

VERMONT SUPERIOR COURT  
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ENVIRONMENTAL DIVISION  
Docket No. 22-ENV-00018

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Ranney Dairy Farm, LLC  
Major Subdivision Appeal

DECISION ON MOTIONS

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In this matter, Daniel Deitz, Steven Goulas, Sr., Veronica Goulas, Martha Monscrip, Nancy Pike, Michael Sylvester, and Teresa Sylvester (collectively, Neighbors), appeal a major subdivision permit issued by the Town of Westminster (Town) Development Review Board (DRB) to Ranney Dairy Farm, LLC (Applicant) for the subdivision of land that it owns at 700 Westminster West Road in Westminster, Vermont (the Property).

In a December 8, 2023 Merits Decision, this Court initially resolved this appeal in favor of Applicant. In re Ranney Dairy Farm, LLC Major Subdivision Appeal, No. 22-ENV-00018 (Vt. Super. Ct. Env'tl. Div. Dec. 8, 2023) (Walsh, J.). In that decision, the Court concluded that Applicant had demonstrated sufficient access to the proposed subdivision on the Property as required by 24 V.S.A. § 4412(3) and the Westminster Zoning Bylaws (the Bylaws) by making a “threshold showing” that it had a right to use Old Coddington Road. Id. at 6. The Court explained that the “threshold showing” analysis was in recognition of the fact that the Court was without jurisdiction over private property rights, which resides in the Civil Division, but could undertake this narrow analysis to demonstrate requisite access. See id. Neighbors appealed that decision to the Vermont Supreme Court.

In an October 24, 2024 Decision, the Vermont Supreme Court concluded that this Court has jurisdiction to determine whether Applicant has a “permanent easement or right-of-way” that provides access to a public road as set forth in § 4412. In re Ranney Dairy Farm, LLC Major Subdivision Appeal, 2024 VT 66, ¶ 10. The Vermont Supreme Court, therefore, reversed and remanded the matter “for a determination of whether applicant has established the existence of an easement or right-of-way over Old Coddington Road.[]” Id. at ¶ 14. Presently before the Court are the parties’ cross-motions for summary judgment on this issue.

### Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Comm’ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332. To determine whether a dispute of material fact exists, we “accept as true allegations made in opposition to the motion for summary judgment so long as they are supported by affidavits and other evidentiary material.” White v. Quechee Lakes Landowners’ Ass’n, Inc., 170 Vt. 25, 28 (1999).

Prior to addressing the undisputed material facts, we note that Neighbors did not file a statement of undisputed material facts in support of their motion for summary judgment. While the Court understands Neighbors’ motion to functionally argue that Applicant has not met its burden on both summary judgment and the merits of the issue before the Court, Neighbors’ motion is procedurally deficient. See V.R.C.P. 56(c)(1) (requiring a moving party to support its motion by filing a separate and concise statement of undisputed material facts). Second, Neighbors do not respond to each of the enumerated paragraphs in Applicant’s statement of undisputed material facts. See V.R.C.P. 56(c)(2) (requiring a nonmoving party “asserting that a fact is genuinely disputed, that the materials cited to not establish the absence of a genuine dispute, or that the moving party cannot produce admissible evidence to support the fact” must file a response sufficient under the Rule). Instead, some paragraphs are not responded to and others contain either a “response” or an “objection,” which is largely based on the admissibility or weight of supporting documents to a given fact. The Court interprets the paragraphs without any response or objection as being undisputed for the purposes of deciding the pending motion. See V.R.C.P. 56(e)(2). Finally, on June 13, 2025, Applicant provided a supplemental statement of undisputed material facts with associated exhibits. Neighbors have not filed a response to this supplemental statement of undisputed material facts, nor have they filed any reply to Applicant’s response to their cross-motion.

### **Factual Background**

We recite the following facts solely for the purposes of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts trial.<sup>1</sup> Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.).

