

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of :

HAMPSHIRE RECREATION, LLC, and :
HAMPSHIRE CLUB, INC., :

Plaintiffs/Petitioners, :

for Order and Judgment Pursuant to 42 U.S.C. Section :
1983, the Fifth Amendment of the U.S. Constitution, :
Article I, Section 7 of the New York Constitution, :
Section 107 of the Public Officers Law, Article 78 :
of the CPLR, and Declaratory Judgment, :

- against - :

THE VILLAGE OF MAMARONECK, :
THE VILLAGE OF MAMARONECK BOARD OF :
TRUSTEES, and THE VILLAGE OF MAMARONECK :
ZONING BOARD OF APPEALS, :

Defendants/Respondents. :

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**NOTICE OF
FIRST AMENDED
VERIFIED ARTICLE 78
PETITION AND
COMPLAINT**

PLEASE TAKE NOTICE, that upon the annexed First Amended Verified Petition and Complaint of Plaintiffs/Petitioners, HAMPSHIRE RECREATION, LLC (“Hampshire Recreation”) and HAMPSHIRE CLUB, INC. (“Hampshire Club”) (collectively, “Hampshire”), verified on the 11th day of August, 2014, the Affidavit of Daniel Pfeffer, sworn to on June 4, 2014, and all exhibits and appendices submitted therewith, application will be made to the Supreme Court of the State of New York, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York 10601, on the 10th day of October, 2014, at 9:30 o’clock in the forenoon, or as soon thereafter as counsel can be heard, for a judgment granting the relief requested in the First Amended Verified Petition and Complaint as follows:

(1) declaring, pursuant to 42 U.S.C. Section 1983, that the Village of Mamaroneck (the "Village") Board of Trustees ("Village Board") has engaged in a course of conduct violating Hampshire's rights to equal protection and to petition the government under the United States and New York State Constitutions, annulling the Village Board's determinations not to accept Hampshire Recreation's First Rezoning Petition or Revised Rezoning Petition, and awarding Hampshire Recreation damages and attorneys' fees in an amount to be determined at trial, but not less than \$55,000,000.00;

(2) declaring that the Village and Village Board effected an unconstitutional taking of Hampshire Recreation's Property, located at 1025 Cove Road, a/k/a 1107 Cove Road N., Mamaroneck, New York, 10543 (the "Property"), and awarding damages and attorneys' fees in an amount to be determined at trial, but not less than \$55,000,000.00;

(3) declaring that the Village Board violated the New York State Open Meetings Law by convening multiple improper executive sessions designed to exclude Hampshire Recreation's participation in discussions on the Revised Rezoning Petition submitted to the Village Board for its consideration, annulling the Village Board's decision not to entertain the Revised Rezoning Petition, and awarding Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but not less than \$800,000.00;

(4) declaring that the Village Board violated the Open Meetings Law by convening multiple improper executive sessions designed to exclude Hampshire's participation in discussions regarding the future use and regulation of the Property, enjoining future violations of the Open Meetings Law, and awarding Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but not less than \$10,000.00;

(5) declaring that the Village Board's decisions not to accept Hampshire Recreation's First Rezoning Petition or Revised Rezoning Petition were irrational and undertaken in bad faith, annulling such decisions, and requiring that the Village Board consider the Petitions on the merits and issue a reasoned decision;

(6) annulling the condition in Resolution #1 SP-2014 of the Village of Mamaroneck Zoning Board of Appeals, filed in the Village Clerk's Office on May 8, 2014 ("Resolution"), prohibiting Hampshire from conducting nonmember events on certain portions of its Property;

(7) annulling the condition in Paragraph A of the Resolution placing Hampshire on "probationary" status;

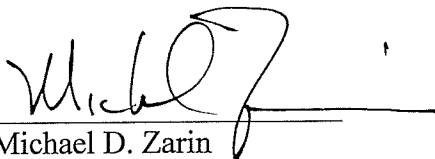
(8) declaring Hampshire's use of the entire Property for nonmember events is a legal preexisting nonconforming use not subject to the Village's Special Permit requirements; and

(9) granting such other and further relief as this Court deems just and proper, including attorneys' fees.

PLEASE TAKE FURTHER NOTICE, that pursuant to the Stipulation entered into by Hampshire Recreation, LLC, Hampshire Club, Inc., the Village of Mamaroneck and the Village of Mamaroneck Zoning Board of Appeals, a Verified Answer and supporting affidavits, if any, must be served on or before September 12, 2014 via overnight delivery, and that, pursuant to Section 7804(e) of the Civil Practice Law and Rules, Defendants/Respondents are directed to file a certified copy of the proceedings to be considered herein.

Dated: August 12, 2014
White Plains, New York

ZARIN & STEINMETZ

By: 
Michael D. Zarin
David J. Cooper
Attorneys for Plaintiffs/Petitioners
81 Main Street, Suite 415
White Plains, New York 10601
(914) 682-7800

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Index No.: 2371-14

Assigned Judge:
Hon. Linda S. Jamieson

AMENDED SUMMONS

Plaintiff designates
Westchester County
as the place of Trial


The basis of venue is:
Location of the real property
subject to judgment in this
action

To the Above-named Defendants/Respondents:

YOU ARE HEREBY SUMMONED to answer the First Amended Verified
Petition and Complaint in this action and to serve a copy of your Verified Answer, or, if the First
Amended Verified Petition and Complaint is not served with this Summons, to serve a Notice of
Appearance, on the Plaintiffs/Petitioners' attorneys within thirty (30) days after the service of
this Summons, exclusive of the day of service (or within thirty (30) days after the service is
complete, if this Summons is not personally delivered to you within the State of New York); and
in case of your failure to appear or answer, judgment will be taken against you by default for the
relief demanded in the First Amended Verified Petition and Complaint.

Dated: August 12, 2014
White Plains, New York

ZARIN & STEINMETZ

By: 
Michael D. Zarin
David J. Cooper
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TO: Charles A. Goldberger, Esq.
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Index No.: 2371-14

Assigned Judge:
Hon. Linda S. Jamieson

**FIRST AMENDED
VERIFIED PETITION
AND COMPLAINT**

Plaintiffs/Petitioners (“Petitioners”), HAMPSHIRE RECREATION, LLC,
 (“Hampshire Recreation”) and HAMPSHIRE CLUB, INC. (collectively, “Hampshire”), by their
attorneys, Zarin & Steinmetz, as and for their First Amended Verified Petition and Complaint,
herein respectfully allege as follows:

SUMMARY OF ACTION

1. This is a hybrid action seeking both equitable relief and related damages in
an amount to be determined at trial, but not less than \$55,000,000.00, because of
Defendants/Respondents’ (“Respondents”) course of unlawful, discriminatory, capricious and
vexatious conduct. Respondents’ unlawful, discriminatory, capricious and vexatious actions
began immediately following Hampshire Recreation’s filing of a rezoning Petition seeking to

permit the construction of a small number of condominium residences on a portion of its property, located at 1025 Cove Road, a/k/a 1107 Cove Road N., Mamaroneck, New York, 10543 (the “Property” or “Site”), and the subsequent vociferous protests of a small, but vocal group of neighboring property owners.¹ Respondents’ conduct is calculated to wrongfully deter Hampshire Recreation from pursuing any development of the Property and thereby depress its value, and to force the sale of the Property to the Village and appease the group of neighbors seeking to shut the country club down. This course of conduct by Respondents included, among other actions: (i) convening illegal executive sessions to consider matters relating to Hampshire; (ii) refusing without cause to entertain Hampshire Recreation’s not one, but two rezoning petitions (the “Petitions”), notwithstanding the fact that the Petitions were consistent with the 2012 Comprehensive Plan Update (the “Comprehensive Plan”) adopted by the Village of Mamaroneck (the “Village”), which expressed long term planning and zoning goals consistent with such Petitions; (iii) threatening to put Hampshire Recreation through a prolonged, expensive and fruitless review process ending in a conservation rezoning if it continued to pursue any development; (iv) initiating not one, but two zoning enforcement actions against Hampshire in two separate courts; and (v) arbitrarily and in bad faith imposing restrictions on Hampshire’s longstanding use of its Property by issuing a conditioned Special Permit that unlawfully purports to prevent Hampshire from continuing its established practice of using its golf course for nonmember events, and further purports to place Hampshire on “probation.” This hybrid action also seeks annulment of the Resolution of Respondent the Village Zoning Board of Appeals (“ZBA”), filed in the Village Clerk’s Office on May 8, 2014 (“Resolution,” annexed to the

¹ The Property includes the following parcels: Section 9, Block 72, Lots 1, 2, 3, 11, 17B, 17C, 18D, 24, 25, 28 & 29; Section 9, Block 89B, Lots 15 & 16; Section 9, Block 89C, Lots 22A & 23; and Section 9, Block 89D, Lots 24, 25, 26, 27 & 28.

Affidavit of Daniel Pfeffer, sworn to June 4, 2014 (“Pfeffer Aff.”), as Exhibit “A”), issuing said illegally conditioned Special Permit.

2. As a result of this course of conduct, the Village finds itself in yet another lawsuit as a result of its arbitrary and capricious treatment of an applicant precipitated by its collusion with a small, but vocal and litigious, neighborhood coalition challenging land use matters in its backyard.

3. Such conduct has produced concrete harm. Hampshire Recreation has been forced to spend critical resources preparing two rezoning Petitions and underlying studies, as well defending two zoning enforcement actions. Hampshire has also been forced to spend substantial funds pursuing a Special Permit to hold nonmember events before the ZBA, culminating in an arbitrary and capricious determination that deprived Hampshire of its ability to use its golf course for nonmember events, and that branded it as a club on “probation.” This determination and stigma has caused the loss of business opportunities and deprived Hampshire Recreation of an essential source of income generated by the longstanding use of its entire Property for nonmember events. The Village took this action without any basis in law and notwithstanding the fact that other clubs within the Village were not treated this way during their Special Permit application processes.

4. As a result of the Village’s refusal to entertain Hampshire Recreation’s rezoning Petitions, and its threats to rezone the Property as a conservation district should Hampshire Recreation pursue an as-of-right residential development, the Village has effectuated an unlawful taking by stripping the Property of any economically viable use and depriving Hampshire Recreation of the ability to realize any reasonable return on its investment in the Property.

5. There is no legitimate government purpose related to this course of conduct. It is irrational, unfair, contrary to established law and practice, and above all, unconstitutional.

