

## Town of Lowell to Geoffroy Deed Issues

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- 1) What did Philip Geoffroy acquire in 1956 (see Book 22, Page 389)?

"Being one acre of land, more or less, situated on the westerly side of the Burlington Road, so-called, Route 100..being all the land that I now own on the westerly side of the above mentioned highway...and being part of the land and premises that was conveyed to me the said Henry Benware by Quit-Claim deed of Ralph Benware and recorded in Book 20, Page 104 of Land Records."

- 2) Where was the western boundary of the above described lot (see Book 10, Page 224)?

The deed in Book 20, Page 104 contained two parcels: a) "9 1/5 acres...same as Book 14, Page 215", and b) "4 ½ acres...same as Book 16, Page 192". Henry Benware sold the 4 ½ acre Book 16, Page 192 parcel to Snider (see Book 21, Page 392) - so the parcel sold Geoffroy had to have been part of the Book 14, Page 215 parcel.

The 9 ½ acre parcel described in Book 14, Page 215 traces back to three deeds in 1883, 1884, and 1888. The 1884 deed, recorded in Book 10, Page 224, for the western most of these contiguous parcels is the most pertinent, and describes the western boundary of the 9 ½ acre parcel as: "beginning in the center of the road...thence north 12 degrees east along the center of the road...".

Thus the western boundary of what is now Raymond Geoffroy's lot is the centerline of the roadway that was abandoned when Route 100 was built.

See also Book 21, Page 256, for a 1948 deed in both the Tetreault & Warner, and Warner chains of title describing the easterly boundary thereof as "land owned by Philip Geoffroy" – so the parcels of Tetreault & W. Warner and M. Warner were correspondingly understood to extend to the centerline of the old roadway.

- 3) Where was the centerline of the road (see Town Book A, Page 74)?

The centerline of the road from Eden to Westfield was laid out in 1827 by order of the VT Supreme Court, as detailed in Town Book A, Page 74 of the Lowell Land Records. While the location of the road could have been altered (and no time was spent researching issue), it is likely that the road as it existed in 1883 was substantially the same as when it was laid out in 1827 – but regardless, VT courts have ruled that in cases where roads over 100 years old may have been moved, it can be impossible to

accurately resurvey them, and in those cases the roads as presently travelled shall be recognized as the original road (Savard v. George & Bolles, 1965, etc.). Accordingly, I have no reason to question the location of the old road as shown in the survey prepared by Willard Gove for Albert Warner.

Note that the court order establishing the road specified that it was for the limited purpose of establishing a "road from Burlington to Derby" and that only the survey of the portion thereof from "Eden to Westfield" was recorded in the Lowell Land Records.

4) What rights did the State acquire when it laid out the road in 1827?

There was no deed from the landowners to the state for the highway, which is reflected by the fact that the 1884 deed described Geoffroy's predecessor in title as owning the land to the centerline of the road. Per the Vermont Supreme Court (Livermore et al v. Jamaica, 1851) the "taking of land for a highway does not divest the owner of his title in fee. The public acquires only an easement; and the right of the owner to use, occupy and control the land in any manner, which is not inconsistent with the public enjoyment of the easement, still remains."

Put another way, the Vermont Supreme Court has repeatedly ruled that when a road is laid out over private property, the public acquires only an easement to use the property as a roadway, nothing more. The landowner continues to own the land subject to the public's right to use and maintain the roadway (Cole v. Drew and wife, 1861; Abell v. Central Vermont Railway, 1954; Pettibone v. Purdy, 1832; Hill v. Western Vermont Rail Road, 1859; etc.).

Thus all the state did in 1827 was acquire an easement to use and maintain a roadway across what became the property of Tetreault & W. Warner, Geoffroy, and M. Warner. Compare to Route 100, for which Henry Benware in 1946 deeded the State ownership of 0.868 acres on which to build the Route 100 (see Book 21, Page 134).

5) What happened when Route 100 was built, and the old roadway discontinued?

Under Section 4719 of the Public Laws of 1933, "When the state highway board relinquishes control ... the maintenance and control of the portions of such highway or highways shall be vested in the town wherein located" (emphasis added). The relinquishment recorded in Town Proceedings Book H, Page 427 is evidence that the state complied with its statutory obligation. But this is not simply a case of the state relinquishing control of the roadway, but rather a case where the roadway was discontinued as a result.

In such a case the Vermont Supreme Court has repeatedly ruled that when a public right-of way is discontinued, the rights of the public to use the property go away. See Pettibone v. Purdy, 1832, holding that: "when the highway is discontinued, the land

becomes discharged of this servitude, and the owner is restored to his former and absolute right"; and *Clossen v. Hamblet*, 1855, holding that: if a roadway is altered, so as to move the roadway, "the alteration supersedes the necessity of use of any portion of the old road, it is discontinued ... by the very act of opening a substitute".

Thus when the road was discontinued in 1948 the easement as a matter of law went away and the rights of the landowners were restored (despite the State being required by statute to relinquish its easement rights to the Town).

See also *In re Bill*, 1998, in which the Vermont Supreme Court ruled that "A town or country highway that has not been kept passable for use by the general public for motorized travel at the expense of the municipality (emphasis added) for a period of 30 or more consecutive years following a final determination to discontinue the highway shall be presumed to have been effectively discontinued." This presumption of discontinuance has since been codified as 19 V.S.A. 717(b), and is relevant because even if the easement somehow did not terminate when the roadway was moved, it would have terminated per statute no later than 1978 (1948 + 30 years) since the right-of-way was not kept passable by the town.

- 6) When the Town of Lowell executed the Quit-Claim Deed to Gloria Geoffroy, what parcel of land was affected (see Book 32, Page 104)?

The deed is drafted with a description qualified by another the description. In other words, the property is described: First, in terms of the specific rights the Town is quitclaiming; and secondly, in terms of the specific parcel of property for which those rights were quitclaimed.

Specifically, the deed, describes the subject property as:

"Being the interest of the Town of Lowell in that portion of the following described property (emphasis added), which was previously used as a public thoroughfare ... and being that portion thereof which was relinquished and returned to the Town of Lowell pursuant to Section 4719 of the Public Laws of 1933," – which is all to say that the Town was Quit-Claiming exactly what it acquired from the state in the following described property – "viz: Being all and the same land and premises conveyed by Henry H. Benware to Philip Geoffroy by Warranty Deed dated October 24, 1956, recorded in Book 22, Page 389 of Lowell Land Records."

The deed is merely quitclaiming the town's rights, as relinquished and returned to the Town in accordance with Section 4719 of the Public Laws, to the land that Henry Benware sold Philip Geoffroy. Thus the deed from the Town gave Gloria Geoffroy no rights to any property she did not already own.

- 7) What was the import of the Quit-Claim deed from the Town of Lowell to Gloria Geoffroy (see Book 32, Page 104)?

Since the Town could not quit-claim any rights that it did not have, all the Quit-Claim Deed did was in effect say that the Town claimed no right in Gloria Geoffroy's land by virtue of the state's relinquishment. Since the roadway had already been abandoned, and therefor per Vermont law so had the limited easement rights granted to maintain the public roadway, all the Quit-Claim Deed did clean up Gloria Geoffroy's title by clarifying that the easement rights had been released.