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John Frey - Superintendent
Town of Inlet
Inlet, NY

RE: Easement, Town road to Town Park along 4th lake inlet

Dear John:

I have researched the situation and broken down my findings into the following categories of concern. First, is there an easement and is it in the Gerace and other private owners chains of title, and if so, where is it located and what is the nature of that easement, if not, is there an easement from another source? Second, does the Town maintained boardwalk reside within the easement area if the easement exists? Third, how does this affect the rights of the private property owners whose parcels would be subject to said easement?

1) Existence and scope of easement:

Introduction –

If an easement is created by express grant or reservation in a deed, and the easement benefits an estate in land; it is an appurtenant easement, or attached to and running with the land. For validity the grantor needs to have the sufficient rights in the properties affected to grant or reserve the easement. For instance, if the deed holder grants an easement but their parcel is under mortgage and the mortgagee subsequently forecloses, then the easement would be extinguished. However, if the easement is valid it is not necessary for it to be repeated in every subsequent deed, to alert the subsequent purchasers, because it will show up in the chain of title. This is especially true when, as here, there are very visible signs of the easement that would trigger a search of the record. In other words, subsequent purchasers know or should have known they were taking title to the parcels subject to the easement. Mere non-use of an easement will not extinguish it, however, non-use coupled with clear and convincing evidence of an intent to abandon the easement might result in its termination. An easement can also be extinguished by adverse possession, but because an easement is a right of use that can be shared with others, the adverse possessor must completely bar that use and go unchallenged for the statutory time (probably ten years now in NY).

Historical evidence –

James Galvin acquired all of the area in question by deed in 1890 (liber 23 page 154). O'Hara acquired property along the inlet in 1897 (liber31 page 362) which reserved a 16 feet wide easement along shore for a "Highway". O'Hara conveyed a parcel to Brown in 1903 (liber 39 page 479) and reserved "the usual" right of passage for the "public" of 16 feet wide along the inlet. The parcels owned by Brown are shown on a map prepared by Dave Hollister in 1974 as adjoining the Town of Inlet (formerly Arrowhead hotel) property. The Hollister map was filed in 1977 and shows the 16 foot wide easement across the former Brown parcel and also across all lots depicted on the map that are easterly and southerly from the Town parcel. The history of the Town is that steamboats were docking on Fourth Lake at the Arrowhead hotel and guide boats taking guests further into the wilderness up the inlet, and guests would disembark and walk or carriage along the inlet to other establishments in the Town.

From the founding of the Town around 1895 and as it began to grow up until 1903, it seems abundantly clear that a "public" easement was intended, and that it would run from the Arrowhead Hotel parcel, along the inlet, for the purpose of reaching other businesses in the Town. So the easement is appurtenant because it benefitted the Hotel parcel and other parcels developed or to be developed. Subsequent conveyances bolster this evidence and indicate that the purpose of the easement did not disappear.

On August 25, of 1904 Galvin conveyed a parcel to Dobson & Kenwell (liber 41 page 313). This conveyance extended along the inlet, from the Brown parcel to the southerly line of the grantor, further described as "nearly opposite the church" (only the Presbyterian Church existed at this time). It included between the Town road and the inlet. The conveyance was limited to the high water mark and reserved a 16 foot wide strip for "public use" along the shore between Brown and a "point opposite said town road". While the wording is not perfect in the document, it is clearly expressing an intent to reserve an easement along the inlet from the entire conveyance, with the intent to reach the Town road. It was not necessary to extend the easement along the southerly line of the grantor in an easterly direction to the Town road rather than ending "opposite" the Town road because plans were already in the works to extend said Town road down to and across the inlet in this area. The parcel extended to "nearly opposite the church" (Presbyterian church built in 1903), and the Town authorized a bridge to be built "between the church and the head of fourth lake" on October 23, 1904 (see Town of Inlet Historical Association Website). So the easement was intended to go to the extension of the Town road, where it crossed the inlet.

The only remaining question is whether the Town road and bridge were extended and built across the above parcel (liber 41 page 313) or instead merely adjoining it. The said deed description (Galvin to Dobson & Kenwwell) travels southerly along the road as it existed on November 8, 1901 to "a point nearly opposite the church", thence along the southerly line of the grantor to the high water mark of the inlet. So,

it is clear that if the road was constructed anywhere northerly of the church, it would have to be constructed on the above parcel. The evidence shows that in fact the road was built northerly of the church. A map made by D.C. Wood and filed December 7, 1908 as map #52, is titled “Map of the Highway showing the changes northerly of the church in the Town of Inlet.”

So, as of 1904, a public easement of 16 feet in width, along the shore of the inlet, had been expressly reserved across all the parcels between the Arrowhead Hotel and a soon to be extended Town road by a party who had the right to do so. The Town road was in fact extended between 1904 and 1908 thereby completing the bargain by way of giving public access.

