

COMMONWEALTH OF MASSACHUSETTS
LAND COURT

BACK BEACH NEIGHBORS COMMITTEE)
)
)
 Plaintiffs,)
)
)
 v.)
)
)
 BEACH STREET, BACK BEACH, THE)
 BEACH STREET OFF-STREET PARKING LOT,)
 TWO BATHROOMS, A GAZEBO, AND THE)
 BEACH STREET SCHOOL HOUSE)
)
 In Rem Defendant Property)
)
)

Docket No. 21 MISC 000174

BACK BEACH NEIGHBORS COMMITTEE)
)
)
 Plaintiffs,)
)
)
 v.)
)
)
 TOWN OF ROCKPORT and)
 CITY OF GLOUCESTER)
)
 Defendants)
)
)
 AND OTHER UNKNOWN PARTIES)
)
)
 Defendants)
)
)
 MARK DIGIOVANNI (27 Beach Street),)
 DAVID AND VALERIE DIGREGORIO)
 (52 Beach Street), JAMES MCSWEENEY)
 (50 Beach Street), NAGY AND CHRISTINE)
 ACCAD (21 Beach Street), GEORGE MUNIZ)
 AND/OR MEGHAN O'SHEA (10 Smith Street),)
 KEITH GRAY (34 Beach Street), TERRENCE)
 GOLDEN (30 Beach Street), LAWRENCE AND)
 MARY SANTAPPAUL (51 Granite Street),)
 AMERICAN LEGION POST #9)
 (32 Beach Street), ROCKPORT PUBLIC)
 WORKS COMMISSION,)

<i>Abutters or other interested parties</i>)
)
OWNER OF 1R SMITH ST., Rockport)
)
<i>Abutter</i>)
)
OWNER OF 9A SMITH ST., Rockport)
)
<i>Abutter</i>)
)
OWNER OF 9 SMITH ST., Rockport)
)
<i>Abutter</i>)
)
ATTORNEY GENERAL MAURA HEALEY)
)
<i>Noticed Party</i>)
)
)

Amended Complaint

Now comes the Plaintiffs, the Back Beach Neighbors Committee who makes complaint as follows:

TOC

I – Try Title

II – Quiet Title

III – Declaratory Judgment

IV – Ouster

V – Reverter and Reentry

VI – Partition

VII – Continuing Trespass

VIII – Lateral Support

IX – Taking

The Parties

1. The Back Beach Neighbors Committee is an unincorporated association with common interest in the improvement and maintenance of Back Beach in Rockport. Its members consist of neighbors and abutters on Beach Street. They have concerns about the quality of life and the quiet enjoyment of the property. It has standing and is entitled to assert the rights of its members. The Committee has roughly a dozen members. Among its members, for whom it speaks in this case, are: Mrs. Stephanie Rauseo, Mr. John Franco, Mrs. Anne Rosone Franco, Mr. Thomas Giblin, Mr. Gaetona “Guy” Cerendulo, Mrs.

Roseanne Cerundulo. The Committee anticipates that other people may join its claims, in the event that Beach Street is determined to be a private way, the abutters rights may be affected or increased to prevent the creation of landlocked parcels. In this case the Committee seeks a judgment to bind the following properties, all in Rockport, as the Plaintiffs and to ascertain the nature and extent of their easterly seaward boundary as well as the rights of property the Committee Members claim to own in fee simple, as well as certain reversionary interests they are entitled to enforce:

- 60 Beach Street
 - 58 Beach Street
 - 56 Beach Street
 - 54 Beach Street (and one unnumbered parcel conveyed on the same deed)
 - 48 Beach Street (and another parcels conveyed on the same deed).
2. The Back Beach is a sand and rock-strewn beach bounded by geographic features now or formerly known as: Hale's Point, Knowlton's Point, Dodge's Rock, Poole's Hill. Back Beach is in Rockport and immediately borders Back Harbor and the Atlantic Ocean. On the northern end of the beach is the so called "Lobster Pool" on land formerly belonging to Azor Knowlton as well as the intersection of Granite and Beach Streets. On the southern end of the beach is a schoolhouse built in 1860, a triangular common, a gazebo, what has been characterized as an off-street parking lot, two bathrooms. Along the top of the beach is a revetment within an easement taken by the Town of Rockport, as well as Beach Street. This stretch of Beach Street is roughly ¼ mile long. The contested property can be partially, but not completely, described by reference to the Assessors Maps of the Town of Rockport as containing the following parcels: 17-44, 17-54, 18-247. The Plaintiffs also plead for their predecessors-in-title who possessed the right into perpetuity to erect and maintain gates across the private way that is now Beach Street. Collectively this land and property is herein denoted "the Property."
 3. The Town of Rockport is body politic which was carved off from the Town of Gloucester in 1840. Formerly being the fifth parish of Gloucester, part of the third parish was also carved off to create the new town. The split was the culmination of roughly 35 years of dispute between the villages of Sandy Bay and Pigeon Cove and the rest of Gloucester.
 4. The City of Gloucester is a municipality formerly incorporated under grant from the colonial government of Massachusetts and the Kings of England. It is the only other municipality on Cape Ann. The City is governed by a Mayor and City Council.
 5. The Committee has identified 18 abutters or other interested parties who should be noticed in the event that they have a claim, or an objection. They are:
 - a. Mark DiGiovanni (27 Beach Street)
 - b. David and Valerie DiGregorio (52 Beach Street)
 - c. Nagy and Christine Accad (21 Beach Street)
 - d. Jim McSweeney (50 Beach Street)
 - e. George Muniz and/or Meghan O'Shea (10 Smith Street)

