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Of Counsel
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November 28, 2016

Southborough Planning Board
17 Common Street
Southborough, MA 01772

Aldo A. Cipriano, Esq.
Law Offices of Aldo A. Cipriano
277 Main Street
Marlborough, MA 01752

**Re: Southborough Planning Board v. Leo F. Bartolini, David Eagle, Paul Drepanos, as they are Members of the Southborough Zoning Board of Appeals and William Depietri
Worcester Superior Court, Civil Action No. 16-1363B**

Dear Members of the Planning Board and Attorney Cipriano:

Enclosed pursuant to Superior Court Rule 9A please find William Depietri's Motion for Dismissal, for Leave to Propound Discovery and for Sanctions, together with Certificate of Service and Notice of Motion. Kindly forward your Opposition, if any, during the applicable time set forth in the Rule.

Thank you.

Very truly yours,

Angelo P. Catanzaro

APC/cme

Enclosures

cc: Client

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)
)
v.)
)
LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

DEFENDANT, WILLIAM DEPIETRI'S MOTION and MEMORANDUM
for DISMISSAL,
for LEAVE TO PROPOUND DISCOVERY and FOR SANCTIONS

Now comes the Defendant, William Depietri, and respectfully moves this Honorable Court to enter an Order dismissing the Plaintiff's Complaint pursuant to Mass. R. Civ. P. 12(b)(1) and/or Rule 12(b)(6) as this Court lacks subject matter jurisdiction and the Plaintiffs have failed to state a claim upon which relief can be granted. Defendant further moves for leave to conduct discovery on the issues of post dismissal sanctions and thereafter, for the imposition of monetary sanctions pursuant to M.G.L. c. 231 §6F and /or M. G. L. C.40A §17 on each of Donald C. Morris, Andrew S. Mills, Philip A. Jenks, Jesse T. Stein and Meme Luttrell, individually and/or as they are members of the Southborough Planning Board ("Plaintiff").

As grounds therefore, the Defendant states as follows:

1. The within motion is *in supplement* to Depietri's Motion to Dismiss and for Sanctions, Memorandum of Law and Affidavit which was served by the Defendant on the Plaintiffs pursuant to Superior Court Rule 9A on October 6, 2016 but was never filed with this Court due to Plaintiffs improper filing of a Notice of Dismissal on the eve of the date that Plaintiffs' Opposition to the Motion to Dismiss was required to be served on Defendant's counsel. For purposes of the within Motion Depietri incorporates by reference his earlier Motion to Dismiss

and for Sanctions, Memorandum of Law and Affidavit the originals of which are appended hereto as **Exhibit A**. In addition, as Depietri's legal arguments are substantially set forth in Exhibit A or hereinafter, Depietri has not prepared or served a supplemental Memorandum of Law.

2. On September 14, 2016 the Plaintiff filed the instant Complaint ostensibly pursuant to M. G. L. c .40A §17 challenging the Zoning Board of Appeals grant of a Comprehensive Permit to Defendant William Depietri ("Depietri").

3. On October 6, 2016 Depietri served a Motion to Dismiss and for Sanctions together with a Memorandum of Law and Affidavit on the Plaintiff with copy to Co-Defendant Southborough Zoning Board of Appeals. The demand for dismissal was predicated on the unequivocal precedent that a municipal Planning Board lacks standing to appeal the issuance of a Comprehensive Permit. See, Exhibit A. On the same date Depietri filed his Notice of Motion with this Court pursuant to Superior Court rule 9E.

4. On October 14, 2016 the Plaintiffs filed, without service on or notice to the Defendant, an Emergency Motion to Extend Time to Respond to Motion to Dismiss. A copy of the Motion is attached hereto as **Exhibit B**. The Court granted an extension to November 15, 2016.

5. On November 3, 2016 the Chairman of the Planning Board, Donald C. Morris requested, verbally and by e-mail, that the Defendants assent to a voluntary dismissal of the Complaint pursuant to Mass. R. Civ. P. 41 (a)(1)(ii). A copy of the email and Stipulation of Dismissal with Prejudice dated November 1, 2016 are attached hereto as **Exhibit C**. On November 8, 2016 Depietri, through counsel, agreed to a stipulated dismissal subject to reimbursement of legal fees and costs in the amount of \$4,645.50. A copy of counsel's e-mail is attached hereto as **Exhibit D**. Chairman Morris did not respond to counsel's email. On November 10, 2016 the Defendant Zoning Board, through Town Counsel, executed the November 1 Stipulation of Dismissal with Prejudice pursuant to Mass. R. Civ. P. 41 (a)(1)(ii) a copy which, together with the transmittal correspondence is attached hereto as **Exhibit E**.

6. On November 10, 2016 the Plaintiffs filed a Notice of Dismissal with Prejudice Pursuant to Mass. R. Civ. P. 41 (a)(1)(ii). The Notice of Dismissal was signed by all five members of the Planning Bboard, including Philip S. Jenks a practicing attorney whose name, but not signature, also appeared on the Complaint. The Notice of Dismissal with Prejudice Pursuant to Mass. R. Civ. P. 41 (a)(1)(ii) filed by the Plaintiffs was not signed by counsel for either Defendant. A copy of the Notice is attached hereto as **Exhibit F**.

7. Mass. R. Civ. P. 41 (a) (1) (i) and (ii) provides as follows:

(a) Voluntary Dismissal: Effect Thereof.

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of these rules and of any statute of this Commonwealth, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of this or any other state an action based on or including the same claim.

Plaintiff's filing of a Notice of Dismissal Pursuant to Mass. R. Civ. P. 41 (a)(1)(ii) is without right as subsection (ii) allows only for a stipulation of dismissal signed by all parties. Moreover, even if Plaintiffs' filing is considered a Notice of Dismissal pursuant to subsection (i), the Plaintiffs' action is still without right as (1) a Complaint brought pursuant to M. G. L. C. 40A § 17 does not require an Answer to be filed; and (2) Depietri's service on the Plaintiffs of his Motion to Dismiss and for Sanctions pursuant to Superior Court Rule 9A on October 6, 2016, together with his filing of a Notice of Motion pursuant to Superior Court Rule 9E operates as a responsive pleading for purposes of Rule 41. Accordingly unilateral voluntary dismissal is not allowed.

8. Regardless of the efficacy of Plaintiffs' Notice of Dismissal, Depietri none-the-less retains the right to move for sanctions under M.G. L. c. 40A § 17 and/or M. G. L. c 231 §6F. Clearly Plaintiffs motivation in attempting to voluntarily dismiss the Complaint, which took place only after Depietri was put to the expense of defending the frivolous law suit by the filing

of his Motion to Dismiss and supporting Memorandum, is nothing more than a veiled effort to avoid an obvious adjudication that the filing of the Complaint was an unlawful action, devoid of any merit warranting sanctions.

