

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

No. 219-2022-CV-00350

David Schofield-Savo, et al

v.

Ian James, LLC et al.

**VERIFIED OBJECTION BY IAN JAMES, LLC  
TO PRELIMINARY INJUNCTION REQUEST**

NOW COMES Ian James, LLC, by and through his attorneys, Steiner Law Office, PLLC, and objects to the preliminary injunction request, and in support states as follows:

1. The injunction request for plowing stems from the town's failure, improperly, to accept the Overlook Circle road as a public road. The fault of the town, in ignoring its engineer agent's reports, and in relying on improper standards, demonstrates that Ian James, LLC paved to the required standards. The evidence demonstrates conclusively that the petitioners are not entitled to an injunction to obligate Ian James, LLC to plow the road as Ian James, LLC met the road installation standards. It is the town, however, through its engineer agent and employees directly, that argue against the standards by applying 2010 outdated standards where the correct road standards, as modified materially, issued in 2016 by the State of New Hampshire. Instead of applying the 2016 State of N.H. standard the town vacillates between the 2010 inapplicable standards and the 2016 standard.

2. The 2010 standard, ex. A, contained a temperature criteria, New Hampshire Department of Transportation Standard Specifications for Road and Bridge Construction ("2010 standards"), section 3.10.6.3 (dated 2010) (surface temperature above 40 degrees) not contained in the 2016 applicable specification. New Hampshire Department of Transportation Standard Specifications for Road and Bridge Construction ("2016 standards"), section 3.10.7.3 (dated 2016). Ex. A. The 2016 standard merely requires that the "underlying surface is dry and frost free." *Id.* It was.

3. The road was paved on November 7, 2019. The town's engineer agents were on site for the entire paving. Ex. B (field report, DuBois & King, Inc. (Nov 7, 2019) ("Field Report"). The report cites to the incorrect 2010 standard, and also cites an improper depth, *compare* Ex. A (2010 standard of 1 ¼") *with* Ex. B, para. 3 (Field Report mis-citing 2010 inapplicable standard at 1.5"). Nonetheless, the report, *id* at para. 4. f. notes that the installation met the "1-inch compacted requirement." Per the 2016 standards, the temperature at installation for the pavement exceeded the 260 degree obligation as it was measured at 292 degrees. Ex. B.

4. Some 2 ½ weeks later, by email of Nov 24, 2019, and after Ian James, LLC sought confirmation the punch list had been met, the town's agent notified Ian James, LLC that the "*only item to be completed would be the gravel pit.*" Ex. C (emphasis supplied). It was completed. By letter the same date from the town's engineer agent to the Town of Barrington, the engineer confirmed to the town that "*the wearing course pavement width met the 24-foot travel way and 1-inch compacted depth requirements.*" Ex. C (emphasis supplied). Ian James, LLC relied on the engineers conclusions.

5. Per their contract with the town, DuBois & King, Inc. served as the town's authorized engineer agents. Ex. D. In a letter dating back to 2016, DuBois & King relied on the applicable 2016 standard in its June 27, 2016 letter to the Town of Milford. Ex. E. DuBois & King then mis-cite to the 2010 standards at the time of the paving on Nov. 7, 2019. Ex. B.

6. By email of September 2, 2021 the bond company, Surety Plus, notified the town that if it had evidence of repair or replacement costs it should send that information to the company to review. The town never sent any material to back up a claim of deficiencies. Ex. F. Months later, counsel for the town confirmed that the bond could be released. *Id.* On February 11, 2022 the town released the bond but subsequently failed to accept the road. *Id.*

7. The evidence demonstrates that the town is at fault in delaying acceptance of the road on grounds that fail to be substantiated through evidence. Accordingly, under the supreme court decision of *Wolfeboro Neck Prop. Owners Ass'n v. Town of Wolfeboro*, 146 N.H. 449 (2001) it is the town that should be obligated to plow the roads:

In 1987, the Wolfeboro Planning Board (board) approved the construction of Embassy Estates. The developer, who is now bankrupt, posted a \$361,240 bond to assure the proper construction of the roads. Thereafter, the plaintiffs purchased lots within the subdivision.

In 1988, the town's designated agent, the director of public works, certified to the board that based on his inspections, the subdivision roads were complete and complied with town requirements. As a result, the Wolfeboro Board of Selectmen (selectmen) released the construction bond.

In May 1995, after the development had reached the residential density required by the town's subdivision regulation for the layout of roads, the plaintiffs filed a petition for acceptance of the roads, pursuant to RSA 231:8 (1993). Upon inspection of the roads, however, the town determined they lacked sufficient pavement depth, crushed gravel and bankrun gravel to meet town requirements.

\* \* \*

"The plaintiffs contend that because the town improperly released the construction bond intended to assure that the roads would meet town standards, the court should have considered this fact when determining whether an 'occasion' existed. We agree and conclude that the superior court erred as a matter of law."

\* \* \*

In the case before us, consistent with its subdivision regulations, the town inspected the roads at various stages of construction to determine whether they would meet the town's highway standards. Indeed, the town's subdivision regulations, in order to protect members of the public from substandard roads, required a bond that the town could not release unless the roads met the town's standards.

"A performance bond is intended to guarantee completion of the improvements it covers." Board of Supervisors of Stafford County v. Safeco Insurance Company of America, 226 Va. 329, 310 S.E.2d 445, 448-49 (1983) (emphasis added). ***Thus, the town established not only the procedure, but also the means to insure that town standards would be met. As an obligee on the bond, the town's role was like that of a trustee "who was required, should the developer fail to make the secured improvements, to attempt to recover the funds from the bonding company and use them ultimately to complete improvements."*** Cox v. Utah, 716 P.2d 783, 785 (Utah 1986); see also Pacific County v. Sherwood Pacific, Inc., 17 Wash.App. 790, 567 P.2d 642, 648 (1977). *Wolfeboro Neck Prop. Owners Ass'n v. Town of Wolfeboro*, 146 N.H. 449, 773 A.2d 633 (N.H. 2001)

*Id.* at 450, 452, 453. In this case the evidence shows that Ian James, LLC properly installed the road. The town's entire case is premised on misapplication of the proper standards, confusing the 2010 standard with the applicable 2016 standard. Ian James, LLC met the 2016 standard. Ultimately, the engineer concluded the same. Ex. B and C.

