



## Settling a Title Dispute at the Ballot Box

By Lance R. Pomerantz

This Election Day voters will have a rare opportunity to weight in on the terms of a settlement in a long-running land ownership dispute. Proposition 4 is a legislatively-referred constitutional amendment that would allow the legislature to authorize a sweeping settlement of disputes with numerous private landowners over property within the boundary of the Adirondack Park Forest Preserve.

Dubbed “the queen of all property title disputes” in an editorial in the *Adirondack Daily Enterprise* (June 22, 2013), all of the land involved in the proposed settlement is located within “Township 40,” surrounding Raquette Lake in the Town of Long Lake, Hamilton County. The disputes involve more than 200 different parcels encompassing more than 1000 acres.

### What’s the fight about?

In 1772, with the approval of the Royal Governor, Joseph Totten, Stephen Crossfield and their associates purchased a vast amount of land<sup>1</sup> in central New York from the indigenous tribes. This area became known as Totten & Crossfield’s Purchase. Soon thereafter, Totten & Crossfield’s Purchase was divided into numbered “townships” and allotted to various “proprietors.”

By 1848, all of Township 40 was owned by one man, Farand Benedict. After that, things get crazy.

Benedict and his successors subsequently sold much of Township 40. Many of the deeds contained erroneous, incomplete, overlapping or vague descriptions. Larger parcels (some comprised of a thousand or more acres) were commonly sold in fractionalized shares. Many deeds went unrecorded for decades and some were not recorded at all.

As a result, local real estate tax rolls were incomplete or inconsistent. Frequently, taxes were paid by someone other than the “record” owner; sometimes payments were credited against a different parcel than the payor believed they would be; or descriptions on the tax roll were dramatically larger or smaller than the local populace believed them to be “on the ground.”

At the same time, there was plenty of “off record” ownership activity in the township. Many individuals and families had braved the

rugged terrain between the Colonial and Civil War eras and “homesteaded” in the area. Precisely because of the remote location and difficult access, investors who held record title often did not visit or protect their holdings. This confluence of events often gave rise to viable claims of adverse possession.

In 1883, the state legislature enacted a law forbidding any further sale of state owned lands in the Adirondacks. In 1885, the legislature created the Forest Preserve, which placed all state owned land in the region under the control of the simultaneously created Forest Commission.<sup>2</sup> The Adirondack Park, comprised of almost three million acres of state and privately owned land, was created in 1892. Township 40 lies entirely within the Adirondack Park. Most significantly, the State Constitution was amended in 1894 to add Article VII, Section 7, declaring that the “lands of the state ... constituting the forest preserve ... shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged...”<sup>3</sup>

### The tax sales and state acquisitions

Many of the modern-day disputes have their origin in several tax sales of Township 40 parcels that were conducted in the mid-1800’s. Local tax enforcement at that time was provided by the state. Due to the uncertainties surrounding many of the Township 40 land titles, jurisdictional defects arose from failures to comply with statutory tax collection mandates.

There was a spate of litigation in the early twentieth century wherein tax titles were struck down by the courts.<sup>4</sup> In addition, several thousand acres were deeded directly to the State using vague descriptions. There are numerous titles that remain in limbo to this day, due either to the parties’ lack of resources to quiet them through litigation, or to the political climate.<sup>5</sup>

### The hard part

For decades, the affected owners, their elected representatives, local and state officials tried to reach a negotiated settlement, but were unsuccessful. A large obstacle is Article XIV of the state constitution.



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Because the state claims title to the contested parcels and all state land within Township 40 is deemed to be “forest preserve,” the state cannot reach any settlement that involves relinquishing an interest in the disputed lands without a constitutional amendment. Such an amendment requires the resolution pass both houses of the legislature in two successive sessions and then be approved by the electorate at the next

succeeding general election.<sup>6</sup>

In the early 2000’s the Town of Long Lake offered to cede to the state lands “at least equal in value” to the disputed Township 40 lands, in exchange for the private landowners’ receiving the state’s claimed interests. The constitutional amendment authorizing the swap was passed in 2008, but failed to get enough support in 2009.<sup>7</sup>

### It ain’t over ‘til it’s over

The current proposal includes provisions that seek to accommodate the competing interests of many different interest groups. In addition to the constitutional amendment resolution, the legislature also passed a concurrent statute setting out the details of implementing the settlement. The “Township Forty Settlement Act” (“TFSA”) would become Title 19 of the Environmental Conservation Law.

The essence of the process is the payment by the private owner of each parcel of “an amount that approximates the state’s administrative costs in resolving the disputed parcels situated within township forty.” The payment will be made to the Town of Long Lake and will be the sum of (A) a flat fee of \$2000 per parcel plus (B) a local tax assessment factor multiplied by \$200,000.<sup>8</sup> The private owners will have the ability to reduce the assessment factor by 1) making a “gift” to the state of a portion of the disputed parcel for inclusion in the Forest Preserve, or 2) granting a conservation easement to the town restricting development on all or part of the disputed parcel. Private owners will also be able to opt out of the process altogether.

Should they choose the latter (or fail to perform after opting in), the TFSA

requires the New York State Attorney General to “commence an action in a court of competent jurisdiction pursuant to the real property actions and proceedings law to determine title to such parcel” within 24 months. Moreover, “[f]ailure by the attorney general to commence such action within such time frame shall not subsequently prevent the attorney general from commencing such an action or create a presumption against the state’s claim of title.”<sup>9</sup>

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1. Originally thought to contain 800,000 acres, more advanced surveying techniques eventually demonstrated that the area was in excess of 1.1 million acres.
2. The functions of the Forest Commission (and much more) are now administered by the Department of Environmental Conservation and the Adirondack Park Agency.
3. This provision was renumbered by the Constitutional Convention of 1938 as Article XIV, Section 1, its present-day designation.
4. See, e.g., *People v. Ladew*, 189 N. Y. 355 (1907), *reh’g. denied with opn.* 190 N. Y. 543 (1907); *People v. Inman*, 197 N. Y. 200 (1910); *People v. Ladew*, 237 N. Y. 413 (1924); *People v. Golding*, 55 Misc. 425 (Sup. Ct., Hamilton Cty., 1907).

5. One noteworthy exception is *State of New York v. Moore*, 298 A. D. 2d 814 (3rd Dept. 2002).

6. New York State Constitution Article XIX, §1.

7. Consensus could not be reached amongst environmentalists, the governor’s office, the DEC and local representatives. The political dynamics caused by the resignation of former Governor Spitzer also affected the process. “RL land bill could be voted on soon,” [*sic*] by Cristine Meixner, Hamilton County Express, April 11, 2012, <[http://www.hamiltoncountyexpress.com/News/04112012\\_land.>](http://www.hamiltoncountyexpress.com/News/04112012_land.>).

8. This factor will be determined by dividing the total assessed value of each disputed parcel by the total assessed value of all disputed parcels.

9. The full text of the Township Forty Settlement Act can be found in 2013 bill numbers A07869/S04809.