



LEONARD D. ZACCAGNINO
JENNIFER L. BURKE
SAMANTHA C. SCHULTZ
BLAKE J. ZACCAGNINO
REID L. ZACCAGNINO

SHAW & SHAW, PC
ATTORNEYS AND COUNSELORS AT LAW

4819 SOUTH PARK AVENUE | HAMBURG, NY 14075
PHONE: (716) 648-3020 | FAX: (716) 648-3730
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OF COUNSEL

JOSEPH H. SHAW, JR.

RETIRED

JAMES M. SHAW

July 21, 2023

Connie Schweitzer
158 Mill Street
Williamsville, NY 14221

County of Erie
95 Franklin St., Room 1634
Buffalo, NY 14202

Town of Amherst
5583 Main Street
Williamsville, NY 14221

Village of Williamsville
5565 Main Street
Williamsville, NY 14221

Erie County Water Authority
295 Main Street
Room 350
Buffalo, NY 14203

Erie County Sewer Authority
A Division of the County of Erie
95 Franklin Street, Room 1634
Buffalo, NY 14202

Erie County Division of Sewerage Management
A Division of the County of Erie
95 Franklin Street, Room 1634
Buffalo, NY 14202

Erie County Sewer District No. 5
A Division of the County of Erie
95 Franklin Street, Room 1634
Buffalo, NY 14202

Re: Josephine Swanson

Dear Ms. Schweitzer and others:

Served herewith is Josephine Swanson's Notice of Claim regarding her fall that occurred on July 14, 2023.

Thank you for your courtesy and consideration in this matter.

Very truly yours,

SHAW & SHAW, P.C.

Blake J. Zaccagnino

BJZ/ksr
Enc.

STATE OF NEW YORK

JOSEPHINE SWANSON
9170 Beech Meadow Court
Clarence Center, NY 14032

Claimant,

-vs-

NOTICE OF CLAIM

CONNIE SCHWEITZER
158 Mill Street
Williamsville, NY 14221

TOWN OF AMHERST
5583 Main St.
Williamsville, NY, 14221

VILLAGE OF WILLIAMSVILLE
5565 Main Street
Williamsville, NY 14221

ERIE COUNTY WATER AUTHORITY
295 Main Street
Room 350
Buffalo, NY 14203

COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY SEWER AUTHORITY
A DIVISION OF THE COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY DIVISION OF SEWERAGE MANAGEMENT
A DIVISION OF THE COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY SEWER DISTRICT NO. 5
A DIVISION OF THE COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, NY 14202

Respondents.

TO:

1. The name and address of **Claimant** is:

JOSEPHINE SWANSON
9170 Beech Meadow Court
Clarence Center, NY 14032

2. The **Claimant** is represented herein by:

Shaw & Shaw, P.C.
Blake Zaccagnino, Esq., of counsel
4819 South Park Avenue
Hamburg, NY 14075

LEGAL THEORY/CAUSE OF ACTION CLAIMED:

3. This is a claim founded in negligence, and is for personal injuries.
4. This is a claim for money damages for personal injuries sustained by the

Claimant, when she was caused to fall on the property and premises and, more specifically, on the sidewalk adjacent to/abutting 158 Mill Street, Williamsville, NY 14221.

Upon information and belief, that property was under the possession, control and ownership of the Respondents.

Upon further information and belief, the Respondents caused and created a dangerous condition, that they had actual and constructive notice of, and failed to take corrective action prior to this incident, resulting in the accident and the Claimant's serious injuries.

TIME AND LOCATION AND MANNER IN WHICH THE CLAIM AROSE:

5. The time when the claim arose and the time when injuries and damages herein alleged were sustained was on or about July 14, 2023 at approximately 11:10PM.

NATURE AND BASIS FOR THIS CLAIM:

6. Attached as **Exhibit A**, please find a real property parcel search and deed of the adjacent/abutting property where the incident took place.

The same indicates that the property is located in the Town of Amherst and Village of Williamsville.

