

Concerned Citizens Seeking Access to Kayak, Canoe and Fish Glass Lake

Town Board
Town of Sand Lake

Supervisor Rounds and Distinguished Members of the Town Board:

My name is Ronald Berti. I represent the Concerned Citizens Seeking Access to Kayak, Canoe and Fish Glass Lake. We are asking that the Town Board assert its ownership of the land now in dispute with the Glass Lake Preservation Corporation, the GLPC.

In order to restrict access to Glass Lake, the GLPC needs to show it owns the land it is attempting to sequester. It is our contention that the Town currently owns this land and has done so since at least 1866, if not earlier. The answer to this is buried in the old deeds and maps which constitute the history of Glass Lake road. I will try to simplify the narration of this historical time line.

All of the land on north of Glass Lake, including what was to become the road itself, was once owned by Colonel Richard J. Knowlson via deed from John Allen 21 Dec. 1796. What is now Routes 43/66 was in existence at the time as the Albany-Sand Lake Plank Road. In 1799 Colonel Knowlson built the first dam on Glass Lake at the outlet to Wynantskill creek. In order to access this dam, it is reasonable to assume that the Colonel created a road from the Plank road at what is now the Glass Lake Inn and was then known as the Glass Lake House. In 1806, a Glass Factory was built on land conveyed to the corporation by Stephen Van Rensselaer III, the Patroon of Rensselaerwyck Manor, and the Old Dutch land grant.

In 1829, the mill owners who used the water flowing from Glass Lake and emptying into Wynantskill Creek formed the Wynants Kill Association. In 1866 they changed the name to the Wynantskill Improvement Association (WKIA). By 1859, the mill owners decided to build a larger dam and a retaining dyke to raise the level of the lake 18 feet. However, this would entail flooding some or all of the lands surrounding the lake. As a result the WKIA began to acquire lands abutting the lake and commissioned a survey of those lands.

Over time a series of lots were sold to people on the South side of what was called "Bridge Road", but is now Glass Lake road. At the corner of the Bridge Road and the Albany-Sand Lake Plank Road was a lot upon which was erected a schoolhouse. From an Easterly direction along the Northern edge of Glass Lake from the schoolhouse to the dam, the lots in 1863 were owned by Robert Winnie, William Gabeler, John Gabeler, Colonel Richard Knowlson and Ezra Knowlton.

Colonel Knowlson owned the lake bottom as situated prior to the impending flooding. When the WKIA acquired the property from his heirs in 1859, the property is described in the conveyance deed as ***"running along the south side of the road leading from the bridge and dam to the Sand Lake Albany Turnpike"*** Starting with the Knowlson property of the old lake bottom in 1859, the WKIA began to acquire the land that was to be flooded. Ezra Knowlton's land a 200' X 125" rectangle was to be completely inundated by the rising waters and his property was acquired by the WKIA in total in 1863. This rectangular parcel just to the south of the road is described in the 1863 deed as going "to the south side of said road & thence along the south side thereof ..." Portions of the other lots were acquired over a period of time from 1863 to 1874. All the deeds describe their Northern boundaries as the South side of the Glass Lake Road. The schoolhouse property did not adjoin the lake. However, the deed to that property describes its boundary as "along the East side of the road..."

In 1866 the WKIA commissioned a survey map of the Northern end of Glass Lake by Jeffrey P. Thomas, surveyor. This map shows all the aforementioned properties, except the Knowlton deed which had been acquired 7 years earlier. All the lots are shown as having their boundary as the South side of Glass Lake Road. Furthermore, the land on the Northern side of Glass Lake road abutting the road from the old Albany-Sand Lake Plank Road to the Wynantskill creek is one lot and is shown on the Thomas map as abutting the Glass Lake road. That lot is currently owned by Robert Mitchell. The deed to his property states its boundary is "on the Northerly line of Glass Lake Road; Thence along the Northerly line of said road...."

