

*Town of Atkinson
Board of Selectmen
Regular Meeting 7:30 P.M.
Monday, October 19, 2009*

Open Meeting:

Selectman W, Friel opened the Regular Meeting of the Atkinson Board of Selectmen on Monday, October 19, 2009, at 6:35 PM in the Atkinson Town Hall.

Members Present:

William Bennett
Fred Childs
William G. Friel

Others Present:

P. Smith, Town Administrator

W. Friel made the motion to go into Non-Public Session under RSA 91-A:3 II. (a) To discuss personnel. Second: W. Bennett. Vote: W. Friel – yes, W. Bennett – yes., Fred Childs – yes.

Open Regular Session:

Mr. William Bennett made a motion to open for a public hearing. Mr. William Friel seconded the Motion and the Board voted all in favor to open a public hearing.

At 7:11 p.m. W. Friel made the motion to go into Non-Public Session under RSA 91-A: 3 II. (a) To discuss personnel. Second: W. Bennett. Vote: W. Friel – yes, W. Bennett – yes. Fred Childs – yes.

Open Regular Session:

Chairman F. Childs re-opened the Regular Meeting of the Atkinson Board of Selectmen at 8:40 PM on Monday, October 19, 2009, in the Atkinson Town Hall, and led those assembled in the Pledge of Allegiance.

Members Present:

F. Childs, Chairman
W. Friel
W. Bennett

Others Present:

T. Barbera, Chairman, Technology
P. Smith, Town Administrator
S. Killim, Chairman, Planning Board
T. Stewart, Road Commissioner
C. Lewis, Atkinson Country Club
Mrs. Margaret Osborn, 8 Valcat Lane
Mr. T. Soltani, Attorney for Ms. Osborn
C. Davis, 6 Chase Island
P. Shea, 5 Valcat Lane
Elaine Vaillancourt, Valcat Lane
Mrs. Noreen Marciano
Mr. Gerald Dobrov, 3 Valcat Lane

Approval of Minutes:

Mr. Childs asked if there were any minutes to be reviewed and Mr. Bennett replied that there were none.

Scheduled Appearances:

- C. Lewis – Atkinson Country Club

Mr. Childs then called Ms. Christine Lewis of Atkinson to the table. Ms. Lewis requested that the letter inviting the town to the Annual Tree Lighting be placed into the Minutes and requested that the Town invite Town organizations to assist with the event. Mr. Childs agreed. Mr. Bennett agreed. Mr. Childs stated that the recreation committee had no conflict. Ms. Lewis then asked about local posters in the Post Office and Town Hall and Toys for Tots collections. She also stated that the School system is not allowing flyers. Mr. Friel stated that no one was allowed to place flyers in the schools at present. Mr. Bennett stated that Ms. Lewis should give the flyers to the TV station to be put on the scroll and also have them put on the web site.

- Superintendent R. LaSalle SAU #55

Mr. Childs then called the School Superintendent, Mr. Richard La Salle, to the table. Mr. La Salle then read the capital improvement plan into the minutes and made recommendations to the Board for upgrading the present school buildings or replacing them. Mr. Friel asked what the deciding factors were. Mr. La Salle replied that the deciding factors were timing and action. He stated that the school district would save money on the Sandown School after the second year and can be done at any time but that the high school and middle school projects would require more time and should be completed by 2019 when the old bond is retired. Then other buildings can be renovated or replaced. The Board then discussed which buildings to replace or repair, and what cost savings would be enabled. Mr. La Salle stated that the money for the capital improvement plan could be raised in two ways. The first would be a big bond to sell to the community. The second would be a bond in two phases, the first phase would be planning and design and the second would be for building.

- Margret Osborn, 8 Valcat Lane

Mr. Fred Childs then called Mrs. Margaret Osborn, 8 Valcat Lane to the table and asked that Mr. Ted Stewart come in to the meeting. Mr. Tony Soltani represented Margaret and David Osborn regarding the cease and desist work on Valcat Road.

Mr. Soltani stated the following: "I have been having difficulty deducing what the Selectman's order is or what the basis for it is. I have for your information copied the cease and desist order law which governs the New Hampshire. The letter that I have does not comply with any of the requirements of the cease and desist order and it certainly not put out anything that my clients may have violated. There is only one paragraph which says that because the work done on I'm sorry Maggie and Daniel signed a document as a part of their variance with the Town of Atkinson that said that any maintenance work done, any maintenance work the Osborns or their successors and assigns may have done must have prior approval of the governing body of the town or the Highway Agent under 236:9. Now this work being done on Valcat Lane and the 20 foot right-of-way is not within Town property, I think we can establish that and there is no dispute, so RSA 236:9 is completely irrelevant because it regulates work being done on Class 1, 2 or 3 roads that are accepted by a municipality or maintained by the state. Even the road that leads into or pours into the right of way of Valcat Lane is not a Class 1, 2 or 3 roads; it is actually a Class 5 road. I am trying to find out what the Board of Selectmen is alleging. Are they alleging a violation of a municipal ordinance or condition of approval or are therefore a cease and desist order is being issued. If that is the case, then we have to meet all the requirements of RSA 676:17-A. If this is a cease and desist order requiring a /or prohibiting trespass on town property then it is governed by the roads and the road regulation authority of the Board of Selectmen. In essence, I don't know what to

tell you because what you have told us doesn't tell us anything that we can respond to. I have done municipal law for and I usually wear the white hat. I usually represent municipalities for 19 years and unfortunately I am unable to deduce what you are trying to do so I can respond to, at the same time what you have done continues to cause Mr. and Mrs. Osborn financial harm. They are sitting there, Their equipment is sitting there, they have done everything that they were supposed to do, in fact they appeared and went to the Board of Selectmen's office, they went to the Road Agent, the road agent approved their proposition to do work on the town road, leading up to Valcat and Valcat is not Town property anyway but they paid their \$60.00. If it was done in error, if it was done by mistake, the doctrine of municipal estoppel would kick in. Even if a town official does something which is wrong or mistaken and someone relies reasonably based on the town official's action to their detriment, the Town cannot back out of it. There is also the doctrine that a municipality is first supposed to educate, cooperate and then enforce. Here we have an October 9 letter that comes out, it doesn't tell us much, it doesn't tell me much and unfortunately I only know common law, primarily I'm a New Hampshire lawyer, I'm admitted to six jurisdictions but I am a New Hampshire lawyer, I don't know anything different, so you can't be doing the foxtrot when I'm doing the tango, so if you could please elaborate, maybe I could respond but I would ask that the cease and desist or the document that the that is entitled the cease and desist be vacated until an appropriate one can be issued so that they can go about their business and they go about their at their own risk. If they have violated the law or any agreement we will stand ready to defend it but this is not the way to do business.

Mr. William Bennett asked, "Mr. Soltani, do you have a copy of the driveway permit? There was a driveway permit that you were referring to; do you have a copy of it?"

Mr. Soltani replied, "There is a driveway permit, there is also a Road Agent sign off on the permit itself." Mr. Soltani then approached the Board and gave them a copy of the permit.

Mr. Bennett asked, "Mrs. Osborn, did you represent yourself as the owner of the property where the driveway is being constructed in obtaining this?"

Mr. Soltani replied, "The document is entitled "as the landowner/applicant I hereby agree to the following. Mrs. Osborn clearly represented herself as the owner of Map 22, Lot 47 right on top and nothing else. And, she does have a deeded, documented legal, not equitable legal right of way..."

Mr. Bennett asked "That's under dispute, I believe."

Mr. Soltani replied, "No, there is no civil suit..."

Mr. Bennett stated, "There isn't"

Mr. Soltani stated, "No, there is no civil suit pending, if the Town wants to parachute in on a civil dispute..."

Mr. Bennett stated, "No, you said that she had this right of way and I believe that it is contested."

Mr. Soltani stated, "No, there is no contest, it is an absolute, clear record, title, it's legal and not equitable, it is in black and white."

Mr. Bennett stated, "I would certainly interpret this as representation that the applicant was asking for a driveway permit to cut into a town road from her own property."

Mr. Soltani replied, "Yes."

Mr. Bennett replied, "But she wasn't, it is Carol Davis's property isn't it?"

Mr. Soltani replied, "But she does have a right of way over that property and I don't know where you get that interpretation, the New Hampshire rules of statutory of contract interpretation are quite simple, we read what it says."

Mr. Bennett replied, "There are two points here, one is that this, as I understand it and I have to admit that this is my first reading of the actual document that it is a permit for a driveway cut, it just permits the opening of a driveway onto the Town road and doesn't grant or deny any other privilege and the second is applicant and owner, I want a driveway cut here for land that I own here but the Osborn's don't own that particular contiguous land, only across someone else's property do the Osborn's property."

Mr. Soltani replied, "The Osborns own fee simple at the end of their right of way and that right of way, in property law, you sell a bundle of rights to the exclusion of others, so you either own it in fee simple which as most of you own your houses and property in or you may own a piece of the action, you may own it according to time, you may own it according to restrictions but they do have a legal, vested interest in that right of way and this document says applicant or owner. Applicant is the Osborns. Applicant lives at the end of that right-of-way and they want to pour in. They held no facts; they withheld no facts from the road agent. In fact, the document that they showed the Road Agent showed that the owned Valcat Lane and then the right of way which is of record and which is recorded in the Rockingham Registry of Deeds exactly what they intended to do and exactly what they have done."

Mr. William Friel asked, "Excuse me, did you say that they owned Valcat?"

Mr. Soltani replied, "No, they own an easement on Valcat."

Mr. William Friel said, "So they own an easement on Valcat."

Mr. Soltani replied, "Yes, they own access on Valcat according to an easement and they own the last three lots which have been merged."

Mr. Friel stated, "So your position is that because they have an easement on Valcat, then they can dig it up".

Mr. Soltani, stated, "Not that they can dig it up, but they can apply, they can ...apply they can"

Mr. Friel asked, "Apply for what?"

Mr. Soltani replied, "The only reason that they are applying for anything."

Mr. Friel asked, "Applied to whom? Who did they apply to to dig up Valcat?"