- f. Unknown Owner (1R Smith Street)
- g. Unknown Owner (9A Smith Street)
- h. Unknown Owner (9 Smith Street)
- i. Keith Gray (34 Beach Street)
- j. Terrence Golden (30 Beach Street)
- k. American Legion Post 98 (32 Beach Street)
- l. Rockport Public Works Commission (Town Hall, 34 Broadway)
- m. Lawrence and Mary Santapaul (51 Granite Street)
- n. Attorney General Maura Healey

In light of the complex and difficult nature of reversionary interests and deeds going back decades, the Committee additionally seeks leave of the Court to serve notice by publication to any additional unknown unidentified potential parties or claimants.

Abbreviate Historical Background of the Contested Properties

6. Beach Street was laid out as part of the King's Highway in 1707 by the Selectmen of Gloucester, under a direction to connect all of the villages on Cape Ann. Other sources report that Beach Street was not laid out until 1710. Early maps and records refer to the road on the top of Back Beach as, variantly: "the road across Back Beach," "Beach Avenue," "road between Sandy Bay and Pigeon Cove," "road to Knowlton's point," and other descriptions.
7. Until 1836 Beach Street was a tidal road, usable only at low tide. Nonetheless, the road was superior, in width and its ability to carry heavy cart loads, to the footpaths and the long way around Poole's Hill. In 1836, Azor Knowlton obtained a public contract to pave the road.
8. Beach Street was originally a public road, although prior to the enactment of the Revised Statutes, the meaning of public versus private ways was different than the legal meanings of the terms. The Town of Gloucester, over a 20-year period starting in 1778, undertook a comprehensive review, refurbishment, survey and cataloging of its public highways through successive committees of Town Meeting. Circa 1792, the Town of Gloucester voted to abandon and discontinue Beach Street as a public way because of the construction of a "new road," helped by the levelling of two of the large hills. The "new road" changed its path and was widened nearly every year between 1800 and 1848 but became known as the northern end of King Street, and later North Street, before in the 1930s changing its name to Granite Street. In 1799, the Town of Gloucester voted to give the abutters of Beach Street the right to "erect and maintain" "gates" across the road "into perpetuity." Contemporary and historical sources record that the gates were erected as part of Azor Knowlton's paving of the road in 1836 and kept until 1860.
9. Circa 1825 the owners of property along Back Beach were Andrew Tarr, Henry Clark, John Gott & J. Wallis, Gorham Norwood, and Azor Knowlton.

10. Amid several local political disputes in the 1820s and 1830s between the villages of Gloucester, over taxes and representation and industry, Sandy Bay village strove to obtain all the trappings of independent local government. Local landowners gave either land or money donated to build a new schoolhouse on Beach Street on the southern end of Back Beach. The Knowlton family were strong supporters of Sandy Bay Village. Azor and Nehemiah Knowlton were on the school committee and over saw donations and collections. The schoolhouse lot was assembled from parcels from several people. For example, the school committee eventually bought part of the plot on the southern end of Back Beach from Michael Knowlton on December 31, 1821. The deeds granting land to the school committee district explicitly condition the land upon its use as a primary school.
11. The disputes between Sandy Bay village and the rest of Gloucester continued to mar public affairs for two decades. Rockport achieved its independence in 1839, effective 1840. It was not for another 20 years, in 1860, that the Town built the Beach Street schoolhouse. It took Rockport approximately 25 years from independence before it built a town hall.
12. As recorded by Dr. Lemuel Gott, in his centennial address published in 1888, the citizens of Rockport were very excited in 1854 about the upcoming anniversary of their independence from Gloucester by the erection of the fifth parish of Gloucester. The Rockport citizenry wanted to have a special celebration to coincide with the national celebration of independence on the Fourth of July. They approached William Knowlton, relative of Azor, and obtained permission to have a Fourth of July Celebration in Knowlton's pasture. The permission was accompanied by the acid observation that the Citizens of Rockport had not yet fought for their freedom. William's pasture was adjacent to the lot given to the Sandy Bay School District for a primary school in 1836, which had lain fallow for 20 years. This annual Fourth of July Celebration has continued without interruption into the present day, prominently featuring a bonfire, on what is now the schoolhouse lot. William would continue Azor's work building a pier on the north end of the Back Beach, later obtaining sanction from the legislature.
13. 1860 also saw significant public improvements, without a corresponding change in legal status. The first sidewalk was erected on Beach Street, on the ocean side, in 1860. In 1860, the Town also bought and planted at least four major willow trees which survived into the 1930s.
14. The Beach Street school house became schoolhouse Number 4 in Rockport. It was improved with indoor plumbing and running water in the later 1890s. By 1904 the schoolhouse was in poor repair, despite having a full-time janitor, and went through a major refit in 1904-1905. In 1930, the Town of Rockport abandoned any and all education use of the Beach Street School house. The schoolhouse was, ostensibly, turned over to the custody and control of the American legion who held its first event in the building as a fundraiser for public relief efforts in the Great Depression in 1931. Since 1931, the schoolhouse has been colloquially known as the Legion Hall.

