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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, et al.)
Plaintiffs)

v.)

TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
Defendants)

DEPOSITION OF W. PARKER DWELLEY, JR., taken
before Colleen A. DiPierro, RMR, CRR, pursuant to
notice dated March 2, 2012, at the law offices of
Taylor, Frame & McCormack, 30 Milk Street, 5th Floor,
Portland, Maine, on March 26, 2012, commencing at
10:10 A.M.

APPEARANCES:

ANDRE G. DUCHETTE, ESQ.
BENJAMIN M. LEONI, ESQ.
BRIAN G. WILLING, ESQ.
AMY K. TCHAO, ESQ.

Also present:

Robert F. Almeder

Colleen A. DiPierro
DiPierro Reporting, LLC
220 Pine Street
South Portland, ME 04106
207-767-5330

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STIPULATIONS

It is hereby agreed by and between the parties that signature is not waived.

- - - - -

W. PARKER DWELLEY, JR., having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION-BY ATTY. DUCHETTE:

Q. Good morning, Mr. Dwelley. My name is Andre Duchette. I represent a large number of the owners at Goose Rocks Beach, both back lot and beachfront owners, and I'm going to be taking your deposition today. And before I go through my questioning, I have a few ground rules.

And I guess the first question is have you ever had your deposition taken before?

A. No.

Q. Okay. During the deposition I'm going to ask you several questions about the events surrounding this case, and you'll answer them under oath. And other lawyers here are allowed to ask you questions, too. And the court reporter is taking everything down and will prepare a written record of everything that is said. It's very important that you understand the questions and give accurate answers. If there's anything you don't understand or anything that you don't know or are not sure of, you let us know.

1 In terms of the reporter being able to take an
2 accurate transcription, it's important that you let me
3 finish my question, and I will do the same with your
4 answers so that we don't talk over each other. It
5 makes it very difficult to transcribe that. In
6 addition, at any time during the deposition you need to
7 take a break, let us know and we can certainly do so.

8 I may ask you to repeat a response if you give
9 a nonverbal answer such as nodding your head or saying
10 uhm-uhm or uh-huh. Again, those don't translate well
11 for -- for the written transcript.

12 Your attorney may object to questions. Once
13 the objection is noted, you still may be required to
14 respond.

15 Any questions at all regarding that?

16 A. I don't think so, no.

17 MR. DUCHETTE: Okay. I'm going to label the
18 notice of deposition as Exhibit 1.

19 (Deposition Exhibit No. 1, Notice of
20 Deposition, marked for identification.)

21 BY MR. DUCHETTE:

22 Q. And have you seen this document before, Mr. Dwelley?

23 A. Could you clarify? Do you mean this specific document
24 or one like it?

25 Q. I submit to you this is a true and accurate copy of the

1 amended notice of deposition of plaintiff, Parker
2 Dwelley, and I'm asking if you've seen this document
3 before or a copy of this document?

4 A. I've seen a copy of it.

5 Q. Okay.

6 MR. LEONI: You may just need to speak up a
7 little bit.

8 THE DEPONENT: Okay.

9 A. I've seen a copy of it.

10 BY MR. DUCHETTE:

11 Q. And could you state your name and address for the
12 record for us?

13 A. Willard Parker Dwelley, Jr., 23 Sand Point Road,
14 Kennebunkport, Maine, 04046.

15 Q. And are you currently on any medications today that
16 might impact your ability to remember or think clearly?

17 A. I'm not a doctor. I'm on several medications. To my
18 knowledge they don't particularly impact memory
19 but --

20 Q. Okay.

21 A. -- they do make you tired or sleepy.

22 Q. And would your judgment or your ability to testify
23 truthfully be impaired in any other way today?

24 A. No.

25 Q. You indicated your address is at 23 Sand Point Road.

1 Is that beachfront property?

2 A. Yes.

3 Q. Okay. Are those addresses that are of even number are
4 on the -- are they on the opposite side of Sand Point
5 Road from you?

6 A. Yes.

7 Q. Okay. What -- what's the -- a little bit of
8 background. Where did you grow up, Mr. Dwelley?

9 A. Massachusetts.

10 Q. Massachusetts. Whereabouts in Massachusetts?

11 A. Belmont.

12 Q. In Belmont. And how long did you live in
13 Massachusetts?

14 A. 25 -- 26 years, I believe.

15 Q. 26 years. Where did you -- where did you move to after
16 you left Massachusetts?

17 A. Connecticut.

18 Q. Okay. And how long were you in Connecticut?

19 A. About 25 years.

20 Q. Did you go to -- did you go to school in Massachusetts?

21 A. Public school and college.

22 Q. Where did you go to college?

23 A. Harvard.

24 Q. Harvard. And did you complete a -- get your bachelor's
25 degree at Harvard?

1 A. Yes, I did.

2 Q. In what?

3 A. Economics.

4 Q. Economics. Did you go to -- after -- did you get any
5 graduate degree after you graduated Harvard?

6 A. We didn't get degrees, but I was in the service where I
7 went into the Army Language Corps.

8 Q. Oh, okay.

9 A. It wasn't a degree.

10 Q. Were you in the military for a period of time?

11 A. Three.

12 Q. Three years. And you were in the Army?

13 A. Correct.

14 Q. And what did you -- what did you -- after you -- after
15 you graduated from college and your service in the
16 military, what did you do for employment?

17 A. I worked at IBM.

18 Q. And what did you do for IBM?

19 A. Marketing.

20 Q. Okay. And how long did you work with IBM?

21 A. Let's see, 32 years.

22 Q. 32 years. Did you work for any other company after
23 IBM?

24 A. No.

25 Q. No. And so -- and are you currently employed now?

1 A. No.

2 Q. Retired?

3 A. Correct.

4 Q. When did you -- when did you stop working with IBM,
5 what year?

6 A. 1987.

7 Q. Okay. And are you currently married?

8 A. My wife is deceased.

9 Q. Okay. And when did she pass away?

10 A. Four years ago.

11 Q. Okay. And did the two of you have any children?

12 A. Two.

13 Q. Two. What are their names?

14 A. One is the same as mine. He's the third.

15 Q. Okay.

16 A. And one is John H. Dwelley.

17 Q. What are their ages?

18 A. Somebody always asks that. 44 and 45, I believe.

19 Q. So Parker Dwelley, III, is 44?

20 A. 45.

21 Q. 45. And John is --

22 A. One year younger.

23 Q. Okay. Where do they currently reside?

24 A. Parker resides in Acworth, Georgia which is just
25 outside of Atlanta. John resides in Brookville,

1 Maryland which is near Columbia, Maryland about halfway
2 between Washington and Baltimore.

3 Q. Now, do they -- do either one of them have any interest
4 in the -- in the Goose Rocks Beach property that you
5 own at 23 Sand Point Road?

6 A. Yes. They're trustees of a trust of which half is the
7 value of the property.

8 Q. Okay. What's the name of that trust?

9 A. I believe my wife's name, Joan H. Dwelley Trust.

10 Q. And do they -- do they come -- do they come and stay or
11 visit at the property at Goose Rocks Beach?

12 A. Yes, they do.

13 Q. Do you own any other property at Goose Rocks Beach?

14 A. No.

15 Q. Have you ever owned any other property at Goose Rocks
16 Beach?

17 A. No.

18 Q. Okay. When did -- when did you start visiting Goose
19 Rocks Beach?

20 A. 1969 was the first year.

21 Q. And when you -- when you started -- where did you stay
22 when you came in 1969?

23 A. We stayed at what today is the Cape Arundel Inn. It
24 was then known as the Seacrest. That's -- correct
25 myself. That was in Kennebunkport; it was not

1 precisely Goose Rocks Beach.

2 Q. So in 1969 you were staying in Kennebunkport?

3 A. Correct.

4 Q. How long did you stay at the Cape Arundel Inn?

5 A. A couple weeks.

6 Q. Do you remember what time of year that was?

7 A. Summer.

8 Q. Do you recall what month that was in?

9 A. I can't be sure.

10 Q. Okay. And so when you came in 1969 to Kennebunkport,
11 you had the occasion to visit Goose Rocks Beach?

12 A. That's correct.

13 Q. What -- why did you visit Goose Rocks Beach?

14 A. Because the waitress at the Seacrest recommended it.

15 Q. Okay. And did you spend the day there or did you spend
16 several days there during your visit?

17 A. A day at a time, yeah.

18 Q. Okay. And when you -- when you visited Goose Rocks
19 Beach do you recall where the location of Goose Rocks
20 Beach you were -- you were at when you visited it?

21 A. That particular year?

22 Q. Yes.

23 A. It was just generally on the beach at one location or
24 another. It depends on who we were with and we had
25 young children, so.

1 Q. Okay. When you say who you were with, did you have
2 friends who lived in Goose Rocks Beach?

3 A. No, not permanently, no.

4 Q. Did you -- at that time did you know anybody who was
5 renting or staying at Goose Rocks Beach?

6 A. Not at that time.

7 Q. Not in 1969. But when you went in 1969 you did go with
8 some other friends?

9 A. To Kennebunkport?

10 Q. To Goose Rocks Beach.

11 A. Not that I recall.

12 Q. Okay. Were you with your family?

13 A. Yes, my wife and children.

14 Q. Okay. Do you recall what type of activities you did on
15 the beach when you visited in 1969?

16 A. Basically swam or played in the sand with the children
17 when they were young.

18 Q. Okay. And, again, you don't recall what area of Goose
19 Rocks Beach you were -- you did those activities in in
20 1969?

21 A. Yeah, that's right, I don't recall.

22 Q. Okay. Okay. For purposes of today's deposition when I
23 refer to Goose Rocks Beach, I think everybody has a
24 general idea of where that is, but I'll be referring to
25 both what's referred to as the intertidal zone.

1 Are you familiar with what the intertidal zone
2 is?

3 A. As it is generally described. I don't know the precise
4 definition.

5 Q. Okay. And so when I refer to Goose Rocks Beach, I'm
6 referring to both the intertidal zone, as well as the
7 dry sand portion of the beach.

8 And do you understand the intertidal zone to be
9 kind of the wet sand portion of the beach?

10 A. It depends on where the tide is.

11 Q. Okay. Do -- would you agree that the intertidal zone,
12 at least in Maine, is typically referred to that
13 portion which is -- lies between the mean high water
14 mark and the mean low water mark?

15 A. I believe I understand that. It's a definition.
16 Whether it's correct --

17 Q. Would you have a different definition with respects to
18 the intertidal zone?

19 A. Not anything that's scientific.

20 Q. What would be your definition?

21 A. Similar to the one you gave before but not necessarily
22 that precise. The reason -- probably my lawyer will
23 kick me under the chair. The problem is, is especially
24 where I live --

25 Q. Okay.

1 A. -- tides change dramatically, and if you ask me today
2 at six months from now, a year from now, if I had to go
3 out and put a stake in the sand, they would be in
4 different locations, both high tide and low tide, so
5 that's why it's difficult to generalize.

6 Q. So the high water mark changes from year to year?

7 A. Month to month even.

8 Q. And similar with the low water mark?

9 A. That's exactly right.

10 Q. Okay. Is that more prominent at your end of the beach
11 versus other areas of the beach or would you say
12 it's --

13 MR. LEONI: Objection to form.

14 BY MR. DUCHETTE:

15 Q. The same holds true for all of Goose Rocks Beach?

16 A. Certainly it changes from one location to another, so
17 that the phenomenon is -- exists, I think, along the
18 entire beach but not necessarily at the same time.

19 Q. In front of -- in front of 23 Sand Point Road is there
20 typically -- how much dry sand is there typically?

21 MR. LEONI: Objection to form.

22 A. I can estimate, say, at high tide, anywhere from 10 to
23 30 yards now.

24 BY MR. DUCHETTE:

25 Q. Okay. Was it -- was it -- was it ever greater than

1 that in the past?

2 A. I'm -- I can't be precise but it was different.

3 Q. How so?

4 A. Just because tides change.

5 Q. Tides. I believe your property is located near the
6 Little River; is that correct?

7 A. That's correct.

8 Q. Does that impact the -- the -- does that impact the
9 beachfront in front of your property at 23 Sand Point
10 Road at all, the flow of the river?

11 A. It does in a modest way. That's about all I can say.

12 Q. Okay. When did you -- when did you purchase your house
13 at Goose Rocks Beach, 23 Sand Point Road?

14 A. '71.

15 Q. So you've -- and did you visit -- you visited
16 Kennebunkport in 1969 and visited Goose Rocks Beach.

17 Did you visit Goose Rocks Beach again in 1970?

18 A. Yes, we rented a house. Let me correct myself. The
19 purchase date, I believe, was actually 1972.

20 Q. Okay. So 1970 you rented a house. Do you recall where
21 that house was located?

22 A. Yes. It's across the street. It's been remodeled but
23 the property is still --

24 Q. Do you recall the address of that house?

25 A. No. It would be an even number, probably 20, either 18

1 or 20.

2 Q. And when you rented that house how long did you stay
3 there?

4 A. A month.

5 Q. A month. And so that was an even number property on
6 Sand Point Road?

7 A. Correct.

8 Q. Okay. And it would not be beachfront property?

9 A. Would not be what?

10 Q. Beachfront property.

11 A. I didn't understand that.

12 Q. So it was not beachfront property?

13 A. Oh, oh, no, right. It was -- a tidal brook was behind
14 that on that side.

15 Q. And did you stay there again with your family?

16 A. Yes.

17 Q. Okay. Did anybody else stay at that house with you?

18 A. My dog.

19 Q. Okay. Did you use -- did you use Goose Rocks Beach
20 during that time you were staying there in 1970?

21 A. Yes.

22 Q. Okay. Do you recall the location of the beach you used
23 when you were renting in 1970?

24 A. Well, it was -- Sand Point Road is a private road, so
25 it would be the beach adjacent to that development.

1 Q. Okay.

2 (Deposition Exhibit No. 2, Plan, marked for
3 identification.)

4 BY MR. DUCHETTE:

5 Q. I'm showing you a plan called the plan showing a
6 subdivision of the O'Hara land, Goose Rocks Beach,
7 Kennebunkport, Maine.

8 On that particular plan do you, if you can, do
9 you know where your current property is, 23 Sand Point
10 Road?

11 A. I believe it's the lot indicated as lot 16.

12 Q. And could you -- could you circle that lot.

13 Is there -- there appears to be a road to the
14 north of lot 16. What's -- do you know what the name
15 of that road is?

16 A. North? No, there's no road to the north. Part of Sand
17 Point Road, the way my property is located on lot 16,
18 is Sand Point Road.

19 Q. It's Sand Point Road?

20 A. Yeah.

21 Q. Could you -- could you label that -- if you could make
22 a notation of Sand Point Road on the subdivision.

23 A. Let me clarify or ask you to clarify. Just that piece?
24 Because the road covers all the way from Kings Highway
25 to the river.

1 Q. Okay.

2 A. But it doesn't cover it in a straight line.

3 Q. Okay. So maybe you can indicate it near your house,
4 but then again where it splits off from Kings Highway.

5 A. And --

6 MR. LEONI: Where it splits off at Kings
7 Highway.

8 A. Up -- for the first I believe two houses on the left as
9 you're coming towards my house, that's public road.

10 BY MR. DUCHETTE:

11 Q. Okay.

12 A. It becomes private at that point. Whether it was --
13 what date is this map, '55 or something, '59? I'm not
14 sure. It's before my time.

15 Q. Okay. The property that you rented in 1970, do you
16 know where that -- do you know where that property is
17 located on this map?

