

Note: Draft minutes are subject to corrections, additions and deletions.

February 23, 2015

PRESENT: Philip Bean, Chairman
Mary-Louise Woolsey, Vice-Chairman
Rick Griffin, Selectman
Rusty Bridle, Selectman
Jim Waddell, Selectman
Frederick Welch, Town Manager
Mark Gearreald, Town Attorney

SALUTE TO THE FLAG

I. Consent Agenda (04:00)

1. 2014 – ITC Tax Collector’s Abatement
2. 2015 Land Rent Warrant in the amount of \$167,624.00
3. 2015 Veteran’s Tax Credit Re-qualifications: Dyer 10 Carlson Rd 193/70; Fallon 20 Page Ln 282/92; Fortin 564 Lafayette Rd 144/1; Heinrich 11 Noel St 128/17; Lang 5 Thayer Rd 107/9; Lavalle 58 Ancient Hwy 134/30/1; Law 44 Milbern Ave 110/11; Lawson 21 Battcock Ave 281/62; Leavitt 161 Winnacunnet Rd 191/1; Lefebure 72 Locke Rd 193/19; Lemerise 558 Exeter Rd 35/6; Lindquist 33 Drakes Landing 124/6/33; Lotito 64 Seabury 218/10/64; Luce 6 Eastmor Ln 178/60; Lupo 561 Ocean Blvd #9 245/10/9; Macaskill 8 Huckleberry Ln 98/21; Macauley 11 Taylor River Ests 170/RCL/11; MacDonald 26 Ridgeview Terr 146/31; MacDonald 34 Carolan Ave 89/55; Machado 105 Winnacunnet Rd #11 176/19/11; MacNevin 8 Thorwald Ave 223/111; Maguire 15 Tucker Ln 192/21; Manis 11 Ocean Dr 305/13; Marine 14 Belmont Cr 108/9; Martin 41 Hampton Meadows 172/6/41
4. Hampton PTA sponsored “Candidate’s Night” Selectmen’s Room March 03, 2015
5. Department of Safety, Division of Homeland Security and Emergency Management and Town of Hampton – Retro-Active Grant Agreement Amendment PO# 1024113 hazard mitigation project for the downtown storm drain update

Selectman Woolsey MOVED to accept the Consent Agenda SECONDED by Selectman Waddell.

VOTE: 5-0-0

II. RSA 31:95-b,III,(b) (04:50)

1. Acceptance of Donation of \$2000.00 from Loco Sports to sponsor the High School Basketball League

Selectman Bridle MOVED to ACCEPT the Donation of \$2000.00 from Loco Sports to sponsor the High School Basketball League SECONDED by Selectman Woolsey.

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VOTE: 5-0-0

III. Approval of Minutes (05:10)

1. February 09, 2015 Public Session

Page 4: Top Paragraph Bottom Line, change “office” to “officer”

Selectman Woolsey MOVED to APPROVE the February 9, 2015 Public Session Minutes SECONDED by Selectman Bridle.

VOTE: 5-0-0

2. February 09, 2015 Non-Public Session Sealed Minutes

Selectman Woolsey MOVED to APPROVE the February 9, 2015 Non-Public Session Sealed Minutes SECONDED by Selectman Bridle.

VOTE: 5-0-0

IV. Town Manager’s Report of the Snow Emergency Situations (06:16)

Town Manager Welch stated: The snow budget for 2015 is \$160,565 as of February 19, 2015 we have spent \$332,409, we are \$171,844 more than was budgeted for this function; vehicle repairs through February 20, 2015 the budget is \$46,000 we have expended \$14,100 in repairs for labor and parts; expenses in 2014 were \$97,604 on a budget of \$46,000 we expect to exceed that this year; the fire department was requested along with the building department to inspect properties and advise residences and businesses regarding snow removal of roofs; additionally the fire department was to call their emergency evacuation list for those in need of medical assistance during evacuations to determine if any emergencies existed during the snow emergency; a number of properties were shoveled out as a result of those surveys as well as roofs being cleared.

