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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ORANGE

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TOWN OF WOODBURY and the TOWN OF
WOODBURY TOWN BOARD,

Plaintiffs,

-against-

Index No.
EF006036-2018

VILLAGE OF WOODBURY, VILLAGE OF WOODBURY
BOARD OF TRUSTEES and ORANGE COUNTY,

Defendants.

-----x

Examination Under Oath of Non Party Witness,
DAVID SUTZ, held on June 26th, 2019, at 10:15 a. m.,
at the offices of Catania, Mahon, Milligram & Rider,
PLLC, One Corwin Court, Newburgh, New York, pursuant
to Subpoena, before a Notary Public of the State of
New York.

KIM A. ZGRODEK
PROFESSIONAL COURT REPORTER
PO BOX 600, MARLBORO, NEW YORK 12542
845-642-8633

1 A P P E A R A N C E S:

2

3 CATANIA, MAHON, MILLIGRAM & RIDER, PLLC
4 Attorneys for Plaintiffs
5 One Corwin Court
6 PO Box 1479
7 Newburgh, New York 12551
8 (845)565-1100
9 By: RICHARD M. MAHON, II, ESQ. and
10 LIA E. FIERRO, ESQ.,
11 of Counsel.

12

13 BURKE, MIELE, GOLDEN & NAUGHTON, LLP
14 Attorneys for Defendants
15 Village of Woodbury and
16 Village of Woodbury Board
17 of Trustees.
18 40 Matthews Street
19 Suite 209
20 P. O. Box 216
21 Goshen, New York 10924
22 (845)294-4080
23 By: RICHARD B. GOLDEN, ESQ.,
24 of Counsel.

25

26 ORANGE COUNTY ATTORNEY'S OFFICE
27 Attorney for Defendant
28 Orange County.
29 255-275 Main Street
30 Goshen, New York 10924
31 (845)291-3150
32 (No appearance)

33

34 Also Present:

35 Joseph G. McKay, Esq.
36 Frank J. Palermo

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2

S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED by
and between the parties hereto, through their
respective counsel, that sealing, certification
and filing shall be waived;

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It is further stipulated and agreed that
all objections except as to the form of the
question and responsiveness of the answer shall
be reserved to the time of trial;

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It is further stipulated and agreed that the
transcript of testimony may be signed before any
notary public or other officer authorized to
administer oaths;

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It is further stipulated and agreed that the
examining party will furnish the examined party
with a copy of the transcript of testimony free
of charge.

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DAVID SUTZ,

having been first duly sworn by the notary public,
was examined and testified as follows:

BY MR. MAHON:

Q Would you state your name and address for the
record, please?

A David Sutz. P. O. Box 383, Central Valley, New
York, 10917.

Q Good morning, Mr. Sutz.

A Good morning.

Q Is it okay if I call you David?

A Yes, it is.

Q And you can call me Richard if you like.

A Okay.

Q I'm going to be asking you a series of questions
involving this lawsuit and I assume that you know
the nature of the lawsuit and you've seen the
pleadings involved. Is that fair to say?

A I know the basics of the lawsuit. I haven't seen
any pleadings.

Q Okay. That's fair. And if I ask you a question
you don't understand, let me know.

A Okay.

Q I'll be happy to rephrase it. If you want to take

1 a break at any time, that's fine with me, too, as
2 long as it's not in the middle of a pending
3 question. Okay?

4 A Sure.

5 Q Are you represented today by counsel?

6 A No.

7 Q Would you just give me a summary of your
8 employment background?

9 A From when?

10 Q Say from college to the present.

11 A I worked in retail for about two years, JC
12 Penney's. I went to a Burger King franchise
13 called Carrols Corporation. Changed there about
14 six years, worked my way through the corporation.
15 Went to a smaller corporation, also a Burger King
16 franchise. I was with them for a few years.
17 Changed again. Went through their corporation.
18 Went to another one. In 1989 I became a
19 franchisee myself and I'm presently a franchisee.

20 Q Of Burger King you said?

21 A Of Burger King, that's correct.

22 Q When you say you're a franchisee, you own a
23 corporation that is a franchisee?

24 A Yes.

1 Q Are you the owner of the stock in that
2 corporation?

3 A Part of it, yes.

4 Q One of the instructions I want to give you as well
5 is that please make sure that all of your answers
6 are verbal. That probably shouldn't be a problem
7 but there's this irresistible impulse for a
8 witness to shake their head or nod their head.
9 Okay?

10 A Got it.

11 Q Okay. What is your educational background?

12 A High school. Some college.

13 Q You're a resident of Orange County?

14 A I am.

15 Q And for how long?

16 A 50 years.

17 Q And did there come a time when you served on the
18 Town Board of the Town of Woodbury?

19 A Yes.

20 Q And when for the first time did that happen?

21 A I believe it was 2016.

22 Q What was your term of service?

23 A Two years.

24 Q You ran for election in 2018, correct?

1 A Yes.

2 Q For the same position, the town supervisor?

3 A Yes.

4 Q And are you going to be running again at the end
5 of this year?

6 A Yes.

7 Q Before coming here today did you look at any
8 documents in preparation for your testimony?

9 A No.

10 Q Before coming here today did you speak to any
11 attorneys in preparation for your testimony?

12 A I spoke to an attorney when I first received the
13 letter and the attorney actually sent a letter to
14 your company.

15 Q Okay. Who was that attorney?

16 A David -- and I'm trying to think of his last name
17 and I can't remember it, from Goshen. Looking for
18 articles or any information that I had that wasn't
19 listed.

20 MR. MCKAY: Dave Donovan?

21 Q David Donovan?

22 A Yes.

23 Q Okay. So Mr. Donovan is not your attorney in this
24 matter?

1 A Not at present.

2 Q Have you ever discussed this lawsuit or the claims
3 in this lawsuit with Mr. Rick Golden?

4 A No.

5 Q Have you ever discussed this lawsuit or your
6 testimony in this lawsuit with anybody at Mr.
7 Golden's law firm?

8 A No.

9 Q Other than Mr. Donovan have you ever discussed the
10 allegations in this lawsuit with any other
11 attorney?

12 A No.

13 Q Before coming here today have you ever discussed
14 the facts in this lawsuit or the allegations in
15 this lawsuit with anybody from the Village of
16 Woodbury?

17 A Probably.

18 Q Do you recall who?

19 A I couldn't tell you. Sometimes we have social
20 events, we're at the same event, conversation may
21 come up but I still don't know the specifics of
22 the lawsuit.

23 Q Okay. Do you know an individual named Michael
24 Queenan?

1 A I do.

2 Q And he's currently the mayor of the Village of
3 Woodbury, is that true?

4 A Correct.

5 Q Did you discuss this lawsuit with Mr. Queenan?

6 A Not in detail, no. Perhaps in passing, yes.

7 Q Was that on one occasion or more than one
8 occasion?

9 A I couldn't tell you. Probably more.

10 Q Do you recall what you -- in general, not verbatim
11 but in general what you talked about with Mr.
12 Queenan?

13 A That we felt the lawsuit was ridiculous and a
14 farce and a waste of taxpayers' dollars.

15 Q Were those your words or Mr. Queenan's words?

16 A Those were my words.

17 Q Did Mr. Queenan have any response or reaction to
18 that?

19 A I believe he agreed.

20 Q Are there any other conversations you had?

21 A Not much, no.

22 Q Have you ever spoken with Maria Hunter concerning
23 the allegations in this lawsuit?

24 A No.

1 Q Do you know who Maria Hunter is?

2 A I do.

3 Q And who is she?

4 A She was or is the planning board -- she's on the
5 planning board. I think she's chairperson.

6 Q Okay. Is she serving as chairperson right now?

7 A I couldn't tell you. I don't know.

8 Q Did you bring any papers with you today?

9 A No.

10 Q When you served during your term as the supervisor
11 for the Town of Woodbury did you have a secretary?

12 A I did.

13 Q Who was your secretary?

14 A Tracy Maggio. M-a-g-g-i-o.

15 Q And just to be clear you served from January 1st,
16 2016 through December 31st, 2017, is that correct?

17 A Yes.

18 Q And during that entire time was Tracy Maggio your
19 secretary?

20 A I don't know if she started right away but if not,
21 soon after I started, yes.

22 Q Okay. Did you have any other secretary or
23 assistant that worked for you as the supervisor?

24 A Well, there was staff in the supervisor's office.

1 Q Right. Aside from the staff somebody who worked
2 with you or assisted you?

3 A No.

4 Q Is Tracy Maggio still employed by the Town of
5 Woodbury?

6 A Yes.

7 Q Do you know what her title was when she worked
8 there at the same time that you worked there?

9 A There is a title to it and I can't remember. It
10 was something to do with executive secretary to
11 the supervisor or something to that effect.

