifer, flooding, traffic and parking. Failure to prepare an EIS was not only unlawful but also arbitrary and capricious because the Board of Trustees made a positive declaration of environmental significance in 2006 on a much smaller re-zoning action in this same neighborhood.

Petitioners seek relief in the form of annulment of Local Law 18-2014 because it not only fails to comply with the State Environmental Quality Review Act (SEQR) but also violates express requirements of New York State Village law for incentive zoning.

## **BACKGROUND**

1. The Village of Mamaroneck is a small Westchester County coastal village of about 19,000 residents located at the bottom of a watershed discharging into Long Island Sound.

2. Two rivers –the Mamaroneck and the Sheldrake, both listed as impaired waterways by New York’s Department of Environmental Conservation (DEC) --snake through the Village and converge in Columbus Park near the train station. Source: DEC Impaired Waterways shown at Exhibit 1.

3. Flooding presents a major hazard in the Village, with several severe and well-publicized floods occurring in recent years.

## **The Washingtonville Neighborhood**

4. The neighborhood called “Washingtonville” or “the Flats” lies generally north of the train station and the Village of Mamaroneck central business district, in a low-lying riverine area that floods.

5. The Washingtonville census tract is a low- to moderate-income area with about 2905 residents (40 percent Hispanic) or 15 percent of the total Village population living on approximately 2 percent of the Village land area. Source: TOD grant application found at Exhibit 2, p.2, identifies study area as 35 acres that is 1.7 percent of Village land area. Exhibit 3 contains excerpts of the “Needs Assessment 2012 Washingtonville Housing Alliance Service Area” giving demographic information.

6. Like much of the Village of Mamaroneck, Washingtonville was already largely developed when zoning districts were adopted, creating certain mismatches between the uses permitted under the Village’s zoning law and actual uses which existed prior to (and have continued since) adoption of these zoning laws. This mismatch is generally benign because the Village of Mamaroneck Code allows continuation of such pre-existing “nonconforming” uses. But re-development or expansion of such a non-conforming use would not be permitted without a variance. Village of Mamaroneck Code, Chapter 342, Article IX.

7. Some Washingtonville properties like the Avalon Willow apartment complex and Parkview Station condominium have been successfully re-developed near the train station. Most recently, the condominium development known as Sweetwater was built just south of the train tracks. Other Washingtonville sites have not been re-developed and have fallen into disrepair. For example, The 3 Jalapenos restaurant on Mamaroneck

Avenue is a nonconforming commercial use in a district zoned as multifamily (RM-3). The site has remained unrepaired after flood damage from tropical storms of 2011. A property on Madison Street had also become dilapidated.

#### **Transit-Oriented Development Study**

8. Against this backdrop, the Village of Mamaroneck and the Washingtonville Housing Alliance together embarked upon a “Transit Oriented Development (TOD)” Study that was funded by a \$38,500 April 2012 grant from Tri-State Transportation Campaign and the One Region Founders Group. Source: TOD Study Final Report<sup>1</sup> at p.1 shown at Exhibit 4.

9. “Transit Oriented Development (TOD) is typically defined as walkable, compact, higher density development, located within an easy walking distance (approximately one-half mile) of quality transit stations, generally with a mix of residential, employment, amenities and shopping opportunities. A TOD land use strategy can lead to reduced driving, lower household transportation costs, reduced demand for parking, increased transit use, more walking and biking, lower greenhouse gas emissions, improved air quality and other benefits.” Source: TOD grant application shown as Exhibit 2 p. 2.

10. The grant application specifically targeted the Washingtonville neighborhood for re-zoning explaining that “the intent of this study will be to transform the [Washingtonville] area into a viable, transit-oriented mixed use zone.” Source: Grant application, p.1 shown as Exhibit 2.

---

<sup>1</sup> Because the TOD Study Report is lengthy --270 pages with appendices—it has not been appended to this petition. The full report can be found on the Village website at [http://www.village.mamaroneck.ny.us/Pages/MamaroneckNY\\_Webdocs/TOD/](http://www.village.mamaroneck.ny.us/Pages/MamaroneckNY_Webdocs/TOD/)

11. The Final TOD Study dated February 2013 recommended three strategies:

- Adjusting existing zoning boundaries to eliminate multi-districts and reduce nonconformities with respect to land use;
- Revising area and bulk regulations in the RM-3 (multi-family) zone to better reflect current conditions, lessen the number and degree of nonconforming properties and allow for appropriately scaled development and redevelopment; and
- Creating a TOD overlay zone to promote development along Mamaroneck Avenue to capitalize on proximity to the train station and Central Business District.

Source: Recommendations of TOD Study Report shown on page numbered 32 shown at Exhibit 5.

12. The density bonuses for affordable housing were conditioned on:

- *Provision of “green” building and/or flood mitigation measures;*
- *Payment into a flood mitigation fund* to be managed by the Village and administered to property owners within a designated area (either coterminous with or a larger area within the flood zone encompassing the TOD study area) for building upgrades to mitigate flood damage; and
- *Compliance with design guidelines* to be developed for the TOD study area.

Source: Recommendations of TOD Study Report, shown at page numbered 39 at Exhibit 5.

## **SEQR REVIEW OF THE ACTION**

13. Proposed Local Law S-2014 [“To amend Chapter 342 (Zoning) of the Village of Mamaroneck, To add provisions to implement the 2013 Transit-Oriented Development (TOD) Zoning Study”] was drafted in final form on October 9, 2014 with fourteen sections and is shown at Exhibit 6.

