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STATE OF MAINE  
YORK, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. RE-09-111

ROBERT F. ALMEDER and VIRGINIA )  
S. ALMEDER, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 TOWN OF KENNEBUNKPORT and )  
 ALL PERSONS WHO ARE )  
 UNASCERTAINED, )  
 )  
 Defendants. )

DEPOSITION OF ROBERT F. ALMEDER, taken pursuant  
to notice dated February 29, 2012, at the Law Offices of  
Taylor, McCormack & Frame, 30 Milk Street, Portland, Maine,  
on **March 23, 2012**, commencing at 9:05 A.M., before Lisa S.  
Bishop, RPR, RMR, a Notary Public in and for the State of  
Maine.

APPEARANCES: GREGG R. FRAME, ESQ.  
ANDRE G. DUCHETTE, ESQ.  
BENJAMIN M. LEONI, ESQ.  
BRIAN D. WILLING, ESQ.  
AMY K. TCHAO, ESQ.  
PAUL D. STERN, ESQ.

ALSO PRESENT: Alexander Lachiatto, pro se  
Richard Driver, pro se

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DIPIERRO REPORTING, LLC  
207-767-5330

I N D E X

Deponent: ROBERT F. ALMEDER

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1           ROBERT F. ALMEDER, having been duly sworn by the  
2 Notary Public, was examined and testified as follows:

3                           EXAMINATION BY ATTY. FRAME:

4           Q       Good morning, Mr. Almeder. I'm Gregg Frame, as  
5 you know.

6           A       Good morning, Gregg.

7           Q       I'm an attorney for a number of folks in Goose  
8 Rocks Beach.

9                   Have you ever had your deposition taken before?

10          A       No.

11          Q       Okay. We are going to go through some short  
12 ground rules. They are pretty simple. You have probably  
13 heard something similar from the prior depositions you have  
14 sat in on. I'm going to ask you a series of questions  
15 under oath. You are going to answer those questions. The  
16 court reporter here will take down what you say and what I  
17 say.

18                   Now normally, Mr. Almeder, in conversation, you  
19 and I may go back and forth and sometimes talk over each  
20 other, not to be rude, but we are anticipating one  
21 another's questions or one another's responses. I will  
22 ask -- I will try not to do that and I will ask that you  
23 try not to do that because it is difficult for the court  
24 reporter to take down that back and forth. And if I say,  
25 you know, let me ask the question, I'm not trying to be

1 rude. I'm trying to make sure the court reporter gets an  
2 accurate record.

3 By the same token, again, I will try not to -- I  
4 will let you finish your response, and if I don't, I'm sure  
5 your attorney will kick me under the table and let me know  
6 that I need to let you finish your response. If at any  
7 point in time you need a break, let me know. I will ask,  
8 Mr. Almeder, that if there's a pending question, that you  
9 allow me to finish -- that you have your response before we  
10 take a break. Sometimes in verbal back and forth, we may  
11 shake our head or use terms like uh-huh and huh-uh.  
12 Unfortunately, for this young lady over here, those are  
13 difficult to define whether that's a yes or a no and the  
14 court reporter will not be able to kind of put that on the  
15 record, so I will say is that a yes or is that a no.  
16 Again, I'm not trying to be rude. I just need to get an  
17 accurate record for the court reporter.

18 Are you comfortable with those ground rules, Mr.  
19 Almeder?

20 A Yes.

21 Q Great. You have already -- you didn't say uh-huh.  
22 Perfect. You're on board.

23 Are you currently taking any medication or in any  
24 way -- is in any way your ability to testify truthfully  
25 hindered today?

1           A     No.

2           Q     Great. I'm going to hand you what will be  
3 Exhibit 1 which is the notice of deposition just to make  
4 sure that you've received that.

5           A     Okay.

6                 (Exhibit No. 1, Notice of Deposition, marked for  
7 identification.)

8           Q     Just take a look at that, Mr. Almeder, and let me  
9 know if you have seen that before.

10          A     I have seen it.

11          Q     So you received a copy of that notice of your  
12 deposition before this morning, correct?

13          A     Yes.

14          Q     Can you state your full name, Mr. Almeder, and  
15 your legal address?

16          A     Robert Francis Almeder, 113 Kings Highway,  
17 Kennebunkport, Maine.

18          Q     And is 113 Kings Highway, Mr. Almeder, the  
19 property abutting the beach that you own?

20          A     Yes.

21          Q     Okay. Do you own any other property in Goose  
22 Rocks Beach?

23          A     Yes.

24          Q     What other pieces of property do you own at Goose  
25 Rocks Beach?

1           A       I own a house at 192 Kings Highway.

2           Q       Doing the math in my head, that's an even number,  
3 so that would be on the other side of Kings Highway?

4           A       Yes.

5           Q       Generally considered -- you understand it to be a  
6 back lot in kind of the parlance of this case?

7           A       Yes.

8           Q       Okay. And who lives at 192 Kings Highway?

9           A       Who lives in it?

10          Q       Is it a rental unit?

11          A       It is a rental unit.

12          Q       Okay. So no family member permanently resides in  
13 192 Kings Highway?

14          A       That's true.

15          Q       Just so we can be clear today, when I refer to  
16 your house, I will be referring to 113 Kings Highway. If I  
17 want to talk about the back -- just so there is no string  
18 of objections that we are going through, if I want to talk  
19 about the back lot, I will refer to that as 192 or the back  
20 lot. Are you comfortable with that?

21          A       Yes.

22          Q       Okay. Great. Who did you buy your house from?

23          A       Marjorie Campbell and her brother.

24          Q       Okay. What year?

25          A       November, 1978.

1 Q Okay. And are the Junkers neighbors of yours?

2 A Yes.

3 Q And I'm talking about the older Junkers, correct?

4 Which Junkers are neighbors of yours?

5 A The younger Junkers.

6 Q Bill and Maria?

7 A Bill and Maria.

8 Q And the parents, where do the parents live, Bill

9 and her name -- Bill and --

10 A William and his wife.

11 Q We will call them the parents.

12 A Yeah, they are at the other end of the beach.

13 Q So Bill and Maria, where do they live in relation

14 to your house?

15 A Right across the street.

16 Q Okay. So on the western side of Kings Highway?

17 A Yes.

18 Q Okay. What do you think of Bill and Maria Junker?

19 A I like them a lot. They are good friends.

20 Q Do you have an issue with Bill and Maria Junker

21 being on the beach?

22 A No.

23 Q Do you -- have you invited them to be on the

24 beach?

25 A They have often asked me and I said, sure, no



1 problem.

2 Q They have asked you -- what have they asked you?

3 A If they could use the beach.

4 Q In what ways have they asked you?

5 A Well, we are going to have a cookout tonight, do  
6 you have any problem with that on the beach, or can I leave  
7 my sailboat on the beach, or as their son did last night,  
8 can I have a fire on the beach. And I keep telling them  
9 you don't have to ask permission.

10 Q Why not?

11 A It's assumed that I have given it to them tacitly.

12 Q What do you mean by your tacit approval or tacit  
13 assumption that permission has been given?

14 A I always assumed that if I didn't object, that I  
15 was giving them permission --

16 Q Okay.

17 A -- so they could --

18 Q So you never objected to Bill or Maria or their  
19 kids being on the beach?

20 A Not ever.

21 Q Do they have a right-of-way to access the beach?

22 A There's a right-of-way beside my house. They have  
23 the right to cross it to get to the ocean. They don't own  
24 the right-of-way.

25 Q Okay. Do they have a deeded right-of-way?

1 A I believe they do.

2 Q Okay. And the owner of the right-of-way, is that  
3 you or the property owner next to you?

4 MR. LEONI: Objection. Form.

5 Q You can answer.

6 A I happen to know that it is the lady across the  
7 street.

8 Q Across the street meaning the western side of  
9 Kings Highway?

10 A Yes.

11 Q So a neighbor of the Junkers?

12 A Right beside them, the Nixons, yes.

13 Q It's the Nixons or right beside --

14 A It isn't the Nixon family. Her name is Mary Dick.  
15 She inherited it from her uncle. And I happen to see his  
16 deed one day and it was very clear that he owned that strip  
17 of land.

18 Q Okay. Let's go back a little bit. I jumped ahead  
19 of my string of questions. Let's start with kind of your  
20 background, your personal background. Where were you  
21 raised, Mr. Almeder?

22 A Boston until I was 11 and then we moved to  
23 Randolph, Massachusetts.

24 Q Don't tell me you're a Red Sox fan.

25 A Yes, I am.

1 Q So when you were 11, you moved to Randolph. Did  
2 you go to high school in Randolph, Massachusetts?

3 A No, I went to high school in Boston.

4 Q Where?

5 A BC High.

6 Q And then after BC High, did you go to college?

7 A I took a degree from St. Bonaventure University.

8 Q Okay. After St. Bona -- what did you get a degree  
9 in?

10 A Philosophy, a major, and two minors, one in  
11 literature and classics.

12 Q And did you enter the work force after St. Bonnies  
13 or --

14 A I taught for awhile in Boston, Latin and Greek, at  
15 a high school called Catholic Memorial, but at the same  
16 time, I was going to graduate school at Boston College.

17 Q Okay. Getting your degree in what?

18 A Philosophy.

19 Q Okay. And did you get your -- did you complete  
20 your degree in philosophy?

21 A At Boston College, I got an MA in philosophy.

22 Q Okay. And after you completed your MA in  
23 philosophy at Boston College, what did you do?

24 A I kept going to graduate school. I went to the  
25 University of Pennsylvania for a Ph.D.

1 Q In what?

2 A Philosophy.

3 Q Deep thinker.

4 A I wouldn't say so.

5 Q You were at that time.

6 After you got your -- did you complete your  
7 degree -- your Ph.D. at Penn?

8 A Yes.

9 Q Okay. And what did you do after that?

10 A I took a job teaching philosophy in Upstate New  
11 York, state university system.

12 Q Okay.

13 A At a campus called Oswego, New York.

14 Q Sure.

15 A And from there, I moved to Atlanta, Georgia, after  
16 four years.

17 Q What timeframe would we be in now, when did you  
18 move to Atlanta, Mr. Almeder?

19 A 1972.

20 Q Okay.

21 A Stayed from 1972 to 2005 in Atlanta.

22 Q At the same university?

23 A Yes.

24 Q What university were you at?

25 A Georgia State University.

1 Q Okay. And I'm going to guess you were a professor  
2 of philosophy, would that be accurate?

3 A Yes.

4 Q Okay. Full professor by the time you were done  
5 there?

6 A Yes.

7 Q Okay. And lived -- Georgia was your primary  
8 residence from 1972 to 2005?

9 A Yes.

10 Q Okay. Do you have any kids?

11 A Two.

12 Q Ages?

13 A 45 and 43, as I recall.

14 Q Okay. So if I'm doing my -- boys, girls?

15 A Two girls.

16 Q If I'm doing my math right, they were probably  
17 born in New York, but then grew up in Atlanta, would that  
18 be accurate, or born in Pennsylvania? I'm trying to  
19 remember.

20 A One was born in -- in Philadelphia and the other  
21 was born in Oswego, New York.

22 Q Any grandkids?

23 A Yes, I have two grandsons.

24 Q And so let's go back now. 2005, you said you no  
25 longer lived in Atlanta. Where did you move in 2005?

1           A       We moved to -- we moved our residence to 113 Kings  
2 Highway.

3           Q       Okay. Great. Was that -- was 2005 the first time  
4 you had been to Goose Rocks Beach, to Kings Highway?

5           A       No.

6           Q       Okay. When was the first time you visited Goose  
7 Rocks Beach?

8           A       1978. 1978.

9           Q       1978. Trying to escape, I'm sure, the Atlanta  
10 summers.

11          A       Well, correct.

12          Q       Did you have any connection to Goose Rocks Beach  
13 prior to that? What brought you to Goose Rocks Beach I  
14 guess is the question?

15          A       We heard it was a nice beach and we were looking  
16 for a piece of property on the beach.

17          Q       Okay. So neither you nor -- you are married,  
18 correct?

19          A       Yes.

20          Q       And were married at that time?

21          A       Yes.

22          Q       To Virginia?

23          A       Yes.

24          Q       Okay. Neither you nor Virginia had any sort of  
25 personal connection to Goose Rocks Beach prior to 1978?

1 A Yes, that's true.

2 Q How did you go about purchasing that -- the 113  
3 Kings Highway?

4 Let me expand on that question and make it easier  
5 for you to answer. Did you come up in 1978 with an eye on  
6 that particular piece of property or did you come up in  
7 1978 looking to test the waters so to speak?

8 MR. LEONI: Objection to form.

9 Q You can answer, if you understand the question.

10 A I do. We just came up and I thought it might be  
11 interesting to go into a real estate office and ask them if  
12 they had an old run down house on the beach that might be  
13 reasonable to buy. The first real estate agent said you  
14 have got to be kidding, that's what everybody wants, but  
15 there was a lady at the back who said, well, there's  
16 something coming out of trust now down there, the old Helen  
17 Towne estate, and I said, well, how do you get there. I  
18 had never heard of Goose Rocks Beach before.

19 Q So where were you staying in '78 when you came up  
20 here?

21 A We were actually staying in New Hampshire.

22 Q Okay. Where in New Hampshire?

23 A Rye Beach.

24 Q And took a drive north?

25 A Yes, just for the day.

1 Q So after you had that discussion in the real  
2 estate office, what did you do?

3 A They took me down to the beach and they showed me  
4 the house or they showed us the house.

5 Q Was Virginia with you?

6 A Yes.

7 Q Okay. And was the house currently on the market  
8 at that time or was it -- you said it was likely to come on  
9 the market?

10 A It was on the market at that time, but it seems to  
11 have been on and off for a long time too before that, so --  
12 but it was up for sale.

13 Q Okay. And you said it was in the Helen Towne  
14 estate, is that accurate?

15 A Yes.

16 Q Ms. Towne passed away prior to that?

17 A Right, and her niece and nephew -- Marjorie  
18 Campbell lived in Maine and her brother lived I think in  
19 Kansas somewhere, but they were selling it through an  
20 attorney named Smith in Saco or Biddeford. I'm not sure  
21 which.

22 Q Walter Smith, does that ring a bell?

23 A It doesn't ring a bell, but his name was Smith.  
24 And the real estate agent was a fellow named Brown, as I  
25 recall.



1 Q A woman named Brown?

2 A A man.

3 Q A man named Brown. Is Mr. Brown still around, do  
4 you know?

5 A I think he is, but I don't know.

6 Q Do you recall the name of the agency that you  
7 stopped in at?

8 A Not now. It usually comes in a little while, but  
9 I don't recall.

10 Q If it comes, just raise your hand and we will go  
11 back to it.

12 A Okay.

13 Q So you went down and saw the property?

14 A Yep.

15 Q Made an offer?

16 A Yes.

17 Q Okay. And when did you close on that property?

18 A I think it was November, '78.

19 Q Okay.

20 A 1978.

21 Q So you didn't spend the summer of '78 at Goose  
22 Rocks?

23 A No, no.

24 Q Okay. Did you know anyone at Goose Rocks Beach at  
25 that point in time?

1 A No.

2 Q How bad was the property?

3 A It was a wreck. The '78 storm had just gone  
4 through it.

5 Q What was the '78 storm?

6 A There was a big storm in 1978 and it actually came  
7 up to the house and broke through a big window. And when  
8 we went inside, there was sand all over the floor and dead  
9 birds and things like that, you know.

10 Q So you wanted to be on the beach, but that was a  
11 little much, correct?

12 A I thought it was a really nice spot and, you know,  
13 the beds were capable of being made level and the fireplace  
14 worked and there was a toilet that worked.

15 Q Great. When did you -- so starting in 1979, did  
16 you start coming up for the summers?

17 A We didn't come for the whole summer, but typically  
18 the better part of a month or a month regularly every  
19 summer.

20 Q Okay.

21 A Otherwise, we leased it --

22 Q Okay.

23 A -- when we weren't there.

24 Q From -- starting in November, 1978, did you have  
25 some work done on the house to improve it, some of the

1 things you were talking about?

2 A We tried for a long time to get some help from  
3 DEP, but I sort of worked on it myself with some  
4 neighborhood kids and things like that, you know.

5 Q Okay. Fixing it up?

6 A Strip it and paint it and make it a little --

7 Q Great. So you said in 1979, you began coming up  
8 mostly for maybe a month, month-and-a-half. Would that be  
9 all four of you, you, Virginia --

10 A Oh, yeah, all four of us. Somewhere between -- I  
11 think there was a couple times that we only came up  
12 three -- I usually worked in the summer too, so we only  
13 came up a couple times for three weeks, but we always came  
14 and it was somewhere between typically three weeks and  
15 maybe four, you know.

16 Q Okay.

17 A We tended not to spend more than a month there.

18 Q You said you worked in the summer. Did you teach  
19 a full load in the summer or just kind of writing and --

20 A I taught a full load.

21 Q Okay. And so in 1979, you said you also leased  
22 the property, rented the property out to people?

23 A Yeah, we were renting the house in 1979, the first  
24 summer, for a few weeks.

25 Q And how long did you continue renting out the

1 house?

2 A 2000.

3 Q So about 21 years, you rented it out?

4 A It might be a little more. I'm just estimate --

5 Q I'm not going to hold you to it.

6 A Might be a little more, but it certainly wasn't  
7 nothing after 2003 or something like that.

8 Q And in 2000 to 2003, why did you stop leasing it,  
9 did you have an eye kind of towards it becoming your  
10 permanent residence or --

11 A Yes, and we had to rebuild the house by that time  
12 and my wife was a little more careful about the premises.  
13 We wanted to spend more time there.

14 Q When you say rebuilt the house, Mr. Almeder, what  
15 do you mean, did you tear it down and actually rebuild it  
16 or did you do some major renovations and --

17 A We got a permit from the town to raise it up and  
18 restore it after we raised it up, but as they were raising  
19 it up, it crumbled and the code enforcement officer  
20 condemned it on the spot, but they allowed me then to  
21 remove all the debris and build a new on-post setback --  
22 setting the house back.

23 Q Did you have to stay on the same footprint or were  
24 you able to enlarge it or --

25 A No, it was the same footprint.

1 Q Beginning in 1979, did you ever leave -- who did  
2 you rent it through, did you rent it through an agency or  
3 did you rent it yourself?

4 A We rented through -- typically we rented it  
5 through the Junkers, Beachwood Realty. Maria handled that.

6 Q Okay.

7 A And we kept arms distance from that. She just  
8 took care of the paperwork and managed everything.

9 Q Did you leave any instructions for Maria in terms  
10 of instructions for renters about use of the house?

11 A I think we left instructions about the fireplace.  
12 It wasn't as safe as it needed to be in the early years.  
13 Other than that, my wife usually put a list of things that  
14 they could do if they needed a plumber or things of that  
15 sort, services, but otherwise, we never gave them any  
16 instructions on how to use the house.

17 Q Okay. Do you recall any instructions left for  
18 Maria to pass onto the renters about use of the beach?

19 A No, I don't recall us ever leaving any  
20 instructions of that sort on how to use -- on how to or  
21 what they could do on the beach. We didn't do that.

22 Q What was your understanding in 1979 as to what  
23 people who were renting your house could do on the beach?

24 A Anything they wanted to if it was legal. They had  
25 to have a permit for a fire. We didn't put any

1 restrictions on that.

2 Q So they could play ball?

3 A They did.

4 Q Have a picnic?

5 A They did.

6 Q Swim?

7 A Uh-huh.

8 Q Sounds like bocce was very popular on Goose Rocks,  
9 but stuff like that?

10 A We just never told them what to do. There's the  
11 beach.

12 Q Did you ever give the tenants instructions about  
13 use of the beach either going north or south of your  
14 property?

15 A No.

16 Q What was your understanding about what the tenants  
17 could do on the beach north or south in front of your  
18 property?

19 MR. LEONI: Objection to form.

20 Q Do you understand the question, Mr. Almeder?

21 A Would you please repeat it?

22 Q Sure, I will try to be a little bit more direct.  
23 You look out the front of your house, correct, at the  
24 ocean, is that accurate?

25 A Yes.

1 Q You look to your right, that's south, correct?

2 A West.

3 Q West. Okay. West. You look to your left, that's  
4 east, correct?

5 A Right.

6 Q Except for the area in front of your house, the  
7 beach area in front of your house, what was your  
8 understanding of what your tenants could do on the beach  
9 areas east or west in front of your house?

10 A I think there was a -- I'm trying to reflect on  
11 whether -- I think there was the understanding that they  
12 were free to use the beach on either side because nobody  
13 objected on either side to them using the beach. There was  
14 a --

15 Q You can finish.

16 A It just seemed that it was something that the  
17 beachfront owners didn't have any problem with people using  
18 it and there was sort of a tacit agreement among them all  
19 that --

20 Q Had you communicated with any of the other  
21 beachfront owners about the use by your tenants?

22 A Yes, I did.

23 Q How many of the -- I don't even know the number.  
24 I know there are 99 now or something like that, but how  
25 many of the other beachfront owners did you communicate

1 with about the use by your tenants?

2 A Typically on -- just on two sides of my house.

3 Might have been down two houses on each side.

4 Q Okay. So going west, the neighbor to the west  
5 would have been whom in '79?

6 A The Gregory family, immediate west, and then at  
7 the time, there was -- the next house over was a fellow  
8 named Reid, Charlie Reid. In the early days, it was sort  
9 of a rundown shack.

10 Q Eastward?

11 A More westerly towards the river.

12 Q Okay. But other than on either side of you, did  
13 you have any communication with front owners regarding the  
14 use by your tenants?

15 A No.

16 Q And you used the term tacit understanding earlier  
17 and I don't quite know what that means, so can you explain  
18 that to me, the tacit understanding that the front owners  
19 had?

20 A They weren't objecting to people walking or using  
21 the beach unless something occurred out there that they did  
22 not want to happen and then they would go over and tell  
23 them. And usually people were responsive to that and --  
24 period.

25 Q Your answer there focused on walking. Is there a



1 distinction in your mind between walking and some other  
2 form of recreation?

3 A I have trouble with that question.

4 Q Okay. I will -- want me to reask it?

5 A Yes.

6 MR. FRAME: Can you read back the response prior  
7 just about walking where he says walking?

8 (Reporter read requested material.)

9 Q Okay. You said earlier, Mr. Almeder, that they  
10 meaning the front owners weren't objecting to the walking  
11 on the beach, is that accurate?

12 A I wasn't and my perception of it was that nobody  
13 else was, but I don't know. Some people -- I know that  
14 some people would be -- especially at our end would be very  
15 concerned and make sure they didn't disturb the birds, for  
16 example. If people were out there playing, flying a kite  
17 or doing things like that, they would go out and say -- and  
18 I would go out and say you can't fly the kite here, these  
19 birds are nesting and fledging. You can go down there  
20 probably and do it, but you can't do it here.

21 Q Okay.

22 A So in other words, unless there was nothing  
23 bothersome going on there, people didn't mind other people  
24 walking.

25 Q So your objection at that point in time was to --

1 is it fair to say that your objection at that point in time  
2 was to recreational uses that would disturb either the  
3 peace or the bird habitats?

4 A Would you please repeat that question?

5 Q Sure. Is it fair to say that your objection at  
6 that time was to use that either disturbed the peace or  
7 disturbed the bird habitat?

8 A Yes.

9 Q Okay. And otherwise, you had no objection to  
10 people playing appropriately, recreating appropriately on  
11 the beach?

12 A No.

13 Q Okay. Has that -- strike that.

14 Just so we are clear, when I'm using the term  
15 beach, I'm including the sand area. So the intertidal  
16 zone, you understand what that is, right, Mr. Almeder?

17 A Yes.

18 Q And the upland area, you understand what that is,  
19 correct?

20 A Yes.

21 Q When I use the term beach, I'm talking about the  
22 intertidal zone and the upland area. Do you understand  
23 that?

24 A Yes.

25 Q Okay. So you said earlier -- you said earlier

1 that you had no objection to people playing appropriately  
2 on the beach, correct?

3 A Yes.

4 Q Has that view changed from 1979 to today?

5 A No.

6 Q Okay. The tacit understanding about use by  
7 tenants of the beach area, I just want to explore that a  
8 little bit more. You said that that comes in part from  
9 your communications with folks east or west of your  
10 property, couple houses east or west of your property?

11 MR. LEONI: Objection to form.

12 Q Do you understand the question?

13 A Would you repeat it?

14 Q I'm going to ask a broader question. Where  
15 exactly does your tacit understanding of -- where exactly  
16 did your tacit understanding in 1979 of what tenants could  
17 do on the beach come from?

18 A I'm not sure. Can I say something?

19 Q Please.

20 A I meant tacit permission rather than my  
21 understanding.

22 Q Okay. What do you mean by tacit permission?

23 A As long as they weren't causing a problem, I had  
24 no problem with it. I felt that they had my permission to  
25 do that, but if they were going to do something untoward

1 that was problematic out there, then I felt perfectly free  
2 to go out and tell them they can't do that. And if they  
3 did, I would ask them to leave.

4 Q And is it your belief that that tacit -- view of  
5 tacit permission was shared by other beachfront owners?

6 A Yes, everything I saw seemed to indicate that.  
7 Typically what I saw was when people had problems with what  
8 was going on, they went out and told people about it. And  
9 typically the people either stopped it or if they were more  
10 resistant, then -- you know, but typically they stopped.  
11 The only thing I would say to my neighbors on either side  
12 was, look, if any of these people are a problem for you on  
13 your property, you need to tell me, you know, tell them,  
14 but if they are not responsive, you need to call me and I  
15 will make sure that doesn't happen.

16 Q Okay.

17 A I mean I think we all tended to do that. When my  
18 neighbor Mr. Coughlin went away, he would say would you  
19 look at -- and I said, if anything happens, I will call  
20 you. And there were cases where people were out on the  
21 beach making a lot of noise late at night and I would go  
22 out and say, listen, you can't do that.

23 Q How frequently would you receive calls from  
24 neighbors regarding your tenants?

25 A I don't recall a call from my neighbors.

1 Q Ever?

2 A Never.

3 Q And did your neighbors -- was it a requirement of  
4 the tenancy -- the lease that your tenants had to meet your  
5 neighbors?

6 A No.

7 Q But you never received a call -- just so I'm  
8 clear, you never received a call about one of your tenants  
9 in the 21 or so years that you rented the property?

10 A I didn't receive any calls of that sort.

11 Q How would your neighbors be able to distinguish  
12 between your tenants and someone else who walked onto the  
13 beach and used the beach in front of your property if they  
14 never met those people?

15 A I don't know. What I did say was that if my  
16 tenants cross over into your area and they identify  
17 themselves, then call me.

18 Q I'm going to ask a stupid question, not to be  
19 rude.

20 A Okay.

21 Q But your tenants didn't have any badges or any  
22 indication that they were a tenant of Robert and Ginny  
23 Almeder, correct?

