

"WHEREAS, the Certificate of Incorporation of this Association provides that the "Particular business and object of this Association will be the promotion of social and recreative pleasures of the members of the Association" and

WHEREAS, the Constitution and By-law includes the same provision and also provides that "The property and affairs of the Association shall be managed by five (5) Trustees, to be known as Governors", and

WHEREAS, it is the duty of the Trustees to protect the interests of its members and properly care for the Association property, and

WHEREAS, it appears that certain members of the Association have caused to be constructed certain fences not in accordance with lines shown on the official map of the Association, and other certain members have, in various ways, indicated their unwillingness to abide by the map of the Taconic Lake Association, as adopted at the Annual Meeting in August 1929, it is therefore

RESOLVED, that the Secretary of this Association be and is hereby directed to mail a copy of these resolutions to Mr. and Mrs. R. V. Wolfe, Mr. William Rodier, Mr. Charles Baum, Mrs. H. T. Miller, officially advising them of the fact that they are infringing upon the rights of the Association and its members, and they are requested to act in accordance with the spirit of the Constitution and By-laws of the Association and forthwith remove such fences or obstructions, and further

RESOLVED, that the attention of these members be called to the fact that the adoption of the official map was by a large majority of the members of the Association who desired to establish definite and accurate lot lines for the members on an equitable basis, and that any attempt to ignore the lines so established must be considered as antagonistic to the Association as a whole and to all its members, and further, that in the event of the failure of the parties named to exhibit a fair spirit of co-operation in supporting of the Constitution and By-laws of the Association, the Board of Governors, much to the regret of every member of the Board, must in the performance of its duties to all members proceed to take such legal action as may be required in the circumstances to protect the interests of the Association."

of July 10th as stating all facts and all reasons.

(54) ANNUAL MEETING AUGUST 1st, 1931

The custom at this period was to elect a full Board of Governors each year. A total of ten had been nominated and as a result there were thirty members present in person and thirteen by proxy, being the largest attendance on record.

In the election three members were tied with twenty-one votes each, being Mr. Wright, Mr. Keags and Miss Eckert.

Mr. Wright, "feeling it would help matters if he withdrew" asked Miss Eckert and Mr. Keags if they would accept and on their approval he insisted upon his withdrawal which was approved, the new Board then being Blieman, Cushman, Tucker, Keags and Eckert.

Officers were elected by the Board

(55) SPECIAL BOARD MEETING
August 15th, 1931

The President, Mr. Tucker, reported on his full investigation of the Susan Wolfe delinquencies and recommended that, inasmuch as no individual or the Association had been injured by the technical violation of the by-law provision, the charges be dropped. On motion the Board approved the recommendations and their being placed before the adjourned Annual Meeting to be held in the afternoon.

The President also reported on the Rosco V. Wolfe failure to pay \$5.00 on extra lot but made no recommendation. (See adjourned Annual Meeting).

(56) THE ADJOURNED ANNUAL 1931 MEETING

At this Meeting Mrs. Wolfe asked the privilege of the floor and, when seeing she wished to speak of the charges, I asked if she would wait until I had reported for the Board. She agreed and, when I reported to the membership that the Board had already recommended cancellation of the charges, her attorney, Mr. Charles Aldrich of Troy, who sat by her side, said he thought the action was exceedingly fair and asked Mrs. Wolfe to say no more.

(57) MR. WOLFE'S CASE

As to the omitted extra lot charge, Mr. Wolfe explained it was under an old arrangement with an earlier Board. The Annual Meeting voted to cancel the charges on condition that he would start paying from date. It was agreed and he has since paid.

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FIRST MESSES CLEARED UP

These were the first two "messes" of my inheritance which were cleared up in a fair and satisfactory way to all, except Mr. Wright who expressed himself in a letter to Mr. Schalkenbach concerning my activities in the interests of Mr. and Mrs. Wolfe, harmony and peace. I never really blamed Mr. Wright for being peeved at me for I had, as President, deliberately asked the Board to undo what he, the preceding President, had done and in which he was doubtless quite sincere. Technically, Mr. Wright was within the facts with his charges. We simply had different points of view.