14. The SEQR review consisted of the preparation of a September 2014 EAF (Parts I and II) that was supplemented with an “EAF Part III” prepared about 2 months later. Several supplemental memos and a geo-hydrology report were prepared in November 2014 about one week before the re-zoning law was enacted.

15. The September 2014 Environmental Assessment Form (EAF), Part I gave the following summary:

The overall effect of the proposed changes would be twofold: first, to make it less problematic for existing property owners to upgrade and renovate existing buildings on their properties by reducing the number and scale of nonconformities so that fewer variances are likely to be required for development applications and that bank financing will be easier to obtain. Secondly, sites within the study area will become more attractive for investment, given this effect on nonconformities and the fact that a smaller number of properties would need to be consolidated to achieve the lot size necessary for new multifamily buildings.” Source: EAF Part I, p. 10 shown at Exhibit 7.

16. The EAF Part I included four sections titled “anticipated development, school-age children, economic impact, and traffic and parking.” No other potential impacts were identified or discussed. Source EAF, Part I, pp. 10-20 shown at Exhibit 7.

17. On September 22, 2014, the Board of Trustees declared the action to be a Type I action under SEQRA and set October 27, 2014 as the public hearing date. Source: Board of Trustee Minutes for September 22, 2014 shown at Exhibit 8.

18. At the October 27, 2014 public hearing, most individuals supported the general concept of Washingtonville re-development but urged the Board of Trustees to do a careful environmental review to be sure that the specific zoning approach taken would address the already-intolerable conditions of flooding, traffic and parking. Source: BOT minutes of 10-27-2014 shown at Exhibit 9.

19. Residents testified that there was a very large aquifer beneath and beyond the entire area proposed for re-zoning –an environmental feature that had been overlooked in the TOD Study and the EAF. Westchester County classified the aquifer as capable of yielding more than 100 gallons/min. An aquifer can create groundwater flooding when



its water table rises above foundations. Source: Westchester County GIS Mapping of Aquifer, U.S.G.S. Water Science for Schools webpage on “Aquifers” and Carnegie Tech webpage shown at Exhibit 10.

20. *The Mamaroneck Review* reported on November 7, 2014 “that residents attended the hearing to voice their fears that higher population density would adversely affect their day-to-day routine and the value of their property by making the area overcrowded and less desirable to potential buyers.”

21. Trustee Potok acknowledged concerns about flooding and other environmental issues and said that TOD needed to be done in an informed and orderly manner, which means having a full environmental impact statement completed and allowing the Village’s Harbor and Coastal Zone Management Commission (HCZMC) which is the Board responsible for determining consistency under the Local Waterfront Revitalization Plan (LWRP), the time to do its analysis.

22. The public hearing was adjourned until November 24, 2014 without declaring the significance of the proposed action.

23. At its November 3, 2014 meeting, the Board of Trustees authorized expenditures (not to exceed \$10,000) for further TOD environmental study. Still no determination of significance was made. Source: Minutes of Board of Trustees November 3, 2014 work session, discussion Item 1A shown at Exhibit 11.

24. Later that same evening, HCMZC reviewed Proposed Local Law S-2014 for consistency with the LWRP. After hearing testimony about flooding and the aquifer — and learning from Petitioner Von Eiff that there was a Superfund site within the TOD Overlay district-- the HCZMC resolved that the proposed local law was not consistent to

the maximum extent practicable with LWRP policies 11 and 17 dealing with flooding and erosion hazards, nor with policies 31 and 33 dealing with water quality and also found that the information about the impacts of the proposed local law was inadequate and incomplete. Source: HCZMC Resolution on Proposed Local Law S-2014 at Exhibit 12A.

[Note: There are no written minutes of the meeting but a video-recording of the proceeding can be found at [http://lmctv.org/videos\\_list/village-of-mamaroneck-hczm-meeting-11314/](http://lmctv.org/videos_list/village-of-mamaroneck-hczm-meeting-11314/)]; an article from *The Mamaroneck Review* is shown at Exhibit 12B.]

25. Before any determination of environmental significance had been made, the Village Manager told the press that a “GEIS [Generic Environmental Impact Statement] would be too speculative as to what would be developed there before any actual plans have been made. He also said that environmental studies should be done by the developers looking to build in the area...” Source: “TOD legislation encouraged development” *The Mamaroneck Review*, November 7, 2014 shown at Exhibit 24.

26. At their meeting of November 17, 2014, the Board of Trustees reviewed the newly prepared material including a geo-hydrological letter report on the aquifer. That new submission—termed the EAF Part III—is shown at Exhibit 13.

27. The new material said that the proposed TOD re-zoning would

A. increase the number of dwelling units and building area about 35 percent over that allowed by existing zoning;

B. decrease impervious surfaces by 19 percent over existing conditions (assuming that a property owner removed excess paving even though the law would not require it); and

C. allow a healthy recharge of the aquifer of about 1.5 million gallons annually in the area by decreasing impervious surfaces;

D. have no significant impacts on traffic and parking based on data from the City of Yonkers.

28. For reasons that are unclear, RM-3 changes that decreased minimum lot area, coverage and parking were described in the materials but their impacts were not evaluated.

29. GEO-HYDRO Inc. submitted a letter giving a brief “hydrogeological evaluation” of the TOD zoning proposal: “An existing unconfined aquifer is located immediately beneath Mamaroneck Avenue and within the general area of the proposed TOD zoning changes.” This letter report was signed by the firm’s engineer rather than the geo-hydrologist. Source: November 14, 2014 Letter from GEO-HYDRO, Inc. at Exhibit 14.