The Thomas map also shows a point on the edge of the Glass Lake Road. This marker is to be the high water mark of the lake after the dyke was built and the water raised to its new normal level. On the bottom of the map is the scale of the water at its high water mark. This marker and the resulting high water mark are WITHIN the boundaries of the width of Glass Lake road.

Therefore all deeds abutting Glass Lake road from the old Albany-Sand Lake Plank Road to the Glass Lake dam on both sides of the road claim the edge of Glass Lake road as their boundaries. None of the deeds claim any portion of the road.

Since Colonel Knowlson built both the dam and road on his own property, then the ownership of the roadbed was private. Ultimately, land on one side gets sold to the WKIA and on the other side gets sold to the predecessors in title of Mitchell. The roadbed remains in Knowlson's name. The Town uses it for a road and eventually that ripens into prescriptive ownership, since the neighbors on either side cannot lay claim to it.

The next question to be answered is how wide is Glass Lake Road? Since there are several laws that regulate the width of roads, it would be helpful if we knew when Colonel Knowlson built his road. Since he needed access from the Albany-Sand Lake Plank Road to the outlet of the Wynantskill from Glass Lake to build his first dam, any road built in 1799 would be subject to Chapter 43 of the Laws of 1797. All private roads could not be more than 4 rods wide. A rod is 16 ½ feet. 4 rods would be 64 feet. Three rods would be 49 ½ feet.

In 1988 C.P.Momrow is commissioned by the WIA to make a surveyed map of Glass Lake. On that map, the Knowlton lot is clearly denoted. Its northern edge (N 74°, 14', 10") aligns with a benchmark on the SE corner of the spillway/dam. The resulting line from the spillway/dam along Glass Lake Road to the old Albany-Sand Lake Turnpike, now RTES 43/66, is 3 Rods (49 1/2') feet.

In researching the materials to assist in the creation of this map, Mr. Momrow was given 16 maps and 37 original deeds by the WKIA. One of the maps was the 1866 Jeffrey Thomas survey map. When Mr. Momrow presented his surveyed map to the WKIA, it clearly defined the Northern and Southern edges of Glass Lake Road as the ownership boundaries of the contiguous land owners.

The Town owns at least 24 ¼ feet from the centerline of Glass Lake Road, which would place the old access way to the lake under the jurisdiction of the Town. This would place the old High Water Mark of Glass Lake within the boundaries of Glass Lake Road. By having its boundary to the edge of the water, the Town now acquires Riparian Rights to navigable Glass Lake. Since Glass Lake Road is public property and not merely a Right-of-way, the public also has Riparian Rights of access for fishing and other recreational activities on the navigable waters of Glass Lake.

Under the riparian principle, all landowners whose property is adjoining to a body of water have the right to make reasonable use of it. Littoral or Riparian rights include such things as the right to access for swimming, boating and fishing. While private property rights are important in understanding water usage, it is also not historically possible to view water in its natural watercourse as solely a matter of private property. There is always a need to recognize the shared, public nature of water. The United States Supreme Court reiterated this in 2008. In its opinion in the original jurisdiction case of *New Jersey v. Delaware*, 552 U.S. 597 (2008), the court said that the rights of littoral/riparian owners ***“are always subordinate to the public rights, and the state may regulate their exercise in the interest of the public.”***

WKIA sold its Glass Lake land holdings to the GLPC in 1999 via quitclaim deed and not warranty deed. The Momrow map is already tied to the deed. The map was commissioned by the WKIA in anticipation of the sale of its Glass Lake holdings. This surveyed map shows Glass Lake Road as scaled to 3 rods wide with the notation "Highway boundary as claimed by the Town of Sand Lake.

Furthermore, the old high water mark of the waters of Glass Lake fell with the 3 rod width of the road prior to the GLPC placing rocks and concrete at the site and extending the land by creating an artificial boundary. There is no doubt, based upon several surveyed maps and multiple old deeds that the Town owns the land in question.

