

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In The Matter Of The Application Of

SENECA MEADOWS, INC.

Petitioner-Plaintiff,

- vs -

TOWN OF SENECA FALLS and
TOWN OF SENECA FALLS TOWN BOARD

Respondents-Defendants,

For a judgment pursuant to Article 78 of the Civil
Practice Laws and Rules and CPLR 3001.

AFFIDAVIT OF KYLE BLACK

Index No. 51652

Hon. Daniel J. Doyle

STATE OF NEW YORK)
) SS:
COUNTY OF SENECA)

KYLE BLACK, being duly sworn deposes and says:

1. I am a District Manager for Petitioner-Plaintiff Seneca Meadows, Inc. ("SMI") in the above-captioned action. I submit this Affirmation in support of SMI's Verified Petition-Complaint (the "Petition" or "Pet.") in this matter.

2. Except as where stated to be based upon information and belief, the basis for my knowledge as to the matters alleged herein is my personal knowledge and/or the contents of my files, and as to those matters stated to be based upon information and belief, I believe them to be true.

INTRODUCTION

3. SMI operates a solid waste management facility at property it owns in the Town of Seneca Falls (the "Town"), located at 1786 Salcman Road, Waterloo, New York 13165 the "Facility").

4. SMI's Facility is the only such facility in the Town.

5. SMI operates the Facility pursuant to permits issued by the New York State Department of Environmental Conservation (the "DEC") and the Town as well as a Host Community Agreement with the Town.

6. SMI's operations are heavily regulated by State and Federal law, DEC rules and regulations, and the Town's own Town Code.

7. SMI has had lawfully issued permits from DEC and the Town for decades. SMI spent hundreds of thousands of dollars acquiring the necessary permits to site its waste management facility in the Town.

8. Although SMI has operated its waste management facility in the Town for several decades, and since 1998 pursuant to a Host Community Agreement with the Town (which was amended in 2007), it has faced strong opposition from a vocal minority of community members intent on shutting down the Facility.

9. Waterloo Containers, a business directly across the street from SMI's Facility, has been one of SMI's most vocal critics over the years and a strong supporter of those community members opposed to SMI's existence.

10. Waterloo Containers and its owners, including former Town Board member Annette Lutz, have long wanted to shut down SMI the Facility.

11. For instance, Ms. Lutz regularly and openly demonstrated her actual bias toward SMI in public hearings by blaming the Facility for her health conditions, disparaging SMI, and calling for SMI's operation to be shut down.

12. In particular, Ms. Lutz personally attended and helped organize various events for the sole purpose of opposing the operations of SMI.

13. At a public hearing during discussions about SMI's operations on August 10, 2017, I observed Ms. Lutz claim that following a diagnosis of Crohn's Disease in 2005 her doctors told her "that a major factor in this disease is environmental, that is my environment was most likely the cause for my body coming down with Crohn's. And that environment was the dump." Ms. Lutz added that in 2011 she "was hit with another health issue, stage 3 breast cancer. I have endured a double mastectomy, chemotherapy, radiation. Was it sheer luck that I was hit with a double whammy?"

14. At that same public hearing, I observed as Ms. Lutz disparaged SMI and argued that SMI's operations should be shut down. She stridently urged her fellow citizens to "learn from past disasters such as the Love Canal, the central landfill fire or Flint, Michigan. Shut this nightmare down before something just as, if not more, horrific happens here or will you kowtow to this multibillion dollar company that is not even based in New York State and only cares about how high their mountains and bank accounts can get and doesn't care about those of us who live here and [are] affected by their greed."

15. Indeed, Waterloo Containers' attorney, Doug Zamelis, Esq., first introduced the concept of passing a law prohibiting SMI's operations when, during an April 2016 Town Board meeting, I observed Mr. Zamelis provide the Town Board with a draft proposed local law that would ban solid waste management facilities in the Town and restrict the operation of existing

solid waste management facilities, of which SMI's Facility was and still is the only one. (*See* Exhibit A to the Attorney Affirmation of Scott M. Turner, dated November 22, 2019 (the "Turner Aff.") at 2.)

16. The following month, I observed as Town Board Member and Waterloo Container co-owner Annette Lutz officially introduced Mr. Zamelis' proposed law at the Town Board's May 3, 2016 meeting as "Local Law #3 of 2016, Town of Seneca Falls Disposal Law" (as proposed and adopted, the "Local Law").¹ (*See* Turner Aff. Ex. C at 6.)

17. At Ms. Lutz's recommendation, and likely because she was in a hurry to pass the Local Law, the Town Board scheduled a public hearing on the first draft of the Local Law for June 7, 2016—only 35 days after it was initially made available to the public. (*See id.* at 9.)