30. The GEO-HYDRO letter referenced only one well within the TOD area for which the U.S. Geological Survey had a single 60-year old record showing the water table was at 13 feet NAVD (or 14 feet NGVD29) --just 6 feet below grade --on a well that extended 412 feet below the surface into bedrock. The referenced well data is shown at Exhibit 15.

31. The report indicated New York average precipitation is nearly 50 inches per year of which 20 inches was expected to reach the aquifer. But there was no discussion of seasonal variations in the aquifer, no explanation of how long rainy spells or droughts

affect the water table, and no explanation of effects on the aquifer over the years as individuals and businesses no longer withdrew its water.<sup>2</sup> Exhibit 14.

32. The Board of Trustees once again adjourned its meeting without making a determination of significance for the action.

33. On November 18, 2014 the Assistant Village Planner, Gregory Cutler, produced an EAF Addendum on “Stormwater Management Infiltration Practice within Transit Oriented Development (TOD) Overlay.” In this memo, Mr. Cutler analyzed the elevations in the TOD area using the assumption that the top of the aquifer water table ranged between 10 and 13 feet NAVD and concluded that “between 45% and 90% of land in the TOD overlay zone has sufficient vertical separation” [for infiltration practices to be installed] between the top of the aquifer and the existing grade. He produced a map noting TOD parcels with elevations above 20 feet –where infiltration systems would be more questionable and parcels with elevations above 22 feet –where infiltration systems would be feasible (should the generalized assumptions about the aquifer water level prove to be true). Only the TOD overlay district was analyzed; the multi-districts rezoned to RM-3 were not evaluated. Source: EAF Addendum Memorandum by Gregory Cutler dated November 18, 2014 shown at Exhibit 16.

34. On November 21, 2014, the Village’s planning consultant prepared a supplemental memo for the Board of Trustees on impacts and a discussion of the LWRP

---

<sup>2</sup> GEO-HYRDO may have been unaware that Pure Foods operated on Mamaroneck Avenue in Washingtonville from 1917 until 1988 and used aquifer water in its food processing operations making Herb-Ox bouillon.  
<http://fultonhistory.com/newspaper%2010/Yonkers%20NY%20Herald%20Statesman/Yonkers%20NY%20Herald%20Statesman%201957%20Grayscale/Yonkers%20NY%20Herald%20Statesman%201957%20Grayscale%20-%200284.pdf>.  
<http://www.nytimes.com/1988/09/04/nyregion/condominiums-planned-for-pure-foods-site.html?pagewanted=print>

consistency of the proposed regulations with applicable policies. Once again, the relaxation of zoning requirements for the RM-3 zoning district was not evaluated. Source: BFJ Planning Memo to the Village of Mamaroneck Board of Trustees, dated November 21, 2014 shown at Exhibit 17.

35. At the November 24, 2014 public hearing on Proposed Local Law S-2014-, village attorneys and consultants advised the Board of Trustees that the EAF materials that had been prepared were sufficient evidence for a negative declaration. Source: Board of Trustees Minutes of 11-24-2014 shown at Exhibit 18A.

36. Many residents remained open to re-development options but unsupportive of the law because environmental impacts were unresolved.

37. Earlier that day, a resident had alerted the Board of Trustees to a previously undisclosed federally mapped wetland within the TOD area. Source: Email from Doreeen Roney dated November 24, 2014 with appended National Wetlands Inventory Map shown as Exhibit 18B.

38. Notwithstanding the newly-identified wetland and ongoing dissatisfaction with the environmental review, three members of the Board of Trustees voted to enact Proposed Local Law S-2014 on November 24, 2014 with a negative declaration of environmental significance. Trustee Miller voted against the resolution and Trustee Potok abstained. Source: Board of Trustees Minutes of 11-24-2014 shown at Exhibit 18A.

39. Once filed with the Secretary of State, it became Local Law 18-2014 shown at Exhibit 19.

40. As of February 27, 2015, there has been no Environmental Notice Bulletin filed by the Village of Mamaroneck for its negative declaration of this Type I action. Aff. of Suzanne McCrory ¶4.

**Efforts to Lobby New Legislators to Repeal TOD pending Environmental Review**

41. Since the passage of Local Law 18-2014, residents have unsuccessfully sought its repeal so that careful environmental review might be done.

42. Rather than introducing a local law to repeal Local Law 18-2014 to enable the environmental impact statement he said was needed, Trustee Potok introduced Proposed Local Law A-2015 to amend three aspects of the law -- one of which urges the Planning Board to encourage impervious surfaces for TOD re-development. That proposed amendment is shown at Exhibit 20.

43. During the February 9, 2015 public hearing on these proposed amendments, Michelle Caparelli of Washingtonville submitted a petition containing 130 signatures from English and Spanish speaking residents seeking repeal of the underlying TOD legislation (Local Law 18-2014) pending environmental review and substantive community involvement in any re-zoning action. Note: The meeting video can be found at [http://lmctv.org/videos\\_list/village-of-mamaroneck-board-of-trustees-meeting-2915/](http://lmctv.org/videos_list/village-of-mamaroneck-board-of-trustees-meeting-2915/) as Item 4B.

44. Petitioner McCrory informed the Board of Trustees that many aspects of Local Law 18-2014 failed to comply with provisions of New York State Village Law on incentive zoning—including the Village’s failure to complete a generic environmental impact statement -- and urged it be revoked to correct these errors and omissions. She

submitted a draft proposed local law draft to repeal Local Law 18-2014. Affidavit of Suzanne McCrory, Exhibits 32 and 33.

