

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MADISON

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In the Matter of the Application for a Judgment  
Pursuant to Article 78 of the Civil Practice Law  
and Rules and for Declaratory Relief Pursuant to  
CPLR Section 3001 of:

LAWRENCE J. FRIGAULT, CAROL A. FRIGAULT,  
PAUL KIDDER, DEBORAH A. KIDDER, REX A.  
SEAMON, DAWN M. SEAMON, JOHN C.  
WOUDENBERG, PAULA M. WOUDENBERG,  
JOEL G. SAWICKI, LORI E. SAWICKI,  
FREDERICK C. VERTUCCI, JOY L. VERTUCCI,  
TED S. FOX, MICHAEL J. REID, LOUIS M.  
SALAUN, LUCY G. SALAUN, GEORG-ANN F.  
GIGLIOTTI, KELLY A. AUGER, DAVID E.  
YODER, LESLIE P. WEAVER, DANIEL E. MEZIK,  
SHERRY M. MEZIK, WILLIAM J. ZALESKI,  
PATRICIA L. ZALESKI, FLORENCE V. TREEN,  
HOWARD C. MOSS, PATRICIA A. DUCIAUME,  
DOROTHY S. DUCIAUME, E. ALAN SILVER,  
SUSAN J. HUXTABLE, KATHLEEN G. CARNEGIE,  
DANIEL R. SULLIVAN, TERESA W. SULLIVAN,  
and BARBARA H. MEZIK,

Petitioners,

-against-

TOWN OF RICHFIELD PLANNING BOARD,  
MONTICELLO WIND LLC, NORTHEAST WIND  
PROJECTS, LLC, RIDGELINE EASTERN ENERGY  
LLC, ALICE C. ARMSTRONG, KEITH C.  
ARMSTRONG, MARNA M. ARMSTRONG, LOIS A.  
AUGER, WENDY S. MULLIGAN, WAYNE K.  
ARMSTRONG, KAREN A. RUDD, HAROLD T.  
FERGUSON, FAY R. FERGUSON, HAROLD F.  
FERGUSON, JR., HANWINSEL FARMS, INC.,  
HUXTABLE FARM PROPERTIES, LLC, DEBRA J.  
KOSEK, and WILLIAM R. KOSEK, JR.,

Respondents.

**AFFIDAVIT OF**  
**MONICA HARRIS**

Town Clerk

Index No.: 2011-2012  
RJI No.: 2011-0465-M  
Hon. Donald F. Cerio, Jr.

STATE OF NEW YORK            )  
                                          )  
COUNTY OF OTSEGO            )        ss.:

MONICA HARRIS, being duly sworn, deposes and says:

1. I am the Town Clerk for the Town of Richfield, a respondent in this proceeding. I have been the Town Clerk since 1996. The Town Clerk position for the Town of Richfield is a part time position. My residence is located at 40 Monticello St., Richfield Springs, New York, and I have been a member of this community for over 62 years.

2. I am fully familiar with the facts and circumstances of this proceeding and personally familiar with the matters referred to in this affidavit. I submit this affidavit in response to the allegations that the Planning Board of the Town of Richfield allegedly violated the New York Freedom of Information Law (“FOIL”), the Open Meetings Law (“OML”), the Town Law, the General Municipal Law, and the Agriculture and Markets Law.

3. As Town Clerk I am the custodian of the Town Board and Planning Board meeting minutes.

4. I also serve as the Secretary for the Town Planning Board and Town Board.

5. I served as Town Clerk while the Town Planning Board conducted its review of the Monticello Hills Wind Project.

6. The Town Board of the Town of Richfield has designated that the Town Clerk is the records access officer under FOIL. Accordingly, one of my responsibilities as Town Clerk is

to receive and respond to requests for copies of public documents and records made pursuant to FOIL.

7. Typically, upon receiving a FOIL request from a member of the public, I respond as quickly as I can, within the timeframes established under FOIL, and provide the requested documents if they are contained in the Town's files. I usually acknowledge the request with a letter prior to sending the material. I usually will copy the documents myself and drop them in the mail to the requesting party. Where appropriate, I will open the files to requesters and allow them to go through the documents and select for themselves those materials they wish to have copied.

8. Throughout the time period in which the application for the Project in the Town of Richfield was under consideration, I received a number of requests for copies of documents from members of the public. This included several requests for documents from Mr. Larry Frigault.

