

United States District Court
for the
District of Massachusetts

JOHN ZARBA and
SUSAN LEMOIE ZARBA,

Plaintiffs

v.

THE TOWN OF OAK BLUFFS, THOMAS PERRY current Building Inspector, ROBERT WHRITENOUR Town of Oak Bluffs Administrator, JOE RE, GEORGE WARREN, ANDREA ROGERS, KRIS CHVATAL, PETER YOARS, as they are Members of the Zoning Board of Appeals of Oak Bluffs, MICHAEL PERRY and LLEWELLYN ROGERS, as they are Associate Members of the Zoning Board of Appeals of Oak Bluffs, DAVID BAILEY Oak Bluffs Principal Assessor, MARK BARBADORO former Oak Bluffs Building Inspector, RONALD RAPPAPORT and MICHAEL GOLDSMITH Town Counsel of the Town of Oak Bluffs, THE LAW FIRM OF REYNOLDS, RAPPAPORT, KAPLAN & HACKNEY, Town counsel law firm to the Town of Oak Bluffs

Defendants

Case No.

U.S. DISTRICT COURT
DISTRICT OF MASS.

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FILED
IN CLERKS OFFICE

COMPLAINT

This is a complaint seeking judicial review of the actions of the defendants while co-conspiring and acting under the color of state law to intentionally deprive the plaintiffs of their federal constitutional property rights.

For the past 36 months the Plaintiff's (the Zarba's) were denied the ability to park on their private property, denied a Final Occupancy Permit and denied a Temporary Occupancy Permit for a legal, permitted, completed and occupied guest home.

Mr. Barbadoro, the former Building Inspector's decision to deny the Zarba's a Final Occupancy Permit was an administrative

decision that was performed in bad faith, with intent to harm the Zarba's, primarily in furtherance of personal instead of a public interest. Therefore, the Building Inspector and the Town of Oak Bluffs are not entitled to absolute immunity. This lengthy delay deprived the Zarba's of their constitutional rights to both procedural and substantive due process, equal protection and a unconstitutional taking of property.

1. Plaintiffs, John J. Zarba and Susan L. Lemoie-Zarba (the "Zarba's"), are individuals owning property at 14R South Street, Oak Bluffs, Massachusetts 02557 (the "Zarba Property").

2. Defendant, The Town of Oak Bluffs (the "Town") is a municipality of the Commonwealth of Massachusetts. The Town has offices at 56 School Street, Oak Bluffs, Massachusetts 02557.

3. Defendant, Thomas Perry is the current Building Inspector of the Town of Oak Bluffs, office is located at 56 School Street, Oak Bluffs, MA 02557.

4. Defendant, Robert Whritenour is the Town Administrator of the Town of Oak Bluffs, office is located at 56 School Street, Oak Bluffs, MA 02557.

5. Defendants, Kris Chvatal Chairman, Joe Re, George Warren, Andrea Rogers, and Peter Yoars are regular members of the Zoning Board of Appeals of the Town of Oak Bluffs (the "Board"), and Michael Perry and Llewellyn Rogers are associate members of the Board. Their office is located at 56 School Street, Oak Bluffs, Massachusetts 02557.

6. Defendant, David Bailey is the Principal Assessor of the Town of Oak Bluffs, office is located at 56 School Street, Oak Bluffs, Massachusetts, 02557.

7. Defendant, Mark Barbadoro (the former "Building Inspector"), is the former building inspector and zoning enforcement officer of the Town of Oak Bluffs. Current Building Commissioner of the City of Fitchburg, 166 Boulder Drive, Fitchburg, MA 01420.

8. Defendant, Ronald Rappaport is the Part-time Town Counsel of the Town of Oak Bluffs, he is one of the Senior Partners of Reynolds, Rappaport, Kaplan & Hackney LLC, P.O. Box 2540 Edgartown, MA 02539

9. Defendant, Michael Goldsmith is the Part-time Town Counsel of the Town of Oak Bluffs, he is the Director of Reynolds, Rappaport, Kaplan & Hackney LLC, P.O. Box 2540 Edgartown, MA 02539

10. Defendant, The Law Firm of Reynolds, Rappaport, Kaplan & Hackney LLC, is the part-time Town Counsel law firm to The Town of Oak Bluffs, MA. Office is located at P.O. Box 2540, Edgartown, MA 02539.

FACTUAL BACKGROUND

11. The Zarba's purchased the Zarba Property in 2005 that included a recorded plan prepared by Charles R. Gilstad, a registered professional land surveyor, dated May 25, 2005, which was endorsed by the Oak Bluffs Planning Board on June 7, 2005 (the "Gilstad Plan"). A copy of the Gilstad Plan is attached hereto as **Exhibit "A,"**. The Zarba's property is noted as Lot #2 on the attached plan.

12. The Town of Oak Bluffs Counsel, Michael Goldsmith supported and endorsed this Gilstad Plan as noted on May 23, 2005 town counsels endorsement letter addressed to the Oak Bluffs Planning Board hereto attached as **Exhibit "B,"**.

13. On October 13, 2015, the Building Inspector issued a building permit to the Zarba's to construct a 750 SF guesthouse on the Zarba Property under section 3.4 of the Zoning By Law. The Zarba's relied in good faith on the Town issued Building Permit hereto attached as **Exhibit "C,"**. The Zarba's property met code and did not require a special permit, or variance and it is a conforming lot. Ms. Lemoie-Zarba acted as her own General Contractor.

