STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & COUNSUMER DOCKET
DOCKET NOS. BCD-RE-18-05
BCD-RE-18-06

IMAD KHALIDI, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**COMBINED ORDER ON PENDING MOTIONS**
	)	
TOWN OF CAPE ELIZABETH,	)	
	)	
Defendant.	)	

Both parties have brought motions asking this Court to reconsider, alter, or amend its Order denying their respective motions for summary judgment. Plaintiffs further ask the Court to reconsider its decision to dismiss Count II of their Complaints as unripe; in the alternative, Plaintiffs move for leave to amend their Complaints to add additional allegations as to the ripeness of Count II. The Court heard oral argument on the motions on May 7, 2019. James Monteleone, Esq. appeared for Plaintiffs and Susan Driscoll, Esq. appeared for the Defendant Town of Cape Elizabeth ("Cape Elizabeth," or the "Town").

BACKGROUND

This case arises out of a dispute over the Town's right to accept what the parties refer to as the Pilot Point Section of Surf Side Avenue (the "Pilot Point Section"). Surf Side Avenue is a so-called "paper street," or proposed, unaccepted way. The Shore Acres Land Company recorded the Shore Acres subdivision plan depicting the Pilot Point section on April 10, 1911 at the Cumberland County Registry of Deeds (the "Registry").

The Town has no fee interest in any part of Surf Side Avenue and has never accepted public rights over the Pilot Point Section. However, the Town has taken formal action pursuant to statutory authority to extend the Town's right to either accept, or vacate its right to accept, the

incipient dedication of the Pilot Point Section at a later date. On September 8, 1997, the Town council voted to extend the Town's right to accept certain paper streets within the Town for a period of twenty years. Pursuant to that vote, the Town recorded a notice of its reservation of rights in the Registry (the "1997 Notice"). On October 5, 2016, the Town voted to extend its right to accept certain paper streets within the Town for a further (and final) twenty-year period. *See* 23 M.R.S. § 2032(2).

The owners of the lots through which the Pilot Point Section passes (several—but not all—of whom are plaintiffs in this lawsuit) and their predecessors-in-interest have essentially used the Pilot Point Section as their "backyards" with minimal development consistent with what one might expect to see in a backyard. In these two consolidated cases, Plaintiffs seek a declaratory judgment declaring that the Town's right to accept the Pilot Point Section has lapsed (Count I) and that if the Town's right has not lapsed, and it is accepted, that the Town is prohibited from altering the location, construction, or usage of the proposed roadway to become a walking trail (Count II).

On February 19, 2019, this Court entered its Order on Cross-Motions for Summary Judgment (the "Summary Judgment Order") denying both motions for summary judgment. The Court concluded that there are genuine factual issues regarding Plaintiffs' predecessors-in-interest's use of the Pilot Point Section material to a legal determination of whether Cape Elizabeth's ability to accept the Pilot Point Section has lapsed. The instant motions do not ask the Court to reconsider this conclusion.

Instead, Plaintiffs ask the Court to reconsider three other legal conclusions: first, that the elements of common law abandonment of an easement cannot prove that the public's right to accept a proposed way has lapsed; second, that Count II is unripe; and third, that evidence of uses in the Pilot Point Section after the recording of the 1997 Notice is not relevant to the lapse analysis.

The Town asks the Court to reconsider its conclusion that Count I is not barred by the relevant six-year statute of limitations.14 M.R.S. § 752. The Court considers each party's motion in turn.

STANDARD OF REVIEW

Under M.R. Civ. P. 7(b)(5), a motion for reconsideration "shall not be filed unless required to bring to the court's attention an error, omission, or new material that could not previously have been presented." "Rule 7(b)(5) is intended to deter disappointed litigants from seeking 'to reargue points that were or could have been presented to the court on the underlying motion.'" *Shaw v. Shaw*, 2003 ME 153, ¶ 8, 839 A.2d 714 (quoting M.R. Civ. P. 7(b)(5) advisory committee's notes to 2000 amend., 3A Harvey & Merritt, *Maine Civil Practice* 270 (3d, 2011 ed.)). "A motion for reconsideration of the judgment shall be treated as a motion to alter or amend the judgment." M.R. Civ. P. 59(e). A trial court's ruling on a motion for reconsideration is reviewable for an abuse of discretion. *Shaw*, 2003 ME 153, ¶ 12, 839 A.2d 714.