6. Accordingly, Hampshire demands relief against Respondents pursuant to: (i) 42 U.S.C. Section 1983, seeking damages for the Village's and Village Board of Trustees' ("Village Board") violation of Hampshire's right to equal protection and right to petition under the United States and New York State Constitutions; (ii) the Fifth Amendment of the United States Constitution, seeking damages for the Village's and Village Board's improper taking of Hampshire Recreation's Property without just compensation; (iii) Section 107 of the New York Public Officers Law, seeking a judgment declaring that the Village Board violated the State Open Meetings Law ("OML") when it improperly convened executive sessions intended to exclude Hampshire Recreation's participation in matters of public business relating to Hampshire Recreation's attempt to submit a second rezoning Petition, and to a zoning text amendment affecting Hampshire Recreation's Property, consequently declaring the Village Board's decision not to accept Hampshire Recreation's second rezoning Petition as null and void, enjoining future violations of the OML, and granting reasonable costs and attorneys' fees; (iv) Civil Practice Law and Rules ("CPLR") Section 3001, seeking a judgment declaring the decision of the Village Board to reject both rezoning Petitions as irrational, undertaken in bad faith, and annulling such decisions; and (v) CPLR Article 78, seeking an order annulling the illegal conditions in the Special Permit issued by the ZBA prohibiting Hampshire from using its golf course for nonmember events, as well as placing Hampshire on "probation;" or, in the alternative, (vi) CPLR Section 3001, declaring Hampshire's longstanding use of its Property for nonmember events a legal preexisting nonconforming use not subject to the Village's Special Permit requirements.

THE PARTIES

7. Plaintiff/Petitioner, Hampshire Recreation, LLC, is a limited liability company, duly formed under the laws of Delaware, with offices located at 60 Cutter Mill Road, Suite 513, Great Neck, New York, 11021.

8. Hampshire Recreation is the owner of the subject Property and landlord of Plaintiff/Petitioner Hampshire Club, Inc.

9. Plaintiff/Petitioner, Hampshire Club, Inc., is a not-for-profit corporation, duly formed under the laws of New York, with offices located at 1025 Cove Road, Mamaroneck, New York, 10543.

10. Hampshire Club, Inc. is the operator of the subject Property, and tenant of Plaintiff/Petitioner Hampshire Recreation.

11. Defendant/Respondent, the Village of Mamaroneck, is a municipal corporation with offices located at 123 Mamaroneck Avenue, Mamaroneck, New York, 10543.

12. Defendant/Respondent, the Village of Mamaroneck Board of Trustees, is an elected municipal body with offices located at 123 Mamaroneck Avenue, Mamaroneck, New York, 10543.

13. Defendant/Respondent, the Village of Mamaroneck Zoning Board of Appeals, is a land use review agency established by the Village Board, with offices located at 169 Mt. Pleasant Avenue, Mamaroneck, New York, 10543.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents in this matter.

15. Pursuant to CPLR Sections 504(2) and 506(b), venue is proper in this Court. The Village is situated, the determination complained of was made, and any material events took place, in the County of Westchester, which is situated within the Ninth Judicial District.

16. The instant First Amended Verified Petition and Complaint amends the Verified Petition and Complaint filed in Supreme Court, Westchester County, on June 4, 2014. A separate but related matter is ongoing in this Court before the Honorable Linda S. Jamieson, J.S.C.,

on an Injunction Application brought by the Village against Petitioners for alleged violations of the Village Zoning Code, and seeking to enjoin Hampshire from holding any recreational or commercial events at the Property. During the proceedings on this related matter, Hampshire and the Village entered into a Stipulation So-Ordered by Judge Jamieson on May 27, 2014 (the “May Stipulation,” annexed hereto as Exhibit “AA”), supposedly resolving the zoning enforcement action. The May Stipulation provided, *inter alia*, that the Village Board agrees to pursue a zoning amendment confirming that the Village’s nonmember event Regulation applies to all portions of Hampshire Recreation’s Property. Hampshire is continuing to pursue its claims stemming from the ZBA’s issuance of the Special Permit because the zoning amendment has yet to be enacted at this time.

FACTUAL BACKGROUND

Hampshire Country Club’s Longstanding History

17. Hampshire Country Club (the “Club”) is located on an approximately 116-acre Site, improved with a clubhouse, golf course, swimming pool, tennis courts, parking and other facilities associated with a membership club use.

18. The Property has been continuously used as a golf course and country club for almost ninety (90) years, since at least 1928. This includes continuously providing recreational facilities, social opportunities and event space for its members and their guests, as well as for nonmembers.

19. The nonmember events hosted by the Club typically have consisted of matches and practices held by local high school golf teams, fundraisers held by local charitable organizations, as well as golf outings, weddings, and events held by other private parties. Both member and nonmember events have occurred on the entire Property, in the clubhouse and on the

golf course, for decades. See Business Records of Nonmember Events Held at Hampshire Country Club from 1988 until 2013, annexed hereto as Appendix 1.²

20. In 1985, the Village Board rezoned a portion of the Site to create a new MR Marine Recreation District, which was intended to revitalize waterfront uses in the Village. See Local Law No. 12-1985, annexed hereto as Exhibit “BB.” As a result, approximately four (4) acres, including the clubhouse and swimming pool, were placed within the MR District. Approximately 106 acres, including the golf course and parking lot, were kept within the original R-20 District. See Zoning Map, annexed to the Pfeffer Aff. as Exhibit “E.”

21. The rezoning did not impact the Club’s operations, and it continued hosting both member and nonmember events on its entire Site, just as it had been doing since its inception, and as it continued to do until the Village took the actions complained of herein.

Village Unsuccessfully Attempts To Purchase The Property In 2010

22. In or about late 2009, the Club’s then-owner and operator put the Club up for sale due to the financial pressures inherent in operating a private country club.

23. Soon after the Club announced its sale, the Village, along with the Town of Mamaroneck (the “Town”), began meeting with the Club’s Board to discuss the municipalities’ interest in purchasing the Club for public use. The Village and Town announced the potential sale as a “once in a life time opportunity for the Village . . . and the entire Town,” while the Village Mayor described the sale as a “no-brainer.” See Village of Mamaroneck, Joint Statement of Ongoing, Cooperative Interest in the Purchase of Hampshire Country Club in Mamaroneck, New York (Mar. 11, 2010), annexed hereto as Exhibit “CC;” Judy Silberstein, Mamaroneck Looks at Buying Hampshire Country Club, Larchmont Gazette (Jan. 21, 2010), annexed hereto as Exhibit

² Due to their voluminous nature, the Records of Nonmember Events are annexed as an Appendix rather than an Exhibit for ease of reference.

“DD.” The municipalities’ plans included preserving the golf course as open space while allowing limited residential development on a portion of the Site. The Village and Town anticipated developing a portion of the Property in order to offset the cost of the purchase.

24. At some time between January and April 2010, the Village and Town jointly bid on the Club.

25. The Village-Town joint bid was rejected, however, and in June 2010, Hampshire Recreation purchased the Property.

2011-2012 Comprehensive Plan Update

26. From 2011 to 2012, the Village engaged in an extensive community-wide effort to update its Comprehensive Plan pursuant to Village Law Section 7-722. See Village of Mamaroneck Comprehensive Plan (Feb. 2012), annexed hereto as Exhibit “EE.” In this endeavor, the Village sought to evaluate its then-current zoning regulations and determine its planning goals for the future. This process involved multiple public hearings and input from professional staff and planning experts regarding the Village’s long term planning goals.

27. The Village’s current Comprehensive Plan was enacted in February 2012. See id. It represents the Village’s blueprint for the future development of the community. By law, the Comprehensive Plan dictates the Village’s policies governing its physical, environmental and economic development.

Comprehensive Plan Outlines The Village’s Intent To Rezone Hampshire Recreation’s Property

28. The Comprehensive Plan identifies Hampshire Recreation’s Property as a unique location in the Village due to its “environmental significance,” and substantial recreational/open space. See id. at 63. The Comprehensive Plan states explicitly that it would be “appropriate” for the Village to pursue rezoning opportunities to “preserve Hampshire Country

Club in the future,” together with protecting its environmental and recreational/open space features in a meaningful and lasting manner. See id. at 63-64.

29. The Comprehensive Plan proposes the enactment of “more sensitive zoning techniques” to achieve these planning goals. See id. at 63. Such techniques include exploring “some development options by reducing the allowable residential density from R-20 (i.e., minimum 20,000 square foot lots) to R-30 (i.e., minimum 30,000 square foot lots). See id. at 64. The Comprehensive Plan also suggests assessing a “cluster” development on this Site, while acknowledging the importance of preserving its open space values. See id. A “cluster” subdivision is a well-recognized site planning mechanism permitting a landowner to group residential units on a limited portion of a property while preserving the remaining property as open space.

30. The Comprehensive Plan also proposed evaluating a “recreational/open space” District as a potential zoning technique at the Site. See id.

31. The Village Board concluded in the Comprehensive Plan that, as a matter of policy, “the above options would better preserve Hampshire Country Club in the future better [sic] than the existing R-20 zoning.” See id.

32. Since enacting the Comprehensive Plan, however, the Village Board has arbitrarily and capriciously rejected its own policies and instead has sought to impede and deter any effort to “preserve Hampshire Country Club.” Instead, the Village Board and its representatives have illegally used their governmental authority to prevent any investment in the Property. Upon information and belief, the Village’s illegal actions were motivated by a desire to depress the Property’s value to facilitate a future purchase by the Village, as well as to appease a small group of vociferous neighbors seeking to shut the country club down.

Hampshire Recreation Develops A Proposal Consistent With The Comprehensive Plan

33. Consistent with the policies stated in the Village's current Comprehensive Plan regarding future zoning changes to the Property, Hampshire Recreation prepared a limited residential development and open space preservation plan for the Site.

34. Hampshire Recreation proposed creating a new "Open Space/Residential Community District" designed to address the Site's unique use and open space qualities. The new zoning designation would require that at least seventy-five percent (75%) of the Property be protected as open space in perpetuity through a duly recorded, legally enforceable restrictive covenant.

35. Hampshire Recreation's proposed Open Space/Residential Community District would not only preserve the existing golf course and other natural features of the Site, but would ensure that a viable custodian of the open space and crucial environmental areas remains indefinitely.

36. The new proposed zoning designation would also limit development on the Site to a density much lower than either the Site's current as-of-right R-20 zoning, or the R-30 zoning identified in the Comprehensive Plan as a potential option for the Property.

37. Under the new proposed zoning designation, Hampshire Recreation proposed preserving over ninety percent (90%) of the Property as open space, concentrating a 121-unit residential building on one (1) acre of the approximately 116-acre Site. This would result in a density below that which would be permitted under the existing R-20 zoning and also considerably below that which would be permitted under the R-30 option considered in the Village's Comprehensive Plan. The building would be integrated into the existing clubhouse building, and all units would be marketed to "empty nester" households who no longer seek to maintain single family homes in Westchester County.

