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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 ROBERT H. SCRIBNER, 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 28, 2012, commencing at 1:01 P.M.

APPEARANCES:

GREGG R. FRAME, ESQ.  
BENJAMIN M. LEONI, ESQ.  
AMY K. TCHAO, ESQ.

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.

- - - - -

ROBERT H. SCRIBNER, having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION-BY ATTY. FRAME:

Q. Good afternoon, Mr. Scribner. My name is Gregg Frame. I'm an attorney representing a number of back lot owners and oceanfront owners in Goose Rocks Beach.

Have you ever had your deposition taken before?

A. Say that again.

Q. Have you ever had your deposition taken before?

A. No.

Q. Have you ever been deposed before?

A. Oh, no.

Q. Have you ever been in a setting like this before?

A. Sorry.

Q. The answer is no?

A. The answer is no.

Q. Okay. Great. I'm going to go through a couple of ground rules that will help you and I and Ben and Amy kind of understand the rules of the road.

A. Yes.

Q. First is I'm going to be asking you a series of

1 questions under oath. You'll have to answer those.  
2 Your attorney may object to some of the questions.  
3 Likely, you'll still be -- have to answer the questions  
4 unless it involves attorney-client privilege, and then  
5 your attorney will instruct you not to answer.

6 In normal everyday conversation you and I may  
7 talk over each other. Not being rude but just the ebb  
8 and flow of conversation. That's very difficult for  
9 Colleen to take down, so I'll ask that you let me  
10 finish a question before you answer, and I'll try and  
11 let you finish your answer before I ask you another  
12 question.

13 The other thing is -- I saw you nodding your  
14 head yes. The other thing is occasionally we'll use  
15 hand gestures or nods and say uhm-uhm and uh-huh in  
16 regular conversation, and we know what that means but  
17 we need to establish a record for the court to which  
18 Colleen is going to take that down. So if you say  
19 uhm-uhm or ahn-ahn or shake your head, I'm probably  
20 going to ask you is that a yes or is that a no. I'm  
21 not trying to be rude, I'm simply trying to establish a  
22 record for the court reporter.

23 So do you understand that instruction?

24 A. Absolutely.

25 Q. Great. Currently are you under any medications that

1           may impair your ability to testify --

2           A.    No.

3           Q.    -- truthfully today?

4           A.    No.

5           Q.    Okay.  No reason why you wouldn't be able to respond  
6           truthfully to my questions today?

7           A.    Not at all.

8           Q.    Okay.  Great.  Could you state your name and address  
9           for the record and spell it for the court reporter?

10          A.    Robert Scribner, R-O-B-E-R-T S-C-R-I-B-N-E-R.  Address  
11          is 183 Beachwood Avenue, B-E-A-C-H-W-O-O-D, in  
12          Kennebunkport.

13          Q.    Great.  And, Mr. Scribner --

14                         (Deposition Exhibit No. 1, Notice of  
15          Deposition, marked for identification.)

16                         MR. FRAME:  I'm going to give you No. 1,  
17          Colleen, what we're marking as Exhibit No. 1.

18          BY MR. FRAME:

19          Q.    -- have you seen a copy of this exhibit labeled notice  
20          of deposition of plaintiff, Robert Scribner?

21          A.    Yes.

22          Q.    Okay.  Great.  Mr. Scribner, you said you live at 183  
23          Beachwood Avenue.  Is that in the Goose Rocks Beach  
24          zone as it's commonly --

25          A.    No, it is not.

1 Q. Do you know what I mean when I refer to the Goose Rocks  
2 Beach zone?

3 A. Yes.

4 Q. Okay. How would you describe the Goose Rocks Beach  
5 zone, what are the boundaries?

6 A. Batson River to Little River to Route 9.

7 Q. Okay. And bounded on the east, of course, by the  
8 Atlantic Ocean?

9 A. Technically, it's the south.

10 Q. Okay. Great. South. Do you -- do you or your family  
11 own property on Goose Rocks Beach?

12 A. Yes.

13 Q. Okay. What piece of property is that?

14 A. 291 Rear Kings Highway.

15 Q. 291 Rear Kings Highway?

16 A. Correct.

17 Q. Okay. Is there a 291 Front Kings Highway?

18 A. There's a 291 Kings Highway.

19 Q. And can you describe for me, because I can picture a  
20 lot of the homes on Goose Rocks Beach, but can you  
21 describe for me how 291 Rear is situated in relation to  
22 291, the regular 291? Is it abutting the sand or not?

23 MR. LEONI: Objection to form.

24 BY MR. FRAME:

25 Q. You can answer.

1 A. 291 Rear is beachfront. 291 is roadfront.

2 Q. Okay. Great. Primarily today, Mr. Scribner, I'll be  
3 referring to 291 Rear as the Scribner home. Just so  
4 that there's no confusion, I'm not going to be talking  
5 if at all about 183 Beachwood Avenue, so we're going to  
6 focus primarily on 291 Rear Kings Highway.

7 Who is the current owner of 291 Rear Kings  
8 Highway?

9 A. It's owned by a QPRT.

10 Q. QPRT which is a --

11 A. Real estate trust.

12 Q. Okay. Who are the trustees of that trust?

13 A. Myself and my mother.

14 Q. Okay. And would your mother be Eleanor Scribner?

15 A. Yes.

16 Q. Okay. Great. And would Scrubby Scribner have been  
17 your dad?

18 A. Well, he wouldn't have been known by that in my  
19 lifetime, but yes, that would have been my father.

20 Q. Okay. I will submit to you that in learning about this  
21 case I would have loved to have known your dad because  
22 Scrubby is considered a bit of a legend down there in  
23 Goose Rocks Beach from people I've talked to as a  
24 wonderful person, so --

25 A. He was a good guy.

1 Q. Yeah. So I'll be interested to hear more about him  
2 because he sounded narrowly universally liked by the  
3 folks at Goose Rocks Beach.

4 A. He would be very unhappy to be sitting here.

5 Q. Well, we'll talk about that a little bit, too.

6 How long has 291 Rear -- has the Scribner home  
7 been in the Scribner family?

8 A. 111 or 112 years.

9 Q. So right about the turn of the 20th century?

10 A. Yes.

11 Q. And I'm not going to ask you to go back and detail the  
12 ownership, but at some point it went -- presumably it  
13 became your mom and your dad's?

14 A. Correct.

15 Q. Passed down through your mom's side of the family, your  
16 dad's side of the family?

17 A. No, it's the Scribner property.

18 Q. Okay.

19 A. Passed down through my father's side of the family.

20 Q. And at any point in that 112-year period, Mr. Scribner,  
21 did it go out of the Scribner family --

22 A. No.

23 Q. -- and get it back?

24 A. No.

25 Q. No. Okay. In your life -- when were you born, Mr.



1           Scribner?

2           A.    1956.

3           Q.    1956.  So that would make you 56 years or old or  
4               55 years old, correct?

5           A.    56.

6           Q.    Okay.  And in your lifetime had -- strike that.

7                        In your 56 years when you would visit Goose  
8           Rocks Beach primarily, would it be 291 Rear Kings  
9           Highway?

10          A.    Difficult to answer that in a yes or no.

11          Q.    You can expound.

12          A.    I'm going to have to.  Up until about 1986, 291 and 291  
13          Rear were effectively owned by the same people.  That's  
14          not technically true but they were both family  
15          properties.

16          Q.    Okay.

17          A.    So every summer in my life I lived in 291.

18          Q.    Okay.

19          A.    In a cottage.

20          Q.    Which is the Rear -- which is not the Rear, it's the  
21          one --

22          A.    It's on the road.

23          Q.    It's hard because you think Rear, you'd think that  
24          would be away from the water, but Rear is actually away  
25          from the road?

1 A. Correct.

2 Q. So you lived on the nonwater side of the --

3 A. The nonwater side but spent much time on the 291 Rear  
4 side because that was my grandmother's home at the  
5 time.

6 Q. Okay.

7 A. And, of course, we used her property as our own.

8 Q. Sure. And 291, at some point did that pass out of the  
9 Scribner family?

10 A. Yes.

11 Q. Okay. When was that, Mr. Scribner?

12 A. I'm not sure I could tell you exactly when, 1991 or '92  
13 or --

14 Q. So 20 years ago or so?

15 A. '95. Yeah, it's been a while.

16 Q. Who owns that property now?

17 A. I can't remember. David somebody.

18 Q. Plaintiff?

19 A. No.

20 Q. Okay.

21 A. No.

22 Q. So it's fair to say that in your 56 years you summered  
23 on the greater 291 plot on Goose Rocks -- you know what  
24 I'm referring to then?

25 MR. LEONI: Objection to form.

1 BY MR. FRAME:

2 Q. The greater 291, 291 Rear Kings Highway plot on Goose  
3 Rocks Beach. You can answer if you understand what I'm  
4 asking.

5 A. Yes.

6 Q. Yes, you understand what I'm asking?

7 A. Yes, I am.

8 Q. And yes, the answer is yes?

9 A. Two yesses.

10 Q. Okay. Great. Besides the 291 and 291 Rear properties  
11 which -- let's go back. At one point were 29 -- was  
12 291 and 291 Rear, they were one -- considered one  
13 property?

14 A. Yes.

15 Q. And it was -- and it was subdivided?

16 A. Yes.

17 Q. Okay. And did the subdivision happen at the time in  
18 the it sounds like the early '90s when it was parceled  
19 out of the Scribner family?

20 A. No.

21 Q. The subdivision happened earlier than that?

22 A. Yes.

23 Q. Okay. When did that subdivision happen?

24 A. I can't tell you exactly. 1978 maybe.

25 Q. Do you recall what the purpose was of dividing that?

1 A. No.

2 Q. Okay. Besides 291 and 291 Rear, has the Scribner  
3 family owned any other property, any other beachfront  
4 property at Goose Rocks Beach?

5 A. No.

6 Q. Has the Scribner family --

7 A. Excuse me. Can I back up?

8 Q. Please do.

9 A. When you say Scribner family, you refer to myself and  
10 my mother?

11 Q. Yourself, your mother, your siblings.

12 A. Okay. But not my uncle or my cousins or somebody like  
13 that.

14 Q. No. We can get into that, now that you offered.

15 Uncles, cousins, any kind of greater relations  
16 than your immediate family own beachfront property at  
17 Goose Rocks Beach?

18 A. Do they own it today?

19 Q. Have they ever owned there?

20 A. Yes.

21 Q. Okay. What properties do you recall and during what  
22 time period?

23 A. Early '70s, I think. There was a property down towards  
24 the western end of the beach.

25 Q. Okay.

1 A. My aunt -- I think my aunt actually owned it.

2 Q. How long did she own that for, Mr. Scribner?

3 A. I don't know, 10 years.

4 Q. And it's no longer in the family?

5 A. No.

6 Q. Great. And was that a beachfront property?

7 A. Yes.

8 Q. Okay. Now, starting with your -- just you and your  
9 mother and your -- do you have any siblings?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. Names?

14 A. Susan Jacoma and Joy Wallingford.

15 Q. And do Susan and Joy, where do they live?

16 A. Florida and Maine respectively.

17 Q. Joy is in Maine?

18 A. Yes.

19 Q. Where does Joy live in Maine?

20 A. Lebanon.

21 Q. Lebanon, okay. Have you, Susan, Joy or your mom or dad  
22 ever owned nonbeachfront property in the Goose Rocks  
23 Beach zone?

24 A. Yes.

25 Q. Okay. Where is that, where was that property?

1 A. One property was in close proximity to 291 Kings  
2 Highway and one was on a back lot on Hayward Avenue.

3 Q. Do you recall the address of the one that's in close  
4 proximity to 291? Was it on Kings Highway but on the  
5 other side?

6 A. No. It's -- it must be 289. It's on the same side as  
7 291, so I'm going to guess it's 289. I don't know the  
8 real number.

9 Q. Okay. But 291 is -- 291 Rear is oceanfront, correct?

10 A. Correct.

11 Q. But this one, 289, is on the same side but was not  
12 oceanfront?

13 A. Correct.

14 Q. Same thing, was it kind of subdivided where the front  
15 of it was oceanfront, the back of it was not?

16 A. No.

17 Q. How would --

18 A. Well, I don't believe it was subdivided. There's two  
19 lots and this was the --

20 Q. The back lot?

21 A. -- road -- the roadfront lot.

22 Q. Okay. Great. And let's start with -- let's start with  
23 289.

24 A. Knowing that's just a guess, not the actual number.

25 Q. It could be 287, 285, it could be 293?

1 A. Right. Yes.

2 Q. The adjacent --

3 A. Yes.

4 Q. -- property?

5 A. Yes.

6 Q. And let's start with that. Who was that owned by and  
7 for what time period?

8 A. My dad owned it.

9 Q. Okay. And for what time period?

10 A. Let's say 1978 to 1988.

11 Q. Okay. About ten --

12 A. I'm just guessing.

13 Q. About ten years, okay.

14 A. I don't remember.

15 Q. And then the Hayward Avenue property, same question:  
16 Who owned it and what time period?

17 MR. LEONI: Objection, form.

18 A. My dad owned it --

19 BY MR. FRAME:

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

21 A. My dad owned it probably about 1970 to 1980.

22 Q. Okay.

23 A. I'm just guessing.

24 Q. Is it fair to say that at some point those two  
25 overlapped and yet he had two properties there besides

1 the 291?

2 A. Definitely. And I would probably amend that from 1970  
3 to '85 or '86.

4 Q. Okay. So for --

5 A. Yeah.

6 Q. Great. The 289 property, let's start with that, your  
7 father owned that from, again, you're guessing, 1978 to  
8 1988?

9 A. Yes.

10 Q. Was that -- what was the purpose of that property?

11 A. Beach house.

12 Q. Okay.

13 A. I don't know what you say -- vacation home.

14 Q. Okay. For your family?

15 A. Yes.

16 Q. Okay. You -- you -- during that time period did you  
17 also have access and use of 291 and 291 Rear?

18 A. Yes.

19 Q. Okay. Is it fair to say this was just another house to  
20 increase the Scribner compound, so to speak?

21 A. No, not at all.

22 Q. Okay. How would you describe it?

23 A. It was my father's what might have become his  
24 retirement home.

25 Q. Okay. And did it not -- it didn't become his



1 retirement home?

2 A. No, did not.

3 Q. Sold it before he retired?

4 A. Did he? Maybe.

5 Q. Okay.

6 A. About the same time but that's -- yeah.

7 Q. Okay. And that, that 289, that was not -- that was on  
8 the Kings Highway side, correct?

9 A. Yes.

10 Q. Or fronting Kings Highway?

11 A. Yes.

12 Q. How did you access the beach from 289 Kings Highway?

13 A. Down a deeded right-of-way.

14 Q. And that deeded right-of-way, did that abut 291?

15 A. Yes.

16 Q. Okay. Did -- so from approximately '78 to '88 -- I'm  
17 not going to hold you to these dates, Mr. Scribner,  
18 because I have a hard enough time remembering stuff  
19 like my own anniversary so I understand where you're  
20 coming from here -- but for that approximate time did  
21 your father and mother live in that house?

22 A. Yes, summers.

23 Q. Okay. Where did they live year-round, where was their  
24 permanent residence?

25 A. Massachusetts.

1 Q. Okay. Did -- did they ever rent that house from '78 to  
2 '88 approximately?

3 A. No.

4 Q. Let's talk a little bit about Hayward Avenue. Now,  
5 that, you describe that as further off the -- off the  
6 beach; is that correct? Is that accurate?

7 A. Yes.

8 Q. Is that still kind of at the end of the beach, though,  
9 or the end of the Goose Rocks Beach zone near where 291  
10 Kings Highway is?

11 A. It's very close to 291.

12 Q. Okay. And you said your father bought that in  
13 approximately 1970 and owned it until approximately  
14 1986, correct?

15 A. Yes.

16 Q. What was the purpose of that property?

17 A. An investment.

18 Q. Okay.

19 A. I was a teenager. I don't really know.

20 Q. Sure. At that point you were just worried about where  
21 your next meal was coming from or where the girls were  
22 on the beach?

23 A. I was worried about a lot of things back in 1970.

24 Q. I won't get into that.

25 So in terms of an investment property, was that

1 a property that was rented?

2 A. Yes.

3 Q. Okay. How frequently was that rented to the best of  
4 your recollection?

5 A. It was a summer rental and a winter rental, and it was  
6 rented nearly every year year-round, probably not a  
7 hundred percent but nearly.

8 Q. Presumably summer for much more than it got through the  
9 winter?

10 A. Yes.

11 Q. Okay. Did you or any of your family members ever stay  
12 in Hayward Avenue?

13 A. Yes.

14 Q. As -- as renters or just during down time when it was  
15 not rented?

16 MR. LEONI: Objection to form.

17 BY MR. FRAME:

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

19 A. As renters. He was a tough landlord, too.

20 Q. I hadn't heard that. Did you rent it personally?

21 A. Yes.

22 Q. For how long?

23 A. Probably two years.

24 Q. What time frame, kind of right out of college?

25 A. Yeah, after I got married.

1 Q. When did you get married? Your wife is not here so  
2 you're not in trouble.

3 A. Different wife. 1979.

4 Q. Okay. So 19 -- after you got married sometime between  
5 '79 and '86 you and your wife lived there year-round or  
6 summer?

7 A. Lived there year-round. I believe it was two years,  
8 '79 to '81.

9 Q. Did you -- was that walking distance to the beach?

10 A. Yeah.

11 Q. Okay. Did you and your wife at the time use the beach?

12 A. Yup.

13 Q. How did you access the beach from Hayward Avenue?

14 A. Family property right-of-way.

15 Q. So you'd go -- explain that to me.

16 A. You walk down, cross the road, and go down the private  
17 right-of-way.

18 Q. At --

19 A. At 291.

20 Q. -- 291? Great.

21 Do you recall how other nonScribner renters  
22 accessed -- did they access the beach from Hayward  
23 Avenue?

24 A. Yes.

25 Q. And how did they do that?

1 A. They crossed on the Scribner right-of-way with  
2 permission.

3 Q. Was that -- how was the, to the best of your  
4 recollection, how was Hayward Avenue advertised?

5 MR. LEONI: Objection to form.

6 A. Yeah, I don't know the answer.

7 BY MR. FRAME:

8 Q. You don't. Did your father or family rent that out  
9 themselves or did they have a real estate agent --

10 MR. LEONI: Objection to form.

11 BY MR. FRAME:

12 Q. -- do the work for them?

13 A. I honestly don't know.

14 Q. Okay.

15 A. I don't remember.

16 Q. Did you ever -- were you ever in charge of renting --

17 A. No.

18 Q. -- Hayward Avenue?

19 A. No.

20 Q. So from '79 to '81, Mr. Scribner, how, in the winters  
21 months, what is the -- what is the beach -- beachlife  
22 like at Goose Rocks Beach?

23 A. Cold and lonely.

24 Q. Mostly summer people down there?

25 A. In the winter?

1 Q. Yeah. I mean mostly -- are there mostly summer people  
2 so that in the winter there's very -- much fewer  
3 residents?

4 A. If you're referring to 1979?

5 Q. Yeah.

6 A. Yes.

7 Q. Has that changed?

8 A. Yes.

9 Q. How much?

10 A. I couldn't tell you how much. Noticeably.

11 Q. If you walked the beach in a typical day and you went  
12 and walked the beach in '79, were you apt to see, in  
13 the winter, were you apt to see other people?

