

1 STATE OF RHODE ISLAND  
2 PROVIDENCE, SC. SUPERIOR COURT

3  
4 WALTER S. FELAG, JR. AND  
5 ELAINE M. CALITRI A/K/A  
6 ELAINE M. FELAG

7 VS. CASE NO. :  
PC-2022-04877

8 ANTHONY PATRIARCA AND  
9 MARY PATRIARCA AND  
10 CASSIE PATRIARCA

11 -----

12  
13 DEPOSITION OF

14  
15 WALTER S. FELAG, JR.

16  
17 OCTOBER 1, 2024

18  
19 10:00 A.M.

20  
21 PROVIDENCE, RI 02903

22  
23 BARBARA J. WARNER, RPR  
24  
25

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1 (DEPOSITION COMMENCED AT 10:00 A.M.)

2 WALTER S. FELAG, JR.

3 Being duly sworn, deposes and  
4 testifies as follows:

5 THE REPORTER: Would you state  
6 your name and spell your last name for the  
7 record.

8 THE WITNESS: Walter S. Felag,  
9 F-E-L-A-G.

10 EXAMINATION BY MR. OWENS

11 MR. OWENS: Before we get started,  
12 Mike, can we agree to some stipulations, that  
13 we'll preserve all objections, except as to  
14 form, until the time of trial?

15 MR. MCCAFFREY: No.

16 MR. OWENS: Witness to have 30  
17 days to read and sign the transcript?

18 MR. MCCAFFREY: That's fine.

19 MR. OWENS: Did you want to waive  
20 notary on the signature of the transcript?

21 MR. MCCAFFREY: No.

22 MR. OWENS: Anybody else have  
23 anything they want to add, Mike or Dan?

24 MR. RESNICK: No.

25 MR. BURGOYNE: No.

1 Q. Have you ever been deposed before?

2 A. Yes.

3 Q. And what was the nature of that  
4 deposition?

5 A. I can't recall the nature, but I was  
6 the Council President of the Town of Warren  
7 some 30 years ago. It might have been a land  
8 dispute or something of that nature.

9 Q. And you are familiar with how a  
10 deposition goes in terms of me asking  
11 questions and you providing verbal answers?

12 A. Yes.

13 Q. I'll make sure that I wait for your  
14 answer before I ask the next question. I'll  
15 just ask that you wait for me to finish the  
16 question before you provide your answer.

17 A. Let me take that back. I might have  
18 been deposed another time as a State Senator.

19 Q. Okay. Thank you. Please make sure  
20 your answers are verbal, yeses or nos, or  
21 narrative responses, not nods or shrugs of  
22 any sort of physical responses that can't be  
23 recorded on the record.

24 Please make sure you understand  
25 the question that I'm asking before you

1 answer it. If you don't understand what I'm  
2 asking, please ask for clarification.

3 If you answer the question without  
4 requesting clarification, I'll assume that  
5 you understood it; is that fair?

6 A. Correct.

7 Q. You're giving your answers today under  
8 oath and the testimony is the same as if you  
9 were signing a formal affidavit, so if you  
10 legitimately don't remember something, please  
11 say that instead of guessing.

12 If you need a break, let me know  
13 and I'll just ask you to complete whatever  
14 question is pending first and then we can  
15 take a break as necessary; does that all make  
16 sense?

17 A. Yes.

18 Q. Do you have any questions for me  
19 before we start?

20 A. No.

21 Q. Anything you need to discuss with your  
22 attorney before we get going?

23 A. No.

24 Q. What is your current address?

25 A. 51 Overhill Road, Warren, Rhode Island

1 02885.

2 Q. What year did you graduate high  
3 school?

4 A. 1972.

5 Q. What college did you attend?

6 A. Providence College.

7 Q. And what year did you graduate?

8 A. 1976.

9 Q. What was your degree in?

10 A. BA in Mathematics, with possibly a  
11 minor in Computer Science.

12 Q. Cutting edge in Computer Science back  
13 in that day, I'm guessing.

14 A. Yes, indeed.

15 Q. Did you attend postgraduate school?

16 A. I took postgraduate courses, yes.

17 Q. Did you receive any postgraduate  
18 degrees?

19 A. No. I took courses at URI and at  
20 Providence College.

21 Q. Did you go to law school?

22 A. No.

23 Q. Where do you currently work?

24 A. I work for a company called SEACORP in  
25 Middletown, Rhode Island.

1 Q. And what do you for SEACORP?

2 A. I'm a senior software engineer.

3 Q. How long have you worked for SEACORP?

4 A. 19 years.

5 Q. Where did you work before that?

6 A. A company called Anteon, A-N-T-E-O-N.

7 Q. And what does Anteon do?

8 A. Same type of work, defense contractor.

9 Q. How long were you with Anteon?

10 A. Probably ten years. And prior to  
11 that?

12 Q. No. I don't need to go back that far.

13 A. Okay.

14 Q. Are you still a member of the Rhode  
15 Island State Senate?

16 A. Yes.

17 Q. How long have you been a Senator?

18 A. 26 years.

19 Q. Did you hold any elected office before  
20 that?

21 A. Yes.

22 Q. And what other elected offices did you  
23 hold?

24 A. A Warren Town Councilman.

25 Q. How long were you a Warren Town



1 Councilman?

2 A. 20 years.

3 Q. What were the dates of your tenure as  
4 a Town Councilman?

5 A. 1978 to 1998.

6 Q. Do you recall being here for a  
7 deposition in November of last year?

8 A. Yes.

9 Q. Do you recall why your deposition was  
10 postponed?

11 MR. MCCAFFREY: Objection.

12 A. No.

13 MR. OWENS: Basis? What is the  
14 basis of the objection?

15 MR. MCCAFFREY: I objected.

16 MR. OWENS: And since we didn't  
17 preserve objections until the time of trial,  
18 I'm curious to know what the objection is.

19 MR. OWENS: Are you refusing to  
20 give me the basis of the objection?

21 MR. MCCAFFREY: I'm not going to  
22 answer your question.

23 Q. Do you recall why your deposition was  
24 postponed?

25 MR. MCCAFFREY: Objection.

1 A. No.

2 Q. Are you aware that there has been a  
3 settlement proposal that would give you full  
4 use of the disputed area that you claim to  
5 have been using?

6 MR. MCCAFFREY: Objection.

7 A. Rephrase the question.

8 Q. Are you aware that there is a  
9 settlement proposal that would let you  
10 continue to use the area of the yard that you  
11 call your own?

12 MR. MCCAFFREY: Objection. If you  
13 have a proposal, if you could show him the  
14 proposal.

15 A. I don't understand the question.

16 Q. How much land are you claiming from  
17 the Patriarcas?

18 MR. MCCAFFREY: Objection.

19 A. I'm not claiming any land; I always  
20 believed it was my property.

21 Q. But you understand that you filed a  
22 lawsuit to claim title to that property,  
23 correct?

24 MR. MCCAFFREY: Objection.

25 A. Under the statute, yes.

1 Q. And do you know how much land you're  
2 claiming under the statute?

3 A. Basically 1100 square feet.

4 Q. Do you know how much frontage of the  
5 Patriarcas' property you're claiming under  
6 the statute?

7 MR. MCCAFFREY: Objection.

8 A. It could be 12 feet, maybe.

9 Q. Are you aware that by claiming 12 feet  
10 of frontage of the Patriarcas' property,  
11 you're going to be leaving them with less  
12 than the minimum frontage required by the  
13 Town of Warren?

14 MR. MCCAFFREY: Objection.

15 A. Yes.

16 Q. When did you first learn about that  
17 zoning issue?

18 MR. MCCAFFREY: Objection.

19 A. What are you talking about, learn  
20 about what zoning issue?

21 Q. The loss of frontage to the Patriarca  
22 property.

23 A. When we did the second survey.

24 Q. When was the second survey done?

25 A. June or July of this year.

1 Q. You didn't learn about that possible  
2 nonconformity when you did the first survey?

3 A. The first survey was just my property  
4 and not their property.

5 Q. Does your anticipated resolution of  
6 this case involve any application to the town  
7 to address the lack of frontage for the  
8 Patriarcas?

9 MR. MCCAFFREY: Objection.

10 A. I believe so.

11 Q. Have you spoken to anyone at the town  
12 about what that application would require?

13 A. No.

14 Q. Has anyone at the town promised you a  
15 favorable decision on that application?

16 A. No.

17 Q. Have you spoken with anybody else at  
18 the town about this property dispute?

19 MR. MCCAFFREY: Objection.

20 A. My attorney.

21 Q. Is your attorney part of the town?

22 A. No, my attorney here, Mike McCaffrey.

23 Q. I'll repeat the question. Have you  
24 spoken with anybody else at the Town of  
25 Warren about the frontage issue?

1 A. The town has spoken to me about it,  
2 yes.

3 Q. Who at the town has spoken to you?

4 A. Tony DeSisto.

5 Q. Who is Tony DeSisto?

6 A. The town lawyer.

7 Q. What did Tony DeSisto say to you?

8 A. He said that the town would accept the  
9 legal nonconforming lot.

10 Q. When I asked you if anybody at the  
11 town had promised you a favorable decision on  
12 the application to address the zoning issue,  
13 you told me no, didn't you?

14 A. The question was a favorable response.  
15 No one gave me any favors.

16 Q. Do you understand what a favorable  
17 response is, an approval, a favorable  
18 response, as opposed to a rejection of the  
19 application?

20 A. The word favorable means different  
21 things.

22 Q. How long have you been a Senator?

23 A. 26 years. And words matter.

24 Q. Did you do anything to prepare for  
25 your deposition today?

1 A. Yes.

2 Q. Did you discuss this deposition with  
3 your wife?

4 A. Yes.

5 Q. Did you discuss this deposition with  
6 anybody, other than Attorney McCaffrey?

7 A. No.

8 Q. What did you and your wife discuss  
9 when talking about this deposition?

10 MR. MCCAFFREY: Objection.

11 A. Certain potential questions that could  
12 be asked of me.

13 Q. Did you review your wife's deposition  
14 transcript?

15 A. Yes.

16 Q. Did you perform any legal research on  
17 the issues involved in this case?

18 MR. MCCAFFREY: Objection.

19 A. What do you mean by legal?

20 Q. Did you look at any cases?

21 A. No.

22 Q. Did you do any on-line research about  
23 adverse possession?

24 A. No.

25 Q. Did you do any on-line research about

1 acquiescence?

2 A. What are you talking about, between  
3 what time period?

4 Q. Since this case started.

5 A. Of course I looked up the definition.

6 Q. Because words matter, right?

7 A. Yes.

8 Q. And what definition did you come up  
9 with in researching acquiescence?

10 MR. MCCAFFREY: Objection.

11 A. I don't recall at this moment. I  
12 would have to review. I wasn't reviewing  
13 about the definitions of acquiescence or  
14 adverse possession.

15 Q. Did you do any on-line research about  
16 the zoning issue and the loss of frontage?

17 A. No.

18 Q. Are you paying Attorney McCaffrey for  
19 his services in this case?

20 MR. MCCAFFREY: Objection.

21 A. Yes.

22 Q. How much have you paid Attorney  
23 McCaffrey so far?

24 MR. MCCAFFREY: Objection.

25 A. Nothing at this juncture.

1 Q. How much do you currently owe Attorney  
2 McCaffrey?

3 MR. MCCAFFREY: Objection.

4 A. I have no idea.

5 Q. What is his billable rate on this  
6 matter for you?

7 A. \$300 an hour.

8 MR. OWENS: Mark this as Exhibit  
9 1.

10 EXHIBIT 1 MARKED FOR IDENTIFICATION

11 Q. Sir, you have been handed a document  
12 that we have marked as Exhibit 1 to this  
13 deposition. Have you ever seen this document  
14 before?

15 A. Yes.

16 Q. What do you understand this document  
17 to be?

18 A. A notice of deposition and a  
19 production of documents.

20 Q. Did you review the list of documents  
21 attached to Schedule A to that notice?

22 A. Yes.

23 Q. And have you seen a similar list of  
24 documents before?

25 A. Yes.



1 Q. Where did you see a similar list of  
2 documents?

3 A. When I originally presented this to  
4 you people.

5 MR. OWENS: Mark this as Exhibit  
6 2, please.

7 EXHIBIT 2 MARKED FOR IDENTIFICATION

8 Q. You have been handed a document that  
9 has been marked as Exhibit 2. Do you recall  
10 having seen this document before?