38. This proposal, embodied in Hampshire Recreation’s first rezoning Petition submitted by Hampshire Recreation on January 28, 2014 (“First Rezoning Petition”), was wholly consistent with the Comprehensive Plan, and, indeed, provided even more open space than the Comprehensive Plan contemplated. Hampshire Recreation’s proposed development would preserve approximately ninety percent (90%) of the Property. As a result, the proposed improvement, if allowed, would provide the Village with significantly more open recreational space to “better preserve Hampshire Country Club in the future.” See id. at 64. Indeed, the proposed development would *double* the amount of preserved open space proposed by the R-30 cluster zoning set forth in the Comprehensive Plan, and *almost triple* the amount preserved under the existing as-of-right R-20 zoning.

Small Coalition Campaigns Against Hampshire

39. After Hampshire Recreation released to the public its intent to pursue the First Rezoning Petition, a small, but vocal, group of neighbors organized the Mamaroneck Coastal Environment Coalition (the “Coalition”), specifically formed to challenge Hampshire Recreation’s development proposal. See Excerpt from the Mamaroneck Coastal Environment Coalition Website, <http://www.mamaroneckcoastal.org>, annexed to the Pfeffer Aff. as Exhibit “G.”

40. The Village has a history of acting arbitrarily and capriciously with respect to proposed developments opposed by small groups of residents. This history has cost the Village and its taxpayers substantial amounts of money. Upon information and belief, the Coalition includes many of the same residents who caused the Village to fruitlessly waste millions of dollars to defend and ultimately settle a lawsuit over another land use application they had opposed. See Westchester Day Sch. v. Vill. of Mamaroneck, 417 F. Supp. 2d 477, aff’d, 504 F.3d 338 (2d Cir. 2007). In Westchester Day School, the property owner sued the Village, alleging, among other things, that the ZBA acted arbitrarily and capriciously when it denied the owner’s application for

a special permit to construct a new school building in response to pressure exerted by a “small but vocal group in the Mamaroneck community,” including certain members of the Coalition. See 504 F.3d at 346. There, the Village paid approximately \$4.75 million to settle the litigation with the property owner.

41. Upon information and belief, the Coalition also includes some of the same members of the community who caused the Village to spend hundreds of thousands of dollars to defend and settle various lawsuits relating to the Mamaroneck Beach and Yacht Club, including an \$825,000 settlement to compensate Mamaroneck Beach and Yacht Club for, among other things, damages, costs and attorneys’ fees. See, e.g., Mamaroneck Beach & Yacht Club, Inc. v. Fraioli, 24 A.D.3d 669, 808 N.Y.S.2d 303 (2d Dep’t 2005) (finding that the Planning Board had improperly refused to consider the club’s site plan application notwithstanding assertions by the local opposition group);³ see also So-Ordered Stipulation, dated Sept. 8, 2010, at 5-6 (Hon. Joan B. Lefkowitz, J.S.C.), annexed hereto as Exhibit “FF.”

42. In the instant matter, the Coalition retained a well-known attorney, who sent multiple letters to the Village on the Coalition’s behalf, threatening to involve the Village in yet another “lengthy and combative process” and to commence new litigation should the Village entertain any rezoning petition submitted by Hampshire Recreation. See Letters from the Coalition to Village Staff, dated Feb. 2013 through Oct. 2013, annexed to the Pfeffer Aff. as Exhibit “H.”

³ See also Mamaroneck Beach & Yacht Club, Inc. v. Fraioli, 12 Misc. 3d 1023, 819 N.Y.S.2d 638 (Sup. Ct. Westchester Cnty. 2006) (granting the club’s motion for contempt order against Village for failing to compel Planning Board to review the club’s site plan application); Mamaroneck Beach & Yacht Club, Inc. v. Zoning Bd. of Appeals of Mamaroneck, 14 Misc. 3d 1221(A), 836 N.Y.S.2d 486 (Sup. Ct. Westchester Cnty. 2007) (finding that local opposition group’s request for reinstatement of its appeal to ZBA was untimely and annulling ZBA’s determination as irrational, arbitrary and capricious); Mamaroneck Beach & Yacht Club, Inc. v. Zoning Bd. of Appeals of Mamaroneck, 53 A.D.3d 494, 862 N.Y.S.2d 81 (2d Dep’t 2008), leave to appeal denied by 11 N.Y.3d 712, 872 N.Y.S.2d 74 (Table) (2008) (upholding lower court’s finding that ZBA acted irrationally when it agreed with the local opposition group that the club’s proposed seasonal residences were not permitted accessory uses to a membership club).

**Initial Efforts By The Village To Harass And Restrict
Hampshire Recreation's Continued Operation Of The Club**

43. As part of its reaction to Hampshire Recreation's announcement of its intent to pursue the First Rezoning Petition, the Village, in collusion with the Coalition, embarked on a campaign with the sole purpose, upon information and belief, of shutting the Club down entirely.

44. In February 2013, the Coalition filed several complaints with the Village regarding Hampshire Recreation's operations. Although the Club's operations had not changed, the complaints included, for the first time in the Club's ninety (90)-plus years of operation, allegations of over-parking, truck traffic and undue noise.

45. The Coalition further demanded that the Village shut the Club because it was purportedly not operated by a true not-for-profit organization in accordance with the Village Zoning Code's requirement that all membership clubs be operated by a not-for-profit/non-profit corporation.

46. The Coalition also sent complaints to the Village asserting that Hampshire Recreation was in violation of the Zoning Code's requirements for operating nonmember events pursuant to a Special Permit, ignoring the years (indeed, decades) of the legal preexisting nonconforming use of the Property for such events.

47. Prior to the Coalition's first letter in February 2013, not one complaint was ever submitted to the Village by the neighbors or members of the Coalition regarding Hampshire Recreation's operations, its corporate structure, or whether it held a Special Permit for nonmember events.

Village Commences Its Campaign Against Hampshire

48. Upon receiving the Coalition's "complaints," the Village suddenly refused to even speak to Hampshire Recreation's representatives. The Village reviewed Hampshire

Recreation's matters in closed sessions, which Hampshire Recreation's representatives were told specifically not to attend.

49. Upon information and belief, during this period various members of the Coalition had conversations with individual members of the Village Board and the Village's counsel strategizing and planning its harassment campaign against Hampshire Recreation.

50. On September 27, 2013, the Village Fire Inspector issued a notice of violation ("NOV") to Hampshire Recreation. See Order To Remedy Violation, issued Sept. 27, 2013, annexed to the Pfeffer Aff. as Exhibit "I." The NOV alleged that on September 27, 2013, at about 9:00 p.m., Hampshire Recreation "created an illegal condition" on the Property by holding a nonmember event without a Special Permit issued by the ZBA. The Village Fire Inspector testified in Supreme Court that he issued this NOV when the Village Building Inspector instructed him to do so "sometime in September 2013." See Transcript of Hearing in Supreme Court, Westchester County, dated Apr. 23, 2014, at 11-13, annexed to the Pfeffer Aff. as Exhibit "D."

51. The Village Fire Inspector subsequently admitted under oath, however, that he never witnessed any nonmember event or any other actual violation of the Zoning Code on the date and time cited in the NOV. He simply followed the instruction of the Building Inspector to issue a violation to Hampshire Recreation. See id.

52. The Village had no probable cause upon which to base the NOV or the charges in subsequent proceedings in Village Justice Court and Westchester County Supreme Court. The Village Fire Inspector subsequently admitted that he did not know whether in fact the alleged "nonmember" events charged in his NOV or in the subsequent court proceedings were attended by nonmembers. He never visited the Property during the timeframe alleged in the NOV. See id. at 15-19. The sole basis of the Village's claims against Hampshire Recreation was the unsupported and undocumented complaints of the Coalition.

53. For over sixty (60) years, and thus long prior to the Coalition's 2013 threats to the Village and vendetta against Hampshire Recreation, the Village itself repeatedly held its golf outing (i.e., a nonmember event) at the Property. See Letter from Michael S. Blau, Village Manager, to Charles Torrance, General Manager, Hampshire Country Club, dated Nov. 13, 2000, annexed to the Pfeffer Aff. as Exhibit "C." Never once during this 60-year history, or at any time prior to the Coalition's formation or the filing of the First Rezoning Petition, did the Village issue a violation to any operator of the Club for hosting nonmember events without a Special Permit.

54. The NOV also cited Hampshire Recreation for failing to file Internal Revenue Service Forms 990 and 990T with the Village (a requirement for not-for-profit corporations).

55. Upon information and belief, this claim was included in the NOV, again, at the request of the Coalition in letters sent to the Village between February and September 2013. See Exhibit H to the Pfeffer Aff.

Village Commences Two Lawsuits Against Hampshire

56. Issuing an NOV did not satisfy the Village. The Village also initiated and sought to prosecute Hampshire in two court proceedings -- one in Village Justice Court, and one in Westchester County Supreme Court.

57. On November 1, 2013, the Village issued a Code Enforcement Appearance Ticket in Village Justice Court based upon the alleged violations of the nonmember event Regulation cited in the NOV. See Code Enforcement Appearance Ticket, Village Justice Court, Village of Mamaroneck, Docket No. 13-0582, issued on Nov. 1, 2013, annexed hereto as Exhibit "GG."

58. The Village subsequently filed a Summons and Complaint in Westchester County Supreme Court on November 11, 2013. In the Supreme Court Action, not only did the

Village seek to enjoin nonmember events pursuant to the NOV, but it added a demand for an injunction preventing Hampshire from conducting *any and all* “recreational or commercial operations” at the Property. See Complaint, dated Nov. 11, 2013, and the Affirmation of Charles A. Goldberger, dated Nov. 22, 2013 (collectively, “Injunction Application”), both annexed to the Pfeffer Aff. as Exhibit “J.”

59. The Village failed to cite any legitimate basis for essentially requesting that the Club be shut down entirely. The Village also sought damages from Hampshire in the form of costs and attorneys’ fees. See id.

60. These were not enforcement proceedings intended to ensure compliance with the NOV. Rather, upon information and belief, they were part of the Village’s and the Coalition’s collaborative effort to seek retribution against Hampshire Recreation for pursuing its condominium proposal, to force Hampshire Recreation to cease pursuing such proposal, and, ultimately, to cause the Club’s closure.

61. Upon information and belief, representatives from the Village and representatives from the Coalition colluded on a regular basis regarding the strategy and progress of these two actions. This relationship was on full display during the proceedings before the Honorable Linda S. Jamieson in Supreme Court, when counsel for the Village conferred privately with counsel for the Coalition during virtually every break in the proceedings.

62. There was no rational basis underlying these lawsuits. Upon information and belief, the Village was merely capitulating to the desires of a small, but vocal, community opposition group. The Village’s treatment of Hampshire was not related to a legitimate governmental purpose, but only an attempt to dissuade Hampshire Recreation from pursuing any rezoning proposal in order to appease the Coalition.