14 A. Not likely.

15 Q. Okay. Do you walk the beach in the winter now at all?

16 A. Not very often.

17 Q. So you have no way to judge if that's changed?

18 A. Not accurately.

19 Q. Okay.

20 A. Although, you know, to be fair, I am down there  
21 regularly visiting my mother and there are frequently  
22 people on the beach.

23 Q. Does your mother live at 291 Rear year-round?

24 A. Yes.

25 Q. Okay. And for how long has she lived there has that

1           been her permanent residence?

2           A.    Since 1990 maybe.

3           Q.    She was in Massachusetts for part of the year before  
4           then, correct?

5           A.    Yes.

6           Q.    -- is that correct?   Great.

7                         What -- what year did your father die, Mr.  
8           Scribner?

9           A.    2003.

10          Q.    And I spaced on your -- you have one sister named Joy.  
11          What's your other sister's name?

12          A.    Sue.

13          Q.    Sue.   Sorry about that.

14                         What -- '79 to '81 when you and your wife, your  
15          first wife were -- were at the Hayward property --

16                         MR. LEONI:   Objection to form.

17          BY MR. FRAME:

18          Q.    -- what kind of activities would you do on the beach?

19          A.    I'm not much of a sitter so mostly walk on the beach.

20          Q.    Okay.

21          A.    Swim.

22          Q.    Did you have kids at the time?

23          A.    No.

24          Q.    Do you have kids now?

25          A.    Yes.

1 Q. How old are your kids?

2 A. I have a child. He's 19.

3 Q. 19. And what's his or her name?

4 A. Samuel.

5 Q. So you said you're not much of a -- you sound like me,  
6 not much of a beach sitter?

7 A. No.

8 Q. Walking the beach, swimming?

9 A. Yeah.

10 Q. Sports, any games, anything like that?

11 A. Not -- not in my adulthood.

12 Q. Okay. In your pre1979, in your younger days, what kind  
13 of activities would you engage in on the beach?

14 A. Well, probably the same things. We might play handball  
15 or frisbee or whatever.

16 Q. Okay. And during the let's take the '79 to '81 period  
17 when you were there living in the Goose Rocks Beach  
18 zone year-round at Hayward Avenue, at that point in  
19 time would you have been able to identify all of the  
20 beachfront owners on Goose Rocks Beach by sight?

21 A. No.

22 Q. Would you have been able to identify any of the, and  
23 this may be an absurd series of questions, but I'm  
24 going to ask it anyway -- would you have been able to  
25 identify their friends by sight?



1 A. I suppose in some rare instances, but no, I don't --

2 Q. Generally --

3 A. Generally speaking, no.

4 Q. Would you have been able to identify, and this is again  
5 1979 to '81 when you were living there year-round,  
6 would you have been able to identify -- strike that.

7 Do you know what I mean when I refer to back  
8 lot owners?

9 A. Yeah.

10 Q. Okay. Yes?

11 A. Yes.

12 Q. Sorry. Would you, from '79 to '81, would have been  
13 able to identify all of the back lot owners in the  
14 Goose Rocks Beach zone?

15 A. No.

16 Q. And would you have been able to identify all of the  
17 friends or guests of those back lot owners?

18 A. No way.

19 Q. Okay. 2012 now, same question, would you be able to  
20 identify all of the beachfront owners by sight?

21 A. No.

22 Q. And all of their friends, would you be able to identify  
23 them by sight?

24 A. No.

25 Q. Okay. And 2012 again, back lot owners, would you be

1           able to identify them by sight?

2           A.    All of them?

3           Q.    Yes.

4           A.    No.

5           Q.    And their friends or invited guests of back lot owners,  
6           would you be able to identify them by sight?

7           A.    No.

8           Q.    Okay.  So towards the late '80s -- since the later '80s  
9           have you or any member of your immediate family owned  
10          any property in the Goose Rocks Beach zone that is  
11          rented?

12          A.    No.

13          Q.    Okay.  And the only places that your immediate family  
14          owned pre1990 were 289 -- one of those abutting 291  
15          Kings Highway and Hayward Avenue, correct?

16          A.    Yes.

17          Q.    And only Hayward Avenue was rented?

18          A.    Yes.

19          Q.    Okay.  And you don't have any recollection on who  
20          rented that in terms of the renters or the rental agent  
21          for that property?

22          A.    No, I could -- I could identify one year-round renter  
23          who was there for several years, but other than that,  
24          no, I have no idea.

25          Q.    And who was -- who was that year-round renter?  Is that

1           someone who ended up buying on Goose Rocks?

2           A.    No, it's just a single, older single woman.

3           Q.    Okay.  Did any of your -- I think you've probably  
4           answered this already, but did any of the renters on  
5           Hayward Avenue ultimately buy property in the Goose  
6           Rocks Beach zone?

7           A.    I don't -- I don't know.

8           Q.    Okay.  So you grew up in Massachusetts, Mr. Scribner?

9           A.    Yes.

10          Q.    And then come to Goose Rocks Beach as soon as school  
11          was out; would that be fair say?

12          A.    Every year.

13          Q.    I did the same thing but went from Long Island to Great  
14          Pond in Belgrade so I know the drill.

15                        So a couple days before school starts you guys  
16          head back to Massachusetts, accurate?

17          A.    Yeah, yeah, maybe one day.

18                        MR. FRAME:  Off the record.

19                                (Off the record.)

20          BY MR. FRAME:

21          Q.    Did you develop friends at Goose Rocks Beach during the  
22          summer?

23          A.    Oh, yes, absolutely.

24          Q.    Who were your chums palling around?

25          A.    You want a laundry list of names?

1 Q. Let's start with the folks who you were good friends  
2 with who you spent -- let's start with your teen years  
3 and that time.

4 A. So Goose Rocks specific friends?

5 Q. Sure. Yes. Presumably you had Massachusetts friends  
6 and in the summer you came up and you had your Goose  
7 Rocks friends?

8 A. Yeah.

9 Q. Who were the folks you hung out with at Goose Rocks?

10 A. A couple of brothers, Eric and Bill Junker,  
11 J-U-N-K-E-R. A guy by the name of John O'Brien, a  
12 woman by the name of Janet Smith. That's not her name  
13 today. I'm drawing a blank. She has an Italian last  
14 name today. Marteolini.

15 MR. LEONI: Would you spell her last name, if  
16 you know.

17 THE DEPONENT: M-A-R-T-E-O-L-I-N-I, I believe.

18 BY MR. FRAME:

19 Q. You're a better man than I am.

20 A. And I'm sure there are a dozen more.

21 Q. Sure. Bill and -- who is the other Junker?

22 A. Eric.

23 Q. Bill and Eric, their parents are back lot owners at  
24 that end of the beach, correct?

25 MR. LEONI: Objection to form.

1 A. Correct.

2 BY MR. FRAME:

3 Q. Do you understand the question?

4 A. I understand the question. I'm not clear on whether  
5 their house is considered back lot or not, but I  
6 suppose it is.

7 Q. But they're at your end of the beach?

8 A. Yes.

9 Q. And Bill is the same Bill Junker who is now married to  
10 Marie Junker who lives at the other end of the beach?

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. And what kind of activities would you and the Junker  
15 boys and Marteolini gal and the other folks engage in  
16 at Goose Rocks Beach?

17 A. We would drive our boats, we would water-ski, we would  
18 hang out on the road at night, we would swim. We would  
19 do all the things teenagers do and don't talk about at  
20 night on the beach. Take swimming lessons, take tennis  
21 lessons, you know.

22 Q. And I'll submit to you the --

23 A. The life of Riley.

24 Q. -- statute of limitations has lapsed at seven, so ever  
25 crack a beer on the beach as a teenager?

1 A. Absolutely.

2 Q. Okay.

3 A. Might have even drank it.

4 Q. Okay. Good. And those activities all occur on the  
5 beach in front of 291 Kings Highway or in other places?

6 A. Generally they were in other places.

7 Q. Hopefully where you were drinking the beer was in other  
8 places so your parents couldn't look under the window  
9 and see you, right?

10 A. Yeah.

11 Q. What were some of the popular spots that -- where you  
12 folks would hang out?

13 A. You know, as a gang, a teenage gang hanging around, we  
14 would generally hang out on what was always been known  
15 as the public part of the beach.

16 Q. And would that be the part in front of what's now The  
17 Tides Inn?

18 A. Yeah, in proximity. It may not be literally in front  
19 of The Tides but --

20 Q. But in that area?

21 A. That area, yeah.

22 Q. Kind of more the middle of the beach?

23 A. Yeah.

24 Q. Okay. What -- have the activities that you've seen  
25 that historically have occurred on the beach, have

1           those changed during your 56 years of coming to Goose  
2           Rocks Beach?

3                       MR. LEONI:  Objection to form.

4           BY MR. FRAME:

5           Q.  If you can understand the question you can answer.

6           A.  I don't think the activities have fundamentally  
7           changed.

8           Q.  Okay.  Does -- does Samuel spend his summers at Goose  
9           Rocks Beach?

10          A.  No.

11          Q.  Are you related at all to the Julian family?

12          A.  Well, my wife's last name is Julian, if that's what  
13          you're asking.

14          Q.  Okay.  So your --

15          A.  I'm not sure what that has to do with Goose Rocks  
16          Beach.

17          Q.  No, just saying your wife is a Julian?

18          A.  Yes.

19          Q.  Okay.  And is she -- she related to William Forest?

20          A.  Yes.

21          Q.  How?

22          A.  In the same manner that I am.  Her sister is married to  
23          Bill.

24          Q.  What do you do for work, Mr. Scribner?

25          A.  I work in global logistics for Fairchild Semiconductor.

1 Q. What is your -- does your wife work?

2 A. No, not full-time.

3 Q. Does she work part-time?

4 A. She works at the polls for the Town and does volunteer  
5 work, et cetera.

6 Q. She -- does she have a -- where did you get your  
7 degree? Did you -- where did you graduate from high  
8 school? I'm bouncing around, I apologize, but --

9 A. Now known as the Governor's Academy.

10 Q. Governor Dummer?

11 A. In Massachusetts.

12 Q. Sure. And did you go to college after?

13 A. Yeah.

14 Q. Where did you go to college?

15 A. University of Maine.

16 Q. And where -- did you get your degree?

17 A. I did.

18 Q. In?

19 A. Accounting.

20 Q. Okay. Any postgraduate work?

21 A. No.

22 Q. Okay. What about your -- and your wife is -- this is  
23 your second wife we're talking about?

24 A. Yes.

25 Q. Okay. What's her full name?



1 A. Claire Julian -- Claire Ann Julian.

2 Q. Great.

3 A. Claire with an E at the end.

4 Q. Great. Thank you. And Julian is J-U-L-I-E-N?

5 A. A-N.

6 Q. A-N. Sorry. Okay. Do you know where she graduated  
7 high school?

8 A. Chelmsford High School.

9 Q. Chelmsford. And did she go to college?

10 A. Yes.

11 Q. Where did she go to college?

12 A. Colby College.

13 Q. I'm a Waterville guy myself. Did she get a degree from  
14 Colby?

15 A. Yes, she did.

16 Q. And did she do postgraduate work?

17 A. Yes, she did.

18 Q. Where did she do that?

19 A. Maine School of Law.

20 Q. Did she graduate from Maine School of Law?

21 A. Yes.

22 Q. Did she take the Bar and pass the Bar?

23 A. Yes, she did.

24 Q. Is she an active lawyer? Is her Bar license active?

25 A. Her Bar license is active in Maine.

1 Q. But not practicing?

2 A. She's not practicing.

3 Q. It's probably helpful to have a lawyer in the family to  
4 understand what's going on here, right?

5 A. Not really.

6 Q. Wow. Tough commentary.

7 You said earlier that the types of use on the  
8 beach hasn't changed in -- dramatically or much in your  
9 56 years.

10 Has the volume changed in your 56 years?

11 A. Yes.

12 Q. In what way?

13 A. It's gone up.

14 Q. Can you give an example or describe that further?

15 A. Well, over the last 56 years the numbers of, you know,  
16 housing units has increased fairly dramatically at the  
17 beach which, of course, has resulted in more people  
18 using the beach and not necessarily just within the  
19 Goose Rocks Beach zone but in other areas of proximity  
20 to Goose Rocks Beach.

21 Q. And when you say housing gone up, do you mean both  
22 beachfront houses and back lot houses?

23 MR. LEONI: Objection to form.

24 BY MR. FRAME:

25 Q. What do you mean when you say the housing has gone up?

1 A. Just in general, the housing units. I can't tell you  
2 whether there has been more beachfront homes added in  
3 the last 50 years. To me in my mind every lot has  
4 always been full, but I don't know that. But certainly  
5 the back lot has expanded greatly.

6 Q. So looking at the -- are you aware of any beachfront  
7 homes in the past 56 years?

8 A. In the past 56, yeah, absolutely.

9 Q. Okay.

10 A. Yeah.

11 Q. And you made mention to the increase coming perhaps not  
12 just from the Goose Rocks Beach zone. What do you mean  
13 by that, Mr. Scribner?

14 A. Well, outside of the zone along Route 9 up towards  
15 Route 1 from Goose Rocks there has been a lot of new  
16 housing. There's been motels built, a campground  
17 opened in the late '60s, early '70s. There's a couple  
18 of housing developments that have gone in locally.

19 Q. And is it your und -- and do those -- the people who  
20 frequent those places, do they access the beach to your  
21 knowledge?

22 A. Yes, they do.

23 Q. Okay. Would you be able to distinguish between someone  
24 from the campground, someone who is a back lot owner  
25 and someone who is a beachfront owner in general?

1 A. Not in general, no.

2 Q. Okay. Do you know where -- let's take the example of  
3 the campground. Do you know where those people access  
4 the beach?

5 A. I -- I could surmise where they access the beach, but I  
6 don't know.

7 Q. Give it a shot. You can surmise.

8 A. The public access near the store.

9 Q. Which is at the end of Dyke Road?

10 A. Yes.

11 Q. Okay. And that, if we're looking at the beach from the  
12 Batson/Little River, that's fairly centrally located,  
13 correct, maybe a little bit westward?

14 A. It's a little to the west I would say.

15 Q. Okay. Amazing I can figure this all out.

16 Have -- how do the people from the campground  
17 get down to the beach, I mean reach The General Store  
18 area?

19 A. I'm sure some of them drive a car and I'm sure some of  
20 them ride a bike. You often see them walking.

21 Q. Okay.

22 A. Because it's not really that far.

23 Q. And are there -- there's defined parking spots in the  
24 Goose Rocks Beach zone, correct?

25 A. There are defined parking areas.

1 Q. Areas. I'm sorry. And have those -- do you recall  
2 parking areas when you were a teen?

3 A. Yes.

4 Q. Controlled by the Town?

5 A. Yes.

6 Q. Have those increased since your teen years?

7 A. I would probably say no.

8 Q. Okay. So is it fair to say that the use -- strike  
9 that.

10 Do you -- do you know the Forbes family?

11 A. No.

12 Q. Do you know the Griswold family?

13 A. No.

14 Q. Do you know the Ryan family?

15 A. Ryan, across the street, yes. I don't know them well.

16 Q. Okay. Do you know the Young family, Herb Young family?

17 A. No.

18 Q. Do you know the McDonald family, Rick McDonald?

19 A. Yes, I do.

20 Q. Okay. Do you know -- I apologize. I'm going to go  
21 through a string of people here.

22 Do you know the Themens?

23 A. No.

24 Q. The Calcutts?

25 A. No.

1 Q. The Bozinskis?

2 A. No.

3 Q. The McGinnesses?

4 A. Yes.

5 Q. The Coynes?

6 A. No.

7 Q. The Kings?

8 A. Yes.

9 Q. The Dees?

10 A. No.

11 Q. The Wiewels?

12 A. Yes.

13 Q. The Weyls?

14 A. I know of them. I don't know them very well.

15 Q. Okay. The Himmelmans?

16 A. No.

17 Q. The Ciarametaros?

18 A. No.

19 Q. That's a mouthful. The Regans?

20 A. If they're owned that same -- if it's the same Regans  
21 that have owned some property since --

22 Q. Gail Regan?

23 A. No.

24 Q. Okay. The Crawfords?

25 A. Yes.

1 Q. The Sakovics?

2 A. No.

3 Q. The Tacys?

4 A. No.

5 Q. Schmaltzes?

6 A. No.

7 Q. Corbeys?

8 A. No.

9 Q. Queens?

10 A. No.

11 Q. Smith, Mark Smith?

12 A. I know a Mark Smith but I don't think it's that one.

13 Q. Okay. The Whiteheads?

14 A. Yeah.

15 Q. The Byrons?

16 A. Yeah.

17 Q. The Wasserbakers?

18 A. No.

19 Q. The Millers?

20 A. Yeah.

21 Q. That crew, by the way, refers to a massive beach league  
22 softball that occurred down at -- you're shaking your  
23 head yes.

24 Does that ring a bell?

25 A. Yes.

1 Q. Okay. The Andersons?

2 A. Not currently on the beach, no.

3 Q. The Ziskises?

4 A. No.

5 Q. The O'Neils?

6 A. No.

7 Q. The Cohens and the Cofers?

8 A. The Cohens, yes.

9 Q. The Morrisseys?

10 A. No.

11 Q. Merrills?

12 A. Yes.

13 Q. Almost done. Murphys?

14 A. No.

15 Q. Would it surprise you that all those people I just  
16 named spoke lovingly of activities in front of the  
17 Scribner home on Goose Rocks Beach?

18 A. I would be very surprised that several of them would  
19 have said that, yes. I'd be very surprised.

20 Q. Who -- obviously the --

21 A. Wiewels.

22 Q. -- those would be the ones you knew?

23 A. Yeah. The Wiewels, their property was at the other end  
24 of the beach. The McGinnesses, their property was down  
25 on the public part of the beach. You know, a whole



1 bunch of them.

2 Q. Okay.

3 A. Whiteheads, their property was further down.

4 Crawford's, the Weyls, their property was further down.

5 Q. A lot of those folks sound like, though, that they  
6 traveled through the beach league softball?

7 A. They may very well.

8 Q. Was that a popular attraction?

9 A. Well, Goose Rocks has a beautiful low tide area.

10 Q. Right. It's very wide?

11 A. Flat hard sand.

12 Q. And flat, right, wide, right?

13 A. Yeah, it's huge.

14 Q. So do you recall those softball games?

15 A. Yeah, I don't play softball, but there was always a  
16 softball game, absolutely.

17 Q. Okay. Do you recall folks flying kites at Goose Rocks  
18 Beach?

19 A. Yup.

20 Q. Volleyball games?

21 A. Not so much back -- back then.

22 Q. Currently?

23 A. Yeah, from time to time you'll see that.

24 Q. Whiffleball?

25 A. Yeah.

1 Q. Football, badminton?

2 A. Yeah.

3 Q. Did you ever tell any of these people that they could  
4 be on the beach in front of your house or your parents'  
5 house?

6 MR. LEONI: Objection to form.

7 BY MR. FRAME:

8 Q. You can answer if you understand the question.

9 A. I am sure that some of them were given permission.

10 Q. From whom?

11 A. Either my grandmother, my dad or my mother.

12 Q. Okay. Did you ever see your grandmother, your dad or  
13 your mother give permission?

14 A. Not specifically. I guess the answer is no.

15 Q. Okay. Did any of those people, your grandmother, your  
16 dad or your mother, ever tell people to leave the  
17 beach?

18 A. Yes.

19 Q. Would that have been for -- what reasons would they  
20 have told them to leave the beach?

21 A. For sitting in front of the house in the soft sand up  
22 close to the house, for using the beach in ways they  
23 didn't appreciate, for, you know, putting up things  
24 like volleyball nets and not removing them, you know,  
25 on our property. Those types of activities.

