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- E. Phil Carter asked if the town took the position that we do not agree with you, what you would do if we issued a violation.
- F. Ethan McNaughton said they would appeal.
- G. Phil Carter said that the appeal period for the permit has expired.
- H. Ethan McNaughton we would ask the board to treat this as an amendment.
- I. Phil Carter asked if the board said that it would hold fast to its decision, what would you do.
- J. Ethan McNaughton said there are ample grounds for an amendment and this should be treated as an amendment. You could agree that there is not a specific reference in the permit to prohibit the Brunos from using the road and that would end this issue. We want to preserve their right to use the road. If you vote no, we will appeal. The case law is out there. If it is not in the permit as a condition of the permit, even though it may be in the minutes and have been discussed, then it is not enforceable. He said he would ask Pam Bruno about the use of the driveway since construction. He asked Pam Bruno to tell the board why she doesn't use the driveway instead of Norman Drive.
- K. Pam Bruno said that she has trouble walking up and down the driveway. She also has trouble driving down the driveway in the ice without hitting the snowbank. She said that Bill has to walk her up and down the driveway because she has fallen several times.
- L. Ethan McNaughton asked her if she has gotten hurt.
- M. Pam Bruno said yes, a split lip and she hit the back of her head.
- N. Ethan McNaughton asked Pam Bruno where they park now.
- O. Pam Bruno said about 20 yards down the road at a place Jim McCall lets them use. She said that they have a 4-wheel drive vehicle and they still slide on their driveway. She said they hit the snowbank.
- P. Ethan McNaughton asked about friends or visitors.
- Q. Pam Bruno said that 3 of her friends won't come up the driveway and she has to walk down. Bill walks here down. When she gets home, she calls Bill on the cell and he comes down to help her back up. She said that the friends also cannot get up the driveway.
- R. Ethan McNaughton asked if it is safe to walk on the driveway.
- S. Pam Bruno said absolutely not.
- T. Ethan McNaughton asked if this is year-round.
- U. Pam Bruno said just in the winter. Even with sand, they slide.
- V. Ethan McNaughton asked if anyone else has fallen.
- W. Pam Bruno said that Ethan McNaughton had fallen and other friends have also fallen.
- X. Ethan McNaughton asked if it is a safety concern.
- Y. Pam Bruno said yes.
- Z. Ethan McNaughton asked Pam Bruno about medical records.
- AA. Pam Bruno said that she has essential tremors and it affects her balance. It is worse when she is frightened or cold. It makes it difficult to walk up and down the driveway. She said the condition is an incurable, neurological disease and she takes medication for it.
- BB. Ethan McNaughton asked when they put in their driveway, did you expect this kind of problem.
- CC. Pam Bruno said no, they thought it would be fine.
- DD. Ethan McNaughton said that for Pam Bruno it is a heightened risk and asked her if it is safe for others.

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- EE. Pam Bruno said no, several people have fallen.
- FF. Phil Carter asked if they have considered putting in stairs with a railing.
- GG. Ethan McNaughton said there is no room for stairs. He asked Bill Bruno if people have trouble getting their vehicles up the driveway.
- HH. Bill Bruno said yes. Doris Eddy and Janine Norman won't come up the driveway. When friends come to visit, they get stuck up at the top.
- II. Ethan McNaughton asked Bill Bruno if he has had any incidents.
- JJ. Bill Bruno said he couldn't get out once this year and had to go out Norman. They sand and put out soot.
- KK. Ethan McNaughton asked if there have been times when they have not been able to get out.
- LL. Bill Bruno said yes, and they have been late for appointments.
- MM. Ethan McNaughton asked Bill Bruno if he has slid on the driveway.
- NN. Bill Bruno said yes, the ABS locked and he slid.
- OO. Ethan McNaughton said that at times you park at the top and why.
- PP. Bill Bruno said he parks there or across the street. They can't get out. They also park by Jim McCall's, about 100 yards from the entrance to their driveway. They also have to walk around.
- QQ. Ethan McNaughton asked Bill Bruno if he is safe and does he fall.
- RR. Bill Bruno said he has to assist his wife. He walks her up and down.
- SS. Ethan McNaughton asked if Bill Bruno has seen his wife fall and if he is worried about her safety.
- TT. Bill Bruno said yes.
- UU. Ethan McNaughton asked if use of Norman Drive would alleviate the problems.
- VV. Bill Bruno said yes.
- WW. Ethan McNaughton asked if, at the time they put in the driveway, did they think it would be unsafe in the winter.
- XX. Bill Bruno said no.
- YY. Phil Carter asked if the person who plows sands.
- ZZ. Bill Bruno said sometimes, but once in a while it settles and gets slippery again. Also, sometimes they have to go out before the driveway gets plowed.
- AAA. Phil Carter said this was built in 2004-05, why this length of time before we hear that you need an amendment.
- BBB. Bill Bruno said there was the case with the fence about 4 or 5 years ago.
- CCC. Phil Carter said the decision was in December 2012.
- DDD. Ethan McNaughton said the case was pending for years and it was sometime before they blocked the driveway. It was more geared to them blocking the driveway. They were ordered to take the fence down, but they think the Brunos are violating the permit.
- EEE. Phil Carter asked if, prior to them blocking the driveway, did you have difficulties with your driveway.
- FFF. Bill Bruno said the driveway was blocked before.
- GGG. Phil Carter asked why there are more problems, now.
- HHH. Bill Bruno said we are getting older and Pam's condition.
- III. Phil Carter said that everyone in Vermont has a tough time with ice and snow on driveways. You have been there, going in and out, why more trouble now.
- JJJ. Bill Bruno said we had the driveway paved 3 years ago.
- KKK. Ethan McNaughton asked if they have been using their driveway.
- LLL. Bill Bruno said we park other places. Jim McCall lets us park over there.

