

Another Memory of French Island, Old Town, Maine

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By Jim Mitchell

It began with an innocent question to the code enforcement officer in 1993. I wondered why Lot 189 which abutted land on which I lived, was not listed on the city property tax information. Charlie, Code Enforcement person at the time, said he could take care of that. He had the database password that allowed him to change everything. "Everyone knows that the City of Old Town owns that lot" he assured me. So right in front of me he altered the tax map to answer my question. It left me with some other questions though. I wondered why there was no tax record of the lot prior to me asking about it. I also wondered why someone in code enforcement was altering tax records.

Fifteen years later, I had bought property that abutted Lot 189 and had been planting some vegetable gardens on it. I, and the family before me, had kept the land which was Lot 189 mowed that kept out the creeping weeds, trees and brush that was always ready to overtake unused land. It reached a point in my gardening that I was using enough of the land beyond my plot that it would be a good idea to formalize the ownership issue with the City. I gathered support from neighbors that they liked having gardens there, they thought it a good use of the land, and they had no issue with me buying the part of Lot 189 that directly abutted my land.

I went to the City Council in March 2017 requesting that they sell me the land. In that meeting I referred to the land as abandoned. I recognized that the city had lain a sewer pipe under part of it in 1975 and so I offered an easement to the City for access to the sewer pipes as part of this offer. This request was rejected by the City Council and an offer for a license was made to me instead.

I had not forgotten Charlie's slight of hand regarding the ownership of the land. It would be hard for me to accept a license of use from anyone that didn't actually own the land. This made me want to find the deed for Lot 189. I spent most of a week hauling out

deeds and reading their old flowing hand written descriptions in the County Registry of Deeds. This was before digitalization, so the process was tedious and cumbersome, but somewhat satisfying to my natural interest in the history of the land. I found the original deed for the Lot 189 and it was in the name of the land company that developed the south west tip of the island in 1902. That company stopped filing records with the Secretary of State in 1932, but the owners of the company were listed. As all of them were from Bangor or Orono, it is quite likely that some of their descendants still lived in the area.

I went back to the City Council that May and stated that the land called Lot 189 was abandoned land that for various reasons the City had no right to claim as their own. I thought it best if they would work with me to resolve ownership issues. This upset some people, so everyone lawyered up, and suits were filed. I was at the City Council meeting in April 2019 when the city attorney admitted to the Council that indeed his team of four lawyers working three days could not find a copy of the deed to Lot 189. He suggested there was no deed at all for the land. I offered to give them the book and page number of the deed, but this offer was ignored.

After a private executive session between the lawyer and the council, a plan was hatched to condemn the land and seize it by use of eminent domain. This was a brilliant plan, but it was poorly executed. This plan was put into action on a sultry summer evening a few months later when the Lot 189 was condemned and seized with no public announcement in a newspaper nor any written communication with abutting landowners. It was claimed by a new team of lawyers that there was no need of public notice since an exigency existed that made it unnecessary to publicly discuss this seizure. Remember the sewer line from 1975? Yes, in the lawyer's mind this plastic pipe under six feet of earth created a situation so dire that all the statutes that Maine has in place for open governance could be ignored.

After the fact, notice was given to abutters via a local newspaper that if anyone claimed ownership of the land then they should apply to court for a settlement based

on fair market value. But this entirely is not at issue here. Perhaps ownership of the land resides in the heirs to the Union Land Company, or perhaps abutting landowners like myself (or the City for that matter) could claim a quiet title to the land they had maintained for more than twenty years. However, ownership of the land is a separate issue when considering the use of eminent domain. Clearly, that the City can seize land if they follow the guidance of Maine Law. Most importantly, this means public notice of the proposed seizure as well as receiving public input before the use of the legal action of eminent domain.

A list of abutters for lot 189 was eventually published, months after the land was seized on that summer meeting of a subcommittee in August. This notice increased the number of parties involved in the lawsuits to potentially thirteen. The City owns two lots, and many people had wisely said they just weren't interested in jumping into the lawyer fracas, so the number of the defendants in the City lawsuit resulted in six abutting landowners.

Then Covid hit, the courts shut down, and this all went on the back burner. During that time the City Council membership has changed a good deal and the attorneys involved have retired or died. Last fall the court dates were scheduled and we all looked forward to presenting to the Judge. We were all representing ourselves, *pro se*, as the original attorney I had employed had dropped out of the case due to illness. We all were on a Zoom conference regarding the issue of a bond the City needed to post after they seize land. We argued that if we extended property lines to the river, the value of our property would be similar to other residential lots on the Island. We requested that the City should deposit more than the assessed value, five times more. Though we had numbers to back our contention, the Judge sitting on this case decided that the city assessment was good enough for the value of the bond.

That had us scratching our heads, but since the Judge is citing the case of the recent mill assessment valuation, we had to admit that we were out-lawyered here and the City won that round. I took it upon myself to mount a case for our trial, and I thought I

could do it. Still in the naive world of right or wrong, I was insensitive to the nuance of legal interpretations where the legal community thrives. I turned to Chat GPT as an ally in my preparation for the trial, and found that I had a brilliant claim based on Maine Case Law as well as Maine Statutes that reflected Maine constitutional rights. Weeks before the trial I learned of that artificial intelligence has a propensity to lie and make up reality at will. It was a shocking setback for my plan of self-representation. In a panic, for weeks before the trial date I searched all over Bangor to find an attorney to represent us, but could find no one.

I went into court last spring with a bunch of hallucinated legal cases, and realizing it was a bit awkward for me to claim I had been victimized by a robot, I threw myself on the mercy of the court asking that I be given three more weeks to find legal representation. The Judge was merciful and not without justice. He asked if I would reimburse the City for going through the trouble of preparing for the trial. I agreed gladly, and found an attorney to represent us.

The new attorney then wrote up a new license (yes, third or fourth version of that old license) and then passed it back and forth such that he came up with a “perfect” Permissive Use Agreement. Except that it wasn’t close to perfect. It contended that the Lot 189 was not open to the public and that landowners were allowed to fence off any part of the land they claimed was part of the agreement. This brought up the issue of public land use that had not been a part of previous discussion. As is seen in the struggle of ownership of intertidal land along the ocean, the issue of public access is relevant here since the removal of the dams in 2014. That removal made the river navigable, so certain state rules can now be applied to the river shoreline.

Since the Penobscot River from Old Town to the ocean is now navigable river, the constitutional commitment to public use for fishing or passage way applies to all of the river line of French Island. The southern tip of the island is the best shad fishing in the State of Maine, and that is well known. Indeed, if there is an analogy here of the daily high and low tide lines of a coastal property. The distinction between the Floodway

(which we saw in January) and the “Normal High-Water Line” which is much of the year, is recognized by anyone who has lived here since the dam removal less than a decade ago. It raises the question of ownership of this interstitial land. Perhaps the State owns it, by constitution. The City can’t condemn and seize State lands.

Beyond this, there is the underlying issue of the trust that has been broken between citizens and governance. There is a way out of this discussion that does not involve lawyers crafting involved papers. I think perhaps a zoning change would be a simple solution that would be agreeable to everyone. Zoning Lot 189 as protected from development would ensure that the land will remain open for fishing, navigation, and pleasure for all citizens. Ownership then is no longer the issue as is a guarantee of land use for our future generations.