45. Upon information and belief, Local Law 18-2014 has the support of a majority of sitting trustees since none has acted to repeal it. As the statute of limitations for challenging Local Law 18-2014 approached without Petitioners' grievances being redressed, the instant action ensued.

#### **NATURE OF THE ACTION, PARTIES, VENUE AND TIMING**

46. This is a proceeding brought under CPLR article 78, that provides for actions against a body or officer to answer

1. whether the body or officer failed to perform a duty enjoined upon it by law; or...

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed;  
CPLR §7803.

47. Petitioners in this proceeding are residents of the Village of Mamaroneck aggrieved by the enactment of Local Law 18-2014 without complying with SEQR or the provisions of NYS Village Law governing incentive zoning.

48. Petitioner Gina Von Eiff dhas resided at 220 Jefferson Avenue since 1958 in her family home near the flood-prone confluence of the Mamaroneck and Sheldrake Rivers just north of the train station, within the TOD Study area and one block from the re-zoned area. She is aggrieved by the Village's failure to take a hard look at flooding, the aquifer and the Superfund site. In 2007, for the first time since the home was built in 1953, floodwaters reached her driveway and flowed into her basement. In 2011,

groundwater entered the basement from Tropical Storms Irene and Lee. She is aggrieved because newly-constructed buildings in the TOD area --particularly those "flood-proofed" with measures to seal them from flooding --will disperse flood waters farther out to neighboring properties, and will therefore increase the frequency and severity of her flood risk. She is aggrieved because there have been no studies as to how groundwater flooding will be affected by large new foundations intruding into the aquifer. Furthermore, she is aggrieved that the Superfund site has been included in the incentive zoning scheme since this site is located above the aquifer, is a source of potential contamination, and construction at or near that site might release contaminants into the air, aquifer and river. Finally, she is aggrieved by the likely increase in traffic on Mamaroneck Avenue that is already quite congested at certain times of the day.

49. Petitioner Suzanne McCrory with her husband owns and resides at 720 The Crescent on Mamaroneck Harbor, about 1.75 miles from the re-zoned area. She is aggrieved that Village officials adopted this re-zoning without understanding the aquifer --its depth and reach and its water quality--to analyze how the proposed re-zoning might affect water quality and flooding effects for the Harbor. Both the Mamaroneck and Sheldrake rivers are DEC-impaired waterways that empty into Mamaroneck Harbor and affect its water quality. During riverine flooding events, polluted waters engulf this small harbor. Those harbor pollutants diminish her property enjoyment--she will not swim in the polluted waters nor eat the oysters growing adjacent to her property.

50. Respondent Village of Mamaroneck Board of Trustees is the duly elected legislative body of the Village of Mamaroneck. As of the filing of this petition, its



members are Mayor Norman Rosenblum, Trustee Lou Santoro, Trustee Leon Potok, Trustee Ilissa Miller and Trustee David Finch.

51. Respondent Andres Bermudez-Hallstrom is named as a Respondent since as a former trustee, his was one of three deciding votes to adopt the negative declaration of significance and enact Local Law 18-2014.

52. The venue of this proceeding is Westchester County where the Village of Mamaroneck is located and where all petitioners and residents reside.

53. This proceeding is brought within 4 months of Local Law 18-2014 passage.

### **SEQR REQUIREMENTS**

54. This action challenges the negative declaration that the Village of Mamaroneck made for Proposed Local Law S-2014 – a declaration to allow the Village of Mamaroneck to circumvent the preparation of an EIS for this re-zoning action.

55. The purpose of an EIS is to

provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. ECL 8-0109.2.

56. To avoid preparing an EIS, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant, commonly termed giving the action a “negative declaration” or “neg dec.”. 9 NYCRR §617.7(a).

57. Indicators of a significant impact include:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste

production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;  
(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;  
(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;  
(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.... 9 NYCRR §617.7(c).

59. The Village of Mamaroneck Board of Trustees, as lead agency, was required to consider reasonably related long-term, short-term, direct, indirect and cumulative impacts and assess whether these impacts were material, substantial, large or important. 9NYCRR §617.7(c)(2).

60. If the action “may include the potential for at least one significant environmental impact” then an environmental impact statement must be prepared. The threshold for a determination of environmental significance is low and the burden for a negative declaration is conversely high.

61. Conventionally for a Type I incentive zoning action such as this municipalities prepare a generic environmental impact statement (GEIS):

Generic EISs may be broader, and more general than site or project specific EISs and should discuss the logic and rationale for the choices advanced. They may also include an assessment of specific impacts if such details are available. They may be based on conceptual information in some cases. They may identify the important elements of the natural resource base as well as the existing and projected cultural features, patterns and character. They may discuss in general terms the constraints and consequences of any narrowing of future options. They may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur. 9 NYCRR §617(a).

62. Environmental Notice Bulletins (ENBs) published by NY Department of Environmental Conservation show that Westchester municipalities routinely prepare environmental impact statements for their proposed re-zoning schemes, including incentive zoning proposals. Below are some examples where local municipalities have used either an EIS or a GEIS for their proposed rezoning and planning processes:

A. The Village of Port Chester's Board of Trustees did a GEIS for the adoption of its 2012 Comprehensive Plan and Zoning Map and Text Amendments [ENB notice 12/12/2012 shown at Exhibit 21A.]

