

#800

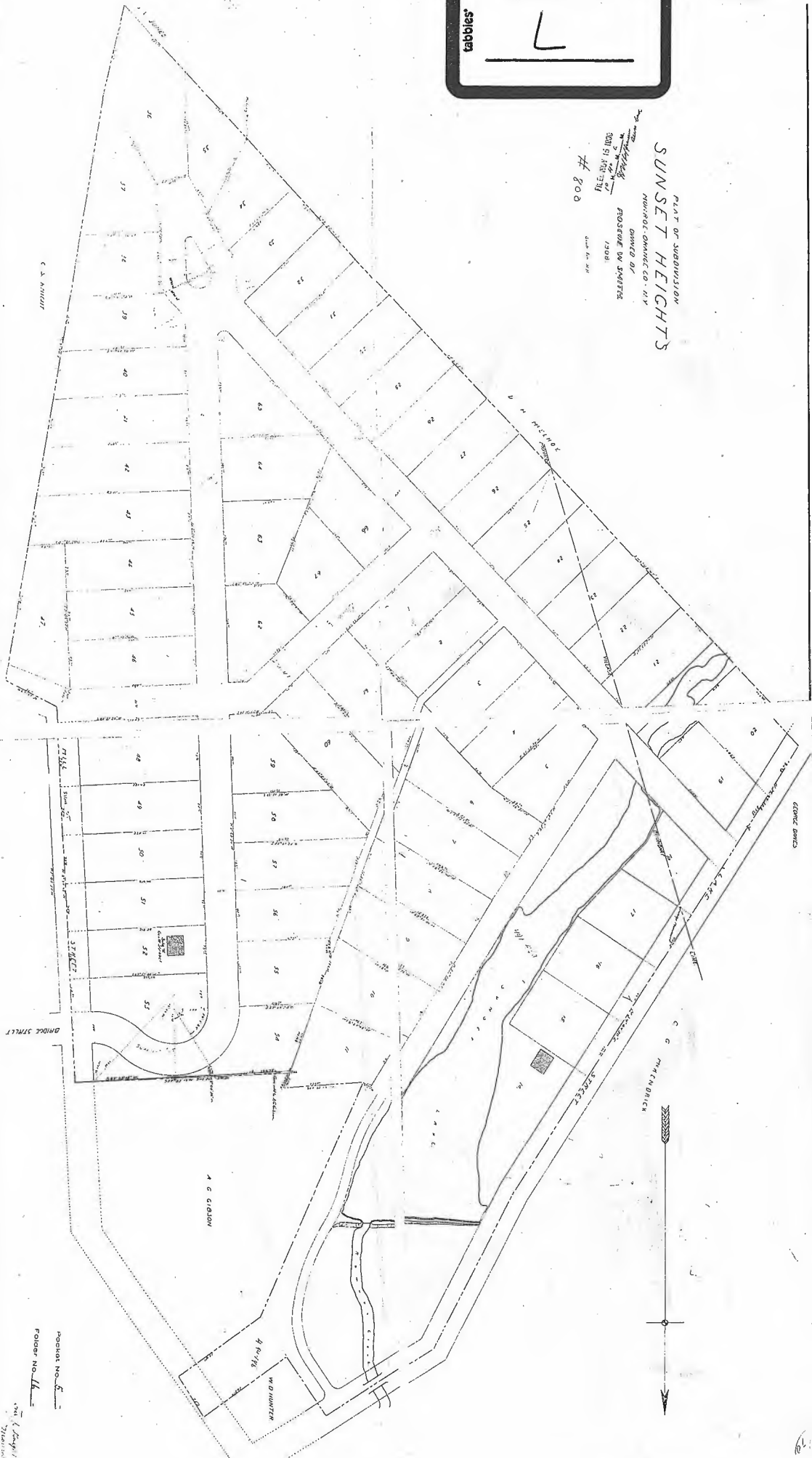
Index No. 5

EXHIBIT

tabbles

L

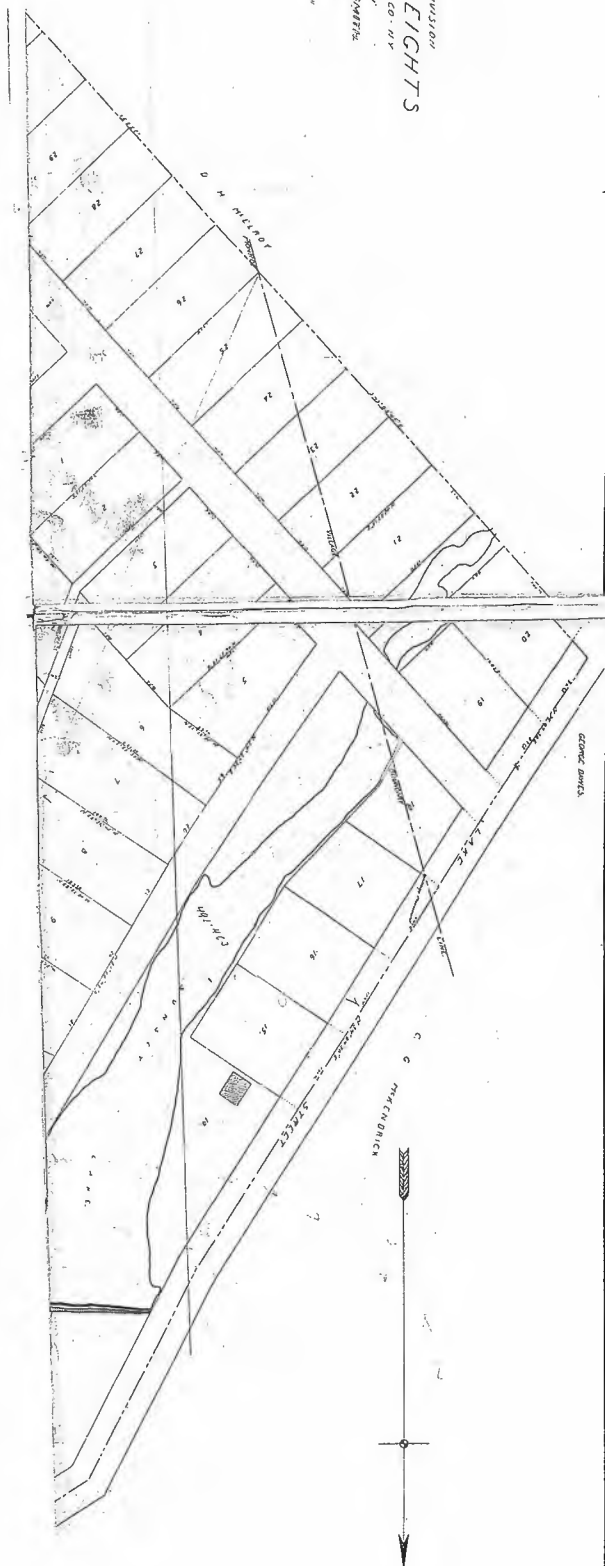
PLAT OF SUBDIVISION
SUNSET HEIGHTS
NEW YORK, CHANCE CO., N.Y.
DIVIDED BY
PROPOSED BY SMITH
1908
800

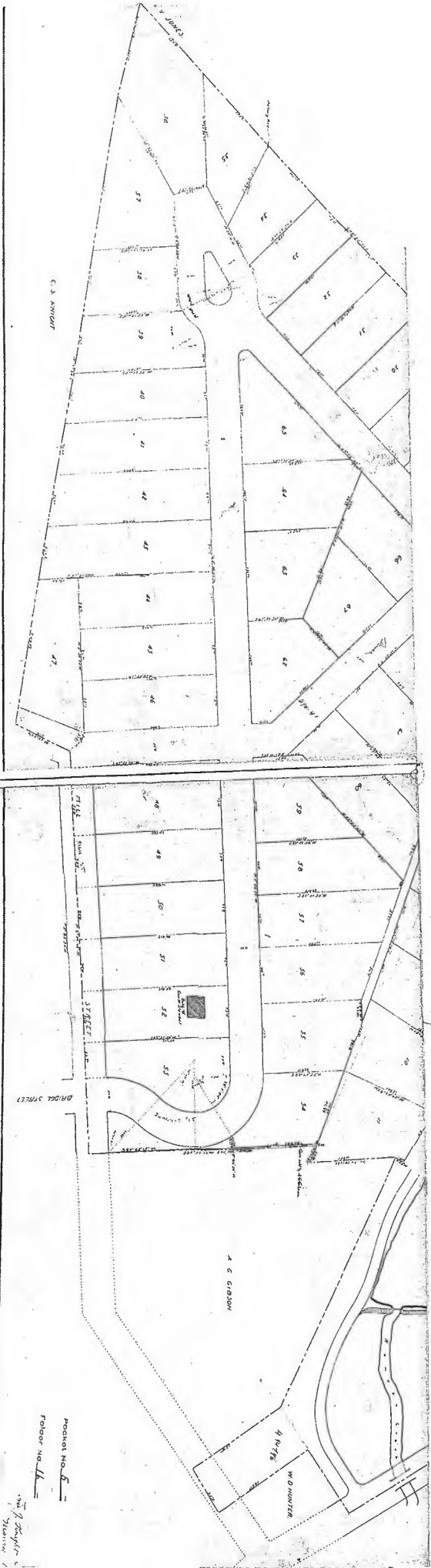


FILED NOV 15 1909

RECORD NO. 5
POLICE NO. 16

PLAT OF ADDITION
 SUNSET HEIGHTS
 MINERAL SPRING CO. N.Y.
 DATED BY
 FROST OF NY ENGRS
 1908
 JAMES H. HAY
 76 808
 FILE NOW IS 1000
 1000
 1000
 1000





FILED NOV 15 1909

POCKET NO. 6
FOUNDER NO. 11
W. D. HUNTER

4741-21 #134741
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

W.C. LINCOLN CORP.,

Petitioner,

for a Judgment pursuant to Article 7
POL and 78 CPLR annulling a decision of

NOTICE OF PETITION

Index No.

2002-0013

Justice Assigned:

ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,

Respondent.

