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February 11, 2015

Friends of the West River Trail—Lower Section
c/o Lester Humphreys
138 Elliot Street
Brattleboro, Vermont 05301

Re: Ownership questions - West River Trail

Dear Lester:

You asked for a legal review of several questions relating to this land, in the context of your continuing effort to ensure a practical route for this part of the West River Trail. You've sent me deeds and the Morse land surveyor opinion, and other documents, and ask that I address the following:

1. As successors to the rights of the West River Railroad Company, what do the Friends own? Is it a fee simple ownership of the land or an easement?
2. What was the effect of the formal abandonment of the route by the Interstate Commerce Commission in 1936? Specifically, did this abandonment of interstate commerce signify a reversion of the property rights owned by the railroad?

Now let me try to address both questions.

What do you own?

The Friends obtained what rights the West River Railroad owned through the State of Vermont, and originally the railroad took the land from private owners in the town of Brattleboro and Dummerston with the payment of damages. I'm convinced that in this case, the railroad was authorized to take title by fee. This is not condemnation, where the Vermont courts seem to have treated properties seized by eminent domain by railroads as easements, rather than fee interests, in spite of what a deed might say, because the taking is premised on the public use. Railroads can own property, and they can convey it by fee, which was done here.

Abandonment, through the ICC, likely constituted abandonment of the rights of the railroad to operate the route for interstate commerce, although not to the railroad's rights to the

land. In light of this history, the Friends own a fee interest in the land through the direct chain of deeds from the railroad to your group.

Abandonment's effect

As noted above, abandonment by the ICC was likely the termination of the railroad's rights to the use of the route. That does not mean, necessarily, the end of the railroad's ability to convey its interest to the State three months after the ICC action. That conveyance was enough to justify your present claim to the land of the trail in fee simple.

Reversion is a legal term for conditions which, if violated, return title to property to a prior grantee. Some have suggested that once the railroad closed down and abandoned the route, that the title to the lands reverted to the property owners who originally conveyed land to the railroad. As explained above, this is not the case of a condemned piece of land, where that idea might be arguable. In recent years, reversions have been affirmed by the Vermont Supreme Court only when deeds expressly describe what would justify a breach and what would happen to the title if there was a breach (such as provisions that have property reverted to the heirs of the grantor at the time of the original deed). These deeds are silent on those points, further justifying the conclusion that this is a fee interest, and that there is no reversion.

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I remain available for questions if you have them.

Thank you.

Sincerely,

Paul Gillies