

1 STATE OF MAINE SUPERIOR COURT  
2 YORK, ss. CIVIL ACTION  
3 DOCKET NO. RE-09-111

4 ROBERT F. ALMEDER and :  
5 VIRGINIA S. ALMEDER et al, :

6 Plaintiffs :

7 vs. :

8 TOWN OF KENNEBUNKPORT and :  
9 ALL PERSONS WHO ARE UNASCERTAINED, :

10 Defendants :

11 TRANSCRIPT OF DEPOSITION OF SUSAN K. LEWIS  
12 Taken pursuant to Amended Notice of Deposition of  
13 Party-in-Interest Susan Lewis dated March 4, 2011, at the offices  
14 of Drummond Woodsum & MacMahon located at 84 Marginal Way,  
15 Portland, Maine on March 22, 2011, commencing at 9:11 A.M. before  
16 Christina J. Duvernay, a Notary Public commissioned by the State  
17 of Maine.

18 APPEARANCES:

19 For the Plaintiffs: SIDNEY ST. F. THAXTER, ESQ.  
20 REGAN M. HAINES, ESQ.

21 For the Defendants: ANDRE G. DUCHETTE, ESQ.  
22 BRIAN D. WILLING, ESQ.

23 For the State of Maine: PAUL D. STERN, ESQ.

24 Also Present: ALEXANDER M. LACHIATTO, ESQ.  
25 Pro Se  
ROBERT ALMEDER  
LARRY MEAD

---

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EXHIBITS

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13 2 Document entitled "Town of Kennebunkport, 13  
Maine - Assessors Maps" Rev. Dec. 1985  
14 and attached documents with handwritten  
notations made during the deposition

15 3 Confirmatory and Corrective Trustee's Deed, 31  
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17 4 8-1/2"-by-11" color photocopy of photograph 45  
with handwritten notation made during the  
deposition

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19 5 8-1/2"-by-11" color photocopy of photograph 45

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21 6 8-1/2"-by-11" color photocopy of photograph 45

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23 7 Third-Party Defendant Susan K. Lewis', as 52  
Trustee of the Amended and Restated Susan  
K. Lewis Residence Trust, Answer to  
Defendants' Counterclaims, 10/27/10

24 8 Document entitled "Goose Rocks Beach 56  
Information Sheet"

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9 Document entitled "Instructions and Tenant 56  
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Rocks Beach"

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1                   Let me finish my question and I'll do the same with  
2                   respects to your answer so we're not talking over each  
3                   other. That makes it very difficult for the court  
4                   reporter to put that down.

5                   I may ask you to repeat a response, especially if  
6                   it's a non-verbal response like a shrug or a nod, because  
7                   it doesn't translate very well for the transcript. I'm  
8                   not trying to be rude or fresh or cute or anything like  
9                   that.

10                  Your attorney may object to a question. Once the  
11                  objection is noted, you may be required to respond anyway.

12                  Any questions before I start?

13    A.        No.

14    Q.        Okay.

15                  MR. THAXTER: We do want to reserve the right for  
16                  her to read it and sign.

17                  THE DEPONENT: Now I have a question. Read and  
18                  sign what?

19                  MR. THAXTER: The deposition transcript.

20    Q.        This is the amended notice of deposition of Susan Lewis.  
21                  We can mark that as Exhibit 1.

22                                (Exhibit 1 marked for identification.)

23    Q.        Have you seen this deposition notice?

24                                (The deponent looked at Exhibit 1.)

25    A.        Yes.

1 Q. Is that a true and accurate copy of the original document?

2 A. Yes.

3 Q. Okay. My first question has already been answered. The  
4 deposition notice had requested you to bring certain  
5 documents and it appears that your attorney has done so.  
6 We've gone through them. I may have some questions with  
7 respects to some of the documents you have produced today.

8 Could you state your full name and your address for  
9 the record?

10 A. Susan K. Lewis. My physical street address is 243 Kings  
11 Highway, Kennebunkport, Maine 04046.

12 Q. Do you have any other address?

13 A. Yes. At the post office.

14 Q. What is that?

15 A. PO Box 1007, Kennebunkport, Maine 04046.

16 Q. Are you currently on any medications that may impact your  
17 ability to remember or think clearly today?

18 A. No.

19 Q. Would your judgment or your ability to testify truthfully  
20 be impaired in any other way today?

21 A. No.

22 Q. Just a little bit with respects to your background, what  
23 is your last level of schooling that you have completed?

24 A. A Master's degree.

25 Q. In what?

1 A. Teaching. Special education.

2 Q. Is that what you do currently?

3 A. Sometimes. I tutor children occasionally.

4 Q. Okay. In any particular district, here in the state of  
5 Maine?

6 A. No, I do it privately.

7 Q. Okay. Any particular focus in terms of the Special Ed  
8 world?

9 A. I'm not sure what you mean by that.

10 Q. Do you work primarily with like sort of like autistic  
11 children or --

12 A. Oh. Mostly -- age range is mostly elementary. Sixth --  
13 fifth to sixth grade.

14 Q. Are you employed in any other capacity?

15 A. No. Well, I take that back. I do occasionally do TV  
16 advertisements.

17 Q. Okay. What -- do you work for a particular company in  
18 terms of doing that?

19 A. -- Eutopia. She's my agent.

20 Q. Are you selling ad -- TV ads, purchasing TV ads?

21 A. No.

22 Q. Creating TV ads?

23 A. Well, if somebody wants -- she has my head shot and  
24 profile. If somebody is looking for somebody like me,  
25 I'll go to a -- I'll go to a ... not an audition. What's



1 the word. I'll go and there'll be a lot of people and  
2 they'll decide who they want. If they choose me, then  
3 I'll usually go and I do it for a day. I have a contract  
4 and I get a one-time fee for that.

5 Q. So commercials and things of that nature.

6 A. Yeah. You've probably seen me on Channel 4.

7 Q. What about your family. Are you married, single?

8 A. Not at this time. My divorced right now.

9 Q. Do you have any children?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. What are their ages?

14 A. 32 and 35.

15 Q. And you indicated that your address is 243 Kings Highway.

16 Are you the current titleholder of that particular  
17 property?

18 A. Yes.

19 Q. In what capacity are you -- did you acquire title? Is it  
20 in your name personally, is it in a trust?

21 A. Okay. Originally I acquired it in my name personally.

22 Q. When was that?

23 A. July 1st, 1992 I believe.

24 Q. And who was that from?

25 A. William Fuller.

1 Q. Do you know how long William Fuller owned the property?

2 A. I believe -- whether it was in his name or his wife's  
3 name, I'm not sure, but since 1971.

4 Q. Do you know who owned it before them?

5 A. Yes. My father and I believe it was in my father's wife's  
6 name, June Lewis, before that time.

7 Q. What was your father's?

8 A. Thomas Lewis.

9 Q. How long did they own it?

10 A. My grandparents died I think in '62 and '63 and he ... I'm  
11 not sure if it went through a trust or what, but he -- it  
12 went through family. And he and his sister, my Aunt  
13 Helen, inherited it. And I think she bought him out  
14 approximately -- he bought her out, rather, around 1966.

15 Q. Okay.

16 A. Somewhere in that time frame. So he owned it  
17 approximately five or six years.

18 Q. And your grandparents had it before them?

19 A. Yes.

20 Q. What were their names?

21 A. Harold Lewis and Roberta Lewis.

22 Q. And how long did they own it, if you know?

23 A. I'm not exactly sure. I've been told it's in the '40's,  
24 so before I was born.

25 Q. So the property had been in the family for quite some time

1 before it was conveyed to Mr. Fuller.

2 A. Yes.

3 Q. Why -- do you know why it transitioned out of the family  
4 for a period of time? What was the circumstances around  
5 that?

6 A. My parents divorced and right -- at some time in the mid  
7 '60's. So my father had remarried. His wife's name is  
8 June Lewis. Was June Lewis. So from what I was told, he  
9 had it in his name and then he put it in her name because  
10 it had to do with trying to protect his property in the  
11 divorce.

12 Q. And then they eventually conveyed it to Mr. Fuller?

13 A. Yes. She didn't like the beach, from what I heard, so she  
14 wanted to sell the house.

15 Q. When your father owned the property or even when your  
16 grandparents owned the property did you visit Goose Rocks  
17 Beach?

18 A. Yes.

19 Q. Was that a regular occurrence?

20 A. Yes.

21 Q. How regular?

22 A. Sometimes every other week. In the summer they -- in  
23 those days, people closed up the homes in the winter. So  
24 they would open it up Memorial Day weekend and close it  
25 sometime in September; usually Labor Day weekend. So we

1 would go up in the summer almost every other weekend. And  
2 in addition to that, we rented a home for the month of  
3 August when I was a child so that we could be close to my  
4 grandparents.

5 Q. How old were you, would you say, when you first started  
6 visiting Goose Rocks Beach?

7 A. As little as I can remember. About 3 is when I first  
8 remember being there, but my mom says that I went there as  
9 a baby.

10 Q. And how long did you -- from 3, was it -- how long -- how  
11 old were you when you stopped visiting Goose Rocks Beach,  
12 if at all?

13 A. We were there every August until I was about 11 years old,  
14 which is when my parents separated.

15 Q. After your parents separated, did you have an opportunity  
16 to go to Goose Rocks Beach?

17 A. Once, when I was 16.

18 Q. Any other time after you were 16 prior to you purchasing  
19 the property back in 1992?

20 A. Yes.

21 Q. When?

22 A. I remember a few times when I would visit my cousin Beth  
23 Gilpatric, if I would come back east to visit my mother  
24 and visit relatives. And I remember once in 1984 when I  
25 visited my mother with a friend from California. We went

1 up and stayed three days in Kennebunkport and I visited  
2 the beach.

3 Q. Your cousin, Beth Gilpatric, has she had property, or does  
4 her family have property, at Goose Rocks Beach?

5 A. Yes.

6 Q. Where is that?

7 A. It's -- it was owned by my Aunt Helen and Uncle Paul  
8 Gilpatric. When they died, she inherited it.

9 Q. I might as well break this out now. I'm probably going to  
10 use it several times today. We can mark it as Exhibit 2.

11 (Exhibit 2 marked for identification.)

12 Q. I don't know if you've seen these maps before.

13 (The deponent looked at Exhibit 2.)

14 Q. I'll represent to you that they are tax maps from the Town  
15 of Kennebunkport.

16 MR. THAXTER: What's the exhibit number?

17 MR. DUCHETTE: Exhibit Number 2.

18 Q. Have you seen these maps before?

19 A. Yes.

20 Q. Okay. Can you -- if possible, could you find -- could you  
21 locate where your property is and go ahead and circle it.

22 A. I'm looking for a reference point. I'm looking for Dyke  
23 Road. Wait a minute. There's Bartlett.

24 (The deponent wrote on Exhibit 2.)

25 A. This one here should be me.

1                   Is there another one where Bartlett continues?

2   Q.       Yeah.  If you --

3   A.       Yeah, so I would be right there.

4                   (Pointing.)

5   Q.       Okay.  Do you mind putting a circle on that one?

6   A.       Sure.

7                   (The deponent wrote on Exhibit 2.)

8   Q.       And where does -- if you can locate it, where does your  
9            cousin Beth Gilpatric own property?

10                  (The deponent looked at Exhibit 2.)

11  A.       Here's Dyke Road.  She should be right here.

12                  (Pointing.)

13  A.       Should I circle it?

14  Q.       Sure.

15                  (The deponent wrote on the exhibit.)

16  Q.       If you want to just draw a line and write 'Gilpatric' that  
17            would be great.

18                  (The deponent complied.)

19  Q.       And you said you used to rent a home when you were a  
20            child.  Do you know where that rental property was  
21            located?

22  A.       There were two of them.  I know -- when I was real little,  
23            I know it's one of these two houses.  Because Evie Archer  
24            is here.  If I'm on the beach I can look at it and I know  
25            it from the front.  It's one of these two, somewhere in

1 here.

2 (Pointing.)

3 Q. You're pointing to --

4 A. -- the early years.

5 38 and 37, somewhere in there. Those are the early  
6 years, from ages 3, 4, 5. And then later, when I was  
7 around 6, 7, or 8, we had -- it's actually the home that's  
8 now the Flemings' home now. I'm not sure if I can find it  
9 on here. It used to be owned by the Pingrees and Mrs.  
10 Whittemore owned it when we rented it.

11 (The deponent looked at Exhibit 2.)

12 A. I can't tell, but it's currently the Fleming home.

13 Q. And you believe it was somewhere between Bartlett Avenue  
14 and Dyke Road?

15 A. Yes.

16 And it's also next to -- I have another cousin, Bob  
17 Gilpatric. It's next door to his home. But it's so  
18 little here, I can't see it. I know it visually. So it's  
19 between Dyke Road and Bartlett Way.

20 Q. And it's --

21 A. On Kings Highway.

22 Q. And it's beachfront property?

23 A. Yes.

24 And that was from when I was ages 7 and 8 to around  
25 11.

1 Q. What -- let's start when you were younger. What sorts of  
2 activities would you and your family do on Goose Rocks  
3 Beach?

4 A. Really young, as young as I can remember, playing in the  
5 sand and down by the intertidal area, because I liked the  
6 little tributaries that the water made at low tide. I  
7 used to have little plastic cars and make roads in the  
8 town. So I did that a lot.

9 We had a boat. My grandfather had a boat and he  
10 kept it -- there's a channel that's on a section of the  
11 beach and he kept his boat moored on that channel. He  
12 used to take us for rides. It was a speedboat.

13 Q. Could you roughly put an X where that -- where you think  
14 that channel might be?

15 (The deponent looked at Exhibit 2.)

16 A. Is this part ocean right here? Or is that sand?

17 Q. This is the sand and that's the -- what they call The  
18 Point.

19 A. Okay. Yeah, the channel's right in here.

20 (The deponent wrote on Exhibit 2.)

21 A. Right around that point.

22 Q. Okay. You drew a squiggly circle there.

23 A. Should I write 'channel?'

24 Q. Sure.

25 (The deponent wrote on Exhibit 2.)



1 Q. What other activities when you were a kid?

2 A. On the beach specifically?

3 Q. Yeah.

4 A. Swimming. Swimming and playing in the sand and, you know,  
5 talking. Playing in the sand with my cousins.

6 Q. Did you play any sports?

7 A. Not when I was real little. We played croquet, but that  
8 was on my grandmother's front lawn.

9 Not that I can recall.

10 Q. Would you have lunch on the beach?

11 A. Yeah. Sometimes my mother and I would sit on the rocks in  
12 front of the -- that home here that I was talking about,  
13 that we rented. I remember she and I would sit on the  
14 rock by the sand and have lunch, yeah.

15 Q. When you were younger, and I'm going to use the time span  
16 of between -- that you can remember between 3 and, I think  
17 you said, 11, where were your activities? Were they  
18 localized, did you have a tendency to use all areas of  
19 Goose Rocks Beach?

20 A. I was -- yeah, I was just thinking -- when I was talking,  
21 I was thinking of areas in front of where we were staying.  
22 I did have swimming lessons, and that was at the public  
23 end of the beach.

24 Q. Where is that?

25 A. That would be in around here.

1 (The deponent wrote on Exhibit 2.)