8. Accordingly, there is no basis for an injunction against Ian James, LLC to continue plowing the road.

WHEREFORE, Ian James, LLC respectfully requests that this court:

- A. Deny the injunction request for Ian James, LLC to plow the road; and
- B. Grant such other and further relief as is just and proper.

Respectfully submitted  
Ian James, LLC

Dated: January 19 2023

Cliff Williams  
By: Cliff Williams  
Its.: duly authorized

STATE OF Massachusetts  
COUNTY OF Nantucket

Personally appeared before me on this 19th day of January, 2023, Cliff Williams and made oath that the statements contained in the within verified pleading are true and accurate to the best of his knowledge and belief.



LINDA M. ROBERTS  
Notary Public  
COMMONWEALTH OF MASSACHUSETTS  
My Commission Expires  
July 3, 2026

Linda M. Roberts  
Notary Public/Justice of the Peace  
My Commission Expires: 7/3/2026

Seal

By and through Its attorneys,  
STEINER LAW OFFICE, PLLC  
30 Oakmont Dr.  
P. O. Box 3722  
Concord, NH 03302-3722  
(603) 345-6440

Date: January 19, 2023

/s/ R. James Steiner  
R. James Steiner, Esq.  
Bar No. 4143

#### CERTIFICATE OF SERVICE

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.

/s/ R. James Steiner  
R. James Steiner, Esq.

## SECTION 401

thickness to retain heat and to protect it from weather conditions. The cover material when new shall weigh a minimum of 18 oz/yd<sup>2</sup> and it shall be a tightly woven or solid material. When necessary, so that the mixture can be delivered on the project at the specified temperature, truck beds shall be insulated, and covers shall be securely fastened.

### 3.10 Placing – General.

**3.10.1** Prior to placing of any mix, a pre-paving conference shall be held to discuss and approve the paving schedule, source of mix, type and amount of equipment to be used, sequence of paving pattern, rate of mix supply, traffic control, and general continuity of the operation. Special attention shall be made to the paving pattern sequence to minimize cold joints. The field supervisors of the above mentioned operations shall attend this meeting.

**3.10.2** The Contractor shall notify the Engineer at least five working days in advance of paving operations to allow sufficient time to schedule required site inspection and testing. All paving and compaction equipment shall be approved and on site prior to start up each day.

**3.10.3** Crack sealing material to be covered by a 1" or less overlay shall cure a minimum of 45 days prior to the placement of bituminous pavement.

**3.10.4** Base course pavement lifts shall not exceed the maximum compacted thickness of 5 inches. Any course exceeding 5 compacted inches shall be placed in 2 passes.

**3.10.5** When performing paving operations at night, in addition to the requirements of 3.1.4.5, the Contractor shall provide sufficient lighting at the work site to ensure the same degree of accuracy in workmanship and conditions regarding safety as would be obtained in daylight.

**3.10.6** Performance Requirements (QC/QA). The Contractor shall provide the following equipment for testing and sampling at the project site. The equipment shall be in good condition and shall be replaced by the Contractor if, during the duration of the project, it becomes unsuitable for testing or sampling purposes.

**3.10.6.1** Metal plate 12" minimum each side, flat bottom scoop 3000-gram capacity minimum, and sample containers to perform NHDOT B-7 sampling.

#### 3.10.7 Weather Limitations.

**3.10.7.1 General.** In special instances, when the Engineer determines that it is in the best interest of the State, the Engineer may waive the requirements of 3.10.7, provided that 3.10.7.3 shall always remain in effect.

**3.10.7.2** Any material delivered to the spreader having a temperature lower than 260°F shall not be used unless modified by a qualified warm mix technology capable of being compacted to project requirements at the recommended delivery temperature.

**3.10.7.3** Mixtures shall be placed only when the underlying surface is dry and frost free. The Engineer may permit, in case of sudden rain, the placing of mixture then in transit from the plant, if laid on a base free from pools of water, provided motorist visibility is not impaired and all other specifications are met. No load shall be sent out so late in the day that spreading and compaction cannot be completed during the daylight, unless the requirements of 3.10.5 are met. The Engineer may suspend operations for the day when the Contractor is unable to meet specifications.

**3.10.7.4** All mix placed after October 1<sup>st</sup> and before May 1<sup>st</sup> shall be modified by a qualified warm mix technology.

**3.10.7.4.1** Wearing course shall not be scheduled for placement after October 1<sup>st</sup> and before May 1<sup>st</sup> without written approval by the Engineer.

**3.10.8** At the beginning and end of the project or project section, the existing pavement shall be removed to a sufficient depth to allow the placing of the new pavement and construction of a transverse joint, which shall be painted with a suitable bituminous material. The underlying course shall be clean and free from foreign materials and loose bituminous patches and must present a dry, unyielding surface.

**3.10.9 Sweeping - General.** Existing pavement or previously laid courses shall be thoroughly dry and free from all dust, dirt, and loose material. Sweeping with a power broom, supplemented by hand brooming, may be necessary.

**3.10.10 Tack coat - General.** Surfaces of any pavement course shall have a tack coat of emulsified asphalt applied in accordance with the requirements of 410.3.4.

**3.10.10.1** Tack will be sampled daily and tested by NHDOT for conformance with Section 410. Any pavement that has been placed over tack that is found to be out of specification, but is deemed suitable to remain in place by the Engineer, will be subject to a 3% price reduction. The price reduction will be applied only to the pavement placed on the date that the tack is

## SECTION 401

**3.10.3** Crack sealing material to be covered by a 1 in (25 mm) or less overlay shall cure a minimum of 45 days prior to the placement of bituminous pavement.

**3.10.4** When performing paving operations at night, in addition to the requirements of 3.1.4.5, the Contractor shall provide sufficient lighting at the work site to ensure the same degree of accuracy in workmanship and conditions regarding safety as would be obtained in daylight.

