

*Orange Planning Board  
Orange, New Hampshire  
Public Hearing Minutes of May 1, 2018*

1. Meeting called to order by Vice Chair Judith Lindahl at 7:00 p.m.

2. *Attendance:*

*Members present:* Judith Lindahl, Bob Ells Albert Emerson, Sal Guadagnino, Karen McFarlane, and Bob Proulx. Scott Sanborn recused himself as a Planning Board member to act as Road Agent.

*Public present:* Terrance McQueeney, Billie Brockhum, Cale Perry, Sharon Proulx, Beverly Ells, Donald Pfaefflin, Rosemary Haness, Tamara Fairbank, Douglas Weekes, Trish Weekes, Alexander Smith, Gully Dunlap, and Donald McFarlane.

3. The Chair announced that the meeting was being electronically recorded. She requested that those wishing to speak to await recognition, avoid speaking over one another, and to eschew ad hominem remarks. She noted that at the last meeting the board had voted, with the objection of one member, to proceed to a public hearing on the issue of a driveway permit for the property of Terry Brockhum and Mr. McQueeney. She distributed three maps created by the Upper Valley Lake Sunapee Regional Planning Commission showing the property and environs on Tug Mountain Road [marked as PB#1, steep slopes in degrees; PB, #2 topographic; PB#3, LIDAR]. Ms. Brockhum interjected that we are only considering a driveway, not the roadway leading from it, so there was no reason to go upon the land.

4. The chair suggested that the board hear from the applicants, the road agent, and the public. Mr. Proulx stated that he would like to hear briefly from the road agent in order to have a perspective on the applicants' presentation, noting that we have heard from the applicants on several occasions. The board voted to request an overview from Scott Sanborn.

5. Mr. McQueeney asked that the road agent recuse himself from the hearing on two counts: 1) he was previously chair of the Planning Board and 2) there are other "pressing matters which the board hasn't figured out yet, for which he was the surveyor, and there might be retaliation from the board" (apparently in reference to the Goodearl rehearing scheduled for May 15<sup>th</sup>, after abutter notices were inadvertently sent to the previous land owners of two of the abutting properties. The Board unanimously voted to deny the motion to bar the road agent from the hearing.

7. The chair inquired whether it was the position of the applicants that not only did the town have no right to require them to apply for a permit, but that - even if they were so

obligated – they are not required to do anything because of the lay of the land, the safety of their access, or whatever it may be. Terry replied that the wording was not correct, that our driveways are grandfathered – they are existing driveways. The chair noted that the Select Board understood the contention, but she was asking whether, even if they were not grandfathered, the town has no right to impose any requirements. Terry stated that if they are not grandfathered-in driveways, and they are not driveways, then we'd have to follow. Billie stated that they were here to talk about a waiver. She stated that she understands that there is a driveway permit [process] and existing regulations, but as a landowner that has an existing driveway, she and Terry were here for a waiver.

Judith stated that the Board is aware that they submitted a waiver form last week. The Board declined to act on it and suggested that they would hear from all parties, including the road agent. We define the hearing, and our authority as defined by the State of New Hampshire per NH Revised Statutes Annotated 136 [sic] as well as the civic compact made by this community in its ordinances and regulations under the authority of the State. We have a responsibility that goes beyond merely acceding to the request of an individual.

9. Mr. Proulx again requested to hear from the road agent; the Board agreed to hear a brief overview. Mr. Sanborn then said that he did not believe that he had the jurisdiction or authority to waive the need for a driveway permit. He was not therefore approaching this as a question of whether it merits a waiver or not. To his understanding, the access in question was a logging road at the time of the enactment of the driveway regulations and that presently the applicants wished to construct a new residence on the property. It was his opinion that the change in land use constitutes an alteration of the driveway and that a driveway permit needs to be submitted prior to receiving a building permit from the Select Board. He has yet to receive a driveway permit. In discussions, he basically expressed that he has one primary concern on the site: there is a small 12inch culvert very near the location of the driveway. When the grade is improved to be in compliance with the driveway regulations, there is a likelihood of water entering that culvert, and that that size culvert is too small to handle the additional runoff, particularly when the driveway is going uphill a third to a quarter to a half mile to the proposed site of the residence. Scott stated that has been his primary concern with the site from the start. His initial suggestion was a driveway culvert to shunt the water to the other side of the road, which has a larger ditch and which feeds into a culvert that can handle the additional water. Failing that, he also recently advised the applicants that he would consider approving a permit without a culvert if they can demonstrate upon completion that no additional storm water runoff is going to enter that culvert.