15. 1797-1799, while surveying and cataloging all the Town's public property, the Town Meeting accepted a report by an investigative committee who reported that there were 7 public landing places in Gloucester. Back Beach was not one of the landing places.
16. A survey of Back Beach, circa 1836, reports that the Gorham Norwood and John Gott parcels, unlike all the other parcels on Beach Street, do not have beach rights extending their property to the median highwater mark. The 1836 report is based on the original settlement plans of Gloucester, from the 1660s-1680s. Unfortunately, the plots in the Sandy Bay area were quite small and did not obtain significant investment or purchasers. The settlement plans were abandoned in the 1740s, and do not bind the rights of any other property in Gloucester or Rockport. Indeed, the historical sources report the settlement plans largely abandoned in relation to what is now Rockport.
17. The ineffectiveness of the Back Beach survey is shown in contemporaneous deeds of the abutters which convey land "to the seashore" or to Beach Street (recalling that it was a tidal road until 1836). These deeds included official transactions like the purchases and donations of land to assemble the Beach Street School House lot. Indeed, Azor Knowlton was involved as a town official, despite being a neighbor with similar interests. These deeds exist both before and after the survey. It is also unclear whether the report of the survey committee was ever accepted by the Gloucester, or Rockport, Town Meeting, both of which routinely rejected committee report relating to public rights. The Gloucester Town Meeting, and later the Rockport Town Meeting, also routinely gave over public appropriation to improve or maintain concededly private roads.
18. In the first quarter of the 20th Century, several landowners donated or sold land to the Town of Rockport for the improvement of Beach Street. These gifts were expressly conditioned upon the widening and improvement of Beach Street. The Town planned the widening of Beach Street and drew up maps to that effect. However, the plans were abandoned but the Town retained the land. Part of the plans included a land swap with Willis Knowlton, heir of Azor Knowlton, for land at the northern end of Beach Street.
19. In the late 1920s, the State Legislature approved substantial outlays to layout a state highway and county road which is now Route 127, running down Granite Street. The Town of Rockport, using state and federal funding and under the supervision of the Essex County Commissioners, spent substantial monies on public works to alleviate the Great Depression. Part of the improvements of the 1930s included the erection of a small revetment or seawall along Beach Street segregating it from Back Beach. The improvements also saw the ambitious construction of drainage and sewerage systems by the Rockport Water and Sewer Commissioners. Apparently, the revetment served to allow a new gravity-fed storm drain and sewerage systems. Similar improvements were made to Front Beach. The Rockport Water Commissioners made a series of takings to lay pipes and water services. Several funds were allocated, the remainder in 1934 dollars is estimated to be \$3500, and many of the funds for takings went unclaimed when the owners could not be found or served.

20. The disputed property is in a residential neighborhood which is zoned as residential. In the 1930s a restaurant known as the Orchards existed and was a popular, elegant destination off of the beaten track and out from the downtown business district. A building, owned by Committee Members, still stands where the Orchards used to be. However, the restaurant folded before the conclusion of WW2 and was the last commercial activity (out of fixture or real estate) in the disputed stretch of Beach Street.
21. In 1931, the Rockport Selectmen and several others petitioned the Essex County Commissioners to survey Back Beach, believing it to be a public landing spot. The Essex County Commissioners did come out and survey the boundaries of the Beach. The surveyors lamented that the maps of the Town of Rockport were poorly kept and frequently inaccurate and at variance with official state and county maps. The boundary markers laid by the Commissioners remain.
22. The Essex County Commissioners, in the survey of Back Beach, adjusted the front seaward boundaries of the properties of the committee members. For example, Sarah Fernwald, one of the heirs of John Fernwald who took from Gorham Norwood, recorded a deed reciting her front boundary as being to Beach Street, but after the Commissioners adjusted the boundary, she sold the property to a boundary being a defined line not contiguous to Beach Street.
23. The front boundary line of all the Committee member's property was adjusted in this way. The adjustments, among other things, make no provision for access to Beach Street. Most of the properties between Beach Street and Granite Street used to touch both streets, but they are now, universally, subdivided.
24. The Essex County Commissioners exceeded their lawful authority, only having statutory power to survey Back Beach and Beach Street if, in fact, it was a public landing. Back Beach is not a public landing.
25. Resting upon the 1836 survey, and its affirmation by the County Commissioners, the Town asserts to own a triangle of land starting at 60 Beach Street and widening down toward 48 Beach Street, on the west side of Beach Street invading the land recited in the chain of title in Committee Members predecessors. The Town contends that this triangle extends all the way to the schoolhouse lot.
26. When the Committee members brought a nuisance suit in July 2020, relating to divers using Back Beach, the Town's policy makers sought to retaliate. The contemplated retaliation was started by a discussion of the Town's public works commission considering whether to assert the Town's rights in places where neighbors control and have improved land on their side of the pavement.
27. The Committee members have, in fact, improved land such as by gates, stone-paved patio porches, and other accoutrements, on portions of land which the Town claims to own.