12 Q When you worked as the town supervisor did you
13 have an assigned town e-mail address?

14 A I did.

15 Q And what was your e-mail address when you worked
16 with the town?

17 A I couldn't tell you now. It was in the town's
18 computer, though. The records are there.

19 Q And was it always the same e-mail address during
20 your entire tenure?

21 A Yes.

22 Q Did Tracy Maggio also have an e-mail address?

23 A I believe she did.

24 Q And as far as you know that did not change?

1 A Yeah. As far as I know it did not.

2 Q During your tenure as town supervisor where was
3 your office located?

4 A In the town hall.

5 Q Okay. Could you be more specific? The address
6 and the part of the building?

7 A It was in the rear right corner office.

8 Q And that was at what address?

9 A I couldn't tell you right now. Off the top of my
10 head I don't know.

11 Q Well, you know that the town offices have moved,
12 right?

13 A Yes.

14 Q So is it fair to say that it was in the old town
15 offices?

16 A Yes.

17 Q Throughout the course of the examination, David,
18 I'm going to be showing you documents and many of
19 these documents have already been marked. We've
20 had six or seven depositions already and so I'll
21 be referring to them by their marked
22 identification and showing them to you. Okay?

23 A Yup.

24 MR. MAHON: Here's a copy of all the

1 defense exhibits for you. (Indicating).

2 MR. GOLDEN: Thank you very much. I
3 appreciate it.

4 BY MR. MAHON:

5 Q David, I'm going to show you what's been marked
6 previously as Defendant's Exhibit B. I'll
7 describe it and then I'll show it to you. I'm
8 going to ask you to look at it and then I'm going
9 to refer you to a portion of it and then I'm going
10 to ask you questions about it. Okay?

11 A Yes.

12 Q This is Defendant's Exhibit B which purports to be
13 the minutes from the Town of Woodbury Town Board
14 meeting held on February 16th, 2017. Please take
15 a moment and look at that.

16 A Okay. Am I looking for something specific?

17 Q Well, just look it over generally and then I'm
18 going to refer your attention to a portion of it.
19 Take a look at page three and in the middle of
20 page three you'll see that there's an agenda item
21 that says Property Exchange With Village.

22 A Okay.

23 Q Do you see that?

24 A Yes, I do.

1 Q And that item continues down the middle of page
2 three to the top of page four. Do you see that?

3 A Yes.

4 Q Just to be clear, this is a meeting of the Town
5 Board on February 16th, 2017. These were the
6 minutes from that meeting and on the first page it
7 appears that you were present as the supervisor.
8 Is that fair to say?

9 A Yes.

10 Q And before coming here today you had the occasion
11 in your role as supervisor to review these
12 minutes, is that correct?

13 A Yes.

14 Q Take a look at page three and keep in mind these
15 are not verbatim minutes but these are paraphrased
16 minutes or shortened minutes, at least it appears
17 that way to me, is that fair to say?

18 A I would think so.

19 Q It says "Supervisor Sutz explained the village and
20 town have been working together to exchange
21 property by the village at Earl's Reservoir, two
22 sizeable lots, to the town and the highway
23 property owned by the town to the village."

24 Do you see that?

1 A Yes.

2 Q When did this working together as you explained,
3 when did that first begin?

4 A I'm going to say it was probably sometime middle
5 of my first term so middle of '16 so maybe May,
6 June, July is when the first conversations
7 probably began with the village, between the town
8 and the village.

9 Q And when those conversations started were they
10 conversations between you and Mayor Queenan?

11 A Initially they were between the mayor and myself
12 and then they were expanded to inform the town
13 board of conversations and then actually Joe was
14 involved in a couple of the conversations.

15 Q Okay. How did this matter first come about?
16 Whose idea was it to structure this land swap?

17 A That's a great question. I don't remember whose
18 idea it was. It came about during conversation.
19 The village was running the highway department.
20 It was transferred to the village. When that
21 occurred we found that in the agreements that the
22 town had with the village the town was responsible
23 for maintaining the highway department building
24 which then I was informed needed tens of thousands

1 of dollars worth of repairs.

2 Q The building itself?

3 A The building itself which based on the agreement
4 the town was responsible for. In addition the
5 mayor and the highway superintendent were thinking
6 about expanding the property, adding garages or
7 salt sheds and things, whatever, to the property
8 which they would then need to come before the town
9 and get permission to do. So after conversations
10 I said, well, when you took over the water and
11 sewer department you took all of the properties
12 and you took the responsibility for them. Why
13 would we want the responsibility and insure both
14 properties, meaning the town and village would
15 have to insure it, when that's a waste of taxpayer
16 dollars. It's duplicate services. Duplication of
17 services. So that's how the discussion began.
18 Who brought it up first, how we got to that point
19 I don't recall.

20 Q Okay. And those initial discussions were between
21 you and Mayor Queenan, is that fair to say?

22 A Initially, yes.

23 Q And that was in the middle of 2016 you said?

24 A I think, yes.

1 Q And did those discussions continue throughout the
2 summer and the fall?

3 A Yes.

4 Q And did anybody else take part in those
5 discussions besides you and Mayor Queenan?

6 A Joe was there for a couple of the conversations.
7 Then probably -- I know we went out to lunch at
8 least twice with the mayor, myself and I think the
9 town clerk was there, Desiree Potvin.

10 Q And just to be clear Desiree Potvin, it's
11 P-o-t-v-i-n, I believe, she is both the village
12 clerk and the town clerk, is that correct?

13 A That is correct.

14 Q And she was serving in those dual capacities
15 during the time that you were a supervisor?

16 A That's correct.

17 Q Okay. And here I'm looking on page three of
18 Defendant's Exhibit B you give a little background
19 and you explain what's happening and you were
20 basically apprizing the town board of what was
21 going on with this land swap and the discussions
22 about that, is that fair to say?

23 A Sure.

24 Q And did Councilman Palermo, Frank Palermo, did he

1 object to this land swap?

2 A Well, if you tell me where it is I can tell you --

3 Q Look in the middle of the paragraph. It says

4 Councilman Palermo stated that he does not

5 believe --

6 A Yes. I see it.

7 Q -- in giving away town property, and that

8 continues there?

9 A Yes.

10 Q You were aware that he was not in favor of that?

11 A Correct.

12 Q Now, take a look at the next page, the top of the

13 page, and the first paragraph there, the first

14 complete paragraph, it says "Motion was then

15 offered by Supervisor Sutz; seconded by Councilman

16 Hunter to authorize the supervisor to sign the

17 required paperwork to be filed with the county to

18 exchange property from the town to the village and

19 from the village to the town once prepared and

20 reviewed by Attorney McKay."

21 A Yes.

22 Q Do you see that?

23 A Yes.

24 Q So that was your own motion, right?

1 A Yes.

2 Q And in your own motion you included the reference
3 that it had to be prepared and reviewed by
4 Attorney McKay?

5 A Well, I don't know if I included that or if that
6 was a paraphrase that the clerk put in. That I
7 don't know.

8 Q So as you sit here today you're not sure whether
9 you said that?

10 A No. Because I probably wouldn't have said that.

11 Q Why is that?

12 A Well, once the board approved something unless
13 there's an issue with it, and I wouldn't see why
14 there would have been in the past, they've
15 transferred properties without the attorneys being
16 involved, there was just transfers to my
17 knowledge. I wouldn't see why we would need to do
18 that. So that could be a paraphrase. That's all
19 I'm saying.

20 Q Okay. When these minutes were approved did you
21 object to that language?

22 A I didn't even see it at the time.

23 Q So the minutes were then approved and I believe
24 nobody objected to the approval of these minutes,

1 is that correct?

2 A Correct.

3 Q And you didn't either?

4 A No. I did not.

5 Q Okay. Let me show you a different exhibit. You
6 have Defendant's Exhibit B. You can keep that
7 there. I'm going to show you what's been marked
8 as Defendant's Exhibit C. I'll describe it and
9 then I'll show it to you. These are the minutes
10 of town board meeting held on March 2nd, 2017.
11 Exhibit B was the February 16th, 2017 minutes.
12 Take a moment and look at that.

13 A Okay.

14 Q And I want to refer you, take a look at the bottom
15 of page one, and there's an agenda item that says
16 Old Business and it says Extra Item, prefab
17 building at Earl's Reservoir.

18 A Uh-huh. Yes.

19 Q What was that about? What was that discussion
20 about?

21 A We were contemplating putting a prefab building at
22 the reservoir property as a municipal building for
23 the parks and the community to use.

24 Q Take a look at the next page, again we're still

1 looking at Defendant's Exhibit C. The first
2 paragraph there states "Supervisor Sutz stated he
3 spoke with Attorney McKay this morning about the
4 land swap issue. Attorney McKay will investigate
5 the issue and see if he can locate a recent survey
6 done on the property." Do you see that?

7 A Yes.

8 Q Do you recall stating that you had a conversation
9 with Attorney McKay about the land swap issue?

10 A Do I recall? No. Do I see it? Yes.

11 Q And when these minutes were approved and adopted
12 you didn't have any objection to that language,
13 did you?

14 A No. I did not.

15 Q Do you know if Attorney McKay ever got back to you
16 concerning whether a recent survey existed for the
17 property?

18 A I don't recall.

19 Q And this town board meeting was on March 2nd,
20 2017. At that time do you know if there was an
21 existing survey for that property? When I say
22 that property, I mean the property involved in the
23 land swap.

24 A We found, and I don't know who found it, I don't

1 know if the town clerk found it or the village
2 clerk for that matter, the same person, we found
3 maps, we found surveys and we utilized those as
4 our basis.

