

Memorandum

To: Marian Anderson, Town Manager, Town of Wiscasset

From: Asha Echeverria

Date: April 29, 2018

Re: Wawenock LLC et al. v. Maine DOT

In its First Amended Complaint, Plaintiffs, three private landowners, made several allegations related to the Town that if accepted by the Court as true could affect the Town's rights and interests in the future. These statements include, but are not limited to, the following:

- Wiscasset Village in Wiscasset, including its downtown Main Street/Route 1 where Plaintiffs' Properties are located, is listed as historic in the National Registry of Historic Places.
- When the State nominated Wiscasset Village to the National Registry, it described the Village as "an authentic late 18th and 19th century sea and river port... [and] its buildings . . . remain, as a whole, intact and are a type of field museum that should be preserved."
- Wiscasset Village, including Main Street/Route 1, Middle and Water Streets where Plaintiffs' Properties are located, is also designated by Town Ordinance as a municipal Historic District, as to which the Town's Zoning Ordinance's historic preservation provisions apply.
- In September 2016, upon learning of MDOT's post-Vote Project changes, voters objected, and a Selectman observed that he felt "hoodwinked" by MDOT.
- In August, and again in September, 2016, MDOT proposed that the Selectmen sign alternative versions of a contract committing the Town to pay for certain Project construction and maintenance costs, without a Town vote.
- Although the Selectmen did not approve either MDOT's first proposed contract, or its revised proposed contract, they were persuaded by MDOT to "acknowledge" MDOT's "letter of its intent" that the Town pay certain Project costs.

Some of these statements are incorrect and other statements can be misleading. The reason why it is important that the Town involve itself in the litigation is the concept of Res Judicata, Latin for “the matter [already] judged”, which says that if this Court in this litigation makes an adjudication on an issue that is adverse to the Town, then that issue binds the Town in all future cases and cannot be further disputed or even pursued by the Town in a later matter. Res Judicata only relates to findings on the merits of this case.

Current Status

At this time, the Court has granted Judgment on the Pleadings in favor of MDOT as a matter of law that does not relate to issues that affect the Town. Because the Motion for Judgment on the Pleadings did not address issues that affect the Town, the Town, on our recommendation, did not file a brief with the Trial Court related to the Motion, or file a brief with the Law Court when the matter was appealed.

For your information, attached is a Pleadings Index of all documents filed in this matter. **Items filed on behalf of the Town are highlighted in yellow.** Our strategy throughout has been to expend as little effort as possible while still monitoring the litigation so that if an issue that affects the rights and interests of the Town is raised, then the Town would be aware and could address the issue with the Court. To this end, we have filed only the minimum documents necessary and, as the issues related to the Town are yet to be addressed in the litigation, have otherwise monitored the litigation.

Going Forward

Given that the issues before the Law Court do not relate to the interests of the Town, it would be reasonable for the Town to not participate in the oral argument scheduled for Tuesday, May 15th. If that is the Town’s decision, we would send a brief letter to the Clerk setting forth the Town’s intent.

If the Law Court denies the appeal, then that should end this litigation and the matter will be fully resolved. If the Law Court grants the appeal or otherwise remands the matter back to the Trial Court, then the Town would need to participate in the lawsuit as a Party-in-Interest as required by the Rules of Civil Procedure. I would otherwise recommend that the Town monitor this litigation as the Town is intricately involved in the issues and some of the issues affect the Town’s rights and interests and failure to address an issue with the Court now could result in Res Judicata, the matter being decided against the Town for all time in future lawsuits.

If you have any questions, please do not hesitate to contact me.



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Name of Case: Wawenock LLC, Bermuda Isles, LLC, 48 Federal Street, LLC
and 32 Middle Street, LLC v. State of Maine Department of
Transportation and Town of Wiscasset

Client/Matter: Town of Wiscasset / Wawenock v. MDOT 5416-54

Docket #: CV-17-05 Lincoln County Superior Court
Maine Supreme Judicial Court/Law court Docket BCD-17-490

Tab	Date	Attorney	Description	DMS Link
1	2/10/17	Hark (McGehee)	Petition for Declaratory Relief; Plaintiff's Motion for Preliminary Injunction, Affidavit of Robert S. Hark; Appendix to Affidavit; Proposed Order	Petition for Declaratory Relief Motion for Preliminary Injunction Affidavit Appendix
2	2/10/17	Hark	Request for Transfer to Business Court	Request for Transfer
3	2/27/17	Rosenblatt	Ltr to Court re Notice of Appearance and No Objection to Transfer to Business Court	Ltr re Representation
4	3/02/17	Hark	ME DOT Acceptance of Service	Acceptance of Service
5	3/03/17	Echeverria	Entry of Appearance of Shana Cook Mueller, Meredith C. Eilers, and Asha Echeverria	Entry of Appearance
6	3/15/17	Eilers	Consent to Transfer to Business and Consumer Court	Consent to Transfer