-----X

S I R S :

PLEASE TAKE NOTICE THAT upon Petitioner's annexed
December 31, 2001 Petition and Yehuda Frank's December 31, 2001
Affirmation, Petitioner will move this Court at an IAS Part of
the Supreme Court of the State of New York to be held in and for
the County of Orange, at the Orange County Government Center, 255
Main Street, Goshen, New York, on January 25, 2002 at 9:30 a.m.,
or as soon thereafter as Counsel may be heard, for a judgment
pursuant to Article 7 POL and CPLR Article 78 with respect to
Petitioner's application to Respondent Zoning Board of Appeals of
the Village of Monroe for a review of an administrative decision
of the Building Inspector denying Petitioner's application for a
building permit based solely on the fact that there was pending
litigation (Respondent's Determination):

a. Annulling Respondent's decision that

Petitioner had to pay a fee in the amount of \$350.00 for an "interpretation" of the Village of Monroe Zoning Ordinance; directing Respondent refund said amount to Petitioner;

b. Annuling Respondent's decision that Petitioner had to pay for three (3) mailings by certified mail return receipt requested to adjoining owners, the second hearing being canceled by Respondent when an insufficient number of members of Respondent appeared for the Public Hearing that Respondent scheduled; directing Respondent pay to Petitioner disbursements to the United States Postal Service the sum of \$342.78 for the December 11, 2001 public hearing mailings;

c. In the nature of mandamus, pursuant to POL Article 7, compelling Respondent to issue a true and correct transcript of Respondent's December 11, 2001 final determination rendered after a public hearing, the document filed in the Clerk's Office purporting to be Respondent's decision reflecting the motion the Village Attorney preferred but the Respondent's members having decided not to enact;

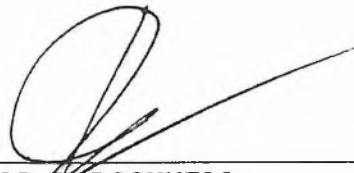
d. Annuling Respondent's Determination by reason of Respondent's violation of POL Article 7 (Eickler v. Village of Walden Zoning Board of Appeals - Orange County Index No. 6432-291);

e. Annuling Respondent's Determination made on December 11, 2001, by reason of the fact that: Respondent failed

to perform a duty enjoined upon it by law, filing a true and correct record of the decision rendered; Respondent's Determination was: (a) made in violation of lawful procedure; (b) was affected by an error of law; (c) arbitrary and capricious; (d) an abuse of Respondent's discretion; (e) the determination aforesaid was made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is not on the record, supported by substantial evidence; and

f. For such other and further relief as to this Court may seem just and proper.

Dated: New City, New York
December 31, 2001



DONALD TIRSCHWELL

DONALD TIRSCHWELL
Attorney for Petitioner
108 New Hempstead Road
New City, New York 10956
845-634-4687

TO: ZONING BOARD OF APPEALS OF
THE VILLAGE OF MONROE
Village Hall
7 Stage Road
Monroe, New York 10950

4741-22 #134741
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

W.C. LINCOLN CORP.,

Petitioner,

PETITION

for a Judgment pursuant to Article
7 POL and 78 CPLR annulling a
decision of

Index No.

ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,

Respondent.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

GENERAL ALLEGATIONS

1. Petitioner is a domestic corporation with principal and only offices in Rockland County, New York.
2. Upon information and belief, Respondent is the duly constituted Zoning Board of Appeals of the Village of Monroe.
3. Petitioner is owner of real property in the Village of Monroe, depicted and described on the annexed Survey prepared by a New York State licensed land surveyor (Real Property).
4. Petitioner's Real Property is Lot 57 shown on a map entitled "Plat of Subdivision of Sunset Heights", filed in

the Orange County Clerk's Office on November 15, 1909, as Map No. 800.

5. Petitioner's Real Property fronts on an improved street, Sunset Avenue, owned and maintained by the Village of Monroe.

6. The Village of Monroe accepted dedication of Sunset Avenue in 1946 and has, upon information and belief been improved and maintained by the Village of Monroe for at least the past forty (40) years.

7. Sunset Avenue has sewers and water installed in the bed of the road, which facilities are owned and maintained by the Village of Monroe.

8. Sunset Avenue has electric service on poles owned and maintained by the public utility servicing the Village of Monroe.

9. Petitioner made application to the Village of Monroe Building Inspector for construction of a new one family home on the Real Property.

10. Petitioner's Real Property is located in a zone permitting erection and maintenance of one family dwellings on a lot housing at least 10,000 square feet.

11. Petitioner's lot reflected on the annexed survey is certified to have 14,923 square feet.

12. Prior to the Village of Monroe Building Inspector issuing the declination for a building permit solely by reason of "pending litigation", the Building Inspector advised Petitioner that the Building Inspector investigated Petitioner's entitlement to issuance of a building permit on Petitioner's Real Property. The Building Inspector went to the County Clerk's Office in Goshen to review the subdivision map upon which the subject property is reflected and the Building Inspector confirmed that this lot was eligible for issuance of a building permit.

13. Basis for the Building Inspector's conclusion that Petitioner was entitled to issuance of a building permit but for the pending litigation, was the Building Inspector's review of the filed subdivision plat and the fact that the lot shown on the filed map complied with the zoning ordinance and was on an improved street.

14. The Village of Monroe Building Inspector issued a declination for issuance of a building permit solely on the basis of pending litigation only after the Building Inspector made a determination that the lot in question was a lot shown on a filed subdivision plat with the road frontage of the lot being on an improved street owned and maintained by the Village of Monroe.

15. No appeal was taken from the Building Inspector's determination that the subject lot was a lot shown on a filed

subdivision plat and qualifies for issuance of a building permit, but for the Building Inspector's determination that the building permit not issue because there was litigation pending. The only appeal taken from the Building Inspector's decision was Petitioner's appeal which was limited to the denial based upon pending litigation.

16. The Village of Monroe Building Inspector made a finding that Petitioner's application for a building permit complied with all requirements of the New York State Building Code and the Zoning Ordinance of the Village of Monroe.

17. The Village of Monroe Building Inspector notified Petitioner that the Building Inspector declined to issue a building permit by reason of the fact that there was litigation pending relating to the parcel of Real Property. A copy of the Building Inspector's declination is annexed as Exhibit "A".

18. Petitioner filed an application with Respondent appealing the Building Inspector's decision not to issue a building permit, solely by reason of pending litigation.

FIRST CAUSE OF ACTION

19. This cause of action seeks review of Respondent's decision demanding an Application Fee for an "interpretation".

20. Annexed as Exhibit "B" is a copy of Respondent's requirements as delivered by Respondent's Clerk to Petitioner.

21. Petitioner tendered a \$50.00 Appearance Fee to Respondent in accordance with Respondent's requirements.

22. Respondent rejected same and demanded, in order for Respondent to accept Petitioner's application for review of the Village of Monroe Building Inspector's decision, a fee of \$350.00, such fee applicable only to request for an "interpretation".

23. Petitioner's application was not requesting an area variance, use variance or interpretation.

24. Respondent had no right to demand and receive a \$350.00 fee for an "interpretation".

25. Respondent's designation of Petitioner's application as an "interpretation" of the Village of Monroe Zoning Ordinance was in error.

26. There is no additional fee set forth in the Village's schedule of fees for filing an appeal from a decision of the Building Inspector.

27. Petitioner is entitled to a judgment that Respondent's decision to charge Petitioner \$350.00 for an "interpretation", was arbitrary and capricious; in excess of their jurisdiction, violative of Respondent's rules and requirements, not in accordance with the fee schedule set by the Village of Monroe; and directing Respondent to refund the sum of

\$350.00 to Petitioner.

SECOND CAUSE OF ACTION

28. Respondent scheduled a public hearing of Petitioner's application as an interpretation of the Building Inspector's denial of a building permit, for the evening of September 11, 2001.

29. Respondent made a determination of and supplied Petitioner with a list of adjoining owners who had to be served with notice of the September 11, 2001 public hearing.

30. Petitioner served the notices of the September 11, 2001 public hearing of Petitioner's application by certified mail, return receipt requested.

31. By reason of the World Trade Center tragedy on September 11, 2001, Respondent decided to cancel their September 11, 2001 public hearing, without notification to Petitioner.

32. Thereafter, Respondent notified Petitioner that Respondent scheduled the public hearing for October 9, 2001.

33. Before publication of the notice of the October 9, 2001 hearing, Petitioner advised Respondent that Petitioner and their attorney could not attend on that date, as said date was a Jewish Holy Day.

34. Respondent rescheduled the public hearing for November 13, 2001 at 8:00 p.m.

35. At Respondent's request, Petitioner served the notices of the public November 13, 2001, 8:00 p.m. hearing by certified mail, return receipt requested, upon the list of property owners supplied by Petitioner by certified mail, return receipt requested (see Exhibit "B" - #5) at a cost of \$342.78.

36. Petitioner appeared with their attorney at the November 13, 2001 public hearing prepared to present Petitioner's application.

37. The number of members of Respondent's Board necessary for a quorum failed to appear for conduct of the public hearing on November 13, 2001.

38. No explanation was offered to Petitioner or the public attending the hearing as to why Respondent scheduled a hearing when the number of Respondent's members who could attend the public hearing necessary for a quorum, could not be achieved.

39. Respondent rescheduled the public hearing for December 11, 2001.

40. Over Petitioner's objection, Respondent demanded that Petitioner again serve a notice of hearing by certified mail, return receipt requested, upon all property owners within 300 feet, at a cost of \$342.78, despite the fact that the failure of the November 13, 2001 public hearing to proceed, was based solely upon the fact that before setting the date for public

hearing, Respondent failed to determine that a quorum of members could not be present.

41. Petitioner objected to Respondent's decision that Petitioner had to pay the cost of the notification by reason of the fact that the new public hearing was required solely by reason of Respondent's actions in canceling the September 11, 2001 public hearing and in failing to produce a quorum for the November 13, 2001 public hearing.

42. Respondent's requirements do not provide for the applicant to notify the public of more than one public hearing.

43. Petitioner objected to Respondent in writing that it was Respondent's obligation to notify the public by reason of the fact that Petitioner had twice expended the \$342.78 cost to notify owners within 300 feet and that the adjournment was Respondent's failure to have a quorum at the November 13, 2001 meeting.

44. Petitioner is entitled to a judgment that Respondent acted in excess of their authority as set forth in the Village Law and the Village Code to compel an applicant to pay three (3) times for certified mail, return receipt requested notices to owners within 300 feet; Respondent's decision was arbitrary and capricious; Respondent's decision was affected by an error in law in that the Village of Monroe only required an

applicant to once notify the owners within 300 feet.

45. Petitioner is entitled to a judgment pursuant to CPLR Article 78, directing that Respondent reimburse Petitioner (\$342.78) for Petitioner's expenditures for mailing notices to owners within 300 feet for the December 11, 2001 hearing by reason of the fact that same was caused solely by Respondent's inability to have a quorum of members present.

AS AND FOR A THIRD CAUSE OF ACTION

46. Petitioner is an aggrieved person having standing to enforce the provisions of POL Article 7.

47. Annexed as Exhibit "C" is a copy of the Decision filed by Respondent (Decision).

48. The Decision (Exhibit "C") fails to reveal the motion actually made and passed by Respondent Zoning Board of Appeals on the evening of December 11, 2001.

49. In fact, the Motion as passed, was not as enunciated in the attached Decision, which fails to reflect the true contents of the motion as stated by the maker of the motion or reflect the motion that actually was passed.

50. The Village Attorney attempted to have the maker of the motion, incorporate the language that is reflected on Exhibit "C", however, the maker of the motion refused to accept such amendment.

51. Relief sought by Petitioner in this cause of action, is a Judgment in the nature of Mandamus, pursuant to Article 7 POL, directing Respondent file and supply this Court with a true copy of the motion, as the motion was made and passed at the December 11, 2001 hearing of the Respondent.

52. Respondent's actions in filing a doctored decision are tantamount to alteration of a public record and are violative of Article 7 POL.

53. Respondent's decision (Exhibit "C") does not reflect the decision rendered in public by Respondent.

54. Respondent's actions in failing to file the actual resolution passed on December 11, 2001, is in violation of POL Article 7.