18 A. Yeah.

19 Q. And you're -- what number are you circling?

20 A. The number here is 11 but that's not a mailing number,
21 that's a lot number.

22 Q. The lot number. Could you put a -- I guess you circled
23 it, but you've already circled your house at lot 16.

24 So we know the difference between what we're
25 talking about, could you put an X in that circled lot

1 11?

2 A. Yes.

3 Q. Great. And I think you've already indicated in 1970
4 when you used the beach, so did you use the beach in
5 this general vicinity of Goose Rocks Beach?

6 A. Correct.

7 Q. Okay. How would you access the beach?

8 A. There's an indicated pathway on the map here.

9 Q. And that would be the pathway that you used?

10 A. Yeah.

11 Q. And could you put a -- maybe the letters ROW for
12 right-of-way near the pathway.

13 A. In fact, that's what it was. I can't read the type to
14 see what it says. I'll put on a circle.

15 Q. If you could just put ROW.

16 Excellent. And when you -- and once you got
17 down to the beach via that pathway, did you -- did you
18 stay in that path or would you go left or right?

19 MR. LEONI: Objection to form.

20 A. All of the above.

21 BY MR. DUCHETTE:

22 Q. Okay. And what type of activities in 1970 did you and
23 your family do on the beach?

24 A. The type of -- this is sort of a general answer. The
25 type of activity that any young family does on the

1 beach.

2 Q. Can you explain some of those?

3 A. Played in the sand, went into the water or whatever
4 else.

5 Q. Did you play any -- did you throw a frisbee?

6 A. Probably not in those days but eventually I'm sure we
7 did.

8 Q. Toss a baseball?

9 A. Correct.

10 Q. Build sandcastles?

11 A. Correct.

12 Q. Have a picnic?

13 A. Not usually.

14 Q. Okay. Sunbathe?

15 A. Not in my situation.

16 Q. Read a book?

17 A. Yeah, or a newspaper primarily.

18 Q. Okay. Would those activities occur in the dry sand?

19 A. Clarify again what you mean by dry sand.

20 Q. The area between the top of the bank or -- well,
21 actually let me go back.

22 Was there the -- the lots bordering the beach,
23 was there -- is there a seawall there now?

24 A. There is now, yes.

25 Q. Okay. And is that -- is that some sort of rock

1 formation?

2 A. Provided by mankind.

3 Q. Okay. And so it was built?

4 A. Yes.

5 Q. Okay. Do you know when that was built?

6 A. It was done in pieces but it depended on the homeowner,
7 but it was in basically 1970s.

8 Q. Okay. Was there -- was there a seawall there when you
9 rented in 1970?

10 A. No.

11 Q. Okay. Was there -- was there any sort of delineation
12 between where the -- the beach ended and the back yards
13 of the beachfront homes began?

14 A. Or front yards.

15 Q. Front yards.

16 A. There were sand dunes, if that's what you're referring
17 to.

18 Q. Okay. But that's how you would -- you would
19 distinguish between the -- where the -- where the beach
20 begins or ends, depending on which direction you're
21 heading in?

22 A. Correct.

23 Q. And so when I'm referring to the dry sand area, I'm
24 referring to that area of the beach which is between
25 the front yards of the beachfront homes and the mean

1 high water mark.

2 A. Okay.

3 Q. Okay. So when you -- so going back to my earlier line
4 of questioning in terms of the types of activities you
5 and your family did in 1970, did those activities occur
6 in the -- in the dry sand portion of Goose Rocks Beach?

7 A. Not exclusively.

8 Q. Okay. But sometimes?

9 A. Yes.

10 Q. And did sometimes those activities also take place in
11 the wet sand portion of Goose Rocks Beach?

12 A. Yes.

13 Q. Okay. In 1970 did you always stay at the -- you know,
14 in the general area of the O'Hara -- we'll call it the
15 O'Hara subdivision -- of the beach or did you access
16 other parts of Goose Rocks Beach?

17 MR. LEONI: Objection to form.

18 A. What -- in those days especially with young children,
19 principally most of the time was spent in the O'Hara
20 area, generally speaking, but not exclusively.

21 BY MR. DUCHETTE:

22 Q. Okay. And this is the east end of Goose Rocks Beach,
23 correct?

24 A. Correct.

25 Q. Okay. Did you and your family ever in 1970 ever walk

1 the length of Goose Rocks Beach?

2 A. I don't recall.

3 Q. Did you -- did you visit -- did you visit Goose Rocks
4 Beach again in 1971?

5 A. Yes.

6 Q. Okay. And where did you stay?

7 A. On New Biddeford Road.

8 Q. Did you rent again?

9 A. Correct.

10 Q. And how long did you rent?

11 A. I don't recall precisely, a month in my estimate.

12 Q. Okay. And did any -- was it just you and your family?

13 A. Correct.

14 Q. And your dog?

15 A. No dog that year.

16 Q. No dog that year.

17 A. We don't allow dogs on the beach.

18 Q. When you stayed -- when you rented at New Biddeford
19 Road, do you recall which area of Goose Rocks Beach
20 that you used with your family?

21 A. At the end of New Biddeford Road is an access road,
22 it's not clear in my mind who owned it then or who owns
23 it today even, known as Jeffrey's Way. It's a
24 continuation of New Biddeford Road. That's how we
25 would access the beach.

1 Q. And would you generally use the area around Jeffrey's
2 Way for beach activities?

3 A. Correct.

4 Q. And where -- the beach activities that you and your
5 family took part in in 1971, were they similar to the
6 same activities in 1970 and 1969?

7 A. Repeat that again.

8 Q. The activities you and your family did on the -- on
9 Goose Rocks Beach in 1971, were they similar to the
10 activities you described -- that you did in 1970 and
11 1969?

12 A. Correct.

13 Q. And did those activities occur in both the wet sand and
14 dry sand portion of Goose Rocks Beach?

15 A. Correct.

16 Q. I think you indicated you purchased your property in
17 1972 at 23 Sand Point Road. Did -- did you stay at
18 that property at 23 Sand Point Road in 1972 or did you
19 rent again?

20 MR. LEONI: Objection to form.

21 A. Both. We stayed some of the time and we rented some of
22 the time to somebody else.

23 BY MR. DUCHETTE:

24 Q. Okay.

25 A. Is that what you meant? I'm sorry.

1 Q. No. Let me ask a better question. In 1972 did you
2 visit Goose Rocks Beach again?

3 A. Yes.

4 Q. Did you -- did you already own your home or did you
5 rent again?

6 A. We already owned.

7 MR. LEONI: Objection to form.

8 A. We already owned.

9 BY MR. DUCHETTE:

10 Q. You already owned your own home. So when you visited
11 Goose Rocks Beach you stayed at 23 Sand Point Road?

12 A. Correct.

13 Q. And I think you indicated that you -- you also rented
14 your property in 1972 as well at 23 Sand Point Road?

15 A. That's correct.

16 Q. Okay. How long did you rent it for in 1972?

17 A. I can't recall precisely.

18 Q. Okay.

19 A. It was -- well, I just can't recall precisely.

20 Q. Was it more than a week?

21 A. Yes.

22 Q. More than two weeks?

23 A. Yes.

24 Q. Was it more or less than a month?

25 A. Correct, more or less than a month.

1 Q. Around a month then?

2 A. Correct.

3 Q. Okay. How long did you -- did you rent your -- how
4 many years did you rent your property at 23 Sand Point
5 Road?

6 A. Let's see, this is 19 -- I mean 2012. I can't recall
7 precisely, 20 years I'd say.

8 Q. So until about 1992?

9 A. More likely 1989.

10 Q. Okay. And did you always rent for about a month during
11 those years or was it -- or was there occasions
12 where --

13 A. It wasn't consistent.

14 MR. LEONI: Objection to form.

15 A. It wasn't consistent. It could have been six weeks, it
16 could have been three weeks, depending on the
17 situation.

18 BY MR. DUCHETTE:

19 Q. Okay. Was there, in that time span, was there ever a
20 year that you didn't rent the property?

21 A. Yes.

22 Q. Do you recall which years those were?

23 A. As soon as I could make my sons go to work. I would
24 say the -- around 1980, but I can't be more precise on
25 that.

1 Q. Okay. What -- when did you rent the property, what
2 season? Is it always in the summertime?

3 A. Or early fall.

4 Q. Okay. Did you ever rent it in the wintertime?

5 A. No.

6 Q. Okay. Or in the early spring?

7 A. No.

8 Q. Okay. Was there -- during that span of 1972 and 1989
9 during the years you were renting it, did you always
10 come at the same time -- same time of year or did that
11 change as well?

12 MR. LEONI: Objection to form.

13 A. I can't generalize in a response. I -- generally
14 speaking, now generally, it would have been August when
15 we were there.

16 BY MR. DUCHETTE:

17 Q. Okay. When you -- I'm going to go back to the periods
18 that you were visiting Goose Rocks Beach before you
19 purchased the property in 1972.

20 So between 1969 and 1972 when you and your
21 family used the beach, did you ever ask anyone's
22 permission to use the beach?

23 A. When -- excuse me. What time frame was that again?

24 Q. Between 1969 and 1972 before you purchased your
25 property at 23 Sand Point Road.

1 A. We never asked any homeowner that I'm -- that I can
2 recollect.

3 Q. Okay. Did you ask somebody who wasn't an owner,
4 homeowner?

5 A. Yes.

6 Q. Who was that?

7 A. The realtor.

8 Q. And was that the realtor with respects to who was
9 renting the properties or a friend of yours?

10 A. Renting --

11 MR. LEONI: Objection to form.

12 A. Renting the property.

13 BY MR. DUCHETTE:

14 Q. And this would have been I believe you rented a house
15 over on Sand Point Road and then you rented a house at
16 New Biddeford Road?

17 A. Correct.

18 Q. Was it the same realtor both times?

19 A. Yes.

20 Q. Okay. And did you speak to that realtor in 1969 when
21 you visited Goose Rocks Beach when you were staying at
22 Cape Arundel Inn?

23 A. Not about the question you're asking.

24 Q. Okay. With respects to in 1970 and 1971 when you spoke
25 with that realtor about the use of the beach, what --

1 what instructions, if any, did she give you about you
2 and your family's use on Goose Rocks Beach?

3 A. Actually, it was a husband, but the -- there were no
4 instructions, there was just a reference to locations,
5 like when we were at the house on Sand Point Road,
6 because it was on a private street. Whether his answer
7 would have been different otherwise, I don't know. He
8 just indicated in front of the neighboring houses.

9 Q. Okay.

10 A. Or the waterfront houses at the time.

11 Q. Okay. And did he give a similar instruction when you
12 were renting on New Biddeford Road?

13 A. I don't recall.

14 Q. Okay. But you didn't -- you didn't seek out any
15 permission from any of the beachfront owners during any
16 of those -- any of that period, between 1969 and 1971,
17 correct?

18 A. I'll modify my answer in the sense that they were all
19 friends and neighbors, so nobody went through that
20 process to my knowledge.

21 Q. Were these people your friends and neighbors between
22 1969 and 1971?

23 A. '70 and '71.

24 Q. Okay. So they -- so they -- the people -- were
25 there -- there were beachfront owners who were your

1 friends and neighbors in 1970 and 1971?

2 A. Correct.

3 Q. Okay. But you didn't seek out their permission when
4 you used the beach in front of their properties,
5 correct?

6 A. Correct.

7 Q. Did they ever -- did any of those beachfront owners
8 ever object to any of your family's use of the beach in
9 1970 and 1971?

10 A. No, they usually encouraged us. They knew we had young
11 children so we didn't have to walk way down the beach.

12 Q. When you say they would encourage us, explain more
13 about that. How would they encourage you and your
14 family's use of the beach?

15 A. Just in a neighborly way, feel free to use the beach.

16 Q. Do you recall who -- who these people were?

17 A. Three of the four of them are dead.

18 Q. Who are they?

19 A. Mr. O'Hara and the Veleskas. That was their last name.

20 MR. LEONI: Could you spell that.

21 THE DEPONENT: Yes, V-E-L-E-S-K-A.

22 BY MR. DUCHETTE:

23 Q. Where did Mr. O'Hara live?

24 A. That would be property 14.

25 Q. Lot No. 14 on the O'Hara subdivision?

1 A. Correct.

2 Q. And where did the Veleskas live?

3 A. On lot -- let's see. On lot 18.

4 Q. Lot No. 18.

5 A. There was -- the occupants of lot 17 were related to
6 the O'Haras. There was no house on lot 15.

7 Q. Did -- was there -- was there anyone who encouraged --
8 when you were staying on New Biddeford Road and
9 utilizing the beach in the area of Jeffrey's Way, the
10 way you described it, were there any beachfront owners
11 you spoke with who encouraged your use of the beach in
12 that particular area?

13 A. Not that I recall.

14 Q. And did any of the -- any beachfront owners ever object
15 to your use of Goose Rocks Beach in that area?

16 A. No.

17 Q. And did you seek out permission to use the beach in
18 that area from any beachfront owners in 1971 when you
19 were renting --

20 A. I don't --

21 Q. -- at New Biddeford Road?

22 A. I don't recall. I don't even know how many houses
23 existed then.

24 Q. Okay. Who's allowed to use the -- who's allowed to use
25 the beachfront area today in front of your house at 23

1 Sand Point Road?

2 MR. LEONI: Objection to form.

3 A. All I can respond is can you be more precise as to what
4 you're talking about?

5 BY MR. DUCHETTE:

6 Q. Is there any restrictions on who can use the beachfront
7 property in front of your house at 23 Sand Point Road
8 today?

9 MR. LEONI: Objection. And, Mr. Dwelley, I'm
10 just going to mention if your understanding is based on
11 any conversations that you had with your attorneys on
12 the issue, that is privilege and confidential --

13 THE DEPONENT: Okay.

14 MR. LEONI: -- information.

15 BY MR. DUCHETTE:

16 Q. And I'm not asking for any discussions you've had with
17 your attorney, I'm asking your opinion as to who you
18 believe has the right to use your property -- your
19 beachfront property in front of your house at 23 Sand
20 Point Road?

21 A. My answer is strictly there are limited usages allowed
22 in that area.

23 Q. And what are those?

24 A. Walking, swimming, something like that.

25 Q. Okay.

1 MR. WILLING: I missed the last thing you said.

2 THE DEPONENT: Swimming.

3 BY MR. DUCHETTE:

4 Q. If I'm looking at the -- the O'Hara subdivision, do --
5 do back lot owners, let's say the person residing at
6 lot 11 which is the property you rented back in 1970,
7 are those -- are the owners of that particular -- and
8 let's say they're family, friends, guests, renters --
9 are they allowed to use the beach in front of your
10 property?

11 MR. LEONI: Objection to form.

12 A. Not -- I have no objection.

13 BY MR. DUCHETTE:

14 Q. You have no objection?

15 A. To those specific people.

16 Q. But do they have the right to use --

17 A. I have no idea.

18 Q. You have no idea. What about the owners, renters,
19 guests, friends of lot 12 in the O'Hara subdivision?

20 MR. LEONI: Objection to form.

21 A. Well, I thought you asked that question when you -- in
22 the preceding question. You were referring, I thought,
23 to all of the property owners in the back.

24 BY MR. DUCHETTE:

25 Q. That was going to be my third question once I

1 established it. But is your -- is your testimony today
2 that anyone living in the O'Hara subdivision, you have
3 no objection to their use of the beach in front of your
4 house, but you don't know whether or not they have a
5 right to use the beach I think was your testimony?

6 A. That's correct, yes.

7 Q. Okay. Do individuals or their guests, renters,
8 friends, do they -- who live outside of the -- I'll try
9 and be clear. Follow me along.

