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MOLLY BUCCI

Of Counsel: PETER L. POTTS

March 30, 2016

Christine Brock, Clerk
Superior Court Chittenden Unit
PO Box 187
Burlington, Vermont 05401

Re: *Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman*
Docket No. **333-4-15 Cncv**

Dear Christine:

I am enclosing Plaintiff's Motion for Partial Reconsideration of Ruling on Motion for Summary Judgment and to Require Joinder, and our certificate of service

Thank you for your assistance. Please give me a call if you have any questions or concerns regarding this matter.

Sincerely,



Elizabeth M. Demas, Esq.
Clarke Demas & Baker, PLLC
346 Shelburne Road, Suite 203
Burlington, Vermont 05401
(802) 652-1400
edemas@cdbesq.com

cc: Hans Huessy, Esq.
Liam Murphy, Esq.
PO Box 4485
Burlington, Vermont 05406-4485
encs

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill
Defendant

CERTIFICATE OF SERVICE

I, Elizabeth M. Demas, attorney for Plaintiff in the above-entitled matter, hereby certify that I served a copy of Plaintiff's Motion for Partial Reconsideration of Ruling on Motion for Summary Judgment and to Require Joinder, by first class mail to Hans G. Huessy, Esq. and Liam L. Murphy at P.O. Box 4485, Burlington, VT 05406-4485, as Attorneys for Defendant Town of Underhill.

Dated at Burlington, Vermont, this 30th day of March, 2016.

By:



Elizabeth M. Demas, Esq.
Clarke Demas & Baker PLLC
346 Shelburne Road, Suite 602
Burlington, Vermont 05401

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No.333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill
Defendant

**PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OF RULING ON MOTION
FOR SUMMARY JUDGMENT AND TO REQUIRE JOINDER**

NOW COMES Plaintiff Brianne E. Chase, Trustee, by and through her attorney, Elizabeth M. Demas, Esq., and hereby submits this Motion for Partial Reconsideration of Ruling on Motion for Summary Judgment and To Require Joinder (the "Ruling"). Plaintiff only requests that the Court reconsider that part of the Ruling requiring joinder of three parties, as it has ascertained that only one party abuts Repa Trail. Plaintiff submits this memorandum in support.

MEMORANDUM

The Court found, in its Order, that "the abutting landowners should be joined as necessary parties". The court then listed three landowners submitted as being abutting landowners by the Defendant Town of Underhill in Defendant's "Motion to Require Joinder and/or to Dismiss". Defendant listed David Arnold of South Burlington, Stanley and Susan S[t]enger of Underhill and Carl and Carol Menard of Underhill as landowners who all abut Repa Trail.

However, municipal and court records show that David Arnold is the only landowner abutting Repa Trail.¹ The Findings from the Goodrich Road/Repa Road Public Hearing, June 12, 2000, Westford Vermont, Westford Selectboard and Underhill Selectboard Public Hearing (See

¹ "Consistent with the Return of the Board of the Selectmen for the Town of Underhill dated August 2, 2000 and recorded in Volume 102 at Page 33 of the Underhill Land Records, it is determined that the public good and convenience requires that the Repa Road, Underhill Town Highway No. 21, be classified as a trail from the Westford/Underhill Town Line, a distance of 238 feet, more or less to the Arnold Driveway and the conjunction with the Class III portion of Repa Road". (See Exhibit 1, Stipulation to Dismissal with Prejudice and Order, Para. 2). It is uncontroverted that the Arnold Property is sited westerly (nearer to the Westford/Underhill Town Line) than the Menard or Senger properties, and thus neither the Menard nor Senger properties can physically abut Repa Trail. The Class III portion of Repa Road starts at the Arnold driveway. Properties located easterly of the Arnold Driveway are located on Repa Road. Thus, Menard and Senger both abut Repa Road, as there are no properties (other than the Arnold property) located between the Arnold Driveway and the Westford/Underhill town Line. (See,

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Exhibit 3) mention David Arnold as the sole abutting landowner on the Underhill side. Municipal records, a recorded survey and court records all show that the Senger and Menard properties abut Repa Road, not Repa Trail, and thus they should not be joined as necessary parties.

This motion is filed pursuant to Rule 59 and Rule 60(b). Plaintiff does not ask for reconsideration of the Court's determination that abutters be included in the action, but asks that the Court correct the error initiated by Defendant in its Motion to Require Joinder and/or to Dismiss, and amend the Ruling to require joinder of the sole abutter, David Arnold, only.

DATED at Burlington, Vermont this 30th day of March, 2016.

