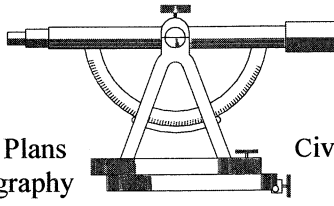


Steven J. Smith



& Associates, Inc.

Land Surveying \* Site Plans  
Subdivisions \* Topography

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Report on  
Land Surveying Services  
Related to the  
Steinman Family 2006 Real Estate Trust property  
Brown Road & Lower Beech Pond  
Tuftonboro, New Hampshire  
September 7, 2017

## Scope of Work

In April of 2017 Steven J Smith & Associates, Inc was retained by attorney Jeremy D. Eggleton of Orr & Reno on behalf of the Steinman Family 2006 Real Estate Trust (Steinman Trust) to provide surveying services related to property on Brown Road in Tuftonboro, New Hampshire. The purpose of the surveying work was to determine the geographic relationship between Brown Road and Lower Beech Pond. The work was to include research, field mapping, interviews with professionals, and drafting a working drawing to graphically show the results of this work.

## Work Performed

I reviewed research on Brown Road that was provided by attorney Eggleton, researched the Steinman Family Trust chain of title, reviewed surveys recorded at the Carroll Registry of Deeds of properties near the Steinman Trust property and reviewed NH Department of Environmental Services, Dam Bureau files on the Lower Beech Pond dam. I also had discussions with Dam Bureau staff member, Mark Stevens and land surveyors, Rick Chellman, Randolph Tetreault and the office of White Mountain Survey, Co.

Field work was preformed at the dam at the north end of the Pond and near the Steinman Family Trust property which included mapping Brown Road, stone walls, boundary monuments and specific elevation contours. A working drawing was then drafted of the mapped features.

## Brown Road

Brown Road is also known as Beech Pond Road, and was formerly known as Center Tuftonboro Road. The original layout for Brown Road according to Town of Tuftonboro records was in 1842. The layout begins at the Wolfeboro-Tuftonboro town line, is described with bearings to the nearest degree and the distances are in rods and the width that is called for is three rods. The description calls for the road to run "westerly to Beach River to the old bridge". I reviewed four plans of record that show Brown Road in the area of interest. The Hidden Valley Shores Development plan, CCRD Plan Book 9/60, is dated 1966 and shows the Steinman Trust property, Lots 1, 2 & 3, and Center Tuftonboro Road, now Brown Road, from the Wolfeboro-Tuftonboro town line to the culvert northwest of the Steinman Trust property. There

are three plans of record of properties on the north side of Brown Road immediately to the west of the culvert. These surveys use the stone walls, or iron pipes near the stone walls, as the northerly sideline of Brown Road.

### **Lower Beech Pond**

Lower Beech Pond is considered a natural pond that has been raised by a dam that is located at the northerly end of the pond. This pond, like all natural ponds in New Hampshire that are greater than 10 acres, is a public water body held in trust by the State of New Hampshire to the Natural Mean High Water Mark (NMHWM). Based on my research the NMHWM for Lower Beech Pond appears to be elevation 968. The NH DES Consolidated List of Water Bodies, United States Geological Survey maps of 1928 and 1958 all identify Lower Beech Pond elevation as 968. This elevation is the line between the public water body and privately-owned land. Since Lower Beech Pond has been raised by a dam, the flowage caused by the dam covers some of the privately held land around the pond. According to NH DES Dam Bureau files the original dam was constructed in 1860. The dam has been reconstructed over the years with the most recent design and reconstruction being done in 2016. Based on the Affidavit of Compliance stamped and signed by the designer Charles Teale of HTE Northeast, Inc. the present dam has a crest elevation of 975.6, this is the maximum elevation that the pond could be raise by the dam. Design plans show that the approximate historical pond operating level is 972.0. Our fieldwork determined that the elevation of Lower Beech Pond on May 18, 2017 was 971.4 and confirmed the apparent operating level elevation of 972.

