

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.
COURT

SUPERIOR

Docket # 218-2020-CV-00008

PAMELA D. KELLY, et al.

v.

TOWN OF NOTTINGHAM

DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT and DEMAND FOR JURY TRIAL

Defendant, Town of Nottingham, answers plaintiffs' complaint as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Pamela D. Kelly ("Petitioner Kelly") is an individual resident of the Town of Nottingham, having a primary residential address of 35 Sachs Road, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny remaining the allegations in this paragraph and puts the plaintiffs to their proof.

2. Matthew H. Eaton ("Petitioner Eaton") is an individual resident of the Town of Nottingham, having a primary residential address of 6 Lamprey Drive, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny remaining the allegations in this paragraph and puts the plaintiffs to their proof.

3. Kevin E. Jordan ("Petitioner Jordan") is an individual resident of the Town of Nottingham, having a primary residential address of 17 Beach Head Road, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

4. Jerome F. Lapham, Jr. (“Petitioner Lapham”) is an individual resident of the Town of Nottingham, having a primary residential address of 23 Jampsa Trail, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

5. James P. Rosborough (“Petitioner Rosborough”) is an individual resident of the Town of Nottingham, having a primary residential address of 41 Mooers Road, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

6. Peter W. Lyle (“Petitioner Lyle”) is an individual resident of the Town of Nottingham, having a primary residential address of 11 Meindl Road, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town denies that this plaintiff owns the stated property and is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

7. Michael Herron (“Petitioner Herron”) is an individual resident of the Town of Nottingham, having a primary residential address of 12 Cahill Lane, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

8. Amede A. Baillargeon, Jr. (“Petitioner Baillargeon”) is an individual resident of the Town of Nottingham, having a primary residential address of 49 Barderry Lane, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

9. Shane Carey (“Petitioner Carey”) is an individual resident of the Town of Nottingham, having a primary residential address of 41 Seaman’s Point Road, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

10. Roger Frieden (“Petitioner Frieden”) is an individual resident of the Town of Nottingham, having a primary residential address of 93 Shore Drive, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town denies that this plaintiff owns the stated property and is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

11. Cheryl LeBlanc (“Petitioner “LeBlanc”) is an individual resident of the Town of Nottingham, having a primary residential address of 137 Highland Avenue, Nottingham, Rockingham County, New Hampshire.

Answer: The Town denies that this plaintiff owns the stated property and is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

12. Thomas Duffy (Petitioner Duffy") is an individual resident of the Town of Nottingham, having a primary residential address of 28 Tuckaway Shores, Nottingham, Rockingham County, New Hampshire 03290.

Answer: The Town admits this plaintiff owns the stated property but is without sufficient information to admit or deny the remaining allegations in this paragraph and puts the plaintiffs to their proof.

13. Petitioners John Doe #1 through Petitioners John Doe #5 are individual residents of the Town of Nottingham, each having his primary residential address on/along one or more of the Camp Road(s) in the vicinity of Nottingham Lake, located in Nottingham, Rockingham County, New Hampshire 03290.

Answer: Deny. The plaintiffs set forth no facts to support these allegations or in support of pseudonym use. There is a presumption of open litigation and no entitlement to or reason for anonymous plaintiffs. It deprives the Town of the ability to defend itself. The John and Jane Does should be dismissed from this action.

14. Petitioners Jane Doe #1 through Petitioners Jane Doe #5 are individual residents of the Town of Nottingham, each having his primary residential address on/along one or more of the Camp Road(s) in the vicinity of Nottingham Lake, located in Nottingham, Rockingham County, New Hampshire 03290.

Answer: Deny. The plaintiffs set forth no facts to support these allegations or in support of pseudonym use. There is a presumption of open litigation and no entitlement to or reason for anonymous plaintiffs. It deprives the Town of the ability to defend itself. The John and Jane Does should be dismissed from this action.