2 A. And that was from Goose Rocks Beach Association. My  
3 sister and I went to swimming lessons. I think I was  
4 about 7 or 8 at the time. It was 8 o'clock in the  
5 morning.

6 Q. Can you --

7 A. -- during August.

8 Q. Can you draw a line where you've indicated where the  
9 public end of the beach is?

10 A. I don't know -- you know, I'm going from when I was a kid,  
11 where I had swimming lesson. In here somewhere.

12 (The deponent wrote on Exhibit 2.)

13 A. And at the time -- it's not there anymore, but at the time  
14 there was a lifeguard and a chair. A great big chair. So  
15 the swimming lessons were in front of that area.

16 Q. Is there -- nearby is there still a public area of the  
17 beach?

18 A. Yes.

19 Q. And is that in the same area that you've written on this  
20 map --

21 A. Yes.

22 Q. -- public?

23 A. Yes.

24 Q. And you've indicated that's the public area of the beach.  
25 Are there any other public areas of the beach?

1 A. On the beach, not that I know of.

2 And even here, I don't know exactly, you know,  
3 which places are public and which aren't. Because I know  
4 that some people own their land on the sand dunes and some  
5 people have given it over in a trust for public use. And  
6 I'm not exactly sure which is which.

7 Q. When you would go to your swimming lessons, how would you  
8 get there?

9 A. I would walk.

10 Q. On the road or on the beach?

11 A. Mostly on the beach.

12 Q. Did you -- when you would walk to your swimming lessons  
13 did you ever get permission from any of the beachfront  
14 owners?

15 A. I personally didn't because I was 7 or 8. I usually  
16 walked with my sister.

17 Q. Do you know if your sister got permission from any of the  
18 --

19 A. No, I don't know.

20 Q. When you were growing up were you aware of any  
21 restrictions on the beach in terms of where you could go  
22 or what you could do?

23 A. No. There was never any verbal restrictions, but there  
24 also were not very many people. I had my personal family  
25 restrictions. I mean there were certain things I was

1 allowed to do and not allowed to do.

2 Q. Such as ...

3 A. At low tide I wasn't allowed to walk out to any of the  
4 islands because my mother was afraid the tide would come  
5 in and I would get stuck.

6 Let's see.

7 I wasn't allowed to walk on the beach alone, you  
8 know, without my sister going with me. This is when I was  
9 much younger, again. Things like that.

10 Q. But there wasn't -- as far as you knew, there wasn't any  
11 other restrictions, any particular areas that were off  
12 limits?

13 A. It never came up because when we would go visit my  
14 grandparents or be in front of my home we'd either do  
15 things in front of my grandparents' home or in front of  
16 where I was staying. And there was hardly anybody on the  
17 beach then. I do remember an awareness as a child, and I  
18 don't exactly know how I knew, but we - my sister and I -  
19 knew -- I knew that this was a private end of the beach  
20 and this was a public end of the beach. So somehow I knew  
21 that.

22 Q. Did you ever have an opportunity to walk the length of the  
23 beach?

24 A. Sometimes, but not a lot.

25 Q. Who would you go with when you did that?

1 A. My sister or my grandmother or my grandfather.

2 Q. Did you -- do you know if they ever had any permission  
3 from any of the beachfront owners?

4 A. I don't know.

5 Q. From when you were younger and visiting the beach and now  
6 as you visit the beach are there any changes in terms of  
7 the use of the beach in your mind?

8 A. Yes.

9 Q. Explain.

10 A. There is a lot -- well, one, there's more people using the  
11 beach and there's people I don't recognize using the  
12 beach. There's a lot more boats on the beach, and mainly  
13 kayaks. That's in the past ten years, since kayaks have  
14 become popular.

15 There's more activity on the beach. Just general  
16 energy and activity and people. And boats. There's more  
17 moorings in the water, too. A lot more.

18 Q. What types of activities do you observe now on the beach  
19 or ... let me step back.

20 Since you have owned the property, since 1992, what  
21 type of activities do you observe on the beach?

22 A. Do I observe or do I do?

23 Q. Let's start with observe.

24 A. I observe people sitting on the beach, people swimming,  
25 people kayaking, people sailing, people eating, people

1 playing volleyball, beach games. Children playing. I  
2 guess what you would consider normal beachfront  
3 activities.

4 Q. What -- is there a particular area that you have seen  
5 these activities or ...

6 A. More so actually in my area in front of my home. Because  
7 I'm next to a public access-way.

8 Q. What is that access-way?

9 A. Bartlett Way.

10 Q. Can you just put a triangle on Bartlett Way?

11 A. It's actually called Bartlett Way Extension.

12 (The deponent wrote on Exhibit 2.)

13 (Discussion off the record.)

14 Q. And this is a public access point to the beach?

15 A. Yes, that's my understanding.

16 Q. And so it's not -- there isn't -- it isn't limited with  
17 respects to who can use it? Anybody from the general  
18 public has a right to use Bartlett Way Extension?

19 A. That's my understanding.

20 Q. When they -- when somebody accesses the beach via Bartlett  
21 Way Extension, what is your understanding with respects to  
22 what they can do once they get down there? Can they go  
23 left or right, do they have to stay within the  
24 right-of-way?

25 A. It's my understanding that they can access the beach. I

1 think -- it's in my deed. It's hard to know the exact  
2 words of ... it's a public access-way to the beach. I  
3 think my deed says for fishing and fowling and navigation  
4 in the intertidal zone.

5 Q. So then it's your understanding that the general public  
6 has a right to access the intertidal zone then --

7 A. For those activities, yes.

8 Q. -- fowling and navigation.

9 They don't have any rights to the dry-sand area?

10 A. Not without permission of the beachfront owners.

11 Q. Do they have the -- in the intertidal zone do they have  
12 the right to recreate?

13 A. I don't believe they have the right to without -- again,  
14 without agreement or permission from the property owners.

15 Q. Okay. You indicated that -- you said most of the  
16 activities you observed is right in front of your  
17 property. Do you see any of those -- the list of  
18 activities you were talking about earlier, any other  
19 places on the beach?

20 A. Actually yes. In front of my cousin Beth's house. It's  
21 the same activities going on, but there's more  
22 congregation of people in front of my house and in front  
23 of Beth's house, I think because people come down the  
24 public walkway --

25 MR. WILLING: -- so I understand, are you saying

1 more congregating in front of your house than your  
2 cousin's house?

3 THE DEPONENT: Both. Both.

4 MR. WILLING: Okay. Thanks.

5 A. Because my observation is that a lot of people come down  
6 with a lot of equipment - sometimes playpens and other  
7 equipment - and they don't want to carry it very far so  
8 they stop right in front of my house and set up. I've  
9 seen them do the same in front of my cousin Beth's house  
10 because of the location. Because we're next to a public  
11 access-way.

12 And the same with the kayaks. A lot of kayaks have  
13 been in front of my house because it's not as far to carry  
14 them.

15 Q. Do people leave their kayaks there or is it more day use?

16 A. People have been leaving them there, and that's been an  
17 issue with me.

18 Q. Where do they put them?

19 A. They put them up against the rocks so they're half on the  
20 rocks and half on the sand in front of my home.

21 Q. And do they -- how long do they stay there?

22 A. Now it depends on if I give somebody permission or not.

23 Q. If you don't give someone permission, how long do they  
24 stay there?

25 A. Not long.



1 Q. Why is that?

2 A. Well, because most people, if ask them to move it, move  
3 it. And if they don't move it, then I move it.

4 Q. And if you move it, where do you put it?

5 A. There's a small area here - approximately 10 feet - that's  
6 part of the public walkway. So I move it into that  
7 10-foot area.

8 Q. Okay. Who have you given permission to to leave their  
9 kayak on the rocks?

10 A. It's partially on the rocks and partially on the sand.  
11 Mostly on the sand. Usually they just back it up against  
12 the rocks.

13 It depends -- it depends on who asks me. You know,  
14 sometimes they Hannas, my neighbors, they have one long  
15 kayak. The people across the street have a couple kayaks.  
16 I think it's Judge Kelly. I'm not really good at  
17 everybody's names.

18 I feel I'm a pretty good neighbor and usually if  
19 somebody comes up to me and says, 'can I leave a kayak  
20 here?', if it's not too crowded, I'll say okay. What I  
21 have said to people -- because sometimes four, five, six,  
22 seven people ask me and there were times when people were  
23 leaving two or three kayaks per family. One family even  
24 four. I've asked people to just leave a kayak - one kayak  
25 - per family so it doesn't look so crowded there.

1 Q. Do you see any kayaks at other locations on the beach?

2 A. Yes, but not nearly so many as in front of my home. Maybe  
3 one or two in front of somebody's home.

4 At one point there was 15 in front of my home.

5 Q. Is that -- where you've seen other kayaks on the beach, is  
6 that -- are there -- let me rephrase the question.

7 Are there any other places on the beach where you  
8 have never seen any kayaks?

9 A. Yes.

10 Q. Where?

11 A. I don't know specifically. I know as I look down the  
12 beach some people have kayaks in front of their homes,  
13 some people don't. It's sporadic.

14 Q. But for example have you seen kayaks on the west end of  
15 the beach?

16 A. Some, sporadically.

17 Q. Have you seen some sporadically in the middle section, if  
18 you will, of the beach?

19 A. Yes.

20 Q. What about the -- same question with respects to the east  
21 end.

22 A. There's kind of a kayak grouping over here.

23 (Pointing.)

24 A. It's -- somewhere in here, there's another area and it's  
25 by a public access area somewhere. There's a lot of

1 kayaks there, too. People seem to ...

2 Q. And you're pointing toward what you've marked as the  
3 public area --

4 A. Yeah.

5 Q. -- of the beach.

6 A. However, I don't know, because of what I said before, that  
7 some people still own their property across the street and  
8 some don't. So I don't know if that's public land or  
9 privately owned. I just know that there's an area where  
10 I've seen a bunch of kayaks there.

11 Q. Any other boats or other kind of flotation devices that  
12 get stored on the beach?

13 A. Mm-hmm. I have one dinghy I store myself and a couple of  
14 my neighbors have asked if they can store their dinghy.  
15 And I've allowed it. What I've asked them is if they  
16 would kind of place it between my house and Evie Archer so  
17 it's not directly in front of my home.

18 Q. Mm-hmm.

19 A. But there's two or three people that do that, yeah.

20 Q. You indicated you have a dinghy. Do you have a boat?

21 A. I have a little sailboat, yeah.

22 Q. Where do you keep that?

23 A. It's in the garage -- in my niece's garage for the winter.  
24 I bring it out in the summer and I keep it on a mooring  
25 out in front of my home.

1 Q. Do you have to have a permit or license for the mooring?

2 A. No.

3 Q. What's your understanding with respects to who's allowed  
4 to have a mooring in Goose Rocks Beach?

5 A. It was my understanding that I could have one in front of  
6 my home.

7 Q. Where did you get that understanding from?

8 A. I don't know. Just general word of mouth.

9 Q. What type of activities do you currently do on the Goose  
10 Rocks Beach?

11 A. Well, I sail in the sailboat, I swim, I walk, I sit and  
12 read, I socialize with friends. That's it.

13 Q. Where do you swim?

14 A. Either in front of my house or, if it's low tide, I go to  
15 that channel I was talking about because you can swim  
16 there at low tide.

17 Q. And walking, is there any particular area that you walk on  
18 the beach or ...

19 A. It depends which way the wind's blowing.

20 Q. Have you walked all the way to the Batson River in the  
21 past?

22 A. Is that the river at the very end?

23 Q. Yes.

24 A. Yes, I have.

25 Q. And have you walked all the way to the east end point to

1 the beach? I believe it's the Little River --

2 A. Yes.

3 Q. Do you have a dog?

4 A. Not now.

5 Q. Did you have a dog?

6 A. Yes.

7 Q. And when you went for walks did you ever take your dog?

8 A. Yes, sometimes.

9 Q. Did you ever get permission from the beachfront owners in  
10 order to walk your dog up and down the beach?

11 A. There's kind of understanding that we've given each other  
12 permission. The only -- in the sense that nobody has  
13 asked me not to. And the only person that - and I  
14 purposely stayed kind of out of her space - is --

15 (Discussion off the record.)

16 A. She has an area -- Mrs. Rencurrel. She has a designated  
17 area with the piping plovers that she blocks off. And  
18 once I was walking with my dog Cindy and I was up close to  
19 that area and she asked me if I would walk Cindy further  
20 down because she was worried about the bird -- the eggs.  
21 So I did. And so I made it a point, when I went by, to  
22 make sure that I was further down.

23 Q. When you go swimming in the channel did you ever get  
24 permission from the beachfront owners in front of the  
25 channel to go swimming over there?

1 A. No. There's nobody directly in front right there.

2 Q. When you say 'there's nobody directly in front right  
3 there' --

4 A. It's past that last house. There's a great big house and  
5 then an open space with sand dunes. That's about where  
6 this section -- that's where the channel is. It's just  
7 past that big house.

8 Q. In terms of -- you had indicated earlier there's kind of a  
9 general understanding with respects to the use of the  
10 beach. Would that general understanding also apply to  
11 swimming?

12 A. Yes.

13 It's never been an issue because I either swim in  
14 front of my place or down here.

15 Q. In terms of swimming in front of your place do you just  
16 swim out and then back in or do you swim along --

17 A. I don't stay in the water long.

18 Q. It's more of a wading than --

19 A. I swim about the length of this table and back and then I  
20 come in.

21 Q. Does that general understanding only apply to beachfront  
22 owners?

23 A. I don't know.

24 (Discussion off the record.)

25 (A brief recess was taken.)

1 \* \* \* \* \*

2 CONTINUED EXAMINATION

3 BY MR. DUCHETTE:

4 Q. In your opinion, how far does your property boundaries  
5 extend to with respects to Goose Rocks Beach?

6 If we're looking at your property here ...

7 A. It's -- it's whatever my deed says.

8 (Exhibit 3 marked for identification.)

9 Q. Okay. I'm handing you what's been marked as Exhibit 3.  
10 Can you indicate what that is?

11 (The deponent looked at Exhibit 3.)

12 A. It's a confirmatory and corrective trustee's deed.

13 Q. And it is a deed from whom to who?

14 A. It's a deed from myself ... let me just refresh my memory  
15 here. I'm going to skim through it really quickly.

16 (The deponent looked at Exhibit 3.)

17 A. Okay. What was the question again?

18 Q. This particular deed is -- who is conveying to who?

19 A. Okay. This is a corrective deed where I -- after my  
20 divorce I took back my maiden name. So this is a deed for  
21 the purpose of a name change.

22 Q. And is this -- is there -- other than the name change is  
23 there any other changes in this deed in terms of the  
24 description of the property or the description of the  
25 right-of-way from when you acquired the property in 1992

1 from Mr. Fuller?

2 A. No, not that I can see here.

3 Q. If you look at this deed in terms of its description of  
4 the property, and it's the paragraph that begins with  
5 'Commencing on the southerly side,' without getting into  
6 all the metes and bounds descriptions, you will see about  
7 halfway down it speaks of '124.96 feet to an iron pipe  
8 driven in the ground near the top of the bank of the  
9 ocean; thence continuing the same course to the ocean;  
10 thence westerly by said ocean to a point,' etcetera,  
11 etcetera.

