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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 PHILIP DOWLING

TAKEN MAY 8, 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: KATHERINE D. LAUGHMAN, ESQ. 617-556-0007 klaughman@k-plaw.com</p> <p>In Attendance:</p> <p>Timothy Fondakowski</p>	4																
3	<p>INDEX:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">WITNESS: PHILIP DOWLING</td> <td style="text-align: right; width: 20%;">PAGE</td> </tr> <tr> <td>Examination by Mr. Jordan</td> <td style="text-align: right;">5</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>EXHIBITS:</td> <td></td> </tr> <tr> <td>Exhibit 1, Page 14 and 15 of Transcript</td> <td style="text-align: right;">76</td> </tr> <tr> <td>Exhibit 2, Letter dated October 2, 2017</td> <td style="text-align: right; vertical-align: bottom;">76</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>Exhibit 3, Letter dated October 11, 2017</td> <td style="text-align: right; vertical-align: bottom;">76</td> </tr> </table>	WITNESS: PHILIP DOWLING	PAGE	Examination by Mr. Jordan	5	 		EXHIBITS:		Exhibit 1, Page 14 and 15 of Transcript	76	Exhibit 2, Letter dated October 2, 2017	76	 		Exhibit 3, Letter dated October 11, 2017	76	5
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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.

1 * * * * *

2 PHILIP DOWLING, Deponent, having produced

3 satisfactory identification by means of

4 Massachusetts Driver's License, was duly sworn,

5 deposes and states as follows:

6 EXAMINATION BY MR. JORDAN:

7 Q. I'm just going to go over some of

8 the ground of depositions. You probably

9 remember this from last time, but --

10 A. It was twenty-five years ago. I

11 don't.

12 MS. LAUGHMAN: The first

13 ground rule is don't speak over him.

14 Q. (By Mr. Jordan) That's right.

15 Wait until I finish my question, and then you

16 can start your answer. If you anticipate it and

17 you start answering the question before I'm

18 finished with it, it makes it difficult not only

19 for myself but he has to try to remember what

20 the other person was saying. It just doesn't

21 work. So that's what you need to do with

22 respect to that, so wait until the end of the

23 question.

24 The second thing is that when you

6

1 give a response, it has to be audible. So going
 2 mm-hmm, nodding your head or shaking your head,
 3 et cetera, he can't pick that up. Try to
 4 remember. Everyone forgets from time to time,
 5 but try to say yes or no and answer the
 6 question. When I'm asking questions, if you
 7 don't understand the question I'm asking, just
 8 say so and I'll try to restate it if it's
 9 confusing or you just don't understand it.
 10 However, if you do answer a question, I will
 11 assume that you understand that question.
 12 And lastly, let's see what else. I
 13 think that is all I can think of.
 14 MS. LAUGHMAN: Mr. Jordan,
 15 stipulations?
 16 MR. JORDAN: Yes. And same
 17 stipulations as last time?
 18 MS. LAUGHMAN: Yes, please.
 19 MR. JORDAN: The usual.
 20 Q. (By Mr. Jordan) Could you state
 21 your name, please?
 22 A. Philip Dowling.
 23 Q. And what's your address,
 24 Mr. Dowling?

7

1 A. 40 Hathaway Road, Westhampton.
 2 Q. And how long have you lived in
 3 Westhampton?
 4 A. Thirty-three years.
 5 Q. With regard to 33 Hathaway Road, is
 6 that close to Northwest Road?
 7 A. You said 33.
 8 Q. Whatever your address -- what's
 9 your address?
 10 A. 40 Hathaway Road.
 11 Q. 40 Hathaway. Is the location of
 12 your home close to Northwest Road?
 13 A. Yes.
 14 Q. Okay. And is it close to the site
 15 of the sawmill?
 16 A. Please define close.
 17 Q. All right. Within 2,000 feet?
 18 A. No.
 19 Q. Within 3,000 feet?
 20 A. No.
 21 Q. 4,000?
 22 A. No.
 23 Q. A mile?
 24 A. No.

8

1 Q. Is it less than a mile?
 2 A. No.
 3 Q. Is it more than a mile?
 4 A. Yes.
 5 Q. Could you approximate how far it is
 6 from the sawmill, sir?
 7 A. I would be guessing.
 8 MS. LAUGHMAN: Don't guess.
 9 A. Don't guess. No, I can't tell you.
 10 Q. All right. Have you ever driven to
 11 the sawmill site?
 12 A. Absolutely.
 13 Q. Have you driven to the sawmill site
 14 from your home?
 15 A. Yes.
 16 Q. And you drove in a car?
 17 A. Yes.
 18 Q. Approximately how long did it take
 19 you to get there by car to the sawmill?
 20 A. Less than ten minutes.
 21 Q. Less than ten, more than eight?
 22 A. I don't know.
 23 Q. Now, you're a current Select Board
 24 member, is that correct, for the Town of

9

1 Westhampton?
 2 A. Yes.
 3 Q. And how long have you been a member
 4 of the Select Board?
 5 A. Four years in June.
 6 Q. Is that your first elected office?
 7 A. No.
 8 Q. What other elected offices have you
 9 held?
 10 A. Board of Health.
 11 Q. Is that also in the Town of
 12 Westhampton?
 13 A. Yes.
 14 Q. How long were you on the Board of
 15 Health?
 16 A. Two years.
 17 Q. What years?
 18 A. I don't remember.
 19 Q. Was it in the past ten years?
 20 A. No.
 21 Q. Past twenty years?
 22 A. Yes.
 23 Q. How long were you elected for as a
 24 Selectmen?

10	<p>1 A. Could you repeat that, please?</p> <p>2 Q. What is the period of time that</p> <p>3 you're elected as a Selectmen?</p> <p>4 A. Three years.</p> <p>5 Q. Fair assumption you're in your</p> <p>6 second period of election?</p> <p>7 A. Yes.</p> <p>8 Q. What's your current position with</p> <p>9 the Select Board?</p> <p>10 A. Clerk.</p> <p>11 Q. Were you ever chairman of the</p> <p>12 Select Board?</p> <p>13 A. Yes.</p> <p>14 Q. Are you currently chairman of the</p> <p>15 Select Board?</p> <p>16 A. No.</p> <p>17 Q. For what years were you chairman of</p> <p>18 the Select Board?</p> <p>19 A. 2016 to 2017.</p> <p>20 Q. How are you elected to be chairman?</p> <p>21 A. The Board. Three of us decide by</p> <p>22 vote.</p> <p>23 Q. Is that a position that you apply</p> <p>24 for or is it just informally at a meeting of the</p>	12	<p>1 run the meeting.</p> <p>2 Q. Who is the current chairman of the</p> <p>3 Select Board?</p> <p>4 A. Jim Houston.</p> <p>5 Q. Is there a reason why you're no</p> <p>6 longer the chairman?</p> <p>7 A. We elected Jim Houston chair.</p> <p>8 Q. Just to clarify, do you put</p> <p>9 yourself forward as being open to being elected</p> <p>10 chairman or is the voting process something like</p> <p>11 who do you want to be chairman and everyone</p> <p>12 votes and whoever gets the most votes, along</p> <p>13 those lines?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So it's not something you, I</p> <p>16 guess, pursue. It's just whoever votes for</p> <p>17 whoever is on the Select Board gets the most</p> <p>18 votes is elected?</p> <p>19 A. Correct.</p> <p>20 Q. Now, do you know David Cotton?</p> <p>21 A. I have met him.</p> <p>22 Q. You're not in a business</p> <p>23 relationship with him at all, not in any type of</p> <p>24 business relationship with him?</p>
11	<p>1 Select Board?</p> <p>2 A. It's informal. It's a vote.</p> <p>3 Q. Okay. And it's done at the</p> <p>4 initiation of, I guess, the -- strike that.</p> <p>5 How often does it come to pass that</p> <p>6 you informally vote for a chairman?</p> <p>7 A. Once a year.</p> <p>8 Q. Are the duties of the chairman of</p> <p>9 the Select Board any different than the Select</p> <p>10 Board?</p> <p>11 A. You run the meetings.</p> <p>12 Q. What does that mean?</p> <p>13 A. You're the chair. You run the</p> <p>14 meeting.</p> <p>15 Q. What is run the meeting? Describe</p> <p>16 your duties.</p> <p>17 A. You call the meeting to order. You</p> <p>18 call votes. It's pretty much it.</p> <p>19 Q. And you state now you're the clerk?</p> <p>20 A. Correct.</p> <p>21 Q. And what are the duties of the</p> <p>22 clerk of the Select Board?</p> <p>23 A. None, that I'm aware of, other</p> <p>24 than -- if the chairman is not present, then you</p>	13	<p>1 A. No.</p> <p>2 Q. And you don't know him socially?</p> <p>3 A. No.</p> <p>4 Q. How about members of his family?</p> <p>5 A. No.</p> <p>6 Q. Now, when was it -- as a Select</p> <p>7 Board member, you got involved with Mr. Cotton's</p> <p>8 application for the sawmill on Northwest Road?</p> <p>9 A. I don't think we were ever involved</p> <p>10 in the application.</p> <p>11 Q. Did you ever review the</p> <p>12 application?</p> <p>13 A. No.</p> <p>14 Q. So when did you get involved?</p> <p>15 MS. LAUGHMAN: Objection.</p> <p>16 Involved with what?</p> <p>17 Q. (By Mr. Jordan) Again, when did</p> <p>18 you get involved in the process of Mr. Cotton</p> <p>19 seeking a special permit for the sawmill on</p> <p>20 Northwest Road?</p> <p>21 A. I don't recall, other than request</p> <p>22 from Planning Board for consulting with town</p> <p>23 counsel. I don't recall when that first date</p> <p>24 was, but that has been an ongoing situation from</p>