14. On March 9, 2016, the Zarba's were named as defendants in an action brought in Land Court Case No. 16MISC006141 (O'Neil Trust) by John C. O'Neil, a Magistrate of the District Court of Fall River, MA, who owns a nearby property at 4 Davis Avenue, Oak Bluffs concerning O'Neil to use the Zarba's private Way for access to their property (the "O'Neil Action"). Mr. O'Neil was seeking an unrestricted Prescriptive Right to the Zarba's property that included commercial vehicles.

15. The O'Neil Trust used their Island power and influence to persuade the local authorities to deny the Zarba's water hook-up from the Oak Bluffs Water Commission and DigSafe services from

DigSafe Company. After a 3 month delay and a Motion in Land Court, the Zarba's received water and DigSafe services. This Federal Case does not include the Oak Bluffs Water Commission and DigSafe Company to this complaint. The Zarba's added this information into this complaint to inform this court that the Zarba's were denied water and DigSafe services which are additional property rights.

16. On April 13, 2016 the plaintiffs in the O'Neil Trust, named the Town of Oak Bluffs as a defendant and potential abutter to the private Way.

17. On Friday, June 24, 2016, the Zarba's applied for their Final Certificate of Occupancy Permit. Mark Barbadoro performed a final walk through inspection and approved the property for a Final Certificate of Occupancy Permit. On June 24, 2016, Mr. Barbadoro forwarded the Zarba's an email approving the property and allowing the Zarba's to move into the dwelling. On Monday, June 27, 2016, the Zarba's were denied the Final Occupancy Permit because Town Counsel advised the Building Inspector to withhold the Zarba's Final Certificate of Occupancy Permit because of alleged zoning issue.

THE BOUNDARY DISPUTE

18. During the 2016 O'Neil Trust land court matter Judge Piper made it clear that this case involved a potential prescriptive right for the plaintiff to access their property from the Way and that the case did not involve title or land ownership of the Way.

19. Even though Judge Piper made it clear that the O'Neil Trust matter did not involve title or land ownership of the Way the Town of Oak Bluffs was directed by Town Counsel to spend over \$200,000 dollars performing extra-ordinary and extensive legal, title and survey research concerning the Zarba's property. Town Counsel commissioned William Austin of Vineyard Land Surveying to locate the boundary line of the Zarba's private property.

20. The Town of Oak Bluffs was named as a defendant party in the O'Neil Trust matter the Town joined the Plaintiffs' (O'Neil Trust) and on July 8, 2016, 10 days prior to the Town beginning any survey work the Town declared to the Land Court in an Answer Of The Town Of Oak Bluffs To Verified Complaint, "... the Town is the owner of at least a portion of the fee in the Way shown on

the Reagan Plan and the boundary lines shown on the Reagan plan are inaccurate".

21. On July 18, 2016, 10 days after the town declared to Land Court that "the town is the owner of at least a portion of the fee in the Way", Mr. Austin began his survey work on the Zarba's boundary for the Town. Mr. Austin produced a plan that disagreed with the Zarba's recorded Gilstad Plan. Austin's plan shows that the southern boundary line of between the Town and the Zarba's is approximately two feet closer to the guesthouse than shown on the Gilstad plan, and that the guesthouse on the Zarba Property is in violation of the rear setback requirement by approximately two and one tenth feet. A draft of the Austin plan, a copy of which is attached hereto as **Exhibit "D,"** was forwarded to the building inspector.

22. On November 1, 2016, Town Counsel directed the Building Inspector to issue a Town Order to the Zarba's that included a copy of the 2016 Austin survey, a copy of which is attached hereto as **Exhibit "E,"**. This Town Order states the Town will revoke the Zarba's temporary occupancy permit and will issue a \$300/day fine (as prescribed by section 10.1.3 of the bylaws) effective as of February 1, 2017 on the grounds that the guesthouse is in violation of the twenty foot rear setback requirement.

THE PARKING DISPUTE

23. In addition to the six parking spaces existing in the Zarba's main house driveway that enters from South Street, the Zarba's have historically also parked in a parking space at the southern end (rear) of their property, entering from the Way, and have recently used that space for convenient access to the guesthouse.

24. On September 29, 2016, the Building Inspector sent the Zarba's an email advising them that their use of this other parking space was a violation of this By Law. The email included threats to impose a \$300/day fines for continued use of the south parking space. Numerous other properties in the Town of Oak Bluffs with guest houses use areas for parking on their property that is other than the spaces designated in their building permit application for the guesthouse, but no one other than the Zarba's have been the subject of enforcement action by the Building Inspector.

TOWN OF OAK BLUFFS JOINED THE ZARBA'S NEIGHBORS

25. The Town of Oak Bluff's joined the plaintiff in the O'Neil Trust case. The Town Attorney, Building Inspector, Town Administrator shared shared 103 emails with O'Neil Trust attorney.

26. The town of Oak Bluffs attorney's conspired with the plaintiffs, O'Neil's Trust, attorney they created an Agreement For Judgement document a copy is hereto attached as **Exhibit "F,"**. This agreement states "...it is the Town's position that both the Town and the public (including the Trust) have the right to use The Way ...". This document was created to grant the public and O'Neil's Trust perpetual unrestricted, public access over the Zarba's Private Way. The Town of Oak Bluffs Agreement for Judgement was endorsed by the Town of Oak Bluffs Selectmen and executed by Michael Goldsmith and O'Neil Trust attorneys. The Town has not proven ownership to any portion of the Way. The Town cannot produce a title to the area of the Oak Grove Cemetery that abuts the Way.

