



## TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

September 8, 2010

Goose Rocks Beachfront Owners

Re: Goose Rocks Beach Litigation

Dear Goose Rocks Beachfront Owner:

I am writing to provide the Town's response to a letter you may have received from Robert Almeder and Jack Fleming, dated September 2, 2010 entitled, "Defending Your Property Rights." Please understand that the Town finds both the content and the timing of this letter very disturbing, as it contains many blatant misrepresentations about the Town's claims and motives in the Goose Rocks Beach lawsuit. This latest initiative by Messrs. Almeder and Fleming publishes false and misleading information about the on-going lawsuit and appears to be a desperate attempt to demonize the Town and scare beachfront property owners into joining their lawsuit against the Town. I write now to correct several of the inaccuracies and misrepresentations set forth in the Almeder/Fleming notice and to set the record straight on the Town's position in this lawsuit.

- On August 30, 2010, the Court issued an order requiring that all beachfront property owners at Goose Rocks Beach be notified of the lawsuit and served jointly by the Plaintiffs and the Town. Almost immediately thereafter on September 2, 2010, Messrs. Almeder and Fleming sent their own notice to all beachfront property owners entitled, "Defending Your Property Rights." **This notice by Almeder and Fleming was not in any way sanctioned by the Court.** Due to the misleading information and misrepresentations contained within it, the notice interferes with the Court's instructions for communicating with beachfront property owners who are not part of this lawsuit.
- **The Town has never made a claim (either in this lawsuit or otherwise) of ownership of anyone's home on Goose Rocks Beach.** Messrs. Almeder and Fleming completely mischaracterize the Town's counterclaim against them in the lawsuit as stating, the Town "own(s) your entire property along with the beach in front of it." They also claim that you "risk losing all rights to . . . your property, including the house that sits on it." These statements are a blatant misrepresentation of the lawsuit and the Town's legal position in it, and there is absolutely no truth to them whatsoever. Let me be clear about the Town's position on this: **The Town does not claim that it (or the public) owns or has a right to use any beachfront property owner's home on Goose Rocks Beach.**

- Nothing in any statements attributed to the Town (either in legal proceedings or in the community) could reasonably be construed as the Town making a claim against anyone's home. This lawsuit involves only the beach portion of Goose Rocks– in other words, from the sea wall (or equivalent) down to the low water mark.
- Because the misrepresentations made in the Almeder/Fleming notice are egregious and could interfere with your rights as a property owner on Goose Rocks Beach, I understand that the Town attorneys intend to notify the Court about the inaccurate and misleading notice sent to you by Mr. Almeder and Mr. Fleming.
- You will soon be served with legal documents officially notifying you of the Goose Rocks Beach lawsuit, including a summons, the Plaintiffs' complaint, the Town's counterclaim and a notice and acknowledgment form. I urge you to give your attention to these court-sanctioned, official legal documents instead of the flawed notice sent to you by Mr. Almeder and Mr. Fleming.

Finally, let me be clear that the Town did not file this lawsuit, the Town did not want this lawsuit, and the Town does not want this lawsuit to this day. It is Mr. Almeder and Mr. Fleming and twenty-two other beach front property owners who filed this lawsuit. Because they sued not only the Town but also "all persons... who claim the right to use or title in" Goose Rocks Beach, they certainly knew that the lawsuit they filed could implicate the rights of other Goose Rocks Beach property owners. The Town is defending this lawsuit to preserve the right of the public – and not just the Plaintiff beachfront property owners – to access the full length and width of the beach for recreational purposes as it has been used for many generations.

As for the Town's true intentions with respect to Goose Rocks Beach, I invite you to review the enclosed memorandum entitled, "Is There Really Any Need for a Lawsuit?" which is also posted on the Town's website ([www.preservegooserocksbeach.org](http://www.preservegooserocksbeach.org)). The Town remains ready and willing to discuss all of the issues raised in the enclosed memorandum, as well as other issues of concern relating to Goose Rocks Beach. Any such discussion should occur free of the latest scare tactics deployed by Mr. Almeder and Mr. Fleming and the inaccuracies and misrepresentations published by them. Shame on them for authoring this misleading and false notice.

Sincerely,



Larry Mead  
Town Manager

Cc: Town of Kennebunkport Board of Selectmen

## IS THERE REALLY ANY NEED FOR A LAWSUIT?

In their October 30, 2009 article published in the Portland Press Herald justifying the lawsuit against the Town, Robert Almeder and Jack Fleming raised a number of concerns regarding the public's use of Goose Rocks Beach. The Town of Kennebunkport has been – and remains – willing to address each and every one of those concerns in order to avoid costly, divisive and time consuming litigation. Thus,

- Mr. Almeder and Mr. Fleming stated that plaintiffs had filed the lawsuit against the Town, in part, because of the “disturbance of the wild and uncultivated bird habitat areas on the beach upsets many residents.” There already exists a group of residents who, in consultation with Maine Island Fisheries & Wildlife, actively monitor and support the plover habitat at Goose Rocks Beach. The Town Manager and Selectmen are supportive of efforts by this group of residents and remain willing to adopt reasonable regulations at Goose Rocks Beach to protect the plovers.
- Mr. Almeder and Mr. Fleming also publicly stated that they filed the lawsuit, in part, because of the “uncontrolled and continuing development of seasonal condominium hotels and motels in the neighborhood,” which they claimed “threatens a loss of existing tranquility, privacy, essential wildlife habitat, and traffic safety by furthering serious congestion on the beach and on the nearby roads.” The Town is prepared to bring together residents of Goose Rocks Beach and other Town neighborhoods to assess the effects of recent and potential Route 9 development on Goose Rocks Beach. The Town supports constructive and open dialogue as a means to make land use decisions that support and promote the interests of the Town and the neighborhood.
- Mr. Almeder and Mr. Fleming (and other Goose Rocks Beach residents) have expressed a desire to ensure that public use of the beach is reasonable and respects all nearby landowners. To address these concerns, the Town Manager and Selectmen have been and remain willing to discuss with the plaintiffs a number of ideas to address these concerns. These include but are not limited to construction of signage clearly designating public and private ways, the installation of racks for kayaks, canoes and boats, an increase in trash receptacles, trash pick-up and disposable waste bags for dogs, the use of beach stewards, and reasonable limitations on bonfire permits and beach hours.
- The Town is also willing to discuss with the plaintiffs the need for an increased police presence at Goose Rocks Beach during the summer months to discourage illegal, inappropriate, disruptive or offensive conduct at the beach. The Town remains open-minded about discussing this issue with the plaintiffs even though there have never been more than a handful of complaints each summer regarding inappropriate use of the beach, and in each case the Town Police has responded to these complaints promptly.
- The Town is also willing to install a public toilet at a suitable location near the beach to help alleviate one of the legitimate concerns that has been raised.

- Finally, the Town was (and is) prepared to help establish a committee, including Goose Rocks Beach residents, to enforce any resolution reached by the parties. In this way, the Town believes that the legitimate issues raised by plaintiffs (and others) concerning reasonable, appropriate use of Goose Rocks Beach will be addressed and that, in the future, any concerns can be addressed by the committee.

Unfortunately, however, the plaintiffs, through their counsel, have refused even to discuss the various proposals suggested by the Town and instead have steadfastly insisted that public use of Goose Rocks Beach must be seriously restricted. The Town remains optimistic that if it continues to work toward addressing legitimate concerns, while still safeguarding the public's right to use the beach, a time will come when the plaintiffs realize that the best interests of everyone will be served by resolving this litigation and working together to ensure that the beach is preserved and protected for all.