

STATE OF VERMONT

SUPERIOR COURT
Rutland Unit

CIVIL DIVISION

RAYMOND LARRY BISHOP and)
CHRISTOPHER SHELDRIK,)
Plaintiffs,)
v.)
TOWN OF WEST HAVEN.)
Defendants.)

Docket No. 653-9-10Rdcv

SUPPLEMENTAL AFFIDAVIT OF PAUL HODGE

I, Paul R. Hodge, being duly sworn, depose and state as follows:

1. I am submitting the following supplemental affidavit in response to arguments set forth in Plaintiffs' Opposition to the Town of West Haven's Motion for Summary Judgment ("Opposition").

2. Plaintiffs' contention that the 1785 and 1808 Surveys merely laid out "lines" rather than a road, Opposition at 4, is contradicted by the explicit language of the surveys. Both the 1785 and 1808 Surveys specifically states that they are laying out "a highway".

3. The blank space to which Plaintiffs refer in the text of the 1785 survey, Opposition at 4, is merely a blank space in my transcription of that Survey where the original text of the handwritten recorded Survey was illegible.

4. In addition, there is nothing unusual about use of the phrase "south and west line of a highway" in the 1785 Survey because surveys at that time set forth the line of only one side of the road, or the centerline. Thus, the phrase in the 1808 Survey that the road is to be "four

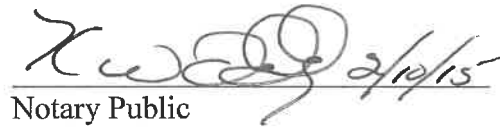
rods to the right hand of the survey” merely refers to the width of the road using the laid out line as a reference point.

Dated at Montpelier, Vermont, this 7 day of June, 2011


Paul R. Hodge, L.S.

STATE OF VERMONT)
WASHINGTON COUNTY, SS)

At Montpelier, in said County, Paul R. Hodge personally appeared and he subscribed and swore to the truth of the above before me this 7 day of June, 2011.


Notary Public
My Commission Expires:

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AFFIDAVIT OF PAUL HODGE

I, Paul R. Hodge, being duly sworn, depose and state as follows:

1. I am the Chief of Survey for the Vermont Agency of Transportation (“AOT”). I have held this position for approximately twenty five (25) years. As Chief of Survey, my duties include supervising land surveying for AOT, including three (3) survey crews, and title research concerning AOT property.

2. I have worked for AOT in various capacities since March 1979. When I began working for AOT, I initially worked as an assistant resident engineer on construction projects for approximately six (6) months. I then worked as a road designer for approximately seven (7) years. I then became Chief of Survey.

3. In 1972, I received an Associate’s Degree from Vermont Technical College in civil engineering, majoring in surveying.

4. I have been a Vermont licensed surveyor since 1974.

5. In connection with the Plaintiffs’ claim that the road bounding their property in West Haven, VT, known as River Road or Town Highway 14, is a private way, I undertook an

investigation to determine 1) whether River Road was laid out as a public way; 2) if River Road was laid out, to determine its location; and 3) whether the current location of River Road, as surveyed by AOT in 2010, matches the location of the recorded layout(s). For purposes of the following discussion, I will refer to the portion of River Road that abuts the majority of Plaintiffs' property as "Upper River Road" and the remaining portion of River Road (which abuts a portion of Raymond Larry Bishop's land and runs parallel to the Hubbardton River) as "Lower River Road".

6. My investigation began with a review and analysis of AOT's documents concerning West Haven roads and documents recorded in the Town of West Haven and Town of Fair Haven land records.

7. According to the West Haven Land Records, Sheldrick acquired approximately 10.5 acres of certain property in West Haven (the "Sheldrick Property") via deed dated March 23, 1998, recorded in the West Haven, VT land records at Book 28, Page 127 (the "Sheldrick Deed"). A true and accurate copy of the Sheldrick Deed is attached hereto as Exhibit 1.

8. According to the West Haven land records, Plaintiff Bishop acquired property containing approximately 18.13 acres (the "Bishop Property") via deed dated April 23, 1987, recorded in the West Haven, VT land records at Book 25, Page 189 (the "Bishop Deed"). A true and accurate copy of the Bishop Deed is attached hereto as Exhibit 2.

9. Based on my investigation, I have made the following additional findings: River Road, designated as Town Highway 14, appears as a class 3 Town Highway on the AOT's current (2003) General Highway Map for the Town of West Haven (the "Highway Map"). A copy of the General Highway Map is attached hereto as Exhibit 3. According to AOT's records, River Road has been shown as a Town Highway on AOT's General Highway Maps for the Town of West Haven

since 1931. A copy of the 1931 map is attached hereto as Exhibit 4.

10. Since 1931, River Road has been included in the State of Vermont's inventory of Town Highways. Lower River Road has received annual State aid for maintenance continuously since 1931. Upper River Road has received State aid for maintenance continuously since 1967, and periodically prior to 1967 back to 1931.

