

STATE OF MAINE

YORK SS

SUPERIOR COURT

CIVIL ACTION

Docket No.

RE-09-111

YOR-12-599

ROBERT F. ALMEDER, and
VIRGINIA S. ALMEDER, et al.

Plaintiffs,

-vs-

TOWN OF KENNEBUNKPORT et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
Non-Jury Trial

Before: Honorable G. Arthur Brennan,
Active Retired Justice Of The Superior Court

Cumberland County Courthouse
Portland, Maine

August 28, 2012

Kimberly McCulloch
Official Court Reporter

APPEARANCES

For Plaintiffs:

Sidney St.F. Thaxter, Esq.
Benjamin M. Leoni, Esq.

For Plaintiffs/Counterclaim Defendants
O'Connor, Lehey, Fleming; and
Party In Interest Henriksen:

Christopher E. Pazar, Esq.

For Defendant Town of Kennebunkport:

Amy K. Tchao, Esq.
Melissa A. Hewey, Esq.
Brian D. Willing, Esq.

For Defendant Alexander M. Lachiatto:

Alexander M. Lachiatto, pro se

For Defendant Richard J. Driver:

Richard J. Driver, pro se

For Defendants TMF Group De Bene Esse:

Gregg R. Frame, Esq.
Andre G. Duchette, Esq.

For Intervenor State of Maine:

Paul D. Stern, Esq.

INDEX OF TESTIMONY

	Direct	Cross	ReD	ReC
DONNA LENCKI	6	25 36 40 44	52	
MARY LOU EMMONS	54	63 69 69 71	71	
JOHN COUGHLIN	73	86 88 93 96	99	
STUART FLAVIN	110	132 134 146		
WILLIAM JUNKER	156	172 175 183	193	196
ALEXANDER LACHIATTO	198	213 219		

INDEX OF EXHIBITS

OFFERED ADMITTED

Town's Exhibit

#171	197	197
------	-----	-----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

(This matter came on before the Honorable G. Arthur Brennan, Active Retired Justice, at Portland, Maine, in the Superior Court, Cumberland County Courthouse, on August 28, 2012 for trial commencing at 9:03 a.m.)

THE COURT: Good morning everyone. Please be seated everyone. Okay, we are here in the Almeder matter and it appears everyone is present.

When we recessed I think we had completed the testimony of Mrs. Fleming.

Ben or Pete? Ben?

MR. LEONI: Good morning, your Honor.

THE COURT: Good morning.

MR. LEONI: The first witness this morning is Donna Lencki.

THE COURT: Miss Lencki, would you come around, please?

THE CLERK: Please raise your right hand and please state and spell your name for the record.

THE WITNESS: Donna Lencki, L-E-N-C-K-I.

1 Thereupon,

2 DONNA LENCKI

3 was called as a witness and, after having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LEONI:

7 Q. Good morning, Donna.

8 A. Good morning.

9 Q. Donna, could you tell us if you own beach-front
10 property at Goose Rocks Beach?

11 A. Yes, I do. I own the property at 256 Kings
12 Highway and I own two parcels and have since 1995.

13 Q. You say you own two parcels. Where are those
14 parcels located, are they right next to each other?

15 A. They are right in front of each other so the
16 parcel that my house sits on and then the parcel in
17 front of my home, and I also have two tax bills and two
18 lot numbers.

19 Q. Okay. What separates your two properties?

20 A. Kings Highway.

21 Q. Donna, if you could just come to this map over
22 here and circle your two properties that you just
23 mentioned and put your initials next to them.

24 A. (Witness complies.)

25 Q. Donna, how long have you owned your beach

1 property at Goose Rocks Beach?

2 A. I have owned the property since 1995.

3 Q. And at what point did you become concerned about
4 your property rights in relation to your beach-front
5 property?

6 A. Well, I think you will see as we speak more this
7 morning but I over the years expressed concerns about
8 the use of my property, but I began -- I started being
9 concerned when the town years ago wanted to make an
10 offer to Marie to take her beach-front property, and
11 then I also understood from the police that they would
12 stop helping me to move kayaks and things like that.

13 Q. Do you remember roughly what year that was?

14 A. It was a few years ago now, so maybe 2004, 2005.

15 Q. Prior to 2004 and 2005 had you approached the
16 town to -- when you had problems with how people were
17 using your beach property?

18 A. Yes, I did. In fact, I had Nathan Poore's phone
19 number right on my refrigerator, I would call him often
20 if there was something happening, likewise with Chief
21 Bruni, and then further in the years it was Larry Mead.

22 Q. And did the police help you remove people from
23 your property when you asked them prior to 2004, 2005?

24 A. Early on they did, they were very responsive and
25 not only would they assist with people if it was

1 unorderly but also with the kayaks or things that were
2 left on the beach.

3 Q. And is that what changed in 2004, 2005?

4 A. Yes. I remember an incident, and I don't
5 remember the exact date, but -- and I think it was Chief
6 Bruni who told me that it is out of his hands now and
7 they are not going to be moving or doing anything any
8 longer.

9 Q. Okay. I am going to take a step back for a
10 minute, Donna.

11 Could you just tell the Court where you are from
12 originally and your permanent address?

13 A. Yes. I am from Candia, New Hampshire and that is
14 my permanent address.

15 Q. Do you have kids, Donna?

16 A. I do, I have two children.

17 Q. Do they come to Goose Rocks Beach with you?

18 A. Yes, they do.

19 Q. Could you tell us how your family uses your
20 Goose Rocks Beach property, meaning when you are there?

21 A. Sure. We use the property, I keep the property
22 open all year long. When the children were in school it
23 was harder to get up in the off season.

24 I have worked remotely out of the home for years
25 now so we spent our full summers there.

1 My daughter worked at the Goose Rocks General
2 Store, my son works for The Porch and we use the beach
3 as most people use the beach, we bike ride, we have
4 friends there, we have family members and so forth.

5 Q. Thank you.

6 Do you recall the first time you ever came to
7 Goose Rocks Beach?

8 A. I do, I stayed at The Tides.

9 Q. What year was that?

10 A. I think it was 1993 or 1994.

11 Q. When you stayed at The Tides how long did you
12 stay there for?

13 A. I stayed there for a week.

14 Q. Do you recall using the beach at all during that
15 week that you were there?

16 A. I do, yes. Yep, I used the beach in front of
17 The Tides.

18 Q. You didn't go to other areas of the beach?

19 A. My daughter was a baby so I think I pretty much
20 stayed right there.

21 Q. Okay.

22 Do you know who Marie Henricksen is?

23 A. I do.

24 Q. Do you recall if she ever told you where to go on
25 the beach when you stayed at The Tides?

1 A. I do remember that, you know, she explained that
2 it's the property in front of her home, and I actually
3 was staying in one of her apartments, I rented one of
4 the apartments next-door to the actual Inn and that was
5 right out in front of that property.

6 Q. A typical day during the summer prior to the
7 issue you had with the police in 2004, 2005, could you
8 just explain to the Court what you would see on your
9 beach property?

10 A. Sure. You know, typical day on the beach you
11 would see people on the beach, you might see people
12 walking the beach.

13 With respect to my property, I might see some of
14 my neighbors or some of the people that live on my
15 street in front of my property.

16 Q. And since you owned the property in 1994 -- I am
17 sorry, 1995, have you seen an increase in the use of
18 your beach property?

19 A. I have seen a bit of an increase, yes. I think
20 because everyone's family has grown so you tend to see
21 now their family members or their children, and I have
22 seen, you know, probably a very significant change just
23 with The Tides changing hands now and The Tides Beach
24 Club having their yellow chairs out in front.

25 Q. Do they put their yellow chairs on your property?

1 A. No, not at all. In fact, they are very -- they
2 keep their yellow chairs exactly in front of theirs and
3 they are very clear with the people who work for them
4 that this is their property.

5 MS. HEWEY: Objection.

6 THE COURT: Sustained. Next question.

7 BY MR. LEONI:

8 Q. Have you ever heard people refer to your area of
9 the beach in front of your house as part of the public
10 beach section?

11 A. I have heard people refer to what they think is
12 the public section as either the conservation trust area
13 or close to The Tides or east of The Tides.

14 Q. Has that -- when you have heard them say that,
15 does that include your specific beach-front property?

16 MS. HEWEY: Objection.

17 THE COURT: You are really asking her to
18 interpret what's in the mind of people that are saying
19 things to her, so the objection is sustained.

20 BY MR. LEONI:

21 Q. You stated that they said east of The Tides?

22 A. Yes.

23 Q. Okay, and your property is east of The Tides?

24 A. Yes, it is.

25 Q. Okay. Do you ever correct them regarding whether

1 your parcel is part of the public beach?

2 A. Yes, in fact I have corrected many people over
3 the years and I think most people have been shocked,
4 one, to see two tax bills --

5 MS. HEWEY: Objection.

6 THE COURT: The objection is sustained.

7 Listen carefully if you would, Miss Lencki,
8 to the question and try to confine your answer to the
9 question and this will go a lot easier, okay? Thanks
10 very much.

11 A. Thank you. Sorry.

12 Q. Thanks, yeah, we don't need to know what you
13 think that they were thinking or -- thank you, though.

14 A. Oh.

15 Q. And you mentioned that on a typical day you do
16 see people use your beach property, and could you just
17 tell the Court have you ever seen anybody put permanent
18 structures on your beach property?

19 A. No.

20 Q. How about garbage cans?

21 A. No.

22 Q. Has anybody ever left personal property on your
23 beach overnight?

24 A. Yes.

25 Q. What kinds of personal property?

1 A. People have left kayaks or kayaks with their
2 beach toys or chairs in them.

3 Q. Have you ever confronted people about leaving
4 their items on your beach property?

5 A. Yes, I have, and I have asked them to move them.

6 Q. Have you ever had the police help you?

7 A. Yes, I have.

8 Q. Are you familiar with the town's requirements for
9 fires on the beach?

10 A. I am somewhat familiar, yes.

11 Q. Have you confronted the town at all about
12 those -- the town requirements for fires?

13 A. Yes, I have, and years ago we actually met with
14 Chief Bruni to talk about that.

15 Q. What's the issue that you have with fires on your
16 beach?

17 A. The issue with the fires on the beach is the
18 number of fires that they put into a smaller area on the
19 beach and the proximity to the sea grass and not asking
20 permission.

21 Q. Okay.

22 Donna, could you please turn to Exhibit Number
23 104? Look at this. Just try to -- make sure you speak
24 into that.

25 A. Okay.

1 Q. Donna, can you please -- there's a section that
2 says incident notes on Exhibit 104, could you just read
3 that first sentence?

4 A. The complainant reported a campfire on the beach
5 in front of her property and advised that she did not
6 want them there.

7 Q. Had they asked your permission to prior to having
8 a campfire on your property?

9 A. No.

10 Q. So what was the point of your calling the police
11 in this instance?

12 A. I did not want the fire on my property and in
13 front of my home.

14 Q. Could you please turn to Exhibit Number 106?
15 Could you please read the first three sentences under
16 incident notes?

17 A. Reports there are people on the private property
18 on the beach, subject was advised that this is public
19 property, she stated that is unsatisfactory and she will
20 be calling each and every time someone goes on her
21 property.

22 Donna also stated that she has spoken with the
23 police chief, the fire warden and the fire marshall
24 regarding this and we should stop issuing burn permits
25 on her property.

1 Q. Okay, that's fine. Thank you.

2 This was in 2004. Is this one of the incidents
3 that you referred to earlier in your testimony as a
4 shift -- that evidenced the shift in the town's approach
5 to enforcing your property rights?

6 A. Yes.

7 Q. Could you please go to Exhibit 107, the following
8 Exhibit? Could you tell me what this incident report is
9 about?

10 A. Yes, it looks like it is another fire in front of
11 the residence.

12 Q. In front of your home?

13 A. Yes.

14 Q. In 2004?

15 A. Yes.

16 Q. Had there been times when people had had fires
17 prior to 2004 and you called the police and the police
18 did something about it?

19 A. Yes, yeah. They would move them and if the
20 police didn't move them then I asked them to move. They
21 would move.

22 Q. Had you ever seen police reports to that effect?

23 A. No, I hadn't seen any police reports other than
24 what I have seen here.

25 Q. But you had done that prior to 2004?

1 A. Yes, I did.

2 Q. Has anybody ever asked you for your expressed
3 permission to use the beach?

4 A. There have been a few people, yes.

5 Q. Do you recall their names?

6 A. Yes, when I first bought the property I recall
7 having conversations with Mr. Dolbeare, and his family
8 uses the property quite a bit, Mr. Roberts who I knew
9 before I got to Goose Rocks and the Parkers, those would
10 have been expressed.

11 Q. Where do they live in relation to Goose Rocks
12 Beach?

13 A. They live in our neighborhood.

14 Q. Are they on the beach front?

15 A. No, they are behind the property.

16 Q. Okay.

17 Donna, do you think that you own the beach all
18 the way to the low watermark -- could you explain why
19 you allowed people that you knew to use the property?

20 A. Yes, because I think the beach is enjoyable and I
21 have allowed people to use it because it is enjoyable to
22 them and their behavior and the way that they use the
23 beach is comfortable to me.

24 Q. Have you ever exercised your right to ask
25 people -- and ask people to leave your beach property?

1 A. Yes, I have.

2 Q. Okay. Did they leave?

3 A. Yes, they did.

4 Q. You have had some -- well, have you ever had any
5 incidents prior to this lawsuit with Hidden Pond
6 dropping people off on your beach property?

7 A. Yes.

8 Q. What's Hidden Pond?

9 A. Hidden Pond is a property behind the beach area,
10 a newer community.

11 Q. What was the issue that you had with Hidden Pond?

12 A. The issue that I had with Hidden Pond is they
13 were starting to shuttle the guests from Hidden Pond to
14 the Goose Rocks Beach area and they started -- they
15 dropped people off and escorted them to the front of my
16 beach property and set up their chairs, set the people
17 up for the day.

18 Q. Donna, could you please turn to Exhibit Number --
19 I believe it's 109 -- I am sorry, it is 103, Exhibit
20 Number 103 and go to page 2?

21 A. They are not all marked. Sorry.

22 Q. Could you tell me what's going on in this photo?

23 A. Sure. This is the Hidden Pond vehicle, you can
24 tell by their logo on the side of the suburban. They
25 would typically leave the suburban running and then

1 escort -- one of their employees I would think or
2 someone from Hidden Pond would escort the people to the
3 beach.

4 Q. Could you flip to photos 3 -- we will start with
5 photo 3.

6 A. Yes. Photo 3 is showing that someone is carrying
7 the chairs and walking the people down to the beach, and
8 they are the green Hidden Pond chairs.

9 Q. Where is the photo taken from?

10 A. From the front of my home.

11 Q. Do you recall roughly what year this was taken?

12 A. I don't. I think it was one of the first years
13 that Hidden Pond was in business.

14 Q. Number 4, same thing. Photo number 4?

15 A. Number 4, same thing.

16 Q. Could you please go to Exhibit 109? I am
17 actually going to ask you to go to the second page which
18 has a bit of text on it --

19 A. Okay.

20 Q. -- and could you go to the second to the last
21 paragraph and read that for the Court?

22 A. Lastly Miss Lencki was concerned with Hidden Pond
23 relating to where they were going to drop off their
24 patrons. I told her that the public access points will
25 be utilized for that purpose.

1 I further explained that I much preferred to have
2 them dropped off where the town had easier access to
3 them in case of a medical emergency. The most logical
4 place is the main area of the beach.

5 Q. Was your issue with where Hidden Pond was
6 dropping people off the fact that they were dropping
7 them off there or the fact that they were setting up on
8 your beach property?

9 A. It actually is twofold, one, because the path of
10 Belvidere is a small footpath and not a large access
11 way, and there's -- and then other -- putting them in
12 front of my property.

13 Q. Okay.

14 Could you turn to Exhibit 110, is that the
15 following page -- I am just going to ask you to go to
16 the last page of that exhibit. Could you tell me what
17 this police report pertains to?

18 A. Yes. Well, it looks like -- this is the first
19 time I have seen this police report. It looks like it
20 is relating to Hidden Pond although it was referencing a
21 vehicle being parked all day, so I think there's a bit
22 of a conflict in the report.

23 Q. Okay. Could you go back to, and I am sorry we
24 are flipping back and forth with exhibits, back to
25 Exhibit Number 103, which is the photos, and I am asking

1 you to go to photos both -- well, start at photo 5.

2 A. Okay.

3 Q. What is this photo of?

4 A. This is a picture of a car, it had a New York
5 license plate that was parked all day and overnight in
6 front of -- in front of The Tides.

7 Q. And photo 6?

8 A. Photo 6 is the gentleman that I believe owns the
9 car.

10 Q. And how about photo 7 and 8, they pretty much
11 depict the same thing, what is that?

12 A. Photo 7 and 8 are pictures of a number of chairs
13 that are being set up very early in the morning. This
14 particular individual or people were setting up these
15 chairs probably by 6 a.m. in the morning.

16 Q. Okay.

17 Those chairs, did they come from the vehicle
18 depicted in pages 5 and 6?

19 A. Yes, they did.

20 Q. And is that depict -- are those photos that
21 depict the incidents that you referred to in Exhibit
22 110?

23 A. Yes, yes. It wasn't Hidden Pond.

24 Q. Exhibit 110 seems to indicate those chairs all
25 came from Hidden Pond. Is that true, to your

1 understanding?

2 A. No, those chairs are not from Hidden Pond.

3 Q. Okay.

4 Did the town police come when you filed these
5 reports and asked those people to move?

6 A. No.

7 Q. Did you do something with Hidden Pond on your
8 own?

9 A. Yes, actually I did.

10 Q. What did you do?

11 A. I had my attorney send a letter to -- after I had
12 a conversation with Tim Harrington, I had my attorney
13 send a letter just reinforcing that I viewed my property
14 as my property and that I did not want his guests on my
15 property.

16 Q. Did he stop dropping his guests off on your
17 property?

18 A. Yes, he did.

19 Q. Besides the objectionable behavior you have
20 talked about with Hidden Pond and the fires is there any
21 other objectionable behavior that you witnessed on your
22 beach property?

23 A. Yes.

24 Q. Could you explain what those are?

25 A. Sure. There have been occasions when people

1 would set up in groups and drink and litter on the
2 property, there was an occasion when people set up a
3 table and brought a grill on the property. Those are
4 two that I can remember.

5 Q. When people set up the table and the grill did
6 you ask them to leave?

7 A. I did.

8 Q. Did they leave?

9 A. They didn't leave.

10 Q. They what?

11 A. They did not leave.

12 Q. They did not leave? When was that?

13 A. That was a couple of years ago.

14 Q. Had you ever asked people to leave prior to 2004
15 and 2005?

16 A. Yes, I did.

17 Q. Do you ever recall an incident where they did
18 not, they refused to leave?

19 A. There probably were, yes, and that's when I would
20 call Chief Bruni or the town manager directly.

21 Q. Okay, and prior to 2004 and 2005 did Chief Bruni
22 and the town manager act upon your phone calls?

23 A. They absolutely did.

24 Q. We have one last Exhibit to go through, Donna,
25 and that's Exhibit Number 108. It appears -- are you

1 there yet?

2 A. Yes, I am.

3 Q. Could you go to page 2? Actually it says 1 on
4 the top right but it is the second page of the exhibit.
5 What year was this complaint filed?

6 A. This is 2008.

7 Q. What were you complaining about?

8 A. It looks like I complained about several boats
9 being left on my property.

10 Q. Did you know who the owner was?

11 A. I don't believe I did.

12 Q. So obviously you called the police. Were the
13 boats moved to your knowledge?

14 A. I don't remember if they were.

15 Q. Okay.

16 Could you please go to the -- sort of the last
17 sentence right above where it says recommendation and
18 read that to the Court?

19 A. A short while later Officer Smith informed me
20 that he had located the owner of the two kayaks and they
21 will be removed later today.

22 Q. Could you go to the next page and just read the
23 last paragraph?

24 A. In that investigation I made contact with Timothy
25 Allen, 32 Concord Street, Peterborough, New Hampshire,

1 and informed him of the complaints about the kayaks. I
2 asked him if he would have a problem moving the kayaks
3 to the public property owned by the Kennebunkport
4 Conservation Trust, he said that he would have no
5 problem moving his two kayaks further down the beach
6 later that day when his family visited the beach later
7 that morning.

8 Q. Did you ever have problems with issues with
9 people camping out on your dune grass?

10 A. Camping out?

11 Q. Well, staying or stopping, picnicking, doing
12 beach activities on your dune grass?

13 A. Yes, and the dune grass has been roped off.
14 Marie and I and Mrs. Emmons have kept our dune grass
15 roped off.

16 Q. Did you ever see people going into the dune
17 grass?

18 A. Yes, I have.

19 Q. And in those instances did you do something about
20 that?

21 A. I would ask them to get off the dune grass, yes,
22 if I had the opportunity.

23 Q. Did they do that?

24 A. Yes, they did.

25 Q. Okay.

1 MR. LEONI: Donna, that's all I have for
2 now. Thank you very much.

3 THE COURT: Miss Hewey.

4 CROSS EXAMINATION

5 BY MS. HEWEY:

6 Q. Good morning, ma'am.

7 A. Good morning.

8 Q. Before I ask you some questions I would just like
9 to have you mark with our trusty Sharpie where your
10 property is on this map?

11 A. (Witness complies.)

12 Q. Just put your initials next to it.

13 A. (Witness complies.)

14 Q. Thank you. You may take the stand.

15 So your property, just so we get it oriented on
16 the beach, is to the east of The Tides Inn; is that
17 right?

18 A. Yes, it is.

19 Q. And so Miss Henricksen's property is next to you
20 on the east, right?

21 A. That's right.

22 Q. And on the west we have Miss Emmons' property; is
23 that right?

24 THE COURT: East or west?

25 Q. Okay, on the right, that would be the west --

1 A. Yes.

2 Q. -- is the Henricksen property. On the left, that
3 would be the east, is the Emmons' property, right?

4 A. That's correct.

5 Q. And then after that is property that's currently
6 owned by the KCT, correct?

7 A. Yes.

8 Q. And coming down into your property there are a
9 number of public rights-of-way; is that right?

10 A. Coming down onto my property?

11 Q. Coming down around your property, in the vicinity
12 of your property.

13 A. In the vicinity of my property I think there's
14 one, two -- well to the left of Mrs. Emmons' property.

15 Q. Okay, there's Bel-Air Ave, correct?

16 A. I guess so.

17 Q. And then there's Belvidere Ave, correct?

18 A. Belvidere Ave does have an entryway, yes.

19 Q. And does Bellevue Ave have an entryway as well?

20 A. Yes, I think so.

21 Q. What about Edgewood?

22 A. Edgewood, yes. I am not sure where all the
23 entryways are.

24 Q. Okay.

25 A. I know there is one public access way beyond

1 Mrs. Emmons' property.

2 Q. In any case there are a number of public access
3 ways in the vicinity of your property, correct?

4 A. There are a number of access ways.

5 Q. And just so we again orient your property with
6 respect to the public beach, are you aware -- I know you
7 haven't been at this trial throughout the entire time
8 but are you aware that every witness who has testified
9 so far has testified that the public beach starts at
10 The Tides and goes past the KCT property?

11 MR. LEONI: Objection.

12 THE COURT: I am not sure that every witness
13 has said that but many witnesses have said that. Let's
14 put many and not every.

15 MS. HEWEY: Okay.

16 BY MS. HEWEY:

17 Q. Are you aware that many of the witnesses that
18 have testified in this trial have testified that the
19 public beach starts at The Tides property and goes
20 through at least the KCT property?

21 A. I am aware that people reference the public area
22 of the beach as being east of The Tides.

23 Q. Okay, and your property is certainly east of
24 The Tides, correct?

25 A. That's correct.

1 Q. And you have testified that you have owned the
2 property since '95, right?

3 A. Yes, I have.

4 Q. And so you wouldn't have any knowledge of use
5 before that time, right?

6 A. No.

7 Q. Okay.

8 Since '95 until today you said I think that
9 there's been a bit of an increase of usage in front of
10 your house, right?

11 A. Yes.

12 Q. And it is fair to say that usage of the beach in
13 front of your house includes your family, right?

14 A. My family, yes.

15 Q. Your neighbors?

16 A. Yes.

17 Q. Friends?

18 A. Yes.

19 Q. And people you don't know?

20 A. And people that I don't know.

21 Q. Some of those people may be back-lot owners and
22 some of them may be members of the public, right?

23 A. Yeah. I don't know if I don't know them.

24 Q. On any given day when the weather is good and
25 it's in the summer you are going to see several

1 different groups of people using the beach in front of
2 your house, right?

3 A. I may.

4 Q. And in terms of your own usage you said that you
5 were first introduced to Goose Rocks Beach when you went
6 to The Tides in '93 or '94, right?

7 A. Yes.

8 Q. And Miss Henricksen told you where her beach was
9 when you stayed there?

10 A. Yes, she did.

11 Q. But she didn't tell you that you were restricted
12 to using only that beach, did she?

13 A. I don't remember.

14 Q. And in fact during the time that you -- well,
15 during the time that you've been staying at Goose Rocks
16 Beach from '93 to the present you have traveled the full
17 length of the beach, right?

18 A. I have.

19 Q. And you and your family have done beach stuff on
20 the beach?

21 A. Yes, we have.

22 Q. Including things like playing Wiffle Ball and
23 other games and swimming and walking and building sand
24 castles?

25 A. We have done different activities on the beach.

1 Q. When you have done activities on the beach you
2 haven't asked for -- on the beach other than in front of
3 your property you haven't asked for permission of the
4 owners, correct?

5 A. Well, we stay in front of our property.

6 Q. Okay. Well, when -- you said that you have
7 traveled the full length of the beach?

8 A. Well, if I travel the full length of the beach it
9 is generally for walking.

10 Q. Okay, and when you do that you don't ask for
11 permission from the people whose property you are
12 passing in front of, right?

13 A. I generally pass in front of my own to get to the
14 water and then I walk along the waters edge.

15 Q. Okay, so you are walking in the tidal zone
16 usually; is that right?

17 A. Yes.

18 Q. But on the wet sand, not in the water?

19 A. It depends on the day and the water temperature I
20 guess.

21 Q. When you are walking on the wet sand have you
22 requested the permission of the property owners that you
23 are passing in front of?

24 A. No.

25 Q. Okay.

1 Now, you said that with respect to your beach a
2 few people have asked for your permission but a number
3 of people it is fair to say have not asked for your
4 permission to use the beach, right?

5 A. That's right.

6 Q. Some of the people that have used the beach and
7 not asked for permission have done things that you find
8 objectionable, right?

9 A. That's correct.

10 Q. And you said that on occasion you have asked them
11 to move and they have not done so, right?

12 A. That's correct.

13 Q. And on occasion when you asked them to move and
14 they haven't done so they have told you that they
15 believe that they have a right to use the beach in front
16 of your house, right?