Hampshire Enters Into A So-Ordered Stipulation With The Village

63. Following the commencement of the second enforcement action in Supreme Court, counsel for Hampshire and the Village appeared before Judge Jamieson on the Village's Injunction Application.

64. Seeking to avoid needless litigation regarding the legal, longstanding use of the Property for nonmember events, Hampshire agreed to submit an Application for a Special Permit to hold nonmember events to the ZBA. The Parties agreed that the Application would be determined no later than April 7, 2014. Otherwise, the Parties were to return to Supreme Court to litigate the action. See So-Ordered Stipulation, dated Dec. 6, 2013 ("December Stipulation") at 2-3, annexed to the Pfeffer Aff. as Exhibit "K."

65. Hampshire only held limited nonmember events during this period, according to the terms of the December Stipulation.

66. Despite the fact that Hampshire's use of the Property for nonmember events is a legal preexisting nonconforming use that does not require a Special Permit (since such events had occurred continuously well before the relevant zoning Regulation was enacted), Hampshire decided to apply for a Special Permit for nonmember events in the interest of working cooperatively with the Village and thus quickly resolve this matter with a minimum of expense.

Hampshire Pursues Its Application Before The ZBA

67. Pursuant to the December Stipulation, Hampshire submitted its Application to the ZBA on December 11, 2013. The Application was placed on the agenda for the January 2, 2014 ZBA meeting.

68. Hampshire sought the exact same Special Permit that the other three (3) membership clubs operating in the Village had applied for, and received, without any difficulty.

69. Here, however, the Village and the ZBA permitted the Coalition to commandeer the process before the ZBA in furtherance of the campaign to harass and prevent Hampshire Recreation from obtaining any revenue from the longstanding use of the Property to host nonmember events, thereby further depressing the value of the Property.

70. On or about December 18, 2013, the Coalition requested that the ZBA delay consideration of the Application. The Coalition used the excuse that some of its members might be on vacation on January 2nd. See Email from Stephen L. Kass, Esq., to Ann Powers, ZBA Secretary, dated Dec. 18, 2013, annexed to the Pfeffer Aff. as Exhibit “L.”

71. The ZBA then cancelled the January 2nd meeting, citing “inclement weather,” and placed Hampshire’s Application on its February 6, 2014 meeting agenda.

72. The Coalition appeared at the ZBA’s February 6th meeting, this time demanding that the ZBA not even open the public Hearing. The Coalition asserted that the notice for this Hearing contained the incorrect Section, Block and Lot numbers for the clubhouse.

73. The Section, Block and Lot information included in the notice was provided to Hampshire expressly by the Village Staff. The Village Building Department’s files, as well as the NOV and various certificates of occupancy, all listed the exact same Section, Block and Lot numbers for the clubhouse.

74. Nonetheless, the ZBA capitulated, and declined to open the public Hearing. It directed Hampshire to re-notice the Application for the March 6, 2014 meeting. See Minutes of the February 6, 2014 ZBA Meeting at 4, annexed to the Pfeffer Aff. as Exhibit “M.”

75. Following the February 6th meeting, Village staff also directed Hampshire to amend its Application to specifically request a Special Permit for nonmember events in both the MR and R-20 Districts.

76. Hampshire was forced to resubmit its Application on February 12, 2014, even though the Application was virtually identical to its previous submission on December 11, 2013.

77. During this time, Hampshire was only permitted to hold the six (6) nonmember events designated in the December Stipulation, causing the loss of critical supplemental income. Hampshire also was spending significant resources defending two court actions while preparing and processing two Special Permit Applications.

78. The ZBA finally opened the public Hearing at its March 6, 2014 meeting.

79. Initially, the Coalition demanded that the ZBA deny Hampshire's request for a Special Permit alleging, once again, that Hampshire was a so-called "bad actor."

80. The Coalition then argued that not only should Hampshire be stripped of its ability to hold nonmember events, but that the Club should be shut down entirely because the not-for-profit corporation operating the golf club was a purported "sham." See Transcript of March 6, 2014 ZBA Hearing at 19-29, 53, annexed to the Pfeffer Aff. as Exhibit "N."

81. The Coalition also asserted, in the alternative, that the ZBA should not allow Hampshire to use its golf course for nonmember events. The Coalition claimed that the ZBA did not have "jurisdiction" to extend a Special Permit to cover the golf course because it remained in the R-20 District pursuant to the Village's 1985 rezoning of the Site. See id. at 60-61.

82. Members of the ZBA adopted the Coalition's latter position virtually verbatim.

83. Finally, the Coalition argued that if a full permit is issued, it should be subject to nine (9) so-called "conditions." The Coalition's laundry list of conditions included placing Hampshire on "probation" for behaving as an alleged "bad actor," an allegation supported

only by uncorroborated and undocumented claims regarding parking, noise and traffic. See id. at 53-63.

84. The Coalition's "laundry list" was wholly unsupported by the Record before the ZBA, and flew in the face of the decades of operations of the Club. Hampshire's representatives provided evidence to the ZBA establishing that nonmember events had been occurring continuously on the entire Property for almost sixty (60) years, specifically producing a Lease from 1959 between the prior owner of the Property and a prior operator of the Club that allowed the operator to use the Property for nonmember events. See Agreement Amending Lease Between Estate Appraisal & Valuation Co., Inc., and Hampshire Country Club, Inc., recorded at Liber 5907, Page 428 in the Westchester County Clerk's Office, dated May 7, 1959 (the "Lease"), ¶ 15, annexed to the Pfeffer Aff. as Exhibit "B."

85. Hampshire's representatives also testified that nonmember events had continually taken place on the entire Property since at least this time. This includes the spring of 2010, while Hampshire Recreation's purchase of the Property was pending. During this time, the grounds were maintained, including mowing the grass and seeding the golf course, and the golf course was in playable condition. Indeed, various nonmembers continued to use the tennis courts and golf course, including Village employees, local residents and local police officers. See Pfeffer Aff., ¶¶ 17-19.

86. The only provision in the Village Zoning Code addressing nonmember events is Section 342-35(B)(9). This provision was enacted in November 2001. See Local Law No. 12-2001, annexed to the Pfeffer Aff. as Exhibit "F." Prior to this date, the Village did not regulate nonmember events held by membership clubs, such as Hampshire Country Club. Since Hampshire's use of the entire Property for nonmember events predates the relevant Zoning Code

provision, it is a legal preexisting nonconforming use that does not legally require compliance with the Special Permit requirements of Section 342-35(B)(9).

87. Hampshire also reminded the ZBA of the ZBA's own prior interpretations of the Village's nonmember event Regulation, all of which adopted a "practical application" of Section 342-35(B)(9). See Resolution on Application No. #26SP-2006, dated Mar. 7, 2013, ¶ 3; Resolution on Application No. #16SP-2009, dated Mar. 7, 2013, ¶ 4; Resolution on Application No. #2SP-2007, dated May 2, 2013, ¶ 4, all annexed to the Pfeffer Aff. as Exhibit "O." The ZBA had issued every other club in the Village a Special Permit for nonmember events, including express language in the Resolution that it had the jurisdiction to apply a "practical" interpretation of the subject provision in order to "reflect the membership operations of membership clubs seeking a special permit to hold nonmember events." See id.

88. Rather than review Hampshire's evidence, the ZBA deemed the Hearing "closed," refusing to consider Hampshire's submissions. The meeting was then adjourned until April 3, 2014.

89. At the April 3rd meeting, at least one member of the ZBA stated that Hampshire must "demonstrate that in 1957 when it became a non-conforming -- when it may or may not have become a non-conforming use, that it was in fact validly operating . . . and that from 1957 through to the present day, that use that was legal in 1956 has not terminated" in order to use the golf course for nonmember events. See Transcript of the April 3, 2014 ZBA Meeting at 10-11, annexed to the Pfeffer Aff. as Exhibit "P."

90. Accordingly, Hampshire compiled additional voluminous business records, demonstrating that nonmember events have been continuously occurring on the entire Property -- both in the clubhouse and on the golf course -- since at least the 1950s to the present. See Appendix 1; see also Letter from Michael D. Zarin, Esq., to Chairman Lawrence Gutterman and

Members of the Village of Mamaroneck Zoning Board of Appeals, dated Apr. 17, 2014, annexed to the Pfeffer Aff. as Exhibit “Q.”

91. Despite the ZBA’s explicit request for these materials, the ZBA, once again, refused to even accept or review these materials, stating that Hampshire’s Application was “closed.” See Transcript of May 1, 2014 ZBA Meeting at 2-10, annexed to the Pfeffer Aff. as Exhibit “R.”

92. The ZBA proceeded to adopt a Resolution restricting Hampshire from using the golf course for nonmember events. See Exhibit A to the Pfeffer Aff. at 2 & 5. The ZBA concluded, as advanced by the Coalition, that “it has no jurisdiction to grant a special permit to the Hampshire Club to conduct non-member events on the portion of the Hampshire Club property zoned R-20.” See id. at 2.

Resolution Arbitrarily Restricts Hampshire’s Use Of Its Golf Course, But Not Its Parking Lots, Despite Both Being Located Within The R-20 District

93. The ZBA Resolution embodies the arbitrary manner in which the ZBA conditioned its approval of the Application, eschewing the evidence and its precedent in favor of the generalized community opposition of the Coalition.

94. The ZBA initially declared that “it has no jurisdiction to grant a special permit to the Hampshire Club to conduct non-member events on the portion of the Hampshire Club property zoned R-20.” See id. at 2. Based upon this finding, the ZBA limited Hampshire’s Special Permit to apply “to the MR zoned portion of the property.” See id. at 3. The ZBA also “denied [the Application] as related to the R-20 zoned portion of [Hampshire’s] property.” Id. This condition prevents Hampshire from utilizing its golf course and tennis courts for nonmember events, because those facilities are located within the R-20 District.

95. On the very *next page* of the Resolution, the ZBA found that it indeed could extend the Special Permit to parking facilities on the Property “regardless of which zoning district such facilities are located.” See id. at 4. This finding, conversely, permits Hampshire to use portions of its Property located in the R-20 District for nonmember events.

96. The ZBA’s disregard for the zoning classification of the parking lots, where the ZBA expressly exercised its authority to apply the nonmember event zoning provision to portions of the Property in the R-20 District, did not adhere to its finding in the Resolution that it has no jurisdiction to apply the Special Permit to the R-20 District. As such, the ZBA could not rationally rely on the position that it “has no jurisdiction” to address portions of the Property within the R-20 District to deny Hampshire the right to continue to use the golf course and tennis courts for nonmember events.