**3.10.5 Performance Requirements (QC/QA).** The Contractor shall provide the following equipment for testing and sampling at the project site. The equipment shall be in good condition and shall be replaced by the Contractor if, during the duration of the project, it becomes unsuitable for testing or sampling purposes.

Metal plate 12 in (300 mm) minimum each side, flat bottom scoop 3000-gram capacity minimum, and sample containers to perform NHDOT B-7 sampling.

### 3.10.6 Weather Limitations.

**3.10.6.1 General.** In special instances, when the Engineer determines that it is in the best interest of the State, the Engineer may waive the requirements of 3.10.6.

- So it is 1 1/4 not 1 1/2

**3.10.6.2** Any material delivered to the spreader having a temperature lower than 250°F (120°C) shall not be used.

**3.10.6.3 Method Requirements.** Mixtures shall be placed only when the underlying surface is dry, frost free, and the surface temperature is above 40°F (5°C) for courses greater than or equal to 1-1/4 in (32 mm) in compacted depth and above 50°F (10°C) for courses less than 1-1/4 in (32 mm) in compacted depth. The Engineer may permit, in case of sudden rain, the placing of mixture then in transit from the plant, if laid on a base free from pools of water, provided motorist visibility is not impaired and all other specifications are met. No load shall be sent out so late in the day that spreading and compaction cannot be completed during the daylight, unless the requirements of 3.10.4 are met. If rapid surface cooling of the laid down mix is occurring due to wind, the Engineer may suspend operations for the day. Wearing course shall not be scheduled for placement after October 1st of any year without written approval by the Engineer. If it is determined to be in the best interest of the Department to schedule placement after October 1st, the above specified weather and surface conditions shall remain in effect.

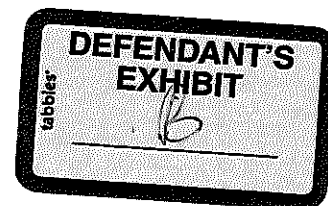
**3.10.6.4 Performance Requirements (QC/QA).** Mixtures shall be placed only when the underlying surface is dry and frost free. Paving shall be placed only as stipulated in the approved Quality Control Plan. The Engineer may permit, in case of sudden rain, the placing of mixture then in transit from the plant, if laid on a base free from pools of water, provided motorist visibility is not impaired and all other specifications are met. No load shall be sent out so late in the day that spreading and compaction cannot be completed during the daylight, unless the requirements of 3.10.4 are met. The Engineer may suspend operations for the day when the Contractor is unable to meet specifications. Wearing course shall not be scheduled for placement after October 1st of any year without written approval by the Engineer. If it is determined to be in the best interest of the State to schedule placement after October 1st, the above specified conditions shall remain in effect.

**3.10.7** At the beginning and end of the project or project section, the existing pavement shall be removed to a sufficient depth to allow the placing of the new pavement and construction of a transverse joint, which shall be painted with a suitable bituminous material. The underlying course shall be clean and free from foreign materials and loose bituminous patches and must present a dry, unyielding surface.

**3.10.8 Sweeping - General.** Existing pavement or previously laid courses shall be thoroughly dry and free from all dust, dirt, and loose material. Sweeping with a power broom, supplemented by hand brooming, may be necessary.

**3.10.9 Tack coat - General.** Surfaces of any pavement course shall have a tack coat of emulsified asphalt applied in accordance with the requirements of 410.3.4.

**3.10.9.1** Tack will be sampled daily and tested by NHDOT for conformance with Section 410 of the NHDOT Standard Specifications. Any pavement that has been placed over tack that is found to be out of specification, but is deemed suitable to remain in place by the Engineer, will be subject to a 3% price reduction. The price reduction will be applied only to the pavement placed on the date that the tack is sampled. This price reduction will not relieve the contractor of responsibility for latent defects and/or gross mistakes as outlined in section 107.14.



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Bedford, NH 03110  
Tele: (603) 637-1043  
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ENGINEERING • PLANNING • MANAGEMENT • DEVELOPMENT

## FIELD OBSERVATION REPORT

PROJECT:	River's Peak Subdivision
PROJECT No.:	323138P
DATE:	November 7, 2019
CONTRACTOR:	Better Built Homes
LOCATION:	Barrington, NH
FIELD ENGINEER:	Scott Bourcier

### TEMPERATURE:

30 °F at 5:50 a.m.  
47 °F at 12:15 p.m.

### SKY:

- ☐ CLEAR  
☐ OVERCAST  
☐ PRT CLOUDY  
☒ CLOUDY  
☐ OTHER

### PRECIPITATION:

- ☐ MISTY  
☐ DRIZZLE  
☐ SPRINKLE  
☐ RAIN  
☐ SNOW  
☐ OTHER: \_\_\_\_\_

### EQUIPMENT ON-SITE:

(1) Volvo P4410B Paver      (1) Caterpillar CB54B Tandem Drum Compactor      (1) Dynapac CC1300 Tandem Drum Compactor

### PRESENT AT SITE:

Clifford Williams (Owner / Developer); GMI Asphalt LLC; Scott Bourcier (DuBois & King)

### OBSERVATIONS:

1. Arrived at approximately 5:50am.
2. Recorded subdivision development roadway binder course pavement surface temperatures:

Time	Surface Temperature
6:00am	25 °F
7:00am	32 °F
8:00am	39 °F
9:00am	43 °F
10:00am	46 °F
11:00am	46 °F

\* 2016 Spec call for 1 1/4  
under 50° not 1 1/2

3. At approximately 6:50am spoke with GMI Asphalt Superintendent to inquire if the project was proceeding forward with the placement of the wearing course pavement. The Superintendent reported that according to the Owner / Developer, the project is proceeding. I then spoke with Cliff about the placement requirements as identified in New Hampshire Department of Transportation (NHDOT – Section 401.3.10.6.3; dated 2010). I reiterated the surface temperature requirement of 50-degrees Fahrenheit for a 1-inch compacted placement and noted the weather forecasted today was to be a high of approximately 52-degrees around 2:00pm and cloudy with inclement weather moving in. I suggested that if the wearing course was placed at a 1.50-inch compacted depth, the surface temperature requirement would be reduced to 40-degrees Fahrenheit. After much discussion, Cliff decided to proceed with placing the wearing course pavement to the 1-inch compacted depth.
4. Recorded the following:
  - a. Tie-in at the intersection of Boulder Drive and all abutting driveways were previously milled 1-inch deep x 12-inch wide.
  - b. The existing binder course pavement surface was previously swept.
  - c. Tack coat was placed for all horizontal and vertical surfaces of the existing binder course pavement surface, tie-in of Boulder Drive, and tie-in of all abutting driveways prior to the placement of new pavement material in accordance with NHDOT Section 410.3.4.1.1 for an Oxidized Hot-Mixed Asphalt (HMA) category.

