

**THE STATE OF NEW HAMPSHIRE**

**GRAFTON COUNTY; S.S.**

**GRAFTON SUPERIOR COURT**

Case No.

Thomas N. T. Mullen, 9 Deacon Willey Road, Campton, NH 03223, plaintiff;

and,

Walter E. Lankau, Jr., 159 Belcher Drive, Sudbury, MA 01776, plaintiff;

and

Owl Street Associates, L.L.C., dba Owl's Nest Resort & Golf Club,

74 Pemi River Road, Campton, NH 03223, plaintiff.

vs.

and,

Public Service Company of New Hampshire, 780 North Commercial Street,  
Manchester, NH 03101, defendant,

and

Northern Pass Transmission, LLC, 780 North Commercial Street, Manchester, NH  
03101, defendant,

and

Northeast Utilities, 56 Prospect Street, Hartford, Connecticut 06103, defendant.

**COMPLAINT FOR INJUNCTION, QUIET TITLE AND DECLARATORY  
JUDGMENT AND DAMAGES FOR SLANDER OF TITLE, TRESPASS,  
AND BREACH OF AGREEMENT**

**PLAINTIFFS DEMAND A JURY**

Plaintiffs, for their Complaint, state that:

**PARTIES**

1. Thomas N. T. Mullen, an individual, is an owner of plaintiff Owl Street Associates, L.L.C. (“OSA”) owner and operator of Owl’s Nest Resort & Golf Club (“Owl’s Nest”). Mr. Mullen has personally invested substantial equity and debt capital in plaintiff OSA and is a personal guarantor of the primary Owl’s Nest mortgage financing.
2. Walter E. Lankau, Jr. an individual, is an owner of plaintiff OSA. Mr. Lankau has personally invested substantial equity and debt capital in plaintiff Owl’s Nest and is a personal guarantor of the primary Owl’s Nest mortgage financing.
3. Plaintiff, Owl Street Associates, L.L.C. (“OSA”), is a New Hampshire limited liability company doing business as Owl’s Nest Resort & Golf Club (“Owl’s Nest”). Owl’s Nest is a golf resort surrounded by four season recreation with mountain views, a place for year round or vacation homes. Owl’s Nest offers a diverse array of real estate purchase opportunities of land, single family homes, townhomes and condominiums.
4. Defendant Public Service Company of New Hampshire, (“PSNH”) is a New Hampshire corporation and the owner of power line easements that burden plaintiffs’ property, including the Easement Agreement described in paragraph 11 of this Complaint.
5. Defendant Northern Pass Transmission, LLC, (“Northern Pass”) is a New Hampshire limited liability company and is the proponent of the Northern Pass more fully described in paragraph 15 of this Complaint.
6. Defendant Northeast Utilities (Northeast), a Connecticut corporation, owns PSNH and Northern Pass.

## **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction of this Petition. The defendants exist and the acts complained of have occurred within Grafton County, New Hampshire.

## **FACTUAL BACKGROUND**

8. OSA is a multi-faceted golf course real estate developer. Since 1997, OSA has developed an 18-hole championship golf course surrounded by residential units (many fully developed) comprised of a mix of single-family home sites, townhomes and

condominiums in Campton and Thornton, New Hampshire. Amenities include: the Clubhouse with fully stocked golf shop, restaurant, bar and office space; an Activities Center with outdoor pool, gym, function space and locker rooms; and beach areas along the Pemigewasset River; all of which are fully developed. Another nine golf holes are planned, with two of these holes already completed and in use for golf lessons. Residents and guests enjoy a year round array of recreational activities both on and off the property. Owl's Nest is located in the Pemigewasset River Valley at the gateway to the White Mountain National Forest, and close to the Lakes Region, Franconia Notch and the Mount Washington River Valley. Owl's Nest is a quick drive from winter activities such as skiing and snowboarding at Loon Mountain, Waterville Valley and Cannon Mountain. Cultural activities are minutes away at Plymouth State University, Silver Cultural Arts Center, and the Papermill Theater.

9. The Owl's Nest golf course residential community includes year round residents, part-year residents and vacation/weekend property owners. The sale of property and the resale of existing homes, townhomes, condominiums and lots is the lifeblood of plaintiffs' business. The Interstate 93 exit for Owl's Nest is within a one-and-one-half-hour to three-hour drive from the entire Boston Metropolitan Statistical Area; a one to two-hour drive from the entire Manchester-Nashua Metropolitan Statistical Area; and less than three hours from the Canadian border. During the winter months, the resort draws heavily from these areas as well as from the remainder of Massachusetts and Rhode Island. During the remainder of the year, travelers from these areas are joined by those from New York, New Jersey and other locations along the eastern seaboard. Thus, Owl's Nest is easily accessible from its primary markets – retirement/seasonal/vacation property owners and golfers or skiers looking to either stay overnight or make a day trip.

