

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

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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.*

VERIFIED ANSWER

Index No. 2011-0902

RJI No. 2011-0499-M

Hon. Phillip R. Rumsey

Respondents-Defendants, as and for the answer to the Verified Petition and Complaint, respectfully allege as follows with respect to the numbered paragraphs of the Verified Petition and Complaint:

Paragraph 1. Admit the allegations of Paragraph 1 but state that the correct title of the "Resolution" is "Resolution in Support of Adopting Amendments to the Town of Dryden Zoning Ordinance Clarifying the Town's Prohibition of Natural Gas Exploration and Extraction." A copy of the Resolution is found in Volume I of the record.

Paragraph 2. Admit.

Paragraph 3. Admit.

Paragraph 4. Admit the purpose of the Resolution and deny the rest of the allegations of this paragraph.

Paragraph 5. Lack knowledge or information sufficient to form a belief as to the allegations of this paragraph.

Paragraph 6. Admit that Anschutz is a driller and developer of natural gas wells and the allegations as to its status and principal place of business, and lack knowledge or information sufficient to form a belief as to the rest of the allegations of this paragraph.

Paragraph 7. Admit that Anschutz is prevented from using the surface of land in the Town of Dryden to develop its leased acreage, and lack knowledge or information sufficient to form a belief as to the rest of the allegations of this paragraph.

Paragraph 8. Admit that the Town of Dryden is a New York municipal corporation in Tompkins County.

Paragraph 9. Admit, except states that its decisions and the Zoning Ordinance does not affect the villages of Dryden and Freeville.

Paragraph 10. Admit.

Paragraph 11. Admit that this Court has personal and subject matter jurisdiction of the Respondents-Defendants.

Paragraph 12. Admit.

Paragraph 13. Admit the publication of a Notice of Adoption of Amendments to the Zoning Ordinance on August 9, 2011.

Paragraph 14. Deny that the Resolution took effect on August 19, 2011, and state that the Resolution took effect immediately.

Paragraph 15. Admit that Zoning Amendments prohibit the activities stated.

Paragraph 16. Admit that Zoning Amendments deem permits without vested rights invalid.

Paragraph 17. Admit the substance of the quoted material.

Paragraph 18. Admit.

Paragraph 19. Admit only so much of this paragraph as has been heretofore been admitted.

Paragraph 20. Deny.

Paragraph 21. Admit.

Paragraph 22. Deny.

Paragraph 23. Lack knowledge or information sufficient to form a belief as to whether the 1992 GEIS prepared by an administrative agency confirms the intent of the Legislature.

Paragraph 24. Deny.

Paragraph 25. Admit.

Paragraph 26. Deny.

Paragraph 27. Admit only so much of this paragraph as has heretofore been admitted.

Paragraph 28. Deny.

Paragraph 29. Deny the first sentence of this paragraph that regulation in the form of zoning is preempted by Article 23 of the Environmental Conservation Law (ECL). Admit that among the declaration of policy in ECL 23-0301 are the quoted excerpts.

Paragraph 30. Admit.

Paragraph 31. Deny that the Zoning Amendments prohibit the exploration and development of oil and gas in the entire state and allege the effect of the Zoning Amendment and the Zoning Ordinance is limited to the Town of Dryden, exclusive of the villages of Dryden and Freeville.

Paragraph 32. Deny.

Paragraph 33. Deny.

Paragraph 34. Admit.

Paragraph 35. Deny.

Paragraph 36. Admit only so much of this paragraph as has been heretofore been admitted.

Paragraph 37. Deny the allegation that the Respondents-Defendants have acted in violation of Anschutz's rights.

Paragraph 38. Deny.

Paragraph 39. Admit.

Paragraph 40. Respondents-Defendants deny each and every allegation of the Verified Petition and Complaint not herein specifically admitted.

**AS AND FOR A COMPLETE DEFENSE  
TO THE CPLR ARTICLE 78 PROCEEDING**

41. The Resolution adopts an amendment to the Zoning Ordinance (The Petitioner-Plaintiff so alleges in the Verified Petition and Complaint and Respondents-Defendants admit those allegations.)

42. The adoption of the Zoning Amendments is a legislative act given its general applicability, indefinite duration and formal adoption.