1. The Town continues to plow and remove snow. For the 4th week in a row we have continued to experience increased snow fall. The Town has devoted all its full resources to plowing for multiple storms with large quantities of snowfall. In addition to Town forces, we have employed private contractors to load and haul snow to various snow dumps including the Ashworth, Island Path and Church Street Parking Lots.
2. Snow removal is continuing as quickly as possible with high priority targets being the lettered and number streets at the Beach, Ashworth Avenue, Brown Avenue, Kings Highway. These areas represent high hazard areas of great concern to our public safety departments.
3. Please do not plow snow into the street and leave it. If it is necessary to place the snow in the public way during clean up, remember to clear the snow from the public way when finished.
4. Residents are reminded to remove built up snow from roof areas, excess weight can cause roof failures especially if rain is forecast. Heating system vents must be kept clear to prevent carbon monoxide poisoning, and do not forget to clear your dryer vents as well.

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Selectman Bridle stated: There was a house fire on Friday morning due to the gas meter being covered; please shovel out all doors and meters.

Town Manager Welch stated: our streets are in better condition than many other towns with larger DPW departments.

Chairman Bean stated: Hampton has performed very well in all our departments due to the snowstorms.

V. Public Hearings (14:17)

The Hampton Board of Selectman pursuant to NH RSA 231:9, 231:28, 231:52, and 43:2, will hear testimony on the following Petitions and Objections:

1. Petition to the Board of Selectman of the Town of Hampton to Layout Stowcroft Drive Extension Pursuant to RSA 231:8 and RSA 231:28, received on December 4, 2014 from Sumner F. Kalman, Esq. on behalf of Lloyd T. Graves, Trustee of the Lloyd T. Graves Revocable Trust-1997, Hampton and North Hampton, New Hampshire

Attorney Kalman stated: filed petition; Memorandum and Support of Petition to the Board of Selectmen to the town of Hampton to layout Stowcroft Drive Extension Pursuant RSA 231:8 and 231:28 to condense issues; tab A in book are 3 documents look at Stowcroft Subdivision with it was originally developed; focusing on end of cul-de-sac; 2 lots owners Rogers and Stevens; 2 statutes to deal with layouts asking selectmen who have authority to layout roads; layout class 5 road over lot D which has history takes back to 1982-1983; VIIA street design and construction standards; arrangements of streets in Hampton allows for continuation of streets; Mr. Brindamour and Mr. Salmon in previous selectmen's meeting had general discussion with developer about projecting streets and making sure there is a pattern of streets, flow of streets and flow of utilities considered good planning; Hampton Planning Board Minutes 12/7/82; 12/15/82; 1/5/83 and 2/16/83; agreement between Mr. Millette Engineer, builder and Hampton Planning Board Committee 1/5/83 tab F; create lots A, B and C; Lot A a 50' strip giving access to Ross property; Lot D a 50' strip giving access to Graves property; Lot C 50' giving access to the Stevens property; be specified as non-building lots will remain with the corp. for 6 years after which ownership goes to town; during 6 years corp. has the right to sell Lots A, B and C to provide access to abutting properties; put there for benefit of Graves property; process of approval continued; Mr. Millette agreed upon changes Tab G; Lots A and C have been used per agreement; Tab A no development for 6 years which was 1983-1989; town owns property assessed at \$400; Tab 1 page 2 recorded 3/14/83 Note 3 D-11424 recorded March 14, 1983 Lots A, B and C future lots to be used for abutting properties, non-buildable lots, after 6 years ownership goes to Town of Hampton; legal issues; contract matter; 3rd party beneficiary; 2015 layout the road over Lot B at no expense to the town; only issue tonight is layout a Class 5 road over Lot B on the plan at no cost to the town.

Selectman Waddell stated: the issue is who owns Lot B; you are contending Lot B is owned by? Attorney Kalman stated: doesn't know if a deed is floating around somewhere; bear legal title in seller; equitable title in seller; sign agreement to sell property to third party; property listed on tax rolls as belonging to town; town of Hampton has equitable title; statute 231:19 provides dealing with property when you don't know who owns it.

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Selectman Woolsey stated: RSA 231:51 dedicated ways; dedicated to public use maybe released from all public servitude if it has not been opened or used within 20 years of such dedication; 12/15/82 Planning Board minutes pages 1, 2 and 3; would like your opinion on RSA 231:51 on the 20 year stipulation.

