

DEPARTMENT OF ENVIRONMENTAL PROTECTION
IN THE MATTER OF THE JUDICIAL REMANDS

NORDIC AQUAFARMS INC.)	
Belfast, Northport and Southport)	Application for Air Emission, Site Location
Waldo County, Maine)	of Development, Natural Resources
)	Protection Act, and Maine Pollutant
A-1146-71-A-N)	Discharge Elimination System/Waste
L-28319-26-A-N)	Discharge Licenses
L-28319-TG-B-N)	
L-28319-4E-C-N)	
L-28319-L6-D-N)	
L-28319-TW-E-N)	
W-009200-6F-A-N)	

**UPSTREAM WATCH’S OBJECTION TO
PRESIDING OFFICER’S PROCESS AND SCOPE LETTER
INCLUDING CHAPTER 3, § 20(E) OBJECTION TO THE TAKING OF
ADDITIONAL EVIDENCE THROUGH “OFFICIAL NOTICE” AND
CHAPTER 3, § 20(F) OFFER OF PROOF**

This adjudicatory proceeding is now back before the Board of Environmental Protection (“Board”) on remand from the Maine Supreme Judicial Court, acting as the Law Court, Docket No. BCD-2022-48.¹ Upstream Watch objects to the Presiding Officer’s July 26, 2023 letter setting forth the process and scope of the proceedings on remand, and the taking of any additional evidence through “Official Notice” (“Process Letter”).

Without any basis, the Process Letter sets forth a process that violates the Board’s own rules applicable to this reopened licensing hearing and Upstream Watch’s due process rights. The Process Letter should be withdrawn. If the Presiding Officer intends to reopen the record to allow for new evidence on whether in light of the *Mabee* decision, the applicant can meet its burden to show sufficient title, right or interest (“TRI”) in the property on or over which it seeks

¹ Order of Remand (May 10, 2023), *reconsideration denied*, Order Denying [Board of Environmental Protection] Motion for Reconsideration (June 29, 2023).

to engage in the activities subject to above referenced licenses, the Presiding Officer must follow the rules applicable to licensing hearings.

The Process Letter permits the introduction of additional evidence, but only that evidence that falls within the taking of “Official Notice” under Chapter 3, § 20(C) (Rules Governing the Conduct of Licensing Hearings (“Rules”)) namely:

1. The Remand Orders in Law Court Docket Nos. BCD-2022-48/WAL-22-299 and Business and Consumer Court Docket No. BCD-APP-2021-009;
2. The Law Court opinion in *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79, which is commonly referred to as the “quiet title action”; and
3. The Commissioner’s Suspension Order dated June 21, 2023, including the fact of matters referenced by the Suspension Order such as the City of Belfast’s eminent domain actions and pending related Superior Court challenges to those actions in Waldo Superior Court, Docket No. BELSC-RE-2021-0007.

06-096 C.M.R. Chapter 3, Section 20(C) states:

C. Official Notice. Official notice may be taken of any facts of which judicial notice could be taken; of any general, technical, or scientific matters within the Department’s specialized knowledge; and of statutes, regulations, and non-confidential agency records. Parties will be notified of material so noticed and will be afforded an opportunity to contest the substance or materiality of the matters noticed. Facts officially noticed will be included and indicated as such in the record.

While the Process Letter identifies three documents, it does not identify what facts from those documents it intends to take official notice. Without knowing which facts will be taken notice of, it is not possible to determine whether any of those facts are “of any general, technical, or scientific matters within the [Board’s] specialized knowledge.” Absent a foundation, the Board cannot rely on the rule to admit facts as evidence into the record as the Board would be abusing its discretion and exceeding its authority.

The *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79, decision is over 30 pages. The Suspension Order is over 9 pages, single typed, and incorporates by reference

petitions and responses filed in a different proceeding and forum such as “the City of Belfast’s eminent domain actions and related Superior Court challenges to those actions in BELSC-RE-2021-0007.” While the rules of evidence do not apply in this proceeding, the same limitation that applies to a court applies here in how the Board can take official notice of a fact, it must identify the fact to be noticed.² Absent a stipulation, the Board cannot in one broad sweep introduce evidence into the record from different proceedings before different forums.

In *Cabral v. L’Heureux*, 2017 ME 50, ¶ 12, 157 A.3d 795, the Law Court made clear that a court “cannot, under the rubric of judicial notice, simply *sua sponte* import and rely upon evidence presented in an earlier judicial proceeding.” While unstated, the rule rests on due process concerns. Those same concerns do not allow the Board here under the guise of “Official Notice” to import whole cloth “evidence” from other proceedings. By so doing the Board is violating Upstream Watch’s due process rights and the Board’s own rules.

For example, in this adjudicatory proceeding, all witnesses must be sworn and be available for cross examination.³ By purportedly taking notice of any and all evidence by reference to another proceeding, or stated as facts in pleadings or briefs, the Board is bypassing its own Rule that all witnesses be sworn and be available for cross examination. These are basic due process rights.

² Section 29(B), “Contents of Record” states that the record must contain among other items:

- (3) a statement of facts officially noticed and stipulations made by the parties;...

³ Section 19(B). Witnesses. “All witnesses must be sworn. Witnesses are required to state for the record their name, address, business or professional affiliation, and whether they represent another individual, firm, organization, government agency or other legal entity for the purpose of the hearing. All witnesses providing sworn testimony, including pre-filed written testimony, shall be present at the hearing and subject to cross-examination by the parties. The parties have a right to question all persons present and testifying.”

Further, absent a statement of what specific facts will be noticed, Upstream Watch is not on notice of what facts will be introduced on remand. Chapter 20 requires the parties be given notice of the facts to be noticed, and “be afforded an opportunity to contest the substance or materiality of the matters noticed.” Upstream Watch’s due process rights are violated when notice of the facts is not given.

Upstream Watch’s due process rights are also violated because the Process Letter expressly limits challenges to the “officially-noticed documents” to objections only, to be made in a brief. This limitation is inconsistent with what the rules permit, that a party/intervenor be “afforded an opportunity to contest” the facts to be noticed. The Rule allows for a meaningful opportunity to challenge, whether it be through the offer of evidence or cross examination.⁴ The Process Letter violates Upstream Watch’s due process rights by preventing Upstream Watch from contesting the facts to be noticed.

The Board is opening the record to allow for new Board self-selected evidence under the cloak of Official Notice and at the same time preventing parties from contesting those facts. A more blatant due process violation is hard to imagine. The applicant bears the burden to establish sufficient TRI.⁵ *Tomasino v. Town of Casco*, 2020 ME 96, 237 A.3d 175 (applicant must

⁴ Section 13, Subpoenas, allows any party to request the issuance of a subpoena to “to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the licensing proceeding.” The Ruling purports to allow new evidence under the guise of a “Official Notice” but does not allow for any party to challenge or contest the facts to be noticed.

⁵ DEP rules require:

D. Title, Right or Interest. Prior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period. Methods of proving title, right or interest include, but are not limited to, the following:

(1) When the applicant owns the property, a copy of the deed(s) to the property must be supplied;

demonstrate that they have the kind of interest that would allow them to make use of the land if they were granted a permit to do so and if easement rights have not been factually determined by a court with jurisdiction to do so, then permitting process should not proceed until court declaration obtained). The Board has no basis to self-select the evidence it intends to consider on remand in making this determination.

The Board is also abusing its discretion by limiting to being raised in a brief any objection to the yet to be disclosed facts to be noticed. The Rules require that any objection to evidence submitted prior to a hearing must be made within 10 working days of service of the proposed evidence.

(2) When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required. If the project requires a submerged lands lease from the State, evidence must be supplied that the lease has been issued, or that an application is pending;

(3) When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed construction and use of the property including closure and post closure care, where required;

(4) When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right or interest to the site of the proposed development or use;

(5) When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied. This provision applies only to those portions of a project where eminent domain authority exists under federal law; or

(6) When the applicant has a written agreement with the landowner where said agreement permits the applicant to spread waste material that will be agronomically utilized by the landowner, a copy of that agreement must be supplied.

The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest. No fees will be refunded if an application is returned for lack of continued title, right or interest.

E. Objections. Objections to evidence submitted prior to or after the hearing must be made within ten (10) working days of service of the evidence on the objecting party, unless otherwise specified by the Presiding Officer. Objections during the course of the hearing must be made at the time a party believes an objectionable action has occurred. Presiding Officer rulings on objections during a hearing are final.

See Section 20(E).

The Board is violating its own Rules by not permitting a party to file a timely objection to the new evidence being submitted into the record and to be relied on by the Board in adjudicating whether the applicant has TRI so as to be able to proceed with its application(s). This too is a violation of Upstream Watch's due process rights.

The Process Letter also purports to bar any party, including Upstream Watch, from referencing "any new evidence" in a brief, and from including any attachments to a brief. Once again the Board is violating its own rules which states Offers of Proof "shall" be allowed in connection with any objection to any evidence.

F. Offer of Proof. An offer of proof shall be allowed in connection with an objection to any testimony, evidence, or question of a witness. Such offer of proof must consist of a summary statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness. Comment or argument by any party shall be allowed on the offer of proof.

See Section 20(F).

There is no basis for the Board to bar any party from filing an Offer of Proof as part of any objection to the evidence the staff is offering through the Official Notice contained in the Process Letter. While the Law Court allowed the Board to determine the scope of proceedings on remand, the court did not authorize the Board to come up with a proceeding that blatantly disregards its own rules, and violates basic notions of administrative due process.⁶ The Board

⁶ Section 29(B), "Contents of Record" states that the record must contain among other items:
(4) offers of proof, objections, and rulings thereon;..."

cannot let new evidence in, and at the same time not allow any party to challenge or contest the evidence, or offer other evidence relative to the issue on remand.

Per the Law Court this issue is:

When, as here, it is unclear whether an approval challenged on appeal would have been issued given intervening circumstances, the appropriate response is to remand the matter to the agency that issued the approval to make that determination. *Cf. Hannum v. Board of Environmental Protection*, 2003 ME 123, ¶17 (remanding to the BEP where the Court could not ascertain from the BEP decision whether the BEP would have reached a different conclusion in the absence of a finding that the Court found unsupported by evidence in the record)... Upon the issuance of the agencies' determinations on remand regarding the viability of the approvals, any party is free to raise in a new appeal any argument raised previously and any new argument arising from the agency proceedings on remand.

See Order Of Remand (May 10, 2023) at 2-3.

To the extent the Process Letter seeks to frame the issue any differently than as set forth above, Upstream Watch objects to the Process Letter. It is clear the court has instructed the Board to reopen the proceedings, and to consider facts on TRI that the Board did not consider when making its initial decision, to determine whether the applicant never had, or no longer has, TRI. 06-096 C.M.R. ch. 2, § 11(D) (“The Department may return an application, after it has already been accepted as complete for processing, *if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest.*”)(emphasis supplied). The Order of Remand was not a carte blanche for the Board to ignore its own rules applicable once it is decided to take additional evidence. Absent a stipulation, there is no legal basis for the process outlined in the Process Letter. The Process Letter should be rescinded.

