
TOWN OF EAST MONTPELIER

DATE: 6/10/03
TO: SELECTBOARD
CC: MIKE GARAND, BRUCE BJORNLUND
FROM: MARLENE BETT
RE: PINE RIDGE ROAD

Please note I have attached the pertinent documents regarding Pine Ridge Road for review prior to the meeting on Monday, June 16th, 2003, at 7:20 p.m. The meeting was initiated by Ellery and Jennifer Packard because Ellery is planning to put his residence on the market and is concerned about the effect the washout may have on a future sale. Jennifer indicated ACT 250 has told them they are not liable for the damage. I asked if she had a copy of the Violation Notice, she said she did.

As you can see from my notes of July 2002, when I spoke with John Hazen, General Counsel, Environmental Board, he had looked at their files and told me the Statue of Limitations (6 years) for Act 250 violations was over. While reviewing the file again to prepare this packet I contacted him to verify the date the violation began. The violation notice is dated November 21, 1996 and I spoke with him in July of 2002. I wondered if I had forgotten to put something in my notes indicating when the actual violation date took place.

I called John and he said he would have given me that information for six years based upon information they had as to when the actual violation by Packard occurred not necessarily by the violation notice. John also indicated that if he had made a mistake in his assessment than it is still too late to do anything about the violation. He said "nothing can be done" and I basically said something would have to be done because the road continues to run into the Winooski and the Town cannot afford to pay the costs to correct the problem. John said he was not aware this was a *continuing violation* and if so then there isn't any statute of limitations applicable because the effects of the violation continue to occur. He said he wasn't aware this was a continuing violation from his research of their files and I assume discussion with the Environmental Board. Anyway, since the violation notice runs with the land it sounds like Act 250 can and will enforce in this situation. I have spoken with Bruce and he is going to contact John to verify this new information.

As noted in the memo of September 25, 2002, from Vtrans, Mike Garand has been monitoring the erosion area. Barry Calhoun of the Agency of Natural Resources continues to work with Mike reviewing and evaluating the erosion during spring and summer.

On Monday I spoke with Ernie Englehardt, District 6 Transportation Administrator regarding possible short and long-term solutions. District 6 has been looking at the Pine Ridge problem at the Town's request for some time.

Ernie Englehardt indicated a short term solution to alleviate further damage to the cul-de-sac would be to ensure surface water from the development is diverted in a sheet type flow to the empty lot (I believe this is the Casavant lot). This would be an inexpensive way to divert water and further damage from the gully. Please look to my July 2002 notes under "Thoughts". Dick Casavant noted a possible solution might be turning over his lot to the town for runoff, Ellery Packard providing equipment and labor, and obtaining gravel from the cul-de-sac next to Casavant's residence (I believe that is still his residence).

Per Ernie Englehardt, a long-term solution depends on what the stream alteration individuals will allow (Barry Calhoun or Chris Brunell – ANR) for activity in the stream where most of the work will need to take place. Ernie indicated heavy rip rapping along bend of river is probably the best solution but would cost tens of thousands of dollars.

Doug Newton (District 6) and Chris Benda (Vtrans Soils & Foundations) both agree with these assessments.

One more item to note, the Casavant vacant lot has been on the delinquent tax list because Dick Casavant feels the appraised value is too high due to the problems and concerns with the cul-de-sac and erosion and what he considers a non-saleable lot.

Finally, if it is true that the development had inadequate drainage than isn't the developer responsible for some of this damage?

If you have any questions please contact me.

Thank you.

ATTACHMENTS

Marlene Betit PINE RIDGE ROAD NOTES

July 2002

Per Casavant:

- 1) Ellery abuts this property and he still owns his residence there
- 2) Casavant property may be part of the solution; water will need to be diverted onto land cul-de-sac onto that lot – build new one and allow for better drainage. Change drainage to get it away from bank that alleviates immediate problem but doesn't resolve wash out – or does it?

The lot is in his name but he hasn't paid last year's taxes. Was trying to make a point that if Vic Fecteau won't buy the property no one will.

Thoughts,

Lot from Casavant, get Packard to use his equipment, gravel from thrown up cul-de-sac (next to Casavant residence).

Fall and spring best time to do work before corn planting and after harvest – come at project from the other side (fields) of the river.

7/17/02

I called and left a message for Tim Tomasi (at Tim Meehan's suggestion). Attorney Tomasi called me back and I explained the situation. He said he would have the appropriate person contact me.

John Hagen, General Counsel, Environmental Board 828-5444 contacted me. Title 10 Section 80175 Statute of Limitations is up. The State should have followed up on Notice of Violation within 6 years for Act 250 violations. The State cannot take any action. Not sure of Statute of Limitation on Bringing Civil Actions.

7/02

I made the Selectboard Chair aware of the phone call with Mr. Hagen. Mr. Meehan suggested suing both the state and the individual parties and letting them fight it out. Asked me to check with Town Attorney Bjornlund to find out which statutes we could utilize to sue the parties. Suggested a letter be written to Attorney General regarding the whole notion of enforcement of violation and leaving the Town high and dry. Town Attorney Bjornlund indicated lawsuit could be quite expensive and it may be cheaper to move dirt.

8/28/02

Per Bruce Bjornlund – doesn't expect to have a great solution to this problem. This should have been handled within the statute of limitations and not allowed to drag on.

TOWN OF EAST MONTPELIER

DATE: 9/25/02
TO: SELECTBOARD
CC: MIKE GARAND, SYLVIA TOSI
FROM: MARLENE BETT
RE: PINE RIDGE ROAD SLIDE/EROSION

Please note the attached review of the Pine Ridge Road landslide by Chris Benda, Vtrans Soils and Foundations Engineer. I spoke with Doug Newton today to better understand the recommendation. As indicated by my notes, Chris Benda suggested that Mike Garand look at and document the site during heavy rains to see if water is getting to the edge of the slide area. Chris believes this is the first step to determine the specific cause of the erosion.

Per Doug Newton, up and down the stream there are similar erosion sites happening (no others appear to be near any roads) due to the sandy soils in that area. Doug Newton also noted the development does not have any drainage or storm systems. If during intense rain the source of the erosion problem is due to the development, this would provide the Town with the necessary documentation to request the developer put in a drainage system.

Attachment