

**Issues Surrounding Ridge Road Access to Police Station
Board of Selectmen Meeting
January 14, 2013**

On May 28, 2010 the Town of York purchased land from Dewey Horn, Harry Horn and Samuel Horn for the purpose of constructing a new police station. The closing for the sale was conducted at the law offices of Bergen and Parkinson in Kennebunk, Maine. At the closing a Quit Claim with Covenant was produced which was signed by the Horn brothers, sellers of the property. Attached to the deed was a document referred to as "**Exhibit A**". This document was prepared by SMRT Architects and was entitled "Proposed Master Plan" with a date of 3.03.10. The "Proposed Master Plan" showed, among other things, a proposed roadway traversing from Route 1 through the land being purchased from the Horns and connecting with Ridge Road. At the time of the closing a Purchase and Sale Agreement was also signed by the parties involved. The Purchase and Sale Agreement also referred to the SMRT "**Proposed Master Plan**" which was attached as "**Exhibit A**".

In early 2011 after the Selectmen had appointed a Municipal Building Committee to supervise the Police station project, Sam Horn came to a meeting and challenged the Town's ownership of all of the land necessary to build the police station road as it was shown on conceptual plans. Scott Fiorentino, Chair of the Municipal Building Committee at that time, began to have discussions with Mr. Horn about his claim. Mr. Fiorentino also discussed this situation with Dennis Jud, a principal at SMRT who had prepared the "**Proposed Master Plan**" dated 3.03.10 and which had been attached to the deed and purchase and sale agreement. Despite the plan showing access to Ridge Road through the southern part of a parking lot owned by the Patrick Cragin Trust, Mr. Jud indicated that the Town did not, in fact, purchase all of the property necessary as there was a triangular piece still owned by the Horns that would be necessary to construct the road as shown on the plan.

Based on the allegation by Mr. Horn and the statements by Mr. Jud, Mr. Fiorentino, who was now a member of the Board of Selectmen and no longer Chair of the Municipal Building Committee, began to negotiate with the Horn family in order to facilitate a land swap between the town and the Horns so that the Town could obtain the necessary land. In September, 2011 all three Horn

brothers signed a land swap agreement through which they agreed to select one of three parcel options provided to them by Mr. Fiorentino but produced by Mr. Jud from SMRT. The Horns were advised that any land swap would have to be approved by the Board of Selectmen.

Negotiations regarding the land swap continued throughout the rest of 2011, and though the first half of 2012. A particular parcel was identified by the Horns that was suitable for a swap, but ultimately that parcel was deemed to be unbuildable due to wetlands issues. At that point negotiations ended as there were no further suitable parcels for exchange.

While the land swap negotiations were going on the Town was continuing with design of the police station and connector road. As part of the design the Town contracted with Berry, Huff McDonald, Milligan, Inc. (BH2M) to conduct a boundary survey of all of the land the Town owned between Route 1 and Ridge Road. The Purchase and Sale Agreement with the Horns, signed May 28, 2010, contained language that **“As soon as possible after closing, the Seller shall obtain a survey to establish a legally sufficient description of the southwesterly sideline of the proposed road as it crosses the land of the seller.”**, however given that the Town needed to conduct a boundary survey anyway, the Horn section was included in the Town’s survey and \$4800 of the \$6000 put into escrow by the Horns for the survey was returned. The survey was completed in November of 2011. The survey was provided to one of the Horn attorneys on January 5, 2012.

On August 11, 2012 a Sketch Plan Review was conducted with the Planning Board on the police station and connector road projects. On February 9, 2012 the Planning Board accepted the entire project application as complete for preliminary review. On March 8, 2012 the Planning Board reviewed only the police station. On April 19, 2012 the Planning Board reviewed the police station and connector road independently as they had been separated into two projects for planning board review purposes. Planning Board review continued in May, June and July with final approval granted for the police station on July 5, 2012 when the findings of fact were signed. There were no findings of fact issued for the connector road.

