



SHAINES & McEACHERN, PA
Attorneys at Law

December 20, 2017

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 Reply to Objections to Motion for Restoration of Historic Marker* 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, Esq.

The State of New Hampshire

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2013-CV-00134

Robert Jesurum

v.

WBTSCC 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

*PETITIONER'S REPLY TO OBJECTIONS TO
MOTION FOR RESTORATION OF HISTORIC MARKER*

NOW COMES the Petitioner, Robert Jesurum, by his attorneys, Shaines & McEachern, PA, who respectfully submits the within reply:

Reply to Town's Objection

1. The Town's claim that it lacks authority to install the sign is belied by the fact that the Town authorized the sign's installation in 2003. In July 2003, Paul Sanders, a descendent of John Sanders, asked the Town for permission to install the sign. Sanders Aff., ¶¶ 13-14.¹ The Town's Board of Selectmen granted Sanders permission without restriction. *Id.*, ¶ 14.

2. The Town's installation of signs and reclamation fill at Sanders Point further demonstrates the Town's authority. In about 1995, the Town placed signs within Sanders Poynt, including a beach access sign, and signs regulating parking and littering. McEachern Aff., ¶ 3 (quoting Town of Rye Board of Selectmen Minutes (July 31, 1995, at 10-11) (voting to install signs); Order on the Merits (noticed on Aug. 26, 2015) at 5 (discussing Town's installation of

¹ Jesurum submitted the Affidavit of Paul Sanders with his Objection to the Wentworth Defendants' Motion for Summary Judgment, and his Cross-Motion for Summary Judgment.

signs).² Additionally, the Town voted to place reclamation fill in the Sanders Point parking area. McEachern Aff., ¶ 3.

3. It is axiomatic that the Town has authority to place markers within a public right of way. Both Mr. Jesurum's Existing Conditions Plan and the Wentworth Defendants' plan B.4.1 show the Sanders Point sign in the public's right of way. Jesurum Trial Exh. 13; Wentworth Defs.' Obj. to Mot. to Restore Historic Marker, Exh. A at 1.

4. It is reasonable to expect the Town to continue to exercise its authority over the area and re-install the Sanders Point sign.

Reply to Wentworth Defendants' Objection

5. The Wentworth Defendants try to dissemble a reason why the Sanders Point sign was on its last restoration plan, but still got removed.

6. The Defendants submitted their Plan B.4.1 with a Motion for Clarification of August 17th Order. Plan B.4.1 shows the Sanders Point sign, in the right-of-way. The plan specifically called out which items would be removed, such as "Junipers to be Removed & Area to be Filled for Parking," "Junipers to be Removed," "Existing Fence to be Removed," and "Limit of Fence Removal," "Existing Post & Rail Fence to be Removed." Unlike those items, which were identified for removal, Plan B.4.1 simply identifies the "Sanders Poynt 1623" sign. Plan B.4.1 did not contemplate removing the sign.

7. The Court granted the Wentworth Defendants' Motion for Reconsideration, making plan B.4.1 the Court-ordered restoration plan, subject to the Court's other orders in the case.

² Jesurum submitted the Affidavit of Paul McEachern, Esq., with his Objection to the Wentworth Defendants' Motion for Summary Judgment, and his Cross-Motion for Summary Judgment.

8. The Sanders Point sign will not obstruct parking. The sign was set against the woods, out of the way. That is why Plan B.4.1 did not contemplate removing the sign.

9. There is no need to relocate the Sanders Point sign. The sign needs to be installed where it was: out of the way, and in the public right-of-way.

Conclusion

10. The Town has authority to construct the sign and the Wentworth Defendants had no right to remove it. The Town and the Wentworth should have left the sign alone, or replaced the sign without requiring Court intervention. Their failure to do so is vexatious.

Respectfully submitted,

ROBERT JESURUM

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

Dated: December 20, 2017³

By: 

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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:

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Dated: December 20, 2017



Paul McEachern, Esq.