Same indicates that the residence is owned by CONNIE SCHWEITZER.

7. As the Claimant walked on the sidewalk mentioned above, she was caused to trip and fall over a dangerous condition on the sidewalk. More specifically, the sidewalk was not level, not even, was lifted, including but not limited to, had a dangerous raised lip on it.

When she fell, she came into contact with the ground, seriously injuring herself.

Attached as **Exhibit B**, please find photographs of the dangerous conditions that caused the Claimant's fall. Please note the ERIE COUNTY WATER AUTHORITY flag shown in the photos, at or near the dangerous condition that caused Claimant's fall.

8. At the time of her fall, the Claimant was with John Swanson. He witnessed the fall. The Claimant has all of his contact information which she is willing to provide to the Respondents on request.

LEGAL THEORY/CAUSE OF ACTION CLAIMED:

9. The above mentioned incident and the injuries and damages occurring therefrom occurred by reason of the fault, neglect, and carelessness of the Respondents, their agents, servants, and/or employees. The negligence of the Respondents, their agents, servants and/or employees includes but is not limited to:

The Respondents' negligence included but was not limited to the following:

- Failure to properly, adequately, and safely maintain the aforesaid premises;
- In failing to repair, keep safe, and maintain the sidewalk where the incident took place;
- Failure to properly and adequately supervise and control the area where the Claimant fell on the date of the incident;
- Carelessly and negligently designing the area on said premises where the incident occurred;
- Failure to take the necessary steps to correct un-level sidewalks, uneven sidewalks, including but not limited to sidewalks with a dangerous raised lips on them;

- Failure to give attention to uneven and unlevel raised sidewalk surfaces;
- Failure to take the necessary steps and make the necessary observations, which, if taken or made, would have avoided the said incident;
- Failing to act reasonable under the circumstances;
- Failing to take precautionary measures to the protect the Claimant from the incident after weighing the probability and gravity of the harm against the burden of precaution;
- Failing to take precautionary measures to the protect the Claimant from the incident when they had ownership, occupancy, control, and or special use of the property on the date of the fall;
- The Respondents' negligence was the proximate cause of the Claimant's fall and serious injuries;
- The Respondents' negligence was a substantial factor in bringing about the Claimant's injuries in that a reasonable person would regard it as a cause of her injuries;

- They failed in their duty to use reasonable care to keep their property in a reasonably safe condition for the protection of the Claimant whose presence was reasonably foreseeable on the date of the fall;
- The Respondents created the condition that caused the Claimant 's fall; and had actual and constructive notice of it;
- The Respondents either knew, or in the use of reasonable care, should have known that the condition that caused the Claimant's fall long enough before the fall to have allowed them, in the use of reasonable care to correct it or to take other suitable precautions, but they failed to do so;
- The Respondents failed to warn the Claimant about the dangerous condition before her fall;
- in having prior written notice of the dangerous sidewalk conditions shown herein, and in failing to timely fix/repair it (pursuant to, including but not limited to Town Law Section 65-a);
- in prior negligent maintenance/repair of the sidewalk conditions where this incident took place, immediately resulting in the dangerous conditions described herein;

- in affirmatively creating the dangerous conditions described herein through an act of negligence;
- in having special use of location where this incident took place, and the location of the incident, that resulted in a special benefit to the Respondents;
- causing/allowing the dangerous condition to have jagged edges, a rough irregular surface, poor lighting, to have the presence of other defects in the vicinity, to be irregular, the dangerous condition was located in an area where people are naturally distracted from looking down at their feet, and the surrounding circumstances and dangerous condition increased the risk of people, such as the Claimant, falling;
- in failing to warn of the dangerous conditions described herein;
- causing/allowing the intrinsic characteristics of sidewalk in question to be such that it was difficult for pedestrians to see and identify and to traverse safely on foot; including but not limited to,
- that the Respondents, its agents, servants and/or employees were otherwise careless and negligent.

