

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

DONALD HANSON and TONY O'NEILL

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

HOUSTON A. STEBBINS, JAMES HAYES,
CHARLOTTE WORTHY, CHRISTOPHER C.
HANSEN, TINKA SHAW, all individually and as
the Mayor and Trustees of the Board of Trustees,*

'08 CIV 10956
JUDGE SEIBEL

TO: (Name and address of defendant)

JOHN LEDWITH, III, Individually and as Building Inspector for the Village of
Tuxedo Park, New York
c/o Village of Tuxedo Park Village Hall, 80 Lorillard Road
Tuxedo Park, New York 10987

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Feerick Lynch MacCartney, PLLC
By: Dennis E. A. Lynch, Esq.
96 South Broadway
South Nyack, New York 10960

DEC 18 2008
12:10 p.m.
Hand Delivered

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

DEC 17 2008

CLERK

DATE

(BY) DEPUTY CLERK

*See Attachment for Additional Defendants

Attachment to Summons in a Civil Case

Additional Defendants:

THE VILLAGE OF TUXEDO PARK, NEW YORK, JOHN LEDWITH, III, individually and as Building Inspector for the Village of Tuxedo Park, New York, "JOHN DOES" and "JANE DOES" 1-5.

FILED
DEC 17 2008
USDC WP SDNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

DONALD HANSON and TONY O'NEILL,

Plaintiffs,

-against-

COMPLAINT

Docket No.

'08 CIV 10956

JUDGE SEIBEL

HOUSTON A. STEBBINS, JAMES HAYES,
CHARLOTTE WORTHY, CHRISTOPHER C.
HANSEN, TINKA SHAW, all individually and
as the Mayor and Trustees of the Board
of Trustees, the VILLAGE OF TUXEDO PARK,
NEW YORK, JOHN LEDWITH III, Individually and
As Building Inspector for the Village of Tuxedo
Park, New York, "JOHN DOES" and "JANE DOES"
1-5,

Defendants.

-----X

The Plaintiffs, as and for their Complaint against the Defendants, allege upon
information and belief as follows:

NATURE OF ACTION

1. This action is commenced by Plaintiffs to seek declaratory relief regarding
their civil rights under the United States Constitution, Fifth and Fourteenth Amendments,
42 U.S.C. 1983, caused by the Defendant's outrageously arbitrary actions to deprive the
Plaintiffs of their Constitutional rights under color of law, as well as vague, burdensome,
discriminatory, inconsistent and selective application of zoning laws and regulations which
have prohibited and continue to prohibit the Plaintiffs from exercising their property rights
and conducting business in the Village of Tuxedo Park and deny Plaintiffs equal protection
of the laws.

2. The Plaintiff Donald Hanson, relying upon existing zoning laws for the Defendant Village applied to the Village to construct an addition on his existing home and to renovate the existing structure on his property with Plaintiff Tony O'Neill as his construction manager. The Defendants in an effort to violate Plaintiff Hanson's property rights, selectively and in a discriminatory fashion, conspired to apply its zoning laws to prevent Plaintiff Hanson from completing construction of an addition to his home and from completing renovation of his home, after said Plaintiffs had already invested significant sums of money and time in the renovation and construction.

3. After requiring Plaintiff Hanson to expend considerable sums to obtain Village approvals and proceed with construction, Defendants conspired to impose an order to stop any further work by Plaintiff Hanson and did impose such order; conspired to prevent Plaintiff O'Neill from entering the Village. Said Plaintiff O'Neill was stopped from entering the Village of Tuxedo Park by an unlawfully placed access gate installed upon the public roadways of the Village of Tuxedo Park and questioned about doing work in the Village.

4. As a result of outrageously arbitrary actions by the Defendants, acting under color of law, Plaintiff Hanson cannot complete construction on the premises as intended, and has been caused to suffer significant financial damages as a result of the Defendants' actions and Plaintiff O'Neill cannot freely enter the Village.

5. Because of the Defendant Village's aforementioned misconduct, monetary damages should be awarded to Plaintiff Hanson and declaratory relief should be awarded to both Plaintiffs that restricted access to the Village is illegal.

6. Because the Code of the Village of Tuxedo Park expressly restricts use of Village's public roadways to residents, landowners and persons with consent of the Village, said provisions of the Code of the Village of Tuxedo Park should be declared unlawful and Defendants' should be enjoined from enforcing said code and from continuing to maintain an unlawful access gate to restrict the use of the public roadways by the whole of the public

7. The Defendant's actions, all of which took place under color of state law, are and should be declared unlawful, and should be permanently enjoined.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to United States Constitution, Fifth Amendment and Fourteenth Amendment; 28 U.S.C. § 1331(a), 28 U.S.C. § 1343, 28 U.S.C. 1367, 42 U.S.C. § 1983, which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights, privileges and immunities secured by the laws and Constitution of the United States, particularly the First and Fourteenth Amendments to the Constitution of the United States.

9. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because the acts and transactions complained of occurred, and continue to occur in this District.

THE PARTIES

10. Plaintiff Donald Hanson is an individual who owns property in the Village of Tuxedo Park, New York.

11. Plaintiff Tony O'Neill is an individual who conducts business in the Village and travels within the Village.

12. The subject property is located on Tower Hill Road within the Village of Tuxedo Park in an area that is zoned (A-4). The property has a tax map reference as Section 107, Block 1, Lot 24 (herein the "property" or "premises").

13. Defendant Village of Tuxedo Park, New York ("Village") is a municipal corporation duly formed and existing pursuant to the laws of the State of New York and is governed by its Village Board for the Village of Tuxedo Park as the municipal legislative body authorized by New York Law to adopt zoning and land use regulations for the Village of Tuxedo Park.

14. Defendant John Ledwith, III is the Building Inspector for the Village of Tuxedo Park, the Village Deputy Clerk and Chief Enforcement Officer of the Village of Tuxedo Park.

15. Defendant Houston A. Stebbins is the elected Mayor of the Village of Tuxedo Park and member of the Defendant Tuxedo Park Board of Trustees.

16. Defendant James Hays is an elected Trustee and member of the Defendant Tuxedo Park Board of Trustees.

17. Defendant Charlotte Worthy is an elected Trustee and member of the Defendant Tuxedo Park Board of Trustees.

18. Defendant Christopher C. Hansen is an elected Trustee and member of the Defendant Tuxedo Park Board of Trustees.

19. Defendant Tinka Shaw is an elected Trustee and member of the Defendant Tuxedo Park Board of Trustees.

20. Defendants "John Does" and "Jane Does" 1-5 are intended to be persons whose names are presently unknown and who conspired with the Defendants regarding the actions set forth in the Complaint.