24 A No.

25 Q So again, unless -- you said if they identified

1 themselves, the neighbors would know? Is that a yes, Mr.  
2 Almeder?

3 A Yes.

4 Q But otherwise, the neighbors would have no idea  
5 for sure who was a tenant and who was otherwise down there  
6 on their own accord?

7 MR. LEONI: Objection. Form.

8 Q Do you understand the question?

9 A Yes.

10 Q And is the answer yes to that question?

11 A Yes.

12 Q When did you -- when did you buy the property at  
13 192 Kings Highway?

14 A This was a few years ago. I think it was 2009.

15 Q Okay. The rental property, 192 Kings Highway,  
16 does that have a deeded accessway to the beach?

17 A No.

18 Q So how do those -- do you advertise that as being  
19 part of a beach community?

20 A Would you repeat the question?

21 Q That was a really bad question, so I'm going to  
22 ask it again in a different way. 192 Kings Highway, you  
23 rent that out, correct?

24 A Yes.

25 Q Through a rental agency?

1 A Yes.

2 Q Who is your rental agent?

3 A Maria Junker, Beachwood Realty.

4 Q Have you seen the postings of that property in  
5 terms of advertising it to potential tenants?

6 A No.

7 Q Okay. Do you know if Maria advertises that as  
8 being part of a beach community or having beach access?

9 A I don't know that she does that.

10 Q Do you know if the tenants use the beach?

11 A I assume they do.

12 Q What do you get per week in August for that  
13 property?

14 A Something like -- because my wife usually handles  
15 these things -- 2,000 a week.

16 Q Okay. Same in July?

17 A Yeah, it's pretty set like that.

18 Q Less for the shoulder seasons if you rented it  
19 all?

20 A Yes.

21 Q Do you rent it outside of July and August?

22 A This year, we have, for four months, people are  
23 living there now.

24 Q I would rent it in March this year with weather  
25 like this.

1           But you responded that you believed that the  
2 tenants of 192 Kings Highway use the beach, correct?

3           MR. LEONI:  Objection.  Form.

4           A     Yes.

5           THE WITNESS:  Huh?

6           Q     You answered.  He objected.  You can answer the  
7 question and you answered.

8           Do you know how those tenants access the beach?

9           A     Yes.

10          Q     Can you tell me?

11          A     When asked -- I remember telling one or somebody,  
12 I don't know if it was a tenant, I remember saying you just  
13 have to go down two -- two lamp posts and there is a public  
14 right-of-way to the ocean.

15          Q     Okay.  And what is your understanding once the  
16 tenants walk down that public right-of-way to the ocean  
17 about what the tenants are permitted to do -- again, we are  
18 talking about 192 Kings Highway -- about what the tenants  
19 are permitted to do when they are on the beach?

20          A     Permitted by?

21          MR. LEONI:  Objection to form.

22          A     It's hard -- I don't know what you are asking me.

23          Q     What do -- what is your understanding about what  
24 tenants of 192 Kings Highway do when they are on the beach?

25          A     My understanding of what they do when they go down



1 to the beach is to -- they use the beach for whatever  
2 purposes they might have in mind as long as nobody asks  
3 them to move.

4 Q What purpose do people generally -- do tenants  
5 generally use the beach for?

6 A They sit down on it and they swim off it.

7 Q Throw a frisbee maybe, ball playing?

8 A I don't --

9 MR. LEONI: Objection. Form.

10 Q You can answer.

11 A They recreate.

12 Q How do you define recreation or recreate, Mr.  
13 Almeder?

14 A I don't think I want to do that.

15 Q Well, you have to. I have asked you the question.

16 A It's to play or undertake activities which are not  
17 usually perceived by the participant as burdensome or as  
18 either obligatory. My problem with it is that one man's  
19 recreation could be another man's burden and that some  
20 things are more or less recreational. In other words, I  
21 jog the beach. I find that recreational. Some people  
22 might find it burdensome. Is that recreation? It's an  
23 interesting question because I think you don't have a clean  
24 definition because there are too many different criteria  
25 for whether or not he's recreating. I know people that do

1 things that are very burdensome and it turns out to be very  
2 recreational. They stay up all night writing.

3 Q Right.

4 A And when it's done, they say, ah, I feel better.

5 Q Let's plow a little ground there because I think  
6 this is helpful to understand. Just from your -- from your  
7 perspective -- and in all these, let's assume that the  
8 activity does not impact the least terns or the plovers,  
9 okay, so can we make that assumption, that the activities  
10 that I'm going to talk about don't impact the birds. Is  
11 throwing a ball -- flowing a football recreation?

12 A People who do it take pleasure in it and they are  
13 playing and they are happy doing it, otherwise I take it  
14 they wouldn't do it.

15 Q So you used the term to recreate on the beach.  
16 I'm trying to find out exactly what you meant by to  
17 recreate. Would that be one of the things that would be  
18 recreating?

19 A Could be, yes.

20 Q And do you have any --

21 A Yes.

22 Q Do you have any objection to that on the beach?

23 A Would I have any? If they are throwing a football  
24 around in the white sand where people are having  
25 conversations or otherwise enjoying the beach, I do have an

1 objection to that because I think it's insensitive to the  
2 possibility of interrupting them or harming them by hitting  
3 them with a football.

4 Q And I know what you are saying there, so absent  
5 them being rude in their ball playing, you don't have an  
6 objection to the ball playing?

7 MR. LEONI: Objection to form.

8 Q You can answer.

9 A Absent them being rude, I don't have any --  
10 there's the question of safety. Some people go down and  
11 hit golf balls from the intertidal right up onto the white  
12 sand. Some people hit my house with their golf balls. I  
13 have an objection to that and I would go out and say you  
14 can't do that here. That's recreational for them.

15 Q Not for you?

16 A Yeah.

17 Q I can tell you that if your house was my target,  
18 you would have no risk of your house getting hit when I was  
19 hitting a golf ball, so let's be clear about that.

20 Reading a book?

21 A No problem. No problem.

22 Q Recreation?

23 A That would be recreational, I think.

24 Q Having a picnic?

25 A I can imagine reading a book studying for a final

1 exam in tensor analysis or something like that, that might  
2 not be called recreation.

3 Q You said earlier you weren't a deep thinker, but  
4 you are.

5 A I'm not.

6 Q Having a picnic, recreation?

7 A Yes.

8 Q Lying in the sun on a beach chair, recreation?

9 A Yes.

10 Q Fishing, recreation?

11 A Depends.

12 Q You know I'm going to ask, what do you mean?

13 A One day a man was fishing in front of my house and  
14 there were other people playing and he was casting very  
15 energetically, and on one of those throws, his plug came  
16 very close to a child's ear and her father saw him do that.  
17 They immediately started a very serious exchange on whether  
18 he should be doing that or moving down the beach. I went  
19 down and said, gentlemen, you can't fight about this, you  
20 need to move down the beach. It was recreation. So I will  
21 object to certain forms of recreation if there are  
22 questions of safety or inconvenience for people that I have  
23 given tacit permission to be there.

24 Q And that tacit permission again comes from not  
25 objecting, correct?

1 A Yes, if I don't object, yes.

2 Q Can anything --

3 MR. LEONI: Do you need a break? Are you okay?

4 THE WITNESS: I'm fine.

5 Q Assuming that something is not violative of the  
6 law, can't anything happen on the beach?

7 MR. LEONI: Objection to form.

8 Q Strike that. Strike the question. I didn't ask  
9 it right. I want to get back to this tacit permission  
10 concept. If you haven't objected, anything goes, correct?

11 A As long as it's legal.

12 Q Okay. So absent your objection, folks can do  
13 anything that's legal on the beach in front of 113 Kings  
14 Highway?

15 MR. LEONI: Objection to form.

16 A Yes, yes.

17 Q Viewing birds, recreation? Got the binoculars  
18 out. Is that recreation?

19 A Yes.

20 Q Kayaking, is that recreation?

21 A Yes.

22 Q Okay. Paddleboarding, all that type of stuff?

23 A Paddleboarding?

24 Q It's a newer thing my wife is into. Strike that.  
25 It may not have reached Goose Rocks Beach yet.

1 MR. LACHIATTO: Yes, it has.

2 MR. FRAME: Oh, it has?

3 Q Paddleboarding is when someone stands on a bigger  
4 surfboard. It is supposed to be a core workout apparently,  
5 so --

6 A Well, presumably that would be in the water.  
7 That's not a problem.

8 Q When did you rebuild the house, when was it  
9 condemned?

10 A I'm thinking 1996 approximately.

11 Q Okay. And how long did it take to rebuild?

12 A A full year.

13 Q So did you lose the summer of '96 or '97?

14 MR. LEONI: Objection to form.

15 Q Were you not able to use the house in one of those  
16 summers if it was a full year?

17 A I'm sorry, it wasn't a full year.

18 Q Okay.

19 A It commenced in the fall and was finished by May  
20 of the following year.

21 Q Okay.

22 MR. LEONI: I'm sorry, Gregg, can we take a break  
23 now really quick?

24 MR. FRAME: Absolutely, let's take a five-minute  
25 break.

1 (A short break was taken.)

2 Q Mr. Almeder, we are back on after a break. You  
3 are still under oath. Okay?

4 A Yes.

5 Q How many beachfront homes are there, Mr. Almeder,  
6 in Goose Rocks Beach?

7 A I believe there's 106.

8 Q 106. And --

9 A It varies, some come and go, but they are  
10 building -- that was my last thing, 106 to 108.

11 Q Do you know every one of the beachfront owners,  
12 Mr. Almeder?

13 A No.

14 Q Would you be able to identify the beachfront  
15 owners in a lineup?

16 A All of them?

17 Q Yes.

18 A No.

19 Q Okay. I'm not going to make assumptions, so I'm  
20 going to ask you some silly questions. Do you know the  
21 children of beachfront owners, all of them?

22 A No.

23 Q Do you know the parents of beachfront owners, all  
24 of them?

25 A No.

1 Q Do you know the friends of beachfront owners, all  
2 of them?

3 A No.

4 Q Do you know the -- this is the last one on this  
5 train of thought -- do you know the invited guests of  
6 beachfront owners, all of them?

7 A No.

8 Q Okay. Beachfront owners have the -- do beachfront  
9 owners have the ability to recreate as you described it on  
10 the beach?

11 MR. LEONI: Objection to form.

12 Q In front of their homes?

13 A The ability?

14 Q Yep. Are they allowed to, are they permitted to?

15 MR. LEONI: Objection to form.

16 A I know of no beachfront owner that objects to  
17 people using the beach in certain ways. Would you please  
18 repeat the question?

19 Q Sure, because I think by your answer that you  
20 didn't quite understand. That's probably my fault.

21 Are the beachfront owners permitted to recreate  
22 on the beach area in front of their home?

23 MR. LEONI: Objection to form.

24 Q You can answer, if you understand.

25 A Are beachfront owners --



1 Q Permitted to recreate on the beach in front of  
2 their homes?

3 A In front of their homes?

4 Q Yep.

5 A In front of their homes on the beach, do they have  
6 permission from themselves to use the beach?

7 Q That's not the question.

8 MR. FRAME: Read the question back, please.

9 (Reporter read requested material.)

10 A I can't answer the question. I don't understand  
11 it.

12 Q Okay. Who is permitted to recreate on the  
13 beachfront in front of beachfront owners' homes?

14 MR. LEONI: Objection to form.

15 Q You can answer that.

16 A Certainly beachfront owners.

17 Q Okay. Anyone else?

18 A I don't know. It will vary for each individual  
19 owner.

20 Q How does it vary for each individual owner?

21 A Well, each individual owner may or may not give  
22 tacit permission or -- on different occasions and --  
23 period.

24 Q Okay. Do you know how many homes off the beach  
25 are in the Goose Rocks Beach zone?

1           A     No.

2           Q     Okay.  You understand what the Goose Rocks Beach  
3 zone is though, correct?

4           A     Yes.

5           Q     You are saying that with a question, so let me say  
6 bordered by Route 9, the water, New Biddeford and Dyke  
7 Road.  Is that what you consider to be the Goose Rocks  
8 Beach zone?

9           A     No.

10          Q     Okay.  Explain to me what you consider to be the  
11 Goose Rocks Beach zone.

12          A     All the land -- this -- all the land south of  
13 Route 9 between the two rivers.

14          Q     So south of Route 9 between the Batson and The  
15 Little River?

16          A     I'm sure that's -- I'm not sure.

17          Q     Okay.

18          A     The people -- I have heard different things.  Some  
19 say up to the Biddeford line and some say -- which wouldn't  
20 be to the river, you know, it would be further.

21          Q     Let's use your definition which would be all the  
22 homes south of Route 9 bordered by The Little River, the  
23 Batson and the ocean.  More than 200 homes in that zone?

24          A     I don't know.

25          Q     Would you consider yourself the lead -- one of the

1 lead plaintiffs in this case?

2 A I'm a plaintiff.

3 Q Were you aware that notice had to be provided  
4 to -- to people regarding the litigation?

5 A Yes, the judge said something that everybody --  
6 no, I have heard that this was the case, that everybody had  
7 to be.

8 Q Okay. More homes in the Goose Rocks Beach zone  
9 that aren't beachfront than there are beachfront?

10 A I don't know.

11 Q Do you know all the -- and we will call those  
12 folks on the opposite side from your house, we will call  
13 them back lot owners.

14 MR. LEONI: Opposite side of what?

15 MR. FRAME: His house which we decided at the  
16 beginning was 113 Kings Highway, his beachfront home.

17 MR. LEONI: Okay.

18 Q The opposite side of Kings Highway, the back lot  
19 owners, opposite side of the road. You know what I mean by  
20 back lot owners, don't you, Mr. Almeder?

21 A Yes.

22 Q Do you know all the back lot owners?

23 A No.

24 Q Apologize for my stupid questions, but I'm going  
25 to ask them again. Do you know the parents of back lot

1 owners?

2 A No. All of them?

3 Q Yeah, all of them.

4 A No.

5 Q Kids of back lot owners?

6 A No.

7 Q Friends of back lot owners, all of them?

8 A No.

9 Q Invited guests of back lot owners?

10 A No.

11 Q Okay. If someone was engaging -- strike that.

12 I believe earlier you said that someone flying a  
13 kite near where the birds were nesting, you would consider  
14 that inappropriate, is that a correct statement?

15 A Yes.

16 Q Okay. If someone were engaging in that activity,  
17 would you readily be able to identify whether they were a  
18 beachfront owner, a back lot owner, a friend of a  
19 beachfront owner, a friend of a back lot owner, a daughter,  
20 kid?

21 MR. LEONI: Objection to form.

22 Q Would you be able to identify that person by  
23 sight?

24 A I don't think so.

25 Q Okay. And when you have had objections in the

1 past to use of the beach, have you asked people to identify  
2 themselves?

3 A Yes.

4 Q Okay. Have you asked them to identify where they  
5 live?

6 A No.

7 Q Okay. So is it fair to say that when you have had  
8 objection to how the beach is being used in front of your  
9 property, that you don't know whether that person who you  
10 object to is a fellow beachfront owner, a fellow back lot  
11 owner --

12 MR. LEONI: Objection to form.

13 Q -- guest or family member of those people?

14 A Would you please repeat the question?

15 Q Sure. I'm not going to repeat the question, but  
16 this young lady will. I can't even remember the question.  
17 I'm already on the next one.

18 (Reporter read requested material.)

19 A It's not fair to say that.

20 Q Okay. Expand on that. Why is it not fair to say  
21 that?

22 A Well, it might well be that I can pick out most of  
23 the beachfront owners from the west end of the beach, and  
24 that's true, I can pick out the people and I know who they  
25 are. I don't necessarily know who their children are,

1 things like that, so I could pick out beachfront owners and  
2 distinguish them from others at least on the west end of  
3 the beach.

4 Q Fair answer. And each time you have objected to  
5 use of the beach in front of your property, have you been  
6 able to identify who the person is whose use you object to?

7 A No, I don't -- I typically don't -- typically  
8 don't ask them their names.

9 Q Okay. So then typically, outside of the west  
10 people who you may know, you have no idea whether someone  
11 who is engaging in that activity is a beachfront owner, a  
12 back lot owner or a member -- or someone from Quebec?

13 A Yes.

14 Q You are a jogger, Mr. Almeder, or a runner?

15 A No, I'm a jogger.

16 Q I just want to make sure we are on the same page.

17 A Yes.

18 Q You are a jogger?

19 A I'm a jogger.

20 Q Every day?

21 A Not every day. This week, four days.

22 Q Do you have a regular route?

23 A Yes.

24 Q What's your regular route?

25 A River to river and back.

1 Q Four miles approximately?

2 A Four-and-a-half anyway.

3 Q That last half is the most important, right?

4 A I understand.

5 Q Been there before.

6 So you start at your house, head down to the  
7 opposite river or do you walk down to the river near your  
8 house and then --

9 A That varies. Sometimes if I'm feeling ambitious,  
10 I will go to the river and start at the river, go to the  
11 other river and come back down to the river and then back  
12 to my house.

13 Q That is more like five.

14 A Could be, yeah, could be.

15 Q Good for you. Where do you -- when you do that  
16 jog, what sand are you on?

17 MR. LEONI: Objection. Form.

18 Q Do you understand the question, Mr. Almeder?

19 A Yes.

20 Q Okay. You can answer.

21 A I'm on usually the dark sand, the intertidal zone.

22 Q Okay. Do you ever deviate up into the dry sand,  
23 the lighter sand?

24 A It is hard to run in that.

25 Q So you never go up on the --

1           A       Well, if there's a lot of seaweed in the middle so  
2 that you are running in seaweed and you have to get around  
3 it and, you know, run a little ways in the sand, the white  
4 sand, then I will do that, but typically you run the --  
5 when the tide is pretty much out.

6           Q       And you don't -- do you seek permission of the  
7 beachfront owners where you deviate onto the dry sand to do  
8 that?

9           A       I don't seek permission from them.

10          Q       Do you believe you have their tacit approval to do  
11 that or tacit permission to do that?

12          A       Yes.

13          Q       Okay. Does the tacit permission, is that  
14 something that was ever discussed or is that something  
15 that's more just been an outgrowth of beach life?

16                   MR. LEONI: Objection to form.

17          Q       You can answer, if you understand the question.  
18 Do you understand the question, Mr. Almeder?

19          A       I'm not sure. Is my -- would you repeat it?

20          Q       Sure.

21                   (Reporter read requested material.)

22          A       I don't know.

23          Q       If I went down to the beach and -- if I was at a  
24 cocktail party on Goose Rocks Beach -- I'm just going to  
25 ask you to answer this -- with beachfront owners and I used



1 the term tacit permission, would everyone know what I was  
2 talking about?

3 MR. LEONI: Objection to form.

4 A I couldn't say whether everybody would know, but I  
5 think they would know that.

6 Q Would the plaintiffs know for sure, your fellow  
7 plaintiffs?

8 MR. LEONI: Objection to form.

9 Q You can answer.

10 A Would all the plaintiffs know what the difference  
11 is between tacit and explicit permission, is that the  
12 question you are asking?

13 Q Would they understand -- if I used the term tacit  
14 permission, would they understand what I was talking about  
15 in relation to the beach?

16 A I believe --

17 MR. LEONI: Objection.

18 A -- they do.

19 Q Excuse me for a second.

20 When you bought your house in '78, was that  
21 bought through you and Virginia purchasing it as joint  
22 tenants?

23 A Did we purchase it as joint tenants?

24 Q Did you and Virginia purchase the house together?

25 A Yes.

1 Q Okay. And it was deeded in your name and  
2 Virginia's name?

3 A Yes.

4 Q And has it always been in your name and Virginia's  
5 name, Mr. Almeder?

6 A The house?

7 Q Yep.

8 A It hasn't always been in that -- in both of our  
9 names.

10 Q Okay. When did it change?

11 A Well, twice. Once, we went through -- the date --  
12 we transferred the property to a trust, the Almeder Living  
13 Trust, and then I think it came out of our joint tenancy to  
14 the trust.

15 Q So is it now in the Almeder Living Trust?

16 A Yes.

17 Q And are you and Virginia the trustees?

18 A Yes.

19 Q So for all intents and purposes, you and Virginia  
20 are still the owners of that property, correct?

21 MR. LEONI: Objection to form.

22 A The trust owns it.

23 Q Any other -- you talked about transferring it from  
24 you and Virginia into the trust. Any other transfers?

25 A Yes, we transferred it to our daughter for a short

1 period of time and then she transferred it back to us.

2 Q When was that?

3 A I think it was 2008. I don't have the -- it's on  
4 the deed. It will be on the deed.

5 Q I will get to those later.

6 A It is more like 2009, as I recall.

7 Q Okay. And you said you transferred it to your  
8 daughter for a short time, but she transferred it back.  
9 Did she live there for a couple weeks and not like the  
10 property, what happened there?

11 A No, this was a legal activity that we took counsel  
12 on and this was part of the procedure.

13 Q Estate planning process or --

14 A No.

15 Q Okay. What was the purpose of the transfer then?

16 A Deed clarification.

17 Q And what were you seeking to clarify?

18 A The southerly border of my property.

19 Q Southerly border being --

20 A I mean --

21 Q Go ahead.

22 A The ocean -- the ocean side border of my property.

23 Q Okay. So prior to this transfer to your daughter  
24 and then back to you, was there no question about the  
25 eastern, western and northern borders of your property?

1           A     I had no question with them.

2           Q     Okay. Did you have a question about the southern  
3 border of your property?

4           A     Yes.

5           Q     Okay. What was your question?

6           A     It wasn't indicated in any of the deeds what the  
7 southerly border was. It referred back to a map of the  
8 Emmons estate that was -- and that didn't clarify it  
9 either.

10          Q     Do you recall what the Emmons plan discussed or  
11 stated was the southerly border?

12          A     Yes.

13          Q     What did it say, Mr. Almeder?

14          A     Along the sea wall.

15          Q     Okay. So how did the transfer from your  
16 daughter -- from you and Virginia -- excuse me -- let me  
17 strike that.

18                   At that point in time, whenever this was from you  
19 to your daughter, was it from the trust at that point to  
20 your daughter or was it from you and Virginia to your  
21 daughter?

22                   MR. LEONI: Objection. Form.

23          Q     You can answer, if you understand the question.

24          A     The trust had not been established then.

25          Q     So the transfer then was from Robert and Virginia

1 Almeder to Lisa Almeder, is that accurate?

2 A Yes.

3 Q Okay. And then transferred from Lisa Almeder back  
4 to you?

5 A Yes.

6 Q And at the time -- strike that.

7 You said that the Emmons plan noted that the  
8 southerly border was the sea wall?

9 A Running along the sea wall.

10 Q Okay. What's the sea wall?

11 MR. LEONI: Objection. Form.

12 Q You can answer, if you know. Do you understand  
13 the question?

14 A I understand the question. It was because I  
15 wasn't sure what the sea wall meant when I first looked at  
16 that that I engaged counsel to answer that question for me.

17 Q And what do you think the sea wall means now?

18 MR. LEONI: Objection to form. To the extent  
19 that he is asking --

20 Q I'm not asking for anything -- any conversations  
21 you have had with your lawyer. I'm asking for your present  
22 understanding as a resident, philosopher person, as to what  
23 the sea wall is.

24 A The mean low water mark.

25 Q Okay. So did the transfer from Lisa back to you

1 and Virginia clarify that deed in your mind?

2 A Yes.

3 Q Okay. You are familiar with the caption of the  
4 complaint that was drafted by your -- you are familiar with  
5 the caption of the complaint that we are dealing with  
6 today, correct?

7 A The caption of the complaint?

8 Q The parties that are titled in the complaint,  
9 plaintiffs and defendants.

10 A Oh, yes.

11 Q Yes?

12 A Yes, I am.

13 Q I'm not trying to be rude.

14 A Yes, I am.

15 Q And are you familiar -- I assume then you're  
16 familiar with who you or your attorneys captioned as the  
17 defendants in that complaint, correct?

18 A Yes.

19 Q And your complaint or the complaint, Mr. Almeder,  
20 not your complaint, the complaint appears to except out --  
21 and I'm going to quote here -- other than persons claiming  
22 ownership or easement by, through or under an instrument  
23 recorded in the York County Registry of Deeds; is that  
24 correct?

25 A I'm not sure what you are asking me. Is that

1 correct that you are reading that or that that sentence is  
2 true or --

3 Q That was rude of me, so what I'm going to do is  
4 I'm going to enter this -- killed a bunch of trees here.  
5 Hold on one second.

6 A Uh-huh.

7 (Exhibit No. 2, Complaint for Declaratory Judgment and  
8 Quiet Title, marked for identification.)

9 Q I'm handing you what's been marked as Exhibit 2,  
10 Mr. Almeder. If you could just take your time to review  
11 that and then explain to me what I have just handed to you,  
12 that would be wonderful.

13 MR. LEONI: How much of this do you want him to  
14 review?

15 Q I will submit to you that that is a true and  
16 accurate copy of the complaint that you served -- you  
17 delivered to York County Court and that has been served on  
18 defendants, but I want you to verify that.

19 A I can't verify that this is a true and accurate  
20 document.

21 Q Okay. Why not?

22 A I haven't given it that kind of consideration.

23 Q Okay. You can take some time to review it.

24 Mr. Almeder, if this was the complaint provided  
25 by your counsel, would you be able to understand and

1 identify this document?

2 MR. LEONI: Objection to form.

3 A I don't know.

4 Q Have you seen this document? We could be here all  
5 day.

6 A I may have. There have been a lot of documents  
7 that I have looked at, but I'm not sure. You were reading  
8 a section out of it to me.

9 Q I'm just asking if you have seen this document in  
10 front of you which is the complaint that was filed in York  
11 County Superior Court that begins with Robert F. Almeder  
12 and Virginia S. Almeder, trustees under the Almeder Living  
13 Trust. It is a complaint for declaratory judgment and  
14 quiet title. My question is simply have you seen this  
15 complaint before?

16 A I don't recall this list of names on this.

17 Q Are you identifying the plaintiffs, Mr. Almeder,  
18 that you don't recall the list of names?

19 A I don't -- I may. I'm not sure.

20 Q Do you know all the other plaintiffs in this  
21 matter, Mr. Almeder?

22 A Do I know all of the other plaintiffs?

23 Q Yep.

24 A I know pretty much most of them, yes.

25 Q Okay.



1           A     Do you mean do I know their names?

2           Q     Know them personally, would you be able to  
3 recognize them and identify them?

4           A     Not all of them.

5           Q     Okay. Look at the second page, Mr. Almeder, the  
6 caption, getting back to my earlier question.

7           A     Second page, okay, that's the caption.

8           Q     Can you just read for the court -- it says  
9 plaintiffs and then it says versus and then there's a  
10 caption on who the defendants are. Can you read that for  
11 the court?

