

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

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MATTHEW DeANGELIS,)	
<i>Plaintiff</i>)	
)	
VS.)	CIVIL ACTION NO. 3:06CV01877 (SRU)
)	
TOWN OF NEWTOWN ET AL.,)	JANUARY 24, 2007
<i>Defendants</i>)	
-----X		

AFFIDAVIT OF HERBERT ROSENTHAL

<i>STATE OF CONNECTICUT</i>)	
)	ss.: Newtown, January 23, 2007
<i>COUNTY OF FAIRFIELD</i>)	

I, Herbert Rosenthal, being first duly sworn, hereby depose and say:

1. I am over the age of eighteen years and believe in the obligation of an oath.

2. I am the First Selectman of the Town of Newtown and have held that position since December of 1997; I was re-elected in 1999, 2001, 2003 and 2005.

3. I make this Affidavit freely, based on my personal knowledge of the facts set forth herein.

4. In my capacity as First Selectman, my actions are governed by the Town Charter, municipal regulations and ordinances, and state and federal statutes. A copy of the Town Charter as revised on November 4, 1997 is attached hereto as Exhibit A and a copy of the Town Charter as revised on November 6, 2001 is attached hereto as Exhibit B.¹ As First Selectman, and as a long-time resident of Newtown, I am familiar with the Fairfield Hills property in Newtown.

5. Plaintiff Matthew DeAngelis purports to reside at 5 Cobbler's Mill, Newtown. No portion of Cobbler's Mill abuts or is it within a radius of one hundred feet of any portion of the Fairfield Hills Campus.

6. On March 17, 1997, property formerly known as the Fairfield Hills Hospital was declared surplus under Conn. Gen. Stat. § 4b-21(b) by the Connecticut Department of Mental Health and Addiction Services.

7. This property was originally comprised of approximately 800 acres; however, various portions of it were transferred to other entities including the Department of Agriculture, Department of Corrections, the Newtown Housing for the Elderly and the Town.

¹ All exhibits attached to this affidavit are certified copies of the originals.

8. The portion of the property that remained, after the initial transfers to the above-referenced entities, is hereinafter referred to as the “Fairfield Hills Campus.” The Fairfield Hills Campus is more fully described as Parcels “D” and “E” on the attached Exhibit C. The Fairfield Hills Campus consists of +/- 189 acres, and includes portions of the former hospital. It is located in the Fairfield Hills Adaptive Reuse Zone (“FHAR Zone”).
9. In an effort to sell the Fairfield Hills Campus, the State sought requests for proposals from private developers for the sale of the Fairfield Hills Campus to them.
10. In response to the anticipated sale of the Fairfield Hills Campus, the Planning and Zoning Commission sought to create an Adaptive Reuse Zone for Fairfield Hills Campus.
11. At the time the Planning and Zoning Commission sought to create an Adaptive Reuse Zone, it was thought that there might be private redevelopment of Fairfield Hills and the Planning and Zoning Commission wanted to preserve the character of the “campus”.
12. On May 7, 1998, the Newtown Planning and Zoning Commission, in accordance with the Town Charter and the Connecticut General Statutes, created the FHAR Zone. See Exhibit D, attached hereto. The Regulations pertaining to the FHAR Zone were amended by the Newtown Planning and Zoning Commission in January of 2005. See Exhibit E, attached hereto.

13. The intent of the FHAR Zone is “to focus on a campus setting and encourage use of the property, existing buildings and new structures that will reinforce and contribute to the overall cohesiveness of the area.” See Exhibit D, § 4.23.100

14. In response to the state’s request for proposal, approximately 80 developers toured the Fairfield Hills Campus. Of these, approximately a dozen submitted their qualifications. Of these dozen developers, four were selected to submit requests for proposals. Three developers submitted requests for proposals on or about July of 1999.

15. The Town held a public informational meeting to discuss the three proposals. At this meeting approximately 400 residents attended and many in attendance voiced concerns about the three proposals. Two concerns dominated the discussion. Citizens believed that the proposals contained too much residential development for the Fairfield Hill Campus and more generally, residents did not like the prospect of having private developers controlling the development of the property.

16. At this time, the Town began to consider purchasing the Fairfield Hills Campus for itself, as it had a statutory right to purchase the Fairfield Hills Campus. See Conn. Gen. Stat. § 3-14b.

17. A water supply system which was previously operated by the State (the “Water Assets”) is located on the Fairfield Hills Campus. On or about March 3, 2000, the Town sent a letter expressing its interest in purchasing the Fairfield Hills Campus from the State along with the Water Assets. See Exhibit F, attached hereto.