28. Upon the lower end of the triangle, and the top of the Schoolhouse lot, the Town has built (circa 1983) two public restrooms and an off-street parking lot with angled parking.
29. The bathrooms and angled parking (as well as the parking meters) actually invaded the Committee Members land, on their current deeds. This invasion continues with when improvements to the bathroom's pumps, or the new computerized meters, have within the last 3 years been placed upon Committee Member land. Worst yet, the Town has started to exercise its permitting and approval authority to deny the Committee members use of their land, such as subdividing, because it would interfere with the Town's encroachments onto what the Town acknowledges is Committee Member's land.
30. The Committee members acknowledge that the Town has an easement for drainage purposes consisting of the revetment. However, the Town has encroached upon the Committee members land and assumed land rights which it does not possess.
31. The Committee members assert that they own and are entitled to legal remedy for their rights:
 - Back Beach
 - The School House lot and its fixtures, including the public bathrooms, the off-street parking lot, and the gazebo
 - Beach Street

Further Factual Pleadings

32. Committee Member Rauseo owns what is now 58 Beach Street, previously numbered 56 Beach Street. Mrs. Rauseo's predeceased husband, Michael Rauseo, inherited the property from his parents, notably Michael and Dorothy Rauseo, who bought the property in 1962. After John Fernald's appearance in Mrs. Rauseo's chain of title, the same chain speaks for the Cerundulos of 60 Beach Street and the Francos of 56 Beach Street. After the appearance of Gorham Norwood in the chain of title, Mrs. Rauseo's chain also speaks for Franco's property at 48 Beach Street, 54 Beach Street and the two associated parcels. Mrs. Rauseo's chain of title may recited to consist of the following, approximately:
 - From Michael Rauseo to Michael and Stephanie Rauseo, Trustees of the Michael J Rauseo Trust, by deed dated February 8, 2010, recorded in the South Essex Registry of Deeds at Book 29273, Pages 36-37.
 - From Michael Rauseo, executor of the will of Dorothy Rauseo, to Michael Rauseo, by deed dated March 2, 2006 recorded in the South Essex Registry of Deeds at Book 25492, Page 236.
 - From Louis H. Anthony to Michael and Dorothy Rauseo, by deed dated October 2, 1962 and recorded at Book 4991, Pages 280-281 in the Registry of Deeds.
 - From Annie M. Hodgins to Louis Anthony, by deed dated July 16, 1945 and recorded at Book 3417, Pages 356-357, being the second parcel in the deed from Ms. Hodgins. Mr. Anthony also had his property mapped out in a plan record made by Howard Marston, on June 14, 1946, and layed out in the records of the Registry at Book 3738, 560.

- From William Currier to Annie M. Hodgins, by deed dated March 31, 1939, and recorded at the Registry at Book 3191, Pages 388-389.
- From Charles J. E. Hodgins to William Currier by deed dated October 1, 1937, and recorded at the Registry at Book 3126, Page 537. Mr. Hodgins's title deriving as a devisee, legatee and heir under the will of his sister Annie D. Hodgins.
- From Henry Hodgins to Annie D. Hodgins, from 1908, recorded at Book 1951, Pages 284-286.
- From Catherine Powers to James Hodgins, dated May 1, 1906, and recorded at Book 1822, Pages 440-441.
- From George W. Cleaves, Betsy Jane Tarr, Willard Cleaves, George E. Cleaves, and J. Fred Cleaves to James Hodgins, dated April 21, 1894, recorded at Registry Book 1409, Pages 26-28.
- From Wilbur H. Sargent to Mary Burns, dated September 18, 1886, and recorded in the Registry at Book 1182, at page (leaf) 124.
- From William and Emma F. Fairfield to Wilbur H. Sargent, date March 9, 1886, and recorded in the Registry of Deeds at Book 1169, Page (leaf) 152.
- From the estate of James Fernald to Emma F. Fairfield *nee* Fernald, by partition/division deed dated May 1877, recorded at Book 1153, Page (leaf) 140, and also from Mary Burns and Betsy Jane Tarr, who hold title under the same partition deed.
 - Through a division deed all of the children of James Fernald, and their spouses, including the Cleaves, the Tarrs, the Fairfields, the Dennises, and Fernalds, and the Widow Fernald divided land between themselves. The deed conveys partial interests in then existing structures, rights to use stairways, traditional cow grazing rights, and other valuable rights to run with the land. The partition, as recorded, was approved by the Probate Court, and is recorded at Book 1153, Pages 139-141, proving a seven way division of real property into adjacent lots.
- From Gorham Norwood, Esther Norwood, John Rowe, and Eliza Rowe to James Fernald, by deed dated March 18, 1853, and recorded at the Registry of Deeds in Book 579, Pages 122-123.
- Most notably, from the estate of Abigail Parson *nee* Pool, through her heirs James D. Parsons, Bulah G. Parsons, William F. Abbot, Mary D. Abbot, David Holbrook, Abigail Holbrook, James Griffin, Eliza Griffin, to John Preston, James Fernald, and Levi Sewall by deed dated March 20, 1860, and recorded in the Registry at Book 603, Pages 291. As recited in the Deed, Abigail Pool inherited 60,000 square feet of beach, on the eastern side of Beach Street, from her father Isaac Pool, who inherited it from his father John Pool who came to own it in 1720. The deed specifically recites running along the land of William H. Knowlton (the heir of Azor) currently own by his descendant Mark DiGiovanni. The DiGiovanni Property marks, as the Town's public records currently reckon, the northern end of Back Beach. This deed does not speak to all of the land claimed by the Committee, but unequivocally establishes that the Town does not own the land it claims to.
- From James B. Stillman to John Preston and James Fernald, by deed dated May 1862 and recorded at Registry Book 637, Pages 23-24