17 A. No, those are your words, not mine. I haven't
18 said that.

19 Q. Okay.

20 Let's take a look at your deposition that was
21 taken in this case, and I want to specifically direct
22 you to pages 108 and 109 and it is really on 109 but if
23 you want to get some context you are welcome to do so.

24 All set?

25 A. Yep.

1 Q. Okay. So -- in this deposition you were being
2 asked some questions about a time when somebody built a
3 campfire on your property and you asked them to leave
4 and the question was, did anyone indicate to you that
5 they thought they were on the public part of the beach,
6 and your answer was they indicated that they thought
7 they could be wherever they wanted to be.

8 Is that true?

9 A. That's probably what they said.

10 Q. Now, with respect to these campfires, it's fair
11 to say that over the time that you have owned your
12 property people have set campfires on a fairly routine
13 basis; is that right?

14 A. Yes.

15 Q. And at times you have objected but those
16 campfires have continued notwithstanding your objection;
17 is that right?

18 A. Yes.

19 Q. Now, I want to ask you to look at Exhibit 103,
20 the pictures. So if we look at Lencki photograph 1,
21 which is the first page of Plaintiff's Exhibit 103, we
22 can see the SUV or whatever kind of car it is, not -- I
23 am not a car person -- parked there that you said was
24 from Hidden Pond, right?

25 A. Yes.

1 Q. Incidentally, Hidden Pond is owned by
2 Tim Harrington; is that correct?

3 A. That's correct.

4 Q. Tim Harrington owns The Tides Inn as well?

5 A. The Tides Beach Club, yes.

6 Q. So he has -- he's using his -- using property
7 near property that he owns for a different property, is
8 that the way you understand it?

9 A. When this picture was taken he didn't own
10 The Tides Inn or The Tides Beach Club.

11 Q. Okay.

12 Now, looking specifically at Plaintiff's Exhibit
13 103 we can see to the right of the vehicle an access
14 point. Do you see that?

15 A. I do.

16 Q. There are a number of signs by the access point.
17 Are those signs to your understanding that are posted by
18 the Town of Kennebunkport?

19 A. I have no idea who does them.

20 Q. Could you just tell me what the signs say?

21 A. I think one is an advisory on the water, about
22 the water, the state of the water.

23 Q. Do you know what the others are?

24 A. One says no traffic and that's -- I can't read
25 them.

1 Q. Okay. Do you remember that there are signs
2 posted in front of your property by the access way to
3 the beach?

4 A. Yes, I know there are signs there.

5 Q. Can you just generally tell us from memory what
6 those signs are advising people about?

7 A. I think they advise -- well, first of all,
8 there's not a public sign, it is not a public access
9 sign and I think they -- one is a water advisory sign
10 and one may be -- I don't know what the other one is, I
11 can't see.

12 Q. Okay. There's also next to the signs a garbage
13 can. Is that a garbage can that you have put there or
14 is that a garbage can that the town has put there?

15 A. I didn't put it there.

16 Q. Okay, and you don't know whether or not the town
17 put it there?

18 A. I think the town put it there.

19 Q. And you have seen the town from time to time
20 picking up garbage from that, that receptacle, correct?

21 A. Yes.

22 Q. Now, looking at the beach out in front you have
23 identified some Hidden Pond folk with blue chairs,
24 right?

25 A. I am sorry, do you want me to -- on the same

1 picture?

2 Q. Yes.

3 A. I don't see -- I just see the Hidden Pond person
4 in the back of the vehicle.

5 Q. Okay, so they hadn't put their chairs out yet; is
6 that right?

7 A. Right.

8 Q. The people out on the beach, however, there are a
9 number of groups of people out on the beach that we can
10 see in Lencki photograph 1. Are those people that
11 you -- are those all people that you know?

12 A. I -- they are in front of what would have been
13 Marie's property and I have no idea if I know them or
14 not.

15 Q. Okay.

16 So let me ask you this way, on a regular nice day
17 in the summer is the scene that we see in Lencki
18 photograph 1 with various groupings of people across the
19 beach including Marie's property, would that -- would
20 it -- essentially the same amount of people be likely to
21 be seated in front of your property?

22 A. You know, there could be. It depends on the day.

23 Q. Okay, that would not be a -- that would be a
24 likely event on a summer day; is that right?

25 A. To see people in front -- on the beach, yes.

1 Q. Sitting there, doing beach things?

2 A. Yes.

3 Q. And they would be on the wet sand and the dry
4 sand; is that correct?

5 A. They may be.

6 Q. Now I just want to ask you to take a quick look
7 at Exhibit 9, and when I say 9 I mean 109, you knew.

8 A. Okay.

9 Q. You gave some testimony about your concern that
10 people were using the access way to get to the beach and
11 this was one of your complaints about that, right?

12 A. 109?

13 Q. Yes.

14 A. I think this is -- this complaint is about the
15 cutting of the bushes and the bike rack.

16 Q. Okay, and it's on Belvidere Avenue?

17 A. No, this would be on Kings Highway.

18 Q. My notes are not as good as I had hoped, I guess.

19 In that case I have no further questions. Thank
20 you.

21 THE COURT: Mr. Duchette.

22 CROSS EXAMINATION

23 BY MR. DUCHETTE:

24 Q. Good morning.

25 A. Good morning.

1 Q. When -- I think you testified earlier in response
2 to Attorney Hewes' questions that for the most part
3 your -- you, your family and your guests recreational
4 activities on the beach are in front of your property?

5 A. Yes.

6 Q. And you never stray left or right from the
7 boundaries of your property on the beach when you are
8 participating in these activities?

9 A. I don't believe I said never.

10 Q. So you do sometimes?

11 A. There may be occasion, yes.

12 Q. And so on those occasions have you asked
13 permission from the beach-front owners to use their
14 property for those recreational activities?

15 A. Well, it is generally in the proximity with
16 Marie's property or with Mrs. Simmons' property, so yes.

17 Q. And they have given you expressed permission to
18 use their properties?

19 A. I believe it is implied permission.

20 Q. So what do you mean by implied permission, is
21 that meaning that they haven't given you verbal or
22 written permission but since they haven't objected you
23 have assumed you have their permission?

24 A. I think of it more as the three of us are good
25 neighbors, we are stewards of the land in front of us

1 and we just make sure we take care of our land and go
2 back and forth between our land as, you know, we
3 recreate on the beach.

4 Q. But they haven't -- but you haven't given each
5 other verbal permission, correct?

6 A. No, no need.

7 Q. Written permission?

8 A. No written permission.

9 Q. Sent an e-mail?

10 A. No.

11 Q. And you indicated earlier -- I think you
12 indicated -- that Goose Rocks Beach is an enjoyable
13 beach?

14 A. Yes, it is.

15 Q. As a result you have allowed people to use it,
16 correct?

17 A. Yes.

18 Q. And those people being back-lot owners?

19 A. Yes.

20 Q. People who live in and around your neighborhood?

21 A. Yes.

22 Q. As well as members of the general public?

23 A. People that -- yes.

24 Q. People who don't live in Goose Rocks?

25 A. Right.

1 Q. And when you say you have allowed people to do
2 that, what do you mean by allowed, have you given them
3 your expressed permission?

4 A. No.

5 Q. So explain that to me. What do you mean by I
6 have allowed people to do that?

7 A. I have allowed -- people use the front of our
8 beach and if I don't find their behavior objectionable
9 then I am very comfortable with them using the front of
10 the beach.

11 Q. Okay, and so -- and you -- you live -- your house
12 is on the landward side of Kings Highway, correct?

13 A. That's right.

14 Q. And that's in the area of Belvidere Avenue,
15 correct?

16 A. Yes.

17 Q. I think Bellevue Avenue is around there,
18 Edgewood, and do you know and/or recognize some of the
19 people who live on those same back-lot streets as you
20 do?

21 A. Yes, I do.

22 Q. Have they used the beach in front of your
23 property?

24 A. Yes, they have.

25 Q. Okay, and you already testified earlier you

1 haven't given them expressed permission to be there,
2 correct?

3 A. That's right -- some I have.

4 Q. And they have engaged in activities such as
5 walking?

6 A. Yes.

7 Q. And again all in front of your property, walking?

8 A. Yes.

9 Q. Sitting?

10 A. Yes.

11 Q. Building sand castles?

12 A. Yes.

13 Q. Playing beach games?

14 A. Yes.

15 Q. And that has occurred since you have owned your
16 property in 1995?

17 A. Yes.

18 Q. One last question. Do you sometimes park your
19 cars on Kings Highway and not in your driveway?

20 A. Yes.

21 MR. DUCHETTE: No further questions.

22 THE COURT: Mr. Stern.

23 CROSS EXAMINATION

24 BY MR. STERN:

25 Q. Good morning. You testified that with respect to

1 Exhibit 108 that there were boats, I guess kayaks left
2 on your property and you objected to that?

3 A. Yes.

4 Q. Were they in the dry-sand area or the intertidal
5 area?

6 A. They were in the dry sand.

7 Q. Can you look at Exhibit 103 -- I think those are
8 the photographs -- and look at photograph 10? What does
9 that photograph depict?

10 A. That photograph depicts one of the public access
11 ways that is east of my property, east of Mrs. Emmons'
12 property.

13 Q. So that's about three lots away from you?

14 A. Three or four, I think, yeah.

15 Q. And is -- I can't read all those signs. Are you
16 familiar with all those signs?

17 A. I am familiar with the public access sign, which
18 is the green sign, and the water advisory sign seems
19 familiar to me.

20 Q. Do any of them state that anyone walking down
21 that access way is limited to stay on the access way
22 down to the beach?

23 A. Not that I'm aware.

24 Q. I understand the way your property is set up,
25 your house is on the landward side of Kings Highway and

1 then the seaward side of Kings Highway is vacant?

2 A. That's right.

3 Q. When someone crosses the vacant property not on
4 one of the access ways and you see it do you tell them
5 not to do that?

6 A. No.

7 Q. Let me rephrase that.

8 You see someone waking across your vacant
9 property across the street, not on one of the access
10 ways, do you object to that?

11 A. Well, I would object if they are on the sea grass
12 or if they are doing something objectionable, but they
13 would typically go through the public access way.

14 Q. But if they walked over your vacant property you
15 would object if it --

16 A. If they walked over the vacant property, yes, all
17 the vegetation and the sand, yes.

18 Q. You testified that you engaged in bike riding
19 down on the beach.

20 A. Did I say that? I don't think I said bike
21 riding, did I?

22 Q. Yes. I just want to clarify. Did you bike ride
23 on the beach or bike ride on Kings Highway or both?

24 A. I bike ride on Kings Highway, I don't think I
25 said on the beach.

1 Q. You also testified that you walked up and down
2 Goose Rocks Beach primarily in the intertidal area?

3 A. Yes.

4 Q. How old are your children?

5 A. My daughter is 20 and my son is 16.

6 Q. So they have walked with you since they have been
7 very small?

8 A. Yes, they have.

9 Q. Have you ever pushed them in a stroller on the
10 beach?

11 A. When they were younger I pushed my son in a
12 stroller.

13 Q. And you also testified that sometimes when you
14 walked along the beach in the intertidal zone sometimes
15 you actually walked in the water?

16 A. I walk -- yes.

17 Q. Did your children do that as well?

18 A. Yes.

19 Q. And did your children occasionally stop and play
20 at a particular location next to the water not in front
21 of your house?

22 A. Yes.

23 MR. STERN: Nothing further. Thank you.

24 THE COURT: Mr. Driver.

25

1 CROSS EXAMINATION

2 BY MR. DRIVER:

3 Q. Good morning, Miss Lencki.

4 You were just asked about parking your cars on
5 Kings Highway. You have a fairly large driveway, don't
6 you?

7 A. I have, yes, I have a driveway.

8 Q. You can probably fit six cars in it?

9 A. I don't think it fits six, maybe three or four.

10 Q. Okay, and the reason you park on Kings Highway?

11 A. The reason that I park on Kings Highway?

12 Q. Yes.

13 A. Well, the reason that I parked on -- before this
14 year I haven't parked on Kings Highway. This is the
15 first year I have gotten a permit. I have had my tar
16 taken out of the driveway and put in grass so I am
17 letting the grass grow on the driveway.18 Q. Could you look at Exhibit 102, please? Is that a
19 letter dated August 5th --

20 A. Yes.

21 Q. -- of '09?

22 A. Yes.

23 Q. And that's to Larry Mead, the manager?

24 A. Yes.

25 Q. And you were complaining about a bike rack?

1 A. Yes.

2 Q. And the bike rack was on Kings Highway, wasn't
3 it?

4 A. The bike rack was placed in front of Belvidere on
5 Kings Highway.

6 Q. On the Kings Highway but you were complaining
7 about having a bike rack in the right-of-way of Kings
8 Highway.

9 A. I was complaining because there was a bike rack
10 placed in front of Belvidere and that they had also cut
11 the vegetation where I have routinely roped off to
12 protect the sea roses and the grass.

13 Q. Do you know how wide the right-of-way is for
14 Kings Highway?

15 A. The Kings -- do I know how --

16 Q. Wide the right-of-way is for Kings Highway, how
17 much does the town own?

18 A. I don't have any idea.

19 Q. You don't know.

20 Do you know that the sea roses you were
21 complaining about were on town property?

22 A. I don't believe that they are.

23 Q. Do you know that the bike rack was on town
24 property?

25 A. I don't believe -- the bike rack was new as of

1 that year.

2 Q. How about the fire hydrant that is right there,
3 is that on town property or on your property?

4 A. I think that the town maintains it but if you
5 read my deed it is pretty clear that my property extends
6 to the ocean.

7 Q. Does your deed show that you own Kings Highway?

8 A. My deed reads as if my property extends to the
9 ocean.

10 Q. Continuously across -- from Belvidere down to the
11 low watermark of the ocean?

12 A. I don't think there's a distinction in my deed
13 about Kings Highway.

14 Q. So why do you let traffic move down Kings Highway
15 if you own it?

16 A. I am not responsible for the traffic.

17 Q. Okay. Other than the bikes and the fires and the
18 Hidden Pond dropping people off, is there anything else
19 that you have complained about?

20 A. Drinking.

21 Q. Drinking?

22 A. You know, big, large groups of people drinking
23 and leaving their trash.

24 Q. The path at the end of Belvidere, whose property
25 is that on?

1 A. The path --

2 Q. The path going to the beach at the end of
3 Belvidere, whose property --

4 A. I think there's a question on -- as to what part
5 of the path is either owned by it would now be
6 Tim Harrington or formerly Marie or me. What I do know
7 is that we have always kind of roped off the path.

8 Q. Do you know how long that path has been there?

9 A. I don't.

10 Q. Do you know whether it was there before you
11 bought your property in '95?

12 A. Yes, the path was there.

13 Q. It was there. Do you know for how long before
14 '95 it was there?

15 A. No, I don't.

16 Q. Do you recognize that people on Belvidere and
17 Wildwood and back-lot property owners have used that
18 path for decades?

19 A. I recognize that people have used the path, yes.

20 Q. And do you have any right to exclude people from
21 using that path?

22 A. I believe that I have rights to my own personal
23 property.

24 Q. You indicated that Al Roberts and the Parkers had
25 asked you for permission to use the beach.

1 A. I indicated that Al Roberts and I had a
2 conversation, he and I actually knew each other before I
3 bought the property so we had a very friendly
4 conversation when I first moved into the house.

5 Q. And what was the conversation regarding use and
6 the beach?

7 A. It is great you are here, we will see you on the
8 front, and typically Al and Simone don't use the beach,
9 they walk on Belvidere and go down and walk the beach
10 together. As long as I have known Al and Simone they
11 generally don't sit on the beach.

12 Q. How about the Parkers?

13 A. The Parkers? The question, I am sorry?

14 Q. The question is did they ask you for permission
15 to use the beach?

16 A. Yes. Yep, and It was similar when I first bought
17 the property, people came up and introduced themselves
18 and we had very casual and comfortable conversation, and
19 I am very friendly with all of the people like the
20 Parkers, we would often sit on the beach together.

21 Q. How about John Marcos, did he come and ask you
22 for permission to come and sit on the beach --

23 A. I don't know John, I don't think he is there
24 often.

25 Q. He isn't going to be there anymore.

1 How about the Dolbeares, did they come in and ask
2 you for permission to use the beach?

3 A. Mr. Dolbeare and I had a conversation very early
4 on and in fact we have become very close friends with
5 their family, their extended family and some of the
6 people that stay on the properties next-door to them and
7 they will be in front of my beach, in front of my
8 property.

9 Q. So is your testimony that the Dolbeares came to
10 you and said we have used the beach before, we know you
11 own it and can we now use the beach, can we sit on your
12 property?

13 A. I don't believe the conversation went like that
14 but it was a very friendly conversation when I first
15 bought the property and we talked about the front of the
16 beach and we all sit out there.

17 Q. How about the Drivers, do they come and ask you
18 for permission?

19 A. I don't know.

20 Q. You don't know the Drivers?

21 A. I know some people by recognition but not by
22 name.

23 Q. Okay.

24 Let me show you a picture that was marked at your
25 deposition. Could you look at Exhibit 103, number 3?

1 A. Okay.

2 Q. Looking at that Exhibit would you say that shows
3 a typical nice summer day at the beach in front of your
4 property?

5 A. I would say that that's a typical day, and the
6 atypical would be that somewhat from Hidden Pond is
7 escorting guests.

8 Q. And you know it is Hidden Pond because they are
9 carrying beach chairs?

10 A. The green chairs and the umbrella.

11 Q. And an umbrella. So anybody who has beach chairs
12 and carries an umbrella is coming from Hidden Pond?

13 A. No, the SUV was parked out in front and they have
14 very distinct chairs.

15 Q. Was the SUV parked in a parking spot?

16 A. No.

17 Q. It was just parked to let people off?

18 A. It was just running and bringing -- escorting
19 guests to the beach.

20 Q. Are you aware that the town worked out some
21 arrangement with Hidden Pond to avoid traffic congestion
22 and not dropping people off at the extension of
23 Dyke Road?

24 A. No.

25 Q. No?

1 A. No.

2 Q. But do you have an objection to Hidden Pond
3 dropping the people off at the end of Belvidere?

4 A. They were dropping the people off, leaving the
5 SUV running and escorting the people onto my property in
6 front of my home, that's what I had an objection to.

7 Q. Okay, so the general public and the back-lot
8 owners can use the beach in front of your property but
9 the guests at Hidden Pond are not allowed to use the
10 beach in front of your property, is that what you are
11 saying?

12 A. The guests at Hidden -- this was a new practice
13 and I found objection to Hidden Pond escorting their
14 guests and putting them on my property, so, yes, I found
15 that objectionable.

16 Q. So you make a distinction between guests at
17 Hidden Pond and the general public coming onto your
18 property?

19 A. I would make a distinction between Hidden Pond
20 and the people that I am comfortable with coming onto my
21 property.

22 Q. Tell me who the people are you are comfortable
23 with.

24 A. People who are respectful to the land and taking
25 good care of my property while they are sitting on it.

1 Q. Were the guests from Hidden Pond disrespectful
2 for the land?

3 A. The guests from Hidden Pond were -- I actually
4 have no idea. It was more about Hidden Pond adopting a
5 practice of bringing people and putting them on my
6 property.

7 MR. STERN: Thank you.

8 THE COURT: Mr. Lachiatto?

9 MR. LACHIATTO: No questions.

10 REDIRECT EXAMINATION

11 BY MR. LEONI:

12 Q. Just a few, Donna.

13 A moment ago Miss Hewey asked you a few questions
14 about your deposition and she especially pointed you to
15 pages 108 and 109 of your deposition. I am just going
16 to actually give that to you.

17 A. Okay.

18 Q. So looking at the same area that Miss Hewey asked
19 you to look at, and specifically on page 109 lines 2
20 through 3, do you see -- is this an incident that
21 Miss Hewey was directing you to just a few moments ago?

22 A. I am not sure but I think it is close to it, yes.

23 Q. Do you see where you say that this is, quote, one
24 of the campfire incidents on lines 2 through 3?

25 A. Yes.

1 Q. Okay, and as a result -- one of the campfire
2 incidents, is this one of the incidents where you called
3 the police?

4 A. I am not sure if I called -- I don't know, I
5 would have to read more to see if this is one of the
6 incidents. There were times that I called the police or
7 didn't call the police and people would move on their
8 own.

9 Q. When did you not call the police?

10 A. When people would move when I asked them to.

11 Q. Okay, and if you look there are you talking about
12 an incident where the people did not move and say that
13 they had a right to be there?

14 A. Yes.

15 Q. And so when they would do that, would you call
16 the police if they said that they had a right to be
17 there?

18 A. Yes, yeah, I would call the police. In years
19 past they would come and move them and other times --
20 and in these later years they haven't.

21 Q. So following that incident if the police didn't
22 move them, is that one of the reasons why you joined
23 this lawsuit?

24 A. That's one of the reasons, yes.

25 MR. LEONI: Thank you.

1 THE COURT: Okay, are we all set with
2 Miss Lencki?

3 Miss Lencki, thank you kindly. You may step
4 down.

5 (Witness excused.)

6 MR. THAXTER: Mary Lou Emmons.

7 THE CLERK: Please raise your right hand and
8 please state and spell your name for the record.

9 THE WITNESS: Mary Lou Emmons, M-A-R-Y L-O-U
10 E-M-M-O-N-S.

11 Thereupon,

12 MARY LOU EMMONS

13 was called as a witness and, after having been duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. THAXTER:

17 Q. Mary Lou, good morning.

18 A. Good morning.

19 Q. You are a quiet speaker so make sure you speak up
20 so everybody can hear you.

21 A. Yes.

22 Q. Would you tell me how old you are, Mary Lou?

23 A. I am 86.

24 Q. And can you tell me where you grew up?

25 A. I grew up in Massachusetts.

1 Q. What was your connection to Goose Rocks Beach?

2 A. My husband's aunt, Helen Emmons Reoch, had
3 property there.

4 Q. Do you know when she first had property there?

5 A. She bought the land in 1925 and had the cottage
6 built in 1927.

7 Q. Is that the cottage on -- right on Goose Rocks
8 Beach next to Donna Lencki that she just testified
9 about?

10 A. It is.

11 Q. Okay, and is there another property that they
12 bought called the Clock Farm?

13 A. Yes.

14 Q. Where is that?

15 A. That's about three-quarters of a mile from
16 Goose Rocks Beach.

17 Q. And are both houses still in the family now?

18 A. Yes.

19 Q. When was the Clock Farm built?

20 A. In 1777.

21 Q. And your family acquired it in 1892?

22 A. Yes.

23 Q. And can you tell me when you first came to
24 Goose Rocks Beach?

25 A. August 1948.

1 Q. Was that with your husband, you were married at
2 the time?

3 A. No, he was my boyfriend and he took me up to
4 introduce me to Aunt Helen.

5 Q. Okay, and did you go down to the beach back then?

6 A. We did, she asked us to walk the dog and there
7 were no restrictions at the time so we did.

8 Q. Did you at some point in time come to spend some
9 summers there?

10 A. Yes.

11 Q. Where did you stay when you spent summers?

12 A. We stayed with Aunt Helen at the cottage.

13 Q. When you stayed at the cottage, that's the one on
14 Goose Rocks Beach?

15 A. Yes.

16 Q. What number is that, is Kings Highway?

17 A. 258 Kings Highway.

18 Q. And were you spending summers there in the 1950's
19 and '60s?

20 A. 1953 we were married and we spent some time there
21 in the '50s and '60s.

22 Q. And what was it like back then compared to today
23 in terms of the number of people?

24 A. Oh, there were very few people on the beach. It
25 was very private, very quiet.

1 Q. And do I understand that 258, like Donna's house,
2 the house is on the non-beach side of Kings Highway?

3 A. Yes.

4 Q. And you own a separate lot or there's a separate
5 lot on the other side of Kings Highway, right --

6 A. Yes, we do.

7 Q. -- the beach side?

8 Do you pay separate taxes for that lot?

9 A. Yes, we do.

10 Q. Did you continue to come through the '70s and the
11 '80s?

12 A. Yes, we did.

13 Q. And what was it like in the '70s and the '80s
14 there?

15 A. It was very quiet.

16 Q. And at some point did you purchase 258, did you
17 and your husband purchase 258 Kings Highway?

18 A. No, my husband's aunt died in 1982 and she left
19 it to my husband.

20 Q. Okay, and so from 1982 that's been your property?

21 A. Yes.

22 Q. Do you also own the Clock Farm?

23 A. Yes, we do.

24 Q. And today where do you spend most of your time?

25 A. At the Clock Farm --

1 Q. But --

2 A. -- my home.

3 Q. -- in 19 -- in the 1980s where were you spending
4 most of your time?

5 A. In 1982 my husband and I spent a lot of time at
6 the beach because that's when he acquired it.

7 Q. Okay, and you have how many children?

8 A. Four.

9 Q. And do the children spend time with you at the
10 beach?

11 A. Yes, they do.

12 Q. And when they went to the beach what area of the
13 beach did they use?

14 A. Mostly the area where we are now.

15 Q. Back in the 80's when you were there were members
16 of the public using the beach also?

17 A. Yes.

18 Q. Did you have any problem with that?

19 A. No.

20 Q. Did they interfere with your use in any way of
21 the beach?

22 A. Never.

23 Q. Now, do you clean the beach, you or your family?

24 A. We did.

25 Q. Do you still do that?

1 A. No, we don't. My husband was a handicapped
2 person, he had cerebral palsy, and in the spring and
3 fall we cleaned the lot out front ourselves, by the sea
4 wall.

5 Q. Does your son clean the beach now for you?

6 A. They did, yes.

7 Q. And has the town ever cleaned your beach that you
8 know of?

9 A. Not that I know of.

10 Q. Has the town -- has the town ever put a lifeguard
11 stand on the beach?

12 A. A lifeguard?

13 Q. Yes.

14 A. When Aunt Helen was there there was a lifeguard
15 but I can't remember exactly what year that was. It was
16 to the left.

17 Q. Okay.

18 Would you look at Exhibit 15, and I put it right
19 out there, page 61, and I just want to confirm, this is
20 an exhibit already in evidence, and this exhibit
21 involves the efforts by the town of the conservation
22 trust to get the property gifted to them in the 1970s
23 and I just want to confirm that that -- on page 61 that
24 that -- is that your aunt's name, Prendergast?

25 A. Yes, it is.

1 MS. HEWEY: What exhibit are you talking
2 about?

3 MR. THAXTER: Exhibit 15.

4 BY MR. THAXTER:

5 Q. That's your aunt's name and address there?

6 A. Yes, it is.

7 Q. That's all I need for that.

8 Now, the next lot over to you right now is owned
9 by the conservation trust, correct?

10 A. Yes.

11 Q. And before it -- before that you did know the
12 neighbors, what was their name, was it Nickerson?

13 A. The Nixons.

14 Q. Nixons?

15 A. Yes.

16 Q. And they owned the property that is now the
17 conservation trust property?

18 A. Yes, they did.

19 Q. Do you know if your Aunt Helen was approached by
20 the conservation trust to give the property to them?

21 A. I think at the time it was the Kennebunk
22 Conservation Commission and it was part of the town, not
23 the trust.

24 Q. Do you think that they -- do you know if they
25 contacted your Aunt Helen or Aunt Helen --

1 A. I believe they did because I found that letter
2 later on relating to taxes.

3 Q. And have you been contacted by the conservation
4 trust to give your property to them?

5 A. Yes, I was.

6 Q. Now, do I understand that now -- do you rent the
7 house now?

8 A. Occasionally on -- one week in June, and my
9 daughter-in-law's mother comes in August.

10 Q. So -- but you don't actually right now, you don't
11 go down to that house?

12 A. No.

13 Q. Is it your children that are using the house now?

14 A. They used it July and August.

15 Q. Has there ever been an incident where something
16 happened on the beach that you didn't like? Was there
17 an incident with a Catamaran?

