

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF TOMPKINS

In the Matter of

JENNY STEIN,

Petitioner,

Index No.: 2013-0151

-vs-

AFFIDAVIT

VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CAYUGA HEIGHTS,

Respondent.



Index #: 2013-0151 CI2013-05863

03/13/2013 04:13:12 PM

AFFIDAVIT

Aurora R. Valenti, Tompkins County Clerk

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules.

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

Kathryn Supron, Mayor of the Village of Cayuga Heights, as and for her response to the Petition, states as follows:

1. I am the Mayor of the Village of Cayuga heights and I make this response based upon my own personal knowledge.

2. The Village, in September 2010, sent out Landowner Consent Forms to landowners in the Village of Cayuga Heights. Such forms were employed to determine which properties the Village could use for the culling of the deer population. This culling was the subject of a previous Article 78 proceeding and appeal to the Appellate Division. See Druyan, et al. v. Village Board of Trustees of Village of Cayuga heights and NYSDEC, Index No: 2011-0522.

3. On each form returned to the Village, the landowners would list names, addresses and contact information together with whether they would consent to the culling taking place on their property. An example of the form is annexed hereto as Exhibit "A".

4. The Landowner Consent Forms are the only documents in existence which are responsive to the petitioner's request.

5. This Court may not be aware that there has been much controversy surrounding this culling program. Proponents of this culling operation, including me and other Village officials, have received death threats and other threats of personal harm.

6. Since these Landowner Consent Forms include names, addresses, phone numbers and other identifying information, we did not want to release the forms in response to the petitioner's demand. Annexed hereto as Exhibit "B" is a copy of our response to the petitioner's FOIL request.


7. The Village will provide redacted copies of the Landowner Consent Forms to the petitioner. The redactions will be limited to removing the names, addresses, phone numbers, and email addresses and any other information which would allow for the identification of the person submitting the form.

8. Because of the seriousness of this task, I intend to perform it myself and will require until April 15, 2013 to complete it.

WHEREFORE, the respondent respectfully requests that the respondent be allowed until April 15, 2013 to provide redacted copies of the Landowner Consent Forms to the petitioner, together with such other and further relief as to this Court is just and proper.


Kathryn Supron

Sworn to before me this
13 day of March, 2013


Notary Public

JOHN ALDEN STEVENS
Notary Public, State of New York
No. 4714947
Certified in Tompkins County
Term Expires August 31, 20 14

EXHIBIT "A"

Landowner Consent Agreement

This Agreement is made by and between _____, whose address is _____, (the "Landowner"), and the Village of Cayuga Heights, a New York municipal corporation having offices at 836 Hanshaw Rd, Ithaca, New York 14850 (the "Village"), acting through the Village's Police Department (the "CHPD").

- A. The Landowner is familiar with the Village's efforts to manage and reduce the population of deer within the Village, referred to in the Agreement as the Village's Deer Management Plan ("DMP").
- B. The Landowner understands that the Village has engaged or will engage the services of an independent contractor to assist with the DMP (the "Contractor"), and that Contractor may be White Buffalo, Inc., a Connecticut nonprofit corporation with offices at 26 Davison Rd, Moodus, Connecticut 06469.
- C. The Landowner is willing to allow the Village, including the CHPD, and the Contractor to use the Landowner's property in connection with the DMP as stated in this Agreement.

For the consideration set forth in this Agreement, the Landowner and the Village agree as follows:

- 1. The Landowner owns the property located at _____, in the Village of Cayuga Heights, Town of Ithaca, New York (the "Property").
- 2. The Landowner hereby consents and grants permission to the Village, including to the CHPD, and to the Contractor to use the Property to take the following action(s):

a. Place or install bait sites for deer	YES	NO
b. Capture deer and remove captured deer	YES	NO
c. Discharge weapons within 500 feet of the residence on the Property	YES	NO
d. Kill deer and remove deer carcasses	YES	NO
- 3. Any action taken on the Property will be in accordance with applicable Village law, New York State law, any permit required for such action issued by the New York State Department of Environmental Conservation, and the agreement between the Village and the Contractor.
- 4. The Village will arrange for the Contractor to remove from the Property all deer killed.
- 5. The Village agrees to indemnify the Landowner for, and save the Landowner harmless from and against, any and all losses, costs, damages, expenses, claims, liabilities and obligations (including reasonable attorneys fees) sustained or incurred by the Landowner as a result of the Village's or the Contractor's performance of the actions that the Landowner has consented to in Section 2 of this Agreement, except to any extent sustained or incurred as a result of any action of the Landowner.

Executed this _____ day of _____, 20_____.

