

IN RE: TOWN BOUNDARY BETWEEN THE TOWNS OF ST. GEORGE  
AND SHELBURNE, VERMONT

REPORT AND CONCLUSIONS OF ARBITRATORS  
SELECTED PURSUANT TO 24 VSA §1461(b)

The undersigned, being the arbitrators selected pursuant to 24 VSA §1461(b), 12 VSA §5652, and the arbitration agreement between the Towns of St. George and Shelburne, dated July \_\_\_\_\_, 2008, unanimously issue this report and conclusions with respect to the boundary that separates the Towns of St. George and Shelburne, Vermont:

In this matter the Town of St. George was represented by Paul Gillies, Esq., and the Town of Shelburne was represented by Robert Halpert, Esq. Both towns submitted written memos on their respective positions to determine the boundary in question. The panel held hearings on July 22, 2009 and August 6, 2009. In addition the panel met with attorneys for the towns on November 19, 2009, but no evidence was taken on said date. The parties, through their attorneys, have agreed that this report and conclusion shall be submitted on or before the 29<sup>th</sup> of January, 2010. Based on the memoranda submitted and the evidence presented, the panel issues this report of its findings and conclusions:

FINDINGS

1. The usual and preferred basis to determine disputed town boundaries is to ascertain the original charter lines for each of the involved towns. However, in this matter it is clear and undisputed between the two towns that the original charter line cannot be determined. Both towns' charters were granted by Benning Wentworth in 1763 who was then the Governor of the Colony of New Hampshire. St. George was chartered on August 18, 1763. Its proprietors were granted land that began at the southeast corner of Shelburne, in the northerly side of Hinesburg,

thence easterly six miles, northerly six miles, and westerly six miles, ending at the northeasterly corner of Shelburne. Shelburne's charter was granted the same day. Its line began on the easterly shore of the lake, and the northwesterly corner of Charlotte, then seven miles easterly by Hinesburg and Charlotte, thence northerly six to a stake and stones, thence westerly to the Lake six miles, thence along the lake to the beginning.

2. There was simply insufficient land to make up the 36 square miles "granted" to each town. This was a result of a number of factors including the fact that different parties surveyed the charter lines for Burlington and Shelburne with the party surveying for Burlington starting from the north, and the party surveying for Shelburne starting from the south. Neither party apparently knew precisely where the other had fixed the boundary, and therefore the boundaries overlapped. Since Burlington had been chartered two months before Shelburne, it embraced all the land included within its survey by priority. In addition, the early surveys weren't "governed by the compass" and the fact that the overlapping charters for Burlington and Williston pre-dated those of Shelburne and St. George led to Shelburne getting only 14,272 acres of its promised 23,500 acres, and St. George getting only 2,200 acres of its promised 23,020 acres.

3. Compounding this dispute is that neither town has proprietor records and at least in the early days of the two towns most of the land that straddled the boundary in dispute was owned by the same individuals and those individuals were not very concerned about the boundary line between the two towns.

4. In 1848 the Vermont legislature considered a proposal that would have fixed this boundary, but that proposal never took effect because the voters of the Town of Shelburne disapproved the resolution.

5. Based on this historical record both towns agree that it is not possible to locate the original charter line boundary between the two towns.

6. This current round of dispute over the boundary was triggered when a survey was prepared for the Ernest Auclair Family Trust and the Mildred Auclair Family Trust by Krebs & Lansing, dated March 7, 2005 (Exhibit #1) for a portion of the Auclair property. This survey showed the southern 750 feet, more or less, of the boundary between the two towns as located approximately one hundred to one hundred ten feet westerly of the boundary line as depicted on the two towns' tax maps.

7. That property owners constructed improvements on a portion of their property that Exhibit 1 showed to be in St. George, after apparently obtaining the necessary permits from St. George. However, Shelburne claimed that the boundary is as shown on the tax map, and therefore the property owner was required to obtain permits for the improvements from the Town of Shelburne, which were not obtained. That matter is pending in the Vermont Environmental Court, pending a decision by this panel.

8. The Town of St. George presented Ian Jewkes to testify as to why the town boundary he identified on Exhibit 1 should be the location of the boundary between the two towns for at least that portion of the boundary specifically delineated on his survey.

9. Mr. Jewkes relied in part upon the boundary line originally drawn by Ebenezer Cobb in 1798 as the foundation for his location of the boundary as shown on Exhibit 1. He also utilized a survey prepared by W. Lowe, dated December, 1986 (Exhibit 5), which also appears to rely upon the Cobb line.

10. Jewkes' testimony was undisputed that there was good physical evidence south of

the Pond Road to support his assumption of this "half-lot" calculation assumed in both the Cobb and Lowe surveys to best locate the boundary, and that was the basis for the boundary line as he determined in Exhibit 1. He did acknowledge that north of the Pond Road, there was a large marshy area and it was difficult to locate physical evidence to support the boundary line in that area as being a simple extension northerly of the line as he delineated it on Exhibit 1.

