

## **Mediation Summary Results**

On July 19, 2018, Council Chairman Jessica Sullivan, Councilors Jamie Garvin and Sara Lennon, Town Manager Matthew Sturgis, and the Town's attorneys participated in a mediation session with the attorneys for the plaintiff and the property owners. This mediation is a required component of the ongoing litigation concerning the future use of the Pilot Point section of Surf Side Avenue.

After a significant discussion between the parties and the mediator, the structure of a tentative agreement was created and agreed upon, subject to final approval by the full town council. The basic structure of the agreement involves the termination of the litigation in exchange for the following promises described below.

The Town of Cape Elizabeth will:

1. Release any right, title, or interest it may have in Surf Side Avenue, or in the strip of land lying between Surf Side Avenue and the ocean. This promise is restricted to the portions of land that directly abut Tax Map U12, Lots 67,69,70,71, and 75.
2. The town council will adopt an order that deems vacated any right the Town may have had to accept Surf Side Avenue for public purposes to the portions of land that directly abut Tax Map U12, Lots 67,69,70,71, and 75.

The Plaintiffs will :

1. Promise to not pursue subsequent legal action under the Maine Paper Streets Act (23 MRSA sections 3027-A and 3033) that allows them to extinguish any implied rights to use Surf Side Avenue that residents of Shore Acres may have.
2. Pay the Town the sum of \$500,000, which will be deposited into the Land Acquisition Fund, to enable the Town to purchase and preserve additional public land in the future.

Both Parties Agree That:

1. This Agreement does not in any way diminish the existing private rights of any person to use Surf Side Avenue.
2. All rights of appeal to contest this settlement will be waived. This will effectively end this dispute between these Plaintiffs and the Town.
3. The promises contained in the agreement are perpetual and will bind the Town as well as future owners of the Plaintiff's properties.



STATE OF MAINE  
CUMBERLAND, SS

SUPERIOR COURT  
CIVIL ACTION  
Docket Nos. RE-18-23  
and RE-18-30

IMAD KHALIDI, DAVID LEOPOLD,  
KARA LEOPOLD, ANDREW SOMMER,  
SUSAN ROSS, STEWART WOODEN, and  
JULIE WOODEN

Plaintiffs,

vs.

TOWN OF CAPE ELIZABETH

Defendant.

CONSENT FINAL JUDGMENT

(Title to Real Estate Involved)

-----  
PILOT POINT, LLC,

Plaintiff,

v.

TOWN OF CAPE ELIZABETH,

Defendant.

Upon the stipulation and consent of entry of final judgment of Plaintiffs Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden, Pilot Point, LLC, and Defendant the Town of Cape Elizabeth, by their respective undersigned counsel, and based upon the entire record herein, IT IS HEREBY, ORDERED, ADJUDGED, and DECREED as follows:

1. Parties. The names and addresses of all parties appearing in the above-entitled action, including their counsel of record, are as follows:

Plaintiffs:	a. Imad Khalidi b. David Leopold c. Kara Leopold d. Andrew Sommer e. Susan Ross f. Stewart Wooden g. Julie Wooden	Counsel:	John B. Shumadine, Esq. Sage Friedman, Esq. Murray, Plumb & Murray P.O. Box 9785 Portland, Maine 04104
Plaintiff:	h. Pilot Point, LLC	Counsel:	David A. Soley, Esq. James G. Monteleone, Esq. Bernstein Shur 100 Middle Street Portland, Maine 04104
Defendant:	Inhabitants of the Town of Cape Elizabeth	Counsel:	Durward Parkinson, Esq. Susan B. Driscoll, Esq. Benjamin T. McCall, Esq. Bergen & Parkinson, LLC 62 Portland Road, Suite 25 Kennebunk, ME 04043

2. Notice. All consenting parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure.

3. Khalidi Property. Plaintiff Imad Khalidi owns the real property located at 19 Pilot Point Road in Cape Elizabeth, Maine which is further described as Cape Elizabeth Tax Map U-12, Lot 75 and by deeds recorded at the Cumberland County Registry of Deeds at Book 31366, Page 145 and at Book 71421 and Page 132 (the “Khalidi Property”).