To the extent the same Assistant Attorney General is advising the Department, the Commissioner, Presiding Officer, and/or the Board regarding Nordic licensing decisions relating to TRI, Upstream Watch also objects to that arraignment. 5 M.R.S. § 9055, *Narowitz v. Board of*

Dental Practice, 2021 ME 46, ¶ 29, 259 A.3d 771 (citing and quoting *Amos Treat & Co. v. Sec. Exch. Comm'n*, 306 F.2d 260, 267 (D.C. Cir. 1962) (stating that an administrative hearing must be attended “not only with every element of fairness but with the very appearance of complete fairness”)).

Attached hereto is Upstream Watch’s Offer of Proof. If and when the Board produces an actual statement of the facts of which it intends to take Official Notice, Upstream Watch reserves the right to amend its offer and amend this objection.

Dated: August 9, 2023



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Board of Environmental Protection
In the Matter of the Court Ordered Remands to the Board
Law Court Docket No. BCD-2022-48; Superior Court Docket No. BCD-AP-2021-009
Nordic Aquafarms, Inc.
Service List
Revised July 26, 2023

Board of Environmental Protection

Filings with the Board must be directed to Ruth Ann Burke and, unless otherwise specified, are due by 5:00 p.m. on the filing date. Untimely filings may be rejected.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
IN THE MATTER OF THE JUDICIAL REMANDS

NORDIC AQUAFARMS INC.)	
Belfast, Northport and Searsport)	Application for Air Emission, Site Location
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W-009200-6F-A-N)	

UPSTREAM WATCH’S OFFER OF PROOF

Note the documentary evidence would be introduced through the individuals who prepared the document, where parties to it, or the deponent or witness. Many of the documents were previously filed with the Board (but not considered) and were included in the Agency’s administrative record and supplement to the record submitted to the superior court, and to the Law Court, and identified as such. Upstream Watch also incorporates by reference herein MGLF’s Offer of Proof dated August 9, 2023 as if fully set forth herein.

1. Deed dated October 15, 2012, from the Estate of Phyllis J. Poor to Richard Eckrote and Janet Eckrote (collectively “Eckrote”) recorded October 15, 2012, in the Waldo County Registry of Deeds at Book 3697, Page 5 (the “Eckrote Deed”). The description of the real property conveyed to Eckrote is based on an unrecorded survey, by reference in the Eckrote Deed, entitled “Boundary Survey of the property of Phyllis J. Poor Estate” dated August 31, 2012, oriented to the magnetic north, August 2012, by Good Deeds, Inc.” (the “April 2012 Good Deeds Survey”). The Eckrote property is known as Lot 36, Belfast Tax Map 29. Offer of Proof includes the Eckrote Deed and April 2012 Good Deeds Survey. See 0906j of the record before the Law Court.

a. The deed into Eckrote, and its reference to the April 2012 Good Deeds Survey, evidence that Eckrote knew in 2012 that Eckrote did not own the intertidal land located between the Eckrote property and Penobscot Bay.

2. The deposition transcript of testimony of Gusta Ronson (July 7, 2023) taken in the matter titled “*Jeffrey R. Mabee, et al. v. Janet Eckrote, et al.*,” U.S. District Court, District of Maine, Docket No. 1:19-cv-432-JDL. Surveyor Ronson testified she gives clients the option to record or not record surveys and they chose to record or not record depending on “what they chose to do.” Transcript at p. 17. “We would bring the original to the registry if we were requested to by either the client or their attorney....” *Id.* When a survey is incorporated by reference into a deed description, “some people choose not to ... there might be information on there that is negative to their interest and they don’t want that seen, or some people just don’t want to spend the extra....” *Id.* “We would not record it without the request of the client, so the client never requested to record it.” *d.* at 18. Ronson testified that in 2019 “when I became aware that this was an issue, I called them [Eckrotes] immediately because I felt like, I...had...not conveyed to them the information. I looked at my plan. I knew that something was off, and I knew people were asking about this Eckrotes’ plan, and it kind of really horrified me that I didn’t have a note on it about not owning beyond high water by deed. So I called the Eckrotes immediately. I called --- I spoke with Janet Eckrote.” *Id.* at 27, 33-35, 48. Offer of Proof includes the transcript of the deposition of Gusta Ronson.

a. The testimony of Gusta Ronson evidences that Janet Eckrote knew Eckrote did not own what Eckrote agreed to grant to Nordic Aquafarms, Inc. (“Nordic”) under their Easement Purchase and Sale Agreement dated August 6, 2018– the basis of Nordic’s application to the DEP and City of Belfast, among others.

3. Survey titled “Lands of Richard & Janet Eckrote” dated October 15, 2018, by Clark Staples of Good Deeds Lands Surveying (“2018 Staples/Good Deeds Survey”) evidences the Eckrotes did not own intertidal land located between the Eckrote property and Penobscot Bay. Offer of Proof includes the 2018 Staples/Good Deeds Survey. *See* 0906i of the Record before the Law Court.

4. Survey for Nordic dated November 15, 2018, by Jim Dorsky of Gartley & Dorsky showing Eckrotes did not own intertidal land located between the Eckrote property and Penobscot Bay. Offer of Proof includes Jim Dorsky’s November 15, 2018 survey. *See* 0935p of the Record before the Law Court.

5. Survey for Nordic dated January 25, 2019, by Jim Dorsky of Gartley & Dorsky showing Eckrotes did not own the intertidal land located between the Eckrote property and Penobscot Bay. Offer of Proof includes Jim Dorsky’s January 25, 2019 survey. *See* 0935p of the Record before the Law Court.

6. Survey for Nordic dated February 22, 2019, by Jim Dorsky of Gartley & Dorsky showing Eckrotes did not own the intertidal land located between the Eckrote property and Penobscot Bay. Offer of Proof includes Jim Dorsky’s February 22, 2019 survey. *See* 0935p of the Record before the Law Court.

7. Survey for Nordic dated May 14, 2019, by Jim Dorsky of Gartley & Dorsky showing Eckrotes did not own the intertidal land located between the Eckrote property and Penobscot Bay. Offer of Proof includes Jim Dorsky’s May 14, 2019 survey. *See* 0935p of the Record before the Law Court.

8. Survey for Nordic dated June 4, 2019, by Jim Dorsky of Gartley & Dorsky showing Eckrotes did not own the intertidal land located between the Eckrote property and

Penobscot Bay. Offer of Proof includes Jim Dorsky's June 4, 2019 survey. *See* 0935p of the Record before the Law Court.

a. Collectively these surveys show that in spite of multiple surveys commissioned by Nordic with careful instructions from its attorneys at Drummond Woodsum, Eckrote did not own the intertidal land located between the Eckrote property and Penobscot Bay, Eckrote and Nordic knew that Eckrote did not own the intertidal land located between the Eckrote property and Penobscot Bay, and Nordic elected to proceed anyway and mislead the DEP. *See* 0935r of the Record before the Law Court

b. Trial transcript of James Dorsky (June 24, 2021) in the matter titled "*Jeffrey R. Mabee, et al. v. Nordic Aquafarms, Inc., et al.*", Waldo County Superior Court, Docket No. RE-19-18. Mr. Dorsky testified where he said he "found" what he did because attorneys at Drummons Woodsum told him to. Transcript at 98-105, Offer of Proof includes the trial testimony of Mr. Dorsky and he would be subpoenaed to appear before this Board.

9. Six (6) 2019 release deed (dated Mar. 26, 2019, Apr. 15 & 23 2019, May 14, 2019) executed by alleged descendants of Harriet L. Hartley (David Wesley Bell, Karen L. Stockunas, Constance Daily and Barbara Bell and Sandra L. Bell, recorded in the Waldo County Registry of Deeds at Book 4548, Page 130; David Nelson Woods recorded at Book 4548, Page 136; Marcia L. Woods recorded at Book 4548, Page 138; Robert L. Burger, II recorded at Book 4548, Page 140; Thomas A. Burger recorded at Book 4548, Page 142; and Robert L. Burger recorded at Book 4548, Page 144) purportedly conveying "any and all right, title and interest" of Harriett L. Harley, if any, by quit claim deed, to Nordic in return for money.

a. Evidences the actions undertaken by Nordic to support its theory of ownership in the intertidal lands between the Eckrote property and Penobscot Bay for Nordic when Nordic knew none existed.

10. Minutes of the Belfast City Council meetings to consider use of eminent domain to acquire the intertidal lands between the Eckrote property and Penobscot Bay.

a. Evidences the date Nordic, knowing it had no access on or over the intertidal lands between the Eckrote property and Penobscot Bay, to the Bay prior to the completion of the June 2021 bench trial of the matter “*Jeffrey R. Mabee, et al. v. Nordic Aquafarms, Inc., et al.*”, Waldo County Superior Court, Docket No. RE-19-18,” and it desperately urged the City to use eminent domain to bail them out.

b. Quitclaim deed of Eckrote to City of Belfast dated June 23, 2021, recorded July 16, 2021, in the Waldo County Registry of Deeds at Book 4679, Book 157.

c. Release deed of Nordic to City of Belfast conveying the property allegedly released by the Harriet L. Hartley heirs recorded July 16, 2021, in the Waldo County Registry of Deeds at Book 4679, Page 160.

11. Results of a title search showing Eckrotes did not own intertidal land between the Eckrote property and Penobscot Bay.

a. Evidences that Nordic knew Eckrote did not own the intertidal land between the Eckrote property and Penobscot Bay before it submitted its October 19, 2018 applications.

12. Deed from Harriet L. Hartley to Fred R. Poor, dated January 25, 1946, recorded August 6, 1946, in the Waldo County Registry of Deeds at Book 452, Page 205, showing the creation of a land use restriction against non-residential use of the Eckrote property.

a. Filing on the land records is notice to the world. If Nordic failed to search the title, or if their searcher missed it, Nordic cannot be allowed to profit from its own delict.

13. Lease of the former Eckrote property from the City of Belfast to Nordic in which the City allowed Nordic to use the entire Eckrote property for its pump station and other industrial facilities, belying any claim that the City's eminent domain taking was for any sort of public purpose.

14. The "residential purposes only" servitude established in the 1946 deed from Harriet L. Hartley to Fred R. Poor ("1946 Hartley-to-Poor deed;" WCRD Book 452, Page 205).

15. The Conservation Easement created by Mabee-Grace on 4-29-2019 (WCRD Book 4367, Page 273; held by Friends pursuant to an assignment by Upstream Watch dated 11-5-2019 (WCRD Book 4435, Page 344).

16. The March 2, 2022 Stipulated Judgment in RE-2021-007 states in relevant part that pursuant to Maine's conservation easement statute, 33 M.R.S. §§ 477-A(2)(B) and 478, the City is prohibited from unilaterally amending or terminating the Conservation Easement and the City's actions, including its condemnation efforts with respect to the Conservation Easement and the Intertidal Land, did not amend or terminate the Conservation Easement.

