

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
WILLIAM CRAIN; THE EAST HAMPTON GROUP  
FOR WILDLIFE; BETSY PETROSKI SMITH; ROBERT  
SILVERSTEIN; GALE FRIEDMAN; DR. ELLEN  
CRAIN; RON BRACH; A. W. NOONAN; NANCY  
CARDOSO; LORI SCHIAFFINO; ZELDA PENZEL;  
CAROL BUDA; SARI THOMPSON; MONICA NAVIA;  
AMELINA SIEKLUSKA; MARY STONE; and THE  
EVELEN ALEXANDER WILDLIFE RESCUE CENTER,

Index No.: 33432/13

AFFIDAVIT OF  
PLAINTIFF WILLIAM  
CRAIN

plaintiffs,

- against -

THE TOWN BOARD OF EAST HAMPTON; THE  
TRUSTEES OF THE FREEHOLDERS AND  
COMMONALITY OF THE TOWN OF EAST  
HAMPTON; and HAMLETS AND VILLAGES OF THE  
TOWN OF EAST HAMPTON, INCLUDING EAST  
HAMPTON, AMAGANSETT, MONTAUK, NEPEAGUE,  
SPRINGS, and WAINSCOTT,

defendants,

-----X

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

WILLIAM CRAIN, being duly sworn, deposes and says under the penalties of perjury as follows:

1. I am a resident of the Town of East Hampton for over thirty (30) years. I am a Professor of Psychology at The City College of the City University of New York, specializing in child development. I have worked with children my entire professional career and life. Children generally have a spontaneous instinctive love and affinity to animals, including the deer in the Town of East Hampton. The deer in the Town of East Hampton are a natural resource which I use as a Child Development Professor, and use and enjoy personally, being a long-time resident

of the Town of East Hampton. The Town's Deer Management Plan is plainly culling the deer to extinction or near extinction which destroys the aesthetics, emotion and environmental well-being and environs of the Town deleteriously affecting my studies and my enjoyment of the Town of East Hampton.

2. I have read the plaintiffs' Summons and Verified Petition and Complaint ("complaint"), with attached exhibits and adopt and incorporate it in its entirety.

3. The media, upon information and belief, including Channel 12 News are now reporting that the Town's Deer Management Plan to cull the deer will commence this weekend or soon after in February 2014. Accordingly, the danger of grave and irreparable harm is imminent.

4. The Town admitted these material and crucial facts alleged in the complaint:

"25. The Town of East Hampton is located in Suffolk County, Long Island.

...

29. The Town Board consists of five (5) people.

...

32. The original town government of the Town of East Hampton is the Trustees of the Freeholders and Commonality of the Town of East Hampton.

...

34. The Town Board adopted the Deer Management Plan, by Resolution 2013-723, on June 20, 2013, a copy of which is attached as Exhibit 1.

35. The Town Board's Deer Management Plan is entitled "Management of the White-tailed Deer Population in East Hampton Town," a copy of which is attached as Exhibit 2 (hereinafter "Deer Management Plan").

...

39. The Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, was received on November 3, 2006, by the Town of East Hampton Natural Resources Department.
40. The Town Board's Deer Management Plan cited to the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, at page 10 ¶ 16 of the Deer Management Plan.
41. The Town Board's Deer Management Plan relied upon the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
42. The Town Board's Deer Management Plan accepted the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
43. The Town Board's Deer Management Plan used the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
44. The Town Board's Deer Management Plan adopted the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
45. The Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, stated that "wildlife managers consider the average acceptable density in the Eastern United States to be 20-40 deer per square mile."
46. The Town Board's Deer Management Plan, attached as Exhibit 2, stated at page 10 ¶ 16, entitled "Distance Sampling," that "20-40 deer/mi<sup>2</sup> was recommended."
47. The Town Board's Deer Management Plan, at page 27, entitled "Addendum I," cited to the Wildlife Biometrics survey, by Frank Verret, attached as Exhibit 2, stating the estimated deer population in 2006 in the Town of East Hampton to be 3, 293.
48. The Town Board's Deer Management Plan, at page 27, entitled "Addendum I," estimated, based on "anecdotal evidence," that there are "now (in 2010)," "between 3,000 and 4,000 deer."
49. The Town Board's Deer Management Plan stated at page 10 ¶ 16 "Distance Sampling," that "[i]t is possible to repeat this study [Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3] to obtain a more up-to-date estimate" of the deer population.
50. The Town Board has not used or relied on any scientific survey other than the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
51. The Town Board authorized a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.

52. The Town Board allocated taxpayer money for a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.

53. The Town Board paid monies for a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.

54. The Town Board obtained a scientifically-based up-to-date or current survey of the deer population by Vision Air Research, Inc.

55. The Town Board rejected the scientifically-based up-to-date or current survey of the deer population done by Vision Air Research, Inc., although the Town Board retained and paid them.