18 A. No, it was mostly the Catamaran, it stayed there
19 all summer long.

20 Q. When was this?

21 A. 2005.

22 Q. Did you try -- did you take some action regarding
23 the Catamaran?

24 A. Well, I called the harbor master at Kennebunkport
25 and the harbor master at Cape Porpoise, and they had no

1 jurisdiction over Goose Rocks Beach, then I got the name
2 of a marine sheriff, but by the time that happened it
3 was the end of the season and someone came and took the
4 Catamaran away.

5 In 2006 it reappeared and my daughter-in-law
6 finally got a number for me to call. I called the
7 number and the woman said, oh, he is not here. He will
8 be back Tuesday and I told her my story and it
9 disappeared in two days and I never saw it.

10 Q. And your objection to that was that is it blocked
11 your view in part too?

12 A. It was right in the middle of the picture window
13 and it made a noise all night long, I don't know what it
14 was.

15 Q. Do I understand that you are not much of a beach
16 person?

17 A. No, I am not. I like to walk on the beach, I
18 always walk every morning around 5:30 to the east end of
19 the beach on the wet sand.

20 Q. And when you take your walks who else -- do you
21 see anybody out there?

22 A. The only person I saw was Mr. Eugene Gray with
23 his dog.

24 Q. When were you -- you don't walk the beach now,
25 right?

1 A. No, I don't. I --

2 Q. When were you doing the walking?

3 A. 1982 to 1990, that's when I walked every morning
4 at 5:30, then we moved to the farm in 1990, I walked
5 from the farm down to the beach and back to the farm.

6 Q. Now, since 2000 have you been down on the beach
7 and had a chance to observe how many people are there?

8 A. I have occasionally.

9 Q. Has there been a change from the early days when
10 you used to go to the beach, just in terms of --

11 A. Yes, I find the beach is more littered and there
12 are so many more people on the beach.

13 Q. Who -- you don't deal with the beach issues
14 anymore yourself, is that correct, you are not down at
15 the house in the summer?

16 A. I go there but I don't like to go alone because
17 it is not handicapped accessible.

18 MR. THAXTER: Thank you very much.

19 CROSS EXAMINATION

20 BY MR. DUCHETTE:

21 Q. Good morning.

22 A. Good morning.

23 Q. I think you were here earlier this morning when
24 you heard Miss Lencki testify, correct?

25 A. Yes.

1 Q. And she indicated that you have never given her
2 any expressed permission to be on the beach in front of
3 your property, correct?

4 A. Pardon me?

5 Q. You have never given her permission to be on the
6 property in front of your --

7 A. Not explicit permission.

8 Q. Okay. What kind of permission did you give her?

9 A. It is the same permission that anyone else would
10 have that goes onto the beach. Aunt Helen said it was a
11 private beach with -- to which the public always had
12 access, so that's how I view it.

13 Q. And again my question is so what -- so if I was a
14 back-lot owner what kind of permission would you have
15 given me? How would I know if I was -- whether or not I
16 was allowed to use your beach?

17 A. You would just walk onto the beach.

18 Q. And have -- and again I think you live in the
19 area of or your home is in the area of Bellevue and
20 Belvidere Avenue?

21 A. Yes.

22 Q. And are there several back-lot homes in that
23 area?

24 A. Yes.

25 Q. Extending up to Wildwood and even past Wildwood?

1 A. Yes.

2 Q. I think Old Proctor Road circles back as well,
3 correct?

4 A. Uh-huh.

5 Q. How many homes are back there, if you had to
6 guess?

7 A. I have no idea how many there is. There are a
8 lot of them.

9 Q. More than 50?

10 A. Probably.

11 Q. And so people who live in that area, they come
12 down the various access ways onto the beach?

13 A. Yes.

14 Q. And they have used the beach and some have use
15 the beach on your property?

16 A. Yes.

17 Q. Okay, and they have done so without your
18 permission?

19 A. Yes.

20 Q. Okay, and they have sat on the beach?

21 A. They sat on the beach, walked on the beach.

22 Q. Played beach games?

23 A. Pardon?

24 Q. Played beach games, built sand castles?

25 A. Occasionally I am seeing that, yes.

1 Q. Toss a Frisbee? Have they tossed a Frisbee?

2 A. They have but I have observed that only twice
3 myself.

4 Q. Okay, and have they been -- and have you seen
5 people and back-lot owners in that area, have they been
6 doing these activities on the beach in front of your
7 property since you have been going there?

8 A. I don't know if these are all back-lot owners or
9 people who park out front and go onto the beach. I have
10 no idea because I don't know who these people are.

11 Q. Okay.

12 A. Some people I recognize, others I do not.

13 Q. For those that you recognize have they been doing
14 these activities on the beach in front of your property
15 since you have owned it?

16 A. Perhaps they have. I don't recognize that many
17 people.

18 Q. Okay, and let's take that one step back. Have
19 people been recreating on the beach in front of your
20 property without permission since you have been going
21 there?

22 A. They probably have.

23 Q. Have you seen people you don't recognize on the
24 beach in front of your property since you have been
25 going there?

1 A. Yes, I see people I don't recognize and a few
2 that I do.

3 Q. Okay, fair enough, and that's been since 1948?

4 A. No, since 1982.

5 Q. Have you seen -- when you started visiting your
6 aunt in 1948 have you seen people on the beach in front
7 of that property that you didn't recognize or didn't
8 know?

9 A. Occasionally but there were very few people then.

10 Q. And that -- but there were back lots, there were
11 homes -- your aunt had neighbors in 1948, correct?

12 A. Yes, she did.

13 Q. Okay, and those folks used the beach, correct?

14 A. Yes.

15 Q. And in 1948 the town or the conservation trust
16 didn't own the beach-front property at that time, did
17 it?

18 A. No, they did not.

19 Q. You indicated that you -- scratch that.

20 In the '70s and '80s did you ever hear any loud
21 noise or any parties or teenagers partying in the area
22 of The Tides Inn?

23 A. I didn't, no.

24 Q. And you have rented your house in the past,
25 correct?

1 A. Just in June and then to my daughter-in-law's
2 mother.

3 Q. And do you provide -- do you provide instructions
4 with respect to where they can go and what they can do
5 on the beach?

6 A. No, I do not.

7 Q. And the farm, where is that located?

8 A. About three-quarters of a mile from the beach.

9 Q. Is that in Goose Rocks?

10 A. That's the Goose Rocks area.

11 Q. And how would you define the Goose Rocks area?

12 A. I think the entrance to the beach is Dyke Road --

13 Q. Okay.

14 A. -- and the exit I consider New Biddeford Road or
15 either --

16 Q. Okay, and below Route 9?

17 A. Yes.

18 Q. And between the Little River and the Batson
19 River?

20 A. Yes.

21 Q. So the farm is in the Goose Rocks area, and you
22 said it is about three quarters of a mile you said to
23 the beach?

24 A. Yes.

25 Q. And you have walked that distance from the farm

1 to the beach?

2 A. Yes, I have, yes.

3 Q. And that wasn't too long of a walk, right, to get
4 to the beach?

5 A. Not at that time, no.

6 Q. Fair enough.

7 MR. DUCHETTE: Thank you.

8 THE COURT: Mr. Stern.

9 CROSS EXAMINATION

10 BY MR. STERN:

11 Q. Good morning.

12 A. Good morning.

13 Q. When you walked from 1982 to 1990 along
14 Goose Rocks Beach at 5:30 in the morning were you
15 walking in the intertidal area of wet sand or were you
16 walking in the dry sand?

17 A. I was walking in the wet sand.

18 MR. STERN: Thank you.

19 CROSS EXAMINATION

20 BY MR. DRIVER:

21 Q. Good morning, Mrs. Emmons.

22 A. Good morning.

23 Q. You said your first time at Goose Rocks was in
24 1948?

25 A. Yes.

1 Q. And there were very few people you saw on the
2 beach?

3 A. Yes.

4 Q. Isn't it in fact the case that your husband's
5 aunt's house was one of the few that was still standing
6 in 1948 after the fire?

7 A. I believe so because I think another portion of
8 the beach was burned and the left side of Goose Rocks
9 Road, the fire went up there and destroyed a building
10 there that was owned by the farm, but the farm was
11 saved.

12 Q. When -- did you walk around Goose Rocks Beach
13 when you were there in that August of 1948?

14 A. We walked a short distance.

15 Q. Did you by any chance see the area that had been
16 the general store that was burnt?

17 A. The general store? I didn't notice that.

18 Q. You didn't?

19 A. No.

20 Q. How about the dance hall that was there?

21 A. I didn't notice the dance hall either.

22 Q. How about the bowling alley that was there?

23 A. No.

24 Q. Did you see the gasoline --

25 A. Yes, I saw that, and we arrived through

1 Cape Porpoise and I noticed a lot of the houses there
2 that were destroyed, just chimneys standing.

3 MR. STERN: Thank you.

4 THE COURT: Mr. Lachiatto?

5 MR. LACHIATTO: None, your Honor.

6 THE COURT: Miss Hewey?

7 CROSS EXAMINATION

8 BY MS. HEWEY:

9 Q. Very quickly, Mrs. Emmons. I wanted to identify
10 your property on this map. Don't worry, I won't make
11 you get up. It is right next to the Lencki property; is
12 that correct?

13 A. Yes, it is.

14 Q. So if I give you this Sharpie, is it right there?
15 That is Donna's right there (indicating).

16 A. Mine is here, right here.

17 Q. So I am going to circle this and then I am just
18 going to ask you to put your initials right next to it.

19 A. (Witness complies.)

20 MS. HEWEY: Thank you, ma'am. I have no
21 further questions.

22 THE COURT: Pete?

23 REDIRECT EXAMINATION

24 BY MR. THAXTER:

25 Q. Mary Lou, did you and your family have any

1 problem with the public using the beach?

2 A. No, we did not, only that Catamaran episode, it
3 was disturbing.

4 MR. THAXTER: Thank you.

5 THE COURT: Miss Emmons, thank you very
6 much. You may step down, okay? Thank you. Thank you
7 for coming today.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: We will take the morning recess.
11 Pete, where are you?

12 MR. THAXTER: The next witness is John
13 Coughlin, and he is our last.

14 THE COURT: All right, so we will be back
15 about a quarter of 11:00.

16 (Thereupon, a recess was taken, and then the
17 proceedings continued as follows:)

18 THE COURT: Once again good morning, folks.
19 Please be seated.

20 Mr. Thaxter.

21 MR. THAXTER: I would like to call John
22 Coughlin.

23 THE COURT: Mr. Coughlin, if you would come
24 right on up, please. We will ask you to stand and Miss
25 Cavanaugh, our clerk, will administer the oath.

1 THE CLERK: Please state your name for the
2 record.

3 THE WITNESS: John Coughlin,
4 C-O-U-G-H-L-I-N.

5 Thereupon,

6 JOHN COUGHLIN

7 was called as a witness and, after having been duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. THAXTER:

11 Q. Mr. Coughlin, will you state your name again and
12 your present residence address for the record?

13 A. John Coughlin, 42 Candlewood Drive, Topsfield,
14 Massachusetts.

15 Q. And are you married?

16 A. Yes.

17 Q. How many children?

18 A. Two.

19 Q. And you have a house on -- at 115 Kings Highway?

20 A. Yes.

21 Q. When did you purchase that house?

22 A. A little over 30 years ago.

23 Q. Was that in 1983, about?

24 A. I think it was 1981.

25 Q. Okay, and when you bought that house did you have

1 somebody check for you to see the extent of your
2 property in terms of the seaward boundary of the
3 property?

4 A. Yes.

5 Q. How did you do that?

6 A. There was an attorney that we were using down in
7 Massachusetts who when we -- before we put the property
8 into agreement I had him check the deed, the title, and
9 he brought his title consultant on and he reviewed it.

10 Q. Where did you understand the seaward boundary of
11 your property was?

12 A. The mean low watermark.

13 Q. Now, at some point in time you made a decision to
14 join this lawsuit, correct?

15 A. Yes.

16 Q. What caused you to make that decision?

17 A. Because I felt my property rights, what I owned
18 was being abused and I thought I should take a position
19 to stand up for it.

20 Q. Was there an event that kind of alerted you to
21 that?

22 A. Just numerous things that were happening.

23 Q. Now -- so you lived there in the '80s, right, in
24 the balance of the '80s after you purchased it?

25 A. Yes.

1 Q. And you were there in the '90s, and I am going to
2 ask you -- probably what I ought to do is get the marker
3 and ask you to go up and circle your property. Put your
4 initials on the property.

5 A. (Witness complies.)

6 Q. Circle it.

7 A. (Witness complies.)

8 Q. Your property is located on the beach side of the
9 Kings Highway, correct?

10 A. Yes.

11 Q. Who are your immediate neighbors on either side?

12 A. To the south would be Bob Almeder and to the
13 north would be the Mulvihills.

14 Q. The Mulvihills?

15 A. That's correct.

16 Q. And -- so you were up on what's called the west
17 end of the beach, is that what it is referred to?

18 A. I don't know --

19 Q. You don't know --

20 A. -- what end they call it.

21 Q. Can you tell me in the '80s and '90s what it is
22 like up there on a typical summer day when you are
23 there?

24 A. Very quiet and very peaceful.

25 Q. And do you see ever people come by?

1 A. Occasionally, yes.

2 Q. Walking or --

3 A. On the beach or on the road? What are we talking
4 about?

5 Q. On the beach.

6 A. On the beach people will walk by, yes.

7 Q. Okay, and do people ever stop and sit on your
8 beach?

9 A. Occasionally, yes.

10 Q. What have you done when they do that?

11 A. I proceed to tell them that they are on my
12 property, number one. Number two, if they are going to
13 have a picnic or anything I would hope that they would
14 pick up their rubbish, and on occasions they have had
15 younger people with them and they built sand castles and
16 the kids play and dig in the sand, and I have asked them
17 before they leave to fill it in so somebody walking
18 along at night doesn't, namely myself, trip on it and
19 break a leg.

20 Q. And up in your end of the beach, even today --
21 you say after 2000, is it still pretty quiet up there?
22 What's it like?

23 A. In the last few years there's been more activity
24 up at that end but it is relatively quiet.

25 Q. And do you remember three or four years ago when

1 you were out of town and pulled up and had some friends
2 coming to your house and there were folks on the beach?

3 A. Yes.

4 Q. Can you tell me about that incident?

5 A. It was a Saturday afternoon, we had people coming
6 to spend Saturday evening with us and Sunday, I came --
7 pulled into the driveway ahead of them to get the house
8 opened up and there was a group of people out on the
9 beach right in front of my property, right on my
10 property, so I went out and I told them, you know, this
11 is private property and we -- they kind of told me that,
12 you know, go take a hike, so I says, no, it is private
13 property, I said I don't mind if you stay, I have people
14 coming up, finish up your afternoon but clean up, but
15 once they get here I am going to ask you to leave.

16 Q. Did you eventually ask them to leave?

17 A. Yes, I did.

18 Q. Did they leave?

19 A. Yes, they did.

20 Q. Did you call the police or have you called the
21 police on occasions like that?

22 A. No.

23 Q. Why is that?

24 A. Because I have always been able to handle it
25 myself.

1 Q. Now, do you see people walking by with their
2 dogs?

3 A. Yes, I do.

4 Q. Do you ever go down and talk to any of them?

5 A. Yes, I do.

6 Q. Okay, and can you tell me on what occasions you
7 have done that?

8 A. It's happened numerous times. First thing, the
9 town has an ordinance that you can't have your dogs on
10 the beach between certain hours, I think it basically
11 runs Memorial Day to Labor Day, okay, so I proceeded to
12 tell people because I have my own dog, doesn't go on the
13 beach, I don't want people having their dog walking
14 across my property, and I will be less than honest with
15 you I get infuriated when I see people with their dogs
16 on the beach and they don't pick up after them, and I do
17 go right after them on that.

18 Q. So you go down and talk to them.

19 A. I bring them out a bag and tell them to pick it
20 up because I am not going to.

21 Q. Do you also participate -- do you have anything
22 to do with the Plovers? Are there Plovers in your area?

23 A. Plovers?

24 Q. Plovers, sorry.

25 A. They have been up there since as long as I can

1 remember.

2 Q. And is there some program that protects them that
3 you know of?

4 A. Yes, there is.

5 Q. And are you participating in that?

6 A. Every year they will call -- this was handled by
7 my wife, they will call my wife, there is nesting in the
8 front area in front of our property, they ask for our
9 permission to rope it off and protect them during this
10 period. It happened -- it just happened this spring,
11 and my wife actually went up and met with them up there
12 to go over how they were going to rope it off, what they
13 were gonna do and we could still have access to walk
14 out, so we have done that for years.

15 Q. And so they do actually rope off the area where
16 the sea grass is?

17 A. They take -- based on where the nesting is, it
18 varies from year to year, but out on our property on the
19 front there will be different areas where they will nest
20 and they will rope it off and so that nobody will
21 disturb the birds during their nesting.

22 Q. And do they also rope off over on the Almeder's
23 property?

24 A. They have done it over there too, yes.

25 Q. Do you know the Junkers?

1 A. Yes, I do.

2 Q. And are they friends?

3 A. They are neighbors across the street, they are
4 some of the best neighbors we have ever had.

5 Q. How long have you known them?

6 A. Pretty much for as long as we have lived up there
7 I think they have been there.

8 Q. And have they asked -- have you ever given them
9 permission to use your beach?

10 A. Of course I have.

11 Q. And can you tell me on what occasions that that's
12 come about?

13 A. There's been different occasions, there's a few
14 years back when Bill had a boat that he used to leave in
15 front, he talked to me about that.

16 There's been occasions when they are having --
17 they have come across the property for something they
18 were going to bring in.

19 His latest, six months ago, I think it was last
20 fall, I had a knock on my door about 6:00 p.m., I didn't
21 know who it was, come to find out it was one of his
22 boys, I didn't recognize him, he was all grown and he --
23 after I finally had gone through the embarrassment of
24 not knowing him he asked me if he could have a fire on
25 the beach that night and I said by all means, if you've

1 got a permit, and he had a permit, so he was good to go.

2 Q. And do you ever have fires on the beach?

3 A. Yes, I do.

4 Q. And do you understand the permit process?

5 A. Yes, I do.

6 Q. And that's okay with you, that permit process?

7 A. No, it kind of bothers me but if that's a rule
8 and regulation of the Town of Kennebunkport I guess I
9 have to live with it.

10 One of the things that I will not do, I went down
11 and applied for it years gone by and you had to put a
12 deposit down to guaranty that you were gonna clean up
13 your property, and I got in -- not a confrontation but I
14 got in a lively discussion with the Kennebunkport Police
15 that I wasn't going to leave a deposit to clean up my
16 own property, so they gave me the permit and I did get
17 the permit, and I take -- now that my grandsons
18 occasionally go up with me, that's part of the process,
19 we go down and we pull the permit, but we do not leave a
20 deposit for cleanup.

21 Q. And did you --

22 THE COURT: I think we might liken a
23 discussion of what an Irish animated discussion might be
24 like.

25 Q. I am sure I could see John in that, yes.

1 Did you have an issue with the Mulvihills at one
2 time involving a kite?

3 A. Early on when we first bought the property the
4 Mulvihills -- well, they now own two houses to the north
5 of us, at the time when we first moved in they did not
6 have the house that directly abuts us now. We were up
7 there, it happened two weekends in a row, my sons were
8 out on our beach throwing the first weekend a Frisbee,
9 the Frisbee took off and went over to their area, and
10 Mr. Mulvihill let them know in no uncertain terms that
11 that is his beach and his property and they had no right
12 being there, and then later in the summer they were up
13 there with their grandmother and they dropped a kite,
14 they were flying a kite and it ended up in his yard and
15 he told him he couldn't go in and get it because that is
16 his property, so he gave my sons an early lesson that,
17 you know, that is other people's property and you better
18 be careful where you put it because he doesn't want you
19 on their property.

20 Q. And you never disputed that he was correct about
21 that?

22 A. No, I thought as a neighbor I thought it was kind
23 of rude of him to give my mother-in-law a hard time
24 trying to go over to the property to get the kite and I
25 have kind of never forgotten that but that is his right.

1 Q. Do other -- do you walk the beach?

2 A. No.

3 Q. You have been up and down it at some point in
4 time?

5 A. I think years gone by but, no, I don't walk the
6 beach.

7 Q. And do you give -- other than the Junkers, have
8 you given any back-lot folks the right to use your
9 beach?

10 A. No, I haven't but my wife might have but I have
11 not.

12 Q. When you are walking -- watching people walk by
13 down in the front is there any way for you to tell
14 whether they are the back-lot people other than the
15 Junkers or the general public?

16 A. No.

17 Q. Now, will you look at Exhibit 39? It should be
18 kind of open right in front of you.

19 A. I will go by the tab, 39?

20 Q. Yeah, look at 39, 40, 41 and I think 42.

21 A. Is there something in particular that I am
22 looking at here?

23 Q. Well, I am just going to ask you about those
24 documents, I think you understand what --

25 A. Okay, let me get them open.

1 Q. Now, did you have a time when a storm took out a
2 lot of the sand in front of your house?

3 A. Yes, it's happened on two or three occasions.

4 Q. And what have you done as a result of that?

5 A. I had to rebuild it on each occasion.

6 Q. Who paid for that?

7 A. I paid for it.

8 Q. Did you have to get approvals from the
9 department, DEP, and that sort of thing?

10 A. Kennebunk Conservation Commission, the Department
11 of Maine Environmental Protection and I think the last
12 time I had to go through another group.

13 Q. How much sand did you have to bring in?

14 A. It varied on each occasion. The most we brought
15 in was 150 yards of beach sand.

16 Q. And you had to get beach sand?

17 A. Oh, yeah, we had to send samples in and so
18 forthwith what we brought in, it had to be approved.

19 Q. Now, on your section of the beach have you ever
20 seen a lifeguard stand down there?

21 A. No.

22 Q. Have you ever seen a lifeguard walking along the
23 beach?

24 A. No.

25 Q. Have you ever seen a policeman along the beach?

1 A. Yes, I have.

2 Q. On how many occasions?

3 A. Numerous occasions, especially when you are going
4 through the Plover season because you will have the
5 Maine environmental police for lack of anything else
6 will be there and the Kennebunkport Police are there,
7 they were up there the 4th of July when -- to people
8 setting off fireworks looking for people there, so not
9 very often but they are there.

10 Q. And is your experience that they have come in
11 relation to some incident?

12 A. Well, the environmental police I believe are
13 there for the Plovers to make sure everybody is taking
14 care of those, and when I have seen the Kennebunkport
15 Police there it's been -- the last time I saw them there
16 was people were lighting fireworks off further down the
17 beach and they were out to make sure they put a stop to
18 that.

19 Q. Has the town ever placed any garbage cans on your
20 beach?

21 A. Not on my property they haven't.

22 Q. Have they ever cleaned up your property?

23 A. They never touched it.

24 MR. THAXTER: Thank you.

25 THE COURT: Mr. Willing.

CROSS EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. WILLING:

Q. Are the Mulvihills plaintiffs in this lawsuit, Mr. Coughlin?

A. I do not know.

Q. How often do you come up these days?

A. I have been up one day this summer.

Q. How about last summer --

A. I try to get up as often as I can. My normal event for me will be to leave work Saturday afternoon, 4 or 5 o'clock come up, spend Saturday night, Sunday up there, go home late Sunday night or early Monday morning.

Q. Are there some years you don't come up at all?

A. No, there's never been a year that I haven't come up at all.

Q. Since 2003 do you come up a lot less?

A. No, I get up whenever I can.

Q. Do you remember taking your deposition in this case?

A. Yes, I do.

MR. THAXTER: What pages are you looking at?

Q. If you could look at 23. Read page 23.

A. The entire page?

Q. Well, I just don't want you to think I am taking

1 anything out of context.

2 So do you remember telling me at your deposition
3 at least in recent years you were coming up a lot less
4 often?

5 A. No, I don't.

6 Q. You don't remember saying that?

7 A. No. I am not saying that I didn't say it but I
8 don't remember saying it.

9 THE COURT: It is probably not --

10 Q. I will move on.

11 You grew up using Goose Rocks Beach at other
12 parts of the beach, did you not?

13 A. No. I grew up at Goose Rocks Beach?

14 Q. No, no, no. I am just saying there were times
15 when you and your family lived at Cleaves Avenue; is
16 that right?

17 A. No.

18 Q. Okay. Did you moor a boat at Goose Rocks Beach?

19 A. Yes, I did.

20 Q. Where did you keep that boat?

21 A. One year we kept the boat out -- off of
22 Goose Rocks Beach, then after that we had it -- we
23 moored it for a few years down -- we didn't moor it, you
24 dock it, park it at a slip down in Kennebunkport.

25 Q. Did you moor it ever off of Dinghy Point?

1 A. I don't know where Dinghy Point is.

2 Q. I think it is essentially in front of
3 The Tides Inn or The Tides Beach Inn.

4 A. No.

5 MR. WILLING: Excuse me just a second, your
6 Honor.

7 Q. Do you remember softball games on the beach when
8 you were younger?

9 A. When you say when I am younger, what time frame,
10 are we talking when I was a kid?

11 Q. Yeah, years ago.

12 A. No, I was never up there when I was a child.

13 MR. WILLING: Your Honor, I have nothing.

14 THE COURT: Mr. Duchette?

15 CROSS EXAMINATION

16 BY MR. DUCHETTE:

17 Q. Mr. Coughlin, you were talking about the Junker
18 family and that would be Bill Junker, Junior, correct,
19 and Maria Junker?

20 A. That's correct.

21 Q. Do you know their parents by any chance?

22 A. Yes, I have met the parents.

23 Q. And they own property at the other end of Goose
24 Rocks Beach, correct?

25 A. I believe they do, I am not familiar with where

1 it is but I think they live on the beach, yes.

2 Q. And I am just trying to establish the correct
3 Junker family.

4 So Maria and Bill Junker, they live pretty much
5 right beyond your property, correct?

6 A. Almost directly across from us.

7 Q. When you were talking earlier about the
8 permission you have provided to the Junkers, that is not
9 permission with respect to the recreational use of Goose
10 Rocks Beach, it is with regards to specific events or
11 specific things that they have talked with you about,
12 for example, storage of a boat, correct?

