

SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, SECOND DEPARTMENT

Docket No. 2020-02351

In the Matter of the Application of Deborah Kopald,
Petitioner

OTSC REQUESTING

For a Judgment Pursuant to Article 78

**(1) STAY with TRO of
construction, tree cutting
and all site activity;**

– against –

The Town of Highlands New York,
David Tonneson, Deborah Tonneson, Jaidin Paisley-
Tonneson,

**(2) Order to Town to Direct
Building Inspector to
Withdraw a Certificate of
Occupancy**

Respondents

**ORDER TO SHOW CAUSE
TEMPORARY RESTRAINING ORDER**

UPON the annexed affidavit of Deborah Kopald sworn to on May 5, 2020, and the exhibits annexed thereto,

LET the Respondents, The Town of Highlands, and David Tonneson, Deborah Tonneson, and Jaidin Paisley-Tonneson show cause before this Court (which is located at 45 Monroe Place, Brooklyn, NY, 11201) via email and/or by other method ordered by the Court by providing answering papers on the _____ day of July 2020 as to why an order should not be entered herein granting the following relief:

- that the Tonnesons/ Paisley-Tonneson be stopped from further construction work on the site that is defined today as (sec-lot-blk 11-1-1.52) until this appeal can be decided
- that the Tonnesons/ Paisley-Tonneson be prohibited from cutting any more trees on the site that is defined today as (sec-lot-blk 11-1-1.52) until this appeal can be decided
- that the Tonnesons/Paisley-Tonneson cease all activity on the site that is defined today as (sec-lot-blk 11-1-1.52) until this appeal can be decided

- that the Town of Highlands direct its Building Inspector to immediately withdraw the Certificate of Occupancy it issued to the Tonnesons/ Paisley-Tonneson on the site that is defined today as (sec-lot-blk 11-1-1.52) until this appeal can be decided

As well as any other relief this Court deems just and equitable. (Petitioner seeks a permanent injunction for the aforementioned Certificate of Occupancy as well.)

ORDERED, that pending a hearing and determination of Petitioner's motion to stay and pending further order of this Court

- that the Tonnesons/ Paisley-Tonneson be stopped from further construction work on the site that is defined today as (sec-lot-blk 11-1-1.52)
- that the Tonnesons/ Paisley-Tonneson be prohibited from cutting any more trees on the site that is defined today as (sec-lot-blk 11-1-1.52)
- that the Tonnesons/Paisley-Tonneson cease all activity on the site that is defined today as (sec-lot-blk 11-1-1.52)
- that the Town of Highlands direct its Building Inspector to withdraw the Certificate of Occupancy it issued to the Tonnesons/ Paisley-Tonneson for the site that is defined today as (sec-lot-blk 11-1-1.52)

Sufficient cause therefor appearing, let service of a copy of this order, together with the papers upon which it was granted upon the Town of Highlands NY (via attorney Michael Matsler) and upon David Tonneson, Deborah Tonneson and Jaidin Paisley- Tonneson collectively via attorney Stephen Honan

By _____ email/ (*preferable due to pandemic and Petitioner's knee injury*)

_____ other method

to the Respondents at mmatsler@riderweiner.com (c/o Rider, Weiner, Frankel at 655 Little Britain Road, New Windsor, NY 12553) for the Town of Highlands, 254 Main Street, Highland Falls, NY 10928 and shonan@fnmlawfirm.com (c/o Feerick, Nugent and MacCartney, 96 South

Broadway, South Nyack, NY 10960) for David Tonneson, Deborah Tonneson and Jaidin
Paisley-Tonneson

On or before _____, 2020 shall be deemed sufficient service thereof.

Dated: Brooklyn NY
July _____, 2020

ENTER:

Hon. _____
Justice of the Appellate Division, Second Department

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David Tonneson, Deborah Tonneson, Jaidin Paisley-
Tonneson,

Respondents

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

TEMPORARY RESTRAINING ORDER SOUGHT

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I, Deborah Kopald, being duly sworn deposes and states:

PAST RELIEF REQUESTED

1. I am the Petitioner in this Appeal (Exhibit 1: Notice of Appeal) and submitted an OTSC with TRO for a stay of construction and a certificate of occupancy (“CO”) on the site in question on May 6th with the understanding that the rules stating emergencies only were in force; I asked for what I thought was appropriate emergency relief – a stay limited to the time when the courts would be re-opened. The Court-ordered Zoning Board of Appeals (“ZBA”) process was still ongoing, even though the Court system itself

was closed, but I was being forced out of my house in the middle of the pandemic by the Respondents' construction noise, which was in part occurring illegally, in violation of the Governor's pandemic orders limiting non-essential construction to one worker on site, instead of a crew. The noise was interfering with my ability to prosecute my case. The TRO request for emergency relief was denied¹. (The Town extended the ZBA hearing).

2. Since that time, I had to deal with the Court ordered ZBA process. My ZBA attorney Richard B. Golden, Esq. had been hospitalized with Covid-19 and is still recovering from the virus; at the same time, I had been rendered quasi-homeless/office-less by the Respondents' activities, which continued to interfere with my prosecuting my case. Counsel and I had to work together. C-scale industrial noise is something not well understood as an extreme nuisance. Much of the noisemaking was occurring illegally but the problems were exacerbated by having nowhere else to go work^{2,3}).

¹ The order on the Appellate Division website, which was updated later in the day after I filed my "emergency" motion (motions absent emergencies could not be filed for a time) did not explicitly say that new motions could be filed- it just gave a schedule for already existing motions:
http://www.courts.state.ny.us/courts/ad2/pdf/ADM_2020-0506.pdf

I called the Court at the end of May when I became aware of Judge Marks' May 4th order allowing motions generally to request clarification if regular non-emergency motions were had been allowed when I filed. (His office could not tell me if the order applied to the Appellate Division). Ms. Agostino told me yes and that I could not ask for temporary relief without forfeiting a request to extend to the time the Appeal would be heard. I withdrew the previous motion with the understanding that I could refile my request for a stay of construction and CO and request a TRO if there were new facts.

I am renewing my request for the TRO because the Town has illegally threatened to stop the Court-ordered ZBA process at the request of the Respondent Debbie Tonneson, which would have the effect of thwarting relief that the lower court judge should have granted in response to this Article 78.

² During the spring, this was because of the pandemic and stay at home orders more recently and was true prior to that owing to my electromagnetic sensitivity which means I am extremely dependent on my home office since Wi-Fi is generally ubiquitous, I cannot tolerate it and I literally could find no other place to work. The N.Y. court system has recognized my allegations of same by exempting me permanently from jury duty (due to Wi-Fi and cell phones) and in a written and bench order in another case *Kopald v Rite Aid et al.* that allowed deposition accommodations to reduce electromagnetic field exposure pursuant to the U.S. Department of Labor Recommendations which were first instituted in 2016:

WHAT THIS CASE IS FUNDAMENTALLY ABOUT (FOREST THROUGH THE TREES)

3. This is an Article 78 involving a local good ole boy developer David Tonneson who owns a piece of property that is just shy of 14 acres (below my house) with his wife (Deborah Tonneson) and step-daughter Jaidin-Tonneson. They violated just about every law on the books (and my property rights) flagrantly, openly and continually. When a former neighbor (who claims to have been run out on a rail by their violations of his property rights and continual noise abuse) confronted him about his flagrant legal violations on other matters, he claims David said that the Building Inspector lets him do it. Indeed the Building Inspector gave them a drill permit *before title had even passed to them*, and acted in violation of lawful procedure by issuing building permits without required conditions precedent.

4. The Tonnesons were not permitted to disturb this site in any way close to the extent that they did without getting erosion control permits, a septic permit, and a stormwater permit among other items. Instead, they illegally chopped down a 100 year old forest below my house and illegally sloped and graded the land and illegally put up a

The United States Department of Labor, Office of Disability Employment Policy, Job Accommodation Network's Accommodation Ideas for Electromagnetic Sensitivity:

<https://web.archive.org/web/20170421082319/http://askjan.org:80/soar/other/electrical.html> (Obama)
<https://askjan.org/articles/When-New-Technologies-Hurt.cfm> (Trump)

³ The "perfect storm" of events included interference by the Respondents such as the passage by the Town of an illegal ordinance allowing the Tonnesons to do construction until 9 p.m. resulting in a taking of my property rights and on information and belief a demand by Debbie and David Tonneson of a local party to stop loaning me an office or this couple told him that they would have people in Town cease patronizing the premises. Footnote 2 explains why this was an especial problem; if one is sensitive to Wi-Fi, there are few places to work, so getting any kind of partial solution is very hard to achieve.

I also had the flu and pneumonia (Exhibit 15) in late February through the end of March- early April which left me winded and at risk for Covid-19 adverse outcome. Construction work continued in March, April and the portion of May when the Courts were closed. In the last five to six weeks I was limited recouping from a sprained knee, replacing a dead computer and shielding it pursuant to footnote 2.

house. Planning Board permits needed to be sought. I should have had notice as an adjacent neighbor, I should have been able to weigh in; no realistic Planning Board would have allowed them to destroy a forest and the Planning Board also had the right to move the house or reduce its footprint. As sited it violates the zoning ordinance on overcrowding and preserving value of peoples' property.

5. The Building Inspector also acted in excess of jurisdiction by granting one type of permit (a foundation). The illegal driveway 750 foot constructed in the forest they disturbed violated state law on turnouts and turnarounds and the Fire Chief gave no reason for saying the driveway was safe- he didn't even acknowledge he was providing an exception for double the slope. (David is a long-standing member of the Fire Department). The Tonnesons also violated multiple provisions of state septic law including soil disturbance. A Yale-trained Forrester asserts that they interfered with the free flow of water in violation of local code.

6. The failure to meet the conditions precedent are obvious; even if they were not, the Building Inspector acted arbitrarily and capriciously and in an abuse of discretion pursuant to NY CPLR 7803. The plans show no spot where deep and perc tests were made (the plans also show two deep tests with the same reading, suggesting they were falsified, because when fill is disturbed as the site was with illegal grading and sloping and cutting and filling, deep tests are rarely the same). The surveyor falsified coordinates of the property to make it meet a road that it did not legally meet to artificially obviate the need for a Town Law 280-a variance. (The surveyor is also being sued by another party for falsifying a right of way through neighboring property). The Tonnesons also managed to find an engineer who did not provide the legally required site plan (perhaps

knowing he could not professionally sign off on one without getting sued, he proffered a so-called “plot plan” in violation of the local code and in contravention of the standards of his profession. Instead, he pulled a bait and switch with the surveyor, who issued a “site plan” which is not something surveyors are licensed to do- the engineer was supposed to do that. This “plans” were accepted unquestioningly by the same Building Inspector who issued a permit before title had transferred and other permits without the required conditions precedent.

7. Along the way, the Town passed an illegal noise ordinance at the Tonnesons’ request allowing construction late in the night which resulted in an illegal taking of my property. (The Tonnesons also requested that the Town arrest me and stop the ZBA process if I did not pay unauthorized fees – I had to have two different attorneys tell the town not to accede to either of these illegal demands). While the construction noise and interference with my due process is one issue that may be perceived to be limited in time, David Tonneson has made it clear he intends to continue developing the parcel, and since the Town won’t admit that he needs permits before doing so, more illegal destruction that will devalue my property is sure to happen. Worse, because the entire construction and home are illegal, besides the blight on my property, the non-construction noise created from the illegal destruction of a simple noise barrier (trees) including highway and train noise and equipment from neighborhoods down the hill (trees previously protected my property from all of that previously), is an extreme nuisance. The noise coming from the site that is not construction related is also forcing me out of my home. Police reports document my calls that the Tonnesons left leaf blowers on for hours on end, however local law doesn’t prohibit it, and while I could sue them for noise nuisance going forward

(my civil rights lawyer is on a town videotape commenting about the noise), if illegal land clearing activities had not occurred and the illegal house had not gone up so close to mine, this overall problem would have been mitigated). The Tonnesons's behavior in other matters forced at least one set of their neighbors to sell his house and leave town (according to them). **Even having found out just today that** they got their Certificate of Occupancy on June 15th, which is utterly shocking, because there was large-scale industrial noise coming from their property forcing me out of my house as late as last week and to an extent this week- trying to finally get this motion done, I was forced out of my house repeatedly by noise coming from the site. My only remedy is this Honorable Court. Right now, I am looking at the possibility of having to move out for a few years before I can get remediation if ever. I respectfully assert this is not an acceptable result. The Tonnesons have no legal right to occupy the premises and my property rights should not be further eroded by them on balance, while this appeal takes a couple of years to be heard with the pandemic slow-down.