10. The applicants spoke, with a slide presentation projected at the back of a room. Billie thanked the board and the public for attending. She said that Scott is accurate in saying he cannot sign a waiver for them but that the Planning Board can. She said this concerns 123 Tug Mountain Road, Map 3, Lot 13. Ms. Brockhum then read, as slides were projected, applicant's exhibit #2. The applicants asserted a constitutionally protected non-conforming use of a driveway; citing NH Constitution parts 1, 2 and 12. They also cited Town of Hampton, NH v. Brust, 122 N.H. 463 (1982), NH RSA 674:19 (zoning



ordinance does not apply to existing structures or the existing use of any building), and Article 23 (prohibiting retrospective laws). Subsequent points included 1) they have a vested, non-conforming driveway that has existed for over 80 years; 2) dictionary definition of the term vested; 3) Article 6 of the zoning ordinance (nonconforming properties in active use when this ordinance is passed may continue in their present use) 4) citations to the driveway regulations and subdivision regulations. Terry stated that there was an old rock wall eight feet from the road. Billie stated that the culvert is 60 feet from the truck depicted in the driveway.

Asserting that the town has acknowledged the driveway, applicants presented the road agent's sketch and a July 27, 2005 driveway permit for Map 3, Lot 25 (appl. # 1, attachment not shown as slide) and presented three photographs, asserting, inter alia, that a rock wall is 12' from the road. Nine photos with an excerpt from the circa 1945 USGS publication Pegmatite Investigation, which refers to a road .4 miles from Cardigan Mountain Road, were offered to document the history of the driveways. Billie noted that the two driveways on the property make "a great loop".

The applicants stated that they drove around the town and counted 22 driveways with culverts, and 78 without. Thus, requiring them to comply with 2011 standards was a taking, and a selective enforcement of the law. Finally, the applicants stated twice that such a taking would require the town to compensate the property owner, citing RSA 647:19 which concluded the slide presentation. They argued that the appropriate "compromise" was that "the Board should sign a waiver for the driveway permit that (sic) acknowledging our vested rights" to allow them to become resident of the town.

11. Ms. Lindahl asked whether they were asserting that there were buildings on the lot (re: RSA 674:19). Billie asked that the answer be deferred. Voice: what is the big black blob on the USGS topo? Donald McFarlane: Do the two structures still exist? Billie replied, no, but that it is irrelevant. She asserted that back in 1800's there was a farm. Asked if she had evidence, Billie stated that it was irrelevant. Donald McFarlane asked the Board if they were talking about the southern or northern driveway. The chair replied that the Board was considering the southern driveway. Billie asserted that both driveways are in the same situation. There was discussion of the applicants' request at the end of the meeting of April 17, 2018 that both driveways be given a waiver. Judith said the Board did not vote to consider any access except for the driveway reviewed by the Road Agnet.

12. Billie reiterated that the applicants were asking for both driveways to be given a waiver based on their asserted of constitutional rights, vested driveways. Judith asked again whether the applicants, in comparing the asserted characteristics of their driveway to the existing driveway regulations, are saying that their driveway conforms to existing standards. Terry then said, no, we are only making the constitutional argument and that that is the sole argument. The comparison is just because someone might wonder are they going up a 20% grade or something else crazy. The only question is, is their driveway a vested driveway. Billie added, "because if not, we've been so politely informed – that someone could throw roadblocks at us and try to make things more difficult for us." Bob



Proulx asked Billie to repeat her charge. Billie said that they were merely trying to make everything crystal clear so that they could move forward. Karen asked whether they were concerned that someone was threatening them. Terri replied that she did not say that.

