

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

-----X
**HILDA KOGUT, ROBERT E. ASSELBERGS and
MAGALI DUPUY,**

Plaintiffs,

-against-

**THE VILLAGE OF CHESTNUT RIDGE, THE BOARD OF
TRUSTEES OF THE VILLAGE OF CHESTNUT RIDGE,
ROSARIO PRESTI, JR. in his capacity as the Mayor and Trustee
of and for the Village of Chestnut Ridge, GRANT VALENTINE in his
capacity as the Deputy Mayor and Trustee of and for the Village of
Chestnut Ridge, and HOWARD COHEN, RICHARD MILLER, and
PAUL VAN ALSTYNE, in their capacities as Trustees of and for the
Village of Chestnut Ridge,**

Defendants.

**VERIFIED
COMPLAINT**

Index No.:

-----X
Plaintiffs, HILDA KOGUT, ROBERT E. ASSELBERGS and
MAGALI DUPUY, by and through their attorney, Steven N. Mogel, Esq., as and for their
Verified Complaint allege as follows:

1. This proceeding is commenced pursuant to CPLR §3001 of the Civil Practice Law and Rules seeking, *inter alia*:
 - a. a declaratory judgment declaring that a local law entitled “A Local Law Amending Local Law No. 20 of 1987, the Zoning Law of the Village of Chestnut Ridge, with regards to Residential Places of Assembly and Houses of Worship” (“House of Worship Law”) is null and void for failure to comply with General Municipal Law 239; and

- b. a declaratory judgment that the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments, §1 and 2; and
- c. a declaratory judgment that the House of Worship Law is null and void as it is was passed in reliance upon a municipal resolution that contained materially false and derogatory information.

THE PARTIES¹

2. At all times hereinafter mentioned, Plaintiff HILDA KOGUT (hereinafter “Plaintiff Kogut”), was and is an individual residing at 20 Pine Knoll Court, which residence is situated within the jurisdictional limits of the Village of Chestnut Ridge (“Village”).

3. At all times hereinafter mentioned, Plaintiff ROBERT E. ASSELBERGS (hereinafter “Plaintiff Asselbergs”), was and is an individual residing at 6 Crown Court, which residence is situated within the jurisdictional limits of the Village.

4. At all times hereinafter mentioned, Plaintiff MAGALI DUPUY (hereinafter “Plaintiff Dupuy”), was and is an individual residing at 49 Spring Hill Terrace, which residence is situated within the jurisdictional limits of the Village.

5. At all times hereinafter mentioned, Defendant VILLAGE OF CHESTNUT RIDGE (“Village”) was and is a municipal corporation situated in the Town of Ramapo, County of Rockland and State of New York.

6. At all times hereinafter mentioned, Defendant THE BOARD OF TRUSTEES OF THE VILLAGE OF CHESTNUT RIDGE (“Village Board”) was and is the elected legislative body, consisting of a mayor and four trustees, for the Village.

¹ The parties and events described herein are identical to those in an action currently pending in Rockland County Supreme Court before the Hon. Paul I. Marx, J.S.C., Index No. 031506/2019.

7. At all times hereinafter mentioned, Defendant ROSARIO PRESTI, JR. (“Defendant Presti”) was and is the mayor and chief executive officer of the Village.

8. At all times hereinafter mentioned, Defendant GRANT VALENTINE (“Defendant Valentine”) was and is the deputy mayor and a trustee of the Village.

9. At all times hereinafter mentioned, Defendant HOWARD COHEN (“Defendant Cohen”) was a trustee of the Village.

10. At all times hereinafter mentioned, Defendant RICHARD MILLER (“Defendant Miller”) was and is a trustee of the Village.

11. At all times hereinafter mentioned, Defendant PAUL VAN ALSTYNE (“Defendant Van Alstyne”) was and is a trustee of the Village.