10 Individuals, families, guests who live outside
11 of the O'Hara subdivision but live in the Goose Rocks
12 Beach zone, and when I say the Goose Rocks Beach zone,
13 do you -- do you understand what I mean by that?

14 A. Generally I understand.

15 Q. How would -- if you were to define the Goose Rocks
16 Beach zone, how would you define it?

17 A. Anything south of the Route 9 between Batson River and
18 Little River.

19 Q. Okay. That's how I define it.

20 So do you have any -- does any individual who
21 lives outside of the O'Hara subdivision and their
22 families and guests and renters, do they have the
23 right -- but still living in the Goose Rocks Beach
24 zone, do they have the right to use the beach in front
25 of your property at 23 Sand Point Road?

1 A. Not to my knowledge.

2 Q. Okay. Do you have any objection to their use of the
3 beach in front of your property at 23 Sand Point Road?

4 A. If they ask permission I don't. I shouldn't say I
5 don't, I probably would not.

6 Q. Okay. Who has -- who -- has anyone ever asked your
7 permission to use the beach in front of your property
8 at 23 Sand Point Road?

9 A. Not that specific question, no.

10 Q. Okay. Has anybody asked a different question?

11 A. Sometimes in bad weather people ask, if they need to
12 get off the beach, they will personally ask me or
13 family representing us if they can trespass over the
14 land to get to the road.

15 Q. Okay. Any other requests?

16 A. No. There was a woman who used to sunbathe nudely --
17 nudie, but we never objected to that.

18 Q. But she didn't ask permission?

19 A. No. That's when we had sand dunes.

20 Q. Have you given permission to -- to any of the back lot
21 owners in the O'Hara subdivision to -- to utilize the
22 beach in front of your property?

23 A. If they ask I did, sure.

24 Q. Has anyone ever asked?

25 A. Yes.

1 Q. And who is that?

2 A. I can answer that if you want to -- it doesn't subject
3 them to any evil looks, does it? The -- our immediate
4 neighbors behind us, the Brasks, who have been there
5 approximately as long as we have.

6 Q. B-R?

7 A. A-S-K.

8 Q. May have asked to use -- use the beach in front of your
9 property?

10 A. Well, more they've asked to use our stairs to the
11 beach. They never questioned the use of the beach.

12 Q. Okay. In order to access -- in your lot you've circled
13 23 Sand Point Road as lot 16?

14 A. Correct.

15 Q. There's no right-of-way depicted on the O'Hara
16 subdivision. Is there a right-of-way near your
17 property?

18 A. No.

19 Q. Or actually I should be more specific, is there a
20 right-of-way that borders your property?

21 A. No.

22 Q. But you indicated that you have stairs that lead --
23 lead to the beach from your property?

24 A. Correct.

25 Q. And are those -- do those abut lot 16?

1 A. Yes.

2 Q. So when people who have asked and utilized your stairs,
3 have they also then crossed your property in order to
4 get to those stairs?

5 A. With our permission.

6 Q. Okay. But their permission wasn't relative to their
7 use of Goose Rocks Beach once they --

8 A. Correct.

9 Q. -- went -- got to the beach, correct?

10 Okay.

11 A. If it had been, we wouldn't be here.

12 Q. Has anyone -- has anyone else besides the Brasks who
13 live in the O'Hara subdivision asked permission to use
14 the beach in front of your property?

15 A. Not the beach, no.

16 Q. Okay. Have other people in the O'Hara subdivision
17 asked to use the -- your stairs?

18 A. Yes.

19 Q. Okay. And who are those people?

20 A. VanVen.

21 Q. Can you spell that for me?

22 A. V-A-N capital V-E-N.

23 Q. The right-of-way that's depicted on the O'Hara
24 subdivision plan, is that still there today?

25 A. Yes.

1 Q. Are there stairs at the bottom of that right-of-way?

2 A. Yes.

3 Q. It might be a still silly question, but why are people
4 utilizing your stairs and not the right-of-way stairs?

5 MR. LEONI: Objection to form.

6 A. You said it correctly: It is a silly question. I
7 don't know. I'm not one of them so I mean --

8 BY MR. DUCHETTE:

9 Q. Are your stairs in better condition than the stairs at
10 the bottom of the right-of-way?

11 A. I would say today they are.

12 MR. DUCHETTE: We've gone for about an hour.

13 Does anybody need a break?

14 MR. LEONI: Would you like a break?

15 THE DEPONENT: Yes, I'll take a break.

16 MR. DUCHETTE: Let's take a five-minute break.

17 (A short break was taken.)

18 BY MR. DUCHETTE:

19 Q. Mr. Dwelley, I'm going to ask some questions now with
20 respects to the period of you and your family and
21 guests' use of Goose Rocks Beach after you purchased
22 your property at 23 Sand Point Road in 1972.

23 I guess my first question is, is you indicated
24 that for many years between 1972 and 1989 you rented
25 your property at 23 Sand Point Road.

1 Did you ever give any instructions to those who
2 rented your property about their use of Goose Rocks
3 Beach?

4 A. I don't recall doing that, but I can't speak for the
5 rental agents that we used.

6 Q. Who do you use for rental agents?

7 A. Well, we originally used the two people named Burnham,
8 husband and wife.

9 Q. Were the -- were the Burnhams the ones who -- who
10 gave -- who you spoke to when you rented your property
11 in 1970 and 1971?

12 A. Yes.

13 Q. Okay. And did you --

14 A. Well, it wasn't -- it wasn't my property in '70 and
15 '71.

16 Q. The property you rented in '70-'71 I think you had
17 indicated that --

18 A. Yes, it was.

19 Q. -- with respect to the use of the beach it was the
20 Burnhams?

21 A. Yes.

22 Q. And did you use any other rental agents?

23 A. Bill and Marie Junker, J-U-N-K-E-R.

24 Q. With respects to instructions regarding the use of the
25 beachfront property, like you said, you never gave that

1 to the renters, it was the rental agent. Did you ever
2 give instructions to the rental agent?

3 A. They've been at Goose Rocks a lot longer than I did.
4 If they needed instruction, I didn't give it to them.

5 Q. Okay. What's your understanding of what type of
6 use -- I'm going to break this down.

7 What type of use is allowed on Goose Rocks
8 Beach, let's say, by those living in the Goose Rocks
9 Beach zone?

10 MR. LEONI: Objection to form. If there's
11 anything -- if your understanding is based on any
12 conversations that you've had with your attorney, that
13 information is confidential.

14 BY MR. DUCHETTE:

15 Q. Again, I'm not asking for you to tell me anything about
16 your discussions with your attorney, only what you've
17 been -- rented for three years and living at Goose
18 Rocks Beach since 1972.

19 I'm wondering what your understanding is with
20 respects to what use -- what your understanding of what
21 the use is allowed on Goose Rocks Beach by those living
22 in the Goose Rocks Beach zone?

23 MR. LEONI: Objection to form.

24 A. The same restrictions the Town employs about when dogs
25 and so forth can be on the beach and when they should

1 be leashed, all those kinds of things, just law-abiding
2 actions that we assume.

3 BY MR. DUCHETTE:

4 Q. Are there -- in your opinion with respects to those
5 living in Goose Rocks Beach zone, whether it's
6 beachfront property owners or back lot property owners,
7 in your opinion is there any restrictions on the type
8 of activities they can -- they can do on Goose Rocks
9 Beach?

10 MR. LEONI: Objection to form.

11 BY MR. DUCHETTE:

12 Q. Other than the Town restrictions, walking the dog and
13 things of that nature?

14 A. As a general rule, I don't know of any, but there may
15 be.

16 Q. And have you ever -- have you ever objected to anyone's
17 use of Goose Rocks Beach in front of your property?

18 A. Yes.

19 Q. That happened on many occasions?

20 MR. LEONI: Objection to form.

21 A. It may have happened, you know, in the sense when I'm
22 not there so I don't know, if that's part of the
23 question or not. There is one that I'm sure you're
24 aware of where I -- my wife was not in very good shape
25 physically healthwise, and she was obstructed by people

1 camping in front of our house, preventing her and her
2 grandchildren to get to the beach, and so I spoke to
3 the people, asked them -- said they could stay the rest
4 of the day but remove themselves and go down to other
5 locations on the beach, which at 5:00 the next morning
6 they were back putting up a tent on the property in
7 front of my house.

8 So I called the police at that time. They
9 came. Eventually they got the people to move. That's
10 the best they could do at the time apparently.

11 BY MR. DUCHETTE:

12 Q. And I am aware of that particular incident. We'll get
13 into that a little bit more later. Have you -- have
14 you ever made any other objections, you yourself
15 personally, to people utilizing the beach in front of
16 your property?

17 A. I can say yes, but I can't cite specifics. It's either
18 yes, a response to the general -- teenagers or whatever
19 being ruckus or playing frisbee or something where
20 they -- having a fire at night. Usually the fires at
21 night I would go out and ask them to put it out and
22 move, which almost invariably they did.

23 Q. Okay. Do you have any personal objection with respects
24 to people and their families recreating, and, again,
25 provided they're not causing a ruckus or interfering

1 with you and your family's access to the beach, do you
2 have any personal objection to people recreating on the
3 beach in front of your property?

4 MR. LEONI: Objection to form.

5 A. The term, recreating, is very broad-based. If it's
6 walking or even fishing, fishing certainly I don't, and
7 walking back and forth. As you can see from the O'Hara
8 map, we're at the end of the line, so to speak, so
9 anybody who wants to exercise somewhere further down
10 the beach tends to walk all the way to our end or the
11 end where Bob lives and return, so they have to transit
12 over many property owners' land.

13 Observation only, I'm not volunteering
14 anything, I know just it's a common activity that they
15 engage in, the tourists, or they could be other
16 homeowners for all I know. So I have -- as long as
17 they're well-behaved, quote, unquote, whatever that
18 means, I don't have any objection.

19 BY MR. DUCHETTE:

20 Q. And let's break that down a little bit. So you don't
21 have any objection to people walking, jogging,
22 exercising when they traverse over the beach in front
23 of your property?

24 MR. LEONI: Objection to form.

25 BY MR. DUCHETTE:

1 Q. Correct?

2 A. I object to them doing it in an organized fashion. If
3 they just stop and take a towel to wipe themselves off
4 or sit down for a few minutes to catch their breath, I
5 have no objection.

6 Now, fishermen have to, by and large at a beach
7 like Goose Rocks, have to be in the water to fish.
8 It's very difficult to fish from land because it's
9 so -- distances, depending on the tide, are quite
10 great, and so they have every right to be in the water
11 fishing.

12 Q. If a family had stopped to build sandcastles in front
13 of your -- in front of your house, would you have any
14 objection to that use?

15 A. It would be selective. It might be, depending on what
16 they were performing. If it looks like something
17 they're going to do every day for a week, yes, I'd have
18 an objection.

19 Q. And have you ever -- and when you said there had been
20 other incidences in which you've objected to people's
21 use, has there ever been an incidence in which you have
22 objected to a family building sandcastles down on the
23 beach in front of your property?

24 A. I don't recall. Well, I'll leave it at that.

25 Q. Okay. Since the -- since the period you have owned

1 your property at 23 Sand Point Road, what types of
2 activities have -- have you done on the beach
3 personally, in -- just -- let me -- other than -- what
4 types of activities have you done on the beach not in
5 front of your property at 23 Sand Point Road?

6 A. Walk.

7 Q. Walk. Have you ever -- you've never -- have you done
8 anything other than walking?

9 A. Probably, and this is I don't recall specifically,
10 playing with the ball or a frisbee or something with my
11 children or something that would have involved
12 neighboring properties.

13 Q. Okay. When you have conducted those activities, did
14 you get permission from beachfront owners in order to
15 do that?

16 A. Not that I recall.

17 Q. Okay. What about your children's use of Goose Rocks
18 Beach, have they utilized and conducted activities on
19 Goose Rocks Beach other than in front of your house at
20 23 Sand Point Road, again, during that period you
21 were --

22 A. I don't -- I don't really know. I can generalize but I
23 really don't know.

24 Q. You spoke earlier about the incident in which you
25 called -- contacted the police because there was a

1 family that was camped out in front of your property,
2 correct?

3 A. Correct.

4 Q. Do you recall when that hap -- when that incident took
5 place?

6 A. It's about four-and-a-half years ago. My wife died
7 in -- what's this '12. It was probably '07, 2007.

8 Q. Have you ever contacted the police for any other
9 incidences with respects to somebody's use of Goose
10 Rocks Beach in front of your property?

11 A. Not that I recall.

12 Q. Okay. So that was the only time that you can recall
13 that you contacted the police with respects to
14 someone's -- your objection to someone's use in front
15 of your property at Goose Rocks Beach?

16 A. I never called on the nude lady. No, I never called.

17 Q. Would -- in the summertime is the -- is the -- is Goose
18 Rocks Beach in front of your property, is it heavily
19 used?

20 A. No.

21 MR. LEONI: Objection to form.

22 BY MR. DUCHETTE:

23 Q. Well, who has a tendency -- who has a tendency to in
24 the summertime utilize the beach, and not just in front
25 of your property but down on the east end in front of

1 the O'Hara subdivision?

2 MR. LEONI: Objection to form.

3 A. I have no idea who they are. The activity that is most
4 prevalent is walking.

5 BY MR. DUCHETTE:

6 Q. Okay. And, again, you said you'd have no idea who they
7 are, so I mean you, typically when you see people
8 utilizing the beach, you have no way of knowing whether
9 or not they're a beachfront owner?

10 A. That's correct.

11 Q. Or they're family guests or renters?

12 A. That's correct.

13 Q. And you have no way of knowing whether or not they're a
14 back lot owner?

15 A. Only by their conduct. No, I have no idea.

16 Q. I apologize and now I have to ask. Can you distinguish
17 between the conduct of a back lot owner from a
18 beachfront owner?

19 A. Maybe.

20 Q. How so?

21 A. It's something you know or you don't know.

22 Q. Can you explain that in any way for me?

23 A. No, I cannot.

24 Q. Okay. Is your use of the beach any different from the
25 Brasks' use of the beach?

1 A. Not generally.

2 Q. Okay. And you have no way of knowing with respects to
3 people using the beach whether or not they're outside
4 of the Goose Rocks Beach zone?

5 MR. LEONI: Objection to form.

6 A. That's correct.

7 BY MR. DUCHETTE:

8 Q. Do you live at your property at 23 Sand Point Road
9 year-round?

10 A. Yes, I do.

11 Q. Have you always lived there year-round?

12 A. Since we -- I retired, yeah.

13 Q. Okay. And when did you retire again? I apologize if
14 you already answered.

15 A. '80 -- December '87 I think it was or in January '88,
16 something --

17 Q. Okay. Do people ever use the beach in front of your
18 property in the wintertime?

19 A. Oh, well, one -- what we've talked about before. You
20 know, walking dogs and things like that. It's very
21 cold to spend there.

22 Q. Have you ever witnessed any cross-country skiing at all
23 on the beach in the wintertime?

24 A. I've noticed tracks in the snow, but I've never
25 actually seen the people.

1 Q. Do you have any objection to -- to that activity
2 occurring on the beach in the wintertime?

3 A. No.

4 Q. Do you believe when people are utilizing the beach in
5 front of your property for recreational activities,
6 whether it be walking, jogging, building sandcastles,
7 do you believe that they're trespassing when those
8 activities are occurring on the beach in front of your
9 property at 23 Sand Point Road?

10 MR. LEONI: Objection to form.

11 A. It's -- to me, that's kind of a legal -- not kind of, I
12 mean it's a legal interpretation as to what trespassing
13 is.