10. OSA's business model depends on land sale income and the resulting streams of revenue from golf membership fees, green fees and golf cart rentals; food & beverage revenue; construction management fees from building single family homes and condominiums; rental (short and long-term) management operations; property management operations for individual residents and their owner associations; and Activities Center membership fees. OSA has sold millions of dollars of property since the development began and has derived significant revenue from construction and landscape services related to these sales. Competing with the beauty of the location and the quality of the golf course for standing as OSA's most valuable asset is the

status of the zoning and permitting required for various development scenarios. All preliminary work in this regard has been completed, with final unit permitting at both the town and state levels easily obtained. At the outset of the project, the towns of both Thornton and Campton amended their ordinances to specifically accommodate OSA's complete Master Plan with various commercial, recreational and residential development options. Special "Land Dedication Agreement[s]" with the towns to permanently allow OSA to develop one dwelling unit per acre have been executed and recorded, permanently protecting the project from zoning or density changes as these agreements have "grandfathered" OSA's ability to develop additional dwelling units as the project moves forward, which has allowed OSA to create a Master Plan that can flex and change with market demands and fluctuations.

11. On January 24, 2007, Owl's Nest and PSNH entered an agreement entitled "Easement Deed, Release of Easements and Joint Use Agreement". ("Easement Deed"). This instrument provided a new description of a 225 foot wide easement and described the easement usage as the "Beebe River-Whitefield 115kV Transmission Line, Line X-178, Mile 4 PSNH Plan #6750-4, dated May 1985, and last revised July 19, 2004." The PSNH lines across Owl's Nest occupy the easement created by the Easement Deed, and other easements, a distance of approximately 14,000 linear feet. The existing lines are mounted on wooden poles approximately 43 feet in height.

12. On February 1, 2010, an independent, full MAI appraisal was done on the Owl's Nest for financing purposes. The appraised value of the Owl's Nest real estate and golf course was \$23,000,000.

13. In October, 2010, Northern Pass announced a billion dollar plus project to build a high voltage transmission line from Canada through New Hampshire. On October 14, 2010, defendant Northern Pass filed an application with the United States Department of Energy for a Presidential permit to construct, operate, maintain and connect an electrical transmission line across the United States border with Canada. The line would be capable of transmitting up to 1200 megawatts of power (MW) in either direction. The line would extend south from the international border 140 miles to an HVDC converter terminal in Franklin, New Hampshire. The converter would convert the direct current to alternating current which would be transmitted to an existing Deerfield Substation in Deerfield, New Hampshire, from where it would be connected to the New England electrical grid. The project from the international border to Franklin, New Hampshire would include 140 miles of new construction of a

single circuit +/- 300 kV HVDC above ground transmission line mounted on new structures ranging from 90 to 135 feet tall, spaced approximately 800 to 1000 feet apart on concrete foundations seven to twelve feet in diameter.

14. Defendants PSNH and Northern Pass claim the right to use the existing easements referred to in paragraph 11 for the construction of the new 300 +/- kV HVDC transmission lines on the Owl's Nest property, and have, on multiple occasions entered the Owl's Nest property, asserting property rights "protected by law".

15. Since the public announcement of the Northern Pass, defendants and their claim of the right to use the easements burdening plaintiffs' property for the construction of the towers and high voltage lines, as shown on multiple plans made widely available to the general public via the Internet and other various media, Owl's Nest real estate sales have collapsed, excepting a few land sales at sacrifice prices, transfers made to settle debt owed to a third party, trades between existing property owners, and foreclosures.

16. Since the public announcement of the Northern Pass project, because of the lack of sales, OSA has become delinquent on its mortgage obligations to Meredith Village Savings Bank ("Meredith Village"), the primary mortgage lender for Owl's Nest. Recently, in early 2013, Meredith Village undertook to obtain an appraisal of Owl's Nest. The appraisal value has not been disclosed to plaintiffs. OSA has been notified by Meredith Village that it has until the end of the 2013 golf season to negotiate an arrangement that would take Meredith Village out of its mortgage by December 31, 2013 or a foreclosure proceeding would be initiated without delay.

