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HAND DELIVERED

Paul Rejman, Chairman
Town of Forestport Planning Board
Forestport Town Hall
10275 State Route 28
P.O. Box 137
Forestport, New York 13338

**Re: Public Hearing-March 9, 2022
Site Plan Review
Application of T. Sunderlin/Red Rock Quarry Associates, LLC
Business Permit to operate a Quarry
Quarry Road, Town of Forestport, NY 13338**

Dear Mr. Rejman and Members of the Planning Board,

My firm respectfully submits the following comments on behalf of Joseph J. Turczyn, Jr., Steven J. Turczyn, and other nearby landowners in the Town of Forestport with respect to the Planning Board's Site Plan Review of the Application of Thomas J. Sunderlin\Red Rock Quarry Associates, LLC ("Applicant") to operate a granite quarry on an approximately 56-acre parcel of land (SBL No. 8.000-1-8) in the Town of Forestport ("Town").

Background

We understand that the Applicant has received a mining permit from DEC (ID 6 – 3038 – 00081/00003) to mine granite from 8.8 acres of its 56.6-acre parcel during the 5-year term of the permit commencing January 26, 2022 and identifies a total of 26.6 acres of Applicant's parcel as the life of mine ("LOM") area subject to the DEC permit. We understand that the life of the mine is 25 years. We are also aware that the Adirondack Park Agency issued a mineral extraction permit (APA Permit 2021 – 0075) affecting the same quarry site.

Mining is a unique land use in New York State. Overall land use regulation of mining operations is under the jurisdiction of DEC, and, in the Adirondack Park, mineral extraction is regulated and permitted by the APA. However mining and mineral extraction activities are also subject to local, town land use regulations. Compliance with local land use regulations is equally important as compliance with DEC mining and APA mineral extraction regulations.

Forestport Land Use Regulations

The Town of Forestport Site Review Law (“Site Review Law”) enacted in 1986 and last revised by Local Law No. 1 of 2015, embodies the Town’s land use regulations. Among other things, the goals and purpose of the Site Review Law are to control the growth of commercial land uses consistent with the needs of the community, protect the unique character of the community’s natural resources, and promote the health, safety, and general welfare of the Town.

To that end, the Site Review Law classified certain land uses as “permitted uses” and identified other uses, including “all commercial/nonresidential uses,” as requiring a public hearing and site plan approval by the Planning Board. The Site Review Law requires an applicant for a non-permitted commercial use to submit an application and provide the supporting documentation required to enable the Planning Board to conduct a meaningful site plan review.

Under the Site Review Law, the local land use issues to be addressed by the Planning Board during the site plan review process include: access to the mining site; need to realign, construct, and maintain the public access roads to accommodate heavy truck traffic; the cost to the Town to reconstruct and maintain the public access road, both during and after completion of mining activity; adequacy of fire, life safety access, and turnarounds for emergency and Town Highway Department maintenance vehicles and private vehicles using the public road; the obstruction and/or destruction of public easements traversing mining site and beyond caused by planned mining activity; adequacy of on-site parking, evaluation of stormwater management and drainage plans, consideration of environmental impacts, including impacts on wetlands adjoining access road; traffic analysis and need for traffic control devices at intersection with State Route 28; requirement for a commercial driveway permit for work within the State highway right-of-way; and signage.

These important local land use issues were not considered during the DEC and APA permitting process and require more than a “ cursory” review by the Planning Board.

Application of Thomas J. Sunderlin\Red Rock Quarry Associates, LLC.

Mr. Sunderlin’s Application for Site Development Plan Review and Approval (“Application”) was received by the Planning Board on June 11, 2021. In addition to the single page Application, Mr. Sunderlin submitted the “White Lake Granite Quarry/Mine Land Use Plan” submitted to the APA dated April 2021 (“Land Use Plan”).

No other documentation or supporting information was submitted.

Comments

1. Planning Board's Statutory and Procedural Violations.

a. Planning Board Failed to Comply with General Municipal Law (GML) § 239 – m.