By:



Elizabeth M. Demas, Esq.

Attorney for Plaintiff

Clarke Demas & Baker, PLLC

346 Shelburne Road, Suite 602

Burlington, Vermont 05401

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

THE A. JOHNSON COMPANY and)
JOSEPH BORNSTEIN,)
Petitioners)
) CHITTENDEN SUPERIOR COURT
v.) DOCKET NO. S1201-00 CnC
)
TOWN OF WESTFORD, Respondent,)
and TOWN OF UNDERHILL, Respondent)

STIPULATION TO DISMISSAL WITH PREJUDICE AND ORDER

Now come the Petitioners, The A. Johnson Company and Joseph Bornstein, and the Respondents, Town of Westford and Town of Underhill, in the above-captioned matter, with the approval of their undersigned counsel, and hereby stipulate and agree that the above-captioned matter may be DISMISSED WITH PREJUDICE under the following terms and conditions.

1. Consistent with the Return of the Board of Selectmen for the Town of Westford dated July 28, 2000 and recorded in Volume 88, Page 297 of the Westford Land Records, it is determined that the public good and convenience requires that the Goodrich Road, Westford Town Highway No. 24, be classified as a trail in its entirety. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that the trail be continued at the same width or three rods.

2. Consistent with the Return of the Board of Selectmen for the Town of Underhill dated August 2, 2000 and recorded in Volume 102, Page 33 of the Underhill Land Records, it is

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determined that the public good and convenience requires that the Repa Road, Underhill Town Highway No. 21, be classified as a trail from the Westford/Underhill Town Line, a distance of 238 feet, more or less, to the Arnold Driveway and the conjunction with the Class III portion of Repa Road. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that said portion of Repa Road shall be continued as a trail at the same width or three rods.

3. Both Joseph Bornstein and The A. Johnson Company may need to continue to utilize the Goodrich Road and Repa Road (hereinafter referred to as the "Trails") for timber management and removal of timber and other forest products on their respective properties as well. As such, the parties enter into this Stipulation and Order to ensure that the Petitioners may not be deprived of access to, or any economic benefits from, their respective parcels.

4. Pursuant to 19 V.S.A. §304, the Boards of Selectmen of the respective Towns not only have the duty and responsibility, but the authority to make regulations governing the use of trails and to extend permission regarding the use of such trails. Likewise, the Board of Selectmen in taking the action noted above and creating Trails in both Westford and Underhill, did not intend by their respective actions to prevent access to and egress from the respective lots of the Petitioners/Appellants.

5. The A. Johnson Company and Joseph Bornstein may use the reclassified Town Highways, now designated as Trails, for access

to The A. Johnson Company and Joseph Bornstein parcels, respectively.

6. The Town of Westford and Town of Underhill shall have no obligation to construct, maintain, plow or repair said Trails within the respective Towns, and all responsibility for maintenance, construction, plowing and repair shall be the responsibility of The A. Johnson Company or Joseph Bornstein, as the case may be.

7. The A. Johnson Company shall acquire no vested rights or interest in the Trails by the construction of or improvements to said Trails for however long a period of time, nor from the use thereof for however long a period of time.

8. The A. Johnson Company and Joseph Bornstein, prior to the construction of any improvements or maintenance of the Trails, shall obtain the approval of the Board of Selectmen and/or Road Commissioner for the respective Towns wherein said Trail is located.

9. The A. Johnson Company and Joseph Bornstein are hereby granted, pursuant to 19 V.S.A. §1111, the right to use the Trails by any motor vehicles, pick-up trucks, four-wheel drive vehicles, logging trucks, logging equipment and the like in order to continue their programs of forestry management on The A. Johnson Company lands and the Bornstein parcel, respectively, and, periodically, to effect the removal of timber from their respective lots during the term of this Stipulation. The parties

agree that the designation of said Town Highways as Trails does not preclude the use of the herein described vehicles.

10. The parties to this Stipulation recognize that the existence of Goodrich Road, or Westford Town Highway No. 24 has been challenged in the matter of Timothy W. Budell and Della J. Budell, Petitioners v. Town of Westford, Respondent, Docket No. S1149-00CnC. If the resolution of the issues in the Budell case affects the existence of the Westford Town Highway No. 24 and the Court determines that said Town Highway does not exist, then this Stipulation is a nullity.

11. This Stipulation shall run with the land and be valid for and binding upon the Town of Westford, the Town of Underhill, The A. Johnson Company, Joseph Bornstein, and their respective heirs, successors, and assigns.