Mr. Soltani replied, "Nobody, nobody other than other property owners that owned Valcat in conjunction with them."

Mr. Friel asked, "They've applied to other property owners?"

Mr. Soltani replied, "No, but that is..."

Mr. Friel asked, "Be clear, they applied to whom to dig up Valcat?"

Mr. Soltani replied, "They did whom they must apply to which one you are asking?"

Mr. Friel asked, "I'm asking you, you said they applied to somebody to dig up Valcat, I'm asking you who it was."

Mr. Soltani replied, "They applied, okay, they applied to the Road Agent only because..."

Mr. Friel asked, "To do what, to dig up Valcat?"

Mr. Soltani replied, "No they came up, okay"

Mr. Friel asked, "They applied to the Road Agent for what, for a curb cut off of Chases Island."

Mr. Soltani stated, "They came up and they told, according to your instructions..."

Mr. Friel said, "Whose instructions, be clear, I'm trying to be clear, whose instructions?"

Mr. Soltani said, "Mrs. Osborn came to the Board of Selectmen..."

Mr. Friel said, "The Board of Selectmen, the three of us..."

Mr. Soltani said, "No, not the Board of Selectmen, your office, apparently."

Mr. Friel replied, "Okay, and talked to whom?"

Mr. Soltani said, "Who did you talk to?"

Mrs. Osborn said, "Barbara Snizer".

Mr. Friel said, "Barbara Snizer is not the Board of Selectmen. Just because you go to the Selectmen's office it doesn't mean you talked to the Selectmen, so let's be clear about that. So keep going, I'm with you so far."

Mr. Soltani: "Barbara Snizer told you what to do."

Mrs. Osborn: "I came to Barbara Snizer and told her that we were opening up the right of way and I needed to know..."

Mr. Friel: "Which right of way?"

Mrs. Osborn: "That we were opening up the right of way from Chase to Valcat and that we were constructing our driveway."

Mr. Friel: "So Barbara Snizer gave you permission to go ahead and do that?"

Mrs. Osborn: "No, Barbara Snizer said to me you have spoken to the Road Agent and you have to file for a permit and it's a \$60.00 fee."

Mr. Friel: “And what does the permit give you the right to do? Does that permit give you the right to dig up both a curb cut on Chase’s Island and Valcat?”

Mrs. Osborn: “It was the Road Agent who met me on Valcat and our contractors with a set of plans who instructed us...”

Mr. Friel: “Have you submitted those plans to the Town, do we happen to have a set of those?”

Mrs. Osborn: “The Town Engineer has them as well as the Fire Department.”

Mr. Bennett: “What Town Engineer?”

Mrs. Osborn: “Aaron, I don’t...”

Mr. Bennett: “Aaron LaChance?”

Mrs. Osborn: “Yes, Aaron LaChance has been in constant communication with our engineer...”

Mr. Friel: “How did you submit them, through what office?”

Mrs. Osborn: “Through, there was a plan office, I guess it was through the Fire Department that would be who it was through, and I also had them with me when we were filling out our application for Valcat Lane as well.

Mr. Friel: “With whom?”

Mrs. Osborn: “With the Road Agent who I was directed to see to get permission...”

Mr. Friel: So your position is that since Barbara Snizer told you to go to the Road Agent, then that particular permit that you had gives you permission for everything you’ve done up there.”

Mr. Soltani: “Define everything we’ve done up there.”

Mr. Friel: “Are you digging up Valcat, you haven’t touched Valcat?”

Mrs. Osborn: “We”

Mr. Friel: “Have you done any work on Valcat, point blank?”

Mrs. Osborn: “The work that was constructed on Valcat”

Mr. Osborn: “Valcat never existed at the point that that right of way came up”

Mrs. Osborn: I understand what you are saying,

Mr. Osborn: “It had never been touched.”

Mrs. Osborn: “Repeat your question, please Mr. Friel.”

Mr. Friel: "I'm asking you, you're saying. You think everything you've done, forget everything, anything you've done up there to do with, right of ways, curb cuts, Valcat, you're..."

Mr. Osborn: "This is how we were directed by the, this is how Maggie was directed by the Town."

Mr. Friel: "Your position is that that permit that you have in your hand, that you paid \$60.00 for, that you sat and explained the whole thing to the Road Agent, and that gives you permission to do everything."

Mrs. Osborn: "I asked the Road Agent"

Mr. Friel: "I'm asking"

Mr. Soltani: "Would you please let her answer?"

Mrs. Osborn: "What I was...I asked what I needed to do, to do the work that I needed to complete for my occupancy..."

Mr. Friel: "What work, okay, what was the work that you needed to complete?"

Mrs. Osborn: "Mr. Friel, can I finish please?"

Mr. Friel: "No, I want to know what work it is that you needed to complete."

Mr. Soltani: "Mr. Friel is this the way you conduct a meeting in this town? You ask a question and don't let her answer?"

Mr. Childs: "Let her answer, right, she can answer, excuse me, yes, go ahead."

Mrs. Osborn: "So I came into the Selectman's office, and asked, explained what we were doing, asked what permission I needed and what permitting I needed. I was directed to the Road Agent. This was in May. The Road Agent met me at the property, told me the permit that I needed, I asked him what about Valcat Lane and what about my driveway from Valcat Lane. The Road Agent said that those were private roads and that he didn't have a concern as much as he did over the public road at the other end. And the permit does say, entrance and exit of, this permit does state that this permit is for the entrance and the exit of that right of way. That exit was Valcat Lane. I had a full set of plans and contractors because I didn't want to misinterpret what the Road Agent's requirements and deeds were. So I didn't even take it upon myself to transfer that information to the contractors, so then I said what else I need for occupancy from Valcat Lane to my driveway. Again, I was told that this was the only permit that I needed and the Road Agent signed off on my permit that we are final for occupancy from a road, Valcat to Chase to the end of our driveway, to the end of our home and that's what I understood. And I don't know of any, and I've served on the Zoning Board, and I don't know of any procedure that you would have to there is no application to come in front of the Board of Selectmen for any type of relief of a variance or waiver so I'm not familiar of what that permission should have been."

Mr. Bennett: "Actually there is a Town Ordinance that uh says that if you excavate a private way open to the public that you have to obtain the permission of the governing board, that's us or the Road Agent."

Mrs. Osborn: "Which I did."

Mr. Bennett: "The Road Agent says he was not aware that you did not own the land that you were requesting the permit for, and uh in terms of what this document allows, I'm going to need some legal advice as to exactly what it says, I see to construct a driveway entrance or plural entrances at the permitted location, but uh to stretch this to cover the entire road that you've created up the hill and intersecting Valcat and uh blocking access of travel on Valcat that's were I need some legal advice."

Mr. Soltani: "Mr. Bennett, I think, I agree, with you, I take to heart the fact that you and the chairman readily accepted my copy of the process for issuing the cease and desist while Mr. Friel just waived his hand off and wasn't interested in what the law says about issuing a cease and desist."

Mr. Bennett: "You attack one of us, you attack us all."

Mr. Soltani: "Well, I say it the way it is."

Mr. Friel: "I'm not a lawyer so I'm not going to sit here and debate law with a lawyer."

Mr. Soltani: "I'm just a regular person."

Mr. Friel: "You're sitting here quoting chapter and verse of law which I don't have the knowledge of knowing or studying."

Mr. Soltani: "676-17:b tells me its requirements."

Mr. Friel: "Again, I'm not going to do this right now or listening to you."

Mr. Soltani: "You didn't listen to me, you have no interest in listening to me, sir, you have no interest in listening to my clients, and you engaged us in combat as soon as we entered."

Mr. Childs: "Can we keep order?"

Mr. Soltani: "Of course, I am interested in engaging in civil discourse, in civil discussion, what I am presenting you is the document you have issued does not comply with anything that New Hampshire law requires, so please tell us what you are holding or saying we have violated and we will comply. You have raised a very good issue. You are saying that the road agent, Phil was some how mislead."

Mr. Bennett: "Ted Stewart"

Mr. Soltani: "Ted, I'm sorry. Ted was somehow misled. If that is true, then we have a problem.. If it is not true, what Mrs. Osborn said, then they are entitled to proceed to enjoy their property."

Mr. Bennett: "Well, I can tell you that the cease and desist was ordered by a majority vote of this Board and it was at the time of issuance based on the agreement and release that the Osborns signed that presumed the class six public way nature of Valcat, that's an open question in my mind. But,

Mr. Soltani: "A private cannot be a class six."

Mr. Bennett: "I know, but I said a class six public ways versus a private way, that distinction is unclear to me, but nevertheless that was the predicate for the cease and desist order, the agreement and

release that the Osborns signed that said they would seek approval from the Town, the governing board or the road agent. This I'm not sure is that.

Mr. Soltani: "Suffices, I understand."

Mr. Bennett: "So, to the extent that they signed an agreement saying they would hold to certain standards and failed to do so that was the principal basis for issuing the cease and desist, but there is also a Town Ordinance just a simple Town of Atkinson Ordinance that says, well the whole thing is called excavation and it deals with digging up a publicly owned road and posting bond for doing it and restoring it to certain standards and then a part "B" that says to dig up a private way open to the public it has to meet all the same standards except from posting a bond. So, that was the basis of the cease and desist. We understand, we got a... I'm not sure it was an email, I've got something printed, I'm not sure how we got it from Mrs. Osborn, explaining the expensive risk of monetary losses in this and we understand this and are sympathetic to that to the extent that we can put ourselves in her shoes, but we also have to represent the interests of this Town.

Mr. Soltani: "Understood and what you have said has been very very helpful."

Mr. Bennett: "May I continue just a moment, we were interested in asking the Osborns tonight for engineering drawings of the roadway being put in between Chase Island and Valcat and now you tell us that Aaron LaChance has those so we will check with Aaron.

Mrs. Osborn: "As long as what we have also done for the Town Engineer as well as the fire department, we have completed an as-built, so that we not only have a set of plans of what we were going to do, but we now have a set of plans of what was completed which I will leave you.

Mr. Bennett: "Is that different?"

