SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ALBANY

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IN THE MATTER OF THE APPLICATION OF

TOWN OF BLENHEIM, TOWN OF CARLISLE, TOWN OF COBLESKILL, TOWN OF CONESVILLE, TOWN OF ESPERANCE, TOWN OF JEFFERSON, TOWN OF MIDDLEBURGH, TOWN OF SHARON, TOWN OF SUMMIT, DONALD AIREY, as Town Supervisor for the Town of Blenheim, AND CYNTHIA A. WEST,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") and a Declaratory Judgment Pursuant to Section 3001 of the CPLR

- against -

AMANDA HILLER, in her official capacity as the Acting Tax Commissioner and General Counsel of the New York State Department of Taxation, and the NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

Respondents-Defendants.

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ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

Index No.: 903157-22

Assigned Judge:
Hon.

PLEASE TAKE NOTICE, that upon reading the annexed petitioner of DYLAN C HARRIS, ESQ. dated April 22, 2022, of LEWIS & GREER, P.C., attorneys for the Petitioners-Plaintiffs, TOWN OF BLENHEIM, TOWN OF CARLISLE, TOWN OF COBLESKILL, TOWN OF CONESVILLE, TOWN OF ESPERANCE, TOWN OF JEFFERSON, TOWN OF MIDDLEBURGH, TOWN OF SHARON, TOWN OF SUMMIT, DONALD AIREY, as Town Supervisor for the Town of Blenheim, and CYNTHIA A. WEST, (hereinafter "Plaintiffs") and the annexed exhibits thereto, sufficient cause appearing therefrom, it is hereby:

ORDERED, that the Respondents-Defendants ("Respondents") AMANDA HILLER, in her official capacity as the Acting Tax Commissioner and General Counsel of the New York State Department of Taxation, and the NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE ("DTF"), by their attorneys show cause at an IAS Term of this Court before Hon. TBD on the 27th day of May, 2022, at TBD a.m./p.m. or as soon as counsel can be heard, at the Albany County Courthouse, Room —, at 16 Eagle Street, Albany, New York, 12207, why the application of the Plaintiffs for an order for the following relief should not be granted pursuant to CPLR §§ 6301, 7803, 7805, and 7806:

a. Preliminarily enjoining, restraining, and precluding the DTF and other Respondents, their agents, officers, contractors, employees, or affiliates from implementing, further developing or amending, and directing others including all real property assessors and assessing units in New York State from implementing or employing the final wind and solar appraisal model ("Model") published online by DTF on or about January 6, 2022;

b. Preliminarily enjoining, restraining, and precluding assessors and assessing units from being bound to use and employ the Model published online by DTF on or about January 6, 2022;

c. Granting Plaintiffs such other and further relief as the Court may deem just and equitable; and it is further,

ORDERED, that pending the hearing of Plaintiffs' application for a preliminary injunction, the Respondents and their agents, officers, contractors, employees, or affiliates, and all others acting on its behalf are enjoined from taking any actions, official or otherwise, to implement, or to direct or induce the implementation of the Model by DTF or any assessor or assessing unit

in New York State, as ~~doing so would render the judgment ineffectua~~ the equities balance in platiffs' favor l, and as Plaintiffs are likely to succeed on the merits in this matter which would entitle them to a judgment restraining the Respondents from the implementation or continued use of the Model, which if implemented or used during the pendency of this proceeding will cause injury, loss, and damage unless restrained;

ORDERED, that a verified answer and answering affidavits, if any, shall be served at least seven (7) days before the return date of this motion; and it is further,

ORDERED, that service of a copy of this order to show cause, verified petition, and the papers on which it is granted shall be made upon Respondents by certified mail return receipt requested or overnight mail on or before April 29, 2022, and shall constitute good and sufficient notice of the relief sought herein.

