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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, SS.

SUPERIOR COURT
NO. 1780CV00105

TIMOTHY FONDAKOWSKI,
Plaintiff,

v.

PLANNING BOARD OF THE TOWN OF WESTHAMPTON
THROUGH ITS MEMBERS MARK SCHWALLIE, THOMAS
HATHAWAY, ROBERT TURNER, ROBERT DRAGON, JR.,
COTTON TREE SERVICE, INC., DODGE MAPLE GROVE
FARM, LLC, AND HAMPSHIRE SUPERIOR COURT,
Defendants.

DEPOSITION OF CHARLES MILLER

TAKEN JUNE 13, 2018

AT THE LAW OFFICES OF

KOTFILA & JORDAN

ONE MONARCH PLACE, SUITE 1340

SPRINGFIELD, MASSACHUSETTS

Reporter: Raymond F. Catuogno, Jr.

2	<p>APPEARANCES:</p> <p>For the Plaintiff: LAW OFFICES OF KOTFILA & JORDAN One Monarch Place, Suite 1340 Springfield, MA 01144 BY: RICHARD T. JORDAN, ESQ. 413-746-0077/413-781-5399 attorneyjordan@gmail.com</p> <p>For the Defendant Town of Westhampton: KP LAW, P.C. 101 Arch Street Boston, MA 02110 BY: DEBORAH I. ECKER, ESQ. 617-556-000 decker@k-plaw.com</p> <p>In Attendance: Timothy Fondakowski</p>	4
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STIPULATIONS

It is agreed by and between the parties that all objections, except objections as to the form of the questions, are reserved and may be raised at the time of trial for the first time.

It is further agreed by and between the parties that all motions to strike unresponsive answers are reserved and may be raised at the time of trial for the first time.

It is further agreed by and between the parties that the sealing of the original deposition transcript is hereby waived.

It is further agreed by and between the parties that the notification to all parties of the receipt of the original deposition transcript is hereby waived.

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1 CHARLES MILLER, Deponent, having produced
2 satisfactory identification by means of
3 Massachusetts Driver's License, was duly sworn,
4 deposes and states as follows:
5 EXAMINATION BY MR. JORDAN:
6 Q. Could you state your name, please?
7 A. My name is Charles Miller.
8 MR. JORDAN: And I'm assuming
9 usual stipulations on this?
10 MS. ECKER: Yes, whatever you
11 have been doing.
12 MR. JORDAN: Okay.
13 Q. (By Mr. Jordan) Mr. Miller, where
14 do you live?
15 A. I live at 2 Dewey Circle in
16 Haydenville, Massachusetts.
17 Q. And how long have you lived there,
18 sir?
19 A. Eight years.
20 Q. What's your current occupation?
21 A. I'm retired.
22 Q. Prior to being retired, what was
23 your last occupation?
24