BACKGROUND

Zoning Law for Places of Worship in the Village of Chestnut Ridge Prior to Passage of the House of Worship Law

12. Since the passage of Village Local Law 6 of 2001, “churches and similar places of worship” (hereinafter “Places of Worship”) have been designated as a permitted use, by special permit of the Village Board, in each and every residential zone in the Village (save one).² Places of Worship are categorized as “use group ‘c,’” setting forth a minimum lot area of five (5) acres, among other bulk requirements. Local Law 6 of 2001, the Tables of General Use Requirements for the Village, and the Table of Bulk Requirements are annexed hereto as Exhibits “1” through “3,” respectively.

² Churches and similar places of worship were not listed as a permitted use in the RSH (Specialized Housing Residential District) zone. The RSH zone has no designated uses permitted by right or as a conditional use by the Village’s Planning Board. The only permitted uses in the RSH zone are uses by special permit for senior citizen and physically handicapped housing development and their designated accessory uses. Churches and similar places of worship were not listed as permitted uses in the Village’s commercial zones (NS, PO, LO, PI, and RS).

13. The issuance of special permits by the Village Board are governed by Article XVI of the Village’s Zoning Law (“Zoning Law”). A copy of Article XVI of the Code is annexed hereto as Exhibit “4”

House of Worship Law: Presentation, Public Hearings, and Passage

...

Village Board Meeting of February 22, 2018

14. A draft House of Worship Law was first presented to the public at a Village Board meeting held on February 22, 2018.

15. At the February 22, 2018 meeting, the Village also made available to the public a memorandum introducing the draft House of Worship Law from Maximilian Stach, AICP of the firm of Nelson, Pope & Voorhis, LLC (“Village Planners”) dated February 9, 2017,³ (“2/9/17 Nelson Memorandum”). A copy of the 2/9/17 Memorandum is annexed hereto as Exhibit “5.”

16. After public comment, Resolution No. 2018-17 was passed, referring the proposed House of Worship Law to the Rockland County Planning Board and neighboring communities, as required under the General Municipal Law, and to the Village’s Planning Board, as required under Village of Chestnut Ridge Article XVII: Amendments, §1.

First Rockland County Department of Planning GML Review

17. Pursuant to General Municipal Law 239-L and 239-M, the proposed House of Worship Law was referred to the Rockland County Department of Planning (“RC Planning”), with an acknowledged “received” date thereupon of February 23, 2018.

18. RC Planning issued its response dated March 26, 2018 (“3/26/18 GML Review”) recommending, *inter alia*, the following modifications to the House of Worship Law:

³ Respondent Presti stated, on April 26, 2018, that the date upon the 2/9/17 Nelson Memorandum was a typographical error and the aforesaid document should not have been identified as having been drafted in 2017. See 4/26/18 Minutes 4-5.

“4. In order to ensure the safety of pedestrians, off-site parking for residential houses of worship must be subject to the availability of sidewalks or suitable walkways between the subject properties.”

19. A copy of the 3/26/18 GML Review is annexed hereto as Exhibit “6.”

Second Rockland County Department of Planning GML Review

20. On or about September 18, 2018, pursuant to General Municipal Law 239-L and 239-M, the second draft of the House of Worship Law was referred to RC Planning, with an acknowledged “received” date thereupon of September 18, 2018.

21. RC Planning issued its response dated October 18, 2018 (“10/18/18 RC Planning GML Review”). A copy of the 10/18/18 RC Planning GML Review is annexed hereto as Exhibit “7.”

Additional Memoranda by Nelson, Pope & Voorhis, LLC

22. The Village Planners submitted memoranda to the Defendant Presti and the Board of Trustees dated August 29, 2018 (“8/29/18 Nelson Memorandum”) and October 26, 2018 (“10/26/18 Nelson Memorandum”). Copies of the 8/29/18 and 10/26/18 Nelson Memoranda, with their respective attachments, are annexed hereto as Exhibits “8” and “9,” respectively.

23. The 8/29/18 Nelson Memorandum, purportedly prepared in response to a workshop held by the Village Board of Trustees on August 8, 2018, set forth changes to the House of Worship Law as proposed in the 2/9/17 Nelson Memorandum.

