

COPY

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

Monday
June 24, 2019
11:15 a.m.

EXAMINATION BEFORE TRIAL

of the Plaintiffs, TOWN OF WOODBURY and the TOWN OF
WOODBURY TOWN BOARD, by and through its witness,
JACQUELINE COLON HERNANDEZ, held at the offices of
Burke, Miele, Golden & Naughton, 40 Matthews Street,
Goshen, New York before a Notary Public in and for
the State of New York.

ROBERTA O'ROURKE
Court Stenographer
P.O. Box 142
Cornwall, New York 12518
(845) 527-2572

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

CATANIA, MAHON, MILLIGRAM & RIDER, PLLC
Attorneys for Plaintiffs
One Corwin Court
Newburgh, New York 12550
845-565-1100
BY: RICHARD M. MAHON, II, ESQ.
AND: JOSEPH G. MCKAY, ESQ.
AND: LIA FIERRO, ESQ.

BURKE, MIELE, GOLDEN & NAUGHTON, LLP
Attorneys for Defendants - Village of Woodbury
and Village of Woodbury Board of Trustees
40 Matthews Street, P.O. Box 216
Goshen, New York 10924
845-294-4080
BY: RICHARD B. GOLDEN, ESQ.

A L S O P R E S E N T :

Frank Palermo

NOT PRESENT:

ORANGE COUNTY DEPARTMENT OF LAW
Attorneys for Defendant - County of Orange
255-275 Main Street
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845-291-3150

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STIPULATIONS

IT IS HEREBY STIPULATED, by and between the attorneys for the respective parties hereto, that:

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to the form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116 of the C.P.L.R., and shall be controlled thereby. The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED that a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

1
2 JACQUELINE COLON HERNANDEZ, the witness
3 herein, having been first duly sworn by Roberta
4 O'Rourke, a Notary Public of the State of New York,
5 was examined and testified as follows:

6
7 THE REPORTER: Will you state your
8 name, please?

9 THE WITNESS: Jacqueline Colon
10 Hernandez.

11 THE REPORTER: What is your business
12 address?

13 THE WITNESS: 615 Route 32, Highland
14 Mills, New York 10930.

15
16 **EXAMINATION BY MR. GOLDEN:**

17 Q Hi.

18 A Hi.

19 Q My name is Rick Golden, I'm an
20 attorney and I'm representing the Village of
21 Woodbury in the litigation that the town brought
22 against the village.

23 A Right.

24 Q Now I'm going to ask you some
25 questions. If you don't understand the question you

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2 can ask me to rephrase it. If you didn't hear the
3 question you can ask for it to be read back,
4 repeated.

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6 I don't want you to answer any
7 question that you haven't heard correctly and don't
8 understand, do you understand that?

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A Yes.

9

Q And also the transcription can only
10 take down verbal responses. So a shake of the head
11 doesn't record. So whenever you respond please do
12 so verbally, okay?

13

A Okay.

14

Q Now, when were you elected as a town
15 counsel person for the Town of Woodbury, New York?

16

A I started January of 2018. January
17 1st of 2018.

18

Q And you were elected the prior
19 November?

20

A Correct.

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Q Did you authorize the bringing of the
22 lawsuit by the town against the village?

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A Yes.

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Q When was it that you first became
25 aware of the land swap that was filed with the

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county?

A I became aware of it when Frank Palermo, the supervisor, presented it to the Board at an executive, I believe it was an attorney/client session in which case I want to say it was sometime in April.

Q April of 2018?

A Correct. When he first discussed the, his concern.

Q And I don't want to ask you anything about --

A Okay.

Q -- the content of any attorney/client meeting.

A Right, yup, yup.

Q That was the first time that you've ever heard of the lawsuit?

A Yeah, yeah.

Q You didn't hear about that on the campaign trail at all?

A No, not at all.

Q There's an allegation by the town in the Complaint that was brought by you and the town saying that there were efforts taken to ensure that

1
2 the town attorney was kept out of the property
3 exchange process. Are you aware of any efforts that
4 were taken in that regard to keep the town attorney
5 out of the property exchange process?

6 MR. MAHON: I object to the form of
7 the question. You can answer the question.

8 A No. I was gonna say can you clarify
9 the question, please?

10 MR. GOLDEN: Mark this as Defendants'

11 A?

12 (Whereupon, a Verified Complaint
13 was marked as Defendants' Exhibit
14 A for identification, as of this
15 date.)