→ This meets even 2010  
Spec's

- d. Placement of the wearing course pavement commenced at approximately 7:20am.
- e. Delivery slips identified the material delivered to be 9.5mm, 75-gradation.
- f. Pavement depths were recorded to be 1-1/4 to 1-1/2 inches loose and 1 to 1-1/4 inches compacted; meeting the 1-inch compacted requirement.
- g. Pavement temperature was recorded to range between 300 to 330 °F; acceptable in accordance with NHDOT Section 401.3.6.2.1.
- h. Pavement placement of the adjacent travel-lane centerline was performed by overlapping the joint approximately 2-inches (no luting), and compacting in accordance with NHDOT 401.3.13.2.
- i. Observations of both placement and compaction procedures were reviewed and appeared to have been performed in a satisfactory manner.
- j. The 24-foot wide, from Sta. 0+00 (intersection of Boulder Drive) to 30+54.85 (end), wearing course pavement was completed at approximately 12:15pm

5. Departed at 12:15pm.

**OUTSTANDING ITEMS:**

- 1. Complete remaining Project Punch List items.

**PROJECT PHOTOGRAPHS:**



Figure 1 – Tack coat



Figure 2 – Placement

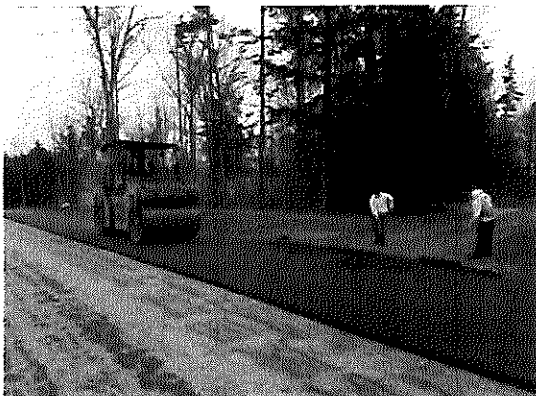


Figure 3 – 04/19/19 photograph

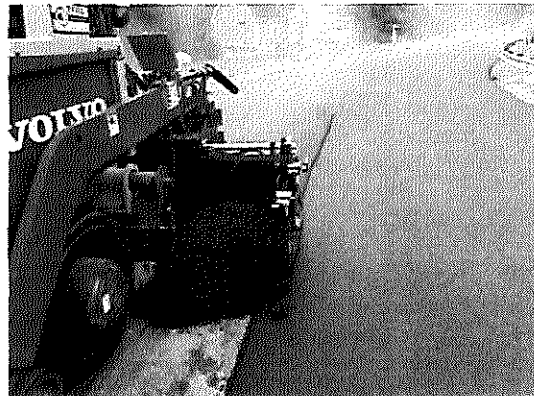


Figure 4 – Joint overlap



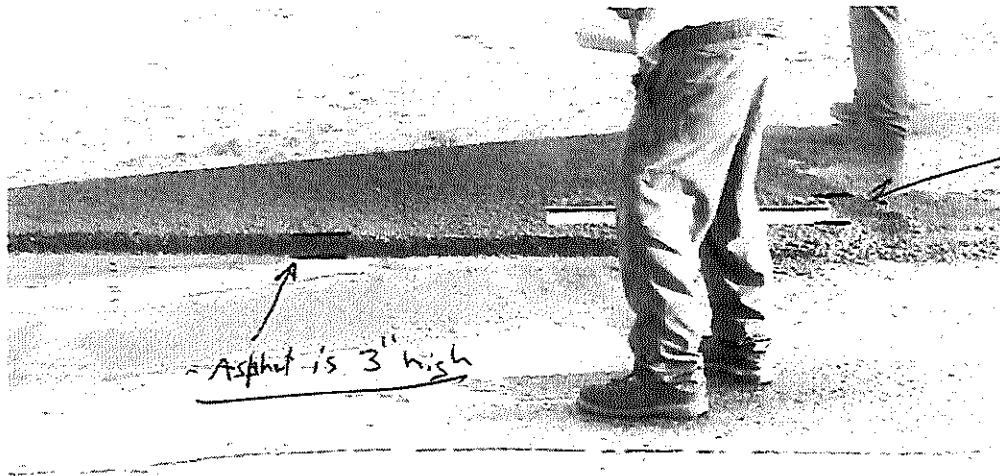
(No Subject)

cliffack@yahoo.../Sent



Clifford Williams <cliffack@yahoo.com>  
To: Clifford Williams <cliffack@yahoo.com>

Nov 30 at 9:03 PM



Sent from Yahoo Mail on Android

- Just making a comparison, the Asphalt Lute was used to set the edge of the Asphalt, even with just this comparison, the Lute is 3" and the asphalt is about the same before compaction. Compacted it's about 2"
- 2010 Spec's call for  $1\frac{1}{4}$ " compacted under  $50^{\circ}\text{F}$
- 2016 Spec's I am only required to Pave 1 inch, at  $260^{\circ}\text{F}$  and above out of the Truck, with no frost in the ground!
- I attach a shot of the temp gun reading after the Asphalt had been placed and roll, it was  $292^{\circ}\text{F}$ .

