

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CHAUTAUQUA _____

DUNKIRK HOSPITALITY, LLC
10455 Bennett Road (Route 60)
Fredonia, New York 14048

Petitioner,

ARTICLE 78
VERIFIED PETITION
MANDAMUS TO COMPEL

For a Judgment Pursuant to Article 78 of the CPLR

vs.

Index No.: _____

VILLAGE OF FREDONIA; VILLAGE OF FREDONIA CODE ENFORCEMENT OFFICE; HON. MICHAEL FERGUSON, Mayor; CHARLES J. LABARBERA, Chief Inspection Officer /Zoning Officer; and THOMAS KAWSKI, Assistant Inspection Officer
1891 Village Opera House
9 Church Street
Fredonia, New York 14048

Respondents.

Petitioner Dunkirk Hospitality LLC (“Petitioner”), by its attorneys, VANDETTTE LAW PLLC, for its Petition against the above-captioned Respondents, alleges as follows:

1. Petitioner is the owner of the premises located at 10455 Bennett Road (Route 60), Fredonia, New York 14063 (the “Property”), formerly operating as an EconoLodge motel at all times hereinafter mentioned, was and still is a limited liability company duly organized and existing under and by virtue of the laws of the State of New York and maintains an office for the transaction of business located within the County of Chautauqua and State of New York.

2. Upon information and belief, always hereinafter mentioned, the Respondent, VILLAGE OF FREDONIA (“Fredonia”), was and still is a municipality duly organized and existing under and by virtue of the laws of the State of New York and the County of Chautauqua and maintains an office for the transaction of business located within the County of Chautauqua and State of New York.

3. Upon information and belief, always hereinafter mentioned, the Respondent FREDONIA CODE ENFORCEMENT OFFICE (“Fredonia CEO”) is an office of the Village of Fredonia empowered to enforce the building and zoning codes of the Village and the State of New York.

4. Upon information and belief, always hereinafter mentioned, the Respondent HONORABLE MICHAEL FERGUSON (“Mayor Ferguson”) is the duly elected Mayor of the Village of Fredonia.

5. Upon information and belief, always hereinafter mentioned, the Respondent CHARLES LABARBERA (“LaBarbera”) is the Chief Inspection and Zoning Officer for Fredonia, and Respondent THOMAS KAWSKI (“Kawski”) is the Assistant Inspection Officer.

6. Venue is proper in Chautauqua County because the Property is located here, and the challenged determinations were made here.

7. This is a special proceeding under CPLR Article 78 seeking (a) to annul Respondents’ April 27, 2026 determination deeming the Property “unsafe for living,” ordering vacatur of all occupants by May 6, 2026, and threatening condemnation, issued without providing Petitioner a prompt, meaningful opportunity to be heard; (b) to enjoin immediate enforcement; and (c) to compel Respondents to afford a prompt post-deprivation hearing consistent with due process.

STATEMENT OF FACTS:
BACKGROUND & PRIOR CODE COMMUNICATIONS

8. The Petitioner reiterates and realleges each and every allegation contained in paragraphs “1” through “7” of this Petition with the same force and effect as if fully set forth herein.

9. Upon information and belief, Respondent Mayor Ferguson began informal discussions with the members of the Petitioner regarding conditions at the motel and its housing of clients placed by the Chautauqua County Department of Social Services (“CCDSS”) in early 2024.

10. Soon thereafter, on March 14, 2024, Fredonia CEO and LaBarbera on behalf of Fredonia issued a “NOTICE OF APPARENT VIOLATION,” Complaint No. 2024-0048, asserting that rooms 301 to 447 were being used for longer than 30 days and directing relocation, with an April 15, 2024, compliance date, while warning of formal enforcement without further warning.

11. On May 24, 2024, Fredonia issued a further “NOTICE OF APPARENT VIOLATION,” Complaint No. 2024-0111, alleging operation without a Certificate of Compliance, with a July 18, 2024, compliance date and the same enforcement warning.

12. Then, on July 12, 2024, Fredonia issued another “NOTICE OF APPARENT VIOLATION,” Complaint No. 2024-0129, alleging failure to obtain a yearly Certificate of Compliance under Chapter 151-10(B), again threatening formal enforcement without additional warning.

13. Upon receipt of the July 2024 letter, members of the Petitioner LLC went to Village Hall to seek an audience with the then Chief of Police and LaBarbera. Both avoided them, were curt, and the Police Chief yelled at them.

14. Frustrated, the Petitioner came to this Counsel and sought assistance. Counsel arranged for a meeting with Mayor Ferguson, LaBarbera, counsel for Fredonia and several members of the Petitioner LLC. Upon information and belief, Ferguson had follow up meetings with the County

leadership and leadership for CCDSS, and so did this Counsel and members of the Petitioner LLC on a separate occasion.

15. Upon information and belief, the parties had several informal conversations where plans, ideas and suggestions were discussed, but never memorialized, counsel for the parties were not involved, and no follow up enforcement action by Fredonia CEO and its two inspectors occurred, until nearly two years later.

Challenged April 27, 2026, Determination and Vacate Order

16. The Petitioner reiterates and realleges each and every allegation contained in paragraphs “1” through “15” of this Petition with the same force and effect as if fully set forth herein.

17. On April 27, 2026, in public comments made at a Fredonia Trustee’s meeting covered in the local newspaper and radio station the following day, Mayor Ferguson made public statements that urged immediate closure and condemnation of the former EconoLodge based on alleged deplorable conditions and numerous police calls, and local media has reported the Village’s movement to condemn the Property as “uninhabitable,” with tenants expected to vacate by Wednesday, May 6th, and condemnation by Friday, May 8th.