55. Petitioner is entitled to a judgment pursuant to POL Article 7 vacating Respondent's decision dated December 11, 2001 and filed in the Clerk's Office on December 18, 2001 and directing that the actual motion as transcribe be filed as Respondent's decision.

FOURTH CAUSE OF ACTION

56. Petitioner is an aggrieved person having standing to enforce the provisions of POL Article 7.

57. Exhibit "C" is a copy of the Decision filed by Respondents.

58. Exhibit "C" fails to reveal the motion actually made and passed by Respondent's Zoning Board of Appeals on the evening of December 11, 2001.

59. In fact, the motion was passed, was not enunciated in the attached Decision which fails to reflect the true contents of the motion as stated by the maker of the motion or reflect the motion that was actually passed.

60. This cause of action seeks to annul the Respondent's Decision with respect to Petitioner's application pursuant to POL Article 7.

61. The Decision (Exhibit "C") as filed was not made in public.

62. The findings necessary to support the termination complained of by Petitioner were not made in public, Petitioner is entitled to the judgment requested annulling the Respondent's Decision (Eikler v. Village of Walden Zoning Board of Appeals - Orange County Index No. 6432/99).

FIFTH CAUSE OF ACTION

63. The sole reason for the Building Inspector's denial to issuance of a building permit was "pending litigation".

64. Petitioner application for building permit was wrongfully denied by the Building Inspector as pending litigation.

65. The fact that there is a pending litigation, i.e., a proposed condemnation of Petitioner's Real Property, is not a basis for a Building Inspector to deny a building permit.

66. The Building Inspector of the Village of Monroe determined that Petitioner's application for a building permit complied with the Building Code of the State of New York and also complied with the Zoning requirements of the Village of Monroe.

67. No appeal was taken by anyone from the decision of the Building Inspector that Petitioner's application and the construction on Lot 57 complied with the Zoning Ordinance of the Village of Monroe and the Building Code of the State of New York.

68. Respondents affirmance of the Building Inspector's decision denying the building permit based upon a pending litigation, i.e., the pendency of an imperfect attempt by the Village of Monroe to condemn Petitioner's Real Property, is not a basis recognized by the laws of the State of New York for denial of a building permit.

69. The attempt by the Village Attorney at the December 11, 2001 public hearing to interject other issues and question the Building Inspector's determination of the compliance of Petitioner's Real Property with the Zoning Ordinance of the Village of Monroe, was an attempt by the Village Attorney to appeal the Building Inspector's determination that Petitioner's

application complied in all respects with the Zoning Ordinance of the Village of Monroe with the Building Code of the State of New York.

70. The Village Attorney had no right to interject these issues at the public hearing of Petitioner's application as no appeal was taken by the Village Attorney, by any member of the Zoning Board of Appeals or any citizen or any person or entity in the Village of Monroe, appealing the Building Inspector's decision that Petitioner's building permit application for this Lot complied with the Building Code of the State of New York and with the Zoning Code of the Village of Monroe. The sole issue before Respondent was the Building Inspector's denial for issuance of a building permit solely for the reason that there was a pending condemnation of Petitioner's Real Property.

71. Respondent's decision was affected by an error in law in that Respondent failed to take into consideration the fact that there was no basis in law in the State of New York for a Building Inspector to deny a building permit, based solely upon a pending, but unperfected, condemnation of the real property.

72. Respondent's decision was also fraught with error in that Respondent attempted to take into consideration issues with respect to the building permit to the Building Inspector's decision, for which no appeal from taken by anyone.

73. Respondent's determination was affected by an error in law in that the Village Attorney attempted to influence the decision of the Respondent by attempting to question the Building Inspector's decision to issue a building permit but for the pending litigation by raising zoning issues for which no appeal was taken.

74. Respondent's decision was arbitrary and capricious in that the decision disregarded the fact that it is not a valid reason for denial of a building permit that there is an unperfected condemnation pending of the subject Real Property.

75. Respondent's decision was arbitrary and capricious in that the Village Attorney gave testimony totally irrelevant to the issue, as no appeal had been taken by the Village Attorney or anyone else in the Village of the Building Inspector's determination that in all respects Petitioner's building permit application complied with the Building Code of the State of New York and the Zoning Ordinance of the Village of Monroe.

76. Respondent's decision was an abuse of Respondent's discretion in that the law in this State does not give credence to a denial of a building permit by a Building Inspector solely for the reason that there is "pending litigation" or pending condemnation.

77. Respondent's determination made as a result of a

hearing and which evidence was taken is on the record, is not supported by substantial evidence.

78. Petitioner is entitled to a judgment annulling Respondent's final decision with Petitioner's aforesaid application to review the denial of a building permit by the Village of Monroe Building Inspector by reason of the fact that Respondent failed to perform a duty enjoined upon by law, Respondent's determination aforesaid is made in violation of the lawful procedure, was affected by an error of law; was arbitrary and capricious, that Respondent's determination aforesaid is an abuse of Respondent's discretion; that the determination of aforesaid was made as a result of a hearing held, and which evidence was taken, pursuant to direction of the statute is not on the record, supported by substantial evidence; and for such other and further relief as this Court may seem just and proper.

79. No previous application for this relief has been made.

WHEREFORE, Petitioner respectfully requests this Court issue a judgment:

a. On Petitioner's first cause of action annulling Respondent's Decision that Petitioner had to pay a fee in the amount of \$350.00 for an "interpretation" of the Village of Monroe's Zoning Ordinance and the judgment directing

Respondent to refund said amount to Petitioner;

b. On Petitioner's second cause of action annulling Respondent's Decision that Petitioner was required to pay for three (3) mailings by certified mail return receipt requested to adjoining owners and directing Respondent to pay to Petitioner the sum of \$342.78 representing the amount paid by Petitioner to the United States Postal Service for mailing notices to adjoining owners for the December 11, 2001 public hearing when the November 13, 2001 public hearing was canceled by Petitioner by reason of Petitioner's inability to have a quorum present for the hearing;

c. On Petitioner's third cause a judgment pursuant to POL Article 7 compelling Respondent to issue a true and correct transcript of Respondent's December 11, 2001 final determination rendered after a public hearing and finding that the document filed in the Clerk's Office purporting to reflect Respondent's December 11, 2001 Decision is not a true and correct copy of the Decision as rendered;

d. Annulling Respondent's determination by reason of Respondent's violation of POL Article 7 (Eikler v. Village of Walden Zoning Board of Appeals - Supreme Court - Orange County Index No. 6432/99);

e. Annulling Respondent's determination made on

December 11, 2001 by reason of the fact that Respondent failed to perform a duty enjoined upon it by law, file a true and correct record of the Decision rendered;

f. Annuling Respondent's determination in that the determination was made in violation of lawful procedure; was affected by an error in law; was arbitrary and capricious; and abuse of Respondent's discretion; and determination aforesaid was made as a result of a hearing held, at which evidence was taken, pursuant to direction of law, is not on the record, supported by substantial evidence; and for such other and further relief as this Court may seem just and proper.

Dated: New City, New York
December 31, 2001

W.C. LINCOLN CORP.

by: 
YEHUDA FRANK, President


DONALD TIRSCHWELL

DONALD TIRSCHWELL
Attorney or Petitioner
108 New Hempstead Road.
New City, New York 10956
845-634-4687

4741-16

#134741

VERIFICATION

STATE OF NEW YORK

COUNTY OF ROCKLAND


YEHUDA FRANK, an Orthodox Jew for whom swearing is forbidden, affirms, deposes and says:

I am the President of W.C. LINCOLN CORP., a domestic corporation and a party in the within action; I have read the foregoing PETITION and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

This Verification is made by me because the above party is a corporation and I am an officer thereof.

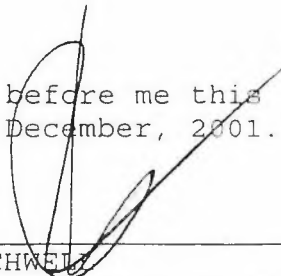
The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Books and records of the corporation, maintained in the ordinary course of business.



YEHUDA FRANK

Affirmed to before me this
31st day of December, 2001.



DONALD TIRSCHWELL
NOTARY PUBLIC - STATE OF NEW YORK
RESIDING IN ROCKLAND COUNTY
COMMISSION EXPIRES 6/30/92

4741-23 #134741
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

W.C. LINCOLN CORP.,

Petitioner,

AFFIRMATION

for a Judgment pursuant to Article
7 POL and 78 CPLR annulling a
decision of

Index No.

ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,

Respondent.

-----X
STATE OF NEW YORK

COUNTY OF ROCKLAND

YEHUDA FRANK, an Orthodox Jew for whom swearing is
forbidden, hereby deposes and says:

1. I am President of W. C. Lincoln Corp., Petitioner
in this proceeding. I have personal knowledge of the facts set
forth in this Affirmation.

2. First purpose of this Affirmation is to detail
what transpired with respect to issuance of the building permit
for Lot 57.

3. When we initially applied for a building permit,
the Building Inspector advised us that he, as Building Inspector,
was rejecting the application because we had to get a sewer

permit from the Orange County Sewer Department. The initial application for a building permit on Lot 57 reflected the use of a temporary septic tank until sewers became available. Although there are sewers installed in the street (Sunset Avenue), permission has to be obtained from the Orange County Sewer Department to hook a new home into the sewer main installed in street.

4. Pursuant to the direction of the Building Inspector, application was made by W.C. Lincoln Corp. to the Orange County Sewer Department for issuance of a sewer permit for this lot.

5. When we received the Orange County Sewer Department permit, we reapplied to the Village of Monroe Building Inspector for issuance of a building permit.

6. I went to the Building Inspector's office and showed him the sewer permit. The Building Inspector told me that he had been to Goshen to investigate as to whether this was a lot on a filed map. He indicated that he had obtained a copy of the filed subdivision map. It took him a few minutes to locate his copy, but when he located his copy, he told me that this was a lot on a filed subdivision map and that the lot was on an improved street. The Building Inspector further advised me that the lot conforms to the Zoning Ordinance of the Village of

Monroe.

7. It was a great surprise that thereafter, we received the letter from the Building Inspector declining issuance of the building permit solely because there was litigation pending.

8. Second purpose is to verify that when our appeal of the Building Inspector's decision was filed, we submitted a check for \$50.00 for the appearance fee.

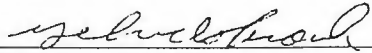
9. The Clerk demanded that we pay an additional fee of \$150.00 because she stated that we were requesting an "interpretation".

10. We had no choice but to pay the additional fee because the Clerk would not accept the application without the fee for an "interpretation".

11. Third purpose is to verify that Petitioner paid the United States Postal Service the amount of \$342.78 for the certified mail return receipt requested to adjoining property owners for the December 11, 2001 hearing. The same amount was paid to the United States Postal Service to mail the notice of the September 11, 2001 hearing and for the November 13, 2001 hearing.

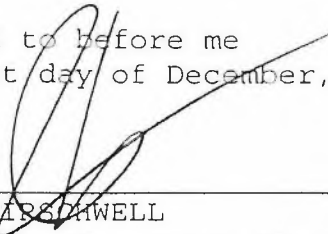
WHEREFORE, on behalf of Petitioner, I respectfully request this Court grant the relief prayed for in the Petition

and for such other and further relief as to this Court may seem
just and proper.