9. As is set forth in Depietri's Affidavit, the Planning Board, led by Chairman Morris, has been an active and vociferous opponent of the Comprehensive Permit Project. At best the filing of the instant Complaint was a wanton and reckless act on the part of the Planning Board members, one of whom is practicing attorney. More likely, based upon the unauthorized nature of the filing and the history of Planning Board member discourse with the Project *and* the Zoning Board, the filing was an intentional and malicious attempt to thwart and delay Depietri's project and deliver a message to the Zoning Board whose consideration and grant of the Comprehensive Permit the Planning Board members have repeatedly and publically chastised. Depietri is entitled to discovery regarding the elements required to be found by this Court in support of the awarding of sanctions, including the issues of representation, authorization, legal investigation and malice. See, M. G. L. c. 40A § 17 (the Court may award costs only upon a finding of malice); and M. G. L. c. 231 § 6F (the Court may order sanctions for insubstantial and frivolous claims only against parties who are represented by counsel).

WHEREFORE, the Defendant, William Depietri, respectfully requests this Honorable Court as follows:

1. To enter an Order dismissing the Complaint with prejudice and with costs and attorney's fees to be determined; and
 2. To enter an Order granting the Defendant Depietri ninety (90) days to propound discovery pursuant to the applicable provisions of the Rules of Civil Procedure; and
 3. To enter an Order granting the Defendant Depietri thirty (30) days following the completion of discovery to supplement his motion for sanctions.
-

4. To enter the following findings:

(a). That the filing of the Complaint by the Members of the Planning Board was without right, was without municipal authority, was contrary to the advice of Town Counsel, was undertaken despite the refusal of the Board of Selectmen to appoint Special Counsel to represent the Board and was filed notwithstanding established legal precedent prohibiting a Planning Board from appealing the granting of a Comprehensive Permit under M.G.L. c. 40B. Planning Bd of Hingham v. Hingham Campus, LLC, 438 Mass 364 (2003); and

(b). That the filing of the Complaint by the Members of the Planning Board was a knowing and intentional act designed to delay and interfere with the rights of William Depietri; and

(c). That the Plaintiff Planning Board Member Philip A. Jenks is an attorney at law licensed in the Commonwealth of Massachusetts and represented, assisted and guided all Plaintiff Members of the Planning Board in preparing and commencing this action; and

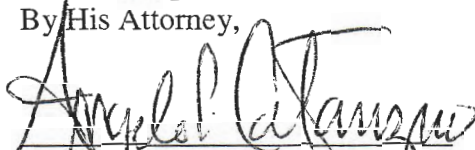
(d). That the Complaint and the claim of appeal set forth therein filed by the Plaintiffs is wholly insubstantial, frivolous, malicious and not advanced in good faith as the Members of the Planning Board knew or should have known that a Planning Board cannot appeal the granting of a Comprehensive Permit issued pursuant to M.G.L. c. 40B or initiate litigation without authority an attorney approved by the Southborough Board of Selectmen. See, Karellas v. Karellas, 61 Mass. App. Ct. 716 (2004).

5. To enter an Order pursuant to M. G. L. c. 40A §17 and/or M.G.L. c. 231 §6F, directing each of Donald C. Morris, Philip A. Jenks, Andre S. Mills, Meme Lutrell and Jesse T. Stein, jointly and severally, to pay the Defendant an amount of money as the Court determines compensates the Defendant for his expenses and costs, including reasonable attorney's fees, incurred in connection with this matter; and

6. To enter such further orders as the Court determines are meet and just.

Date: November 28, 2016

Respectfully submitted,
William Depietri,
By His Attorney,

A handwritten signature in black ink, appearing to read "Angelo P. Catanzaro". The signature is written in a cursive style with a horizontal line underneath it.

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)

v.)

LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

**DEFENDANT, WILLIAM DEPIETRI'S MOTION TO DISMISS
AND FOR SANCTIONS**

Now comes the Defendant, William Depietri, and respectfully moves this Honorable Court to enter an Order dismissing the Complaint of Donald C. Morris, Andrew S. Mills, Philip A. Jenks, Jesse T. Stein and Meme Luttrell, as they are members of the Southborough Planning Board ("Plaintiff") and to enter sanctions against the Plaintiffs, pursuant to M.G.L. c. 231 §6F.

As grounds therefore, Defendant presents as follows:

A. Dismissal.

1. The Plaintiffs, as a Board, are not a party "aggrieved" or otherwise conferred with standing so as to commence or prosecute an appeal of a Comprehensive Permit issued pursuant to M.G.L. c. 40B. Planning Bd of Hingham v. Hingham Campus, LLC, 438 Mass 364 (2003). The Complaint must be dismissed pursuant to Rule 12(b)(1) as this Court lacks subject matter jurisdiction.

2. The Plaintiffs, by commencing this action without counsel of record, and without the authorization of the Southborough Board of Selectmen (which denied Plaintiffs' request for the appointment of special counsel) are precluded from initiating any litigation. Bd of Public

EXHIBIT

A

Works of Wellesley v. Bd of Selectmen of Wellesley, 377 Mass. 621 (1979). Ellis et al v. Alberghini et al and Neep Hotel-Realty, LLC, (Land Court No. 16 MISC 000150 KCL, May 20, 2016). The Complaint must be dismissed pursuant to MRCP Rule 12(b)(1) and/or Rule 12(b)(6) as this Court lacks subject matter jurisdiction and the Plaintiffs have failed to state a claim upon which relief can be granted.

3. The Plaintiffs have failed to serve a copy of the Complaint on the Defendant, William Depietri, by delivery or certified mail within fourteen (14) days of the filing with the Court on September 14, 2016 as required by M.G.L. 40A §17. The Complaint must be dismissed pursuant to MRCP Rule 12(b)(1) as this Court lacks subject matter jurisdiction.

4. The Plaintiffs have failed to file an affidavit of service within twenty-one (21) days of the filing of the Complaint as *specifically* required by M.G.L. 40A §17. The Complaint must be dismissed pursuant to MRCP Rule 12(b)(1) as this Court lacks subject matter jurisdiction.

5. The Plaintiffs have failed to include Park Central, LLC, the entity to which the subject Comprehensive Permit was issued, as required by M.G.L. c. 40A §17. The Complaint must be dismissed pursuant to MRCP Rule 12(b)(1) and Rule 12(b)(7) for failure to include Park Central, LLC as a party Defendant and therefore this Court lacks subject matter jurisdiction.

WHEREFORE, the Defendant, William Depietri, respectfully requests this Honorable Court grant his Motion to Dismiss with prejudice.

B. Sanctions.

1. The commencement of this action by the Members of the Planning Board was without right, was without municipal authority, was contrary to the advice of Town Counsel, followed by the refusal of the Board of Selectmen to appoint Special Counsel to represent them, was specifically contrary to established legal precedent prohibiting a Planning Board from

appealing the granting of a Comprehensive Permit under M.G.L. c. 40B. Planning Bd of Hingham v. Hingham Campus, LLC, 438 Mass 364 (2003).

2. The commencement of this action by the Members of the Planning Board was a knowing and intentional act designed to delay and interfere with the rights of William Depietri.