13. Terry reviewed each element of the driveway regulations, per the slide. Driveway surface is gravel, the same as the road. He said that they were told by contractors not to mess with that. When asked the name of the contractors, Terry replied that they are my contractors and that I can get their statements. Billie said that only a quarter of the town has culverts. Billie said the law says you can't retroactively tell them they have to have culverts. Donald Macfarlane asked if they were asserting that the law says you cannot require someone with an existing driveway to put in a culvert, and could they provide a citation for that. Judith asked if that include chapter 236, Section VI? Billie responded that it was the New Hampshire State Constitution, article 23 which reads: "retrospective laws are highly injurious, oppressive and unjust." She referred back to the culverts. The Planning Board cannot tell 75% of the town that they have to put culverts in, because it would be retroactively telling them to do something that is unjust and oppressive. Therefore, we're asking for a waiver – you wouldn't ask someone else to do it. We would like a waiver, because we would like to build a structure and we obviously have existing driveways.

14. Karen asked that wouldn't Billie's estimate make the assumption that the Town of Orange does not arbitrarily require culverts and that they demand them only when they are necessary. Terry: no. Billie: we shouldn't have to tear up our existing driveway. We have existing driveways. Karen said she was talking about the safety issue. Terry said that Scott and he had some emails back and forth, and he recommended a culvert, and he said he would look into it. I don't have the email with me at this time, and that is a separate issue. Terry stated that at this time they are only talking about whether we have a constitutionally protected grandfathered driveway. Everything else is irrelevant.

15. Doug Weekes asked the applicant what percentage of their property is in the current use taxation category. Terry replied that all of it was. Billie stated that the issue of current doesn't matter and that a driveway is a driveway. Billie continued with the slide presentation beginning "when the government does unreasonably deprive an owner of a vested right" a taking occurs and compensation is required; and noting zoning ordinances shall not apply to existing buildings or structures. Donald said that she was quoting RSA 674:19, and that doesn't the rest of 674:19 read, "it shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration." Terri stated that a driveway is a driveway and that there is no change of use. Judith asked if they had any authority for that that you would like the Board to consider, or are you just asserting that? Terry stated that it was New Hampshire law. Judith asked if they had counsel in this state. Terry said yes. Judith asked to supply the Board with the lawyer's name. Terry asked if the town is going to supply us with who you're working with. Judith answered that, absolutely, town council is a matter of public record. [There was no response.] Billie continued with the penultimate slide [Here's the Compromise]. Judith noted that the Board can be assumed to be familiar with its regulations, including the prior regulations which were tightened

up to preclude arbitrary application of the standards. She asked the applicants if they had anything to say which they have not said before.

16. After consultation, Terry read from what he said was RSA 236:13 (f): "Where entrances to state highway have been constructed after July 1<sup>st</sup>, 1971 without the benefit of a permit or not constructed according to the permit issued; the entrances shall be considered non-conforming. Upon notification by the district engineer, the owner shall apply for a permit to make necessary... Judith stated that if you want people to understand what you are saying, you'll have to slow down. Billie stated that it simply comes down to that RSA that says if a driveway was in existence prior to 1971, it shall stay in existence. We showed in imagery and books [that it was in existence in 1930 and following) and Terry has showed in tax cards and permits that the town has acknowledged our driveway. Judith again asked whether there was something new that they would like to add. Terry said he did request the width the road from the Road Agent. The chair allowed the Road Agent to respond. Scott said it was not that he could not provide the information but that it was that the road was laid out without a prescribed width, which is not uncommon. Judith again asked if there was something more that the applicants would like the Board to consider that they have not already told us. Billie said that she has a piece of paper that she would like to ask if the Board would sign it, or create a waiver that says we do not need a driveway permit because we have existing driveways, because it would cause an injustice to us, we ask that you waive it. We ask tonight will you waive the application for us.

17. Judith stated that the Board will continue with the public hearing, and hear from the road agent. Bob Proulx pointed out that Billie took it upon herself to design a waiver form (reading from it). Judith noted that the form was not signed by the applicants and that it was the same form attached to the minutes of the prior meeting. Judith marked it as an exhibit [appl # 5].