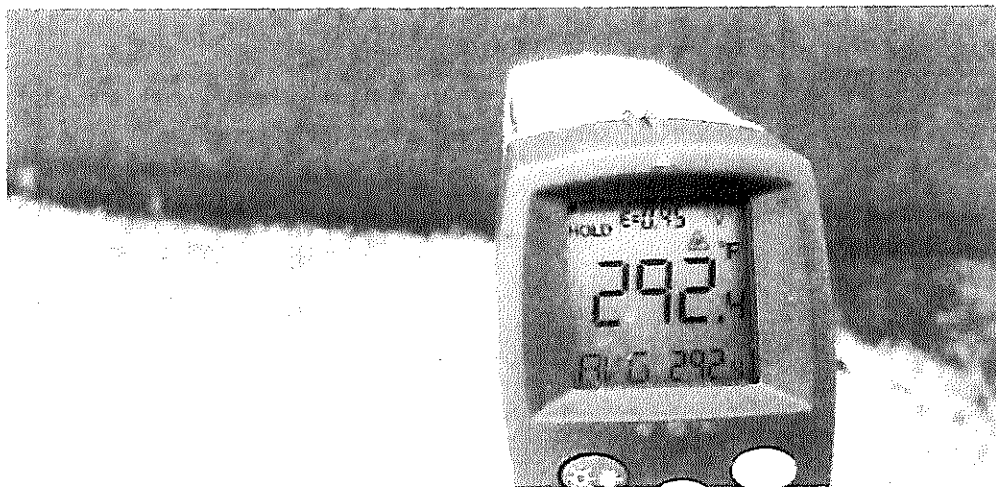
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cliffack@yahoo.../Sent

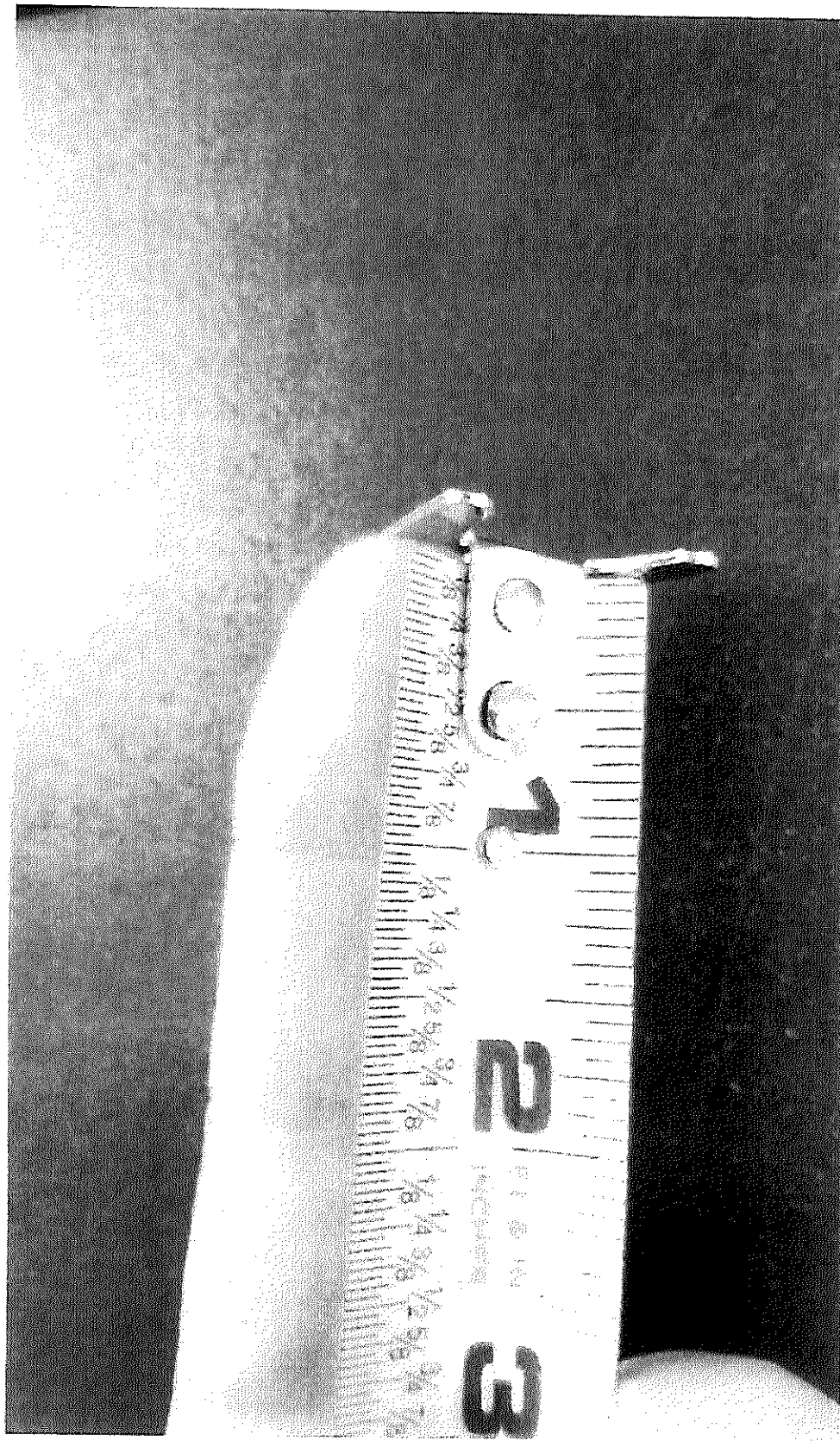


Clifford Williams <cliffack@yahoo.com>  
To: Clifford Williams <cliffack@yahoo.com>