97. Beyond the location of these facilities in the R-20 District, and the purported lack of authority, the ZBA provided no other basis for its conditioning the Special Permit to preclude Hampshire from using the golf course and tennis courts for nonmember events. See id. at 1-4. This condition, denying Hampshire’s Application “as related to the R-20 zoned portion of its Property” and any other language in the Resolution limiting the Special Permit “exclusively” to the MR zoned portion of the Property, lacks any rational basis in the Record, and must be annulled as arbitrary and capricious.

ZBA Places Hampshire On Undefined “Probation”

98. The ZBA further issued its partial approval of the Application on the condition that Hampshire serve an “initial probationary period” lasting three (3) years. See id. at 3. While all other clubs in the Village have received special permits for nonmember events requiring renewal every three (3) years, Hampshire is the only club with a so-called “probation” period. Compare Exhibit O to the Pfeffer Aff., with Exhibit A to the Pfeffer Aff. at 3.

99. There is no basis in the Record for this condition, let alone a rationale offered by the ZBA as to why it was included in the Resolution.

100. The ZBA merely adopted the Coalition's position that Hampshire be "placed on probation" as a purported "bad actor." See Exhibit N to the Pfeffer Aff. at 55-56. Again, the "complaints" cited by the Coalition to support this claim were filed by members of the Coalition only *after* Hampshire announced its intent to pursue the First Rezoning Petition and condominium plan. Such "complaints" were never shown to be based on any submitted factual evidence.

101. There are no reports of parking, traffic or noise problems in the Village's building files other than the letters provided by the Coalition in the last year. The Coalition only produced one (1) photo from 2011 purporting to show "regular" over-parking conditions associated with nonmember events. This photograph was taken during a *member event* held on Labor Day. See id. at 66-67.

102. This lack of evidence was brought to the ZBA's attention by Hampshire's representatives. See id. Hampshire requested that the ZBA review the Building Department files pertaining to the Club, because these files contain no documentary support for the Coalition's self-serving claims. See id. The ZBA refused to do so.

103. Moreover, there is no authority in the Zoning Code relating to nonmember event special permits, which allows the ZBA to place a club on probation. See Village Code § 342-35(B)(9). Nor did the ZBA ever discuss its intent to consider such vindictive action. There is also no articulation in the Resolution indicating what the terms of this so-called "probationary" period would be, why it was included in the Special Permit conditions, or how this "probationary" status would be applied to Hampshire. See Exhibit A to the Pfeffer Aff. The ZBA simply placed this term into the Resolution without explanation.

Village Board Rejects Hampshire Recreation's First Rezoning Petition And Threatens A Prolonged SEQRA Process

104. While Hampshire was processing its Application before the ZBA, on January 28, 2014, Hampshire Recreation filed the First Rezoning Petition with the Village Board, along with an alternative proposal to subdivide the Site pursuant to the existing as-of-right R-20 zoning ("R-20 Alternative").

105. Again, the First Rezoning Petition presented the Village with the chance to implement important elements of its Comprehensive Plan, and to engage the community in a meaningful and constructive dialogue concerning how best to achieve the intent and objectives of the Comprehensive Plan concerning this uniquely situated Property. The First Rezoning Petition would also further achieve the Village's stated goal of "preserv[ing] Hampshire Country Club" by ensuring that a viable custodian remains at the Site to maintain in perpetuity the private open space and environmental areas on the Property as attractive resources for the community.

106. In support of the First Rezoning Petition, Hampshire Recreation submitted, in accordance with the Village Code's rules and regulations, and, at substantial expense, numerous technical and environmental reports prepared by engineering, traffic and planning experts. These reports established that the proposal could be accomplished in a manner that was consistent with the surrounding community, and have limited, if any, adverse environmental impacts.

107. These submissions included, among other studies, an architectural assessment, demonstrating that the new residential building would blend into the architecture and bulk of the existing clubhouse, and not be seen by most of the residences in the adjacent areas. Hampshire Recreation also submitted a comprehensive Traffic Impact Assessment, which confirmed that the development would not have a significant adverse impact upon traffic operating

conditions on area roadways, along with various technical analyses determining that the proposal would improve stormwater management and drainage issues at the Site.

108. The First Rezoning Petition was placed on the agenda for the February 10, 2014 Village Board meeting for a public Hearing.

109. During the Hearing, the Coalition's counsel appeared to, once again, demand that the Village Board not entertain the Petition because it was not "worth the hassle" associated with reviewing the proposal given the Coalition's opposition, and the "potential litigation" that the Coalition would initiate.

110. The Coalition also continued to accuse Hampshire Recreation of being a "bad actor," again, without providing any evidentiary support.

111. Individual members of the Coalition addressed the Village Board, demanding that the Board refuse to accept the Petition, and that it send Hampshire Recreation's R-20 Alternative to the Village Planning Board to subject it to years of review under the State Environmental Quality Review Act ("SEQRA") and Village regulations.

112. Various members of the Village Board, as well as certain Village consultants, adopted the Coalition's position, expressing privately that if Hampshire Recreation sought to pursue its R-20 Alternative before the Planning Board, the Village would subject Hampshire Recreation to a lengthy and expensive environmental review process with the likely outcome being a rejection of the proposal, and the Village's adoption of a conservation zoning as a so-called "SEQRA alternative."

113. This review process would cost Hampshire Recreation hundreds of thousands of dollars, only to yield a pre-determined (indeed, threatened) denial of the proposal and adoption of a restrictive conservation zoning.

114. Such conservation zoning, if adopted as threatened, would deprive Hampshire Recreation of the ability to make any future improvements on the Site, and would endanger the continued viability of the Club.

115. After the public Hearing on the First Rezoning Petition, which was largely dominated by a handful of the Coalition's members, the Village Board voted unanimously to refuse to even accept the Petition. Such a decision prevented any dialogue on, or consideration of, the merits of Hampshire Recreation's proposal. The Board provided no articulated basis or elaboration for refusing to consider the Petition.

116. Upon information and belief, the Village's refusal to accept the First Rezoning Petition was in response to the threats and intimidations of the Coalition.

Hampshire Recreation Resubmits A Reduced Proposal To Village Board

117. After the close of the Hearing, Hampshire Recreation, once again, attempted to work collaboratively with the Village to reach a mutually acceptable result for both the Parties and the community.

118. Hampshire Recreation again spent considerable time and resources making changes to its original proposal. On June 12, 2014, Hampshire Recreation formally submitted a revised rezoning Petition to the Village Board, reflecting a reduced density proposal ("Revised Rezoning Petition"). The revised proposal would continue to preserve approximately ninety (90%) of the Site as open space in perpetuity. The proposed density was reduced to ninety-seven (97) condominium units, and the top floor of the proposed condominium building was removed.

119. Similar to the First Rezoning Petition, the Revised Rezoning Petition was fully consistent with the planning goals articulated in the Comprehensive Plan. It would preserve far more undisturbed area than suggested in the Comprehensive Plan, while permitting Hampshire Recreation to act as a viable custodian of the open space.

120. Given this consistency, and the reduced density of the new plan, Hampshire Recreation in good faith expected the Village Board to review the Revised Rezoning Petition, as well as provide Hampshire Recreation's representatives an opportunity to address the Village Board and discuss the proposal.

Village Board Illegally Convenes Executive Sessions To Exclude Hampshire Recreation From Its Consideration Of The Revised Rezoning Petition

121. The Village placed Hampshire Recreation's revised proposal on its Work Session Agenda for June 16, 2014, yet indicated that "it is anticipated that this matter will not be discussed on Monday, June 16, 2014, as it is being reviewed by the Village's attorneys, staff and consultants." See Village of Mamaroneck Board of Trustees Agenda – June 16, 2014 at 5:30 PM – Work Session, annexed hereto as Exhibit "HH."

122. At the Work Session, Hampshire Recreation, nevertheless, appeared with its representatives, ready to discuss the Revised Rezoning Petition and the merits of its proposal. The Village Board declined to hear Hampshire Recreation's presentation, not even entertaining a discussion of the revised proposal.

123. Instead, the Village Board convened a closed executive session for "advice of counsel." This was not a lawful justification to convene an executive session under the OML, Public Officers Law Sections 103 and 105.

124. The purpose of the OML "is to prevent municipal governments from debating and deciding in private what they are required to debate and decide in public." Gernatt Asphalt Prods., Inc. v. Town of Sardinia, 87 N.Y.2d 668, 642 N.Y.S.2d 164, 175 (1996). Thus, Section 105 of the OML provides that the Village Board may conduct executive sessions *only* for

eight (8) enumerated purposes. See id. § 105(1).⁴ The Village Board did not enter into executive session for *any* of these eight (8) permitted purposes. “Advice of counsel” on a petition submitted by a property owner seeking to rezone a property specifically identified in the Comprehensive Plan as a location warranting public consideration of new zoning is *not* one of the eight enumerated purposes. See id.

125. Instead, upon information and belief, the Village Board convened the session to discuss the Revised Rezoning Petition, and debate whether to entertain it, behind closed doors, in order to prevent Hampshire Recreation’s representatives from making a presentation on the proposal, listening to the Village Board’s deliberations, or participating in any other meaningful discourse.

126. When the Village Board completed the illegal closed session, Hampshire Recreation was informed that consideration of the Revised Rezoning Petition was “adjourned” for the Village Board’s counsel to review the submission. No discussion was permitted.

Village Board Convenes A Second Illegal Executive Session, And Refuses To Entertain The Revised Petition

127. The Village Board next placed the revised proposal on its June 23, 2014 meeting Agenda for “Review and Possible Referral of Zoning Petition Submitted by Hampshire Country Club.” See Village of Mamaroneck Board of Trustees Agenda – June 23, 2014 at 7:30 PM – Regular Meeting, annexed hereto as Exhibit “II.”

⁴ The eight (8) approved purposes are: (i) matters which will imperil the public safety if disclosed; (ii) any matter which may disclose the identity of a law enforcement agent or informer; (iii) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed; (iv) discussions regarding proposed, pending or current litigation; (v) collective negotiations pursuant to article fourteen of the civil service law; (vi) the medical, financial, credit or employment history of a particular person or corporation, or employment-related matters of a particular person or corporation; (vii) the preparation, grading or administration of examinations; and (viii) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. See N.Y. Pub. Off. Law § 105(1).

128. Once again, Hampshire Recreation and its representatives attended the meeting with the expectation to make a formal presentation on the Revised Rezoning Petition, as is typical for such an application. And once again, the Village Board convened yet another executive session behind closed doors for purported “advice of counsel.” The Village Board did not provide any valid basis under the OML to convene an executive session. Rather, upon information and belief, the Village Board entered into an executive session in order to prevent Hampshire Recreation, and members of the public, from hearing its debate over whether to entertain the Revised Rezoning Petition, or making any presentation on the proposal.

129. Upon returning from its illegal executive session, the Village Board immediately voted to refuse to entertain the Revised Rezoning Petition without any discussion. The Village Board did not permit Hampshire Recreation’s representatives to come to the podium and present the merits of the revised proposal, let alone afford them any opportunity to address the Board.