BACKGROUND

An Ethic of Exclusion

21. The Village is situated on 2,300 acres of wooded hills, lakes and ponds and boasts being "unique among municipalities in New York State." That sense of uniqueness derives from a history without reference to which Defendant Village's flagrantly illegal conduct cannot be fully understood.

22. Tuxedo Park was founded 1886 by Pierre Lorillard IV, a sportsman and tobacco heir. Where there was untamed forest, Lorillard envisioned a game preserve and resort for the uppermost echelons of New York society. Lorillard realized his vision by importing from the docks of New York 1,800 laborers, mostly Slavs and Italians. Those laborers, housed in a shanty town outside Tuxedo Park, took a mere eight months to lay over thirty miles of dirt grade and macadam roads; install a complete water and sewerage system, fish hatchery, and formidable dam; build twenty-two large cottages, village stables, an ice house and two blocks of stores; construct an opulent clubhouse above the largest lake, as well as a police headquarters; and erect the stone gateway that continues to exclude the public at large, even today. One author has written: "What only eight months earlier had

been a ... wilderness of forbidding forests and rocky ravines in the Ramapo Hills was now a place of manorial elegance and rustic charm."

23. The same author noted a "more prosaic but even more alluring feature was the sturdy barbed-wire fence, eight feet high and twenty-four miles long, which encircled the entire park. Patrolled around the clock by a private constabulary, the fence provided the inmates with a blissful sense of social security. " Longer term, "[t]ribal clannishness, nourished by frequent intermarriages among offspring of the pioneer settlers and intensified by the insidious effect of the fence syndrome, bred both disdain for outsiders and fear of their contaminating influence."

24. A different author summarized the total effect of all this: Tuxedo Park was "a caricature of the Victorian millionaire's mania for exclusion."

25. Lorillard's barbed-wire fence ensured that laborers living outside Tuxedo Park could access the park only when summoned. Though the physical fence is now gone, the stone gateway at the main entrance and a second gated entrance at the south entrance, remain the exclusive points of entry and egress. And, as late as 1986, upon Tuxedo Park's centennial, the supervisor of the surrounding Town of Tuxedo summed up the attitude of the "Parkie" toward citizens of the Town: "The old serfdom still exists."

26. But had a greater openness taken root at least within Tuxedo Park? A prominent newspaper looking for centennial signs of diversity within Tuxedo Park could offer only paltry progress: "In contrast to the 1920s, there are now a number of Catholics and Jews living in the Park."

27. Insularity and exclusiveness continue today as Tuxedo Park's most distinguishing traits. The use of house numbers is of fairly recent advent. The Tuxedo Club, a private country club that centers social life within Tuxedo Park, retains a by-invitation-only membership policy and requires an initiation fee of fifty-thousand dollars.

28. Roughly half the residents with school-age children avail themselves of the Tuxedo Park School, a private school housed in an "elegant English country manor house, designed by Carriere and Hastings." www.tuxedoparkschool.org/about/index.asp

29. New homes, if built at all, require a four-acre lot. Not surprisingly, nobody in 2008 could mistake the Village of Tuxedo Park for a demographic snapshot of America, New York State, or even Orange County. Far from it.

30. By reckoning of the U.S. Census Bureau, the Village of Tuxedo Park has a population that is 94.4 percent White. In contrast, the United States' general population is 74 percent White, whereas New York State is 68 percent White and Orange County is 77 percent.

31. The Village of Tuxedo Park's population is .7 percent African-American. In contrast, the United States' population is 12 percent African-American, whereas New York State's population is 16 percent African American and Orange County's population is 9 percent African-American.

32. The Village of Tuxedo Park's population is 5.1 percent Latino. In contrast, United States' population is 15 percent Latino, whereas New York State's population is also 15 percent Latino and Orange County's population is 15 percent Latino as well.

33. Custom, zoning, and demographic bespeak exclusion. And the check point and crossing gate serve as exclusion's powerful symbols and effective instruments.

A Remaining Rampart of Exclusion

34. Tuxedo Park's 1952 decision to incorporate as a village and (putatively) shed its identity as a private community meant more than a change in form; financial advantages attended the change. The new village was eligible for both automatic state aid toward its operating expenses and a share of property taxes.

35. At the time of incorporation, the existing private roads providing access throughout the Village were dedicated to the Village as public roads for access by the public.

36. Notwithstanding the former private roads throughout the Village being dedicated as public roads, the Village has for at least half a century remained a "gated community," preventing access to the public roadways to any persons, other than residents, landowners and invitees authorized by residents.

37. This is no secret. The FAQ section of the Village of Tuxedo Park's official web site sets out the policy politely but unmistakably: *"May I visit Tuxedo Park for tourism or recreation? Yes, but you must be a guest of a resident or on an event list."*

38. More formally, the current Code of Tuxedo Park, *Use of Restricted Roads*, § 25-4. *Legislative intent*, states:

"In order to preserve and protect the public health, safety and welfare and in accordance with the single-family residential zoning of the Village and pursuant to the provisions of § 171 of the Village Law, as amended by c. 537, L. 1952, and resolution of the Board of Trustees as adopted May 9, 1953, the use of Village roads is restricted to owners of land within and residents of the

Village and persons lawfully having business with or invited therein by any such owner or resident."

39. The Code of Tuxedo Park neglects to mention in § 25-4, or elsewhere, that § 171 of New York States Village Law was effectively repealed over forty years ago. The code further omits reference to New York State Vehicle and Traffic Law ("NYSVTL") § 1604, which specifically prohibits a local authority from enacting such laws by providing that "a local authority shall have no power to pass, enforce or maintain any ordinance, rule or regulation ... excluding any such owner, operator or chauffeur from the free use of such public highways." The language of NYSVTL § 1604 existed in the Vehicle and Traffic law in section 54 of the former Vehicle and Traffic Law, which was enacted in 1929. Accordingly, the act of the Defendant Village, in excluding the public at large from the public roadways in 1953, was unlawful and contrary to the express provisions of the Vehicle and Traffic Law.

40. The Code of Tuxedo Park also fails to mention NYSVTL § 1640, which specifically enumerates the powers that a Village has in enacting local laws, and nowhere makes provision for the erection or maintenance of a gate denying access to non-residents or a power to exclude non-resident vehicles from public roadways.

41. Likewise, the Code of Tuxedo Park Village fails in text and in editor's notes to reference either People v. Grant, 306 N.Y.2d 258 (1953), which asserts that "municipal corporations hold the fee of streets for the benefit of the whole people" and thus "residents of a particular area in a town or village do not possess and cannot be granted proprietary rights to the use of the highways therein in priority to or exclusive of use by the general public" or

King v. New Rochelle Municipal Housing Authority, 442 F.2d 646, 648 (2d Cir. 1971), in which this circuit first recognized a right to intrastate travel. .

42. Finally, no where does the Code of Tuxedo Village reconcile its determinedly cloistered existence with its placement on the National Register of Historic Places.

