

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 29, 2012

Kimberly McCulloch
Official Court Reporter

APPEARANCES

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

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Melissa A. Hewey, Esq.
Brian D. Willing, Esq.

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.

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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 29, 2012 for trial commencing at 9:03 a.m.)

THE COURT: Good morning, folks.

Robert, welcome back.

THE CLERK: Thank you, your Honor.

THE COURT: Good morning, Kimberly.

THE COURT REPORTER: Good morning, your Honor.

THE COURT: We are here in the Almeder matter and it looks like the parties are present with the exception of Alex Lachiatto whom I understand is a little under the weather and has sort of chosen to stay home today. We actually had completed his testimony at the close of business yesterday afternoon.

Gregg, I will be inviting you to go forward with the evidence.

MR. FRAME: Good morning again.

THE COURT: Good morning.

MR. FRAME: Joan Junker, your Honor.

THE CLERK: Please state and spell your full name for the Court.

1 THE WITNESS: Joan T. Junker, J-U-N-K-E-R.

2 Thereupon,

3 JOAN JUNKER

4 was called as a witness and, after having been duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 Q. Good morning, Joanie.

8 A. Good morning, Gregg. How are you?

9 Q. I am doing well. How are you?

10 A. Pretty good.

11 Q. A little nervous?

12 A. A little bit.

13 Q. Have you ever testified in court before, Joanie?

14 A. Never.

15 Q. Okay.

16 Can you state your name and legal address for the
17 record, Joan?

18 A. All right, it's Joan Junker, 305 Kings Highway,
19 Goose Rocks Beach, Kennebunkport, Maine.

20 Q. Is that your home on the eastern end of Goose
21 Rocks Beach?

22 A. Yes, it is.

23 Q. Is this a year-round home, Joanie?

24 A. Yes, it is.

25 Q. How long have you lived in that home?

1 A. Well, in that home since -- year-round since 1976
2 but since 1950 as a summer resident, and prior to that
3 we were in a home that we lost in the '47 fire.

4 Q. Where was the home that you lost in the '47 fire?

5 A. On the same lot that our house is now.

6 Q. When was that home that was lost in the fire,
7 when was that built?

8 A. Well, probably before 1900.

9 Q. Has that been in your family the entire time?

10 A. Yes, since 1925, but I believe my grandparents
11 rented it for a few years before they purchased it.

12 Q. Great.

13 When did you first start coming to Goose Rocks
14 Beach, Joanie?

15 A. I think I came in 1931 or 1930 actually.
16 Probably 1931 when I was a year old.

17 Q. Thank you for saving me there because my mom said
18 never to ask a woman her age.

19 A. I don't mind.

20 Q. So 1931 you first started coming to Goose Rocks
21 Beach, coming to that home but not that home but the
22 home on that piece of property --

23 A. Yes.

24 Q. -- that was owned by your grandparents at that
25 time?

1 A. Yes, it was.

2 Q. Great.

3 How long did your grandparents own it before it
4 passed -- title to it passed to someone else?

5 A. The mid '30s when my grandparents passed away.

6 Q. And your parents took over?

7 A. My mother and my aunt.

8 Q. Okay.

9 A. Yes.

10 Q. And what happened in 1950? You said 1950 you
11 started to summer there more often?

12 A. That's when the house was rebuilt, when my mother
13 rebuilt a different house of course, but she rebuilt and
14 moved there herself year-round in 1950 and we would come
15 summers.

16 Q. Okay. Would you just come summers at that point?

17 A. Yes.

18 Q. When did you and Bill Junior, your husband, start
19 to come year-round?

20 A. 1976.

21 Q. Okay.

22 Can you, Joanie, with the orange marker, can you
23 go up to the map and identify your home on this map? It
24 says TMF defendants.

25 A. (Witness complies.)

1 Q. I won't make you get up again, Joanie, I will
2 give you a red pen now.

3 Can you identify how you have generally X'd the
4 route you have taken to generally access the beach from
5 your home, show an arrow to the beach?

6 A. (Witness complies.)

7 Q. Thanks, Joanie.

8 Now, you identified, Joanie, three different ways
9 that you generally access the beach. Can you explain
10 that?

11 A. Well, we had -- we have -- I -- what do you call
12 it, a deeded right-of-way to the sea and that became
13 almost impassable after the fire because of some fairly
14 large holes that were in it and it wasn't repaired for
15 several years so we used what is now known as Peg's Way,
16 but we generally use Jefferys Way.

17 Q. Great.

18 Besides that home -- is it 305 you said?

19 A. That's correct.

20 Q. Besides that home at 305 are there any other
21 homes that the Junker family owns in the Goose Rocks
22 Beach zone?

23 A. Yes.

24 Q. You know what I mean by the Goose Rocks Beach
25 zone?

1 A. I do.

2 Q. What other homes does the Junker family own?

3 A. Well, our son Bill and his wife Maria own a home
4 at 114 Kings Highway and then my husband's sister
5 Hildegard owns a house at 5 Belvidere Avenue.

6 Q. So Bill and Maria are more at the west end --

7 A. That's correct.

8 Q. -- and your sister is more kind of centralized to
9 the beach?

10 A. Right next to the hotel.

11 Q. Great.

12 From 19 -- I want to take you, Joanie, for a
13 little bit from the period of time from 1931 to 1947.
14 You said in 1947 there was a fire?

15 A. Yes, there was.

16 Q. What kind of impact did the fire have on the
17 beach. Did it destroy homes?

18 A. It certainly did, both ends of the beach were
19 destroyed at that time.

20 Q. From 1931 to 1947 you were a kid. What kind of
21 activities did you engage in on the beach?

22 A. All the beach activities that we have been
23 discussing, swimming, playing baseball, digging, sand
24 castles, walking, water skiing -- well, that was after
25 the fire. You said before the fire. Well, the general

1 things that kids do on the beach.

2 Q. You sun bathe?

3 A. Oh, absolutely --

4 Q. Do you socialize --

5 A. -- unfortunately, yes, yes, we did.

6 Q. Did you socialize with friends?

7 A. Oh, we had a lot of friends. What happened --
8 during the war it brought the beach together because
9 families would come up and we would -- and it -- before
10 the war we sort of would stick to our own little bit but
11 then the war brought us all together and we were
12 teenagers, so we were from all over the beach.

13 Q. And those teenagers from all over the beach,
14 those were back-lot owners, beach-front owners kids?

15 A. Yes, back lot, ocean front.

16 Q. And would you stay localized, Joanie, in that '31
17 to '47 --

18 A. No, we take turns going to --

19 Q. Let me finish, I am sorry.

20 A. I am sorry.

21 Q. That's okay.

22 From '31 to '47 would you stay localized to that
23 east end of the beach?

24 A. No, we visit at each others houses, take turns
25 going to each others houses and have sleepovers and, you

1 know, parties and things like that.

2 Q. And was that up and down the beach?

3 A. Yes.

4 Q. Who was into your kind of crew or gang of friends
5 at that time?

6 A. Well, it was Janie Prescott, she was Janie
7 Austin, the Wiewels, Lee Newcomb, Barbara Line --
8 Barbara Rencurrel, Bill Nickerson, Dick Nickerson,
9 Annette Chase Scribner, Bob Scribner, my brother,
10 Howard -- oh, no, that's my kid's friend.

11 Well, in general, yeah.

12 Q. You said Barbara Rencurrel was in that group that
13 recreated up and down the beach?

14 A. Oh, yeah, we were all friends together, yeah, had
15 a good time.

16 Q. What kind of impact, Joanie, did the fire have on
17 activities on the beach in the late '40s and into the
18 '50s and '60s?

19 A. Well, of course The Casino burnt and that's where
20 we used to have a lot of fun and that's where the
21 bowling alleys were and -- and we -- barn dances, and
22 also -- and I believe it was in 1951 or '2 that they
23 bought another building over from Kennebunk Beach and we
24 call it now the Community House and that's when our kids
25 -- you know, they became -- we became members of the

1 association and they used the Community House.

2 Q. Prior to '47, Joanie, were there -- you know, now
3 we know -- tell me now how many grocery stores or stores
4 are in Goose Rocks Beach --

5 A. Well, there were two little convenient --

6 Q. Right now, right now.

7 A. Oh, right now?

8 Q. Yep.

9 A. One.

10 Q. And how many hotels are in Goose Rocks Beach zone?

11 A. One hotel.

12 Q. What about prior to 1947, prior to the fire?

13 A. Okay, there was The Homestead, which was down at
14 the east end of the beach, and then there was the hotel
15 that was known as the New Belvidere and then Allen's By
16 The Sea, the new Beachwood House and the Anchorage had
17 guests, you know, guest rooms.

18 Q. So four or five hotels at that time?

19 A. Well, you know, two, three or four, yeah.

20 Q. What about stores, were there stores at Goose
21 Rocks Beach?

22 A. Before '47?

23 Q. Yes.

24 A. Yes, two general stores.

25 Q. Two general stores.

1 Was there -- I think you talked about a bowling
2 alley?

3 A. Yes, that was behind town store and we called it
4 The Casino and it was just a large building that had two
5 bowling alleys and a big hall that we used to have barn
6 dances and whatnot.

7 Q. Great.

8 Do you recall roughly how many houses burned down
9 in the fire of '47?

10 A. I think there were probably 50 to 100 if not
11 more. It was both ends of the beach.

12 Q. Okay.

13 A. Yeah.

14 Q. And after 1947 did people of those 50 to 100, did
15 you see people kind of immediately rebuilding or did it
16 take some time?

17 A. It took some time, like it took my mother almost
18 three years before she started the house and had it
19 built in '49 to '50. It took people two or three years
20 to recoup and, you know, decide what they were going to
21 do about rebuilding.

22 Q. Great.

23 You have kids, right?

24 A. Yes, I do.

25 Q. How many?

1 A. Three.

2 Q. Great.

3 And you have grand kids?

4 A. Yes.

5 Q. How many?

6 A. Five.

7 Q. Great.

8 When your kids were growing up from 1950 to 1976
9 when you were summering at that home before you moved
10 there year-round what kind of activities did you see
11 them engage in on the beach?

12 A. Well, the usual, swimming, sun bathing and
13 digging sand castles and especially the softball games
14 on the weekends when the dad's would come, they -- gosh,
15 there would be anywhere from 10 to 20 or more kids
16 playing softball. My husband and Mr. Miller and a few
17 others of the dad's would organize the games and then --
18 and then as they got into their teen years there was
19 water skiing at Little River, we did that a lot and,
20 well, the usual activities, Frisbee, the tidal pool,
21 playing as infants in the tidal pools.

22 Q. Did some of those activities, Joanie, take place
23 before the Asplundhs and the Dwelleys and the Temerlins
24 built their house on Sand Point?

25 A. Yes, the low tide goes out so well it was a

1 perfect ball field in that whole area and then the water
2 skiing was at Little River which was in front of the --
3 it was then the Page property but I believe it now is
4 owned by Temerlin.

5 Q. So when the kids were engaging in these games
6 would you go down to the beach and watch?

7 A. Oh, yes. Oh, yeah.

8 Q. Would you set up a beach towel?

9 A. Yes.

10 Q. Would you normally do that on wet sand or on dry
11 sand?

12 A. Well, it would be on dry sand and then if it was
13 too hot then we would be down on the wet sand.

14 Q. Great.

15 Primarily that activity on the eastern end, the
16 ball games and stuff like that?

17 A. Yes, wherever the tide -- at low tide wherever it
18 would be the best, sometimes it was in what we refer to
19 as the middle part of the beach or the open part,
20 sometimes there too.

21 Q. Okay.

22 Were you in front of the Scribner house?

23 A. Yes, I think we were a few times.

24 Q. And what's now the Asplundh and Dwelley and
25 Temerlin house --

1 A. That whole general area we sort of used the whole
2 beach.

3 Q. Did you ever instruct your three kids on what
4 they were allowed to do and not allowed to do on the
5 beach?

6 A. No, except referring to -- oh, they would get so
7 cross at us when we would make these wonderful cars and
8 things in the sand and we would make them fill them in
9 before they would leave the beach and they would get
10 annoyed at us for that.

11 And also not to go in the water unless we were
12 down there.

13 Q. Great.

14 Did you ever tell them where they could go or
15 couldn't go?

16 A. No. No, it never occurred to us.

17 Q. I am going to -- sorry to jump around, I am going
18 to take you back a little bit. 1931 to 1947 or -- 1931
19 to 1950 when you were palling around with back-lot
20 owners and -- other back-lot owners and beach-front
21 owners on the beach, did you ever feel like you couldn't
22 go in certain places on the beach?

23 A. No. We went everywhere.

24 Q. Did you ever feel that you had lesser rights to
25 utilize the beach than any of -- Barbara Rencurrel was

1 with you or other beach-front owners?

2 A. No, we never had that problem, ever. Actually to
3 this day I don't have that problem.

4 Q. Did you ever see at that time any of the folks
5 you were with or the parents of the folks you were with
6 tell people to get off their beach?

7 A. No, everybody welcomed us.

8 Q. Is it fair to say, Joanie, that in all your years
9 of recreating or, excuse me, summering at Goose Rocks
10 and now living at Goose Rocks Beach that the beach has
11 been the focal point of your family's recreational
12 activities?

13 A. Oh, yes, uh-huh.

14 Q. When you were -- do you still go down to the
15 beach, Joanie?

16 A. Well, yes, I do. I have -- in the last few years
17 I have had some health issues so I have to stop my
18 walking. I was a pretty regular walker because we had
19 -- at one time we had three dogs and I had to get their
20 exercise. The year that we moved here was when they
21 passed the dog ordinance so -- but the last few years I
22 have had some health issues that I haven't gotten out as
23 much as I would like to.

24 Q. At any point -- you have been coming out, Joanie,
25 I don't mean to date you --

1 A. I don't mind.

2 Q. -- but you have been coming to the beach now for
3 81 years?

4 A. Correct.

5 Q. At any point in time, Joanie, have you
6 distinguished between the wet and the dry sand in terms
7 of where you are permitted to go on the beach?

8 A. No.

9 Q. When you are on the beach, Joanie, engaging in
10 the activities you have talked about did you observe --
11 was your family alone on the beach in those activities
12 or did you observe other families engaging in similar
13 activities on the beach?

14 A. Oh, we were usually with other families.
15 Occasionally alone but mostly we were with the
16 neighbors, yeah.

17 Q. Were they engaging in similar activities?

18 A. Yes.

19 Q. If you looked east and you looked west on the
20 beach would you -- were you apt to see other folks
21 engaging in similar activities as the ones you were
22 engaging in?

23 A. Yes, yep.

24 Q. In your 81 years, Joanie, have you ever asked
25 permission of any beach-front owner to use the beach?

1 A. No, I have not, no.

2 Q. Have you ever been told by a beach-front owner --

3 A. No.

4 Q. -- not to engage in any activities on the beach?

5 A. No, I haven't.

6 Q. Have you ever been told that you need to move to
7 the so-called public beach?

8 A. Nope.

9 Q. Were other beach-front owners on the beach with
10 you, Joanie, when you have engaged in these activities?

11 A. Yes, yep.

12 Q. Scribner has been out there when you have been
13 engaged in those activities?

14 A. Yep.

15 Q. Temerlin, Dwelley, Asplundh families?

16 A. Well, yes -- I don't know the Temerlins or the
17 Asplundhs that well but the previous people you
18 mentioned, yes.

19 Q. Great.

20 Would they -- would those folks, the Scribner
21 family, the Dwelley family, other beach-front owners,
22 would they know you by sight, Joanie?

23 A. Oh, I think so.

24 Q. And they probably know where you live too,
25 wouldn't they?

1 A. I think so.

2 Q. Final question, Joanie. In all your 81 years on
3 the beach did you ever imagine that there would be a
4 lawsuit over your ability to utilize the beach?

5 A. No, I didn't.

6 Q. Has this been hard on you and your family?

7 A. I would say it has. Yes. It is sad.

8 MR. FRAME: Nothing further, your Honor.

9 THE COURT: Mr. Stern.

10 CROSS EXAMINATION

11 BY MR. STERN:

12 Q. Good morning.

13 A. Good morning.

14 Q. You mentioned tidal pools.

15 A. Yes.

16 Q. And that's -- those were in the intertidal area
17 after the tide went out?

18 A. Yes, I guess that's technically, yes, they would
19 come and go, some years there would be none.

20 Q. Did your children and grandchildren play in
21 those?

22 A. Oh, yes.

23 Q. What did they do?

24 A. Oh, they just splashed around mostly and would
25 play in the water and sometimes they would build the

1 sand castles in the water to try to see if they could
2 make castles in the water.

3 Q. You testified that you have been walking up and
4 down Goose Rocks Beach your entire life.

5 A. Well, yes, seriously walking after we moved here
6 in 1976, I started seriously walking from our area to
7 Batson River almost every day.

8 Q. And generally that was in the wet sand area?

9 A. Yes, yeah, it would be wet sand.

10 Q. Did you also walk with your children and
11 grandchildren when they were small?

12 A. Yes.

13 Q. When you were walking up and down the beach in
14 front of other people's property did you -- were you
15 always moving or did you occasionally stop?

16 A. I would say we occasionally would stop to chat
17 with people that we know along the way.

18 Q. Did you stop so the children could play in the
19 sand in a particular area that they found interesting?

20 A. Well, yes, if they did, yeah.

21 Q. Did they sit down when they did that?

22 A. Probably, yes.

23 Q. Okay.

24 A. Yeah.

25 MR. STERN: Nothing further. Thank you.

1 THE COURT: Mr. Driver?

2 MR. DRIVER: Nothing.

3 THE COURT: Miss Hewey?

4 MS. HEWEY: Thank you.

5 CROSS EXAMINATION

6 BY MS. HEWEY:

7 Q. Just a couple of questions. Good morning.

8 A. Hello.

9 Q. You testified about the period from the '30s to
10 the '50s when according to your lawyer you were palling
11 around with people --

12 A. Yes.

13 Q. -- that were beach owners and back -- back-lot
14 owners.

15 During that time did you also see members of the
16 general public using the beach?

17 A. Yes.

18 Q. And were those members of the general public
19 using the beach in the same way that you and your pals
20 were using the beach?

21 A. Well, I guess they were. I would say they were.

22 Q. And is that during the time from the '50s to the
23 present, have you also seen members of the general
24 public using the beach?

25 A. Yes.

1 Q. And they also are using the beach in the same
2 manner that you and your family are using it?

3 A. Yes, uh-huh.

4 Q. Now, when you were up at the -- at that very
5 hard-to-see map there you said -- I think you said that
6 one of the ways that you access the beach from your back
7 lot property is on Jefferys Way; is that correct?

8 A. That's right, yes.

9 Q. And about, I don't know, 15 or 20 years ago do
10 you recall that there was some litigation involving --

11 A. Yes, I do.

12 Q. What was that about?

13 A. Well, I think some of the people that lived along
14 Jefferys Way felt that they wanted to close it to
15 traffic. I guess they wanted to privatize it in other
16 words.

17 Q. And you in fact -- well, gave a deposition, I
18 know it is one of the first depositions I took.

19 A. Yes, I did, I gave a deposition at that time.

20 Q. Ultimately was it determined that the town --
21 that the Jefferys Way is a public right-of-way?

22 A. Yes, it was.

23 MS. HEWEY: I have no further questions.

24 Thank you.

25 THE COURT: Ben?

1 CROSS EXAMINATION

2 BY MR. LEONI:

3 Q. Good morning. My name is Ben Leoni and I am an
4 attorney with the plaintiffs.

5 A. Good morning.

6 Q. A moment ago when Gregg was asking you some
7 questions he asked you some questions about your time in
8 the '50s and even up till now with basically socializing
9 with friends on the beach?

10 A. Yes, yeah.

11 Q. And some of your friends were -- did they own
12 beach-front properties?

13 A. Yes.

14 Q. When you socialized with them were you sometimes
15 on their beach-front properties with them?

16 A. Yes.

17 Q. You stated in fact that some of your friends back
18 in the '40s and the '50s were the Scribners and the
19 Rencurrels?

20 A. That's correct.

21 Q. And after the fire that you went to their houses
22 for sleepovers and things like that?

23 A. Well, actually that was before the fire --

24 Q. Okay.

25 A. -- I did that, yeah.

1 Q. Sorry, I will try not to interrupt you.

2 After the war, before the fire?

3 A. Uh-huh.

4 Q. Did that continue after the fire?

5 A. Well, we all started to get married and move away
6 but as we came back to the beach summers we all became
7 friends -- we never lost our friendship really and we
8 reconnected and we would get together occasionally with
9 our families and sit together on the beach.

10 Q. I think you stated, I have in quotes, that around
11 that time you were, quote, all friends together?

12 A. Oh, yes, yeah.

13 Q. So when you visited other beach-front owners on
14 their beach front you visited them as friends?

15 A. Yes.

16 Q. Okay.

17 A. Uh-huh.

18 Q. There was some testimony a little earlier about
19 the inns and the hotels that were on the beach I think
20 prior to the fire.

21 A. Correct.

22 Q. Those inns and hotels for the most part were
23 beach-front properties, were they not?

24 A. No, the hotel I referred to is now The Tides Inn
25 or The Tides Beach Club, but the homestead was not on

1 the -- it was actually on the New Biddeford Road and
2 Kings Highway.

3 Q. Okay.

4 How about the Allen's House?

5 A. Well, let's see, it was known as Allen's By The
6 Sea, The Tides Inn, before it was The Tides Inn --

7 Q. Okay.

8 A. -- and then there was the Beachwood house which
9 is what Marie Henricksen now owns, was known as the
10 Beachwood house.

11 Q. Right next to The Tides?

12 A. Yes, correct.

13 Q. And the Anchorage?

14 A. The Anchorage is still the Anchorage, yes.

15 Q. Where is that?

16 A. That's on the -- well, it is across the street
17 from the beach but I guess you can call -- I don't call
18 it ocean front because the road is in between but that's
19 just me.

20 Q. But there's no house on the other side of Kings
21 Highway --

22 A. No.

23 Q. -- between the hotel and the beach?

24 A. Correct.

25 Q. Is that where the Dicesares now live?

1 A. Yes, that is correct.

2 Q. And did you see -- back in those days did you see
3 the guests from those hotels using the beach?

4 A. I don't know really whether they were guests --
5 you mean from the hotel or from the Anchorage?

6 Q. From the hotels.

7 A. Oh, yes. I worked at the hotel for three years
8 after the fire -- two years after the fire.

9 Q. So when you saw people in -- on the beach in
10 front of those hotels, many of them were guests?

11 A. Yes.

12 Q. You mentioned weekend softball games --

13 A. Yes.

14 Q. -- in the I think '60s and '70s when your kids
15 were teenagers?

16 A. That's correct or preteens actually.

17 Q. And you mentioned that the softball games where
18 they were on the beach, although typically on the east
19 end would depend on where the good wet sand was at low
20 tide?

21 A. That is correct, the good, hard-packed sand.

22 Q. So that was below the high watermark that those
23 softball games took place?

24 A. Yes, in the hard packed wet sand.

25 Q. Okay. Sometimes you said that the wet -- the

1 softball games occurred on what you called the open
2 section of the beach?

3 A. Yes.

4 Q. Is that the area east of The Tides where there's
5 no houses on the south side of Kings Highway?

6 A. That is correct.

7 Q. You also mentioned that you saw softball games in
8 front of the Scribner's house.

9 A. Yes.

10 Q. And the Scribners participated in the softball
11 games, didn't they?

12 A. Yes, I am sure they did.

13 Q. Earlier, and I think this is sort of the nature
14 of Goose Rocks Beach, you testified that whenever you
15 went to other people's property or other beach front
16 areas in quotes you said everybody welcomed us.

17 A. Absolutely.

18 Q. And that's still true today?

19 A. I would say so, yes.

20 Q. You also testified that when you would come
21 out -- you typically access I think you testified
22 through the Jefferys Way?

23 A. Yes, that is correct.

24 Q. When you come out of the Jefferys Way you said
25 you looked east and west and you saw people using the

1 beach?

2 A. Yep, yes.

3 Q. And that includes beach-front owners, people that
4 own beach front?

5 A. Yes, yep.

6 Q. You know the Scribners?

7 A. Oh, yes.

8 Q. Good friends?

9 A. Yes.

10 Q. You know Barbara Rencurrel?

11 A. Yes, I do.

12 Q. Do you consider her a friend?

13 A. Oh, yes.

14 Q. A moment ago you mentioned that you saw members
15 of the general public using the beach back from the '30s
16 and on. I just want to ask you a few questions about
17 that because a moment ago you mentioned that you didn't
18 really know the Asplundhs --

19 A. Well, I -- how can I answer that? I know who
20 they are. I used to see Mrs. Asplundh when I was -- she
21 would be walking her dogs when I would be walking our
22 dogs, but as far as -- we don't socialize or we haven't
23 socialized or anything.

24 Q. Is it fair to say that you don't know by sight
25 all of the beach-front owners on Goose Rocks Beach?

1 A. There would be a few that I do not know, correct.

2 Q. For those properties that are rented, beach-front
3 properties that are rented it's fair to say you don't
4 know all the renters?

5 A. That is correct, that would be fair to say.

6 Q. Sometimes when you walk down the beach you see
7 people that you don't know?

8 A. That is correct.

9 Q. And if you don't know them you have no idea
10 whether they are on the beach as beach-front owners or
11 members of the general public?

12 A. That's correct.

13 MR. LEONI: That's all I have. Thank you
14 very much, Mrs. Junker.

15 THE COURT: Mr. Frame.

16 REDIRECT EXAMINATION

17 BY MR. FRAME:

18 Q. One more question, Joanie, then someone else may
19 have some questions. During those softball games or any
20 ball games that were on hard sand, if you weren't
21 participating in those games would you set up a beach
22 chair or a towel to watch?

23 A. Yes.

24 Q. Would you do that on the wet sand or on the dry
25 sand?

1 A. Probably both. Probably out of the way of the
2 ball. We would be well out of the way of the line of
3 fire so to speak.

4 MR. FRAME: Nothing further, your Honor.

5 THE COURT: Anything else?

6 Miss Hewey?

7 REXCROSS EXAMINATION

8 BY MS. HEWEY:

9 Q. Mrs. Junker, you talked about four different
10 hotels, inns, whatever, places where people stayed --

11 A. Yes.

12 Q. -- back before the fire, The Homestead, the
13 Beachwood, The Tides which had a different name --

14 A. Yes.

15 Q. -- and the Anchorage, and am I correct that none
16 of those are beach-front property?

17 A. Well, I don't know if you call a hotel beach
18 front because they don't have a house in front, they
19 have Kings Highway in front, and the Anchorage and the
20 Beachwood, so I don't know how technically you would
21 call -- I call ocean front are the home owners right on
22 the beach itself.

23 Q. Okay.

24 A. Yeah.

25 Q. So maybe to make my question a little bit more

1 precise, is it correct that Kings Highway is between the
2 ocean and each of those establishments that you talked
3 about?

4 A. Yes.

5 MS. HEWEY: Thank you.

6 THE COURT: All set?

7 Miss Junker, thanks very much. You may step
8 down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Gregg.

12 MR. FRAME: Herb Cohen, your Honor.

13 THE COURT: Mr. Cohen.

14 THE CLERK: Please raise your right hand.
15 State and spell your full name for the Court.

16 THE WITNESS: Herbert Cohen, H-E-R-B-E-R-T
17 C-O-H-E-N.

18 Thereupon,

19 HERBERT COHEN

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

22 DIRECT EXAMINATION

23 BY MR. FRAME:

24 Q. Good morning Herb.

25 A. Hi Gregg.

1 Q. State your residence for the Court.

2 A. 106 Kings Highway.

3 Q. Herb, where did you grow up?

4 A. Maine.

5 Q. Where in Maine?

6 A. Lewiston.

7 Q. Did you go to Lewiston High School?

8 A. I did.

9 Q. Where did you go -- did you go to school after
10 Lewiston High School?

11 A. The University of Maine.

12 Q. Great.

13 After the University of Maine did you go back to
14 Lewiston?

15 A. No.

16 Q. What did you do after the University of Maine?

17 A. Went south, went to Boston -- well, after the
18 university I was in the service but I worked in Boston
19 for months before I went into the service.

20 Q. Great.

21 When did you first hear about Goose Rocks Beach,
22 Herb?

23 A. Oh, I first heard about it when I moved to
24 New Jersey in 19 -- I think 1977.

25 Q. So you didn't know about Goose Rocks Beach when

1 you were growing up in Lewiston?

2 A. Never.

3 Q. So you said about 1977?

4 A. Well, that was -- I really didn't know about it
5 till after that but I had heard about it. When I moved
6 to New Jersey my neighbor came over and said, oh, I know
7 Maine, I went to Goose Rocks Beach, and I said to my
8 wife what is he talking about, there is no such place.

9 Q. Was that -- the neighbor from New Jersey, do they
10 own property at Goose Rocks Beach?

11 A. No, he used to come and visit and he loved it and
12 sort of introduced us to it.

13 Q. Great.

14 When did you first come to Goose Rocks?

15 A. Probably not until sometime in the '80s, late
16 '80s.

17 Q. Okay, and did you rent a home in the '80s?

18 A. Well, originally, no, we stayed -- we rented
19 hotels, we stayed at The Tides, we stayed at the
20 Shawmut and --

21 Q. And --

22 A. -- our first year we rented I think was 1990.

23 Q. You said we. Do you have a family, Herb?

24 A. Yes, I do.

25 Q. Wife?

1 A. Wife, four --

2 Q. Kids?

3 A. -- four children.

4 Q. Great.

5 So in the '70s when you were staying at hotels
6 did you have four kids at that point?

7 A. Yes.

8 Q. Did all four kids come up with you?

9 A. Sometimes. Some did, some didn't. Because they
10 went to camp in Maine, so we would drop them off and
11 swing over by the beach.

12 Q. Vacation for you and your wife, right?

13 A. Yes.

14 Q. When you started -- give me the proximate date
15 again. When did you first start renting homes at Goose
16 Rocks Beach?

