

STATE OF NEW YORK
COUNTY OF ALBANY

SUPREME COURT

In the Matter of the Application of

SAVE THE PINE BUSH, REZSIN ADAMS, JOHN WOLCOTT,
LYNNE JACKSON, SANDRA CAMP, RUSSELL ZIEMBA,
SHARON CASTERLIN, PAULA SPRATT, SALLY CUMMINGS,
CLAIRE NOLAN, GRACE NICHOLS, JAMES A. TRAVERS III,
and TIM TRUSCOTT,

Petitioners,

Affidavit

Index No.

for judgment pursuant to Article 78 of the CPLR

-against-

The NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and the CITY OF ALBANY,

Respondents.

State of New York)
) ss:
County of Albany)

Corey Ellis, being duly sworn, deposes and says:

1. I am a member of the City of Albany Common Council for Albany's Third Ward. I am also a candidate for Mayor of Albany, in the election scheduled to be held on November 3, 2009. Although I am not a party to this proceeding, I make this Affidavit in support of petitioners' application for a temporary restraining order and preliminary injunction, enjoining the City of Albany from: 1) proceeding with the development of the Eastern Expansion of the Rapp Road Landfill, and 2) spending any public money, including the proceeds of bonds that were recently issued, for the purposes of paying fees assessed

under special condition 34 (a) of the permits that were issued by the New York State Department of Environmental Conservation for the landfill.

2. I believe that the preliminary injunction is necessary to preserve the status quo pending the resolution of the merits of petitioners' claims. In the absence of a preliminary injunction, the City of Albany will proceed to take a portion of land for the purposes of constructing a landfill cell, and will irreparably destroy irreplaceable Pine Bush land.
3. Special condition 34 (a) requires the City of Albany to set aside \$10.00 for every ton of solid waste that is accepted at the facility for a habitat restoration fund. However, the permit does not specify whether this fee is to be paid by entities who deposit waste at the landfill, or by the City itself.
4. The City has determined to pay the fee itself and, since the effective date of the permit (June 25, 2009), has been responsible for paying this fee.
5. On July 15, 2009, the Common Council approved six bonds for the landfill. One of these bonds, in the amount of \$2,400,000, is intended to pay the fees under condition 34 (a). I voted against this bond ordinance along with Council Members Calsolaro, Fahey and Smith.
6. I strongly believe that the City of Albany must establish a viable plan to handle its solid waste, and to meet the needs of other local communities in the CRSWMP that depend upon the City. I believe that such a plan must define a long-term solution, and not rely upon continual expansions of a landfill that was improperly sited 30 years ago.
7. I also believe that the City of Albany, as the host community for a unique and irreplaceable inland pine barrens that is critical habitat for the endangered Karner Blue butterfly, has a special environmental responsibility to the state, to the nation, and to the

world, to preserve this habitat. Continual expansions of an ill-considered landfill are directly contrary to this responsibility.

8. As Mayor, I would make it an extremely high priority to fully investigate alternative possibilities to such an expansion, and to do what should have been done 20 years ago: develop and implement a realistic solid waste management plan for the City which does not rely upon further insults to the ecologically sensitive Pine Bush.

Probability of success

9. For the reasons set forth in the Petition and in the Affirmation of petitioner's counsel, Peter Henner, in support of this motion, I believe that petitioners are likely to prevail with respect to their claims that the landfill expansion should not have been approved by DEC in the absence of a Solid Waste Management Plan which sets forth a viable and realistic plan for the handling of solid waste in the CRSWMP communities.
10. Furthermore, I believe that the petition establishes that DEC has not adequately performed a thorough analysis of viable alternatives, as is specifically required by both SEQRA and by the Part 360 regulations.
11. I also believe that petitioners are likely to prevail with respect to their claims that the City's determination to pay the \$10 per ton fee established by Special Condition 34 (a) of the DEC permits is an unconstitutional gift of public monies to private entities. If I am elected Mayor, I would take all necessary actions within my power to stop the City from continuing to make this payment, as part of my legal obligation to uphold the Constitution of the State of New York.

Irreparable harm


12. The effective date of the permits was June 25, 2009. The permits, by their terms, authorized construction of the Eastern Expansion, and also directed the City to establish, within 30 days, a fund for habitat restoration, funded by the \$10 per ton fee described in special permit Condition 34 (a).
13. Upon information and belief, this \$10 per ton fee is now being paid to the fund, for every ton of garbage which is presently deposited at the Rapp Road Landfill.
14. Absent an injunction, the City will continue to pay this \$10 fee to the fund, despite the fact that the payment of this money represents an unconstitutional subsidy to private waste haulers.
15. I do not believe that the city can afford to lose this money, and I believe that the injunction is critical, to preserve the city resources; especially so that these resources can be properly redirected to establishing a viable and environmentally responsible policy and plan for the management of solid waste in both the City of Albany and in the CRSWMP communities that rely upon the City.

Balance of equities

16. Because the City of Albany has had over 20 years to devise a meaningful solution to its solid waste problems and because the City has refused to consider any alternative strategies for the handling of its solid waste besides further insults to the Pine Bush, the equities do not favor the City of Albany in this case.
17. Furthermore, inasmuch as the City has adequate capacity in its existing landfill until June 2010, the City cannot claim that it needs to utilize the Eastern Expansion of its landfill on an emergency basis.

18. Finally, the City should not be permitted to irrevocably spend public money to fund its compliance with condition 34 (a). The balance of equities favor an injunction against the City paying this fee pending the resolution of this lawsuit. If the waste haulers are required to pay this fee themselves, and, at the conclusion of this lawsuit, it should be determined that the City can legally subsidize this payment, the fee can be refunded to the waste haulers. However, once the City pays this money, it will not have any effective way of recouping it from the waste haulers.

Wherefore, your deponent respectfully urges this court to enjoin the City from paying the \$10 per ton fee required by special condition 34 (a) of the Department of Environmental Conservation permits for the Eastern Expansion of the Rapp Road landfill, and from undertaking any additional construction work for landfill purposes in the area designated as the Eastern Expansion, pending the resolution of this lawsuit.


Corey Ellis

Sworn to before me this 19th day of October, 2009



Notary Public – State of New York

PETER W. HENNER
Notary Public, State of New York
No. 02HE4747690
Qualified in Albany County 2009
Commission Expires July 31, _____