16 Q I'm showing you what has been marked
17 as Defendants' Exhibit A, it is a Verified Complaint
18 in this action which you said that you had
19 authorized. Can you turn to paragraph 40, please?
20 Can you read that out loud?

21 A Upon information and belief efforts
22 were taken to ensure that the town board, the
23 attorney for the town and engineer for the town were
24 kept out of the property exchange process all
25 together.

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Q Are you aware of any such efforts?

A When you say am I aware, are you saying am I aware because I was part of the board at that time?

Q No, you obviously were not part of the board at that time.

A Okay.

Q I'm asking if you are aware of any efforts taken to ensure that the town attorney was kept out of the property exchange process?

A I -- as part of the board I was, I was told that he was not part of it. So when we spoke I was told that he was not part of it.

So when you say aware, I mean I wasn't part of the board when these things were going on. But from the, from the, you know, the discussions that we had it became apparent that the lawyer was not a part of these discussions. So I made my decision based on that information.

Q But this allegation --

A Uh-hum.

Q -- doesn't simply say that he was unaware of the process, does it?

MR. MAHON: Objection to the form of

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the question.

Q Can you re-read --

A Correct. Upon information and belief efforts were taken to ensure that the town board -- that the town board, the attorney for the town and the engineer for the town were kept out of the property exchange process all together.

Q So what was the word efforts referring to?

A That the former supervisor and the mayor did not inform the town attorney or did not, kept him out of, did not invite him to the board meetings, the board meetings where these decisions were being made, so there was an effort to keep him out of the conversation.

Q So the efforts that you're referring to were that he was not invited to the town board meetings at which this was being discussed?

A That he was kept out of the loop. He was, he was not informed. He did not know that the former supervisor and the mayor was working on, from what I understand, that he was kept out of the property exchange process. He wasn't part of that final, you know, whatever deliberations, whatever

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deeds were signed, he was not part of that process.

Q I understand that, but that's not what the allegation says. So again I'm asking you about the efforts that were taken. You said that --

MR. MAHON: Excuse me, I'm sorry.

MR. GOLDEN: I'm not finished with my question.

Q You had said that one of the efforts was that he was not invited to the town board meetings where this was discussed, correct?

A What I am saying is that there was an effort taken so that the town, the town attorney was not part of the process.

Q Who took that effort?

A The previous, the former supervisor and, the former supervisor of the town board.

Q And what form did that effort take?

A When you say form, he was excluded.

Q Other than being excluded from the meetings is there any other effort that you're aware of?

A For the attorney not to be, I believe the discussions, from what we understand the discussions -- I don't know that I understand what

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2 you're alluding to.

3 Q It's an allegation --

4 A Right.

5 Q -- that the town board has put in this
6 lawsuit --

7 A Right.

8 Q -- that said that there were efforts
9 taken.

10 A Right.

11 Q I'm trying to find out what were those
12 efforts. You have identified one of those
13 efforts --

14 A Right.

15 Q -- that the town attorney was not
16 asked to be at meetings. And I'm simply asking you
17 do you know of any other efforts?

18 A Yes, yes. The attorney did not review
19 the deeds. The attorney did not review, did not
20 provide the board with sufficient information,
21 packets that needed to be reviewed by the board
22 members. I mean I just don't know, do you want me
23 to go through the whole thing with you?

24 Q I want you to tell me the efforts that
25 obviously somebody else took to keep the town

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attorney out of the process. What did they do to keep him out of the process? Not that he was out of the process --

A Uh-hum.

Q -- what did they do to keep him out of the process?

A Again, the attorney did not review all of -- the board members requested that the attorney review all of the information that the town supervisor was presenting for review by counsel and the counsel was not, the counsel did not review that information.

Q So you've identified all the efforts that you're aware of that were taken to ensure that the town attorney was kept out of the property exchange process?

MR. MAHON: Object to the form of the question. You can answer that.

THE WITNESS: I'm sorry?

MR. MAHON: I just objected to his question, but you can answer it if you understand his question.

Could you read the question back, please?

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(Whereupon, the last question was read back.)

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A There are others. I'm trying to -- I don't know if what I'm saying -- maybe I'm just not explaining myself well enough. I think that's just my issue. I don't know if there's any additional things that would be needed. For me there was a number of issues that we, that we talked about.

That was the main one that, that was the main effort that we talked about.

Q I'm not asking you about the main one. There's an allegation saying that there were certain efforts that were taken, somebody made an effort --

A Right.

Q -- took an effort to stop the town attorney from being involved in the process. You've identified one of those to say that he was not invited to the meetings --

A Right.