B. The White Plains Common Council did a GEIS on a proposed Open Space Recreation District Zoning. [ENB Notice 8/22/2012 shown at Exhibit 21B.]

C. The City of Mount Vernon City Council prepared an environmental impact statement for its proposed creation of a "senior citizen housing floating overlay zone." [ENB 8/21/2013 shown at Exhibit 21C.]

D. The Village of Pelham Manor required a GEIS for proposed amendments to its 5-acre Retail (R) Zoning district, expanding potential retail and commercial uses as well as allow new residential housing opportunities. [ENB 9/3/2014 shown at Exhibit 21D.]

63. The Village of Mamaroneck Board of Trustees had required an EIS for a 2006 rezoning action in the Washingtonville community, but offered no explanation to distinguish that matter from its instant negative declaration. [ENB 7/19/2006 shown at Exhibit 25.]

**LOCAL LAW 18-2014 WAS ENACTED IN SUBSTANTIVE AND  
PROCEDURAL VIOLATION OF SEQR**

64. Petitioners repeat and re-allege each and every allegation set forth in Paragraphs 1 through 63 as though repeated here.

65. Before this Court is the incongruous Village of Mamaroneck “negative declaration” that there will be no significant effect on the environment from a 35-acre incentive zoning law that will materially increase density in an already-crowded neighborhood located in a floodplain, directly above a very productive aquifer, adjoining two impaired rivers, and including a federal wetland and Superfund site.

66. The negative declaration was arbitrary and capricious insofar as the Village of Mamaroneck, acting in an administrative capacity as lead agency, gave a positive declaration for a much smaller Washingtonville re-zoning action nine years earlier and without explaining why one rezoning action demanded an EIS but the other did not. [“ A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.” *Matter of Field Delivery Serv. [Roberts]*, 66 NY2d 516, 517).]

67. Furthermore, the negative declaration was unlawful insofar as it neither fully identified, nor thoroughly analyzed, nor attempted to mitigate the significant adverse environmental effects from its rezoning effort on the aquifer, flooding, traffic and parking.

**Negative Declaration was arbitrary and capricious**

68. The Board of Trustees’ 2014 failure to prepare an EIS for this proposed 35-acre site evidences an arbitrary and capricious practice of requiring a private--but not a public --sponsor of a re-zoning action to prepare an EIS. SEQR allows no such distinction.

69. Specifically, in 2005, the Village of Mamaroneck Board of Trustees was asked to re-zone a 2.77-acre Washingtonville site called Sheldrake Estates (locally called “Blood Brothers” after the auto salvage company that long-operated at the site.) Source: ENB notice of acceptance of Final EIS, dated 7-19-2006 shown at Exhibit 25.

70. Sheldrake Estates was located adjacent to the river, near the train station but zoned for manufacturing uses (M-1). The project sponsor requested the parcel to be re-zoned to multi-family (RM-3) for construction of 114 residential units, some of which were to be affordable. *Id.*

71. Unlike the instant matter, the Board of Trustees required the preparation of an EIS before acting on this re-zoning request.

72. Sheldrake Estates was a 2.77-acre microcosm of the impacts to be expected from the 25+ acre re-zoning action under challenge here. Both re-zoning proposals involved higher-density development close to the train station; both involved neighborhoods with narrow streets and parking constraints; both were located in flood zones; both had traffic concerns and both involved past site contamination.

73. But in the Sheldrake Estates re-zoning action, a hard look was taken through the EIS process. Traffic counts were taken and intersections were evaluated, establishing the density of traffic on Washingtonville’s very narrow one-way streets and the impacts of further development.

74. No such “hard look” at traffic impacts was taken in the Nov. 2014 Washingtonville re-zoning.

75. In the Sheldrake Estates rezoning proposal, groundwater samples were taken and analyzed but no such “hard look” was taken for the TOD re-zoning proposal.

Source: FEIS for Sheldrake Estates, p. 5-1 shown at Exhibit 26.

76. Furthermore, the Sheldrake Estates rezoning proposal discussed a variety of alternatives, including a less dense residential alternative. No alternative was considered the TOD proposal. Source: Excerpts from DEIS identifying alternatives shown at Exhibit 27.

77. If the re- zoning of the 2.77 acre Sheldrake Estates was an environmentally significant action in 2006, then the re-zoning of the 35-acre TOD Overlay District in 2014 was even more significant.

**Village of Mamaroneck failed to satisfy the high burden for a negative declaration of its rezoning action in the Washingtonville neighborhood**

78. In order for a negative declaration of environmental significance to be upheld, the Village of Mamaroneck must satisfy a three-part test showing that it “identified relevant areas of environmental concern, thoroughly analyzed them for significant adverse impacts and supported its negative determination with reasoned elaboration.” *H.O.M.E.S. v. UDC* 69 AD2d 222 (4th Dept. 1979).

79. The Village of Mamaroneck failed to meet its burden for a negative declaration with respect to related the aquifer, flooding concerns, traffic and parking.

**Aquifer**

80. The TOD study and proposed local law were finalized without recognition of the presence of the aquifer– a shocking failure to identify a relevant area of environmental concern within the TOD Study area.

81. Once the aquifer's presence was identified, it was not thoroughly analyzed. For example, the Village could not conclusively show the boundaries of the aquifer. Source: EAF Part III, p. 11: "None of the available GIS datasets accurately show the aquifer location." shown at Exhibit 13.

82. Instead of thoroughly analyzing the aquifer's boundaries and depths to understand whether foundations would intrude and displace its waters, the Village relied exclusively upon one 60-year old reading from a single well to generalize ground water levels throughout the 35-acre rezoning area.