ENTER:

Hon. Christina L. Ryba J.S.C.
Supreme Court Justice

Dated: April 29, 2022
Albany, New York

* personal appearances to be determined by assigned Judge *

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of TOWN OF BLENHEIM, TOWN OF CARLISLE, TOWN OF COBLESKILL, TOWN OF CONESVILLE, TOWN OF ESPERANCE, TOWN OF JEFFERSON, TOWN OF MIDDLEBURGH, TOWN OF SHARON, TOWN OF SUMMIT, DONALD AIREY, as Town Supervisor for the Town of Blenheim, AND CYNTHIA A. WEST

Petitioners,

-against-

AMANDA HILLER, in her official capacity as the Acting Tax Commissioner and General Counsel of the New York State Department of Taxation, and the NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE,

Respondents.

DECISION & ORDER
Index No. 903157-22

APPEARANCES:

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RYBA, J.,

In this hybrid proceeding pursuant to CPLR Article 78 and action for a declaratory judgment, petitioners challenge the assessment model for wind and solar energy producing real property ("the Model") established by respondent New York State Department of Taxation and Finance pursuant to Real Property Tax Law (RPTL) § 575-b, claiming that the Model was not lawfully promulgated pursuant to the

procedural requirements of the State Administrative Procedure Act ("SAPA") and the New York State Constitution and is otherwise arbitrary, capricious and irrational. Petitioners now seek a temporary restraining order ("TRO") enjoining respondents from taking any actions to implement the Model pending the outcome of this proceeding. The Court heard oral argument via Teams with regard to petitioners' request for a TRO on April 28, 2022, at which time respondents opposed the request for a TRO on the ground that petitioners failed to make the showing required to warrant temporary relief.

A TRO may be granted "where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had " (CPLR 6301). In order to prevail in obtaining provisional relief in the form of a TRO, petitioners are required to demonstrate a likelihood of success on the underlying merits, irreparable harm in the absence of a temporary injunction, and a balance of equities in their favor (see, Da v New York City Dept. Of Parks and Recreation, 84 AD3d 596 [2011]; Kuttner v Cuomo, 147 AD2d 215 [1989], aff'd 75 NY2d 596 [1990]). In rendering its determination, the Court must be mindful that the purpose of temporary relief is not to reach a final decision on the underlying merits, but rather to preserve the status quo until a final decision on the merits may be rendered in the future (see, Gambar Enterprises, Inc. v. Kelly Servs., Inc., 69 A.D.2d 297, 306 [1979]). Therefore, temporary relief may be granted where it is deemed necessary to maintain the status quo, even if the movant's success on the merits cannot be conclusively determined at the time (see, Mr. Natural, Inc. v Unadulterated Food Products, Inc., 152 AD2d 729, 730 [1989]). Notably, the decision of whether to issue a TRO rests in the trial court's sound discretion (see, Cooperstown Capital, LLC v Patton, 60 AD3d 1251, 1252 [2009]; Schweizer v Town of Smithtown, 19 AD3d 682, 682 [2005]; Honeywell Intl. v Freedman & Son, 307 AD2d 518, 519 [2003]).

Initially, the Court is persuaded that petitioners have demonstrated a likelihood of success on the merits with regard to their claim that the Model constitutes a rule or regulation which was not adopted in compliance with the procedural requirements established by SAPA and the NY State Constitution. Article IV, § 8 of the New York State Constitution mandates that "[n]o rule or regulation made by any state department * * * shall be effective until it is filed in the office of the department of state." SAPA § 102(2)(a)(i), defines a "rule" as "the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or * * * the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof." Pursuant to SAPA § 202(8), every rule or regulation proposed by an agency must be promulgated "in substantial compliance" with SAPA §§ 202 (setting forth general procedures for rulemaking), 202–a (requiring consideration of the regulatory impact of the proposed rule), and 202–b (requiring consideration of regulatory flexibility for small businesses).