11. My investigation also revealed that Upper River Road was laid out in 1785 when West Haven was still part of the Town of Fair Haven. According to records of the Vermont Secretary of State, West Haven was incorporated in 1792. A true and accurate copy of the 1785 survey, recorded in Fairhaven Proprietor's Book 2, Page 105 (the "1785 Survey") is attached hereto as Exhibit 5.

12. Lower River Road was laid out in 1808. A true and accurate copy of the 1808 survey for Lower River Road, recorded in the West Haven land records in Book 2, Page 78 (the "1808 Survey") is attached hereto as Exhibit 6 (collectively with the 1785 Survey, the "Surveys"). The 1808 Survey for Lower River Road provides that the width of the right of way is four rods.

13. For the Court's convenience, I have transcribed the text of the Surveys and have attached the transcriptions of the 1785 Survey and the 1808 Survey as Exhibits 7 and 8, respectively. Both Surveys set forth the dimensions of the right of way in terms of rods and degrees. These measurements were determined using a compass and a survey chain, 66 feet or four rods in length with 100 links.

14. I confirmed the location of the Surveys in West Haven by referring to a United States Geological Survey ("USGS") Map of West Haven dated 1946, attached hereto as Exhibit 9. I did so by first plotting the bearings and distances set forth in the recorded Surveys. I also matched the

scale used on the USGS Map (accounting for changes in the location of magnetic north, known as declination). I then used the plotted Surveys to create an overlay that I placed over the USGS Map, which allowed me to match landmarks referenced in the Surveys, such as the Hubbardton River, with the actual location of the landmarks, as shown on the USGS Map.

15. I also oversaw a Survey of the existing location of the River Road by an AOT survey crew (the "2010 Survey"). The current location of River Road, as determined by the 2010 Survey, is depicted on a plan entitled Plan of River Road (Town Highway 14), West Haven, Vermont (the "Plan") attached hereto as Exhibit 10.

16. In connection with the 2010 Survey, I provided AOT's survey crew with copies of the Sheldrick Deed and the Bishop Deed and a map of the subdivision off Hackadam Road (Town Highway 13) to the west of the Upper River Road (the "Subdivision Map"). A true and accurate copy of the Subdivision Map is attached hereto as Exhibit 11.

17. As part of the 2010 Survey, the AOT's survey crew located the boundaries of the Sheldrick Property and the Bishop Property based on the metes and bounds set forth in the Sheldrick Deed and the Bishop Deed. The survey crew also located the boundaries between 1) the Sheldrick and Bishop Properties; and 2) the current location of the traveled surface of River Road. The survey crew also located the bounds on the Subdivision Map and any other item that would be helpful in determining the boundaries between River Road (Town Highway 14) and abutting properties.

18. In order to map the existing road, the survey crew established control points along the edge of the existing road. The survey crew used these control points to locate various topographic features such as edges of gravel roads and drives, iron pins, bounds, buildings (including houses and garages), fences, signs, poles, trees, the Hubbardton River, and tree stumps. Because the 1808

Survey refers to a bridge over the Hubbardton River, the survey crew also located the four corners of the existing bridge over the Hubbardton River on Main Road (Town Highway 1).

19. The survey data was downloaded to a computer in AOT's offices, which generated a map of the existing road, as depicted on the Plan. A right-of-way line was then plotted on the Plan 24.75 feet (1.5 rods) off both sides of the centerline of the existing traveled surface of River Road. The Plan shows both the location of the existing traveled surface of River Road (in gray) and the boundaries of a right of way three rods wide.

20. The Plan also includes excerpts from Scott's Map of Rutland County, Vermont (1854), the F.W. Beers Atlas of Rutland County, Vermont (1869) and a USGS Map of Whitehall Quadrangle (1904), each of which depicts River Road (highlighted in bold on each map excerpt).

21. Based on the 2010 Survey of the existing road, topographic features and the bearings and distances set forth in the 1785 and 1808 Surveys, the location of the 1785 and 1808 Surveys were also plotted on to the Plan. The property boundaries set forth in the Bishop Deed and the Sheldrick Deed were also plotted on to the Plan.

22. There are no structures within 66 feet of River Road on the east side which bounds the Sheldrick Property and the Bishop Property.

23. In my professional opinion as a licensed surveyor with over twenty five (25) years experience, I have concluded that the centerline of River Road in its current location closely follows the path of the Town Highway laid out in 1785 and 1808. As depicted on the Plan, the location of the Surveys match the location of the existing road within the standards of performance at the time of the Surveys. In other words, the existing road is in the same location as the recorded Surveys, but there are some slight, non-material deviations between the boundaries of the recorded Surveys and

the existing location of Town Highway 14 due to the increased precision of survey measurements today, as compared to 1785 and 1808.