13 A. Yes.

14 Q. And I think one was -- was there as a wedding or
15 something to that effect?

16 A. I don't think it was there, I think it was Bob
17 Almeder's.

18 Q. So Bob Almeder asked you permission because of a
19 wedding?

20 A. I believe it was his, yes.

21 Q. And I think you've indicated the Junkers --
22 another incident was because they wanted to cross over
23 your property because they were bringing some things
24 down?

25 A. That's correct.

1 Q. But it's never been you have my permission to use
2 the beach in front of your property, there's never been
3 any expressed permission such as that, correct?

4 A. No, no.

5 Q. There are -- there's a number of back lot
6 properties directly across Kings Highway from your
7 property, correct?

8 A. Yes.

9 Q. And there's various rights-of-ways that lead down
10 to the beach from Kings Highway, I believe one abuts the
11 Almeder property, correct?

12 A. There is a path there, yes.

13 Q. Okay, and then there's -- I believe there's
14 another pathway about four lots to the west of you?

15 A. I am unaware of it. I am not saying there is or
16 there isn't.

17 Q. Then there's another pathway two lots to the east
18 of you, next to the Celi property, correct?

19 A. It could be.

20 Q. Do back-lot owners use those paths to go down to
21 the beach?

22 A. I don't know.

23 Q. Do the back-lot owners use the path next to the
24 Almeder property to --

25 A. I have seen people going up and down on that,

1 yes.

2 Q. And you have seen people who are not the Almeders
3 going up and down that path, correct?

4 A. I believe so, yes.

5 Q. And then where do they go once they get down to
6 the beach?

7 A. I have no idea.

8 Q. I think you had indicated that you joined this
9 case because your property rights had been abused,
10 correct? I believe that was your testimony to Attorney
11 Thaxter?

12 A. To protect my property rights I think might be a
13 better way to paraphrase it.

14 Q. Okay, and how long has your property rights been
15 abused since you have purchased your property in 1981?

16 A. They haven't been because I haven't allowed them
17 to be.

18 Q. Okay. When did you stop allowing them?

19 THE COURT: I am going to object. He just
20 said they haven't been because he didn't permit it so it
21 is not a question.

22 Q. I am just trying to get -- I think you can
23 understand where I am going with my questioning here. I
24 guess I am trying to understand when you -- you
25 indicated that you wanted to protect your property

1 rights. When did you get a feeling that you needed to
2 start protecting your property rights, was it in 2009,
3 was it in --

4 A. I don't real -- I don't remember the exact date,
5 2009. There was a lot of discussion going on up there
6 about the fact that -- and I had the discussion when I
7 was pulling a building permit with the building
8 inspector to do some work on my house that he felt, and
9 there was discussion in the town, that they owned right
10 up to my back door, and that's what got me very
11 concerned about what they owned and they didn't own.

12 Q. Were you ever concerned about not so much about
13 ownership but were you ever concerned about people using
14 the beach in front of your property? Was that ever a
15 concern of yours?

16 A. No because any time I was dissatisfied with what
17 was happening I went out and took care of it.

18 Q. And when you weren't dissatisfied you just
19 allowed that activity to continue to occur?

20 A. People have been out on the front of my beach, I
21 have gone out -- they have been out on my property, I
22 have gone out and said this is private property,
23 however, if you want to enjoy the day here on the beach
24 please treat it respectfully, watch your language and
25 make sure you pick up after yourselves.

1 Q. Certainly, and have you done that every time
2 somebody has been using --

3 A. If I see people on my property, on my beach, yes,
4 I do.

5 Q. Okay. So do you do that every time the Junkers
6 are using the property in front of you?

7 A. No.

8 Q. What about the Nixon family?

9 A. No.

10 Q. Do you ever walk the beach?

11 A. Very seldom.

12 Q. But do you walk up and down Goose Rocks Beach?

13 A. I haven't done it in years.

14 Q. And when you have done that have you asked
15 permission of the fellow beach-front owners to use that
16 property?

17 A. No, I have not.

18 MR. DUCHETTE: No further questions.

19 THE COURT: Mr. Stern.

20 CROSS EXAMINATION

21 BY MR. STERN:

22 Q. Good morning.

23 A. Good morning, sir.

24 Q. How far away is the closest public access way to
25 your house on Goose Rocks Beach?

1 A. I don't know.

2 Q. Do you know where it is?

3 A. No.

4 Q. I'd like to clarify something you said perhaps in
5 response to one of Mr. Thaxter's questions. Did you say
6 you lived at Goose Rocks Beach in the 1980s?

7 A. My wife and myself purchased the property in the
8 early 1980s, I think it was 1981, somewhere in that
9 area.

10 Q. Have you ever lived year-round there?

11 A. No, we go up year-round but I have never lived
12 there year-round.

13 Q. You have seen people you don't know walking the
14 intertidal area in front of your house, correct?

15 A. Yes.

16 Q. The only ones you have ever stopped are people
17 with dogs?

18 A. When I have seen people with dogs and I have
19 watched with my own eyes that the dogs have done
20 something and they didn't pick it up I do go right after
21 them.

22 Oh, the other thing, I went right after the guy
23 with the horses too, because the horses -- one fall I
24 was up there -- was putting droppings on the beach and I
25 got in a confrontation -- not a confrontation, a

1 discussion with him and said if you are going to ride
2 your horse you ought to pick up after the horse.

3 Q. How often have you seen horses up there?

4 A. You see it -- I go up a lot in the fall, in the
5 winter, and you will see the horses out on the beach,
6 people will be riding, one or two horses up and down the
7 beach.

8 Q. Are they usually doing it in the intertidal area
9 or the dry sand?

10 A. They are usually out on the wet sand and it is
11 low tide when they are riding the horses.

12 Q. Do the horses interfere with your use and
13 enjoyment of your property more than the dogs?

14 A. No, but I don't want to go out on my property and
15 sit on horse droppings, stand on horse droppings either.

16 Q. So they are about the same?

17 A. About the same, pick up after yourself.

18 Q. Have you ever seen somebody with a cow out in
19 front of your property?

20 A. I saw a deer one time but no cow.

21 Q. But the deer did not have a person with him or
22 her?

23 A. No, he was kind of wild.

24 Q. A solo deer?

25 A. Yes.

1 Q. A free range deer.

2 Would somebody with a cow out in the intertidal
3 area interfere with your use and enjoyment of your
4 property more than a horse?

5 A. I would think not.

6 MR. STERN: Thanks.

7 THE COURT: Mr. Driver.

8 CROSS EXAMINATION

9 BY MR. DRIVER:

10 Q. Good morning, Mr. Coughlin.

11 A. Good morning, sir. How are you today?

12 Q. I am good.

13 A. Good.

14 Q. I want to go back to this question you were asked
15 by Mr. Thaxter and it was what got you to come into the
16 lawsuit. You used the word abused when you said my
17 property rights were being abused. What did you mean by
18 abused?

19 A. I and my wife own the property, it is our
20 property. I think I should be able to do with it
21 whatever I want to do, let whoever wants to come on it
22 come on it, and I fully realize I have to abide by the
23 rules of Kennebunkport, the rules and regulations of
24 Kennebunkport and the State of Maine, I might not agree
25 with a lot of them but that's part of being an American,

1 you have to live with rules.

2 So if somebody is -- to finish your question, if
3 somebody is on my property without my permission or
4 somebody is doing something on the property they are
5 abusing my rights as a property owner.

6 Q. So are you saying that at -- around 2009 there
7 were activities on your property that you thought were
8 abusive to your property rights, is that what you are
9 saying?

10 A. There were activities on my property that I did
11 not give permission to happen, so when I saw those
12 happening I tried -- I corrected them.

13 Q. Were the activities that you saw in 2009 any
14 different than the activities you saw in 2005?

15 A. No, I have carried the same philosophy in
16 reference to my property the 30 years I have owned it.

17 Q. Okay. Was there something particular that
18 triggered your concern about your property rights for
19 you to say that they were being abused and you had to
20 get into a lawsuit?

21 A. Yes.

22 Q. And what were those things?

23 A. I think I expressed it earlier, what really
24 triggered my concerns on this when I was down pulling a
25 building permit to do some work on my home up there and

1 the building inspector gave me a dissertation that I did
2 not own the property that I thought I owned, and I had
3 my plot plan there because that was part of pulling my
4 building permit, I had to go over my setbacks and my
5 deeds requirements with him, and he proceeded to tell me
6 that he thought the Town of Kennebunkport owned up to
7 the grass land.

8 Q. You say you don't walk the beach very much --

9 A. Very seldom.

10 Q. You purchased in 1981. Do you remember ever
11 hearing anyone talk about the west end of Goose Rocks
12 Beach as being the other side of the tracks?

13 A. No.

14 Q. But you do drive up and down Kings Highway; is
15 that correct?

16 A. You have to to get to my property, yes, sir.

17 Q. Okay, and on the beach side of Kings Highway,
18 going from Dyke Road to your property, is there a lot of
19 new construction, new construction in the last five
20 years?

21 A. Yes, there has been.

22 Q. A lot of cottages that have been torn down and
23 new buildings put up?

24 A. Quite a few, yes.

25 Q. And those buildings that are being put up are

1 considerably larger than the shacks that were torn down?

2 A. I don't know. Supposedly you have to stay on the
3 same footprint is what I was informed by the building
4 department so I am sure anybody building something up
5 there is adhering to the building codes and regulations.

6 Q. Staying on the same footprint doesn't mean the
7 same size building, does it?

8 A. You have to stay with the same footprint, that's
9 all I know.

10 Q. Do you know what the height limit is on Goose
11 Rocks Beach?

12 A. I do not know.

13 MR. DRIVER: Thank you, Mr. Coughlin.

14 THE COURT: Mr. Thaxter.

15 REDIRECT EXAMINATION

16 BY MR. THAXTER:

17 Q. Mr. Coughlin, when the Junkers are using your
18 property why is it you don't go out and ask -- and tell
19 them it is your private property?

20 A. Can you say the question again?

21 Q. When the Junkers are using your property, or the
22 Nixons, why do you treat them different from other
23 folks?

24 A. Because the Junkers are my neighbors, I have
25 known them for as long as I have been up there, the

1 Junkers have come over to my house when I have been -- I
2 have called them on the phone when I have been down in
3 Massachusetts and we have had a bad storm, there is
4 nothing that they wouldn't do for us and they are a
5 great family and great people, they could come in and
6 out of my house any time they wanted to, that's what
7 good neighbors do for good neighbors.

8 Q. And the same with the Nixons?

9 A. I don't know the Nixons that well but I do know
10 them but it is a great group of people that live up
11 there, we all get along fairly well.

12 MR. THAXTER: Thank you.

13 THE COURT: All set with Mr. Coughlin?
14 Thank you, John, you are all set.

15 THE WITNESS: Dismissed?

16 THE COURT: Yes.

17 THE WITNESS: Thank you, sir.

18 (Witness excused.)

19 MR. THAXTER: I am done for the day with my
20 witnesses.

21 THE COURT: Okay.

22 Now, Andre, you are going to be prepared to
23 go forward at 1 o'clock?

24 MR. DUCHETTE: Correct.

25 THE COURT: While we are here, it looked

1 like, Diane, you weren't here but Robert was here the
2 first week, and as far as the exhibits that it was
3 likely that Pete was going to use there was pretty much
4 unanimous agreement.

5 Have you done the same thing, Andre, with
6 the exhibits that you are intending to use?

7 MR. DUCHETTE: Your Honor, we provided our
8 list to Pete. He has admitted our deeds but has not
9 admitted our plans, and the photos, those are the ones
10 that we have the largest concern about because in order
11 to get those admitted then we might be -- I don't think
12 we will wrap up by Friday if --

13 THE COURT: Why don't we use this time, we
14 have half an hour now, we will need to know, Pete, from
15 you to what extent you object to these various items.

16 MR. THAXTER: Well, your Honor, I went
17 through the -- I went through all of the -- all the
18 deeds were fine.

19 The recorded plans that relate to the
20 waterfront were fine, that is not a problem.

21 There's -- I don't now if there are a
22 thousand but there are hundreds and hundreds of pictures
23 and I probably won't give him a hard time with --

24 THE COURT: So, Andre, you have to boil --
25 you have to boil how many pictures you have down to the

1 ones you actually are thinking about using.

2 MR. DUCHETTE: Your Honor, he gave us two
3 big binders, a lot of them are folders. We only have
4 three. I don't think we have a lot more folders than he
5 does.

6 THE COURT: Well, we need to know where
7 there will be objections here so that I can deal with
8 them.

9 Melissa?

10 MS. HEWEY: Judge, can I make a couple of
11 suggestions, and I think that we should probably be
12 given the Town's exhibits at the same time as TMF --

13 THE COURT: There might be duplicates.

14 MS. HEWEY: I think the way that Attorney
15 Thaxter did it was to -- as long as somebody refers to
16 some of the photos in a block, that that -- would that
17 work? Because if we have to go through each photo --

18 MR. THAXTER: I am going to be very liberal
19 when we get to doing them but when I have 175 people,
20 their answers, their documents, and the photos are --
21 some of them are all written on and there's hearsay on
22 them and, you know, they should come in pretty easy when
23 there is somebody there to testify about them.

24 I just don't want --

25 THE COURT: Mr. Driver, is there something

1 you wanted to say?

2 MR. DRIVER: I heard Mr. Thaxter say that
3 the plaintiffs were finished for the day. Are the
4 plaintiffs resting or are they not resting?

5 THE COURT: Well, it is hard to know about
6 resting because we are trying this case upside down.

7 MR. DRIVER: I understand that, your Honor,
8 but --

9 THE COURT: He's essentially completed his
10 presentation, he may or may not request to reopen and I
11 will have to deal with it, but I understand that the way
12 we structured this, and this was in deference to the
13 town's concerns, that we put Pete in the position of
14 going first instead of second. In all fairness he may
15 have wanted to go first to begin with, if I remember
16 back to August 2nd, but -- so he has essentially
17 completed his presentation, but that is not to say that
18 someone or any party could say, Judge, may I reopen for
19 this specific purpose.

20 MR. DRIVER: So as I understand it, Judge,
21 then if Mr. Thaxter wishes to call another witness on
22 his case he has to ask to reopen that case so
23 essentially he has rested subject to your Honor
24 reopening it?

25 THE COURT: Sound about right, Pete?

1 MR. THAXTER: Not quite but -- I mean,
2 first, I haven't told -- Mr. Almeder had to go to the
3 hospital and he's been in the hospital. I probably --
4 Mr. Almeder had his gallbladder taken out, has been in
5 the hospital and is still there. I probably would have
6 put him on. I may have put a few more on. I tried to
7 truncate it. I want to see what they have now. Most of
8 the stuff will be rebuttal.

9 THE COURT: I understand your case is
10 basically in, that's what I understand, that's what I
11 understand.

12 MR. THAXTER: Yes.

13 THE COURT: I am going to be amenable to
14 anybody saying for example if Mr. Almeder has been
15 physically unavailable because he is in the hospital,
16 would I be inclined to hear what he had to say as the
17 lead plaintiff, yes, I would.

18 But, no, I mean this case is going to
19 contract, it is not going to expand.

20 MR. DRIVER: Thank you, your Honor.

21 MS. HEWEY: So back to the photos because I
22 think that is a big issue in terms of time, the
23 plaintiffs put in a significant number of photos and we
24 just let them come in and we need to obviously put in
25 our photos.

1 To the extent that Mr. Thaxter is going to
2 require a witness on the stand to look at and identify
3 each of those, that takes longer than if the photos can
4 come in.

5 Now, I appreciate Mr. Thaxter saying that he
6 is going to be easy with us, but that makes planning
7 very difficult. We need to know whether these exhibits
8 come in or they don't.

9 There is, I will tell you, another issue
10 relating to historical photos that is more of a legal
11 issue, and we probably want to reserve that, but in
12 terms of sort of modern photos I think we need an
13 answer.

14 THE COURT: The pattern has been that the
15 photos that -- that my attention has been directed to
16 have been those that relate to a specific witness.

17 We looked at Mrs. Zagoren's photos, we
18 looked at Miss Lencki's photos, okay, so I think maybe a
19 useful way of approaching this is Mr. Duchette told us
20 who his prospective witnesses are for today, and I think
21 it would be helpful to know if there are any objections
22 to any of the photos that are associated with those
23 witnesses, and if the answer is no then there's no
24 reason we shouldn't do it the same way we have been
25 doing it. If there are going to be objections then we

1 need to flag them and I need to rule on them.

2 MR. THAXTER: The only other thing -- and I
3 agree with that, your Honor, I am comfortable with that.

4 The only other problem I have with it is
5 some of the photos have been -- have editorial pieces on
6 them and some of them are incorrect, there is one that
7 says well, this is in front of Donna Lencki's house when
8 it is not.

9 THE COURT: You are just going to have to
10 trust me to ignore some of that stuff. I mean, there
11 are comments -- the very nice older lady whose name I am
12 blanking on right now --

13 MR. THAXTER: Jule.

14 THE COURT: Jule, yes. There were a number
15 of handwritten on different photos, that is not going to
16 -- that is not what this case is about.

17 MR. THAXTER: As long as they have the
18 witness so I can cross examine them on the photo I am
19 comfortable.

20 THE COURT: All right. Okay, so I guess my
21 suggestion would be, you know, who you are going to call
22 this afternoon, right, Andre?

23 MR. DUCHETTE: I know who we are going to
24 call this afternoon.

25 THE COURT: So I think I would check with --

1 MR. DUCHETTE: If I have to call everyone to
2 get my photos in --

3 THE COURT: Folks, you are not going to --
4 this -- I mean, once is enough for me. You have to give
5 me a little credit. So you should consult with Pete or
6 Ben today with respect to the witnesses who are going to
7 be on this afternoon and square away photos, either they
8 are going to be admissible or there are objections and I
9 am going to deal with them. We will do that, we may
10 have to stay late tonight but that's what we will do to
11 move this along.

12 MS. HEWEY: We can probably then do that on
13 a daily basis, here are my witnesses, here are the
14 exhibits that I intend to use without waiving anything
15 and then if Mr. Thaxter can tell us that evening or at
16 the worst early in the morning which ones he really does
17 object to we can probably move this along quicker.

18 THE COURT: Sure.

19 MS. HEWEY: Work for you?

20 MR. THAXTER: Yes, except we have been doing
21 it two days.

22 THE COURT: Okay, we will do it for two
23 days, that's fine.

24 Okay, so if we break now and I give you a
25 half an hour to get squared away with the photos for

1 this afternoon and we reconvene at 1 o'clock and Andre
2 or Gregg will be going forward with the evidence, okay?

3 MS. HEWEY: Thank you, your Honor.

4 THE COURT: Okay, good.

5 (Thereupon, the luncheon recess was taken,
6 and then the proceedings continued as follows:)

7 THE COURT: Welcome back.

8 Now, do we think Gregg and everybody -- we
9 have got our evidentiary -- any evidentiary issues that
10 I need to deal with, do you think?

11 Okay, sounds good.

12 Gregg, you are going forward with the
13 evidence as I understand it?

14 MR. FRAME: Yes, your Honor.

15 A quick housekeeping issue I just want to
16 address with the Court, we are trying to juggle all of
17 our witnesses, your Honor. We do have a judge from
18 Massachusetts who is a client, we want to have him
19 Friday afternoon. I want to make sure we are hearing
20 testimony Friday afternoon.

21 THE COURT: Okay. The answer is that's
22 fine. One thing I was thinking about after one of the
23 colloquies was we are sort of trying this case upside
24 down as the -- back-asswards might be the more
25 appropriate -- but normally of course since the town and

1 the TMF Group are the proponents, the claimants so to
2 speak, they will present their case, Pete would respond
3 to it and then you would get the rebuttal.

4 I would like to save maybe an hour on each
5 side Friday afternoon if I could on the 7th for sort of
6 rebuttal each way, so keep that in mind.

7 MR. FRAME: Just so I am clear, your Honor,
8 this is for Friday, the 31st, that's what I was asking
9 about.

10 THE COURT: This coming Friday?

11 MR. FRAME: This coming Friday.

12 THE COURT: That's fine.

13 MR. FRAME: We intend to be done probably
14 Tuesday morning or afternoon. The judge needs a
15 subpoena under Massachusetts rules.

16 THE COURT: That's fine. You will be
17 satisfied with Wednesday, Thursday and half a morning on
18 Friday?

19 MS. HEWEY: We hope to be.

20 THE COURT: Okay.

21 MR. FRAME: And I endeavor to be done
22 Tuesday morning so they can take Tuesday afternoon.

23 THE COURT: Okay. Let's go.

24 MR. FRAME: I call Stu Flavin, your Honor.

25 THE COURT: Mr. Flavin, if you will come

1 forward, please. Let me invite you to stand if you
2 would and our clerk, Miss Cavanaugh, will administer the
3 oath.

4 THE CLERK: State and spell your name for
5 the record.

6 THE WITNESS: My name is Stuart Flavin,
7 F-L-A-V-I-N.

8 Thereupon,

9 STUART FLAVIN
10 was called as a witness and, after having been duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FRAME:

14 Q. Good afternoon, Mr. Flavin.

15 A. Hi.

16 Q. Can you state your name and your legal residence
17 for the record.

18 A. My name is Stu Flavin and I live in Kennebunk at
19 12 Joshua's Way.

20 Q. Is 12 Joshua's Way a home in the Goose Rocks
21 Beach zone?

22 A. No, it is in Kennebunk.

23 Q. Do you own a residence at Goose Rocks Beach,
24 Mr. Flavin?

25 A. Yes, I do, it's at 19 Norwood Lane.

1 Q. Can you take that orange pen and circle 19
2 Norwood Lane, where that would be on the map that says
3 TMF defendants?

4 A. (Witness complies.)

5 Q. Thank you.

6 That's identified on that map as 43 which
7 corresponds with the deed, correct?

8 Is that number 43?

9 A. Number 43, yes.

10 Q. Great.

11 Is your house at Norwood Lane, Stu, is that a
12 year-round home or a summer home?

13 A. No, it is not, summer only.

14 Q. Summer only, okay.

15 When did you buy that house at Norwood Lane?

16 A. Four or five years ago, six years ago possibly,
17 something like that.

18 Q. Was four or five years ago your first time at
19 Goose Rocks Beach?

20 A. No, I have been coming to Goose Rocks Beach
21 probably since I was around seven years old, my aunt had
22 a cottage and I would go down every summer for a little
23 while.

24 Q. When would -- I hate to date you but when for
25 your six or seven years old, what years would that have

1 been when you first came to Goose Rocks Beach?

2 A. In the mid '40s to a little higher '40s, over
3 that magnitude.

4 Q. Your aunt's cottage, Stu, where was her cottage
5 located?

6 A. I think we just decided it was on Edgewood, which
7 is two streets from The Tides. If that's the two
8 streets from The Tides it was on Edgewood. It was by
9 the old fire station.

10 Q. And for how many summers did you go to your
11 aunt's place on Goose Rocks Beach?

12 A. Frankly I don't know, I don't recall.

13 Q. Did you at some point start -- did you go every
14 summer for a period of time?

15 A. I think so.

16 Q. And have you been summering at Goose Rocks Beach
17 for every Summer of your life?

18 A. No, we -- my wife and I have been married 50
19 years next June and we have spent a period of time at
20 Goose Rocks Beach every year with the exception of one,
21 and when I say a period of time I am talking a minimum
22 of two weeks to a maximum of probably four, and that's
23 about what we do now, we don't really go much beyond
24 four weeks.

25 Q. Great.

1 You were at your aunt's house for a number of
2 years, correct, summering there?

3 A. Yes.

4 Q. How long would you go to your aunt's house?

5 A. Anywhere from days to a week.

6 Q. Great.

7 At some point did you start going to a different
8 house other than your aunt's house?

9 A. Yeah, we rented several houses on the beach and
10 my parents rented some houses on the beach as well.

11 Q. When you say we rented, are you now --

12 A. My wife and I.

13 Q. -- are you now transitioning when you and Elle
14 were --

15 A. Yes.

16 Q. Okay, so up until the time you and Elle, you and
17 your wife Elle, got married you were summering at -- you
18 were spending some time in the summer at Goose Rocks
19 Beach at your aunt's house, correct?

20 A. No. I lived in Biddeford and my aunt sold her
21 house so it was not available to us as I got older.

22 When I was a lifeguard we did not have -- she did
23 not have a house down there. That was 1967 -- 1957
24 through '60.

25 Q. Okay, so at some point your aunt sold the house

1 sometime before 1957 but from 1957 to 1960 you were a
2 lifeguard down at Goose Rocks Beach?

3 A. Living in Biddeford and commuting daily.

4 Q. You said that you and Elle are celebrating your
5 50th wedding anniversary so you got married 1962 or
6 1963?

7 A. Whatever.

8 Q. Are you celebrating it this year or next year?

9 A. Next year.

10 Q. Okay, so you were married in 1963?

11 THE COURT: Let me give you some advice,
12 Mr. Flavin, get that date right.

13 A. It is on the inside of my ring but I can't take
14 it off.

15 Q. So 1963 you and Elle got married?

16 A. Yes.

17 Q. And you at that point -- did you decide that you
18 wanted to summer at Goose Rocks Beach?

19 A. Yeah, we summered -- from that point on we
20 summered every summer, except one, when we went to
21 Prince Edward Island one summer.

22 Q. When was that?

23 A. The kids were about -- maybe seven through four
24 maybe, and our first was born one year almost to the day
25 after our marriage.

1 Q. So the one summer in the last 50 that you haven't
2 spent at Goose Rocks Beach was probably sometime about
3 40 years ago?

4 A. Roughly, and that time we actually did go back
5 and spend a couple of days there but not renting.

6 Q. Starting in 1963 you rented -- you said you
7 rented homes at Goose Rocks Beach?

8 A. Yes.

9 Q. You said also that your parents rented homes at
10 Goose Rocks Beach during the summer?

11 A. On occasion they did, yes.

12 Q. Great.

13 You -- I know this is dating you. Do you recall
14 in 1963 where the house was that you rented that year?

15 A. I can't tell you specific years. I can tell you
16 that we rented -- I think it was Snyder, there was -- it
17 was either Webber or Snyder, there was a group of people
18 on the -- going towards the east end of the beach that
19 had a bunch of cottages and we rented one from them one
20 time.

21 We also rented several times from Frank Coppola
22 who was -- Frank Junior is there now.

23 Then we rented from --

24 Q. Is Frank Coppola -- is that down more on the west
25 end?

1 A. That was down on the west end.

2 Then we rented the house that Pierre Boulanger
3 lives now, and I don't recall who did it but we bought
4 it through a real estate person, it was Burnham,
5 Lorraine Burnham.

6 Then we rented the Philbrick cottage, and we
7 rented the Philbrick cottage for either 23 or 25 years.

8 Q. So you rented it. Where was the Philbrick
9 cottage that you rented?

10 A. Philbrick cottage was on Norwood Lane at the
11 corner of -- it was all the way down Norwood Lane on the
12 left-hand corner overlooking the marsh.

