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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

2011 OCT 21 PM 3:39

ANSCHUTZ EXPLORATION CORPORATION,

*Petitioner-Plaintiff,*

For a Judgment Pursuant to Articles 78 and 3001 of the  
Civil Practice Law and Rules,

*-against-*

TOWN OF DRYDEN and TOWN OF DRYDEN TOWN  
BOARD,

*Respondents-Defendants.*

AFFIDAVIT OF  
MARY ANN SUMNER

Index No. 2011-0902

RJI No. 2011-0499-M

Hon. Phillip R. Rumsey

STATE OF NEW YORK: SS:  
COUNTY OF TOMPKINS:

Mary Ann Sumner, being duly sworn, deposes and says as follows:

1. I am the town supervisor for the Town of Dryden, Tompkins County, New York, and have held this office since January 1, 2008. Prior to being elected supervisor, I was a town board member.
2. Since 2009 many residents of the town have appeared at town board meetings and requested that the town board ban slickwater hydrofracking in the town. On April 20, 2011 a petition with 1,594 town residents' signatures was presented to the town board requesting such a ban.
3. Following the presentation of the petition, the town board undertook to study the request.
4. On June 15, 2011, the proposed Zoning Amendment was introduced and a public hearing scheduled for July 20, 2011.
5. On July 20, 2011 the town board held a public hearing on the proposed Amendment.

The town board heard 73 speakers for and against the proposed Amendment (See Volume I of the record.)

6. The town board accepted comments on the issue both before and after the public hearing.

7. On August 2, 2011 the town board met in a special meeting to deliberate adoption of the proposed Amendment.

8. The public hearing and special town board meeting minutes and the pre- and post-hearing comments are found in the three volumes of the record filed in this matter.

9. Following a discussion the town board voted unanimously to adopt the Resolution and the Amendment to the Zoning Ordinance.

10. Following publication of a Notice of Adoption, the Amendment became effective August 19, 2011.

11. The Town of Dryden first adopted a Zoning Ordinance in 1969.

12. Upon information and belief, at no time since the town adopted its Zoning Ordinance has the use of land for a natural gas well been an allowed use in the town.

13. The Resolution adopted on August 2, 2011 reaffirmed this position and amended the Zoning Ordinance to clarify the then existing prohibition now embodied in the Zoning Amendment.

14. As can be seen from the record filed in this matter, there was extensive interest in this issue and the town board took its responsibilities very seriously.

15. The overwhelming majority of those who spoke at the public hearing and/or submitted statements were in favor of the Zoning Amendment.

16. The Zoning Amendment does not relate to the regulation of the oil, gas and solution mining industries, but relates to an entirely different subject matter: land use.

17. The Zoning Amendment reflects the judgment of local elected officials as to what

land uses are intended to be prohibited based on the 2005 Comprehensive Plan and historical land use regulations embodied in the Zoning Ordinance since 1969.

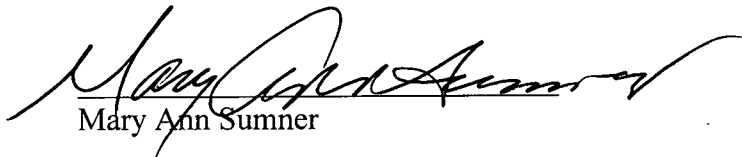
18. The Zoning Amendments do not address areas regulated by ECL Article 23, Title 3 and the Department of Environmental Conservation regulations found in 6 NYCRR, such as requirements related to applications, plans, financial security, well spacing requirements, access road specifications, location of well pads, issuance or revocation of permits, reports, notices, record keeping, operating practices, including well construction and operation, well closure, plugging, re-plugging, inspections, private well testing, specifications for well cement, etc. Rather, the Zoning Amendment makes it clear that natural gas drilling in the Town of Dryden is prohibited under the zoning power of the town.

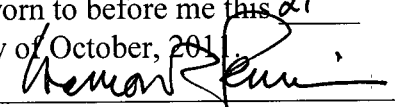
19. Upon information and belief, prior to the receipt of a Notice of Determination of Non-Significance received from DEC in December 2009 in connection with proposed Cook-1 natural gas well, the town had no prior notice of any natural gas wells being proposed or drilled in the town until after the fact.

20. Not having received prior notice of a complete application or of intent to issue a permit, the town had no prior opportunity to object to such prohibited use of the land.

21. DEC is not a land use agency and that function is left to cities, villages and towns.

22. The Zoning Amendment is a valid excuse of the power to regulate land use in the town pursuant to Town Law 261.

  
Mary Ann Sumner

Sworn to before me this 21<sup>st</sup>  
day of October, 2011  
  
\_\_\_\_\_  
Notary Public

MAHLON R. PERKINS  
NOTARY PUBLIC, State of New York  
No. 4605632  
Qualified in Tompkins County  
Commission Expires 6/30/2014