Nov 30 at 8:56 PM



Sent from Yahoo Mail on Android



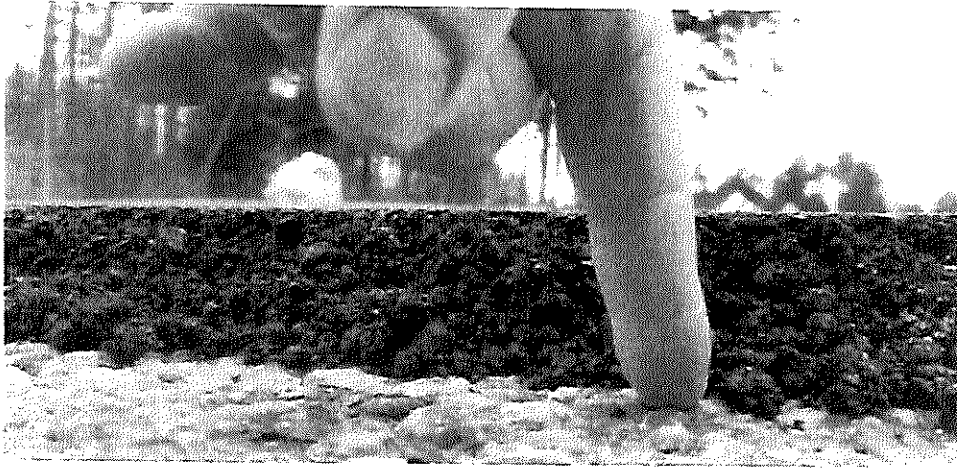
(No Subject)

cliffack@yahoo.com



Clifford Williams <cliffack@yahoo.com>  
Tel: Clifford Williams <cliffack@yahoo.com>


Nov 30 at 7:54 PM



[View more photos from this album](#)

RE: Barrington, NH - River's Peak Subdivision; Shoulder Leveling Gravel

cliffack@yahoo.../Inbox

 Scott Bourcier <sbourcier@dubois-king.com>  
To: 'Clifford Williams' <cliffack@yahoo.com>

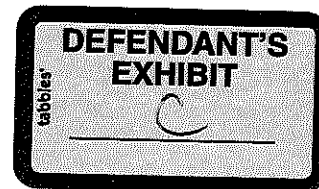
Nov 24, 2019 at 8:45 PM

Hi Cliff,

Has the access road from the gravel pit to the project site been stabilized? If so, then I would agree the only item to be completed would be the gravel pit.

Scott

Scott M. Bourcier, PE  
DuBois & King, Inc.  
18 Constitution Drive, Suite 8  
Bedford, New Hampshire 03110  
(O) 603.637.1043  
(C) 603.828.8788



-----Original Message-----

From: Clifford Williams [mailto:cliffack@yahoo.com]

Sent: Thursday, November 21, 2019 11:49 AM

To: Scott Bourcier

Subject: Re: Barrington, NH - River's Peak Subdivision; Shoulder Leveling Gravel

Hi Scott, other than the pit area, does that complete the punch list for the road?

On Wednesday, November 20, 2019, 7:58:50 AM EST, Scott Bourcier <sbourcier@dubois-king.com> wrote:

Thank you.

Scott

Scott M. Bourcier, PE  
DuBois & King, Inc.  
18 Constitution Drive, Suite 8  
Bedford, New Hampshire 03110  
(O) 603.637.1043  
(C) 603.828.8788

-----Original Message-----

From: Clifford Williams [mailto:cliffack@yahoo.com]

Sent: Tuesday, November 19, 2019 9:02 AM

To: Scott Bourcier

Subject: Re: Barrington, NH - River's Peak Subdivision; Shoulder Leveling Gravel

Hi Scott, I talked with Ron from GMI, they did finish the gravel on the shoulders yesterday, the 18th. Thanks

On Sunday, November 17, 2019, 8:08:12 PM EST, Scott Bourcier <sbourcier@dubois-king.com> wrote:

Thank you for the update.

Scott

Scott M. Bourcier, PE  
DuBois & King, Inc.  
18 Constitution Drive, Suite 8  
Bedford, New Hampshire 03110  
(O) 603.637.1043  
(C) 603.828.8788

-----Original Message-----

From: Clifford Williams [mailto:cliffack@yahoo.com]

Sent: Sunday, November 17, 2019 1:00 PM

To: Scott Bourcier

Subject: Re: Barrington, NH - River's Peak Subdivision; Shoulder Leveling Gravel

Hi Scott, Ron from GMI told me that it would be this Monday, the 18th. I think its predicted to rain, so I will let you know, thanks.

On Thursday, November 14, 2019, 5:22:06 PM EST, Scott Bourcier <sbourcier@dubois-king.com> wrote:



November 24, 2019

Ms. Marcia Gasses, Town Planner  
Town of Barrington  
P.O. Box 660  
Barrington, New Hampshire 03825

Subject: River's Peak – Map 215 / Lot 1  
Wearing Course Pavement Observations


Dear Ms. Gasses:

As requested, DuBois & King performed wearing course pavement observations of the above-referenced project's subdivision roadway from Boulder Drive to end (approx. Sta. 30+54.85). Observation for the wearing course pavement was performed on November 7, 2019, while confirmation of the shoulder leveling gravel placement was performed November 21, 2019. The following were comments recorded during the observations.

1. The wearing course pavement width met the 24-foot travel way and 1-inch compacted depth requirements.
2. Placement of the wearing course pavement met the New Hampshire Department of Transportation (NHDOT) Standard Specifications for Road and Bridge Construction (dated 2010) specifications, except for surface temperature requirement; please see Field Report dated 11/07/19.
3. The shoulder leveling gravel met the 4-foot width requirement; and,
4. There are some outstanding punch list items to be completed as of the date of this letter.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,  
DuBOIS & KING, Inc.

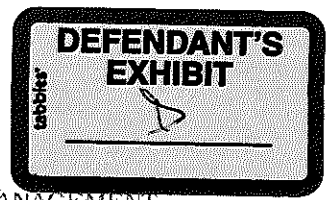
  
Scott M. Bourcier, P.E.  
Project Manager

SMB/smb

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ENGINEERING • PLANNING • DEVELOPMENT • MANAGEMENT



February 17, 2016

Ms. Marcia Gasses  
Town Planner & Land Use Administrator  
Town of Barrington  
PO Box 660  
Barrington NH 03825

SUBJECT: Rivers Peak  
Road Inspections

Dear Ms. Gasses:

We are pleased to submit our second proposal to conduct road inspections for the Barrington Planning Board regarding the above project. We propose the following scope of work.