15. The Town of Nottingham (“Respondent”) is an incorporated municipality, located within Rockingham County that maintains its principal place of business at 139 Stage Rd., P.O. Box 114, Nottingham, NH 03290.

Answer: Admit.

16. At all times relevant to the Petitioner’s allegations and legal claims herein, the Petitioners, or their predecessors-in-title own real property located along roads maintained by the Respondent around or in the vicinity of Pawtuckaway Lake or Nottingham Lake, so-called, in the Town of Nottingham.

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. By way of further answer, this paragraph does

not set forth specific roads or portions thereof. To the knowledge of the Town, all referenced roads in the vicinity are private. Some portions of these roads in the area identified have been classified as emergency lanes under RSA 231:59-a since at least 1995 and have been maintained as such. Other roads have never received any maintenance by the Town.

17. This Court has subject matter jurisdiction in this action pursuant to and consistent with R.S.A. 491:7 (civil actions and pleas, real, personal, and mixed), 491:22 (declaratory judgments) and/or R.S.A. 498:1 (equity matters).

Answer: Admit.

18. This Court has personal jurisdiction over each Petitioner, because each Petitioner resides in and owns real property, which is central to this action, located within Rockingham County.

Answer: The Town is without sufficient information to admit or deny whether each plaintiff resides in this County and puts the plaintiffs to their proof. By way of further answer, not all plaintiffs named in this case own property as alleged.

19. This Court has personal jurisdiction over the Respondent, because the Respondent, including the members of the Respondent's Board of Selectmen, is an incorporated municipality located within Rockingham County.

Answer: Admit.

20. Further, this Court has jurisdiction over this matter, because the actions and/or inactions of the Respondent, by and through its Board of Selectmen and/or employees of the Respondent, which are at-issue in this action, each decision, action, and/or omission, or a majority thereof, of the Respondent occurred in Rockingham County.

Answer: Admit.

21. Venue is properly in this Court, because Respondent is principally located within Rockingham County, each Petitioner resides in and is a property owner within Rockingham County, and each decision, action, and/or omission, or a majority thereof, of the Respondent occurred in Rockingham County.

Answer: Admit.

22. The Petitioners demand trial by jury for actions at law.

Answer: No response is required.

II. CLASS ACTION ALLEGATIONS

23. Pursuant to and consistent with NH Superior Court Rule 16, the Petitioners, as representatives, initiate the present action seeking declaratory relief, in the form of the Court's determination of factual issues and application of law to such facts to determine and declare the status, rights, and obligations to/over nineteen (19) roads ("Camp Roads"), located around a portion of Pawtuckaway Pond and/or Nottingham Lake, both of which are located in Nottingham, Rockingham County, New Hampshire.

Answer: The Town admits the plaintiffs seek declaratory relief but denies that the plaintiffs are representative of a class or that any class would be representative of all the varying factual issues with respect to the 26 different roads mentioned in the Complaint.

24. The Camp Roads provide the sole ingress to and egress from numerous individual parcels or tracts of upon which approximately 375 homes exist.

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. Given the amorphous nature of the Complaint and identification of the roads and portions of roads at issue, the Town can only admit that some plaintiffs have access to the properties by Camp Road.

The Petitioners Satisfy the Requirements of Rule 16

25. Some of those parcels are owned by multiple individuals, which would cause the number of petitioners in this action to be so large as to make it unworkable to this Court and the parties.

Answer: The Town admits that some parcels are owned by multiple individuals and denies that the number is so large as to make it unworkable to this Court and the parties.

26. Therefore, the class is so numerous that joinder of all members is impracticable. N.H. Super. Ct R. 16. (a)(1).

Answer: The Town admits that some parcels are owned by multiple individuals and denies that

the number is so large as to make it unworkable to this Court and the parties.

27. The type of access that the above-named Petitioners have by and through the Camp Roads is similar among all named-Petitioners as well as among the named-Petitioners and all owners of real property that have access to each such real property by way of the Camp Roads.