(59)

APPEALS TO STOP THE LAWSUIT

As soon as elected President, appeals came to me to "stop the lawsuit" and at the Annual Meeting of 1932 Mr. Lisk, as self-appointed spokesman for others, in a most emphatic manner literally demanded that I stop the lawsuit which I agreed to do if possible.

As most intelligent people know there are three grounds upon which action may be taken to discontinue a lawsuit, viz:

- (a) By withdrawal of complaint
- (b) By an agreement between parties interested
- (c) By trial in Court.

As President, I had no authority to withdraw the complaint so long as the cause which occasioned it still existed.

I once asked Mr. Rodier to remove his fence and he courteously said, "Maybe I will", but he didn't and as a final attempt I wrote him before the suit was brought to trial.

Six months later, nothing having been done, I wrote Mr. Rodier a five page letter expecting, when he came to the Lake later on, to see him and to sit down and talk it all over. Unfortunately, Mr. Rodier, did not even acknowledge receipt of my letter so there was nothing I could do. Copy of the letter follows:

"

March 17, 1933

Mr. William Rodier,
2979 Briggs Ave.
New York City

Dear Mr. Rodier:

I think it fair to assume that you have been able to recognize, to an extent at least, what I have succeeded in doing and have endeavored to do in an adjustment of misunderstandings and inharmonies at Taconic Lake.

Because of this feeling, I am writing you with reference to what I believe to be of the greatest importance to all members, especially at the present time when conditions in our country are in an unsettled condition.

" We have, within our Association, a lawsuit, which to my mind is without exception so decidedly unnecessary as to be ridiculous. This for the reason that regardless of any possible outcome of a trial, no one can ever be considered as a winner. We will all be losers, not only of money, but in loss of time, happiness, peace of mind and even our self-respect, to say nothing of our feelings toward one another, and gain nothing.

I intended all last summer, both before and after the Annual Meeting, to talk the entire situation over with you, but was at the lake so little on account of the illness of Mrs. Tucker's sister (who has since passed on) that the summer was over and everyone gone before I realized it. I, therefore, requested of the attorneys (with permission from the Board) that if possible action be deferred and that the case be left off the calendar of the October and January terms of court.

I had hoped to arrange to see you in New York during the winter, but although I have been down several times, have always been exceptionally busy and simply neglected to get in touch with you.

I now understand the attorneys have placed the case on the Court Calendar for trial at the April term, and I do not feel like interfering again as I know there are several members who, without any feelings of animosity, believe the question should be settled in court. This, of course, I assume to be in case it cannot be adjusted by agreement, for it doesn't seem quite possible that any member would wish to fight or spend time and money when avoidable.

In the circumstances, I am asking that you and Mr. Baum give me, as president, the cooperation so much needed in order to bring an end to the unpleasant and useless discussions at the Lake.

First: Don't you think the lawsuit should be ended without further trouble and expense?

Second: It seems to me that entirely apart from any legal question as to which I assume to have no opinion, there is nothing involved beyond what started as a personal conflict, and there is no longer cause for this.

Third: Not one of the present Board of Governors has any personal interest in the case, but cannot consistently discontinue the action while your fence remains on Association property as shown on the map as adopted. If you will take down the fence which is really a detriment to your own property and appearance in general, and exchange deeds, you will still have full use of all the land you have ever had.

Fourth: If you feel the Association should fill in any part of the road end of the lot, I would be willing to guarantee that the Association would do it, just as I promised you at the meeting in 1931. If you do not want to do this, will you please write and tell me why? I really can't understand it.