1 Q. When you say things -- for reasons or things we didn't  
2 appreciate, would that have been illegal things or  
3 would that have been something other than -- something  
4 that was illegal?

5 A. I don't recall anything illegal being called upon, no.  
6 I would call it dis -- things disrespectful of the  
7 property.

8 Q. And you referred to someone leaving a volleyball net  
9 up, not removing it?

10 A. Yeah. Throwing trash in a family boat that was on the  
11 beach, things like that.

12 Q. Okay. How frequently an occurrence was that, that your  
13 grandmother, your mom or your dad would chastise people  
14 for -- and I use that term, it's probably not the right  
15 term, but you know what I'm saying?

16 A. Well, if you knew my grandmother, that was probably a  
17 good term, but I wouldn't say every day but regularly.  
18 How's that? Two, three, six times a year, eight times  
19 a year, regularly.

20 Q. Is it fair to say that your grandmother took a more  
21 strident view of appropriate beach use than your dad?

22 MR. LEONI: Objection to form.

23 BY MR. FRAME:

24 Q. You can answer if you understand.

25 A. Yeah, I guess the answer is probably yes.

1 Q. Explain that to me. You referred to your -- you said  
2 if you knew my grandmother, you'd know that she acted  
3 that way.

4 Explain to me your grandmother a little bit.

5 A. With respect to the beach, she -- she believed in  
6 exercising her rights as a property owner. If her  
7 right gave her -- it was her property. She could allow  
8 whoever she wanted to be on it to be on it, and she  
9 exercised that right regularly.

10 Q. And how would -- how would someone know if they had a  
11 right to be on her property? Was it through a  
12 negative? If she didn't say anything, you were allowed  
13 to be on her property?

14 MR. LEONI: Objection to form.

15 BY MR. FRAME:

16 Q. You can answer the question if you understand.

17 A. Yeah, I think that's probably true, yeah.

18 Q. So if -- what was your grandmother's name?

19 A. Dorothy.

20 Q. Dorothy Scribner?

21 A. Yes.

22 Q. If Dorothy Scribner didn't tell someone to leave, they  
23 were presumed to have a right to be on the property?

24 MR. LEONI: Objection to norm.

25 BY MR. FRAME:

1 Q. You can -- I'm trying to probe what you said earlier  
2 so.

3 A. I don't think they can presume they had a right to be  
4 on the property, I think they could presume they were  
5 using it with permission.

6 Q. And the way permission was granted -- is it fair to say  
7 the way permission was granted was by lack of a  
8 directive to leave?

9 A. At times, yes, not exclusively.

10 Q. Okay. How else was permission granted?

11 A. There were back lot neighbors that had her granted  
12 permission to access the beach and to be on the  
13 beachfront.

14 Q. In writing?

15 A. Ultimately in writing, yes, actually.

16 Q. And when was that writing provided to those folks?

17 A. It was -- they were -- there were several deeds that  
18 were altered, giving them legal access to the beach, in  
19 the early or mid '80s. Early '80s, I think.

20 Q. Those deeds gave them access?

21 A. Access to the beach.

22 Q. Did the deeds describe the permissible uses on the  
23 beach?

24 A. No.

25 Q. And the permissible locations on the beach --

1 A. No.

2 Q. -- that they could provide --

3 A. It didn't provide them beachfront property, it provided  
4 them access to reach the beach.

5 Q. And once they got down to the beach, what could they  
6 do?

7 A. I suppose they could do anything they wanted within  
8 reason. If they chose to do it on the Scribner  
9 property and it was deemed to be inappropriate, they  
10 were spoken to and continued to be spoken to to today.

11 Q. Did your father speak to people like your grandmother  
12 spoke to people?

13 A. Yup.

14 Q. Was he -- was he as strict or strident in the --

15 MR. LEONI: Objection to form.

16 A. I would say yes.

17 BY MR. FRAME:

18 Q. Okay. When someone put up a -- you said maybe, and I'm  
19 not going to -- I'm going to paraphrase. You said  
20 maybe four to eight times a year your grandmother would  
21 speak to someone on the beach.

22 Do you recall whether the person she spoke to  
23 was a beachfront owner?

24 A. I -- I -- I don't recall. I doubt very much she would  
25 speak to a beachfront owner.

1 Q. Do you recall if the person she spoke to was a back lot  
2 owner?

3 A. She would often speak to back lot owners.

4 Q. And do you recall if the person she spoke to was from  
5 the general public?

6 A. She would also speak to the general public.

7 Q. Why wouldn't, if someone was engaging in -- strike  
8 that.

9 Did beachfront owners not engage in any  
10 activities your grandmother or your father found  
11 inappropriate on the beach?

12 A. No. I -- I think the beachfront owners allow each  
13 other a little bit of leeway.

14 Q. What do you mean by that?

15 A. As far as using, you know, like using your neighbor's  
16 beachfront versus your beachfront, I think the  
17 neighbors were a little more lenient or tolerant of  
18 each other.

19 Q. That makes sense. If your neighbor didn't let you use  
20 the beach in front of them, what would be the outcome  
21 of that?

22 A. He wouldn't be a good neighbor, would he?

23 Q. Would you not let them use the beach in front of your  
24 property if that happened?

25 MR. LEONI: Objection to form.

1 A. Yeah. I -- that's a hypothetical question. I don't  
2 know how to answer that.

3 BY MR. FRAME:

4 Q. You don't have an answer to that?

5 A. Yeah, I don't know how to answer that. I mean --

6 Q. Okay. So is -- is Scrubby -- was Scrubby your dad or  
7 your grandfather?

8 A. Father.

9 Q. Okay. Was there a Scribby Scribner, too?

10 A. Well, it was either him or me.

11 Q. Okay. People described -- I'll represent to you that  
12 people described your father as reveling in the  
13 activity in front of 291 Kings Highway.

14 Is that an accurate statement?

15 MR. LEONI: Objection to form.

16 A. I don't -- I don't understand the phrase.

17 BY MR. FRAME:

18 Q. Would you agree with the statement that your father  
19 enjoyed watching people enjoy the beach in front of his  
20 property?

21 A. No. I'm not sure I would -- no, I would not agree with  
22 that.

23 Q. Okay. Why not?

24 A. He enjoyed the property; he enjoyed the beach. He  
25 wasn't necessarily a people watcher.



1 Q. You said your father would -- something like not be  
2 happy to be here and know that you're here today.

3 A. Uhm.

4 Q. What did you mean by that?

5 A. He would be very unhappy about the whole Goose Rocks  
6 Beach situation.

7 Q. Why?

8 A. For obvious reasons. It's a miserable situation. He  
9 did his best to protect his property over the years  
10 with signage and changes to various right-of-ways and  
11 things like that, and he would be totally pissed off  
12 that somebody would want to take his property away from  
13 him.

14 Q. Would he be pissed off at the -- at the back lot owners  
15 who want to appropriately use the beach in front of his  
16 property?

17 MR. LEONI: Objection to form.

18 BY MR. FRAME:

19 Q. You can answer.

20 A. I don't know if he'd be pissed off at them. I think he  
21 would be disappointed in their attitudes, considering  
22 that he and his predecessors, ancestors, allowed the  
23 local -- you know, the back lot owners in close  
24 proximity to their property use the beach.

25 Q. Now, let's take -- let's take one of your chums, for

1 example. Bill Junker, would your dad be upset that  
2 Bill -- young Bill, your age Bill --

3 A. Yeah.

4 Q. -- that young Bill felt that he had wanted to preserve  
5 what he believed his right to appropriately use the  
6 beach?

7 MR. LEONI: Objection to form.

8 BY MR. FRAME:

9 Q. Do you understand that question?

10 A. Yeah. Repeat the question.

11 Q. Sure. Would your dad, to the best of your knowledge --  
12 I know it's difficult to devine what your dad would  
13 think.

14 A. Right.

15 Q. But we're going down that path and we've talked a lot  
16 about your dad -- would your dad be pissed at Bill  
17 Junker because Bill Junker is claiming he has a right  
18 to appropriately use the beach in front of your house?

19 A. No.

20 MR. LEONI: Objection to form.

21 A. No, he would not.

22 BY MR. FRAME:

23 Q. Okay. Would your dad be pissed at the Town? And I'm  
24 using pissed because that's a term you used so I'm not  
25 trying to be a wise guy, although Colleen and Amy know

1 I'm a wise guy in general.

2 A. Well, so am I.

3 Q. I'm glad we're getting along.

4 A. Yes, he would.

5 Q. Okay. Why would he be pissed at the Town?

6 A. He would be unhappy because of the self-righteous  
7 attitude the Town has taken in trying to solve what's  
8 possibly not even a problem. How's that?

9 Q. That's a good answer. You're a brighter man than I, so  
10 I'm going to ask you to expound on that because I don't  
11 quite know what you mean by it, though.

12 A. The --

13 Q. Let's move it from your dad to you. Are you upset at  
14 the Town?

15 A. Absolutely.

16 Q. Okay. Why are you upset at the Town?

17 A. Because of the attitude the Town has taken to solve or  
18 to -- let me start again.

19 Because of the way the Town responded to a  
20 situation that probably could have been handled  
21 differently. In the outcome of the way they responded  
22 is why we're sitting here today, and a lot of money has  
23 been spent for something that was probably at the end  
24 of the day unnecessary.

25 Q. Okay.

1 A. Time will -- time will prove that one way or the other,  
2 but that's how I feel.

3 Q. Sure. Sure. You're one of the original plaintiffs,  
4 correct?

5 A. Correct.

6 Q. So you -- you sued the Town --

7 A. Correct.

8 Q. -- correct?

9 A. Yeah.

10 Q. Is that one of the things you're referring to as could  
11 have been handled differently? Because you alluded to  
12 things that could have been handled differently before  
13 the Town responded, so I'm just trying to understand  
14 that.

15 A. No. No, I purposely joined the lawsuit.

16 Q. Okay. So you don't find fault at all in the  
17 plaintiffs' suit -- complaint against the Town,  
18 correct?

19 A. There may be aspects of it that I'm not happy with, but  
20 generally, no, I don't have any issues with that.

21 Q. Okay. And did you see, and I'll -- you'll have a  
22 chance to review the complaint. Did you see the  
23 complaint before it was filed that you as a plaintiff  
24 or -- strike that -- your mom, the QPRT as a plaintiff,  
25 filed, did you see that?

1 A. Before it was filed, you know, I honestly can't answer  
2 that. I don't think I did until after it was filed.

3 Q. Did you and/or your wife -- did you and/or your wife or  
4 your mom understand who you were suing?

5 A. Absolutely.

6 Q. Who did you think you were suing?

7 A. The Town of Kennebunkport.

8 Q. Okay.

9 MR. FRAME: 2, Colleen.

10 (Deposition Exhibit No. 2, Complaint for  
11 Declaratory Judgment and Quiet Title, marked for  
12 identification.)

13 BY MR. FRAME:

14 Q. Mr. Scribner, in front of you is a document labeled  
15 complaint for declaratory judgment and quiet title.

16 Do you see that document?

17 A. Uhm-uhm, yes.

18 Q. Have you seen that before?

19 A. Yes.

20 Q. And is this the complaint that your -- that the QPRT  
21 for 291 Kings Highway is a part of?

22 A. Yes.

23 Q. Okay. Can you turn to page 2, Mr. Scribner. Do you  
24 see where it says -- it says plaintiffs and then  
25 verses, and then there's a whole string of information

1           and the caption up top?

2           A.    Yes.

3           Q.    Can you read that to me between V and defendants?

4           A.    Town of Kennebunkport and all persons who are  
5           unascertained, not in being, unknown or out of the  
6           state, heirs or legal representatives of such  
7           unascertained persons or such persons as shall become  
8           heirs, devisees or appointees of such unascertained  
9           persons who claim the right to use or title in  
10          Plaintiffs' Property other than persons claiming  
11          ownership or easement by, through, or under an  
12          instrument recorded in the York County Registry of  
13          Deeds.

14          Q.    Okay.  Is it fair to say, Mr. Scribner, that -- and  
15          when I use the term you, I'm talking about your mother,  
16          the property.

17          A.    Understood.

18          Q.    -- that you sued more than the Town of Kennebunkport?

19                         MR. LEONI:  Objection to form.

20          A.    Yeah, I understand that.

21                         BY MR. FRAME:

22          Q.    Okay.  You understand that?

23          A.    Yeah, I understand that.

24          Q.    Do you understand that the description you just gave  
25          could include people like Bill and Maria Junker?

1 MR. LEONI: Objection to form.

2 BY MR. FRAME:

3 Q. You understand that?

4 A. Yes, I do.

5 Q. Okay. Did you understand that when you entered this  
6 lawsuit?

7 A. It may not have been crystal clear to me but general  
8 understanding.

9 Q. Okay. So when you said earlier that you were suing the  
10 Town of Kennebunkport, that wasn't an entirely complete  
11 statement, correct?

12 A. Correct. It wasn't entirely accurate.

13 Q. Okay. Did it give you pause -- did you pause at all to  
14 think about the impact of that -- who the defendants  
15 were?

16 A. I did. As I stated earlier, there were aspects of this  
17 claim that I wasn't happy with, but it is what it is,  
18 and I wasn't going to force any change in it.

19 Q. Are you -- are you still friends with any of those  
20 folks you chummed around with --

21 A. Yes.

22 Q. -- when you were teens?

23 A. Yes.

24 Q. Who?

25 A. Bill Junker.

1 Q. Bill Junker. You're friends with Maria?

2 A. Yeah.

3 Q. Any other folks you gave names?

4 A. Some -- yeah, all of them. In fact, all of them.

5 Q. Okay. So let's take Bill and Maria. Do you fault Bill  
6 and Maria Junker for joining this litigation?

7 A. Not at all.

8 MR. LEONI: Objection to form.

9 BY MR. FRAME:

10 Q. Why not?

11 A. It's their right to do anything they want to do. Why  
12 would I find fault with something they chose to do?  
13 That wouldn't be fair on my part.

14 Q. If you were in their shoes would you have joined the  
15 litigation?

16 MR. LEONI: Objection to form.

17 A. Probably not.

18 BY MR. FRAME:

19 Q. Why not?

20 A. I don't -- I just don't think I would have.

21 Q. Okay. Do you recall -- have you seen any of the deeds,  
22 you know, for 291 Kings Highway? Have you reviewed  
23 those in the past?

24 A. Yes, I have.

25 Q. How far back did you review the deeds? Have you seen



1 back to the original deed from 1900?

2 A. I have seen that deed, yeah.

3 Q. Has the property description changed since 1900 in any  
4 of those subsequent deeds?

5 A. Yes, it has.

6 Q. How has it changed?

7 A. There have been alterations due to changes in  
8 right-of-way easements or whatever you want to call  
9 them, right-of-ways.

10 Q. But no change to the best of your knowledge to the  
11 boundaries of the property?

12 A. Other than the subdivision in 1970 or whenever, no.

13 Q. But the property hasn't shrunk or --

14 A. No.

15 Q. -- expanded?

16 A. No, not -- not per the description of the deed.

17 Q. Okay. And what does the deed say is your southerly  
18 boundary, do you know?

19 A. The sea.

20 Q. The sea. Let's go to page 8, Mr. Scribner, of the  
21 complaint, Exhibit 2.

22 No. 29 of this, it gets into a little bit more  
23 detail on what -- I think it gets into a little more  
24 detail on what the caption -- the defendants means.

25 A. Uhm-uhm.

1 Q. And it says, and I quote: All persons who are  
2 unascertained, not in being, unknown or out of state,  
3 heirs or legal representatives of such unascertained  
4 persons, or such persons as shall become heirs,  
5 devisees or appointees of such unascertained persons,  
6 who claim the right to use or title in Plaintiffs'  
7 Property other than persons claiming ownership or  
8 easement by, through or under an instrument recorded in  
9 the York County Registry of Deeds, hereinafter  
10 individual defendants, comma -- and then here's the  
11 part that was not in the beginning -- in the caption,  
12 excuse me. It says in quote: And who have trespassed  
13 upon Plaintiffs' Property have used or claim the right  
14 to use Plaintiffs' Property for unlawful uses,  
15 including but not limited to, bathing, sunbathing,  
16 picnicking and other recreational activities.

17 What do you understand the term, trespass, to  
18 mean here?

19 MR. LEONI: Objection to form.

20 BY MR. FRAME:

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

22 A. My -- my understanding of trespass is passing over  
23 something or if you have not -- no permission to do, to  
24 be there.

25 Q. And you said earlier that absent -- that people were

1 granted permission to be on the beachfront in front of  
2 the Scribner home in two ways. If I'm wrong, tell me.  
3 But one way was that they were granted explicit  
4 permission, meaning from you, your mother or -- your  
5 mother, your father, your grandmother, your  
6 grandfather; is that correct?

7 A. Yes.

8 Q. And the other way would be by the lack of any objection  
9 to them being on that property; is that correct?

10 A. By lack --

11 MR. LEONI: Objection to form.

12 A. -- of any objection. I.e., implicit permission? I  
13 would say implicit permission.

14 BY MR. FRAME:

15 Q. And is implicit permission that I'm there, Scribner  
16 family members see me there, and no one tells me to  
17 leave?

18 A. Correct, yes.

19 Q. That's implicit permission?

20 A. I would say that's implicit permission.

21 Q. So those are the two ways that people in your mind  
22 would have a right to be on the Scribner -- the  
23 property in front of the Scribner home?

24 A. Yes.

25 MR. LEONI: Objection.

1 BY MR. FRAME:

2 Q. Okay. Do you consider it unlawful for someone to swim  
3 in the ocean in front of your home?

4 MR. LEONI: Objection to form.

5 BY MR. FRAME:

6 Q. In front of the 291 --

7 A. Unlawful, tell me what you mean by unlawful.

8 Q. Well, I'm going to ask you that because it says here  
9 for unlawful uses, including but not -- this is the  
10 complaint --

11 A. I understand what it says.

12 Q. Including but not limited to bathing, which  
13 maybe -- maybe you'll tell me bathing is something  
14 other than swimming -- sunbathing, picnicking and other  
15 recreational activities.

16 Do you consider it unlawful -- let's take the  
17 bathing with the soap and the nonbiodegradable stuff  
18 out of the picture, but someone swimming, bathing in  
19 the water, just kind of enjoying the water in front of  
20 your house, do you consider that unlawful?

21 MR. LEONI: Objection to form.

22 BY MR. FRAME:

23 Q. You can answer if you understand.

24 A. As a layperson, someone who describes unlawful to me, I  
25 immediately respond against the law. In the context of

1           this legal document, I don't know what this means.

2           Q.    Okay.  But -- so the question is to your knowledge or  
3           to your understanding as a layperson do you consider it  
4           unlawful for someone to be bathing in the water?

5           A.    I don't consider somebody bathing to be against the  
6           law.

7           Q.    Okay.

8           A.    To my understanding.

9           Q.    What about someone who is sunbathing on the beach in  
10          front of your --

11          A.    Same thing.

12          Q.    -- property?

13                         MR. LEONI:  Objection.

14                         BY MR. FRAME:

15          Q.    You don't consider it be unlawful?

16          A.    I don't consider it to be against the law.

17          Q.    Against the law.  Is there a difference between  
18          unlawful and against the law in your mind?

19          A.    May be, yeah.  Maybe; I don't know.  That's why I said  
20          I don't understand the legal definition being used  
21          here.