While petitioners allege that the Model constitutes a rule or regulation subject to the foregoing requirements, respondents counter that the Model is merely interpretative or explanatory of the statute pursuant to which it was adopted, i.e. RPTL § 575-b, and that therefore adherence to SAPA and the State Constitution was not required. However, courts have defined a "rule" in pertinent part as "a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers" (Matter of Roman Catholic Diocese of Albany v New York State Dept. of Health, 66 NY2d 948, 951 [1985]; Med. Soc'y of State v. Serio, 100 NY2d 854, 869 [2003]). Mere guidance, on the other hand, does not establish substantive standards but merely explains or interprets an already existing standard (see, Matter of Council fo the City of New York v Department of Homeless Servs. of the City of NY, 22 NY3d 150, 156 [2013]). Here, as the Model

promulgated by respondents appears to establish "a rigid, numerical policy invariably applied across-the-board to all claimants without regard to individualized circumstances or mitigating factors", the Court finds that petitioners will likely succeed on their claim that the Model is a "rule" subject to the procedural requirements of SAPA and the State Constitution (see, Schwartfigure v Hartnett, 83 NY2d 296, 301–02 [1994]; Matter of Roman Catholic Diocese v New York State Dept. of Health, 66 NY2d at 951 [1985]).

Turning to the irreparable harm prong of the Court's analysis, "[w]hat constitutes an imminent threat of irreparable injury * * * will depend not only upon the facts of the individual case but also upon the discretion of the court" (7A Weinstein–Korn–Miller, NY Civ. Prac. para. 6301.15, at 63–45–63–46; 46) see, Samuelsen v Yassky, 29 Misc. 3d 840, 848 [2010]). As a general rule, when an alleged violation of the constitution is asserted, no further showing of irreparable injury is required (see. Mitchell v Cuomo, 748 F2d 804, 806 [2d Cir. 1984]). In addition, "[a]n injury is irreparable when it cannot be adequately compensated for in damages, or when there is no certain pecuniary standard for the measurement of damages" (67 NY Jur. 2d. Injunctions section 18, citing Poling Transp. Corp. v A & P Tanker Corp., 84 AD2d 796 [1981]; Haulage Enterprises Corp. v Hempstead Resources Recovery Corp., 74 AD2d 863 [1980]). Notably, petitioners are not required to demonstrate that irreparable harm is certain in the absence of an injunction, but rather only that there is a likely prospect or potential for irreparable harm (see, Kings Mall, LLC. v Wenk, 42 AD3d 623, 625 [2007]; Council of the City of New York v Giuliani, 248 AD2d 1, 3 [1998]). Inasmuch the Court concludes that petitioners' proof is sufficient to demonstrate that they will likely succeed on their claim that respondents promulgated the Model in violation of the State Constitution, the Court also finds that irreparable harm will likely result if a TRO is not granted. Moreover,

petitioners contend that implementation of the Model will result in decreased tax revenue and a corresponding reduction of municipal services available to the affected communities. Due to the difficulty of determinating the manner and degree of such reductions in services, how many community members may be affected, and the nature of the damages that they may suffer as a result, the Court cannot conclude that monetary damages may be measurable or otherwise sufficient to provide adequate compensation (Kings Mall, LLC. v Wenk, 42 AD3d at 625 [2007). Accordingly, the Court finds that petitioners have established the likelihood of irreparable harm if a TRO is not granted.

Finally balancing of the equities of this matter, the temporary injunction sought is prohibitory in nature and merely operates to maintain the status quo pending a full hearing on the merits (see, All Am. Crane Serv. Inc. v Omran, 58 AD3d 467, 468 [2009]; 360 W. 11th LLC v ACG Credit Co. II, LLC, 46 AD3d 367[2007]). Petitioners have demonstrated that harm would likely result if the Model is implemented during the pendency of this action, while on the other hand, respondents have failed to show that temporarily delaying enforcement of the Model will result in any significant prejudice to them. Accordingly, the equities balance in favor of retaining the status quo during the pendency of this action through the issuance of a TRO.

For the foregoing reasons, it is

ORDERED that the application for a temporarily restraining order is granted.

Dated: April 29, 2022

HON. CHRISTINA L. RYBA
Supreme Court Justice