Attorney Kalman stated: fact pattern does not lend itself to dedication and acceptances; different situation here; do we have access or not; the right Mr. Graves has was created by contract.

Selectman Woolsey stated: I disagree with you on that point; this was platted by the owner; it has been more than 20 years.

Selectman Bridle stated: public access to provide access to Graves' property in 1982-1983 does that say a town road going over that or just to access property? Attorney Kalman stated: I am here in 2015 asking to lay it out as a public way as they are looking to develop the Graves property.

Chairman Bean stated: Lot B is point of discussion but in terms of what precedent would Lots A and C as to their rolls in future access in developments would bear on anything the selectmen would have to make a decision on, if at all? Attorney Kalman stated: the fact that both A and C were used for the very purpose we are asking you for the layout is very relevant; it is what the deal said; it establishes the flow of the pattern; A and C did it why not do with B.

Chairman Bean stated: we will recess tonight and not be making decision tonight as we need to do further requirement as stated by NH state law; I would be looking for specific written comment from you in helping to make my decision on what exactly transpired with A and C and how that has merit for your case. What is the public good that is served by this layout as opposed to the benefit of the Graves family? Attorney Kalman stated: anytime someone who owns developable piece of property is a benefit to the public; also a benefit to Mr. Graves; 13 families possibly would like to live in that sub-division; provides opportunity to live in Hampton in nice neighborhood.

Chairman Bean stated: Earlier you responded to Selectman Woolsey that any development is irrelevant that this is simply requesting a layout and I would agree with that and so I would say in a more narrow interest that the public good; your position through your data that was provided there was an agreement and this is the right thing to do and that is in the interest of the public good; would you agree with that? Attorney Kalman stated: I would, thank you.

Chairman Bean stated: the ownership of the land is a moot point under statute, except for the fact under RSA 231:20 which calls for the payment of damages; how would you address that issue; and if you are not prepared to address now would like comments later in on? Attorney Kalman stated: there are several ways to handle it; the town has assessed the property at \$400; procedure available; thinks the town owns it; if there was an issue, pay the \$400, which would resolve it.

Selectman Woolsey has a follow up: what is the timeframe during which Lots A and C were converted to use for adjacent properties? Attorney Kalman stated: I don't know; will find out.

Chairman Bean asked if there was public comment in support of Attorney Kalman and Lloyd T. Graves; there was none; will go onto next petition.

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2. Petition for Release of Dedication Way Pursuant to RSA 231:52, received on December 31, 2014 from Derek R. Durbin, Esq. on behalf of Barry and Marsha Curtis, David and Louise Drolet, Robert & Michelle Kupka, Nancy Philbrick, Trustee of the Nancy Philbrick Revocable Trust, Richard & Donna Tarantin and Judy Clarkin

Attorney Durbin stated: will address the release issue; heard Attorney Kalman state that we do not have to talk about the law of dedication tonight; but we do have to talk about the law of dedication, it was filed as a form of alternative release; proceeded by objection; seeking alternative release if the board was not to find against the petition for layout; RSA 231:52; pre 1989 version of RSA 231:51; contrast the language the 2 word difference is may vs shall; in the context of releasing dedicated way; ownership of Lot B is a moot issue or that Lot B is in fact owned in some respect by petitioner; the 1989 version of RSA 231:52 under which the subdivision plans were approved in 1983 would in fact apply which requires that this board release Lot B as a dedicated way; was established in Supreme Court case in memo 2007; dealing with original subdivision land in 1928; subsequent subdivisions; give board discretion; Supreme Court did apply the pre 1989 version and that is the version that this board must apply in acting on the petition for a release of the dedicated way; our position that the board does have discretion to simply denied the petition outright and not act finding it moot; or will grant release as to the extent that ownership of Lot B is moot point or Lot B is in fact owned by the town; equitable title should be decided by court; this board does have the authority to take action in eminent domain but that issue is not before board, but equitable title is; putting cart before horse.

Selectmen Woolsey, Waddell, Griffin, and Bridle each had no comment.

Chairman Bean called for public comments: no public comment.