Answer: Deny. By way of further answer, some roads and portions thereof are designated emergency lanes under RSA 231:59-a, and the Town is not familiar with how other private roads are maintained.

28. The facts central to this action, being the manner in which each Camp Road was created and has been maintained by the Respondent, and the issues to be determined by this Court and the law to be applied by this Court in this action are substantively similar or the same.

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

29. The above-named individual Petitioners are owners of real property along the various Camp Roads (subsequently defined) and are similarly situated to the overall class, with respect to the Respondent's maintenance, repair, and improvement of all of the Camp Roads in the Town of Nottingham, NH, with respect to the relief being requested by same Petitioners through this Complaint being able to provide adequate redress and legal relief for the injuries and damages sustained by each and every owner of real property situated on or along the Camp Roads.

Answer: Deny. The Town denies that all plaintiffs are owners of real property along the so-called Camp Roads listed in the Complaint. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

30. Questions of law and/or fact, which are common to the entire class, that predominate over any/all questions, if any, that might affect individual members of such class. N.H. Super. Ct R. 16. (a) (2).

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

31. The legal claim(s) of the representative party is/are the same or typical of the legal claim(s) of the entire class of petitioners. N.H. Super. Ct R. 16. (a) (3).

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

32. The Petitioners, having the same property rights at stake and having the potential of being exposed to similar monetary losses or damages as the entire class of potential petitioners, will fairly and adequately protect the interests of the entire class. N.H. Super. Ct R. 16. (a) (4).

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

33. The relief sought by the Petitioners will provide an adequate remedy to each member of the class, with both the Petitioners and the remaining members of the class being owner(s) of real property that has access to real property by way of the Camp Roads. Id.

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

34. In light of the Petitioners being similarly situated as the entire class, the factual and legal issues being nearly identical as between the Petitioners and the entire class, the total number of the class being so large, and the relief being requested by the Petitioners providing for an adequate redress for each member of the class, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. N.H. Super. Ct R. 16. (a) (5).

Answer: Deny. The facts with respect to each road and portions of the roads differ greatly, as does the applicable law.

35. The attorney(s) providing legal representation to/of the Petitioners will adequately represent the interests of the class. N.H. Super. Ct R. 16. (a) (6).

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph for reasons stated in paragraph 34.

Further Allegations For Class Action Status

36. In addition, separate, individualized actions, seeking a declaration as to the classification(s), rights, and obligations of individual Camp Roads would present the potential for inconsistent and/or contradictory declarations.

Answer: Deny. By way of further answer, the extent of any maintenance work on a road and whether any work at all was performed by the Town varies greatly, depending on whether a road or portion of a road has been designated as an emergency lane under RSA 231:59-a.

37. Further, separate, individualized actions as to the Camp Roads would increase the delay and expense to the parties, including the Respondent, and to this Court and the New Hampshire judicial system itself.

Answer: Deny.

38. Whereas, a class action to resolve issues of fact, for the uniform application of the law, and clear declaration as to the Camp Roads presents far fewer case management difficulties and realizing the efficiency of economies of scale.

Answer: Deny.

Request for Class Action Certification

39. The Petitioners, hereby, respectfully request that this Honorable Court determine that this action be maintained as a class action and issue an Order declaring and instructing the parties hereto further.

Answer: The Town objects to the certification of this matter as a Class Action under NH Super. Ct. R. 16.

40. In the event that this Honorable Court is inclined to deny the Petitioners' request for certification of class, based solely upon the initial pleadings, the Petitioners respectfully request that a hearing be scheduled, during which the parties can provide more detailed facts, as well as maps and photographs that will aid this Honorable Court in its determination.

Answer: The Town similarly requests the Court schedule a hearing to set forth the procedure for determination of certification under Rule 16.

III. FACTS

41. Each Petitioner is the current owner of record of at least one (1) parcel or tract of real property (individually, "Petitioner's Property" and collectively, "Petitioners'

Properties”), located in the Town of Nottingham, County of Rockingham, State of New Hampshire.