11 (WITNESS PERUSES DOCUMENT)

12 A. It's issued to my wife. I believe I  
13 have.

14 Q. Is the list of documents on this  
15 document similar to the list of documents on  
16 your deposition notice?

17 (WITNESS PERUSES DOCUMENT)

18 A. Yes.

19 Q. Do you recall having got a similar  
20 request for production of documents issued in  
21 your name?

22 MR. MCCAFFREY: Objection.

23 A. Yes.

24 Q. What did you do to identify any  
25 documents described in these lists?

1           A. I read each question and looked up  
2 whatever information we could find in our  
3 household to pertain to each of the actual  
4 questions of requests for production.

5           Q. Do you have a file of physical  
6 documents at your home where you keep all  
7 your important documents that you would have  
8 gone to look for documents on this list?

9           A. I would never consider these requests  
10 in a formal location because I always  
11 believed it was my property, so why would I  
12 have a list located in a central location of  
13 answers to each of these questions?

14          Q. Do you have copies of documents that  
15 were responsive to these lists in any  
16 electronic format?

17          A. Possibly the YouTube video that my  
18 wife took pictures of.

19                   And I'm sure the articles that  
20 were highlighting our yard as a featured yard  
21 with the news article, I believe in 2013 and  
22 maybe 2015. And possibly the bills on the  
23 spraying that we performed.

24          Q. Did you review your E-mail history for  
25 any E-mails that might have been responsive

1 to the document requests?

2 A. No.

3 Q. Was that because you were sure there  
4 were no E-mails relevant to these requests or  
5 because you just didn't think to look there?

6 A. You're asking me to find documentation  
7 from forty years ago to the present.

8 It's pretty difficult to find all  
9 types of correspondence, and I thought that  
10 the information we provided was adequate for  
11 this particular situation. But obviously  
12 we're still looking for more stuff.

13 Q. Not including Attorney McCaffrey, did  
14 you discuss these lists of documents with  
15 anyone?

16 MR. MCCAFFREY: Objection. Other  
17 than his wife, right?

18 MR. OWENS: Including his wife.

19 A. To what degree are you speaking about?

20 Q. Did you ask relatives if they had  
21 photos that would have been responsive to  
22 this list of documents?

23 Did you talk to neighbors if they  
24 had photos that would have been responsive to  
25 this list of documents?

1                   Did you talk to any prior  
2 employees or vendors or landscapers or  
3 contractors to see if they had any documents  
4 that would have been responsive to these  
5 requests?

6           A. No, except for the additional one that  
7 we put in for the springs, TruGreen. I  
8 called them up and asked if we still had an  
9 account, and I was able to garner those  
10 things through that account.

11          Q. Do you recall when you first received  
12 this list of documents?

13          A. Not at this juncture, no.

14          Q. Do you recall when you responded to  
15 the first request for documents?

16          A. Not a specific date, no.

17                   MR. OWENS: Mark this as Exhibit  
18 3, please.

19                   EXHIBIT 3 MARKED FOR IDENTIFICATION

20          Q. You have been handed a document that  
21 has been marked as Exhibit 3. Do you  
22 recognize this document?

23                   MR. MCCAFFREY: I object. This  
24 does not appear to be a complete document,  
25 Scott. It references certain exhibits that

1 do not appear to be attached to the document.

2 Q. Do you recognize Exhibit 3 as an  
3 excerpt of a document that you're familiar  
4 with?

5 A. What do you mean by excerpt?

6 Q. Part of.

7 A. Yes.

8 Q. And what do you recognize this partial  
9 document to be?

10 A. A response to the production of  
11 documents.

12 Q. And do you see a date on this  
13 response?

14 A. Yes.

15 Q. And what is the date of this response?

16 A. October 22, 2023.

17 Q. Can you look back on Exhibit 2, on the  
18 bottom of Page 6?

19 A. Yes.

20 Q. Do you see a date on the request?

21 A. 24, July, 2023. This is my wife's  
22 production and not mine.

23 Q. Understood. Do you notice that on  
24 Exhibit Number 3, that it's described as  
25 defendants' response to the request for

1 production and not individually yours or your  
2 wife's response?

3 A. Are you referring to the plaintiffs?

4 Q. Well, the title says it's defendants'  
5 response, but you have identified it as your  
6 response and you are the plaintiff, correct?

7 A. I believe so.

8 Q. And on Page 6, these responses are  
9 submitted by you and your wife through your  
10 attorney?

11 A. Correct.

12 Q. So despite the fact that it says  
13 defendants' response, these are your and your  
14 wife's responses to the request for  
15 documents?

16 A. Correct.

17 Q. Between July 24, 2023 and October 22,  
18 2023, what did you do to identify documents  
19 responsive to the request for production?

20 MR. MCCAFFREY: Objection.

21 A. We continued to look for responses to  
22 each of the questions. You have to realize  
23 that you're asking for information over a  
24 40-year period.

25 MR. OWENS: Mark this as Exhibit

1 4.

2 EXHIBIT 4 MARKED FOR IDENTIFICATION

3 Q. You have been handed a document that  
4 has been marked as Exhibit 4. Do you  
5 recognize this document?

6 A. Yes.

7 Q. And what do you understand this  
8 document to be?

9 A. Additional information relative to the  
10 production of documents, to some of the  
11 responses.

12 Q. And why was there a supplemental  
13 response?

14 A. Because we were continuously looking  
15 for receipts and information relative to the  
16 questions asked.

17 Q. And what was the date of the  
18 supplemental response?

19 A. It says here November 5, 2023.

20 Q. Have you continued to look for other  
21 documents since November 5, 2023?

22 A. Yes.

23 Q. Have you found any other documents  
24 since November 5, 2023?

25 A. No.

1 Q. Did you bring any new documents from  
2 Schedule A with you today?

3 A. I believe we have.

4 MR. MCCAFFREY: He did bring some  
5 documents with him.

6 Q. So you have found new documents, or  
7 you just brought documents that are the same  
8 as things that have already been produced?

9 MR. MCCAFFREY: He brought a copy  
10 of the survey from Waterman Engineer. I  
11 don't know if you have a copy of that. I  
12 know Mr. Resnick does. That's an additional  
13 document.

14 As well as he brought a  
15 communication that I received from Attorney  
16 DeSisto with multiple communications between  
17 you and him relative to a nonconforming  
18 undersized lot and what the town would do or  
19 wouldn't do.

20 MR. OWENS: Okay.

21 MR. MCCAFFREY: Would you like a  
22 copy of them?

23 MR. OWENS: Yes, if they're part  
24 of the continued production.

25 MR. MCCAFFREY: They are in



1 response to your notice to take the  
2 deposition.

3 MR. OWENS: If they're responsive  
4 to the notice to take the deposition, they're  
5 also responsive to the request for production  
6 of documents, so they should have been  
7 produced as a supplemental production, yes.

8 MR. MCCAFFREY: You've already  
9 received most of the communications. I want  
10 to make sure you have them.

11 MR. OWENS: Okay.

12 MR. MCCAFFREY: Can we do this as  
13 Exhibit A and Exhibit B? Exhibit A is the  
14 map from Waterman Engineer marked  
15 preliminary, dated 6-24-24.

16 EXHIBIT A MARKED FOR IDENTIFICATION

17 MR. MCCAFFREY: I have an E-mail  
18 from Anthony DeSisto, dated July 25, 2024.  
19 And it starts off, "Mike, I'm sending you the  
20 attached exchanges with Attorney Scott Owens.  
21 Since he's asking for the Town of Warren's  
22 position on the matter, I thought it best to  
23 send to you also. Please let me know if you  
24 have any questions." We can do Exhibit B.

25 EXHIBIT B MARKED FOR IDENTIFICATION

1 Q. If we can look at Schedule A to  
2 Exhibit 1, please.

3 A. Okay.

4 Q. On Page 3 is where Schedule A starts.

5 A. Okay.

6 Q. Item 1 asks for all documents  
7 evidencing your numerous improvements to the  
8 disputed area. Did you under that request?

9 A. Yes.

10 Q. And in your responses to the request  
11 for production, you provided nine groups of  
12 photographs from various time periods and  
13 three news articles; does that sound right?

14 A. In the initial production, yes.

15 Q. And at the time of this initial  
16 production, did those represent all of the  
17 documents evidencing your improvements in the  
18 disputed area that you could find?

19 MR. MCCAFFREY: Objection.

20 A. Rephrase the question.

21 Q. At the time you produced those  
22 documents, those nine groups of photographs  
23 from various time periods and those three  
24 articles, did those represent all of the  
25 documents responsive to Question 1 that you

1 could find?

2 A. At that particular time, yes.

3 Q. Question 2, or Item 2, asks for all  
4 documents tending to prove your continuous  
5 and open use of that disputed area. Did you  
6 understand that request?

7 A. Yes.

8 Q. And in response, you provided those  
9 same photos and articles; is that correct?

10 A. In my initial response, yes. There  
11 were additional ones later.

12 Q. And at the time that you made that  
13 initial disclosure, those represented all of  
14 the documents you had evidencing your  
15 continuous and open use of the disputed area,  
16 right?

17 A. Yes, at that time.

18 Q. Request Number 3 asks for all  
19 documents tending to prove your exclusive use  
20 of the disputed area. Did understand that  
21 request?

22 A. Yes.

23 Q. In your first response, you referred  
24 to those same photos and articles; is that  
25 right?

1 A. Yes.

2 Q. And that was all of the documentation  
3 that you could find evidencing your exclusive  
4 use of the disputed area as of the time of  
5 that production?

6 A. Correct.

7 Q. Skipping down to Number 6, it asks for  
8 all documents evidencing parties, playing,  
9 walking and maintenance that you allege to  
10 have conducted in the disputed area. Did  
11 understand that request?

12 A. Yes.

13 Q. And you responded with those same  
14 photos and articles; is that right?

15 A. Yes. Because I couldn't prove  
16 maintenance was one of the sticking points  
17 where I cut the lawn for all that period of  
18 time and maintained that area.

19 Personally, I didn't have any  
20 pictures of myself cutting the lawn or  
21 trimming the bushes or planting.

22 Q. Skipping down to Number 8, it asked  
23 for all documents evidencing your  
24 installation of Hemlock trees within the  
25 disputed area. Did understand that request?

1 A. Yes.

2 Q. And your response was with those same  
3 photos and articles, right?

4 A. Correct.

5 Q. And you have claimed to have used the  
6 disputed area since 1983, right?

7 A. No. I claimed to use the disputed  
8 area since 1970 when I purchased it. I  
9 always believed that was my property. I  
10 mowed the lawn. I planted the grass.

11 Q. To be clear, you're alleging more than  
12 40 years of use of this disputed area, right?

13 A. Yes, not more than. October will be  
14 40 years. I mean, yes, more than 40,  
15 correct.

16 Q. October will be 44, right?

17 A. Yes.

18 Q. More than 40?

19 A. Correct.

20 Q. I'm sorry. But time stops for no man.  
21 Going back to Request Number 5, it asks for  
22 all documents related to mowing, tree  
23 trimming and spraying of trees within the  
24 disputed area. Did understand that request?

25 A. Yes.

1 Q. And your initial response was, none in  
2 our possession; is that right? Do you  
3 remember that?

4 A. Correct. I couldn't prove that I  
5 mowed. I mean, I could have had my wife take  
6 a picture of me mowing the lawn or trimming  
7 the trees or those types of things. I  
8 didn't.

9 Q. But even though your initial response  
10 was, none in our possession, you made a  
11 supplemental response in November with  
12 receipts from Hidden Gardens Barrington and  
13 receipts from TruGreen, right?

14 A. Yes.

15 Q. So you didn't have those documents in  
16 your possession at the time you made your  
17 initial disclosure, but you later acquired  
18 them?

19 A. Correct.

20 Q. Did you later acquire them because you  
21 reached out to Hidden Gardens or TruGreen to  
22 get them, or you found them someplace else  
23 that you were looking among your records?