27. The Zarba's granted the O'Neil Trust a deeded, restricted easement over the Way that excluded commercial vehicles.

28. The Town attorney instructed the Selectmen of the Town to place a public "Davis Avenue" street sign on the Zarba's Private Way. The hi-way department installed the Davis Ave sign on the Private Way.

29. The Town attorney delivered a copy of the Town's 2016 Austin survey to the Zarba's neighbor, The Murphy's. The Murphy's initiated the setback violation to the building inspector using the Austin Town's survey.

30. The Murphy's placed a copy of the Towns Austin 2016 partial survey on the Zarba's deed.

31. During this O'Neil Trust matter the Town of Oak Bluffs Principal Assessor, David Bailey, tampered with the Zarba's assessor tax documents. Mr. Bailey doubled the tax value of the Zarba's main dwelling, removed a bedroom from the Zarba's Property Card and added a bedroom to the O'Neil Trust Property Card, and moved Davis Avenue in the town assessor maps onto the Zarba's private driveway.

THE ZONING APPEALS

32. On November 10, 2016, the Zarba's hired an attorney and filed a petition with the Board appealing the Town Order of the Building Inspector revoking the temporary Certificate of Occupancy and issuing \$300/fines that was issued on November 1, 2016 and the Building Inspectors \$300/day Parking Violation Order.

33. The Board held consolidated public hearing on the two appeals. The Zarba's requested in writing that the board refrain from consulting with Town Counsel. During the first night of the appeal the ZBA Chairman, Kris Chvatal assured the Zarba's that Town Counsel would not be consulted in this matter. The Board ignored the Zarba's request and they consulted with Town counsel who directed the Board to deny the Zarba's 2 appeals.

Before the second night of the Zarba's Board meeting the members of the board were directed by the Chairman, Kris Chvatal to deny the Zarba's appeals. At the end of the Zarba's appeal the Chairman, Kris Chvatal read a prepared statement without any questions and/or discussion among the Board or the Building Inspector which stated, in effect that the 2016 Austin Plan was correct and the 2005 Gilstad plan of record was incorrect, and that the Zarba's therefore had a setback violation. The Board did not discuss the issue of parking. Upon motion made and seconded, the Board voted 5-0 to "affirm the decision of the Building Inspector." Town counsel advised the board to tell the Zarba's to come back the following month to ask the board for a variance. This advice was completely irrational. The Zarba's met code based on the survey of record, therefore, they did not qualify for a variance. If the Zarba's accepted a variance the variance would be invalid.

COUNT ONE

MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17

THIS ACTION IS DOCKETED IN LAND COURT CASE No.17MISC000139

34. The Zarba's repeat and incorporate by reference the averments of paragraphs 1 through 33.

35. Neither the Building Inspector, Town Counsel nor the ZBA Board has the competence or the lawful authority to adjudicate a boundary dispute between the Town and the Zarba's surveys, or to determine that the deeded 2005 Gilstad plan of record was invalid. Because the 2016 Town Austin Plan has never been recorded and is not in recordable form, and because it purported to disagree with the record plan that established the boundaries of the Zarba Property and was referred to in the Zarba's' deed, it was an

inadequate basis for the Building Inspector to determine that there was indeed a setback violation or to initiate enforcement action.

36. The Zarba's had the right to appeal the parking and zoning Building Inspectors decisions to a neutral ZBA Board. The Town, the Building Inspector, Town Counsel and the ZBA Board have intentionally used the zoning power of the Town to attempt to gain an advantage for the Town in a boundary dispute, and have acted in coercion to deprive the Zarba's' of their property rights without due process of law.

37. The Building Inspector's determination that he had authority under the Zoning By Law to direct the Zarba's not to park in designated areas was without lawful basis. The Zoning By Law does not prohibit the construction or use of parking spaces in addition to those required by the By Law for construction of a guesthouse.

38. The Board's decision is in direct conflict with the facts before it and applicable case law.

39. The Board's decision is in excess of its authority, and is arbitrary, capricious, and based upon legally untenable grounds.

40. The Zarba's action in Land Court against the Building Inspector, the Town of Oak Bluffs and the ZBA Board Members is docketed in Land Court as Case No.17MISC000139. This is a request to enter judgment vacating the decision of the Oak Bluffs Board of Appeals, and enforcement orders issued by the Building Inspector, and enjoining and requiring the Building Inspector to issue a final Certificate of Occupancy for the Zarba's guest house; and to grant the Zarba's permission to park their vehicles in the rear of the the property next to the guest home.

41. On April 4, 2018, Judge Piper of Land Court held a Summary Judgement trial with regards to the Zarba's two appeals. Judge Piper denied the Boundary Dispute Summary Judgement request and allowed the Parking appeal to be heard. The Zarba's won the Parking appeal. Judge Piper adjudicated the Boards Parking decision and granted permission for the Zarba's to park on their property next to the guest house.