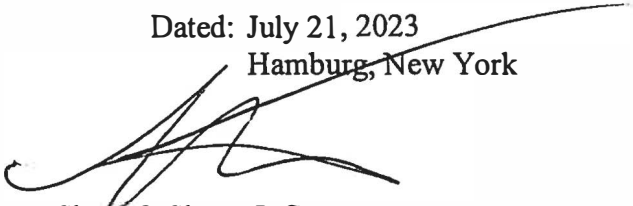
DAMAGES CLAIMED:

10. By reason of the aforesaid occurrence, the Claimant sustained severe, painful and permanent injuries in and about her body, including, but not limited to, facial lacerations, facial bruising, possible future scarring, head trauma, facial trauma, all of which were and are severe, painful and permanent in nature including, shock to the nerves and nervous system, circulatory system, traumatic injuries to nerves, tendons and muscular system with resultant impairment and/or loss of use of normal functions; was otherwise rendered sick, sore, lame and disabled and prevented her from performing her usual activities for a period of time subsequent to this incident, and has incurred, and may suffer and sustain loss of earnings and/or loss of future earning potential and/or capacity; has caused, or may incur, hospital expenses, medical expenses, physical therapy and/or rehabilitation and counseling expenses and/or other similar types of expenses as to past, present or future, as would relate to the care, treatment and attempted cure of the injuries sustained and/or the residual effects thereof; has been deprived of the ability to enjoy the life and lifestyle that she was able to participate in and enjoy prior to the happening of this incident, and has been caused to suffer emotional upset, anxiety and depression as a result of the pain and suffering associated with the injuries as to the past, present and, upon information and belief, into the future; and together with any other special and general damages as may manifest themselves subsequent to the date of this Notice of Claim. Attached as **Exhibit C**, please find photos of some of the Claimant's injuries.

11. The Claimant also makes a claim for any and all medical expenses incurred as to her care, treatment and attempted cure of the injuries sustain and/or the residual effects of the same herein as to the past, present, and or future.

WHEREFORE, Claimant respectfully prays and requests that these claims as set forth herein be paid and allowed by the **Respondents**.

Dated: July 21, 2023
Hamburg, New York



Shaw & Shaw, P.C.
Blake Zaccagnino, Esq., of counsel
Attorneys for Claimant
Office and Post Office Address
4819 South Park Avenue
Hamburg, New York 14075
(716) 648-3020 Telephone
(716) 648-3730 Fax
www.shawlawpc.com

VERIFICATION

STATE OF NEW YORK)

)ss.:

COUNTY OF)

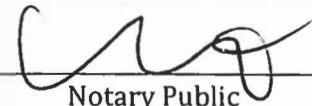
JOSEPHINE SUMMONS

being duly sworn, deposes and says that (he)(she) is the Plaintiff/Claimant in the within action; that (he)(she) has read the foregoing and knows the contents thereof; that the same is true to (his) (her) own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.



Sworn to before me this 17

day of JULY 2023



Notary Public

BLAKE J ZACCAGNINO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02ZA6336306
Qualified in Erie County
Commission Expires February 1, 2024

EXHIBIT A

Real Property Information

Parcel Status	ACTIVE	City/Town	Amherst	Village	Williamsville
S-B-L	69.17-2-1	Owner	SCHWEITZER CONNIE		
Property Location	158 MILL ST	Mailing Address			
Property Class	210 1 FAMILY RES	Line 2			
Assessment	\$150,000.00	Line 3			
Taxable	\$150,000.00	Street	158 MILL ST		
Desc		City/State	WILLIAMSVILLE NY		
Desc		Zip	14221	SWIS	142201
Deed Book	10095	Deed Page	00590		
Frontage	95.00	Depth	210.00	Acres	0.00
Year Built	1840	Square Ft	1521		
Beds	4	Baths	1.0		
FirePlace	1	School	WILLIAMSVILLE CENTRA		

Owner History

Tax Payment History

Google Maps

This Indenture,

Made the 26th day of October, Nineteen Hundred and Eighty-Nine

Between MARTIN L. KASBOHM and MARY B. KASBOHM, his wife residing at 158 Mill Street, Williamsville, NY 14221 and JOHN RUDOLPH and LINDA K. RUDOLPH, his wife, residing at 9335 Clarence Center Road, Clarence, New York Grantor(s), and

CONNIE SCHWEITZER, residing at 438 Highland, Tonawanda, New York 14223 Grantee(s).