DISCUSSION

As they conceded at the oral argument, Plaintiffs not only could have, but in fact did, argue that the common-law elements for the abandonment of an easement also apply to the lapse of the public's right to accept a proposed way. (Summ. J. Order 10-12.) Plaintiffs' re-argument on this issue does not bring to the Court's attention any error, omission, or new material. It merely rehashes the same reasoning that the Court rejected in its Summary Judgment Order. Plaintiffs may be disappointed by the Court's conclusion, and believe in good faith that it was legal error, but this is not the kind of "error" contemplated by Rule 7(b)(5). *See* M.R. Civ. P. 7(b)(5) advisory committee's notes to 2000 amend., 3A Harvey & Merritt, *Maine Civil Practice* 270 (3d, 2011 ed.). The Court declines to revisit its conclusion that the test for whether the public's right of incipient dedication has lapsed announced in *Ocean Point Colony Trust, Inc. v. Town of Boothbay*, 1999

ME 152, 739 A.2d 382 is distinct from the test for abandonment of an easement. As explained in the Summary Judgment Order, different considerations require a different test. (Summ. J. Order 11.) For example, an element of abandonment of an easement is a history of nonuse. *Phillips v. Gregg*, 628 A.2d 151, 153 (Me. 1993). Until a municipality accepts a paper street there is nothing for the public to use, so a history of nonuse cannot be relevant to whether the municipality's right to accept the paper street has lapsed. As the Court concluded in its Summary Judgment Order, even assuming that the other element of abandonment—an act or omission evincing a clear intent to abandon—were relevant to the lapse analysis, the Plaintiffs have not presented any evidence that satisfies this element. (Summ. J. Order 12.) In sum, the Court declines to reconsider its conclusion that the elements of common law abandonment of an easement cannot prove that the public's right to accept a proposed way has lapsed.

The new material presented by Plaintiffs as to the ripeness of Count II relates to steps taken by the Town after or during the briefing on the summary judgment motions. Thus, it is not "new material *that could not previously have been presented*." M.R. Civ. P. 7(b)(5) (emphasis added). Furthermore, while the material presented is further evidence of the Town's intent to develop the Pilot Point Section as a public walking trail, this evidence alone does not alter the Court's ultimate legal conclusion: "that the issue of the Town's hypothetical, future use of an easement that it may or may not accept is not ripe." (Summ. J. Order 8.) Plaintiffs claim that the Court as a matter of law can determine whether an "unimproved walking trail" over the Pilot Point Section is a permissible use of Cape Elizabeth's hypothetical easement that it may never accept, but the issue is not that simple. A walking trail is clearly distinguishable from the City of Rockland's impermissible use of the proposed way it accepted in *Rockland v. Johnson*, 267 A.2d 382, 385 (Me. 1970). This is a far more fact-bound inquiry than the issue the Law Court held was ripe in

Me. Pub. Serv. Co. v. Pub. Utils. Com., 524 A.2d 1222, 1226 (Me. 1987), where the Law Court wrote in dicta that a declaratory judgment would "only aid the Commission in making use of its lawful regulatory powers." *Id.* Here, any ruling on Count II would be *only* an advisory opinion. Far from clarifying anything, it would invite future litigation if and when the Pilot Point Section were ever accepted and developed. Cape Elizabeth would argue that its use was within the scope of what the Court ruled permissible and Plaintiffs would argue it was not. The Court dismissed Count II without prejudice so that that argument could be had, if ever, in due course when the facts were established and no longer speculative.

For similar reasons, the Court denies Plaintiffs' motion to amend their Complaints. Rule 15(a) provides that after a responsive pleading has been served a party may amend its pleading only by leave of court, and leave shall be freely given when justice so requires. M.R. Civ. P. 15(a). Nonetheless, "[U]ndue delay, bad faith, undue prejudice, or futility of amendment are grounds for denying a motion to amend." *Paul v. Town of Liberty*, 2016 ME 173, ¶ 9, 151 A.3d 924 (quotation omitted). The decision of whether to give leave to amend is committed to the sound discretion of the trial court. *Bangor Motor Co. v. Chapman*, 452 A.2d 389, 392 (Me. 1982). First, the Court finds that Plaintiffs' amendment would result in undue delay and Plaintiffs did not offer a satisfactory explanation for why the motion was only brought now, after an adverse ruling on summary judgment. *See Diversified Foods, Inc. v. First Nat'l Bank*, 605 A.2d 609, 616 (Me. 1992) ("undue delay removes any presumption in favor of allowing amendment") (quotation marks omitted). The supplemental paragraphs in Plaintiffs' proposed amended Complaints allege facts that could have been alleged when the Complaints were originally filed or anytime thereafter. More importantly, this exact issue has now been extensively litigated in two separate motions for summary judgment, each with its own statement of material facts, opposing statement of material