YEHUDA FRANK

Affirmed to before me
this 31st day of December, 2001.



DONALD TIRSCHWELL
NOTARY PUBLIC - STATE OF NEW YORK
RESIDING IN ROCKLAND COUNTY
COMMISSION EXPIRES 6/30/02

VILLAGE OF MONROE
7 Stage Road
Monroe, NY 10950

Jay Wilkins
Building Inspector

Office: 845-783-8656
Fax: 845-782-3006

July 18, 2001

Yehuda Frank
President
W. C. Lincoln Corp.
1 Jackson Avenue
Spring Valley, NY 10977

Re: 211-1-1

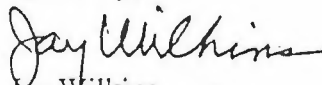
Dear Mr. Frank:

This is in reference to your application to construct a single family dwelling on lot #57
Sunset Heights Subdivision which lot is part of the parcel known as 47 Lakes Road.

Due to the pending litigation action on this property, a Building Permit cannot be issued until
this matter has been resolved.

If you have any questions you can contact J. Bennett Farrell Esq., Village Attorney for the
Village of Monroe at 845-782-5456

Sincerely,


Jay Wilkins
Building Inspector

Cc: Mayor Joseph Mancuso
Village Trustees
J. Bennett Farrell

Exhibit B

ZONING BOARD OF APPEALS APPLICANT:

PLEASE READ THE FOLLOWING MATERIAL AND
INSTRUCTIONS VERY CAREFULLY.

YOU ARE NOT ENTITLED TO AUTOMATICALLY
RECEIVE A VARIANCE JUST BECAUSE YOU APPLIED.
YOU MUST SHOW TO THE BOARD THE HARDSHIP
REQUIRED UNDER SECTION 7-712-B(2) OR 7-712-B(3).

ZONING BOARD OF APPEALS REQUIREMENTS

APPLICANT:

In order for the Zoning Board of Appeals to consider your request, you must submit an application to the Village Clerk. This application must contain the required information and data and be submitted at least 20 days prior to the scheduled hearing upon such appeal. No appeal shall be heard unless a record on appeal is so furnished to the chairman. If no record on appeal is so furnished within the time prescribed herein the appeal shall be denied subject to renewal upon supplying a sufficient record on appeal to the chairman or adjourned at the discretion of the board.

CONTENTS OF THE RECORD OF APPEAL:

The record on appeal shall consist of the following material in regard to the following matter (see Village Code Section 47-24 Zoning).

1. Zoning Board of Appeals Fees: These fees are payable to the Village of Monroe at the Village Clerk's Office at the time of application for a hearing.
 - a. Appearance Fee: Fifty (\$50) dollars for each application.
 - b. Area Variance: Two hundred fifty (\$250) dollars
 - c. Use Variance: Five hundred (\$500) dollars
 - d. Interpretations: One hundred fifty (\$150) dollars
2. A copy of the letter, opinion, decision or requirement or ruling appealed from. To be filed within 30 days of denial.
3. A written executed application stating in detail all the pertinent facts relating to the appeal and stating the grounds therefor.
4. A plot plan, survey or diagram showing accurately the size of the subject property, the location of the proposed structure thereon, the amount of frontage on any abutting road; the distance of the proposed structure from any abutting street or highway if the property does not abut a state, county or Village Road, the distance from the subject property to the nearest state, county or Village Road, and the dimensions, location and type of access to the property from the nearest state, county or Village road.
5. Proof of notification at least 10 days prior to the hearing to all other property owners within 300 feet of your property. This must be done by CERTIFIED mail, return receipt requested.
 - a. The ZBA requires that you show the mailing receipts before final action on your application will be taken.
 - b. In determining who to notify, you should refer to the official Tax Map to determine landowners.
 - c. It is suggested that the required notice contain a copy of the NOTICE OF HEARING which is published in the local newspaper.

NOTE: THE ZONING BOARD OF APPEALS IS AN ADMINISTRATIVE BODY REPRESENTED BY THE VILLAGE ATTORNEY. YOU MAY WISH TO CONSULT AN ATTORNEY AND/OR HAVE ONE WITH YOU AT YOUR HEARING ALTHOUGH IT IS NOT REQUIRED.

712-b. Permitted action by board of appeals

*Orders*¹, requirements, decisions, *interpretations*, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, *interpretation* or determination the appeal is taken.

Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances,¹ *as defined herein*.

b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that *for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; 2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.*

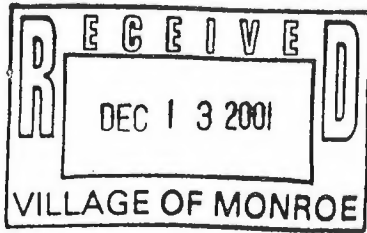
c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of *the* administrative official charged with the enforcement of such local law, to grant area variances² *as defined herein*.

b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

position of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of property¹. Such conditions shall be consistent with the spirit and intent of the local law, and shall be imposed for the purpose of minimizing any adverse effect such variance may have on the neighborhood or community.



At a regular meeting of the Zoning Board
Of Appeals of the Village of Monroe,
Held at the Village Hall, 7 Stage Road
Monroe, New York 10950, on the
11th day of December, 2001.

VILLAGE OF MONROE
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of

W. C. Lincoln Corp.

Appealing the July 18, 2001 Decision
of the Building Inspector.
-----X

WE HELD a Public Hearing on the 11th day of December, 2001, with regard to the above matter. The matter had been adjourned several times. At that time, we heard testimony from the applicant and we find the facts surrounding this application as follows:

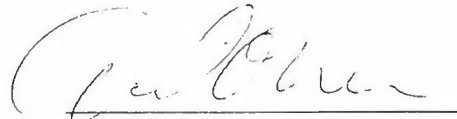
1. We find that the applicant's property lies in the SR-10 District. The lot in question is part of a nineteen (19) acre parcel designated as Section 211, Block 1, Lot 1.

2. That the applicant requested a building permit on a lot shown on a subdivision plat filed in 1909, before the Village had a Zoning Law. The Zoning Law was last amended in 1999. The lot does not conform to the requirements of the SR-10 District in that it is seventy-five (75) feet wide instead of the required one hundred (100) feet width. No area variance was sought.

3. The 1909 plat showed 61 lots and several roads. No work on improvements of any kind had been done by the present owner or any one of the past owners. Section 7-709(2)(d) of the Village Law of the State of New York, gave the owner one year to take advantage of any exemption.

4. In March 2001, the Village of Monroe began a proceeding under the Eminent Domain Law to acquire the entire 19 acres that constitute Section 211, Block 1, Lot 1 of the tax map. At present, there is a proceeding pending in the Appellate Division brought by the Petitioner for a review of the actions of the Village. This was stated by the Building Inspector in denying the application.

5. Accordingly, the Board finds that the decision of the Building Inspector is affirmed.



David O. Moore
Chairman

THOSE PRESENT:

David O. Moore
Frank Vitarelli
Patrick Kelleher

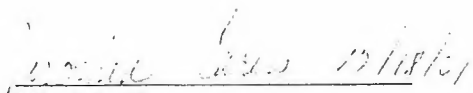
Members of the Zoning Board of Appeals voting against the application:

David O. Moore
Patrick Kelleher
Frank Vitarelli

Members of the Zoning Board of Appeals voting in favor of the application:

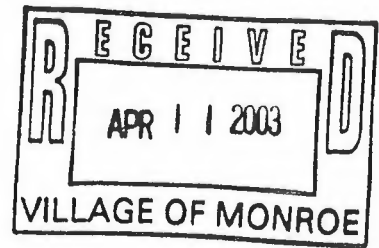
None

This decision was filed in the Office of the Clerk of the Village of Monroe.



Virginia Carey
Clerk of the Village of Monroe

47411-17 #134741
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE



-----x
In the Matter of the Application of

W.C. LINCOLN CORP.,

NOTICE OF SUPPLEMENTAL
PETITION

Petitioner,

Index No. 2002-0013

for a Judgment pursuant to Article 7
POL and 78 CPLR annulling a decision of

Justice Assigned:

ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,

HON. MARY SMITH
J.S.C.

Respondent.

-----x
S I R S :

PLEASE TAKE NOTICE THAT upon Petitioner's Supplemental Petition dated April 11, 2003, Petitioner's annexed December 31, 2001 Petition and Yehuda Frank's December 31, 2001 Affirmation, Petitioner will move this Court at an IAS Part (Smith, J.) of the Supreme Court of the State of New York to be held in and for the County of Orange, at the Orange County Government Center, 255 Main Street, Goshen, New York, on May 7, 2003, at 9:30 a.m., or as soon thereafter as Counsel may be heard, for a judgment pursuant to Article 7 POL and CPLR Article 78 with respect to Petitioner's application to Respondent Zoning Board of Appeals of the Village of Monroe for a review of an administrative decision of the Building Inspector denying Petitioner's application for a

*Recd 3:35 PM
Deputy Clk. M. Keenan
Delivered by: Yehuda Frank*

building permit based solely on the fact that there was pending litigation (Respondent's Determination) which are in addition to the Petitioner's requests for relief in Petitioner's December 31, 2002 Notice of Petition and Petition incorporated herein by reference annulling Respondent's Determination made on March 11, 2003, by reason of the fact that: Respondent failed to perform a duty enjoined upon it by law, filing a true and correct record of the decision rendered; Respondent's Determination was: (a) made in violation of lawful procedure; (b) was affected by an error of law; (c) arbitrary and capricious; (d) an abuse of Respondent's discretion; (e) the determination aforesaid was made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is not on the record, supported by substantial evidence; and for such other and further relief as to this Court may seem just and proper.

Dated: New City, New York
April 11, 2003



DONALD TIRSCHWELL

DONALD TIRSCHWELL
Attorney for Petitioner
108 New Hempstead Road.
New City, New York 10956
845-634-4687

TO: ZONING BOARD OF APPEALS OF
THE VILLAGE OF MONROE
Village Hall
7 Stage Road
Monroe, New York 10950

J. BENNETT FARRELL, ESQ.
Attorney for Respondent
107 Stage Road
Monroe, New York 10950
(845) 782-5450

47411-19 #134741
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----x
In the Matter of the Application of

W.C. LINCOLN CORP.,

Petitioner, SUPPLEMENTAL PETITION

for a Judgment pursuant to Article
7 POL and 78 CPLR annulling a
decision of

Index No. 13/02

ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,

Justice Assigned:

HON. MARY SMITH, JSC

Respondent.

-----x
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

1. This is Petitioner's Supplemental Petition, supplementing Petitioner's December 31, 2001 Petition, a copy of which is annexed hereto and incorporated herein by reference.

2. Petitioner is a domestic corporation with principal and only offices in Rockland County, New York.

3. Upon information and belief, Respondent is the duly constituted Zoning Board of Appeals of the Village of Monroe.

4. Petitioner is owner of real property in the Village of Monroe, depicted and described on the annexed Survey prepared by a New York State licensed land surveyor (Real Property).

5. Petitioner's Real Property is Lot 57 shown on a map entitled "Plat of Subdivision of Sunset Heights", filed in

the Orange County Clerk's Office on November 15, 1909, as Map No. 800.