24 A. My wife found the Hidden Gardens  
25 receipt elsewhere.

1                   And I reached out to TruGreen and  
2 they said my account was still active, even  
3 though I had not been with them for a number  
4 of years. I looked up myself those  
5 particular date receipts.

6                   I mean, there were other spraying  
7 of trees, but I couldn't get receipts from  
8 those individuals or I didn't reach out to  
9 them, but I knew there were other people.

10           Q. Who are those other people?

11           A. I believe there was a Mark Churco.  
12 There was a Northeastern Tree. There  
13 probably could be another addition to the  
14 production of documents because they did some  
15 spraying.

16                   And also, I believe, Chuck Staton,  
17 landscaper in Warren, looked at the property  
18 and sprayed.

19           Q. What service or services did Hidden  
20 Gardens Barrington provide in relation to the  
21 disputed area?

22           A. They provided the flowers themselves.  
23 I planted all of the flowers.

24           Q. Did they provide the Hemlocks that you  
25 initially planted or did you get those

1 someplace else?

2 A. Someplace else.

3 Q. Where did you get the Hemlocks?

4 A. From a nursery in Barrington.

5 Q. Do you recall the name of the nursery  
6 in Barrington?

7 A. No.

8 Q. Do you recall how many Hemlocks you  
9 acquired from that nursery in Barrington?

10 A. At what stage?

11 Q. Let's talk about that. How many did  
12 you start out with?

13 A. Possibly, I'd say, maybe 22.

14 Q. And when were those 22 planted?

15 A. October of 1983.

16 Q. And when did you -- when was your next  
17 installation of Hemlocks?

18 A. The fall of 1988.

19 Q. And how many was that?

20 A. Probably around the same number, maybe  
21 one more or something.

22 Q. And where did you get those?

23 A. From the same nursery in Barrington.

24 Q. And was there a third installation or  
25 was it just those two?



1           A. Those two. Princess Hilton Nursery  
2 was the name.

3           Q. Do you know if they're still in  
4 business?

5           A. No.

6           Q. Going to Request Number 7 on that  
7 Schedule A, it asked for all documents  
8 relating to your claim that you have been  
9 paying taxes on the disputed area. Did you  
10 understand that request?

11          A. Yes.

12          Q. And do you recall that your response  
13 was none?

14          A. Yes, because I believed the property  
15 in question was always my property, so when I  
16 received the tax bill, I just paid the tax  
17 bill.

18          Q. If you believed the tax bill to be  
19 including the disputed area, wouldn't  
20 providing a copy of the tax bill be  
21 responsive to all documents relating to your  
22 claim that you have been paying taxes on the  
23 disputed area?

24          A. Possibly.

25          Q. But your response was none, correct?

1 A. Correct.

2 Q. And do you agree that none is a  
3 different response than none in our  
4 possession?

5 MR. MCCAFFREY: Objection.

6 A. Well, if I didn't pay the taxes to the  
7 Town of Warren, I wouldn't be still owning  
8 the property. I thought it was understood  
9 that I paid the taxes.

10 Q. Did you do anything to try to find  
11 documents that proved that you paid taxes on  
12 the disputed area?

13 A. No, because I've always believed it  
14 was my property.

15 Q. Did you talk to anyone at the Town of  
16 Warren tax office?

17 A. No.

18 Q. Did you do anything to validate your  
19 belief before you made the claim that you  
20 paid taxes on the disputed area?

21 A. No.

22 MR. MCCAFFREY: Objection.

23 MR. OWENS: Mark this as Exhibit

24 5.

25 EXHIBIT 5 MARKED FOR IDENTIFICATION

1 Q. You have been handed a document we  
2 marked as Exhibit 5 to this deposition. Have  
3 you seen this document before?

4 (WITNESS PERUSES DOCUMENT)

5 A. Yes.

6 Q. What do you understand this document  
7 to be?

8 A. It's the complaint submitted August  
9 12, 2022 to the Rhode Island Superior Court.

10 Q. And on the 8th page, I don't think the  
11 pages are numbered, there are a couple of  
12 notary stamps and a signature; did you find  
13 that page?

14 A. Yes.

15 Q. Is that your signature?

16 A. Yes, it is.

17 Q. And did you sign this document in the  
18 presence of a notary?

19 A. Yes.

20 Q. And did you read this complaint before  
21 you filed it?

22 A. To the best of my knowledge. There  
23 are a lot of legal terms in there.

24 Q. I didn't ask if you understood it,  
25 necessarily, I asked if you read it before

1 you signed it. Did you read it before you  
2 signed it?

3 A. Yes.

4 Q. What was your understanding of the  
5 reason for signing the document?

6 A. That what I believed to be our  
7 property would be our property, and so it  
8 would have to be decided in Superior Court.

9 Q. Can you find numbered Paragraph 16 in  
10 this complaint, please? I think it starts at  
11 the bottom of the third page.

12 A. Okay.

13 Q. And then continuing over to the fourth  
14 page, do you see 16E, Item E?

15 A. Yes.

16 Q. It says, "Upon information and belief,  
17 at each and every tax valuation, the Town of  
18 Warren taxed the Felag Property as if the  
19 most westerly portion of the Felag Property  
20 abutting the tree-lined edge of the Patriarca  
21 Property belonged to the plaintiffs." Did I  
22 read that correctly?

23 A. Yes.

24 Q. Did you understand that statement?

25 A. Yes, that upon each valuation, we were

1 taxed on that property.

2 Q. And you said that you believed that?

3 A. Correct.

4 Q. And upon information and belief, so  
5 did you have any information that suggested  
6 to you that you were paying taxes on that  
7 portion of the disputed property?

8 MR. MCCAFFREY: Objection.

9 A. Just my tax bill, which I paid on a  
10 yearly basis.

11 Q. But you didn't produce the tax bill as  
12 part of the documentation evidencing your  
13 payment of taxes on that property, right?

14 A. I didn't think it was necessary  
15 because I always paid the tax bill.

16 MR. OWENS: Mark this as Exhibit  
17 6.

18 EXHIBIT 6 MARKED FOR IDENTIFICATION

19 Q. You have been handed a document that  
20 has been marked as Exhibit 6 to this  
21 deposition. Do you recognize this document?

22 A. Yes.

23 Q. And what do you understand this  
24 document to be?

25 A. A motion for a temporary restraining

1 order.

2 Q. And do you understand what a motion  
3 for a temporary restraining order is?

4 A. Yes.

5 Q. What do you understand a motion for  
6 temporary restraining order to be?

7 A. To be that no one is to touch the  
8 property in question without that particular  
9 hearing taking place.

10 Q. And looking on Page 8 of this motion  
11 for temporary restraining order, is that your  
12 signature on this document?

13 A. Yes.

14 Q. And also in front of a notary, sworn  
15 and subscribed?

16 A. Yes.

17 Q. Looking at Paragraph 16E of the motion  
18 for temporary restraining order --

19 A. What page?

20 Q. They're not numbered, but I think it's  
21 at the bottom of Page 4, the fourth page.

22 A. Okay. Yes.

23 Q. Do you see that same allegation about  
24 the taxes, "Upon information and belief, at  
25 each and every tax valuation, the Town of

1 Warren taxed the Felag Property as if the  
2 most westerly portion of the Felag Property  
3 abutting the tree-lined edge of the Patriarca  
4 Property belonged to the plaintiffs"?

5 A. Yes.

6 Q. Are you aware that the Patriarcas  
7 filed an opposition to this motion for TRO  
8 that provided documents from the -- excuse  
9 me, I will start that entire question over.

10 Are you aware that the Patriarcas  
11 filed an opposition to this motion for  
12 temporary restraining order and provided  
13 documents from the tax records that showed  
14 that you were not, in fact, taxed on the  
15 disputed area?

16 MR. MCCAFFREY: Objection.

17 A. Yes.

18 Q. What did you think when you saw that  
19 opposition?

20 MR. MCCAFFREY: Objection.

21 A. I was in disbelief because again, I  
22 always believed that it was my property.

23 Q. Did you have any reason to doubt the  
24 tax records that they produced in their  
25 opposition?

1 A. Not necessarily.

2 MR. OWENS: Mark this as Exhibit  
3 7.

4 EXHIBIT 7 MARKED FOR IDENTIFICATION

5 Q. You have been handed a document that  
6 has been marked as Exhibit 7. Do you  
7 recognize this document?

8 A. Yes.

9 Q. And what do you recognize this  
10 document to be?

11 A. An amended complaint.

12 Q. Do you know why you amended your  
13 complaint?

14 A. Possibly because the defendants cut  
15 and butchered the trees, the Hemlocks.

16 Q. Are you guessing or is that your  
17 recollection of why the complaint needed to  
18 be amended?

19 A. It's my recollection.

20 Q. If you could put Exhibit 6 and Exhibit  
21 7 side by side.

22 A. Okay.

23 Q. And it starts off with a section  
24 called the Parties.

25 On the complaint, you see how many



1 paragraphs identify the parties in the case?

2 A. Yes. It's adding BayCoast Bank to it.

3 Q. And does looking at the amended  
4 complaint and that section of the parties  
5 refresh your recollection of why you needed  
6 to amend the complaint?

7 A. Yes.

8 Q. Now that your recollection has been  
9 refreshed, why did you need to amend the  
10 complaint?

11 A. Because we went to court and the  
12 BayCoast Bank asked to be a part of the  
13 process, be a party to it. The Town of  
14 Warren did not.

15 Q. Can you look at Paragraph 18E of  
16 Exhibit 7, the amended complaint?

17 A. Yes.

18 Q. And does that Paragraph 18E make the  
19 same claim about the taxes that you made in  
20 the original complaint and in the motion for  
21 temporary restraining order?

22 A. Yes. It's my belief that I was always  
23 paying the taxes.

24 Q. Are you aware that the amended  
25 complaint was filed in February of 2023,

1 almost six months after the Patriarcas had  
2 provided information in opposition to the  
3 motion for temporary restraining order that  
4 you had not been assessed for taxes on the  
5 disputed area?

6 A. Yes.

7 Q. And yet you continued to allege that  
8 upon information and belief, you had been  
9 taxed on that area, despite them having  
10 provided evidence to the contrary?

11 MR. MCCAFFREY: Objection.

12 A. From my recollection, the taxes on  
13 that disputed property were \$5 a year.

14 Q. How did you calculate \$5 a year as the  
15 taxes on that disputed area?

16 A. I did not calculate anything. The  
17 defendant went to the press on a complaint  
18 against me as a neighbor and State Senator.

19 And upon interviewing myself, I  
20 asked the reporter to go and find out what is  
21 the differential between the disputed  
22 property.

23 Q. And so you're relying on information  
24 that the reporter has represented, not on any  
25 independent investigation with the town that

1 you have made?

2 A. None that I've made.

3 Q. Once the reporter made that discovery  
4 and represented the tax differential to you,  
5 did you make any efforts to correct your  
6 statements to the court about having paid the  
7 taxes?

8 A. No.

9 Q. Looking back at Exhibit 1, that list  
10 of requests, Schedule A, the bottom of Page  
11 3, Request Number 13 asks for documents  
12 relating to communications with the  
13 Patriarcas' predecessors regarding the  
14 disputed area or the property boundary. Did  
15 understand that request?

16 A. Yes.

17 Q. And your response was none, correct?

18 A. Correct, no documentation.

19 Q. And none is different than none in our  
20 possession, right?

21 A. Correct.

22 Q. When you answered none to Request  
23 Number 13, it was your intention to say that  
24 there were no documents that you were aware  
25 of at all relating to communications with the

1 Patriarcas' predecessors regarding the  
2 property, right?

3 A. Just verbal communication.

4 Q. So there was no communication with the  
5 prior owners of the Patriarca Property by  
6 E-mail or text message or handwritten note or  
7 anything like that?

8 A. I don't even know if those existed  
9 back then.

10 Q. Turning to Page 4 of Exhibit 1, Number  
11 14 asks for all documents relating to  
12 communications with the Patriarcas regarding  
13 the disputed area or the property boundary.  
14 Did understand that request?

15 A. What number?

16 Q. Number 14.

17 A. Yes.

18 MR. OWENS: Mark this as Exhibit  
19 8.

20 EXHIBIT 8 MARKED FOR IDENTIFICATION

21 Q. You have been handed a document that  
22 has been marked as Exhibit 8. Do you  
23 recognize this as one of the exhibits to your  
24 document production responses?