Mrs. Osborn: "It is a requirement of the fire department that we do an as-built as well."

Mr. Bennett: "Okay, you are not finished building, right?"

Mrs. Osborn: "Valcat, that portion we have been asked to stop, we have not been able to complete from Valcat onto our property, but the portion from Chase Island Road up to Valcat has been completed and signed off by the Road Agent. And I would like to add Mr. Bennett, you know, what you were speaking about, the public excavations and ways is on this driveway permit, all those RSA's are clearly stated..."

Mr. Bennett: "No, it's not an RSA."

Mr. Soltani: "It's a Town Ordinance".

Mrs. Osborn: "The ordinance is on here, Section 440:1:2

Mr. Bennett: "Is that on the back of the document.."

Mrs. Osborn: "It's on the front.."

Mr. Bennett: No all those, alright.

Mrs. Osborn: "That's what you seemed to recite, it's on the bottom"

Mr. Bennett: “No it’s not, it’s not part of the Zoning, these are zoning sections, it’s a town ordinance that I think predates the Master Plan.

Mrs. Osborn: “But I also wanted to show under signature, it says permission to construct driveway entrance, exit approach adjoining to the above noted locations and specifications as described and hereby granted. Failure to adhere to the standards of engineering drawings previously submitted and failure to complete construction of said facility within one calendar year from the date of this permit shall render this instrument null and void. So it does say from the entrance, the exit, the approach and the adjoining.”

Mr. Bennett: “As I said, I for one, I think that my two compadres will agree that we need some legal advice, and we will listen attentively to that, let me just clarify something and that is the plans that Aaron LaChance has. Right now, and tell me if you don’t agree with me, as you go up the existing access easement that runs by I believe that’s Carol Davis’s house up to Valcat and turn left on Valcat and go towards your property and then you come on Valcat to a seven foot drop off, it drops about seven feet, then there’s your roadway down there and there’s a seven foot rise up to where the rest of Valcat used to be.

Mrs. Osborn: “That portion of Valcat has never been opened, there are trees in that right of way that has never been opened. Valcat Lane ended at the bottom of the entrance of the property that we now own. The other two lots that Valcat Lane continued to run down were separate lots but they were all owned by one individual and those were the lots that we purchased, so...”

Mr. Bennett: “Yes, but”

Mrs. Osborn: So that portion of Valcat Lane has never been opened so we didn’t block its entrance.

Mr. Bennett: Yes, but our tax maps our road maps everything shows Valcat running along the ridge line there but then taking a dog leg towards the leg roughly at the boundary between your property and the Vaillancourt’s property.

Mrs. Osborn: “Yes, but that portion has never been opened”

Mr. Bennett: “Isn’t that the way that Elaine Vaillancourt accessed her property?”

Mrs. Osborn: “And we have actually have a neighbor here that will actually attest to that as well. That our property, that Valcat Lane never continued on, nobody ever opened it, actually because it’s a right of way to the tree lots back there, there’s really no other reason for anyone to use that right of way or the private way that you’re describing and we do have pictures and we have neighbor testimony to that, there are trees in that portion as well.”

Mr. Bennett: “The more information that you have the better. If you have pictures showing the area prior to being disturbed that would be great.”

Mr. Soltani: Mr. Bennett, could you please tell me the ordinance that you are referring to.

Mr. Bennett: “Our ordinances are not numbered, they are titled, I don’t know I think that standard goes back to the 1800’s or something, but it’s entitled ‘Excavation”. Phil, could you pull up that

ordinance and print it for ...No, no, no. The ordinance, not within the zoning, I presume that you have the .doc file with all the ordinances. Search on excavation and it's entitled to a whole ordinance section.

Mr. Smith: Don't have it"

Mr. Bennett: "If you can give me a business card with an email address, we can send it to you.

Mr. Smith: "Ted says it's on the permit.

Mr. Bennett: "The Zoning ordinances are on the permit but not the non-zoning ordinances, we have this thick binder of ordinances going back to whenever, the Indians, I guess and then we have the book of the Zoning ordinances and they are separate and never shall be mixed.

Mr. Soltani: "I'm from a small town, and we do things pretty much the same way but the problem with that becomes finding it and getting your hands on it. Was it an ordinance that was voted by the voters?

Mr. Bennett: The adoption date is there.

Mr. Childs: The adoption date is there its late seventies' or early eighties.

Mr. Friel: "January 4, 1988."

Mr. Childs: "What's that, January 4, 1988 and was mostly for people tearing the roads up and not replacing them the way they should be and having big dips in them."

Mr. Bennett: "As I understand it, you know, every coin has two sides, Elaine Vaillancourt alleges that Valcat was the access to her property and though they don't have a home there now, they hope to build one, so there's

Mr. Osborn: "It's not open."

Mr. Bennett: "Your pictures would help."

Mr. Soltani: "One other point, perhaps you want to raise with Sumner is that the Town in this instance if there is a dispute between the ownership of something where the Town has no ownership, then the Town is not the party to resolve the dispute."

Mr. Bennett: "Except our ordinance that if you dig up a private way you've got to put it back. And, I lost of train of thought, when we come back to what I as going to say, the drawings that Aaron LaChance had, that you gave him, do they show the finish on either side of your driveway where Valcat was on one side and alleged to have been on the other side, does it show what you have been doing in that road?"

Mrs. Osborn: "There is mapping that shows to the left of the right of the way in the front of our property and down the side of our property Valcat Lane because it has never been opened and used in that matter and from my research of deeds and I am not an expert, but I did do my homework, that deeded right of way for that continuation of Valcat Lane is deeded to lots one two and three are owned and was owned previously by the person from who we purchased the property and are now owned by us so there was no reason to continue that because they did not sell off lots one and two, they were all together as three lots."

Mr. Soltani: "If they are deeded to those lots only which are the abutter lots, then she holds the bundle of rights to all the lots"

Mr. Bennett: "I haven't looked at any of those deeds because I've been trying to get copies of this."

Mr. Soltani: "One other point, maybe you could help us, the Road Agent is here and if the Road Agent could give his side, it would be most helpful to us."

Mr. Bennett: "Okay, he needs a microphone."

Mr. Soltani: "I will gladly give him mine."

Mr. Bennett: "I need a copy of that before you leave tonight."

Mr. Stewart: "When it comes to a description of the work, then the bottom of the permit describes the work within the right of way, Chase Island right of way in order to construct your driveway. On the permit it says one driveway entrance or entrances is permissible but it says one, not to exceed 24 feet in width, a culvert is not required, and the right of way is 20 feet from the center line and it says it describes to do a swale at the end so that water running your property doesn't run out into the road. And this permit is only for within the right of way of any Town highway so this permit covers the work that took place on Chase Island right of way to do this one entrance, this one curb cut. I thought I made it very clear that this wasn't a fire lane and that Valcat, everything beyond Chase Island is not my concern because it is a private road, private drive. If you build a driveway to your home through a right of way, God Bless You, I don't regulate it past the edge of the right of way. So, to me the hard part that I want to come out of this discussion is I know they pulled a permit to get ultimately an occupancy permit. This gave them permission to do a driveway cut to start a driveway. Up here in the middle of the permit describes if the driveway exceeds 150 feet from the edge of the public way, it must be approved to 20 feet of unstructured width and meet NFPA standards or the dwelling shall be sprinkled. To me, I don't want this driveway cut on Chase Island Road to be misconstrued as an approved fire lane. In order to have an approved fire lane, that a plan that went to Aaron LaChance would need to be approved before construction and would need approval of myself and the fire chief. We never approved or saw any driveway designs that would meet fire lane expectations. The fire chief and I have been working closely together with this because one thing I don't want to do is but heads with the fire department. I want to be on the same page all the way through, so to me, you have a wonderful driveway with this permit. And, if someone who owns the land or doesn't own land, that's a separate issue, that's a civil case, it's not a highway department concern, as long as everyone understands that this is not a permit for a fire lane, I'm comfortable."

Mr. Bennett: "It's not a permit for anything except a portion of work within the town right of way of Chase Island Road."

Mr. Stewart: "To construct a driveway."

Mr. Bennett: "Do you agree with that Mr. Soltani?"

Mr. Soltani: "The only reason that Valcat is an issue is because apparently Section 6 of the Agreement...and that's why."

Mr. Bennett: "the Town ordinance."

Mr. Soltani: "Yeah, I didn't know that, I'll have to dig that up and find out."

Mr. Bennett: "I'll have to give it to you and feel free to take one of my cards here and if you can leave me a card, I'll email that."

Mr. Soltani: That will be fine, however I am not sure if Mrs. Osborn explained what the whole thing was, she said look I don't want anything to do with it because Ted didn't know that there was that agreement about Valcat."

Mr. Bennett: He certainly was not aware that the Osborn's didn't own the land immediately adjacent to Chase Island Road that they were applying for a driveway permit."

Mr. Soltani: "He didn't know?"

Mr. Bennett: "He didn't know that she didn't own the land. He did not know that she did not own the land that might be a better way."

Mr. Soltani: Right, but that's really not wrong, what is wrong is that she has the right to cross and recross."

Mr. Bennett: "And that's a civil matter."

Mr. Soltani: "That is a civil matter that is not for the Town to resolve. The Town has very right to protect its road. That's why the swale is there. You have required Mrs. Osborn and Mr. Osborn to go get a permit from the Selectman or the Town Road Agent and here is Mrs. Osborn trying to do her best and here's Ted trying to do his best and...something..."

Mr. Bennett: "No the crux appears to be that the Town ordinance says thou shalt not dig up a private way that's open to the public and the Osborn's say well it was, I don't know but that's where pictures can certainly help us."

Mr. Soltani: "Right, that would, that part of Valcat their position is that that part of Valcat was not opened up and that Ordinance may not be applicable."

Mr. Bennett: "Well, I'll wait for my lawyer to say that, but you, know I'll certainly say the overall picture"

Mr. Soltani: "Oh, I would say that a forest, digging up a forest is certainly not digging up a class six or a public highway or a private highway, but we appreciate your time and effort and hopefully we can certainly consult with your counsel.. I will get a hold of him tomorrow. If there is going to be a cease and desist issue, we'll know the grounds once we have the cease and desist and then."