14 BY MR. DUCHETTE:

15 Q. What do you believe trespassing to be?

16 A. Well, I believe that's trespassing, but it's just like
17 the people who use the woods in northern Maine and dump
18 refrigerators. It's considered trespassing.

19 Q. When you or your family are using --

20 A. No, the State considers it, the law considers it
21 trespassing.

22 Q. I'm asking whether or not you consider it trespassing?

23 A. I told you I don't consider it anything that I want to
24 bother with.

25 Q. Okay. And would you consider it a trespass when you or

1 your family members are utilizing the beach in front of
2 other beachfront owners' property?

3 A. Probably.

4 Q. But that's -- those are occurrences that have happened
5 since you've been visiting Goose Rocks Beach since
6 1969, correct?

7 A. Correct.

8 Q. And you haven't sought out the permission from those
9 beachfront owners, correct?

10 A. Along the beach when I walked or something, that's
11 correct, I haven't.

12 Q. Or when you were passing the ball or frisbee I think
13 you testified to earlier?

14 A. That's correct.

15 Q. What -- what was the purpose for bringing, and, again,
16 not any discussions you've had with your attorney, but,
17 in your opinion, what is the purpose for bringing this
18 lawsuit?

19 A. To get the recognition of private property.

20 Q. And what do you mean by that?

21 A. Just what I said. It's being contested that the beach
22 portion of my property is not private property.

23 Q. And who has -- who has contested that?

24 A. The Town. They refuse to put up signs.

25 Q. And what type of signs?

1 A. Acknowledging that it's private property.

2 Q. And did the -- and so is this lawsuit being brought
3 with respects to -- so is this -- is that why this
4 lawsuit is in your opinion is being brought?

5 MR. LEONI: Objection. Again, nothing that has
6 to do with attorney-client privilege.

7 THE DEPONENT: I understand, yes.

8 A. There probably are a multiple reasons and I can't
9 enumerate all of them.

10 BY MR. DUCHETTE:

11 Q. Okay. I'm talking about, you know, what -- I guess
12 what I'm asking is other than the recognition of
13 private property from the Town of Kennebunkport, what
14 are your -- are there any other objectives or goals
15 that you have with respects to the filing of this
16 lawsuit?

17 A. They're all related to that point. In other words,
18 enforcement for trespassers and so forth, damage issues
19 to undertake that.

20 Q. But in the -- but in the 40 years that you've been
21 living at Goose Rocks Beach, you've only called the
22 police once, correct?

23 A. That's right. They also moved the contending parties
24 40 yards from where they were to another beachfront
25 owner who wasn't in residence at the time.

1 Q. Okay. In your opinion did that -- did that alleviate
2 your particular issue at the time?

3 A. It reduces the irritation.

4 Q. Do you know who the Forbes are?

5 A. The Forbes?

6 Q. Yeah.

7 A. No, I don't know who you're referring to.

8 Q. Okay. Do you know who Herb Young is?

9 A. I know a family or a man by that name. I don't know
10 him personally.

11 Q. Okay. Have you ever objected to Mr. Young or his
12 family's use of the beach in front of your property?

13 MR. LEONI: Objection, foundation.

14 BY MR. DUCHETTE:

15 Q. You can answer.

16 A. Not to my knowledge.

17 Q. Okay. Do you know who Rick McDonald is?

18 A. Who?

19 Q. Rick McDonald?

20 A. I have no idea.

21 Q. What about Tom Weyl?

22 A. No.

23 Q. Okay. Hal Himmelman? Pete Ciarametaro?

24 A. No.

25 Q. Bety Tacy or Tacey?

1 A. I have no idea.

2 Q. Do you know who Ann Corbey and Steve Painter are?

3 A. No.

4 Q. What about Jan Fitzpatrick?

5 A. I know Jan.

6 Q. Okay. Have you ever objected to her use of Goose Rocks
7 Beach in front of your property?

8 A. No.

9 Q. Okay. Has she ever asked your permission to use the
10 beach?

11 A. Not to my recollection.

12 Q. Do you know who Joanne and Don Anderson are?

13 A. No.

14 Q. How about Joe Papillardo?

15 A. Again, a familiar name but I really don't know.

16 Q. Okay. I think you spoke of the Junkers earlier. Do
17 you know who the Junkers are?

18 A. I know who Marie and Bill are and Bill's mother and
19 father.

20 Q. Okay. Have you ever objected to their use of the beach
21 in front of your property?

22 A. To my knowledge they've never asked.

23 Q. Okay. What about Mary Ann Morrissey, do you know who
24 Mary Ann Morrissey is?

25 A. I don't know who she is.

1 Q. Is -- is softball a popular activity or has softball
2 ever been a popular activity in front of your property
3 on Goose Rocks Beach?

4 MR. LEONI: Objection to form.

5 A. Not in front of my property, no.

6 BY MR. DUCHETTE:

7 Q. Has softball ever been a popular activity on the east
8 end of the beach near your property?

9 MR. LEONI: Objection to form.

10 A. I would not define it as a popular activity. It's been
11 played occasionally.

12 BY MR. DUCHETTE:

13 Q. Okay. But never played in front of your property?

14 A. No.

15 Q. Have you ever objected to the use of the beachfront --
16 the beach in front of your property, have you ever
17 objected to the Scribners' use?

18 MR. LEONI: Objection.

19 A. The Scribners?

20 BY MR. DUCHETTE:

21 Q. Yes.

22 A. Not that I know of.

23 Q. Have they ever asked permission?

24 A. No.

25 Q. What about the Flemings?

1 MR. LEONI: Objection to form.

2 BY MR. DUCHETTE:

3 Q. Same question. Have you ever objected to their use and
4 have they ever asked permission?

5 A. They've never asked permission to my knowledge.

6 Q. Have you objected to their use?

7 MR. LEONI: Objection to form.

8 A. No.

9 BY MR. DUCHETTE:

10 Q. What about the Kenneys?

11 A. The Kinneys?

12 MR. LEONI: Objection to form.

13 BY MR. DUCHETTE:

14 Q. The Kinneys?

15 A. I know who she is but I don't recall her asking
16 permission.

17 Q. And have you ever objected to her use?

18 MR. LEONI: Objection to form.

19 A. No.

20 BY MR. DUCHETTE:

21 Q. What about the Flynns?

22 MR. LEONI: Objection to form.

23 A. I don't know the Flynns I don't believe.

24 BY MR. DUCHETTE:

25 Q. Okay. What about Celi?

1 MR. LEONI: Objection to form.

2 BY MR. DUCHETTE:

3 Q. The Celis?

4 A. I vaguely know the family. My son or one of them was
5 knowledge -- or acquainted with at least one of the
6 children who would be in their 40s, but I have never
7 had any personal contact with them.

8 Q. So you have never objected to their use of the beach in
9 front of your property?

10 MR. LEONI: Objection to form.

11 A. Correct.

12 BY MR. DUCHETTE:

13 Q. And they've never asked permission?

14 A. No.

15 Q. What about the Sotirs?

16 MR. LEONI: Objection to form.

17 A. I have know who the Sotirs are. They've never asked
18 permission to use the property in front of my house.

19 BY MR. DUCHETTE:

20 Q. And you've never given them any objection to their use?

21 MR. LEONI: Objection to form.

22 A. They've never asked so how could I object.

23 BY MR. DUCHETTE:

24 Q. Is that a yes?

25 A. I don't know.

1 Q. You've never objected?

2 A. I've never objected, correct.

3 Q. Okay. We talked earlier about the use of the
4 beachfront in front of your property, and I think you
5 indicated that you have no objection to someone coming
6 down with a fishing pole and fishing in front of your
7 property?

8 A. That's correct.

9 Q. Okay. If 10 men came down with fishing poles and were
10 fishing in front of your property, would you have any
11 objection to that?

12 MR. LEONI: Objection to form.

13 BY MR. DUCHETTE:

14 Q. You can answer.

15 A. I would -- it would have to be a real problem. In
16 other words, I can't in abstract tell you if 10 people
17 show up with fishing poles what I might do.

18 Q. Okay. If -- if a, say, let's say a mother and her two
19 children came down and, again, provided they weren't
20 blocking your steps or preventing you or your family
21 from utilizing the beach but they set up, let's say, a
22 beach blanket and were having a picnic on the beach in
23 front of your property, would you have an objection to
24 that use?

25 MR. LEONI: Objection to form.

1 A. It depends on how old the children were.

2 BY MR. DUCHETTE:

3 Q. Is -- the children's age, does that -- would that give
4 rise to whether or not you would object to that use or
5 not?

6 A. It would have some influence based on their behavior.

7 Q. Okay. So if the children were 10-year-old -- 10 years
8 old, would you object to -- would you object to that
9 use?

10 MR. LEONI: Objection to form.

11 A. Again, it's an abstract so I can't really respond.

12 BY MR. DUCHETTE:

13 Q. Well, I guess I'm trying to get a sense of -- so you're
14 not -- you're not objecting to the general use of
15 someone -- the family having a picnic on the beach in
16 front of your property, it's -- does it have more to do
17 with some other disturbance that they may be causing
18 you?

19 MR. LEONI: Objection to form.

20 A. I guess it's the same kind of thing. You're talking
21 about walking or running on the beach. If they decide
22 to run a marathon along the front of Goose Rocks Beach,
23 I probably would be demonstrating against it.

24 BY MR. DUCHETTE:

25 Q. Okay. And would that -- and would that similar

1 objection go to -- to most recreational activity,
2 whether it's flying a kite, building sandcastles,
3 reading a book? Is it -- is it more the intensity of
4 that activity and not necessarily the activity itself
5 that you're objecting to, again, in front of your
6 property?

7 A. This is strictly a generalization answer. The
8 intensity has a lot to do with my reaction. That's
9 about all I can say.

10 Q. Okay. What about swimming in front of your property,
11 do you have any objection to that use?

12 A. As long as they can stand the cold water, no.

13 Q. And, again, does your -- does your objection to the use
14 differ depending on whether or not it's a beachfront
15 owner, their family or guests, versus a back lot owner,
16 their family or guests or someone from the general
17 public?

18 A. That's correct, it has no difference.

19 MR. DUCHETTE: I don't have any further
20 questions.

21 MR. WILLING: I'll start now or we can -- we
22 can take a break. This can be off the record.

23 (Off the record.)

24 EXAMINATION-BY ATTY. WILLING:

25 Q. Mr. Dwelley, my name is Brian Willing. I'm the -- an

1 attorney for the Town of Kennebunkport, along with
2 Attorney Amy Tchao who you're acquainted with, and I
3 along with her represent the Town in this action. The
4 same rules that you and Attorney Duchette discussed
5 would apply here. In particular, the one I struggle
6 with the one most is the don't interrupt rule, but I
7 will try not to and hopefully you won't. It looks like
8 the two of you didn't have too much trouble with that,
9 so maybe we'll be all right.

10 On that note, let's move ahead. Have you been
11 on town committees?

12 A. Yes, the budget board.

13 Q. Can you tell me the years you were on the budget board?

14 A. Good question.

15 Q. Approximate.

16 A. Early -- early '90s I would say.

17 Q. And what -- what did the budget board deal with?

18 A. The budget.

19 Q. Town budget?

20 A. Town budget, right.

21 Q. Any other committees that you've been on?

22 A. I was on a county budget board.

23 Q. York County?

24 A. York County.

25 Q. But not for the town?

1 A. Not for the town.

2 Q. Did the budget board while you were on it address Goose
3 Rocks Beach in any way that you can remember?

4 A. There was a question about staffing that came up, and I
5 don't remember most of the issue. It was essentially
6 this member -- whatever you want to call it, the
7 lifeguards, because the staff felt they weren't getting
8 their monies worth.

9 Q. There was -- sorry. Go ahead.

10 A. So they would replace it with a police patrol.

11 Q. Okay. So there was -- let me just summarize if I can.

12 You can answer yes or no. There was a lifeguard
13 employed by the Town of Goose Rocks Beach?

14 A. Probably two or three, but yes, that's correct.

15 Q. And while you were on the budget committee, they
16 decided to replace the lifeguard with a police patrol?

17 A. Correct.

18 Q. To save some money?

19 A. Basically, or get their money's worth.

20 Q. Okay. Where was -- this occurred in the early '90s
21 about?

22 A. Yes.

23 Q. Has there been a lifeguard since then?

24 A. No.

25 Q. But prior to that there was a lifeguard or more than

1 one?

2 A. For a limited number of years, and I don't remember the
3 number of years.

4 Q. Okay. Do you know where the lifeguard was posted?

5 A. At the time I was there they used to put up a lifeguard
6 chair, and that was usually maybe a hundred feet or so
7 east of The Tides location.

8 Q. Did -- did you ever observe the lifeguard patrolling
9 the beach?

10 A. I can't answer that. I'm sure I did but --

11 Q. Is it possible they patrolled the river to river?

12 A. Yes, there's a possibility.

13 Q. Okay.

14 A. That was something I think they did historically, but
15 I'm not positive.

16 Q. And the Town paid for the cost of that?

17 A. Correct.

18 Q. Did the police patrols come down to Goose Rocks Beach?

19 A. Good question.

20 Q. You don't know?

21 A. Not only don't I know but most people don't know.

22 Q. You --

23 A. There's --

24 Q. Sorry. Go ahead.

25 A. There's a police officer that patrols the Kings Highway

1 and issues parking tickets. Sometimes there's another
2 officer. Theoretically, that person is on the beach
3 but hard to prove.

4 Q. You've never observed the officer on the beach?

5 A. Oh, on random occasion.

6 Q. Is -- when you have observed the officer, let me just
7 strike that.

8 Let me get an understanding of how random. If
9 -- this budget committee decided to replace the
10 lifeguard with a patrolling officer in the early '90s,
11 correct?

12 A. Correct.

13 Q. Okay. So in the last 20 years or so since the early
14 '90s, how many times approximately have you seen or
15 observed a police officer on the beach?

16 A. Less than a hundred.

17 Q. Okay. Do you tend to see the police officer on the
18 beach more in the summer or is it not --

19 A. It's strictly a summer position.

20 Q. Okay. More on holiday weekends or weekends than --

21 A. I wouldn't know the schedule.

22 Q. Okay. Fair enough. If you could take a look at
23 Exhibit No. 2, just that's the O'Hara subdivision map?

24 A. Okay.

25 Q. You talked in response to the attorney's questions

1 about the right-of-way across from, I think it's lot
2 11, between lot 14 and 15 on the plan?

3 A. Correct.

4 Q. What's the purpose of that right-of-way, if you know?

5 A. To allow people in the back lots primarily to access
6 the beach without trespassing.

7 Q. Okay. Do they have to stick -- once they get to the
8 beach and they get -- you know, they cross between lots
9 14 and 15 and they get to the beach, do they have to
10 stick within that right-of-way to avoid trespassing or
11 can they go left and right?

12 A. The practice is they can probably go in both
13 directions, left or right.

14 Q. Are they trespassing when they go left or right out of
15 the right-of-way?

16 A. I can't tell you that.

17 Q. Is this something -- an issue you're wrestling with?
18 I'm just --

19 A. I don't understand.

20 Q. Well, and you can tell me I'm wrong, I've noticed -- it
21 seems to, in response to Attorney's Duchette's
22 questions, you struggle with whether or not there's a
23 difference between the rights of the owners of property
24 and the O'Hara subdivision as compared with the owners
25 of property in the Goose Rocks zone?

1 A. That's true.

2 Q. Do you believe that the owners of property in the
3 O'Hara subdivision have more rights to the beach in
4 front of the O'Hara subdivision than the owners of
5 property in the Goose Rocks zone generally?