24. The 8/29/18 Nelson Memorandum made, *inter alia*, the following changes:

- a. RPWs would now be called “residential gathering places,” (“RGP), to indicate that “[a]ll regular large gatherings in private homes will require a conditional use permit – not just religious assemblies.”

- b. Require RGPs and NPWs to provide 50% and 75% of required parking spaces on-site, respectively, with the remainder to be provided “offsite (including on private driveways), up to 1500 feet away” as originally proposed, 8/29/18 *Nelson Memorandum 1*.
- c. Explicitly permit on-street parking for RGPs and NPWs, subject to certain limitations and restrictions. See 8/29/18 *Nelson Memorandum 2*.
- d. Explicitly permit places of worship on pre-existing, non-conforming, undersized lots, as long as said lots were conforming at the time of construction and are at least 80% of the minimum lot size. *Id.*
- e. Explicitly permit RGPs and NPWs an additional 10% lot development coverage “over residential single-family homes in the district to facilitate the provision of on-site parking.”

Resolution 2019-12 and Passage of House of Worship Law

25. On February 21, 2019, the Village Board voted upon and approved Resolution 2019-12 (“Resolution”), approving the House of Worship Law. A copy of the Resolution, certified by the Village Clerk, is annexed hereto as Exhibit “10.”

26. The Resolution alleges that the House of Worship Law, as an amendment to the existing Zoning Code for the Village of Chestnut Ridge (“Code”) was (officially at least) precipitated by the filing, on or about November 1, 2017, of a “written petition . . . in letter form” from Brooker Engineering, PLLC “on behalf of the Orthodox Jewish Coalition of Chestnut Ridge” (“11/1/17 Brooker Letter”). *Resolution 1*.

27. The Resolution later devolves into what can be described, at its most generous, as a highly subjective description only of residents who opposed the passage of the House of Worship

Law⁴ (although tempers flared at the public hearings on both sides of the issue), stating that same engaged in, for example:

“ . . . catcalls, shouting down of individuals who spoke in favor of the proposal, outright animus, and even discriminatory bias demonstrated against the Orthodox Jewish residents of Chestnut Ridge and members of the Village Board.”⁵

Id. at 4.

28. The Resolution concludes with selectively quoting a named member of the public who chose to express his opposition to the proposed House of Worship Law, and stating that same “sum(s) up the opposition to the proposed local law,” in that it evidences:

“a basic failure to recognize the requirement that a municipality must strive to accommodate legitimate assembly and religious practice of all denomination (sic) within its borders. Taken to their logical conclusion, the final comment submitted on the proposed local law, and the bulk of the comments opposing the proposed local law made at the Public Hearings by those opposing the proposed local law, would have the Village Board either ban places of religious assembly from residential neighborhoods altogether, or impose arbitrary numerical limitations on a person’s right to worship. The Village Board finds that position to be contrary to law.”

*Id. at 14-15.*⁶

29. The House of Worship Law was stamped filed with the New York State Department of State, State Records Department, on March 5, 2019 thereby becoming, in accordance with its terms, effective as of that date. A copy of the filed House of Worship Law is annexed hereto as Exhibit “11.”

⁴ In one relatively minor, but telling, instance, letters in opposition to the House of Worship Law were described as “*form* letters” (emphasis added), while letters from supporters of the House of Worship Law were simply described as “letters.”

⁵ The Resolution then takes the highly unusual step in a municipal resolution of citing individual members of the community by name and quoting their public comments verbatim as purported evidence of such “outright animus and . . . discriminatory bias” and returning over and over to this issue. Petitioners have never engaged in any such behavior and disaffirm such language and/or behavior.

⁶ The “summation” of the opposition to the House of Worship Law has no basis in truth. It is a purely subjective evaluation that selectively admits or ignores the evidence before it so as to reach a predetermined outcome, i.e., to pass the House of Worship Law.