3. Plaintiff Planning Board Member Philip A. Jenks is an attorney at law licensed in the Commonwealth of Massachusetts and represented, assisted and guided all Plaintiff Members of the Planning Board in preparing and commencing this action.

4. The Complaint and the claim of appeal set forth therein filed by the Plaintiffs is wholly insubstantial, frivolous and not advanced in good faith as the Members of the Planning Board knew or should have known that a Planning Board cannot appeal the granting of a Comprehensive Permit issued pursuant to M.G.L. c. 40B or initiate litigation without authority or counsel approved by the Southborough Board of Selectmen. See, Karellas v. Karellas, 61 Mass.App.Ct. 716 (2004).

WHEREFORE, the Defendant respectfully requests this Honorable Court to order the Plaintiffs pursuant to M. G. L. c. 40A §17 and/or M.G.L. c. 231 §6F, jointly and severally, to pay the Defendant an amount as the Court determines compensates the Defendant for his expenses and costs, including reasonable attorney's fees, incurred in connection with this matter, and to enter such further orders as the Court determines are meet and just.

Date: October 6, 2016

Respectfully submitted,
William Depietri,
By His Attorney


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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)
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LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

DEFENDANT WILLIAM DEPIETRI'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS AND FOR SANCTIONS

A. Preliminary Statement

On August 25, 2016 the Southborough Zoning Board of Appeals granted a Comprehensive Permit to Park Central, LLC ("Park Central") pursuant to M.G.L. c. 40B for a 180 unit affordable housing project located on a portion of a 101 acre parcel owned by Park Central. William Depietri is the Manager of Park Central. On September 14, 2016 five (5) members of the Southborough Planning Board commenced the instant action styled "Complaint for Judicial Review" (the "Complaint"). Paragraph 1 of the Complaint seeks "judicial review pursuant to M.G.L. Chapter 40A §17 from a Decision of the Zoning Board of Appeals of the Town of Southborough, which Decision granted Petitioner William Depietri a Comprehensive Permit . . ."

The Defendant now moves to have the Complaint dismissed and for the imposition of sanctions against the five Planning Board Members.

B. Argument

1. The Planning Board is without standing to file or maintain an action under M.G.L. c. 40A §17 appealing a Comprehensive Permit issued under M.G.L. c. 40B.

“A defendant may properly challenge a plaintiff’s standing to raise a claim by bringing a motion to dismiss under Mass. R. Civ. P. 12(b)(1) or (6).” Ginther v. Comm’r of Ins., 427 Mass. 319, 322 (1998). “Under rule 12(b)(1), the judge may consider affidavits and other matters outside the facts of the complaint that are used to support the movant’s claim that the court lacks subject matter jurisdiction.” Ginther, 427 Mass. at 322 n. 6. A determination that this court has subject matter jurisdiction goes to the power of the court to hear and decide the case at bar. As a result, that determination should first be considered under Mass. R. Civ. P. 12(b)(1). See, Town of Cohasset Water Commission v. Avalon Cohasset, Inc., 2005 WL 647335).

At bar, the Complaint filed by the five Planning Board Members seeks judicial review under M.G.L. c. 40A §17 of a Comprehensive Permit issued pursuant to M.G.L. c. 40B (the Anti-Snob Zoning Act which provides for the development of affordable housing projects without strict compliance to local bylaws, rules and regulations). M.G.L. c. 40B § 21 provides that the only appeal from the granting of a comprehensive permit is pursuant to M.G.L. c. 40A §17. Section 17, however, allows that only a “person aggrieved” or certain governmental bodies have standing to seek judicial review under the statute.

The Supreme Judicial Court has been clear and unequivocal in its determination that a municipal Planning Board is neither a “person” nor “aggrieved” under M.G.L. c. 40B and therefore has *no standing to appeal* a Comprehensive Permit. Planning Board of Hingham v. Hingham Campus, LLC, 438 Mass. 364 (2003). The Courts of this Commonwealth have

steadfastly recognized this mandate and routinely dismissed any such attempt. See, e.g., Town of Hingham v. DHCD, 451 Mass. 501, 506 n. 9 (2008) ("The town is not a 'person aggrieved' within the meaning of [Chapter 40B]"); Board of Water Comm'rs of Hanson v. Zoning Bd. of Appeals of Hanson, 62 Mass. App. Ct. 1109, 2004 WL 2452690 at *2 (Mass. App. Ct. Nov. 2, 2004) (Rule 1:28 decision) (municipal plaintiff was "beating a dead horse" by arguing it had standing to appeal the zoning board's comprehensive permit); Town of Cohasset Water Comm'n v. Avalon Cohasset, Inc., 2005 WL 647335 (Mass. Land Ct. March 22, 2005) (Sands, J.) *aff'd*, Cohasset Water Comm'n v. Cohasset Zoning Bd. of Appeals, 68 Mass. App. Ct. 1103 (2007) (municipal entities lack standing); The Friends of the Middlesex Fells Reservation v. Vallarelli, No. 05-3620 (Mass. Super. Ct. Mar. 24, 2006) (dismissing municipal appeal for lack of standing); Town of Framingham v. Chrysler Apts., LLC, Permit Session Case No. 39220 (Mass. Land Ct. May 27, 2009) (same).

This Court need not look further. A Planning Board cannot appeal the granting of a Comprehensive Permit. This Court is without jurisdiction.

2. As the Planning Board was without municipal authority and without counsel of record when initiating the instant action the Complaint is a nullity and failed to invoke the jurisdiction of this Court.

It is axiomatic that a municipal board such as the Southborough Planning Board is without authority to commence a lawsuit on its own initiative. In Bd. of Public Works of Wellesley v. Bd. of Selectmen of Wellesley, 377 Mass. 621, 624 (1979) the Supreme Court held that "[I]t is conventional learning that a municipal department is not permitted to bring suit for the town without specific authorization from the town or from agents entitled to act for it — unless, indeed, there is governing legislation conferring the power on the department. The rule serves to prevent confusion or conflict in the direction and management of municipal litigation."

At bar, the Complaint fails to allege or specify the requisite authority because the Planning Board did not have any. On at least two occasions prior to the filing of the Complaint, the Planning Board requested that the Board of Selectmen appoint special counsel (as the Planning Board was in open disagreement with the advice it was receiving from Town Counsel) and on both occasions the Selectmen denied that request.¹ Notwithstanding the denial of counsel and the absence of authority, the Plaintiffs prepared the instant Complaint with the apparent assistance of Member Philip A. Jenks, a practicing attorney, and filed same without the appearance of an attorney of record, each member being listed as a party and signing his or her own name.²

The filing of the Complaint by the Planning Board was without right and was an *ultra vires* act in direct contravention of the municipal code and the implicit direction of the Board of Selectmen. The Planning Board was neither authorized to employ counsel, see, O'Reilly v. Scituate, 328 Mass. 154, 154-155 (1951) ("In the absence of legislative authority, it is settled that a department of a city or town has no authority to employ counsel. Benefit to the municipality is immaterial."), or file the lawsuit. Bd. of Public Works v. Wellesley, *supra*. The Complaint must be dismissed.