6 A. I believe that the specific property, my property, for
7 instance, in front of my house, I have more rights, so
8 to speak, for that piece of property.

9 Q. Right. But are there -- is there a distinction between
10 everybody else in your subdivision and the rest of the
11 Goose Rocks zone as to what their rights are in front
12 of your property?

13 A. Yes.

14 Q. And can you explain to me the distinction between the
15 O'Hara subdivision owners and the rest of Goose Rocks
16 zone?

17 A. Well, the road in the first place is a private road,
18 Sand Point Road.

19 Q. Right.

20 A. So immediately you have that difference, and the access
21 that the individual owners have is partly dictated by
22 where their property is located. The Town has provided
23 access to the beach at the end of Dyke Road and at the
24 end of Jeffrey's Way. Over the years other accesses
25 have developed vis-à-vis the property owned by the

1 Conservation Trust, so you'd have to ask them what the
2 property conduct or rights are. They have signs that
3 seem to indicate anybody can use their beachfront
4 property, so --

5 Q. I'm talking about the beach solely in front of the
6 O'Hara subdivision, so let's focus only on that, okay,
7 for my questions.

8 Do O'Hara subdivision owners have more rights
9 than Goose Rocks zone owners?

10 A. I can't answer that question because I only know what
11 applies to my property.

12 Q. What applies to your property?

13 A. Whatever I say.

14 Q. If you say -- let me ask a different question. Does a
15 member of the public generally who does not live in
16 either the O'Hara subdivision or Goose Rocks zone but
17 who obtains a parking permit from the Town, comes down,
18 parks his car legally, accesses via Dyke Road or
19 Jeffrey's Way or some other public access point, does
20 that person have a right to cross the intertidal zone
21 in front of your property to go swimming?

22 A. Yes, he can cross the intertidal zone.

23 Q. To go swimming in front of your house?

24 A. To do whatever he wants.

25 Q. Well, can he set up a beach chair and --

1 A. Not if --

2 Q. -- and read a book?

3 A. Not if it's on my property.

4 Q. Well, that's what I'm talking about.

5 A. But I don't own the intertidal zone. Is that correct?
6 I'm asking.

7 Q. You can ask your lawyer that question. I can't answer
8 that.

9 But what I'm trying to figure out is what
10 rights different -- you view different people having in
11 front of your property depending on the activity?

12 A. Well, I guess all I can respond to is I only know what
13 the existing laws or rules are, and I don't even know
14 those well, I'm not a lawyer, so I -- I can only speak
15 to what I have some knowledge of, and that's my own
16 property.

17 Q. Okay. Do you believe the law allows fishing in the
18 intertidal zone in front of your property by the gen --

19 MR. LEONI: Objection.

20 Q. -- by the general public?

21 MR. LEONI: If your understanding, Mr. Dwelley,
22 is from conversations you've had with your attorney of
23 what rights the public has in the intertidal zone,
24 those are confidential. That's privileged and
25 confidential information.

1 BY MR. WILLING:

2 Q. I don't want to know any conversation you've had with
3 your attorney in response to any question I ask you in
4 this deposition. I want to know, based on living and
5 owning property from 1972 to 2012, which is, if I have
6 my math right, that's 40 years of owning property, what
7 your understanding is of the public's right to fishing
8 from the intertidal zone in front of your property.

9 Do you believe they have a right to fish or do
10 you believe you can call the police if you want to and
11 have them removed?

12 A. Not if they're in the intertidal zone.

13 Q. You think they can fish?

14 A. Yes.

15 Q. How about 25 people all packed in with fishing poles in
16 front of your house, can they fish?

17 A. It would be pretty dangerous.

18 Q. You're probably right but can they?

19 A. Yes.

20 Q. How about -- let's go back to one person again. One
21 person crosses your intertidal zone in front of your
22 house to go swimming?

23 A. To go swimming?

24 Q. To go swimming.

25 A. Where would they go swimming?

1 Q. Just right in front of your house.

2 A. If it's in the intertidal zone and the tide is up, it's
3 not a problem.

4 Q. Right. So they come down Jeffrey's Way, they take a
5 left, they walk down and for whatever reason they stop
6 in front of your house to go swimming; they never get
7 in the dry sand. Is that okay?

8 A. Yes.

9 Q. Do they have a right to do that?

10 A. I don't know if they have a right.

11 Q. Okay. How about bird watching, do they have a right to
12 stand in the intertidal zone in front of your house
13 with a pair of binoculars and watch birds?

14 A. Yes.

15 Q. I assume you believe they have a right to, but tell me
16 if I'm wrong, to take a kayak in the intertidal zone
17 and then access the water from your property?

18 A. Well, maybe I'm having a problem with I'm thinking of
19 the intertidal zone being under water.

20 Q. Let's assume it's half tide like midtide so that it's
21 not -- there is some part of the intertidal zone that's
22 not under water and part of the intertidal zone that is
23 under water.

24 If they never get on the dry sand but
25 they -- they take their kayak, you know, down Jeffrey's

1 Way, take a left and for whatever reason decide to
2 launch from the wet sand in front of your house, is
3 that -- do they have a right to do that?

4 A. I have no idea. You're talking about launching a boat
5 or running a boat? As far as I know, so long as it's
6 in the water in that location, they can do what they
7 want to do.

8 Q. So to say it another way, I think I understand what
9 you're saying, they can paddle the boat in the water in
10 the intertidal zone?

11 A. Correct.

12 Q. But you're not sure whether they can launch a boat from
13 the intertidal zone in --

14 A. I don't know the full extent of what they're permitted
15 to do.

16 Q. Did you ever discuss with Mr. O'Hara what his
17 intentions were for the rights of the people in the
18 subdivision to use the beach?

19 A. Well, there are two Mr. O'Haras: The man who initially
20 developed and his son Desmond who is also now deceased.
21 So the first Mr. O'Hara I never had any discussions
22 with. The second Mr. O'Hara, we chatted a lot on a lot
23 of subjects, I don't recall that subject as one that we
24 talked about.

25 Q. Okay. You don't know whether -- what the O'Haras'

1 intention was for creating a right-of-way for the back
2 lot owners at Sand Point?

3 A. Not specifically. One or two of their deeds I've read
4 spell out a lot of conditions or limitations. I've
5 never studied them in enough detail to memorize them,
6 so I don't recall whether -- there may be another
7 right-of-way or two that I did not see on this map, but
8 I'm not sure of that. In fact, the lot, the Migneaux
9 lot, it's French so pardon my pronunciation, lot
10 encompasses several lots today. So there may be
11 something that's been changed. In fact, it appears to
12 be another right-of-way but maybe that's just a blur
13 next to that location. In fact, there is a driveway
14 that's used to some extent in a public way.

15 Q. Can you tell me where that is?

16 A. Right where I was referring to.

17 Q. Which lots?

18 A. Well, the Migneaux lot doesn't have a number because it
19 wasn't part, as I understand it. It would be to the
20 left as you're looking at the map, of the -- of lot No.
21 9.

22 Q. I see. Got it.

23 A. Although to the right of that lot there appears to be
24 like a driveway.

25 Q. Yup.

1 A. I'm not sure.

2 Q. Do you see people going down paths in that vicinity at
3 all to access the beach?

4 A. No.

5 Q. Okay. Not even back lot owners or --

6 A. Well, there could be back lot owners, but I wouldn't
7 pay any attention to that.

8 Q. You haven't observed that?

9 A. No.

10 Q. You talked a little bit with Attorney Duchette about
11 your personal motivation to be a plaintiff in the
12 lawsuit. Do you recall that?

13 A. Yeah, I believe private property.

14 Q. Right. You want to -- you want a declaration of your
15 private property rights; is that right?

16 A. Yes.

17 Q. Did anything the Town -- you want the Town to post
18 signs; is that right?

19 A. That would be one request from me.

20 Q. Why can't you post your own signs?

21 A. Because I don't want to be bothered.

22 Q. Well, and I'm not trying to be hostile or create --
23 stir things up, but you think it's more of a pain in
24 your neck to put up signs than --

25 A. Apparently it is to the Town because when somebody did

1 that, they wrote a very vigorous objection to it.

2 Q. Did they order that person to remove the signs?

3 A. Yes.

4 Q. How long has it been since you've reviewed that letter?

5 A. Which letter?

6 Q. The letter the Town wrote to -- are you talking about a
7 letter the Town wrote to Janice Fleming?

8 A. Yes. It's been a while. Why, have they changed the
9 letter?

10 Q. I'm asking -- you said, I believe, that the Town
11 ordered her to take down the signs?

12 A. Yes.

13 Q. That's your understanding of the letter?

14 A. That's right.

15 Q. Your understanding is what it is. You may want to
16 reread the letter.

17 A. Why, what do you think the letter said?

18 MR. LEONI: He's going to be asking you the
19 questions.

20 BY MR. WILLING:

21 Q. I can't -- it's not --

22 A. I understand.

23 Q. It's not really -- off the record you can ask me and
24 I'll answer questions to the extent your attorney
25 allows me to. On the record --

1 A. Yeah, I understand.

2 Q. If hypothetically I told you the Town isn't going to
3 order anybody to take down their signs, does that
4 change your motivation for the lawsuit?

5 MR. LEONI: Objection to form.

6 A. I can't say without thinking about it.

7 BY MR. WILLING:

8 Q. For you personally is this lawsuit about the commercial
9 development in the Goose Rocks zone?

10 A. No.

11 Q. Is it about the --

12 A. What commercial development?

13 Q. Well, let's just -- to the extent that I have heard
14 Goose Rocks Beach owners complain about --

15 A. Are you telling me something I didn't know?

16 Q. I don't know that there is, but some people may have
17 that motivation for this lawsuit. I've also heard that
18 some people have concerns about the plovers and other
19 birdlife at Goose Rocks Beach.

20 Is that part of your personal motivation for
21 this lawsuit?

22 A. No.

23 Q. What about the buses or vans coming from Hidden Pond
24 and other developments in Kennebunkport, is that part
25 of your motivation for the lawsuit?

1 A. Not motivation for the lawsuit, no.

2 Q. Okay. I'm going to -- let me switch gears. Can one of
3 the back lot owners in the O'Hara subdivision use the
4 dry sand in front of your house without your
5 permission?

6 A. No.

7 Q. Okay. The -- there are two -- two families that have
8 asked for permission from you; is that right?

9 A. For what?

10 MR. LEONI: Objection to form.

11 BY MR. WILLING:

12 Q. I think I wrote down two families. Maybe Brask --

13 A. Yes.

14 Q. -- asked permission?

15 MR. LEONI: Objection to form.

16 BY MR. WILLING:

17 Q. And the VanVens?

18 A. Yeah.

19 MR. LEONI: Objection to form.

20 BY MR. WILLING:

21 Q. And those are the only two that have asked permission?

22 A. The only two that I remember.

23 Q. Who asked you permission?

24 A. Huh?

25 Q. Who asked you permission? Sorry. Those are the only

1 two who asked you permission?

2 A. That's correct. There are only three families back
3 there.

4 Q. Okay. Both of them asked for permission to use the
5 stairs?

6 A. Correct.

7 Q. They didn't ask for permission to use the beach?

8 A. Correct.

9 Q. I'm going to go over a few documents. This may be a
10 bit dull, but let's plow through it, unless you want to
11 take a break now.

12 MR. LEONI: Do you want to take a quick break?

13 THE DEPONENT: Yeah, I'll take a break.

14 (A short break was taken.)

15 (Deposition Exhibit No. 3, O'Hara Subdivision
16 Map, marked for identification.)

17 (Deposition Exhibit No. 4, Incident Report,
18 8/7/07, marked for identification.)

19 (Deposition Exhibit No. 5, Dwelley PR Deed,
20 signed 10/9/08, marked for identification.)

21 (Deposition Exhibit No. 6, Dwelley Warranty
22 Deed, signed 11/27/02, marked for identification.)

23 (Deposition Exhibit No. 7, Dwelley Schedule A,
24 11/27/02, marked for identification.)

25 (Deposition Exhibit No. 8, Certification of

1 Trust, 11/27/02, marked for identification.)

2 (Deposition Exhibit No. 9, Easement Deed signed
3 5/8/91, marked for identification.)

4 (Deposition Exhibit No. 10, Warranty Deed
5 signed 1/21/72, marked for identification.)

6 (Deposition Exhibit No. 11, Email from Almeder
7 to Beachfront Owners, 9/5/07, marked for
8 identification.)

9 (Deposition Exhibit No. 12, Letter from Dwelley
10 to Beachfront Owners, 7/24/97, marked for
11 identification.)

12 BY MR. WILLING:

13 Q. Are you ready?

14 A. Yeah.

15 Q. Mr. Dwelley, I'm showing you a map, very similar to
16 Exhibit 2, the O'Hara subdivision map?

17 A. Yeah.

18 Q. But I will stipulate to you I printed this off this
19 morning from the Town's GIS map.

20 A. It's much neater. You may have missed an opportunity.

21 Q. Could you on that exhibit, to the extent you can find
22 it, put a D on your lot for Dwelley?

23 A. Yeah. I think I can.

24 Q. And there appears to be a right-of-way adjacent to the
25 lot to your west. Is that the same right-of-way --

1 A. Yes.

2 Q. -- that you -- and is that right-of-way used by back
3 lot owners?

4 A. Yes.

5 Q. Could you point to it and put ROW. Thank you.

6 And can you recognize which of the back lots,
7 so to speak, that you rented from this map?

8 A. I'll just put an R there.

9 Q. Perfect. And to the west of the right-of-way that
10 you've already marked there looks to be another
11 right-of-way.

12 Do you see that on this map?

13 A. Yes, I do.

14 Q. My question to you is simply does that right-of-way get
15 used by people in the Sand Point area do you know?

16 A. I don't know for sure.

17 Q. Okay. That was the right -- that's in the location of
18 the right-of-way you were speculating about before
19 though, right?

20 A. Yeah. The driveway, or whatever you want to call it,
21 it's obvious on this printout.

22 Q. Right.

23 A. That probably is used by anybody who has use down among
24 those lots. All the lots in back are unbuildable as
25 far as I know, the ones abutting the water.

1 Q. The river?

2 A. Yeah.

3 Q. Are there any houses back there?

4 A. No. And I think they've been designated fairly
5 recently within the last three to 5 years as
6 unbuildable by the code enforcement officer.

7 Q. Got it.

8 A. There's some challenge in the background. People may
9 still want to challenge that.

10 Q. But as of right now, there's no built-upon lots back
11 there?

12 A. No.

13 Q. Okay.

14 A. They're owned defensively, I'll call it, by some of the
15 other owners to, even if some day they became
16 buildable, they would own.

17 Q. Okay.

18 A. And they pay for it.

19 Q. Understood. Okay. Moving on, the document I've marked
20 as Exhibit 4 is at least captioned as a Kennebunkport
21 Police Department Incident Report dated August 2, 2007.

22 A. Right.

23 Q. And then there's an attached narrative of Patrol
24 Officer David Breault.

25 A. Breault.

1 Q. Right. I may have pronounced that wrong.

2 A. That's okay.

3 Q. This document, are you familiar with this?

4 A. Yes.

5 Q. What is it?

6 A. A police report.

7 Q. And is this the police report relating to the family
8 that was camping in front of your house?

9 A. I believe so.

10 Q. I think you even testified to in response to Attorney
11 Duchette's questions that you thought this incident was
12 in 2007, right?

