

Judy Newman-Rogers - Select Board Admin

From: Lick, Derek D. <dlick@orr-reno.com>
Sent: Thursday, September 26, 2024 2:53 PM
To: Judy Newman-Rogers - Select Board Admin
Cc: Landuse Secretary; Lick, Derek D.
Subject: RE: Warner Gibson Dimond Lane - Request for Meeting With Select Board [OR-IMANAGE.FID592536]

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Hi Judy,

Yes, I can provide more details on the reason we are requesting a meeting with the Select Board.

No!
The request for the meeting relates to an issue that arose during an August 5, 2024 Planning Board meeting. Specifically, Mr. and Mrs. Gibson's neighbor, Mark Xenakis, sought approval for a subdivision of his property located at 93 Dimond Lane, just past the Gibson property. As part of his subdivision approval, the Planning Board required Mr. Xenakis to construct a hammerhead on his property to allow the town's plow trucks to turn around at the end of the Dimond Lane. However, based on my client's and his surveyor's review of the land records, the Gibsons own the portion of Dimond Lane over which the Town plow trucks (and other vehicles) must travel to reach the hammerhead on the Xenakis property. We are unaware of the Town being granted any easement or of the town taking the road by eminent domain etc. As a condition of Mr. Xenakis' subdivision approval, the Planning Board required the Gibsons and the Town to come to an agreement as to the Town's access rights over the portion of Dimond Lane crossing the Gibson's property. Therefore, we wanted to begin the discussions with the Town about some form of access agreement.

Selectman Harry Seidel was at the Planning Board meeting, as was Selectman Michael Smith. They should have some recollection of the situation. Additionally, if I recall correctly, Mr. Smith pulled me and Mr. Gibson aside after the meeting and said that he was going to try to track down documents at the Highway Department that he thought might clarify the Town's rights. I looked for the minutes of the Planning Board meeting to share with you, but they are not yet posted. So, I've copied Janie Loz on this email in the event she has any input or might have a draft of the minutes to share with you to get a better understanding of the condition related to reaching agreement with the Town.

I hope that is helpful. Let me know if you or the Select Board have any additional questions before slotting us in for a meeting.

Thanks!



Derek D. Lick
Attorney/Shareholder



Warner: Eminent domain

Legal Inquiries <legalinquiries@nhmunicipal.org>

Thu 8/8/2024 10:19 AM

To: Kathy Frenette - Town Administrator <administrator@warnernh.gov>

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Good Morning Kathy:

To establish a highway by prescription, it must appear that the general public used the road continuously without interruption for a period of twenty years prior to 1968. RSA 229:1. In addition, the public use must be shown to have been adverse. *Catalano v. Town of Windham*, 133 N.H. 504, 509 (1990). The burden of proof on the issue of adversity, at least initially, lies with the town claiming the prescriptive easement. *Mahoney v. Town of Canterbury*, 150 N.H. 148 (2003).

Stephen C. Buckley
Legal Services Counsel
NH Municipal Association
25 Triangle Park Drive
Concord, NH 03301
603-224-7447
legalinquiries@nhmunicipal.org



The attorneys at NHMA provide general municipal legal advice based on the information that is provided by the inquirer. The attorneys at NHMA operate best when they are answering questions of general municipal law—issues of interest to more than just a few communities—especially questions which can be answered by reference to state statutes or court opinions. In the event you have already received legal advice from your town attorney, please understand that NHMA does not provide second opinions and would defer to the advice of town counsel who is in a much better position to advise on specific facts and circumstances. Please read the full legal services FAQ located here: <https://www.nhmunicipal.org/legal-services>.

From: Kathy Frenette - Town Administrator <administrator@warnernh.gov>

Sent: Wednesday, August 7, 2024 2:31 PM

To: Legal Inquiries <legalinquiries@nhmunicipal.org>

Subject: Eminent domain



TOWN OF WARNER

P.O. Box 265, 5 East Main Street
Warner, New Hampshire 03278-0059

Land Use Office: (603)456-2298 ex. 7

Email: landuse@warnernh.gov

Planning Board Notice of Decision

Date of Decision: Monday, August 5, 2024

Minor Subdivision Application

Applicant: Mark W. Xenakis

Owners: Mark and Susan Xenakis

Agent: J.E. Belanger Land Surveying, PLLC.

