

**PINE RIDGE ROAD AND GULLY
CHRONOLOGICAL TABLE**

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Date	Document Notes	Exh. #
27 Mar. 1991	<p>Act 250 Land Use Permit 3 5W00032-7 with Findings of Fact issued for the 14 Lot Pine Ridge subdivision; Commission Exhibits 24 and 28; Minutes of Selectboard meeting on 26 April 19891 and AOT A-76 Road Standards.</p> <ul style="list-style-type: none"> • Condition [C] 1 requires that the project be completed and maintained as per the permit conditions, the findings of fact and the plans and exhibits. • C-13 requires that the road be built in strict conformance with Exhibit 23; <i>"The road shall be lined with 18" wide grass lined ditches of a graduated depth from one foot at the Paul Square Drive to three foot as the road passes the eastern boundaries of adjoining properties."</i>² • C-20 prohibits cutting of softwood on the tract w/o prior approval; • C-23 requires that <i>"Each <u>prospective purchaser</u> of any lot shall be shown a copy of the approved plot plan, the Subdivision permit, and the Land Use Permit before any written contract of sale is entered into."</i> • Note: Act 250 erosion-related Exhibits 24 and 28 are also at this tab. <i>As of this date, the District's Commission's file on this application, including its key Exhibit #23, has not been located; Ex. 23 is the road plans and important to the Commission as per its Condition 13 and the language in its Findings under Criterion 4 pertaining to Soil Erosion.</i> • The District Commission's Findings state that the development road will be "constructed to A-76 standards." Decision at p. 4. Vermont AOT Standard A-76, Standards for Town and Development Roads, addresses drainage, which includes a profile drawing of a Typical—Non-Curbed Section with Ditch. 	1
19 Sep. 1991	<p>Letter from William Bryant for the Town to R. Casavant, enclosing AOT inspection letter (5 Sep. 1991) from Gary Schelley, noting "embankment erosion on the right at station [plus or minus] 3+75," and calling for repair, seed and mulch of same. The AOT letter to the Town returns the project plans which had been delivered to them by Richard Casavant.</p>	2

¹ The Minutes of the Selectboard meeting included at Tab 1, with Richard Casavant present, state that the Casavant road in the proposed housing development will be constructed to meet A-76 Standards...."

² Any italics, underlining or highlighting in this Table has been added to draw special attention to same.

26 Mar. 1992	Admin. Ass't Bill Bryant memo to the Selectboard re process for laying out and acceptance of a development road, including that the Town has adopted Agency of Transportation (AOT) Specifications for highway construction. Selectboard Minutes of 24 July 1991 (included at this tab), specifically in reference to the Casavant development road, that <i>the Board had adopted the State's A-76 standards "as the Town's minimum specs for roads."</i>	3
29 Sep. 1993 And 7 Oct. 1993	<ul style="list-style-type: none"> • VT AOT letter of Joseph Landry, P.E., District Transportation Administrator, to Wm. Bryant, Town Administrative Assistant, following inspection of the Casavant Development Road, suggesting minor items to be addressed while concluding that "it is perhaps the best candidate that I have seen for a private road turn public" and that "many Class 3 Town highways in this district are inferior" to this development road. The only reference to drainage was to say that "[a] temporary culvert which exists for an access road should be removed or corrected." The letter does not say anything about whether the road meets A-76 Standards which the Town had adopted. See also 8 Nov. 1994 below. • Town's Notice of Hearing for Laying Out and Acceptance of a Town Highway. The Notice describes the highway as being approximately 0.4 mile in length and running in a generally easterly and northeasterly direction. It references Wayne Lawrence survey recorded in Map Book 3, Page 5 of the Town Land Records. 	4
8 Nov. 1994	Opinion letter of J. Landry of VT AOT to the Town: "Upon inspection of the road, we note than an additional panel or two extending the guardrail westerly would enhance safety. Otherwise we find it fully acceptable [as a Class III Town Highway]." Based on Town notes and a corresponding check and note from Mr. Casavant included at this tab, it appears that the Town did that guardrail work and billed him \$300, which he paid 27 Nov. 1994. The Letter makes no statement as to whether the development road meets the State A-76 Standards which the Town had adopted for acceptance of development roads.	5
Received for record 19 Jan. 1995	Casavant Quit Claim Deed to the Town, executed 20 October 1994, conveying 2.8 acres more or less for the road property, referencing survey of Wayne Lawrence recorded in Map Book 3, Pages 3-5.	6