5 Q So you don't know who retrieved or who came across
6 those maps?

7 A No, I don't.

8 Q And when were the maps located?

9 A I don't recall the dates.

10 Q Do you know if the maps were located before this
11 meeting in March of 2017?

12 A I couldn't tell you.

13 Q Do you recall if you notified Attorney McKay
14 either at or after the meeting that you already
15 found maps that were usable?

16 A I don't recall that.

17 Q Do you know who prepared those maps or surveys
18 that you found?

19 A Prepared the maps or surveys that were found? No.

20 Q Well, let me just make it clear. I read you a
21 portion of the minutes in Exhibit C that said that
22 Attorney McKay was going to look and see if there
23 was a survey in existence already.

24 A Okay.

1 Q What I'm asking you is did there come a time when
2 you learned that there already was a survey in
3 existence?

4 A I -- yes. Yes.

5 Q Was that after this meeting or before the meeting?

6 A That I don't recall.

7 Q And who was the survey prepared by?

8 A The survey was found or prepared? I couldn't tell
9 you who found it or prepared it. I don't know.

10 Q When you were the supervisor for Woodbury did
11 Woodbury have a town engineer?

12 A They had somebody who was assigned as the town
13 engineer, right, for projects, yes.

14 Q And who was that?

15 A Al Fusco.

16 Q And Mr. Fusco was a principal or if you know of
17 Fusco Engineering, is that correct?

18 A Yes.

19 Q And that company also does land surveying, are you
20 aware of that?

21 A No, I'm not.

22 Q Did you contact Mr. Fusco concerning a survey for
23 the land swap property?

24 A I don't believe I did, no.

1 Q Take a look -- we're looking at page two of
2 Defendant's Exhibit C and if you look down the
3 bottom of the carryover paragraph on page two
4 there's a portion there I'm going to read to you
5 and then I'm going to ask you a question about it.
6 It's the last three sentences. It reads
7 "Supervisor Sutz noted he invited the village
8 board member" should be members plural, "to attend
9 a meeting once he puts together a packet for both
10 boards with visuals of both properties.
11 Councilman Hunter noted the board began discussing
12 this issue in February 2016 with Attorney McKay
13 and does not want to see it delayed. Supervisor
14 Sutz stated he hopes to discuss it again at the
15 next meeting or in April." Do you see that?

16 A Yes.

17 Q The one particular sentence where it says
18 Supervisor Sutz noted he invited the village board
19 to attend a meeting once he puts together a packet
20 for both boards with visuals of both properties.
21 Do you see that?

22 A Yes.

23 Q Did you ever put together a packet for both boards
24 with visuals of the property?

- 1 A I did.
- 2 Q And what did that packet include?
- 3 A The maps of the properties and the properties that
4 were going to be exchanged.
- 5 Q So the packet included a survey of the properties?
- 6 A I don't know if it was a survey but it was
7 definitely the maps.
- 8 Q When you say the maps do you mean the tax maps?
- 9 A Yes. That's probably what we used.
- 10 Q And did you also include or provide copies of the
11 deeds that would be used?
- 12 A I believe we did.
- 13 Q And was that done at a regular meeting of the town
14 board?
- 15 A That I don't recall.
- 16 Q Do you know if it was done in an executive session
17 meeting of the town board?
- 18 A Couldn't tell you. I don't recall. I know that
19 everybody received it. I don't remember -- I know
20 we put hard copies in their boxes and I don't
21 remember whether they were e-mailed to them or not
22 as well.
- 23 Q Right. And that would include both the map of the
24 land and a copy of the deeds, is that correct?

1 A To the best of my recollection, yes.

2 Q But you don't recall how that was delivered to the
3 town board members?

4 A No. In addition I have a copy sitting on the desk
5 which was available to them all the time.

6 Q When you say the desk, what desk?

7 A There was an additional desk in the office, in my
8 office.

9 Q Right.

10 A So it was available any time they walked in to
11 view any of the projects that were going on.

12 Q Including copies of the deeds for the land swap?

13 A I believe the entire packet was there, yes.

14 Q Did you receive any feedback from any of the board
15 members or any comments or discussion?

16 A The reason we moved forward is because they agreed
17 except for Frank. Everybody agreed that the
18 concept made sense instead of making the taxpayers
19 pay for things twice.

20 Q Okay. I'm going to show you -- we'll come back to
21 this exhibit. I'm going to show you now what's
22 been marked as Plaintiff's Exhibit 7. Plaintiff's
23 Exhibit 7. And just for the record these are the
24 minutes of a town board meeting held on July 20th,

1 2017. Please take a look at that, if you would.

2 A Okay.

3 Q Let me just get my copy here.

4 MR. MAHON: Rick, do you have a copy?

5 MR. GOLDEN: I do. Thank you.

6 MR. MAHON: Okay.

7 BY MR. MAHON:

8 Q We're looking at Plaintiff's Exhibit 7. Do you
9 see on the first page there is an agenda item II,
10 it says Old Business?

11 A Yes.

12 Q And it says Exchange of Land with Village of
13 Woodbury, do you see that?

14 A Yes.

15 Q And here we have a further discussion of the land
16 swap and I want to refer your attention down to
17 the bottom of page one.

18 A Okay.

19 Q There's a portion I'm going to read and then I'm
20 going to ask you a question about it. It says
21 "Motion was then offered by Councilman Arone,
22 seconded by Councilman Hunter, to authorize the
23 supervisor to sign any and all documents relating
24 to a property exchange with the Village of

1 Woodbury as follows, upon final preparation,
2 review and authorization by counsel: From the
3 town to the village, section 219, block 5, lot 21
4 and a portion of the lot 20, (highway garage and
5 salt shed)." Do you see that?

6 A Yes, I do.

7 Q So is it your testimony that before this meeting
8 occurred --

9 MR. GOLDEN: Rich, if I could
10 interrupt?

11 MR. MAHON: Sure.

12 MR. GOLDEN: It does continue on the
13 next page which is the rest of the --

14 MR. MAHON: Okay. I'm sorry. And
15 just to be clear, thank you, by counsel.

16 BY MR. MAHON:

17 Q What I was reading to you on page one of
18 Plaintiff's Exhibit 7 does carry over and the
19 actual vote, the yeas and the nays, the yeses and
20 nos appear on the top of page two. Do you see
21 that?

22 A Yes, I do.

23 MR. GOLDEN: Off the record.

24 (Discussion off the record)

1 BY MR. MAHON:

2 Q And then, I'm sorry, it says from the village to
3 the town, section 204-1-30, it says (Earl's
4 Reservoir)?

5 A Yes.

6 Q Do you see that?

7 A Yes.

8 Q I want to focus on the first page. So I just want
9 to be clear, based on what you testified to did
10 all of the town board members have a packet before
11 they voted on this land swap on July 20th, 2017?

12 A They had the information.

13 Q Okay. And you told us before that the information
14 was given to them in the form of a packet, is that
15 correct?

16 A Early on, yes.

17 Q And that would include copies of the actual deeds
18 themselves?

19 A I don't recall. As I said, I think it did but I
20 don't recall. If not there was a packet in my
21 office as I said which included everything which
22 was available for them to view at any time.

23 Q Did you receive any comments or any discussion or
24 any input at all after you delivered those packets

1 from any board member?

2 A I had conversations with individual board members
3 who came in who had questions about what was going
4 on, why we were doing it and so forth and so on.
5 That's why the vote actually changed from we
6 couldn't pass it before to a 4-1.

7 Q And which board -- I'm talking about just to be
8 clear, David, this is after the board members had
9 the information in the packets that you provided.
10 At that time and before this vote on July 20th,
11 2017 did you have any discussions with any of the
12 board members about the land swap transaction?

13 A Your timing is confusing me. Say that again,
14 please?

15 Q Yeah. I had asked you before, we had looked at
16 the prior minutes, the prior minutes, and I
17 believe it was Defendant's Exhibit C and it
18 referred to you providing a packet of visuals of
19 the property for the board members and I think you
20 told me that you did do that either by delivering
21 it to them or making it available to them
22 including the deeds, is that fair to say?

23 A Yes.

24 Q And my question then is after that was done, after

1 the packets were delivered and before this vote
2 was taken on July 20th, 2017 did you have any
3 discussions with any board members about the land
4 swap transaction?

5 A Yes.

6 Q Who did you talk to?

7 A Mike Essig, Councilman Essig and Councilman Arone.

8 Q Okay.

9 A And I also spoke with councilman Palermo briefly.

10 Q Let's start with Councilman Palermo. What was the
11 sum and substance of what you said to him and what
12 he said to you?

13 A I tried to reexplain why we were doing this as the
14 town and the village and his stance was that he
15 didn't want to give away anything so that was it.

16 Q What about with Tim Arone?

17 A We had conversations about the insurance, having
18 the town and the village insure the same property.
19 He concurred that, you know, it was kind of
20 foolish to waste taxpayers' dollars that way. We
21 discussed the benefits of switching the
22 properties, flipping the properties, swapping the
23 properties, and that was pretty much it. The same
24 conversation with Councilman Essig at separate

1 times.

2 Q Sure. And aside from those three individuals is
3 there anybody else on the town board that you
4 recall having a conversation with about the land
5 swap or the documents during this time frame?