8. This is a long motion. *If the Court looks at only a few things in deciding the TRO, please read Exhibits 4 and 5, the briefs of my ZBA attorney Richard B. Golden, who has represented many local boards in Orange County for decades, as well as Exhibits 3 and 6, especially the affidavits of Michael W. Finkbeiner (Exhibit 3, sub-exhibit 2, and page 3 of sub-sub exhibit 2 to see exactly the location of the 42 old growth trees the Tonensons illegally cut down (to say nothing of the smaller trees in between that comprise a forest) and Exhibit 6- sub-exhibit 2 (sub-sub exhibit 2 is the same tree cutting analysis and other exhibits amplify with a more complete calculation of the illegal destruction).*

9. For the proverbial picture that says a 1000 words, see also Exhibit 6- sub-exhibit 2 (sub-sub exhibit 6) for the image of the house footprint area from 9/30/19 overlaid atop the 2016 google earth image of the forest. My house above it, which is ensconced in trees in the forest as required by code, is labelled. The destruction below it is extreme.

A BRIEF NOTE ABOUT MY ASKING FOR TWO DIFFERENT STAYS IN TWO DIFFERENT MOTIONS

10. I ask for stays in two motions- this one for the Construction/Trees and the CO and another (yet to be filed) for the Stay of the Portion of the Judge's Order requiring me to get permission to file.

11. I spoke to Deputy Clerk Band who wrote that while the Court preferred both stay requests to be in one motion, I could break them into two. I am doing that because these are like two different cases within a case and there is much to document about the Judge's *sua sponte* order precluding me from filing actions without permission⁴.

12. The first portion of this motion deal addresses what the case is about and why I should win my appeal. Pages 34 discusses the extreme duress I have been under due to the Respondents' illegal and other actions and why the Balance of the Equities favor a withdrawal of the illegal Certificate of Occupancy and a cessation of further site activity.

PROCEDURAL HISTORY OF THE CASE

13. I filed this Article 78 (Index No. 2019-007757) in Orange County Supreme Court; there was a construction project going on below me that was flushing me out of my home/office with noise- that is not the issue in the underlying case (though it is an issue

⁴ Among other things, this order was based on an obvious error by the judge who incorrectly claimed I could not go to Court before exhausting administrative remedies (contrary to the case he himself cited). This obvious error occurred after I complained to Court administration about serial due process violations by the judge, which have now been compounded with this order.

in this motion). There appeared to be excess tree cutting, and the extreme noise meant I had a lot of difficulty working to figure out what was even going on. Trees, the tops of which I used to be able to see from the windows of both my downstairs office and upstairs living room were knocked down, and there was a huge gash at the end of my yard and light streaming in that was not there before. It was becoming obvious that a foundation for a house was being erected at the end of my yard, which was odd since the subject parcel was 13.926 acres, and I had received no notification⁵. My complaints to the Town were met with indifference. I had to quickly devise an innovative way to get some proof of my claims⁶. I notified the Respondents and went to Court on September 30, 2019 to seek a Temporary Restraining Order to prevent further illegal destruction of the forest with this Article 78 asserting among other things, the failure to get required erosion control permits before commencing the activity. I filed for a preliminary injunction, and the TRO was denied.

⁵ Later I realized that the Respondents David and Deborah Tonneson and Jaidin Paisley-Tonneson ("Tonnesons") should have sought certain permits from the Planning Board, and I should have been given notification of same to weigh in before that Board. These permits included ones for erosion control which would have triggered notification to me ; this would have saved trees instead of the Tonnesons decimating a 100-year old forest illegally cutting 39 large trees. They also illegally sloped, graded, cut, filled, excavated, Another power the Planning Board has would have been to control the location and size of the house which would have prevented the degradation of my property. See Exhibit 3, Sub-Exhibit 2, Affidavit of Michael W. Finkbeiner; 11/16/19 and Exhibit 6, sub=exhibit 2 /29/20. See also Exhibit 3, Sub-Exhibit 10, Local Codes § 101-4, 101-5, 101-7, 101-8, 101-9, 101-10(R); 210-2. 210-48(A)(2), 210-49(E) 210-50(A),(B),(E), (F), 210-52(B).

The plans are also clear that Tonnesons helped themselves and put a septic in the ground before applying for a septic permit pursuant to Local code § 146-2. The second petition which I sought to join with the first which will be perfected as of right with this appeal (if I do not move to consolidate before) shows that a calculation could be performed with the leaves off the trees which showed that more than 1 acre was stripped, triggering the need for a Stormwater Permit § 164-4(A), 164-4(G), 164-6 (definition of land development). 164-7(A)

⁶ Since I would not trespass, upon a recommendation from a data specialist at the Massachusetts Institute of Technology, I hired a company which took some drone aerial photography which provided some initial documentation of the wrongdoing.

14. Right after the denial of the TRO, the modular home was trucked in that week and within days was erected. The septic trenches had been dug on September 30, 2019 the day I went to Court. Subsequent work seemed to involve earth moving over the septic field. Data analysis of the drone pictures by the aerial photogrammetrist/ surveyor, Michael W. Finkbeiner took place subsequently. The bulk of the damage to the land occurred before I even went Court. That is to say, the forest had largely been destroyed and illegal grading, excavating, filling, cutting and illegal tree cutting had already occurred. (This was the noise flushing me out of my house in August that I complained about to the Town); Finkbeiner's comparison of the google earth 2016 photo to the drone photography and shadow analysis of trees showed that 39 trees greater than 10 Diameter Breast Height ("DBH") had been illegally destroyed (to say nothing of all the trees of smaller dimension that comprise a forest nestled among these large growth trees and that would not have been destroyed but for the illegal forest destruction). (See Exhibit 6, sub-exhibit 2 and Exhibit 3, Sub-Exhibit 2, Sub-Sub-Exhibits 2 and 7- Finkbeiner tree analysis using shadow analysis to demonstrate large trees greater than 10 DBH that were there previously and then removed by the Tonnesons⁷ as well other major erosion control violations- area cleared, cutting, filling, grading, excavating, etc.

15. While all of this was going on, I was still being flushed out of my house

⁷ The shadow analysis methodology was used in the sub-sub exhibits. It should be pointed out that when the Tonnesons are being sued for illegally cutting trees on the mutually adjoining lot, 20-2-5 (See NYSCEF filed case EF-002857-2020 and Exhibit 9, sub-exhibit 15) I appended an exhibit to the case being appealed in Docket 2020-02351 which calculated the tree destruction there using the aerial photogrammetry method and the on the ground taper measurement of stumps and it came up with the same number of trees cut; in other words visual inspection proved that the technique is mathematically sound.

by extreme noise⁸. The Lower Court Judge at first would not grant an extension of time to answer motions to dismiss, pushing me to the precipice of default. He also told me he would not let me amend my petition (even though permission to amend is supposed to be freely given under NY CPLR 3025(b)). I ultimately filed an amended as of right petition pursuant to NY CPLR 3025(a) which has the limitation that one cannot set forth new facts or occurrences that occurred after commencement of the action (unlike an amendment by permission, which allows post-commencement facts)⁹. (See: *Hernandez v. City of New York*, 2016 WL 1449413, (Sup. Ct., Kings County 2016)). This meant that I could not include the amended building permit allowing a modular house to be trucked in. This seemed to be my only option then as the judge had said at the conference he wouldn't "let" me amend, which I took to mean let me move for permission to amend. The judge moved out my discovery motions and preliminary injunction motion until after the motions to dismiss were decided.

16. The Town attorney then wrote to the Court insisting that I was prohibited from filing an amended petition. The Court law clerk then wrote after I answered the motions to dismiss and said I was prohibited from filing cross motions¹⁰ to the motion to dismiss and had been told not to file anything and that such filings would be held "in abeyance".

⁸ On one day this also encompassed illegal tree cutting on an adjacent lot (owned by relatives) that on information and belief was orchestrated by David Tonneson, who falsely told the local police, the building inspector and the utility (Orange and Rockland) that he had a deed to that property and/or an easement.

The events of those day are the subject of lawsuit (NYSCEF filed case EF-002857-2020) by Canterbury Forest Corporation against these same Tonneson Respondents for Trespass, RPAPL §861 Violations, Conversion, Negligence and Slander of Title.

⁹ I had, however been able to prove more things that had occurred pre-commencement with my aerial photogrammetrist/surveyor which I introduced in my CPLR 3025(a) amendment as of right.

¹⁰ I was addressing a return date issue pursuant to *Oneida Pub. Library Dist. v. Town Bd. of Town of Verona*, 153 A.D.3d 127, 59 N.Y.S.3d 524 (Third Dep't: 2017).

I called 9th Judicial District court administration and asserted to James Garfein that the Judge was violating due process by suspending my rights under the CPLR to push off filings that were part and parcel of defending such a motion and my Article 78. Besides the obvious-on-its-face due process issue and the fact that the judge wouldn't so-order the minutes claiming this wasn't a "substantive" ruling just a "procedural" one, case law specifically contemplates such filings (cross motions and amendments as of right pursuant to NY CPLR 2214(b) and 3025(a)) *in defense of motions to dismiss*. See: *Sage Realty Corp. v. Proskauer Rose LLP*, 251 A.D.2d 35, 675 N.Y.S.2d 14 (1st: Dep't 1998), *Sobel v. Ansanelli*, 98 A.D.3d 1020, 951 N.Y.S.2d 533 (2nd Dep't: 2012), *Sholom & Zuckerbrot Realty Corp. v. Coldwell Banker Commercial Grp., Inc.*, 138 Misc. 2d 799, 525 N.Y.S.2d 541 (Sup. Ct. 1988).

17. As these so-called "not-substantive, just procedural" orders made in Court kept getting redefined. A few days after the court appearance, the judge would not sign a subpoena for the part of the Town code missing from the website, claiming there was no evidence it was missing even though E-code (as well as the paper copy in the library) demonstrated that it was¹¹:

[Subdivision of land regulations for the Town of Highlands, adopted in 1967, are currently under review by the Town Board. *Said provisions will be included here as Chapter 173, Subdivision of Land, upon completion of said review.*]

Mr. Garfein suggested I file a recusal motion and a Notice of Settlement. I did both¹².

¹¹ I had also submitted evidence in discovery motions before the Court that the Town was regularly flouting FOIL rules and not fulfilling my FOIL properly- which is a felony pursuant to NY Penal Law 240.65.

¹² The judge would not sign the Order to Show Cause on the recusal request, never settled the order of what he demanded in court or what he demanded by the law clerk's letter (that he was suspending CPLR 3025(a) and 2214(b) with regard to me and instead issued a sua sponte order that insisted I failed to understand that he had not done anything "substantive", that expressed annoyance that I had called Court Administration and that largely painted me as a clueless pro se, over-filer.

18. There is a related Article 78, EF-000818-2020 filed on January 29, 2020 to address the amended permit (the first permit was for a foundation, the second was to bring in a modular home), which as a “post-commencement fact” could not be put into the amended as of right petition in this case. See again: *Hernandez v. City of New York*, supra. I filed an Article 78 on that permit and sought to join it with this Article 78. I also showed further proof of the extent of the erosion control violations and violations of other state laws as well as other provisions of the local code therein; the lower court judge is simply wrong that there were no new claims in that petition; and again, I had to file it to meet a statute of limitations deadline on the new amended permit. I also provided an affidavit from a previous owner that proved that no one else could have done these violations to the land other than Tonneson. This case (dismissed by the Judge before the Respondents answered) based on the order herein that I had to exhaust my administrative remedies first will be perfected with this Appeal by right (if I don’t formally request to join first). Appellate Docket No. 02272 (Exhibit 2).

PETITIONER IS ALLOWED TO SEEK A STAY FROM THIS COURT AS WELL AS A TRO AGAIN

19. Contrary to the Tonnesons and Paisley-Tonneson’s (“Tonnesons”) Affirmant’s previous claim to this Court, the lower court order does not require me to seek the lower Court judge’s permission to file motions in *this* court. It only makes me get permission to file certain *actions*. This order, which I will seek to have overturned on immediate summary disposition, states the following:

However, at the time of the court hearing, he only had 2 motions for discovery, the commencement motion for an injunction, and 1 petition from me before him from me (and 2 motions to dismiss).

The filing of the amended petition and motions to set a return date for the petition occurred subsequently.

