

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY HOWARD, JERYL ABRAMSON
and YRP, LLC,

Plaintiffs,

-against-

COMPLAINT

THE TOWN OF BETHEL; TOWN OF BETHEL PLANNING BOARD; HERMAN BRESSLER, Individually and as Chairman of the Town of Bethel Planning Board; WILLIAM BREY, Individually and as Member of the Town of Bethel Planning Board; ELMER BRUCHER, Individually and as a Member of the Town of Bethel Planning Board; LEON SMITH, Individually and as Member of the Town of Bethel Planning Board; WILFRED HUGHSON, Individually and as Member of the Town of Bethel Planning Board; TIMOTHY DOLLARD, Individually and as Member of the Town of Bethel Planning Board; BERNARD GREISBERG, Individually and as Member of the Town of Bethel Planning Board; VICTORIA VASSMER-SIMPSON, individually and as Town Supervisor of the Town of Bethel; ROBERT BLAISE, individually and as a Bethel Town Board Member; HAROLD RUSSELL, individually and as a Bethel Town Board Member; RICHARD CRUMLEY, individually and as a Bethel Town Board Member; DANIEL STURM, individually and as a Bethel Town Board Member; and DANIEL HOGUE, individually and as Sheriff of the County of Sullivan.

Defendants.

The Plaintiffs, Roy Howard, Jeryl Abramson and YRP, LLC, by their attorney, Russell A. Schindler, Esq., as and for their Complaint as against the above-named Defendants allege the following:

I. THE PARTIES

1. Plaintiffs Roy Howard and Jeryl Abramson are residents of the Town of Bethel, County of Sullivan and State of New York, and they are citizens of the United States of America.
2. Plaintiff, YRP, LLC, is a limited liability company duly created and existing pursuant to the laws of the State of New York, and which maintains its principal place of business in the

Town of Bethel, Sullivan County, New York.

3. Defendant, Town of Bethel, is a municipal corporation duly created and existing pursuant to the laws of the State of New York, and which is one of the towns within the County of Sullivan.

4. Defendant, Town of Bethel Planning Board, is a duly constituted board created and existing pursuant to the laws of the Town of Bethel and the State of New York.

5. Defendants, Herman Bressler, William Brey, Elmer Brucher, Leon Smith, Wilfred Hughson, Timothy Dollard and Bernard Greisberg are each residents of the Town of Bethel, Sullivan County, New York and are members of the Town of Bethel Planning Board.

6. Defendant, Victoria Vassmer-Simpson is a resident of the Town of Bethel and is the Town of Bethel town Supervisor.

7. Defendants Robert Blaise, Harold Russell, Richard Crumley and Daniel Sturm are each residents of the Town of Bethel, Sullivan County, New York, and are members of the Town of Bethel Town Board.

8. Defendant, Daniel Hogue, is the Sheriff of the County of Sullivan.

II. JURISDICTION AND VENUE

9. This action is brought pursuant to 42 U.S.C. §1983 to redress violations of the Plaintiffs' rights as guaranteed to the Plaintiffs by the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution by persons acting under color of state law, and, as such, jurisdiction is provided by 28 U.S.C. §§1343(a)(3),(4) and 1331 (a), as well as by the United States Constitution, First, Fourth, Fifth and Fourteenth Amendments and 42 U.S.C. §§1983,1988.

10. Venue is proper in the U.S. District Court, Southern District of New York, as all of the parties are residents of Sullivan County and all of the events which form the basis for this action

occurred in Sullivan County.

III. THE FACTS

11. The Plaintiffs, Roy Howard, Jeryl Abramson, and YRP, LLC, are owners of certain real property consisting of more than 100 acres located within the Town of Bethel, Sullivan County, New York.

12. That the real property owned by the Plaintiffs was once the homestead of Max Yasgur, who hosted the 1969 “Woodstock” festival upon a nearby parcel, and Plaintiff’s property has international historic significance.

13. That the Plaintiffs proposed to host a three-day event on their real property commemorative of the anniversary of the 1969 “Woodstock” festival to be held on August 12, 13, and 14, 2005.

14. That the Plaintiffs’ proposed event included camping, playing non-amplified music, discussion of political issues, sharing of memories, and the selling of various items by licensed vendors, including items of visual art and other arts and crafts items, and said event would be open to the general public.