General Municipal Law § 239 – m requires the Town Planning Board to refer all requests for site plan approval (GML § 239 – m (3) (iv)) and requests for a special use permit (GML § 239 – m (3) (iii)) involving a project component lying within 500 feet of a State Highway to the Oneida County Planning Department for review and recommendation.

The mapping submitted in the Applicant's Land Use Plan shows that the Applicant's 56.6-acre parcel is within 500 feet of State Route 28. In addition, Stone Quarry Road, depicted on the Land Use Plan as providing access to the mine site, is not only within 500 feet but physically touches the state highway right-of-way for State Route 28. Although the adequacy of access is not addressed in the DEC and APA permit applications, Stone Quarry Road will have to be reconstructed and realigned to accommodate the projected heavy truck traffic. The sufficiency of access to the proposed mining site should be addressed as part of the Planning Board site plan review.

It appears that the Planning Board never referred the Applicant's Application for site plan review or request for special use permit to the County Planning Board as required. Therefore, the Planning Board should not proceed with its review of the Applicant's request for site plan review and a special use permit until it refers the site plan and special use permit applications to the County Planning Board and receives its recommendations.

b. Public Hearing is Not Timely Held.

Both Town Law § 274 – a, entitled "Site Plan Review," and section 5.2 (D) of the Town's Site Review Law, require that the public hearing required to be held in connection with a site plan review must be conducted "within 62 days from the date an application is received."

Mr. Sunderlin's Application was received by the Town Planning Board on June 11, 2021. The Public Hearing scheduled for March 9, 2022 is more than 7 months beyond the time within which a public hearing on Mr. Sunderlin's Application was required to be held.

Therefore, the Public Hearing on Mr. Sunderlin's Application scheduled for March 9, 2022 violates Town Law § 274 – a and the Site Review Law and therefore is invalid and a nullity. The Public Hearing should be canceled and terminated immediately. Any action taken during or flowing from this Public Hearing is invalid and *ultra vires*.

c. Planning Board Failed to Comply with Town Law § 274 – b.

Town Law § 274 – b defines a special use as an authorization of a particular land use which is permitted by a local law subject to the requirements of the local law. Under the Site Review Law every proposed commercial use requires site plan approval. By definition, any request to permit the commercial use of land in the Town requires a special use permit. In its response to the APA's Local Government Notice Form dated May 12, 2021, Planning Board Chairman Rejman acknowledged that the Applicant's proposed commercial granite quarry was not a permitted use under the local code and required a special use permit from the Planning Board.

As noted above, although all requests for a special use permit require a referral to the Oneida County Planning Department, no such referral was ever made by the Planning Board in connection with the proposed commercial mining proposed by the Applicant.

Town Law § 274 – b also requires that a public hearing on a special use permit application must be conducted "within 62 days from the date an application is received." Accordingly, the Public Hearing scheduled for March 9, 2022 is not timely held as it violates the requirement that a public hearing be held within 62 days of the Town's receipt of the Application. Therefore, the Public Hearing on Mr. Sunderlin's Application scheduled for March 9, 2022 is invalid and a nullity. The Public Hearing should be canceled and terminated immediately.

In addition, Town Law § 274 – b (7) requires the Planning Board to mail notice of the required public hearing at least 10 days before such hearing to the County Planning Board as required by GML § 239 – m. It appears that the Planning Board never mailed written notice to the Oneida County Planning Board regarding the special use permit required in connection with the Planning Board's review of the proposed commercial mining project.

Therefore, the Planning Board should not proceed with its review of the Applicant's request for a special use permit until it refers the special use permit application to the County Planning Board and receives its recommendations.

2. The Town's Site Review Law Lacks Objective Standards against which to Review the Applicant's Proposed Commercial Land Use.

Under the Site Review Law, all commercial/nonresidential uses are subject to site plan review and approval from the Planning Board. However, the Site Review Law fails to establish any standards or dimensional requirements which are required to be addressed and satisfied during site plan review other than for the subdivision of land into lots (Article 6), off-street

parking and loading requirements for certain enumerated commercial and residential uses (Article 7), and the regulation of signs, solid waste disposal sites, junkyards, mobile homes, and mobile home parks (Article 9).