43. In March of 1980, the entirety of the Village of Tuxedo Park was nominated and subsequently listed on the National Register of Historic Places pursuant to 36 C.F.R. 60, *et. seq.* This entitled the Village to grants [36 C.F.R. 60.2(b)] and tax benefits [36 C.F.R. 60.2(c)]. Apparently, however, in the view of the Village, neither the federal designation nor its attendant advantages entitled the public at large to view this historic village worthy of being listed on the National Register of Historic Places.

44. If the Village has lapsed in accounting for its exclusionary law, it has not lapsed in ensuring its enforcement. No fewer than three sections of the Code of Tuxedo Park Village address the Village-issued vehicle identification tags, detailing eligibility, placement, and even proper disposal of the tags in the event of a vehicle's sale. Code of the Village of Tuxedo Park §§ 25-1, 25-2, 25-3.

45. These vehicle tags are after all important to any Villager intent on easy passage in and out of the Village. For twenty-four hours a day, seven days a week, fifty-two weeks a year, armed, uniformed Village Police Officers keep post at the Village's stone gateway. These members of law enforcement check for vehicle tags and, without apology or explanation, prohibit access to all non-Village residents except those enjoying permission to

enter from a Village resident or the Village government. And even these exceptions have their license plates recorded by the police.

Equal Protection is for Members Only

46. Plaintiff Hanson is not a member of the exclusive Tuxedo Club, and likely would not have faced such adversity had he been a member of the Club.

47. Not only was Plaintiff Hanson not a member of the Tuxedo Club, but he utilized his home for religious purposes and had the audacity to invite minorities into Tuxedo Park to come to his home for such purposes.

48. Such actions by a Tuxedo Park resident are wholly inconsistent with the "old taboo against certain ethnic groups" within the park.

49. Often, the "rules" that apply in Tuxedo Park are dependent on Tuxedo Club status. In May of 2007, when Plaintiff Hanson was submitting plans for the renovation of his residence, he was advised by the Village that he was required to install "True Divide Light" windows, specifically a Woodstone brand. This requirement added approximately \$250,000 to the cost of Plaintiff's project.

50. At approximately the same time, the historic Tuxedo Club building was undergoing a renovation as well. However, the same requirement for True Divided Light windows was not imposed by Village Officials on this historic Tuxedo Club building.

51. Plaintiff Hanson has also been subject to accusations and an appearance ticket for work occurring after hours. In the case of the appearance ticket, Plaintiff Hanson was

cited at 5:00 pm based on a prohibition against working past 4:30pm. Working on weekends is also prohibited in the Tuxedo Park Village Code.

52. However, during the renovation of the historic Tuxedo Club building that occurred during the same time as Plaintiff Hanson's construction, work was regularly conducted after hours, and on Saturdays and Sundays. Apparently, despite the central and very visible location of the historic Tuxedo Club, minutes from Tuxedo Park Village Hall, these continuous and repeated violations were either not observed, or simply ignored by the Defendant Village and its officials.

53. Whether a stop-work order should be upheld against a project in the Village also appears to be dependent on whether it is club-affiliated or not. In February of 2007, the Village Board had been advised, in writing, by the Village Attorney that a vote taken by the Board in May of 2005, pertaining to expansion of docks at the Tuxedo Club was illegal. When the former Mayor moved to uphold the stop work-order and revoke the permit, the majority of the board voted against upholding the stop work order 3 to 2. Included in that majority against upholding the stop work order was Defendant Stebbins (then Trustee, now Mayor).

54. Defendant Stebbins, however, when it comes to non-club member Plaintiff, has taken a personal interest in enforcing the stop work order against Plaintiff's project and ensuring, with no rational basis, that ALL work is stopped on Plaintiff's property, even work having no bearing on Defendant Village's concerns. On November 20, 2008, Defendant Stebbins called the Plaintiff's residence via telephone and stated to the Plaintiff: "You can't

do anything. You can't even paint inside your house." Defendant Stebbins then asserted, inconsistently, that Plaintiff should notify the Building Inspector of anything that Plaintiff is doing."

55. When Plaintiff contacted the Building Inspector to ask to bring in new hay bales to place along the silt fence for drainage protections (the very heart of the Defendant Village's complaints), Plaintiff was told that he could not do anything.

**Zoning Behind The Rampart
and Plaintiff Hanson's Disappearing Permit**

56. No good comes from day-to-day exclusion if the wrong people can buy their way into the Village. Thus, as noted, the Village maintains a Zoning Code that is as real an instrument of exclusion as the Village's stone gateway, police checkpoint, and crossing barrier.

57. Under the Village Zoning Code, at § 100-3, the entire Village:

Is hereby considered one zoning district, which shall be known as the "Four-Acre Single-Family Residence" (A)(4) District.

58. Accordingly, the only residents allowed in the Village are those who can afford four acres upon which only a one-family house can be constructed.

59. The Village Code at § 100-6 allows as "permitted uses" only "one-family dwelling" as well as certain "accessory uses as are customary in connection therewith the foregoing (one-family dwelling) use and are incidental to said use."

60. Accordingly, the allowable uses under the Village Code are extremely limited. Having made the significant investment in the Village of Tuxedo Park, Plaintiff Hanson

sought lawfully to improve and expand his single family home, the only permitted use, so he could benefit from the peaceable enjoyment of his property and its environs.

61. At the time Plaintiff Hanson purchased property in the Defendant Village, the aforementioned Zoning Code provisions applied.

62. Prior to May 16, 2007, Plaintiff Donald Hanson filed a building permit application with the Defendant Village to renovate his existing single-family home and construct an addition to the home. Plaintiffs had engaged in work under a prior Building Permit which had reached its maximum period of validity.

63. On or about May 15, 2007, the Defendant Village Board of Architectural Review approved the Plaintiff's plans, allowing the new Building Permit to proceed for approval to the Board of Trustees.

64. On or about May 16, 2007, during a scheduled Board of Trustees meeting, the Defendant Village Board of Trustees, after review, approved the Plaintiff's application and plans, and authorized the Building Inspector to issue a Building Permit to Plaintiff Hanson.

65. Remarkably, this new Building Permit authorized for issuance by the Defendant Village Board of Trustees has not been made available for inspection, despite Freedom of Information Law requests for the specific document, as well as a Freedom of Information Law review of the Building Department file.

66. Counsel for the Defendant Village of Tuxedo Park has represented that the Defendant Building Inspector has asserted/claimed that the Building Permit cannot be located in the Building Department file, despite Defendants' having other documents in the

Plaintiff's Building Department file dating from the middle of the 20th Century right through to the present day.

67. The mysterious absence of this document is particularly suspicious, since the date of the expiration of the Building Permit was a critical issue and a catalyst in the Defendants carrying out unlawful, arbitrary and discriminatory conduct against the Plaintiffs.