...the Court orders that Petitioner is precluded from filing any further or additional actions concerning these Respondents and the subject property without the prior written permission of the Court

Legally, *an appeal is not an action*, pursuant to *People ex rel. Bendon v County Judge of Rensselaer*, 13 How. Pr. 398 (Supreme Court, New York County 1854). An appeal is a review by a higher court of a lower court action. An appeal is not an “action” in and of itself. Motions before this Court are not “actions”; they are motions before a Court of Appellate jurisdiction, which sits in judgment and review of the “action”¹³.

20. The Town affirmant’s reliance on *Angiolillo v. Town of Greenburgh*, 21 A.D.3d 1101 (2nd Dep’t: 2005) is similarly misplaced. I can ask a stay of this Court for anything. In this case previously quoted to by the Town’s affirmant, the Appellate Division *had already ruled* that the basis for restoring the land to its natural condition in the hybrid petition did

¹³ This case dating to the nineteenth century refers to an action as something occurring in “a” court, singular not multiple courts, plural; it does not contemplate one action occurring simultaneously in two courts:

The appellate jurisdiction of the county court, embraces all judgments rendered by a justice’s court in civil actions.

What is an action? Within the definition of the Code, “an action is an ordinary proceeding in a *court of justice*, by which a party prosecutes another party, for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence.” Although this definition is not remarkable for perspicuity or distinctness, it essentially includes any judicial proceeding, which, if conducted to a termination, will result in a *judgment*.....

...Therefore, a *judgment* of a justices’ court, in proceedings instituted under and in pursuance of the provisions of the *mechanics’ lien law* (in the statutes) is a judgment in a civil action, and is the subject of review on *appeal to the county court*, the same as other judgments.

(Emphasis Added)

Id. 13 How. Pr. 398, 399

The action in “a court of justice” referred to in this case is the subject of review on appeal to a *different* court- here the county court. The appellate proceeding is thus separate from the lower Court proceedings and is not an “action”. See also: *People ex. rel Sanders v. Colborne*, 20 How. Pr. 378 (Supreme Court, New York, 1861) which defines “action” as being something occurring in “a court” (singular).

Returning to the wording of the two nineteenth century cases, taken literally, the “action” is the proceeding in a Court- the lower Court; the “appeal” is not the “action”; it is an appeal of the action. It also follows that a motion in the appellate court is not an “action”; it is a motion in an appeal of an action.

not exist and that administrative remedies had to be exhausted. Here, that issue is under appeal in the within case.

21. In terms of the TRO, the Respondents had stated that they are about to seek a Certificate of Occupancy (“CO”); this was stated by the Tonnesons’ affirmant in the ZBA hearing. I have been working on this motion when I could between noise; I just got a copy of this CO today (it was issued on 6/15/20) - Exhibit 14 and am requesting now that the Court order the Town to direct its Building Inspector to withdraw the certificate as improvidently granted. I note for the record construction noise was occurring last week from the site, this week and as recently as Wednesday, yesterday and today (which raises questions about why heavy machinery was still being turned on if construction is finished or if this is just part and parcel of what the Tonnesons think they can continue to subject me to from the site. The home itself is not legally habitable since the proper permits were never obtained and thus not subject to a CO (the decision to grant one should be reversed if it was already made). Case law permits Courts to override illegal CO’s See: *Arents v. Squires*, 7 N.Y.2d 1009, 166 N.E.2d 848 (Court of Appeals:1960):

The issuance by a Building Inspector of a certificate of occupancy or, in this case, by the Board of Appeals acting under the same authority cannot amend or dispense with the enforcement of a zoning ordinance if the certificate has been issued in violation of the provisions of the ordinance.

Id. 166 N.E.2d at 853.

Case law also gives precedent for reversing by motion the holding of a lower court and reversing the status quo. See: *Debra H. v. Janice R.*, 13 N.Y.3d 753, 914 N.E.2d 1006 (Court of Appeals: 2009).

22. The Clerk of the Court, Aprilanne Agostino, Esq., emailed the parties that a TRO

could be sought with new circumstances. The new circumstance is the claim that the CO was being sought imminently (and apparently has been granted as of two days ago) as well as the Respondents' efforts to try to prevent the Town from issuing a ZBA ruling, which has created needless controversy and distraction ¹⁴ (when I already had repeatedly documented due process problems, discussed in the balance of equities section herein again.)

TIMING ISSUES INCLUDING PANDEMIC

23. In January, while I was addressing the amended permit with the companion Article 78, on information and belief, David Tonneson was in the hospital for sepsis. It was also extremely cold and no work was being done. The aerial photogrammetrist

¹⁴ Other than trying not to hear my ZBA appeal, the town conducted it in such a fashion that although the ZBA chairman having had his attorney write mine to request I not lobby ZBA members directly (which I had never done), regularly entertained inflammatory emails by Debbie Tonneson that had nothing to do with the case, demanded they be put in a file, and did not put a stop to her not communicating through her lawyer. (Exhibit 9, sub-exhibits 13 and 14). They refused to rule on my ZBA case until my attorney showed them Town Law 267(a)(8).

While I have asserted from my first petition that the good-ole boy ethos has enabled these gross violations to occur, I was attacked by a ZBA member for supposedly disparaging people (I pointed out that the Tonnesons' surveyor was being sued by another party (Exhibit 9, sub-exhibit 15) for producing a falsified survey and that given that I had also submitted an affidavit from a surveyor showing that he falsified the contours of the property to make them meet a road (Exhibit 6, sub-exhibit 6).

ZBA members themselves, probably knowing that Tonneson violated multiple laws and provisions thereof, tried to claim that they didn't "buy" that I was aggrieved notwithstanding my being less than 200 feet from the subject home and less from the property boundary (when the standard is 500 feet pursuant to *Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 N.Y.3d 297,309 (2009)).

The Chairman absurdly claimed he could not see blight- at a time when leaves were back on the trees and from a street that is at a much higher elevation than my home and my yard which are directly adjacent to the site. He did not bother to acknowledge in his flagrant advocacy for the Tonnesons the major elevation difference and that he could not possibly see anything that could be seen from my house or my yard from where he was standing.

I had shown multiple pictures, both before the house went up when leaves were on the trees and one from my deck showing the house on April 11th (Exhibit 9, sub-exhibit 1) and David Tonneson's own admission Exhibit 10, point 19 that he could see my deck, my house and me standing on my deck from the subject home's porch also on April 11th.

commissioned another drone to see what else had been done on the site and get a clearer picture of what had been disturbed without the leaves on the trees (and the attendant shadows they cast). This allowed a precise calculation of the erosion control and stormwater violations. I was then working on the second Article 78. The judge did not rule until the end of the first week of February. While I filed notices of appeal in February, docket numbers were assigned on March 3rd, whereby I acquired appellate jurisdiction. By then I had the flu and pneumonia (Exhibit 15) and while I was recovering the Governor issued pandemic orders and shut down the Court system in March. Also in March the noise had started up again and I was supposed to be home on a stay at home order while Tonnesons were allowed to work with one person on site only, not a crew. There was a crew on site regularly. Even when there was not, David Tonneson was running an earth mover back and forth over the septic area right outside my office and bedroom windows. There was even a time where I was supposed to be in bed recovering, but instead had to curl up in the backseat of my car in a parking lot by the woods, during the height of the pandemic. I had no court access due to pandemic orders, and was simultaneously stymied from working due to the noise. Since the beginning of May, I have had to work on my ZBA case under the inclement noise situation¹⁵.

I. WHY I AM LIKELY TO NOT JUST WIN THIS APPEAL IN WHICH AN ARTICLE 78 WAS IMPROPERLY TERMINATED ON A MOTION TO DISMISS IN AN ERROR OF LAW BUT TO ALSO WIN THE UNDERLYING ARTICLE 78.

A. The judge made an obvious reversible error in dismissing the petition

¹⁵ There have been few stretches of a quiet in the last couple weeks; before finishing the ZBA application with my attorney Mr. Golden on June 29th, I sprained my knee and was laid up and in the last two weeks, I had a few emergency EMF issues including having to get a new computer (and get it shielded so I could functionally use it)- pursuant to explanation in the U.S. Department of Labor recommendations in footnote 2). To reiterate, the modular house was erected in October.

24. The lower court judge should not have dismissed my petition claiming that it was hornbook law that I had to exhaust my administrative remedies. *The very case the judge cited, Watergate II Apartments, Buffalo Sewer Authority*, 46 N.Y.3d 52, (Court of Appeals: 1978) as somehow exemplifying that it is hornbook law that one cannot go to Supreme Court without exhausting one's administrative remedies, clearly states the opposite, which is what I argued in my responding papers, that there are indeed four exceptions. I explicitly named this case in my opposition to the motion to dismiss, the four exceptions made and why they applied, yet the judge incorrectly said that I did not refer to any case law. This case that all parties and the judge cited states:

The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power (cf. Matter of First Nat. City Bank v. City of New York, 36 N.Y.2d 87, 92-93, 365 N.Y.S.2d 493, 496-497, 324 N.E.2d 861, 863-864; see Jaffe, Judicial Control of Administrative Action, p. 438), or when resort to an administrative remedy would be futile (Usen v. Sipprell, 41 A.D.2d 251, 342 N.Y.S.2d 599; 1N.Y.Jur., Administrative Law, s 171, p. 575) or when its pursuit would cause irreparable injury (Pierne v. Valentine, 291 N.Y. 333, 52 N.E.2d 890; Utah Fuel Co. v. Coal Comm., 306 U.S. 56, 59 S.Ct. 409, 83 L.Ed. 483).

(Emphasis Added)

Claiming there were no exceptions, contrary to the case he cited, the judge never ruled on my arguments for exhaustion rule exceptions, including whether irreparable injury was being caused (and making resort to an administrative remedy futile) by not stopping the construction immediately (including the importation of the modular home) so that the proper permits could be obtained and land remediation could occur, and so I could get an expert on site to prove watercourses and the free flow of water had been interfered with¹⁶

¹⁶ The Department of Environmental Conservation ("NYSDEC") has jurisdiction over some wetlands while the federal government has it over others; the issue of whether watercourses and the free flow of water was being interfered with was yet another issue.

or whether the granting of the foundation permit I challenged was wholly beyond the grant of the Building Inspector's power¹⁷. While I was ultimately able to prove what was disturbed through aerial photogrammetry, the aerial photographs showed downed trees and these should have been inspected before they were carted away.¹⁸ Showing permanent and needless despoliation of the land and the probability that that Building Inspector had acted in excess of jurisdiction was enough to defeat the motion to dismiss; the question of what the local code actually said and whether I was correct that it was violated was a matter to be briefed in the Article 78 itself; it was not for the motion to dismiss, which is limited to threshold objections pursuant to NY CPLR 7804(f). See again footnote 17. The judge erred in not acknowledging these exceptions, not acknowledging my arguments as to why I qualified and in incorrectly characterizing the holding of the case he relied upon (and which I cited).

15. I would not even need to plead the *de novo* standard of appellate review to show that the made a clear error. See- Exhibit 8. Affidavit in opposition to motion to dismiss (without exhibits)). I stated explicitly in my answering papers to their motion to dismiss right beginning on page 2:

¹⁷ Besides the obvious error by the judge, motions to dismiss filed against my Petition were spurious to begin with; facts alleged in the complaint must be accepted as true, and in a motion to dismiss, the Court is limited to assessing whether the facts fit a cognizable legal theory pursuant to *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 754 N.E.2d 184 (Court of Appeals 2001) and the plaintiff is supposed to be accorded the benefit of favorable inferences from the pleading pursuant to *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 655 N.E.2d 661 (Court of Appeals: 1995):

The judge never says that any of my claims do not assert a cognizable legal theory. He just said they should all go to the ZBA first where I should exhaust my administrative remedies.

¹⁸ When the judge issued a sua sponte order in response to my complaints to court administration about his pushing off filings, he stated he would read everything and indeed had already signed orders to show cause on discovery. Besides not acknowledging the exceptions and reasoning I cited, he completely ignored the evidence by the forester and the aerial photogrammetrist of destruction (this evidence was also provided in the amended petition.

2. With respect to the Poplar Street, *proposed* Respondents' claim that this proceeding is premature. As I stated in the Jurisdiction section of my Amended Verified Petition (exhibit 1):

This proceeding was commenced in Orange County Supreme Court because the stay provision in N.Y. TOWN LAW § 267-a, does not apply to the permits in an aggrieved neighbor appeal See: *Mamaroneck Beach & Yacht Club, Inc. v. Fraioli*, 24 A.D.3d 669, 808 N.Y.S.2d 303 (2nd Dept. 2005) . Therefore, I needed to go to this Court to try to get stays of construction and to attempt to prevent further despoliation of the land, and I need to get discovery to prove things with visual inspection by experts. With the construction continuing at the time I filed the original Petition and the house being put up imminently I had to go to court to safeguard my rights when I did. Furthermore, one is entitled to go to Court before having exhausted one's administrative remedies,

- when an action is unconstitutional²
- wholly beyond the grant of its power
- when pursuit of an administrative remedy is futile³
- when irreparable harm would be caused⁴

I assert said immediate activity could not have occurred but for the lawlessness that preceded it and that procedure was not properly followed⁵.