Address: 93 Dimond Lane, Warner, NH 03278

Map/Lot: Map 3, Lot 29

District: R-2 and OC-1

Description: Subdividing a 11.16-acre lot into two residential lots. There will be an existing house on one lot and a single-family residential home will be built on the newly created lot. An existing lane will be extended so the newly created lot will have road frontage (this has been approved by the Town of Warner Selectboard).

On August 5, 2024, the Warner Planning Board voted **APPROVE** a 2-lot subdivision for Mark and Susan Xenakis for Map 3, Lot 29 if the following conditions have been met, before the final mylars are signed by the Chair and submitted to the Merrimaak County Registry of Deeds:

- CONDITIONS*
1. The zone delineations and buildable areas noted on the plan.
 2. The turn-around will not be used to park Town vehicles, to be agreed upon by the Road Agent.
 3. Subject to an extension of Diamond Lane constructed to Class V road standards, so both of the proposed residential lots have the required road frontage.

The vote tally was 7 to 0 in favor of approving the minor subdivision.

The Planning Board's decision may be appealed to superior court pursuant to RSA 677:15 or, if it has jurisdiction, to the Housing Appeals Board pursuant to RSA Ch. 679.

Karen Coyne
Planning Board Chair



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Karen Coyne
Planning Board Chair

WHEN DID STEVE HART
BUILT HIS HOUSE

- CAN'T BUILD HOUSE ON
PUBLIC ROAD

- Camp @ XENAKIS

Know all Men by these Presents:

That I, Henry R. Davis, of Winchester, in the County of Middlesex, and Commonwealth of Massachusetts,

for and in consideration of the sum of one dollar and other valuable consideration to me in hand, before the delivery hereof, well and truly paid by

Herman Davis, of Warner, County of Merrimack and State of New Hampshire

the receipt whereof I do hereby acknowledge have --- granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Herman Davis

his heirs and assigns forever,

the perpetual right and privilege to construct, maintain and forever use a certain right of way across my premises, situated near Tom Pond, so-called, in the town of Warner, County of Merrimack and State of New Hampshire, said right of way being sixteen (16) feet in width and extending in a straight line from the southeasterly corner of my land to the right of way now owned by Joseph E. Sanborn and located on the Northerly side of my premises.

As to the tract of land on which this right of way is granted, reference is hereby made to deed of Henry W. Hubbard, et als to me, dated April 16, 1906, and recorded Merrimack County Records Vol. 327, Page 348.

MCRD

TO HAVE AND TO HOLD the said granted premises, with all the privileges and appurtenances to the same belonging, to him the said Grantee and his heirs and assigns, to his and their only proper use and benefit forever. And I the said Grantor and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Grantee and his heirs and assigns, that until the delivery hereof, I am the lawful owner of the said premises and am seized and possessed thereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid, that the premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators shall and will warrant and defend the same to the said Grantee and his heirs and assigns against the lawful claims and demands of any person or persons whomsoever.

And I, Mildred L. Davis wife husband of the said Henry R. Davis in consideration aforesaid, do hereby relinquish my right of dower ~~courtesy~~ in the before mentioned premises.

And we and each of us do hereby release all rights of HOMESTEAD, secured to us, or either of us, by Chapter 214 of the Public Laws of New Hampshire, or any other statute of said State.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twenty fourth day of April in the year of our Lord 1931.
Signed, sealed and delivered in presence of us:

Mary Sargent Howard

Henry R. Davis (L. S.)

Mildred L. Davis (L. S.)

COMMONWEALTH OF MASSACHUSETTS,
~~STATE OF NEW HAMPSHIRE~~

Bristol ss April 24, A. D. 1931.
Personally appeared the above named Henry R. Davis and Mildred L. Davis

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

William A. Bellamy,
Master in Chancery Justice of the Peace.
(L. S.)

Received Apr. 28, 1931, 10H. 45M. A. M.

Recorded and examined. Attest.

Frederick H. Brown Register.

///

T3
T. F. BERNIER, INC.
Land Surveyors, Designers, Consultants
 38 WARDEN STREET - P.O. BOX 3466
 CINCINNATI, OHIO 45202-3466
 Tel: (616) 224-4145 - Fax: (616) 224-0507