facts, and additional statement of material facts. Put simply, the time for allegations has passed, and the time for adducing evidence on this issue has now likewise come and gone. *See id.* ("when the summary judgment has been entered, the court should be reluctant to allow the addition of a new cause of action, particularly when the delay is unexplained"), *see also Holden v. Weinschenk*, 1998 ME 185, ¶¶ 6-8, 715 A.2d 915. Second, Plaintiffs' failure to adduce all evidence in support of its cause of action at the summary judgment stage cannot be remedied by amendment because the prejudice to the Town in having to relitigate this issue would be undue. Harvey & Merritt, *Maine Civil Practice*, § 15:2, at 480 (3d, 2011 ed.) ("If the moving party is not acting in bad faith or for delay, the motion will be granted *in the absence of undue prejudice to the opponent*.") (emphasis added). Finally, the Court concludes that Plaintiffs' proposed amendments would be futile. Even taken as true, these allegations make the legal issue posed in Count II no more concrete, nor withholding judicial decision on the issue any more burdensome for Plaintiffs. *Johnson v. Crane*, 2017 ME 113, ¶ 9, 163 A.3d 832. They also make the legal issue no less speculative. *See Clark v. Hancock Cty. Comm'rs*, 2014 ME 33, ¶ 19, 87 A.3d 712. For the reasons explained above, even in light of these supplemental allegations, any ruling by this Court on Count II would be an advisory opinion and invite further litigation if and when the Pilot Point Section is ever accepted and developed.

Finally, Plaintiffs request the Court revisit its conclusion that evidence of uses in the Pilot Point Section after the recording of the 1997 Notice is not relevant to the lapse analysis. This issue was not a focus at the oral argument on the summary judgment motions and was only mentioned in passing in the written memoranda. It was relegated to a footnote in the Summary Judgment Order, in part because the Court assumed that the parties agreed that Plaintiffs would have to prove that the Town's right of incipient dedication had lapsed before the recording of the 1997 Notice

under *Ocean Point Colony Trust, Inc.*, 1999 ME 152, 739 A.2d 382. (Summ. J. Order 9, 15 n. 6.) This assumption seems to have been in error. The Court therefore concludes that Plaintiffs' motion for reconsideration is proper under M.R. Civ. P. 7(b)(5).

Upon reconsideration, the Court nonetheless declines to deviate from its original conclusion. First, the Court still considers this to be the holding of *Ocean Point Colony Trust, Inc.*, 1999 ME 152, ¶ 7, 739 A.2d 382. With that being said, the Court acknowledges that this issue was not squarely before the Law Court in that case because plaintiffs presented no evidence "to establish that the paper street has been used in a manner inconsistent with the premise that the Town may later decide to accept the proposed way" over any period, before or after the defendant Town recorded its section 3032(2) notice.[1] *Id.* ¶ 10. From a practical perspective, in *Ocean Point Colony*, summary judgment was entered in the Town's favor very soon after it recorded its section 3032(2) notice, leaving a very short post-notice period for plaintiffs to establish inconsistent uses in any event. *Id.* ¶¶ 1-4. By contrast, in this case, roughly twenty-two years have passed since Cape Elizabeth filed its section 3032(2) notice—sufficient time for an inconsistent use to satisfy the statutory period for adverse possession. *C.f. Ocean Point Colony Trust, Inc.*, 1999 ME 152, ¶¶ 9-10, 739 A.2d 382. Notwithstanding the distinguishable procedural posture of *Ocean Point Colony*, the language of that case is couched exclusively in terms of pre-notice lapse: "Ocean Point argues that . . . the Town's right to accept the proposed street *lapsed before the town filed its notice* to except the street from deemed vacation pursuant to 23 M.R.S.A § 3032 . . . ." *Id.* ¶ 1. Later, the *Ocean Point Colony* opinion provides:

> Ocean Point argues that the Town's right to accept the incipient dedication lapsed under common law because the Town did not accept the street within a reasonable time and 23 M.R.S.A. § 3032(2) applies only to those incipient dedications that

[1] I.e. a notice excepting a proposed, unaccepted way laid out in a subdivision plan recorded before September 29, 1987 from the operation of the time limitations for deemed vacation for twenty years. 23 M.R.S. § 3032(1-A), (2).

