

**St. Regis Mohawk Tribal Court**

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<b>Newton LaFrance Jr.,</b>	)	
<b>Appellant</b>	)	<b>DECISION AND ORDER</b>
	)	
-V-	)	<b>Case No.: 12-LND-00005</b>
	)	
<b>Rita Cole,</b>	)	
<b>Appellee</b>	)	

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**Procedural History**

On March 28, 2012 Mr. Newton LaFrance Jr. filed an appeal of an SRMT LDT decision dated February 28<sup>th</sup>, 2012 in SRMT Court. A Twenty Day Civil Summons was issued by the Court to Newton LaFrance to accompany the Notice of Appeal.

A Proof of Service was provided by Mr. Newton LaFrance Jr. on March 28, 2012, affirming that the summons and notice of appeal were served upon Ms. Rita Cole, Appellee. The Appellee's Answer was received by the SRMT Court from Ms. Rita Cole on April 10, 2012 and on April 11, 2012 a Notice of Pre-Trial Conference, scheduled for April 25, 2012, was sent to both parties in this matter.

On July 18, 2012, after 2 pre-trial conferences, Ms. Rita Cole asked the SRMT Court to limit the issues in the matter before it to boundary measurements and time frame to do so, and to remove the right of way issue. Ms. Cole includes an SRMT TCR 98-37 regarding the right of way in which the vote by Tribal Council was to not affirm the right of way in the matter between Mr. LaFrance and Ms. Cole.

On October 1<sup>st</sup>, 2012 St. Regis Mohawk Tribal Court (Chief Judge Peter J. Herne) sent a letter requesting information on the validity of Tribal Council Resolution 98-37.

Another Pre-Trial Conference in the matter of LaFrance v Cole was held in St. Regis Mohawk Tribal Court on October 16, 2012 and on that date an amended complaint from Attorney Lorraine White on behalf of Newton LaFrance Jr. was filed with Court.

**Factual Background**

On December 11, 1951 Mary Sears sold to Theodore and Carrie LaFrance a parcel of land consisting of four acre(s) more or less with boundaries as follows: On the North by Raquette Point Road, On the South by Noah LaFrance, On the West by Lawrence White, On the East by James Thompson. *See*, Record 12/11/51 Land Transaction Mary Sears to Theodore and Carrie LaFrance.

In a Document signed by Thomas Laughing, Margaret Connors, Mary Bero, Newton LaFrance, and Percy Thompson (all land owners in the disputed area) on June 13, 1968, each agreed to release a strip of land for the purpose of having a public road made and maintained by New York State. *See*, Record 6/13/68 Public Road Agreement. This road would be adjacent to their properties and the properties involved in this dispute.

In July 1973, after the passing of Noah and Louise LaFrance, their children held a 'lottery' to determine the division of the property that was left to them as heirs of the Noah and Louise LaFrance estate. On July 21<sup>st</sup>, 1973 the four children of Noah and Louise LaFrance divided the property of their parents amongst themselves. Each sibling was to receive 172'6" of river frontage. *See*, Record October 26<sup>th</sup>, 1973 Proposal of Land Distribution. In a letter dated November 8<sup>th</sup>, 1973 from Theodore LaFrance to Alvina Upell it appears that, "Lot #1 fell to Newton LaFrance, and Lot #2, which contained the house and barn of Noah and Louise LaFrance, fell to Theodore LaFrance". *See*, November 8<sup>th</sup>, 1973 Letter Theodore LaFrance to Alvina Upell. From west to east the parcels at this time went: (west) Grace Day/Alvina Upell/Theodore LaFrance/Newton LaFrance (east).

Following this transaction, a signed agreement dated 1973 was entered between Theodore LaFrance and Newton LaFrance Sr. which stated that Theodore LaFrance and Newton LaFrance Sr. swapped parcels of land. Newton agreed to trade Lot #1 to Theodore for Lot #2 (which contained a house and barn). In this agreement Newton LaFrance consented to altering the dimensions of Lot #2, because he would receive the house and barn, and Theodore agreed to compensate their other siblings for their monetary share of the house and barn. In this document it was agreed that the original dimensions of Lot #2 contained 172'6" of river frontage from east to west, and 1065' from south to north. Newton LaFrance agreed to cut the size of Lot #2 from 1065' south to north, to 500', leaving him with 172'6" of river frontage east to west, and 500' from south to north.<sup>1</sup> It is clear from the language in this document that the house and barn were a part of the exchange of properties between Theodore LaFrance and Newton LaFrance, meaning these buildings would be on the property of Newton LaFrance Sr. By this date the Noah LaFrance estate could be described from west to east: (West) Grace Day/Alvina Upell/Newton LaFrance Sr. /Theodore LaFrance (East).