I really can see no reason why every member of the Association should not cheerfully come in, exchange deeds and complete the cause for which Mr. Wolfe labored so earnestly for several years, for it is the best course, harms no one and benefits many.

I feel quite certain that if you and Mr. Baum would cooperate with me in this matter so the lawsuit could be discontinued without

"any further unpleasantness or cost, it would be a splendid thing to do and be the ending of all difficulties at the lake so we could all join hands in a program of constructiveness."

What has occurred in the past does not necessarily concern me, and while I can readily see where you might at times have had cause for being antagonized, that is all past, the Big Thing now is for all to get in on "A New Deal" and get out of our vacations at Taconic Lake all that we can of real joy and happiness. There is so much discord and tragedy in every-day life that we should be able to escape it all for at least two months out of a year.

You were the first and only member of the Association I met when on the occasion of my first visit to the Lake you took me to see your sister's cottage. Some two years later, after having driven over several times, and finally concluding that no one could fail to be at peace with the world in so beautiful a spot, I bought the property.

I have never had and never shall have any trouble with anyone but had I known of conditions existing, I never would have bought the property. Life, on this plane, to my way of thinking, is too short and too valuable to be wasted in personal differences and especially in connection with unimportant matters.

My first Association meeting was in 1928 on Dr. Blieman's porch, and I saw there some unmistakable evidences of personal dislikes and prejudices, but had not then and do not now have any idea as to why it should be so.

I was, however, by the very plain and comprehensive illustrated talk on the survey situation by Mr. Wolfe, then and there convinced that he had given the matter an exhaustive study and performed without compensation a wonderful and much needed service to members of the Association. I have never changed my mind. He played the part of a gentleman, answered in detail and with knowledge of the subject every question asked, and supported his contentions with the colored plates in the preparation of which he must have spent much time.

A year passed, and in the meantime Mr. Wolfe asked me to serve on the Board in place of Mr. Schalkenbach, who, as you know, had resigned because of the personal differences with you and as I recall, you too had resigned before the meeting of another year.

In 1929 the survey matter was up for discussion again. I knew very little about it, had nothing to say and was willing to accept anything the members found to be necessary. I was, in fact, delighted to have a real map of my property as to the true boundaries of which I knew nothing beyond what you told me in 1926 and a description on the deed which could not well be followed.

After the Annual Meeting of 1929, the Board sat all one afternoon to hear complaints of any. The only complaints made seemed to be with respect to the lands shown on the map between Dr. Palmer's and your property. Actual measurement seemed to show there was a shortage of twenty feet. Lots and streets from measurements on deeds called for 640 feet and there were but 620 feet of land. This was the only place on the entire shoreline where there appeared to be a shortage.

On the evening prior to the adjourned Annual Meeting of 1929, without consulting anyone, I gave the matter much thought in the light of discussions heard and it clearly appeared to me that the only answer was in the fact that an error was made in original measurements. The question of where the shortage appeared depended entirely upon what point was used in starting. If starting at your line, it came short between Palmer and Schalkenbach and if started at Palmer's or beyond it would be short between you and Mr. Baum.

" It was certain that no one could ever get forty out of twenty. No one knew then, and no one knows now and no one ever will know just what happened to cause the discrepancy but it was there - a problem to solve. To me there appeared but one equitable solution, and I assumed that was the entire purpose of the survey.

Because of this, at the adjourned meeting next day and after the entire matter had been there discussed with none of those directly interested in that section seeming free to suggest or approve a remedy, I offered the resolution to change the map by making an equitable division and moving ten feet north all lines between Dr. Palmer and the street called for between you and Mr. Baum, thus leaving a ten foot street at each end of the section. This was amended and accepted by me by changing the lines at road by absorbing therefor, the "gore lot" shown north of your line. I had not given this matter any thought before, but it seemed reasonable as it made no difference in the use of the property as the street would be just as available to you as your own lot.

