

October 22, 2012

Dianne Hill, Clerk
York County Courthouse
45 Kennebunk Road
P. O. Box 160
Alfred, Maine 04002-0160

RE: Robert F. Almeder, et al. v. Town of Kennebunkport, et al.
Docket No. RE-09-111

Dear Ms. Hill:

Enclosed for filing in the above referenced case, please find the following document:

**Plaintiffs' Rule 52 Motion for
Findings of Additional Facts**

Copies of the enclosed were served via U. S. Mail post-prepaid and addressed to parties noted below.

Thank you for your assistance.

Sincerely,



Benjamin M. Leoni

BML/rar

Enclosure

Copy to (w/encls):

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

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

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

PLAINTIFFS' RULE 52 MOTION FOR
FINDINGS OF ADDITIONAL FACTS

Plaintiffs and Parties-in-Interest represented by Curtis Thaxter LLC (collectively “Plaintiffs”), by and through counsel, hereby move, pursuant to Rule 52 of the Maine Rules of Civil Procedure for additional findings of fact to support conclusions not addressed by facts found in the court’s “Partial Judgement” dated October 16, 2012.

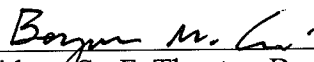
Any party may file a motion to request findings of facts and conclusions of law within (5) days of an entry judgment. M.R. Civ. P. 52(a). “The purpose of motions for findings of additional facts pursuant to M.R.Civ.P. 52(b) is to seek specific fact-finding to support conclusions not already addressed by facts found in the court’s opinion.” Wandishin v. Wandishin, 2009 ME 73, ¶18. These motions should specify the conclusions that require additional fact findings and should “suggest particular facts to be found that are supported by the record and are relevant to the conclusions at issue.” Id. This is because a trial court has a “duty to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review.” Jarvis v. Jarvis, 2003 ME 53, ¶ 22, 821 A.2d 913, 917 (citing Bayley v. Bayley, 602 A.2d 1152, 1153–54 (Me. 1992)).

Prior to closing remarks, this Court requested proposed findings of fact and conclusions of law from each party. Plaintiffs submitted detailed findings of fact and conclusions of law as

to each Plaintiff's property and a post-trial brief prior to closing remarks. On October 16, 2012, this Court entered a Partial Judgment and concluded that the Town and TMF Group had established a public and class prescriptive easement, respectively, over Goose Rocks Beach. This Court recognized that both the Town and TMF Group had the burden to establish the necessary elements of a prescriptive easement as to each Plaintiff's property, but did not make any specific findings of fact with regard to each individual Plaintiff's property. Although Plaintiffs already submitted findings of fact, Plaintiffs respectfully now seek—out of an abundance of caution—additional findings of facts to support this Court's conclusion that the Town and TMF Group satisfied their burden of proving each element of a prescriptive easement as to each of Plaintiff's property pursuant to Rule 52(b).¹

Specifically, as to each Plaintiff's property, Plaintiffs request findings of fact as to the specific time period in which the Town and the TMF Group's prescriptive claims ripened; the nature, location (dry sand v. intertidal zone); the extent and duration of recreational uses that occurred during the Town or TMF Group's claimed period, and which specific facts mentioned in this Court's Partial Judgment pertain to which of the Plaintiffs' properties and what portion of those properties.

Dated: October 22, 2012



Sidney St. F. Thaxter, Bar No. 1301
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/Parties in
Interest

¹ A list of all beachfront properties owned by Plaintiffs and Parties-in-Interests that are subject to this Court's October 16, 2012 Partial Judgment are attached hereto as Exhibit A.

NOTICE

Pursuant to Rule 7 of the Maine Rules of Civil Procedure, opposition to this Motion must be filed not later than 21 days after the filing of the Motion, unless another time is provided by the Rules of Court. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.

EXHIBIT A

Deed/Title Holder	GRB Address
Robert F. Almeder and Virginia S. Almeder, Trustees of the Almeder Living Trust dated October 28, 2008	113 Kings Highway
Christopher B. Asplundh	17 Sandpoint Road
Mark E. Celi and William E. Brennan, Jr., Co-Trustees of The Celi Kennebunkport Real Estate Trust No. 1	123 Kings Highway
John T. Coughlin and Priscilla M. Coughlin, Trustees of P.M.C. Realty Trust	115 Kings Highway
Willard Parker Dwelley, Jr. and W. Parker Dwelley, III, and John H. Dwelley, Co-Trustees of the Joan H. Dwelley Testamentary Trust	23 Sandpoint Road
Janice M. Fleming	227 Kings Highway
Susan Flynn	161 Kings Highway
William D. Forrest and Nancie M. Julian	239 Kings Highway
Nancie M. Julian	241 Kings Highway
John O. Gallant and Sharon A. Gallant	219 Kings Highway
Jule C. Gerrish	173 Kings Highway
Eugene R. Gray, as Trustee of the Qualified Personal Residence Trust dated October 31, 2005	183 Kings Highway
Edwina D. Hastings, Trustee of the Edwina D. Hastings Revocable Trust UTA dated August 25, 2006	221 Kings Highway
Leslie A. Josselyn-Rose, Trustee of the LAJR Trust dated February 24, 2009	251 Kings Highway
Deborah J. Kinney	223 Kings Highway
Donna Lencki, Trustee of The Donna Lencki Revocable Trust of 1993	256 Kings Highway
Terrence G. O'Connor and Joan M. Leahey	195 Kings Highway
Kristen B. Raines	249 Kings Highway
Linda M. Rice	193 Kings Highway

Deed/Title Holder	GRB Address
Michael J. Sandifer and Alice B. Sandifer, Co-Trustees of the Alice B. Sandifer Trust dated August 31, 2005	253 Kings Highway
Eleanor A. Scribner and Robert H. Scribner, Trustees of the Eleanor A. Scribner Qualified Personal Residence Trust dated July 30, 2004	291 Kings Highway (Rear)
Goose Rocks Beach Holdings LLC	149 Kings Highway 207 Kings Highway B 201 Kings Highway
J. Liener Temerlin and Karla Sue Temerlin, Trustees of the Temerlin 1988 Family Trust dated October 1, 1998, amended April 5, 1999 and June 1, 2007	29 Sandpoint Road
Richard M. Vandervoorn, Lawrence W. Vandervoorn, and Robert O. Clemens, Trustees of The Cornelius J. Vandervoorn Qualified Personal Residence Trust	177 Kings Highway
Steven H. Wilson and Shawn B. McCarthy, Co-Trustees of The Twombly Family Trust u/d/t dated January 24, 2002, as amended.	165 Kings Highway
Beth G. Zagoren	215 Kings Highway #Rear
David L. Eaton & Jennifer L. Scully-Eaton	225 Kings Highway
Susan K. Lewis, Trustee of the Amended and Restated Susan K. Lewis Residence Trust	243 Kings Highway
Heather Vicenzi, Trustee of the George A. Vicenzi Trust	Kings Highway
Mary L. Emmons, Emmons Family Realty Trust	Kings Highway
Anne E. Clough	191 Kings Highway
John A. Parker and Jeannette M. Parker	287 Kings Highway
Sea Rose Family Limited Partnership (Marie B. Henriksen)	Kings Highway

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)
 Defendants.)

ORDER

UPON CONSIDERATION of Plaintiffs Rule 52 Motion for Additional Findings of Facts, this court hereby GRANTS/DENIES Plaintiffs' motion.

IT IS SO ORDERED that additional findings of fact will be issued by: _____.

Dated: _____

Justice, Superior Court