130. By excluding Hampshire Recreation, and the public, from its debate over whether to entertain the Revised Rezoning Petition using the guise of an executive session, the Village Board violated the OML when it denied the Revised Rezoning Petition on June 23, 2014.

Village Board Improperly Holds Executive Sessions To Exclude The Public And Hampshire When Discussing Any Matter Related To Hampshire’s Use Of The Property

131. Any time the Village Board now discusses matters relating to Hampshire, they do so in a closed executive session so as to exclude Hampshire, its representatives and the public from participating in its debate regarding the Club and the use of the Property.

132. On July 14, 2014, for example, the Village Board held a public hearing on the zoning text amendment relating to the use of nonmember events on the portion of the Property located within the R-20 District. This zoning text amendment was proposed by the Village

pursuant to the May Stipulation. The purpose of the proposed zoning text amendment was to settle the zoning enforcement lawsuit in Supreme Court by clarifying that Hampshire could utilize its entire Property for nonmember events pursuant to the conditions imposed upon all clubs in the MR District under Section 342-35 of the Zoning Code.

133. During the public hearing, members of the Coalition proposed changes to the text amendment that would place undue conditions on Hampshire's use of the Property, such as time-limited hours of operation. The Village Mayor then convened an executive session for Village Board members to review and discuss these suggestions outside of the presence of Hampshire's representatives, and the public in the audience. As articulated above, the Village Board again followed its same pattern of justifying leaving the public hearing room under the guise of seeking "advice of counsel," without any further explanation.

134. Upon returning to the public hearing room, the Village Board informed the public that the matter would be adjourned without further comment. The Village Board gave no indication of whether it would refuse to adopt its own proposed text amendment, or otherwise change its language such that Hampshire's use of the Property would be materially impacted. Nor did the Village Board indicate when the matter would next be on the Board's agenda.

135. Such reliance upon executive sessions to conceal any discussion the Village Board engages in regarding the future use and regulation of Hampshire Recreation's Property is improper, unfair and illegal. Hampshire must be afforded the right to hear the Village Board's deliberations concerning how it intends to regulate Hampshire Recreation's Property. Further violations of the OML must be enjoined.

**Hampshire Has Incurred Substantial Costs
As A Result Of The Village's Harassment Campaign**

136. Hampshire has incurred significant damages from the Village's course of conduct, suffering economic losses in the amount of approximately \$54,968,000.00, to date.

137. Hampshire has been forced to defend against two Court proceedings, both brought, upon information and belief, with the intent to deter Hampshire Recreation from pursuing development at the Property, and to ultimately cause the Club's closure. Hampshire was also required to spend time and money preparing for, and appearing at, hearings in Supreme Court, as well as multiple appearances in Village Justice Court.

138. To date, Hampshire has spent over \$140,000.00 defending these lawsuits.

139. Moreover, Hampshire Recreation has spent substantial time and money preparing two development plans, the First Rezoning Petition and the Revised Rezoning Petition, which were prepared at the encouragement of Village staff and officials, and which were summarily rejected without any rational basis or legitimate governmental purpose.

140. To date, Hampshire Recreation has spent over \$800,000.00 preparing the development plans and two rezoning Petitions.

141. Hampshire has also spent significant time and resources applying for a Special Permit before the ZBA, including preparing two separate submissions of virtually identical Applications, noticing over two hundred property owners and attending four (4) ZBA meetings.

142. To date, Hampshire has spent over \$28,000.00 applying for such Special Permit.

143. The Village's refusal to entertain both the First Rezoning Petition and Revised Rezoning Petition has also deprived Hampshire Recreation of a productive use of its Property. The Comprehensive Plan specifically recognizes potential residential development as a

use that “would better preserve Hampshire Country Club in the future.” Rejecting Hampshire Recreation’s development proposal – twice – has prevented Hampshire Recreation from pursuing a plan that would ensure sufficient income to secure its ability to maintain the Club, and its abundant open space, into the future. This has resulted in an economic loss for Hampshire Recreation equaling approximately \$54,000,000.00.

Hampshire Recreation Has Also Suffered An Unconstitutional Taking

144. The Village’s conduct also resulted in an unconstitutional taking of Hampshire Recreation’s Property.

145. Hampshire Recreation initially invested \$12,139,317.00 in purchasing the Property. Hampshire Recreation must spend \$1,290,276.00 annually in order to maintain the Property in a condition feasible for recreational use. This includes the costs of maintaining the golf course, as well as other recreational amenities offered to its members. These annual investments in the Property, together with the initial purchase price, have totaled to date \$17,300,420.00.

146. The current operation of the Property solely as a golf course and country club does not produce sufficient revenue to sustain such use.

147. The maintenance expenses outweigh the revenue generated by the club operation. Hampshire Recreation, to date, has never generated a profit from its operations. Similar losses have occurred at golf courses and country clubs across the nation over the past decade. This national trend demonstrates the unfortunate reality that it is no longer economically viable to operate a golf course and country club solely for recreational use, without any supplemental sources of revenue.

148. In order to put the Property to viable use, Hampshire Recreation must supplement the club use through nonmember events (a use that had occurred continually for almost

ninety (90) years), as well as developing a limited portion of the Property for residential use to provide additional income to support maintenance of the golf course and country club. In the alternative, Hampshire Recreation must develop the Property in accordance with the existing as-of-right residential zoning.

149. The Village Board has refused to even entertain Hampshire Recreation’s proposals to rezone the Property in accordance with the Village’s own planning goals (as articulated in the Comprehensive Plan). The Village has also placed unreasonable restrictions on the existing use of the Property, such as limiting nonmember events to the clubhouse and placing Hampshire on “probation.” Finally, the Village has stated that Hampshire would not be permitted to develop the Property under the existing as-of-right R-20 zoning.

150. The Village’s actions have confined Hampshire Recreation to a recreational operation of the Property yielding only financial losses, depriving Hampshire Recreation from sustaining any economically viable use at the Property. The Village’s conduct has also denied Hampshire Recreation the ability to generate a reasonable return on its investment in the purchase and maintenance of the Property.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 – Equal Protection)

151. Plaintiffs/Petitioners repeat and reallege paragraphs 1 through 150 as if fully set forth herein.

152. The Village violated Hampshire’s rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. For no rational reason, it treated Hampshire differently than other similarly situated membership clubs in the Village. See Vill. of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073 (2000).

153. Hampshire is similarly situated to the other three (3) membership clubs in the Village because (1) no rational person could regard its circumstances as sufficiently differing from any of the other clubs in the Village with a Special Permit for nonmember events “to a degree that would justify the differential treatment on the basis of a legitimate government policy,” and (2) the similarities between Hampshire and the other clubs, and the differences in treatment, “are sufficient to exclude the possibility that [the Village] acted on the basis of a mistake.” See Clubside, Inc. v. Valentin, 468 F.3d 144, 159 (2d Cir. 2006).

154. First, no rational person could conclude that Hampshire’s circumstances are such that it should be treated differently from the other clubs with a Special Permit to hold nonmember events.

155. There are three (3) other membership clubs in the Village that are subject to Section 342-35(B)(9) of the Zoning Code, which governs nonmember events: Mamaroneck Beach and Yacht Club, Orienta Beach Club and Beach Point Club.

156. All four (4) clubs are members-only clubs located along the Long Island Sound in the Village, and have been continuously operating at their current locations for over sixty (60) years.

157. All four (4) clubs provide open space opportunities, as well as a variety of recreational activities for members and their guests, including swimming pools, tennis courts, boating opportunities, children’s programs, and restaurants and bars.

158. All four (4) clubs also host nonmember events, such as charitable fundraisers and weddings, to supplement their income.

159. All four (4) clubs are subject to the same Regulation governing nonmember events.

160. Upon information and belief, the Village has not commenced any lawsuit, let alone two simultaneous lawsuits, against the other three (3) clubs, seeking an injunction and monetary damages for alleged failures to obtain Special Permits to conduct nonmember events.

161. Upon information and belief, the Village has not brought an injunction application against the other three (3) clubs seeking to cause their closure, *i.e.*, seeking to prevent *any and all* commercial and recreational events from occurring at their respective properties.

162. Upon information and belief, the other three (3) clubs have sought and received the exact same Special Permit to hold these nonmember events on their respective entire properties, which the ZBA granted in the normal course of the approval process.

163. Upon information and belief, the ZBA utilized its “practical application” of the relevant zoning provisions when granting Special Permits to these other three (3) clubs.

164. Upon information and belief, the other three (3) clubs were not granted “probationary” Special Permits.

165. Upon information and belief, there was no rational justification offered by the Village for commencing not one, but *two* separate lawsuits against Hampshire. Nor, upon information and belief, was there any rational justification provided for seeking to prevent all recreational and commercial use of Hampshire Recreation’s Property, which would, effectively, cause the Club’s closure.

166. Upon information and belief, the only justification offered by the Village for treating Hampshire differently than the other similarly situated clubs with regards to issuance of the Special Permit did not actually serve as a basis for the Village’s actions. The ZBA claimed that it had to treat Hampshire differently because it did not have the “jurisdiction” to issue a Special Permit to cover the portion of the Property located in the R-20 District (*i.e.*, the golf course). The

ZBA then expressly rejected its own reasoning in the same Resolution by applying the Special Permit to the parking lot, also located within the R-20 District.

167. Upon information and belief, the initiation of two actions against Hampshire, one of which sought to cause the Club's closure, as well as the fabricated "jurisdiction" claim, were all intended to harass Hampshire Recreation in retaliation for pursuing its development proposal, to deter Hampshire Recreation from further pursuing any iteration of this development proposal, and to essentially force the Club to close.

168. Under these circumstances, no rational person could view Hampshire as differing from the other clubs to such a degree as to justify dissimilar treatment from the Village.

169. Second, there is no "legitimate government policy" underlying the Village's treatment of Hampshire here.

170. Upon information and belief, the sole reason for the Village's unequal treatment of Hampshire was to deter Hampshire Recreation from, and retaliate against it for, pursuing the rezoning of the Property, in order to depress the value of the Property, and force Hampshire Recreation to close the Club at the behest of the Coalition. These are not legitimate governmental purposes justifying differential treatment of Hampshire.

171. Third, the similarities, and the lack of any significant difference, between Hampshire and the other three (3) clubs, are more than sufficient to exclude the possibility that the Village treated Hampshire differently "on the basis of mistake."

172. Upon information and belief, all of the Village's actions against Hampshire from February 2013 until present represented an organized effort to harass Hampshire, not based on any "mistake" as to the similarities between Hampshire and the other three (3) clubs in the Village.