¹ Under Town of Southborough Town Code only the Selectmen have the authority to retain counsel. See Article I Chapter 36 and Article III Chapter 27 of the Southborough Town Code copies of which are attached hereto as Exhibit 1(a) and 1(b) for the exclusive authority of the Board of Selectmen to initiate litigation and retain counsel. As noted on the Board of Selectmen's Agenda for September 9, 2016 (attached hereto as Exhibit 2) the Planning Board made such a request. See also, Minutes of the Selectmen Meeting on September 6, 2016 (attached hereto as Exhibit 3) in which the issue was previously raised. Although there are no available public records formally evidencing the Board of Selectmen's ultimate decision, the fact that the Planning Board filed this action without counsel speaks for itself.

² Although Member Philip A. Jenks' signature does not appear on the Complaint above his name on the signature page he stated at a public hearing on September 19, 2016 that the "only reason" he did not sign was because he was not available and that he would sign the Complaint subsequently if allowed to do so by the Court.

3. As the Plaintiffs have failed to serve the Defendant William Depietri with a copy of the Complaint or file an affidavit of service with this Court the Court is without subject matter jurisdiction and the Complaint must be dismissed.

M.G.L. c. 40A §17 specifically provides that

“To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within fourteen days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board of appeals or special permit granting authority and shall within twenty-one days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed.”

The Complaint was filed on September 14, 2016. The Defendant never received written notice or a copy of the Complaint from the Plaintiffs.³ Twenty-one (21) days after filing is October 5, 2016. This Court’s Docket reflects that no such affidavit was filed. The statute is mandatory. Count I of Plaintiffs’ Complaint must be dismissed. See, Konover Mgmt. Corp v. Planning Board of Auburn, 32 Mass. App. Ct. 319, 322-323 (1992) and Town of Uxbridge v. Griff, 68 Mass. App. Ct. 174, fn. 3 (2007)

4. William Depietri is not the party to whom the Comprehensive Permit was issued.

The Comprehensive Permit of which the Planning Board is attempting to challenge was issued to Park Central, LLC of which William Depietri is the Manager. Park Central, LLC is the owner of the subject property and the applicant for the permit. The Plaintiffs’ failure to include the very entity which applied for and was granted the permit and is

³ Depietri, through counsel, requested and received a copy of the Complaint from the office of the Zoning Board of Appeals. This was the only copy ever received by Depietri.

the owner of the land subject to the Comprehensive Permit is fatal to Plaintiffs' claim. MRCP Rule 19(a) requires that "(a) person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties" M.G.L. c. 40A §17 mandates that "(i)f a complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant or petitioner and all members of the board of appeals . . . shall be named as parties defendant with their addresses." Plaintiffs' failure to comply with the mandates of §17 and Rule 19 is fatal. The Complaint must be dismissed.

C. Sanctions

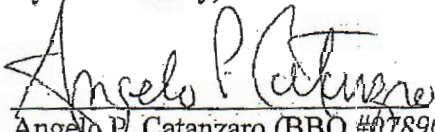
Section 17 of c. 40A provides for assessment of costs against parties appealing thereunder if the Plaintiffs acted in bad faith or with malice. M.G.L. c. 231 §6F provides for the imposition of sanctions against a party represented by counsel upon a finding that a claim or defense, whether factual or legal, was frivolous, wholly unsubstantial and not advanced in good faith. As set forth in the arguments in support of dismissal, the Planning Board filed this action without any statutory or municipal right to do so, without counsel of record and in direct contravention of the mandate of the Board of Selectmen. The subject matter of the Complaint (appeal of a Comprehensive Permit) was also clearly beyond the authority of the Planning Board as the Supreme Judicial Court and various trial courts have repeatedly held. Significantly, part of this collaborative and unlawful effort included Planning Board Member Philip A. Jenks, a practicing attorney who, regardless of filing an appearance, allowed his name to be included as a party and publicly announced his support and participation. For purposes of this action Attorney Jenks clearly "represented" the Board Members. In Karelas v. Karelas, 61 Mass. App. Ct. 716 (2004) the Appeals Court stated "Expressed another way, we think the requirement of

representation during a 'proceeding' within the meaning of §6F may be fulfilled by consideration of steps or acts undertaken by legal counsel to advance a claim or defense before a judicial tribunal." In so ruling, the Appeals Court referenced International Paper Co. v. Commonwealth, 232 Mass 7 (1919) in which the Supreme Judicial Court had noted in different context that "the word 'proceedings' is of a broad signification. It comprehends every step from the filing of the petition until the final determination of the controversy." There is little doubt that the Planning Board was represented by counsel in filing the Complaint.

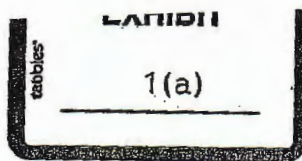
In addition to the commencement of an unauthorized judicial action void of subject matter jurisdiction, the substance of the Complaint belies the Plaintiffs' relentless attempt to undermine the affordable housing project as approved by the Zoning Board of Appeals because the Plaintiffs were dissatisfied with an earlier Use Variance granted by the Zoning Board which tied into the affordable housing project. As set forth by the Plaintiffs in the Complaint, well prior to the actual granting of the Comprehensive Permit, the Board disagreed with the exercise of Zoning Board authority in connection with the project and the Use Variance and embarked on a journey of discourse, delay and antagonism despite receiving no support from the Selectmen or Town Counsel. Appealing the Comprehensive Permit under circumstances in which Plaintiffs knew they were without authority and knew that the court is without jurisdiction, because of dissatisfaction of the Use Variance which was not appealed surely constitutes bad faith. Vigilante type conduct, such as demonstrated by Plaintiffs in the filing a judicial action under the circumstances at bar, demands measured retribution from the Court. The imposition of sanctions is appropriate.

Date: October 6, 2016

Respectfully submitted,
William Depietri,
By His Attorney,

A handwritten signature in dark ink, appearing to read "Angelo P. Catanzaro". The signature is fluid and cursive, with the first name "Angelo" being more prominent.

Angelo P. Catanzaro (BBO #078960)
Catanzaro and Allen
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Ashland, MA 01721
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Town of Southborough, MA
Tuesday, October 4, 2016

Chapter 36. Selectmen

Article I. Miscellaneous Provisions

[Adopted as Art. IV, Secs. 1 through 3 and 9, of the 1983 Code]

§ 36-1. Authorization to settle legal claims.

The Board of Selectmen shall have full authority as agent of the Town to prosecute and defend all suits in which the Town is a party. It may settle, at its discretion, any legal and valid claim or suit against the Town which does not require the payment of more than \$300. Any settlement requiring a payment greater than \$300, except when authorized by law, shall be made only when authorized by vote of a Town Meeting.

§ 36-2. Protection of Town's interests.

