

Judge Curran's June 24, 2013 ruling, from the court docket for case # MICV2011-04095:

JUDGMENT: Plaintiff Twenty Wayland, owner of the property at 400-440 Boston Post Road in Wayland, filed a Complaint on November 16, 2011 against the Town of Wayland and the Wayland Wastewater Management District Commission alleging that the defendants had breached a 1999 contract (called the Memorandum of Agreement) and seeking damages, specific performance, and declaratory relief. A Final Pre-Trial Conference was held on June 7, 2012, and a Final Trial Conference was held on June 4, 2013. A jury was selected on June 7, 2013, and evidence was presented to the jury over two days, June 10-11, 2013. Associate Justice of the Superior Court Dennis J. Curran presided.

There were a total of 48 exhibits admitted into evidence and the jury heard testimony from witnesses Anthony DeLuca, Frank Dougherty, Kevin Brander, Kevin Foley, Fred Knight, and Ian Catlow, as well as from the Rule 30(b)(6) deposition testimony of the Town of Wayland through its designee Fred Turkington. The jury returned a verdict in favor of Twenty Wayland on all issues triable to the jury. Specifically, according to the Jury Verdict form, the jury found, by a vote of 14-0, that:

1. Twenty Wayland had proven by a preponderance of the evidence that the defendants breached the 1999 Memorandum of Agreement provision that defendants "shall provide 45,000 GPD (gallons per day of maximum daily design flow as defined in 310 CMR 15.000) of sewage treatment capacity."
2. Twenty Wayland had proven by a preponderance of the evidence that the defendants breach of this provision of the 1999 Memorandum of Agreement has caused Twenty Wayland to suffer damages.
3. Twenty Wayland had proven with a reasonable degree of certainty that, as a result of the defendants breach, Twenty Wayland has been damaged by carrying costs related to the delay in constructing the residential phase of the Town Center project including \$55,100.00 in real estate taxes, \$70,000.00 in interest charges (on property mortgage), and \$440,000.00 in the increase of Twenty Wayland's construction costs to construct the residential phase of the Town Center project.
4. Twenty Wayland had proven by a preponderance of the evidence that defendants breached the 1999 Memorandum of Agreement provision for "sewage treatment capacity" to be provided "at a pro-rated cost of operation and amortized acquisition costs, but excluding all costs in any way related to installations made for service to others and services provided to others."

5. Twenty Wayland had proven by a preponderance of the evidence that the defendants breach of this provision of the 1999 Memorandum of Agreement has caused Twenty Wayland to suffer damages.

6. Twenty Wayland has proven with a reasonable degree of certainty that, as a result of the defendants breach, Twenty Wayland has been damaged in the amount of \$424,674.00.

There were also two issues heard by the Court. First, was Twenty Wayland entitled to specific performance as to the 1999 Memorandum of Agreement provision that defendants "shall provide 45,000 GPD (gallons per day of maximum daily design flow as defined in 310 CMR 15.000) of sewage treatment capacity"? Second, was Twenty Wayland entitled to a declaration that going forward, in order to comply with the 1999 Memorandum of Agreement provision that any "sewage treatment capacity" was to be provided "at a pro-rated cost of operation and amortized acquisition costs, but excluding all costs in any way related to installations made for service to others and services provided to others," the Commission could only take into account "sewage treatment capacity" actually available and useable by Twenty Wayland, currently 28,000 gallons per day?

On these two questions, the Court finds that the evidence established, consistent with the jury's findings, that defendants have and are breaching both of these provisions and therefore the requested relief of specific performance and declaratory judgment is merited.

Now, accordingly, it is ORDERED, DECREED, and ADJUDGED that Final Judgment shall enter in favor of the plaintiff Twenty Wayland, LLC, and against the Defendants, jointly and severally, as follows:

A. Defendants shall pay to Twenty Wayland \$989,774 in contractual damages.

B. Defendants shall pay to Twenty Wayland \$234,298.45 in pre-judgment interest.

C. Defendants shall pay to Twenty Wayland \$3,413.04 in statutory costs.

D. Twenty Wayland is entitled to specific performance of the 1999 Memorandum of Agreement provision that defendants "shall provide 45,000 GPD (gallons per day of maximum daily design flow as defined in 310 CMR 15.000) of sewage treatment capacity." Defendants are ordered to accept, treat, and discharge up to 45,000 gallons per day of wastewater from 400-440 Boston Post Road.

E. Twenty Wayland is entitled to declaratory judgment that going forward, in order to comply with the 1999 Memorandum of Agreement provision that any "sewage treatment capacity" is to be provided "at a pro-rated cost of operation and amortized acquisition costs, but excluding all

costs in any way related to installations made for service to others and services provided to others," the Commission shall only take into account sewage treatment capacity actually available and useable by Twenty Wayland, currently 28,000 gallons per day. So ordered. By the Court, (Dennis J. Curran, Justice, Dated: 6/23/2013). Entered and Copies mailed 6/24/2013

(On Monday, June 24, Wayland filed the following)

Defendants Town Of Wayland and Wayland Wastewater Management District Commission's MOTION to extend time for filing opposition to Plaintiff's Motion for Entry of Proposed Judgment

(On June 26 and 27, Judge Curran filed two additional rulings)

Motion (P#39) RULING: Judgment has entered, but the defendants are free to file any materials on why the judgment should be amended. Deadline for doing so shall be August 2, 2013. (Dennis J. Curran, Justice). Notices mailed 6/26/2013

Motion (P#39) Further ruling, the time for serving a motion for a new trial is extended to 8/2 and the 30 day appeal period is extended 30 days from the ruling on a motion for new trial. (Dennis J. Curran, Justice). Notices mailed 6/27/2013