Some 6 years later on June 13<sup>th</sup>, 1979 Theodore and Carrie LaFrance sold to John and Rita Cole property that included a portion of Lot #1 that was a part of Noah and Louise LaFrance's estate which was obtained through the trade/swap with Newton LaFrance Sr. This sale also contained the land that was purchased by Theodore and Carrie LaFrance from Mary Sears, property which is directly north of the portion of Lot #1 to be sold. The property lines are described as follows:

"at a point on the Racquette Point Road, where a black top road divides the properties of Margaret Connors and the parties of the first part. From this point due west along the Racquette Road, for a distance of 277' at this point, due south at a 90 degree angle, for a distance of 629'2", this parcel of land equals 17,424 feet, equal four acres. At this point along an old fence dividing the properties of the late Mrs. Sears and the late Noah

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<sup>1</sup> *See*, Record 1973 Land Swap Agreement

LaFrance, the same distance as at the Racquette Point Road, 277', from this point due west for a distance of 172'6" (total distance of 345' from the black top road dividing the properties of Margaret Connors and Theodore LaFrance and Carrie Maria LaFrance, at this point due south for a distance of 565' at this point due east for a distance of 345'. At this point and again due south to the river bank of said Racquette River." *See*, Land Sale Agreement June 13<sup>th</sup>, 1979.

There is no mention in this boundary description of a house and barn that may be situated upon any of these property's boundaries.

On July 3, 1982 a note stating that John and Rita Cole made final payment to Theodore and Carrie LaFrance for land purchase was written. This note stated that the land is paid in full, and that there is a house on it owned by Newton Boots LaFrance (son of Noah LaFrance) and that an agreement will be reached between the owner of house and the Cole's. *See*, Record 7/3/82 Note Regarding Final Payment by John and Rita Cole to Theodore and Carrie LaFrance. It is not easily discernible which exact property is covered by this agreement. It is uncertain if this is the 277' x 629' parcel which was purchased from Mary Sears, or if it was the portion that was acquired via the swap with Newton LaFrance Sr. from their parents estate. Finally, it is indeterminable as to what became of the remaining portion of the estate which was not included in this sale to John and Rita Cole. (E.g. the 172'6" x 500' portion adjacent to the river). However, it does not appear that any person named in the document (Theodore LaFrance/John and Rita Cole) signed this document. What is telling is that on July 3, 1982 an SRMT deed was issued to John and Rita Cole for Lot #31 which consists of only 4 acre(s). *See*, Record 7/3/82 SRMT Deed Lot #31, which appears to be the lot purchased by Theodore LaFrance from Mary Sears and Sold to John and Rita Cole.

The next document in the record is a letter from Attorney Vaughn Aldrich dated June 24, 1988 to Carol Herne SRMT Tribal Clerk regarding a property dispute between John Cole and Newton Boots LaFrance regarding a house that sits on property owned by Mr. Cole. *See*, Record 6/24/88 Letter from Vaughn Aldrich to SRMT Tribal Clerk.

By letter on May 11, 1994 Rita LaFrance (sister of Newton LaFrance Jr.) relinquished all claim against the properties of Newton LaFrance Sr. and she agreed that title to all of his properties now belong to her brother, Newton LaFrance Jr. *See*, Record 5/11/94 Relinquishment to Newton LaFrance Estate.

An ownership Certification dated September 27, 1994 made by Carol Herne, SRMT Tribal Clerk, provides that Newton LaFrance Jr. is the rightful owner of Lot #32. *See*, Record Ownership Certification Lot #32. This appears to be the lot which was 'swapped' from Theodore LaFrance to Newton LaFrance Sr.