3. Objection to Petition for Layout received on December 31, 2014 from Derek R. Durbin, Esq. on behalf of Barry and Marsha Curtis, David and Louise Drolet, Robert Michelle Kupka, Nancy Philbrick, Trustee of the Nancy Philbrick Revocable Trust, Richard Donna Tarantin and Judy Clarkin

Attorney Durbin stated: stating board turn down the petition tonight; a lot of issues presented by petitioner and the obvious one is the ownership issue; do not feel the need to discuss in too much detail; to his knowledge there is no deed to property; equitable title may not have merit, that is to be decided by court; let parties hash that out and then come back to board; subdivision plan 1983 right of way was never referred to in plan, described as access; no one has exercised any ownership of that land; please refer to case he stated above for implied acceptance by a town of a right of way dedication; created by subdivision of land in 1928; public hasn't actually made use of that particular right of way; there was no implied acceptance as public has made no use of this land; extremely relevant issue here; no acceptance then how can you find you can lay out a road; planning board intent to make Lot B a right of way or public way was never expressly stated; prerequisite issues; language was carefully crafted on the subdivision plan did not create right of way; taking of the land would serve little to no public interest; strongly urge board not to take such an extreme action which would lead to perilous consequences; second argument raised by the petitioner is that there is an occasion under the statute, which the petitioner has to prove; petitioner did not discuss whether a legal occasion does exist; in the case of Greencrow Corp. vs Town of New Ipswich the court sitting applied a 2-part balancing test; balance the public interest in the layout vs

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rights of affected land owner; if the public interest prevails the petitioner must prove that the public interest outweighs any burden upon the town; the court set forth several factors about whether there is a public interest; cannot meet either part of the test; no public interest being served by proposed road; serves a small number of individuals; Stowecroft Drive has never been accepted as any class of highway finding made at planning board level; lack of connectivity; no public interest in layout itself; rights of abutting land owners would be affected by this layout; drainage issues; fails first part of test; second part will it impose burden upon town in the long term; liabilities and drainage issues; it is asking this board to dictate land use policy; could not find anything in master plans that it is in towns interest; board isn't under any obligation to act; statute says may but not required; petitioner saying contractual relationship that has been established; never heard that and no case law sited to that; third party beneficiary rights; no legal merit; land locked parcels with some potential access from North Hampton; ask board deny petition for layout and or release Lot B as a dedicated way.

Selectman Woolsey stated: December 23, 1982 Hampton Planning Board subcommittee 50' strip giving access to properties; they are referenced as strips; parcels designated as strips? Attorney Durbin stated: Yes, that is how they are referenced, his point is that they are not referenced as right of ways; wouldn't call it an agreement; what are the terms if they are an agreement.

Selectmen Waddell, Griffin, and Bridle each had no comment.

Chairman Bean stated: request your view of Lot A and C and what pro or con, however it is relevant or not relevant to Lot B on behalf of your clients; please respond to the written information that they have provided; assuming there is an obligation to require access to the Graves property from Stowecroft Drive that by itself constitutes an occasion that requires the board of selectman to lay out a roadway across Lot B; you mentioned access from North Hampton identify if there were any planning board efforts on behalf of project in North Hampton property; my understanding that this is exclusive Hampton Planning Board/Selectman in attendance; alternatives for access from North Hampton by the pursuits of the petitioners this evening.

Chairman Bean asked for public comment: no public comment.

4. Letter of objection by Scott E. Hogan, Esq. on behalf of Frank Chiaramitaro, Jr., Trustee of the GT Revocable Trust of 1996 and Amy R. Chiaramitaro, to Petition to Layout received on December 22, 2014

Attorney Hogan stated: got involved in project when it went before the planning board; relevant to his client who owns Lot B because town could take property by eminent domain and lay out road across property whoever owner is; planning board ultimately determined that it couldn't take jurisdiction over the subdivision application and its own procedure and its own application specifically requires applicant to identify who owner is; if you are not the owner you should have authority of owner so that you can represent all the land that you are putting in front of the planning board is yours and you have the actual authority to use it to develop a residential subdivision or you have the right to pass across it as a road for its primary access, which is why they declined, ownership of parcel B to be determined; this board cannot determine ownership; but has to be determined to go forward; March 26, 2014 at meeting from town minutes Mr. Welch explained Stowecroft and the cul de sac is not town

