

June 14, 2013

VIA HAND DELIVERY

Matthew Pollack, Clerk
Maine Supreme Court
205 Newbury Street, Room 139
Portland, ME 04101

RE: Robert F. Almeder, et al. v. Town of Kennebunkport, et al.
Law Court Docket No. YOR-12-599

Dear Mr. Pollack:


Enclosed for filing in the above referenced docketed appeal, please find Appellants' Motion for Leave to File Appendix in Excess of the Two Volume Limit of June 6, 2013 Order together with a proposed Order.

The State of Maine and Richard Driver do not have an objection to the motion. The positions of the Town, TMF Group, and Mr. Lachiatto are unknown at the time of filing this motion.

Copies of the enclosed were served via U.S. Mail upon counsel for the full parties to the appeal noted below.

Thank you for your assistance.

Sincerely,

 Bar No. 4870
for
Sidney St. F. Thaxter

SST/jvw

Enclosures

Copy to (w/encl.):

Melissa A. Hewey, Esq. / Amy K. Tchao, Esq./Brian Willing, Esq.
Gregg R. Frame, Esq. / André G. Duchette, Esq.
Paul Stern, Deputy Attorney General
Alexander M. and Judith A. Lachiatto, *pro se*
Richard J. and Margarete K.M. Driver, *pro se*
Christopher E. Pazar, Esq.

STATE OF MAINE
CUMBERLAND, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. YOR-12-599

ROBERT F. ALMEDER et al.,)
)
)
Plaintiffs-Appellants,)
)
v.)
)
TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
)
Defendants-Appellees.)

APPELLANTS' MOTION FOR LEAVE
TO FILE APPENDIX IN EXCESS OF
TWO VOLUME LIMIT
OF JUNE 6, 2013 ORDER

Pursuant to Rule 10 of the Maine Rules of Appellate Procedure and paragraph 7 of this Court's June 6 Order, appellants Robert F. Almeder et al. ("Appellants") move this Court for leave to file the Appendix in excess of the two volume, 150 sheets of paper printed on both sides of the paper, limit.

The Appendix includes not only the mandatory documents under Rule 8(g) but transcripts of trial testimony of witnesses, the parties' admitted trial exhibits and other pleadings allowed under Rules 8(h)(7) and 8(i)(1), (2). Further, this Court on June 6, 2013 granted leave to the parties to file an Appendix to include electronic versions of the transcripts of the entire trial testimony of all witnesses on compact discs (CD). Order ¶ 8 (June 6, 2013). The content of the CDs is incorporated in the table of contents of the Appendix. Attached is the table of contents to the Appendix.

Presently, the Appendix consists of the following designated by the full parties to the appeal (the plaintiffs, Town, TMF Group, State of Maine, Alexander Lachiatto and Richard Driver):

Rule 8(g) Mandatory Contents

536 pages

Rule 8(h)(7): Trial Transcripts	1,344 pages (saved onto CD)
Rule 8(i)(1): Admitted Trial Exhibits	447 pages
Rule 8(i)(2): Other Pleadings	14 pages

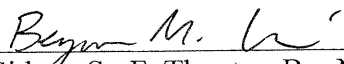
Total: 2,430 pages

During the three week trial of this matter, thousands of sheets of paper were admitted as exhibits. Plaintiffs admitted a total of 169 exhibits (Plaintiffs' Exhibit Nos. 1 – 172), the Town admitted a total of 157 exhibits (Town Exhibit Nos. 1 - 264), and the TMF Group admitted a total of 201 exhibits (TMF Exhibit Nos. 1 – 367). Many of the exhibits totaled 25 pages or more. For instance, the Town's Exhibit No. 59 consisted of subsections a through rrr for a total of approximately 352 pages; Town Exhibit No. 61 consisted of subsections a – l (81 pages); Town Exhibit No. 65 with subsection a–e; and the Town and TMF Group admitted picture exhibits consisting of up to 48 pages or more. Of these voluminous exhibits, the parties have narrowed their submissions down to less than 500 pages.

Of the 2,430 pages of the Appendix, 1,344 are transcripts to be provided on CD(s) and 536 pages are mandatory documents, with 303 pages being the superior court's docket reports alone. The joint Appendix shall consist of 1,086 sheets of paper to be printed on both sides of the paper, 150 sheets per volume, or a total of 4 volumes.

WHEREFORE, Appellants respectfully request the court grant them leave to file the joint Appendix in excess of the two volume, 150-page per volume, limit of the June 6, 2013 Order.