6. Petitioner's Real Property fronts on an improved street, Sunset Avenue, dedicated to, owned and maintained by the Village of Monroe.

7. The Village of Monroe accepted dedication of Sunset Avenue in 1946 and has, upon information and belief been improved and maintained by the Village of Monroe for at least the past forty (40) years.

8. Sunset Avenue has sewers and water installed in the bed of the road, which facilities are owned and maintained by the Village of Monroe.

9. Sunset Avenue has electric service on poles owned and maintained by the public utility servicing the Village of Monroe.

10. Petitioner made application to the Village of Monroe Building Inspector for construction of a new one family home on the Real Property.

11. Petitioner's Real Property is located in a zone permitting erection and maintenance of one family dwellings on a lot housing at least 10,000 square feet.

12. Petitioner's lot reflected on the annexed survey is certified to have 14,923 square feet.

13. Prior to the Village of Monroe Building Inspector

issuing the declination for a building permit solely by reason of "pending litigation", the Building Inspector advised Petitioner that the Building Inspector investigated Petitioner's entitlement to issuance of a building permit on Petitioner's Real Property. The Building Inspector went to the County Clerk's Office in Goshen to review the subdivision map upon which the subject property is reflected and the Building Inspector confirmed that this lot was eligible for issuance of a building permit.

14. Basis for the Building Inspector's conclusion that Petitioner was entitled to issuance of a building permit but for the pending litigation, was the Building Inspector's review of the filed subdivision plat and the fact that the lot shown on the filed map complied with the zoning ordinance and was on an improved street.

15. The Village of Monroe Building Inspector issued a declination for issuance of a building permit solely on the basis of pending litigation only after the Building Inspector made a determination that the lot in question was a lot shown on a filed subdivision plat with the road frontage of the lot being on an improved street owned and maintained by the Village of Monroe.

16. No appeal was taken from the Building Inspector's determination that the subject lot was a lot shown on a filed subdivision plat and qualifies for issuance of a building permit, but for the Building Inspector's determination that the building

permit not issue because there was litigation pending. The only appeal taken from the Building Inspector's decision was Petitioner's appeal which was limited to the denial based upon pending litigation.

17. The Village of Monroe Building Inspector made a finding that Petitioner's application for a building permit complied with all requirements of the New York State Building Code and the Zoning Ordinance of the Village of Monroe.

18. The Village of Monroe Building Inspector notified Petitioner that the Building Inspector declined to issue a building permit by reason of the fact that there was litigation pending relating to the parcel of Real Property. A copy of the Building Inspector's declination is annexed as Exhibit "A".

19. Petitioner filed an application with Respondent appealing the Building Inspector's decision not to issue a building permit, solely by reason of pending litigation.

20. Subsequent to Petitioner's original Petition, in this proceeding, this Court rendered a Decision and Order (Order) dated January 7, 2003, a copy of which is annexed hereto.

21. The Order directed:

"Accordingly, this branch of the instant petition is granted to the extent that the portion of the ZBA's decision which upheld the refusal of the Building Inspector to issue a building permit based solely on the issue of pending litigation is annulled and the matter is remanded to Respondent ZBA for

reconsideration, in accordance with this decision, as to whether or not Petitioner's request for a building permit was denied due to non-compliance with the zoning laws, pursuant to their authority under Village Law § 7-712-B."

22. On March 11, 2003, Respondent held a public hearing.

23. At the public hearing, the evidence offered by Petitioner was the testimony of Yehuda Frank.

24. The Village of Monroe Building Inspector did not testify.

25. At the hearing, no evidence was submitted by any person or entity other than Petitioner.

26. Petitioner's President, Yehuda Frank testified that the lot in question fronted on a Village road that was paved and which had Village sewer main and water main installed in the bed of the street.

27. Yehuda Frank further testified that the Building Inspector told him that after Petitioner filed the application for a building permit for the subject premises, the Building Inspector went to the County Clerk's Office and reviewed a copy of the subdivision ap.

28. After the Building Inspector's review of all relevant facts, the Building Inspector made a determination that Petitioner was entitled to the issuance of a building permit, except for the fact that there was then pending a condemnation by

the Village of all of Petitioner's real property holdings including the subject real property and adjacent real property.

29. Pursuant to the Village Law § 7-736 no public municipal street utility or improvements shall be constructed in any street until it has become a public street.

30. By a 1946 deed, a copy of which was introduced in evidence, the Village of Monroe accepted dedication of the street fronting on the subject premises.

31. Petitioner's counsel advised the Board that pursuant to the Court of Appeals decision in Ellington Construction Corp. v. Zoning Board of Appeals (77 NY 2d 114-1990) that where substantial expenditures have been made for subdivision improvements, there is an exemption of lots shown on a filed subdivision map.

32. In Ellington, the Village has not accepted dedication of the subdivision streets and public improvements.

33. Petitioner's predecessors in title made Substantial investment for improvement of the street on which the subject premises front, installation of water and sewer mains and the Village of Monroe accepted dedication of the street.

34. Petitioner by filing this Petition, is not waiving Petitioner's rights alleged in Petitioner's December 31, 2001 petition that Respondent's review of Petitioner's appeal is limited to the sole issue raised by Petitioner's appeal to

Respondent.

35. After the March 11, 2003 hearing, Respondent issued a decision, filed in the office of the Clerk on March 12, 2003, a copy of which is attached.

36. Respondent's finding that no work on improvements had been done by the present owner or any past owner is in direct contravention of the testimony elicited at the hearing and the evidence produced at the hearing that municipal sewer and water had been installed on Sunset Avenue fronting on the premises; that the street had been paved.

37. No proof was introduced that the Village had improved the road, or that the Village installed the water and sewer which serviced the subject premises as well as adjoining lots shown on the subdivision map.

38. Proof was introduced that the Village had accepted dedication to Sunset Avenue as a street shown on the subdivision by the then owner of the subdivision.

39. Petitioner respectfully submits that the mere act of accepting dedication of a road shown on a subdivision map constitutes an acceptance of value by the Village and fixes the location and use of the adjoining real property.

40. The acceptance of dedication of subdivision streets by a village, vests rights in the owner of subdivision to develop the subdivision as filed.

41. Acceptance of dedication of roads shown on a filed subdivision plat prohibits the owner for any future owner of the subdivision from utilization of the real property as if the real property had not been subdivided.

41. The offer of dedication to a Village of streets shown on a filed subdivision and the acceptance of the offer by the Village, represents a contractual obligation of the Village.

42. Respondent's March 11, 2003 decision is against the weight of the evidence produced.

43. The Village of Monroe Building Inspector was never called to refute the expert opinion he rendered as related by Petitioner.

44. No evidence was introduced at the March 11, 2003 hearing to refute the Building Inspector's expert opinion.

45. The sole reason for the Building Inspector's denial to issuance of a building permit was "pending litigation".

46. Petitioner application for building permit was wrongfully denied by the Building Inspector as pending litigation.

47. The fact that there is a pending litigation, i.e., a proposed condemnation of Petitioner's Real Property, is not a basis for a Building Inspector to deny a building permit.

48. The Building Inspector of the Village of Monroe determined that Petitioner's application for a building permit complied with the Building Code of the State of New York and also complied with the Zoning requirements of the Village of Monroe.

49. No appeal was taken by anyone from the decision of the Building Inspector that Petitioner's application and the construction on Lot 57 complied with the Zoning Ordinance of the Village of Monroe and the Building Code of the State of New York.

50. Respondent's decision was affected by an error in law in that Respondent failed to take into consideration the fact that the Building Inspector in his expert opinion determined that Petitioner was entitled to issuance of a building permit and no evidence was introduced to the contrary.

51. Respondent's decision was also fraught with error in that Respondent attempted to take into consideration issues with respect to the building permit to the Building Inspector's decision, for which no appeal from taken by anyone.

52. Respondent's determination was affected by an error in law in that the Village Attorney attempted to influence the decision of the Respondent by attempting to question the

Building Inspector's decision to issue a building permit but for the pending litigation by raising zoning issues from which no appeal was taken.

53. Respondent's decision was arbitrary and capricious in that the decision disregarded the fact that it is not a valid reason for denial of a building permit as the finding that in essence must have been the good Lord who installed the sewers, water and pavement on Sunset Avenue, was baseless.

54. Respondent's decision was arbitrary and capricious in that there was no evidence submitted other than Petitioner's which related to the Building Inspector's expert opinion.

55. Respondent's decision was an abuse of Respondent's discretion in that Respondent failed to take into consideration the vested rights acquired by this parcel of the installation of substantial subdivision public improvements and the acceptance of dedication of the subdivision streets. .

56. Respondent's determination made as a result of a hearing and which evidence was taken is on the record, is not supported by substantial evidence.

57. Petitioner is entitled to a judgment annulling

Respondent's March 11, 2001 decision with Petitioner's aforesaid application to review the denial of a building permit by the Village of Monroe Building Inspector by reason of the fact that Respondent failed to perform a duty enjoined upon by law, Respondent's determination aforesaid is made in violation of lawful procedure, was affected by an error of law; was arbitrary and capricious, that Respondent's determination aforesaid is an abuse of Respondent's discretion; that the determination of aforesaid was made as a result of a hearing held, and which evidence was taken, pursuant to direction of the statute is not on the record, supported by substantial evidence; and for such other and further relief as this Court may seem just and proper.

58. No previous application for this relief has been made, except as set forth in Petitioner's original Petition.

WHEREFORE, Petitioner respectfully requests this Court issue a judgment:

a. Annuling Respondent's determination made on March 11, 2001 by reason of the fact that Respondent failed to perform a duty enjoined upon it by law;

b. Annuling Respondent's determination in that the determination was made in violation of lawful procedure; was affected by an error in law; was arbitrary and capricious; and

abuse of Respondent's discretion; and determination aforesaid was made as a result of a hearing held, at which evidence was taken, pursuant to direction of law, is not on the record, supported by substantial evidence;

d. and for such other and further relief as this Court may seem just and proper.

Dated: New City, New York
April 11, 2003

W.C. LINCOLN CORP.

by: 
YEHUDA FRANK, President


DONALD TIRSCHWELL

DONALD TIRSCHWELL
Attorney for Petitioner
108 New Hempstead Road
New City, New York 10956
845-634-4687

4741-20 #134741

VERIFICATION

STATE OF NEW YORK

COUNTY OF ROCKLAND

YEHUDA FRANK, an Orthodox Jew for whom swearing is forbidden, affirms, deposes and says:

I am the President of W.C. LINCOLN CORP., a domestic corporation and a party in the within action; I have read the foregoing SUPPLEMENTAL PETITION and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

This Verification is made by me because the above party is a corporation and I am an officer thereof.

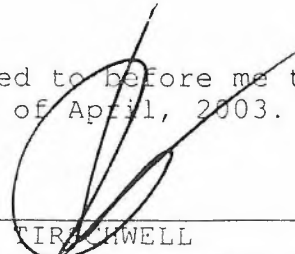
The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Books and records of the corporation, maintained in the ordinary course of business.