6 A I'm sure I spoke with Mr. Hunter as well but he
7 was already in favor of the project so there
8 wasn't a whole lot of conversation that had to go
9 on between him and I.

10 Q Now, we're looking at Plaintiff's Exhibit 7, down
11 at the bottom again, and at the end of the motion
12 and before identifying the section, block and lot
13 it says "Upon final preparation, review and
14 authorization by counsel." Do you see that?

15 A Yes.

16 Q At this time in July of 2017 who was counsel for
17 the Town of Woodbury?

18 A Joe McKay.

19 Q And did you receive final authorization by
20 Attorney McKay?

21 A Via phone. We had conversations over the phone
22 after this meeting and I told him that the board
23 voted 4-1 to make the land swap and he said okay.
24 Prepare the paperwork. We did. Actually I think

1 if I'm not mistaken I believe the clerk prepared
2 the paperwork initially because he's had her do
3 that in the past and then I went upstairs to -- at
4 some point to the assessor and had her draw up the
5 deeds and file it.

6 Q The assessor meaning Laura Breslin?

7 A Correct.

8 Q And so in your mind did you believe that the
9 attorney, Attorney McKay, had authorized?

10 A Absolutely.

11 Q Did you believe that he had reviewed the
12 documents?

13 A He was aware of the documents all along.

14 Q Did Attorney McKay actually see the deeds that
15 would be transferred?

16 A I don't know if he saw them or not but I do
17 believe they were sent to him.

18 Q Was that sent to him electronically or through
19 hard copy?

20 A Electronic I'm sure.

21 Q Was that sent to him by you?

22 A No. I think it was sent to him by the town clerk.

23 Q And that would be Desiree Potvin?

24 A I believe so, yes.

1 Q Okay. Do you see where it says at the end of that
2 motion, it says a portion of lot 20 and then it
3 says (highway garage and salt shed). Do you see
4 that?

5 A A portion --

6 Q It says at the very bottom of page one of
7 Plaintiff's Exhibit 7 --

8 A Yes.

9 Q -- it says section 29, block 5, lot 21 and a
10 portion of lot 20.

11 A Okay.

12 Q Do you see that?

13 A Yes.

14 Q How was that portion of lot 20 determined?

15 A You're asking me now, I couldn't tell you.

16 Q Okay. Was that determination made by you?

17 A You're asking me now, I couldn't tell you. I
18 don't know.

19 Q Okay. So you don't know who, if anyone, else made
20 that determination?

21 A I don't know how that language got in there. I
22 don't know what it represents at the moment.
23 Without seeing the maps I couldn't tell you.

24 Q I'm going to show you a different exhibit now.

1 You can keep all those there. I'm going to show
2 you what's been marked as Plaintiff's Exhibit 1
3 which purports to be a survey of the property as
4 we've been talking about and the survey is dated
5 March 8th, 2017 and it's stamped under the name of
6 Steven J. Green, PLS. Please take a look at that.

7 A Okay.

8 Q First, do you recognize this document?

9 A Yes.

10 Q What do you recognize it to be?

11 A I believe it's the senior center and the town hall
12 and I'm not sure what that other square is but --
13 and part of the highway garage, I think.

14 Q Does this map represent the contemplated land
15 exchange that we've been talking about?

16 A Part of it.

17 Q And which part of it does it represent?

18 A This is what the town had owned.

19 Q Right. So when I showed you before the resolution
20 which is Plaintiff's Exhibit 7, I think you have
21 that right over there, if you look down at the
22 bottom of Plaintiff's Exhibit 7 it references on
23 the first page --

24 A Yes.

1 Q -- section 29, block 5, lot 21 and a portion of
2 lot 20. Do you see that?

3 A Section 29?

4 Q Section 219. I'm sorry?

5 A 219.

6 Q Block 5, lot 21 and a portion of lot 20. Do you
7 see that?

8 A You'll have to point that out because I don't.
9 The print is too small even with my glasses.

10 Q Okay. Well, let me ask the question this way.
11 You're right. The print is very small. In the
12 motion there's a reference to the highway garage
13 and the salt shed. Do you see where that is
14 depicted or shown on the map on Plaintiff's
15 Exhibit 1?

16 A I see the salt barn, yes.

17 Q And you see above that it says garage? There's a
18 structure shaded and it says garage in small
19 print?

20 A I'm sorry. I don't see it.

21 Q Let me just point it out to you. Do you see this
22 structure right here and there's the word garage
23 right there? (Indicating).

24 A Oh, over here. I was looking at this one. Yes.

1 MR. GOLDEN: Which exhibit is this?

2 MR. MAHON: This is Plaintiff's

3 Exhibit 1.

4 MR. GOLDEN: Thanks.

5 A Yes.

6 BY MR. MAHON:

7 Q And just to be clear for the record on Plaintiff's
8 Exhibit 7 where the reference in the minutes
9 refers to the highway garage and the salt shed,
10 those are the two structures shown on this
11 Plaintiff's Exhibit 1 map, is that fair to say?

12 A As well as the senior center and library, yes.

13 Q Okay. And the salt barn or the salt shed and the
14 garage were on lot 20, is that fair to say?
15 That's the lot that's referenced in Plaintiff's
16 Exhibit 7 in that motion that was made.

17 A On this map I can't tell but if you say so I'll
18 trust you.

19 Q Well, they were originally on lot 20. I don't
20 think that's disputed.

21 A Okay.

22 Q My question is this, if you look at the map it
23 shows the garage, it shows beneath that the salt
24 shed and we're looking at Plaintiff's Exhibit 1

1 and then as you're looking at the map to the left
2 of these structures it says edge of driveway and
3 it shows where the driveway ends. Do you see
4 that?

5 A Edge of driveway. On the left side? I'm sorry.
6 I don't see that.

7 Q Okay. I'll point it out to you again. My glasses
8 help a lot. Right here it says edge of driveway.
9 (Indicating).

10 A Okay. So that's in the center of the map.

11 Q Right. Do you see that?

12 A Yes.

13 Q But it's to the left of where the garage and the
14 salt shed are located on the map?

15 A Well, it's above them both.

16 Q Okay. But you see where I'm indicating?

17 A Yes.

18 Q And do you see the actual property line as you're
19 looking at the map it's further to the left of
20 these structures and if you look at the garage
21 there's actually -- there's a dimension from the
22 very corner of the garage to the property line,
23 it's shown has 134.5 feet, do you see that?

24 A Yes.

1 Q And I appreciate your following me on that. Let
2 me ask this question. If the garage and the salt
3 shed were being conveyed as a portion of lot 20
4 who determined how much extra land would also be
5 conveyed around the garage and the salt shed?

6 A I'm sorry. I don't follow the question.

7 Q Okay. What I'm trying to get at is this, is that
8 I showed you Plaintiff's Exhibit 7 --

9 A Right.

10 Q -- and I showed you a motion that was made?

11 A Yes.

12 Q And part of the motion was that a portion of lot
13 20, and lot 20 has that highway garage and that
14 salt shed on it, would be conveyed, okay?

15 A Yes.

16 Q So my question is aside from those -- the
17 footprint of those specific structures who
18 determined the extra land that would also be
19 conveyed?

20 A I think it was done based upon the maps that we
21 had at the time and not a survey.

22 Q Okay. But was that determination made by you?

23 A It was agreed upon by me.

24 Q Okay.

1 A I can't tell you who made the determination but,
2 again, I think we made it based upon the maps we
3 had and not a survey at the time.

4 Q Do you know if the board also agreed to those
5 specific survey areas to be conveyed?

6 A Whatever information I had at the time was shared
7 with all board and councilman members so they were
8 aware of it. What they did with it, I don't know.

9 Q Now, let's go back. We've been looking at this
10 map which is Plaintiff's Exhibit 1. If you look
11 at the right-hand side of the map the name Steven
12 J. Green, PLS, Professional Land Surveyor appears?

13 A Yes.

14 Q Do you see that?

15 A Yes, I do.

16 Q Stamped by him and it's also dated March 8th,
17 2017?

18 A Okay.

19 Q Did you contact Steven Green to request that he
20 prepare this survey?

21 A I did.

22 Q When did you first contact him about a survey for
23 this property?

24 A Obviously prior to this so I'm going to say a

1 couple months prior.

2 Q So did you contact him in 2016 or 2017?

3 A I don't recall.

4 Q You have over there in front of you I think
5 Defendant's Exhibit B?

6 A Yes.

7 Q Could you take a look at that? We were looking at
8 this exhibit before. Let me take a look here and
9 make sure we've got the right exhibit. I'm sorry
10 it's Exhibit C. Take a look at Exhibit C.

11 Defendant's Exhibit C. Take a look at the second
12 page. I'm going to read a portion and then I'm
13 going to ask you a question. At the top of the
14 page, the first full sentence it says "Attorney
15 McKay will investigate the issue and see if he can
16 locate a recent survey done. If not, one will be
17 done to determine who owns what which will cost
18 about 10,000 to \$15,000." Do you see that?

19 A Yes, I do.

20 Q And this Exhibit C is dated March 2nd, 2017. Now,
21 the map I just showed you with Steven Green is
22 dated six days later on March 8th, 2017. Do you
23 see that?