18. The Local Law was next discussed during a public forum held on September 28, 2016. I attended the September 28 public forum, along with other representatives of SMI, and provided testimony demonstrating that the factual and technical Findings contained in the proposed Local Law were not factually or scientifically supported or accurate.

19. Upon information and belief, following the September 28 public forum, the Local Law was not discussed again at any Town Board meetings until Ms. Lutz re-introduced the topic at the Town Board's November 10, 2016 meeting. (*See* Turner Aff. Ex. C at 1-2.)

20. Only two days before the November 10, 2016 meeting, Ms. Lutz, who was initially appointed (not elected) to the Town Board, lost her campaign for re-election to remain on the Town Board. Ms. Lutz had run on a campaign of shutting down SMI's operations. Ms. Lutz's term on the Town Board was set to expire at the end of 2016.

¹ The Local Law was initially styled as "Local Law #7." However, as the Local Law was passed as Local Law #3, and for clarity and the avoidance of any confusion, the law is referred to herein both in draft and final form as the "Local Law."

21. At the November 10 Town Board meeting, I observed as Ms. Lutz made a motion to schedule a public hearing on the Local Law for November 30, 2016. (*See id.* at 1-2.)

22. The version of the Local Law provided to the public after the November 10, 2016 Town Board meeting had been significantly amended from the draft previously shared with the public at the September 28, 2016 public forum. SMI therefore requested an adjournment of the November 30, 2016 public hearing (which allowed only twenty-days, including the Thanksgiving holiday) for the public and SMI to review the changes to the proposed Local Law and to prepare comments.

23. The Town ignored SMI's request for an adjournment and went forward with the public hearing on November 30, 2016.

24. I attended the November 30 public hearing, along with other representatives from SMI, and again provided testimony and robust written comments demonstrating the inaccuracies in the factual and technical "Findings" of the Local Law and that the Local Law's "Findings" were not scientifically supported. (*See Turner Aff. Ex. D at 2.*)

25. After the Town Board finished receiving public comments, Ms. Lutz produced an Environmental Assessment Form and Negative Declaration for "consideration" by the Town Board. (*See id.* at 6.)

26. Ms. Lutz announced that the Environmental Assessment Form and Negative Declaration had been prepared not by the Town's attorney, but by Waterloo Container's attorney, Doug Zamelis.

27. After Ms. Lutz read aloud the Environmental Assessment Form, it was apparent it had not previously been shared with the rest of the Town Board. Nevertheless, Ms. Lutz next

introduced a resolution adopting the Negative Declaration and moved for a vote to adopt the Negative Declaration. (Turner Aff. Ex. D at 6.)

28. For the entire duration of this process, I observed as Ms. Lutz received direction from Waterloo Containers' attorney, Mr. Zamelis, who had moved from the back of the room to a prominent seat in the front.

29. Following the Town Board's adoption of the Negative Declaration, Ms. Lutz next suggested that the Town Board vote to approve the Local Law at a meeting scheduled for December 6, 2016. (*Id.* at 7.) The Local Law was passed at that meeting. (*Id.*)

30. It was clear during the entirety of the conversation regarding the Local Law that the Town Board had not formally retained any experts or taken any steps to independently verify the "findings" included in the Local Law proposed by Ms. Lutz.

SMI'S INVESTMENT IN THE FACILITY

31. There can be no question that SMI manifested an intent, long before the Local Law was ever contemplated, to use its property as a solid waste management facility and that it made significant changes to the property and incurred significant expenses and invested millions of dollars into the property in furtherance of that intent.


32. For example, SMI lawfully operates under all the various DEC permits necessary to operate a solid waste management facility in New York.

33. SMI also went through the process of obtaining the necessary permit from the Town. Based on the Town's issuance and repeated renewal of the permit, SMI reasonably believed it would be able to continue to use the Facility for its intended purpose so long as SMI complied with Town and DEC regulations.

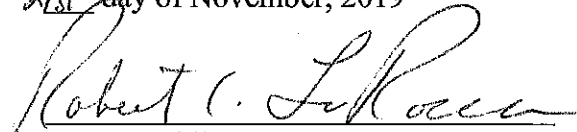
34. Additionally, SMI has invested tens of millions dollars to design a highly-engineered, state-of-the-art Facility, including by building the necessary office buildings, processing facilities, roads, and safety equipment for the Facility to meet SMI's lawful and intended purpose and DEC's requirements.

35. SMI has also invested significant sums to purchase heavy equipment, such as bulldozers, backhoes, excavators, loaders, and dump trucks necessary to operate a solid waste management facility and has directly or indirectly employed hundreds of people over the years (including over 100 current individuals) in furtherance of that purpose.

36. The vast majority of the above-described investments by SMI would be rendered valueless if the Local Law is allowed to stand and force SMI to close its business.


KYLE BLACK

Sworn to before me this
21st day of November, 2019


Notary Public