Next is a property Certification issued by SRMT Chiefs John Loran and Norman Tarbell dated March 12, 1995 stating Newton LaFrance Jr. is now the owner of the late Newton LaFrance Sr. estate. Boundaries are described as follows: on the North by Lot #36, on the East by John Cole Lot #31, on the South by Raquette River, on the West by Lot #33 late (Alvina Upell). The Court notes that for Newton LaFrance Jr's property to be bordered on the "east" by John Cole Lot #31, John and Rita Cole would have to have purchased the remaining 172'6" x

500' portion of property from Theodore LaFrance, which he obtained in the "land swap" with Newton LaFrance Sr. OR if Newton LaFrance Sr. would have the property of Alvina Upell. From the Record before us we cannot determine if either of those circumstances actually occurred. Nonetheless, in this document it states that Newton LaFrance's sisters have released all claim to this property. *See*, Record 3/12/95 Property Certification issued by SRMT Chiefs John Loran and Norman Tarbell.

On October 15, 1998 Rita Cole sent Newton LaFrance Jr. an order of eviction, demanding all property and person be removed from Lot #31 within 7 days. *See*, Record 10/15/98 Order of Eviction.

On August 9, 2010 Charles Degges Jr. stated that as executor of Theodore LaFrance's estate, granted Newton LaFrance Jr. access to "whatever files exist" in the Office of the Tribal Clerk at the SRMT. *See*, Record 8/9/10 Charles Degges Jr. Letter.

### Discussion

In the matter at bar it is clear that there is an ongoing boundary dispute between the Appellant, Mr. Newton LaFrance Jr., and the Appellee, Ms. Rita Cole. The Court will examine the history of this issue and methodically scrutinize the record as it renders a decision in this matter.

As the Court reviewed the record before it in this matter it is clear that there are two main points of contention between the Appellant, Mr. Newton LaFrance Jr. and the Appellee, Ms. Rita Cole.

Mr. Newton LaFrance Jr. alleges that the property, which includes the house and barn his father Newton LaFrance Sr. received when he swapped parcels with his brother Theodore LaFrance, was never 'on' the property that John and Rita Cole purchased from Theodore LaFrance. Mr. Newton LaFrance Jr. also stated that appropriate measurements should be taken of the properties to determine the correct boundary lines.

Newton LaFrance Jr. also argues that the right-of-way which was in existence at the time of the land sale from Theodore LaFrance to John and Rita Cole must be re-examined/re-evaluated to determine if it still exists.<sup>2</sup> The Appellant, Mr. Newton LaFrance Jr also argues that this right of way was in existence when his father Newton LaFrance Sr. and his brother Mr. Theodore LaFrance (Newton LaFrance Jr's uncle) "swapped" parcels. That this has been extinguished is contrary to the agreement in place before John and Rita Cole purchased the property from Theodore and Carrie LaFrance in 1979. It can be noted that in the July 21<sup>st</sup>, 1973 proposal on dividing up the land of the estate of Noah and Louise LaFrance it is clearly stated that there is a right of way which,

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<sup>2</sup> A right of way is defined by Black's Law Dictionary as "the right to pass through property owned by another". *See*, Black's Law Dictionary pg. 1351.

“will be along the river bank which will be known as the north bank of the said Racquette River, this will also provide a road for the property laying beyond the designated land for Fred and Judith Thompson laying at the west side.” *See*, July 21<sup>st</sup>, 1973 Proposal of Land Distribution.

Appellant argues that the right of way was established in writing in the July 21<sup>st</sup>, 1973 proposal between the children of Noah and Louise LaFrance to divide the property of their parent’s estate, and should therefore still be in place.

Ms. Rita Cole, Appellee, has argued that based on property descriptions made to her and her husband John Cole from Theodore LaFrance, the house and barn which were conveyed to Newton LaFrance Sr. in 1973 are situated on the property John and Rita Cole purchased from Theodore LaFrance and therefore the aforementioned house and barn are on her property.

The Appellee, Ms. Rita Cole, has also stated that the right of way which was established in 1973 by the heirs of Noah and Louise LaFrance has been extinguished. Ms. Cole provides that a document purporting to show that the SRMT Tribal Council had voted to extinguish this right of way with SRMT TCR 1998 8-39. *See*, Record March 10<sup>th</sup> 1998.

