

Dover City Council
Municipal Building
Dover NH 03820

October 20, 2009

RECEIVED

OCT 20 2009

**CITY MANAGER'S OFFICE
DOVER, NH**

RE: Middle Road Right of Way

NOTICE --- INSTRUCTIONS TO CEASE TRESSPASS

Dear Councilors;

I have asked on several occasions and for more than a year ago to have this matter brought before the Council. The manager and attorney have refused to add this matter to your agenda. Resolution of the Middle Road bounds requires under New Hampshire Statutes for the City to re-survey Middle Road and re-establish lost bounds the Council should be involved. This letter requests the Council to act as prescribed and order the Middle Road bounds to be re-established. (see RSA 231:135, 231:17, and 228:35).

The City of Dover (Manager, Attorney, City Engineer) admits the City has constructed Middle Road outside the recorded right of way and has continues to widen and pave lands not within the bounds of the recorded way. The bounds of the Middle Road ROW are described by description and by two maps contained in Book 6 of the New Hampshire Highway Source Records. The centerline of the recorded way is the property boundary between adjoin property owners.

When Middle Road was reconstructed approximately five years ago, the road was moved off the established right of way to the east. Plows have recently operated an additional distance off the recorded Right of Way. As a result, the Williams have sustained considerable damage to their property and the changes have caused a more dangerous egress that existed previously. Two winters ago (2007-2008) and thereafter City plows caused considerable damage to a stone wall constructed on the lands of the Williams. The Williams submitted a claim for the damage in the amount estimated to repair and restore the wall. As part of this claim the Williams attempted to resolve the larger boundary problem. As a result of the Williams asking the City to re-establish the boundary by survey, the City asserted to its insurance carrier its Right of Way extended well beyond the recorded Right of Way and that used and improved by the City. A number of requests were then made for the City to provide evidence as to its claims as to the bounds of Middle Road. The City has supplied only the 1767 recorded ROW which the Williams agree. The City is however unable to identify the described bounds as they relate to the lands of the Williams.

In 2008, I scheduled an appointment with Michael Joyal to develop a procedure to resolve my and other affected land owners' issues concerning the Middle Road Right of Way and to recover damages sustained to real property. To advance a fair resolution, Michael Joyal was asked to have the

boundary re-established as should have occurred as part of the Middle Road reconstruction. Michael Joyal failed to appear at this scheduled meeting then refused to reschedule. The Manager sent an e-mail asserting the City did not recognize the recorded 1767 Right of Way bounds but the bounds claimed by Attorney Krans which were unknown, not defined, and not established at the site.

Attorney Krans asserted the City would not resolve the boundary by agreement and Williams would be required to sue the City if they wished to contest the City's taking of their private property and damages sustained by City plows. We have continued to seek resolution without litigation. It is appropriate in the interest of its citizens, for the council to intervene and take actions necessary to properly re-establish this lost boundary.

1. The 1767 Middle Road Right of Way documents are housed in the State of New Hampshire Archives. The City of Dover's Planning Department, Legal Department, Community Services Department, Engineering Department, Police Department, and Manager's Office each have copies of the copies of the recorded Way. No other written right of way exists to describe the bounds in this location. The City attorney upon request was unable to provide any document disputing these recorded bounds.
 - a. New Hampshire RSA 539:6 prohibit's landowners and other from asserting possession of the City's 1767 recorded ROW by adverse possession. As a matter of law, the bounds described by the 1767 recorded Middle Road Right remained today as described and recorded.
 - b. The City Council has at no time divested its rights to the recorded way.
 - c. Plans, maps, and/or deeds that do not recognize the recorded bounded Middle Road Way are in error.
 - d. No adverse possession claim been ever been asserted in writing against the Williams land except as described by the 1767 recorded Middle Road way. The City recognizes it does not own the land on which Middle Roads occupies and the abutting owners own to the centerline of the recorded way.
 - e. In 2007, the City of Dover Engineer agreed in writing the bounds of the 1767 recorded ROW were binding on the City and property owners.
2. During the recent Middle Road reconstruction, the City extended its claim to its ROW and trespassed, improved, and paved portion of the current Middle Road never claimed, used, or improved prior to that date.
 - a. The City did not comply with the requirements of RSA 231:17 in taking this land.
 - b. As part of this project, 3-4 feet of additional never acquired lands were taken, improved, and paved without notice and without the City complying with New Hampshire laws.
3. In 2007, the City of Dover was asked to cease and desist participating in the taking of trees on the lands of the Williams.
 - a. After a detailed investigation, which included examination of deeds, documents, and meetings with the Community Services Director and City Engineer, the Dover Police

