

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF OTSEGO

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COOPERSTOWN HOLSTEIN CORPORATION,

Plaintiff,

vs.

TOWN OF MIDDLEFIELD,

Defendant.

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AFFIDAVIT IN  
SUPPORT OF  
MOTION FOR  
SUMMARY  
JUDGMENT

Index No.: 20110930

STATE OF NEW YORK

ss.:

COUNTY OF OTSEGO

Jennifer K. Huntington, being duly sworn, deposes and says:

1. I am the President of the Plaintiff, Cooperstown Holstein Corporation ("CHC"), in which capacity I am personally familiar with the real estate located in the Town of Middlefield owned by CHC and with the oil and gas leases entered into by CHC on real estate located in the Town of Middlefield ("Town").

2. This Affidavit is submitted in support of the motion for summary judgment made by CHC herein.

3. I have reviewed the Defendant Town of Middlefield's Zoning Law effective June 28, 2011, and in particular Article II, Subsections B(7) and B(8) and Article V thereof ("Zoning Law") which seeks to prohibit, among other things, all natural-gas exploration and extraction activities in the Town.

4. I have also verified the Complaint herein and have reviewed the Verified Answer of the Defendant Town dated October 12, 2011.

5. This Affidavit is based upon my own personal knowledge and upon my review of the books and records of CHC regarding the mineral rights owned or controlled by CHC in the Town.

6. CHC is the owner in fee of certain real property located within the Town.

7. CHC executed the following two (2) oil and gas leases with Elexco Land Services, Inc.:

A. Lease dated February 22, 2007, a memorandum of which was recorded in the Otsego County Clerk's Office on May 22, 2007 in Book 1104 of Deeds at page 412 for premises located in the Town of Middlefield, Tax Map No.: 162-2-8.01, containing 305.1 acres, which lease was thereafter assigned to Covalent Energy Corporation by Assignment of Oil & Gas Leases dated April 29, 2008 and recorded in the Otsego County Clerk's Office on July 21, 2008 in Book 1116 of Deeds at page 266, which lease was further assigned to Utica Energy, LLC by Assignment dated November 8, 2010 and recorded on November 12, 2010 as Instrument No.: 2010-5343, which lease was partially assigned to Gastem USA, Inc. by Partial Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 17, 2010 as Instrument No.: 2010-5422.; and

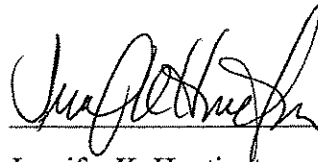
B. Lease dated March 8, 2007, a memorandum of which was recorded in the Otsego County Clerk's Office on May 22, 2007 in Book 1104 of Deeds at page 426 for premises located in the Town of Middlefield, Tax Map No.: 146-3-15.01, containing 74.02 acres, which lease was thereafter assigned to Covalent Energy Corporation by Assignment of Oil & Gas Leases dated April 29, 2008 and recorded in the Otsego County Clerk's Office on July 21, 2001 in Book 1116 of Deeds at page 266, and which lease was further assigned to Utica Energy, LLC by Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 12, 2010 as Instrument No.: 2010-5344, which lease was partially assigned to Gastem USA, Inc. by Partial Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 17, 2010 as Instrument No.: 2010-5423.

8. Currently, CHC is the owner of the aforesaid real property subject to the aforesaid oil and gas leases.

9. The Zoning Law will prevent CHC and its lessee from being able to realize their respective rights under the Leases, frustrating the purposes of CHC's Leases and denying CHC the economic benefits of the Leases including the right to market its minerals including oil and natural gas.

10. As a result of the foregoing, CHC seeks the declaratory relief set forth in the Complaint.

11. I respectfully urge this Court to declare that the provisions of the Zoning Law pertaining to gas, oil and solution drilling or mining and the Town's ban on such drilling or mining to be void by reason of being preempted by Section 23-0303(2) of the Environmental Conservation Law of the State of New York for the reasons set forth in the Affidavit of Gregory H. Sovas submitted herewith.



Jennifer K. Huntington

Sworn to before me on  
October 2<sup>nd</sup> 2011

  
Notary Public

MARILYNN M. FOLTS  
Notary Public, State of New York  
No. 4653357 Otsego County  
Commission Expires 06/30/15