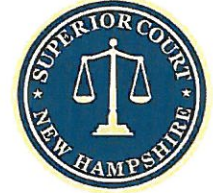


THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
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<http://www.courts.state.nh.us>



**SUMMONS
ZONING BOARD APPEAL
RSA 677:4**

Case Name: **Alan Marsh, et al v Town of Temple Zoning Board of Adjustment, et al**
Case Numbers: **226-2023-CV-00560**

Date Complaint Filed: November 15, 2023

A Complaint has been filed in this Court. A copy of the Complaint is attached.

The Court ORDERS that ON OR BEFORE:

| | |
|-----------------------|--|
| January 11, 2024 | John Jackson-Marsh; Alan Marsh shall have this Summons and the attached Complaint served upon Town of Temple; Town of Temple Zoning Board of Adjustment. |
| February 01, 2024 | John Jackson-Marsh; Alan Marsh shall electronically file the returns of service with this Court. Failure to do so may result in this action being dismissed without further notice. |
| 30 days after service | Town of Temple; Town of Temple Zoning Board of Adjustment must electronically file an Appearance and Answer or other responsive pleading. In addition, a certified record of all previous proceedings must be mailed to this Court. A copy of the Appearance and Answer or other responsive pleading must be sent to the party/parties listed below. |

Notice to Town of Temple; Town of Temple Zoning Board of Adjustment: If you do not comply with these requirements, you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

| | |
|---|--|
| Jonathan B. Sistare, ESQ | Law Office of Jonathan B Sistare PO Box 213 Dublin NH 03444 |
| Russell F. Hilliard, ESQ | Upton & Hatfield LLP 10 Centre St PO Box 1090 Concord NH 03302 |
| Thomas R. Hanna, ESQ | BCM Environmental & Land Law PLLC 41 School St Keene NH 03431 |
| Town of Temple Zoning Board of Adjustment | 423 Route 45 Temple NH 03084 |
| Town of Temple | 423 Route 45 Temple NH 03084 |

BY ORDER OF THE COURT

November 27, 2023

Amy M. Feliciano
Clerk of Court

(126987)

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

John Jackson-Marsh and Alan Marsh

v.

Town of Temple Zoning Board of Adjustment and Town of Temple

226-2023-CV-00560

Docket #: _____

**APPEAL FROM TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT'S
DECISION PURSUANT TO RSA 677:4**

Plaintiffs John Jackson-Marsh and Alan Marsh (collectively, "Plaintiffs"), by their attorneys, BCM Environmental and Land Law, PLLC, appeal the October 19, 2023 decision of the Town of Temple Zoning Board of Adjustment (the "Board" or "ZBA") to deny, based on lack of jurisdiction, Plaintiffs' application for a special exception to allow a collection of antique construction equipment (the "2023 Application") on their 39-acre property at 32 West Road (Tax Map 7, Lot 13) (the "Property"). The October 19, 2023 denial of the 2023 Application was preceded by the Board's August 3, 2023 denial, also based on lack of jurisdiction. The Board granted Plaintiffs' timely-filed Motion for Rehearing, and at the rehearing on October 19, 2023 again denied the 2023 Application on the same grounds, namely lack of jurisdiction. This appeal follows:

PARTIES

1. Plaintiffs John Jackson-Marsh and Alan Marsh reside at 32 West Road, Temple, New Hampshire 03084.

2. The Town of Temple is a municipality with a principal business address of 423 Route 45, Temple, New Hampshire 03084.

3. The Temple Zoning Board of Adjustment is a duly formed municipal board with a principal business address of 423 Route 45, Temple, New Hampshire 03084.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to RSA 677:4, which provides that “[a]ny person aggrieved by any order or decision of the zoning board of adjustment . . . may apply, by petition, to the superior court within 30 days after the date upon which the board voted to deny the motion for rehearing.”

5. Venue is proper because the Town of Temple, Town of Temple Zoning Board of Adjustment, Plaintiffs, and the Property are all located in Hillsborough County.

STANDARD OF REVIEW

6. In appealing a decision of a zoning board of adjustment, a petitioner must “set forth that such decision or order is illegal or unreasonable, in whole or in part, and shall specify the grounds upon which the decision or order is claimed to be illegal or unreasonable.” RSA 677:4.

7. Pursuant to RSA 677:6, “[i]n an appeal to the court, the burden of proof shall be upon the party seeking to set aside any order or decision of the zoning board of adjustment . . . to show that the order or decision is unlawful or unreasonable. All findings of the zoning board of adjustment . . . upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said order or decision is unreasonable.”

8. Under RSA 677:11, the court may dismiss the appeal, vacate the order or decision complained of in whole or in part, or remand the matter to the zoning board of adjustment for proceedings consistent with the court's order, as justice may require.

SUMMARY OF THE APPEAL

9. The Board declined to accept jurisdiction over Plaintiffs' 2023 Application because, in its view, the 2023 Application was not materially different from a prior application that Plaintiffs had submitted in 2018 (the "2018 Application").

10. The Board's decision was unlawful and unreasonable because the applications themselves are materially different, the circumstances surrounding the applications are materially different, and the Town and the Board invited Plaintiffs to reapply.

FACTS AND PROCEDURAL HISTORY

11. Plaintiffs own approximately 39 acres of land located in the Town of Temple at 32 West Road, which they acquired in 2014 via deed recorded in the Hillsborough County Registry of Deeds at Book 8717, Page 1278. Plaintiffs subsequently added Alan Marsh's son, George Marsh, as an owner of the Property by deed, dated August 19, 2022, and recorded at Book 9644, Page 2154 of said Registry.

12. This parcel is identified as Tax Map 7, Lot 13 in the Town's assessment records.

13. The Property is primarily located in the Town's Rural Residential and Agricultural zoning district, with a small portion in the Village Historical Preservation zoning district.

14. The Property contains Plaintiffs' single-family home and large barn.

15. Plaintiffs engage in the unique hobby of collecting antique construction vehicles and equipment (the "Collection"), with the mission of preventing these items from being forgotten or destroyed.

16. The Collection includes pieces such as a 1952 Northwest Model 25 front-shovel; a 1944 Caterpillar D7 tractor with a LeTourneau cable-operated bulldozer; a 1925 American Gopher crane; a hydraulic front-end loader based on a 1937 Corbitt Truck; a 1953 Lorain Model TL-25 with a rare scoop shovel attachment; and a 1963 American Model 975 Crawler crane with a 100-foot-long boom.

17. Plaintiffs are passionate and enthusiastic about this hobby, participating as active members of the Northeast Chapter of the Historical Construction Equipment Association (“HCEA”), the New England chapter of which is called the Northeast Rockbusters.

18. Plaintiffs transport pieces of the Collection around the country to exhibit at HCEA shows and events. The Property is not open to the public for viewing the Collection.

19. When Plaintiffs are not displaying the Collection at shows and events, their intent is to store the pieces, along with twelve (12) tractor trailers that contain old tools and parts to support the Collection, on the Property.

20. Plaintiffs originally stored the Collection at various locations in Massachusetts, but they began transferring it to the Property in 2015.

21. In 2017, Plaintiffs received notice of violations of the Town of Temple Zoning Ordinance (the “Ordinance”) and New Hampshire’s junk yard statute from the Town related to the Collection on the Property.

22. Plaintiffs received a subsequent Notice of Violation on April 6, 2018, but on May 8, 2018, the Town informed Plaintiffs that it was willing to suspend enforcement if Plaintiffs applied for a special exception with the Board.

23. In response, Plaintiffs filed an application for a special exception with the Board (the “2018 Application”).

24. Ultimately, the Board denied the request for a special exception on July 16, 2018.

25. As reflected in its Notice of Decision for the 2018 Application, the 2018 Board voted that all but one (1) of the special exception requirements set forth in the Ordinance had been met, subject to conditions of approval. See generally, 2018 Notice of Decision, attached as **Exhibit A**.

26. Specifically, the Board determined that Plaintiffs had failed to meet their burden of establishing that the proposed use would not adversely affect the values of adjacent property. Id. at 5.

27. The Board highlighted that Plaintiffs had not provided expert evidence from a realtor or appraiser to show that the proposed use would not negatively impact surrounding properties. Id.

28. The Board also noted that, despite appropriate screening (which the Board voted had been met), “technological innovations such as Google Earth [would] cause [Plaintiffs’] proposed use to adversely affect adjacent property values.” Id. at 5, 8.

29. The Board concluded that all the Ordinance’s other requirements for a special exception had been met.

30. It voted: 5-0 that the proposal met setback requirements (Id. at 5); 5-0 that there was adequate off-street parking (Id. at 5); 3-2 that the site was an appropriate location for the proposed use if several conditions were met (Id. at 5–8); 5-0 that no hazardous waste would be permanently stored or disposed of on the site (Id. at 8); 5-0 that the use did not present a safety hazard to the community (Id. at 8); and 5-0 that buffering requirements were met (Id. at 8).

31. The Board’s sole reason for denying the 2018 Application was that Plaintiffs did not establish that the proposed use would not adversely affect adjacent property values. Id. at 8.

32. Plaintiffs did not appeal the Board's decision.

33. In May of 2019, the Town issued another notice of violation consistent with its previous notices.

34. The Town then filed a complaint in superior court (Docket #: 2019-CV-00495), which culminated in an Order issued by Justice Charles S. Temple on June 2, 2023 (the "Order"), attached as **Exhibit B**.

35. In summary, the Court determined that Plaintiffs' use of the Property qualified as a junkyard under state law and constituted a "noncommercial enterprise" under the Ordinance for which zoning approval had not been obtained. Order at 14.

36. As such, the Court ordered that Plaintiffs either remove the Collection and attendant materials OR "[a]pply for the necessary land use approvals including the required special exception, site plan approval, and license, within 30 days of the date of this order." Order at 15.

37. The Order closely mirrored a proposed order submitted by the Town (the "Proposed Order"), attached as **Exhibit C**, which likewise proposed that Plaintiffs should bring their Property into compliance by either removing the offending materials OR "obtaining the land use approvals necessary including, but not necessarily limited to, the required special exception, site plan approval, and license, as required, within 30 days of the date of this Order." Proposed Order at 2.

38. In accordance with the Court's Order, Plaintiffs submitted a new special exception application to the Board on June 29, 2023, requesting approval of their hobby activities as a "non-commercial enterprise" pursuant to Sections 13 and 13A of the Ordinance.

39. This time, in response to the Board's 2018 decision, Plaintiffs submitted a report by Brian C. Underwood of B.C. Underwood LLC, a certified New Hampshire general real estate appraiser (the "Appraisal Report"), attached as **Exhibit D**.

40. The Appraisal Report concluded that "there is no market evidence that the construction equipment collection will diminish surrounding property values." Appraisal Report at 3.

41. The Report addressed the Board's concerns about aerial imagery, noting that "[a]erial photos or videos of the subject property would not alter the evidence contained in this letter, the real estate market in Temple[,], or [Mr. Underwood's] professional opinion stated herein." Id.

42. While not expressly requested by the Board in 2018, Plaintiffs also submitted a study conducted by GeoInsight, an environmental strategy and engineering company, attached as **Exhibit E**, to address the environmental concerns the Board voiced during the 2018 proceedings (the "Environmental Report").¹

43. However, notwithstanding the Court's Order and the fact that Plaintiffs' 2023 Application addressed the shortcomings raised by the 2018 Board, the Board at its August 3, 2023 and October 19, 2023 meetings denied the Application based on lack of jurisdiction.

44. As of the date of this appeal, the Board had not provided a Notice of Decision concerning its October 19, 2023 decision.

¹ While the Board did not reject the 2018 Application on this basis, it did express concerns about impacts to soil, groundwater, etc., as reflected in several of the conditions that it imposed. See 2018 Notice of Decision at 5–8.