In this appeal, the SRMT Court will review a determination made by the St. Regis Mohawk Tribe Land Dispute Tribunal (hereinafter SRMT LDT). The SRMT LDT conducted hearings regarding this dispute and rendered a decision on this matter February 28<sup>th</sup>, 2012. In their decision the SRMT LDT found that a survey should be completed to get accurate boundary measurements of Lot #31 and Lot #32. The SRMT LDT also stated in their decision that boundary measurements, “provided by Theodore LaFrance at the time the lottery was drawn is the root of the problem and needs to be surveyed to establish the correct property boundaries between the LaFrance/Cole properties.” *See*, SRMT LDT Decision 2/28/12.

Further, the SRMT LDT found that, “the 1982 deed between Theodore LaFrance and John and Rita Cole does not include any provision for a road right of way. Therefore it is the tribunal’s decision that respondent Rita Cole does not bear any responsible on this issue.” *Id.*

### Analysis

In addressing the boundary dispute that both parties agree is at issue the Court thoroughly examined the record of this case which included various property descriptions, hand drawn maps, GIS maps, survey maps and land sale transactions. It is clear that at times vague, non-specific descriptions given for land purchases and land “swaps” have resulted in the tumultuous situation the parties are now entangled with. After reviewing this case we can concur with the LDT regarding the complexities of this case.<sup>3</sup>

We can begin by providing that the direction ordered by the LDT that other measurements should be ‘surveyed to establish boundaries’ to resolve this dispute is not in the

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<sup>3</sup> We can note that all land dispute cases on the SRMIR seem to exhibit these complexities.

technical sense a “final decision” as stated in the LDRO. *See*, SRMT LDRO XIII (D) (4). In fact it may only serve to prolong the dispute and increase confusion.

The Court feels that it is far better to get a “final decision” with respect to boundaries from either the LDT or the Tribal Court long before one is compelled to incur the cost of sending a ‘surveyor into the woods’ to ‘run the lines’. Without the benefit of a final decision on boundaries this may only cause further dispute and increased cost. Our LDRO cases have shown us that examining the original documents of a land sale or land exchange can be extremely useful in determining the correct boundaries for secondary land owners who are now disputing boundaries of property which they have purchased or inherited.<sup>4</sup> Furthermore, we have also recognized that a surveyor’s utility is only going to be as good as what is ‘placed in their hands’ with respect to completing the surveying, and in order to do that lawful boundaries have to be provided long before the actual surveying task commences.

### House and Barn

The 1973 land “swap” agreement between Newton LaFrance Sr. and Theodore LaFrance is an instance where examining the original transaction can bring a dispute into clarity. It is clear that when Newton LaFrance Sr. and Theodore LaFrance decided to “swap” the parcels of property they had each drawn in the lottery of their parents estate property, there is an explicit acknowledgement by both parties that the house and barn of Noah and Louise LaFrance was to be conveyed to Newton LaFrance Sr. in this transaction.

There is no evidence in the record before the Court that when John and Rita Cole purchased the property from Theodore and Carrie LaFrance that the house and barn of Noah and Louise LaFrance was to be included in their purchase. In fact there is no mention of a house and barn intruding on the property that the Cole’s were purchasing when they signed the June 13<sup>th</sup>, 1979 land sale agreement with Theodore and Carrie LaFrance.<sup>5</sup> The plain language of the original transaction involving this dispute definitively shows that Theodore LaFrance and Newton LaFrance Sr. swapped property inclusive of a house and barn. *See*, 1973 Agreement.

The only evidence in the record of any alleged house owned by Newton LaFrance Jr. overlapping onto the property purchased by John and Rita Cole is on a handwritten letter dated July 3<sup>rd</sup>, 1982. This particular document contains no signatures for Theodore LaFrance, the Coles OR Newton LaFrance Sr.,<sup>6</sup> and appears to be from John and Rita Cole to Theodore LaFrance. This would be contrary to the prior (1973) agreement that Theodore LaFrance had with Newton LaFrance Sr. Finally, our land dispute cases have consistently found that ‘one can only sell what one owns’. *See*, *Sawyer v Laughing 12-LND-0004*, *Point v Peters 10-LND-00005*, *Roundpoint v Chubb 11-LND-00010*.

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<sup>4</sup> *See*, *Hathaway v Thomas 12-LND-00007* where the Court found by examining the property description given by the original owner boundaries were clearly identifiable, without the necessity of further surveying.

<sup>5</sup> *See*, June 13<sup>th</sup>, 1979 Sale Agreement.