Witnesseth, that the said Grantor(s), in consideration of One and More Dollars (\$ 1.00 & More) lawful money of the United States, paid by the Grantee(s), do hereby grant and release unto the Grantee(s), her and assigns forever.

All that Tract or Parcel of Land, situate in the Town of Asherst, County of Erie and State of New York, being part of Lot No. 5, Township 12, Range 7 of the Holland Land Company's Survey, described as follows:-

BEGINNING at a point in the west line of said Lot No. 5, said point being distant one hundred sixty and seventy-seven hundredths (160.77) feet northerly from the southwest corner of said lot: thence northerly along the west line of said lot seventy-five (75) feet: thence easterly along the southerly line of premises conveyed by Demeter Arbogast and Sarah H. Arbogast his wife to George Miller and Otila Miller his wife by deed dated July 1, 1912 and recorded in Erie County Clerk's Office in liber 1264 of Deeds page 216 on the 13th day of June, 1913, four (4) chains sixty-two (62) links to the center of Mill Street: thence southerly along the center line of Mill Street one hundred seven and eight tenths (107.8) feet: thence westerly on a straight line drawn through the point or place of beginning two hundred twenty-five and ninety hundredths (225.90) feet to the west line of said Lot No. 5 at the point or place of beginning.

EXCEPTING and reserving from the above described premises part conveyed to Adeline Mirabelli by deed recorded in Erie County Clerk's Office in liber 5683 of Deeds page 63 on January 19, 1955.

RECEIVED
\$312.00
REAL ESTATE
OCT 27 1989
TRANSFER TAX
ERIE COUNTY

45-1-2-10

11 010095 P 590

10 15 19

FILED

MARTIN L. KASBOHM and
MARY B. KASBOHM, his wife
JOHN RUDOLPH and
LINDA K. RUDOLPH, his wife

1989 OCT 27 PM 1:28
ERIE COUNTY
CLERK'S OFFICE

288

CONNIE SCHWEITZER

DATED October 26, 1989

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE
Recorded in Liber 1125 Page 580
of Reels
on the 27 day of Oct
A.D., 19 89, at 1:28 o'clock P.M.
and examined.

Paul J. [Signature]
CLERK

1-11-89-50

89-13698 Dd

TOGETHER with the appurtenances and all the estate and rights of the Grantor(s) in said land and premises
TO HAVE AND TO HOLD, the above granted premises unto the said Grantee(s),
AND the said Grantee(s) do covenant with said Grantee(s) as follows:
FIRST.—That the Grantee(s) shall quietly enjoy the said premises.
SECOND.—That the Grantee(s) will forever WAARRANT the title to said premises.
THIRD.—Subject to the first and provisions of section thirteen of the Eas Law.
IN WITNESS WHEREOF, The said Grantee(s) has hereunto set their hands and seals the day and
year first above written.

