

STATE OF VERMONT

VERMONT SUPERIOR COURT  
CIVIL DIVISION

ORLEANS UNIT  
DOCKET NO. 141-6-18 Oscv

SAMUEL KENT,  
HANNAH KENT,  
MAYNARD CASSADY KENT,  
SARAH KENT,  
DAVID MUROV,  
WENDY ROSENOW,  
and  
LORI SOLUS,

*Plaintiffs,*

v.

ANNE S. TANNER, Trustee of the Tanner Family Trust,  
E. HOWLAND SWIFT, ANNE S. TANNER,  
LILAS BARTON, and, ISABELLE JEAN PHINNEY,  
Trustees of the Swift Family Trust,  
*Defendants.*

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**PLAINTIFF'S MEDIATION STATEMENT**

COME NOW, Plaintiffs, Samuel Kent, Hannah Kent, Maynard Cassady Kent, Sarah Kent, David Murov, Wendy Rosenow and Lori Solus, by and through counsel, Robert J. Kaplan, Esquire and KAPLAN AND KAPLAN and hereby submit the following mediation statement:

**BACKGROUND**

This case involves the boundaries of an undeveloped lot on the west shore of Willoughby Lake in Westmore, Vermont. Prior to 1947, Emerson Swift began to subdivide and sell portions of property which he had acquired from Arthur Smith on the west shore of Willoughby Lake. The first conveyance by Emerson Swift relevant to this case was to Sherrill Kent on August 18, 1947 (hereinafter the "Kent Lot"). The Kent Lot is bounded on the south by the west shore of Willoughby Lake, on the west by a brook called Crescent Brook, on the north by property then owned by Emerson Swift (now owned by the Tanner Family Trust) and on the east by property then owned by Emerson Swift (now owned by the Swift Family Trust).

For the sake of convenience and ease of identification, the boundary points of the Kent Lot will be referred to as "southeast," "southwest," "northeast" and "northwest" with the lakefront points being the southeast and southwest points and the opposite points away from the lake being the northeast and northwest points. The back boundary, farthest from the lake, will be referred to as the "northern" boundary. The disputed common boundary running from the beach up to the northeast corner of the Kent Lot will be referred to as the "eastern" boundary.

The parcel description in the deed from Emerson Swift to Sherrill Kent reads as follows:

Beginning at the midpoint of the present mouth of the brook on Crescent Beach said brook now forming the boundary line between the property of Emerson H. Swift and the land of Isabel H. Swift and Lucy W. Swift. Thence in a north easterly direction along the shore of Willoughby Lake for a distance of one hundred feet. Thence inland approximately 33 degrees west of north a distance of approximately four hundred feet, this line being the extenuation of a line passing along the summit of Mt Pisgah. Thence in a south westerly direction approximately 53 degrees west of south a distance of approximately one hundred ninety feet to the main brook. Thence in a south easterly direction along said brook to its mouth and the point of beginning.

The present dispute pertains to the correct placement of the northern and eastern boundaries of the Kent Lot. Exhibit 1, attached, is a graphical depiction of the disagreement between the parties concerning the correct placement of these disputed boundary lines. Referring to Exhibit 1, Plaintiffs' position is that correct boundary line for the eastern boundary of the Kent Lot is from Point C to Point E and that the correct northern boundary is from point E to point F. Defendant's position is that the correct boundary would be from point B to point A on the east and from point A to point F on the north. As will be described below, the available evidence from the time period between 1947 and 1970 shows that Plaintiffs are correct about the placement of these boundary lines and that this determination is amply supported by numerous contemporaneous factors.

Before discussing deeds and maps, it is first noteworthy that in or around the early 1970's, Sherrill Kent became aware that the boundary pin makers for the northeast and northwest corners of the Kent Lot had been removed. Sherrill Kent also believed the boundary pin for the southeast corner of the Kent Lot had likewise been removed. After becoming aware of the missing boundary pins, Sherrill Kent made it a point to tell his children, on multiple occasions,

that the northeastern boundary point of the Kent Lot was between two boulders and that the southeast boundary point, along the beach, was between two cedar trees. The two boulders in the back and the two cedar trees by the beach still exist and are well known as being the markers to which Sherrill Kent referred.