12 Is that your understanding with respects to your  
13 boundary lines?

14 A. Yes.

15 Q. And what's your understanding in terms of what that means  
16 in terms of 'to the ocean?'

17 A. It depends if it's high tide or low tide.

18 Q. If it's low tide do you believe you own the what's been  
19 referred to today as the intertidal zone?

20 A. Yes.

21 Q. I'm not going to put a sticker on this. I think we'll  
22 wait until we have a copy of it. I'm showing you what you  
23 produced a part of your documents today. It's titled  
24 'Plan showing land at Goose Rocks Beach, Kennebunkport,  
25 Maine.'



1 (Mr. Duchette passed a document to the  
2 deponent.)

3 Q. Have you seen this plan before?

4 A. Yes.

5 Q. Can you describe to me what it is?

6 A. It's a -- well, it's a -- I first received this when I  
7 bought the home. It was with my documents when I bought  
8 the home. So to me it's a, I guess, a surveyor's  
9 description of -- of the exact coordinates of the  
10 property.

11 Q. Is your property located on this plan?

12 A. Yes. It's right here.

13 (The deponent pointed to the document.)

14 Q. And it's titled as what?

15 A. Lewis.

16 Q. And so in terms of your property and the property you own,  
17 what would you consider -- who is allowed to use the ...  
18 and when I say 'the beach' I mean both the dry-sand and  
19 wet-sand area. In your opinion who is allowed to use, if  
20 anyone, the beach in front of your property?

21 A. Myself and anyone that I've given permission to use it.

22 Q. How many people have you given permission to use the beach  
23 in front of your property?

24 A. I would say I've given permission conversely by not asking  
25 them to leave.

1 Q. And what would -- what in your mind is considered  
2 permissible uses of the beach in front of your property?

3 A. If somebody's sitting -- sitting, reading, sunbathing,  
4 playing. To me it's general respect of the property and  
5 the fact that I'm the property owner. What I do  
6 appreciate with people is if there had been large groups  
7 like a volleyball group or a -- kind of a large gathering,  
8 I really think on the whole people have asked me before if  
9 that's okay and I've said yes and I appreciate that. But  
10 normal general -- you know, groups of two, three, four  
11 people in their little group eating, sunbathing, reading,  
12 that's all okay with me.

13 Q. Have you ever asked anybody to move or leave the area in  
14 front of your property?

15 A. I did.

16 Q. Was it just one occasion or more than one occasion?

17 A. There was one person specifically and on another occasion  
18 it was more letting people be aware that it was a private  
19 beach.

20 Q. The one person specifically, who was that?

21 A. I don't know his name. I know the circumstance.

22 Q. Can you tell me about that?

23 A. Sure. I had put out two chairs in the morning because --  
24 and this is in the year 2008. I had put out two chairs in  
25 the morning because what had been happening over the years

1 is the area in front of my house has gotten more and more  
2 populated, and it was to the point that if I didn't put  
3 out chairs in the morning sometimes there wouldn't be a  
4 space for me to sit on the dry sand in front of my own  
5 property. So even if it might be low tide when I left,  
6 when it comes to high tide there's not a lot of room  
7 sometimes. So I had gotten to the point of putting chairs  
8 out to kind of save my spot in the morning.

9 Then I came back around 11 o'clock or noontime and  
10 there was a family - two adults and two children - this  
11 far --

12 (Gesturing.)

13 A. -- away from my two chairs with a playpen, a big cooler,  
14 the whole thing. And I sat down and I thought -- you  
15 know, I mean it was really uncomfortably close. And the  
16 guy and one child was there and the woman and the other  
17 child were in the water. And I said, 'Would you mind  
18 moving?' because there was space further over. I said,  
19 'Would you mind moving your things a little further away  
20 from me?' I said, 'I put my chairs out here first thing  
21 this morning and you're 1 or 2 feet away from me.' And he  
22 said, 'Well, yes, I do mind moving.'

23 And then I said, 'Well, I don't know if you're  
24 aware of it or not, but I own the home up here and I own  
25 this property in front of the beach.' And I said, 'It's

1 really pretty much for use -- I don't mind my friends and  
2 neighbors using it, but -- people using it, but I expect  
3 people to respect people's spaces here.' I said, 'You're  
4 really close to my chairs and I would really appreciate it  
5 if you would move.' And he said, 'Well, it's not your  
6 private property. It's a public beach.' and I said, 'No,  
7 it's not a public beach.' and we got into this discussion  
8 over whether or not it was a public beach. And he said,  
9 'Well, what's your name?' and I told him my name. And  
10 then I said, 'What's your name?' and he told me his name -  
11 which I don't remember. I do remember he was from West  
12 Kennebunk.

13 Then his wife came over at that time with her child  
14 and she said, 'Oh, I'm sorry. Usually we go around the  
15 corner to the public end of the beach,' and she said, 'but  
16 this time we found a parking space right out in front here  
17 so we just walked down the walkway.' And I said, 'Well, I  
18 don't know if you're aware of it or not, but this end of  
19 the beach is private property.' I said, 'It's okay if you  
20 want to stay here today, but I just want you to be aware  
21 that there's a difference.'

22 And she was okay. She said, 'Well, why aren't  
23 there any signs?' She said, 'There's no signs.'

24 And I had this same talk with a couple of other  
25 people I talked to, too. Most people didn't realize that

1           it was a private beach and they all said the same thing:  
2           'Why aren't there any signs?' and I said, 'That's a good  
3           question.'

4   Q.       With respects to your deed, we were talking about this a  
5           little bit earlier, you had said that there was a  
6           right-of-way - I'm paraphrasing - there was a right-of-way  
7           that allowed the public to access the intertidal zone for  
8           fishing, fowling, and navigation. Can you point to me in  
9           your deed where it says that?

10                               (The deponent looked at Exhibit 3.)

11   A.       I don't see it.

12                               MR. THAXTER: Is there another question?

13   Q.       Do you -- have you seen it anywhere else?

14   A.       I've seen it somewhere.

15   Q.       Do you know where?

16   A.       No. On a document.

17   Q.       A deed?

18   A.       I thought it was on a deed.

19   Q.       And it's your understanding that it's a right-of-way to  
20           access the intertidal zone for fishing, fowling and  
21           navigation?

22   A.       Yes.

23   Q.       And no other -- people are not allowed to -- it's not a  
24           right-of-way for people to access the beach for  
25           recreational purposes?

1 A. Without permission.

2 Q. So they can't do so without -- they need permission.

3 A. Yes.

4 Q. And again, in terms of your activity on the beach, when  
5 you're not utilizing Goose Rocks Beach in front of your  
6 property or in front of your family's property, have you  
7 gotten permission from other beachfront owners?

8 A. I haven't specifically verbally and yet if somebody asked  
9 me not to I would respect their wishes.

10 Q. In your mind is there any difference between those living  
11 in what I would call the Goose Rocks Beach zone - back-lot  
12 owners - versus the public at large?

13 A. Yes.

14 Q. And in your mind what is that difference?

15 A. I think that these people are my neighbors and I make a  
16 good-faith effort to -- to be a friend and get along with  
17 my neighbors, as I would hope they would do with me. I do  
18 have to say in all my neighbors have been very respectful  
19 of the space in the area of my house. I haven't -- you  
20 know, that hasn't been an issue.

21 Q. The general understanding with respects to the use of  
22 Goose Rocks Beach that you had indicated that applied to  
23 you and the beachfront owners, would that same general  
24 understanding also apply to the back-lot owners in the  
25 Goose Rocks Beach zone?

1 A. Can you repeat the --

2 MR. THAXTER: Yeah, which general understanding are  
3 you referring to?

4 Q. You had spoken earlier about -- when I had asked you about  
5 walking up and down the beach and/or swimming on certain  
6 areas on the beach not in front of your property, that  
7 there was a general understanding that these uses were  
8 permissible.

9 A. I can only speak for myself. I don't have any issue with  
10 people walking up and down the beach.

11 Q. What about swimming.

12 A. That's -- that's okay with me, too.

13 Q. What about sitting.

14 A. That's okay with me, too, as long as I would reserve the  
15 right for example where I gave that example of that guy.  
16 It's really a matter of just respecting people's spaces  
17 and being aware of people's spaces.

18 Q. Sunbathing?

19 A. Yeah.

20 Q. That's okay?

21 A. Yeah. I'm thinking as long as it's not really, really  
22 crowded and ... it's a tough issue, but for the most part,  
23 yes, I don't have an issue -- I don't have a problem with  
24 it.

25 Q. Other than -- you said there was that one specific

1 occasion that you had objected to the family's use in that  
2 they were sitting too close to you. Have you ever  
3 objected to anyone else's use of the property in front of  
4 your home?

5 A. Not that strongly.

6 Q. What do you mean by that?

7 A. Well, there's never been anyone that just came up and was  
8 right in my face like that. There's other people like --  
9 for instance that same summer, in 2008, there were some  
10 other families that I didn't recognize. In the past, I  
11 recognized most of the people and they had been my  
12 neighbors. And my neighbors have been very respectful and  
13 it hasn't been an issue. I would say over the past four  
14 or five years there's been a lot of people I don't  
15 recognize.

16 So that summer, I went down to people and just  
17 said, 'Excuse me, but I don't know you or recognize you.  
18 Did you buy a house in the area or -- you know, I just  
19 wondered how you're here; how you happened to get here.'  
20 and some people's response was that Goose Rocks Beach had  
21 been listed by the Chamber of Commerce as a public beach.  
22 And I don't think that was the case in prior years. The  
23 other issue is a lot of the neighbors in the back have  
24 been renting their homes more so it might be somebody --  
25 some people were there for one or two weeks as renters.



1           And again I just said, 'I just want to make you aware that  
2           this area is a private area. It's okay if you want to be  
3           here today but just to be aware of it.'

4                     And I think that came up in the context of -- yes,  
5           I know how it came up. It was a family and the children  
6           had been digging holes. I had seen them there one day and  
7           didn't say anything and that evening there were some  
8           elderly people and some kids and they didn't cover the  
9           holes and the people were coming from having walked on the  
10          intertidal area up to the public access and I saw two  
11          people trip in the holes.

12                    So I went to the family and part of what I said is  
13          'it's really important to cover the holes when you leave  
14          here because I saw two people trip in the holes.' And  
15          they were, like, 'Oh, we didn't think of that. Okay.'

16                    The only confrontation I had really was with that  
17          guy. No, I take it that back. That's not true. There  
18          were some teenage boys that same summer and I filed a  
19          police report on that one. That one I was driving into my  
20          driveway and there was three to five boys, about 16 or 17,  
21          walking across the rocks and jumping on my front lawn and  
22          walking back and forth and going over to where the bushes  
23          were just as you get to the public access and picking the  
24          berries and throwing them at each other.

25                    And I said, 'Are you guys -- would you please get

1 off the rocks?' and they just stared at me. And I said,  
2 'Would you please get off the rocks? This is private  
3 property.' and one of the boys said, 'No, it's not.' I  
4 said, 'Yes, it is.' and he was, like, 'No, it's not.' And  
5 we got into an argument about that. And I said, 'I can go  
6 get my deed and show you.' and they said, 'No, this is a  
7 public beach.' And I said, 'Well, you might like that to  
8 be the case, but it isn't.' So I said, 'I'll go in and  
9 get my deed and show you.'

10 Then their father came out at that time. One of  
11 the boys actually ... I don't -- well, he called me a  
12 bitch and another guy said something really rude to me.  
13 Then they jumped off the rocks and went onto the sand.

14 Then the father came, so I thought I would go down  
15 and say something in front of the father. So I went down  
16 on the beach right in front of the rocks and I said, 'I  
17 just want to say that you may not like it, but I do own  
18 these rocks and this is a private beach.' And the father  
19 just looked at the boys and he said, 'Come on, boys.  
20 Let's go.' And they walked off toward the easterly side.  
21 And one of the boys turned at me and kicked sand at me and  
22 said, 'Bitch.' So I called the police and I reported it.

23 Q. Have you ever called the police and reported any other  
24 incidents?

25 A. There was one other incident. I don't know if a report

1 was made or not. But last year I had a concern. I came  
2 down one morning to take a walk, and on Bartlett Way,  
3 right in that 10 feet that is part of the public  
4 access-way, there was a couple broken beer bottles. So I  
5 called the police just to have them be aware of that  
6 because there's not supposed to be alcoholic beverages on  
7 the beach. I did ask someone to come down and it was at  
8 least an hour before anybody came.

9 Q. Who said that rule: that there's no alcoholic beverages  
10 allowed to be on the beach?

11 A. That was actually told to me by a policeman in  
12 Kennebunkport.

13 Q. You had indicated that there was -- that some of the  
14 objections you had made had been in 2008. Have you ever  
15 made any objections to people using the beach prior to  
16 2008?

17 A. Yes.

18 Q. When?

19 A. It isn't so much people using the beach as their kayaks.  
20 I have asked people to limit -- to either not put their  
21 kayak here in a certain place or would they please move it  
22 in between my house and Evie Archer's. Or if one family  
23 had three or four kayaks, I asked them if they would just  
24 keep one here; that that would be okay with me, but not  
25 three or four.

1 Q. Any other objections prior to 2008 with respects to  
2 people's use of the beach?

3 A. Not that I verbalized. I've just been aware over the  
4 years that there's more and more and more people. Like  
5 for instance last Labor Day weekend it was packed right in  
6 front of my house. And it's more packed in front of my  
7 house than -- it spreads out as you get further away from  
8 the public walk -- accesses.

9 Q. You had indicated that it can get pretty busy in front of  
10 your cousin's house; the Gilpatrics.

11 A. Yes.

12 Q. Are there other areas that it gets pretty busy on the  
13 beach?

14 A. The public area of the beach.

15 Q. Any other areas?

16 A. Not that I've noticed.

17 When I say 'busy' I mean quite a number of people.  
18 Like whoa. You know, where did everyone come from.

19 Q. More than ten?

20 A. Oh, yeah.

21 Q. More than 20?

22 A. Yeah.

23 Q. More than 50?

24 A. I'm not that good at that. Somewhere between 20 and 50.

25 Q. Okay. I'm going to show you a couple pictures now. I'll

1 have these each marked separately.

2 (Exhibits 4, 5, and 6 marked for  
3 identification.)

4 (The deponent looked at Exhibit 4.)

5 Q. Do you see your house in any of these pictures?

6 A. Yes.

7 MR. THAXTER: What picture are you referring to  
8 now?

9 MR. DUCHETTE: 4, 5, and 6.

10 Q. I guess let's start with 4.

11 MR. THAXTER: This is 4.

12 (Discussion off the record.)

13 Q. Okay. I'm showing you Exhibit 4. Do you see your house  
14 in Exhibit 4?

15 A. Yes.

16 Q. Can you put an X on it?

17 (The deponent wrote on Exhibit 4.)

18 Q. Is the -- just by point of reference, what side of your  
19 house does the right-of-way sit on?

20 A. The right-of-way is right there --

21 (The deponent pointed to the document.)

