

**STATE OF MAINE
YORK, ss.**

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

ROBERT F. ALMEDER and VIRGINIA S.)
ALMEDER, et al.,)

Plaintiff,)

v.)

TOWN OF KENNEBUNKPORT, et al.,)

Defendant.)

**MOTION TO
CONTINUE TRIAL**

Defendant Town of Kennebunkport (the “Town”) hereby requests a brief continuance of the trial in this case until August 27, 2012 so that the Town and a number of the parties in this case, including: (1) one plaintiff not represented by Plaintiffs’ legal counsel Attorneys Sidney Thaxter and/or Chris Pazar (“Plaintiffs’ Counsel”); (2) two defendants who are beachfront property owners at Goose Rocks Beach, Kennebunkport, Maine; and (3) 61 beachfront property owners who are parties-in-interest not represented by Plaintiffs’ Counsel (collectively, “Non-affiliated Beachfront Property Owners” or “NABOs”), can take the steps necessary to reach a final settlement agreement among the above-referenced parties in this case. The reasons for the Town’s request for a brief continuance until August 27, 2012 are set forth below:

1. The trial in this case is currently scheduled to begin on August 6, 2012;
2. The parties to the case have been engaged in extensive settlement negotiations since the beginning of June 2012 through the judicially assisted settlement conference (“JASC”) process conducted by Justice Andrew M. Horton and Durward Parkinson, Esq. pursuant to a court order governing the JASC process.

3. The JASC process has continued into July 2012. On July 14, 2012, Justice Horton and Attorney Parkinson presided over two separate meetings, one with NABOs and the other with TMF Defendants. The purpose of the meetings was to discuss the Town's settlement proposal, outlined in a Nonbinding Memorandum of Intent ("NBMI") and a draft Beach Use Agreement ("BUA") that had been distributed to the parties in advance of the meetings.
4. At both meetings, the Town presented the Nonbinding Memorandum of Intent ("NBMI") to each group and asked the parties to sign it, indicating their agreement to certain terms and conditions and an expedited process to achieve a settlement of this action as between the signing parties and the Town.
5. The NBMI provides for certain milestones to be reached in a short period of time in order for the settlement to be effective among signing parties. In summary, the process includes the following steps, each of which must be met in order for the Town to proceed to the next step:
 - a. The owners of no fewer than 60 beachfront lots must sign and execute the NBMI by Friday, July 20, 2012;
 - b. The owners of no fewer than 60 beachfront lots must then sign and execute the Beach Use Agreement by August 1, 2012;
 - c. The Town will draft a Beach Use Ordinance, with the opportunity for input provided to all parties;
 - d. The Beach Use Agreement and Beach Use Ordinance will be presented for voter approval at a special town meeting to be called no later than August 20, 2012;

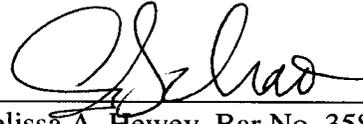
- e. If the Beach Use Agreement and Beach Use Ordinance are adopted by the voters, each signing Beachfront Owner shall have seven (7) days to opt out of the Agreement, provided, however, that the Agreement and Ordinance will not take effect unless, following expiration of the opt out period, beachfront owners of no fewer than 50 beachfront lots remain parties to the Agreement.
6. Provided that each step in Paragraph 5 above is met and the Beach Use Agreement and Beach Use Ordinance go into effect, the Town would then file a stipulation with the Court (a) quieting title to any portion of the Beach described in the deeds of stipulating beachfront owners, and (b) dropping its prescriptive easement claims against stipulating beachfront owners.
7. As of this date, beachfront lot owners of 64 lots have signed and executed the NBMI, agreeing to its terms and the process described above. These lots are scattered all along the full two-mile stretch of Goose Rocks Beach, from its westernmost end to its easternmost end. The signatures obtained represent the agreement of more than 55% of beachfront owners on Goose Rocks Beach, and almost 60% of the beachfront lots on the Beach, to the above described process. This level of participation also represents almost 85% of the beachfront lots not owned by plaintiffs or parties-in-interest who are represented by Plaintiffs' Counsel, Attorneys Sidney Thaxter and/or Chris Pazar in this action.
8. The Town requests this brief continuance of the trial so it can move forward with the steps outlined in the NBMI and Paragraphs 5 and 6 above. If the milestones in Paragraphs 5 and 6 are met, then the recreational use rights on well over half of

Goose Rocks Beach will be agreed upon, understood and enforced according to the terms of the Beach Use Agreement and the Beach Use Ordinance.

9. As the Town obtains additional signatures from beachfront lot owners beyond what it has received as of today agreeing to the process described above, the Town will be assessing the need to continue to pursue its prescriptive easement claims against non-settling parties in this action.
10. No party in this action will be prejudiced by this brief continuance of the trial. The trial will still begin, if necessary, in August when witnesses and parties are more easily available to participate.
11. The Town and NABOs will be prejudiced if this brief continuance is not granted and trial commences on August 6, and it is possible, if not likely, that any settlement between the Town and NABOs would fall apart, because the Town and NABOs would be forced into litigation over the very issues that they are working to resolve.
12. Any inconvenience caused by a brief delay in the trial is far outweighed by the public interests served by achieving a settlement and management plan governing use of over half of the Beach. It is also in the interest of the Court not to expend judicial resources on a long and expensive trial before it is known which parties will remain in this action after the settlement with the signing parties above becomes effective.

WHEREFORE, Defendant Town of Kennebunkport respectfully requests that the trial in this case be continued to August 27, 2012.

Dated: July 23, 2012



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