17 A. The first house we rented as a family was I think
18 1990.

19 Q. And you don't need to show me on the map but
20 where approximately was that home on the map, east end,
21 west end, center of the beach?

22 A. It was on the end of I think what is Jefferys
23 Way, it was the Plants Anchors house. It doesn't exist
24 anymore.

25 Q. The Plants Anchors house, so that would be more

1 the eastern end of the beach?

2 A. It was the east end of the beach.

3 Q. Was that a beach-front home or a back lot?

4 A. No, it was on the corner of New Biddeford Road
5 and Kings Highway.

6 Q. Kings Highway, so it was not a beach-front home?

7 A. No.

8 Q. Great.

9 After the Plants Anchors home where did you rent?

10 A. I rented that for two years and then we rented
11 the Trudo house.

12 Q. Where is the Trudo house?

13 A. The Trudo house is on the Kings Highway sort of
14 in the middle but there's no -- I don't -- it's not
15 beach front although there is no home between --

16 Q. So it is one of those homes on Kings Highway on
17 the western side of Kings Highway but there's no home on
18 the eastern side of Kings Highway?

19 A. Right.

20 Q. Great.

21 That's T-R-U-D-O, right?

22 A. T-R -- right.

23 Q. After the -- so that's more in the center of the
24 beach, correct?

25 A. Right.

1 Q. After the Trudo home, Herb, where did you rent?

2 A. Well, one year we did -- we split, we did the
3 Trudo home and I think what's called Sandifer. I am not
4 saying it properly, S-A-N-D I think I-F-E-R, something
5 like that. Anyway, it's the large house that sort of
6 begins the houses on the middle of the beach.

7 Q. Is that where what's now become known as Dinghy
8 Point, that area?

9 A. I have no idea. I never heard that. It's sort
10 of diagonally across from where The Tides is.

11 Q. Diagonally from where The Tides is?

12 A. If you stood on The Tides -- I think it's across
13 from the Anchorage, I am not --

14 Q. But --

15 A. -- anyway the first large house.

16 Q. -- more center of the beach, though, correct?

17 A. Yeah.

18 Q. And that's beach front, correct?

19 A. Yes.

20 So I split that one -- let's see, two, two -- I
21 split that one year.

22 Q. After that house where did you rent?

23 A. I moved west. Let's see. The Celi house, I
24 think, for three years.

25 Q. That's a -- the Celi house is a beach-front

1 house?

2 A. Yes.

3 Q. More towards the western end?

4 A. It's on the west end.

5 Q. You rented that you said for about four years?

6 A. Three.

7 Q. Three years, okay.

8 In these rentals up to the Celi house were you
9 coming up for a week, two weeks? What was the time
10 frame?

11 A. No, it was definitely two weeks and I kept
12 extending it to longer periods of time, so it might have
13 been -- I don't know, the Celi house was two or three
14 weeks.

15 Q. You started to fall in love with Goose Rocks?

16 A. Yes.

17 Q. After the Celi house which you said is a
18 beach-front home and you were on that -- you were in
19 that house renting for three weeks, where did you go?

20 A. I rented the Almeder house.

21 Q. And that's the beach-front home on Kings Highway?

22 A. Yes.

23 Q. How long did you rent that for?

24 A. Five years.

25 Q. Again were you coming up for two weeks now or

1 starting --

2 A. No, by that time I was going for four weeks and I
3 think even five weeks. I was going for -- I think one
4 year we did July but I think for the most part it was
5 August.

6 Q. And were you -- I forgot to ask you this, Herb.
7 Were you still working full time at that point?

8 A. Yes.

9 Q. So were you able to come up for that two-week
10 stretch or -- initially?

11 A. I did. My family was here the whole time. I
12 would come and go, I would work.

13 Q. As you got in the Almeder for that five-week
14 stretch, how much of that five-week stretch would you be
15 there?

16 A. Probably a couple of weeks or half the time,
17 something like that or take shorter weeks. I don't
18 remember.

19 Q. Sure, and after the Almeder house did you rent?

20 A. No.

21 Q. That was your last rental?

22 A. I purchased a house.

23 Q. You purchased a house. Where -- what house did
24 you purchase after?

25 A. Well, the lot that I live in now and the house --

1 there was a cottage there prior to that.

2 Q. Where is that?

3 A. It's at 106 Kings Highway.

4 Q. Is that directly west of the Almeder house,
5 across the street from the Almeder house?

6 A. It's diagonally across. I don't know what the
7 number is.

8 Q. Herb, can you take the orange pen and circle your
9 house -- your property on that map that says
10 TMF Defendants parcel map?

11 MR. FRAME: Permission to approach, your
12 Honor?

13 THE COURT: Yes.

14 A. I am not exactly sure.

15 Q. While you are up there, Herb, how would you --
16 put with a red pen -- how would you access the beach?

17 A. From where I live now?

18 Q. From where you live now.

19 A. Well, it's directly across the street. It is the
20 right-of-way that goes through --

21 Q. Right there?

22 A. (Indicating).

23 Q. Great.

24 You purchased that home, Herb, when?

25 A. 2000.

1 Q. So you rented for a number of years?

2 A. Yes, from -- 10 years.

3 Q. Great.

4 A. More than 10, 1990 -- I think I -- actually we
5 rented 11 years because I moved into the house -- the
6 house was built in 2001 but I still rented the Almeder
7 house that year.

8 Q. While it was being built?

9 A. Yes.

10 Q. Great.

11 You rented -- you testified you rented towards
12 the east end, towards the middle, towards the west end,
13 rented back-lot owners -- rented back lots -- excuse me,
14 rented beach front. At any point in time did any of
15 your landlords give or leave you anything that
16 instructed you on what you were and were not allowed to
17 do on the beach?

18 A. No.

19 Q. At any point in time did any of those landlords,
20 whether beach front or back lot, give you directions on
21 where you were permitted to go on the beach?

22 A. No.

23 Q. At any point in time whether you were renting a
24 beach front or a back lot did your activities on the
25 beach change?

1 A. No.

2 Q. Would you have ever rented a back lot if you
3 didn't have the ability to use the beach?

4 A. No.

5 Q. You said your -- the property that you live at
6 now that you have a deeded right-of-way to the beach?

7 A. Yes.

8 Q. Anywhere in that deed, Herb, does it tell you
9 where you are allowed to go on the beach after you have
10 used that right-of-way?

11 A. I don't -- I haven't looked at it that carefully.
12 I don't think so. It seems that the -- actually the
13 Engel's property and the -- and my property were all
14 connected and owned by one person, I think that whole --
15 including the beach was included in the deed, but the
16 deeds go back, there's a bunch of deeds. There's a deed
17 that refers to a deed that refers to a deed.

18 Q. But it doesn't tell you where you are allowed to
19 go on the beach?

20 A. No.

21 Q. Does it tell you what you are allowed to do on
22 the beach?

23 A. No.

24 Q. Since you bought that in 2001, did that become --
25 did that immediately become your full-time residence or

1 were you still living --

2 A. No, I purchased it in 2000, it became my
3 permanent residence in 2002.

4 Q. 2002, okay.

5 What, starting in 1990, what activities have you
6 and your family engaged in on Goose Rocks Beach?

7 A. Well, the usual beach activities.

8 Q. The usual is different for each family so I need
9 to know your family.

10 A. Well, I jogged, I walked. We -- the
11 grandchildren played in tide pools, we read, we sun
12 bathed, we played ball, we built sand castles.

13 Q. Did those activities, Herb, change from the east
14 end to the center to the west end or were they
15 relatively consistent throughout the years?

16 A. Very consistent.

17 Q. Great.

18 I want to talk a little bit about this, I think
19 you used the term chasing tide pools and I heard the
20 term chasing tides a lot. What do you mean by chasing
21 tide pools? Explain that to the Court.

22 A. Well, Goose Rocks Beach provides -- Maine water
23 is very cold, in case you haven't heard --

24 Q. I am well aware of that. I think your Honor can
25 take judicial notice of that?

1 THE COURT: Although I am told it is 70
2 degrees in York this weekend so what are we doing here?

3 A. Anyway, the little kids, the safety of the tide
4 pools, the warmth of the water of the tide pools, we
5 would swim in the tide pools, hang out, play, splash,
6 and I am talking about the kids under six, maybe under
7 five years old that didn't know how to swim yet, so we
8 would often sit by the tide pools, and the tide pools
9 would be different year to year, their locations were
10 different.

11 Q. Change, go all over the beach?

12 A. Yeah.

13 Q. Different, would it change day-to-day or --

14 A. No, no.

15 Q. -- year-to-year?

16 A. Maybe not even year-to-year, maybe even
17 month-to-month. I mean it could have happened depending
18 on the storms.

19 Q. When you were --

20 A. Not -- usually it didn't change during the summer
21 months.

22 Q. When you were watching the kids were you right
23 next to them, were you in the tide pool, were you
24 sitting on the beach chair, a towel?

25 A. Yeah, sitting close by or playing with them.

1 Q. Great.

2 You ever see any of your family members ride
3 bikes on the beach?

4 A. Yes.

5 Q. At any point in time, Herb, from when you first
6 started going there did you ever distinguish between the
7 wet and dry sand in terms of what you could and couldn't
8 do on the beach?

9 A. Never.

10 Q. Since you have owned have your -- you say you
11 walk or run the beach?

12 A. Well, not anymore but --

13 Q. You don't run anymore?

14 A. My running days are done.

15 Q. Do you still walk?

16 A. From time to time, yes.

17 Q. When you have been out engaging in the activities
18 you talked about now at the home formerly -- at your
19 year-round home, your residence, when you go out and
20 engage in these activities on the beach have you
21 observed other people engaging in similar activities on
22 the beach?

23 A. Yes.

24 Q. Have you observed other beach-front owners
25 engaging in similar activities when you were engaged in

1 those activities on the beach?

2 A. Yes, the ones that I know.

3 Q. Would some of the beach-front owners know you?

4 A. I think so, yes.

5 Q. Bob Almeder certainly?

6 A. Well, yes.

7 Q. Anyone else?

8 A. Well, in our neighborhood, you know, the Engels,
9 the Gregorys.

10 Q. The Shermans?

11 A. The Shermans.

12 Q. Great.

13 In your activities, now a lot of them occurring
14 down at the west end --

15 A. Yes.

16 Q. -- in front of Almeder, Sherman, Gregory --

17 A. Yes.

18 Q. -- Coughlin, those areas?

19 A. Yes.

20 Q. Have you ever asked any beach-front owner for
21 permission to use the beach in front of their home?

22 A. No.

23 Q. Have you or -- have you observed any of your
24 family members ever been told not to engage in any
25 activity on the beach in front of the beach owners home?

1 A. No.

2 Q. You heard this question asked earlier but I will
3 ask you, what do you instruct your grand kids about what
4 they are permitted to do and not permitted to do on the
5 beach?

6 A. Very little.

7 Q. Tell them to be a good neighbor?

8 A. They are good neighbors. I don't give much
9 instruction. They go to the beach, they play in the
10 sand, they do fine.

11 Q. See what everybody else is doing and follow
12 along?

13 A. Yeah, they go down to have fun and swim and hang
14 out and don't shake their towels or get sand on people.

15 Q. Good advice.

16 Herb -- permission to approach, your Honor? 285,
17 your Honor, we will look at, TMF Exhibit 285?

18 A. Here we go.

19 Q. Herb, the top picture on the first page of 285,
20 can you identify who's in that photo?

21 A. I am not sure. I think -- is that my grandson?

22 Q. You tell me. Unfortunately I don't know your
23 grandson.

24 A. They change from day-to-day. I hope he is not in
25 the courtroom right now.

1 I am not exactly sure who it is. Who is it
2 supposed to be?

3 Q. I think it is your grandson. I think you have
4 some notes on the next page.

5 A. He's changed a lot -- so much. Yeah, I think it
6 is Matthew.

7 Q. Matthew?

8 A. Yes.

9 Q. And what's Matthew doing in that photo?

10 A. Well, he's just standing there, right?

11 Q. With someone riding a bike?

12 A. Yes, somebody riding a bike.

13 Q. Great.

14 What about the photo -- well, how long ago was
15 that photo?

16 A. Well, it is not that long ago. I don't know.

17 Q. Last 10 years?

18 A. Oh, certainly.

19 Q. How about the next photo below that, do you know
20 who that is?

21 A. Well, do you think that's me? I don't know how
22 to recognize -- I think it is me.

23 Q. Walking up from the beach?

24 A. Yes. I should stand straighter.

25 Q. How about the third page, Herb?

1 A. I think those are also my grandchildren.

2 Q. Okay, and does that -- what are they wearing,
3 Herb?

4 A. Oh, that's -- this must be in the winter.

5 Q. They are wearing winter hats?

6 A. Yes. They do visit in the winter too.

7 Q. Do you know about where that picture is taken?
8 Is that by one of the rivers?

9 A. That's what it looks like. I really can't tell.

10 Q. Does your family utilize the beach all four
11 seasons, Herb?

12 A. Yes, when they come.

13 Q. Great.

14 What kind of activities do you do on the beach
15 out of summer?

16 A. Oh, we look for shells and, you know, walk around
17 in the winter you can get the sand dollars a lot easier
18 than you can in the summer, and that's all in a certain
19 location where you can get them so we used to do that,
20 just go down for a walk.

21 Q. Great.

22 How about the last picture, Herb, do you
23 recognize any of those folks?

24 A. Well, I don't know who that is supposed to be.
25 Is that Judy? Judy doesn't go to the beach that often

1 but that must be her. Judy and myself and -- I don't
2 know who the other person is.

3 Q. That one is down at the west end of the beach,
4 correct?

5 A. Yes.

6 Q. Or east end of the beach, excuse me, correct?

7 A. You know, I really can't -- it is hard for me to
8 tell where those pictures are actually.

9 Q. Okay. Are there other people in the background
10 of those photos?

11 A. Yeah, but I also can't see those very well.

12 Q. I am not going to ask you to identify them but
13 are there a number in the back of those photos?

14 A. Yeah, there are a lot of people here.

15 Q. Fair to say, Herb, that your family's
16 recreational activities at Goose Rocks Beach are
17 centered around using the beach?

18 A. Oh, yes.

19 MR. FRAME: Nothing further.

20 THE COURT: Mr. Stern.

21 MR. STERN: Nothing, your Honor.

22 THE COURT: Mr. Driver.

23 CROSS EXAMINATION

24 BY MR. DRIVER:

25 Q. Good morning, Herb.

1 A. Hello, Richard.

2 Q. You bought your property in 1990. Who did you
3 buy it from?

4 A. No, no, I bought my property in 2000.

5 Q. 2000, I am sorry. Who did you buy it from?

6 A. Almeder.

7 Q. Bob Almeder?

8 A. Yes.

9 Q. Would you have bought that property and built a
10 house if you didn't have access to the beach?

11 A. It never occurred to me. The answer is no.
12 Access -- but I always thought I had access to the beach
13 from the time I rented, from the time -- the answer is
14 no, if they said you cannot use the beach when I was
15 doing the closing I probably would not have bought the
16 property.

17 Q. When you jogged the beach did you jog the whole
18 beach river to river or some substantial portion of it?

19 A. Yes.

20 Q. Have you seen Bob Almeder jogging?

21 A. Never on the beach.

22 Q. Never on -- just on --

23 A. I have seen him on Kings Highway a few times over
24 the years, not lately.

25 Q. And have you ever seen Bill Junker cross-country

1 skiing?

2 A. Not that I can recall.

3 Q. Have you seen your -- you are on the beach in the
4 winter as well as in the summer?

5 A. Yes.

6 Q. And over the seasons what other activities do you
7 see people doing on the beach? Obviously summer
8 activities, swimming and so on but in the fall, in the
9 winter, in the spring?

10 A. You know, mostly walking and running and, you
11 know, just going for a stroll. In the winter months
12 not -- nobody is sitting, taking in the sun or playing
13 in the sand.

14 Q. But you still see people on the beach?

15 A. Yeah, sure.

16 Q. All four seasons?

17 A. Yes.

18 Q. All right.

19 A. Watching the storms is a good activity.

20 MR. DRIVER: Thank you.

21 THE COURT: Miss Hewey.

22 MS. HEWEY: Thank you.

23 CROSS EXAMINATION

24 BY MS. HEWEY:

25 Q. I just have a couple of questions. First you

1 testified that when you started going to Goose Rocks
2 Beach you stayed in hotels and you mentioned
3 The Tides Inn and then you also mentioned -- I think you
4 said the Shawmut Inn?

5 A. The Shawmut when it existed.

6 Q. Where was the Shawmut?

7 A. In Kennebunkport and we would migrate over.

8 Q. Okay, so you would stay in the Shawmut Inn which
9 is not in the Goose Rocks Beach zone but rather in
10 Kennebunkport proper?

11 A. Right.

12 Q. And then you would come down and use the beach;
13 is that right?

14 A. Right.

15 Q. And what portions of the beach did you use when
16 you were staying in the Shawmut Inn?

17 A. I don't know, I think mostly in front of -- I
18 think mostly in front of where The Tides was.

19 Q. And then would you -- but then would you move
20 from river to river as you discussed --

21 A. No, those years we would just go and sit for a
22 couple of hours and that's it.

23 Q. When you were in the Shawmut Inn did you -- was
24 it apparent that other people that were staying in the
25 Shawmut Inn were also headed out for Goose Rocks Beach

1 on some days?

2 A. I think that's where we learned where the beach
3 was from either guests or the owners of the inn there.

4 Q. Okay.

5 Now I just want to ask you to look again at
6 Exhibit 285 and I want you to look at the last picture
7 and the back of the last picture. Read that carefully
8 to yourself.

9 A. Well, yeah.

10 Q. When you are done reading it look up and I will
11 know you are done.

12 Does that refresh your recollection that that
13 picture, the last picture in Exhibit 285, is a picture
14 of your family members and friends in front of the
15 Scribner property in approximately 1986?

16 A. I don't even know where the Scribner property is.

17 Q. Okay, then let me ask you this way. In '86 you
18 were staying over towards the east end of the beach; is
19 that right?

20 A. In '86 we were -- no, we didn't start renting
21 until 1990 so we were probably at The Tides.

22 Q. Okay, and you would -- looking at this picture,
23 the last picture in 285, is that an accurate
24 representation of how the beach looked back then when
25 you were using the beach?

1 A. Yeah. I mean, if we went to the beach and had
2 four people -- we stayed with our friends, the Perlman's,
3 and we would go where there were no other people. If
4 people were here we would walk down and go somewhere
5 else so I don't know where we sat exactly.

6 Q. Okay, so you would have to -- in '86 when you
7 went to the beach you were looking not to sit in a big
8 crowd of people, you were looking for some privacy?

9 A. Right, right.

10 Q. So were there times then when you would arrive on
11 the beach and you would have to walk some distance?

12 A. Yes.

13 Q. And that's because there were other people
14 sitting on the beach sun bathing, doing beach stuff?

15 A. Right.

16 Q. And you didn't know who those people were?

17 A. Right.

18 Q. So they could have been members of the public?

19 A. Yes.

20 MS. HEWEY: Thank you. No further
21 questions.

22 THE COURT: Mr. Leoni.

23 CROSS EXAMINATION

24 BY MR. LEONI:

25 Q. Good morning, Mr. Cohen.

1 A. Hello, Ben.

2 Q. Do you mind if I call you Herb?

3 A. Not at all.

4 Q. We met at deposition a few months ago.

5 A. Yes.

6 Q. I think I would like to start off with just going
7 back a little bit to your history of the use at Goose
8 Rocks Beach. Just a moment ago you testified that you
9 had actually never rented a property on Goose Rocks
10 Beach until 1990 I believe it was?

11 A. Yes.

12 Q. So prior to that you just stayed in hotels?

13 A. Yes.

14 Q. When you came and stayed in the hotels during the
15 '80s is it true that you only came for a couple of days
16 at the time for the whole summer?

17 A. Yeah, I don't know exactly how long but it would
18 not be more than a week. You know, it would probably
19 be -- but not -- maybe longer than two days.

20 Q. Okay. In some of those years you actually split
21 your time between staying at the Shawmut Inn and staying
22 at The Tides Inn?

23 A. No, when we stayed at Shawmut we stayed at the
24 Shawmut and then we came to The Tides another year but I
25 never did both in one year, I don't think.

1 Q. How many years did you stay at The Tides?

2 A. Oh, a lot. I will have to ask Marie but -- I
3 don't remember exactly but a lot, often.

4 Q. When you stayed at The Tides you used the beach
5 in front of The Tides?

6 A. Well, yeah.

7 Q. Okay.

8 Since you purchased your back lot property from
9 the Almeders, most of your time spent at the beach has
10 been near that property; is that correct?

11 A. Yes.

12 Q. Down on the far west end of the beach?

13 A. Yes.

14 Q. And I think you testified at your deposition that
15 occasionally you went down to the river.

16 A. Which river?

17 Q. I think it is the Batson River.

18 A. Okay, yes.

19 Q. And do you usually sit near Bob's house?

20 A. Well, we are near Bob's house, the west end is --
21 all the -- you know, jammed in there.

22 Q. You talked a little earlier about a right-of-way
23 that you have in your deed?

24 A. Right.

25 Q. That goes right next to Bob Almeder's house?

1 A. No.

2 Q. Is that one house down?

3 A. No, it is three houses down.

4 Q. Okay.

5 In fact, in your deposition you testified that
6 the majority of the time you sit right near the end of
7 your right-of-way.

8 A. I am not sure about the majority of the time. If
9 I -- we do that a lot but if there's -- our neighbors
10 are sitting in front of the other right-of-way which
11 goes between Gregory and Almeder and we would go down
12 and visit with them, in fact our family is part of that
13 family and that group and they spend all of their time
14 there, my daughter, son-in-law and grandchildren from
15 one of my families, so they spend a lot of time, and
16 that would be -- I don't know, in front of -- I guess
17 Gregory's house or Almeder's house or closer -- but much
18 closer, but it is all pretty close to --

19 Q. Right.

20 A. -- in proximity.

21 Q. Just a few properties away?

22 A. Yes.

23 Q. And that's where you would spend the vast
24 majority of your time since 2000?

25 A. No, not since -- yes, since 2000. 2002.

1 Q. 2002.

2 A. Well, actually -- when I bought the house -- but
3 I rented -- I was there for five years before that, so I
4 had -- we stayed at Almeder's house so we knew those
5 people at that time as well.

6 Q. You stayed at Almeder's house for about five
7 years --

8 A. Right.

9 Q. -- the beach-front house?

10 A. Yes.

11 Q. I just want to be clear, when you were renting
12 the Almeder's house, the Almeders owned two properties
13 at that time --

14 A. Yes.

15 Q. -- and the beach-front property, and that's the
16 property that you stayed in?

17 A. We rented, yes.

18 Q. That you rented, and the house that you currently
19 own that you purchased from the Almeders, that's the
20 back-lot property that they formerly owned?

21 A. Yes.

22 Q. Okay.

23 So back in 1990 when you stayed at the Almeder's
24 property and you rented at their property for I think
25 you said between two and five weeks, you spent the

1 majority of your time right near the area of the
2 Almeder's house?

3 A. Yes.

4 Q. You testified in your deposition that since you
5 began renting at the Almeder's house you barely ever
6 went to the east end of the beach?

7 A. I don't do it very often. At the beginning I
8 used to run and walk the beach a lot, and I don't do
9 that very much anymore, but we certainly -- you know,
10 the kids might walk down but I don't think they hang at
11 the east end very much.

12 Q. You had some family, some in-laws that have
13 rented towards the east end of the beach; isn't that
14 correct?

15 A. In-laws?

16 Q. In-laws. Do you not remember that?

17 A. I don't remember that.

18 Q. Okay.

19 So besides just walking towards the east end of
20 the beach if I understand your testimony correctly since
21 you began renting the Almeder's house in the mid 1990s
22 you rarely have been down to the east end of the beach
23 besides for walking.

24 A. Well, you hang where you live.

25 Q. Okay.

1 I am going to draw your attention to Plaintiff's
2 Exhibit 6, page 270, and that is your answers to
3 interrogatories, and I can give him a copy if it is just
4 easier to do it that way.

5 A. You think I can read this, right?

6 Q. Are you going to have trouble reading that?

7 A. Yeah. You will help me I am sure.

8 Q. Do you have reading glasses?

9 A. Yes, I do. Do you want to know where they are?

10 Q. I think I already know the answer to that, not
11 here.

12 A. Not here.

13 Q. That's okay. Well, we will see how we can do.
14 Your Honor, I am going to --

15 THE COURT: Just read it.

16 Q. Okay. Page 2, if you could flip to page 2.

17 A. That I can do. Shoot.

18 Q. And in the bottom half do you see the number 2
19 there?

20 A. Yes.

21 Q. I am going to read that question and then you
22 will see there's an objection at -- underneath that and
23 then on the next page there is an answer and I will ask
24 you to just skip the objection and read the answer after
25 I finish reading the question, okay?

1 A. Okay.

2 Q. Two says, Count 1 paragraph one of the proposed
3 counterclaim asserts that the TMF Defendants have
4 acquired the easement by prescription in Goose Rocks
5 Beach by virtue of 20 years of continuous,
6 uninterrupted, open and notorious use of Goose Rocks.

7 Describe as to each individual member of the TMF
8 Group which of the plaintiffs property he, she or it or
9 they claim to have used and describe the particular use,
10 the time period of use and the extent of each such use.

11 Now if you could just flip the page and at the
12 beginning read your answer.

13 A. During our period of ownership we have regularly
14 walked the entire length of Goose Rocks Beach, in
15 addition we sun bathe, jog and engaged in other
16 recreational activities on the beach. These activities
17 occurred regularly at all areas of Goose Rocks Beach.
18 While there may have been a certain area that we used as
19 others our use was in no way localized to one particular
20 area.

21 Q. With the exception of visiting friends since the
22 1990s when you started renting the Almeder's house,
23 those activities were localized to the western end of
24 the beach, weren't they?

25 A. Well, at different times because we rented

1 different places and we stayed at different places.

2 Q. Okay.

3 Well, I am just --

4 A. Over the 11 years we rented at different places.

5 You can talk about since I lived --

6 Q. Just since you started renting at the Almeder's
7 house.

8 A. Okay. I don't understand the question. Tell me
9 the question again.

10 Q. Since 19 -- I believe 1997 you started renting
11 the Almeder's house?

12 A. Okay.

13 Q. So from 1997 through 2001 when you rented the
14 Almeder's house you did not rent any other houses during
15 that time period, correct?

16 A. Right.

17 Q. Okay, so from 1997 onward the majority of your
18 use has just been in the western end of the beach?

19 A. Majority can be interpreted. Yes, we lived
20 there, that's where we spent our time, but I used to run
21 the beach at that time, we had friends that lived in
22 other parts of the beach we would visit, we had friends
23 that rented at The Tide that we would visit, and we
24 did -- we used the whole beach, but did we get up in the
25 morning and go -- you know, leave and go somewhere else

1 for the day, no, we would stay there.

2 We also -- I have a big family, so they would be
3 all over the place too.

4 Q. But I am just trying to understand your testimony
5 because earlier you said we mostly just stayed in front
6 of the Almeder's house on the west end of the beach and
7 so I am trying to get an idea if you went to other
8 portions of the beach when that was since 1997, how long
9 were you there for?

10 A. It is hard to say.

11 Q. Okay.

12 A. The beach -- where you live is where you hang but
13 do you use the whole beach? Yes. For other activities.

14 Q. Let me --

15 A. Chase the tide pool. If there was a tide pool
16 that was in a different area, we would go down there
17 with the little kids.

18 Q. Okay. Well, let me ask a different question.

19 A. And we would go to the river and jump off the
20 river --

21 Q. Can you please wait for the question?

22 A. Okay.

23 Q. So on the east end do you regularly sun bathe on
24 the east end of the beach?

25 A. Today? When?

1 Q. In the last -- same time period, 1997 and onward.
2 Please -- I am guilty of this too, we are going to try
3 to not speak over each other.

4 A. Okay. So please ask me the question again.

5 Q. Since 1997 have you regularly sun bathed on the
6 eastern end of the beach?

7 A. What's regularly mean?

8 Q. I don't know, you wrote it in your answer, maybe
9 you could tell us.

10 A. Since 1997, probably not.

11 Q. Okay.

12 You stated that you rented the Sandifer property
13 in 1994?

14 A. Yes.

15 Q. And that was a time when you split your rentals,
16 half the time you were in the Trudo rental and half the
17 time in '94 you were in the Sandifer rental?

18 A. Right.

19 Q. And you stayed -- how long did you stay in each
20 property?

21 A. I think it was only a week in the Sandifer
22 property and a week -- probably only two weeks that
23 year.

24 Q. Okay, two weeks total between the two properties?

25 A. Each place, yes.

1 Q. So for the one week that you were at the Sandifer
2 property, isn't it true that you don't know for any
3 certainty whether you actually went onto Barbara
4 Rencurrel's property right next-door?

5 A. I don't know.

6 Q. And isn't it also -- well, let me ask you, did
7 you ever see no trespassing signs on Barbara Rencurrel's
8 house?

9 A. I do not know Barbara Rencurrel's property, I
10 have no idea.

11 Q. Okay.

12 A. I wouldn't know.

13 Q. We are going to go to your deposition in this
14 case and specifically page 59 which -- your Honor, may I
15 approach the witness?

16 THE COURT: You may.

17 Q. Your Honor, since I have one copy of this and
18 there's going to be a little bit of back and forth would
19 you mind if I stand here?

20 THE COURT: No, go right ahead.

21 A. Okay, let's see if we can do this.

22 Q. We will be right on the top here.

23 A. Okay.

24 Q. I am going to start at line 4 on page 59, I will
25 ask the question, you are just going to answer.

1 A. Right.

2 Q. Do you know who Barbara Rencurrel is?

3 A. Yes.

4 Q. Do you know where her residence is and where she
5 lives?

6 A. I answered generally. I don't know the exact
7 house. I see her garage, I think.

8 Q. Have you ever sun bathed in front of Barbara
9 Rencurrel's house?

10 A. Not that I recall. It's possible, I don't
11 recall.

12 Q. Do you recall any recreational activities that
13 you ever have done in front of Barbara Rencurrel's
14 house?

15 A. I don't recall. It seems as though we rented the
16 house next to her so it is very possible we did at the
17 time. We rented the house because there is no lines
18 drawn in the sand as they say. I defy somebody to say
19 where -- whose house they are really in front of.