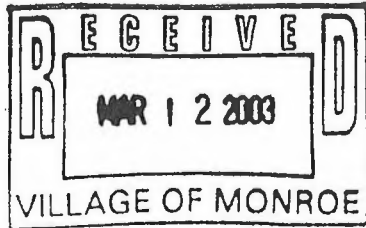


YEHUDA FRANK

Affirmed to before me this
11 day of April, 2003.



DONALD FIRSCHWELL
NOTARY PUBLIC - STATE OF NEW YORK
RESIDING IN ROCKLAND COUNTY
COMMISSION EXPIRES 6/30/06



At a regular meeting of the Zoning Board Of Appeals of the Village of Monroe, Held at the Village Hall, 7 Stage Road Monroe, New York 10950, on the 11th day of March, 2003.

VILLAGE OF MONROE
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of

W. C. Lincoln Corp.

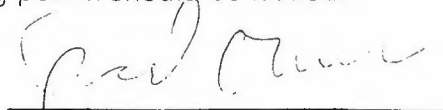
Appealing the July 18, 2001 Decision
of the Building Inspector.
-----X

WE HELD a Public Hearing on the 11th day of March, 2003, with regard to the above matter. The hearing was directed by the Order of the Honorable Mary H. Smith, dated January 7, 2003. At that time, we heard testimony from the applicant and we find the facts surrounding this application as follows:

1. We find that the applicant's property lies in the SR-10 District. The lot in question is part of a nineteen (19) acre parcel designated as Section 211, Block 1, Lot 1.
2. That the applicant requested a building permit for a lot shown on a subdivision plat filed in 1909, before the Village had a Zoning Law. The Zoning Law was last amended in 1999. The lot does not conform to the requirements of the SR-10 District in that it is seventy-five (75) feet wide instead of the required one hundred (100) feet width. No area variance was sought.
3. The 1909 plat showed 61 lots and several roads. No work on improvements of any kind had been done by the present owner or any one of the past owners. Section 7-709(2)(d) of the

Village Law of the State of New York, gave the owner one year to take advantage of any exemption.

4. Accordingly, the Board finds that no building permit should be issued.



David O. Moore
Chairman

THOSE PRESENT:

David O. Moore
Frank Vitarelli
Richard McCarthy
Paul Baum
Michael Crill

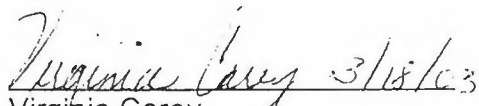
Members of the Zoning Board of Appeals voting against the application:

David O. Moore
Frank Vitarelli
Richard McCarthy
Paul Baum
Michael Crill

Members of the Zoning Board of Appeals voting in favor of the application:

None

This decision was filed in the Office of the Clerk of the Village of Monroe.



Virginia Carey
Clerk of the Village of Monroe

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

In the Matter of the Application of
W.C. LINCOLN CORP.,

Petitioner

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

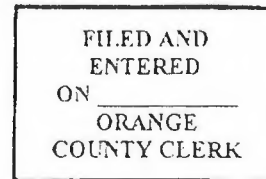
- against -

**ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,**

Respondent

-----X

Mary H. Smith, J.



DECISION AND ORDER

Index No. 02-0013

This is a *CPLR Article 78* proceeding brought to challenge a determination made by *Respondent* Zoning Board of Appeals of the Village of Monroe (ZBA). According to the petition, *Respondent*: (1) charged *Petitioner* an unauthorized fee to appear before the ZBA; (2) caused *Petitioner* to expend excessive funds for mailing notices of a public hearing to be held before the ZBA; (3) failed to issue a true and correct transcript of a public hearing; and (4) failed to annul an unlawful determination of the Village of Monroe's Building Inspector.

The Court has previously issued a Decision and Order which denied *Respondent's* motion, pursuant to *CPLR § 7804 (f)* and *CPLR § 3212*, for a dismissal of the matter.

In considering this matter, the Court has read the Notice of Petition and Verified Petition with attached Affirmation in Support, and Exhibits; and *Respondent's* Verified Answer and the Certified Record of the Proceedings before the ZBA. In addition, *Petitioner* served a Reply. Upon those submissions, and the prior proceedings, the matter is decided as follows:

Background

Petitioner is the owner of property in the Village of Monroe, which lot is shown on the tax maps as a portion of part of Section 211, Block 1, Lot 1. The property is known as Lot 57 as shown on a map, entitled "Plat of Subdivision of Sunset Heights", filed with the Orange county clerk's Office on November 15, 1909.

By application dated February 28, 2001 *Petitioner* applied for a building permit to construct a single family residence on the aforementioned parcel of land. On March 6, 2001, the Village of Monroe, pursuant to the Eminent Domain Law, began a proceeding to acquire the property known as Section 211, Block 1, Lot 1, consisting of approximately 20 acres of property and including *Petitioner's* Lot 57.

The Village of Monroe Building Inspector denied *Petitioner's* application for the permit and cited as the sole reason "...pending litigation action on this property, a Building Permit cannot be issued until this matter has been resolved."

Petitioner filed an application to *Respondent* ZBA to appeal the Building Inspector's denial of the permit. As part of the appeal process, applicants before the ZBA are required to pay a fee which consists of a \$50.00 appearance fee for each application and an additional amount based upon the nature of the appearance (*i.e.* area variance: \$425.00; use variance: \$500.00; interpretations: \$350.00). In this case, *Petitioner* was required to pay the application fee (\$50.00) and the fee for an interpretation (\$350.00) for a total of \$400.00. Additionally, *Petitioner* was required to mail a notice of the hearing to nearby property owners by certified mail, return receipt requested.

The hearing was originally scheduled for September 11, 2001, but was cancelled due to a national emergency (the attack on the World Trade Center). The hearing was rescheduled for November 13, 2001 and *Petitioner* was again required to accomplish a mailing to nearby property owners. However, due to the failure of the ZBA to muster a quorum on that

date, the hearing was, once again, cancelled. The matter was then rescheduled for December 11, 2001 and *Petitioner* was, once again, required to accomplish a mailing to nearby property owners.

The hearing was finally held on December 11, 2001 and the Court has been provided with a certified transcript of the proceedings (Exhibit 'H' of *Respondent's* Motion to Dismiss) and a copy of the resulting written decision of the ZBA (*Petitioner's* Exhibit 'C').

From a reading of the transcript it is apparent that the ZBA, as represented by its attorney, and *Petitioner*, as represented by its attorney, were taking positions which were diametrically opposed and the hearing denigrated into a rancorous exchange between the respective counsel.

The argument presented by *Petitioner's* counsel was that the issue of "pending litigation" (the eminent domain action) was an improper basis for the Building Inspector's refusal to issue the requested building permit and *Petitioner* steadfastly insisted that was the only issue that the ZBA could consider. Furthermore, *Petitioner* argued that its appearance should be considered an appeal of the Building Inspector's decision and not an interpretation as the ZBA was characterizing it.

The ZBA's attorney, however, was equally insistent that they were not limited to a review of the actual reason that the Building Inspector cited for the refusal, but could take into consideration zoning issues such as the property's non-compliance with the Village's bulk requirements and the lack of a request for a variance. The argument presented by *Respondent* for expansion of the issues before the ZBA was that N.Y.S. Village Law § 7-712-B authorized such action on behalf of the ZBA.

The record indicates that the board members appeared uncomfortable with the matter being before them; individual members questioned why the matter was not before the

Planning Board or the Village Board itself. The members even questioned whether they were empowered to grant any relief in *Petitioner's* case.

A motion to uphold the Building Inspector's determination, "...until such time that the matter is resolved in Court..." was made and it was unanimously passed. It should be noted that the written decision which was issued as a result of the passed motion recited the issue of non-compliance with the zoning law, but it does not state that non-compliance was the reason for upholding the decision to not issue a building permit.

Analysis and Conclusions of Law

Petitioner was Charged an Unauthorized Fee to Appear Before Respondent

As a first cause of action, *Petitioner* seeks a ruling that it was charged an unauthorized fee to appear before the ZBA. *Petitioner* was charged a \$50.00 appearance fee and an additional fee of \$350.00 for an Interpretation. The fee schedule promulgated by the ZBA includes three categories for appearing before it: (1) area variance; (2) use variance; and (3) interpretations.

Petitioner was not seeking a variance of any type, so he was charged under the interpretations category, which was the only remaining option for an appearance.

Accordingly, this branch of the petition is denied as the charge for *Petitioner's* appearance before the ZBA was in accordance with that office's published rules.

Petitioner was Wrongfully Required to Mail Notices When Hearing Not Held

As a second cause of action, *Petitioner* claims that the ZBA caused it to expend

excessive funds for re-mailing notices of a public hearing to be held before the ZBA, when it was the ZBA who wrongfully cancelled the originally scheduled meeting.

Petitioner mailed the required notices for the first scheduled hearing (9/11/01) which was cancelled on an emergency basis due to a national disaster. The cancellation of that first hearing cannot be ascribed to *Respondent*.

Petitioner then, at *Respondent's* insistence, re-mailed the required notices for the second scheduled hearing (11/13/01) which was cancelled due to *Respondent's* failure to have a quorum present to conduct the meeting.

Petitioner then, at *Respondent's* insistence, again re-mailed the required notices for the third scheduled hearing (12/11/01) which was actually held.

This Court finds that it was unreasonable and not in keeping with *Respondent's* own rules to have required *Petitioner* to pay for re-notification of nearby property owners when the second scheduled hearing (11/13/01) was cancelled solely because of *Respondent's* failure to have enough members present to conduct the hearing.

Accordingly, *Respondent* shall reimburse *Petitioner* for the mailing of notices for the December 11, 2001 hearing. However, while *Petitioner* stated that the mailing cost \$342.78, it has failed to include proof of the cost of that mailing with the petition. Since *Petitioner* provided *Respondent* with a list of those land owners who were notified, *Petitioner* shall provide *Respondent* proof of the cost of that mailing (postal fees only) and *Respondent* shall reimburse *Petitioner* for the proven amount of the postal fees which were incurred for the mailing of notices for the December 11, 2001 hearing only.

Respondent's Failure to Issue a True and Correct Transcript of the December 11, 2001 Hearing

As a third cause of action, *Petitioner* requests an order compelling *Respondent*

to issue a true and correct transcript of the hearing before the ZBA. As a part of the motion to dismiss the instant matter, *Respondent* provided the Court with a certified transcript of the proceedings in question (Exhibit 'H' of *Respondent's* Motion to Dismiss). *Petitioner* has made no complaint that the foregoing is not a true and accurate record of the hearing before the ZBA on December 11, 2001.

Accordingly, this branch of the motion is dismissed as moot.

Request to Annul *Respondent's* Determination Reached After Hearing for Violation of Public Officer's Law

As a fourth cause of action, *Petitioner* seeks, pursuant to *Public Officer's Law Article 7*, to annul the action taken at the December 11, 2001 hearing because the decision as issued (*Petitioner's* Exhibit 'C') is not a true reflection of the motion as was made and passed at the meeting and/or the findings made were not made in public.

This application is denied. While the Court believes that the written decision is ambiguous in relation to the certified transcript which was produced, at this point it cannot be said that the decision is inaccurate because the proceeding itself was ambiguous.