So, exhausting administrative remedies is not an absolute pursuant to *Watergate II Apartments v Buffalo Sewer Authority*, 46 N.Y.2d (Court of Appeals, 1978),

(this case is quoted on the bottom of page 2 of Exhibit 8)

(Emphasis Added)

² By failing to adhere to various aspects of the code that required Planning Board review where the public and especially I, as next door neighbor, was kept from being able to weigh in to assert that the Code and its purpose (protection of the land, etc.) would be followed, my due process rights were ignored....

³ An affidavit filed at commencement gives an inkling of how this Town operates and Respondent David Tonneson's outsize role in it as well as the good-ole boy ethos. I do feel dealing with local authorities is futile. That said when I commenced, I assert I had a circularity problem; without getting discovery, I would not be able to have a complete application.

⁴ Sitting on my rights would cause irreparable harm as things that should not have occurred could have been grandfathered in.

⁵ I repeat what I said in the original petition that if the flagrant violation of rules, procedure and the overstepping of the Building Inspector's authority is

permitted, then it is unlikely that the steps that should have been taken first and corrections that need to be made will ever be made, and I will be subjected to further needless eyesores, more violations of my property rights and my right to have weighed in at the Planning Board. If the Honorable Court allows the Poplar Street Residents to put up and keep up this modular house the incentive to quickly meet the code requirements that should have been met before the granting of a permit to put up a modular home on the entire property will not be there in the future; I respectfully assert that the ToH also needs court guidance to follow its own code and not let certain residents do whatever they want while trampling on the rights of others.

Again the modular house was erected within days of my filing for an injunction and three months before this motion to dismiss was decided. This belies the lower court judge's claim that I did not cite to any case (I cited what he cited- he just incorrectly said there were no exceptions and ignored my list of the exceptions and why I asserted I qualified for them). I asserted why it was beyond the grant of the Building Inspector to issue the permit for a foundation pursuant to local code 210-21. I had an affidavit before the Court from a forester discussing erosion control problems and possible interference with free flow of water(Exhibit 7, sub-exhibit 2) that numerous laws had been violated as well as aerial photogrammetry affidavits expressing same showing that Tonneson had cut at least 39 trees greater than a certain size, when a permit was required to cut more than 3 (local code 101-7(A)(11) (See Exhibit 3, Sub-exhibit 10 for local code) This also means that many more trees than that were cut as smaller trees that are part of a forest are nestled among larger trees. These trees were cut before Tonneson even applied for a foundation permit. The erosion control portion of the code (101-7)(A) allows NO EXCEPTIONS for getting Planning Board approval. (There were no exceptions for this or other erosion

control violations as there was no existing house or a pending building permit application pursuant to 101-7(B)(3)¹⁹,(7).

B. Even if the Judge had not improperly dismissed the Petition, I should have ultimately won the underlying Article 78 and should do so now.

12. My ZBA attorney Richard B. Golden's first brief of June 8, 2020 (page 4, ¶2)

See: Exhibit 4 sums up the gravamen of my Petition (and ZBA appeal) and suggests explanations for why the system has completely and utterly broken down here into flagrant lawlessness:

Whether the Code Enforcement Officer's haste to issue these permits and certificate without the necessary prior approvals or compliance with law, or the failure to enforce the illegal tree cutting, etc., were born of favoritism toward Tonneson, animus toward Ms. Kopald, or otherwise, is of no moment presently.

Conditions precedent to the issuance of these permits and certificate were not accomplished by the Tonnesons, requiring this Board, acting in the place and stead of the Building Inspector/Code Enforcement Officer, to annul these building permits and certificates of occupancy and issue a stop work order for any additional work. The Tonnesons had no legal right to construct their home or to occupy it without securing the necessary approvals therefor. To allow them to do it was and is wrong and it is incumbent upon this Board, acting in conformance with its legal duty, to right this wrong.

(Emphasis added)

13. The Town makes but one argument and hangs its hat on one provision of the code that allows single-family home applicants to get a building permit from the Building Inspector, asking everyone to ignore multiple other provisions of the code that identify conditions precedent to getting a building permit *or to even start disturbing a site.*

To quote from page 12 of the letter brief of attorney Golden, before the ZBA:

I understand that it has been argued in opposition to Ms. Kopald's appeal that no Planning Board approvals were required (such as the Town Code Chapter 101 erosion control permit, and the Town Code Chapter 164 stormwater pollution

¹⁹ Even if there had been an application 101-7(B)(3) only excepted basements, footings and septic. The destruction well exceeded that limited footprint and involved carving a road on a near 14 acre parcel and cutting well in excess of an acre (101-7(A) mandated many permits for disturbance of over half an acre)

prevention plan), owing to Town Code §210-21(A). *This position is disingenuous and frivolous.*

(Emphasis added)

Town Code §210-21(A) only provides that a single-family home is not required to obtain a Planning Board site plan approval:

§210-21 Building permits; site plan procedure and standards.

A. No building permit or certificate of occupancy shall be issued for other than a one family residence...until a site development plan has been approved by the Planning Board in accordance with this section. (Emphasis added).

Ms. Kopald is not arguing that the Tonnesons needed site plan approval from the Planning Board; the Tonnesons only needed approval from the Planning Board for the separate and discretely mandated erosion control permit and stormwater pollution prevention plan (neither of which are mandated for a pending or otherwise required site plan approval).

Town Code §210-21(A) is not some talisman allowing a single-family home to avoid all approvals from the Planning Board or otherwise, it is a narrow and very typical municipal code provision simply allowing the Tonnesons' single-family home approvals to proceed without also getting site plan approval from the Planning Board. This purported defense of Ms. Kopald's appeal is a red herring.¹⁷

17 In addition, the more specific provisions of Planning Board approvals required for the erosion control permit and stormwater pollution prevention plan of Chapters 101 and 164 respectively would, in any event, control over the more general language of Town Code 210-21(A). See Town Code §§ 210-48(A); 101-5.

(Emphasis added)

(See again Exhibit 3, Sub-Exhibit 10 for local code) Another issue that the Town's affirmant kept wrongly insisting on, is that the decision to issue a permit for a home is NOT an act left up to the broad discretion of the Building Inspector to issue a house permit willy-nilly: while 210-21 does say "a" house, not "any" house, the act cannot be done at all until conditions precedent are satisfied; it cannot be done in violation of lawful

procedure (NY CPLR § 7803(3))²⁰. However, Golden explains on page 4, ¶1 of his June 8th brief (Exhibit 4):

The fatal errors in the issuance of the building permits (and certificate of occupancy, if issued), are:

- (i) the Tonnesons failed to include in their applications for those building permits and certificate of occupancy the information that, prior to any entitlement to such permits or certificates, Planning Board approvals were required for an erosion control permit²¹ and stormwater pollution prevention plan, rendering the issuance of the permits and certificate improper,
- (ii) the Tonnesons installed their septic system prior to a finding or determination that it complied with the requirements of Town Code Chapter 146, as it was installed prior to receiving a permit,²²
- (iii) (iii) the Tonnesons constructed a driveway with a slope that violates the State Fire Code,²³ and
- (iv) (iv) the Tonnesons failed to obtain the required Town Law § 280-a variance²⁴.

Golden goes on to point out the first flaw in the Tonnesons' application process citing to Local Code: § 210-50(A):

Compliance with building code. All procedure with respect to applications for and issuance of building permits shall be in conformity with the provisions of the New York State Uniform Fire Prevention and Building Code. *All such applications shall be accompanied by such other information as may be necessary to determine and provide for the enforcement of this chapter.*

²⁰ The granting of a house permit may in fact be ministerial as it is in most jurisdictions ("shall" is defined as "must" in the code). *See, e.g., People ex rel. Namm v. Carlin*, 182 A.D. 626, 629 (2d Dept. 1918).

²¹ See Exhibit 3 Sub-Exhibit 2, Finkbeiner Affidavit, November 16, 2020 ¶¶29-41 Sub-Sub Exhibits 1-7

²² See Finkbeiner affidavit (Jan. 24, 2020), ¶ 14, Exhibit 6, sub-exhibit 2. (appended to second article 78 of the amended permit, which I will seek to have consolidated as of right).

²³ See 2020 N.Y. Fire Code Appendix D, Section D103.2 and Section 511.2.2. as well as Finkbeiner Affidavit November 16, 2020, Exhibit 3, Sub-exhibit 2, slope analyses of drive area- Exhibit 3, Sub-exhibits 1,2 3,7. See also, Exhibit 6, Sub-exhibit 5, Finkbeiner affidavit (December 18, 2019) ¶8, also submitted in sur-reply to motion to dismiss in the instant case.

²⁴ See two page Second Finkbeiner Affidavit of January 29, 2020- Exhibit 6, Sub-exhibit 6, ¶8-13 The coordinates of the property in the deed do not directly connect to Hemlock Street; the surveyor falsified the coordinates, and again he is being sued now for falsifying a supposed right of way coming out of the subject property onto the adjacent Canterbury Forest Lot 20-2-5. See NYSCEF filed case EF-002857-2020 in Exhibit 9, Sub-exhibit 15.

(Emphasis added)

“Shall” is mandatory. The Tonnesons had a requirement to present their building department application with “such other information as may be necessary to determine and provide for the enforcement of this chapter”. They failed to provide Planning Board erosion control permits or applications for same; they never sought any. They also didn’t give any information about what they had done to the site in the previous few weeks. By the time the Building Inspector gave them a permit for a foundation on September 12, 2020, (he had no jurisdiction to issue a permit for a “foundation” under §210-21, only a permit for a single family home), the tree destruction had occurred and the gash in the mountain should have been obvious. Furthermore, the fact that much more than half an acre had been stripped was in plain view to him. Having issued an illegal well drilling permit to the Tonnesons on July 12, 2019, *two weeks before the land transferred title to them on July 26, 2019*, the Building Inspector had been on site before tree destruction and land disturbance occurred and was aware that they were intending to build a house. (What was the well drilling permit for?) Obviously, the Tonnesons didn’t drive 750 feet (see sloping sub-exhibits to Finkbeiner affidavits (Exhibit 3, Subexhb 2, sub-sub exhibit 1) up their property without cutting trees to build a road to then drill the well, so the Building Inspector must have noted prior to the property being transferred (when he issued the permit) that the area was covered in trees. It is also worth noting the drill permit was applied for and issued before the transfer of title of the land to Tonneson. (Exhibit 3, Sub-exhibit 6- Deed Recording on 7/26/19 and Exhibit 3, Sub-exhibit 1, Sub-Sub Exhibit C- drill permit).

14. The Building Inspector failed to do his job and proceeded in excess of jurisdiction

first by giving a permit for a “foundation” and in violation of lawful procedure by giving *any building permit* to the Tonnesons. An amended permit was issued the day I went to court apparently to bring in a modular home on the premises; it too suffers the same procedural defects; also one cannot amend a nullity. The affidavits in both petitions provided by Michael Finkbeiner (11/16/19 and 1/29/20) alleged the same violations of the erosion control code and the stormwater code as the affidavit submitted with the second petition which I will perfect as of right with the instant appeal (or seek to combine earlier). the latter merely gave more specificity as to the amount of land disturbed. (Both affidavits determined that 39 trees greater than 10 DBH (Diameter Breast Height) had been destroyed prior to the Tonneson’s even seeking building permits. The point was that the Tonnesons in a “shoot now, ask questions later approach” violated all of these provisions *before the Tonnesons had even sought a building permit*. This is relevant in that the erosion control section of the local code is clear that

§ 101-7 Activities requiring a permit.

A.

None of the following activities shall be commenced until a permit has been issued from the Planning Board under the provisions of this chapter:

There is no exception to this requirement. The Tonnesons could not even start to prepare the site. Continuing with the activities needing a permit that did not get one:

- (2) Site preparation within waterlands.
- (3) *Site preparation on slopes which exceed 1 1/2 feet of vertical rise to 10 feet of horizontal distance.*
- (4) Site preparation within the one-hundred-year floodplain of any watercourse.
- (5) *Excavation which affects more than 200 cubic yards of material within any parcel or any contiguous area.*
- (6) *Stripping which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area.*

(7) Grading which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area.