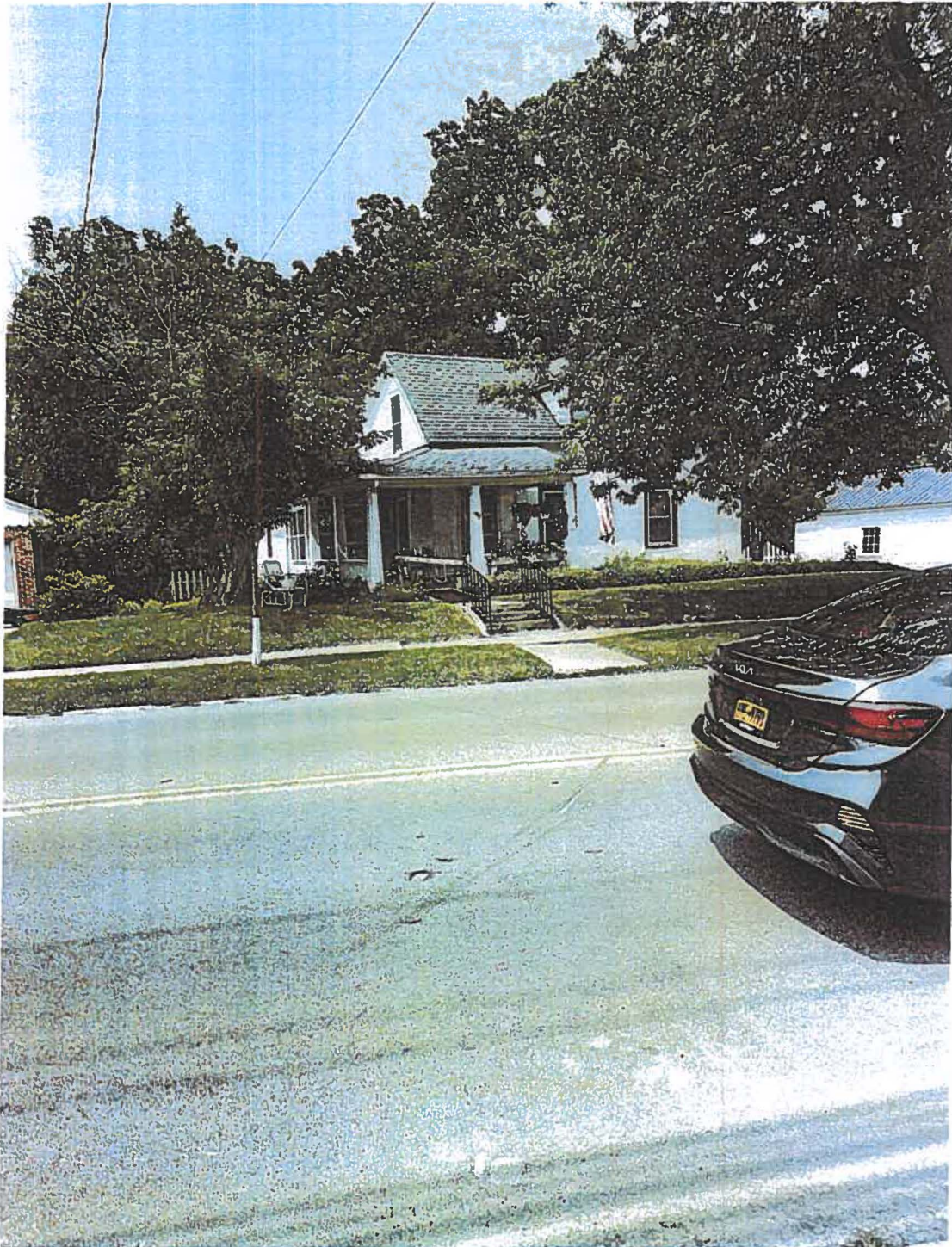
IN PRESENCE OF
MARTIN L. KASBOHM
MARY B. KASBOHM
JOHN RUDOLPH
LINDA K. RUDOLPH
STATE OF NEW YORK
COUNTY OF: ERIE
On this 26 day of October
Nineteen Hundred and Eighty-Nine
before me, the undersigned, personally appeared MARTIN L. KASBOHM and MARY B. KASBOHM, his
wife and JOHN RUDOLPH and LINDA K. RUDOLPH, his wife,
to me personally known and known to me to be the same persons described in and who executed the within instrument,
and they acknowledged to me that each of them executed the same.
My Commission Expires May 11, 1992

before me, the undersigned, personally appeared
to me personally known and known to me to be the same person described in and who executed the within instrument,
and they acknowledged to me that he executed the same.

