

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS.

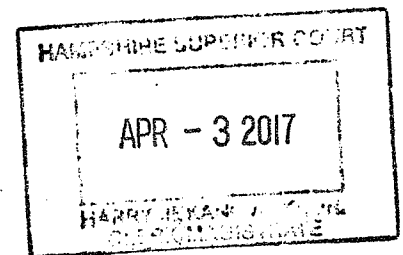
SUPERIOR COURT
C.A. NO. 1580-CV-0112COTTON TREE SERVICE, INC., and
DODGE MAPLE GROVE FARM, LLC,

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

AGREEMENT FOR JUDGMENT

The Parties to the above action hereby submit this Agreement for Judgment and respectfully request that Judgment enter as follows to fully resolve all claims in the above-referenced matter.

WHEREAS, on or around December 13, 2013 the Plaintiffs, Cotton Tree Service, Inc. and Dodge Maple Grove Farm, LLC (the "Plaintiffs") filed an application for a Special Permit pursuant to Section 5.1 and Section 6.2 of the Town of Westhampton Zoning Bylaw for a sawmill operation on property located at 0 Northwest Road, Assessor's Parcel Map 5, Lot 15 in Westhampton, Massachusetts (the "Property").

WHEREAS the Planning Board denied the Plaintiffs' application by decision dated May 28, 2015.

WHEREAS, the Plaintiffs filed a complaint on or about June 12, 2015 in Hampshire Superior Court appealing the Planning Board's decision pursuant to G.L. c.40A, §17 and further alleging that the Special Permit had been constructively granted under G.L. c.40A, §9.

WHEREAS, the Parties are desirous to resolve the above litigation in accordance with the terms and conditions negotiated by the Parties.

NOW, THEREFORE, the Parties agree that:

1. Judgment shall hereby enter ordering the case remanded to the Westhampton Planning Board for issuance of a Special Permit for operation of a sawmill on the Property in the form attached hereto as Exhibit A. The Planning Board shall hold a public hearing, duly noticed in accordance with the requirements of G.L. c.40A, §9, for purposes of voting and issuing a new decision, which shall then be filed with the Town Clerk.

2. The Planning Board shall hold a public hearing and issue its Special Permit decision within 60 days from the date the Court enters this Agreement for Judgment. Failure of the Planning Board to hold a public hearing and affirmatively vote to approve the Special Permit decision within 60 days shall result in the Court directly issuing the Special Permit in the form agreed upon by the Parties pursuant to the Agreement for Judgment. In the event the Special Permit is issued by the Court, the parties shall file the Special Permit in the form attached with the Westhampton Town Clerk, and in accordance with G.L. c.40A, §9 (13th par.), notice of such filing shall forthwith be mailed to all parties in interest, as defined in G.L. c.40A, §11, and to any person who requested that notice be sent to him and stated the address to which such notice was to be sent.

3. This Agreement for Judgment, including the Special Permit Decision voted by the Planning Board following the remand hearing, shall be deemed to be an Order and Judgment of

the Court, enforceable in contempt, any breach of which is subject to the remedy of specific enforcement by the Court without limitation to other appropriate remedies.

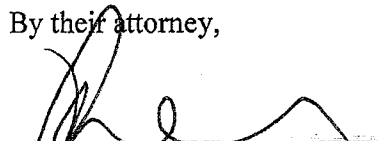
4. At the conclusion of the 20-day appeal period under G.L. c.40A, §9, a copy of this Judgment and the Special Permit Decision shall be recorded by the Plaintiffs with the Hampshire County Registry of Deeds and shall be binding on all successors and assigns. Full compliance with the terms of the Special Permit shall be a condition of the continued operation of the sawmill on the Property by the Plaintiffs and their successors or assigns. Failure of any individual or entity operating and/or controlling the sawmill operation on the Property to comply herewith shall justify suspension or rescission of the Special Permit.

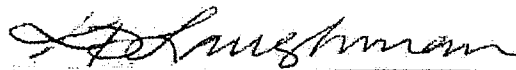
COTTON TREE SERVICE, INC., and
DODGE MAPLE GROVE FARM, LLC,

TOWN OF WESTHAMPTON PLANNING
BOARD, ET AL.