17. 10/10/1973 Deed, State of Maine into City of Belfast (B710-P1153)

18. 1987 City-to-BWD deed (WCRD Book 1092, Page 145)

19. 02/14/2018 Belfast Water District letter to City of Belfast and exhibits

20. 03/02/2018 City of Belfast Motion to Intervene, in Maine Public Utilities Commission, Docket No. 2018-00043, Belfast Water District Notice of Proposed Sale of Water Resource Land Pursuant to 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules

21. 03/05/2018 Order Granting Petition to Intervene in Maine Public Utilities Commission, Docket No. 2018-00043, Belfast Water District Notice of Proposed Sale of Water Resource Land Pursuant to 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules

22. 03/06/2018 Belfast Water District's Responses to MPUC's Data Requests of February 7, 2018, in Maine Public Utilities Commission, Docket No. 2018-00043, Belfast Water District Notice of Proposed Sale of Water Resource Land Pursuant to 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules

23. 04/09/2018 DOT Deed of Vacation to City (B4778-P34)

24. 03/22/2021 Confidential Real Property Negotiations

25. 04/07/2021 Confidential Real Property Negotiations

26. 2021 07 05 email thread: William Kelly, Joanna B. Tourangeau, David Kallin RE Call at 3 today?

27. 2021 07 07 W Kelly email P Klein

28. 2021 07 08 323 pm W Kelly

29. 2021 08 13 Jeffrey Mabee affidavit with photos

30. 2021 07 08 City of Belfast Special City Council Meeting Packet (156 pp)

31. 2021 07 12 William Kelly letter to Friends of the Harriet L. Hartley Conservation Area (with enclosures)

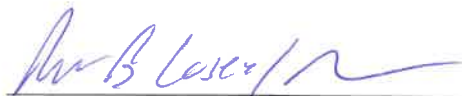
32. 2021 07 12 William Kelly letter to Jeffrey R. Mabee and Judith B. Grace (with enclosures)

33. 2021 07 12 William Kelly letter to Jeffrey R. Mabee and Judith B. Grace (with enclosures) (intertidal land)

34. 2021 07 15 William Kelly letter to Peter D. Klein, Esq., and 07/15/2021 Municipal Deed, City of Belfast into Nordic (and 10/12/2021 email thread K. Collins, K. Ervin Tucker, William Kelly RE: FOAA Request)
35. 2021 07 29 & 2021 08 12 K. Tucker emails to Belfast City Council and William Kelly RE Response Letter to Kelly (104 pp); 07/29/2021 K. Tucker letter to William Kelly RE 7-12-2021 "Offer(s) to Mabee/Grace and Friends with exhibits
36. 2021 07 30 & 2021 08 05 email thread between K. Tucker and W. Kelly RE: Response Letter to Kelly, attachment: 2021 08 04 W. Kelly letter to Mabee/Grace and Notice of Intent to Condemn Real Property; 2021 08 04 W. Kelly letter to Friends (13 pp)
37. 2021 08 16 William Kelly letter to Friends of Harriet L. Harley Conservation Area with attachments (Condemnation Order, \$36k check)
38. 2021 08 16 William Kelly letter to Jeffrey R. Mabee and Judith B. Grace with attachments (Condemnation Order, checks)
39. 2021 08 19 Affidavit of Donald R. Richards, P.L.S. and exhibits
40. 2021 08 13 Andrew Stevenson Affidavit and exhibits
41. 2021 08 12 Sally Brophy Affidavit and exhibits
42. 2021 08 23 M. Hurley comment
43. 01/14/2022 J. Tourangeau/Nordic Letter to K. Collins, Legal Counsel to City of Belfast
44. 03/14/2022 Quitclaim Deed: Belfast Water District into City of Belfast (B4776-P270)
45. Belfast Water District into Nordic (B4776-P210)
46. 03/15/2022 Deed of Vacation: City of Belfast to Nordic (B4778-P35)

47. Release Deed Nordic to City (B4679-P160)
48. Conservation easement deed B4367-P273
49. Ex A Complete Clerk's Certificate
50. Ex D 9-7-2021 Recorded Easement from City
51. M Hurley Comment-Belfast City Council
52. 2023 05 31 Affidavit of Donald R. Richard, P.L.S. and exhibits
53. FOAA Response from City of Belfast with email threads 01/21/2021 through 07/02/2021 between Nordic (J. Tourangeau, B. Chandler) and City (B. Kelly) RE negotiations; various attachments, including without limitation: draft Third Amendment to Evaluation Agreement and Options and Purchase Agreement, draft Fourth Amendment to Evaluation Agreement and Options and Purchase Agreement, Purchase and Sale Agreement, Order denying Plaintiffs' Motion for Partial Summary Judgment (Dec. 18, 2020), Plaintiffs' Exhibit 27 (B4425-P165) (324 pp).

Dated: August 9, 2023



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Filings with the Board must be directed to Ruth Ann Burke and, unless otherwise specified, are due by 5:00 p.m. on the filing date. Untimely filings may be rejected.

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**ATTACHMENT 2
TO OFFER OF PROOF**

STATE OF MAINE

WALDO, ss.

SUPERIOR COURT
Civil Action
Docket No. RE-19-18

JEFFREY R. MABEE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
NORDIC AQUAFARMS, INC., et al.,))
)
 Defendants.)

VOLUME III OF III

TRIAL PROCEEDINGS
(without jury)

BEFORE: HONORABLE ROBERT E. MURRAY JR.,
JUSTICE OF THE SUPERIOR COURT

Waldo Judicial Center
Belfast, Maine
June 24, 2021

APPEARANCES:

For the Plaintiffs: David Perkins, Esq.

Nancy Kelly, Esq.

Kim Tucker, Esq.

For the Defendants: Melissa Hewey, Esq.

David Kallin, Esq.

Andre Duchette, Esq.

Jeremy Marden, Esq.

Laurie A. Gould
Official Court Reporter

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JAMES DORSKY

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DONALD RICHARDS (Rebuttal)

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1 I'm getting at, or the Grady deed. It was just a
2 factual -- new factual information that came to me
3 that made it change. It's as similar as a revision
4 of me being asked to hash the Eckrote intertidal
5 zone. That's not a change in my opinion. It's a
6 fact change based on new information that was
7 provided to me.

8 Q. I have one more question about Plaintiffs' 7. So
9 the intertidal land off of Morgan and Eckrote,
10 we've already gone over how it says partial
11 interest in Nordic Aquafarms. You also say heirs
12 of Harriet Hartley; is that correct?

13 A. Right.

14 Q. Who are you referring to?

15 A. Hartley's heirs.

16 Q. But who are they?

17 A. I wouldn't have known. I could have labeled
18 Hartley's heirs -- well, I hadn't confirmed that
19 that hadn't ever been deeded to someone or that had
20 gone to an heir and since been conveyed. We didn't
21 do research beyond knowing that Hartley had owned
22 it and then there weren't any recorded deeds from
23 her after that point. That's why the initial plan
24 said now or formerly of Harriet Hartley. After
25 Nordic, also working -- I mean after Drummond

1 Woodsum was also working for Nordic and has more
2 expertise in probate law and researching those
3 types of things did the work to confirm that the
4 land, if it hadn't been conveyed to Fred Poor,
5 would have gone to Hartley's heirs. There hadn't
6 been any other conveyances from Hartley's heirs or
7 anything. They'd figured out who they were. I
8 relied on that information from them to note that
9 it was Hartley's heirs.

10 Q. Did you ask detailed questions of Drummond Woodsum
11 as to what they had done in the probate area?

12 A. Some. And a lot of that was just offered to me.
13 It was explained what they'd done.

14 Q. Did you realize that they had used an independent
15 party to do searches on *ancestry.com* to find names?

16 A. I didn't know that it was *ancestry.com*.

17 Q. Did you ever look to see if there's any record in
18 the probate court in Waldo County that would be
19 relevant to the issue of whether the so-called
20 heirs of Harriet Hartley owned any property in
21 Waldo County?

22 A. No.

23 Q. At the time you rendered that opinion that the
24 heirs of Harriet Hartley owned an interest, did you
25 search the title to land in Belfast to see if any

1 heirs showed up as owners?

2 A. I wouldn't have known who the heirs were at that
3 point. We had grantored Harriet Hartley and not
4 found anything.

5 Q. And you couldn't tell who the heirs were because
6 you didn't know the heirs' names, correct?

7 A. Again, I was relying on what was represented to me
8 by Drummond Woodsum.

9 Q. You do recall the deposition that you and I had
10 last summer?

11 A. I'll never forget it.

12 Q. Yeah, it was pretty special. And you had just
13 completed survey nine, correct, maybe a week or so
14 before that?

15 A. Survey nine?

16 Q. Yeah, the one that says unclear. Sorry,
17 Plaintiffs' 9.

18 A. Oh, yes.

19 Q. And survey nine, I have a copy of it here. I'll
20 move it over to make it easier for you and I.
21 Survey nine is the one where you indicated
22 that your --

23 THE COURT: Counsel, just for clarity, are you
24 referring to Plaintiffs' 9?

25 MR. PERKINS: Yes I'm saying survey nine, but

1 I mean Plaintiffs' 9.

2 THE COURT: I think the language is just a
3 little clearer, I think.

4 MR. PERKINS: Give me a heads up. I need a
5 cup of coffee and I'm not totally firing on all
6 cylinders here.

7 BY MR. PERKINS:

8 Q. When you made the change in Plaintiffs' 9 to
9 ownership unclear, was that prompted by the fact
10 that you were about to have a deposition taken?

11 A. Only in the sense that the reason for the change,
12 which had to do with the language in the Poor deed
13 and the Grady deed, I had been thinking about since
14 late 2019 after the *Almeder* case and, again as I
15 testified, there was a seminar that I listened to
16 at the end of the year for continuing education
17 credits. I started thinking about it then, but I
18 didn't work on this project between then and just
19 before the deposition. So it was the deposition
20 coming up and me starting to have conversations
21 with David Kallin about the deposition when I told
22 him that if I had issued this plan today based on
23 now the *Almeder* case coming out and my thinking
24 about that, and the language in the deeds and that
25 altering my way of thinking about how to interpret

1 that deed, that I would have labeled the area
2 ownership unclear and not been so definitive that
3 there had been a severance.

4 Q. What was the seminar that you referenced taking in
5 late 2019?

6 A. It was -- a portion of it had to do with intertidal
7 zone issues and it was by Half Moon Seminars, or
8 something like that. I remember Ben Leoni was the
9 attorney who spoke on that topic.

10 Q. And so it was that seminar the end of 2019, and
11 then the fact that your deposition was coming up,
12 and the fact that you had discussions with David
13 Kallin that caused to you change your survey?

14 A. It was the *Almeder* case primarily that got me to
15 rethinking the interpretation of that deed. And I
16 think it was my telling David Kallin about that,
17 that I would have labeled it ownership unclear.
18 And then after that conversation he actually called
19 me back, and I don't remember if it was the same
20 day or a day later or something like that, and
21 asked me if I would be willing to do a revision and
22 label it the way that I said I kind of wished I
23 would have.