43. A challenge to a legislative act cannot be pursued in a CPLR Article 78 proceeding.

44. That part of the Verified Petition and Complaint which seeks judgment pursuant to CPLR Article 78 should be dismissed.

### **AS AND FOR A SECOND DEFENSE**

45. The Zoning Amendments confirm what have been the zoning regulations in the Town of Dryden since the original Zoning Ordinance was adopted in 1969.

46. At no time since 1969 has a heavy industry, outdoor factory or natural gas drilling been a permitted use of land in the Town of Dryden.

47. The Zoning Amendments do not relate to the regulation of the actual operation and process of oil and gas mining and as such is not in conflict with, or preempted by, ECL Article 23.

### **AS AND FOR A THIRD DEFENSE**

48. Respondents-Defendants repeat and reallege paragraphs 45-47 as if fully set forth herein.

49. The Zoning Amendment does not relate to the regulation of the oil and gas industry but to an entirely different subject matter and purpose, to wit: land use control.

### **AS AND FOR A FOURTH DEFENSE**

50. Respondents-Defendants repeat and reallege paragraphs 45-49 as if fully set forth herein.

51. Statute of Local Government 10(b) grants to the town the power to adopt, amend and repeal zoning regulations. Town Law 261 provides that for the purpose of promoting the

health, safety, morals, or the general welfare of the community the Town Board is empowered by ordinance to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes.

52. The power to adopt and amend zoning regulations is the power to regulate the use of land within the town.

53. The New York State Department of Environmental Conservation (DEC) regulates the granting of drilling permits and well siting, including the drilling, casing, operation, plugging and re-plugging of wells and reclamation of surrounding land, not whether the use of land for such purposes is permitted under local land use regulations.

54. DEC is not a land use agency and the regulatory scheme in ECL Article 23, Title 3 does not address land use reserved to local governments.

55. The power to regulate land use through the zoning power has been delegated to the Town.

56. The power of the town to regulate the use of land is not preempted or superseded by ECL 23-0303(2).

#### **AS AND FOR A FIFTH DEFENSE**

57. Respondents-Defendants repeat and reallege paragraphs 45-56 as if fully set forth herein.

58. The Zoning Amendments do not directly regulate the oil and gas industry since they regulate land use generally and as such have only an incidental effect on the oil and gas industry.

**AS AND FOR A SIXTH DEFENSE**

59. Respondents-Defendants repeat and reallege paragraphs 45-58 as if fully set forth herein.

60. The enactment of the Zoning Amendments was a legislative act.

61. As a legislative act, the Zoning Amendments are entitled to a strong presumption of constitutionality and validity, rebuttable only upon a demonstration of unconstitutionality beyond a reasonable doubt.

62. Petitioner-Plaintiff has failed to rebut the presumption of validity and constitutionality.

**AS AND FOR A DEFENSE TO THE THIRD CLAIM  
FOR RELIEF AND CAUSE OF ACTION (INJUNCTION)**

63. Respondents-Defendants repeat and reallege paragraphs 45-62 as if fully set forth herein.

64. Petitioner-Plaintiff has no DEC permits to drill any natural gas wells in the Town of Dryden.


65. Therefore, with respect to this claim and cause of action, Petitioner-Plaintiff does not have standing to request an injunction.

66. Petitioner-Plaintiff is not irreparably damaged since it is only prohibited from using land in the Town of Dryden for natural gas exploration and extraction. Petitioner-Plaintiff

is not prohibited from obtaining oil and gas from sub-surface formations underlying the land in the Town of Dryden.

WHEREFORE, Respondents-Defendants respectfully request that the Petition which requests relief under CPLR Article 78 be dismissed and that the Court grant the Respondents-Defendants judgment declaring the Amendments to the Zoning Ordinance effective, valid and constitutional, and that the Respondents-Defendants be awarded their costs and disbursements.

Dated October 21, 2011

  
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MAHLON R. PERKINS, P.C.  
Attorneys for Respondents-Defendants  
11 South Street  
P. O. Box 27  
Dryden, New York 13053



VERIFICATION

STATE OF NEW YORK: SS:  
COUNTY OF TOMPKINS:

MARY ANN SUMNER being duly sworn, deposes and says that she is the Town Supervisor and a Respondent-Defendant in the within matter; that deponent has read the foregoing Verified Answer and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matter deponent believes it to be true.

  
MARY ANN SUMNER

Sworn to before me this 21st  
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