- From Benjamin Haskell and Jane Haskell to James Fernald by deed dated April 15, 1863 and recorded at Registry Book 650, Pages 284-285
 - From Gorham Norwood and Esther Norwood to John Preston, James Fernald, and Levi Sewall by deed dated February 16, 1850, record at Book XX, Page 6.
 - From Gorham Norwood and Esther Norwood to John Fernald by deed dated January 18, 1849, and recorded in the Registry.
 - From Gorham Norwood to Morris Hill, by deed dated January 19, 1849, and recorded in the Registry.
33. Other relevant historical deeds and records relied upon in support of the Committee's contentions may be cited as follows:
- An indenture from John Pool, Isaac Pool, and John Rowe dated September 12, 1785, recorded at Book XX, Pages 199-201, reciting land going to the beach, running along the short, intersecting with the road of Pigeon Cove just short of the gate.
 - A deed from John Rowe to Caleb Norwood Jr. dated May 10, 1786, recorded in the Registry of Deeds, at Book XX, Page 74-75. This deed recited land running to the beach, with adjacent land belonging to Capt. Mark Pool, John Gott, Isaac Pool.
 - A deed from Caleb Norwood to Caleb Norwood Jr. dated February 5, 1787, reciting a parcel of land with half a barn, and an adjacent parcel containing Stephen Norwood's fish house and sea land along the highway, recorded at Book XX, Pages 75-76.
 - A deed from John Rowe to William Rowe, dated July 27, 1789, recorded at Book XX, Pages 86-87, reciting land running to the short beach and then along the sea by the highway.
 - A Deed from Caleb Norwood to Gorham Norwood, dated April 16, 1818, recorded at the Registry at Book XX, and Pages 156-157, reciting land running to the wall at the Back Beach and thence running by the Back Beach.
 - A Deed from John Pool to John Gott, dated August 20, 1798, recorded at the Registry at Book 164, Pages 125-126, reciting land which runs to the sand dunes on Back Beach.
 - A Deed from John Pool to William Thurston, dated August 27, 1800, and recorded at Book 168, Pages 6-7, reciting ownership to the sea and along it until Rowe's Point.
 - A Deed from John Pool to William Thurston, dated October 18, 1806, recorded in the Registry at Book XX, pages 145-146, reciting ownership of land on the east side of the highway to Pigeon Cove to the Back Beach.
 - A Deed from William Thurston to Jonathan Story and Adam Boyd, dated June 9, 1817, recorded at Book XX, Pages 213-214, reciting ownership of land to the beach and taking in all land along the seashore.
 - A Deed from Jonathan Story and Adam Boyd to Malachi Knowlton, dated April 18, 1818, recorded in the Registry at Book 237, pages 208-209, reciting ownership of the Back Beach along the road to Pigeon cove, to the place where the gate stood.
 - A Deed from William Thurston to Malachi Knowlton on behalf of his son Azor, dated April 4, 1818, and recorded at Book 216, Pages 74-75, reciting ownership

of the northern end of Back Beach and land along the seashore, to the place where the gate stood.

- A Deed from John Pool to William Rowe, dated November 8, 1796, recorded at Book 161, page 112, reciting ownership of land along the highway to the beach starting at the gate.
- A Deed from John Pool to Caleb Norwood Jr., dated July 29, 1797, and recorded at Book XX, Page XX, reciting ownership of 4 acres on the northern half of Back Beach.
- A Deed from William Rowe to William Thurston, dated February 21, 1803, and recorded at Book 172, pages 217-218, reciting ownership of seashore.

34. The Town of Rockport's claim to the Schoolhouse Lot derives from several deeds. An appropriate exemplar is the deed recorded from Michael Knowlton to Azor Knowlton, Nehemiah Knowlton, Levi Sanborn, William Thurston, and Matthew Giles, (the School Committee), dated December 31, 1827 and recorded at the Registry of Deed in Book 247, Pages 235-236. A similar deed from Michael Knowlton to the School Committee, dated February 23, 1826, and recorded at Book 237, Pages 246-247. These deeds, and the others like it, are conditional grants premised on the Sandy Bay School District No. 7, and its successors, running a school. Neither Gloucester nor Rockport are using the Schoolhouse lot for educational purposes, and have not in decades so used it.