LEGAL ARGUMENT

45. The subsequent application doctrine was established by the New Hampshire Supreme Court in Fisher v. City of Dover, with the Court's holding that a zoning board of adjustment may not reach the merits of a subsequent application unless (1) there is a material change of circumstances affecting the merits of the application or (2) the proposed use is materially different in nature and degree from the use proposed in the prior application. Fisher v. City of Dover, 120 N.H. 187, 190 (1980).

46. The subsequent application doctrine established in Fisher has been revisited in a number of cases during the past 42 years.

47. In order to accept a subsequent application, a land use board "must be satisfied that the subsequent application has been modified so as to meaningfully resolve the board's initial concerns." The application must contain more than an "inconsequential change." CBDA Dev. v. Town of Thornton, 168 N.H. 715, 725 (2016).

48. Changes in the law can constitute a material change in circumstances justifying reapplication. See Brandt Dev. Co. v. City of Somersworth, 162 N.H. 553, 557 (2011) (case law interpreting variance standards changed between applications); Appeal of Allen, 170 N.H. 754, 761 (2018) (agency adopted substantive rules between applications).

49. The subsequent application doctrine established in Fisher does not preclude consideration of a subsequent application when the land use board invites reapplication and the new application has been modified to address the Board's concerns. Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529, 536 (2009).

50. An express invitation from the land use board is not required; the invitation to reapply can be explicit or implicit. Id.; TransFarmations, Inc. v. Town of Amherst, 175 N.H. 530, 536 (2022).

51. If during its deliberations on the original application the land use board does not indicate it would never grant the requested relief, this can be construed as an implicit invitation to reapply. See Morgenstern v. Town of Rye, 147 N.H. 558, 566 (2002) (“The minutes from the 1993 and 1995 ZBA hearings do not suggest that the ZBA would never grant a variance.”).

52. Likewise, a town can invite an applicant to reapply through its court pleadings. See id. (“Indeed, in its pleadings submitted to the superior court, the town essentially invited the plaintiff to file a new variance application.”).

53. If a land use board implicitly or explicitly invites an applicant to reapply to address the board’s concerns with the original application, it logically follows that an application so modified qualifies as materially different for purposes of Fisher. Hill-Grant Living Trust, 159 N.H. at 536.

54. However, it is not required that the land use board invite the applicant to submit a modified application; such invitation merely serves as additional evidence that the subsequent application is, in fact, materially different. See Allen, 170 N.H. at 762.

55. If a land use board bases its denial of an application on a lack of information, then a subsequent application that supplies the missing information is considered “materially different” for purposes of Fisher. TransFarmations, Inc., 175 N.H. at 540.

56. When a land use board’s denial is based on a lack of information, a new application can even be “substantially identical” to the original application as long as the new

application provides the information that was deemed missing from the original application. Id. at 539.

57. Here, the Board's decision was unreasonable and legally erroneous because: (1) Plaintiffs' 2023 Application is materially different because it provides the information that the 2018 ZBA deemed missing when it denied the 2018 Application; (2) the Court's Order and instructions therein to apply for a special exception amount to a material change in circumstances; and (3) the 2018 ZBA and Town invited Plaintiffs to reapply.

Missing Information Supplied in 2023 Application

58. As described above, the New Hampshire Supreme Court has held that a subsequent application can be substantially identical to an original application if the subsequent application provides information that was missing from the original.

59. Here, the Board's sole basis for denying the 2018 Application was that the proposed use would adversely affect adjacent property values.

60. In making this determination, the Board pointed out that Plaintiffs had not provided expert realtor or appraiser testimony to support their position that their proposed use would not negatively impact surrounding property values.

61. Notably, the Board in no way suggested that it would *never* find that the proposal would not adversely affect surrounding property values; rather, it stated that it did not have sufficient information to make that determination.

62. To cure this deficiency, Plaintiffs produced the Appraisal Report with their 2023 Application.

63. The Appraisal Report supplies the information that the Board felt was missing from the 2018 Application and directly addresses the Board's concerns about the impacts of aerial imagery on surrounding property values.

64. What is more, Plaintiffs took the extra step of producing an Environmental Report with the 2023 Application to address environmental concerns that the Board had raised with the 2018 Application, even though the Board had not denied the 2018 Application on this basis or expressly requested additional environmental information.

65. The breadth of additional information that Plaintiffs provided amounts to much more than an "inconsequential change." Indeed, the Appraisal Report directly addresses the shortcomings that the 2018 Board expressly highlighted.

66. The addition of the Appraisal Report is analogous to the TransFarmations, Inc. situation in which the land use board indicated that a new traffic study would aid the board's decision. TransFarmations, Inc., 175 N.H. at 533.

67. The Board's Notice of Decision in the 2018 Application makes it clear that the application was denied because the Board lacked sufficient information to conclude that the proposal would not have a negative impact on surrounding property values.

68. As such, under the TransFarmations, Inc. test, it does not matter that the relief requested in Plaintiffs' 2018 Application and 2023 Application is substantially the same—Plaintiffs provided a materially different subsequent application and satisfied Fisher by presenting the information that was missing from their 2018 Application via the Appraisal Report (along with additional supplemental information).

69. Therefore, the Court does not even need to look beyond the face of the applications themselves to see that the Board erred by concluding that it could not accept jurisdiction over the 2023 Application.

Court Order is a Material Change in Circumstances

70. Although the 2023 Application is materially different and satisfies Fisher on its face, it is also the case that the Order qualifies as a material change in circumstances that allows the 2023 Application to clear the Fisher hurdle.

71. In the Order, Judge Temple instructed Plaintiffs to “[a]pply for the necessary land use approvals including the required special exception . . . within 30 days of the date of this order.” Order at 15.

72. An order from a court of law is not “inconsequential;” it counts as a material change in circumstances under Fisher.

73. The New Hampshire Supreme Court has concluded that a material change in circumstance can be based on changes in the law, and a court order is considered law. See Appeal of Langenfeld, 160 N.H. 85, 89 (2010) (“The interpretation of a court order is a question of law.”).

74. However, even assuming for the sake of argument that the Order is not considered a change in law, there is no doubt that the Order equates to a material change in circumstances regardless.

75. Therefore, in light of the Order, it was unreasonable and legally erroneous for the Board to refuse jurisdiction over the 2023 Application.

The Town's Explicit and Implicit Invitations to Reapply

76. As established by the New Hampshire Supreme Court, an invitation to reapply—whether explicit or implicit—serves as additional evidence of a material change in circumstances under Fisher.

77. In this case, the Town and the Board provided both explicit and implicit invitations to Plaintiffs to reapply after their 2018 Application was rejected.

78. On the explicit invitation front, the Town expressly invited Plaintiffs to submit a new application in the Town's Proposed Order.

79. As explained above, the Proposed Order contained nearly identical language to the final Order, providing that Plaintiffs should “obtain[] the land use approvals necessary including, but not necessarily limited to, the required special exception . . . within 30 days of the date of this Order.” Proposed Order at 2.

80. The New Hampshire Supreme Court has already noted that a town can invite an applicant to reapply via its court pleadings.²

81. If the Town did not intend that Plaintiffs resubmit a special exception application and have that application considered by the Board, it would have been illogical for the Town to include such a suggestion—a suggestion that was eventually adopted by the Court—in its Proposed Order.

82. There is no other logical way to interpret the Proposed Order than as an express invitation for Plaintiffs to resubmit a special exception application to the Board.

² The Town may attempt to argue that it is a separate entity from the Board and that its Proposed Order would not be binding upon the Board. This argument is belied by New Hampshire case law. In the Morgenstern case, for example, it was the pleadings *the town* submitted to the court—not any pleadings submitted by the zoning board of adjustment—that served as an invitation for the plaintiff to reapply. Morgenstern, 147 N.H. at 566 (“Indeed, in its pleadings submitted to the superior court, *the town* essentially invited the plaintiff to file a new variance application.” (emphasis added)).

83. However, even if assuming for the sake of argument that the Town did not explicitly invite Plaintiffs to reapply, there is no doubt that the Board provided an implicit invitation to reapply with its 2018 Decision.

84. As discussed above, the Board denied the 2018 Application because it did not have adequate information to determine whether Plaintiffs' proposal would negatively affect adjacent property values.

85. Specifically, the Board highlighted that Plaintiffs had not offered expert testimony from an appraiser or realtor.

86. As such, the Board gave Plaintiffs an implicit invitation to reapply with such appraiser or realtor testimony.

87. Moreover, the Board *never* suggested that there were no circumstances under which it would determine that the proposal would not adversely affect adjacent property values, and, indeed, the 2018 Board never insinuated that it would never grant the special exception.

88. In fact, the Board included several conditions of approval in its decision on the 2018 Application, so it clearly conceived of a universe in which the application would be approved; it would have been pointless for the Board to prepare such conditions if approval was outside the realm of possibility.

89. By denying the 2018 Application based on a deficiency of information, the Board implicitly invited Plaintiffs to reapply if they could provide such information.

90. Plaintiffs did provide such information in their 2023 Application through the Appraisal Report, so the Board erred by declining jurisdiction over the 2023 Application.

91. In summary, Plaintiffs were acting upon clear invitations from the Town and the Board to submit a new special exception application—whether by virtue of the explicit invitation from the Town’s Proposed Order or the implicit invitation from the Board’s 2018 decision.

CONCLUSION

92. Plaintiffs’ 2023 Application was materially different on its face because it included substantial additional information, including information specifically referenced as a shortcoming by the Board when it rejected Plaintiffs’ 2018 Application.

93. The circumstances surrounding the 2018 Application and 2023 Application were materially different, because the 2023 Application was submitted in response to a court order instructing Plaintiffs to do so.

94. Furthermore, Plaintiffs were invited to submit the 2023 Application by both the Town, through its Proposed Order, and the Board, through its decision on the 2018 Application, which provide further evidence of material differences between the 2018 Application and 2023 Application.

95. The Board, therefore, acted unlawfully and unreasonably by refusing to accept jurisdiction over Plaintiffs’ 2023 Application based on the subsequent application doctrine, and the Board’s decision must be overturned.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Reverse the Board’s October 19, 2023 decision declining jurisdiction over Plaintiffs’ 2023 Application;
- B. Remand the case to the Board with instructions to hear Plaintiffs’ 2023 Application on the merits; and
- C. Grant such other and further relief as may be equitable and just.

Respectfully submitted,

John Jackson-Marsh and Alan Marsh

By their Attorneys,

Dated: November 15, 2023

/s/ Thomas R. Hanna, Esq.

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Exhibit A

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT
MARSH SPECIAL EXCEPTION

On or about May 18, 2018, John Jackson-Marsh and Alan Marsh (hereinafter the “applicant”) filed an application for special exception with respect to the property located at 32 West Road and identified as tax map 7A, lot 7-13 seeking permission to have what the applicant has described as a collection of “antique equipment”. The Zoning Board of Adjustment (hereinafter the “ZBA”) held a public hearing on Monday, June 11, 2018, a site visit on June 19, 2018, a continued public hearing on July 9, 2018 and a meeting on July 16, 2018 to deliberate on this matter.

At the hearings, the applicant testified along with the Board of Selectmen, the Conservation Commission, as well as abutters and members of the public.

The applicant represented that they had an approximately 39 acre parcel and that they had cleared and mowed a spot to the left and rear of the house to store the equipment that was approximately 1.4 acres in size. The collection of “antique equipment” consists of industrial and construction equipment including, but not limited to trucks, cranes, bulldozers and excavators in various conditions. The proposed storage area was at least 600 feet from the nearest abutting residence and 100 feet from the nearest property line. The applicant was moving equipment and trailers from the front of the property to the proposed storage area to the side and rear of the house and expected to have everything moved over within the next several weeks and only planned to leave the Michigan excavator visible by the driveway entrance and one other piece of equipment on the front lawn.

The applicant was unsure of the number of pieces of equipment they had in their collection, though there were 10-12 tractor trailer boxes stored on the property with approximately half containing items related to the household and the others containing equipment related to their collection.