(The Planning Board took a short break at this time)

18. Hearing resumes.

Scott said, as brief background, that the applicants came to us in the fall and asked me to make a suggestion, which he did. They objected, and he told them that they were welcome to submit something else and he would give it due consideration. He said he did not receive anything else until two days ago by email. He gave it some consideration and replied to them to that effect. He said he would let what he said earlier stand as his position and would add a couple of things. He wanted clarification if there a residence or a structure of any sort on the property at the time the driveway regulations were enacted in 2011. Judith asked that a question from either party go through the Board. She asked the applicants if there was a residence. Terry said he could not answer that because they did not own the land at the time.

19. Judith asked whether the applicants were members of the Capital Mineral Club. Billie asked what the pertinence of the question was. Judith noted that the applicants have a predecessor in interest in that land for years, Gordon Jackson, and did they know him



personally. Billie asked if Judith could explain the relevance of the question. Judith said that because your predecessor in interest owned the land for years, he would have information that is uniquely within your ken. Are you not all members of the Capital Mineral Club, of which Gordon Jackson has been the past president? Terry asked again the relevance for the relevance of the question. Judith asked if they were declining to answer. Terry replied yes. Sharon Proulx stated that there was no residence in 2011.

20. Scott asked if the applicant's could be asked to read from the Driveway Regulations, Standard, #6 (driveway with a positive grade). The Chair read: "The driveway at a distance of six feet from the shoulder of the road will be a minimum of six inches lower than the shoulder grade. At a distance of 20 feet from the shoulder of the road, the driveway grade will be no more than 18 inches higher than the shoulder grade. Beyond that point, a reasonable vertical curve will be used to meet up to a recommended 15 % maximum positive grade." Scott noted that the applicants seemed to be contending that their driveway was very close to meeting all the regulations with respect to location and sight distance, thus this paragraph they seemed to gloss over a little bit, so he would like the Board to have the entire paragraph.

21. Judith asked Scott if sometime in September this matter first came to him as road agent. Scott answered it did. Judith asked if he had the sketch that he made for them. (Road Agent exhibit #1) Scott pointed out that this was simply a suggestion done at their request. Judith read from RSA 236:13 (vi): "The commissioner of transportation or the Planning Board shall retain continuing jurisdiction of the adequacy and safety of every existing driveway, entrance exit, and approach to a highway, whether or not such access was constructed or installed pursuant to a permit under this section, and, unless the access a public highway, the owners of property to which the access is appurtenant shall have continuing responsibility for the adequacy of the access and any grades, culverts, or other structures pertaining to such access, whether or not located within the public way." Judith asked Scott if the case that you, as road agent, to whom we delegate the safety of the public ways, can, if you deem it necessary, make orders with respect to driveways, even those constructed under a permit. Scott agreed. Judith asked Scott if he hear from Billie or Terry before March of 2018. Scott replied that he had a conversation with Miss. Brockhum who at that time advised me that they did not want to construct the driveway to the sketch. I advised her that they could submit their own. That was the end of contact until the spring.

22. Judith asked whether in the spring the Board of Selectmen asked the Road Agent to come up and have a conversation with them. Scott stated that prior to that he had sent an email to Terry and Billie on March 19<sup>th</sup> saying that in the event that the Board of Selectmen does not accept the access as being "grandfathered" for the proposed purpose, that Billie and Terri may want to consider sending him a sketch with an alternative to the suggestions he gave them last fall (at their request) which they were apparently unhappy with. He wrote that he would certainly consider other solutions as long as they can demonstrate that the existing culverts/road-side ditches will not become overloaded. If he has something in hand from them, he could approve it before the Selectmen's meeting that Tuesday and that it should streamline the process for them if the driveway permit is



not waived. Note that the grade of the entrance is prescribed by the driveway regulations; it is the drainage treatment is where the road agent has more discretion. By the grade, Scott said he was referring to paragraph 6. Judith stated that the email communication that Scott is referring to was cc'd to the Select Board office and is part of our public record. Terri stated she had not received Scott's email. She said that as soon as Sandi Pierson [Select Board secretary] gave her a printout of it, they tried to get in touch with Scott, but we thought he was on vacation. Judith noted that the Board was pleased that the parties were talking and hoped they would come to a resolution soon.