6	<p>1 A. Assistant building commissioner in 2 Northampton, Massachusetts and building official 3 in Westhampton, Massachusetts. 4 Q. Are those simultaneously or 5 different dates? 6 A. I started first in Westhampton and 7 then started in Westhampton three years later, 8 and they ran contiguous at that point. 9 Q. What date in Westhampton? 10 A. Oh, God, I don't remember. 11 Q. Was it prior to 2012? 12 A. Well, I was there for ten years and 13 I just retired last June, so work it backwards. 14 Q. Okay. So what is that, 2008? 15 A. 2007. 16 Q. Okay. So you think approximately 17 2007? 18 A. Yes. 19 Q. And then assistant building 20 inspector, you said, with what town? 21 A. Northampton. 22 Q. And that was three years later? 23 A. Yes. 24 Q. That would be about 2010. Let's</p>	8	<p>1 before that, I worked for myself starting back 2 in about '73. 3 Q. Doing designing and building? 4 A. Yes, hands-on building. 5 Q. Okay. Now, you earlier stated that 6 in Westhampton your responsibility and duties 7 was to enforce the zoning? 8 A. Zoning ordinances and building 9 codes. 10 Q. Okay. And that would include any 11 kind of special permits, I would assume, right? 12 A. That would include referring 13 someone for a special permit. I had nothing to 14 do with the special permit process, actually. 15 Q. Right. But if there were 16 conditions on a piece of land that -- to operate 17 to have a special permit, would you be the 18 person that would enforce the conditions? 19 A. Yes. If they violated conditions 20 of a special permit, I would be the person that 21 would have to act on that. 22 Q. Specifically, I want to talk about 23 the land on Northwest Road that was Maple Grove 24 Farm. And at one point it was also referred to</p>
7	<p>1 talk about the Westhampton piece of this. You 2 were the building inspector for Westhampton? 3 A. That's correct. 4 Q. As building inspector, what are 5 your duties? 6 A. To enforce the building and zoning 7 codes. 8 Q. Do you have special training to do 9 that? 10 A. Yes. You have to pass a series of 11 tests to get an inspector's license. That's 12 really the training that you have. And there's 13 different courses and miscellaneous other things 14 that you attend, but that's about it. 15 Q. Do you get certifications? 16 A. Yes, you do. You get 17 certifications in building, not in zoning. 18 Q. Prior to being a building 19 inspector, did you work in the trades at all? 20 A. I spent four or five years doing 21 trainings for the building inspectors and other 22 groups for energy efficiency. And before that, 23 I spent twenty years with Wright Builders in 24 Northampton as a designer and estimator. And</p>	9	<p>1 as Cotton Tree Service as the owners of that 2 property? 3 A. Yes. 4 Q. Are you familiar with the property 5 that now contains the sawmill that we're talking 6 about? 7 A. Yes, I know the property you're 8 speaking of. 9 Q. And prior to it being a sawmill, it 10 was operated as something else; is that right? 11 A. There was a different owner that 12 operated as a farm, I believe. 13 Q. Okay. And at some point it came 14 into the ownership of Maple Grove Farm or Dave 15 Cotton? 16 A. Yes. 17 Q. Do you know when that was, 18 approximately? 19 A. I don't recall today. 20 Q. Do you remember at any point giving 21 what they call a -- any violations to Mr. Cotton 22 for what he was using that land for? 23 A. Policy in Westhampton is to respond 24 to written complaints for zoning only. I</p>