1. The roadway at issue in this appeal is presently known as Old Coddling Road.
2. Old Coddling Road has been in existence since at least 1805.
3. Old Coddling Road is a roadway beginning from an intersection with McKinnon Road, in the Town, running easterly before turning towards the southeast.
4. The majority of Applicant's Property is to the north of Old Coddling Road, however, starting with its intersection with McKinnon Road, Old Coddling Road lies within Applicant's Property in close proximity to the southern boundary of Applicant's Property for its first 1,800 feet. Applicant's Property was originally owned by Elijah Ranney who, in the 1700s and early 1800s, owned parcels identified as Lots 3 and 4 of Range 3, and portions of Lot 3 of Range 4, and Lot 2 of Range 3, all in the Town.
5. Neighbors own property generally to the south of Old Coddling Road and their properties generally originate in parcels owned initially by Samuel Phippin identified as Lot 2 of Range 3 in the Town.
6. Generally, and more specifically as set forth herein, for the first 1,800 feet of the road, Old Coddling Road lies to the north of the southern boundary of Applicant's Property and north of the northern boundary of Neighbors' properties, as well as other landowners not before the Court.
7. The initial charter for the Town of Westminster was issued on November 11, 1752 under the authority of King George II.
8. On May 6, 1761, the Town's proprietors voted to accept the land of the Town, order parcels to be drawn therein, and to allow the Town to create a town way through those parcels.
9. In 1772, an order for survey was made and then returned for the Town, measuring the Town as 6 miles by 7 miles.
10. On March 28, 1772, New Hampshire, New York, Cumberland County of New York, and Massachusetts issued an indenture to Josiah Willard, an attorney, "releasing [23,500] acres to him" for the transference "of uses and in possessions to his heirs and assigns forever . . ." Ex. W.

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<sup>1</sup> Trial in this matter was initially held on October 17 and 18, 2023.

11. On September 26, 1772, Mr. Willard conveyed to Elijah Ranney two whole subdivided lots in the Town and part of a third. Ex. Z. These were Lot 3 and Lot 4 of Range 3 and approximately 2.5 acres of Lot 3 of Range 4.

12. The deed to Elijah Ranney references a map “by actual survey.” Id. It does not appear that a survey was recorded with the deed.

13. On the same day of the conveyance to Elijah Ranney, Mr. Willard conveyed to Crean Brush several other parcels of land within the Town. See Ex. X. The deed to Mr. Brush also references a map.

14. The referenced map was subsequently recorded twice in the Clerk’s Office of Cumberland County, once on September 19, 1774 and again on September 19, 1775. See Ex. Y. This map states that it is the map “in and by the original deed from Josiah Willard, Esquire to Crean Brush and also referred to in and by sundry other deeds executed by the said Josiah Willard.” Id.

15. Additionally, in the Town records recorded at Plat Map 201B is a trace of the original Town Plan dated December 1839. See Ex. AA. This trace includes names filled in on the lots and ranges in the Town and states that it is a “Map of Westminster VT traced from original plan by Iran J. Davis Montpelier, VT Dec. 1839.” Id. Elijah Ranney is shown as owning Lots 3 and 4 in Range 3. Id.

16. In 1810, Ephraim Ranney, Jr. sold the northeast corner of Lot 2 of Range 3 to Elijah Ranney.<sup>2</sup> Lot 2 of Range 3 is south of Lot 3 of Range 3. This parcel consisted of approximately 10 acres of land located on the northeast side of Coddington Road.

17. In 1818, Elijah Ranney sold the southern half of Lot 3 of Range 3, the 10-acre portion of Lot 2 of Range 3 he received in 1810, and approximately 1 acre of land east of Westminster West in Lot 3 of Range 4 to Joseph Ranney.

18. In 1846, Henry P. Ranney received these properties from Joseph Ranney’s estate and the parcels were described as one parcel.

19. In 1910, Henry Ranney’s daughter, Delia Ranney Hall, received these properties from her father’s estate.

20. It is not genuinely disputed that this parcel as received by Ms. Ranney Hall, which includes the southern half of Lot 3 of Range 3, the 10-acre portion of Lot 2 of Range 3, and the approximately 1 acre of land in Lot 3 of Range 4, is presently owned by Applicant.

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<sup>2</sup> Ephraim Ranney, Jr.’s ownership of Lot 2 of Range 3 is discussed below.

21. Property in the area south of Old Coddling Road largely originates in Samuel Phippen's ownership of Lot 2 of Range 3.

