

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CLINTON

KEVIN DASHNAW and HENRY DASHNAW, JR.

Index No. 2011-1163

RJI No. 09-1-2011-0416

Petitioners/Plaintiffs,

-against-

TOWN OF PERU, TOWN OF PERU TOWN BOARD, PETER GLUSHKO, as Acting Code Enforcement Officer and Supervisor for Town of Peru, FRANK SLYCORD, as Code Enforcement Officer for Town of Peru, BRANDY MCDONALD, as Deputy Supervisor for Town of Peru, KREGG BRUNO, as a member of Town of Peru Town Board, JAMES DOUGLASS, as a member of Town of Peru Town Board, SUSAN POLHEMUS, as a member of Town of Peru Town Board, TOWN OF PERU ZONING BOARD OF APPEALS, LEON BLAIR, as a member and Chairman of Town of Peru Zoning Board of Appeals, JAMES FALVO, as a member and Vice-Chairman of Town of Peru Zoning Board of Appeals, ROB BASHAW, as a member of Town of Peru Zoning Board of Appeals, FRANK DENCHICK, as a member of Town of Peru Zoning Board of Appeals, TOM FUSCO, as a member of Town of Peru Zoning Board of Appeals, LAWRENCE BOSLEY, as a member of Town of Peru Zoning Board of Appeals, DONALD MCBRAYER, as a member of Town of Peru Zoning Board of Appeals, and MICHAEL FARRELL, as Town of Peru Highway Superintendent,

Respondents/Defendants.

ORDER AND

SETTLEMENT AGREEMENT AND STIPULATION OF DISCONTINUANCE

This Settlement Agreement is entered on the date of execution indicated below between Petitioners/Plaintiffs KEVIN DASHNAW and HENRY DASHNAW, JR. (hereinafter collectively referred to as "Petitioners"), on the one hand, and the above-named Respondents/Defendants (hereinafter collectively referred to as "Respondents"), on the other hand.

WHEREAS, Petitioners commenced the above-captioned hybrid Article 78 proceeding/declaratory judgment action, bearing Index Number 2011-1163, by filing a Notice of Petition and Petition with the Clinton County Clerk and Defendants joined issue by service of an Answer, which was amended by an Amended Answer, all with regard to issues concerning the status of a road located in the Adirondack Golf & Country Club Subdivision, in the Town of Peru, County of Clinton, State of New York, and more particularly defined or described hereinbelow, as either being a private road or a public town road or highway;

WHEREAS, Petitioners allege and claim that said road was a public town road or highway, which had never been abandoned as a matter of law or fact and Respondents deny that said road ever existed as a public town road or highway and, if it had existed as a public town road or highway, Respondents claim the Road was abandoned by non-use for a continuous period of six years and no longer exists as public town road or highway; and,

WHEREAS, Petitioners and Respondents wish to compromise and fully settle all issues between them and thereby obviate the further need for either party to incur additional expenses and proceed with litigation.

NOW, THEREFORE, the parties hereto, intending to be legally bound, and in consideration of the mutual covenants and other good and valuable consideration set forth below, do hereby agree as follows;

(1) The term, "Road," used herein shall be defined as Fairway Drive as depicted on a Survey Map Showing Phase I of the Adirondack Golf & Country Club Subdivision filed at the Clinton County Clerk's Office on July 20, 1990 at Book 18 and Page 68 (hereinafter referred to as the "Survey Map") with an eastern terminus at Rock Road (Cayea Road on the Survey Map), and a western terminus at an imaginary line drawn between the northwestern corner of Lot 9 and the southwestern corner of Lot 8 on the Survey Map.

(2) The term, "Lots," used herein shall mean the 19 lots depicted on the Survey Map and currently designated by the following tax map identification numbers: 258.-7-1; 258.-7-2; 258.-7-3; 258.-7-4; 258.-7-5; 258.-7-6; 258.-7-7; 258.-7-8; 258.-7-9; 258.-7-10; 258.-7-11; 258.-7-12; 258.-7-13; 258.-7-14; 258.-7-15; 258.-7-16; 258.-7-17; 258.-7-18; 258.-7-19.

(3) Immediately upon execution of this Settlement Agreement:

(a) The Town of Peru and the Town of Peru Highway Superintendent and his successors (hereinafter collectively referred to as the "Town") shall maintain the Road in its current condition and location at its own cost from April 1 to November 30 until the Road becomes a town road or town highway as defined by Highway Law §3(5). If the Road is damaged during said period of April 1 to November 30, even if the damage is not discovered during said period, the Town shall be responsible to repair the same at its cost, provided Petitioners did not cause such damage to the Road.

(b) The Town shall be responsible for making any changes, alterations or additions to the Road which, in its sole discretion and at its own cost, are necessary to allow safe and appropriate ingress and egress of emergency vehicles to access each of the Lots. It is understood by the parties that in order to accommodate the creation of a turn-around for larger emergency vehicles some such changes, alterations or additions may occur outside of what has previously been defined herein as the “Road”.