By their attorney,

By their attorneys,


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**PLANNING BOARD
TOWN OF WESTHAMPTON
TOWN HALL
WESTHAMPTON, MASSACHUSETTS 01027**

Decision of the Planning Board.

Owner/Applicant's Name: Cotton Tree Service, Inc. and Dodge Maple Grove Farm, LLC
0 Northwest Road, Westhampton (Assessor's Map 5, Lot 15).

Nature of Zoning Relief Sought: Special Permit pursuant to Sections 5.1 and 6.2 of the
Zoning Bylaw to operate a sawmill on property located at 0
Northwest Road, Westhampton (Assessor's Map 5, Lot 15)

Background

By decision dated May 28, 2015, the Planning Board of the Town of Westhampton voted to deny a special permit to the applicant Cotton Tree Service, Inc. and Dodge Maple Grove Farm, LLC for zoning relief pursuant to Section 5.1 and 6.2 of the Zoning Bylaw to operate a sawmill on the property located at 0 Northwest Road, Westhampton (Assessor's Map 5, Lot 15) (the "Property").

The Applicant appealed the denial of the special permits pursuant to G.L. c.40A, §17 and G.L. c.40A, §9 in litigation known as Cotton Tree Services, Inc. et al. v. Planning Board of the Town of Westhampton et al. 1580 CV 00112. By agreement of the parties, this matter was ordered remanded to the Planning Board for issuance of the special permits in accordance with negotiated terms and conditions.

Notice of the remand hearing was published in ----- on ----- and ----- . A remand hearing, in accordance with said notice, was held on ----- at the Town Hall, in Westhampton. Notice of the hearing was provided to the petitioners, abutters and appropriate town boards and officials. Notice of the hearing was posted at Town Hall.

Findings

1. The Applicant proposes to use the Property for storage of logs, chipping of wood, composting of wood chips and sawing logs under Section 5.1 of the Zoning Bylaw.
2. The sawmill operation will be comprised exclusively of portable equipment including the following:
 - a. Morbark #27 900 horsepower portable chipping machine or equivalent;
 - b. Morbark #75 800 horsepower portable stump grinder or equivalent;
 - c. Woodmiser LT 70 horsepower band saw or equivalent;
 - d. Conventional chain saw;
 - e. Conventional portable wood splitter.

- ✓ 3. The Property has a history of being used for gravel removal, log storage, stockpiling stumps.
- ✓ 4. The Applicant proposes to remediate the old gravel pit use on the Property and restore it to a forested condition.
5. The Planning Board finds that there is no pre-existing nonconforming use on the Property.
6. The Site Plan submitted by the Applicant, last revision dated November 16, 2014, which is attached hereto and hereby incorporated as part of the Decision, accurately indicates the location of the proposed activities on the Property.
- ✓ 7. Although the commercial nature of the business, to process wood, including the use of large trucks at the Property to deliver and pick up wood products processed at the Property and the actual processing of wood at the Property is significant in scope, the Planning Board finds that the use can be sufficiently mitigated by conditions of approval.

Decision

The Board hereby votes ___ to ___ issue, pursuant to Section 5.1 and Section 6.2 of the Zoning Bylaw, a special permit for a sawmill operation with the following conditions noted below.

Conditions

The following conditions shall apply to the Planning Board's issuance of the special permit:

The following conditions, required under the Zoning Bylaw Section 5.11, shall apply to the Applicants' use of the Property for sawmill operations:

1. The distance from the nearest residence to the portable wood processing equipment shall be, at all times, a minimum of 500 feet;
2. A buffer strip of either fencing or plantings to visually screen the portable wood processing equipment from the traveled way/abutting property shall be installed.
3. The applicant shall make provisions for noise abatement, including the installation of a 12-foot vertical structure to serve as a sound barrier, which shall be installed adjacent to the wood chipper and stump grinder.
4. The Town landfill shall not be used for the disposition of by-products unless arrangements are made suitable to the Board of Health.
5. Adequate precautions shall be taken by the applicant to assure containment of by-products to the site.
6. Adequate storage for fuel shall be provided to assure containment in the event of a leak or spill.