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road; no deed for Parcel B to the town; Attorney Ells was there for the applicant stated by operation of law the town owns Parcel B as referenced by the note on the original subdivision giving the ownership to the town after 6 years if not developed; it was dedicated as public land by the plan being registered; Mr. Welch explained that land dedicated as town property is different from land for town highway and the RSA process is different; only town meeting or the board of selectmen can give approval for use of town land; Attorney Ells stated that the land to be developed was landlocked and that Parcel B was to be used for access; Mr. Welch stated the land that is being developed is not landlocked as access can be made through North Hampton and the development does not have access to a road in Hampton; ownership of Parcel B needs to be verified; May 2014 town manager to planning board transferred by automatic operation of law; not what record supports; parcel is not owned by town no deed of transfer has been presented this matter needs resolution by court of legal jurisdiction; legally significant issue on who owns property; not in right forum to decide legal jurisdiction; 3rd party beneficiary is contract case; in 1982 the Graves property had no access through the Town of Hampton; the corporation was dissolved years ago; all issues the board needs to decide; Lot B never been opened; never deed, never process dedicated as road; burden on party trying to assess that public road was established; board cannot deal with underlying legal issues; board under no obligation to act; seems like everything is premature as ownership needs to be resolved.

Selectman Waddell stated: you are claiming that your client owns the property? Attorney Hogan stated: yes

Selectman Waddell stated: have there been taxes paid on it all this time? Attorney Hogan stated: no, if you look at the tax card, it says that it is in the ownership of the Town of Hampton.

Selectman Waddell stated: has your client disputed that by paying? Attorney Hogan stated: no; that is one of the reasons to impress upon the board; his client was kind of thrust back the process by the subdivision coming before board.

Selectman Waddell stated: the property wasn't relevant before? Attorney Hogan stated: whoever was paying property taxes on it?

Selectman Waddell stated: interested? Attorney Hogan stated: well I guess interested is a subjective word.

Selectman Waddell stated: it is you property and you're paying taxes on it then you are interested in the property; maintaining the property? Attorney Hogan stated: yes, I guess the way I would answer that is whoever is being currently assessed property taxes on any given property isn't dispositive frankly as to who is the ultimate owner; as to the correct owner; those obviously go many different ways.

Selectman Waddell stated: if somebody thought they were the owner wouldn't they dispute that; if they had an interest in the property and they felt they were the owner wouldn't they dispute that; that somebody else was paying the taxes on their property? Attorney Hogan stated: in that this property came to my client after the death of his father who was the principal in the corp., so we are 30 years into this at this point so it certainly wasn't something that was at the forefront of his mind again until the planning board notices came and it became relevant within the context of the planning board process; at the time in 1982

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was considered good planning for these strips; putting long cul de sac roads at the end of long cul de sac roads is no longer considered good planning; it is in fact most towns prohibit or discourage; not in 1982 anymore.

Selectman Waddell stated: that was up to the planning board not up to us.

Attorney Hogan stated: within the argument that you heard tonight to look at case law; relevant in that respect.

Selectman Woolsey stated: Selectman Waddell is concerned about revenues so we want to make sure that back taxes are on target; thank you for your explanation; I really appreciate it and I think you have clarified a great deal for me. Thank you.

Selectman Griffin stated: I along with Selectman Waddell have a problem if you have not been paying taxes on this property for 30 years I don't see how you would have any say in it at all; that is how I see it.

Attorney Hogan stated: if you pick up the tax map, every tax map has right on it that it cannot be used for legal conveyance or description, etc., and town's tax maps and assessing records are often very wrong and sometimes they are corrected and there is some adjustment made for that; whoever town has actually assessed property taxes from is not in the context of what we are talking about here; perhaps what the board decides ultimately and if the board decides if it is the corporation there is a way to go back and address the property tax issue.

Mr. Chiaramitaro stated: personally I would like to address Selectman Griffin and Selectman Waddell; we had a divorce and death in the family which those are things to consider and then obviously being the heir in this situation and I know that is not any form of excuse but that is unfortunately what occurred to answer your questions; some of the information I wasn't privy too.

Selectman Griffin stated: he is finished.

Selectman Bridle stated: Frank do you know when Fieldstone Circle was put in?