(8) Filling which exceeds a total of 100 cubic yards of material within any parcel or any contiguous area.

(11) On all properties, the removal or destruction of more than three trees 10 inches DBH or over during any period of 12 consecutive months or any one tree 30 DBH inches or over.

(The italicized ones have been definitively proven by Finkbeiner's remote analysis; Number 4 is suggested by the Forester Child's Affidavit)

15. Furthermore, §101-5 is the conflict of interest provision mandates that the erosion control provision be adhered to when they have a greater requirement than another part of the code:

§ 101-5 Conflict with existing regulations.

Where this chapter imposes greater restrictions than are imposed by the provision of any law, ordinance, regulation or private agreement, this chapter shall control.

While there is an issue of enforcement of the erosion control provision of the code, again the Tonnesons needed to secure these permits prior to developing the land²⁵ and prior to getting approval for building permits pursuant to §210-50(A). Likewise, another conflict of laws provision, § 210-48 (A)(2) reads:

§ 210-48 Conflicts between legislation.

A. Others laws.

(2)

Wherever the provisions of any other law or ordinance or regulations impose a greater restriction than this article, the provisions of such other law or ordinance or regulation shall control.

§ 210-48 (A)(2) is in the same Article VIII of the Zoning Chapter (210 et seq.), as §210-50(A). The Tonnesons' Affirmant has tried to claim that the Building Inspector only needs to enforce 210 (not other aspects of the Town code). This is simply wrong-

²⁵ The Tonnesons continued to expand the footprint of what was disturbed after securing the building permits as determined by the January drone flight and analysis by Mr. Finkbeiner thereof.

first because 210 is rife with references to other parts of the code including the aforementioned conflict of laws section § 210-48(A)(2) , because of § 210-50(A) (which required the Tonnesons to append information to their building permit to provide for enforcement of the Chapter and because Local Code § 210-49(E) (also in that chapter) specifically states:

In addition to his powers and duties to administer and enforce this chapter [210 (Zoning)], the Building Inspector and/or Code Enforcement Officer shall have all of the powers and duties relating to the administration and enforcement of . . . all other laws, ordinances and regulations applicable to the construction . . . of building and structures and . . . the location, use, [and] occupancy . . . thereof.” Highlands Town Code

(Emphasis added)

Quoting to Golden again on page 5 ¶3 of his June 29th brief (Exhibit 5) requested by the ZBA on jurisdiction:

By this clear directive to the Building Inspector/Code Enforcement Officer, which places the duty to administer and enforce all laws, ordinances and regulations applicable to the construction and location of building and structures, even those that are outside of his obligations under the Zoning Chapter, he had and continues to have the duty to enforce Chapters 101 (Erosion Control), 146 (Sewers) and 164 (Stormwater Management) of the Highlands Town Code. Having the duty to administer and enforce these provisions of the Highlands Town Code, the Building Inspector/Code Enforcement Officer had the obligation to ensure that the Tonnesons complied with these provisions before he issued the building permits to them. *See, e.g., Highlands Town Code §210-50(B)*²⁶.

There is an obvious nexus outside of 210 to buildings and construction as explained by Golden in his brief of June 29th, page 6, ¶2- page 7, ¶1-2 (See again: Exhibit 5)_

Highlands Town Code Chapter 101 (Erosion Control) is particularly apt in the circumstances complained of by Ms. Kopald in this appeal. Highlands Town Code § 101-4 (Jurisdiction) provides that “all . . . construction activities requiring

²⁶ §210-50(B) Compliance:

No building permit shall be issued for the erection, construction, reconstruction, structural alteration, restoration, repair or moving of any building or structure or part thereof, unless the plans and intended use indicate that such building or structure is designed and intended to conform in all respects to the provisions of this article.

a permit under this chapter [101] shall be in conformance with the provisions set forth herein”

...**Section 101-10(R) relatedly provides that in making determinations on the extent of tree removal to be allowed under an erosion control permit, the Planning Board must take into account “whether the [tree] removal will have significant adverse impact on other properties”** (Emphasis added)

Additionally, and, relevant to the Building Inspector/Code Enforcement Officer’s duty to enforce and administer Highland Town Code provisions outside of Chapter 210 (Zoning) provided they are “applicable to the construction . . . of building and structures and . . . the location . . . thereof” (*see* Highlands Town Code § 210-49(E)), Section 101-10(R) provides:

“The Planning Board may require proposed buildings or structures to be relocated on a plan or reduced in size in order to save a tree or trees which the Planning Board determines to be important or whose removal will have significant adverse impact.” (Emphasis added).

At a minimum, the Planning Board’s determinations under Highlands Town Code § 101-10(R) concerning tree removal – and the ability to require buildings to be relocated or reduced in size – apply to the construction and location of the Tonnesons’ house. It was, therefore, the duty and obligation of the Building Inspector/Code Enforcement Officer under Highlands Town Code § 210-49(E) to “administer and enforce” that the Tonnesons obtain the necessary erosion control permit required by Highlands Town Code Chapter 101, because Highlands Town Code § 210-49(E) mandates that these home construction and location issues under Highlands Town Code § 101-10(R) are part of the duties and administration of the Building Inspector/Code Enforcement Officer, and thus within the jurisdiction of the ZBA to review.[8]

(I reproduce footnote 8 of Golden’s brief below²⁷ in response to the Tonneson’s Affirmant assertion that

²⁷ Golden Footnote 8, June 29th ZBA brief: (Exhibit 5)

Curiously, the Tonnesons’ attorney argued at the ZBA hearing that Chapter 101 was outside of the jurisdiction of the ZBA because the Town’s cited authority for enacting Chapter 101 is based upon N.Y. Town Law Article 9 (Ordinances and Licenses), and not N.Y. Town Law Article 16 (Zoning and Planning). To be clear, all that Article 9 provides is that, in relation to certain enumerated powers of the Town, a permit and permitting processes may be authorized; it does not exclude those permitting powers from being applied to zoning and planning functions. *See* N.Y. Town Law § 130. Indeed, many of the enumerated powers specified in N.Y. Town Law § 130 to which such permitting may apply (and to which Chapter 101 applies) relate to zoning and planning matters (including the “construction, alteration, removal and inspection of buildings and structures of every nature and description erected or proposed to be erected in said town.”). Also, N.Y. Town Law § 130 provides that additional purposes, not specifically enumerated, are also proper subjects of permitting “as contemplated by the provisions of [Chapter 62, *i.e.*, N.Y. Town Law],” which, perforce, includes N.Y. Town Law Article 16. Thus, the only meaning that can be attributed to

the Building Inspector can just ignore the rest town code)

(Emphasis added)

It cannot be repeated enough; if the Tonnesons had followed the law, I would have been able to weigh in at the Planning Board, they likely would not have gotten permission to cut down a whole forest, I could have advocated for the house footprint being moved away farther from my home so there would be more of a tree barrier and the Planning Board even could have considered the home footprint being smaller.

16. The Tonnesons also needed a stormwater permit as a condition precedent to any construction activity²⁸. Local code § 164-6 Definitions, defined land development as

Construction activity, including but not limited to clearing, grading, excavating, blasting, soil disturbance, or placement of fill, that results in disturbance of one or more acres of land.....

(Emphasis added)

As with the erosion control permit regulations in §101, just discussed, there is no requirement in Chapter 164 that the “land development” necessitating compliance with Chapter 164 be part of a subdivision, site plan, special permit or other approval otherwise subject to Planning Board review. Per the definition, it applies to any construction activity over an acre including on a site where just a single house is going to be placed.

Local code § 164-4(G) specifically states

Chapter 101’s “Authority” (§ 101-2) is that the Town is exercising its right to provide for a permitting process in Chapter 101 for, among other purposes, N.Y. Town Law Article 16 (Zoning and Planning). Also, another baseless objection to the ZBA’s jurisdiction over Chapter 101 issues is that Chapter 101 is restricted in its application only to subdivisions. Although Chapter 101 does specifically apply to subdivision site preparations, as well special use permit site preparations, it also applies clearly to other site preparations, including grading, excavation, filling and removal of trees without any linkage to subdivisions. *See* Highlands Town Code § 101-7(A)(1)-(11).

²⁸ The affidavit provided with the Article 78 that I will perfect as of right with this case, if I do not seek to join the two cases before, was able to show with leaves off the trees that the Tonnesons had actually cleared over 1 acre triggering this condition. See again Exhibit 6, Sub- Exhibit, 2, ¶36, Finkbeiner Affidavit of January 29, 2020.

no land development activity [not otherwise reviewable before an applicable municipal board] shall be commenced unless and until the Town Planning Board has approved a stormwater pollution prevention plan

The Tonnesons could not even start disturbing the land without this permit either and again before the Building inspector issued the first illegal permit for a foundation, which is not allowed under the code, he did not calculate the land illegally already cleared and couldn't even have issued a permit for a house. Their surveyor, again the one I have alleged improperly moved the coordinates of the property to make them connect with a road and whom Canterbury Forest Corporation has now alleged in a complaint falsified a survey to imagine a right of way for the Tonnesons' through CFC's property, (see again footnote 24), is now claiming that the Tonnesons really didn't disturb over 1 acre of land. His word should be taken as suspect given the other controversies and lawsuit he is now embroiled in. (Even if he were telling the truth (I assert this is the third major thing he has lied about), it doesn't obviate the fact that multiple triggers of the Erosion Control provision Section 101 were violated, which were conditions precedent. (Also the Tonnesons' Affirmant wrongly tried to confuse the ZBA that there were exceptions for his clients (there are none. Quoting from Footnote 9 of Golden's June 29th post-hearing brief:

Also, the Tonneson attorney misrepresented to the ZBA that Highlands Town Code § 164-7(C) exempts single family residences from the Chapter 164 SWPPP requirements. It does not. Highlands Town Code § 164-7(C) only exempts single family homes from providing certain additional information (postconstruction stormwater runoff controls) in the mandated SWPPP; it does not excuse the requirement for a SWPPP. Beyond curiosity is the objection posed that Highlands Town Code Chapter 164 is somehow limited to subdivision review. There simply is no authority for this assertion. Highlands Town Code § 164-4 makes clear that Chapter 164 applies to "all land development activities," broadly defined under Highlands Town Code § 164-6 to include "construction activity" and never limited its scope or context to only construction activity related to subdivision applications.

17. To wit, in terms of the order of operations, the Tonnesons could do no land development activity under the code whatsoever without an erosion control permit under Chapter 101 (as well as stormwater permit under local code Chapter 164) or a septic permit. The plans David Tonneson submitted with his building permit application brazenly show a septic tank²⁹ *already in the ground*. (See Exhibit 3, sub-exhibit 7).

Footnote 29 also explains how the Tonnesons failed to submit legal plans- their Engineer

²⁹ Local code § 146-2 states:

No installation of any septic tank or outside privy nor the construction or erection of any structure intended for human occupancy shall be commenced until an application duly filled out, in triplicate, on forms supplied by the Town Clerk

Tonneson could not even start constructing or erecting any structure without getting a permit to install a septic tank.

There are other egregious issues which would come under the prongs of NY CPLR § 7803 demonstrating an abuse of discretion and arbitrary and capricious decision-making by the Building Inspector:

The plans also do not delineate where the perc and deep tests were taken , which were required among a number of other septic requirements under NYCRR 10 Ch. II, Subch. I, Pt. 75, App. 75-A) N.Y. Comp. Codes R. & Regs. 10 Ch. II, Subch. I, Pt. 75, App. 75-A. (See Finkbeiner Affidavit, November 16, 2019, Exhibit 3, Sub-Exhibit 2 ¶¶20-22) (There was also no plan submitted by an architect or engineer pursuant to local code 101-9.

This is supportive of my contentions that absent all of the other clear violations of lawful procedure and in excess of jurisdiction (NY CPLR 7803(3)(2), that the Building Inspector abused his discretion and acted arbitrarily and capriciously pursuant to NY CPLR 7803(3).

An engineer submitted a “plot plan” with this limited inadequate information, but a plot plan is not a site plan as required by Local Code 101-9. This means the plans themselves were wholly illegal.

Just as Tonneson’s surveyor misrepresented the contours of the property and is also being sued by another party for misrepresenting right of way, the Tonnesons were able to find an engineer to submitted something that is not a site plan, as they are expected to submit pursuant to their profession and NYSED regulations.

The surveyor pulled a bait and switch with the surveyor providing a site plan and the engineer providing a “plot plan”. The surveyor is supposed to provide a survey and the engineer is supposed to provide a site plan, not a “plot”.