The Selectmen may appear, either personally or by the Town Counsel, before any committee of the Legislature, any state or County official or any board or commission to protect the interests of the Town, but are not authorized by this article to commit the Town to any course of action.

§ 36-3. Actions on conveyances.

All conveyances under seal which may hereafter be executed by the Town, pursuant to a vote of the Town or otherwise, shall be sealed with the Town Seal and subscribed by a majority of the Board of Selectmen for the time being, unless otherwise directed by the Town or by statute.

§ 36-4. Deriving of benefits from contracts or agreements.

No member of the Board of Selectmen shall enter into any contract or agreement from which he will derive any direct or indirect benefit with any department of the Town without the majority approval of the Advisory Committee. Said approval shall be recorded by the Secretary of the Advisory Committee, and a copy thereof duly attested by said Secretary shall be attached to such contract or agreement.

Chapter 27. Officers and Employees

Article III. Town Counsel

[Adopted as Art. IV, Secs. 4 through 7, of the 1983 Code]

§ 27-4. Appointment; compensation; additional counsel.

The Board of Selectmen may, annually, upon its organization, appoint an attorney at law as Town Counsel for the term of one-year. He shall receive, as his salary, such compensation as is provided in Article VIII A hereof,^[1] together with such additional sums as may be appropriated for such services as may be performed in addition to those rendered as legal adviser to the Town. It may, in any case, employ additional or special counsel.

[1] *Editor's Note: This refers to the Salary Administration Plan, on file in the office of the Town Clerk.*

§ 27-5. Duties and responsibilities.

Such Town Counsel shall act as the legal adviser of the Town. It shall be his duty to examine or cause to be examined all titles to property in which the Town may acquire an interest, to draft all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments, of whatever nature, which may be required by any bylaw, vote or action of the Town or any board of officers to which the Town or its agents may be a party, and which, by law, usage or agreement, the Town is to be at the expense of drawing.

§ 27-6. Appropriations in warrants to be submitted for review.

All Articles in warrants for Town Meeting which contemplate the appropriation of money or the negotiation of Town bonds or notes shall be submitted to the Town Counsel for his examination and approval.

§ 27-7. Consent for opinions required.

No Town officer, board or committee shall request an opinion of the Town Counsel, except in cases not admitting of delay, without first obtaining the consent of the Board of Selectmen; nor shall any such officer, board or commission employ any other counsel without like consent.

Town of Southborough, MA
Meeting of the Board of Selectmen
Friday, September 9, 2016, 5:00 P.M.
McAuliffe Hearing Room, Southborough Town House
17 Common Street

RECEIVED
TOWN CLERK'S OFFICE

2016 SEP -7 P 4:36

SOUTHBOROUGH, MA

Note: Scheduled start times are approximate, with the exception of public hearings.

I. Call Meeting to Order

II. Scheduled Appointments

1. ~~Consideration of Planning Board request for Special Counsel~~; vote may be taken.

VII. Adjournment

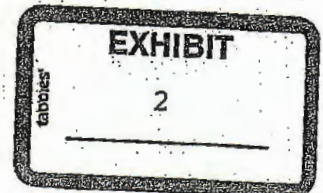
Brian E. Shea

Brian E. Shea, Chairman

UPCOMING MEETINGS

September 20, 2016

October 4, 2016





TOWN OF SOUTHBOROUGH

BOARD OF SELECTMEN Meeting Minutes

EXHIBIT

3

Meeting Date: Tuesday, September 6, 2016

Location: McAuliffe Hearing Room, Southborough Town House

Present: Chairman, Brian Shea; Vice Chairman; Bonnie Phaneuf; Daniel Kolenda; John Rooney;
Paul Cimino; Town Administrator, Mark Purple

Absent:

I. Called Meeting to Order at 6:30 pm

II. Public Comment

~~Mr. Don Morris, Chair of Planning Board~~ reported that last week, ZBA granted and signed the Park Central 40B comprehensive permit which includes a major 40A component. This action triggered a 20-day appeal period which will end 9/15. The Planning Board met and discussed options and felt it needed guidance by independent counseling if any action could or should be appealed. Mr. Cipriano was not able to provide guidance and suggested that he contact Mr. Purple. Mr. Purple expressed concerns about one Board appealing another Board and recommended that he come before the Board of Selectmen to seek advisement. BOS would like to have follow up discussions with Town Counsel whether or not he is able to provide guidance on the 40A questions that the Planning Board has before granting permission for Planning Board to seek independent counseling.

Mr. Sam Stivers, 7 Presidential Drive. He requested to add Jack and Louise Barron as co-sponsors to the Use Variance Article 6.

Mr. Howard Rose, 2 Bantry Road In follow up with Mr. Morris's request, suggested to the Board to consider a co-counsel to assist Planning Board with the appeal process.

Ms. Karen Shimkus, 2 Lynbrook Road, addressed her concerns on the Policy on Public Comments draft document.

III. Scheduled Appointments

Mr. Shea noted that four petition articles were submitted for Special Town Meeting warrant. Article 8 will be discussed at an upcoming meeting, after the Flagg Road Forum scheduled for 9/12.

Citizen proponents will provide a brief discussion on each of the articles.

1. Review of Citizen Petition articles for October 18, 2016 Special Town Meeting (may take positions)

- Article 5 – Repave and Repair Main Street: Reject TIP project for Main Street
Mr. Sam Stivers, 7 Presidential Drive. Project is too big and not in the interest of the town. The Board would like to see cost estimates presented at Town Meeting if this was to be done at local standards. The comparable cost needs to be strong and clear to identify the standards and direct DPW to do this road if TIP is not used. The Board would like to present a concise comparison at Town Meeting for the residents to decide as the State made it clear the TIP fund will not be available after Special Town Meeting. The Board voted unanimously to not support this article at Town Meeting.
- Article 6 – Zoning Bylaw- Eliminate ZBA power to grant use variances
Ms. Freddie Gillespie and Mr. Sam Stivers, co-sponsors of this petition, briefed on this article to eliminate the use variance which gives too much authority to the appointed members of the ZBA. Mr. John Bartolini, Mr. David McCay, and Mr. Bill Pezzoni also

spoke and are not in support of this article. The Board agreed to take position at Special Town Meeting.

- Article 7 – Rescind prior town meeting votes for Industrial Development Commission ('IDC') and related Financing Authority ('IDFA').
Ms. Freddie Gillespie explained this article is to rescind the existing IDC and IDFA. The IDC was not set up to cover what the Economic Development Committee ('EDC') is to be charged with. Mr. McCay, Chair of EDC, offered clarity on what the statutory Commission is set up to do. He said the statutory language does not change the operation on what the EDC is charged to do. He asked the Board to not support this warrant article at Town Meeting.
Mr. Cimino moved that Board of Selectmen to not support Article 7 at Town Meeting.
Mr. Kolenda seconded. Vote 4-0-1 Mrs. Phaneuf abstained.