22. In 1795, Samuel Phippen sold that land to Joseph Phippen, who in turn sold that land to Ephraim Ranney, Jr. the same year.

23. In 1810, as addressed above, a 10-acre portion of the northeast corner of Lot 2 of Range 3 was sold to Elijah Ranney.

24. Ephraim Ranney, Jr. retained the remainder of Lot 2 of Range 3 until 1817 when he sold that remaining land to Elijah Ranney.

25. In 1835, Elijah and Joseph Ranney sold the remainder of Lot 2 of Range 3 and portions of additional lots to Lyman C. Ranney.

26. Lyman Ranney passed and Alfred P. Ranney, his son, and Alfred's wife transferred the land to Otis and Mary Buxton in 1870.

27. The Ranney to Buxton deed description is a general description and includes a reference to a boundary line "in said Coddling Road." Ex. 15.

28. There is no formal laying out of Old Coddling Road in the land records of the Town or Windham County records, nor in the archives of the states of New Hampshire, New York, or Vermont.

29. Old Coddling Road appears to have been used as a road and is referenced in deeds from as early as approximately 1805.

30. Old Coddling Road runs from McKinnon Road to the east, generally in a straight line, until curving southeast.

31. There is a document dated October 30, 1893 in the Town land records described as a "Discontinuance of highway near Otis F. Buxton's Received for record March 17, 1894 . . ." Ex. K. This document purports to discontinue Old Coddling Road.<sup>3</sup>

32. Joseph A. DiBernardo owns DiBernardo Associates, LLC and is a licensed land surveyor in Vermont. He has been retained by Applicant relative to this matter.

33. At trial before the Environmental Division in October 2023, Mr. DiBernardo was certified as an expert in land surveying.

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<sup>3</sup> The parties dispute the legal import of this document. The parties do not dispute that the document exists and is recorded with the Town.

34. Mr. DiBernardo has completed historical research of the Property and Old Coddling Road, including deed research, relative to this matter as well as land surveying work using various technologies.

35. Through this work, Mr. DiBernardo sought to establish the Property's boundaries, including the southern boundary of Lot 3 of Range 3 and the northern boundary of Lot 2 of Range 3, which is the general area through which Old Coddling Road runs from McKinnon Road.

36. Using the historical and recorded documents, Mr. DiBernardo then surveyed the boundaries.

37. The surveying work used high order GPS equipment, ArcGIS software, and the Light Detection and Ranging (LIDAR) project from the State Bare Earth Models.<sup>4</sup>

38. Mr. DiBernardo's firm located stonewalls on the east and west of the studied parcel. These identified walls were then plotted into CAD software to delineate the boundaries.

39. Mr. DiBernardo cross-referenced his survey work with Town tax maps, but did not rely upon the tax maps in creating the survey, nor did he rely on a map created as a part of the Town's ancient roads delineation process.

40. The resulting survey establishes the southern boundary of Lot 3 of Range 3, and the Property, as being between 25 and 50 feet south of Old Coddling Road for at least the first 1,800 feet of Old Coddling Road, running from McKinnon Road.

41. There are a series of deeds granting rights of way over Old Coddling Road from Applicant's predecessor in interest, Arthur Ranney. See Exs. 16–19. One of those exhibits has other grantors, see Ex. 16, but others do not.

42. There are other deeds granting rights of way over Old Coddling Road granted by individuals owning property south of Old Coddling Road. See Neighbors Exs. 4–10.

43. Applicant's immediate predecessor in interest had no deeded right of way over Old Coddling Road, but their deed notes that it is subject to rights of way and other easements over the road, as conveyed by Arthur Ranney. See Ex. 20.

44. Applicant has no deeded right of way or easement over Old Coddling Road.

### **Discussion**

The Westminster Zoning Bylaws (the Bylaws) state that “no land development may be permitted on lots that do not have either frontage on a public road or public waters.” Bylaws

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<sup>4</sup> LIDAR is a technology that uses laser light to develop 3 dimensional maps of the earth's surface. Bare Earth Models are digital representations of Earth's surface created from LIDAR.