56. The Town Board relied solely on what it calls “anecdotal evidence,” with respect to the deer population in the Town of East Hampton since the Wildlife Biometrics survey, by Frank Verret, done in 2006, attached as Exhibit 3.

...

62. The Town Board knows the estimated deer population in the Town of East Hampton in 2012.

...

75. The Town Board has no survey done in 2011, 2012 and/or 2013 to support their statement in the Town Board’s Deer Management Plan at page 1 that there is an “uncontrolled explosion in the deer population,” in the Town of East Hampton.

...

89. Vision Air Research undertook an aerial survey of the deer in the Town of East Hampton in 2012 [sic].

90. Vision Air Research’s aerial survey of the deer in the Town of East Hampton in 2012 [sic], was reported by Vision Air Research, by report, dated May 28, 2013, a copy of which is attached as Exhibit 4.

...

92. The Certified Wildlife Biologist Susan Bernatos submitted the Vision Air Research report, dated May 28, 2013, to East Hampton’s Planning Department.

...

**94. Vision Air Research’s aerial survey, a copy of which is attached as Exhibit 4, of the estimated deer population in the Town of East Hampton estimated the number of deer in 2012 [sic] to be 877.**

...

96. The Town Board's Deer Management Plan at page 6 recommended that the "most reliable baseline survey of the current of deer herd," be obtained.

...

**98. The Vision Air Research aerial survey report, dated May 28, 2013, attached as Exhibit 4, estimated the deer population to be 877, a reduction of almost 70% from the last scientific-based survey by Wildlife Biometrics, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.**

...

**104. There is no "uncontrolled explosion in the deer population" in East Hampton.**

**105. The Town Board's statement in the Deer Management Plan that there is an "uncontrolled explosion in the deer population" in East Hampton is unfounded, unsupported by science, reason and the evidence.**

**106. The Town Board's statement in the Deer Management Plan that there is an "uncontrolled explosion in the deer population" in East Hampton is inaccurate.**

107. The Town Board in the Deer Management Plan stated on page 1 that "[w]e have too many deer."

**108. The Town Board's statement in the Deer Management Plan that "[w]e have too many deer," is unfounded, unsupported by science, reason and the evidence.**

**109. The Town Board's statement in the Deer Management Plan that "[w]e have too many deer," is inaccurate.**

**110. The Town Board's statement in the Deer Management Plan at page 1 that there is an "uncontrolled explosion in the deer population" in East Hampton is arbitrary and capricious.**

**111. The Town Board's statement in the Deer Management Plan at page 1 that "[w]e have too many deer," is arbitrary and capricious.**

**112. The deer population in the Town of East Hampton decreased from 2006 to the present.**

113. The Town Board's Deer Management Plan, at page 1, states that there is an "emerging emergency" because "the white-tailed deer population exceeds the community's cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment."

...

115. The Wildlife Biometric survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, cited to and relied on by the Town Board, stated that “wildlife managers consider the average acceptable density in the Eastern United States to be 20-40 deer per square mile” (see also *Druyan v. Village Bd. of Trustees of Village of Cayuga Heights*, 33 Misc3d 1203(A) [Supreme Court 2011], *aff’d*, 96 AD3d 1207 [3d Dept 2012] (fifteen (15) deer per square mile is acceptable)).

...

117. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is unfounded, unsupported by science, reason and the evidence.**

118. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is inaccurate.**

119. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is contradicted by science, reason and the evidence.**

120. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is arbitrary and capricious.**

121. The Town Board’s Deer Management Plan states there is an “emerging public health crisis,” based on the increasing incidence of Lyme disease.

122. The Town Board’s Deer Management Plan states “[a] report from a local doctor said the number of Lyme disease cases among his patients more than doubled from 60 in 2010 to 125 in 2011.”

123. The Town Board’s Deer Management Plan does not identify the “local doctor.”

124. **The Town Board’s Deer Management Plan does not provide any copy of a report, study or survey from the “local doctor,” nor a certified or credible report, study or survey.**

125. **The Town Board’s Deer Management Plan provided no expert or medical reports and/or studies evidencing any causal relationship between the increase of Lyme disease and the deer population.**

...

128. **Deer do not cause Lyme disease.**

129. The Town Board’s Deer Management Plan states that “[t]he relationship between deer populations and the incidence of tick-borne diseases is not clear and is the subject of on-going scientific research.”

...

149. **The Town Board’s Deer Management Plan to reduce the deer population based on the incidence of Lyme disease cases in the Town of East Hampton is arbitrary and capricious.**

150. **The Town Board’s Deer Management Plan to reduce the deer population based on the incidence of Lyme disease cases in the Town of East Hampton is an inappropriate and wasteful use of limited and valuable taxpayer resources.**

...

162. **The Town Board never obtained approval, permission and/or acceptance by the Trustees of the Freeholders and Commonality of the Town of East Hampton for the Town Board’s Deer Management Plan.**

...