At that time and ever since it has seemed to me the action was fair to all concerned and, as a matter of fact, it improved the location of all five cottages on each lot, didn't take an inch from any one and so far as uses were concerned, made no change at all.

During the past year we have exchanged deeds with about half the members and would have had several more except for the facts as stated concerning my inability to spend much time at the Lake. So far as I know, practically all members desire to exchange deeds, but it is quite inconvenient when we are all so far apart. We have, however, exchanged Quencers, also the Baldwin Palmer property which has been sold during the winter.

I think we have accomplished quite a little during the last two years:

- (1) The Elgizer membership and deed matter has been closed and Association owns the lot. In this matter we found Elgizer actually owned property at the Lake, but a short time and was President when not a member.
- (2) We disposed of controversy relative to Byk property.
- (3) We disposed of controversy relative to Mr. Wolfe's extra lot. (Note) It was unfortunate that this was "dug up" last year, but I do not think it will happen again.
- (4) We put through the new road on east side at a very low cost, thus making a real improvement, and at the same time satisfying Mr. Rourke who has his new deeds. In this action we also cared for the interests of Mrs. Studwell.
- (5) We built the new ice house and thus started a real improvement on the Lake Front of the Association property, which when completed will be enjoyed by all.
- (6) We repaired and painted the store.
- (7) We have made substantial payments on the survey cost.
- (8) We have exchanged more than twenty deeds.
- (9) Unfortunately, we have been forced to spend \$500 for attorneys
- (10) We rebuilt the telephone line and tennis court.

" (11) All this accomplished by borrowing only \$400 addition, and except for the lawsuit we would have been within the normal income from dues in spite of tax increases.

It is because of what has been accomplished in the interests of harmony and the happiness of all that I am very anxious to have the last obstacle removed, and am therefore appealing to you as the only one who can give me the needed assistance.

If you do not want to do it, I shall find no fault, but want you to know my desire and to have you understand that if you and the Association have the expense of a suit, it will not be because of any desire on my part.

On the other hand, if you and Mr. Baum will work with me in the manner suggested, I will see to it that you have no expense in exchange of deeds.

In addition to this, I would like to have Mr. & Mrs. Wolfe exchange deeds before the summer season and believe the effect of such action without any controversy would be simply wonderful as there are those at the Lake who have the wrong impression of the attitude and all this action without any argument or comment would work wonders.

Please let me hear from you promptly, even if you feel like saying "Go chase yourself" for I am very sincere and have not written you without prior serious thought.

Yours very truly,

Frank P. Tucker,

President,
Taconic Lake Association "

(60)

NO RESPONSE

Mr. Rodier did not reply to my appeal and the matter was allowed to go to trial, and so on July 19, 1934 I wrote a letter to all members, sending a copy of the letter I had written to Mr. Rodier, which was as follows:

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July 19, 1934

Members,
Taconic Lake Association

Dear Friends:

- (1) I deem it advisable to inform you with respect to important Association matters prior to the Annual Meeting to be held on August 4, 1934.
- (2) At the Annual Meeting of the Association in 1932, I said to those present it was felt we had already done much that was needful to restore a proper friendly feeling and would do all possible to bring about a harmonious condition within our Association.
- (3) At the Annual Meeting in 1933, I reported to you that the trial of the test case in the court action had been held in April but the Judge had, as yet, rendered no decision. I then stated that the decision must necessarily be one of only two, viz:

- "
1. That the by-law and action thereunder is valid under the law and all members bound to be governed by it, accept boundary lines as established, remove any obstructions and exchange deeds, or
 2. That the by-law is not valid and members cannot be forced thereby to remove fences or accept the boundary lines and exchange deeds.

(4) I plainly stated that was all there was to the action, as it had been heard by the Court, (as the Judge said at the trial he would not attempt to determine as to deeds and original lines in accordance with their descriptions, that being a question of fact for a jury.)