13 Q. Can you identify the Philbrick cottage with the
14 purple marker on that map?

15 A. Sure.

16 Then we rented from Bill Luthern too which is
17 also down there.

18 Q. Okay.

19 A. Norwood Lane, okay, right here (indicating).
20 There seems to be nothing in there.

21 Q. That's okay.

22 That was the Philbrick or Philbrook cottage?

23 A. Philbrick.

24 Q. Okay.

25 A. Philbrick.

1 Q. You rented that for 23 to 25 years, right?

2 A. Right.

3 Q. After that you said you rented from Bill Luthern?

4 A. Bill Luthern, yes.

5 Q. For how many years did you rent from Bill
6 Luthern?

7 A. Two or three, maybe four.

8 Q. Was that Luthern cottage in the same general
9 area?

10 A. One house in between and then -- actually two
11 houses cause they have two houses, we were renting the
12 further one, so there would be two houses in between the
13 Philbrick and that house.

14 Q. Great.

15 In all the years you rented were you ever given
16 instructions by any of the landlords on what you could
17 do at Goose Rocks Beach and where you could go on
18 Goose Rocks Beach?

19 A. No, I never saw anything like that.

20 Q. Great.

21 Would you have rented a house in the Goose Rocks
22 Beach zone if beach use was not part of that rental?

23 A. Absolutely not.

24 Q. You said you purchased your home about five or
25 six years ago. Did you know the owner of the home that

1 you purchased?

2 A. Yeah, her name was -- she died. Her name was
3 Fisher, and I called her Doris and he called her Dor, I
4 am sure he is right, he's been around longer than I
5 have --

6 Q. Was Miss Fisher --

7 A. -- and she died and I was told the house was
8 going up for sale, and my daughter has a house right
9 next-door, so I called the people in the estate and said
10 what do you want for it and they said this and so I made
11 them an offer and it was very close and it was accepted
12 within a few days. So it never hit the market
13 basically.

14 Q. So you knew -- the question was you knew
15 Mrs. Fisher before she passed away?

16 A. We had known her for several years. She used to
17 go down to the beach at the end of Norwood as well.

18 Q. And she -- I think you just said she was
19 next-door neighbors of your daughter Kate, correct?

20 A. She was next-door neighbors to my daughter Kate.

21 Q. And you would -- prior to owning that house you
22 would -- when you were renting you would see Mrs. Fisher
23 on the beach?

24 A. Oh, yeah, we saw her for years.

25 Q. For years?

1 A. And her daughters and her granddaughter, so.

2 Q. Besides Kate does your home and Kate's home,
3 which are 19 and 21 Norwood Lane, does your family own
4 any more homes in the Goose Rocks Beach zone?

5 A. Well, my family, if you can include my brother,
6 he owns a house, one house away from us in the other
7 direction -- actually two houses, he owns two houses.

8 Q. How often going back, let's go back to the
9 Philbrick cottage which gets us back about 30 years or
10 so, how often would you and your family rent that for,
11 what length of time in the summer?

12 A. I believe at that time we were renting it for
13 four weeks and I was coming for two. I think my wife
14 was here for four and I was coming for two.

15 Q. So Elle would bring the kids for the entire time
16 and you would come for part of it?

17 A. I would always fly up because I didn't like to
18 drive.

19 Q. You didn't live in Biddeford at that time?

20 A. No, we lived in western New York.

21 Q. Western New York, okay.

22 A. Yep.

23 Q. And did that period of time at Goose Rocks Beach,
24 did that stay pretty consistent for the entire -- for
25 the amount of time you rented the Philbrick cottage?

1 A. I think it was very consistent.

2 Q. Four weeks generally every summer?

3 A. I think so.

4 Q. Great.

5 How about the next three years, the Luthern
6 cottage?

7 A. No, we weren't doing that then. Elle and I were
8 then on the same schedule and I think I wasn't working
9 anymore and I think we rented it for two or three weeks
10 and that was it.

11 Q. Okay.

12 Now, your home on Norwood Lane, how often are you
13 and Elle there?

14 A. We generally rent it for five weeks in the
15 summer, we generally do that during the July time frame,
16 and we stay four weeks in the August time frame slurring
17 over into Labor Day.

18 Sometimes we come down -- it depends on the
19 weather -- sometimes we come down in June, sometimes we
20 come a little after Labor Day, but to be frank with you
21 four weeks in a row is as much as I can take.

22 Q. And Kate, her home which is next-door to you, is
23 that a year-round home or is that a summer residence?

24 A. I think it's barely a year-round home. I don't
25 think it is a year-round home that you would want to

1 live in because I don't think the insulation is terribly
2 good but I think it is insulated and I know that they
3 heated part of it one year and were able to survive so I
4 think it is.

5 Q. Can you use -- using the red marker I want you to
6 be able to show from your home on Norwood Lane before
7 you get up where you generally access the beach, what
8 route you take to get to Goose Rocks Beach?

9 A. Sure. (Indicating).

10 Q. Thank you, Stu.

11 Now, is that -- did -- where is that route, is
12 that the extension of Norwood Lane?

13 A. That is Norwood Lane.

14 Q. Is that a right-of-way?

15 A. It's a right-of-way for some people but it is not
16 one for me by deed I am anticipating now.

17 Q. Sure.

18 I want to kind of plow a little bit of ground on
19 your -- the activities that you and your family have
20 engaged in on Goose Rocks Beach. I think we have
21 identified you were married to Elle, two kids?

22 A. Three children.

23 Q. Three children.

24 Do you have grand kids?

25 A. Four grand kids.

1 Q. Great.

2 What activities have you over the years engaged
3 in on Goose Rocks Beach?

4 A. There's been a lot of them. I used to do a lot
5 of clamming, used to do a significant amount of fishing,
6 used to do boating, tidal pooling.

7 Did I say clamming?

8 Q. You did.

9 A. Clamming. We would play ball on the beach, we
10 played volleyball on the beach, we built sand castles.
11 I don't know, we lit fires, we had fires, we had
12 parties, we had lobster bakes.

13 Q. Picnics?

14 A. Yeah.

15 Q. Sun bathe?

16 A. Oh, yes, certainly, sun bathing, reading.

17 I am trying to think if -- I might have brought
18 my shotgun down once in the wintertime looking for geese
19 but I am not sure that was this beach or not.

20 Q. Okay.

21 Socialize with neighbors and friends?

22 A. Socialize, yes.

23 Q. Great.

24 Have those activities, Stu, stayed relatively
25 consistent through your 60 plus years of recreating on

1 Goose Rocks Beach?

2 A. With me?

3 Q. With you or the people who were with you when you
4 were on the beach.

5 A. We no longer have a boat, my daughter sold it, so
6 we don't do -- we all have kayaks, so that's consistent.

7 The kids play ball --

8 Q. Still picnic?

9 A. Yeah, they do, I don't.

10 Q. Still read?

11 A. Still read, still swim.

12 Q. Sun bathe?

13 A. Yep.

14 Q. Socialize?

15 A. Oh, sure.

16 Q. Is it fair to say that over the many years that
17 you have been at Goose Rocks Beach that the beach has
18 been the focal point of your recreational activities?

19 A. From a vacation standpoint, yes.

20 Q. I would like to focus a little bit on where you
21 have engaged in those activities. When you have gone
22 down the beach, Stu, have you stayed directly in front
23 of that right-of-way or have you moved left or right
24 down the beach?

25 A. We are a little bit unconscious about that whole

1 thing, we never really thought anything about the front
2 or the right-of-way. I think it all depended on how
3 many people were there and what was going on, what we
4 did. Now, I know we have gone both to the left and to
5 the right.

6 I also was thinking a lot about it since this
7 thing has all started and I find that for the most part
8 when we rent a property we go in the immediate area of
9 that property, in other words we don't go all the way
10 down to the west end to put towels down and sun bathe,
11 we tend to stick close to home.

12 Q. So your activity is around that Norwood Lane --

13 A. Around that Norwood Lane.

14 When we were at the Coppola's, it was around
15 Coppola's area. When we were down at the other end, it
16 was around that end. But we were not consciously trying
17 to stay in the right-of-way.

18 Q. Do you and/or Elle walk the beach?

19 A. Yep.

20 Q. Do you -- when you are walking do you go from --
21 the length of the beach?

22 A. Sometimes.

23 Q. Do you always stay in the intertidal zone?

24 A. Actually I don't like to walk in the other area.
25 If the tide is right we always walk in the intertidal

1 zone but if the tide isn't right and we feel like
2 walking we can walk on the dry sand.

3 Q. Getting back to the activities you have engaged
4 in, did you ever prior to this case make a distinction
5 between the wet and the dry sand in terms of where you
6 were doing your activities?

7 A. No, absolutely not.

8 Q. And when you were down on the beach engaged in
9 activities were you alone with just your group or were
10 their other groups on the beach at the same time?

11 A. The beach has people from end to end during the
12 height of the summer and people are engaged in doing
13 things, I don't think you are ever alone except when you
14 start to get into the late fall and the winter and the
15 early spring, people were down there and they are doing
16 what they want to do and it was not restricted to my
17 knowledge.

18 Q. Did you see when you -- when you saw other groups
19 on the beach were they engaging in activities similar to
20 the ones that you described for us that you engaged in?

21 A. Yes, sure.

22 Q. And in the last -- you have talked about the last
23 30 years you have been down in that Norwood Lane area
24 with your house, prior to that the Fisher house that you
25 rented and then the Philbrick house before that?

1 A. We never rented the Fisher house.

2 Q. Excuse me, you bought the Fisher house, excuse
3 me. The Philbrick house before that, the Luthern before
4 that and then the Philbrick house?

5 A. Correct.

6 Q. You said you stayed in the Norwood Avenue area so
7 would you have engaged in any of these activities in
8 front of the Gerrish home or the Vandervoorn home or the
9 Twombly home?

10 A. Oh, I am sure we did. I can't point with any
11 specific thing that we had done there but we were not
12 concerned about being there. I can recall sitting in
13 front of -- what's his names house -- Almeder's for
14 example, I can recall sitting there with Herb Cohen and
15 having some discussions with Almeder's kids, so it
16 wasn't like, you know, you were not allowed anywhere.
17 You pretty much could go where you wanted.

18 Q. And --

19 A. That was my thought about it.

20 Q. And when you were engaging in those activities
21 did you ever think to ask permission of the beach-front
22 owner?

23 A. If I were gonna leave my boat there I always
24 asked permission.

25 Q. That's something special but what about

1 picnicking, reading --

2 A. No.

3 Q. When you left your boat were you doing that as a
4 courtesy or because you felt you needed to?

5 A. As a courtesy.

6 Q. Did anyone ever tell you when -- over these I
7 guess 60 plus years when you were engaged in these
8 activities not to engage in these activities on the
9 beach in front of their house?

10 A. Not that I recall.

11 Q. Anyone ever tell you that you needed to go to the
12 so-called public beach?

13 A. No, no, not at all.

14 Q. When your three kids were growing up did you give
15 them instructions on what they could and could not do at
16 Goose Rocks Beach and where they can and could not go at
17 Goose Rocks Beach?

18 A. The only instructions we gave them was regarding
19 going into the water when nobody was around and things
20 of that nature, safety kind of things. There was
21 nothing about property.

22 Q. Great.

23 And when you were engaged in these activities on
24 the beach over those years you said you saw other people
25 engaging in similar activities, correct?

1 A. Yes.

2 Q. Were those just beach-front owners or were there
3 also back-lot owners -- did you see any beach-front
4 owners engaging in those activities?

5 A. Yes, I did, and there were all kinds of people
6 including people from town who were engaged in those
7 kind of activities.

8 Q. Did the beach-front owners see you engaged in
9 those kind of activities?

10 A. The beach-front owners often engaged in those
11 activities with me.

12 Q. Great.

13 A. Or I with them.

14 Q. Great.

15 There was testimony earlier in the case from
16 Mr. Sotir that he never stored his boat on the beach
17 anywhere but in front of his properties. Have you had
18 any occasion to see Mr. Sotir store his boat elsewhere?

19 A. I saw -- this is Tuesday. I saw him Sunday, I
20 think it was, and I have my boat stored in front of Mike
21 Kelly's house and I asked permission to do that, and
22 Matt's boat is right next to mine, and Matt's sister's
23 boat was there for a substantial period of time as well,
24 that's gone now.

25 Q. Has that been the same in the years past as well?

1 A. It's been in the exact same spot, yes.

2 Q. Great.

3 A. And, again, when I did it I asked even to the
4 renters.

5 Q. Great.

6 I will ask you, we are almost done here, I am
7 almost done with you, Stu, here. I will ask you to look
8 at Exhibit 298.

9 MR. FRAME: Permission to approach, your
10 Honor?

11 THE COURT: Of course.

12 Q. Stu, on page 298 on the left-hand top photo, can
13 you identify who's in that photo?

14 A. Yeah, myself and my oldest daughter Kate.

15 Q. Kate.

16 Do you know where that was taken?

17 A. For sure, no.

18 Q. Is it Goose Rocks Beach, though, Stu?

19 A. Yes, it is Goose Rocks Beach, I know that.

20 Q. What year was that?

21 A. Well, she being one year old, Kate now is 49,
22 49 -- Kate is 49, so -- 48, Kate is 49 -- 48, so --

23 Q. At least 40 years ago --

24 A. 47 years ago.

25 Q. Great.

1 What does that photo depict you and Kate doing?

2 A. Being young.

3 Q. You are not very young there.

4 A. God, I don't recognize me. I guess we were
5 just -- I guess she was just on my lap, I think.

6 Q. Great.

7 The next photo to the right?

8 A. Yep.

9 Q. Can you identify who that is?

10 A. That is Kate and Elle and Mulligan.

11 Q. Mulligan?

12 A. Mulligan.

13 Q. All right, and where is that photo taken?

14 A. That's in front of Coppola's.

15 Q. Coppola's, okay.

16 Turn to the next page, Stu.

17 A. Yep.

18 By the way, Phil Pearce and Kate Flavin is in
19 front of Coppola's as well.

20 Q. The bottom right?

21 A. Bottom right.

22 Q. Okay.

23 The top left photo, Stu?

24 A. Yeah.

25 Q. Who is that a photo of?

1 A. Curt Pearce and myself. Curt is dead now. That
2 was taken in front of Coppola's.

3 Q. What are you guys doing there? It looks like he
4 has some sort of Jart or something?

5 A. I think we were playing Jarts. We loved Jarts,
6 yes.

7 Q. Are you in the dry sand or the wet sand?

8 A. It looks like the wet -- the dry, excuse me. It
9 looks like the dry.

10 Q. And what year would that have been?

11 A. I would kind of guess it is -- oh, 1966, it is up
12 at the top of the page.

13 Q. So you were renting from the Coppolas at that
14 point?

15 A. Yeah, I guess so.

16 Q. Great.

17 We are almost done here.

18 The next photo to the right?

19 A. Yep.

20 Q. Who is in that photo?

21 A. Well, that is Curt's wife Mary and Curt and Kate
22 Flavin and me, and I don't know who the person is in the
23 front.

24 Q. Okay, and what are you -- again 1966?

25 A. Yeah.

1 Q. And what does that photo depict?

2 A. Just sort of sitting around talking, I think.
3 Not doing much of anything.

4 Q. Just enjoying the beach?

5 A. Yep.

6 Q. Are you in the wet sand or the dry sand?

7 A. The dry sand there.

8 Q. Where is that again?

9 A. In front of Coppola's.

10 MR. FRAME: I would like to offer 298 into
11 evidence, your Honor.

12 MR. THAXTER: No objection.

13 THE COURT: Admitted.

14 MR. FRAME: Nothing further for this
15 witness, your Honor.

16 THE COURT: Mr. Stern.

17 CROSS EXAMINATION

18 BY MR. STERN:

19 Q. Good afternoon, Mr. Flavin.

20 A. Hi.

21 Q. You have walked on the intertidal area at
22 Goose Rocks Beach for 50 or so years?

23 A. For 50 or so did you say?

24 Q. Yes.

25 A. Yes.

1 Q. You walked the entire beach?

2 A. Yeah. Part of the -- I was a lifeguard there for
3 four years. Part of the job was every morning I had to
4 check these life buoys which were at both ends of the
5 beach so the first thing I did every morning was walk
6 the entire length of the beach.

7 Q. When you weren't a lifeguard what was the purpose
8 of your walking, was it to have fun?

9 A. Just exercise, scenery.

10 Q. And you said you walked with your wife Elle?

11 A. Yes.

12 Q. When you walked sometimes did you wade in the
13 water?

14 A. Sometimes.

15 Q. Did you occasionally stop to look at the water,
16 the clouds or the birds?

17 A. Oh, I am sure.

18 Q. Sometimes did you sit down to rest?

19 A. Sometimes we sat down when we saw people we knew.
20 I don't think we ever really sat down to rest but I
21 think if we saw people that we knew, for example we were
22 just talking about Curt Pearce and Mary Pearce, often
23 times we would see them someplace and we would talk with
24 them.

25 Q. Those are lovely pictures of you and your

1 children. Did they walk the beach with you when they
2 were young?

3 A. No.

4 Q. Did anyone ever tell you not to walk on the
5 beach?

6 A. No.

7 Q. Did anyone ever tell you not to stand in the
8 intertidal zone?

9 A. No.

10 MR. STERN: Nothing further.

11 THE COURT: Mr. Driver?

12 MR. DRIVER: No questions.

13 THE COURT: Mr. Lachiatto?

14 MR. LACHIATTO: No questions.

15 THE COURT: Mr. Willing?

16 CROSS EXAMINATION

17 BY MR. WILLING:

18 Q. Good afternoon, Mr. Flavin.

19 A. Hi.

20 Q. I would like to ask you some questions about your
21 time as a lifeguard at Goose Rocks Beach.

22 A. Okay.

23 Q. I think you already testified that you were a
24 lifeguard from 1957 to 1960; is that right?

25 A. That's correct.

1 Q. If you don't mind, Stu, would you put an X in the
2 spot where the lifeguard chair was -- let me ask you
3 this. Was it always in the same spot when you were a
4 lifeguard?

5 A. Yes, it was.

6 Q. Could you put an X in the spot where the
7 lifeguard chair is?

8 A. Okay. It is right about where I put the X.

9 Q. Could you put LGC next to it?

10 A. Actually it is a little over this way.

11 Q. Okay. Thank you.

12 A. Two blocks away from The Tides.

13 Q. Two blocks away from The Tides?

14 A. (Motions head up and down.)

15 Q. I think you have put -- with the arrow something
16 indicating it is about in front of Edgewood Avenue?

17 A. I think so. I think that's the one that goes up
18 to the community center, if that's the one that goes to
19 the community center that is it.

20 Q. And that was where you remember the lifeguard
21 chair being in the 19 -- in 1957 to 1960 --

22 A. Yep.

23 Q. -- when were you a lifeguard?

24 A. Yes.

25 Q. Now, there's been some testimony in this case

1 that nobody remembers ever seeing a lifeguard anywhere
2 else. Did you patrol the full length of the beach?

3 A. As I just said in the morning the first job in
4 the morning was to walk the entire beach to check the
5 ring buoys.

6 Q. There were ring buoys located --

7 A. There were ring buoys just as you see in the
8 old-time ships, there was one at the Batson River.

9 Q. Is the Batson River at the west end?

10 A. West end. There was one at Dyke Road. There was
11 one at New Biddeford Road.

12 Q. Is that Jefferys Way, the New Biddeford Road?

13 A. I don't think so. Is it?

14 Q. New Biddeford Road is -- sorry, I guess that is.
15 I guess so.

16 A. There was one there and then there was one at the
17 very east end, and I am recalling that there were two
18 more but I don't remember where they were. So that was
19 how I started the day, basically it took me an hour to
20 walk that length and do that job. I also picked up any
21 trash that I found on the way.

22 Now, during the day I was basically stationed at
23 the lifeguard tower which I would not sit in because it
24 hurt so I would wander around there, and I would wander
25 basically from The Tides down to the other end, down to

1 New Biddeford Road to Jefferys Way, if you will.

2 I would not go around the corner at Dinghy Point,
3 I wouldn't go around the corner, you can't see that from
4 where you are. You could see the whole rest of the bay
5 but not around the corner.

6 Q. Now, focusing on your time as a lifeguard, was
7 the public using the beach to your knowledge or was it
8 just local Goose Rock zone folks?

9 A. The beach was being used by all kinds of people,
10 some of whom came in from out of state, some of whom
11 came in from Biddeford, Arundel and Kennebunk, some of
12 whom had cottages here, it was a whole big mismatch.

13 Q. The people that came in from Biddeford or
14 Kennebunk or Arundel or out of state, were they
15 constrained just to some specific area or did they use
16 the whole beach?

17 A. I don't believe there was any constraint and I
18 know that several of those people did things like
19 clamming which was not done at the public beach, if you
20 will, so I don't think anybody thought of this as
21 constraint.

22 One of the reasons why the majority used what we
23 call the public beach is because that was the best place
24 to park, you could get right from your car right to the
25 beach.

1 Q. You didn't have to walk over somebody's lawn?

2 A. Well, no, I am not referring to that, I am
3 referring to the fact that if you parked for example on
4 Dyke Road you had a fair walk to get to the beach.

5 Q. Did people refer to the rest of the beach as the
6 private beach to your knowledge?

7 A. No.

8 Q. Have you ever heard the use of the term private
9 beach in connection with Goose Rocks Beach?

10 A. The first time I started to get concerned about
11 that kind of a thing was when the University of Maine
12 published the paper about Moody Beach and it was such a
13 revelation to me that I made a couple of copies of it, I
14 gave one to Bill Luthern who you all know and I gave
15 another one to my daughter because I thought this was
16 absolutely unbelievable, so the idea as far as I was
17 concerned at that time, and I think that's 10, 12, 13
18 years ago, I am not sure about the time, the idea of a
19 public beach as far as I was concerned was totally
20 unrealistic.

21 Q. So when you were in your younger days back in the
22 '50s and '60s there was use of the term public beach, am
23 I understanding you correctly?

24 A. I am not sure. Probably.

25 Q. But am I understanding that you never heard the

1 term private beach in connection to Goose Rocks Beach?

2 A. If we heard it we did not associate it with being
3 some place that nobody could go. I don't recall hearing
4 it.

5 Q. Mr. FLavin, I would like to show you some town
6 records if I could.

7 A. Sure.

8 MR. WILLING: I believe these have been
9 stipulated to, your Honor.

10 May I approach, your Honor?

11 THE COURT: Of course.

12 MR. THAXTER: Brian, I am going to have some
13 trouble, there is no pagination of this.

14 MR. WILLING: So you are now not
15 stipulating?

16 MR. THAXTER: No, no, I am okay --

17 THE COURT: Maybe show him the documents
18 that are in your hands.

19 MR. WILLING: They are marked 59 A, B, C, D,
20 I am specifically going to be looking with Mr. Flavin at
21 double E, double F, double G, double H, which would be
22 the town reports for 1957, 1958, 1959 and 1960, the
23 years when he was a lifeguard.

24 BY MR. WILLING:

25 Q. Mr. Flavin, were you paid by the town?

1 A. Yes, I was.

2 Q. All four years?

3 A. Yes, I was.

4 Q. If you could look at 59 EE, which I believe is
5 the first document I have showed you?

6 A. Yep.

7 Q. And turn to the -- page 37, so the third to the
8 last page of the Exhibit.

9 A. 37, okay. Uh-huh.

10 Q. On the right-hand side there's a line item that
11 says lifeguard Goose Rocks Beach, do you see that?

12 A. Sure do.

13 Q. And Stuart Flavin, junior lifeguard, \$426.00. Is
14 this what you got paid in 1957 for your lifeguard
15 duties?

16 A. Yep, I am sure.

17 Q. If you could turn to the next one, Mr. Flavin.

18 A. The next page or the next --

19 Q. No, the next year, FF.

20 A. Okay.

21 Q. I am going to ask you to look at the third page
22 of that exhibit, which is also marked as page 14, if you
23 can find it.

24 A. I am still on the first one, I think.

25 All right.

1 Q. It appears that for 1958, if you look at the
2 bottom of 14, lifeguard Goose Rocks Beach you were paid
3 \$450.00; is that right?

4 A. I guess so.

5 Q. Does that sound about right to your memory?

6 A. That's a raise.

7 Q. You did something right the year before I guess.

8 A. Apparently.

9 Q. If you turn to the next one, GG, 59 GG?

10 A. Which page?

11 Q. 18?

12 A. 18, I have 18, okay. Yep. Another raise.

13 Q. It appears in 1959 you got a raise to \$500.00 --

14 A. Yeah.

15 Q. -- is that right?

16 A. Yeah.

17 Q. And if you turn to the last of these this would
18 be 1960 and the fourth page labeled as page 13?

19 A. Labeled as page 13, I don't -- oh, I am not on
20 the right one yet, I am not there yet.

21 Right there here, okay.

22 Q. It looks like you didn't get a raise. Did you do
23 something wrong before?

24 A. Right.

25 Q. But that also is \$500.00?

1 A. Yep.

2 Q. It also looks like you got paid for painting some
3 equipment and repairs; is that right?

4 A. Apparently. I don't remember that. But I worked
5 for Dick Butts and doing general work before the season,
6 so possibly that was something that we were both doing
7 because I see he had some paint too.

8 Q. Do you recall lifeguards at Goose Rocks Beach
9 before you became the lifeguard at Goose Rocks Beach?

10 A. I know there were some because I knew -- I knew
11 some of the people.

12 Q. Who were they?

13 A. The only one I knew before was -- his name was
14 Hurley, H-U-R-L-E-Y, he lived in The Anchorage, which is
15 the place -- it's kind of on the west end of the public
16 beach, it is like a bed and breakfast, I think.

17 Q. Right by Dinghy Point?

18 A. Right by Dinghy Point, so I know he lived there
19 and he was a lifeguard.

20 Q. And were there lifeguards at Goose Rocks Beach to
21 your knowledge after you --

22 A. Yeah, there were. I can't tell you what year we
23 are talking about but my -- I don't know, third or
24 fourth cousins from Saco were doing it. That year I
25 think there were two of them doing it. I don't know his

1 name.

2 Q. From your -- in terms of your understanding of
3 the so-called public beach, could you just describe for
4 the Court where it ran from?

5 A. I guess I can't really. You know, I think -- I
6 think the term public beach basically was where the
7 parking was and, you know, there were no lines of
8 demarcation at all.

9 Q. Where was the parking located at Goose Rocks
10 Beach back in the '50s and '60s if you recall?

11 A. From the standpoint of that area it was I think
12 less than it is now.

13 Q. There is less parking?

14 A. I believe there's less parking than there is now.

15 Q. Where was it located?

16 A. Same place it is today.

17 Q. Was it located along Kings Highway --

18 A. Oh, yeah.

19 Q. -- at -- from Dyke Road?

20 A. No, there was -- I don't think there was any
21 parking on Dyke Road.

22 Q. I mean starting at Dyke Road on Kings Highway,
23 was there parking?

24 A. No.

25 Q. Where did it start?

1 A. Going east, where the opening was to where the
2 grass is, wherever that -- no, not way over there.

3 Q. There was no parking by the New Biddeford Road?

4 A. No, there was no parking on the Biddeford Road.

5 Q. It was located in the vicinity of where the --
6 there's no houses on the seaward side of the road?

7 A. Yeah, and I just told you a lie because
8 Fessenden, who was Gil Fessenden's father, if we had a
9 real busy day he would take these folks and put them
10 places where there were not normally parking, so on any
11 given day there might be some special places. I had
12 really not thought about that for a while.