17. Because of the lack of property sales, OSA has become delinquent on other obligations, including but not limited to: default of a mortgage obligation to a local family on land that was acquired in 2005; substantial accounts payable; and overdue taxes to the towns of Campton and Thornton.

18. If the Owl's Nest mortgage is foreclosed and the property sold at auction, or if OSA is forced into bankruptcy, plaintiffs Mullen and Lankau will lose their personal investment in OSA, will lose the value of Owl's Nest as a going concern, will lose the value of the real estate and golf course and will face deficiency judgments on their personal guaranty on the Owl's Nest mortgage balance.

## **DEFENDANTS' CONDUCT HAS BEEN WRONGFUL**

19. Defendant PSNH wrongfully and fraudulently induced plaintiffs to enter the Easement Deed by misrepresentation of its intended use, entitling plaintiff OSA to an order enjoining the defendants from claiming the right to expand the use under the Easement Deed.

20. Defendant PSNH wrongfully and fraudulently induced plaintiffs to enter the Easement Deed by misrepresentation of its intended use, entitling plaintiff OSA to have its title quieted against the expanded use by the defendants.

21. The defendants' claim of the right to the expanded use of the Easement Deed and other easements across OSA property is unreasonable, will, if constructed, wrongfully encroach on OSA property and wrongfully exceeds any claim of right under the Easement Deed and other easements, causing plaintiffs damage and entitling plaintiff OSA to an order enjoining the expanded use of the Easement Deed and other easements.

22. The defendants' claim of the right to the expanded use of the existing easements across OSA property is unreasonable, will, if constructed, wrongfully encroach on OSA property and wrongfully exceeds any claim of right under the Easement Deed and other easements, causing plaintiffs damage and entitling plaintiff OSA to have its title quieted against expanded use of the Easement Deed and other easements.

23. The defendants' claim of right to expand the use the Easement Deed and other easements across OSA property is a slander of the OSA title to its property, causing plaintiffs damage.

24. Defendants have trespassed on OSA property, causing plaintiffs damage.

25. Defendants have breached the Easement Deed by claiming rights beyond the terms of the Easement Deed, including, but not limited to, the provisions of paragraph 18 of the Easement Deed wherein defendant PSNH acknowledged that that the aesthetic quality of the OSA property is vital to the golf course operation and residential development, causing plaintiffs damage.

26. Defendant PSNH has committed anticipatory breach of the Easement Deed by announcing it will assign or permit third party use of the Easement Deed.

## **CLAIMS FOR RELIEF**

27. Plaintiffs restate the allegations of paragraphs 1-26 above.

28. Plaintiffs do not have an adequate remedy at law entitling them to an order enjoining defendants from claiming that they have the right to expand the use of the Easement Deed based on the wrongful acts described at paragraph 19 of this Complaint.

29. Plaintiffs do not have an adequate remedy at law entitling them to an order enjoining defendants from the expanded use of the Easement Deed and other easements based on the wrongful acts as described at paragraphs 21 of this Complaint.

30. Plaintiffs demand an order quieting title to their property against the right of way claims and expanded use of the Easement Deed and other easements based on the wrongful acts as described at paragraphs 20 and 22 of this Complaint.

31. Plaintiffs demand declaratory judgment determining that PSNH may not permit third party use of or assign the Easement Deed.

32. Plaintiff OSA demands damages for injury to the going concern value of Owl's Nest together with the reduction in market value of the Owl's Nest property caused by the defendants' wrongful conduct as described at paragraphs 19-26 of this Complaint, all within the jurisdiction of this Court

33. Plaintiffs Mullen and Lankau demand damages for their personal investment in Owl's Nest, the loss of the value of Owl's Nest as a going concern together with the loss of the real estate and golf course, and such personal deficiency judgments they will suffer in the event of mortgage foreclosure and/or bankruptcy caused by defendants' wrongful conduct as described at paragraphs 19-26 of this Complaint, all within the jurisdiction of this Court.

## **WHEREFORE**

Plaintiffs demand judgment granting the relief claimed at paragraphs 28-33 above, together with such other relief as may be proper, including attorney fees, expert fees and the expenses of litigation.

Date:

Arthur B. Cunningham

Attorney for plaintiffs

PO Box 511, Hopkinton, NH 03229

603-746-2196 (O); 603-219-6991(C)

giffavor @comcast.net

Reg. No. 18301

### **JURY DEMAND**

Plaintiffs demand that a jury hear and determine the matters set forth in this  
Complaint.

Arthur B. Cunningham