173. Under the foregoing facts, Hampshire is sufficiently similarly situated to the three (3) other membership clubs subject to the Zoning Code's nonmember event Regulation.

174. For these and other reasons, the Court should issue a declaratory judgment finding the Village Board's denial of both Petitions to be in violation of the United States Constitution under 42 U.S.C. Section 1983, annul the Village Board's determination not to accept either Petition, and award Hampshire compensatory damages in an amount to be determined at trial, but not less than \$55,000,000.00, as well as attorneys' fees.

SECOND CAUSE OF ACTION

(42 U.S.C. § 1983 – First Amendment Retaliation)

175. Petitioners repeat and reallege paragraphs 1 through 174 as if fully set forth herein.

176. The Village violated Hampshire Recreation's Constitutional rights by punishing it for exercising its right to petition the government.

177. The Village has violated Hampshire Recreation's Constitutional right to petition in that (i) such right is protected by the First Amendment to the United States Constitution, as well as the New York State Constitution, (ii) the Village's deprivation of such right was motivated or substantially caused by Hampshire Recreation's exercise of these rights, and (iii) the Village's actions have caused some concrete harm. See Curley v. Vill. of Suffern, 268 F.3d 65, 73 (2d Cir. 2001).

178. First, Hampshire Recreation's right to apply to the Village Board for land use approvals, including filing the Petitions to amend the Zoning Code in accordance with the Comprehensive Plan, constitutes petitioning activity under the United States and New York State Constitutions.

179. Second, the Village's actions were motivated by Hampshire Recreation's exercise of this right to petition, rather than any legitimate government purpose.

180. The Village embarked upon a purposeful course of conduct designed to deter and retaliate against Hampshire Recreation for pursuing both rezoning Petitions and its development proposals, in order to depress the value of the Property, and force Hampshire Recreation to close the Club at the behest of the Coalition.

181. Third, the Village's retaliatory conduct has caused Hampshire Recreation to suffer concrete harm in the form of pecuniary losses.

182. For this and other reasons, the Court should award Hampshire Recreation compensatory and punitive damages in an amount to be determined at trial, but not less than \$55,000,000.00, as well as attorneys' fees, for the losses it has suffered as a result of the Village's retaliatory actions in violation of Hampshire Recreation's Constitutional right to petition the government.

THIRD CAUSE OF ACTION

(Unconstitutional Taking Of Hampshire Recreation's Property)

183. Petitioners repeat and reallege paragraphs 1 through 182 as if fully set forth herein.

184. The Village has effectuated an unconstitutional taking of Hampshire Recreation's Property by (i) depriving it of any economically viable use of the Property, and (ii) rendering it unable to realize any reasonable return on its investment in the Property.

185. The Village deprived Hampshire Recreation of any economically viable use of its Property by placing irrational restrictions on longstanding club operations, refusing to entertain Hampshire Recreation's proposals to rezone the Property in accordance with the Village's own planning goals (as articulated in the Comprehensive Plan), and already pre-judging

that it would not permit Hampshire to develop the Property under the existing as-of-right R-20 zoning.

186. The Village's course of conduct has prevented Hampshire Recreation from realizing a reasonable return on its investment in the Property. Based upon the longstanding use of the Property for nonmember events, its existing R-20 zoning, and the provisions in the Comprehensive Plan providing for rezoning the Property to facilitate certain residential development on the Property, it was reasonable for Hampshire Recreation to invest \$17,300,420.00 to purchase and maintain the Property over the past four (4) years. The Village's current actions have prevented Hampshire Recreation from generating any reasonable return on the Property sufficient to offset these investments.

187. The Village's course of conduct, therefore, has resulted in an unconstitutional taking.

188. Various Village Board members and members of the Coalition have contended that subdividing the Property as an R-20 as-of-right subdivision is not a viable option due to the physical constraints of the Property. As such, Hampshire Recreation will file an application with the Planning Board for a 106 single-family residential subdivision in accordance with the existing R-20 zoning of the Property. This filing will demonstrate the physical viability of the plan, and establish the Property's highest and best use. Hampshire Recreation is also making this record in order to establish the reasonableness of its investment-backed expectations when purchasing the Property.

189. To the extent that the Village would argue a takings claim is unripe at this juncture, the doctrine of futility applies. It would be futile for Hampshire Recreation to delay filing the instant Action when the Village has already indicated that it would subject an R-20 application to a prolonged SEQRA process, costing Hampshire Recreation hundreds of thousands of dollars,

resulting in a denial of the subdivision application and a rezoning of the Property to a conservation district, and precluding any development of the Property. Hampshire will pursue the Application only to establish the appropriateness of its taking claim.

190. For these reasons, the Court should declare that the Village effected an unconstitutional taking of Hampshire Recreation's Property, and award Hampshire Recreation compensatory damages in an amount to be determined at trial, but not less than \$55,000,000.00, equal to the highest and best use of the Property.

FOURTH CAUSE OF ACTION

(Pub. Off. Law § 107 – Annulment Of The Village Board's Refusal
To Accept Revised Rezoning Petition For Violating The Open Meetings Law)

191. Petitioners repeat and reallege paragraphs 1 through 190 as if fully set forth herein.

192. The Village Board violated the OML when it entered into multiple illegal executive sessions to discuss the Revised Rezoning Petition for the purpose of excluding Hampshire Recreation from the Village Board's deliberations on a matter of public business, preventing Hampshire Recreation from presenting its development proposal, and precluding Hampshire Recreation from engaging the Village Board in any discourse.

193. Section 105 provides that public bodies may conduct executive sessions *only* for eight (8) enumerated purposes. See N.Y. Pub. Off. Law § 105(1). The executive sessions convened by the Village Board in relation to the Revised Rezoning Petition on June 16, 2014, and June 23, 2014, did not qualify for any of the eight (8) exceptions to the requirement that the Village Board "debate and decide in public." See Gernatt Asphalt Prods., 642 N.Y.S.2d at 175.

194. The Village Board's actions therefore were intended to wholly exclude Hampshire Recreation -- and any other member of the public -- from participating in a matter of public business in direct contravention of the spirit and the letter of the OML.

195. For these reasons, the Court should declare, pursuant to Public Officers Law Section 107, that the Village Board violated the OML when it improperly convened multiple executive sessions in order to exclude Hampshire Recreation and other members of the public from its discussions on the Revised Rezoning Petition, should further declare null and void the Village Board's refusal to accept the Revised Rezoning Petition, and should award Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but no less than \$800,000.00.

FIFTH CAUSE OF ACTION

(Pub. Off. Law § 107 – Enjoining Village Board's Reliance On Executive Sessions
To Conceal Its Discussions Regarding The Future Use Of The Property)

196. Petitioners repeat and reallege paragraphs 1 through 195 as if fully set forth herein.

197. The Village Board violated the OML when it entered into an illegal executive session to discuss the potential zoning text amendment, proposed pursuant to the May Stipulation, for the purpose of excluding Hampshire from the Village Board's deliberations on a matter of public business.

198. The Village Board claimed to enter into executive session for "advice of counsel" instead of discussing the text amendment in front of the public, as required by the OML.

199. This has become the Village Board's modus operandi when discussing matters related to Hampshire, and its future use of the Property.

200. The Village Board's actions are intended to wholly exclude Hampshire -- and any other member of the public -- from participating in a matter of public business in direct contravention of the spirit and the letter of the OML.

201. For these reasons, the Court should declare, pursuant to Public Officers Law Section 107, that the Village Board violated the OML when it improperly convened an executive session in order to exclude Hampshire, its representatives and other members of the public, from

its discussions relating to the future use and regulation of the Property. The Court should also enjoin the Village Board from convening similar executive sessions in the future, as well as award Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but no less than \$10,000.00.

SIXTH CAUSE OF ACTION

(Declaratory Judgment – Annulment Of The Village Board's
Refusal To Accept Both Rezoning Petitions For Exercise Of Bad Faith)

202. Petitioners repeat and reallege paragraphs 1 through 201 as if fully set forth herein.

203. The Village Board's decision on both rezoning Petitions was unjustly, and irrationally, influenced by the clear bias and prejudice of the Board members seeking to depress the value of the Property, and in capitulation to a small, vocal opposition group, and should be annulled.

204. Again, there is no legitimate government purpose related to this course of conduct. It is irrational, unfair, and above all, unconstitutional.

205. The actual bias, bad faith and prejudice of the Village in favor of the Coalition and against Hampshire Recreation justifies an annulment of the Village Board's decisions on both rezoning Petitions.

206. For these reasons, the Court should declare that the Village Board has shown actual bias, bad faith and prejudice towards Hampshire Recreation in denying both rezoning Petitions, and annul the Village Board's decisions not to accept either Petition.

SEVENTH CAUSE OF ACTION

(Declaratory Judgment – Annulment of the Village Board's
Refusal To Accept The Petition As An Irrational Act)

207. Petitioners repeat and reallege paragraphs 1 through 206 as if fully set forth herein.

208. The Village Board acted arbitrarily and capriciously when it exercised its zoning power in a manner inconsistent with the duly enacted 2012 Comprehensive Plan.

209. Under New York law, municipalities may not decline to follow a comprehensive plan without articulating a rational basis for that determination. It is well-established that zoning decisions must be consistent with the planning goals outlined in the comprehensive plan.

210. The Comprehensive Plan states explicitly that it would be “appropriate” for the Village to pursue rezoning opportunities to “preserve Hampshire Country Club in the future,” together with protecting recreational/open space features and allowing for limited residential development. See Exhibit EE at 63-64.

211. Both of Hampshire Recreation’s proposals were wholly consistent with, and in fact extended far beyond, the Plan’s stated goals.

212. The Village Board’s decision not to even consider either Petition is in direct conflict with the duly adopted planning policy of the Village.

213. It was irrational, arbitrary and capricious for the Village Board to have rejected both Petitions without consideration on the merits in order to depress the value of the Property, and as a response to the opposition raised by a small, but vocal, group of neighbors.

214. In the land use and zoning context, Courts have overturned decisions where they are based solely on generalized community objections, rather than any rational planning basis.

215. Similarly, the decision of the Village Board to not even consider either Petition simply to depress the value of the Property so it may purchase it is irrational.

216. The Village Board acted arbitrarily and capriciously when it exercised its zoning power to deviate from the planning goals articulated in the Comprehensive Plan, where the only apparent justification was mere capitulation to the Coalition.

217. For these reasons, the Court should declare that the Village Board acted irrationally in denying both rezoning Petitions without articulating why it deviated from the goals of the Comprehensive Plan, and accordingly annul the Village Board's decisions not to accept either Petition, and require that the Village Board consider them on the merits and issue a reasoned decision.