12. The parties understand and agree that this Stipulation will be incorporated into a Court Order in this case.

DATED at Burlington, Vermont, this 14th day of September, 2001.

TOWN OF WESTFORD

By:

Timothy M. Eustace, Esq.

DATED at Montpelier, Vermont, this 19th day of September, 2001.

TOWN OF UNDERHILL

By:

Paul S. Gillies, Esq.

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DATED at Middlebury, Vermont, this 17th day of September,
2001.

PETITIONERS

By: 
Karl W. Neuse, Esq.

SO ORDERED this ___ day of September, 2001.

Presiding Superior Court Judge

wed451.lit

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FLETCHER, P.C.
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REPA ROAD

ARNOLD

WESTFORD
UNDERHILL

1

2

3

4

11.5 AC ±

10.1 AC ±

10.2 AC ±

36.0 AC ±

REF 99

7265 ±
N52°W

316 ±
N47°W

242 ±
N45°W

251 ±
N45°W

468 ±
N45°W

259 ±
N45°W

N43°E
1700 ±

N42°E
1720 ±

N43°E
1735 ±

N43°E
1740 ±

S41°E
275 ±

S48°E
260 ±

S48°E
261 ±

S48°E
1188 ±

S36°E
200 ±

S37°E
200 ±

S37°E
191 ±

JOHN & MYRTLE REPA

EXHIBIT

2

SLIDE 60 b

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All of the abutters were given notice of the time and place of examination by Return Receipt mail. Notice was given to the Minicipal Planning Commissions of the Town of Westford and the Town of Underhill. A copy of said notice was posted in the offices of the Town Clerk of Westford and Underhill, and the like notice was published in the Burlington Free Press.

At the time and place appointed the Selectboards made the site visit to the Goodrich Road and Repa Road and heard all interested parties. This hearing was adjourned to allow the Selectboard to gather additional information on the public highway in question. The public hearing continued on June 12, 2000, at which time the Selectboards heard further testimony.

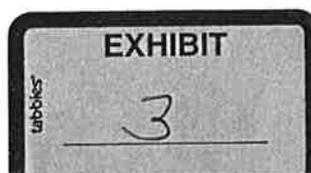
Upon due consideration the Westford Selectboard has determined that the public good and convenience requires that the following action be taken with respect to Goodrich Road:

The Goodrich Road (TH#24) be classified as a trail
in its entirety.

Upon due consideration the Underhill Selectboard has determined that the public good and convenience requires that the following action be taken with respect to Repa Road:

The Repa Road (TH#21) be classified as a
Trail from the Westford/Underhill Town line a
Distance of 238 feet, more or less, to the Arnold
Driveway and the conjunction with the Class 3
Portion of Repa Road.

You have a right to appeal this decision to the superior court of this county, in writing within 30 days of the date of the decision, pursuant to V.R.C.P. 75. You need to serve the towns, as you would do in any civil action, through a constable or sheriff, or using the alternative first class mail method explained V.R.C.P. 4(1). Merely sending a written notice of appeal is not enough. The fee is \$150.00. If you fail to appeal within that time, you may lose your right to challenge this decision at some future time.