15. That Plaintiffs’ proposed event constituted an exercise of the First Amendment rights of freedom of speech, free expression, freedom of association and freedom of assembly.

16. That, by operation of the Fourteenth Amendment, the First Amendment rights mentioned above are applicable to the States.

17. That by virtue of the Town Code of the Town of Bethel, the Plaintiffs’ real property is located within an “agricultural district”, wherein a recreational event and camping are acceptable special uses.

18. That, pursuant to the Town Code of the Town of Bethel the Plaintiffs’ proposed event is

considered a recreational event requiring a special use permit.

19. Additionally, by virtue of the Town of Code of the Town of Bethel, the proposed camping is an activity which if performed without a license is a crime.

20. That the Town Code of the Town of Bethel, at Section 57.2 thereof, defines camping as “[T]he use of a property as a site for sleeping outside, or; the parking of travel trailers or similar equipment, the erection of tents or other shelters, to serve as temporary residences”.

21. Pursuant to Section 57.3 and Section 57.9(A) of the Town Code of the Town of Bethel camping without a permit constitutes a misdemeanor.

22. That Section 57.2 of the Town Code of the Town of Bethel is overbroad in violation of the First Amendment, as made applicable upon the States by operation of the Fourteenth Amendment, in that camping at an event such as this constitutes expressive conduct protected by the Free Speech and Free Assembly Clause which may not be criminalized and that said statute criminalizes behavior that is otherwise protected by the First Amendment.

23. That Section 57.2 of the Town Code of the Town Bethel further violates the Fourteenth Amendment of the U.S. Constitution in that, by criminalizing “sleeping outside” the law violates the Plaintiffs’ fundamental rights protected by the Due Process Clause of the Fourteenth Amendment.

24. That the Plaintiffs’ did seek a special use permit from the Town of Bethel Planning Board for the purpose of complying with Article 130 of the Town Code.

25. That Defendant Town of Bethel Planning Board and Defendants Bressler, Brey, Brucher, Smith, Hughson, Dollard and Greisberg, individually and in their capacity as members of the Defendant Town of Bethel Planning Board did deny the Plaintiffs’ application for a special use permit.

26. That, by denying the Plaintiffs' application for a special use permit, the Defendants named above did violate the Plaintiffs' rights under the First and Fifth Amendments of the U.S.

Constitution as made applicable upon the States by operation of the Fourteenth Amendment.

27. That the denial of the Plaintiffs' application for a special use permit constitutes a prior restraint upon Plaintiffs' rights protected by the Free Speech Clause, Free Assembly Clause and Free Association Clause of the First Amendment.

28. That the denial of the Plaintiffs' application for a special use permit, to the extent that same was based upon failure of the Plaintiffs to pay "consultant fees" charged to the Plaintiffs violates both the First Amendment and the Fifth Amendment, as made applicable upon the States by operation of the Fourteenth Amendment.

29. That the exorbitant "consultant fee" imposed by said Defendants violate the principle that the government may not profit by imposing licensing and permit fees on the exercise of First Amendment rights and is prohibited from raising revenue under the guise of defraying its administrative costs.

30. Furthermore, the imposition of the "consultant fee" as a condition of the granting of the special use permit constitutes a violation of the Plaintiffs' Procedural Due Process Rights in that the Defendants failed to follow their own procedures regarding the imposition of such fee, specifically failing to conduct a meeting with the Plaintiff's to estimate a reasonable fee prior to the imposition of same, and failing to establish an escrow for the estimated fee.

31. That, in light of the denial of the special use permit, the Plaintiffs did not conduct their event as planned, in that they did not charge an entry fee to those members of the general public who attended, being forced to accept only voluntary donations for fear of violating the terms of Article 130 of the Town of Bethel Town Code.

32. That, during the event held by the Plaintiffs, the Plaintiffs did not allow camping for fear of criminal prosecution for violating the terms of Article 57 of the Town Code of the Town of Bethel.

33. That prior to the event held by Plaintiffs, Defendant Daniel Hogue and Defendant, Victoria Vassmer-Simpson, issued nearly identical letters in which the Plaintiffs were threatened with the imposition of thousands of dollars as a penalty to the Plaintiffs if the Plaintiffs would need the assistance of the police to enforce the Plaintiffs' property rights.