§ 441(E)(1).<sup>5</sup> With approval, however, “access to such a road or waters can be achieved by a permanent easement or right-of-way.” *Id.* The subdivision of land constitutes development under the Bylaws. Bylaws § 441(E)(2). This mirrors 24 V.S.A. § 4412(3), which allows for land development “on lots that do not have frontage either on a public road, class 4 town highway, or public waters” only when there has been approval by an appropriate municipal panel of “access through permanent easement or right-of-way.” 24 V.S.A. § 4412(3). As directed by the Vermont Supreme Court, on remand and in the context of the pending cross-motions, the Court must determine whether Applicant has established an easement or right-of-way over Old Codding Road.

As set forth in the above facts, there is no document in the Westminster Land Records, nor in the records of Windham County or the Vermont, New York and New Hampshire State Archives, laying out Old Codding Road. Because there has been no document laying out the road, Applicant concedes that the Court may, from the absence of a recorded document, presume that Old Codding Road was never laid out.<sup>6</sup>

Applicant instead asserts that its property extends south of Old Codding Road such that the roadway runs across the southern portion of Applicant’s Property for at least the first 1,800 feet of the road. As such, Applicant argues that it satisfies the Bylaws and § 4412(3).

Neighbors assert that this would amount to “moving” property lines which is outside of the scope of the Court’s jurisdiction and is an “apocalyptic” interpretation of the Vermont Supreme Court’s remand. The Court disagrees.

On remand, this Court has jurisdiction to determine whether Applicant complies with Bylaws § 441(E)(1), (2). Applicant is offering evidence and documents to demonstrate compliance by establishing that it has the requisite access by virtue of owning the relevant portions of land under which Old Codding Road runs.<sup>7</sup> Further, Applicant’s argument is not that boundary lines are to be

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<sup>5</sup> The Westminster Zoning Bylaws are not in the record of these pending motions but they were admitted at trial as an exhibit.

<sup>6</sup> Applicant has argued in the alternative that Old Codding Road was a public road by virtue of being open for general public use without distinction from at least 1805 to 1893 when it was discontinued such that Applicant retains the right to use the road. In support of this, Applicant cites to a series of unrecorded historical maps from the 1800s that Neighbors dispute the admissibility of. These disputed maps, as anecdotal evidence, are insufficient to establish that Old Codding Road was a public road by virtue of general public use such that the Court declines to conclude as such.

<sup>7</sup> Neighbors’ argument that this is outside of the scope of jurisdiction also runs contrary to their long-running argument in this case that Applicant must prove, and this Court has jurisdiction to determine, Applicant’s rights to use Old Codding Road. Now that the Vermont Supreme Court has concluded that the Environmental Division has jurisdiction to determine Applicant’s right to use Old Codding Road, Neighbors seek to foreclose Applicant from means by which to prove compliance with the Bylaws. The remand in this matter cannot be so interpreted.

moved. Instead, Applicant is attempting to demonstrate the location of the boundary line.<sup>8</sup> The Court concludes that this is a means of proving compliance with the Bylaws that is within the scope of the Vermont Supreme Court's remand and analysis regarding this Court's jurisdiction. We turn now to whether Applicant has the requisite access through ownership of Old Coddington Road.

Such an analysis requires the Court to go back to the founding of Westminster. Westminster's charter was first issued in 1752 and accepted by the Town by vote of the proprietors in 1761. At this time, the Town voted to order parcels to be drawn. In 1772, an order for survey was made for the Town and was returned. That same year, Josiah Willard, an attorney, was issued an indenture to transfer parcels within the Town. On September 26, 1772, Attorney Willard transferred Lot 3 of Range 3, Lot 4 of Range 3, and 2.5 acres of Lot 3 of Range 4 to Applicant's predecessor in title, Elijah Ranney. The deed to Elijah Ranney references a map "by actual survey." Id. It does not appear that a survey was recorded with the deed.

The initial deed to Elijah Ranney does not have an accompanying survey or map. A deed, dated the same day as Elijah Ranney's, from Attorney Willard to Crean Brush conveying parcels of land in the Town does have an accompanying map. The Brush deed references a map, which was subsequently recorded with the Clerk's Office of Cumberland County twice, in 1774 and 1775. The referenced map notes on its certification that this map is "in and by the original deed from Josiah Willard, Esquire to Crean Brush and also referred to in and by sundry other deeds executed by the said Josiah Willard." See Ex. Y. While this map does not state that it is the survey referred to in Mr. Willard's deed to Elijah Ranney, as set forth above, Elijah Ranney's deed was executed on the same date as Mr. Willard's deed to Crean Brush.