25 A. Yes.

1 Q. And what do you understand this  
2 document to be?

3 A. It was a demand to immediately cease  
4 and desist taking down the Hemlocks until  
5 this issue could be resolved in court.

6 Q. What prompted you to send this letter  
7 in August of 2022?

8 A. Mary Patriarca came to our house, rang  
9 the doorbell, and stated that they were going  
10 to cut down all of the Hemlocks by the end of  
11 the week.

12 Q. Did they tell you why?

13 A. They said they were going to put up an  
14 addition.

15 Q. And who did they talk to when they  
16 came and rang the doorbell, you or your wife  
17 or both?

18 A. Probably both. I'm not sure.

19 Q. Had they done anything to the trees up  
20 to that point?

21 A. What trees?

22 Q. The Hemlock trees.

23 A. No.

24 Q. Had they been trimming them or cutting  
25 them or doing anything to them, from the time

1 they bought the property, up until August of  
2 2022?

3 A. I believe they had trimmed them once.

4 Q. Did you say anything to them when they  
5 trimmed the trees?

6 A. No.

7 Q. Do you recall saying anything to  
8 Michael Patriarca about it's not the right  
9 time of year to trim the trees or anything of  
10 that nature?

11 A. No.

12 Q. You didn't say anything to them when  
13 they were trimming the trees to the effect  
14 of, those are our trees, stop cutting them?

15 MR. MCCAFFREY: Objection.

16 A. I can't recall if I physically saw him  
17 cutting the trees. I knew they were cut.

18 Q. But seeing that the trees had been  
19 cut, you didn't say anything to the  
20 Patriarcas about, stop cutting the trees,  
21 they're our trees?

22 A. No, because he did a good job of  
23 trimming the trees. That's the first time.  
24 I want to get that on the record.

25 Q. In that third paragraph of the letter

1 that stars with, "The purpose of this  
2 letter", do you see the sentence that says,  
3 "We have engaged our own surveyor and will  
4 press our property rights to the trees and  
5 the land upon which they grow in Superior  
6 Court"?

7 A. Yes.

8 Q. And the last paragraph says, "We will  
9 get back to you with the results of our  
10 survey, but in the meantime, we will protect  
11 our property to the fullest legal extent  
12 possible"?

13 A. Yes.

14 Q. When did you get the survey that you  
15 referred to in this August 2022 letter?

16 A. Probably much later.

17 Q. Do you recall how much later?

18 A. No.

19 MR. OWENS: Mark this as Exhibit  
20 9.

21 EXHIBIT 9 MARKED FOR IDENTIFICATION

22 MR. MCCAFFREY: Is that one  
23 different than this one, Scott?

24 MR. OWENS: Yes.

25 MR. MCCAFFREY: It's red instead

1 of black.

2 MR. OWENS: It's the same exhibit.  
3 It has the same stamp in the top corner, the  
4 court stamp, that he has on that one.

5 MR. MCCAFFREY: Okay.

6 Q. Do you recognize the document that has  
7 been marked as Exhibit 9?

8 A. Yes.

9 Q. You're welcome to stand up and move  
10 around. Do you need a break? Do we need to  
11 stop for a minute?

12 A. No. I'm okay. I just need to stand.

13 Q. Okay. Fair enough. Is this the  
14 survey that you got that you referred to in  
15 your August 2022 letter?

16 A. Yes.

17 Q. I know it's small, but can you see in  
18 the lower right-hand corner where the  
19 Waterman Engineering logo is, do you see the  
20 date of this survey?

21 A. Yes.

22 Q. Does it say November 7, 2022?

23 A. You're really checking my eyesight.  
24 Yes.

25 MR. MCCAFFREY: Mine says -- on



1 the other side, okay.

2 MR. OWENS: On the left-hand side,  
3 yes, the engineer did stamp it and it's a  
4 different date.

5 MR. MCCAFFREY: It's a different  
6 date.

7 MR. OWENS: And that date, just  
8 for the clarity of the record, is January 4,  
9 2023.

10 Q. Does that look right to you, sir?

11 A. Yes.

12 Q. So you got this survey at some point  
13 between November 2022 and January of 2023; is  
14 that correct?

15 A. I believe so.

16 Q. Do you know when you provided a copy  
17 of this survey to the Patriarcas?

18 MR. MCCAFFREY: Objection.

19 A. No.

20 Q. Was this part of your October 2023  
21 production in response to the document  
22 requests?

23 A. What number? Can you help me with  
24 what number it was?

25 Q. I'm looking at --

1 A. There's a Number 9 and a Number 15.  
2 There's all kinds of numbers.

3 Q. I'm going to tell you. It was in  
4 response to Number 9, if I recall. And you  
5 can double-check me on that by looking at  
6 Exhibit Number 3, which is your response.

7 A. Okay.

8 Q. At Number 9, the response says, "See  
9 copy of survey from Waterman Engineering  
10 Company."

11 A. It says Exhibit N, but I don't have an  
12 Exhibit N here to cross-section it.

13 MR. MCCAFFREY: Is this Exhibit N  
14 from the production?

15 MR. OWENS: I will represent it is  
16 Exhibit N from your production, but I did not  
17 print out the cover sheet that identified it  
18 as Exhibit N.

19 MR. MCCAFFREY: Okay.

20 THE WITNESS: Okay. If you say it  
21 is, I'll agree to your statement. Like I  
22 said, I don't have that physically in front  
23 of me.

24 Q. This Waterman survey was produced as  
25 Exhibit N to your October 2023 document

1 responses; is that correct?

2 A. Yes.

3 Q. Is there a reason you waited almost a  
4 year to share the survey results with the  
5 Patriarcas?

6 MR. MCCAFFREY: Objection.

7 A. I have no idea.

8 Q. Your August 2022 letter said, we will  
9 share the survey results once we have them;  
10 is that right?

11 A. Yes.

12 Q. And you got the survey results in  
13 November 2022, or at least by January 1,  
14 2023, right?

15 A. Yes.

16 Q. But you didn't produce them until  
17 October of 2023?

18 A. Through my attorney.

19 Q. Were there any drafts of this survey  
20 before it was finally stamped and approved in  
21 January of 2023?

22 A. Not that I can recall.

23 Q. You didn't review any E-mails of  
24 drafts with your surveyor to make sure that  
25 he had all of the information on there that

1 you wanted him to depict?

2 A. No.

3 Q. So your only communication with your  
4 surveyor was when he provided you this plan,  
5 correct?

6 MR. MCCAFFREY: Objection.

7 A. I went to his office to hire him.

8 Q. And all of your communications with  
9 him were face-to-face at his office, you  
10 didn't exchange E-mails or anything like  
11 that?

12 A. No.

13 Q. No text messages, just phone calls and  
14 face-to-face?

15 A. Phone calls, yes.

16 Q. And there were no prior drafts of this  
17 survey?

18 A. Not that I can recall.

19 Q. Do you see the notes and references on  
20 the right-hand side of the survey? I know  
21 they're small.

22 A. Yes.

23 Q. And do you see note and reference  
24 Number 4?

25 A. Yes.

1 Q. And note Number 4 says, "These  
2 premises are situated in an R10 zone,  
3 Residence 10." Do you see that?

4 A. Yes.

5 Q. And under Paragraph 4, it has a list  
6 of dimensional requirements; do you see that?

7 A. At a stretch, yes.

8 Q. I agree, but do you see it?

9 A. Yes.

10 Q. It's a stretch, but you do see it?

11 A. Yes. How about you?

12 Q. I do. I got my glasses on, they're  
13 not sitting on top of my head.

14 A. These are for distance.

15 Q. Do you see where it says, "Minimum  
16 frontage/width," the second line item in  
17 those tables?

18 A. Yes.

19 Q. And do you see where it says 90 feet  
20 as the minimum frontage width?

21 A. Yes.

22 Q. Now we're going to really strain.  
23 Going over to the drawing itself, you see  
24 where your lot is depicted; is that right?

25 A. Yes.

1 Q. And to the left of that, you see an  
2 outline of a lot that is labeled, "Now or  
3 formerly AP13E, Lot 305, Anthony, Mary M. and  
4 Cassie Patriarca?

5 A. Yes.

6 Q. And you see where Overhill Road in  
7 relation to your two properties?

8 A. Yes.

9 Q. And do you see the distance along  
10 Overhill Road for the Patriarca property as  
11 100 feet?

12 A. Yes.

13 Q. And then do you see that your disputed  
14 area has a width of 13 feet and change?

15 MR. MCCAFFREY: I can't read that,  
16 but I agree with you.

17 A. Yes.

18 MR. MCCAFFREY: Do you have a  
19 bigger map, because this is difficult to  
20 read?

21 MR. OWENS: He said he saw it, so.

22 MR. RESNICK: I can get a  
23 magnifying glass.

24 MR. MCCAFFREY: I think his  
25 attorney should be able to read it, too.

1 MR. OWENS: Let's go off the  
2 record.

3 (OFF THE RECORD)

4 MR. OWENS: Back on the record.

5 Q. So the distance of the disputed area  
6 along Overhill Road is 13.1 feet; do you see  
7 that?

8 A. Yes.

9 Q. And since you were a math major, I'm  
10 going to ask you to do the math, subtracting  
11 13.1 from 100.

12 A. 86.9.

13 Q. And is 86.9 less than the 90 feet of  
14 frontage required by the Town of Warren?

15 MR. MCCAFFREY: Objection.

16 A. Under a conforming, yes.

17 Q. So you understand that by taking this  
18 disputed area as your own property, it would  
19 be rendering the Patriarca lot nonconforming?

20 MR. MCCAFFREY: Objection.

21 A. At this stage, not when I received the  
22 engineering.

23 Q. Are you aware that the Patriarcas  
24 raised concerns about this zoning issue  
25 between November 2022 and October of 2023?

1 MR. MCCAFFREY: Objection.

2 A. To who?

3 Q. To your attorney, for one.

4 A. Possibly, yes.

5 Q. And are you aware that your attorney  
6 represented to the Patriarcas that you had a  
7 survey that did not show a zoning issue?

8 MR. MCCAFFREY: Objection.

9 A. I don't recall.

10 Q. Did you have a relationship with the  
11 Patriarca Family before this dispute arose?

12 MR. MCCAFFREY: Objection. Time  
13 frames?

14 Q. This dispute arose in 2022. Did you  
15 have a relationship with the Patriarca Family  
16 prior to 2022?

17 A. I knew who they were, yes.

18 Q. Did you have a relationship with them  
19 before they bought the house next to yours?

20 A. I knew who they were.

21 Q. How did you know them; what was the  
22 nature of that relationship?

23 A. Mary Patriarca was Mary Abbruzzi. Her  
24 family grew up in Warren and I grew up in  
25 Warren.



1 Q. Did you go to high school together?

2 A. No.

3 Q. Did your families get together for  
4 parties or events or things along those  
5 lines?

6 A. No.

7 Q. You were just aware that they lived in  
8 the same town?

9 A. Yes.

10 Q. Did you go to the same church or did  
11 you belong to the same clubs, any sort of  
12 things like that?

13 A. Who are you referencing?

14 Q. You said Mary Patriarca's family,  
15 before she became Mary Patriarca, her family  
16 and your family lived in Warren?

17 A. Correct.

18 Q. How did you know that they also lived  
19 in Warren? How did your paths cross to know  
20 that they lived there?

21 A. Her father was the football coach.  
22 Her father was the gym teacher.

23 Q. Did you play football for him?

24 A. No.

25 Q. Were you in his gym class?

1 A. I assume so, yes. And then being a  
2 political figure, I knew.

3 Q. Was the cease and desist letter that  
4 you sent in August of 2022 the only  
5 communication that you had with the  
6 Patriarcas about this dispute over the trees  
7 and this strip of land?

8 A. Yes.

9 Q. No E-mails, no text messages?

10 A. No E-mails and no text messages.

11 Q. Did you talk to any of them on the  
12 telephone?

13 A. No.

14 Q. Did you talk to them in-person after  
15 they had come and knocked on the door and  
16 told you that they planned to cut down the  
17 trees?