GOODRICH ROAD/REPA ROAD PUBLIC HEARING
JUNE 12, 2000 WESTFORD, VT
WESTFORD SELECTBOARD AND UNDERHILL SELECTBOARD

FINDINGS OF FACT

1. IN 1972, THE TOWN OF WESTFORD DISCONTINUED PART OF GOODRICH ROAD AND TURNED ANOTHER SECTION OF IT INTO A TRAIL. THEY DID THIS WITHOUT REALIZING THAT, ACCORDING TO 19 VSA 790, THEY SHOULD HAVE WORKED JOINTLY WITH THE TOWN OF UNDERHILL, SINCE THE ROAD, CALLED GOODRICH ROAD IN WESTFORD AND REPA ROAD IN UNDERHILL, IS AN INTERTOWN HIGHWAY.
2. IN 1996, THE UNDERHILL SELECTBOARD DISCONTINUED A SMALL SECTION OF REPA ROAD TO THE BOUNDARY WITH WESTFORD. THE UNDERHILL BOARD KNEW THAT THE WESTFORD SIDE OF THE ROAD HAD BEEN DISCONTINUED, AND THEY NOTIFIED THE TOWN OF WESTFORD THAT THE ACTION TO DISCONTINUE THE ROAD WAS TAKING PLACE. HOWEVER, UNDERHILL DID NOT NOTIFY THE PROPERTY OWNED ON THE WESTFORD SIDE OF THE BOUNDARY LINE.
3. THE TOWN OF UNDERHILL WAS ADVISED BY PAUL GILLIES, ESQ., THAT THE SITUATION COULD BE REMEDIED BY GOING THROUGH A ROAD RECLASSIFICATION PROCESS ACCORDING TO 19 VSA 790 JOINTLY WITH WESTFORD.
4. AFTER DUE NOTICE TO ALL INTERESTED PARTIES, THE SELECTBOARDS MET JOINTLY IN WESTFORD, HEARD FROM INTERESTED RESIDENTS, WALKED A PORTION OF THE GOODRICH ROAD, WALKED THE AFFECTED PORTION OF THE REPA ROAD IN UNDERHILL, AND HEARD FROM OTHER INTERESTED PARTIES ON THE ROAD AND IN THE UNDERHILL TOWN HALL.
5. WESTFORD: JOHN LOUIS, REPRESENTING ABUTTING LANDOWNER A. JOHNSON COMPANY, TESTIFIED THAT THE COMPANY NEEDED ALL AVAILABLE ACCESSES. THEY RECONSTRUCTED THE ROAD FROM MACHIA HILL RD. TO THEIR LANDING. THEY WANT TO MAINTAIN A ROW, AND NOT LOSE THAT OPTION. IF THE ROAD GOES TO THE EASTMAN PROPERTY AND STOPS, THEN THEY DO NOT HAVE THAT OPTION. THEY HAVE AN ACCESS CLOSE TO THE HOUSE OF PEOPLE WHO WILL TESTIFY LATER. THEY WOULD LIKE THE TRAIL TO BE AS WIDE AS POSSIBLE. THEY WOULD LIKE THE ROAD TO REMAIN CLASS 4, BUT REALIZE PEOPLE DO NOT LIKE LOG TRUCKS COMING ON A TRAIL. JOHNSON CO. LAND ABUTS EASTMAN PARCEL. HE IS SYMPATHETIC TO NO ATV USE.
6. WESTFORD: MOLLY LIEBOWITZ, REPRESENTING ABUTTING LANDOWNERS THE EASTMAN FAMILY, SAID THE FAMILY HAD NO OBJECTION TO WESTFORD DISCONTINUING THE ROAD ON THE WESTFORD SIDE, BUT WANTS ACCESS ON THE UNDERHILL SIDE. THEY WOULD LIKE REPA ROAD TO BE CLASS 3, BUT WOULD SETTLE FOR CLASS 4. THEY DO WANT A DISCONTINUANCE OF GOODRICH ROAD THROUGH THE EASTMAN PARCEL.
7. WESTFORD: TIM AND DELLA BUDELL LIVE AT THE END OF THE PRESENTLY MAINTAINED ROAD. HOW WILL YOU KNOW WHERE THE ROAD IS? A COUPLE OF PEOPLE SEEM TO KNOW WHERE IT IS, INCLUDING DAVID ARNOLD ON THE UNDERHILL SIDE. DELLA BUDELL SAID, IF THE ROAD EXISTS, WE WANT IT DISCONTINUED. SHE IS OPPOSED TO MOTORIZED ACCESS.
8. WESTFORD: JOHN COOLEY, WHO ABUTS JOHNSON LAND TO THE WEST, WANTS ACCESS FOR VEHICLES BECAUSE HE CUTS WOOD.
9. WESTFORD: JACOB AND LAURA HOLZSCHEITER, ABUTTING LANDOWNERS, WOULD LIKE TO HAVE THE ROAD DISCONTINUED. THEY DO NOT WANT A THROUGH TRAIL OR ATV ACCESS. ANYTHING THAT WOULD DECREASE ACTIVITY ON THE TRAIL WOULD PLEASE THEM. IN 1998 THE WESTFORD CONSERVATION COMMISSION SUBMITTED A REPORT ON TRAILS. THEY DO NOT WANT TO RESTRICT ACCESS TO THE PEOPLE ALREADY UP THERE. THEY HAVE HAD ATV AND DRINKING PROBLEMS WITH USERS OF THE TRAIL. PEOPLE RECALL THAT THE OLD TRAIL BY THE HOUSE (WHICH HOUSE?) IS NOT WHERE THE TRAIL CURRENTLY IS.

10. Underhill: David Arnold, abutting landowner on Underhill side, testified by telephone. He would like the road to "return to nature." He is not in favor of giving access so building can go on at the Eastman property.

11. Underhill: Jim Phelps of Repa Road, not an abutter, would like to leave things as they are and not create more traffic.