24 A I do.

1 Q So my question is at this meeting on March 2nd,
2 2017 when there was discussion about trying to
3 find a survey and investigating whether one
4 existed --

5 A Yes.

6 Q -- had you already contacted Steven Green?

7 A I don't recall. I could have. It's very
8 possible. If we needed a survey and we already
9 had a guesstimate of 10,000 to \$15,000 which I
10 thought was a bit much I might have reached out to
11 several people and asked them what a survey would
12 have cost so it's possible.

13 Q Well, let me ask you this. Isn't it fair to say
14 that before this meeting on March 2nd, 2017 you
15 had already been in touch with Steven Green?

16 A I would say yeah.

17 Q Yet during the course of the meeting you never
18 told or you never let the board members know that
19 you had already been in touch with Steven Green?

20 A As well as possibly others to get prices, sure.

21 Q Okay.

22 A Why would I let them know until I have a
23 confirmation of what the cost would be?

24 Q Well, let me ask you this. Was Steven Green

1 retained by the Town of Woodbury?

2 A He was eventually paid by the Town of Woodbury.

3 We hired him, yes.

4 Q Did you hire him in March of 2017 or before then?

5 A Probably 2017.

6 Q I mean he didn't prepare this survey in six days,
7 did he?

8 A Probably not. But that might have been when he
9 started or completed it. I don't know. I have to
10 look at that.

11 Q My question is this if you can answer it. Isn't
12 it true that you had already retained Steven Green
13 before the town board meeting on March 2nd, 2017?

14 A It is very possible.

15 Q And at that meeting you did not disclose that you
16 had already retained him, is that correct?

17 A Well, no. That is not correct because I wouldn't
18 have hired him or paid him unless I had the
19 board's approval to move forward on it so, no,
20 that would not be correct and there's a date on
21 here that I don't understand that says January
22 23rd, '17.

23 Q Where are you looking?

24 A On that same Plaintiff's Exhibit 1 in the square

1 where it says Subdivision for Town of Woodbury,
2 just above that, what does that date represent?

3 Q That is usually a prior date when there may have
4 been a prior draft of the map or the actual
5 project had started. That's usually what that
6 means.

7 A And what is the wording next to it because I can't
8 read that?

9 MR. MCKAY: I can get the magnifying
10 glass if you need it.

11 MR. GOLDEN: I have it electronically
12 so you can enlarge it. This is which one?

13 MR. MAHON: In the signature block,
14 Plaintiff's Exhibit 1, at the very top
15 there's a date January 23rd, 2017, then
16 there's some words next to it. It looks
17 like revised lots. The second word is
18 definitely lots.

19 MR. GOLDEN: You can enlarge or make
20 it smaller on the pad.

21 MR. MAHON: Okay.

22 MR. GOLDEN: Do it on the pad and it
23 works. The middle of the --

24 MR. MAHON: You can do it.

1 MR. GOLDEN: This one right down
2 here. (Indicating).

3 MR. MAHON: We can come back to that.
4 If I can't read it, I don't know if he can
5 read it either.

6 A Well, my next question on this would be it looks
7 like there's a date at the bottom also of 12-4-16
8 but I can't make out what that's referencing
9 either in that same square.

10 BY MR. MAHON:

11 Q At the very bottom there, that was my next
12 question to you, there's a date indicated in
13 December of 2016. My question is could you have
14 retained Mr. Green as early as December of 2016?

15 A I wouldn't think so, no.

16 Q Okay. Let me ask this question. Who is Steven
17 Green?

18 A I don't -- he's a person.

19 Q Well, is he somebody that you knew before taking
20 office?

21 A No.

22 Q How did you come to work with Steven Green?

23 A County tax maps had an issue with the Town of
24 Woodbury in conjunction with other towns that

1 inadvertently redrew maps and the county accepted
2 the maps as drawn. That's how I met him, through
3 meetings with municipalities trying to correct it.
4 He was working there at the time.

5 Q For the County of Orange?

6 A Still does, I believe.

7 Q I'm going to show you what's been marked as
8 Plaintiff's Exhibit 3 which is a copy of a deed.
9 The deed is dated August 18th, 2017. Please take
10 a moment and look at that.

11 A Okay.

12 Q Do you recognize that document?

13 A Yes.

14 Q And what do you recognize it to be?

15 A The deeds being recorded in the county.

16 Q Let's just take it step by step. On page three of
17 Plaintiff's Exhibit 3 -- I'm sorry, on page two
18 there's a deed dated August 18th, 2017 from the
19 Town of Woodbury to the Village of Woodbury and
20 there's the printed name David Sutz and then
21 there's a signed name. Is that your signature?

22 A Yes.

23 Q And you signed this document?

24 A Yes.

1 Q And you see to the left of the deed in the margin
2 there is the reference 219-5-20. Do you see that?

3 A Yes.

4 Q So this was that lot 20 that had the salt shed and
5 the garage on it, right?

6 A Correct.

7 Q And if you turn to the next page there's a
8 schedule A and this schedule A represents the
9 metes and bounds description which would include
10 the salt shed and the garage, right?

11 A It looks that way, yes.

12 Q Do you know who determined these courses and
13 distances?

14 A I would assume that it was done by Steven Green.

15 Q Well, do you know who gave him direction as to how
16 much land to include?

17 A No. I don't recall that.

18 Q Is it something you did?

19 A Probably.

20 Q Take a look at the fourth page. Down at the
21 bottom of the land description it says containing
22 6.787 acres of land more or less as surveyed by
23 Steven J. Green, PLS, December 2016.

24 A Okay.

1 Q Seeing that does that refresh your recollection as
2 to when maybe he was retained to do this work?

3 A It does not but if that's what it says that's
4 probably accurate.

5 Q So is it fair to say that he was retained during
6 2016 and not 2017?

7 A Probably.

8 Q And we were looking before at minutes, I believe
9 it's Defendant's Exhibit C, when there was
10 discussion about whether or not there was a survey
11 for the property?

12 A Okay.

13 Q So my question is this, at the time of that
14 meeting Defendant's Exhibit C which is in March of
15 2017 you had already retained Steven Green for
16 this purpose?

17 A It appears that way. It does.

18 Q Why didn't you tell anybody?

19 A Good question. I don't have an answer for that.

20 Q Is there a reason why you didn't use Fusco
21 Engineering for that work?

22 A 10,000 to \$15,000 was the cost. That's what he
23 gave me as his estimate.

24 Q Okay. So you did talk to him about that?

1 A He spoke to me about it.

2 Q Let me ask you a different question now.

3 Previously on Monday we had the deposition of

4 Maria Hunter and she testified to the effect that

5 she had a personal meeting with you about this lot

6 line change. Do you recall that meeting?

7 A Not at all.

8 Q Did you ever have a personal meeting with Maria

9 Hunter about this land exchange?

10 A No. Not that I recall.

11 Q The deed that we were just looking at, was this

12 deed -- was a copy of the deed provided to Mayor

13 Queenan before it was signed?

14 A Yes. Yeah. I believe he had to sign it as well.

15 Q And did you provide a copy to any other attorney

16 before it was signed, the actual deed was signed?

17 A Not that I'm aware of.

18 Q Did the village have an attorney at that time?

19 A I'm sure they did.

20 Q Do you know who their attorney was?

21 A I couldn't tell you, no.

22 Q Did you provide a copy of this deed or the other

23 deeds for this land swap to Richard Golden?

24 A Did I? No.

1 Q I'm going to show you what's been marked as
2 Plaintiff's Exhibit 5. Please take a moment and
3 look at that and tell me if you recognize it.

4 A It appears to be another deed.

5 Q And just to be clear on the second page of
6 Plaintiff's Exhibit 5 there's a deed dated August
7 18th, 2017 and there's the printed name of David
8 Sutz and there's a signature. Is that your
9 signature?

10 A Yes, it is.

11 Q And you signed this document, its original, is
12 that correct?

13 A I believe that is.

14 Q I notice that the notary for this deed and the
15 prior deed I showed you was taken by Desiree
16 Potvin. Do you see that?

17 A Yes.

18 Q Do you recall where you were when you signed the
19 deed?

20 A I would say town hall in her office.

21 Q Did you have any discussion with Ms. Potvin about
22 what the deed was for?

23 A I'm sure we did.

24 Q Did she question you on what the deed was for?

1 A Did she question me about it? No. Was it
2 discussed? I'm sure it was.

3 Q And what generally was your discussion about the
4 deed?

5 A Specifics I couldn't tell you. I know we had
6 conversation, probably an explanation of what it
7 was and that this was involving the swap of land
8 between the village and the town.

9 Q Let me ask you a general question, David. You
10 understand what a subdivision of land is I assume?

11 A Yes.

12 Q You understand when you want to subdivide land you
13 would have to go to the local planning board and
14 you have to submit a subdivision map and you have
15 to get approval from the planning board. Is that
16 fair enough?

17 MR. GOLDEN: Objection to the form of
18 the question.

19 Q Do you understand my question?

20 A I understand the question if you're an individual,
21 yes.

22 Q Right.

23 A My understanding as a municipality you don't need
24 to do any of that and that experience I had with

1 the Village of KJ when they never had to come
2 before the town or the village when they wanted to
3 do something that was relevant to their community
4 as a municipality.