13 Q. Do you have any -- did the town ever clean up the
14 beach, do you have any memories of that?

15 A. Yeah, the town did, and the town stopped cleaning
16 up the beach many years ago. The reason why the town
17 stopped cleaning it up --

18 MR. THAXTER: Objection.

19 THE COURT: Objection sustained.

20 Next question, please.

21 BY MR. WILLING:

22 Q. Did you ever have any rescues while you were a
23 lifeguard at Goose Rocks Beach?

24 A. I had one real rescue, yes.

25 Q. Where -- could you describe it?

1 A. Yeah, it was in front of New Biddeford Road at
2 Jefferys Way, this girl who didn't know how to swim fell
3 off a life raft -- a blow-up raft and she was in trouble
4 and I ran out and got her.

5 I had a couple of others where someone was out on
6 a sailboat and they broke the rudder or they broke the
7 line to the mast or something, I just rowed out and
8 pulled them in but it was not serious. This was a
9 potentially serious one.

10 Q. Were your rescues confined to the area
11 immediately or by The Tides or Edgewood?

12 A. No, no, the thing for the boats was predominantly
13 down around Timber Island and this lady that I pulled
14 out, this young woman that I pulled out was down near
15 Jefferys Way, which is quite a ways away from where you
16 are talking about.

17 Q. Did you ever observe in your time as a lifeguard
18 any beach-front owners asking people to leave the beach?

19 A. No.

20 Q. Did you observe any beach-front owners telling
21 you or members of the public that it was a private
22 beach, they weren't allowed to recreate there?

23 A. It never happened to me but I understand Barbara
24 Rencurrel has done that.

25 Q. And I guess I am focusing on your time when you

1 were a lifeguard.

2 A. Oh, no, not at all.

3 Q. Did you observe in your time at Goose Rocks Beach
4 public using the beach in the same way you described for
5 Mr. Frame that you and your family used the beach?

6 A. Yes, I did.

7 Q. Did you observe the public using the high dry
8 sand and intertidal zone?

9 A. Yes.

10 Q. Did you observe the public using the beach down
11 at the east end of the beach?

12 A. Yes.

13 Q. How about at the west end?

14 A. Yes.

15 Q. The middle of the beach?

16 A. Yes.

17 MR. WILLING: No further questions.

18 THE COURT: Mr. Thaxter.

19 CROSS EXAMINATION

20 BY MR. THAXTER:

21 Q. Mr. Flavin, my name is Pete Thaxter and I
22 represent the plaintiffs in this case.

23 How are you?

24 A. Fine. How are you?

25 Q. Good.

1 Would you go to Exhibit 298 that you testified
2 about?

3 A. Sure.

4 Q. Look at the first page of 298 and it shows Elle
5 and Kate in a picture.

6 A. Uh-huh.

7 Q. I think you told us that that's by the Coppola's
8 house, right?

9 A. Yes, it is.

10 Q. And that's the house you rented on the beach?

11 A. No, we did not rent the house on the beach, we
12 rented in back across Kings Highway and back a road a
13 little bit, a road, and we came up through the Coppola
14 property.

15 Q. Did you rent from the Coppolas?

16 A. Yes.

17 Q. Okay, and did you have a discussion with the
18 Coppolas about using the beach-front property in front
19 of your property?

20 A. It never came up.

21 Q. But then you look again at the picture where it
22 shows Phillip Pearce and Kate Flavin, and that's again
23 you said in front of the Coppola house.

24 A. Correct.

25 Q. You go to the next page where it says you say

1 1966 and that's again in front of the Coppola house.

2 A. Yes.

3 Q. Now, I understand that you bought your house on
4 Norwood Lane in 2007, right?

5 A. That's probably right, I assume it is.

6 Q. Okay, and I also understand that while your wife
7 may have been here for four weeks, the longer period
8 that you were here -- that you were here for two
9 weeks --

10 A. In general, yeah.

11 Q. Do you remember answering some interrogatories?
12 Would you look at the last page of those and see if
13 that's your signature?

14 A. Oh, on that page. Sure, yeah.

15 Q. Would you turn to page 2?

16 A. Page 2, okay.

17 Q. And look at the question there and we are asking
18 you to describe your use of Goose Rocks Beach, right?
19 We are asking you?

20 A. I am sorry, what is your question?

21 Q. Would you read on page -- why don't you read on
22 page 2 the question.

23 A. I see objection. Is that --

24 Q. No, no, read above that.

25 A. One, identify every person who to your knowledge

1 or the knowledge of your representatives, attorneys,
2 et cetera, has knowledge of any facts relating to in any
3 way to your claim alleged in the proposed counterclaim
4 and describe the nature, source and basis --

5 Q. No, no, pardon me, read number two. I am sorry,
6 that's the wrong one.

7 A. Okay.

8 Proposed counterclaim.

9 Q. Okay --

10 THE COURT: I was going to say, let
11 Mr. Thaxter read the question and then you can read the
12 answer, that would be helpful I think, so that will keep
13 you in the right spot. Here we go.

14 Q. Thank you.

15 I am going to read the question that we proposed
16 to you.

17 It says, Count 1 paragraph one of post
18 counterclaim asserts that TMF defendants have acquired
19 an easement by prescription in Goose Rocks Beach by
20 virtue of 20 years continuous uninterrupted, open,
21 notorious use of Goose Rocks Beach.

22 Describe as to each individual member of the TMF
23 Group which of the plaintiffs properties he, she, it or
24 they claimed to have used -- to have used and describe
25 the particular use, the time period and extent of time

1 for such years.

2 Would you are read your answer on the next page?

3 A. Sure.

4 TMF defendants object to this inter --

5 Q. No, no, forget the objection, just the answer.

6 A. Okay.

7 During our period of ownership we have regularly
8 walked the entire length of Goose Rocks Beach, in
9 addition we picnic, launch boats, kayak, swam, sat,
10 read, played in the sand, held lobster bakes, fished,
11 clammed, collected shells, flew kites and sun bathed on
12 the beach.

13 These activities occurred regularly at all areas
14 of Goose Rocks. While there may have been a certain
15 area that we used more than others our use in no way --
16 our use was in no way localized to one particular area.

17 Yeah?

18 Q. So are you saying that you would go all the way
19 down to Sand Point and use that for extended periods of
20 time?

21 A. No.

22 Q. Are you saying that you would go all the way up
23 to where Bob Almeder's -- and be on his property for
24 extended periods of time?

25 A. No.

1 Q. And you were on the beach with Mr. Almeder's son
2 once, right?

3 A. I was on the beach with Mr. Almeder's daughter.

4 Q. Daughter?

5 A. And her son.

6 Q. And you were having a conversation with them?

7 A. Yes.

8 Q. Friendly conversation?

9 A. Yeah.

10 Q. Friends, neighbor kind of conversation?

11 A. I don't really know them. I knew one of the guys
12 that was sitting with them.

13 Q. Okay, but your renting and your ownership has
14 been mostly up in the Norwood Lane area, right?

15 A. No, that is not true -- well, mostly I guess --
16 yes, mostly you are right.

17 Q. And you knew that some people like Barbara
18 Rencurrel objected to people using her beach?

19 A. I had heard that and I had seen a sign posted in
20 front of her house, I think.

21 Q. Did you ever see -- do you know the Scribner
22 family?

23 A. I know the name.

24 Q. Did you ever see a sign posted up in their
25 right-of-way?

1 A. I don't know which house is theirs so I couldn't
2 answer that.

3 Q. Okay, and what about -- you said that -- you
4 talked about three families, I believe, the Vandervoorns
5 who -- who did you know of the Vandervoorns?

6 A. We tried to buy the Vandervoorn house so I had
7 met their family effectively, and I, again, I don't know
8 them other than who they are.

9 Q. And how often were you at their house?

10 A. Only when we were trying to buy it.

11 Q. Okay, and the Twombly house?

12 A. Twombly house as I understand it is next to Bob
13 Eisenberg's. I -- to my knowledge I have never been at
14 the Twombly house.

15 Q. Okay, and --

16 A. By the way, when I say I have never been to the
17 Twombly house or the other house I mean inside the
18 house.

19 Q. Have you sat in front of the beach of that house
20 for any extended period of time?

21 A. I have undoubtedly sat in front of the beach with
22 people that I know who were there. For an extended
23 period of time it is not where I normally go.

24 Q. Do you know who Willie Wilson is?

25 A. Wilson is next to Twombly, isn't he?

1 Q. He is one of the Twomblys.

2 A. Okay.

3 Q. And do you know Jule Gerrish?

4 A. Yeah.

5 Q. And have you sat in front of her house?

6 A. On occasion I am sure I have.

7 Q. Okay.

8 A. But, again, it is not where I go all the time.

9 Q. Right.

10 Now, there was some testimony about a boat?

11 A. About a what?

12 Q. About a boat.

13 A. Okay.

14 Q. Where did you keep your boat?

15 A. For as long as I have had a kayak, which is, oh,
16 since we -- well, before I moved to Maine, so probably
17 eight years, nine years we have kept it in front of the
18 house that is now Michael Kelly's.

19 Q. And did you ask -- you said you asked Mr. Kelly
20 for permission to keep it there?

21 A. Yes, I did.

22 Q. Now, you are familiar with Beth Zagoren, right?

23 A. Oh, I like Beth.

24 Q. Yeah, and you would come down and you dated some
25 of Beth's baby-sitters, right?

1 A. Yeah, I hope so.

2 Q. And you walked down the beach?

3 A. Yeah.

4 Q. Yeah.

5 Now, when you were the lifeguard is it fair to
6 say that your duties were to take care of the area in
7 front of the lifeguard stand primarily?

8 A. Well, as I mentioned earlier one of my specific
9 duties was doing the buoys.

10 Q. You did those in the morning, right?

11 A. To the tune of approximately an hour. The rest
12 of the time I was expected to be somewhere visible of
13 this thing from Timber Island over to Dinghy Point.

14 Q. In the area of where the lifeguard stand is, it
15 was in the middle of that area?

16 A. Sort of, yeah. Yeah, right.

17 Q. Do you know Chuck Archer?

18 A. Yep.

19 Q. Was he a lifeguard too?

20 A. Not to my knowledge.

21 Q. Do you know Eve Archer?

22 A. Who Archer?

23 Q. Eve, I think it is his sister -- Jean, Jean
24 Archer?

25 A. Jeanie Archer? No, I don't think so.

1 Q. I just want to pull out one exhibit that I want
2 you to look at.

3 A. Sure.

4 Q. Would you look at Exhibit Number 19?

5 A. I have it.

6 Q. Does that look like the lifeguard stand?

7 THE COURT: Excuse me, which?

8 MR. THAXTER: Exhibit 19. Plaintiffs.

9 A. Yes, it does.

10 Q. Does that look like the correct position it was
11 in most of the time?

12 A. Yes, it does.

13 Q. Thank you.

14 A. Are you done with this?

15 Q. Yes.

16 THE COURT: Mr. Frame?

17 MR. FRAME: Nothing.

18 THE COURT: Thank you very much, Mr. Flavin.
19 You may step down.

20 (Witness excused.)

21 THE COURT: Mr. Frame.

22 MR. FRAME: Bill Junker, the third, your
23 Honor.

24 THE COURT: Mr. Junker, if you would come
25 forward, please.

1 THE CLERK: Please raise your right hand.
2 Please state and spell your name for the record.

3 THE WITNESS: My name is William A. Junker,
4 III. J-U-N-K-E-R.

5 THE COURT: Thank you, Mr. Junker.
6 Thereupon,

7 WILLIAM JUNKER, III
8 was called as a witness and, after having been duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FRAME:

12 Q. Good afternoon, Bill.

13 A. Good afternoon.

14 Q. Can you state your name and legal address for the
15 record?

16 A. William A. Junker, III, and I live at 114 Kings
17 Highway in Kennebunkport, Maine.

18 Q. Do you own the residence at 114 Kings Highway?

19 A. With my wife Maria, yes, we do.

20 Q. Is that a beach front or a back lot?

21 A. It is back lot.

22 Q. Great.

23 Is that a year-round home?

24 A. Yes, it is.

25 Q. Great.

1 Bill, what first brought you to Goose Rocks
2 Beach?

3 A. My mom and dad.

4 Q. What year?

5 A. The Summer of '54.

6 Q. I apologize for doing this but I will do it for
7 everyone, how old were you in '54?

8 A. I was one year old and I don't remember it, so.

9 Q. And in the Summer of '54 when you were one year
10 old were your parents -- did they have a rental there or
11 a residence there?

12 A. My -- we stayed with my mom's mother, my
13 grandmother, at -- down near Sand Point.

14 Q. Was that on the beach?

15 A. No, that was a back lot too.

16 Q. Back lot.

17 Do you know when -- did your grandmother own that
18 house?

19 A. Yes, she did.

20 Q. Do you know when your grandmother bought that
21 house?

22 A. I believe it was in her -- her parents bought it
23 in the '20s.

24 Q. How long did you continue -- did you continue
25 coming up to your grandmother's house?

1 A. Yes, we continued every summer right through '78.

2 Q. Where did you live year-round at that time, from
3 '54 to '78?

4 A. From '54 to '77 we -- '76 we lived in Georgetown,
5 Massachusetts and summered at Goose Rocks Beach.

6 Q. And '76, would that have been when you had gone
7 out on your own?

8 A. That's when my folks moved to Goose Rocks
9 permanently year-round.

10 Q. In 1978?

11 A. '76.

12 Q. '76, okay.

13 From '54 to '76, Bill, how often during the
14 summer would you come to your grandmother's house?

15 A. I spent the entire summer there.

16 Q. With your parents?

17 A. With my mom all the time and my dad was a
18 salesman on the road so he was able to spend a lot of
19 time there too.

20 Q. All right, and do you have siblings?

21 A. I have a brother and a sister.

22 Q. Were they there with you from --

23 A. We were all there, yes.

24 Q. Great.

25 What kind of -- in '76 your parents bought a

1 home, correct?

2 A. No, they -- in '72 my mom had purchased her
3 brother's share of that -- of their home --

4 Q. Okay.

5 A. -- and so -- I think it was '72, it might have
6 been '70, but in the early '70s it became our summer
7 home.

8 Q. Okay, and did you continue going there from '72
9 on?

10 A. Yes, till 1979 when my wife and I bought our own
11 house, yes.

12 Q. And your parents' home is on Sand Point?

13 A. It is right where Sand Point turns off of
14 Kings Highway.

15 Q. What end of the beach?

16 A. That is what everybody calls the east end.

17 Q. East end, okay.

18 Your home is where?

19 A. It is at the opposite end of the beach, at the
20 west end.

21 Q. I will ask you, Bill, to take the orange pen and
22 identify on the map where the home that you and Maria
23 bought in 1979 is?

24 A. Circle it?

25 Q. Please.

1 A. (Witness complies.)

2 Q. From '54 to -- well, strike that.

3 Besides from your home down at the west end, your
4 parents' home down at the east end, did your family own
5 any other homes at Goose Rocks Beach?

6 A. Yes, my dad's family home was on Belvidere sort
7 of right -- one lot back from the beach, from the ocean,
8 you know, two lots back from Kings Highway.

9 Q. Okay.

10 A. And my aunt, my dad's younger sister, still lives
11 there.

12 Q. How long has that home been in the Junker family?

13 A. They rented it for years before they bought it
14 but I believe my dad said it was in the early '50s that
15 the family bought the house.

16 Q. Is Belvidere more towards the middle of the
17 beach?

18 A. It is, yes. It is -- you know, it is right
19 next -- it is literally right next -- their house is
20 right next to The Tides Inn.

21 Q. Great.

22 As a kid in the '50s and '60s did you spend more
23 time at your -- at your grandmother's house or at your
24 aunt's house?

25 A. Actually at the time they were both of my

1 grandmothers' houses --

2 Q. Okay.

3 A. -- but my mom's mom's house was where we
4 predominantly spent time.

5 Q. Great.

6 What kind of activities would you and your sister
7 and your brother engage in on the beach in the '50s,
8 '60s and '70s?

9 A. I don't remember, you know, much of the first
10 years. My first memories are playing in the tidal
11 pools, building sand castles.

12 I recounted a story that I remember when I
13 learned how to swim my neighbor took his son and I out
14 and kind of -- in a row boat and kind of said get in the
15 water and hold onto the boat and that's how he taught us
16 how to swim, so that was -- we were only five or six at
17 the time so.

18 Q. Baptism by fire, right?

19 A. Well.

20 Q. What other activities besides swimming --

21 A. We -- people have talked about it, I think people
22 mentioned it, we had -- we used to have -- once we got a
23 little bit older we had the whole beach from The Tides
24 down we would have, you know, pretty massive softball
25 games every Sunday morning, that was kind of a thing

1 during the '60s and '70s, but we walked the beach, we
2 did all the -- you know, sun bathed, we definitely took
3 sandwiches down to the beach so we didn't have to go
4 home.

5 Q. Did you ever party on the beach, Bill?

6 A. In the '70s -- well, late '60s and '70s
7 absolutely.

8 Q. And when you were partying on the beach were you
9 just hanging out with other back-lot kids or was it a
10 mix and match?

11 A. It was a mix and match.

12 Q. Anyone you care to divulge in year crew?

13 A. Well, two of my best friends growing up, because
14 we worked together and I continue to be good friends
15 with them now, Chuck Archer, his name was mentioned
16 earlier, and Dick Stedman --

17 Q. All right.

18 A. -- who his family -- almost formerly where Bill
19 Forrest lives now.

20 Q. So Chuck and Bill were both beach-front owners?

21 A. Dick.

22 Q. Dick, excuse me.

23 A. Yes, but it was everybody, including town people.

24 Q. Great.

25 Can you just draw with a red arrow, a red marker,

1 Bill -- strike that, we will hold onto that for a
2 second.

3 In '79, when did you -- when did you get married,
4 Bill?

5 A. August '78.

6 Q. August '78. You said in 1979 you and Maria
7 bought a home?

8 A. Yes.

9 Q. That is the 114 Kings Highway home?

10 A. That's correct.

11 Q. Can you -- you have already identified that home
12 on the map. Can you identify the route that you
13 generally took from that house to get to the beach with
14 your red pen?

15 A. Sure. (Witness complies.)

16 Q. Put an arrow pointing towards the beach.

17 A. (Witness complies.)

18 Q. You have kids, Bill?

19 A. Yes, we do have three kids.

20 Q. When did the kids come into your life?

21 A. Well, Michael is 27, so.

22 Q. '85?

23 A. '85, exactly.

24 Q. So from '79 to '85 before kids did you and Maria
25 use the beach?

1 A. Absolutely.

2 Q. What kind of activities would you and Maria
3 engage in on the beach?

4 A. Sun bathing, played horseshoes, we have some
5 neighbors that we play horseshoes with, you know, throw
6 the football, baseball around, swimming, always
7 swimming. Swimming is kind of what you do.

8 Q. In '85 when Matthew you said --

9 A. Michael.

10 Q. Michael, excuse me, I am bad with names. When
11 Michael came along what activities did you engage in on
12 the beach with your kids?

13 A. A lot of the same things except, you know, you
14 have all the kid paraphernalia, the buckets and trucks
15 and, you know, Floaties and all the stuff that you worry
16 about for being in the water, but it was basically the
17 same thing.

18 Q. Would you socialize with other folks with kids
19 down at the beach?

20 A. Absolutely.

21 Q. Back-lot owners?

22 A. Back-lot owners.

23 Q. Beach-front owners?

24 A. Beach-front owners.

25 Q. When you were engaging in these activities, Bill,

1 when you first as a kid on the east end and then as an
2 adult on the west end did you ever distinguish between
3 the wet and the dry sand in terms of your ability to
4 engage in those activities?

5 A. Never.

6 Q. Why not?

7 A. It just wasn't part of anybody's -- that wasn't
8 even part of vocabulary, I am sorry, it was just -- just
9 wasn't.

10 Q. When you were engaging in those activities, I
11 think you mentioned earlier but I want to make sure I
12 have it right, were other beach-front owners and
13 back-lot owners on the beach at the same time?

14 A. Absolutely.

15 Q. Did you observe other beach-front owners and
16 back-lot owners engaging in the same activities that you
17 were engaging in?

18 A. Pretty much we all did the same thing, yeah.
19 Everybody -- I mean -- yes.

20 Q. And when you -- starting first with your youth,
21 Bill, kind on the east end and then your middle years on
22 the west end, when you go down to the beach did you feel
23 constrained to staying in that area where you accessed
24 the beach?

25 A. I never gave it a thought.

1 Q. Did you wander?

2 A. Almost always because nobody stayed right there
3 by the paths, you spread out.

4 Q. Do you have friends up and down the beach?

5 A. I am very lucky, yes, I have lots of friends at
6 Goose Rocks Beach.

7 Q. East end?

8 A. East end.

9 Q. West end?

10 A. West end.

11 Q. Back kind of behind The Tides, that area?

12 A. Absolutely.

13 Q. Was that -- that's now -- you have kind of
14 accumulated friends over the year, you have had a rich
15 life but when you were in your teens were you localized
16 only to the east end or did you wander the beach?

17 A. We went all over the beach.

18 Q. Playing?

19 A. Playing.

20 Q. Maybe drinking a beer or two?

21 A. Maybe.

22 Q. I won't hold you to that.

23 A. The drinking age was 18.

24 Q. There you go.

25 So starting in 1972 you would have a beer on the

1 beach, right?

2 A. Yes.

3 Q. Great. I am good with math, I am not good with
4 names.

5 Same thing on the east end now that you are on
6 the east end, you have friends -- excuse me, on the west
7 end you have friends on the east end and --

8 A. Yes.

9 Q. -- so localize your activity?

10 A. Correct.

11 Q. Great.

12 In all your years on the beach, Bill, have you
13 ever asked anyone for permission to do any of those
14 activities?

15 A. Never to do the normal beach activities.

16 Mr. Coughlin commented that I had a Catamaran and
17 we spoke with both Mr. Almeder and John to figure out
18 where it would be the best to put so it wouldn't block
19 their view, so it ended up kind of being straddling on
20 their property.

21 Q. So you discussed that with them as a courtesy?

22 A. Well, that's because I think John said it best,
23 we have a great neighborhood down there, so it's a nice
24 place to live.

25 Q. Great.

1 Since '79 is it fair to say that a lot of your
2 activities on the beach have been in front of the
3 Almeder, Coughlin, Celi, Sotir, Hayes area, that area of
4 the beach?

5 A. Yeah, more Celi's to the west end, that stretch
6 of probably 10 or 15 houses because those are our
7 immediate neighbors. I mean -- yeah, that would be the
8 area I would say would be --

9 Q. When you have been out there the Celis have seen
10 you, correct?

11 A. Uh-huh.

12 Q. Correct?

13 A. Yes.

14 Q. The Almeders have seen you on the beach?

15 A. Yes, we're with them, yeah.

16 Q. Coughlin seen you on the beach?

17 A. Yes.

18 Q. Great.

19 In all your years on the beach starting on the
20 east end, Bill, and then traveling all over the beach
21 has anyone ever told you not to engage in any of the
22 activities you have engaged in?

23 A. I may remember once or twice in the '70s if we
24 were -- caused being a little rowdy at night that I know
25 we got shooed by the police near The Tides, so -- on the

1 beach.

2 Q. You got shooed away from the Tides?

3 A. Shooed away from The Tides, yes.

4 Q. So you were part of that rowdy crew that was
5 hanging out at The Tides in the '70s?

6 A. Maybe once or twice.

7 Q. Great.

8 So they weren't telling you at that point -- did
9 they tell you to go down to the public area of the beach
10 or did they tell you to go home, stop raising heck?

11 A. Yeah, they told us to be quiet.

12 Q. Great.

13 What -- how did you know growing up what you were
14 allowed to do and not allowed to do on the beach? Were
15 there written rules or --

16 A. I guess we just did what our parents did. I
17 mean, we all used the beach the same way, everybody did
18 the same -- pretty much the same things.

19 Q. And have you with your three kids ever taken time
20 to sit down with them and kind of lay out what you are
21 allowed to do on the beach and not allowed to do, where
22 you are allowed to go on the beach and not allowed to
23 go?

24 A. One thing we have always been adamant about was
25 because it -- I have seen it happen is filling in holes

1 because at night if people are walking on the beach you
2 can't see the hole and you can fall in.

3 Q. So you have instructed them to fill in the hole?

4 A. Yeah -- well, and basically, you know, be
5 respectful, you know, don't make a mess, you know, when
6 we have a picnic down there we try and do a good job
7 cleaning up.

8 Q. Great.

9 Goose Rocks Beach is part of the fabric of your
10 being, isn't it, Bill?

11 A. Absolutely.

12 Q. Has this litigation been difficult on you?

13 A. It's been very difficult, it's changed the way a
14 lot of people think about Goose Rocks unfortunately.

15 Q. When the litigation was filed did any of the
16 plaintiffs come over and ask to speak with you?

17 A. As is very common Bob Almeder came over.

18 Q. Came to your house?

19 A. Came to our house.

20 Q. Is this after they had filed the litigation?

21 A. After they filed the litigation, yes.

22 Q. Why was Bob Almeder at your house?

23 MR. LEONI: Objection, grounds, after the
24 lawsuit started, and he is asking why Bob came over to
25 his house.

1 THE COURT: Overruled, you may answer.

2 A. He came over the house to talk to us about what
3 we were doing, get -- how we were getting involved in
4 the suit.

5 Q. Had you decided to join the litigation at that
6 point?

7 A. Yeah, we had decided to exercise what we thought
8 were our rights to the use of the beach, yes.

9 Q. What did Bob say to you, Bill?

10 A. Bob basically said that we shouldn't -- we don't
11 need to get involved, that he was willing to put in his
12 deed that our family could -- that we and our family
13 could have the use of the beach in front of their house,
14 that there was no need to get involved in the lawsuit.

15 Q. What did you say to Bob?

16 A. My wife spoke for us.

17 Q. Were you there?

18 A. I was there.

19 Q. What did Maria say to Bob?

20 A. Maria said to Bob -- I believe her exact words
21 are Bob, honey -- we are pretty close, I mean, they are
22 almost like family, she said Bob, honey, I don't think
23 you get it, we don't think we need your permission to
24 use the beach. Those were I think her exact words.

25 MR. FRAME: Nothing further, your Honor.

1 THE COURT: We are going to take the
2 afternoon recess. We will take about 15 minutes, that
3 will get us back about 20 of.

4 (Thereupon, a recess was taken, and then the
5 proceedings continued as follows:)

6 THE COURT: Good afternoon, folks.

7 We are here in the Almeder matter. It looks
8 like everyone is present.

9 Mr. Stern, questions for Mr. Junker.

10 CROSS EXAMINATION

11 BY MR. STERN:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. You have been swimming at Goose Rocks Beach it
15 sounds like your entire life?