42. During the 3 day boundary dispute Land Court trial the Zarba's uncovered the fact that the defendants conspired and committed acts of fraud and negligence. First, William Austin, the Town surveyor stated in his affidavit that the 2016 Austin survey

was based on "original monumentation". Mr. Austin was questioned under oath he confirmed that the Town 2016 survey was not built on any "original monumentation". Second, Mr. Austin and the Town's Title expert witness confirmed that the Town does not have a title and can not prove ownership of the portion of the Oak Grove Cemetery that abuts that Zarba's property. Mr. Austin inappropriately labeled the Oak Grove Cemetery the Town Of Oak Bluffs Oak Grove Cemetery. Third, Mr. Austin placed a label of Davis Avenue on the Zarba's private driveway. Finally, Mr. Austin had an ethical duty to contact the surveyor of record to discuss this 22 inch potential boundary difference. The Town surveyor stated under oath that Town counsel advised him to ignore his ethical duty to not to contact the surveyor of record.

43. Judge Foster of Land Court presided over the 3 day Zarba v. Town of Oak Bluffs boundary dispute trial. The closing arguments were held on February 22, 2019. The results of that trial will be forwarded to this court as soon as the Ruling is docketed. The outcome of this Land Court boundary dispute has no bearing on this civil rights claim against the defendants. The Zarba's should never have been put in a position of having to defend the boundary of their deeded private property for the past 3 years.

COUNT TWO

VIOLATION OF 42 U.S.C. 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS DENIAL OF DUE PROCESS

44. Mr. Barbadoro the Building Inspector was acting as an official of the State of Massachusetts while performing duties as the Building Inspector in the Town of Oak Bluffs. Mr. Barbadoro's actions were under color of state law. The relationship between Town counsel and the Town Building inspector was sufficiently close that the actions of Town Counsel were also under the color of state law.

45. Town Counsel entered into a conspiracy with the Town of Oak Bluffs Building Inspector and the ZBA Board to deprive the Zarba's their federal protected property rights.

46. Mr. Barbadoro's has been granted final decision making authority concerning the delivery of the Zarba's Final Occupancy Permit. Mr. Barbadoro made a deliberate choice to deny the Zarba's a final Occupancy permit among various alternative choices. Mr. Barbadoro's decision to deny the Zarba's parking and a final occupancy permit singles out the Zarba's and influences them

differently from others therefore, the action will be deemed administrative.

47. This lengthy delay deprived the Zarba's of their constitutional rights to both procedural and substantive due process, equal protection and a unconstitutional taking of property.

48. The Zarba's were deprived equal protection and procedural due process. The Zarba's can prove that they had a legitimate claim of entitlement to the building permit. The building permit was issued by right. Therefore, a claim of entitlement was sufficiently met. This triggers a Due Process Guarantee. The Zarba's can claim that the procedural due process claim exists.

49. The Zarba's were also entitled to a fair and impartial ZBA hearing. Instead the board denied the Zarba's appeal based on a defective procedure. The town attorney, building inspector and board have no legal authority to adjudicate a boundary. Therefore the board exceeded its authority and denied the Zarba's on both appeals.

The board was well aware that the Town's 2016 Austin survey was paid for by the Town of Oak Bluffs and created by the direction of Town Counsel, and that Town Counsel had a conflict of interest by advising the board in this matter. The board ignored these facts, consulted with Town Counsel and denied the Zarba's appeal. The board's decision was made pursuant to a constitutional defective procedure. Therefore, the Zarba's were denied their procedural due process.

The building inspector, town counsel and the board committed deliberate and arbitrary abuse of power decisions against the Zarba's therefore the Zarba's substantive due process rights have been violated.

The Zarba's were entitled to constitutional due process right to be free of arbitrary or irrational zoning action. Town counsel advised the board to tell the Zarba's to come back the following month to ask the board for a variance. This advice was completely irrational. The Zarba's met code based on the survey of record therefore they did not qualify for a variance. If the Zarba's accepted a variance the variance would be invalid.

50. The Zarba's are the only residence in the Town of Oak Bluffs to receive parking violations for parking on their private property and the only residence to be denied a final Occupancy Permit after the structure was complete and occupied. The decisions of these defendants was arbitrary, irrational and tainted by improper motives. Town Counsel actions were motivated by personal reasons (the O'Neil Trust matter) unrelated to the delivery of the Zarba's final occupancy permit.

51. Town counsels interference with the delivery of the Zarba's final occupancy permit the day that it was due was a self serving act and was motivated by a lack of impartiality towards the Zarba's. The municipality's actions violated the Zarba's property rights and the right to substantive due process.

52. The building inspector was well aware that the Town had not begun any survey work the day that the Zarba's finalized the construction of the guest home. The building inspector was also party to the O'Neil Trust matter and was well aware that the Town of Oak Bluffs had joined the O'Neil Trust in their quest for rights in the private Way. Mr. Barbadoro understood that his actions were improper.

53. The defendants knew that the Town was not the owner of the portion of the Oak Grove Cemetery that abuts the Zarba's property yet the defendants fraudulently carried out a survey that claims that the Town is the owner.

54. Mr. Barbadoro and the ZBA Board owed a duty to the Zarba's to grant them a Final Occupancy Permit, this duty was breached therefore the Town of Oak Bluffs, The ZBA Board, The Town Administrator, Town Counsel and the Building Inspector should be held liable.

55. The defendants in this matter are not entitled to qualified immunity under 1983 because (1) they violated the Zarba's constitutional property rights, and (2) the unlawfulness of their conduct was clearly established at the time the Zarba's property rights were violated.