20 Q. Thank you.

21 After you rented the Sandifer property and Trudo
22 property in 1994 you rented the Celi property for two to
23 three years?

24 A. Celi was I think three years, yes.

25 Q. He is a plaintiff in this case, isn't he?

1 A. I have seen his name on the plaintiff list, yes.

2 Q. So it is fair to say then when you rented his
3 property you used his beach property?

4 A. Yes.

5 Q. You didn't rent anybody else's beach property
6 those years that you were at the Celi house?

7 A. No.

8 Q. So the only time that you were at the beach
9 during those summers or at Goose Rocks Beach during
10 those summers was when you were staying at the Celi
11 house?

12 A. Yes.

13 Q. You testified earlier that nobody had ever -- I
14 think you never asked anybody permission to go to their
15 beach property; is that true?

16 A. Yes.

17 Q. But people have invited you over to their beach
18 property, haven't they?

19 A. I don't -- what do you mean by people invite me
20 to the beach -- I don't understand.

21 Q. If I say the name the Gilpatricks, does that
22 refresh your memory?

23 A. I don't know who the Gilpatricks are.

24 Q. We are doing it again, I may come back to that.
25 Before the lawsuit were you friends with Bob

1 Almeder?

2 A. No.

3 Q. You were not?

4 A. Oh, before the lawsuit?

5 Q. Yes.

6 A. Yes.

7 Q. And you and Bob used to go swimming together,
8 correct?

9 A. Yes.

10 Q. And that is in the area generally in front of Bob
11 Almeder's house?

12 A. I don't know whose house we were in front of but
13 wherever we go swimming down there, but I would say
14 generally in the area, yes.

15 Q. And you often did that with him?

16 A. I don't know about often but we have done that
17 from time to time.

18 Q. A few minutes ago you mentioned your deeds and
19 that your deed gives you a right-of-way to the beach and
20 to the ocean.

21 A. I believe so.

22 Q. Does your deed also state that you have rights to
23 any of the beach?

24 A. What do you mean?

25 Q. I mean --

1 THE COURT: It might be a bad selection of
2 words because if you get to the water you are going to
3 have to cross the beach. I mean, if the deed -- first
4 of all, the best evidence of the deed is the deed and I
5 am sure it is in one of those 5,000 pieces of paper that
6 are on this desk right now, that is the best evidence of
7 what the deed says, but if the deed gives him rights to
8 the water it has to give him rights across some aspect
9 of the beach.

10 Q. Right. I just wanted to know if he had an
11 understanding what to the extent those rights went to.

12 A. It is not something I've ever thought about. The
13 beach was always there to be used and --

14 Q. In your opinion?

15 A. Yes, in my opinion.

16 Q. Okay, that's fine.

17 A. And in fact because I used the beach all those
18 years, I just went to the beach like you go to the
19 beach.

20 Q. While you were renting beach-front property.

21 A. While I was staying at a hotel, while I was going
22 there wherever I went to the beach.

23 MR. LEONI: I am all set. Thanks, Herb.

24 THE WITNESS: You are welcome.

25 THE COURT: Mr. Frame.

1 REDIRECT EXAMINATION

2 BY MR. FRAME:

3 Q. Almost done, Herb.

4 THE COURT: You are almost done, Herb, I am
5 not almost done.

6 MR. FRAME: Sorry, your Honor, I apologize.

7 A. I will keep my mouth shut.

8 Q. Herb, is it fair to say that you don't know or
9 don't look to see whose house you are sitting in front
10 of when you go to the beach?

11 A. It's fair to say that.

12 Q. Is it fair to say that you don't care whose house
13 you are sitting in front of when you are on the beach?

14 A. It's fair to say that.

15 Q. And as you stated earlier is it fair to say that
16 your activities never changed whether you were in a
17 hotel, in a back lot renting, in a front lot renting or
18 owning a back lot in your use of the beach?

19 A. No.

20 Q. No --

21 A. No, it didn't change or stay the same or --

22 Q. Ben asked if you were friends with Bob Almeder
23 before the lawsuit. You said yes.

24 A. (Motions head up and down.)

25 Q. Are you still friends with Bob Almeder?

1 A. No.

2 Q. Why not?

3 A. We are getting sued.

4 Q. Has this lawsuit been difficult on you?

5 A. It's been very difficult. It's been difficult
6 for the whole community. It is breaking the community
7 up, but -- I think he's been less than honest about the
8 way he's approached it and that's one of the reasons I
9 just --

10 Q. What drew you to Goose Rocks Beach?

11 A. The community, the family, the physical lay-up
12 but mostly the community.

13 MR. FRAME: All set, your Honor.

14 THE COURT: Anything else?

15 Mr. Driver?

16 RE CROSS EXAMINATION

17 BY MR. DRIVER:

18 Q. Herb, the right-of-way that you had to the beach,
19 that was part of the purchase in 2000 from Bob Almeder?

20 A. Yes.

21 Q. Now, you testified just a short time ago that you
22 spent most of your time when you were at the beach, you
23 would sit somewhere near the right-of-way or near
24 Almeder's property.

25 A. Yes.

1 Q. And was that pretty much the same when you were
2 renting from him for five years?

3 A. Yes.

4 Q. Did Bob Almeder ever say to you you can't stray
5 to any other properties because they are private?

6 A. I never met Bob Almeder, I never met any of the
7 people I rented from. I didn't know -- meet him until
8 after I purchased his house.

9 Q. Did you meet him before you purchased the
10 property?

11 A. Never.

12 Q. Did you meet him at the closing?

13 A. No.

14 Q. You never met him at all until --

15 A. No, I didn't know, I never met him.

16 Q. And at the closing was there any instructions
17 when you were purchasing the piece of property on Kings
18 Highway that you were limited to just that access
19 right-of-way and you couldn't stray anywhere else on the
20 beach?

21 A. No.

22 MR. DRIVER: That's all. Thank you.

23 THE COURT: Anything else?

24 MR. LEONI: No, your Honor.

25 THE COURT: Now you are all set.

1 (Witness excused.)

2 THE COURT: We will take the morning recess,
3 folks. We will be back at about 20 of, okay?

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

6 THE COURT: Mr. Frame -- Mr. Duchette.

7 MR. DUCHETTE: I call Judy Jose-Roddy.

8 THE CLERK: Please state and spell your full
9 name for the Court.

10 THE WITNESS: Judy Jose-Roddy, J-O-S-E
11 hyphen R-O-D-D-Y.

12 Thereupon,

13 JUDY JOSE-RODDY

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

16 DIRECT EXAMINATION

17 BY MR. DUCHETTE:

18 Q. Good morning, Judy.

19 A. Good morning.

20 Q. Where is your legal residence?

21 A. 61 Stratford Street, West Roxbury, Mass.

22 Q. Do you own a residence at Goose Rocks Beach?

23 A. I do, 122 Kings Highway.

24 Q. 122 -- explain to me where on Goose Rocks Beach
25 is that.

1 A. It's number 6 on your map, it is on the west end.

2 Q. West end?

3 A. Yes.

4 Q. How long have you owned that property?

5 A. I have owned it since 1984.

6 Q. 1984.

7 Prior to owning that property at Goose Rocks
8 Beach from 1984 had you visited before that?

9 A. Yes. I have been going to Goose Rocks all my
10 life.

11 Q. That would have began when?

12 A. 1955.

13 Q. 1955, and did you rent, did you have family
14 there, who --

15 A. Yes, we rented but it was family property. Rose
16 Cummings was my great aunt and she owned the property
17 that I now own.

18 Q. Okay, and did you have any other family at Goose
19 Rocks Beach?

20 A. Not that owned it. Rose and her husband and then
21 later her daughter, Doris Reando, owned that and several
22 other lots.

23 Q. And so they owned the property that you -- so
24 they owned the property that you know own at Goose Rocks
25 and they owned other lots at Goose Rocks?

1 A. Yes.

2 Q. Where were those?

3 A. The two lots behind mine, what's known as The
4 Westerly on the beach front and also two lots further
5 down, other back-lot owners, back lots that -- she
6 called them Goose Ledge or the Electric Cottages, they
7 are just a little bit further down towards Batson River.

8 Q. Okay, and how long did Rose Cummings, how long
9 had she owned property at Goose Rocks Beach?

10 A. Since the early 1900s. We have a photograph in
11 the house of what Kings Highway looked like at the time
12 that she purchased it and it was all woods, there was
13 nothing there when she first purchased.

14 Q. Okay, and so she owned both the beach-front
15 property as well as back-lot property?

16 A. Yes.

17 Q. Did she ever rent out any of the other
18 properties?

19 A. She always rented them out. The Westerly was a
20 restaurant prior to the fire in '47.

21 Q. So before 1947, so there was -- and what was the
22 name of the restaurants again?

23 A. That I don't know. The cottage is called
24 The Westerly. The restaurant may have had the same
25 name.

1 Q. Okay, and again that was over on the west end of
2 the beach?

3 A. Yes.

4 Q. Okay.

5 So you -- correct me if I am wrong but you also
6 rented prior to purchasing in 1984, correct?

7 A. Yes, I came with my parents and then I rented
8 myself.

9 Q. And again that was in the same location, west end
10 of the beach?

11 A. Yes.

12 Q. Did you -- during the time you were growing up
13 when you were coming with your family before you
14 purchased was your use of the beach restricted to the
15 west end of the beach or did you use other areas of the
16 beach?

17 A. No, we used the entire beach.

18 Q. And explain that, what type of activities, why
19 would you leave the west end if you will and go to other
20 areas of the beach?

21 A. When I was a teenager to get away from my
22 parents. We would sometimes want to swim so we would
23 swim in the river or we would go in front of our
24 property on the beach, the tide goes out about a half
25 mile, so if you want to find water to swim in you need

1 to move over, so we would go down the beach just to find
2 water to swim in, we would chase the tide pools, we
3 would walk, we with play Wiffle Ball, volleyball, built
4 sand castles, we would just walk and settle wherever we
5 felt like it.

6 Q. And when you were doing those activities were you
7 by yourself or were you with other people?

8 A. I was with other people.

9 Q. Were those other people beach-front owners,
10 back-lot owners?

11 A. No, they tended to be people that were visiting
12 or family members that were visiting us at the house.

13 Q. I am going to have you, so we can stay
14 consistent, please grab the orange marker and if you
15 could circle your property that you now own.

16 A. (Witness complies.)

17 Q. And then while you are up there, take the red pen
18 and draw a line to -- how you access the beach.

19 A. Now, that's changed so I should make two lines?

20 Q. So make two lines. We will get it.

21 With respect to how you accessed the beach, do
22 you have a right-of-way?

23 A. We do, we have a deeded right-of-way.

24 Q. If you would look at Exhibit 244, I think I
25 opened it right up for you.

1 A. Uh-huh.

2 Q. Exhibit 244, is that -- do you see the
3 right-of-way -- do you see rights-of-way depicted on
4 that?

5 A. I guess so.

6 Q. I think there's one that runs down -- if you are
7 looking at the lot on the left there's a right-of-way
8 that runs down the center of that lot, it is a four-foot
9 wide path.

10 A. Come show me. I don't understand. This is Celi
11 here?

12 Q. I believe there's one -- there's -- if you look
13 at the top lot it has a house on it?

14 A. Uh-huh.

15 Q. And the bottom lot there is no house?

16 A. Yep.

17 Q. And there is like a dotted path that says
18 four-foot wide path.

19 A. Okay, so that was the old right-of-way.

20 Q. Okay. That was the line you kind of draw right
21 down the middle of the lot?

22 A. Yes, yep.

23 Q. And then there's also what's right below that
24 there's another what says proposed seven foot wide
25 pedestrian right-of-way.

1 A. Uh-huh.

2 Q. Is that the right-of-way you are referring to in
3 the right-of-way that was conveyed to you in your deed?

4 A. In the deed it is stated both things, it stated
5 the original right-of-way that went right through what
6 is now Decisis property and right through his house, and
7 it also stated that when that property was sold and
8 somebody built on it that the right-of-way would be
9 moved to run right next to the Celi property.

10 MR. DUCHETTE: I would like to offer Exhibit
11 244.

12 THE COURT: Objections?

13 MR. THAXTER: No, your Honor.

14 THE COURT: Admitted without objection.

15 BY MR. DUCHETTE:

16 Q. When you would -- either in your deed or on this
17 plan it depicts the right-of-ways but does it indicate
18 anywhere on your deed or on these plans where you can go
19 or what activities you can do once you get down to the
20 beach?

21 A. No.

22 Q. What do you do when you get down to the beach
23 from these right-of-ways?

24 A. We do lots of things, we sun bathe, we walk and
25 we walk from river to river a lot, still involve -- do

1 some ball games, Wiffle Ball, we make miniature golf
2 courses out on the dry sand.

3 I know my brother still will hit -- will drive
4 some golf balls at low tide, Frisbee, throw a football,
5 sand castles, collect sea shells, walk the dog. We have
6 had kayaks in the past, we have had a row boat and a
7 canoe up there.

8 Q. When you do these activities are they confined to
9 within the four foot or seven foot right-of-way?

10 A. Not at all.

11 Q. Okay.

12 Do you -- do you -- you go left and right onto
13 the beach?

14 A. Yes, with the boats we have to chase the tide,
15 you know, to get out and in, so we move a lot.

16 Q. Your kayaks, where do you typically -- where do
17 you typically store those?

18 A. We store those back at my house, we bring them
19 back over the right-of-way.

20 Q. Going back to -- prior to your ownership in 1984,
21 how often would you visit Goose Rocks Beach during the
22 summers?

23 A. We would come for one or two weeks every year,
24 usually two.

25 Q. And would you ever -- would you ever visit Goose

1 Rocks Beach either before 1984 or even after you
2 purchased your property would you visit Goose Rocks
3 Beach at all in other seasons, fall, winter, spring?

4 A. Yeah, we often had family reunions at
5 The Westerly before that was sold and that usually took
6 place in the fall, and I went to college at UNH and I
7 would often come over during my college years and visit
8 the beach.

9 Q. What sort of things would you do during the off
10 season when you were visiting the beach on the beach?

11 A. Mostly walk the beach, collect sea shells, if it
12 was warm enough I might sit down and read a book.

13 Q. Would it be fair to say that over the many years
14 that you have been visiting the beach as well as during
15 your ownership that when you are at Goose Rocks Beach
16 the beach itself has been the focal point of your
17 recreational activities?

18 A. Absolutely.

19 Q. You tended to play Wiffle Ball down in the beach,
20 not in your back yard?

21 A. Yes.

22 Q. I think you -- do you have children?

23 A. I have three children.

24 Q. Three children. They -- would they use the beach
25 with you?

1 A. Yes.

2 Q. What sorts of activities would they do on the
3 beach?

4 A. Same, same stuff. They would, you know, swim,
5 run around, build sand castles, play Wiffle Ball,
6 Frisbee, football.

7 Q. Again was this activity localized or restricted
8 to just in the area in which your home was on the west
9 end or did these activities occur at other areas at
10 Goose Rocks Beach?

11 A. All over the beach.

12 Q. Okay, and so explain that to me. What are some
13 of the areas you -- what are some of the areas that you
14 have used on Goose Rocks Beach and what other activities
15 occurred?

16 A. Okay, with the boats as I mentioned before you
17 have to chase the tides and where the water is to get
18 the boats in and out, so there's that.

19 With children they walk and they decide where
20 they want to play and they sit down and that's where
21 they are going to play, so we would walk around, we
22 would find a tide pool, we would find whatever
23 interested them and they might sit there and play for
24 hours on end and that could be in any direction,
25 anyplace in front of anyone's house.

1 Q. Middle of the beach?

2 A. Middle of the beach.

3 Q. East end of the beach?

4 A. East end of the beach.

5 Q. And when you have done those activities have you
6 ever stopped to ask permission of any of the beach-front
7 owners to be there?

8 A. No.

9 Q. Has any beach-front owner ever, and I am not just
10 in -- since 1984 but the entire time you have been
11 visiting the beach has any beach-front owner given you
12 permission to use the beach?

13 A. No.

14 Q. Has any beach-front owner ever come out of their
15 house and said I am sorry, you can't be here, I am going
16 to have to ask you to leave?

17 A. No.

18 Q. Has any beach-front owner ever directed you and
19 said it is fine that you are here but you really should
20 be using the public end of the beach?

21 A. No.

22 Q. When you are recreating on the beach whether
23 yourself, with your friends or with your children have
24 you ever given any thought as to, you know, whose house
25 I am in front of, where I am recreating?

1 A. No.

2 Q. In your property, correct me if I am wrong, is it
3 in the general vicinity of the Celi residence, correct?

4 A. Yes.

5 Q. And they are a plaintiff?

6 A. Yes.

7 Q. And, again, when you are out on the beach have
8 you ever made it a point to say, oh, we should stay in
9 front of the Celi property or we should stay in front of
10 somebody else's property?

11 A. No.

12 Q. And you have never said because we know them or
13 because we are friends with them that's where we
14 should -- our activities should occur?

15 A. No.

16 Q. When you have engaged in -- when you have been on
17 Goose Rocks Beach, and again I am talking about the
18 entirety of the time both when you were visiting as well
19 as when you owned the beach, have you seen other people
20 on the beach engaging in similar activities?

21 A. Yes.

22 Q. Okay.

23 Have you recognized back-lot owners engaging in
24 similar activities?

25 A. Many, yes.

1 Q. And have you recognized beach-front owners
2 engaging in similar activities?

3 A. A few, yes.

4 Q. When you have seen beach-front owners engaging in
5 recreational activities on the beach has it always been
6 in front of the houses they own?

7 A. Hard to say. I am not sure.

8 Q. Do you know the Celi family?

9 A. I just know them by sight and say hello when we
10 are walking by.

11 Q. When you have seen them have they always been in
12 front of their house?

13 A. They are usually in their yard when I see them.

14 Q. I am going to have you look at Exhibit 310, and
15 there's a number of photos here, I am not going to have
16 you go through all but I will have you go through some,
17 and if you look at -- I guess I should comment at first,
18 your Honor, I think we talked about this yesterday but
19 with respect to the notes on the photos we are going to
20 ask you to disregard those notes.

21 So in the first photo do you -- who's in that
22 photo?

23 A. Two of my nephews and my oldest daughter, Leah.

24 Q. And do you know what year the photo -- what year
25 this is?

1 A. 1985.

2 Q. And --

3 THE COURT: Let me just ask Miss Jose-Roddy
4 something. Absent the notes would you be able to
5 approximately --

6 A. Yeah, because my daughter looks to be, you know,
7 a year or less.

8 THE COURT: All right.

9 Q. And where on the beach are you?

10 A. Right in front of the Celi's house.

11 Q. And absent the notes do you recognize the Celi
12 house?

13 A. I can see their porch, yeah.

14 Q. If you look at the second photo, who's in that
15 photo?

16 A. My husband and my oldest daughter.

17 Q. And how -- and your oldest daughter is how old
18 now?

19 A. Right now?

20 Q. Yes.

21 A. She is 27.

22 Q. And about how old does she appear to be in that
23 photo?

24 A. She is about two and a half.

25 Q. What are they doing?

1 A. They are flying a kite.

2 Q. Whereabouts are they flying that kite?

3 A. Directly in front of the Celi's house.

4 Q. And you recognize that house in the photo?

5 A. Yes.

6 Q. Did you ever get permission from the Celis to fly
7 kites in front of their house?

8 A. No.

9 Q. Do you know about what time of year this --
10 approximately this photo might have been taken?

11 A. It was during the summer.

12 Q. And they both, both your husband and your
13 daughter are wearing long-sleeves shirts?

14 A. Uh-huh.

15 Q. So sometimes during the summer it gets a little
16 chilly?

17 A. It does. It might have been early or late
18 summer.

19 Q. You can skip the third photo.

20 The fourth photo, who's in that picture?

21 A. My oldest daughter and my son.

22 Q. Do you recognize any of the houses in the
23 background of that photo?

24 A. I believe they are down in front of the
25 Almeder's, Coughlin area. They are just --

1 Q. They appear to be playing on an old tree trunk?

2 A. There was a couple of years when there was a big
3 old tree trunk on the beach and it was a great place to
4 play.

5 Q. And again the Almeder, Coughlin property is not
6 directly in front of your back lot that you own,
7 correct?

8 A. No, it is quite a bit further down.

9 Q. And so the children found something amusing on
10 the beach and in that general area and that's where you
11 ended up hanging out on those particular days?

12 A. Yes.

13 Q. The next photo?

14 A. Yep.

15 Q. Who is that a picture of?

16 A. Our friends daughter.

17 Q. And again do you recognize any of the houses in
18 the background?

19 A. I believe it is the Coughlin house.

20 Q. What is she doing in that photo?

21 A. I don't know what it's called, that game with
22 like the Velcro thing and you throw a ball at it and you
23 catch it. She is playing ball.

24 Q. And do you -- and did you ever ask permission of
25 the Coughlins to use the beach in front of their

1 property?

2 A. No.

3 MR. DUCHETTE: Your Honor, I would like to
4 admit, because I don't want to put the Court of going
5 through all these photos, but I would like to admit
6 Exhibit 310 into evidence.

7 MR. THAXTER: That's fine. I think we
8 already agreed on that.

9 THE COURT: It can be admitted then without
10 objection.

11 MR. DUCHETTE: No further questions.

12 THE COURT: Mr. Stern.

13 CROSS EXAMINATION

14 BY MR. STERN:

15 Q. Good morning.

16 A. Good morning.

17 Q. Could you draw your attention to Exhibit 310
18 again --

19 A. Uh-huh.

20 Q. -- which are the photographs which have been
21 admitted into evidence, and if you can could you look at
22 I guess it is pages 10 to 12.

23 With the Court's permission I would like --

24 THE COURT: Help her out.

25 Q. Right here.

1 A. Okay.

2 Q. You are looking at pages 10 to 12, correct?

3 A. Yes.

4 Q. What do those generally show or depict?

5 A. My children and a friend and a nephew and my
6 husband building sand castles all in front of the --
7 well, one of them is in front of the Celi house, two of
8 them are in front down by the Coughlin and Almeder
9 properties.

10 Q. And that appears to be in the intertidal or wet
11 sand area?

12 A. Yes.

13 Q. And is that something your children and husband
14 enjoyed doing when your children were young?

15 A. And me too, yes, very much.

16 Q. And you too.

17 Did you have permission from the Almeders or the
18 Celis or the Coughlins to do that?

19 A. No.

20 Q. Did you ever ask permission?

21 A. No.

22 Q. Did you engage in this activity elsewhere on the
23 beach?

24 A. Yes.

25 Q. And you did it without permission?

1 A. Yes.

2 Q. Could you go on to page 14, which is two pages
3 further?

4 A. Yep.

5 Q. What does that depict?

6 A. My husband is giving a friend of ours a ride on
7 like a Boogie board on a string through a tidal pool.

8 Q. Did your family -- can you describe what a Boogie
9 board is?

10 A. It is sort of like a surf board that you just
11 ride on on your stomach.

12 Q. Did your children use it down at Goose Rocks
13 Beach regularly when they were smaller?

14 A. Yes.

15 MR. STERN: That's it, thanks.

16 THE COURT: Mr. Driver?

17 MR. DRIVER: No questions, your Honor.

18 THE COURT: Miss Hewey?

19 MS. HEWEY: Thank you.

20 CROSS EXAMINATION

21 BY MS. HEWEY:

22 Q. Good morning.

23 A. Good morning.

24 Q. I just have a couple of questions. First, is it
25 true that when you traveled the beach and the various

1 places that you did you sometimes saw other people doing
2 essentially the same types of activities that you were
3 doing?

4 A. Yes.

5 Q. And is it true that at least some of those other
6 people that you saw doing the activities were people
7 that you didn't recognize and didn't know?

8 A. Yes.

9 Q. So they could have been members of the public,
10 they could have been beach-front owners, they could have
11 been back-lot owners for all you know, right?

12 A. Yes.

13 Q. Now, the next thing I want to do is show you --
14 ask you a couple of questions about Great Aunt Cummings?

15 A. Yes.

16 Q. I don't though remember her first name.

17 A. Rose.

18 Q. Rose. I want to show you a copy of Town's
19 Exhibit 133 and I am going to particularly ask you to
20 look at page 34 of that Exhibit. And I pointed you to
21 that but I am going to let Mr. Thaxter get to that
22 before I get to any questions.

23 Page 34, does that depict some pictures of your
24 Great Aunt Rose's properties?

25 A. Yes.

1 Q. And can you tell us what properties those were?

2 A. The Westerly and The Nabisco.

3 Q. And those are two of the properties that you
4 talked about before?

5 A. Yes.

6 Q. It appears that one of them at least was burnt
7 down in the fire and then rebuilt?

8 A. Yes.

9 Q. Is that true of all of them?

10 A. Yeah -- actually what I understand is
11 The Westerly was not burnt --

12 Q. Okay.

13 A. -- but The Nabisco -- and then there was another
14 cottage on the same lot at that time called The White
15 Cap and The Pretty Penny behind us, in the way back
16 behind us, were all burned.

17 MS. HEWEY: Okay. I have no further
18 questions at this time.

19 THE COURT: Mr. Thaxter.

20 CROSS EXAMINATION

21 BY MR. THAXTER:

22 Q. Good morning, my name is Pete Thaxter. Can I
23 call you Judy?

24 A. Yes. Good morning.

25 Q. Judy, do you have Exhibit 244?

1 A. Yes.

2 Q. Okay, and who owned the -- who owns the front lot
3 now?

4 A. Ed Case.

5 Q. And when the right-of-way was -- you testified
6 about the right-of-way being moved from the middle of
7 the lot over to the left side. When did that happen?

8 A. It happened after he -- when he built his house.

9 Q. Okay. Did that happen after you had purchased
10 your lot?

11 A. Yes.

12 Q. Okay, and who owned it when you purchased your
13 lot?

14 A. Doris Reando still owned it.

15 Q. Is that your relative, your aunt?

16 A. It's my aunt's daughter, yes, my great aunt's
17 daughter.

18 Q. And so I understand you purchased in '87?

19 A. '84.

20 Q. '84.

21 When you purchased did your aunt own the front
22 lot?

23 A. Yes.

24 Q. Okay, and the -- and so you knew when you
25 purchased that you were going to get access to the

1 beach, correct?

2 A. Yes. It was in the deed.

3 Q. And I would note that Exhibit 64 is your deed but
4 it doesn't contain within the exhibit the actual
5 description, Exhibit 8 is missing so I can't actually
6 ask you about it right now, it is in evidence, but does
7 your deed -- to your knowledge, does it describe the
8 right to use your aunt's property, the beach part of
9 your property?

10 A. No.

11 Q. Is it just a seven foot right-of-way that runs to
12 the ocean?

13 A. I believe so.

14 Q. Well, didn't you understand when you bought the
15 back lot and got this right-of-way that your aunt was
16 giving you the right to use the beach?

17 A. I didn't understand that she needed to give us
18 the right to use the beach. Our understanding and
19 always had been was that the beach was everyone's to
20 use.

21 Q. Okay, but the next-door neighbor to that
22 right-of-way is Celi, right?

23 A. Yes.

24 Q. And do not you use your aunt's property
25 primarily?

1 A. My aunt's property?

2 Q. When it was your aunt's property that's what you
3 used, right?

4 A. What do you mean by that?

5 THE COURT: I think the question is if you
6 go down the right-of-way and go on the beach is it
7 primarily do you use for sun bathing and so forth the
8 property in front of your aunt's property.

9 A. No, I would say probably equally as much in front
10 of the Celis as in front of that lot and quite a bit
11 elsewhere as well.

12 Q. I am just trying to find it. Would you get out
13 the one with the pictures 310 and let's kind of go
14 through those?

15 A. Uh-huh.

16 Q. So the first one, that's a couple of your
17 children right there, right?

18 A. Two nephews and a daughter.

19 Q. Right, and that's the Celi house up behind there?

20 A. Yes.

21 Q. And are you -- you are not smack in front of the
22 Celi house there, right?

23 A. Well, it seems to be directly behind where they
24 are sitting, yes.

25 Q. Well, do you know where the property line runs,

1 the Celi property line?

2 A. I have an idea of where it runs but not exactly.

3 Q. You don't know.

4 Go to the next picture which is kite flying. Is
5 that the Celi house there in the background?

6 A. Yes, it is.

7 Q. Once again do you know where the Celi line,
8 property line runs right there?

9 A. No.

10 Q. And have you ever had -- who are the present
11 owners of the lot through which your right-of-way runs?

12 A. Ed and Wendy Case.

13 Q. And do they give you permission to use their
14 beach?

15 A. No.

16 Q. Do you know the Cases?

17 A. Yes.

18 Q. Do you use the property in front of their house?

19 A. Yes.

20 Q. The next picture appears to be your daughter; is
21 that correct?

22 A. No, it is a friend of mine.

23 Q. Okay, and she's not in front of the Celi house.

24 Are you saying that?

25 A. She's sort of next to it.

1 Q. Uh-huh.

2 Now, did you hear this morning Mr. Cohen had
3 rented the Celi house sometimes?

4 A. Yes.

5 Q. And were you ever there when he was renting?

6 A. I am sure I was.

7 Q. And do you know when these pictures were taken
8 whether Mr. Celi was at home or not?

9 A. I don't know.

10 Q. Do you know when Mr. Celi bought the property?

11 A. No. I know that he's been there for a long time.
12 I know the name has been on the mailbox for a long time.

13 Q. Back in the '80s was his name on the mailbox?

14 A. I am not sure.

15 Q. What I'd like you to do and you have to --
16 this -- keep going through the pictures because the
17 pages aren't numbered but there's one where there are
18 two boys on the ground and another standing on top of
19 them.