34. That, despite the fact that the Plaintiffs held a lawful event upon their property, Defendant, Daniel Hogue, in his capacity as Sullivan County Sheriff, did authorize and did order his deputies to establish a roadblock near the entrance to Plaintiffs' property.

35. That Defendant, Daniel Hogue, did authorize and instruct his deputies to stop, search and interrogate those members of the public who sought to attend the Plaintiffs' lawful event.

36. That the stopping, searching and interrogating of those members of the public attending the Plaintiffs' lawful event constituted a violation of the Plaintiffs' First Amendment rights of Free Speech, Free Assembly and Free Association, as well as the Fourth Amendment rights of those people who attended or wanted to attend the Plaintiffs' event.

37. Furthermore, the road block, and the searches, seizures and interrogations which accompanied the roadblock, created a "chilling effect" upon the exercise of the Plaintiffs' First Amendment rights.

38. Additionally, during the course of Plaintiffs' event, a New York State Police helicopter circled over the Plaintiffs' property and the Plaintiffs' guests several times each day to further place a "chilling effect" upon the Plaintiffs' exercise of their First Amendment rights.

39. That the Defendants, Town of Bethel, Town of Bethel Planning Board, Herman Bressler,

William Brey, Elmer Brucher, Leon Smith, Wilfred Hughson, Timothy Dollard, Bernard Greisberg, Victoria Vassmer-Simpson, Robert Blaise Harold Russell, Richard Crumley and Daniel Strum have treated the Plaintiffs in a manner not equal to others similarly situated in violation of the Equal Protection Clause of the Fourteenth Amendment.

40. That, for instance, other applicants for special use permits have not been charged the exorbitant consultant's fees, even though the consultant has been asked to perform site visits and other similar tasks for these other applicants.

41. That Defendant, Town of Bethel and Defendant Town of Bethel Planning Board has refused to allow the Plaintiffs to advertise their event until after a special use permit has been issued, a condition which has not been imposed upon other applicants.

42. Furthermore, the Defendant Town of Bethel has created the Bethel Local Development Corporation (hereinafter "BLDC") for the purpose of holding competing recreational events within the Town of Bethel and has exempted any of the BLDC's events from having to comply with the same provisions of the Town Code.

43. That by exempting the BLDC from the provisions of the Town Code, Defendant, Town of Bethel, can hold similar events to that held by the Plaintiffs, for the benefit of favored applicants without the added time and expense of having to apply for permits or pay exorbitant consultant's fees, and can thereby attempt to defeat the Plaintiffs constitutional rights through unfair competition.

44. Furthermore, Defendant Town of Bethel uses the threat of contempt of court in its determined effort to defeat the Plaintiffs' constitutional rights, as it did prior to the Plaintiffs' 2004 anniversary event.

45. That prior to the Plaintiffs' 2004 anniversary event, while the Plaintiffs' application for a

special use permit was pending, Defendant Town of Bethel did file an application for contempt of court against the Plaintiffs for advertising their proposed event, even though there was no court order in existence which would have prevented such advertisement.

46. That the Defendant, Town of Bethel's contempt of court application was prosecuted against the Plaintiffs even though the Plaintiffs had never been served with an order of any court which Plaintiffs allegedly violated.

47. That Defendant, Town of Bethel, held their contempt of court application open and pending in the New York State Supreme Court, County of Sullivan, even after Plaintiffs had received a special use permit to conduct their event.

48. That Defendant, Town of Bethel, did hold their contempt of court application open and pending after the issuance of the special use permit for the purpose of intimidating the Plaintiffs and to create a "chilling effect" upon the exercise of their First Amendment rights.

49. That, the Defendant Town of Bethel advertises other upcoming events on its own internet web site, which events have not as yet received permits under the Town Code of the Town of Bethel.

50. That, Defendant, Harold Russell, did assist in the violation of Plaintiffs' constitutional rights, by filing a false affidavit with the Town of Bethel Planning Board, asserting that Plaintiffs' event has caused losses to his business, which assertion has never been documented nor proven despite Plaintiffs' requests for proof.

51. That Defendant Harold Russell's affidavit falsely asserted that "milk production at our farm is depressed by as much as \$500.-\$700 per day due to the impacts" of the Plaintiffs' events.