Possible origination of the dispute:

On the same day as the above transaction (liber 41 page 313) Dobson & Kenwell penned a deed to one Buckingham (liber 41 page 257) for a parcel described as sub lot 4 per map made by S. S. Snell 1904. This parcel came out of what Dobson & Kenwell were purchasing from Galvin but was filed on August 29, 1904 and their source deed from Galvin was not filed until September 22, 1904. In addition, this deed from Dobson & Kenwell to Buckingham does not include the easement that was reserved in the conveyance to Dobson & Kenwell. The argument is probably that a search of the record back to Buckingham would stop there and find nothing before it in the record. One would have to search forward from Buckingham to find the easement. Therefore the easement should not be valid against a subsequent bona fide purchaser for value (BFP) of this parcel. In other words, the Gerace parcel is protected from the easement by the recording statutes because they did not have constructive notice of the easement and therefore did not know of it. This argument does not hold up because in order to be a BFP one must truly be without knowledge of the easement and in addition without reason to have known of it. Knowledge of the easement comes from actually knowing of it or being in a position that one should have known of it, having constructive notice of it (correct recording sequence), or having inquiry notice. In this case the use by the public is obvious and Gerace did inquire. The result was a survey map prepared by John Deming that clearly indicated the 16 foot wide easement. I would have included the stairway in the express easement myself, but nevertheless the easement is shown along the shoreline and the map was prepared for the transaction. According to the Deming map the survey was completed June 21, 2000, the deed to Gerace filed July 6, 2000, and the survey map completed September 12, 2000. So, it could be claimed that Gerace did not have actual knowledge of the easement before the purchase. But nevertheless, Gerace should have known of the easement because they had a situation that would trigger inquiry, they did inquire, and all they had to do was wait for the results before purchasing.

Conclusion:

There is a 16 foot wide easement along the shore of the inlet, for the general public, for passage between the Town of Inlet Park and the Town road (South Shore Road), for the purpose of accessing the Town business establishments. The easement includes the necessary reasonable area for access from the shore to South Shore Road in order to carry out the intent of the easement. The minimal impact and reasonable location of the steps in the current location are part of the expressly granted easement. The easement has not been blocked or obstructed from its intended purpose. Only so much of the 16 foot width as is necessary for passage is required to remain open. Improvements within the 16 foot wide easement are allowable as long as enough remains for the customary and expressly granted use of travel. Improvements and building of the bridge may have extinguished the use of the easement for carriages but certainly not for foot travel. There is no evidence that there has been an effective blockage, for purposes of foot travel, for any length of time, let alone the statutory period for extinguishment.

2) Location of Town Maintained Boardwalk:

First, as concluded above, the easement is a public way per grant. However, the building of structures that need maintenance, by a public entity, would quite likely be overburdening the original intended use. The negotiation of the lease agreement was a reasonable measure to protect the private owners from an increased burden of maintenance and liability. In no way could it be construed as a relinquishment of easement rights. The courts frown on relinquishment of easement rights and will only recognize it if the easement holder is very explicit in doing so.

The location of the boardwalk is partly beyond and into the water from a pre-existing stone retaining wall and partly to landward of said wall. There is no horizontal separation distance between low water and high-water mark (HWM) because of said wall. All of the deeds convey either to high or to low water per calls to and along the shore, bank, or high-water mark. All of the surveys reviewed, including maps from 1907 to present, show the parcels ending at either the stone retaining wall or the high-water mark, which are virtually the same horizontal location. Of course deeds are to be construed as of the date they were made, so they extend to the HWM as of the date of the source deed. The best available evidence of the HWM at the time of the source deeds are old surveys and descriptions made at or near the time. In addition, NY courts have held that the location of the HWM as a boundary may be governed by local surveying practice.

The substantive chain of evidence for the HWM begins with a map made by Sylvester in 1948, which shows an Iron Pipe set 5.4 feet from the retaining wall on the northerly division line of Gerace. Said Iron Pipe was recovered in 1996 by

Deming in the course of a survey and recovered again by Deming in the course of the Gerace survey in 2000. Deming used said Iron Pipe and deed dimensions to it as the HWM. However, the actual HWM is on the stone retaining wall as confirmed by said Iron Pipe. All other surveys have used the stone retaining wall as the HWM. The recovered Iron Pipe is evidence that the wall in this location has not moved since at least 1948 and is the best evidence of the original location of the wall/HWM. The easement language conveys "along the shore" which is usually construed as low-water mark, which in this case is the same as HWM and the same as the stone retaining wall. However, again the location of an easement is guided by intended use and slightly more flexible than a fee title line as far as location goes.

Ownership of the bed of the inlet does not seem to be an issue at this point. However, my research indicates that the State does or would claim ownership if the issue came up. The water in the Fulton chain of lakes in this area was raised by a Dam constructed by the State for purposes of supplying water to the Black River Canal. In all other reservoirs of this nature the State has claimed ownership of the entire bed by eminent domain takings rather than merely the portion between the pre-dam and post-dam levels. Corroborating this is one deed in particular wherein the grantor releases their claims for compensation for the taking of the bed of these lakes as part of a sale of other lands to the State. In addition, these reservoirs are protected from abandonment by the NY State constitution and are held in the State's sovereign capacity which makes them free from claims of adverse possession.

Conclusion:

Part of the boardwalk extends into the stream beyond the HWM or LWM. That part of the boardwalk to landward of the stone retaining wall is located within a valid 16 foot wide easement that extends from the stone retaining wall landward. If that part of the boardwalk in the stream is outside of its easement, it sits on other private land not belonging to the owners on this side of the inlet, or it sits on state lands if the bed of the inlet is owned by the state.

3) Rights of Private Owners Subject to the Easement:

The private owners subject to the easement and probably State ownership of the bed of the inlet do retain their riparian rights. These rights also cannot be abandoned and are appurtenant to the respective parcels. The easement in no way limits these rights. These owners have the right to unobstructed access to the water as well as docking and access to the main channel for navigation. Those portions of the boardwalk fronting on private property cannot be used for public docking. In addition, the public cannot loiter or block the private owners free access to the water as the easement is merely a right of passage.

Presumably, if the lease for the boardwalk is expired and the Town has not continued its maintenance, then the private owner would be within their rights to remove that portion of the boardwalk resting on their land. If this were to happen the private owner would be required not to obstruct the easement during demolition and to return the path to its natural state, suitable for public passage.

Sincerely,

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Executive Juris Doctor