

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Application of
FIREPLACE HISTORY CLUB,
and MARTIN VAN LITH, Chairman,

Notice of Petition

Petitioners,

For a Judgment Pursuant to
CPLR Article 78

Index No.

-against-

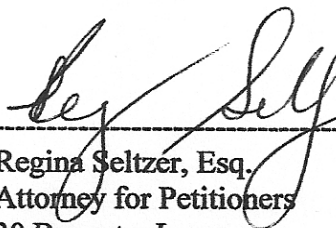
TOWN BOARD OF THE TOWN OF
BROOKHAVEN

Respondents.

Upon the annexed petition of Martin Van Lith, verified July 16, 2009, and the affidavit of Martin Van Lith, sworn to July 16, 2009, an application will be made to this Court, at the Courthouse at Griffing Avenue, Riverhead, New York, on August , 2009 at 9:30 A.M. for a judgment directing the Town Board of the Town of Brookhaven to act upon petitioners application for the removal of grass and weeds from the Town's historic cemeteries in Brookhaven Hamlet and for such other and further relief as the court deems proper. You are required to serve, at least five days prior to the return date, a verified answer and supporting affidavits, if any.

Suffolk County is designated as the venue of this proceeding on the basis that the property is located in Suffolk County.

Dated: Bellport, New York
July 16, 2009



Regina Seltzer, Esq.
Attorney for Petitioners
30 Brewster Lane
Bellport, New York 11713
(631) 286-8849

To: Town Board of the Town of Brookhaven
1 Independence Hill
Farmingville, New York 11738

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Application of
FIREPLACE HISTORY CLUB,
and MARTIN VAN LITH, Chairman,

Verified Petition

Petitioners,

For a Judgment Pursuant to
CPLR Article 78

Index No.

-against-

TOWN BOARD OF THE TOWN OF
BROOKHAVEN

Respondents.

Petitioners allege:

1. Petitioner, Fireplace History Club (hereinafter "History Club"), is a non-for profit association that intends to make these cemeteries an educational resource of Brookhaven's Historic Heritage.
2. Petitioner, Martin Van Lith, is the chairman of the Fireplace History Club.
3. Respondents, Town Board of the Town of Brookhaven, are elected officials of the Town of Brookhaven, a municipal corporation duly organized and existing pursuant to the laws of the State of New York.
4. New York State Town Law section 291 in relevant part states:
"It shall be the duty of the Town Board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground."

FACTS

5. These cemeteries are in the Town's Fire Place Historic District and are included
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in the Post Morrow Foundation Historic Tours. They are historically significant dating back to Revolutionary times. The lack of maintenance is essentially destroying these historic landmarks.

6. The History Club has recruited volunteers to help repair and restore these cemeteries but they are not able to provide the basic maintenance needed, such as cutting the grass and keeping the access route open. The Club obtained an \$11,000 grant to hire a stone mason to do some of the repairs but he is unable to gain access to the cemeteries because the cemeteries are overgrown and the paths, in some cases, are impenetrable.

7. On numerous occasions Petitioners have presented the Town Board and the Parks Department with explicit information about the location of these historic cemeteries and advised the Town of the lack of maintenance. We have had meetings with Town officials who have been supportive but the Parks Department, who does the actual work, has simply not performed.

8. Our last attempt to have the cemeteries maintained was a meeting on June 3, 2009 with a Deputy Parks Commissioner who assured us that the cemeteries would be mowed.

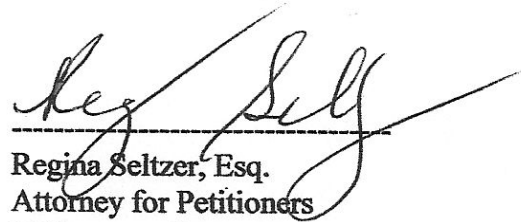
9. We provided her with a list of the cemeteries that were historically significant. The cemeteries were : Rose, Hulse, Corwin, Azel Hawkins, Barteau, Miller, David Hawkins, South Haven Presbyterian and Carmans. We also provided maps, GPS and tax map locations of the cemeteries Unfortunately, as of this date, most of the cemeteries have not been mowed.

10. Despite our reluctance to commence litigation, after three years it appears that only by court order will the Town comply with the express mandates of New York State Town Law Section 291.

11. No previous application has been made for the relief requested herein.

WHEREFORE, Petitioners respectfully ask for a judgment pursuant to CPLR 7803 directing that the Town Board comply with Town Law Section 291 and remove the grass and weeds from the above referenced historic cemeteries and maintain access to these cemeteries, for costs and for such other and further relief as the Court deems just, proper and equitable.

Dated: Bellport, New York
July 16, 2009

A handwritten signature in cursive script, appearing to read "Regina Seltzer", is written over a horizontal dashed line.

Regina Seltzer, Esq.
Attorney for Petitioners
30 Brewster Lane
Bellport, New York 11713
(631) 286-8849

VERIFICATION

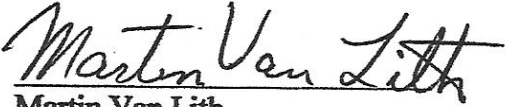
STATE OF NEW YORK

:ss.:

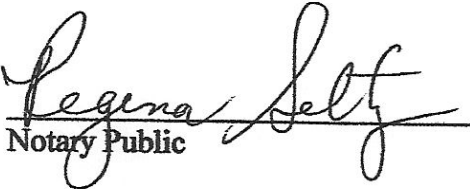
COUNTY OF SUFFOLK

MARTIN VAN LITH, being duly sworn deposes and says:

That deponent is the Chairman of the FIREPLACE HISTORY CLUB, a
Petitioner in the within proceeding; that I have read the foregoing Verified Petition and
know the contents thereof; that the same is true to deponent's own knowledge, except as
to the matters herein stated to be alleged upon information and belief; and that as to those
matters, deponent believes it to be true.


Martin Van Lith

Sworn to on the 16th day
Of July 2009


Notary Public

Regina Seltzer
Notary Public, State of New York
No. 02SE4838093
Expires 02 28 10

