Supreme Court Chambers
545 Hall of Justice
Rochester, New York 14614-2185

Ann Marie Taddeo
Justice

Phone: (585) 428-5541
Fax: (585) 428-4122

June 21, 2007

M. Corrin Strong
38 Main Street
P.O. Box 236
Geneseo, New York 14454

William S. Lofquist
59 North Street
Geneseo, New York 14454

Ronald G. Hull, Esq.
Underberg & Kessler
300 Bausch & Lomb Place
Rochester, New York 14604

RE: Please Don't Destroy Geneseo, William S. Lofquist & M. Corrin Strong vs. Weston Kennison, Supervisor of the Town of Geneseo and the Town of Geneseo
Livingston County Index No. 448-2007

Dear Counsel:

Enclosed please find Justice Taddeo's Decision and Order in the above referenced matter. This decision and Order resolves all matters pending before this Court and therefore the courtdate of June 28, 2007 in Livingston County is hereby cancelled.

Very truly yours,

Janice Bartz

Janice Bartz
Secretary to Justice Ann Marie Taddeo

cc: Dino Provo, Livingston County

SUPREME COURT
COUNTY OF LIVINGSTON STATE OF NEW YORK

Please Don't Destroy Geneseo, William S. Lofquist and M. Corrin Strong

Petitioners

vs.

Index No.: 2007-448

Weston Kennison, Supervisor of the Town of Geneseo and the Town of Geneseo,

Respondents

DECISION AND ORDER

Petitioner Please Don't Destroy Geneseo (PDDG) is a citizens' group organized to oppose particular commercial development in the Village of Geneseo. Petitioners Lofquist and Strong are both members of PDDG as well as residents of the town of Geneseo. Respondent Town of Geneseo is an incorporated town under the laws of New York. Respondent Kennison is the Town Supervisor for the Town of Geneseo.

Petitioners Strong and Lofquist represent themselves in this action. Respondents are represented by Underberg and Kessler, Ronald G. Hull, of counsel.

Petitioners have sought access to certain town records related to an application to develop the Gateway Town Center. Petitioners filed FOIL requests with the Town of Geneseo. Among the items returned pursuant to their request were bills from the town's lawyers, Underberg and Kessler (UK).

On October 11, 2006, Petitioners made a further FOIL request upon UK for 36 specific documents. UK provided all but 10 of those documents. In their papers, UK avers that they have searched their client records as well as their e-mail records and cannot find the particular

documents that Petitioners seek. UK believes that the documents in question have been destroyed in the ordinary course of business.

Petitioner now seeks:

1) an Order from this Court permitting they to access the requested documents;
2) a declaratory judgment that they are entitled to the documents and
3) attorney's fees.

UK has provided affidavits from various Geneseo personnel in order to prove that the sought-after documents do not exist. Jean Bennett, the Geneseo Town Clerk certified that the records could not be found following a diligent search. According to her affidavit, in October of 2006 she initiated a search of records at both the Town's offices as well as at the office of the Town Attorney. Ms. Bennett also requested searches be conducted at the Planning Board, the Code Enforcement Clerk's office and the Center for Governmental Research. After further requests by Petitioners, Ms. Bennett repeated her search between January and February of 2007.

On May 16, 2007 the parties appeared before this Court for a conference. While Mr. Hull had already provided an affidavit that he personally searched the Town of Geneseo's client files at UK for written or electronic records corresponding to Plaintiffs' requests to no avail, the Court requested UK to further search its own e-mail archives, if any.

In compliance with the Court's request, On June 11, 2007 Mr. Hull provided the affidavit of Michael L. Klinkbeil, the Systems Administrator for UK. According to Mr. Klinkbeil, UK does not maintain a centralized archive of historical e-mails. Their system is designed to only maintain a centralized directory for one week; individual user's e-mail may be stored on their own computers indefinitely.

Mr. Klinkbeil then conducted a search of the computer of James Coniglio, the other UK attorney assigned to the Geneseo case. According to Mr. Klinkbeil, his inspection of Mr. Coniglio's computer confirmed that he routinely deletes e-mails and that there were no e-mails

stored on his machine from the time in question.

Setting aside Respondents' arguments that Petitioners lack standing and failed to state a cause of action, this Court believes that both the Town of Geneseo and its attorneys, UK, have gone above and beyond the requirements of FOIL in searching for these documents. FOIL does not grant one a license for a fishing expedition.

Here, Petitioners seek the Respondents and their attorneys to produce something that no longer exists. Even if this Court were to believe that respondents or UK willfully destroyed these documents in an attempt to thwart Petitioners' discovery, the Court would be unable to order Respondents to produce what has already been destroyed.

But, the Court has not been persuaded that Respondents or UK have done any such thing. Regardless of the fact that Plaintiffs have not presented any credible evidence that the papers sought would have been relevant or admissible, the Court is not convinced that these documents were intentionally destroyed by Geneseo or UK for the purpose of secreting them from Plaintiffs.

The Court finds that Respondents and UK have used diligent efforts to attempt to track down the documents in question.

Accordingly, it is hereby

ORDERED, that Plaintiffs petition is denied in all respects.

Dated this 21st day of June, 2007

Hon. Ann Marie Taddeo
Supreme Court Justice