18. The State initially asked in excess of \$5 million for the Fairfield Hills Campus; however, as a result of the negotiations concerning environmental clean-up and demolition required to be performed by the purchaser, the Town and State agreed at a purchase price of \$3.9 million. See Exhibit G, attached hereto.

19. The Town exercised its right to acquire the Fairfield Hills Campus and entered into an agreement with the State titled: “Negotiated Terms and Conditions of Sale Fairfield Hills” on May 21, 2001. See Exhibit G.

20. On May 21, 2001, at a publicly noticed meeting of the Town’s Board of Selectman, it unanimously passed four resolutions: (1) recommending the acquisition of the Fairfield Hills Campus in accordance with the terms of the document entitled “Negotiated Terms and Conditions of Sale Fairfield Hills” dated May 21, 2001; (2) requesting funding for the capital projects as listed on the Cost Estimate page of the Fairfield Hills Campus Proposed Work Program and Cost Estimates prepared by Harrall-Michawloski Associates, Inc., dated May 21, 2001 in the total amount of \$21,723,600; (3) recommending that the Town authorize the sale of

six town-owned houses on Queen Street, which were part of the original hospital property and were previously given to the Town; and (4) making a referral to the Planning & Zoning Commission for resolutions numbered (1), (2) and (3) in accordance with Conn. Gen. Stat. § 8-24. See Exhibit H, attached hereto.

21. On May 23, 2001, at a publicly noticed special meeting of the Legislative Council of the Town of Newtown, it unanimously passed a resolution recommending the acquisition of the Fairfield Hills Campus in accordance with the terms of the document entitled “Negotiated Terms and Conditions of Sale Fairfield Hills” dated May 21, 2001. At this meeting the Legislative Council also unanimously passed a resolution instructing bond counsel to draft a bonding resolution using the parameters set out in Phase I, Phase II and Phase III of the Harrall - Michawloski Associates, Inc., report dated May 21, 2001 without any prices, or dollar amounts, save for the caps of \$1 million for the Edmond Town Hall, \$600,000 for playing fields at the high school, \$1.4 million for the rest of the fields, and a total bond authorization of \$21,850,000. See Exhibit I, attached hereto.

22. On June 6, 2001, at a publicly noticed special Town Meeting, the Town approved the bonding of \$21,850,000 for the purchase of the Fairfield Hills Campus and renovation and improvements to various buildings thereon, the planning, design and construction of renovations and code updates to Edmond Town Hall, and for various other public improvements. The special

Town Meeting also authorized the issuance of \$21,850,000 of bonds for the foregoing purposes. See Exhibit J, attached hereto.

23. On November 12, 2003 the Town and the State entered a more formal agreement for the purchase of the Fairfield Hills Campus. See Exhibit G.

24. As part of the negotiations for the purchase of the Fairfield Hills Campus with the State, the State transferred to the Town some additional property which is not part of the Fairfield Hills Campus. This additional property had previously been conveyed to the Town, but title had not formally transferred. On February 2, 2004, the Board of Selectmen unanimously resolved to accept from the State this additional property consisting of 21 acres along Deep Brook, 37.5 acres on Commerce Road, 4 acres on Oakview Road and five houses on Mile Hill Road South. As part of this resolution the Board of Selectmen made a mandatory referral to the Planning and Zoning Commission. See Exhibit K, attached hereto.

25. On February 5, 2004, pursuant to Conn. Gen. Stat. § 8-24, at a publicly noticed meeting of the Planning and Zoning Commission, it unanimously resolved to accept this additional property from the State. See Exhibit L, attached hereto.

26. Likewise, on February 18, 2004 at a publicly noticed meeting of the Legislative Council, it unanimously resolved to accept this property. See Exhibit M, attached hereto.

27. On June 16, 2004 the State and the Town entered into a purchase and sale agreement for the transfer of the Water Assets to the Town. See Exhibit N, attached hereto.
28. On or about July 28, 2004 the Town and State entered into an asset purchase agreement for the Town to purchase from the State the Water Assets. See Exhibit O, attached hereto.
29. On or about July 27, 2004 the State, by way of General Assignment and Bill of Sale, transferred the Water Assets to the Town. See Exhibit P, attached hereto.
30. On July 16, 2004 the Town of Newtown acquired the Fairfield Hills Campus by way of Quit Claim Deed. See Exhibit Q, attached hereto.
31. The acquisition of Fairfield Hills Campus was funded in accordance with the June 6, 2001 authorization.
32. Since the June 6, 2001 special Town Meeting and prior to the borrowing or expenditure of funds at the Fairfield Hills Campus, the Town has included the amount and purpose for the borrowing and resulting debt service expenditures in the annual budgets approved by the Selectmen, Board of Finance, Legislative Council and by the taxpayers at the annual budget referenda. All payments resulting from the June 6, 2001 bonding authorization (e.g. interest) were approved at the annual budget referenda.