22          Q.    We'll use against the law as -- as our term of art.  Do  
23          you consider it to be against the law for someone to  
24          picnic --

25                         MR. LEONI:  Objection to form.

1 BY MR. FRAME:

2 Q. -- on the beachfront in front of the Scribner home?

3 A. Not so long as it's done with permission.

4 Q. Okay. And permission again being the explicit  
5 permission or the implicit permission?

6 A. Correct.

7 Q. Okay. And do you consider it against the law for  
8 someone to be playing softball on the beach in front of  
9 the Scribner home?

10 MR. LEONI: Objection to form.

11 A. No.

12 BY MR. FRAME:

13 Q. Do you consider it against the law for someone to fish  
14 in front of the Scribner home?

15 MR. LEONI: Objection to form.

16 A. No.

17 BY MR. FRAME:

18 Q. Do you consider it against the law for someone to bird  
19 hunt on the beach in front of the Scribner home?

20 MR. LEONI: Objection to form.

21 A. I would say, considering the discharge of weapons, I'd  
22 say, yeah, I would consider that against the law.

23 BY MR. FRAME:

24 Q. Okay. Bow and arrow?

25 MR. LEONI: Objection to form.

1 A. I would find it against the law simply because it's a  
2 violent act, and it shouldn't be done around many  
3 people. Common sense approach.

4 BY MR. FRAME:

5 Q. Fair enough. I'm with you.

6 If -- if -- if a woman walked down -- if a  
7 woman sat down on the beach in front of your house, in  
8 front of the Scribner house with a -- with a book and a  
9 lawn chair and a picnic basket, would you consider her  
10 to have trespassed?

11 MR. LEONI: Objection to form.

12 A. Yes.

13 BY MR. FRAME:

14 Q. Okay. What about if someone -- what about if ten men  
15 walked down with fishing poles to the beach in front of  
16 your house and were fishing --

17 MR. LEONI: Objection to form.

18 BY MR. FRAME:

19 Q. -- would you consider that a trespass?

20 A. That's an interesting question. I guess the answer is  
21 yes.

22 Q. Which one of those is more invasive to you as a  
23 property owner?

24 MR. LEONI: Objection to form.

25 A. Neither one.

1 BY MR. FRAME:

2 Q. Neither one?

3 A. Neither one is more invasive than the other.

4 Q. Okay. Let's -- let's go to the -- your wife's a  
5 lawyer, so she knows about the parade of horrors.  
6 Let's go down that path.

7 You have a hundred people on the beach because  
8 the Stripers are running like crazy in front of your  
9 house and there's a hundred men with fishing poles and  
10 they're casting for Stripers on that plot right in  
11 front of the Scribner house.

12 Is that -- which is more invasive, that or the  
13 one woman with the picnic basket?

14 MR. LEONI: Objection to form.

15 A. Well, I think from a technical perspective they're all  
16 equally invasive. Is one more uncomfortable than the  
17 other one? Sure, a hundred guys with fishing poles is  
18 more uncomfortable. I don't think it's any more  
19 invasive than one person. If they violated the  
20 property, they're violating the property.

21 BY MR. FRAME:

22 Q. And where do you -- do you distinguish, when you say  
23 violating the property, between -- do you understand  
24 what I mean when I talk about the intertidal zone  
25 versus the upland area?



1 A. Yes.

2 Q. So the intertidal zone, is that -- we call that the wet  
3 sand. You've heard that before, too?

4 A. Hard sand.

5 Q. Hard sand.

6 A. We always call it the hard sand.

7 Q. Okay. Hard sand. And the upland area is the soft  
8 sand?

9 A. Soft sand.

10 Q. Okay. When you talk about the invasiveness, or however  
11 you described it, on the property, do you distinguish  
12 between the hard sand and the soft sand?

13 A. Yes.

14 Q. Okay. Explain that to me.

15 A. We generally do, the family.

16 Q. Okay. In what way?

17 A. We view the soft sand as a more important part of our  
18 property than the hard sand. How's that?

19 Q. Do you -- that's fair enough.

20 Do you view -- do you view your family as  
21 having more rights relative to removing someone from  
22 the soft sand as opposed to the hard sand?

23 MR. LEONI: Objection to form.

24 BY MR. FRAME:

25 Q. You can answer.

1 A. No.

2 Q. So if someone is fishing from the soft sand in a way  
3 that's interrupting something that's going on with the  
4 family and someone is fishing in the hard sand,  
5 those -- those are indistinguishable or can you  
6 distinguish between those?

7 MR. LEONI: Objection to form.

8 A. Well, you described the former as someone fishing and  
9 interrupting some family activity versus fishing from  
10 the hard sand is not interrupting family activity. So  
11 one is more invasive than the other.

12 BY MR. FRAME:

13 Q. Assuming an interruption equally of a family activity.

14 A. Then they're equal. They're both disruptive.

15 Q. And then would you ask both of them, the person on the  
16 hard sand and the person on the soft sand, to leave?

17 MR. LEONI: Objection to form.

18 A. Yes.

19 BY MR. FRAME:

20 Q. Are you familiar with the Colonial Ordinance, Mr.  
21 Scribner?

22 A. You'll have to give me a little more information.

23 Q. Has your wife ever talked to you about the ability to  
24 fish, fowl and navigate in the intertidal zone?

25 A. I have spoken to my wife about it. I'm not sure if

1 she's spoken to me about it. Yeah, I'm familiar with  
2 that, yeah.

3 Q. So do you understand -- do you know where the term,  
4 fishing, fowling and navigating comes from?

5 A. Yes.

6 Q. And where does it come from?

7 A. Some Act of 16-something or another.

8 Q. Also known as the Colonial Ordinance?

9 A. Okay. There you go.

10 Q. And what do you understand about the Colonial Ordinance  
11 or the Act of 16-something or another? I like that  
12 better.

13 MR. LEONI: Objection to form. If your  
14 understanding comes from a discussion you've had with  
15 Pete Thaxter or another attorney at Curtis Thaxter,  
16 another lawyer that you've hired, that information is  
17 privileged and I'm going to instruct you not to answer.

18 THE DEPONENT: Okay.

19 A. I guess I'll just simply say my understanding is  
20 relatively minimal of the Colonial Ordinance.

21 BY MR. FRAME:

22 Q. Okay. We'll probably go for another few minutes, Mr.  
23 Scribner, and then take a short break.

24 Are you okay for now?

25 A. Yes.

1 Q. We'll take a break for restroom and water and coffee.  
2 Logistics, they're all long meetings, right?

3 A. Some days yes, some days no.

4 MR. FRAME: 3, Colleen.

5 (Deposition Exhibit No. 3, Defendants' Answers  
6 and Objections to Interrogatories, marked for  
7 identification.)

8 BY MR. FRAME:

9 Q. Mr. Scribner, I've put in front of you Exhibit 3 which  
10 is answers and objections to interrogatories propounded  
11 by TMF defendants.

12 Have you seen that document?

13 A. Yes, I have.

14 Q. Okay. Did you help your mother respond to this  
15 document?

16 A. Yes, I did.

17 Q. Okay. Great. Is your mother -- how is your mother?  
18 Is she -- in terms of her faculties?

19 A. She's terrific.

20 MR. LEONI: Objection to form.

21 BY MR. FRAME:

22 Q. Terrific, okay. I direct you to the answer No. 2, Mr.  
23 Scribner. Your mom says: We have used the beach in  
24 front of our house for sitting, sunning, playing games  
25 with children, picnics and storing small boats, and

1           have always used both the dry and wet sand areas. We  
2           have not used the beach in front of other beachfront  
3           owners' homes, unless we were socializing with the  
4           property owners. We have always enjoyed walking along  
5           the entire beach on the wet sand area.

6                           Do you see that answer?

7           A.    Uhm-uhm, yes.

8           Q.    Do you or your family members ever walk the beach at  
9           high tide?

10          A.    I suppose the answer is yes.

11          Q.    Okay. Do you ever walk the beach at high tide and walk  
12          on the soft sand?

13          A.    Occasionally I suppose, yeah.

14          Q.    Okay. So at high tide you don't feel that you're  
15          restricted to walk in the water when you're walking the  
16          beach?

17                           MR. LEONI: Objection to form.

18                           BY MR. FRAME:

19          Q.    Let me strike that. At high tide do you feel that  
20          you're restricted in any way to walking in the water  
21          when you walk the beach?

22                           MR. LEONI: Objection to form.

23          A.    No.

24                           BY MR. FRAME:

25          Q.    Okay. So it's fair to say that at high tide there have

1           been occasions when you or family members have walked  
2           the beach and have -- from the Batson to the Little  
3           River or somewhere in between and have walked on the  
4           soft sand?

5           A.    I'm sure there are.  I mean, generally speaking, you  
6           wouldn't go for a walk on the beach at high tide  
7           because it's too hard to walk on the soft sand, so  
8           you'd almost always go at other than high tide.

9           Q.    But there have been times --

10          A.    But I'm sure there have been instances where you've  
11          walked along the edge.

12          Q.    Sure.  And on those instances -- you may think these  
13          questions are silly so I apologize in advance -- on  
14          those instances have you or anyone else in your family  
15          ever sought the permission of the abutting property  
16          owner to walk on the soft sand?

17          A.    No.

18          Q.    Do you feel that permission is implicitly granted?

19          A.    We all know there are summer property owners that  
20          really don't want you to walk on their section of the  
21          beach, but we would anyhow.  So yes, implicit.

22          Q.    Who are the property owners who wouldn't want you to  
23          walk on their section of the beach?

24          A.    I'm not sure I could give you exact names.

25          Q.    Can you give me some -- you said it as if everyone

1           noted that, so do you have any names you can give me?

2           A.    Well, you know, as a kid, you always know there's a  
3           cranky neighbor somewhere that doesn't want you sitting  
4           in front of their house or whatever.

5           Q.    Like Mr. Wilson from Dennis The Menace?

6           A.    Yeah, exactly.   Time is changing.

7           Q.    Do you know any Mr. Wilsons down on Goose Rocks Beach  
8           now?

9                         MR. LEONI:   Objection to form.

10          A.    Yeah.

11                         BY MR. FRAME:

12          Q.    Do you know what I mean when I describe a Mr. Wilson, a  
13                 cranky old person who doesn't want you walking on the  
14                 beach?

15          A.    I certainly do.

16          Q.    Okay.   And you're under oath.   Do you know any Mr.  
17                 Wilson, cranky old people down to Goose Rocks Beach  
18                 who don't want you walking on the beach in front of  
19                 their property?

20          A.    Who don't want you walking?   I think the answer is no  
21                 right now, walking on the beach in front of their  
22                 property.

23          Q.    Great.   Do you know any property owners who don't want  
24                 you doing anything on the beach in front of their  
25                 property?

1 A. No.

2 Q. Okay. It's fair to say then that it's a kinder gentler  
3 Goose Rocks Beach than when you were growing up?

4 MR. LEONI: Objection to form.

5 A. I would say that it's not a kinder gentler, but there's  
6 far fewer long-term property owners so it has changed.

7 BY MR. FRAME:

8 Q. Okay. Page 3, Mr. Scribner, No. 8, part of the answer  
9 your mother said that my mother-in-law, which would  
10 have been your grandmother on your father's side?

11 A. Yes.

12 Q. Who owned the property prior to my husband chose to  
13 exclude the public from using the beach in front of the  
14 house, but we have been more open to others using the  
15 beachfront.

16 Is that an accurate statement?

17 A. Yes, I would say that it is.

18 Q. Okay. Do you distinguish, Mr. Scribner, between the  
19 public and back lot owners?

20 A. Yeah, yes.

21 Q. How?

22 A. The only easy way to distinguish is to ask them,  
23 although we know some of the back lot owners so we know  
24 who they are.

25 Q. Right. That was -- that was a bad question, I'm sorry,



1           because I know you previously answered that you can't  
2           identify who a back lot owner is versus a beachfront  
3           owner versus a member of the public.

4                       My question is, through no fault of your own,  
5           it's my poor asking, is do you consider back lot owners  
6           to be members of the general public in relation to  
7           Goose Rocks Beach?

8           A.    No.

9           Q.    Okay.  Do you consider back lot owners to have  
10          different rights than the general public --

11                       MR. LEONI:  Objection to form.

12                       BY MR. FRAME:

13          Q.    -- in terms of Goose Rocks Beach?

14          A.    In some instances, yes.

15          Q.    Can you explain that?

16          A.    My family has always believed that the local, to their  
17          property, local to 291 Rear, should have the ability to  
18          access the beach easily and in a friendly manner,  
19          neighborly manner.

20                       Now, that doesn't apply to all of the back lot  
21          owners, that applies to the few that are --

22          Q.    Near like Hayward Avenue and the other places you have  
23          described?

24          A.    That are adjacent to Kings Highway or 291 Rear 6.

25          Q.    And where does that belief come from?  Maybe I can

1 expand on the question to help -- to be more clear.

2 Is it -- is it your family's belief that folks,  
3 let's say, at the west end, the back lot owners near  
4 the west end, have similar relations with the front  
5 owners on the west end as -- as you do to the back lot  
6 owners on the east end?

7 A. Yeah.

8 MR. LEONI: Objection to form.

9 A. I would hope so. It certainly is an assumption.

10 BY MR. FRAME:

11 Q. Is it your -- was it your intent by joining this  
12 litigation to deny back lot owners use of the beach at  
13 Goose Rocks Beach?

14 A. No, absolutely not.

15 Q. What was your intent?

16 A. To protect my rights as a property owner to quiet  
17 title.

18 Q. Purely a -- not purely. Strike that.

19 It's primarily a title issue to you?

20 MR. LEONI: Objection to form.

21 A. Yes.

22 BY MR. FRAME:

23 Q. Did your mom want to join this litigation?

24 A. Left to her own devices, she probably would have not  
25 joined.

1 Q. Did your wife encourage your mom to join this  
2 litigation?

3 A. I encouraged my mother to join.

4 Q. Like every good man, there's a good woman behind him.  
5 Did your wife encourage you to encourage your wife  
6 [sic] to join this litigation?

7 A. My wife and I discussed the ramifications of the  
8 lawsuit in general, but I'm the trustee. I'm one of  
9 the two trustees in the trust, so I have to make my own  
10 decisions, and my mother does pretty much whatever I  
11 tell her to do, so.

12 Q. You have a better relationship with your mother than I  
13 do with mine, Mr. Scribner.

14 A. My mother --

15 Q. I have to buy my mother dinner to get her to do  
16 what I --

17 A. My mother is a terrific woman.

18 MR. FRAME: Let's take just a five-minute  
19 break.

20 (A short break was taken.)

21 BY MR. FRAME:

22 Q. All right. Mr. Scribner, you're back still under oath,  
23 okay?

24 A. Okay.

25 Q. In your 56 years of being -- spending summers and

1           sometimes greater than that at Goose Rocks Beach, can  
2           you tell me what specific activities you have seen on  
3           the beach in front of your family home that you  
4           consider to be objectionable, and not that you've heard  
5           about but that you've seen yourself?

6           A.    I can speak to two specific examples.  One being a back  
7           lot renter allowing his small children to climb in and  
8           treat my son's sailboat as a toy basically.  The  
9           second --

10          Q.    Can I stop you with that just -- stay one at a time, is  
11          that all right with you?

12          A.    Okay.

13          Q.    The back lot renter you were able to identify by asking  
14          them?

15          A.    I knew who they were.

16          Q.    You knew who they were.  Do you recall around what year  
17          this was?

18          A.    No.

19          Q.    Okay.  Would it be in the last five years, last  
20          ten years, last 20 years?

21                         MR. LEONI:  Objection to form.

22          A.    Within the last ten.

23                         BY MR. FRAME:

24          Q.    Okay.  And did you say something to the back lot  
25          renter?

1 A. I did.

2 Q. Okay. And did the activity cease?

3 A. At that time, yes.

4 Q. Okay. And you said that there was one other time when  
5 you found something objectionable?

6 A. Yes.

7 Q. And what was that?

8 A. A back lot property owner put a volleyball net up in  
9 the soft sand in front of my mother's house in front of  
10 291 Rear and left it there, didn't take it down at the  
11 end of the day, left it there several days.

12 Q. And who was that?

13 A. It was one of the Chase families.

14 Q. C-H-A-S-E?

15 A. Yes.

16 Q. Okay. And did you speak to them?

17 A. No.

18 Q. Did it -- did you take the net down?

19 A. I removed the net.

20 Q. Actions speak louder than words, right?

21 A. Yes.

22 Q. Would you say that in your 56 years, you've spent the  
23 majority of your sum -- that you spent -- strike that.

24 Have you been at Goose Rocks Beach every summer  
25 for your 56 years?

1 A. Every summer of my life.

2 Q. Great. And other than those few --

3 A. I'm sorry. There was one exception, one summer I did  
4 not spend there.

5 Q. We call that the dark summer.

6 A. Yes, it was. I lived in Westbrook. It was a dark  
7 summer.

8 Q. What summer was that?

9 A. Summer of '79.

10 Q. Did you still frequent Goose Rocks Beach?

11 A. Yes.

12 Q. Or were you ex-communicated all together?

13 A. No, I -- I frequented it.

14 Q. Okay. So it's fair to say that your 56 years you spent  
15 the summer at Goose Rocks Beach?

16 A. Yes.

17 Q. And you've described two -- two instances where you've  
18 identified objectionable activity?

19 A. Two recent instances.

20 Q. Okay. Any other instances in your -- all of your  
21 56 years, outside of any -- any self-incriminating  
22 objectionable activities?

23 A. I can think of one other instance also related to my  
24 son's boat, but I didn't see it occur. But when  
25 there's trash in the boat and I discover that, I

1           consider that an incident, so someone was using it as a  
2           trash receptacle.

3           Q.    So you saw trash in your son's boat?

4           A.    Yeah.

5           Q.    But you didn't see how it got there?

6           A.    Correct.

7           Q.    So is it fair to say that you have no idea if a member  
8           of the general public, a back lot owner or a beachfront  
9           owner put the trash in your son's boat?

10          A.    Yes, correct.

11          Q.    And outside of those three instances, any other  
12          instances of objectionable activity in your 56 years?

13          A.    I can't recall one.

14          Q.    Okay.  And I think I know the answer to this, but in  
15          neither of those three instances in the 56 years you  
16          didn't call the police, did you?

17          A.    No.

18          Q.    No.  You wouldn't consider those unlawful, just  
19          objectionable; would that be accurate?

20          A.    Yes.

21          Q.    Did you, during the period of time that your father  
22          owned and was renting the Hayward Avenue property,  
23          Hayward Avenue Street property, did you ever pal around  
24          with any of the renters or their kids?

25          A.    No.

1 Q. Okay. You mentioned earlier, and forgive me if I'm  
2 wrong, you mentioned earlier the posting of signs, and  
3 I think you said it was by your father.

4 Did someone post signs about the beach on your  
5 property?

6 A. I'm not sure I mentioned that.

7 Q. Okay. Have you ever seen signs posted on your -- on  
8 the 291 Kings Highway property relating to the beach?

9 A. Yes.

10 Q. Okay. Who posted those signs?

11 A. Related to the beach, my father posted the signs.

12 Q. Okay. When -- what time frame would he have posted  
13 those? Obviously, summer, but time frame in terms of  
14 years?