18 Jan. 1995 And 8 Feb. 1995	<p><u>18 January 1995</u>: “Decision and Order of the Selectboard for the Acceptance of a Public Highway Richard Casavant ‘Pines’ Development Road.” Para. 4: “The said development road has been constructed in accordance with the Town’s policy for acceptance of development roads.” The Order states that “the road be accepted and laid out as a Class 3 Town highway as depicted on the survey map and described in a deed to the Town of East Montpelier to be recorded with this Order.”³</p> <p><u>8 February 1995</u>: “Town of East Montpelier Certificate of Completion and Opening of a Highway for Public Travel,” recorded in Bk. 55, Pg. 109.</p>	7
2 Aug. 1995 and 5 June 2009	<p><u>2 Aug. 1995</u>: Warranty Deed of Richard G. Casavant and Carole A. Casavant to Ellery Packard III and Jennifer Packard of Lot 9 on Wayne Lawrence survey, dated 2 August 1995, being 1.96 acres.</p> <p><u>5 June 2009</u>: The Town Tax Collector conveyed Lot 8, being 1.53 acres, to the said Packards on 5 June 2009, following expiration of the one-year redemption period.</p>	8
20 Nov. 1996	<p>Notice of Alleged Violation (NOAV), signed by Assistant District Coordinator Diana Peduzzi, issued to Ellery Packard, states the belief that Mr. Packard is in violation of Act 250 Permit Conditions 1 and 20 [see Ex. 1] and Findings of Fact under Criteria 4 and 8 and “Water Quality Regulations.” Notes:</p> <ul style="list-style-type: none"> • The Permittee (Casavant) did not provide the Packards as prospective purchasers a copy of the Act 250 permit until the closing, by which time he had already cut some tress in the back yard, without objection from Seller Richard Casavant. [See 22 Nov. 1996 letter of Atty. George Rice to Diana Peduzzi below]. • “A serious bank failure has occurred which <i>may be</i> related to the ditch draining your residential property ... This failure appears to be partially located on land owned by Richard Casavant and the Town of East Montpelier (road right-of-way).” • The NOAV states that the top of the bank should be stabilized or bermed to prevent additional runoff, but <i>all plans must be approved by Barry Cahoon</i> who “<i>will not be available until after December 2. Until that time this Notice shall be considered as a warning that the involved parties should prepare a stabilization plan</i>” • <i>The Act 250 office, although faced with a drainage problem, apparently neglected to check whether the roadside ditching required by the developer’s Act 250 permit had been installed and whether the road satisfied the A-76 Standard. This Notice of Alleged Violation was not perfected; indeed, the above signer of the NOAV came to a different view after review by other officials with the State. See Diana Peduzzi letters to Mr. Casavant dated 18 February 1997 and 31 May 2002 and other documents below.</i> 	9

³ This document and the Casavant Quit Claim Deed of the road to the Town are recorded in Book 55, pages 72-75. A Preliminary Decision and Order to accept the road was issued 8 Dec. 1993, which is included in this Tab.