Mr. Bennett: You have the cease and desist."

Mr. Soltani: Yeah but, uh talk to someone about it."

Mr. Bennett: You're saying it may be invalid as drawn?"

Mr. Soltani: "It is, I suggest that it wouldn't take a first year law student to tell you and please email me that thing whenever you find it."

Mr. Bennett: "I have it on my computer at home, I can email it when I get home. I may not be home until after midnight."

Mr. Soltani: "Lately I've been getting home from ZBA meetings after midnight, so that's because you make the big bucks."

Mr. Bennett: "Yes."

Mr. Soltani: "Pass this on to Mr. Bennett."

Mr. Bennett: "Thank you very much."

Mr. Soltani: "Thank you sir, Thank you gentlemen. "Hopefully we can resolve it."

Mr. Bennett: "Thank you, and whatever information you can give us, please do, after we see whatever Aaron's got, we may want to ask you some more questions about that."

Mr. Bennett: "Certainly, as I said, the first step is to cooperate and educate each other and .."

Mrs. Osborn handed the documents to Mr. Bennett and Mr. Bennett thanked her.

Mr. Bennett: "Fred, did you want to give a chance for just a brief and non-repetitive statement from anybody else?"

Mr. Childs: "Well, we can, I wasn't going to do this, but seeing there are so many people here, I will let anybody speak, but very briefly, I don't want to go over the same thing over and over again."

Mr. Childs requested Mrs. Carol Davis to come to the table.

Mrs. Davis: "My name is Carol Davis, and I own the property that is 6 Chase Island and there are a couple of things that I want to address, first of all, there is an existing right of way to Valcat Lane that the Osborns and their contractors have been using for the last two years. So, I fail to understand why they would need a second right of way that goes through my land that I in fact do own according to deed. The contractors have destroyed part of this right of way at the very end on the left hand side as they make the left hand turn to go to the Osborns which I am not addressing here, I'm just making the comment about it. Also, I'd like to make the statement that in these two years I have never been legally notified about the Osborn's claims. Not once have I received any document from either the Osborns or the Town of Atkinson addressing any plans or anything addressing what was being done. I have never been asked permission to build any right of way, any driveway entrance across my land. The land, that driveway has been excavated as Mr. Bennett said without my permission and for a long time without my knowledge until it was pointed out to me that this work was in fact going on. I'd like to know why I wasn't notified as an abutter and as the owner of this land about what was going on."

Mr. Childs: "I can't answer the question because I do not know."

Mr. Bennett: "The town wasn't aware either, I think that is part of your civil case."

Mrs. Davis: "That is, and also to mention the fact that there is a civil case, even though the lawyer sat here and said that there wasn't, there is a civil case."

Mr. Bennett: "I think that was lawyerly nitpicking."

Mrs. Davis: "Irregardless, that was an untruthful statement."

Mr. Friel: "Were you notified during the ZBA hearings?"

Mrs. Davis: "No, no I was not I was not. I have never been notified."

Mr. Bennett: "That is strange, why is that?"

Mr. Friel: "Let me check with the planning office."

Mr. Bennett: "Because you are thoroughly an abutter."

Mrs. Davis: "I thoroughly am an abutter, yes, and a very interested participant in this whole process, especially since my land has been destroyed, my trees have been cut down, the DES and the forestry department have been called in to address some of these issues, that I am very concerned about, I am concerned for myself, for my grandchildren, and for the other abutters to the property and as far as I know, Valcat Lane was used all the way through."

Mr. Bennett: "To the dog leg towards the lake?"

Mrs. Davis: "Yes, I have been there almost nine years and that has been a private way that anyone who wanted to use it could use it and the right of way going up to Valcat Lane, I've never denied the use of that to anyone. It was there when I bought the land and it was commonly accepted, it was the accepted right of way all of these years that all of the abutters have used."

Mr. Bennett: Mr. Soltani, when did the Osborns purchase that land, do you know?"

Mr. Soltani: "I don't know, I have the deed and it's easy to find out."

Mr. Bennett: "Just roughly. And was there anyone, were there any people living on any of those three lots that are now combined into one lot?"

Mrs. Osborn: "The property was foreclosed."

Mr. Bennett: Okay, and it had been vacant for a long time, so traffic would not have been going in and out."

Mr. Soltani: "They bought it in '06."

Mr. Bennett: "06, ok."

Mr. Soltani: And, if there is a civil case pending, I would be happy to know about it, but unfortunately, I don't know."

Mr. Bennett: "The hearing, trial is in February."

Mrs. Davis: "Yes it is, the 17th of February. ."

Mrs. Osborn: "That is the stop order"

Mrs. Davis: "It is more than the stop order."

Mr. Childs: "Thank you. Anybody else?"

Mrs. Noreen Marciano came to the table. She stated: "I'm Noreen Marciano, a friend of Carol Davis. I've been looking through the Town Files since this project has recently been going on, and nowhere in the files did I see an engineering plan that was approved for the construction of that right of way that leads up onto Valcat Lane that has altered Valcat Lane with that..."

Mr. Bennett: "Yes, we have to see what Aaron LaChance has, when he got it and what he told them about it."

Mrs. Marciano: "Yes, so I'm just concerned, I'd like to know when you found out, when it was approved, when it was signed off and how come it hasn't been available to the public."

Mr. Bennett: "The engineer can't, he signs to give his advice to the Town but he can't by himself approve anything, I don't believe."

Mrs. Marciano: "I think that's my main concern the fact that they had signed that waiver of liability and then they did work and it just doesn't appear in the file that they had approval, so I just want to make sure that Aaron is aware of that."

Mr. Bennett: "Well, we'll get to the bottom of this."

Mrs. Marciano: "Thank you."

Mr. Gerald Dobrov came to the table. "I've never done this before."

Mr. Bennett: "Could you spell your name please?"

Mr. Dobrov: "Dobrov".

Mr. Bennett: "And where do you live, sir?"

Mr. Dobrov: "I live at 3 Valcat right next door to the Osborns."

Mr. Bennett: "Okay, how long have you lived there?"

Mr. Dobrov: "Well, my property that I'm living on now my mother and father owned and they gave me permission to live on it and we built a new home, we're in the process of building a new home right next door to her. We were there for about a couple of years before, 2006 or 2004 and we've been at that property since 1963. When I was 13 years old we used to go up there. Basically my driveway is the most affected by all this construction work. I asked her if it was going to stay like that. She said they were going to smooth it out. It got smoothed out they came back the next day and the end of my driveway dropped down about 5 feet, in the corner about may be three feet wide. That drops down about

4 feet at one corner. Valcat used to be level right behind me, it's not level anymore. In the wintertime when the boys plow the snow whoever plows, that snow used to go, used to come from, you talk about that left hand turn when they come up from that existing..., the snow would be pushed past my house, past Paul Shea's house, past my house up onto Valcat Lane where the oak tree is, right now there's a road there that's about six feet deep, like a big dig, so Valcat used to go right up there and they used to push the snow to the left, up on Valcat where it's still on a map somewhere and that's where the snow used to go. Now I don't know where the snow's going to go any more. That's just one thing. I mean you can talk about legal stuff, that's just stupid. Are they going to truck the snow out, are they going to plow it onto the town road, are they going to put it in my driveway, are they going to put it in her driveway, where's the snow going to go? It used to go up Valcat that crosses the road they built, you used to be able to drive up there, there was a little raise, it would go up and then there was a path there, I saw it there years ago, and you can almost still see it there, but that doesn't mean anything but that's where the snow used to go and that's where Valcat used to go. I don't want to have to back up and end up on a steep incline the minute I back out of my driveway and that's what's happening now. I have people working up there and they're spinning their tires, on dry land just to get up that little incline. They're putting ruts in the road about six inches, eight inches deep. I don't know where Paul Shea comes in, but there's five people that use the old Valcat lane, at least five property owners. Brian Orlando is one, Paul Shea is one, and we're one, the Osborns, the Davis's, okay. Only two people are paying for that road. I don't know why, but I keep getting calls, my family keeps getting calls from this woman saying that your share of the road is \$6,000, the project is coming along, and your brother is giving me trouble. I don't even know why I have to even be there right now because after 45 years no one should have touched the road behind me."

Mr. Dobrov: "She asked my brother for \$6,000 for our share of the new road. I told her I didn't want anything to do with it, because I'm trying to build a home. I'm not trying to build a road. That road that's been there for 45 years is fine with me. Two days ago I got another call, she was calling again, and I told my brother ..."

Mr. Bennett: "That was a lot of pronouns with no names attached, can you help us out?"

Mr. Dobrov: "Oh, my brother?"

Mr. Bennett: "Well not, the he and she, and your shares, ..."

Mr. Dobrov: "I think I know too much. I know who he and she is"

Mr. Bennett: "Who's telling you your share of the road is \$6,000?"

Mr. Dobrov: "I got a call yesterday that said Maggie Osborn called my brother, Kenneth Dobrov, who is helping me build this house. She is asking him for \$6,000. She asked me for this about 3 months ago and I told her I'm trying to build a home."

Mr. Bennett: "Valcat or the road up the hill from Chase Island?"

Mr. Dobrov: "The driveway that they're building for this house, okay. She asked my brother for \$6,000. Our share of the new road and I told her that I don't want anything to do with it because I'm trying to build a home, I'm not trying to build a road. That road that's been there for 45 years is Valcat Lane, okay, that road's fine with me I don't need a new road, I was building a house. Two days ago I got another call that she called him again and said our share of the road is \$6,000. I told my brother, if you dive into this thing, you're going to dive into a legal mess that you're never going to get out of."

Mr. Bennett: "Do you know anything about this, Attorney Soltani?"

Mrs. Osborn: "Mr. Ken Dobrov who is the property, who is in charge of the property, did a year ago agree with Mr. Shea and me that he would be interested in splitting the cost of that because it would be a safety, a life safety..."

Mr. Bennett: "Do you have anything in writing on that?"