For all other commercial and nonresidential uses, including mining operations, the Site Plan Law contains no criteria or standard which must be addressed and satisfied in connection with the Planning Board's site plan review and approval of those commercial uses. Nor does the Site Plan Law specify the requirements for the issuance of a special use permit to ensure that the proposed special use is in harmony with the local law and will not adversely affect the neighborhood.

The Site Review Law is fatally defective and cannot be equitably applied because it fails to establish any objective standard or criteria which must be met in order for the Planning Board to approve site plans or special use permits. Without established objective standards and criteria which must be satisfied, the review and approval of each application is inherently subjective and vulnerable to being decided on the whim and fancy of the sitting planning board. The subjective evaluation of site plans and special use permits by the Planning Board is the very definition of a governmental action being "arbitrary and capricious" and cannot withstand scrutiny.

3. Applicant's Site Plan Review Application Is Incomplete.

Section 5 (D) (1) of the Site Review Law identifies and sets forth the documents and information which are required to be submitted with an application for site plan review.

a. No Signed and Sealed Survey of the Parcel Was Submitted with the Application.

Under the Site Review Law, the information required to be submitted with the application for site plan review includes a signed and sealed survey prepared by a licensed land surveyor showing the dimensions and bearings of all property lines, land elevations including the elevation of the centerline of all private and public roads adjacent to the property and the identification of all easements and/or rights of way on or adjacent to the lot.

The Land Use Plan submitted with the Application includes an unsigned and unsealed copy of a 2012 survey of the quarry parcel prepared by Parker Land Surveying, P.C. The 2012 Parker Survey (**Exhibit 1**) is neither signed or sealed and, in any event, does not depict the detail and information required by the Site Review Law.

The Land Use Plan submitted by the Applicant included a "Mine Plan Map" dated February 15, 2021 (**Exhibit 2**). This Mine Plan Map is not a survey and does not depict any dimensions and bearings of the property lines, the elevations of private and public roads adjacent to the property or other details required to be shown on the survey.

b. Mine Plan Map Does Not Satisfy Site Plan Requirements.

The Site Review Law also requires the Applicant to submit three copies of a site plan, drawn to scale, and sets forth the information required to be shown on that site plan map.

The Mine Plan Map incorporated within the Land Use Plan fails to include applicable and relevant information required by the Site Review Law, including:

- identifying contiguous properties and any easements or rights-of-way.
- a grading and drainage plan, showing existing and proposed contours and limits of clearing.
- location and design of all parking and truck loading areas, showing ingress and egress.
- location, design, and construction materials of all proposed site improvements, including drains, culverts, retaining wall and fences.
- location, size, design and construction details of all proposed signs.
- location and design of outdoor lighting facilities.
- erosion and sediment control plan meeting current DEC requirements.
- a traffic impact analysis.

c. No Environmental Assessment Form Submitted in Connection with Planning Board's Site Plan Review.

The Site Review Law also requires the Applicant to submit a completed Environmental Assessment Form (EAF) as part of its application for site plan review. No EAF was submitted by the Applicant in connection with its Application to the Planning Board for site plan review.

We understand that an EAF was submitted in connection with the Applicant's mining permit application and that DEC/APA considered the mining activity a Type II project exempt from further SEQRA review. However, not only was that EAF incomplete and inaccurate, but the site plan review by the Planning Board addresses land use issues which are separate and distinct from the issues related to DEC/APA issuing a mining permit. Therefore, a separate EAF is required to be submitted to the Planning Board as part of its site plan review. Since no separate EAF was submitted, the Applicant's Application is incomplete.

We also understand that the Town is in communication with the State DOT regarding an application for a commercial driveway permit in connection with the planned reconstruction of Stone Quarry Road. DOT requires the applicant for a commercial driveway permit to complete an EAF before the permittee applies for a permit. It appears that no EAF has been completed and submitted to the DOT in connection with the Town's request for commercial driveway permit.

We note that reconstruction and expansion of Stone Quarry Road to accommodate the projected traffic generated by the mining project is necessary. The proposed construction and expansion of the town highway is related to the proposed commercial use of the Sunderlin parcel which is currently under site plan review. As such, the Planning Board would be an involved agency for the SEQRA review. It appears that no EAF has been completed in connection with the highway construction project.