> have not *already* lapsed. We agree that section 3032(2) only applies to those incipient dedications that have not lapsed pursuant to common law.

Id. ¶ 7 (emphasis added). Given this language from the Law Court's opinion, this Court is persuaded that a plaintiff is required to prove that a municipality's right to accept a paper street had already lapsed prior to the recording of a section 3032(2) notice.

Second, the Court is persuaded that this result is consistent with the legislative purpose of 23 M.R.S. §§ 3031-3034, as announced in section 3035: "enhancing the merits of title to land by eliminating the possibility of ancient claims to proposed, unaccepted, unconstructed ways that are outstanding on the record but unclaimed."

In other words, these statutes are designed to bring clarity by eliminating, through deemed vacation, those paper streets that municipalities were either unaware of or had no interest in accepting. *See id.* §§ 3027 and 3027-A, 3032-3033. However, the statutes also describe a process to be followed for those paper streets which, like the Pilot Point Section, a municipality may be interested in accepting in the future. Even in such cases, the reservation of rights is limited to a maximum period of forty years. *Id.* § 3032(2). Once the extension period allowed for pre-1987 incipient dedications expires in 2037, the doctrine of common law lapse of the right of incipient dedication will fade into obscurity in this State. *Id.* § 3031(1). All "ancient claims" will thereby be eliminated. Already, paper streets laid out in subdivision plans recorded after September 29, 1987 must be accepted within twenty years or are deemed vacated. *Id.*, *see also id.* § 3032(1-A). Pre-1987 dedications that were not accepted or reserved pursuant to a section 3032(2) notice have likewise already been deemed vacated. *Id.* § 3032.

Prior to the passage of these statutes, pursuant to the common law, municipalities were required to accept a paper street within a "reasonable time." *Ocean Point Colony*, 1999 ME 152, ¶ 9, 739 A.2d 382. However, under the case law, whether a reasonable time has passed is

determined not by how many years have gone by since the dedication but rather whether the paper street has been used by its possessors in a manner inconsistent with its future use as a way for some length of time, probably at least twenty years. *Id.* A reasonable time is thus determined on a case-by-case basis. *Id.*

Ocean Point Colony and 23 M.R.S. §§ 3031-3034 describe a staggered implementation of the new regime of deemed vacation to supplant common-law lapse, with "flag posts" put in at different points along the timeline to determine which doctrine is applicable. One such obvious flag post is September 29, 1987: only deemed (or voluntary) vacation, and not common law lapse, can extinguish a municipality's right to accept a paper street laid out in a subdivision plan recorded after that date.[2] 23 M.R.S. §§ 3027, 3027-A, 3031-3032.

The Court concludes that September 29, 1997—or more specifically, the date of any notice recorded by a municipality reserving its right of incipient dedication before that deadline—is another flag post for determining whether vacation or lapse is the relevant doctrine. *Id.* § 3032. By its plain terms, section 3032 deals exclusively with the concept of "deemed vacation" of paper streets laid out in subdivision plans recorded prior to September 29, 1987 and provides a mechanism by which a municipality can forestall that result by recording a section 3032(2) notice. *Ocean Point Colony* merely confirmed that the recording of such a notice could not revive incipient dedication rights that had already lapsed. To extend its holding to apply to claims of lapse that arise, accrue, or mature after the filing of a section 3032(2) notice would frustrate the legislative purpose of replacing the case-by-case lapse test with the stricter statutory doctrine of deemed vacation by extending the applicability of the lapse doctrine to the year 2037: landowners frustrated with a municipality's decision to preserve an incipient dedication from deemed vacation

[2] This is true not just because statutory law trumps the common law when there is a conflict, but also as a practical matter, because vacation is a stricter doctrine than lapse. *Bird v. Bird*, 77 Me. 499, 502, 1 A. 455, 456 (1885).

would be free to argue that the right had nonetheless lapsed over the reserved period. Such a result would frustrate the legislative purpose of replacing an uncertain common law test with a strict statutory one.