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- MMM. Phil Carter asked when this started.
- NNN. Bill Bruno said about 7-8 years ago. In the winter, it gets bad.
- OOO. John Boehrer asked if they had a professional engineer design the driveway.
- PPP. Bill Bruno said yes.
- QQQ. John Boehrer asked if they have gone back to that engineer with these problems.
- RRR. Bill Bruno said no, because there was only one way to do the driveway.
- SSS. Ethan McNaughton asked about recent or old places they park.
- TTT. Bill Bruno said they used to park at the top before Jim McCall said they could park by him.
- UUU. Ethan McNaughton said the reason the driveway is located as it is, is because the lot is not as large as the town Zoning wanted and they replaced the house.
- VVV. Bill Bruno said the old house had improper setbacks and they wanted to build within the codes. He added that before they built the new house, they used Norman Drive.
- WWW. Pam Bruno said they bought in 1976.
- XXX. Ethan McNaughton asked if the prior owners of their property used Norman.
- YYY. Bill Bruno said yes.
- ZZZ. Ethan McNaughton asked if the neighbors decided to block the driveway when you changed your house.
- AAAA. Bill Bruno said yes.
- BBBB. Ethan McNaughton asked if Bill Bruno thought the neighbors tried to use leverage against them because they built the house.
- CCCC. Bill Bruno said he would say yes.
- DDDD. Phil Carter said the ROW exists. The court says it is a matter for the town to limit the manner of use. He said that according to the minutes, you (the Brunos) came forward not to use the driveway.
- EEEE. Bill Bruno said that they had thought it would be easier to use the new driveway, but he also wanted to be able to use Norman.
- FFFF. Ethan McNaughton asked if they wanted to stop using Norman.
- GGGG. Bill Bruno said no.
- HHHH. Ethan McNaughton said that anything can be said in the minutes, but it was not a condition of the permit.
- III. Phil Carter said we understand that. He said we need information. The Court says any reasonable person can read what was said. In 2004, they came before the DRB and clearly said they wished to use Tepper instead of Norman. Part of the site plan is in the permit. It was not specified in the permit, but also says that no changes could be made to the site plan without an amendment. You can't change the site plan which shows Tepper Drive. The permit does support that. The board did leave the process believing that you did not want to use Norman Drive.
- JJJ. Bill Bruno said that is not right.
- KKKK. Phil Carter asked if they always wanted to use Norman.
- LLLL. Bill Bruno said yes.
- MMMM. Ethan McNaughton said that the site plan shows Norman and Tepper. He said we have an issue. The bottom line is that you have heard that their safety is at issue, even though they park away and walk through other's properties. Why would you block a driveway where someone has an ROW? Is it safe to let them use their driveway or try to walk on it? Was it foreseeable when they were here before? Do you think you would create an unsafe condition for them? First, it is not in the permit. The board should find to approve the amendment. They do plow and have asked for the same. They don't want this issue. They do go to great lengths to deal with it and do park

elsewhere. If it were in the permit, that would be different. Where does safety lie? The Brunos are willing to only use Norman from October through April, in the snowy season. They like their driveway. This is unsafe, not only for them. Look at the situation. For 50 years, people who owned this property have used Norman. They built the new house and then the neighbors did not want them to use Norman. Nobody foresaw this issue with their driveway.

NNNN. Phil Carter asked board members for comments. There were none.

OOOO. Patrick Zilvitis said that they (he and his wife) did not press for the Brunos to build a driveway. He asked if board members recall him saying anything about blocking the driveway or pressing them to change their access. He said he was surprised. Then it was 2 houses, 2 driveways. He said he was happy with that. In the first 5 minutes of the permit hearing, Richard Walsh said the Brunos would like to change the access to Tepper and they no longer wanted to use Norman. He said that he takes issue to anyone saying that he coerced them to change their access to Tepper. No one knew it would be unsafe. He said that after the permits were issued and the access was changed, it is a known fact that I asked Rose Goings if I could put shrubs along the drive. She said yes. Someone ran over the shrubs. I then asked Rose Goings if I could put up a fence and was told yes. He said we did not suggest the Brunos change their access.