15 MR. LEONI: Objection to form.

16 BY MR. FRAME:

17 Q. Was it during the summer?

18 A. No, it's posted year-round.

19 Q. Okay.

20 A. It has been for decades. I can't tell you exactly  
21 when.

22 Q. Is it still up?

23 A. Yes.

24 Q. Okay. What does this sign say?

25 A. There are two signs that are up.



1 Q. Okay.

2 A. One sign is specifically on the beach. It says private  
3 property. That's been there for decades. I mean it's  
4 replaced regularly, but it's -- a sign has been there.  
5 The other sign is on the private right-of-way from  
6 Kings Highway to the beach.

7 Q. Uhm-uhm.

8 A. And that sign says private way. It may also say no  
9 parking. I could be wrong. That has been there, I  
10 believe, since 1939.

11 Q. The private way sign?

12 A. Yes.

13 Q. And is that the private way, Mr. Scribner, that you  
14 said that your parents frequently granted access to to  
15 back lot owners in the vicinity of 291?

16 A. Yes.

17 Q. And, in fact, you said, I think you used the term,  
18 amended or changed deeds to add that right-of-way  
19 access to certain deeds; they granted permission?

20 A. Yes.

21 Q. Okay. Great. The -- I just want to get schematically  
22 where these signs are. If I'm walking along Kings  
23 Highway going eastward and I turn southward to walk  
24 down towards the beach, would I turn into the -- would  
25 I see the sign at that point?

1 A. Yes.

2 Q. Okay. And that's the -- that's the private way perhaps  
3 no parking sign?

4 A. Yes.

5 Q. Is it possible for me to get a picture of that sign at  
6 some point?

7 A. Absolutely.

8 Q. Great.

9 A. You should have a picture of that somewhere.

10 Q. Okay. I'll check. I probably do.

11 If I go -- if I walk down that right-of-way,  
12 that private right-of-way, would I see the private  
13 beach sign?

14 A. Not unless you -- no.

15 Q. Is the private beach sign -- what does the private  
16 beach sign face?

17 A. It faces the ocean.

18 Q. Okay. If someone was walking along the intertidal zone  
19 walking -- walking eastward and looked to the north  
20 towards the Scribner house, they would see that sign?

21 A. Yes, they should.

22 Q. Okay. And is the sign -- is the sign posted towards  
23 the westward side of the property?

24 MR. LEONI: Objection, form.

25 BY MR. FRAME:

1 Q. The southwest border?

2 A. The sign is in the soft sand facing the ocean.

3 Q. And just one sign?

4 A. About midway along the property line.

5 Q. Okay.

6 A. Along the --

7 Q. Along the southern border?

8 A. No, it's not on a border. In the soft sand facing the  
9 ocean about midway across the property.

10 Q. Okay. And is it just one sign?

11 A. Yes.

12 Q. Okay. Do -- do other front owners post signs like  
13 that?

14 A. I don't know.

15 Q. You've walked the beach, though, before, right?

16 A. Yes.

17 Q. Do you recall ever seeing similar signs?

18 A. I can't accurately answer that.

19 Q. Okay. Can you not accurately answer that because you  
20 don't recall seeing them?

21 A. Because I don't recall seeing them.

22 Q. Okay. Was that private property sign up during the  
23 swinging '70s of beach softball league?

24 MR. LEONI: Objection to form.

25 A. I don't -- I don't recall when it went up. It very

1 well could have been.

2 BY MR. FRAME:

3 Q. Would you be opposed to a resolution that affirmed your  
4 property rights but permitted back lot owners to  
5 appropriately use the beach in front of your house?

6 A. Yes.

7 MR. LEONI: Objection to form.

8 BY MR. FRAME:

9 Q. You'd be opposed to that?

10 A. Yes.

11 Q. Why?

12 A. I don't -- we own the property. I don't need to give  
13 anything up.

14 Q. Why do you feel that's giving something up, to use your  
15 language?

16 A. Why do I feel that's giving something up? Why -- why  
17 do I have to grant somebody something in a legal sense  
18 that's -- that's giving something up from this  
19 property? That's -- you know, whether it impacts value  
20 or whatever, it's giving up something that I don't need  
21 to give up.

22 Q. In 56 years has there ever been a summer when back lot  
23 owners haven't used the beach in front of your  
24 property?

25 A. No. Tough one to answer accurately.

1 Q. Well, have you --

2 A. My best answer is no.

3 Q. Is that -- is that not an accurate answer? I guess let  
4 me be more clear.

5 A. I don't know.

6 Q. In the 56 years that you've summered on Goose Rocks  
7 Beach, do you ever recall a summer where the beach in  
8 front of your parents' property was devoid, absent of  
9 back lot owners?

10 A. No, no.

11 Q. Are you pretty sure about that answer?

12 A. Pretty sure.

13 Q. Very sure?

14 A. Very sure.

15 MR. FRAME: Nothing further. Ms. Tchao is  
16 going to ask you some questions. Thank you, Mr.  
17 Scribner.

18 THE DEPONENT: My pleasure.

19 MR. FRAME: You're under oath.

20 THE DEPONENT: Still my pleasure.

21 MS. TCHAO: Let me go off the record just for a  
22 second.

23 EXAMINATION-BY ATTY. TCHAO:

24 Q. Good afternoon, Mr. Scribner.

25 A. Hi.

1 Q. My name is Amy Tchao and I'm the attorney for the Town  
2 of Kennebunkport in this action, and Attorney Frame has  
3 asked you a number of questions, and my hope is not  
4 plow the same ground and be redundant, but there will  
5 inevitably be some redundancies.

6 A. Okay.

7 Q. But I'll do the best I can. You're still under oath,  
8 of course. We still have to not talk over each other,  
9 which you have done a beautiful job with Mr. Frame, so  
10 I don't think that will be a problem, at least not on  
11 your end.

12 I'm going to start by showing you some  
13 documents, just so we can orient ourselves, if you  
14 don't mind. I think we're going to mark this  
15 Exhibit 4.

16 (Deposition Exhibit No. 4, Map, marked for  
17 identification.)

18 BY MS. TCHAO:

19 Q. Okay. So looking at Exhibit 4, Mr. Scribner, and this  
20 is just for purposes of orienting where your property  
21 is, and by your property, I'm now referring to 291 Rear  
22 Kings Highway owned by the QPRT that you're a trustee  
23 of?

24 A. Okay.

25 Q. And this is a map, and I'm not asking you to buy into

1 all the delineations as to where your seaward boundary  
2 is, it's simply, for purposes of today, intended to  
3 locate where your property is. And I apologize for how  
4 small it is, but are you able to, using this map, to  
5 locate 291 Rear Kings Highway, your property on this  
6 map?

7 A. I believe so.

8 Q. Okay. And if you could, would you -- would you take a  
9 pen and circle --

10 A. If I could read it, it would be easier but --

11 Q. I'll show you something else in a moment that maybe  
12 will help you.

13 A. Yeah, it must be that property right there.

14 Q. Okay. So you've circled that.

15 Okay. Now I'm going to show you what is going  
16 to be Exhibit 5, and this might help a little bit more.

17 (Deposition Exhibit No. 5, Plan of Scribner  
18 Property, 9/21/57, marked for identification.)

19 BY MS. TCHAO:

20 Q. If you take a look at that, Mr. Scribner. I'm showing  
21 you Exhibit 5 which is a plan showing the Scribner  
22 property. It's dated September 21, 1957.

23 Do you recognize your property, and by your  
24 property, I mean 291 Rear Kings Highway, on this map?

25 A. Yes.

1 Q. Is that the seaward lot on the map, the one that is  
2 located closest to the Atlantic Ocean?

3 A. Right.

4 Q. So can you --

5 A. Yes. I missed the word, seaward. I was looking for a  
6 name.

7 Q. Okay. And in that lot, if you would, could you just  
8 write the word 291R.

9 This is the property you currently own as  
10 trustee --

11 A. Yes.

12 Q. -- with your mother?

13 Okay. And am I right that the lot behind it or  
14 to the north of it abutting Kings Highway is 291 Kings  
15 Highway?

16 A. Yes.

17 Q. The property you've been talking about with Attorney  
18 Frame?

19 A. Yes.

20 Q. And as a child it was 291, the building that's located  
21 in this map, that you actually lived in as a child; is  
22 that right --

23 A. Yes.

24 Q. -- in the summers?

25 And your mother currently resides in 291 Rear



1 Kings Highway?

2 A. Yes.

3 Q. Okay. Can you also identify -- there is on this map it  
4 says Reserved Street. Is this the right-of-way, the  
5 deeded right-of-way, that you've been speaking about  
6 with Attorney Frame?

7 A. Yes.

8 Q. Okay. Is there more than one in relation to or  
9 immediately adjacent to your property?

10 A. Yes.

11 Q. Okay. And so the one -- the one that you've been  
12 speaking about with Attorney Frame, have you only been  
13 speaking about one that has the sign in it?

14 A. Yes.

15 Q. Okay. So the Reserved Street area is the right-of-way,  
16 the deeded right-of-way, that currently, and has, as  
17 you said, for years had the sign saying private way, no  
18 parking?

19 A. Yes.

20 Q. Okay. Can you, if you would, if you would write  
21 in -- out towards Kings Highway just put an X and put  
22 sign next to it in the approximate, again, approximate  
23 location of where you think that sign is.

24 Okay. Thank you.

25 You said there was another right-of-way. Is

1           it -- can you depict it anywhere on this map,  
2           Exhibit 5, another right-of-way that's deeded?

3           A.    There is -- there is another right-of-way that's deeded  
4           that runs up the eastern border from the 291 property  
5           to the beach.

6           Q.    So if I'm looking at this map, it says the property to  
7           the east is Mitchell?

8           A.    Right.

9           Q.    And there's an indication on this map that says fence?

10          A.    Right.

11          Q.    Is that where the right-of-way is, the second  
12          right-of-way that you've been speaking about?

13          A.    Yeah, it's towards -- it's on the 291 rearside of the  
14          property line.

15          Q.    Is there a fence there currently?

16          A.    No.

17          Q.    Okay.  So does it extend all the way out to Kings  
18          Highway?

19          A.    No, it just -- it just comes from the corner of 291.

20          Q.    Okay.  So could you draw it approximately, in  
21          approximately its location?

22          A.    Yeah.  There is a line already on -- on the plot that  
23          would be approximately exactly where that right-of-way  
24          would be.

25          Q.    Where the length is, it says 122.98 feet?

1 A. Right, yeah. The directional lines for that length is  
2 right where the right-of-way would be.

3 Q. Okay. And does it end at the iron pipe?

4 A. No, it goes all the way to the ocean, to the sea.

5 Q. It goes to the sea?

6 A. Yeah.

7 Q. Going back towards Kings Highway, where does this  
8 right-of-way end? Does it end at this iron pipe?

9 A. I'm not positive. I believe right at that intersection  
10 of the lots.

11 Q. Okay. It doesn't take a jog and go out to Kings  
12 Highway to your knowledge?

13 A. No, it does not.

14 Q. And what -- do you know the purpose of that  
15 right-of-way?

16 A. I do know the purpose of that.

17 Q. What is that?

18 A. It was granted to my uncle when he took ownership of  
19 that property after my grandmother died.

20 Q. Okay. Ownership of 291?

21 A. 291, yeah.

22 Q. Okay. And do you see, on this plan, do you see where  
23 it says seawall on the plan?

24 A. Yes.

25 Q. And it looks like what's drawn here are two rows, if

1           you will, of rocks. Maybe that's one wall.

2                       Is that the seawall that is currently located  
3           at the end of your -- the southern boundary of your  
4           property?

5       A.    It's not the southern boundary but it does exist. It  
6           crosses the property there.

7       Q.    Okay. And you do see a solid line, don't you, next to  
8           the seawall roughly parallel to it?

9       A.    I do.

10      Q.    Okay. Okay. Now, apologies with how small this is. I  
11           think we're going to mark this one Exhibit 6.

12                       (Deposition Exhibit No. 6, Kennebunkport  
13           Assessor's Map, 1984 Revised, marked for  
14           identification.)

15      BY MS. TCHAO:

16      Q.    If you would take a look at this, this is an assessor's  
17           map for the Town of Kennebunkport, Maine, that was --  
18           indicates that it was revised in July of 1984. So it  
19           is an older tax map.

20                       And what I'd like you to do, if you could, many  
21           of these lots have in cursive writing the names of the  
22           apparent owners at the time this map was drawn up?

23      A.    Uhm-uhm.

24      Q.    Can you describe where your property is, the 291 R  
25           property?

1 A. Yeah, it's right adjacent to the No. 10 that's circled.

2 Q. Okay. So that's lot 11 on this map?

3 A. Okay.

4 Q. This is map 35, block 10. Do you see the lot that says  
5 Scribner on it, lot 11? Do you see that on the map?

6 A. Yes.

7 Q. Okay. Could you put a -- could you just circle that,  
8 if you would.

9 Okay. And the lot behind it fronting Kings  
10 Highway which is 291 says Pattillo on it or Pattillo.

11 Is that the current owner to your knowledge?

12 A. No, it's not.

13 Q. Okay. But that is 291 Kings Highway, what is listed as  
14 lot 10?

15 A. Yes.

16 Q. Behind your property, correct?

17 A. Yes.

18 Q. Okay. You've also made some reference to Hayward  
19 Avenue. Do you find that located on this map?

20 A. Yup.

21 Q. Okay. So -- I'm sorry. Would you please, on the  
22 Pattillo lot, could you -- I know it's small but could  
23 you write 291 or maybe draw an arrow to -- okay.

24 And would you do 291 R on your property,  
25 please.

1                   Do you see where Hayward Avenue is located on  
2                   this map?

3           A.    Yes.

4           Q.    You've indicated -- you've been talking about a rental  
5                   property on Hayward Avenue owned by your father --

6           A.    Yes.

7           Q.    -- in the '70s and which you rented yourself for two  
8                   years with your wife?

9           A.    Yes.

10          Q.    Can you locate that on this map?

11          A.    It's lot 14.

12          Q.    Okay. Lot 14 which on this map says at the time was  
13                   owned by Cohen; is that correct?

14          A.    Yes.

15          Q.    Okay. Could you circle that, if you would, and draw an  
16                   arrow that says H somehow to depict it.

17                   Okay. And there's all -- you also testified  
18                   earlier or with Attorney Frame that there was a lot  
19                   adjacent to 291 Kings Highway owned by your father in  
20                   the '70s that was intended to be a retirement home.

21                   Is that lot 13?

22          A.    Yes, it is.

23          Q.    Okay. The one that says Eisenberg?

24          A.    Yes.

25          Q.    Is that correct?

1                   Okay. Why don't you go ahead and put a -- why  
2                   don't you star -- put a star in that spot, if you  
3                   would.

4                   Did your father sell lot 13 to Mr. Eisenberg?

5           A.    Yes.

6           Q.    Okay. Do you recall roughly when that was?

7           A.    Well, hang on. He did not sell that one to Eisenberg.  
8            Sorry.

9           Q.    There was an intervening landowner?

10          A.    Yes.

11          Q.    Okay. So you spoke also of various back lot owners who  
12                had a right that was clarified in writing to use the  
13                right-of-way to the west of your property, right?

14          A.    Yes.

15          Q.    Okay. Do you recall who -- which back lot owners those  
16                were?

17          A.    I recall some of them. I'm not sure I could recall all  
18                of them.

19          Q.    Okay. Of the ones that you can recall, can you let me  
20                know which --

21          A.    Yeah. If you follow Hayward Avenue to its end.

22          Q.    Yes.

23          A.    You'll see a series of lots in there that are separated  
24                with what appears to be a right-of-way, R-O-W, and it's  
25                most of the lots -- at a minimum, it is lot No. 9, 10,

1 11, 12, 6 and 7.

2 MS. TCHAO: Okay. Just so we're all on the  
3 same page of this, what exhibit are we on now, 7?

4 MR. LEONI: Yeah, that will be Exhibit 7.

5 MS. TCHAO: 7.

6 (Deposition Exhibit No. 7, Quitclaim Deed w/o  
7 Covenant, 8/27/90, marked for identification.)

8 BY MS. TCHAO:

9 Q. Mr. Scribner, Exhibit 7, you can take a look at it, is  
10 a quitclaim deed dated August 27, 1990, and your  
11 signature is on this document at page 4.

12 And just so I'm clear, is your middle initial J  
13 or H?

14 A. Yeah, that's not my signature.

15 Q. It's not your signature. I'm sorry. Are you -- what's  
16 your middle initial?

17 A. H.

18 Q. Is there a Robert J. Scribner who is not you?

19 A. There was a Robert J. Scribner who is not me.

20 Q. And who was that?

21 A. My father.

22 Q. Okay. Your father was Robert J, your father was not  
23 George?

24 A. Correct.

25 Q. George was your grandfather?



1 A. George was my uncle.

2 Q. Okay. Okay. That's helpful. I'm glad we clarified  
3 that.

4 So Eleanor A is your mother, Robert J is your  
5 father?

6 A. Correct.

7 Q. Otherwise known as Scrubby, that was his affectionate  
8 nickname?

9 A. As a child it was his nickname.

10 Q. Okay. All right. Okay. So this is not a document  
11 that you signed?

12 A. Correct.

13 Q. Okay. Have you seen it before, are you familiar with  
14 it?

15 A. I have seen it before.

16 Q. Okay. And is it fair to say this is a deed drawn up to  
17 give those back lot owners that you indicated the  
18 right-of-way or the right to use -- to access the beach  
19 from the deeded right-of-way?

20 A. Yes.

21 Q. Is this the only such deed or document that you're  
22 aware of that granted nonbeachfront owners, specific  
23 nonbeachfront owners, access to the beach by way of  
24 that right-of-way or are there others to your  
25 knowledge?

1 A. When you say document, what do you mean by document?

2 Q. I mean is this the only recorded instrument that you  
3 know of? And if you don't know, you don't know.

4 But are there others, others that you believe  
5 received an easement, to use this right-of-way?

6 A. To my knowledge there are no others.

7 Q. Okay. All right. Now I'm going to show you Exhibit 8.

8 (Deposition Exhibit No. 8, Affidavit, 8/9/78,  
9 marked for identification.)

10 BY MS. TCHAO:

11 Q. This is an affidavit -- actually, there are two  
12 affidavits attached to this Exhibit 1 by Dorothy  
13 Scribner who is your grandmother?

14 A. Yes.

15 Q. And Beatrice Eldridge, and they are both dated  
16 August 9, 1978. And they are affidavits that were  
17 attached to the Exhibit 7 quitclaim deed that we were  
18 just discussing granting easements to these back lot  
19 owners.

20 And have you seen this document before or these  
21 affidavits?

22 A. I've seen one of these before.

23 Q. You've seen the one involving your grandmother?

24 A. Correct.

25 Q. The first two pages at least?

1 A. Correct.

2 Q. So I just wanted to ask you some questions about this  
3 exhibit, if you know. Forgive me, in 1978 you were  
4 about how old? I can't do the math.

5 A. 22.

6 Q. 22. Thank you. I hope no one else asks me a question  
7 like that if I'm ever deposed.

8 Okay. If you review this document, it  
9 references the private right-of-way. And that's the  
10 one to the west of your property, correct?

11 A. Yes.

12 Q. Okay. And indicates that the Town has never done any  
13 maintenance or work of any sort, has never plowed it;  
14 is that correct?

15 A. Absolutely correct.

16 Q. And it talks about the signs that were erected in the  
17 right-of-way, and I think mentions -- does it also  
18 mention -- yes, it mentions the seawall and the efforts  
19 taken by your family to maintain it?

20 A. Correct.

21 Q. Correct. Okay. Do you -- can you tell me why this  
22 affidavit was drawn, if you know? Do you know why?  
23 What's the context for this?