### **Layout of Road Right of Way, limits of Pond and Conclusions**

After drafting our field mapping of the paved road, existing old stone walls and apparent boundary monuments I attempted to fit the 1842 Road Layout to our field mapping. The result was that the written description and the existing road do not match. I had the same results when trying to fit the road right of way alignment from the Hidden Valley Shores Development plan to the existing road. Since the record documents don't fit the actual road location I used the existing old stone walls, actual physical road location from the town line to the culvert west of the Steinman property and a right of way width of 3 rods to establish the right of way for Brown Road on our working drawing.

We field mapped the edge of the water of the pond, elevation 971.4, the apparent operating level of the pond, elevation 972 and contours north of the culvert for 190'.

As I mentioned before the line between private shore front land owners and the public body of water is elevation 968. Except for a small pocket at the end of the culvert the northerly sideline of Brown Road right of way does not intersect the 968 contour. Therefore, the Brown Road right of way never intersects the NMHWM of Lower Beech Pond. The Brown Road right of way does intersect the flowed water that has been raised by the dam, but that flowed water is over privately-owned land that is subject to flowage rights. Another way to visualize this circumstance is to consider, if the dam was opened to allow the pond level to be lowered to elevation 968, the limit of the public/private interests; the edge of the water of the pond would be over 200' north of the culvert and road right of way. The exposed land between the road and the water at elevation 968 is private land.

## Subsequent visit to the site

On August 16, 2017, I met attorney Eggleton at the Steinman Trust property to review the working drawing and view the site. The line of large stones on the north side of Brown Road that we had mapped in May, 2017 had been moved northward to a location about 25' north of the centerline of the paved Brown Road. The location of the moved stones appears to line up with the right of way line on our working drawing. The level of the pond and all the other items mapped in May, 2017 appear to be the same as they were in May. There is land between the northerly edge of the Brown Road right of way, as shown on my working drawing, and the height of the water, that is dry land. This land is unencumbered by the road easement, assuming the road easement is three rods wide at that location. The Steinmans could extend the line of stones in question in a westerly direction to the water, across this portion of their land without encroaching on the road easement.

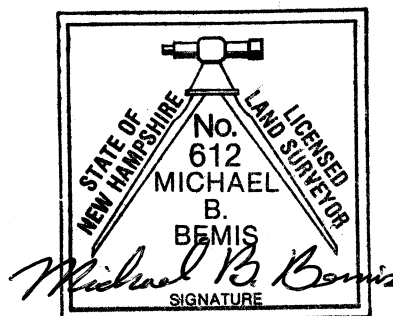
## Additional Notes/Observations

It is not unusual for old road layouts that have bearing and distance descriptions to vary from the actual physical road locations. Stone walls are commonly held as evidence of the sideline of a road right of way.

Where there are stone walls on both sides of the road east of the Steinman Trust property, the distance between them is 3 rods. The stone walls on Brown Road west of the culvert near the Steinman Trust property are about 2-1/2 rods apart. These stone walls appear to be longstanding and are the closest stone walls to the location at issue.

In my research I found a recorded sketch, CCRD 489/136, plans and a reference in the 1842 Road Layout that indicate the water west of the Steinman Trust property is a river, distinguishing it from the pond. This is consistent with my conclusions about the NMHWM and the private nature of the property above that mark.

Respectfully,



Michael B. Bemis, NHLLS 612

**List of Attachments:**

1. Hidden Valley Shores Development – A.E. Maynard, CCRD Plan 9/60
2. Plan of Land Ringer & Ringer – Norway Plain Survey Associates, Inc., CCRD Plan 116/2
3. Plan of Land Ringer & Ringer – Norway Plain Survey Associates, Inc., CCRD Plan 169/46
4. Boundary Line Adjustment Bear & Brown – McLean Associates,
5. DES Consolidated List of Waterbodies – NH DES web site
6. United States Geological Survey - Wolfeboro Quadrangle, 1928
7. United States Geological Survey - Wolfeboro Quadrangle, 1958
8. Affidavit of Compliance, by Charles E. Teale, PE
9. Sketch, approved by Tuftonboro Planning Board, CCRD Deed 489/136
10. N. H. Water Control Commission, Lower Beech Pond map, Dam Bureau
11. Town of Tuftonboro, Petition, March 19, 1842, Road Layout (Brown Road)