In 1810, Ephraim Ranney, Jr. sold the northeast corner of Lot 2 of Range 3, which consisted of approximately 10 acres and was located on the northeast side of Old Coddington Road, to Elijah Ranney. In 1818, Elijah Ranney sold the southern half of Lot 3 of Range 3, the 10-acre portion of Lot 2 of Range 3 he received in 1810, and approximately 1 acre of land east of Westminster West in

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<sup>8</sup> Both parties cite to theories of adverse possession in relation to the pending motions. Neither party, however, undertook significant analysis on these issues. To the extent that Neighbors assert that some of them have acquired the land under Old Coddington Road by adverse possession such that Applicant may not claim a right to use it by way of ownership, they have not met their burden of proving an adverse claim of title. To achieve title through adverse possession, a claimant must show that use of the land was open, notorious, hostile and continuous for the statutory period of 15 years. First Congregational Church of Enosburg v. Manley, 2008 VT 9, ¶ 13, 183 Vt. 574. What's more, adverse possession involves an intent to exclude all others. See MacDonough-Webster Lodge No. 26 v. Wells, 175 Vt. 382, 393-94 (2003) (citations omitted). Neighbors' motion makes mere unsupported allegations and does not offer any proof to support their individualized claims of title by adversity. The Court further notes the use of Old Coddington Road by various members of the neighborhood, some of whom are not before the Court in this matter, which further supports declining to address this claim as presented. Neighbors do not address this issue.

Lot 3 of Range 4 to Joseph Ranney. This is the parcel of land presently owned by Applicant. Old Coddling Road runs in the southerly section of the combined parcels for its first 1,800 feet. In 1846, Henry P. Ranney received these properties from Joseph Ranney's estate and the parcels were described as one parcel. In 1910, Henry Ranney's daughter, Delia Ranney Hall, received these properties from her father's estate. It is not genuinely disputed that this is the parcel presently owned by Applicant.

Property south of Old Coddling Road largely originates from Lot 2 of Range 3, initially owned by Samuel Phippen. Samuel Phippen sold that land to Joseph Phippen in 1795, who in turn sold that land to Ephraim Ranney, Jr. the same year. Ephraim Ranney, Jr. sold the above-referenced 10 acres to Elijah Ranney in 1810. He retained the remainder of Lot 2 of Range 3 until 1817 when he sold that remaining land to Elijah Ranney. In 1835, Elijah and Joseph Ranney sold the remainder of Lot 2 of Range 3 and portions of additional lots to Lyman C. Ranney. Lyman Ranney passed and Alfred P. Ranney, his son, and Alfred's wife transferred the land to Otis and Mary Buxton in 1870. This deed description is a general description and includes a reference to a boundary line "in said Coddling Road." Ex. 15.<sup>9</sup>

The Town's original map of lots and ranges is in the Town Clerk's office but is not recorded. Instead, an 1839 trace of that original plan is recorded. See Ex. AA. That map states that it was "[t]raced from original plan." *Id.* It lists Elijah Ranney as owning Lots 3 and 4 of Range 3.<sup>10</sup>

Applicant has retained Joseph A. DiBernardo, a licensed land survey in Vermont and owner of DiBernardo Associates, LLC. At trial before the Environmental Division in October 2023, Mr. DiBernardo was certified as an expert witness in land surveying. Related to this matter and following the Vermont Supreme Court's remand in this case, Mr. DiBernardo participated in historical research regarding Old Coddling Road and the Property, including deed research. From this research, Mr. DiBernardo sought to establish the boundaries of the Property, most notably the southern boundary of Lot 3 Range 3 and the northern boundary of Lot 2 of Range 3, which is the general area through

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<sup>9</sup> The Court notes that the parties dispute the use of the word "in" in the description of the Ranney/Buxton deed. Neighbors argue that use of "in" expresses the Ranney's belief that their property line ran within Old Coddling Road rather than beyond it. Applicant does not adopt such an interpretation of the drafter's "belief." We agree with Applicant's interpretation for the reasons set forth below. This is because arguments as to subjective belief of the parties, generally, or by their predecessors in interest as may or may not be inferred by general descriptions of knowledge within deeds are outweighed by objective survey work based on lot and range information as within the originating deeds of these parcels. This is particularly true when considering that this deed, nearly 100 years after the creation of the relevant parcels, is the first time such description is used despite Old Coddling Road being in existence for a substantial period prior thereto and significant deeds concerning parcels in this area occurring between 1772 and 1870.