30. Plaintiffs commenced a hybrid proceeding pursuant to CPLR §3001 and Article 78 of the Civil Practice Law and Rules by Verified Petition dated March 21, 2019 seeking, *inter alia*:

- a. to vacate and annul the Negative Declaration under the State Environmental Quality Review Act (“SEQRA”) issued by the Board of Trustees of the Village of Chestnut Ridge of January 15, 2019 (“Neg Dec”) pertaining to a local law entitled “A Local Law Amending Local Law No. 20 of 1987, the Zoning Law of the Village of Chestnut Ridge, with regards to Residential Places of Assembly and Houses of Worship” (“House of Worship Law”) as same was arbitrary and capricious; and
- b. a declaratory judgment declaring that the House of Worship Law is null and void as the lead agency failed to comply with the requisite procedures under SEQRA; and
- c. a declaratory judgement that the House of Worship Law is null and void for failure to comply with General Municipal Law 239; and
- d. a declaratory judgment that the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments, §1 and 2; and
- e. a declaratory judgment that the House of Worship Law is null and void as it is was passed in reliance upon a municipal resolution that contained materially false and derogatory information.

170. Defendants moved to dismiss by Notice of Motion⁷ filed May 2, 2019, returnable May 8, 2019. Defendants argued, *inter alia*, that the three (3) causes of action seeking a declaratory judgment were dismissible due to Plaintiffs’ failure to comply with the requirements

of CPLR §9802; to wit, Plaintiffs had failed to file a notice of claim against the Village forty (40) days prior to the bringing of these causes of action.

171. Plaintiffs served a notice of claim upon Respondents by certified mail in compliance with GML §50-e (3)(a) on May 20, 2019 (“Notice of Claim”). Same was received by the intended recipient on May 23, 2019. A copy of the Notice of Claim and proof of service thereof are annexed hereto as Exhibit “12.”

172. By Decision and Order of the Hon. Paul I. Marx, J.S.C. dated October 4, 2019 (“Decision and Order”), Plaintiffs’ Fourth through Sixth Causes of Action (corresponding to the First through Third Causes of Action herein), were dismissed without prejudice due to Plaintiffs’ non-compliance with the requirement to wait forty (40) days after filing of notice of claim before the bringing suit for declaratory judgment pursuant to CPLR §9802. A copy of the Decision and Order are annexed hereto as Exhibit “13.”

31. More than forty (40) days have elapsed since the service of the Notice of Claim. Therefore, the instant action complies with CPLR §9802.

AS AND FOR A FIRST CAUSE OF ACTION

***The House of Worship Law is null and void due to failure to comply with
General Municipal Law 239***

173. General Municipal Law (“GML”) 239-m requires, among other proposed actions, that the adoption or amendment of a zoning ordinance or local law must be referred to the county planning agency for review and comment before taking final action thereupon. Failure to comply with General Municipal Law 239-m renders the legislative act at issue null and void. See Ernalex Const. Realty Corp. v. City of Glen Cove, 256 A.D.2d 336, 338 (2nd Dep’t 1998) (“The alleged failure to comply with the referral provisions of the statute is not a mere

⁷ Incorrectly designated as a “Cross-Motion.”

procedural irregularity but is rather a jurisdictional defect involving the validity of a legislative act.”)

174. As set forth *supra*, the proposed House of Worship Law was referred to RC Planning with an acknowledged “received” date thereupon of February 23, 2018.

175. In their 3/26/18 GML Review, RC Planning recommended, *inter alia*, the following modification to the House of Worship Law:

“4. In order to ensure the safety of pedestrians, off-site parking for residential houses of worship must be subject to the availability of sidewalks or suitable walkways between the subject properties.”

176. This modification was not adopted by the Village in the House of Worship Law.

177. General Municipal Law 239-m provides that:

“5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.”

178. Upon information and belief, the Village never voted to override the recommendation of RC Planning in its 3/26/18 GML Review. Therefore, the House of Worship Law was jurisdictionally defective. See e.g. Ernalex Const. Realty Corp. v. City of Glen Cove, 256 A.D.2d at 338.