35. The City of Gloucester is properly added as a co-defendant because under the act incorporation Rockport, both communities retained in undivided common whole, all public landings, clam flats, and water rights situated in the other community. In 1840 (St. 1840, c. 8) Rockport was incorporated as a separate town. St. 1840, c. 8, s. 4 provides "All town landings and water privileges, including clam flats, shall be common to the inhabitants of both towns; and the town in which said landings or water privileges are situated, shall be alone liable for any and all expenses or costs of suit, which may be incurred in support of the same, or in maintaining or defending the rights of the town thereto." Section 3 of the act also gave Rockport a proportional share of all of Gloucester's then existing real and personal property owned by the Town. The Legislature has meddled with this intermingled property rights a couple of times. St. 1886, c. 347; St. 1929, c. 33. The 1886 law authorized sale of intermingled property, but only if the electorate of both communities approved. The 1929 law provided that the intermingling would end and each community would control outright the public property in its own geographic boundaries. However the General Laws provide that a law requiring local acceptance, like the 1929 law, only go into effect if the municipality files a return with the Secretary of State. While both communities voted to adopt the 1929 law, Gloucester did not file its return with the Secretary or the Archivist, and the 1929 law has not gone into effect. The Committee anticipates that Rockport will assert that Back Beach is a public landing, which, if true, would also implicate Gloucester's interests. Gloucester may also have existing proportional interests in the contested land, based on Section 3, of the 1840 law. Rockport, of course, has reciprocal rights over any such water rights or public landings in Gloucester.

36. The Deed from Abigail Parsons *nee* Pool to James Fernald and John Preston (Bk. 603, pg 291) unequivocally conveys 60,000 sq. feet of seashore property, along the property line of Mark DiGiovanni. This is the northern end of Back Beach in land that both the Town of Rockport and the Essex County Commissioners wrongfully claim to be a public landing belonging to Rockport. Additional deeds, most recited above, from the chain of title of Committee Members Rauseo, Francos, and Cerundulos, clearly show that the parcels once owned by John Gott and John Pool and Gorham Norwood extend to the sea.
37. The Committee can and does claim that Stephanie Rauseo, John & Anne Franco, Guy & Rose Cerundulo, and Thomas Giblin, exercise legal title and/or a legal stake, as well as actually possess and maintain, to the Back Beach, the private way known as Beach Street, and are entitled to enforce the reversionary interest in the Schoolhouse lot and the northern parcel of Beach Street previously identified. The lands are not public lands and the Town's use of them is illegal. Contrary to the Town's argument the Committee "Certainly, the Committee [is] claiming that the unidentified roughly dozen members jointly or individually are in possession of the public property, which includes a public street, public beach, and public bathrooms,... Similarly, the Committee has [] alleged, [] that its unidentified roughly dozen members jointly or individually hold record title to all or even a portion of the public property." *Rockport MTD* at pg 7. Likewise the Committee Members have a direct chain to title to land on terms which directly competes with the 1836 Survey and the 1931 Essex County Commissioners. For their directly competing claims, they are entitled to the Court's attention to solve the outstanding question.
38. The Town's attempts to label the Committee's claims as "ludicrous" or "beyond reason" or frivolous are belied by months of careful research, work with various archivists, and extensive historical and legal research.
39. The Town, in fact, invited this litigation when its DPW Commissioners threatened retaliation against the Committee after it filed a federal civil rights lawsuit seeking to curtail objectionable abuses by scuba divers using the Beach. The DPW Commissioners, acting under their theory that a triangle of land separates the members land from directly abutting frontage on Beach Street, in fact threatened to send out a backhoe to knock down expensive, permitted ornamental structures such as granite pillar posts. Thus a determination, at least, of the Committee Members' front boundaries is necessary.
40. Even should the Court not find the chain of title supports claim to seashore land, the deeds unequivocally show that all the Committee Members predecessors in title owned to Beach Street. This claim eliminates the argument of Rockport's DPW Commission that a triangle of public land separates the Members' front door from the pavement edge on their side of the street.

Count I – Try Title

41. The Committee Members assert a try title claim against the Town of Rockport and any other parties claiming right, dominion, control, or possession. They assert this claim in

series for (1) the land between their house and the western edge of the pavement of Beach Street, (2) for whole ownership of Beach Street as a private way, (3) for ownership of Back Beach, (4) for ownership of the Schoolhouse lot.