The Board of Selectmen (hereinafter "BOS") represented by Attorneys William Drescher and Christopher Drescher, objected to the application for special exception. The BOS, in support of its position cites a lengthy history going back at least 3 years of incomplete or untimely performance of requests for compliance with the Town Zoning Ordinances, that the collection of equipment more accurately resembles a junk yard, as defined in both the zoning ordinances and RSA 236:111-a and was not in keeping with the character of the neighborhood. In particular, the BOS argued that the application would diminish property values, such that even if out of sight, it would still be visible from Google Earth and weigh negatively on property values and it was not an appropriate location for the use because it is surrounded by an aquifer conservation district and junkyards are prohibited in the aquifer conservation district. One of the selectmen, Gail Cromwell, testified that while on the site visit, she counted 32 vehicles, one boat and numerous pieces of equipment. This observation appeared to be consistent with the photographs submitted to the ZBA by the BOS.

In a similar vein, the Conservation Commission submitted a memorandum to the ZBA and testified about the location of the proposed use, in particular, it was concerned about possible contamination of ground water and soil contamination arising from the further deterioration of motor vehicles and equipment being stored in an open field.

John Kielely, an abutter, also raised concerns about the effect on the aquifer conservation district and felt the applicant had failed to meet its burden of proof concerning the special exception.

Testimony was also received that Richard and Sandra Benotti had a well located less than 100 feet from the applicant's property line.

After hearing from the applicant and the BOS multiple times, all abutters and members of the public wishing to be heard, the ZBA closed the public hearing on July 9, 2018.

The applicant has the burden of proving it meets all of the conditions for a special exception. RSA 674:33, III, Temple Zoning Ordinance Section 13.

While the ZBA is sympathetic to the applicant's situation that a collection of "antique equipment" of the size and breadth of the applicant's is not permitted anywhere in the zoning, it cannot overlook the restrictions of the zoning ordinance which requires the ZBA find:

- 1) The proposed use shall be set back at least five hundred (500) feet from any existing dwelling of another owner; provided, however, that at the discretion of the Board of Adjustment, this distance may be reduced in any amount to a minimum of two hundred (200) feet, but only if written permission is obtained from the abutting owners affected.

- 2) The Board of Adjustment finds that the proposed use shall have off street parking, which will be ample to serve the proposed use; provided, however, that any such off-street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.

3) The proposed use shall not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would be obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage or other conditions that are associated with the intended use, but are not typical of permitted uses within the area.

4) The proposed site shall be in an appropriate location for the use. Among the factors the Board of Adjustment will consider are lot size, topography, soils, water resources, road access and locations of driveways, conditions of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land use.

5) No hazardous waste shall be permanently stored on or disposed of on the property.

6) Traffic generated by the proposed use shall not present a safety hazard to the community for either vehicles or pedestrians, nor shall it cause excessive wear and tear to town roads.

7) Appropriate buffering landscape shall be provided within the setback areas of a type and amount deemed appropriate by the Planning Board during the Site Plan Review.

8) The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent or Health Officer concerning the proposed use.

Following general discussions of the merits of the application, the concerns of the BOS, Conservation Commission, abutters and members of the public, the ZBA proceeded to consider each of the criteria for special exception and to vote on them individually.

The applicant meets the requirements that the proposed use is setback at least five hundred (500) feet from any dwelling of an existing owner, provided that the applicant shall verify the distance with a licensed land surveyor and if any dwelling is found to be less than five hundred (500) feet, the applicant shall obtain the written permission of the affected land owner.

Vote 5-0 in favor.

The applicant has ample off-street parking to serve the proposed use.

Vote 5-0 in favor.

The applicant has failed to meet its burden of establishing that the proposed use shall not adversely affect the value of adjacent property. For example, the applicant did not offer any realtor or appraiser testimony or other evidence in support of their assertion that the proposed use will not adversely affect the value of adjacent property. In particular, the ZBA is concerned that despite appropriate screening, technological innovations such as Google Earth will cause the applicant's proposed use to adversely affect adjacent property values.

Vote 0-5, failed.

The application as offered by the applicant does not meet the requirements that the proposed site is an appropriate location for the proposed use. However, with the imposition of substantial conditions, the concerns about the impact of the proposed use

on the soil, groundwater, and the scope of the use can be ameliorated provided the applicant complies with the following:

1. Any equipment or motor vehicle containing antifreeze, motor oil, hydraulic fluid, gasoline, diesel or other petroleum based substance, shall be kept on an impervious surface or a pad designed by a professional engineer to be sufficient in size, strength and durability to prevent the accidental or intentional discharge of the aforementioned fluids from contaminating soil and/or groundwater. Such impervious surface or pad to be covered by a roof or other design approved by a professional hydrogeologist to ensure that rain water and other surface run-off does not result in contamination of the soil or groundwater.
2. There shall be no more than twenty-five (25) pieces of equipment, motor vehicles or parts equivalent to twenty-five pieces, which are 25 years old or greater on the property.
3. The applicant shall provide the BOS with an inventory of the motor vehicles, equipment and parts prior to their submission of a site plan application to the Planning Board.
4. On or before August 1st of each year, the applicant shall provide the BOS an inventory of the collection and identify any changes in the equipment, motor vehicles and/or parts from the previous inventory.
5. The applicant shall permit inspection of the collection by the BOS annually at or around the same time the inventory is furnished.
6. No box trailers shall be permitted to be used for storage on the property.
7. All "antique equipment" and parts of "antique equipment" shall be kept out of view of the public and abutters by means of storage inside a permanent structure (to the extent feasible), or by suitable fencing which, at a minimum, substantially conforms to or complies with the fencing requirements of RSA 236:123 or by trees or shrubbery sufficient to block visual access year round as well as the requirements that govern all special exceptions set forth in the Temple Zoning Ordinance - §13-B-9. One antique motor vehicle shall be counted as one antique motor vehicle. In the course of Site Plan Review, the applicant shall provide the Town and Planning Board with a full listed inventory of all vehicles and/or equipment items. The purpose of this limitation on the special exception is to insure that the scope of this enterprise does not exceed that limitation. The applicant shall be responsible for maintaining and updating such inventory as vehicles and/or equipment are traded and/or bought and sold. Under no circumstances shall the maximum number be exceeded.
8. All mechanical repairs and modifications are performed out of view of the public and abutters.

9. It is expressly found by the ZBA that the applicant did not intend to have this enterprise be open to the public and any special exception granted hereunder shall not be deemed to allow for the public display of the equipment or sanction any form of public "museum" or other gathering.

10. The use of the premises shall continue to be in compliance with all municipal land use ordinances and regulations.

11. The applicants shall designate a portion of their property that shall constitute the location on which all vehicles and/or equipment identified in the inventory, as well as any vehicles used for storage shall be located. This area shall not exceed 1/8 of the total area of the subject property. Within 14 days of the grant of this special exception, the applicants shall identify the intended storage area by establishing markers or boundaries and provide the Town officials with a sketch or plan of that site containing sufficient information so its location can be ascertained. This sketch shall also be provided to the Planning Board as part of the site plan review process.

12. All equipment shall be moved and located within the storage area designated in accordance with the preceding paragraph, within 30 days of the approval of this special exception. Failure to timely comply with this requirement shall render this special exception null and void.

13. Additionally, the applicant shall apply to the Town of Temple Planning Board for site plan review approval of the enterprise and the ZBA recommends that the Planning Board require the applicant to address, and the Board consider, at a minimum, the following operational elements and impose such reasonable conditions as the Planning Board deems necessary:

- Hours of operation.
- Noise or other emissions from repair and/or renovation of equipment.
- Storage of equipment, parts, tools, etc., in a manner that is not viewable from adjacent properties, or from the road.
- Consideration of performance standards governing the use that are designed to protect against pollution of water resources and other environmental consideration including, but not limited to monitoring, auditing and disclosure of liquids contained in stored vehicles, equipment and machinery, storage specifications, etc.

14. All petroleum, motor vehicle and equipment fluids shall be stored in lawfully approved, environmentally safe containers inside a properly vented building or cabinet.

15. No equipment or motor vehicle shall be stored, erected to or otherwise kept at a height in excess of 40 feet above ground, except that such height may be exceeded for up to 3 calendar days a year for patriotic display after seven or more day's written notice to the Board of Selectmen.

Vote 3-2 in favor.

The applicant meets the requirement that no hazardous waste shall be permanently stored on the property or disposed of on the property provided they comply with condition 15 above.

Vote 5-0 in favor.

The applicant's proposed used does not present a safety hazard to the community for either vehicles or pedestrians.

Vote 5-0 in favor.

The applicant meets the buffering landscaping requirement, provided they comply with conditions 7 and 13 above and obtain approval by the Planning Board for site plan review.

Vote 5-0 in favor.

In addition, the applicant shall submit a complete application for site plan review to the Planning Board within 60 days of expiration of the appeal period of this special exception.

Despite the imposition of substantial conditions on the applicant, the ZBA finds that the application for special exception still fails because the applicant has not established that the proposed use shall not adversely affect the value of adjacent property.

For these reasons, the application is denied.

So Ordered,

Temple Zoning Board of Adjustment

By:  _____
Mary Beth Ayyazian, Chairperson

4852-4401-4447, v. 1

Exhibit B

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2019-CV-00495

Town of Temple

v.

John H. Jackson-Marsh and Alan Marsh

ORDER

The plaintiff, the Town of Temple (the “Town”), brought this action against the defendants, John Jackson-Marsh and Alan Marsh (collectively the “defendants”), seeking relief from alleged violations of New Hampshire’s junkyard statute and Town zoning ordinances (“ZO”). The Court conducted a bench trial on this matter on February 22 and 23, 2023, including a view of the property at issue on the morning of February 22, 2023. The Court heard testimony from five witnesses. The parties submitted exhibits for the Court’s consideration. The parties submitted post-trial memoranda and proposed orders.¹ After considering the evidence presented at trial and the applicable law, the Court finds and rules as follows.

Findings of Fact

The defendants own property located at 32 West Road in Temple (the “Property”). The Property is primarily located in the Rural Residential and Agricultural zoning district with a small portion located in the Village Historical Preservation zoning district. The Property includes over thirty-nine acres of land, a single family home, and a barn. The defendants purchased the Property in late 2014 and have resided there

¹ In light of this narrative order, the Court declines to rule on the parties’ proposed orders. See Magrath v. Magrath, 136 N.H. 757, 760 (1993) (stating superior court not required to rule on parties’ requests for findings and rulings as long as decision sufficiently recites basis for decision).

ever since.

At issue in this case is the defendants' use of the Property. The defendants maintain a collection of antique construction vehicles and equipment (the "collection"). The defendants have a genuine enthusiasm and love for their collection, and endeavor to prevent these items from being destroyed or forgotten. They are active members of the Northeast Chapter of the Historical Construction Equipment Association ("HCEA") and transport pieces of their collection around the Country to exhibit at HCEA shows and events. Prior to purchasing the Property, the defendants' collection consisted of "a couple dozen" pieces of equipment that they stored at various locations in Massachusetts. (2/23/2023 Tr. at 10:01.) In the spring of 2015, the defendants began transferring their collection to the Property with a tractor trailer and flatbed.² At some point after the defendants moved in, neighbors complained about a number of storage trailers located on the Property that were visible from the road. In response, the defendants cleared a significant portion of their land and moved the storage trailers to an area hidden from the view of the road.

In January 2017, the defendants received notice from the Town of violations of the Town's ZO provisions and New Hampshire's junk yard statute. (Ex. 5 at 1.) The Town informed the defendants that it had received several complaints regarding the condition of the Property and, in particular, allegations that the defendants are operating a junk yard and/or a home business without special exception approval. (Ex. 6.) The Town conducted an inspection of the Property in late 2017 and issued a subsequent notice of violation on April 6, 2018 ("April 6th Notice"). (Exs. 6, 5 at 3.) On May 8, 2018,

² Operable vehicles were driven straight onto the flatbed while inoperable vehicles and equipment were transferred onto the flatbed with assistance from other pieces of equipment. (*Id.* 10:02.)

the Town notified the defendants that while the April 6th Notice specified that the Property “must be cleared of junk within 30 days[,]” it was “willing to suspend further action . . . if and only if [the defendants] submit[ed] a completed application to the [Town’s] Zoning Board of Adjustment requesting a special exception[.]” (Ex. 5 at 3.) In response, the defendants applied for a special exception in 2018 (the “application”). (See Ex. 11.)