16 A. Once I learned to swim, yes.

17 Q. And you learned to swim when you were how old?

18 A. Probably five or six.

19 Q. And generally speaking you have been using a
20 swimming suit when you swim?

21 A. Yes.

22 Q. And that is a pair of trunks where your torso,
23 arms and legs are bare?

24 A. Yes.

25 Q. And you wear a pair of swimming trunks rather

1 than street clothes because it's safer?

2 A. It is easier to swim.

3 Q. If you were wearing clothes -- street clothes and
4 under garments would the clothes be heavier on you?

5 A. Yes.

6 Q. And it would make it for difficult for you to
7 swim with your arms and kick?

8 A. Yes.

9 Q. And -- well, your children are grown up now?

10 A. 18 to 27, yes.

11 Q. 18 to 27 is grown up where I grew up.

12 Did you swim in general -- did your children
13 generally swim in swimming suits?

14 A. I would say always, yes.

15 Q. Always, and you had them swim in swimming suits
16 because it was safer for them than in street clothes?

17 A. Yes.

18 Q. They could swim longer and further distances in a
19 swimming suit as opposed to street clothes?

20 A. Yes.

21 Q. You mentioned Floaties. Did your children ever
22 use Floaties?

23 A. Well, those are just the things that they put on
24 their arms to help them float.

25 Q. They are buoyancy devices?

1 A. They are buoyancy devices, yes.

2 Q. And to help them float they were safer because of
3 those?

4 A. Yes -- well, we thought so.

5 Q. It also helped them to swim?

6 A. I am actually not sure it could help them swim.

7 Q. But it helped them --

8 A. Stay afloat for sure.

9 Q. Did any of your children ever wear goggles to
10 keep the salt water out of their eyes?

11 A. I believe my son Michael has because I have some
12 and I think he's used them.

13 Q. Have you or anybody in your family ever used a
14 wet suit to go swimming?

15 A. I have used a wet suit because I kayak.

16 Q. But not to go swimming?

17 A. Not to go swimming.

18 Q. And you wear it to go kayaking when the water is
19 cold?

20 A. In the spring, yes.

21 Q. In the spring.

22 MR. STERN: Thank you.

23 THE COURT: Mr. Driver?

24 MR. DRIVER: No questions.

25 THE COURT: Mr. Lachiatto?

1 MR. LACHIATTO: No questions.

2 THE COURT: Mr. Willing?

3 CROSS EXAMINATION

4 BY MR. WILLING:

5 Q. Good afternoon, Bill.

6 A. Good afternoon.

7 Q. You have been using Goose Rocks Beach since the
8 mid '50s; is that right?

9 A. Yes. I have no memories really before I was four
10 or five, but yes.

11 Q. Could you describe the use of Goose Rocks Beach
12 now as compared to when you were growing up in terms of
13 the quantity of the use?

14 A. Well, the use -- the quantity? The uses people
15 are doing on the beach is similar but it is definitely
16 busier today than it was in the '60s.

17 Q. Is that something that happened -- the busier
18 aspect of today, did it happen all of a sudden or is it
19 something that happened over time?

20 A. Well, it's been very gradual over time.

21 Q. Are you familiar with the current parking, public
22 parking I should say at -- in and around Goose Rocks
23 Beach?

24 A. Yes, I am.

25 Q. Do you have any memory of parking in a -- back in

1 the '60s and '70s?

2 A. Yes, I do.

3 Q. Could you describe whatever difference there
4 might have been if any?

5 A. The main difference is that there was parking
6 with the exception of a couple what they call fire lanes
7 because the fire house was on Wildwood, so they needed
8 to be able to get engines in and out, I would say most
9 or all of the side streets cars were allowed to park
10 on -- in some cases both sides of the street and then
11 later on when the town got involved with -- you know,
12 whenever it was -- I am not sure when it was, late '70s,
13 early '80s got involved with selling the stickers it
14 became, you know, that that's when the signage went up
15 for no parking.

16 Q. So in terms of the back street, are you talking
17 primarily down at the eastern side of the beach?

18 A. I am talking from between Dyke Road and New
19 Biddeford Road, that -- that's where all the side
20 streets -- most of the side streets are.

21 Q. And there used to be parking back in there,
22 public parking?

23 A. Well, people used it as public parking. I
24 think -- all the parking I think was public because I
25 don't believe during that time there were beach stickers

1 and stuff like that so -- but people parked a lot,
2 Jefferys Way is an example, that's the way we got to the
3 beach a lot, and that had cars parked on -- there is no
4 parking on either side now and that had cars parked on
5 both sides.

6 Q. On Jefferys Way today there is no parking?

7 A. There is a handicapped spot, correct.

8 Q. But not -- otherwise no?

9 A. Otherwise no parking.

10 Q. When you were growing up there was parking on
11 both sides of Jefferys Way?

12 A. Yes.

13 Q. The parking around Dyke Road and Kings Highway
14 now, has that changed recently?

15 A. Yes, it changed just this past year when the town
16 built the road up because it always flooded, so they
17 actually eliminated five or six or seven spots on Kings
18 Highway, added a couple more back, you know, where the
19 road was built wider on -- right across from the store
20 they added a few spots.

21 Q. You lived down on the west end of the beach; is
22 that right.

23 A. Uh-huh.

24 Q. Is there any public parking spots on the west end
25 of the beach?

1 A. I believe there are four marked spots near the
2 end of the road which is the public access to the beach
3 at that end.

4 Q. Are you familiar with the current state of
5 parking between Dyke Road and New Biddeford Road?

6 A. I know it is very busy.

7 Q. Is there parking all along Kings Highway?

8 A. There is parking -- it starts probably I believe
9 a couple of houses towards New Biddeford Road from
10 Dyke Road, it is not right at the corner but a few -- a
11 couple of lots down, certainly past Palmers, I think.

12 Q. Is that different than what it was when you were
13 growing up?

14 A. I have to be honest with you, I don't remember
15 cars, whether they were parked there or not parked
16 there. I know people parked along Kings Highway, I
17 don't remember where it started or ended.

18 Q. Fair enough.

19 You described some of the activities that you and
20 your family have engaged in on the beach. Have you
21 observed members of the public engaging in similar
22 activities on the beach?

23 A. I don't know everybody that's on the beach, I
24 know people who park at the beach for the most part are
25 members of the general public and that they don't live

1 at the beach, so, yes, I would say I would have to -- I
2 mean, there are some people I know that go to the beach
3 that I have seen at the beach but --

4 Q. You mean some people that don't live in the Goose
5 Rocks zone that you have seen at the beach?

6 A. Well, yeah, I ran into one just Sunday afternoon,
7 so.

8 Q. Have you run into people that don't live in the
9 Goose Rocks zone all along Goose Rocks Beach, river to
10 river, over the years?

11 A. I would say yes.

12 Q. And so the public is using all of Goose Rocks
13 Beach to some degree?

14 A. Absolutely.

15 Q. High dry sand and wet sand?

16 A. I haven't observed -- I have a friend who fishes,
17 he is a fly fisherman and he fishes in the Batson River
18 and he doesn't live at the beach and he's there all the
19 time. I am assuming most of the time he's in the river
20 or near the river but he has to walk across the dry sand
21 to get there, so.

22 Q. You have heard -- you have been to at least a
23 number of days of this trial, have you not?

24 A. Yes.

25 Q. Have you heard testimony concerning the term

1 public beach?

2 A. Yes, I have.

3 Q. Does that term historically as you have used
4 Goose Rocks Beach have any meaning to you?

5 A. It has become known as that since the town and
6 the conservation trust acquired the property there
7 because that's what people refer to it as.

8 Q. How about -- and are you aware when about the
9 town and the conservation trust acquired the property?

10 A. I am thinking '80s, early '80s, mid '80s.

11 Q. Prior to that what term was used to describe the
12 areas of the beach or terms?

13 A. My friends from the middle part of the beach
14 called us down near Sand Point the river rats but we
15 always called it the Timber Island end or the east end,
16 and the end where I live now was always called the west
17 end of the beach.

18 Q. What was the area around The Tides called if
19 anything?

20 A. I don't know. I mean, I have heard it referred
21 to, you know, as the open area of the beach, you know,
22 it was definitely where the lifeguard stand was, so.

23 Q. Okay. Have you ever observed anybody riding
24 their bike on the beach?

25 A. Yes.

1 Q. Is this something that's infrequent or --

2 A. No, it happens quite regularly.

3 Q. Does -- do back-lot owners engage in this
4 activity?

5 A. I have.

6 Q. Your family has?

7 A. Yes.

8 Q. And you have observed friends and others using
9 it?

10 A. Yes.

11 Q. Have you observed the police patrolling the
12 beach?

13 A. Yes, the police over the years have patrolled
14 mostly on foot but they have used their bikes on the
15 beach too.

16 Q. Back in the '70s -- well, let me say growing up
17 do you recall a lifeguard stand at the beach?

18 A. Yes, I do.

19 Q. Where was it located?

20 A. It primarily was located in the Proctor Ave to
21 Edgewood area, in that general -- sometimes it was -- it
22 was not always in the same place, it moved about when
23 the town put it back on the beach.

24 Q. Do you have any recollection of any life station
25 or areas of the beach where the lifeguard kept other

1 equipment besides that area around the chair?

2 A. As a little kid I do remember what I come to -- I
3 call it now a throw ring but they were the buoys, and
4 the one I remember I believe was at Bartlett.

5 Q. Bartlett Avenue?

6 A. Yeah.

7 Q. Growing up do you recall people you know prior to
8 let's say 2000 using the term private beach to describe
9 portions of Goose Rocks Beach?

10 A. Not to my knowledge, no.

11 Q. Did you consider portions of Goose Rocks Beach to
12 be private?

13 A. No.

14 Q. Do you recall the town burning sea grass growing
15 up?

16 A. Yes, I do.

17 Q. Do you recall the town ever cleaning up the
18 beach?

19 A. Yeah, they did that a few times, a number of
20 years, yeah.

21 Q. Can you describe what they did to clean up the
22 beach?

23 A. I believe they just had a tractor that dragged
24 like a big rake and piled it up and hauled it away.

25 Q. You talked a little bit with -- in response to

1 Attorney Frame's questions -- about in some -- I don't
2 know the right term, tomfoolery or teenage behavior in
3 your youth especially around The Tides.

4 A. Yes, it wasn't limited to The Tides but primarily
5 that was where we hung out on the rocks, yes.

6 Q. Were there any rules that you guys were required
7 to follow that you remember back in that time?

8 A. Well, when we were kids they -- the 9 o'clock
9 test, they blew the fire whistle at 9 o'clock and anyone
10 under 16 was supposed to go home but it was -- there
11 wasn't a police force like there is now so it was really
12 hard to enforce.

13 MR. WILLING: Thank you.

14 THE COURT: Mr. Leoni.

15 CROSS EXAMINATION

16 BY MR. LEONI:

17 Q. Good afternoon, Mr. Junker.

18 A. Good afternoon, Mr. Leoni.

19 Q. As you know my name is Ben Leoni, you can call me
20 Ben. Would you prefer it if I call you Mr. Junker or
21 Bill?

22 A. Bill, please.

23 Q. Okay. Bill, have you ever spent time working for
24 the Town of Kennebunkport?

25 A. Yes.

1 Q. Have you -- you have worked in their recreation
2 department, haven't you?

3 A. That's correct.

4 Q. And you have taught kayak classes for the
5 rec department?

6 A. That's correct.

7 Q. And you have taught kayak classes for the
8 rec department in the area near Bob Almeder's house,
9 haven't you?

10 A. That's correct.

11 Q. Do you know who Carol Cook is?

12 A. That's my boss.

13 Q. At the rec department?

14 A. Yes.

15 Q. Isn't it true that Mr. Almeder has given Carol
16 Cook expressed permission to use the beach for those
17 recreational activities?

18 MS. HEWEY: Objection, foundation.

19 THE COURT: The question I guess would be --

20 MS. HEWEY: Oh, I can't say it. Erase that,
21 I am not supposed to say anything.

22 MR. WILLING: Objection, your Honor.

23 BY MR. LEONI:

24 Q. Are you aware if Mr. Almeder has said anything
25 to --

1 A. I am not, I am not aware.

2 Q. Okay.

3 I am going to draw your attention to Plaintiff's
4 Exhibit 31.

5 Are these blue? These are blue.

6 Bill, do you see that exhibit?

7 A. Yes, I do.

8 Q. Isn't it true that is a letter from Bob Almeder
9 to Carol Cook, your boss, giving her
10 expressed permission to have lessons for kayaks on his
11 beach property?

12 MR. WILLING: Objection, your Honor. The
13 letter speaks for itself and he is not on it anyway.

14 THE COURT: He is just bringing my attention
15 to it and that's what it says.

16 Next question.

17 BY MR. LEONI:

18 Q. Bill, you are friends with Bob; isn't that
19 correct?

20 A. Yes.

21 Q. You are also friends with John Coughlin?

22 A. That's correct.

23 Q. Bob Scribner?

24 A. Scribby is -- yes.

25 Q. I have heard Scribby referred to Bob's father.

1 Do you call Bob Scribby as well?

2 A. All the Scribner kids and nephews are -- for some
3 reason the boys end up being Scrib, yes.

4 Q. Have you ever joined all those people that I have
5 just listed, Bob Almeder, John Coughlin, Bob Scribner,
6 have you ever participated in activities on their beach
7 property with them?

8 A. Yes.

9 Q. You are aware, aren't you, that your son has
10 actually asked Bob and -- both Bob and John for
11 permission to have fires on their beach property?

12 A. Yes.

13 Q. And you yourself have actually asked --
14 personally asked John Coughlin if you could store your
15 boat on his property?

16 A. We had a -- I described it earlier we had a
17 discussion between the three of us because the boat
18 was -- I wanted to put it where it wasn't going to
19 block -- I mean, they have a mast so they block people's
20 view, so we tucked it between their two houses up as
21 close to the beach grass as we could get it.

22 Q. So you wanted to put it where it would not
23 interfere with John's use?

24 A. Correct, and Bob and Ginnie's too because it's --
25 their houses are right next to each other.

1 Q. Great.

2 You talked to them about it to make sure that
3 where you are putting it would not interfere with their
4 use?

5 A. Correct.

6 Q. Great.

7 I am going to draw your attention to some photos,
8 and the photos are -- they are actually Town Exhibit 171
9 which I know -- I am not sure if its been stipulated, I
10 think we can stipulate to them now if you would like, I
11 think they are the same photos as Plaintiff's 147 which
12 have been stipulated.

13 THE COURT: So 147 is the same as whatever
14 else.

15 MS. HEWEY: May I hand it to you?

16 BY MR. LEONI:

17 Q. It is Town Exhibit Number 171. These are photos
18 produced by the Junkers.

19 A. I have that.

20 Q. Looking at -- I am sorry, I will wait until you
21 are there.

22 A. It is not here unless my numbering system is way
23 off.

24 Q. It is not in this book.

25 MS. HEWEY: I will get it for you.

1 A. Which plaintiff's exhibit was it?

2 Q. I can give you Plaintiff's Exhibit Number 147, if
3 it's easier to follow along, which is this one.

4 A. Perfect. Since it is right there I like it.

5 Q. Why don't we go with this one because it is the
6 same anyway.

7 A. Sure.

8 Q. I apologize for the confusion.

9 Bill is now at Exhibit 171, the Town's Exhibit
10 171.

11 That first picture, who is that?

12 A. That is my wife and daughter.

13 Q. That's on Goose Rocks Beach?

14 A. Yes, it is.

15 Q. And Bob Almeder took that photo, didn't he?

16 A. Actually Lisa Almeder took that picture.

17 Q. Lisa Almeder.

18 Just flipping through to the next page and that
19 bottom right photo, is that Mark Celi's house in the top
20 left?

21 A. That is correct, that's Celi's house.

22 Q. So this is on the west end of the beach, the west
23 end where you currently live?

24 A. Yes.

25 Q. And do you see anybody else or who is this in the

1 photo?

2 A. I believe it is two of my daughter's friends.

3 Q. Do you see anybody else in this photo on the
4 beach?

5 A. I do not.

6 Q. Next page, top left, this is a photo looking
7 towards the west, is it not?

8 A. I can't tell from -- I can't tell from that
9 picture.

10 Q. Okay. Can you tell where this is?

11 A. I don't -- I don't see any houses or seawall or
12 anything for me to get an idea.

13 Q. And let me just make sure we are on the same one.
14 They are sitting like this. I apologize.

15 A. Got you. Got you.

16 Q. So this one up here.

17 A. Oh, yes.

18 Q. That's a photo looking towards the west?

19 A. That's the west end, yes.

20 Q. Do you know when this photo was taken?

21 A. It is my daughters picture, I believe at
22 Katherine's graduation party so it would have been June,
23 early June of 2011, she's been -- that's one of her best
24 friends -- she's been out of school a year.

25 Q. So in early June of 2011 when this photo was

1 taken there's no people depicted on the beach besides
2 your daughter's friend all the way as far as you can
3 see?

4 A. Yes.

5 Q. I think we could go on but for the moment because
6 they are all into evidence right now I will move on.

7 Bill, you and Maria own a realty company; isn't
8 that correct?

9 A. Yes, we do.

10 Q. It is called Beachwood Realty?

11 A. Beachwood Realty.

12 Q. And you serve as the realtor -- you and your wife
13 serve as the realtors for a number of plaintiffs
14 parties -- properties when they rent out?

15 A. Yes, we do.

16 Q. Including the Sotirs?

17 A. Sotirs, Almeders and the Celis.

18 Q. And a few moments ago you stated that over time
19 there's been a gradual increase in the number of people
20 that have used Goose Rocks Beach. Is that true also for
21 the west end where your property is, your current
22 property since 1979?

23 A. I would have to say no only because, you know,
24 most of the increase, it is my belief, that since I was
25 a kid the hundred plus houses that have gone up down

1 towards the other end is what really has caused the
2 increase.

3 Q. Okay, so -- but your end of the beach on the west
4 end you haven't seen an increase at all since you
5 purchased the property in 1979?

6 A. Maybe a slight increase because of like our three
7 kids, Mrs. Nixon's grandchildren, I mean that type of an
8 increase, so yes, okay, yes.

9 Q. In fact that area of the beach where you are has
10 always been the quiet end of the beach, hasn't it?

11 A. That is one of the ways it is described, yes, the
12 quiet end.

13 Q. In fact when you market Bob Almeder's beach-front
14 property part of your -- part of your marketing material
15 actually depicts or states that Bob Almeder's property
16 is located on the quiet end of the beach, does it not?

17 A. It could. They haven't rented their oceanfront
18 house for a long time but we do handle another house of
19 theirs, yes.

20 Q. You testified earlier that when you stayed at
21 your parents' house and used the beach that was on the
22 east end of the beach?

23 A. That's correct.

24 Q. And your parents have actually a deeded
25 right-of-way to access of beach, don't they?

1 A. Yes, they do.

2 Q. When you used the beach now that you have owned
3 14 Kings Highway most of that use is down towards the
4 west end, besides walking, when you use the beach it is
5 mostly on the west end, isn't it?

6 A. Mostly but not exclusively because we still do go
7 down the beach, you know, when my brother and sister are
8 here we will go down the beach at my parents' house and
9 occasionally at my -- you know, in the middle part of
10 the beach too.

11 Q. What do you go to the middle part of the beach
12 for?

13 A. Because my aunt lives there.

14 Q. So you go to visit your aunt?

15 A. Yes.

16 Q. So when you are not visiting your aunt or your
17 parents, though, primarily your activities are located
18 on the western end of the beach?

19 A. Yes.

20 Q. Have you ever seen Bob Almeder post his property
21 with no trespassing signs?

22 A. I haven't, no.

23 Q. You haven't?

24 A. No.

25 Q. Do you know if he has?

1 A. I believe he put up a sign at least that's what
2 we were told in April one time, so I don't know.

3 Q. How many years ago was that?

4 A. It would have either been right before or right
5 after the lawsuit started, so three or four years ago.

6 Q. Okay. Have you ever had a cookout on Bob
7 Almeder's beach-front property?

8 A. Yes, we have.

9 Q. And Bob Almeder was actually at that cookout,
10 wasn't he?

11 A. They usually are, yes.

12 MR. LEONI: I think I have no further
13 questions. Thank you very much, Bill.

14 THE COURT: Mr. Frame.

15 MR. FRAME: Briefly, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. FRAME:

18 Q. Bill, looking at those pictures do you and Maria
19 ever think to take pictures of the beach to document
20 your use of the beach or the use of the beach by others?

21 A. Primarily we take pictures of the beach to -- you
22 know, for family pictures.

23 Q. So you wouldn't go out and just take a picture of
24 the beach because there are people on the beach?

25 A. No, not till this year.

1 Q. And looking at Town's Exhibit 171, which has
2 already been admitted into evidence, is there a
3 photograph of you cross-country skiing on the beach?

4 A. Well, it is a picture I took of my tracks on the
5 beach because I kind of thought it looked kind of cool
6 but --

7 Q. So your use of the beach is not limited to just
8 the summer, is it, Bill?

9 A. No, we use the beach year-round.

10 Q. And I am not a cross-country skier but I would
11 imagine it is difficult to cross-country ski in the
12 intertidal zone, isn't it?

13 A. Believe it or not if the snow comes at the right
14 time right after high tide as it did once this year you
15 can almost go down to low tide. Yes, it is pretty cool.

16 Q. Do you ski in the intertidal zone?

17 A. Yes, I do.

18 Q. Do you ski in the dry sand, in the --

19 A. Mostly in the dry sand, yes.

20 Q. Great.

21 Mr. Leoni asked you a question about your parents
22 having a deeded right-of-way down to the beach; is that
23 correct?

24 A. Yes.

25 Q. Have you seen your parents' deed?

1 A. No.

2 Q. Have your parents described the deed to you?

3 A. Yes, they described the width of the foot path.

4 Q. Does the deed say anything about what you are
5 allowed to do and where you are allowed to go once you
6 are down that deeded right-of-way?

7 A. No, it doesn't.

8 Q. I think you testified earlier that you knew what
9 to do when you got down there by looking at what
10 everyone else was doing, correct?

11 A. Yes.

12 MR. FRAME: One second, your Honor.

13 Q. I think you testified in response to one of
14 Mr. Leoni's questions that you were sometimes on the
15 beach with the Scribners, correct?

16 A. That's correct.

17 Q. And any number of Scribbies, right?

18 A. Yes.

19 Q. In all the times that you were at the beach with
20 Bob Scribner, Bob Junior I think he is, your
21 generation --

22 A. Yes.

23 Q. -- did he ever kick anyone off the beach in front
24 of his house?

25 A. Not in front of me, no.

1 MR. FRAME: Nothing further, your Honor.

2 THE COURT: Mr. Stern.

3 RECROSS EXAMINATION

4 BY MR. STERN:

5 Q. Do you have the Town's Exhibit 171 in front of
6 you? A bunch of pictures?

7 A. Yes.

8 Q. Could you go to page 10 -- they are not numbered.
9 If I can approach the witness to make sure he
10 gets the right one.

11 A. Okay.

12 Q. For the Court's benefit it is -- I am not sure
13 how they are doing this but either in the upper right or
14 upper left there is a picture of a bunch of children
15 swimming in the water, yes?

16 A. Yes.

17 Q. Is that the usual -- is that the depiction of the
18 usual manner in which children swim in the ocean at
19 Goose Rocks Beach in your 40 plus years experience?

20 A. I would say it is very accurate.

21 MR. STERN: Thank you.

22 THE COURT: Are we all set?

23 Mr. Junker, thank you very much. You may
24 step down.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 MR. FRAME: Alex Lachiatto, your Honor.

3 THE COURT: People have mentioned -- 171,
4 will that be admitted now without objection?

5 MR. LEONI: Yes.

6 THE COURT: The answer is yes.

7 So I don't lose the thought, one thing, I
8 would like people to maybe be here a little early
9 tomorrow morning -- well, we will talk about it at the
10 end but it would be very helpful if the clerk knew what
11 exhibits can come in in advance, okay, which we did with
12 I think the State's exhibits or the town's exhibits or
13 -- no, I guess the Plaintiff's Exhibits, that process is
14 very helpful.

15 If you need my assistance I am glad to --

16 MS. HEWEY: I think that now we have had
17 some dialogue going here I should be able to provide the
18 clerk with a beautiful list --

19 THE COURT: Terrific.

20 MS. HEWEY: -- early morning.

21 THE CLERK: Please raise your right hand and
22 state your name and please spell your name for the
23 record.

24 THE WITNESS: Alexander M. Lachiatto, last
25 name L-A-C-H-I-A-T-T-O.

1 Thereupon,

2 ALEXANDER LACHIATTO

3 was called as a witness and, after having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FRAME:

7 Q. Good afternoon, Alex.

8 A. Good afternoon, Gregg.

9 Q. Please state your name again for the court
10 reporter.

11 A. Alexander M. Lachiatto.

12 Q. Where do you live, Alex?

13 A. Presently at 12 Bel-Air Avenue, Goose Rocks
14 Beach, Kennebunkport, Maine.

15 Q. Great.

16 Alex, where did you grow up?

17 A. Concord, New Hampshire.

18 Q. And from Concord, New Hampshire where did you go
19 to college -- did you go to college?

20 A. I did.

21 Q. Where?

22 A. Providence College.

23 Q. And after Providence what did you do?

24 A. Three years of Suffolk University Law School.

25 Q. And after you got out of Suffolk University Law

1 School did you practice law?

2 A. I did.

3 Q. For how long?

4 A. Well, we won't count today but I retired after 40
5 years.

6 Q. Okay, and during that time were you a practicing
7 lawyer?

8 A. I was.

9 Q. Solo practice firm?

10 A. Actually the first nine years I was in with a
11 gentleman, we became partners two years subsequent to
12 the time I went with him, he retired after nine years
13 and then I was solo for 31 years I guess.

14 Q. Great.

15 When did you first come to Goose Rocks Beach?

16 A. Either in July or August of 1969.

17 Q. How did you hear about Goose Rocks Beach in 1969?

18 A. Well, the wife and I were looking for a place to
19 go for a week and in the local newspaper we saw an ad
20 about Goose Rocks Beach from -- there was an exchange, a
21 telephone number in the next town so we called it, a
22 fellow invited us over, and I didn't realize it was on
23 the ocean, I didn't know where, but showed us some
24 pictures and we signed off for a week.

25 Q. Great.

1 Did you and your wife at that point have any
2 kids?

3 A. Three.

4 Q. Do you have three kids now or you had more?

5 A. Four.

6 Q. Four, okay.

7 So in July or August 1969 where did you stay at
8 that point?

9 A. 60 Wildwood Avenue owned by Allen Hodgkins.

10 Q. And is that a beach-front home?

11 A. No, it is not.

12 Q. It is a back lot -- it is in the Goose Rocks
13 Beach zone as we have defined it in this case?

14 A. Yes, sir.

15 Q. Great.

16 Was it just you and your wife and your three kids
17 for that first summer?

18 A. And my mother.

19 Q. A little helper, right?

20 A. Absolutely.

21 Q. Great.

22 How would you access the beach, Alex, from
23 Wildwood? You don't need to -- we will get to that in a
24 minute.

25 A. Okay, walk out the front door, turn right and go

1 on to Bartlett and go across Kings Highway and through
2 the Bartlett path between the Lewis and Forrest
3 property, formerly Fuller and Stedman.