4. Leopold Property. Plaintiffs David Leopold and Kara Leopold own the real property located at 25 Pilot Point Road in Cape Elizabeth, Maine which is further described as Cape Elizabeth Tax Map U-12, Lot 71 and by deed recorded at the Cumberland County Registry of Deeds at Book 29981, Page 58 (the “Leopold Property”).

5. Sommer/Ross Property. Plaintiffs Andrew Sommer and Susan Ross own the real property located at 29 Pilot Point Road in Cape Elizabeth, Maine which is further identified as Tax Map U-12, Lot 69 and by deed recorded at the Cumberland County Registry of Deeds at Book 33436, Page 312 (the “Sommer/Ross Property”).

6. Wooden Property. Plaintiffs Stewart Wooden and Julie Wooden own the real property located at 33 Pilot Point Road in Cape Elizabeth, Maine which is further described as Cape Elizabeth Tax Map U-12, Lot 67 and by deeds recorded at the Cumberland County Registry of Deeds at Book 27786, Page 272 and at Book 3345, Page 64 (the “Wooden Property”).

7. Pilot Point Property. Plaintiff Pilot Point, LLC owns the real property located at 27 Pilot Point Road in Cape Elizabeth, Maine, which is further described as Cape Elizabeth Tax Map U-12, Lot 70 and by deed recorded at the Cumberland County Registry of Deeds at Book 25799, Page 318 (the “Pilot Point Property”).

8. The Town. Defendant Town of Cape Elizabeth (the “Town”) is a municipal entity located in Cumberland County, Maine that owns and maintains public roadways within the Town’s boundaries, including certain roadways granted to the Town – and formerly accepted – through the process of incipient dedication.

9. Surf Side Avenue. All of the Plaintiffs’ properties are shown on a development plan on the “Shore Acres” Subdivision, dated April 11, 1911. A true and accurate copy of the Shore Acres Plan is recorded in the Cumberland County Registry of Deeds at Plan Book 12, Page 45 (the “Shore Acres Plan”). The Shore Acres Plan also shows a paper street known as “Surf Side Avenue.”

10. Oceanfront. The Shore Acres Plan shows, in certain places, property on the ocean side of Surf Side Avenue (the “Oceanfront”).

11. Ownership of Abutting Portions of Surf Side Avenue and the Oceanfront. The Town releases any real property right, title, or interest in any of the Plaintiffs’ properties, including any portion of Surf Side Avenue which is immediately abutting the Khalidi Property, the Leopold Property, the Sommer/Ross Property, the Wooden Property, or the Pilot Point Property. Furthermore, the Town releases any right, title, or interest in any portion of the Oceanfront which abuts the aforesaid abutting portions of Surf Side Avenue. The area in which the Town is releasing its real property right, title, and interest is depicted in a certain plan, entitled “Existing Conditions Survey, Surf Side Avenue, Cape Elizabeth, Maine” prepared by Northeast Civil Solutions, dated January 24, 2018, as amended through July 19, 2018, said plan being attached hereto as Exhibit A. The Town continues to have the rights of a municipality to levy real estate taxes.

12. Vacation. Any interest of the Town in the aforementioned portions of Surf Side Avenue or the Oceanfront – including any incipient or other dedication of those portions of Surf Side Avenue or the Oceanfront to public use – is hereby deemed vacated pursuant to 23 M.R.S.A. § 3032.

13. Private Rights. Notwithstanding the vacation of the Town’s interest, no party to this action may pursue any right of action under 23 M.R.S.A. § 3033 and 23 M.R.S.A. § 3027-A. Nothing in this judgment shall diminish the private rights of any person to the portions of Surf Side Avenue that abut the Khalidi Property, the Leopold Property, the Sommer/Ross Property, the Wooden Property, and the Pilot Point Property.