83. A single 60-year-old data point is insufficient to describe variations in the aquifer due to consider seasonal and climate changes, variations due to topography over the entire span of the aquifer, or variations arising from use of aquifer water by commercial and residential interests.

84. For example, the 1955 well reading occurred during those years when a major Mamaroneck enterprise, Pure Foods, was actively using aquifer waters in its food processing. When Pure Foods was sold in 1988, and ceased local operations, there was a likely impact to the aquifer that has never been quantified.

85. One other piece of evidence suggests that the water table was higher than the 1955 reading. Trustee Miller stated concern about the aquifer, noting that the DEC reported the depth of the aquifer to be 5-8 feet from grade at the Hoyt Avenue Superfund site, closer than the TOD study estimated. Source: BOT Minutes of 11-24-2014 shown at Exhibit 18. See also the Site Report for ITT Sealectro at 139 Hoyt Avenue by NYS Department of Environmental Conservation shown at Exhibit 29. Another Superfund site in the industrial area adjoining Washingtonville shows the depth to ground water at 6 feet

below grade—exactly the depth below grade found in 1955. Source: NYS Department of Environmental Conservation Site Record for Former EMCA Site at 605 Center Avenue shown at Exhibit 30.

86. But even the 1955 well reading suggests cause for concern about the re-zoning proposal. The Village analysis showed that 10 to 55 percent of the TOD sites would have too little vertical separation to install conventional storm water control devices (i.e. dry wells) to help address water quality issues. Given this area involved impaired rivers, water quality treatment is important. This impact seemed to satisfy the low threshold but the Village found the impact to be not significant.

87. The Village's environmental assessment also completely ignored the aquifer's water quality. The EAF provided no information on whether the aquifer is "pure" water as it formerly was or whether it has become contaminated by problematic development. By contrast, Sheldrake Estates had been required to do groundwater testing.

88. Furthermore, options to respond to potential significant impacts related to water quality were never considered. For example, the area of the TOD zoning overlay could be altered to remove unsuitable sites that were too close to the aquifer for storm water controls. Rather than 80 parcels, perhaps only 50 would be appropriate for incentive zoning. Alternatively, development in the TOD overlay district might be regulated by precluding the placement of any underground storage tanks such as fuel tanks or even storm water infiltration devices within a prescribed vertical distance of the aquifer. Alternatively, all sites might be *required* to have green roofs that would reduce both infiltration to the aquifer and storm water runoff.



89. The Village failed to thoroughly assess the aquifer before giving its negative declaration.

### **Flooding**

90. Flooding is the second environmental impact from the re-zoning that was improperly given a negative declaration.

91. In the Washingtonville area above the aquifer, residents experience not just overland flooding from the rivers but also groundwater flooding. Residents describe sump pumps laboring continuously for days after rainstorms to keep groundwater at bay.

92. Re-development can change the incidence of flooding because new buildings must be flood-proofed or elevated to prevent them from being damaged. Flood-proofing does not reduce the total volume of flood waters in the community but rather diverts them away from the newly constructed building to other properties. Only a cumulative impact assessment could show the magnitude of this flooding diversion problem from incentivized re-development.

93. To meet its burden for a negative declaration of significance, the Village of Mamaroneck needed to model flooding from both overland and groundwater sources to understand how the cumulative anticipated new development would change the incidence of flooding in the neighborhood, particularly its effect on older buildings. No such modeling was done.

94. The only “flooding” analysis done was one showing the permitted level of impervious surfaces under the re-zoning proposal. Impervious surfaces would be allowed

to increase by at least 5 percent<sup>3</sup> more than would be allowed under existing zoning — under the hopeful assumption that a developer would remove the paved surfaces already in place. The EAF did not analyze the 43 percent increase in coverage for the RM-3 district under the re-zoning proposal — a potentially significant increase in such a flood-prone area. Source: EAF Supplemental Memo shown at Exhibit 17, p. 2.

95. The Village never considered any mitigating measures even for the increased impervious surfaces that were anticipated. Any re-development could have *required* retaining storm water on green roofs—an option that would presumably reduce overland and groundwater flooding, deter flood waters from entering the sewer system and improve water quality in the contaminated rivers. Other options might have required buildings to be elevated on piers or pilings so that floodwaters would not be dispersed by the new buildings but rather flow under them. Such alternatives were not considered.

96. Furthermore, the “Flood Mitigation Fund” that had been proffered as the community benefit to offset the TOD density incentives had morphed into a nebulous “Neighborhood Stabilization Fund” controlled by the Village Manager. The promised density compensation funds that originally were to be available to Washingtonville residents to diminish their flood risk—presumably by elevating their buildings—had become general revenue funds available to serve unspecified purposes.

97. The impacts on flooding from this redevelopment were significant but not thoroughly assessed by the Village of Mamaroneck.

---

<sup>3</sup> The printed table in the EAF Supplemental memo at Exhibit 17 p. 2 showing this analysis contains an arithmetic error that gives the wrong total in the column displaying “change in square feet of impervious surfaces under existing zoning” that was pointed out by Trustee Potok at the public hearing of 11-24-2014 (minutes of that hearing can be found at Exhibit 18).

## **Traffic and parking**

98. The Village of Mamaroneck did not meet its burden for a negative declaration of the re-zoning's impact on traffic and parking.