10	<p>1 received a written complaint about Cotton's use 2 of the property and it was implied that he was 3 using it for a commercial sawmill. I looked at 4 the site, concluded that in my view his use was 5 not allowed by zoning by right and that he would 6 need a special permit. It appeared that he was 7 stockpiling logs and that he was sawing them 8 on-site. 9 Q. And if you could, just go through 10 the process of how you discovered that 11 information. 12 A. Written complaint. 13 Q. Okay. 14 A. And I walked the property. 15 Q. And then you walked the property? 16 A. And Mr. Cotton gave me permission 17 to go on the property and walk it. 18 Q. Okay. So when you got the initial 19 letter, was it addressed to you or was it 20 addressed to the selectmen? 21 A. It was addressed to me as the 22 zoning enforcement officer. 23 Q. And if you could, could you -- is 24 there a procedure that you would follow as the</p>	12	<p>1 was fine and I did. 2 Q. Did you give him a cease and desist 3 order? 4 A. I did give him a cease and desist. 5 Q. If I could, I'm going to show you a 6 document here. I'm going to show you a letter 7 dated May 30, 2012 from you addressed to Cotton 8 Tree Service, Inc., 248 Hatfield Street. And I 9 will show it to your attorney first. 10 MS. ECKER: Are you going to 11 mark it? 12 MR. JORDAN: I don't know yet. 13 MS. ECKER: It may be easier 14 for the transcript if you just marked it. 15 MR. JORDAN: Okay. 16 MS. ECKER: Because we 17 wouldn't know what he's referring to. 18 MR. JORDAN: I described it, 19 but that's fine. 20 (Exhibit 1, Letter dated May 30, 2012, 21 marked for identification) 22 Q. (By Mr. Jordan) Sir, could you 23 review that and tell me if you remember sending 24 that letter?</p>
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11	<p>1 zoning enforcement officer when you receive a 2 complaint? 3 A. I investigate it, whatever that 4 takes. 5 Q. Is there any written procedures or 6 is that just something that -- 7 A. Not that I recall, no. 8 Q. So you get a complaint, a written 9 complaint, and then you said at this point you 10 went and spoke to Mr. Cotton? 11 A. Yes. I spoke to Mr. Cotton -- 12 well, I went to the site, actually, looked from 13 the neighbor's property, so I knew what the 14 neighbor was talking about in his complaint. 15 And then I went to Mr. Cotton because I wanted 16 to go on the property, but I wanted his 17 permission to do that. 18 Q. Okay. 19 A. So I told Mr. Cotton that what I 20 saw there, I felt, did not meet the prescriptive 21 allowances under zoning and that I would likely 22 have to give him a letter and tell him to cease 23 and desist. But I wanted to go and walk on the 24 property and he was accommodating. He said that</p>	13	<p>1 A. Yes. 2 Q. That's your signature? 3 A. Yes. 4 Q. Was that the letter you were just 5 referring to prior to me showing you that, the 6 cease and desist? 7 A. That's the letter I gave him for 8 cease and desist, that's correct. 9 Q. Did you give more than one letter 10 to him for cease and desist for the same 11 activity? 12 A. The same property, no, I don't 13 believe so. I don't recall. 14 Q. As a result of that, what happened? 15 A. Well, as a result of that, I 16 continued to get complaints of log deliveries on 17 the site. I attempted to ticket Mr. Cotton, but 18 technically messed up the tickets. They went 19 nowhere. I got nowhere with ticketing, so I 20 decided just to take it to court, went to court 21 with Mr. Cotton and his attorney. And at that 22 point we were assigned an arbitrator and a 23 decision was made that Mr. Cotton could leave 24 his equipment on-site where it was pending his</p>
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1 appeal or approach for special permit. And he
 2 was pursuing other avenues because he felt his
 3 use fit under land use for farms, which I did
 4 not agree with, so we made an agreement that --
 5 and I made an agreement that he could leave his
 6 equipment there, he would cease all operations
 7 and stop hauling logs into that site.
 8 And that was then brought into the
 9 judge. The judge said all right, and that is
 10 where it went. After that, it rolled through
 11 court cases and it just sat in limbo. I used to
 12 get calls occasionally that he might be doing
 13 something, but I walked the site several times
 14 and didn't feel that he was continuing
 15 operations on that site.
 16 Q. Okay. Just to go back to the
 17 beginning part, at some point you said you --
 18 technically there was a problem with the
 19 tickets?
 20 A. I wrote tickets --
 21 Q. What was that?
 22 A. I wrote tickets wrong. I didn't
 23 sent them to the right place. One time the
 24 Court didn't have a copy of it that we sent in,

15

1 so they were all -- had some problem that I did
 2 not pursue further. You could get thirty days
 3 on the ticket, and then you could appeal it.
 4 You know, so then we went forward with the
 5 appeals. But then the ticket was invalid
 6 because it was written incorrectly, so I got
 7 nowhere essentially.
 8 Q. Did you issue more than one ticket?
 9 A. I believe I issued two.
 10 Q. Two tickets. If you could,
 11 approximately how long apart from the tickets
 12 that you issued?
 13 A. I don't recall.
 14 Q. Could you approximate? Are we were
 15 talking a year, two months?
 16 A. Within weeks.
 17 Q. So you learned from your mistake on
 18 the first one. And the second one, did you do
 19 that one properly?
 20 A. We actually had more tickets made
 21 in Westhampton, so they had all the correct
 22 copies. And we followed procedure, but the
 23 second one the Court claimed never to receive.
 24 It also went nowhere.

16

1 Q. And the Court, you're talking
 2 about Hampshire -- which court?
 3 A. Yes, in Northampton, the Hampshire
 4 Court.
 5 Q. Superior Court?
 6 A. I don't know what it's called.
 7 Q. What floor were you on?
 8 A. The main floor.
 9 Q. So just to clarify here, you said
 10 at some point you went to the court for some
 11 kind of arbitration?
 12 A. Okay. That's a separate and
 13 different court.
 14 Q. Where was that?
 15 A. We actually had a building
 16 department training and we had some
 17 representatives come in that explained that
 18 depending on the type of issue it may be
 19 possible to take it to Land Court. So because
 20 it involved residential complaints, I was able
 21 to take Mr. Cotton to Land Court in Hadley,
 22 Massachusetts. That's where we came to an
 23 agreement that he would cease and desist his
 24 work, he could leave equipment and the logs that