Mrs. Osborn: "Just documentation of correspondence between us as far as letters but I have not been in communication, he hasn't returned my calls."

Mr. Bennett: "Anything would be a help."

Mr. Dobrov: "He doesn't want you to call him anymore or correspond with him."

Mr. Childs: "Let's stick to the issue here, we have more people who want to speak."

Mr. Bennett: "Now what is your recollection of the condition of Valcat prior to this construction in terms of its extension towards the Vaillancourt property?"

Mr. Dobrov: "The only way that I can really prove this to you is to tell you that that snow used to get pushed, Paul used to do it, Paul Shea used to..."

Mr. Bennett: "Well in the summer time, could you drive on that road, you wouldn't be driving between trees, you would be driving on a level road?"

Mr. Dobrov: "Yes, you'd have to do it, there were a couple of trees that were at the, my oak tree and there was another tree that was, kind of looked like a gate almost but you could drive through it, and that's where they'd push the snow, they'd push it up past, where the existing driveway that she just built now, they'd push that snow past that point and up there so it would be out of the way."

Mr. Bennett: "So a snowplow could get between those trees."

Mr. Dobrov: "Yes, that's where they plowed the snow."

Mr. Bennett: "A pick up snow plow or a bigger snow plow?"

Mr. Dobrov: One of those 250's, S250's

Mr. Bennett: "Would you say that it was 8 feet wide, 6 feet wide, 10 feet wide?"

Mr. Dobrov: "10 feet, and the only thing I have to say is I'm tired now and I think everyone else is to, sprinkle the house, yours goes up, mine goes up, too. I've got a really big house that's right next to me."

Mr. Childs: "Thank you, anybody else."

Mr. Shea: "I've lived at 5 Valcat Lane since May of 2005 so the last three winters I've taken on the chore of plowing the right of way coming up Carol Davis's driveway at the top of the hill and

maintaining that, that area. Basically, Valcat Lane stopped at the lot lines of the Osborn house and the Dobrov residence. There was a, before the house was built, the Osborn's house, there was a little summer cottage tucked down closer to the shore line which had, you'd call it a driveway, it was a dirt path going down, a fairly steep grade down towards the water, I'd never seen anyone there, I think the property was abandoned for years. But, as Gerry Dobrov was saying, I would push the snow up onto, because Valcat ended at that property line and there was a big, there is an oak tree there now, there's about a 10 foot gap between those two oak trees, and where their driveway is now or where it is proposed to be."

Mr. Bennett: "This new construction?"

Mr. Shea: "Excuse me?"

Mr. Bennett: When you say where there driveway is now, this new construction?"

Mr. Shea: "Right her,"

Mr. Bennett: "The new road cut?"

Mr. Shea: "Right the top of that, the new driveway."

Mr. Bennett: "Going towards the house?"

Mr. Shea: "Towards their house, on the right side towards their house but as far as an actual Valcat Lane, it would stop at the line of the Osborns and the Dobrovs and that's where the old driveway going down towards the lake then started. Valcat Lane never went down and to right as depicted in the tax maps."

Mr. Bennett: "Okay, thank you."

Mr. Bennett: Karen, could you record these witness statements as close to verbatim as is reasonable."

Mr. Friel: "On the disk the from 2007, you can see where the road starts and stops.

Mr. Friel: "It's on your desk?"

Mr. Bennett: "Yes, I have it."

Mr. Childs: "Anybody else?"

Mr. Bennett: "May we take a 5 minute recess?"

Mr. Childs: "We'll take a 5 minute recess, its 9:25, 9:30 for sure."

Mr. Childs: "Welcome back, everyone, I guess we have one more person, Chief Murphy?"

Chief Murphy: "I just want to put some things in the minutes and get some clarification. To back up to the original building permit. When she came in for the original building permit, we required that the building to be sprinkled as we do to most of the buildings up there and the next door neighbors are actually sprinkling now. She accepted that regulation at the time, it was put on the building permit to be sprinkled, and she said that she would get us a set of plans which we never received. However, being just

a single family dwelling it's not that big of a deal for a sprinkler system, so we allowed the permit to go out awaiting the plans. A couple of months after that she came back to me and spoke about alternatives to sprinkling. One of the alternatives on the NFPA is to allow a fire access lane provided that she has the distances that would be required by me the fire chief from the other residences that are up there so the first thing we wanted to do was check the distances between the other structures up there so if she has anything within 50 feet she still would have been required to sprinkle anyway. We went up there and we did the measuring and we found out that she was not within 50 feet of any of the other residences up there so that left her with the option of putting in a fire lane. When she first approached me, she came to my office and had a rough idea of what she wanted to do to make the area better up there for all the residents. She talked about putting a cistern in, if you don't know what that is, it's an underground water storage facility along with a fire lane and things like that, so it sounded very promising to me as a fire chief that she was going to be doing all that stuff in that little small neighborhood up there that would help the fire department immensely in that area so we started down the road and selfishly I thought we were going to get a good deal for the town, so I started down that road we were going to get a fire cistern up there, we were going to get good access to the five or six residences up there. So I started down that road with Maggie, and I said, well the first thing you need to do, we know you're less than 50 feet from the houses, everything looks good, I need a detailed drawing, as to how you're going to do this for the fire lane and I need to submit it to the town engineering so they can review it for comments before I sign off anything, I'm going to need to have that. So I've got letters going back to February of correspondence that we have where I was requesting that information from them, so finally I did get an elevation plan and I believe she submitted a second one tonight and that one came in I want to say in February, I can get that exact date, but it had an elevation of 23% of grade on the road, and I said no way will I accept a grade of 23%, so then she went back to the drawing board and came back with a 15%, and I said, Maggie I'm not accepting a 15%, the least I'll go, the town requires it, but I'm willing to accept a 10% grade in this particular area because we're serving a few homes and it's going to better the entrance, so what she says for detailed plans but I haven't seen them so that's one thing I want to get on the record, I know Aaron hasn't seen them because I've been in contact with him and he's only seen what I've seen and that's these plans here and which I think you have a copy tonight which are just elevation and he's only seen what I've seen, which are just elevation, that's all that's shown, there's no details, there's no how the road was built, no gravel no digging or anything that would allow me to send it off to the Town Engineering firm for approval."

Mr. Childs: "You say that you requested 10%."

Mr. Murphy: "Correct, so to this day, we have not received any detailed drawing. Tonight she came in to the fire house, this was early, it was just about two hours ago, Maggie stopped at the fire house, she presented me again with another elevation, which is not really a detailed drawing which is what we've been asking for, it doesn't show the cut, it doesn't show any type of paving, it doesn't show anything and this one here again..."

Mr. Bennett: "Do you understand what he is saying in terms of?"

Mrs. Osborn: "I asked the engineer, to see, the town engineer, I told the chief, maybe I should talk about my side after the chief is done so that..."

Mr. Murphy: "She submitted this as the plan that she said I requested, and I told her I would give it to the town engineer, but when she walked out of the office I opened it up and we're still looking at a 13.7% grade up there and that's still unacceptable, and when you look over where I guess some of the residents, I forget the fellow's name, shared with the new house that's being sprinkled, had concern over a dip, but we do have some contour lines and he's correct, he's got quite a dip going on there which I don't

believe would be approved by the town engineer. It doesn't allow for any access of any fire apparatus, I just can imagine what that grade is, so I just want to caution people, to the point where your hearing that the fire department requested, the fire department wants it, this was in lieu of sprinkling the home, which we still haven't waived the sprinkling of the home. I haven't had an opportunity to do that because there's ..."

Mr. Bennett: "There's been no exception."

Mr. Murphy: "There's been no plans submitted to me that I can send out. So, my last letter denied all the plans and told them to sprinkle. I feel sorry about the whole situation, but they proceeded on their own, at their own risk because I've been asking over and over again for a year, get me a set of plans Maggie, that I can do justice with and bring somewhere to have them looked at, so now I have an as-built, which the last plan, I had a plan that was submitted from Maggie about six months ago with a 10% grade, well tonight, I'm submitted another one with a 13.7%, it doesn't pass the sniff test. She came to me and gave me one with a 10% grade which I accepted and now I have one as an as-built with a 13.7%. It doesn't work."

Mr. Bennett: "Can you get copies of the plans and give them to the Board of Selectmen and before you leave, I want to point out that what the chief is talking about when he talks about engineering drawings, as opposed to what you've given him, which to a lot of people might look like an engineering drawing, he's talking about engineering in the way of what holds a building up, what's inside the structure, so he's talking about the sub base, the depth of the sub base, the coarseness of the gravel, the sub pavement, the overlay all the little nitty gritty details."

Mr. Murphy: "I don't know if it can support a fire truck and that's what I've been asking for for almost 8-10 months."

Mr. Bennett: "And it requires a soils analysis underneath the sub bed."

Mr. Murphy: "So, I just want to let you know where we stand at this point, I've heard talk about occupancies and things like that but we still have an issue here that hasn't been solved for at least eight to ten months, and I've been waiting and waiting and still do not have answers, she's getting there, she's doing what she can to get there, but unfortunately she hasn't met the requirements even when I enlightened her, I still would have liked an 8%, I knew that 10 would be hard as it was, and that an 8% would be nearly impossible, so I was trying to be reasonable, but I don't want to be reasonable to the extent where we get a road, the approach there is just going to be incredible, I just wanted to clarify that, I know Maggie has been working hard to get into her house, but there are still some hurdles that need to be jumped."

Mrs. Osborn: "So, yes there are many hurdles that Maggie has been trying to jump to get into her home, many hurdles that are over and above the subject of just building a home to fire code and to specs."

Mr. Bennett: "We're really just talking about the house..."

