

TOWN OF  
Caroline



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Mark Witmer, Supervisor  
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(607) 539-3395

October 28, 2016

Scott Van Gaasbeck  
58 Middaugh Road  
Brooktondale, NY

Dear Scott:

The Caroline Town Board asked our town attorney, Guy Krogh of Thaler and Thaler, to review your letter of June 8, 2016 that raised questions about NYSEG ownership of the abandoned Ithaca and Owego railroad (I&O RR) right-of-way, and to provide us a professional legal analysis of the issues that you raised. Mr. Krogh has conducted his review and I want to update you on his findings to help resolve misunderstandings about this issue, with the goal of developing constructive dialogue within our community about the proposal to extend the Southeast Recreation Way Trail.

Mr. Krogh has concluded that NYSEG holds valid title to the rail bed. Chapter 21 of the New York State Laws of 1828, specifically §8, unambiguously states that I&O RR took true title. Mr. Krogh has also ascertained that the width of the railroad right-of-way is at least 66', and possibly 100', not 3.6'. Mr. Krogh's analysis of the deed history of your property found that your claim to title is not valid. The deed history shows that prior owners of your land recognized that the I&O Railroad, and then NYSEG, owned the land. Most recently, the deed from Maurice Rosenblatt and the Bernice Evan Trust to you and Ms. Burrows references a 2001 map by T.G. Miller (Map Drawer ZZ, p. 59) showing the railroad right-of-way with title held by NYSEG.

The previous cases that you cited regarding rail bed usage pertain to other circumstances, places and times, and do not bear on the I&O RR lands in question. Specifically, *US v. Brandt* was a case about the United States Railroad Act of 1875 regarding land patents granted by the US Government in the West, and is not relevant to an eastern state-granted railroad chartered by New York State in 1828 and built in 1833-34. The *Coles v. Granville* case is specific to Ohio law - it concerned a 99-year lease of railroad rights, and use of private land in an area where the lease had never applied. And the *Presault v. US* case arose in Vermont. It involved the overlap of federal and state law, and is not relevant to the New York State title issue in question.

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As you know, the Town Board was concerned by the issues raised by you and others at the Caroline town meeting and has been waiting for resolution of the railbed ownership issue before further consideration of the proposed project. With ownership resolved, we will be gathering and providing more information about the trail extension proposal and planning to inform our thinking, both as a town board and as a community. I want to point out, as explained in my letter to you last June, that your property lies within the Phase II section which would be a ways off as it will require major work, discussions with landowners, and significant funding.

I offer these factual findings in the spirit of engagement and the best interests of our community. We will be gathering and providing more information to objectively address the concerns that have been raised regarding recreational trails.

Sincerely,

Mark Witmer, Town Supervisor