17

1 were there at the time, and he would pursue his
 2 special permit and also his case for farm use
 3 that he was trying to achieve.
 4 Q. So as I can assume from your answer
 5 there, you felt, as the zoning enforcement
 6 officer, it was up to your discretion to either
 7 enforce the ticket or to enter into an agreement
 8 of some sort; you have that authority?
 9 A. I felt I had that authority, yes.
 10 Q. And did anyone from Westhampton
 11 ever tell you you didn't have that authority?
 12 A. Not to my knowledge.
 13 Q. And as a zoning enforcement
 14 officer, did you have anyone that was
 15 supervising you, that you're aware of?
 16 A. Well, the selectmen were my bosses.
 17 Q. And you say they're your bosses.
 18 Why did you feel that?
 19 A. They hired me.
 20 Q. Did you report to them?
 21 A. When necessary, but not regularly.
 22 Q. What would be a necessary time to
 23 report?
 24 A. Probably if I wanted a raise.

18	<p>1 Q. More specifically, with regard to</p> <p>2 your duties, like enforcement, et cetera?</p> <p>3 A. I usually didn't unless they</p> <p>4 requested that I come and talk to them, and I</p> <p>5 don't recall that happening, maybe once. I</p> <p>6 didn't go to their meetings. I didn't attend</p> <p>7 any of those meetings. And if I thought that</p> <p>8 they needed to know what I was doing, then I</p> <p>9 would copy them on the documents, which I did on</p> <p>10 several occasions.</p> <p>11 MR. JORDAN: Off the record.</p> <p>12 (A recess was taken)</p> <p>13 MR. JORDAN: Back on the</p> <p>14 record. I'm going to mark this as Exhibit</p> <p>15 2.</p> <p>16 (Exhibit 2, Letter dated November 6, 2014,</p> <p>17 marked for identification)</p> <p>18 Q. (By Mr. Jordan) Please review it</p> <p>19 and let me know when you're set.</p> <p>20 A. Okay.</p> <p>21 Q. Do you remember receiving that</p> <p>22 letter, sir?</p> <p>23 A. I do.</p> <p>24 Q. And when you receive letters such</p>	20	<p>1 November 6, 2014 -- you had already had your</p> <p>2 arbitration at the Hadley Land Court and you had</p> <p>3 come to some kind of an agreement with respect</p> <p>4 to those tickets you had issued?</p> <p>5 A. Yes, I believe that's correct.</p> <p>6 Q. And as a result of that agreement,</p> <p>7 part of the agreement was that he would be able</p> <p>8 to pretty much leave the land in the status quo</p> <p>9 but not do anything further on it?</p> <p>10 A. That was the assumption, yes.</p> <p>11 Q. So the original reason for issuing</p> <p>12 the ticket was due to the fact that he was</p> <p>13 storing what on the property?</p> <p>14 A. The original reason for issuing the</p> <p>15 ticket is to try to encourage Mr. Cotton to</p> <p>16 cease and desist, and the ticketing process</p> <p>17 didn't go well for me. It also extends the time</p> <p>18 period. It just drags out because there's</p> <p>19 thirty days at first. There is other appeal.</p> <p>20 It was an expedited process once I knew I could</p> <p>21 go to Land Court with him and have a judge</p> <p>22 decide something.</p> <p>23 Q. All right. So at that point, after</p> <p>24 you had entered into that agreement, were there</p>
19	<p>1 as that, do you have a filing system at your</p> <p>2 office or anywhere?</p> <p>3 A. There's a file on that piece of</p> <p>4 property. Everything goes in the same file.</p> <p>5 Q. As a result of receiving this, what</p> <p>6 did you do, this letter?</p> <p>7 A. Truthfully, I don't recall. At</p> <p>8 that point I don't recall what I did. I</p> <p>9 certainly didn't try to ticket Mr. Cotton for</p> <p>10 what that letter states.</p> <p>11 Q. Is there a reason that you didn't</p> <p>12 enforce the cease and desist at that point when</p> <p>13 you received this?</p> <p>14 A. Well, I enforced the cease and</p> <p>15 desist.</p> <p>16 Q. But then let me withdraw that.</p> <p>17 Enforce in terms of the tickets</p> <p>18 that you had issued?</p> <p>19 A. I didn't believe it was his place</p> <p>20 to tell me to ticket or not to ticket. And an</p> <p>21 agreement from the Court, as I saw it, was what</p> <p>22 stood until resolution of the issue.</p> <p>23 Q. Okay. So by the time you had</p> <p>24 received this letter -- and this letter is dated</p>	21	<p>1 any further violations that you were made aware</p> <p>2 of?</p> <p>3 A. I don't recall. I received calls</p> <p>4 sometimes. But if there was a truck that went</p> <p>5 down the road, sometimes I had a call about it</p> <p>6 whether it was Cotton or not.</p> <p>7 Q. Okay.</p> <p>8 A. I could not stand on the property</p> <p>9 at the gate and watch Mr. Cotton come in and</p> <p>10 out. If the calls came on the weekend or if</p> <p>11 they weren't at a time where I could physically</p> <p>12 go and catch them there and show and prove they</p> <p>13 were there, then they weren't useful. So I went</p> <p>14 by the property several times after receiving</p> <p>15 calls that he was still loading logs on-site,</p> <p>16 but I never physically found him there.</p> <p>17 Q. In fact, as a result of those</p> <p>18 experiences and other things, you expressed the</p> <p>19 opinion that the amount of trucks going in and</p> <p>20 out of the property was almost impossible to</p> <p>21 enforce, right?</p> <p>22 A. At some point I expressed that,</p> <p>23 yes, it would be very difficult to enforce</p> <p>24 whatever conditions ended up being placed on the</p>