18 A. Yes.

19 Q. And what was that or when was that  
20 conversation in relation to the time that  
21 they came to the door?

22 A. They came to the door right around the  
23 same time I believe I received a notice from  
24 the Zoning Board to appear at the Zoning  
25 Board meeting that they were putting on this

1 tremendous addition to their cape or ranch,  
2 their ranch.

3 Q. And you talked to them at the meeting  
4 or leading up to the meeting?

5 A. Leading up to the meeting.

6 Q. And where did that conversation take  
7 place?

8 A. Well, upon having the plans of what  
9 type of addition they were going to put up,  
10 it wasn't really just an in-law addition, it  
11 was a major addition.

12 I was in the process of hiring a  
13 lawyer and engineer and then I provided them  
14 with the cease and desist order. And then I  
15 spoke with Anthony Patriarca as to what his  
16 plans were.

17 Q. And when was that conversation?

18 A. I believe it was after they were given  
19 the cease and desist order, prior to the  
20 Zoning Board meeting.

21 Q. When did you acquire your property at  
22 51 Overhill Road?

23 A. October of 1980.

24 Q. And was your house already built or  
25 did you buy an empty lot and build your own?

1 A. The house was built on spec.

2 Q. Was the lawn and landscaping already  
3 on your lot?

4 A. No.

5 Q. Was it just dirt or was it just they  
6 had overseeded, like most contractors do when  
7 they sell a spec house?

8 A. It was dirt. They might have put some  
9 grass seed down, but it never took. Later  
10 on, I ended up putting some turf down.

11 Q. Was there a walkway to your front door  
12 already in?

13 A. No.

14 Q. Was the driveway already poured?

15 A. The driveway was poured.

16 Q. Was the house at 49 Overhill already  
17 built when you bought your house at 51?

18 A. I don't believe so.

19 Q. Was it the same contractor that built  
20 your house?

21 A. I don't know. Who was the contractor?

22 Q. I guess -- let me rephrase the  
23 question. Do you know who the contractor was  
24 on your house?

25 A. Yes.

1 Q. And who was that?

2 A. Sylvia.

3 Q. Do you know who the contractor was on  
4 the 49 Overhill house?

5 A. I believe it could be Sylvia.

6 Q. But you don't know?

7 A. I think the records show that it was  
8 him.

9 Q. If you think the records show it was  
10 him, when I asked you if it was the same  
11 contractor, why did you ask me who was the  
12 contractor?

13 MR. MCCAFFREY: Objection.

14 A. I wanted to see if you knew who the  
15 contractor was.

16 Q. It's not my deposition. Was there  
17 anything marking the boundary between 51  
18 Overhill and 49 Overhill at the time you  
19 bought in 1980?

20 A. No markers.

21 Q. Was there a line of Hemlock trees  
22 marking the boundary between 51 Overhill and  
23 49 Overhill when you purchased your property?

24 A. No.

25 Q. Looking at Exhibit 7, at Paragraph 15,

1 "From the date of the conveyance to  
2 plaintiffs on or about October 10, 1980, the  
3 plaintiffs were under the good-faith belief  
4 that the property line between the Felag  
5 Property and Patriarca Property was  
6 physically identified by the Hemlock trees  
7 placed on the land."

8 A. My last name is Felag.

9 Q. What did I say?

10 A. Felag.

11 Q. I'm sorry. Do you need me to read the  
12 whole thing again?

13 A. Well, again, I always was under the  
14 belief that where the Hemlocks were was the  
15 actual property line.

16 It could be semantics as to later  
17 identified as the Hemlock trees on the land.  
18 Or it could be a typo because we planted the  
19 Hemlocks in October of '83.

20 Q. Did the seller of your property tell  
21 you where the boundary line was?

22 A. No.

23 Q. Did you have a survey done at the time  
24 you bought the property in 1980 to show where  
25 the boundary line was?

1 A. No.

2 Q. So what was the basis of your  
3 good-faith belief that that Hemlock tree line  
4 was where your boundary line was?

5 MR. MCCAFFREY: Objection.

6 A. Sometime later when they put in the  
7 driveway, I had always cut the property up to  
8 that particular point where the Hemlock line  
9 was.

10 And also the fact that when the  
11 owner came in, he put his mailbox in the  
12 middle of his property. He didn't put it on  
13 the disputed property.

14 Q. And what does where he put his mailbox  
15 have to do with the boundary between the two  
16 properties, in your mind?

17 A. In my mind, if he put it on that  
18 property, then it would indicate to me that  
19 he thinks that it's his property. He never  
20 conversed to me, indicating that I was mowing  
21 his yard or mowing his property.

22 Q. What is the significance of a mailbox  
23 in terms of where the boundary line is?

24 MR. MCCAFFREY: Objection.

25 A. It's just like planting a plant or an

1 indicator indicating that that's your  
2 property.

3 Q. Doesn't it make more sense to put your  
4 mailbox at the foot of your walkway where  
5 your front door meets the street?

6 A. Each person has their own thing of  
7 where they want to put their mailbox,  
8 preference.

9 Q. If each person has their own thing  
10 about where they want to put their mailbox,  
11 where they put the mailbox has no bearing  
12 really on where the property line is, right?

13 A. It depends on your point of view.

14 Q. On that amended complaint, Exhibit  
15 Number 7, at Paragraph 18A --

16 A. I don't know where you are now.

17 Q. Paragraph 18A.

18 A. Okay.

19 Q. "From the date of purchase by  
20 plaintiffs, they mowed the land, trimmed the  
21 trees, sprayed the trees on the Felag  
22 Property, up to the most westerly border of  
23 the Felag Property, to the Hemlock tree line  
24 on the most easterly side of the Patriarca  
25 Property." Did I read that correctly?



1 A. Yes.

2 Q. Again, you're saying that from your  
3 date of purchase, and that's not a typo,  
4 because we're talking about your date of  
5 purchase, we're not talking about from the  
6 date you planted the Hemlock trees, we're  
7 talking about your date of purchase, which  
8 you said is October of 1980, that you  
9 maintained up to the Hemlock trees?

10 A. Up to the Hemlock tree line.

11 Q. But there were no Hemlock tree lines  
12 from the date of your purchase. They weren't  
13 there for another three years, right?

14 A. Correct. As a reference, what did we  
15 do? We mowed the land, so we mowed up to  
16 that particular line.

17 And then later after planting the  
18 trees, we trimmed the trees and sprayed the  
19 Felag Property up to the Hemlock line.

20 MR. OWENS: Off the record.

21 (OFF THE RECORD)

22 MR. OWENS: Back on the record.

23 Q. Looking at amended Paragraph 35 on  
24 Exhibit 7, it says, "The Hemlock boundary  
25 line existed as a boundary marker between the

1 plaintiffs' property and the defendants'  
2 Patriarca Property for over ten years, and  
3 their respective predecessor's in interest  
4 have all recognized the Hemlock boundary  
5 line, 1980, as the boundary markers between  
6 the plaintiffs' property and the defendants'  
7 Patriarca Property." Did I read that  
8 correctly?

9 A. You're asking me?

10 Q. I am.

11 A. Okay. Yes.

12 Q. Again, you're alleging that the  
13 Hemlock boundary line of 1980 had already  
14 been there when you purchased, correct?

15 A. We're recognizing that where the  
16 Hemlock line existed, it was always my belief  
17 that that was the line between my property  
18 and the next property.

19 If we want to go into specifics,  
20 then the Hemlock line existed from 1983, and  
21 the first town records were referencing the  
22 line itself.

23 Q. Who are the predecessors in interest  
24 that you're referring to in Paragraph 35?

25 A. The predecessors were Jack and, I

1 believe, Betty Huss, H-U-S-S. They owned the  
2 property from 1982 until maybe 1987. After  
3 that, Ann and Patrick McDonough,  
4 M-C-D-O-N-O-U-G-H.

5 Q. And Jim and Catherine bought it from  
6 the Husses?

7 A. Who are Jim and Catherine?

8 Q. Didn't you say Jim and Catherine  
9 McDonough?

10 A. No. I said Ann and Patrick.

11 Q. Wow. Sorry about that. So Ann and  
12 Patrick McDonough bought from the Husses?

13 A. Yes.

14 Q. And that was in about 1987?

15 A. Correct.

16 Q. And when did the McDonoughs leave or  
17 when did they sell the property?

18 A. Probably when the Patriarcas bought  
19 it.

20 Q. Did Jack and Betty Huss live at the  
21 property during the time that they owned it?

22 A. Yes.

23 Q. Did Ann and Patrick live at the  
24 property during the time that they owned it?

25 A. Yes.

1 Q. The entire time for both of them, or  
2 was there ever a time when they left and let  
3 somebody else live there?

4 A. No. They lived there the entire time.  
5 Jack and Betty ended up selling the property.

6 During the time that the  
7 McDonoughs owned it, Patrick passed away and  
8 then Ann passed away. And there might have  
9 been a niece that lived in the property.

10 Q. Do you know her name, the niece?

11 A. I can't recall.

12 Q. Do you recall about what time frame  
13 that would have been that she moved into the  
14 property?

15 A. She might have been there to assist  
16 Ann in her illness and then just stayed after  
17 that, a couple of years after, or maybe a  
18 year.

19 Q. She was there for a year or she moved  
20 in a year or so after something?

21 A. I can't recall, but she was there.

22 Q. You say that all of these predecessors  
23 in interest recognize the 1980 Hemlock line  
24 as the boundary marker, right?

25 A. Yes.

1 Q. How do you know that they recognized  
2 that Hemlock line as the boundary?

3 A. Well, for the first three years, 1980  
4 to 1983, I mowed the property up to the  
5 driveway area and planted the sod on that  
6 area. And there was no objection and no  
7 indication from Jack or Betty Huss that it  
8 was their property.

9 And then in 1983, in conversation  
10 with Jack, I wanted to put up Hemlocks  
11 because my wife wanted a natural boundary,  
12 rather than a fence, between two properties.  
13 And we agreed that that would be the property  
14 line basically halfway and continue to the  
15 road without the Hemlocks.

16 Q. When you say, we agreed, that was you  
17 and Jack?

18 A. Yes.

19 Q. Was Betty part of that conversation?

20 A. Not that I recall.

21 Q. Was Elaine part of that conversation?

22 A. No.

23 Q. Did anybody witness that conversation  
24 between you and Jack who could testify that  
25 Jack agreed to that?

1 A. No.

2 Q. Did you and Jack have anything in  
3 writing memorializing that agreement?

4 A. No, because as I stated before, I  
5 always believed that was my property line.

6 Q. And why, again, did you believe that  
7 that was the property line, without having  
8 done a survey or without there having been  
9 anything there until you planted the  
10 Hemlocks; what formed your basis of that  
11 belief?

12 A. It was just always the belief that I  
13 was mowing the land and I was maintaining it.  
14 And part of that land was all on a hill, so I  
15 always believed it was my property.

16 Q. Was the driveway on the Patriarca  
17 property, there are two driveways, the one  
18 closer to you, was that one there when you  
19 bought in 1980?

20 A. I can't recall, but probably a short  
21 time later. I believe the house was  
22 purchased in January of '81 and I purchased  
23 my in October on spec, so.

24 MR. OWENS: Mark this as Exhibit  
25 10.

1 EXHIBIT 10 MARKED FOR IDENTIFICATION

2 Q. You have been handed a document that  
3 has been marked as Exhibit 10. This is from  
4 your production documents, which included  
5 this label, Exhibit A, 1983 Photo Hemlocks  
6 Planted. Do you recognize this?

7 A. Yes.

8 Q. And what does this photo show?

9 A. It shows the initial planting of the  
10 Hemlocks in the background.

11 Q. And do you know how long after you  
12 planted the Hemlocks this photo was taken?

13 A. I can't recall.

14 Q. Did you also, at the same time, plant  
15 those bushes and flowers in the foreground or  
16 was that done at a different time?

17 A. I would assume at a different time.  
18 They look a lot more mature.

19 Q. Are they still there?

20 A. I would say no. No, they are not  
21 there.

22 Q. For perspective, we're looking from  
23 your house toward the Hemlocks with the  
24 Patriarca property behind it; is that  
25 correct?

1 A. Correct.

2 Q. That grassy area in the background  
3 behind the Hemlock trees is the Patriarca  
4 property, or what is now Patriarca property?