In the years between 1947 and the early 1970's, Emerson Swift engaged in a series of land transactions involving property near or surrounding the Kent Lot. The lot adjacent to the Kent lot on the east has remained within the Swift family (hereinafter the "Swift Lot"). The property to the north of the Kent Lot has remained within the Swift/Tanner family though it has been subdivided and reconveyed several times.

### **THE NORTHERN BOUNDARY**

The northern boundary of the Kent Lot was not disputed prior to 1970. Two maps created by Emerson Swift show the northern boundary of the Kent Lot in the precise location that Plaintiffs claim. The first map is a hand drawn map on graph paper which was delivered to Samuel Kent by Joshua Swift and represented as being from the personal papers of Emerson Swift. This map appears to have been updated at least as late as 1952. This map shows the Kent Lot, the Swift Lot and a parcel conveyed to Cloduis Willis on September 3, 1947 (hereinafter the "Willis Lot") as sharing a northern boundary along the same bearing. This map also depicts "the cascades," a small waterfall in Crescent Brook, as being south of the northwest corner of the Kent Lot. This map further shows the southwest corner of a lot sold to Harold C. Mack on August 27, 1951 (hereinafter the "Mack Lot") as being directly across the existing private road from the northeast corner of the Willis Lot. The pin marking the southwest corner of the Mack Lot (Pin W on Plaintiff's diagram in Exhibit 1) still exists and is shown on every map since.

The second map, also hand drawn by Emerson Swift, is dated August 21, 1967 and is recorded in the land records of the Town of Westmore. This map is basically identical to the first Emerson Swift map from circa 1952. Here again, the Kent Lot, the Swift Lot and the Willis Lot are all shown to have a northern boundary along the same bearing which is directly across from the southwest corner of the Mack lot (Pin W). The only difference of any significance between the circa 1952 Emerson Swift map and the 1967 Emerson Swift Map is that the 1967 map does not include a marker for the location of "the cascades" in Crescent Brook. Otherwise, these maps are the same for the points which determine the present dispute.



The dispute over the northern boundary arises from a survey map by Horace S. Brown, Jr. dated December 28, 1970 (hereinafter the "Brown Map"). The Brown Map, for the first time, moved the northern boundary of the Swift Lot and the Kent lot to a line southward (closer to the lake) than the earlier maps. As can be seen on the Brown Map, the northern boundaries of the Swift Lot and the Kent Lot are not in alignment with the southwest corner of the Mack Lot (Pin W) as was depicted on the earlier maps. Further, the Brown Map places the northwest corner of the Kent Lot at a point which is just below "the cascades" when the circa 1952 Emerson Swift Map clearly showed this corner above "the cascades." The lines established in the Brown Map and the pins he placed are the foundation on which all of the subsequent erroneous deed descriptions and maps of these parcels are constructed. The subsequent changes in pin locations and boundary bearings by surveyors hired by Swift family members have all arisen from the attempts in subsequent surveys to square the Brown Map points with boundary points which simply do not work.

Plaintiffs postulate that the source of Brown's error was confusion caused by a second conveyance by Emerson Swift to Clodius Willis of a small triangle of land north of the original lot sold to Willis in 1947. This conveyance of the "Willis Triangle" was by deed dated August 25, 1952. The "Willis Triangle" is shown on the circa 1952 and 1967 Emerson Swift maps as a small triangle just north of the northern boundary line of the Kent, Swift and Willis lots and abutting the private road. When Brown tried to draw the Willis Lot and the Willis Triangle into a single lot on the 1970 Brown Map, he failed to do so accurately which had the effect of lowering the northwest corner of the original Willis Lot which then lowered the boundary line of the adjacent Swift Lot and Kent Lot. Significantly, the Brown Map shows the iron pin marking the southwest corner of the Mack Lot (Pin W on Exhibit 1) and the failure of Brown to align the boundaries of the Swift Lot and the Kent Lot with this pin is an obvious error when reference is made to Emerson Swift's earlier maps.

