

TOWN OF ULYSSES

10 Elm Street
Trumansburg, NY 14886

(607) 387-5767

Fax (607) 387-5843

December 2011

updated February 29, 2012

Dear Supervisor or Mayor,

I am writing to ask your municipality to consider joining with the Town of Ulysses in filing an amicus curiae or "friend of the court" brief in two important lawsuits that could have profound impacts on our Municipal Home Rule Law rights. My request is discussed in more detail below.

The Towns of Middlefield and Dryden recently revised their zoning laws to prohibit heavy industrial uses (including natural gas drilling) in their communities. These laws were quickly challenged in court by plaintiffs claiming that the Towns do not have any municipal home rule powers to regulate gas drilling as a land use. The industry argued that these important local decisions should be made by the industry and the NYSDEC, not the Towns.

The Town of Ulysses strongly disagreed with this position. As a result, our Town retained the prominent Albany law firm, Whiteman Osterman & Hanna, to file an amicus brief in these lawsuits in support of municipal home rule. A copy of the brief is attached for your review. The brief outlines in excellent detail the arguments supporting home rule on this issue. In the Anschutz v. Dryden case, Supreme Court Justice Rumsey ruled on February 21, 2012 in favor of the Town of Dryden, and on February 24th acting Supreme Court Justice Cerio ruled in favor of the Town of Middlefield. These are very encouraging decisions for all municipalities concerned about the issues of gas drilling and home rule. Given the statewide implications of these cases, appeals are expected.

The Town of Ulysses will be filing another amicus brief when these lawsuits get appealed. The brief will be very similar to the attached brief. Ulysses is asking its sister Towns, Villages, and Cities to join in this brief on appeal. More signatories would make a powerful statement to the appellate courts, NYSDEC and to the NYS Legislature about the importance of protecting Municipal Home Rule and a municipality's right to decide, for itself, whether natural gas drilling (or any other land use for that matter) is appropriate for its citizens.

It is important to note that the amicus brief is not about whether a municipality supports

natural gas drilling or not. In fact, the enclosed brief does not take any position with respect to that issue. Rather, the brief is about a municipality's legal right to decide for itself, now or in the future, whether gas drilling is an appropriate land use for its citizens. My Town strongly believes that such a local decision should not be made by a private company or by the NYSDEC. Instead, the people who live in the municipality should decide for themselves what is best for their future, at any given moment.

Home rule is a fundamental pillar of our State's Constitution. It is also an important practice in many other States including States with a thriving gas drilling industry such as Texas, New Mexico, Colorado and Pennsylvania, among others. In those states, natural gas drilling has coexisted successfully with municipal home rule for decades. While the same is possible in New York State, the issue remains undecided.

There is no cost to your municipality to join the amicus brief on appeal. Our Town is working with interested parties to secure funding to cover any legal costs related to filing such a brief. Moreover, it's important to understand that by agreeing to join the amicus brief your municipality will not become a party to any of the lawsuits. It will simply be characterized as a "friend of the court." Please call your Attorney if you have any concerns about becoming an amicus.

If your municipality is interested in standing together with others across New York State to support Municipal Home Rule, I would encourage you to join in our amicus brief. I have enclosed a short resolution for your Board to consider (and adopt) in this regard, if you so desire. If your Board adopts this or a similar resolution, please forward it on to me at the email or mailing address below.

If you or your municipal attorney have any questions, please feel free to call or email me. If you need more information on the legal issues, I can put you in contact with the attorney we are working with.

Thank you kindly for considering this request. I greatly appreciate your attention to this important issue that will undoubtedly affect hundreds of municipalities across our State and millions of our citizens. Now that a decision has been issued in one of the cases, the appeal process is likely to begin very soon, so please consider this with your Board at your earliest opportunity.

Sincerely,



Roxanne Marino

Supervisor, Town of Ulysses

Tompkins County

email: roxanne.m.marino@gmail.com

phone: (607) 387-5767 ext. 232

fax: (607) 387-5843