Answer: Deny. The Town denies that all plaintiffs are owners of real property along the so-called Camp Roads listed in the Complaint.

42. Access to/from the Petitioners’ Properties is achieved by certain various roads, all having gravel traveling surfaces, which have been commonly and collectively referred to within the Town of Nottingham as the camp roads or pond roads (“Camp Roads”).

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. By way of further answer, the Town admits that many private roads within the Town are either gravel or dirt roads.

43. In connection with the present action, the Camp Roads, as identified by the Tax Assessor and the Tax Collector for the Town of Nottingham, NH, are:

- a) so-named "Beachhead Road", a/k/a "Beach Head Road";
- b) so-named "Sachs Road";
- c) so-named "Jampsa Trail";
- d) so-named "Mooers Road";
- e) so-named "South Road";
- f) so-named "Meindl Road";
- g) so-named "Meindl Way";
- h) so-named "Meindl Way East";
- i) so-named "Brustle Road";
- j) so-named "Tuckaway Shores Road";
- k) so-named "Lamprey Drive";
- l) so-named "Indian Run";
- m) so-named "Dolloff Dam Road";
- n) so-named "Cahill Lane";
- o) so-named "Seaman's Point Road";
- p) so-named "Shore Drive";
- q) so-named "Cove Road";
- r) so-named "Highland Avenue";
- s) so-named "Lookout Point";
- t) so-named "White Grove Road";
- u) so-named "Barderry Lane";
- v) so-named "Langley Lane";
- w) so-named "Little Jolm Lane";
- x) so-named "Nottingham Lane";

- y) so-named "Sherwood Lane"; and
- z) so-named "Swan Drive" (f/n/a "Marston Lane").

Answer: Deny. The Town does not recognize the names of all the so-called Camp Roads as identified by the plaintiffs. The plaintiffs do not make clear what portions of these roads to which they refer and are in dispute, and some of these names do not appear consistent with the names used by the Town.

44. For many Petitioners, a single Camp Road provides the sole or single means of ingress to and egress from the Petitioner's Property.

Answer: To the extent that properties generally have frontage on only one road and have only one curb cut, the Town admits that virtually all properties are served by one road for ingress or egress.

45. Each Camp Road is named and/or show a plan or plat, which was approved and signed by the Respondent, by and through its Planning Board.

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. To the extent further answer is required, the Town denies this paragraph.

46. Each such approved plan or plat has been recorded in the Rockingham County Registry of Deeds.

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. To the extent further answer is required, the Town denies this paragraph.

47. Thereafter, one or more lots or parcels of land, which comprise or constitute the approved and recorded plan or plat was conveyed to third party purchasers, by Deed, also being recorded in the Rockingham County Registry of Deeds.

Answer: The Town is without sufficient information to admit or deny the allegations in this paragraph and puts the plaintiffs to their proof. The Town, however, admits that it is likely that properties were conveyed by deed.

48. For over 40 years, the Respondent, by and through its employees and/or agents, has regularly and consistently performed maintenance, repairs, and improvements of the Camp Roads.

Answer: Deny.

49. The maintenance that the Respondent has regularly and routinely performed on the Camp Roads for well over 40 years, includes, but has not been limited to, regularly and repeatedly plow snow, ice, and other precipitation ("winter maintenance") from each Camp Road, spread sand, salt, and/or other materials on each Camp Road throughout the winter season.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

50. For well over 40 years, the Respondent has regularly and consistently generated annual budgetary projections, assessed annual real estate taxes (commonly referred to as property taxes) on individuals, including but not limited to the Petitioners, and corporate entities who own real property within the limits of the Town; collected those property taxes as public funds; and appropriated and expended those public funds specifically to provide and pay for the labor, equipment, and materials to regularly and repeatedly perform winter maintenance on each Camp Road.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