Q -- to keep him out of the process.

A All right, he was not --

Q I'm asking you whether or not there were any other efforts that you are aware of?

A And I thought I identified it. He was not provided, he was not provided with the final

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whatever packet, the maps and the -- he wasn't provided with the information, whatever information the board was reviewing with regards to the swap of the highway.

Q Which board?

A The town board. The town board was, the town board was supposed to be provided with maps and information. It was supposed to be reviewed by counsel for final approval.

Q Anything else?

A No, that's it.

Q Do you believe that Earl Reservoir is parkland property?

A Yes.

Q And what do you base that opinion on?

A It was stated by Supervisor Sutz in his comment to me when I was at a board meeting on July 20th.

Q Do you have any other information as to what actions were taken to form it as a parkland?

A Can you clarify the question?

Q Do you know of any actions that were taken at any time to identify Earl Reservoir as parkland?

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A No.

Q Would you look at paragraph 16,
please, of the Complaint identified as Exhibit A?
Could you read that, please?

A Yes. Together, prior to the transfer
to the village, lots 20 and 21 contained
approximately 11 and four tenths acres property
behind town hall. The purported transfer to the
village, by former Supervisor Sutz, conveyed 85
percent of that acreage, leaving the town with a
mere 1.7 acres of land, now identified as new tax
parcel, which contains the town's senior
center/library and associated parking facilities.
This new gerrymandered lot is all that is left of
the land directly adjacent to the senior center and
library, and this dramatically reduced lot size,
upon information and belief, renders the new lot
non-conforming and capable of being used, modified
or improved by the town in the future.

Q How is the new lot non-conforming?

A Because it's this new lot, the new lot
that was being transferred --

Q You just read from --

A Yes.

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Q -- your own document against.

A Yes.

Q These are the town's allegations, they're not the village's allegations.

A It's non-conforming because it's incapable of being modified or improved by the town.

Q Why?

A Because it's, there's a portion that's still not part of the town, it's owned by the village.

Q Why would the part that's owned by the town not be able to be used?

A Because it's not part of the, it says it's owned. They wanted -- the village wanted to transfer it to the town park so that is under the town. There's a parcel that's not part of the town.

Q I believe this is referring to the new lot that is owned by the town, is it not, or this is referring to the village parcel?

A This part here is referring to a parcel of land that the village and the town -- that the village was going to transfer to the town. Together prior to the transfer to the village lots 20 and 21 contain approximately 11 and four-tenths

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2 acres of property behind town hall. The purported
3 transfer to the village by former Supervisor Sutz
4 conveyed 85 percent of the acreage leaving the town
5 with a mere 1.7 acres of land new identified as new
6 parcel which contains town and the senior center and
7 the library.

8 Q Right.

9 A Uh-hum.

10 Q And then when it says this new lot,
11 are you not referring to the new town lot of 1.7
12 acres identified as 219-5-20.2?

13 A Yes.

14 Q So how is the new lot that contains
15 the town senior center, library and associated
16 parking not capable of being used?

17 A I don't know that I, I don't know, I
18 think I'm just very nervous right now and I'm just
19 not processing what it is that you're...

20 Q I'm trying to understand what these
21 allegations mean.

22 A Right.

23 Q You've indicated that it's alleging
24 that the town received a new 1.7-acre reconfigured
25 parcel?

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A Right.

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Q And that parcel was 219-5-20.2?

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A Uh-hum.

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Q And it contains the town senior center, the library and the associated parking facilities, correct?

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A Uh-hum.

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Q And then it says this new lot is incapable of being used, modified or improved by the town in the future. And I'm asking you how is this new lot that contains this senior center, library and associated parking facilities not capable of being used?

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A Because it was dramatically reduced. So when the property around the senior center was transferred or when, when the highway department and the land around that was transferred, the way that it was done there was this border around the senior center which doesn't allow us to expand or do anything. It butts right up against the perimeter of the town and the senior center -- I mean the town senior center and the library.

So initially when everything was transferred over the initial plans had actually had

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2 the town senior center and the library transferred
3 also. But that was corrected.

4 So because of the way that everything
5 was transferred we have no control over or around
6 the park, I mean around the senior center. It's
7 very limited so we can't expand or we can't do
8 anything else beyond what's there already.

9 So we were, so like for example the
10 boundaries, the fence line, everything butts up
11 against the senior center and the library. If we
12 needed to do anything to that we wouldn't be able to
13 because it's not under the town.

14 Q Let's take it one at a time. Is the
15 library, senior center and its associated parking
16 capable of being used presently today?