11 010035 P 591







7/19/23, 5:16 PM

IMG-4197.PNG



Google Maps 147 Mill St

Williamsville, New York
Google Street View
Aug 2019

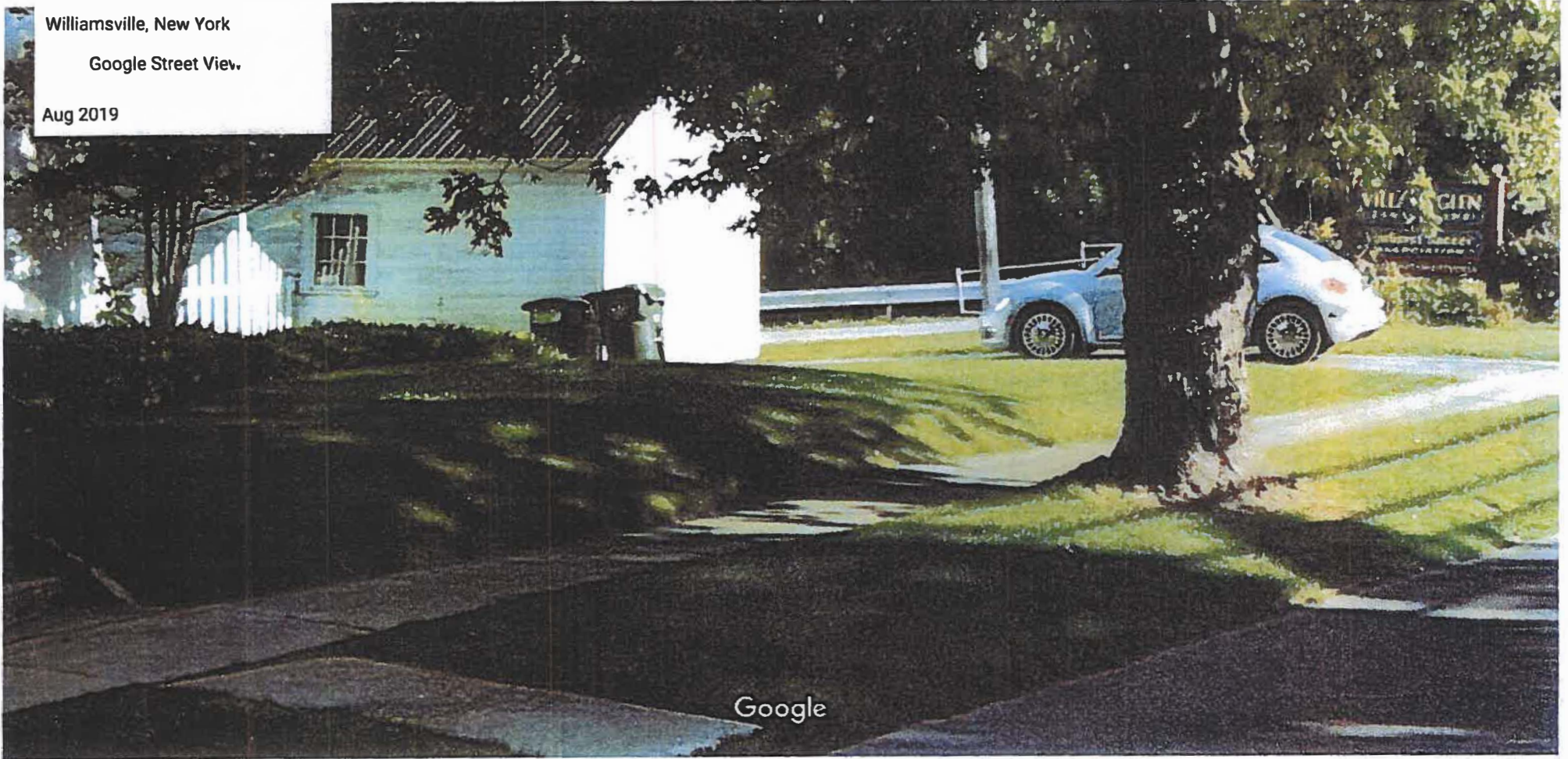


Image capture Aug 2019 © 2023 Google



EXHIBIT C