COUNT THREE
VIOLATION OF 42 U.S.C. 1985 (3)
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

56. The plaintiffs can prove that Town Counsel acting under color of state law conspired with one or more Town officials to deprive

the Zarba's federal property rights. Town Counsel who is not a state official acted under color of state law when he entered into a conspiracy involving the Building Inspector to deprive the Zarba's of their federal property rights. Town Counsel also acted under color of state law when he conspired with the Town's surveyor and persuaded him to create a survey for the Town that was built on fraud and negligence and to suit the Town's needs.

57. Mr. Whritenour the Town's Administrator while acting under the color of law was obligated as Town Administrator to intervene and to stop this town's behavior towards the Zarba's. Instead, Mr. Whritenour co-conspired with the Building Inspector, Town Attorney, Principal Assessor and surveyor to cause harm to the Zarba's. Mr. Whritenour directed the Principal Assessor to commit tax fraud and directed him to move Davis Avenue onto the Zarba's property. Mr. Whritenour is clearly liable because he encouraged, directed and participated in the Town's Building Inspectors, Town Counsel and Principal Assessors unconstitutional conduct which denied the Zarba's their property rights.

58. Mr. Barbadoro while acting under the color of law co-conspired with Town Counsel and denied the Zarba's a final occupancy permit on the day that it was due. Mr. Barbadoro was well aware that the Town had not even begun any survey work the day that he denied the Zarba's their property rights. Six months later Town Counsel delivered a copy of the 2016 Austin survey to Mr. Barbadoro and directed him to send the Zarba's an Order that included \$300 /day fines and the Zarba's Temporary Occupancy Permit revoked if they did not comply to the 2016 Austin survey. Mr. Barbadoro was also present at the 2 night Zarba ZBA appeal. He co-conspired with the board to support their denial.

59. The Board members co-conspired with Town Counsel with regard to denying the Zarba's due process. The Zarba's did not receive an impartial hearing from the ZBA Board. Instead the board was directed by Town Counsel and the Building Inspector to deny the Zarba's appeal. The Board members were instructed by the Chairman Kris Chvatal to deny the Zarba's appeal. The individual board members intentionally denied the Zarba's appeals causing the Zarba's property rights to be denied. The boards decision was based on an arbitrary use of power by government officials for personal gain.

60. The principal Assessor, David Bailey co-conspired with the Town's administrator, Robert Whritenour to commit an illegal fraudulent tax actions. Mr. Bailey doubled the Zarba's taxes,

removed a bedroom from the Zarba's property tax card. Mr. Bailey also moved Davis Avenue from the O'Neil Trust property and placed it onto the Zarba's property on the Assessment maps.

61. Thomas Perry the current Building Inspector co-conspired with the Town Counsel and the Town Administrator to cause harm to the Zarba's. First, Mr. Perry joined the Town by delivering an affidavit and photos's that were used in the Zarba's Land Court Parking Summary Judgement trial. Mr. Perry fraudulently moved the location of Davis Avenue onto the Zarba's private driveway in the photo's that he attached to his affidavit. Secondly, Mr. Perry ignored the Zarba's request to renew the Zarba's Temporary Occupancy Permit. Mr. Perry refused to reply to the the Zarba's request for a Temporary Occupancy renewal. On Friday, May 24, 2019 the Zarba's were forced to move out of their guest home. Mr. Perry denied the Zarba's request and ousted the Zarba's from their home.

62. Town counsel orchestrated, directed and co-conspired wrong doings against the Zarba's. The Zarba's are a third party that has been harmed by Town counsels fraud and misrepresentation. Town counsel knowing and substantially assisted and encouraged the Town Building Inspector and the Town's Surveyor to commit wrongdoings. Therefore, the Zarba's may sue the town attorney in tort for adding and abetting the towns misdeeds. The following is a list of misconduct and bad faith exhibited by Town Counsel:

First, Town Counsel was well aware that the O'Neil Trust matter in Land Court had nothing to do with Land Ownership. Yet, Town Counsel persuaded the Town to spend over \$200,000 of tax dollars performing extraordinary, legal, title and survey work. Their was never any potential social or economic gain to the Town for spending the town's tax money.

Second, The Town was brought into the O'Neil Trust matter as a defendant. Town Counsel joined the plaintiff, O'Neil Trust and began co-conspiring against the Zarba's. Town Counsel, the Town Administrator, Town Building inspector shared 103 emails with O'Neil's Trust attorney regarding helping O'Neil Trust to gain unlimited access over the Zarba's private property.

Third, Town Counsel had falsely stated to land court "... the Town is the owner of at least a portion of the fee in the Way shown on the Reagan Plan and the boundary lines shown on the Reagan plan are inaccurate" 10 days prior to commissioning any survey work.

Fourth, Town Counsel had no legal authority to interfere with the delivery of the Zarba's Final Occupancy Permit without the benefit of any Town survey work.

Fifth, Town Counsel was well aware that the Town does not have a title to the area of the Oak Grove Cemetery that abuts the Zarba's property, yet Town Counsel directed Mr. Austin to label the Oak Grove Cemetery the Oak Bluffs Oak Grove Cemetery. The 2016 Austin Survey does not include any Original Monuments, yet Town Counsel fraudulently stated in the Town's Order directed to the Zarba's that the town's survey was bound by "original monumentation" and that the Town is the owner of the cemetery.

Sixth, Town Counsel and The Building Inspector prematurely delivered a Setback Violation Order to the Zarba's. This order threatened to revoke the Zarba's Temporary Occupancy Permit and to fine the Zarba's \$300/ day for each day of setback violation.