IV. Reports

- Chairman's Report:
Mr. Shea pointed out that the Flagg Road Forum will be held on Monday, September 12 at 6:30 pm at the Senior Center. This is to address the safety concerns, current conditions and issues on Flagg Road.
- Town Administrator Report: None

V. Consent Agenda

1. Approve Open Session meeting minutes: June 28, 2016, July 15, 2016
2. Appoint Cameron Chapski as Full-Time Safety Communication Officer
3. Appoint Meme Luttrell as Planning Board representative to the MetroWest Regional Collaborative
4. Appoint William Sines to ADA Committee
5. Accept resignation of David Eagle from Zoning Board of Appeals
6. Approve revised charge for Municipal Technology Committee
7. Approve one-day Beer and Wine License- Chestnut Hill Farm: September 16, Community Dinner Event
8. Approval of Request for Potential Filming in Southborough
9. Approve Executive Session meeting minutes: June 28, 2016, August 2, 2016, August 23, 2016

Mr. Cimino moved to approve Item 8 with the pending review of Indemnification Agreement that Mr. Hartman will provide. All in Favor 5-0

Mr. Kolenda moved to approved items 1 through 7 and 9. Mr. Cimino seconded. All in Favor 5-0

VI. Other Matters Properly Before the Board

1. Discussion of Policy on Public Comment during Selectmen meetings
Mr. Kolenda provided a brief overview on the draft document for Policy on Public Comment. Purpose of the policy is to provide guidance, direction, set parameters and focus on the agenda at hand. Mr. Shea asked the Board to review the draft and channel comments back through Mr. Purple and revisit this at upcoming meetings.

The Board adjourned the open session at 8:56pm and unanimous roll call vote to enter into Executive Session.

VII. Executive Session

The Board will be entering into Executive Session per M.G.L. Chapter 30A, Section 21, and will not return to Open Session – issue to be discussed to consider the purchase of real property (Exemption 6) as the Chair has determined that having the discussion in open session may be detrimental to the public body's negotiating position.

VIII. Adjournment

Upcoming Meetings

September 12, 2016 – Flagg Road Forum, Senior Center, 6:30 pm

September 20, 2016

October 4, 2016

Submitted by Jenn Hom, Recording Secretary

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)

v.)

LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

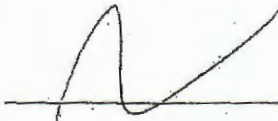
AFFIDAVIT OF WILLIAM A. DEPIETRI

I, William A. Depietri, upon my oath depose and state:

1. I am the William Depietri named as Defendant in the within action. I am a resident of Southborough. My business address is also in Southborough.
2. At no time did I ever receive notice of the within action or a copy of the Complaint from the Plaintiffs. The only copy of the Complaint I ever received was through my attorney who requested it from the Zoning Board of Appeals.
3. Park Central, LLC is the owner of the 101± acre site in Southborough on which the affordable housing project and other proposed uses are located. I am the Manager of Park Central, LLC. Park Central, LLC was the Applicant and was issued the Comprehensive Permit by the Zoning Board of Appeals. The application was filed on February 12, 2014 and the first public hearing before the Zoning Board was held on March 23, 2014. I routinely appeared at the public hearings and identified myself by name or on behalf of Capital Group Properties, LLC (my development company) as the developer of the Property.

4. Throughout the permitting process Plaintiff, Donald C. Morris, Chairman of the Southborough Planning Board, purportedly on behalf of all the members of the Board, has been a vocal opponent of the Project. On numerous occasions Plaintiff has pontificated views, opinions and disagreements regarding Zoning Board authority, procedures and actions as well as Town Counsel's public opinions regarding the same, in correspondence, in the media and at numerous public hearings held by, including without limitation, the Planning Board, the Board of Selectmen and the Zoning Board of Appeals. During the public hearing Site Plan Approval review of a portion of the project before the Planning Board the application for which was timely filed in May 2016, the Planning Board engaged in an obvious pattern of delay, refused to accept its limited jurisdiction and ultimately, during the public hearing on September 29, 2016, rejected the Site Plan. The filing of the instant appeal on September 14, 2016 was but another act purposefully engaged in by the Plaintiffs in defiance of applicable law and precedent in an obvious attempt to further incite and prolong public discourse and holdup the Project.

Signed under the pains and penalties of perjury this 5th day of October, 2016.



William A. Depietri

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)

v.)

LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

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OCT 06 2016

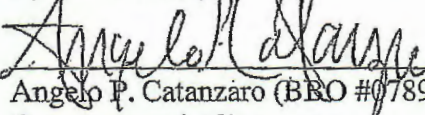
CLERK OF COURTS
WORCESTER COUNTY

DEFENDANT, WILLIAM DEPIETRI'S NOTICE OF MOTION

Now comes the Defendant, William Depietri, pursuant to Superior Court Rule 9E and hereby gives notice that he served his Motion to Dismiss and for Sanctions together with a Memorandum of Law and Affidavit of William A. Depietri, upon the Plaintiffs, Southborough Planning Board on October 6, 2016 by hand delivery and first class mail to 17 Common Street, Southborough, MA 01772, and upon the Defendant Southborough Zoning Board of Appeals by first class mail to Aldo A. Cipriano, Esq., Law Offices of Aldo A. Cipriano, 277 Main Street, Marlborough, MA 01752, in accordance with Superior Court Rule 9A.

Date: October 6, 2016

Respectfully submitted,
William Depietri
By His Attorney,


Angelo P. Catanzaro (BRO #078960)

Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566
apc@catallen.com

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

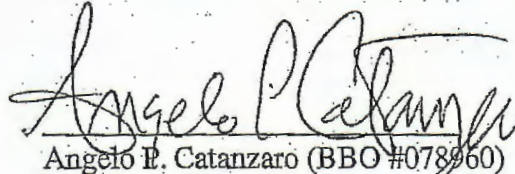
SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)

v.)

LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

CERTIFICATE OF SERVICE

I, Angelo P. Catanzaro, attorney for the Defendant, William Depietri, hereby certify that on this 6th day of October, 2016, I served a copy of Notice of Appearance, Motion to Dismiss and for Sanctions and Memorandum of Law, Affidavit of William Depietri and Notice of Motion upon the Plaintiffs by hand delivery and first class mail to 17 Common Street, Southborough, MA 01772 and the Defendant Southborough Zoning Board of Appeals by first class mail to Aldo A. Cipriano, Esq., Law Offices of Aldo A. Cipriano, 277 Main Street, Marlborough, MA 01752.



Angelo P. Catanzaro (BBO #078960)
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566
apc@catallen.com

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD)

Plaintiffs,)

v.)

LEO BARTOLINI, DAVID EAGLE,)

,PAUL DREPANOS)

As they are Member of the Southborough Zoning)

Board of Appeals, AND WILLIAM DEPIETRI,)

Defendants.)