5 A. Correct.

6 Q. And the other trees, the bark trees  
7 that are behind that shrub in the foreground  
8 that are in the vicinity of the Hemlocks, are  
9 those trees still there?

10 A. The one in the middle might be there,  
11 but the one on the left is definitely not  
12 there.

13 MR. MCCAFFREY: There are three  
14 trees there, so the one in the middle is  
15 right behind, just for identification.

16 Q. There's a single one on the left,  
17 that's the one that you say is gone?

18 A. Yes. That one fell.

19 Q. And the one that kind of Vs, that  
20 splits that looks like a V or a Y, you think  
21 that one might still be there?

22 MR. MCCAFFREY: There's a big one  
23 behind it.

24 A. Yes.

25 Q. And then there's one behind it that's



1 definitely on the Patriarca property that  
2 doesn't look like it, necessarily?

3 A. Those probably are not there. They've  
4 cut a lot of trees down. The one way to the  
5 right is probably not there.

6 MR. OWENS: Mark this as Exhibit  
7 11.

8 EXHIBIT 11 MARKED FOR IDENTIFICATION

9 Q. You have been handed a document marked  
10 as Exhibit 11 for this deposition.

11 This was in your production of  
12 documents with the label Exhibit B, June 1988  
13 Photo Wedding Reception. Do you recognize  
14 this?

15 A. Yes.

16 Q. And what does this photo show?

17 A. It shows that from the driveway to my  
18 property has been maintained with the  
19 grass-cutting.

20 It indicates that the bar area is  
21 up to the driveway, with the bar stationed a  
22 little bit in front. It shows utilization of  
23 the disputed property.

24 Q. And whose driveway is this shown in  
25 this picture?

1 A. It was the McDonough's property.

2 Q. The Patriarca property now, that's  
3 their driveway?

4 A. Correct.

5 Q. And are there any Hemlock trees along  
6 the boundary shown in this photo?

7 A. No.

8 Q. And this is dated 1988, June of 1988;  
9 is that correct?

10 A. Correct.

11 Q. When did you plant the rest of the  
12 Hemlock trees?

13 A. In the fall of '88, 1988.

14 Q. Did you have any conversation with the  
15 McDonoughs about extending the Hemlock tree  
16 line?

17 A. Yes.

18 Q. And who was present at that  
19 conversation?

20 A. I believe Patrick, maybe Patrick and  
21 Ann.

22 Q. Patrick and Ann were both there?

23 A. I believe so, yes.

24 Q. Was Elaine there?

25 A. No.

1 Q. And was that conversation, how did  
2 that conversation go?

3 A. That I was going to continue the  
4 property line from the existing Hemlocks to  
5 the street.

6 Q. Was anybody else there who witnessed  
7 that conversation?

8 A. No.

9 Q. Do you understand that one of the  
10 claims that you have asserted in this lawsuit  
11 is called adverse possession?

12 A. Yes.

13 Q. And do you understand what adverse  
14 possession means?

15 A. Not necessarily.

16 Q. Do you understand that with a claim of  
17 adverse possession, one of the things you  
18 have to show is that you used somebody else's  
19 property without permission?

20 A. If I always believed it was my  
21 property, then it was my property, so.

22 Q. Is it your contention that you planted  
23 the Hemlock trees on the Patriarca property  
24 without permission?

25 A. No.

1 Q. You didn't plant the Hemlock trees  
2 without permission?

3 A. Rephrase the question.

4 Q. Did you have permission to plant the  
5 Hemlock trees when you planted them?

6 A. Yes. It was an agreement between  
7 Patrick, Ann and myself that we would plant  
8 the Hemlocks and that would be the boundary  
9 line.

10 MR. OWENS: Mark this as Exhibit  
11 12, please.

12 EXHIBIT 12 MARKED FOR IDENTIFICATION

13 Q. Have you ever seen this document  
14 marked as Exhibit 12 before?

15 A. Yes.

16 Q. And what do you understand this to be?

17 A. This was a letter to the Zoning Board  
18 indicating my rights to the property.

19 Q. Who wrote this letter?

20 A. Peter Skwirz.

21 Q. And who is Peter Skwirz?

22 A. He was my attorney.

23 Q. Is he currently your attorney?

24 A. No.

25 Q. Was he your attorney solely for the

1 purpose of sending this letter to the Zoning  
2 Board or did he represent you on other  
3 things?

4 A. He represented me at the Zoning Board  
5 hearing, too.

6 Q. Did you -- and this Zoning Board  
7 hearing was on the Patriarca's application to  
8 add on to their residence at 49 Overhill; is  
9 that right?

10 A. Correct.

11 Q. Did you review that application that  
12 they had submitted?

13 A. The Patriarcas'?

14 Q. The Patriarcas' application, did you  
15 look at it?

16 A. Yes.

17 Q. And what were they proposing to do, as  
18 you understood it?

19 A. They were proposing to put a huge  
20 addition on, one that was probably 32 feet by  
21 maybe 16 feet, maybe. And then another  
22 addition that was 26 feet by another 20 feet  
23 or whatever.

24 Q. Do you recall if there was a survey  
25 attached to their zoning application?

1 A. There was a schematic. I don't know  
2 if you would call it a survey.

3 Q. Can you describe the schematic that  
4 you're talking about?

5 A. Not really.

6 Q. Okay. In the third paragraph on this  
7 letter starts, "The Felags moved onto that  
8 their property in 1980. In approximately  
9 1982, the Felags made an oral agreement with  
10 Jack and Betty Huss, the then-owners of 49  
11 Overhill Road and the Patriarcas' predecessor  
12 in title, to establish a boundary marker  
13 between the two properties." Did I read that  
14 correctly?

15 A. I mean, it says approximately 1982,  
16 but it was 1983.

17 Q. And then the next sentence of this  
18 paragraph, "To mark the boundary, the Felags  
19 planted a row of Hemlock trees between the  
20 properties."

21 A. Correct.

22 Q. "These trees have marked the boundary  
23 between the two properties for 40 years and  
24 the property owners on each side of the trees  
25 have recognized the trees as the boundary, up

1 until the Patriarcas moved into 49 Overhill  
2 Road in 2022." Did I read that all  
3 correctly?

4 A. Yes.

5 Q. Did you think it was important to  
6 distinguish between the trees that had been  
7 planted in 1983 and the trees that had been  
8 planted in 1988?

9 MR. MCCAFFREY: Objection.

10 A. No, because if you did a straight line  
11 from where the Hemlocks were planted, then it  
12 goes right to the road.

13 Q. The statement, "The trees have marked  
14 the boundary between the two properties for  
15 40 years," the trees had not been there for  
16 40 years, though, had they?

17 A. Half of the trees had been there for  
18 41 years.

19 Q. The trees had been there for 39 years,  
20 so we can round that to 40, but the others  
21 hadn't, right?

22 A. No. They had only been there for 34  
23 years, or whatever the math is.

24 Q. Skipping to the paragraph at the  
25 bottom of the first page, "Removal of the

1 Hemlock trees would have a devastating impact  
2 on the Felag's quiet enjoyment of their home  
3 and exacerbate drainage issues that are  
4 already posed by the Patriarcas' proposed  
5 addition." Did I read that correctly?

6 A. Yes.

7 Q. What drainage issues were you having  
8 at your property?

9 A. None at the present time at that time.

10 Q. What drainage issues did you think  
11 would be exacerbated, if you didn't have any  
12 existing drainage issues?

13 A. I had a drain issue back in 2010, at  
14 which time it was torrential rain.

15 And from that point, I ended up  
16 contouring the property differently, where I  
17 put in a border of a couple of feet and put  
18 some plants in to hold the vegetation and  
19 then contoured the property away from my  
20 property into more of a valley, so when it  
21 rains now continuously, all the water sits in  
22 that particular area.

23 Q. So water comes off of the hill from  
24 the Patriarca property, because we have seen  
25 that hill in the photos?



1 A. Yes.

2 Q. And then you have graded away from  
3 your house to create a valley where the water  
4 pools now?

5 A. Correct.

6 Q. And now, would removing the trees  
7 exacerbate that drainage issue?

8 A. The trees soak up the water. If the  
9 trees were not there, then it would make a  
10 bigger stream that would come through that  
11 area.

12 And I can provide pictures of  
13 various times where the water has pooled  
14 based on the rain.

15 Q. Did you file any permits for changing  
16 the contour of your lot or adding in the  
17 retaining walls and additional vegetation in  
18 2010?

19 A. No. It was just a small little  
20 retaining wall.

21 Q. Did you have any engineering plans  
22 drawn up for that or did you just do it  
23 yourself?

24 A. I hired somebody to put up the  
25 retaining wall.

1 Q. Who did you hire to put up the  
2 retaining wall?

3 A. Carlos Alves and Dave Cardoza.

4 Q. If we all pull out our little  
5 microscopes or phones, on Exhibit 9, the  
6 survey plan, do you see within the disputed  
7 area within Parcel A, running perpendicular,  
8 essentially, from Overhill Road, a line of  
9 something?

10 It's not necessarily labeled by  
11 the surveyor, but is that the location of the  
12 retaining wall that you installed?

13 A. Yes.

14 Q. And was that entire length of  
15 retaining wall installed at the time in 2010?

16 A. Yes. Well, or 2011, right in that  
17 time frame.

18 Q. Was drainage a factor where you put  
19 the Hemlock trees in in 1983?

20 A. No.

21 Q. Was privacy a factor?

22 A. Yes.

23 Q. And one of the reasons for having a  
24 vegetative buffer between the properties was  
25 to have some sort of privacy screen between

1 you and the neighbor's property?

2 A. Yes. That's the way my wife preferred  
3 it, a natural boundary. She's a naturalist.  
4 She's a gardenist and a gardener. She wanted  
5 that natural because the back is a stone  
6 wall.

7 Q. Didn't it make sense to plant the  
8 trees at the top of that hill running from  
9 the Patriarca property to yours so that you  
10 got the benefit of the privacy sooner?

11 A. They were not planted at the top of  
12 the hill. The hill continues to go up, so  
13 they were planted on the hill, the side of  
14 the hill.

15 Q. Doesn't their driveway sit where the  
16 trees are?

17 Isn't that the top of the hill?  
18 You wouldn't build a driveway on the side of  
19 the hill, right? As it continues to go up,  
20 you'd put the driveway in at the top of the  
21 hill?

22 A. Yes, but if the driveway is here, then  
23 the hill goes down this way. The Hemlocks  
24 are here. That's half the driveway.

25 The other half, the land continues

1 to go up, so you're on the side of a hill  
2 when you planted them.

3 Q. But planting the trees at the bottom  
4 of the hill wouldn't have provided the same  
5 privacy, right?

6 A. Again, I planted at what I believed to  
7 be the property line. Why would I plant them  
8 anywhere else?

9 Q. To get the best bang for the privacy  
10 buck, to mitigate drainage issues? Those are  
11 potential whys, just for the sake of  
12 discussion.

13 A. I disagree.

14 Q. What is your understanding of what  
15 constitutes a boundary marker?

16 A. Some sort of indication, whether it be  
17 a stone wall, a fence, shrubs, whatever.

18 Q. Are those types of boundary markers  
19 referenced in the deeds to property?

20 A. I don't know.

21 Q. What about surveying stakes, those are  
22 boundary markers?

23 A. I learned that they are, yes.

24 Q. Pins, things of that nature that  
25 surveyors put in to mark property corners?

1 A. Yes.

2 Q. But you didn't have any of those  
3 things put in before you decided where to put  
4 the Hemlock trees, right?

5 A. No. And there were none existing.

6 Q. If the trees are the boundary line,  
7 where do you contend that your property  
8 stops?

9 A. In what direction?

10 Q. Between you and the Patriarcas. Where  
11 does your -- trees grow, right?

12 A. Yes.

13 Q. And there's an outside face where the  
14 bark and the branches are and then there's  
15 the center line of the trees?

16 A. Near the trunk, I believe.

17 Q. So your property stops at the trunk?

18 A. No. I would think my property stops a  
19 little bit after the trunk. Just like when  
20 you put up a fence, you end up putting the  
21 facial part toward your neighbor so your  
22 foundation would be there. And then whatever  
23 the fence would be, it would be the property  
24 line.

