

COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

**ROBERT W. MATT,
EDMUND J. WIATR, JR.
CATHERINE R. LAWRENCE,**

Claimants,

v.

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AUG 13 2008
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TOWN OF NEW HARTFORD
TOWN CLERK

**ROGER CLEVELAND, TOWN
HIGHWAY SUPERINTENDENT,
DAVE REYNOLDS, TOWN
COUNCILMAN,
ROBERT PAYNE,
TOWN COUNCILMAN,
KURT SCHWENZFEIER, TOWN11
PLANNER,
JOHN MEAGHER, DEPARTMENT OF
ENGINEERING,
KEN LOWELL, PUBLIC WORKS
ADVISORY BOARD,
HANS ARNOLD, PLANNING BOARD,
DOUG PETERSON, MEMBER OF
STORMWATER ADVISORY
COMMITTEE,
FRANK MONTECALVO, MEMBER OF
STORMWATER ADVISORY
COMMITTEE,
ED DESANCTIS, MEMBER OF
STORMWATER ADVISORY
COMMITTEE,
ELIZABETH DEGIRONIMO, MEMBER
OF STORMWATER ADVISORY
COMMITTEE,
TOWN OF NEW HARTFORD, AND
TOWN OF NEW HARTFORD
STORMWATER ADVISORY
COMMITTEE,**

Respondents.

NOTICE OF CLAIM

Index No.: _____

SIRS:

PLEASE TAKE NOTICE that Robert W. Matt, Edmund J. Wiatr, Jr., and Catherine R. Lawrence, Claimants, hereby make a claim and a demand against Roger Cleveland, Dave Reynolds, Robert Payne, Kurt Schwenzfeier, John Meagher, Ken Lowell, Hans Arnold, Doug

Peterson, Frank Montecalvo, Ed Desanctis, Elizabeth DeGironimo, Town of New Hartford Stormwater Advisory Committee, and Town of New Hartford, Respondents, as follows:

1. The name and post office address of the claimants:

a. Robert W. Matt, 3 Hubbardton Rd., New Hartford, NY, 13413;

b. Edmund J. Wiatr, Jr., 2 Sylvan Rd., Utica, NY 13501, Town of New

Hartford;

c. Catherine R. Lawrence, 67 Imperial Dr., New Hartford, NY 13413; and

d. the name and address of the attorney for the claimants is Ryan R. Matt,

Esq., 3 Hubbardton Rd., New Hartford, NY 13413; telephone 315-404-1594.

2. The nature of the claim is for damages sustained by the Claimants as a result of the Respondents' failure to comply with state law, specifically the Open Meeting Law and Freedom of Information Law.

3. The time when, the place where, and the manner in which this claim arose is as follows: Upon information and belief, on March 2007, the Town of New Hartford Board held an election where the public passed a \$2 million bond to address stormwater flooding issues that have plagued town residents for decades. A Stormwater Advisory Committee was created to explore how best to invest that \$2 million bond. At the Town of New Hartford Board meeting on July 11, 2007, it was announced that the Stormwater Advisory Committee meetings were going to be open to the public. The Stormwater Advisory Committee held its first meeting on July 2007. Another meeting was held on August 2007. Both meetings were open to the public, but it was decided at the September 12th Town Board meeting that the September 2007 meeting and all further Stormwater Advisory Committee meetings would be closed from the public.

4. Upon information and belief, Earl Reed, Town Supervisor issued a letter on the

Town of New Hartford website that condoned this gross violation of the Open Meetings Law, and justified the committee's decision with the following, "there is a time and a place for public involvement."

5. This opportunity, occurred at a public information meeting held on June 24, 2008 for residents in the Woodberry Hills Development. At this meeting, the Town Highway Superintendent, Roger Cleveland, unveiled "tentative" plans that "are not set in stone." Robert W. Matt, Claimant, was upset to hear that the Respondents failed to understand the stormwater issues plaguing the Woodberry Hills Area.

6. The Stormwater Advisory Committee's plans do not include any measures to address stormwater problems plaguing residents along Hubbardton Rd. Based upon comments from other residents who attended this meeting, it appears that the committee has grossly underestimated the scope of the stormwater issues in the areas discussed at this meeting. Several residents voiced concern that these "tentative" plans fail to address stormwater flooding issues that they have. Even Mr. Cleveland appeared surprised to hear of these problems. All of these problems could have been readily addressed had the committee chosen not to violate the Open Meetings Law.

7. On July 2, 2008, Robert W. Matt asked his attorney, Ryan R. Matt, Esq., to author a letter to Mr. Cleveland regarding the "tentative" plans and to ask Mr. Cleveland to urge the Stormwater Advisory Committee to reconsider closing its meetings to the public. As of August 11, 2008, Mr. Cleveland has failed to respond to this letter.

8. On July 22, 2008, Ryan R. Matt, Esq. authored a second letter to Mr. Cleveland regarding the Stormwater Advisory Committee's choice to violate state law. As of August 11, 2008, Mr. Cleveland has failed to respond, prompting this Notice of Claim.

9. On August 11, 2008, in order to pursue further measures to investigate why the Stormwater Advisory Committee has chosen to ignore the Open Meetings Law, Ryan R. Matt, Esq. filed a FOIL request. New Hartford Town Clerk, Gail Young, time-stamped the FOIL request and sent an e-mail verification acknowledging receipt of my FOIL request. Ms. Young also carbon copied her e-mail to Mr. Cleveland advising him of the FOIL request and reminding him of the statutory five-day period.