13 A. Yeah.

14 Q. And it appears to be; is that right?

15 A. Correct.

16 Q. Do you take issue with anything written in this report?

17 A. Well, I can't respond to that.

18 Q. Do you want to take a couple minutes to read it?

19 A. Well, I don't -- do I take issue? Issue can be a
20 strong word. By that, I mean there may be details in
21 here that I would disagree with the officer's
22 interpretation and all that sort of thing.

23 Q. Well, let's take a minute to read it and go over those
24 disagreements.

25 MR. LEONI: Why don't you start from the

1 beginning.

2 BY MR. WILLING:

3 Q. Yeah.

4 A. I want to explain that there's been other things stated
5 as a result of this by town officials, so, you know,
6 you can debate it, if you will. This report was
7 written or dated the 6th, the attachment.

8 Q. Uhm-uhm.

9 A. Upfront -- or the other pages are dated the 2nd, I
10 believe. Now, as I understood it, after they made the
11 call at my location, they went back and checked with
12 people in the town office, and there's a notation here
13 that case forwarded to Chief Bruni for review, and
14 somewhere in here, it may refer to such, I think he was
15 on vacation at that time.

16 Q. Well, do you disagree with that, that it was forwarded
17 to him and or that he was on vac --

18 A. I don't disagree; I have no knowledge. I wasn't there.
19 This was all done in the office. I was also told they
20 discussed it with the town manager, but he was out of
21 town, so they must have discussed it with him over the
22 phone. I have no idea if that ever took place.

23 Q. Let's stop for a sec. I mean just take a step back.
24 I'm not asking you to tell me things that you don't
25 have personal knowledge. What I'm saying is you were

1 involved --

2 A. You asked if I disagreed with anything.

3 Q. Yeah. Tell me what you disagree with.

4 A. They don't mention the fact that he talked with the
5 town manager. They don't mention that Bruni was on
6 vacation.

7 Q. Okay.

8 A. That shouldn't get into the record.

9 Q. I think, if you look at the bottom of the second page,
10 do you see the paragraph that starts: I explained that
11 it is not selectively enforced?

12 MR. LEONI: Just so we know, there's actually
13 two page 1s marked here in this exhibit, and then
14 there's, after the second page 1, there's page 2 and
15 then after that there's another page 1.

16 MR. WILLING: Sure.

17 BY MR. WILLING:

18 Q. I'm talking about literally the second page which is
19 marked as page 1.

20 A. Yes, right.

21 Q. Do you see where it says I explained?

22 A. Yes.

23 Q. Do you see that last paragraph?

24 If you look at lines 3 and 4 of that paragraph,
25 doesn't it say that Chief Bruni is on vacation?

1 A. Yes, it does.

2 Q. So that was accurate, right?

3 A. Yes, it was. I think I said it was -- the
4 understanding was that he was on vacation.

5 Q. Right.

6 A. And then at the end of what is now page 2 of
7 recommendation: Case forwarded to Chief Bruni for
8 review.

9 Q. Right.

10 A. Well, they weren't going to send it to wherever he was.
11 Some time in the future he was going to review it.

12 Q. And you --

13 A. I don't disagree with that.

14 Q. Okay. That's what I'm trying to understand.

15 A. And it doesn't mention, I don't believe -- it mentions
16 somewhere that -- maybe it does. Oh, I was going to
17 attempt to contact him, meaning I guess the town
18 manager, about this issue. It doesn't resolve whether
19 they ever did reach him at that time.

20 Q. Right. I agree with you that's what it appears to say.

21 A. Yeah.

22 Q. I'm trying to understand if you -- so we can move on
23 and cut this short, whether I need to go over every
24 detail of this police report --

25 A. No.

1 Q. -- if you disagree with it?

2 A. No. I'm saying that it was a subject they were
3 sensitive about in general. I don't mean my incident
4 but handling complaints from the beach.

5 Q. Fair enough. The issue of ownership -- private
6 property ownership rights on the beach was a sensitive
7 issue in and around the summer of 2007?

8 A. And before.

9 Q. And as that sensitivity, you know, existed, it's clear
10 from the Town's reaction to your complaint that it was
11 a sensitive issue at this time?

12 A. Yeah. I don't know if this covers, because I haven't
13 read it obviously recently, the fact that the police
14 officer or Moses, who was acting for the chief at that
15 point, they -- they were -- they talked to and got an
16 opinion, not to disparage the legal profession, from
17 one of the staff members in the zoning area -- oh, here
18 it is: And spoke with assistant code enforcement
19 officer, Warren Gilliam who pulled the deed on the
20 property and so forth. And Gilliam rendered his, like
21 I might, my legal opinion. And so they felt -- I don't
22 know what they felt.

23 The implication is that that was going to pass
24 muster for checking things out, so to speak, and, of
25 course, I didn't see this until weeks later or

1 something or years later.

2 Q. But today is not the first time you've seen it?

3 A. No, no.

4 Q. Okay. Let's move on. Would you look at Exhibit 5,
5 please.

6 A. Yeah.

7 Q. Is that the current deed to your property?

8 A. I can't say for sure this is the current. What has
9 changed -- let me see. I believe it is. Nothing has
10 changed to my knowledge.

11 Q. This, I will tell you, appears to be a deed that's
12 dated October 9, 2008.

13 A. Yup.

14 Q. And it is from you to your sons --

15 A. Right.

16 Q. -- as cotrustees of the Joan H. Dwelley testamentary
17 trust?

18 A. Right, and I would agree with that. Basically I don't
19 believe that's incorrect in any way.

20 Q. Okay. Could you look at Exhibit 6 and 7.

21 What -- do you recognize these deeds? They
22 both appear to be November 2002.

23 A. Right. We were, so to speak, getting our house in
24 order to some extent in replacing old documents or
25 deeds or whatever. I forget exactly what else we --

1 powers-of-attorney type of thing -- we created at the
2 time.

3 Q. Does this change the description of the property in any
4 way or --

5 A. Not -- not to my knowledge.

6 Q. Okay. Exhibit 8 probably goes more along with the
7 current deed than it does following those deeds from
8 2002.

9 But could you tell me what this is, if you
10 know?

11 A. Let me look at it. It reflects on the last page, I
12 guess, or next-to-the-last page, those -- after my wife
13 died over the next several months, I know I worked with
14 Milde Catner who is serving -- she's a lawyer but she
15 was serving as sort of a -- you know, to fill trust.

16 Q. You were updating the trust --

17 A. Basically.

18 Q. -- is that fair?

19 A. Yeah.

20 Q. Are you related to Milde Castner in any way?

21 A. No, no. We had two people in mind -- well, a bank
22 locally, and then the week we were doing that they
23 decided to get out of the trust business, so they
24 lost -- or we lost them. And we had other people in
25 mind but they were all remote, I mean they were people

1 who lived away, so more or less as a last resort since
2 there were two Dwelleys involved, they always had the
3 majority vote so she didn't mind signing on as the
4 third trustee.

5 Q. Okay.

6 A. I don't know if that was particularly kosher. But it
7 was convenient at the time. By the way, off the
8 record.

9 Q. Sure, go ahead.

10 (Off the record.)

11 BY MR. WILLING:

12 Q. Back on the record.

13 A. I don't consider it an official town body because, in
14 essence, we have very little authority.

15 Q. Fair enough. Off the record we were talking a little
16 bit about some recent committee that -- work that
17 you've had, and it sounds to me like you were not
18 thinking of it as a big deal committee.

19 But could you describe that committee work?

20 A. We review proposals for regulations or conduct or
21 whatever on police patrolling and traffic control at
22 Goose Rocks Beach to make recommendations to the
23 selectmen.

24 Q. Is that the growth planning committee?

25 A. No.

1 Q. Okay. What -- what's the name of that committee?

2 A. Bob is on it. We just call it, I guess, the traffic
3 and parking.

4 Q. Okay.

5 A. It's that informal.

6 Q. Okay. And recently you've been talking about a
7 horseback riding ordinance?

8 A. Right.

9 Q. And could you just very briefly in a sentence or two
10 describe what that is?

11 A. It's to designate the calendar days and hours, I
12 believe, that horses will be permitted to use the beach
13 which is essentially off-season.

14 Q. Okay. I assume --

15 A. It's very important work.

16 Q. Right. I assume that whatever the time frame would be
17 starting sometime in the fall and through --

18 A. Yeah.

19 Q. -- the spring?

20 A. Exactly, yeah.

21 Q. How long ago was this committee formed?

22 A. Good question. In one form or another, it's probably
23 two or three years old, something like that.

24 Q. Who else is on the committee?

25 A. It depends on the meeting. Bob is on it, I'm on it.

1 Larry Meade right now is serving as sort of the
2 chairman. Prior to him it was the then police chief
3 who is no longer with us, and I think in the near
4 future it will be the new police chief. Larry is sort
5 of sitting in. Whether he stays there, I don't know.
6 And there is, oh, four or five private citizens who
7 live at the beach, Debbie -- what's Debbie's last name?

8 MR. LEONI: Kinney.

9 A. Debbie Kinney. And Karen Schelegel who is a local
10 realtor and her father maybe. He's not too well I
11 don't think. Wayne Fessenden, Norm Merrill. That's
12 all I can think of at the moment.

13 BY MR. WILLING:

14 Q. Okay.

15 A. There may be one or two others.

16 Q. Fair enough. Let's go back to Exhibit 9, if we can.

17 I'm showing you an Exhibit 9, or you're looking at what
18 appears to be an easement deed dated May 1991 from you
19 to the Town.

20 Could you explain what this is if you remember?

21 A. To the Town?

22 Q. Yes.

23 A. Oh, I think this was maybe when they were doing sewers.

24 MR. LEONI: Yeah.

25 BY MR. WILLING:

1 Q. Did you give a sewer easement to the Town?

2 A. Yeah.

3 Q. Okay. I've got one more --

4 A. And interestingly enough, that's probably in the
5 O'Haras's deeds somewhere way back in time. A deed was
6 granted, maybe it preceded the O'Haras, for the water
7 company or whatever you want to call it. They had a
8 water main that runs -- used to run across my property
9 and up several other properties. It's no longer an
10 active main but it's caused problems, not the main
11 itself, but the legal paperwork to obviate the -- we
12 always thought, well, maybe it's a deterrent; you
13 couldn't build back there. In fact, I used that excuse
14 one time.

15 When DEP asked me to move my house, I said, I
16 can't, there's an easement from the water company.
17 They didn't want to spend the time or money on a lawyer
18 to prove me right or wrong. It's no longer an active
19 main.

20 Q. Got it. The last deed I'm showing you is what I think
21 is a January 1972 deed from Margot Andrews to you.

22 Do you recognize this?

23 A. Oh, this, yeah.

24 Q. Is this the original deed to your property?

25 A. I believe so. This, if it's got a blue cover folder

1 that was traditional in those days for transference of
2 deeds.

3 Q. I can't tell you whether it did or didn't because I've
4 got a copy of it.

5 A. No, I understand. This is the one either I have or the
6 other. That's right, it is. She and her husband own
7 the property, but her husband died -- no, they got
8 divorced or something, so she ended up with the
9 property.

10 And I ended up -- off the record.

11 (Off the record.)

12 BY MR. WILLING:

13 Q. Back on.

14 A. Fine, yes. I'm sorry.

15 Q. Don't apologize. Not a big deal at all.

16 If you could -- have you had a chance to look
17 at Exhibits 11 and 12 sufficient to recognize them?

18 A. No.

19 Q. Why don't you just take a minute to refresh your
20 memory --

21 A. When were these prepared?

22 Q. Well, I'll tell you my understanding. I believe
23 Exhibit 11 is an email and memo -- I've seen it in both
24 email form and memo form, this is an email -- that went
25 out to beachfront owners from you, Bob Almeder, and

1 Barbara Rencurrel, and contained a survey which had
2 questions for them to answer.

3 A. What's its date? Do you have a date?

4 Q. September 5, 2007. I've seen other dates on it
5 slightly different than that but all in the
6 September 2007 time frame.

7 A. Yeah, this is the printout from email. Joan O'Connor
8 who is --

9 MR. ALMEDER: Town selectman.

10 BY MR. WILLING:

11 Q. Do you remember the survey?

12 A. I remember the survey. I don't remember this
13 particular memo.

14 Q. Okay. Did you and Bob and Barbara and Peter Gray and
15 Deb Kinney sent out a survey to beachfront owners?

16 A. Whether there were other people involved, I don't know.

17 Q. You were involved?

18 A. I was involved at the time.

19 Q. Who was your primary person you were working with on
20 this at the time?

21 A. Probably Bob.

22 Q. And what was the purpose to the extent you remember of
23 sending out this survey?

24 A. To gather data.

25 Q. For what purpose?

1 A. For any discussions we might have going on. We had
2 ongoing discussions at that time with town officials.

3 Q. About --

4 A. About conduct at the beach.

5 Q. And what was your hope -- what were you hoping to
6 accomplish with the surveys with your discussions with
7 the Town?

8 A. To make believers out of --

9 MR. LEONI: Objection. Parker, there's an
10 ongoing issue about whether that survey and the
11 preparation of the survey was done pursuant to
12 discussions with Attorney Thaxter. If it's your
13 recollection that it was, or any of this or the purpose
14 behind it relates to advice received from an attorney,
15 that information is privileged.

16 A. And I can't speak to that particular issue because all
17 I was doing was working with Bob and, you know --

18 BY MR. WILLING:

19 Q. Did you have conversations with Attorney Thaxter?

20 A. No, I did not.

21 Q. Then I guess I would again ask again. What was your
22 purpose in sending out this survey to beachfront
23 owners?

24 A. To gather data.

25 Q. To what end? What were you hoping to accomplish?

1 A. We were just nuts about data. The only purpose I know
2 from that period of time was we were having ongoing
3 meetings which did not involve attorneys to my
4 recollection to discuss ongoing issues at Goose Rocks
5 Beach.

6 Q. With the Town?

7 A. With town officials.

8 Q. And did you attend meetings with town officials?

9 A. I did.

10 Q. How many?

11 A. I don't recall. At least two.

12 Q. Before or after this survey?

13 A. I couldn't tell you the dates. I don't have any formal
14 calendar or whatever that I kept at the time.

15 Q. Do you remember specific discussions at those meetings?

16 A. Private property.

17 Q. Well, what does that mean? What did Larry Meade say,
18 what did you say, what did Bob Almeder say?

19 MR. LEONI: Objection to form.

20 A. That's not what you asked me.

21 BY MR. WILLING:

22 Q. Do you remember specific conversations at those
23 meetings?

24 A. Yes.

25 Q. Okay.

1 A. I'll take that back. I remember general subjects.

2 Q. Okay.

3 A. Not the specifics of what A or B or C said.

4 Q. What was the general subject?

5 A. Private property.

6 Q. Okay. What was your position?

7 A. I'm all for it.

8 Q. Okay. And by private property, you mean the beach?

9 A. Yes.

10 Q. Do you mean the intertidal zone in front of your house?

11 A. I don't know if that specifically was included in the
12 definition.

13 Q. Okay. What was the Town's position, if you recall?

14 A. They didn't object to private property. Otherwise,
15 they wouldn't have any taxes. But they did object to
16 posting signs put up by the Town to indicate where
17 proper access and private property existed.

18 Q. They objected to the -- the Town objected to putting
19 the signs?

20 A. Exactly.

21 Q. Did they tell you you couldn't?

22 A. No.

23 Q. Do you pay taxes on the beach?

24 A. I have no idea. I pay it on the valuation of my
25 property.

1 Q. Okay.

2 A. And my property includes what the deed says it
3 includes, to the low water mark.

4 Q. Fair enough. But do you know if the assessor assesses
5 you for the beach?

6 A. That probably is a mystery that only the gods can
7 define. I know I had a neighbor one time who every
8 time a storm came in and took out sand -- we had dunes
9 in those days -- he wanted his valuation reduced. When
10 I brought in sand I never heard from him.