22

1 property.
 2 Q. And that was due -- why would it be
 3 difficult to enforce those conditions?
 4 A. Because of those reasons. One,
 5 typically we respond to written complaints, by
 6 practice. So if, by the time I got a written
 7 complaint, I couldn't tell -- and how could I
 8 tell if there was ten trucks that went in or
 9 1,000 trucks that went in unless there was a
 10 counter at the gate or video surveillance that
 11 could be reviewed? It's impracticable. And
 12 that's much the same with many things, but in
 13 this condition it lent itself to being abused.
 14 Q. So it would be your opinion with
 15 respect to the number of -- limiting the number
 16 of trucks, at least on the property during the
 17 specified period of time, is essentially almost
 18 worthless because you can't really monitor that
 19 unless were you there 24/7?
 20 A. In my opinion, it would have been
 21 near impossible to validate any of that. I did
 22 speak to Mr. Cotton's attorney about it. His
 23 attorney was encouraging him to record logs of
 24 everything that happened all of the time in all

23

1 of the vehicles, but, again, that would have
 2 been something that he was maintaining as a
 3 record and subject to whatever.
 4 Q. Okay. Now, what about in terms of
 5 stockpiling? The original ticket, as I reviewed
 6 in there, was due to the fact where you would
 7 ask him to at least cease and desist. At that
 8 point the property was being used commercially
 9 and there was a stockpile of logs and wood
 10 chips. And you were also concerned there was
 11 grinding going on at that time, correct?
 12 A. Yes. I believe that was part of
 13 it, yes.
 14 Q. So after you entered into that
 15 agreement that it basically would stay status
 16 quo, did you ever monitor whether the amount of
 17 logs or chips or anything on that property had
 18 decreased or increased?
 19 A. I photographed the property from
 20 time to time and I did walk through there. It
 21 didn't appear that after that point there were
 22 additional logs, but it's hard to tell. He
 23 could have snuck one in here or there, but I
 24 didn't see that. There wasn't a vast amount of

24

1 difference at any point that I walked through
 2 there that I recognized.
 3 Q. So today what you would say from
 4 your memory is that things were fairly
 5 consistent. You didn't see any increase or
 6 decrease of wood chips or logs on the property?
 7 A. No, I did not. Wood chips
 8 initially were a large pile. They ended up
 9 being pushed over and bulldozed out, so that
 10 changed before the agreement. But after that, I
 11 didn't see anything.
 12 Q. Now, with regard to Mr. Cotton and
 13 at least his company using the property as a
 14 sawmill, were you the building inspector or
 15 building enforcement officer at that time when
 16 he brought those large grinders onto the
 17 property?
 18 A. Yes. They were brought on before
 19 the first time I was involved, so yes.
 20 Q. They were. So what was on there
 21 had been there since when you said you were
 22 involved, which would have been around 2012 when
 23 initially you got involved?
 24 A. I believe so. He may have brought

