

11 October 2017

Art Pichette  
Phil Dowling  
Jim Huston  
Westhampton Select Board  
Westhampton, MA 01027

*Certified mail, return receipt requested 7016034000072747471*

Dear Westhampton Select Board:

I write to request that you immediately terminate the services of KP Law aka Town Counsel for cause for what appears to be legal malpractice and gross negligence:

1. As evidenced by Exhibit 1, the transcript of the 5/23/17 Remand Public Hearing (the "5/23/17 Hearing"), it was at the direction of KP Law, according to Phil Dowling, that Phil discussed matters from Executive Session meetings that have not been released as public record.
2. Attached as Exhibit 2, is a 10/5/17 KP Law Motion submitted in a Court case (the "10/5/17 KP Law Motion") claiming that all discussions as to why the Dodge Maple Grove Farm, LLC sawmill settled are privileged.
3. Attached as Exhibit 3 are the Open Meeting laws for selectmen which state, inter alia, "The law prohibits you from publicly revealing confidential information, or from using it for private or political purposes. Anything that is not a "public record" under the Massachusetts Public Records Law is considered confidential. **Remember that matters discussed while the Board is in Executive Session are confidential until after the Executive Session minutes are released as public records.**"
4. KP Law signed and submitted a 4/3/2017 Agreement For Judgment. KP Law failed to exercise "reasonable care and skill" in handling this case. A layperson can easily see and document the lack of research done in preparing this contract. It fails miserably when compared to any legal standard of care one would expect from licensed attorneys. Some examples of gross negligence and legal malpractice found in this Agreement are:
  - a. "... on property located at 0 Northwest Road, Assessor's Parcel Map 5, Lot 15 in Westhampton, Massachusetts (the "Property"),
  - b. The site plan accompanying the Special Permit, in fact, incorporates both Lot 15 and Lot 26 which means that representation made by KP Law in the Agreement For Judgment to the Hampshire Superior Court is false.
  - c. The Site Plan for land belonging to Dodge Maple Grove Farm, LLC for said Special Permit on Lot 15 has 164.34' on the public way. The "Table 2 of Dimensional Regulations" for "Bylaw Number 3.082: Sawmills" requires 250' on a public way. KP Law failed to verify the Town's dimensional land requirements for a commercial sawmill's use.

- d. The Site Plan shows access to the “Sawmill” site over a Town’s discontinued road, formerly called Dodge Road. Its 15’ width passes through two parcels (Assessor Map 5, Lot 26 and Lot 16). KP Law failed to verify that access to said “Site” is not provided for in the Agreement’s “additional conditions” or as part of “the Property” description.
- e. The Site Plan shows an arrow pointing to “Sanitary Facilities” on Lot 26. KP Law failed to verify that such location is not owned by Dodge Maple Grove Farm, LLC; no such lot number is listed as part of “the Property”.
- f. KP Law failed to verify if the State Requirement of passing a Title 5 Inspection, at the time of conveyance in 2014 to Dodge Maple Grove Farm, LLC, was performed by our local Board of Health; “Sanitary Facilities” are listed on said “Site Plan”. KP Law failed to realize that a residential dwelling cannot be used for sanitation facilities for a commercial project especially when it is not even a part of the “Property.”
- g. The Site Plan shows there is not 250’ of frontage on a public way for “Lot 15”. This frontage requirement is required before a Building Permit can be issued. KP Law has failed to verify how “Conditions” can be implemented. Specifically, “3 . Applicant shall make provisions for noise abatement, including the installation of a 12’ vertical structure to serve as a sound barrier...”. Based on Town Zoning Bylaws, a building permit cannot be issued to a site that has insufficient frontage for its intended use.
- h. The additional permission that is granted under “Additional Conditions”, specifically #5 is based upon the false premise that Dodge Maple Grove Farm, LLC has an approved “Chapter 61 forest plan” in place. KP Law failed to verify that such a plan submitted by Dodge Maple Grove Farm was denied by the State Forester; no such plan has been filed or recorded at the Registry of Deeds. KP Law represented incorrectly to the Court that Dodge Maple Grove Farm, LLC has a Chapter 61 forest plan in place.
- i. This “Special Permit Decision and Agreement for Judgment” were wrongfully issued under Town Bylaws “Section 6.2: Special Permits”. Town “Bylaw Number 3.082: Sawmills” requires “SP/PB/SPA” (Special Permit/Planning Board/ Site Plan Approval) zoning process under “Section VI Enforcement”: 6.3 SPECIAL PERMITS WITH SITE PLAN APPROVAL. Procedure to issue a Special Permit with Site Plan Approval requires under Ch. 40A Sect.9: “Specifically, a joint public hearing of the Planning Board and the Zoning Board of Appeals to address the Site plan Approval application”. A joint public Hearing was never scheduled. KP Law failed to assure and verify if the legal zoning process was followed for this application.

