

STATE OF NEW YORK
SUPREME COURT

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Sally B. Edly
COUNTY OF WASHINGTON

In the Matter of the Application of

MARY ANNE RICHARD AND DANIEL
SMITH,

Petitioners,

VERIFIED PETITION

-against-

INDEX NO.: 16168
RJI NO.:

THE TOWN OF CAMBRIDGE; THE
CAMBRIDGE TOWN BOARD; AUDREY
B. HALL; SALLY J. WHITNEY; and
TERRY E. WHITNEY, SR.;

Respondents,

For a Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules and Declaratory Judgment
Ordering the Town Board to Repeal its Resolution
Authorizing the Conveyance of the Disputed Property and
Declaring the Town of Cambridge the Record Owner of
the Disputed Property.

TO THE SUPREME COURT, STATE OF NEW YORK:

Petitioners, Mary Anne Richard and Daniel Smith, by and through their attorneys,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC, allege as follows:

1. Petitioners, Mary Anne Richard and Daniel Smith, are adult individuals residing at 1793 Meeting House Road, Cambridge, New York.
2. Respondents, the Town of Cambridge and the Cambridge Town Board, are municipal bodies duly existing under the laws of the State of New York and having a mailing address of 505 County Route 59, Cambridge, New York 12816.
3. Upon information and belief, Respondent Audrey B. Hall is an adult individual residing at 1858 Meeting House Road, Cambridge, New York. Upon information and belief, Ms. Hall has since married and may now be known by a different last name.

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Washington County
Donna J. Grandall

4. Upon information and belief, Respondents Sally J. Whitney and Terry E. Whitney, Sr. are adult individuals residing at 104 Brownell Road, Cambridge, New York.

5. Respondents Audrey B. Hall, Sally J. Whitney, and Terry E. Whitney, Sr. are named in this action as necessary parties.

6. The property which is the subject of this action is known as Tax Map Parcel 270.-1-33.8 (Disputed Property) and is located on Brownell Road in the Town of Cambridge, Washington County, New York. A true and correct copy of the tax map of the property and surrounding properties is attached hereto and incorporated herein by reference as **Exhibit A**.

7. Petitioner Richard is the owner of property known as Tax Map Parcel 270.-1-38.4 in Cambridge, New York. This parcel abuts the disputed parcel on all sides excluding the portion bordered directly by Brownell Road. See **Exhibit A**.

8. Petitioner Richard and Petitioner Smith used the Disputed Property for many years for storage of a scrap metal container from his recycling business, and to gain road access.

9. Upon information and belief based on review of documents of record, Respondent Hall and Respondents Whitney, do not and have not owned property directly adjacent to or directly abutting the Disputed Property.

10. The Disputed Property was conveyed by Leo O'Donnell to the Town of Cambridge by deed dated September 1939, acknowledged September 13, 1939, and recorded in the Washington County Clerk's Office on April 30, 1941 in Book 225 at Page 597. A true and correct copy of the deed is attached hereto and incorporated herein by reference as **Exhibit B**.

11. Upon information and belief, the Town did not convey or relinquish its rights in the Disputed Property in any way before the invalid conveyance now at issue.

12. Upon information and belief, the Town Board passed a Resolution authorizing the conveyance of the Disputed Property to Audrey B. Hall. A true and correct copy of the Resolution is attached hereto and incorporated herein by reference as **Exhibit C**.

13. Upon information and belief, the Town Clerk did not post a notice stating the date of adoption of the Resolution, containing an abstract of the Resolution, and stating that the resolution was adopted subject to permissive referendum.

14. Upon information and belief, the Town conveyed the Disputed Property to Audrey B. Hall, without consideration, by quitclaim deed dated September 8, 2008. A true and correct copy of the deed is attached hereto and incorporated herein by reference as **Exhibit D**.

15. The Town's conveyance to Respondent Hall was done in violation of the statutory requirements for the conveyance of town property.

16. Upon information and belief, in October 2008, less than a month after the improper conveyance to Respondent Hall, Respondent Hall sold the property to Respondents Whitney. A true and correct copy of the deed from Respondent Hall to Respondents Whitney is attached hereto and incorporated herein by reference as **Exhibit E**.

17. Upon information and belief, Respondents Whitney have begun and intend to continue clearing the Disputed Parcel by removing and cutting trees.

18. Petitioners demanded the repeal of the Resolution authorizing the conveyance from the Town to Respondent Hall by letter from their attorneys dated August 7, 2009. A true and correct copy of the letter is attached hereto and incorporated herein by reference as **Exhibit F**.

