

November 6, 2014

VIA CERTIFIED MAIL:

Town of Westhampton Massachusetts
Attention: Mr. Charles Miller
1 South Road
Westhampton MA 01027

RE: Violation of Zoning Enforcement Order

Dear Mr. Miller

This office represents the interests of Mr. Paul Silvernail, a resident of the town of Westhampton, Massachusetts. It has come to our attention that a Mr. David Cotton is has been operating a commercial operation at lot 5-15 Northwest Road, Westhampton Massachusetts (the "Property"), in direct violation of a lawful order from your office dated May 30, 2012, a copy of which is attached hereto as Exhibit "A".

Background

One May 30, 2012 your office issued a cease and desist order requiring Mr. Cotton, and his associated businesses, to cease all commercial operating at the property, specifically the "processing or storing of wood waste or logs" without a special permit. This order further required Mr. Cotton to "remove all evidence of the commercial operations" from the Property within thirty days of the order. Mr. Cotton failed to take such action and appealed your order to the Westhampton Zoning Board of Appeals ("ZBA"). A hearing on Mr. Cotton's appeal was held on August 14, 2012, at which the Board of Appeals unanimously voted to uphold your order and require Mr. Cotton to cease and desist all commercial activities at the Property, a copy of this decision is attached hereto as Exhibit "B".

Description of Violations and Applicable Regulations

Your order, as affirmed by the ZBA, gave Mr. Cotton until June 30, 2012 to cease all processing and storing of wood waste or logs at the Property and to remove all evidence of the commercial operations therefrom. To date, Mr. Cotton has failed to cease his commercial operations at the Property, or remove the evidence thereof; a violation which has existed for 856 days as of the date of this letter. *See* Affidavits of Mark and Sarah Challet attached hereto as Exhibit "C" and Photos of the Property attached hereto as Exhibit "D".

Under Section 5.473 of the Town of Westhampton Zoning Bylaws (the "Bylaws"), a person violating any provision of the Bylaws or any lawful order of the Zoning Enforcement Officer "shall be subject to a fine of not more than \$100 per offense." (emphasis added). The Bylaws indicate that each day that a violation exists shall be considered a separate offense.

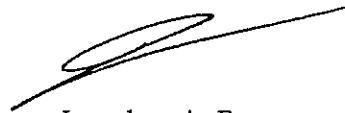
Furthermore, Section 6.06(a) of the Bylaws states "[a]ny violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decision rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense." This section goes on to permit the Building Inspector to enforce the Bylaws or any ZBA decision by filing a non-

criminal complaint pursuant to General Laws Chapter 40, Section 21D and further states that “[t]he fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.”(emphasis added).

Request for Relief

Pursuant to Mass. Gen. Laws c. 40A § 7¹ your office is charged with enforcing the Bylaws and has authority to assess and levy fines on individuals who violate the Bylaws. Mr. Cotton’s continuing violation of the Bylaws and your cease and desist order over the past 856 days demonstrates blatant disregard for the Bylaws and those charged with enforcing them. As such, we ask that you assess the maximum fine of \$100 per day to Mr. Cotton for these continuing violations (\$85,600.00 to date) and pursue a non-criminal complaint against Mr. Cotton as permitted by Section 6.06 of the Bylaws.

Very Truly Yours,



Jonathan A. Breton

cc: Selectmen, Town of Westhampton
Zoning Board of Appeals, Westhampton
Mark and Sarah Challet

Enclosures

¹ If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.