22 A. -- where those steps are.

23 Q. Do you recognize any of the people in Exhibit 4?

24 A. These are my neighbors. I don't know everybody's names  
25 because they had their extended family here.

1 Q. Do you -- do you roughly know when these pictures were  
2 taken?

3 A. I think it was last summer.

4 Q. And can you describe to me kind of what's -- what's going  
5 on in these photos?

6 A. Yes. They had a cookout and they invited me.

7 Q. Are you in any of these pictures?

8 A. Yes. I'm right there.

9 (Pointing.)

10 Q. What exhibit is that that you're pointing to?

11 A. 5.

12 Q. And you're -- in Exhibit 5 are you sitting down?

13 A. Yes.

14 Q. You're sitting - just as a description for the transcript  
15 - what are you sitting on?

16 A. It looks like an upside down kayak.

17 Q. Is that your kayak?

18 A. It could be because mine is blue, although I usually keep  
19 mine up by the rocks.

20 (The deponent looked at the exhibit.)

21 A. I'm not sure if it's mine or not.

22 Q. And on --

23 A. Oh. Yes, I remember. It is, because I went kayaking  
24 first and I was pulling it back up. Yes, it's mine.

25 Q. Were you joining your neighbors for the cookout?

1 A. Yes. They asked me to join them.

2 Q. Did they ask your permission to have that cookout in front  
3 of your property?

4 A. Yes.

5 Q. Do you know who these neighbors are?

6 A. Well, I know Mr. Pierce. I don't see him. He's the --  
7 like the grandfather. Or the older one. I know Kathy,  
8 and Kathy's husband.

9 Q. And what's their last name?

10 A. I don't know. I have it written down at home. It might  
11 be Pappas I think. I just know they're related to the --  
12 they're part of the Pierce family.

13 Q. And they had asked you for permission to have this cookout  
14 in front of your property?

15 A. Yes.

16 Q. Does anybody else ever have any cookouts in front of your  
17 property?

18 A. My ... not that I've seen. My renters asked if they could  
19 have a bonfire last year - they went to get a permit - and  
20 I gave them permission to do that.

21 Q. You rent your home?

22 A. Yes.

23 Q. And what months do you typically rent your home?

24 A. It depends, but typically some weeks in July and August.

25 Q. Is that -- is that randomly, do you do that every year?

1 A. I do it most years.

2 Q. Can you tell me what years you have rented your property?

3 A. Yeah. I have it written down here, exactly when I did.

4 It's on ...

5 (The deponent looked at a document.)

6 MR. THAXTER: She's referring to her answers to the  
7 interrogatories.

8 A. Answer Number 3.

9 Q. And what -- what are the dates that you indicated?

10 A. Would you like me to read it to you?

11 Q. Sure.

12 A. I rented my home during ... let's see. Okay, the  
13 beginning.

14 My home was rented various weeks during the summer  
15 season 1993 through 1999 including some weeks, slash,  
16 weekends in the fall. I use Maritime Realty, Kathy  
17 Anuszewski, as my agent.

18 Do you want the whole answer or do you just want to  
19 know when I rented?

20 Q. My next question was have you rented it after 1999.

21 A. Yes. There was a period where I didn't. Then -- I  
22 stopped. And then I began renting my home during the  
23 summer of 2003, and then I rented between 2004 and 2007.  
24 And then the summer of 2008 that I've referred to, I  
25 didn't rent that summer. Then I rented -- and it varies.



1           Some years I'll rent four weeks, some five weeks, some  
2           eight weeks. It just depends. In 2009 I rented and last  
3           year I rented.

4   Q.       How much is it to rent your property?

5                   Do you do it by the day or by the week?

6   A.       That varies, too. I do it by the week.

7   Q.       What's the range in terms of your rental?

8   A.       And it's been different different years.

9                   Well, it started out in the beginning in the  
10           2,000-dollar range and now it's in the 4,000-dollar range.

11   Q.       Okay. Per week?

12   A.       Yes.

13   Q.       What instructions, if any, do you give your renters with  
14           respects to their -- what is permissible use of Goose  
15           Rocks Beach?

16   A.       I brought that with me. I have rules -- tenant rules and  
17           regulations.

18   Q.       Again, we'll mark it after we make a copy.

19   A.       I would like to note here, on this one, every year it's  
20           the same rules, but I change the date to 2007 or whatever  
21           it is. I just go into my computer and make it current.

22   Q.       Can you read for me what that document is; what it's  
23           titled?

24   A.       [Reading] Instructions and Tenant Responsibilities 2011.  
25           Welcome to Goose Rocks Beach.

1 Q. Can you show me on those instructions to tenants their --  
2 any rules that are specifically geared towards their use  
3 of Goose Rocks Beach?

4 A. No. This all pertains to use of my home.

5 Q. Do you have any rules with respects to what their  
6 permissible use of Goose Rocks Beach is?

7 A. I leave - it should be in there; I think it's in those  
8 plastic folders - what the Town -- this information sheet  
9 that gets put out. Every year when I get my sticker for  
10 the summer at the police department, they give you this  
11 sheet. So I put this in this little thing for the  
12 renters.

13 Q. Can you read me what that document is titled?

14 A. [Reading] Goose Rocks Beach Information Sheet.

15 Q. And you said that is provided by the Town of  
16 Kennebunkport?

17 A. Yes, when you get a parking sticker.

18 Q. Do you have any objections to any of the statements, for  
19 lack of a better word, that's indicated in that Goose  
20 Rocks Beach Information Sheet?

21 (The deponent looked at the document.)

22 A. No.

23 MR. STERN: This can be off the record.

24 (Discussion off the record.)

25 MR. DUCHETTE: I'm almost done. Just a few more

1 questions.

2 Q. You indicated you have children. Do they come and visit  
3 you?

4 A. Occasionally.

5 Q. Do they have children?

6 A. No.

7 Q. When your children come to visit you what activities do  
8 they do on the beach?

9 A. It depends on what season they come. They tend to come  
10 Thanksgiving and Christmas. Occasionally they come in the  
11 summer, but they work full-time jobs, so not that often.

12 So which time of year are you referring to?

13 Q. When they come and visit in the fall and early winter what  
14 do -- do they utilize Goose Rocks Beach at all?

15 A. They hang out in their rooms a lot and they would probably  
16 walk on the beach with me.

17 Q. Do you guys get permission from beachfront owners when you  
18 do that?

19 A. Not any differently than I would any other time of year.

20 Q. When they come and visit in the summer, do they utilize  
21 Goose Rocks Beach at all?

22 A. Yes.

23 Q. And do they utilize Goose Rocks Beach in areas which are  
24 not in front of your property?

25 A. Not other than walking.

1 (Exhibit 7 marked for identification.)

2 Q. I'm showing you what has been marked as Exhibit 7. If you  
3 want to read what this document is captioned --

4 A. Is it the same thing?

5 Q. Yes.

6 (The deponent looked at Exhibit 7.)

7 A. Okay.

8 Q. Could you read it out loud?

9 A. [Reading] Third Party Defendant Susan K. Lewis', as  
10 Trustee of the Amended and Restated Susan K. Lewis  
11 Residence Trust, Answer to Defendants' Counterclaims.

12 Q. Have you seen this document?

13 A. Yes.

14 Q. Okay. And in your opinion what does -- what does this  
15 document do?

16 A. I think this was the document ... it was confusing to me  
17 when I first saw it last fall.

18 MR. THAXTER: You're not asking her to interpret  
19 the legal implications of this document.

20 MR. DUCHETTE: I'm not. I'm just asking her what's  
21 her understanding in terms of what her interests are with  
22 respects to this suit.

23 A. Well, that I was somehow going to be involved.

24 Q. What's your understanding in terms of how you were going  
25 to be involved?

1 A. I didn't know.

2 Q. Okay. Did you ask to be involved in the suit?

3 A. No.

4 Q. Okay. How -- explain to me how you ended up becoming  
5 involved in this suit.

6 A. It started with getting this and then I don't remember  
7 what documents, but --

8 MR. THAXTER: I'm going to object because you're  
9 going into our attorney-client-privileged conversations  
10 that she and I have had over her involvement in the suit  
11 and I don't see how she's going to answer the question  
12 without getting into that.

13 MR. WILLING: For the record, I was going to ask  
14 these questions, too. Chris Pazar went over the Town's  
15 counterclaim in great detail with the Town manager. I  
16 don't see why -- understanding your objection that she  
17 can't talk about attorney-client privilege, I don't  
18 understand why he can't ask questions about it.

19 MR. THAXTER: He's asking questions about the type  
20 of pleading. We asked about the factual allegations made  
21 in the pleading. There's a big difference.

22 MR. WILLING: I think he's trying to ask what her  
23 understanding of her involvement is.

24 MR. THAXTER: But that has -- her involvement and  
25 the nature of her involvement was a long set of

1 discussions that she and I had and that's privileged. If  
2 she understands she's a third-party defendant now  
3 party-in-interest, fine. If she understands what that  
4 means, she can talk about it.

5 MR. DUCHETTE: That's fine. I'll keep going. You  
6 can make objections.

7 MR. THAXTER: -- the point anyhow.

8 MR. DUCHETTE: I'll determine what I think is a  
9 good point.

10 MR. THAXTER: Okay.

11 Q. Do you know who the plaintiffs are in this case?

12 A. I know there's a list of names. I know some of the  
13 plaintiffs. I'd have to refresh my memory with the list.

14 Q. Are you friends with any of the plaintiffs?

15 A. I know some of them. Not close day-to-day friends. I  
16 know them.

17 My cousin is one of them. I know that.

18 Q. And is that Mrs. Gilpatric?

19 A. Her name now is -- Gilpatric was her maiden name. It's  
20 Beth Zagoren.

21 Q. And are you a plaintiff in this action?

22 A. No.

23 Q. Have you been asked to be a plaintiff in this action?

24 A. Yes.

25 Q. By who?

1 A. I think there was a letter that went out by other  
2 plaintiffs.

3 Q. Why have you chosen not to be a plaintiff in this action?

4 A. The very first reason is financially. We --

5 MR. THAXTER: I'm going to ask her not to get into  
6 any conversations about our fees or our arrangements on  
7 that.

8 MR. DUCHETTE: To the extent she's had  
9 conversations with other plaintiffs about what the fees  
10 are, that's not privileged.

11 Q. So I would ask -- same question, I would ask you to answer  
12 to the extent you had conversations with other plaintiffs.

13 A. Well, the big reason is financially. I would have had to  
14 borrow money to - and I have had to, for the extent that  
15 I'm involved - on my equity line of credit. So I didn't  
16 want to get entangled in a legal lawsuit and although I  
17 believe in the integrity of my deed and what I know is my  
18 personal property, and I feel strongly in that way, I -- I  
19 was hoping to sit on the sidelines because my neighbors  
20 are my friends and it can be a sticky issue and I guess I  
21 just didn't want to get involved.

22 MR. DUCHETTE: I have no further questions at this  
23 time. There's a couple documents I want to take a closer  
24 look at and some other questions might come up, if that's  
25 okay. But at this point I'm done.

1 MR. THAXTER: I just need to take a quick break.

2 (Discussion off the record.)

3 (A brief recess was taken.)

4 \* \* \* \* \*

5 EXAMINATION

6 BY MR. WILLING:

7 Q. Good morning, Mrs. Lewis. My name -- or is it Ms.? I  
8 don't want to --

9 A. Ms.

10 Q. Can I call you Susan?

11 A. Yes. I was going to say you can call me Susan.

12 Q. My name is Brian Willing. I'm one of the Town attorneys  
13 in this case. I won't -- I'll do my best not to go over  
14 anything that Attorney Duchette did although my initial  
15 task is to get marked exhibits that he referenced. So  
16 I'll show you a couple exhibits, just to put them on the  
17 record.

18 (Exhibit 8 marked for identification.)

19 Q. I'm showing you a document that you and Attorney Duchette  
20 talked about that's been marked as Exhibit 8. It's  
21 entitled Goose Rocks Beach Information Sheet.

22 Is that the document that you and Attorney Duchette  
23 discussed?

24 A. Yes.

25 (Exhibit 9 marked for identification.)



1 Q. Okay. I'm showing you what has been marked as Exhibit 9.  
2 It is entitled Instructions and Tenant Responsibilities  
3 2011 Welcome to Goose Rocks Beach. I believe that's the  
4 document that you and Attorney Duchette discussed that you  
5 had prepared that's on your computer that you update every  
6 year.

7 Is that correct?

8 A. Yes.

9 (Exhibit 10 marked for identification.)

10 Q. Lastly, among the remaining exhibits from your discussions  
11 with Attorney Duchette, I'm showing you Exhibit 10. It's  
12 a plan from 1960, with your lot labeled 'Lewis' on it.

13 Is that the plan that you and Attorney Duchette  
14 referenced?

15 A. Yes.

16 Q. Okay. That's it for those.

17 MR. WILLING: Okay, Andre?

18 MR. DUCHETTE: Yes. Thank you.

19 Q. In the same vein, I'm going to have marked as Exhibit 11,  
20 what I believe is the deed from Mr. Fuller when you  
21 acquired the property and have you take a look and just  
22 confirm that it is that.

23 (Exhibit 11 marked for identification.)

24 Q. So I'm now showing you Exhibit 11 which I believe is the  
25 '93 deed. '92 deed?

1 A. July 1st, 1992.

2 Q. From Mr. Fuller to you.

3 Is that the original deed --

4 A. Yes.

5 Q. -- when you reacquired the property? Your family  
6 property?

7 A. Yes.

8 (Exhibit 12 marked for identification.)

9 (Discussion off the record.)

10 Q. Susan, I'm showing you what we've marked as Exhibit 12. I  
11 won't represent to you that it's anything other than a  
12 document I found in your notebook of materials that you  
13 brought to the deposition.

14 Could you explain what it is?

15 A. Sure. I was excited when I first bought the house back.  
16 It was a big deal to me because it had been in my family.  
17 And I went to -- I was curious who had owned the house. I  
18 did this very shortly after I bought the house. I went to  
19 where all the records were kept - in Alfred I guess - and  
20 I went back as far as I could to see who the owners of the  
21 house were. And I was also interested, because my mother  
22 and father had been divorced -- I was actually surprised  
23 at the time to see that the house had been put in June's  
24 name. I didn't know that prior to this.

25 So I did it for my personal history of wanting to

1 know where I came from in this house.

2 Q. So as best as you understand it, that's just your own  
3 notes related to what you think is the -- the title  
4 history going back as far as you chose to go back.

5 A. Mm-hmm. Yeah, I did this in the early to mid '90's.

6 (Exhibit 13 marked for identification.)

7 Q. You may have told Andre. What address -- what number  
8 Kings Highway are you?

9 A. 243.

10 Q. Okay. I'm showing you another document that I took out of  
11 the material that you provided today. It appears to  
12 relate to the sale of the property.

13 Could you just explain to me what that document is  
14 - or series of documents - that's been marked as Exhibit  
15 13?

16 A. The first is a contract for sale of real estate.

17 Q. That's the contract for sale when you bought it in '92  
18 from Mr. Fuller?

19 (The deponent looked at the exhibit.)

20 A. Yes.

21 Q. -- a long time ago.

22 A. Yes.

23 Q. Could you just review that packet and see if vaguely looks  
24 familiar from almost 20 years ago?

25 (The deponent looked at Exhibit 13.)