52. That Defendant, Harold Russell's affidavit further asserts, falsely, that during an event conducted by the Plaintiffs "several years ago", without specifying which year, "the level of

smoke was so thick over our farm that two of our cows died and, at the recommendation of our veterinarian four other cows had to be sold at market for beef production because of the stress they suffered from the impacts of the Plaintiffs' event.

53. That Defendant Harold Russell did prepare and file this affidavit knowing that same was false and he did so for the purpose of attempting to contribute to the deprivation of Plaintiffs' constitutional rights.

54. That, during the Plaintiffs' event, Defendant Daniel Hogue and Defendant Town of Bethel did cause to be posted numerous signs along Route 17 B stating "No Parking" along said route, whereas no such posting is done at other events in the Town of Bethel, nor is there enforcement of a parking ban along Route 17B at other events held within said Town.

55. That the disparate treatment of the Plaintiffs is motivated by the Defendants' desire to deprive the Plaintiffs of the lawful use of their property, to deprive the Plaintiffs of their First Amendment freedom of association, assemblage, speech and expression, and to create a "chilling effect" upon the exercise of these First Amendment freedoms by the Plaintiffs and their attendees.

56. That, Section 130-05 of the Town Code of the Town of Bethel defines "commercial recreation" as "recreation facilities operated as a business and open to the general public for a fee".

57. As such, the sole difference between a private recreation event which does not require a special use permit and a "commercial recreation" event which does require a special use permit is the charging of a fee to those members of the general public who attend.

58. That the definition of "commercial recreation" is overbroad, in violation of the First Amendment of the U.S. Constitution, in that the mere exchange of money does not transform First Amendment expressive activity into a commercial transaction which can then be regulated or

prohibited, as has long been held by the U.S. Supreme Court.

59. That the Defendants, at all times mentioned herein, were acting under color of state law, as that term is used in the context of 42 U.S.C. §1983 jurisprudence.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST
DEFENDANT TOWN OF BETHEL

60. That, based upon the facts outlined above, Section 57.2, Section 57.3 and Section 57.9 (A) of the Town Code of the Town of Bethel are overbroad in violation of the First Amendment, as made applicable upon the States by operation of the Fourteenth Amendment.

61. That, in light of the overbreadth of these sections of law Plaintiffs request a judgment of this Court declaring these sections of the Town Code unconstitutional and granting injunctive relief preventing Defendant Town of Bethel from enforcing said provisions of the Town Code.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
BRESSLER, BREY, BRUCHER, SMITH, HUGHSON, DOLLARD, GREISBERG
AND THE TOWN OF BETHEL PLANNING BOARD-42 USC §1983

62. Based upon the facts set forth above, the Defendants named herein did violate the Plaintiffs' rights of Freedom of Speech, Freedom of Assembly and Freedom of Association as guaranteed to the Plaintiffs by the First Amendment of the U.S. Constitution as made applicable upon the States by operation of the Fourteenth Amendment, by failing to grant to the Plaintiffs a special use permit.

63. That, as a result of the violation of Plaintiffs' rights as described above, Plaintiffs suffered a deprivation of their civil rights, loss of income, public shame and other damages.

64. By reason of the foregoing, Plaintiffs seek judgment as against these Defendants personally for actions taken under the color of state law pursuant to 42 U.S.C. §1983 in an amount to be determined by the Court.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS BRESSLER, BREY,
BRUCHER, SMITH, HUGHSON, DOLLARD, GREISBERG, AND THE TOWN OF
BETHEL PLANNING BOARD- 42 U.S.C. §1983

65. That based upon the facts as described above, the Defendants named herein did violate the Plaintiffs rights as guaranteed by the Fifth Amendment of the U.S. Constitution as made applicable to the States by operation of the Fourteenth Amendment, by denying the Plaintiffs' application for a special permit based upon Plaintiffs' failure to pay the exorbitant consultant's fee.

66. That, the Town Code of the Town of Bethel requires at Section 130-06A thereof, that the Building Inspector confer with the Plaintiffs for the purpose of computing an amount to be placed in escrow, and that any fees to be charged shall be paid from the escrow account.

67. That the Defendants named herein did deny the Plaintiffs' application for a special use permit for Plaintiffs' failure to pay exorbitant consultant's fees despite the failure of the Building Inspector to confer with Plaintiffs and despite the absence of such an escrow account.