Finally, Plaintiffs argue that 23 M.R.S. § 3034(1) supports the proposition that a municipality's right of incipient dedication can lapse after a municipality records a section 3032(2) notice. Section 3034(1) provides:

> Action to compel removal. When any structure, for 20 years, has been continuously located, in whole or in part, within a proposed, unaccepted way laid out in a subdivision plan recorded in the registry of deeds, and lots have been sold with reference to this plan, no action may be maintained by any person to compel removal of the structure based upon the fact of its location within the proposed, unaccepted way. For the purposes of this section, person includes a corporation, partnership, governmental entity or other entity.
> Nothing in this section may be construed to restrict or affect private rights in a proposed, unaccepted way which come into existence under common law, in equity or under existing statutes. This section shall not be construed for any reason to extend the 20-year period set forth in this subsection.

The following subsection establishes that this protection "applies to structures existing and proposed, unaccepted ways laid out on subdivision plans recorded in registries of deeds before, on or after the effective date of this section," subject to exceptions not applicable here. *Id.* § 3034(2).

The problem with Plaintiffs' argument is that it conflates lapse as a common law doctrine with the purpose of section 3034. Section 3034 protects structures located in paper streets but is silent on the effect such protection has on a municipality's right to accept the paper street. The two concepts are not mutually exclusive; section 3034 could insulate a structure from an action to compel removal of the structure, and the municipality could nonetheless accept the paper street. In fact, as both parties explained at the oral argument on the instant motion, that is precisely what may happen in this case. Plaintiffs claimed that they will be able to prove that there are structures in the Pilot Point Section, some of which have been there over twenty years, including some which

hit the twenty-year mark after 1997. Cape Elizabeth responded that even if that is true, the nature of its intended use of the Pilot Point Section (should the Town ever accept it) can easily avoid those structures.

The Court's ruling that the relevant period for proving lapse is 1911 to 1997 does not implicate section 3034 at all. In order to prove that the Town's right of incipient dedication has lapsed, Plaintiffs must prove that it lapsed prior to 1997. Disputed factual questions regarding the historical use of the Pilot Point Section will answer that question. If the Town's right has not lapsed, and it accepts the Pilot Point Section, any action to compel removal of structures therein will be required to comply with section 3034(1).

Whether such structures are of sufficient number and magnitude as to render public use of the Pilot Point Section practical or even possible is separate from the issue of whether the Town's right to accept the Pilot Point Section has lapsed. In other words, section 3034 may offer the Plaintiffs an alternative mechanism by which to frustrate the Town's acceptance of the Pilot Point Section should it be proved at trial that the Town's rights have not lapsed. But it is not relevant to the issue of lapse per se, and does not stand for the proposition that lapse can be established after a municipality has reserved its right of incipient dedication by recording a section 3032(2) notice. The Court concludes that based on 23 M.R.S. §§ 3031-3035, after such a notice is recorded, the municipality can only lose the right through voluntary or deemed vacation, and not by lapse.

The purpose and function of a section 3032(2) notice also informs the Court's analysis of Cape Elizabeth's motion for reconsideration. The Town's motion asks the Court to reconsider just three sentences of its Summary Judgment Order that it argues are either internally inconsistent or inconsistent with the law.

The three sentences identified by the Town are the following:

> [T]he 1997 Notice did not explicitly list the Pilot Point Section. Plaintiffs did not feel compelled to bring the instant litigation until the Town began to take preliminary, exploratory steps toward development of the Pilot Point Section, which did happen until 2016-17. 2016 was also the year that the Town voted to extend its right to accept proposed ways in the Town a further twenty years by recording a second notice in the Registry, this time explicitly listing Surf Side Avenue.

The Town argues that this quoted language implies that Count I was timely brought because the Plaintiffs were "excused" from constructive notice of the 1997 Notice until the second notice was filed in 2016. Upon reconsideration, the Court recognizes that this language could create such an impression, and takes this opportunity to clarify why the cause of action stated in Count I of the Plaintiffs' Complaint is not barred by the six-year statute of limitations for declaratory judgment actions. 14 M.R.S. § 752.

The Court's reference to the 1997 Notice and the Town's 2016 extension of its reservation of rights was not the basis of the Court's conclusion that Count I is timely under the six year statute of limitations, but was merely meant to contextualize why Plaintiffs filed their lawsuit in 2018 and not earlier. The main thrust of the Town's argument on summary judgment had been not that the lawsuit was untimely but rather that it was unripe.[3] By analogy to the "final decision rule" for appeals of government action brought pursuant to M.R. Civ. P. 80B & 80C, the Town argued that the Plaintiffs' cause of action could only accrue based on some action or decision by the Town: first, in 1997, when the Town council recorded the 1997 Notice; and second, if or when the Town ever decides to accept the Pilot Point Section. Under the Town's reasoning, each of these events opened (or would open) a six-year window; the former closed in 2003, the latter has yet to open.