(c) Once the Town has made the changes, alterations or additions as contemplated in paragraph 3(b) of this Settlement Agreement, or at the expiration of 60 days from the date of execution of this Settlement Agreement, whichever shall first occur, the Town shall not deny any building permit to Petitioners, their agents, successors in interest or assignees based upon a lack of adequate road frontage.

(d) Petitioners shall maintain the Road in its current condition and location and at their own cost from December 1 to March 31. If the Road is damaged during said period of December 1 to March 31, even if the damage is not discovered during said period, Petitioners shall be responsible to repair the same at their cost. If and when Petitioners sell or convey one of the Lots to a third party, from December 1 to March 31 Petitioners shall be responsible for snow removal when snow accumulates to three inches on the road and, if necessary, sanding – such necessity to be determined by the Town of Peru Highway Superintendent at his sole discretion. If Petitioners do not remove said snow or perform said sanding within 36 hours of snow accumulating to three inches or the time the Town of Peru Highway Superintendent advises the Petitioners in writing of the need to sand the Road, the Town may plow and/or sand the Road, whatever the case may be, and charge Petitioners for such services at a rate of \$100/hour, which shall be paid within 30 days of receiving an invoice for the same.

(e) The Town shall indemnify and hold harmless Petitioners for any claims or liabilities arising out of the Town performing maintenance, including snow removal and sanding services, on the Road.

4. Seven years from the date of execution of this Settlement Agreement or when the collective tax base of the Lots reaches One Million, Nine Hundred and Eight Thousand, Three Hundred and Ninety-Six Dollars and Ninety Five Cents (\$1,908,396.95), whichever shall first occur, the Road shall become a town road or town highway as defined by Highway Law §3(5) and the Town shall immediately take over all maintenance of the Road and Petitioners shall have no further obligations to maintain the Road. At that time, Petitioners shall dedicate and convey the Road and all turn-arounds necessary to accommodate emergency vehicles by delivering a warranty deed adequate in all respects and including accurate descriptions of the Road and said turn-arounds to be conveyed to the Town.

5. Nothing in this Settlement Agreement shall be construed as precluding any future owner of the Lots from lawfully petitioning the Town under Article 12 of the Town Law or otherwise lawfully petitioning or compelling the Town to perform its duties with respect to the Road as mandated by law after the Road becomes a town road or town highway pursuant to

paragraph 4 above.

6. Under no circumstances shall this Settlement Agreement be construed in such a manner as to compel the Town to make any improvements to the Road either before or after the Road becomes a town road or town highway pursuant to paragraph 4 herein.

7. Petitioners shall discontinue their appeal currently pending before the Appellate Division, Third Department, and the parties hereby agree to discontinue the above-captioned proceeding/action with prejudice.

8. Petitioners and Respondents hereby mutually remise, release, and forever discharge each other and their past, present and future agents, representatives, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors, and assigns, from any and all legal, equitable or other claims, counterclaims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, reckonings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, extents, executions, judgments, findings, controversies and disputes and any past duties responsibilities or obligations whatsoever, in law or in equity, with the exception of any taxes, assessments, charges or penalties which have accrued against any real estate the Petitioners may now own in the Town which against either ever had, now has or which their heirs, executors, or administrators, hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, including but not limited such asserted in the above-captioned proceeding/action.

9. This Settlement Agreement shall be recorded in the Clinton County Clerk's Office and shall be binding upon any successors in interest to the lands adjacent to, and with frontage on, the Road.

10. This Settlement Agreement may be executed in counterparts, each of which shall be deemed original, and all counterparts so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties may not be signatory to the same counterpart. This Settlement Agreement may be executed by electronic or facsimiled signatures, such signatures shall be binding and deemed original for purposes of enforcing this Settlement Agreement.

The parties hereby signify their agreement to the above terms by their signatures below.

Dated: September ___, 2016

Henry Dashnaw

Kevin Dashnaw

Dated: September __, 2016

Michael Farrell
Town of Peru Highway Superintendent

Town of Peru and Town of Peru Town Board

By:

Peter Glushko
Town Supervisor and
Authorized Representative

All Remaining Respondents

By:

Donald Biggs, Esq.
Town Attorney and Attorney of
Record for Respondents

STATE OF NEW YORK)
COUNTY OF) ss:

On the ____ day of September, 2016, before me, the undersigned, a Notary Public in and for said State, appeared HENRY DASHNAW, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF CLINTON)ss:

On the ____ day of September, 2016, before me, the undersigned, a Notary Public in and

for said State, appeared KEVIN DASHNAW, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF CLINTON)ss:

On the ____ day of September, 2016, before me, the undersigned, a Notary Public in and for said State, appeared MICHAEL FARRELL, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF CLINTON) ss:

On the ____ day of September, 2016, before me, the undersigned, a Notary Public in and for said State, appeared PETER GLUSHKO, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF CLINTON)ss:

On the ____ day of September, 2016, before me, the undersigned, a Notary Public in and for said State, appeared DONALD BIGGS, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SO ORDERED!

Honorable Robert M. Muller
Supreme Court Justice