Mrs. Osborn: "So, to be honest this is effecting our living situation, so I would like to say that in October of 2008, well first of all we were given a building permit for a foundation, when we came in to get a permit to build the rest of our house, we were then told that you have to sign a class six agreement and you won't get your permit until you have signed it, so fine, what is this class six, well look at what over people have done and we went and looked up another person on Chase Island Road, copied it exact with our information, brought it back in before the selectmen and was told that wasn't sufficient even

though it was sufficient for the other home, so we came back with another draft that still wasn't sufficient so weeks went by without our building permit then so Sumner Kalman came back with the agreement that we did sign. We signed that agreement under duress because we were forced to comply to get a building permit. After signing that the Town would not be liable for police protection, fire protection, plowing, trash removal, picking our children up from school or delivering our mail, we were then told well, you are on a rural road so you are going to have to sprinkle, and you can't get a building permit until you agree to that, so we got the plans for the sprinkling system, found out what we needed to do, submitted it to the fire department, so that we could now after getting a foundation permit get our building permit, so we were forced to agree to sprinkle, forced to sign the class six which we complied with, as we found out the cost of sprinkling, to sprinkle our home is over \$5,000.00, which when we weighed the fact what do sprinklers do? Smoke detectors save lives, sprinklers save property. We have an extreme situation up here that no one can find us. Our family can't find us, friends can't find us, and ambulance service can't find us, if something happens to our children or one of our elderly parents, an ambulance would be hard pressed to find 8 Valcat Lane. We felt as a life safety decision that our money would be best spent to find out and create a better way to get to Valcat Lane. We knew that the right of way existed, we know that it would cost us twice as much to open the right of way, but we knew that was going to be a greater safety and a greater value to our family and the protection of our home by opening up that right of way. I went to the police chief, I did do my home work, I brought him information on because what is one house on Valcat Lane, two houses on Valcat Lane, sprinkled, if there's a brush fire up there if someone gets hurt on the lake, where's our protection, so you need to be able to find us and you need to have other ways to put out fires besides sprinklers. So, I looked up dry hydrants which seemed to make a lot of sense since we live on a lake, we did research on that I did the cistern research, and brought it to the Chief, I talked to him and said Chief, we need the setbacks, we are 50 plus feet from any other home around us, some of the homes up there don't meet, we did meet that 50 feet with three lots. We also meet the driveway length requirement. The right of way is only 120 feet. Our driveway is only 97 feet. We were being held to standards that were not the standards of what we were building. I had a couple of conversation with the Chief about what are some alternative things we could do because I don't think sprinkling is the safest route for our family to go. He told me then that I did not have to sprinkle the house that I did meet all the setbacks. I told him I was going to open up the right of way and he told me to get a set of plans. I think it takes some fault because I didn't take that as a set of engineer plans, there was no directive as to what type of plans I needed to submit. Now, we were looking at ledge, boulders, obviously no one else up there ever wanted to open that right of way because of the cost. I went to the neighbors, talked to them about the cost of opening it, the betterment, the safety factor, I even went to Mrs. Davis at the time, told her of our interest, and it would be a win because it would get some of the people off of her driveway, maybe all of them. She was concerned that Mr. Dobrov was used to driving that way maybe he wouldn't be agreeable to that, but I did go to each and every one of the neighbors to get their agreement that this would be..."

Mr. Bennett: You realize those are issues in your civil case."

Mrs. Osborn: "Right, I'm just saying tonight that I'm not the type of person who just came in, I paid \$750 to Lavelle to construct those plans, and asked if he could please get me a set of plans as to what we could put there."

Mr. Bennett: "Mr. Lavelle should have known better, in terms of, if you told him..."

Mrs. Osborn: "You are holding Mr. Lavelle to the standard of construction to a Town Road, this isn't a town road."

Mr. Bennett: "Remember the purpose of the road is to get fire apparatus up there so it has to be able to support a fire truck."

Mrs. Osborn: "It is not only better than what's there, it's better than anything to get to us, you can't even get that grade coming up Hemlock Heights, so what we have built there, when we made a life safety decision that this would be a better option for our family and for the other three homes on Valcat Lane. It was better than..."

Mr. Friel: "You made the decision, not the town, you made the decision not to sprinkle and you wanted to go a different route. The permit application that was approved was to sprinkle."

Mrs. Osborn: "Mr. Friel, I did speak, this was two weeks ago before dry walling my house, I went to Chief Murphy. I would not have dry walled my house if I had not understood that I met the setbacks that I didn't need to sprinkle my home. I did meet the setbacks, I'm 50 feet from any other property, my driveway is not 150 feet in length, and I don't understand why I'm being held to those standards."

Mr. Bennett: "What is the setback from your structure to the lot line?"

Mrs. Osborn: "53 feet and it's even farther on the other side, that's the closest side."

Mr. Bennett: "Are you talking about to the nearest dwelling or to the lot line?"

Mrs. Osborn: "It's probably to the nearest dwelling, and that's what the fire regulation is, to the nearest dwelling."

Mr. Bennett: "What is it to the lot line, I'm just trying to get all the facts."

Mrs. Osborn: Well, that house is built eleven feet from the lot line. They were granted a variance to eleven feet from that side. The structures are 53 feet apart, so, minus the 11 feet, what are we at, we're at 42?"

Mr. Bennett: "You're 42 feet from the lot line."

Mrs. Osborn: "I have three lots, we are built on three lots there."

Mr. Bennett: "Right"

Mrs. Osborn: "I respect the Chief, and we have met but he did not hold me to that standard. It wasn't until we went to a Zoning Board meeting in November to get the conditions modified with the bunk house, that the next day I had the fire inspector there to tell me that my windows didn't meet egress, the building inspector was there unannounced. He honestly told me that there were a lot of eyes on this now and I would have to produce at that point an engineering plan that would have to be approved by the Town Engineer. We're talking about thousands of dollars."

Mr. Bennett: "For the road now or the house?"

Mrs. Osborn: "The road."

Mr. Friel: "You filled out your application and you got your permit saying to sprinkle."

Mrs. Osborne: "Yes, and I got that condition lifted."

Mr. Friel: "You did?"

Mrs. Osborn: "Yes."

Mr. Bennett: "Did the ZBA lift it?"

Mrs. Osborne: "It was verbal and that's too bad that, but that's what it was"

Mr. Friel: "That's disputed, that's obviously disputed, the letter from Chief Murphy that it wasn't, your building permit said you were going to sprinkle your house, you decided not to.

Mrs. Osborne: "I would not have dry walled my house, gentlemen."

Mr. Friel: "You dry walled your house without getting, your basement wasn't supposed to be approved, but you finished your dry wall in the basement also, so you had to go back to the ZBA to get relief because you already had it finished."

Mrs. Osborne: Yes, but I did the same thing to my basement as I did to my garage and my basement still isn't finished but I understood that I needed to come back and I did that. This is the second time we're building in the town of Atkinson, you can look at our requirements from zoning, we are held to more astringent standards than a lot of other properties..."

Mr. Friel: "No, because you weren't the one in front of zoning, there was a different person in front of zoning, not you, so you are not being held to different standards. Patrick Malin was in front of the zoning board, not Maggie and Daniel Osborn, so don't tie the two..."

Mrs. Osborne: "No Mr. Friel, it is well known that that was Melbourne Realty Trust."

Mr. Friel: "You on the tape said you were not a part of Melbourne Realty Trust at the time, now you are saying that you are were and we all knew that and the third part is you had a building permit that said you were going to sprinkle the building and you didn't sprinkle."

Mrs. Osborne: "Mr. Friel, would you slow down please and let me answer the question that you just asked. You asked me, I never denied being a part of Melbourne Realty Trust that was not asked at this time."

Mr. Friel: "I did not ask, I made a statement, I'm not asking a question."

Mrs. Osborne: "You stated that I made a fact that I was not a part of Melbourne Trust and that's not true."

Mr. Friel: "Okay."

Mrs. Osborne: "So that was your first question, Mr. Friel."

Mr. Friel: "I didn't have a question, I'm making a statement."

Mrs. Osborne: "Okay so that Statement is incorrect."

Mr. Friel: "I disagree."

Mrs. Osborn: "And what is your second statement?"

Mr. Friel: "I don't have any statements, I'm just saying that your building permit said you were going to sprinkle your house and you decided not to. The fire chief said he did not give you permission to change that rule."

Mrs. Osborn: "I would ask the Chief did I meet with him in October prior to dry walling my home to discuss that matter and was it discussed that I didn't have to sprinkle the home?"

Mr. Murphy: "That is the discussion that I referred to earlier in my comments that Mrs. Osborn came up to me and talked about doing an improvement in the area with a cistern and all those other things and of course doing my job as a fire chief, I thought would be better for the community. She then started to proceed down that road and as I explained she never submitted a plan. So at that time, it was February 18, 2009 that I sent her a letter, and to gist it to the end of the letter was one of the plans with the elevation and it says, 'therefore I deny you your request to install a fire access road in lieu of the proposed residential sprinkle system as shown on your building permit for and approved by the Atkinson Fire Department on 5/19. So she was told in February that I denied what she was asking to do because obviously I wasn't receiving enough information that would allow me to approve it, like I said before I didn't have enough input if you will to go any further, plus the grade at that time at this level when we went even more, this one was a 15% grade, so she received a letter denying the road. She continued to work to try to get the road, but that was at her own risk. She was told by the building inspector, my inspector don't do that until we get this situation solved. Then, in February I submitted this letter to her denying her request for a fire road, you can go back and sprinkle it like your building permit said."

Mrs. Osborn: "With all due respect, Chief, our meeting was in October of 2008, I was two weeks from dry wall, I had to make a decision to run the pipes and then dry wall or dry wall. I kind of took you on your word, sir."

Mr. Murphy: "My word was get me a set of plans that I can work with."

Mrs. Osborn: "and that letter came in February and we met in October of 2008."

Mr. Bennett: "Do you have anything else?"