ZBA's Failure to Annul the Unlawful Determination of the Village of Monroe's Building Inspector

As a fifth and final cause of action, *Petitioner* complains of the ZBA's failure to annul the unlawful determination of the Village of Monroe's Building Inspector which denied *Petitioner's* application for a building permit.

The opposing positions presented to the Court can be succinctly stated as:

- *Petitioner* claims that the issue of "pending litigation" (the eminent domain action) was an improper basis for the Building Inspector's refusal to issue the requested building

permit and that was the only permissible issue before the ZBA; and

- *Respondent* argues that an expansion of the issues before the ZBA, to include zoning issues, was an authorized action on behalf of the ZBA [*Village Law § 7-712-B*].

The Court agrees with *Petitioner* that the refusal to issue a building permit on property just because it is the subject of an eminent domain action, absent an injunction, would amount to an improper taking of that property. *Respondent* has offered nothing to counter *Petitioner's* argument on this point. Hence, the refusal of the Building Inspector to issue a building permit to *Petitioner*, based solely on the reason that the property was in litigation, was a wrongful denial.

However, the Court also agrees with *Respondent's* argument that an expansion of the issues before the ZBA, to include zoning issues, was an authorized action on behalf of the ZBA [*Village Law § 7-712-B*]. *Petitioner* has offered nothing to counter *Respondent's* argument on this point. Hence, the ZBA was properly authorized to deny *Petitioner's* application for a building permit if it found that the property was not in compliance with the zoning law and no application for a variance had been made.

While it is clear that the issue of the zoning laws were addressed, the problem is that the record of the hearing is unclear as to what effect those issues had on the ultimate determination of the ZBA.

Consequently, although this Court can say that it appears that the issue of the property's non-compliance with the zoning laws, and the lack of a request for a variance, was discussed, the record before the ZBA is not quite clear as to the justification for upholding the denial of the building permit.

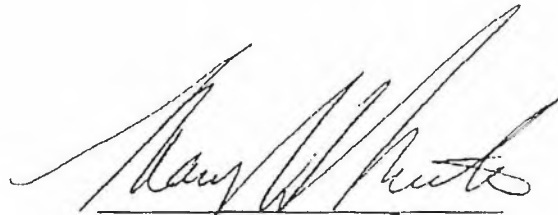
Therefore, this Court cannot substitute its judgment for that of the ZBA and say with absolute certainty what the basis for the ZBA's determination was.

Accordingly, this branch of the instant petition is granted to the extent that the

portion of the ZBA's decision which upheld the refusal of the Building Inspector to issue a building permit based solely on the issue of pending litigation is annulled and the matter is remanded to *Respondent* ZBA for reconsideration, in accordance with this decision, as to whether or not *Petitioner's* request for a building permit was denied due to non-compliance with the zoning laws, pursuant to their authority under *Village Law § 7-712-B*.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
January 7, 2003



Hon. Mary H. Smith
Justice of the Supreme Court

Donald Tirschwell, Esq.
Attorney for *Petitioner*
108 New Hempstead Road
New City, New York 10956
(845) 634-4687

J. Bennett Farrell, Esq.
Attorney for *Respondent*
107 Stage Road
Monroe, New York 10950
(845) 782-5456

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

In the Matter of the Application of
W.C. LINCOLN CORP.,

Petitioner

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

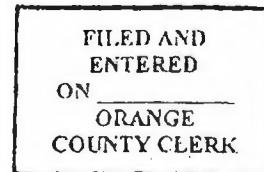
- against -

**ZONING BOARD OF APPEALS,
VILLAGE OF MONROE,**

Respondent

-----X

Mary H. Smith, J.



DECISION AND ORDER

Index No. 02-0013

This is a *CPLR Article 78* proceeding brought to challenge a determination made by *Respondent* Zoning Board of Appeals of the Village of Monroe (ZBA). According to the petition, *Respondent*: (1) charged *Petitioner* an unauthorized fee to appear before the ZBA; (2) caused *Petitioner* to expend excessive funds for mailing notices of a public hearing to be held before the ZBA; (3) failed to issue a true and correct transcript of a public hearing; and (4) failed to annul an unlawful determination of the Village of Monroe's Building Inspector.

The Court has previously issued a Decision and Order which denied *Respondent's* motion, pursuant to *CPLR § 7804 (f)* and *CPLR § 3212*, for a dismissal of the matter.

In considering this matter, the Court has read the Notice of Petition and Verified Petition with attached Affirmation in Support, and Exhibits; and *Respondent's* Verified Answer and the Certified Record of the Proceedings before the ZBA. In addition, *Petitioner* served a Reply. Upon those submissions, and the prior proceedings, the matter is decided as follows:

Background

Petitioner is the owner of property in the Village of Monroe, which lot is shown on the tax maps as a portion of part of Section 211, Block 1, Lot 1. The property is known as Lot 57 as shown on a map, entitled "Plat of Subdivision of Sunset Heights", filed with the Orange county clerk's Office on November 15, 1909.

By application dated February 28, 2001 *Petitioner* applied for a building permit to construct a single family residence on the aforementioned parcel of land. On March 6, 2001, the Village of Monroe, pursuant to the Eminent Domain Law, began a proceeding to acquire the property known as Section 211, Block 1, Lot 1, consisting of approximately 20 acres of property and including *Petitioner's* Lot 57.

The Village of Monroe Building Inspector denied *Petitioner's* application for the permit and cited as the sole reason "...pending litigation action on this property, a Building Permit cannot be issued until this matter has been resolved."

Petitioner filed an application to *Respondent* ZBA to appeal the Building Inspector's denial of the permit. As part of the appeal process, applicants before the ZBA are required to pay a fee which consists of a \$50.00 appearance fee for each application and an additional amount based upon the nature of the appearance (i.e. area variance: \$425.00; use variance: \$500.00; interpretations: \$350.00). In this case, *Petitioner* was required to pay the application fee (\$50.00) and the fee for an Interpretation (\$350.00) for a total of \$400.00. Additionally, *Petitioner* was required to mail a notice of the hearing to nearby property owners by certified mail, return receipt requested.

The hearing was originally scheduled for September 11, 2001, but was cancelled due to a national emergency (the attack on the World Trade Center). The hearing was rescheduled for November 13, 2001 and *Petitioner* was again required to accomplish a mailing to nearby property owners. However, due to the failure of the ZBA to muster a quorum on that

date, the hearing was, once again, cancelled. The matter was then rescheduled for December 11, 2001 and *Petitioner* was, once again, required to accomplish a mailing to nearby property owners.

The hearing was finally held on December 11, 2001 and the Court has been provided with a certified transcript of the proceedings (Exhibit 'H' of *Respondent's* Motion to Dismiss) and a copy of the resulting written decision of the ZBA (*Petitioner's* Exhibit 'C').

From a reading of the transcript it is apparent that the ZBA, as represented by its attorney, and *Petitioner*, as represented by its attorney, were taking positions which were diametrically opposed and the hearing denigrated into a rancorous exchange between the respective counsel.

The argument presented by *Petitioner's* counsel was that the issue of "pending litigation" (the eminent domain action) was an improper basis for the Building Inspector's refusal to issue the requested building permit and *Petitioner* steadfastly insisted that was the only issue that the ZBA could consider. Furthermore, *Petitioner* argued that its appearance should be considered an appeal of the Building Inspector's decision and not an interpretation as the ZBA was characterizing it.

The ZBA's attorney, however, was equally insistent that they were not limited to a review of the actual reason that the Building Inspector cited for the refusal, but could take into consideration zoning issues such as the property's non-compliance with the Village's bulk requirements and the lack of a request for a variance. The argument presented by *Respondent* for expansion of the issues before the ZBA was that N.Y.S. Village Law § 7-712-B authorized such action on behalf of the ZBA.

The record indicates that the board members appeared uncomfortable with the matter being before them; individual members questioned why the matter was not before the

Planning Board or the Village Board itself. The members even questioned whether they were empowered to grant any relief in *Petitioner's* case.

A motion to uphold the Building Inspector's determination, "...until such time that the matter is resolved in Court..." was made and it was unanimously passed. It should be noted that the written decision which was issued as a result of the passed motion recited the issue of non-compliance with the zoning law, but it does not state that non-compliance was the reason for upholding the decision to not issue a building permit.

Analysis and Conclusions of Law

Petitioner was Charged an Unauthorized Fee to Appear Before Respondent

As a first cause of action, *Petitioner* seeks a ruling that it was charged an unauthorized fee to appear before the ZBA. *Petitioner* was charged a \$50.00 appearance fee and an additional fee of \$350.00 for an Interpretation. The fee schedule promulgated by the ZBA includes three categories for appearing before it: (1) area variance; (2) use variance; and (3) interpretations.

Petitioner was not seeking a variance of any type, so he was charged under the interpretations category, which was the only remaining option for an appearance.

Accordingly, this branch of the petition is denied as the charge for *Petitioner's* appearance before the ZBA was in accordance with that office's published rules.

Petitioner was Wrongfully Required to Mail Notices When Hearing Not Held

As a second cause of action, *Petitioner* claims that the ZBA caused it to expend

excessive funds for re-mailing notices of a public hearing to be held before the ZBA, when it was the ZBA who wrongfully cancelled the originally scheduled meeting.

Petitioner mailed the required notices for the first scheduled hearing (9/11/01) which was cancelled on an emergency basis due to a national disaster. The cancellation of that first hearing cannot be ascribed to *Respondent*.

Petitioner then, at *Respondent's* insistence, re-mailed the required notices for the second scheduled hearing (11/13/01) which was cancelled due to *Respondent's* failure to have a quorum present to conduct the meeting.

Petitioner then, at *Respondent's* insistence, again re-mailed the required notices for the third scheduled hearing (12/11/01) which was actually held.

This Court finds that it was unreasonable and not in keeping with *Respondent's* own rules to have required *Petitioner* to pay for re-notification of nearby property owners when the second scheduled hearing (11/13/01) was cancelled solely because of *Respondent's* failure to have enough members present to conduct the hearing.

Accordingly, *Respondent* shall reimburse *Petitioner* for the mailing of notices for the December 11, 2001 hearing. However, while *Petitioner* stated that the mailing cost \$342.78, it has failed to include proof of the cost of that mailing with the petition. Since *Petitioner* provided *Respondent* with a list of those land owners who were notified, *Petitioner* shall provide *Respondent* proof of the cost of that mailing (postal fees only) and *Respondent* shall reimburse *Petitioner* for the proven amount of the postal fees which were incurred for the mailing of notices for the December 11, 2001 hearing only.

Respondent's Failure to Issue a True and Correct Transcript of the December 11, 2001 Hearing

As a third cause of action, *Petitioner* requests an order compelling *Respondent*

to issue a true and correct transcript of the hearing before the ZBA. As a part of the motion to dismiss the Instant matter, *Respondent* provided the Court with a certified transcript of the proceedings in question (Exhibit 'H' of *Respondent's* Motion to Dismiss). *Petitioner* has made no complaint that the foregoing is not a true and accurate record of the hearing before the ZBA on December 11, 2001.

Accordingly, this branch of the motion is dismissed as moot.