#### SCOPE OF WORK

##### Task 1 - Subgrade Inspection

We will conduct a subgrade inspection (prior to placement of road subbase) and issue a letter report.

##### Task 2 - Drainage Inspection

Following installation of drainage facilities, we will make an inspection and submit a letter report.

##### Task 3 - Bankrun Gravel Inspection

Following placement of bankrun gravel, we will make an inspection and submit a letter report.

Ms. Marcia Gasses  
February 17, 2016  
Page Two

Task 4 - Crushed Gravel Inspection

Following placement of crushed gravel, we will make an inspection and submit a letter report.

Task 5 – Paving Inspection

We will be on-site during paving and monitor the paving process.

Task 6 – Punch List

Following paving, we will issue a punch list of items necessary to complete roadway.

Task 7 - Final Inspection

Following completion of the punch list, we will make a final inspection and submit a closeout report stating that the road was constructed in accordance with the approved drawings and recommending acceptance as a Class V road.

Task 8 – Shop Drawings

We will perform reviews of shop drawings, compaction test results and sieve analysis.

Task 9 – Field Reports

After each inspection, we will prepare a field report that will be issued to the Contractor should issues require attention or correction and acknowledgement of receipt by the Contractor will be documented.

Task 10 – Bond Releases

We will provide recommendation on bond releases/reduction if required.

DuBois & King will perform the above Scope of Work in accordance with our Master Contract. We suggest a budget range of \$3,400 to \$3,700. Actual costs will depend on the extent of coordination required, phasing, and the actual number of inspections required.





Ms. Marcia Gasses  
February 17, 2016  
Page Three

If you find this proposal to be acceptable, please execute both copies of this proposal and return one fully executed copy to this office. Upon receipt of the fully executed Agreement and the security deposit, we will initiate work.

We look forward to serving the Town of Barrington this project.

Yours truly,

DuBOIS & KING, INC.



Jeffrey A. Adler, P.E.  
Senior Project Manager

JAA/js

ACCEPTED AND AUTHORIZED TO PROCEED:

TOWN OF BARRINGTON, NH

DEVELOPER

BY \_\_\_\_\_

BY

*Ian James LLC / Clifford William*

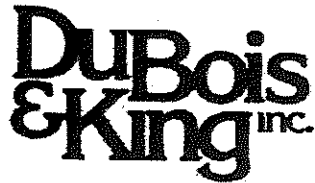
DATE \_\_\_\_\_

DATE

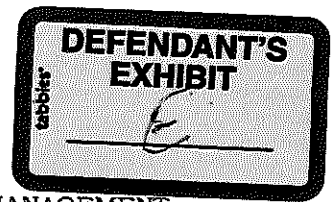
*Feb 22, 2016*

**DuBois  
& King**<sup>INC.</sup>

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June 27, 2016

Marcia Gasses, Planner and Land Use Administrator  
Town of Barrington  
P.O. Box 660  
333 Calef Highway  
Barrington, New Hampshire, 03825

Subject: River's Peak - Map 215 / Lot 1  
Bankrun Gravel and Binder Pavement Observations  
Construction Bond Reduction Estimate

Dear Ms. Gasses:

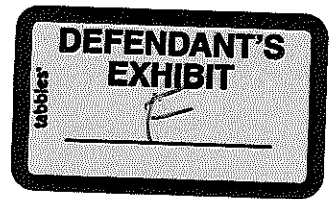
As requested, DuBois & King performed crushed gravel and bituminous concrete binder course observations of the above-referenced project's subdivision roadway from Boulder Drive to end (approx. Sta. 30+54.85). Observations for crushed gravel were performed on May 12, 2016 (Sta. 0+00 to 11+50) and June 16, 2016 (Sta. 11+50 to end), while bituminous concrete binder course observations were performed subsequent the crushed gravel observations on May 13, 2016 and June 17, 2016. The following were comments recorded during the observations.

1. Based on a sieve analysis provided by John Turner Consulting (JTC), the crushed gravel material met the New Hampshire Department of Transportation (NHDOT) 304.3 Crushed Gravel requirements; ①
2. The roadway width met the 24-foot travel way and 4-foot shoulder requirement;
3. The roadway's cross-sectional slope was measured and determined to meet the 2% (+/- 0.4%) requirement (in accordance with Section 214 of the NHDOT Standard Specifications for Road and Bridge Construction, dated 2016); and, ②
4. Compaction test results from John Turner Consulting (JTC) of the crushed gravel layer were submitted on May 6, 2016 and June 22, 2016. Results demonstrated that compaction of the material met the NHDOT requirements. ③

① - 304.3 mat requirements

② - He is quoting 2016 Spec's for DOT, But Nov 7, 2019, he states 2010 Spec's?

③ Compaction met NHDOT requirement



-----Original Message-----

From: Duke, Thomas

Sent: Thursday, September 02, 2021 2:05 PM

To: Laura Spector-Morgan <laura@mitchellmunigroup.com>

Cc: Conner MacIver <cmaciver@barrington.nh.gov>; jim@jimsteinerlaw.com

Subject: 18L003650/Ian James, LLC d/b/a/ Better Built Homes, LLC

Laura:

Thank you for the information and additional documents.

I assume the borings relate to one of the three issues raised in the Town's letters to LMS, i.e., the wear course being applied at too cold an ambient temperature. Is that right? What is the status of the other two issues raised, i.e., transition radii and lack of required monumentation? Are there damages associated with these two issues? Has Better Built Homes, LLC ("Principal") addressed these two issues? Are there any other known issues in addition to these three? When does the Town expect to have an estimate of the cost of repairing any issues with the wear course caused by the air/surface temperature at application.

