

12/26/2007 14:53 FAX 9784620432

NEWBURYPORT SUPER COURT → SALEM CIVIL CLK @011/011

<b>CIVIL ACTION COVER SHEET</b>	DOCKET NO.(S) <b>07-2473 C</b>	Trial Court of Massachusetts Superior Court Department County: _____
PLAINTIFF(S) <b>JAMES M. THIVIERGE</b>	DEFENDANT(S) <b>Town of Amesbury</b>	<i>Major Case Report Chapter 17</i>
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE <b>Pro se for the town</b>	ATTORNEY (if known)	
Board of Bar Overseers number:	<b>Origin code and track designation</b>	
Place an x in one box only: <input checked="" type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)	
<b>TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)</b>		
CODE NO. <b>E03</b>	TYPE OF ACTION (specify) <b>Action Against Municipality</b>	TRACK ( ) Yes ( ) No <b>(X) Yes</b>
<b>IS THIS A JURY CASE?</b>		
<b>The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; Indicate single damages only.</b>		
<b>TORT CLAIMS</b> (Attach additional sheets as necessary)		
A. Documented medical expenses to date:		\$ .....
1. Total hospital expenses .....		\$ .....
2. Total Doctor expenses .....		\$ .....
3. Total chiropractic expenses .....		\$ .....
4. Total physical therapy expenses .....		\$ .....
5. Total other expenses (describe) .....		\$ .....
	<b>Subtotal</b>	<b>\$ .....</b>
B. Documented lost wages and compensation to date .....		\$ .....
C. Documented property damages to date .....		\$ .....
D. Reasonably anticipated future medical and hospital expenses .....		\$ .....
E. Reasonably anticipated lost wages .....		\$ .....
F. Other documented items of damages (describe) .....		\$ .....
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)		\$ .....
	<b>TOTAL</b>	<b>\$ .....</b>
<b>CONTRACT CLAIMS</b> (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
		<b>TOTAL \$ .....</b>
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."		
Signature of Attorney of Record	<i>James M. Thivierge (Pro se)</i>	DATE: <i>12-26-07</i>

ACTC-6 mto005-11/99  
A.O.S.C. 1-2000

Commonwealth of Massachusetts  
County of Essex  
The Superior Court

CIVIL DOCKET# ESCV2007-02473

RECEIVED  
07 DEC 28 AM 8:36  
ESSEX COUNTY CLERK

James N Thivierge, Plaintiff(s)  
vs.  
Amesbury Town of, Mayor Kezer, Town Assessor, Town Clerk, Agent of the Library  
, Defendant(s)

**SUMMONS AND ORDER OF NOTICE**

To the above-named:

You are hereby summoned and required to serve upon  
**James N Thivierge**, plaintiff's whose address is **106 Friend Street Amesbury, MA 01913**, , an answer to the complaint/cross claim/counterclaim which is herewith served upon you. This must be done within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint/ cross claim/counterclaim. You are also required to file your answer to the complaint/ cross claim/counterclaim in the office of the Clerk of this Court at Lawrence either before service upon plaintiff or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

**WE ALSO NOTIFY YOU** that application has been made in said action, as appears in the complaint, for a preliminary injunction and that a hearing upon such application will be held at the court house at said Essex County Superior Court, in Lawrence on **01/08/2008, at 02:00 PM in CtRm 1 (Lawrence)**, at which time you may appear and show cause why such application should not be granted.

Witness, **Barbara J. Rouse**, Esquire, Chief Justice of the Superior Court, at Lawrence, Massachusetts this 26th day of December, 2007.

*Shirley Gaudette*  
.....  
Asst. Clerk

(AFFIX RETURN OF SERVICE ON BACK OF SUMMONS)

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130



TRUE ATTEST COPY  
DEPUTY SHERIFF

*Bob Murray*  
946

07  
2473C

12.24.07

106 Friend Street, Amesbury, Massachusetts 01913

James N. Thivierge v. Town of Amesbury Mayor Kezer, ASSESSOR. *Assessor*  
*John Kezer, Peter Kezer, Robert Thivierge*

Written Testimony to supplement verbal testimony of  
James N. Thivierge on the matter of "No Trespass Order" of 12/19/07

Your Honor

to establish jurisdiction and the course of action I did enter Newburyport district court to establish on December 24, 2007 in the afternoon before the presiding judge.

First of all, I've broken no law and the facts are severely mis-characterized and smacks of political retribution.