After the Planning Board had approved the police station project it was pointed out that the survey completed by BH2M did not reflect that the Horns owned a

triangular piece of land where the entrance from Ridge Road was located. The survey, in fact, reflected that the Town owned all of the land north of the property owned by the Norton family. When this was discovered I contacted the surveyor, Bob Libby, of BH2M and asked him about his survey. Mr. Libby stated that he based his survey on the quit claim deed from the Horns along with the Master Plan attached as "**Exhibit A**". I asked Mr. Libby to produce a survey that reflected the right of way adjacent to the post office building on the north side of the Cragin Trust parking lot. Mr. Libby did produce this survey on August 29, 2012 but indicated that the right of way, as shown, was approximate.

In early September I again contacted Mr. Libby and told him that we needed to finalize the survey. Mr. Libby told me that his survey was correct based on the deed that was signed and recorded along with the attached Master Plan. Mr. Libby further indicated that the only way to amend the survey was through a corrected deed. I asked Mr. Libby to put his formal opinion in writing which he did in a letter dated September 12, 2012. In this letter Mr. Libby summarizes how he established the boundary line. Mr. Libby further stated in the letter "**There is some question by the parties involved that this is not the correct boundary. This is simply not correct. The boundary may not be what the parties intended, but it is what they created in the deed transfer.**"

After receiving the letter from Mr. Libby I contacted an independent surveyor from outside York County in order to get an additional opinion on the boundary line issue. The independent surveyor, John Swan of Own Haskell, Inc. of Falmouth, agreed to review all of the material and render an opinion. All relevant materials were supplied to Mr. Swan along with Mr. Libby's opinion letter. On or about October 6, 2012 I received a letter from Mr. Swan. In his letter Mr. Swan identifies the materials he reviewed and the basis for his opinion. Mr. Swan states in his letter "**Based on my review of the documents outlined above it is my professional opinion the survey plan dated November, 2011 titled "Standard Boundary Survey Plan" by BH2M listed above correctly depicts the property conveyed to the Town of York by the Horns by deed dated 5/28/10 and recorded in the York County Registry of Deeds in book 15871, page 326-328.**"

In early October a suggestion was made that it would be a good idea for representatives from the Town to meet with the Horns and their attorneys to discuss the real estate situation. A meeting was tentatively set up for October 9,

2012 at the Town Attorney's office Kennebunk. On October 4, 2012 one of the Horn attorneys indicated that if the Town did not have a specific proposal to resolve the situation it would not be productive to meet. The meeting was subsequently canceled.

On October 9, 2012 an executive session was held to discuss how best to proceed given the formal opinion of two professional surveyors that the Town owned the land that was previously believed to be owned by the Horns. It was determined that I would contact a real estate attorney for an opinion based the survey issues that had developed along with a recommendation that had been made suggesting that the Town take the property and layout a road pursuant to state statutes.

On October 10, 2012 I contacted Richard Shinay of the law firm of Drummond Woodsum in Portland. Mr. Shinay has practiced real estate law since 1981 and is the former chair of both the South Portland and Scarborough Planning Boards. Mr. Shinay agreed to assist the Town and on October 10, 2012 I sent him all documents relevant to the real estate issue. On October 16, 2012 I traveled to Portland and met with Mr. Shinay in his office. We reviewed all of the documents related to the Horn land issue including, purchase and sale, quit claim deed, boundary survey, letter from Bob Libby, letter from John Swan and the "**Proposed Master Plan**" from SMRT date 3.03.10. At the end of our discussion Mr. Shinay advised that based on his review of the documents, and our discussion, it was his opinion that the Town did, in fact, own the property in question.

