

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

LEVI YODER, JONAS ZOOK, SAM ZOOK,  
JOHN L. HERSHBERGER, MENNO S.  
HERSHBERGER, URIE HERSHBERGER,  
MENNO L. GLICK, ANDY A. MILLER,  
DANNIE L. SWARTZENTRUBER, MOSIE  
SWARTZENTRUBER, PETER D.  
SWARTZENTRUBER, BISHOP HARVEY  
MILLER, and BISHOP MOSE MILLER,

Plaintiffs,

Case No.: 09-CV-0007 (TJM/GHL)

v.

TOWN OF MORRISTOWN, LANETTA KAY  
DAVIS, in her official capacity; FRANK L.  
PUTMAN, in his official capacity; HOWARD  
WARREN, in his official capacity; DAVID  
STOUT III, in his official capacity; MARK  
BLANCHARD, in his official capacity;  
CHRISTOPHER COFFIN, in his official capacity;  
and GARY TURNER, in his official capacity,

Defendants.

ECF CASE

**AFFIDAVIT OF DANIEL P. GOLDBERGER**

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

I, DANIEL P. GOLDBERGER, being duly sworn, state:

1. I am associated with the firm Proskauer Rose LLP, attorneys for Plaintiffs. I make this affidavit in support of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(7), or, in the Alternative, To Join Additional Parties.

2. The Complaint (*see* Docket No. 1) in this action was filed on January 6, 2009. Defendants answered the Complaint on March 17, 2009. (*See* Docket No. 13.)

3. Defendants filed this motion on February 5, 2010 (Docket No. 42.)
4. Plaintiffs are adherents of the Swartzentruber Amish faith who reside within the Town of Morristown (the “Town”). (*See* Complaint, Docket No. 1, ¶ 3.) The Swartzentruber Amish have lived in Morristown for many years. (*See id.*)
5. Plaintiffs lived in peaceful coexistence with non-Amish Morristown residents until Defendant Lanetta Kay Davis was appointed as the Town’s new Code Enforcement Officer in late 2005 or early 2006. (*See id.* ¶¶ 3, 58.)
6. Not long after she was appointed, the Town enacted a new local law, “Local Law # 4,” the purpose and intent of which is to, among other things, provide authority to the Town for “the administration and enforcement of the . . . Building Code.” (*See* Affidavit of Jacinda H. Conboy, Ex. A, Section 1).
7. Defendant Davis (and the other Defendants) immediately began to enforce Local Law # 4 in a manner that violates Plaintiffs’ civil rights. (*See id.* ¶¶ 11-14, 54-103.)
8. Prior to the appointment of Defendant Davis, the Swartzentruber Amish residents of the Town were granted building permits (*see id.* ¶ 10) and otherwise peacefully coexisted with their non-Amish neighbors. (*Id.* ¶¶ 3, 56-57.)
9. Since the appointment of Defendant Davis and the adoption of Local Law #4, no Swartzentruber Amish resident of the Town has been granted a building permit, and any Swartzentruber Amish resident who has tried to build, alter or move a structure on his property has been issued a criminal citation. (*See id.* ¶¶ 10, 66-73.)
10. Plaintiffs allege that the manner in which Defendants have enforced Local Law # 4 substantially burdens Plaintiffs’ religious beliefs without a compelling governmental interest

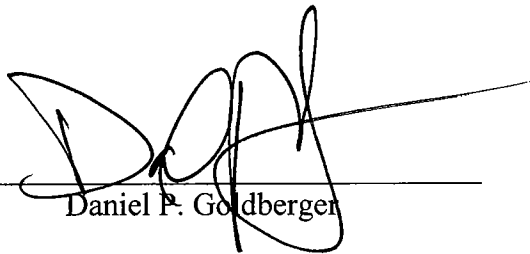
and that Defendants' actions do not constitute the least restrictive means to further any governmental interest Defendants may claim to have. (*See id.* ¶ 11.)

11. Plaintiffs allege that Davis harbors anti-Amish animus and has enforced Local Law # 4 selectively and discriminatorily against Plaintiffs because of their religious beliefs. (*See id.* ¶¶ 12, 89-96.)

12. Plaintiffs do not, however, allege that Local Law #4 (or the Building Code) is facially unconstitutional. (*See, generally, id.*)

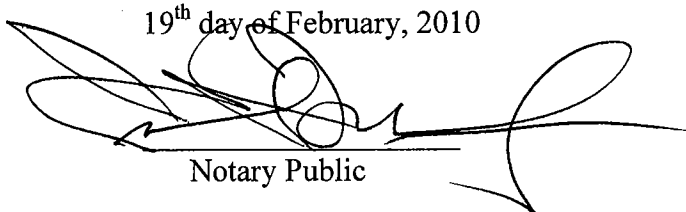
13. Prior to 2006, the County routinely worked with the Amish to resolve concerns over enforcement of state laws. (*Id.* ¶ 64.)

14. Plaintiffs are aware of only two other building code enforcement actions currently pending against Swartzentruber Amish in New York. Both cases are in neighboring Hammond, and both were initiated by Defendant Davis during her tenure as Hammond's Code Enforcement Officer. (*Id.* ¶ 59)



Daniel P. Goldberger

Sworn to before me this  
19<sup>th</sup> day of February, 2010



Notary Public

**WINSTON MARTINEZ**  
Notary Public, State of New York  
No. 01MAG184562  
Qualified in Queens County  
Commission Expires April 7, 2012