Throughout June and July 2018, the Town’s Zoning Board of Adjustment (“ZBA”) held a series of hearings, site visits, and deliberations on the application. The defendants maintained throughout the application process that their use of the property to store their collection of antique construction vehicles and equipment does not constitute a junk yard and that they do not need a special exception under the Town’s ZO because they are not operating a business. Ultimately, the ZBA denied the application because it found the defendants failed to prove that their use of the Property would not negatively impact surrounding property values as visible from aerial views. (See Exs. 11, 12.) The defendants sought a rehearing of their application, labeling this request as an “appeal.” (See Ex. Q; 2/23/2023 Tr. at 11:50-57.) The ZBA denied this request, finding that the defendants did not state anything new and that there was nothing the ZBA missed in its original review of the application. (See Ex. O at 2.) The defendants did not appeal this decision to the superior court. In May 2019, the defendants received another notice of land use violations from the Town for the same reasons previously noted. (See Ex. 5.)

It is undisputed that since the defendants purchased the Property in 2014, the number of construction vehicles and equipment in their collection has continued to

increase and expand, currently encompassing at least two and a half acres of land on the Property. (See 2/23/2023 Tr. at 11:00; Ex. 9.) While the placement of these items on the Property is somewhat organized, the size and breadth of the defendants' collection cannot be overstated. (See Exs. 9, 10.) During its view of the Property, the Court observed dozens of motor vehicles in various states of disuse, numerous large motor vehicle and mechanical parts, rusted construction equipment, attachments for construction equipment, nearly fifty loose tires, old ferrous and non-ferrous materials, and several large box trailers. Many of the motor vehicles on the Property are not in working order. However, some of the items on the Property seem to be in working condition despite their appearance. For example, during the view, Mr. Marsh turned on and operated a 1952 Northwest Model 25 front-shovel. (See Ex. C.) Additionally, Mr. Marsh pointed out the following antique items to the Court: a 1944 Caterpillar D7 tractor with a LeTourneau cable-operated bulldozer (Ex. D); a 1925 American Gopher crane (Ex. E); a hydraulic front-end loader based on a 1937 Corbitt Truck (Ex. F); a 1953 Lorain Model TL-25 with a rare scoop shovel attachment (Ex. G); and a 1963 American Model 975 Crawler crane with a 100 foot-long boom. These items, however, only comprise a small portion of the defendants' entire collection.

All of the materials stored on the Property belong to the defendants and are kept for their own personal use. The defendants have not obtained a license to operate a junk yard business at the Property and have never received a special exception for a junk yard or noncommercial enterprise use of the Property. Since the Town filed this action, the defendants' collection has continued to grow.

Analysis

The Town argues that the defendants' use of the Property constitutes a "junk yard" as defined by RSA 236:112, and that they are therefore required to obtain a junk yard business license pursuant to RSA 236:114. Because the defendants have not obtained a license, the Town argues that it is entitled to injunctive relief pursuant to RSA 236:128, abating the defendants' use of the Property as a junk yard. Further, the Town argues that the defendants' use of the Property requires them to obtain a special exception under the Town ZO. Because the defendants have not received a special exception, the Town argues that their use of the Property violates the Town's ZO and that, accordingly, the Town is entitled to injunctive relief and recovery of all applicable civil penalties and attorney's fees and costs, pursuant to RSA 676:17.

In response, the defendants argue that: (1) they are not operating or maintaining a junk yard as defined under RSA 236:112; and (2) their hobby is neither expressly prohibited by the ZO, nor an enterprise, and therefore does not require special exception approval from the ZBA. As the essential facts described above do not appear to be in dispute, the Court will consider each of the defendants' arguments in turn.

I. RSA 236:112, New Hampshire's Junk Yard Statute

RSA 236:112 provides, in relevant part

I. "Junk yard" means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

- (a) Automotive recycling yards, meaning a motor vehicle junk yard, as identified in subparagraph (c), the primary purpose of which is to

salvage multiple motor vehicle parts and materials for recycling or reuse;

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, . . . where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded secondhand material which has been a part, or intended to be a part, of any motor vehicle.

RSA 236:112, I (emphasis added). Additionally, under RSA 236:112, “motor vehicle” “means ‘motor vehicle’ as defined by RSA 259:60, I, namely, any self-propelled vehicle not operated exclusively upon stationary tracks, including ski area vehicles.” RSA 236:112, IV. The defendants argue that the vehicles are “construction equipment” as defined in RSA 259:42, “and excepted from RSA 259:60.” (Defs.’ Reply Pl.’s Post-Hearing Mem. at 3.) Under RSA 259:42, “construction equipment” is defined as

all bulldozers, rollers, scrapers, graders, spreaders, pavers, bituminous mixers, retreading machines, compressors, power shovels, excavators, backhoes, wagons, concrete mixers, generators, message boards, wood chippers, bucket loaders, snow loaders, rooters, scarifiers, and construction tractors, and such other items of equipment which in the opinion of the director shall be classified as construction equipment.

On the other hand, “motor vehicle” is defined as “any self-propelled vehicle not operated exclusively on stationary tracks, including ski area vehicles.” RSA 259:60. Contrary to the defendants’ assertion, nothing in RSA 259:60 states that construction equipment cannot also qualify as a motor vehicle. Further, RSA 236:112 does not exempt construction equipment from its definition of motor vehicles. In fact, the broad definition of motor vehicle clearly encompasses any construction equipment that is self-propelled and not operated exclusively on stationary tracks. In other words, the two

characterizations are not mutually exclusive. Moreover, Mr. Marsh testified that there are five or more vehicles on the Property that operate on normal wheels, and that of the other pieces of construction equipment, none operate on stationary tracks. (2/23/2023 Tr. at 10:49.) Thus, based on the evidence at trial and a plain reading of the relevant statutes, the Court finds the defendants' argument unpersuasive.

Next, the Court turns its analysis to whether the defendants' Property constitutes a junk yard within the meaning of RSA 236:112. It is undisputed that the defendants store on their Property a quantity equal in bulk to two or more motor vehicles which are not operable, and thus, cannot function for their original use. (See 2/22/2023 Tr. at 3:38; 2/23/2023 Tr. at 10:45, 10:49, 10:51); see also RSA 236:112, 1(c). Mr. Marsh testified that "there are a number of pieces [on the Property] that are going to require relatively major mechanical repairs in order to be operable." (2/23/2023 Tr. at 10:03-04.) At least fifty percent of the vehicles on the Property would need, at a minimum, a battery to operate. (2/22/2023 Tr. at 3:36.) However, the defendants do not possess the necessary batteries to make all of the vehicles operable. A number of vehicles have shredded and not useable tires mounted to the wheels.³ (2/23/2023 Tr. at 10:56– 57.)

Further, Mr. Marsh testified that while all of the construction equipment attachments are capable of being attached and functioning for their intended use, (id. at 10:14–15), he cannot "say that every attachment [on the Property] goes to a machine that [the defendants] own." (2/22/2023 Tr. at 3:31.) Because these attachments cannot be affixed to the motor vehicle that they are meant for, it necessarily follows that they are merely "intended to be a part of [a] motor vehicle," not presently a part of a motor

³ There are also roughly fifty loose tires on the Property stored next to the barn that the defendants assert are spare tires for machines and trucks. (2/22/2023 Tr. at 3:34; 2/23/2023 Tr. at 10:18.)

vehicle. RSA 236:112, I(c)(2). Mr. Marsh further testified that there are “a few tons” of source material iron on the Property. (2/22/2023 Tr. at 3:35.) Based on the foregoing, the Court finds that motor vehicles and used parts of motor vehicles are stored on the Property in a quantity equal in bulk to two or more motor vehicles and, therefore, constitute a junk yard as defined by RSA 236:112.

The defendants argue that these motor vehicles are not “junk” because many of them could be restored to operability with the help of various types of mechanical work such as “replacing spark plugs, belts, [or] fluids, up to re-building an engine.” (2/23/2023 Tr. at 10:55.) However, RSA 236:112 does not contemplate a vehicle’s potential for future operability. Rather, it clearly encompasses within its definition of motor vehicle junk yards, vehicles “which are no longer . . . in condition for legal use according to their original purpose,” and secondhand material “which has been a part, or intended to be a part, of any motor vehicle.” RSA 236:112, I (emphasis added). The Court must assess the present status and operability of the motor vehicles and parts, not speculate about their potential future operability after repairs are made.

Alternatively, the defendants contend that many, if not all, of these motor vehicles are antiques and, thus, fall within the “noncommercial antique motor vehicle restoration activities” exception (“antique exception”) to RSA 236:112. Specifically, pursuant to RSA 236:111-a, III, RSA 236:112 shall not apply to noncommercial antique motor vehicle restoration activities involving antique motor vehicles over twenty-five years old, provided that:

- (a) All antique motor vehicles kept on the premises are owned by the property owner or lessee; and
- (b) All antique motor vehicles and parts of antique motor vehicles are kept out of view of the public abutters by means of storage inside a

- permanent structure or by suitable fencing which complies with the fencing requirements of RSA 236:123, or by trees or shrubbery sufficient to block visual access year round; and
- (c) Any combination of antique motor vehicles or parts of antique motor vehicles that are not stored inside a permanent structure shall otherwise comply with the requirements of this section and shall not exceed a total amount of 5 vehicles. For purposes of this section, the sum of all parts of antique motor vehicles that equal in bulk to one antique motor vehicle shall be counted as one antique motor vehicles; and
 - (d) All mechanical repairs and modifications are performed out of the view of the public and abutters; and
 - (e) Not more than one unregistered and uninspected motor vehicle that is not over 25 years old shall be kept on the premises; and
 - (f) The use of the premises is in compliance with all municipal land use ordinances and regulations.

RSA 236:111-a, III (emphasis added).

At least five of the defendants' vehicles are over twenty-five years old. (See Exs. C, D, E, F, G.) The Court credits Mr. Marsh's detailed testimony describing the provenance and history of these vehicles. (2/23/2023 Tr. at 10:20–25.) The defendants' collection also seems to be kept out of view of the public abutters by means of trees and shrubbery, aside from the 100 foot-long boom on the 1963 American Model 975 Crawler crane which can be lowered. (Id. at 10:11–13.) However, the combination of antique motor vehicles and parts of antique motor vehicles not stored inside a permanent structure on the Property *vastly* exceeds a total amount of five antique motor vehicles. Even excepting five motor vehicles under the antique exception, the remaining motor vehicles and parts thereof in excess of the amount allowed by the antique exception would fall within the general provisions of RSA 236:112 governing motor vehicle junk yards.

To the extent the defendants contend that their use of the Property does not constitute a junk yard because they are not operating a place of business, the New

Hampshire Supreme Court has held that based on the “evident purposes of the statute together with the broad statutory definition of junk yard,” a junk yard need not be a place of business under RSA 236:112. Town of Lincoln v. Chenard, 174 N.H. 762, 767 (2022). The supreme court analyzed whether a junk yard must have some element of commerce as follows:

As defined in the subdivision, a junk yard includes “a place” used for “storing and keeping” or “storing and selling” or “otherwise transferring” the items enumerated in the statute. RSA 236:112, I. Thus, under the plain and ordinary meaning of the words used, a person can “stor[e] and keep[]” the items listed at “a place” and thereby be considered to “maintain” a junk yard for which he must obtain a license under RSA 236:114, regardless of whether the items are also stored and sold.

Id. Furthermore, the use of the word “business” in this statutory subdivision does not necessarily mean that commerce is conducted. The supreme court articulated that

Another definition of “business” is “action which occupies time and demands attention and effort.” Construing the evident purposes of the statute together with the broad statutory definition of junk yard, we determine that the word “business” in RSA 236:111 encompasses junk yards not operated as a commercial business.