Seventh, Town Counsel lacks the legal authority to adjudicate a boundary dispute, therefore Town Counsel lacks the authority to advise the ZBA Board regarding the two surveys. Additionally, Town counsel should have recused himself from giving an opinion to the Board based on the fact that Town Counsel commissioned and directed the Town's survey in question and was wearing too many hats to advise the board.

Eight, Town Counsel drafted and executed the Agreement for Judgement document with O'Neil's Trust attorney. Town Counsel lacks the legal authority to do a taking of the Zarba's private property for public use.

Ninth, Town Counsel violated the Rules of Professional conduct, and knowingly assisted and advised Mr. Austin the Town's surveyor to ignore his ethically duty of contacting the surveyor of record when a boundary dispute was uncovered. These actions by Town counsel engaged in conduct involving fraud, deceit and misrepresentation.

Tenth, Town Counsel should have never shared this partial 2016 Austin survey with the O'Neil Trust, and the Zarba's neighbors the Murphy's. These actions caused this Zarba's to be denied a property civil right and a copy of the partial 2016 Austin survey is now a blemish on the Zarba's deed.

COUNT FOUR
VIOLATION OF THE FOURTEENTH AMENDMENT
THE EQUAL PROTECTION CLAUSE
DENIAL OF RIGHTS SECURED BY THE DUE PROCESS CLAUSE INCLUDING THE
JUST COMPENSATION CLAUSE
DENIAL OF SUBSTANTIVE DUE PROCESS AND PROCEDURAL DUE PROCESS

63. Fourteenth Amendment Equal Protection Clause requires states to practice equal protection. Equal Protection refers to idea that a governmental body may not deny people equal protection of its governing laws. The government body must treat an individual in the same manner as others in similar conditions and circumstances.

64. The defendants did not treat the Zarba's in the same manner as others in similar conditions and circumstances. Instead the Town joined the O'Neil Trust and conspired against the Zarba's. The Town violated the Zarba's right to substantive due process by arbitrarily subjecting their land project to heightened scrutiny and intentionally delaying approval of the Zarba's guest home.

65. The Zarba's are entitled to Bundle of Rights. The expression "bundle of rights" refers to the rights that come with ownership of property. The bundle gives the property owner the right to sell, lease, or give the property away, as well as to live in it, control it, use it, and enjoy it. The term arises because the rights resemble a bundle of sticks, with each stick standing for a single right. The term "fee simple title" refers to the property of someone who owns all the rights.

The defendants denied the Zarba's their "bundle of rights". The Zarba's have been denied the right to sell, occupy or enjoy their property. The Town denied the Zarba's all beneficial use of their property.

66. The Zarba's can prove their right to substantive due process was violated. The Town's actions were clearly irrational, arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

COUNT FIVE
VIOLATION OF THE FOURTH AND FIFTH AMENDMENT
INVERSE CONDEMNATION

67. The Zarba's claim that their fifth amendment rights have been violated do to their property was taken without just compensation. The Town's behavior towards the Zarba's is considered an

extraordinary delay in the delivery of the final Occupancy Permit and the restriction placed on the Zarba's parking. The restrictions and delays placed on the Zarba's by the Town fail to substantially advance a legitimate public purpose.

68. The Town of Oak Bluffs through their town attorney commissioned William Austin of Vineyard Land Surveying and Engineering to create a Town 2016 Austin survey that would include a revised boundary of the Zarba property. This 2016 Austin survey includes moving Davis Avenue from O'Neil Trust property onto the Zarba's private Driveway. This survey also includes miss labeling the abutting "Oak Grove Cemetery" labeling it the "Town of Oak Bluffs Oak Grove Cemetery". The surveyor lacked the legal authority to move these items onto the Town's survey.

69. On February 15, 2016 the Town Selectmen executed the Town's Agreement for Judgement document. In that agreement the Town granted the public and the O'Neil party an unrestricted right to the use of the Zarba's Private Property. A taking occurs when the government gives third parties a permanent and continuous right to pass to and fro on private property.

The very same night that the Selectmen approved the Town's Agreement for Judgement document, and the Town Attorney directed the Selectmen to install a Davis Avenue public Street sign on the private Way. Within a few days the Town installed the Davis Avenue public street sign on the private Way.

70. During these past three years the Town has physically entered onto the Zarba's Private Property by putting up a public street sign, mowing and snow plowing the Zarba's private Way.

71. In 2016 the town Principal Assessor committed tax fraud by moving Davis Avenue (a public street) onto the Zarba's private driveway on the Oak Bluffs Assessor Maps.

72. The Zarba's claim that for the past 36 months the Zarba's were denied all use of their property. From June 27, 2016 - current date that Zarba's have been denied a Final Occupancy permit, the ability to live in their guest home, and the ability to park on their property, privacy, the right to peaceful enjoyment of their guest home, and the ability to sell their property.

73. The Town of Oak Bluffs attempted to secure a permanent and physical occupation on the Zarba's private Way without just

compensation and without any social or economic value to the public.

74. Fifth amendment guarantees that private property shall not "be taken for public use, without just compensation". The Application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests, or denies an owner economically viable use of his land.

75. In the Zarba's case the zoning decision does not substantially advance any legitimate government goals. The Zarba's property was taken from them. The Zarba's are the only property owners in the Town of Oak Bluffs that have been denied parking privileges and a final occupancy permit. The Town's actions have denied the Zarba's the "justice and fairness" guaranteed by the Fifth and Fourteenth Amendments.