PPPP. Judy Zilvitis agreed that they did not suggest the access be changed, but that they were happy about it. She said that she cannot always walk to the mailbox on icy days. She said that Bill Bruno told Pat and me that they were not going to use Norman. I sent an email to Rose Goings about it. There are letters on record about the re-routed driveway. We are being blamed for blocking the driveway with a fence. She added that for their safety, they do not want others trying to cut through to the lake to use the road. It does not cut through. She said that they have 12 grandchildren in the yard and they wanted to make it obvious to others that it is not a cut through and people should not be using the road.

QQQQ. Jim Norman said that his property has been in the family for 56 years and the ROW has never been a problem. He said that he has no issue with them using the ROW.

RRRR. Janine Norman said that she does not see why the Brunos have to park so far away because it is easier to use Norman Drive. She said that she has seen Bill Bruno go to pick up Pam Bruno and then go back.

SSSS. Doris Eddy said that she will not use the Bruno's driveway, even in the summer. She said that Bill Bruno always has to help Pam Bruno. It is a dangerous driveway.

TTTT. Ethan McNaughton said there is no question that the Brunos wanted to put in their own driveway. The issue is if they wanted to relinquish use of Norman Drive. That is not in the permit. Legally, if it is not expressly part of the permit, even if it was discussed at the permit hearing, then it is not enforceable. How would anyone know what was said in the meeting minutes. Their safety is based on changed circumstances. The town attorney looked at this. We can't look at the minutes. Superior Court suggested a compromise for winter use, but if Mr. and Mrs. Zilvitis sell the property, that the Bruno's right to use the driveway in the winter continue with any new owners of the Zilvitis property.

UUUU. Patrick Zilvitis referred back to the permit and the process, including the meetings, is part of the permit. We have thought about a compromise and will offer that Pam Bruno can use the driveway from November 1 through March 31. He said that they do not feel good about the situation about stating what would happen if our property changes hands. Our original thoughts were that the permit hearing was fair and good.

The process was good and the minutes and meeting were good. Pam Bruno would be allowed to drive on the driveway for as long as she is able to drive. If she is no longer able to drive (or no longer lives) it reverts back to our property. Also, he would like the Brunos to put up a barrier in the off season. He said that he has a letter to describe this.

VVVV. Ethan McNaughton said that the deadline for submitting evidence was February 26<sup>th</sup>. He said that we did not have a chance to see this letter. We want this resolved today. He said that they also attached a letter from Chris Callahan where he says that the situation has been litigated and is not subject to enforcement by the Ludlow Zoning Administrator.

WWWW. Phil Carter said that Chris Callahan is not part of tonight.

XXXX. Ethan McNaughton said that he can give you a copy of the letter from Chris Callahan. He said he has reviewed the town's position. The permit has a new access, but does not limit the Brunos to using just Tepper. There is nothing about limiting use, therefore it is not enforceable.

YYYY. Rose Goings said that Chris Callahan's first letter is on file and also his subsequent letter.

ZZZZ. Patrick Zilvitis said that it superseded the first letter. He said that Phil Carter and Chris Callahan went through the minutes and Chris said it was the purview of the town to say that the Brunos may not use the access from Norman Drive.

AAAAA. Phil Carter said that the board has enough evidence.

BBBBB. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

### 3. **APPROVE MINUTES**

A. Phil Carter advised that the minutes to be reviewed are from the meeting of January 12, 2015.

- i. Phil Carter said that Item 3I on page 3 should read "he knew..."
- ii. Julie Nicoll said that Item 3U on page 3, should say "raze and rebuilt."
- iii. Phil Carter indicated that Item 4/5 AA on page 6 should read "would there be any color..."
- iv. Julie Nicoll said that Item 7B iv on page 8 should read "...house behind the talc mill..."

v. **MOTION by John Boehrer and seconded by Phil Carter to accept the minutes from January 12, 2015 as corrected. Motion passed unanimously.**

### 4. **OTHER BUSINESS**

A. Approved Permits

- i. Rose Goings advised that Frank Heald had suggested that the board may want to mention permits that have been recently approved. She advised that from the January meeting Mojo's Café, Aubuchon's and IMERYS Conditional Use Amendment and Local Act 250 Review were all approved.

5. **ADJOURN**

- A. **MOTION by Phil Carter and seconded by John Boehrer to adjourn this meeting.**  
**Motion passed unanimously.**
- B. Meeting adjourned at 7:04 p.m.

Respectfully submitted,

Lisha Klaiber

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Phil Carter, Chairman

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Julie Nicoll

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John Boehrer

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Linda Petty

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Richard Harrison