



SHAINES & McEACHERN, PA
Attorneys at Law

January 23, 2018

Maureen F. O'Neil, Clerk
Rockingham County Superior Court
PO Box 1258
Kingston NH 03848-1258

Re: *Robert Jesurum v. WBTS CC Limited Partnership, William H. Binnie, Trustee of the Harrison Irrevocable Trust, the Town of Rye, and the State of New Hampshire*
Docket # 218-2013-CV-00134


Dear Ms. O'Neil:

Enclosed, please find the *Petitioner's Objection to Motion for Reconsideration* for filing with the Court in the above-referenced matter.

I hereby certify that copies of the enclosed have been forwarded to counsel of record.

Thank you for your attention to this matter.

Very truly yours,


Paul McEachern *rlm*

PM/rlm
Enclosure

cc: Robert Jesurum
Michael L. Donovan, Esq.
Christopher Carter, Esq.
Rebecca L. Woodard Ross, Esq.

The State of New Hampshire

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2013-CV-00134

Robert Jesurum

v.

WBTS CC Limited Partnership, William H. Binnie, Trustee of the Harrison Irrevocable Trust, the Town of Rye, and the State of New Hampshire, *through* Joseph Foster, Attorney General of the State of New Hampshire

OBJECTION TO MOTION FOR RECONSIDERATION

NOW COMES the Petitioner, Robert Jesurum, by his attorneys, Shaines & McEachern, PA, who objects to the Motion for Reconsideration filed by Respondent WBTS CC Limited Partnership et al (“WBTS CC” hereafter). In support hereof, Jesurum says:

Throughout this controversy, the innocuous existence of a historic marker on the site has gone unchallenged - until after the Court approved the final restoration plan. See Exhibit 1. Now, after the unauthorized removal of the marker, the restoration of the marker has suddenly become “... the fundamental question of whether Plaintiff can require the placement of his sign on private property.” (*emphasis supplied*) (Response to January 2 Order and Request for Reconsideration, ¶1.) In response to this audacious turn, the Petitioner says:

1. The marker is not Petitioner’s sign. It was placed in an appropriate location by permission of the Town of Rye in 2003 to mark the site of Sanders Poynt¹ so-called since 1623. It remained so located upon the view of this Court on June 25, 2015 (See Exhibit 2). Indeed, the Building Permit issued by the Town of Rye on October 15, 2012 ordered

¹ While the Town claims bystanders status, they took it upon themselves to alter the wording of the marker from SANDERS POYNT to SANDERS POINT.

WBTSCC to comply with condition #2 “The historic marker shall not be disturbed.” (See Exhibit 3).

2. Now, after approval of the final restoration plan, which clearly marks the sign as an existing condition, WBTSCC seeks reconsideration of this Court’s Order.
3. In so moving, WBTSCC makes the claim that the removal of the sign was necessitated by the Restoration Plan. The Plan however does not indicate, as it does some other existing conditions, that the sign is to be removed. For instance, a portion of the fence erected to block off the site is listed for removal. In fact, the fence left in place actually protects the sign location from exiting vehicles, according to the Restoration Plan. Further, under “Construction Sequence, ... 2. Remove existing junipers and section of fence along Wentworth Road”, the Plan makes no mention of “Sanders Poynt 1623” as being removed.
4. Because the marker has always been within the right of way, WBTSCC invokes the “higher authority” argument that the Department of Transportation, and not this Court, must approve the location of the sign. This argument has been made before.
5. This Court has jurisdiction to approve the continued existence of the marker. The Court approved the restoration plan showing the location of the marker. The Court should deny the Motion for Reconsideration and put an end, once and for all, to this matter.

WHEREFORE, Robert Jesurum respectfully prays that this Court:


- A. The Motion for Reconsideration be denied;
- B. Award attorney’s fees and costs to Petitioner to be paid equally by the Town of Rye and WBTSCC; and
- C. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ROBERT JESURUM

By his attorneys,
SHAINES & MCEACHERN, P.A.

Dated: January 23, 2018

By: 
Paul McEachern, Esq. (NH Bar #1679)
Jacob J.B. Marvelley, Esq. (NH Bar #20654)
282 Corporate Drive
Portsmouth, NH 03801
603-436-3110 (telephone)

CERTIFICATE OF SERVICE

I hereby certify that on this date I have sent via e-mail and regular mail a copy of the foregoing to the following parties:

Christopher Carter, Esq.
Hinckley Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301-4846

Rebecca L. Woodard Ross, Esq.
NH Department of Justice
33 Capitol Street
Concord, NH 03301

Michael L. Donovan, Esq.
PO Box 2169
Concord, NH 03302-2169

Dated: January 23, 2018



Paul McEachern, Esq.

Exhibit 1



31 Wentworth Road
Wentworth Rd
↻ Street View - Sep 2011

Hide imagery >>

Back to Map

Island
Wentworth
Head
Dr

Earth

Wentworth Road

Wentworth By The Sea

Wentworth Road

3 Wentworth

Image capture: Sep 2011 Wentworth Rd © 2014 Google Wednesday, September 03, 2014 3:31 PM 9/3/2014

Exhibit 2

SANDERS
POYNT
1623



Exhibit 3

FENCE

This Permit and / or variances expire 1 year from date of issue
Permit expires if work is not commenced within 180 days, per IRC 2006

BUILDING PERMIT

RYE, N.H.

Oct. 15 20 12

PERMIT # 002580

PERMISSION IS HEREBY GRANTED TO:

OWNER: WBTSCC Ltd. Partnership TELEPHONE # 433-3050

LOCATION OF WORK: 60 Wentworth TAX MAP # 24 LOT # 61-26

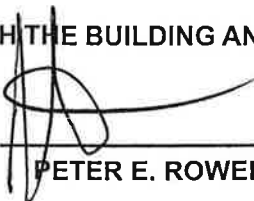
DESCRIPTION: 66' linear ft. of 4'H split rail fence as per plans.

* CONDITIONS: The issuance of this permit does not constitute an admission by the Town that there are no public prescriptive rights to use of the area behind the fence. The historic marker shall not be disturbed. *

CONTRACTOR: Owner

ADDRESS: _____ TELEPHONE # _____

THIS PERMISSION IS GRANTED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES OF THE TOWN OF RYE

SIGNED:  10-15-12
PETER E. ROWELL, BUILDING INSPECTOR

FLOOD PLAIN CERTIFICATE REQUIRED? YES/NO

THIS PERMIT TO BE POSTED AT WORK SITE

CC: _____