14. Binding Nature. The terms of this Consent Final Judgment shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden, Pilot Point, LLC, and the Town, its successors, agents, officials, officers, and employees (as applicable) and shall benefit the Khalidi Property, the Leopold Property, the Sommer/Ross Property, the Wooden Property, and the Pilot Point Property (as applicable). This Judgment shall run with the land and be enforceable at law and in equity.

15. Further Assurances. Plaintiffs Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden, Pilot Point, LLC, and the Town shall execute and deliver such other and further documents as any of them may reasonably request and shall otherwise reasonably cooperate to effectuate and implement the terms of this Consent Final Judgment.

16. Adjudication of Claims. This Consent Final Judgment is an adjudication of all claims and counterclaims alleged by Plaintiffs Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden, Pilot Point, LLC, and the Town in the above-captioned matter without costs and attorneys' fees to any party.

17. Recording. The Plaintiffs shall be responsible for recording an attested copy of this Consent Final Judgment at the Cumberland County Registry of Deeds and for paying the appropriate recording fees.

18. Waiver. The parties have waived their right to appeal from this Consent Final Judgment and have stipulated that it will become final immediately upon entry by this Court.

19. Court Docket. Any and all remaining claims or counterclaims by Plaintiffs Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie

Wooden, Pilot Point, LLC, and Defendant The Town of Cape Elizabeth – not adjudicated above – are hereby dismissed with prejudice and without costs or attorney fees. The Clerk is instructed to reference this Consent Final Judgment on the docket pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: September \_\_\_\_, 2018

\_\_\_\_\_  
Justice, Superior Court

CLERK'S CERTIFICATION

I, \_\_\_\_\_, Clerk of the Maine Superior Court, County of Cumberland, hereby certify that:

\_\_\_\_\_ The applicable appeal period concerning this Judgment has expired without action.

\_\_\_\_\_ The final judgment has been entered after remand following appeal.

\_\_\_\_\_ The parties by entry of Consent Final Judgment waived their right to appeal from this judgment and by stipulation entered upon the docket that the Consent Final Judgment shall become final immediately upon entry by this Court.

Dated: September \_\_\_\_, 2018

\_\_\_\_\_  
Clerk/Deputy Clerk  
Maine Superior Court / County of Cumberland



## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this \_\_\_\_ day of July 2018 between Plaintiffs Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden, and Pilot Point, LLC (collectively the “Plaintiffs”) and The Town of Cape Elizabeth (the “Town”).

**WHEREAS**, Plaintiffs own property on Pilot Point Road in the Town of Cape Elizabeth;

WHEREAS, there is an alleged paper street known as Surf Side Avenue that runs roughly parallel to Pilot Point Road, but across the back of Plaintiffs’ properties at the point where Plaintiffs’ properties meet the ocean;

WHEREAS, Plaintiffs have filed a consolidated action in the Cumberland County Superior Court entitled *Khalidi et al. v. Town of Cape Elizabeth, Pilot Point LLC v. Town of Cape Elizabeth*, Docket Nos. RE-18-23 & RE-18-30, seeking, among other things, a declaratory judgment that Surf Side Avenue no longer exists on their properties; and

WHEREAS, Plaintiffs and the Town wish to resolve their dispute.

NOW THEREFORE, Plaintiffs and the Town agree as follows:

1. Following execution of this Agreement, the parties agree to file with the Court the draft Consent Judgment attached hereto as Exhibit A.
2. Within 10 days of receipt of the executed Consent Judgment, Plaintiffs will pay to the Town the sum of five hundred thousand dollars and zero cents (\$500,000) to be applied towards the \_\_\_\_\_ fund.

3. Any dispute in consummating this Agreement shall be resolved by binding Arbitration before retired Judge Robert E. Crowley.

Signature lines