12          A     Yes, Town of Kennebunkport and all persons who are  
13 unascertained, not in being, unknown or out of state, heirs  
14 or legal representatives of such unascertained persons or  
15 such persons as shall become heirs, devisees or appointees  
16 of such unascertained persons who claim the right to use or  
17 title of plaintiffs' property other than persons claiming  
18 ownership or easement by, through or under an instrument  
19 recorded in the York County Registry of Deeds.

20          Q     And that's the list of the defendants, correct, at  
21 the time you filed?

22          A     An exhaustive list?

23          Q     That's the list -- the list of defendants as  
24 captioned, correct?

25          A     I see what it says. I think I would need to -- I

1 think I would want to talk to my attorney about whether  
2 this is the list.

3 Q Well, who did you think you were suing?

4 A All the defendants, whoever they might be, and all  
5 those people who are -- who might have an interest in the  
6 property, wherever they might be, period.

7 Q So that -- would that include back lot owners?

8 A It might, yes.

9 Q Okay. Public members, members of the public?

10 A I don't know.

11 Q Okay. We have to plow this ground a little bit  
12 because you brought the lawsuit and I have to understand  
13 who is being sued here. What does -- fair to say that you  
14 were suing anyone who claimed a right to use the property  
15 in front of your house?

16 A Fair to say we were suing anybody who claimed to  
17 have a right to use the property in front of the house, I  
18 think that's fair to say.

19 Q Okay. Now there's a section here where it says  
20 other than persons claiming ownership or easement by,  
21 through or under an instrument recorded in the York County  
22 Registry of Deeds. Do you understand what that means?

23 A No.

24 Q Okay. If someone has an easement to access the  
25 beach, were you suing them or are you suing them?

1           A     As I said, we are suing anybody who claimed to  
2 have a right to use the beach without the permission of the  
3 owner. I don't know if that answers your question.

4           Q     I don't think it does. We will get to it a little  
5 bit more. The Junkers have an easement, right, Bill and  
6 Maria Junker?

7           A     They have a right-of-way easement, right, to use  
8 the -- yeah, that's fine.

9           Q     Are you suing the Junkers?

10          A     No.

11          Q     Why not?

12          A     They haven't --

13          Q     Strike that. Have Maria or Bill Junker told you  
14 that they believe they have a right to use the beach in  
15 front of your property?

16          A     They haven't told me that.

17          Q     They haven't. Okay. If they told you that, would  
18 you be suing the Junkers?

19                 MR. LEONI: Objection to form.

20          Q     You can answer, if you understand the question.

21          A     I thought they would be suing us.

22          Q     Let's go back. You are suing, correct, anyone who  
23 claims a right to use the title in your property?

24          A     Yes.

25          Q     We got that, that's our first point.

1           A     All right.

2           Q     If the Junkers at any point in time said to you  
3 that they claim a right to use the beach in front of your  
4 property, would it be fair to say that you are suing the  
5 Junkers?

6           A     Yes.

7           Q     Okay.  And what if someone didn't have an  
8 easement, still fair to say that -- I'm trying to  
9 understand this part here in your complaint that you  
10 drafted or that -- strike that -- you didn't draft it -- in  
11 your complaint, this part here that excepts out people  
12 claiming ownership or easement through an instrument  
13 recorded in the York County Registry of Deeds.

14          A     I suspect that's for use of the beach for  
15 recreational purposes rather than a right-of-way to the  
16 sea, but I'm speculating.

17          Q     What do you mean by that?

18          A     Well, if they said they have an easement -- they  
19 don't have an easement to the beach.  They have an easement  
20 to cross to the water.

21          Q     So if someone has an easement that crosses to the  
22 water, you are not suing them?

23          A     If they claim a right to use the beach on either  
24 side of the easement, that's another story.  That's my  
25 understanding.  Now, look, I'm not an attorney.  You may

1 want to talk to our attorney to get more clarification on  
2 the extent and who falls under this suit. I don't think  
3 I'm the person that should be answering that question. And  
4 if I did know, it would probably be the case that I had the  
5 information from my attorney, in which case I think it  
6 would make that privileged.

7 Q I'm not asking you as a lawyer. I'm asking for  
8 your understanding, just your general understanding.

9 A Okay.

10 Q So is it your understanding if you have an  
11 easement -- is it fair to say your understanding is if you  
12 have an easement to the sea, that easement allows you to  
13 walk down that accessway and stand in the sea within that  
14 accessway?

15 A If they are standing in the -- on the land in the  
16 water, they can do that.

17 Q And they can go in the water -- you are not saying  
18 you own the water, correct?

19 A No.

20 Q The ocean?

21 A No.

22 Q So they can go --

23 A Anywhere they want.

24 Q -- east or west when they are in the water?

25 A Right.

1           Q     But when they walk down that accessway and they  
2 are on that accessway, that easement, let's start with the  
3 dry sand, the upland area, is it your understanding that  
4 they can't go east or west off that easement?

5           A     They don't have a legal right to.

6           Q     Okay. And is it your understanding that getting  
7 down into the wet sand, that they don't have a right to go  
8 east or west on that wet sand?

9           A     Correct, yes.

10          Q     Is there any way that they are permitted to go  
11 east or west on that wet sand once they go down that  
12 accessway?

13                   MR. LEONI: Objection to form.

14          Q     You can answer the question.

15          A     Yes, if they are either fishing, fouling or  
16 navigating and any and all activities incidental to that.

17          Q     For a nonlawyer, that was a good lawyer answer.  
18 Let's go back to that. So you don't -- do you object to  
19 someone using the accessway to get down to the intertidal  
20 zone with a skiff?

21          A     I haven't given this a lot of thought, but I think  
22 they have the right to take a boat to the ocean over that  
23 right-of-way. I don't know whether that's something that  
24 has to be explicitly put into an easement of that sort.

25          Q     Okay. But you --

1           A     I don't have any objection to that.

2           Q     When you talked about fishing, fouling or  
3 navigating, you were referring to the Colonial Ordinance,  
4 weren't you?

5           A     Yes.

6           Q     So do you have an objection to someone  
7 accessing -- using that easement to access the intertidal  
8 zone with a rifle?

9                     MR. LEONI:  Objection to form.

10          A     It's not -- if somebody were coming through there  
11 and -- and I disagreed with it, I don't have any right to  
12 tell them not to bring the boat over the -- over the  
13 easement.  The owner of the land and the people for whom  
14 that is reserved, I don't know.  They might have an  
15 objection to the boat being -- to it being used that way  
16 simply because it wasn't explicitly provided for in the  
17 easement, so it wouldn't bother me if they -- the Junkers  
18 or anybody else, the four families for whom that restricted  
19 access applies.

20          Q     Assuming the easement provides access to the sea  
21 or to the beach, you said earlier that once they access  
22 that easement, they can fish, foul and navigate in the  
23 intertidal zone, is that a correct statement?

24          A     Yes.

25          Q     Okay.

1           A     That's my understanding of it.

2           Q     Okay. We are going to continue on your  
3 understanding.

4           A     Okay.

5           Q     And you said that based upon that, you wouldn't  
6 have an objection to someone bringing a skiff down?

7           A     I wouldn't.

8           Q     Okay. And I asked about a rifle and you didn't  
9 answer that. What about someone bringing a rifle down to  
10 shoot -- to legally shoot birds if it was permitted?

11                   MR. LEONI: Objection to form.

12           A     If it were permitted under the law, which it isn't  
13 in this case, I couldn't object to it. I don't have any  
14 right to prevent that activity from happening.

15           Q     Okay. What about if someone accessed the easement  
16 to the intertidal zone with, you know, 10 members of their  
17 family and fishing poles?

18                   MR. LEONI: Objection to form.

19           Q     Do you object to that?

20           A     Are the fishing poles baited?

21           Q     Sure.

22           A     They are crossing the easement with their family  
23 members to go fishing in the intertidal zone?

24           Q     Correct.

25           A     I don't have any problem with that.



1 Q Okay. So these --

2 A I don't have any problem. I don't know whether  
3 the people to whom that is reserved have the right to  
4 object to that.

5 Q So you have got 10 folks with baited fishing poles  
6 in front of your property casting lines. They have  
7 accessed it through the easement.

8 A Low tide?

9 Q No objection?

10 MR. LEONI: Objection to form.

11 Q You can answer, if you understand the question.

12 A Repeat -- would you repeat that question?

13 Q Sure. Low tide. 10 folks -- 10 family members,  
14 the family has a deeded right to access the beach. They  
15 walk down with baited fishing poles and stand in the  
16 intertidal zone in front of your house. Any objection?  
17 And fish.

18 MR. LEONI: Same objection.

19 THE WITNESS: I'm sorry?

20 MR. LEONI: Same objection.

21 Q You can answer, if you understand the question.

22 A I understand the question.

23 Q What's your answer to the question?

24 A I have no objection.

25 Q Okay. Woman with a -- woman with a two-year-old

1 walks down -- has a deeded right to the beach or to the  
2 sea, walks down on that easement, goes over on the  
3 intertidal zone in front of your house with a lawn chair  
4 and sits down while her daughter makes a sandcastle.

5 MR. LEONI: Objection to form.

6 Q Do you have an objection to that use?

7 A Insofar as she's not fishing, fouling or  
8 navigating, I take the behavior to be illegal. I might  
9 permit it myself in terms of tacit permission and just let  
10 her alone. I could do that. But if she happened to bring  
11 3,000 relatives down there for that activity and it was  
12 noisy and otherwise problematic in some other way, I might  
13 not. I mean I might not like that, you know, but if she's  
14 fishing with all these people, you know, I mean the law  
15 allows that.

16 Q So is it fair to say that part of this lawsuit is  
17 that you are able to determine who can use the beach in  
18 front of your house and what they can do on the beach in  
19 front of your house?

20 A As long as it's legal, yes.

21 Q When you filed -- strike that.

22 What's your goal with this litigation, Mr.  
23 Almeder?

24 A The goal of the litigation is to get a declaratory  
25 judgment from the court on whether or not the public or any

1 other individuals have acquired recreational rights as a  
2 result of unopposed usage over time on Goose Rocks Beach.

3 Q How long have the Junkers been in Goose Rocks  
4 before you arrived, do you know?

5 A You mean the ones who live across the street?

6 Q No, the parents.

7 A I don't know when they got here. They got here  
8 earlier. It might have been in the '50s. I know they were  
9 coming back and forth regularly. I don't know when they  
10 actually retired. I thought it was -- I thought it was  
11 before. I thought it was in the '70s, but I don't know.

12 Q Okay. But is it fair to say that your position in  
13 this -- in this lawsuit is that -- let's talk the younger  
14 Junkers -- that their ability to utilize the beach is  
15 dependent upon your permission?

16 A Legally, yes.

17 Q Have you shared that with the Junkers?

18 A Did I ever go up and say -- I don't tell people  
19 that it's private property. There's no need for me to do  
20 that. And I have never told that to the Junkers. In spite  
21 of that, they have always asked permission to use the  
22 beach. And we have never had any problems with that. But  
23 I don't feel I'm obliged to go up and tell people, you  
24 know, you don't have a right to use this beach without my  
25 permission. All I know is I don't have to stop them and

1 they have it.

2 Q Have you discussed this case with Bill and Maria  
3 Junker?

4 A Yes.

5 Q What have you guys talked about?

6 A Well, I went over to them one day and I said,  
7 listen, I hope you are not disturbed by this, but I'm  
8 willing to do whatever you would like to do to make sure  
9 that you can still use the beach out front here, permission  
10 is never going to be a problem as long as I'm here and my  
11 children are here, but if somebody else sells the house,  
12 then technically, that could be a problem for you, because  
13 if it was sold, a new owner might say you don't have the  
14 right to actually -- and she asked me what I would do if I  
15 were in their position and I said, well, I suppose I would  
16 be very tempted to do what you are doing if I were in your  
17 position, but before I did it, I would make sure that I  
18 could satisfy all the legal requirements of the State of  
19 Maine for that kind of an easement.

20 Q Take me back. You lost me there in the  
21 conversation with what they could and what you could do.  
22 What exactly was your conversation with Bill and Maria?  
23 You went to them?

24 A I went over to them because I wanted to reassure  
25 them that nothing would change, they always had our

1 permission, and they never needed to ask for it.

2 Q Did you tell them you weren't suing them?

3 A Did I tell them I wasn't suing them?

4 Q Yeah.

5 A No.

6 Q Did you tell them you were suing them?

7 A No.

8 Q Okay. Did you talk at all about the lawsuit with  
9 them?

10 A Yes, as I just said, I said that no matter what  
11 happens, this is not -- you will always be permitted to use  
12 this beach in the ways that you have.

13 Q As long as --

14 A As long as I'm there and as long as my -- I can't  
15 even -- I said -- what I didn't tell them is I can't make a  
16 commitment for my children after I'm dead, but I know my  
17 children well enough to know that they wouldn't have a  
18 problem with that. Should they for some reason sell it,  
19 then I can't account for what -- I mean that's my  
20 understanding of it.

21 Q Is there a -- in your mind, is there a value  
22 component to having -- strike that.

23 MR. FRAME: Let's take another five-minute break.

24 (A short break was taken.)

25 Q Back on. Mr. Almeder, you are under oath still.

1           A     Yes.

2           Q     Mr. Almeder, you talked about a discussion with  
3 Bill and Maria Junker about giving them some sort of right  
4 to use the beach in front of your house, is that an  
5 accurate statement?

6           A     No, I didn't offer a right to use the beach like  
7 you would offer an easement or something like that. I just  
8 said I will be happy to do whatever I can, if you need a  
9 letter by way of permission or something like that, but I  
10 don't think you should worry about, you know, not being  
11 able to recreate or do what you have been doing all these  
12 years, nobody is intent on stopping that.

13          Q     If you did a letter, you could revoke that at any  
14 time, right?

15          A     If you gave a letter?

16          Q     Correct, you could revoke it at any time, right?

17          A     Unless you notarize that this is an irrevocable  
18 thing, yeah, you could do it, you could say I gave it to  
19 you, but I changed my mind.

20          Q     So what you are offering them is no different than  
21 what they have now which is they are there with your tacit  
22 permission unless you --

23          A     They have my explicit permission and they often  
24 ask for it.

25          Q     But your explicit permission could be revoked as

1 well, correct?

2 A Yes.

3 Q So what exactly were you offering them?

4 A I was letting them know that they had nothing to  
5 fear for the claim that people often made that the beach  
6 will be closed and accessible only by the beachfront  
7 owners. What I was trying to do was to say we are not --  
8 this hasn't anything to do with that, we are essentially  
9 doing something else. That was my take of this. What I  
10 did say was just that.

11 Q Just so I'm clear, you never offered them  
12 irrevocable use of the beach?

13 A No.

14 Q So what you offered them could be taken away at  
15 any point in time by you for any reason, correct?

16 A Yes.

17 Q Did what you offered the Junkers appease them?

18 A Well, we seem to be on very good terms still and I  
19 don't think they had any problem with it at that time.

20 Q What did Maria or Bill say to you when you said I  
21 will offer you a revocable right to use the beach?

22 A I didn't say I will offer you a revocable right.

23 Q Well, what did Bill and Maria said to you when you  
24 offered them what you did offer?

25 A I said, I will do anything that you think is

1 appropriate by way of providing permission in writing. I  
2 didn't -- the revocable irrevocable just didn't come up and  
3 it didn't occur to me to bring it up.

4 Q What did they say to you, did they jump on it?

5 A She said, well, what would you do if you were in  
6 my position. I said, I would probably be doing the same  
7 thing that you're doing if I were in your possession, but  
8 before I bought onto a legal action, I would want to make  
9 sure the chances were pretty good by examining what  
10 requirements under the law would be -- would be --

11 Q So let's go back to that. Maria asked you what  
12 you would do in her position and you told her I would do  
13 what you are doing?

14 MR. LEONI: Objection.

15 A I qualified it. I said, I would probably be doing  
16 just what you are doing. I said, but I wouldn't proceed  
17 unless I knew I could satisfy or the group that I was with  
18 could satisfy the standards required for this kind of an  
19 easement under Maine law.

20 Q So Maria didn't accept your offer of writing  
21 something?

22 MR. LEONI: Objection.

23 A No.

24 Q Bill didn't accept your offer of writing  
25 something?



1 A No.

2 Q Well, since you went there, if you were in her  
3 position, what value would you see in being offered  
4 something that could be -- something that she has right  
5 now?

6 MR. LEONI: Objection.

7 Q You can answer.

8 A Yeah, I can answer that. The value that she would  
9 have is she would never have to ask for permission in the  
10 future, it would be guaranteed, at least as long as I was  
11 alive. So the advantage -- that would be the advantage,  
12 that they wouldn't have to ask.

13 Q But it could be revoked by you?

14 A Sure.

15 Q And you testified earlier that if people didn't  
16 ask, there was tacit permission unless that permission was  
17 denied, right?

18 A Yeah.

19 Q Could you see how someone would think that what  
20 you offered them was absolutely nothing?

21 MR. LEONI: Objection.

22 Q You can answer.

23 A No, I can't see that. I think what I was doing  
24 was trying to better the situation by assuring them that as  
25 long as I was alive, they had permission to use the beach

1 as they had been using it, and that is more than nothing.  
2 It certainly is freedom from the obligation to have to ask  
3 something like that.

4 Q As long as you are alive and in good standing with  
5 the Junkers, correct?

6 A If I gave my word on it, as long as I'm alive, as  
7 long as I'm alive would be the point. I don't know what  
8 would -- I don't know what could possibly put me not in  
9 good standing with the Junkers.

10 Q Well, have you ever been friends with someone who  
11 you are no longer friends with? If you haven't, you are a  
12 better man than me.

13 A My good friends are still my good friends from a  
14 long time ago. They are very few in number.

15 Q So you have never lost a friend because of a  
16 falling out or some difference of agreement?

17 A I did have one falling out a long time ago and it  
18 was -- yeah, but it wouldn't be such that if I had given my  
19 word to do something ahead of time, that that would have  
20 been nullifying it. That's just me.

21 Q Fair enough. Let's take a look at the complaint  
22 which is Exhibit -- you have got it in front of you  
23 somewhere.

24 MR. LEONI: Exhibit 2.

25 Q Exhibit 2. Page two, Mr. Almeder, number two, it

1 says that each plaintiff owns beachfront property at said  
2 Goose Rocks Beach and each plaintiff's respective deed or  
3 that of their predecessor in title to the property runs to  
4 the Atlantic Ocean, to the sea, to the ocean, or to the low  
5 water mark of the Atlantic Ocean. Which one of those  
6 reflects your current title?

7 MR. LEONI: Objection. To the extent that that  
8 opinion is based on any information given to you by your  
9 attorneys, either previous attorneys or us, I'm instructing  
10 you that that is attorney client privileged and I'm  
11 instructing you not to answer that.

12 A I won't answer that.

13 Q Do you need to see your current deed to understand  
14 what your deed says about which one of those options your  
15 title refers to?

16 A If you take out the current deed, it's very, very  
17 explicit on that.

18 Q If I take out the current deed?

19 A The current deed is very explicit. It says to the  
20 mean low water mark.

21 Q Okay. So your current deed does say to the mean  
22 low water mark?

23 A Yes.

24 Q Okay. That answers the question. Did the deed of  
25 your predecessor in title say any of those four options, to

1 the Atlantic Ocean, to the sea, to the ocean, or to the low  
2 water mark of the Atlantic Ocean?

3 A No.

4 Q No. Okay. When the -- when the Junkers come upon  
5 the beachfront in front of your house, are they technically  
6 trespassing in your opinion?

7 A No.

8 Q Because you have given them permission?

9 A It's always been tacit.

10 Q Okay. What about other back lot owners who you  
11 don't know, if they -- let me finish, sorry -- if they used  
12 the beachfront in front of your house, are they  
13 trespassing, dry sand?

14 MR. LEONI: Objection. Are you asking him for a  
15 legal opinion?

16 MR. FRAME: No, his opinion.

17 A I'm not likely to ask them off. I don't have any  
18 problem with people from the back, but I would be giving  
19 them tacit permission even though they didn't know it.

20 Q By not asking them to leave?

21 A By not opposing it.

22 Q But you also can't tell someone from the back,  
23 from the front, from the public, correct, generally?

24 A Not always.

25 Q Not always?

1 A No.

2 Q Okay. And is it fair to say that you consider  
3 sunbathing, bathing, picnicking and recreational activities  
4 to be unlawful --

5 MR. LEONI: Objection.

6 Q -- on the beach in front of your house? You can  
7 answer.

8 A If I have given my permission, it's not unlawful.

9 Q If you haven't given your permission?

10 A It is unlawful if I haven't given at least my  
11 tacit permission.

12 Q Okay. And tacit permission is not doing anything  
13 about it?

14 MR. LEONI: Objection.

15 A Not opposing it.

16 Q Not opposing it. So then if it happens, if any  
17 activity happens and you don't oppose it, you have provided  
18 permission --

19 A Yep.

20 Q -- for that activity?

21 A Yes.

22 Q Any and all activities?

23 A Yes, as long as they are legal, yep. I wouldn't  
24 give permission to illegal activities.

25 Q But you haven't done anything, I'm saying if

1 there's an illegal activity that's occurring and you  
2 haven't said anything, you are giving your tacit  
3 permission, correct, you said any activity?

4 MR. LEONI: Objection.

5 A I put the qualification on it. It has to be  
6 legal.

7 Q How do you object to an illegal activity when you  
8 don't do any affirmative act, what's the basis of your  
9 objection?

10 A Would you please repeat that?

11 Q Sure. This is one of those philosophical -- like  
12 if the tree falls in the woods.

13 A Yeah.

14 Q If you object to an illegal activity in your mind,  
15 how does anyone on the beach understand that to be an  
16 objection?

17 MR. LEONI: Objection.

18 A I'm still not getting this question.

19 Q Okay. We'll plow around on that then a little  
20 bit. You have said that if someone is on the beach and you  
21 don't object to their -- whatever they are doing, you have  
22 provided them with tacit permission. Is that an accurate  
23 statement?

24 A As long as it's legal behavior.

25 Q So if it's illegal behavior, you have provided a

1 tacit objection to that?

2 A I would go out, if it was illegal behavior, and  
3 tell them to stop.

4 Q Would you call the police?

5 A I would call the police.

6 Q How often have you called the police in the 20 --

7 A I never called them. 33 years or something. I  
8 have never called the police.

9 Q So is this -- forgive me -- is there a lot of  
10 activity in -- I mean is the beachfront in front of your  
11 house akin to Old Orchard Beach in the summer?

12 MR. LEONI: Objection to form.

13 Q You can answer, if you've been to Old Orchard  
14 Beach.

15 A It's not like Old Orchard Beach at all.

16 Q Okay. Little bit more quaint?

17 MR. LEONI: Objection to form.

18 Q You can answer, if you understand the question.

19 A It's quieter.

20 Q And in 33 years, you said that if there was an  
21 illegal activity that you objected to, you would call the  
22 police, correct?

23 A I would go out and talk to them first and see --  
24 and tell them to stop. If they didn't stop, then I would  
25 feel that I certainly had an obligation to call the police.

1 Q How many times in your 33 years of ownership have  
2 you gone out to the beach in front of your property and  
3 confronted someone about illegal use?

4 A There's been a couple of times people ran their  
5 dogs up into the bird cages and they didn't seem to want --  
6 and there was a big sign saying -- on the beach that this  
7 is a preserved area for endangered species and I went out  
8 and told them, look, we have -- there's a federal law,  
9 there's a state law, and there's a local ordinance, and  
10 what you are doing is illegal and you have to get your dogs  
11 off the cage. Usually that's enough.

12 Q Let's talk specifically --

13 A If they said no, I'm not going to do it, then I  
14 would say, well, okay, I will call the police.

15 Q Let's talk specifically because it's easy to talk  
16 specifically because there are only two instances. In  
17 those two instances, was your communication enough?

18 A Yep.

19 MR. LEONI: Objection.

20 MR. FRAME: What's the objection?

21 MR. LEONI: Two instances of what?

22 MR. FRAME: He said there were two instances --  
23 he said there were a couple instances --

24 THE WITNESS: A few.

25 MR. FRAME: -- where he talked to the offender



1 about what he believed to be illegal activity, so I'm  
2 asking about those two instances.

3 Q In those two instances, was your communication  
4 with the offender enough to stop the activity?

5 A Yes.

6 Q So in 33 years, just so I'm clear, you have seen  
7 two illegal activities -- let me finish my sentence -- you  
8 have seen two illegal activities on the beach, in your  
9 mind, illegal activities that you identified with the  
10 person and it stopped; is that correct?

11 A On reflection, I think there were more than two.  
12 There may have been three or four of these.

13 Q Okay. Let me hear about number three and number  
14 four. Well, let's go back to one and two first, incident  
15 one and two. Beachfront owners?

16 A In this case?

17 Q One and two, the two with the dogs.

18 A No.

19 Q How do you know?

20 A Well, they -- well, I don't.

21 Q So you don't know if they were a beachfront owner?

22 A I would know if they were beachfront owners from  
23 the west end of the beach. If I didn't see that, I would  
24 still go out and tell them.

25 Q But you don't know if those two -- if in those two

1 instances, whether they were beachfront owners, correct,  
2 the whole beach?

3 A I don't know.

4 Q Okay. Let's talk about instance number three and  
5 then instance number four where you talked to people about  
6 illegal activity from your house. Tell me about those.

7 A One lady kept running her dogs up across the --  
8 into the bird -- into the bird area, which was really  
9 close. Sometimes they nest right in front of my house and  
10 sometimes they don't. But she kept running her dogs into  
11 the bird area and I went out and told her that, you know,  
12 you really need to put your dog on a leash. She said, I  
13 don't do that. I said, well, you need to do that because  
14 it's a local ordinance, it's a state law, and it's a  
15 federal law. She said, well, that doesn't interest me.  
16 That's when I would say but it is also private property.  
17 She went away.

18 Q Can I stop you there? Are you done with that?

19 MR. LEONI: You asked the question. If you are  
20 done, you can stop, but --

21 Q I asked you about the third instance. Are you  
22 done with the third instance?

23 A Yes.

24 Q Okay. Was she -- and I didn't mean to interrupt,  
25 I apologize -- was she a beachfront owner?

1 A No.

2 Q How do you know?

3 A I know where she lives.

4 Q Who is she?

5 A She lives on Bosie's Way. I'm forgetting her  
6 first name.

7 Q Is that a back lot? Is that in the Goose Rocks  
8 Beach zone?

9 A Yes.

10 Q Okay.

11 A And that was the third time I told her.

12 Q That was the third time you told her, so you  
13 gave -- was she the person in incidents one and two or was  
14 she incident three with three warning -- two warning shots?

15 A She wasn't in one or two.

16 Q Okay. And did you call the police then?

17 A No.

18 Q Why?

19 A Because I thought she took the lesson well.

20 Q Okay. Great. Incident number four.

21 A People were flying kites out there over the birds  
22 and that frightens the birds and they stop either nesting  
23 for awhile or it changes their eating habits. I went out  
24 and I said, you can't fly a kite here, you know. And  
25 there's no ordinance against that though. I just said you

1 can't fly a kite here and I explained why. They said they  
2 were from Canada and they didn't see any problem with it,  
3 but after you explain it, they sort of take it and go away.