25

1 additional equipment after I was not involved,
 2 but I don't know that.
 3 Q. But certainly not during the period
 4 of time when you had the agreement for the Land
 5 Court, that you didn't see any new machinery?
 6 A. That's correct.
 7 Q. So do you remember what machinery
 8 was on the property when you entered into that
 9 agreement?
 10 A. Well, there were miscellaneous
 11 pieces scattered around, but the largest piece
 12 of equipment was a machine that picked up logs
 13 and essentially ground them into nothing. And
 14 there was a saw, I believe, attached to that
 15 same machine, so it was made to mill logs all in
 16 one shot.
 17 Q. Did you ever hear those machines
 18 run?
 19 A. Had I heard them run?
 20 Q. Had you heard his machines run?
 21 A. No, I never heard his machines run.
 22 And there was some testing done on-site,
 23 apparently that he was given permission to do in
 24 order to see what the sound levels were at, but

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1 I didn't attend it. I didn't hear much about
 2 it. And Westhampton didn't have any kind of
 3 ordinance with a set decibel level for anything,
 4 so it would have been challenging again to try
 5 to enforce anything like that.
 6 Q. But you are aware, with regard to a
 7 sawmill, it's a requirement that the person that
 8 is seeking the special permit for the running of
 9 that has to hire an independent, qualified
 10 person to take sound levels. Are you aware of
 11 that?
 12 A. No. I don't recall that in the
 13 zoning.
 14 Q. When we're talking about zoning,
 15 it's not just the bylaws that we're talking
 16 about in the Town of Westhampton. You
 17 understand there is also state regulations and
 18 state statutes that have to be followed?
 19 A. That would be something that
 20 Mr. Cotton would have to follow. Once he had
 21 the right to do that, my piece of that was to
 22 see that he got the special permit to have the
 23 right.
 24 Q. At some point you said that his

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1 attorney had made the recommendation to
 2 Mr. Cotton that he log the coming and going of
 3 the trucks?
 4 A. That was long after the Town had
 5 decided whatever they were doing, and it was in
 6 a conversation that I had with him when I was
 7 visiting for a different issue.
 8 Q. Okay.
 9 A. It was just coincidental.
 10 Q. So you weren't necessarily part of
 11 that. You just happened to be around and heard
 12 that?
 13 A. Yes, I just happened to be with
 14 him.
 15 Q. At the time his attorney was
 16 Patrick Melnik?
 17 A. That's correct.
 18 Q. At some point did Patrick Melnik
 19 represent you also?
 20 A. Yes.
 21 Q. Was that before or after?
 22 A. I have known Pat forever and he is
 23 my attorney.
 24 Q. Now, just going back to Exhibit 2,

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1 that letter that was sent from Attorney Jonathan
 2 Breton from Bacon and Wilson, did you ever
 3 respond to this letter?
 4 A. I believe I did.
 5 Q. Did you tell him there had been an
 6 agreement and there really wasn't a violation at
 7 that point?
 8 A. I don't recall. I would have to go
 9 find the document.
 10 Q. Were you ever asked to give your
 11 input, by anyone, with regard to the conditions
 12 of allowing a sawmill to run in Westhampton?
 13 A. I believe I did go to a selectmen's
 14 meeting about that and expressed that it would
 15 be -- well, expressed that if there were going
 16 to be conditions that there be some way to
 17 enforce them or they'd be conditions that were
 18 enforceable, which I had a hard time believing
 19 could happen truthfully. I knew it would become
 20 a zoning enforcement officer's nightmare.
 21 Q. So this is a discussion you had
 22 with the selectmen?
 23 A. I believe I did that at the
 24 selectmen's meeting, yes.

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1 Q. Did they ask you to come so you
 2 could give them information?
 3 A. Yes. I believe that was the issue
 4 they asked me to come for.
 5 Q. Do you have any more specific
 6 details of that conversation?
 7 A. I don't.
 8 Q. So you felt -- all right. Because
 9 what you just stated is whatever conditions that
 10 be put on it be something that could be
 11 adequately monitored?
 12 A. I believe that is what I told them,
 13 yes.
 14 Q. Did the selectmen ask you for
 15 specific recommendations --
 16 A. No.
 17 Q. -- concerning conditions?
 18 A. No.
 19 Q. But at some point you did state
 20 that -- at least with regard to the number of
 21 trucks that continued to the property, that it
 22 would be virtually impossible to monitor?
 23 A. At some point I stated that I felt
 24 it would be problematic and near impossible to