The three sentences identified by the Town could imply that the Court was persuaded by this reasoning but decided that 2016, when the Town filed its second notice extending its right to accept the Pilot Point Section another twenty years, opened another six-year window. Alternatively, the reference to

[3] The Town does not ask the Court to reconsider its decision that the Plaintiffs' claim is ripe. (Summ. J. Order 7.)

when the Plaintiffs "felt compelled" to file their lawsuit could imply that the Court improperly concluded that a property owner's subjective decision could give rise to its cause of action. *See Bog Lake Co. v. Town of Northfield*, 2008 ME 37, ¶ 9, 942 A.2d 700.

To clarify, the Court disagrees with the Town that the Plaintiffs' cause of action is tied to municipal decision-making. *Bog Lake Co.* is distinguishable. In that case, the developer-plaintiff filed suit against the defendant-municipality in 2005 to challenge a municipal ordinance enacted in 1987 prohibiting development on some of plaintiffs' land. *Id.* ¶¶ 2-4, 8. The plaintiff challenged the defendant-municipality's decision, not its authority to take the action that it did, once it decided to develop the property in a manner inconsistent with the ordinance many years later. *Id.* ¶ 11, 14. Here, Plaintiffs are not challenging Cape Elizabeth's decision to reserve its right to accept the Pilot Point Section—they seek a declaratory judgment that Cape Elizabeth has no inchoate right in the Pilot Point Section today because that right has lapsed.

Cape Elizabeth characterizes the 1997 Notice as "put[ting] the world on notice that it claimed a right in Surf Side Avenue, which it then elected to extend pursuant to [statute]." (Def's Mot. Recon. 5.) The Court disagrees with this characterization. As explained above, notices recorded pursuant to section 3032(2) serve a limited purpose. The reservation of rights resulting from the filing of a section 3032(2) notice is a reservation of the right of incipient dedication from expiration by operation of deemed vacation. It does nothing to "save" an incipient dedication that has already lapsed. In other words, by filing the 1997 Notice, the Town was not claiming that its right to the Pilot Point Section had not lapsed, it was merely insulating the Pilot Point Section from deemed vacation under the presumption that the right had not lapsed.

The Plaintiffs' right to challenge that presumption did not accrue in 1997 or at any time before or since. The Town's inchoate right over the Pilot Point Section—the right to accept the paper street—

burdens the Plaintiffs' property every day, thereby accruing each day. See *Britton v. Dep't of Consrv'n*, 2009 ME 60, ¶¶ 18-20, 974 A.2d 303. The statute of limitations has thus not begun to run—nor will it, until (and if) the Town accepts the Pilot Point Section. *See Johnson v. Town of Dedham*, 490 A.2d 1187, 1189 (Me. 1985). To be clear, the Court does not decide whether Plaintiffs' claim is "a declaratory judgment action . . . bringing what is functionally, a quiet title action[,]" a proposition disputed by the parties. *See Welch v. State*, 2004 ME 84, ¶ 6 n.3, 853 A.2d 214. However, for purposes of determining when Plaintiffs' cause of action accrues, a quiet title action is much more analogous to Plaintiffs' cause of action than a Rule 80C challenge to government action. Plaintiffs seek a declaratory judgment as to the Town's right to accept the Pilot Point Section where it passes over their property today. The Town had that right since 1911 and after 1997, or it lost it at some point in the interim. This lawsuit will resolve that question. The recording of the 1997 Notice did not alter the analysis as to when and if that lapse occurred.[4] *See Ocean Point Colony Trust*, 1999 ME 152, ¶ 7, 739 A.2d 382. Therefore, it would be illogical to conclude that the filing of the 1997 Notice caused the Plaintiffs' cause of action to accrue.

In sum, on reconsideration, the Court declines to dismiss Count I of the Plaintiffs' Complaints as untimely.

By reason of the foregoing it is hereby ordered:

1. That Plaintiffs' motion to alter or amend the order on cross-motions for summary judgment is DENIED.
2. That Plaintiffs' motion to amend their Complaints is DENIED.
3. That Defendant's motion for partial reconsideration is DENIED.

[4] Although, as explained above, it did insulate the Pilot Point Section from lapse claims that arose or matured thereafter.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: May 22, 2019

/s/
M. Michaela Murphy
Justice, Business and Consumer Court