4 Q So they said they were from Canada, but were they  
5 beachfront owners, back lot owners or visiting from Canada?

6 A They were visiting from Canada.

7 Q Great. So in your 33 years of owning 113 Kings  
8 Highway, are those the -- is that the entirety of the time  
9 you have spoken to someone about objectionable activity on  
10 the beach in front of your house?

11 A No, as I said earlier this morning, there was a  
12 man who was fishing out there with -- in a way that  
13 threatened the children on the beach with his fishing  
14 hooks. It came very close to the kids' heads and he  
15 started in an altercation with the father and I went down  
16 and said, look, you can't have this fight here and you  
17 can't throw your fishing equipment in such a way that it  
18 threatens these kids.

19 Q Were they --

20 A And he moved. He moved down.

21 Q Were they like throwing hands?

22 A They were ready. They were ready.

23 Q Okay.

24 A And the air was blue.

25 Q What do you mean by that?

1           A     A lot of cussing.

2           Q     Okay.  Never heard that statement.

3                     Outside of that, any other time you have objected  
4 to --

5           A     Not that I can think of right now.  Oh, there was  
6 one more.  A photographer showed up at the -- in the heart  
7 of the nesting area, plovers, and he went right up to the  
8 cage with a big lens and he had a big dog with him and the  
9 dog while he was taking the picture was running around and  
10 upsetting the birds.  And I went up to him and said your  
11 dog should be on a leash and you shouldn't be in here with  
12 him that close.  He said, well, I got permission.  I said,  
13 well, do you have Mr. Baylis' permission, he owns this  
14 land.  He said, no, I'm here from Audubon.  I said, do you  
15 have Audubon's permission to do this.  He said, well,  
16 listen, I take these photos for Audubon and I sell them at  
17 their gatherings.  I said, that isn't permission to do  
18 this.  And he got fairly testy about it, but I said, look,  
19 I just want you to know, these are federal, state and local  
20 laws.  And finally, he said okay.  So I -- but that's --  
21 that's about it.  I generally don't have any problems.  I'm  
22 protective of the birds.

23           Q     What would happen if a beachfront owner told you  
24 that they didn't want you -- strike that.

25                     Let's make an assumption that -- I know that you

1 periodically -- if there is seaweed, you deviate onto the  
2 dry sand in front of the beachfront owner's home,  
3 periodically, not often. What would happen if that  
4 beachfront owner said I no longer grant you tacit  
5 permission, Bob, to -- strike that. I'm not articulating  
6 this at all.

7 Do the beachfront owners have an understanding on  
8 their own use of the beach with each other?

9 A I believe so, but I haven't talked to them all.  
10 It seems to me that that's true.

11 Q What's your understanding of the use of the beach  
12 relative to fellow beachfront owners?

13 A Well, I can tell you what I think. If somebody  
14 came out and said I don't want you crossing this part of  
15 the beach anymore, I wouldn't cross that part of the beach  
16 anymore. He had clearly withdrawn his tacit permission. I  
17 might ask him why and so on, but if he said no, then I  
18 would find another way to run. I might go up on the street  
19 and go down and go back, but as long as I wasn't opposed, I  
20 felt I had tacit permission. And if he opposed it, then it  
21 was his right to do so.

22 Q And would you then oppose his right to walk on the  
23 beach in front of your house?

24 MR. LEONI: Objection. Form.

25 Q You can answer.

1           A       Well, I can answer. I probably wouldn't have that  
2 problem.

3           Q       So --

4           A       No, I wouldn't for that reason simply say you  
5 can't walk in front of my house either. I don't think  
6 that's a very fruitful way to act.

7           Q       Let's take a look at your interrogatory -- your  
8 answers to interrogatories.

9           (Exhibit No. 3, Answers to Interrogatories, marked for  
10 identification.)

11                   MR. LEONI: It looks like in this packet, Gregg,  
12 there is a bunch of other things in here. Are these  
13 produced with the questions?

14                   MR. FRAME: They might have put the  
15 interrogatories and the RPDs together.

16                   MR. LEONI: Yeah.

17                   MR. FRAME: That's okay. We will keep it all as  
18 one.

19                   MR. WILLING: This looks to me like at least one  
20 package of materials that Mr. Almeder produced.

21                   MR. FRAME: I think it was the original answers  
22 to interrogatories and the RPDs.

23                   MR. LEONI: Okay.

24                   MR. FRAME: We will focus purely -- we won't get  
25 to the RPDs. We will focus on the first part of that.

1           MR. LEONI:   Okay.

2           Q     Mr. Almeder, are you familiar with this document  
3 in front of you?

4           A     Yes.

5           Q     Okay.  And did you -- it is not page numbered, but  
6 if you look four pages in, is that your signature and  
7 Virginia's signature on this document?

8           A     Yes.

9           Q     Okay.  So I want to take you through right above  
10 your signature.  We were just discussing this and I want to  
11 make sure I understand this.  You said if any beachfront  
12 owner were to suddenly withdraw his or her permission to  
13 let other beachfront owners traverse his or her property,  
14 that beachfront owner would face the predictable result  
15 that other beachfront owners on both sides would withdraw  
16 their permission to let him traverse their property thus  
17 insuring that the first to withdraw permission for any  
18 other beachfront owner to traverse his property would be  
19 isolated on his own property and not able to walk the beach  
20 outside the confines of his own property.  Is that still an  
21 accurate statement?

22          A     That would be a predictable thing, I think.  I  
23 wouldn't do it, but I think it would be predictable, yes.

24          Q     It is kind of like Goose Rocks Beach's version of  
25 strategic defense initiative, right?



1 MR. LEONI: Objection.

2 A Strategic defense initiative?

3 Q Yeah, Star Wars, 1980, Soviets, Americans,  
4 mutually assured destruction, are you familiar with all  
5 that?

6 MR. LEONI: Objection.

7 A Yes, but I'm -- I don't know how this is helpful.

8 Q Well, if one withdraws, sounds like the other  
9 withdraws and we have got --

10 A Well, the point I was trying to make was if one  
11 man says nobody will cross this property, I think you could  
12 expect a reaction on either side typically, that's  
13 predictable, that they would say, well, you can't cross  
14 ours either, and then everybody if that replicated would  
15 give you a group of people isolated on their own beaches.

16 Q How many of the 106 beachfront owners are  
17 plaintiffs in this matter?

18 A Are what?

19 Q Plaintiffs.

20 A Of the 106?

21 Q Yep.

22 A The last I counted, I thought it was something  
23 like 28. And there were a number of other people, at least  
24 eight or nine, who were defendants against the town to  
25 protect their property against the claim -- the town's

1 claim to own as well as the claim to have a prescriptive  
2 easement, but they are -- they are not plaintiffs  
3 technically. That's my understanding. So if you want to  
4 know how many owners are involved, I can't say exactly  
5 right now.

6 Q Why don't you run on Kings Highway?

7 A I do sometimes.

8 Q Mostly the beach though, do you do mostly the  
9 beach in terms of your running?

10 When you run, you said you run -- I asked about  
11 your running and you said four or five times a week, you  
12 run along the beach mostly?

13 A There are times when it's very hard to run on the  
14 beach and -- you know, in the winter, because it gets windy  
15 in that way, so I will run on the road from time to time,  
16 but I prefer when the conditions are right to run the  
17 beach.

18 Q Have you ever calculated the mileage for your run  
19 if the 50 to 60 to 70 beachfront owners did not allow  
20 permission for you to run -- tacit permission for you to  
21 run along the beach in front of their house?

22 A I would just run the road. Sometimes I do that, I  
23 just run the road.

24 Q But you prefer to -- you prefer to run on the  
25 beach?

1           A     On a good day, yeah.

2           Q     When you have people come and visit you and they  
3 want to go for a run, where do you send them?

4           A     They go up and down the beach too.

5           Q     Do you ask them to identify themselves to other  
6 beachfront owners as they are running or anything like  
7 that?

8           A     No, I never have.  Nobody has ever objected to  
9 them running.

10          Q     It's part of your tacit understanding on the beach  
11 about use that guests can do whatever they want similar  
12 to -- can do whatever beachfront owners do?

13          A     As long as they have the tacit permission of the  
14 owners.

15          Q     And that tacit permission comes from no objection,  
16 correct?

17          A     Yes, yes.

18          Q     Okay.  How many -- how many people is too many  
19 people in front of your house?

20          A     How many people would be too many people?

21          Q     Yep.  What's the number?

22          A     It's a judgment of perception, but I would think  
23 it would be too many if I couldn't sit down comfortably and  
24 have a conversation without being interrupted by noise or  
25 other kinds of activities like that.

1 Q Have you talked to any of the other 105 beachfront  
2 owners on what their perception is of how many is too many?

3 A No.

4 Q So is there any kind of common ground rules for  
5 people who are using Goose Rocks Beach with your tacit  
6 permission about what in fact they can do and how they can  
7 do it or is it just wait until an objection comes?

8 A Would you please repeat the question again?

9 Q I won't, but she will.

10 (Reporter read requested material. )

11 A That would be the understanding, you can run the  
12 beach until somebody stops you, but I have told people that  
13 if somebody comes out and wants to stop you, then you can  
14 be sure it would be an owner, but I have never seen that  
15 done or heard of it done.

16 Q So you can do whatever you want legally on the  
17 beach as long as an owner doesn't stop you?

18 A Yeah, that's tacit permission.

19 Q In your -- your view, do the owners have a  
20 manual -- beachfront owners have a manual on what is  
21 permissive and what isn't, is there a guidebook you go to?

22 A The town's Comprehensive Plan is pretty clear  
23 about that, there are sections of the beach that are  
24 private and not open to recreation.

25 Q That's not my question. My question was --

1           A     You asked if there was a guide.

2           Q     -- do the owners refer to their own guidebook in  
3 terms of what is and is not permissible on the beach in  
4 front of their property?

5           A     I know of no guidebook like that.

6           Q     Okay.  And I know that there's -- I think you are  
7 referring to -- and correct me if I'm wrong -- that there's  
8 a beach that's commonly known as the public part in front  
9 of the Tides, correct, and you are referring to the  
10 Comprehensive Plan in terms of what is and is not  
11 permissible there, is that accurate?

12          A     Can you repeat the question?

13                     (Reporter read requested material.)

14          A     I'm not sure that's accurate.

15          Q     What's inaccurate about that?

16          A     I said I'm not sure it's accurate.

17          Q     Let me break it down for you.  When you are  
18 referring to the public part of the beach, what were you  
19 referring to?

20          A     The section that you mentioned.

21          Q     In front of the Tides?

22          A     Yeah.

23          Q     And when you were referring to the document that  
24 provides what is and is not permissible in that public part  
25 of the beach, you were referring to the town's

1 Comprehensive Plan, correct?

2 A In various places, yes.

3 Q Okay. Great. Is it fair to say that what you at  
4 the west end may consider to be a permissible use or an  
5 unobject -- is it fair to say that what you at the west end  
6 consider to be a permissive use may or may not be  
7 consistent with what someone on the east end or someone in  
8 the middle believes?

9 A Possible.

10 Q So how is an individual -- let's take the Junkers.  
11 How are they to know what is and is not permissible on the  
12 beach, any point in the beach?

13 A It's permissible unless the owner tells you to  
14 stop.

15 Q Okay. Here we go. Mr. Almeder, I'm going to hand  
16 you --

17 MR. FRAME: What number are we on?

18 THE REPORTER: 4.

19 (Exhibit No. 4, Deed, Attachments, marked for  
20 identification.)

21 Q I apologize for the quality of this. This is the  
22 best we've got. It's an old deed. It's the best we got  
23 from your attorney. Can you identify this document for me?

24 A Looks like -- looks like the deed that we acquired  
25 when we bought the house in 1978 at Goose Rocks Beach.

1 Q The one at 113?

2 A Yes.

3 Q Correct?

4 A At 113, yes.

5 Q Do you see -- on this deed, do you see a property  
6 description?

7 A Yes.

8 MR. WILLING: Are you marking this?

9 MR. FRAME: Yes, it's 4.

10 Q Does the property description provide any guidance  
11 as to what the southerly border of your property is?

12 A No, except to say it's further described in the  
13 plan of the land of the Emmons heirs dated 1921 and  
14 recorded and so forth and so forth.

15 Q And that's the -- I'm sorry, were you done?

16 A Yes.

17 Q Okay. And that's the Emmons plan that you  
18 referred to as saying that --

19 A Yes.

20 Q -- it's your belief that the property extends to  
21 the sea wall, correct?

22 A Yes.

23 Q Okay.

24 A Along the sea wall.

25 Q Along the sea wall. Okay. Great.

1           A     Uh-huh.

2                     (Exhibit No. 5, Quitclaim Deed, marked for  
3 identification.)

4           Q     I'm going to hand you Exhibit 5, Mr. Almeder. Can  
5 you identify this for me, please?

6           A     Yes, this was transferring our title to our  
7 daughter in October, 2007.

8           Q     You said earlier, Mr. Almeder, just so I'm sure,  
9 that you thought there were three or four transfers, there  
10 was the conveyance from the Campbells to you, the  
11 conveyance from you -- you and your wife to Lisa, the  
12 conveyance from Lisa back to you, and then a conveyance  
13 into a trust, is that accurate?

14          A     Yes, there was a -- there was a -- there might  
15 have been -- yes, I think that's -- that's accurate.

16          Q     So to the best of your recollection, from 1978 to  
17 2007, there was no other transfers of this property?

18          A     When we took out -- I'm not sure this was a  
19 transfer -- when we took out a second mortgage on our  
20 house, the attorney who was handling the title, I don't  
21 know whether that was a transfer to the bank or anything  
22 like that.

23          Q     But to your knowledge, there was no transfer?

24          A     No.

25          Q     And this is dated October 3rd, 2007, correct?



1 A Yes, that's what it says.

2 Q Were you at this point contemplating litigation  
3 against the Town of Kennebunkport?

4 A Not at all, no.

5 Q Okay. And on that deed -- in this deed, Mr.  
6 Almeder, does this have a property description?

7 A This is Exhibit 5?

8 Q Yeah, the one from you and Virginia to Lisa.

9 A Yes, that's under Exhibit A in that document.

10 Q And what is the -- what is the southerly border,  
11 what's the southerly border that's in this deed that you  
12 are conveying to Lisa?

13 A Low water mark of the ocean.

14 Q Which was not in the prior deed, Exhibit 4,  
15 correct?

16 A Right.

17 Q Exhibit 4 only referred to the Emmons plan?

18 A Right.

19 Q Okay. Then -- this was not, as you said, part of  
20 any estate planning, correct?

21 A Right.

22 MR. FRAME: Okay. Let's do Exhibit 6 here.

23 (Exhibit No. 6, Quitclaim Deed, marked for  
24 identification.)

25 Q Do you have Exhibit 6 in front of you, Mr.

1 Almeder?

2 A No.

3 Q Sorry about that, Mr. Almeder. Can you identify  
4 Exhibit 6 for me, Mr. Almeder?

5 A This was the re-description of the deed -- wait a  
6 minute -- so that the property was held -- that's a  
7 re-description of the deed prior to my daughter's sale of  
8 it back to us.

9 Q Is it a re-description of the deed or is it an  
10 actual deed from your daughter to you and Virginia?

11 THE WITNESS: That's the re-description, right?

12 Q I'm asking you, not your attorney.

13 A I was told that the point was to -- you couldn't  
14 simply introduce this sort of clarification.

15 MR. LEONI: Objection. To the extent that you  
16 were told any information by your previous attorneys, that  
17 information is covered by the attorney client privilege and  
18 it's waived.

19 Q I'm just asking you what this document is and for  
20 you to identify it for the court.

21 A It's a quitclaim deed.

22 Q Thank you. From Lisa Almeder to you and Virginia,  
23 correct?

24 A Yes.

25 Q On October 3rd, 2007, correct?

1 A Yes.

2 Q Same day that you quitclaim deed the property from  
3 Virginia and you to Lisa, correct?

4 A Yes.

5 Q The conveyance from you and Virginia to Lisa  
6 happened before the conveyance from Lisa back to you,  
7 correct?

8 A Yes.

9 Q And the conveyance from you and Virginia to Lisa  
10 had the language to the low water mark, correct?

11 A I'm sorry, would you --

12 Q The conveyance from you and Virginia to Lisa had  
13 language that the southerly border was to the low water  
14 mark, correct?

15 A Yes.

16 Q Okay. And the conveyance from Lisa back to you  
17 and Virginia said the southerly border was to the low water  
18 mark, correct?

19 A Yes.

20 Q And the 1978 deed where you bought the property  
21 from the Campbells was silent as to the southerly border?

22 A Yes.

23 Q Other than to refer to the Emmons plan which you  
24 say was to the beach or to the sea wall?

25 A Along the sea wall.

1 Q Along the sea wall?

2 A My understanding.

3 (Exhibit No. 7, E-mails, marked for identification.)

4 Q Mr. Almeder, are you familiar with this document?

5 A Yes.

6 Q What is it?

7 A It's a letter to beachfront property owners for  
8 the purpose of conducting a survey on what they thought  
9 were or what they might think were important issues in the  
10 Goose Rocks Beach area.

11 Q You weren't contemplating litigation at this point  
12 in time?

13 A No.

14 Q Who -- the ad hoc steering committee, Bob Almeder,  
15 Barbara Rencurrel, Peter Gray, Parker Dwelley, Debby  
16 Kinney, that's the, quote, ad hoc steering committee for  
17 the Goose Rocks Beach Property Owners Association. Is that  
18 a formal entity?

19 A No, it's a group of people who are associated for  
20 this purpose.

21 Q Who created the Goose Rocks Beach Property Owners  
22 Association?

23 A We all did.

24 Q Who is we?

25 A The people who are listed as the Goose Rocks Beach

1 property owners.

2 Q So Bob Almeder, Barbara Rencurrel, Peter Gray,  
3 Parker Dwelley, Debby Kinney?

4 A Yes.

5 Q Who appointed those folks as the ad hoc steering  
6 committee for that?

7 A Nobody appointed them to it. We all decided to  
8 become it.

9 Q So at this point in time, the steering committee  
10 was the association, same people?

11 A Yeah.

12 Q Okay. You said -- you previously mentioned that  
13 when you found uses to be objectionable, you have  
14 identified them and people have generally moved on,  
15 correct?

16 A Yes.

17 Q Okay. So in C here, it says one of the concerns  
18 is the ability to maintain our private property rights to  
19 the beach and to be able to act upon them. What concerns  
20 did you have about your ability to act upon what you  
21 considered to be your private property rights?

22 A Whether we could effectively expect of the town  
23 and the police department to enforce trespass laws when  
24 requested.

25 Q And the trespass would be sunbathing, picnicking,

1 bathing, all those things that were in your complaint,  
2 correct?

3 A It could be.

4 Q Okay. And the trespass would depend upon the  
5 owner and what they found objectionable, correct?

6 A Yes, and our concern then was that a number of  
7 people in the middle of the beach had serious complaints  
8 and they weren't being processed by the police department  
9 efficiently and effectively.

10 Q How many parking spots are there at Goose Rocks  
11 Beach, public parking spots?

12 A My guess, I'm only guessing, somewhere around 100.

13 Q When you came in 1978, were there identified  
14 public parking spots?

15 A Yes.

16 Q How many?

17 A I wasn't aware of counting them in 1978, but I  
18 think there were -- I'm only guessing now. I think it was  
19 more like 60 or 70.

20 Q And if someone is a back lot owner and they want  
21 to access the beach and they don't have a deeded right to  
22 access the beach, how do they get on the beach?

23 A If they what?

24 Q If someone is a back lot owner and they don't have  
25 a deeded right-of-way to the beach, how do they get to the

1 beach?

2 A Walk.

3 Q How? How do they get down there? I know they  
4 walk there, but through what means of traversing, what  
5 avenue, what right-of-way? Are there public rights-of-way?

6 MR. FRAME: Objection to form.

7 Q You can answer.

8 A I believe there's -- there is at least one good  
9 public right-of-way to the public beach down there and  
10 that's the way they would access it across the town's lot.

11 Q Okay. What if -- would you have an objection to  
12 someone using your private right-of-way who didn't have a  
13 deeded right to use that?

14 A Would I have an objection?

15 Q Yes.

16 A I should think the -- would I have an objection to  
17 somebody using somebody else's right-of-way to the beach?

18 Q Back lot owners going down a private right-of-way  
19 who didn't have a deeded right to use that, is that part of  
20 what your group is trying to accomplish here is to not  
21 allow that?

22 A That hasn't come up in our group. Anything like  
23 that has not come up in discussion. I don't know what they  
24 would take on that issue, but generally, I would assume  
25 that if people are crossing over private or restricted

1 rights-of-way to get to the beach, then that is not a right  
2 they have.

3 Q What if someone in a back lot deeded the property  
4 to their daughter and then deeded it back to them with a  
5 right to use that right-of-way, would you have a problem  
6 with that?

7 A If they had the right to convey it that way, I  
8 wouldn't have a problem with it.

9 Q And where would that right to convey it come from,  
10 looking at a plan or something like that?

11 A Well, you are talking about somebody who had a  
12 deeded right-of-way across a deed -- across a restricted  
13 right-of-way and then they convey it to their daughter?

14 Q No, I'm talking about someone who has no right  
15 whatsoever to a deeded right-of-way and conveys to their  
16 daughter a right to that right-of-way and then gets it  
17 back. Do you have a problem with them doing that?

18 A Oh, yeah.

19 MR. FRAME: Let's take a break for lunch. We  
20 will take an hour and be back at 1:00. Does that work?

21 (A lunch break was taken.)

22 EXAMINATION BY ATTY. WILLING:

23 Q Mr. Almeder, I believe we have met before. My  
24 name, as I believe you know, I'm Brian Willing, the  
25 attorney for the Town of Kennebunkport.



1           A     Uh-huh.

2           Q     And in terms of the rules, obviously the same  
3 rules would apply that Attorney Frame and you discussed at  
4 the beginning of the deposition and which have been  
5 discussed at the other depositions, some of which at least  
6 you have attended.

7                     (Exhibit No. 8, Newspaper Article, marked for  
8 identification.)

9                     I'm showing you what's been marked or I have  
10 marked as Exhibit 8 and you may or may not be familiar with  
11 it. I'm sort of assuming you are vaguely familiar with it  
12 because it's a piece you wrote to the Portland Press  
13 Herald.

14          A     Yes.

15          Q     But take your time.

16          A     I'm familiar with it.

17          Q     Okay. This is an article or letter you wrote to  
18 the Portland Press Herald right around the time the lawsuit  
19 was filed; is that right?

20          A     Yes.

21          Q     And in this letter, you were, you know, amongst  
22 other things, explaining the reasons why you -- along with,  
23 again, Mr. Fleming who wrote it with you -- felt compelled  
24 to bring the lawsuit, is that fair to say?

25          A     Yes.

1 Q I won't go over every word of this, but if you can  
2 skip down to the paragraph -- sixth paragraph starting with  
3 the motivation.

4 A Yes.

5 Q It says the motivation for this legal action is  
6 basically to prevent the Town of Kennebunkport from turning  
7 the whole of Goose Rocks Beach into a public beach as a  
8 wider tourist attraction than it currently is. The action  
9 is clearly not motivated by any desire to close Goose Rocks  
10 Beach to general public recreation and especially not to  
11 residents of Kennebunkport. Did I read that correctly?

12 A Yes.

13 Q Do you still feel that way?

14 A Yes.

15 Q Have you been involved at all in the ongoing  
16 conversations between property owners, back lot,  
17 beachfront, and the town in the last six months?

18 A No. You mean these secret meetings?

19 Q Yeah, whatever you want to call them.

20 A I haven't been involved in them.

21 Q Have you seen the recent letter that went out  
22 enclosing a so-called term sheet and other documents?

23 A Yes, I have.

24 Q Have you reviewed that information?

25 A Yes, I have.

1 Q In that document -- well, do you have an opinion  
2 on that term sheet and the other documents?

3 A In what respect?

4 Q Well, I don't want to get into anything you  
5 discussed with your lawyer, so I want to make that clear,  
6 but it outlines terms under which the people at least  
7 involved are encouraging folks to try to resolve this  
8 matter.

9 A Yeah.

10 Q Do you have an opinion on the terms that are  
11 discussed in that proposal?

12 MR. LEONI: Objection. I know Brian already  
13 stated he didn't want to know about discussions with your  
14 attorney, but to the extent that your understanding or your  
15 opinion is formed as a result of discussions with your  
16 attorney, that is attorney client privileged and I'm asking  
17 you not to -- not to provide an answer.

18 Q And I don't want to know if that's the case.

19 A Okay. Then I think I will pass on that one.

20 Q Again, so you have no -- you have no opinion on  
21 that independent of your discussions with counsel?

22 A Well, I'm trying to think of my first reaction  
23 when I saw it before I talked. I don't think I have an  
24 opinion that's sufficiently well-formed.

25 Q Okay.

1           A     I know that it's under review and that we will be  
2 talking about it in the future, but --

3           Q     If you skip down this particular -- again, I'm  
4 going to call it a letter. I don't know what you would  
5 characterize it as.

6           A     It was a letter to the editor. I think they made  
7 it out as one of the main voices things, as I recall.

8           Q     Do you see the sentence that starts with the town,  
9 like two thirds of the way down the page?

10          A     The town presently refuses?

11          Q     Yeah, the town presently refuses to do anything to  
12 limit this growth undermining the residential nature of the  
13 Goose Rocks area and the easy accessibility all residents  
14 of Kennebunkport have had before this action. And then the  
15 paragraph before, such development expands and threatens  
16 the loss of existing tranquility, privacy, essential  
17 wildlife habitat, traffic, safety, by furthering serious  
18 congestion on the beach and on the nearby roads. Did I  
19 read at least that correctly?

20          A     Yes.

21          Q     Based on your review of the term sheet, is the  
22 town refusing to do anything to limit growth?

23          A     This was written then. You want to know my view  
24 of whether the town is doing anything now?

25          Q     Yes.

1           A     I haven't seen any substantive action on that  
2 issue.

3           Q     You don't think the term sheet is substantive  
4 action?

5           A     Well, it says what it would like to do, but I  
6 haven't seen any details.

7           Q     Did you write a letter relating to the term sheet  
8 to beachfront owners?

9           A     Yes.

10          Q     I guess, first of all, did you limit it solely to  
11 plaintiffs?

12          A     Yes.

13          Q     I won't get into that then. I will talk to your  
14 attorneys about it.

15                   We may come back to that in a little bit, but  
16 let's move on for now. I'm going to show you --

17                   MR. WILLING: Let's mark this.

18                   (Exhibit No. 9, Map of Goose Rocks Beach, marked for  
19 identification.)

