

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.

**REPLY IN SUPPORT OF
MOTION TO
CONTINUE TRIAL**

Defendant Town of Kennebunkport (the “Town”) hereby replies to Plaintiffs’ Opposition to the Town’s Motion to Continue and states as follows:

1. Over 55% of beachfront owners at Goose Rocks Beach (the “Beach”) have now agreed to resolve this case, which represents 85% of beachfront lots whose owners are not represented by Attorneys Thaxter and Pazar. The number of participating beachfront owners includes one plaintiff not represented by Attorneys Thaxter and Pazar, two defendants who are beachfront property owners, and 61 beachfront property owners who are parties-in-interest not represented by Attorneys Thaxter and Pazar (collectively, “Non-affiliated Beachfront Property Owners” or “NABOs”).
2. After demanding that the Town not be permitted to provide the Court with a copy of the settlement papers to review, Plaintiffs now unfairly mischaracterize the settlement reached by the aforementioned parties, and state that the “parties are

not even close [to settlement]” when Plaintiffs are not even parties to the settlement.¹

3. Plaintiffs also mysteriously reference “e-mail traffic” between NABOs in an effort to raise concerns about the current status of the agreement between the Town and NABOs, but Plaintiffs do not provide copies of the e-mails – perhaps realizing that doing so would violate the confidentiality of the judicial settlement process – and simply make spurious and unsupported allegations concerning the intent of the unnamed and unspecified NABOs.
4. The bottom line here is that 53 NABOs owning a total of 64 beachfront lots on the Beach have entered into an agreement with the Town. As discussed in the Motion to Continue, the steps that are required to finalize the settlement are straight forward and concrete:
 - 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;

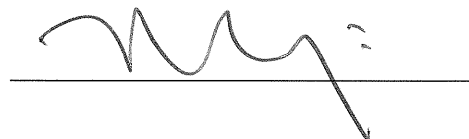
¹ If necessary, the Town’s undersigned counsel can provide a copy of the settlement papers to the Court so that the Court can better evaluate the status of the settlement agreement in this case.

- 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.
- 5. The first step in Paragraph 4(a) above has already been completed, and steps two and three are in progress and will soon be completed.
- 6. Regarding the necessity of voter approval at a special town meeting, Maine law requires such a town meeting, and there are also notice requirements with which the Town must comply in scheduling a special town meeting. Thus, the Town is seeking the bare minimum amount of time necessary to finalize the settlement that has been reached with the NABOs relating to almost 60% of Goose Rocks Beach.
- 7. The settlement with the NABOs could not have been completed sooner. Plaintiffs correctly note that they engaged in “an extended arduous judicially assisted settlement process and that process ended with no settlement” with the Town or TMF Defendants but that “the Town has continued to negotiate with the non-plaintiff beachfront owners.” Plaintiffs’ Opposition at 1. Prior to July 2012, the settlement process focused primarily on the Town, TMF Defendants and plaintiffs who are represented by Attorneys Thaxter and Pazar. When the settlement process ended with no settlement between the Town and Plaintiffs, the focus of the judicial settlement process immediately shifted to the NABOs and an agreement was reached between the Town and NABOs on July 20, 2012.

8. Although TMF Defendants have not yet reached an agreement with the Town and/or NABOs, discussions between the Town, NABOs and TMF Defendants continue, and the Town remains hopeful that an agreement with TMF Defendants will be reached. If trial commences on August 6, however, it is highly unlikely, if not impossible, that an agreement between the Town, TMF Defendants and NABOs would survive while the parties are actively litigating at trial the very issues that they are currently working to resolve.
9. Plaintiffs will not be prejudiced by this brief continuance sought by the Town. The trial will still begin, if necessary, in August when witnesses and parties are more easily available to participate, and the Town is willing to accommodate Plaintiffs to minimize any potential prejudice by allowing any witnesses of Plaintiffs who would not be available after Labor Day to testify during the week of August 27 when trial was already planned. Thus, such witnesses would not have to wait until September as Plaintiffs assert.
10. In contrast to the Plaintiffs, the Town and NABOs will be prejudiced if this 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, which currently involves 60% of the Beach, would fall apart, and any chance at a settlement involving would TMF Defendants would also be lost.

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

Dated: July 24, 2012

A handwritten signature in black ink, consisting of a series of loops and a long downward stroke, positioned above a horizontal line.

Melissa A. Hewey, Bar No. 3587
Amy K. Tchao, Bar No. 7768
Brian D. Willing, Bar No. 9112

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