51. Other maintenance, repairs, and improvements that the Respondent has regularly and repeatedly performed, for well over 40 years, on each Camp Road, beyond or "outside" of the winter maintenance includes, but has not been limited to, preventative maintenance and/or repairing the travelling surface, cleaning or repairing drainage ditches, cleaning or repairing existing culverts previously-installed by the Respondent, installing new culverts, trimming and/or removing trees or branches, and erecting temporary road hazard signs.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

52. For well over 40 years, the Respondent has regularly and consistently generated annual budgetary projections, assessed annual real estate taxes (commonly referred to as property taxes) on individuals, including but not limited to the Petitioners, and corporate entities who own real property within the limits of the Town; collected those property taxes as public funds; and appropriated and expended those public funds specifically to provide and pay for the labor, equipment, and materials to regularly and repeatedly perform maintenance on each Camp Road beyond or "outside" of the winter maintenance it has performed.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

53. The Respondent performed such maintenance, repairs, and improvements on the Camp Roads because it benefitted the Town to have Camp Roads well-maintained, for purposes including, but was not limited to, receiving increased property tax receipts for properties along or serviced by the Camp Roads.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

54. Over the decades, with the Respondent regularly and consistently maintaining, repairing, and/or improving the Camp Roads, the Respondent continued to issue permits for the construction of new homes and/or approve subdivisions for properties along or accessed by the Camp Roads.

Answer: Deny to the extent that maintenance was performed on a private road beyond any road designated an emergency lane. By way of further answer, the Town admits that building permits have been issued, and the Planning Board has approved subdivisions.

55. In addition, during decades of regular and consistent maintenance, repair, and/or improvement of the Camp Roads, the Respondent continued to issue permits for additions and improvements to be constructed on existing homes and seasonal structures.

Answer: Deny to the extent that maintenance was performed on a private road beyond any road designated an emergency lane. By way of further answer, the Town admits that building permits have been issued, and the Planning Board has approved subdivisions.

56. Over those same decades, the Respondent has assessed and collected increased property taxes from the Petitioners, as well as their predecessors-in-title, for the improved structures, in part, so the Respondent could continue to maintain the Camp Roads.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

57. Over the decades, the Respondent has maintained the Camp Roads similarly as to the maintenance performed on other roads in the Town of Nottingham that have gravel travelling surfaces.

Answer: Deny. Any snowplowing performed on private roads is not, as a matter of law, sufficient maintenance to establish a public highway, and any maintenance performed was in accordance with RSA 231:59-a.

58. In 1995, the Respondent, by and through its Board of Selectmen, designated or “declared” the Camp Roads as “emergency lanes”, under the guise of R.S.A. 231:59-a.

Answer: The Town admits that it designated certain roads as emergency lanes under RSA 231:59-a after the passage of this statute. By way of further answer, the Town denies the remaining allegations and insinuations.

59. A road or highway can only be designated as an “emergency lane” if it is a private road or a Class VI highway. R.S.A. 231:59-a.

Answer: Admit, and the Town further states that it appears that all roads subject to this Complaint are private roads and that the Town has designated some of these roads and portions of these roads as emergency lanes under RSA 231:59-a.

60. The terms "private road" and "Class VI highway," for the purposes of the designation of an "emergency lane" are defined by R.S.A. 229:5.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. By way of further answer, “private roads” are not defined in RSA 229:5.

61. The Respondent's 1995 declaration of the Camp Roads as so-called emergency lanes failed to comply with the statutory requirements for such a designation.

Answer: Deny.

62. Furthermore, under the law of New Hampshire, the Camp Roads were Class V highways by 1995 and the Respondent's attempts to "declare" the Camp Roads as "emergency lanes" was and is invalid and beyond the Respondent's statutorily-prescribed powers.

Answer: Deny.

63. As a result, the Respondent, in 2011, engaged in another attempt to designate and classify the Camp Roads as so-called "emergency lanes."

Answer: The Town admits that it reviewed, discussed, and reaffirmed the emergency lane designation of private roads in 2011 and denies the remaining allegations of this paragraph.

64. The Respondent's second attempt to declare the Camp Roads as "emergency lanes" also was under the guise of R.S.A. 231:59-a.

Answer: The Town admits that in 2011 it reviewed and re-designated certain roads as emergency lanes under RSA 231:59-a. By way of further answer, the Town denies the remaining allegations and insinuations.

65. Nonetheless, because the Camp Roads already were or had been Class V highways prior to the Respondent's second attempt to declare the Camp Roads as "emergency lanes" in 2011, the Respondent's second attempt to "declare" the Camp Roads as "emergency lanes" also was and is invalid.

Answer: Deny.

66. The Respondent's second attempt to declare the Camp Roads as "emergency lanes" failed to comply with the statutory requirements for such a designation.

Answer: Deny.

67. By exceeding its statutorily-prescribed powers and/or authority, the Respondent's first and second attempts to declare the Camp Roads are unlawful, invalid, and ineffective.

Answer: Deny.

68. If a Class VI highway or private road is correctly and lawfully designated or "declared" an "emergency lane," that declaration"... may be rescinded or disregarded at any time without notice." R.S.A. 231-59-a.

Answer: Admit.

69. Because the Respondent incorrectly believes that its declaration of the Camp Roads as "emergency lanes" was and is valid and effective, the Respondent also believes that it can rescind or disregard that declaration at any time and, thereby, discontinue its continued maintenance of the Camp Roads.

Answer: Denied that any designation of emergency lanes by the Town were not valid or effective, but the Town admits that pursuant to RSA 231:59-a it may rescind or disregard such a designation at any time.

70. Because of the Respondent's attempts to designate the Camp Roads as "emergency lanes," and then, its perceived ability, under the guise of R.S.A. 231-59-a, for the Respondent to, unilaterally and without notice, rescind such designation and cease appropriating and spending public funds for the continued maintenance of the Camp Roads, has created a level of uncertainty as to the continued maintenance of the Camp Roads, which includes, but is certainly not limited to plowing snow and treating ice on the Camp Roads.

Answer: Deny.

71. The uncertainty caused by the Respondent incorrectly or unlawfully designating the Camp Roads as "emergency lanes" has caused damage to the fair market values of the

properties that have their access by or through the Camp Roads, as well as other damages and injuries to the Petitioners.

Answer: Deny. By way of further answer, the Town states that no emergency lane designation has been rescinded, and therefore that Complaint fails to state a ground upon which damages may be awarded.

72. A “highway” is a way over which the entire public have the right to travel. R.S.A. 229:1.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. The statute speaks for itself.

73. A Class V highway is a highway that a municipality has the obligation to maintain. RSA 231:3.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. The statute speaks for itself.

74. A way can become a highway through a number of methods. See, e.g., RSA 229:1; and *Polizzo v. Town of Hampton*, 126 N.H. 398,401 (1985).

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

75. One method is dedication and acceptance. *Id.*

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

76. Dedication and acceptance require that a landowner offer up its property to the municipality, and the municipality accepts it. *Hersh v. Plonski*, 156 N.H. 511, 515 (2007).

Answer: This paragraph contains legal conclusions and does not require a response from the Town. Further, the Town states that no acceptance of a private road has occurred and that is why portions of these roads have been designated as emergency lanes.

77. An offer to dedicate may be express or implied. *Id.*

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

78. Dedication also may occur, or be deemed to have occurred, by the recording of a plan, and lots being sold with reference to the plan. *Id.*

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

79. Implied dedication is one arising from the acts of the owner. Dedication can be implied from circumstances or by acts or conduct of the owner that clearly indicate an intention to devote land to public use or from which a reasonable inference can be drawn. *Hersh*, 156 N.H. at 516.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

80. A landowner's acquiescence to use of a road, without objection, can be competent evidence that the landowner dedicated the land without any compensation. *Pritchard v. Atkinson*, 4 N.H. 9, 15 (1827).