20 A. That's two girls and one boy.

21 Q. Okay, sorry about that. It is a little fuzzy, my
22 picture. I didn't mean to -- and would the -- is it
23 your testimony that that's the Celi house right back up
24 over the right, just right behind the head of -- is that
25 your daughter?

1 A. It is.

2 Q. Okay.

3 A. Yes, it is the Celi house.

4 Q. It appears to be quite a space in there where
5 there is no house. Is that the space where your
6 right-of-way is or is that before the house was built by
7 the --

8 A. It is before the house was built.

9 Q. Okay. So back in that time you had a large empty
10 lot that was owned by your aunt, right?

11 A. My aunt's daughter, Doris --

12 Q. Aunt's daughter, okay.

13 Keep going back through the pictures. There's
14 one of a young boy in a red shirt holding a shovel.
15 There is a girl doing a hand stand behind it.

16 A. Okay.

17 Q. Now -- is that the Celi house in the background?

18 A. Yes.

19 Q. And is he standing in the right-of-way -- isn't
20 he standing in the right-of-way area?

21 A. No, you would see the right-of-way because it
22 would be -- well, he is sort of on the edge of it, I
23 guess, you can see the flags marked where it was going
24 to come out probably.

25 Q. Did you have -- those flags right up there near

1 the house are where the right-of-way was coming out?

2 A. I think so.

3 Q. So right up -- let's talk about this a little.
4 There's -- so you had to climb over The Rocks at this
5 point in time, right?

6 A. No, we were still using the other right-of-way
7 until the new one was built.

8 Q. Okay, but you built a new one right there?

9 A. Ed did.

10 Q. Did you build stairs?

11 A. Ed had them all built for us as part of the deal.

12 Q. But that is the right-of-way so it runs very,
13 very close to that corner of the Celi house, right?

14 A. Yes.

15 Q. Okay.

16 Now, in looking through these pictures that you
17 have taken and the pictures with the Celi house and the
18 Coughlin house and what you say is the Almeder house, I
19 don't see -- they are all taken in the summer, right?

20 A. I think most of them if not all of them are.

21 Q. Okay. I mean obviously the ones where they are
22 making sand castles, are in swim suits, et cetera,
23 right?

24 A. Uh-huh.

25 Q. And I don't see in any of them any other members

1 of back-lot owners or members of the general public.

2 Can you identify any in any of those pictures?

3 A. I think these are pictures of my family and
4 friends were visiting with us.

5 Q. Okay, but that's on a day, a typical beach day
6 when you are using the beach, right?

7 A. Uh-huh.

8 Q. Okay. Thank you.

9 Judy, I am going to hand you a set of
10 interrogatories that were -- that you signed and just
11 ask you if you can identify them and then I am going to
12 ask you about -- I highlighted a question too on
13 there -- may I approach, your Honor?

14 THE COURT: Of course.

15 Q. Please look at the last page and see if you
16 signed that page.

17 A. I did.

18 Q. I am not going to read you question 2 but would
19 you take a look at it and refresh your memory and then I
20 will ask you about the answer. The question has already
21 been read into the record before.

22 A. Okay.

23 Q. Have you had a chance to review the question and
24 your answer?

25 A. Yes.

1 Q. So it is your testimony the activities, the last
2 sentence, that all the activities that you do regularly
3 occurred over all areas of the beach; is that correct?

4 A. Yes -- well, all the activities? I said these
5 activities, the cookouts only in front of -- you know,
6 near our right-of-way I would say, everything else over
7 the entire area of Goose Rocks.

8 Q. Now, when you go up to the -- you have been up to
9 the east end of the beach, correct?

10 A. Many, many, many times.

11 Q. Okay. Well, let's say in 2005 when you were up
12 there and you see people sitting in front of a property,
13 do you know if they are the owners or they are renters
14 or the public?

15 A. No.

16 Q. So as you walk the beach you can't differentiate
17 mostly -- I assume you know a few people between the
18 owners and the public or renters that may be using a
19 property, right?

20 A. That's correct.

21 MR. THAXTER: Thank you.

22 THE COURT: Mr. Duchette.

23 REDIRECT EXAMINATION

24 BY MR. DUCHETTE:

25 Q. I think you testified earlier you recognized the

1 Celis, the Celis would recognize you?

2 A. Uh-huh.

3 Q. What about Bob Almeder, do you know him at all?

4 A. Not really, no.

5 Q. The Coughlins?

6 A. Nope.

7 Q. The Shermans?

8 A. No.

9 Q. Okay. When you are -- I think you testified
10 earlier when you are on the beach you have seen the
11 Celis for example up on their porch and they have seen
12 you down on the beach, correct?

13 A. Yes.

14 Q. And have other beach-front owners, if you know,
15 have other beach-front owners been out on their property
16 and seen you on the beach, you and your family or guests
17 on the beach in front of their properties?

18 A. I imagine they have. I don't know for sure --
19 well, the Ashleys have -- the Celis have been on the
20 beach at times, just most of the time when I see them
21 they are in the yard.

22 I am trying to think of other beach-front owners
23 that I know. Ed Case certainly.

24 Q. And when you are down on the beach would you ever
25 think to establish or identify where the property lines

1 are of beach-front owners homes?

2 A. No.

3 Q. No.

4 It sounds like you would consider that idea of
5 property lines in the sand kind of silly, correct?

6 A. I have never considered anybody having property
7 lines in the sand.

8 MR. DUCHETTE: No further questions.

9 THE COURT: Additional questions?

10 Mr. Stern?

11 MR. STERN: It is my understanding that
12 Exhibit 310 has been admitted into evidence without
13 objection.

14 THE COURT: It has been.

15 RE CROSS EXAMINATION

16 BY MR. STERN:

17 Q. Looking at Exhibit 310, if you can look through
18 it, there are a lot of activities depicted there. There
19 are apparently members of your family snorkeling?

20 A. Yes.

21 Q. And in the intertidal area and in the ocean
22 itself?

23 A. Yes.

24 Q. And there are members of your family on Boogie
25 boards?

1 A. Yes.

2 Q. And there are members of your family pulling a
3 wagon?

4 A. Yes.

5 Q. And when they were pulling a wagon they weren't
6 fishing, falling or navigating, were they?

7 A. No.

8 Q. Did your family engage in this activity in the
9 intertidal zone across the -- a good swath of Goose
10 Rocks Beach?

11 A. Yes.

12 Q. Did they do so without permission?

13 A. We never asked permission, never sought
14 permission.

15 Q. And this activity was not confined simply to the
16 area in front of the Celis or the Almeders or the
17 Coughlins?

18 A. No.

19 MR. STERN: Thank you.

20 THE COURT: Any further questions? All set?

21 Thank you. You may step down,

22 Miss Jose-Roddy.

23 (Witness excused.)

24 Mr. Duchette.

25 MR. DUCHETTE: I call Paul Hogan.

1 THE CLERK: Please state and spell your full
2 name for the Court.

3 THE WITNESS: Paul Hogan, H-O-G-A-N.
4 Thereupon,

5 PAUL HOGAN
6 was called as a witness and, after having been duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DUCHETTE:

10 Q. Good morning, Paul.

11 A. Good morning, Andre.

12 Q. Where do you currently reside?

13 A. 324 Kings Highway, Kennebunkport.

14 Q. Where and I will probably just have you -- get
15 right to it. If you want to grab the orange pen and
16 identify that property?

17 A. I guess it would be 61.

18 Q. Could you take the red pen and draw a line as to
19 how you access the beach when you use the beach?

20 A. Sure, I go down Kings Highway, past Sand Point
21 Road, past to Jefferys Way and take a left to the beach.

22 Q. And prior to your ownership you have visited
23 Goose Rocks Beach in the past, correct?

24 A. Yeah, I first started coming 1980.

25 Q. 1980, and did you -- were you visiting friends,

1 did you rent?

2 A. I was an accidental tourist to Goose Rocks, we
3 came on our honeymoon in 1980 and stayed downtown.

4 Q. And with respect to -- I am going to kind of take
5 you through your rental history. Where was the first
6 property you rented -- it was in 1980 you said?

7 A. So we were at Country Gardens, which is no longer
8 an inn in town, in the port, and then at Maine Stay,
9 which is also in the port, and then we started
10 The Tides Inn.

11 Q. So when you first rented at The Tides Inn, what
12 year was that?

13 A. I have to check. 1982, I think.

14 Q. 1982.

15 How many years did you rent at The Tides?

16 A. I believe for four years, not including 1984.

17 Q. And when you were renting at The Tides did the
18 proprietors of the Inn, did they give you any
19 instructions as to where you could go, what you could do
20 on the beach?

21 A. I think -- no, I don't think so. It was
22 self-explanatory. We had come to the beach before,
23 we -- when we stayed in the port we found Goose Rocks
24 Beach so we knew where.

25 Q. Okay.

1 When you say you knew where to go, was there --
2 was there a defined area where you felt that you needed
3 to stay on the beach?

4 A. I think when we first came we just took
5 right-hand turns looking for sand because we didn't find
6 it down at the port and I believe we took a right and
7 went all the way to the end and there weren't houses
8 there then and we just parked and walked over, I don't
9 even know whose property it was.

10 Q. Do you recall if you came down Dyke Road or New
11 Biddeford Road?

12 A. I think Dyke Road first.

13 Q. And again going back to when you were renting at
14 The Tides, when you would go down to the beach would you
15 always stay in front of The Tides?

16 A. Pretty much. We would always walk every day but
17 we would center our activities there.

18 Q. What sorts of activities would you do on the
19 beach when you rented at The Tides?

20 A. So we were there before children so it changed.
21 We did -- we sun bathed, we read, we wind surfed, we
22 walked the beach, spent all of our time on the beach
23 essentially.

24 Q. Did you see other people on the beach engage in
25 similar activities at the time?

1 A. Yes.

2 Q. After, and correct me if I am wrong -- you said
3 you rented at The Tides for about two years, three
4 years?

5 A. I think it was four years but there was a gap of
6 one year.

7 Q. And after you rented at The Tides where did you
8 rent next at Goose Rocks Beach?

9 A. So I think -- let me just double check -- so -- I
10 guess it was more than four because in 1998 our first
11 child was born and then we started renting houses, so
12 from '88 on through '95 when we bought our house we
13 rented different houses.

14 Q. Do you recall the first house you rented as a
15 family?

16 A. Yeah, it was way up at the east end. Do you want
17 me to show you?

18 Q. Sure.

19 A. Way back here (indicating).

20 Q. And that's over on what is it, Sand Point Road?

21 A. No, no, it's the Pelletier house on Kings Lane.

22 Q. Kings Lane, and how long did you -- how many
23 summers did you rent there?

24 A. We were there just one year.

25 Q. Just one year, and when you were on Kings Lane I

1 think you said the Pelletier house?

2 A. Yes.

3 Q. Where would you -- where would you go on the
4 beach? Where you would go on Goose Rocks Beach?

5 A. We would come back the same way we accessed the
6 beach now, come down to Jefferys Way.

7 Q. And would you drive a car down or would you walk
8 down?

9 A. Walk.

10 Q. And you had children?

11 A. Yes.

12 Q. You take a wagon down?

13 A. You got it.

14 Q. And when you came down Jefferys Way would you
15 stay right in Jefferys Way or would you go to the right
16 or to the left?

17 A. As soon as the kids could walk it was wherever
18 the tidal pools were, so sometimes they were to the west
19 of us, sometimes they were to the east of us. It was,
20 you know, the safe place to watch your kids.

21 Q. And they would play in the tidal pools?

22 A. For hours.

23 Q. And you and your wife would set up a beach chair?

24 A. You got it.

25 Q. Would you bring food down to the beach with you?

1 A. Yes, have lunch.

2 Q. At any of those times when you -- that you rented
3 from the Pelletiers did any beach-front owner ever come
4 out and say you are not allowed to be here, please move?

5 A. No.

6 Q. Did you ever ask any permission from any
7 beach-front owners as -- to use the beach?

8 A. No.

9 Q. And did the Pelletiers ever give you any
10 instructions about where you could go on Goose Rocks
11 Beach or what you could do?

12 A. We rented through an agent and we never met the
13 Pelletiers until many years later.

14 Q. Did the agent ever give you any instructions?

15 A. No.

16 Q. And, again, when you rented from the Pelletiers
17 did you see other people engaging in similar activities
18 on the beach?

19 A. Yes.

20 Q. Where did you rent after the Pelletiers?

21 A. So for a few summers we rented right along Kings
22 Highway in a building that had five or six apartments
23 just -- I don't even -- two little private lanes, I
24 don't even know their names, maybe three blocks from
25 The Tides to the east. It is now a private residence.

1 Q. Okay, and during those summers -- so you were
2 kind of in the middle of the beach?

3 A. Yes, in the middle section.

4 Q. And when you got down to the beach you would go
5 right or left?

6 A. Same thing.

7 Q. And engage in similar activities?

8 A. Yes.

9 Q. Find tidal pools?

10 A. Yeah, as the kids got older it expanded of
11 course.

12 Q. After you rented that property by The Tides did
13 you rent another piece of property?

14 A. In 1991 my son was born in the summer, so we came
15 up in the fall and rented -- it was like about the
16 fourth house from the end at the west end.

17 Q. Okay, and did you -- in the fall did you -- you
18 and your family use the beach?

19 A. We did.

20 Q. And when you were on the west end how did you get
21 to the beach?

22 A. I guess there was an access way from the property
23 but I don't remember.

24 Q. Okay, and that was beach-front property?

25 A. Yes.

1 Q. And as owners of the property did they give you
2 any instructions with respect to say you have to stay
3 right in front of their house?

4 A. No but, again, we did it through a rental agent.

5 Q. Again --

6 A. No instructions.

7 Q. And that fall what types of things did you and
8 your family do on the beach on the west end?

9 A. Tidal pool stuff and we had an infant so we
10 didn't go that far but walking on the beach, playing,
11 you know, my daughter was a few years older so we would
12 play in the ocean, play in the tidal pools, dig holes,
13 build sand castles.

14 Q. And when you were walking on the beach did you
15 ever walk your infant in a stroller on the beach?

16 A. Oh, absolutely, you know, assuming the weather
17 was good, every day.

18 Q. After you rented that property on the west end
19 did you rent any other houses?

20 A. We rented the Homer house which is at the very
21 east end on Sand Point, it is maybe five or six from the
22 very end --

23 Q. Okay.

24 A. -- on the ocean.

25 Q. Near the Little River?

1 A. Yes.

2 Q. That was a beach-front home?

3 A. Yes.

4 Q. Did that family give you any instruction as
5 renters as to where you could go, what you could do on
6 the beach?

7 A. No.

8 Q. And on the -- when you would go down to the beach
9 would you always stay in front of their house on the
10 east end?

11 A. No, we would probably put our blankets there, our
12 chairs there but we would go to wherever --

13 Q. Again what time was that, around what year?

14 A. So we were there two years -- actually the second
15 year I rented two houses because we put up another
16 family, so that was '92, '93.

17 Q. '92, '93.

18 When you were way down on the east end of the
19 beach down by the Little River did you see other people
20 recreating on the beach?

21 A. Sure, the river is a big center of activity so,
22 you know, all day long people would go past the house
23 heading to the river to go swimming, fishing, walk to
24 Timber Island.

25 Q. And after you rented that property did you rent

1 any other?

2 A. We rented -- we rented in '94 on Bel-Air, sort of
3 just to the west of The Tides streets -- right by
4 The Tides.

5 Q. Okay, and how would you access the beach when you
6 were renting on Bel-Air?

7 A. I guess we walked to Kings Highway, we were maybe
8 three back from Kings Highway and I think we walked left
9 and maybe went in right at The Tides or to the street on
10 the right side of The Tides.

11 Q. Did you -- when you were in that area when you
12 were renting the Bel-Air did you understand or have any
13 idea of whether or not you were on private or public
14 property at that time?

15 A. No. I thought it was public. It was -- you
16 know, just never came up.

17 Q. And again would you engage in similar activities
18 with your family?

19 A. Yes.

20 Q. And would you see -- by that point were you
21 starting to recognize other families, other people on
22 the beach?

23 A. Sure because people would come back, mostly
24 renters -- you know, some renters in the summer so my
25 kids would start to make summer friends.

1 Q. And these people would rent beach-front homes,
2 back-lot homes?

3 A. Mostly back lot.

4 Q. Would you see these families and your children's
5 friends engaging in similar activities as you and your
6 family on the beach?

7 A. Yes.

8 Q. After you rented the I think Bel-Air property --

9 A. Yes.

10 Q. -- where did you rent next?

11 A. We bought a house.

12 Q. Okay, and again what year was that?

13 A. '95. We closed in the winter.

14 Q. So in all of those I think it was --

15 A. 15.

16 Q. -- 15 years that you were renting properties all
17 on Goose Rocks Beach, west end, middle, east end, at any
18 time did any beach-front owner ever give you
19 permission --

20 A. No.

21 Q. -- to be there?

22 At any time did any beach-front owner ever object
23 to you and your family recreating on the beach?

24 A. Before '95?

25 Q. Yes.

1 A. No.

2 Q. Did any beach-front owner ever object to your use
3 after '95?

4 A. Once.

5 Q. Who -- explain to me that situation.

6 A. So it was -- I don't know exactly the year, maybe
7 2003, '4 or '5, once we were -- we bought a boat in
8 2000, and before 2000 my kids had gone skiing with the
9 neighbors who had boats off of -- it is now Temerlin's
10 property at the point and then in 2000 we bought a boat
11 and we did what all the neighbors did and, you know,
12 parked the boat in front of our house in the Little
13 River area and, you know, we would pick up skiers and
14 sometimes start off at the beach and my wife had kayaked
15 out to watch us, and at one point a woman said get off
16 my property.

17 Q. Do you know who that woman was?

18 A. We understood -- we learned later that the man
19 who had watched us for many years had -- passed away and
20 this was his daughter or niece or somebody who had
21 control of the property for I think one summer before
22 she sold it.

23 Q. This was down on the east end?

24 A. It was right at the river.

25 Q. Right at the river?

1 A. Yes.

2 Q. And that's the Little River, correct?

3 A. Yes.

4 Q. And is that a popular spot for boats and water
5 skiers?

6 A. Yes, it was then, less so now.

7 Q. Both in the years that you've rented and owning
8 and whether it was on the west end, east end or the
9 middle part of the beach, would you see pockets of
10 increased use up and down the beach?

11 A. More people on the beach?

12 Q. Yeah, in certain areas.

13 A. I don't think it's changed fundamentally over the
14 years. I know when we stayed by The Tides it was a
15 pretty crowded place. I know when my wife wanted to
16 look at the house that Donna Lencki bought I said too
17 crowded, I said I would feel like a fish bowl. I said I
18 like the quiet ends.

19 Q. And you along with other people who prefer quiet
20 ends, that's where those people would tend to -- they
21 would try to find a quiet place on the beach?

22 A. Well, yeah, you go to the beach you always look
23 for -- you don't want to be on top of somebody so you go
24 25 feet beyond the closest person if you are polite.

25 Q. And were there days where there were very few

1 people on the beach?

2 A. Oh, sure.

3 Q. And were there days when there were more people
4 on the beach, whether it be in the east end, west end or
5 the middle section?

6 A. Sure. It depends upon the tides weather people
7 can stretch out or high tide. If it is high tide midday
8 where we are at Jeffreys it's packed, it's very -- you
9 know, there's always -- crowded but then the tide goes
10 out and it spreads out.

11 Q. And because there are certain parts on Goose
12 Rocks Beach where the tide can go out quite a ways,
13 correct?

14 A. Yes, certainly.

15 Q. But in the years that you have been at Goose
16 Rocks Beach renting and then owning, while there is
17 certainly days where it's busier than others, you said
18 Goose Rocks Beach has been prevalent across the entirety
19 of the beach, correct?

20 A. Yes, we walked the beach -- until the lawsuit we
21 walked the beach virtually every day and I -- you know,
22 there were always people there in more crowded places
23 and less crowded places. By the rights-of-way it is
24 more crowded of course.

25 Q. And would you have ever rented at Goose Rocks

1 Beach if you weren't able to use the beach itself?

2 A. No.

3 Q. Would you have ever purchased your home at Goose
4 Rocks Beach if you weren't able to use the beach itself?

5 A. Do I look that foolish?

6 Q. No.

7 A. No, I would not have.

8 MR. DUCHETTE: Thank you. No further
9 questions.

10 THE COURT: Mr. Stern.

11 CROSS EXAMINATION

12 BY MR. STERN:

13 Q. Good morning, Mr. Hogan. I am Paul Stern.

14 A. Good morning.

15 Q. You have walked the beach at Goose Rocks since
16 you have been there I think you said in 1980?

17 A. Yes.

18 Q. And sometimes you have walked when it is extreme
19 low tide?

20 A. Yes.

21 Q. And without anybody's permission I take it?

22 A. That's correct.

23 Q. Have you sometimes waded into the water --

24 A. Certainly.

25 Q. -- at extreme low tide?

1 A. Yeah, if it's warm you want to walk through the
2 water.

3 Q. And sometimes when it is middle tide you have
4 done the same thing?

5 A. Sure.

6 Q. And you have walked up and down the beach. Have
7 you ever seen a sign indicating the boundary of any of
8 the access ways?

9 A. Not -- boundary --

10 Q. You are walking along the intertidal zone --

11 A. Right.

12 Q. Have you ever seen a sign saying beginning of
13 access way or --

14 A. No. On the sand you mean? No.

15 MR. STERN: Nothing further.

16 THE COURT: Mr. Driver?

17 MR. DRIVER: No.

18 THE COURT: Mr. Willing?

19 CROSS EXAMINATION

20 BY MR. WILLING:

21 Q. Mr. Hogan, Brian Willing. I want to focus
22 primarily on the first few years you came to Goose Rocks
23 Beach between 1980 and '82 --

24 A. Sure.

25 Q. -- if you can try to remember back that far.

1 I think you said you stayed at the Maine Stay one
2 year?

3 A. That was the second year, yeah, I think.

4 Q. And one year you stayed at Country Gardens?

5 A. Country Gardens. It turned into a private home
6 now.

7 Q. And neither one of those inns or bed and
8 breakfasts are located within the Goose Rocks zone, are
9 they?

10 A. No, they are probably -- I think they are in the
11 port, I would call them in the port.

12 Q. How did you get to the beach when you were
13 staying there?

14 A. We drove.

15 Q. Where did you park?

16 A. I think sometimes at the far end along -- at the
17 far west end right along Kings Highway. I don't
18 remember whether there were parking spots or not.

19 Q. But you remember going down to the west end of
20 the beach?

21 A. Absolutely. There weren't houses. Maybe there
22 was one at the end and then a gap of several and we
23 would just walk, you know, over the sand dunes.

24 Q. So you walked from Kings Highway over the sand
25 down to the beach?

1 A. Yes.

2 Q. How did you use the beach at that time?

3 A. At that time we would just, you know, bring
4 chairs, towels and sit and, you know, make it our base,
5 and then -- this was before kids.

6 Q. Right, so before kids so -- well, I don't want to
7 speak for you but you talked a lot about using the tidal
8 pools once you had little kids?

9 A. Later, yeah.

10 Q. At this point in time you didn't have kids?

11 A. No.

12 Q. Did you stay down by the tidal pools or did you
13 use the dry sand as well?

14 A. We -- you know, I can't remember specifically but
15 I am sure we -- depending upon the temperature, you
16 didn't want to walk too far, you would put your towel
17 down at the closest quiet spot if nobody else was near
18 you and, you know, we would spend the day walking,
19 reading, eating a snack.

20 Q. And again this was before you were renting
21 property or owning property --

22 A. Sure.

23 Q. -- or staying at the Goose Rocks zone?

24 A. Yes.

25 Q. And you used Goose Rocks Beach?

1 A. Yes.

2 Q. And the west end of the --

3 A. I think more than the west end but that's where
4 we started.

5 MR. WILLING: No further questions, your
6 Honor.

7 THE COURT: Mr. Thaxter.

8 CROSS EXAMINATION

9 BY MR. THAXTER:

10 Q. Mr. Hogan, good morning -- it is still morning.

11 A. Good morning, hi.

12 Q. I am Pete Thaxter representing the plaintiffs.

13 Can I call you Paul?

14 A. Certainly.

15 Q. Okay. I would just like to kind of review the
16 time you were at the beach. So we started in 1981,
17 correct?

18 A. '80. We got married June -- goodness -- 14th.

19 Q. You want to remember that.

20 THE COURT: Flag day at that.

21 A. You got it.

22 Q. When you came up in 1980 how long did you stay at
23 the beach?

24 A. At Goose Rocks probably two or three nights. We
25 went some other places too.

1 Q. Then in '81 you came back?

2 A. We came back to stay, yeah.

3 Q. How long was your stay?

4 A. I don't recall, probably a week then.

5 Q. Okay, and from '81 through '85 how long were you
6 there?

7 A. From '81 to '85 --

8 Q. Yeah.

9 A. Well, '84 we weren't here at all and I would
10 guess we came for a week but I don't recall
11 specifically.

12 Q. Then you started renting in '88, right?

13 A. When our child was born, first child, yep.

14 Q. How long were those rentals?

15 A. I think two weeks, I think pretty much two weeks
16 every year.

17 Q. And so you rented '88 until --

18 A. '94.

19 Q. '94, so you are renting two weeks a summer?

20 A. Yeah. Sometimes we would come up off season, you
21 know, when -- once we stayed at that inn up at Goose
22 Rocks off season and come to Prelude.

23 Q. And when you were talking about when you were
24 down in the west end of the beach back in 1980, '81 you
25 went down to the west end you said, right?

1 A. Yes.

2 Q. Are you familiar with the area down in the west
3 end where the Rachel Carson Preserve is?

4 A. I am now.

5 Q. And were you -- did you go to that area back
6 then?

7 A. I don't know if it existed back then. I may have
8 walked out that path, I don't remember any sign or
9 anything, but we also walked just straight into the
10 beach.

11 Q. If you go -- so were you walking straight off
12 Kings Highway straight down to the beach near the Batson
13 River there?

14 A. I think we may have done that but it was just
15 quicker to go right through these empty lots where there
16 were no houses and no fences and no anything.

17 Q. And do I also understand that when you were
18 renting that a lot of the rentals you were using
19 Jefferys Way as an access point, right?

20 A. Well, we were on the Chase property one year, I
21 think I forgot to mention that, which was back off of --
22 oh, what's the street, it's New Biddeford Road -- you
23 guys should know -- then there's a little one -- Hayward
24 and Dorrance, I rented a house on Dorrance for my sister
25 one year, we were on Hayward right behind her.

1 Q. When you rented the Chase property, where did you
2 go to the beach?

3 A. I think when we came to Kings Highway we might
4 have turned right a few properties and hit the first
5 right-of-way --

6 Q. You talked about --

7 A. -- in the open section of the beach I would say.

8 Q. Okay, thank you.

9 You talked about renting the Homer property,
10 right?

11 A. Yes.

12 Q. And the Homer property is on the beach, right?

13 A. It is, yeah.

14 Q. And you rented that when you had a family?

15 A. Yes.

16 Q. Okay, and I am assuming when you had a family
17 that you stayed generally in front of the Homer
18 property?

19 A. If there was a tidal pool there, if not we would
20 go to the tidal pool.

21 Q. But other than going to tidal pools did you walk
22 -- I will --

23 A. We always walked, we always strolled, we went out
24 in the water on a boat, we -- I remember doing a lot of
25 wind serving in those days.

1 Q. Do you remember using the area near Dyke Road at
2 all?

3 A. Near Dyke Road? I don't remember whether we ever
4 parked there. We might have but I don't remember. I am
5 not sure why we wouldn't have because it was right
6 there.

7 Q. But the area from Dyke Road on toward what is
8 sometimes called Dinghy Point, did you ever sit in that
9 area between Dyke Road and Dinghy Point?

10 A. I don't think so. We certainly went on it most
11 days but I don't think there were good tidal pools there
12 when the kids were young, and we never had friends in
13 that section.

14 Q. I am going to hand you your interrogatories and
15 just ask you if you can identify them, and I have
16 highlighted interrogatory number two. I just want you
17 to read that and then your answer and then I will ask
18 you a question.

19 A. Yeah.

20 Q. So have you looked at your answer there?

21 A. Yeah.

22 Q. Okay.

23 The last two sentences of your answer say, these
24 activities occurred regularly over all areas of Goose
25 Rocks Beach from the Little River to Batson River, and

1 then you qualify that by saying, well, there may have
2 been a certain area that we used more than others. Our
3 use was in no way localized to one particular area.

4 Is that correct?

5 A. Yeah, I think that's what --

6 Q. So --

7 A. -- if you quoted that.

8 Q. When you say that these activities occurred at
9 all areas of Goose Rocks Beach, you didn't take your
10 kids and your picnic basket and your blanket and all
11 that and go to the area between Dyke Road and Sand Point
12 and plop down there, did you?

13 A. Well, we would take all that gear -- for example
14 when you had house guests you had to dig up sand dollars
15 which were west of that, so we would take our gear, and
16 I don't know if you have children but sometimes you
17 would make it, sometimes you wouldn't make it, sometimes
18 you had to stop and play, sometimes you would go so, you
19 know, we knew what our goal was but sometimes it would
20 take us two hours to get there.

21 Q. But it's fair to say that most of your activities
22 were around Jefferys Way, right?

23 A. Only since we bought the house. I mean, one year
24 when we had the Pelletier house we went out that way and
25 then we never used Jefferys Way again until we bought

1 the house, I think.

2 MR. THAXTER: Thank you.

3 THE COURT: Mr. Duchette.

4 REDIRECT EXAMINATION

5 BY MR. DUCHETTE:

6 Q. Just so I am clear you have rented beach-front
7 property, back-lot property?

8 A. Yes.

9 Q. You have rented on the east end?

10 A. Yes.

11 Q. You have rented in the middle area of Goose Rocks
12 Beach?

13 A. Yes.

14 Q. The west end?

15 A. Yes.

16 Q. So you have had a -- fair to say you have had a
17 rich rental history prior to your ownership?

18 A. My realtor is very happy.

19 Q. Were the uses you engaged in or the uses you
20 observed on the beach different in any way with respect
21 to any of these places up and down Goose Rocks Beach?