The Planning Board's review of the Applicant's site plan application cannot be completed or approved without the Planning Board's review and consideration of the environmental impacts identified in the EAFs for the DOT Commercial Driveway Permit and the construction of the town highway providing access to the mining project.

4. The location of Stone Quarry Road (a town highway), and the public easement running over the qualified abandoned portion of the road, lie within the permitted mining and Life of Mine areas, precluding the Planning Board from granting site plan approval.

Town and County DPW highway records show that historically Stone Quarry Road, formerly known as the Otter Lake Road, ran from its current intersection with State Route 28 through the Turczyn and Sunderlin lots to the railroad tracks and then ran northerly and generally parallel to the railroad tracks to Otter Lake. In 1922 the Town undertook proceedings pursuant to Highway Law section 205 (2) declaring the "qualified abandonment" of the portion of Stone Quarry Road commencing near the quarry buildings and running through the quarry lot (now Sunderlin) to the railroad tracks and then generally northerly to Otter Lake.

As a result of those proceedings, the .37 miles of Stone Quarry Road commencing at Route 28 and running through the Turczyn lot and terminating within the Sunderlin lot remains a public, town highway. The qualified abandoned portion of Stone Quarry Road begins where the public, town highway ends and runs through the Sunderlin lot to the railroad tracks and generally northerly to Otter Lake. The Town surveyor's February 16, 2022 Survey Map of Stone Quarry Road ("Frymire Survey") (**Exhibit 3**) shows the point where the .37 miles of the town highway ends and where the qualified abandoned portion of Stone Quarry Road begins.

Under Highway Law section 205 (2), the effect of such qualified abandonment with respect to that portion of the highway is: 1.) It shall no longer be worked at public expense; 2.) It shall continue to be subject to use as a public highway; 3.) No person may impair its use as a highway or obstruct it; 4.) No person shall be required to keep any part of it in repair; and 5.) persons owning or occupying land on both sides thereof may construct and maintain a fence at each end of the area owned or occupied, provided there is a gate in such fences which must remain unlocked.

In other words, the Town does not lose its public easement over the section of Stone Quarry Road that has been qualifiedly abandoned, and both the adjoining landowners as well as the public in general may still use the road under the right of the continuing public easement.

In 1987 the Town confirmed that the qualified abandoned portion of the Stone Quarry Road “may be used by the public all the way through to Otter Lake” and the “general public cannot be hindered from travel on this highway.” See, **Exhibit 4** (Letter dated September 28, 1987 from Town of Forestport to Joseph Turczyn and others). We understand that many residents of the Town have used the qualified abandoned portion of Stone Quarry Road over the years for various recreational purposes.

The 2012 Parker Survey and the Mine Plan Map submitted as part of the Applicant’s Land Use Plan to the APA depict Stone Quarry Road as it traverses the Turczyn lot and runs into and across the Sunderlin parcel. The Mine Plan Map notes that Stone Quarry Road is a “shared access road” and shows that the road runs directly through the LOM area of the proposed mining operation as well as into the proposed Permit Area for mining activities.

The Applicant’s proposed mining plan directly conflicts with the Town’s easement and use of those lands for both the .37 miles of Stone Quarry Road as well as the public’s easement over the qualified abandoned section of the road. The Applicant’s proposed use of the same land now occupied by Stone Quarry Road and the public easement over the qualified abandoned portion of the road as a stone quarry, are mutually exclusive. Common sense dictates that the Planning Board may not approve a site plan to permit mining activity which would destroy or obstruct any portion of Stone Quarry Road or the public’s easement over the qualified abandoned portion of the road.

The Town is precluded both legally and ethically from granting the Applicant site plan approval, as doing so will not only restrict and interfere with the Town’s and the public’s existing use but create a safety hazard to anyone attempting to utilize the public easement.

5. The width of the Town’s easement for Stone Quarry Road is not 3 rods (49.5’) wide.

The Town has no documentation that Stone Quarry Road was ever laid out as a town road to a specific width or deeded or dedicated to the Town for public highway purposes. It appears that Stone Quarry Road became a town highway by prescription or use and is a “user” road. As such, the Town has only an easement for highway purposes.