11. The Town of Shelburne did not retain a surveyor to perform any actual survey work to determine the boundary but did have Tim Cowan, who is a licensed surveyor, testify on its behalf. Mr. Cowan's testimony called into question the approach of just relying upon a projection of the line determined by Jewkes in Exhibit 1 as a sound basis for fixing the entire length of the boundary. He also questioned Jewkes' assumption of half-lots without a determination of the existence of the other half of the half-lots. However, he acknowledged that that was probably beyond Ian Jewkes' scope of work, and in any case, the Town of Shelburne did not ask Mr. Cowan to perform any further research or field work on its behalf.

12. The Town of Shelburne's position is that the town's tax map delineation of the boundary should be accepted as the boundary. Exhibit A were minutes of Shelburne's Select Board meeting of December 21, 2006 which reflect that the two towns had agreed that the tax map boundary would be the boundary between the two towns. However, Mr. Stitzel was called to testify and did testify that portions of Exhibit A are not accurate and are inconsistent with his memo prepared prior to that meeting, and he never said both towns had agreed on the boundary as shown on the tax maps, as reported in Exhibit A.

13. The tax maps for both towns were prepared by the same individual and are useful for the limited purposes for which they are prepared. However, they are not surveys and it is not

possible to determine from those maps what historic or scientific assumptions were made in their preparation. They are not intended to replace surveys or to be the equivalent of surveys, and will not be relied upon by this panel to determine the boundary in question.

14. The towns were offered the opportunity to mutually perform additional survey work to attempt to correlate field evidence to record evidence of half lots extending northerly of the Pond Road. Both towns declined that opportunity.

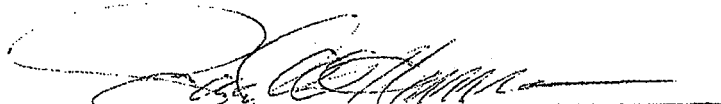
15. The panel on its own initiative determined that credible evidence exists on the ground of the easterly boundaries of the St. George half of Lots 81 and 88 (as depicted on the ca. 1775 Ira Allen survey) in the form of stone walls, wire fences and changes of land use patterns. Specifically, along the easterly boundary of the St. George half of Lot 81 on a line believed now or formerly to separate ownership of one L. Guillemette from that of one Beliveau and of one LaPierre from one H. Pillsbury, wire fence and remnant stone wall was found to project in a north/south direction. Furthermore, along the easterly side of the St. George half of Lot 88, southerly of St. George Town Highway #2 a distinct field/woods line exists with remnant wire fence evidencing Lot 88's easterly boundary.

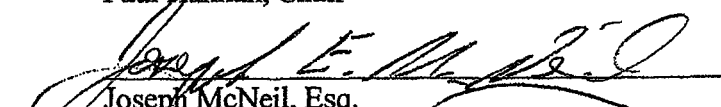
16. Based on all the evidence the panel determines that the line in question shall be established as the line delineated on Exhibit 1 (the Jewkes line, so-called) extended northerly to its intersection with the Pond Road and southerly to the Hinesburg Town Line. Northerly of the Pond Road the line shall be established 13 chains and 50 links (891 feet) parallel to and westerly of the evidence described in Paragraph 15 above. This decision recognizes that employing the evidence described in Paragraph 15 above will likely result in a line that is not uniformly straight from the Pond Road to the Williston Town Line. It also recognizes that additional evidence of

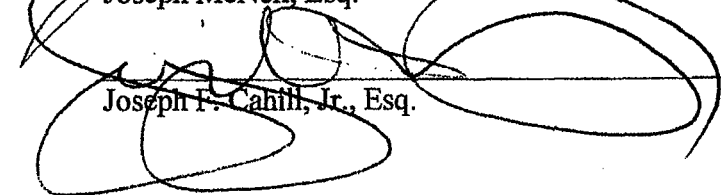
the St. George half of the lots along this municipal boundary may be discovered in the process of surveying the evidence described above. It is expected that the surveyor or surveyors employed by the towns to implement this decision and monument the Town Line will employ generally accepted standards and practices in marking a line parallel to the field evidence found.

Monuments placed will be notably durable and, at a minimum, will be placed at or near all public road crossings and at significant angle points resulting from paralleling the corresponding angle points in the field evidence of the St. George half lots. Because no evidence was presented regarding the North and South termini of the town line, no monuments will be placed northerly of VT Route 116 or closer than 200 feet from the apparent Hinesburg Town Line.

DATED this 12<sup>th</sup> day of February, 2010.

  
Paul Hannan, Chair

  
Joseph McNeil, Esq.

  
Joseph F. Cahill, Jr., Esq.