42. The Committee members are in actual legal physical possession of all the claim land, including the Back Beach, the Parking lot, the Schoolhouse lot, and Beach Street. They improve it, police it, maintain it, and have the right to exclude people from it.
43. The Committee Members' deeds, despite readjustment in line with the Essex County Commissioners survey, recite that they own all the land their predecessors-in-title received. Thus, by incorporation, the face of the deed conveys record title to all the disputed land.
44. The Committee members are indisputably in possession of the land between their houses and the western edge of the pavement of Beach Street. The Committee Members are also in possession of the other disputed property, the Beach, the whole of the Street, and the Schoolhouse lot. The Committee Members walk on, plant flowers on, paint signs, paint rocks, the disputed land. In winter storms they place sandbags to control stormwater. They also maintain the storm drains and improve the drainage at their own expense. The Committee members have publicly asked the Town for permission to place curbstone, at their own expense, to improve their property.
45. The Town makes public and political claims to own the Schoolhouse lot, the Back Beach, Beach Street, and the triangle of land on the western edge of Beach Street. Indeed, the Town and its public works department have threatened legal enforcement proceedings against Committee members in the past and threatened to tear down the Committee Members improvements (such as gates, plumbing, and stone paved patio porches). This claim is adverse to the Committee Members real interests in land.
46. There may be other unknown parties who claim rights in the property, but any such exist rights are not superior to the Committee Members.

Count II – Quiet Title

47. The Committee Members own, directly on the face of their deed, and by incorporation of the prior owner's conveyance of quitclaim interests conveying all their interest, by right of reverter and reversion, and by successor interests from their chain of title: (1) all of the land "to beach street," (2) beach street itself, as a private way with the right to erect gates, (3) the Back Beach, (4) the Schoolhouse lot and its fixtures.
48. Despite the Town's recent encroachments by erecting fixtures, the Town has given up all of its rights in the disputed properties. The Town of Gloucester abandoned Beach Street and made it a private way, later granting the right to erect gates, which were in fact erected and maintained. The Town has abandoned the other claimed parcels by failing to comply with the conditions placed upon it (widening Beach Street or maintaining a primary school), allowing reverter and reversion to the heirs-in-title being the Committee members.

49. The Town has never owned Back Beach. In the alternative, the Town *may* own it in undivided whole in common with the Committee Members who have frontage on Beach Street.
50. Beach Street is not a public landing. It was not included in the 1799 report on public landings in Gloucester. No subsequent statutes authorize the erection of a public landing spot, which has become required since at least the enactment of the Revised Statutes. Other statutes enacted by the Legislature have allowed the disestablishment or establishment of public landings in Rockport, but none deal with Back Beach. The special statute allowing William Knowlton, who continued the work of Azor Knowlton to erect Knowlton's wharf at the end of the Beach & Granite Street intersection, specifically acknowledges that private interests, along the beach are not to be affected by the erection of Knowlton's Wharf.
51. The Rockport Water & Sewer Commissioners would not have needed to take an easement for the erection of the revetment and storm drain outlets if the Town had owned Back Beach.

Count III – Declaratory Judgment

52. With a real dispute about the owners of the property, and the rights of the Committee members and the Town in the property, a real dispute exists.
53. The Committee has standing because its members have rights in the property which are disputed.
54. The Court should declare the rights of the parties, including the public or private nature of Beach Street, the right of the Committee to erect gates, the nature of the reversionary interests which the Town has not complied with, and the usage rights public, the Town of Rockport or the City of Gloucester, and the Committee members in the Beach, the Schoolhouse lot and its fixtures.
55. The Committee Members are also entitled to a declaration of their rights to access Beach Street unhindered.
56. The Committee members are entitled to a reformation of their deeds to reflect the true and accurate nature of their ownership of land, especially relating to the land between their houses and the western edge of the pavement of Beach Street.

Count IV – Ouster

57. The Committee members are entitled to a judgment of ouster.

58. After assessing and declaring the rights of the parties, the Committee, upon prevailing, is entitled to equitable relief assuring the unhampered use and enjoyment by the Committee members of their property.
59. The Committee is separately entitled to a judgment ousting the Town and its fixtures from the undisputed property which is unquestionably not the Town's property.

Count V – Reverter and Reentry

60. The Committee is entitled to reverter and reentry to both the Schoolhouse lot and the two lots granted to the Town, at the mouth of the Granite & Beach Street intersection, for the failure to comply with the conditions of the grant.
61. The Town is not using the Schoolhouse lot for a schoolhouse or any educational activities.
62. The Town did not commence the planned widening of Beach Street.
63. Reverter and reversion are not subject to the rule against perpetuities.
64. The Committee is uncertain which type of reversionary interest applies to the contested properties, and thus also notes that roughly 80 years of fair market use compensation may be owed to them under Article of the Declaration of Rights, if reverter applies automatically upon the noncompliance with the conditions.
65. The Committee is entitled to clear and unimpeded legal title and actual possession and the Court should order the Town of Rockport to facilitate this and remove such fixtures as it wishes to keep, whereupon the Town should vacate the disputed property and not allow strangers to enter claiming license from the Town.

Count VI – Partition

66. The Committee has pleaded, in the alternative, that if the Town does have a right to use the Back Beach, its right is held with the Committee Members as an undivided whole.
67. If the Court opts for this alternative holding, the Court must declare the percentage of undivided whole interest owned in common by the Town and the Committee members. This percentage should be based on the footage each property owner has on Beach Street, since Beach Street is a long and pre-existing metric.
68. If the Court declares an undivided whole interest, the Committee hereby petitions for a partition of the Back Beach. The Committee proposes that the Town's interest once calculated, should be laid out from the southern end of the Beach, with a north-south boundary line perpendicular to Beach Street. The southern end is the most logical place to site the Town's partitioned interest since its whole claim to the Beach derived, in the Committee's opinion and based on historical research, from its ownership of the

Schoolhouse lot which granted rights to the “seashore.” The Southern end is also closer to the business district.