<sup>6</sup> *See*, July 3<sup>rd</sup>, 1982 Note.

While the Court recognizes that there are discrepancies in numerous land descriptions for these properties, even in various maps, including survey maps, it is abundantly clear to the Court that the house conveyed to Newton LaFrance Sr. by Theodore LaFrance in 1973 was NEVER intruding on the property that John and Rita Cole purchased from Theodore and Carrie LaFrance. This is only clearer when reading the June 13<sup>th</sup>, 1979 transaction agreement between the Coles and Theodore and Carrie LaFrance as it is not mentioned, nor is there any mention of a possible conflict due to a house or barn on the property transfer.

Based upon the foregoing, the Court finds that if the house and barn that Newton LaFrance Jr. owns is that described in the 1973 document as being the Noah and Louise LaFrance house and barn it is NOT intruding on Rita Cole's property and this should be reflected in any subsequent boundary description of these properties.

### **'Right of Way'**

While the Court understands that the legal definition of a 'right of way' may not be readily known to many, we will now address it.

The July 1973 proposal to divide the Noah and Louise LaFrance estate property clearly included language that a right of way would be established so that the heirs of the western most portion of the LaFrance estate property would be able to access it.<sup>7</sup> It must be noted that not only did ALL of their children consent to this, but in particular so did Theodore LaFrance who subsequently sold to the Appellee, John and Rita Cole.

The Court recognizes that the owners of Lot #31 are John and Rita Cole, AND that the property which they purchased from Theodore and Carrie LaFrance is a part of that parcel. The Court however must also recognize that there was an established right-of-way in place for the heirs of Noah and Louise LaFrance to access the westernmost portions of the property, including Newton LaFrance Sr. who "swapped" his property with Theodore LaFrance.<sup>8</sup>

While the Court recognizes the ownership of the Coles for Lot #31, a right-of-way is not extinguished when property is sold from one party to another. In this case the right-of-way that was in existence when the children of Noah and Louise LaFrance decided to establish it, and was still in place when the Coles purchased the Theodore and Carrie LaFrance's parcel. The Court finds that the right-of-way that was in existence in 1973 (as created by the owners in 1973) is STILL in existence today and that the Coles could not solely extinguish that right-of-way.

We also find unavailing the arguments forwarded by Ms. Rita Cole with respect to TCR 98-39. By its very terms it is clear that this was an attempt by an un-identifiable party to have a right-of-way affirmed by previous SRMT elected officials. We do not get involved with the minutiae of signatures or signatories because it is clear to us that in the absence of any TCR the original agreements with respect to this parcel remains intact. As such, the right-of-way provided by the original parties to the 1973 agreements remains intact. Finally, also telling is the lack of a

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<sup>7</sup> See, July 21<sup>st</sup>, 1973 Land Proposal.

<sup>8</sup> As we just recognized, 'one can only sell what one owns', it is clear that Theodore LaFrance also could not extinguish the right-of-way in any subsequent sale.

TCR in the record of this case which explicitly and clearly extinguished the right-of-way established in 1973. As such, we must find that the right-of-way still exists.

Clearly, if a right-of-way is not being used its need fades to distant memory, the holders of such right-of-way can consent to its extinguishment. We say holders because although a right of way may be created for or by a single person, yet there are instances when more than 1 person has the right to use it. In those instances, all have an interest in the right of way, therefore extinguishment would require all to consent. Such is the case here. Therefore, the property acquired by John and Rita Cole came with this right of way that they like the original parties and subsequent purchasers can enjoy.

### **Property Boundaries**

Next, we must determine what the boundaries are in this dispute. We have carefully examined the documents in the record which gave vague and conflicting boundary descriptions of the parcels of land at issue in this matter.