The Highway Road Inventories certified by the Town Highway Superintendent to the State Department of Transportation over the years show Stone Quarry Road as a one-lane road, with a traveled track ten feet (10’) wide and having and one foot (1’) of shoulder on each side of the

traveled track. Thus, overall width of the Town's highway easement for Stone Quarry Road claimed by the Town has never been more than 12 feet wide. The Survey Report prepared by the Town's land surveyor, Duane Frymire (**Exhibit 5**), indicates he measured the traveled way and that that the "width [of the road] appears somewhat variable but nominally 12 feet wide..."

Nevertheless, in apparent reliance on Highway Law § 189, Surveyor Frymire opined that "the width of the highway is 3 rods", or 49.5 feet wide. Mr. Frymire's opinion is not only wrong, but as a land surveyor he is not qualified to offer a legal opinion.

Highway Law § 189 states that "the town Highway superintendent shall open all...[user]... highways to a width of at least 3 rods." However, if the historic use and maintenance is less than three rods, then a town has not met the burden necessary to establish a three-rod wide user road. 95 Op. Atty. Gen. 31 (1995), citing to *People v. Sutherland*, 352 NY 86 (1929). Therefore, Highway Law § 189 does not authorize the Town Highway Superintendent to appropriate lands not actually in use as part of a user road without the consent of the owners thereof or, by due process of law, compensating the owners, therefore, as such an appropriation would be a taking of real property without due process of law in violation of both the United States and New York State Constitutions. *Jones v. Cederquist*, 1 Misc. 2d. 1020, 1024 (Sup Ct. Chautauqua Co.) (1956), citing *Walker v. Caywood*, 31 NY 51, 63 (1865); see also, 75 Op. Atty. Gen. 155 (1975).

Furthermore, where a road has obtained its character as a public highway by user, its width is determined by the width of the improvement. *Schillawski v. State of New York*, 9 NY2d 235, 238 (1961). Although the width of the user highway is generally measured by the actual use for road purposes, a user highway includes not only the traveled track, but such improvements as are necessarily used or incidental for highway purposes, including ditches, shoulders, guardrails, and similar highway improvements. The Frymire Survey shows no ditches, shoulders, guardrails, or other similar highway improvements outside the traveled track of Stone Quarry Road for its entire length except for the guardrails for the culvert and the recently erected "Stone Quarry Road" sign at its intersection with State Route 28. There is absolutely no evidence in the record that there has been public use and/or public maintenance of Stone Quarry Road to a width of three rods. In fact, adjacent landowners have indicated that public maintenance has been sporadic and occasional at best and never extended beyond 12 feet in width.

In reviewing a site plan application, one of the key issues to be considered is whether the parcel affected by the site plan application has access appropriate for the proposed use of the parcel being developed. Here the Applicant seeks site plan approval for a granite mining and quarry operation. Stone Quarry Road provides the only public access to the quarry site. The existing single lane, twisting and narrow public roadway is insufficient to accommodate the projected volume of heavy trucks. We understand that as part of the site plan approval the Town may consider the construction of a new roadway of sufficient width and design to bear the weight and volume of traffic and accommodate the turning radius of tractor-trailers.

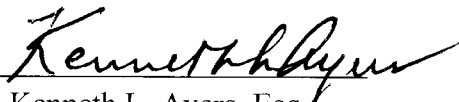
However, as noted above, the width of the Town's easement for Stone Quarry Road is limited to a width of 12 feet, which is obviously insufficient to accommodate the size, weight, and volume of heavy truck traffic projected by the operation of the mine. The landowners over which a portion of Stone Quarry Road traverses have indicated that they will not permit the Town to use or voluntarily convey any of their land to the Town for the construction or improvement of Stone Quarry Road. Any improvement or construction of Stone Quarry Road outside the historic 12-foot width Road would constitute an illegal and improper taking of the adjoining landowner's property.

Based on the foregoing, the Planning Board cannot approve the Applicant's Application for site plan approval because there is inadequate public access to the mining site.

In consideration of the public comments and for all the reasons set forth above, the Planning Board should deny the Applicant's Application for site plan approval.