4 Q. So the Bartlett Avenue extension was the way you
5 got down there?

6 A. Yes, sir.

7 Q. Great.

8 How long did you rent that house at Wildwood?

9 A. Just that one week.

10 Q. Just that one week?

11 A. In '69.

12 Q. '69, yep. We will get to later years.

13 When you got down to the Bartlett Avenue
14 extension, 1969, did you stay right there or did you
15 explore the beach?

16 A. Explored the beach.

17 Q. Did you come back to Goose Rocks Beach the next
18 summer?

19 A. We did.

20 Q. Same house?

21 A. Yes, sir.

22 Q. How many years were you at 16 Wildwood?

23 A. From '69 through '73.

24 Q. Okay, and I think you testified, Alex, that the
25 first summer you just came for a week, right?

1 A. That's correct.

2 Q. '70 through '73 did you extend your stay at all
3 or was it still a week?

4 A. No, still a week and sometimes three.

5 Q. Would you be up there the entire time or would
6 Judy go and bring the kids and you would come up?

7 A. I would go if it was two weeks for the entire
8 time because I still had a partner.

9 Q. '69 to '73, Alex, what kind of activities would
10 you, Judy, your mother and the kids engage in on the
11 beach?

12 A. Sun bathing, swimming, looking for shells, you
13 know, the sand dollars were plentiful then, Chinese
14 hats, those kinds of things, kids liked to dig in the
15 sand, make some sand castles.

16 Back then I don't think we were throwing the ball
17 around much, they were still young.

18 Q. Was the -- at some point -- how old is the fourth
19 child?

20 A. Presently -- he will be 38 on the 4th of
21 September.

22 Q. So one of those last summers the fourth child --
23 you had four children there, correct?

24 A. The fourth child came along in September of '74.

25 Q. Okay. When you are down at the beach were you

1 and Judy and the kids kind of your own little unit or
2 would you engage, socialize with other folks, other
3 kids?

4 A. We engaged with a number of families who were
5 either owners or renters in the -- in the Bartlett
6 Avenue, Wildwood area.

7 Q. And you said owners or renters. Were they owners
8 of back lots primarily or exclusively or were there some
9 beach-front owners who would engage in these activities
10 with you?

11 A. I don't recollect beach-front owners children but
12 I do recollect beach owners.

13 Q. Okay.

14 A. Most of them were back-lot children and parents.

15 Q. Who were some of the -- you talked about engaging
16 in activities with other families. Who were some of the
17 other families at the time that you were socializing
18 with -- recreating on the beach?

19 A. There was a family that lived across from us by
20 the name of Grays, they were from Norwalk, Connecticut,
21 grandmother, grandfather, father, mother and a couple of
22 kids.

23 Then you turn the corner and it was the McGee
24 family, they had a daughter. The Downing family, they
25 had four children. The Kembers. The Larrabees. The

1 Kellys, they had five children. And we would be down on
2 the beach.

3 Q. Fair to say that from '69 to '73 or '74, Alex,
4 that the majority of your recreational activities when
5 you were renting at Goose Rocks Beach were focussed
6 around beach use?

7 A. Yes.

8 Q. And would you have rented a home at that point in
9 time if you didn't have the opportunity and the
10 availability to use the beach?

11 A. No.

12 Q. Great.

13 At some point in time did you begin to come to
14 Goose Rocks Beach for longer periods of time?

15 A. Well, when the little one came along in September
16 of '74 the cottage on 16 Wildwood was too small.

17 Q. One kid tips the balance, right?

18 A. You got it, and we rented a cottage on Edgewood
19 that was called Gulls & Buoys and it was a duplex, and
20 after going through all the rigmarole with the family on
21 the other side and the noise we decided we were going to
22 look for a place to acquire.

23 Q. So did you then purchase a home?

24 A. In September of 1975 we purchased the 12 Bel-Air
25 Avenue premises.

1 Q. Can you go up using the orange, Alex, can you
2 circle 12 Bel-Air for us on the beach -- I mean on the
3 map, excuse me.

4 A. (Witness complies.) I put my initials.

5 Q. Don't sit down, Alex, I will have you get up
6 again.

7 A. Okay.

8 Q. Alex, while you are standing up just to make it
9 easier on you, can you with the red, you are a step
10 ahead, can you identify the path that you and your
11 family would generally take to go down to the beach from
12 12 Bel-Air Avenue?

13 A. (Witness complies.)

14 Q. You can make it a full red line, you don't need
15 to dot it.

16 A. Oh.

17 Q. Put an arrow towards the beach.

18 A. (Witness complies.)

19 Q. Great. Thanks, Alex.

20 In -- and you have been in that house since 1975,
21 correct?

22 A. True.

23 Q. Is that a year-round residence for you now?

24 A. Yes, sir.

25 Q. At what point in time did you transition from

1 being a summer resident of Goose Rocks Beach to a
2 year-round resident, Alex?

3 A. Well --

4 Q. Hold on a second, wait for the siren.

5 A. We had to take the house down because we couldn't
6 do what we wanted because you have to stay in the
7 footprint.

8 So we moved in in -- on the 15th of June 2001,
9 and I was still working so my wife stayed down and I
10 came down on Thursday evening, went home on Mondays.

11 Then I became full time in January 2003.

12 Q. So '75 to 2003 it was more of a summer home, 2003
13 it became a year-round home?

14 A. No, it became a year-round home in June of 2001.

15 Q. Oh, you were commuting in that time?

16 A. I was, yes.

17 Q. Okay, great.

18 From '75 -- 1975 to 2001, Alex, has your use and
19 your family's use of the beach been consistent with your
20 earlier use from '69 to '74?

21 A. I would say in terms of the activities, yes, but
22 probably using it more.

23 Q. Because you are there for -- in '75 did you start
24 -- because you owned it did you start going for longer
25 periods of time?

1 A. All year-round -- well, strike that.

2 We would come down until the middle of November
3 and then pick up again in April.

4 Q. Great.

5 Besides the activities you talked about, you
6 know, sand castles, the picnicking, the sun bathing and
7 all that stuff, did you ever use the water at
8 Goose Rocks Beach?

9 A. Yes, swim, boating, fishing, clamming, used to
10 dig for those big hen clams when you could.

11 Q. Did you own a boat?

12 A. I have had a couple of boats.

13 Q. Where would you keep the boat?

14 A. Generally it would be -- it would be out in front
15 of what I call the east Goose Rocks and just in front of
16 Dinghy Point, in that area.

17 Q. My -- I will point here. You say east Goose
18 Rocks and Dinghy Point. Are you talking about this
19 area?

20 A. Yes, maybe a little towards the west but
21 generally there.

22 Q. When you were engaging in those activities from
23 '75 to the present day did you see beach-front owners on
24 the beach?

25 A. Yes, absolutely.

1 Q. Did you see back-lot owners on the beach?

2 A. Yes.

3 Q. Did you see members of the general public on the
4 beach?

5 A. Yes.

6 Q. Would beach-front owners be able to identify you?

7 MR. THAXTER: Objection.

8 THE COURT: Well, Gregg.

9 BY MR. FRAME:

10 Q. Did you know beach-front owners?

11 A. Absolutely.

12 Q. Did they say hi, Alex, how are you doing?

13 A. Yes.

14 Q. Great.

15 Did you observe those other people, Alex,
16 engaging in similar activities on the beach to what you
17 were engaging in?

18 A. Beach-front owners, back-lot owners and general
19 public?

20 Q. Everyone.

21 A. Yes. Not so much boating but some boating.

22 Q. In all the time, Alex, from 1969 to today have
23 you ever asked anyone for permission to use the beach?

24 A. Never.

25 Q. From 1969 to today, Alex, did you ever -- well,

1 strike that.

2 Prior to this litigation taking place did you
3 ever make a distinction between wet and dry sand on the
4 beach?

5 A. Well, I know the difference.

6 Q. Did you ever make a distinction between where you
7 could go and what you could do on the beach based on the
8 wet and dry sand?

9 A. No.

10 Q. Did anyone ever tell you that you couldn't engage
11 in what you were doing on the beach?

12 A. No.

13 Q. Did anyone ever tell you you had to move along or
14 go down to the public part of the beach?

15 A. I have to answer that question in a different
16 way. In my view the whole beach is public, I will say
17 no to the whole beach.

18 Q. The so-called public part of the beach.

19 A. Can you define for me what the so-called public
20 area of the beach is?

21 Q. East of The Tides. Did someone tell you that you
22 needed to move -- did someone ever use the term, Alex,
23 you need to move to the public part of the beach?

24 A. Never.

25 Q. Do you engage in recreational activities, Alex,

1 outside of the summer, at Goose Rocks Beach -- on
2 Goose Rocks Beach?

3 A. Yes.

4 Q. You walk the beach?

5 A. Absolutely.

6 Q. You sit on the beach?

7 A. I do.

8 Q. In an October day would you do that?

9 A. I probably wouldn't sit on the beach in October
10 but I will walk it and I will walk my dog. I don't walk
11 the dog from June 15th to September 16th.

12 Q. Why not?

13 A. Because, number one, I don't want to go down
14 there prior to 8 o'clock, during that time frame
15 because --

16 Q. You are retired?

17 A. Well, no, I get up early, but I don't want to
18 engage with all the other animals on the beach and 6:00
19 to 8:00 there are still too many so I don't go.

20 But I go if there's -- if the weather is fine all
21 the rest of the year.

22 Q. Do you have any grand kids, Alex?

23 A. Five.

24 Q. When you were raising your kids at Goose Rocks
25 Beach did you ever give them instructions on where they

1 were allowed and not allowed to go on the beach?

2 A. When they were young, right in front of me.

3 Q. When they were able to wander were they free to
4 roam?

5 A. I didn't give them any instructions, no.

6 Q. Did you ever tell them that wherever they went on
7 the beach they needed to seek permission from the
8 beach-front owner?

9 A. I did not.

10 Q. Have your kids -- have you seen -- have you
11 observed your kids instructing your grand kids on what
12 they were allowed to do and not do on the beach?

13 A. No.

14 Q. Other than stay within the line of sight when
15 they are toddlers, correct?

16 A. Right.

17 Q. You and Judy involved at all in the Goose Rocks
18 Beach Association?

19 A. Well, I have been playing tennis up there since
20 the '70s, still do, generally twice a week, I haven't
21 been able to do it for the last couple, though, and my
22 wife was on the board of directors for three years, and
23 back years ago it was strictly voluntary, and we helped
24 in many of the social functions.

25 Q. Kids involved -- did the kids take advantage of

1 any of the activities that the Goose Rocks Beach
2 Association offers?

3 A. The two boys took swimming lessons, the girls
4 knew how to swim before and the youngest son and both
5 daughters took the tennis lessons and one of them was on
6 the traveling tennis team.

7 Q. Great.

8 Were -- so you were a back-lot owner. That is an
9 association that is open to beach-front owners and
10 back-lot owners in the Goose Rocks Beach zone, correct?

11 A. And also the general public.

12 Q. You said your daughters knew how to swim but your
13 sons hadn't yet when you moved to Goose Rocks Beach,
14 correct?

15 A. Correct -- not when I moved but when we first --

16 Q. When you were there?

17 A. -- started going.

18 Q. They took swimming lessons through the
19 Goose Rocks Beach Association?

20 A. Yes.

21 Q. Where on the beach do you recall were those
22 swimming lessons?

23 A. They fluctuated. At one point they were doing
24 the lesson -- they had put a raft --

25 Q. Feel free to identify it on the map if you want

1 just by --

2 A. Well, I can just tell you, the raft was in
3 between the -- in front of the Sandifer,
4 S-A-N-D-I-F-E-R, slash Barstows and Dicesare, now The
5 Anchorage premises, that was there for a while and so
6 naturally with the raft out there that's where they took
7 the lessons, and for some reason or other it moved east.

8 Q. You watch your kids take those lessons at all?

9 A. On occasion.

10 Q. Did they have to set up shop on, you know, their
11 towel and stuff on the wet sand or do they do it on the
12 dry sand up in front of Sandifer and Barstow?

13 A. I can't tell you where the towels were placed.

14 MR. FRAME: Okay. Nothing further, your
15 Honor.

16 THE COURT: Mr. Stern.

17 MR. STERN: Nothing, your Honor.

18 THE COURT: Mr. Driver?

19 MR. DRIVER: Nothing, your Honor.

20 THE COURT: Mr. Willing?

21 MR. WILLING: Just a few questions, your
22 Honor.

23 CROSS EXAMINATION

24 BY MR. WILLING:

25 Q. When did you first hear the term public beach in

1 the sense that it's been used by witnesses in this
2 lawsuit?

3 A. I couldn't give you an estimate but it's in
4 recent years.

5 Q. I am sorry?

6 A. In recent years.

7 Q. Did you ever hear that term back in the '70s when
8 you were first using the beach?

9 A. No. As I indicated, everybody thought the beach
10 was public from one end to the other.

11 Q. Were there any sailing lessons at Goose Rocks
12 Beach at any point?

13 A. Yes, three were.

14 Q. Where were those located?

15 A. Generally around the Dinghy Point area.

16 Q. And was there sailing equipment kept on the
17 beach?

18 A. The sailing equipment, the oars, buoys, some of
19 the sails, other accoutrements involving sailing were
20 kept in two large green boxes on the west end of the
21 Bartlett Road path.

22 Q. Do you recall a lifeguard stand on the beach back
23 when you first started renting and then bought?

24 A. Yes.

25 Q. Do you recall lifeguards on the beach?

1 A. Yes.

2 Q. When -- could you give us your understanding of
3 when that practice ended?

4 A. I would say -- this is my recollection -- early
5 '80s because one of the last lifeguards or the last
6 lifeguard was a gentleman by the name of John Prell who
7 was a neighbor and friend of our family who owned
8 property with his parents on Crescent Street -- Crescent
9 Avenue.

10 Q. Was there a lifeguard and a lifeguard chair when
11 you first started renting in 1969?

12 A. Yes.

13 Q. So from '69 to the early '80s when Mr. Prell was
14 we think maybe the last lifeguard, was there a lifeguard
15 there consistently that you recall?

16 A. Consistently being --

17 Q. In the summer.

18 A. In the summer, yes.

19 Q. Was there a police patrol, a regular police
20 patrol that you observed at some point by the town?

21 A. Back in '69?

22 Q. At any -- well, you tell me.

23 A. I don't recollect policemen walking the beach in
24 the late or early '70s but subsequent to that walking
25 the beach.

1 Then they had these -- what do you call them --
2 they looked like a motor vehicle, a Vespa or something
3 like that, they had those, then they went to bicycles,
4 and then of course patrol cars are up and down the beach
5 all hours of the day and night.

6 Q. Focusing on the patrol of the sand itself by the
7 town, has the town as far as you observed been
8 patrolling the beach since the '80s?

9 A. To some degree.

10 Q. When you have been using the beach you said you
11 have walked -- you have walked the full beach river to
12 river; is that right?

13 A. Yes.

14 Q. Do you do that regularly?

15 A. Are you talking about now?

16 Q. Now, we will start with now.

17 A. Start now?

18 Q. Starting with now.

19 A. I would say from September 16th until the 14th of
20 June I will walk the beach with my dog practically every
21 day except in extreme inclement weather. I have been
22 down there in snowstorms and freezing weather or if I've
23 got something else to do.

24 But I don't walk the whole beach at that -- I
25 generally go most of the time from Bel-Air to the east,

1 New Biddeford Road and then back down on the sidewalk
2 and then sometimes I go the other way to Dyke Road and
3 back and then sometimes I even go further.

4 Q. Do you ever walk the beach or run the beach in
5 the summer or have you?

6 A. I do without the dog -- well, summer doesn't end
7 until the end of the third week in September so I guess
8 probably I do walk it with the dog.

9 Q. Let's focus on Memorial Day to Labor Day. Do you
10 ever walk or run the beach?

11 A. Yes.

12 Q. Have you done so since you first started renting
13 in '69?

14 A. In the times that I was here, yes.

15 Q. How consistently do you do that, how frequently
16 when you are here?

17 A. Well, up until the time we became full-time
18 residents I would walk it frequently but not every day.

19 Q. How about after you became full-time residents?

20 A. Well, I just indicated to you that --

21 Q. In the summer.

22 A. In the summer? A fair amount of time. I can't
23 give you specifics but --

24 Q. Did you observe members of the public using the
25 beach river to river?

1 A. Well, let me say this, from Bartlett Avenue to
2 beyond New Biddeford Road there's always people there in
3 the summer, less from Bartlett to it is either -- I
4 think it is Rencurrel's house, Mrs. Rencurrel's house,
5 then it starts picking up in front of Sandifer,
6 Barstows, more in front of Anchorage, more in front of
7 Vincenzi and gradually increasing past Marie's, past
8 The Tides and then to Lencki and then to Emmons and then
9 I guess you got town and conservation trust property and
10 then -- but I don't see a large decrease from Vincenzi
11 all the way down to New Biddeford Road.

12 Q. You were kind of moving, am I correct, west to
13 east in your description of the use of the property in
14 that last bit of testimony?

15 A. Yes.

16 Q. Okay.

17 When you first arrived in the '60s was the same
18 true of the public use?

19 A. In terms of numbers or in terms of local?

20 Q. Both, why don't you address both.

21 A. Well, I believe that the numbers were less.
22 Yeah, I would say they were less in '69 but the local
23 was the same.

24 Q. Was the public using all of those same sections
25 of the beach in '69 at least to some degree?

1 A. Absolutely.

2 Q. When you kept your boat off of Dinghy Point how
3 did you get out to it?

4 A. With the dinghy.

5 Q. Where was the dinghy stored?

6 A. The dinghy was stored not always exactly in the
7 same location but it would be between or halfway between
8 the Sandifer, Barstows property and the Anchorage,
9 Dicesare property.

10 Q. When you would put the dinghy on the beach were
11 you focussed on making sure it wasn't on somebody's
12 private property?

13 A. No.

14 Q. You were focusing on putting it in the safest
15 place near where your boat was moored off the beach?

16 A. Right, so the high tide wouldn't take it out.

17 MR. WILLING: Thank you.

18 THE COURT: Mr. Thaxter.

19 CROSS EXAMINATION

20 BY MR. THAXTER:

21 Q. Good afternoon, Mr. Lachiatto.

22 A. Good afternoon.

23 Q. I would like you to walk up and look and point to
24 where the Dicesare property is and write there name
25 there if you can. If you could actually -- if it's all

1 right if you could mark it --

2 A. Okay. Do you want the beach property and also
3 the -- just the beach?

4 Q. No, both.

5 A. I will do the house here and this is --

6 Q. If you could write the name out on the beach end
7 of it that would be good.

8 A. Out here?

9 Q. Yes.

10 A. Well, there are dunes and --

11 Q. Okay. Well, write the name right there.

12 A. (Witness complies.)

13 Q. Now, did you observe standing close to that that
14 that's a large pie-shaped piece of property, right --

15 A. Yes, sir.

16 Q. -- and that looks like it?

17 A. Do you want me to go back?

18 Q. Yes, you can go and sit down.

19 That piece of property looks like it includes
20 most of -- what you call sand -- Dinghy Point, right?

21 A. I would say more than less.

22 Q. And did you hear Mr. Dicesare testify the other
23 day about where his property line was and that those
24 dinghies weren't on his property?

25 A. Mr. Dicesare didn't testify the other day.

1 Q. No, pardon me, Mr. Sandifer. Michael Sandifer.

2 A. I heard him say that. I would disagree with it.

3 Q. Okay, but if you look at the pie-shaped property
4 his is the one to the left of Dinghy Point, right?

5 A. Yes, sir.

6 Q. Okay.

7 Did you ever -- I heard you say that nobody had
8 ever stopped you and questioned your right to walk the
9 beach, correct?

10 A. Yes, sir.

11 Q. Do you remember having a little confrontation
12 with Barbara Rencurrel one day?

13 A. I would say that was -- it wasn't a
14 confrontation. That was -- I am trying to think. That
15 was my other dog, Heidi, and my son's dog Bailey, and
16 she asked me to leash the dog, and I indicated to her --
17 no --

18 Q. Go ahead.

19 A. That was the confrontation.

20 Q. Go ahead. What did you say to her?

21 A. I said I am not doing that, I have the leash in
22 my hand and the dog is under my control.

23 Q. And she was concerned about the Plovers in her
24 yard, did she express that concern to you?

25 A. Attorney Thaxter, my recollection was that was

1 either in the spring or fall, there could have been
2 Plovers there but I don't recollect her fencing that she
3 normally had out there during that season when the
4 Plovers and the Least Terns came.

5 Q. She normally had some Plover fencing there,
6 though.

7 A. No question about that, sir.

8 Q. And did you ever see her no trespassing sign?

9 A. I am trying to think.

10 There was a sign there, whether it said private
11 or no trespassing I can't tell you but there was some
12 sort of sign that said one or the other things.

13 Q. Did you ever see the sign on the Davis property?

14 A. No, I didn't.

15 Q. Did you ever see a sign up on the Scribner
16 property?

17 A. Yes, it was just below the dunes. I can't
18 recollect what it said, though.

19 Q. And do I understand that at least in recent years
20 your past time is walking your dog on the beach,
21 correct?

22 A. No -- I mean yes, that is part of it.

23 Q. Okay. Have you ever been up and sat down in
24 front of Mr. Gray's property?

25 A. Peter Gray --

1 Q. Yes.

2 A. -- or Mr. -- whatever his father's name is. Have
3 I ever sat in front of his property? I have been on it
4 and conversed with him on the dry sand and on occasion
5 have been on -- talking with him actually on the lot.

6 Q. Now, when you walk up the beach and see people
7 sitting in the front of the houses do you -- can you
8 differentiate between the owners and the general public?

9 A. Well, it depends on where I am and in front of
10 whose houses.

11 Q. You know some people.

12 A. I know quite a few people that live off and on
13 the beach.

14 Q. Do a lot of people on the beach rent their
15 houses?

16 A. Beach-front owners?

17 Q. Yes.

18 A. A fair number, yes.

19 Q. And you wouldn't know they are renters if they
20 were sitting in front of the house, would you?

21 A. Yeah, I would know some, I would know a couple of
22 families that sit in front of the Vincenzi home, I
23 would -- I am trying to think.

24 In years past I would know some that sat in front
25 of Lewis, formerly Fuller, and the old look-out station

1 and the Forrest and Stedman properties.

2 Q. I have just handed you what are some answers to
3 interrogatories that you and your wife signed. Would
4 you look and make sure that that is your signature on
5 the last page?

6 A. Yes, it is.

7 Q. And like I did with Mr. Flavin, could I just --
8 would you look on page 4, interrogatory number 7?

9 A. You want me to read it?

10 Q. I will read the question then you can read the
11 answer, how about that.

12 A. Sure.

13 Q. With reference to Count 4 of your counterclaim in
14 which you allege a prescriptive easement for both
15 general public -- for both the general public and for
16 each of you individually, describe each fact that
17 supports your claim to said prescriptive rights, and in
18 parens, include in your response a description in detail
19 as to each plaintiffs properties, the times, the dates
20 and the description of all such uses that you -- that
21 you claim give rise to your individual rights and
22 differentiate these facts from the facts that you claim
23 support a claim of public prescriptive easement.

24 MR. FRAME: Your Honor, I would object to
25 the individual --

1 THE COURT: He is part of the --

2 MR. FRAME: Part of the class.

3 THE COURT: -- the class so, yes, he can
4 answer the question.

5 A. Do you want me to read the answer?

6 Q. Yes, please. Sorry.

7 A. The defendants, and that's us, have used
8 Goose Rocks Beach from the Batson River to the Little
9 River for recreation for more than 41 continuous years,
10 and the uses included the properties all -- of all the
11 beach-front owners whether they are parties to this suit
12 or not.

13 Our use and that of our family included walking,
14 jogging, sun bathing, swimming, pitching baseball and
15 football, Frisbee throwing, building sand castles, sand
16 sculptures, digging holes, hunting for sand dollars,
17 Chinese hats, dog walking, water skiing, tubing,
18 kayaking, playing, kite flying and other recreational
19 uses including fishing and navigation.

20 Q. It's fair to say in your answer you did not
21 detail which plaintiffs properties you were using and
22 which times you were using them, correct?

23 A. I didn't put which times but we used from one end
24 to the other, so everybody.

25 Q. Have you ever taken out a fire permit?

1 A. No, sir.

2 Q. Do you understand the ordinance provision on fire
3 permits?

4 A. I do.

5 Q. Okay. Now, were you aware that in the '70s the
6 center part of the beach -- the town and the Kennebunk
7 Conservation Trust started acquiring lots in the center
8 portion of the beach where the lifeguard chair generally
9 is?

10 A. I didn't become aware of it at the time but later
11 on in years I was made aware of it.

12 Q. And how far later was that?

13 A. That it was a piece that the town owned and
14 several conservation trusts?

15 Q. Yes.

16 A. I would be guessing. Do you want me to guess?

17 Q. No, don't do that.

18 My understanding is that until -- is that you
19 continued working till about 2001 and up to that -- for
20 a period you were just coming up on the weekends between
21 work or were you coming up every night?

22 A. Are you talking about me personally?

23 Q. You personally, yes.

24 A. I continued working until December 31, 2002.

25 Q. Okay.

1 A. And you want to know when I came up from when to
2 when, sir?

3 Q. Well, my understanding is there was a long period
4 from '75 on where you were up somewhat in the summer but
5 not all summer; is that correct?

6 A. Me personally, I was a weekend warrior except for
7 maybe taking -- coming down on a Thursday and going back
8 on Monday.

9 Q. You talked about the sailing equipment.

10 A. Yes, sir.

11 Q. I believe you indicated that you -- that it was
12 kept in the Bartlett Ave path, right?

13 A. Yes, sir.

14 MR. THAXTER: Okay, thank you. Thank you.

15 THE COURT: Mr. Frame?

16 MR. FRAME: Nothing more for this witness,
17 your Honor.

18 THE COURT: Mr. Lachiatto, thanks very
19 kindly. You may step down. Thank you.

20 (Witness excused.)

21 THE COURT: Okay, we will wrap up for this
22 afternoon.

23 Now, I don't know if there are going to be
24 evidentiary issues, things that need my attention, if
25 there are I will be here at 8:30 and I will be glad to

1 deal with them, but at 9:00 I want to come in and start
2 taking testimony, okay?

3 So we will see everybody at 9 o'clock in the
4 morning or 8:30 if necessary. I will be here.

5 (Thereupon, the foregoing proceedings
6 concluded at 4:02 p.m.)

7 * * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Kimberly McCulloch, Official Court Reporter
for the State of Maine, do hereby certify the foregoing
transcript as true and accurate to the best of my
ability.

Kimberly McCulloch
Official Court Reporter