22 A. They just changed as the kids grew, you know, we
23 weren't on the motor boat when the kids were young. I
24 didn't go into tidal pools after the kids, you know,
25 didn't want to be with us so, you know, the kids would

1 take off for the day and we wouldn't see them until
2 dinner.

3 So our activities did change but, you know, it
4 was just upon whether we had house guests, whether we
5 had small children, whether we had just adults with us.

6 MR. DUCHETTE: No further questions.

7 THE COURT: Anyone else?

8 Mr. Hogan, thank you.

9 (Witness excused.)

10 THE COURT: Okay, we will break for lunch.

11 Everyone has people lined up for this
12 afternoon? We are all set. 1 o'clock.

13 (Thereupon, the luncheon recess was taken,
14 and then the proceedings continued as follows:)

15 THE COURT: Good afternoon. It looks like
16 we are all here except Mr. Lachiatto who excused himself
17 today.

18 Mr. Frame.

19 MR. FRAME: Good afternoon again, your
20 Honor. I call Walt Wiewel.

21 THE COURT: Mr. Wiewel, if you will come up
22 please.

23 THE CLERK: Please raise your right hand.
24 Please state and spell your name for the Court.

25 THE WITNESS: Walter H. Wiewel, III,

1 W-I-E-W-E-L.

2 Thereupon,

3 WALTER WIEWEL, III

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

6 DIRECT EXAMINATION

7 BY MR. FRAME:

8 Q. Afternoon, Walt.

9 A. Good afternoon.

10 Q. Tell us your legal residence, Walt.

11 A. 4 Sky View Lane, Kennebunk, Maine.

12 Q. That's in Kennebunk, correct?

13 A. Yes.

14 Q. Do you and your family own property in
15 Kennebunkport?

16 A. Yes, we do.

17 Q. In the Goose Rocks Beach zone?

18 A. Yes.

19 Q. Do you know what I mean when I use the term Goose
20 Rocks Beach zone?

21 A. Uh-huh.

22 Q. How would you define Goose Rocks Beach zone?

23 A. Pretty much inside of Route 9 I think -- yeah,
24 from Dyke Road to New Biddeford Road.

25 Q. Bordered by the rivers?

1 A. Yes.

2 Q. And obviously the ocean on the east side?

3 A. Uh-huh.

4 Q. Where are the properties that you and your family
5 own in Goose Rocks?

6 A. We own property on 187 Kings Highway which is an
7 oceanfront property, we also own a property on 13 New
8 Biddeford Road which is set back, I consider a back lot,
9 and my brother owns the property adjacent to that
10 13 A New Biddeford Road.

11 Q. Great.

12 Can you take the orange pen, Walt, and let's
13 start first with your -- the ocean-front property, the
14 beach-front property that you own, can you circle that
15 on the map?

16 A. It is I believe right here.

17 Q. Great. Thank you.

18 Can you, while you are there, I don't want you to
19 get up and down, can you circle the property that --
20 there's two properties that sit side by side, one owned
21 by you or you and your siblings or just you?

22 A. Both of these properties are owned by myself and
23 my six other siblings.

24 Q. And then your brother owns the house by himself?

25 A. Yes, he does but --

1 Q. You said those two houses are off New Biddeford?

2 A. Yes, the New Biddeford Road here, and this is one
3 parcel here and this is one here.

4 Q. Great, thank you.

5 Are either of those houses, starting with the
6 beach-front home, is that a year-round home?

7 A. It is, it is winterized. We are not using it
8 year round but it is winterized.

9 Q. And the back lots, are those beach-front homes --
10 I mean year-round homes?

11 A. Yes.

12 Q. And are either of those used year round?

13 A. Yes, they are, not every year but sometimes it is
14 a winter rental, sometimes there is not. My brother is
15 still a resident in his home.

16 Q. Sure. Has your family owned any other homes on
17 Goose Rocks Beach over the years?

18 A. Yes, we have.

19 Q. Where else has your family owned homes?

20 A. Let's see, this property right here.

21 Q. Is that another beach-front home?

22 A. Yes, it is.

23 Q. You don't need to do anything.

24 Besides that, any other property?

25 A. No. We have rented for numerous years up and

1 down the beach but -- no.

2 Q. Great.

3 Did you grow up in Kennebunk?

4 A. I did not.

5 Q. Where did you grow up?

6 A. I grew up in Groton, Massachusetts.

7 Q. When did you first come to Goose Rocks?

8 A. All my life.

9 Q. So when you were a baby you --

10 A. Yes.

11 Q. Your parents before you?

12 A. My parents pretty much came there all their
13 lives, my grandparents on my mother's side came in 1921,
14 they were registered in The Tides in 1921, then my
15 father's parents came in 1928 and they stayed at the old
16 Homestead.

17 Q. Great.

18 So you have had on both sides of your family
19 family at Goose Rocks Beach since the '20s?

20 A. 91 years.

21 Q. And you said you have been coming your whole
22 life?

23 A. Yes.

24 Q. I have to ask this, when was the first year you
25 came to Goose Rocks?

1 A. That would be 1957.

2 Q. 1957, okay. In 1957, Walt, was your family
3 renting property --

4 A. Yes, they rented the property -- do you want me
5 to show you?

6 Q. Sure. More important to show the Court so if you
7 want to go to the other side so the judge can see.

8 A. This property here used to be called The Bath
9 House and we rented that the first years of my life.

10 Q. The first years?

11 A. Yeah.

12 Q. At what point in time -- you can sit down.

13 At what point in time did your family purchase
14 property?

15 A. My immediate family?

16 Q. Sure.

17 A. My parents, the first property that they
18 purchased was the piece of property near the Dyke Road
19 that I pointed out.

20 Q. When did they purchase that?

21 A. I believe they purchased that in 1967. We rented
22 it the first year from Mrs. Bond and then we purchased
23 it the following year.

24 Q. So from -- I just want to make sure that I have
25 this right. From 1921 to 1967 your family came to Goose

1 Rocks Beach every summer but rented, correct?

2 A. Correct.

3 Q. At what point in time did you and your siblings
4 buy the New Biddeford property?

5 A. That was first left to my father when his parents
6 passed away and then my father passed away in 1999 and
7 that was left to myself and six other siblings.

8 Q. So the New Biddeford property was in the family
9 for a number of years as well?

10 A. Oh, yes, his parents bought that in 1936, I
11 believe.

12 Q. So that would be your grandparents?

13 A. My grandparents, Wiewel.

14 Q. Wiewel. Your mother's side is the Sheedy?

15 A. Sheedy.

16 Q. We will get into that in a little bit.

17 Starting in 1967 or let's -- before that. You
18 rented -- you said you were born in '54?

19 A. '57.

20 Q. '57, I am sorry, and your family rented until
21 '67, correct?

22 A. Just a minute, let me think, make sure.

23 That's correct.

24 Q. And during that time -- you rented -- where was
25 the place you rented again?

1 A. We rented numerous other places.

2 Q. Any one particular spot on the beach or up and
3 down the beach?

4 A. Up and down the beach, yeah.

5 Q. East end, center?

6 A. West end -- my earliest that I can remember was
7 we rented a Coppola cottage, you have heard that
8 referred to --

9 Q. Sure.

10 A. -- down near the west end, it was the third
11 cottage back on the right, the last one in on the right,
12 and that's about as far back as I can remember. I
13 remember my little brother being bathed in the sink.

14 Q. Being bathed in the sink?

15 A. Yeah.

16 Q. Do you have any pictures of that?

17 A. I think we do.

18 Q. And then after the Coppola cottage, where else
19 did you guys rent?

20 A. We went from the Coppola cottage to a cottage
21 that my grandparents had purchased for a short period of
22 time which was next to our currently owned oceanfront
23 house, and --

24 Q. So a little bit west --

25 A. Just to the west of that, yeah.

1 Q. Great.

2 A. And stayed there a year or two. Then we went
3 down to -- at that time it was actually next to the
4 first house I showed you, The Bath House, it was at that
5 time called the MacDonald cottage and we rented there
6 for two years.

7 Q. Is that more towards the east end?

8 A. Yes, it is.

9 Q. Okay.

10 A. It is in between -- about smack in between
11 The Tides and Jefferys Way.

12 Q. After that is that when your family purchased the
13 house at Kings Highway?

14 A. That was -- yes, yes, by Dyke Road, yeah.

15 Q. So you've -- you rented in a number -- your
16 family rented in a number of places up and down the
17 beach?

18 A. Uh-huh.

19 Q. How long before '67 would your family come up
20 for, what was the extent of the --

21 A. The shortest period of time, again, these are my
22 younger years, you know, but I am guessing the shortest
23 period of time would be two weeks maybe and then a month
24 and sometimes the whole summer.

25 Q. Did there come a point in time when it was

1 generally you were up there for the whole summer?

2 A. My recollection was being there the whole summer,
3 yeah, but --

4 Q. Would that have been after you owned, spending
5 more of the summer up there?

6 A. No, I think the MacDonald cottage was for the
7 whole summer, when we were at the little cottage my
8 grandparents owned, that was for the summer and, again,
9 beyond that I was too young to remember.

10 Q. Great.

11 Besides the several houses you rented, the three
12 houses that your family owned, one of which is a
13 beach-front home, you have a pretty good familiarity
14 with the rest of the beach, correct?

15 A. Yes, I do.

16 Q. You are a builder?

17 A. Yes, I am.

18 Q. Have you built or remodeled any of the homes on
19 the beach?

20 A. Almost my entire career I have been at Goose
21 Rocks.

22 Q. How many homes have you built or remodeled in
23 Goose Rocks Beach and Goose Rocks Beach zone?

24 A. I should know that but I am guessing between 10
25 and 20 homes probably.

1 Q. Some on the beach?

2 A. Oh, yes, yeah.

3 Q. Some on the back?

4 A. Uh-huh.

5 Q. Besides the homes you talked about renting and
6 the three homes, one on the beach and two out back, have
7 you lived in any other homes in the Goose Rocks Beach
8 zone?

9 A. Yes, I winter rented for a few years there. I
10 lived behind the Celi house, Mrs. Cataldo's house one
11 season, and another season I rented I think at that time
12 it was the Ryan's house across from Scribner's house.

13 Q. Great.

14 A. Yeah.

15 Q. Growing up prior to owning -- your family owning
16 in '67 so up to your tenth year, I guess, what kind of
17 activities would you and your family engage in on the
18 beach?

19 A. Well, there weren't many that we didn't. It kind
20 of covered the gamut, I mean from -- we would walk the
21 beach, sun bathe, sail, softball, Frisbee, lacrosse,
22 tidal pool, treks -- I mean when I was a kid to my kids,
23 taking my own kids --

24 Q. Let's just stick with you, pre '67.

25 A. Oh, pre '67.

1 Q. I will get into the teen years in a minute.

2 A. Oh, pre '67. Basically playing on the beach,
3 swim, swimming lessons, sailing lessons. You know, a
4 big attraction were the shore rocks, crabbing.

5 Q. Socialize?

6 A. Oh. Yeah, yeah, we had between swimming lessons,
7 Community House, many family friends up and down the
8 beach, you know, congregating at their houses as well.

9 Q. Friends up and down the beach both -- is this
10 when you were a back-lot owner? Do you have friends who
11 are not -- excuse me. When you were renting did you
12 have friends who lived on the front, friends that lived
13 out back?

14 A. All over, all over.

15 Q. Great.

16 In '67, Walt, when you went from a renter to an
17 owner or your family went from renters to owners, did
18 your use on the beach markedly change that summer?

19 A. No, no, no. I mean, we were -- I mean a lot of
20 places we rented were beach front but, no, we kept doing
21 the same activities that we always did.

22 Q. And when you were -- so post '67 you start -- you
23 are 10 at that point, you start to get into your teen
24 years, did you start to explore the beach a little bit,
25 were you given a little bit more freedom?

1 A. Yes.

2 Q. Did you have a group of friends you hung out
3 with?

4 A. Yes.

5 Q. Who was in that group?

6 A. Oh, jeez, it was different times, but the Junkers
7 were good friends, O'Briens, O'Connors, the Grays, the
8 LaRochelles. I mean, I could go on and on, kids
9 scattered all over the beach, Scribner, Bobby Scribner,
10 a good friend of mine Chuck Archer. I had older
11 brothers and sisters and younger so my peer group was
12 quite -- had quite a range.

13 Q. And those were -- some of those are beach-front
14 folks, some of those are back-lot folks, correct?

15 A. Yes.

16 Q. Do you have a family, Walt?

17 A. Yes, I do.

18 Q. Kids?

19 A. Yes.

20 Q. Did they grow up going to Goose Rocks Beach?

21 A. They sure have.

22 Q. Every summer of their life?

23 A. Every summer of their lives.

24 Q. Where would you stay when you would go to Goose
25 Rocks?

1 A. Since they've been born generally we would go to
2 my mother's house.

3 Q. And your mother's house, is that the Kings
4 Highway house?

5 A. Yes, it is.

6 Q. Great.

7 Do you rent -- does your family rent the Kings
8 Highway house?

9 A. We do now.

10 Q. You do now?

11 A. For a certain amount of weeks in the summer.

12 Q. Okay, and then does your family use it for the
13 rest of the summer?

14 A. Yes, we do. We have an adjacent building, a
15 garage apartment so we have access to the beach during
16 the summer as well, but we do rent the main house for
17 four to five weeks every summer.

18 Q. Great.

19 The New Biddeford Road homes, do you rent those?

20 A. Well, yes, I have one sister who is -- her
21 husband is in the service so we -- she primarily is the
22 user of that house when she's home but we do rent that
23 as well.

24 Q. Great.

25 When -- I want to get new when you were renting

1 before you became a landlord but when you and your
2 family were tenants, this is a long way back but do you
3 recall ever being given instructions on where you were
4 allowed to go on the beach and where you were not
5 allowed to go on the beach?

6 A. No. The only strict rule we had was that -- not
7 to swim in the rivers when we were young.

8 Q. Without an adult with you?

9 A. Well, even with an adult. The current, you know,
10 it was not -- it was -- apparently a boy had drowned
11 once when my parents were younger and that was the --
12 you know, they drove that home pretty hard, just stayed
13 out of the rivers.

14 Q. Were you -- did your parents permit you to kind
15 of go up and down the beach?

16 A. No, no.

17 Q. You had to stay close --

18 A. No, we had quite a bit of free rein, the beach is
19 a very safe place and we had quite a bit of free rein.

20 Q. And you have friends up and down the beach?

21 A. Oh, yes.

22 Q. And were you ever instructed what you could and
23 could not do -- excuse me, I already asked.

24 Were you ever instructed where you could and
25 could not go on the beach?

1 A. No.

2 Q. And no instructions on what you could do on the
3 beach?

4 A. No.

5 Q. Did you ever hang out in front of The Tides?

6 A. Yes, yeah.

7 Q. Popular place at night?

8 A. It was at one time.

9 Q. Do you remember the alarm, the 9 o'clock alarm
10 that would go off?

11 A. I do, I do.

12 Q. What was that, a curfew alarm?

13 A. It was supposed to be, I believe.

14 Q. How did it work?

15 A. It was a siren, the fire house at that time was
16 on Wildwood Avenue and it would go off. I thought more
17 of just a 9 o'clock whistle but it went off at noon and
18 9 o'clock.

19 Q. You kind of disregarded it, though?

20 A. Yeah. Funny, I wasn't even really aware there
21 was a curfew whistle but apparently there was.

22 Q. When you were going up and down the beach when
23 you rented and then into your teens when your family
24 owned did you ever make a distinction between the wet
25 and dry sand?

1 A. No, never, just the obvious.

2 Q. What kind of activities -- we talked about the
3 activities pre 1967 when you rented. Post 1967, similar
4 activities engaging on the beach except probably a
5 little bit different in terms of age appropriateness?

6 A. Yeah, absolutely.

7 Q. So what kinds of things would you do on the
8 beach?

9 A. Pretty much what we had always done, I mean beach
10 activities would be Frisbee, playing catch, softball,
11 volleyball during the day.

12 At night time there were a lot of camp fires, you
13 know, socializing on the beach, just everything you
14 would want to do on the beach you pretty much did.

15 Q. Did you ever make a distinction between whose
16 house you were in front of when you were engaging in
17 these in terms of whether use was permitted or not?

18 A. No, no.

19 Q. You said when you had kids -- you have kids and
20 they have spent their lives at Goose Rocks Beach. Have
21 you taught them to make a distinction between whose
22 houses they engaged in activities in front of and whose
23 not to?

24 A. No.

25 Q. Have you told them where and what -- where they

1 can go and what they could do on the beach?

2 A. No, no, just maybe some safety measures, that's
3 all.

4 Q. You rent out your -- you rent out both the beach
5 front and the back-lot properties?

6 A. Uh-huh.

7 Q. Do you give your tenants instructions at either
8 of those places as to where they can go on the beach?

9 A. No.

10 Q. Or what they can do on the beach?

11 A. No.

12 Q. How do you think a tenant knows where they can go
13 and what they can do on the beach if you don't give them
14 instructions?

15 MR. THAXTER: Objection.

16 THE COURT: Sustained.

17 Next question.

18 BY MR. FRAME:

19 Q. Is it easy for you, Walt, to pinpoint in your
20 early years, in your teen years where you engaged in
21 activities on the beach, the recreational activities?

22 A. Sure, yeah. Do you want me to show on the board?

23 Q. Did you do the entire beach or did you do -- were
24 you in certain spots?

25 A. I mean during the day -- I mean, I had friends

1 all over, you know, depending on where we were hanging
2 out that day on the beach. I mean, I sailed. I mean at
3 night -- at nighttime we would vary from end to end
4 depending whose house or where we had a fire. It was
5 all over, yeah.

6 Q. And your kids, have you observed them having
7 similar experiences on Goose Rocks Beach in terms of
8 their activities?

9 A. Yeah, yeah.

10 Q. Do they have friends up and down the beach?

11 A. Not as much as when I was younger. We have -- a
12 lot of cousins between myself, my siblings, so there's
13 usually a lot of activity in our area but they -- when
14 they take off I am not sure where they go but they are
15 on the beach walking, swimming.

16 Q. When you -- outside of your family, your
17 immediate family and your extended family with cousins
18 and everything, Walt, when you have been down on the
19 beach have you observed other people engaging in similar
20 activities as your family is engaging in?

21 A. Oh, sure.

22 Q. East of where you are, west of where you are?

23 A. All over.

24 Q. Excuse me?

25 A. All over, both ends. Both ends.

1 Q. You have engaged in some of those activities with
2 other beach-front owners, correct?

3 A. Oh, absolutely.

4 Q. And other back-lot owners?

5 A. Sure.

6 Q. Fair to say that for all your years of being down
7 at Goose Rocks Beach the beach has been the focal point
8 of your recreational activities?

9 A. That and probably my life.

10 Q. Excuse me?

11 A. Probably my life as well, it's been a focal point
12 for activities, family getting together, it is a huge
13 part of our life.

14 Q. Goose Rocks Beach is a part of who you are?

15 A. Absolutely.

16 Q. How has this litigation impacted you personally?

17 A. It's been very trying, very upsetting. I would
18 hate to ever see the character of Goose Rocks change and
19 the tradition that's been going on since my parents
20 first came, and I would hate to ever see it change, I
21 think it's what made it what a great spot it's been.

22 Q. Has anyone ever told you that you couldn't
23 engage, whether it was when you were a renter or as an
24 owner, that you couldn't engage in any activities on the
25 beach in front of their house?

1 A. No.

2 MR. FRAME: Nothing further.

3 THE COURT: Mr. Stern?

4 MR. STERN: No questions, your Honor.

5 THE COURT: Mr. Driver?

6 MR. DRIVER: No.

7 THE COURT: Miss Tchao?

8 MS. TCHAO: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MS. TCHAO:

11 Q. Good afternoon, Mr. Wiewel.

12 A. Good afternoon.

13 Q. Just a few questions. So from your earliest
14 memories in the early '60s I just wanted to ask you, you
15 mentioned that you -- your family rented the Bond
16 cottage?

17 A. Yes, in 19 -- it was owned by Mrs. Bond in 1966,
18 I believe.

19 Q. Did there come a time when your family purchased
20 that cottage?

21 A. We purchased it the following year, I think 1967.

22 Q. And how long did your family own that cottage?

23 A. We owned that to -- I am not sure of the exact
24 date, it was in the early '80s.

25 Q. Okay, and would you do me a favor and mark on the

1 town map, which Miss Hewey is going to put up on the
2 easel --

3 A. What color?

4 MS. HEWEY: I like blue.

5 A. Okay.

6 Q. I see where you are marking that, Mr. Wiewel.
7 Would that be immediately to the west of the Zagoren
8 property?

9 A. Yes.

10 Q. So that is two houses to the west of the
11 Dyke Road extension?

12 A. Correct.

13 Q. And if I got the math right you were in the late
14 '60s to late '70s, early '80 you were somewhere in your
15 teens to early 20's?

16 A. Yes.

17 Q. So when your family owned that property did you
18 have the opportunity to recreate in front of that
19 property?

20 A. Oh, definitely, yeah.

21 Q. And observe others engaging in the same kinds of
22 activities that Mr. Frame asked you about on direct?

23 A. Yes.

24 Q. Did there come a point when you began to use 187,
25 Kings Highway more than the Bond cottage?

1 A. Yes, that was around 1978.

2 Q. Okay, and then just briefly you mentioned renting
3 the MacDonald cottage on the east end of the beach. Do
4 you recall around what time frame?

5 A. Yes, 1965, 1967.

6 Q. Is that property now owned by John Parker?

7 A. Yes, it is.

8 Q. He is a party in this case?

9 A. I believe he is.

10 Q. He is two doors down from the Scribner property
11 on the east end?

12 A. Yes.

13 Q. Close to Jefferys Way?

14 A. Yes.

15 Q. I want to ask you a few questions about the uses
16 of the beach that you made in your teen years, so if I
17 have the math right somewhere in the late '60s, early
18 '70s?

19 A. Uh-huh.

20 Q. I think you said that you hung out at The Tides a
21 lot in the evening hours?

22 A. Yeah, that was a popular spot at one time, it
23 varied around the beach through my teen years, The Tides
24 was one spot closer to the New Biddeford Road and Kings
25 Highway, and that intersection was a popular spot for a

1 while. Very young I remember the west end before there
2 were houses that kids would hang out there.

3 Q. Okay, so when you were at The Tides was there --
4 and would you mind bringing that microphone just a
5 little bit closer to you?

6 A. I am sorry.

7 Q. Was there a nickname for the teen hangout at
8 The Tides at some time?

9 A. The Rocks.

10 Q. It was called The Rocks?

11 A. (Motions head up and down.)

12 Q. When you hung out there in the evenings with your
13 friends were there some friends who were the Goose Rocks
14 Beach neighborhood?

15 A. Yes.

16 Q. And were there other friends who did not live in
17 the Goose Rocks Beach neighborhood?

18 A. Uh-huh, yes.

19 Q. They came from elsewhere on the port?

20 A. Yeah, Cape Port is Kennebunkport.

21 Q. Anybody outside of --

22 A. There could be some Cape -- Kennebunkers too.

23 Q. Were there times when you would hang out at
24 The Rocks where your friends would meet you there at
25 night?

1 A. Yeah. It was a popular spot.

2 Q. Do you remember if any of the friends who were
3 not residents of Goose Rocks Beach who met you there who
4 came on their own, went to The Tides, went to The Rocks,
5 meeting at The Rocks?

6 A. You mean how did they get there or?

7 Q. Other than going to a friend's house in the
8 neighborhood were there times when friends would come
9 and meet at The Rocks?

10 A. I would imagine, yeah, yeah.

11 Q. Do you ever recall in that time frame any friend
12 who was not from Goose Rocks Beach asking your
13 permission to come and hang out with you on the beach?

14 A. No.

15 Q. Did you ever give permission to any friends who
16 were not from the Goose Rocks Beach community permission
17 to be on the beach or at The Rocks or any of your local
18 hangout spots?

19 A. No, no.

20 Q. You mentioned there were some beach fires. Were
21 those in one specific location or were they all over the
22 beach?

23 A. They were -- they were all over the beach, yeah.

24 Q. West end?

25 A. West end, there were different areas, it would be

1 fires down near Coppola's area, Dinghy Point, there were
2 beach fires down towards Jefferys Way, Scribners area,
3 for a while the tradition -- we had some great bonfires
4 too and --

5 Q. Do you ever recall any beach fires in front of
6 the Scribner property?

7 A. Good chance. I know there was a couple down in
8 that area. I can't -- I don't know precisely whose
9 house they were in front of.

10 Q. How many kids would you say if you had to
11 envision a typical beach fire on a summer night?

12 A. It would vary. It would vary. I mean, you could
13 have as few as, you know, four, to some of the larger
14 ones could have had maybe 20 kids at that time.

15 Q. Did you ever seek permission from any beach-front
16 owner to have a fire on the beach at that time?

17 A. No, never.

18 Q. Did anyone ever tell you that you couldn't have a
19 fire on the beach at that time?

20 A. No.

21 Q. Were there times when you also would walk the
22 length of the beach as a teen?

23 A. Oh, absolutely. It was a huge family tradition
24 but not just our family, many families, to walk the
25 beach at least once a day, and we would actually run the

1 beach too, my father was a big runner in the '60s and he
2 would make our whole family run to Timber Island and
3 back and it was usually a site to see the Wiewels
4 running single file back down the beach.

5 Q. That is a good visual.

6 You spoke about Timber Island. I just want to
7 ask you a question. When you say you run to Timber
8 Island, do you have to run all the way to the end of
9 Sand Point and then go to Timber Island?

10 A. Well, it depends on the tide. You can only
11 access Timber Island at low tide and -- I mean at that
12 end of the beach, you know, as close as we could get to
13 low tide -- I mean to Timber depending on the tide so if
14 it was a high tide we would just go to the river and
15 then run back.

16 Q. All right, and as an adult have you continued to
17 walk the beach the full length, from river to river?

18 A. Oh, absolutely.

19 Q. All times of day?

20 A. All times of day.

21 Q. Midday?

22 A. All times of day, all times of year.

23 Q. And you seem to know a lot of people in the Goose
24 Rocks Beach general area. I imagine you see friends on
25 the beach?

1 A. Sure, yeah.

2 Q. Do you see friends from -- that are beach-front
3 owners?

4 A. I see friends that are beach-front owners, yes.

5 Q. Back-lot owners?

6 A. Uh-huh.

7 Q. Do you also see friends who are not from the
8 Goose Rocks Beach area?

9 A. Occasionally we do, yeah.

10 Q. People from in town or --

11 A. Uh-huh.

12 Q. -- who you know?

13 A. Kennebunk, Kennebunkport.

14 Q. Can you -- either as a teen or as an adult can
15 you think of any specific names of people you have seen
16 recreating on the beach?

17 A. Going back as far as I was a teenager?

18 Q. Just --

19 A. I can think of, you know, especially in the
20 younger days there were the Rydlin girls, Williams, the
21 Bryants, the Spangs. Oh, jeez. Labosiers. I don't
22 know, I would have to -- I could make a list if I really
23 had time to sit down.

24 Q. And in the late '60s into the '70s when your
25 family owned the Bond cottage, what we are calling the

1 cottage next to the Zagoren's property, have the numbers
2 of people using the beach in that general area, have
3 they changed over time?

4 A. I really can't say if it's increased or
5 decreased. I think it is pretty much the same.

6 Q. What about at 187 Kings Highway?

7 A. I don't think it's changed. I can't recall if
8 it's increased or decreased. Pretty much the same.

9 Q. Okay, thank you.

10 I'd like to show you with help some photographs
11 from -- Town's Exhibit 174, which I believe it's marked
12 on the Town's Exhibit List as objected to but I think
13 it's admitted without objection, your Honor.

14 If you would take a look at those photographs to
15 yourself and when you are ready I will ask you some
16 questions.

17 A. Yeah.

18 Q. A little walk down memory lane?

19 A. Oh, yeah.

20 Q. Are these photos, Mr. Wiewel, from your family
21 photo album?

22 A. Yes, they are.

23 Q. Just quickly if we could go through them, the
24 first photograph has what appears to be a young couple
25 on a bicycle?

1 A. Yes, that's my mother and father.

2 Q. That is your mother and father.

3 Do I see seawall rocks in the background?

4 A. Yes.

5 Q. Is that Goose Rocks Beach in the background?

6 A. Yes, it is.

7 Q. The next one has a boy on a horse.

8 A. Yeah, that's my father on a pony and I think he's
9 in front of the Anchorage -- Tides, Anchorage right near
10 Dinghy Point.

11 Q. Near the point, Gardiner Point or Dinghy Point?

12 A. I think he is about six years old.

13 Q. We have another horse picture coming up?

14 A. And that's my mother right in front of the -- I
15 think it was the Belvidere at that time, and I think
16 she's the same age, probably around five or six.

17 Q. It was known as the Belvidere at that time?

18 A. I believe so.

19 Q. But that is The Tides?

20 A. Yes, that's The Tides, yeah.

21 Q. At that time.

22 Then the next photograph, that's a photograph of
23 the beach?

24 A. Yes.

25 Q. And there are members of your family on the

1 beach?

2 A. Yeah, I think this could have been a postcard,
3 and the funny thing was my grandmother and my uncle and
4 father were on the beach, so they labeled the post card.

5 Q. Based on what people are wearing and the people
6 you know in that photo can you roughly date the photo?

7 A. Well, I am guessing that that was around probably
8 early '30s.

9 Q. Okay, and where is that looking on the beach, any
10 landmarks?

11 A. Yeah, I am guessing by the perspective of
12 The Tides and Dinghy Point it is probably right around
13 maybe Scribner's house, maybe Parkers, somewhere in that
14 area, between Jefferys Way and Parkers is my guess.

15 Q. So you are looking west --

16 A. Looking west.

17 Q. -- from -- towards Dinghy Point?

18 A. Uh-huh.

19 Q. Can you count the number of people in that
20 photograph? I thought it is probably hard to see.

21 A. Roughly maybe 20, 30 people that I can count.

22 Q. Next photo, and I think we only have two left, do
23 you recognize the fellow in that -- holding that very
24 large balloon?