Mr. Chiaramitaro stated: Parcel A and Parcel C used; has exact dates in his briefcase; his recollection were they were before the 6-year period expired; substantial difference between the two things.

Selectman Bridle stated: who developed those; your father? Mr. Chiaramitaro stated: that is correct, yes; once again, some of these points I was 10-12 years old.

Chairman Bean stated: could I draw your attention to the amendment to protect the conveyance for Stowcroft Drive, Fieldstone Circle, and Westridge Drive that was recorded June 27, 2008; are you familiar with that? Mr. Chiaramitaro stated: yes

Chairman Bean stated: we understand what it says, but can you explain your motivation; what was your intent; why was it done in 2008 by you? Do you want a copy of it?

Mr. Chiaramitaro retrieved the document.

Chairman Bean stated: if you are not prepared tonight. Mr. Chiaramitaro stated: to be honest it is a legal document that is beyond my purview, we can address that in the future.

Attorney Hogan stated: I did note the items that the chair was asking from the other parties to follow up on in writing and I would be happy to submit that in writing.

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Chairman Bean stated: thank you I was going to ask that of you; alternatively my last question about an occasion requiring the board of selectman to lay out a road; alternatively because there are more than a couple of attorneys if all council could provide their agreement or disagreement just to allow access to the Graves property from Stowecroft does not constitute an occasion; if you could respond either way to that as well.

Chairman Bean: Is there any public comment following immediately Attorney Hogan? You are rising sir would you take the podium and identify yourself and your address please?

Barry Curtis, 6 Fieldstone Circle stated: wants to comment to perspective of the abutters; comment on detriment to others; the abutters of the Dalton Woods Development strongly believe the development would increase the water run off; reassure all parties here that their full intent is not self-interest; support selectmen, planning board and conservation committee so that they can exercise fiduciary responsibilities based on the full facts; 2006 only room for 5-6 homes, new study shows 13 drastic difference between the two; hired own drainage experts found different criteria used; very real issue is land is wet and doesn't drain properly; flooding issues to contend with; environmental and economic concerns; insurances do not cover flooding; possible lawsuits to whomever is liable; conservation committee recommendation itself not to continue with project; environmental impact, financial impact to town, residents, emotional stress of future lawsuits, abutter's feel more than just a narrow self-interest; alternative solution to Mr. Graves do not renew; open options; find viable alternative for property; work together for solution.

Selectman Waddell stated: I don't think it is a narrow self-interest at all; I get what you are saying, but my only problem is that we here to deal with the ownership and the laying out of Lot B and not to deal with that, it is a planning board issue and the planning board is an elected board like the selectmen are certain responsibilities they have and certain responsibilities we have.

Selectmen Woolsey, Selectman Griffin, and Selectman Bridle each had no comments.

Chairman Bean called for further public comments.

Peter Ross, 91 Leavitt Road: listened tonight to people saying they have no public interest in this; thanks if that 13 lot subdivision is approved and is built; \$3,000,000 bill due on Exeter Road on Route 27; if this 13 lot subdivision is approved and the town takes out a 25 year bond that subdivision will pay the whole \$3,000,000 and as a taxpayer that is my concern.

Chairman Bean stated: point of order we are here not to discuss if the court has already recognized planning board issues, conservation issues, we have narrow and strict confines in terms of our deliberation and considerations.

James Gove, Gove Environmental Services, Exeter, NH consultants for the Green Company: map shows wetlands; 2nd page shows actual wetland impact is 640 square feet; make clear in addition to the town's review, the town's engineer has looked at the drainage study and finds it acceptable; not going to create huge flooding problem to the abutting properties; was accepted by the DES; and has issued a permit.

Chairman Bean stated: again the board of selectmen considering the lay out specifically.

Selectman Woolsey stated: the DES is the outfit that allowed building in the marsh at the end of High Street; no development at this point in time on the Graves property and yet you

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are seeing spill over flooding come into the existing properties; don't know how building on that property would reduce the flooding risks, but it is a fact that there is significance flooding just below the existing Graves property; the worse complaints we get as selectmen are flooding on adjacent property claims.

Selectmen Waddell, Griffin, and Bridle each had no comment.