22 Nov. 1996	<p>Letter of Atty George Rice, on behalf of Ellery Packard, to Agency of Natural Resources and Environmental Board, Attn: Diana Peduzzi:</p> <ul style="list-style-type: none"> • The road sheds water that drains into a low spot between Packard and Casavant Lot caused erosion; Casavant designed and built the road. • Mr. Packard denies causing problems which have occurred. • Pre-closing site work on behalf of Packard, including tree-clearing and installation of footing drains, occurred while Casavant was the owner and with his knowledge and acquiescence. • The permits and conditions were not provided to Packard until the Closing, after the above had already occurred. 	10
6 Dec. 1996 (date sent)	<p>Email from ANR's Barry Cahoon to Diana Peduzzi, with subject of "East Montpelier river bank erosion." After lamenting the end of deer season, Mr. Cahoon's letter states in full exactly as follows:</p> <p style="text-align: center;"><i>"I met with Ellery P. at the site last tues. His drainage probably aggravated the situation but the whole bank is unstable, undermining and sliding due to saturation of the surface soil layers. <u>It's not only the road that's built too close but the entire housing development, especially Ellery's lot is not adequately set back from the river to accommodate the river's natural propensity to wander around.</u></i></p> <p style="text-align: center;"><i>So I would hesitate to condemn Ellery for this erosion problem. The solution would be very expensive and we talked about several options. I advocate a wait and see approach until spring and then we can evaluate things further at that time."</i></p>	11
30 Dec. 1996	<p>Letter of Richard Casavant to Barry Cahoon:</p> <ul style="list-style-type: none"> • "Thank you for inspecting the washout at our development in East Montpelier <u>I agree with your comments as to the cause</u> and the cure." • "This ditch line was constructed after the road was turned over to the town and not by us." <p>Note: At least in the area of the subject northerly cul-de-sac, the developer did not install the 18" wide grass-lined ditching required by Condition 13 of the Act 250 permit.</p>	12

18 Feb. 1997	<p>Memo of Diana Peduzzi to Ellery Packard, Richard Casavant and Town of East Montpelier, Re: "Riverbank slide in East Montpelier," copying Barry Cahoon:</p> <ul style="list-style-type: none"> • With this memo all written correspondence on this matter is circulated. [Namely: Barry Cahoon's 6 Dec. 1996 email to Ms. Peduzzi; Atty. Rice 22 Nov. 1996 letter to Ms. Peduzzi; Mr. Casavant's 30 Dec. 1996 letter to Barry Cahoon; and VT AOT 29 Sept. 1993 letter of Joseph Landry, P.E. to Wm. Bryant of the Town]. • "It has yet to be determined which of the adjoining land owners is or are responsible for or liable for the runoff which caused the bank failure and the resulting soil erosion." • "Barry Cahoon ... has indicated that the extent of the drainage and preferred solutions can best be determined after spring runoff." • "It would seem to make sense for the affected, potentially liable parties to work together to develop a proposal.... Please respond to the enclosed letters and submit any other new information by March 5, 1997." 	13
4 June 1998	<p>Wm. Bryant letter for the Selectboard to District Coordinator Ed Stanak: "...the Selectboard would like to express its concern about the riverbank erosion problem along the Winooski River in the development ... this slide has come very close to the cul-de-sac... <i>The slide should not be left to worsen and damage the town highway.</i>"</p>	14
7 June 1998	<p>Richard Casavant letter to District Coordinator Ed Stanak:</p> <ul style="list-style-type: none"> • I met with Mr. Packard at the site in late Oct. of 1996 and thought we had agreed he would take care of the problem. When nothing done we reported it to your office. • Packard admitted he did site work (contrary to the permit) as per Atty. Rice letter of 22 Nov. 1996 – we did Packard a favor by letting him start work on a handshake. As a construction contractor, he should have known, and he had the entire road plan as he constructed the first 1,000 feet.⁴ • The way the ditch line is shaped IS the problem. • There was another significant slide this spring. • We had Craig Heindel (respected consulting hydrogeologist) to review our design to see if we had erred in our design and construction; he could meet with your enforcement people. <p>Mr. Casavant forwarded this letter to the Selectboard on 11 June 1998 with cover letter, see below.</p>	15

⁴ With regard to Mr. Casavant's statements that Mr. Packard should have known better: The portion of the road for which Mr. Casavant hired Ellery Packard did not include the area of the subject cul-de-sac and erosion. Whoever constructed the subject problem area, without the required drainage ditches, was subject to Mr. Casavant's control.