25 A. Oh, I don't think I have that one but --

1 Q. Oh, you don't?

2 A. No.

3 Q. That's okay.

4 Thank you, Mr. Wiewel.

5 A. You are welcome.

6 Q. Just a couple of questions about parking down on
7 Goose Rocks Beach. Was there a time that you recall any
8 parking -- people parking on the west end of Goose Rocks
9 Beach on Kings Highway, west of Dyke Road?

10 A. Yes.

11 Q. Around what time was that?

12 A. Periodically, you know, people still do park
13 there. I don't know, is it prohibited now? I probably
14 should know that but I -- pretty much -- I mean, I know
15 people who live on Kings Highway park as well we do, we
16 park on Kings Highway and we have had other people
17 parked there as well, so.

18 Q. Do you also recall -- from as long as you can
19 remember do you recall that there were lifeguards on the
20 beach?

21 A. Yes.

22 Q. Okay.

23 Do you recall where you saw lifeguards on the
24 beach?

25 A. Sure. The lifeguard stand moved around a little

1 bit. I remember it being down near Proctor at one time,
2 and I remember it being closer to The Tides as well, and
3 I can remember I think three lifeguards.

4 Q. Were there -- do you recall any structures being
5 on the beach when you were growing up --

6 A. I --

7 Q. -- other than a lifeguard chair.

8 A. I remember there was a chin-up bar at Dinghy
9 Point when I was really little.

10 Q. A chin-up bar, would that be in the wet sand
11 area?

12 A. It was in the dry sand, up amongst the dinghies
13 and it may have been even more than one at one time, and
14 there was just a post with a bar drilled through them,
15 and I think there was -- I think the Fessendens had a
16 raft that would sometimes be on the beach that they used
17 for swim lessons, and I have seen pictures from my
18 parents, the kids used to build a diving platform and --
19 out of whatever they could build it out of -- and at
20 high tide they would dive off that.

21 Q. That was in the Dinghy Point?

22 A. That was in the Dinghy Point, I think it moved
23 around a couple of years, I have seen it on both sides I
24 think of Dinghy Point in pictures, east and west side.

25 Q. Have you heard the term public beach be used or

1 did you as a child?

2 A. I have used -- I have heard that used.

3 Q. What does that mean to you?

4 A. Basically the area between Dinghy Point and
5 Timber Island.

6 Q. And -- but did anyone use the term private beach
7 when you were growing up?

8 A. I have heard that used.

9 Q. As a child or more recent?

10 A. Probably throughout my life, yeah.

11 Q. And what area did that refer to?

12 A. That would be Dinghy Point to Batson River.

13 Q. You -- do you live -- you live in Kennebunk
14 year-round now?

15 A. Yes.

16 Q. And you are on Goose Rocks Beach quite a bit?

17 A. About everyday.

18 Q. Do you also have occasion to go into
19 Kennebunkport, in town for supplies or anything like
20 that?

21 A. Oh, sure.

22 Q. Are you familiar with the town's Goose Rocks
23 Beach parking sticker program?

24 A. Yes.

25 Q. How does it work to your understanding?

1 A. I believe you can -- I think for residents I
2 believe it's free. I believe you can purchase a sticker
3 at the general store, the town hall and the police
4 station. For day trippers I think you can buy them at
5 the general store now as well, and I think they actually
6 have a property owner sticker which I think might be
7 new, so if you own property you can have a beach sticker
8 where I think for a while you couldn't and I think they
9 also have -- I think they have season passes as well, I
10 am not totally --

11 Q. Is it your understanding to park in the spaces
12 provided by the town down in the Goose Rocks Beach area
13 that you need one of these stickers on your car to park
14 there?

15 A. Yes, I believe -- yeah, I think it is posted on
16 the way in that you need a sticker.

17 Q. And have you seen cars with -- have you seen a
18 number of cars with stickers on their cars?

19 A. Oh, absolutely, yeah.

20 Q. Peter Gray?

21 A. Uh-huh?

22 Q. Are you related to Peter Gray?

23 A. Yes, I am.

24 Q. And what's your relation to him?

25 A. First cousins.

1 MS. TCHAO: Thank you. No further
2 questions.

3 THE COURT: Mr. Thaxter?

4 MR. THAXTER: No.

5 THE COURT: Mr. Stern?

6 MR. STERN: Is Exhibit 174 from the town
7 admitted or not?

8 THE COURT: It has been admitted. I
9 understood it was admitted by agreement.

10 MR. STERN: Thank you.

11 THE COURT: Mr. Thaxter.

12 MR. THAXTER: Thank you, your Honor.

13 CROSS EXAMINATION

14 BY MR. THAXTER:

15 Q. Good morning, my name is Pete Thaxter.

16 A. Good afternoon.

17 Q. Let me just check something.

18 Can I call you Walt, is that all right?

19 A. Yes, you can.

20 Q. Do your -- are your family homes in LLC's?

21 A. Yes, they are.

22 Q. And the LLC's are the Tree Tops?

23 A. Yes.

24 Q. Sand Castles?

25 A. Yes.

1 Q. And the Sand Castles -- Sand Castles, is that
2 GRB LLC?

3 A. Yes.

4 Q. Why don't you take a look at Exhibit 174.

5 A. Uh-huh.

6 Q. Let's go to the second page with your father and
7 the horse.

8 A. Yep.

9 Q. That picture is obviously taken in the summer,
10 right?

11 A. Yes.

12 Q. And the same with your mother on the horse?

13 A. Uh-huh.

14 Q. And then go to the next picture. I am having a
15 little trouble with this because it is a little blurry,
16 isn't it?

17 A. Which picture are we looking at?

18 Q. The next one of the whole beach there.

19 A. Oh, yes.

20 Q. And you said you were guessing as to the -- you
21 know where it starts and where it ends so I want to ask
22 you a few questions.

23 A. Uh-huh.

24 Q. Do you see a lifeguard stand down there on the
25 right-hand side?

1 A. Okay.

2 Dinghy Point -- I mean, it is pretty big so I am
3 going to circle that area.

4 Q. Do you see the -- I can't, I don't believe, but
5 is The Tides Inn down there someplace?

6 A. Yes, it is. I know it is kind of blended in.

7 Q. Okay.

8 A. It was the tallest structure, is when it had the
9 fourth story on it at the time, and it is the tallest
10 structure.

11 Q. So you are looking over is now referred to as --
12 you are looking right over what is now referred to as
13 the public beach, right?

14 A. Uh-huh.

15 Q. Thank you.

16 Peter Gray is your first cousin?

17 A. Yes.

18 Q. Can you turn to TMF Exhibit Number -- I don't
19 know whether they asked you about it but it is number
20 349?

21 A. 349, yep.

22 Q. And there are some -- would you go through, and
23 there are about -- there are some early pictures and
24 then there's some more up-to-date pictures.

25 I think there's a picture of 213 Kings Highway,

1 is there one?

2 A. Let's see. I am getting into 350, is that where
3 I am supposed to be?

4 Q. You are supposed to be at Exhibit 349.

5 A. 349, hang on a second here.

6 Last picture that I am looking at --

7 Q. Can I approach the witness?

8 A. Okay, it is in the beginning, not the end. Okay,
9 yeah.

10 Q. Now, there's a picture of a Catamaran there and
11 it says on the left 213 Kings Highway; is that correct?

12 A. I am not sure of the numbers. When I lived there
13 the houses were not numbered. I can't tell you if
14 that's the house.

15 Q. That's the Bond house, right?

16 A. Yes.

17 Q. And that's the one with the yellow windows?

18 A. Yes -- the yellow trim, yes.

19 Q. And that's the Gorham's house next to it?

20 A. It is. The Gilpatricks at that time.

21 Q. We are going to again assume this is a summer day
22 since you have the Catamaran out?

23 A. I would imagine it is.

24 Q. Let's go to the next page.

25 A. Okay.

1 Q. And there's -- there's a group of people sitting
2 on the beach there. Is that 187 Kings Highway?

3 A. Yes, it is.

4 Q. And that's the house up on the left?

5 A. Yes.

6 Q. And that's your Catamaran?

7 A. It is a different one but it is, yes.

8 Q. And are some of those people sitting there with
9 you the Grays?

10 A. Yes.

11 Q. And would you and the Grays often go to each
12 others properties?

13 A. Yes.

14 Q. And this picture was taken about what time if you
15 know?

16 A. Oh, boy. I am guessing somewhere after 1978,
17 maybe between '78 and '80, maybe. I am just kind of
18 guessing here.

19 Q. If you look at the bottom picture does that help
20 you? It looks like -- is that one of them is the
21 Gray --

22 A. Yes, the right one is Eugene, Junior and my
23 brother and then Eugene, Senior.

24 Q. Okay. Was that a pretty quiet section of the
25 beach back then?

1 A. Back then, it's no different today.

2 Q. Quiet.

3 A. It depends on the day. That was actually a
4 pretty busy day with the gang we had that day, I'd say
5 it was a pretty busy day.

6 Q. So that is a busy day?

7 A. A big family gathering.

8 Q. Look at the next picture.

9 A. Uh-huh.

10 Q. That's a fall walk. Who is in that picture?

11 A. That is my nephew, Mark, and her dad -- and his
12 dad, Bob.

13 Q. Okay.

14 Now, when you -- part of your group on the beach
15 was -- well, Bob Scribner --

16 A. Uh-huh --

17 Q. I will see if I can find that list. You gave a
18 list earlier about four or five folks and I am trying
19 to -- and Peter Gray?

20 A. Uh-huh.

21 Q. And so when you guys were hanging out together by
22 The Tides did the police get called sometimes?

23 A. They could have.

24 Q. Do you ever remember being disbursed by the
25 police?

1 A. In front of The Tides? It could have happened,
2 it probably did.

3 Q. Do you ever remember Marie calling your parents
4 telling them you were making noise?

5 A. I do not.

6 Q. What?

7 A. I do not.

8 Q. Okay. Do you ever remember Marie complaining
9 because you were making noise?

10 A. Possibly.

11 Q. And you said you had bonfires all over the beach.
12 I gather that you used to go down to the west end of the
13 beach when there were no houses down there, right?

14 A. At one time in my life, yeah.

15 Q. And that was a good place back then for bonfires,
16 right?

17 A. I don't know if I recall as many bonfires at the
18 west end but it was a gathering spot.

19 Q. And you had bonfires at the Scribner house?

20 A. I did not say that. I said in that vicinity.

21 Q. You spent time at the Scribner house, though?

22 A. Never -- I didn't go to Bobby's house a lot.
23 Actually when I was very young at the MacDonald cottage
24 which was two houses over I played over there, I was
25 probably in my -- under 10 years old at that time.

1 In our later years we mostly associated on the
2 beach or in our boats, we both had boats, or out in the
3 evenings.

4 Q. Where did you keep the boats?

5 A. My boat was moored off of our house.

6 Q. Did you keep some kind of dinghy at your house?

7 A. Yes, yep.

8 Q. And you said you rented the Coppola house?

9 A. It was a Coppola cottage, yes.

10 Q. Was it the one on the beach or --

11 A. No, it was back. It was a back-lot house, it was
12 the last one in on the right of this -- it's changed a
13 lot today but --

14 Q. But Mr. Coppola also owned the cottage on the
15 beach, right?

16 A. This is when Frank, Senior was alive. Yes, they
17 owned a few on the beach at the time.

18 Q. So these cottages were out behind the cottage he
19 owned on the beach?

20 A. Yes. They were back lots.

21 Q. Who is Marie, and I am going to get your name
22 wrong, Wiewel?

23 A. Wiewel?

24 Q. Wiewel.

25 A. Marie Wiewel, that is my grandmother.

1 Q. Okay, and are you aware that Barbara Rencurrel's
2 family bought the east end cottage from her?

3 A. Yes.

4 Q. And did you ever stay in that cottage?

5 A. I don't believe I did. I know my parents
6 honeymooned there.

7 Q. Okay, and do you know who the -- this is another
8 tough one, the Lavimodierres?

9 A. Yes, the Lavimodierres.

10 Q. Did they have a house in the front of the beach
11 near that cottage?

12 A. That house is on Kings Lane -- actually it's
13 Kings Highway just as you cross the little creek, the
14 Lavimodierre's house is ocean front, they are not really
15 very close to each other.

16 Q. But you know that that house is an oceanfront
17 house --

18 A. Yes, I know it very well.

19 Q. Did your dad used to have a plane?

20 A. My father did.

21 Q. Did he take pictures of Goose Rocks Beach?

22 A. Most definitely. He was quite a photographer,
23 aerial, he would bore us at slide shows quite often.

24 Q. Have you ever seen the aerial photographs of
25 Goose Rocks Beach?

1 A. I have seen many aerial photographs of Goose
2 Rocks, not just by him.

3 Q. I am going to try to see if I can find among
4 those documents one more document for you.

5 I will ask you -- this is Exhibit 136. Would you
6 look at Plaintiff's Exhibit 136?

7 A. Sure.

8 Q. Can you see that?

9 A. Uh-huh.

10 Q. Now, there's been testimony that was taken in
11 August of 1994. You were no longer -- can you see the
12 Bond house and the Zagoren house?

13 A. I can.

14 Q. In 1994 you were no longer in the Bond house,
15 right?

16 A. No, I wasn't. I can see that it had been
17 remodeled.

18 Q. Is that -- is that typical of the use that was
19 going on in 1994, that aerial photograph?

20 A. It depends when this was taken. Do you know when
21 it was taken?

22 Q. It was taken, it says right behind it on the
23 piece of paper, just -- flip it up further and you will
24 see.

25 A. I don't see anything. Any date on it?

1 THE COURT: There's a note that suggests
2 August 24th of '94 --

3 A. Oh, right there.

4 THE COURT: August 24th, at noontime, 1:36.

5 Q. Would that be pretty typical of that area back in
6 that time of day that the picture was taken?

7 A. Noon.

8 Q. Noon?

9 A. It looks very -- it doesn't look very typical for
10 an August 24th --

11 Q. Pretty quiet.

12 A. Pretty quiet. It must be -- yeah.

13 MR. THAXTER: Thank you.

14 THE COURT: Mr. Frame.

15 REDIRECT EXAMINATION

16 BY MR. FRAME:

17 Q. Walt, do you know if August 24, 1994 was a
18 Saturday or Wednesday?

19 A. I have no idea.

20 Q. If I told you it was a Wednesday because I looked
21 it up in my phone would that change your answer about
22 the beach?

23 A. Well, it would be less likely to have more people
24 on it.

25 Q. The beach is more likely to be busy --

1 A. On a weekend.

2 Q. On a weekend.

3 A. Yeah.

4 Q. And that photo was taken at noon, correct?

5 A. Uh-huh, that's what it says.

6 Q. Did you ever go home to eat lunch when you were
7 on the beach?

8 A. When my mother was alive I used to eat there, a
9 lot of times I would bring my lunch, we would go to the
10 general store for lunch.

11 Q. For your rentals, you are the go-to guy for any
12 problems with those rental properties, correct?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. Have you ever heard from a beach-front renter an
17 issue with -- complaining about people on the beach or
18 wanting people to move off the beach, in front of the
19 beach front?

20 A. No, never.

21 MR. THAXTER: Objection.

22 THE COURT: Objection sustained, it is
23 beyond the scope of cross.

24 Next question.

25 BY MR. FRAME:

1 Q. The fact that the beach was called public or
2 private as you suggested earlier, did that change the
3 uses that you observed on either part of those beaches?

4 A. Not at all.

5 Q. I went through some pictures earlier and you were
6 asked about your family being on the beach and the
7 Grays. You never thought there would be a lawsuit about
8 beach use, did you?

9 A. Never.

10 Q. So it is probably a silly question but did you
11 ever think that you would need to document beach use or
12 somehow go out and take pictures of non-family or
13 non-invitees on the beach in front of your house?

14 A. No.

15 MR. THAXTER: Objection.

16 THE COURT: The objection is sustained to
17 the form of the question. It is really an argument.

18 MR. FRAME: Excuse me, your Honor?

19 THE COURT: It is really an argument. It is
20 really not a question. I mean, judges can infer things
21 like that. Beyond that it is leading.

22 MR. FRAME: Okay.

23 THE COURT: We could probably go down the
24 list of a few more reasons it is objectionable but two
25 ought --

1 MR. FRAME: I will stop.

2 THE COURT: -- two ought to do it.

3 BY MR. FRAME:

4 Q. You testified earlier though that people did
5 recreate on the beach in front of your house?

6 A. Absolutely.

7 Q. And not just the Grays?

8 A. Correct.

9 Q. And not just other beach-front owners?

10 A. Correct.

11 MR. FRAME: I will sit down, your Honor.

12 THE COURT: Mr. Stern.

13 MR. STERN: Just a couple of questions.

14 First of all has TMF Exhibit 349 been
15 admitted or not?

16 MR. THAXTER: Yes.

17 THE COURT: By agreement 349 is admitted.

18 MR. STERN: Great.

19 RE CROSS EXAMINATION

20 BY MR. STERN:

21 Q. Could you look at the last page of 349?

22 A. The last page of 349?

23 Q. Right before Exhibit 350.

24 A. Okay.

25 Q. In one of those photographs is a boat, correct?

1 A. Sorry?

2 Q. There's a boat in one of those photographs?

3 A. Yes.

4 Q. Where is that boat located?

5 A. That boat is sitting on Dinghy Point.

6 Q. In the intertidal area?

7 A. Yes.

8 Q. Are you in that picture?

9 A. No, this is my father. That is a little before
10 my time.

11 Q. That's a picture of your father?

12 A. I believe it's my father and uncle and if it was
13 a better quality I could maybe tell you who else was in
14 it.

15 Q. Could you go to the previous page? There's a
16 picture depending upon how you look at it in the lower
17 left or upper left of two young men navigating in a
18 craft of some kind. Do you know who those two folks
19 are?

20 A. That's -- is it the row boat in the upper right?

21 Q. No, it is the box-like boat.

22 A. Oh, that is -- that's my uncle and father.

23 Q. How old are they there?

24 A. Oh, boy. Jeez, six and eight --

25 Q. Okay.

1 A. -- maybe.

2 Q. Does that box-like boat appear to be floating?

3 A. Sort of.

4 MR. STERN: Nothing further, thank you.

5 THE COURT: Anything else?

6 Mr. Wiewel, you are all set. Thank you.

7 (Witness excused.)

8 THE COURT: Mr. Duchette.

9 MR. DUCHETTE: I would like to call
10 Mr. Steiger.

11 THE CLERK: Please state and spell your full
12 name for the Court.

13 THE WITNESS: Richard Steiger,
14 S-T-E-I-G-E-R.

15 Thereupon,

16 RICHARD STEIGER

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

19 DIRECT EXAMINATION

20 BY MR. DUCHETTE:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Can you state where your principal residence is?

24 A. It's 8 Canter Circle in Westford, Massachusetts.

25 Q. And do you own a piece of property at -- in Goose

1 Rocks?

2 A. I do.

3 Q. Where is that?

4 A. 11 Wildwood Avenue.

5 Q. Is that on the west end, east end, middle section
6 of the beach?

7 A. It is in the middle section of the beach.

8 Q. And actually, if you want to grab the orange pen,
9 circle that.

10 A. It is this little piece right here.

11 Q. If you want to take the red marker and draw a
12 line as to how you usually access the beach. The red
13 marker --

14 A. Either come right down Bartlett and there's an
15 access point here or we go down Bel-Air, an access point
16 here.

17 When I had a sailboat I used to back it in and
18 access it down here near the general store.

19 Q. And when you had -- you can sit back down.

20 A. (Witness complies.)

21 Q. When you had your sailboat, was that Dyke Road,
22 is that where you could put it in?

23 A. Yes.

24 Q. So you would use the Dyke Road extension to
25 launch your sailboat?

1 A. Yes.

2 Q. Would you moor your sailboat?

3 A. It was what they call a wet boat so after I used
4 it I would bring it up on the beach and put it out at
5 Dinghy Point.

6 Q. Okay, so you would leave it on Dinghy Point?

7 A. Yes.

8 Q. And how long have you owned your residence at
9 11 Wildwood?

10 A. Since 1984.

11 Q. Since 1984, and had you had an opportunity to
12 visit Goose Rocks Beach before then?

13 A. Yes.

14 Q. When was that?

15 A. Our first visit was in 1981.

16 Q. Did you -- were you visiting friends, did you
17 rent a piece of property?

18 A. We rented from '81 to '84 when we purchased the
19 residence at 11 Wildwood.

20 Q. So the residence you were renting was -- you
21 ended up purchasing?

22 A. No. We rented -- I don't know the name of the
23 street. It is a dirt road one block away from
24 The Tides Inn heading east.

25 Q. And you rented there for three years?

1 A. Yes.

2 Q. Do you remember who you rented from?

3 A. No, I don't. The wife would remember but I
4 don't.

5 Q. And when you were renting for those three years
6 were you given any instructions with respect to where
7 you could go, what you could do on the beach?

8 A. Never, no, no instructions.

9 Q. How did you learn about Goose Rocks Beach?

10 A. A co-worker, his wife's parents were from
11 Biddeford and he would come up to Goose Rocks Beach and
12 he told me about it so we came up and liked it and
13 rented for three years and eventually purchased.

14 Q. And would you have rented at Goose Rocks Beach if
15 you couldn't use the beach?

16 A. Probably not.

17 Q. Would you have purchased your home at Goose Rocks
18 Beach in 1984 if you couldn't use the beach?

19 A. No.

20 Q. Do you have any children?

21 A. Two girls.

22 Q. Two girls. How old are they?

23 A. 36 and 31.

24 Q. So they have been coming to Goose Rocks Beach
25 since 1984?

1 A. Since 1981.

2 Q. Since 1981?

3 A. We came when our second daughter was born.

4 Q. What sort of things did you and your family --
5 what types of activities did you do on the beach in --
6 that started in 1981 and going forward?

7 A. All kinds of sports games, volleyball,
8 bad mitten, Wiffle Ball, football, Bocce, did a lot of
9 kite flying, used it for launching a sailboat, searching
10 for sand dollars the whole length of the beach because
11 they are tough to find and just any kind of -- sand
12 castle building, any activity associated with that
13 nature.

14 Q. When you would come down Bartlett Avenue would
15 you stay right in the Bartlett Avenue right-of-way or
16 would you go left or right?

17 A. It depended on how many people were at the beach.
18 If it was during the week you could usually stay pretty
19 close to walking off the concrete steps. If there were
20 other people at the beach, because I used to go down
21 midday, we would walk either right or left to get our
22 own little space.

23 Q. And do you know where Barbara Rencurrel's
24 property is?

25 A. No.

1 Q. Would you -- do you know where Dinghy Point is?

2 A. Yes.

3 Q. Would you set up camp, if you will, for -- you
4 know, if you were recreating on the beach anywhere
5 between Bartlett Avenue and Dinghy Point?

6 A. Yes.

7 Q. And did that occur regularly in the summer?

8 A. During the summer, yes.

9 Q. Okay, and would you recreate depending on the day
10 anywhere between Dyke Road and Bartlett Avenue?

11 A. Yes. That's the area we would fly kites mostly
12 on a weekend. There were less people, you didn't have
13 to worry about if your kite took a nose dive hitting
14 people.

15 Q. And when you were doing these activities did any
16 beach-front owner ever come out and ask you to move or
17 ask you to leave?

18 A. Never.

19 Q. Did any beach-front owner ever give you
20 permission to use the beach --

21 A. No.

22 Q. -- property?

23 Did you ever ask any beach-front owners since
24 1981 if you could use the beach in front of their
25 property?

1 A. Never.

2 Q. In addition to that area between Dyke Road and
3 Dinghy Point have you recreated in other areas of Goose
4 Rocks Beach?

5 A. Yes.

6 Q. What types of use would that be and where?

7 A. Our own ingress, the beach front, would be
8 Bel-Air Avenue which is one street west of where
9 The Tides Inn is, and the same thing would happen, you
10 would walk through the pathway and depending on how many
11 people are on the beach you either went to the right or
12 the left to find your own little piece of real estate.

13 Q. And have you walked the full length of the beach?

14 A. Yes.

15 Q. And would you walk either to the Batson River or
16 to the Little River?

17 A. Both ways, yep.

18 Q. And when you were walking did you ever -- were
19 you always walking or did you ever stop at all?

20 A. We would stop, look for sand dollars, and since
21 2005 I have had to frequently stop and sit down on the
22 beach. I blew my foot out, almost lost it and it's all
23 fused and it doesn't have the circulation that it should
24 have so if I walk for too long it begins to bother me,
25 so when we would walk down towards the Batson, which is

1 the longer direction, I'd have to sit down for a bit to
2 let the circulation start again, and so it would
3 probably be two or three times between coming out at
4 Bartlett Avenue to the Batson point.

5 Q. And whenever you have done that since 2005,
6 whenever you have stopped, sit down, a take a break,
7 again has any beach-front owner ever come out and asked
8 you, I am sorry, sir, you are going to have to move
9 along?

10 A. No.

11 Q. Do you have a kayak?

12 A. We have two.

13 Q. And when you have used your kayak have you ever
14 stored it on the beach?

15 A. It is at the beach right now.

16 Q. And where do you typically store it?

17 A. Usually near Dinghy Point, not always, it depends
18 on where the tide level is, sometimes if it is low tide
19 you don't want to drag it as far so we would go to the
20 west end of Dinghy Point. If it was the high tide we
21 would bring it over to the eastern side of Dinghy Point.

22 Q. Have you ever asked any of the beach-front owners
23 who live either to the west or to the east of Dinghy
24 Point to store your kayaks there?

25 A. No.

1 Q. How long have you been doing that?

2 A. Well, we bought the kayaks probably 12, 14 years
3 ago but prior to that I used to use the sailboat and
4 every time I would bring the sailboat up it was in that
5 general vicinity as well.

6 Q. When you were talking earlier about the various
7 activities you have done on the beach, Frisbee,
8 volleyball, things of nature, and have you sun bathed --

9 A. Yes.

10 Q. -- sat in the sand, read a book --

11 A. Yes, yep.

12 Q. -- have you ever distinguished your use between
13 the dry sand and the wet sand?

14 A. You kind of knew if you were going to be in the
15 wet sand the tide would come in and get you. If it was
16 a real hot day sometime you would sit in the wet sand to
17 cool off otherwise we would sit in the dry sand.

18 Q. But in terms of the use there was never a
19 distinction that I can do certain things in the wet sand
20 and I can't use the dry sand for certain things?

21 A. No, no.

22 Q. Okay.

23 When you and your family -- when you were down
24 recreating on the beach, whether it was during your
25 walks and you would stop and sit or when you were

1 engaging in activities between Dyke Road and all the way
2 to Bel-Air Avenue, did you see other people engaging in
3 similar activities?

4 A. Absolutely.

5 Q. Were there certain days where the beach was
6 busier than others?

7 A. Usually on the weekends it would be busier.

8 Q. And when you started visiting Goose Rocks Beach
9 in 1981, again, was there recreational use occurring on
10 the beach from the Batson River to the Little River?

11 A. Yes.

12 Q. And were there certain days that were busier than
13 others in the 1980s?

14 A. Again the same things on the weekends, it would
15 get busier.

16 Q. Same thing in the 1990's?

17 A. Uh-huh.

18 Q. And extending to 2000?

19 A. Yes.

20 MR. DUCHETTE: No further questions.

21 THE COURT: Mr. Stern?

22 MR. STERN: No questions.

23 THE COURT: Mr. Driver?

24 MR. DRIVER: No questions.

25 THE COURT: Miss Hewey?

1 MS. HEWEY: No questions.

2 THE COURT: Mr. Thaxter?

3 CROSS EXAMINATION

4 BY MR. THAXTER:

5 Q. Good morning, Mr. Steiger. My name is Pete
6 Thaxter. Can I call you Richard?

7 A. Sure.

8 Q. Is that what you go by?

9 A. Dick.

10 Q. Dick, thanks. Dick, you just testified that
11 you -- when you go between Dyke Road and Bel-Air in the
12 '80s and '90s you would see people sitting on the beach,
13 correct?

14 A. Yes.

15 Q. And the people -- would some of those people be
16 sitting up near the houses?

17 A. Yes.

18 Q. And is there any way for you -- could you
19 distinguish between the owners of those houses or
20 renters or the public?

21 A. Some of the people I knew that were sitting
22 there, I knew were not beach-front owners, yes.

23 Q. And on what property?

24 A. I don't know the beach-front properties so I
25 wouldn't know who they were sitting in front of.

1 Q. So if somebody was sitting there and you knew
2 they weren't a beach-front owner do you know whether
3 they were a friend of the beach-front owner or --

4 A. No.

5 Q. And when you are down on the west end, when you
6 were walking down on the west end in the '80s and the
7 '90s if you saw people sitting in front of the houses
8 there can you distinguish any of those people from the
9 owners?

10 A. Nope.

11 Q. Now, you indicated that when you come down the
12 path that you come down either Bartlett or Bel-Air,
13 correct?

14 A. Normally, yes.

15 Q. Normally, and when you come down you go to the
16 left or the right --

17 A. Correct.

18 Q. -- to find a spot?

19 A. Correct.

20 Q. And generally you would go as far as you need to
21 go?

22 A. Generally.

23 Q. But it sounds like your activities have been
24 limited more to the Dinghy Point area and the public
25 beach area, right?

1 A. I don't know what you mean by the public beach
2 area. I have never heard of that reference before.

3 Q. You never have?

4 A. No.

5 Q. Do you know the area -- the other side of -- I
6 think it is the other side of Bel-Air, you know the area
7 where the houses are on the other side of the beach,
8 right?

9 A. Yes.

10 Q. The other side of the road, pardon me, you know
11 that area?

12 A. Yes.

13 Q. And have your beach use activities been contained
14 mostly in that area?

15 A. No.

16 Q. Where else have they been?

17 A. They have gone all the way down to either the
18 Batson Point in or out to Timber Island.

19 Q. Okay, and so when you come with your family and
20 your kids did you take your kids all the way out to
21 Timber Island when they were little kids?