23. Judith asked Scott what are the recommendations to ensure the safety of the public on this road. Referring to the LIDAR exhibit, Judith noted that the watershed is northwest to southeast and asked if directly upstream of the "southern" driveway is a small concrete culvert. She asked about the overloading. Scott said that he guesses the concrete culvert was probably put in prior to the 1960's. As far as the driveway is concerned, the sight distance is fine, the driveway grade needs to comply with the standard, and the grading or the use of a drainage structure, such as a culvert, should be done so that no additional storm water will run off to fall into the 12" culvert which is a short distance north of proposed driveway. Scott stated that that was his sole concern. Judith: culvert and grade? Two concerns. Billie {inaudible}. Scott said that if the Board wants, he can give them a bit more of his communications with the applicants. Judith asked what should the Board be concerned with in terms of public safety, citing public travel, emergency vehicles accessing neighbors and the applicants, and guarding the public purse. She asked Scott what were his recommendations. Scott answered he would recommend a culvert across the driveway so that any water coming down and reaching the north side of the driveway will flow into the ditch on the far side (i.e., parallel to the road). He said he recently suggested to them that they could do it without a culvert, but that the finished grading would have to be done in such a way that no water flows in the direction of that culvert. He said he did suggest that if they did that, they might have water running over their driveway, but that is their business, not the town's.

21. Judith asked whether their driveway—whatever it is determined to be—stops the ditch on the side of the road. Scott answered that it did, and that is the purpose of the small culvert: to funnel the water across the road rather than across that driveway. Scott affirmed that on the south side of the driveway there is a ditch which runs down the slope to three newer culverts within sixty feet. He said it is a pretty significant watershed. Judith asked if it made sense to continue the ditch down the road. Scott replied that one would need to relieve a ditches periodically or they will overflow in a heavy rain.

22. Judith asked about forestry. Scott replied that we do not have jurisdiction over forestry, but many loggers will check with the Road Agent before beginning an operation. Judith said that if you pull up Google Earth in the early part of this century you can see the cut, so she pulled the intent to cut the Tom's Hahn's 2005-6 operation. Scott read from the timber tax assessment sheet the notation: "construct 1 new landing; reconstruct 1 old landing." (Road Agent exhibit #2-b)  
There was discussion of logging practices. Intent to cut, signed by Gordon Jackson was entered as (Road Agent exhibit #2-a).

23. Mr. Proulx, read an excerpt from New Hampshire town and city, 2008, (c. Christine Fillmore, Esq.) titled "*But it's grandfathered! Six common myths about non-conforming uses.*"

"...driveway regulations: not even a grandfathered property owner has the legal right to maintain a driveway access that constitutes a potential threat to the integrity of a public road or to the public safety. RSA 236:13-VI gives planning boards 'continuing jurisdiction over the adequacy and safety of every existing driveway, entrance, exit, and approach to a [municipal ] highway, whether or not the driveway ever received planning board approval. Property owner have continuing responsibility for driveway connections to municipal highways, including grades, culverts and any other related structures, whether or not they are located within the highway right of way.' It may come as a surprise to property owners that the planning board has the authority to order the owner to make any repairs or otherwise modify a driveway if it 'is or becomes a potential threat to the integrity of the highway or its surface, ditches, embankments, bridges or other structures, or a hazard to the safety of the traveling public.'"

24. Judith asked Scott if the Board required nothing, or if they waived all the regulations, would that be consistent with public safety. Scott replied that it would not. Scott said that what is being proposed qualifies as an alteration under our driveway regulations. Judith asked whether the driveway appeared to be merely dirt. Scott stated that he did not know thus he could not speak to the driveway's construction but that it appears like a typical logging road. He's driven by it over a number of years and it is simply a logging road. He said that it was his understanding is that it was a logging road in 2011 when the driveway regulations were enacted. Judith asked if there were driveway regulations prior to 2011. Scott said there were. Judith asked if they allowed the road agent a more discretion. Bob Proulx said those regulation were a single page. He said the previous road agent was a member of the Planning Board (not Scott) and that road agent advised the Board that they really need to take another look and come up with something much more comprehensive regulations that people can understand and that the road agent can understand. Bob Proulx said the Board worked a year and a half on the regulations including consultations with the Upper Valley Lake Sunapee Regional Planning Commission. At this time Terry was waving his hand which distracted Bob Proulx, who states his reaction to the presentation. Judith reminded the Board that, whatever its impact, the Board is there to listen.