10. On August 14, 2008, Mr. Cleveland *finally* acknowledged Claimants' attorney's two letters and indicated he would be in contact with regarding the Hubbardton Rd. plans. This was the first response to a letter dated July 2, 2008. However, Mr. Cleveland never acknowledged the FOIL request that Counselor Matt personally served on the Town Clerk's office.

11. Though Mr. Cleveland has until Monday, August 18, 2008 to respond to this FOIL request, it is disturbing that Mr. Cleveland would only acknowledge receipt of a letter that is over one month old.

12. Catherine R. Lawrence, Claimant, also attended the June 24, 2008 meeting and had the meeting videotape recorded. Additionally, Ms. Lawrence attended the Stormwater Advisory Committee meetings that *were* open to the public on July 2007 and August 2007.

13. Edmund J. Wiatr, Jr., Claimant, experiences severe water damage at his above-described residence that results from stormwater flooding. Mr. Wiatr has regularly contacted Mr. Cleveland about the issue and Mr. Cleveland has failed to address Mr. Wiatr's concerns, whatsoever. It is Mr. Wiatr's concern that the Stormwater Advisory Committee is focusing on only a small portion of the town that is plagued with stormwater flooding problems and ignoring other portions of the town where residents also suffer from severe stormwater flooding. Because

of the Stormwater Advisory Committee's refusal to comply with state law, it appears that the Stormwater Advisory Committee is not aware of the scope and magnitude of the stormwater issues plaguing *all* town residents. Therefore, the Stormwater Advisory Committee may unfairly and inadequately allocate the \$2 million stormwater bond toward only a few areas. This current apparent situation is not what the Town of New Hartford Board explained at the time of the March 2007 bond vote. The Town of New Hartford Board advertised the bond as a solution to all stormwater flooding.

14. Claimants have filed several Freedom of Information Law requests relating to information about the Stormwater Advisory Committee. Claimants requested electronic versions of these requested documents. While the documents were available electronically, Mr. Cleveland caused several of them to be available only in print, a violation of Freedom of Information Law § 89 [3] [b].

15. Claimants have filed several Freedom of Information Law requests that were untimely answered. Claimants were forced to undergo added expenses to receive a response explaining why the request was not answered within the statutory five-day period. These continual delays and other dilatory tactics violate the statutory text and the statutory intent. Also, these FOIL violations restrict Claimants' abilities to evaluate their options.

16. In light of Mr. Cleveland's letter received on August 14, 2008, this Notice of Claim is being filed to preserve Claimants' rights in this matter. Claimants are eager to negotiate a settlement that addresses the issues raised herein and is equitable for all parties involved. Claimants reserve their right to pursue this matter with further legal action should a settlement not be achieved.

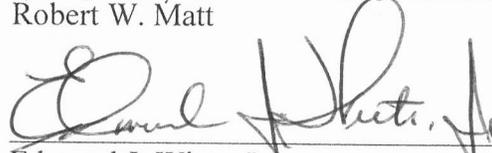
PLEASE TAKE FURTHER NOTICE, that by reason of the premises, in default of the

Respondents to accommodate for the compliance of state law within the time limited for compliance herewith, as set forth in the statutes in such cases made and provided, the Claimants intend to commence an action against the Respondents herein to recover for damages, together with costs, expenses, attorney's fees, and other relief the Court may deem just, proper, and equitable under the circumstances.

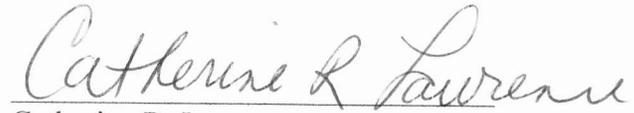
Dated: August 15, 2008


Robert W. Matt

Dated: August 15, 2008


Edmund J. Wiatr, Jr.

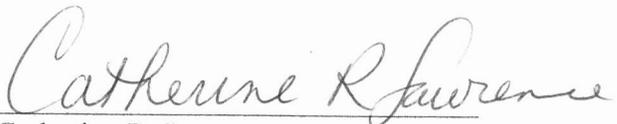
Dated: August 15, 2008


Catherine R. Lawrence

VERIFICATION

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

Catherine R. Lawrence, being duly sworn, deposes and says, that it is the Claimant in the within Notice of Claim; that it has read the same and knows the contents thereof; that the same is true to the best of its knowledge, except as to the matters therein alleged on information and belief; and that as to those matters, deponent believes it to be true.


Catherine R. Lawrence

Sworn to before me this
15th day of August, 2008.

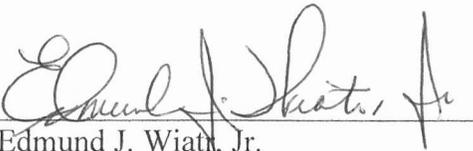

Notary Public

PEARL M. JOHNSON STANBROOK
Reg. #01JO6101898
Notary Public, State of New York
Qualified in Oneida County
My Commission Expires Nov. 17 2011

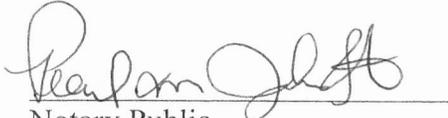
VERIFICATION

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

Edmund J. Wiatr, Jr., being duly sworn, deposes and says, that it is the Claimant in the within Notice of Claim; that it has read the same and knows the contents thereof; that the same is true to the best of its knowledge, except as to the matters therein alleged on information and belief; and that as to those matters, deponent believes it to be true.


Edmund J. Wiatr, Jr.

Sworn to before me this
15th day of August, 2008.


Notary Public

PEARL M. JOHNSON STANBROOK
Reg. #01JO6101898
Notary Public, State of New York
Qualified in Oneida County 2011
My Commission Expires Nov. 17 2011