179. Pursuant to GML 239-m, referrals to the county planning agency must be accompanied by a “full statement of such proposed action” which is defined, in relevant part, in the statute as follows:

“The term ‘full statement of such proposed action’ shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning

ordinance or local law, “full statement of such proposed action” shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council.”

GML §239-m (c).

180. The Resolution states that:

“WHEREAS, on or about September 18, 2018 the second draft of the proposed local law was resubmitted to the Rockland County Planning Department for further comment pursuant to the relevant provisions of the General Municipal Law . . .”

181. Upon information and belief, no additional submissions were made to the Rockland County Department of Planning after September 18, 2018.

182. The Resolution confirms that the first Full Environmental Assessment Form (“FEAF”) was completed on or about October 26, 2018 and that the second FEAF was completed on or about January 9, 2019.

183. As the FEAFs were not completed before the submission of the second draft of the House of Worship Law to the Rockland County Planning Department, the Village failed to provide the Rockland County Department of Planning with a “full statement” of the House of Worship Law. Failure to provide a “full statement” of the proposed action as required under the GML renders the proposed action null and void. See LCS Realty Co. v. Inc. Vill. of Roslyn, 273 A.D.2d 474, 475, 710 N.Y.S.2d 605, 605 (2nd Dep’t 2000) (“After referral by the Village, the NCPC should have been in possession of all of the materials which the Village needed in order to pass a new zoning resolution, including the final version and complete text of the proposed new zoning law and the final generic environmental impact statement. However, it is clear that the NCPC did not have these materials for the requisite 30–day period before the Village acted and adopted the subject zoning law. Under such circumstances, the Village did not comply with General Municipal Law § 239–m and, as a consequence, Local Laws, 1997, No. 4 of the

Incorporated Village of Roslyn and the Comprehensive Master Plan were improperly adopted and are void.”).

184. The Resolution further confirms that there were several subsequent drafts of the House of Worship Law after September 18, 2018. Copies of drafts no. 3 and 5, dated December 27, 2018 and January 16, 2019 are annexed hereto as Exhibits “14” and “15,” respectively.

185. The pre-September 18, 2018 drafts of the House of Worship Law deviated significantly from the final text of the House of Worship Law as passed. If subsequent drafts of a proposed action deviate significantly from prior drafts, they must be referred again to the county planning agency pursuant to GML 239. Calverton Manor, LLC v. Town of Riverhead, 160 A.D.3d 842, 845 (2nd Dep’t) (“Where changes are made to a proposed action following [GML 239] referral, a new referral is not required if ‘the particulars of the amendment were embraced within the original referral.’ . . . Here, the TDR law as enacted contained substantial modifications that warranted a new referral . . . the Town Board’s failure to comply with the referral requirements of General Municipal Law §239-m constitutes a ‘jurisdictional defect.’”).

186. Given the facts set forth in the Resolution, the complete text of the House of Worship Law as well as all existing provisions to be affected thereby could not have been submitted to the Rockland County Department of Planning before final action was taken by the Village thereupon.

187. As Defendants failed to comply with General Municipal Law 239-m, the House of Worship Law is null and void.

AS AND FOR A SECOND CAUSE OF ACTION

The House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments §§1 and 2

188. Chestnut Ridge local law Article XVII sets forth the procedure for amendment of the zoning law for the Village. Article XVII provides, in relevant part:

1. Amendment of chapter; report from Planning Board.

This local law, or any part thereof, may be amended, supplemented or repealed from time to time by the Village Board on its own motion or upon recommendation by the Planning Board or by petition.

...

2. Petitions.

Petitions to amend this local law shall be in writing and shall contain a description of the property affected, together with such other information as the Village Board shall require. Such petitions shall include the names and addresses of all owners of real property within five hundred (500) feet of the property affected or any other contiguous property of a Plaintiff in the same ownership. All petitions for amendment of this local law, excepting those submitted by the Planning Board or on motion of the Village Board, shall be accompanied by a fee in accordance with the Standard Schedule of Fees of the Village of Chestnut Ridge.