(5) I did not tell you in the 1933 meeting what action I had taken in keeping my promise of 1932 to "do all possible to bring about a harmonious condition within our Association" as it seemed to me a rather personal matter.

(6) In the light of subsequent developments, I now want you to know what I did, and to this end am enclosing copy of a friendly letter which I wrote to Mr. Rodier in March 1933, which letter he received but never acknowledged. I am not sending this copy with the thought of criticizing Mr. Rodier for not answering. That is his business, but, as stated, I want you to know that I at least tried to puncture the error in its infancy, and in the most friendly and kindly way.

THE LAWSUIT AND FACTS

(7) You will recall that on October 10, 1933, after the Court Decision, I addressed a letter to the membership explaining the situation. In that letter I said that "Judge Loughran recently rendered a decision in which he dismissed the complaint with costs, basing such decision upon the theories that,

1st - There was no proof of a substantial equity sufficient to justify it (the complaint) and

2nd - That "A group of plaintiff members have constituted themselves judges of their own case against a dissenting minority", and the by-laws could not be enforced".

(8) I did not at that time realize that Judge Loughran had made a very apparent error of doing that which he had definitely stated at the trial he would not assume the responsibility for doing, and, as a result of which statement, no testimony was given.

(9) Contrary to his statement made at the trial, and to all undisputed documentary evidence set forth in the boundary lines described in Mr. Rodier's deeds as "adjoining the Howard lot" and tied to the "large rock" the Judge stated in substance in his decision that the fence erected by Mr. Rodier enclosed the land described by his deed. It is very certain this was due to an oversight on his part.

This would be an impossible condition as it was not a fact supported by the evidence and it was no part of the by-law controversy and had no legitimate place in the decision.

The case was carried to the Appellate Division and was argued on May 17th, a few days later, with no opinions given. The Appellate Court handed down a decision confirming Judge Loughran's decision, including the error referred to, apparently assuming from the argument that Judge Loughran must be right.

THE NEXT MOVE

It is only fair to the Appellate Court that the intelligent men presiding there be given an opportunity to review the case and privileged to correct the unintentional error. A request will, therefore, be made for a re-argument at the September term of Court, and this will be handled by Judge Harold J. Hinman of Albany, a former member of the Appellate Court, who now has the matter in hand. Absurd as the whole case is, there is nothing to do but continue in an effort to find justice.

THE "FUNNY" SIDE

If there could possibly be anything "funny" to so ridiculous a situation, it is in the fact that Judge Loughran saw in the voluminous record "no proof of substantial equity", while as a matter of fact there is nothing but equity involved as the actual land measurements or values were not changed by the survey or by-law.

As against the expressed opinion of Judge Loughran, there exists the further fact that a former decision of the Appellate Court in the Wolfe-Schalkenbach case states that a twenty foot street between Dr. Palmer's and the Schalkenbach lot "is still there". Mr. Schalkenbach, however, did not demand the twenty feet but gladly accepted the ten feet at the lake shore, in accordance with the survey, thus making the proposed adjustment possible.

It follows that with the two conflicting opinions, if both were right, it would have the effect of creating a condition somewhat difficult of solution as it would require the services of some magician to produce several feet of land which are not now available.

These two conflicting decisions furnish in themselves all the evidence necessary to establish a case in equity, proving as they do the absolute necessity for an equitable adjustment such as was made, if the survey made at considerable cost and declared by former officers to be necessary was to have its greatest value to the membership.

THE ANNUAL MEETING

The Annual Meeting of 1934 will soon be held. It is unfortunate that this last difficulty could not have been definitely and equitably disposed of prior to that time.

It is regrettable that so much trouble and expense should have resulted from the very earnest efforts of former officers to correct such things as were repeatedly described as "impossible conditions" in the boundary lines as revealed in the survey.

The legal status of a by-law is of small importance as compared to the moral obligations which should be recognized by every member, in an organization such as ours, but where such moral obligations are not respected there is but one course open and your Board of Governors, contrary to any personal wishes of its members, has followed that course in an effort to protect the rights of members.