5 Q Okay. So let me ask the question this way. At
6 the time these deeds were signed and then later
7 recorded --

8 A Yes.

9 Q -- in August of 2017 did you have the
10 understanding that municipal land that was
11 subdivided did not have to go before the local
12 planning board?

13 A That is correct.

14 Q And did somebody give you that opinion?

15 A No. That was my opinion based upon experience.

16 Q Based upon your own personal experience?

17 A Based upon the experience on the village, prior to
18 being on the town board I was on the village board
19 as well and then we've dealt with other
20 municipalities coming into our community requiring
21 things for their municipalities and they are not
22 required by law as we were told back then to go
23 before planning boards.

24 Q Do you know what law that is?

1 A No. I don't know the specifics of it but I
2 remember it being discussed in detail many a time.

3 Q So for this transaction before you completed the
4 transaction and delivered the deeds did you talk
5 to an attorney about that issue, whether or not
6 there had to be subdivision approval?

7 A No. I didn't think it was necessary.

8 Q And you didn't talk to any attorney whether there
9 had to be a lot line approval either?

10 A No.

11 Q Now, I just want to be clear on one thing, David.

12 A Go ahead.

13 Q Maria Hunter testified in detail that she had a
14 personal meeting with you and that you presented
15 this lot line change for her to sign off on as the
16 chairman of the village planning board and she
17 said she declined to do that. Are you saying that
18 you've never had a meeting with her about this?

19 A I'm saying I never had a meeting with her about
20 this.

21 Q So that testimony of hers is mistaken?

22 A I agree.

23 MR. MAHON: Okay. Let's take a short
24 break and then we'll finish up. We'll

1 take like a five minute break.

2 THE WITNESS: Sure.

3 (Discussion off the record.)

4 MR. MAHON: I wonder if you could
5 mark this as Plaintiff's Exhibit 8.

6 (Plaintiff's Exhibit 8
7 marked for identification.)

8 BY MR. MAHON:

9 Q David, we're back on the record again. I'm going
10 to show you what's been marked as Plaintiff's
11 Exhibit 8 and between counsel we've stipulated
12 that this is a blown up version of Plaintiff's
13 Exhibit 1 which I showed you before. Do you see
14 that?

15 A Yes.

16 Q It's certainly a lot easier to read.

17 A Absolutely.

18 Q Now, do you see on Plaintiff's Exhibit 8 there is
19 the area called the garage?

20 A Yes.

21 Q And the salt barn?

22 A Yes.

23 Q And what I was referencing before is that there is
24 a line, a measurement on the very edge of the

1 garage --

2 A Yes.

3 Q -- and going to the property boundary line it
4 shows 134.5 feet. Do you see that?

5 A Yes.

6 Q And there's a line in the middle of this
7 Plaintiff's Exhibit 8 that says deleted, deleted,
8 deleted. Do you see that?

9 A Yes.

10 Q And that was the boundary line that was being
11 removed, do you see that?

12 A Yes.

13 Q And the question I had before, and maybe it's
14 clearer now because it wasn't clear before because
15 we couldn't read the map, on Plaintiff's Exhibit 8
16 all of the property that's surrounding the salt
17 barn and the garage that was part of this land
18 swap, how was that extra space determined? Who
19 approved it?

20 A I'm assuming it was me. I don't recall.

21 Q Okay.

22 A So I'm going to assume it was me.

23 MR. MAHON: If you could mark this as
24 Plaintiff's Exhibit 9?

1 (Plaintiff's Exhibit 9
2 marked for identification.)

3 BY MR. MAHON:

4 Q David, I'm going to show you what's been marked as
5 Plaintiff's Exhibit 9 which purports to be an
6 invoice from Steven J. Green dated September 19th,
7 2016 to the Town of Woodbury. Do you see that?

8 A Yes.

9 Q Now, we had talked before about when Steven Green
10 came into the picture so to speak. Looking at
11 that date, September 19th, 2016, does that refresh
12 your recollection as to when he began to render
13 services in this land swap matter?

14 A Yes.

15 Q Was it in the fall of 2016?

16 A Could have been even before then.

17 Q Do you know if there was a town board resolution
18 authorizing the retention of Mr. Green for this
19 survey?

20 A I don't recall.

21 Q Did you ever discuss with any of the town board
22 members after September of 2016 the fact that
23 Steven Green had been retained as the surveyor to
24 survey the land exchange area?

1 A In conversation I'm sure I have.

2 Q Do you remember specifically discussing it with
3 any particular board member?

4 A No.

5 Q And what I said before, I walked you through the
6 language in Defendant's Exhibit C when there was a
7 discussion about whether there was a survey,
8 whether the property had been surveyed and
9 Attorney McKay was going to be searching for
10 surveys. During that meeting, and I believe that
11 meeting was in March of 2017, Mr. Green had
12 already been retained by the town?

13 A I believe he was. However, now that I'm looking
14 at this Mr. Green was surveyed -- or hired to
15 survey the town hall because we had parking issues
16 and we were trying to determine how much of that
17 back property behind town hall was the town's or
18 the funeral home next door or the other property
19 to the left side. I don't know based upon just
20 this invoice whether this was the initial contact
21 of that or not.

22 Q Sure.

23 A So I just wanted to clarify that there were other
24 things that he was doing. It wasn't just this

1 project. This project probably came out of the
2 other things.

3 Q Okay. But looking at Plaintiff's Exhibit 8 in the
4 legend on the right-hand side at the very bottom
5 there is a date indicated of December of 2016. Do
6 you see that?

7 A That's correct. Yes.

8 Q So we knew that at least before December of 2016
9 he was working on the survey, is that fair to say?

10 A Oh, yes.

11 MR. MAHON: If you could mark this as
12 Plaintiff's Exhibit 10?

13 (Defendant's Exhibit 10
14 marked for identification.)

15 BY MR. MAHON:

16 Q I'm going to show you what's been marked as
17 Plaintiff's Exhibit 10. Do you see that? Take a
18 moment and look at that.

19 A Okay.

20 Q Do you recognize what is shown there?

21 A Not really, no.

22 Q Just for the record Plaintiff's Exhibit 10 is a
23 part of an e-mail that was retrieved from the town
24 records and there's an e-mail shown from Laura

1 Breslin dated July 25th, 2017 to the town
2 supervisor, the subject matter says Deed Revised
3 7-25-2017. Do you see that?

4 A Yes.

5 Q And it says, David, attached is the revised
6 description from Steve. Laura. Do you see that?

7 A Yes.

8 Q And this Laura is Laura Breslin, the assessor for
9 the town?

10 A Yes.

11 Q And by looking at this do you know what Laura
12 Breslin was sending you?

13 A At this point, no.

14 Q Attached to Plaintiff's Exhibit 10 if you go to
15 the sixth page it begins with Schedule A. Do you
16 see that?

17 A Yes.

18 Q And do you recognize what that Schedule A
19 description is?

20 A It appears to be the property in discussion.

21 Q And is it fair to say that Mr. Green or Steve
22 Green had prepared the property description?

23 A I don't know the answer to that.

24 Q Well, did you ever ask Steven Green to prepare a

1 property description for the deed?

2 A I don't recall.

3 Q Now, take a look at the third to last page of that
4 Plaintiff's Exhibit 10 and at the top of the page
5 it says 219-5-8. Do you see that?

6 A Yes.

7 Q Was lot 8 part of the properties that were being
8 transferred by the town to the village?

9 MR. GOLDEN: Objection to the form.

10 A Excuse me?

11 Q He's just making an objection.

12 MR. GOLDEN: An objection on the
13 record but if you understand the question
14 you can answer the question.

15 A I don't so --

16 Q Well, let's go back. We had looked at Plaintiff's
17 Exhibit 7. Let me see if I have that.

18 A Well, what is lot 8? Can you tell me?

19 Q Lot 8 is the lot with the pump house on it.

20 A Okay. Yes.

21 Q So that's part of the property that was conveyed,
22 is that fair to say?

23 A Yes.

24 Q Was that property discussed at the meetings as

1 part of the property that would be conveyed to the
2 town?

3 A Yes. And it was required -- I was under the
4 impression it was required by law that when they
5 took water and sewer, moved it over to the village
6 that all the properties that were under the
7 control of the water and sewer department should
8 have been transferred at that point in time. This
9 property was missed.

10 Q Okay. Let me just find my exhibit here.

11 A And in conversation with the board at the time
12 they seemed to have no issue with that.

13 Q I'm going to show you what's been marked
14 previously as Plaintiff's Exhibit 7. Down the
15 bottom there?

16 A Uh-huh.

17 Q Do you see in Plaintiff's Exhibit 7 down at the
18 bottom of page one there's language of a motion
19 that was made?

20 A Yes.

21 Q Do you see that? And I pointed out before the
22 reference to the exact language of the property
23 and the last sentence says from the town to the
24 village section 219, block 5, lot 21 and a portion

1 of lot 20.

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q And then it carries over on the next page of
6 Plaintiff's Exhibit 7 and it says from the village
7 to the town, section 204-1-30 and it says (Earl's
8 Reservoir). Do you see that?