In addition to the requirements specified in Section 5.11 of the Bylaw, the following additional conditions shall apply:

1. Applicant shall only operate the wood chipper, stump grinder, band saw, or any other wood processing equipment on the Property Tuesday through Friday during the hours of 9 a.m. to 4 p.m.
2. The equipment used on the Property to chip logs, grind stumps and tree waste into mulch and saw logs into boards will consist of the following:
 - a. Morbark #27 900 horsepower portable chipping machine or equivalent;
 - b. Morbark #75 800 horsepower portable stump grinder or equivalent;
 - c. Woodmiser LT 70 horsepower band saw or equivalent.

In the event the Applicant replaces the above equipment, he will notify the Building Inspector of the replacement model and provide the Building Inspector with engineering certification and documentation sufficient to demonstrate that the replacement is equivalent.

3. The operation of wood chipper and stump grinder shall not exceed 17 hours during any single week period.
4. No more than 120 trucks requiring a Commercial Driver's License to operate will enter carrying materials into the site or leave with materials during any monthly period. A truck entering the site with material and also leaving the site with material will be counted as two trips. A truck entering the site with material and leaving empty will be counted as one trip. A truck entering the site empty and leaving with material will be counted as one trip. Trucks requiring a Commercial Driver's License accessing the Property on Saturdays may only do so during the hours of 9 a.m. to 1 p.m. Ordinary 4-wheel pick-up trucks will not count towards truck trip totals.

NO
PLAN

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5. The Applicant shall be permitted to work on the site for reclamation purposes as set forth in the Chapter 61 forest plan (grading, installing mulch on areas to be reforested and planting trees) from Monday to Friday from 9 a.m. to 5 p.m. and Saturdays from 9 a.m. to 1 p.m. During the hours of 1 p.m. to 3 p.m. on Saturdays, the Applicant shall be permitted to engage in reclamation activities that do not generate any noise, such as the planting and watering of trees. The first area of the site to be reclaimed and revegetated will be the area to the east of the property.
6. The portable saw mill shall be located as shown on the Site Plan last revision dated November 16, 2014, attached hereto, unless the location is otherwise modified for the reasons stated below. In the event the operation of the wood processing equipment in this area generates complaints from abutting neighbors concerning excessive noise, dust or odors, the Applicant agrees, in consultation with the Building Inspector, to select a new location for the portable equipment on the Property and shall file a notice with the Planning Board of the change in location. The portable equipment shall be located in an area of the property intended to minimize impacts on the surrounding neighborhood, especially relating to noise, dust or odors.

7. Any equipment on the Property not listed in Condition 2 above shall be stored in location that is not visible to abutters.
8. Applicant shall be allowed to cut and split firewood for personal, non-retail purposes using a conventional chainsaw and conventional portable splitter Monday through Friday during the hours of 9 a.m. to 4 p.m. and Saturday 9 a.m. to 1 p.m. Activities relating to the cutting and splitting of fire wood shall not exceed 12 hours in a single week period.
9. No area of the stump dump will be expanded in the direction of the wetland area or buffer zone, or any other area regulated by the Wetlands Protection Act, and the Applicant will conduct no activity on the Property in an area regulated by the Wetland Protection Act, unless the Applicant obtains an Order of Conditions from the Conservation Commission of the Town of Westhampton allowing such activity to take place in an area regulated by the Wetlands Protection Act.
10. The Building Inspector shall have access to the Property, at times of his choosing, for purposes of inspection in accordance with his zoning enforcement authority.
11. The conditions imposed by this Special Permit shall not be construed to permit the on-site retail sales of any saw mill or firewood products.
12. The Zoning Enforcement Officer may seek enforcement of the Special Permit through judicial means in any Massachusetts court of competent jurisdiction as set forth in the Agreement for Judgment upon which the issuance of this Special Permit is predicated.

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I, Mark T. Schwallie, as chair of the Planning Board, certify that this is a true and accurate decision made by the Planning Board in _____ and certify that a copy of this decision has been filed with the Town Clerk this ____ day of _____, 2017.

Mark T. Schwallie, Chair