20          Q     I'm going to show you a map of Goose Rocks Beach  
21 that has been marked as Exhibit 9. And I will attempt to  
22 articulate in the same way I did in Barbara Rencurrel's  
23 deposition that I'm not showing you this or asking you  
24 about it in the sense that you need to endorse the lines  
25 drawn or the opinions, you know, articulated by Maine

1 Boundary Consultants on behalf of the Town of  
2 Kennebunkport. I'm simply showing this to you as a tool to  
3 look at Goose Rocks Beach and locations on it. Is that  
4 fair?

5 A Yes.

6 Q All right. And you understand I'm not asking you  
7 to endorse any opinions of Maine Boundary Consultants?

8 A Yes.

9 Q Okay. Could you -- again, simply so we can get  
10 acclimated and to the extent you can -- put an Almeder --  
11 an A in the approximate location of your beachfront  
12 property?

13 A I'm having trouble counting these lots.

14 MR. LEONI: Take your time if you need to.

15 A Is this the end house on the beach?

16 Q Yes, at the far left-hand side of this picture is  
17 the Batson River.

18 A Here.

19 Q And I believe in yellow is at least Mr. Yarumian's  
20 understanding of the location of you, your property, the  
21 Coughlin property and the Sherman property, I believe.

22 A I can't -- I'm sorry, I'm not being helpful, but I  
23 can't find my house or Sherman or -- I can't find it here.

24 Q Is the Coughlin property immediately --

25 A If you can point that out to me, I would be happy

1 to --

2 Q Well, let me ask you this. Is the Coughlin  
3 property immediately to your east?

4 A Yes.

5 Q And is the Sherman property two properties down to  
6 the west?

7 A Yes.

8 Q Well, I believe that amongst the three highlighted  
9 in yellow on the far end of the beach, yours would be the  
10 middle of those three.

11 A Okay. If you tell me that that's the Coughlins  
12 and that's Shermans, then that would be my house right  
13 there.

14 Q Can you put an A there?

15 A Put a what?

16 Q A for Almeder.

17 A Okay.

18 Q And again, approximately where is the rental  
19 property? And if you can find it, you can put an R.

20 MR. LEONI: Is that what we are referring to as  
21 the back lot?

22 MR. WILLING: Gregg was referring to it as the  
23 back lot. The property at 192 or something --

24 THE WITNESS: 192.

25 MR. WILLING: -- Kings Highway.

1 A Well, I will have to find the Dyke Road.

2 Q Dyke Road is right in the dead center of this.

3 A Is this it right here?

4 Q Yes. And again, I'm not trying to be difficult.

5 I have no way of knowing where that property is.

6 A It is --

7 Q You know what might be easier --

8 MR. WILLING: Can we mark another one?

9 (Exhibit No. 10, Tax Map, marked for identification.)

10 Q I'm going to show you a tax map that is at least  
11 slightly closer up. I don't know if that will make it  
12 easier to find things.

13 A This is hard for me to read.

14 Q That's okay.

15 A That doesn't help either much. This is Dyke Road,  
16 right?

17 Q Yes, Dyke Road would be right in the dead center.  
18 You are now looking at a tax map. It is map number 34 of  
19 the Town of Kennebunkport assessor maps and we have  
20 marked it as Exhibit 10. Do you have any idea what tax map  
21 block and lot number your properties are?

22 A Not right now.

23 Q No.

24 A You are looking for the rental property?

25 Q Well, if possible, I would like to mark both on



1 one map. I don't really care which map it is.

2 A Okay. See, there are no names on any of these  
3 lots. If you could show me the Coughlin house here --

4 Q Well, at the end of the day, if you can't do it, I  
5 don't want to be telling you where things are. I was  
6 hoping you could help me identify --

7 A I don't find these maps helpful because if you  
8 told me that this was -- I could say, okay, I live here  
9 relative to that. If you say that that's the Coughlin  
10 house, we are okay with that, but if you come back down the  
11 beach --

12 Q Describe for me where the rental property is in  
13 your words.

14 A If you take a right off Dyke Road down to Kings  
15 Highway, it will be the second house on the right.

16 Q Okay. So it's actually, you know, a mile or more  
17 from your other house?

18 A It is not a mile or more. It is more like 7/10 of  
19 a mile.

20 Q Okay. If I am -- so again, coming down Dyke Road  
21 towards the beach, I would need to take a right to go down  
22 towards the west end?

23 A Right.

24 Q You are saying it's the second house on the right?

25 A Yeah, and it's down about maybe 300 yards.

1 Q Is that before Norwood Lane, before I get to  
2 Norwood Lane?

3 A Yes.

4 Q Okay. And the primary access for that particular  
5 lot to the beach -- strike that.

6 The most convenient access from that rental  
7 property to get to the beach, putting aside whether there  
8 are rights to use the access or not, would be what path?

9 A The Dyke Road -- the Dyke Road access -- the Dyke  
10 Road access would be regardless of what was on either side  
11 of it.

12 Q You talked about at least a conversation you had  
13 with one tenant -- I think you told this to Attorney  
14 Frame -- where you said take a -- go -- you said jog two  
15 poles or something?

16 A You can see the entrance from the house from the  
17 front lawn, it is the Dyke Road entrance.

18 Q That's the Dyke Road entrance?

19 A Yeah, you can see it. It is down about three or  
20 four telephone or electric wire poles.

21 Q So when you were talking about your conversation,  
22 that's what you meant?

23 A Yeah.

24 Q You were describing to that particular tenant how  
25 to get there, but that's the Dyke Road entrance to the

1 beach?

2 A Yes.

3 Q Okay. In a sense, that's what I was trying to  
4 understand is where it was and where they would go.

5 A Okay.

6 Q Do you have any knowledge of, you know, once your  
7 tenant goes down the Dyke Road, where they would recreate  
8 on the beach?

9 A I don't know. When they go down, they could go  
10 either way and recreate, but I don't know where they go.

11 Q Okay. And you never personally at least told them  
12 they needed to go down to the public beach so-called?

13 A I said they had two options. One to go to the  
14 public beach so-called down there, that's a little bit  
15 further, but this is access to the ocean.

16 Q But you told them they had to go to the public  
17 beach?

18 A I didn't tell them anything. I told -- my rental  
19 agent, Maria Junker, would tell them everything and I  
20 didn't feel I had to tell them anything basically because  
21 we never handled the rental.

22 Q Got it.

23 A She handled it and that's what she was telling  
24 them, but I did tell one person there is an access path to  
25 the ocean down here, and if you walk the beach a little

1 further, you will get up to the public beach.

2 Q Do you have -- I listened to your answer, so I'm  
3 curious, do you know what Maria Junker tells the tenants  
4 about public, private, their rights to use the beach or not  
5 use the beach?

6 A I don't know what she tells them.

7 Q You don't know if she tells them things orally or  
8 if she puts something in writing or anything?

9 A I don't know that she puts anything in writing,  
10 but my guess is if they say, well, how do I get to the  
11 beach, she will tell them what she thinks or believes.

12 Q But you don't know exactly what she says?

13 A No, I don't.

14 Q For you or for any other rental property that she  
15 handles?

16 A Right.

17 Q She handles a lot of the rentals on the beach?

18 A She does, and if there are things that the owners  
19 don't want done, like don't use the fireplace or something  
20 like that, she will tell them that, but I don't know what  
21 she is telling them about the use of the beach.

22 BY MR. WILLING:

23 MR. WILLING: Can we mark these through 20?

24 (Exhibit No. 11, Quitclaim Deed, marked for  
25 identification.)

1 (Exhibit No. 12, Quitclaim Deed, marked for  
2 identification.)

3 (Exhibit No. 13, Quitclaim Deed, marked for  
4 identification.)

5 (Exhibit No. 14, Letter, 7/25/07, marked for  
6 identification.)

7 (Exhibit No. 15, Letter, 8/17/07, marked for  
8 identification.)

9 (Exhibit No. 16, Plan of Land, marked for  
10 identification.)

11 (Exhibit No. 17, Quitclaim Deed, marked for  
12 identification.)

13 (Exhibit No. 18, Quitclaim Deed, marked for  
14 identification.)

15 (Exhibit No. 19, Statutory Short Form, marked for  
16 identification.)

17 (Exhibit No. 20, Abstract of the Will of Helen M.  
18 Towne, marked for identification.)

19 Q All set?

20 A Yep.

21 Q Mr. Almeder, I have shown you Exhibits 11 through  
22 20. Have you at least had a chance to at least very  
23 briefly look at each one of them?

24 A Yes.

25 Q Do you recognize those documents?

1           A       The one I didn't recognize is the abstract of the  
2 will.

3           Q       What I have shown you is a series of deeds that I  
4 believe are to your property going back in time, some  
5 letters of Attorney Bergen, and then the last couple  
6 Exhibits, 19 and 20, particularly 20 is a will of Helen  
7 Towne.

8           A       Yeah, that's the one.

9           Q       You have never seen that one before?

10          A       I have never seen that before.

11          Q       Helen Towne though is the prior owner of the  
12 property that you now own?

13          A       Yes.

14          Q       Okay. Looking at the first one, No. 11, is that  
15 the current deed to your property?

16          A       Is this the current deed?

17          Q       Yes, June 5, 2009.

18          A       Yes, back, that one.

19          Q       Yes.

20          A       Yes, that's the current deed.

21          Q       No. 12, what is this particular document?

22          A       This was putting the -- this is the deed for the  
23 property put into the trust, the Almeder Living Trust.

24          Q       Do you have a distinction or an understanding of  
25 the difference between 11 and 12? And if the answer is

1 no --

2 A On the deed itself or the description?

3 Q Is the difference the description? What is the  
4 difference between these two deeds other than the date?

5 A Well, I think they have different purposes.

6 Q That's what I guess I'm asking you. What is the  
7 purpose of each of these?

8 A The purpose is to put the property in trust in 12.  
9 And 11, I think it was equally -- hold on.

10 Q If you don't --

11 A They were dated differently.

12 Q That's about as much as I figured out from a quick  
13 review.

14 A They were dated differently, but I think one had  
15 to do with recording -- the necessity for recording it.  
16 Otherwise, I don't see any -- I can't answer your question.

17 Q No problem. We will move on. How about  
18 Exhibit 13 which appears to be dated the 28th of October,  
19 2008, if you know?

20 A I still think it has -- I can't say what this is.  
21 We signed it and I believe it was to put this deed as so  
22 described --

23 Q Into the trust?

24 A As part of the trust, yeah.

25 Q Let me take a shot at summarizing your testimony.

1 I'm going to attempt to do it as cleanly and neatly as  
2 possible. Your attorney can correct it if I screw it up.

3 A All right.

4 Q I think you essentially testified in response to  
5 Attorney Frame's questions that around 2007, there was a  
6 transaction involving your daughter Lisa --

7 A Yes.

8 Q -- in which the deed description, particularly the  
9 southerly description was changed?

10 A Clarified.

11 Q Sorry. Didn't -- subsequent to that, I think you  
12 testified to him that you and your wife put the property  
13 into trust; is that correct?

14 A Subsequent to that, yes.

15 Q You have gone over with Attorney Frame, I think,  
16 the two deeds to and from your daughter? Yes? You are  
17 nodding your head.

18 A Yes.

19 Q And those have been marked as exhibits in this  
20 deposition?

21 A Yes.

22 Q And I have shown you a series of deeds subsequent  
23 to that and I think what you are saying is somewhere in  
24 there, you accomplished the putting of the property in the  
25 trust?



1 A Yes.

2 Q Let's move on.

3 A Well done.

4 Q I'm showing you Exhibits 14 and 15 which -- well,  
5 you have them in front of you. Are you familiar with those  
6 letters from Attorney Bergen?

7 A Yes, I am.

8 Q The first of the two exhibits is a letter dated  
9 July 5th, 2007. Do you recall that letter?

10 A Yes.

11 Q And this is Attorney Bergen's opinion to you  
12 concerning the -- the boundary -- southerly boundary of  
13 your property and specifically the term sea wall and what  
14 that means?

15 A Yes.

16 Q And in the -- in Exhibit 15, the next one, I  
17 believe this letter is doing a couple things, but you tell  
18 me if you agree. It is sending you I believe the deeds  
19 that you -- the deeds that involve -- were involved in the  
20 deed exchange with your daughter?

21 A Yes, the deeds they prepared.

22 Q Right. But in this letter, Attorney Bergen, is it  
23 fair to say, raises a concern about the 1921 Emmons heirs  
24 plan and the term beach?

25 A Yes.

1 Q And now if you could refer to Exhibit 16, is that  
2 the -- is that the plan -- not a particularly great  
3 photocopy of it, but is that the plan that he's referring  
4 to?

5 A Yes.

6 Q And in this plan, Exhibit 16, the southerly  
7 boundary, the southerly boundary or seaward boundary is  
8 not by reference to the plan sea wall, but rather it  
9 appears to be beach, is that fair?

10 A Yes, by this plan.

11 Q By this plan. There were earlier deeds that  
12 predate this particular plan --

13 A Yes.

14 Q -- that reference a term sea wall?

15 A Yes.

16 Q Could you take a look at Exhibit 17, 18 and 19 and  
17 just explain those to me?

18 A 17, 18 and 19?

19 Q Yes, let's start with 17 and 18.

20 A I'm reading it. Yes, this is starting to come  
21 clear. We had to -- since we were in -- we had a will  
22 drawn up in Georgia and the attorney was -- who was  
23 Patterson in town wanted us to rewrite the deeds so that we  
24 would be tenants in common or something like that because  
25 it was a bypass trust and I think this is the deeding that

1 goes with it.

2 Q Okay. It does say tenant in common.

3 A Yeah, something like that, yeah. You had to do  
4 that in order for the bypass trust to work.

5 Q Okay.

6 A That's my impression right now.

7 Q It appears that this occurred in 1994, correct?

8 A Yes.

9 Q And the description of your property in this deed  
10 is by reference to the plan -- 1921 plan that we have  
11 marked here as Exhibit 16, right?

12 A Yes.

13 Q Is 19 the original deed from -- to you and your  
14 wife in 1978?

15 A Yes.

16 Q And that again references the 1921 plan that's  
17 been marked here as Exhibit 16, right?

18 A Yes.

19 Q And then 20 you said you had never seen before; is  
20 that correct?

21 A I have never seen that before.

22 Q But you did acknowledge that Ms. Towne was a prior  
23 owner?

24 A Yes.

25 MR. WILLING: Okay. Off the record.

1 (Discussion off the record.)

2 (Exhibit No. 21, Trustee's Deed, marked for  
3 identification.)

4 Q Go ahead and take your time. Have you had a  
5 chance to look at Exhibit 21?

6 A Yes.

7 Q Do you recognize it?

8 A No.

9 Q If I were to ask you whether this is the deed to  
10 the other property, what you and Gregg I think decided to  
11 call the back lot property, would that ring a bell?

12 A Yes, that does ring a bell. This would be the  
13 deed to the 192 property and I think this had to be  
14 transferred into the trust too.

15 Q Right. And it does say, does it not, on the first  
16 page, that they are granting it to you and your wife as  
17 trustees of the trust?

18 A Yes.

19 Q Yep. And this document at least appears to be  
20 dated the 5th of June, 2009?

21 A Yes.

22 Q Is that about the timeframe you acquired the back  
23 lot property?

24 A Close. I think you had to put it into trust after  
25 it was purchased, but it might be -- he might have done

1 that with the purchase, but I'm not sure.

2 Q I think you already testified there's no easement  
3 to the beach benefiting the back lot property, right?

4 A Not to my knowledge.

5 Q Okay. And I don't see anything in the deed, do  
6 you?

7 A No.

8 Q Okay. Did you ever rent any property at Goose  
9 Rocks Beach? And by that, I mean you personally renting  
10 that property, not you renting out your own property. Did  
11 you ever go, stay at Goose Rocks Beach as a renter, not an  
12 owner?

13 A No.

14 Q I would like to talk to you or ask you some  
15 questions about your own use of the beach and your family.

16 A Sure.

17 Q Do you or your family ever swim the beach, Goose  
18 Rocks Beach?

19 A Swim in the ocean?

20 Q Yes.

21 A Yes.

22 Q Where do you swim?

23 A Right in front of the house.

24 Q Do you and your family ever go and swim --

25 A In the river?

1 Q Well, anywhere else other than immediately in  
2 front of your property.

3 A Yes.

4 Q Do you do so, you know, in other areas of the  
5 beach?

6 A Just one.

7 Q Well, tell me -- explain.

8 A Well, I live near the Batson River and there's --  
9 when the tide is high, there's a river that comes out the  
10 back. We sometimes go and jump into that. It is less than  
11 a quarter of a mile from the house, but it's warmer.

12 Q Got it. But you never -- other than that, nobody  
13 in your family ever goes outside of your boundary lines?

14 A For swimming?

15 Q Yes.

16 A I don't think -- to answer your question, I don't  
17 think anybody ever went out of their way to swim in any of  
18 those places, but if they did -- well, never mind. That's  
19 it.

20 Q Okay.

21 A Mostly it was right in front of the house because  
22 it was --

23 Q Let me ask this a different way. I think what I  
24 hear you saying is you and your family to the extent you  
25 went swimming other than going swimming in the river would

1 generally swim in front of the house, right?

2 A Generally.

3 Q To the extent that you might have gone east or  
4 west in front of somebody else's property slightly, it  
5 would have only been slightly, is that fair?

6 A That's fair actually, yeah, fair, yes.

7 Q You didn't walk 100 yards down the beach and then  
8 go swimming?

9 A I don't ever recall going swimming down in there.

10 Q How about your children, did you own -- were they  
11 kids at any point that you owned the beach -- owned the  
12 property at the beach?

13 MR. LEONI: Objection.

14 A Were they children at the time?

15 Q Yeah, teenagers.

16 A Yes.

17 Q Did they ever go and use other parts of Goose  
18 Rocks Beach for swimming?

19 A I don't know. I don't think so.

20 Q Did they have friends at the beach?

21 A Yes.

22 Q Did they ever visit the friends?

23 A I think so.

24 Q Would they use the beach to go and meet those  
25 friends or would they walk on --

1           A       Well, they would mostly meet in front of our house  
2 and they would swim from there I think typically. That's  
3 what I remember. That was a number of years ago.

4           Q       I understand. I think I heard you say that your  
5 children were in their 40s now; is that right?

6           A       That's true.

7           Q       But they might have gone to meet their friends at  
8 other parts of Goose Rocks Beach, is that fair to say?

9           A       Yeah, they might have, but I can't recall any of  
10 them swimming there, but sometimes they were out at night.  
11 I don't know what they --

12          Q       I'm not going to probe in that area.

13                    Did you or any member of your family ever go  
14 fishing at the beach?

15          A       Yes.

16          Q       Who?

17          A       Me.

18          Q       Anybody else?

19          A       I took a friend of my daughter fishing one day  
20 right out front.

21          Q       Okay. But you would do that in front of your  
22 house between your property lines essentially?

23          A       Yeah.

24          Q       Okay. How about sunbathing, sitting sunbathing,  
25 did you and your family members do that?



1 A Yes.

2 Q Where would you do that?

3 A Right in front of the house.

4 Q Would you ever go east or west of your property to  
5 do that?

6 A Occasionally to talk with the neighbors in a  
7 little circle or something like that, but not generally, we  
8 would just sit right out in front of the house.

9 Q I think I can guess the answer to the next one,  
10 but I'm going to ask it anyway. Kite flying, ever do any  
11 kite flying?

12 A No.

13 Q Family members ever do any kite flying?

14 A No.

15 Q Is that because of the birds?

16 A Yes.

17 Q Did you or your family members ever go kite flying  
18 somewhere else on the beach in light of the issue with the  
19 birds?

20 A No, as a matter of fact, we are not kite fliers.

21 Q Okay. How about sandcastles, did your kids ever  
22 build sandcastles at the beach?

23 A I wouldn't say it was building sandcastles, but  
24 they were involved in sand kind of activities.

25 Q Where would they do that?

1 A Right in front of the house.

2 Q Did they ever go and do that with friends or do it  
3 somewhere else?

4 A Not that I know of.

5 Q How about -- I know you said that you jog the  
6 beach?

7 A Yes.

8 Q So I won't get into that, I think it's been  
9 covered, but what about walking?

10 A Yes.

11 Q Separate and apart from the jogging that you  
12 already talked about?

13 A Sometimes I walk the beach.

14 Q How about your family members?

15 A My wife walks the beach a lot and my daughters  
16 too, yes.

17 Q And --

18 A Not a lot, but I mean they might want to walk for  
19 the day rather than run.

20 Q Attorney Frame, again, in fair detail went over  
21 with you the whole issue of permission --

22 A Yes.

23 Q -- when you go jogging.

24 A Yes.

25 Q When your wife or daughter walk the beach, do they

1 get permission from the upland owners whose property they  
2 are walking across?

3 A Did they solicit permission to do that, no.

4 Q Anybody ever do dog walking in your family?

5 A When we first got there many years ago, yes.

6 Q Did you have a dog many years ago?

7 A Yeah, we had a couple Siberians, they didn't last  
8 long, but after that, we didn't have any more dogs.

9 Q But you walked the dog on the beach many, many  
10 years ago?

11 A Many, many years ago.

12 Q Did you get permission from the upland owners when  
13 you did that?

14 A Never occurred to me.

15 Q How about horseback riding, do any horseback  
16 riding or your family?

17 A No.

18 Q Any specific games that you or your family would  
19 play at the beach?

20 A Sometimes we played in the intertidal zone way  
21 back when, softball games or volleyball games when we had  
22 visitors.

23 Q Would that be just you and your --

24 A Relatives.

25 Q -- invitees?

1           A     Yeah, yeah.

2           Q     Nobody else?

3           A     Mostly, yeah, mostly.

4           Q     You ever observe -- you've been there since '78,  
5 right?

6           A     Yes.

7           Q     All right. Ever observe other people playing  
8 softball games in the general vicinity in front of your  
9 house? And now I'm talking about maybe getting into the  
10 Coughlin property a little bit or the other properties  
11 adjacent, but do you ever see softball games going on out  
12 there at the west end of the beach?

13          A     Not lately. I think I may have seen a couple over  
14 the years, but it takes a fairly large group of people, but  
15 I --

16          Q     Maybe a long time ago?

17          A     Yeah, a long time ago, maybe.

18          Q     On that subject, when the tide goes low at the  
19 west end of the beach, is it fair to say there's a lot more  
20 wet sand than in other areas of the beach on the west end?

21          A     Yes.

22          Q     So, you know, in that sense, you and the other  
23 owners at the west end of the beach generally speaking have  
24 a -- where you claim ownership to the low water mark, you  
25 generally own a lot more intertidal property than other

1 owners of the beach?

2 A I think there's this 100 rods, so if there is more  
3 land there than 100 rods, we only own up to 100 rods.

4 Q Understood, and I have heard that too, but would  
5 it be fair to say that most -- on most parts of Goose Rocks  
6 Beach, the beachfront property owner, to the extent that he  
7 or she owns to the low water mark or the 100 rods, it is  
8 going to be the low water mark because there aren't  
9 100 rods?

10 A Right.

11 Q Whereas on the west end, you might in fact have  
12 100 rods at low tide?

13 A Oh, yeah. It is quite a ways out.

14 Q At low tide?

15 A Yeah.

16 Q I think you already answered this to Gregg, so I  
17 apologize if I'm being redundant, but if you were denied  
18 permission to jog by a beachfront owner or to walk when you  
19 go walking along the beach, what would you do?

20 MR. LEONI: Objection.

21 A I already answered this question. I would leave  
22 the beach. I would not across over his property or her  
23 property. I might ask them why, you know, or something  
24 like that, but if he was insistent, I would leave.

25 Q There are some beachfront owners -- are you aware

1 that there are some beachfront owners in this case who are  
2 defendants?

3 A Yes.

4 Q Just as an aside, have you considered the  
5 possibility that --

6 A Yeah.

7 Q -- that could be one outcome of this lawsuit even  
8 if you prevail?

9 A That --

10 Q Let me step back and ask a different question.

11 A Yeah.

12 Q Is it fair to say this lawsuit has created a lot  
13 of ill feelings down at the beach, whoever is to blame for  
14 it, it has created a lot of ill feelings down at the beach?

15 A A lot?

16 MR. LEONI: Objection.

17 Q You can answer. If you disagree with my --

18 A There's a certain amount of stress on the beach,  
19 and yes, I think it is fair to say that there's a good deal  
20 of stress on both sides of the issue.

21 Q And I think you went over some of your  
22 interrogatory answers with Attorney Frame. One of them,  
23 you speculated that it would probably be not a smart move  
24 for someone to do that because of what -- the potential  
25 response --

1 A Yeah.

2 Q -- that they would get?

3 A Yeah.

4 Q But it's one at least potential outcome of this  
5 lawsuit that sides are chosen and the beach is never the  
6 same for anybody?

7 A Potential, there is some likelihood of it, but  
8 whether that's sufficiently high to worry about, I don't  
9 know.

10 Q But you are aware that there are defendant  
11 beachfront owners?

12 A Yes.

13 Q Presumably if they prevail -- if you prevail, they  
14 won't be pleased?

15 MR. LEONI: Objection.

16 A I don't know that. I don't know. I know there  
17 are some people who are defendants, but --

18 Q When you --

19 A Can I go back to that?

20 Q If you need to clarify anything, you can go ahead  
21 and clarify.

22 A Yeah, there are defendants who would lose nothing  
23 if we prevailed.

24 Q Who are those?

25 A Those would be people who still maintain their

1 right to do what they want with their property, nobody is  
2 taking it away from them.

3 Q Right. But -- well, if -- is it fair to say -- I  
4 mean I know you are not a lawyer.

5 A I'm not a lawyer, that's for sure.

6 Q Is it fair to say -- I mean you already testified,  
7 have you not, that if a beachfront owner tells you you  
8 can't walk in front of his house, recreate in front of his  
9 house, do anything in front of his house --

10 A Uh-huh.

11 Q -- then you are acknowledging they have the right  
12 to say that?

13 A Yes, yes.

14 MR. LEONI: Just wait until he finishes.

15 THE WITNESS: What?

16 MR. LEONI: You are just going to have to wait  
17 until he finishes the full question.

18 Q That's okay. I have done it a few times too. Not  
19 to worry.

20 To the extent that that beachfront owner thinks  
21 that the beach is not private, that it is generally open to  
22 the public, if you prevail, that beachfront owner would  
23 lose their right to recreate on the beach wherever they  
24 choose unless they have permission, would they not?

25 MR. LEONI: Objection.



1 Q They would maintain the right to recreate in front  
2 of their own house, but moving left or right, they would  
3 have to get permission, east or west, right?

4 A Yes.

5 Q Or have tacit permission?

6 A Or have tacit permission, yes.

7 Q Are you on a committee for the Town of  
8 Kennebunkport, the Growth Planning Committee that deals  
9 with Goose Rocks Beach?