17 A The actual center, yes.

18 Q And the library?

19 A Correct.

20 Q Right?

21 A Uh-hum.

22 Q And people can park there, there's
23 parking there?

24 A There is parking there.

25 Q So it's being used today?

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A It is.

Q And you can't modify that senior center at all, you can't put a three foot addition onto that center?

A There could be some modification but I don't know the, I'm not an engineer, so I don't know what could be done to the building as it exists. But because of the way that the lot was dramatically reduced it prevents us from expanding or if there's any future needs we would not be able to do anything with that property.

Q So you're saying that not that it's incapable of being used, but simply it's not capable of being used to the fullest extent that you might want at sometime in the future?

A Correct, because initially there was discussion with the town court, which was the previous town hall, there was discussion of possibly expanding and using, connecting the parking lot or the areas that were surrounding those areas and the senior center. But with the transfer of that it divides the two properties, the town hall and the senior center.

So now we can't even unify those

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2 parcels for possible additional parking, you know.
3 As we know the town hall right now -- the town court
4 has limited parking as it is. So it does limit our
5 ability to provide for the needs of the residents or
6 if anyone is coming to court or to the library if
7 there's a need for expansion we're very limited in
8 what we can do at this point.

9 Q But it's the same parking for --

10 A Correct.

11 Q -- both the courts and the library
12 that its been for decades, correct?

13 A Right. But as the court continues to
14 meet more needs in the community parking always
15 continues to be a problem in that area.

16 Q But it's been a problem for a long
17 time, hasn't it?

18 A Correct, but it limits our ability to
19 meet this need or to address it.

20 Q How has the town tried to meet that
21 need in the past when it had every opportunity to?

22 MR. MAHON: Objection to the form of
23 the question.

24 Q You can answer it.

25 A Could you clarify your question?

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Q Clarify the question, yes. Is it fair to say that parking has been a problem for the town court and the library for a very long time?

A Yes.

Q And that the town, prior to this land swap, had every ability to try to rectify that parking problem, correct?

A The town has attempted to rectify it by moving the town hall from that location to decrease the amount of congestion that occurs in that area. But it still is an ongoing issue.

Q Where is the town contemplating on moving its town hall to?

A The town hall has already been moved.

Q And where is that?

A That's in a professional building at 615.

Q So they took care of that parking problem of the town board?

A We took, we took care of the town hall building, yes, but it's still --

Q The parking lot surrounding the senior center didn't stop you from doing that?

A It wasn't about the parking around,

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it's about that whole area and developing that area to continue to meet the needs of the community. So we're limited in our ability to do that.

Q But you were able to move the town center without any problem, correct?

A Correct.

Q I have no further questions.

MR. MAHON: I have no questions of the witness.

(Whereupon, the proceeding was concluded.)

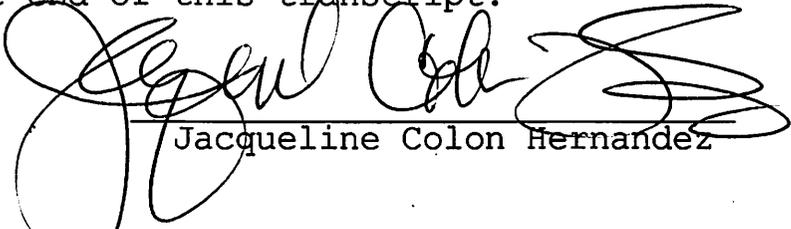
(The jurat is on the next page.)

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STATE OF NEW YORK)
COUNTY OF ORANGE)

I have read the transcript of my testimony taken at the time and place noted on the title page, and I acknowledge it to be true and correct. Any and all corrections will be put on the errata sheet included at the end of this transcript.



Jacqueline Colon Hernandez

Sworn before me this
16 day of JULY, 2019.



Notary Public

DEBRA A. MCCARRON
Notary Public, State of New York
No. 01MC4890860
Qualified In Orange County
Commission Expires June 15, 2023

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W I T N E S S I N D E X

Examination by Mr. Golden4

E X H I B I T S

Defendants'	ID
A Verified Complaint	7

I N F O R M A T I O N R E Q U E S T E D

NONE

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

I, ROBERTA O'ROURKE, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn or affirmed by a Notary Public and that the transcript of said examination is a true record of the testimony given by the said witness; and

That I am not related to any of the parties in this action by blood or marriage, and I am in no way interested in the outcome of this matter.

Roberta O'Rourke

Roberta O'Rourke