11 Q. On Exhibit 11 it looks like the last couple pages are
12 an email from Joan O'Connor to Bob. I didn't really
13 intend to include that. Can we rip that -- those
14 two pages off?

15 A. Sure. There's a page 2 of 3 still attached to mine but
16 still no 3.

17 Q. Right. I don't know what happened to 3.

18 A. Yeah, okay.

19 Q. These documents come from documents produced by Terry
20 O'Connor, not by you, but I used it because it contains
21 the memo from you and Bob Almeder and Barbara and Peter
22 Gray and Ted Kinney to beachfront owners?

23 A. Right.

24 Q. Right. Showing you -- can you take a look at
25 Exhibit 12, the one under the pen there? This one I

1 really want you to take a quick look at.

2 A. Okay. This was not written by a lawyer.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. It's a letter from me, I believe, to Margie
7 Hollingsworth.

8 Q. Okay. Why did you send Margie a letter in 1997 on
9 beach face property rights?

10 A. Because -- two reasons. I'm sorry.

11 Q. That's okay.

12 A. 1, I think at that time she may have been a selectman.
13 If not, she was just before that or just after. She
14 also prides herself as being a -- what do you call
15 people who look up deeds, a title searcher?

16 Q. Okay. Abstractor?

17 A. Yeah, that kind of thing. And she used to do that as a
18 hobby or a job. And she sent a memo, one copy to
19 me -- I don't know who else was copied on it, I've
20 forgotten -- regarding ownership. I don't know if you
21 can gather from the gist of this, but she was of the
22 frame of mind that the records indicated that nobody
23 had title to the beachfront. It all went back to some
24 amorphous granting by colonial figures who could no
25 longer testify.

1 Q. Who -- there's a couple -- there's another memo
2 attached. What is that?

3 A. This?

4 Q. Yes. It's entitled summary chronology, colonial land
5 grants?

6 A. Yeah. And that's something I prepared.

7 Q. You prepared that as well?

8 A. Yes.

9 Q. Okay. Did you do this research?

10 A. Yes.

11 Q. What did you do for research to write this memo?

12 A. Oh, I basically made it up, but -- like most
13 researchers. No, the local library has a wealth of
14 material, and I had collected certain things on my own,
15 anticipating where we sit today.

16 Q. In 1997 you thought there might be a lawsuit?

17 A. Exactly.

18 Q. Why did you think that?

19 A. Well, for 20 years I dealt with lawyers at IBM, and
20 idle hands are the devil's playmate. Off the record
21 I'm being wise.

22 Q. Let me ask you: I mean is it because of the Moody
23 Beach case or some --

24 A. Partly, partly.

25 Q. What other -- what else?

1 A. Oh, just the discussion that was going on in public
2 journals and things at the time.

3 Q. You mean like newspapers?

4 A. Newspapers, magazines. There was also that publication
5 put out by the state that I believe in -- it's an
6 exhibit that had been exchanged back and forth. It's a
7 nice printed document. I forget who -- what agency put
8 it out -- Professor Duff. Do you know Professor Duff?

9 THE DEPONENT: Do you know who I'm talking
10 about, Amy?

11 MS. TCHAO: I think I know who you're talking
12 about.

13 A. I forgot what university law school he was associated
14 with, but he prepared the document that I'm referring
15 to that got pretty wide circulation.

16 BY MR. WILLING:

17 Q. So the issue of if it -- is it discussions that are
18 going on around Goose Rocks Beach specifically or
19 private property rights of beachfront owners generally
20 in Maine?

21 A. Both.

22 Q. Both. What's the stuff that's going on that you recall
23 back in the '90s about Goose Rocks Beach specifically?

24 A. I don't think I can recite you chapter and verse. I
25 think the Moody case has a lot to do with people's

1 concern, that it would get out of hand or get reversed
2 or whatever. So that's sort of one of the reasons
3 there was a lot of discussion.

4 But there was also in journals, public
5 newspapers and so forth, topics or articles on this
6 kind of -- and they went as far, at least I interpreted
7 it, Governor Baldacci appointed a person to serve in
8 the land division, one of them -- I think he was an
9 ex-state representative -- to ameliorate the problems
10 between private property owners and people who were on
11 guest status who were using properties back in the
12 forest and woodlands area regarding access to
13 snowmobiling or skiing or whatever, that they weren't
14 acknowledging their deficiencies in taking care of the
15 property that they were generously allowed to use; and
16 some of the property owners were going to increase
17 their restrictions of access.

18 So there were those kinds of things going on,
19 and it didn't take a genius to understand that sooner
20 or later that would happen all over the state,
21 including the beaches.

22 Q. Why did it take so long then for the Goose Rocks Beach
23 case to erupt, if you have an opinion?

24 A. I have no idea.

25 MR. WILLING: Mark this, please.

1 (Deposition Exhibit No. 13, Annual Report,
2 1974, marked for identification.)

3 BY MR. WILLING:

4 Q. I will tell you this is amongst the documents I found
5 that you produced today, Mr. Dwelley.

6 Do you recognize this document?

7 A. Yes, I do.

8 Q. Is this -- it's labeled at the top annual report 1974.
9 Is that your handwriting?

10 A. Oh, I don't know about that.

11 Q. Okay. Did you do some research in the Town records?

12 A. If it's a Town report I probably have it.

13 Q. Well, I'm asking you. It came from your documents, so
14 do you know what this is?

15 A. It's sort of -- well, apparently it looks like a page
16 from an annual report. In fact, that's what it's
17 titled, annual report.

18 Q. Right. Did you do some research in the Town records
19 and the town's annual reports?

20 A. Not specific research. If I read them and saw
21 something that was useful, I would earmark it or
22 whatever.

23 Q. Okay. What was your purpose in reading the Town -- old
24 Town reports?

25 A. What was my purpose?

1 Q. Yeah. Like what, curiosity?

2 A. Get better informed.

3 Q. As to what?

4 A. As to the status of what was going on in town.

5 Q. For Goose Rocks Beach private property rights or just
6 generally?

7 A. Generally.

8 Q. And is it -- did you make this copy do you think out of
9 the Town reports?

10 A. I can't read the faded writing at the bottom. If it's
11 my writing, then I probably made it. Well, here are my
12 initials up here, but I don't know who put those
13 initials there.

14 Q. Okay. Do you know whether you produced this to the
15 Town as part of this lawsuit?

16 A. I have no idea.

17 Q. You don't know if this is part of your records or not?

18 A. I'm not -- no, I can't recall. Whatever I gave them if
19 I had a file on something that looked of interest, I
20 gave it to the attorney. Whether they produced it or
21 not, I don't know.

22 Q. Did that file include research you had done in the Town
23 records?

24 A. Well, I think you're elaborating not intentionally. I
25 didn't go into any, you know, archives or safes in the

1 town building. I just took stuff out that I had run
2 across, annual reports or whatever.

3 Q. I think we're saying the same thing. You looked at old
4 annual reports, correct? Yes or no?

5 A. Some, yes.

6 Q. And you made copies of pages that interested you?

7 A. Correct.

8 Q. Did you make copies of things that interested you
9 relating to Goose Rocks Beach?

10 A. If there were some, I probably did.

11 Q. And is it possible you made this particular copy that
12 says WPD in the upper right-hand corner?

13 A. It's very possible.

14 Q. Does this particular annual report, to the extent it
15 is, refer to Goose Rocks Beach as commonly used as a
16 public beach?

17 A. Go back -- repeat that question.

18 Q. Does this particular page state the Goose Rocks Beach
19 is commonly used as a public beach?

20 A. It states what it states.

21 Q. Well, is that circled on this page?

22 A. Not in -- somebody such as myself may have circled it.

23 Q. Those words are circled, right?

24 A. Right.

25 Q. In reference to Goose Rocks Beach?

1 A. Exactly.

2 Q. In 1974 you lived there and owned property at Goose
3 Rocks Beach, correct?

4 A. I did.

5 Q. Was it commonly used as a public beach?

6 MR. LEONI: Objection to form.

7 A. Commonly, I guess I'd have to have -- I think I
8 understand your implication about the definition for
9 what's public and what's private.

10 BY MR. WILLING:

11 Q. Well, I'm not asking you for -- your opinion as a
12 lawyer whether it was or was not a public beach.

13 What I'm asking you is did the public use Goose
14 Rocks Beach as a public beach in 1974?

15 A. As far as I know, they did.

16 Q. Okay. In response to Attorney Duchette's questions, I
17 believe you indicated that the use of the property in
18 front of your house, it's used. Some people use it but
19 not intensively; is that fair to say?

20 A. Yeah.

21 MR. LEONI: Objection to form.

22 BY MR. WILLING:

23 Q. Does that include the high dry sand and the intertidal
24 zone?

25 A. Generally not the high -- how did you phrase it?

1 Q. I call it the high dry sand.

2 A. High dry sand is not generally used. It was prior to
3 the loss of the sand dunes that we replaced it with
4 granite riprap.

5 Q. Before you put in the seawall the beach was -- the high
6 dry sand was used more often than after?

7 A. Correct.

8 Q. Could you just elaborate? Why, if you know?

9 A. Well, the nude lady liked it. Yeah, I can -- it's
10 simply the attractive thing. When people from away
11 come to a beach like that, they like the -- they
12 thought it was like in Massachusetts or someplace else.
13 Anything out in front of a house is fair game.

14 Q. Right. But --

15 A. We have a difference of opinion.

16 Q. I understand that. But what -- why did the seawall
17 change things?

18 A. Have you ever sat on a seawall versus a high dry sand?

19 Q. I don't know that I've ever sat on a seawall.

20 A. Somewhat making a joke out of it, but the seawall
21 doesn't attract except little kids who want to walk on
22 it.

23 Q. Right.

24 A. People who want to use it in any way, whereas picture
25 the sand dunes are more attractive if they want to take

1 photographs or something like that.

2 Q. Sure. So -- and just to make sure we're both on the
3 same page, I'm talking about the use of the high dry
4 sand that would be between either the dunes or the
5 seawall and the intertidal zone.

6 A. I'm not sure that condition ever existed.

7 Q. There is no high dry sand between the seawall and the
8 intertidal zone?

9 A. Not frequently in this last 10, 15 years. Now --

10 Q. Does that mean the tide comes right up to the seawall?

11 A. Well, up until last fall for the last three or four
12 years, yes.

13 Q. Okay.

14 A. Every high tide was coming to the seawall.

15 Q. Okay. Well, then let's -- that's why it's probably
16 making all these questions confusing, so let's just
17 focus on the intertidal zone.

18 A. Okay.

19 Q. Do -- do people -- do people use the intertidal zone in
20 front of your house occasionally?

21 MR. LEONI: Objection to form.

22 A. Yes.

23 BY MR. WILLING:

24 Q. Okay. Do you know who those people are?

25 A. In general, no.

1 Q. They could be back lot renters?

2 A. Correct.

3 Q. Probably know them if they're back lot owners; is that
4 fair to say?

5 A. Some, yeah.

6 Q. If they're -- if they're fellow Sand Point beachfront
7 owners would you know them?

8 A. Generally, yes.

9 Q. Mr. Themen and/or his family?

10 A. Yes.

11 Q. Are the McCartheys down near you?

12 A. Yes.

13 Q. The Asplundhs; is that right?

14 A. The what?

15 Q. Asplundh.

16 A. Oh, Asplundh, yes.

17 Q. You know most of those families?

18 A. Yes.

19 Q. But not -- do they ever rent, any of those folks?

20 A. Rent their houses?

21 Q. Yeah.

22 A. It's random. Some do on occasion, some don't. In
23 fact, my -- as an example, my son-in-law -- I mean my
24 sons-in-laws rented the Asplundh's house several years
25 ago for a couple weeks.

1 Q. Got it. So other than when your family members are
2 renting some of their houses, you wouldn't generally
3 know the renters; is that fair to say?

4 A. That's fair to say.

5 Q. So sometimes at least are there people in front of your
6 house who you don't know?

7 A. Like the couple we referred to the police?

8 Q. Right.

9 A. Yes.

10 Q. Are there any occasionally other people in front of
11 your house that you don't know?

12 A. Only those that -- I shouldn't say only. There are
13 people who are walking, jogging, taking their dog.
14 Most of them I don't know.

15 Q. Okay. How about people sitting on a chair reading a
16 newspaper, does that ever happen?

17 A. I can't say it's never happened. It's not a frequent
18 happening.

19 Q. And I understand that but occasionally?

20 A. Maybe occasionally.

21 Q. Let me ask this a different way. This incident with
22 the family where you called the police, the only time
23 somebody sort of stopped and, you know, put down
24 blankets in front of your house -- or did that happen
25 from time to time?

1 A. That type of activity, they were a rare person doing
2 that, rare family doing that.

3 Q. Okay. So apart from them, nobody has ever put a towel
4 down in front of your house?

5 A. I didn't say that.

6 Q. Okay. Well, that's what I'm trying to get a sense of.
7 Does that occasionally happen?

8 A. Oh, I'm sure it occasionally happens, that somebody
9 puts a towel down if they're all wet or something and
10 they want to sit on it.

11 Q. And you don't call the police every time?

12 A. No.

13 Q. You call the police --

14 A. When they're obstreperous.

15 MR. LEONI: Just wait until he finishes because
16 she has a hard time --

17 THE DEPONENT: I understand.

18 MR. LEONI: -- recording.

19 BY MR. WILLING:

20 Q. How often would you say that happens when there's
21 somebody that -- and let's eliminate people that are
22 walking or jogging, you know --

23 A. Yeah.

24 Q. -- and just sort of passing through your property.

25 A. Right.

1 Q. Let's talk about somebody who stays on your property
2 for more than a minute. How often would that happen?

3 A. Not often.

4 Q. Give me a July -- typical July how often it's going to
5 happen during the month of July?

6 A. If you're talking about just sitting on a towel?

7 Q. Staying for more than a minute, you know --

8 A. Staying for more than a minute, five times.

9 Q. Okay. And of those five times about approximately how
10 many will you know who the person is?

11 A. One.

12 Q. Okay. And of the four times approximately that you
13 don't know who the person is, could -- is it safe to
14 say that person could be anybody?

15 A. I'm saying that I might know one person.

16 Q. Right. One out of five?

17 A. Correct.

18 Q. So four out of five times you won't know whether the
19 person is a back lot owner?

20 A. Correct.

21 Q. Or a renter?

22 A. Correct.

23 Q. Or a member of the general public?

24 A. Correct.

25 Q. Or a resident of the Goose Rocks zone but not part of

1 the O'Hara subdivision?

2 A. Correct.

3 Q. That's five times per month in the end of July, right,
4 or is that five times per day?

5 A. No, five times per month.

6 Q. Can --

7 MR. WILLING: Let's mark this and this.

8 (Deposition Exhibit No. 14, Goose Rocks Beach
9 Info, marked for identification.)

10 (Deposition Exhibit No. 15, Goose Rocks Beach
11 Sticker Buyers Info, marked for identification.)

12 BY MR. WILLING:

13 Q. Mr. Dwelley, I will stipulate to you that these two
14 documents, Exhibits 14 and 15, were provided to me by
15 your lawyers as documents coming from you.

16 Do you recognize them?

17 A. I -- not specifically, but I recognize them as
18 documents that were written by I believe -- I believe
19 written by the police as the top says and attached to
20 sticker applications' parking stickers.