24 Q. So the making the change in your survey to
25 ownership unclear, that was at the request of

1 Drummond Woodsum?

2 A. Or the suggestion of me.

3 Q. Why did Drummond Woodsum want you to testify that
4 you were unclear as to who owned the intertidal
5 land?

6 MR. KALLIN: Objection. Foundation.

7 THE COURT: Any further argument on that?

8 MR. KALLIN: He inaccurately summarized the
9 testimony. The testimony the witness gave was that
10 he had changed his opinion and then was asked to
11 issue a new plan showing that new opinion. And
12 then it was summarized as where he was requested to
13 change his opinion.

14 THE COURT: Any response to the objection?

15 MR. PERKINS: The prior testimony was that
16 Attorney Kallin suggested that he change his survey
17 and I was following up on that.

18 THE COURT: In terms of the basis of the
19 objection being lack of foundation, I'll overrule.
20 The foundation's been sufficiently established
21 for the question posed. You may restate it if you
22 wish.

23 MR. PERKINS: Ma'am, could you repeat the
24 question?

25 (The pending question was read by the

1 reporter.)

2 THE WITNESS: I'm not sure -- I don't remember
3 the question that way.

4 BY MR. PERKINS:

5 Q. Well, she's pretty accurate.

6 A. I'm not sure I'd use the word testify.

7 Q. Which word would you like me to use?

8 A. If they did ask me to testify, why -- can you read
9 it again? Because --

10 (The question was read by the reporter.)

11 THE WITNESS: They didn't want me to testify
12 to that.

13 BY MR. PERKINS:

14 Q. I thought you just said that they suggested that
15 you change your plan to unclear.

16 A. They did. That's not testifying.

17 Q. Okay. Why did Drummond Woodsum want you to change
18 the depiction on your plan regarding ownership of
19 the intertidal land to ownership unclear?

20 A. I would assume because it would more accurately
21 represent my opinion at the time just before the
22 deposition.

23 Q. And would you agree that as of the date of
24 Plaintiffs' 9 you weren't sure who owned the
25 intertidal land?

1 A. I wouldn't put it that way.

2 Q. How would you put it?

3 A. We've kind of been over that already in the notes.
4 I explained that at that point in time I was saying
5 that there were two potential answers to that
6 question. And actually in my deposition, when
7 pushed by Dana Strout, I said I actually believed
8 that the better answer was that the land had been
9 conveyed to Fred Poor.

10 Q. Do you recall being asked at your deposition
11 whether it was your opinion as a licensed surveyor
12 that Janet and Jeffrey Eckrote owned the title to
13 the intertidal land abutting their upland parcel?

14 A. I remember questions of that nature, yes.

15 Q. And do you agree that you answered that question by
16 saying you wouldn't say conclusively one way
17 whether the Eckrotes own the intertidal land
18 abutting their upland?

19 A. I do remember several questions of that nature
20 through the deposition and trying to be consistent
21 with what the plan said, which basically puts equal
22 weight on either of two scenarios, neither of which
23 would have Mabee and Grace owning that land. But
24 that in the end when Dana Strout pushed me to say
25 come on --

1 over here, okay? Others have to be in back there
2 so I want to make sure. We'll work together.

3 MS. HEWEY: And it will be good.

4 THE COURT: I don't need any of these. I
5 don't think there's writing on any of them.
6 Anything further from any party?

7 MR. PERKINS: Good luck tomorrow.

8 MS. HEWEY: That's going to do it.

9 THE COURT: Court will be in recess.

10 (Proceedings concluded at 3:56 p.m.)

11 **CERTIFICATE**

12 I hereby certify the foregoing is an accurate
13 transcript of my stenographic notes of the
14 testimony and proceedings in the above-entitled
15 cause.

16 Dated this 9th day of July, 2021.

17

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Official Court Reporter

**ATTACHMENT 1
TO OFFER OF PROOF**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JEFFREY R. MABEE and JUDITH)
B. GRACE, individuals,)
residents of Belfast, Waldo)
County, Maine; and THE)
FRIENDS OF THE HARRIET L.)
HARTLEY CONSERVATION AREA,)

Plaintiffs)

v.)

JANET ECKROTE and RICHARD)
ECKROTE, individuals,)
residents of Lincoln Park,)
New Jersey,)

Defendants)

Docket No.
1:19-cv-00432-JDL

ZOOM DEPOSITION OF: GUSTA RONSON, PLS

BEFORE: Lisa Fitzgerald, Notary Public, via Zoom on
July 7, 2023 beginning at 10:34 a.m.

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Reporter's Note: PDF of read and sign was sent to
Attorney Tucker.

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WITNESS: GUSTA RONSON, PLS

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By Ms. Tucker:	4, 47
By Mr. Duchette:	44

Exhibits

No.	Description	Page
A	1946 Deed from Harriet L. Harley to Fred R. Poor	11
B	Deed from Fred R. Poor to William O. Poor and Phyllis J. Poor	12
C	1991 Deed from William O. Poor and Phyllis J. Poor to Phyllis J. Poor, Individually	12
D	Boundary Survey	12
E	Deed Executed on October 15, 2012	18
F	2018 Survey by Clark Staples	22
G	Easement Purchase and Sale Agreement	25
H	August 26, 2019 Letter to Donald R. Richards from Gusta Ronson, PLS	29
I	Affidavit of Gusta Ronson, PLS	31

1 (This deposition was taken before Lisa Fitzgerald,
2 Notary Public, via Zoom on July 7, 2023 beginning at
3 10:34 a.m.)

4 * * * * *

5 (The deponent was administered the oath by the
6 Notary Public.)

7 * * * * *

8 GUSTA RONSON, PLS, called, after having been duly sworn on
9 her oath deposes and says as follows:

10 EXAMINATION

11 BY MS. TUCKER:

12 Q. Can you please state your name for the record.

13 A. My name is Gusta Ronson.

14 Q. And what is your address?

15 A. 188 Pattee Road Extension.

16 Q. And what town is that in?

17 A. Sorry. That's in Monroe, Maine. 04951 is my ZIP if you
18 want that, too.

19 Q. So you're a Maine resident?

20 A. I am.

21 Q. And are you over the age of 18?

22 A. Very much so.

23 Q. Aren't we all. And what is your educational background?

24 A. I went to college and studied philosophy and decided
25 that that was not going to put any food on my table, so

1 I went to the University of Maine after that, years
2 after I had children, and took some courses specific to
3 becoming a land surveyor.

4 I was always a math person, and I went through a
5 number of courses, took the exam to get an LSIT, and
6 worked with a number of surveyors in Maine as required.

7 And after the required number of years, I took the
8 test to be a land surveyor, and I think I became a land
9 surveyor in 1987.

10 Q. And so how many years did you practice as a land
11 surveyor in Maine?

12 A. From that point on -- I pretty much retired a couple of
13 years ago, so I worked for Plisga & Day, and I was a
14 surveyor with them. Let's see, so '87. That's a lot.
15 You know, close to 40 years, 30 -- I'd say 35 years.

16 Q. And are you still licensed as a surveyor in Maine?

17 A. I believe I am.

18 Q. During your time as a Maine-licensed surveyor, have you
19 ever provided professional surveying services to the
20 City of Belfast?

21 A. I have.

22 Q. Do you have an estimate of how many surveying projects
23 you or your firm, Good Deeds or Plisga & Day, worked for
24 the City of Belfast?

25 A. How many projects?

1 Q. Yes.

2 A. Maybe half a dozen. It's been a while. I don't have a
3 clear memory of all that.

4 Q. And have you ever worked with Attorney William Kelly
5 while he was City attorney or not when he was City
6 attorney?

7 A. Absolutely, both.

8 Q. And was that regarding property boundary litigation?

9 A. Yes, some of it was. Yes.

10 Q. And did any of that concern oceanfront boundaries?

11 A. Yes.

12 Q. And rights-of-way to the ocean?

13 A. I think so. Yeah, yeah, actually, very much so.

14 Q. Were you ever an expert witness, qualified as an expert
15 witness, in any litigation?

16 A. Yes.

17 Q. Did any of that litigation involve the City of Belfast?

18 A. I don't believe so.

19 Q. Can you describe your work as a surveyor, in other
20 words, how you would survey, begin to approach a survey
21 of a particular property?

22 A. I would -- my first task would be to get all the
23 essential information -- which includes deeds, maps --
24 go to the Probate [sic] office, just see what I could
25 pull up for information and then go and take just a

1 first walk around the property to see if any of the
2 evidence that seems to rise to the surface on those
3 essential pieces of information can be found.

4 Then I also look at the abutters and make a chain
5 of title. I draw sketches before I actually do the
6 survey, and then -- and then as I get more information,
7 I would go out with a crew, and we would determine a
8 traverse to physically locate all of the pieces of
9 evidence that will be necessary to determine where this
10 piece of property is located on the face of the earth.

11 It doesn't necessarily follow the boundaries. It
12 follows what it needs to to get to these pieces of
13 information, like along streams or roads or whether a
14 fence is called for, rods, anything like that.

15 And we try to write notes to get ahold of the
16 abutters to tell them what we're doing.

17 Let's see. And then once we gather all of this
18 data and put it together, put it on a piece of paper and
19 then put all the evidence in there and then match it
20 with our information that we pulled -- and some of it is
21 conflicting -- and determine which information stands,
22 and the property begins to take shape.

23 And we would often -- I would work with my partner,
24 Margo, who also did a lot of the registry work and we
25 played devil's advocate for each other, tried to like

1 find the things we may have missed or seen in a
2 different way, and then in the end when we've spoken
3 about it, draw it up and that was it.

4 Q. And you mentioned that you had a company, Good Deeds?

5 A. Yes.

6 Q. When was Good Deeds formed?

7 A. Let's see, maybe Good Deeds was 19- -- it was 1988,
8 maybe, or maybe even '87. Yeah. So I must have got my
9 license in '85, because I had my license for a couple
10 years before we started Good Deeds.

11 Q. And who was in Good Deeds with you?

12 A. Margo Davis, who does -- she worked for a law firm
13 before that for Marsano, Francis Marsano, doing all of
14 his title work.

15 And then we had Steve Lurie, Steve Tremblay, and
16 Dan Avener, he was also a licensed surveyor. Steve
17 Tremblay became a licensed surveyor, and Steve Lurie was
18 there pretty much from the beginning as a field member.

19 Q. What about Clark Staples?

20 A. Clark Staples came on when Plisga & Day bought my
21 business.

22 Q. So when did you sell Good Deeds and to whom?

23 A. I'm sorry, I don't have the dates right off the top of
24 my head, but it was before 2020, probably 20- -- I mean,
25 yeah, 2017. I really -- roughly, if anybody else knows,

1 chime in.

2 Q. And after that sale, what was your role at Good Deeds?

3 A. I agreed to stay on as a surveyor, and I had a lot of
4 clients, and they provided, you know, a lot of help,
5 they paid the staff, including me, and there wasn't --
6 there wasn't any kind of written agreement as to how --
7 when I would step in or step out or what my role was.

8 It was very friendly and cordial. I had great
9 admiration. I worked with Stan Plisga for a long, long
10 time. He and I were on a surveying crew together, which
11 was pretty amusing because he was like a whole body
12 taller and bigger than me. It was great. I learned a
13 ton of stuff from him. And so I always had a good
14 rapport with that company.