14

1 the time I was on the Select Board.
 2 Q. So somebody approached you from the
 3 Planning Board asking you to consult with the
 4 Town's attorney?
 5 A. No.
 6 Q. Maybe I didn't hear it right then.
 7 Did you say somebody asked for legal consult on
 8 the Planning Board?
 9 A. As I understand it, people who are
 10 on the Planning Board requested to the Select
 11 Board, probably through the administrative
 12 assistant, to have Select Board approval to
 13 contact town counsel for advice.
 14 Q. All right. And as a result of
 15 that, was the approval given?
 16 A. Yes.
 17 Q. Do you know approximately when that
 18 was?
 19 A. I have no dates.
 20 Q. Did you prepare at all for this
 21 deposition? Did you review any documents prior
 22 to attending the deposition today?
 23 A. I talked with town counsel.
 24 Q. Other than conversation with your

15

1 legal counsel -- I will ask that further on, but
 2 have you reviewed any documents prior to your
 3 deposition?
 4 A. No.
 5 Q. Other than your town counsel, legal
 6 counsel, have you discussed your deposition with
 7 anyone prior to attending?
 8 A. My wife knows I'm here to be
 9 deposed, but other than that, no.
 10 Q. At some point you attended -- I
 11 believe it was May 3 when you had the remand
 12 hearing, which would have been, I believe, the
 13 third vote on the application for the sawmill
 14 requested by Mr. Cotton and Maple Grove Farm?
 15 MS. LAUGHMAN: Objection.
 16 What is the question?
 17 MR. JORDAN: Could you read
 18 that back, please.
 19 (Question read by reporter)
 20 Q. (By Mr. Jordan) So you attended
 21 that meeting?
 22 A. Yes.
 23 Q. And what was the purpose of that
 24 meeting, that you understood?

16

1 A. To lay out the settlement of the
 2 case with conditions.
 3 Q. And when you say to lay out the
 4 settlement, to lay out to who?
 5 A. To the people attending the
 6 hearing.
 7 Q. And that would have been considered
 8 an open meeting; is that correct?
 9 A. Absolutely.
 10 Q. And are you aware of the reasons
 11 that -- for the need to have an open meeting?
 12 A. I don't understand the question.
 13 Q. You know there's an open-meeting
 14 law in the State of Massachusetts?
 15 A. Correct.
 16 Q. And you wanted to comply with the
 17 open-meeting law. Is that why you had this
 18 meeting?
 19 A. It was not my meeting.
 20 Q. When I say you, I mean the Town of
 21 Westhampton, the Planning Board.
 22 A. Yes.
 23 Q. And the Select Board was there too,
 24 right?

17

1 A. I believe all members of the Select
 2 Board attended that meeting.
 3 Q. Is that unusual that the Select
 4 Board would attend a meeting of the Planning
 5 Board?
 6 A. I don't know.
 7 Q. Well, you have been on the Select
 8 Board for four years. Have you -- other than
 9 that meeting for the sawmill, have you ever
 10 attended any other Planning Board open meetings?
 11 A. I can't be sure if I have or not.
 12 I don't remember.
 13 Q. Have you ever attended any open
 14 meeting other than this one? When I say this
 15 one, I mean the one that was conducted in May
 16 2017.
 17 A. Could you repeat the question,
 18 please?
 19 Q. Have you ever attended any open
 20 meeting in the Town of Westhampton other than
 21 the one that we're talking about, which is the
 22 one that occurred in May of 2017?
 23 A. Yes.
 24 Q. What meetings were those?

18

1 A. Town meetings, Select Board
 2 meetings. I've been to ZBA meetings. I've been
 3 to Board of Health meetings.
 4 Q. And why were you at those meetings?
 5 A. In some cases to add information
 6 that -- you know, finance committee meetings, we
 7 talk about finances.
 8 Q. Okay. With regard to the
 9 planning -- you stated other than this meeting
 10 you don't remember if you attended any other
 11 Planning Board meetings; is that correct?
 12 A. I don't remember.
 13 Q. Okay.
 14 A. I can't give you a definitive
 15 answer.
 16 Q. So tell me, why did you attend this
 17 particular meeting, the one that happened in May
 18 of 2017?
 19 A. I was asked to attend.
 20 Q. By who?
 21 A. By Tom Hathaway.
 22 Q. Did Mr. Hathaway tell you why he
 23 asked you to attend?
 24 A. He was hoping -- no, I have no

19

1 idea. He asked me if I would attend.
 2 Q. That's all that he said?
 3 A. No. He asked me if I would attend
 4 and say what the Select Board did in regards to
 5 this case.
 6 Q. Okay. Did he say anything else?
 7 A. No.
 8 Q. So when you say what the Select
 9 Board did, you mean to explain it to the town
 10 residents that showed up at the open meeting?
 11 A. Could you repeat that question,
 12 please?
 13 Q. When you say he asked you to say
 14 what the Select Board did, my question to you
 15 is: Do you mean by that to explain the process
 16 by which -- strike that.
 17 What did you take that to mean when
 18 he said to explain what the Select Board did?
 19 A. The Select Board was responding to
 20 advice from town counsel and were in support of
 21 settling the case.
 22 Q. Okay. So you spoke at the meeting?
 23 A. I did.
 24 Q. Do you remember what you said?

20

1 A. I said, based on the advice of town
 2 counsel, we felt it was prudent to settle this
 3 case with conditions because, if we did not,
 4 this case was going to go to trial and there was
 5 a strong likelihood, according to town counsel,
 6 that we would lose the case and it would be
 7 without conditions. There would be no
 8 conditions applied.
 9 Q. Now, what was your understanding of
 10 why it was likely that the Town of Westhampton
 11 or the Planning Board would lose the case, based
 12 on what facts?
 13 A. Basically, for me, it was advice of
 14 counsel. It was their opinion that this thing
 15 was going to trial and that there was a strong
 16 likelihood, in their opinion, that we would lose
 17 the case.
 18 Q. And that's all you know?
 19 A. That's what the town counsel's
 20 advice was, and this was coming up quickly.
 21 Q. My question to you, based on what
 22 facts made it likely that Westhampton would lose
 23 the case?
 24 A. I don't remember specifically.