1 Q. To me that just looks like the packet of materials you  
2 likely would have received in connection with the purchase  
3 and sale of the home.

4 Is that at least generally a fair and accurate  
5 description?

6 A. Yes.

7 Q. And they go -- in your mind they go together generally,  
8 just as part of that transaction?

9 A. Yes.

10 Q. Okay. I'll binder-clip them together.

11 (Exhibit 14 marked for identification.)

12 Q. I'll show you another document that may really be  
13 connected with that packet of information from Exhibit 13  
14 - the purchase and sale of the property - but I think it  
15 was kept slightly differently in your packet of materials  
16 - at least when I went through it. Anyway it's identified  
17 as Exhibit 14.

18 Could you, if you remember --

19 (The deponent looked at Exhibit 14.)

20 A. Yes, this is all part of the real estate sale transaction.  
21 It's called Seller Disclosure.

22 Q. This is a document Mr. Fuller gave to you in connection  
23 with the sale?

24 A. The realtor gave it to me.

25 (Exhibits 15, 16, and 17 marked for

1 identification.)

2 Q. I'm showing you three pages with photographs that you  
3 brought in your folder today. I didn't take all of the  
4 photographs from your folder. I just picked out a few  
5 representative photographs. By way of context there were  
6 lots of photographs showing what appeared to be kind of  
7 the bushes and I didn't take all of those out.

8 Could you describe, starting with Exhibit Number 15  
9 and picture Number 1 what we're seeing in each of these  
10 photographs?

11 A. Sure. This is -- shows the easterly side of my house; my  
12 home.

13 Q. This is Number 1?

14 A. Number 1, yes.

15 Q. On Exhibit 15.

16 Okay. Go ahead.

17 A. This is the public access-way, this is the easterly side  
18 of my home, and the ocean.

19 Q. And is that public access-way that we're seeing, Bartlett  
20 Avenue or Bartlett Avenue Extension, however --

21 A. Yes.

22 Q. What -- is that the fall that this picture was taken?

23 A. Well, the grass is still green. I'm not sure.

24 Q. And was --

25 A. The leaves are off. So maybe late summer/early fall.

1 Q. And if you know, in what context was this photograph  
2 taken?

3 A. This has to do with right after the Town cut down the rosa  
4 rugosa and the bittersweet.

5 Q. There was a dispute with the Town over that?

6 A. No, there was -- I wouldn't call it a dispute. I would  
7 call it who's responsible for what.

8 Q. Okay. Could you just give a brief description of your  
9 understanding of that issue?

10 A. Sure.

11 Q. And then the resolution of it if there was one.

12 A. Over the years there was, until it was cut down, a hedge  
13 of first rosa rugosa and then invasive bittersweet and it  
14 went all along to the road. From the time I bought the  
15 home in 1992 to whenever this was taken - I believe it's  
16 around 2006 - it had gotten bigger and bigger. What I had  
17 been doing on my side, because the bittersweet was jumping  
18 over, coming into my front lawn, and it was growing ... if  
19 you can see the indentations in the grass here --

20 Q. This is in Picture 1 on Exhibit 15?

21 A. Yeah.

22 -- it was growing closer to the side of my home so  
23 that it was -- as I was trying to walk down the side of my  
24 home, the bittersweet branches were reaching out and  
25 touching my house.

1           So what I had done in prior years is ... yeah, it  
2           would be the fall. It was the end-of-the-year cleanup. I  
3           would have a person come and cut back so that I could walk  
4           through on my side. I had been doing this for a number of  
5           years, since I owned the home, and it cost me anywhere  
6           from 3 to \$500 to cut the -- you know, trim it so it  
7           looked decent.

8           So at one point I went down to the Town because  
9           technically, according to my knowledge of this survey,  
10          this part was actually on Town land.

11        Q.     You mean the bittersweet and rosa rugosa?

12        A.     Yes, part of the Bartlett Way Extension.

13                So I went down and I explained -- it was before  
14                Larry was manager. I forget the guy's name.

15        Q.     Nathan Poore?

16        A.     No, after him. An intermediate guy.

17                       (Discussion off the record.)

18        A.     So I went down and told him the situation and I said that  
19                I had been cutting this back and could the Town start  
20                doing this because really technically it was on their  
21                property and it was getting out of hand. Because also it  
22                was growing way up on the telephone pole and by the street  
23                it -- it was just huge. It was very tall, it was  
24                overgrown.

25                So he came down and I guess he agreed with me. So

1 the Town came in the next couple days and it was, like,  
2 great. So they came to cut this down and we talked about  
3 ... the reason he did this is that -- well, the way to get  
4 rid of the bittersweet is you actually have to get it out  
5 at the roots and then get the rosa rugosa back in. It was  
6 overtaking the rosa rugosa so that the rosa rugosa was  
7 dying. The only way to get rid of the bittersweet was to  
8 pull it out.

9 Then what happened at one point is Brian Shaw came  
10 down and got upset that this had been done. So I remember  
11 Brian Shaw, the guy that -- I think his name is Thibodeau,  
12 that does the cutting for the Town, and Leo Martin, we  
13 were all down here talking about it. And they just  
14 stopped right there and they decided not to do any more.  
15 So I took picture of it.

16 Q. Okay. So that's what that picture shows.

17 A. Yes. It kind of looked like a bad haircut, as you can  
18 see.

19 Q. From your perspective how was that issue ultimately  
20 resolved? Just summarize.

21 A. It was left at a standstill. The Town didn't want to put  
22 the money into doing any more. The landscaper said that  
23 really you need to pull up the bittersweet from the roots  
24 and then replant the rosa rugosa. The Town didn't want to  
25 do any more, but they said if I was willing to pay for a



1 landscaper to do it that they would issue me the permits  
2 to do it.

3 So I got a quote from Thibodeau and it was about  
4 \$7,000. And I said I can't afford to do that, so it was  
5 just left as it.

6 Q. And is that how it remains?

7 A. Well, it's grown up now, haphazardly.

8 Q. Okay. But I mean -- and I get that.

9 So this was -- when was this picture taken  
10 approximately?

11 A. I think that year -- 2006.

12 Q. So five years ago give or take?

13 A. Yes.

14 Q. Since then -- you've testified you couldn't afford to pay  
15 Thibodeau to do that work; right?

16 A. Yeah, and I also didn't feel I should have to spend -- 1,  
17 I couldn't afford it and I didn't feel I should have to  
18 spend \$7,000 when it wasn't on my property.

19 Q. Okay. So since then, nothing has really been done and  
20 it's grown back --

21 A. It's grown back up just the way it would naturally grown.

22 Q. Okay. I think the second picture is pretty  
23 self-explanatory, but --

24 A. That's my beloved dog, Cindy.

25 Q. Cindy or Sidney?

- 1 A. C-I-N-D-Y, short for Cinderella.
- 2 Q. And that's a picture on Goose Rocks Beach?
- 3 A. Yes.
- 4 Q. Is Cindy still with you?
- 5 A. No, she passed away in 2005.
- 6 Q. Was this picture taken around ... it sounds like it must  
7 have been taken a little before the other picture.
- 8 A. A year before, yeah.
- 9 Q. In the background is that Timber Island?
- 10 A. Yes. So this was taken out in front of my home.
- 11 Q. Is that taken looking out at Timber Island and down toward  
12 Sand Point? Is that the direction of that photo?
- 13 A. I was facing Timber Island, yeah.
- 14 Q. Okay. Exhibit 16. If you could start with what I've --  
15 the Number 1 --
- 16 A. Sure. Same -- around the same time period.
- 17 Q. As Exhibit 15?
- 18 A. Yeah.
- 19 Q. And Number 2?
- 20 A. Same time period. This is what it looked like within days  
21 after it was cut.
- 22 Q. Is that picture, Number 2 on Exhibit 16, looking sort of  
23 from the beach back up towards Kings Highway?
- 24 A. Yes. I'm -- it's from my front lawn. I'm standing on the  
25 -- I'm probably standing right at this corner of the

1 house, looking --

2 Q. In front of the flag pole?

3 A. Not even -- not even -- the flag pole would have been  
4 behind me. I'm probably standing almost to the side of  
5 the house right about there, looking out at the street,  
6 yeah, from that angle.

7 Q. And Exhibit 17?

8 A. A close-up.

9 Q. Of the --

10 A. That's where they stopped. That's where Brian Shaw said  
11 to stop.

12 Q. In the backdrop can we see the sort of top of the stairs  
13 down to the beach?

14 A. Yes.

15 Q. And that's a close-up of what the path --

16 A. Shaved versus the unshaved.

17 Q. Is that fairly representative of what the path itself --

18 A. Yes.

19 Q. -- looks like?

20 A. Yes.

21 (Exhibit 18 marked for identification.)

22 Q. Susan, I'm showing you what has been marked as Exhibit 18.  
23 It appears to be, I think, some kind of postcard. It  
24 wasn't signed or addressed or written on in any way that I  
25 could tell. Could you explain, if you know, what it is?

1 A. Yes. It's a note card that I bought at Bradbury's. I  
2 thought -- I liked the picture and it's -- it's a picture  
3 -- this would be the easterly end of the beach which I  
4 would call the public end of the beach.

5 Q. Taken from -- I'm speaking in very general terms, but in  
6 and around where your house is from the beach out toward  
7 Sand Point. Is that fair?

8 A. I didn't take it. I just bought this in the store. But  
9 guessing, from what I know, I would say whoever was  
10 standing here taking this picture would almost be at the  
11 Point, like what they call Dinghy Point.

12 Q. Looking down toward Sand Point?

13 A. Yes.

14 Q. Do you know -- did Bradbury's provide you any information  
15 about this? Is this some kind of painting? Do you know  
16 what this is?

17 A. I just saw it on the rack and liked it.

18 (Exhibit 19 marked for identification.)

19 Q. I'm showing you what I've marked as Exhibit 19. It looks  
20 like it cut off some stuff right at the top, which I think  
21 says 'July 2010.'

22 A. It does.

23 Q. The photocopier did that, not me.

24 Could you -- I believe this relates to the permit  
25 for a bonfire for your renters that you were talking about

1 and discussing with Attorney Duchette. Could you take a  
2 look at it and confirm that?

3 A. Yes, it is.

4 Q. And it has, I think, a note from you to the fire  
5 department?

6 A. This is to -- no, regarding beach fire permit on the beach  
7 in front of my home at 243 Kings Highway.

8 Q. Who was -- who did you give that to, if you remember?

9 A. I gave this to my renters, Ginny and Joe DeAngelis, and  
10 they in turn brought it to the police station so they  
11 could get a permit.

12 Q. So this was sort of your note for your renters.

13 A. Yeah, because this was required. They tried to get a  
14 permit and they couldn't get it without this note from me.

15 Q. Okay. And can you -- the next two pages --

16 A. -- are the rules that they were given from the police  
17 department. [Reading] Deposit for Goose Rocks Beach Fire  
18 Permit; Rules and Regulations.

19 Q. The three pages that follow your note are information from  
20 the Town?

21 A. They got it from the police department along with their  
22 permit that they got.

23 (Exhibit 20 marked for identification.)

24 Q. I'm showing you what has been marked as Exhibit 20. This  
25 seems to be a document relating to the piping plovers. I

1 was hoping you could describe what it is to your knowledge  
2 and where you got it.

3 A. [Reading] Attention - Endangered Wildlife Needs Your Help.

4 It's about the piping plovers.

5 Q. Do you know how that came to you?

6 A. I don't remember. It says Kennebunkport Conservation  
7 Commission 2001.

8 (Exhibit 21 marked for identification.)

9 Q. I'm showing you what has been marked as Exhibit 21. It  
10 appears to be a Kennebunkport police department document  
11 relating to parking?

12 A. Yes.

13 Q. How did you come to have that particular document?

14 A. This comes -- when I got my parking sticker, this was  
15 given to me with the sticker.

16 Q. Can you explain the parking sticker? I think you said  
17 something about every summer you go get your parking  
18 sticker. If that for the whole summer?

19 A. I think it's June 15th. Here it is.

20 (The deponent looked at a document.)

21 A. I don't remember the exact date when it starts. Somewhere  
22 around June -- approximately June 16 to September 16.

23 If a person is going to park anywhere in one of the  
24 parking spaces you have to have a Goose Rocks Beach  
25 sticker. As a resident of Kennebunkport I pay I think

1           it's \$4 and I get a sticker for the summer.

2   Q.       Do you -- given that you have a house ... and I think it  
3           has a driveway?

4   A.       A two-car carport.

5   Q.       Why do you need a sticker?

6   A.       Because when I rent my home, for those weeks I rent my  
7           home, my renters use the carport.  If I want to go to the  
8           beach, I park in a parking spot.

9   Q.       Do you ever -- when you're not renting - and I'm not  
10           trying to cast aspersions - do you ever park your car out  
11           in one of the parking spots on the road to take up a spot?

12  A.       No.

13  Q.       Are you aware of people -- beachfront owners doing that?

14  A.       I've heard that, yeah.

15  Q.       But you don't do that?

16  A.       No, I don't.  And I don't personally know anyone who does.  
17           I've heard kind of rumors in the air.

18  Q.       I'm going to ask a few questions to follow up maybe a  
19           little bit on what Attorney Duchette was discussing with  
20           you.

21                    You talked about a general understanding between  
22           beachfront owners that they can walk across the beach and  
23           go swimming.  I assume that's sort of an unspoken  
24           understanding, not some written understanding.

25                    You don't have a document that says --

1 A. Yes.

2 Q. Is that right?

3 A. Yes.

4 Q. So it's unspoken.

5 A. Yes.

6 Q. Is it fair to say your view is that -- is it an unspoken  
7 understanding that goes beyond swimming and walking?

8 What would it include?

9 A. Can you be more specific?

10 Q. Would it include, you know, throwing a frisbee?

11 A. Yes.

12 Q. Flying a kite?

13 A. Yes.

14 Q. What about bonfires. When you get a bonfire permit or  
15 your renters get a bonfire permit, where is the bonfire?

16 A. Well, the only people that have gotten -- my renters had  
17 the bonfire in front of my home.

18 Q. They had it immediately in front of your home?

19 A. I don't know because I wasn't there. But they got the  
20 permit -- I mean the permit would be to have it in front  
21 of my home versus somebody else's home. It's only a  
22 permit giving approval in front of my home.

23 Q. I'm sort of skipping around a bit.

24 Would -- the pictures of the cookout with your  
25 neighbors, was that a permit situation?



1 A. No. It was different. This was a charcoal pit. You  
2 don't need a permit for that.

3 Q. So to the extent -- your understanding is if a beachfront  
4 owner gets a permit for a bonfire, whether it's a renter  
5 or the beachfront owner him or herself, they would have  
6 that bonfire right out in front of the home.

7 A. If somebody -- people -- a person isn't allowed to have a  
8 bonfire in front of my home without getting my permission  
9 in order to get a permit to do that.

10 Q. You talked about the Bartlett Way Extension being a public  
11 access point --

12 (The deponent moved her head up and down.)

13 Q. -- with Attorney Duchette?

14 Are you aware -- again, I'm not asking for your  
15 legal opinion because you have a lawyer to offer legal  
16 opinions. What is your understanding of the other public  
17 access points as opposed to public sections of the beach,  
18 if you understand the difference?