EIGHTH CAUSE OF ACTION

(Article 78 – ZBA's Condition Prohibiting Use of the
Golf Course was Arbitrary and Capricious)

218. Petitioners repeat and reallege paragraphs 1 through 217 as if fully set forth herein.

219. The ZBA acted arbitrarily and capriciously when it enacted the portion of the Resolution precluding Hampshire from using the golf course in the R-20 District for nonmember events on the basis of an alleged lack of "jurisdiction."

220. The ZBA expressly recognized its jurisdiction to extend the Special Permit to the portion of the Property in the R-20 District when it permitted Hampshire to use the parking lot for nonmember events "regardless of which zoning district" it is located in.

221. In the Resolution, the ZBA also explicitly recognized, as it has with all other clubs that have Special Permits, that it has historically "adopted a more practical application" of Section 342-35(B)(9).

222. The ZBA utilized this "practical application" to permit Hampshire to use its parking lot located in the R-20 District for nonmember events held at Hampshire in the MR District (i.e., the clubhouse).

223. The ZBA's failure to apply the identical reasoning to the golf course and other facilities used for nonmember events for many decades was arbitrary and capricious.

224. In addition, the ZBA only indicated it lacked jurisdiction to allow Hampshire to continue to use the golf course for nonmember events after the Coalition presented its unsubstantiated complaints about Hampshire behaving as a “bad actor.”

225. It is well-settled in New York that a Zoning Board decision based upon generalized community pressure, rather than a rational basis articulated on the Record, is arbitrary, capricious, and subject to annulment.

226. The ZBA’s reliance on generalized community pressure in limiting the applicability of the Special Permit was also arbitrary, capricious and subject to annulment.

227. Accordingly, the portion of the Resolution denying Hampshire’s Special Permit Application as related to the R-20 portion of the Site must be vacated, and the Court should direct the ZBA to amend the Resolution approving the Application such that Hampshire’s entire Property may be used for nonmember events subject to the Special Permit.

NINTH CAUSE OF ACTION

(Article 78 – ZBA’s Decision To Ignore Evidence Of A
Preexisting Nonconforming Use Was Arbitrary And Capricious)

228. Petitioners repeat and reallege paragraphs 1 through 227 as if fully set forth herein.

229. The ZBA acted arbitrarily and capriciously when it refused to consider the evidence presented by Hampshire establishing that the use of the entire Property for nonmember events constituted a legal preexisting nonconforming use.

230. Hampshire orally presented evidence of this longstanding use to the ZBA during the public Hearing.

231. The ZBA ignored this Record evidence.

232. Hampshire followed this presentation by submitting additional information in response to specific requests made by the ZBA seeking proof of this legal preexisting nonconforming use.

233. The ZBA instead “closed” the Record, and refused to accept the evidence when Hampshire sought to present it.

234. Hampshire had a due process right to submit this evidence so that the ZBA could properly evaluate the issue presented by Hampshire of whether use of the Property for nonmember events constitutes a legal preexisting nonconforming use, obviating the need for a Special Permit.

235. By refusing to consider this evidence, the ZBA deliberately ignored crucial material facts relevant to the inquiry before it as a quasi-judicial body, thereby unfairly prejudicing Hampshire.

236. The ZBA also acted arbitrarily and capriciously in failing to consider Hampshire’s evidence even though Hampshire produced such evidence in response to statements and requests made specifically by one or more members of the ZBA.

237. Accordingly, the portion of the Resolution denying Hampshire’s Special Permit Application as related to the R-20 portion of the Site must be vacated, and the Court should direct the ZBA to amend the Resolution approving the Application such that Hampshire’s entire Property may be used for nonmember events subject to the Special Permit.

TENTH CAUSE OF ACTION

(Article 78 – ZBA’s Imposition Of A “Probationary”
Special Permit Was Arbitrary and Capricious)

238. Petitioners repeat and reallege paragraphs 1 through 237 as if fully set forth herein.

239. The ZBA acted arbitrarily and capriciously by inserting the condition in the Resolution placing Hampshire on an undefined “probationary” status.

240. No other club in the Village has a Special Permit placing it on “probationary” status.

241. There is no provision in Section 342-35(B)(9) or elsewhere in the Zoning Code allowing the ZBA to issue a “probationary” Special Permit for nonmember events.

242. There is no discussion by the ZBA in the Record, nor in the Resolution, defining the terms of Hampshire’s so-called “probationary” status.

243. The ZBA, therefore, acted arbitrarily and capriciously when it included the term “probationary” within Hampshire’s Special Permit.

244. For these reasons, the Court should direct the ZBA to amend the Resolution to annul the condition placing Hampshire on “probationary” status.

ELEVENTH CAUSE OF ACTION

(Declaratory Judgment – Hampshire’s Longstanding Use Of The Entire Property For Nonmember Events Is A Legal Preexisting Nonconforming Use)

245. Petitioners repeat and reallege paragraphs 1 through 244 as if fully set forth herein.

246. Hampshire does not require a Special Permit to hold nonmember events on its Property, including the portion of the Site within the R-20 District, because this use is legal, preexisting and nonconforming. See, e.g., Piesco v. Hollihan, 47 A.D.3d 938, 849 N.Y.S.2d 671, 673 (2d Dep’t 2008) (holding a restaurant did not require a special permit because the use predated the relevant zoning regulations).

247. Under the Village Code, “the lawfully permitted use of land or buildings existing at the time of the adoption of [the zoning code] may be continued, although such use does

not conform to the standards specified for the zone in which such land or building is located. Said uses shall be deemed ‘nonconforming uses.’” See Village Code § 342-62.

248. Section 342-35(B)(9) of the Village Code, which governs Special Permits for nonmember events, was enacted in 2001. See Exhibit F to the Pfeffer Aff.

249. Use of the entire Property, including the golf course, for nonmember events has been continuous since at least 1959 until present day, well before the adoption of the relevant Zoning Code provision, as evidenced by the documents annexed as Appendix 1.

250. This use has never been discontinued, nor has any owner of the Club intended to abandon such use.

251. As such, Hampshire’s use of the entire Property for nonmember events is a legal preexisting nonconforming use.

252. Accordingly, the Court should issue a declaratory judgment that Hampshire’s use of the entire Property for nonmember events is a preexisting nonconforming use, and does not require compliance with the Zoning Code’s Special Permit provisions under Section 342-35(B)(9).

WHEREFORE, Petitioners respectfully demand judgment, as follows:

(1) declaring, pursuant to 42 U.S.C. Section 1983, that the Village Board has engaged in a course of conduct violating Hampshire’s rights to equal protection and to petition the government under the United States and New York State Constitutions, annulling the Village Board’s determinations not to accept Hampshire Recreation’s First Rezoning Petition or Revised Rezoning Petition, and awarding Hampshire Recreation damages and attorneys’ fees in an amount to be determined at trial, but not less than \$55,000,000.00;

(2) declaring that the Village and Village Board effected an unconstitutional taking of Hampshire Recreation’s Property, and awarding damages and attorneys’ fees in an amount to be determined at trial, but not less than \$55,000,000.00;

(3) declaring that the Village Board violated the Open Meetings Law by convening multiple improper executive sessions designed to exclude Hampshire Recreation’s participation in discussions on the Revised Rezoning Petition submitted to the Village Board for its consideration, annulling the Village Board’s decision not to entertain the Revised Rezoning

Petition, and awarding Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but not less than \$800,000.00;

(4) declaring that the Village Board violated the Open Meetings Law by convening multiple improper executive sessions designed to exclude Hampshire's participation in discussions regarding the future use and regulation of the Property, enjoining future violations of the Open Meetings Law, and awarding Hampshire Recreation costs and attorneys' fees in an amount to be determined at trial, but not less than \$10,000.00;

(5) declaring that the Village Board's decisions not to accept Hampshire Recreation's First Rezoning Petition or Revised Rezoning Petition were irrational and undertaken in bad faith, annulling such decisions, and requiring that the Village Board consider the Petitions on the merits and issue a reasoned decision;

(6) annulling the condition in the Resolution prohibiting Hampshire from conducting nonmember events on certain portions of its Property;

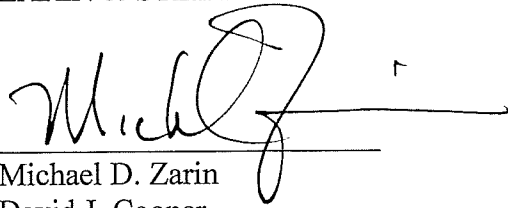
(7) annulling the condition in Paragraph A of the Resolution placing Hampshire on "probationary" status;

(8) declaring Hampshire's use of the entire Property for nonmember events is a legal preexisting nonconforming use not subject to the Village's Special Permit requirements; and

(9) granting such other and further relief as this Court deems just and proper, including attorneys' fees.

Dated: August 12, 2014
White Plains, New York

ZARIN & STEINMETZ

By: 
Michael D. Zarin
David J. Cooper
Attorneys for Plaintiffs/Petitioners
81 Main Street, Suite 415
White Plains, New York 10601
(914) 682-7800

VERIFICATION

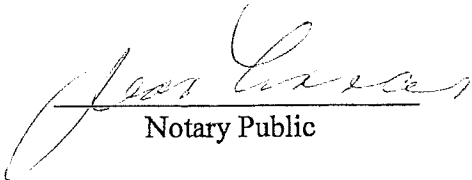
STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss.:

Daniel Pfeffer, being duly sworn, hereby deposes and says that he is an officer of Plaintiff/Petitioner Hampshire Recreation, LLC in the above-referenced proceeding, that he has read the foregoing Verified Petition and Complaint, and that the foregoing Verified Petition and Complaint is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true.

HAMPSHIRE RECREATION, LLC



Sworn to before me
this 11th day of August, 2014


Notary Public

JEAN A. CONNAIR
Notary Public, State of New York
No. 01CO6137395
Qualified in Westchester County
Commission Expires 11/21/2017

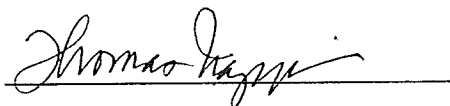
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

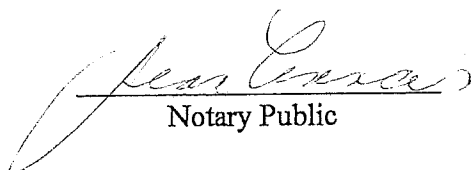
ss.:

Thomas Nappi, being duly sworn, hereby deposes and says that he is an officer of Plaintiff/Petitioner Hampshire Club, Inc. in the above-referenced proceeding, that he has read the foregoing Verified Petition and Complaint, and that the foregoing Verified Petition and Complaint is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true.

HAMPSHIRE CLUB, INC.



Sworn to before me
this 11th day of August, 2014



Notary Public

JEAN A. CONNAIR
Notary Public, State of New York
No. 01C06137395
Qualified in Westchester County
Commission Expires 11/21/2017