24 A. I don't know.

25 Q. You don't know, okay.

1                   Okay. I apologize. This gets a little  
2                   tedious, but we do have to go through a few of these  
3                   documents.

4                   (Deposition Exhibit No. 9, Warranty Deed,  
5                   signed 7/30/04, marked for identification.)

6                   BY MS. TCHAO:

7                   Q. Okay. Exhibit 9, is that your current deed, Mr.  
8                   Scribner?

9                   A. Yes.

10                  Q. Dated July 30, 2004?

11                  A. Yes.

12                  Q. Okay. You're familiar with this document?

13                  A. Yes.

14                  Q. This was produced in discovery.

15                         Okay. And if you would, turn to page 2 which  
16                         is the first page of Exhibit A. The second full  
17                         paragraph describes the property in that paragraph.

18                                 Would you agree it describes the southern  
19                                 boundary of that property as more or less to a seawall,  
20                                 thence running along said seawall to a point?

21   Do you see where it says that?

22                   A. Yes.

23                  Q. Okay. Now, you testified earlier, I think, that you  
24                  believe your property is bounded by the sea?

25                  A. Correct.

1 Q. Okay. And is that because, if you go to the next  
2 paragraph, it says: Also hereby conveying all the  
3 right, title and interest of the grantors in and to all  
4 land lying adjacent to and southerly of the southerly  
5 boundary of the above-described parcel to the Atlantic  
6 Ocean.

7 Is that -- is that why you say --

8 A. Yes.

9 Q. -- it is bounded by the sea?

10 A. Correct.

11 Q. So if -- if you were to go back in your title chain and  
12 find out that a previous grantor never conveyed in your  
13 property chain anything seaward of the seawall, then  
14 would you agree with me that that statement that I just  
15 read to you wouldn't convey anything -- would not have  
16 conveyed title to anything seaward of the seawall to  
17 you?

18 MR. LEONI: Objection to form.

19 A. I can't agree to that. I would have to have a legal  
20 expert to pass judgment.

21 BY MS. TCHAO:

22 Q. Okay. And if we go to the next page, flip to the next  
23 page which is Scribner -- there's a third page -- the  
24 -- the first paragraph says: Beginning at the  
25 northwesterly corner of land of Dorothy A. Scribner,

1           thence southerly by said land of Scribner to low water  
2           mark of the Atlantic Ocean or so far as Beatrice C.  
3           Eldridge may own.

4                         Do you see where it says that?

5         A.    Yes.

6         Q.    Okay.  Is that also part of your understanding as to  
7           why you believe your property extends to the sea?

8         A.    Certainly part of my understanding.

9         Q.    Okay.  And I'm not -- just to clarify, I'm not asking  
10           you to answer based upon any of your discussions with  
11           your attorney.

12                        And then where it says said lot is conveyed  
13           subject to, and there's a 1 and a 2, do you see that in  
14           the middle of the page?

15         A.    Yes.

16         Q.    And it refers to a pedestrian right-of-way.  Is that  
17           the right-of-way that we've just talked about where the  
18           back lot owners were given the right to cross over?

19         A.    Yes.

20         Q.    And No. 2 says -- it says:  Said lot is conveyed to  
21           subject to the rights of the public in that portion  
22           between high and low water mark, as granted by the  
23           Colonial Ordinances of 1641 and 1647 and as now  
24           enforced.

25                        Do you see where it says that?

1 A. Yes.

2 Q. Okay. And you mention that you've -- I'm not going to  
3 take you through all the other deeds, but you've  
4 mentioned you've looked at deeds going back to the  
5 early 19 -- the early 20th century?

6 MR. LEONI: Objection to form.

7 A. I have seen them. I have not studied them.

8 BY MS. TCHAO:

9 Q. Understood. Do you recall seeing this language in  
10 prior deeds within your title chain?

11 A. For this section here?

12 Q. Yes.

13 A. Yes, I've read this section before in prior deeds.

14 Q. Okay. Do you know when that language was placed in  
15 your title chain?

16 A. I don't know the exact date.

17 Q. Okay. And do you know why that language was put in the  
18 deed?

19 A. No.

20 Q. Okay.

21 MS. TCHAO: 10?

22 (Deposition Exhibit No. 10, Black and White  
23 Photos, marked for identification.)

24 BY MS. TCHAO:

25 Q. So go ahead and take a moment to just quickly page

1 through these, if you would. These were produced in  
2 discovery by you. The Town sought all photographs in  
3 your possession that depicted either your property on  
4 Goose Rocks Beach or Goose Rocks Beach.

5 Go ahead and --

6 A. Okay.

7 Q. Mr. Scribner, are these all the photographs in your  
8 possession depicting Goose Rocks Beach?

9 A. All the ones that I'm aware of.

10 Q. Okay. You're not aware of any that you have that you  
11 haven't produced?

12 A. No.

13 Q. Okay. And were you -- do you have access to any  
14 collections of family members of photos on Goose Rocks  
15 Beach such as your mother's?

16 A. Do I have access to them? I suppose my mother's I have  
17 access to.

18 Q. Okay.

19 A. But that's where most of these came from.

20 Q. That's where most of these came from?

21 A. Yup.

22 Q. All right. So without going through each one, I do  
23 want to establish where -- which one is your residence  
24 here, so if we look on page 1 -- this exhibit is  
25 numbered -- the two photos of a house. I know it's



1 dark and not a very good photo. Is that your house,  
2 291 R?

3 A. Yes.

4 Q. And approximately when was that photo taken, if you  
5 know, approximately?

6 A. 2010.

7 Q. Okay. And the sailboat that we see on a little  
8 trailer, is that on the beach in front of your  
9 property?

10 A. Yes.

11 Q. Is that your son's sailboat that you were referencing  
12 earlier?

13 A. Yes.

14 Q. Okay. And is that currently stored on your property?

15 A. No.

16 Q. Okay. Is it -- is it stored seasonally, has it been  
17 stored seasonally on your property, on the beach on  
18 your property?

19 A. It was for several years. It's no longer stored there.

20 Q. Roughly in the last five or ten years?

21 A. He outgrew it.

22 Q. And he's 19 now?

23 A. 19.

24 Q. That happens.

25 A. Yeah.

1 Q. Okay. If we just go to page 2 quickly, what are we  
2 looking at here if you can tell us? I see a fence.

3 A. That is -- the picture was taken from Kings Highway  
4 looking towards the ocean, approximately toward the  
5 ocean, from down the private right-of-way.

6 Q. Okay. Now, I know it's hard to see, but I think in the  
7 top photo do I see a sign next to the fence?

8 A. Yes, you do.

9 Q. Is that the sign that says private way?

10 A. Yes.

11 Q. No parking?

12 A. And no parking.

13 Q. Okay. Thank you.

14 And I see a house in the bottom photograph or  
15 maybe two houses. Is that one or two houses, can you  
16 tell?

17 A. I can't tell from the photograph but --

18 Q. Yeah.

19 A. -- I spent a lot of time in my life there. That's a  
20 house and a garage.

21 Q. Okay. Is that what is now known as the Eisenberg's  
22 residence?

23 A. No, that's Eldridge.

24 Q. This is Eldridge. If you don't mind, Mr. Scribner,  
25 going back to Exhibit 6, would that be lot 12 or lot --

1 the house on --

2 A. 12.

3 Q. -- 12?

4 It says it's owned by Clark in this -- on  
5 Exhibit 6?

6 A. Correct.

7 Q. Is that currently owned by Clark to your knowledge?

8 A. Yes.

9 Q. Okay. Page 3, is the middle photo your property?

10 A. The middle photo is a picture of the property prior to  
11 1947.

12 Q. And you're saying prior to 1947 because 1947 was the  
13 year of the fire?

14 A. Yes.

15 Q. And was your property destroyed?

16 A. Yes.

17 Q. Okay. Burned to the ground?

18 A. To the ground.

19 Q. Okay. And in the top photo are those, if you know, are  
20 those family members or --

21 A. I have no idea --

22 Q. No idea?

23 A. -- who they are.

24 Q. It says 1920, okay.

25 A. Yeah, slightly before my time and before my mother's

1 time.

2 Q. Okay. And you see a seawall in that middle photo.

3 That seawall is still there in some form?

4 A. It's still there in that exact form.

5 Q. Okay. Have there always been stairs as the ones --

6 A. Yes.

7 Q. -- that are depicted there?

8 A. Yes.

9 Q. In that approximate location?

10 A. I would say in that exact location.

11 Q. In that exact location, okay. And the bottom photo I'm

12 not going to ask you about because it was taken in

13 1920.

14 A. And it's facing out to sea in front of the house and

15 that's Timber Island in the background.

16 Q. Okay. Thank you. Page 4 -- I think we can go fairly

17 quickly through these. What are these photos of from

18 top to bottom?

19 A. I'm not -- I can't accurately tell you what the top one

20 is.

21 Q. Okay. That's not your house? That's not --

22 A. I don't think that it's our house. The house was

23 modified a couple times. I just -- I just can't tell

24 you exactly.

25 Q. Okay.

1 A. The middle one and the bottom one was the house that  
2 was built to replace the house we lost in the fire.

3 Q. Okay. And does it look substantially the same now or  
4 does it look quite a bit different?

5 A. It looks substantially the same now.

6 Q. Okay. Page 5, do you know what we're looking at here?

7 A. Yeah.

8 Q. Is that the path from your property down through the  
9 dunegrass?

10 A. Yes.

11 Q. To the beach?

12 A. Yes. It's the -- the top picture is the top of the  
13 stairs.

14 Q. Okay. In the bottom picture are we looking at is that  
15 Timber Island again?

16 A. Yes.

17 Q. Okay. In 1928 on page 6, I just have to ask who that  
18 cute boy is. Is that your father?

19 A. That's not my father because he was born in 1928 so it  
20 must be his brother.

21 Q. Okay.

22 MR. FRAME: That's a great photo.

23 MS. TCHAO: I love the swimsuits.

24 A. It's got to be my Uncle George, but don't hold me to  
25 it.

1 BY MS. TCHAO:

2 Q. I won't. Toehead.

3 A. We all were.

4 Q. Okay. Page 7, this is Goose Rocks Beach. Do you know  
5 -- I know -- I apologize for its graininess, but do you  
6 know where this photo is taken from?

7 A. Absolutely.

8 Q. Okay. Where is it taken from?

9 A. It was taken from the beach in front of the Dicesare  
10 property.

11 Q. Dicesare property?

12 A. Go right to the point of the scallop in the beach, and  
13 you'll find the Dicesare property.

14 Q. Okay. So at Dinghy Point?

15 A. Yeah. Okay.

16 Q. Is it at Dinghy Point?

17 A. Yeah. I don't know that term, but yeah, yes, from  
18 approximately there somewhere.

19 Q. Okay. So your house is not depicted on this unless  
20 it's way out there?

21 A. No, it would be way around the corner and you  
22 couldn't -- no, it's not there.

23 Q. Okay. And this says turn of the century.

24 A. Yeah.

25 Q. All right. How about page 8, it says a hundred years

1 at Goose Rocks, August 26, 2000. Is that your  
2 handwriting?

3 A. No.

4 Q. Do you know whose handwriting that is?

5 A. I'm going to say it's my mother's, not my father's.

6 Q. Okay. And is that -- would that be your property?

7 A. Yes. That would be the house prior --

8 Q. Prior to the fire?

9 A. Prior to the fire, yeah.

10 Q. Okay. We're getting there. We're almost done with  
11 these photos. Page 9, there's a house all by its  
12 lonesome dated 1948 which is obviously after the fire.

13 Do you recognize that house?

14 A. Yeah, it's the new house.

15 Q. That's the new house?

16 A. Yeah.

17 Q. Okay. So it was pretty immediately rebuilt, correct?

18 A. The next year.

19 Q. What's that?

20 A. Yeah, the next year.

21 Q. It looks like you were one of the first to rebuild?

22 A. Yeah. I wouldn't know, before my time.

23 Q. Okay. And we're looking at something similar in the  
24 middle photo it looks like?

25 A. Uhm.

1 Q. Yes?

2 A. Yes. It looks like the same construction period.

3 Q. In the 1955 photo are you able to see the -- to tell  
4 where on the beach this property -- this photo was  
5 taken or where we are looking at -- what we are looking  
6 at, if you can tell?

7 A. Yeah. It was taken probably in front of our house or  
8 thereabouts.

9 Q. Looking westward?

10 A. Looking to the west, yeah.

11 Q. Okay. All right. Last page, these are all -- these  
12 all appear to be old photographs. If you look at the  
13 upper right corner, the one that has the writing on it,  
14 one of them says the Belvidere Hotel.

15 Is that the location known as The Tides Inn?

16 A. Yes.

17 Q. Okay. So this -- your house is not depicted here?

18 A. No.

19 Q. Okay. What about in any of the other photos, do you  
20 see your house?

21 A. Well, bottom right, no; top left, no. The bottom left,  
22 I can't tell.

23 Q. Hard to tell. Is that Timber Island off in the  
24 distance?

25 A. Yes, yeah.



1 Q. Okay. Okay. So I don't -- am I right that there  
2 are -- what is the most recent photograph that we have  
3 in this packet of your property? Is it on the first  
4 page?

5 A. First page, yeah, first and second page.

6 Q. Okay. So if -- if you look at the first page, this,  
7 you said, was taken around 2010, right?

8 A. Yes.

9 Q. Can you tell me -- can we see where the private  
10 property sign is?

11 A. Yes, you can.

12 Q. Okay. Could you circle that?

13 A. It's right in the middle of the top left picture and in  
14 the lower right-hand corner of the bottom left picture.

15 Q. Oh, I see. The -- so what looks -- it looks to me  
16 almost like a lobster trap or a box, but that's a sign?

17 A. That's a sign.

18 Q. Okay.

19 A. Its height above the sand changes from time to time as  
20 the sand comes and goes.

21 Q. Is that the approximate location of the sign as it's  
22 been there for as long as it's been there?

23 A. It's the exact location.

24 Q. It is?

25 A. For as long as it's been there.

1 Q. Okay. And it says private property?

2 A. Correct.

3 Q. Okay. And you said -- forgive me, I think you were  
4 asked this already, but do you know how -- when it was  
5 put in approximately?

6 A. I do not know exactly.

7 Q. Okay.

8 A. Approximately in the early '70s, but I don't know  
9 exactly.

10 Q. Okay. Early '70s. All right. Thank you.

11 Now, I'm not sure if we should mark this yet.  
12 Can I ask if you're familiar with this because you may  
13 not be? I won't ask you any questions about it if  
14 you're not, so if you could take a moment.

15 These are, what I will tell you, this is a  
16 collection of photos, old and new, that were delivered  
17 to the Town by John Pinelle and were represented to the  
18 Town as being part of the Annette Scribner collection.

19 A. Okay.

20 Q. Does that mean anything to you?

21 A. Absolutely.

22 Q. Okay. Can you tell me what that means or what is that?

23 A. John Pinelle was a neighbor, I believe he's deceased,  
24 Canadian guy, and Annette Scribner is my aunt and still  
25 alive and kicking.

1 Q. Okay. To your knowledge did she collect photographs of  
2 the beach?

3 A. I don't know.

4 Q. Have you seen these before?

5 A. No.

6 MS. TCHAO: Why don't we go ahead and mark this  
7 because I think I will ask just a few questions about  
8 these. This is 11.

9 (Deposition Exhibit No. 11, Group of Black and  
10 White Photos, marked for identification.)

11 BY MS. TCHAO:

12 Q. And for the record, they're numbered at the bottom  
13 pages 1 through 57, and I will not take you through, I  
14 promise, not take you through all of them.

15 But if you look at the first page, Mr.  
16 Scribner, there's some handwriting to the right of the  
17 photographs.

18 Do you recognize the handwriting?

19 A. You know, it very well could be borne of my aunt, but I  
20 wouldn't want to swear to it.

21 Q. Okay.

22 A. Since I'm under oath I'll say I don't know.

23 Q. Okay. Okay. If you turn to page 20 of that packet, do  
24 you recognize your house in this photo?

25 A. Yeah. I think we've seen a photo very similar to this

1 in my packet.

2 Q. Could you circle is it the middle one?

3 A. Yes, it's the middle one with the cupola.

4 Q. And this is obviously pre1947, correct, right?

5 A. Yes.

6 Q. The same with page 21?

7 A. It appears to be the same house.

8 Q. Page 22, could you help me with that one?

9 A. No.

10 Q. Okay. Just checking.

11 MR. FRAME: Ask him a question and you'll get  
12 an answer.

13 A. It says Hayward Avenue and Kings Highway, so I could  
14 identify the lot but I couldn't tell you who the house  
15 is.

16 BY MS. TCHAO:

17 Q. And page 23, I think this could be my last one, do you  
18 recognize where we are on the beach?

19 A. Yeah, I do.

20 Q. Okay. Can you see your house?

21 A. No.

22 Q. Okay. And is -- it looks like it kind of goes to a  
23 point. Is that what is commonly known as Dinghy Point  
24 off to the left there to your knowledge?

25 A. Yeah. Again, I'm not familiar with the term, Dinghy

1 Point.

2 Q. Dinghy Point. Is that near the Dicesare --

3 A. Yeah, I know what you mean by Dinghy Point, but I'm not  
4 familiar with that so. But yes, that is what -- that  
5 is the point.

6 Q. Can we see The Tides Inn in that photo?

7 A. Yes, we can.

8 Q. Can you circle it and put a T next to it.

9 Thank you. So your property -- can you tell  
10 was this taken from your property --

11 A. No.

12 Q. -- or further down the beach?

13 A. No, no. This picture -- that house showing is at least  
14 four or five lots further to the west.

15 Q. Okay. Great.

16 A. This was a postcard I have a copy of on my laptop.

17 MR. FRAME: It's a pretty post card.

18 BY MS. TCHAO:

19 Q. Okay. I'm going to switch gears a little bit, Mr.  
20 Scribner. Just so I know, remind me where 183  
21 Beachwood Avenue is? I think you said it was not in  
22 the Goose Rocks Beach --

23 A. It's off Beachwood Avenue.

24 Q. And remind me where that is in relation to Route 9,  
25 just roughly. How far away from Goose Rocks Beach?

1 A. I don't know how far it is from the beach. It's  
2 two miles to my mother's house from my house.

3 Q. Okay. You go on Route 9 and --

4 A. Yeah.

5 Q. -- take a right?

6 A. Beachwood is right off of Route 9.

7 Q. All right. Thank you. And how long have you lived  
8 there?

9 A. I've been on Beachwood Ave since 1986.

10 Q. 1986 as a permanent residence -- resident?

11 A. Yes.

12 Q. Okay. And since 1986 how have you -- have you spent  
13 time at Goose Rocks Beach in the summers?

14 A. Yeah.

15 Q. Okay. You'd visit your mother?

16 A. Absolutely.

17 Q. Okay. Did you ever stay in her home?

18 A. No.

19 Q. Okay. And your -- you said your son did not spend  
20 summers at Goose Rocks Beach or --

21 A. No. He lives up the road so there's no need for him to  
22 spend summers at the beach.

23 Q. Okay. He lives up the road meaning he lives with you?

24 A. Correct.

25 Q. Right. Okay. Do you own any other property in

1 Kennebunkport?

2 A. No.

3 Q. Okay. All right. Does your sister Joy who lives in  
4 Maine, does she use the property, your mother's -- your  
5 property on 291 Rear Kings Highway?

