State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 2, 2013 515498

COOPERSTOWN HOLSTEIN CORPORATION,
Appellant,
v MEMORANDUM AND ORDER

TOWN OF MIDDLEFIELD,
Respondent.

Calendar Date: March 21, 2013

Before: Peters, P.J., Stein, Spain and Garry, JJ.

Levene, Gouldin & Thompson, LLP, Binghamton (Scott R. Kurkoski of counsel), and The West Firm, PLLC, Albany (Thomas S. West of counsel), for appellant.

Whiteman, Osterman & Hanna, LLP, Albany (John J. Henry of counsel), for respondent and Town of Ulysses and others, amici curiae.

Cynthia Feathers, Glens Falls, for New York Farm Bureau, amicus curiae.

Sidley Austin, LLP, Washington, D.C. (Joseph R. Guerra of counsel), for American Petroleum Institute and others, amici curiae.

Levene, Gouldin & Thompson, LLP, Binghamton (Scott R. Kurkoski of counsel), for Business Council of New York State, Inc. and others, amici curiae.

Susan J. Kraham, Morningside Heights Legal Services, Inc., New York City, for Vicki Been and others, amici curiae.

Nancy S. Marks, Natural Resources Defense Council, New York City (Katherine Sinding of counsel), for Catskill Mountainkeeper and others, amici curiae.

Tooher & Barone LLP, Albany (John L. Barone of counsel), for A&E Management & Contracting, Inc., and others, amici curiae.

Peters, P.J.

Appeal from a judgment of the Supreme Court (Cerio, J.), entered August 8, 2012 in Otsego County, which, among other things, granted defendant's cross motion for summary judgment dismissing the complaint and declared that defendant's zoning law was not preempted by the Oil, Gas and Solution Mining Law.

In June 2011, defendant enacted a new zoning law which, among other things, categorized all oil, gas and solution mining and drilling as prohibited land uses within the Town of Middlefield, Otsego County. Plaintiff, a corporation which owns oil and gas leases for parcels of real property located within the Town, commenced this action seeking a declaration that the zoning law was preempted by the Oil, Gas and Solution Mining Law (see ECL 23-0301 et seq. [hereinafter OGSML]). Following joinder of issue, plaintiff moved for summary judgment and defendant cross-moved for summary judgment dismissing the complaint. Additionally, various groups moved for, and were granted, leave to file amicus curiae briefs.[1] Concluding that the zoning law was not preempted by the supersession clause of the OGSML (see ECL 23-0303 [2]), Supreme Court denied plaintiff's motion and granted defendant's cross motion. After plaintiff unsuccessfully moved to renew its motion based upon newly discovered legislative material (see CPLR 2221 [e]), a judgment was issued dismissing the complaint and declaring that the zoning law was valid and not preempted by the OGSML. Plaintiff appeals.

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[1] Several interested groups were also granted permission by this Court to file an amicus curiae brief on appeal (see 2012 NY Slip Op 91275[U] [2012]; 2012 NY Slip Op 90486[U] [2012]; 2012 NY Slip Op 89959[U] [2012]; 2012 NY Slip Op 89414[U] [2012]; see also Matter of Norse Energy Corp., USA v Town of Dryden, ___ AD3d ___, ___ n 4 [decided herewith]).

As in Matter of Norse Energy Corp. USA v Town of Dryden (___ AD3d ___ [decided herewith]), plaintiff here argues that the OGSML preempts a municipality's authority to enact local land use laws prohibiting oil, gas and solution mining or drilling activities within its borders. For the reasons set forth in Matter of Norse Energy Corp. USA v Town of Dryden (supra), we find plaintiff's claim to be without merit and affirm Supreme Court's judgment declaring that defendant's zoning law is valid.

Stein, Spain and Garry, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

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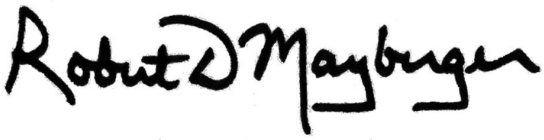

Robert D. Mayberger
Clerk of the Court