

**POTSDAM VILLAGE COURT  
COUNTY OF ST. LAWRENCE  
STATE OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK,**

-v-

Case No.: 05080018

**JASON ROHRER,**

Defendant.

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**SUMMATION ON BEHALF OF THE PEOPLE**

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## FACTS

The Village of Potsdam has a Municipal Code, which has been compiled over many years. One section of the Municipal Code is known as “Streets and Sidewalks” and is incorporated in the Code as Chapter 145. One section of the chapter is Section 145-6. Known as brush, grass and weeds. It has been most recently amended on May 12, 2005 by Local Law Number 2-2005.

Prior to the enactment of the law, the proposed law was published and a public hearing was duly held thereon, and the passage of said Local Law otherwise followed all of the procedures required in order to pass a local law by a Village in the State of New York.

The Defendant, Jason Rohrer, and his wife, own real estate within the Village, known as 93 Elm Street. It is a residential property and a one-family home.

The Village Code, including Section 145-6 is thus applicable to that premises.

The Defendant was served an information alleging that he violated the above Section of the Municipal Code on the 4<sup>th</sup> day of August 2005. He was accused specifically of having failed to cut or cause to be cut his grass, brush and weeds on that property. Notice to cut the vegetation down to the height required by the Ordinance was provided to said Defendant, prior to the issuance of the Violation, upon his refusal to do so. A trial was had on the matter on the 15<sup>th</sup> day of December 2005.

At the trial, Code Enforcement Officer, John Hill testified as to the violation and the existence of the Code. The Defendant testified, as did one defense witness. The Defendant took the position that the Statute was being selectively enforced against him and that he had the “constitutional right” and that the prosecution somehow violated his “due process” and that the

matter in which he allowed vegetation to grow on his property was “protected expression”. Mr. Hill testified that during the course of the Summer of 2005, Mr. Rohrer was not the only individual cited, that there were more than 35 times when the appropriate standard Village letter went out, ordering individuals to take care of the vegetation growing on their property, and on seven occasions, the Village forces went in to actually do the mowing upon the failure of that individual to do so.

Code Enforcement Officer Hill also testified in detail as to the code violation itself and further that the recent amendment to the Code was to more closely follow and implement the New York State guidelines.

Mr. Rohrer was unable to demonstrate any other improved lots in the Village that did not meet or were not forced to meet the Village Code in 2005. Mr. Grover testified as an expert that there was a place for the development of natural vegetation on the lot, although he would not go so far as the Defendant in stating that residential lots should be left completely to overgrow without controls or mowing. He further indicated that he knew of no such lots within the Village area, and that any change should be done by statutory change.

Mr. Rohrer admitted that he was aware prior to purchasing his property in 2004, that there was zoning within the Village, which regulated uncontrolled growth of vegetation, but that he did not agree with the Code requirements.

### **REQUESTED FINDINGS**

That Mr. Rohrer should be found guilty of violating Section 145-6 a & b of the Village of Potsdam Code. The Defendant has not demonstrated that the Code is a violation of his “constitutional rights”. He did not present any facts demonstrating the whys or how a constitutional question applied to him.

Procedural due process guarantees only that there is a fair decision making process before the Government take some action directly impairing a person's life, liberty or property. It is only necessary that a fair decision-making process be used. Constitutional Law 2d Nowak, Rotunda and Young Page 417 West Publishing (1983) As noted earlier, this Law was duly passed upon consideration by the Village Board of Trustees of the Village of Potsdam and utilizing the fully constitutional procedures as set forth in the State Statutes for the procedures for Villages to follow in the passage of local laws. There are many occasions when the Village, or any other municipality, must take appropriate action in order to fairly govern.

Federal, State and local laws exist in thousands of forms, which restrict individual freedom. Few would disagree that, for example, a much more severe taking occurs during the eminent domain process, wherein private land owners can actually have their property taken from them so long as there be a valid reason and all procedures are followed properly. Clearly, the Defendant does not like the Code section in question and so doesn't feel that he should have to follow it. In traveling by automobile it might be more environmentally sound to take a short cut down a one-way street to save fuel, rather than to drive around the block, but once the procedures of a street becoming one-way within the Village is validly completed, this Code Section that must be followed by all.

The same rationale applies to this Section 145.6 a and b.

Municipalities have a legitimate interest in controlling their environment for aesthetic, fire, vermin, safety, allergy and other reasons. The code is not demonstrably improper or illegal, but merely codifies the Village's position on the issue.