Dated: June 14, 2013



 Sidney St. F. Thaxter, Bar No. 1301
 David P. Silk, Bar No. 3136
 Benjamin M. Leoni, Bar No. 4870
 CURTIS THAXTER LLC
 One Canal Plaza / P.O. Box 7320
 Portland, Maine 04112-7320
 (207) 774-9000
 Attorneys for Plaintiffs-Appellants

APPENDIX
TABLE OF CONTENTS

Table of Contents.....	
Docket Entries.....	1
<u>Trial Court Decisions, Rulings and Judgment:</u>	
August 17, 2010 Order.....	304
December 22, 2011 Decision and Order on Motion for Summary Judgment	324
October 16, 2012 Partial Judgment.....	349
November 29, 2012 Order (Town of Kennebunkport).....	370
November 29, 2012 Order (Class).....	375
November 29, 2012 Order (State of Maine).....	378
<u>Complaint and Counterclaims:</u>	
Complaint for Declaratory Judgment and Quiet Title (Oct. 23, 2009) ¹	379
First Amendment to Plaintiffs’ Complaint for Declaratory Judgment and Quiet Title (Apr. 8, 2010).....	395
Joinders of Plaintiffs (Celi, Forrest-Julian, Julian, Flynn, Goose Rocks Beach Holdings, LLC, Lencki).....	397
Joinders of Parties In Interest (Clough, Eaton, Emmons, Henricksen, Lewis, Parkers, Vicenzi).....	407
Letter/Notice to Clerk of Opt-In of Parties In Interest (Aug. 24, 2012).....	415

¹ Dismissals and withdrawals from the group of Plaintiffs and Parties-In-Interest represented by Sidney St. F. Thaxter and Curtis Thaxter LLC: Order (Joint Motion for Dismissal: Robert B. Eisenberg and Leslie A. Eisenberg)(June 1, 2010); Notice of Withdrawal and Notice of Appearance (The Albert Palmer Trust)(Apr. 11, 2011); Order (Louise S. DeMallie Trust)(Jan. 20, 2012); Order (on Motion for Leave to Withdraw as Counsel for Paley Family Homes LLC)(Jan. 26, 2012); Order on Motion to Withdraw as counsel for Plaintiff Carolyn Sherman (May 5, 2012); Notice of Dismissal of Appeal as to Only W. Parker Dwelley III and John H. Dwelley, Co-Trustees of the Joan H. Dwelley Testamentary Trust (May 2, 2013); Notice of Dismissal of Appeal as to Only Linda Rice (May 14, 2013); Notice of Dismissal of Appeal as to Only Anne E. Clough (May 14, 2013).

Answer, Defenses and <u>Counterclaims</u> of Town of Kennebunkport (Nov. 19, 2009).....	416
Answer of Defendant Town of Kennebunkport to Plaintiffs’ First Amendment to The Complaint (Apr. 15, 2010)	439
Answer, Defenses and <u>Counterclaims</u> of TMF Defendants (exhibits omitted) (Oct. 27, 2010).....	441
Answer, Defenses and <u>Counterclaims</u> of [Additional TMF Defendants] (Nov. 16, 2010).....	490
Answer, Defenses and <u>Counterclaims</u> of State of Maine (Dec. 30, 2009)	492
Answer, Defenses and <u>Counterclaims</u> of Defendants Alexander M. Lachiatto and Judith A. Lachiatto (Jan. 11, 2010).....	499
Answer, Defenses and <u>Counterclaim</u> of Richard J. Driver and Margarete K.M. Driver (Feb. 8, 2010).....	521
Defendants Richard J. Driver’s and Margarete K.M. Driver’s Answer to Plaintiffs’ First Amendment to the Complaint (Apr. 20, 2010).....	535
<u>Trial Transcript(s) (see compact disk):²</u>	
August 21, 2012 Trial Testimony	537
Robert Scribner	540
Mary Davis.....	556
Edwina Hastings	557
Barbara Rencurrel (Part I).....	572
August 22, 2012 Trial Testimony	617
Joseph Bruni.....	621
Peter Gray	637
Christopher Asplundh	653
Meredith Asplundh Gardner	664
Barbara Rencurrel (Part II)	669
Linda Rice (Part I)	677

² Transcripts of the complete trial testimony of witnesses are submitted in electronic format pursuant to this Court’s June 6, 2013 Order. An index of Appellants’ designated excerpts of trial testimony pursuant to Rule 8(h)(7) is provided for the convenience of the court at the beginning of each day’s testimony and are bookmarked with the notation “P”. The designated excerpts of the State and Driver are also indexed and are bookmarked with the notation “D”.