6 A. Use as in --

7 Q. Does she --

8 A. -- come for a vacation?

9 Q. -- come -- does she use the beach in front of your  
10 home, does she come and stay, does she recreate?

11 A. Not really.

12 Q. Okay.

13 A. Obviously, she visits her mother but --

14 Q. Like every good daughter should.

15 A. She's a good daughter.

16 Q. And you mentioned that there was someone who rented the  
17 Hayward Avenue property for about a year -- for several  
18 years which was a single woman.

19 What was her name?

20 A. Alison Pierre.

21 Q. Is she still alive to your knowledge?

22 A. No, she's gone.

23 Q. All right. Let's talk about the activities that you  
24 participated in on Goose Rocks Beach. I won't ask you  
25 a lot of those questions because Attorney Frame has

1 covered them, but you mentioned earlier that you had a  
2 gang of friends?

3 A. Yes.

4 Q. And spent time -- would it be fair to say more often  
5 you would spend time not in front of your property, not  
6 on the beach in front of your property but on the beach  
7 elsewhere?

8 A. Yes. I mean depending on my age, right. When I was a  
9 single digit I was in front of the house. When I was  
10 double digit, I'd start to wander.

11 Q. Okay. Fair enough. And when you started to wander as  
12 you got older, I think you mentioned that you spent  
13 more time down to the west of your property?

14 A. Yes.

15 Q. Down in the area that you referred to as the public  
16 beach in front of The Tides Inn?

17 A. Correct.

18 Q. With your friends you did that?

19 A. Correct.

20 Q. How would you get there typically?

21 A. By feet.

22 Q. You would walk?

23 A. Walk or bicycle. Yeah, walk most of the time.

24 Q. And when you walked would you walk on the beach?

25 A. Oh, it depended what time of day.



1 Q. Sometimes you would walk on the beach?

2 A. In the daytime you're likely to be on the beach,  
3 nighttime you'd be on the road.

4 Q. On the road. And when you walked down the beach to do  
5 the activities that you did, did you ever ask  
6 permission of the beachfront owners along the way?

7 A. No.

8 Q. Okay. Did any of your friends do that?

9 A. I don't know.

10 Q. I mean did any of your friends -- did you observe any  
11 of your friends do that?

12 A. No.

13 Q. Were there other times that you would walk other areas  
14 on the beach? Have you -- I can't remember if you said  
15 you walked the length of the beach as -- is that  
16 something you regularly do?

17 A. Yeah, I guess.

18 Q. Okay.

19 A. Not so much anymore but --

20 Q. Okay. But you have from time to time walked --

21 A. Oh, absolutely.

22 Q. -- the full length of the beach?

23 A. Absolutely.

24 Q. With your friends?

25 A. Probably. I'm not sure I could drag up a specific

1 instance but --

2 Q. Okay. At any time when you have walked the length of  
3 the beach have you ever asked permission of any  
4 beachfront owner --

5 A. No.

6 Q. -- to walk?

7 And if you recall, has -- have you observed any  
8 of your friends asking permission?

9 A. No.

10 Q. Okay. Any time that you have walked on the beach,  
11 again -- at any time that you've walked on the beach  
12 not in front of your property has a beachfront owner  
13 ever told you not to do so?

14 A. No.

15 Q. Okay. And you mentioned is it Mr. Wilson?

16 MR. FRAME: Grumpy old people who don't want  
17 you on their property, kind of like a Mr. Wilson from  
18 Dennis The Menace.

19 A. Dennis The Menace.

20 MS. TCHAO: Are we off the record?

21 (Off the record.)

22 BY MS. TCHAO:

23 Q. I won't take you through all the activities that you  
24 engaged in as a teenager, some that you said you  
25 wouldn't repeat, but when you were engaging in

1 activities on the beach, again, not in front of your  
2 own home, other than walking with your friends or not  
3 with your friends, has a beachfront owner ever told you  
4 to stop?

5 A. I don't remember being told to stop.

6 Q. Okay. Have you ever -- do you ever remember any of  
7 your friends who you were with being told to stop doing  
8 what they were doing?

9 A. No.

10 Q. To your knowledge --

11 A. Can I -- can I --

12 Q. Sure.

13 A. -- back up on that one?

14 There is -- there was a property owner at the  
15 far eastern end of the beach who often would ask us not  
16 to tread on his property.

17 Q. And who was that?

18 A. Well, I'm stretching my memory. The name that comes to  
19 mind is Page.

20 Q. Okay. Are you talking about the Sand Point area of the  
21 beach?

22 A. Yes, yes.

23 Q. Okay. Not to even walk down there or not to linger?

24 A. Not to walk on his property.

25 Q. Is Mr. Page still around --

1 A. I don't know.

2 Q. -- to your knowledge?

3 Okay. Was he old when he told you not to walk  
4 on his property?

5 A. No, he was probably my age.

6 Q. Was that when you were a teenager or as an adult?

7 A. It was when we were teenagers. I will expound a little  
8 bit; I don't mind.

9 Q. Sure.

10 A. Because we used to water-ski down there in the river.

11 Q. In the Little River?

12 A. Yeah. He was always worried about erosion and things,  
13 so he always asked us to stay away from his property.  
14 He wasn't being vindictive or mean, he just had it in  
15 his mind that we might erode his property.

16 Q. I was going to ask you where you water-skid because  
17 it -- now I know. Is that because it's the deepest  
18 place on Goose Rocks Beach?

19 A. No, it's actually not deep at all, but it was a nice  
20 tidal river and great for water-skiing. Probably still  
21 is.

22 Q. Okay. So other than Mr. Page, you can't recall --

23 A. No.

24 Q. -- anyone else who has told you not to be --

25 A. No, but I thought I'd give you something.

1 Q. In your mind -- and I think did you say you didn't play  
2 softball?

3 A. No -- no, I do not play softball.

4 Q. And you didn't as a teenager --

5 A. Nor do I play baseball.

6 Q. Where were the softball games that the association --  
7 that Attorney Frame mentioned to you, do you know where  
8 on the beach?

9 A. I don't -- I don't know specifically.

10 Q. You don't know, okay. All right.

11 In your mind, I just want to be clear, in your  
12 mind is there a distinction between what someone can do  
13 in the intertidal -- I'll use your terms, I think you  
14 said hard sand versus soft sand.

15 So is there a distinction between what someone  
16 can do on your -- on the beach in front of your  
17 property between -- as between the soft sand and the  
18 hard sand? Go ahead.

19 MR. LEONI: Objection to form.

20 A. No.

21 MR. LEONI: To the extent that any of those  
22 types of questions are getting to facts or  
23 understanding that you have as a result of discussions  
24 with your attorney, that's privileged information. I'm  
25 instructing you not to answer.

1 THE DEPONENT: Okay.

2 BY MS. TCHAO:

3 Q. And I'm not asking for that information, I'm asking  
4 your understanding prior to the lawsuit. There's no  
5 distinction I think is what you said.

6 A. Correct.

7 Q. So -- and I don't mean to be repetitive, so if someone  
8 were fishing in the intertidal zone on the beach in  
9 front of your property and you didn't like what that  
10 person was doing, you believe you would be able to go  
11 down there and say you need to move off my property?

12 MR. LEONI: Objection to form.

13 BY MS. TCHAO:

14 Q. If you understand, you can answer the question.

15 A. I believe I have the right to ask somebody to move  
16 along.

17 Q. Okay.

18 A. Regardless of what they're doing.

19 Q. Do you -- do you believe you have the right to tell  
20 someone who is walking the length of the beach not to  
21 do that in front of your property?

22 MR. LEONI: Objection to form.

23 BY MS. TCHAO:

24 Q. If you understand, you can answer.

25 MR. LEONI: Again, objection. Same objection

1 to attorney-client privilege.

2 A. Yeah, I think I won't answer that one.

3 BY MS. TCHAO:

4 Q. Okay. If you have an understanding prelawsuit?

5 A. Yeah.

6 Q. I'm --

7 A. But it gets confusing. It gets confusing when you  
8 cover something with your attorney and --

9 Q. Okay.

10 A. So I'd just rather not make it more confusing.

11 Q. Mr. Scribner, how many -- in terms of describing the  
12 foot traffic on the private right-of-way that abuts  
13 your property that has the deeded rights and sign, on  
14 a -- on a nice summer's day, let's say even a weekend,  
15 how would you describe the foot traffic on that  
16 right-of-way? How many people would be using that  
17 right-of-way on a given summer day if you had to  
18 estimate?

19 A. 10 to 20.

20 Q. 10 to 20. Has that changed over time? You're saying  
21 10 to 20 now?

22 MR. LEONI: You'll have to answer verbally so  
23 she gets --

24 THE DEPONENT: I'm thinking.

25 MR. LEONI: Gotcha.

1 A. Because we have been proactive trying to maintain it as  
2 a private right-of-way, the use of it hasn't really  
3 changed that much.

4 BY MS. TCHAO:

5 Q. Okay. So fair to say in your 56 years for as long as  
6 you can remember, that around 10 to 20 people using  
7 that right-of-way would be a pretty constant number?

8 A. I would say that's a good average number for, you know,  
9 July, August.

10 Q. Okay.

11 A. Summertime.

12 Q. Okay. And that hasn't increased or decreased over  
13 time?

14 A. I don't think so.

15 Q. Okay. And I think Attorney Frame has already asked you  
16 these questions, but you have no way of knowing if each  
17 and every one of those 10 or 20 people on a given day  
18 using that right-of-way are back lot owners?

19 MR. LEONI: Objection to form.

20 BY MS. TCHAO:

21 Q. Would that be fair to say?

22 A. I guess -- no, I don't always know. You don't always  
23 know.

24 Q. In every case. I understand you might know some back  
25 lot owners.



1 A. But, again, again, we have actively protected the use  
2 of that right-of-way, so if someone is recognized as  
3 the general public, they're generally asked to not use  
4 it to this day.

5 Q. Okay. Has that ever happened?

6 A. Absolutely.

7 Q. Have you ever instructed someone not to use --

8 A. I have.

9 Q. -- the right-of-way?

10 A. I have, yes.

11 Q. Okay. And in every case would it be fair to say that  
12 you cannot distinguish between a back lot owner and a  
13 member of the public?

14 A. Not unless you recognize them.

15 Q. Okay. How often would you say you've told -- have  
16 you -- how have you gone about figuring out whether  
17 someone is a member of the public? Do you ask them?

18 A. You can ask them. Normally you simply say where did  
19 you park your car. Back lot owners don't drive their  
20 cars.

21 Q. Okay. And how often would you say that you've told  
22 someone not to use the right-of-way?

23 A. It happens every summer several times.

24 Q. Okay.

25 A. As I said, we proactively work to maintain it as a

1 private right-of-way.

2 Q. Okay. And if someone says -- if someone were to say I  
3 didn't park a car, I came from across the street, would  
4 that person be able to cross --

5 A. No.

6 MR. LEONI: Objection to form.

7 A. You'd ask the second question: What property are you  
8 renting, whose house are you renting.

9 BY MS. TCHAO:

10 Q. Okay. And how often have you done that, have you ever  
11 asked that question?

12 A. I'm not sure I've ever asked that question.

13 Q. Do you have knowledge if any of your family members  
14 have asked that question?

15 A. Definitely.

16 Q. And who would that be?

17 A. It would be my mother, my father, my grandmother.

18 Q. Okay. You may have answered this but I just want to be  
19 clear, in terms of giving permission, explicit  
20 permission to use the beach in front of your home, I  
21 believe you said earlier that your mother and father  
22 and grandmother had certainly done that?

23 A. Yes.

24 Q. Have you given permission, explicit permission? Have  
25 you yourself ever done that?

1 A. I have given people permission, yes.

2 Q. Okay. Is that a -- you're laughing. May I ask you why  
3 you're laughing?

4 A. I am laughing because it's not always appreciated by  
5 the residents of 291 Rear when I do that.

6 Q. Okay. Have you -- I think you've answered this  
7 question so I apologize, I just want to make sure:  
8 Have you ever told someone to leave the beach in front  
9 of your home other than I think there were three  
10 incidents that you mentioned -- actually, two incidents  
11 in which there were people --

12 A. There were only two that I could remember specifics.

13 Q. The back lot renter with the sailboat and the  
14 volleyball net --

15 A. Correct.

16 Q. -- not being taken down?

17 A. Correct.

18 Q. May I ask if it was a frequent occurrence for a  
19 volleyball net to go up on a daily basis but then be  
20 taken down on your property?

21 MR. LEONI: Objection to form.

22 BY MS. TCHAO:

23 Q. If you --

24 A. No, I don't know the answer to that.

25 Q. You don't know?

1 A. Yeah.

2 Q. Not that you remember?

3 A. Correct.

4 Q. Okay. Okay. We're getting there.

5 (Deposition Exhibit No. 12, GRB Lifeguards and  
6 Tragedies, marked for identification.)

7 BY MS. TCHAO:

8 Q. Exhibit 12 says GRB lifeguards and tragedies. Is this  
9 a document you recognize?

10 A. I've never seen this.

11 Q. Okay. The document does reference Eleanor A. Scribner.  
12 That's your mother?

13 A. Yes.

14 Q. Okay.

15 (Deposition Exhibit No. 13, The Beachcomber,  
16 7/15/46, marked for identification.)

17 BY MS. TCHAO:

18 Q. This is the Beachcomber which is dated July 15, 1946.  
19 There are excerpts from what appears to be a  
20 publication from what appears to be the Goose Rocks  
21 Beachcomber. And on the first page of this exhibit  
22 there's reference to a clambake, an evening of  
23 merrymaking for a crowd of young people, and it lists  
24 among those in attendance as Bob and George Scribner.  
25 Would that -- would the Bob Scribner be your father?

1 A. Most definitely.

2 Q. Okay. And George is his brother?

3 A. It is his brother.

4 Q. Your uncle?

5 A. Yeah.

6 Q. Is George still alive?

7 A. He is not.

8 Q. Have you seen this document before?

9 A. I have not seen this document.

10 Q. Did your father ever talk about clambakes on the beach,  
11 social events on the beach, gatherings?

12 A. Well, as a child I experienced some of them.

13 Q. Okay. Why don't we -- why don't you talk about what  
14 you experienced as a child in terms of gatherings on  
15 the beach of this nature.

16 A. What do you want to know?

17 Q. How often? What gatherings did you have on the beach?

18 A. Well, back in the '60s there were public bonfires down  
19 on the public part of the beach where kids would come  
20 and cook marshmallows and sing Kumbaya or whatever you  
21 do.

22 Q. Would these be scheduled events that would go on --

23 A. Yeah.

24 Q. -- in some years later?

25 A. I think they were scheduled usually through the Goose

1           Rocks Beach Association.

2           Q.    Okay.  This refers to a clambake.  It doesn't indicate  
3           where the clambake occurred.

4                        Do you have any knowledge based on  
5           conversations with your father about where that  
6           occurred?

7           A.    No, no idea.

8           Q.    Okay.  And the second page references a wein-nie roast  
9           at the bottom -- it's an interesting spelling of the  
10          word, wean-nie -- also indicating that Bob Scribner and  
11          George Scribner and his guest, Dave Brown, were there.

12          A.    Uhm.

13          Q.    Giving thanks to Bob Scribner for all he did to make  
14          the roast as enjoyable as it was.  And they sang  
15          Christmas carols.

16                        You've not seen this document?

17          A.    No.  I don't know most of those people.

18          Q.    Do you have any knowledge of wein-nie roasts --

19          A.    I have no knowledge.

20          Q.    -- on the beach?

21          A.    About that.  Sorry I missed it.

22                        MR. FRAME:  Me, too.  I've read about 22 banana  
23          splits down there.

24                        THE DEPONENT:  Yeah, and then down to the  
25          Riverview for desert.

1 MR. FRAME: I love the writing. Off the  
2 record.

3 (Off the record.)

4 BY MS. TCHAO:

5 Q. All right. I'm almost done with the exhibits anyway.

6 (Deposition Exhibit No. 14, Email to Almeder  
7 from O'Connor, 9/17/07, marked for identification.)

8 BY MS. TCHAO:

9 Q. Go ahead and take a moment to look that Exhibit 14 over  
10 if you would.

11 Mr. Scribner, have you seen the document that's  
12 Exhibit 14?

13 A. I've never seen it.

14 Q. You've never seen it? Okay. It -- if you would,  
15 just -- just go to what is the third page of the  
16 exhibit. This actually is the same survey, but one of  
17 them has some handwriting in it and the other one does  
18 not. The email on here says it's from Robert Almeder.  
19 It's dated December 5, 2007, and it's to all beachfront  
20 property owners at Goose Rocks Beach.

21 So did you not receive this email?

22 A. Never seen it.

23 Q. Okay. So you've never filled out a survey like this?  
24 Would that be a no?

25 A. Oh, sorry. No. No, I have not.

1 Q. Are you familiar with the Goose Rocks Beach Oceanfront  
2 Owners Association?

3 A. No.

4 Q. Never heard of it?

5 A. Never heard of it.

6 Q. Do you know Bob Almeder?

7 A. Yes, I do.

8 Q. Do you know Barbara Rencurrel?

9 A. Yes, I do.

10 Q. Do you know Peter Gray?

11 A. Yes, I do.

12 Q. And I mean other than prior to this lawsuit --

13 A. Yup.

14 Q. -- have you known these people?

15 A. I did not know Bob Almeder prior, nor did I know Parker  
16 Dwelley prior.

17 Q. Okay. Others you knew?

18 A. Barbara Rencurrel, Peter Gray and Debbie Kinney, yes.

19 Q. Okay. You mentioned, Mr. Scribner, that you were upset  
20 at the Town because of the Town -- how the Town  
21 responded and the Town's attitude that could have  
22 avoided the lawsuit. I'm going to ask you a few  
23 questions about that.

24 What do you mean -- what do you mean when you  
25 say the Town's attitude? Could you be more specific?



1 A. I believe that the Town responded in a manner that  
2 raised emotion rather than any type of solution when  
3 they sent the letter regarding the manner in which one  
4 of the people, probably in this survey group, posted  
5 the end of their path to the beach.

6 Q. Okay. I think you're speaking of the letter to Janice  
7 Fleming?

8 A. Fleming, yes.

9 Q. Does that sound right?

10 A. Yes.

11 Q. The October 2008 letter?

12 A. Yes. I think it was just an unfortunate way to respond  
13 to something, that face-to-face, a little bit of  
14 discussion would have --

15 Q. In your --

16 A. -- made a big difference.

17 Q. I'm sorry. I didn't mean to interrupt.

18 A. Go ahead.

19 Q. In your view how should the Town have responded to  
20 the -- the situation at Ms. Fleming's property?

21 MR. LEONI: Objection to form.

22 A. So you're just asking for my opinion?

23 BY MS. TCHAO:

24 Q. Yes. In your view, in your opinion?

25 A. My opinion is that face-to-face discussion results --

1 brings a much better result than a pointed contentious  
2 letter does.

3 Q. Okay.

4 A. So what should they have done? They should have picked  
5 up the phone and asked to talk about it.

6 Q. Okay. And have you -- were you aware of conversations  
7 the Town had with the Flemings?

8 A. No. I don't know the Flemings.

9 Q. Okay.

10 A. I still don't know the Flemings.

11 Q. Okay. So you don't know if the Town did have  
12 conversations prior to writing this letter?

13 A. No, I don't.

14 Q. Okay. Were you aware -- were you aware -- you  
15 obviously were not aware of the survey that was going  
16 out before -- over a year prior to the letter that went  
17 to Mrs. Fleming?

18 A. I'm not aware -- I know nothing about that survey.

19 Q. Okay. Were you aware of other efforts and discussions  
20 by some beachfront property owners with the Town in  
21 the -- prior to the -- the fall 2008 letter to Mrs.  
22 Fleming?