99. The EAF "applied the traffic generation rates surveyed at the apartment buildings located on the Hudson River waterfront near the Yonkers train station," increasing these by 25 percent to include a margin of safety. Source: Planning Memo Supplement to EAF Part III shown at Exhibit 17, p.5-6

100. Yonkers is the fourth most populous city in NY with a population ten times that of the small coastal Village of Mamaroneck.

101. A thorough assessment of traffic and parking impacts necessarily requires Village of Mamaroneck traffic and parking information. The traffic analysis should have been based on data from the Village of Mamaroneck.

102. Yet, none of the EAF traffic assessments considered the baseline state of traffic conditions in the community before the re-zoning to assess the effect of added cars on existing intersections as had been required for the much more-limited re-zoning action of Sheldrake Estates.

103. The 2006 DEIS and FEIS for Sheldrake Estates showed a failed intersection at Waverly and Plaza Avenues and a D-rated intersection at Waverly and Mamaroneck Avenues with more than 4000 cars daily traveling narrow, one-way Waverly Avenue. "Existing Conditions" and "No Build Condition Level of Service Summary" shown at Exhibit 23.

104. It is unreasonable to conclude that increased numbers of Washingtonville households since 2006 combined with an increase in density from re-zoning would have

“small to no impact” on traffic when existing intersections were already classified as failed or near-failing. Source: Excerpt from Sheldrake Estates DEIS showing “Existing Conditions” and “No Build Condition Level of Service Summary” shown at Exhibit 23.

105. Similarly, parking impacts were evaluated using Yonkers data that could never be considered appropriate for a small coastal village such as Mamaroneck.

106. It is arbitrary and capricious for the Village of Mamaroneck to require project sponsors to perform traffic and parking analysis using Village of Mamaroneck data, and then itself rely on traffic and parking estimates from elsewhere in the county.

#### **NON-COMPLIANCE WITH VILLAGE LAW REQUIREMENTS FOR INCENTIVE ZONING**

107. Petitioners repeat and re-allege each and every allegation set forth in Paragraphs 1 through 106 as though repeated here.

109. Local Law 18-2014 was an incentive zoning scheme enacted without complying with four express requirements of Village Law with respect to (a) preparation of a GEIS [§7-703.3d], (b) the required analysis of affordable housing impacts [§7-703.3g], (c) establishing a trust fund controlled by the Board of Trustees for cash payments in lieu of compensatory community benefits [§7-703.3h]; and (d) consistency with the Village comprehensive plan.

110. First, where an incentive zoning scheme may have a significant effect on the environment, Village Law requires that a GEIS be prepared with costs allocated to future applicants for the incentives or bonuses:

A generic environmental impact statement pursuant to article eight of the environmental conservation law and regulations adopted by the department of environmental conservation *shall be prepared* by the village board of trustees for any zoning district in which the granting of incentives or bonuses *may have*

*a significant effect on the environment before any such district is designated*, and such statement shall be supplemented from time to time by the village board of trustees if there are material changes in circumstances that may result in significant adverse impacts. Any zoning law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the costs of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law. Village Law §7-703.3d. emphasis added.

108. Local Law 18-2014 was adopted without preparation of a GEIS, as required by Village Law, and without provisions for cost allocation.

109. Second, the Village of Mamaroneck never assessed the incentive zoning provisions' effects on affordable housing:

Prior to the adoption or amendment of the zoning local law pursuant to this section to establish a system of zoning incentives or bonuses *the village board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the village*. Further, the village board of trustees shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the village has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section. Village Law §7-703.3g.

110. Third, Local Law 18-2014 established a "Neighborhood Stabilization Fund" that did not comply with Village Law §7-703.3h insofar as it was neither a trust fund nor controlled by the Village Board of Trustees. [Village Law §7-703.3h: "If cash is to be accepted in lieu of other community benefit or amenity, provisions shall be made for such

sum to be deposited in a trust fund to be used by the village board of trustees exclusively for specific community benefits authorized by the village board of trustees.”]

111. Fourth, Local Law 18-2014 deviated from the recommendations of the 2012 Village of Mamaroneck Comprehensive Plan, a violation of Village Law §7-703.2 requiring that “[t]he system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section 7-704 of this article.”

112. The 2012 Village of Mamaroneck Comprehensive Plan was adopted the same night that the TOD grant application was authorized. Incentive zoning to promote transit-oriented development was not discussed in the comprehensive plan.

113. The incentive zoning scheme fails to accord with numerous recommendations of the comprehensive plan—either it fails to implement comprehensive plan recommendations made for the Washingtonville area or it makes zoning changes different than those proposed by the comprehensive plan.

114. For example, the TOD Study made a key assumption that there would be no transfer of private property to public ownership. But property acquisition is a key flood mitigation strategy of our planning efforts. In particular, the comprehensive plan recommended that the Village “develop strategies to acquire private lands adjacent to the Sheldrake River as part of the Village’s open space network and for flood mitigation” and “explore the potential and feasibility for a Village-wide system of riverwalks to improve access and public visibility of the Village’s waterways.” Source: Comprehensive Plan, EAF at p.3 shown at Exhibit 28

115. Local Law 18-2014 also re-zoned Washingtonville parcels in a way different than contemplated by the comprehensive plan. Upon information and belief, only the

Bilotta parcel [one of the 80 TOD total] was re-zoned to match the recommendations of the 2012 comprehensive plan. Source: EAF for Comprehensive Plan at p.1 shown at Exhibit 28.

116. For lots other than the Bilotta parcel, the mismatches between the incentive zoning scheme and the comprehensive plan are many.

