

# KP | LAW

*The Leader in Public Sector Law*

101 Arch Street, Boston, MA 02110  
Tel: 617.556.0007 | Fax: 617.654.1735  
[www.k-plaw.com](http://www.k-plaw.com)

July 27, 2017

**Katherine D. Laughman**  
klaughman@k-plaw.com

BY FACSIMILE 413-736-3300  
AND FIRST CLASS MAIL

Richard T. Jordan, Esq.  
Kotfila & Jordan  
One Monarch Place, Suite 1340  
Springfield, MA 01144

Re: Cotton Tree Service, Inc., et al. v. Planning Board of the Town of Westhampton, et al.  
Hampshire Superior Court C.A. No. 1580CV00112

Dear Mr. Jordan:

In accordance with Superior Court Rule 9A, enclosed please find the original and one copy of the Opposition of Planning Board of the Town of Westhampton to Timothy Fondakowski's Motion for Reconsideration of the Denial of his Motion to Intervene. Please copy me on your filing with the Court.

Thank you for your attention to this matter.

Very truly yours,



Katherine D. Laughman

KDL/man

Enc.

cc: Select Board  
Patrick J. Melnick, Sr.

588446/WHAM/0041

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS.

SUPERIOR COURT  
C.A. NO. 1580CV00112

COTTON TREE SERVICE, INC., and  
DODGE MAPLE GROVE FARM, LLC,

Plaintiffs

v.

PLANNING BOARD OF THE TOWN OF  
WESTHAMPTON THROUGH ITS  
MEMBERS MARK SCHWALLIE, THOMAS  
HATHAWAY, ROBERT DRAGON, JR., and  
ROBERT TURNER, and PATRICIA  
COTTON, TOWN CLERK OF THE TOWN  
OF WESTHAMPTON,

Defendants

OPPOSITION OF PLANNING BOARD  
OF THE TOWN OF WESTHAMPTON  
TO TIMOTHY FONDAKOWSKI'S  
MOTION FOR RECONSIDERATION  
OF THE DENIAL OF HIS MOTION  
TO INTERVENE

I. INTRODUCTION

Now come the Defendants in the above-captioned matter, the Town of Westhampton Planning Board ("Planning Board"), and the Westhampton Town Clerk, (collectively, the "Town"), and hereby oppose the Motion for Reconsideration of Order on Timothy Fondakowski's Motion to Intervene and Request for Hearing.

The underlying litigation in this matter involves an appeal of the Planning Board's May 28, 2015 denial of the special permit under G.L. c.40A, §17 to operate a saw mill. Mr. Fondakowski, who claims to be an abutter, sought to intervene in this action after this matter was settled by the parties on April 3, 2017 by entry of an Agreement for Judgment. This Court denied the Motion to Intervene on July 13, 2017 by a written decision. Town hereby opposes this Motion for Reconsideration for the reasons stated herein.

## II. ARGUMENT

“[A] motion for reconsideration calls upon the discretion of the motion judge. Decisional law has developed several practical criteria for submission of a request for a second consideration. They apply with special force if the applicant has already received a written, reasoned explanation of a ruling. The applicant should specify (1) “changed circumstances” such that as (a) newly discovered evidence or information, or (b) a development of relevant law; or (2) a particular and demonstrable error in the original ruling or decision.” Audubon Hill S. Condo. Ass’n v. Cmty Ass’n Underwriters of Am. Inc., 82 Mass. App. Ct. 461, 470 (2012)(citing Peterson v. Hopson, 306 Mass. 597, 600 (1940); Barbosa v. Hopper Feeds, Inc., 404 Mass. 610, 622 (1989).

“A party or counsel should not abusively employ a motion for reconsideration as (1) a mere repetition of previously failed arguments, (2) a means of stalling against the implementation of an adverse ruling, (3) an effort to oppress an opposing party by infliction of delay, expense, and effort, (4) a medium for quarreling with the judge, or (5) an exercise in posturing for the client. Audubon Hill S. Condo. Assn’n, 82 Mass. App. Ct. 461.

The arguments made in the Motion of Mr. Fondakowski are identical to the issues raised in the original Motion to Intervene. This Motion is a mere repetition of previously failed arguments. Moreover, Mr. Fondakowski has since filed a second action in this Court appealing the issuance of the special permit pursuant to G.L. c.40A, §17, which provides him with the opportunity to address his grievances with the terms of the special permit to his Court, should he be found to have standing.

Mr. Fondakowski has failed to specify any changed circumstances, new evidence or information or a development of relevant law, or a particular and demonstrable error in the

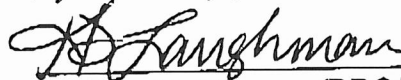
original ruling or decision. In fact, Mr. Fondakowski is challenging not only the Court's clear and legally-supported decision to deny his motion to intervene, but also seeks to call into question this Court's authority to approve and enter an agreement for judgment, thereby disturbing a case which has been designated settled and closed by this Court. Lastly, Mr. F has failed to advance any new arguments in the instant motion.

In light of the foregoing, the Town respectfully requests that this Honorable Court deny the Motion for Reconsideration.

DEFENDANT,

TOWN OF WESTHAMPTON PLANNING BOARD,

By its attorneys,



Jonathan D. Eichman (BBO# 641227)  
 Katherine D. Laughman (BBO# 657250)  
 KP Law, P.C.

Town Counsel  
 101 Arch Street, 12<sup>th</sup> Floor  
 Boston, MA 02110  
 (617) 556-0007  
 jeichman@k-plaw.com  
 klaughman@k-plaw.com

Date: 7/27/2017

587160/WHAM/0041

CERTIFICATE OF SERVICE

I, Katherine D. Laughman, hereby certify that on the below date, I served a copy of the foregoing Notice of Appearance by first class mail, postage prepaid, to the following counsel of record:

Richard T. Jordan, Esq.  
Kotfla & Jordan  
One Monarch Place, Suite 1340  
Springfield, MA 01144

Patrick J. Melnick, Sr.  
110 King St.  
Northampton, MA 01060

Dated: 7/27/2017

  
\_\_\_\_\_  
Katherine D. Laughman

# KP | LAW

*The Leader in Public Sector Law*

101 Arch Street  
Boston, MA 02110  
Tel: 617.556.0007  
Fax: 617.654.1735

**THIS DOCUMENT IS CONFIDENTIAL**

**FAX TRANSMITTAL COVER SHEET**

Date: July 27, 2017 Number of Pages Including Cover: \_\_\_\_\_

Account Code: 0077 Original Will Follow: Yes X No \_\_\_\_\_

This Fax was Sent By: Katherine D. Laughman Operator Initials: man

**PLEASE DELIVER TO:**

Name	Fax Number
<u>Richard T. Jordan, Esq.</u>	<u>413-736-3300</u>

**COMMENTS OR INSTRUCTION:**

Re: Cotton Tree Service, Inc., et al. v. Planning Board of the Town of Westhampton, et al.  
Hampshire Superior Court C.A. No. 1580CV00112

PLEASE CONTACT SENDER AT 617.654.1754 IF YOU HAVE NOT RECEIVED THE NUMBER OF PAGES NOTED ABOVE OR IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION

KP Law, P.C. | Boston • Hyannis • Lenox • Northampton • Worcester