15 And Clark -- I worked with Clark's father, and I
16 remember Clark as a -- before he went to college, and so
17 I -- everybody got along really well.

18 Q. And you say that Clark Staples started working with you
19 at Good Deeds after Good Deeds was sold to Plisga & Day?

20 A. That's correct.

21 Q. And did Margo continue to work at that point?

22 A. She did for a while, yes.

23 Q. And you would consider yourself an employee of
24 Plisga & Day after that sale?

25 A. Yes.

1 Q. And Plisga & Day would have owned Good Deeds at that
2 point?

3 A. That's correct.

4 Q. And how long did you continue to work as a surveyor for
5 Plisga & Day and Good Deeds after that sale?

6 A. Until about 2020.

7 Q. And Margo did most of the title search work for your
8 projects?

9 A. Yes, she -- I would say so.

10 Q. All right. The next series of questions I'm going to
11 ask are about the 2012 survey you did of the Eckrote,
12 what became the Eckrote property.

13 A. Okay.

14 Q. So in 2012 you did a survey of what we'll call Belfast
15 Tax Map 29, Lot 36, the Eckrote block.

16 What exactly did you survey, and why did you do
17 that -- why was a survey needed of that property?

18 A. As I remember -- and it's been a while and I don't have
19 access to all of those files -- but we, as a normal
20 course of events, were asked to create an understandable
21 description of that particular piece of property.

22 We were looking more at the upland area. There was
23 no question about the water boundary at that time, but
24 it was to clarify a description of that particular piece
25 of property, which is normally, you know, why many

1 people get a survey.

2 Q. Had there been a lot of property exchanges or boundary
3 agreements done in addition to the deeds and the
4 direction title for that plot?

5 A. I think there were a few things that made -- that made
6 them feel that they needed a survey to clarify what --
7 where the actual boundaries were after all the deeds had
8 settled.

9 Q. And was that a boundary survey or a retracement survey
10 or a bit of both?

11 A. I'd call it a boundary survey.

12 Q. Do you recall who did the title search work for that
13 survey?

14 A. I don't remember. Often Margo and I did things in
15 tandem so that -- I honestly can't tell you exactly who
16 created the chain of title, but I'm sure we both had a
17 hand in it.

18 Q. So I'm going to ask that the court reporter pull up
19 Exhibit A which are -- which is the deed from 1946 from
20 Harriet L. Hartley to Fred R. Poor.

21 (There was an off-the-record discussion.)

22 (There was a break in the deposition at 10:48 a.m.
23 and the deposition resumed at 10:57 a.m.)

24 (Deposition Exhibit No. A, 1946 Deed from Harriet
25 L. Harley to Fred R. Poor, was introduced.)

1 BY MS. TUCKER:

2 Q. We're on Exhibit A, the 1946 deed from
3 Harriet L. Hartley to Fred R. Poor.

4 Do you want to take a look at that to refresh your
5 recollection on that deed?

6 A. Okay. Yes, basically. Yes.

7 Q. And Exhibit B is the 1971 deed from Fred R. Poor to his
8 son and daughter-in-law, William O. Poor and Phyllis J.
9 Poor.

10 (Deposition Exhibit No. B, Deed from Fred R. Poor
11 to William O. Poor and Phyllis J. Poor, was introduced.)

12 (Deposition Exhibit No. C, 1991 Deed from
13 William O. Poor and Phyllis J. Poor to Phyllis J. Poor,
14 Individually, was introduced.)

15 BY MS. TUCKER:

16 Q. And Exhibit C is the 1991 deed from William O. Poor and
17 Phyllis J. Poor to Phyllis J. Poor, individually as a
18 quitclaim deed; do you see that?

19 A. Yes.

20 Q. Would those have been included in the chain of title
21 that you reviewed?

22 A. Yes, definitely.

23 Q. Do you recall -- if you'll pull up Exhibit D, as in
24 "dog."

25 (Deposition Exhibit No. D, Boundary Survey, was

1 introduced.)

2 BY MS. TUCKER:

3 Q. Is this a copy of your boundary survey?

4 A. Yes, it is.

5 Q. And it is titled, Boundary Survey, on the bottom right
6 corner of it?

7 A. Yes.

8 Q. And it is dated August 31st, 2012?

9 A. Yes.

10 Q. And can you describe your findings about the eastern,
11 which would be the waterside boundary of this parcel?

12 A. Well, the findings were basically, located high-water
13 mark, and that's the dark line that you see, and
14 high-water mark is determined by the vegetation of a
15 seaweed line, where the vegetation is.

16 But that's what that line -- that's what we would
17 have located, and that's what that line represents.

18 Q. And who did you do this survey for? Who was your
19 client?

20 A. It says Phyllis Poor.

21 Q. It says it's the boundary survey of the property of
22 Phyllis J. Poor, but was it Phyllis J. Poor or the
23 Eckrotes that retained you? It says on the bottom here,
24 Richard and Janet Eckrote in the bottom right-hand
25 corner.

1 A. Right. Right. You know, I can't say that I remember
2 who actually -- it may have been the attorney for them
3 who said, do you need a survey -- or someone acting for
4 them.

5 I don't remember if it was them, personally. I
6 don't remember who we wrote the estimate for.

7 Q. And was it your opinion that the eastern seaward
8 boundary of this parcel was the high-water mark, or was
9 it the low-water mark based on the deed?

10 A. Based on the deed it was the high-water mark.

11 Q. And were the sideline tourmaline monuments that you
12 placed as part of your survey also located at the
13 high-water mark or about there?

14 A. Yeah, just prior on the upland side of the high-water
15 mark.

16 Q. And do you recall if Lee Woodward was the lawyer for the
17 estate for Phyllis J. Poor when you did the survey?

18 A. I'm guessing that he was. I don't have the
19 documentation in front of me.

20 Q. Do you recall if there was any other lawyer involved in
21 this survey on behalf of the Eckrotes?

22 A. I don't believe so. I think this was a pretty simple
23 request.

24 Q. And there wasn't a dispute about the boundary when you
25 did this, was there?

1 A. No.

2 Q. This was being done because the Eckrotes were purchasing
3 this parcel from the estate of Phyllis J. Poor?

4 MR. DUCHETTE: Objection. Form and foundation.
5 You can answer.

6 THE WITNESS: I believe it was done -- it was
7 requested because the description that was there, and I
8 think subsequent line agreements made it unclear as to
9 where the boundaries were.

10 I think there was nothing on the face of the earth
11 that determined it. It looked like the boundary
12 probably between Lyndon Frederick [sic] and the Eckrote
13 property was probably the one most concerned about at
14 that point in time.

15 Q. You're talking about Lyndon Morgan?

16 A. Yeah, Lyndon Morgan.

17 Q. And do you recall whether you discussed the boundary
18 survey with Lee Woodward in 2012?

19 A. Honestly, I cannot remember.

20 Q. Did you find the monument, the iron bolt, in the mouth
21 of a brook when you did that survey?

22 A. You know, I don't remember that either, and I'm looking
23 at this, and because it's sort of blobby, it's unclear
24 whether -- I show -- the boundaries we found are an open
25 circle, but because this is a shrunk version, it's hard

1 to tell.

2 And I -- you know, as I say, I -- I do hundreds of
3 these surveys -- or I've done hundreds of these
4 surveys -- so my memory of this particular parcel, but I
5 would show if it was found or if it wasn't. The one I'm
6 looking at, I don't have -- I don't have the original in
7 front of me. It would show whether it was found.

8 Q. And this indicates, as I read it, that on the eastern
9 boundary you have the words, 425 feet, plus or minus,
10 along the high water; is that correct?

11 A. Yes, feet -- 420 or what does it say?

12 Q. I believe it's 425. Like you say, it's hard to read.

13 A. Yeah, okay. Yeah, that's what it -- yeah.

14 Q. Did you discuss, or do you recall, whether or not you
15 discussed the parcel boundaries with the Eckrotes in
16 2012?

17 A. I don't believe I discussed anything with the Eckrotes
18 in 2012.

19 Q. Did you determine in 2012 who owned the intertidal land
20 adjacent to this parcel?

21 A. We never even went there. That was not a consideration
22 at that point in time.

23 Q. Did you give the Eckrotes a copy of your survey plan in
24 2012?

25 A. I'm sure we did.

1 Q. Do you know why your survey plan was not recorded in the
2 Waldo County Registry of Deeds in 2012?

3 A. We give our clients the option -- or we did -- to record
4 or not record depending on, you know, what they chose to
5 do.

6 Q. And who would be responsible for recording a survey in
7 the registry of deeds? Would that be you? The Estate
8 of Phyllis J. Poor? The Eckrotes? Lee Woodward?

9 Who would it be that would normally do that
10 recording?

11 A. We would bring the original to the registry if we were
12 requested to by either the client or their attorney who
13 was actually working on their behalf or working from
14 their request.

15 Q. When one of your surveys is incorporated by reference in
16 a deed description, do you normally record that survey?

17 A. Again, not necessarily.

18 Q. What would be the reason not to record your survey?

19 A. Some people choose not to they don't want -- there might
20 be information on there that is negative to their
21 interest and they don't want that seen, or some people
22 just don't want to spend the extra, I don't know, it
23 wasn't very much money, but, you know, don't want to
24 take another step because, you know, they did what they
25 had to do and that was good enough for them.

1 Q. Has anyone instructed you not to record your
2 August 31st, 2012 survey since 2018?

3 A. Well, we would not record it without the request of the
4 client, so the client never requested to record it. It
5 wasn't an issue.

6 Q. So no one has requested -- your client, the Eckrotes --
7 let me put it this way -- the Eckrotes have not, or
8 their counsel, have not requested you to record this
9 survey since you did it?

10 A. That's correct.

11 Q. Has anyone ever questioned the accuracy of your
12 August 31th, 2012 survey plan?

13 A. Not to me.

14 Q. Has anyone, Plisga & Day, ever claimed that your
15 August 31st, 2012 survey plan was wrong or that the
16 eastern -- the Eckrotes' eastern boundary was the
17 low-water mark pursuant to earlier deeds?

18 A. No, I think they were very clear that it was the
19 high-water mark, because it says so on the face of the
20 deed that goes into this property.

21 Q. Here is the copy as Exhibit E of the deed that was
22 executed on October 15th, 2012 --

23 (Deposition Exhibit No. E, Deed Executed on
24 October 15, 2012, was introduced.)

25

1 BY MS. TUCKER:

2 Q. -- from the estate of Phyllis J. Poor -- actually, from
3 the personal representatives of that estate -- to the
4 Eckrotes.

5 Do you have that in front of you?

6 A. I do.

7 Q. And do you see the deed description there?

8 A. Yes.

9 Q. Have you seen this deed before -- in 2012?

10 A. Probably.

11 Q. Do you recall who drafted the deed description that's on
12 Page 7 there?

13 A. I -- I can't -- I don't remember. It could have been
14 me. It could have been Margo. It could have been Lee.

15 Q. By Lee you mean Lee Woodward?

16 A. Right. But I would take responsibility for it, and I
17 see what the -- not continuing to call for high water
18 was just an oversight.