21 Q. Okay. Did you -- did you make copies of those
22 documents?

23 A. You mean copies of these, yes.

24 Q. Okay. On Exhibit 14 it looks like there's your
25 initials and the year 2006 at the top right; is that

1 correct?

2 A. I believe that's probably my writing.

3 Q. There's some handwritten notes, too, on Exhibit 14.

4 Are those your handwritten notes?

5 A. I cannot say categorically but I would not say that
6 they aren't. I mean all I can say is it looks like my
7 handwriting but some of it doesn't, so it could have
8 been the document that was written on more than myself.

9 Q. And next to Exhibit -- paragraph numbered 2?

10 A. Right.

11 Q. Which says a police officer patrols the Goose Rocks
12 community to assist you if needed, comma, the last week
13 of June through Labor Day weekend, period, did I read
14 that right?

15 A. Yeah.

16 Q. Then there's a handwritten note that says except
17 trespassing is permitted, I think, according to custom.

18 Did I read that right?

19 A. Except trespassing is permitted according to custom.
20 And that was some of the writing I was referring to
21 that wasn't mine.

22 Q. That's not yours?

23 A. No.

24 Q. Okay. Did you -- how about down below where it says,
25 after paragraph 7, unless you own the beach, did you

1 write that?

2 A. It looks like my handwriting.

3 Q. That does, okay. So do you mean by that note that a
4 private property owner can drink on the beach in front
5 of his or her house as the owner of the property?

6 A. That would be my interpretation.

7 Q. Okay. I'm just trying to understand what you're
8 saying.

9 After No. 9 it says: Or at the discretion of
10 the police. It looks like this is dealing with fire
11 permits.

12 What does that mean when you write: Or at the
13 discretion of the police?

14 A. Well, they're the ones that issue the permits. Where
15 it says permits are available at the communications
16 department --

17 Q. Yeah.

18 A. -- the police are located in the same building.

19 Q. Yup.

20 A. Same area. So all that means is if there's a reason
21 for doing something differently, the police are the
22 ones that have to make that decision.

23 Q. Okay. I'm going to ask you some pretty basic
24 questions.

25 Have you ever seen anybody swimming in the

1 intertidal area in front of your house?

2 A. I can't answer categorically. Sure -- I'm sure people
3 have been swimming there at one point in time. Have I
4 seen them, I don't keep that close a log.

5 Q. In four years you're not sure if you've ever seen
6 somebody swimming there?

7 A. You used the word, sure, and swimming.

8 Q. Right.

9 A. What they're doing there is their business in the
10 intertidal water because that's governed by state.

11 Q. No, I get it. I'm asking if you have personally
12 observed with your own two eyes somebody swimming --

13 A. I have.

14 Q. Okay. Did you -- did you recognize all of the people
15 whom you have observed swimming in the intertidal area?

16 A. No.

17 Q. Okay. How about fishing, have you ever observed
18 anybody --

19 A. Yes.

20 Q. -- fishing?

21 Did you recognize all of those --

22 A. Not all of them, no.

23 Q. Did you recognize some of them?

24 A. Some of them.

25 Q. Anybody you can name?

1 A. Only if they're dead.

2 Q. That's okay. I mean not --

3 A. There was a gentleman who lived nearby named Walter
4 Plazankas and he used to fish primarily down by the
5 river and he used to teach young children how to fish.

6 Q. Got it. Sometimes out there?

7 A. Out where?

8 Q. Out on Sand Point.

9 A. Yes.

10 Q. On the subject of swimming, kids ever run down to Sand
11 Point and maybe even past your property to jump off the
12 point, did that ever occur?

13 A. I don't think so per se because it's not a high --
14 there's maybe two or three feet of water there at the
15 deepest when the tide is in the highest, so it's not a
16 very inviting thing to do but they probably do.

17 Q. You don't have any specific knowledge of that?

18 A. No.

19 Q. Have you ever observed, again, focusing on the
20 intertidal zone in front of your house -- and I'm
21 limiting it to intertidal zone because you said
22 generally the tide comes right up to the seawall; is
23 that right?

24 A. It has until the last couple months.

25 Q. Okay. In the intertidal zone in front of your house

1 have you ever observed, apart from the time you made
2 the police report, a family or anybody else, an
3 individual sunbathing in front of your house?

4 A. Generally not since the wall has been there.

5 Q. Okay. Occasionally since the wall has been there?

6 A. Maybe occasionally, but I don't have a clear
7 recollection.

8 Q. Okay. How about anybody flying a kite?

9 A. Kites are flown but rarely in the general vicinity of
10 Sand Point.

11 Q. Where are they flown?

12 A. Down other areas of the beach like the --

13 Q. In front of The Tides?

14 A. In front of Conservation Trust property.

15 Q. Okay. Anybody ever -- ever observe anybody building
16 sandcastles in front of your house in the intertidal
17 zone?

18 A. Yeah. But I don't know who. I don't know those
19 people.

20 Q. We were talking about the horseback riding ordinance.
21 Have you ever seen anybody on horseback --

22 A. Yeah.

23 Q. -- along the beach?

24 A. Yes.

25 Q. How about -- I think you talked a little bit about

1 softball with Attorney Duchette, although you said it
2 wasn't in front of your house; is that right?

3 A. That's correct.

4 Q. Where -- where would they play softball that you
5 remember?

6 A. Where there was more dry sand available to their
7 purpose, flat areas where the tide had gone out
8 sufficiently.

9 Q. Would that be like in front of the Jeffrey's Way
10 right-of-way or where would that be about?

11 A. From about that area further east -- further west.

12 Q. Further west towards the Conservation Trust property?

13 A. Exactly.

14 Q. Okay. Any bonfires in front of your property that
15 you've observed?

16 A. Yes.

17 Q. Did you know the people that were doing it?

18 A. In some cases.

19 Q. But not all?

20 A. Correct.

21 Q. What would you do when you didn't know them, if
22 anything?

23 A. Go down and tell them to put them out.

24 Q. Is that when you were talking about some kids, some
25 teenagers?

1 A. Yeah.

2 Q. Okay. Do you recall the seagrass being burned ever by
3 the Town at Goose Rocks Beach?

4 A. I don't have a specific recollection.

5 Q. How about the Town raking the seagrass?

6 A. Again, I don't have a specific recollection.

7 Q. Do you recall the Town ever organizing or orchestrating
8 trash pickup, apart from the trash cans that sometimes
9 exist at the end of right-of-ways?

10 A. I don't recall the Town doing it. There may have been
11 private, you know, environmental groups that did it.

12 Q. Okay.

13 A. Whether they did it at the request of the Town, I don't
14 know.

15 Q. Do you recall swimming lessons at Goose Rocks Beach?

16 A. Yes.

17 Q. Tell me about what you recall.

18 A. Well, the Town, recreation people, ran some there, and
19 a private citizen who is now dead, she used to run
20 swimming lessons.

21 Q. Is that Wayne Fessenden's mom?

22 A. Yes.

23 Q. Where would that occur, if you know?

24 A. More or less down -- it depended on time of day and
25 depth of the tide, and that would occur almost -- it

1 was sort of random. I mean people participating in it
2 knew when and where to go, but I don't think there was
3 any, you know, set we're going to do it every Tuesday
4 at 4:00, no, because the tides would be entirely
5 different.

6 Q. Right. Was there a specific location on the beach
7 where it occurred?

8 A. Usually in the front near The Tide's Inn, you know,
9 somewhere where it's commonly known.

10 Q. In the documents that have been produced on your
11 behalf, I've received no photographs, none whatsoever.

12 Do you have any photographs that in any way,
13 shape or form depict Goose Rocks Beach or the seawall?

14 A. I'm sure -- not sure, I believe some exist, but my wife
15 used to take care of all that stuff -- I don't mean
16 stuff, that kind of thing. But she died four years
17 ago.

18 Q. Right.

19 A. A lot of her materials or whatever you want to call
20 them either were given away to one of my sons who no
21 longer live in the area or they were thrown out with
22 other materials that we might have had, so I -- I
23 recall photographs being taken, but I don't recall
24 what -- you know, where they ended up.

25 Q. Okay.

1 MR. WILLING: I'll just request that his sons
2 be contacted. They're owners of the property as
3 trustees anyway, and request, and to the extent that
4 they retained old family photo albums --

5 BY MR. WILLING:

6 Q. -- I'm sure is what your wife kept. Is that probably
7 right?

8 A. Yeah.

9 MR. WILLING: -- for somebody to go through
10 that and see if there are pictures of Goose Rocks
11 Beach.

12 A. Is there any limitation timewise or contentwise?

13 BY MR. WILLING:

14 Q. You can talk about that with your lawyer. From my
15 perspective, I'm just looking for things that depict,
16 if you can see sand or the seawall. Those are the
17 photos I'd like to get.

18 If you can give me just a minute, we might
19 be -- I've got a couple more but they won't take long.
20 Let me just see if there's anything else than what
21 Attorney Tchao is asking me -- the seawall, you
22 answered a few questions about the construction of it.
23 There was no seawall there when you bought the property
24 in '72?

25 A. That's correct.

1 Q. Why did you -- why was the seawall built?

2 A. Insurance.

3 Q. Insurers started to insist upon it to insure the
4 property?

5 A. No.

6 Q. Go ahead.

7 A. I buy insurance so that's why I bought the seawall.

8 Q. So it's just -- it's your own insurance?

9 A. Exactly.

10 Q. It's making you feel safer?

11 A. I'm self-insured.

12 Q. Got it. But what prompted that? I mean --

13 A. Well, back in the early '70s we went through a few
14 severe coastal storms that were depleting private
15 property that existed along the edge of the ocean.

16 Q. At Goose Rocks Beach?

17 A. At Goose Rocks Beach. There were one or two
18 homeowners, maybe 500 feet down the beach from me, who
19 had seawalls built maybe the year I bought my house or
20 the year before, and common practice was to go down and
21 laugh at them. Strange enough, a couple years later I
22 never saw the ladies but they were laughing. No, I
23 mean that's generally -- it became apparent that
24 seawalls were a necessity.

25 Q. And so slowly owner after owner built it?

1 A. That's correct.

2 Q. Did -- was there ever any like organized or unorganized
3 meetings of owners to get together on that?

4 A. To my knowledge since we didn't live there year-round,
5 there was no real organized, it was sort of ad hoc. A
6 couple of times I think people saw their neighbor was
7 doing it and they felt if they didn't do it, the ocean
8 would just come in on their property and spill over and
9 all that stuff. So some of it was enforced by common
10 sense.

11 Q. Did the Town ever get involved in any way with that? I
12 don't mean just building, I mean discussions, anything?

13 A. Not to my knowledge.

14 Q. Anybody seeking permits or anything like that from --

15 A. Now, you have to remember the beach has been there
16 what, 200 years. The walls were built, say, in one
17 location a hundred years ago, and they gradually got
18 filled in in the front and the back by homeowners who
19 wanted lawns and gardens, and so to my knowledge those
20 were never assisted by any Town instruction.

21 Later on, my era, starting in the '50s, '60s or
22 whenever, '70s, there was a lot of wall-building going
23 on. It was mostly to my recollection word of mouth. I
24 mean I'd do it, and then I'd talk to my neighbor, he
25 said, gee, tell the contractor, whoever it was, send

1 him over to my house, I think I'll do it, too, that
2 kind of thing. And it was not all done at once, no.

3 Q. Do you -- I think you said that you don't think it was
4 the Town that was involved. Do you know the Town never
5 participated in it?

6 A. No, I don't know that for sure. I believe they may
7 have participated along the highway, Kings Highway.
8 I'm almost a hundred percent certain that they didn't
9 participate down on Sand Point Road, but they may have
10 participated 75, a hundred years ago when they put a
11 wall in along Kings Highway, so roughly where The Tides
12 is and so forth, because you'll notice there's a large
13 open space where the Conservation Trust property is.
14 To my knowledge that's been vacant kind of property for
15 many years. It stopped wherever the last houses were
16 built. I don't know why.

17 Q. By open space, you mean portions of property along
18 Kings Highway where there's no house between Kings
19 Highway and the beach?

20 A. That's right.

21 Q. Okay. I'm just clarifying what you're talking about.

22 How much did you spend, if you can recall,
23 constructing your seawall?

24 A. Somewhere, and this is just an estimate, between 5 and
25 \$10,000. Now, it wasn't -- in my cases it was a lot of

1 people. You might have constructed the wall in year
2 one and it needed repair in year four or five, and you
3 may or may not have added stones at that time.

4 Q. Okay. You think -- you think five to ten to build it
5 and then there have been repair costs since then?

6 A. Yes.

7 Q. Is that correct?

8 I think in response to Attorney Duchette's
9 questions, you indicated that from time to time you
10 have used the beach outside of the area directly in
11 front of your house?

12 A. Correct.

13 Q. Okay. And that you never affirmatively sought or
14 obtained permission to do so?

15 A. That's correct.

16 Q. Okay. Do you ever -- you or any family members ever
17 walk the beach similar to what people do in front of
18 your house?

19 A. Oh, sure.

20 Q. And I assume that you will say you don't, as you walk
21 down the beach, obtain permission from each property
22 owner?

23 A. I just have them sign a three-page document. No.

24 Q. Of course, you're kidding, right?

25 A. Of course.

1 Q. If a property owner said, Parker, respectfully, I just
2 don't want you or your family to walk or use the beach
3 in front of my house in any way, what would you do?

4 A. I'd honor their request.

5 Q. And how would you -- does that mean if it were -- not
6 that it would probably ever happen, but if they were
7 your next-door neighbors, would that mean you would
8 walk around their house? What would you do?

9 A. I have never faced that so I don't know.

10 Q. Do you understand that that's at least theoretically
11 possible as a result of this lawsuit?

12 A. Oh, sure, sure.

13 MR. WILLING: That's all I have.

14 THE DEPONENT: Thank you.

15 MR. WILLING: Thank you.

16 MR. DUCHETTE: I have no further questions.

17 (The deposition concluded at 1:26 P.M.)

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I, W. PARKER DWELLEY, JR., do hereby certify that the foregoing testimony taken on March 26, 2012, is true and accurate to the best of my knowledge and belief.

DATE

At _____ in said County of _____, this _____ day of _____, 2012, personally appeared W. PARKER DWELLEY, JR. and he made oath to the truth of the foregoing answers by his subscribed.

Before me, _____, Notary Public.

My commission expires: _____

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STATE OF MAINE

I, Colleen A. DiPierro, RMR, CRR, a Notary Public in and for the State of Maine, do hereby certify that pursuant to notice there came before me on March 26, 2012 the following-named person to wit: W. PARKER DWELLEY, JR., was duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor employed by any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

IN WITNESS WHEREOF I have hereunto set my hand this ____ day of _____, 2012.

Colleen A. DiPierro, RMR, CRR

My Commission Expires
May 1, 2018

1 Colleen A. DiPierro
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11 April 9, 2012

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17
18 RE: Robert F. Almeder and Virginia S. Almeder, et
19 al.

20 Enclosed please find your copy of this deposition of W.
21 PARKER DWELLEY, JR. taken in the above-mentioned action
22 on March 26, 2012. Also enclosed is the original
23 signature page and a sheet for corrections.

24 Please have W. PARKER DWELLEY, JR. read your copy of
25 the deposition and sign the original signature page
before a Notary Public. If there are any corrections
he wishes to make, they should be made on the enclosed
correction sheet. Do not mark on the deposition.

Please return the signed original signature page and
correction sheet to Andre G. Duchette, Esq. within 30
days.

Thank you.

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ERRATA SHEET OF: W. PARKER DWELLEY, JR.

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W. PARKER DWELLEY, JR.