COUNT SIX

COMMONWEALTH OF MASSACHUSETTS G.L. CHAPTER 12, SECTION 11H
VIOLATIONS OF CONSTITUTIONAL RIGHTS; CIVIL ACTIONS BY ATTORNEY
GENERAL; VENUE; COMPENSATORY DAMAGES FEES AND COSTS; CIVIL
PENALTIES

COMMONWEALTH OF MASSACHUSETTS G.L. CHAPTER 12, SECTION 11I
VIOLATIONS OF CONSTITUTIONAL RIGHTS; CIVIL ACTIONS BY AGGRIEVED
PERSONS; COST AND FEES

76. The defendants acting under the color of law interfered by threats, intimidation and coercion with the exercise and enjoyment of the Zarba's property rights. The defendants threatened to withdraw the Zarba's Temporary Occupancy Permit, to fine the Zarba's up to \$600/day, to take the Zarba's property through Eminent Domain procedures. The defendants doubled the Zarba's taxes on the Oak Bluffs property, placed a public road onto the Zarba's property in the assessor maps, removed a bedroom on the Town's assessor card, claimed that the Zarba's 2005 deeded survey or record was invalid, and for 3 years denied the Zarba's the right to park on their property, denied the right to sell their property and as of May 24, 2019 ousted the Zarba's from their home.

77. The Zarba's claim that these violations committed by the defendants are considered civil actions against the Zarba's.

COUNT SEVEN

MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE X AND XI

78. The Zarba's have a right to be protected by the enjoyment of their property. The Zarba's property cannot be taken from them or applied to public uses without the Zarba's consent. If the Zarba's property is taken without their consent then they shall receive reasonable compensation for it.

79. The Zarba's are entitled to find remedy for all the injuries or wrongs that the defendants have placed on them and their property.

COUNT EIGHT

INVASION OF PRIVATE PROPERTY

80. The defendants have physically invaded the Zarba's private property by claiming that the Town's 2016 Austin survey is correct and the Zarba's deeded 2005 Gilstad surveyor is invalid. The Town's 2016 Austin survey allegedly deletes a portion of the Zarba's property and causes the Zarba's guest home to not meet the rear set back requirements. The town placed a "Davis Avenue" public street sign on the Zarba's private way, the Town began mowing and snow plowing the Zarba's private way, the town created an Agreement for Judgement that gives the Zarba's private Way to the public for unrestricted usage, the Town changed the Town assessor maps and moved Davis Avenue onto the Zarba's private driveway and finally the Town ousted the Zarba's from their private property by not renewing the Temporary Occupancy permit.

Due to the defendants physical invasion onto the Zarba's private property these actions have severely and unreasonably limited the Zarba's economically viable use of their property.

COUNT NINE

MASSACHUSETTS TORT CLAIM ACT (MTCA)

Negligence and Negligence Infliction of Emotional Distress
Massachusetts Tort Claims Act (the MTCA)

81. The Zarba's received a Building Permit and relied in good faith on that permit. The Zarba's have sustained physical manifestations of distress due to the defendants wrongdoings, therefore, should recover for that tort under Mass Law. The Zarba's have sustained physical and emotional distress that include

panic attacks, headaches, anxiety, nausea, and sleeplessness that sustain a claim for negligent infliction of emotional distress.

82. The defendants are not entitled to indemnification because the Zarba's civil rights are violated by acts that were grossly negligent, willful and of a malicious manner.

83. The Defendants knew that their actions would inflict harm and severe emotional distress on the Zarba's. The defendants conduct was extreme and outrageous.

Damages

The Zarba's seek actual, punitive, compensatory damages, injunctive relief, and attorney fees and expenses.

Actual damages

The Zarba's have been defending themselves in court for over 3 years over constructing a legally permitted guest home. The Town's extraordinary permitting delays were not "normal" delays. Instead, they were inflicted with intent to harm the Zarba's. The Zarba's borrowed \$290,000 for construction costs and have spent \$180,000 in legal expenses defending themselves against the Town's bad behavior.

The Zarba's seek compensation from the defendants asserting that the unreasonable three year delay imposed a taking of their private property. The Zarba's property was taken on June 27, 2106 the day that the Final Occupancy Permit was due. The denial of the permit prevented the Zarba's all "economically viable" use of their property therefore a taking occurred. The Town's taking of the Zarba's private property does not serve the public in any social or economic way.

The Town had no jurisdiction over the Zarba's private property. The Town cannot produce a title to the property abutting the Zarba's property. The Zarba's were issued a Town Order that included fines of \$300/day for every day that the Zarba's guest house stood "in violation" and \$300/day fines for every day that the Zarba's parked on their property. Therefore, the Zarba's were ordered to pay \$600/day for everyday they parked on their property and the guest house stood standing. If the Zarba's did not bring suit against the Town the \$600/day fine

times 1095 days would be equal to \$657,000 for constructing a legal permitted guest home.

If the plaintiffs prevail in this case the defendants should pay the Zarba's for the unreasonable three year delay and the taking of the Zarba's private property. The defendants should compensate the Zarba's the amount of the imposed fines of \$657,000 plus legal expenses incurred of \$180,000 to equal \$837,000. The Zarba's can prove that the Town's actions were done in bad faith and a deliberate delay applied only to the Zarba's property.

Punitive Damages

The plaintiff can prove that the defendants behavior was malicious and in violation of the Zarba's property rights and was motivated by bad intent.