9 A Yes.

10 Q Is there any reference there in that resolution or
11 that motion to lot 8?

12 A No. There was not. It was not needed to be at
13 the time. This property was supposed to have been
14 transferred when the village took the water and
15 sewer department and it was missed so it was just
16 correcting what was required by law.

17 Q Okay. Well, do you know if there are any minutes
18 of any town board meetings where the transfer of
19 lot 8 was voted upon and authorized by the town
20 board?

21 A Not while I was in office. Prior to it should
22 have been.

23 Q And why do you say that?

24 A Because it was required by law that all the

1 properties that the sewer and water department had
2 when the village took responsibility for them
3 should have been transferred at that time. This
4 property was missed. And this was agreed upon
5 verbally between myself, the mayor and my board.
6 I spoke to them about this specifically and they
7 all had no issue with it and they all agreed
8 because they were the ones who initially
9 transferred that property and they missed it.

10 Q Did you ever have a search, meaning did you or
11 anybody acting at your direction conduct a search
12 to see who was the owner of lot 8?

13 A No. I did not.

14 Q Isn't it true that lot 8 was owned by the town?

15 A No. I don't know that. I understood it to be
16 owned by the water and sewer department which at
17 one time was under the control of the town, yes.

18 Q Right.

19 A Other than that I don't know.

20 Q And you already told me that while you were in
21 office there was no resolution that you're aware
22 of or no motion authorizing the transfer of lot 8.
23 You said that it happened previously?

24 A It should have happened previously, yes.

1 Q My question is different. Do you have any
2 personal knowledge from actually seeing it or
3 reading it any other prior motion or resolution
4 authorizing the transfer of lot 8?

5 A No.

6 Q Let me ask you a different question now, David. I
7 had questioned you in detail about the packet that
8 was promised at a prior meeting and you said the
9 packet was delivered or made available to the
10 board members, is that correct?

11 A Yes.

12 Q Were the deeds that were actually recorded ever
13 sent to Joseph McKay for his review and approval
14 before they were recorded?

15 A I don't know.

16 Q The property description that was attached to the
17 deed, were those property descriptions ever
18 provided to Attorney McKay for his review and
19 approval before the deeds were recorded?

20 A Again, at this point I don't remember. I don't
21 recall.

22 Q I think you told me before that you thought that
23 the clerk had prepared the deeds?

24 A That is what I do remember happening, yes.

1 Q And the clerk being Desiree Potvin?

2 A Correct.

3 Q Is there anybody else that you know of who was
4 involved in the preparation of the deeds besides
5 Desiree Potvin?

6 A Laura Breslin.

7 Q And what role did she play, if any?

8 A I asked her to record the deeds and I don't recall
9 if she did anything more or less with that. If it
10 was something that was technical that needed to be
11 corrected, then I would have left it up to her to
12 do that.

13 Q David, you have in front of you Plaintiff's
14 Exhibit 10.

15 A Yes.

16 Q If you could just turn over to the second page of
17 that exhibit. The second page of the exhibit is a
18 copy of a form. It's generally filed or recorded
19 whenever you file a deed. Do you see that?

20 A Yes, I do.

21 Q Do you know who prepared that form?

22 A I would think it would have been Laura.

23 Q But it was not you, is that correct?

24 A That is correct.

1 Q And did Laura prepare that form at your direction?

2 A Yes.

3 Q So the deeds were also prepared by Desiree Potvin
4 at your direction, is that correct?

5 A I don't know if she prepared the deeds or if Laura
6 prepared the deeds or it could even have been
7 Steve at the time so one of the three.

8 Q Okay. But you're not sure which one prepared the
9 deeds?

10 A No, I'm not.

11 Q But whoever prepared the deeds it was done at your
12 direction, is that correct?

13 A Of course.

14 Q And the deed descriptions were also done as you
15 said before at your direction, is that correct?

16 A Based upon the information provided by Steve, yes.

17 Q Now, let me ask you this question, David. It's a
18 different question. We looked at the deeds. We
19 see that the deeds are dated August 18th, 2017?

20 A Yes.

21 Q And that you signed the deeds and the deeds were
22 then recorded?

23 A Okay.

24 Q You continued to serve as the supervisor to the

1 end of the year, December 31st of 2017?

2 A Yes.

3 Q Did you ever tell any of the board members that
4 the deeds had been recorded?

5 A No. Not that I recall. Once an issue is resolved
6 with a board vote there's usually no follow up
7 unless they come to me and ask me a question.
8 It's done.

9 Q Okay. And I had showed you before in Defendant's
10 C, David, and also in Plaintiff's Exhibit 7, I
11 showed you in Plaintiff's Exhibit 7 the language
12 of the motion, and you've got it there in front of
13 you?

14 A Yes.

15 Q And part of the motion referred to a portion of
16 lot 20?

17 A Yes.

18 Q And obviously that portion was defined when the
19 property deed description was prepared, right?

20 A It looks that way, yes.

21 Q Well, when that portion became concrete and not
22 just a reference to portion did you ever send the
23 property description which defined the word
24 portion to the board members?

1 A I don't know if I sent it to them electronically
2 but I'm sure that whatever information I had was
3 copied, hard copied and stuck in their file. What
4 they did with it I don't know. There are times
5 when other people came and picked up their mail
6 such as Mr. Hunter's wife would come in
7 occasionally and pick up his mail. Whether he got
8 it, what happened to it, I don't know.

9 Q Okay. Well, let me ask you this, David, because I
10 want to be clear on that. When you say that you
11 put it in the mail is it fair to say that the town
12 board members all have a mailbox at town hall?

13 A Yes.

14 Q And often times they received their mail by having
15 somebody physically place it in their box?

16 A Yes.

17 Q And the materials we've been talking about, the
18 deed, the deed descriptions, those kind of things,
19 you said I'm sure that somebody placed it in their
20 box.

21 A Uh-huh.

22 Q Did you personally place it in their box?

23 A Some items I probably did. A lot of items I did.
24 All of them I can't say to.

1 Q Okay. Let's take it with respect to the deeds for
2 the property conveyances, do you recall if you
3 personally put that in their box?

4 A I did.

5 Q For each of the board members?

6 A For each board member as well as leaving the hard
7 copy on my table in my office for them to view at
8 all times.

9 Q When you put the copies of the deeds in their box
10 did you put any note with it or just copies of the
11 deeds?

12 A Whatever the packet consisted of at that time is
13 what they got.

14 Q Did you also include in their box a copy of the
15 survey?

16 A If that was part of the packet -- again, you're
17 asking me something two years ago, I don't
18 remember exactly what was in the packet but I was
19 very open. All the information that I had was
20 relayed to the board so it was always available to
21 them to look at whether it be in their box, on my
22 table or in some cases it was sent to them
23 electronically.

24 Q Okay. But in the case of the deeds and the survey

1 mark this as the next exhibit?

2 (Plaintiff's Exhibit 11
3 marked for identification.)

4 BY MR. MAHON:

5 Q David, I'm going to show you what's been marked as
6 Plaintiff's Exhibit 11. Could you take a moment
7 and look through it and then I'm going to ask you
8 questions about it?

9 A (Indicating).

10 Q And just for the record, Plaintiff's Exhibit 11
11 purports to be an e-mail from Laura Breslin to you
12 that's dated August 2nd, 2017, and then below that
13 an e-mail from Steven Green to Laura Breslin dated
14 August 2nd, also 2017 and attached to the e-mails
15 is a draft and unsigned copy of a deed and there
16 appears to be a memorandum as well and then a
17 survey, a reduced size survey. Do you see that?

18 A Yes.

19 Q And just to be clear the survey is also by Steven
20 J. Green and it's dated December 4th, 2016.

21 A Okay.

22 Q This one is more readable. I can see it. The
23 last page.

24 A Yes.

1 Q And that survey shows a different view. It shows
2 the library, senior center and it also shows parts
3 of the salt barn and the garage. Do you see that?

4 A Yes.

5 Q By looking at this do you know the purpose why
6 this survey was done?

7 A No, I don't.

8 Q And looking at the first page of Plaintiff's 11 it
9 appears that Laura was just forwarding this to you
10 and the message by Steven Green says "Laura, good
11 morning. Attached is the deed front page for
12 Woodbury water district to Town of Woodbury.
13 Please look it over and let me know if it's okay.
14 If it is, then I will take care of the remaining
15 paperwork. Thank you. Steve." Do you see that?

16 A Yes.

17 Q By looking at that does that refresh your
18 recollection as to who prepared some of the
19 documents?

20 A Not really, no.

21 Q And does this deed -- is this deed with respect to
22 lot 8?

23 A Does it say that because I don't see that
24 anywhere?

1 Q I don't see it either but I was asking you about
2 that.

3 A I don't know.

4 Q If you know.

5 A I don't know.

6 Q Take a look at the third page of that Exhibit 11.

7 A Yes.

8 Q Do you see the third page there?

9 A Yes.

10 Q That appears to be a memorandum but it says to --
11 it looks like is that an e-mail address used by
12 the Town of Woodbury Building Department?

13 A It appears that way, yes.

14 Q Do you know that of your own personal knowledge?

15 A No, I don't.

16 Q Okay. Do you know who the e-mail was addressed to
17 or this --

18 A My guess is if it's the building department
19 there's a secretary in the building department
20 named Maria but I don't know.