Although the Defendant testified that fires would not be a concern and Mr. Grover testified only to one real property damage case that he could recall as a result of grass fires, it is

safe to say that every Springtime and at other times during the year, a number of structures burn in St. Lawrence County as a result of fires that do not occur within the structure itself, but because of vegetation fires. Complete and uncontrolled growth of vegetation within the Village is a legitimate concern, and one which the Village has made its determination.

Open burning of vegetation is not allowed within the Village at all, but burn bans are a common occurrence County wide during periods of drought, and one only has to have been present during a rainless July and August to know how dangerous a situation can be created, especially in a built-up area like the Village of Potsdam.

Villages can validly exercise their powers in many ways. For instance, a mobile home owner was denied a variance requested, as when he failed to show that provisions of the Code, which generally excluded mobile homes, was not adopted for a legitimate governmental purpose, and that there was lacking a reasonable relationship between the ends sought to be achieved by such a zoning provision and mobile home exclusions, and, thus, the owner failed to show that the zoning provisions denied him due process. *Village Board of Trustees of the Village of Malone vs. Zoning Board of Appeals of the Village of Malone* 164A.D.2d 24, 562N.Y.S. 2d 24, 562N.Y.S. 2d 973 (AD3rd Dept 1990) It should be noted that in any event that an exceedingly strong presumption of constitutionality applies to not only enactments of the legislature, but Municipalities as well, including that of the Village of Potsdam. *Lighthouse Shores, Inc. vs. Town of Islip* 41N.Y.S 2d 7, 11, 390N.Y.S. 2d 827, 830 (1976)

The *Romer v. Evans* case cited by the Defendant, was an attempt by the State of Colorado and various of its municipalities to deny equal protection to a class of individuals (gays and lesbians) and was struck down as a violation of the Fourteenth Amendment, the promise that no person shall be denied equal protection under the law. *Romer v. Evans* 517U.S. 620 (1996).

The Court stated that if the law neither bars a fundamental right or targets a suspect class, we will uphold the classification, so long as it bears a rational relation to a legitimate end. *Romer v. Evans* Supra and *Heller v. Doe* 509 U.S. 6 (1993)

The Defendant grossly misconstrues the *United States vs. O'Brien* case. 391U.S. 367 (1968). First, the U.S. Supreme Court did indeed find that in this case that freedom of expression, which consisted of a burning of a draft card, was a violation of criminal law. The claim by the Defendant in *O'Brien* that his acts were protective of speech was not supported by the Court. As such, the case absolutely stands for and supports the argument that the Defendant be found guilty in this case.

Likewise, the *Cohen vs. California* case cited by the Defendant is inapplicable. See *Cohen vs. California* 403U.S. 15 (1971). That case applied solely to language when Defendant wore a jacket imprinted with "Fuck the Draft" and was arrested for wearing that item in a public building.

Clearly, this was a pure exercise of free speech, rather than a mix of speech and action (or as in this case, inaction) and thus is protected. The Court in the *Cohen* case made that clear distinction and it should be maintained today.

Courts of limited jurisdiction should not set aside a Statute as unconstitutional except where life and liberty are involved and the invalidity of the Statute is apparent on its face, or the conclusion is inescapable. *People vs. Mineola* 112 Misc. 2d, 949, 952, 447N.Y.S. 2d 809. The Village of Potsdam is indeed a Court of limited jurisdiction. More specifically, if the constitutional questions are fairly debatable, the Court must declare the ordinance (here, local law) constitutional, as the Court, cannot and must not substitute its judgment for the judgment of the local legislative body. *Buffalo vs. Hawks* 226A.D. 480, 236N.Y.S. 89. Finally, and most

tellingly, the Defendant was incorrect when he indicated that the New York Courts had not addressed the issue. Involving grass, indeed New York Court has found legislation requiring the cutting of long grass and weeds valid, despite a constitutional attack for vagueness. *People vs. Jack Resnick and Sons, Inc.* 127 Misc. 2d 1031, 487N.Y.S. 2d 988 (1985).

It should be noted that the Defendant has in fact, had his opportunity to object to the Statute before the legislature could have appeared (and may have appeared) before the Board, when the new section was being amended in May of 2005 and has not demonstrated how his constitutional right of free expression is harmed by or overrides the legitimate aims duly enacted of the Village of Potsdam. It should further be noted that the Defendant readily agreed that the Village had taken no action and indeed was aware that the Defendant's rear yard was being naturally developed.

Respectfully submitted,



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