Village of Cayuga Heights

Landowner(s)

Authorized Representative

Print Name

Signature

Print Name

Signature

EXHIBIT "B"



Village of Cayuga Heights

MARCHAM HALL
836 HANSHAW ROAD
ITHACA, NEW YORK 14850

(607) 257-1238
fax (607) 257-4910

Kathryn D. Supron, Mayor
Mary E. Mills, Clerk
Angela M. Podufalski, Deputy Clerk
Joan M. Mangione, Treasurer
Brent A. Cross, Engineer

October 31, 2012

VIA U.S. MAIL

Trevor J. DeSane, Esq.
10 River Road, Unit #15G
New York, New York 10044

Re: Jenny Stein's Freedom of Informational Law Appeal

Dear Mr. DeSane:

On October 19, 2012, I received your letter describing Jenny Stein's appeal of the Village of Cayuga Heights' denial of certain records requested in Ms. Stein's FOIL request dated August 24, 2012. As Mayor of the Village of Cayuga Heights, I am providing this letter in response to Ms. Stein's appeal to fully explain the reasons for the denial of access to the requested records. As required in accordance with New York Public Officers Law Section 89(4)(a), a copy of your October 19, 2012 letter, along with this response, will be delivered to the Committee on Open Government.

As you note in your letter, Ms. Stein was seeking copies of records described as:

From January 1, 2011 to the present, all communications/correspondence memos emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and or around Cayuga Heights for activities related to deer management;
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

Also as noted in your letter, the Village Deputy Clerk responded to this request with the statement:

The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.

Trevor J. DeSane, Esq.
October 31, 2012
Page 2

After careful consideration of your letter appealing this denial on Ms. Stein's behalf, I have determined that access to the requested records should be denied for the following reasons. The Village does not dispute your analysis of Public Officers Law Section 87(2)(e). However, the Village's denial of Ms. Stein's request falls squarely within the exception to access provided in Public Officers Law Section 87(2)(f), and as stated in the Village Deputy Clerk's response, because such records "if disclosed could endanger the life or safety of persons."

As you know, the records that Ms. Stein has requested pertain to the Village's deer population management plan. As you may or may not be aware, this plan has been developed as a result of in excess of ten years of assemblage of public comments, consultation with experts, collection of relevant studies and data, numerous public hearings and the conduct of an extensive State Environmental Quality Review process. Throughout the many years under which the Village's deer management plan was being developed, opposition has been expressed to the plan, and in particular to the component of the plan that involves the culling of the Village's deer herd. This opposition has been expressed by many individuals and organizations, in many cases by individuals and organizations located outside of the Village. In numerous instances, these expressions of opposition to the culling of deer have been extremely threatening. In particular, statements have been made by opponents of the plan indicating that they would prefer to see the Village officials who have supported the plan killed, rather than the deer.

In fact, I myself, in my role as Mayor of the Village, and in that role overseeing various aspects of the plan, have received death threats and threats to my safety. These threats have in every case made reference to the issue of culling deer in the Village. Needless to say, in each instance of myself or another Village official receiving threats to our persons we have reported such events to the Village Police. Over the years that the culling of deer in the Village has been discussed, and the plan to do so developed, we have been advised to take every precaution in response to threats of this nature and to be vigilant in reporting such instances.

Given the threats to the safety of persons that Village officials have regularly received over the years during which culling of the Village deer herd has been under consideration, it is quite apparent that individual property owners who have granted the Village permission to undertake culling operations on their property would likewise become the subject of such threats from opponents to the deer culling program. Given the wide range of statements made by the opponents, including, at the extreme, death threats, it is of the utmost importance, and it is the clear responsibility of the Village administration, to protect individual property owners who simply have provided consent to use their property for the Village to conduct its deer management program by maintaining the confidentiality of such consent forms.

Additionally, opponents of the deer culling program have regularly indicated that they would undertake various activities in an effort to prevent the program from proceeding. Given the extreme levels of threat that have been posed to Village officials, it is plainly the case that opponents to the deer culling program would mount efforts to physically prevent the culling

Trevor J. DeSane, Esq.
October 31, 2012
Page 3

operations by conducting activity at the culling sites. In order to address this concern, the Village had discussed and evaluated the issue of the culling sites being made public. These considerations were reflected in the Village's Draft Environment Impact Statement, Findings Statement and Final Environmental Impact Statement produced in accordance with the State Environmental Quality Review process. Specifically, in the Draft Environmental Impact Statement, Section 4.0, "Potential Impacts," in subsection 4.1, "Potential Land Use and Zoning Impacts," provides, in pertinent part that the Village:

Will work with the VCH Police Chief and the Department of Environmental Conservation officer to develop and oversee the culling protocol and hiring of licensed professional sharp shooters. ...

The protocol for culling varies from situation to situation. However, generally a meeting is held with participating volunteer landowners so they may understand what is involved in a remote euthanasia program. ...

A baiting program is established to pattern the deer and bring them to the selected areas. Shooting lanes are then cleared to insure that there are no obstructions in the trajectory of the bullet. Patterns of human activity in the site vicinity are recorded to ensure maximum safety and discretion. Specialized weapon systems designed for select site characteristics may then be selected based on maximal shooting range, acceptable noise, proximity to homes and deer abundance. ...