19 Q. So what you're discussing there is in the deed
20 description it says that the eastern boundary is along
21 said bay, instead of the high-water mark, Penobscot Bay?

22 A. Right.

23 Q. And that's a difference from the 1946 --

24 A. Right.

25 Q. -- 1971 and 1991 deeds?

1 A. Right.

2 Q. And you describe that as -- would you say that that
3 inclusion of along said bay instead of along the
4 high-water mark, Penobscot By, was that a scrivener's
5 error?

6 A. That's probably what I would call it. I mean, if I were
7 looking back at this deed and, you know, somebody from
8 the future asked me to do a survey, I would look at this
9 and call it a scrivener's error because if I go back on
10 it, you know, these people never owned low water, so it
11 couldn't have been that, and it stopped at high water
12 just like the words high water got left out when it went
13 along.

14 Q. When there's a discrepancy in a deed description and an
15 incorporated survey plan, does Maine law specify that
16 the plan controls?

17 A. I don't know.

18 Q. Would recording your survey plan cure any confusion
19 created by the use of the call, along said bay, in the
20 deed?

21 A. I'm not sure that it would clarify anything more. I
22 mean, it shows it going to high water, but maybe surveys
23 do. It doesn't really -- it doesn't really give any
24 information about the intertidal area, so it's really
25 something that needs to be investigated separately, I

1 would say.

2 Q. As a professional surveyor, do you think that a
3 corrected deed or some other document giving future
4 title searchers notice of the error in this deed
5 description in the 10-15-2012 deed should be placed in
6 the registry of deeds changing the call to, along
7 high-water mark of Penobscot Bay?

8 A. Yes.

9 Q. Have you heard anyone explain why a correction or notice
10 of this error should not be entered in the registry of
11 deeds?

12 A. No. And actually -- well, if I were to record this, I
13 would put a note on it about the deed only going to the
14 high-water mark.

15 Q. By this you're referring to Exhibit B --

16 A. Yes.

17 Q. -- your August 31st --

18 A. Yes.

19 Q. -- 2012 survey?

20 A. Yes.

21 Q. So if you were to record that -- had permission to
22 record that in the registry of deeds, you would add a
23 note to the original that would mention that?

24 A. Definitely.

25 Q. Are you aware of whether the Eckrotes obtained a title

1 insurance policy when they bought Lot 36?

2 A. I have no idea.

3 Q. You would not have dealt with the insurance provider?

4 A. No.

5 Q. Okay. I'm going to now switch to questions about a 2018
6 survey done by Clark Staples.

7 Are you aware of work that Plisga & Day or Good
8 Deeds was retained to do for Nordic Aquafarms, Inc. in
9 Belfast in 2018?

10 A. I'm aware of it but I was not part of it.

11 Q. What was -- to your recollection, what was the nature of
12 that survey work?

13 A. I believe they were doing a topographic survey for
14 Nordic Aquafarms to, you know, for basically engineering
15 purposes.

16 Q. And did Clark Staples do that work?

17 A. He was -- he was in charge of that work, yes.

18 Q. And did you discuss your prior survey with Clark Staples
19 or anyone else from Plisga & Day or lawyers in 2018?

20 A. We didn't discuss it, but Plisga & Day owned all of my
21 records, and he pulled it out and looked at it and
22 looked at the chain of title and got a lot of
23 information from that, but we never had to have a
24 discussion about it.

25 Q. And I'm going to direct your attention to Exhibit F --

1 (Deposition Exhibit No. F, 2018 Survey by Clark
2 Staples, was introduced.)

3 BY MS. TUCKER:

4 Q. -- which is the 2018 survey that Clark Staples did.

5 Have you seen that survey before?

6 A. No.

7 Q. In looking at it now, where did Surveyor Staples
8 indicate that the eastern waterside boundary, the
9 Eckrotes' lot, is, high or low water?

10 A. Well, I have a note -- let's see.

11 Q. The note is written in bigger letters behind it if you
12 want to --

13 A. Right. He clarifies that there's, you know -- that he
14 doesn't know how they get any -- let's see -- should I
15 read it?

16 Q. Sure.

17 A. Shaded area depicts lands located below the high
18 water [sic] line.

19 So he shows that on the plan, but he said that the
20 deed -- the Estate of Phyllis Poor to Richard and Janet
21 Eckrote dated October 15th, 2012 and recorded in Book
22 3697, Page 5, contains the language, "... Thence
23 generally southwesterly along said (Penobscot) Bay a
24 distance of 425 feet. The previous deed from William O.
25 and Phyllis J. Poor to Phyllis J. Poor dated July 1st,

1 1991, recorded 1228 Book 346 contains the language, ...
2 thence easterly and northeasterly along high-water mark
3 of the Penobscot Bay, 410 feet.

4 I suggest a legal opinion of the ability of the
5 Estate of Phyllis Poor to grant an easement below the
6 high-water mark.

7 Q. And by him saying you need a legal opinion --

8 A. Yes.

9 Q. -- would that indicate that they could grant below the
10 high-water mark --

11 MR. DUCHETTE: Objection. Form and foundation but
12 you can answer.

13 THE WITNESS: What this note is saying is that he
14 does not see anything that gives them rights below the
15 water mark on its face and that he feels that they
16 should get a legal opinion as to who owns that.

17 Because it wasn't -- it does not appear to be owned
18 by the grantors of the property to -- who gave it to the
19 Eckrotes.

20 BY MS. TUCKER:

21 Q. Are you aware of whether Surveyor Staples, or do you
22 recall if you, told Nordic Aquafarms, its agents or its
23 counsel, that the Eckrotes did not own the intertidal
24 land on which Lot 36 fronts?

25 A. I never had anything to do with Nordic Aquafarms. I'm

1 sure that this note on this plan, Exhibit F, from Clark
2 Staples was intended to give them that information and
3 tell them that their lawyers needed to give them an
4 opinion about who owns to the low-water mark.

5 Q. I'm going to direct your attention to Exhibit G, as in
6 goat.

7 (Deposition Exhibit No. G, Easement Purchase and
8 Sale Agreement, was introduced.)

9 BY MS. TUCKER:

10 Q. And if you could turn to the last page of that exhibit.

11 A. Yes.

12 Q. Have you ever seen this Easement Agreement, Easement
13 Purchase and Sale Agreement, dated August 6th, 2018
14 before?

15 A. Wait a minute. This is my last page here.

16 Q. Yes, that's the right --

17 A. Oh, this is.

18 Q. Yes. And have you ever seen the whole document before?

19 A. No.

20 Q. Okay. And as you look at that last page, which has a
21 Google Earth image of the Eckrote lot, do you see the
22 lines on this chart --

23 A. Yes.

24 Q. -- marking the temporary construction easements and a
25 25-foot permanent easement?

1 A. I see that, yes.

2 Q. And where does -- where do both of those lines terminate
3 along the eastern waterside boundary?

4 A. Well, it looks like they -- I assume that this gray area
5 is the high-water mark, and that appears to be where
6 these lines are drawn to.

7 Q. And pursuant to your prior survey and review of the
8 deeds, is that where they must terminate, at the
9 high-water mark, as opposed to low?

10 MR. DUCHETTE: Objection. Form and foundation.
11 You can answer to the extent you know.

12 THE WITNESS: I don't think you can convey an
13 easement in gross, like an easement to something you
14 don't own.

15 BY MS. TUCKER:

16 Q. In other words, could the Eckrotes have granted Nordic
17 an easement beyond their high-water mark based on their
18 deed?

19 A. Based on their deed, they didn't own it, so I don't know
20 how they would -- how that justifies an easement to it,
21 through it, I should say.

22 Q. Are you aware of anyone telling the Eckrotes that they
23 did not own the intertidal land on which Lot 36 runs?

24 A. Well, not during the time they got the survey, but when
25 I became aware that this was an issue, I called them

1 immediately because I felt like I, you know, had, you
2 know, not conveyed to them the information.

3 I looked at my plan. I knew that something was
4 off, and I knew people were asking about this Eckrotes'
5 plan, and it kind of really horrified me that I didn't
6 have a note on it about not owning beyond high water by
7 deed.

8 So I called the Eckrotes immediately. I called --
9 I spoke with Janet Eckrote because I felt, you know,
10 responsible for, you know, her not having that
11 information correctly.

12 Q. And when did that call take place? Was it 2019? 2018?

13 A. It was somewhere -- it was just when I started finding
14 out about this thing, so I think it was 2018, maybe. I
15 think there's -- you had, you know -- my conversation
16 with Don, I think, you know, made me look at the plan.

17 Q. Let's go to that. So in 2019 did you have
18 communications with Don Richards about the Eckrotes'
19 parcel and its boundaries?

20 A. Yeah, I guess it was 2019. Yeah -- yes.

21 Q. Had you worked with or spoken with Don Richards over the
22 years prior to that time?

23 A. Oh, frequently. I mean, we've -- we would share
24 information as much as, you know, we could when we were
25 working on something that bounded each other or even,

1 you know, a later rendition of something.

2 There's no -- yeah, there was no reason not to
3 share information. The idea is to get the truth out,
4 not to like, you know, create a mystery about something.

5 Q. In fact, you have an ethical obligation as a licensed
6 surveyor to truthfully set the boundaries where they are
7 on the face of the earth?

8 A. Without doing it for the advocating point of view. Yes.

9 Q. And do you recall discussing your August 31st, 2012
10 survey plan with Don Richards in August and September of
11 2019?

12 A. I remember we had -- yeah, we had a discussion about it,
13 yeah.

14 Q. And what was the nature of that discussion?

15 A. Well, the nature of that discussion was, you know, I
16 sent Don a copy of that plan, and he just wanted to
17 clarify because I think he would have liked to have seen
18 that plan be part of the record, and he was trying to
19 get the information of that plan to be part of the
20 record because he was working on an issue that was about
21 that and had already been part of the -- well, part of
22 the information, but it wasn't part of the record, of
23 the public record.

24 Q. And where did you tell Surveyor Richards that you placed
25 the eastern waterside boundary on the Eckrotes' lot?

1 A. On high water, which -- I mean, anybody who looked at it
2 who knows how to read deeds would know that. I mean,
3 that's -- it's not -- it's not even -- it doesn't, you
4 know, it's so clear on its face, I don't know how you
5 could come up with anything else.

6 Q. And would it be accurate to say that Surveyor Richards
7 asked you for a signed and sealed copy of your
8 August 31st, 2012 survey on or about August 23rd, 2019?

9 Does that sound about right?

10 A. Yeah, that would definitely be right.

11 Q. And did he make that request by email?

12 A. He made the request by email. We only communicated by
13 email, and I had sent him many copies of deeds, and
14 he -- of plans that I had done of different surveys, and
15 he had done the same for me over the years, so this
16 didn't seem like anything that jumped up and down any
17 differently.

18 Q. And did you provide Surveyor Richards with a signed and
19 sealed copy of your August 31st, 2012 survey of Lot 36
20 in 2019?

21 A. I believe I did.

22 Q. I'm going to ask you to look at Exhibit H --

23 (Deposition Exhibit No. H, August 26, 2019 Letter
24 to Donald R. Richards from Gusta Ronson, PLS, was
25 introduced.)