21 MR. MAHON: I wonder if you could
22 mark this as Plaintiff's Exhibit 12.

23 (Plaintiff's Exhibit 12
24 marked for identification.)

1 MR. MAHON: My associate is going to
2 ask you a few questions.

3 BY MS. FIERRO:

4 Q So I've just handed you what's been marked as
5 Plaintiff's Exhibit 12. Just take a look at it
6 and let me know when you've looked through it.

7 A I'm ready.

8 Q So this is an e-mail or it appears to be an e-mail
9 from Laura Breslin to Town Supervisor, Monday,
10 February 13th, 2017, and the subject is Town and
11 Village Properties. Do you see that listed there?

12 A Yes.

13 Q And then it says, the content of the e-mail says,
14 David, attached are the lists of town and village
15 owned properties. Do you see that as well?

16 A Yes.

17 Q At that time you were the town supervisor?

18 A Yes.

19 Q And do you recall receiving this e-mail?

20 A No.

21 Q Do you have any reason to believe that you didn't
22 receive this at the time?

23 A No.

24 Q Take a look at the attachment. You can see up at

1 the top in the other header block there there's an
2 attachment listed, it says Town and Village Owned
3 Properties, PDF. That's reproduced in those next
4 two pages behind the e-mail text.

5 If you would turn to the second page of that
6 attachment you'll see there's an Excel -- it looks
7 like an Excel spread sheet there or a grid there.
8 Do you see that?

9 A Yes.

10 Q And it says owner name and the second page it's
11 all Town of Woodbury, right?

12 A Yes.

13 Q And in the fourth column there it says parcel ID.
14 Do you see that?

15 A Yes.

16 Q If you go down, it's about mid way through in
17 column 4 it says parcel ID is 219-5-8. Do you see
18 that?

19 A Yes.

20 Q And the street name says 33 Penny Lane?

21 A Yes.

22 Q Does it also say there that the owner name is Town
23 of Woodbury?

24 A Where does it say owner's name?

1 Q So to the left, the first column.

2 A Oh, I see it. Yes.

3 Q It says Town of Woodbury is the owner of that
4 parcel 219-5-8, is that right?

5 A Yes.

6 Q Did you ever receive any other e-mail or document
7 or any other information after this e-mail that
8 would have listed that parcel 219-5-8 as not being
9 owned by the Town of Woodbury?

10 MR. GOLDEN: Objection to the form.

11 A No. Not that I recall.

12 Q Okay. Just to clarify something about Plaintiff's
13 Exhibits 11 and 10 which were the other two
14 e-mails that we put before you there, I just
15 wanted to clarify, too, because I don't know if we
16 got into this little ministerial detail but does
17 it say to town supervisor in that heading as well
18 on each of those e-mails?

19 MR. GOLDEN: Objection to the form.

20 A Yes.

21 Q Do you understand what I mean by that? In each
22 e-mail that I gave you I think it says town
23 supervisor, to town supervisor, right?

24 A Yes.

1 MR. GOLDEN: Well, to be fair --

2 MS. FIERRO: Or does it? That's what
3 I'm asking. I can't look at them right
4 now. They're not right in front of me.

5 MR. GOLDEN: I mean it has two
6 to-firms.

7 MS. FIERRO: I see. Thank you.

8 BY MS. FIERRO:

9 Q So starting with Plaintiff's Exhibit 10 where it
10 says from Laura Breslin, it says to town
11 supervisor?

12 A Yes.

13 Q And that was July 25th, 2017?

14 A Yes.

15 Q And you were the town supervisor at that time?

16 A Yes.

17 Q Do you recall getting this particular e-mail?

18 A No.

19 Q But you have no reason to dispute that you
20 received it as town supervisor?

21 A That's correct.

22 MR. GOLDEN: Objection to form.

23 Q Is that right?

24 A Yes.

1 Q And similarly with Plaintiff's Exhibit 11, we're
2 looking at the first to-from or from-to and it
3 starts with Laura Breslin and it says --

4 MR. GOLDEN: Objection to the form
5 because it's not the first one. The one
6 above it is the first one.

7 Q Fine. Thank you. So for the second one. The
8 first one is redacted, do you see that?

9 A Yes.

10 Q Okay. The second one it says from Laura Breslin
11 to town supervisor?

12 A Yes.

13 Q It's dated Wednesday, August 2nd, 2017?

14 A That's correct.

15 Q Do you recall receiving this e-mail as town
16 supervisor?

17 A No.

18 Q But you do not dispute receiving this e-mail as
19 town supervisor?

20 A No.

21 MS. FIERRO: All right.

22 BY MR. MAHON:

23 Q David, let me ask you just a couple of follow-up
24 questions. You told me that during your time as

1 supervisor you used the town assigned e-mail
2 address for correspondence, is that correct?

3 A Yes.

4 Q During your tenure as supervisor did you ever use
5 your personal e-mail for town business?

6 A No.

7 Q And just to clarify one thing, we've looked in a
8 prior exhibit, I believe it was in Defendant's
9 Exhibit C where there was reference made to a
10 packet and there was reference made to visuals, do
11 you recall that?

12 A Yes.

13 Q And I think you've testified at length that you
14 believe you provided that information, is that
15 correct?

16 A Yes.

17 Q And so the visuals that were referred to was in
18 the form of the surveys maps, is that correct?

19 A I don't know if it was the survey maps or if it
20 was the maps that we had at the time. That I
21 don't recall.

22 Q And the only way that was ever provided was
23 through a hard copy through the town board
24 members' mail?

1 A As I said before I don't remember. I could have
2 sent it electronically as well.

3 Q During the time you were supervisor and up until
4 the time you finished your term did you ever
5 delete any e-mails?

6 A No.

7 Q Did anyone acting on your behalf including Tracy
8 Maggio ever delete any of your e-mails?

9 A No.

10 Q Did you maintain any personal information on your
11 assigned computer that you deleted either during
12 the time or after the time you left as supervisor?

13 MR. GOLDEN: Objection to the form of
14 the question.

15 A Like what? I'm not clear on that.

16 Q Well, let me break it down. Did you maintain any
17 files on your desktop when you served as the town
18 supervisor?

19 MR. GOLDEN: Objection to the form of
20 the question.

21 A Did I maintain any -- I'm sorry. I still don't
22 understand what you're asking.

23 Q Okay. Let me put it this way. Maybe you can
24 explain to me when you received, for example, a

1 copy of the survey --

2 A Uh-huh.

3 Q -- and you wanted to keep the copy what procedure
4 did you follow to do that?

5 A I would print it out, keep a hard copy so I had it
6 for reference until the project was done and over
7 with.

8 Q Would you also keep an electronic copy?

9 A Yeah. It would stay in the computer. I didn't do
10 anything with it.

11 Q Okay. It would stay in the computer as an e-mail
12 or an attachment to the e-mail, is that correct?

13 A Yes.

14 Q Did you ever create a separate file for documents
15 or attachments?

16 A There were times that there were files created for
17 different things, yes.

18 Q Were those files maintained on your computer
19 desktop?

20 A Yes.

21 Q And the question I had before just to be clear,
22 did you ever delete any information or any
23 documents out of those desktop files?

24 A No. Not that I recall.

1 Q The original deed that was circulated before it
2 was signed and the original deed to the highway
3 garage and the salt shed, this is the lot 20 we've
4 been talking about --

5 A Uh-huh.

6 Q -- do you know if that original deed, the draft
7 deed contained any inaccuracies with respect to
8 the property description?

9 A I don't know.

10 Q Was there more than one deed that was circulated
11 to the board members with respect to the land
12 swap?

13 A I don't recall.

14 Q Were there any corrections made to any deeds that
15 were circulated to the board members with respect
16 to the land swap?

17 A Again, I don't recall.

18 Q And I just want to be clear on this one thing. We
19 had looked before at Plaintiff's Exhibit 7 and we
20 looked at the exact language of the motion --

21 A Yes.

22 Q -- the exact language of the motion referred to
23 lot 20 if you recall --

24 A Yes.

1 Q -- and lot 20, then in parentheses could you read
2 what it says after that?

3 A Highway garage and salt shed.

4 Q And so my question is that after that meeting and
5 the date of the meeting was July 20th, 2017, do
6 you see that?

7 A Yes.

8 Q After that meeting was the final description that
9 described the lot 20 that was being conveyed, was
10 that final description circulated to the board
11 members?

12 A I don't know.

13 MR. MAHON: I don't have any further
14 questions at this time, Rick.

15 MR. GOLDEN: I have no questions.

16 MR. MAHON: Thank you, David.

17 (Whereupon, the examination of
18 David Sutz was concluded.)

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E X H I B I T S

Exhibits: Pages:

Plaintiffs' Exhibits marked for ID.

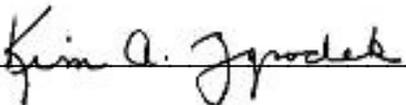
8 - Map of Steven Green.	54
9 - Steven Green invoice.	56
10 - Deed.	58
11 - Four-page e-mail.	71
12 - Four-page e-mail.	73

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C E R T I F I C A T I O N

I, Kim A. Zgrodek, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.



Kim A. Zgrodek

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