19. After not receiving a determination from the Town regarding their demand, Petitioners' attorneys sent a second letter dated September 22, 2009 renewing their demand. A true and correct copy of the letter is attached hereto and incorporated herein by reference as **Exhibit G**.

20. On September 25, 2009, the Town issued a final determination denying repeal of the Resolution by a letter from Town attorney D. Alan Wrigley to Petitioners' attorneys. A true and correct copy of attorney Wrigley's letter is attached hereto and incorporated herein by reference as **Exhibit H**.

21. Venue is proper consistent with CPLR §506.

22. By this action, Petitioner seeks an Order of the Court annulling the Resolution authorizing the conveyance of the Disputed Property to Respondent Hall, declaring all subsequent conveyances void, and declaring the Town of Cambridge the owner of record of the Disputed Property.

**AS AND FOR A FIRST CAUSE OF ACTION, PETITIONERS
ALLEGE THAT RESPONDENTS TOWN AND TOWN BOARD
VIOLATED THE CONSTITUTION OF THE STATE OF NEW
YORK BY GIFTING TOWN LAND**

23. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 22 above with the same force and effect as if fully set forth herein.

24. Respondent Town conveyed the Disputed Property to Respondent Hall without any consideration, constituting a gift of Town real property.

25. The Constitution of the State of New York Article VIII Section 1 expressly prohibits the gifting of town land.

26. The Town's conveyance of the Disputed Property was in violation of the laws of the Constitution of the State of New York.

27. The Resolution authorizing the gifting of the Disputed Property must be annulled, all subsequent conveyances must be declared void, and the Town of Cambridge must be declared the owner of record of the Disputed Property.

**AS AND FOR A SECOND CAUSE OF ACTION, PETITIONERS
ALLEGE THAT RESPONDENTS TOWN AND TOWN BOARD
FAILED TO PERFORM DUTIES ENJOINED UPON THEM BY
LAW**

28. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 27 above with the same force and effect as if fully set forth herein.

29. Resolutions authorizing the conveyance of town land are subject to permissive referendum.

30. As such, the Town was statutorily required to, within ten days after of adoption of the Resolution, post a notice of the Resolution indicating that it was subject to permissive referendum.

31. The Town, its agents and representatives, failed to perform duties enjoined upon them by law related to the conveyance of Town property, including the duty to provide proper notice that the Resolution was subject to permissive referendum.

32. Petitioners demanded the Town Board repeal the Resolution and conveyance of the Disputed Property for failure to comply with statutory requirements. See Exhibits F and G.

33. Respondents Town and Town Board refused to repeal the Resolution and conveyance. See Exhibit H.

34. The Resolution authorizing the conveyance of the Disputed Property must be annulled, all subsequent conveyances must be declared void, and the Town of Cambridge must be declared the owner of record of the Disputed Property.

**AS AND FOR A THIRD CAUSE OF ACTION, PETITIONERS
ALLEGE THAT RESPONDENTS TOWN AND TOWN BOARD
MADE A DETERMINATION IN VIOLATION OF LAWFUL
PROCEDURE**

35. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 34 above with the same force and effect as if fully set forth herein.

36. The Town and Town Board violated New York State Law and acted outside of their authority when they conveyed the Disputed Property to Respondent Hall.

37. Town Law Section 64 requires that resolutions authorizing the conveyance of town land be subject to permissive referendum.

38. The Town failed to comply with the statutory procedures for the conveyance of Town land, including the requirement to notify the public of the Resolution and its right to a permissive referendum.

39. In spite of this, the Town Board conveyed the Disputed Property to Respondent Hall.

40. Respondent Hall then sold the erroneously conveyed Town parcel to Respondents Whitney.

41. By passing a Resolution authorizing the conveyance of Town property, subsequently conveying the Town property without following the statutory requirements to do so, and then refusing to repeal the Resolution, Respondents Town and Town Board made a determination in violation of lawful procedure.

42. The Resolution authorizing the conveyance of the Disputed Property must be annulled, all subsequent conveyances must be declared void, and the Town of Cambridge must be declared the owner of record of the Disputed Property.

**AS AND FOR A FOURTH CAUSE OF ACTION, PETITIONERS
ALLEGE THAT RESPONDENTS TOWN AND TOWN BOARD
MADE A DETERMINATION THAT WAS ARBITRARY AND
CAPRICIOUS**

43. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 42 above with the same force and effect as if fully set forth herein.

44. The Town and Town Board's decision to convey the Disputed Property without consideration and without following lawful procedure, and the Town and Town Board's final determination refusing to repeal the Resolution were arbitrary and capricious.

45. The Town and Town Board had no rational basis for gifting Town land to a private individual and had no rational basis for its refusal to repeal the Resolution and the unlawful conveyance.