As a remedy I ask the court for a writ of Mandamus to abolish this order and to stay this action, revoke or whatever is necessary to restore in an uncomplicated matter all access to public buildings and my right of assembly to access them in that the mayor and the agents of local government have overreached their authority. I know this is a reflex, but very troubling to me, political action against a fiscal critic furthered exacerbated by the new tax rate, an unjustified water/sewer increase and its implications on the local economy and the reduction in disposable income for families the undue influence on rents plus the following facts that transpired during the past six months where I was a candidate for mayor:

No debate prior to the preliminary election; an unjustified water/sewer increase; no questions from the audience during the final debate; significant tax increase subsequent to the final election that amounts to nearly three million dollars taken from the local market place, placing my community nearly five dollars per thousand from Newburyport, six dollars

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106 Friend Street, Amesbury, Massachusetts 01913 Written Testimony to supplement verbal testimony of  
James N. Thivierge on the matter of "No Trespass Order" of 12/19/07

*12/26/07 Fulham: J  
Anul Order of Justice returning order Town, Jan 8, 2007  
at 2:00 p.m. at Lawrence Superior Court. Ce. Brook. Shale. Account.  
Anul Clerk*

12.24.07

plus above Salisbury due to a 1.44 increase in the residential rate for one year.

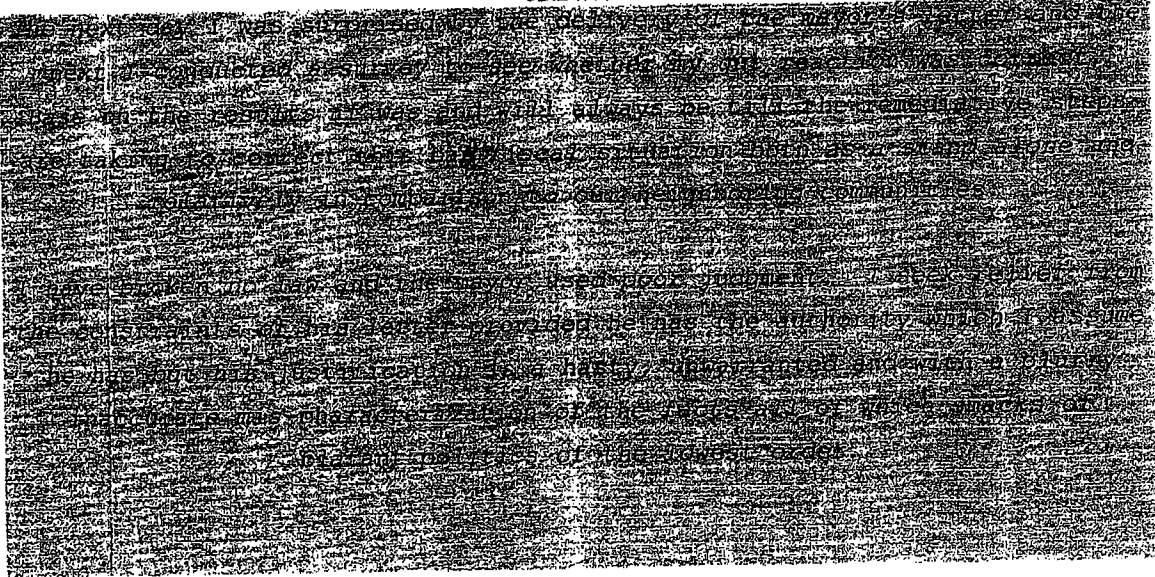
I feel the mayor's action violates my right to access public offices like the veterans, the senior center, and community action "food bank" need be, and others. His unwarranted action impedes my rights as a citizen and the right to assembly, I feel. This act of intimidation is an attempt to suppress my right of free speech to address concerns using my considerable experience, education and understanding of fiscal issues.

Basically, the mayor of Amesbury and his subordinates can't take the "heat" in other words the questions generally asked via c. 66 s. 10 request or in this case vis-à-vis.

The Facts

After leaving the senior center after reading several emails, I walked to the town hall to pick up the recap sheet I requested under Freedom of Information. Noticing the revenue deficit figure and after reading the mayor's panel testimony I uttered to myself and not to anyone else that he had to be incompetent to place himself on this panel of control. I did not utter and his relation to the immediate community. Without thinking any further I went to the clerk's office and asked an Executive Board member to receive the recap sheet from an outgoing city councillor. She brought the recap sheet which has become the norm and because of the rudeness of her comeback I uttered an expletive and left. Her actions may be a result of legislation I filed on elections that came about because of who was preliminary this past September. The petition was heard in October before the Joint Committee on Elections.