9. In each of these cases I endeavored to follow my general practice and the procedure provided in FOIL: After receiving a request, if I could not provide the material immediately, I would send a letter to the person making the request acknowledging the request within five days of receipt and then send the documents either within the next 20 days, or in the event of a very large request, I would forward the materials on a later date (after advising the requester of such later date). As a part-time Town Clerk for the Town, I have very limited resources. I have no other staff person to copy things for me, and the only equipment available to me is one desktop type copier. With those limited resources, it was difficult to keep up with the numerous requests, especially when the requests were overly broad, vague or unclear. Also some

documents were in the possession of our Counsel and we had to coordinate the response to the request, which took time as well.

10. To the best of my knowledge and recollection, I responded to all those requests in a reasonable manner consistent with FOIL. I am not aware of any documents which were improperly withheld from any requester. I am unaware of any plan to withhold any document which was properly appealed under FOIL.

11. I advised the public at meetings of the Planning Board that all of the records regarding the Monticello Hills Wind Project were available in my office during normal business hours. In fact, some individuals came to my office and reviewed those files. Members of the public were never denied access to records properly reviewable under FOIL.

12. In response to one of the particular allegations of Mr. Frigault, I assure the Court that I never said to him that “.....by the time [he] received any documents, the review process would be all over and the (sic) would be permits issued,” (Frigault affidavit at ¶25). The allegation is false.

13. As part of my job duties, I am also aware that certain documents should not be released under FOIL. While I tend to err on the side of disclosure, if there is any confusion on my part, I seek the assistance of counsel.

14. Petitioner Frigault cites essentially two FOIL requests as the basis for Petitioners’ claim regarding compliance with FOIL: (A) his October 24, 2011 request for “information relative to the erection and installation of wind turbines in the Town of Richfield” (R-2536); and (B) his oral request on November 14, 2011 (Frigault Affidavit ¶-32), which was later reduced to writing (November 23) (R-2540), for a “Resolution of Negative Findings under SEQRA,”

“Resolution to Issue Special Permit” and “The Draft Host Agreement.” To the extent that I did not immediately provide Mr. Frigault with all the materials he requested, this was attributable to claim of privilege asserted by the Town Attorney, the difficulty in retrieving and copying an extensive file, and/or a good faith misunderstanding as to the scope of Mr. Frigault’s requests.

#### **Board Resolutions and HCA**

15. The day after Mr. Frigault’s requested the proposed resolution to grant the Special Use Permit, the proposed resolution to issue a SEQRA Negative Declaration and the draft Host Community Agreement, his neighbor, John Woodenberg, came to Town Hall to pick up the documents. So that he wouldn’t have to wait for copying, I agreed to forward the materials to Mr. Frigault by e-mail. Subsequent to Mr. Woodenberg’s visit, the Town Attorney advised me that these materials were not final and as such were exempt from FOIL.

16. On November 17, 2011, two days after his request, I advised Mr. Frigault that, on the advice of counsel, I could not release the resolutions or the draft Host Community Agreement because they were draft documents.

17. On November 23, 2011, Mr. Frigault followed up his oral request for documents with a written request for the Resolution of Negative Declaration of SEQR, the Resolution to Issue the Special Use Permit, and the draft Host Agreement.

18. As the draft resolutions were no longer “drafts” on November 30, 2011, as they had been adopted by the Planning Board at their meeting on November 22, 2011, I forwarded Mr. Frigault the Resolution adopting the Negative Declaration and the Resolution adopting the Special Permit.

19. Mr. Frigault complains at paragraph 63 of this affidavit that I did not provide him with the “Rationale supporting the SEQRA Determination of Significance of Negative Declaration”—However, he did not request this document. While he claims to have requested this document in a follow-up e-mail (see Frigault Affidavit ¶ 64), the e-mail which he references in this regard contains no such request (see Frigault Affidavit ¶ 64 and exhibit C).

20. In any event, as Mr. Frigault concedes, Mr. Woodenberg picked up a copy of the Rationale on December 13, 2011.

21. I did not provide Mr. Frigault with a copy of the draft Host Community Agreement because it remained a draft until the Town Board approved the Agreement on January 15, 2012.