46. The Resolution authorizing the conveyance of the Disputed Property must be annulled, all subsequent conveyances must be declared void, and the Town of Cambridge must be declared the owner of record of the Disputed Property.

**AS AND FOR A FIFTH CAUSE OF ACTION, PETITIONERS
ALLEGE THAT RESPONDENTS TOWN AND TOWN BOARD
ABUSED THEIR DISCRETION BY AUTHORIZING THE
CONVEYANCE, CONVEYING THE DISPUTED PROPERTY AND
REFUSING TO REPEAL ITS AUTHORIZATION**

47. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 46 above with the same force and effect as if fully set forth herein.

48. Respondent Town Board abused its discretion by passing a Resolution authorizing the gifting of Town land, as such a gift is prohibited by the Constitution of the State of New York.

49. Respondents Town and Town Board abused their discretion by passing the Resolution and conveying the Disputed Property without subjecting the Resolution and conveyance to permissive referendum as required by law.

50. The Resolution authorizing the conveyance of the Disputed Property must be annulled, all subsequent conveyances must be declared void, and the Town of Cambridge must be declared the owner of record of the Disputed Property.

**AS AND FOR A SIXTH CAUSE OF ACTION, PETITIONERS
ALLEGE THAT THE TOWN AND TOWN BOARD WERE
ARBITRARY AND CAPRICIOUS IN THEIR DETERMINATION
TO CONVEY THE DISPUTED PROPERTY TO RESPONDENT
HALL, WHILE NOT ALLOWING PETITIONER RICHARD THE
OPPORTUNITY TO BID ON THE PROPERTY**

51. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 50 above with the same force and effect as if fully set forth herein.

52. Petitioner Richard has not been impacted by the Town's unlawful conveyance solely as a Town resident and taxpayer, but also as an individual property owner.

53. As the Disputed Property is bounded on two of its three sides by Petitioner Richard's property, Petitioners used the Disputed Property for several years for the storage of a scrap metal container from his scrap recycling business, and to gain road access.

54. In conjunction with the conveyance at issue, Petitioners were forced to remove their property from the Disputed Property and discontinue use of that property.

55. Petitioner Richard was ejected from the property without being given an opportunity to bid on the Disputed Property.

56. Petitioner Richard should have been provided the opportunity to bid on the Disputed Property as she is the adjacent landowner, but was never given such an opportunity.

57. The Town's failure to provide Petitioner Richard this opportunity has negatively impacted her property by cutting off road frontage and potentially obstructing the views from Petitioner's property.

58. Respondents Town and Town Board were arbitrary and capricious in passing the Resolution and conveying the Disputed Property to Respondent Hall without providing Petitioner Richard the opportunity to bid on the parcel.

59. The Resolution authorizing the conveyance of the Disputed Property must be annulled, all subsequent conveyances must be declared void, the Town of Cambridge must be declared the owner of record of the Disputed Property, and if the Town wishes to convey the Disputed Property, Respondent Richard should be afforded the opportunity to bid on the parcel.

**PETITIONERS REQUEST TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF**

60. Petitioners repeat and reallege each and every allegation contained in Paragraphs numbered 1 through 59 above with the same force and effect as if fully set forth herein.

61. Upon information and belief, Respondents Whitney have been cutting trees and clearing vegetation on the Disputed Property.

62. The clearing of the Disputed Property could have a permanent and irreversible impact on the property.

63. The clearing of the Disputed Property could have a permanent and irreversible impact on Petitioner Richard's adjacent property.

64. The Court should temporarily and permanently enjoin the development, clearing and cutting of trees of the Disputed Property.

65. As alteration, deforestation and clearing of real property cannot be undone; Petitioners do not have an adequate remedy at law to remedy this damage.

WHEREFORE, Petitioners respectfully request Judgment as follows:

- A. Granting the Verified Petition in its entirety;
- B. Granting temporary and permanent injunctive relief;
- C. Awarding Petitioner the costs, disbursements and reasonable attorney's fees

associated with this action; and

D. Awarding Petitioner such other and further relief as the Court may deem just and proper.

Dated: December 3, 2009



Cathi L. Radner, Esq.
MILLER, MANNIX, SCHACHNER & HAFNER, LLC
Attorneys for Petitioner
451 Glen Street - PO Box 765
Glens Falls, New York 12801
(518) 793-6611

VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF Franklin)

MARY ANNE RICHARD, being duly sworn, does hereby say:

That I have read the annexed Petition and know the contents thereof and that the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge is based upon information provided to by counsel.

Mary Anne Richard
MARY ANNE RICHARD

Sworn to before me this
16th day of November, 2009

Susan E Tansey
Notary Public