Placing the northern boundary of the Kent Lot correctly is quite easy. Proceeding from Pin W along a bearing of 53 degrees west of south (the bearing from the deed to the Kent Lot) to Crescent Brook will draw the line on which the northern boundary of the Swift Lot and the Kent Lot lays. To find the northeast corner of the Kent Lot, the Willis Lot deed description locates the northern boundary point of the Willis Lot and the Swift Lot (Point S on Exhibit 1) along this line. Proceeding along this line 90 feet southwest, which is the length of the northern boundary

of the Swift Lot, leads to a point between two boulders which is the correct location of the northeast corner of the Kent Lot (Pin E on Exhibit 1). Continuing along this same bearing from Pin E to Crescent Brook establishes the northwest corner of the Kent Lot (Pin F on Exhibit 1). This is the precise boundary line drawn by Emerson Swift on his own maps and has only become controversial due to years of subsequent surveys and maps done on behalf of members of the Swift family which have each built on errors of the survey before which all started with the original mistake by Horace Brown in 1970.

### **THE BEACH BOUNDARY**

The southern boundary of the Kent Lot runs along what is commonly referred to as the “west shore” of Willoughby Lake. The deed description of the Kent Lot and the maps of Emerson Swift show this boundary of the Kent Lot as being 100 feet along the beachfront running west to east from the mouth of Crescent Brook to a point which is the boundary between the Kent Lot and the Swift Lot on the beach. The boundary point on the beach between the Kent Lot and the Swift Lot is the point in controversy (Pin C vs. Pin B on Exhibit 1).

The origin of the dispute over the beach boundary point was a math error by Emerson Swift. The circa 1952 Emerson Swift Map and the 1967 Emerson Swift Map both show distance measurements of the Kent Lot, the Swift Lot and the Willis Lot along the beach. The Kent Lot is depicted as having a length along the beach of 100 feet. The Swift Lot and the Willis Lot are each depicted as having a length along the beach of 75 feet. Emerson Swift conveyed the Kent Lot and the Willis Lot in 1947 but retained the Swift Lot for himself. The deed description of the Willis Lot contains a distance measurement along the beach of 75 feet consistent with Emerson Swift’s maps. Emerson Swift apparently did not realize, due to a math/measurement error, there was only 65 feet of beach frontage left for the Swift Lot after the 1947 conveyances to Kent and Willis.

The beach front of the Kent Lot, the Swift Lot and the Willis Lot all fall between the mouth of the Crescent Brook on the west and a lot then owned by Collins on the east. Arthur Swift had sold a lot to Edward M. Collins by deed dated September 29, 1933 which included 75 feet of beach frontage (hereinafter the “Collins Lot”). The southeastern boundary point of the Collins Lot was land then owned by Annie R. French (hereinafter the “French Lot”). There was apparently some disagreement between Arthur Swift, Annie French and Edward Collins over the



correct boundaries along the beach because corrective quitclaim deeds were exchanged between Arthur Swift and Annie French and accepted by Edward Collins on September 4, 1934. The corrective quitclaim deeds between Arthur Swift and Annie French established the eastern point of the French Lot as a "drilled boulder slightly easterly of the boathouse" of Annie French. The French Lot is agreed to have a length along the beach of 55 feet which terminates at an iron stake which is the southeast corner of the Collins Lot. Thus, as of 1934, the boundary along the beach started with the drilled boulder near Annie French's boathouse, ran west 55 feet to the Collins Lot and then 75 feet west along the Collins Lot to the boundary with the land retained by Arthur Swift and later conveyed to Emerson Swift.

After Emerson Swift sold the Willis Lot, the boundary along the beach, from east to west, again started with the drilled boulder by Annie French's boathouse, ran 55 feet west along the French Lot, 75 feet west along the Collins Lot and 75 feet west along the Willis Lot to the southeast corner of the retained Swift Lot. On the opposite side of the Swift Lot was the Kent Lot which started with the mouth of the Crescent Brook and ran 100 feet east to the southwest corner of the Swift Lot. However, there was only actually 65 feet of beach frontage remaining for the Swift Lot after the conveyances of the Kent Lot and the Willis Lot when accurate measurements are taken from the mouth of the Crescent Brook on the west to the drilled boulder on the east. The first deed claim of a beach frontage of 75 feet for the Swift Lot was in a set of quitclaim conveyances between Emerson Swift and Edward Collins in 1963 which were effectively a straw man transaction to allow Emerson Swift to subdivide his land and create deed descriptions for the various parcels he intended to sell. This deed description was wrong because there was not 75 feet of beach frontage retained by Emerson Swift between the Kent Lot and the Collins Lot which had been determined in 1947.