19 A. The only other one I know for sure is the one by my cousin  
20 Beth's house.

21 Q. What is that called?

22 A. I'm not sure. Dyke Road Extension?

23 Q. Okay. So that's the one that's sort of near the store?

24 A. Yes.

25 Q. To the extent you know, and only to the extent you know or

1 think you know, Jeffery's Way.

2 A. I don't know where Jeffery's Way is.

3 Q. That might be the answer right there.

4 There's -- my understanding is Jeffery's Way is ...  
5 we can look on the tax map. I need the Sand Point one.

6 (The deponent looked at a document.)

7 A. When you say Sand Point, can you show me specifically what  
8 you're referring to?

9 Q. I just mean the point down by the little river.

10 I'm now pointing at what is Tax Map Number 35 on  
11 Exhibit 2. There's a road near the beach called Jeffery's  
12 Road. That's my understanding of Jeffery's Way, but it  
13 sounds like --

14 A. I don't know, yeah.

15 Q. To the best of your knowledge where is there public  
16 parking on Kings Highway?

17 A. In designated parking spaces, designated by white lines.

18 Q. Is there any particular portion of the beach or is it --  
19 do you have a sense of where that is generally?

20 A. Shall I describe it?

21 Q. Sure.

22 A. If I were driving down Dyke Way toward the beach and I  
23 take a left, there's parking spaces along that line all  
24 the way down to the public area of the beach. And you can  
25 tell because there are -- three sides have a white line.

1 A box. Rectangle.

2 Q. Okay.

3 A. And there's a few on the right side. Three or four.

4 Q. On the right side of Dyke Road?

5 A. Yeah. On the beach side if you were to turn right on Dyke  
6 Road I think I've seen a couple.

7 The majority are on the left side from where you  
8 turn left all the way down through the public -- the east  
9 end of the beach.

10 Q. Is that all of the public parking spots that you're aware  
11 of?

12 A. Yes.

13 Q. You discussed some swimming lessons in the public area of  
14 the beach --

15 (The deponent moved her head up and down.)

16 Q. -- with Attorney Duchette.

17 Were those with Mrs. Fessenden?

18 A. I have no idea.

19 Q. You don't know the name?

20 A. For some reason the name Carol sticks in my mind.

21 I was 7 or 8. She was a woman I think.

22 Q. Do you know Wayne Fessenden?

23 A. I know the name, but I don't know him personally.

24 Q. You and Attorney Duchette discussed the scope of what your  
25 understanding of public rights are. I won't go back over

1 all of that, but I had a couple follow-up questions.

2 I think you said, and your attorney will object if  
3 I get this wrong, I think you said that you understood  
4 that the public had a right in the intertidal zone to  
5 fish, fowl, and navigate.

6 A. That sounds correct, yes.

7 Q. Okay. And that's separate and apart from what you found  
8 acceptable or unacceptable to you personally, but that's  
9 your understanding of the right; is that --

10 A. Yes.

11 Q. Okay. What about back-lot owners. What rights -- what's  
12 your understanding of their rights?

13 A. To my knowledge, and I'm hesitant to say this because I  
14 haven't seen their deeds, to my knowledge they don't have  
15 beachfront access rights other than I've heard - and  
16 again, I haven't seen anyone's deeds - I've heard that  
17 some people in the back have easements to walk through  
18 certain ways. They're kind of in clusters or groups. And  
19 maybe that's part of their deed. That's what I've heard.

20 Q. Okay. So some back-lot owners may have a deeded access.

21 A. Yes.

22 Q. Besides -- leaving open the possibility that there are  
23 some deeded access rights for back-lot owners, any other  
24 right that they have above and beyond the public's rights?

25 A. Not that I know of.

1 Q. Okay. How about beachfront owners. Apart from the  
2 particular sand adjacent to their home, what rights do  
3 they have related to the wet sand and the dry sand  
4 throughout the rest of --

5 A. -- more specific? Do you mean -- what do you mean by  
6 'rights?' Property rights --

7 Q. -- a legal term. I think you've talked about your  
8 unspoken understanding. I'm trying to understand, though,  
9 if you think people have a right, depending on which group  
10 they're in - the general public, the beachfront owners, or  
11 the back-lot owners - with respect to the beach.

12 A. Well, I feel that myself, as a beachfront owner, I have  
13 the right to -- that I own what my deed says I own and I  
14 have the right to have that respected.

15 Q. Do you have the right to walk left and right off the patch  
16 of sand adjacent to your home?

17 A. I guess not if I'm not fishing, fowling, and navigating, I  
18 don't have the right. It's a privilege.

19 Q. I think you discussed with Attorney Duchette some problems  
20 - is that fair to say - that you had that seemed focused  
21 in the summer of 2008 with people using the beach in front  
22 of your home?

23 A. Mm-hmm.

24 Q. Do you know the time of the -- was this all concentrated  
25 in a particular time frame in the summer of --

1 A. It was my observation throughout the summer months: June,  
2 July, August.

3 Q. Is 2008 a summer -- one of the summers you didn't rent?

4 A. Yes.

5 Q. Generally speaking when did you rent? When you did rent  
6 during the summer, what periods of time did you rent?

7 A. Different years, different times. When I rented through  
8 Kathy Anuszewski from 1992 to 1999, we always kept two  
9 weeks for -- I was married then and my children were at  
10 home. We kept two weeks for ourselves and I rented six to  
11 eight weeks.

12 Q. Was that a specific two weeks?

13 A. I think it was usually the last week in July and the first  
14 week in August.

15 Q. Okay. And how about after.

16 A. Then after --

17 Q. You started again renting I think in 2003?

18 A. Yes. I began living here full-time in 1999 and I didn't  
19 rent for those first couple years. I didn't rent in 2000,  
20 2001, and 2002; and I began in 2003 - to rent.

21 Q. What period --

22 A. Then I kept -- same time in the summer months. Maybe the  
23 end of June, July, and August. Whatever she could fill.  
24 She handled that first year for me.

25 Q. And did you reserve any time - like a two-week period - or

1 was it rented the whole time during that -- the summer  
2 months?

3 A. Then it was rented the whole time. Probably a six- or  
4 seven-week period. Eight weeks at the most.

5 Q. Was that from 2003 to 2008?

6 A. It was different each year. 2003 was one year, 2004, '5,  
7 '6, and '7 I rented to a family --

8 Q. The whole summer --

9 A. -- from Texas. One family the whole summer, yeah. Same  
10 time: July and August.

11 2008, I didn't rent. I stayed there myself all  
12 summer. 2009, I rented it was either five or six weeks  
13 through Kathy. 2010, last year, I rented six weeks and I  
14 kept a week for myself. Of those six weeks I kept one  
15 week in July for me and one week in August.

16 Q. In 2008, that was your first -- the summer you had these  
17 problems, that was the first summer you were back and at  
18 the house all summer during the busy season since 2003.

19 Is that fair to say?

20 A. Yes and no. Even though I rented my home, I would sublet  
21 a place, usually nearby, so I would still come over to the  
22 beach. I would park -- I would use my parking sticker, I  
23 would park -- I would walk down the public access-way and  
24 sit out in front of my home or use my kayaks, use my  
25 sailboat. So I was still kind of keeping tabs on my home.

1 Q. Were you -- I'm just focusing on the particular incident  
2 with the family that wouldn't move because they were --

3 A. Right.

4 Q. -- were you putting your chairs out during that time frame  
5 to sort of save your spot so to speak?

6 A. When I lived -- when I -- for instance June of that time,  
7 if I knew I wanted to be out there later in the day, I  
8 would go put two chairs out in the morning and then maybe  
9 come back when I finished what I was doing in the morning  
10 - around noon - and know that I would have a spot. When I  
11 rent to my renters and I'm not staying there, then I don't  
12 do that. Other than the last -- I just bring a chair with  
13 me. Other than the past couple years, I have two green  
14 Adirondack chairs that I've been putting out by the rocks.  
15 The last two or three years now I've put those chairs out.

16 Q. Okay. Regarding the Chamber of Commerce advertising it as  
17 a public beach, I think -- am I right that it's your  
18 understanding that starting in 2008 that was a change?

19 A. That was my understanding.

20 Q. Where does that understanding, if you know, come from?

21 A. People's conversations, words of mouth. Because when I  
22 saw -- there was a dramatic difference in people in the  
23 year 2008 from the prior years, and I was trying to figure  
24 out where everybody came from and how they got here.  
25 That's why I decided to ask them. And the answers I got



1           was they had seen Goose Rocks Beach listed on the  
2           information sheet as a public beach. And when I had  
3           mentioned that to some of my neighbors, somebody said,  
4           'yeah, there's four beaches listed this year and Goose  
5           Rocks is one of them and it wasn't listed last year as a  
6           public beach.' That was in general conversation with  
7           neighbors.

8    Q.     Okay. So you understand from your neighbors and from some  
9           of these folks that may or may have been causing problems  
10          but were using the beach, that something had changed?

11   A.     Yeah. I couldn't understand where all the people came  
12          from.

13   Q.     I was admittedly reviewing some of your file at the very  
14          beginning when you and Attorney Duchette were talking  
15          about some of the background information, so some of it  
16          might have slipped by me. I know you were talking about  
17          how you have been coming to Goose Rocks Beach, you know,  
18          for years dating back to being a child. Remind me when  
19          you first were there and experiencing Goose Rocks Beach.  
20          I know you said when you were 7 --

21   A.     My first memory was approximately 3, but I was told by my  
22          parents that I was a baby when I came there.

23   Q.     I'm not trying to date you, but when -- what year give or  
24          take was that?

25   A.     Well, what year was I 3.

1 Q. What year when you were a little kid --

2 A. Well, I'm 59 now.

3 Q. So the '50's --

4 A. Yes.

5 Q. -- when you were a baby.

6 You had talked about a conversation of why weren't  
7 there any signs.

8 Have there ever been signs during that time period  
9 going back to the '50's to your knowledge?

10 A. Not to my knowledge.

11 Well, signs about what specifically?

12 Q. Private Beach signs or No Public Use.

13 A. Because there is a sign by the public access, something  
14 about No Lifeguard on the Beach and Keep Your Dog on a  
15 Leash.

16 Q. That's a fair point. My question wasn't very specific. I  
17 was sort of harkening back to that conversation with  
18 Attorney Duchette talking about the signs and just wanted  
19 to confirm that there had never been signs related to  
20 Private Beach or No Public Use in your memory.

21 A. In my memory, not any Town-posted signs. I have seen  
22 privately-posted signs.

23 Q. For example would that be -- I'm aware of the Flemings'  
24 sign. Is that what you're referring to?

25 A. No, I -- and I can't even tell you exactly who, but when I

1 walk the beach I've seen some signs that say Private  
2 Property.

3 Q. Are those things that are recent - within the last few  
4 years - or things you saw back in the '50's?

5 A. Well, not in the '50's, I didn't notice. Since I've owned  
6 my home.

7 Q. Since the '90's?

8 A. Yeah.

9 For instance on the east end of the beach sometimes  
10 at the end of somebody's stairs, it'll say Private  
11 Walkway.

12 Q. How about Private Beach.

13 A. I haven't noticed that. It mostly says Private. I've  
14 seen it either on the stairs -- on people's stairs going  
15 down to the beach, and if I've seen signs on the beach  
16 it's been by the rocks. Some say Private, some say  
17 Private Property.

18 Q. Okay. On the beach or on the rocks and the walkways?

19 A. On the sand by the rocks, on the steps -- the wooden steps  
20 that somebody might have in front of their home; Private  
21 Walkway. I'm talking all about the beach side, not the  
22 street side.

23 Q. Okay, fair enough.

24 A. Although I haven't seen it recently, some people used to  
25 have 'private' just put on the rocks or 'keep off the

1 rocks.' Sometimes there would be big white paint, 'keep  
2 off the rocks.'

3 Q. When you were engaged in your conversation saying why  
4 aren't there signs - maybe you were even sort of talking  
5 to yourself - what do you mean by that? What kind of  
6 signs?

7 A. I mean a specific sign making it clear to people which  
8 part of the beach is public and private.

9 Q. So are there any signs right now that make it clear?

10 A. No.

11 Q. Have there ever been?

12 A. Not to my knowledge.

13 Q. The signs that you are talking about, signs that are near  
14 the seawall or near the walkway or near the steps, those  
15 kinds of signs, do you recall those signs there before you  
16 bought the property in '92?

17 A. You know, I wouldn't know because I didn't frequent the  
18 beach that often. It was after I bought the property and  
19 started walking the beach that I would notice the signs.

20 Q. But you did notice those signs sometime after you bought  
21 the property.

22 A. Yeah, occasionally. Yeah.

23 Q. Has it increased over time, the frequency of seeing those  
24 signs?

25 A. You know, there was a period just before the lawsuit that

1 it did increase. Yeah.

2 Q. Do you have any signs like that by your property?

3 A. I have one that I put up one day and I chose to try and be  
4 a little more diplomatic, again because, as I said, my  
5 neighbors are my friends. My sign refers to 'please don't  
6 store boats or kayaks without the owner's permission.'  
7 Instead I chose to just verbally talk to people one by one  
8 - especially since this lawsuit because, you know, it's a  
9 sensitive subject.

10 Q. So I'm trying to understand. You had a sign put up one  
11 day related to the boats and kayaks.

12 A. Yeah.

13 Q. And then you didn't put it up anymore?

14 A. Because I chose to talk to people instead.

15 Q. When was it --

16 A. I was a little bit worried. It was during -- it was the  
17 past couple years. It may have been around that summer.  
18 It was just before the lawsuit started or just after. It  
19 was a sign that my -- my niece's brother -- my niece's  
20 boyfriend had made for me because I was concerned about  
21 all the kayaks in front of my house and I really didn't  
22 know what to do about it. So he made me this little sign  
23 saying 'Private Property - Please no kayak or boat storage  
24 without the owner's permission.' And I, like, looked at  
25 it and I put it up for like half a day, and I even think

1 one of the neighbors made a sarcastic comment about it. I  
2 just didn't -- it's an awkward situation. I didn't feel  
3 comfortable. So I decided to just talk to people on an  
4 individual basis.

5 Q. Okay.

6 A. One of the reasons I went down to the Town that summer of  
7 2008 is that I spent a lot of my personal time that summer  
8 what I would call interviewing people. You know, like if  
9 I didn't recognize them, I'd ask them how they got here  
10 and what their knowledge was of the beach. Everybody --  
11 with the exception of one or two people, everybody across  
12 the board was very polite and did not realize -- and a lot  
13 of them were renters from the back homes, did not realize  
14 that this was a private beach and that the beach had a  
15 public and private part. And part of the reason I went  
16 down to the Town to ask about having a sign put in, is  
17 that it took the pressure off me. I said it would clarify  
18 things if we had a sign. I mean everyone said, 'why  
19 aren't there any signs?' and I didn't want to keep  
20 spending a large portion of my day explaining to people  
21 that this was my section of the beach. So I had hoped  
22 there would be more clarity. Clarity for both sides.

23 Q. Okay. I'm going to mark a few documents that were part of  
24 your folder.

25 (Exhibits 22, 23, 24, and 25 marked for

1 identification.)