10 A Yes.

11 Q How long have you been on that committee?

12 A I think it's over four years now.

13 Q How did that get started?

14 A I just applied for a position on it.

15 Q Was it preexisting?

16 A The committee?

17 Q Yes.

18 A Yes, it was already in existence.

19 Q Who else is on the committee currently?

20 A Currently, the chairman is Jamie Howitz, John  
21 Daggett, there's Patricia Clemati, a new person, and there  
22 is Charlie Smith, and we have in attendance at all times  
23 the town planner, Warner Gilling. And there is another  
24 fellow, Dan -- I think it's McGuire who is -- but that's  
25 the size of it.

1 Q And does that committee discuss and deal with  
2 issues concerning Goose Rocks Beach?

3 A Well, of late, yes.

4 Q In what way? Tell me. Of late.

5 A There are sections -- when they talk about public  
6 and private facilities and recreational areas and that sort  
7 of thing, there are sections that have read apart from  
8 walking, there are recreational private areas, they are not  
9 open for recreation, there has been considerable --

10 Q Are you talking about the Comprehensive Plan right  
11 now?

12 A Yes.

13 Q Okay. Go ahead.

14 A And there's extensive discussion on whether  
15 they -- they were eliminated, those kinds of claims, and  
16 they were voted out by the people, the town, after there  
17 was a motion made to eliminate or rewrite those things. I  
18 don't know if that helps you.

19 (Discussion off the record.)

20 Q Amy knows a heck of a lot more about the town  
21 committees than I do, so it is -- she's just trying to help  
22 me.

23 Does the GPC or Growth Planning Committee propose  
24 changes to the Comprehensive Plan, is that what you are  
25 kind of talking about?

1           A       Yes, they propose changes to the Comprehensive  
2 Plan.

3           Q       Okay.

4           A       They vote them up and down and then they recommend  
5 them to the selectmen who will either take them on for  
6 public warrant or for recommending to the voters or not as  
7 they see fit.

8           Q       And I will confess to you, I didn't entirely  
9 follow you, but maybe I can figure it out. It might be me  
10 that's the problem, not you. It sounds like you were  
11 talking about some changes to the Comprehensive Plan that  
12 the committee has recommended in recent years; is that  
13 right?

14          A       This year.

15          Q       This year?

16          A       The change was made and forwarded and adopted.

17          Q       By the whole town?

18          A       The whole town, yes.

19          Q       And those related to Goose Rocks Beach?

20          A       Yes, they did, because in the previous -- in the  
21 previous Comprehensive Plan, those were in there to  
22 demarcate the private from the public areas.

23          Q       Yes.

24          A       Those demarcations are not there now by public  
25 vote.

1 Q Okay. So I take it this is something you must  
2 have opposed?

3 A I did.

4 Q Okay. Is there -- moving on from that, is  
5 there -- does the Growth Planning Committee deal with  
6 horseback riding ordinances or anything or is that a  
7 different committee?

8 A They can deal with any ordinance that comes down.  
9 In fact, according to the town, they obliged to pass a  
10 judgment on whether or not any proposed ordinance or  
11 amendment is consistent with the Comprehensive Plan as it  
12 exists.

13 Q Did you recently take up a horseback riding  
14 ordinance or am I --

15 A As little as two days ago.

16 Q Okay.

17 A Oh, it's been on the table for quite some time,  
18 yeah.

19 Q Okay. Is that something you support or are  
20 opposed to?

21 A I don't say anything about it. I actually like  
22 the horses on the beach, but I don't say anything by way of  
23 opposition to it. They don't get in the way of birds.  
24 Horses don't ride in the soft sand, but there are still  
25 safety and -- safety issues and health issues involved, so

1 it looks like they are going to -- the town wants to pass  
2 an ordinance governing use of them on the beach, but for  
3 our purposes, I just don't say anything about it.

4 Q You don't have a problem with it?

5 A I don't have any problem with it. A lot of other  
6 people do.

7 Q Is Deb Kinney on that committee?

8 A Yeah, in fact, she's -- she's one of the people  
9 who live in the middle of the beach where they have very  
10 little sand and the town -- they crowd up fairly quickly in  
11 the summer and there are people who are frightened of  
12 horses. And there are dogs that try to run them down and  
13 some horses are skittish and people can't run them well.  
14 They are more concerned in the middle of the beach because  
15 they have much less beach than anywhere else.

16 Q I'm somewhat jumping around here.

17 A That's all right.

18 Q I don't know much about piping, plovers and the  
19 other protected birds, I know you do, or you know a heck of  
20 a lot more than me. Are the nests generally in the dry  
21 sand?

22 A Yes, they are in the dry sand and -- yes.

23 Q So thus, I think that's why you -- with respect to  
24 the horses, which like jogging, you tend to ride the horse  
25 in the wet sand like you jog in the wet sand?

1           A       The horseback riders don't want to ride the horses  
2 in the dry sand, that's not good for the horses.

3           Q       I think you said you were on the GPC the last four  
4 years; is that right?

5           A       Seems to me it's been four years anyway.

6           Q       Have you overlapped at all with Barbara Rencurrel?

7           A       No.

8           Q       Was she on the GPC, do you know?

9           A       At one time, I think she was on, way back, 1996 or  
10 something, yes, but otherwise, she was a selectman and  
11 chairman of the Board of Selectmen, several years.

12          Q       In this action, we have received -- and I'm going  
13 to go over a couple pieces -- well, why don't we go over  
14 them first and then I will ask you a question. I'm getting  
15 ahead of myself.

16                   MR. WILLING: What number are we at?

17                   THE REPORTER: 22.

18                   (Exhibit No. 22, E-mail, 8/26/08, marked for  
19 identification.)

20                   (Exhibit No. 23, E-mail, 9/3/08, marked for  
21 identification.)

22                   (Exhibit No. 24, Letter, 10/31/08, marked for  
23 identification.)

24          Q       Looking at -- I have shown you three bits of  
25 correspondence that I think have been produced in this

1 case. I can't tell you. It may be that some of these were  
2 produced actually by the O'Connors, not by you, Bob.

3 A Okay.

4 Q But the first one, Exhibit 22, appears to be  
5 communication between the O'Connors, but forwarding an  
6 e-mail that you had sent out --

7 A Yes.

8 Q -- in August of 2008?

9 A Yes.

10 Q Next one is similar except it is forwarding your  
11 e-mail from September 2nd, 2008, that's Exhibit 23?

12 A Yes.

13 Q And Exhibit 24 I'm confident you are familiar  
14 with. That's the letter from the town to Mrs. Fleming.

15 A Yes.

16 Q Are you -- do you remember all of these?

17 A Yes.

18 Q Okay. And I'm not asking you about whatever the  
19 O'Connors are saying to each other. I'm just talking about  
20 the e-mails that they are forwarding from you. You  
21 recognize those e-mails?

22 A Yes.

23 Q Prior to the town's letter to Mrs. Fleming, did  
24 you -- did you meet with Attorney Thaxter?

25 A No.

1 Q But you invited him to come down and talk with  
2 you?

3 A Yes, on the phone.

4 Q Okay.

5 A I never met him.

6 Q You never met him. And is that for the reasons  
7 that are outlined in Exhibit 23, the second e-mail,  
8 something to do with the fire station?

9 A No, that didn't precipitate any action. It was --  
10 it was the letter to Mrs. Fleming. But no, nothing that  
11 occurred on that -- about that meeting in the fire station  
12 prompted any consideration.

13 Q So I -- just so I understand this, your testimony  
14 is -- and maybe I'm jumping the gun. I believe your  
15 opinion is -- and tell me if I'm wrong -- is that the  
16 letter from the town in October, the one I just handed to  
17 you, Exhibit 24, precipitated this lawsuit?

18 A Very much so.

19 Q Okay. And I just want to -- I think it's clear  
20 from your answer, but bear with me. You are saying that  
21 notwithstanding the fact that in 2007, you sent out the  
22 survey to all beachfront owners talking about all the  
23 issues down at Goose Rocks Beach, right?

24 A Yes.

25 Q And you are saying that even though you're



1 communicating with Attorney Thaxter to arrange a meeting  
2 just weeks before -- you know, eight weeks, nine weeks  
3 before the letter from the town, right?

4 A Right.

5 Q And you are saying it's the town's letter that  
6 caused this lawsuit despite all of these events --

7 A Yes.

8 Q -- that you are involved with that precede it?

9 A Yes.

10 Q The sign Mrs. Fleming put up, did you -- did you  
11 and the Flemings consult about that at all before they put  
12 up that sign?

13 A No. Oh, I sent a letter to everybody. As a  
14 result of the meeting being canceled at the fire station  
15 and as a result of unfruitful conversations with the town  
16 on two separate occasions, we just gave up and I sent a  
17 letter to everybody saying please feel free to, A, check on  
18 your deeds, and B, post your own property. We thought we  
19 had -- before this letter came from Ms. Fleming, we found  
20 ourselves ineffective in doing anything.

21 Q What conversations did you have with the town  
22 again prior to October 31st, 2008, could you describe those  
23 conversations?

24 A Well, yes, we did a survey and we analyzed the  
25 survey and a number of people -- we actually got something

1 like 76 people of beachfront owners and 98 percent of them  
2 wanted clear demarcations between public and private. And  
3 we asked how they felt about trespassing and that sort of  
4 thing, notifying people how to use the beach. They agreed  
5 very strongly with that, so as a result of that, we sent a  
6 letter to the town. This is the whole committee. Any time  
7 any of these letters went out, it was the whole committee  
8 that had to agree to it. We sent a letter to the town  
9 asking for a meeting. And that was -- I think it was in  
10 November -- I'm not certain -- November, 2008.

11 Q Can I interrupt you one second? Was it before or  
12 after the letter to Janice Fleming, if you know?

13 A Before, certainly before.

14 Q The reason I got confused is you said November,  
15 2008, and this letter was October 31st, 2008.

16 A Yeah, okay, so let me see. November, 2007.

17 Q Okay. Go ahead.

18 A We had our first meeting with the chief of police  
19 and the chairman of the selectmen. There were three of us  
20 and the town manager. And we talked for about an  
21 hour-and-a-half about the issues.

22 Q Was that Larry Mead or --

23 A Yes, Larry Mead, and we talked about would they do  
24 these things since everybody wanted it and could you please  
25 help us establish these signs. And they said no, said they

1 didn't see any need for that. Then we -- but we agreed to  
2 have another meeting and we did meet I think -- it was  
3 after Christmas, might have been sometime in January, and  
4 we had another meeting, you know. And certain things came  
5 out of it, but it was still an unsuccessful meeting. We  
6 still didn't get any cooperation from the town. At that  
7 point, I did send a note, as I recall, off saying, look,  
8 the town is not going to be helpful and the only thing you  
9 can do to protect your property rights would be to post  
10 right now and we have nothing else to offer, period.

11 Q Okay. The meetings you had with the town at  
12 least -- I think you talked about at least two, I think I  
13 heard?

14 A Yes.

15 Q Was Attorney Tchao at any of those meetings?

16 A No.

17 Q You did eventually have a meeting involving  
18 Attorney Tchao; is that true?

19 A Yes, we did.

20 Q I just wanted to make sure that we weren't talking  
21 about the same series of meetings.

22 A No, these were two meetings in the town offices.  
23 There were four or five of us.

24 Q Okay. Go ahead, if you want to say anymore.

25 A No.

1 Q Okay. There were meetings, at least one of which  
2 involved Attorney Tchao in the months immediately prior to  
3 the lawsuit being filed; is that true?

4 A Yes.

5 Q Okay. But those are separate from the ones you  
6 were just talking about?

7 A Yes.

8 Q Okay. The surveys -- you said you got 70  
9 something survey responses. I don't have a copy of any of  
10 those. Who keeps those?

11 A I have copies of them all.

12 MR. WILLING: I guess I won't go into a diatribe,  
13 but on the record, I would like copies of those survey  
14 responses.

15 Q For the record, those would include responses of  
16 both plaintiffs and nonplaintiff beachfront property  
17 owners, correct?

18 A That distinction had not come into existence.

19 Q Because this is all before the lawsuit, correct?

20 A Yes.

21 Q Okay. The correspondence that you sent to the  
22 town or -- sorry -- sent to the town asking for a meeting,  
23 do you have a copy of that?

24 A Yes.

25 Q I would like a copy of that too because I don't

1 think I have that.

2 A I submitted it. Oh, that was before the suit.

3 Q Yeah. I will go back and double check that I  
4 don't have that, but neither Amy nor I -- and she's not  
5 taking the deposition, but neither of us can recall it.  
6 Was it submitted in discovery, do you know?

7 A I submitted everything I had for discovery. Which  
8 document are we talking about now?

9 Q This is the letter to the town asking for a  
10 meeting after you sent out the surveys in 2007.

11 A Yes, that was -- I'm not recalling the date, but  
12 that was --

13 Q But you think you still have a copy of it?

14 A I sent it out. I don't know the date on it. I'm  
15 drawing a blank.

16 Q That's okay, but do you think you have a copy of  
17 it, whatever the date is, still?

18 A This was with -- tell me the content of this.

19 Q I think you are saying that you sent out all the  
20 surveys which we talked about?

21 A Yeah.

22 Q After you got that back, you had a sense of what  
23 the beachfront property owners thought?

24 A Yes.

25 Q And then you asked for a meeting with the town?

1           A     Yes.

2           Q     I think we are hoping that -- we are asking if you  
3 still have a copy of whatever letter you or communication  
4 you sent to the town asking for this meeting.

5           A     Yes.

6           Q     Do you think you still have that?

7           A     I think I still have that or I -- I thought I  
8 submitted it.

9           Q     Well, it is what it is. Can you look for it?

10          A     I will look for it.

11          Q     If you did submit it, then Ben's office is going  
12 to have that and be able to show that it's me that's in  
13 error and in fact it was sent to me. If you didn't submit,  
14 let's just correct it.

15          A     I think I know where I can get a copy of that.

16          Q     And the surveys?

17          A     And the what? This is this big, the surveys.

18          Q     Yes. Again, Ben can advise you about it. I'm  
19 just asking for copies, that's all.

20                 Let's move on. Was the letter that you sent out  
21 to beachfront property owners advising them to post their  
22 property and protect their rights, do you think you still  
23 have a copy of that?

24          A     I don't know. I think I do have a copy of that  
25 somewhere, but I'm not sure. I have got so much paper and

1 space used up on computers. I will do my best to double  
2 check that.

3 Q Please do. What I would say is -- and again, I'm  
4 saying this in an attempt not to inflame it, but I was  
5 surprised I guess by how little -- I made a big deal about  
6 Barbara Rencurrel not giving me a bunch of pictures. One  
7 of the things that surprised me about the information that  
8 I was getting from you, Mr. Almeder, was the lack of  
9 correspondence and communications with other beachfront  
10 owners where I had, for instance, a copy of the original  
11 survey, but I had never seen any of the survey responses.  
12 I had, you know, examples of letters where it seemed like  
13 you were actively writing, but very few of those have ever  
14 been produced to me.

15 So, you know, I'm asking you and your attorney to  
16 go and take a look to make sure that you are giving us all  
17 of the -- I don't want privileged or confidential  
18 communications. I just want the stuff that is between you  
19 and beachfront property owners building up to the lawsuit,  
20 so let's move on.

21 (Discussion off the record.)

22 Q In your meetings with the town, you said you had a  
23 couple of them, but you said certain things came out of  
24 your meeting with the town after Christmas. What things  
25 are those, do you know?

1           A       The town first and foremost wasn't going to do  
2 anything by way of putting up signs indicating where the  
3 public and the private was. During that meeting, the  
4 chairman of the Board of Selectmen, Matt Lannigan, said  
5 they wouldn't put them up, but we could put them up if we  
6 wanted to. And the other things we wrote down in the  
7 minutes and I'm not sure what those minutes say now.

8           Q       Okay.

9           A       But it was a result of those two meetings that we  
10 told the rest of the beach people that there wasn't  
11 anything that could be done.

12          Q       I want to ask you about -- you talked with  
13 Attorney Frame about the Colonial Ordinance a little bit  
14 and fishing, fouling and navigating. I think he asked you  
15 about what if somebody comes out with a gun on the beach.  
16 I want to ask somewhat related questions. I think I  
17 understand your answer to the one about the gun. What is  
18 your understanding of the scope of the Colonial Ordinance  
19 exceptions, the rights the public has under the Colonial  
20 Ordinance, could you describe for me what you understand  
21 the public has a right to do?

22                   MR. LEONI: Again, this is an objection for  
23 attorney client privilege. If your understanding comes  
24 from any discussions that you have had with your attorneys,  
25 that information is privileged.



1           A       These are things I knew a long time ago before I  
2 had any conversations with attorneys. They had the right  
3 to fish.

4           Q       If they had a baited fishing pole in front of your  
5 house --

6           A       Oh, you heard that.

7           Q       -- you can do that. What about if a guy with  
8 binoculars who is clearly looking at the plovers or  
9 something like that, is that fouling?

10          A       That's not -- in my view, it is not fouling.

11          Q       Bird watching?

12          A       I don't think bird watching meant fouling or  
13 fouling meant bird watching.

14          Q       Scuba diving -- I'm sorry, I'm interrupting you.

15                 So bird watching is not a Colonial Ordinance  
16 right of the public I think I hear you saying?

17          A       That's my understanding.

18          Q       Okay. Scuba diving?

19          A       What are you asking me?

20          Q       Does the public have -- as opposed to what you  
21 would give permission or tacit permission for, does the  
22 public have the right, assuming they can get to the  
23 intertidal zone in front of your house legally, does the  
24 public have the right to scuba dive?

25          A       Supreme Court said yes.

1 Q How about swimming?

2 A Don't know.

3 Q Okay. Any activity that you believe the public  
4 has the right to do as opposed to your permission or tacit  
5 permission in the intertidal zone in front of your house  
6 that I haven't asked you about or Gregg?

7 A Are you asking me do I think that the public has a  
8 right to do anything other than what's allowed in the  
9 Colonial Ordinance?

10 Q I'm really just trying to understand what you  
11 think the right -- the scope -- your understanding of the  
12 scope of those rights. I think you said that anything in a  
13 boat basically is going to be okay, right, in a boat on the  
14 water, right?

15 A Yeah, I mean it can -- yeah.

16 Q Let me back up and ask it a little bit better.  
17 Once the tide is high tide or medium tide or some tide  
18 where water is within the intertidal zone, I believe based  
19 on your answer to Attorney Frame's question about the  
20 paddleboat, you take the position that more or less things  
21 on a boat to the extent that they are in the intertidal  
22 zone on water, that's okay?

23 A Yeah.

24 Q The public has a right to do that?

25 A Yeah.

1 Q I think you have acknowledged based on the recent  
2 Supreme Court decision that the public has a right to scuba  
3 dive?

4 A Yes.

5 Q And you have acknowledged that the public has a  
6 right to fish with a baited fishing line in the intertidal  
7 zone in front of your property?

8 A Yes.

9 Q Is there anything else that I have missed?

10 A No.

11 Q Let me go back. You also said to the extent it  
12 would somehow be legal to go out with a gun and shoot  
13 birds, that's okay, but you don't think it's legal?

14 A That would be part of fouling.

15 Q What is fouling, do you have an understanding what  
16 it is?

17 A You shoot birds, it's bird shooting, which is  
18 still done along the coast.

19 Q Okay. Swimming, you are not sure whether one way  
20 or the other whether that is, it may or it may not?

21 MR. LEONI: Objection. You can go ahead.

22 A The swimming turns out to be an issue because of  
23 the -- I don't want to go into that.

24 Q What about skating, do you know, in the winter?

25 A Skating on the ocean in the winter?

1 Q Well, you live pretty close to the river, I'm not  
2 there in the middle of January.

3 A It never freezes.

4 MR. WILLING: Do you want to say something about  
5 any of these?

6 MR. LEONI: Do I want to say something about any  
7 of these?

8 MR. WILLING: Yeah. Didn't you send an e-mail  
9 about producing stuff even though we had not signed the  
10 confidentiality agreement? I'm not telling you to say  
11 something.

12 MR. LEONI: Not for these.

13 MR. WILLING: Okay. I apologize for that. For  
14 whatever reason today, my assistant who is great in every  
15 way and I don't complain about, just happened to separate  
16 the pictures instead of stapling them all into one packet.

17 (Exhibit Nos. 25-36, Photographs, marked for  
18 identification.)

19 Q Let's go through these photographs, if we can.  
20 Exhibit 25, do you recognize that photo?

21 A Yes.

22 Q Who is that?

23 A That's a visitor, a friend of my daughter's, some  
24 friends.

25 Q Where is that photograph taken?

1 A Right out in front of my house.

2 Q What's the body of water I see kind of off to his  
3 right on the left bending around him?

4 A That's just the tide. The ocean must be high.  
5 That's the tide going out.

6 Q Is that house on the other side of the river?

7 A No, this isn't a river. There are times when a  
8 sandbar will build up.

9 Q I see. We are looking back --

10 A And water will come behind it.

11 Q We are looking back at your house right there?

12 A He's looking up at my house.

13 Q Okay. So in this picture, to the far left, to the  
14 left of those trees that you see in the upper left-hand  
15 corner of the picture, that would be where the Batson River  
16 is somewhere over there?

17 A No, the Batson River is way down this way. You  
18 are looking eastward when you are looking up this way.

19 Q Okay.

20 A And Batson River is down here and he's standing in  
21 front of -- you go over this a little ways. It is just a  
22 little body of water and then the white sand begins on the  
23 other side.

24 Q There are some people in the far background in the  
25 upper right of the picture.

1 A I have no idea.

2 Q Where are they, do you know, those little dots,  
3 where is that? Maybe they aren't even people, I don't  
4 know.

5 A Those are people, but I have no idea where they  
6 are.

7 Q Where on the beach is that, where they are kind of  
8 standing off in the distance?

9 A They are still on the west end.

10 Q Okay.

11 A About a quarter of a mile from the river.

12 Q When was this photo taken?

13 A Four years ago.

14 Q Exhibit 26, who is that, your grandson?

15 A That's my grandson and my daughter.

16 Q Lisa?

17 A Lisa, Lisa Marie.

18 Q Okay. And where is this taken?

19 A Right in front of our house.

20 Q What direction am I looking?

21 A You are looking towards the river westerly.

22 Q It looks like there is somebody in some kind of  
23 blue shirt or jacket?

24 A I believe that's my wife.

25 Q Okay. These next photos are actually not yours,

1 they are mine.

2 A This one?

3 Q When was that taken, the last one?

4 A Well, I mean it had to be three or four years ago  
5 anyway. I'm not certain, but it was within that timeframe.

6 Q The next two photographs are going a little bit  
7 out of order and then we will go back to ones I think you  
8 produced. These are ones, I will tell you I actually took  
9 these.

10 A You took these?

11 Q Yes.

12 A Good shot.

13 Q Do you recognize them?

14 A Oh, yes.

15 Q What is Exhibit 27?

16 A That's the right-of-way alongside of my house to  
17 the ocean and that's the one where four people -- four  
18 houses on this side of the road have deeded rights-of-way  
19 across.

20 Q Okay. Have you talked to them -- who put the no  
21 trespassing sign?

22 A I believe the Junkers did that or it could have  
23 been the Nixons, but they all seem to -- I'm not sure. I  
24 think the Junkers.

25 Q You didn't put it?

1 A Oh, I didn't put it, no.

2 Q Exhibit 28, is that your house?

3 A Yes.

4 Q Is that how it looks more or less today in the  
5 summer months?

6 A Yeah.

7 Q That's from the Kings Highway side, right?

8 A Yes.

9 Q Exhibit 29, what am I looking at here?

10 A You are looking at me standing in front of a sign  
11 that I put out there and posted for two days and that's  
12 the -- our house behind it.

13 Q And --

14 A I put the date on it to make sure that I wouldn't  
15 forget when it was taken.

16 Q You put that out for two days and then took it  
17 down?

18 A Yeah, well, yeah, you know -- yes.

19 Q What precipitated you doing that on April 5th,  
20 2008?

21 A The felt need to post the property as a result of  
22 failure to get any protection from the town.

23 Q Is this posted sub -- we have talked about the  
24 survey that you sent to beachfront property owners.

25 A Yeah.



1 Q That went out in September, 2007, I think?

2 A Yes.

3 Q Okay. Subsequent to that, you have indicated that  
4 you did have some meetings with the town?

5 A Yes, and they ended, as I said, fruitlessly in I  
6 think it was January or February of 2008. This was April.  
7 Between the ending and this time, I had sent a note to the  
8 beachfront owners saying please post your own property now  
9 if you want to protect your rights.

10 Q Okay. And that's the letter amongst the couple --

11 A Amongst the other two.

12 Q Okay. If possible, if you can find those and your  
13 attorney agrees, that's the ones I would like a copy of.

14 A Okay.

15 Q Exhibit 30.

16 A Same thing.

17 Q When is this?

18 A 2009. No. Yeah, 2009.

19 Q So it's the next year?

20 A Yeah, the following year.

21 Q When?

22 A It was in the spring. Trees are green. You know,  
23 I'm not certain. I believe it was in the spring the  
24 following year.

25 Q Do you have a routine now with respect to your

1 private beach sign?

2 A I don't put them out anymore.

3 Q Figured the lawsuit is -- it is what it is?

4 A Everybody knows.

5 Q Is that the reason though?

6 A That -- is that the reason?

7 Q Well, let me ask it a different way.

8 A Yep.

9 Q You put out a sign in 2008?

10 A Yeah.

11 Q You put out a sign in 2009?

12 A Yeah.

13 Q In late 2009, you filed an action?

14 A Right.

15 Q In that action, you are seeking a judgment --

16 A Yep.

17 Q -- to what extent your rights are?

18 A Yeah.

19 Q Are you not putting out a sign anymore because  
20 having filed the lawsuit, there is no longer a need to put  
21 out the sign?

22 A My thinking was that you could put it out once a  
23 year. I don't think I did it after that though. I'm  
24 forgetting right now.

25 Q Okay. You had a reason, but you don't know?

1           A     It seemed good at the time, but I don't -- I don't  
2 post it. I don't think it's really necessary.

3           Q     Was April, 2008, the first time you put out a  
4 sign?

5           A     No.

6           Q     It wasn't?

7           A     April 5th, 2008?

8           Q     Yeah, is that the first time you put out a sign?

9           A     Yes, I'm sorry, that was the first one I put out.

10          Q     Moving on to Exhibit 31.

11          A     That's just me standing in the garden, but the  
12 beach is behind and the house is to the left. And that had  
13 to be about five years ago.