This conspiracy claim requests that the court consider the liability over all the defendants even those who have lesser participatory role in the wrongdoing. The conspirator becomes vicariously liable for all torts actually committed pursuant to this conspiracy, regardless of his degree of participation in the tortious conduct.

The defendants are not immune from personal liability because their conduct violates clearly established constitutional rights of which a reasonable person would have known. The defendants have no license to lawless conduct. The defendants actions did not protect the interest of the town. These decisions were to serve only the O'Neil Trust's pursuit of an unrestricted easement.

Compensatory Damages

This Town's extraordinary actions have caused major health, emotional and economic impact for the Zarba's.

The Zarba's were denied for 3 years of economically viable use of their property without compensation. The Zarba's have been denied a loss of profit due to this long delay.

The Zarba's have received offers on their Oak Bluffs property and were unable to sell the property due to this legal matter.

Ms. Zarba is a Construction Engineer, Interior Designer and a Real Estate salesperson. Ms. Zarba's career and reputation have been impaired by the Town's actions.

The plaintiff seeks compensatory and injunctive damages against David Bailey the Oak Bluffs Principal Tax Assessor, Mr. Bailey knowingly overvalued the plaintiff's property, removed a bedroom from the plaintiff's assessor card and moved a public road onto the plaintiffs private driveway on the assessor maps. Mr. Bailey's performed these actions willingly and in bad faith.

Plaintiffs seeks compensation for their physical, mental and emotional distress stemming from the economic loss that required medical and psychological treatment. The Zarba's have been in individual and marriage therapy for the past 3 years over the stress of this matter. The Zarba's are under the care of a medical doctor and are both prescribed stress related medications.

Ms. Zarba suffered from post-traumatic stress syndrome, constant nightmares and panic attacks due to the stress of the defendants wrongful conduct. These stress related symptoms will likely require extensive future medical treatment.

Ms. Zarba worked full-time as a Pro Se litigant for these past 3 years defending the the construction of a legal permitted guest home.

The Zarba's life savings and largest asset is this Oak Bluffs Property. The Zarba's were denied the ability to enjoy the property or sell it for 3 years.

The Zarba's were forced to withdraw the majority of their 401K savings to pay legal expenses due to the defendants wrongful conduct.

Zarba's have a "cloud" on their deed because a copy of the 2016 Austin survey has been placed on the plaintiff's deed.

Plaintiff seek compensation of their loss of privacy on their private driveway and the town's taking of their property. The Town has granted the public the right to use the Zarba's private driveway. The Town placed a public street sign on the private Way. The Town changed the Assessor Maps by placing a Davis Avenue on the Zarba's private driveway. The town's actions have caused the google maps to remain incorrect showing Davis Avenue on the Zarba's property.

The Zarba's have lost quiet enjoyment of their property. The traffic on the private Way has become constant. The Island

population explodes to 150,000 people during the peak summer season, many of these tourists follow google maps that point them to "Davis Avenue" on the Way, however it is a dead end and lost tourists travel up and down all day because it appears to be a public street. In addition, after the Town joined O'Neil Trust in this matter the town begun mowing the lawn and performing snow removal on the Zarba's private Way. The Town has invaded the Zarba's private property.

For the past 3 years the Zarba's lived in fear that the Town would revoke or refuse the renewal their Temporary Occupancy Permit. On May 24, 2019 the day before Memorial Day week-end the Town refused to respond to requests to renew the Zarba's Temporary Occupancy Permit, thereby revoking the Zarba's Temporary Occupancy Permit. Therefore, the town ousted the Zarba's from their home. The Zarba's were forced to vacate their guest home. The Zarba's have lost their livelihood because they were forced to move into their rental property this seasonal loss of rental income is approximately \$60,000 plus moving expenses.

Injunctive Relief

Plaintiffs ask this court to place a preliminary and permanent injunction on the Defendants to stop all taking actions against the plaintiffs private property. Plaintiffs ask the court to direct the defendants to remove the public "Davis Avenue" street sign, and replace it with a street sign that states, "Private Property, Dead End, to 14R South Street 4 and 10 Davis Avenue". Plaintiffs ask the court to order that the words "Davis Avenue" is permanently removed from the plaintiffs private property assessor map. Plaintiffs ask this court to instruct the defendants to remove the Austin 2016 Town survey from the plaintiffs deed.

Attorney's Fees and Expenses

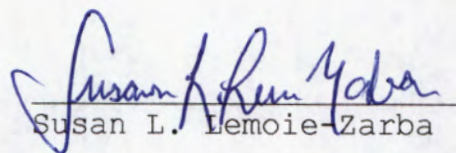
We pray that this court reimburse the plaintiffs the litigation expenses where the defendants have acted in bad faith which have caused the plaintiff unnecessary trouble and expenses.

WHEREFORE, Plaintiffs pray that the Court:

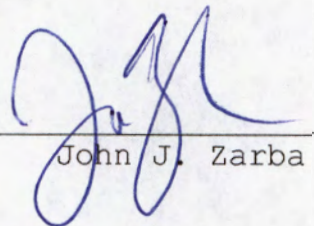
After a trial on the merits, enter judgment that grants such other and further relief as the Court deems just and proper.

The plaintiffs request that this court will allow this case to be considered for a Jury Trial.

Respectfully Submitted,
Pro Se, Plaintiffs,



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Dated: June 20, 2019