2 Q. I'm showing you what's been marked -- four pieces of  
3 correspondence that have been marked as Exhibits 22, 23,  
4 24, and 25. I guess initially I'm just hoping you'll tell  
5 me what they are, to the extent you know, starting with  
6 22.

7 A. 22 says [reading] An addendum to our last message on  
8 access issues at GRB from Bob Almeder.

9 Q. Do you remember receiving that?

10 A. Yeah.

11 Q. Was it an e-mail?

12 A. I think so.

13 Q. Sent before the lawsuit was starting?

14 A. I'd have to read it.

15 (The deponent looked at Exhibit 22.)

16 A. What was your question?

17 Q. I think my question was was it sent before the lawsuit was  
18 filed, to the extent you know.

19 A. I don't know.

20 Q. It's an e-mail you received from Mr. Almeder in the summer  
21 of 2009?

22 A. 6/9/2009.

23 To me, reading it now, it looks like they were in  
24 the process of gathering people together.

25 Q. And I think you have testified -- was this part of the

1           communications, written and oral, to the extent there were  
2           any, relating to whether you were going to be a plaintiff  
3           or not?

4    A.       Yes.  And there was a lot of communications from both  
5           sides that, when I got it, I didn't even read the whole  
6           thing.  I just put it in a folder.  Especially if it had  
7           dollar signs up front, it went in the folder very quickly.

8    Q.       Could you summarize - and again, I'm not asking you to be  
9           a lawyer here and I'm certainly not asking you to tell me  
10           anything you've discussed with your attorney, but could  
11           you tell me, especially harkening back to this time  
12           period, before you at least were I think signed on with  
13           Attorney Thaxter's office, why you didn't join as a  
14           plaintiff.

15   A.       As I said before, the primary reason was financial.  Not  
16           wanting to get involved in a legal lawsuit that might --  
17           that costs money.

18   Q.       Did you agree with what they were doing, though, assuming  
19           -- putting that aside?

20   A.       To the extent that I knew what they were doing ... because  
21           I wasn't involved in it, I don't know exactly what they  
22           were asking for or what their terms were.  I agreed to the  
23           extent that -- that I, as a property owner, feel that I  
24           own the property according to my deed and I could  
25           understand how they would feel the same way as property



1 owners and like to have their property acknowledged and  
2 respected, too, both by the Town and the neighbors. So  
3 yes, I agree to that extent.

4 Q. To what extent, if any, did you -- I'm focusing before you  
5 hired an attorney or even consulted an attorney, to what  
6 extent did you not agree, if any?

7 A. I didn't not agree. I guess I felt that it's each  
8 person's personal choice or decision how -- how they want  
9 to share their property. So I agree with the basic that a  
10 person's deed should be respected and their property  
11 rights should be respected, period.

12 Q. But you chose not, at least at that time, to be a part of  
13 the lawsuit. Is that fair to say?

14 A. Yes.

15 Q. Okay. Exhibit 23. I'm wondering -- there was a reference  
16 to an earlier communication - in maybe Exhibit 22 - I'm  
17 just wondering if that might be the earlier one.

18 A. It's dated one day before this one.

19 Q. So possibly at least it was the earlier one?

20 A. According to the date here. It's called [reading] Update  
21 on Public Access Issues at GRB.

22 Q. Do you recall receiving that?

23 A. I'd have to read it to see.

24 Q. I don't know that I'm going to ask you for all the  
25 details, but please review to the extent you need to.

1 A. As I said before, there's a lot of things that I got it  
2 and I put it in a folder --

3 Q. The folder that you --

4 A. -- without reading it.

5 Yeah, it's a big folder.

6 Q. The next exhibit, Number 24, says Goose Rocks -- GRB  
7 Survey number 2 and has the same date as Exhibit 23.

8 A. Yes, it does.

9 Q. Do you recall the survey?

10 A. Yeah.

11 Q. Did you fill one out?

12 A. I never submitted it. I actually wrote answers, which  
13 might be in there, but I got this in an e-mail and I kept  
14 thinking I was going to answer it. And time went by.  
15 This is around the time that I'm renting and I'm getting  
16 my home ready to rent, and it got deleted by mistake  
17 actually because the place that I was renting I didn't  
18 have access to a printer. So I remember handwriting  
19 answers, but I don't think I ever submitted them.

20 Q. Okay. Exhibit 25 appears to be a communication between  
21 you and somebody who's crossed out.

22 Do you recall that?

23 A. Yes.

24 Q. I think -- well, it looks like some kind of exchange  
25 following the Town vote --

1 A. Yes.

2 Q. -- on the budget?

3 A. Yeah.

4 Q. Let me ask you, before I start peppering you with  
5 questions about who this is, why is it crossed out?

6 A. I crossed it out because he's a private person. This is  
7 somebody that lives in the Cape Porpoise-Kennebunkport  
8 area, not on the beach; a friend of mine who's a private  
9 person. And I decided if this was relevant he probably  
10 wouldn't like his name shared or information shared. So I  
11 chose to just cross it out.

12 Q. You don't -- your take is it doesn't really matter who it  
13 is and he probably doesn't want to be mixed up in it so  
14 you crossed it out. Is that --

15 A. Yes.

16 Q. At this point in time I'll just take it up with your  
17 attorney.

18 MR. THAXTER: If we have to have it, we'll talk  
19 about it. But she did that.

20 MR. WILLING: I just wanted to understand. That's  
21 all.

22 (Exhibit 26 marked for identification.)

23 Q. I'm showing -- I've marked as Exhibit 26 some -- the cover  
24 page of your guest log, just so we can identify what it  
25 is, and then a few miscellaneous pages out of it. The

1 first one is dated September 25th and 26th, 1993 and it's

2 --

3 A. That was a weekend.

4 Q. Okay. 'Love from' --

5 A. That's my friend Janet and her parents. She's listed as  
6 friends that have visited me in the interrogatories.

7 Q. You may have already answered this to some extent, so I'm  
8 not -- I won't belabor it. It does talk about -- focusing  
9 on the second sentence, the third line, [reading] the sun  
10 shone and we had wonderful walks and excellent birthday  
11 celebration.

12 You didn't -- I think you answered this to Andre,  
13 but you didn't tell them 'don't walk up and down the beach  
14 without getting permission from other beachfront property  
15 owners,' did you?

16 A. It never came up.

17 Q. Okay. They came up, they stayed at the house, and you  
18 probably don't even know where they walked. Is that  
19 right?

20 A. Well, this is Janet's father's 70th birthday and her  
21 parents asked if they could celebrate at my home and I  
22 said yes.

23 Q. But there were no instructions about don't walk in front  
24 of other beachfront owners' properties.

25 A. No. It wasn't an issue.

1 Q. The next one is dated July 8 to 15, 1995. It looks like  
2 -- you can read it. It looks like he's talking about  
3 going to the river and seeing lobsters and seals and I  
4 think he might have talked about Timber Island. But it  
5 was before ...

6 (The deponent looked at the exhibit.)

7 A. Okay.

8 Q. So similar question. You didn't tell ... I don't know who  
9 these folks are, but you didn't tell them 'don't go down  
10 to the little river in front of Parker Dwelley's house or  
11 Mr. Temerlin's house without getting their permission,'  
12 did you?

13 A. This wouldn't be up for me to say anything because this is  
14 during the time period that Kathy Anuszewski handled my  
15 rentals. So --

16 Q. Whatever she told them, she told them.

17 A. That's right.

18 Q. Okay. Fair enough.

19 The last one, this says 'We're back,' and it says  
20 'see July '94.' So I assume this was after that. And  
21 it's talking about bonfires.

22 A. -- 7/98.

23 Again this is during the time period that Kathy  
24 handled all my rentals so they would go through her.

25 Q. And if they had a bonfire and needed to work through that

1 with somebody, she would have dealt with it, not you.

2 A. Exactly.

3 (Exhibit 27 marked for identification.)

4 Q. I probably won't ask a lot on this.

5 (Discussion off the record.)

6 Q. I'm showing you what has been marked as Deposition Exhibit  
7 27.

8 Do you recognize that document?

9 A. Yes.

10 Q. That's the plaintiffs' complaint? To the extent you know.  
11 I will instruct you do not tell me anything that you  
12 understand from Attorney Thaxter.

13 A. What's your question?

14 Q. Is that the plaintiffs' complaint?

15 A. It appears so.

16 Q. When was the first time you saw this?

17 A. I don't remember. Sometime last year.

18 MR. WILLING: Okay. One minute.

19 (There was a pause in the deposition.)

20 MR. WILLING: I have no further questions subject  
21 to if there's something that comes up that somebody else  
22 asks that I feel I need to clarify.

23 MR. STERN: My name is Paul Stern, I'm with the  
24 Attorney General's Office. I have just a few questions  
25 for you.

1 EXAMINATION

2 BY MR. STERN:

3 Q. Your year of birth 1952?

4 A. No.

5 Q. '51?

6 A. Yes.

7 Q. Okay. You purchased this property in 1992; correct?

8 A. Yes.

9 Q. And you did not have it as your primary residence until  
10 1999?

11 A. Yes.

12 Q. What was your primary residence between '92 and '99?

13 A. California, between '92 and '94-'5, and then Chevy Chase,  
14 Maryland between '95 and '99.

15 Q. Between 1999 and presently, you have rented, for various  
16 times during the summers, your home in Kennebunkport.

17 A. Yes.

18 Q. Where did you live, so to speak, when you were renting out  
19 your home?

20 A. I take that year to year. I sublet a place. It could be  
21 five weeks, six weeks, four weeks, eight weeks. I do  
22 something different every year.

23 Q. Have you generally sublet in Maine?

24 A. Yes.

25 MR. STERN: That's it.





1 to when you took them?

2 A. I only know when I took them.

3 Q. How about when you acquired the property in -- was it  
4 1991?

5 A. 1992.

6 Q. 1992, were there -- by the way, who gave the swimming  
7 lessons? What organization?

8 A. It was my understanding that it was somebody from Goose  
9 Rocks Beach Association.

10 Q. Now, in 1992 are you aware whether or not swimming lessons  
11 were still being given --

12 A. No.

13 Q. -- by ... may I finish the question?

14 A. Sure. Sorry.

15 Q. -- by Goose Rocks Beach Association or any other entity?

16 A. No, I wasn't aware.

17 Q. So you never observed it?

18 A. No.

19 Q. Did you observe a raft out in front of The Anchorage or  
20 the Sandifer, formerly the Gardiner, premises that was  
21 used in conjunction with swimming lessons from 1992  
22 forward?

23 A. I don't remember seeing a raft.

24 Q. The fact that you don't remember it doesn't mean it wasn't  
25 there; correct?

1 A. True, yes.

2 Q. Now, you talked a little about where the parking spaces  
3 were located and if I can -- I think this is what you  
4 said. The parking spaces begin somewhere after you make  
5 the turn from the store headed in an easterly direction  
6 and end in the area of what is owned either by the Town --  
7 you said the public beach, but it's either the area owned  
8 by the Town or the Kennebunk Conservation Trust. Is that  
9 a fair statement of your testimony?

10 A. Because I don't know specifically, the best way to  
11 describe it is I see the white designated parking spaces  
12 as far -- however far down they go. Wherever that is.

13 Q. So that in other words they could go well beyond what is  
14 owned by the Town specifically and the Kennebunk  
15 Conservation Trust; is that correct?

16 A. They could. I don't know one way or the other. I have no  
17 idea.

18 Q. Do you travel Kings Highway during the summer season in an  
19 easterly direction down to the New Biddeford Road?

20 A. Not often. I tend to use Dyke Road.

21 Q. Not often, but you do do it on occasion.

22 A. Yes.

23 Q. And have you seen cars parked from The Tides all the way  
24 down to the New Biddeford Road on the right-hand side of  
25 the road as you traverse it?

1 A. I don't remember. They are definitely parked where The  
2 Tides are and a little bit beyond it. How far beyond, I  
3 don't remember.

4 Q. If I told you there were parking spaces from The Tides all  
5 the way down to the New Biddeford Road would you disagree  
6 with that?

7 A. No. I mean, no, wait a minute. If you told me that was  
8 true --

9 Q. I'm telling you --

10 A. -- go down and look myself to be for sure.

11 Q. If I told you it was true, would you believe me?

12 MR. THAXTER: You don't have to believe him.

13 A. -- my instinct, I probably would and then I would go down  
14 and look and see.

15 Q. Now, you recollect sailing lessons being given by Goose  
16 Rocks Beach Association from the time you started visiting  
17 the beach until you acquired the property in 1992.

18 A. I've heard from other beach people that there were sailing  
19 lessons. I never took any or knew of them at the time.

20 Q. You never observed them?

21 A. I don't know -- I saw sailboats sailing, but I don't know  
22 if they were just people sailing or lessons.

23 Q. Now, the path from leads from Bartlett and goes down to  
24 the beach adjacent to yours and your neighbors, who are  
25 the Fosters or something?

1 A. Forrest.

2 Q. Do you recollect at any time, during when you were a child  
3 or up to the present time, that there was a large green  
4 box as you walked down the path on the right-hand side  
5 that was used to store sailing paraphernalia?

6 A. No, I don't remember that.

7 Q. You never saw that?

8 A. No.

9 Q. Or you don't remember it.

10 A. I don't remember and, to my knowledge, I never saw it.

11 Q. You don't -- it could have been there, but you just don't  
12 remember.

13 MR. THAXTER: You're asking -- she answered the  
14 question. She doesn't remember --

15 MR. LACHIATTO: I don't think she did, so I'm going  
16 to pursue it.

17 MR. THAXTER: I'll instruct her she answered the  
18 question.

19 Q. Answer the question.

20 A. Well, I said I never saw it and I don't remember. One  
21 reason might be I didn't use that path as a child. My  
22 grandparents had their own wooden steps. And I noticed,  
23 when I bought the house back, that those wooden steps were  
24 gone. When I was a child I don't remember those concrete  
25 steps being there. I think it was just a path. And I

1 would just go down the wooden steps in front of my  
2 grandparents' house.

3 Q. You visited the property from the time you were 3 until  
4 you acquired it in 1992; right?

5 A. Yes.

6 Q. Your property, that is.

7 A. Yes.

8 Q. The one you presently own.

9 A. Yes.

10 Q. And as you grew older you spent a few weeks there; a  
11 couple weeks every summer.

12 A. I spent weeks there in the summer until I was 11.

13 Q. And after 11, how much time did you spend there?

14 A. Very little. I went there one day -- two days to visit my  
15 father and his wife when I was 16 - once - and then I  
16 didn't go again until 1984.

17 Q. And never during those times did you observe this green  
18 box that I referred to?

19 A. No, because that was only two times.

20 Q. Now, you talked about Kathy Anuszewski being your rental  
21 agent during the period between 1993 and 1998; is that  
22 correct?

23 A. 1993 and 1999.

24 Q. Through 1999.

25 A. Yes.

1 Q. And after that?

2 A. After that --

3 Q. She wasn't involved as your agent after that.

4 A. She was.

5 Q. So has she always been the agent?

6 A. When I've used an agent, she's been my agent, yes.

7 Q. And you indicated, I think on examination from Attorney  
8 Willing, that you didn't tell the people that were renting  
9 during those periods in which Kathy Anuszewski was the  
10 rental agent how they could or couldn't use the beach. Is  
11 that correct?