First, when Theodore and Carrie LaFrance sold property to John and Rita Cole on June 13<sup>th</sup>, 1979 the sale agreement document contained language which vaguely and poorly outlined the property boundaries for the parcel which was conveyed to Mr. and Mrs. Cole. In this agreement it appears that Theodore and Carrie LaFrance first sold property which they had purchased from Mary Sears, and a portion of the land that Theodore LaFrance swapped with his brother Newton LaFrance Sr. in 1973. The description of the parcel sold by the LaFrance's to the Cole's describes first the portion which Theodore and Carrie LaFrance purchased from Mary Sears, and gives dimensions that state: "from this point due west along the Racquette Road, for a distance of 277', at this point, due south for a distance of 629'-2", this parcel of land equals 17,424 feet, equal four acres." *See*, Sale Agreement June 13<sup>th</sup>, 1979. We can note that the 277x629' is not used to provide the other two measurements to enclose the parcel,<sup>9</sup> and that 277'x629' = 174,233 square feet, and that 4 acres of land in square feet should equal 174,240. The parcel here falls 7 square feet short of 4 acres, and the total acreage is typed as "17,424."

The next portion of the agreement describes the section of property purchased from Theodore and Carrie LaFrance which was a part of the land "swap" between Theodore LaFrance and his brother, Newton LaFrance Sr. It is at this point the Court must reference again the document which recorded the 'land swap' between Theodore LaFrance and his brother Newton LaFrance Sr. to contrast and give insight into our analysis of the property boundaries in this dispute.

When the heirs of Noah LaFrance agreed to divide the property in their father's estate they concurred that the 4 lots created would be divided into individual parcels that ran south to north 1065' from the Racquette River and would be about 172'6" from east to west. *See*, Record October 26<sup>th</sup>, 1973 Proposal of Land Distribution. It appears this was done to ensure that each sibling would receive 172'6" of river frontage. *Id.*

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<sup>9</sup> Without this, one could also create a triangle.

Following this, and also in 1973, Theodore LaFrance and Newton LaFrance Sr. 'swapped' the lots which they had received from their father's, Noah LaFrance, estate. Newton LaFrance Sr. agreed that because he was going to receive their father's house and barn when he 'swapped' property lots with his brother Theodore LaFrance, his property line (which would have run 1065' from south to north), would be reduced to 500' from the Racquette River south to north. This meant that Theodore would now acquire from Newton LaFrance Sr. a portion of land which would border his western boundary of the inherited property he received from the lottery. Therefore, the northern portion of the property would measure ANOTHER 172'6" from east to west, and 565' north to south, on the NORTHERN boundary of what became Newton LaFrance Sr.'s property. Theodore LaFrance's 'swapped' property would now measure 345' east to west from the southern boundary of the property which he purchased from Mary Sears, 565' north to south to the northern boundary of Newton LaFrance Sr.'s property, 345' west to east back to the Freedom School Road.<sup>10</sup>

It appears that it is this portion which the Court has identified as land the Cole's purchased from Theodore LaFrance in 1979 and finished paying for in 1982. The remaining portion of the 'swapped' property contained 172' east to west along the southern boundary of the property purchased by John and Rita Cole, and another 500' south to the Racquette River.<sup>11</sup> The Court sees nothing in the record which indicates that Theodore and Carrie LaFrance sold this remaining 500' x 172'6" parcel to John and Rita Cole, which again was the remainder of the property which was "swapped" by Theodore LaFrance and Newton LaFrance Sr. In light of these measurements we have obtained a 'GIS' mapping of this parcel which is based upon the descriptions we just discussed. *See*, Addendum A and B attached hereto.

The Court is mindful that the description provided in the sale agreement is incomplete and a trifle confusing, however, the Court notes that this language was copied verbatim into the deed for Lot #31 which officially recorded the transfer of this property with the St. Regis Mohawk Tribe, from Theodore and Carrie LaFrance, to John and Rita Cole.

Further confusion regarding this issue is then created by the previously noted description, as it does contain language which states, "at this point and again due south to the river bank of said Racquette River." *Id.* The language which states "at this point and again due south to the river bank of said Racquette River", appears to the Court to mean that the Coles were not purchasing the remaining 500' x 172'6" of land, but were instead receiving access to the same right of way which the heirs of Noah LaFrance had previously agreed to in 1973, which the Court has already found could not be extinguished without consent of all the property owners who would have access to the right of way. The Court notes as well that while the wording, "at this point and again due south to the river bank of said Racquette River" is in the document, there are NO measurements to accompany this language, which does not support a claim for ownership by John and Rita Cole for the remaining 172'6" by 500' of property owned by Theodore LaFrance.

As noted above, the Court with the assistance of the St. Regis Mohawk Tribe's GIS department, created maps which identify the property boundaries of the above mentioned parcels

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<sup>10</sup> *See*, Addendum A & B Attached Hereto.

