

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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EAST END PROPERTY COMPANY #1 LLC,  
MARK KASPIEV, JOHN McCONNELL, JOHAN  
McCONNELL, DONALD SEUBERT, PATRICIA SEUBERT,  
FRANCESCA HURLEY, MICHAEL HURLEY,  
LAURENCE EINUIS, EMILY KARLOVITS, STEPHEN  
HENRY, THE YAPHANK TAXPAYERS AND CIVIC  
ASSOCIATION, INC., and the SOUTH YAPHANK  
CIVIC ASSOCIATION,

Index No. 06-

Petitioners-Plaintiffs

- against -

TOWN BOARD OF THE TOWN OF BROOKHAVEN,  
THE TOWN OF BROOKHAVEN, and  
CAITHNESS LONG ISLAND, LLC,

**AFFIDAVIT OF  
COUNCILMEMBER  
CAROL BISSONETTE**

Respondents-Defendants

- and -

LONG ISLAND POWER AUTHORITY,

Additional Respondent-Defendant  
(CPLR 1001[a])

Justice Assigned:  
Hon.

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STATE OF NEW YORK     )  
                                  )ss:  
COUNTY OF SUFFOLK    )

CAROL BISSONETTE, being first duly sworn, deposes and states under the penalties of perjury that:

1. I am a Councilmember of the Town Board of the Town of Brookhaven, elected to represent the Sixth Council District in the Town of Brookhaven which includes Shirley, Mastic,

Mastic Beach, Moriches, Center Moriches, East Moriches, Eastport to the Southampton Town Line, Manorville, Uptonville, Greater Peconic, as well as portions of Brookhaven Hamlet, Ridge, East Yaphank and Calverton.

2. I submit this affidavit in order to set forth certain matters which occurred at the time that the Town Board of the Town of Brookhaven ("Town Board") on July 25, 2006 voted to approve a proposed 350 megawatt electrical generating plant, to be constructed by Caithness Long Island, LLC ("Caithness") on an approximately 96 acre plot of land located in Yaphank, New York (the "Caithness Project").

3. Specifically, on July 25, 2006, by a vote of 5-to-2, the Town Board approved a special permit required by the Brookhaven Town Code for maintaining an electric generation facility in the L 1 Industrial District where the facility is to be constructed, agreed to substantial variances and waivers from applicable zoning requirements, and adopted a Finding Statement under the State Environmental Quality Review Act ("SEQRA"). The SEQRA Findings Statement approved and accepted a prior final environmental impact statement ("FEIS") for the power plant project previously prepared by Long Island Power Authority ("LIPA"), acting as "lead agency" under SEQRA.

**A. The Town Board's First Vote, Denying the Application and Denying SEQRA Certification**

4. Following a period of public hearings, the Caithness Project was initially voted upon by the Town Board at a meeting of June 6, 2006. Presented for vote of the Town Board on that date was whether to approve SEQRA Findings and a certification under SEQRA that the environmental statute had been complied with, and whether to approve the special permit application, which additionally necessitated several substantial waivers and variances. By a vote

of 4-to-3 the Town Board voted against accepting a proposed SEQRA Findings Statement which was to certify that the project complies with SEQRA and its environmental concerns. Because SEQRA approval was denied, the Town Board could not move forward with the permit application, which was therefore effectively denied as well.

**B. The lack of further noticed public hearings, and the lack of any changes to the project itself or to its environmental impacts after the no-vote and prior to the July 25, 2006 Town Board Hearing**

5. After June 6, 2006 and before July 25, 2006, there were no Town Board hearings at which the Caithness Project was on the agenda, either for consideration or hearing (although citizens were free to and did discuss whatever relevant issues they wished during the intervening Town Board meetings, including the Caithness Project). Moreover, the project itself and its environmental and other impacts on the surrounding communities remained the same since June 6, 2006. Under these circumstances, I am advised it was improper under SEQRA, the Town Law, and the Brookhaven Town Code for the same project to be subjected to a second vote by the Town Board.

**C. The failure to comply with Town Board Rules of Procedure**

6. Additionally, several of the Town Board's duly adopted Rules of Procedure (Appendix hereto), adopted pursuant to Town Law § 63, prevented the lawful re-submission of the already disapproved Caithness Project before the Town Board.

7. First, Rule of Procedure § 3(A)(2) provides that:

A motion for reconsideration of a Resolution, Local Law, or Ordinance shall not be in order unless made on the same day of the legislative session or the next succeeding session on which the action proposed to be reconsidered took place....

There was no such motion for reconsideration made either on the day of the June 6, 2006

meeting at which the project was voted down, or on the next regularly scheduled legislative session.

8. Moreover, Rule of Procedure § 3(A)(5) provides that:

A Resolution, Local Law or Ordinance that receives less than a majority of votes shall not be reintroduced for ninety days (90) or unless this rule is waived by a super majority vote of the Town Board (emphasis supplied).

Because the Rules of Procedure further require that all non-emergency or “special” matters proposed to be put for vote<sup>1</sup> must be placed on the Agenda in advance of the Town Board meeting (see §§ 5F; 5C; and 6B), I interpret this rule (§ 3(A)(5)) as necessarily meaning that the vote to waive the 90 day delay period cannot be made at the same Town Board meeting at which the resolution is reintroduced. Here, in apparent violation of § 3(A)(5) the Town Board voted to waive the 90 day delay period on July 25, 2006, the same day that it voted in reconsideration of the project.

9. Additionally, I believe the Town Board violated § 5(F) of the Rules of Procedure in that I and (as far as I am aware) the other Town Board members did not receive a copy of the resolution agenda and packet for the July 25, 2006 Town Board meeting regarding the Caithness project until after that Town Board meeting had commenced.

10. Section 5(F) provides:

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<sup>1</sup>Section 6(C) provides that the Supervisor is allowed to add any “special or emergency” matter to the agenda after the meeting has commenced. The project here, by no means qualified as a special or emergency matter, and to the best of my knowledge, was never purported to be.

The Supervisor's office shall place a copy of the resolution agenda and packet for each Town Board meeting upon the desks of the Councilpersons and Town Clerk no later than the close of business the day before the Work Session preceding each regular meeting (emphasis supplied).

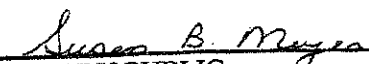
**D. The inclusion of unlawful and unauthorized provisions in the Resolutions of July 25, 2006**

11. With section 5(F) having apparently been violated, and as I had not been provided in advance with a copy of the resolution agenda specifying the proposed resolution regarding the Caithness Project, when that proposed Resolution was finally first provided to me during the July 25, 2006 meeting, it was then that I first discovered that a new proposal had been added, indicating, among other things, that 15% of certain PILOT payments would be set aside for a special open space environmental fund. I do not consider that provision to be lawful, especially when I do not know of any law which authorizes a Town Board to create such a fund in this context, and the creation of such of fund would, in my view, first require a public referendum, which as far as I know has never occurred.

12. As an elected public official with information concerning the apparent failure of the Town Board to comply with the applicable laws, I have made contact with the attorneys for the petitioners-plaintiffs and agreed to provide this affidavit in order to supply relevant factual material in connection with their challenge to the Town Board's approvals.

  
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CAROL BISSONETTE

Sworn to before me this  
22nd day of August, 2006

  
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NOTARY PUBLIC

SUSAN B. MEYER  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01N5074311 SUFFOLK COUNTY  
TERM EXPIRES MARCH 10, 2007