Subsequent to a decision by the landowner and the New York State DEC and the Village to implement a culling operation, the following procedures would commonly be used: ...

Every occupied structure would be identified and areas of connectivity be noted in order to proceed with work in a safe, discreet, efficient manner.

Bait sites would be selected with the involvement of the landowner, the DEC and the Village. Each site is selected based on human safety. ...

During the activity, there is continuous communication between community members, municipal officials and the culling agent, to keep all parties fully informed regarding field activities and to avoid conflicts. ...

For safety reasons, the DEC and the DRAC [Deer Remediation Advisory Committee] have recommended against publicizing culling sites and times. Some Village residents have expressed their view that safety would be enhanced by publicizing the sites and times. The VCH Board may enact a local law making it illegal and punishable by fine, to interfere in any portion of a culling operation. [emphasis added] ..

Trevor J. DeSane, Esq.
October 31, 2012
Page 4

Culling sites would be closely monitored to deter human activity during the operation. During those times, land use activities in the culling sites may be highly restricted. [emphasis added] ...

With no record of incidents and oversight by the NYS DEC and local police, the likelihood of a significant adverse impact to normal human activities from culling activities as anticipated and described herein and is projected to be very low.

As is readily apparent from the brief excerpts above from the Environmental Impact Statement, a thorough analysis was performed by the Village of the potential safety concerns with regard to publicizing of culling sites. Of course, the Village's primary interest in conducting the deer management program, as in any other Village undertaking, is the utmost protection of the safety of the Village's residents. Based upon the input of the Village's consultants, experts in the field of wild animal removal, and of the New York State Department of Environmental Conservation, the Village determined that the safety of the Village's residents is best protected by non-disclosure of the culling sites.

The Village has invested substantial time and resources in the development of the Village's deer management program. These efforts are amply reflected in the Village's Environmental Impact Statement detailing the basis and impacts of the program. Of course, the Environmental Impact Statement was developed with substantial input both from the public and from experts in the area of deer population management. A significant conclusion from the years of work invested in developing the deer management plan was that the safety of Village residents is best protected by maintaining the culling sites as confidential.

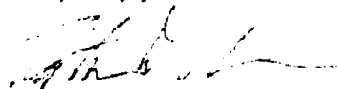
It should be noted that opponents of the Village's deer management plan sued the Village challenging the adequacy of the Village's Environmental Impact Statement. The opponent's lawsuit questioned, among other things, the adequacy of the Village's protection of the safety of its residents in the conduct of culling operations. The Village succeeded in defending against this lawsuit in every respect. Of particular reference, in rejecting the opponents' contentions, Judge Rumsey stated, "... it also bears noting that the [plan] adopted by [the Village] is generally consistent with the DEC's recommendations for managing deer populations in urban and suburban areas ... where, as here, hunting is impractical, the bait and shoot technique adopted by [the Village] is the preferred option for dealing with over abundant deer in suburban areas." It is also notable that, although the lawsuit included a wide range of criticisms of the Village's plan and the environmental review of the plan, the lawsuit did not challenge the components of the plan described above, wherein culling sites would be maintained as confidential.

In fully affirming this judgment, the Appellate Division stated, in pertinent part, "The DEIS was detailed in describing the problem, the proposed solution, the potential impacts, and the alternative approaches. Moreover, the DEIS was similar in its recommendations to the

DRAC report, which had been issued and made public over a year before the DEIS was issued. There was ample information and sufficient time to comment, as reflected by over 60 comments received. The comments were sufficiently addressed in the EFIS. On the basis of the Village's deer management program having been carefully constructed over many years time, publically vetted in a variety of forums, challenged and upheld at the New York State Supreme Court and again by affirmation in the Appellate Division, there is no rational basis for challenging the denial of records that would reveal the location of culling sites, which the Village's plan, and the detailed environmental review of the Village's plan, made clear would be maintained as confidential in the interest of assuring the safety of the Village's residents.

In summary, the lengthy and involved development of the Village's deer management plan, together with the comprehensive and detailed environmental analysis of the plan, resulted in a clear determination that the safety of persons would be best protected by maintaining the location of culling sites as strictly confidential. Further, given the regular, and in some cases extreme, threats delivered to Village officials concerning their own safety should they participate further in the culling of the deer herd in the Village, it became clear that any persons more directly involved in the deer culling program, such as property owners who provided permission for culling operations to take place on their properties, would be likewise endangered. Of course, it is the Village's primary responsibility to assure the safety of its residents. For these reasons, the denial of records that would reveal the identity of property owners who have given permission for culling operations to take place on their properties would endanger the life or safety of these persons, and therefore this denial of records falls squarely within the exception for deniable records provided in Public Officer's Law Section 87(2)(f) that such records "could if disclosed endanger the life or safety of any person."

Very truly yours,



Kate Supron, Mayor

cc: NYS Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231