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Sources of Law

With the "No Trespass Order" a hardship exists in compiling adequate sources to further justify my position from either a statutory, administrative, judicial and/or constitutional basis at the appropriate level. However from existing documentation I believe I can platform my position:

Constitutionally, I rely on the First Amendment rights of free speech, the right of assembly and the right of petition. In terms of judicial case law at the federal level I cite relative to the First Amendment and the two word "expletive" I used, *Cohen v California* 1971 and Judge Harlan's opinion the states "acting as guardians of public morality, may properly remove this offensive word from the public vocabulary", the states did not have such authority consistent with the First Amendment Judge Harlan emphasizes the value of freedom of speech in developing a more capable citizenry. The courts have rejected the argument that offensive speech

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lacks constitutional protection. In short, offensive speech is fully protected speech, while there are categories of unprotected expression, the Supreme Court has been quite insistent that offensive speech is not one of them. (First Amendment Law in a Nutshell, 2<sup>nd</sup> Ed., Barron & Dynes, West Group St. Paul, Minn. 2000).

In his letter the Mayor in his order mentions no violation of law, his contentions are mischaracterizations invoking the "abstract and speculation" by the lack of application of any law making his judgment in the case poor and of danger to the consistent administration of the public good to this citizen.

On the statutory and administrative level, I refer the Civil Rights Act of 1964 (42 U.S.C.A), Discrimination in Places of Public Accommodation, P.L. 88-352, title II & VI, s. 201, July 2, 1994, 78 Stat. 243 and any state Comm. of Mass. Equivalent.

On the state level I embrace the Constitutional intent and purpose of the Preamble that government exist for the "safety and tranquility" of their natural rights." And the "Declaration of Right" for all Inhabitants," article I and successor CVI, Articles 4 and sel-government, 5 and Accountability, 6 and no peculiar privileges, 7 and government for the common good, 8 and to prevent those who vested with authority from becoming oppressors, 11 and every subject... Ought to find a certain remedy, 12 and no person shall be held to answer for any crimes or offenses until the same is fully and plainly, substantially and formally, described to him., 18 and good administration, 19 and the right to assemble, 21 and freedom of deliberation and debate. Not having the case law available to reference and use. I rely on the court to get the gist of my arguments.

On the local level invoking the local Amesbury Home Rule Charter (AHRC), that the Mayor has abused his authority under Section 2-2 of the AHRC and

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not using good judgment and may be susceptible to section 8-8 on the same  
AHRC.

Background Information

For your information I have attached several exhibits for your review:  
My dd-214 honorable discharge with good conduct; master of arts in public  
administration studied to a town manager; bachelors degree American  
studies at Merrimack College plus over ninety credits at Northern Essex  
community college; over 25 years in public service with the department of  
revenue, senior computer programmer, union steward, and the division of  
banks, manager information systems, with schooling at the federal reserve,  
with performance recognition working in Boston; five 3 year terms on the  
board of selectmen; prior, seven years on the local finance committee;  
nine years county advisory board, executive committee; twenty three years  
town meeting; one term school committee; nine years by-law committee;  
county selectmen association president; one time adjunct college  
instructor two disciplines "relational database" and "state/local  
government;" my first citizen's petition became law of the commonwealth;  
American legion boys state in high school; courses at the labor guild;  
most recently at the federal reserve at a conference on alternative  
revenue for municipalities by the public policy center; assisted local  
people becoming citizens of the United States of America; little league  
coach championship team; high school football and basketball coach;  
substitute teacher; presentations on "theophilus parsons"; corporator,  
seacoast healthcare; struggling independent business person within the  
public sector attempting to mitigate fiscal issues like this for the body  
politic; tax rate survey and impact of surrounding communities.

~~I am enclosing  
five broken up tabs and I seek relief from this court to stay any and all orders  
and insure my access to the public buildings within my community.~~

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12.24.07

[The body of the document is extremely faint and largely illegible due to heavy noise and low contrast. Discernible fragments of text include:]

...of the Commonwealth of Massachusetts...

...I, James N. Thivierge, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in my files...

...Thank you Your Honor...

...James N. Thivierge

978-517-7163 -