25 If you think of the spikes of the

1 fence as the trunk of the trees, then the  
2 tree itself would be on my property.

3 Q. But a fence doesn't grow like a tree  
4 does, right, get wider and wider over the  
5 years?

6 So are you saying that your  
7 property line is ever changing as the trees  
8 grow and expand further and further out?

9 A. I don't think it grows that far out.  
10 I don't think it causes a differential.

11 Q. Had you consulted with any arborists  
12 that have told you how quickly the trees  
13 grow, or are you just relying on your own  
14 understanding of trees?

15 MR. MCCAFFREY: Objection.

16 A. I mean, we hired an arborist.

17 Q. Looking back on Exhibit 9, Notes and  
18 References, the magnifying glass is there, if  
19 you need it, Note 8 says, "Parcel A is an  
20 area of land as shown up to the center line  
21 of the existing hedges currently being  
22 occupied and claimed by Walter S. Felag, Jr.,  
23 and Elaine M. Felag." Do you see that?

24 A. Yes.

25 Q. Your surveyor says that the disputed

1 area is up to the line of the hedges, but  
2 you're suggesting that it's something other  
3 than that?

4 A. Yes.

5 Q. Did you instruct your surveyor to  
6 change his recent survey to reflect your  
7 understanding that your property extended  
8 beyond the center line?

9 A. Yes.

10 Q. When did you do that?

11 A. When I believed to have an agreement  
12 between the two parties as to what the line  
13 would be and I was instructed to hire the  
14 land surveyor for the second time and produce  
15 a land survey of both properties.

16 Q. So you thought you had an agreement,  
17 based on this plan and where the property  
18 line was going to be. And then you  
19 instructed your surveyor in preparing another  
20 plan to change the line?

21 MR. MCCAFFREY: Objection.

22 A. Maybe a couple of inches or whatever.  
23 It was to indicate that the trunk was in my  
24 property, on my property.

25 Q. Did you discuss the change, the

1 anticipated change, of the Hemlock trees as  
2 they grew with the Husses or the McDonoughs  
3 when you were talking about how the boundary  
4 line was going to be marked with these trees?

5 A. Rephrase that.

6 Q. You said you talked to Mr. Huss in  
7 1983 before that first batch of Hemlocks was  
8 planted and that the Hemlocks would mark the  
9 boundary line; is that right?

10 A. Yes.

11 Q. Did you discuss with him how the  
12 boundary line was going to change as those  
13 trees grew?

14 What was his understanding of  
15 where the boundary line was going to be? Did  
16 he think it was going to be the center line  
17 or did he think it was going to be the  
18 outward side of the bark?

19 MR. MCCAFFREY: Objection.

20 A. I would assume he would have assumed  
21 that it was the outside.

22 Q. And you base that on what, that  
23 assumption on what?

24 A. Just on our conversation.

25 Q. And what did he say that led you to



1 believe that he assumed the outer bark to be  
2 the boundary line and not the center line of  
3 the trees?

4 A. I don't recall. I don't recall.

5 Q. And when you had that conversation  
6 with Mr. McDonough later when you installed  
7 the second batch of Hemlock trees, did you  
8 have a discussion with him about where the  
9 boundary line was going to be in relation to  
10 the center line or the outside of the tree?

11 A. No.

12 Q. So if you didn't have a discussion  
13 about it with them, and you can't recall a  
14 discussion with them about it, how can you  
15 say that they acquiesced to what you're now  
16 claiming to be the boundary line in relation  
17 to the center line or outside of the tree?

18 A. Just like I stated previously, when  
19 you put up a fence, you put a post and those  
20 posts are aligned, but then there's the fence  
21 itself.

22 The post itself is on the  
23 neighbor's property, so the post acts as a  
24 trunk, so the trunk would be on my property.

25 Q. Is that always the case whenever you

1 put in a fence along the boundary line, that  
2 the posts go right on the property line and  
3 the face of the fence extends into the  
4 neighbor's property? Is that always how  
5 fences are installed?

6 Or is it subject to the preference  
7 of the people installing the fence?

8 A. Probably subject to the preference.

9 Q. Same with the planting of trees,  
10 right?

11 A. To some degree, yes.

12 MR. OWENS: Mark this as Exhibit  
13 13, please.

14 EXHIBIT 13 MARKED FOR IDENTIFICATION

15 Q. You have been handed a document we  
16 marked as Exhibit 13 to this deposition.  
17 This was Exhibit C in your production of  
18 documents.

19 A. Okay.

20 Q. And it's labeled as August 1992 Photos  
21 of Son's Baptism. Do you recognize this  
22 photo?

23 A. Yes.

24 Q. Do you see the Hemlock trees in the  
25 background of this photo?

1 A. Yes.

2 Q. In the background, running between  
3 your property and the Patriarca property, at  
4 the far left, there's one big bushy shrub; is  
5 that part of the Hemlock trees?

6 A. No.

7 Q. But then behind that, and running from  
8 the left to the right, there's what looks  
9 more like a manicured Hemlock hedge; is that  
10 the Hemlock hedge that we have been talking  
11 about?

12 A. Yes.

13 Q. And as you near the right corner of  
14 the house on the Patriarca property between  
15 the two sets of balloons, it looks like it  
16 drops?

17 A. Yes.

18 Q. And then continues at a different  
19 height?

20 A. Yes.

21 Q. Is that the line where the two  
22 different installations of Hemlocks were?  
23 The 1983 line stops where the tall one is and  
24 the 1988 picked up where the lower one is?

25 A. Yes. And it also shows the white

1 picket fence going up part of the hill.

2 Q. We don't see the retaining wall in  
3 this photo, that was 2010, right?

4 A. Yes.

5 Q. So we wouldn't see that in this photo?

6 A. Correct. You can see the fence going  
7 up.

8 Q. The white fence?

9 A. Yes.

10 MR. OWENS: Mark this as Exhibit  
11 14.

12 EXHIBIT 14 MARKED FOR IDENTIFICATION

13 Q. Looking back at Exhibit Number 13, the  
14 one we just had, is that typically how you  
15 maintained the hedges to look neat and  
16 trimmed like that?

17 A. It changed over the years, obviously,  
18 as they got bigger.

19 Q. You have been handed photos marked as  
20 Exhibit 14 to this deposition. These were  
21 Exhibit D to your document production.

22 It's labeled July 1993, Five  
23 Photos of Son's First Birthday. Do you  
24 recognize these photos?

25 A. Yes.

1 Q. And do you see in the first photo of  
2 this five-photo series, somebody is sitting  
3 on a saddle in a hay bale?

4 A. Yes.

5 Q. Is that the Hemlock in the background?

6 A. Yes.

7 Q. And are those the 1983 Hemlocks or the  
8 1988 Hemlocks?

9 A. 1983.

10 Q. And they're a bit more bushy in this  
11 photo than they were in the prior set; is  
12 that right?

13 A. Yes.

14 Q. Does that indicate some sort of a  
15 change in how you decided to maintain the  
16 bushes or is this just between trimmings?

17 A. Possibly between trimmings, I don't  
18 know.

19 Q. And if we turn the page to the third  
20 photo in the five-photo series, it look looks  
21 a young girl sitting on the same saddle?

22 A. Yes.

23 Q. And we can see both elevations of the  
24 Hemlock trees in the background; is that  
25 right?

1 A. Yes.

2 MR. OWENS: Mark this as Exhibit  
3 15.

4 EXHIBIT 15 MARKED FOR IDENTIFICATION

5 THE WITNESS: This is the same  
6 thing.

7 MR. OWENS: That was my mistake.  
8 15 goes on Exhibit E. This one just wound up  
9 in the wrong accordion.

10 Q. Exhibit 15 to this deposition is  
11 Exhibit E from your production labeled 2000,  
12 Three Photos. Do you recognize these photos?

13 A. Yes.

14 Q. And in that first photo with the red  
15 triangle, is that the Hemlocks on the  
16 right-hand side, along the right-hand side?

17 A. Yes.

18 Q. And again, they're looking in a more  
19 natural state than a manicured and trim  
20 state, right?

21 A. Yes. This picture looks like it's  
22 more of a summer picture.

23 Q. And the last photo, it looks like  
24 there are some railroad ties along the edge  
25 of the lawn with some vegetation cascading

1 over that; is that what I see in that  
2 picture?

3 A. Yes, part of the retaining wall.

4 Q. Didn't you say the retaining wall was  
5 in 2010 in response to the flooding?

6 A. Yes. These are from 2000 on.

7 Q. This is not necessarily the year 2000,  
8 it's from the 2000s?

9 A. Correct.

10 Q. And later?

11 A. Correct. If you look at the first  
12 picture and the second picture, you'll see a  
13 differential of the same area.

14 Q. Okay.

15 A. The bottom one was the earlier one.

16 Q. So can you put a time frame on these  
17 various pictures from this exhibit, or can  
18 you put them in order at least?

19 A. I can put them in order. The order  
20 would be the second one would be the first.

21 Q. The bottom one on the second page  
22 there is the first in time?

23 A. Yes. The top one would be the second  
24 one. And then the third one would be with  
25 the retaining wall.

1 Q. And the third one is sometime after  
2 2010?

3 A. Correct.

4 MR. OWENS: Mark this as Exhibit  
5 16.

6 EXHIBIT 16 MARKED FOR IDENTIFICATION

7 Q. Deposition Exhibit 16 is Exhibit F  
8 from your document production labeled June  
9 2005, Three Photos Graduation Party. Do you  
10 recognize these photos?

11 A. Yes.

12 Q. Do you know who took all of these  
13 photos; are these photos that you took?

14 A. Yes.

15 Q. So you're not in any of them?

16 A. Except for this one. This one I'm in,  
17 so someone else might have taken that one,  
18 the second picture.

19 Q. Okay. But these are all from the same  
20 time, from that 2005 graduation party?

21 A. Yes.

22 Q. And the background in the first photo  
23 is a little dark, so there's not really much  
24 detail that we can get out of that.

25 A. Right. It's part of the package of



1 the party.

2 Q. Is that looking back toward to the  
3 Hemlock tree line?

4 A. Yes.

5 Q. Is that on the right-hand side? As  
6 the trees start giving way to sky, that peak  
7 there, is that the peak of the Patriarca  
8 house?

9 A. No.

10 Q. What is that?

11 A. It's the peak of the Jackson house,  
12 the neighbor on the other side.

13 Q. So we're looking over the Patriarca  
14 yard, over the hedges and over the yard to  
15 their other neighbors?

16 A. Correct.

17 Q. And in that bottom photo, we can see  
18 the street now. Are we looking at the more  
19 flushed-out 1988 Hemlocks in this photo?

20 A. Yes.

21 Q. Again, it looks like we're continuing  
22 with more of that natural look and less of  
23 the manicured look or is that just between  
24 trimmings?

25 A. I can't recall. And then Number 3 is

1 the same thing.

2 Q. Number 3, same thing, Hemlock trees in  
3 the background?

4 A. And then showing the utilization of  
5 the property with the tent up to the  
6 Hemlocks.

7 MR. OWENS: Mark this as Exhibit  
8 17.

9 EXHIBIT 17 MARKED FOR IDENTIFICATION

10 Q. Deposition Exhibit 17 is Exhibit G  
11 from your production, labeled 8 Photos  
12 Depicting Current Plants and Bushes.

13 The first photo, is that your side  
14 yard on the Patriarca side showing the  
15 Hemlocks running down toward the back of your  
16 lot?

17 A. Yes.

18 Q. And again, they're looking in that  
19 natural state, not trimmed?

20 A. Yes.

21 Q. Two, the same Hemlocks and with some  
22 of the landscaping in the foreground?

23 A. Yes, probably looking the opposite  
24 way.

25 Q. Looking back toward the road?

1 A. Yes.

2 Q. And through the trunks of the  
3 Hemlocks, are we seeing the Patriarca  
4 driveway?

5 A. Yes.

6 Q. And we can see the railroad ties in  
7 there as well?

8 A. Yes.

9 Q. And this was labeled Current Plants  
10 and Bushes. Do you know when these  
11 particular photos were taken?

12 A. Probably before my wife's deposition.  
13 I don't know.

14 Q. That third page has some ground  
15 vegetation that somebody has written the  
16 names of the various plants. There's also a  
17 couple of cut trunks and a trailer.