Such ownership based upon the width of a public road whose underlying land is owned by the Town, gives the public an undisputed right to access to the lake and all the Riparian Rights that are attended thereto.

I spent two days at the Rensselaer County Historical Society reviewing the records of the WKIA. I found a July 29th, 1889, engineering report commissioned by the WKIA on its holdings. It makes NO mention of any land holdings along Glass Lake Road. I also found a December 3rd, 1959 report commissioned by the WKIA. This report refers back to the Jeffrey Thomas 1866 map in referring to its ownership and location of the dam and the dykes. While it mentions ownership of a strip of land along Rtes 43/66, it makes NO mention of any land holdings along Glass Lake Road.

In addition, further evidence of a lack of ownership by the GLPC of the disputed access way can be found in the Town's Assessor's Office. According to the Assessor, the land in question has always been considered Town Land and as a result no one has been paying taxes on this land.

I also wish to bring to the Board's attention a map presented by the GLPC to the Zoning Board of Appeals. On that map, the GLPC places the high water mark of Glass Lake at the edge of the road. Even the GLPC in its own research cannot deny the fact that the waters of Glass Lake abut the edge of Glass Lake Road.

One last matter should be attended to. There has been some question by people that if the Town were to assert its ownership of this small plot of land there might be acquiring title to the Dam and the Dyke and all the attendant liabilities attached thereto. On August 2nd, 1867, after the dyke was built, Thomas Knowlson, son of and heir of Colonel Richard J. Knowlson, assigned to the WKIA the right "to raise and perpetually maintain the waters of Glass Lake.....by making and maintaining a dam with necessary dykes across the outlet of Glass Lake..." Mr. Knowlson only conveyed to the GLPC the right to construct and maintain the dam and dykes and not the underlying land. Moreover, in 1846, for the sum of \$197.25, the Town of Sand Lake acquired the right-of-way for a bridge over the dam and not the dam nor the land under the dam.

I found a 1988 letter in the WKIA archives from a VP of Portec to the Nietzel family. They own the property closest to the access way before the dam. According to the Momrow map 95% of their garage is on Portec land and the other 5% which goes over the Glass Lake Road boundary as per Momrow (1.5 Rods from the centerline) " is on county land".

I also found a letter in the WKIA archives dated May 19, 1988 from Richard E. Northcraft of the DEC to David T. Fogarty of Portec. In that letter Mr. Northcraft writes:
"PORTEC does not own the parcel of land lying between the water line and Glass Lake."

I also found in the WKIA archives an unexecuted 10 year lease drawn up by the DEC in 1988 for a 50' X 50' plot of land adjacent to the easterly side of the dam "for access to Glass Lake". There is also a cover letter dated November 22, 1988.

The lease states:

"Whereas the Lessee (the DEC) has determined that the development of the property as a fisherman access site will further the purposes of the Department of Environmental Conservation as set forth in ECL 11-0303 by providing public access to Glass lake and is willing to lease the property from the LESSOR: "

The lease continues:

"The purpose of this lease is to allow the development and subsequent operation of the property as a public fishing access site pursuant to ECL 11-2103."

I would like to point out to the Board that I have done original research at the Van Rensselaerwyck Manor records at the NYS archive, the Rensselaer County Clerk's office, The Rensselaer County Historical Society and the archival records in the Sand Lake Town's Clerk Office and I could not find a hint or a scintilla of evidence that the GLPC ever owned or currently owns the old access way.

Our committee is seeking restoration of the old access way. I am submitting to the Board a detailed request. I request that since most of my supporting documents are large hand written deeds and since I have been at local archives and not had the time to make multiple copies, I be allowed to submit copies of the supporting documents to the Town attorney at a later date.

I ask that a copy of my remarks and its appendices be appended to the minutes of this meeting.

Thank you,
Ronald Berti-11/10/2010