23 A. No.

24 Q. Okay. If -- if you knew that some beachfront owners  
25 were asking the Town to post the beach in such a manner

1           that would delimit what you have called the public  
2           beach in front of The Tides Inn as being public and the  
3           remainder of the beach being private property, would  
4           that be a reasonable request?

5                       MR. LEONI:  Objection to form.

6           BY MS. TCHAO:

7           Q.    In your view?

8           A.    In my opinion I think it's a reasonable request.  Would  
9           it have been granted, who knows.  Yes, it was a  
10          reasonable request.

11          Q.    You spoke in terms of trying to avoid a situation and  
12          trying to avoid -- you didn't use the words, fan the  
13          flames, but I will.  If I'm wrong about that -- it  
14          sounds like you believe the letter from the Town to  
15          Mrs. Fleming fanned the flames and prevented the  
16          situation from being dealt with in a way that would not  
17          have provoked a lawsuit.

18                       Is that fair to say?

19          A.    That's my opinion.

20                       MR. LEONI:  Objection to form.

21          BY MS. TCHAO:

22          Q.    Okay.  So would -- would -- would it have fanned the  
23          flames to, do you believe, to have in the minds of not  
24          beachfront owners but other back lot owners and others  
25          who have used the beach for years who you -- it sounds

1           like you -- that that was an unfortunate consequence,  
2           speaking of Bill Junker and some others.

3           A.    Uhm-uhm.

4           Q.    Would it -- would that have been a reasonable action by  
5           the Town in terms of how you believe others on the  
6           beach or back lot owners were --

7           A.    You've lost me.

8                         MR. LEONI:  Objection to form.

9           A.    You'll have to start again.

10                        BY MS. TCHAO:

11           Q.    Okay.  I'll start again.  That was poorly worded.

12           A.    It's a long circuitous question.

13           Q.    Yes, it was.  It's late in the day.  I apologize; I'll  
14           try again.

15                        Let's say the Town posts a sign saying here's  
16           the public part of the beach, it's right here in front  
17           of The Tides Inn, and the rest of the beach is private  
18           property and we ask all users of the beach to respect  
19           private property rights and send out flyers to that  
20           effect and the beach is actually posted in that way.

21                        Do you believe that if the Town were to do  
22           that, that that would allow things to just -- that that  
23           would fan the flames or would that not fan the flames?

24                        MR. LEONI:  Objection to form.

25           A.    I don't know how that -- I don't know what the result

1 of that would be.

2 BY MS. TCHAO:

3 Q. Okay. Are you aware of lifeguards having a presence on  
4 the beach on Goose Rocks Beach?

5 A. In the past.

6 Q. In the past. In your lifetime?

7 A. Yes, in my lifetime.

8 Q. And do you remember approximately the time frame that  
9 lifeguards were on the beach?

10 A. Approximately I would say in the '60s through the mid  
11 '70s.

12 Q. Okay. And do you recall where the lifeguards were  
13 stationed?

14 A. Yes.

15 Q. And where was that?

16 A. It was always in the same spot. It was to the The  
17 Tides, maybe one or two lots.

18 Q. Okay.

19 A. I couldn't tell you exactly but that's --

20 Q. And were you aware that those lifeguard -- that  
21 lifeguard service was funded by the Town?

22 A. That's my understanding.

23 Q. Okay. And were those lifeguards to your knowledge, did  
24 they also patrol the length of the beach?

25 A. No, they did not.

1 Q. Okay. Were you aware of any beach patrols of the beach  
2 funded by the Town?

3 A. No, I'm not aware.

4 Q. Not aware?

5 A. Not aware.

6 Q. It's possible that it happened but you're just not  
7 aware?

8 A. You asked me if I was aware. I'm saying I'm not aware.

9 Q. Fair enough. Are you aware of any fire department  
10 trainings that occurred down on the beach?

11 A. Yes, I am aware.

12 Q. Okay. When did those occur?

13 A. I couldn't tell you exactly when, but I remember seeing  
14 them.

15 Q. Uhm-uhm. Within the last 20 years would you say, 10  
16 years, if you had to estimate? Is it more recent or  
17 something that happened in the '60s and '70s?

18 A. Oh, no, I would say in the last 20, 30 years.

19 Q. And still happens?

20 A. I don't know. I would assume so. I don't know  
21 honestly.

22 Q. Okay. If you don't --

23 A. It's the police department.

24 Q. Okay.

25 MR. LEONI: It's okay if you don't know.

1 A. I don't know what they do.

2 BY MS. TCHAO:

3 Q. Sorry. I'm talking over you.

4 A. It's okay.

5 Q. Seagrass burning, how about that?

6 A. I remember that.

7 Q. And who did that, the Town?

8 A. I believe the Town did.

9 Q. Okay. When was that?

10 A. Well, they definitely burnt in the '60s. I don't  
11 recall when they stopped doing it.

12 Q. Okay. Within the past 20 years did they stop?

13 A. Oh, it's been stopped a long time.

14 Q. Longer than 20 years would you say?

15 A. Yeah, I would say so.

16 Q. And where did they do that, all along the length of the  
17 beach?

18 A. They burnt it everywhere.

19 Q. West, east?

20 A. Wherever there was grass.

21 Q. River to river?

22 A. Well, there isn't any grass on a great section of the  
23 beach, so.

24 Q. Okay. How about raking of seagrass? Again, these are  
25 all activities that I'm saying by the Town. Are you

1           aware of the Town doing -- undertaking raking of  
2           seagrass?

3           A.    I am aware.

4           Q.    Okay.  Again, same questions, when and where on the  
5           beach, if you know?

6           A.    I believe --

7                         MR. LEONI:  Objection to form.

8           A.    I believe, and this is bad memory on my part, I believe  
9           they only did it one summer, and it would have been in,  
10          I think, the late '60s.  It could have been two  
11          summers, but I think they only did it once.

12          BY MS. TCHAO:

13          Q.    How about trash pickup along the beach?

14          A.    They pick up trash along the beach.

15          Q.    Okay.  For, again, when?  Still do it today?

16          A.    Yeah.

17          Q.    What about swimming lessons on the beach?  I think you  
18          mentioned -- did you mention swimming lessons and  
19          tennis lessons?

20          A.    I did.

21          Q.    Okay.  Let's take swimming first.  Did you participate  
22          in swimming lessons --

23          A.    I did.

24          Q.    -- on the beach?

25                         Good.  So you'll be able to tell us where you



1 did that.

2 A. I can tell you where I did that.

3 Q. Let's go to Exhibit 6, if you would. Oh, maybe  
4 Exhibit 4 would be better. You choose.

5 A. The big one, 4.

6 Q. Yeah, Exhibit 4, okay. When did you take swimming  
7 lessons on the beach?

8 A. When?

9 Q. Yes. When you were a child?

10 A. 1962 to 1972. How's that?

11 Q. Okay. Good.

12 A. Approximately.

13 MR. FRAME: Ten years? You should be Mark  
14 Spitz.

15 MS. TCHAO: I know.

16 BY MS. TCHAO:

17 Q. I'm not going to guess how old you were then but it  
18 sounds about right.

19 MR. FRAME: Six to 16.

20 A. Yeah, maybe I was 14. Right through life saver. I was  
21 a Red Cross life saver.

22 BY MS. TCHAO:

23 Q. Was that through Ms. Fessenden?

24 A. No.

25 Q. It was not?

1 A. It was not.

2 Q. Who was it from, who ran it?

3 A. Well, it was different people, but a guy by the name of  
4 Bob Dean ran it for a long time.

5 Q. Okay. And if you could locate where on the map --

6 A. I'll just use your term, Dinghy Point.

7 Q. Oh, Dinghy Point?

8 A. Yes.

9 Q. Okay. Could you draw on the map -- again, it would be  
10 in the water so -- or near the water, put an S with a  
11 circle. Could you put that in?

12 A. Right, right there.

13 Q. Okay. Great. Thank you.

14 And did that change, the location of your  
15 swimming lessons, from year to year?

16 A. Not when I was taking lessons.

17 Q. Okay.

18 A. No. The water is damn cold down there, too.

19 Q. I believe it. And would your lessons have to vary from  
20 day to day because of the tides?

21 A. No.

22 Q. Tennis lessons, I assume those were not on the beach?

23 A. Correct.

24 Q. Okay. All right. If you could go back to Exhibit 6 --  
25 I'm almost done here. Bear with me.

1                   What is your understanding, again, not from  
2                   your lawyer, your understanding, of where the public  
3                   rights-of-way to Goose Rocks Beach are?

4           A.    Public rights-of-way, to my understanding, I know  
5           you're going to ask me to circle, there's one at the  
6           termination of Dyke Road.

7           Q.    Oh, it's not on this map?

8           A.    It's not on that map.

9           Q.    Sorry. Can you go to Exhibit 4 which I can't see very  
10           well, but I can show you where Dyke Road is if that's  
11           helpful.

12          A.    So it's right there. So the termination of Dyke Road,  
13           that's a public right-of-way, and I believe it's right  
14           above the word that says portion. It should be right  
15           there.

16          Q.    Is it -- is it above the sea and rocks? Would that be  
17           where the Dyke Road right-of-way is?

18          A.    No, no, no. Further to the west.

19          Q.    Okay.

20          A.    It says sand portion. Right above portion that should  
21           be the Dyke Road.

22          Q.    Okay. Can you circle where you think the Dyke Road  
23           public right-of-way is and write Dyke ROW. Dyke is  
24           fine, I think.

25          A.    Okay.

1 Q. Okay.

2 A. There's a second -- there's another what I believe to  
3 be a public right-of-way. It's adjacent to my  
4 brother-in-law's property, to the Forest property,  
5 which I think is right above the R of rocks, but I  
6 could be wrong. But I think that's -- that's the  
7 approximate location.

8 Q. Okay.

9 A. There are what is believed to be public access along  
10 what I call the public part of the beach. There's  
11 several paths there.

12 Q. Yes.

13 A. I couldn't possibly identify them on here. And then  
14 there's one known as Jeffrey's Way which is much  
15 further to the west.

16 Q. Let's go to --

17 A. That's public access.

18 Q. Okay. Let's go to map -- I'm sorry, Exhibit 6, if you  
19 will.

20 A. Yeah.

21 Q. And look at Jeffrey's Way or Jeffrey's Road.

22 A. Road. It says road.

23 Q. Is that what --

24 A. Yes.

25 Q. -- you're speaking about?

1 A. Yeah. That's -- that's public access.

2 Q. That's a public access. And that's fairly near your  
3 house?

4 A. Yes, it is.

5 Q. Okay. Have you ever seen people utilizing the  
6 Jeffrey's Way right-of-way to get to the beach?

7 A. Yes, I have.

8 Q. And, again, fair to say that you -- it's not possible  
9 always to distinguish between a member of the public or  
10 a back lot owner or a beachfront owner?

11 A. Right.

12 Q. Have you ever observed what you believe -- who you  
13 believe to be a member of the public using that  
14 right-of-way?

15 A. Yes.

16 Q. Okay. And do you believe --

17 A. Do I call qualify?

18 Q. Go ahead.

19 A. I've used it.

20 Q. You've used it? Okay. If you've observed a member of  
21 the public or someone you believe to be a member of the  
22 public, is that based on how they look or you've asked  
23 or --

24 A. No. I -- I -- I know many people that live in that  
25 area and they use it as their normal beach access, so

1           those are your back lot owners. And there's always  
2           public -- public -- general public parks along the New  
3           Biddeford Road during the summer, so you know there's  
4           general public using it.

5           Q.    Okay. And you've seen them?

6           A.    Yes.

7           Q.    Okay. So if a member of the public were to use that  
8           right-of-way which let's assume that's -- about how  
9           wide is that right-of-way to the beach? 10 feet, 15,  
10          20 feet?

11                         MR. LEONI:  Objection, form.

12          A.    It's probably 20 or 30.

13                         BY MS. TCHAO:

14          Q.    Okay.

15          A.    Just estimating. It's the full width of a road.

16          Q.    Okay. So if someone -- if you observe someone using  
17           that right-of-way to get to the beach, let's assume  
18           it's a member of the public, in your mind once the  
19           person gets to the beach, does that person have the  
20           right to go left or right down the beach?

21                         MR. LEONI:  Objection to form. And I think Amy  
22           has alluded to this, but she's not looking for any  
23           privileged information, but to the extent that your  
24           understanding is the result of discussions with your  
25           attorney, that is privileged information and I'm

1           instructing you not to answer.

2                       THE DEPONENT: Okay.

3       A.    I will answer it, and say that they don't have the  
4            right to go right or left.

5                       BY MS. TCHAO:

6       Q.    Okay. So they presumably could recreate in that  
7            20-foot width all the way down to the low water mark,  
8            and that's all they have the right to do?

9       A.    That's all they have the right to do.

10      Q.    So have you seen members of the public go left or right  
11            on the beach?

12      A.    Of course.

13      Q.    It's a rare day when they would stay within the 20 feet  
14            right in front where Jeffrey's Way ends?

15      A.    Right.

16      Q.    Okay. And, I take it, that you believe that if -- that  
17            if the beachfront owners on either side of Jeffrey's  
18            Way are silent and yet they observe those people going  
19            left or right, that they are then giving them  
20            permission, is that your view?

21                       MR. LEONI: Objection to form.

22      A.    I can't answer for those people.

23                       BY MS. TCHAO:

24      Q.    Okay. All right. Almost done. Bear with me.

25                       MR. LEONI: How are you doing?

1 THE DEPONENT: Fine.

2 MR. LEONI: Okay.

3 BY MS. TCHAO:

4 Q. I meant to ask you if a beachfront owner had ever  
5 denied you permission, and I think with the exception  
6 of Mr. Page who objected to your water-skiing, that you  
7 couldn't recall; is that right?

8 A. Yeah. Just to qualify, he didn't object to the  
9 water-skiing, he objected to us --

10 Q. Right.

11 A. -- walking on his property.

12 Q. Understood.

13 A. Along the riverbank.

14 Q. And with the exception of that one example, you can't  
15 recall any others?

16 A. I don't have a memory of any others.

17 Q. Can I ask you, if you remember, what you did when he  
18 objected to your crossing his property?

19 A. Well, I was brought up to be a fairly respectful kid so  
20 I said okay.

21 Q. So -- okay. So what did you do? Did you say I guess  
22 we can't water-ski today or --

23 A. No, we wouldn't water-ski from his property, we'd move  
24 further down the beach.

25 Q. Down towards your property or down further east?



1 A. No, further out on the river. He objected to us  
2 walking on his property, not water-skiing. He had no  
3 control over whether we water-skid in the river or not.

4 Q. Right. And so I'm not trying to be difficult here, I'm  
5 just trying to understand what you did.

6 A. We would simply move further away from his house.

7 Q. And go into the --

8 A. No. We --

9 Q. Walk into the water?

10 A. No, we probably technically were still on his property,  
11 but we would move further along the riverbank. And  
12 that's all he asked us to do.

13 Q. And if you were walking, which you say you do on  
14 occasion the length of the beach and a beachfront owner  
15 would say to you I don't want you walking on my  
16 property, even if you're passing along, what would your  
17 response be?

18 MR. LEONI: Objection to form.

19 A. I would say, I'm sorry to hear that, and I would  
20 respect his right to stop me.

21 BY MS. TCHAO:

22 Q. And would you turn around and go home or how would  
23 you -- what would you do at that point?

24 A. Well, I probably would have to ask his permission to  
25 continue walking across his property to get to the

1 other side, but no, I'd just keep walking.

2 Q. And if he said you don't have my permission to do that,  
3 I'm sorry, this is my private property and I don't want  
4 you walking across my property, even to get to the  
5 other side?

6 A. Then I'd have to backtrack and move on. I wouldn't  
7 make a big deal out of it.

8 Q. You understand that's technically a possibility -- a  
9 possible outcome of this lawsuit?

10 A. Absolutely, yeah. I absolutely understand that.

11 Q. All right.

12 A. Just for the record, I'm not Mr. Wilson.

13 Q. Understood. And your attorney is not Dennis the  
14 Menace?

15 A. I like to think that I'm one of the good guys.

16 Q. Attorney Frame touched on -- this is the last few  
17 questions I have -- he asked you some questions about I  
18 think what it was that made you join the lawsuit and  
19 join it early, your personal motivation for the  
20 lawsuit.

21 And if -- are you concerned about the -- you  
22 said the activities haven't changed but there's  
23 increased volume on the beach and increased housing  
24 density of not necessarily in the zone but in the  
25 neighboring areas that you believe are impacting the

1 beach; is that fair to say?

2 A. Yes.

3 Q. Okay. And is it fair to say you're concerned about  
4 that?

5 A. Yes.

6 Q. Okay. Are you concerned about commercial development,  
7 pressures on the beach?

8 A. Yes.

9 Q. Are you concerned about things like piping plover  
10 habitat or protecting species of birds on the beach?

11 A. I'm a conservationist so the answer is yes.

12 Q. Are you also concerned about large numbers of people  
13 getting deposited on the beach through shuttle buses  
14 or --

15 A. Absolutely, yes.

16 Q. -- big tourist buses?

17 Okay. I assume you would be very concerned if  
18 the Town were to build a public parking lot off of New  
19 Biddeford Road that was within walking distance of the  
20 Jeffrey's Way public right-of-way to the beach?

21 MR. LEONI: Objection to form.

22 A. I would be concerned if they did that and did not  
23 remove other parking areas.

24 BY MS. TCHAO:

25 Q. Okay. So assuming -- I know there's a big if here --

1 but assuming that the Town were to address those  
2 concerns through its powers and its authority, would  
3 that take away your motivation for joining this  
4 lawsuit?

5 MR. LEONI: Objection to form.

6 A. I would -- I can't -- I can't answer that now. I'd  
7 have to understand in detail what the Town would want  
8 to do.

9 BY MS. TCHAO:

10 Q. Okay. That's fine. All right. Bear with me.

11 MS. TCHAO: Those are my questions. You've  
12 been very patient. Thank you.

13 THE DEPONENT: My pleasure.

14 MR. FRAME: Any questions?

15 MR. LEONI: Nothing from me.

16 MR. FRAME: Thanks, Mr. Scribner.

17 (The deposition concluded at 4:33 P.M.)

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I, ROBERT H. SCRIBNER, do hereby certify that  
the foregoing testimony taken on March 28, 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 ROBERT H. SCRIBNER 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 28, 2012 the following-named person to wit: ROBERT H. SCRIBNER, 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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
Colleen A. DiPierro, RMR, CRR

My Commission Expires  
May 1, 2018

1 Colleen A. DiPierro  
2 **DIPIERRO REPORTING, LLC**  
3 220 Pine Street  
4 South Portland, ME 04106  
5 207-767-5330

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8  
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10  
11 April 13, 2012

12 Benjamin M. Leoni, Esq.  
13 Curtis Thaxter  
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15 P.O. Box 7320  
16 Portland, ME 04112-7320

17  
18 RE: Robert Almeder, et al. v. Town of  
19 Kennebunkport, et al.

20 Enclosed please find your copy of this deposition of  
21 ROBERT H. SCRIBNER taken in the above-mentioned action  
22 on March 28, 2012. Also enclosed is the original  
23 signature page and a sheet for corrections.

24 Please have ROBERT H. SCRIBNER read your copy of the  
25 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 Gregg R. Frame, Esq. within 30  
days.

Thank you.

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ERRATA SHEET OF: ROBERT H. SCRIBNER

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ROBERT H. SCRIBNER