33. The Board of Selectmen created a preliminary plan for the future re-use of the Fairfield Hills Campus (the “BOS Plan”).
34. The Board of Selectmen decided to seek input from voters with respect to the BOS Plan through a *non-binding advisory* question.
35. On August 12, 2003 a *non-binding advisory* machine vote was held to provide guidance into the BOS Plan. The turnout for this vote was dismal with only 15% of the registered voters actually voting. Of those who voted, 1204 voted against the proposed development shown on the BOS Plan and 1050 voted in favor of it.
36. Mathew DeAngelis did not take part in this vote on August 12, 2003. Nor did he speak out in objection to any of the actions of the Board of Selectmen, Legislative Council or Planning and Zoning Commission referenced in this affidavit.
37. Following the non-binding advisory vote, the Board of Selectmen authorized me to hire the University of Connecticut to conduct a scientific public opinion survey to better understand the aspects of the BOS Plan that the voters liked and did not like.
38. After reviewing the results of the University of Connecticut survey, a master plan of development was prepared (“Master Plan of Development”) and submitted to the Planning and

Zoning Commission in compliance with the procedures required by Section 4.23.200 of the Planning and Zoning Regulations.

39. The Planning and Zoning Commission held a noticed public hearing on February 17, 2005, and on March 17, 2005, it approved the Master Plan of Development. See Exhibit R, attached hereto.

40. After the public hearing, the Commission approved the Master Plan of Development, effective as of March 28, 2005. See Exhibit S, attached hereto.

41. Notice of the Planning and Zoning Commission's approval of the Master Plan of Development was published in the Newtown Bee on March 25, 2005. See Exhibit T, attached hereto.

42. After acquisition of the Fairfield Hills Campus and adoption of the Master Plan of Development, the Board of Selectmen further determined that a new political entity was necessary to implement the Master Plan of Development, and requested that the Connecticut General Assembly create legislation to enable the creation of such an entity

43. On May 17, 2005, the Connecticut General Assembly enacted Public Act No. 05-33, effective July 1, 2005, which authorized the creation of the Fairfield Hills Authority.

44. On July 6, 2005, at a publicly noticed meeting of the Legislative Council, pursuant to Public Act No. 05-33, it adopted an ordinance establishing the Fairfield Hills Authority. See Exhibit U, attached hereto.
45. No appeal of the aforementioned actions of the Planning and Zoning Commission, Board of Selectmen or Legislative Council was ever brought by Mathew DeAngelis or anyone else.
46. Every dollar of tax money spent for Fairfield Hills has been approved by the taxpayers at the June, 2001 special Town Meeting. Subsequent expenses resulting from the issuance of bonds were approved at the Town's annual budget referenda.
47. The Town Charter does not require or authorize a master plan of development to be approved by the voters at either a Town Meeting or a referendum.
48. The Town Charter does not provide a means for holding either a binding town meeting or a binding referendum to adopt a master plan of development.
49. All of the expenditures by the Fairfield Hills Authority, both for operations as well as from borrowing for capital projects, have been reported each month at public meetings of the Fairfield Hills Authority. Expenditures have not exceeded those authorized on June 6, 2001 at the special Town Meeting.

50. Every dollar of tax money spent for Fairfield Hills has been approved and spent in accordance with the Town Charter, Town ordinances and regulations and the Connecticut General Statutes.

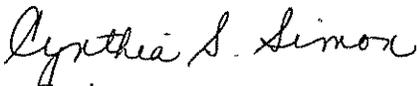
51. Likewise the Master Plan of Development has been approved in accordance with the Town's Planning and Zoning Commission's zoning regulations, which are the only approval required for it, and in accordance with P.A. 05-33.

52. On January 22, 2007 and January 23, 2007, I accessed <http://www.insidenewtown.com/> and attach as Exhibit V, a true, complete and correct copy of the following postings authored by Plaintiff from that website: (1) "Why my Right to Due Process isn't frivolous" dated November 21, 2006; (2) "Why I filed a Civil Rights Lawsuit against the town" dated November 21, 2006; (3) "Herb Rosenthal: John Belushi or The Energizer Bunny?" dated December 18, 2006; and (4) "The Town Hall issue - Matt throws down the gauntlet" dated December 11, 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of January, 2007.


Herbert Rosenthal

SUBSCRIBED and **SWORN** to before me this 23rd day of January, 2007.

Notary Public 
My Commission Expires:

CYNTHIA S. SIMON
NOTARY PUBLIC
My Commission Expires Feb 28, 2008