Under Local code 101-9 “Maps and plans accompanying the application shall be prepared by a licensed architect or engineer or by any other person approved by the Town Planning Board.”

never provided a site plan as required by Local code 101-9- he offered a “plot plan”, instead of a plot plan, probably because he knew he could not legally sign off on such a plan. The building permits were issued without a permit to put a septic tank in.

Tonneson cut trees and excavated a long road with double the slope allowable and without turnouts and turnarounds required and other requirements for when there are four structures on a road mandated under the 2015 International Fire Code (which applied to permits sought before May 2020) greater than 750 feet to the proposed house^{30,31}.

18. The Town and the Tonneson Respondents would have the Courts believe that they were entitled to do whatever they wanted on a 13.926 acre parcel and that no other portions of the code applied. By their assertions, Tonneson could have entirely levelled the forest if he were putting up one house. He came too close as it was. The rest of the code is just completely ignored and as I indicate in the subsequent section, a former neighbor of Tonneson is on tape saying that when this person would approach

³⁰ While the fire chief inexplicably said the road was safe (without any explanation for same- David Tonneson is a member of the department)- he did not acknowledge an exemption was granted and had no right to grant an exemption for the other provisions of this code such as for turnouts and turnarounds and other requirements which were ignored when four structures (which can include sheds) share a road. See again [footnote 22](#).

³¹ In fact Finkbeiner’s tree analysis shows that 14 trees greater than 10 DBH were cut to make the driveway, 9 in what he calls a borrow pit area which is not part of the excavation for the footings and basement (of a house that had not yet been applied for) and 3 between the house and the drive- a total of 26 trees (and all the parts). That leaves 11 trees greater than 10 DBH in the house envelope that could not qualify for the exception for existing houses (it did not yet exist) and where there is an exception for excavation for footings, basements and septic; again there was no application for same pending for construction, which meant that there were no exceptions for tree cutting.

Even if there had been an application pending, there were 26 trees illegally destroyed to build a road and come up with fill to deal with sloping, and grading (which too required permits) that were outside of the ultimate location for septic, basement and footings. The only way those exceptions could apply (and if this information accompanied the building permit application pursuant to 210-50(A) is if the construction were contemplated for a narrow area at the edge of the property- not in an area that required constructing a road to get to it and not for excess land clearing beyond basement and footings which is what occurred.

Tonneson for violating laws, he said “the Town let him do it”. The permits were both illegally granted and the house cannot be legally occupied, which is why I am asking the Court to stay all construction and stay or reverse occupancy. Also quoting from Rick Golden Esq.’s June 8, 2019 brief, page 14, ¶1 before the Zoning Board (Exhibit 4):

Also pursuant to Town Code § 210-52(B), “**no certificate of occupancy shall be issued....unless [the Tonnesons development of their property is] in conformity in all respects with the provisions of [Article VIII of the Town Code], which Article VIII includes Town Code § 210-50(A) mandating that the Tonnesons provide in their building permit application to the Building Inspector/Code Enforcement Officer that all prior required approvals were obtained.** They could not have done so (as they were not obtained) and consequently, **have no entitlement to a certificate of occupancy, whether or not one has been issued to date.**

(Emphasis added)

As just explained, the property is not in conformity with § 210-48(A)(2) (laws outside of 210 need to be adhered to when they have a greater restriction than the chapter) or 210-49(E) (the Building Inspector MUST enforce other laws applicable to construction). (See again Exhibit 3, Sub-Exhibit 10 for local code) Golden goes on to state

Neither in this instance, nor in any other matter, does the Building Inspector/ Code Enforcement Officer possess the power to issue building permits *or a certificate of occupancy* if there is no entitlement thereto, such as when there is a failure of an applicant to secure any and all required underlying Planning Board, ZBA, or other Town approvals.

(Emphasis added)

The Tonnesons are not entitled to occupy the house.³² Quoting again to Golden: (page 14, ¶3 June 8 brief):

³² Given all these egregious violations, notwithstanding that the lower court judge never ruled on the merits of my claims, he refers to my repeated complaints to authorities about “violations” (in quotations) of the Town code and states that (David) Tonneson claimed 50 years in the business and to be “fully aware of all laws and codes concerning same” as if that statement could be legal proof of anything. The subtext along with the incorrect claim that it is hornbook law that I could not go to Court before exhausting administrative remedies is that I am a wanton complainer while Tonneson is some kind of expert. The evidence I have put before the Court shows otherwise.

No building permit or certificate of occupancy ought to have been granted to the Tonnesons, as they failed to supply the information in their building permit application that they had first secured the required Planning Board approvals for an erosion control permit and stormwater pollution prevention plan, conform their driveway to the State Fire Code, or install their septic system only after it had been reviewed and approved.

(Emphasis added)

Again the requirements to look outside the code spring directly from 210- the zoning code include §210-50(A) § 210-49(E) and §210-48(A)(2). The CO should be denied and if issued, reversed.

18. Because of non-compliance with the Chapter, §210-50(E) necessitates an immediate Stop Work Order:

§ 210-50 Building permits; general procedure

E. Any building permit issued under false pretenses by the applicant or in violation of the provisions of this chapter shall be subject to a stop-work order or an order to remedy violation issued by the Building Inspector and/or Code Enforcement Officer. Any work undertaken or use which is not in conformity with this chapter shall be unlawful and discontinued until brought into compliance with this section.

The work should have been stopped. The Town did not demand compliance with its code, which has a penalty of \$250 per tree illegally taken down per day (Local code § 101-12). Written notice was served pursuant to 101-12(c) so the Tonnesons owe the Town well over \$1.5 million for their illegal forest destruction. See also Exhibit 6, Sub-exhibit 2 (¶, 22-23, 29-30, 35-51) and sub-exhibit 3b).

II. NOISE, ONGOING ILLEGAL ACTIVITIES HAVE INTERFERED WITH MY DUE PROCESS; GIVEN THE WHOLLY ILLEGAL NATURE OF THIS PROJECT AND THE INTENTION OF THE TONNESONS TO

Again, Tonneson submitting an application and receiving a drill permit before title had passed to him was the first in a steady spray of continual legal violations.

A tape I have of his former neighbor (who claims to have been run out on a rail by the Tonnesons) saying that David told him he does these things because the Building Inspector lets him do it, flies in the face of these excerpts noted by the judge (and not cited as being apposite to any specific holding).

**SUBDIVIDE AND BUILD MORE AND ILLEGALLY DESTROY
MORE OF THE FOREST, THE STAY IS NECESSARY TO PREVENT
MORE ILLEGAL LAND DESTRUCTION AS WELL AS
CONTINUING HARM TO ME BY FAILURE TO REMEDIATE LAND
AND PRESENCE OF HOUSE TOO CLOSE TO MINE- WITHOUT
PROPER PERMITS.**

12. To reiterate, finding out today that the Tonnesons have had a CO since 6/15 (two weeks ago), I am patently shocked. While here had been a reduction in activity for about the 10 days that occurred prior to two weeks ago, there has been obvious noxious construction noise coming from the site last week and this week to the point where I was forced out of my house yet again), I have been harassed out of my home office by noxious noise coming from their site from C-scale type noise from leaf-blower type noise, I cannot emphasize this enough, but I have been made homeless and officeless by these people during the day and there is no end in sight to this nightmare even though construction has ostensibly been over (due to the granting of the CO). The Tonnesons have been and are the neighbors from hell and are effectively forcing me to move if I want to function in my own home because of their illegal activity. I haven't been able to work and I have barely been able to prosecute this case. I'll get to the particularities of my situation in a moment- but it should be noted that another former neighbor of theirs claims he had to move because of them and as I explained in footnote 2, having electromagnetic sensitivity, it isn't so easy to go find another place to live. Nor should I have to because the Tonnesons have been abusing my property rights for the greater part of a year and are continuing to do so. I have also had two heart attacks and continual daily provocations because of their illegal construction is not something I should have to put up with.

13. Overall the Respondents' utter lawlessness has continued in one way, shape or

form unabated. There have been various types of abuse interfering with my due process. Besides what I claimed in the previous motions (that noise has interfered with my ability to function in my home office, especially during the Pandemic, where legally there is no other place to go while the Tonnesons had limited right to work with one worker only on site- which they abused). The noise impeded my ability to prosecute this case, make a living and meet other court-ordered and quasi-judicial body deadlines (“ZBA”). The Town’s decision to pass an illegal noise ordinance and enable the Tonnesons to abuse my property rights by doing construction as well as noisy home repairs until 9 p.m. was part and parcel of the problem. Every lawyer I have consulted said the law should be invalidated on a declaratory judgment and will be clearly seen as having meted out retaliation for my having sued the town. (The police were previously enforcing the 6 p.m. recommendation on Attachment A of the Building Permit), so the passage of the noise ordinance in the fall functioned as a “make more noise ordinance”. Construction noise is not allowed at night in other jurisdictions in residential areas to say nothing of 7 days a week. And even with the stop and start nature of work being done in the last few months- as I explain in subsequent points below, I did not have a lot of time to leave my property once things started up and the whole nature of it was antithetical to getting any work flow going.

14. The Tonnesons have been knowingly working at their own peril; I already asserted that the Building Inspector had no right to issue a “foundation permit” and that any subsequently amended permit to bring in a modular home (it was amended after I emailed the parties that I was going to Court for a TRO) would be issued in violation of lawful procedure. The Tonnesons have acknowledged that I will continue this case and

seek to get the house torn down. (See December 9th, 2019 email from Debbie Tonneson to Ned Kopald forwarded to Sue Kopald (See Exhibit 9, sub-exhibit 6):

Furthermore, Deborah Kopald claims she wants Jaidin's house to be torn down....

See also my letter to their former counsel Robert Magrino: (Exhibit 9, subexhibit 5)

The Tonnesons have no one to blame but themselves for continuing to work and engaging in misconduct that interfered with my ability to work. This includes a pattern of extreme indifference and utter disregard for many laws and my rights by both the Town at the suggestion of the Tonnesons and by the Tonnesons. See Especially my Affidavit in Exhibit 9 and sub-exhibits in which Debbie Tonneson demanded my arrest for violating no laws and demanded the Town stop the ZBA process if I did not pay illegal fees).

15. Contrary to David Tonneson's claim (Exhibit 10) in his affidavit before this court, his activity is not normal and it is not like the McCarthy's adjacent site where there was normal house construction and very occasional use of machinery generating noxious C-scale noise. Tonneson was generally running earth moving equipment, noisy machinery with whiny motors, using equipment without mufflers, equipment making loud clicking and sometimes explosive sounds and bangs (sometimes in the early morning and sometimes well into the night) and rendering me quasi-homeless and office-less the middle of a pandemic when I was prohibited from using the courts.³³ It is rather

³³ A former neighbor of the Tonnesons' at the time he was doing construction down the hill is on tape discussing the extreme nature of David Tonneson's obnoxious and obsessive work habits- both from extreme noise and duration.

The Town retaliated during this litigation by allowing Tonneson to do construction 14 hours a day, 7 days a week until 9 p.m. at night. This was fundamentally a taking of my property rights. It also occurred after I was flushed out of my house all week and Tonneson strung up lights at 7 p.m. at the dark and the police

ironic, given that the modular home was erected within days in October. Please see my Exhibit 9 in full in which I address David Tonneson's misrepresentations and self-serving claims.

16. Contrary to the Town's affirmant in his last sworn statement about other noise, I live in a 3,500 square foot house on a rural forested hillside – this is not a “condo” district and indeed until Tonneson illegally cut trees, I barely heard any noise at all from anywhere else before any of this illegal construction occurred as stated in my affidavit to the ZBA. I have only been able to get work done when there is a lull in activity, which has been rarely until very recently. This activity has gone on until 9 p.m. some nights and has absolutely disrupted my life in every respect. The full shutdown in Governor Cuomo's emergency order which was in effect for most of this time period only permitted Tonneson to work alone and not with a crew³⁴. Tonneson regularly

shut him down. Tonneson demanded the right to work at midnight 7 days a week, and the Town was only too happy to oblige most of this demand, with the Town attorney knowing it was lawless and unlikely to pass legal muster.

Contrary to the Tonnesons' Affirmant's incorrect claim, a noise ordinance (including legal ones which this one is not) does not obviate a legal finding of nuisance and does not absolve all matters of noise. Pursuant to *Bove v. Donner Hanna Coke Corp.*, 236 A.D.3d 37, 39 (4th Dep't 1932), citing to *Booth v. R.W.O.T.R.C.C.*, 140 N.Y. 267, 274: An owner will not be permitted to make an unreasonable use of his premises to the material annoyance of his neighbor if the latter's enjoyment of life or property is practically lessened thereby.