117. For example, Local Law 18-2014 imposed C-1 zoning and the overlay district on Mamaroneck Avenue properties north of the train station but left out a Nostrand and Mamaroneck Avenue property that the comprehensive plan expressly recommended to be re-zoned as C-1. [“Review the possibility of rezoning the C-1/2F zone on the north side of Mamaroneck Avenue at Nostrand Avenue to a pure C-1 to allow for different uses and preclude commercial conflict.”] EAF for Comprehensive Plan at p.2, #9 shown at Exhibit 28.

118. Most of Hoyt Avenue was left out of TOD consideration despite its proximity to the train station; those Hoyt Avenue properties closest to Mamaroneck Avenue were re-zoned to commercial uses with the TOD overlay (rather than residential as the comprehensive plan suggested). [“Hoyt Avenue has close proximity to the train station and the Village’s downtown, similar to other recent high-density residential developments.”] EAF for Comprehensive Plan at p.2, #10 shown at Exhibit 28.

119. Local Law 18-2014 re-zoned the Mamaroneck Avenue area C-1 with the TOD overlay allowing density bonuses rather than following the comprehensive plan recommendation to extend the central business district: “Explore the potential to rezone sections of Mamaroneck Avenue in the vicinity of the train station to C-2, to allow higher density mixed-use development. This is consistent to increase downtown residential

population, increasing local buying power and supporting new local businesses and improved retail.” Also recommended was to “amend the C-2 regulations to require retail on the ground floor and limit residential uses to the second and higher floors.” Source: Comprehensive Plan EAF at p.2 #11 and p.1 #6 shown as Exhibit 28.

120. The Comprehensive Plan made no recommendations to relax the zoning parameters for the RM-3 district, as was done in Public Law 18-2004.

121. Local Law 18-2014’s material differences from the 2012 comprehensive plan’s recommendations make this re-zoning a significant action under 9 NYCRR §617.7(c)(iv) as well as a violation of Village Law § 7-703.

122. The only lawful route to adopt the incentive zoning scheme of Proposed Local Law 18-2014 was to simultaneously amend the Village of Mamaroneck Comprehensive Plan and prepare a GEIS.

#### **RELIEF REQUESTED**

123. Petitioners seek annulment or revocation of Local Law 18-2014 for failure to comply with the substantive and procedural requirements of SEQRA and of Village Law provisions governing incentive zoning. *Matter of Tri-County Taxpayers v. Town Board of Queensbury*, 55 NY2d 41 (Ct of Appeals, 1982).

WHEREFORE Petitioners request that this court annul, revoke or otherwise reverse the enactment of Local Law 18-2014 and for other such relief as the court may deem appropriate.

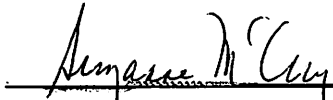
Mamaroneck, NY  
March 7, 2015



**OATH OF TRUTH**

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

SUZANNE MCCRORY, being duly sworn, says that she is a Petitioner in the within action, that she has read the foregoing Petition and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

  
\_\_\_\_\_  
SUZANNE MCCRORY  
Petitioner Pro Se  
720 The Crescent  
Mamaroneck, NY 10543  
914 698-5686

Sworn to before me this  
7<sup>th</sup> day of March 2015

  
\_\_\_\_\_  
NOTARY PUBLIC

DONALD GOLDSMITH  
Notary Public, State of New York  
No. 01GO5021034  
Qualified in Westchester County  
Commission Expires Dec. 6, 2017

**CERTIFICATION**

**I, SUZANNE MCCRORY, HEREBY CERTIFY**, under penalty of perjury, to the best of my knowledge and upon information and belief, formed after an inquiry reasonable under the circumstances, that the foregoing Petition Pursuant to CPLR 5531 is not frivolous pursuant to Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Dated:  
March 7, 2015

  
\_\_\_\_\_  
SUZANNE MCCRORY

**OATH OF TRUTH**

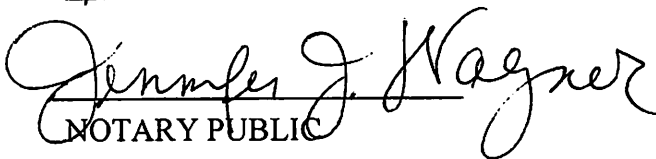
STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF WESTCHESTER)

GINA VON EIFF, being duly sworn, says that she is a Petitioner in the within action, that she has read the foregoing Petition and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.



GINA VON EIFF  
Petitioner Pro Se  
220 Jefferson Avenue  
Mamaroneck, NY 10543  
914 698-2450

Sworn to before me this  
9<sup>th</sup> day of March, 2015

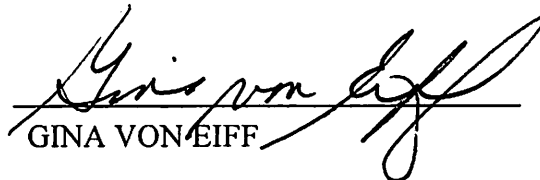
  
NOTARY PUBLIC

**JENNIFER J. WAGNER**  
Notary Public, State of New York  
No. 01WA6290927  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires October 15, 2017

**CERTIFICATION**

**I, GINA VON EIFF, HEREBY CERTIFY**, under penalty of perjury, to the best of my knowledge and upon information and belief, formed after an inquiry reasonable under the circumstances, that the foregoing Petition Pursuant to CPLR 5531 is not frivolous pursuant to Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Dated:  
March 9, 2015

  
GINA VON EIFF