

THE STATE OF NEW YORK
CITY COURT; CITY OF GENEVA

IN THE MATTER OF AN IN REM PROCEEDING FOR THE PROPERTY
KNOWN AS 50 STATE STREET BY THE CITY OF GENEVA NEW YORK

Plaintiff,

- against -

REPLY AFFIRMATION

JEFF HENDERSON

Index No.:

MC-14-319

Defendant.

FILED
CITY OF GENEVA
CLERK OF COURT
JUL 23 2014

DONALD J. CHENEY, ESQ, being duly sworn hereby affirms upon information and belief as follows:

1. On or about May 15, 2014 Defendant submitted an application for a building permit to install solar panels, fencing, an underground water storage tank, a shed, and a chicken coop on property at 50 State Street, Geneva, New York.

2. Pursuant to a review by the City of Geneva Code Office it was determined that Defendant needed site plan approval from the City of Geneva Planning Board ("Planning Board"), a Special Use Permit for the solar panel installation. Defendant was also directed to make application to the City of Geneva Zoning Board of Appeals ("ZBA") for any necessary variance relief.

3. On or about July 21, 2014 Defendant appeared at the Planning Board. A lengthy hearing was held and public comment was taken. There were discussions about setbacks and uses permitted in the Industrial Zone. There were discussions about variance relief that might be required. Neil Braman was at this meeting and was part of this discussion. It is important to

note that all proposed uses, with the exception of the solar installation, are uses permitted as of right in the Industrial Zone. The Planning Board voted 8-0 to approve the Defendant's site plan as presented and approve the Special Use Permit.

4. As part of this approval, the Planning Board completed and in due course filed a SEQR Short Environmental Assessment Form Parts 2 and 3, determining that "the proposed action does not result in any significant environmental impacts." It should be noted for the Court that Question 1 on Part 2 of said form asks, "Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?" to which the Planning Board, in consultation with Mr. Braman, attested "no."

5. On the morning of July 22, 2014 Defendant spoke to Neal Braman and was told that no variance relief was necessary for Defendant's project and Defendant could proceed with his project. On the evening of July 22, 2014 Defendant noted a sign posted at the location for the ZBA meeting that it had been cancelled, as there were no longer applications under review.

6. Based upon these events Defendant reasonably believed that all necessary approval was obtained, and he proceeded with the project by installing the solar panels, the shed, and the chicken coop with chickens. Defendant is in possession of a validly issued permit which is attached hereto as Exhibit A. It should be noted for the Court that a chicken coop is a farm building and therefore not subject to a building permit.

7. The building permit itself lists the use and occupancy class of the property as "Residential." The Code Office considered the use of Defendant's property as "Residential," meaning that Section 350-26(f) is not applicable to the project as it would make no sense to have a residential use buffered by 100 feet from another residential use.

8. On or about August 6, 2014 there were complaints by local residents at a

City Council meeting about chickens being present on Defendant's property. As a result of these complaints the Code Office seems to have magically reversed course and in a letter dated August 20, 2014 for the first time made the claim that Defendant required variance relief from the ZBA. This letter is in direct contradiction to an August 18 voicemail received by the Defendant from the Code office affirming permission to proceed with the project, as well as the earlier withdrawal of Defendant's application, by the Code Office, for ZBA review owing to Mr. Braman's determination that no relief was necessary. By August 20, 2014 Defendant had already installed the majority of the solar panels and the chickens were present on the property. This is not a case where the Defendant failed to get required relief which would make him subject to the jurisdiction of the ZBA. This is a case where the Code Office affirmatively determined that no variance relief was required and after public/political pressure the Code Office is trying to reverse course and ask the Defendant to apply for variance relief. Defendant already has a vested right in this project as he received a validly issued building permit and upon reliance on this permit committed substantial expenditures and substantial construction.

9. It is certainly not legal nor is it equitable to allow the Code Office to make a determination on July 22, 2014 that Defendant does not require variance relief and then on August 20, 2014 reverse its own determination due to political pressure and require the Defendant to appear before the ZBA.

10. To make this matter even more curious, on August 19, 2014 the Defendant was delivered a building permit for which he had applied and which had been held subject to review by the Planning Board. The delay in delivery was due to staff vacation. Upon delivery there was no mention of additional concerns or requirements. Yet, Mr. Braman's timeline submitted to this Court makes note that on August 14, 2014 he conducted a site visit on the

property and found the project being “developed in a manner that violates Zoning Chapter 350-26.” If Mr. Braman thought the project was in violation on August 14, 2014, it begs the question why Mr. Braman's office would deliver Defendant's building permit on August 19, 2014.

11. More problematic with Mr. Braman’s timeline is that he conveniently omits the fact that the Defendant has obtained a valid building permit for this project and that Defendant submitted an application to the ZBA upon which a determination was made by Mr. Braman and the Code Office that no inconsistencies with existing Code existed and therefore no variance relief was necessary. Each of these facts completely undermines the City’s case. Given these glaring omissions in the City’s submittal, the Court should not entertain this application until all facts can be put before the Court at which point the Court will clearly see that this matter is a misguided attempt by certain officials in the City of Geneva to save political face rather than apply their zoning law objectively to the facts at hand.

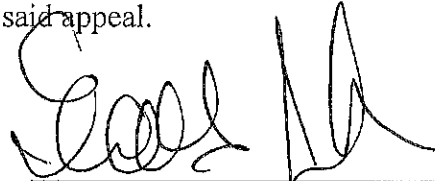
12. As a result of the filing of this Order to Show Cause and statements made by City Attorney David Foster, Building and Zoning Coordinator Neal Braman, and other City officials to members of the public and press regarding this project, the Defendant continues to suffer harm to his character and professional dealings within the Geneva community.

13. As a result of the filing of the Order to Show Cause and Mr. Braman’s City Court Complaint Information, the Defendant hereby appeals to the City of Geneva Zoning Board of Appeals any and all determinations made by the City Code Office in its Order to Show Cause filed on October 6, 2014. Pursuant to General City Law Section 81(a)(6) the Defendant’s appeal shall stay all actions, including any action from this Court, until such appeal is heard by the ZBA.

WHEREFORE, the Defendant hereby respectfully requests as follows:

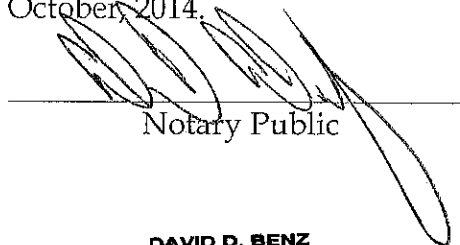
1. That this matter be dismissed for lack of evidence and any enforcement action stayed until the ZBA has had an opportunity to hear Defendant's appeal and any subsequent Court proceedings that may occur as a result of any outcome of said appeal.

Dated: October 8, 2014



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Severally subscribed and sworn
to before me this 8th day of
October, 2014.



Notary Public

DAVID D. BENZ
Notary Public, State of New York
Qualified in Ontario County
Registration No. 02BE6074839
Commission Expires May 27, 2015