Mrs. Osborn: "I would just like to reiterate that I did nothing without getting the proper permits. Again, we are under a microscope for some reason back in Hemlock Heights. We understand that. It's our second go around, and we continue to be under that microscope and it's very costly and it shouldn't take anyone this long to get a building permit. I need to move my children in, they don't have a place to live. We can't be in our summer home anymore, the water is declining. We need proper permission to be in our home for our children. We are the ones putting out all the money. We've hired the surveyors, we've hired the lawyer, we paid for the permits, and we pay our house payment every month. This order from your department, this cease and desist order, it's causing terrible hardship. We can't lose our contractor, we are charged \$1500 per day to have the equipment there. No one else is spending the money and doesn't have a legal place to live after all that we have spent on our home. It is unfair to us as residents of Atkinson, it's unfair to our children. What we have done back there is create a better place to live. We bought a property and there should be access to know where that property is. We know in town that if you don't know where a property is it can cost minutes to save a life. There are four other

properties in town right now in those disputes and we didn't want to be in that, we took a road to spend more money to create a better way. We did not shoot out or try to not do something that we should have done. I asked the Fire chief, please answer my question, if we are 50 plus feet away from any other property, if our driveway is 92 feet long, if the right of way is 120 feet long, what fire code are we being held to that would require us to sprinkle. That's why I went into the fire chief with those questions."

Mr. Bennett: "Aren't you presenting him now with a set of plans with a 13.7% grade?"

Mrs. Osborn: "I wasn't trying to meet a fire code road. I went to him with a set of plans. He said, well this doesn't meet fire code. I didn't know I was going to be held to a fire code. I went back to the engineer and said to him, what can you do, the Town is looking for an 8-10% maximum. He said I'll put it on the plan, Maggie, we'll do the best we can but you don't know what's there until you start excavating. This isn't an engineered road in a subdivision where you know what's there. We weren't dealing with flat ground, we weren't dealing with, we only had 20 feet of space to work within, but it is better gentlemen than anything back in Hemlock Heights that the Town has been able to provide. It is just the topography of that section of land. What we have created, for the fire department, for safety, for FedEx, for anybody else to get to us is a betterment to anything else that exists up there. So if I call Plaistow on a Saturday because my child is has fallen and is hurt and needs immediate assistance, I know now that I have a better chance of that ambulance finding me within a short period of time than I did before."

Mr. Bennett: "But you were clearly given the choice of sprinkle or a 10% grade, right?"

Mrs. Osborn: "No sir, I was not. I was told from the fire chief that when I told him about our set back, about the length of the road, what I would prefer to do as a life safety measure that I would like to open up the right of way. At that time the discussion was not about a 10% grade. It wasn't until November of 2009 that that discussion then happened and we tried to meet it and we still have tried to meet it."

Mr. Bennett: "I do apologize because I've let this ramble and I shouldn't have, it's not that what you are saying isn't valid input but we have tried to keep it to the topic of the Town's jurisdiction and Valcat. And what's happening now, the fire code, the road way you are cutting, that's a different subject."

Mrs. Osborn: "Mr. Bennett, I understand, but you did open this up. You have put me under scrutiny in front of my fellow residents."

Mr. Bennett: "We came back from recess and there was one other person who wanted to speak, we previously asked if there was anyone else and we did not notice that there was someone else."

Mrs. Osborn: "I have worked diligently to cooperate with this Board of Selectmen. I have a high regard and respect for all of you. As I have said numerous times, I am just asking to be treated like every other resident has been asked in this town. The conditions that we have had to meet, the conditions that are still forced upon us, the scrutiny that is allowed to be exploited about us and our family is uncalled for. There is a house going up next door. That house has not been asked for silt fences, anything. No one looks over that way. It's the Osborns. I'm not pointing fingers, but I just want to be treated like everyone else. I feel that we are being discriminated against and I would like it to stop. We need to move into our house."

Mr. Bennett: "Well, certainly there should be no discrimination in anything that you are being held to, the abutting properties."

Mrs. Osborn: "Then is it too much to ask Mr. Bennett if we can get temporary occupancy until these obstacles can be looked into. What do I tell my children, when you know?"

Mr. Bennett: "We're here tonight to discuss the cease and desist on Valcat. The question of the occupancy certificate has another set of requirements to go through that we don't even have the ground work yet, we have..."

Mrs. Osborn: "But surely Mr. Bennett, this governing board has the power to grant us temporary relief if our house meets all fire and building code regulations..."

Mr. Bennett: "I believe it doesn't to tell you the truth."

Mrs. Osborne: "I would like to see where it states that our particular home under certain circumstances has to meet a sprinkler code. It is not a town building code. We meet all fire, safety and building codes."

Mr. Bennett: "I believe it is a state fire code, isn't that right, Chief?"

Mr. Murphy: "Yes."

Mr. Bennett: "Selectman Friel has to get out of here at 10:30 p.m."

Mrs. Osborn: "I walk out of here today with nothing again, I waited a whole week with your cease and desist order, it's costing me money every day, I now leave again with no home to live in, with neighbors harassing us, being the spectacle of the Eagle Tribune and I think there needs to be to put a stop to it and would like to ask this Board for temporary occupancy."

Mr. Friel: "I would vote no for temporary occupancy and don't put your issues on this Board. It's not us that put you in this spot. I disagree, you obviously have a different opinion, I'm not going to debate it with you, and I'm not going to take responsibility for where you are today. I'm not in favor for issuing you any temporary permits."

Mr. Bennett: "That was not even on the agenda for tonight. There have to be inspections done, that have not yet been done before a certificate of occupancy is considered by any board."

Mrs. Osborn: "I appreciate your time gentlemen and I just want you to know that building a home is, as you know, one of the toughest things that you can do and all of the extra conditions that we have been asked to comply to, it has been extremely difficult, and we are the ones suffering here and we are the ones who have to spend the night..."

Mr. Bennett: "The lake area, it's always been kind of hard, and I apologize for that but I don't take responsibility for it but I do apologize."

Mrs. Osborn: "Thank you, thank you for your time. Will there be any more public discussion?"

Mr. Childs: "That's all."

Mr. Bennett: "Well maybe one more, no we're done, so says Mr. Chairman."

Mr. Friel: "I see someone over there raising there hand and we let everyone else speak."

Mr. Bennett: "Mrs. Osborne."

Mr. Childs: "Okay Maggie there's one more."

Mrs. Elaine Vaillancourt came to the table. "I would like to speak if I may, you gentlemen decided to take a break and I was next. My name is Elaine Vaillancourt. There are a few things on my mind. First of all, I guess I'm the oldest on the block because my property was purchased in 1952 and when I listen to all the newbie's the area talk about what is or what isn't I take exception to that because I have been able to utilize Valcat, I don't do it daily but on occasion, for example when I got a building permit and went through all the departments here, I had a demolition and I did use that because I had the utility lines over my property and if I had disconnected that it would have disturbed all everybody out on Chase Island at the time. So, being a Good Samaritan I chose not to have that happen. I have gone through the Boards for approval as Maggie has. I followed all the instructions, I worked with them, I got approvals through the Town of Atkinson, I got all my State approvals, none of my neighbors were disturbed and there was no problem. The proposed road on the Fred Storrs 1924 plot plan of the subdivision of the whole area up in the Valcat area is certified in the registry of deeds. It does not belong to them, meaning the Osborns. I have the right to as an abutter to utilize that to go and talk to my neighbors, or on occasion like I said, I have taken a trailer up to clean brush off my property or something like that. I don't make it a habit daily but it is my right to do so. When we asked about the road being taken down. Right now, I can't currently walk between my neighbors and that area because Valcat is blocked whether it is cut into, there is machinery and I understand why, because she has a cease and desist, but right now it is cut off from my property.

Mr. Bennett: "Could I just ask you, you said you had the right to use Valcat?"

Mrs. Vaillancourt: "It goes to my property."

Mr. Bennett: "And the easement going up by Carol Davis's is that in your deed, that I could see the other deeds on Valcat?"

Mrs. Vaillancourt: "My property goes back way back and they have all those accesses. I today have a driveway. I today ..."

Mr. Bennett: "Yes, I know but I'm just asking does your deed share the..."

Mrs. Vaillancourt: "but the deeds go back in time with the rights to pass and repass."

Mr. Bennett: "On Valcat and the route by Davis's."

Mrs. Vaillancourt: "What I was going to go to was the fact that when Maggie did start this process whether it was under the Melbourne Trust, whom ever owned the property next to me, I did get invited to the ZBA meetings. I attended all the ones I was invited to. It just so happened that the night that the question of how she accessed her property came up, I was called in by the code enforcer to remove something from my property, which wasn't on my property and wasn't mine, so when I came to the ZBA Board meeting and she was pointing to her right of way down to Chase Island, I did get up and spoke to Frank and the Board and I believe that Norm Friel was on the Board at the time, I expressed that the property that she was positioning to or what they were pointing to was Carol Davis's and my property.

This has come to me and I like to show that to Mr. Friel. I tried to stop the ZBA from acknowledging that in fact there was this problem, and this drawing.”

Mr. Friel: “I’ve seen it, it has my signature on it.”

Mrs. Vaillancourt: “Can you explain the notation?”

Mr. Friel: “Without looking at the whole plan, no. I actually went to the zoning department to see the whole drawing, and I wasn’t able to get it, but what I understand from Shirley, it was signed by both me and Frank. It’s got a bunch of notations on it but I haven’t had a chance to read the whole document. That particular spot says, “Road to go here if it gets moved, it has to come back to the Board.”

Mrs. Vaillancourt: “I would like to see that.”

Mr. Friel: “That’s exactly what that comment says, but that’s exactly what that comment says, but I haven’t had a chance to see the whole plan but…”

Mrs. Vaillancourt: “I would like to be informed of that. I did try early on that I tried to address that problem. Maggie did not come to me as one of the abutters. I know that she said that she went to the abutters and talked about this new roadway, I was never discussed in that, but I just wanted to let you know, not that it matters any way but I was not.”

Mr. Bennett: “You weren’t living there right, so.”

Mr. Friel: “She may not have known how to find you.”

Mrs. Vaillancourt: “The fact that on the deeds it says Fred Stolz as their right of way according to what goes by Carol Davis’s property and on Carol’s deed it only requires one right to pass and not two, so if Maggie has been utilizing the one she has currently, if she really had that at ZBA why didn’t she break through there initially to build her house, why did she wait, that would be my question, if you really felt you had a right which could have been settled before her house was built, before she incurred all these costs. Thank you very much.”

Mr. Bennett: “Thank you.”