1 BY MS. TUCKER:

2 Q. Which is a letter from you to Don Richards.

3 That letter's dated August 26, 2019.

4 A. Hm-hmm (indicates yes).

5 Q. Do you recall sending Don Richards this letter?

6 A. Yes. And this -- okay.

7 Q. And does this letter accurately reflect your purpose and
8 conclusions relating to the August 31st, 2012 survey
9 plan?

10 A. Yes.

11 Q. Is it customary for surveyors to share their prior
12 surveys and such explanations with one another?

13 A. It's customary among the group of surveyors that I
14 worked with.

15 Q. And what's the purpose of sharing prior survey
16 information with a subsequent surveyor?

17 A. Because you don't have to reinvent the wheel. You're
18 working on a, you know, a basis of building information.

19 Q. After providing Surveyor Richards with this letter, did
20 he request that you provide an affidavit memorializing
21 this same information?

22 A. He asked me if I would do that.

23 Q. And did he send you a draft affidavit for you to edit
24 and put in your own words?

25 A. Yes, he did.

1 Q. And was that request made in about September of 2019?

2 A. You have the dates, I don't. So I would say that's
3 probably true.

4 Q. If I told you that he had sent you a copy of that draft
5 affidavit on September 10th, 2019, does that sound about
6 right?

7 A. Probably, yes.

8 Q. Did he -- does it sound accurate that he described that
9 as a template for you to put in your own words?

10 A. Yes.

11 Q. And did you edit that draft affidavit that he sent you?

12 A. Yes.

13 Q. And I'll direct your attention to Exhibit I.

14 (Deposition Exhibit No. I, Affidavit of Gusta
15 Ronson, PLS, was introduced.)

16 BY MS. TUCKER:

17 Q. Exhibit I is a copy with black wording, and then it's
18 got blue and -- it looks like, I'll just call it, gold
19 colored, sort of a beige highlighting -- we normally
20 call it red lining, but it's not red, it's blue or
21 beige.

22 But do you see those changes?

23 A. Yes.

24 Q. And are you the one who made those blue and beige edits
25 to this document?

1 A. Probably. I would say, yes. Yeah, I mean, this is an
2 edit. I was the only one who edited it.

3 Q. Was it your intention -- did you tell Mr. Richards it
4 was your intention to sign that affidavit as amended and
5 provide it to him for use by counsel for Mabee and
6 Grace?

7 A. I believe I did.

8 Q. And does this affidavit, as edited by you, accurately
9 reflect your personal opinion about the boundaries of
10 the Eckrotes' parcel?

11 MR. DUCHETTE: Objection. Form and foundation.
12 You can answer.

13 MS. TUCKER: Just review it and just make sure.

14 THE WITNESS: I mean, I wrote it, you know, as
15 opposed to sitting reading all of this.

16 I think I've read it before online, and I think all
17 this stuff accurately reflects what I would have -- what
18 I wanted to say.

19 BY MS. TUCKER:

20 Q. And did you tell Surveyor Richards that before he
21 executed and delivered this affidavit as edited, you
22 were going to talk to Janet Eckrote about the meaning of
23 your August 31st, 2012 survey plan and your intent to
24 provide an affidavit to Mr. Richards?

25 A. Yes.

1 Q. And did you speak to Janet Eckrote about the meaning of
2 your August 31st, 2012 survey at that time?

3 A. I did. I did. I called her. I felt terrible.

4 Q. And why do you say you felt terrible?

5 A. Because I knew there was all of this flurry going on,
6 and I felt terrible that I didn't make this clear to
7 her.

8 I didn't realize that there was a whole other
9 theory going on, but, you know, I wanted to make it
10 clear to her what the -- what my survey meant, and I
11 spoke with her at length. I mean, we spoke for a good
12 10, 15 minutes.

13 Q. Did you tell Janet Eckrote at that time that the
14 Eckrotes did not own the intertidal land adjacent to
15 Lot 36?

16 A. I did.

17 Q. And did you tell her that that's what your 2012 survey
18 also reflected?

19 A. I did.

20 Q. Did you tell Janet Eckrote that her parents and
21 grandfather never owned the intertidal land on which
22 Lots 36 or 35 fronted?

23 A. Probably. I wanted to explain how that happened.

24 Q. Did you reference the 1946 Hartley to Poor deed at that
25 time?

1 A. Probably not, not to confuse. People really don't
2 relate to that stuff very well.

3 Q. But you did unequivocally tell her that based on the
4 prior deeds that she did not, and her mother did not,
5 own the intertidal land?

6 A. That's exactly right.

7 Q. And what did Janet Eckrote say in response to what you
8 told her?

9 A. She was -- I felt bad for her. She told me about being
10 there. I mean, she -- basically she was telling me how
11 this used to be a wonderful place for her as a child and
12 that now she feels that everybody hates her in that area
13 because of this whole thing, and she didn't know that
14 that was going on, or that's what she shouldn't have
15 done.

16 You know, she was kind of, you know -- I felt -- I
17 just felt terrible for her. You know, it was more of a
18 personal thing than an ah-huh. It wasn't like she had
19 just discovered this. It was like -- more like she was
20 telling me the discomfort of her situation that she was
21 in right now with this whole thing and how this place
22 that was so wonderful to her was now a place where she
23 felt like a paria.

24 Q. Did she tell you that other people had told her that the
25 Eckrotes didn't own this land prior to you telling her?

1 A. She really didn't discuss the information I gave her.
2 She was more talking about what it all meant to her and,
3 you know, on a personal level.

4 Q. Did she mention that Jeffrey Mabee had told her that he
5 owned that land previously?

6 A. I don't remember if she said that or not.

7 Q. Did you tell Janet Eckrote at that time that you
8 intended to provide Don Richards with an affidavit
9 stating your conclusions about the boundary of the
10 Eckrotes' lot being the high-water mark and not
11 including ownership of intertidal land?

12 A. I did, and that's another reason why I called her
13 because it was her information. I wanted to make sure
14 that she understood that I was, you know, passing this
15 information out.

16 Q. And what did she say in response to you telling her that
17 you were going to give an affidavit to Don Richards?

18 A. She didn't say anything about that.

19 Q. Did you provide Don Richards with the edited affidavit?

20 A. I provided him -- I edited it and sent it to him, but I
21 didn't ever -- it never got beyond that stage, I don't
22 think.

23 Q. And why did it not get beyond that stage? What happened
24 to stop you from giving an executed version of that to
25 Don Richards?

1 A. There was a meeting with the new owners of Good Deeds
2 and the attorneys for Nordic Aquafarms and the attorney
3 for the Eckrotes.

4 Q. Who asked you to do that meeting?

5 A. I believe I was told by John -- by Good Deeds that this
6 meeting was happening and I should come to it.

7 I was no longer the face of Good Deeds. I was an
8 employee now.

9 Q. Would that have been Jonathan Stewart, PLS?

10 A. Yes, who I adore. I think he's a great person and a
11 good -- a really good surveyor.

12 Q. And who else was at this meeting?

13 A. It was also Adam -- Adam -- Robinson, who was another
14 co-owner of Good Deeds to Plisga & Day, a co-owner of
15 Plisga & Day, and two attorneys, a woman, who I believe
16 was there for the Eckrotes, and then a Nordic attorney
17 was there.

18 Q. And would that have been Sarah Gilbert for the Eckrotes?

19 A. I'll tell you, I cannot remember their names, and I
20 don't have any of that information in front of me.

21 Q. And would it have been David Kallin from Nordic
22 Aquafarms?

23 A. Again, I don't know.

24 Q. And were you told at this meeting that you were not
25 allowed to provide the affidavit to Don Richards or

1 Mabee/Grace?

2 A. I was -- I was -- I was kind of told that I was being
3 duped and that -- I don't know, it was a very bizarre
4 meeting.

5 My employee -- employers who never liked to act
6 like employers but were not really excited about this
7 thing happening, and everybody knew about the affidavit,
8 so I assumed that Janet Eckrote told them or Don
9 Richards told them, and -- and that was a -- I think
10 they were all convening there to make sure that I knew
11 that that was wrong and I shouldn't do it, and they had
12 terrible things to say about people.

13 You know, it was an awful meeting, but the gist of
14 it was, you know, don't send -- don't sign the thing.

15 Q. And did this take place at the Good Deeds' office in
16 Belfast?

17 A. It did.

18 Q. And describe specifically what the attorney for the
19 Eckrotes and the attorney for Nordic said were the
20 reasons for you not to provide the affidavit or what
21 harm would flow from that?

22 A. Well, they -- they weren't specific about what harm
23 would flow from that. It was more like, you know, there
24 was -- there was talk of lawsuits going around because
25 of the written description along the bay that there was,

1 you know -- they were pointing fingers at Lee, whose
2 office that deed flowed from. They were talking about
3 Don Richards and how he, like, was, you know,
4 instrumental in twisting things and he was -- you know,
5 they did, you know, I had a relationship with Don that I
6 respect and admired him always, and they were turning
7 him into the bad guy, and at that time I kind of shut
8 down and thought, like, okay, I just -- and at the same
9 time I was going through -- my partner was in the last
10 months of Stage IV cancer, and I wasn't about to join
11 any fight except that one. So that's -- I just backed
12 off.

13 Q. And by them saying these things about Don or lawsuits,
14 was that the lawyers for Nordic or the lawyer for the
15 Eckrotes?

16 A. It was a lawyer for the Eckrotes who was saying
17 something about Lee, and I felt very, like, upset about
18 that, and then they were ganging up and talking about
19 Don together and I just -- at that point --.

20 And then the lawyer from Nordic had some theory
21 that he was trying to convince me, the Eckrotes actually
22 owned to low tide, and I could not wrap my head around
23 that, and I could -- well, that turns everything on its
24 head. Does that mean words don't mean what they say?

25 But it was all this, you know, legalese,

1 contrivance with case law, and I was not about to get
2 into that either.

3 Q. Did anyone tell you not to give the affidavit because
4 the affidavit was wrong in its conclusion?

5 A. Well, the affidavit was just facts, it couldn't be
6 wrong.

7 Q. And at the time when you had this meeting, you were an
8 employee of Plisga & Day, not an owner of Good Deeds?

9 A. That's right.

10 Q. And Jonathan Stewart and Adam Robertson were
11 effectively, as the owners, of Plisga & Day?

12 A. Yes, and they had also worked for Nordic Aquafarms, who
13 was one of their clients, where Clark had done that
14 work, so they were not pleased about creating something
15 that could possibly harm a client, especially a client
16 with big pockets, I guess.

17 Q. And did -- was there any suggestion made by anyone at
18 that meeting that Plisga & Day would not get future work
19 if they allowed you to file this affidavit?

20 A. No, nobody said that.

21 Q. Was it implied?

22 A. Well, I think in my own head it was implied.

23 Q. Did they also suggest that a lawsuit -- that the
24 Eckrottes' lawyer, Sarah Gilbert, did she suggest that a
25 lawsuit might be filed against Lee Woodward for

1 including the call, Along said bay in the 2012 deed?