11 June 1998	<p>Letter of Richard Casavant to the Selectboard:</p> <ul style="list-style-type: none"> • Bill Bryant indicates that the Board is ready to address the wash-out which is affecting both our lands. • <i>The wash out is expanding and presents a danger to the cul-de-sac.</i> • “We regret that the town has been put in this position. We have no intention of trying to walk away saying it’s the town’s problem as George Rice would suggest.” • Encloses copy of Casavant letter to Ed Stanak dated 7 June 1998 (see Tab 15 above). 	16
11 June 1998	<p>Atty. George Rice to Ed Stanak on behalf of the Packards:</p> <ul style="list-style-type: none"> • Our view is that the erosion first appeared after bad rain storm in 1997 while Mr. Casavant still owned the road, which he had caused to be designed and constructed. • Town accepted the road. • The Packards are not liable. 	17
31 May 2002	<p>Letter of Assistant District Coordinator Diana Peduzzi to Richard Casavant “Re: Land Use Permit #5W0032-7-Bank Failure.”</p> <ul style="list-style-type: none"> • <i>“...You claimed at the time that Packard had constructed a ditch along the road which caused the problem. Since roadside ditches were shown on the Act 250 approved site plan, it was not possible to determine that a ditch was a violation of the permit. Others were of the opinion that the road cul-de-sac, and in fact the whole subdivision, were designed and constructed too close to the top of the bank. Another opinion indicated that the problem could have started with the instability of the river itself.”</i> • “At this time, the East Montpelier Select Board, through its Administrative Assistant, has expressed its intent to push this case through the enforcement process.” • <i>“If you have any evidence to indicate that your subdivision project is not the cause of the problem, please offer it at this time.”</i> <p>The letter is copied to Sean McVeigh, Environmental Enforcement Officer; Marlene Betit for the Town; Barry Cahoon, ANR Stream Alteration Engineer; and Bruce Chappelle of the Natural Resources Conservation District.</p>	18

24 Sep. 2002	<p>Letter of Ernest Englehardt, P.E., AOT District 6 Transportation Administrator, with Report by Christopher Benda, AOT Soils and Foundation Engineer, to Town Administrator Marlene Betit:5</p> <ul style="list-style-type: none"> • We have reviewed the landslide site at the end of Town Highway 71 with Chris Benda, the Agency's Soils and Foundation Engineer, and Mike Garand who provided some background. Mr. Benda's report (dated 10 September 2002) is enclosed. • According to Mr. Garand, the slide has been on-going since roughly 1997 and appears to be getting progressively worse. • "The toe of the slope, facing easterly, is being undercut by the river, resulting in an excessively steep slope, the sand cannot maintain a state of equilibrium and movement occurs. Drainage ditches appear to be directed towards the slide and snowmelt and rainwater from the roadway and housing development will readily erode the sandy soils in this area. As small trees become larger, they add to the load of the slope, the sand cannot support the load and additional movement occurs. As vegetation is lost, further erosion takes place. This cycle will likely continue until a state of equilibrium is reached. <i>Whether or not a balance is achieved before the slide impacts the road will depend on the volume of runoff, whether vegetation can become established, and how much more the Winooski River cuts into the bank.</i>" • "I recommend the town continue to monitor the area particularly during heavy rain events....I also suggest that if observations made during significant rainstorms indicate a substantial amount of runoff occurs, <i>the town seriously consider redirecting the runoff away from the slide area.</i>" • Handwritten notes on 9/24/02 include, "Per Doug [Doug Newton, District 6] up and downstream this continues to happen ...has to do with sandy soils in that area. <i>No drainage in development. No storm system. If during intense rain you pinpoint source of problem you could go back to developer and ask them to put in system.</i>" 	19
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5 The Vermont Agency of Transportation (AOT) has also come to be known as VTrans. Note the letterhead used by Mr. Englehardt.