24. The location of the 1785 Survey deviates from the current location of River Road (Town Highway 14) in one significant way. The 1785 Survey curved near the point where it intersected what is now Hackadam Road, by the location of the old school district #5 schoolhouse, to the east of Plaintiff Sheldrick's property. See boundaries of 1785 Survey on the Plan. As a result, approximately 3363 square feet of land used as part of Sheldrick's yard encroaches upon the laid out Upper River Road right of way, as depicted on the Plan.

Dated at Montpelier, Vermont, this ____ day of March, 2011


Paul R. Hodge, L.S.

STATE OF VERMONT)
WASHINGTON COUNTY, SS)

At Montpelier, in said County, Paul R. Hodge personally appeared and he subscribed and swore to the truth of the above before me this 23rd day of March, 2011.


Notary Public
My Commission Expires: 2/10/15

3/9/11

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Deleted: layout

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14. I confirmed the location of the Surveys in West Haven by referring to a United States Geological Survey ("USGS") Map of West Haven dated 1946, attached hereto as Exhibit 9. I did so by first plotting the bearings and distances set forth in the recorded Surveys. I also matched the

scale used on the USGS Map (accounting for changes in the location of magnetic north, known as declination). I then used the plotted Surveys to create an overlay that I placed over the USGS Map, which allowed me to match landmarks referenced in the Surveys, such as the Hubbardton River, with the actual location of the landmarks, as shown on the USGS Map.

15. Using the information contained in the Surveys, as confirmed by reference to the USGS Map, I plotted the distances and boundaries of the Surveys on to a plan entitled _____ (the "Plan") attached hereto as Exhibit 10.

16. I also oversaw a Survey of the existing location of the River Road by an AOT survey crew (the "2010 Survey"). The current location of River Road, as determined by the 2010 Survey is also depicted on the Plan. As part of the 2010 Survey, the location of the boundaries of the Sheldrick Property and the Bishop Property were determined based on the metes and bounds set forth in the Sheldrick Deed and the Bishop Deed. The boundaries between 1) the Sheldrick and Bishop Properties; and 2) the current location of the traveled surface of River Road were also determined in connection with the 2010 Survey.

17. In connection with the 2010 Survey, AOT's survey crew was given copies of the Sheldrick Deed and the Bishop Deed and a map of the subdivision off Hackadam Road (Town Highway 13) to the west of the Upper River Road (the "Subdivision Map"). AOT's survey crew first ran a traverse doubling the angles and distances (need a translation of this and why it was done). The survey crew then located features like edges of gravel roads and drives, iron pins, bounds, buildings (including houses and garages), fences, signs, poles, trees, river, ties (what is this?) and stumps. The survey crew located the bounds referenced in the Deeds and on the Subdivision Map and any other item that would be helpful in determining the boundaries between

State vs

River Road (Town Highway 14) and abutting properties. The survey crew also located the four corners of the bridge over the Hubbardton River on Main Road (Town Highway 1) *(why?)*. The survey data was downloaded to a computer in AOT's offices, and an alignment was placed in the center of each section of road located *(need to explain alignment process)*. A right-of-way line was then plotted 24.75 feet (1.5 rods) off the centerline on both sides. The Plan shows both the location of the existing traveled surface of River Road and the boundaries of a right of way three rods wide. The location of the 1785 and 1808 Surveys were also plotted on to the Plan to match the key points of the 2010 Survey (Need explanation of "key points" and how matched). The property boundaries set forth in the Bishop Deed and the Sheldrick Deed were also plotted on to the Plan.

18. There are no structures within 66 feet of River Road on the east side which bounds the Sheldrick Property and the Bishop Property.

19. In my professional opinion as a licensed surveyor with over twenty five (25) years experience, I have concluded that the centerline of River Road in its current location closely follows the path of the Town Highway laid out in 1785 and 1808. As depicted on the Plan, the location of the Surveys match the location of the existing road within the standards of performance at the time of the Surveys. In other words, the existing road is in the same location as the recorded Surveys, but there are some slight, non-material deviations between the boundaries of the recorded Surveys and the existing location of Town Highway 14 due to the increased precision of survey measurements today, as compared to 1785 and 1808.

20. The location of the 1785 Survey deviates from the current location of River Road (Town Highway 14) in one significant way. The 1785 Survey curved near the point where it intersected what is now Hackadam Road, by the location of the old school district #5 schoolhouse, to

the east of Plaintiff Sheldrick's property. See boundaries of 1785 Survey on the Plan. As a result, approximately 3360 square feet of land used as part of Sheldrick's yard encroaches upon the laid out Upper River Road right of way.

Dated at Montpelier, Vermont, this ____ day of March, 2011

Paul R. Hodge, L.S.

STATE OF VERMONT)
WASHINGTON COUNTY, SS)

At Montpelier, in said County, Paul R. Hodge personally appeared and he subscribed and swore to the truth of the above before me this day of March, 2011.

Notary Public
My Commission Expires: