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CASE NO. CV03-0183606 :  
NEW ENGLAND ESTATES, LLC :  
V. :  
TOWN OF BRANFORD, ET AL :  
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SUPERIOR COURT  
JUDICIAL DISTRICT  
OF WATERBURY  
AUGUST 16, 2007

*E X C E R P T*

BEFORE: HONORABLE WILLIAM T. CREMINS, JUDGE,  
AND A JURY

APPEARANCES: ATTORNEY JAMES W. BERGENN  
ATTORNEY CHRISTOPHER MATTEI  
ATTORNEY TIMOTHY S. HOLLISTER  
For the Plaintiff New England Estates

ATTORNEY STEVEN R. HUMPHREY  
ATTORNEY BRIAN R. SMITH  
For Thomas Santa Barbara and  
Frank Perrotti, Jr.

ATTORNEY KERRY CALLAHAN  
ATTORNEY DANIEL CANAVAN  
For the Defendant Town of Branford

(Morning Session)

Lisa Longi  
Court Recording Monitor

1 THE COURT: For the record, this is the matter  
2 of New England Estates, LLC versus Town of Branford,  
3 et al, docket number CV3-183606. I would ask  
4 counsel present to please again note your  
5 appearances for the record.

6 MR. CALLAHAN: Kerry Callahan, Updike, Kelly  
7 and Spellacy for the defendant Town of Branford.

8 MR. CANAVAN: Dan Canavan for the Town of  
9 Branford.

10 MR. HUMPHREY: Steve Humphrey for Thomas Santa  
11 Barbara and Frank Perrotti.

12 MR. HOLLISTER: Tim Hollister, Shipman and  
13 Goodwin, for New England Estates.

14 MR. BERGENN: With Jim Bergenn and Chris Mattei  
15 for New England Estates.

16 THE COURT: Thank you. Please, have a seat.  
17 Counsel, a couple of matters if I might, please. We  
18 don't as yet have an answer from the juror with  
19 respect to that doctor's appointment tomorrow. He's  
20 going to check at the break today. He couldn't  
21 reach anyone yesterday. So hopefully we will have  
22 that by the end of the day.

23 The other thing I wanted to mention for  
24 scheduling purposes is we will not have evidence  
25 next Friday. I will not be available on the 24<sup>th</sup>.  
26 That's the only day in the next four weeks. So  
27 Friday of next week, which is August 24<sup>th</sup>, we will

1 not have evidence.

2 Attorney Hollister, please.

3 MR. HOLLISTER: Yes. Good morning, Your Honor.  
4 You had - in chambers yesterday you had asked for a  
5 memorandum on the issue of whether the reasonable  
6 permits is a Court issue or a jury issue. And I  
7 have prepared that memo, provided a copy to  
8 Mr. Canavan.

9 THE COURT: Thank you.

10 THE COURT: Attorney Callahan, are you going  
11 to - or Attorney Canavan, are you going to reply to  
12 this? I mean -

13 MR. CALLAHAN: Yes, Your Honor. We will.

14 THE COURT: Okay.

15 MR. CALLAHAN: Whatever deadline Your Honor  
16 sets, I -

17 THE COURT: By Monday? Is that doable?

18 MR. CALLAHAN: I believe it is. I would like  
19 to - one of the people who's -

20 THE COURT: well, let me put it to you - we're  
21 not having evidence on Monday anyway. So Tuesday.

22 MR. CALLAHAN: That's fine, Your Honor. It's -  
23 I have - one of my partners is doing a lot of our  
24 briefing, Attorney Frederick, has to - she - who I  
25 think Your Honor saw who was here, has to be away  
26 for some family issues, and I'd like her to be able  
27 to work on it. And I believe that'll work.

1 THE COURT: Well, I think Tuesday's a  
2 reasonable time.

3 MR. CALLAHAN: I think it is.

4 THE COURT: Counsel?

5 MR. HOLLISTER: I understand the need for them  
6 to review it. I would just point out to the Court  
7 that what I said in the memo is that the answer to  
8 the question really affects how the rest of the  
9 evidentiary presentation is going to go. Okay.  
10 It's as simple as that. I think the - for both  
11 sides.

12 MR. CALLAHAN: And I just learned now,  
13 Your Honor, not having seen the memo previously,  
14 it's only about five pages long. So perhaps if we  
15 can agree to first thing Tuesday morning?

16 THE COURT: Okay. Thank you.

17 MR. CALLAHAN: I have no problem setting  
18 deadlines for other people.

19 (An off-the-record discussion was held.)

20 THE COURT: Any other matters, please, before  
21 we have the panel come out? Counsel, anything else,  
22 please?

23 MR. CALLAHAN: No, Your Honor.

24 MR. BERGENN: I'm ready to proceed, Your Honor.

25 THE COURT: Okay. Can we bring the panel out,  
26 please.

27 (The jury entered the courtroom.)

1 THE COURT: Ladies and gentlemen, good morning.  
2 First of all, we'll get the notebooks passed out.

3 (An off-the-record discussion was held.)

4 THE COURT: Mr. Santa Barbara, while that's  
5 being done could you come back up, sir, please and  
6 take the stand.

1 T H O M A S S A N T A B A R B A R A ,

2 having been previously duly sworn, resumed the  
3 witness stand, was examined, and testified as  
4 follows:

5 THE COURT: Again, sir, have a seat. Good  
6 morning. I remind you, sir, you're still under  
7 oath. And again, please keep your voice up as much  
8 as possible. Everyone has to hear your responses.  
9 They're also being recorded. You don't have to  
10 yell, but you've really got to keep your voice up.  
11 Okay?

12 THE WITNESS: Thank you.

13 THE COURT: Has everyone got their book? Okay.  
14 I think we're ready to proceed. Attorney Bergenn,  
15 please.

16 MR. BERGENN: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION BY MR. BERGENN:

18 Q Mr. Santa Barbara, when we finished yesterday we had  
19 just finished your dealings with Fuss and O'Neill in the  
20 early 90's where you had considered, and then decided  
21 against, considering using the portion of the property for  
22 bulky waste, and with their recommendation that you contact  
23 their site development engineers for assistance in  
24 evaluating the feasibility of various site uses. Do you  
25 remember that's where we left off?

26 A Yes.

27 Q Okay. Before getting to the option agreement, which