Discussions continued with Mr. Shinay and on November 5, 2012 he sent an email to the attorneys representing the Horn brothers concerning the provisions of the purchase and sale agreement. Paragraph 3 of the purchase and sale agreement, as referenced earlier, states that "**the seller shall obtain a survey to establish a legally sufficient description of the southwesterly sideline of the proposed road as it crosses the land of the seller. Upon receipt and approval of the survey, the parties will enter into a boundary line agreement containing a survey description of said boundary, to be recorded in the York County Registry of Deeds. The agreement in this paragraph will survive the closing.**" As also referenced earlier, the Horns did not obtain the survey but rather the Town conducted an entire boundary survey, including the Horn portion, and the survey was transmitted to the Horn attorneys. The email sent to the Horn attorneys by

Mr. Shinay on November 5, 2012 also contained all of the legal documents along with a proposed legal description of the southwesterly boundary line.

Nothing was heard from the Horn attorneys so Mr. Shinay sent a follow up email on November 8, 2012. Later that day one of the Horn attorneys emailed back that he was coordinating a response with his client and others. On November 15, 2012 a response was received from one of the Horn attorneys that did not address the boundary line description but rather a resolution that would leave the Horns with approximately 7.29 acres north of the proposed road. On November 16, 2012 Mr. Shinay spoke with the Horn attorney to clarify the response that had been received.

On November 26, 2012 I asked Mr. Shinay if he had received any additional response from the Horn attorneys. Mr. Shinay advised that he had not heard anything in return. Mr. Shinay left a voicemail for the Horn attorney he had previously spoken with stating that the Town was going to proceed with the boundary line agreement.

On December 4, 2012 I asked Mr. Shinay again if he had received any additional response from the Horn attorneys. Mr. Shinay indicated that he had not heard anything but that he was working on the boundary line agreement.

On December 6, 2012 Mr. Shinay submitted a draft Boundary Line Agreement to the Horn attorneys for their review with a request that a response be sent back to him by Wednesday, December 12, 2012.

On Monday, December 10, 2012 one of the Horn attorneys requested a more legible copy of the **“Proposed Master Plan” (Exhibit A)** which was originally attached to the purchase and sale agreement and quit claim deed. Mr. Shinay electronically provided a color copy of the plan.

On December 12, 2012 Mr. Shinay met with one of the Horn attorneys. During that meeting, and a subsequent conversation, the Horn attorney advised Mr. Shinay that he didn't feel a boundary line agreement should be contemplated until the road had actually been built and a determination could be made as to whether any land not needed for the road should be conveyed back to the Horns. The Purchase and Sale agreement actually states, as mentioned earlier, **“As soon**

as possible after the closing, the Seller shall obtain a survey to establish a legally sufficient description of the southwesterly sideline of the proposed road as it crosses the land of the seller. Upon receipt and approval of the survey, the parties will enter into a boundary line agreement containing a survey description of said boundary, to be recorded in the York County Registry of Deeds. The agreement contained in this paragraph shall survive the closing.”

On December 26, 2012 Mr. Shinay provided a draft written agreement to Patrick Cragin’s attorney to confirm the details of a potential land swap relating to the parking lot owned by Mr. Cragin, which had previously been approved by the planning board. This agreement was proposed by Mr. Shinay as a follow up to the deed that Mr. Cragin had previously signed and sent to the Town concerning the land swap.

On January 7, 2013 I spoke with Mr. Shinay and he informed me that he was going to send a revised and final boundary line agreement to the Horn attorneys for their approval in order to get all parties to sign the agreement so we can formally move forward. That revised and final boundary agreement was sent on January 10, 2013. On January 11, 2013 a response was received from the Horn attorney advising that the agreement was being forwarded to their respective clients and that he would be back in touch with Mr. Shinay sometime early in the week of January 14th.

The Town has been working to comply with the provisions of the purchase and Sale Agreement, particularly paragraph three (dividing line) and paragraph four (establishment of the road). We are hopeful that the Horns will agree to the boundary line agreement in the very near future so that the police station and connector road projects can move forward in the spring.

