

Guy K. Krogh  
Thomas D. Cramer  
Katrina Thaler Medeiros  
Michael P. Porciello

Richard B. Thaler  
(1932-2017)



309 North Tioga Street  
Ithaca, New York 14850  
Telephone: (607) 272-2314  
Fax: (607) 272-8466  
Reply to: GKrogh@thalerandthaler.com  
\* also admitted in Idaho  
† also admitted in Massachusetts

August 23, 2018

Town of Caroline

Attn: Mark Witmer, Town Supervisor  
PO Box 136  
2670 Slaterville Road  
Slaterville Springs, NY 14881

Re: Recreational Trail, NYSEG title, and Abstracts of Title  
For Additional Parcels dating to Railroad Vesting Dates

Dear Supervisor Witmer:

As you may recall, this process regarding title analyses first started with one landowner who produced title documents and caselaw that were claimed to be controlling. I was asked to analyze the legal issues presented by such cases and analyses, and that led to title analyses as well. I had little difficulty disbursing the claims based upon the application of NYS law, the particular historical Railroad Act that created the railway in question, and the records concerning the acquisition and retention of land title in fee by the railroad ("RR"). None-the-less, some arguments persisted and I was authorized to perform a deep title analysis on one particular parcel of land and found hundreds of years of history and document filings verifying that NYSEG was properly vested in title in fee simple absolute title to the 66±' RR lands once and in some cases still denominated as a right-of-way, as were all highways, railroads, and even canalways in that era. Again, this is because the rails were the highways of their day and, even today, we refer to NYS-owned land under state highways as rights-of-ways.

None-the-less, problems still persisted, including because each title is unique and other landowners may, or may not, have ownership of the lands NYSEG is recognized as owning in the old RR lands. Thus, the Town authorized the preparation of Abstracts of Title ("Abstracts") for several parcels. Tracing titles back to the 1800s is no easy task, and this took quite a long time. As you may recall, several months ago the Abstracts were finalized, certified and delivered. I thus began my title review. As is typical, particularly of ancient title records, several matters had to be cross-checked and supplemented to try to achieve maximum clarity, but I was able to examine the historical titles of all searched adjacent landowners to determine whether any of the selected landowners actually own the land currently titled in NYSEG.

While I do not want to spend pages describing each relevant document in each Abstract, as that is what the Abstract itself is for, I do want to provide a summary of my findings and conclusions. Based upon these Abstracts I am of the opinion that each and every searched tax parcel (and such parcel owners) have no title interest or claims in or to the NYSEG-owned historical RR lands. As to a short-form finding for each parcel, I note as follows:

1. TPN 14.-1-2.2. This one was easy as the deed histories are clear that title was always excluded, and there was even a fence line between the RR and this parcel's title, as well as surveys showing adjacent, and not overlapping, boundaries.
2. TPN 14.-1-1. Another somewhat easy one as the exclusion in title has been clear and land descriptions run to the edge of the RR title, even using concrete RR monuments as survey and boundary markers.

3. TPN 14.-1-5.32. This parcel shares, like others, many of the same underlying historical title documents, and here too title was never in this chain since the 1828 RR condemnation and filings. In some of the newer deeds there is no mention of this RR title anymore and this can be misleading – it is not. This absence makes sense as the town line also serves as a title boundary. Thus, as title never went to the RR lands there is and has been no need to describe lands in two municipalities when the title is not held over the municipal boundary (i.e., in the old RR lands).

4. TPN 14.-1-2.1. Here it is also clear that title was never in the RR property after the RR took title by eminent domain (as was true of all the other parcels), and here made even clearer by a judicial determination arising in a contested land rights and foreclosure case that such title did not extend into, but only bordered upon, the RR title.

5. TPN 14.-1-5.2. This parcel shares similar histories as some of the neighboring parcels above, and again there is no history of title in RR lands after said 1828 RR taking by condemnation. However, this one had the toughest title to track as the last conveyance was in 1976 and nobody had ever modernized the land descriptions. Thus, the RR title-vs-Owner's title-vs-exclusions from title had to be traced from inception in 1828 to the current owners. It indeed did track and line-up from the 1828 taking in condemnation, through Lokken, through Freeman, to the current owners. Thus, the original 1828 taking by the RR in fee simple does track though to current owners despite older and harder-to-interpret land descriptors.

Throughout these histories there are many side tracks to get lost in, including because the larger farm tracts were parceled and splintered, new roads popped up, road names changed, etc. Thus, for example, in the last parcel discussed above, when title went into the first Lokken, it splintered from such then owner into 6 different subsequent owners, each trail of which had to be followed until it could be eliminated as not being the land under review. As noted, the RR title did track through as not tied to, or acquired by, anyone in the chain of title after 1828. As you may know, this is not easy stuff and I do not envy the job the abstractor had on this one.

In conclusion, I have reviewed these abstracts and all confirm, with little room for doubt or argument, that none of these parcels (nor their present or any past owners) ever had title to the RR property conveyed to them or any predecessor, dating fully back to the RR acquisition by State Statute circa 1828, when RR Commissioners Jennings, Camp, and McCormick were authorized to condemn a railway line up to 100' in width, and did so (here, to the apparent width of 66'). Title to the RR lands was vested in the railroad by fee (and not by mere easement), and such title remained so vested separate and apart from title rights of neighboring owners, such that such title currently rests in NYSEG. Thus, for all intents and purposes, it is my opinion that NYSEG's title in such old RR lands appears both valid and solid.

Finally, this opinion seems consistent with the conclusions of others, including state agencies and authorities, that have examined this issue, as well as NYSEG itself. However, I doubt anyone other than the Town of Caroline went this far to prove it. Please advise what else you may desire in respect of this long-pursued title question.

Very Truly Yours,

Thaler & Thaler, P.C.



By: \_\_\_\_\_  
Guy K. Krogh, Esq.