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*In Memoriam*  
C. Wesley Crowell

1955-2015

September 26, 2018

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**HAND DELIVERED**

Julie Howard, Clerk  
Portland Superior Court  
205 Newbury Street  
Portland, ME 04101

***Re: Imad and Hulda Khalidi, et al. v. Town of Cape Elizabeth***  
***Docket No. RE-18-23***

***Pilot Point, LLC v. Town of Cape Elizabeth***  
***Docket No. RE-18-30***

Dear Ms. Howard:

We represent the Town of Cape Elizabeth in the above captioned action. I am writing to request a 30 minute conference with the Court, preferably in person, to discuss the future course of proceedings in this significant municipal dispute.

This is an action brought by certain plaintiffs who own oceanfront homes in Cape Elizabeth in a development created by Shore Acres Land Company in 1911. The backyards of plaintiffs' deeded lots abut a paper street known as Surf Side Avenue that runs between their lots and the ocean. Paper streets, or more precisely, unaccepted public ways, are governed by various statutes including primarily 33 M.R.S.A. §469-A, 23 M.R.S.A. §§3032, 3033 as well as Maine common law.

Despite that Surf Side Avenue was properly reserved and extended by the Town in 1997 and again in 2016 pursuant to 23 M.R.S.A. §3032, the plaintiffs seek a declaratory judgment to dissolve the Town's rights based on two alternative theories. Count One claims the Town's rights of incipient dedication in the Surf Side Avenue paper street were extinguished due to its failure to accept the street sooner and that its right to accept has now lapsed. Count II asserts that even if the Town accepts Surf Side Avenue, it cannot use it as a pathway, trail or other type of recreational space. Ultimately, Plaintiffs seek a declaration that they hold fee title beyond their deeded boundaries including the entirety of Surf Side Avenue and, indeed, all the way to the ocean.

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Notwithstanding the dubious legal and factual support for plaintiffs' claims, we engaged in day long mediation with Robert Crowley in July. We reached a tentative agreement subject to acceptance by a majority of members of the Town Council and temporarily stayed the litigation. After public hearings and much consideration, on September 19, 2018, the Town Council voted to reject the proposed settlement. We are now in the process of conferring with counsel to determine next steps. Early intervention by the court would assist the process.

Contemporaneously with this letter, the Town filed a motion pursuant to M.R. Civ. P. 19(a) to add indispensable parties to the litigation, including shareholders of the original developer who own land on the eastern side of Surf Side Avenue and the abutting homeowners on Pilot Point Road who are similarly situated to the plaintiffs. We believe the Rule 19 motion needs to be considered before further discovery is undertaken to avoid duplication of efforts once the additional necessary parties are brought into the case.

Secondly, plaintiffs have filed an early motion for summary judgment (that they already intend to amend) relating to one of their theories for declaratory judgment. Based on the initial round of discovery and the nature of the arguments asserted in their motion, material facts are in dispute and a dispositive motion is premature. It would be a waste of resources to litigate this matter piecemeal and summary judgment at this early stage should be screened by the court to realistically assess its viability. In any event, the summary judgment motion should be stayed pending the Rule 19 motion.

This case affects the public's right of access to the ocean and is a matter of passionate interest not only in Cape Elizabeth, but to all of Maine's coastal towns. We look forward to discussing the procedural issues at the Court's earliest convenience.

Very truly yours,

  
Susan B. Driscoll

SBD/mb

cc: David A. Soley, Esq.  
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