A copy Chestnut Ridge local law Article XVII is annexed hereto as Exhibit "16."

189. The Resolution unequivocally states that the House of Worship Law, as an amendment to the zoning code for the Village, was initiated by a "written petition submitted by Brooker Engineering, PLLC, in letter form, submitted on behalf of the Orthodox Jewish Coalition of Chestnut Ridge." *Resolution at 1.*

190. The Village continues:

"WHEREAS, as a result of additional oral testimony, and written correspondence and communications submitted to the Village in connection with the Village Board's eventual deliberation and consideration of this local law (some of which are referred to hereinbelow), its is apparent that some members of the OJC are in fact residents of the Village of Chestnut Ridge, as was asserted in the Brooker Engineering letter of November 1, 2017.

WHEREAS, the Chestnut Ridge Zoning Code Article XVII, entitled “Amendments”, provides that “This local law, or any part thereof, may be amended, supplemented or repealed from time to time by the Village Board on its own motion or upon recommendation of the Planning board, or by petition”; thus, the Village Board finds that any resident of the Village of Chestnut Ridge have (sic) the right under existing Village law, at any time, either before or after the November 1st Brooker Engineering letter, to petition the Village Board of Trustees to amend the Zoning law.”

191. Although far from clear, it appears that the Village is arguing (a) that the November 1, 2017 Brooker Engineering letter (“11/1/17 Brooker letter”) is a petition under Chestnut Ridge Zoning Code Article XVII; (b) any resident of the Village has the right to petition for amendment of the zoning code; and (c) therefore, any request by any resident of the Village to amend the zoning code constitutes a petition under Article XVII; or, in the alternative (d) multiple unspecified “petitions” were, in fact, submitted to the Village both before and after the 11/1/17 Brooker letter. A copy of the 11/1/17 Brooker letter is annexed hereto as Exhibit “17.”

192. The interpretation of a zoning law starts with the plain language thereof. See Balbuena v. IDR Realty, LLC, 6 NY3d 338, 356 (Ct of Appls 2006); Matter of Theroux v. Reilly, 1 NY3d 232, 239 (Ct of Appls 2003) (“When interpreting a statute, we turn first to the text as the best evidence of the Legislature’s intent.”); Riley v. County of Broome, 95 NY2d 455, 463 (Ct of Appls 2000) (“Of course, the words of the statute are the best evidence of the Legislature’s intent.”).

193. The Village Code does not define “petition.” See Village of Chestnut Ridge Article XVIII.

194. In the absence of a specific definition for a given word, the Village law provides as follows:

“Word Usage 1. General word usage. A. Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the latest edition of Webster's New Collegiate Dictionary. Terms of law shall have the meanings as set forth in the latest edition of Black's Law Dictionary.”

A copy of page “1” of Article XVIII is annexed hereto as Exhibit “18.”

195. According to the latest edition of Webster’s New Collegiate Dictionary, “Petition” means:

“1: an earnest request: entreaty

2a: a formal written request made to an official person or organized body (such as a court)

b: a document embodying such a formal written request

(cont.)

3: something asked or requested”

<https://www.merriam-webster.com/dictionary/petition>. A copy of the aforementioned page is annexed hereto as Exhibit “19.”

196. Notwithstanding (1) and (3) above, it is clear that the definition of “petition” within Article XVII is that identified above as (2a) and (b). Article XVII §2 provides that said petitions will (i) be in writing; (ii) contain a description of the property affected; (iii) contain the names and addresses of all owners of real property within five hundred (500) feet of the property affected or any other contiguous property of a Plaintiff in the same ownership;⁸ and (iv) be accompanied by a fee.

197. The 11/1/17 Brooker letter did not refer to Article XVII, did not describe itself as a petition, was not signed by any resident of the Village, did not identify any resident of the Village, and was not accompanied by any fee. The 11/1/17 Brooker letter is just that: a letter, nothing more.