68. On or about October 18, 2008 the Defendant Building Inspector notified the Plaintiffs, via letter, that the Building Permit was due to expire on November 16, 2008 and that the Plaintiffs were required to appear before the Board of Trustees to apply for an extension, or face an order requiring removal of all improvements on Plaintiff's property.

69. The Building Inspector apparently used the November 16, 2008 date based on the statutory eighteen (18) month calculation period from May 16, 2007. However, May 16, 2007 was the date that the Board of Trustees approved the plans and authorized the Building Inspector to issue the Building Permit. Under the Code of the Village of Tuxedo Code, the measurement of the eighteen (18) month period of validity of the permit begins from the date of issuance of the Building Permit by the Building Inspector, not the date of the Board of Trustees meeting where the authorization to issue the permit is granted.

70. The Defendants were, and remain, unable to produce the Building Permit showing the date of issuance, or they wish to avoid revealing the date of issuance, having already relied on November 16, 2008 as the expiration date and proceeding unlawfully thereafter. Therefore, Plaintiff Hanson remained under a proverbial zoning "Sword of Damocles."

71. Alternatively, Plaintiff Hanson asserts that the Building Inspector never prepared the Building Permit which would have started the 18 month clock running under the Code § 100-32, despite the Building Inspector continually authorizing and inspecting the work performed by the Plaintiff during the construction, and representing to the Plaintiff that the work was authorized.

November 12, 2008 Village Board of Trustees Meeting

72. Plaintiff Hanson, while not conceding that the Building Permit expired on November 16, 2008, appeared before the Defendant Village Board of Trustees on November 12, 2008, preserving all rights and remedies to which Plaintiff was entitled, to request a six month extension to the Building Permit, which is in accordance with the Code of the Village of Tuxedo Park, and a standard practice and policy in the Village of Tuxedo Park.

73. Within a short time of arriving at the Village Board of Trustees meeting, it became apparent that the Village Board of Trustees had already conducted inquiries, had discussions with Plaintiff Hanson's neighbor and had resolved to prevent Plaintiff Hanson from continuing the work on the property prior to the open meeting.

74. Defendant John Ledwith, III during the "Building Permits" portion of the Board Meeting agenda advised that Plaintiff Hanson was requesting an extension to his Building Permit. Defendant Ledwith, who would have been the official most familiar with the status of the site in his role as Building Inspector, did not raise any concerns with the site, did not recommend for or against the extension, and did not raise any issues concerning the

Plaintiff's site. Defendant Ledwith then identified Plaintiff Hanson's neighbor, Ken Stewart in the audience and stated that Mr. Stewart had some concerns.

75. Plaintiff Hanson's counsel addressed the pending concerns over drainage and problems that Plaintiff Hanson's neighbor alleged were caused by the Plaintiff's construction. Plaintiff's counsel advised the Board that the Plaintiff's engineer had been on the site and would be submitting a report that could be presented at the next meeting, and that any drainage problems on Plaintiff Hanson's neighbor's property, if caused by the Plaintiff, would be immediately remedied, and the Plaintiff was willing to make a condition of the extension his addressing those concerns within the month.

76. Plaintiff's counsel also advised the Board that the Plaintiff's engineer was going to arrange to meet with the neighbor's engineer to address any drainage issues stemming from Plaintiff's construction. Plaintiff Hanson's counsel further informed the Board that some of the neighbor's drainage concerns stemmed from his property being at the bottom of a hill where public roadway drainage was insufficient and possibly a cause of some drainage issues.

77. Thereafter, the Board of Trustees, now conducting a quasi-hearing without proper notice and without any procedural fairness to the Plaintiffs, permitted the neighbor, Mr. Stewart, to address the Board of Trustees and present and submit photographs, which Mr. Stewart stated he had previously e-mailed to the Defendant Board of Trustees and Defendant Ledwith. Plaintiff Hanson was not provided with any of the prior e-mails or

photographs before to the meeting, nor was Plaintiff's counsel given an opportunity to inspect the photographs at the meeting itself.

78. When Plaintiff's counsel asked to respond, Defendant Mayor Stebbins indicated that he would allow a brief rebuttal. No such restrictions were placed on Mr. Stewart's presentation. The Defendant Board of Trustees then began to discuss the extension of the Building Permit and clearly accepted undated and unchallenged photographs to support their pre-determined decision to stop the Plaintiffs from continuing work on his home.

79. Defendant Charlotte Worthy held up several photographs and stated that they constituted evidence that the Plaintiff's worksite was causing drainage problems to Mr. Stewart's property. Yet Plaintiff's counsel was not permitted to question the photos, examine the photos, or to otherwise respond to the photographs, which were inflammatory and inaccurate with respect to the issues at hand. Nor was there any foundation for Ms. Worthy's comments, other than her layperson viewpoint.

80. Without any factual input from the Defendant Building Inspector, and without a single iota of information from an engineer, and without any meaningful response permitted from the Plaintiff, the Defendant Board of Trustees resolved to table a decision on extending Plaintiff Hanson's Building Permit, intending to, and purporting to, effect a *de facto* revocation of Plaintiff's building permit indefinitely, while Defendant Board of Trustees imposed conditions and requirements, including "cleaning up" certain portions of the Plaintiff's construction site that, in fact, would exacerbate, rather than assist, with the

purported drainage issues which the Board claimed to be concerned with, despite the absolute lack of credible basis for that determination.

81. Plaintiff Hanson's counsel, having not had an opportunity to fairly challenge the "evidence" being presented to the Board of Trustees, waited until the Public Participation portion of the Agenda and again requested to speak.

82. Defendant Mayor Stebbins, in an unprecedented and unlawful content-based inquiry, before granting permission for Plaintiff's counsel to speak, demanded to know on what subject Plaintiff Hanson's counsel wished to speak during the Public Participation portion of the agenda, and was visibly unhappy with the idea of Plaintiff's counsel speaking at all. Plaintiff's counsel advised that he had been unable to respond to the discussions during the Building Permits portion of the meeting.

83. Plaintiff's counsel, within the limits of his 30 seconds of public participation, preserved Plaintiff's rights and remedies and put on the record that Plaintiff was not consenting to any actions taken by the Defendant Board of Trustees during the meeting.

Review of the Building File: Hunt for the Missing Building Permit

84. On November 14, 2008 Plaintiff's counsel, pursuant to a Freedom of Information Law request, responded to the Defendant Village of Tuxedo Park's Village Office to inspect the Building Department file pertaining to Plaintiff's property.

85. The file included numerous plans and a large box filled with documents, some dating back to the 1950's and including all prior Building Permits with the exception, of

course, of one Building Permit: The Building Permit purportedly issued subsequent to the May 16, 2007 Village Board of Trustees meeting by Defendant Ledwith.