Id. (internal citation omitted). Accordingly, the fact that the defendants are only storing their collection on the Property for personal use does not mean that the use of the Property cannot fall within RSA 236:112.

The Court understands that the defendants are attempting to prevent these items from being “junked” in the pejorative sense of the word. However, applying the relevant statutory framework to the facts of the case, the Court finds that the defendants’ use of the Property falls within the statutory definition of a junk yard in RSA 236:112.

Accordingly, the Court must consider whether the defendants have violated the applicable junk yard statute.

RSA 236:114 provides that “[a] person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard.” It is undisputed that the defendants have not received a license to operate a junk yard on the Property. As such, the Court finds that the defendants are operating or maintaining a junk yard in violation of RSA 236:114. Operation of a junk yard without the required license and approval constitutes a nuisance. See RSA 236:119 (“Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance”). Therefore, consistent with RSA 236:119, the Court finds the defendants’ use of the Property is a nuisance.

II. Town’s ZO

The defendants first argue that the ZO is not permissive, meaning a use need not be identified or expressly permitted by the ZO to be lawful. The defendants categorize their use as a “hobby” and argue that because the ZO does not contain the word “hobby” or reference similar activity, a hobby “is not, and cannot be, prohibited by the Town.” (Defs.’ Post-Hearing Mem. at 5.) For its part, the Town maintains that the ZO is permissive in nature with respect to noncommercial enterprises.

A permissive ordinance is “intended to prevent uses except those expressly permitted or incidental to uses so permitted.” Town of Carroll v. Rines, 164 N.H. 523, 526 (2013) (quotations omitted). The Town ZO contains numerous provisions articulating what residential uses of property are permitted, (see Ex. 1 Article V, Districts and Uses), as well as what are referred to as Home Business I, Home Business II, Home Business III, and Farming and Related Rural Pursuits. In addition, Article VI,

section 13, of the ZO provides that “[t]rade, enterprises, facilities, whether commercial, non commercial and/or industrial use of land or buildings . . . not specifically authorized under other sections of this ordinance, may be permitted by special exception[.]” (See Ex. 1, Art. VI, § 13 (emphasis added).) It necessarily follows that if a trade, enterprise, or facility, whether commercial or noncommercial, is not expressly permitted under a section of the ZO, it is allowed only upon special exception.

Alternatively, the defendants argue that their hobby of collecting antique construction equipment is not a noncommercial enterprise because “the word enterprise connotes some business or entrepreneurial activity, and no reliable source identifies enterprise as a synonym for hobby.” (Defendants’ Post-Hearing Memo at 8.) In response, the Town argues that the defendants “wish to morph the use of the word ‘hobby’ into a dispositive category for the purposes of the ZO and relevant statutory provisions” and that the defendants’ “motivation for doing something with their property is not cited anywhere as a determinative element of the use.” (Pl.’s Reply Def. Post-Hearing Mem. at 2.) The ZO does not define “noncommercial” or “enterprise,” but states that “all words other than those defined specifically [in the ZO] shall have the meanings implied by their context in [the ZO] or their ordinarily accepted meanings.” (Ex. 1 at 1.) Thus, the Court must interpret the meaning of a “noncommercial enterprise.”

Noncommercial is defined as “not occupied with or engaged in commerce.” Noncommercial, Merriam-Webster dictionary, <https://www.merriam-webster.com/dictionary/noncommercial> (visited May 24, 2023). “Enterprise” is defined as “[a]n organization or venture, esp. for business purposes,” Enterprise, Black’s Law dictionary (11th ed. 2019), “[a]n undertaking, especially one of some scope,

complication, and risk” as well as “a business organization,” Enterprise, American Heritage dictionary (4th ed. 2000), and also “a project or undertaking that is especially difficult, complicated, or risky,” Enterprise, Merriam-Webster dictionary, <https://www.merriam-webster.com/dictionary/enterprise> (visited May 24, 2023). Thus, the Court understands the reasonable interpretation of “noncommercial enterprise” under the ZO to be an undertaking or project of scope that entails some level of difficulty, complexity, or risk, not necessitating a business or commercial element.

Applying these definitions to the present case, the Court finds that the defendants’ hobby-use of the property constitutes a noncommercial enterprise. While the activity of collecting antique construction vehicles and equipment may not ordinarily be considered a noncommercial enterprise, the sheer scale and scope of the defendants’ operation is sufficient in this case to qualify the use as a noncommercial enterprise. Their hobby admittedly requires “quite a bit of time” and “demands quite a bit of . . . effort.” (2/22/2023 Tr. at 3:33.) The acreage on the Property covered by the defendants’ collection is expansive, occupying significantly more acreage than the home itself. (See Ex. 9.) The process of repairing these motor vehicles and machines, as well as loading them onto flatbed truck with the use of a crane if necessary to transport them to HCEA shows and exhibitions across the country, may be fairly described as difficult, complicated, and risky. Thus, while the defendants are not operating an establishment or place of business at the Property, but instead storing these vehicles and machines as a hobby and for personal use, such activity in this case qualifies as a noncommercial enterprise.

Because the defendants’ use constitutes a noncommercial enterprise under the

ZO, the defendants are required to obtain special exception approval from the ZBA. It is undisputed that the defendants do not have the necessary approvals. Therefore, their use of the Property violates the ZO. Having found that the defendants' hobby-use of the Property in its current scale violates the ZO, the Court need not determine whether a junk yard use, which is factually indistinguishable from the defendants' hobby-use, is prohibited by the ZO as the Town seeks the exact same relief for this claim.

III. Relief

The Town requests injunctive relief pursuant to RSA 676:15 and RSA 236:128 to stop the defendants from operating a junk yard in violation of RSA 236:114 and operating a noncommercial enterprise on the property in violation of the Town's ZO.

RSA 676:15 provides:

in case any . . . land is . . . used in violation . . . of any local ordinance, code, or regulation adopted under this title, . . . the building inspector or other official with authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title . . . may . . . in addition to other remedies provided by law, institute injunction . . . to prevent, enjoin, abate, or remove such unlawful [use][.]"

Additionally, RSA 236:128 authorizes local governing bodies to enforce provisions of the state statutes regulating the existence, operation, and use of junk yards, by seeking, *inter alia*, injunctive relief. As stated previously, the Court finds that the defendants are operating or maintaining a junk yard in violation of RSA 236:114 and the use of the Property is therefore a nuisance. The Court also finds that the defendants' use of the Property constitutes a noncommercial enterprise without a special exception in violation of the Town's ZO. The Court understands that the defendants are deeply passionate about their hobby of collecting construction vehicles and equipment, however, such passion does not relieve them of the obligation to conduct their hobby within the

parameters outlined by statute and the ZO. Consistent with these findings and due to the sheer scale of the defendants' violative use, as well as the likelihood that such use will only continue to expand, the Court finds that injunctive relief to abate the land use violations is an appropriate remedy under these circumstances. Thus, the Court makes the following orders:

- (1) The defendants shall bring the Property into compliance with state law and the Town's ZO by either removing all materials which constitute a junk yard pursuant to RSA 236:112 and their noncommercial enterprise use, or
- (2) Apply for the necessary land use approvals including the required special exception, site plan approval, and license, within 30 days of the date of this order. If the defendants do not obtain such approvals and license, then the defendants shall bring the Property into compliance as described in paragraph (1) above.

If the defendants fail to comply with these terms, the Town may, consistent with the authority granted by RSA 236:128, III, impose a civil penalty of up to \$50 per day for every day that the nuisance and/or violation continues, until such time as it is abated to the Town's satisfaction.

In addition to injunctive relief, the Town also seeks the imposition of civil fines and penalties pursuant to RSA 676:17, I. RSA 676:17, I, allows the Court to award a \$275 penalty for the violation of a zoning ordinance plus additional penalties of \$275 for each day that the violation continues after the landowner receives written notice of the violation. See City of Rochester v. Corpening, 153 N.H. 571, 575 (2006). The Town asserts that the \$275 per day penalties began to run on May 16, 2019, the date of

service of the most recent notice violation, up until April 3, 2022. It therefore seeks the imposition of \$389,950 in civil fines and penalties. (Pl.'s Proposed Order, Prayer for Relief C.) The Court finds that there is no equitable purpose to impose statutory fines on the defendants. The main goal of the Town's present action is to remedy the condition of the Property and current land use violations. This order will accomplish those goals. Additionally, to impose such steep fines on the defendants will likely make it more financially difficult for them to bring the Property into conformity with the land use requirements, consistent with the terms of this order. Therefore, the Court declines to impose statutory fines on the defendants. See 153 N.H. at 575 ("RSA 676:17, I(b) grants the trial court the authority to determine whether or not to impose a penalty and the amount of the penalty should it choose to impose one.").

Additionally, the Town seeks reasonable costs and attorney's fees incurred in bringing and pursuing this litigation pursuant to RSA 676:17, II. RSA 676:17, II, provides, in relevant part:

In any legal action brought by a municipality to enforce, by way of injunctive relief . . . or otherwise, any local ordinance, code or regulation adopted under this title, . . . the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses

(Emphasis added).

Because the Town is the prevailing party in this action to enforce a local ordinance, the Court finds that they are therefore entitled to recover costs and reasonable attorney's fees. The Town shall submit a full accounting of its attorney's

fees and costs within 60 (sixty) days of the clerk's notice of this order.⁴

So ordered.

Date: June 2, 2023



Hon. Charles S. Temple,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 06/02/2023

⁴ In its proposed order, the Town indicates that it is seeking a post-judgment attachment on the Property for any civil penalties assessed as well as approved attorney's fees and costs. (See Pl.'s Proposed Order Prayer for Relief (e).) The Town did not request such relief in its initial complaint, or by any motion prior to or during trial. As such, the Court declines to impose a post-judgment attachment on the Property for the Town's reasonable costs and attorney's fees. However, the Town is not prohibited from filing a motion for post-judgment attachment after the amount of attorney's fees and costs are determined by the Court.

Exhibit C

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH-SOUTH, S.S. SUPERIOR COURT

Town of Temple

v.

John H. Jackson-Marsh, et al

Docket No. 226-2019-CV-00495

PROPOSED ORDER

Judgement is hereby entered against the Defendants for violations of the Town of Temple, NH Zoning Ordinance, and violations of RSA 236:112 et seq.

The Defendants are the owners of property located at 32 West Road, Temple NH, 03084. The Defendants John H. Jackson-Marsh and Alan Marsh are using the property as a junkyard in violation of RSA 236:122 *et seq.*, and the Town's relevant zoning ordinance and regulations. Specifically, the property constitutes a junkyard as it has stored and/or deposited on it, among other things:

...a quantity equal in bulk to 2 or more motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.

See RSA 236:112

The Town of Temple's Zoning Ordinance incorporates this statutory scheme, and requires a special exception for such a use, and as the Defendants do not have said approval, nor the required site plan approval, the Defendants are in violation of the provisions of the zoning ordinance.

Furthermore, as none of the required approvals for this use of the property have

been received, the Defendants' use of their property constitutes a nuisance pursuant to RSA 236:119.

Prior to filing suit, the Town sent at least four separate notices of violation identifying the non-compliance to the Defendants. The Court notes that there is no dispute that said notices were received and, furthermore, the notice dated May 9, 2019 was served on the Defendants by the Hillsborough County Sheriff's Department. As the Defendants did not address the conditions stated in the notices, the Town filed suit on August 2, 2019, requesting injunctive relief pursuant to RSA 676:15 and RSA 236:128, all applicable civil penalties and attorney's fees and costs, pursuant to RSA 676:17, as well as all applicable fines afforded pursuant to RSA 236:128. To date, the the conditions on the property have not improved, and testimony was received indicating that the condition has actually worsened.