21

1 Q. What do you remember generally?
 2 A. That town counsel advised that we
 3 could potentially lose the case and, if we
 4 applied conditions to it, it would be a better
 5 result.
 6 Q. But your testimony today is you
 7 cannot remember one factual basis as to why it
 8 would be likely that the Town of Westhampton
 9 would lose this case?
 10 A. Correct.
 11 Q. Now, I reviewed a letter -- I guess
 12 you wrote a letter to Hampshire Gazette dated
 13 Tuesday, May 30, 2017. Is that about the time
 14 you wrote the letter to them?
 15 A. If you say so.
 16 Q. Okay. Well, I'm going to show
 17 you -- I would like you to review this. And
 18 this was an attachment to the Complaint filed by
 19 Mr. Fondakowski. So if could read that over and
 20 tell me if you wrote that letter or not.
 21 A. I did write the letter. Some of
 22 the words have been changed by the editor. The
 23 word "amplify" is not a word I used.
 24 Q. Why don't you read it through and

22

1 tell me what is not yours, something you did not
 2 write?
 3 A. Yes. I would own the rest of it.
 4 Q. So other than amplify, I guess?
 5 A. Yes. I don't remember what word I
 6 used.
 7 Q. All right. So it sounds like your
 8 concern at that time was that you were concerned
 9 that you couldn't set conditions if there was no
 10 agreement to settle the case, if they were
 11 successful? And when I say "set conditions," I
 12 mean set conditions on the operation of the
 13 sawmill.
 14 A. This is a question?
 15 Q. It is. What I said was, your
 16 concern was that you wouldn't be able to set
 17 conditions if the Town of Westhampton lost the
 18 case. That was a concern to you, correct?
 19 A. Relevant to this letter or just in
 20 general?
 21 Q. Just in general at this point.
 22 A. In general, yes.
 23 Q. Okay. And in fact, you mention
 24 that as one of the reasons that settlement was

23

1 reached, correct?
 2 A. Correct.
 3 Q. Now, why was it important that
 4 those conditions -- why was it important for you
 5 as -- I guess as a Select Board member that
 6 there be conditions on the special-permit issue?
 7 A. It seemed like a better option than
 8 no conditions.
 9 Q. Okay. And what would be the
 10 purpose of having those conditions? What would
 11 be your understanding?
 12 A. To limit the amount of the use of
 13 that facility for grinding stumps.
 14 Q. Okay. And if, indeed, there was a
 15 violation, what would be -- what was your
 16 expectation if there was a violation of
 17 conditions? What would be your expectation of
 18 what action the Town of Westhampton would take?
 19 A. It was told by counsel that
 20 violation would be a contempt of court, of the
 21 agreement. That would have much more -- yes.
 22 Q. In that it would be contempt of
 23 court. Then would it be a fair statement to say
 24 that would have, I guess, more, I guess, legal

24

1 effect than just a violation of a regular permit
 2 issued by the Town?
 3 A. It's my understanding that's true.
 4 Q. So who in the Town of Westhampton
 5 monitors those conditions?
 6 A. Building inspector, zoning
 7 inspector.
 8 Q. Who is that?
 9 A. Tom Quinlan.
 10 Q. And was that a concern prior to
 11 entering into this agreement, that it would
 12 be -- that certain conditions would be
 13 essentially unenforceable -- strike that.
 14 Not unenforceable, very difficult
 15 to monitor?
 16 A. Not in my opinion.
 17 Q. Okay. Since the issuance of that
 18 special permit, have there been any reported
 19 violations, that you're aware of, by Mr. Cotton
 20 at the sawmill?
 21 A. We have received a letter or two
 22 talking about violations.
 23 Q. There are actually three, that I'm
 24 aware of. Do you remember what those violations

25

1 were?
 2 A. Not specifically, truck traffic.
 3 Q. Well, do you remember a violation
 4 that was reported by Mr. Fondakowski?
 5 A. No.
 6 Q. And if a violation is reported at
 7 the meeting that was held in May of 2017 -- I
 8 think it was May 23, actually -- did you not
 9 explain that it could be reported to the
 10 enforcement officer or building inspector and/or
 11 the selectmen if any violations were known?
 12 A. No.
 13 Q. If Mr. Fondakowski sent a letter to
 14 the Town, what would be the procedure for
 15 following up on a reported violation?
 16 A. I believe it would go to the
 17 building inspector.
 18 Q. So if it was reported that it could
 19 also be reported to the Select Board, that would
 20 be erroneous advice?
 21 A. It may go to the Select Board as
 22 well. That might be the first step, but
 23 whatever it was would be given to the zoning
 24 enforcement officer who is the building

26	<p>1 inspector.</p> <p>2 Q. So one method of reporting would be</p> <p>3 to report to the Select Board, violations?</p> <p>4 A. Yes, sure.</p> <p>5 Q. Is there a procedure set up</p> <p>6 where -- if a violation is reported, that it is</p> <p>7 reviewed by some Select Board member?</p> <p>8 A. No.</p> <p>9 Q. So the procedure would be, if it's</p> <p>10 reported to the Select Board, you don't even</p> <p>11 review it. You just pass it on to the building</p> <p>12 inspector. Is that the procedure?</p> <p>13 A. Generally speaking.</p> <p>14 Q. So you personally have never</p> <p>15 reviewed any of the letters that were sent</p> <p>16 recording violations by Mr. Cotton at the</p> <p>17 sawmill?</p> <p>18 A. As I said before, I remember seeing</p> <p>19 a letter or two reporting violations.</p> <p>20 Q. How did you see those letters?</p> <p>21 A. They were part of the Select Board</p> <p>22 meeting that were handed to us about the Select</p> <p>23 Board meeting.</p> <p>24 Q. By who?</p>	28	<p>1 If we ask him to look at something, generally we</p> <p>2 would ask him to get back to us after the fact.</p> <p>3 Q. So the building inspector in this</p> <p>4 case at least of the special permit in the Town</p> <p>5 of Westhampton is the enforcement officer for</p> <p>6 those conditions?</p> <p>7 A. Correct.</p> <p>8 Q. So is it your testimony today that</p> <p>9 he's essentially responsible for following up on</p> <p>10 all violations that are reported?</p> <p>11 A. That's my understanding.</p> <p>12 Q. And he has no duty to report to the</p> <p>13 selectmen the results of any investigation that</p> <p>14 he did concerning the violations?</p> <p>15 A. I do not think that he has the</p> <p>16 responsibilities of reporting violations to the</p> <p>17 Select Board.</p> <p>18 Q. Does he have responsibility to</p> <p>19 report to anyone, that you're aware of?</p> <p>20 A. I believe that his responsibility</p> <p>21 is to act on violations.</p> <p>22 Q. Okay. And in reviewing one of</p> <p>23 the -- I guess the meetings that you had with</p> <p>24 Mr. Quinlan -- I remember him basically</p>
27	<p>1 A. By the administrative assistant.</p> <p>2 Q. And what did you do with those</p> <p>3 after you reviewed them?</p> <p>4 A. We didn't do anything with them.</p> <p>5 Q. Did you hand them back to whoever</p> <p>6 gave them to you?</p> <p>7 A. I don't recall.</p> <p>8 Q. So you can't say today what would</p> <p>9 have happened to those letters?</p> <p>10 A. My -- again, I cannot assume, so I</p> <p>11 can't say.</p> <p>12 Q. So you can't even say today whether</p> <p>13 they were even given to the building inspector</p> <p>14 to check for the violation?</p> <p>15 A. I did know that the building</p> <p>16 inspector did go to the site, talked to David</p> <p>17 Cotton after one or another of those letters was</p> <p>18 sent. There may be more than one visit, but I</p> <p>19 don't know. I do know that he did and he</p> <p>20 reported back to us.</p> <p>21 Q. Is that one of his duties, the</p> <p>22 building inspector report back to the Board of</p> <p>23 Selectmen his investigation?</p> <p>24 A. It's not a requirement of his job.</p>	29	<p>1 responding to the Select Board and saying that</p> <p>2 he drove by and didn't see any violations. Was</p> <p>3 that the extent of his investigation?</p> <p>4 A. I have no idea.</p> <p>5 Q. So you don't know if he spoke to</p> <p>6 any of the people that reported the violation?</p> <p>7 A. I don't know.</p> <p>8 Q. If, indeed, Mr. Cotton was</p> <p>9 operating the stump dump in violation of those</p> <p>10 conditions, what would be the expectation of</p> <p>11 what would be done by the Town of Westhampton?</p> <p>12 A. My expectation was that the zoning</p> <p>13 enforcement officer would issue some form of</p> <p>14 penalty or -- I don't know exactly what his</p> <p>15 procedure is.</p> <p>16 Q. Okay. Anything else?</p> <p>17 A. No.</p> <p>18 Q. You stated earlier that you thought</p> <p>19 that because of conditions were an order of the</p> <p>20 court they would have more enforcement strength</p> <p>21 behind them, correct?</p> <p>22 A. Yes.</p> <p>23 Q. So who would have to bring an</p> <p>24 action before the Court to allege a violation of</p>

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1 the conditions? What is your understanding?
 2 A. I would assume that the zoning
 3 enforcement officer would do that.
 4 Q. Was that left up to his total
 5 discretion or is he supervised or monitored by
 6 anyone at the Town?
 7 A. I would assume that he would bring
 8 something like that before the selectmen.
 9 Q. And why would you assume that?
 10 A. Well, if he were going to incur
 11 town counsel's costs, money, then it would come
 12 to the Select Board.
 13 Q. To ask for permission to talk to
 14 counsel? Is that what you mean?
 15 A. Correct.
 16 Q. Are you aware it was reported that
 17 Cotton Tree Service and, I guess, Maple Grove
 18 Farm were operating the sawmill at times outside
 19 what the conditions were? Were you ever made
 20 aware of that?
 21 A. No.
 22 Q. If you were made aware of that,
 23 what would be your obligation to respond to
 24 that, if any?