Tab	Date	Attorney	Description	DMS Link
7	3/20/17	Rosenblatt	Maine DOT's Answer and Memo in Opposition to Plaintiff's Motion for Preliminary Injunction (*Exhibits and Affidavits in separate DMS subfolders-not included in binder)	DOT Answer and Memo in Opposition*
8	3/21/17	Echeverria	Town of Wiscasset's Answer	Wiscasset's Answer
9	3/21/17	Court	Order granting Application for Transfer to Business and Consumer Docket	Order Accepting BCD
10	04/12/17	Court	Case Management Scheduling Order No. 1	Scheduling Order
11	06/01/17	Rosenblatt	NDS- Defendant's First Supplemental Response to Plaintiffs' First Set of Requests for Production of Documents	NDS Supplemental Response
12	06/01/17	Rosenblatt	NDS-Defendant's Responses to Plaintiffs' First Set of Interrogatories	NDS-Responses
13	06/07/17	Hark	NDS-Plaintiff's Interrogatories and Request for Production	NDS-Requests
14	06/07/17	Hark	NDS- Plaintiff's Answers to MDOT's First Set of Interrogatories and Responses to MDOT's First Request for Production of Documents and First Set of Requests for Admissions	Discovery responses
15	06/12/17	Hark	Plaintiffs' Motion to Amend Complaint- Amended Complaint	Motion to Amend Complaint
16	07/11/17	Echeverria	NDS-Wiscasset's Responses to Interrogatories and Request for Production of Documents of Plaintiffs	NDS Responses
17	07/11/17	Echeverria	Wiscasset's Answer to First Amended Complaint	Wiscasset's Answer to Amended Complaint
18	07/27/17	Hark	Plaintiffs' Objection to Defendant ME DOT's Motion for Judgment on the Pleadings	Objection to Motion for Judgment on Pleadings

Tab	Date	Attorney	Description	DMS Link
19	08/10/17	Court	Status Conference Order No. 1	Status Conference Order
20	08/11/17	Weliver	NDS- Plaintiff's Second Set of Interrogatories and Second Set of Requests of Production of Documents to ME Department of Transportation	Discovery Requests
21	08/31/17	Hark	NDS-Plaintiffs' Notice of Deposition of Ernest Martin	Ernest Depo Notice
22	09/05/17	Billings	Entry of Appearance as Co-Counsel for ME DOT	Entry of Appearance
23	09/12/17	Court	Order on Defendant State of Maine Department of Transportation's Motion for Judgment on the Pleadings	Order
24	09/21/17	McGehee	Plaintiffs' Motion for Reconsideration of the Court's Order granting Defendant's Motion for Judgment on the Pleadings	Motion for Reconsideration
25	11/01/17	Court	Order on Motion for Reconsideration-Denied	Order
26	11/09/17	Court Stamped	Plaintiff's Notice of Appeal	Docketed Notice of Appeal
27	11/10/17	Hark	Plaintiff's Notice of Appeal	Notice of Appeal
28	11/13/17	Law Court	Notice of Docketing in the Law Court	Notice of Docketing in Law Court
29	11/22/17	Hark	Appellants Motion for Preliminary Injunction filed with Business Court	Motion for Preliminary Injunction
30	11/22/17	Hark	Appellants Motion for Preliminary Injunction filed with Supreme Court	Motion for Preliminary Injunction
31	11/27/17	Business Court	Order Denying Motion for Preliminary Injunction Pending Appeal	Order
32	11/28/17	Hark	Ltr to Law Court re Preliminary Injunction Ruling	Hark Ltr

Tab	Date	Attorney	Description	DMS Link
33	11/28/17	Rosenblatt	MDOT Memorandum in Opposition to Motion for Preliminary Injunction Pending Appeal	<u>Memo in Opposition</u>
34	11/29/17	Echeverria	Town of Wiscasset Ltr to Law Court re Appeal	<u>Town Ltr</u>
35	11/29/17	Law Court	Briefing Schedule	<u>Briefing Schedule</u>
36	11/30/17	Hark	Letter to Law Court Withdrawing Motion	<u>Ltr re Withdrawing Motion</u>
37				

Last Updated: April 30, 2018