86. Following the review of the file, Plaintiff's counsel inquired of Defendant Ledwith where the current Building Permit could be located. Defendant Ledwith stated "I never issued one." Plaintiff's counsel confirmed Defendant Ledwith's statement and asked if the prior Building Permit (issued in 2004) was the only one prepared, to which Defendant Ledwith responded "yes."

87. Plaintiff's counsel confirmed that conversation in a letter sent to the Defendant Ledwith, on November 14, 2008. By letter of November 18, the Defendant Village, via its counsel who was not present for the conversation, stated that the Defendant Ledwith had not communicated that he never issued the Building Permit, but rather had "unremarkably" informed Plaintiff's counsel that the Building Permit could not be located in the file at that time.

88. On November 21, 2008, a Freedom of Information Law request was submitted in person to the Defendant Village, requesting a copy of the now elusive and apparently lost 2007 Building Permit, yet the Defendant Village remains unable to produce the Building Permit, which would include the date of issuance that would reflect the proper and actual expiration of the eighteen month period of validity of the Building Permit, and would expose the unlawful and improper actions of the Defendants in stopping work at Plaintiff Hanson's home, based on the purported expiration of a Building Permit that the Defendants admittedly are unable to produce.

89. In sum and substance, the Defendants have declared an expiration of the Plaintiff's Building Permit, yet are unable to produce the Permit from which they calculated the declared expiration. In fact, based on Defendant Ledwith's statements, the permit was not issued and the 18-month period has not started to run.

90. If the document was, in fact, issued and subsequently lost, one may not be surprised, considering the apparent lack of care taken by the Defendants in securing the records. In a letter "From the Mayor's Desk" in November of 2006, then Mayor McFadden stated that "[a]nyone who has experience working with Village files know that occasionally files in whole or part of have been lost or misplaced." The Mayor went on to state that many members of appointed boards experience this first hand "including Trustee Stebbins" (now Defendant Stebbins).

91. The letter goes on to say that "[t]he Village has given out numerous keys over the years without changing the locks and we don't have any record of who returned them."

92. The Mayor went on to describe how certain records were transported to the police department for security purposes.

93. However, apparently, despite Defendant Stebbins familiarity with the past problems associated with the Defendant Village's record-keeping and Village Hall security, and his continued presence on the Board, the Village was still unable, many months later in May of 2007, to retain and produce for inspection, a single copy of a building permit allegedly issued by the Building Inspector.

94. Apparently the exclusion of outsiders from the whole of the Village by means of a gatehouse takes precedence over the security of the Village's own records and property.

Trespassing, Obstruction of Work and Police Actions

95. Following the November 12, 2008 Board of Trustees meeting, the Plaintiffs were authorized by the Board of Trustees to engage in certain activities on the property that addressed cleaning the site and abating potential drainage issues, such as the presence of dirt piles that the Board wanted reduced. Despite the Board's objection to the dirt pile, the temporary dirt pile was indicated on the approved plans.

96. At the November 12, 2008 Board of Trustees meeting, Defendant Board of Trustees advised Plaintiffs that the Defendant Village would, via the Building Inspector and Village Attorney, set forth a list of what activities the Plaintiffs would be permitted to engage in, despite the purported expiration of the Building Permit.

97. The Defendants did not provide said list, and Plaintiffs attempted to proceed with the permitted work relating to drainage, clean-up and reduction of the dirt piles. Immediately, Plaintiffs were the subject of harassment, arbitrary, capricious and outrageous behavior on the part of the Defendants.

98. On November 19, 2008, Defendant Ledwith attempted to stop cement delivery vehicles coming to Plaintiff Hanson's property to engage in work that was necessary to address the drainage issues, and necessary to allow reduction of the dirt piles. Defendant Village Board had advised the Defendant at the November 12, 2008 Board meeting that he could perform work related to abating drainage issues and Plaintiff's counsel notified the

Village, via letter of November 18, 2008, that Plaintiff's engineer had determined that in order perform grading of soil (to reduce the dirt piles), the cement wall had to be poured first, otherwise the wooden forms would not be stable if the soil was moved before the cement was poured.

99. Despite the Board's direction and notification, Defendant Ledwith harassed operators of the vehicles, and intimidated the operators of the vehicles attempting to access Plaintiff Hanson's property and significantly delayed the cement pour of the wall. A cement pour must be continuous, once started, and due to delays caused by the Defendant Ledwith, the cement pour was required to continue past 4:30 P.M.

100. Consistent with the outrageous and arbitrary nature of the Defendants' conduct, an appearance ticket was prepared in Plaintiff Hanson's name for a violation of a noise ordinance for working after 4: 30 P.M. on November 19, 2008, and then improperly served on Plaintiff Hanson.

101. Upon information and belief, Defendant Ledwith had directed the Village of Tuxedo Park Police Department to respond to Plaintiff Hanson's property and issue an appearance ticket in Plaintiff Hanson's name for the violation of a Village Noise ordinance.

102. Consistent with the Defendants' flagrant disregard of statutory provisions, the appearance ticket was unlawfully prepared and issued in the name of the Plaintiff Donald Hanson, and served a person at Plaintiff Hanson's home who answered the door, in contravention of the plain language of New York State Laws which requires personal service in such situations at NY Criminal Procedure Law § 150.40.

103. On or about November 20, 2008, Defendant Ledwith, Defendant James Hayes and a female companion, believed to be Defendant Charlotte Worthy trespassed upon Plaintiff Hanson's property, walking around the premises without any notice to the Plaintiff, and without any permission of the Plaintiff.

Denial of Access

104. Defendant Ledwith attempted to prevent trucks traveling to Plaintiff Hanson's residence from entering the Village of Tuxedo Park by directing police officers at the entry gate to stop any vehicles from entering, if they were traveling to Plaintiff Hanson's residence.

105. On November 21, 2008, several individuals working on Plaintiff Hanson's home arrived at the Village of Tuxedo Park entry gate to travel to Plaintiff Hanson's residence.

106. The Village of Tuxedo Police Department stopped the workers and advised that they were not permitted to travel to Plaintiff Hanson's home.

107. When the workers protested, the Police Department official advised that they would only be permitted inside the Village for a matter of minutes and would be required to leave.

108. When Plaintiffs inquired to the police officer at the gate why individuals were being prevented from coming to his residence against Plaintiff Hanson's wishes, the police officer advised that Defendant Ledwith had directed that the Police Department prevent any persons intent on traveling to Plaintiff Hanson's residence from entering the Village of Tuxedo Park.

109. As a result of the unlawful stop work order and misconduct of the Defendants, Plaintiff Hanson is financially impaired from proceeding meaningfully and realistically with any renovation and construction of the single-family house as he intended initially.