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1 A. What I would do is contact the
 2 zoning enforcement officer and have him look
 3 into it.
 4 Q. And in fact, he did do that at one
 5 time, correct, that you're aware of?
 6 A. Yes.
 7 Q. And what did he tell you?
 8 A. I don't remember specifically, but
 9 the gist of it was that they were not operating
 10 stump grinding on that site.
 11 Q. So it would be a fair statement to
 12 say there is no monitoring whatsoever with
 13 regard to what kind of investigation is done for
 14 reports of violations of the stump dump?
 15 MS. LAUGHMAN: Objection.
 16 A. That is not true.
 17 Q. It's not true, is that what you
 18 said?
 19 A. Correct.
 20 Q. Again, let's go back to the
 21 violations that were reported. What is your
 22 understanding of what investigation took place?
 23 Other than talking to Mr. Cotton and driving by,
 24 do you know of any other part of that

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1 investigation that took place?
 2 A. I don't know what Tom Quinlan did
 3 exactly.
 4 Q. Well, he told you what he did,
 5 didn't he? Didn't he tell you he drove by and
 6 didn't see any violation and spoke to Mr. Cotton
 7 and he denied it?
 8 A. That's not what he said.
 9 Q. What did he say?
 10 A. He said that he talked with Cotton,
 11 visited the site, and he did not find any
 12 violations.
 13 Q. All right. And you understand the
 14 violation that was reported was that he was
 15 operating outside the stated time?
 16 A. I don't remember.
 17 Q. Did you ever review the site plan
 18 that was approved for the sawmill?
 19 A. No.
 20 Q. Why did you not review it?
 21 A. It's not my job.
 22 Q. Are you aware of the frontage
 23 requirement for a sawmill in the Town of
 24 Westhampton?

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1 A. No.
 2 Q. Are you aware of the need for a
 3 Chapter 61 forest plan for the sawmill in the
 4 Town of Westhampton?
 5 A. No.
 6 Q. Did you receive a complaint by a
 7 resident of the Town that the sign that is
 8 erected is in violation of the zoning
 9 regulations in the Town of Westhampton?
 10 A. I believe I read recently an e-mail
 11 that said something to that effect.
 12 Q. As a result of that e-mail, did you
 13 take any action on that?
 14 A. No.
 15 Q. And the e-mail alleged that the
 16 sign was not in conformance with the permit that
 17 was granted; is that correct?
 18 A. I glanced at the letter.
 19 Q. You glanced at it. What did you do
 20 with it after you glanced at it?
 21 A. It's an e-mail.
 22 Q. All right, the e-mail.
 23 A. Nothing.
 24 Q. Have you ever even seen the site

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1 plan for the sawmill on Northwest Road?
 2 A. Yes, I have seen it.
 3 Q. And what were the circumstances
 4 that you have seen it?
 5 A. I don't recall.
 6 Q. When did you see it?
 7 A. I don't recall.
 8 Q. Now, it states that Mr. Dowling, in
 9 your letter that you sent to the Hampshire
 10 Gazette -- and did you -- you made this
 11 statement, "I have complete empathy for the
 12 abutter's loss of peace and quiet in the
 13 neighborhood, particularly of the canopy dirt
 14 lane I once lived on that has now become a paved
 15 highway." You made at that statement?
 16 A. Correct.
 17 Q. And that was a truthful statement?
 18 A. Absolutely.
 19 Q. Now, what was your involvement in
 20 the Agreement for Judgment? Do you know what
 21 that is, sir? Do you know what the Agreement
 22 for Judgment was that was filed in the case
 23 between the Town and Mr. Cotton?
 24 A. Yes.

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1 Q. What was your involvement in that?
 2 A. I don't believe I had any
 3 involvement in that directly.
 4 Q. How about indirectly? What was
 5 your involvement?
 6 A. As I stated earlier, we received a
 7 letter from counsel recommending that we settle
 8 the case with conditions and we passed that on
 9 to the Planning Board because it was a short --
 10 it was going to go to court, we understood,
 11 within a week or so. We had a meeting with the
 12 Planning Board and presented that recommendation
 13 to them and left it to them to decide what they
 14 did with it.
 15 Q. So what did you tell the Planning
 16 Board?
 17 A. We told them that town counsel
 18 recommended that they settle with conditions
 19 because there was a likelihood that the case
 20 would be lost.
 21 Q. Did you give them any explanation
 22 as to why it was likely to be lost?
 23 A. We gave them the letter from town
 24 counsel.

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1 Q. And that was the only discussion
 2 about that?
 3 A. Correct.
 4 Q. So you gave them a letter from town
 5 counsel and essentially said that there is a
 6 high likelihood, or words to that effect, that
 7 you would lose and you should come up with some
 8 conditions?
 9 A. I don't remember exactly what words
 10 were exchanged, but I would not say that is
 11 exactly -- precisely what I said.
 12 Q. Well, can you tell me -- you cannot
 13 tell me precisely?
 14 A. No.
 15 Q. So then would that have been the
 16 gist of it?
 17 A. No comment.
 18 Q. Yes or no?
 19 A. Would you repeat what you just
 20 said?
 21 MR. JORDAN: Can you read that
 22 back, please?
 23 (Testimony read by reporter)
 24 A. No.

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1 Q. So that was not the gist of it?
 2 A. No.
 3 Q. Did you review the Agreement for
 4 Judgment prior to being filed?
 5 A. Yes.
 6 Q. Sir, on Page 2, Number 2, it states
 7 this, "The Planning Board shall hold a public
 8 hearing and issue its special-permit decision
 9 within sixty days from the date the Court enters
 10 this Agreement for Judgment. Failure of the
 11 Planning Board to hold a public hearing and
 12 affirmatively vote to approve the special-permit
 13 decision within sixty days shall result in the
 14 Court directly issuing this special permit in
 15 the form agreed upon by the parties pursuant to
 16 the Agreement for Judgment. In the event the
 17 special permit is issued by the Court, the
 18 parties shall file the special permit in the
 19 form attached with the Westhampton town clerk
 20 and in accordance with General Law 40A, Section
 21 9, thirteen paragraphs. Notice of such filing
 22 shall forthwith be mailed to all parties of
 23 interest as defined in general Law 40A, Section
 24 11, and to any person who requested that the

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1 notice be sent to him and stated the address to
 2 which such notice was to be sent."
 3 Now, with respect to that
 4 statement, sir --
 5 MS. LAUGHMAN: Mr. Jordan,
 6 before you write on it, I'm going to ask
 7 that you place it before him.
 8 MR. JORDAN: I'm not writing
 9 on it.
 10 Q. (By Mr. Jordan) I'm going to ask
 11 you to read the second sentence there where it
 12 says "failure." And the second sentence, I mean
 13 Page 2, Paragraph 2, second sentence.
 14 A. "Failure of the Planning Board to
 15 hold a public hearing and affirmatively vote to
 16 approve the special-permit decision within sixty
 17 days shall result in the Court directly issuing
 18 a special permit in the form agreed upon by the
 19 parties pursuant to the Agreement for Judgment."
 20 Q. Okay. So what did you understand
 21 that sentence to mean?
 22 A. That if no hearing was held, that
 23 the Court would issue those conditions and
 24 settle the case.

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1 Q. Okay. It also says, "Failure of
 2 the Planning Board to hold a public hearing and
 3 affirmatively vote to approve the special
 4 permit..." What did you interpret that to mean?
 5 A. I didn't.
 6 Q. You didn't. As a result of reading
 7 this Agreement for Judgment, were you not aware
 8 that if the Planning Board did not vote
 9 affirmatively for it that the permit would still
 10 be issued?
 11 A. Repeat the question, please.
 12 Q. Okay. Are you aware from that
 13 sentence in the Agreement for Judgment that if
 14 the -- strike that.
 15 Are you aware that it didn't matter
 16 how the Planning Board voted, if they voted for
 17 it, all four for it, it would be approved; if
 18 they voted against it, it would still be
 19 approved because it was not an affirmative vote?
 20 Were you aware that was one of the agreements in
 21 the Agreement for Judgment?
 22 A. That's my understanding.
 23 Q. So prior to the open meeting held
 24 in May of 2017, you were aware at that point

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1 when you went to explain to the town residents
 2 that any vote that was taken was irrelevant,
 3 that the special permit was going to be granted
 4 no matter what, correct?
 5 A. Correct.
 6 Q. Did you have any conversation with
 7 Mr. Dragon concerning the Agreement for
 8 Judgment?
 9 A. No.
 10 Q. And what was the reason for putting
 11 into the Agreement for Judgment that there had
 12 to be an affirmative vote -- strike that.
 13 What was your understanding why
 14 that second sentence was put in there, which
 15 basically made the vote of the Planning Board
 16 irrelevant to whether the permit was granted or
 17 not?
 18 A. It was my understanding that when
 19 the Planning Board presented those conditions,
 20 hammered out those conditions and presented them
 21 to town counsel, that that agreement was the
 22 final decision in that regard.
 23 Q. And that is why -- so that is your
 24 understanding as to why that second sentence of

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1 Page 2, Paragraph 2, is in there?
 2 A. I have no opinion on that.
 3 Q. Was there any concern that the
 4 Planning Board may not -- any concern by you
 5 that the Planning Board would not affirmatively
 6 vote for the special permit?
 7 A. I didn't know they were going to
 8 vote at that meeting.
 9 Q. Now, who is the authorizing
 10 authority for special permits in the Town of
 11 Westhampton?
 12 A. I would say it depends on the
 13 special permit. There is different types of
 14 special permits.
 15 Q. The special permit for the sawmill?
 16 A. According to the town bylaws, it's
 17 my understanding it's the Planning Board.
 18 Q. And it's certainly not the Select
 19 Board?
 20 A. Absolutely not.
 21 Q. And there is no other board that
 22 has any authority to issue a special permit for
 23 sawmills in the Town of Westhampton?
 24 A. It's my understanding from the

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1 bylaws that the special permit for the sawmills
 2 is from the Planning Board.
 3 Q. So are you aware, sir, as a result
 4 of this agreement, that the -- it was the Court
 5 that issued the special permit?
 6 A. I have no opinion on that.
 7 Q. What did you understand when it was
 8 explained to you that a special permit issued by
 9 the courts would be able to be enforced by
 10 filing a Complaint for Contempt?
 11 A. I have no opinion on that.
 12 Q. Sir, I'm not asking what your
 13 opinion is. I asked you what your understanding
 14 was.
 15 A. It's not something I thought about.
 16 MR. JORDAN: Off the record.
 17 (A recess was taken)
 18 MR. JORDAN: Back on the
 19 record.
 20 Q. (By Mr. Jordan) Mr. Dowling, right
 21 now I'm looking at the minutes of the public
 22 hearing held on May 23, 2017. Have you
 23 reviewed, at any time, the minutes from that
 24 public meeting that was held concerning the

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1 remand hearing?
 2 A. No.
 3 Q. As part of those minutes, it
 4 states, "The Select Board determined it was cost
 5 effective to enter into negotiations and in the
 6 Town's favor to have the Planning Board
 7 negotiate a settlement and voted to authorize
 8 town counsel to negotiate a settlement." Is
 9 that a true statement?
 10 A. Please read that again.
 11 Q. "The Select Board determined it was
 12 cost effective to enter into negotiations and in
 13 the Town's favor to have the Planning Board
 14 negotiate a settlement and voted to authorize
 15 town counsel to negotiate the settlement." Is
 16 that a true statement?
 17 A. I don't like the words "cost
 18 effective" because it sort of implies that was
 19 the primary issue, and it was not.
 20 Q. So it's partially correct.
 21 Anything else in that sentence that I read that
 22 is inaccurate?
 23 A. I don't think so.
 24 Q. So you think cost effective is not

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1 the primary reason, but it was partially the
 2 reason?
 3 A. Absolutely.
 4 Q. Did the Select Board have any
 5 involvement at all in the negotiation of the
 6 settlement?
 7 A. No.
 8 Q. Prior to the filing of the
 9 Agreement for Judgment, were the details of that
 10 agreement ever explained to you?
 11 A. I don't recall.
 12 Q. Now, this is part of a
 13 transcription of the remand hearing that was
 14 held on May 23, 2017. That hearing was
 15 recorded?
 16 A. Yes.
 17 Q. It was also videotaped, was it not?
 18 A. No.
 19 Q. It states here, Mr. Dowling, that
 20 you stated at that hearing that -- this is page
 21 5, starting at Line 9. It says, "So the Select
 22 Board voted unanimously to direct the Planning
 23 Board to come up with a set of conditions to
 24 attempt to settle the case." Do you remember

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1 making that statement, sir?
 2 A. I remember making a similar
 3 statement. I can't attest to the exact wording.
 4 Q. Okay. So the Select Board -- would
 5 you agree that there was a vote unanimously by
 6 the Select Board for the Planning Board to come
 7 up with a set of conditions? Is that accurate?
 8 A. No.
 9 Q. What is not accurate about that?
 10 A. We didn't direct them to do
 11 anything.
 12 Q. Well, these are your words.
 13 A. They may be my words, but I cannot
 14 attest to that. And if I did say that, that is
 15 incorrect.
 16 Q. It also states on Page 4 -- this
 17 is, again, your transcribed statement you made
 18 at the remand hearing on May 23, 2017. "Had the
 19 Court overturned the Board's decision and
 20 ordered the issuance of a special permit, the
 21 Town would have lost the opportunity to
 22 condition the project in order to protect the
 23 neighborhood from potential impact."
 24 So I just wanted to be clear about

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1 that. Was it your understanding that the
 2 conditions were put in place to protect the
 3 neighborhood from potential impact?
 4 A. It was my understanding the
 5 conditions were better than no conditions.
 6 Q. But your statement is, sir, it was
 7 to protect the neighborhood from potential
 8 impact. Was that a true or false statement made
 9 by you?
 10 A. Would you read it again?
 11 Q. "Had the Court overturned the
 12 Board's decision and ordered the issuance of a
 13 special permit, the Town would have lost its
 14 opportunity to condition the project in order to
 15 protect the neighborhood from potential impact"?.
 16 MS. LAUGHMAN: Mr. Jordan, I
 17 ask that you put the document in front of
 18 the witness so he can look at it.
 19 MR. JORDAN: Sure.
 20 A. Yes.
 21 Q. So that is a true statement?
 22 A. As far as I'm concerned.
 23 Q. Now, sir, these are not your words,
 24 but they are the words of Mr. Schwallie. My

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1 question to you is whether you would agree with
 2 the statement by Mr. Schwallie. And this is
 3 Page 6, starting Line 11, "With the conditions,
 4 I would like to say we tried. The goal was to
 5 make the conditions as restrictive as possible."
 6 Was that your goal, sir?
 7 A. I have no goal whatsoever in
 8 regards to the conditions other than suggesting
 9 the Planning Board look at what they can do.
 10 Q. On Page 14 of the transcript, Line
 11 11, there is another statement that was
 12 transcribed that you made at that open meeting
 13 that says, "So we hired counsel and we listened
 14 to them." I'm going to have you read it first,
 15 sir, and then I will ask you specific questions
 16 instead of me reading that into the record.
 17 A. You want me to read where it
 18 starts?
 19 Q. From Line 11.
 20 MS. LAUGHMAN: To himself or
 21 aloud?
 22 Q. (By Mr. Jordan) Just read it so I
 23 can ask you questions about it.
 24 MS. LAUGHMAN: To yourself.

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1 A. To myself?
 2 Q. Yes.
 3 A. Okay.
 4 Q. So sir, based on statements that
 5 you made at the May 23, 2017 open meeting, it
 6 was your understanding at that time that you had
 7 been told by counsel you were not going to win
 8 the case between Cotton versus Westhampton; is
 9 that correct?
 10 MS. LAUGHMAN: Objection.
 11 A. That is not correct.
 12 Q. So sir, where it says, on Line 17,
 13 you were recounting to the residents of the Town
 14 based on what information she had from years of
 15 dealing with the Court, was that we were not
 16 going to win this case, that the special permit
 17 would be granted and would give us no conditions
 18 and no power.
 19 So my question to you again is:
 20 That is incorrect, you were not told that you
 21 were not going to win the case?
 22 A. Correct.
 23 MS. LAUGHMAN: Could we have
 24 that in front of him while he is answering

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1 the question?
 2 A. We were not told that we were not
 3 going win. We were told that we were unlikely
 4 to win the case.
 5 Q. So that statement you made at the
 6 hearing is not accurate?
 7 A. Based on what is on this piece of
 8 paper, it's not accurate.
 9 Q. On Page 45 of the transcript of the
 10 May 23, 2017 meeting, you made the statement,
 11 "It's my understanding that regardless of what
 12 the Planning Board does, this agreement is part
 13 of the agreement, then it's indiscernible, has
 14 already been decided. It will go into effect."
 15 And Line 8, "MR. DOWLING: Regardless of how the
 16 Planning Board votes, that's that." What did
 17 you mean whether you stated that, sir?
 18 A. Just what it says.
 19 Q. Well, I would ask you to repeat.
 20 What does it mean and you want me to read it?
 21 MS. LAUGHMAN: Excuse me,
 22 please put the document in front of the
 23 witness that you're reading from. You
 24 should really have copies of this document

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1 for the witness' use, not just keep the
 2 document for yourself.
 3 MR. JORDAN: I'm not keeping
 4 the document for myself.
 5 MS. LAUGHMAN: It's regular
 6 practice to have copies before the
 7 witness.
 8 Q. (By Mr. Jordan) My question is --
 9 you stated "that's that" -- what did you mean by
 10 that?
 11 MS. LAUGHMAN: And I'm saying
 12 don't answer the question until he puts
 13 the document that he is reading from in
 14 front of you. Please put the document in
 15 front of the witness. Thank you.
 16 A. It's my understanding that
 17 regardless of what the Planning Board does this
 18 agreement has already been decided and it will
 19 go into effect. That's my understanding.
 20 Q. And that's what you meant when you
 21 said "and that's that"?
 22 A. Regardless of how the Planning
 23 Board votes, then that's that. Yes, the
 24 agreement had already been agreed to.

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1 Q. On Page 27, starting at Line 19, I
 2 would ask you to read that, if you could, sir.
 3 You can read it to yourself.
 4 A. Okay.
 5 Q. Now, again, with respect to this
 6 hearing that was held on May 23, 2017, the open
 7 meeting, you're explaining this transcript is
 8 you explaining to questions from residents of
 9 the Town when they asked you questions about how
 10 it came about that special permit was granted,
 11 correct?
 12 A. I believe so, yes.
 13 Q. And in this you state that it was
 14 conveyed to the Select Board, recommending that
 15 conditions on the blank -- on the special permit
 16 could take advantage of the teeth that it would
 17 give us to enforce it rather than allowing this
 18 thing to go forward without conditions. Was it
 19 important to the Select Board that these
 20 conditions would give teeth for enforcement by
 21 the town officials?
 22 A. It's my understanding it would set
 23 the course of a Court Order and that was more
 24 than just a zoning violation.

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1 Q. In terms of enforcement, I have
 2 asked you questions about the enforcement part.
 3 So from your previous answers, it's my
 4 understanding that the Select Board really has
 5 nothing to do with regard to making decisions
 6 about the enforcement of any violations of
 7 special permits for the sawmill; is that
 8 correct?
 9 A. No.
 10 Q. What is incorrect about that
 11 statement?
 12 A. We're in the loop, so the zoning
 13 enforcement officer deals with us when there is
 14 issues he's dealing with.
 15 Q. And he confers with you in what
 16 manner?
 17 A. He would come to a meeting and
 18 explain to us what he's doing or what the
 19 violations were and, perhaps, asks for our
 20 permission to talk to town counsel or tell us
 21 that he was going to go to court with a
 22 violation.
 23 Q. But in terms of a -- other than the
 24 Select Board passing on whether they can talk to

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1 town counsel, he would -- the town enforcement
 2 officer has the discretion to either enforce it
 3 himself or to seek advice from, I guess, town
 4 counsel if the Select Board authorizes it?
 5 A. Correct.
 6 Q. But in terms of the Select Board
 7 itself, the Select Board has no authority to
 8 direct the enforcement officer to file
 9 violations?
 10 A. I don't believe that has ever
 11 happened. I don't know that it could.
 12 Q. Are you aware of any procedures,
 13 written procedures, rules, regulations, or
 14 anything in the Town that outlines the duties of
 15 the enforcement officer to enforce, I guess,
 16 bylaws in the Town of Westhampton?
 17 A. I believe it's in the bylaws that
 18 the zoning enforcement officer enforces zoning
 19 rules and regulations.
 20 Q. But my question was, with regard to
 21 procedures, any written procedures, what the
 22 enforcement officer is supposed to follow, that
 23 you're aware of?
 24 A. Not that I'm aware of.

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1 Q. How long were you at that meeting,
2 Mr. Dowling?
3 A. I was there for the whole time.
4 Q. And what was the -- from the
5 residents of the Town, what was the tone of that
6 meeting?
7 A. There was a lot of grumbling.
8 There was a lot of, I will call it,
9 hostilities in that meeting towards the Planning
10 Board, particularly Mark Schwallie and the way
11 he presented.
12 Q. And when you say there was -- the
13 way he presented, what did you mean by that?
14 A. He was not -- it's difficult to be
15 heard in that room, so I think that if you were
16 sitting in the back of the room it would have
17 been difficult to understand what he said
18 because he was not speaking -- it's very
19 difficult in that room to be heard.
20 Q. Well, in terms of people that were
21 speaking up, I reviewed the transcript and there
22 were concerns issued about certainly the thing
23 we already discussed, which was the fact that
24 that was that, the decision had already been

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1 made and the special permit was going to be
2 granted whether the residents of the Town agreed
3 with it or not or the Select Board agreed with
4 it or not. It was a done deal basically. Did
5 you anticipate that there would be pushback, I
6 guess, from residents of the Town when you
7 showed up?
8 A. I knew that this had been going on
9 for a long time. I had not attended any of the
10 other Planning Board meetings, so I was not
11 aware of, perhaps, the level of hostility
12 towards the Planning Board in this regard. So I
13 believe going to that meeting I completely
14 underestimated the hostility that would come out
15 at that meeting. People were not civil.
16 Q. We already went over the letter
17 that you sent. Why did you send that letter to
18 the Hampshire Gazette?
19 A. It was an article in the Gazette
20 that I thought misrepresented what I said and
21 also the Town's position. I just wanted to
22 clarify some of it, things I said, and that's
23 about it.
24 Q. Well, one of the things I noted was

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1 the fact that you wanted to clarify that it was
2 not a decision specifically derived by the cost
3 of the litigation. You did say that was really
4 one of the driving issues of the settlement; is
5 that correct?
6 A. I think what I meant was that it
7 was not the primary issue. It was definitely an
8 issue, but it was not a primary issue.
9 Q. In fact, currently are you aware of
10 other lawsuits that are -- that Westhampton is
11 involved in currently?
12 A. Of course.
13 Q. Besides this one that we're dealing
14 with, how many others?
15 A. Two.
16 Q. Two others. Are any of those
17 having do with zoning violations?
18 A. One of them.
19 Q. How long has that one been going
20 on?
21 A. It's pretty recent. Let me take
22 that back. It's not about a zoning violation.
23 Q. So no other zoning violations
24 currently?

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1 A. Correct.
2 Q. How about in the past while you
3 have been a selectman?
4 A. No.
5 Q. No zoning violations?
6 A. No.
7 Q. You said you had looked at the plot
8 plan for the sawmill; is that correct?
9 A. I have seen it.
10 Q. Well, you said you saw it. Did you
11 just see it or did you read it?
12 A. I did not examine it closely, no.
13 Q. I'm going to show you -- this was
14 taken from the assessor's plan, which is Lot 15,
15 which is where the sawmill is currently located.
16 A. Okay.
17 Q. Do you recognize that?
18 A. Not particularly, no.
19 Q. Okay.
20 A. I mean, I know where Northwest Road
21 is. But if you had not told me that fifteen was
22 the lot, I would not have known.
23 Q. Let me show you one that is
24 attached to the plot plan -- I mean to the

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1 decision of the Court.
 2 This is the copy of what was filed
 3 in the court, so this is the assessor's map so
 4 you can actually see it if you want to look it
 5 over.
 6 A. It doesn't look like the same thing
 7 to me --
 8 Q. Okay.
 9 A. -- but it might be. This little
 10 triangle is going one way and this little
 11 triangle is going the other way in that one.
 12 Q. I'm just trying to make it easier
 13 for you. If you would prefer to have this one
 14 to look at, that's fine with me.
 15 Are you aware that it's Lot 15 that
 16 was given the special permit to operate the
 17 sawmill in the Town of Westhampton?
 18 A. No.
 19 Q. Are you aware that this is a
 20 requirement that you have a -- to get the
 21 special permit you need approval of a site plan
 22 for the special permit for the Town of
 23 Westhampton?
 24 A. No.

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1 Q. Have you ever driven by the sawmill
 2 on Northwest Road?
 3 A. I have driven up Northwest Road
 4 many times.
 5 Q. My question: Have you ever driven
 6 by the sawmill?
 7 A. Well, if I have driven up Northwest
 8 Road, I have gone by that spot.
 9 Q. Do you know where it is?
 10 A. Roughly.
 11 Q. All right. Have you ever seen the
 12 sign?
 13 A. Yes.
 14 Q. So you generally know the area
 15 where it is located. But it's your testimony
 16 today you have no idea what the boundaries are,
 17 what the frontage is required for a sawmill in
 18 the Town of Westhampton; is that correct?
 19 A. That's correct.
 20 Q. And again, it was a letter sent by
 21 a Paul Silvernail about the sign that was placed
 22 by Cotton. That was sent directly by you,
 23 wasn't it, or an e-mail or letter?
 24 A. I don't recall. I have been

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1 dealing with some elderly-parent issues for the
 2 last couple weeks. My father fell out of bed
 3 and broke his leg at ninety-five, so I have been
 4 out of town up until last week. So that letter
 5 did come, but I don't recall where or how I
 6 received it. But I did have a letter that was
 7 sent regarding a sign.
 8 Q. In fact, you sent a quick note
 9 saying that -- words to the effect that you
 10 would pass on the information or consider the
 11 information?
 12 A. No.
 13 Q. What did you say?
 14 A. What?
 15 Q. You didn't send anything?
 16 A. I didn't do anything.
 17 Q. I will just go by your memory, sir.
 18 So you don't remember a quick letter back to
 19 Mr. Silvernail?
 20 A. I'm sorry?
 21 Q. You don't remember writing a quick
 22 response to Mr. Silvernail?
 23 A. I don't recall. Like I said, I was
 24 dealing with life and death issues.

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1 Q. So in --
 2 A. What was the date on that letter?
 3 Q. It's in this pile here. I will
 4 look for it.
 5 A. Whatever.
 6 Q. I just looked at it, but I'm not
 7 going to hunt through that now.
 8 A. That's okay.
 9 Q. I'm going to show you a letter that
 10 is dated October 2, 2017 from Mr. Fondakowski
 11 addressed to you and Mr. Art Pichette. Do you
 12 remember receiving that letter?
 13 MS. LAUGHMAN: Are you going
 14 to mark this as an exhibit to the
 15 deposition?
 16 MR. JORDAN: No.
 17 A. Yes, I remember receiving this
 18 letter.
 19 Q. What did do you with this letter
 20 once you received it?
 21 A. I think it was brought up at a
 22 Select Board meeting. So in that case we would
 23 have contacted the zoning enforcement officer
 24 and had him -- gave it to him.

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1 Q. You said you would have. You don't
 2 have a memory of that?
 3 A. Specifically, no. It would
 4 potentially be in the meeting minutes.
 5 Q. And earlier you stated that
 6 Mr. Quinlan did report back to the Select
 7 Board --
 8 A. Mm-hmm.
 9 Q. -- with regard to this specific
 10 letter?
 11 A. I don't know if it was a specific
 12 letter. As I said, there were one or two that I
 13 was aware of, so it might have been that letter.
 14 Q. Does it concern you that there were
 15 violations going on at the sawmill?
 16 A. Absolutely.
 17 Q. And it was mentioned -- or it was
 18 stated by you to the town residents that it was
 19 important it have teeth, so the assumption for
 20 that was that we have something that we can
 21 enforce, correct? That was the whole motivation
 22 for entering into the agreement, correct?
 23 A. Yes.
 24 Q. And you're aware that there were a

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1 fair number of people from the Town that were
 2 pretty upset about how this whole special permit
 3 was, I guess, granted, right?
 4 A. Yes.
 5 Q. So you earlier testified that
 6 Mr. Quinlan said he spoke to Mr. Cotton and went
 7 by and didn't see any violations. Do you
 8 remember that?
 9 A. I don't think I exactly said that.
 10 I said Mr. Quinlan had looked into the issues
 11 and told us that he did not find violations.
 12 How he did it and what he did, I don't know.
 13 Q. So you don't remember making the
 14 statement that he spoke to Mr. Cotton?
 15 A. I definitely made the statement he
 16 spoke to Mr. Cotton.
 17 Q. And you're not aware of any time
 18 that Mr. Quinlan spoke to anyone that made the
 19 complaint?
 20 A. I'm not aware of what Mr. Quinlan
 21 did regarding his investigation of the
 22 complaint.
 23 Q. Who would evaluate Mr. Quinlan to
 24 see if he is investigating complaints properly?

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1 A. He works for the Town of
 2 Westhampton and he's under the direct oversight
 3 of the Select Board.
 4 Q. Okay. So when you say oversight,
 5 does that mean you supervise what he does?
 6 A. Not directly, but we hired him.
 7 And so if we didn't feel he was performing his
 8 work adequately, we could theoretically fire
 9 him.
 10 Q. Okay. So if you have a town
 11 resident like Mr. Fondakowski reporting a
 12 violation, would you expect that at a minimum
 13 Mr. Quinlan would at least speak to
 14 Mr. Fondakowski?
 15 A. Could I see that letter again,
 16 please?
 17 Q. Sure.
 18 A. I'm not sure that the two incidents
 19 listed here are violations of that court
 20 agreement from my perspective of what that
 21 agreement says. And I would not -- did not
 22 state that to Mr. Quinlan, but in reading that
 23 it's saying that Cotton Tree Service trucks were
 24 working on or around the sawmill site on a

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1 Saturday and on a Sunday.
 2 Q. And it gives dates and times, does
 3 it not?
 4 A. Yes, but I'm not sure that -- I
 5 would have to sit down with that agreement with
 6 those conditions before I would be willing to
 7 state that is a violation. The agreement, the
 8 conditions, I don't think says he cannot go on
 9 his land or do things on his land.
 10 Q. So what you are stating is, from
 11 this, you can't tell if that is a violation or
 12 not, right?
 13 A. Correct.
 14 Q. And did you show that to
 15 Mr. Quinlan?
 16 A. I did not personally show it to
 17 Mr. Quinlan, but I believe that was passed on to
 18 Mr. Quinlan.
 19 Q. Okay. So given what that letter
 20 states, wouldn't you say that to do a proper
 21 investigation that Mr. Quinlan would have to
 22 speak with Mr. Fondakowski to see exactly what
 23 he observed?
 24 A. I would not make that judgment, no.

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1 Q. Well, it states here -- and this is
 2 one of the conditions, that -- and this would be
 3 condition Number 8, "Applicant shall be allowed
 4 to cut and split firewood for personal nonretail
 5 purposes using a conventional chainsaw and a
 6 conventional portable splitter services for
 7 Monday through Friday during the hours of 9 a.m.
 8 to 4 p.m. Saturday would be 9 a.m. to 1 p.m.
 9 Activities relating to the cutting and splitting
 10 of wood shall not exceed twelve hours in a
 11 single week."
 12 So does it state in there what time
 13 he observed it, stated in the letter from
 14 Mr. Fondakowski?
 15 A. It says Saturday, September 23,
 16 7:38 p.m.
 17 Q. And one of the conditions for at
 18 least the cutting and splitting of firewood
 19 would be Saturday -- it could only operate
 20 between 9 a.m. to 1 p.m.?
 21 A. Correct.
 22 Q. So I guess, again, my question to
 23 you is: As the enforcement officer, would it
 24 not be prudent on the part of the enforcement

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1 officer to at least speak to Mr. Fondakowski,
 2 who is a resident of the Town who is making a
 3 complaint that there has been a violation of
 4 conditions at the sawmill and what he observed?
 5 A. I would not make that judgment, no.
 6 Q. And you would not make that
 7 judgment as someone that Mr. Quinlan -- or part
 8 of a body that Mr. Quinlan reports to?
 9 A. Correct.
 10 Q. So if a town resident's observed a
 11 violation and it's reported to either you or
 12 Mr. Quinlan, I guess, is it your testimony today
 13 that you relied just on Mr. Quinlan's discretion
 14 in what he will do to investigate --
 15 A. To an extent.
 16 Q. -- violations?
 17 A. To an extent, yes, absolutely.
 18 Q. What if Mr. Fondakowski was to show
 19 you a video with sound with a date and time
 20 stamp of the machine operating outside those
 21 conditions? Would you, as a Select Board
 22 member, make sure that that violation was
 23 investigated --
 24 A. Yes.