<p>10 June 2003 And 16 June 2003</p>	<p><u>10 June 2003:</u></p> <ul style="list-style-type: none"> • Memo to Selectboard from Town Administrator Marlene Betit: • The Packards are planning to put their house/lot on the market and he asked about effect of the wash-out on the sale, and produced the notice of alleged violation. Marlene consulted with John Hasen, General Counsel for the Environmental Board. Mr. Englehardt of AOT suggests short term solution to alleviate further damage is to divert water from the development in sheet-type flow to the vacant Casavant lot [Lot 8]; and long-term solution is rip-rap along the bend of the river, requiring ANR approval. Mr. Casavant raised idea of his turning over Lot 8 to the Town, Mr. Packard providing equipment and labor, and Casavant to provide gravel from near his residence. Casavant is on the delinquent tax list; he feels valuation is too high due to erosion. • The Betit Memo references and includes her typed "Notes" document dated July 2002, with attachments. One of the attachments is her memo to the Selectboard dated 25 September 2002 which includes this statement: • <i>"Doug Newton [AOT District 6] also noted the development does not have any drainage or storm systems."</i> <p><u>16 June 2003 Selectboard Minutes.</u> "The Pine Ridge Road erosion problem was discussed with Mr. Packard...Mr. Packard will be reviewing the documentation including the Town files and will discuss at a later date with the Selectboard. At this time Mr. Packard is planning to sell his primary residence on Pine Ridge Road."</p>	<p>20</p>
<p>Undated. see State Letter 25 Oct 2004 below</p>	<p>"Grant Application, Town of East Montpelier, River Corridor Protection Project Implementation, North Branch of Winooski Adjacent to Pine Ridge Road TH# 71".</p> <ul style="list-style-type: none"> • Repeats language from above 2002 VT AOT [see Tab 19]; • Mr. Packard will provide \$10k in-kind service; Mr. Casavant will provide 10k in funds; Town will provide grant administration; Natural Resource Conservation Service will provide design and cost estimates; and AOT will provide information. <p>Also included at this Tab is a series of documents, some with hand-written notes, pertaining to the Grant Application or related purposes:</p> <ul style="list-style-type: none"> • 15 June 2004 ANR Letter of Barry Cahoon, River Management Engineer, to River Corridor Protection and Restoration Partners; • Town Highway Structures Program; • 29 July 2004 email, Laurie Emery of the Central VT Regional Planning Commission to Towns re Pre-Disaster Mitigation Grants; • 29 July 2004 email, Laurie Emery of CVRPC to Marlene Betit; • 18 Aug. 2004 Marlene Betit email to AOT and involved ANR personnel, Richard Casavant and Ellery Packard, Subject Pine Ridge Road; • 25 Aug. 2004 Marlene Betit email to same people and subject; 	<p>21.</p>