110. Because of the aforementioned illegal action by the Defendant Village as well as the financial damages sustained by Plaintiff Hanson, Plaintiff Hanson will be required to suffer significant financial set-back due to the delays in construction, the obstruction of work and harassment and misconduct on the part of the Defendants.

December 9, 2008 Site Visit

111. On December 9, 2008, a site visit was conducted at Plaintiff's residence, including Plaintiff, Plaintiff's engineer, Plaintiff's counsel, the Village Engineer, Village Counsel, Defendant Ledwith, Defendant Stebbins and Defendant Worthy.

112. The purpose of the meeting was to allow the two engineers to address drainage issues relative to the construction site.

113. During the visit, Defendant Stebbins, in a hostile manner, began to question Plaintiff Hanson concerning the concrete pour of the wall. Plaintiff's counsel asked that the issues focus on the purpose of the meeting, and that was future actions to be taken concerning drainage issues.

114. When Plaintiff's counsel suggested that the Village Engineer provide an overview of issues that the Defendant Village wanted addressed in order for Plaintiff to continue work, Defendant Worthy, in a hostile tone, stated "We're not here to hold your hands."

115. Once Defendant Stebbins and Defendant Worthy walked away, the meeting immediately became productive with a meaningful discussion occurring between the engineers. Plaintiff Hanson's engineer immediately began on submitting an overview of what steps would be taken and items that would be part of the storm water management and erosion control plan that Plaintiff would submit to the Village, to be approved by the Village Engineer.

116. The Plaintiff also immediately prepared a timeline of construction work going forward to present to the Defendant Board at its meeting of December 10, 2008.

The December 10, 2008 Village Board Meeting

117. The Plaintiff again appeared before the Board of Trustees on December 10, 2008 to request, at the direction of the Board, an extension of his building permit, since the decision to extend the permit had been "tabled" by the Board of Trustees at the November 12, 2008 meeting.

118. Plaintiff continued to advise that his building permit had not expired, as the Village had yet to produce the building permit purportedly issued by Defendant Ledwith, nor had the Village produced any other evidence supporting an expiration of the building permit on November 16, 2008.

119. Since Plaintiff Hanson's prior appearance before the Defendant Board, the Plaintiff had taken steps to clean the work site at the request of the Board; had attempted to remediate drainage concerns, which efforts were stopped by the Village; and had submitted

an engineer's report in response to the concerns raised by the Village Board at the November 12, 2008 meeting concerning flooding of a neighboring property.

120. Further, Plaintiff Hanson, based on the discussions of the December 9, 2008 site visit, submitted a letter from his engineer outlining the features of the storm water management and erosion control plan that would be implemented as well as a schedule of construction going forward.

121. Plaintiff Hanson advised the Board that no ground disturbing work would take place on the site until approval of the storm water management and erosion control plan was approved by the Village Engineer. Plaintiff Hanson requested, however, that he be permitted to continue with framing of the addition to the building and related building work that would not involve any ground disturbance or otherwise affect drainage.

122. Plaintiff Hanson asked that the Board lift the stop work order, at least partially, and extend the building permit, with conditions, so that work that was not a concern of the Defendant Board could continue and some progress could take place on the project.

123. The Board, rather than extending the permit with conditions that would assure compliance with their stated concerns, again "tabled" the decision to extend Plaintiff's building permit for another month. Although, not an option available to the Defendant Board in the Village of Tuxedo Park Code, the Defendant Board again imposed a *de facto* revocation of Defendant's building permit of an indefinite nature, leaving the Plaintiff in a position where he was continuing to invest significant amounts of money in a project that may be perpetually delayed by the Defendant Village Board.

124. Despite tabling the decision to extend the permit, the Board imposed conditions upon the Plaintiff, including new conditions that had not been raised previously. During the December 10, 2008 Board meeting, for the first time, the Defendant Stebbins stated that there was pile of rocks that appeared unsafe, and wanted something done about the rock pile as well as the other conditions.

125. There was no submission in writing or orally from the Building Inspector, or the Village Engineer, or any qualified person to substantiate the safety concern for the pile of rocks that, incidentally, had been in place for over eight months without incident, and was present for numerous visits by the Building Inspector without a concern being raised.

126. Defendant Village Board continued to support a blanket stop work order on the site, despite the fact that Defendants had not set forth any concerns with respect to the construction on the building itself, including framing. Defendant Village Board has issued limited stop work orders in the past that are rationally related to the concerns at hand, rather than arbitrarily stopping all work on a site.

127. In February of 2007, a stop work order was issued on a property at 194 E. Lake Road (within 100' of the lake) in Tuxedo Park, concerning the construction of a walkway path and steps. Unlike Plaintiff's stop work order, the stop work order at 194 E. Lake was limited to the construction of the walkway path and steps.

128. When asked by Plaintiff's counsel if satisfactory compliance with the imposed conditions would result in an extension of the permit at the January 2009 Village Board meeting, the Defendant Stebbins declined to confirm that the permit would be extended if the

Plaintiff satisfactorily complied with all imposed conditions. Therefore, Defendants hold Plaintiff Hanson's property rights subject to their utter whim and caprice.

129. In addition, during the public comment portion of the meeting, Defendant Stebbins and Defendant Hansen falsely stated that Plaintiff Hanson had, in fact, committed violations of a stop work order as well as other violations. No notices of any such violations were ever issued to Plaintiff Hanson, and the only appearance ticket issued, albeit improperly, was for a noise ordinance violation for which Plaintiff had yet to even be arraigned. Defendants' statements were reckless, false, and malicious as to the Plaintiff, and made it clear that the Defendant Board members had prejudged the Plaintiff's matter, relying on incompetent and insufficient evidence, and acting on their whim as laypersons in violating Plaintiff Hanson's rights.

130. Further, the statements of the Defendant Board members made it clear that the Board had predetermined that Plaintiff Hanson would not be granted an extension to his building permit at the December 2008 meeting, and that the decision to table the extension of Plaintiff's permit had in fact been made prior to the public meeting, in violation of the New York State Open Meetings Law.

131. When Plaintiff's counsel objected to the false statements being made concerning Plaintiff committing violations, Defendant Stebbins asserted that the meeting was a public forum and reiterated that he had said that Plaintiff committed a violation of the stop work order. Said statement was a false statement, as Plaintiff had not even been charged,

much less convicted of any such act, nor had the Defendants even established an expiration date of Plaintiff's building permit.

132. Plaintiff's counsel advised the Defendant Board members of the discrepancy between what was said by Defendant Ledwith on November 14, 2008 pertaining to the Building permit ("I never issued it."), and the subsequent letter of November 19, 2008 by the Defendant Village's counsel, asserting that Defendant Ledwith had not, in fact, made that statement, but rather had said that the permit could not be located in the building file at that time.