⁸ It is conceded that any petition to amend the zoning law in as comprehensive and wide-ranging a manner as the House of Worship Law does could not reasonably be expected to “contain the names and addresses of all owners of

198. The Village simply seeks to call what is clearly a letter a petition *post hac* in order meet the necessary procedural requirements for amending the zoning law.

199. This is all the more apparent in the frankly bizarre corollary to the “letter is a petition” argument; namely, the statement that “any resident” has the right “at any time, either before or after the November 1st Brooker Engineering letter, to petition the Village Board of Trustees to amend the Zoning law.”

200. There is, of course, no dispute that any resident of the Village can petition the Village Board to change the zoning law at any time. However, they must, in fact, submit a formal petition, as required by the local law.

201. The implication of the Village in the Resolution seems to be that, if it is determined that the 11/1/17 Brooker letter is not a petition (which it clearly is not), then some other unidentified request(s) before and/or after the 11/1/17 Brooker letter should be deemed petitions. If the position that any such unidentified request can be or not be a petition, depending on what one needs at the moment, then the explicit requirement in the law for a petition is utterly meaningless.

202. No argument need be made that this position is the very definition of arbitrary and capricious.

203. Given the above, the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments §§1 and 2.

real property within five hundred (500) feet of the property affected . . .” Such a concession, however, does not obviate the need for a petition under the law.

AS AND FOR A THIRD CAUSE OF ACTION

The House of Worship Law is null and void as it was passed in reliance upon a municipal resolution that contained materially false and derogatory information

204. Included in the Resolution is the following comments regarding the undersigned, to wit:

“WHEREAS, a citizen group also retained two attorneys who spoke and submitted written comments at the June 28, 2018 Public Hearing, one of whom stated to the Village Board that he intended to address “both the audience and the Board”,⁹ and identified his clients as “good Americans”. . . [and] espoused conspiracy theories as to the genesis of the proposed law.”

205. The quotation of the undersigned as identifying CUPON of Chestnut Ridge as “good Americans” seems to suggest some nefarious intent on the part of the undersigned, perhaps suggesting that those that do not agree with the undersigned’s clients are not “good Americans.” The choice to selectively quote these words, as if the undersigned’s choice of words carried some hidden meaning is, at the very least, improper.

206. The statement of the undersigned, in context, was as follows:

“MR. MOGEL: I’m addressing both the audience and the board. My name is Steven Mogel and I represent CUPON. Who is CUPON? CUPON Chestnut Ridge are your neighbors, they are your constituents and they’re people that love this Village. They are people, like all good American should, are people who believe in equal treatment for everyone regardless of race, creed, color or religion.

(Crowd applauds)

MR. MOGEL: There (sic) people who hold sacred the idea of freedom of religion as all good Americans should.

(Crowd applauds)

MR. MOGEL: Religious worship or the absence of religious worship should be honored and protected and it is protected in the Constitution and Federal and State Law and people of good conscious (sic) also protect it. However, the rights of

⁹ The undersigned is truly at a loss as to how to address the quoted language. While, on its face, the quoting of the undersigned as “addressing both the Board and the audience” seems innocuous, it seems apparent that the author of the Resolution is implying some improper motive to this statement. As the undersigned cannot discern the purported improper motive, no further comment will be made.

those who wish to worship in a particular way do not trump the needs of everyone else.

(Crowd applauds)

MR. MOGEL: They don't trump the needs of everyone who chooses to worship a different way or not to worship at all. CUPON is concerned that this basic American view is not being adequately advocated by its representatives.

A VOICE: Yes."

6/28/19 Transcript at 29-30.

207. As should be abundantly clear, there is nothing whatsoever nefarious or untoward about the undersigned's comments, the selective and out of context quotation in the Resolution aside.

208. Far more troubling is the subsequent comment that the undersigned "espoused conspiracy theories as to the genesis of the proposed law." This comment is demonstrably false, unethical, and defamatory.