2 A. She did, she did. And I -- it might have just been a,
3 you know, a passing comment or I don't know if she
4 actually did file one. And my thought was, gees, I
5 might have written that and passed it along and got Lee
6 in trouble, you know, so I felt pretty awful about that.

7 Q. How would you describe your feeling about this meeting?
8 Was it intimidating? Threatening? How would you
9 describe this meeting?

10 A. It was annoying, and it was -- I think it was intended
11 to be intimidating, and I was -- I just wanted to get
12 out of there, you know. I wasn't fearful of it, I
13 didn't feel intimidated by either of those people that I
14 knew what they were trying to do, and it was like I
15 wanted to go take a shower.

16 Q. Do you believe that Janet Eckrote is the one that
17 contacted Nordic, or her own attorney, to stop you from
18 filing the affidavit with Don?

19 A. I don't know what her intention was, but I'm sure she
20 called after I called her, called her attorney to just
21 let them know what, you know, what I had -- what we had
22 talked about.

23 Q. And was this meeting scheduled shortly after you spoke
24 with Janet Eckrote?

25 A. I think it was, yeah.

1 Q. Do you believe that either the Eckrotes' or Nordic's
2 counsel contacted the senior people at Plisga & Day to
3 schedule this meeting?

4 A. They must have.

5 MR. DUCHETTE: Objection. You can answer.

6 BY MS. TUCKER:

7 Q. Do you know, did anyone from Plisga & Day tell you how
8 this meeting was scheduled or came about? Was it -- did
9 they ever tell you that it was requested by Nordic?

10 A. They may have, you know.

11 Q. During that meeting, did you tell the lawyers for the
12 Eckrotes, Nordic, and the senior people at Plisga & Day
13 that the Eckrotes did not own the intertidal land on
14 which their lot fronts?

15 A. I told them that that was my feeling, yeah.

16 Q. And did anyone provide any evidence to support a
17 contrary conclusion at that meeting?

18 A. Yes, the Nordic attorney had -- and I'm sorry, if it's
19 you, I don't remember -- you don't look like --

20 MR. DUCHETTE: For the record, I was not at that
21 meeting.

22 THE WITNESS: But, yeah, it was, you know,
23 something about, yeah, he was citing some case law that,
24 you know, very complex case law where it was agreed that
25 when the call went to high water it actually meant low

1 water.

2 I don't know. I mean, he went into it. He was
3 crowing a little bit because he was involved in that
4 case. I don't know, it was like one of those ego
5 stroking things. I wasn't about to argue with him.

6 I think what I said to him was, you know, you're
7 the lawyer, you can come up to your own conclusions, but
8 I'm a surveyor, and [inaudible] words that are on the
9 deed.

10 BY MS. TUCKER:

11 Q. And after that meeting, did you tell Don that you could
12 not provide the affidavit because you were told not to
13 provide it by lawyers for Nordic and the Eckrotes?

14 A. I may have said that to Don, but nobody said to me, you
15 better not do that. I mean, for one thing I did not
16 want to hurt my client or hurt, you know, my employers
17 or, you know, and it was clear where their attitude was
18 at. So I just backed off.

19 I didn't even realize that this was going to create
20 such a -- because I really wasn't -- I was so involved
21 in dealing with, you know, my partner at that point, I
22 wasn't even following the news or anything like that.

23 Q. Did -- have you ever changed your mind about the
24 location of the eastern boundary of Lot 36 or do you
25 still believe it's the high-water mark of Penobscot Bay?

1 A. I believe it's the high-water mark of Penobscot Bay.

2 Q. And did you ever have a conversation with surveyor James
3 Dorsky about the Eckrotes not owning the intertidal land
4 adjacent to Lot 36?

5 A. We never had a conversation.

6 Q. Have you ever read the Court's decision dated
7 February 16th, 2023 regarding who owns the intertidal
8 land adjacent to Lot 36?

9 A. I just scanned it, and actually I was in a car, and
10 someone sent me a link to it, and I read it with great
11 pleasure because I fell vindicated.

12 Q. I was just going to ask you. My question is, do you
13 feel vindicated by the Law Court's decision?

14 A. Yeah. It's like, yeah.

15 Q. And is there anything else you'd like to say about the
16 boundaries of this parcel, your work in this survey, or
17 the ongoing dispute regarding who owns the intertidal
18 land adjacent to Lot 36?

19 A. There's no other facts that I can think of that I have
20 to say.

21 MS. TUCKER: Andre, you're up.

22 MR. DUCHETTE: Ms. Ronson, thank you. I'm attorney
23 Andre Duchette. I represent Janet and Richard Eckrote
24 who have been sued in Federal Court by Mabee and Grace
25 relative to a slander of title claim that your

1 deposition today is being taken in regards to that
2 lawsuit. I just want to clarify a few things

3 EXAMINATION

4 BY MR. DUCHETTE:

5 Q. In 2012 when you were asked to prepare the survey for
6 the estate of Phyllis Poor, I think you testified
7 earlier that at that point in time you were not
8 requested to make any -- any judgments relative to the
9 ownership of the intertidal zone; is that correct?

10 A. No, I wasn't requested not to make any judgments, it
11 just never -- it didn't seem that that was even in the
12 picture, so I didn't really focus on that. But it was
13 pretty clear on its face, anyway.

14 Q. So who -- so in 2012 who owned the intertidal zone?

15 A. Whoever owned it before that, I mean, whoever owned it
16 in 2009.

17 Q. Okay. But you -- but in 2012 you didn't make any
18 inquiries or investigations as to who that owner was;
19 correct?

20 A. That's correct.

21 Q. Okay. And after 2012, did you do any further
22 investigation as to who the owners of the intertidal
23 zone were?

24 A. No, I never even looked at that survey again until 2018,
25 '19, whenever it was, 2019.

1 Q. And did you do any survey work to the -- any survey work
2 for any of the abutting properties of the Eckrotes?

3 A. I'm not sure. I don't think so. I mean, not clearly
4 abutting, not abutting.

5 Q. Let me ask it this way. Did you do any survey work
6 within the intertidal zone near the Eckrote property?

7 A. We may have. You know, I'm sorry, I just don't have
8 that. We've done so many surveys, and if I had our big
9 picture, I could tell you, but I don't have a specific
10 memory. We've done stuff in the intertidal zone before
11 many times in Belfast.

12 Q. So in that regard, are you familiar with Maine law with
13 respect to -- with respect to the presumption of who
14 owns the intertidal zone?

15 A. Yeah -- well, I think I am.

16 Q. And what is that?

17 A. That is if -- so usually property, depending on the way
18 the deed is written, but normally, even if it's
19 abutting, you own to low tide or, what is it, 100 rods
20 into low tide if you abut, if you abut high tide.

21 But there's words of exclusion and words of
22 inclusion and all of that stuff, which I'm also familiar
23 with, you know. Along high tide excludes the intertidal
24 zone.

25 Q. And, again, you never made any further -- you never took

1 any further investigation or research relative to the
2 ownership of the intertidal zone in front of the Eckrote
3 property; correct?

4 A. Correct. We did not determine who owned that. We
5 didn't even look at that.

6 Q. Okay. And sitting here today, you have no opinion as to
7 who the owner of the intertidal zone is; correct?

8 A. I haven't researched it. I've been reading about it, so
9 my personal opinion isn't relevant because I haven't
10 been doing any research on it.

11 Q. And in 2019 when you were speaking with Don Richards, I
12 think you indicated that there was -- I think your words
13 were, there was a whole other theory going on.

14 What did you mean by that?

15 A. Oh, well, if that was after I spoke with that lawyer,
16 then he had some theory going on, which I didn't quite
17 understand as I just mentioned before --

18 Q. Did --

19 A. -- about, you know, something in case law, which Don
20 seems to be very familiar with a lot of case law, so,
21 you know, I just mentioned to him that, you know, people
22 have another opinion.

23 Q. Who did -- when you say I mentioned to him other people
24 have another opinion, who are you talking about?

25 A. Well, if I had said that to Don, the only other thing I

1 would have known about other things going on, as you
2 just asked me, would have been what the attorney from
3 Nordic had said to me in trying to convince me that the
4 Eckrotes owned to low tide, to low water.

5 Q. Well, I guess I'm confused. Who -- how was there any
6 convincing? Because you hadn't done any -- you didn't
7 know who owned the intertidal zone; correct?

8 A. I would have -- I could have -- I could have discovered
9 that, but I didn't look into that, no.

10 Q. And so -- well, did you ever discover that other than
11 your reading of the 2023 Law Court opinion?

12 A. No, I -- other than reading that opinion, I, personally,
13 have done no research on that.

14 Q. And so when you spoke with Janet Eckrote in 2019, at
15 that time did you indicate to Ms. Eckrote who you
16 thought owned the intertidal zone?

17 A. No.

18 MR. DUCHETTE: I have no further questions.

19 MS. TUCKER: I just have a few redirect.

20 FURTHER EXAMINATION

21 BY MS. TUCKER:

22 Q. So although you, in 2012, did not determine who did own
23 the intertidal land adjacent to Lot 36, you did
24 determine that the Eckrotes or the Estate of
25 Phyllis J. Poor did not own it?

1 A. Correct.

2 Q. And because the estate of Phyllis J. Poor did not own
3 the intertidal land, is it your position that there was
4 no reason to determine who did own it at that time?

5 That wasn't a dispute?

6 A. Yeah, I mean, you know, if part of their survey was to
7 determine, you know, if there was any intertidal
8 ownership, I would have looked into that and come up
9 with who would own it, but I didn't.

10 The whole -- the whole survey was really based on
11 the upland area.

12 Q. Because that's all under the deed that Phyllis J. Poor's
13 estate owned?

14 A. That's correct.

15 Q. Based on your review of the Law Court's opinion in 2023,
16 did the Law Court determine that Mabee and Grace do own
17 that intertidal land?

18 A. Yes.

19 Q. And when you told Janet Eckrote in 2019 about the
20 ownership of the intertidal land, did you tell her that
21 the Eckrotes did not own it?

22 A. I did.

23 MS. TUCKER: I have no further questions.

24 MR. DUCHETTE: Nothing further.

25 (Witness will read and sign.)

(The deposition was concluded at 11:56 a.m.)

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CERTIFICATE

I, Lisa Fitzgerald, a Notary Public in and for the State of Maine, hereby certify that on July 7, 2023, appeared via Zoom GUSTA RONSON, PLS, the within-named deponent, who was sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause of action JEFFREY R. MABEE and JUDITH B. GRACE, individuals, residents of Belfast, Waldo County, Maine; and THE FRIENDS OF THE HARRIET L. HARTLEY CONSERVATION AREA v. JANET ECKROTE and RICHARD ECKROTE, individuals, residents of Lincoln Park, New Jersey, now pending in the UNITED STATES DISTRICT COURT, DISTRICT OF MAINE; and that this deposition was stenographically reported by me and later reduced to typewritten form with the aid of computer-aided transcription; and the foregoing is a full and true record of the testimony given by the witness.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

I further certify that the adverse party was duly notified according to law to attend at the taking of said deposition and did attend.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this July 9, 2023.



LISA FITZGERALD, NOTARY PUBLIC
Court Reporter

My commission expires: May 10, 2025