



Supreme Court

State of New York

JAMES P. McCLUSKY
Justice

July 13, 2016

CHAMBERS

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Re: Atlantic Wind LLC vs Town of Clayton Town Board et al
Index No. 2016-1091; RJL No. 22-16-0485

Dear Counselors:

Enclosed please find your copy of the Decision issued in the above referenced matter, the original of which will be forwarded to the Jefferson County Clerk's Office for filing.

Sincerely,

Barbara J. Wright
Secretary to Hon. James P. McClusky

Enclosure

At a term of Supreme Court held in and for
the County of Jefferson, in the City of
Watertown, New York on the 7th day of
July 2016

PRESENT: HONORABLE JAMES P. McCLUSKY
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF JEFFERSON

COPY

In the Matter of the Application of

ATLANTIC WIND, LLC,

Plaintiff-Petitioner,

**MEMORANDUM
AND
DECISION**

For a Judgment Pursuant to Civil Practice Law
and Rules Article 78 and for a Declaration of Rights
Pursuant to Civil Practice Law and Rules §3001,

Index No. 2012-0126

RJI No. 22-12-0058

-against-

TOWN OF CLAYTON TOWN BOARD and
TOWN OF CLAYTON PLANNING BOARD,

Defendants-Respondents.

Plaintiff-Petitioners commenced this hybrid CPLR Article 78 proceeding and CPLR §3001 declaratory judgment action seeking a declaration that Town of Clayton Local Law No.2 of 2016 establishing a moratorium on applications for the review and approval of permits for Wind Energy Facilities (WEF) is invalid as applied to temporary wind measurement towers (Met Towers), and that said local law is preempted by New York State Law. The petition-complaint seeks an Order directing the Respondent Planning Board to issue a final determination regarding the applications by Petitioner for permits to place the Met Towers. Petitioner also moves for a preliminary injunction enjoining the

Town of Clayton from enforcing Local Law No. 2 of 2016 as applied to Met Towers and directing the Respondent Planning Board to decide the three applications by Petitioner for permits to place the Met Towers.

The Court has considered the Notice of Petition dated May 26, 2016; the Verified Petition-Complaint dated May 26, 2016, with attachments; the Affidavit of Jerry Reinkemeyer dated May 25, 2016, with attachments; the Affidavit of Louis Bowers dated May 25, 2016, with attachments; the Affirmation of Jeffrey S. Baker dated May 26, 2016, with attachments; the Petitioner's Memorandum of Law dated May 26, 2016; the Verified Answer dated June 29, 2016; the Affidavit of David Storandt, Jr. dated June 29, 2016, with attachments; the Affidavit of Thomas J. Fucillo dated June 29, 2016 with attachments; the Respondents' Memorandum of Law dated June 29, 2016; the Supplemental Affidavit of Jerry J. Reinkemeyer (not dated), and the Petitioner's Reply Memorandum of Law dated July 5, 2016.

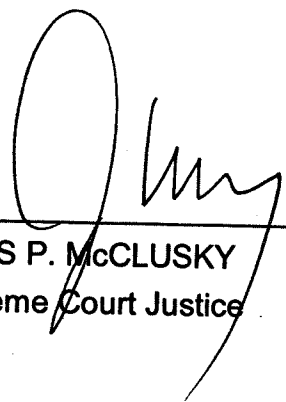
A party seeking preliminary injunctive relief must establish a likelihood of success, irreparable injury, and the balance of equities in their favor. The Court finds that Petitioner has not established irreparable injury. Petitioner concedes that the process of creating a WEF is long and entails dealing with a multitude of regulations and regulatory agencies. Petitioner correctly points out that the delay will prevent them from obtaining wind data for an additional six months. Petitioner did not point to any deadlines they will miss and inadequately explained how or if the delay prevents them from taking any further steps along the regulatory path. In addition, both sides acknowledge that wind testing has been going on for several years from preexisting Met Towers associated with an earlier proposed WEF, and the Court is not aware as to how these new measurements effect the process.

The motion for a preliminary injunction is denied.

The Court is not ruling on the underlying petition-complaint at this time as it is improper to use a summary procedure to award judgment on the cause of action that sought a judgment declaring the legislative enactment invalid.

The Court is aware that the Town may elect to extend the moratorium so the underlying issues must be addressed in a timely manner. Therefore, the Court will schedule this matter for a hearing **Friday, October 14, 2016 at 9:00 a.m.**

Dated: July 13, 2016
Watertown, New York
ENTER



JAMES P. McCLUSKY
Supreme Court Justice