<sup>10</sup> Of note, by 1839 when this trace was completed, Elijah had since deeded portions of Lot 3 of Range 3, along with subsequently acquired land in Lot 2 of Range 3 to Joseph Ranney.

which Old Coddling Road runs, before it turns to the southeast. Mr. DiBernardo did this by using high order GPS equipment, ArcGIS software and the LIDAR project from the State Bare Earth Models. Mr. DiBernardo's firm located stonewalls on the east and west of the studied parcels. These identified walls were then plotted into CAD software to delineate the bounds of the Lot and Range.

<sup>11</sup> Mr. DiBernardo's firm cross referenced these results with the Town tax map lines. Through his analysis, DiBernardo Associates located the southern boundary line of Lot 3 of Range 3 as being south of Old Coddling Road by between 25 and 50 feet for approximately the first 1,800 feet of the road.

Neighbors point to no admissible evidence sufficient to genuinely dispute the conclusions of Mr. DiBernardo's analysis. This is particularly true when considering Applicant's initial and supplemental statement of material facts and initial and supplemental affidavit by Mr. DiBernardo. Neighbors offer no competing survey or affidavit of a land surveyor or other individual with sufficient education or experience to demonstrate why Mr. DiBernardo's conclusions are not supported. Instead, Neighbors provide unsupported allegations that the Applicant's expert survey is "irregular" or insufficient. This Court is directed to "accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White, 170 Vt. at 28; see also Progressive Ins. Co. v. Wasoka, 2005 VT 76, ¶ 25, 178 Vt. 337 ("It is a basic principle of summary judgment that mere allegations of counsel unsupported by documented evidence are not enough to create a genuine issue of material fact.") (citations omitted). The allegations made in opposition to the pending motion are therefore insufficient to create a genuine dispute of material fact. To the extent that Neighbors seek to rely upon these assertions to support their own cross-motion for summary judgment, they are insufficient to support such a motion. See V.R.C.P. 56(c)(1).

Neighbors point to a series of deeds from property owners south of Old Coddling Road purporting to deed rights of way over the southern portion of Old Coddling Road and/or describing boundaries in reference to the road. Applicant, however, has provided title research that, combined

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<sup>11</sup> In response to Applicant's statement of undisputed material facts, Neighbors attempt to discredit Mr. DiBernardo's conclusions asserting that they are based on an "Ancient Road Map" produced by DiBernardo Associates in 2009 for the Town related to so-called ancient roads in the Town. In reply to Neighbors' response to Applicant's motion, and response to Neighbors' cross-motion, Applicant has provided a supplemental statement of material facts and a supplemental affidavit from Mr. DiBernardo reiterating that Neighbors' objection to Mr. DiBernardo's conclusions are not accurate and that his analysis was not based upon the Ancient Road Map from 2009. This is similarly true for the so-called 1774 map and the Town's Grand List/tax map, which is not recorded in the Town records and/or used for survey purposes because the DiBernardo survey was completed in relation to other recorded maps/surveys and techniques.

For this reason, Neighbors' affidavits of the Town Clerk and former assistant Town Clerk and Town Lister are not persuasive as to this issue because they address matters not relevant to the underlying information in the survey

with surveying work, demonstrates that the deeds offered by Neighbors transferred rights to use a right of way wholly on Applicant's property. Furthermore, there are additional deeds by Applicant's predecessor in interest granting rights of way over Old Coddling Road through the Property.<sup>12</sup> While at least one of these deeds has additional grantors granting rights of way, others do not and are from Applicant's predecessor in interest only. This indicates that Applicant's predecessors in interest held a right to use Old Coddling Road and could exercise the right to grant easements over the road to others. Thus, Neighbors offered right of way deeds, considering the title and surveying work offered by Applicant, are unavailing.