133. The disparity between these two assertions is glaring. Defendant Village's outrageous attempt to deny the Building Inspector's statement that he never issued the building permit underscores the Defendants' malicious motivation to avoid admitting that the 18 month period of expiration of the Plaintiff's building permit had not yet started to run under the provisions of the Village Code.

134. During the December 2008 meeting, when a neighbor inquired about obtaining a copy of the now elusive building permit, he was advised that it could not be located. Defendant Stebbins then responded that sometimes people look through files and documents have been known to disappear.

135. As set forth previously, Defendant Stebbins, despite his continuous presence on the Village Board and his awareness of lax Village security with respect to its documents, continues to exercise complete indifference to the security of Village records.

136. Defendant Trustee Hansen began to question Plaintiff Hanson about whether he would commit violations in the future, again suggesting that Plaintiff had, in fact, committed a violation already, and asking a meaningless, speculative question intended to place Plaintiff in a false light.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HANSON
[Depriving of Rights Under Color of Law: 42 USC 1983]

137. Plaintiffs repeat and reallege paragraphs "1" through "136" as if fully set forth herein.

138. Pursuant to the powers of the Defendant Village, a Zoning Code was enacted regarding land use issues within the Village, including such regulations regarding the issuance and extension of Building Permits.

139. Pursuant to the Village Code that regulates land use issues and the enforcement of zoning rules and regulations, the Defendant Village enacted regulations concerning approval and issuance of Building Permits under the Code of Tuxedo Park, Article VI.

140. Pursuant to that code, a Building Permit is valid for 18 months from the date of issuance by the Building Inspector, and may be extended for two additional six month periods.

141. Without being able to produce the Building Permit issued or prove that its issuance occurred, Defendants arbitrarily declared that the date of the Board of Trustees meeting (May 16, 2007) would be the date from which the 18 month period would be measured, despite said declaration being inconsistent with express language of the Village

Code, which states that the Board of Trustees merely authorizes the Building Inspector to issue the Building Permit.

142. The relevant Village of Tuxedo Code section (100-32) is entitled "approval of applications; issuance of permits," so there are two different occurrences. The Board of Trustees approves the application, and authorizes the issuance of the permit, but the Building Inspector is charged with actually issuing the permit, which must have the signatures of a majority of the Board of Trustees thereon.

143. Defendants actions deprived Plaintiff Hanson of his Constitutional rights to Procedural and Substantive Due Process, and his right to confront witnesses, prior to Defendants "tabling" a decision to extend Plaintiff's Building Permit, effectively revoking the Building Permit from the Plaintiff with no legal basis.

144. Plaintiff Hanson, possessing a valid and unexpired Building Permit, had a legitimate claim of entitlement to continue construction and would have completed the construction and renovation project absent the deprivation of rights by the Defendants. Defendants acknowledge that Plaintiffs had authorization to perform the work on his residence, but are suspiciously unable to produce the building permit, because Defendants acted arbitrarily, deciding that Board of Trustees meeting date was the date of issuance of the Building Permit, rather than the actual date of issuance on the Building Permit as provided by the Village Coed.

145. Having acquired a cognizable property interest, Plaintiff Hanson had a right to be free from arbitrary or irrational actions of the Defendants, destructive of this interest.

146. Defendants, disguising their actions as "tabling the decision to extend the building permit" effectively revoked Plaintiff Hanson's permission to build, following a significantly constitutionally deficient proceeding whereby Defendants:

- a. Denied Plaintiff Hanson a meaningful opportunity to be heard and to present evidence;
- b. Permitted adverse parties the opportunity to present evidence without limitation;
- c. Relied on incompetent evidence that Plaintiff Hanson was not provided with an opportunity to challenge, including undated unidentified photographs;
- d. Admitted the testimony of laypersons on engineering matters;
- e. Received information and evidence outside the scope of the public meeting in contravention of state law;
- f. Received and considered documentary and photographic submissions without providing Plaintiff Hanson an opportunity to challenge said documents or photographs or a meaningful opportunity to respond to same; and
- g. Failed to notify Plaintiff Hanson that a hearing would be taking place on various matters.

147. Defendants acted with no legitimate reason for their decisions. The effective revocation of Plaintiff Hanson's permission to build was arbitrary and capricious, and without any legal or factual basis.

148. Defendants actions have resulted in a taking of Plaintiff Hanson's property without just compensation, and have failed to comport with the strictures of the Constitution in doing so.

149. Defendants Ledwith, James Hayes and, upon information and belief, Defendant Charlotte Worthy, acting in an arbitrary, outrageous and irrational manner, trespassed upon Plaintiff Hanson's property without permission and without notice, intending to harass the Plaintiff and in complete disregard of Plaintiff Hanson's property rights.

150. Defendant Ledwith, acting in an arbitrary, outrageous and irrational manner, attempted to stop vehicles from traveling to Plaintiff Hanson's home; harassed operators of said vehicles; directed police officers at the entry gate to the Village to deny access to persons intent on traveling to Plaintiff Hanson's home; directed the police department to issue a noise ordinance appearance ticket to Plaintiff Hanson, in an unlawful manner contrary to the provisions of state law; and denied access of Plaintiff Hanson to view the Building Permit issued by Defendant Ledwith.

151. The actions of the Defendants are also wanton and so reckless, if not motivated by intentional malice, to warrant the imposition of punitive damages.

152. By reason of the foregoing, Plaintiff Hanson has and will suffer and should be awarded compensatory and punitive damages in the amount of Twenty-Five Million (\$25,000,000) Dollars.

153. The aforesaid actions, customs and/or policies of Defendants were performed by Defendants acting in concert with others, while acting under color of state law in their

official capacities to deprive Plaintiff Hanson of his federal rights under the First and Fourteenth Amendments to the United States Constitution.

154. By virtue of the foregoing, the Defendant Village was deliberately indifferent to Plaintiff Hanson's constitutional rights, granted under the First and Fourteenth Amendments to the Constitution.

155. The deprivation of constitutional rights, granted under the First and Fourteenth Amendments to the Constitution was a foreseeable consequence of the Defendants' conduct.

156. The Defendant Village violated Plaintiff Hanson's clearly established constitutional and statutory rights regarding what a reasonable person would know regarding issuance and possession of a Building Permit in the Village Zoning Code.

157. As a result of the aforesaid wrongful actions, policies and/or customs, the Defendant deprived Plaintiff Hanson of his constitutional rights, granted under the First and Fourteenth Amendments and injured him.

158. Plaintiff Hanson has no adequate remedy at law for the harm and damage caused by Defendants' violation of his constitutional rights.

159. Defendants have caused Plaintiff Hanson to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiff will continue to suffer such damages unless application to the Village's Code complained of is permanently enjoined.

