

***MAINE VOICES* Kennebunkport seizing private property rights at Goose Rocks Beach**

The claim made by the town is an irresponsible change of the status quo regarding beach access.

ROBERT ALMEDER and JACK FLEMING October 30, 2009

Last year a couple at Goose Rocks Beach posted at their access path to their beach a sign reading: "Reserved Access. Private Beach. No Public Access."

In a letter to the owners last October, the town manager of Kennebunkport asserted that the community "... does not acknowledge the legitimacy of any claim of restricted access to members of the public that is asserted by your placement of this sign."

The town thus asserted for the first time that beachfront owners have no right to restrict in any way public access to their property, that the general public has acquired a basic right to recreate on any private property on the beach without permission.

The vast majority of the owners deny that the general public has acquired any such right, and they have retained the law firm of Curtis Thaxter in Portland.

They believe that the adversarial claim made by the town represents a remarkably unjustified, unprecedented, and irresponsible change of the status quo on the question of the limits of public and private access at Goose Rocks Beach.

The motivation for this legal action is basically to prevent the town of Kennebunkport from turning the whole of Goose Rocks Beach into a public beach as a wider tourist attraction than it currently is. This action is clearly not motivated by any desire to close Goose Rocks Beach to general public recreation, and especially not to the residents of Kennebunkport.

Indeed, the owners acknowledge that the general public has unrestricted recreational access to the public beach, which is that portion of the beach embracing both the town's lot and the area owned by the Kennebunkport Conservation Trust and held in trust for public recreation. This area is in the middle of the beach, clearly marked, with public access paths, and is longer than two and a half football fields.

The owners along with many neighbors not on the beach are also motivated in this action to prevent further deterioration of the beach by progressively excessive public use during the summer months. Furthermore, the unnecessary disturbance of the wild and uncultivated bird habitat areas on the beach upsets many residents.

Finally, the uncontrolled and continuing development of seasonal condominium hotels and motels in the neighborhood constitutes a persistent assault on neighborhood identity.

Such development expands and threatens a loss of existing tranquility, privacy, essential wildlife habitat, and traffic safety by furthering serious congestion on the beach and on the nearby roads.

The town presently refuses to do anything to limit this growth undermining the residential nature of the Goose Rocks area and the easy accessibility all the residents of Kennebunkport have had before this recent boom.

Make no mistake about it. This is a legal dispute between beachfront owners and the town on the question of who has the right to determine the limits of recreational use on private beach-front property. It is not an effort to close the private beach to the community at large. Indeed, beachfront owners in the past have often welcomed visitors to the beach.

There is a strong sense of community at Goose Rocks Beach. Residents are happy to see a reasonable use of the beach. It is important, however, that this pristine beach be protected for the community from the excessive tourism that would occur with unrestricted commercial access authorized under town control without the consent of the owners.

Even so, the owners have expressed a willingness to abandon litigation if the Town of Kennebunkport provides appropriate signage, information brochures indicating where the public and the private areas of the beach are, the prompt enforcement of trespass laws when initiated by beachfront owners, and restrictions on buses and shuttles by way of dropping off and picking up visitors at public access paths to the public area of the beach.

If the town will agree with these conditions, then the owners will consider seriously an agreement permitting the general public to walk the beach from end to end at any time. If the town does not accept all the conditions proposed, however, the beachfront owners will need to continue litigation in order to obtain a court judgment strictly enforcing ownership rights. To date, the town has not accepted any of these conditions.

Unfortunately, this episode could become a long, costly and bumpy ride for the community.

Copyright © 2009 MaineToday Media, Inc.