22 A. Yes.

23 Q. You did?

24 A. And I do it now with my grandchildren.

25 MR. THAXTER: Okay. Thank you, your Honor.

1 THE COURT: Mr. Duchette?

2 MR. DUCHETTE: Nothing further.

3 THE COURT: Mr. Steiger, thank you very
4 much. You may step down.

5 (Witness excused.)

6 THE COURT: Why don't we take the -- we will
7 take the afternoon break. We will resume, Liz, maybe at
8 25 of.

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

11 THE COURT: Once again good afternoon,
12 folks. It looks like we are all here in the Almeder
13 matter excepting Mr. Lachiatto who has excused himself.

14 Mr. Frame, you will be calling your next
15 witness.

16 MR. FRAME: Thank you, your Honor.

17 Carol Kraeuter, please.

18 THE CLERK: Please state and spell your full
19 name for the Court.

20 THE WITNESS: Carol Kraeuter,
21 K-R-A-E-U-T-E-R.

22

23

24

25

1 Thereupon,

2 CAROL KRAEUTER

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, Carol.

8 A. Hello.

9 Q. How are you?

10 A. Okay.

11 Q. A little nervous?

12 A. Uh-huh.

13 Q. Have you ever testified in court before, Carol?

14 A. No. I have been on a jury but never testified.

15 Q. Great.

16 Where do you live, Carol, your legal residence?

17 A. Legal residence is Cape May, New Jersey.

18 Q. And do you own a residence in Goose Rocks Beach?

19 A. I do, 148 Kings Highway.

20 Q. 148 Kings Highway, okay. Is that known by any
21 sort of popular name?

22 A. (Motions head sideways.)

23 Q. The Maritime Cottages?

24 A. That is 146 Kings Highway.

25 Q. Great.

1 Can you go up to the map and with the orange pen
2 circle where you live?

3 A. (Witness complies.)

4 This is where I live.

5 Q. Great. While you are up, Carol, can you draw
6 with the red pen the route you generally take to get
7 down to the beach, the 146 and 148?

8 A. We use this one and this one, whichever.

9 Q. The one on the top, can you identify the full
10 route? So do you go down Kings Highway and can you draw
11 that on the map?

12 A. Yes.

13 Q. And arrow to the beach on both of those?

14 A. (Witness complies.)

15 Q. So you generally access the beach from two
16 different ways?

17 A. Mostly from the lower one but --

18 Q. The one that is more --

19 A. Closer.

20 Q. When was the first time, Carol, you came to Goose
21 Rocks Beach?

22 A. I don't know the exact date. Late '60s. I would
23 say 1966 or '67.

24 Q. Were you married at that point?

25 A. No.

1 Q. Did you meet John at Goose Rocks Beach?

2 A. No, he brought me to Goose Rocks Beach.

3 Q. Okay, and when you came up in the late '60s,
4 Carol, where did you stay?

5 A. At Maritime Cottages.

6 Q. How did you choose Maritime Cottages?

7 A. How did I -- because my inlaws had Maritime
8 Cottages so we had -- we used the -- we rent free.

9 Q. So John's family owned Maritime Cottages?

10 A. Yes.

11 Q. When were -- do you know when Maritime Cottages
12 were built?

13 A. Uh-huh.

14 Q. What year?

15 A. My father-in-law acquired the land in 1949 and he
16 started renting cottages in 1950.

17 Q. How many cottages did he build in 1950?

18 A. I don't know how many he built in 1950. I think
19 four.

20 Q. How many total cottages are there on the
21 property?

22 A. Ten --

23 Q. Great.

24 A. -- one used personally.

25 Q. Excuse me?

1 A. One used personally.

2 Q. We will get to that.

3 A. Okay.

4 Q. So he bought the land in 1949 after the fire?

5 A. Yes.

6 Q. Was that a part of the beach that had been razed,
7 for lack of a better term, by the fire?

8 A. Yes.

9 Q. You started coming up you said 1966, 1967?

10 A. Uh-huh.

11 Q. Since 1966, 1967 have you come up every summer?

12 A. Not every summer, no, nuh-huh.

13 Q. What summers do you recall that you didn't come
14 up?

15 A. We lived in Georgia and we had two small children
16 and it was too far to travel.

17 Q. How long ago would that have been?

18 A. Late '70s.

19 Q. So from the -- when did you start coming up
20 consistently every summer?

21 A. I started coming up every summer in the late
22 1980s. My husband and both my boys had the great good
23 fortune to grow up spending their summers on Goose
24 Rocks.

25 Q. Great.

1 So starting in the late '80s would you come up
2 for the entire summer or would you come up for part of
3 the summer?

4 A. The entire summer in the late 1980s.

5 Q. And the boys would come up with you for that
6 entire time?

7 A. They came up and spent time with their
8 grandparents.

9 Q. Even without you there?

10 A. I was on two weeks, grandparents were on two
11 weeks.

12 Q. Great.

13 Did there come a point in time, Carol, where you
14 ended up purchasing one of the cottages or all of the
15 cottages?

16 A. We purchased the house adjacent to Maritime
17 Cottages.

18 Q. Okay, and that's 146?

19 A. 148.

20 Q. 148, I am sorry.

21 A. And we purchased that in 1984.

22 Q. So on -- just so we can be clear, on the 148
23 property there's just your residence, correct?

24 A. Correct.

25 Q. And on the 146 property there's ten guest homes,

1 correct?

2 A. Ten small cottages.

3 Q. Small cottages?

4 A. (Motions head up and down.)

5 Q. And there's been ten cottages on that property,
6 on 146, for as long as you have been coming to Goose
7 Rocks, correct?

8 A. Nine. Their home was built in 1968 --

9 Q. Okay.

10 A. -- so --

11 Q. So they were using one of the cottages before
12 that?

13 A. Yes, and -- their personal, yes.

14 Q. Great.

15 You said again in the late 1980's you started
16 coming up -- your kids started coming up for the full
17 summer and you as well for a great part of the summer?

18 A. Uh-huh.

19 Q. And you would stay at 148?

20 A. We stayed for a while at 146, then after we
21 acquired 148 we rented 148 and then we moved over to
22 148.

23 Q. Are The Maritime Cottages still guest cottages
24 that you rent out or have you done something different
25 with them?

1 A. We condominium-ized in 1978 and sold off six of
2 them. I retain four, my family retains four, we use one
3 personally and rent three.

4 Q. Great.

5 Do you have -- so since 1978 you have been
6 renting three of those cottages?

7 A. 1978 -- more than that, three or four. Because
8 we -- it took us a while to sell some of them and I
9 don't have --

10 Q. But you rented at least three or four for the
11 last 30 plus years?

12 A. My family has rented nine since the 1950s but me
13 personally?

14 Q. Yes. Because you sold six of them off as condos
15 at some point?

16 A. Right, so I have been renting three or four since
17 the late -- yes.

18 Q. Great.

19 Starting in the late '60s when you first started
20 coming to Goose Rocks Beach what kind of -- did you have
21 kids at that point?

22 A. '60s? No.

23 Q. Before you had kids what kind of activities would
24 you and John engage in -- your family, your in-laws
25 engage in on the beach?

1 A. My introduction to Goose Rocks Beach, the first
2 time I came we went out to the rocks, we played
3 volleyball and I walked to Timber Island, and wow.

4 Q. Fell in love?

5 A. Yes. It was a lot of activity that first time.

6 Q. Great.

7 In later years after that first summer what kind
8 of things -- before kids again what kind of activities
9 did you engage in?

10 A. Walking the beach at night, looking at the stars,
11 volleyball, visiting with people on the beach. My
12 husband knew a lot of people on the beach.

13 Q. Because he grew up there?

14 A. Yes, he grew up there. He spent his entire life
15 there.

16 Q. And when you were engaging in those activities
17 did you see other people engaging in other similar
18 activities?

19 A. Yes.

20 Q. Did you always know whether they were back
21 fellow -- back-lot owners or beach-front owners?

22 A. Not always, no.

23 Q. When your -- two sons, correct?

24 A. Two sons.

25 Q. When your sons came along, Carol, what kind of

1 activities did you engage in on the beach with them?

2 A. Me personally or could I watch?

3 Q. Yeah, exactly.

4 A. Watch? They played capture the flag, volleyball,
5 Frisbee, sand castles, they built forts, my oldest son
6 had a boat, a little row boat and he would go out to the
7 rocks and puddle out of the rocks and go back to the
8 Batson River.

9 I had camp fires at night, did I say that?
10 Zim Zam, sun bathing, reading, collecting shells,
11 visiting. Always visiting on the beach. As you walked
12 along the beach you stopped and visited with people.

13 Q. Great.

14 Did you engage in those activities purely on the
15 wet sand or was that wet sand, dry sand or you didn't
16 care?

17 A. Everywhere.

18 Q. As your sons started to get older did they start
19 to get out of your sight on the beach?

20 A. I am learning more about their activities on the
21 beach now than I knew then.

22 Q. Don't punish them.

23 A. No, I can't.

24 Q. But did you allow them to roam the beach?

25 A. Yes, they had -- yes, that was part of their

1 growing up, their nurturing, their maturity, to learn to
2 conduct themselves.

3 Q. Did you ever sit them down -- you seem like a
4 pretty straightforward person, Carol. Did you ever sit
5 them down and say this is what you are allowed to do on
6 the beach, this is what you are not allowed to do on the
7 beach?

8 A. Their grandfather took care of that. Mostly
9 safety things, they weren't allowed to swim in the
10 Little River without an adult. No inflatable toys in
11 the ocean with an off shore wind because it would carry
12 you right out to sea, we had several rescues that way.

13 Q. Any instructions to give your sons any
14 instruction about where they could go on the beach, east
15 or west from where you were going?

16 A. No. They had friends all up and down the beach.

17 Q. And you talked about going up and down the beach.
18 When you would access -- you and your two sons and your
19 husband, when you would access the beach from those two
20 rights-of-way would it be common for you to set up
21 somewhere around that area a beach chair or --

22 A. If I was going to read or sun bathe, yes, but
23 most of the time we were active on the beach, some
24 activity, and we would usually travel to the beach
25 lightly, not carry much or set up, but generally in the

1 area between those two and farther down to the Sotirs
2 and Coppolas.

3 Q. And then you would roam from there?

4 A. Yes.

5 Q. So you would, just so I am clear, generally set
6 up -- you talked about Sotir. What about the Hayes or
7 Flynnns?

8 A. From Flynnns to Coppolas because rental cottages
9 too, the rental people, would go back and forth.

10 Q. Sure. Let's get to that a little bit. At what
11 point in time did you -- you answered this already but I
12 have forgotten -- did you condo-ize Maritime?

13 A. 1978.

14 Q. Okay, and starting in '78 you were renting and
15 have continued to rent to this day at least three of
16 those guest cottages, correct?

17 A. Or four, uh-huh.

18 Q. Okay. At least three?

19 A. At least three.

20 Q. And at any point in time have you instructed your
21 tenants on where they are allowed to go and not allowed
22 to go on the beach in that 34 years of renting?

23 A. (Motions head sideways.)

24 Q. She can't record a nod.

25 A. No, no.

1 Q. At any point in time have you instructed over
2 those at least three units in 34 years, instructed
3 people on what they could do when they are down on the
4 beach?

5 A. No except for safety things, for the --

6 Q. And those three units that you have had, do you
7 get new renters every year?

8 A. A very few. Most of my renters are repeat
9 customers. I have a family who's rented from me for
10 four generations, from my family for four generations.

11 Q. Have you become friends with them?

12 A. Yes.

13 Q. Come every year?

14 A. Yes.

15 Q. Same weeks generally or period of time?

16 A. As their families grow and change sometimes it
17 changes.

18 Q. What have you observed them, those folks, your
19 renters doing down on Goose Rocks Beach?

20 A. Recreational activities, socializing activities
21 with families that would meet at the beach year after
22 year with children growing up together.

23 Q. Would they stay right -- as you are observing
24 them, would they stay localized to the Sotir, Hayes,
25 Flynn area?

1 A. Wherever the action was, wherever the kids were
2 going, whatever the people wanted to do, that's where
3 they would go.

4 Q. If they were older they would maybe stay in one
5 place more likely, if they were kids they would be
6 chasing the kids; is that accurate?

7 A. Yes, the tide pools, we would have babies in tide
8 pools, the games on the hard sand, the volleyball in the
9 soft sand.

10 Q. Is it fair to say that for you, your family, your
11 husband, your two boys that the focal point of your life
12 at Goose Rocks Beach is the beach itself?

13 A. Very much so.

14 Q. And have you observed that being consistent with
15 your renters over the years?

16 A. Yes, many renters, yes.

17 Q. You have been coming up to Goose Rocks Beach now
18 for 45 years, somewhere around there, correct? Sorry to
19 date you. Is that correct?

20 A. Uh-huh, from the 1960s, sure.

21 Q. Has anyone ever told you that you couldn't engage
22 in an activity on the beach?

23 A. No.

24 Q. Have any of your renters ever told you that they
25 have been told to leave the beach?

1 A. No.

2 Q. Would you hear about that do you think if a
3 renter had been told that?

4 A. You bet.

5 Q. When you have been -- are you friends with all of
6 the beach-front owners at Goose Rocks Beach?

7 A. I think I am neighbors with many of the
8 beach-front owners on Goose Rocks Beach.

9 Q. Let's talk about the ones near 146 and 148. Are
10 you friendly with all of them?

11 A. Beach-front owners?

12 Q. Yes.

13 A. Paul and Sharon Hayes, Mark and Luanne Paley,
14 Kenny and Joanne Rowe.

15 Q. You are not friends with all of them, are you, in
16 that area?

17 A. No, I know -- I just know them, I am not
18 necessarily friends.

19 Q. Over the years you have grown accustomed to them?

20 A. Yes.

21 Q. And have they seen you engaging in these
22 activities on the beach?

23 A. Uh-huh, yes.

24 Q. Have they always been with you when you have
25 engaged in these activities on the beach?

1 A. No.

2 Q. I'd like you to take a look at Exhibit 315 which
3 are photos. They are a little grainy. Maybe I will
4 give you mine.

5 A. This one I can identify.

6 MR. FRAME: Your Honor, can I approach?
7 This is a little grainy for her so mine is a little bit
8 better?

9 THE COURT: Yes.

10 Q. The first photo on 315, can you identify that
11 photo, where that is taken?

12 A. Uh-huh. I was not present but this is my
13 father-in-law and my mother-in-law, Florence and Norman
14 Kraeuter, they are sitting in front of the path between
15 Hayes and Sotir. You will notice there's no building
16 there.

17 Q. Okay.

18 A. And the building you see is Coppolas.

19 Q. Great.

20 Go to the next page. That photo on the -- let's
21 go back to the page before, I am sorry. Can you give us
22 a date for that photo estimate? If you can't, that's
23 fine.

24 A. I would estimate somewhere in the '50s.

25 Q. Okay.

1 A. This was -- my father-in-law and mother-in-law
2 talked about doggie roasts for the renters. See the
3 stick sticking up out of the sand and the wood in the
4 wheelbarrow and everybody sitting around for the
5 campfire?

6 Q. Would you do a roast in the dry sand or the wet
7 sand?

8 A. Usually the dry sand up by the rocks in the
9 evening.

10 Q. Okay. Go to the next page.

11 Can you identify the top of that photo, who's in
12 there?

13 A. This is my husband, John.

14 Q. Is that dated, that photo?

15 A. It says August and -- in my mother-in-law's
16 handwriting August 1945.

17 Q. That is at Goose Rocks Beach?

18 A. Yes.

19 Q. You can identify where that is looking out at the
20 beach, correct?

21 A. No, I cannot specifically identify.

22 Q. How about the one below that, is that another one
23 of the doggie roasts photos?

24 A. Yes.

25 Q. Next page.

1 Page 3, Carol, starting at the top, I think as
2 always you are organized and you have labeled them
3 number one, can you identify first where that photo was
4 taken?

5 A. In the -- in front of the Hayes' property before
6 it belonged to Hayes, that's Tasey's cottage.

7 Q. Tasey?

8 A. Tasey. Okay.

9 Q. When was that taken?

10 A. 1968.

11 Q. Do you know who is in that photo?

12 A. I can identify the man in the foreground, his
13 name is Kenny Lang and he was a renter for a long, long
14 time.

15 Q. A renter at Maritime Cottages?

16 A. A renter at Maritime Cottages.

17 Q. Is that on the wet sand or the dry sand?

18 A. It looks like the dry sand.

19 Q. Dry sand is usually white, correct, and the wet
20 sand is usually dark?

21 A. Yeah, uh-huh.

22 Q. Great.

23 How about let's go down to number 4. Can you
24 identify where that photo is taken?

25 A. Yes.

1 Q. Where is that photo taken?

2 A. The cottage to the left is the Rowe cottage, the
3 cottage to the right is Si Loral.

4 Q. So can you tell where that would be in front of?

5 A. Where my access to the beach is, where it would
6 be in front of?

7 Q. Yes, what house would it be in front of?

8 A. Currently?

9 Q. Strike that.

10 When you go down to the beach do you even care
11 which beach-front house you are in front of?

12 A. No, sir.

13 Q. Excuse me?

14 A. No. It is more where the space is available,
15 where there is space on the beach to be.

16 Q. How about number 5? I think you talked about --
17 I will submit to you the first time I heard this term in
18 this case was playing Zim Zam, is that --

19 A. Zim Zam is number 6.

20 Q. I am sorry, number 6. What is Zim Zam?

21 A. It is like teether ball with a tennis ball on a
22 road -- on a pole.

23 Q. Is that on -- it looks to be on the dry sand; is
24 that correct?

25 A. Dry sand.

1 Q. Do you know who is in that photo, number 6?

2 A. I can identify the man on the right and that's
3 Fred Reid and he was a renter a long --

4 Q. At Maritime Cottages?

5 A. At Maritime Cottages.

6 Q. And --

7 A. And the property -- the deck in the foreground on
8 the right is John Dever's property, which is currently
9 Paley.

10 The next one over is Paul Hayes' home.

11 Q. And how about photo number 8 on the next page,
12 what are they doing there?

13 A. They are building a fort.

14 Q. And are they up -- that is near the beach grass,
15 correct?

16 A. Yes, it.

17 Q. So is that dry sand?

18 A. Yes, it is.

19 Q. Do you know who is in that photo?

20 A. The boy in the distance is my youngest son Eric.
21 The boy in the foreground is Benjamin Reid.

22 Q. Okay.

23 Judging by Eric's -- you are a CPA so I will have
24 you do some math here. How long ago was this photo
25 taken?

1 A. He was born in '74, this is dated in 1987, so
2 what is he, seven years old, eight years old?

3 Q. 13.

4 A. 13?

5 Q. My math from having to do my taxes.

6 A. You don't need math to have to be an accountant.

7 Q. And number 9, Carol, can you identify where that
8 photo is taken?

9 A. The brown cottage all the way to the right is
10 Flynns, just a little bit above the top path that we
11 access.

12 Q. Okay, so is that further -- that's further west
13 down --

14 A. Further east.

15 Q. East down the beach, I am sorry.

16 A. Yep.

17 Q. And is it fair to say, Carol, that these pictures
18 depict at least some of the activities that you and your
19 family and your renters have engaged in at Goose Rocks
20 Beach along the way?

21 A. Yes.

22 Q. Do they depict all of the activities that you
23 have engaged in?

24 A. No.

25 Q. Did you always bring a camera down to the beach

1 to document where you were and what you were doing?

2 A. No, we did not. We were there to have fun, relax
3 and have fun.

4 MR. FRAME: Your Honor, I would like to
5 offer 315 into evidence.

6 THE COURT: Objections?

7 MR. LEONI: No, your Honor, I think the same
8 understanding.

9 THE COURT: Admitted.

10 MR. FRAME: I have nothing further.

11 THE COURT: Mr. Stern.

12 CROSS EXAMINATION

13 BY MR. STERN:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Could you please look again at Exhibit 315, it is
17 the photographs, and I believe it is the third page and
18 it is a photograph with the number 3 beside it?

19 A. Yes, sir.

20 Q. Who is in that picture?

21 A. The little boy in the striped swimsuit with the
22 red thing is my son Eric.

23 Q. So when was this taken?

24 A. 1977.

25 Q. What does it depict?

1 A. They are building an elaborate sand castle or
2 fort on the beach.

3 Q. Okay, and is that in the intertidal area?

4 A. It could be in the intertidal, it is probably in
5 the high sand.

6 Q. Okay. Do you know what part of the beach that
7 was, whose house it was in front of?

8 A. The brown house off to the right is Flynns, so I
9 would assume it is somewhere in front of what is now
10 Hayes or Sotirs or Paleys.

11 Q. Did your on engage in this activity at different
12 parts of the beach when he was that young?

13 A. Mostly it was near the path, the access where we
14 were.

15 MR. STERN: Thank you.

16 THE COURT: Mr. Driver?

17 MR. DRIVER: No, your Honor.

18 THE COURT: Miss Tchao?

19 CROSS EXAMINATION

20 BY MS. TCHAO:

21 Q. Good afternoon, Miss Kraeuter.

22 A. Good afternoon.

23 Q. I will show you Town Exhibit 133 and I would like
24 to ask you to turn to page 33 of that Exhibit.

25 MR. THAXTER: 133?

1 MS. TCHAO: 133.

2 Q. Just let me know when you get there.

3 A. Yes.

4 Q. The bottom is a -- what appears to be a photo, it
5 says Maritime Cottages. Is that the business that you
6 have been referring to that has been in your family
7 since 1950?

8 A. It is.

9 Q. And Norman Kraeuter is your father-in-law or was
10 your father-in-law?

11 A. Yes, he was.

12 Q. Okay, and I understand your testimony that
13 Maritime Cottages has been in business although having
14 changed with the condos from 1950 to present day?

15 A. Correct.

16 Q. And you have rented at least three of the
17 cottages and in some years prior to that nine or ten
18 cottages since that time --

19 A. Yes.

20 Q. -- your family has?

21 A. Yes.

22 Q. Okay.

23 If you read what it says in small print --

24 MR. LEONI: What page?

25 MS. TCHAO: Page 33.

1 Q. Could you read the third line down starting with
2 modern, just that sentence, please?

3 A. Modern two-bedroom house-keeping cottages, about
4 50 yards from beach.

5 Q. Did you advertise in the years that this Maritime
6 Cottages was in your family business, did you advertise
7 the beach as being the main attraction and reason to --
8 staying at your cottages?

9 A. Yes.

10 Q. Do you believe your business would have been as
11 successful if your renters did not have access to the
12 beach?

13 A. No.

14 Q. Now, above that there is a reference to Dever's
15 Goose Rocks Beach and I think earlier in your testimony
16 you referred to John Dever.

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Okay.

21 Were you familiar with that cottage business?

22 A. Yes.

23 Q. Was that in the vicinity of Maritime Cottages?

24 A. It was, it was just a little bit east, at
25 West Wind and then he also had an apartment that he

1 rented in his house.

2 Q. Okay, so West Wind, just so we are clear, was
3 that on the non-water side of Kings Highway?

4 A. Yes, correct.

5 Q. A lot or so down from Maritime Cottages?

6 A. Yes.

7 Q. Do you know how many cottages were for rent
8 there?

9 A. Four, possibly five. Five.

10 Q. Okay, and there was also a beach-front home owned
11 by Mr. Dever that he rented out?

12 A. He sold the non-beach-front property in order to
13 acquire and build the house on the beach front to my
14 knowledge.

15 Q. Okay, and this was in the '60s, '70s, same time
16 frame?

17 A. Uh-huh.

18 Q. If you would just read the third line down
19 starting with four two-bedroom cottages. Just read that
20 sentence if you would.

21 A. Screened porches and wonderful bedroom apartment
22 located across the street from a beautiful beach
23 approximately 100 feet to the ocean.

24 So this would be an advertisement for West Wind.

25 Q. That's the advertisement for West Wind?

1 A. Uh-huh.

2 MS. TCHAO: Thank you. No further
3 questions.

4 THE COURT: Mr. Thaxter or Mr. Leoni.

5 CROSS EXAMINATION

6 BY MR. LEONI:

7 Q. Good afternoon, Miss Kraeuter. My name is Ben
8 Leoni and I represent the plaintiffs. Do you mind if I
9 call you Carol or would you prefer Mrs. Kraeuter?

10 A. Carol is fine.

11 Q. Carol, you testified that you had been coming to
12 Goose Rocks Beach for 45 plus years I think is what
13 Mr. Frame just said?

14 A. Uh-huh, yes.

15 Q. And -- but you never came to Goose Rocks Beach
16 for the entire summer until the late '80s?

17 A. For the entire summer, that is correct.

18 Q. Right.

19 You mentioned that when you came up to visit with
20 your husband in the earlier years before you were here
21 all summer that you used to walk up and down the beach
22 with your husband and visit a lot of people?

23 A. Yes.

24 Q. Now, your husband knew a lot of people on the
25 beach?

1 A. He grew up on the beach, yes, he knew a lot of
2 people.

3 Q. And it is fair to say that some of those people
4 were beach-front owners?

5 A. Yes.

6 Q. I think you used the term earlier that you
7 thought of a lot of the other beach-front owners as
8 neighbors?

9 A. Yes.

10 Q. And so when you went and visited people on the
11 beach front you visited them as neighbors?

12 A. With my husband John it was friends.

13 Q. Friends?

14 A. Friends.

15 Q. Okay, and when you go to other -- when you are on
16 other properties you are there as neighbors?

17 A. Sometimes neighbors, sometimes friends.

18 Q. Okay. You testified in the late '80s that with
19 respect to some of the activities that you engaged in on
20 the beach that you saw other people engaging in those
21 activities as well, recreational activities?

22 A. Yes.

23 Q. At that time you stated that you didn't know a
24 lot of people on the beach but that your husband knew
25 quite a few people on the beach.

1 A. Yes.

2 Q. So is it fair to say that when you walked up and
3 down the beach you didn't know all the people that were
4 on the beach?

5 A. That is correct.

6 Q. So when you saw people engaged in recreational
7 activities on the beach you had -- they could actually
8 be beach-front owners or renters of beach-front owners
9 engaged in those activities, correct?

10 A. Yes.

11 Q. I think we are going to turn back to the photos
12 which is Exhibit 315. Are you finding that okay? I can
13 help you.

14 A. It is grainy.

15 Q. Yes, they are a little grainy.

16 Okay. The first page where you testified about
17 the hot dogs, you stated earlier in your testimony that
18 you believed this was a hot dog cookout because you see
19 sticks?

20 A. That's what I assume they were, sticks.

21 Q. You are not sure for certain, though?

22 A. No.

23 Q. There is no campfire in that photo, is there?

24 A. I -- I cannot tell from this. I would assume
25 there would be because that was the way the activity was

1 conducted.

2 Q. Okay.

3 A. I can't tell from this picture.

4 Q. Okay.

5 Now, the following picture -- we will go to page
6 2. That's the photo of your husband, John -- I think
7 you testified that was your husband John?

8 A. Uh-huh.

9 Q. Do you know where on the beach that was? You may
10 have said it.

11 A. I assume it was near the path --

12 Q. Okay.

13 A. -- the access path.

14 Q. Near the access path.

15 I know it is difficult to see in this photo. Do
16 you see anybody else on the beach?

17 A. No.

18 Q. Go to the third page and that's the series of
19 photos listed 1 through 6. I will first draw your
20 attention to photo number 3 which I believe you said
21 that's your son holding the red pail there and in the
22 background there is sort of a one-story house with a
23 flag pole. Is that the Flynn property?

24 A. Yes, I believe, yes.

25 Q. So it is a little difficult because you -- well,

1 why don't you -- maybe the best thing to do, just so
2 that we have a record and I can hold this up, if we
3 could just draw your two access points that you used to
4 get to the beach on this map as well with the red
5 marker.

6 You can refer to this if you want to.

7 A. It is right here.

8 Q. If you know where it is you can put the marker.

9 A. (Witness complies.)

10 Q. Is it this gray one?

11 A. I am sorry.

12 Q. That's okay. Just scribble that out. Just put
13 your initials next to those.

14 A. (Witness complies.)

15 Q. Thank you. You can sit down.

16 So the Flynn property that you can see in photo
17 3, that's this property just to the east of the
18 northerly right-of-way?

19 A. Uh-huh.

20 Q. And it appears that your use of the beach is --
21 where your son is on the beach is a couple of properties
22 to the west?

23 A. (Motions head up and down.)

24 Q. So is it likely that it is right in front of this
25 right-of-way somewhere in that general vicinity?

1 A. Not directly in front of that right-of-way, no.

2 Q. Okay. Well, where do you think it is?

3 A. Somewhere in here.

4 Q. Somewhere in there, okay.

5 The second -- next photo down, which is number 5,
6 is that the Flynn house that you can see in the back
7 there?

8 A. Yes, I believe it is, yes.

9 Q. Does this appear that the activity is happening
10 in roughly the same place?

11 A. Yes.

12 Q. And that's right in this vicinity?

13 A. Uh-huh.

14 Q. And then if you flip the page, page -- photo
15 number 9, there's another photo. Do you see the Flynn
16 house on the right side again?

17 A. (Motions head up and down.)

18 Q. So that photo depicts activity in the same
19 general area as number 3 in number 5?

20 A. Yes, it would appear so. It depends on the angle
21 of the camera too.

22 Q. Right.

23 If you disagree, you can say that.

24 A. No, that's the general area.

25 Q. So a few moments ago you mentioned that we go --

1 I think I have this in quotes -- we go where there is
2 space on the beach.

3 Do you ever have trouble finding space on the
4 beach when you come out your right-of-way?

5 A. No.

6 Q. Okay, so is it similar to what these -- well, why
7 don't we go back to the photos. In number 3 -- are you
8 there?

9 A. (Motions head up and down.)

10 Q. Number 3, do you see anybody else on the beach
11 besides your son and his friends?

12 A. There's a group way up the beach.

13 Q. Way up the beach, okay.

14 Nobody in front of the Flynn house?

15 A. I don't see any in the picture, no.

16 Q. Okay. I am just asking you about the picture and
17 that's the same as number 5 just below it?

18 A. Uh-huh.

19 Q. And again in photo 9 there is nobody in front of
20 the Flynn house?

21 A. I think it is really hard to tell from the angle
22 of the camera and everything.

23 Q. I think the photos speak for themselves but what
24 I am trying to get to is between the two right-of-ways
25 that you usually come down, the areas right around the

1 right-of-ways, you don't have any trouble finding a
2 space on the beach as you put it?