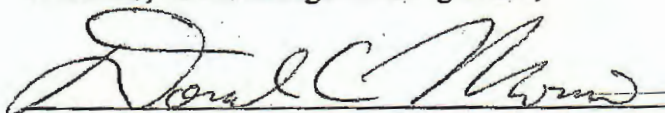
**PLAINTIFFS EMERGENCY MOTION TO EXTEND
TIME TO SERVE RESPONSE TO MOTION TO DISMISS**

Plaintiffs the Southborough Planning Board hereby request this Honorable Court to allow their Renewed Motion to Extend Time to File Brief of the Appellants, which motion seeks a thirty day (30) continuance from to Tuesday, November 15th, 2016. As grounds therefore, the Plaintiffs state as follows:

1. Due to Open Meeting Law requirements, the Planning Board has not been able to discuss this.

WHEREFORE, the Plaintiffs respectfully request that this Court Extend the Time to Serve Response to Appellants' Motion to Dismiss for thirty (30) days, namely from Sunday October 16, 2016 to Tuesday, November 15th, 2016.

Respectfully submitted,
Donald C. Morris,
Chairman, Southborough Planning Board,



Dated: October 14, 2016

EXHIBIT

B

CERTIFICATE OF SERVICE

I, Donald C. Morris, Planning Board Chair, hereby certify that on this 14th day of October 2016 I served the Plaintiffs' Emergency Motion to Extend Time to Serve Response to Appellants' Motion to Dismiss by mailing a copy thereof, via first class mail, postage prepaid, to the following counsel of record:

Angelo P. Catanzaro, Esquire
Catanzaro & Allen
100 Waverly Street
Ashland, MA 01721


Aldo A. Cipriano, Esquire,
Law offices of Aldo A. Cipriano,
277 Main Street,
Marlborough, MA 01752

Respectfully submitted,

Donald C. Morris,

Chairman, Southborough Planning Board,

A handwritten signature in cursive script, appearing to read "Donald C. Morris", is written over a horizontal line.

CLERK'S NOTICE		DOCKET NUMBER 1685CV01363	Trial Court of Massachusetts The Superior Court 
CASE NAME: Southborough Planning Board vs. Leo F. Bartolini In Official Capacity As a Member of the Southborough Zoning Board of Appeals et al			Dennis P. McManus, Clerk of Courts
TO: Angelo Patrick Catanzaro, Esq. Catanzaro and Allen 100 Waverly Street Ashland, MA 01721			COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608
<p>You are hereby notified that on 10/14/2016 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to Extend Time to Serve Response to Motion to Dismiss (#8.0): ALLOWED</p> <p>Notices mailed 10/17/16</p>			
DATE ISSUED 10/17/2016	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Richard T Tucker		SESSION PHONE# (508)831-2364

Angelo Catanzaro

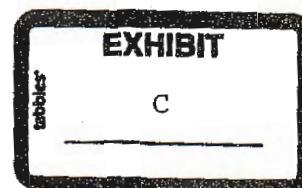
From: dmorris51@verizon.net
Sent: Thursday, November 03, 2016 10:27 PM
To: apc@catallen.com
Cc: jgrama@southboroughma.com
Subject: Stipulation of Dismissal
Attachments: Stipulation of Dismissal.pdf

Mr. Catanzaro

Attached is a copy of the document we reviewed earlier tonight. The Planning Board respectfully requests that you sign the original.

Thank you.

Don Morris



COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs,)
v.)
LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS as they are members of)
the Southborough Zoning Board of Appeals,)
and WILLIAM DEPIETRI,)
Defendants,)

STIPULATION OF DISMISSAL

WITH PREJUDICE

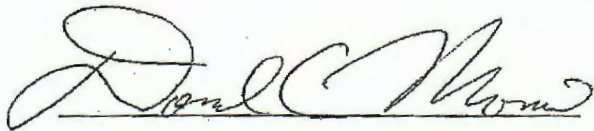
PURSUANT TO MASS. R. CIV. P. 41(a)(1)(ii)

Now come the parties to the instant action and stipulate that this action may be dismissed, with prejudice, pursuant to Mass. R. Civ. P. 41(a)(1)(ii).

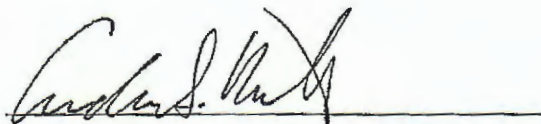
By entering into this stipulation of dismissal, the parties waive all rights of appeal. Each party shall be responsible for its respective costs and attorneys' fees.

PLAINTIFFS
SOUTHBOROUGH PLANNING BOARD
By

DEFENDANTS
SOUTHBOROUGH ZONING BOARD
By its attorney



Donald C. Morris



Andrew S. Mills

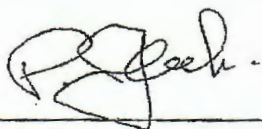
Aldo A. Cipriano (BBO #084300)

Town Counsel

277 Main Street,


Marlborough, MA 01752

508-485-7245



Philip A. Jenks

WILLIAM DEPIETRI,
By his attorney,



Jesse T. Stein

Angelo P. Catanzaro (BBO #078960)

Catanzaro and Allen

100 Waverly Street

Ashland, MA 01721

508-881-4566



Meme Luttrell

DATED: NOVEMBER 1, 2016

Angelo Catanzaro

From: Angelo Catanzaro
Sent: Tuesday, November 08, 2016 12:15 PM
To: 'dmorris51@verizon.net'
Cc: 'jgrama@southboroughma.com'; Aldo A. Cipriano; wad@cgpllc.net
Subject: RE: Stipulation of Dismissal; Worcester Superior Court C. A. No. 16-1363B

Chairman Morris: I have reviewed your request for dismissal with Bill Depietri. The unauthorized filing of a law suit absolutely void of any court jurisdiction is a serious matter. Ignorance is not an excuse. The action taken by the five members of the Planning Board, knowing that your endeavor was without the Board of Selectmen's approval and contrary to the advice of Town Counsel, sent a message of arrogance. Be that what it may, I have been authorized to sign the stipulation of dismissal with prejudice only upon full reimbursement from the individual members of the Board of the legal fees and costs incurred by my client in the necessary defense of this frivolous action. To date that amount is \$4,645.50. If the matter is not promptly resolved and we are compelled to litigate the motion to dismiss and the imposition of sanctions please be aware that legal fees and costs will increase significantly as I intend to immediately initiate discovery on issues including frivolity, bad faith, malice and representation as those matters are directly germane to the court's determination of sanctions under M. G. L. 40A § 17 and/or M. G. L. c. 231 §6F. Discovery will be in the form of depositions of each member and the Town Planner as well as formal document request to each member and the Town Planner. If the Court ultimately agrees that the imposition of sanctions is appropriate I can assure you the monetary sanctions will be substantial.

In order to end this matter as you request, payment in the above amount made payable to William A. Depietri must be received by this office no later than Monday November 14, 2016 @ 3:00 p.m. Upon clearance of the funds I will promptly sign the dismissal. If you do not confirm by this Friday that payment will in fact be made as set forth I will assume that we will simply litigate the issue. Thank you.