12. Underhill: Bernie Couillard of Repa Road, not an abutter, would like to see things remain as they are and the town not be responsible for more road maintenance.

13. Underhill: Dennis Poley of Route 15, not an abutter, would like to open the road to the Westford town line as Class 4 and discontinue it or make it a trail in Westford.

14. Underhill: Craig Armstrong of Sam Ward Road, who abuts Eastman in Underhill and Westford, but does not abut the road, thinks we should be fair to the Eastmans and future property owners and have it open on the Underhill side. It is OK for Westford to throw up the road on Eastman's property. A property owner should have a say over a road going through his property. People who want access should talk to the landowner. People with abutting property should have ROW.

15. Underhill: John Cooley reiterated that he does not want a through trail on the Westford side. What was the classification of the road in Westford? He would like to keep the road open in Underhill, and retain the ability to build a house. The property has been in his family since the 70's, and his father knew the road was being discontinued. He talked to the Selectboard about it. He now has access through Holzscheiters but that might not continue.

16. Underhill: Joseph Bornstein, Westford, presented a letter and some documents which show that he took the town to court in 1974 over their action in 1973. The court agreed that the road should be a trail up to a point on a corner of lot 57. From there until the town line it was discontinued. (Eastman had denied him access--Selectboard gave him agricultural access through Eastman property to Repa Road.)

The boards recessed the hearing until June 12, at 7:30 in Westford.

JUNE 12, 2000: Westford

1. The selectboards, meeting jointly, heard further testimony, including the minutes from the May 22, 2000 Westford Selectboard meeting, where this matter was discussed. Concerns were raised about motorized vehicles, and the precise location of the trail. Some landowners would like to have the trail moved.

2. The Westford Selectboard has determined that, to the best of its knowledge, the Goodrich Road was a Class 4 town highway prior to the Selectboard's action in 1973.

3. Abutter Joseph Bornstein wants long-term forest management possibilities. Hearings and legal action are a burden for him. He wants controlled motor vehicle access in a respectful manner.

4. Stan Senger of Underhill, not an abutter, does not want the road continued to the Westford line. He thinks what the Selectboard did in 1996 was correct.

5. Dave Cooley of Westford, father of John Cooley, an abutter who testified on May 10, explained that after he purchased the property in the early 1970s, he improved the road, as did the A. Johnson company. He wants a Class 4 road.

6. Barbara Peck of Westford, not an abutter, inquired if the court action of 1974 was legal? No, said Bob Bancroft, chair of the Westford Selectboard, but it is mute, because the 1973 action was illegal. He

continued that the issue for Westford is the portion from Bornstein to Underhill, because the rest of the road must remain, in his opinion, at least a trail.

7. Molly Liebowitz, representing the Eastman family, pointed out that the road on the Westford side through the Eastman property has been closed for over 25 years. They only want approximately 300 feet on the Underhill side.

8. The Selectboards examined various maps of the road in question and the Westford property parcel maps.

9. Tim Budell of Westford inquired if a survey of the Goodrich Road is available. Bob Bancroft replied that it is probably in the town records, but it has not been found.

10. Hearing no further comments, the Selectboards closed the hearing and began to deliberate. Ted Tedford, chair of the Underhill Selectboard, expressed his concerns about the effects of maintaining a Class 3 or 4 road on the Underhill side. Maintenance and safety are his main concerns. He would not want to make any decision that would place a greater traffic impact on Repa Road. Stan Hamlet and Margaret Hummel, the other members of the Underhill board, concurred that Repa Road is one of the most fragile roads in the town, has recently been improved, and has no possibilities for further improvement without major and expensive reconstruction. Steep slopes and drainage are problems. Ted Tedford said that people should have access all along the road. Bob Bancroft said that the town is working on an ordinance for trails which would designate types of uses allowed at appropriate times of year. The property along the Goodrich Road is in Westford's forestry district, which has lot requirements of 30 acres for a house, and if the Eastman property were developed, it would fall under the Westford zoning ordinance. (NOTE: After the hearing was over, the Selectboards learned that the forestry district in Westford was eliminated several years ago, and that the present zoning allows for a dwelling on ten acres or more.)

11. Bill Leach of the Westford board made the motion that the entire road in question, that is, the Goodrich Road in Westford, and Repa Road in Underhill, from the town line to the Arnold driveway, a distance of 238 feet, be designated a trail. Ken Tardie seconded the motion. All on the Westford board agreed.

12. Stan Hamlet offered an identical motion to Bill Leach's on behalf of the Underhill board. Margaret Hummel seconded. All on the Underhill board agreed.