18. On April 27, 2026, Respondents issued a letter stating the Property was “under violation of multiple codes and is therefore deemed unsafe for living,” citing inspections on April 23 and 24, 2026, listing numerous Building, Property Maintenance, and Mechanical Code provisions, attaching photographs, and directing that “this property needs to be vacated by every occupant no later than Wednesday May 6, 2026.”

19. Petitioner did not receive said letter until Wednesday, April 29th, two days *after* the Mayor made his public comments, though it was dated April 27th. [Emphasis added]

20. The April 27, 2026 letter relies on generalized code excerpts (including Property Maintenance Code Sections 107.1.1, 107.1.3, 107.4, 108.1, 305.1, 403.1, 403.2, and 404.6; and

Building Code Section 101.3) and generalized descriptions of roof leaks, missing tiles, ventilation, and other conditions, but it does not provide Petitioner with a procedure or date for a prompt post-deprivation hearing before a neutral officer to contest the vacate directive.

21. A few days later, this Counsel issued a press release on behalf of the Petitioner disputing the factual basis for said condemnation and requested use of formal code enforcement processes and a follow-up inspection to avoid full condemnation.

22. Moreover, on April 30, 2026, Petitioner's counsel formally demanded that Respondents cease and desist from condemnation, allow continued operations pending issuance of proper code informations and appearance tickets, and proceed through Fredonia Justice Court; counsel also recounted the Village's prior 2024 notices, challenged the absence of evidentiary support for certain allegations, and sought an immediate meeting of all parties to formalize compliance plans in writing, something that never happened in the two prior years.

23. During the following week, Petitioner's counsel made several attempts to dissuade the Respondents from pursuing this course of action, made mention of the procedural issues and lack of due process, and encouraged formal negotiations with written agreements; unfortunately, those attempts, although politely acknowledged, were ignored.

Causes of Action

First Cause of Action – Article 78

(Arbitrary and Capricious; Failure to Provide Required Due Process)

24. The Petitioner repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "22" of this Petition with the same force and effect as is fully set forth herein.

25. Respondents' April 27, 2026, vacate directive and threatened condemnation failed to provide Petitioner with a prompt post-deprivation hearing opportunity to be heard, despite the

sweeping deprivation of property interests and the serious impact on occupants, rendering the action unlawful and arbitrary and capricious under CPLR 7803(3).

26. New York courts have vacated municipal vacate/demolition actions where the locality failed to afford notice and an opportunity to be heard absent demonstrated exigent circumstances requiring immediate action, holding that due process generally requires pre- or prompt post-deprivation hearings tailored to the circumstances.

27. Courts have likewise set aside condemnation and demolition orders issued without providing the owner a hearing or advising of that right, reaffirming that determinations affecting property rights of this nature require procedural safeguards and cannot proceed on conclusory findings alone.

28. In analogous contexts where government seizes or withholds property promptly for public safety, due process still requires a prompt post-seizure retention hearing before a neutral magistrate, with the government bearing the burden to show probable validity and the need for continued deprivation pending final adjudication.

**Second Cause of Action – Article 78
(Error of Law; Exceeding Lawful Procedure)**

29. The Petitioner repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “28” of this Petition with the same force and effect as is fully set forth herein.

30. The Village had long been aware of alleged conditions and issued multiple prior notices in 2024; on this record, there was time to afford at least a prompt post-deprivation hearing and to consider less drastic interim measures (e.g., partial vacate or securing specific areas) rather than a blanket vacate without hearing.

31. Where immediate, no-notice action is not strictly required to address truly imminent hazards, the failure to provide notice and opportunity to be heard before ordering vacate or demolition violates due process, and liability may attach to the Respondents.

Relief Requested

32. The Petitioner repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “31” of this Petition with the same force and effect as is fully set forth herein.

33. Pursuant to the principal of Quantum Meruit, Petitioner Dunkirk Hospitality, LLC requests full payment of all attorney fees and costs incurred from the underlying illegal and improper condemnation and order to vacate this continuing Article 78 action, as well as the loss of income and hindrance of its ability to pay its debt service and carrying costs as a direct result of this action.

WHEREFORE, Petitioner respectfully requests that the Court enter Judgment:

- a) Annuling and vacating Respondents’ April 27, 2026, vacate directive to the extent it orders the Property wholly vacated by May 6, 2026, without affording Petitioner a prompt, meaningful opportunity to be heard.
- b) Directing Respondents to promptly afford Petitioner an expedited post-deprivation administrative hearing before a neutral hearing officer on a schedule set by this Court.
- c) Preliminary injunctive relief via temporarily staying enforcement of the April 27, 2026, vacate directive pending a prompt hearing, with reasonable interim safety conditions to be fixed by the Court.

- d) In the alternative, granting compensatory damages for the balance of debt service owed on the property, and the loss of income due to the forced removal of occupants in the last week.
- e) Granting such other and further relief as the Court deems just and proper.

Dated: Dunkirk, New York
May 8, 2026

VANDETTE LAW PLLC

By: *Richard J. Morrisroe*

Richard J. Morrisroe, Esq.
Attorneys for Petitioner
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PETITIONER VERIFICATION

State of New York)
) ss:
County of Chautauqua)

Kulwinder Singh, Managing Member, Dunkirk Hospitality, LLC, being duly sworn, depose and state under penalty of perjury pursuant to CPLR 2106:

That I am the Petitioner in the action herein; I have read the contents of the annexed Article 78 Petition and know the contents thereof and the same are true to my knowledge, except as to those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I affirm, under penalties of perjury under the laws of New York, which may include fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law

Dated: May 8, 2026

Kulwinder Singh

**Kulwinder Singh, Managing Member
Dunkirk Hospitality, LLC**



Audit trail

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| File name | Article%2078%20Pe...of%20Fredonia.pdf |
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