

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

TOWN OF PITTSFORD, TOWN OF BRIGHTON,
and TOWN OF PERINTON,

Petitioners,

vs.

POWER AUTHORITY OF THE STATE OF NEW
YORK and NEW YORK STATE CANAL
CORPORATION,

Respondents.

REPLY AFFIDAVIT

Index No. 2018-945

Assigned to:
Hon. Daniel G. Barrett

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

LUCINDA M. ENRIOT, being duly sworn, deposes and says:

1. I am an owner of the property located at 1259 Marsh Road, a 5-acre parcel in the Town of Perinton abutting the Erie Canal at the Great Embankment.
2. My family has owned this property for over 100 years. This goes back to the time when the canal was being widened for barge traffic and was breached at or near the Great Embankment in 1911 and 1912. The accidents were caused, of course, by the acts of man, not the presence of trees along the canal.
3. The Great Embankment, other than the sections of large concrete walls hidden from view, is made from alluvial sand extracted from the region. Black locust trees, with their shallow roots which resist rotting (hence, the traditional use of black locust for fence posts), were deliberately planted and allowed to proliferate on the Great Embankment in order to hold the

sand in place. These trees have added to the stability of the canal embankment over the years, not detracted from it.

4. Counsel for petitioners has shown me portions of respondents' answering papers in this proceeding. Several factual assertions are false or unsupported with evidence.

5. Respondents claim that when the Barge Canal was built over a century ago, it was intended that the embankments be clear of woody vegetation. Respondents, to my knowledge, have relied on no building plans for the canal, or any statements of engineers at the time the canal was built, to support that contention. Of course, the embankments had to be clear of vegetation right after they were built, but that does not mean they were intended to stay that way. Indeed, as I have said, trees were allowed to grow on the canal embankments and help to hold them together.

6. Respondents also claim that historically, the canal embankments were free of trees and only recently were trees allowed to grow unchecked. That is completely false, as anyone who has lived near the canal embankments for any length of time knows. I personally have memories of the Great Embankment for 60 years, and I know that the trees were not cut down there for supposed "maintenance" purposes, except for one fiasco I will describe below.

7. I am incensed that respondents seek to justify the wholesale removal of all vegetation on the canal embankments by the 1974 breach at the Great Embankment. I was there at the time and know what happened and why. Indiscriminant digging of a water or sewer line under the canal along the Great Embankment caused the bottom of the canal bed to collapse and the water to pour out below. Again, trees upon the embankment had nothing to do with the accident. This kind of fearmongering by respondents does nothing to advance proper governmental management and stewardship of the canal.

8. I was also around the Great Embankment in 1999, when respondent New York State Canal Corporation ("Canal Corporation"), before it was controlled by respondent Power Authority of the State of New York, showed up and started chain sawing the trees along various portions of the canal embankments, including the Great Embankment. Ironically, this was within a year after the Canal Corporation issued a new guideline for keeping the embankments clear of trees and brush, based on respondents' answering papers which I have been shown. I was among the neighbors who organized and vehemently objected to the Canal Corporation's rash behavior, done then, as now, without careful investigation and consideration of any structural maintenance that could have been needed and how it could have been performed with the least damage to the environment. Eventually, the Canal Corporation relented and went away, without, I might add, performing any structural maintenance which was supposed to have been facilitated by the vegetation removal.

9. With hundreds of feet of my property bordering the Great Embankment, I have more reason than most people to want a safe and secure separation of the canal water from my property. Indeed, I favor any attempt by respondents to routinely inspect the embankments for structural deficiencies, remove vegetation which causes or contributes to any such deficiencies, and to correct those deficiencies. But that is not what respondents have proposed and done so far. Instead, respondents have proceeded to clear cut all of the vegetation within selected sites, acting under the premise that there is no such thing as a good tree on the canal embankment, and proposed to come back to the clear cut sites, with heavy earth moving equipment, to dig out the stumps and root balls and plant grass. This ill-advised approach will not only needlessly damage the environment, but also set up the canal for another manmade flood.

10. Counsel for petitioners has shown me respondents' answering papers indicating that the Canal Corporation has declared the embankment site in the Town of Perinton near the

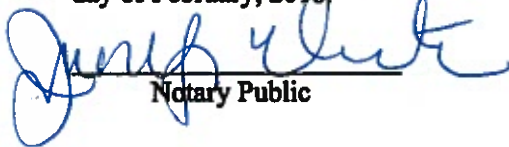
Village of Fairport to be an emergency, and has directed that all of the vegetation on all of the embankment sites within Pittsford, Brighton, and Perinton must be removed, including the vegetation on the Great Embankment behind my property. The Canal Corporation has based this emergency directive on a single inspection report from August 30, 2017, nearly 6 months before the issuance of the directive on February 19, 2018, indicating a few wet spots and cattails in Perinton, many miles from my property and even farther from Brighton.

11. This emergency declaration is outrageous. There is no emergency on the Great Embankment behind my property, and the trees do not have to be shorn from the Great Embankment to address any structural concerns in Perinton near Fairport. It is also highly suspicious that the Canal Corporation would sit on this inspection report for nearly 6 months before declaring an emergency affecting many miles of the canal embankments.

12. I applaud the court's temporary order restraining the respondents from clearcutting the canal embankments during the pendency of this proceeding. I ask the court to order the respondents to comply with the New York State Environmental Quality Review Act before respondents resume work on the embankments.


Lucinda M. Enriot

Sworn to before me this 22
day of February, 2018.


Notary Public

Jennifer P Winters
Notary Public State of New York
Monroe County
Registration Number :01W14964955
Commission Expires April 16, 2018