Barry Curtis, 6 Fieldstone Circle: wanted to make comment on Mr. Gove that the DES permits were in appeal; prior discussion comments were actually directed towards the occasion to have a development.

Judy Clark, 35 Fieldstone Circle: my property abuts Mr. Graves was given a copy of a covenant; was told were legal documents registered at Rockingham County Courthouse; which states no other roads can be built off the existing roads that are present; without consent of Mr. Chiaramitaro Jr. or 2/3rds of existing property owners in the subdivision.

David Drolet, 44 Stowcroft Drive: feels that the issue of abutters has certain rights to Lot B; abutters have right to that property.

Chairman Bean stated: there is no further public comment; back to the attorneys; Attorney Kalman please: we are eager to hear from you again.

Attorney Kalman stated: we have learned quite a bit tonight; the corp. has been dissolved and the Mr. Chiaramitaro Jr. claims to own the property; we know it is worth \$400; RSA 231:19 says when owner or resident unknown; we now know who does own it, it would be the Town of Hampton; reminds him of reverse condemnation case; pointed out that a community can't do indirectly what it can't legally do directly; asking the board of selectmen to look at the situation factually; thinks contract arrangement is the argument here; you are being asked to deny the lay out; does an occasion exist to lay out a roadway; Mr. Graves wants to use his property to the full extent that the planning board will let him use it; protected covenant thing; only apply to owners of property in the subdivision; magic date is March 14, 1983 for the rights created for Mr. Graves; the folks in the subdivision can vote and decide to change their protected covenant annually, but all junior to the rights that the Graves family benefitted from in 1983; among themselves they can create these protected covenant and I am sure they are all binding and reliable; but also each of these lot owners when they bought their property bought off that plan that has note 3; so I don't believe that the junior documents would have any effect on the right that the Graves have on Note 3 on the plan that was recorded March 14, 1983.

Selectman Woolsey stated: I look forward to the courts resolution.

Selectmen Waddell, Griffin, and Bridle each had no comment.

Chairman Bean stated: Attorney Durbin

Attorney Durbin stated: the conversation with the petitioners turned to eminent domain and I think that is how drastic they view this; we are at a last resort here asking the town to exercise eminent domain power; with some perceived public benefit in mind; benefit one particular land owner could not have any reasonable expectation to develop the property alone; let alone to lay out a road here; so again I would assert there is no public interest at issue here; the towns public interest does not act in the interest of one owner, but in the interest of all; the argument is self-defeating.

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Chairman Bean stated: can you just clarify if the title is clouded; can you explain in your follow up; if the town did in fact own it; it would be eminent domain.

Attorney Hogan stated: rest on the comments he has made, and will take the board up on the invitation to follow up in writing.

Chairman Bean stated: as we have been instructed from town council we have heard all public comment; we have heard from the attorney's we have heard from the petitioners; will recess this hearing and we will execute our duties according to state law.

Selectman Woolsey MOVED to take 5 minute recess at (09:15) SECONDED by Selectman Bridle.

VOTE 5-0-0

Chairman Bean stated: Public Hearing is back in session.

Sharon Raymond, 2 Lamson Lane: a lot of issues and concerns about the condition of Lamson Lane and how it is being cared for; two major safety concerns; snow banks at end of street are so high cannot see getting out onto Route 1; been that way for a few weeks; dangerous conditions; street is down to 12' width; if fire ladder truck would not fit on street; last 2 years have been really bad; not plowing streets with right equipment; can't push banks back because of size of trucks; not being able to get anyone to answer email or return phone call; went to DPW and police station asking when street will be cleared; finally spoke with Chris Jacobs; expressing concern and frustration; feels let down.

Chairman Bean stated: are we going non-public:

Attorney Gearreald stated: yes; I recommend that the board goes into under RSA 91A:3,II,c matters which if discussed in public would likely affect adversely the reputation of any person and RSA 91A:3,II,e consideration of litigation which has been

VI. Adjournment

Selectman Woolsey MOVED to enter into nonpublic session under RSA 91A:3,II,c and RSA 91A:3,II,e and asked for roll call at 09:27 PM SECONDED by Selectman Bridle.

VOTE BY ROLL CALL: 5-0-0

Chairman