AS AND FOR A SECOND CAUSE OF ACTION
**[Equal Protection Clause United States Constitution,
Fourteenth Amendment 42 U.S.C. §1983]**

160. Plaintiffs repeat and reallege paragraphs "1" through "159" as if fully set forth herein.

161. Defendants' laws and actions deprived and continue to deprive the Plaintiffs of the right to equal protection of the laws, as secured by the Fourteenth Amendment, by (1) discriminating against and targeting the Plaintiffs for disfavor by means of arbitrary, outrageous and irrational actions; (2) by treating Plaintiffs on less than equal terms as similarly situated property owners; and (3) by arbitrarily enforcing zoning regulations in a manner that constitutes a grave interference with fundamental rights.

162. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

163. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Village's acts and conduct complained of are permanently enjoined.

AS AND FOR A THIRD CAUSE OF ACTION
[New York State Constitution - Article 1, §§7, 8, 9 and 11]

164. Plaintiffs repeat and reallege paragraphs "1" through "163" as if fully set forth herein.

165. The Defendants, by their acts, have acted under color of law and have conspired and continue to conspire, in breach of the rights of the Plaintiffs to protect their interests under the law in violation of Article I, §8 (freedom of speech), Article I, §9 (right to

assemble) and Article 1 §11 (equal protection of laws; discrimination in civil rights prohibited) of the New York State Constitution.

AS AND FOR AN FOURTH CAUSE OF ACTION
[New York Civil Rights Law § 40-c Discrimination]

166. Plaintiffs repeat and reallege paragraphs "1" through "165" as if fully set forth herein.

167. The Defendants, by their acts, have conspired under color of law and continue to conspire to abridge the rights of Plaintiffs to be free from deprivation of equal protection of the law and arbitrary enforcement of its law under Section 40-c(1) of the New York Civil Rights Law.

AS AND FOR A FIFTH CAUSE OF ACTION
[Declaratory Relief Declaring that Installation and Maintenance of a Police-Controlled Access Gate Denying Non-residents Access to the Public Roadways is in Violation of the New York State Vehicle and Traffic Law and the Decisional Law of the New York State Court of Appeals].

168. Plaintiffs repeat and reallege paragraphs "1" through "167" as if fully set forth herein.

169. The Village of Tuxedo Park has and continues to maintain gates at the entrances to the Village of Tuxedo Park denying access to the public at large, and granting access only to Residents and Landowners residing in the Village of Tuxedo Park and their invited guests.

170. The Code of the Village of Tuxedo provides for a Main gate and a South Gate controlled by the Village of Tuxedo Police Department, and resident vehicles are issued

identification tags. Vehicles without identification tags, if admitted, have their license plates recorded by the Village of Tuxedo Police Department.

171. The Defendant Village enacted a local ordinance, Article II, §25-4 of the Code of the Village of Tuxedo Park that provides that "the use of Village roads is restricted to owners of land within and residents of the Village and persons lawfully having business with or invited therein by any such owner or resident."

172. Further, the Code of the Village of Tuxedo provides, in Article IV, §100-22 that "the existing Main Gate and the South Gate shall be the only points of access and egress for the Village."

173. The New York State Vehicle and Traffic Law ("NYSVTL") §1604, specifically prohibits a local authority from enacting such laws, and provides that "a local authority shall have no power to pass, enforce or maintain any ordinance, rule or regulation ... excluding any such owner, operator or chauffeur from the free use of such public highways."

174. NYSVTL §1640 specifically enumerates the powers that a Village has in enacting local laws, and no provision of that section permits erection or maintenance of a gate denying access to non-residents.

175. In interpreting the provisions of the Vehicle and Traffic Law pertaining to the power of local authorities to regulate access to public streets, the New York State Court of Appeals held that "[p]olitical subdivisions and municipal corporations hold the fee of streets for the benefit of the public. This refers not alone to adjacent property owners, nor to the

inhabitants of the particular political subdivision or municipality, but to the whole people." People v. Grant, 306 N.Y. 258, 260, 117 N.E.2d 542, 543 (1954).

176. The Court went on to state that " it follows that residents of a particular area in a town or village do not possess and cannot be granted proprietary rights to the use of the highways therein, in priority to or exclusive of use by the general public." Grant at 262, 544.

177. In Grant, the Court struck down a local Town law prohibiting access to certain streets in the Town.

178. The Village of Tuxedo Park, in its entirety, was nominated and, in March of 1980, was listed on the National Register of Historic Places pursuant to 36 C.F.R. 60, *et. seq.* However, despite this benefit of federal designation as a nationally recognized historic site, the Defendants continue to deny access to the general public to this significant historical site, preventing the public at large, and visitors from other states from accessing a site listed on the Register pursuant to Federal Law.

179. Defendants have acted in an arbitrary, outrageous and irrational manner by using the illegal Main Gate to prevent lawful visitors of the Plaintiffs from accessing his residence, interfering with Plaintiffs' freedom to associate with guests and otherwise excluding the general public from public roadways and from a Nationally recognized historic site listed on the National Register of Historic Places, in contravention of the laws of the State of New York.

RELIEF SOUGHT

WHEREFORE, Plaintiffs demand Judgment as follows:

- A. Declaratory judgment holding the zoning laws, as applied, and actions of the Defendant to be unconstitutional and illegal under the United States and New York Constitutions, and Federal laws as well as the New York Civil Rights Law;
- B. Annulment of the Defendant Village's erroneous determination that Plaintiff Hanson's Building Permit expired on November 16, 2008 and permanent injunctive relief enjoining all Defendants from unconstitutionally and illegally applying the laws and codes of the Village;
- C. Declaratory judgment declaring that the Defendants' continued maintenance of an access gates is in (1) a violation of New York State Law and existing case law from the New York State Court of Appeals; and (2) is otherwise and illegal denial of access to a site designated on the National Register of Historic Places, pursuant to 36 C.F.R. 60, and that Defendants be permanently enjoined from denying access to the general public to the Village of Tuxedo Park;
- D. For an award of monetary damages to Plaintiff Hanson in the amount of Twenty-Five Million (\$25,000,000) Dollars;
- E. Appointment of a federal monitor to ensure that the Village complies with all orders of this Court by overseeing the actions of the Village so as to entitle

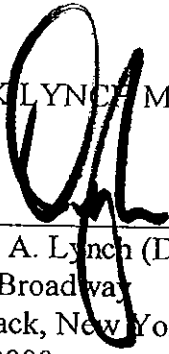
the Plaintiffs to the relief awarded by the Court and to report to the Court as needed;

- F. An award of Plaintiffs' costs and disbursements and attorney fees; and
- G. Granting such other, further and different relief as to this court seems just, proper and equitable.

The Plaintiffs demand a trial by jury of all issues for which the Plaintiffs are entitled such a jury trial.

Dated: South Nyack, New York
December 17, 2008

FEERICK LYNCH MacCARTNEY PLLC

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