

**Town of Schodack v Haas**

2007 NY Slip Op 33164(U)

October 4, 2007

Supreme Court, Rensselaer County

Docket Number: 0214637/2007

Judge: George B. Ceresia

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF RENSSELAER

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TOWN OF SCHODACK,

Plaintiff,

-against-

Index No.: 214637  
RJI No.: 41-0281-2005

JOHN HAAS,

Defendant.

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JOHN HAAS,

Plaintiff,

-against-

Index No.: 216369  
RJI No.: 41-0706-2005

TOWN OF SCHODACK,

Defendant.

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All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

HISCOCK & BARCLAY, LLP  
Attorneys for Town of Schodack  
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**DECISION/ORDER/JUDGMENT**

George B. Ceresia, Jr., Justice

John Haas commenced the second action seeking damages for his allegedly

unlawful ouster from his home, for damages to the house caused by the Town's actions in boarding it up and seeking review of a determination by the Town Board of the Town of Schodack requiring the removal or demolition of the house. By decision/order dated May 25, 2007, this Court converted the second cause of action, which challenged the determination requiring the demolition of Mr. Haas' home, into an article 78 proceeding. Defendant-respondent Town has answered and submitted a certified record of the basis for its determination.

As noted in the prior decision/order addressed to injunctive relief, Mr. Haas has shown that the Town served a notice of violation dated April 26, 2005 which listed the violations as

“sagging floors; ceilings collapsing; foundation collapse in the rear of the structure; structure filled with junk, trash and clutter; egress blocked; improperly installed woodstove; improperly maintained and located portable heater; wall sections open to the outside; absence of smoke detectors; exposed sewer pipes and structure, yard and means of exit blocked with vehicles and parts of vehicles in violation of the Town of Schodack Zoning Code.”

At the Town Board meeting held on September 26, 2005 it was determined that further information with respect to the then current condition of the structure was required. An inspection on October 19, 2005 by the engineer retained by the Town resulted in findings of structural deficiencies of “a. No permanent moisture/weather barrier on the rear of the house; b. The rear door (second means of egress) has no permanent steps; c. Lack of a permanent heat source; and d. the plumbing continues to be incomplete.” However, at the time of such inspection, essentially all of the originally listed violations had been

cured. While some of the remaining deficiencies are related to those listed in the original notice of violation, none of them were listed in the original notice of violation. The record clearly shows that at the time of the October inspection and the November vote to demolish the structure, the house was structurally stable and in no imminent danger of collapse due to the significant repairs performed by Mr. Haas.

The Code of the Town of Schodack § 99-2 authorizes the town to order the removal or repair of any building or structure which is “dangerous or unsafe to the public.” As of the date of the vote to demolish the building, all significant structural deficiencies had been cured. However, it is uncontroverted that there continued to exist deficiencies which rendered the premises unsafe to live in at the time of the November 10, 2005 determination. The determination found that code deficiencies still existed and that the building was unsafe and uninhabitable. As such, there was a factual basis for the finding that the building was dangerous or unsafe to the public, as required under the Town’s code.

The determination states “the Town Board hereby orders the removal and/or repair of such building or structure by the Town pursuant to Town of Schodack Code §99(f) and the Town of Schodack shall assess all costs and expenses incurred by the Town in connection with the proceeding to remove or secure, including the cost of actually removing said building or structure...” While the determination does not specify whether the building should be demolished or repaired, it is clear from the proceedings undertaken

buy the Town that it sought only demolition of the building.

There was no proof on the record with respect to the total cost to demolish the house and clean up the area as compared to the cost to cure the defects. (cf. Matter of Berncolors-Poughkeepsie, Inc. v City of Poughkeepsie, 96 AD2d 595, 597 [2d Dept 1983]). However, based upon the relatively minor nature of the deficiencies that plaintiff-petitioner has not yet cured, it appears that the cost to repair would be significantly less than the cost to demolish. Such difference in cost does not even consider the difference in the value of the land with and without the structure. It is therefore determined that given the nature of the continuing deficiencies, to the extent that the order requires or authorizes demolition of the structure, rather than repair, it was arbitrary and capricious.

Moreover, Mr. Haas was never served with a formal notice of violation with respect to the new deficiencies nor was he given a reasonable opportunity to cure them. Unless a structure is in imminent danger of collapse, the municipality must provide adequate notice and an opportunity to cure the defects before it may demolish a structure (see Scott v Town of Duanesburg, 176 AD2d 989, 991 [3d Dept 1991]; cf. St. David's Anglican Catholic Church, Inc. v Town of Halfmoon, 11 AD3d 874 [3d Dept 2004]; Matter of Town of Duanesburg v Vojnar, 147 AD2d 819 [3d Dept 1989]). As noted above, the building was not in any danger of collapse. As such, even if the determination had a proper factual basis to order demolition, the determination was procedurally

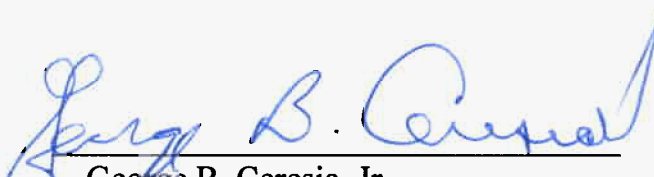
defective.

Accordingly it is hereby,

**ORDERED and ADJUDGED**, that the petition is hereby granted to the extent that the determination of November 10, 2005 which directed the removal of plaintiff-petitioner's house is vacated and annulled.

This shall constitute the decision, order and judgment of the Court. All papers together with the original of this Decision/Order/Judgment are returned to the attorney for plaintiff-petitioner who is directed to enter this Decision/Order/Judgment without notice and to serve the attorneys for defendant-respondent with a copy of this Decision/Order/Judgment with notice of entry.

Dated: Troy, New York  
October 4, 2007



George B. Ceresia, Jr.  
Supreme Court Justice

Papers Considered:

Summons dated November 17, 2005; Affidavit of John Haas sworn to November 18, 2005; Affirmation of Andrew S. Jacobs, Esq. dated November 18, 2005 with Exhibits A-D annexed;

Affidavit of Beth Knauf Secor "verified" November 22, 2005 with Exhibits A-I annexed; Affidavit of Jeffrey F. Budrow sworn to November 23, 2005 with Exhibits A-C annexed; Affidavit of Gary Ziegler sworn to November 23, 2005 with Exhibits A-J annexed;

Affidavit of John Haas sworn to December 5, 2005; Affirmation of Andrew S. Jacobs, Esq. dated December 3, 2005 with Exhibit A annexed;

Complaint dated June 2, 2006;

Supplemental Affidavit of Jessica R. Wilcox, Esq. sworn to April 6, 2007;  
Supplemental Affidavit of Jeffrey F. Budrow sworn to April 6, 2006 [sic] with Exhibits  
A-D annexed.

Answer dated July 26, 2007;  
Affidavit of Jeffrey Conlin sworn to July 25, 2007; Certified Record;  
Memorandum of Law dated July 26, 2007.