Request to Annul *Respondent's* Determination Reached After Hearing for Violation of Public Officer's Law

As a fourth cause of action, *Petitioner* seeks, pursuant to *Public Officer's Law Article 7*, to annul the action taken at the December 11, 2001 hearing because the decision as issued (*Petitioner's* Exhibit 'C') is not a true reflection of the motion as was made and passed at the meeting and/or the findings made were not made in public.

This application is denied. While the Court believes that the written decision is ambiguous in relation to the certified transcript which was produced, at this point it cannot be said that the decision is inaccurate because the proceeding itself was ambiguous.

ZBA's Failure to Annul the Unlawful Determination of the Village of Monroe's Building Inspector

As a fifth and final cause of action, *Petitioner* complains of the ZBA's failure to annul the unlawful determination of the Village of Monroe's Building Inspector which denied *Petitioner's* application for a building permit.

The opposing positions presented to the Court can be succinctly stated as:

- *Petitioner* claims that the issue of "pending litigation" (the eminent domain action) was an improper basis for the Building Inspector's refusal to issue the requested building

permit and that was the only permissible issue before the ZBA; and

- *Respondent* argues that an expansion of the issues before the ZBA, to include zoning issues, was an authorized action on behalf of the ZBA [Village Law § 7-712-B].

The Court agrees with *Petitioner* that the refusal to issue a building permit on property just because it is the subject of an eminent domain action, absent an injunction, would amount to an improper taking of that property. *Respondent* has offered nothing to counter *Petitioner's* argument on this point. Hence, the refusal of the Building Inspector to issue a building permit to *Petitioner*, based solely on the reason that the property was in litigation, was a wrongful denial.

However, the Court also agrees with *Respondent's* argument that an expansion of the issues before the ZBA, to include zoning issues, was an authorized action on behalf of the ZBA [Village Law § 7-712-B]. *Petitioner* has offered nothing to counter *Respondent's* argument on this point. Hence, the ZBA was properly authorized to deny *Petitioner's* application for a building permit if it found that the property was not in compliance with the zoning law and no application for a variance had been made.

While it is clear that the issue of the zoning laws were addressed, the problem is that the record of the hearing is unclear as to what effect those issues had on the ultimate determination of the ZBA.

Consequently, although this Court can say that it appears that the issue of the property's non-compliance with the zoning laws, and the lack of a request for a variance, was discussed, the record before the ZBA is not quite clear as to the justification for upholding the denial of the building permit.

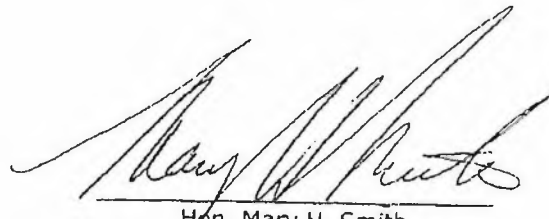
Therefore, this Court cannot substitute its judgment for that of the ZBA and say with absolute certainty what the basis for the ZBA's determination was.

Accordingly, this branch of the instant petition is granted to the extent that the

portion of the ZBA's decision which upheld the refusal of the Building Inspector to issue a building permit based solely on the issue of pending litigation is annulled and the matter is remanded to *Respondent* ZBA for reconsideration, in accordance with this decision, as to whether or not *Petitioner's* request for a building permit was denied due to non-compliance with the zoning laws, pursuant to their authority under *Village Law § 7-712-B*.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
January 7, 2003



Hon. Mary H. Smith
Justice of the Supreme Court

Donald Tirschwell, Esq.
Attorney for *Petitioner*
108 New Hempstead Road
New City, New York 10956
(845) 634-4687

J. Bennett Farrell, Esq.
Attorney for *Respondent*
107 Stage Road
Monroe, New York 10950
(845) 782-5456

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. PETER C. PATSALOS, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----x
In the Matter of the Application of
W.C. LINCOLN CORP.,

| | |
|--|--|
| Petitioner, -against- THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONROE, | To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties. |
|--|--|

| | |
|-------------|---|
| Respondent. | Index No. 6471/2003 Motion Date: October 9, 2003 |
|-------------|---|

-----x
The following papers numbered 1 to 10 were read on this proceeding pursuant to CPLR Article 78 to review a determination of respondent, dated March 11, 2003, which upheld on administrative appeal the denial of a building permit by the Building Inspector of the Village of Monroe and this motion by respondent for summary judgment:

| | |
|--|-----|
| Notice of Supplemental Petition-Supplemental Petition-Exhibits.. | 1-3 |
| Notice of Motion-Affirmation-Exhibits..... | 4-6 |
| Affirmations in Opposition-Exhibit..... | 7-9 |
| Answer..... | 10 |

Upon the foregoing papers it is ORDERED that the motion by respondent is granted; determination confirmed and proceeding dismissed on the merits.

Petitioner owns real property in the Village of Monroe. The property is shown on a subdivision map filed in the office of the Orange County Clerk in 1909. Petitioner applied for a building permit to build a one family residence on one of the lots shown on the map. The Village of Monroe Building Inspector denied the application on the ground that the property was the subject of an

eminent domain proceeding. That determination was affirmed by respondent. Petitioner brought an Article 78 proceeding with respect to that determination and this court [SMITH, J.] by decision and order dated January 7, 2003, remanded the matter to respondent for a determination whether petitioner's application was denied pursuant to the zoning laws of the Village of Monroe.

Upon remand, respondent again affirmed denial of the application on the ground that the lot was in a SR-10 district which requires lot width of one hundred feet and the lot in question was only seventy-five feet wide. Petitioner had not applied for an area variance.

Petitioner now brings this proceeding pursuant to CPLR Article 78 alleging that it has vested rights in the subdivision because one of its predecessors in title, Ina A. Smith, deeded property to the Village of Monroe in 1946 to create village streets on the land of the subdivision.

In order to acquire vested rights in a subdivision approval which would no longer be in compliance with current zoning laws, the owner of the property must have made substantial expenditures and undertaken substantial construction prior to the effective date of the amendment (see Ellington Construction Corp. v Zoning Board of Appeals of the Incorporated Village of New Hempstead, 77 NY2d 114; Matter of Putnam Armonk v Town of Southeast, 55 AD2d 10). Petitioner offers no proof of the value of Ms. Smith's conveyance in 1946 and it is uncontroverted that she never commenced construction. Moreover, where, as here, it appears that the improvements, i.e., the village

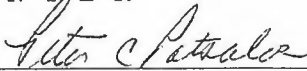
streets, would be equally useful under new zoning requirements, a vested right may not be claimed (see Ramapo 287 Limited Partnership v Village of Montebello, 165 AD2d 544). Finally, any vested right Ms. Smith may have acquired in 1946 must be deemed to be abandoned since over fifty years have passed with no construction pursuant to a subdivision map filed almost one hundred years ago (see Matter of Schoonmaker Homes-John Steinberg, Inc. v Village of Maybrook, 178 AD2d 722).

Settle judgment with a bill of costs.

The foregoing constitutes the decision and order of the court.

Dated: October 23, 2003
Goshen, New York

E N T E R


HON. PETER C. PATSALOS,
J.S.C.

TO: DONALD TIRSCHWELL, ESQ.
Attorney for Petitioner
108 New Hempstead Road
New City, New York 10956

J. BENNETT FARRELL, ESQ.
Attorney for Respondent
107 Stage Road
Monroe, New York 10950

New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0006471/2003**
Case Name: **W.C. LINCOLN CORP., MATTER OF vs. ZONING BD. APPEALS, VIL OF MON**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Standard**
RJI Filed: **09/18/2003**
Date NOI Due:
NOI Filed:
Disposition Date: **10/23/2003**
Calendar Number:
Jury Status:
Justice Name: **PETER C. PATSALOS**

Attorney/Firm For Plaintiff:

DONALD TIRSCHWELL, ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

J. BENNETT FARRELL
107 STAGE ROAD
MONROE, NY
782-5456

Attorney Type: **Retained**

Atty. Status: **Active**

[Close](#)[Show Appearances](#)[Show Motions](#)



New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0006471/2003**
Case Name: **W.C. LINCOLN CORP., MATTER OF vs. ZONING BD. APPEALS, VIL OF MON**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Standard**
RJI Filed: **09/18/2003**
Date NOI Due:
NOI Filed:
Disposition Date: **10/23/2003**
Calendar Number:
Jury Status:
Justice Name: **PETER C. PATSALOS**

Attorney/Firm For Plaintiff:

DONALD TIRSCHWELL, ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

J. BENNETT FARRELL
107 STAGE ROAD
MONROE, NY
782-5456

Attorney Type: **Retained**

Atty. Status: **Active**

[Close](#)[Show Appearances](#)[Show Motions](#)



New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0006471/2003**
Case Name: **W.C. LINCOLN CORP., MATTER OF vs. ZONING BD. APPEALS, VIL OF MON**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Standard**
RJI Filed: **09/18/2003**
Date NOI Due:
NOI Filed:
Disposition Date: **10/23/2003**
Calendar Number:
Jury Status:
Justice Name: **PETER C. PATSALOS**

Attorney/Firm For Plaintiff:

DONALD TIRSCHWELL, ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

J. BENNETT FARRELL
107 STAGE ROAD
MONROE, NY
782-5456

Attorney Type: **Retained**

Atty. Status: **Active**

[Close](#)[Show Appearances](#)[Show Motions](#)



New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0000013/2002**
Case Name: **W.C. LINCOLN CORP.,MATTER OF vs. MONROE, VIL. OF, ZONING BD.**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Expedited**
RJI Filed: **01/02/2002**
Date NOI Due:
NOI Filed:
Disposition Date: **06/17/2003**
Calendar Number:
Jury Status:
Justice Name: **MARY H. SMITH**

Attorney/Firm For Plaintiff:
DONALD TIRSCHWELL,ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

[Close](#)[Show Appearances](#)[Show Motions](#)



New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0000013/2002**
Case Name: **W.C. LINCOLN CORP., MATTER OF vs. MONROE, VIL. OF, ZONING BD.**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Expedited**
RJI Filed: **01/02/2002**
Date NOI Due:
NOI Filed:
Disposition Date: **06/17/2003**
Calendar Number:
Jury Status:
Justice Name: **MARY H. SMITH**

Attorney/Firm For Plaintiff:

DONALD TIRSCHWELL, ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

[Close](#)[Show Appearances](#)[Show Motions](#)



New York State Unified Court System

WebCivil Supreme - Case Detail

[Add to eTrack](#)

Court: **Orange Supreme Court**
Index Number: **0000013/2002**
Case Name: **W.C. LINCOLN CORP., MATTER OF vs. MONROE, VIL. OF, ZONING BD.**
Case Type: **ARTICLE 78 AND SPECIAL PROCEED**
Track: **Expedited**
RJI Filed: **01/02/2002**
Date NOI Due:
NOI Filed:
Disposition Date: **06/17/2003**
Calendar Number:
Jury Status:
Justice Name: **MARY H. SMITH**

Attorney/Firm For Plaintiff:
DONALD TIRSCHWELL, ESQ.
108 NEW HEMPSTEAD RD.
NEW CITY, NY 10956
(845) 634-4687

Attorney Type: **Retained**

Atty. Status: **Active**

Attorney/Firm For Defendant:

[Close](#)[Show Appearances](#)[Show Motions](#)