30	32
<p>1 enforce conditions that counted numbers of 2 trucks, hours of the day. You know, days of the 3 week might have been reasonable. You might have 4 had a shot to catch them on a weekend if it was 5 only weekdays, but it had to be some condition 6 that was reasonable. And looking at that 7 operation and how I thought that it would work, 8 I didn't believe that there were going to be 9 conditions that would be reasonably enforceable. 10 Q. What was the date you retired as 11 the enforcement officer? 12 A. June 30 of last year. 13 Q. So 2017? 14 A. That is correct. 15 Q. Were you at some point made aware 16 that an agreement was entered into by the Town 17 with Maple Grove Farm and Mr. Cotton to allow 18 the sawmill to operate under a special permit? 19 A. No. 20 Q. When was the first -- do you know 21 today that there was an agreement made by the 22 Town to allow Mr. Cotton and his company to 23 operate a sawmill in Westhampton under a special 24 permit?</p>	<p>1 Q. So today you could not -- you don't 2 know what conditions were put on the special 3 permit? 4 A. I still don't know. 5 Q. Have you reviewed any documents 6 from that lawsuit at all? 7 A. No. 8 Q. Now, Mr. Quinlan took over from 9 you? 10 A. That is correct. 11 Q. Was there a period of transfer 12 where you stayed on and he came in to replace 13 you and you sort of showed him the ropes, or how 14 did that work? 15 A. He visited me a couple of times 16 before he started while I was still working, and 17 that was about it. 18 Q. Did you have a chance to inform him 19 about what was happening in your office in terms 20 of enforcement activities at the time? 21 A. I told him what I thought the 22 pending issues might be around town, the hot 23 spots for zoning and basically what building was 24 going on, how things were kept, basic things.</p>
31	33
<p>1 A. I only know by chance. Again, when 2 I was with his attorney, I believe I asked how 3 that was going and his attorney said that the 4 Court had ordered that permit. So I didn't know 5 the circumstances of it or what details there 6 were, but I knew then that at least he did have 7 a permit of some fashion. 8 Q. But his attorney did not tell you 9 that the Court had entered it as an order 10 because of an agreement between the parties? 11 A. No. 12 Q. So today is the first time you're 13 aware of that, when I told you that? 14 A. In preparation for this meeting and 15 speaking with the town's attorney, she gave me 16 some background. I'm aware of that now. 17 Q. So are you aware that on April 3, 18 2017 -- that an Agreement for Judgment was filed 19 in the Hampshire Superior Court with respect to 20 settling of the case between Maple Grove Farm, 21 Dave Cotton and Cotton Tree Service, and the 22 Town of Westhampton? 23 A. No. I don't know any details of 24 that.</p>	<p>1 Q. Included in that was there a 2 reference to the whole issue for the special 3 permit for the sawmill? 4 A. I told him that property was 5 involved in a special permit process and court 6 cases, and that's about it. 7 Q. And would that have been in a June 8 statement? 9 A. That would have been the end of 10 June, yes. 11 Q. At that point, at the end of June, 12 you still did not know that an agreement had 13 been entered into by the Town? 14 A. No, not at all. Was it by then? 15 Communication in Westhampton is lacking. 16 Q. With regard to the sawmill itself, 17 have you, yourself, ever experienced listening 18 to the grinders and such, not -- certainly not 19 the property. You said you haven't. But any 20 other place, log grinders and such, have you 21 experienced that? 22 A. I have had occasion to be at 23 sawmills and listened to the logs being sawn, 24 more than grinding and chipping. But I've been</p>

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1 in some places where chipping was happening,
 2 probably not to the extent that he was going to
 3 do it. Chipping is a very loud, annoying
 4 process, in my opinion.
 5 Q. When you say how he was going to do
 6 it, could you describe it?
 7 A. I think he was going to do it in
 8 bulk more than, you know, a contractor would do
 9 for a couple trees on the side of the road. I
 10 think he was going to have 100 trees on the side
 11 of the road that he was going to chip up, so I
 12 think his operation was going to expand. That
 13 was one of my worries. It's hard to keep a
 14 handle on those types of things and there's --
 15 you know, it's difficult because you know, as a
 16 zoning enforcement officer, that you're
 17 responsible for it; yet you know, in fact, it
 18 would be a challenge to enforce and to oversee.
 19 Q. And if you were an abutter to that
 20 property, would you want to have a sawmill
 21 beside your house?
 22 A. Absolutely not.
 23 Q. That would be primarily due to the
 24 sounds and the coming and going of traffic or

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COMMONWEALTH OF MASSACHUSETTS
 Hampshire, ss.