Neighbors further argue in opposition to Applicant's motion and, presumably, in support of their cross-motion, that Applicant's purported boundary is not correct by virtue of "belief" of the parties, other neighbors, and/or predecessors in interest of various property owners along Old Coddling Road. Neighbors cite to no law or statute in support of reliance on "belief" evidence. This evidence is largely made through unsubstantiated objections to Applicant's statement of undisputed material facts.

Further, Neighbor's proffer of "belief" of the boundaries of the related properties is inconsistent with the interpretation of deeds, generally, and the countervailing evidence provided by Applicant. The Vermont Supreme Court has recognized that lot and range descriptions, among other means, "enable the boundaries [of land] to be readily determined, [thus] such definitely bounded parcel shall be the lot conveyed although perhaps inconsistent with some general words of description or statements of quantity." Spooner v. Menard, 124 Vt. 61, 63 (1963) (citing Ripchickv. Pearsons, 118 Vt. 311, 316–17 (1954)). It is axiomatic that lot and range descriptions would outweigh general descriptions of boundaries within a deed, and that such descriptions and surveys based on lots and

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<sup>12</sup> Neighbors have previously argued in some capacity that, Applicant's immediate predecessors in title, didn't have deeded access to the road, and could not use the road, such that Applicant was similarly precluded from using the road. Presently, Neighbors do not dispute the existence of those recorded deeds nor do they appear to argue that Applicant's predecessor in interest lacked the ability to grant the rights therein. See Neighbors' Reply to Statement of Undisputed Material Facts, ¶ 49(a)–50 (filed on May 7, 2025). If it is undisputed that Applicant's predecessor(s) in interest had the authority to grant rights of way over Old Coddling Road, it would appear that such predecessor(s) in interest had the right to use the roadway themselves absent any form of deeded interest to them. With such undisputed deeds from predecessors, it would make sense that Applicant would similarly lack a deeded right of way over the road in these circumstances. Because no party, however, argues specifically that Applicant retains the right to use the road through these undisputed facts, and we instead conclude that Applicant is entitled to summary judgment on other grounds, the Court makes no conclusion on this issue.

ranges would outweigh general understanding of ownership/lot lines, both within deeds and outside thereof.<sup>13</sup>

Functionally, the Court has before it a series of deeds relating back to the earliest days of the Town describing parcels of land with lots and ranges and subsequent deeds in the relevant chains of titles thereof. At some point in the past, lesser orders of deed descriptions were employed either by deeds transferring land or deeds transferring rights of way/access easements. Lot and range deed descriptions define the lot that is conveyed, not the general description of a parcel. See Spooner, 124 Vt. at 63. Applicant's expert used these historical descriptions and related maps to create a survey using modern technology to establish the higher-order definition of the related parcels. Neighbors have not provided admissible evidence sufficient to create a dispute as to the survey or how it was created. Thus, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law such that Applicant's motion is **GRANTED** and Neighbors' motion is **DENIED** with respect to the first 1,800 feet of Old Coddling Road.

Applicant has established that it owns the first 1,800 feet of Old Coddling Road and thus it has the right to use this portion of Old Coddling Road to access the proposed lots. The Court is unclear if this conclusion resolves the present dispute because it is unclear to the Court how this distance of 1,800 feet relates to the proposed lots and the access.

With this decision, the Court is concurrently setting this matter for a status conference to discuss what, if any, further action is needed in this matter.

Electronically signed this 5th day of August 2025, pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division

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<sup>13</sup> For the reasons set forth above, the Court thinks it is outside the scope of the Court's jurisdiction on remand and as defined by the Vermont Supreme Court to determine whether such beliefs with respect to lot lines and/or use of Old Coddling Road may have impacts on any individual/entity's right to use Old Coddling Road beyond that of Applicant's ability to demonstrate compliance with the Bylaws. To the extent that Applicant seeks a ruling on this matter precluding certain individuals from using Old Coddling Road to access their property, that aspect of the pending motion is **DENIED**.