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

81. "Whether a lapse of time is, in any particular case under the circumstance, proper to be submitted to a jury as evidence of a fact [of dedication], is a question of law to be settled by the court, and must to a certain extent depend upon the circumstances." *Pritchard*, 4 N.H. at 15.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

82. Acceptance as a Class V highway may be express or implied. *Hersh*, 156 N.H., at 515.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

83. Implied acceptance as a Class V highway may occur by "improving a street, repairing it, removing snow from it, or assigning police patrols to it." *Hersh*, 156 N.H., at 516.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

84. Inclusion of a road on a map is competent evidence to support the inference of public use of the road. *Mahoney v. Town of Canterbury*, 150 N.H. 148, 151 (2003), citing *Williams v. Babcock*, 116 N.H. 819, 822 (1976).

Answer: This paragraph contains legal conclusions and does not require a response from the Town. By way of further answer, this case involved a challenge to finding a road was a highway created by prescription pursuant to RSA 229:1. This law does not apply, as prescriptive roads cannot be established since 1968.

85. When no "Private Road" sign is erected on a road, the public may assume the road is open for public use. *Catalano v. Town of Windham*, 133 N.H. 504, 510 (1990).

Answer: This paragraph contains legal conclusions and does not require a response from the Town. By way of further answer, this case involved a challenge to finding a road was a highway created by prescription pursuant to RSA 229:1. This law does not apply, as prescriptive roads cannot be established since 1968.

86. In fact, the Respondent has appropriated and expended public funds to purchase, erect, and maintain signs displaying the names of a number of the Camp Roads that are identical or substantially similar to the signs (green background with white letters) that the Respondent purchased, erected, and maintains on other Class V roads in the Town of Nottingham.

Answer: Deny. As stated above, the Town is not entirely clear which roads or portions of roads are exactly at issue, as they are not adequately described in the Complaint. By way of further answer, the Town states that it would have authority to do as described in this paragraph pursuant to RSA 231:133 and :133-a.

87. The inclusion of roads in deeds indicates use by people other than the owners of land through which the road runs. *Mahoney*, 150 N.H. at 151, citing *Williams*, 116 N.H. at 823-24.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

III. CAUSE OF ACTION:
Count 1- Declaratory Judgment

("Camp Roads" are Class V Highways, by Dedication through Approved/Recorded Plat and Acceptance through Maintenance, Repair, and/or Improvements)

88. The Petitioners incorporate, by reference, each allegation set forth in the paragraphs herein above, as if each were separately and fully set forth herein.

Answer: The Town incorporates all prior responses herein.

89. The Camp Roads were dedicated by being shown on a recorded plan and lots being sold with reference to the plan.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

90. Some Camp Roads were dedicated by being shown on a recorded plan, and lots being sold with reference to the plan.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

91. The Camp Roads were accepted by the Respondent, as public Class V highways, by and/or through the Respondent's maintenance (including, but not limited to snow plowing), repair, and/or improvement, over an extended period of time, of the Camp Roads.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

92. As such the cumulative effect of the Respondent's combined actions, with respect to the Camp Roads, is that the Camp Roads are and have been public Class V highways.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

93. The Respondent has refused and continues to refuse to acknowledge and accept that the Camp Roads are and have been public Class V highways.

Answer: Admit.

94. As such, a dispute exists as between the parties with respect to the title, more specifically the legal right(s) and duties of the Respondent, in or to portions of the parcels or tracts of real property upon which the Camp Roads are situated.

Answer: Admit.

95. The Petitioners do not have a plain, complete, and/or adequate remedy at law that could operate to determine and declare with finality the Camp Roads as public highways and protect their legal rights with respect to the Camp Roads. *Sands v. Stevens*, 21 N.H. 1008, 1001 (1981).

Answer: This paragraph contains legal conclusions and does not require a response from the Town..

Count 2- Declaratory Judgment
("Camp Roads" are Class V Highways by Dedication and Acceptance through Municipality's Maintenance, Repair, and/or Improvement)

96. The Petitioners incorporate, by reference, each allegation set forth in the

paragraphs herein above, as if each were separately and fully set forth herein.