August 23, 2012 Trial Testimony	684
Linda Rice (Part II)	687
Terrence G. O'Connor	696
John O. Gallant	714
Michael J. Sandifer	724
Beth Gilpatrick Zagoren	736
August 24, 2012 Trial Testimony	751
Jennifer Scully-Eaton	755
Lawrence Vandervoorn	764
Matthew James Sotir	776
Jule Gerrish	790
August 27, 2012 Trial Testimony	801
William D. Forrest	805
Marie B. Henriksen	816
Norman P. Merrill	829
Susan K. Lewis	835
Janice M. Fleming	847
August 28, 2012 Trial Testimony	864
Donna Lencki	868
Mary Lou Emmons	917
John Coughlin	936
Stuart Flavin	973
William Junker, III	1019
Alexander Lachiatto	1061
August 29, 2012 Trial Testimony	1093
Joan Junker	1098
Herb Cohen	1125
Judy Jose-Roddy	1167
Paul Hogan	1200
Walter Wiewel, III	1226
Richard Steiger	1276
Carol Kraeuter	1290
Peter Smith	1323
August 30, 2012 Trial Testimony	1355
Maureen Pearce Somers	1360
Robert Pearce	1401
Barbara Mazeika	1433
Richard Driver	1472
Joan Hartz	1489
Robert Gordon	1504
Carl Schmalz	1528

Roderick MacDonald	1548
August 31, 2012 Trial Testimony	1595
Howard Whitehead	1621
Edmund Case	1662
Ellen Nixon	1701
Barbara Westbrook.....	1730
Christine Rodden	1740
Donald Anderson	1762
Mary Kudaroski	1784
Joanne Gustin.....	1811
September 4, 2012 Trial Testimony	1828
Sheila Matthews-Bull.....	1833
Richard Johnson.....	1838
Janet Weston	1846
Barbara Barwise.....	1850
Robert A. Yarumian.....	1872
Edward A. Churchill.....	1876
Wendell Wayne Fessenden.....	1885
September 5, 2012 Trial Testimony	1903
Ralph Smith	1908
Terri Dwyer.....	1911
Maria Junker	1915
Larry Mead.....	1921
September 6, 2012 Trial Testimony.....	1947
William Forrest	1952
Robert Scribner	1956
William Joel.....	1959
 <u>Trial Exhibit(s):</u>	
Plaintiffs Exhibit 1 (1982 Comprehensive Plan), pp. 1, 9, 17	1970
Plaintiffs Exhibit 2 (1996 Comprehensive Plan), pp. 1, 20, 23-24, 27, 91-92.....	1973
Plaintiffs Exhibit 3 (2009 Comprehensive Plan), pp. 1, 11, 22, 23, 25, 68	1980
Plaintiffs Exhibit 4 (Tax Maps 33, 34 and 35).....	1986
Plaintiffs Exhibit 7 (Oct. 25, 2007 Selectmen’s Minutes), pp. 1, 3	1989
Plaintiffs Exhibit 8 (transcript Oct. 25, 2007: Larry Mead)	1991

Plaintiffs Exhibit 14 (9/1/1993 Re: Rights of Way Goose Rocks Beach)	1992
Plaintiffs Exhibit 15 (Excerpt. 1974 Wally File Materials), pp. 1, 15, 86, 94, 95	2002
Plaintiffs Exhibit 16 (Chart: Conveyances to Kennebunkport Conservation Trust and Selectmen’s Minutes; Oct. 10, 1974 Selectmen’s Meeting Minutes), pp. 1, 18.....	2007
Plaintiffs Exhibit 17 (Aug. 17, 2005 Maine Beaches Conference 2005), pp. 2-5, 18, 21	2009
Plaintiffs Exhibit 19 (Photograph).....	2016
Plaintiffs Exhibit 22 (Aug. 11, 1975 Selectmen’s Minutes).....	2017
Plaintiffs Exhibit 26 (Almeder Photographs), pp. 2, 6-8, 10	2018
Plaintiffs Exhibit 30 (Almeder email from to Jodi Jones)	2024
Plaintiffs Exhibit 31 (Oct. 7, 2007 Almeder email to Carol Cook).....	2025
Plaintiffs Exhibit 33 (Asplundh photographs), p. 6	2026
Plaintiffs Exhibit 35 (Sept. 5, 2007 supplemental narrative).....	2028
Plaintiffs Exhibit 37 (Celi photographs), pp. 2, 4, 7	2033
Plaintiffs Exhibit 46 (Dwelley photographs), pp. 2-5.....	2037
Plaintiffs Exhibit 49 (Oct. 31, 2008 letter from Larry Mead).....	2042
Plaintiffs Exhibit 50 (June 15, 2008 letter from Jack Fleming).....	2045
Plaintiffs Exhibit 51 (Fleming photographs), pp. 1, 2, 9	2046
Plaintiffs Exhibit 53 (Flynn photographs), pp. 8, 9, 10	2049
Plaintiffs Exhibit 59 (Gerrish photographs – historical).....	2054
Plaintiffs Exhibit 60 (Gerrish photographs), pp. 1, 8, 12, 15.....	2060
Plaintiffs Exhibit 64 (1978 and 1977 Good and Lane letters)	2065
Plaintiffs Exhibit 66 (Sept. 12, 2007 letter from Joseph Bruni and July 4, 2007 notes of Peter Gray).....	2069