I, RAYMOND F. CATUOGNO, JR., a Notary
 Public in and for the Commonwealth of
 Massachusetts, do hereby certify that there came
 before me on June 13, 2018, at the offices of
 Kotfila & Jordan, One Monarch Place, Suite 1340,
 Springfield, Massachusetts, the following named
 person, to wit: CHARLES MILLER, who was by me
 duly sworn to testify to the truth and nothing
 but the truth as to his knowledge touching and
 concerning the matters in controversy in this
 cause; that he was thereupon examined upon his
 oath and said examination reduced to writing by
 me; and that the statement is a true record of
 the testimony given by the witness, to the best
 of my knowledge and ability.

I further certify that I am not a relative
 or employee of counsel/attorney for any of the
 parties, nor a relative or employee of such
 parties, nor am I financially interested in the
 outcome of the action.

WITNESS MY HAND June 19, 2018.

 Raymond F. Catuogno, Jr.
 Notary Public

My Commission expires:
 February 12, 2021

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1 trucks?
 2 A. I like peace and quiet and I can
 3 certainly understand the neighbors's position,
 4 but my only purpose there was to decide whether
 5 or not it was allowed by zoning and let someone
 6 else decide whether or not he could have it if
 7 it wasn't.
 8 Q. And this should be the last
 9 question. So it would be a fair assumption that
 10 since you entered into the agreement in Land
 11 Court and when you retired, you were unaware of
 12 any kind of operations by Mr. Cotton or his
 13 companies in operating the sawmill?
 14 A. That's correct.
 15 MR. JORDAN: I have no further
 16 questions.
 17 MS. ECKER: I have no
 18 questions.
 19 (Deposition concluded)
 20
 21
 22
 23
 24

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June 22, 2018

Deborah I. Ecker, Esq.
 KP LAW, P.C.
 101 Arch Street
 Boston, MA 02110

Re: FONDAKOWSKI v. TOWN OF WESTHAMPTON, et al.

Dear Counselor:

Enclosed is a copy of the deposition of
 CHARLES MILLER taken on June 13, 2018, in the
 above-entitled action.

According to Rule 30(e) of the
 Massachusetts Rules of Civil Procedure, the
 deponent has thirty days to sign the deposition
 from the date of its submission to the deponent,
 which is the above date.

Please have the deponent sign the enclosed
 Signature Page/Errata Sheet and return it to the
 offices of:
 Richard T. Jordan, Esq.
 LAW OFFICES OF KOTFILA & JORDAN
 One Monarch Place, Suite 1340
 Springfield, MA 01144

Whereupon it will be attached to the
 original deposition transcript, and a copy
 thereof to all counsel of record.

Thank you for your cooperation in this
 matter.

Raymond F. Catuogno, Jr.

cc: Richard T. Jordan, Esq.

COMMONWEALTH OF MASSACHUSETTS
Hampshire, ss. 1780CV00105

TIMOTHY FONDAKOWSKI,
Plaintiff,

v.
PLANNING BOARD OF THE TOWN OF WESTHAMPTON
THROUGH ITS MEMBERS MARK SCHWALLIE, THOMAS
HATHAWAY, ROBERT TURNER, ROBERT DRAGON, JR.,
COTTON TREE SERVICE, INC., DODGE MAPLE GROVE
FARM, LLC, AND HAMPSHIRE SUPERIOR COURT,
Defendants.

I, CHARLES MILLER, do hereby certify,
under the pains and penalties of perjury, that
the foregoing testimony is true and accurate, to
the best of my knowledge and belief, with the
addition of the following changes/corrections:

Page	Line	Change/Correction

WITNESS MY HAND, this day of , 2018.

CHARLES MILLER

cc: Richard T. Jordan, Esq.
Deborah I. Ecker, Esq.

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