The Court therefore orders that:

- a.) The Defendants shall bring the property into compliance with state and local law by either removing all materials which constitute a junkyard pursuant to RSA 236:112 , *et seq.* and their non-commercial enterprise use, or obtaining the land use approvals necessary¹ including, but not necessarily limited to, the required special exception, site plan approval, and license, as required, within 30 days of the date of this Order; and
- b.) If the Defendants fail to comply with paragraph (a) above, the Town may enter the property and remove all violative materials. The determination of what

¹This statement is in no way an obligation on the part of the Town to grant any one or all of the required request approvals.

constitutes violative materials for purposes of statutory and ordinance compliance is at the sole discretion of the Town, however, to the extent that certain items may remain, the Town shall endeavor to prioritize the items the Defendants would like to remain.² Any costs incurred by the Town in such removal effort which are not offset by any proceeds from the sale of said materials shall entitle the Town to a post-judgment attachment on the property³; and

c.) The Town is awarded civil penalties in the amount of \$275 per day for each day since May 16, 2019, the date of service of the most recent Notice of Violation (see Exh. 5), that Defendants have been in violation of state and local law (\$389,950.00 through April 3, 2022), to be paid within 30 days of the date of this Order; and

d.) The Town is granted an award of attorneys' fees and costs incurred in bringing and pursuing this litigation. The amount shall be submitted by affidavit within 60 days of the date of this Order.

e.) The Town is entitled to a post-judgement attachment on the property for the civil penalties assessed as well as the approved attorney's fees and costs.

SO ORDERED.

Date: _____

By: _____
Presiding Justice

²Any failure by the Town to allow the Defendants' prioritized equipment and/or motor vehicles to remain in no way constitutes any liability on the part of the Town.

³Any arrangement for the removal of any of the violative items on the property is solely in the Town's discretion. The Town is under no obligation to realize the highest value for an item removed from the property.

Exhibit D

28 July 2023

Thomas R. Hanna, Esquire
BCM Environmental & Land Law, PLLC
3 Maple Street
Concord, New Hampshire 03301

Re: Opinion: Temple Zoning Board of Adjustment
Application for Special Exception

Alan Marsh & John Jackson-Marsh
Antique Construction Equipment Collection
Map 7, Lot 13
32 West Road
Temple, New Hampshire

Dear Mr. Hanna:

At your request, I have reviewed the Application for Special Exception for the above referenced property. I have inspected the subject property by walking its grounds. I also inspected the surrounding neighborhoods including West Road, Hill Road, Hadley Highway between West and Hill Roads, and Holt Lane. The purpose of this consulting assignment is to provide an opinion as to whether the antique construction equipment collection will impact the surrounding property values.

I am uniquely qualified to render an opinion related to this matter for the following reasons. (1) I served as Chairman of the Wolfeboro Zoning Board of Adjustment for 13 years. In that capacity, I have extensive experience hearing cases all of which have an impact on surrounding property values component. (2) I have appraised and/or consulted on numerous projects and properties in Hillsborough County and New Hampshire. (3) More specifically, I have been retained as an expert and testified in state and federal courts related to diminution of value issues. My curriculum vitae is attached to this opinion letter. The following is a summary of the facts, analysis, and my conclusions.

The subject property is a single family home located on the top of a small hill on 38.69 acres of land. The house is situated, more or less, in the middle of the parcel. The site is located along West Road, a two lane, asphalt paved town rural road with scattered single family homes.

The storage of antique construction equipment will be on up to four acres of the 38.69 acre parcel (10.3%). The storage of the construction equipment is not a commercial enterprise where parts are stripped from equipment, or the public is invited to view the collection on a frequent basis. It is solely a private collection like that of an antique car collection albeit outdoors.

The equipment collection will be located in the center of the property, on up to four acres, out of view from abutters and not visible from West Road. There are woods surrounding three sides of the property and the elevation of the house and adjacent four acre area makes it impossible to see from West Road. In consideration of the Given the topography and the overall large lot size, the subject site is suitable for the storage of a private collection of construction equipment.

The property located at 18 West Road abuts the subject property and is the closest house to the location of the construction equipment collection. It cannot see the adjacent property or its construction equipment collection due to mature trees and landscaping. Eighteen months after the construction equipment collection was present, the property sold in 2017 for \$367,775. In 2017, the equalized assessed value of the property calculated to \$289,077 (\$272,600 / 94.3%). The property sold 27.2% higher than its equalized assessed value. The listing broker was interviewed in order to determine if there was any impact on the marketing period or sale price of the property due to the construction equipment collection. She responded that there was no impact on either. Therefore, the sale price compared to equalized assessed value and interview with the listing broker indicated no impact on value from the adjacent property's construction equipment collection.

The property located at 68 West Road also abuts the subject property and is the next closest house to the location of the construction equipment collection. It cannot see the adjacent property or its collection due to mature trees and landscaping. In June 2022, the property sold for \$185,000; however, the assessor classified it as an unqualified sale due to insufficient market exposure.

Currently, there are three listings in Temple. They range in asking price from \$644,900 to \$3.495 million. 37 Holt Lane is considered part of the subject property's neighborhood and has been on the market for less than a month. The land area totals 256.05 acres of which 245.8 acres is in conservation. The parcel is located on the opposite side of West Road. The asking price calculates to \$538 per ft². While this property has not yet sold and is relatively new to the market, the substantial asking price for Temple, much less New Hampshire would indicate no impact on value from the construction equipment collection. It should also be noted that the average days on market for the 35 current listings in New Hampshire of \$3+ million is 128 days with a high of 805 days. Thus, a property in this price range will take longer to sell given the limited number of buyers, especially for a property in Temple. According to NH MLS, there have never been any residential sales in excess of \$2 million in Temple. The asking price of the property would suggest that there is no adverse impact on value based considering the seller's full knowledge of the equipment collection.

The real estate market in Temple is strong. In 2022, according to the New Hampshire MLS, there were a total of 16 residential sales. The median asking price was \$437,000 and the median sale price was \$443,750 or 1.5% over asking. Median days on market was 10. The sales ranged in price from \$285,000 to \$1.8 million. In 2023 to date, there were a total of 7 residential sales. The median asking price was \$650,000 and the median sale price was the same. Median days on market was 6 – a decrease of 4 days compared to the year prior despite rising interest rates and inflation. The sales ranged in price from \$160,000 to \$924,000.

Under the hypothetical condition that the subject property and its equipment collection has some adverse impact on surrounding property values, given the very strong market conditions, market participants would most likely overlook the adverse factors given the limited inventory, short marketing periods, and sale prices in excess of the asking price. Furthermore, properties on either side of the subject property have sold since the construction equipment collection was in place and a landmark property down the street is currently listed for sale.

The neighborhoods along Hill Road and Hadley Highway are farther removed from the subject property than the two adjacent houses referenced above. There is a mature forest and sloping topography that further prevents any possible view of the subject property and its collection.

From an appraisal perspective, the highest and best use of a property must be considered in order to determine its market value. There are four components to the highest and best use; they are: Physically Possible, Legally Permissible, Financially Feasible, and Maximally Productive. When a parcel of land or improved property cannot be put to its highest and best use, the market value of the property is adversely impacted. In the case of the immediate residential neighborhood, if the special exception is granted, the highest and best use of the surrounding residential properties will not change; therefore, there is no indication from a highest use analysis that there would be any diminution in value.

It is not uncommon for a property owner to claim that their property's value will decrease because of a proposed project. Over the course of my 30+ year career, I have been asked many times by abutters opposing a project to opine that a proposed use will adversely impact their property values. In most cases, as in this case as well, the market data along with researching the actions of both buyers and sellers in the marketplace result in undisputable evidence that, in fact, there is no diminution in value. It is easy to claim an impact; however, the supporting evidence and market data indicate otherwise.

At your request, I have also considered whether there is an adverse impact on the value of adjacent property if the antique equipment collection is visible from the sky, such as from an airplane, drone or satellite, and shows on internet mapping websites like Google Earth or Apple maps. I am not aware of any study that has ever considered this question. Furthermore, based on my 30+ year real estate appraisal and counseling practice, I have never analyzed an impact on value much less concluded that because it can be seen from the sky (not the ground) that it would have an adverse impact on value. Aerial photos or videos of the subject property would not alter the evidence contained in this letter, the real estate market in Temple or my professional opinion stated herein.

The storage of the construction equipment collection is not obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, does not generate any refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the use. The collection is in the middle of the site at the top of the hill far from any other residential home and not within eyesight from any other property.

The neighborhood's highest and best use does not change, nor would its marketing time increase as evidenced by the data and the existing conditions along West Road and Temple in general. Therefore, there is no market evidence that the construction equipment collection will diminish surrounding property values.

Respectfully submitted,
B.C. UNDERWOOD LLC



Brian C. Underwood, CRE, FRICS

QUALIFICATIONS OF THE FIRM

bc underwood llc
real estate counseling & appraisal

B.C. Underwood LLC specializes in the appraisal and consulting of complex real estate. The following is a representative list of assignments, geographical areas covered, and clients served.

ASSIGNMENT TYPES

| | |
|--|---------------------------------------|
| Airport Land & Buildings | Marinas |
| Apartment Buildings & Complexes | Market & Feasibility Studies |
| Appraisal Review | Mediation |
| Athletic Clubs & Facilities | Medical Buildings / Facilities |
| Automobile Dealerships | Mill Buildings |
| Bank Buildings | Mineral Rights |
| Bed & Breakfasts | Mobile Home Parks |
| Business Valuation | Multi-Family Residential Properties |
| Campgrounds | Office Buildings & Parks |
| Commercial Land & Buildings | Parking Lots |
| Condominium Buildings | Partial Interests / Partition Actions |
| Conservation Easements | Planned Residential Developments |
| Convenience Store Chains | Private Schools |
| Continuing Care Retirement Communities | Quarries |
| Diminution in Value Projects | Railroad Tourist Attractions |
| Easements & Rights of Way | Restaurants |
| Eminent Domain | Retail Petroleum Properties |
| Environmentally Contaminated Property | Self-Storage Facilities |
| Equestrian Properties | Senior Living Facilities |
| Estates & Luxury Residential Property | Service Garages |
| Fast Food Restaurants | Sports & Entertainment Facilities |
| Forest Land | Spring Water Plants |
| Group Homes | Shopping Malls |
| Going Concerns | Single Family Homes |
| Golf Courses | Strip Centers |
| Higher Education Institutions | Taverns & Inns |
| Hospitals | Tax Abatement |
| Industrial Land & Buildings | Time Share Projects |
| Impact on Property Value Studies | USPAP & Appraisal Methodology |
| Litigation Strategy & Support | Utility Corridors |
| Lumber Yards | Waterfront Property |

GEOGRAPHICAL AREAS

Connecticut: New Haven
Maine: Androscoggin, Cumberland, Franklin, York
Massachusetts: Barnstable, Bristol, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester
Georgia: Fulton

New Hampshire: Belknap, Carroll, Cheshire, Coös, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, Sullivan
New York: Kings
Pennsylvania: Cumberland, Juniata
Rhode Island: Providence
Vermont: Rutland, Windham, Windsor