At the Annual Meeting a Board of Governors will be elected. If the members should for any reason feel that the present Board has not served in the interests of all and the Association as a whole, there is a remedy. If it is believed the present Board has served well, that too can be recognized.

EXCHANGE OF DEEDS

As to exchange of deeds, it is well to understand that any result in the lawsuit will have no effect. Those who have exchanged are in the better position. Those who wish may still do so, and I will be glad to assist, but do not wish to devote further time in efforts to convince members

"that it is a proper and desirable thing, and in their interests to do so.

I shall have a further report at the Annual Meeting.

Yours very truly,

Sgd. Frank P. Tucker

President
Taconic Lake Association "

The Judge stated at the trial he would not pass upon anything but the by-law provision with respect to moving lot lines

(61)

THE JUDGE FORGOT

In spite of this declaration the Judge evidently forgot, overlooked the facts in evidence and handed down a decision to the effect that "Mr. Rodier's fence enclosed the land covered by his deed".

This could not be allowed to stand, being contrary to facts and evidence in the record. An appeal was made.

Strange as it seemed to be, the Appellate Division of the Supreme Court affirmed, without a written opinion, the erroneous decision of Judge Loughran.

Here again was a condition which could not be allowed to stand, being in error, but the only course open seemed to be going to the Court of Appeals of which Judge Loughran had since been made a member by appointment.

Instead of taking that natural course, feeling sure the Appellate Court was in error, I went to Judge Harold J. Minnman of Albany, a former member of the Appellate Division, and retained him to review the case and determine as to procedure.

Judge Minnman decided to ask the Appellate Court for permission to re-argue (requiring unanimous consent) which was granted; the Court was convinced of its error and reversed its former action.

This left the matter just where it started, except that, while members could voluntarily exchange deeds, they could not be forced to do so and this was entirely satisfactory to the Board of Governors.

Deeds have been exchanged to comply with the Map. Others should be changed and can be at the owners' expense under the amendment of 1946.

(62)

REMAINING INFRINGEMENTS

There are still three remaining infringements upon the rights of others, viz:

- (1) Mr. Rodier's fence still remains, infringing on the road
- (2) Mr. Baum's fence, based on Mr. Rodier's attitude, still remains, an infringement on Grattan property.
- (3) Mr. Grogan's fence, infringing upon the Lathrop property to the extent claimed by Mrs. Miller, the former owner, is quite ridiculous and can be so proven by leading to it in either direction. If Grogan's claim could be possible, Lathrop's

in deed description

would take a part of Akin; Akin would take a part of Chambers; Chambers a part of Cushman and Cushman a large part of Rourke.

Note: In all these cases the remedy lies with the aggrieved persons in removing the obstructions or the Association, which gave them warranty deeds according to the Map, can take action.

RECAPITULATION OR SUMMARY

It seems to me that in conclusion this partial history might well include at least four points in the nature of a summary, as follows:

First From an analysis of the entire period it is plain to see and understand that there never was a real reason for any inharmony at Taconic Lake. Every particle of discord was due to some misunderstanding of matters of small importance, honest mistakes in judgment and, we might add, petty personalities which, as sparks, were allowed to continue until fanned into flame.

Second It is, perhaps, true that, if no one had ever stirred up the desire for a Map and no fences had been built, there could have been no fight.

Third The lawsuit was a great mistake as the simpler way would have been to follow the Resolution of the Board of Governors of August 30, 1930, taking down the fences, leaving it with members to start a suit if desired. It was generally admitted by all attorneys that he who started a suit was "licked" from the start as nothing could be proved apart from the Map.

Fourth In addition to all accomplishments listed in the letter to Mr. Rodier on page eighteen, the properties of Howard Estate, Deliner, Haas and Neubert were recovered and reconditioned.