25. Terry stated that his and Billie's concern is whether their driveway is constitutionally existing and protected. Terry said he has come before the Board to get a waiver; if the Board is unwilling, then say no. It has nothing to do with safety. A discussion ensued about procedure and responsibility. Judith asked if Board member had any questions. Notice of public hearing put in as exhibit PB #4. Judith polled the Board for questions. Judith invited the applicants to address their concerns.

26. Billie discussed standard 6, stating that she has done the measurements and it is in compliance. Terri stated that the Richard Remacle did work on their land, but not on the



driveway. Judith asked if the applicants had moved the rocks. Terry replied that the question was irrelevant, they were moved. Judith asked if they object to us issuing a permit which requires that you comply with that standard. Billie said that it comes down to the fact that we have an existing driveway. It has to date not had problems. She asserted that the October 19, 2017 storms were 150 year storms and their driveway did not wash out. Irene did not wash out those sections of the road; they were fine, according to Richard Remacle. Terri said that Scott said there was one phone call; there were multiple phone calls. Asked what was the relevance, Terry stated there was none; he was just straightening out a point. Billie said that several people contacted the road agent on our behalf.

27. Judith asked Scott if he said to them that they have existing roads and you don't need to worry about them. Scott said that he probably used the word "access," but they still need to comply with the regulations. Judith asked Scott if he had been approached by anyone on their behalf. Scott said he was not. Scott said we don't usually check with Canaan Fire Department. Asked if one needed to crown the road up, in order to ensure 12 month access by emergency vehicles, Scott said if you are improving a logging road you will increase the runoff. Billie said that this has nothing to do with the regulations. (four voices). The Chair advised that the record needed to be clear.

28. Karen said that if you did not know what was on your property before you purchased it, how can you know that there has never been [damaging] storms prior to 2011? Billie said they have information about a major storm. Karen said she asked because every storm is different. Judith suggested that everyone was here in October for the storm which was the 4<sup>th</sup> biggest power outage windstorm; we also know from our hazard mitigation plan what our vulnerabilities are, including Tug Mountain Road. Terry said their current contractor said the road was fine. Terry offered the 2018 open file report from the USGS (Applicant exhibit #5).

29. Scott said he just wanted to be clear: that the road has not washed out during his term as road agent and he wanted to keep it that way. Sharon Proulx, noting that the applicants said upgrading the road would cause undue hardship, asked Scott if he had an estimate of what it would cost to do what he is recommending. Scott said he has not done measurements, but as to cost, assuming that they are upgrading the driveway surface to typical material, and if the grade accords with regulations, the additional cost is negligible. It's simply a little grading, the cost of 15" culvert is \$200, and a few swipes of the backhoe. Judith stated that it was \$165 for your backhoe. Scott said it was.

30. Terry clarified that the undue hardship is not financial, but the loss of their vested rights, which is an injustice. He added that it is not just the initial cost, but maintenance over time: culverts can get clogged, freeze, or upheave. Scott said, that there could be approval without the culvert, provided that the final grade does not allow additional water to run to the small culvert. Scott said he was comfortable that he could take a look at the final grade and determine whether it would funnel additional water to the culvert. If additional water was running into the culvert, it is his understanding that the occupancy permit would not be granted. Judith asked if Scott's position was that whatever they do,

the condition is that there should be that there be no additional runoff to the small [existing] culvert. Scott affirmed that was the case, adding that he made it clear in very recent communications over the last couple of days.