68. That when the Defendants attempted to enforce the collection of the exorbitant consultant's fee, the Plaintiffs objected upon the grounds that the established procedures had not been followed, and that the fees had not been itemized nor explained.

69. That in response to Plaintiffs' objections to the exorbitant consultant's fee charged, the Defendants reduced the amount claimed by \$1,700.00, but failed to explain or itemize the fees still sought to be collected.

70. That, to the extent the denial of the special use permit by these Defendants was based upon the Plaintiffs failure to pay the consultant's fees, this constitutes a violation of the Plaintiffs' right to Due Process of Law as guaranteed to the Plaintiffs by the Fifth and Fourteenth Amendments of the U.S. Constitution.

71. By reason of the Due Process violation, Plaintiffs have suffered a loss of their civil rights, loss of income, public shame and other damages.

72. That, as a result of the Due Process violation, Plaintiffs seek an award of damages in an amount to be determined by the Court, along with injunctive relief preventing the Defendants from enforcing or collecting the consultant's fee.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT DANIEL HOGUE

73. That the roadblock and its attendant searches, seizures and interrogations, as ordered by Defendant Daniel Hogue, violated the Plaintiffs' right to Freedom of Assembly, Freedom of Speech and Freedom of Association as guaranteed by the First Amendment, as made applicable upon the States by operation of the Fourteenth Amendment; and did violate the Fourth Amendment rights of those persons attending or wanting to attend the Plaintiffs' event.

74. That the roadblock and the use of the helicopter fly-overs did have a "chilling effect" upon the Plaintiffs' First Amendment rights.

75. That the Plaintiffs seek injunctive relief as against Defendant, Daniel Hogue, in his capacity as Sullivan County Sheriff, and his successors in office, preventing the use of roadblocks and helicopter fly-overs during future events to be held at the Plaintiffs' property.

AS AND FOR A FIFTH CAUSE OF ACTION- AGAINST DEFENDANTS TOWN OF
BETHEL, TOWN OF BETHEL PLANNING BOARD AND HAROLD RUSSELL EQUAL
PROTECTION 42 U.S.C. §1983

76. That based upon the facts as outlined above relative to the treatment of Plaintiffs in a manner different from that of others similarly situated, Plaintiffs allege that such disparate treatment constitutes a violation of Plaintiffs' rights to equal protection under the law, as guaranteed to Plaintiffs by operation of the Fourteenth Amendment to the U.S. Constitution.

77. That by reason of said equal protection violation, Plaintiffs have suffered a violation of their constitutional rights, have been denied a special use permit for their 2005 event, have sustained a loss of earnings and have sustained other damages relative to same.

AS AND FOR A SIXTH CAUSE OF ACTION AS AGAINST DEFENDANT TOWN OF
BETHEL-FIRST AMENDMENT 42 U.S.C. §1983

78. That Section 130-05 of the Bethel Town Code, as to such part of same which defines “commercial recreation” is overbroad in violation of the First Amendment, on its face.

79. As such, Plaintiffs seek a declaration by this Court that said part of Bethel Town Code Section 130-05 defining “commercial recreation” is unconstitutional.

AS AND FOR A SEVENTH CAUSE OF ACTION AS AGAINST DEFENDANTS TOWN OF
BETHEL AND TOWN OF BETHEL PLANNING BOARD

80. That Section 130-05 of the Bethel Town Code, as to such part of same which defines “commercial recreation” is overbroad as applied by these Defendants in violation of the First Amendment, for the reasons set forth above.

81. As such, Plaintiffs seek injunctive relief from the enforcement of the special use permit requirements of the Bethel Town Code.

82. Plaintiffs further seek an award of damages in that, by application of said overbroad definition of commercial recreation, Plaintiffs have sustained a loss of income, and have sustained other damages relative to the denial of the special use permit.

ATTORNEY’S FEES

83. Pursuant to 42 U.S.C.§1988, Plaintiffs seek an award of counsel fees for each of the causes of action set forth above, in an amount to be determined by the Court.

JURY TRIAL DEMAND

84. Plaintiffs hereby demand a trial by jury with respect to each of the causes of action set forth above.

Wherefore, the Plaintiffs respectfully request judgment for the relief sought above, along with such other and further relief, as to the Court may seem just and proper.

Dated: December 15, 2005
Kingston, NY

s/

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