167. **Resident hunters in the Town of East Hampton do not support the Town Board’s Deer Management Plan.**

...

169. Laws of and relating to the regulation of culling and hunting of wild animals come under the auspices of the New York State Department of Environmental Conservation.

170. These laws include how and under what conditions a locality can pass laws regulating and effecting animal hunting and culls in their locality.

...

174. **Local Assemblyman Fred Thiele sponsored a bill in the New York State Assembly, under Bill Number A6428, to amend the State**

**Environmental Law to permit the Town Board's Deer Management Plan.**

175. **The Bill Number A6428 has not passed.**

...

180. Resolution 2013-723 states that the "Town's Plan is consistent with the New York State Department of Environmental Conservation's Deer Management Plan."

181. The Town Board's Deer Management Plan is attached as Exhibit 2.

...

185. The Town Board's Councilman Dominick Stanzione is the only named Town Board Councilperson to appear on the cover of the Town Board's Deer Management Plan.

186. The Town Board's Councilman Dominick Stanzione's name appears numerous and multiple times throughout the Town Board's Deer Management Plan.

187. The Town Board's Councilman Dominick Stanzione headed the Deer Management Plan committee called "Deer Management Working Group," or "DMWG."

...

189. The Town Board's Councilman Dominick Stanzione lost his 2013 re-election bid to continue as Councilman."

(emphasis added). These are, of course, crucial, material admissions warranting the requested injunctive relief, including a TRO enjoining any deer cull pursuant to and/or in connection with the Town's Deer Management Plan. The defendant's admission that there is no "uncontrolled explosion in the deer population," and that there is no scientific evidence, no survey of any kind, supporting the defendants' assertion that there is an "uncontrolled explosion in the deer population" (§ 75), and "that there is an emerging emergency," are materially crucial admissions. **The defendant's admission at § 112 that the deer population decreased since 2006 to the present is another materially crucial admission** (emphasis added). The defendants admit that these statements are "unfounded, unsupported by science, reason and the evidence," and are



inaccurate, arbitrary and capricious (§§ 104-113, 115, 117, 118-120). These are materially crucial admissions supporting the granting of the requested TRO.

5. The defendant's admission that "[d]eer do not cause Lyme disease," and that the "local doctor" relied upon by the defendants' Deer Management Plan is not supported by any credible report, study or survey (§§ 121-125, 128), are also crucial material admissions warranting the granting of the requested TRO.

6. Importantly, *the defendant admits that the Town's Deer Management Plan is "arbitrary and capricious," and "is an inappropriate and wasteful use of limited and valuable taxpayer resources"* (§§ 149-150) (emphasis added). This indisputable fact alone warrants the TRO enjoining the implementation of the Town's Deer Management Plan.

7. The defendant also admitted that the resident hunters do not support the Town Board's Deer Management Plan (§ 167).

8. Importantly, the defendant admitted that the State of New York has not yet authorized or sanctioned the Town's Deer Management Plan (§§ 169-170, 174-175). Accordingly, the Town's plan to proceed with the deer cull per the Deer Management Plan should be stayed.

9. The defendant, very importantly, also admitted that they never obtained the approval of the Trustees (§ 162), thus indisputably establishing that the Deer Management Plan is overbroad, including within its scope, property on which they are not authorized to hold a deer cull. The Trustees have objected to the Town's Deer Management Plan by "Memorandum," dated January 2, 2013.

10. The defendant Village admitted that the "newly elected and constituted Town Board reflecting the will of the 2013 voters should weigh-in consider and reconsider and vote on

the plan after noticing and holding public hearings based on science, reason and evidence” (§ 193). Thus the Village supports the requested TRO otherwise the “newly elected and constituted Town Board,” cannot consider, reconsider and hold a vote on the Deer Management Plan reflecting the will of the 2013 voters.

11. Scientific studies establish that reducing the deer population may cause an increase in tick-borne diseases (§§ 133-145). The scientific study “*Scientific Frontline: Deer-free areas may be haven for ticks, disease,*” Penn State’s Center for Infectious Disease Dynamics at Penn State University, Sarah Perkins, postdoctoral researcher; Isabella M. Cattadori, postdoctoral scholar; and Peter J. Hudson, the Willaman Professor of Biology; and Valentina Tagliapietra and Annapaola P. Rizzoli, Centro di Ecologia, Alpina, Italy, dated Wednesday, August 30, 2006, establishes that deer-free areas may be a haven for ticks and diseases. Thus the Town’s Deer Management Plan is arbitrary and capricious and an inappropriate and wasteful use of limited and valuable taxpayer resources just as the Town admitted (§ 6).

WHEREFORE, the Court is respectfully requested to grant a Temporary Restraining Order (“TRO”), together with such other and further relief as is just and proper in the circumstances.

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William Crain

Sworn to before me this  
\_\_\_\_ day of January 2014

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Notary Public