<sup>11</sup> There is nothing in the record of this case indicating what became of this property.

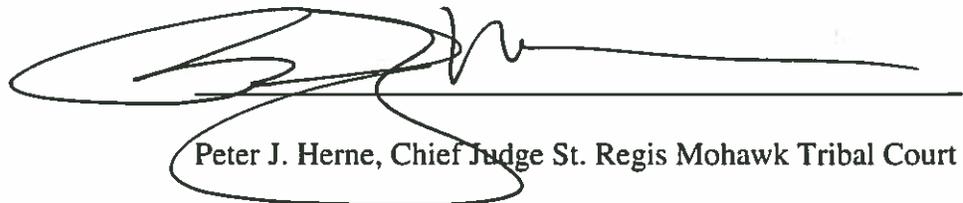
of land, using the property boundary descriptions provided from the documents in the record before us.<sup>12</sup> As the Appellee, Rita Cole, has provided her SRMT deed for her property boundaries, the Court used those dimensions and boundary descriptions to delineate those lines on the map generated with the SRMT GIS software.

When using the Appellee's deed for Lot #31 to identify the boundaries of this parcel, the property lines are clearly identifiable. The easterly boundary for Lot #31 runs parallel to Indian Village Road for a distance of 1194', which is the total distance from north to south that is provided for in the SRMT Deed issued to John and Rita Cole. This also coincides with the description given in the June 13<sup>th</sup>, 1979 Sale Agreement between Theodore LaFrance and John and Rita Cole. At no point does this easterly boundary cross over into Indian Village Road or anyone other recorded property owner's land. What is interesting to note, is that the Court also overlaid these exact same property boundary lines on a 1942 map of the same exact geographic area of the properties in dispute. In this alternate map, the property boundary lines for Lot #31 run along the "old road" (later Indian Village Road) that was in place long before any of the transactions in the dispute in this matter ever occurred and which appears to the Court to be that of the 1968 agreement. The Court has identified the parcel of property which measures 172'6"x500' that is the remainder of the Theodore LaFrance estate. *See*, Addendum A and B attached hereto.

### Conclusion

As the Court has identified the Appellee, Ms. Rita Cole's property boundaries using the documents provided in the record as the Appellee requested, the Court finds that the house and barn once owned by Noah LaFrance does not intrude onto Lot #31, the property owned by Ms. Rita Cole. The remaining portion of the Theodore LaFrance estate, which according to the record before the Court, was not sold to John and Rita Cole in June of 1979. The Court further finds that the right of way which was in existence when the heirs of Noah LaFrance divided the property amongst themselves, was never extinguished. The Appellee, Ms. Rita Cole, does not have the sole authority to extinguish this right-of-way which was in place at the time of her and her husband's purchase of property from Theodore LaFrance. Pursuant to the SRMT Land Dispute Resolution Ordinance, this is the final decision of the SRMT Court.

Done by my hand this 15<sup>th</sup> day of 2015



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

<sup>12</sup> July 21<sup>st</sup>, 1973 Proposal of Land Distribution, June 13<sup>th</sup>, 1979 Sale Agreement, and July 3<sup>rd</sup>, 1982 SRMT Deed for Lot #31.

# Addendum

A



277'

Mary Sears  
to  
Theodore  
Lafrance  
to  
John &  
Rita Cole

629'

629'

277'

345'

Noah Lafrance  
to  
Theodore  
Lafrance  
to Newton  
Lafrance Sr.  
to Theodore  
Lafrance  
to  
John &  
Rita Cole

565'

565'

345'

172.6'

Remainder  
of  
Theodore  
Lafrance  
Estate

500'

500'

172.6'

1194'

# Addendum

**B**



277'

Mary Sears  
to  
Theodore  
Lafrance  
to  
John &  
Rita Cole

629'

277'

345'

Noah Lafrance  
to  
Theodore  
Lafrance  
to Newton  
Lafrance Sr.  
to Theodore  
Lafrance  
to  
John &  
Rita Cole

Noah Lafrance  
to  
Newton  
Lafrance Sr.  
to Theodore  
Lafrance  
to  
John &  
Rita Cole

565'

345'

172.6'

Remainder  
of  
Theodore  
Lafrance  
Estate

500'

500'

172.6'

1194'