Answer: The Town incorporates all prior responses herein.

97. The owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through acquiescing to and/or allowing the Town to repeatedly perform maintenance activities to/upon the Camp Roads.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

98. In addition, the owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through their participation in and/or acquiescence to the appropriation of public funds, through public annual Town meetings, for the continued maintenance, repair, and/or improvement of the Camp Roads.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

99. Further, the owners, individually and collectively, of real property accessed by the Camp Road(s) impliedly dedicated the portions of their land that constitute the Camp Roads, by or through each such owner's payment of annual real estate taxes on those same portions of land.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

100. The Camp Roads were accepted by the Respondent, as public Class V highways, by and/or through the Respondent's maintenance (including, but not limited to snow plowing), repair, and/or improvement, over an extended period of time, of the Camp Roads.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

101. As such the cumulative effect of the Respondents' combined actions, with respect to the Camp Roads, is that the Camp Roads are and have been public Class V highways.

Answer: This paragraph contains legal conclusions and does not require a response from the Town. To the extent a response is necessary, the Town denies this paragraph.

102. The Respondent has refused and continues to refuse to acknowledge and accept that the Camp Roads are and have been public Class V highways.

Answer: Admit.

103. As such, a dispute exists as between the parties with respect to the title, more specifically the legal right(s) and duties of the Respondent, in or to portions of the parcels or tracts of real property upon which the Camp Roads are situated.

Answer: Admit.

104. The Petitioners do not have a plain, complete, and/or adequate remedy at law that could operate to determine and declare with finality the Camp Roads as public highways and protect their legal rights with respect to the Camp Roads. *Sands v. Stevens*, 121 N.H. 1008, 1001 (1981).

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

**Count 3 - Ultra Vires
(Respondent's act of "declaring" the Camp Roads as "Emergency Lanes," When the
Camp Roads Were Not Class VI Highways or Private Roads Was/Is Beyond Its Powers
and, Thus, Unlawful and Invalid)**

105. The Petitioners incorporate, by reference, each allegation set forth in the paragraphs herein above, as if each were separately and fully set forth herein.

Answer: The Town incorporates all prior responses herein.

106. The Respondent has statutorily-prescribed powers and duties.

Answer: This paragraph contains legal conclusions and does not require a response from the Town.

107. The Respondent exceeded its powers and/or failed to adhere to statutory requirements for the proper and lawful declaration of Class VI highways and/or private roads as "emergency lanes."

Answer: Deny.

108. By exceeding its statutorily-prescribed powers when it unlawfully declared the Camp Roads as "emergency lanes," the Respondent has caused the Petitioners to sustain damages, including, but not limited to attorneys fees and costs, within the minimum and maximum jurisdictional limits of this Honorable Court.

Answer: Deny.

AFFIRMATIVE DEFENSES

- A. The plaintiffs have failed to state a claim upon which relief can be granted.
- B. The plaintiffs' claims are barred, in whole or in part, by the statute of limitations.
- C. The plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.
- D. The plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
- E. The plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.
- F. The Town is entitled to immunity under RSA 507-B.
- G. The Town is entitled to official immunity under Everitt v. General Electric Co., 156 NH 202 (2007).
- H. The Town is entitled to discretionary function immunity.

- I. The Town is entitled to judicial, quasi-judicial, legislative, or quasi-legislative immunity.
- J. The Town reserves its right to amend this list of Affirmative Defenses and the case progresses.

Respectfully submitted,
Town of Nottingham,
By its Counsel,
UPTON & HATFIELD, LLP

Date: February 12, 2020

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**GALLAGHER, CALLAHAN & GARTRELL,
PC**

Date: February 12, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this day I forwarded a copy of the within document via the Court's electronic filing system to James L. Soucy, Esq., opposing counsel of record.

/s/ Susan Aileen Lowry
Susan Aileen Lowry