209. The language of the undersigned which it is alleged constitutes a "conspiracy theory" is as follows:

MR. MOGEL: The law that was presented at the Village Board meeting on February 22, 2018 was added to the agenda with less than two days notice. Even though it was the product of negotiations for an unknown period of time between Board Members, the Orthodox Jewish Coalition and Brooker Engineering, which was hired by the Orthodox Jewish Coalition, and no one else. No one else. FOIL requests made to the Village show that there are no records of the meetings, we don't know who attended on behalf of the Board, we don't know if it complies with the open meetings law, but what we do know is that almost two weeks before the February 22nd meeting a memorandum was prepared and presented to the Village Board that set forth this proposed law, why then only two days notice was this dropped onto the agenda?

A VOICE: Where's the transparency?

MR. MOGEL: As noted by the Planning Board in number three of it's (sic) May 29th comments, "we question why only input of one religious organization, the Orthodox Jewish Coalition, was considered in connection with the drafting of the

proposed local law. The proposed law is designed to favor one religious institution over another. We are concerned that it maybe (sic) unconstitutional and prohibited due to the established (sic) laws of the First Amendments (sic).”

Id at 31.

Copies of the pages cited *supra* from the 6/28/19 Transcript are annexed hereto as Exhibit “20.

210. Annexed to the instant petition are:

- a. billing statements showing that the Village Planners reviewed the “OJC law,” met with Brooker Engineering, and met with Defendant Presti regarding the “OJC law” beginning approximately (6) months before consideration of the House of Worship Law was ever disclosed to the public on February 22, 2018; and
- b. the results of a FOIL request, wherein the Village Clerk attested, in writing, that no records, minutes, or notes exist from any of the meetings between the OJC, the Village Board, Brooker Engineering, or the Village Planners, and that no records exist as to who was present, what they discussed, or how many times they met.

Copies of the above are annexed hereto as Exhibits “21” and “22.”

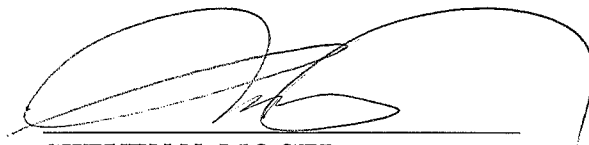
211. The undersigned was not “espousing conspiracy theories,” but reporting facts, each of which was documented and none of which was ever denied by the Village. Falsely accusing the undersigned of such behavior is beyond all bounds of propriety.

212. Given that the Resolution is predicated, in part, upon this demonstrably false and defamatory statement, the House of Worship Law should be declared null and void.

WHEREFORE, on behalf of the Plaintiffs HILDA KOGUT, ROBERT E. ASSELBERGS and MAGALI DUPUY, I request a Judgment and Order:

- (a) Declaring that a local law entitled “A Local Law Amending Local Law No. 20 of 1987, the Zoning Law of the Village of Chestnut Ridge, with regards to Residential Places of Assembly and Houses of Worship” (“House of Worship Law”) is null and void for failure to comply with General Municipal Law 239; and
- (b) Declaring that the House of Worship Law is null and void as it was not passed in accordance with Village of Chestnut Ridge local law Article XVII: Amendments, §1 and 2; and
- (c) Declaring that the House of Worship Law is null and void as it was passed in reliance upon a municipal resolution that contained materially false information.
- (d) Such other and further relief as, to the Court, may seem just, proper, and equitable.

Dated: November 5, 2019
Monticello, NY



STEVEN N. MOGEL
Attorney at Law
Attorney for Plaintiffs
457 Broadway, STE 16A
Monticello, NY 12701

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

HILDA KOGUT being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.



HILDA KOGUT

Sworn to before me this 6th
day of November, 2019.



NOTARY PUBLIC

DORI KAPLAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KA6320062
Qualified in Rockland County
My Commission Expires 03-02-2023

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

MAGALI DUPUY being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Magali Dupuy

MAGALI DUPUY

Sworn to before me this 5th
day of November, 2019.

Robert A. Mangione

NOTARY PUBLIC