Angelo P. Catanzaro, Esq.
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721

tel: (508) 881-4566
fax: (508) 231-0975
cell: (508) 561-4266

From: dmorris51@verizon.net [<mailto:dmorris51@verizon.net>]
Sent: Thursday, November 03, 2016 10:27 PM
To: apc@catallen.com
Cc: jgrama@southboroughma.com
Subject: Stipulation of Dismissal

Mr. Catanzaro
Attached is a copy of the document we reviewed earlier tonight. The Planning Board respectfully requests that you sign the original.
Thank you.
Don Morris



ALDO A. CIPRIANO
ATTORNEY AND COUNSELLOR AT LAW

277 MAIN STREET
VICTORIA BUILDING
SECOND LEVEL • ATRIUM SUITE
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 485-7245
FAX (508) 485-2304

November 10, 2016

Angelo P. Catanzaro, Esq.
Catanzaro and Allen
Attorneys at Law
100 Waverly Street
Ashland, MA 01721

**Re: Southborough Planning Board v. Southborough Zoning Board of Appeals et al.,
Worcester Superior Court, Civil Action No. 16 1363B**

Dear Attorney Catanzaro,

Please be advised that last evening, in legal consultation with my client, the Zoning Board of Appeals, it was duly voted to execute the Stipulation of Dismissal on behalf of said Board, as submitted by Plaintiff pro se Southborough Planning Board members.

We request that you add this document together with any other Rule 9A documents that you may subsequently submit to the Court under your original Motion to Dismiss.

Thank you for your attention in this regard.

Very truly yours,


Aldo A. Cipriano, Esq.
Town Counsel

AAC/fc

Cc: Zoning Board of Appeals
Southborough Planning Board (Pro Se)



COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs,)
v.)
LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS as they are members of)
the Southborough Zoning Board of Appeals,)
and WILLIAM DEPIETRI,)
Defendants,)

STIPULATION OF DISMISSAL

WITH PREJUDICE

PURSUANT TO MASS. R. CIV. P. 41(a)(1)(ii)


Now come the parties to the instant action and stipulate that this action may be dismissed, with prejudice, pursuant to Mass. R. Civ. P. 41(a)(1)(ii).

By entering into this stipulation of dismissal, the parties waive all rights of appeal. Each party shall be responsible for its respective costs and attorneys' fees.

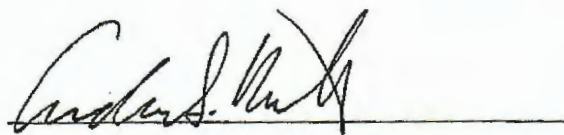
PLAINTIFFS

SOUTHBOROUGH PLANNING BOARD

By



Donald C. Morris



Andrew S. Mills

DEFENDANTS

SOUTHBOROUGH ZONING BOARD

By its attorney



Aldo A. Cipriano (BBO #084300)

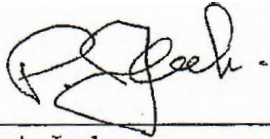
Town Counsel

277 Main Street,

Marlborough, MA 01752

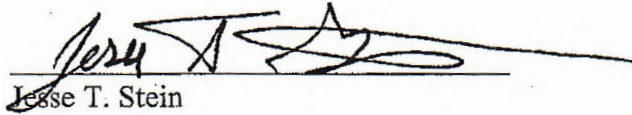
508-485-7245

11/10/16



Philip A. Jenks

WILLIAM DEPIETRI,
By his attorney,



Jesse T. Stein

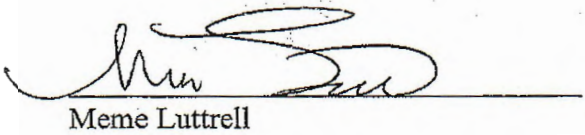
Angelo P. Catanzaro (BBO #078960)

Catanzaro and Allen

100 Waverly Street

Ashland, MA 01721

508-881-4566



Meme Luttrell

DATED: NOVEMBER 1, 2016

COMMONWEALTH OF MASSACHUSETTS

11/10

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,

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LEO F. BARTOLINI, DAVID EAGLE,

PAUL DREPANOS as they are members of

the Southborough Zoning Board of Appeals,

and WILLIAM DEPIETRI,

Defendants,

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NOV 10 2016

CLERK OF COURTS
WORCESTER COUNTY

NOTICE OF DISMISSAL

WITH PREJUDICE

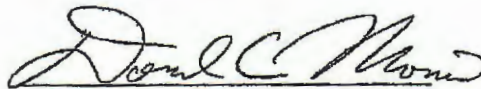
PURSUANT TO MASS. R. CIV. P. 41(a)(1)(ii)

Now come the plaintiffs to the instant action and give notice that this action may be dismissed, with prejudice, pursuant to Mass. R. Civ. P. 41(a)(1)(ii).

By entering into this notice of dismissal, the plaintiffs' waive all rights of appeal. Plaintiffs state that this notice of dismissal is being filed before service by the defendants of an answer or of a motion for summary judgement.

PLAINTIFFS

SOUTHBOROUGH PLANNING BOARD



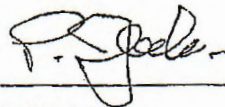
Donald C. Morris, Chair



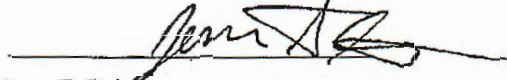
Andrew S. Mills

EXHIBIT

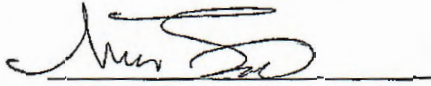
F



Philip A. Jenks



Jesse T. Stein



Meme Luttrell

Dated : November 1 2016

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

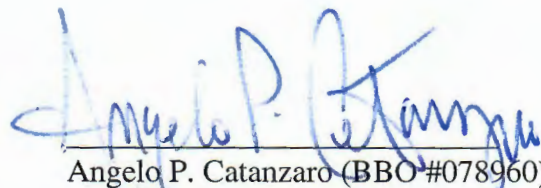
WORCESTER, SS.

CIVIL ACTION NO. 16-1363B

SOUTHBOROUGH PLANNING BOARD,)
Plaintiffs)
)
v.)
)
LEO F. BARTOLINI, DAVID EAGLE,)
PAUL DREPANOS, as they are Members)
of the Southborough Zoning Board)
of Appeals, AND WILLIAM DEPIETRI,)
Defendants)

CERTIFICATE OF SERVICE

I, Angelo P. Catanzaro, attorney for the Defendant, William Depietri, hereby certify that on this 28th day of November 2016, I served a copy of Motion and Memorandum for Dismissal and for Leave to Propound Discovery and for Sanctions by first class mail to 17 Common Street, Southborough, MA 01772 and the Defendant Southborough Zoning Board of Appeals by first class mail to Aldo A. Cipriano, Esq., Law Offices of Aldo A. Cipriano, 277 Main Street, Marlborough, MA 01752.



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