Respectfully submitted,

The Ayers Law Firm, PLLC

By: 
Kenneth L. Ayers, Esq.

Enc.

TOWN OF FORESTPORT
FORESTPORT, NEW YORK - 13338

TOWN CLERK



September 28, 1987

Joseph J. Turczyn
512 Deerfield Dr. W.
Utica, New York 13502

Joseph De Traglia
Box 103
Barneveld, N Y 13304

Mrs. Nicholas Gentile John H. Cross
708 Jefferson Avenue 510 Bronson Road
Utica, NY 13501 Syracuse, NY 13

Dear

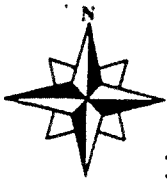
Please be advised that at a Special Meeting of the Forestport Town Board held on September 23, 1987 the Town Board rescinded the motion to abandon Quarry Road.

The Town Board requests the removal of the gate with lock across the tracks on this qualified abandoned highway which is illegal; the removal of the stop sign at the top of the hill, and removal of the two posts by the burned out cellar on the highway right-of-way. On your map the highway is called a "private road". This, in fact, is a qualified abandoned highway which may be used by the public all the way through to Otter Lake. Therefore it is also requested that the general public not be hindered from travel on this highway.

A public hearing can be arranged between yourselves and the opposing parties with the Town Board at a mutually agreed upon date and time. If you desire such a hearing please write back with date and time and a hearing will be arranged.

Sincerely,

Barbara R. Smith
Town Clerk
Town of Forestport



Duane C. Frymire, L.S.
Land Boundary Consultant

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Woodgate, NY 13494
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2/10/2022

TJ Entwistle
Supervisor – Town of Forestport
Forestport Town Hall
10275 State Route 28, PO Box 137
Forestport, NY 13338

RE: Stone Quarry Road

Dear Town Board:

Below is my report on Stone Quarry Road. I will forward a couple of maps as well.

SURVEY REPORT – STONE QUARRY ROAD

Summary:

1 - Length)

Per 1922 Qualified abandonment the road runs from NYS Rte. 28 right of way to a point "...opposite buildings known as the Stone Quarry Buildings...". The Town highway inventory list the length of the road as 0.37 miles. Unlocked gates were quite commonly erected at the ends of qualified abandoned roads, and I find one on this site "...opposite buildings known as the Stone Quarry Buildings...".

My measurements of current roadway along centerline from right of way of NYS Rte. 28 to the said gate are 1997.72 feet, or 0.378 miles as measured on the level (not considering slope distances).

It's possible the roadway was moved slightly many years ago and the bridge re-located somewhat downstream because maps from 1800's do not show the extreme curve near the creek. If that were the case, the mileage measuring the straighter course circa 1922 would have been about 0.365 miles to the gate.

In my professional opinion the seasonal highway ends, and the qualified abandoned highway begins, at the old gate as shown on my survey map.

2 – Width)

The Town highway inventory lists the road as a 3 rod (49.5 feet) road. I measured the centerline of the travelled way as close as possible considering covered with snow at the time of survey. The width appears somewhat variable but nominally 12

feet wide travelled way. I did not observe any longstanding, substantial fencing or stone walls that might limit the legal width if a user road, or might be evidence of a user road rather than dedicated road.

In my professional opinion the width of the highway is 3 rods.

3 – Easement or Fee)

The highway in question was contracted to be built by John Brown in 1798-1799 from Remsenburgh Patent near Forestport to Old Forge, in order to develop his lands north of the Moose River valley. It basically followed the Iroquois path, as did the Deerfield-Remsen Turnpike that it tied into. It was initially called the "Remsen Road".

To date I find no evidence that "Remsen Road" was considered a Turnpike or Plank road, but it is possible that would turn up with further research. If so, it would be 4 rods wide likely.

In any event it is an easement unless it could be proved that it was a Turnpike or Plank Road, and there was some affirmative action by the Town of Forestport taking over said Road and officially filing said record (without the affirmative official record action, it would still be an easement). In that case the Town would most likely have fee title of a 4 rod wide road. Highways held in fee by the Town cannot be abandoned.