Plaintiffs Exhibit 67 (Apr. 11, 2008 letter from Larry Mead)	2072
Plaintiffs Exhibit 73 (Hastings Photographs 2, 3, 10)	2074
Plaintiffs Exhibit 78 (Nov. 25, 1947 Blais invoice).....	2078
Plaintiffs Exhibit 85 (Rencurrel Photographs), pp. 7-15	2079
Plaintiffs Exhibit 86 (Memo from Barbara Rencurrel).....	2089
Plaintiffs Exhibit 87 (Aug. 23, 1994 and Mar. 27, 1993 police reports)	2090
Plaintiffs Exhibit 87A (Aug. 25, 2005 police report)	2092
Plaintiffs Exhibit 88 (Aug. 13, 2006 police report)	2095
Plaintiffs Exhibit 89 (Aug. 31, 2008 police report)	2097
Plaintiffs Exhibit 92 (Nov. 2, 2005 email from Nathan Poore and Oct. 27, 2005 letter from Amy Tchao)	2100
Plaintiffs Exhibit 98 (Invoice for repair of rock wall – Kinney)	2104
Plaintiffs Exhibit 104 (July 2, 2004 police report)	2106
Plaintiffs Exhibit 116 (O’Connor/Leahy Photographs), pp. 1, 7, 9, 11	2107
Plaintiffs Exhibit 121 (Sandifer Photographs), pp. 2, 3, 6.....	2111
Plaintiffs Exhibit 125 (Scribner Photographs), pp. 1, 11	2115
Plaintiffs Exhibit 127 (Sotir Photographs), pp. 1, 2.....	2117
Plaintiffs Exhibit 131 (Vandervoorn Photographs), pp. 1, 5	2119
Plaintiffs Exhibit 136 (1994 Aerial Photograph)	2121
Plaintiffs Exhibit 137 (Zagoren Photographs), pp. 6, 7	2123
Plaintiffs Exhibit 138 (Zagoren Photographs), pp. 8, 9, 14, 20	2126
Plaintiffs Exhibit 140 (Zagoren Photographs), p. 30	2130
Plaintiffs Exhibit 147 (Junker Photographs), pp. 1-6	2132
Plaintiffs Exhibit 152 (August 23, 1994 police report).....	2137

Plaintiffs Exhibit 156 (Aug. 16, 2003 police report)	2138
Plaintiffs Exhibit 162 (Aug. 21, 2000 memo to All Dispatchers)	2139
Plaintiffs Exhibit 163 (Nov. 7, 2005 memo to Members of Kennebunkport Police Department)	2140
<u>Town Exhibits:</u>	
Town Exhibit 59b (1893 Annual Report), pp. 1, 36	2141
Town Exhibit 59f (Annual Report 1931-1932), p. 46 (Report of the Kennebunk-Kennebunkport Information Bureau).....	2143
Town Exhibit 59ff (1958 Annual Report excerpt).....	2145
Town Exhibit 130 (Town Records – Goose Rocks Beach Wall files), pp. 5, 6, 7, 8.....	2150
Town Exhibit 133a (List of Commercial Businesses prepared by B. Barwise)	2155
Town Exhibit 136 (photographs/postcards).....	2160
Town Exhibit 147 (Photographs), pp. 1, 4 of 9, 9 of 9	2188
Town Exhibit 152 (excerpts from Pinel database).....	2191
Town Exhibit 158 (excerpts from Pinel database).....	2203
Town Exhibit 171 (Junker photographs), pp.1, 4, 5, 8, 10, 12	2235
Town Exhibit 177 (R. Johnson photographs), pp. 1, 5, 7	2240
Town Exhibit 178 (Photographs: President Bush)	2243
Town Exhibit 248 (Photograph - Beach).....	2246
Town Exhibit 261 (Abstract of Information prepared by R. Yarumian)	2247
Town Exhibit 263 (W. Fessenden photograph)	2275
Town Exhibit 264 (Photograph – Life Guard Ring).....	2276