On page 100 of your letter to me dated August 17, 2021, which is a letter from DuBois & King to Marcia Gasses dated June 27, 2016, Scott Bourcier states at the bottom of the first page of his letter, "We have also calculated a construction bond estimate for the items necessary to complete the roadway (see attached - \$214,386)." I do not see that attachment included in the documents you sent me. If you will, please send me a copy of the attachment to which Scott refers in his letter.

While I appreciate the Town's position that giving notice equals initiating a "legal proceeding," the bond form will not allow that interpretation. Paragraph 1 of the bond deals with "giving notice" of an actual or potential claim on the bond. Paragraph 2 deals with bringing a "legal proceeding" on that claim. Now, aside from the common definition of a "legal proceeding," i.e., "any action, suit, litigation, arbitration invoking the power of a tribunal for the purpose of enforcing a right or law," which seems to me to preclude equating "giving notice" to LMS of a claim on the bond with "bringing a legal proceeding" against LMS on the bond, the bond itself expressly distinguishes between "giving notice" to LMS and "bringing a legal proceeding" against LMS. Thus, I do not think the Town's position that giving notice to LMS is the same thing as bringing a legal proceeding against LMS is supportable.

Nevertheless, LMS intends to complete its investigation of the claim before rendering a final decision on the Town's claim. Please send me the cost estimate once you have received it, together with evidence showing that the repair and/or replacement costs of the wear course arise from the alleged temperature issue at time of application. Also, if there are cost estimates for the other two issues cited by the Town in its letters to LMS or if there are other issues with Principal's performance covered by this bond, please send me the documents and information supporting same.

LMS continues to reserve its rights under the bond and applicable law.

Sincerely,

Tom

Thomas H. Duke  
Surety Claims Counsel  
Surety Plus Claims

## James Steiner

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**From:** Laura Spector-Morgan <laura@mitchellmunigroup.com>  
**Sent:** Wednesday, February 9, 2022 4:18 PM  
**To:** James Steiner  
**Subject:** RE: Ian James, LLC Barrington project

Jim:

The town does not intend to pursue calling the bond, and it is willing to release the bond. Please let us know what, if any, steps must be taken to do so, or if your client will simply not renew it.

The Select Board will be holding a hearing on February 28 to consider the acceptance of Overlook Circle.

Thank you.

Laura

Laura Spector-Morgan, Esquire  
Mitchell Municipal Group, P.A.  
25 Beacon Street East  
Laconia, NH 03246  
(603) 524-3885  
fax (603) 524-0745  
www.mitchellmunigroup.com

-----Original Message-----

From: James Steiner  
Sent: Wednesday, February 02, 2022 3:58 PM  
To: Laura Spector-Morgan <laura@mitchellmunigroup.com>  
Subject: Ian James, LLC Barrington project

Laura,

I have done a detailed review of the issues surrounding acceptance of the road in the project.

At the present time Cliff Williams is losing an opportunity for a project because he cannot bond it with the current bond still in place for this project.

I note this because given the error in applying the correct standard, below, if we have to resort to the courts this will be an element of damages pursued by Cliff Williams.

Attached is the Standard Specifications for Road and Bridge Construction in New Hampshire, March 2016. The road was paved in 2016 and the wearing course on November 24, 2019. The town representatives relied, Improperly, on the earlier 2010 specifications. See e.g. Letter by Dubois & King to Marcia Gasses, Nov 24, 2019, relying

on 2010 standard, and Field Observation Report, Nov 8, 2019 (date of wear course installation). Both refer to the 2010 standard, not the applicable 2016 standard.

The updated specifications, attached, provide at section 401, paragraphs 3.10.7 Weather Limitations- that the material must have an exit temperature above 260 degrees. Paragraphs 3.10.7.2.

At 3.10.7.3 the standard provides that the underlying surface must be "dry and frost free." Both of these conditions were met. The temperature for the mix was between 300 and 330 degrees.

Nov 19 Field Report, at 4.g. The same Field Report makes no mention of frost, noting the weather as simply "cloudy."

Under the Town of Barrington Subdivision Regulations, para. 12.8.10 your representative is required to be present. Per the field report, he was present.

On Nov 24, 2019, your engineer emailed Cliff Williams to confirm that the only item to be completed was the gravel pit, assuming, as it had been, that the Access road from the gravel pit to the project site had been stabilized.

Accordingly, the evaluation completed, while recognizing it was unclear which standard applied, noted that the test pits, at 1", all met that standard, and relied erroneously, as did The town engineer, on the 2010 standard for placing the wear course.

I believe some monumentation may still be required. If so, that would be completed asap knowing the Town will now apply the correct NH standards from 2016.

Please confirm that the town is prepared to accept the road

Jim Steiner  
Steiner Law Office, PLLC  
[www.jimsteinerlaw.com](http://www.jimsteinerlaw.com)  
603.345.6440

**MITCHELL MUNICIPAL GROUP, P.A.**

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LACONIA, NEW HAMPSHIRE 03246  
[www.mitchellmunicipalgroup.com](http://www.mitchellmunicipalgroup.com)

WALTER L. MITCHELL  
LAURA A. SPECTOR-MORGAN  
NAOMI N. BUTTERFIELD  
JOSEPH H. DRISCOLL, IV

TELEPHONE (603) 524-3885

February 11, 2022

Stacey Anderson  
Skillings Shaw & Associates  
103 Park Street, 2nd Floor  
PO Box 481  
Lewiston, ME 04243

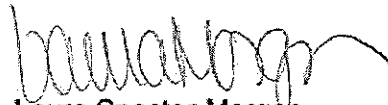
Re: Bond: 506179S  
Principal: Ian James, LLC  
Bond Type: Site Improvement Bond (Improvements i/c/w River's Peak  
Subdivision, Barrington, NH)

Dear Ms. Anderson:

Please be advised that this firm represents the Town of Barrington. The town agrees that the above captioned bond in the amount of \$214,386 may be released effective February 11, 2022.

Thank you for your assistance and please let me know if I can be of additional assistance.

Sincerely,



Laura Spector-Morgan  
[laura@mitchellmunigroup.com](mailto:laura@mitchellmunigroup.com)

cc: Conner MacIver, Town Administrator  
James Steiner, Esquire