France: Bourgogne, Île de France,

REPRESENTATIVE LIST OF CLIENTS

AMRESKO Commercial Finance
Arent Fox, PLLC
BCM Environmental & Land Law PLLC
Bald Peak Land Company
Bank of America
Bank of America Private Clients Group
Bank of New Hampshire
Bangor Savings Bank
Beech River Mill, Inc.
Brewster Academy
Carlisle Capital
Casella Waste Systems, Inc.
Chase Bank
Citizens Bank
Cleveland, Waters & Bass, P.A.
Cooper, Cargill, Chant Attorneys at Law
Cornerstone Energy Services, Inc.
Create
Danville, Town of
Dartmouth College
Dartmouth Hitchcock Medical Center
Devine, Millimet & Branch, P.A.
Eversource
Farm Credit East
Federal Deposit Insurance Corporation
Fletcher Tilton, P.C.
Franklin, City of
GSSG Solar
Gallagher, Callahan, & Gartrell, P.C.
General Services Administration
Godbout Law, PLLC
Gov. Wentworth Regional School District
Green Mountain Furniture, Inc.
Grinnell & Bureau Attorneys at Law
Hinckley Allen LLP
Holland & Knight LLP
Huggins Hospital
J.P. Noonan, Inc.
Key Bank
Lakes Region Conservation Trust
Lakeview Management, Inc.
Mallet Company
Marriott, J. Willard Jr.; Chairman, Marriott
International
Martin, Lord, & Osman, P.A.
Latici Law Office, P.A.
Liberty Utilities
Lyme Properties
McLane Middleton, P.A.
Mobil Oil Corporation
Monziona Law Offices
Mount Washington Observatory
Mutual Oil Company
New Hampshire Charitable Foundation
New Hampshire Motor Speedway
North Conway Country Club
Northern Pass Transmission LLC
Northway Bank
Orr & Reno
Pace Academy
Pastori Krans Attorneys at Law
Perkins Thompson Attorneys & Counselors
Phillips Exeter Academy
Pierce Atwood LLP
Pike Industries, Inc.
Pleasant View Gardens
Portsmouth, City of
PriceWaterhouseCoopers
RHP Properties
Ricci Lumber
Rochester Toyota
Rye, Town of
Salvation Army
Seward & Kissel LLP
Sheehan Phinney, P.A.
Sulloway & Hollis, PLLC
Sullivan & Gregg Attorneys at Law
TD Bank
Taylor Community
Tuscan Brands
U.S. Trust Company
University System of New Hampshire
Upton & Hatfield LLP
Vermont Academy
Walker & Varney Attorneys at Law
Webster Land Corporation
Wescott Law P.A.
Wolfeboro, Town of

**BRIAN C. UNDERWOOD, CRE, FRICS
CURRICULUM VITAE**

PROFESSIONAL DESIGNATIONS

Awarded the CRE designation, Counselor of Real Estate; The Counselors of Real Estate

Awarded the FRICS designation, Fellow, Royal Institution of Chartered Surveyors

PROFESSIONAL PUBLIC APPOINTMENTS

New Hampshire Real Estate Appraiser Board, Chairman (2008-2012)

PROFESSIONAL EXPERIENCE

B.C. Underwood LLC, Rye Beach, New Hampshire: Principal of a real estate appraisal & counseling firm founded in 1998 specializing in complex property types, litigation support, and mediation.

Atlantic Valuation Consultants, Inc., Meredith, New Hampshire: President of an east coast real estate and business valuation firm specializing in market / feasibility studies, and litigation support.

Conwood Group, New Cumberland, Pennsylvania: Managing General Partner of a real estate investment company that owned and operated coin laundries.

LICENSEE

Certified General Real Estate Appraiser, State of Maine
License Number: CG4821 (expires December 31, 2023)

Certified General Real Estate Appraiser, State of New Hampshire
License Number: NHCG-394 (expires November 30, 2023)

PROFESSIONAL EDUCATION

Harvard Business School

- *Valuation*; Cambridge, Massachusetts; 1999

American Society of Appraisers Seminars

- *The Expert Witness*; Manchester, New Hampshire; 1996

Appraisal Foundation

- *Appraisal Investigator Training Level I*; Alexandria, Virginia; 2009
- *Appraisal Investigator Training Level II*; Scottsdale, Arizona; 2010

Appraisal Institute Courses

- 400: *Uniform Standards of Professional Appraisal Practice (USPAP) Update Course*; 2022-23
- 410: *Standards of Professional Practice, Part A (Uniform Standards of Professional Appraisal Practice)*; Portland, Maine; 1997
- 420: *Standards of Professional Practice, Part B*; Hershey, Pennsylvania; 1993
- 110: *Appraisal Principals*; Hershey, Pennsylvania; 1993

- 120: *Appraisal Procedures*; Hershey, Pennsylvania; 1993
- 310: *Basic Income Capitalization*; Tallahassee, Florida; 1993
- 320: *General Applications*; Boston, Massachusetts; 1995
- 510: *Advanced Income Capitalization*; Tallahassee, Florida; 1993
- 540: *Report Writing & Valuation Analysis*; Tallahassee, Florida; 1995

Appraisal Institute Seminars

- *Valuation Issues & the Tax Abatement Process*; 2022
- *Current Residential & Commercial Valuation Concerns*; 2022
- *Implications for Appraisers for Conservation Easement Appraisals*; 2022
- *Artificial Intelligence, AVMs, & Blockchain: Implications for Valuation*; 2021
- *Forestland Valuation*; 2021
- *Appraiser Essentials*; 2021
- *Appraising Residential & Commercial Properties during a Pandemic*; 2020
- *Market Trends in New Hampshire Real Estate*; 2020
- *Eminent Domain and Condemnation*; 2017
- *Data Verification Methods*; 2015
- *Thinking Outside the Form*; 2015
- *Subdivision Valuation*; Manchester, New Hampshire; 2005
- *Automated Valuation Models*; Baltimore, Maryland; 1997
- *Mock Trial*; Boston, Massachusetts; 1995
- *Appraisal Practices for Litigation*; Boston, Massachusetts; 1995
- *GIS Seminar*; Boston, Massachusetts; 1995
- *Due Diligence for Contaminated Properties*; Boston, Massachusetts; 1995
- *Environmental Risk and the Real Estate Appraisal Process*; Rockport, Maine; 1994

The Counselors of Real Estate Seminars

- *Global Economic Forces: The Deficit, the Dollar and Interest Rates*; Chicago, Illinois; 2005
- *Real Estate Capital Markets*; Chicago, Illinois; 2005
- *Big Thinkers on The Big Picture: Commercial Real Estate Markets*; Chicago, Illinois; 2005
- *Hedging: Protecting Your Assets in a Rising Interest Rate Environment*; Chicago, Illinois; 2005
- *Market Watch: A Real World View on Market Prospects*; San Francisco, California; 2007
- *Institutional Investment: When Residential Real Estate Brings the Highest Yields*; San Francisco, California; 2007
- *Banks, Banking Rules, Fed Policy, and Real Estate*; San Francisco; 2013
- *Outlook for the Economic Real Estate Market*; San Francisco; 2013
- *Real Estate Analytics, Investments and Beyond*; San Francisco; 2013
- *Reaching for Yield - The High Risk of Investments*; San Francisco; 2013
- *Money Never Sleeps*; San Francisco; 2013
- *Sustainability: Energy and Land Use*; San Francisco; 2013
- *A Vision for Boston*; Boston; 2014
- *Real Estate Outlook*; Boston; 2014
- *Emerging Trends in Real Estate*; Boston; 2014
- *Making Infrastructure Happen: Public-Private Partnerships*; Montreal; 2017
- *Retail Industry - In Crisis?*; Montreal; 2017
- *Trends in Tourism & Hospitality*; Montreal; 2017
- *Laying the Groundwork of Large Scale Development*; Montreal; 2017
- *The Global Economy & Real Estate Trends: Is Capital Following Growth?*; Montreal; 2017
- *The New City: The American Urban Scene*; Chicago; 2019
- *The Global Economy & Real Estate Trends*; Chicago; 2019
- *Technology: How Data is Being Leveraged*; Chicago; 2019
- *Opportunity Zones: Challenges and Opportunities*; Chicago; 2019

- *2019-2020 Top Ten Issues Affecting Real Estate*; Chicago; 2019
- *Aging in Place: Innovation in Design & Programming*; Chicago; 2019
- *University of Chicago's Influence on the South Side*; Chicago; 2019
- *Housing, Leasing, Finance, Valuation, Property Technology, Legal, & Taxes Series*; 2021
- *Leverage Urban Development and Increase Inclusion & Diversity*; Boston; 2022
- *Economic Point and Counterpoint*; Boston; 2022
- *Life Science Industry*; Boston; 2022
- *Resilience, Adaptation, Mitigation, and Preparedness*; Boston; 2022
- *The Future Shape of Our Workplace: Office Uprising vs. Employee Uprising*; Boston; 2022
- *European Real Estate Dialogue & Debate*; Boston; 2022

Massachusetts Board of Real Estate Appraisers Seminars

- *Teamwork In Eminent Domain*; Boston, Massachusetts; 1997

McKissock Learning

- *Introduction to Legal Descriptions*; November 2017
- *Fundamentals of Appraising Luxury Homes*; November 2019
- *Expert Witness Testimony for Appraisers*; November 2019

New Hampshire Association of Industrial Agents Seminars

- *Redeveloping Contaminated Sites*; Center Harbor, New Hampshire; 1994

New Hampshire Attorney General's Office

- *Wynn Arnold Administrative Law Workshop*; Concord, New Hampshire; 2009

New Hampshire Bar Association Seminars

- *Managing, Buying, & Selling Contaminated Properties*; Concord, New Hampshire; 1994

New Hampshire Superior Court, Office of Mediation & Arbitration

- *NH Superior Court Rule 170 Civil Mediation Training*; Concord, New Hampshire; 2010

ARTICLES PUBLISHED

How to Lower Real Estate Taxes, Coin Launderer & Cleaner; February 1996

Tax Abatements for Environmentally Contaminated Real Estate, New England Service Station & Automotive Repair Association; January 1995

SEMINARS PRESENTED

New Hampshire Tax Abatement Process, [presented together with Jack B. Middleton, Esquire & Jennifer L. Parent, Esquire; McLane Middleton]; Rochester, New Hampshire; 2014

New Hampshire Tax Abatement Process, [presented together with Jack B. Middleton, Esquire & Jennifer L. Parent, Esquire; McLane Middleton]; Concord, New Hampshire; 2013

Real Estate Appraisal Issues, New Hampshire Chapter, Appraisal Institute; Concord, New Hampshire; 2010 & 2011

Appraising Environmentally Contaminated Real Estate, New Hampshire Bar Association; Concord, New Hampshire; 1999

Real Estate Tax Abatement & Eminent Domain, [presented together with Jack B. Middleton, Esquire & Arthur G. Greene, Esquire; McLane Middleton]; North Conway, New Hampshire; 1999

Real Estate Tax Abatement Process, [presented together with Jack B. Middleton, Esquire; McLane Middleton]; Hanover, Portsmouth, and Manchester, New Hampshire; 1996

Real Estate Tax Abatement Process, [presented together with Jack B. Middleton, Esquire; McLane Middleton]; Manchester, New Hampshire; 1995

Tax Abatement for Environmentally Contaminated Real Estate, Independent Oil Marketers Association of New England; Westborough, Massachusetts; 1995

Tax Abatement Issues for Campground Owners, New Hampshire Campground Owners' Association; Laconia, New Hampshire; 1995

LITIGATION EXPERIENCE

admitted as expert witness

- New Hampshire Superior Court
- New Hampshire Board of Tax and Land Appeals
- New Hampshire Circuit Court, Family Division
- New York Family Court
- Massachusetts Appellate Tax Board
- United States Bankruptcy Court
- Vermont Family Court

EXPERT WITNESS HISTORY

testimony at deposition, hearing, or trial

Trustees of Dartmouth College v. Town of Hanover
Town of Hanover Planning Board / New Hampshire Supreme Court

150 Greenleaf Realty Trust v. City of Portsmouth
Rockingham County Superior Court, New Hampshire

Gilman Family Trust v. Town of New London
Merrimack County Superior Court, New Hampshire

In Re: Carlucci
U.S. Bankruptcy Court, District of New Hampshire

Campbell v. Campbell
New York Family Court, New York

Cutter Family Partnership v. Town of Rollinsford
Rockingham County Superior Court, New Hampshire

Southern Spectrum LLC v. Town of Wolfeboro
Carroll County Superior Court, New Hampshire

Bridge v. Town of Sunapee
Sullivan County Superior Court, New Hampshire

Kraeger v. Town of Sunapee
Sullivan County Superior Court, New Hampshire

Ruedig v. Town of Sunapee
Sullivan County Superior Court, New Hampshire

Wolters v. Wolters
10th Circuit Court, Family Division, New Hampshire

Public Service of New Hampshire v. Town of Richmond
New Hampshire Board of Tax & Land Appeals

PROFESSIONAL & PUBLIC AFFILIATIONS

- New Hampshire Real Estate Appraiser Board by appointment of Governor Lynch
Chairman (2008-2012)
- The Counselors of Real Estate: Member
Real Estate Issues Editorial Board (2005-2007)
CRE Consulting Corps Steering Committee (2005 -2007)
- Mount Washington Observatory
Past Vice President & Treasurer
- Town of Wolfeboro Zoning Board of Adjustment
Chairman (1995-2008)
- First Congregational Church, Wolfeboro, New Hampshire
Moderator (2008-2010)

CONTACT INFORMATION

Brian C. Underwood, CRE, FRICS
B.C. Underwood LLC
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Rye Beach, New Hampshire 03871

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Exhibit E

October 18, 2023

GeoInsight Project 11310-000

Thomas R. Hanna, Esq.
BCM Environmental & Land Law
41 School Street
Keene, NH 03431

Re: Marsh Property
Temple, NH

Dear Mr. Hanna,

As requested, GeoInsight, Inc. (GeoInsight), is providing you with comments regarding the status of property at 32 West Road in Temple, New Hampshire (the Property) relative to potential risks posed by antique vehicles and associated maintenance activities to surface water and groundwater resources. Specifically, you requested our opinion regarding a letter prepared by the Town of Wilton Planning Board¹ and the likelihood of conditions/activities at the property causing contamination to surface water/groundwater resources of Wilton.