See also: Restatement [Second] of Torts § 821D and *Domen Holding Co. v. Aranovich*, 1 N.Y.3d 117, 802 N.E.2d 135 (Court of Appeals: 2003).

While this is not a nuisance lawsuit per se, the court has the power to stop more activity from going on while this Appeal is being heard which is interfering with property rights and has extremely compromised my due process and made me homeless sometimes for more than 12 hours a day.

³⁴ See Section 9 of the Empire State Development Corporation Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders). Tonneson's house was non-essential construction and as such they could only have one worker on site at any given time. <https://esd.ny.gov/guidance-executive-order-2026> (Note the April-May version- See Exhibit 9, sub-exhibit 8).

violated this order (even their affirrant Mr. Honan never denied this in his affirmation in response to my last motion). The police would not go inside the structure, notwithstanding there being multiple vehicles parked at the site on many days and my claims I saw people on the land and indoors. Even if this Court is inclined to take the Tonneson's misrepresentations at face value, the point was the Courts were closed, I was forced out of my home during a pandemic and Tonneson was making noxious noise (I wrongly assumed I would have peace and quiet during the pandemic stay at home orders).

17. The issue was that I was forced out of my house as soon as the noise started and was probably one of the few people (or only person) in New York State with a home who was actually quasi homeless during the day in the middle of a pandemic due to noxious noise. I was forced under the orders to stay in my house (in practice I could not because of the noise, so I was forced into the woods for much of the day- again besides the pandemic, my environmental sensitivity to Wi-Fi has meant that I conduct almost all business from home (or often in parking lots pursuant to USDOJ guidelines and the Access Board recommendations). See again footnote 2.

18. The article by Bianca Bosker in the Atlantic Monthly November 2019 – print title, “The End of Silence”³⁵ (Exhibit 11) captures exactly what I have been experiencing physiologically and articulates the problem in a way that is hopefully understandable to a reader who has not been subjected to repeat noise from motors, machines and the like:

³⁵ Bosker B. “The End of Silence” (paper copy title)/ “Why Everything is Getting Louder: The tech industry is producing a rising din. Our Bodies can’t adapt.” (online title), *Atlantic Monthly*, November 2019. <https://www.theatlantic.com/magazine/archive/2019/11/the-end-of-silence/598366/> The article makes these key points:

Noise is never just about sound; it is inseparable from issues of power and powerlessness. It is a violation we can’t control...

What *is* clear, however, is that sound, once noticed, becomes impossible to ignore. *“Once you are bothered by a sound, you unconsciously train your brain to hear that sound,”* [Stéphane] Pigeon [an audio processing engineer based in Brussels] said. *“That phenomenon just feeds itself into a diabolic loop.”* Research suggests habituation, the idea that we’ll just “get used to it,” is a myth. And there is no known cure.

(Emphasis Added)

This description of the brain scanning the environment looking for the sound even when it is not on, describes the insidious sensitization that happens after repeat provocations³⁶. I had referred to it in conversation with people as “brain entrainment” before I read this article. I also had pain in my jaw and my chest from the low frequency vibrations. The physiological debilitation does not go on just while one is exposed, it is lasting and lasting and it takes a period of time with no noise to stop the looping effect described by the audio processing engineer in the article. There are no mitigating measures for construction equipment in the Town of Highlands as required by the NYC noise code, which addresses the C-scale noise generated³⁷ and Tonneson has been allowed to work

Scientists have known for decades that noise...is bad for us. “Calling noise a nuisance is like calling smog an inconvenience,” former U.S. Surgeon General William Stewart said.....numerous studies have only underscored his assertion that noise “must be considered a hazard to the health of people everywhere.”

....Experts say your body does not adapt to noise. Large-scale studies show that if the din keeps up—over days, months, years—noise exposure increases your risk of high blood pressure, coronary heart disease, and heart attacks, as well as strokes, diabetes, dementia, and depression.

For those grappling with it, noise is “chaos,” “torture,” “unbearable,” “nauseating,” “depressing and nerve-racking,” “absolute hell,” and “an ice pick to the brain.” “If you didn’t know they were talking about noise, you might think they were describing some sort of assault,” Erica Walker, an environmental-health researcher at [BU], has said.

³⁶ 29 dB ear plugs worn with industrial strength noise blocker headphones from Home Depot do not block enough to be able to think clearly or avoid physiological aftereffects from even brief exposures. I feel the vibrations in my chest, jaw, brain and heart and the long-lasting looping effect described in the article.

³⁷ The article by Daniel Fink, “Ambient Noise is the New Second-Hand Smoke: Excessive ambient noise causes hearing loss, disrupts sleep, function and communication; and causes nonauditory effects for

until 9 p.m.. The civil rights lawyer Michael Sussman is on tape at the noise hearing saying he thought the levels I was exposed to at my house were extreme and nuisance level: <https://www.youtube.com/watch?v=4x5J9OFFTYo&t=2954s> The Bosker article is instructive in its acknowledgment that the treatment of noise as the funny cars of environmental problems belies its severity:

....As environmental hazards go, noise gets low billing. There is no Michael Pollan of sound; limiting your noise intake has none of the cachet of going paleo or doing a cleanse. When *The New Yorker* recently proposed noise pollution as the next public-health crisis, the internet scoffed. “Pollution pollution is the next big (and current) public health crisis,” chided one commenter. Noise is treated less as a health risk than an aesthetic nuisance—a cause for people who, in between rounds of golf and art openings, fuss over the leaf blowers outside their vacation homes. Complaining about noise elicits eye rolls. Nothing will get you labeled a crank faster.

Scientists have known for decades that noise—even at the seemingly innocuous volume of car traffic—is bad for us. “Calling noise a nuisance is like calling smog an inconvenience,” former U.S. Surgeon General William Stewart said in 1978. In the years since, numerous studies have only underscored his assertion that noise “must be considered a hazard to the health of people everywhere.” Say you’re trying to fall asleep. You may think you’ve tuned out the grumble of trucks downshifting outside, but your body has not: Your adrenal glands are pumping stress hormones, your blood pressure and heart rate are rising, your digestion is slowing down. Your brain continues to process sounds while you snooze, and your blood pressure spikes in response to clatter as low as 33 decibels—slightly louder than a purring cat.

millions of people” surveys the literature on the extreme effects of noise explaining that people work from home, quiet is needed for thought and concentration, repetitive exposure to noise causes obesity, cardiovascular problems and mental health issues- at levels lower than can be found at construction sites. The article cites to the effects of low frequency noise I am exposed to:

Low-frequency noise [C-weighted decibels; dB(C)] may also impact humans, specifically causing damage to hair cells in the vestibular system responsible for balance (Stewart et al., 2016). An association between hearing loss and falls has been reported, with worse hearing being correlated with increased fall risk (Lin and Ferrucci, 2012).

https://www.quietcommunities.org/wp-content/uploads/2019/09/Fink_Ambient-Noise-Is-The-New-Secondhand-Smoke_Acoustics-Today_Fall-2019.pdf

Experts say your body does not adapt to noise. Large-scale studies show that if the din keeps up—over days, months, years—noise exposure increases your risk of high blood pressure, coronary heart disease, and heart attacks, as well as strokes, diabetes, dementia, and depression.

.....Even when not intentionally deployed for harm, the sound of drilling, barking, building, crying, singing, clomping, dancing, piano practicing, lawn mowing, and generator running becomes, to those exposed, a source of severe anguish that is entirely at odds with our cavalier attitude toward noise. “It feels like it’s eating at your body,” a man plagued by a rattling boiler told a reporter. A woman who was being accosted on all sides by incessant honking told me, “The noise had literally pushed me to a level of feeling suicidal.” For those grappling with it, noise is “chaos,” “torture,” “unbearable,” “nauseating,” “depressing and nerve-racking,” “absolute hell,” and “an ice pick to the brain.” “If you didn’t know they were talking about noise, you might think they were describing some sort of assault,” Erica Walker, an environmental-health researcher at Boston University, has said.

See also Exhibits 12 and 13, “Ambient Noise is the New Second Hand Smoke” and “Post-Hearing Statement of Daniel Fink, MD, to the Washington D.C. City Council’s Committee of the Whole Regarding the Leaf Blower Amendment Act of 2017” (July 2, 2018). Until one has experienced what I was subjected to, one cannot understand how impossible it is to function under such conditions.

20. I’ve discussed my electromagnetic sensitivity (see again footnote 2); this is disabling, because publicly allowable levels I cannot tolerate are now ubiquitous; however the harsh symptoms of exposure wear off after a circumscribed period of time (sometimes a day or more if the exposure is particularly bad, but the symptoms do resolve completely when away from the source of provocation). Not so with C-scale construction noise as this article explains is happening to many, many people of otherwise normal sensitivities. As Bosker explains, once sensitized to the sound, the brain is actively searching for it and constantly disrupted by its on/off nature. I had only been able to concentrate here and there with a few days of sustained quiet. A reasonable

question is how did a person who has a track record of performing at a high level, with an undergraduate degree from Harvard and a Master's from MIT and was functioning fine suddenly become unable to work? When the noise would force me out of my house, since I cannot use a cell phone, I had no access to communications and no access to internet; the Town library cancelled the limited accommodation they gave me (DOJ says they must accommodate and the Wi-Fi is not essential to the running of the library, it is only there for people to check their "smart" phone). I tried very hard, but I could find no place to work. (So did my civil rights attorney Michael Sussman). It is hard for most to understand I have been plunged into a human rights crisis, but I cannot pussyfoot around what it is and the fact that the Tonnesons and the Town are proximately responsible for it. Last week, I was forced out by extreme noise from the site. This went on well into the evening and included some loud industrial type noise that I could hear in every room and that was causing my house to vibrate. I was forced out again this week. Again, I am surprised to have learned today that a CO was even granted (I had submitted a FOIL request weeks ago). While legally occurring construction would also have negative effects and forcing me out of my house, none of the Tonnesons' activities were legal and the extreme and continual nature of it made me effectively homeless (I could sleep in my house from 9 p.m. to 7 a.m. – only time I was guaranteed to be free of construction noise).

21. Besides their abuse of the Governor's order and their taking advantage of the Town's illegal noise ordinance allowing Construction until 9 p.m. at night, I was told by the person who was giving me an office from which to make phone calls (I could not connect to the businesses' internet for legal reasons but could tolerate the environment

enough to use a desk and a phone) that Debbie and David Tonneson told him that if I were seen there again that people in Town would stop patronizing the premises. This person has emailed me asking me not to discuss it and that he does not want to be involved in the litigation and told me that David had called him after I mentioned this in court papers. I was forced outdoors during the day again after that. This is another way that the Tonnesons have contributed by their own choices to making a perfect storm (including advocating and getting the Town's illegal noise ordinance), interfering with my property rights, and ultimately my due process and ability to process my case. This in and of itself would be bad enough without my having nowhere else to go because of my sensitivity to Wi-Fi). (I also can't shift my working patterns to nighttime- it's common knowledge that shift work disrupts circadian rhythms and raises risk for cancer; worse. In my case, being afflicted with electrosensitivity is a reason why I have to sleep at night and at night only (Exhibit 16 letter of Dr. David O. Carpenter which was given to Court administration after the judge was not hearing me that the noise from the project was disrupting my life to the point where I could not get things done by deadlines). In other words, I could not cope with the taking of my property by the illegal noise (made at night) and made incessantly by doing shift work at night to accommodate the Tonneson's activities. The point is given the disruptions ongoing through the day and inability to work in my home, I was left with very few hours to do basic life necessities around the house and work.

22. After I made complaints, I was routinely tortured by a leaf blower being left on the subject property for hours on end. Leafblowers are not illegal, but leaving them on for hours on end is a nuisance; they are also not deemed construction equipment See

police reports (Exhibit 9, sub-exhibit 4). See again Exhibit 13 for an explanation of how deleterious this noise is. Once the police explained that they weren't "construction noise" and they could do nothing about them, I didn't call again. If the house had been properly sited and trees preserved this would have been less of an issue as noise drops with the square of distance. Even with periods with no construction going on, there is still ambient noise I was not previously subjected to because of the illegal land use activities that I never heard before. While construction has a terminus point, the leafblower noise, other neighborhood noise that comes through (one particular yapping dog coming through that was previously deterred by the forest, the C-scale noise of various power tools and motors I could not hear before both from the site and from neighborhoods down the hill I never heard before as well as ambient traffic and train noise to the point where I can hear the commuter trains brake, when I could not even hear the train before) is still going on. If the Tonnesons had followed the rules, not destroyed the forest and given me proper notice by seeking the permits they needed to have, a likely result also would have been that the house would not have been put so close to mine. It's not just a question of devaluing my property- the Tonnesons have made it and especially with their own non-construction noise-making on site so I can't really continue to live here if I want peace and quiet and the ability to make a living. This is very serious.