3 A. No, and sometimes we go to the right, we don't
4 always go to the left.

5 Q. Right. That's because there's not a lot of other
6 people around there, correct?

7 A. That's right.

8 Q. That it never interferes with you when you are
9 down there?

10 A. No.

11 Q. Do you have a deeded right-of-way, do you know?

12 A. Yes.

13 Q. And so sometimes when you come out the deeded
14 right-of-way you are in the vicinity of the
15 right-of-way?

16 A. Would you repeat that, please? Sometimes?

17 Q. It is not a very good question.

18 A moment ago you stated that you have a deeded
19 right-of-way?

20 A. The subdivision that my father-in-law originally
21 bought the property from had two reserved rights-of-way,
22 reserved ways to the beach.

23 Q. Isn't it true your husband actually restricts
24 access to that right-of-way?

25 A. There is a sign posted there saying no public

1 access.

2 MR. LEONI: Okay. I think that's all the
3 questions I have. Thank you very much, Carol.

4 THE COURT: Mr. Frame?

5 MR. FRAME: Nothing, your Honor.

6 THE COURT: Thank you, Miss Kraeuter. You
7 may step down.

8 (Witness excused.)

9 THE COURT: Next witness.

10 MR. FRAME: Pete Smith, your Honor.

11 THE COURT: Mr. Smith.

12 THE CLERK: State and spell your name for
13 the Court.

14 THE WITNESS: Peter M. Smith, S-M-I-T-H.

15 Thereupon,

16 PETER SMITH

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

19 DIRECT EXAMINATION

20 BY MR. FRAME:

21 Q. How are you doing, Pete?

22 A. Very well, Gregg. Yourself?

23 Q. I am doing okay.

24 A. Good.

25 Q. State your legal residence for the record.

1 A. 8 Marshview Drive, Goose Rocks Beach.

2 Q. And is Marshview Drive in the Goose Rocks Beach
3 zone?

4 A. The zone being from river and inside of Route 9,
5 yes.

6 Q. Great.

7 Is it an oceanfront home or a back lot?

8 A. A back lot.

9 Q. Great.

10 Let's get the formalities out of the way here.

11 A. Orange or red.

12 Q. Thank you, Pete.

13 Can you identify on this map, Pete, in orange
14 where your house is?

15 A. (Witness complies.)

16 Q. Can you then in red identify the route you take
17 to get to the beach, general, right along the road or
18 however you get there?

19 A. (Witness complies.)

20 Q. Can you draw arrows to the beach on all three of
21 those?

22 A. (Witness complies.)

23 Q. Can you identify this one, this one and this one?

24 A. (Witness complies.)

25 Q. Great.

1 Pete, you drew three different ways to get to the
2 beach. Why is that?

3 A. We tend to sleep in and so I have motor scooters
4 and because we are about three blocks off the beach we
5 take any of those three, four, even five routes and
6 wherever there is a parking space we park and hop on the
7 beach.

8 Q. Great.

9 How long have you -- do you own any other
10 property at Goose Rocks Beach, Pete?

11 A. I own the adjoining lot next to mine.

12 Q. Is there a house on that?

13 A. No, there is not.

14 Q. I am sorry, I should have asked you to do that
15 before. Can you circle that as well? Is that that big
16 odd-shaped lot?

17 A. We cut half of it off so I only own that.

18 Q. Great.

19 Maybe just write in there Pete Smith or Smith,
20 that will help us.

21 A. (Witness complies.)

22 Q. Thanks, Pete.

23 How long have you owned that home at Goose Rocks
24 Beach?

25 A. I bought the property in '99 and I built it in

1 '00.

2 Q. So was your first time to Goose Rocks Beach was
3 in 1999?

4 A. No. My parents own a home at Goose Rocks, we
5 came up in 1969, I was 11, and we rented for two weeks
6 the first summer, and that was on Bartlett Avenue, the
7 home they now own or my mother now owns.

8 Q. Great.

9 So your mom is currently a resident of Goose
10 Rocks Beach?

11 A. My mother is a summer resident, her formal
12 residence is Watertown, Massachusetts.

13 Q. Okay, but she has a house on Bartlett Avenue?

14 A. That's correct.

15 Q. Great.

16 So -- and that was starting in 1971?

17 A. '69.

18 Q. '69. You rented from '67 to '69 --

19 A. No, we first came in '69, we rented until '72,
20 and my parents purchased the house in '72.

21 Q. Great.

22 And you said in '69 you were 11 years old?

23 A. That's correct.

24 Q. So from '69 to '72 when you were renting on Goose
25 Rocks Beach were you renting at Bartlett Avenue?

1 A. That's correct.

2 Q. Did you use the beach when you were --

3 A. Every day.

4 Q. -- renting?

5 A. Every day.

6 Q. What kind of activities would you engage with the
7 beach from the time when you were 11 until 14 before you
8 owned it?

9 A. Obviously a lot of swimming, Wiffle Ball games,
10 volleyball, walking, running, hiding. Back then we
11 could even play in the rocks and we would go to the
12 store and get stuff and make little forts in the rocks,
13 do whatever we could do to keep busy on the beach.

14 Q. You said that your mom is a legal resident of
15 Watertown. Is that where you grew up?

16 A. No. I grew up in Belmont.

17 Q. When you came up in '69, just from '69 to '72
18 before you bought, how long would you and your family
19 come up for the summer?

20 A. The first two years we came up we came up for two
21 weeks and then the year before they bought it we came up
22 for four weeks.

23 Q. And do you have siblings?

24 A. I have two sisters and a brother.

25 Q. Older, younger?

1 A. Two sisters older, a brother younger.

2 Q. What is the age span, difference?

3 A. 14 years.

4 Q. Great.

5 In 1972, Pete, you said your parents bought that
6 house that they had been renting.

7 A. Yes.

8 Q. And you were 14 at that point approximately?

9 A. Uh-huh.

10 Q. Did your activities change at all on the beach,
11 Pete, from the time you were renting versus the time
12 your parents bought?

13 A. No, at that age it didn't really register with me
14 whether we owned or bought. We were lucky enough to get
15 up there.

16 Q. Great.

17 Would your family -- sorry, Pete.

18 How often would your family come up during your
19 period of ownership, starting in '70 -- '72?

20 A. We would come up Memorial Day to open it for the
21 weekend then we couldn't come back again until school
22 got out in late June and we would leave Labor Day and
23 then we would come back on Columbus Day Weekend and
24 close it up.

25 Q. So you would spend the whole summer there?

1 A. The first summer that we owned it I spent four
2 weeks but every summer after that I have been there for
3 the whole summer.

4 Q. Your mom would be up there with you and the kids?

5 A. That's correct.

6 Q. Your dad, would he commute or was he --

7 A. He came up for four weeks and then he would go
8 back to the Boston area.

9 Q. Great.

10 And what about -- when you went away to college
11 did you --

12 A. Came back to Goose Rocks every summer and worked
13 there, painting houses, worked in the restaurants, every
14 summer.

15 Q. Have you spent -- since your eleventh summer have
16 you spent every summer of your life, at least some
17 portion of it, at Goose Rocks Beach?

18 A. There were four or five years when I lived down
19 in Alabama where we just got back up for like four days
20 but, yes, I have been at Goose Rocks Beach at least once
21 every summer since I was one --

22 Q. And even when you were in Alabama you said you
23 were at Goose Rocks Beach for a period of time?

24 A. Yeah, yeah.

25 Q. You bought the property that you are in now in

1 1999, correct?

2 A. That's correct.

3 Q. So from '69 to '99 when you would come up to
4 Goose Rocks Beach was your home the Bartlett Avenue
5 house with your parents?

6 A. Yes. There were two summers where my wife and my
7 children rented homes at Goose Rocks.

8 Q. Great.

9 Where did you -- did you rent the Goose Rocks?

10 A. We rented one month of July, which was four
11 weeks, on Wildwood, and then another time we rented one
12 week up on Skyline.

13 Q. Where is Wildwood?

14 A. Wildwood is parallel to Kings Highway.

15 Q. How far -- middle beach, east end, west end?

16 A. If you take a left at the store it is like the
17 back road that is parallel to Kings Highway from like
18 the Bartlett Avenue, it is adjacent to Bartlett Avenue.

19 Q. Between Dyke Road and The Tides?

20 A. Well, it runs between Dyke Road and probably New
21 Biddeford Road.

22 Q. Great.

23 Then you said you were on Skyline as well?

24 A. Yeah, that's up by where I live now.

25 Q. Great.

1 Do you have kids, Pete?

2 A. I have five children.

3 Q. How old are the kids?

4 A. 25 to 17.

5 Q. Great.

6 When you were coming up at the age of 11 and
7 staying up here with your mom and for part of that time
8 with your dad did your mom and dad give you and your
9 three siblings any instructions on where you were
10 allowed to go on the beach?

11 A. As long as we stayed inside Route 9 it didn't
12 matter.

13 Q. And did they give you any instructions on what
14 you were allowed to do on the beach?

15 A. Certainly as far as people's, you know, manners
16 and to behave accordingly.

17 Q. Like what kind of things?

18 A. Don't get in trouble. You know, there was not a
19 lot of instruction. They were happy to be up here as
20 well.

21 Q. I am not going to ask you whether you obeyed your
22 parents because I think I know the --

23 A. That wouldn't be prudent.

24 Q. Have you provided your five kids with
25 instructions on where they are allowed to go on Goose

1 Rocks Beach?

2 A. No. Where they are not, like others that you
3 have heard today, they are not allowed in the ocean --
4 now my adult children are but not in the rivers unless
5 there's an adult with them.

6 Q. And any instructions on they are -- what they are
7 permitted to do?

8 A. Use good judgment but, I mean, they can do what
9 they want to do as long as it is behaving correctly.

10 Q. You have three different ways that you and your
11 family access the beach or have traditionally accessed
12 the beach from your home. When you get down on the
13 beach what is your family's normal routine?

14 A. Well, now there's just one person at home. It
15 used to be set up an umbrella and play Wiffle Ball and
16 dig holes and dig sand castles now it's primarily find a
17 place to park and walk the beach, and sometimes we visit
18 with people we see and other times we just walk the
19 beach, and we do that year round, it doesn't matter what
20 the weather is.

21 Q. When you would set up your umbrella, your beach
22 chairs, was it the same place every time?

23 A. No, we tried to find a place where we had some
24 room, you know, where there were fewer people.

25 Q. Okay, and as a kid -- this is now jumping around

1 a little bit and I apologize -- as a kid when -- you
2 would go down from Bartlett Avenue, correct?

3 A. Uh-huh.

4 Q. Did you stay in the area around the Bartlett
5 Avenue extension?

6 A. No, because most of my friends I met up at the
7 Community House which was a gathering place where most
8 of the kids went in the morning and then we all
9 scattered from there where whoever we were in swimming
10 or tennis lessons with or whoever and then we would go
11 to somebody's house for lunch or my mother's house and
12 do our things.

13 Q. Is Community House where the Goose Rocks Beach
14 Association is?

15 A. Same place.

16 Q. You are involved in that now?

17 A. I was on the board and I was the treasurer for a
18 number of years.

19 Q. That's a -- that's an organization that's for
20 beach-front owners, back-lot owners?

21 A. No discrimination.

22 Q. And your friends that you -- the Community House
23 was -- was that near Dyke Road?

24 A. No, it is closer to where I live now, it is about
25 three blocks off the beach up behind Wildwood.

1 Q. Great.

2 When you would go to the Community House in the
3 morning, I think you said this but I want to make sure
4 -- were kids there mostly from that Wildwood area or
5 were they --

6 A. No, whole beach. Whole beach, up and down the
7 beach.

8 Q. What ages?

9 A. I think it started when you were six you could
10 start taking tennis lessons. Back then they had
11 swimming lessons off the point so we would either meet
12 at the Community House or meet down at the point and
13 there was a raft out at the point.

14 Q. Did you take swimming lessons with
15 Mrs. Fessenden?

16 A. Unfortunately. It was very cold.

17 Q. Did you have the -- the friends that you met at
18 the Community House, would you spend time around where
19 they lived?

20 A. Absolutely.

21 Q. And that would be back-lot owners, beach-front
22 owners, west end, east end?

23 A. All of the above.

24 Q. Did you ever -- some of those friends were
25 beach-front owners, correct?

1 A. That's correct.

2 Q. Did you ever feel when you were on the beach like
3 as a back-lot owner you had lesser rights to use the
4 beach?

5 A. No one noticed it. I didn't know the difference.

6 Q. Did you ever -- I know this is probably a silly
7 question, have you ever distinguished when you were on
8 the beach between the wet and the dry sand in terms of
9 what you could do on the beach?

10 A. Not prior to this case.

11 Q. Certainly you would stay on the -- were you
12 involved in the softball games down by --

13 A. Absolutely.

14 Q. -- in front of Scribner and down at the Sand
15 Point area?

16 A. A lot of Wiffle Ball games, lots of kids.

17 Q. And those were I imagine softball -- Whiffle Ball
18 you could probably play on dry sand, right?

19 A. Uh-huh.

20 Q. Softball more so likely on the wet sand?

21 A. I think both more likely on the wet sand, just
22 it's hard to run on the sand. Frisbee, that kind of
23 stuff on the dry sand. It really all depends on
24 the tides.

25 Q. Those were popular gathering spots, weren't they,

1 people on the beach, those softball games?

2 A. Yes.

3 Q. And when people were gathering for those softball
4 games were they staying purely on the wet sand or were
5 they on the dry sand and all around?

6 A. I would presume we were all around. I don't
7 remember --

8 Q. Ever --

9 A. -- any difference.

10 Q. Did you ever distinguish when you were out there,
11 Pete, whose oceanfront home, beach-front home you were
12 in front of?

13 A. Not at that age. I think as we got older and
14 understood property value at Goose Rocks it became a
15 little more evident but, no, you don't think like that
16 when you are 11.

17 Q. You -- you were with the kids, did you ever -- I
18 think you used the term earlier, you followed the tides?

19 A. That's correct.

20 Q. What does that mean?

21 A. Well, we do a lot of swimming in the rivers with
22 a lot of families and so to do that you have to know
23 when the high tide is that day so you can go down there
24 and catch the outgoing tide, and what you do is jump in
25 off of this cliff and then the current takes you about

1 150 feet and you jump back out and, you know, we call it
2 running the river, and there's loads of people down
3 there as we have grown up and still to this day that do
4 it.

5 Q. Great.

6 When you have been on the beach over the 42 years
7 you have been there engaging in these activities I
8 imagine your family has grown to know a lot of people on
9 the beach?

10 A. That's correct.

11 Q. Back lot and front lot?

12 A. That's correct.

13 Q. You do not know everyone?

14 A. No.

15 Q. Friends with some?

16 A. Friends with most.

17 Q. Would other -- would you ever see other people
18 engaging in similar activities, observe other people
19 engaging in similar activities on the beach?

20 A. Yes.

21 Q. Beach-front owners?

22 A. Yes.

23 Q. Back-lot owners?

24 A. Absolutely.

25 Q. Were they always in your group at the time or

1 were they doing their own thing maybe a little bit
2 further down the beach?

3 A. I think both, I think they did their own thing
4 and certainly they were with us and we were in front of
5 their house and we didn't notice it. No one -- didn't
6 think that way.

7 Q. You know where the houses are now, right?

8 A. I certainly do.

9 Q. Fair to say talking about the activities that you
10 have engaged in that you have engaged in activities over
11 the years in front of Sand Point, it is a popular spot,
12 correct?

13 A. Absolutely.

14 Q. Which would be Barbara Rencurrel and Sandifer and
15 those places?

16 A. Rencurrels is down more towards the point and
17 certainly we have flown kites and thrown Frisbees and
18 sat on the beach in front her house.

19 Q. Great.

20 You already testified that you spent quite a bit
21 of time in front of Scribner and Asplundh and Dwelley
22 and Temerlin now, right?

23 A. That's right.

24 Q. When you first started coming to Goose Rocks
25 Beach is that right about the time that Sand Point

1 was -- started to be developed?

2 A. I would say about two-thirds of it was already
3 developed.

4 Q. Okay.

5 A. There were still some lots left.

6 Q. Okay.

7 Pete, in your 42 years of coming to the beach and
8 now living at the beach you have used the beach in the
9 summer?

10 A. Yes.

11 Q. Fall?

12 A. (Motions head up and down.)

13 Q. Winter?

14 A. Uh-huh.

15 Q. Spring?

16 A. (Motions head up and down.)

17 Q. Have you ever -- from the time you were 11 to
18 now, you are 53, 52, right?

19 A. (Motions head up and down.)

20 Q. Have you ever asked anyone for permission to use
21 the beach in front of their house?

22 A. No, sir.

23 Q. Have you ever been told that you couldn't use the
24 beach in front of someone's house?

25 A. No, sir.

1 MR. FRAME: Nothing further, your Honor.

2 THE COURT: Mr. Stern?

3 MR. STERN: No questions, your Honor.

4 THE COURT: Mr. Driver?

5 MR. DRIVER: No questions, your Honor.

6 THE COURT: Miss Tchao? Miss Hewey?

7 CROSS EXAMINATION

8 BY MS. HEWEY:

9 Q. I just have a couple of questions to ask you.
10 During the time that you've been visiting the Goose
11 Rocks region have you also met or come to know people
12 from outside the region?

13 A. Certainly.

14 Q. And during the time that you have been using the
15 beach have there been times when you have either been
16 with or seen people from outside of the region using the
17 beach in the same manner that you are?

18 A. Yes.

19 MS. HEWEY: No further questions.

20 THE COURT: Mr. Leoni.

21 CROSS EXAMINATION

22 BY MR. LEONI:

23 Q. Good afternoon, Mr. Smith.

24 A. Good afternoon.

25 Q. You probably heard me say this before but my name

1 is Ben Leoni and I represent the plaintiffs.

2 Do you mind if I call you Peter?

3 A. That is just fine.

4 Q. Could you just explain to me -- are you still
5 employed?

6 A. Am I still employed?

7 Q. Yes.

8 A. Yes, I own a business.

9 Q. Okay. Where is that business?

10 A. Scarborough, Maine.

11 Q. Do you live down in the Goose Rocks zone
12 year-round?

13 A. I do.

14 Q. When did you move here permanently?

15 A. Three years ago.

16 Q. Three years ago.

17 Before three years ago -- so that's 2009?

18 A. That's correct.

19 Q. So before three years ago where were you working?

20 A. Exactly where I am working today.

21 Q. Okay, but where did you live?

22 A. Kennebunk, Maine.

23 Q. So when did you come down during the summers
24 and -- let me ask you it this way. When you were living
25 in Kennebunk, Maine, were you living during the summers

1 on Goose Rocks Beach, at the Goose Rocks Beach house?

2 A. That is correct.

3 Q. Okay. Before that, how long had you lived in
4 Kennebunk, for?

5 A. Kennebunkport? I lived in Kennebunkport for
6 three years, prior to that I have lived in Kennebunk
7 since '93.

8 Q. Since '93?

9 A. That's correct.

10 Q. And do you live in -- when you were living in
11 Kennebunk that was your permanent residence. Were you
12 living the summer in Kennebunkport?

13 A. That's correct.

14 Q. Okay, at the house that you currently own?

15 A. Yes. We traveled six miles to our summer home.

16 Q. You could practically bike there or electric
17 scooters at least.

18 You stated earlier in direct that when you came
19 to the beach you tried to find a place where there was
20 room?

21 A. That's correct.

22 Q. And you also outlined three spots that you
23 usually come down to access the beach and you said that
24 you -- that it depended on whether you found parking --
25 well, parking would determine where you came down to the

1 beach.

2 A. When we took our scooters, yes.

3 Q. Okay, so sometimes you didn't take your scooters?

4 A. Sometimes we would walk or ride our bicycles.

5 Q. Okay.

6 A. As we got older we have been taking the scooters.

7 Q. I will just ask you a couple of questions about
8 the map over here, and just for the court reporter's
9 sake if you could answer into the microphone.

10 So you stated that you or you indicated what
11 appears to be Bel-Air Avenue, Old Proctor Avenue and
12 Broadway Avenue?

13 A. Yes.

14 Q. But when you were young you used Bartlett Avenue?

15 A. Yes. That's where I lived with my mother.

16 Q. Do you still use Bartlett Avenue?

17 A. I do, I park in front of her house when I can't
18 find a space anyplace else.

19 Q. Okay.

20 When you come down here you said you sleep in
21 oftentimes now?

22 A. (Motions head up and down.)

23 Q. So where do you go to find more space?

24 A. After the spaces on Kings Highway are filled?

25 Q. (Motions head up and down.)

1 A. I go to my mother's house.

2 Q. Okay, so these spaces on Kings Highway fill
3 first?

4 A. Typically, yes.

5 Q. Okay, and so this area will get filled up and
6 once that is filled up then you go and stay at your
7 mother's house?

8 A. Yes.

9 Q. And access Bartlett way?

10 A. Yes.

11 Q. In that area you don't have -- that area you
12 don't have a problem finding a quiet space, open space
13 for yourself?

14 A. Typically when we go in that area we just walk
15 the beach.

16 Q. Okay, you don't stop and sit down over here?

17 A. Not really.

18 Q. Where do you stop and sit down recently?

19 A. Of the other three places that I showed you.

20 Q. Okay.

21 Are there any of these three areas that you use
22 more frequently than others?

23 A. No.

24 Q. I think there's a couple of photos from that
25 area -- thank you.

1 A. Uh-huh.

2 Q. There's a couple of photos from those areas that
3 we will get to in a minute. First I just want to ask
4 you about -- you stated you had -- when you were staying
5 down near the Bartlett Ave and would access the beach
6 through Bartlett Ave, Gregg asked you whether you
7 usually stayed right there and you said no, I usually
8 went to the Community House to hang out with my friends.

9 A. Yes.

10 Q. So you weren't really spending much time on the
11 beach when you were there?

12 A. No, we were. We had our swim lessons and sailing
13 lessons on the beach, but typically in the morning we
14 would go to the Community House and then we would
15 disburse there. Sometimes we would end up at my
16 mother's house and go down to the beach in front of
17 Bartlett Ave or wherever we went. There were, you know,
18 quite a few of us.

19 Q. Could you turn to Exhibit 345, please?

20 May I approach, your Honor?

21 THE COURT: You may.

22 Q. Can you identify where these three photos were
23 taken?

24 A. The one on the top left is at the end of
25 New Biddeford Road, I recognize the Ramsey house. The

1 one on the right is the same place, as is the bottom
2 one.

3 Q. Okay, and you can see the right-of-way in the top
4 two photos and is it fair to say that your family is
5 camped out or stationed very close to the end of the
6 right-of-way in those two top photos?

7 A. Relative to what?

8 Q. Well, how far away would you say if you are from
9 the exit of the New Biddeford right-of-way?

10 A. I am sorry, are you suggesting this is my family?

11 Q. I believe 345 is his, right? A clerical error?

12 A. I have a lot of kids but not that many.

13 Q. How about 346? I have them both in here for you
14 but let's look at 346 and see if those are yours.

15 A. Okay.

16 Q. Do you recognize those photos?

17 A. Yes, the one -- I certainly recognize Goose Rocks
18 on the top, and the bottom picture is at the end of --
19 it is not Proctor, it's the next road down towards New
20 Biddeford Road.

21 Q. Did you take these pictures?

22 A. No, sir.

23 Q. Could you just flip through the first couple of
24 pages and if they are not your photos I am not going to
25 ask you any questions about them. You don't have to go

1 through all of them. There's quite a few.

2 A. Okay.

3 I don't recognize any of these as my photos.

4 Q. Okay.

5 A moment ago you stated that you spent a bunch of
6 time in front of Barbara Rencurrel's house playing
7 Frisbee and other activities. Did you ever see Barbara
8 Rencurrel's no trespassing signs in front of her house?

9 A. I have.

10 Q. And you also said that you spent time in front of
11 Bob Scribner's house for --

12 A. His younger sister Joy was my age and so she was
13 one of the ones that would play tennis with us at the
14 Community House and that was just one of the houses that
15 we might end up at.

16 Q. And you would end up there with her to hang out
17 with her?

18 A. Her and a number of other people.

19 Q. Okay. She was with you?

20 A. Many times.

21 Q. Did you ever see no trespassing signs or private
22 property signs --

23 A. No, sir, no --

24 Q. -- at the house?

25 A. No.

1 MR. LEONI: Okay. I think that's all I
2 have. Thank you.

3 THE COURT: Mr. Frame?

4 MR. FRAME: Nothing, your Honor.

5 THE COURT: Mr. Smith, you are all set.
6 Thanks very much.

7 (Witness excused.)

8 THE COURT: Okay, we will wrap up for this
9 afternoon.

10 Did you get your lineup for tomorrow, Gregg,
11 which is Thursday and Friday, right?

12 MR. FRAME: Yes.

13 THE COURT: Do you have it, Pete, and -- you
14 are all set?

15 MR. LEONI: Yes.

16 MR. FRAME: It appears now at the pace we
17 are at we will likely have one witness only on Tuesday
18 morning and we will be done with our witnesses.

19 MR. THAXTER: Your Honor, I would like to
20 get the town's list of witnesses for Tuesday. I am
21 hoping to take a little time off this weekend so I can
22 work on it the next couple of days.

23 THE COURT: By tomorrow you will.

24 MS. HEWEY: We will do that as I told Pete
25 during the break. As soon as we work out the exhibits

1 we are good.

2 THE COURT: As we move along here, if people
3 have sort of unique, different, that's helpful. I mean,
4 endlessly repeating the same is not helpful, so -- and I
5 am a little concerned, I want to save time for everybody
6 to have a fair opportunity on Friday to respond to
7 things that come up.

8 Once we get beyond Friday, the 7th, we are
9 in trouble here. Okay?

10 So we don't expect any problems. I mean,
11 one thing we could do -- well, I should check with my
12 friend Kim first. We could start at 8:30, could we,
13 Kim?

14 THE COURT REPORTER: Yes.

15 THE COURT: I am prepared to start at 8:30,
16 which would give us -- and I am prepared to take a half
17 hour for lunch -- which gives people more time.

18 I will give you -- I am prepared to take
19 snacks and have breaks every couple of hours with power
20 bars, whatever it takes to get this case tried, but come
21 the 7th I don't want to be hearing people say I need
22 more time.

23 So I will leave that up to you. Again, I am
24 glad to start at 8:30, I am glad to take a half hour for
25 lunch, whatever it takes.

1 MR. FRAME: We are done Friday afternoon,
2 your Honor.

3 MS. HEWEY: Your Honor, there is one major
4 evidentiary issue that I would like -- especially hoping
5 that the Court can save maybe a half an hour of time
6 this week so that we can --

7 THE COURT: Why don't we do it at 8:30
8 tomorrow morning?

9 MS. HEWEY: Okay.

10 THE COURT: What is the issue going to be?

11 MS. HEWEY: We have a number of historical
12 photos that were collected by a gentleman who has
13 since -- has since deceased, they have been in -- I
14 believe they were in the Kennebunkport Historical
15 Society, so it is sort of whether those can come in and
16 if so how.

17 THE COURT: Well, I mean, there's evidence
18 from the Eaton case that -- I mean in the Eaton case
19 there was a lady who was the current -- of the Wells
20 Historical Society and presented a variety of historical
21 documents from that collection. Now, I don't know
22 whether that was objected to at trial or not but I know
23 that the Eaton case describes in detail her testimony.

24 MR. THAXTER: Yes, your Honor. One of the
25 problems is that these are now -- these are on a

1 database with a lot of hearsay, statements from
2 different people, so there are thousands of them and
3 they are all thrown in together and there's all kinds of
4 miscellaneous information in there and I just --

5 THE COURT: Why can't we clean them up so to
6 speak?

7 MS. HEWEY: I believe that we put in the
8 whole thing at once, which we don't intend to put in,
9 but there are little pieces of photographs and postcards
10 and things like that. I don't have -- I am not sure
11 what the issue is.

12 MR. THAXTER: If they will e-mail me -- I
13 mean, you know, the best thing for me if they will
14 e-mail me what they want I can look at that but a
15 thousand photographs just is -- you know.

16 MS. HEWEY: Well, I provided you with the
17 exhibits.

18 How about -- could I suggest that instead of
19 doing --

20 THE COURT: Tomorrow?

21 MS. HEWEY: -- doing this tomorrow we do it
22 on Friday so we will try to meet --

23 THE COURT: That's good. I mean, I think
24 what makes sense to me is to get rid of what I will call
25 editorial comment and you have the exhibits, the

1 pictures, the postcards in specie form and in that
2 fashion without notes on the side that purport to
3 provide information about them.

4 MS. HEWEY: I think the problem there though
5 would be, your Honor, if you get a batch of photographs
6 with no dates, no nothing that would not be helpful. I
7 think that there is evidentiary support for the notion
8 that historical documents that are stored in the
9 historical society do come in.

10 THE COURT: So it sounds like at Friday
11 morning at 8:30 we are going to -- what is going to
12 happen is, in my phrase, you are going to clean them up
13 as much as possible, get them to Pete by tomorrow so he
14 will have a chance to look at them and on Friday morning
15 we will sort this out.

16 MS. HEWEY: Sounds good.

17 MR. THAXTER: I assume that they are going
18 to be more selective than a thousand photos.

19 MS. HEWEY: I am not -- we will do the best
20 we can is what I can say.

21 THE COURT: I am not interested in a
22 thousand photographs.

23 MS. HEWEY: I completely understand that,
24 your Honor. I appreciate that.

25 THE COURT: Okay.

1 So we are on for 9:00 tomorrow morning. See
2 everybody then.

3 (Thereupon, the foregoing proceedings
4 concluded at 3:57 p.m.)

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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