

expiration of the discovery period – which discovery period Plaintiffs themselves have sought to stay in this case on June 9, 2011.¹ Thus, Plaintiffs have been engaged in an ongoing effort to avoid depositions and frustrate the discovery process since at least February 11, 2011 and, incredibly, they now assert that the Town should not be allowed to take depositions because the discovery period has expired. Such actions are unconscionable.

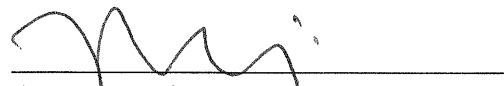
Plaintiffs also attempt to mischaracterize the Town’s Motion to Enlarge, Continue and/or Stay pursuant to Rule 56(f) as nothing but an ongoing discovery dispute between the parties. To address Plaintiffs’ summary judgment motion on Counts II (adverse possession), III (boundary by acquiescence), V (dedication and acceptance) and VIII (implied/quasi easement) of the Town’s Counterclaims, the Town will need to establish facts that would be entirely different depending on who currently owns, or who historically has owned, the intertidal zone, the high-dry sand, and/or the adjacent upland. Plaintiffs’ summary judgment motion is, therefore, necessarily predicated on an “assumption” that the court will deny the Town’s summary judgment motion on title AND grant the Plaintiffs motion on title, which Plaintiffs concede. Thus, the Town is seeking a stay until after the Court’s ruling on the title issues, which has a direct bearing on the Plaintiffs’ summary judgment motion on Counts II (adverse possession), III (boundary by acquiescence), V (dedication and acceptance) and VIII (implied/quasi easement) of the Town’s Counterclaims.

¹ It should also be noted that Plaintiffs’ counsel called the Town’s undersigned counsel on June 30, 2011 and requested that the Town agree to stay all depositions in this case, including expert depositions until after the Court had ruled on the pending summary judgment motions.

Finally, as discussed above and at length in the Town's Motion to Enlarge, Continue and/or Stay, the Town has been severely prejudiced in responding to Plaintiffs' summary judgment motion as a result of Plaintiffs' refusal to permit discovery. Plaintiffs have not permitted the Town to take depositions and have failed to fully respond to the Town's Request for Production of Documents. There still remain plaintiffs who have produced almost no documents in this case, and Plaintiffs have not produced the files of its designated experts in this case.²

WHEREFORE, Defendant Town of Kennebunkport respectfully requests, pursuant to Rule 56(f) of the Maine Rules of Civil Procedure that the deadline to respond to Plaintiffs' Motion for Partial Summary Judgment on Counts II, III, V and VIII of the Town's Counterclaims be enlarged, continued or stayed.

Dated: December 15, 2011



Amy K. Tchao, Bar No. 7768
Brian D. Willing, Bar No. 9112
David M. Kallin, Bar No. 4558

Drummond Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480
207-772-1941

² Plaintiffs finally produced an incomplete copy of the expert file of J. Gordon Scannell, Jr. yesterday (December 14, 2011), but they still have not produced a file for either of its expert surveyors, Steve N. Ross and M. Johann Buismann.