In my professional opinion, and based on the evidence I currently have and the presumption at law of an easement rather than fee, the Stone Quarry Road is a public easement.

4 – Abandonment earlier than last six years)

The Town provided documents showing they considered declaring the highway abandoned in 1987, the motion was rescinded, and a public hearing was held. After evidence contrary to an abandonment was presented, the Town Board voted unanimously that the highway was not abandoned. Those arguing that a highway is abandoned have the burden of proof, which is substantial or clear and convincing evidence, which is a higher burden than a mere preponderance of evidence. Therefore it is quite reasonable for Towns to reject a claim of abandonment when there is any evidence to the contrary.

A public comment to the APA, contributed by a municipal planner associated with Pace University, challenged the existence of the highway based on deed language. The Turczyn property, over which the road travels from route 28 to the bridge over

the stream, does not have any language conveying the public easement to said landowner. I do not have an abstract of title for said property. However, I looked at the 1980 deed and find the language: "...to the center of bridge where highway formerly crossed said creek (said highway now being abandoned);...". If the bridge is there and they can find the center of it, then a highway is on top of it. The only thing this passage tells us is that there was a bridge there at the time the deed was written, which indicates the presence of an actual travelled roadway. The scrivener opinion in parenthesis that the highway is now abandoned was most likely derived from the fact that there had at the time been a qualified abandonment of a portion of said highway. The 1980 deed tells us it's the same as conveyed in 1955 by Whitlac. I did not get a copy of that deed, but most likely the 1980 language was originally penned in 1955, after the qualified abandonment of a portion of the highway. The Turczyn deed language is more evidence of a public easement, rather than evidence against one.

I find no evidence that the portion of highway from NYS Rte. 28 to the qualified abandoned part of the highway was abandoned at some time in the past.

5 – Abandonment last six years)

There is a definite cleared roadway through the woods wider than the travelled way. There are no ditches observed at time of survey, but the general character is of a path kept open for vehicular traffic and highway purposes by affirmative and regular acts of maintenance.

At the time of the survey there was a snowmobile path along the road from route 28 to the railroad. As a local resident of more than 30 years I know that the roadway is used regularly as a snowmobile path every winter, including the past six years.

During the summer months over the past six years I have used the road with vehicles to fish near the bridge, launch kayaks at the bridge, and have observed vehicles travelling in and out of the road onto route 28.

During the past year there have been social media posts indicating the roadway is also regularly used by locals to take walks, and walk their dogs.

One landowner, Mr. Sunderlin, put a locked cable across the roadway this past autumn. At the time of my survey the cable was down and buried under the snow beneath snowmobile trail.

There is an unlocked tube type gate where the qualified abandoned portion of highway begins. After that point the character of the highway changes to one of little maintenance, lesser cleared limits, and more of a recreational type use associated

with qualified abandoned highways. Still, it is quite open and well-travelled by appearance.

The law favors continued existence of public easements, and the burden of proof rests with those challenging the existence of same. Abandonment is a factual question, but misunderstood by many. In fact, use as a highway can be recreational travel over "lines of the ancient street". This is not a case of an occasional hunter struggling around, over, or under a substantial barrier to wander thru overgrown bushes and brambles in what used to be roadway. I have looked hard for facts that would indicate an abandonment of the highway (as the law requires to try to prove its non-existence) but find nothing.

In my professional opinion both the seasonal highway portion and the qualified abandoned portion of the highway remain public easements.

6 – Sight Distance at Rte. 28 Intersection)

Based on field locations and consultation of chapter 5 of the NYS DOT Design manual I find the existing entry of Quarry road into NYS Rte. 28 does not meet recommended sight distance guidelines for combo nor single unit trucks, for single lane 55 mph in any case except possibly a left turn into Quarry road from the north.

The only reasonable solution is to reduce speed limit to 40 mph from a point south of the old Polaris shop to north of Rte 28 bridge over White Lake Outlet. I also recommend obtaining a major commercial entry permit from NYS DOT due to the proposed change in use of this intersection.

Sincerely,

Duane C. Frymire, L.S., E.J.D.
NY Land Surveyor Lic. # 050224
Executive Juris Doctor