- j. In November 2014, KP Law, based on their invoices, apparently agreed to dismiss the criminal enforcement case against Cotton Tree Service in the midst of the trial. KP Law charged our Town \$367.50 to help Cotton Tree Service and Dodge Maple Grove Farm not pay the substantial fines that would have been collected by our Town if our Town officials were not acting against the best interests of our Town in this case. KP Law advised our Town to do this in the midst of litigation initiated against our Town by Cotton and Dodge Maple Grove Farm.
- k. Under “Findings” submitted to the Court, number 6 is an untrue statement. The site plan does not “accurately indicate the location of the proposed activities on the Property” because it fails to list Lot 26. KP Law failed to assure and verify this information and, because of their negligence, KP Law submitted a false claim to the Court.
- l. Under “Findings” submitted to the Court, number 7 is an untrue statement. The statement “the Planning Board finds that the use can be sufficiently mitigated by conditions of approval.” This is patently false. The Planning Board voted twice to deny the permit based on the fact that the use cannot be sufficiently mitigated by conditions. KP Law failed to assure and verify this information and, because of their negligence, KP Law submitted a false claim to the Court.
- m. Under “Conditions” the statement “The following conditions shall apply to the Planning Board’s issuance of the Special Permit” is false. The Planning Board did not issue this Special Permit. The Planning Board voted twice to deny this Special Permit. The Special Permit being issued by the Court was based on this inaccurate and false “Agreement for Judgment” agreed upon by “the parties.” Those “parties” were KP Law, Patrick Melnik, Sr. and your Select Board. KP Law failed to assure and verify this information and, because of their negligence, KP Law submitted a false claim to the Court.
- n. Under “Conditions” number 2, “A buffer strip of either fencing of plantings to visually screen the portable wood processing equipment from the traveled way/abutting property shall be installed.” This provision fails to inform the Court that to visually screen from one abutting property would call for the need for a structure over a few hundred feet in height which could never be built under existing building codes.

- o. Under “Conditions” number 5, the statement “The Applicant shall be permitted to work on the site for reclamation purposes as set forth in the Chapter 61 forest plan.” Evidence was provided at the 5/23/17 Public Remand Hearing that confirmed Dodge Maple Grove Farm, LLC does not have a Chapter 61 forest plan. Planning Board Chairman, Attorney Mark Schwallie, made comments about this demonstrating he has no knowledge of the applicable law and incredibly still voted in favor of the Special Permit on 5/23/17 knowing this claim was false. KP Law failed to assure and verify this information and, because of their negligence, KP Law submitted a false claim to the Court.
- p. Under “Conditions,” number 10 and number 12 speak to the Building Inspector accessing the Property and seeking enforcement of the Special Permit through judicial means. At the time this Agreement was written by KP Law, the only information available to the Town regarding the building inspector in relation to Dodge Maple Grove Farm, LLC was the building inspector’s public testimony at a Planning Board hearing attended by Mark Schwallie and Thomas Hathaway in which the building inspector said it would be “impossible” to enforce the stated conditions. The implication that the building inspector could do anything to enforce the agreement is directly contradicted by the facts. KP Law failed to assure and verify this information and, because of their negligence, KP Law submitted a false claim to the Court.
- q. The two Planning Board members that voted twice to deny the Special Permit said it broke our laws because "In particular, some members of the Planning Board believed the proposed activity did not comply with the following sections of the Westhampton's Zoning Bylaws: sections 1.2, 6.2, 6.27 (1 & 2), 6.31 and 6.352(g) amongst others." KP Law failed to address any of the following Town bylaws that are being violated with this Special Permit.
- r. The Agreement KP Law drafted, signed and submitted to the Court violates Town Bylaw 1.2: "The purpose of this bylaw is to promote the health, safety, and the general welfare of all the inhabitants of the Town of Westhampton; to protect and conserve the value of property and the beauty of the Town; to reduce the hazard from fire by regulating the use of land, and the location and use of buildings and structures and the area of open spaces about them, and to encourage the most appropriate use of land within the Town."
- s. The Agreement KP Law drafted, signed and submitted to the Court violates Town Bylaw 6.2: "Special permits are intended to provide

detailed review of certain uses and structures which may have substantial impact upon traffic, utility systems, and the character of the town, among other things, The Special Permit review process is to insure a harmonious relationship between proposed development and its surroundings, and insure the proposals are consistent with the purpose and intent of this Bylaw.

- t. The Agreement KP Law drafted, signed and submitted to the Court violates Town Bylaw 6.27, 1 and 2: "Where a special permit may be authorized by the Special Permit Granting Authority under this Bylaw, said Authority may grant, upon written application, such permit if it finds, among other things: 1. That the proposed use would be suitably located in the neighborhood in which it is proposed and/or the total town. 2. That the use will be reasonably compatible with the character and scale of other uses permitted as of right in the same district.
- u. The Agreement KP Law drafted, signed and submitted to the Court violates Town Bylaw 6.27: "The purpose of site plan approval is to further the purposes of this bylaw and to ensure that new development is designed in a manner which reasonable protects visual and environmental qualities and property values of the Town, and to assure adequate drainage of surface water and safe vehicular access."
- v. The Agreement KP Law drafted, signed and submitted to the Court violates Town Bylaw 6.351: "The following criteria shall be considered by the aforementioned Boards in the review and evaluation of a site plan, consistent with a reasonable use of the site for purposes permitted or permissible by the regulations of the district in which it is located: The development will not place excessive demands on Town services and infrastructure.

After having attended the majority of meetings on this commercial sawmill application and having met all of you, it is very apparent to me what is happening in my Town. I strongly encourage you to seek the advice of a competent attorney to examine KP Law's practices in regard to standard of care and negligence because your board authorized KP Law's actions by expressed authority in this case.

**You should consider immediately notifying the Court that a contract was submitted by our Town for a Judge's signature that was based on false and inaccurate information, violates our Town bylaws and zoning procedures and contains an inaccurate Site Plan filing.** You have the evidence in front of you. As our elected representatives, you have a duty and responsibility to be answerable to our Town for the actions of all Town officials and those hired to assist in legal matters.

Also please be advised that I am seeking assistance from appropriate law enforcement agencies to investigate and prosecute what appears to be Town officials' misrepresentation of facts to a Court, breach of fiduciary duties, conflicts of interest, failure to follow State and local zoning Bylaws as well as Open Meeting law and Disclosure Law requirements.

Sincerely,

Paul J. Silvernail  
PO Box 447  
Southampton, MA 01027