22. I would ask the Court to note that Mr. Frigault does not state that he didn't actually have a copy of the Host Community Agreement, but simply that he did not get a copy from the Clerk's office.

23. It is my understanding that a copy of that final Host Community Agreement document was provided directly to Mr. Frigault's attorney by the applicant's attorney on January 17, 2012 (see Affidavit of J. Michael Naughton, ¶ 12, Exhibit C), two days after it was accepted by the Town Board. Also, I understand that the draft Host Community Agreement was earlier posted by the applicant online along with the regular posting of all of the documents submitted by the applicant (as was announced at several meetings) on the applicant's website at [http://www.ridgeline.veolia.com/projects/wind/monticello\\_hills.htm](http://www.ridgeline.veolia.com/projects/wind/monticello_hills.htm).

### Project Documents

24. With respect to Mr. Frigault's October 24, 2011 request for all project documents, I attempted to avoid a tremendous cost to both Mr. Frigault and the Town as well as hours and hours of work by furnishing Mr. Frigault with a CD of the documents he requested. The FOIL request sought hundreds of pages of documents, including oversized maps, many colored documents and photographs. To this end, the Town's Engineering Consultant on the project, CHA Associates, agreed to prepare CD's of the documents and exhibits submitted to the Planning Board. I gave a copy of that CD to Mr. Frigault. I believed that providing him with that CD would fully satisfy his request for documents. As Mr. Frigault agrees, I advised him 3 days after his request (October 27, 2011), that I would provide him with the materials within 45 days. (R-2537)

25. As Mr. Frigault concedes, I provided him with a CD containing the documents that he requested on December 19, 2011.

26. Until I read Mr. Frigault's Affidavit, I was unaware of the fact he felt that he had not been provided access to all of the requested project records. At this time, I am not certain which documents he contends have not been provided.

27. In addition, requests were made for minutes of meetings. It is the Towns' routine practice to vote on the minutes at the next monthly meeting, at which point they are available to the public for review in my office. I specifically provided copies of those minutes to Mr. Frigault.

28. With regard to the Monticello Hills Wind Project, to the best of my knowledge, I withheld only two documents under FOIL during the entire period in which the Project was

under review by the Town of Richfield. The first was the request for draft documents for review by the Town Planning Board, which I was advised by the Town Attorney are privileged, not a public document, and therefore not disclosable under FOIL.

29. The second document was an attorney-client communication that contained confidential legal advice to the Town Board, which I knew was not available under FOIL and the Town Attorney confirmed this.

30. As I stated above, I have made every effort to comply with the requirements of FOIL and dutifully responded to each and every request for documents properly released under FOIL. Despite Mr. Frigault's inferences, I never withheld any documents related to this project from either him or any other person out of any "purposeful intent" except as directed to do so regarding either attorney-client communications, or because I was directed by the Town Attorney that the documents requested were exempt from FOIL disclosure.

31. Regarding the allegation that the Town violated the Agriculture and Markets Law, I have provided the fully executed Agricultural Data Statement that was filled out by the Project Applicant. (R-1590) I personally was responsible for mailing the Statement to the parties identified in the Statement and affirm that the Statement was provided to those parties.

32. Lastly, I have been informed that Petitioners claim that the Town failed to comply with GML 239-nn. This is not true. The Record of Proceedings (R-00001866A and B) contains a copy of the notice that I faxed to the Town of Winfield on September 7, 2011. The facsimile I sent to the Town of Winfield notified them of the public hearing on September 12, 2011.

33. The Town of Winfield did not submit comments at the public hearing.



34. In addition to the above referenced notice, on September 14, 2011, I sent the Town of Winfield a letter (R-00001866C) notifying them that the Planning Board would be holding a public workshop session on September 26, 2011 and informed them that they were welcome to submit comments to the Planning Board on the project.

35. The Town of Winfield did not submit comments at the public workshop session.

36. As stated above, I support the Planning Board's response to the Petition as it relates to matters in which I was involved. As a public official, I take my job seriously and do not "play favorites." I would ask the Court to dismiss Petitioners' claims regarding FOIL.

Monica Harris  
MONICA HARRIS



Sworn to before me this 27<sup>th</sup>  
day of March, 2012

Larry Jouben  
Notary Public

LARRY JOUBEN  
Notary Public, State of New York  
Qualified in Otsego County  
Commission Expires July 31, 2013