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1 Q. And reported?
 2 A. Yes.
 3 Q. Would it be your position that the
 4 Town take action and enforce the contempt
 5 against Mr. Cotton for violating the condition
 6 if it's found to be accurate?
 7 A. Absolutely.
 8 Q. And what would you be seeking as a
 9 sanction for that contempt?
 10 A. Denial of the special permit.
 11 MR. JORDAN: I have just a few
 12 more questions.
 13 Q. (By Mr. Jordan) You stated
 14 earlier, I guess, at one point you were on the
 15 Board of Health?
 16 A. Correct.
 17 Q. And if you're aware, does a
 18 commercial -- does a sawmill at Northwest
 19 Road -- is it required that they have -- as a
 20 commercial property, is it required that they
 21 have sanitation facilities on the site?
 22 A. My time on the Board of Health was
 23 at least roughly twenty years ago and I don't
 24 know if that's a requirement or not, then or

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1 currently.
 2 Q. On the site plan that was
 3 submitted, are you aware that there was an arrow
 4 on that site plan pointing to sanitation
 5 facilities and they pointed to another lot
 6 unconnected with Lot 15, which is the site for
 7 the sawmill?
 8 A. No.
 9 Q. Do you know today if a Chapter 61
 10 forest plan has been filed by Mr. Cotton for the
 11 sawmill?
 12 A. I do not know.
 13 Q. Do you think it's important to know
 14 those things?
 15 A. I don't know if that is important.
 16 It was part of the conditions so it would be
 17 part of the concern if it was not.
 18 Q. Do you know who Sean Libby is?
 19 A. No.
 20 Q. Do you know if Mr. Cotton ever met
 21 with someone from the Department of Conservation
 22 and Recreation --
 23 A. No.
 24 Q. -- with respect to a Chapter 61

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1 forest plan?
 2 A. I do not.
 3 Q. And there was a condition of
 4 limitation of trucks that could access the
 5 property where the sawmill is located. Were you
 6 aware that the enforcement officer for the Town
 7 of Westhampton said it would be impossible to
 8 monitor?
 9 A. I believe that was the previous
 10 enforcement officer. And I have heard that
 11 quote, but I was not present when he said it.
 12 That's not the current officer in any case.
 13 Q. Are you aware that there is a
 14 provision that there needs to be a buffer strip
 15 of some sort between abutting property and the
 16 lot where the sawmill is located?
 17 A. Not specifically, no.
 18 Q. There was a site visit. I believe
 19 it was done before the approval of the sawmill
 20 permit. The Planning Board and, I believe, some
 21 of the Selectmen went out to the site to listen
 22 to the machines that were running. Did you
 23 attend that?
 24 A. No.

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1 Q. Were you aware that occurred?
 2 A. No.
 3 Q. With respect to the letter that was
 4 sent, I did find that. Can you tell from this
 5 who sent this letter? It was copied to you.
 6 This is dated November 13, 2017 from the Select
 7 Board.
 8 A. Well, we all signed it, Houston,
 9 Pichette, Dowling.
 10 Q. Do you remember signing this?
 11 A. Yes.
 12 Q. So it states: "Mr. Silvernail, we
 13 received your letter and will take your concerns
 14 under consideration." How did you do that?
 15 A. Do you have his letter?
 16 Q. I'm asking you.
 17 MS. LAUGHMAN: Objection.
 18 A. I'm not sure which letter you're
 19 talking about. That's in response to a letter
 20 from Silvernail to the Select Board. I'm not
 21 sure which one that is. So if you have that
 22 letter, I can tell you what was done.
 23 Q. Let me look for that then. Did you
 24 ever review this letter? It's a letter

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1 addressed, October 11, 2017, to Pichette.
 2 A. Yes.
 3 Q. Now, was this the letter in
 4 response to that letter?
 5 A. I believe so.
 6 Q. Okay. So my question to you is: it
 7 states, "We'll take your concerns under
 8 consideration." So the question is: What did
 9 you do?
 10 A. We sent it to town counsel.
 11 Q. That's it?
 12 A. Yes.
 13 Q. You did nothing else?
 14 A. Correct.
 15 Q. Did you receive a response from
 16 town counsel?
 17 A. I don't recall. I don't recall
 18 receiving a response.
 19 Q. Were you on the Select Board when
 20 the previous -- I believe it was the previous
 21 enforcement officer was issuing violations to
 22 Mr. Cotton for the use of the property on
 23 Northwest Road?
 24 A. I may have been, so you would have

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1 to give me a date.
 2 Q. Well, it's my understanding that
 3 around November of 2014 the Town or town's
 4 counsel entered into an agreement to waive the
 5 daily fines that it assessed against him for
 6 violation for a fairly long period of time on
 7 the property on Northwest Road. Are you aware
 8 of anything about that?
 9 A. No.
 10 Q. So until today you were never aware
 11 that Mr. Cotton had been cited by the Town for a
 12 long period of time concerning any land he had
 13 on Northwest Road?
 14 A. I knew that Chuck Miller issued a
 15 cease-and-desist order for stump grinding on
 16 that property back in the day. And when the --
 17 it's my understanding when the court case was
 18 filed that put a hold on any penalties.
 19 Q. Put a hold on it?
 20 A. Yes.
 21 Q. So what does that mean? Does that
 22 mean it's your understanding the assessed fines
 23 are still available?
 24 A. No.

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1 Q. Or were they waived?
 2 A. I don't think the word would be
 3 waived. I think that once it's in court, once
 4 it's been contested or whatever, then that puts
 5 a stop to it for any fines until the thing has
 6 been resolved. I could be wrong, but that's my
 7 understanding.
 8 Q. So you are unaware of any agreement
 9 for the Town to waive the right to collect on
 10 those?
 11 A. Certainly not aware of anything
 12 like that.
 13 Q. When you were at the hearing on May
 14 23, 2017, you did hear some residents of the
 15 Town bring that up with regard to the large
 16 amount of money that was due from Mr. Cotton for
 17 his previous violations. Do you remember
 18 hearing that?
 19 A. Yes, absolutely.
 20 Q. But it's your testimony today you
 21 don't know really anything else besides the fact
 22 that there have been previous violations, but
 23 you don't know today -- you could not state
 24 whether the Town agreed to waive those fines or

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1 not?
 2 A. So again, two things: I know of no
 3 agreement to waive any violations. And it's
 4 also my understanding that once something has
 5 been -- I don't know what the right term would
 6 be -- but goes to court, then that process stops
 7 until that's resolved. That's my understanding.
 8 And I was not involved in any of those. I don't
 9 know the dollar amounts.
 10 Q. The fact that he had violated
 11 earlier citations by the town enforcement
 12 officer, did that concern you about whether he
 13 would follow the conditions that were agreed to
 14 in the special permit decision?
 15 A. Absolutely.
 16 Q. Do you know who Charles Miller is?
 17 A. Yes.
 18 Q. Was he the previous building
 19 inspector or town enforcement officer for the
 20 Town of Westhampton?
 21 A. Yes.
 22 Q. Do you know the process at all
 23 about how a violation is ticketed or fined for
 24 violation of permit for use of property?

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1 A. No.
 2 MR. JORDAN: I have no further
 3 questions.
 4 MS. LAUGHMAN: Off the record.
 5 (A recess was taken)
 6 MS. LAUGHMAN: Back on the
 7 record. Page 14 from the transcript of
 8 the agreement hearing that Mr. Jordan was
 9 asking you, could I have that marked as
 10 Exhibit 1. And the October 17 letter
 11 referenced during the examination, could I
 12 have that marked as Exhibit 2, please?
 13 And the October 11, 2017 letter from
 14 Mr. Silvernail, could I have that marked
 15 as Exhibit 3?
 16 (Exhibit 1, Page 14 and 15 of Transcript;
 17 Exhibit 2, Letter dated October 2, 2017;
 18 Exhibit 3, Letter dated October 11, 2017,
 19 marked for identification)
 20 MS. LAUGHMAN: That's all. No
 21 questions.
 22 MR. JORDAN: I have no further
 23 questions.
 24 (Deposition concluded)

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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 May 8, 2018, at the offices of
 Kotfila & Jordan, One Monarch Place, Suite 1340,
 Springfield, Massachusetts, the following named
 person, to wit: PHILIP DOWLING, 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 May 15, 2018.

 Raymond F. Catuogno, Jr.
 Notary Public

My Commission expires:
 February 12, 2021

May 16, 2018
Katherine D. Laughman, 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 PHILIP DOWLING taken on May 8, 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, PHILIP DOWLING, JR., COTTON TREE SERVICE, INC., DODGE MAPLE GROVE FARM, LLC, AND HAMPSHIRE SUPERIOR COURT,
Defendants.

I, PHILIP DOWLING, 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.

PHILIP DOWLING

cc: Richard T. Jordan, Esq.
Katherine D. Laughman, Esq.

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