31. Judith said it was 9:20 PM and asked the applicants if they wish to add anything that they had not said before. Terry began to ask Scott what he meant by no additional runoff. Judith stated that if he wanted to pull a permit, and present it to him, and that she told you upfront that this is the small town way; if you are willing to do it, fine. Judith said her understanding is that you're talking about vested rights and you decline on principle to pull a permit, let alone sign it. The applicants repeated that they were asking for a waiver, and asked if the Board would sign it. Judith said they will discuss it.

32. Donald McFarlane stated that over a decade he has had high regard for George White and for Scott, the latter having provided free service to Donald and to the town. He asked the Board and the Road Agent whether it was not true that a stitch in time saves nine; that is, what we are trying to do is protect both the interest of the town and of the landowner, so that they have a driveway that is going to be serviceable to them in its altered purpose – which he assumes, as the land is 100% in current use, and these people are looking to build a residence, would be an altered purpose –it is true that the intent here is merely to enact the provisions of 236:13 (vi). Donald said that what we're attempting to do here is to guard against not the threat, but the potential threat...when we ask for a driveway permit in furtherance of the application for a building permit we are merely asking the parties concerned to recognize the forthcoming alteration of purpose and to give the road agent the opportunity to view any potential threat and issue an order thereto. Scott and the chair agreed.

Donald said that it was extraordinary to him that you're making a constitutional case here; but seeing that you are, he found it extraordinary that you are referring to articles 2, 12, and 23. Article 12 states clearly that every member of the community has a right to be protected by it in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. Not only are you seeking not to render service to the town in other ways, you are seeking to waste everyone's time and insult out intelligence by explaining such words vested, nonconforming, and topography; and explaining to us that a mine is a structure. And yet you are not willing to take even the smallest of steps with the costs that we hear quoted by Scott a few moments ago to address potential threats to the town and the town's roads. In full knowledge of the ordinances, which you clearly have mastered, it would be reasonable to assume that any reasonable person purchasing a property would do due diligence, and be familiar with the ordinances and chapter 236. How is it could this be a taking from you? If anything, it would be a taking from the prior owner, article 23, forbidding ex post facto laws. You have not explained why 236 is in conflict with it; and if it is, your have not provided us with any of the case law relative to this point.

It occurs to me to wonder why anyone would take up residence in a town and immediately – in your case before - come into the town bodies and say we are going to disrespect the ordinances that we knew about, or we are going to take you to Superior



Court if you choose to disagree with us. As a citizen of this town, as a resident, as a property owning taxpayer of this town, I take offense to the notion that you would choose to buy property in our town, only to turn around and rhetorically punch us in the eye. We've heard from the chair that ad hominem are not warranted. I put it to you, that what we have heard from you since you have come before this body and the other bodies – and I was in attendance when Terry came before the selectman a few weeks ago – has been, in fact, nothing but negative. In an attempt to move forward in a positive light, I would exhort you to consider that whatever your personal beliefs and politics may be, folks in this town are choosing of their own free will, of their own compunction to duty and public service – and certainly not for the grand salaries they receive – to serve on the Planning Board, or to serve in other public offices, should be accorded at least the respect of understanding their positions and working with them civilly.

A very large part of their presentation seemed to hinge on the southern and northern driveways were existing. Scott has never challenged that they were existing, but was treating the application as for an alteration. If you're going to come before us it would be appreciated if you would restrict your points to those that are actually germane to the topic. If you are saying that you would like to make an alteration to the driveway, either physically or as an alteration of purpose, because you're building a new structure, that surely is what is applicable here. (Applause.)

33. Judith reminded all present that people have fervently held beliefs, and we should respect the fervency of those beliefs. She said she appreciated what Mr. McFarlane stated because we started out the hearing by inviting you to understand that we are a small town: we work toward compromise and we invite it. Judith said the Board will do what we – as Donald has reminded us – have a duty to do under the civic compact made by the people in this town under the laws of New Hampshire. We are not a home rule state; we have no power that the State did not give us. The Board's duty is to listen to you carefully, and we have done so.

Judith closed the evidence and, because of the late hour, motioned to defer deliberations. Motioned was seconded. Motion passed unanimously 6-0.

Meeting adjourned 9:38 PM.

Respectfully submitted,

Judith Lindahl