Proposed 2010 Budgets:

Building Inspectors
Highway
Planning & Zoning

Mr. Friel: “Ted’s gone, I know we were supposed to go through it but I have 20 minutes.”

Mr. Bennett: “Have you gone through Ted’s budget?”

Mr. Friel: “I marked it up and gave it to Fred.”

Mr. Childs: “We should have had this before.”

Mr. Bennett: “I dropped the ball because I didn’t notify you immediately.”

Mr. Friel: "It's actually not bad."

Announcement by Chairman F. Childs re: Open house by the Fire Department

Mr. Childs: "I'd like to make an announcement. The Fire House is having an Open House on Sunday October 25th from 10:00 a.m. to 2:00 p.m. They're having rides, demonstrations of what the Fire Department does, they'll have food and they'll have the smoke house to show you how they operate when a building is on fire to get people out, this Sunday coming... and you wanted to speak about the Historical Society."

Announcement by Selectman Bennett re: Historical Society

Mr. Bennett: "Yes, I just wanted to share with you that I had to go to the Historical Society to look at a siding problem and discovered that it is a delightful place with a lot of good things to see about Atkinson's history and New England's history. It's open every Wednesday from 2:00 p.m. to 4:00 p.m. and first Saturday from 10:00 a.m. to 2:00 p.m. and it would be well worth your while to drop by to see the place. That's all I have."

Old Business:

Mr. Tod Barbera, IT Committee

- *Policies and Procedures*
- *Position Statement for IT Support Services RFP*

Mr. Childs: "Thank you. Tod, do you have anything that's going to take a few minutes." If you have something that's quick, I'll let you come up otherwise we'll have to reschedule. Mr. Friel has to leave, he has an appointment.

Mr. Tod Barbera of the IT Committee stepped to the table to address the Board regarding RFP's that was submitted and go over the IT support contract that was submitted.

Mr. Bennett stated that he had a couple of comments regarding the contract. First is just a typo, under general consulting IT services, Network Devise should probably be device. But, under back up and recovery, I would like it explicitly stated that the backups over the wire be encrypted when they leave our server and that the backup service not have encryption keys. You have desktops not be backed up, I'm not sure, have you asked the desktop users how they feel about it?

Mr. Barbera: "Currently, it is standard practice if you want something backed up you will store it to a network drive."

Mr. Bennett: "This will include all incoming and outgoing email in the backup data"

Mr. Barbera: "On the exchange, the email stays in the server and is archived. You could download it and archive it."

Mr. Bennett: "Okay. Last page, section criteria should be selection criteria. That's all I have. Do we have to run an exchange server, we can't run an open source server."

Mr. Friel: Based upon those changes, do you approve the contract?

Mr. Bennett: Yes.

Mr. Friel:made the following motion to allow the IT Committee to put the contract out to bid based on the changes recommended by Mr. Bennett; that:

- 1. In general consulting IT services section, network devise be changed to network device;**
- 2. Explicitly state that the backups over the wire be encrypted when they leave our server and that the backup service not have encryption keys; and**
- 3. on the last page, change section criteria to selection criteria.**

Mr. Bennett: I second the motion.

Mr. Childs: Is the firm checking out to see what changes we need going to bid?"

Mr. Barbera: "Yes"

Mr. Bennett: "How many bidders do you anticipate having?"

Mr. Barbera: Approximately five.

Mr. Childs: Is everyone okay if the firm checking the services is going to bid.

Mr. Barbera: The agreement with him is that he has volunteered, he has the library contract and he has agreed to come in and perform the inventory and agreed that the compiled inventory will be available to all bidders.

Mr. Bennett: I don't see that as an unfair advantage to the other bidders.

Mr. Friel: If his findings are available to the other bidders, then it should not be an unfair advantage.

Mr. Childs: The question came up.

Mr. Bennett: He will gain more knowledge of the system than some of the other bidders will care to.

Mr. Friel: One of the bidders has been running the system for 14 years.

Mr. Childs: Is there anything else?

Mr. Friel: We have a motion and a second, are all in favor?

The Board of Selectmen voted in favor of submitting the contract to bid with the changes suggested by Selectman Bennett.

Mr. Barbera: "With regards to potential bidders, do we need to advertise?"

Mr. Bennett: "If the bid is over \$5,000.00, then you need to advertise, as you are in the industry, you can send to target companies that you might be aware of as well. I would personally thank you and your committee for the work that you have done.

Chairman Susan Killam, Planning Board

Mr. Childs then requested if Mrs. Sue Killam had something to bring before the Board. Mrs. Killam replied that she would need more time and would prefer to wait until the next Board meeting.

Ms. Nancy Raczka, Building Permit (Map 23 Lot 79)

Mr. Childs then referred to the next item on the Agenda: authorization of N. Raczka Building Permit (Map 23 Lot 79). Ms. Nancy Raczka stepped up to the table.

Mr. Bennett stated that the Board could not authorize at this meeting. He spoke to Sumner Kalman. He stated that the document he had referred to a Class VI road, and the property is on a private road and inquired of Ms. Raczka if that were true and she stated that she believed it was.

Mr. Bennett informed Ms. Raczka that he spoke to the Town attorney requesting and ask if he could change the document to say class VI, private way and the town attorney responded no and marked up the document which Mr. Bennett will give to the Town Administrator. Mr. Bennett informed Mrs. Raczka that she had to create a new document referring to a private way. Mrs. Raczka stated that she understood that she needed a separate deed referring to private ways and had to change the wording regarding RSA's so that it stated section b instead of section c. Mr. Bennett replied that the changes the Town Attorney recommended did not refer to the RSA's, and it applies to class VI as well and asked Mrs. Raczka if she had been before the ZBA. Mrs. Raczka replied yes. Mr. Bennett then asked if she needed other approvals. Ms. Killam, Chairman of the Planning Board stepped forward to say that Mrs. Raczka had also been to the Planning Board. Mr. Bennett asked if the Planning Board had given her approval to build on a private way and Ms. Killam stated yes.

Ms. Killam replied yes and introduced the memo from the planning board into the minutes. Mr. Bennett replied that there was an action by the ZBA. Ms. Killam replied that she did not have a copy of 674:40 in front of her but there were issues. Mr. Bennett asked if 674:40 applied. Ms. Killam replied that 674:41 applies. Ms. Killam reiterated that the applicant needed to come to the planning board and they did. Mr. Bennett responded that the town attorney may have misspoke. Ms. Killam again introduced her memo stating that the planning board would allow if it were either a Class VI public road or a private way as long as the documentation is corrected. Mr. Bennett stated that she could resubmit the documents changing the wording from Class VI to private way. Mrs. Raczka, asked if she needed to redo the deed addendum to private way and return to the planning board. Ms. Killam responded stated that Ms. Raczka did not need to return to the planning board.

Mr. Bennett informed Ms. Raczka that the town attorney had stated that in order to receive a building permit, the property had to have access to a Class V road, and Ms. Raczka needed a variance from the zoning board to build, irregardless if the property were on a Class VI or private way.

Ms. Killam stated that she would send Mr. Bennett a copy of the RSA. Ms. Raczka agreed to work with the Board and the Town Administrator to ensure that all documentation was correctly submitted.

Mr. Ted Stewart, road commissioner then asked for permission to go before the budget committee on Tuesday, October 20, 2009. Mr. Childs responded that he and Ms. Killam, chairman of the Planning

Board would be allowed to appear before the Budget Committee. Ms. Killam responded that she was not notified.

Mr. Childs then stated that other items on the agenda would be postponed until the next meeting of the Board of Selectmen. Mr. Childs then read off the agenda schedule for future meetings as published on the agenda. Mr. Bennett requested Mr. Smith ask the department heads should give the Selectmen a copy of their budget a week and a day before their scheduled hearings.

Highway Budget

The Board next discussed the highway budget and Mr. Friel stated that he had the following questions for Mr. Stewart:

1. The town salt supply is low and is their enough money in the budget to resupply;
2. Waste management is up \$25,000 and the company had raised tipping fees for waste disposal and options for breaking the contract; The Board discussed ways to break the current contract and ways to reduce tipping fees.
3. Warrant article for budget for roads, the town has a \$136,000 block grant for roads. Mr. Stewart had requested \$300,000. Does the wish to allow \$300,000? Mr. Bennett stated that the Town should not get too far behind on road maintenance. The Selectmen agreed to look at the roads and discuss the warrant with Mr. Stewart before making a decision.

Crack Sealing

Mr. Childs then stated that the Board had to open up bids for crack sealing. He stated that he had one bid for crack sealing and wished to take it under advisement. He would like crack sealing completed before October 30, 2009.

Mr. Bennett asked if Mr. Friel would obtain more information on the Osborn case. Mr. Friel stated that the Osborn hearing continuation could be scheduled whenever the Board wanted.

Mr. Childs stated that he had one bid for crack sealing from Seal coating Inc., 120 Industrial Park Road, Hingham, MA.

Mr. Childs suggested that the Board start the meeting of October 25, 2009 at 7:00 p.m. The rest of the Board agreed.

Mr. Bennett asked when Mr. Friel would be available to meet with the Town Attorney regarding the cease and desist on Valcat. They agreed to set an appointment with Mr. Kalman in the afternoon of Tuesday, October 20, 2009.

Mr. Childs stated that he could not find a price for the seal coating in the bid and that it would be taken under advisement. Mr. Friel stated that he had to leave the meeting.

Mr. Bennett looked at the seal coat bid and found a price of \$1.68 per pound. Mr. Childs asked how many pounds. Mr. Childs stated that the seal coat bid could be approved pending approval by the Road Agent.

Mr. Childs made a motion to adjourn. Mr. Bennett seconded the motion and the Board of Selectmen voted unanimously to adjourn the meeting at 10:45 p.m.

Mr. Childs thanked the audience and reminded the audience not to forget the fire department, that Halloween would be celebrated on October 31, and that the next meeting of the Selectmen would be on Monday, October 25, 2009 at 7:00 p.m.

Fred J. Childs, Jr.

William G. Friel

William M. Bennett