23. While ongoing constant provocations by them starting from early in the morning could ostensibly be dealt with in a nuisance lawsuit, again, I should not be forced out of MY OWN HOME one more day of my life because of these serial rule violators whose construction was wholly illegal. I respectfully assert, the house legally should be torn down, so there is no point in it being occupied. David Tonneson has been

open about subdividing the property, building a road, again under my property and selling off the other half. See Exhibit 6, sub-exhibit 9. This only invites further illegal tree cutting that needs to be resolved in this case; the destruction of the forest is so extreme, and as I assert illegal; it will continue absent a stay. Furthermore, while I assert my property has been ruined by the ambient noise that has occurred from forest destruction (it is open and notorious that trees are a sound barrier, I cannot afford to be in a situation where I am forced out of my home by further illegal construction to say nothing of the noxious non-construction noise the Tonnesons have continued to make. Again, many electrosensitive people are homeless because they cannot find a home far enough away from sources of wireless so it is hard to find housing, I can't work because of serial noise provocations that are still going on that I would not have otherwise been exposed to, I have had a couple of heart attacks and I can't work when I am flushed out of my house by noise and no alternate space to work because of the ubiquity of Wi-Fi (see footnote 2 again).

24. The Balance of the Equities tip in my favor; since the Tonnesons' permits are clearly illegal, the house should not be occupied and I will continue to pursue this case to get it torn down and for the land to be remediated. I have been tortured sometimes all day by construction noise, but still intermittently on and off all day to the point where I am forced out of my house by noise I would not have otherwise experienced. This is from work they are *still* doing on the property, (Last week's industrial type noise flushed me out of my house within a minute) and by ambient noise that I would not be exposed to but for the illegal tree cutting and the illegal placement of the house site too close to me. Again, I have a former neighbor on tape saying the

Tonnesons abused him by noise and abused his property rights, forcing him to sell his house to get away from them as stated in my affidavit in Exhibit 9. (The neighbor also claims the Tonnesons have abused the property rights of at least 6 other of their current neighbors, who could not afford to hire a lawyer to fight them and kept getting shamed by the Tonnesons' demand they be neighborly and acquiesce to their abuse. (This is on display in the noise ordinance hearing as well while David demanded the right to work until midnight without being interrupted and was supported by people on his payroll and other low-information tiki-torch carrying neighbors who rallied to his cry in which he also identified me as a person celebrating "other Sabbaths") . Two of these supposedly aggrieved neighbors are now deceased.) The former neighbor who is on tape warned me early on I would need to leave- that they would push me out and their constant abuse and would make me sick. I said I have never backed down to a bully and would not now. However, he is correct- this is exactly what has happened. I have been made sick, effectively constructively evicted by home and scarcely been able to write briefs to prosecute my case.

24. I respectfully assert that the Tonnesons' "right" to occupy an illegal house³⁸ does not trump my right to be able to function as I did in my home since 1974 because of their illegal destruction of a noise buffer and failure to get the proper permits to construct said home. While the construction noise has forced me out on and off all day to the point where I could not functionally process work, the permanent ambient noise created is an ongoing nuisance to me and the Tonnesons seeking and their non-construction activity- including ongoing noise the past two weeks past the point where

³⁸ David and Deborah Tonneson are not moving into the house on the subject property. It is to be occupied by their step-daughter/daughter, Jaidin, a recent college graduate, who is also a Respondent. She had been living with Deborah and David at their home below the property at 35 Hemlock Street.

construction was ostensibly done as well as their incessant use of noisy machinery (whether leafblowers or home construction equipment). They do not have the proper permits to have even begun construction, let alone occupy the house, which should be torn down. Forcing them to comply with the law and shutting down their activity on the site completely, while not fixing the other ambient noise would protect me from the constant noise provocations I am getting from them. Given my personal circumstances there is nowhere else to go. Electrosensitive people- even those with money are often homeless because it is difficult to find property that is far enough from a cell tower, the neighbors' smart meter and other wireless antennae. In my case I have had two heart attacks (I'm only in my mid-40's) and have been continually pushed out of my house (which I am dependent upon because of the electrosensitivity issue) by both the noise made on site and ambient noise caused by the illegal tree removal and during a pandemic. I should not be forced out and forced into effective homelessness because these people are flagrant law violators, albeit, as the former Tonneson neighbor has claimed Dave said, "because the Building Inspector lets him do it". The Town should be incentivized to make the Tonnesons comply with the law and to fine them pursuant to Local Code 101-12. As stated, the Tonnesons owe the Town well over \$1.5 million. There is nothing like a fine of that nature to get someone to comport themselves lawfully when they otherwise clearly will not do so.

22. The Tonnesons' credo is what is mine is mine and what is yours is mine and if you won't be complicit in our abuse, we will force you out into the Hobbesian wilds. It appears they have been getting away with this abuse of many people for a very long time, and no authority figure has told them no. They found a surveyor who moved

the points of the surveyed property *sua sponte* against the standards of his profession to connect them to a road and who imagine a right of way on a property that does not belong to the Tonnesons, They found an engineer who was supposed to provide a site plan and since there was no bonified site plan with proper perc and deep tests or proper erosion control, he put his name to a “plot plan”, something that is not standard practice in his profession. Just as the building inspector could not be bothered to notice that the Tonnesons didn’t have title of the property when he granted them a drill permit, he was either too inept or worse to notice these other things. Again, as the former neighbor is taped quoting David Tonneson that he does these things because “the Town lets him do it”.

23. The Town will do everything possible to continue to violate my due process. Besides passing an illegal noise ordinance allowing construction noise in a residential zone, the Town illegally declared they will not rule on the ZBA hearing in violation of NY Town Law 267-a(8). In other words, they have demonstrated that they are willing to violate the law to prevent the Tonnesons from ever having accountability. (After my ZBA lawyer told them they were violating the law, the Town finally backed down this week- apparently two days before the Town issued the illegal CO). Debbie Tonneson’s latest round of emails to the Town I discovered by FOIL request- in addition to demanding “the Town charge [me} under the law” demands they fine me to stop me from pursuing my legal remedies. See again Exhibit 9 (sub-exhibits 13 and 14). The Town is trying to saddle me with an illegal tax³⁹ illegally pursuant to her command

³⁹ This will be discussed in another motion but in brief, the Town is violating their own written code which requires them to provide an estimate before charging me, to charge a lower escrow and to compare to prevailing rates in other jurisdictions. The local code is also illegal pursuant to *Jewish Reconstructionist Synagogue of North Shore, Inc. v Incorporated Village of Roslyn Harbor*, 40 N.Y.S.2d 158, 352 N.E.2d 115

(while failing to collect the \$1.5 million in fines the Tonnesons have accrued by violating the tree ordinance under Local Code 101-12). The Town generally genuflects to the Tonnesons' illegal demands where they think they can get away with it, including their passage of an illegal noise ordinance to allow heavy construction at night in a residential area.

25. In this motion, I am demanding a TRO; the obvious harm to me is I cannot functionally work with any further noise provocations by the Tonnesons and have the right to peace and quiet in my home which they will not afford me They could not do anything on the site and may not continue to do one more thing on the site absent Planning Board permits. They are not allowed to legally occupy the house. The house itself is illegal Besides the extreme effects of the construction noise over time, there has been continual non-construction noise nuisance from the site – the house is sited too close to mine, my property has been affected by their failure to remediate) and even though my ZBA lawyer stopped the Town's attempt to thwart the Court-ordered ZBA review, the Town has already demonstrated that they will do anything possible to stop this inquiry. This court has jurisdiction to immediately stop irreparable injury to me pursuant to NY CPLR § 5518 and a TRO pursuant to § 6313. NY CPLR § 6301 allows a preliminary injunction when rights are being violated. This situation meets the tests in *Vapor Tech. Ass'n v. Cuomo*, 66 Misc. 3d 800, 118 N.Y.S.3d 397 (N.Y. Sup. Ct. 2020). I am likely to win the case, the balance of the equities tips in my favor; the Tonnesons are lawless and their previous lawless behavior that destroyed the tree barrier and put the house too close to mine exacerbates noise nuisance that did not previously exist- especially noise that is

(Court of Appeals: 1976) which prohibits Towns from passing along the cost of their administering their appeal to the applicant- ie the legal fees of their attorneys.

still coming from their site and flushing me out of my home even after construction has ostensibly been completed. The toll their construction noise has taken on my health and finances from not being able to work is high. They succeeded in getting the Town to do their bidding in effectively taking my property due to noise going on into the night which is legal pursuant to local code. Further ongoing deprivation of my right to use and enjoy my property is irreparable harm. There is no “equity” in their being able to have a CO for a house that is wholly illegal and should be torn down. There is no “equity” in their being able to cut any more trees on the property when they illegally cut 39 large growth trees and destroyed a forest without permits; they should not be able to further develop the property absent replacement of the trees. Given their nuisance behavior and oft-stated belief they can do whatever they want on their property, the fact that I have documented being flushed out by non-construction noise (leafblowers) for hours on end, is a nuisance that would not be so severe or would not otherwise have occurred if they had developed the property with proper permits. They did not, and I should not be subjected to any more noise from the site until I get the remediation demanded in my Article 78.

CONCLUSION

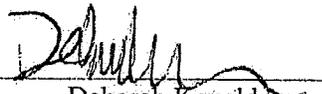
This case should have been decided by Supreme Court, not sent back to the ZBA. I did not need to exhaust my administrative remedies when one of the permits I challenged was wholly beyond the grant of the Building Inspector’s power and when I was trying to stop a house from being erected that the Tonnesons had no legal right to erect and when I was trying to stop further illegal land alterations. The Tonnesons were not legally entitled to any of the permits they got including and especially the certificate of occupancy. They still have not gotten the permits they were required to get. The

failure to stay this project will result in more illegal destruction to the forest and disincentivize remediation of same including Town enforcement. Their use of the property has continually interfered with my property rights- they should have be prohibited from occupying an illegal house, they should not be allowed to continue to develop the property and cut one more tree without replacing the forest they illegally destroyed (to say nothing of the fact that they need other permits to do so and the Town will not make them get them absent this Court's intervention. **I should not be subjected to any more needless and ongoing noise provocations from the site associated with construction, tree destruction and/or illegal human habitation until those trees are put back and proper permits are sought by the Respondents.**

David Tonneson is on tape at the noise hearing of October 14th 2019 <https://www.youtube.com/watch?v=4x5J9OFFTYo> and a Town Board meeting on September 23rd 2019 <https://www.youtube.com/watch?v=IJJWVF-T2J0&t=647s> saying that he has made \$16 million dollars in construction and been free to do so by dint of their having been no noise ordinance. He will not be hurting by relief requested. He then got his illegal noise ordinance allowing him to make all matters of noise including house repairs and for me to be subjected to this until 9 p.m. The proverbial saying and its metaphorical import apply here: Live by the Sword, Die by the Sword. I ask the Court to hold the Tonnesons accountable, deny them the right to occupy a house wholly illegally erected and to protect my right to exist in my home, and even given my other unique environmental health challenges, in effect the right to exist in peace at all. Therefore I respectfully request that the Court order

- that the Tonnesons/ Paisley-Tonneson be stopped from further construction work on the site that is defined today to as (sec-lot-blk 11-1-1.52) until this appeal can be decided
- that the Tonnesons/ Paisley-Tonneson be prohibited from cutting any more trees on the site that is defined today to as (sec-lot-blk 11-1-1.52) until this appeal can be decided
- that the Tonnesons/Paisley-Tonneson cease all activity on the site that is defined today as (sec-lot-blk 11-1-1.52) until this appeal can be decided
- that the Town of Highlands direct its Building Inspector to immediately withdraw the Certificate of Occupancy it issued to the Tonnesons/ Paisley-Tonneson until this appeal can be decided on the site that is defined today as (sec-lot-blk 11-1-1.52)

Ultimately, I seek a permanent injunction against occupancy of the home and ask for whatever else the Court deems relevant in the interests of justice.


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Sworn to Before Me on this 17th Day of July 2020


 Notary Public

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 Notary Public, State of New York
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 Qualified in Orange County
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