TMF Exhibit(s):

TMF Exhibit 65 (Deed: Joan & William Junker)	2277
TMF Exhibit 66 (Deed: Maria & William Junker III)	2279
TMF Exhibit 183 (Ivory Emmons plan (1925))	2281
TMF Exhibit 244 (Reando plan).....	2282
TMF Exhibit 279 (Anderson photographs), pp. 3, 4, 8, 9.....	2283
TMF Exhibit 282 (Barwise photographs), pp. 1-6, 9, 12.....	2289
TMF Exhibit 284 (Case photographs), pp. 1, 2	2303
TMF Exhibit 285 (Cohen photographs), p. 1.....	2305
TMF Exhibit 298 (Flavin photographs).....	2306
TMF Exhibit 302 (Gordon photographs).....	2313
TMF Exhibit 310 (Jose-Roddy photographs) nos. 6-14, 17-18, 20-21, 24-28, 41, 47-48, 50, 53-58, 61).....	2320
TMF Exhibit 316 (Kudaroski photographs), pp. 2, 3, 5-7, 13	2349
TMF Exhibit 318 (MacDonald photographs)	2356
TMF Exhibit 327 (Nixon photographs), pp. 1, 2	2390
TMF Exhibit 330 (Mazeika/Parrot photographs), pp. 2, 4, 10, 11, 15-17, 30-31, 35	2392
TMF Exhibit 335 (Pearce/Somers photographs) at 1, 2, 7, 14	2403
TMF Exhibit 336 (Pearce/Somers photographs), p. 3	2407
TMF Exhibit 342 (Schmalz photographs) at 1	2409
TMF Exhibit 348 (Whitehead photographs) at 2, 4.....	2410
TMF Exhibit 349 (Wiewel photographs) at 8, 14, 15.....	2413

Other Pleading(s):

Pleadings:

State of Maine’s Motion for Leave to Intervene as Defendant and Incorporated Memorandum of Law in Support Thereof (Dec. 30, 2009) (attachment omitted)	2417
Plaintiffs’ Motion in Limine to Exclude Testimony of Edwin A. Churchill (Aug. 10, 2012).....	2421
Plaintiffs’ Rule 52 Motion for Findings of Additional Facts (Oct. 22, 2012)	2424
Order on Plaintiffs’ Motion for Additional Findings of Fact (Nov. 29, 2012).....	2429

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have this 14th day of June, 2013, caused a copy of the foregoing Appellants' Motion for Leave to File Appendix in Excess of Two Volume Limit of June 6, 2013 Order to be served on counsel for the full parties listed below, by depositing the same in the United States mail, first-class postage prepaid, addressed as follows:

Brian Willing, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

Paul Stern, Esq.
Deputy Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

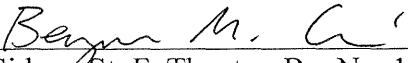
Gregg Frame, Esq.
André G. Duchette, Esq.
Taylor McCormack & Frame, LLC
30 Milk Street, 5th Floor
Portland, Maine 04101-4164

Christopher E. Pazar, Esq.
Drummond & Drummond
One Monument Way
Portland, ME 04101

Alexander M. and Judith A. Lachiatto, *pro se*
12 Bel Air Avenue
Kennebunkport, ME 04086

Richard J. and Margarete K.M. Driver, *pro se*
6 Marshview Circle
Kennebunkport, ME 04046

Dated: June 14, 2013



Sidney St. F. Thaxter, Bar No. 1301
David P. Silk, Bar No. 3136
Benjamin M. Leoni, Bar No. 4870

STATE OF MAINE
CUMBERLAND, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. YOR-12-599

ROBERT F. ALMEDER et al.,)
)
)
Plaintiffs-Appellants,)
)
v.)
)
TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
)
Defendants-Appellees.)

ORDER

UPON CONSIDERATION of Appellants' Motion for Leave to File Appendix in Excess of the Two Volume Limit of June 6, 2013 Order, the motion is GRANTED.

IT IS HEREBY ORDERED that Appellants are granted leave to file a joint Appendix in excess of the two volume, 150-page per volume, limit of the June 6, 2013 Order.

Dated: _____

Chief Justice/Justice