SITE CONDITIONS

GeoInsight visited the property twice (on May 12, 2021 and on August 3, 2023) to evaluate management practices of oil and hazardous materials, and significant environmental concerns were not identified during these visits. Although the property may be legally defined as a “junkyard”, volumes of wastes stored or generated at the property were not consistent with automobile recycling businesses we have evaluated that rely on frequent dismantling and disarticulation of vehicles for parts. To the contrary, the use and storage of oil and regulated materials was relatively limited and vehicle storage was generally in good order. Most vehicles viewed during both site visits were wire drive vehicles which did not utilize hydraulic fluids. Some de minimis oil staining generally covering less than four square feet was observed under some vehicles. Spill kits and speedy dry was observed in use during both site visits under vehicles that were actively being maintained.

Regulated materials such as gasoline, waste oil and car batteries were stored in small quantities and were stored under cover in a barn. Outside storage of these materials was not observed. Antifreeze storage was not observed. Gasoline was stored in five-gallon containers and waste oil was generated in small quantities (between 50 and 80 gallons per year for either off-site recycling or use in an off-site waste oil burner).

¹ Town of Wilton Planning Board letter dated May 18, 2022 to the Town of Temple Select Board

A floor drain was formerly identified in the barn and this drain was closed out following the May 12, 2021 site visit. A GeoInsight field scientist was on site during drain closure activities to take soil samples at floor drain discharge location. Oil staining and oil impacts were not observed during excavation and sampling activities and sampling results did not suggest a release of hazardous materials. A GeoInsight letter report describing site conditions and laboratory results from field sampling was prepared for the property owners on June 18, 2021 and it is our understanding that this document has been provided to the Town of Temple Select Board.

ENVIRONMENTAL SETTING

The area of the property used for the storage of antique construction equipment storage is located on a hill which is outside the boundaries of Temple's Aquifer Protection Overlay District and away from surface water bodies or wetlands. Surface water bodies or wetlands were not identified near the vehicle storage locations during GeoInsight site visits in 2021 or 2023. The area is mapped by the New Hampshire Department of Environmental Services² as "Qt" or glacial till. Glacial till is generally considered a poorly sorted, low permeability material deposited directly by glacial ice. Contaminants released onto glacial till migrate slowly and do not typically travel large distances unless the release is large in volume. Groundwater within glacial till is generally not available in large enough quantities to serve as a public drinking water supply.

CONCLUSIONS REGARDING REGIONAL IMPACT

Based upon our experience and research at the site, there are inconsistencies or misconceptions in the Wilton Letter dated May 18, 2022 relating to the potential for regional impact. Letter language is included in italics followed by GeoInsight's response.

Page one, paragraph 2: *Based on our review of GIS maps, the site is surrounded by, and uphill from a, stratified drift aquifer that not only underlies this part of Temple but extends to Wilton, where is it the town drinking water supply, and other communities to the east.*

To be clear, a stratified drift aquifer does not underlie the Marsh property. The property is underlain by glacial till and bedrock.

Page two, last paragraph: *Chemical leaks do not stay put. They travel and travel quickly with any precipitation.*

The surficial material underlying the property is glacial till. This material is generally low in permeability in comparison to stratified drift aquifer material and fluids including oil and water travel very slowly in glacial till.

² Hildreth, C.T. 1988, Surficial Geologic Map of the Geenville 7.5 minute Quadrangle, New Hampshire. Open File Report NH-88-XX

Page three, first paragraph under Surface Water Contamination: *The collection endangers Wilton's surface water and its wellhead protection district. The deteriorating collection is outside, on the ground, unprotected from the elements. In addition to potential seepage into the aquifer, the pollutants identified above likely will contaminate runoff from the site, which flows downhill at an average 17% slope into the Temple Brook, thence into Blood Brook in Wilton and then into the Souhegan River in Wilton's wellhead protection area.*

These concerns do not consider the property conditions, management practices, or the environmental setting. During the two site visits conducted by GeoInsight, regulated materials were found to be stored in a barn protected from precipitation in generally small containers (less than 5 gallons in size). The few areas of oil staining under antique vehicles that were found were small in square footage (generally less than four square feet) and did not extend away from areas directly under the vehicle. Speedy dry and spill kits were observed in use under vehicles that were actively being maintained. Regulated materials associated with vehicle maintenance such as gasoline, waste oil, batteries, etc. were stored under cover in barn protected from precipitation.

Considering the limited amount of oil and regulated materials stored on site, the storage and management activities employed, and the limited size of soil staining observed in a till setting documented at the site, it is unlikely that releases at the site would pose a risk to drinking water supplies for the Town of Wilton. The closest Town of Wilton water supply source to the property appears to be the Everett Groundwater Production Well which is over four miles to the east measured in a straight line from the property.

GeoInsight's services and its conclusions, and recommendations are subject to the limitations and exceptions included as an attachment to this letter.

If you have questions or concerns regarding this matter please contact me at 603-314-0820.

Sincerely,
GEOINSIGHT, INC.



David A. Maclean, P.G., L.S.P.
Senior Associate/Senior Hydrogeologist

cc: Alan Marsh

Attachments A: Limitations and Exceptions

P:\11310 Temple Sistare GW BMP evaluation\11310_10-17-23 Regional Impact Response.docx

ATTACHMENT A: LIMITATIONS AND EXCEPTIONS

The findings presented in this report are based upon the scope of services performed, information obtained through the performance of the services, and other conditions as agreed upon by GeoInsight and the original party for whom this report was originally prepared. This report is an instrument of professional service and was prepared in accordance with the generally accepted standards and level of skill and care under similar conditions and circumstances established by the environmental consulting industry. To the extent that GeoInsight relied upon information prepared or provided by other parties, GeoInsight makes no representation as to the accuracy or completeness of such information. Only the party for whom this report was originally prepared, and other specifically named parties, may make use of and rely upon the information in this report, in its entirety.

The findings presented in this report apply solely to Property conditions existing at the time when GeoInsight's assessment was performed. It must be recognized, however, that assessment services rendered were intended for the purpose of evaluating the potential for impact through limited research and investigative activities, and in no way represents a conclusive or complete characterization of the Property. Conditions in other parts of the Property may vary from those at the locations where data were collected. GeoInsight's ability to interpret investigation results is related to the availability of the data and the extent of the investigation activities. As such, 100 percent confidence in conclusions provided cannot reasonably be achieved. Therefore, GeoInsight does not provide guarantees, certifications, or warranties (express or implied) that a property is free from environmental impacts. Furthermore, nothing contained in this document shall relieve other parties of its responsibility to abide by contract documents and all applicable laws, codes, regulations, or standards.

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE TO DEFENDANT

Case Name: **Alan Marsh, et al v Town of Temple Zoning Board of Adjustment, et al**
Case Number: **226-2023-CV-00560**

You have been served with a Complaint which serves as notice that this legal action has been filed against you in the **Hillsborough Superior Court Southern District**. Review the Complaint to see the basis for the Plaintiff's claim.

Each Defendant is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: www.courts.state.nh.us, select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Hillsborough Superior Court Southern District** as the location.
3. Select "I am filing into an existing case". Enter **226-2023-CV-00560** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

IMPORTANT: After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Complaint will want to be familiar with the Rules of the Superior Court, which are available on the court's website: www.courts.state.nh.us.

Once you have registered and responded to the summons, you can access documents electronically filed by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

If you have questions regarding this process, please contact the court at 1-855-212-1234.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Hillsborough Superior Court Southern District
Case Name: John Jackson-Marsh and Alan Marsh v. Town of Temple Zoning Board of Adjustment
Case Number: 226-2023-CV-00560 and Town of Temple
(if known)

APPEARANCE/WITHDRAWAL

APPEARANCE

Type of appearance (Select One)

Appearance Limited Appearance (*Civil cases only*)

If limited appearance, scope of representation:

Select One:

As Counsel for:

| | | |
|---------------------------|---------------------------------------|-----------------------|
| <u>John Jackson-Marsh</u> | <u>32 West Road, Temple, NH 03084</u> | <u>(203) 605-4747</u> |
| (Name) | (Address) | (Telephone Number) |
| <u>Alan Marsh</u> | <u>32 West Road, Temple, NH 03084</u> | <u>(617) 212-8871</u> |
| (Name) | (Address) | (Telephone Number) |
| (Name) | (Address) | (Telephone Number) |

I will represent myself (*self-represented*)

WITHDRAWAL

As Counsel for _____

Type of Representation: (Select one)

Appearance:
 Notice of withdrawal was sent to my client(s) on: _____ at the following address:

A motion to withdraw is being filed.

Limited Appearance: (Select one)

I am withdrawing my limited appearance as I have completed the terms of the limited representation.

The terms of limited representation have not been completed. A motion to withdraw is being filed.

Case Name: John Jackson-Marsh and Alan Marsh v. Town of Temple Zoning Board of Adjustment

Case Number: _____

APPEARANCE/WITHDRAWAL

For non e-filed cases:

I state that on this date I am mailing by U.S. mail, or Email (only when there is a prior agreement of the parties to use this method), or hand delivering a copy of this document to:

Other party

Other party's attorney

OR

For e-filed cases:

I state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Jonathan Sistare, Esq.

Name of Filer

/s/ Jonathan Sistare

Signature of Filer

11/15/2023

Date

Law Office of Jonathan Sistare, PLLC 14938

Law Firm, if applicable Bar ID # of attorney

(603) 338-9300

Telephone

PO Box 213

jsistare@sistarelaw.com

E-mail

Address

Dublin NH 03444

City State Zip code

THE STATE OF NEW HAMPSHIRE
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Other party

Other party's attorney

OR

For e-filed cases:

I state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Russell F. Hilliard, Esq.

Name of Filer

Upton & Hatfield, LLP

1159

Law Firm, if applicable

Bar ID # of attorney

159 Middle Street

Address

Portsmouth

NH

03801

City

State

Zip code

/s/ Russell F. Hilliard

Signature of Filer

11/15/2023

Date

(603) 436-7046

Telephone

rhilliard@uptonhatfield.com

E-mail

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Thomas R. Hanna, Esq.

Name of Filer

BCM Environmental & Land Law, PLLC **1086**

Law Firm, if applicable

Bar ID # of attorney

41 School Street

Address

Keene

NH

03431

City

State

Zip code

/s/ Thomas R. Hanna

Signature of Filer

(603) 352-1928

Telephone

hanna@nhlandlaw.com

E-mail

11/15/2023

Date