	<ul style="list-style-type: none"> • 21 Sept. 2004 Marlene Betit email re Pine Ridge Road Project; • 2 November 2004 Marlene Betit email re Pine Ridge Road. 	
25 Oct. 2004	<p>Letter of Michael Kline of Dept. of Environmental Conservation, ANR, to Town Administrator Marlene Betit, not funding the grant application. In the face of insufficient funds to cover the grant applications under the Clean and Clear Program, the project selection committees focused on projects where stream geomorphic assessments had already been completed. Mr. Kline suggested that implementation might proceed another Grant program that is being developed. Also at this Tab is one-page of hand-written notes (presumably by Marlene Betit) dated 10/27/04 in follow-up discussion with Mike Kline.</p>	22
2 March 2005	<p>Letter of the Winooski Natural Resources Conservation District to Marlene Betit, regarding a two-year effort to conduct stream geomorphic assessment on the Upper Winooski, including this area, in collaboration with the Central Vermont Regional Planning Commission and Friends of the Winooski River. The assessment protocols were developed and grant funding was made available through the ANR River Management Division of the Department of Environmental Conservation. Let us know if interested. This Tab also includes the following related documents:</p> <ul style="list-style-type: none"> • An 11 February 2005 <i>Times Argus</i> article entitled, "Channeling River Information"; • A two-page chain of e-mails between the Town of East Montpelier and the Central Vermont Regional Planning Commission (CVRPC) in the period of 2 November 2004 through 28 April, pertaining to the status of the Pine Ridge Road area under the Upper Winooski River project. <i>The 28 April 2005 email from the CVRPC to Marlene Betit of the Town of East Montpelier includes these statements: "The Pine Ridge Road area will be included in the Phase 1 assessment" and that "we will be drafting an RFP and selecting a consultant for the Phase 2 portion of the study ... We will make sure that the Pine Ridge Road area is included in the RFP for the consultant to study."</i> • A 15 June 2006 email from East Montpelier Town Administrator Lisa Rice to the CVRPC, inquiring as to the status of activity regarding the Pine Ridge Road area (apparently triggered by Packard inquiry); the same date reply from the CVRPC states that her email has been forwarded to Dan Currier of the CVRPC, who is doing the fluvial work. <p>[I, Attorney Stephen A. Reynes, have not seen any subsequent documents regarding that study or any other efforts to address that erosion/Pine Ridge Road situation].</p>	23

<p>19 July 2006 And 1 Aug. 2006</p>	<ul style="list-style-type: none"> • 19 July 2006: Atty. David Grayck for the Packards letter to Town Atty. Bruce Bjornlund wanting to resolve the bank failure ASAP because they want to sell their property. Would like town to accept their offer of \$10k of in-kind services of labor, equipment and materials as provided in the town's grant application. • 1 August 2006: Atty. Bjornlund reply letter to Atty. Grayck: The Selectboard was involved as a mediator. It seems to the Town that Mr. Packard would be dealing with Richard Casavant to solve matters noted in the 20 Nov. 1996 VT Notice of Violation. Town is not impeding the house sale: "It is ANR that needs to be contacted." <p><i>Note: Characterizing this situation as an issue between Mr. Casavant and Mr. Packard for which the Town may be a mediator ignores several realities, including:</i></p> <ul style="list-style-type: none"> • <i>The Town, as owner of the Pine Ridge Road and its right-of-way, is responsible for compliance with the Act 250 permit which requires drainage system for the road;</i> • <i>The Town's road and right of way in the area of the cul-de-sac have already been impacted (see Exhibit 26);</i> • <i>The Town was already actively pursuing paths to addressing the erosion relative to the Winooski River as per Tab 24, and;</i> • <i>What was issued to Mr. Packard was a Notice of <u>Alleged</u> Violation, not a Notice of Violation, and the issuer of the NOAV backed off same after consulting with other State officials; see Tabs 18 and 19.</i> 	<p>24</p>
<p>17 Dec. 2014</p>	<p>Affidavit of Richard W. Bell, State of Vermont Licensed Land Surveyor, dated 17 December 2014, with its following Exhibits:</p> <ul style="list-style-type: none"> • Exhibit 1, Education and Experience Highlights; • Exhibit 2, being two survey sheets as described in paragraph 4 of Mr. Bell's Affidavit, and; • Exhibits 4A and 4B as described in paragraph 7 of Mr. Bell's Affidavit. <p>Exhibit 4B is a Google Earth Ortho Image (2012) superimposed on the Wayne Lawrence survey of the town road in the area of the cul-de-sac "to show the extent of the washout within the town road property." 6 An extra full-size color copy of this image is included in the front-pocket of this binder, in addition to the documents included at this Tab.</p>	<p>25</p>

6 Mr. Bell's Affidavit was prepared in connection with a zoning appeal filed by Ellery Packard and Jennifer Packard regarding the question of whether their Pine Ridge Lots 8 and 9 had merged. Their position was that the two lots could not function as one lot due to the impassable gully dividing them and therefore, under case law, the two lots did not merge. The Court agreed. Superior Court Environmental Division, Docket No. 159-11-14 Vtec (23 June 2015).