14          Q     Is that sea grass there?

15          A     That's sea grass right behind me.

16          Q     Does that always grow every year?

17          A     Yes.

18          Q     When does it grow?

19          A     It is -- it turns brown in the winter. It is  
20 brown now, but --

21          Q     It is always there?

22          A     As summer goes on, it is always there.

23          Q     It is like grass on my lawn?

24          A     Well, we have lost a good deal of it after certain  
25 storms, but it comes back.

1 Q Do you know when that was taken?

2 A This picture?

3 Q Yeah.

4 A About five years ago.

5 Q And who is that, your grandson?

6 A Yep.

7 Q Okay.

8 A I don't know -- I told my wife to find everything  
9 that would be relevant by way of showing a picture because  
10 we already submitted things that -- and these are the ones  
11 she came up with and she said that's all we have.

12 Q So I guess let's address that just while we are at  
13 it because I was going to come back to that anyway. You  
14 have produced all -- to your knowledge, I understand you  
15 are telling me what your wife told you, but to your  
16 knowledge, you have produced all of the photographs that  
17 you have that depict Goose Rocks Beach?

18 A Yes.

19 Q Again, not just the ones -- are you -- are you --  
20 do you think she's providing like a sample that she thinks  
21 is representative or all of them?

22 A Not a sample that is just representative. Any  
23 pictures that would show us either acting on the beach or  
24 the beach itself at different times, I asked her to get  
25 them all, and this is what she gave me. She had to go into

1 the family album and pull them out.

2 Q And I do understand that is not -- it is a bit of  
3 a pain.

4 A Yeah.

5 Q Okay. Exhibit 32, why don't we start at the top  
6 and work our way down. What's the top photo of?

7 A That is just the front -- that's our porch.

8 Q It looks like there is kind of two photographs  
9 crammed together; is that right?

10 A Where?

11 Q Up on top.

12 A Oh, yeah. Well, in the family album, these were  
13 side by side.

14 Q Got it.

15 A But --

16 Q This is sort of a page from the family album?

17 A Yeah, this is some sort of a bird that she had in  
18 there.

19 Q Okay. And then down below?

20 A That's to show that the area is restricted by the  
21 federal government for bird preserving area.

22 Q Who is in the top photo?

23 A That's my daughter.

24 Q How long ago is this?

25 A Oh, that had to be at least 10 years ago.

1 Q Okay.

2 A Might have been '98, somewhere around there.

3 Q Is that after your renovation?

4 A Yes.

5 Q When was the -- when did you do the renovation?

6 A It was finished in 1996.

7 Q Exhibit 33, we have three photos. Do you  
8 recognize these?

9 A Yes, these are at an earlier time, maybe 20 years  
10 ago.

11 Q Who is in the top photo?

12 A The middle is my daughter.

13 Q Which?

14 A My oldest daughter there.

15 Q Is that Lisa?

16 A Yes.

17 Q Okay.

18 A That's my brother-in-law and these are friends of  
19 the family, I think, yeah.

20 Q Okay. And --

21 A My niece and her child.

22 Q Okay. And what about in the middle one?

23 A The middle one, these are nieces, and my other  
24 daughter to the right, Lisa Marie, and the one to the left  
25 is my oldest daughter, Melanie, and that's their aunt. You

1 get some picture of the beach there, but that was a full  
2 day of sun. And that's just the family reunion at the  
3 bottom.

4 Q I see a flag pole in the background. Whose house  
5 is that?

6 A That's the Sealey home.

7 Q And where is that in relation to your house?

8 A It is about 200 yards, maybe 300 yards. It's four  
9 houses to get there.

10 Q To the east?

11 A You are looking east, yeah.

12 Q And then the bottom picture?

13 A That was a good shot of the beach. Oh, this one,  
14 that's just our family gathering, friends.

15 Q In front of your house?

16 A In front of my house, yeah.

17 Q Looking down easterly down the beach?

18 A Looking down towards the river, but this was in  
19 July. Regularly, every July, it's this group of people.

20 Q Are all of these photographs, you know, from 20 or  
21 so years ago?

22 A Yes.

23 Q Exhibit 34 looks -- probably the top one is cut  
24 off because it is not showing anything on the beach, right?

25 A Right. The middle one shouldn't be there either.

1 Q But the bottom one?

2 A Bottom one is from the front -- front deck.

3 Actually, it looks like it is back further. The bottom one  
4 is just the view from when the tide is out from the house.

5 Q Given that this again appears to be from the photo  
6 album, does that mean it is an older photo?

7 A Yes, that's an older photo. I think it was  
8 probably taken at the very same time, both of these.

9 Q Okay. How about page -- Exhibit 35, top photo, is  
10 that you and your wife?

11 A My wife and I.

12 Q How long ago is that?

13 A Oh, God, I don't know.

14 Q Okay. And the one below, left or right, if you  
15 don't mind.

16 A That's my oldest daughter and that's my youngest  
17 daughter to the right and my youngest daughter's baby in  
18 the middle.

19 Q Your grandsons, are they -- does one of your  
20 daughters have two kids or do they each have one?

21 A One has two kids.

22 Q That's the younger one?

23 A Yeah.

24 Q Final --

25 A Beach activities around the house.



1 Q Grandson on the left?

2 A Yeah, two grandsons.

3 Q And how about the upper right?

4 A Daughter and husband.

5 Q And that's which daughter?

6 A That's Lisa Marie.

7 Q What's the other daughter's name?

8 A Melanie.

9 Q Okay. And how about in the bottom right?

10 A That's me in the middle walrussing.

11 Q Is that your house in the back?

12 A Yes.

13 Q And when are these taken? These look like more  
14 recent maybe.

15 A Yes, actually, they would have been about four,  
16 maybe five years ago.

17 MR. LEONI: Do you need a break?

18 THE WITNESS: I'm all right. I don't need a  
19 break.

20 MR. WILLING: I am -- let's take a quick break.  
21 I actually think I'm almost done. It might actually help  
22 me to not blather on.

23 (A short break was taken.)

24 Q Okay. I think I actually successfully have culled  
25 down what I have left, so that couple minutes was

1 profitable. Going back to '79 or so when you started  
2 coming up in the summer, Mr. Almeder, do you recall there  
3 being lifeguards on any portion of Goose Rocks Beach?

4 A No.

5 Q Do you recall swimming lessons on Goose Rocks  
6 Beach?

7 A No.

8 Q Do you recall the town or anybody doing sea grass  
9 raking at Goose Rocks Beach?

10 A In 1979?

11 Q Since '79, yeah.

12 A Seaweed raking?

13 Q Sea grass raking.

14 A No.

15 Q Sea grass burning?

16 A No.

17 Q Trash pickup by the town?

18 A There are trash barrels along the way and I recall  
19 that happening, but as for picking up trash on the beach --

20 Q Yes.

21 A -- that was done by the Kiwanis Club, I think. It  
22 was a volunteer effort.

23 (Exhibit No. 37, Newspaper Article, marked for  
24 identification.)

25 Q I'm showing you another letter to the editor. And

1 it might help actually to get out Exhibit -- I think it's

2 8. Do you recognize Exhibit 37?

3 A Yes.

4 Q Is that a letter to the editor written by your  
5 son-in-law?

6 A Yes, it is.

7 Q Which of your daughters is he married to?

8 A Lisa Marie.

9 Q Okay. And he wrote this letter, did he not, in  
10 response to the letter that we already looked at to the  
11 editor by you and Mr. Fleming?

12 A Yes.

13 Q It's fair to say at least as of the day he wrote  
14 this letter, he didn't approve of the lawsuit?

15 A He disagreed with it, yes. I encouraged him to  
16 send it.

17 Q Did he think there were other ways to go about I  
18 guess dealing with your concerns about Goose Rocks Beach?

19 A I thought he said something in there about --

20 Q You can take your time to review it.

21 A He doesn't say that here. Did he think at the  
22 time that there were other ways to go about it? He just  
23 thought it shouldn't be done. As for the concerns, he  
24 didn't have any offerings in that.

25 Q He didn't think that you could simply post signs

1 permitting walking and incidental use explicitly and  
2 requesting that homeowners or requesting people respect the  
3 homeowners instead of filing the lawsuit?

4 A He does say a simple but effective response would  
5 have been to post signs permitting walking and incidental  
6 use and requesting people respect the homeowners. Instead,  
7 the group has chosen the path that, in their own words,  
8 could become a long, costly and bumpy ride. He thought  
9 posting signs would be adequate. We had a disagreement on  
10 that.

11 Q In the town's letter to Janice Fleming and in  
12 conversations with you for that matter, did the town ever  
13 say we prohibit you from posting signs?

14 A In Janet -- the letter to Janice Fleming, it says  
15 that you shall not restrict by use of such signs. Do you  
16 remember that?

17 Q Okay. Fair enough. We can get that out if you  
18 want, but does it order her to take it down?

19 A No.

20 Q Or would it be fair to say the town simply says we  
21 don't agree that it is a private beach?

22 A I don't know what the town said.

23 Q What if the town -- what are you -- can you tell  
24 me what your concerns were -- your personal concerns? I  
25 think some of them, if not all, must be articulated in

1 Exhibit 8, the letter to the editor. What were your  
2 personal concerns that prompted you after 30 years to bring  
3 the action?

4 A The letter from Larry Mead to Janice Fleming, it  
5 seemed to me to be an adversarial claim for a prescriptive  
6 easement. In fact, it is.

7 Q All right. Looking at Exhibit 8 -- okay, that's  
8 fair enough -- in Exhibit 8, you reference other issues.  
9 You talk about the -- for instance, kind of halfway down,  
10 do you see the sentence that starts with finally?

11 A Yes.

12 Q Finally, the uncontrolled and continuing  
13 development of seasonal condominium hotels and motels in  
14 the neighborhood constitute a persistent assault on  
15 neighborhood identity?

16 A Yes.

17 Q The next paragraph, you talk about I think  
18 protecting the habitat of the plovers and other species of  
19 birds and such, correct?

20 A Yes.

21 Q Were those concerns of yours that prompted the  
22 lawsuit?

23 A They were concerns. How you would weight them  
24 against the major one --

25 Q The letter is the real issue?

1           A     The letter is the real issue.

2           Q     Okay.  So let's assume that the town took action  
3 that placated any concern you had about the commercial  
4 development around Goose Rocks Beach.  Do you still -- I  
5 assume you would still then proceed with the lawsuit  
6 because of the letter?

7           A     Yes.

8           Q     What about if they took --

9           A     It's not -- let me stop you.  It's not up to me.  
10 I mean this is a matter of --

11          Q     Well, you're one plaintiff.  You would continue  
12 with the lawsuit?

13          A     I would recommend that until the easement issue  
14 was --

15          Q     So I guess my question is all of these concerns  
16 that you raise in the letter to the editor, that's not  
17 really why you brought the lawsuit, you didn't bring the  
18 lawsuit about the birds or the commercial development, you  
19 brought it because the town said we don't agree it's a  
20 private beach?

21                   MR. LEONI:  Objection.

22          Q     You can answer.

23          A     I thought I said the motivation for this legal  
24 action is basically to prevent the town -- I'm sorry, to  
25 prevent the town from turning the whole of Goose Rocks

1 Beach into a public beach and a wider tourism attraction  
2 than it currently is. That would have been facilitated by  
3 taking a prescriptive easement over the whole beach. In  
4 other words, the prescriptive easement would have been the  
5 problem that had to be dealt with.

6 Q Okay. So again, I want to be clear. The  
7 commercial development, the parking issues, the plovers --  
8 and I'm not saying you don't have any concerns about  
9 these -- the buses, those are concerns, but the real reason  
10 you are bringing this lawsuit is the letter the town wrote  
11 in October, 2008?

12 A Yes, to prevent the ever increasing numbers of  
13 people coming through and building up on the beach.

14 Q Well, what if the town -- what if the town limits  
15 the parking in a way that is satisfactory to you  
16 personally?

17 A That still wouldn't be enough.

18 Q What if the town again protects the plovers in a  
19 way that is satisfactory to you personally?

20 MR. LEONI: Objection.

21 A Still wouldn't be enough.

22 Q And what if it limits the buses?

23 MR. LEONI: Objection.

24 A Still wouldn't be enough.

25 (Exhibit No. 38, Letter, marked for identification.)

1 Q Okay. I think I'm almost done. I'm going to show  
2 you one more document. Mr. Almeder, this is a letter I  
3 think you produced to me.

4 A Yes.

5 Q From Heather and I guess Alec Cyr?

6 A Yes.

7 Q You are familiar with this?

8 A I'm familiar with the contents of the letter.

9 Q Is it -- you tell me if this is a reasonable  
10 description. Is it fair to say this is sort of a plea to  
11 you and your wife --

12 A Yes.

13 Q -- to drop the lawsuit?

14 A Yes.

15 Q And in this letter -- obviously it's an emotional  
16 letter?

17 A Yes.

18 Q This particular couple is talking about their love  
19 of Goose Rocks Beach and their historic use of Goose Rocks  
20 Beach?

21 A Yep.

22 Q How do you respond to this letter? I'm asking  
23 you, what is your response to the concerns raised by  
24 Heather and Alec Cyr?

25 A There need not be any closing of the beach that



1 they seem to be fearing. After all, it has always been  
2 used permissively. There's no reason to suppose that it  
3 wouldn't continue that way in the future.

4 Q All right. I think I understand that. So is  
5 it -- what you're saying is you are not going to stop  
6 Heather and Alec Cyr from using the beach, is that fair?

7 A They have my tacit permission right now.

8 Q Okay. Can you guarantee them that no other owner  
9 is going to do that?

10 A I can't do that, no. I don't see how I could do  
11 that.

12 Q It's possible that even if all 28 of the current  
13 plaintiffs, assuming they prevail in the lawsuit, any one  
14 of those 28 owners or multiple plaintiffs could the day  
15 after you prevail go out and say to Heather and Alec Cyr,  
16 get off of my beach, right?

17 MR. LEONI: Objection.

18 A Yes, they could.

19 Q And even if all 28 of you continue to allow Goose  
20 Rocks Beach to be used the way it's been used without  
21 changing anything, you can't promise that the next owner is  
22 going to continue to allow it to be used that way, can you?

23 A No, I can't.

24 MR. WILLING: That's all I have.

25 EXAMINATION BY MR. LACHIATTO:

1 Q My name is Alex Lachiatto.

2 A Nice to meet you.

3 Q I know. Long time. Okay. Just a couple of  
4 questions. In going over this exhibit, this one here, I  
5 don't know what number it is, but --

6 MR. LEONI: I believe that's Exhibit 8.

7 MR. LACHIATTO: 8.

8 MR. LEONI: Hold on. If you want to hold onto  
9 that, we have a copy here.

10 MR. LACHIATTO: Yep.

11 Q Okay. The sixth paragraph down is your statement  
12 as to -- yours and Jack Fleming's that is -- motivation for  
13 the action, the legal suit, correct?

14 A Yes.

15 Q So as I read it, you were worried at least from  
16 the tenor of this letter that you didn't want this to  
17 become a wider tourist attraction than it already is?

18 A Yes.

19 Q And is it fair to say that at least during the  
20 height of the summer, say July, August to Labor Day, that  
21 beach is -- has a great number of people on it?

22 MR. LEONI: Objection to form.

23 A A great number?

24 Q Well, let's put it this way. On a good day, would  
25 you say there is more than 1,000 people on that beach from

1 one river to the other?

2 MR. LEONI: Objection to form.

3 A I don't know what 1,000 people look like.

4 Q Is the beach crowded on a good day in the height  
5 of the summer?

6 A Yes.

7 MR. LEONI: Objection to form.

8 Q And where do you find most of the people using the  
9 beach during July and August?

10 MR. LEONI: Objection to form.

11 A I think it's between Dyke Road and Geoffrey's Way.

12 Q Okay. Now you indicated in answers to Attorney  
13 Willing's questions that you are not aware of any lifeguard  
14 during your time at Goose Rocks Beach from 1979?

15 A No, I never saw one.

16 Q You never saw one. And in terms of burning the  
17 sea grass, you never observed the town doing that from '79  
18 on -- I mean up to a certain period?

19 MR. LEONI: Objection to form.

20 A I never saw it. Where did they do it?

21 Q Well, you can't ask me questions.

22 A Oh, I'm sorry, I'm sorry.

23 Q But I will represent to you that it occurred in  
24 many areas over the beach from -- after '79.

25 MR. LEONI: Sir.

1           MR. LACHIATTO: I'm just representing to him  
2 because he asked me a question.

3           Q     Swimming lessons, you are not aware of any  
4 swimming lessons that took place at Goose Rocks Beach from  
5 '79 forward?

6           A     I never saw it, but I hear that it happened.

7           Q     So you are aware that it did happen?

8           A     I won't question that.

9           Q     Okay. But you don't know where it took place?

10          A     No. Well, I'm not going to argue that they didn't  
11 do it because it seemed like a lot of people say they did,  
12 but I never witnessed it. I never saw it.

13          Q     And what about the sailing lessons, you never  
14 observed those either?

15          A     I never saw those.

16          Q     Okay. Now there's been a lot of talk during the  
17 course of this lawsuit, people mentioned the status quo.  
18 How do you define the status quo as it relates to the  
19 use -- the recreational use of Goose Rocks Beach prior to  
20 the lawsuit?

21          A     Prior to the lawsuit, it's always been a matter of  
22 permissive use. When -- period.

23          Q     Would you agree that with the exception of one or  
24 two of the plaintiffs in this lawsuit, actually beachfront  
25 owners, plaintiff beachfront owners in this lawsuit, there

1 has been a long-standing unopposed recreational use of  
2 Goose Rocks Beach from river to river?

3 A Could you please repeat the question?

4 (Reporter read requested material.)

5 A I could agree to that.

6 Q Okay. And this long-standing use, as I refer to  
7 in my previous question, has been at least since 1979 up  
8 until the lawsuit?

9 A At least from 1979 up until the lawsuit, there has  
10 been a lot of unopposed use of the beach for recreational  
11 purposes, I agree to that.

12 Q Okay. Now I believe you said -- and if you want  
13 verification, I can have the stenographer recite your  
14 response to a question by Attorney Frame, but -- if you  
15 want me to do that, I will do it, or I can give you my  
16 recollection of it. Which would you prefer?

17 A Suit yourself.

18 (Reporter read requested material.)

19 Q That's the goal?

20 A Yes.

21 Q Okay. Let's go to something of a little different  
22 nature. You said over the course of time, you and members  
23 of your group, not the plaintiffs necessarily, maybe some  
24 of the plaintiffs, tried to work something out with the  
25 town in terms of limiting access, defining what the public

1 had for rights, et cetera; is that correct?

2 A Yes.

3 Q Now did it ever occur to you -- strike that.

4 And prior to that meeting or maybe subsequent to,  
5 I don't recollect, you sent out this survey and that survey  
6 went to all the beachfront owners?

7 A Yes.

8 Q But it didn't go to any back lot owners, did it,  
9 yes or no?

10 A No.

11 Q Okay. Now what has been your experience over the  
12 last several years in connection with gathering people, in  
13 other words, back lot owners, to challenge things that the  
14 town has tried to do at Goose Rocks Beach, i.e., contract  
15 zoning and things of those nature -- things of that nature?

16 MR. LEONI: Objection to form.

17 A What has my experience of the efforts being made  
18 by -- I'm sorry?

19 Q By beachfront owners or yourself as a beachfront  
20 owner with back lot owners in trying to stop commercialism  
21 of the beach, et cetera.

22 MR. LEONI: Objection to form.

23 A I think I can say that there has been some effort  
24 on the part of the groups together to help each other out  
25 for those -- I'm thinking in particular of the contract

1 zoning issue.

2 Q With the Tides Inn?

3 A Yep.

4 Q And didn't you and I and Jack Fleming and  
5 Mr. Parker and others work to defeat that contract zoning,  
6 yes or no?

7 A Yes.

8 Q And we were successful; is that correct?

9 A Yes.

10 Q And did it -- go ahead.

11 A We weren't -- it is still an ordinance in the  
12 town. It wasn't defeated, but the Tides Inn activity was  
13 defeated.

14 Q Right.

15 A And for that, you are right.

16 Q And in a subsequent year, didn't the same group  
17 consisting of you, me, Fleming and others, nonbeachfront  
18 owners, work to try to eliminate the contract zoning law in  
19 the Town of Kennebunkport?

20 A Yes.

21 Q And that's where we were not successful, correct?

22 A Yes.

23 Q Now did it ever occur to you to consult with back  
24 lot owners to try to resolve the issues that you are all  
25 worried about prior to bringing this lawsuit?

1           A       It did.

2           Q       Then why didn't you?

3           A       We did not have the e-mail addresses of the people  
4 in the back. We only collected the e-mail addresses of the  
5 people in the front to talk with them about what issues  
6 they had. We had planned on -- and I made motions to the  
7 effect that we would get a cumulative e-mail catalog of  
8 everybody in the area. We were planning that. And we  
9 noticed that when the -- when we invited Attorney Thaxter,  
10 we didn't have those e-mails, but we did invite everybody  
11 that we saw. We didn't have those, so we weren't really  
12 hooked up by way of communication with the people in the  
13 back. Your question to me is did it occur to us to talk to  
14 the people in the back to -- to deal with the adversarial  
15 claim for a prescriptive easement?

16          Q       No, my question was to deal with some of the  
17 issues that you raised with the town, whether it be just  
18 the prescriptive easement or other matters, parking, et  
19 cetera.

20          A       We thought about it and it seems as though that  
21 the main issue was the town's claim that beachfront owners  
22 as a group had no right to restrict access in any way to  
23 their property. That was an issue between the town and the  
24 beachfront owners because they were making the adversarial  
25 claim. The people in the neighborhood were not making that



1 claim.

2 Q But your lawsuit, if you prevail, will effectively  
3 bar residents of Goose Rocks Beach from a prescriptive  
4 right to use the beach other than in the Conservation Trust  
5 and town owned lot, isn't that correct, as far as you  
6 understand it?

7 A It would effectively bar these people from using  
8 the beach?

9 Q Yeah.

10 MR. LEONI: Objection. I think there are two  
11 pending questions right now. There is one -- your first  
12 question was barring a prescriptive right and the second  
13 question which he asked you was barring them from using the  
14 beach. Those are two different questions. I just want to  
15 be clear which question we are answering right now.

16 Q I'm asking you the first -- to answer the first.

17 A Well, if we were successful, they would not have a  
18 right to a prescriptive easement for recreational purposes  
19 over the beach. They would not have a right to it.

20 Q They would not have a right to it and you are  
21 happy if that occurs to these people that have been  
22 residing there for a number of years?

23 A I didn't say I was happy.

24 Q Then would you be happy if that occurred?

25 A No.

1 Q Then why bring a lawsuit?

2 A Because there are other ways to deal with it.

3 Q There are other ways to deal with what?

4 A Them having access to the beach without being --  
5 without having a right.

6 Q So they would have to ask you and every other  
7 beachfront owner if they could use and sit on the property  
8 for recreational purposes?

9 A That's not the option I had in mind.

10 Q So is it fair to say that you would rather have  
11 people who reside at Goose Rocks Beach either as  
12 year-rounders, part-timers and their renters use the beach  
13 as they have in the past without reservation?

14 A I'm sorry, I was thinking of something else. I  
15 lost the question while you were asking it.

16 MR. LACHIATTO: Would you kindly read it back?

17 (Reporter read requested material.)

18 A Not as long as the prescriptive easement from the  
19 town -- the adversarial prescriptive easement is in place.

20 Q So if I interpret what you are thinking correctly,  
21 you envision a prescriptive right obtained by the town with  
22 the general public as one prescriptive easement, and two,  
23 the other prescriptive easement being for those people that  
24 I identified in that question; is that correct?

25 MR. LEONI: Objection to form.

1           A       I'm not happy with the disjunct.  What I was  
2 getting at was that you -- you may not have the right to a  
3 prescriptive easement, but you could still get, as they did  
4 in Massachusetts, for example, get a license for  
5 recreational activities, but it wouldn't be from the town  
6 it would be given if it happened.  I mean there are other  
7 options to deal with this other than taking the property.  
8 That's all I'm trying to get to.

9           Q       Let's put it this way.  If the lawsuit was between  
10 the plaintiffs and the town wasn't involved and the  
11 defendants were the TMF group, myself and Driver and the  
12 State, would you still feel the same way?

13                   MR. LEONI:  Objection to form.

14           Q       In terms of the public -- in terms -- in other  
15 words, what I'm trying to ask is --

16           A       I think I got it.

17           Q       You think you get it.  So the town is out of the  
18 picture now.  Would you have brought the claim if the town  
19 had made no claim to a general public prescriptive  
20 easement?

21           A       Had the town -- if the town had made no  
22 adversarial claim for a prescriptive easement, things would  
23 be going along precisely as they are now, but that could  
24 not be accepted without acquiescing and the town's alleged  
25 claim to have a right to do that.

1 Q So what you are saying is we can go back to the  
2 way -- well, we will go back to the way it is right now,  
3 correct, and if that's the case, there's no need for a  
4 lawsuit if the town withdraws?

5 A If the town withdraws the claim -- an adversarial  
6 claim for a prescriptive easement and forever promises and  
7 we can guarantee that that will never come up again and be  
8 relitigated and that sort of thing, I think you would be  
9 quite -- I think there would be some support for that,  
10 sure. Get rid of -- get rid of the adversarial  
11 prescriptive easement.

12 Q For the benefit of the general public by the town,  
13 but you would acknowledge that people who live at Goose  
14 Rocks Beach, as I described in four or five questions  
15 previous to this, would have a prescriptive right?

16 A No.

17 Q You wouldn't?

18 A I don't think you have a prescriptive right simply  
19 as a result of your customary use over time unopposed. I  
20 don't believe you have that.

21 Q It's not unopposed. Nobody has opposed it other  
22 than one or two beachfront owners. You answered that  
23 question in the affirmative.

24 A Are you asking me a question?

25 MR. LEONI: Is there a question?

1 MR. LACHIATTO: No, there isn't, because the  
2 answer will stand for itself.

3 MR. LEONI: I think you made the answer.

4 MR. LACHIATTO: No, the answer that he gave is on  
5 the record to the question that I asked 10 questions ago.

6 Q When you came to Goose Rocks Beach in 1979, I  
7 think you indicated either to Attorney Willing or Attorney  
8 Frame's question, that to the best of your knowledge and  
9 belief, there were 60 to 70 parking spaces at Goose Rocks  
10 Beach?

11 MR. LEONI: Objection. Form.

12 A I was guessing. I don't know how many there were.  
13 That was an estimate I would make.

14 Q And what is your estimate today as to the number  
15 of parking -- legal parking spaces at Goose Rocks Beach?

16 A Are you talking about going over the bridge in the  
17 east end towards King's Grant? Because there are some  
18 legal parking spaces in there that people don't know much  
19 about.

20 Q I'm talking about all of them.

21 A Things marked off with paint on them, that sort of  
22 thing?

23 Q Yep.

24 A I think it is more like 80, 85, but here again, I  
25 don't know. There was a time when I counted these things,

1 but --

2 Q When you counted them, do you remember what the  
3 count was?

4 A Well, that's the problem I'm having now.

5 Q Okay. Have there been any increased legal parking  
6 spaces within the last three to four years to your  
7 knowledge?