Count VII – Continuing Trespass

69. The Town should be ordered to cease tolerating, promoting, encouraging, or advertising that strangers and trespassers tromp on and abuse the Committee Member’s land. Especially the private way of Beach Street, the Back Beach (or its northern end upon partition), and the Schoolhouse lot and fixtures.
70. The Town, holding an underlying easement in the revetment is entitled to entry and reasonable use to maintain and control its easement. However, the Town’s rights are not, in this instance, coterminous with the rights of the public.
71. There is no general right of public access to the Committee Member’s land, whether it be the disputed property or land which is undisputedly the property of the Committee members.

Count VIII – Lateral Support

72. The Committee is entitled to a judgment for lateral support, either in money to repair or in effort to shore up, Beach Street and their property.
73. The choice of the Town to erect a revetment, one which has become progressively taller in its later iterations, has elevated the Plaintiffs’ land over the beach. The erection of the first revetment in the 1930s coincided with the destruction of the willow trees which held the land in place.
74. The erection of a revetment impacts the rights of the Committee members to accretion and deposition as the sea creates and destroys land.
75. Having elevated the Plaintiff’s land, over the beach, by interfering with the natural rhythms of the sea, the Town has taken upon itself, within its easement, an obligation of lateral and vertical support.
76. The Town is obliged to keep the sea wall and revetment in good enough repair to prevent the cataclysmic erosion and destruction of the elevated portions of the Plaintiffs’ land.

Count IX – Taking

77. To the extent that the Committee Members do not receive the fullest expectation of the land which they are entitled by deed, by chain of title, and by reversion, the Town is a public entity which owes the Committee just compensation under Chapter 79, Article 10, and the Fifth Amendment.

78. The Committee members are entitled to compensation or restored and clear title and possession.
79. The Committee is also entitled to the compensation funds assessed in the 1930s for the loss of the easement, the effects of the revetment upon their property, the street, and the beach. Statute and common law entitle the Committee members to 12% prejudgment interest on the fund as well. This potential additional judgment must be clear and precise because at a 2000 review of the Town's finances by the State Department of Revenue indicated that the Town was failing to keep its accounts properly. The Committee believe that the Town has absconded with the segregated funds to which they would be entitled and believes that the amount, with prejudgment interest, is an eight-figure number.
80. The Committee is entitled to not merely compensation for the use of the Beach and road and schoolhouse lot with fixture (parking and gazebo and Legion hall and bathroom). The Committee is also entitled to compensation for more abstract rights like accretion and deposition.
81. Even if the Court grants the Committee Members only the usual and customary fee simple, granting them half of the Beach Street roadway subject to the permanent public travel easement, then the Constitution of the Commonwealth dictates sharp limits to the extent to which the Town may profit off of the Committee Members' land by charging exorbitant parking fees. This will factor into the Court's just compensation analysis.
82. The Committee is also entitled to be compensated either for a pro rata share of all the parking revenue made or the reasonable rental value of the spaces, both the on-street spaces on Beach Street and the off-street spaces on the Schoolhouse lot. The 2000 DOR review indicated that the Town's parking revenues amounted to roughly \$120,000 per year, with an on-hand accumulation of roughly \$1.2Million in monies and assets. The Town, under Chapter 79 and the state and federal constitutional provisions, has a fiduciary obligation to make good use of its wrongfully taken property and to eventually compensate the Committee accordingly. The Town, according to the 2000 DOR review, has grossly failed in this fiduciary responsibility.

Miscellaneous

83. The Land Court has subject matter jurisdiction over these claims and personal jurisdiction over the parties.
84. The Committee demands a jury trial on all claims so triable.
85. The Committee prays for relief, as above, including but not limited to:
- A declaration over the rights of the Committee members to ownership of the Beach, the Schoolhouse lot, and the land between their houses and the western edge of the pavement of Beach Street.

- A determination that Beach Street, north of the southern boundary of the Schoolhouse lot with the Accad property is a private way, and a confirmation of the right to erect and maintain gates.
- A determination of the holder of the underlying fee owner of an easement shown to engulf the pavement of Beach Street (and Smith Street and Pearson Way) between 60 Beach Street and the Accad Property.
- A determination of the front boundaries of 60, 58, 56, 54, and 48 Beach Street, as well as the attached unnumbered parcels.
- A determination of the identified Committee Member's frontage on Beach Street and their right to access the right of way.
- A determination of the ownership and proper usage of the Schoolhouse Lot
- A determination of the ownership and use of Rockport Assessor Parcel 17-44
- A determination of the compensation owed to the Committee should they not be awarded the ownership they are entitled
- Equitable and Injunctive relief to effect their awarded rights
- Damages to make the Committee members whole

Conclusion

Wherefore the Plaintiff Back Beach Neighbors asks for any and all applicable relief and any such relief as the Court feels just and appropriate.

Respectfully Submitted,

Back Beach Neighbors Committee
By their Attorney

3/14/2021

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