Plainly, Emerson Swift could not expand his land holding in 1963 with land he had previously sold in 1947. Nonetheless, the fiction of 75 feet of beach frontage for the Swift Lot, which began with the Swift-Collins-Swift quitclaim deeds in 1963, has been repeated in numerous subsequent conveyances of the Swift Lot among Swift family members. The present dispute over the boundary point between the Kent Lot and the Swift Lot on the beach is the product of various surveyors working on behalf of members of the Swift family attempting to find 75 feet of beach frontage for the Swift Lot.

Plaintiffs only became aware of a dispute over the beach boundary between the Kent Lot and the Swift Lot in 2012 when a surveyor hired by the Swift family placed a pin claiming to mark this boundary point which was an obvious encroachment on the Kent Lot. Prior to this, Plaintiffs had known from the statements of Sherrill Kent that the boundary point between the Kent Lot and the Swift Lot was between the two cedar trees. In fact, Samuel Kent had placed a sign on the cedar trees clearly marking the beginning point of the Kent Lot in the early 1990's and no objection had been made about this sign until the dispute arose more than 20 years later in 2012. On April 24, 2013, Nathan Nadeau, a surveyor hired by Samuel Kent, found the original boundary pin buried at the base of the two cedar trees using a metal detector. The cedar trees are approximately 100 feet to the east of the mouth of Crescent Brook. There should not be a serious disagreement that this iron pin (Pin C on Exhibit 1) is the correct boundary marker between the Kent Lot and the Swift Lot.

The final determinant to prove that the iron pin on the beach (Pin C) and the point between two boulders at the northeast corner of the Kent Lot are correct is the bearing described in the Kent Lot deed for the eastern boundary of the Kent Lot. This boundary line is described in the deed for the Kent Lot as running from the beach northward as "[t]hence inland approximately 33 degrees west of north a distance of approximately four hundred feet, this line being the extenuation of a line passing along the summit of Mt Pisgah." The bearing of "33 degrees west of north" starting from Pin C aligns perfectly with the summit of Mt. Pisgah and intersects with the point between two boulders at the northeast corner of the Kent Lot. The only slightly contrary factor to the conclusive establishment of these points as the correct boundary markers is that the distance between Pin C and the point between two boulders is 438 feet rather than the 400 feet referenced in the deed. This discrepancy can be explained as another distance measurement error by Emerson Swift, particularly since the physical land along this boundary line was densely overgrown at the time making precise measurements over long distances very challenging for Emerson Swift who was not a professional surveyor.

Subsequent deeds and surveys of the Swift Lot have struggled to account for the bearing and distance for the eastern boundary of the Kent Lot as described in the deed for the Kent Lot. For example, the 2004, 2009 and 2012 Truline maps depict the Kent/Swift boundary on a bearing of North 30 degrees, 13 minutes, 45 seconds West. The 2014 Truline map depicts this boundary line on a bearing of South 30 degrees, 53 minutes, 5 seconds East. The 1963 Swift to



Collins to Swift deeds correctly reflect the North 33 degrees West bearing of the Swift/Kent line. In the 1971 Swift to Phinney deed, the bearing is stated as North 32 degrees, 18 minutes West. Basically, there was no way for Swift family's surveyors to make the Swift Lot have both 75 feet of beach frontage and a common boundary with the Kent Lot along the bearing 33 degrees west of north.

### CONCLUSION

Plaintiffs' contention of the correct boundary points between the Kent Lot and the Swift Lot is plainly correct. The boundaries of the Kent Lot were established in 1947 and subsequent conveyances of other parcels by and among other members of the Swift family and subsequent surveys on behalf of members of the Swift family cannot change what was made final in 1947. The iron pin found between the two cedar trees is clearly the boundary marker between the Kent Lot and the Swift Lot. A bearing of 33 degrees west of north from this pin is in alignment with the summit of Mt. Pisgah and intersects the point between two boulders. The original maps of Emerson Swift show the correct placement of the northern boundary of the Kent Lot in alignment with the still existing pin marking the corner of the Mack Lot, which line runs to a point on Crescent Brook north of the cascades exactly as shown on Emerson Swift's maps. New pins must be placed to formalize these boundary points and end all disagreement about the boundaries of the Kent Lot.

DATED at Burlington, Vermont this 28<sup>th</sup> day of September, 2020.

Respectfully Submitted By,

SAMUEL KENT, et al.

By Counsel

~~KAPLAN AND KAPLAN~~

  
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