

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

DUKES, ss

MISCELLANEOUS CASE  
NO. 17 MISC 000139 (RBF)

\_\_\_\_\_  
JOHN. J. ZARBA and SUSAN L. LEMOIE )  
ZARBA, )

Plaintiffs, )

v. )

KRIS CHVATAL, MICHAEL PERRY, )  
JOE RA, ANDREA ROGERS, )  
LLEWELLYN ROGERS, GEORGE )  
WARREN, and PETER YOARS, )  
Members of the Town of Oak Bluffs )  
Zoning Board of Appeals, )

Defendants. )  
\_\_\_\_\_

**ORDER ON DEFENDANTS' MOTION TO ALTER OR AMEND THE  
JUDGMENT/DECISION**

On December 26, 2019, the court issued its Decision on the trial in this action and entered its Judgment. The defendants, members of the Town of Oak Bluffs Zoning Board of Appeals (ZBA), filed Defendants' Motion to Alter or Amend the Judgment/Decision (Motion to Alter or Amend) on January 7, 2020. Plaintiffs John J. Zarba and Susan L. Lemoie Zarba (the Zarbas) filed the Plaintiffs Motion in Opposition to the Defendants' Motion to Alter or Amend the Judgment/Decision on January 13, 2020. The court decides the Motion to Alter or Amend without hearing pursuant to Land Court Rule 6.

The ZBA brings the Motion to Alter or Amend pursuant to Mass. R. Civ. P. 59(e) or, in the alternative, Mass. R. Civ. P. 52(b).<sup>1</sup> Rule 59(e) allows for a motion to alter or amend a judgment, and Rule 52(b) allows for a motion asking the court to amend its findings and amend its judgment. These motions must be served not later than ten days after entry of the judgment. Mass. R. Civ. P. 52(b), 59(e). The Motion to Alter or Amend is timely. It was served on January 6, 2020. The tenth day after entry of judgment was January 5, 2020, which was a Sunday. Thus, service on the following Monday was timely. Mass. R. Civ. P. 6(a).

The Motion to Alter or Amend points out an error in one of the Decision's findings of fact. Finding of Fact 46 of the Decision states: "Austin laid out the line of the Davis deed so that it ran within a foot of the bolt in Pacific Avenue, and ran it for a distance of 1,668 feet to a bound on a registered parcel on School Street. He drew this line at an angle of 1 degree, 50 minutes, rather than the 8 degrees called for in the Davis deed." The ZBA is correct that the figure "1 degree, 50 minutes" should read "approximately 6 degrees." The Decision is amended to make that change. That correction, however, does not require any further change in the Decision or altering of the Judgment. The remainder of the Decision stands, and the Judgment stands.

The Motion to Alter or Amend is **ALLOWED IN PART AND DENIED IN PART**. The Decision is hereby **AMENDED** as follows: In Finding of Fact 46, the phrase "1 degree, 50 minutes" is struck and is replaced with the phrase "approximately 6 degrees." The remainder of the Motion to Alter or Amend is **DENIED**.

SO ORDERED

By the Court (Foster, J.)

Attest:

Dated: January 15, 2020

A TRUE COPY

ATTEST:

*Deborah J. Patterson*  
RECORDER

Deborah J. Patterson, Recorder

<sup>1</sup> While the Motion to Alter or Amend refers to Mass. R. Civ. P. 52(a), it actually seeks relief under Rule 52(b).