8 A In the last three to four years?

9 Q Yeah, yes.

10 A To my knowledge?

11 Q Uh-huh, yes.

12 A No.

13 Q Okay. Has there been any commercial development  
14 in the Goose Rocks area in the last three years?

15 A Last three years?

16 Q Right.

17 A I think there's an expansion on the Resort at  
18 Goose Rocks going forward, but I'm not sure of that. They  
19 did apply for a substantial expansion. And of course the  
20 expansion of Hidden Pond, that hasn't been going. I think  
21 it's -- they were going to go into a second phase after the  
22 restaurant, but I don't -- I'm not sure how that happens.

23 Q That's not in the Goose Rocks zone as you defined  
24 it previously?

25 A That's true.

1 Q I'm talking about the Goose Rocks zone.

2 A Yeah, okay. No, you are right.

3 Q So that would just be Goose Rocks Resort?

4 A Well, both of those would be outside the Goose  
5 Rocks zone, the Resort at Goose Rocks and Hidden Pond.

6 Q Are both outside?

7 A But they -- yes.

8 Q Now were you spending a fair amount of time at  
9 Goose Rocks Beach when the Beachwood Hotel was in  
10 operation which is now the Goose Rocks Resort?

11 A Yes.

12 Q And would you -- is it fair to say there were more  
13 people taking occupancy of that area during the tourist  
14 season than at the Beachwood Resort -- Motel than there are  
15 at the Goose Rocks Resort?

16 A I don't think it is fair to say that.

17 Q You think there are more today at the Goose Rocks  
18 Resort than existed in the five units at the Beachwood?

19 A Yes.

20 Q You do.

21 MR. LACHIATTO: Okay. I don't have anything  
22 further.

23 EXAMINATION BY MR. DRIVER:

24 Q Mr. Almeder, I'm Richard Driver and I'm going to  
25 be asking you a few questions. I will try to keep it as

1 brief as possible. The instructions you were given by  
2 Mr. Frame and Mr. Willing still apply. You are still under  
3 oath.

4 A Yes.

5 Q Let me just add one to it so we are clear. None  
6 of my questions are aimed at asking you for privileged  
7 information, conversations between you and your attorney,  
8 so just -- if you are interpreting any of my questions,  
9 just interpret them not to include anything privileged.

10 A Okay.

11 Q And I'm sure Mr. Leoni, if he thinks there is  
12 something, will alert you.

13 A Yep.

14 Q Let me -- could you pull out Exhibit 3 and  
15 Exhibit 8? Exhibit 3 are answers to interrogatories that  
16 you provided to Mr. Frame and his firm. I would just ask  
17 you to go to the last question which is on page four of the  
18 document. The pages are unnumbered. In your answer to  
19 question nine, you indicate -- let me just read it into the  
20 record. Quote, naturally, by common agreement, we, like  
21 they, give all other beachfront owners permission to  
22 recreate on our property until such time as we may feel it  
23 necessary to withhold that permission, closed quote. Do  
24 you see that language, sir?

25 A Yes.



1 Q Okay. It's in the fourth line down.

2 A Okay. I got it.

3 Q The answer. When did you and all of the other  
4 beachfront property owners get together and come to a  
5 common agreement?

6 A We didn't.

7 Q So is that -- this answer untruthful?

8 A We -- of the beachfront owners I know and have  
9 asked questions like this, it was something we all agreed  
10 on, but I don't know that we all got -- I'm not aware of  
11 ever getting together to discuss this issue. It's a matter  
12 of perception and --

13 Q So is it -- I'm sorry, I don't want to interrupt  
14 you.

15 A It was a matter of perception more than anything  
16 else.

17 Q So is it fair to say that the beachfront property  
18 owners have never gotten together and never come to an  
19 agreement as regards their use of the beach?

20 A Yes.

21 Q Is it also --

22 A I think.

23 Q Is it also fair to say that the beachfront  
24 property owners have never gotten together and come to some  
25 common agreement on the use of the beach by back property

1 owners?

2 A Yes.

3 Q The same question as regards the general public?

4 A No, the surveys -- no.

5 Q No. These are the surveys that Mr. Willing has  
6 asked you to provide copies of that none of us have seen?

7 A Yes.

8 Q Okay. Where you said there was 98 percent  
9 agreement among those who responded?

10 A Yes.

11 Q And your intention is to produce those to your  
12 attorney?

13 A We -- yes, I mean we are very happy to do that,  
14 yes.

15 MR. LEONI: If they haven't already been  
16 produced.

17 A If they haven't already been produced.

18 Q That's fair enough. None of us have seen it,  
19 so --

20 A Uh-huh.

21 Q Would you look at Exhibit 8? That's the letter to  
22 the editor at Portland Press Herald.

23 A Yes.

24 Q Would you go down to the center of the page? And  
25 I think you referred to this sentence before where it

1 starts finally the uncontrolled and continuing development.

2 A Uh-huh.

3 Q What are the seasonal condominium hotels that have  
4 been developed?

5 A That's the Resort at Goose Rocks.

6 Q And you acknowledge that was a motel that had been  
7 there actually long before you came to Goose Rocks in '79?

8 A Not as a condominium development.

9 Q I said as a hotel, motel.

10 A Yeah, the Beachwood has been there.

11 Q It was the Spanks?

12 A Yeah, yes.

13 Q And you reference motels. What motels?

14 A I was referring there to the Hidden Pond  
15 development and the -- I talk about the uncontrolled and  
16 continuing development. There has been considerable  
17 discussion about creating more condominiums in the Goose  
18 Rocks Beach area that would flow by way of population  
19 increase into Goose Rocks Beach.

20 Q Where in the Goose Rocks area, are you talking  
21 about outside the Goose Rocks zone?

22 A I mean right into the beach, but these  
23 condominium -- people have been discussing and doing what  
24 they can to arrange or to -- doing what they can to  
25 facilitate more condominium development in the area.

1 Q Okay. Who are the people?

2 A I would rather not say.

3 Q I'm sorry, sir, you are under oath at a  
4 deposition.

5 A Charlie Reid on the Growth Planning Committee said  
6 it publicly, we need a lot more condominiums, and I know of  
7 only one place where that could be developed.

8 Q In the Goose Rocks zone?

9 A Yep.

10 Q Is Mr. Reid the only person?

11 A There seemed to be a good deal of agreement among  
12 the committee, the committee members.

13 Q Is this the Growth Planning Committee?

14 A Growth Planning Committee. That's my impression.

15 Q And how recently were those comments made?

16 A Two years ago, a year ago. There are other things  
17 that are indicative of that too.

18 Q Such as?

19 A Allowing multiplexes and condominiums to be built  
20 without hooking up to the infrastructure in the town and  
21 allowing them to be built with septic systems and wells.  
22 That was something that bothered myself and a number of  
23 other people, namely that somehow or another -- and it got  
24 through and it's in the Land Use Ordinances that if you  
25 wanted to build a hotel above Route 9, as long as you were

1 150 feet -- I think it was 500 feet, 500 feet from a plug,  
2 you could build it and stay on septic systems and wells  
3 until the infrastructure comes out. That's what I mean by  
4 continuing development, those kinds of plans.

5 Q Is there zoning that permits that?

6 A Yes, right now, it has been passed.

7 Q In the Goose Rocks zone?

8 A This is for the area above the Goose Rocks zone  
9 where presumably these condominiums would be built, not far  
10 from say Hidden Pond. Go ahead.

11 Q The letter that we are referring to, No. 8, marked  
12 for identification as No. 8 --

13 A Yes.

14 Q -- did you write that letter, sir?

15 A Yes, I wrote the first draft and Mr. Fleming read  
16 it. He made corrections and we agreed on the corrections.

17 Q Did anybody else make corrections to the letter?

18 A We ran it by our attorney who agreed with it. We  
19 did the content and we did the whole thing.

20 Q Your attorney being Mr. Thaxter?

21 A Yes, do you have any objections that we do that as  
22 a rule, do you have any objections to this going out. He  
23 did not.

24 Q He did not have any objections?

25 A Did not have any objections to this going out.

1 Q Did he edit it by any chance?

2 A No.

3 Q There was discussion about a letter that you  
4 apparently wrote recently regarding the proposed settlement  
5 and you were asked a question by Mr. Willing as to whether  
6 or not you had formed an opinion of the settlement and you  
7 said that you had not formed an opinion. Do you recall  
8 those questions and answer?

9 A Yes, I do. I haven't formed -- yes, I do.

10 Q Okay. So you haven't formed an opinion on the  
11 settlement proposal, but you have written a letter to the  
12 beachfront property owners regarding the proposed  
13 settlement?

14 A Yes.

15 Q All of the beachfront property owners or just the  
16 plaintiffs?

17 A Just the plaintiffs.

18 Q Okay. And could you tell me the position you took  
19 in that letter?

20 A I asked them -- we asked them, Barbara Rencurrel,  
21 Jack and myself, we asked them to not respond to the  
22 request whether people agreed or not until we had more time  
23 to discuss the matter with our attorneys, but that at any  
24 rate, there was some problems with it, there were some  
25 issues with it, and that -- let me see. Yeah, we asked

1 them -- oh, and we wanted to make it clear that this was  
2 not a recommendation that has been approved by the  
3 plaintiffs and it didn't come from them. We put that in  
4 the letter. It was a very short letter.

5 Q Could you provide a copy of that letter through  
6 your attorney?

7 A I just did it a week ago.

8 Q Just asking for it now.

9 MR. LEONI: Are you making a request for  
10 production?

11 MR. DRIVER: Yes, I am.

12 MR. LEONI: Okay. There is ways to do it.

13 MR. DRIVER: Well, I'm making it on the record  
14 and it makes it simple. I'm just asking him to provide it  
15 through you.

16 A We work on the principle that whenever we put out  
17 a letter to the beachfront owners, that sooner or later, it  
18 gets out. In fact, sooner, it gets out.

19 Q Haven't seen it, Mr. Almeder.

20 A Okay.

21 Q Maybe it's too soon.

22 A There's no reason why you can't have a copy of  
23 that letter.

24 Q That's fine. Thank you. When did you start  
25 jogging on the beach, '79?

1           A     It was right around then, yeah.

2           Q     And you indicated you just assumed you could run  
3 from the Batson to the Little River without getting  
4 permission from anyone?

5                     MR. LEONI:  Objection.

6           A     I didn't say that.  I said --

7           Q     Okay.  Well, let me ask you.  Did you assume that  
8 you could run from the Batson River to the Little River  
9 without getting permission from any of the beachfront  
10 property owners along the way?

11          A     No, I didn't assume that I didn't need their  
12 permission.  I assumed that I had their tacit permission.

13          Q     Okay.

14          A     Otherwise somebody would have come out and told  
15 me not to and nobody has ever done that.

16          Q     Well, let's suppose I'm jogging in front of your  
17 property as I have many times.

18          A     Oh.

19          Q     How would I know that I have your tacit  
20 permission?

21          A     I'm not coming out and telling you to stop.

22          Q     Okay.  I don't have to be psychic or something  
23 to --

24          A     No, as long as nobody comes out and says, look,  
25 you can't run here anymore.  If I came out to you and said,



1 look, you need to stop, I don't want you crossing here, and  
2 then you continued, then I would say it's a trespass.

3 Q Okay.

4 A But as long as I'm not saying anything, I regard  
5 that as tacit permission. And I don't have to go around  
6 telling people that I own the beach or anything like that.

7 Q But you never gave me or anyone else formal  
8 permission?

9 A No, no.

10 Q And you never told me I can't jog in front of your  
11 property?

12 A No.

13 Q And you agree that jogging is recreation?

14 MR. LEONI: Objection.

15 A There are days when it's painful.

16 Q I understand that, but do you consider jogging  
17 recreation?

18 MR. LEONI: Objection.

19 A Yeah, sure.

20 Q Okay. How about walking?

21 A Could be, yeah, could be medicinal too.

22 Q Okay. Well, could be or is it, is walking in some  
23 respects recreation?

24 A It depends on where you are walking and why you  
25 are doing it.

1 Q Well, you are making it a little more difficult  
2 than necessary, but let's suppose somebody is just walking.

3 A Ordinarily, if I'm going to take a walk, it makes  
4 me feel better, it's recreational ordinarily.

5 Q That's all. There was a question and answer that  
6 you gave and I didn't quite understand the answer. I asked  
7 the court reporter to mark it.

8 MR. DRIVER: Could you read it back, please?

9 (Reporter read requested material.)

10 Q What did you mean by that answer, as long as it's  
11 legal?

12 A I don't think I can give people permission to do  
13 illegal things on my property.

14 Q So you were looking at the illegal as opposed to  
15 the legal?

16 A Yeah, I mean I have no problem with people  
17 recreating on my property at any given time, but if it is  
18 illegal, I do have a problem.

19 Q Okay.

20 A Because it's against the law.

21 Q We will come back to that in a minute or two. You  
22 know who Herb Cohen is, don't you?

23 A Yes, I do.

24 Q Did you ever have a discussion with Mr. Cohen  
25 similar to the discussion you said you had with the Junkers

1 regarding the use of the beach?

2 A No, no.

3 Q Does Mr. Cohen have an easement to get to the  
4 beach?

5 A Yes, indeed, he does.

6 Q Is it across your property?

7 A No.

8 Q Does it come out near your property?

9 A It's --

10 MR. LEONI: Objection to form.

11 A I would say -- he has a right-of-way across the  
12 street and the neighbor across from him and that neighbor  
13 is four houses down from mine, so I'm thinking 400 yards,  
14 that's how far away it is. That's just an approximate  
15 answer.

16 Q Your testimony earlier -- I know Mr. Lachiatto  
17 asked you something about the parking. Your testimony was  
18 that there were, years ago, 60 or 70 parking spaces and  
19 then the first question was how many are there now and you  
20 estimated or guessed about 100 and then when you were  
21 asked -- let me finish the question, please -- when you  
22 were asked how many were there before, you said you thought  
23 60 or 70. My question to you, sir, is where are the  
24 additional parking spaces that were created from the time  
25 you first bought property at Goose Rocks to now?

1           A       Nearly all of them are from Dyke Road down to the  
2 pump house. I think all of those. And there's about eight  
3 or 10 in there. And also Dyke Road over the bridge, that  
4 is used informally as a parking place and the town doesn't  
5 issue tickets to anybody anywhere, so there's a tacit  
6 assumption that those are parking space along there. I  
7 don't know how many exactly are there. I think one day I  
8 counted 20, but that was evidence of a complete fill-up of  
9 what was going on in the rest of the beach.

10          Q       When you were first coming to Goose Rocks in '79  
11 and '80 and '81, did you spend most of your time down at  
12 the west end of the beach?

13          A       Yes.

14          Q       What time of day do you usually jog?

15          A       It varies depending on my schedule, but typically  
16 I prefer in the afternoon, but lately I've been doing it  
17 early in the morning.

18          Q       Okay. Do you recall the beach in front of the  
19 Tides and the property that is Conservation Trust and so  
20 on, the number of people that were on the beach in July and  
21 August in that area? I'm not asking you for how many, but  
22 just your visual -- the visual appearance of how many  
23 people were on that beach.

24          A       Seemed to be considerably more than there were  
25 years -- maybe as little as six or seven years ago. There

1 seem to be crowds there now.

2 Q Okay. When you suggested to the other plaintiffs  
3 that they post their property similar to what you did, that  
4 April 5th, 2008, sign that you had up for two days, was it  
5 the intention to keep people off the beach?

6 A No, no.

7 Q What was the intention?

8 A To make it clear to them that if they posted the  
9 property, they would be doing what they needed to do to  
10 retain their rights over the property for determining what  
11 recreational activities will take place on it.

12 Q So you felt that a sign put up for two days in  
13 April of 2008 was enough to put the public on notice that  
14 they were on private property?

15 A I didn't think it was enough.

16 Q Did you think it had any effect?

17 A I --

18 Q Let me ask you -- I'm going to ask you whether you  
19 thought it had any legal effect. I'm not asking you  
20 whether you thought that because you were told that by any  
21 legal counsel.

22 A Okay. You want to know whether I thought it had  
23 any --

24 Q Legal effect, posting a sign for two days on your  
25 property.

1           A       We couldn't get the town to agree to signs  
2 indicating as much, but we were told by the town that you  
3 can post the property, but we won't. And I think insofar  
4 as we put up a sign and we made bona fide efforts to inform  
5 people, and I don't think it required any more than 48  
6 hours, and that's all you could do. I by no means thought  
7 it was sufficient for protecting the property either.

8           Q       You said you made bona fide efforts. What efforts  
9 besides putting --

10          A       Put the signs up.

11          Q       Okay. You would acknowledge that April is not the  
12 time of the year that most people are at Goose Rocks?

13          A       That's true, but the birds are there then.

14          Q       I think we need to find another God who is going  
15 to allow them to be able to read.

16                    You were asked a series of questions as to what  
17 would be sufficient to resolve the lawsuit. Mr. Willing  
18 asked you whether restricting the parking or additional  
19 development or what have you and all of your answers were  
20 that's not enough. What would be enough?

21          A       This is just my opinion.

22          Q       That's all I can ask you.

23          A       The town could very easily withdraw the  
24 adversarial claim for a prescriptive easement, and as long  
25 as it keeps that there and they promise to use it, nothing

1 else will make any difference substantially.

2 Q There was a subsequent question where you were  
3 asked about whether there were other options and you  
4 indicated that you really -- that none of the options that  
5 you had been given was really your option. Is your option  
6 in terms of resolving this lawsuit just giving up the  
7 prescriptive easement?

8 A Not simply. There has to be some sort of a  
9 consent agreement that will hold over time for enforcing  
10 trespass laws when beachfront owners ask that they be  
11 enforced.

12 Q Well, if the town was to give up the prescriptive  
13 easement and the TMF clients, Mr. Lachiatto and I were to  
14 give up our claim for prescriptive easements, wouldn't we  
15 in effect be barred from using the beach at your whim and  
16 will?

17 A No.

18 Q Explain that answer, please.

19 A You could always arrange a license, as happens  
20 frequently in the Massachusetts area, a license between the  
21 town and the beachfront owners guaranteeing some forms of  
22 recreation and then you wouldn't have this problem of going  
23 from house to house supposedly and stuff like that.

24 Q Well, you know that licenses are term limited or  
25 revocable?

1 A Yes.

2 Q So why wouldn't an easement which is not usually  
3 term limited or revocable --

4 A Why wouldn't an easement be --

5 Q Be acceptable, fulfill your option, no  
6 prescriptive easement.

7 A Because the beachfront owners will lose all  
8 control over what kinds of activities go on on their  
9 property. They would be subject only to the people holding  
10 the easements. And in the current case, it looks like only  
11 the town can get those easements.

12 Q Mr. Almeder, I must say the deposition today has  
13 been rather surprising for me. Your testimony has  
14 generally been that you don't have any problem with people  
15 using the beach. You in fact seem to welcome it as long as  
16 they obey the law, they are not inconsiderate. What is  
17 there that is so intent -- intense in terms of use of Goose  
18 Rocks Beach that leads you to conclude that you need to be  
19 able to bar people from using it?

20 A What is it that makes me feel I need to bar people  
21 from the beach?

22 Q Yes, because that's what the lawsuit is all about.

23 A Is that what it's about?

24 MR. LEONI: Objection.

25 Q It is.



1           A       I'm sorry, I asked you a question.

2                   MR. LEONI:  Objection.

3           Q       That's okay.  You've read the complaint.  The  
4 complaint is to give you and the other plaintiffs absolute  
5 control over who comes on the beach, and if that's the  
6 case, then everybody else is effectively barred unless you  
7 give approval.

8           A       And you want me to answer the question?

9           Q       Yes, sure.  I'm really trying to understand why  
10 the hell we are here.

11          A       There's no guarantee -- there is nothing entailed  
12 by controlling your property that you are barring people  
13 from using it as long as you have tacit agreement or tacit  
14 permission to use the property or a leasing -- an  
15 enforceable leasing mechanism for using the property.  And  
16 that way, beachfront owners will retain their property  
17 rights and not have to be forced to hand them over to the  
18 town whose interest in the beach might not be the same as  
19 yours and mine.

20          Q       Have you -- have you read the proposed settlement  
21 where it talks about the involvement of the Conservation  
22 Trust?

23          A       Yes.

24          Q       And isn't that different from just giving it to  
25 the town?

1 MR. LEONI: Objection to form.

2 A No, the town will be taking easements under this  
3 proposal.

4 Q And if the easements were to go to the  
5 Conservation Trust as opposed to the town?

6 A Nobody has made that particular proposal yet, but  
7 I don't think that would help either.

8 Q Why not?

9 A Because the beachfront owners will still lose  
10 control over their property on what kinds of things can  
11 happen there.

12 Q You mean whether somebody can sunbathe or sit in a  
13 chair and read, they lose control over that?

14 A Well, whatever they decide is appropriate  
15 recreation is something that the beachfront owner would  
16 have to own up to and enforcement of those rules would not  
17 be -- would not fall on the beachfront owners, they would  
18 fall on the Conservation Trust, or their agent in this  
19 case, it would fall on the town.

20 MR. DRIVER: I don't have any more. I just want  
21 to tell you I'm still -- still have this frustration, Mr.  
22 Almeder. You come across as a very reasonable person in  
23 your testimony, but the lawsuit and --

24 MR. LEONI: I'm going to object to this. If you  
25 have a question, you can ask him the question. If you

1 don't have a question, I think we are done.

2 MR. DRIVER: That's fine. You heard me. You  
3 understand where I am.

4 THE WITNESS: Yep.

5 MR. DRIVER: Thank you, Mr. Almeder.

6 MR. FRAME: Read and sign?

7 MR. LEONI: Read and sign.

8 (Time Noted: 4:01 P.M.)

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C E R T I F I C A T E

I, Lisa S. Bishop, RPR, RMR, a Notary Public in and for the State of Maine, hereby certify that the within-named deponent was sworn to testify the truth, the whole truth, and nothing but the truth, in the aforementioned cause of action.

I further certify that this deposition was stenographically reported by me and later reduced to print through Computer-Aided Transcription, and the foregoing is a full and true record of the testimony given by the deponent.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand  
this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Lisa S. Bishop, RPR, RMR, Notary Public

My Commission Expires: January 27, 2016

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DEPONENT SIGNATURE PAGE

CAPTION: Almeder vs. Town of Kennebunkport, et al.

DEPONENT: Robert F. Almeder

I \_\_\_\_\_, acknowledge that I have read  
pages \_\_\_\_ through \_\_\_\_ inclusive of the transcript of my  
deposition taken on March 23, 2012.

I further acknowledge that:

(check appropriate language)

\_\_\_\_\_ the same is a true, correct, and complete  
transcription of the answers given by me to the questions  
recorded therein. OR

\_\_\_\_\_except for the changes noted on the attached errata  
sheet, the same is a true, correct, and complete  
transcription of the answers given by me to the questions  
recorded therein.

\_\_\_\_\_

Deponent

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public \_\_\_\_\_

1 THE ORIGINAL DEPOSITION OF ROBERT F. ALMEDER

2 SHOULD INCLUDE THE FOLLOWING CORRECTIONS:

3 Page/Line:                    Change From:                    Change To:

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25 NAME: \_\_\_\_\_

1 DiPierro Reporting, LLC  
2 220 Pine Street  
3 So. Portland, ME 04106  
4 (207) 767-5330

5 April 5, 2012

6 RE: Almeder v. Town of Kennebunkport, et al.

7 Dear Mr. Leoni:

8 Enclosed is a copy of the transcript of the deposition  
9 of Robert F. Almeder taken in the above-mentioned action on  
10 March 23, 2012, along with a separate signature page and  
11 errata sheet.

12 Please provide these items with appropriate  
13 instructions to Mr. Almeder for his review and signature.  
14 Upon your receipt of the executed signature page and errata  
15 sheet (if one is necessary), please forward them on to  
16 Attorney Frame, who is holding the original transcript,  
17 while retaining copies for your records.

18 Thank you for your prompt attention to this matter.

19 Sincerely,

20  
21 Lisa Bishop, RPR, RMR

22 Enclosures

23 cc: Gregg Frame, Esq.  
24 Brian Willing, Esq.

25

	<b>1996 [3]</b> 38/10 142/9 166/6 <b>1:00 [1]</b> 104/20	<b>7</b>
<b>'50s [1]</b> 67/8 <b>'70s [1]</b> 67/11 <b>'78 [7]</b> 15/19 17/18 17/21 18/3 18/5 49/20 132/4 <b>'79 [9]</b> 24/5 170/1 170/11 179/17 179/24 180/5 195/7 199/25 204/10 <b>'80 [1]</b> 204/11 <b>'81 [1]</b> 204/11 <b>'96 [1]</b> 38/13 <b>'97 [1]</b> 38/13 <b>'98 [1]</b> 166/2	<b>2</b> <b>2,000 [1]</b> 31/15 <b>20 [11]</b> 3/6 79/6 116/23 117/17 117/22 118/6 118/6 123/19 166/9 167/20 204/8 <b>200 [1]</b> 42/23 <b>200 yards [1]</b> 167/8 <b>2000 [2]</b> 20/2 20/8 <b>2003 [2]</b> 20/7 20/8 <b>2005 [5]</b> 12/21 13/8 13/24 13/25 14/3 <b>2007 [10]</b> 96/7 96/17 96/25 98/25 120/5 121/9 144/21 146/16 149/10 161/1 <b>2008 [16]</b> 51/3 119/19 143/8 143/11 145/22 146/10 146/15 146/15 160/20 161/6 162/9 163/3 163/7 175/11 205/4 205/13 <b>2009 [8]</b> 30/14 51/6 118/17 124/20 161/18 161/18 162/11 162/13 <b>2012 [7]</b> 1/13 1/15 212/17 213/8 213/23 215/4 215/9 <b>2016 [1]</b> 212/22 <b>207 [1]</b> 215/2 <b>207-767-5330 [1]</b> 1/24 <b>21 [5]</b> 3/7 20/3 29/9 124/2 124/5 <b>22 [4]</b> 3/8 142/17 142/18 143/4 <b>220 [1]</b> 215/1 <b>23 [7]</b> 1/15 3/9 142/20 143/11 144/7 213/8 215/9 <b>24 [4]</b> 3/10 142/22 143/13 144/17 <b>25 [1]</b> 156/20 <b>25-36 [2]</b> 3/11 156/17 <b>26 [1]</b> 158/14 <b>27 [2]</b> 159/15 212/22 <b>28 [5]</b> 89/23 160/2 177/12 177/14 177/19 <b>28th [1]</b> 119/18 <b>29 [2]</b> 1/13 160/9 <b>2nd [1]</b> 143/11	<b>7/10 [1]</b> 113/18 <b>7/25/07 [2]</b> 2/25 117/5 <b>70 [6]</b> 90/19 102/19 148/8 189/9 203/18 203/23 <b>76 [1]</b> 146/1 <b>767-5330 [1]</b> 215/2
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