12 A. Yeah. I never met the people.

13 Q. Did you instruct your agent, Kathy Anuszewski, as to what  
14 to tell these renters as to their use of the beach?

15 A. We never had a conversation about it.

16 Q. So therefore you didn't tell her; correct?

17 A. I didn't tell her what specifically?

18 Q. You didn't tell her how your renters were to recreate or  
19 use the beach.

20 A. No.

21 Q. Okay. Now, as you indicated, you rented your property  
22 anywhere from five to seven weeks during the period that  
23 you rented it from '93 to '98, and 2003 to 2007, and 2009  
24 to 2010. Right?

25 A. Can you say that again? Break it down, let me absorb each

1 part.

2 Q. You rented your property, during the periods that you  
3 rented it, anywhere from five to seven weeks during the  
4 summer months.

5 A. Yes.

6 Q. Okay. And is it fair to say that during those five to  
7 seven weeks of the years in which you rented that you  
8 visited the beach during the rental periods?

9 A. Yes.

10 Q. And when you visited the beach during those rental periods  
11 did you just stick around in front of your dwelling or did  
12 you survey the beach?

13 A. When I visited, I would sit in front of my dwelling or I  
14 would take a walk.

15 Q. And when you'd walk you'd either go to the west end or the  
16 east end.

17 A. Yes.

18 Q. And during those walks, you would observe people from --  
19 sitting and recreating the entire length of the beach; is  
20 that correct?

21 A. Yes, and different amounts of people might be in different  
22 places.

23 Q. And when you came down during those summer months prior to  
24 2008 there were a fair number of people in good weather  
25 during those months of July and August using the beach in

1 terms of bathing and recreating; is that correct?

2 A. Prior to what year?

3 Q. 2008.

4 A. What -- how many do you mean by 'a fair number?'

5 Q. Hundreds.

6 A. It didn't feel crowded until recently.

7 Q. I understand it didn't feel crowded until recently, but  
8 there were hundreds of people using the beach as I  
9 indicated; correct?

10 MR. THAXTER: What's the question? We're not  
11 having an argument here. What's the question?

12 MR. LACHIATTO: Do you want to repeat it, Madam?  
13 The one that I initially asked her before I was  
14 interrupted by Attorney Thaxter.

15 (Prior questions and answers read.)

16 Q. I said hundreds. You can answer whether it was hundreds  
17 or not.

18 A. It would depend on what area of the beach you're referring  
19 to --

20 Q. Well, I'll --

21 MR. THAXTER: Please let her finish answering. Go  
22 ahead.

23 Q. It depends on what area of the beach I'm talking about;  
24 correct?

25 A. Yes. The public part of the beach or the private --



1 Q. Let's talk from Bel-Air Avenue down to the New Biddeford  
2 Road/Jeffery's Way right-of-way.

3 A. Is Bel-Air Avenue where -- the corner where The Tides is?

4 Q. Correct, next to your cousin's house.

5 A. In that general vicinity, when I walk around the beach --  
6 because I don't walk the street side, so I get mixed up  
7 which streets are which. As I walk around Dinghy Point,  
8 that's where I see a lot more people sitting. That  
9 section.

10 Q. When you walk, we'll say, from -- do you know where  
11 Hayward Avenue is?

12 A. That's further down, I think, toward Biddeford -- New  
13 Biddeford Road --

14 Q. Correct. Actually it's the -- if I may, it's the second  
15 street prior to New Biddeford Road as you proceed in an  
16 easterly direction.

17 Do you know where that is?

18 A. Yes.

19 Q. Did you observe people, during that time frame I  
20 mentioned, recreating on the beach in fairly significant  
21 numbers?

22 A. You know, the difficulty in answering that question is  
23 when I'm driving my car I know where Hayward Avenue is,  
24 then I make a left turn at New Biddeford. When I'm  
25 walking on the beach, I don't have -- I don't know where

1 Hayward Avenue is. Because I'm on the beach.

2 Q. Let's say you're at Jeffery's Way, which is an extension  
3 of New Biddeford Road down to the beach, and you're  
4 walking toward the beach, and you look to your right and  
5 look 750 feet down the line. Do you see a fair number of  
6 people recreating during the time frame I have mentioned  
7 when you were renting?

8 MR. THAXTER: What time frame is this again?

9 MR. LACHIATTO: The time frame that she rented  
10 during those periods, with the exception of 2008.

11 A. First, I wouldn't be walking toward the beach from  
12 Jeffery's Avenue. I would already be walking on the beach  
13 from around Dinghy Point.

14 Q. -- not the question. The question is if you in fact were  
15 down at the New Biddeford Road, Jeffery's Lane Extension,  
16 as you look to the right for 750 feet, and assuming you  
17 were walking down that way towards your place, would you  
18 see a significant number of people during that time frame  
19 recreating and using the beach.

20 A. I can't answer that question because I haven't been there  
21 from that perspective.

22 Q. Well, how about the perspective if you're walking  
23 easterly.

24 MR. THAXTER: What time frame and what time of year  
25 are you talking about here?

1 MR. LACHIATTO: Mr. Thaxter --

2 MR. THAXTER: I object to the question.

3 MR. LACHIATTO: Are you listening? I said during  
4 the period of her rental with the exception of 2008.

5 MR. THAXTER: -- summer period or the winter?

6 MR. LACHIATTO: She didn't rent in the winter. She  
7 rented in the summer.

8 Q. Can you answer the question or not? If you can't, fine.

9 A. I'm confused about what the question is. Can you restate  
10 it, please?

11 Q. I'll restate it, hopefully in a manner in which you can  
12 understand it.

13 We'll say you're perpendicular to Hayward Avenue,  
14 which I'm saying is 750 feet to Jeffery's Way, which is an  
15 extension of New Biddeford Road. You're doing your walk  
16 during this period in which you rented. Are there, in  
17 good weather, a significant number of people sitting and  
18 using that beach and recreating?

19 Do you understand the question?

20 A. I'm not trying to be difficult. I'm having a hard time  
21 conceptually because I don't go down to that area of the  
22 beach very much.

23 What I -- what I can say is when I walk around  
24 Dinghy Point I see the majority of a lot of people in the  
25 immediate area around there. Then as I walk further down

1 on the beach side toward that little river or whatever the  
2 river is, there's fewer people. The bulk of the people  
3 are in that first area as you round the corner.

4 Q. When you say 'fewer people,' what do you mean by 'fewer  
5 people?' Less than half of the bulk that you see --

6 A. Less than less than half.

7 Q. A quarter of the bulk?

8 A. It depends what day you're talking about. Significantly  
9 less. Maybe sporadic people here and there versus a mass  
10 of people.

11 Q. We'll get away from the rental period and now we'll talk  
12 about the months of May -- from May 15 to when you  
13 commence your rentals in July and when you terminate your  
14 rentals in August through the end of September.

15 What is your understanding -- not your  
16 understanding, but do people frequent the whole beach at  
17 those points in time?

18 A. Do they frequent the whole beach?

19 Q. The entire beach.

20 A. To do what? To walk, to --

21 Q. To walk and recreate. Play.

22 A. I see people frequenting the beach; in much lesser numbers  
23 though.

24 Q. And that's the entire beach that you are walking at the  
25 time.

1 A. Still even at those times there's more people congregated  
2 down in the public section than there is in the private,  
3 even in June and September.

4 Q. Tell me, based on your knowledge and belief, where does  
5 the public section begin and end? Not -- not the public  
6 section. I'm sorry. The Town-owned section.

7 A. I don't know specifically. I know the general area. But  
8 I'm hesitant to answer that question because, again, I  
9 don't know people's deeds. That's why signs are  
10 important. It all looks the same.

11 Q. Do you know the Sandifer dwelling, which was formerly the  
12 Gardiner house?

13 A. No, I don't.

14 Q. You don't know that?

15 A. No.

16 Q. You don't know where that house is?

17 A. No.

18 Q. If you look out your niece's window, look toward the beach  
19 and cock your head to the right, that big gray place. Do  
20 you know where that is?

21 A. The great big house at the end that's the hotel? That  
22 people call the hotel?

23 Q. I don't know what people call it, but it's the big gray  
24 place.

25 A. That was renovated --

1 Q. Right.

2 A. -- that's huge, yeah.

3 Q. In front of that dwelling, is that, to your knowledge,  
4 Town-owned?

5 A. Directly in front of - and I'm guessing because, again, I  
6 haven't seen a deed - I think it's privately-owned.

7 Q. And do you see a fair number of people sitting in front of  
8 that when you traverse the beach --

9 A. No.

10 Q. You don't.

11 A. No. I see a fair number of dinghies in front of it.

12 Q. That's right. A lot of kayaks as well.

13 A. Yeah, mostly I think -- dinghies more there and the kayaks  
14 are a little further around. The kayaks are by -- there's  
15 some walkway, and I don't know if that's public or  
16 private, but that's where I've seen the kayaks: next to  
17 that walkway in the --

18 Q. -- The Anchorage; correct?

19 A. It's either in front of The Anchorage or The Tides. It's  
20 between those two places.

21 Q. And you see a fair number of people sitting on the beach  
22 during the summer or when you're down there no matter  
23 when, in front of The Anchorage and in front of the  
24 Sandifer, formerly Gardiner, home. Sitting, playing,  
25 etcetera.

1 A. If I'm looking at The Anchorage, where is the  
2 Sandifer/Gardiner home? To the right side of the  
3 Anchorage -- if I'm on the beach, looking at The  
4 Anchorage?

5 Q. It's on the left. The big gray one.

6 A. Oh, on the beach side.

7 Q. Yes.

8 A. Yeah.

9 I don't see a lot of people in front of that home,  
10 no. It's as you go further around the corner.

11 Q. In front of The Anchorage.

12 A. More -- even a little further than that. In that general  
13 vicinity.

14 Q. What is your position on the rights of people that own  
15 from Kings Highway backward to Wildwood as to the use of  
16 the beach?

17 A. My position would be that depending on what their deed  
18 says in terms of easement that that would dictate what  
19 their rights are.

20 Q. When did you come up with that conclusion?

21 A. It's almost common sense.

22 Q. That isn't the question.

23 MR. THAXTER: She answered the question. Let's not  
24 have an argument here.

25 MR. LACHIATTO: I'm not having an argument.

1 Q. When did you determine that that was correct, your view of  
2 it and common sense?

3 A. Whenever the first time the question was asked of me.

4 Q. And when was that?

5 A. I don't know.

6 Q. When you grew up on the beach -- strike that.

7 From the time you came here to the beach at 3 until  
8 the present time, there were no, to your knowledge,  
9 restrictions on the use of the beach, were there.

10 A. The only restrictions I had were the ones that my parents  
11 gave me because I was a child. I don't know beyond that.

12 Q. What were the restrictions your parents gave you as a  
13 child?

14 A. Not to walk to Timber Island, not to walk on the beach  
15 without an adult, go where the adults told me to go.

16 Q. Basically those are safety reasons; correct? They didn't  
17 want you going out walking to Timber Island because they  
18 were afraid you might get stuck out there during high  
19 tide; right?

20 A. Right.

21 Q. And they wanted you to walk with someone a little older  
22 than yourself for safety reasons; correct?

23 A. That would be logical, but I didn't ask what their reasons  
24 were.

25 Q. Now, initially, when you were asked by Attorney Duchette



1 and then similar questions by Attorney Willing, you said  
2 you didn't ask to be involved in this lawsuit. That's  
3 what your statement was early on by --

4 A. No, it's not. I said -- I didn't say I didn't ask to be  
5 involved. I said I didn't want to be involved.

6 Q. You didn't want to be involved. Well, the record will  
7 speak for itself.

8 MR. LACHIATTO: I don't have anything further.  
9 Thank you.

10 MR. DUCHETTE: Just one.

11 (Discussion off the record.)

12 FURTHER EXAMINATION

13 BY MR. DUCHETTE:

14 Q. I'm handing you what is Exhibit 25. In the top of it,  
15 actually in the middle of it, you indicate where your  
16 property -- I believe this is an e-mail from you.

17 Correct?

18 To someone else?

19 A. From me, yes. It was in response to an e-mail he sent me.

20 Q. And in it you say [reading] I own to the mean high tide?

21 A. Where? Show me where.

22 MR. THAXTER: Right there.

23 (Mr. Thaxter pointed to the document.)

24 (The deponent looked at the document.)

25 A. Yes, that's what I said.

1 Q. Do you still agree with that statement?

2 A. Yes and no. Because now it's been -- it's my  
3 understanding that if I own up to the mean high tide water  
4 mark I own up to the low tide water mark also.

5 Q. And where did you come to that understanding?

6 A. In general conversation with people over this whole  
7 lawsuit.

8 MR. DUCHETTE: Okay. No further questions.

9 MR. STERN: Could I see that? I may have one  
10 question.

11 (Discussion off the record.)

12 FURTHER EXAMINATION

13 BY MR. STERN:

14 Q. Exhibit 25 is the exhibit where you've crossed out the  
15 name of the person you were communicating with?

16 A. Yeah.

17 Q. Is that person a party in this lawsuit?

18 A. No, absolutely not.

19 MR. STERN: Thank you.

20 MR. THAXTER: Read and sign.

21 (The deposition was concluded at 12:47 P.M.)

22 \* \* \* \* \*

23

24

25

1 CERTIFICATE OF REPORTER

2 I, Christina J. Duvernay, a Notary Public commissioned by  
3 the State of Maine, hereby certify that the within-named deponent  
4 was sworn to testify the truth, the whole truth, and nothing but  
5 the truth in the aforementioned cause of action.

6 I further certify that this deposition was  
7 stenographically reported by me and later reduced to print  
8 through Computer-Aided Transcription, and the foregoing is a full  
9 and true record of the testimony given by the deponent.

10 I further certify that I am a disinterested person in the  
11 event or outcome of the above-named cause of action.

12 IN WITNESS WHEREOF, I subscribe my hand and affix my seal  
13 this 2nd day of April, 2011.

14 Dated at Westbrook, Maine.

15

16

17

Christina J. Duvernay

18

Notary Public

19

My commission expires

20

December 7, 2013

21

22

23

24

25

DEPONENT SIGNATURE PAGE

CAPTION: ROBERT ALMEDER ET AL V. TOWN OF KENNEBUNKPORT ET AL  
DEPONENT: SUSAN K. LEWIS

I, \_\_\_\_\_, the deponent, acknowledge that I  
have read Pages \_\_\_\_\_ through \_\_\_\_\_ inclusive of the transcript  
of my deposition taken on March 22, 2011. I further acknowledge  
that:

(check appropriate language)  
the same is a true, correct, and complete  
transcription of the answers given by me to  
the questions recorded therein.

OR  
except for the changes noted on the attached  
errata sheet, the same is a true, correct, and  
complete transcription of the answers given by  
me to the questions recorded therein.

Susan K. Lewis, Deponent

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

1 ERRATA PAGE  
2 THE TRANSCRIPT OF THE DEPOSITION OF SUSAN K. LEWIS TAKEN ON  
3 MARCH 22, 2011 SHOULD INCLUDE THE FOLLOWING CHANGES:

3	Page	Line	Change from this	To this
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