18 Is this standing roughly near  
19 Overhill Street, looking back toward the  
20 Patriarcas' side? This is their driveway and  
21 trailer and you're looking across the front  
22 of the hedge line; is that where this is?

23 A. Yes.

24 Q. And that next picture is showing, are  
25 those the Hemlocks again?

1 A. Yes.

2 Q. On your side?

3 A. Yes. It's showing from probably  
4 between the retaining wall and between the  
5 front.

6 Q. Are we seeing the retaining wall  
7 below? There's like one roundish bright  
8 green plant and something underneath it; is  
9 that the base of the retaining wall there?

10 A. Yes.

11 Q. The next one has more handwriting on  
12 it. It says, Ferns, Ebony, Oak Leame and  
13 Hydrangea; do you see that one?

14 A. Yes.

15 Q. And this is at some point along the  
16 hedge line on your side?

17 A. Yes, the far-right corner.

18 Q. So the back corner, the corner  
19 farthest from Overhill Street?

20 A. Correct.

21 Q. But along the hedge line with the  
22 Patriarcas?

23 A. Correct.

24 Q. And then the next looks like it has  
25 some Honeysuckle and other sorts of Violets

1 and things in it similar to that back corner?

2 A. No. This would be the other side of  
3 where the fence went up.

4 Q. Okay. Where that fence had been, that  
5 picket fence, that was perpendicular to the  
6 hedges on the right-hand side of this photo  
7 and we're looking in the corner where the  
8 fence meets?

9 A. Correct, from the back of my yard.

10 Q. And the next one, Hemlocks are  
11 actually labeled on this one, with an Azalea  
12 and some Golden Thread Cypress.

13 Is this on the other side of the  
14 fence, looking at the other corner with the  
15 fence?

16 A. Yes, I think that's the other corner.

17 Q. Okay. And then that last one,  
18 Hemlocks in the background. Is that a power  
19 line on the right-hand top?

20 A. Yeah. This is another picture where I  
21 showed the Hemlocks. I mean, I showed the  
22 border on one of them.

23 And then on this exhibit here, it  
24 shows that going that way toward the back.  
25 This would be a picture of it going toward

1 the street. You can see in the left-hand  
2 corner that same bush.

3 Q. So the bright green tree in the lower  
4 left-hand corner on the last photo is the  
5 same bright green tree that was more or less  
6 in the middle of the photo on the fourth  
7 page?

8 A. Correct. And that's probably why you  
9 see the power line going through.

10 MR. OWENS: Mark this as Exhibit  
11 18.

12 EXHIBIT 18 MARKED FOR IDENTIFICATION

13 Q. Deposition Exhibit Number 18 is  
14 labeled as Exhibit H, 2012 Google Maps Photo  
15 from your production. Do you recognize this  
16 photo?

17 A. Yes.

18 Q. And what does this show?

19 A. It shows the Hemlock line as the  
20 boundary.

21 Q. And your house is on the left-hand  
22 side of this photo and that's the Patriarcas'  
23 driveway?

24 A. Correct.

25 Q. And this is 2012, showing the Hemlocks

1 maintained on this side, on the Patriarca  
2 side of the Hemlocks; is that right?

3 A. Correct.

4 Q. Who is responsible for trimming the  
5 Hemlocks?

6 A. I performed that task.

7 Q. You trimmed the Hemlocks on the  
8 Patriarca side?

9 A. Yes.

10 Q. Why did you do that?

11 A. In 2012, that would be Ann and Patrick  
12 McDonough who owned the property.

13 Q. Right.

14 A. So I trimmed both sides.

15 Q. Did you discuss that with the  
16 McDonoughs, that you were going to do that?

17 A. Yes.

18 Q. And what was the nature of that  
19 conversation?

20 A. I planted the trees, is it okay or do  
21 you want to hire somebody to trim the bushes,  
22 but I'll gladly do it for you.

23 Q. And they agreed to that?

24 A. Yes.

25 Q. Were they older? Were they not able

1 to trim them themselves; it was either you do  
2 it or they hire someone? Was there a reason  
3 you offered to do it?

4 A. No. I'm just a neighborly person.

5 MR. OWENS: Mark this as Exhibit  
6 19.

7 EXHIBIT 19 MARKED FOR IDENTIFICATION

8 Q. What has been marked as Exhibit Number  
9 19 is labeled Exhibit I, 2014 Three Photos of  
10 Plants from your document production. Do you  
11 recognize these photos?

12 A. Yes.

13 Q. Now, the first of these, the first  
14 page has a 3 on it. I don't know if this  
15 meant anything at some point.

16 The first page of these photos  
17 shows some ground plantings, including  
18 Lemongrass, Impatiens and Ferns.

19 Is this the retaining wall that we  
20 have been talking about on the base of those  
21 plants?

22 A. Yes.

23 Q. And this is looking back toward  
24 Overhill Street along the --

25 A. Overhill Road, yes.



1 Q. Along the Hemlock line?

2 A. Yes.

3 Q. And then the second photo shows an  
4 open lawn area; those are the Hemlocks along  
5 the right-hand side?

6 A. Correct.

7 Q. And we're now looking from the street,  
8 back toward the back of your lot; is that  
9 right?

10 A. Yes.

11 Q. And then we can see the base of the  
12 retaining wall there in the foreground on the  
13 right-hand side?

14 A. Yes.

15 Q. And some of those plantings that we  
16 had a closer photo of in the prior photo?

17 A. Correct.

18 Q. And it looks like there's also some  
19 lawn furniture and other things with some  
20 growth behind those which runs along that  
21 fence that we've been talking about?

22 A. Yes.

23 Q. That divides your front yard from the  
24 backyard?

25 A. Yes.

1 Q. On the third photo we have grasses,  
2 Coral Bells, Lilies and some ornamentation.

3 It's a little hard to tell where  
4 along the line this might be, although is  
5 that in the lower right-hand corner or is it  
6 barely the top of the retaining wall peeking  
7 through there?

8 A. Yes.

9 Q. Again, looking toward Overhill Road,  
10 along the Hemlock line?

11 A. Yes.

12 Q. When this case is resolved, is it your  
13 understanding that the Patriarcas will have  
14 the right to cut the branches of the Hemlocks  
15 on their side?

16 MR. MCCAFFREY: Objection.

17 A. Yes.

18 Q. Are you claiming any right to the  
19 driveway on the Patriarca side of the hedges?

20 A. No.

21 Q. Have you identified any people that  
22 you're going to call as witnesses at a trial  
23 in this case?

24 A. I have no idea.

25 Q. Have you talked to any neighbors about

1 whether they would appear as witnesses in  
2 this case?

3 A. Not at this juncture.

4 Q. Are there any witnesses, are there any  
5 neighbors in your mind that you think you  
6 might call as a witness in this case?

7 A. Possibly.

8 Q. Who are those people; what are their  
9 names?

10 A. I don't know.

11 Q. So you possibly have people in your  
12 mind you will call as witnesses, but you  
13 don't know who they are?

14 A. Not at this juncture.

15 Q. Are there any neighbors who you think  
16 have information that would be relevant to  
17 this case?

18 A. Possibly.

19 Q. And who are those people that you  
20 think might possibly have information?

21 A. People that have lived in the  
22 neighborhood.

23 Q. What are the names of these people  
24 that you think might possibly have  
25 information that would be relevant to this

1 case?

2 A. I'm not willing to share that at this  
3 time.

4 Q. That's not really --

5 A. I don't know. I don't know.

6 MR. RESNICK: Off the record.

7 (OFF THE RECORD)

8 MR. RESNICK: Back on the record.

9 Q. Do you plan to call any landscapers or  
10 tree maintenance personnel as witnesses in  
11 this case?

12 A. I don't know at this time. I have not  
13 consulted with my attorney.

14 Q. Have you consulted with any  
15 landscapers or tree maintenance personnel  
16 about possibly calling them as witnesses in  
17 this case?

18 A. No.

19 Q. Did you mention it to your spray guy,  
20 hey, I might need to call you as a witness in  
21 this lawsuit?

22 A. No.

23 MR. OWENS: Off the record.

24 (OFF THE RECORD)

25 MR. OWENS: Back on the record.

1 Q. Just to recap, you said in 1983, you  
2 talked with Jack Huss about establishing the  
3 Hemlock trees as the boundary line; is that  
4 right?

5 A. Yes.

6 Q. And even though you only planted a  
7 portion of the Hemlock trees in 1983, you  
8 said it was your and Jack's agreement or  
9 understanding that that line would continue  
10 all the way up to Overhill Road; is that  
11 right?

12 A. Correct.

13 Q. If you established the boundary line  
14 with Jack in 1983, why did you feel the need  
15 to go back and ask McDonough to plant the  
16 rest of the trees in 1988?

17 A. Well, being neighborly, Number 1. And  
18 Number 2 is the fact that since, to my  
19 recollection, no land survey was performed  
20 from the selling of the property, that the  
21 land was still mine and so I just wanted to  
22 reaffirm with them if they had any  
23 objections.

24 Q. Did either Jack or Pat McDonough  
25 suggest a need for a survey before you guys

1 established a boundary?

2 A. It's not Jack, it's Patrick.

3 Q. Jack Huss and then Patrick McDonough,  
4 did either of them suggest a need for a  
5 survey as part of setting the boundary?

6 A. No.

7 Q. Do you understand that the Patriarcas  
8 have offered the entire disputed area to you  
9 by way of an easement?

10 A. Yes.

11 Q. Do you understand how having the  
12 disputed area as an easement would be  
13 different than having it as property that you  
14 actually owned?

15 A. Yes.

16 Q. What is your understanding of that  
17 difference?

18 A. My understanding is that I would not  
19 rightfully own the parcel. That if I sold  
20 the parcel, then it would be back in the  
21 Patriarcas' hands.

22 Q. Do you understand that easements can  
23 be written in a such a way that they continue  
24 in perpetuity and run with the land so that  
25 when you sold, the easement would be conveyed

1 to your buyers?

2 A. Yes, but I don't want an easement.

3 Q. Do you understand that the way you're  
4 using the land now with having exclusive,  
5 alleged exclusive, use of it while it's still  
6 owned by the Patriarcas on title and they're  
7 still paying taxes on it is pretty much  
8 exactly the same that you would be getting if  
9 you accepted an easement?

10 MR. MCCAFFREY: Objection.

11 A. We're beyond easement phase or asking  
12 about easements, as stated.

13 MR. OWENS: I don't have any  
14 further questions. Do you have anything you  
15 want to ask?

16 MR. RESNICK: No.

17 MR. MCCAFFREY: I have no  
18 questions.

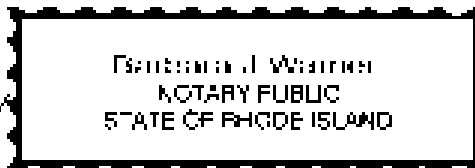
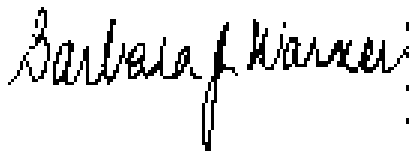
19 (Closed at 1:30 p.m.)  
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C-E-R-T-I-F-I-C-A-T-E

I, BARBARA WARNER, Notary Public, RPR, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to the Rules of Civil Procedure of the Superior Court, especially, but without restriction thereto, under Rule 28 of said Rules; that the witness was first sworn by me; and that the foregoing transcript contains a true record of the proceedings.

Correction and Signature pages for the deponent were requested by the parties upon completion of the transcript.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 14th day of October, 2024.



BARBARA WARNER, NOTARY PUBLIC/RPR/CERTIFIED COURT REPORTER, NOTARY #50523

My commission expires October 15, 2026.



DEPOSITION ERRATA SHEET

Our Assignment No. J11771354

Case Caption: WALTER S. FELAG, JR., ET AL V.  
ANTHONY PATRIARCA, ET AL.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of my  
deposition taken in the above-captioned  
matter or the same has been read to me, and  
the same is true and accurate, save and  
except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION  
ERRATA SHEET hereof, with the understanding  
that I offer these changes as if still under  
oath.

Signed on the \_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_

WALTER S. FELAG, JR.

DEPOSITION ERRATA SHEET

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DEPOSITION ERRATA SHEET

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