- determined in writing the bounds of Middle Road at this location were unknown and undetermined.
- b. This written report alone is sufficient to require the City to re-surveying and re-establishing the location and bounds of the Middle Road at this location under RSA 231:135.
4. In 2007 and 2008, the City of Dover Community Services Director stated verbally the City would pay the costs to restore damages sustained to the stone wall on the Williams property.
 - a. Following this and without any document to support his claim, the City Attorney became involved and represented the City's ROW is whatever the City asserts the bounds to be and the City does not have to comply with New Hampshire statutes regarding the taking of private lands unless ordered to do so by a Court.
 - b. Attorney Krans asserted to Craig Williams he would be required to sue the City of Dover if he wished to contest the bounds the City chooses to assert now or in the future, establish the legal ROW bounds, and/or recover from damages sustained to their property at the hands of the City.
 5. Following the City admitting in writing the bounds of Middle Road had been lost, the Williams made a request pursuant to RSA 231:135 for the City to re-survey the lost bounds. The City Manager empowered to comply with this request and New Hampshire Statutes has refused to commission the re-survey to re-establish the bounds.
 - a. Absent re-establishing the bounds, the City may not claim any lands of the Williams to be within the ROW and is in violation of RSA 231:17 as the City has asserted claim to lands of the William without deed, without a survey, without any document, and without compensation to the Williams.
 - b. The Williams reserve their rights to petition the Superior Court under RSA 228:35 if necessary following completion of this re-survey if financial compensation for lands taken is not deemed just.
 - c. RSA 231:17 prohibits the City from appropriating lands of the Williams for public use until the re-survey is performed, damages are assessed, and damages paid.

As a result of the refusal of the City to address and resolve the boundary and right of way issues as required by New Hampshire Statute, the owners have no choice but to issue to the City a cease and desist order to prohibit all trespass on the lands of the Williams outside the legally recognized and recorded Middle Road Right of Way.


The City is again requested to comply with the requirements of RSA 231:135 and re-survey the lost bounds and fully comply with RSA 231:17 prior to asserting claim to any lands outside the recorded Right of Way.

The City is again requested to provide any document upon it relies to assert claim to lands outside the recorded 1767 ROW.

This cease and desist request includes plowing outside the bounded and recorded Right of Way, removing paving placed outside the right of way, and restoring impacted and damaged lands, wall, and grounds to their pre-impacted condition.

A response to this request with 14 days would be appreciated.

Thank you,


R. Craig Williams

154 Middle Road

Dover, NH 03820

603.742.7200

Enclosures: 1767 Middle Road Deed and maps from NH State Archives

RIGHT OF WAY SOURCE RECORDS

Middle Road Highway T. L. Town of Dover
 by Upper Neck school S. A. Taken from
 Dover Town }
 County } Book 6 Page 21 Year 1767
 General Court Sessions Records, Henry Page
 cover

EXTRACT

2 rods.

Whereas we the subscribers have been Desired By
 Sundry of the Inhabitants of the Town of Dover to lay out
 a highway in Dover & where the way now goes from the
 Road leading to Canneps slip (so called) up along By John
 Perkins Thomas young Nichols Hartford Joseph Bickford
 John Cromwell Benjamin Roberts Jonathan Bickford
 William Hanson William Twombly houses or near
 thereto which said highway we have laid out as follows
 viz. Beginning on the north side of the way leading
 to said Canneps Slip about 38 rod from high water
 mark then running North 7° East 48 rod then North
 5° West 56 rod then running North 25° East 36 rod
 then North 28° West 36 rod then North 55° West
 76 rods to ye road leading to Husberrys hill then
 North 10° East 103 rod along by sd. Joseph Bickfords
 house until it comes to the northeast corner of John
 Cromwells Land near opposite to sd. Benjamin Roberts
 Barn & then running West as the way now goes
 leading up over Middle Point Bridge so called 56
 rod then North 38° West 24 rod then North 55°
 at 124 rod then north 6° West 132 rod then
 south 60° West 36 rods then North 75° West 54 rod
 then 55° West 28 rod then south 80° West 28 rod until
 it comes to the main road leading from Cochesco
 to Hilton Point Ferry the said way to hold the full
 width in its widest extent as it now is & not
 less than two rods wide in any part from said
 Canneps slip to sd. road leading to Hiltons Point
 ferry.

The said way was laid out & Bounded By us
 this 18th Day of July 1767

Brot to Record ye By	Clement Meserve	} select men of Dover
21st Day of March	John Gage Jun	
1768.	Math. Horn	
	Ephm Ham	
Recorded By	Daniel Hayes	
Ephm. Hanson		
Town Cler.		

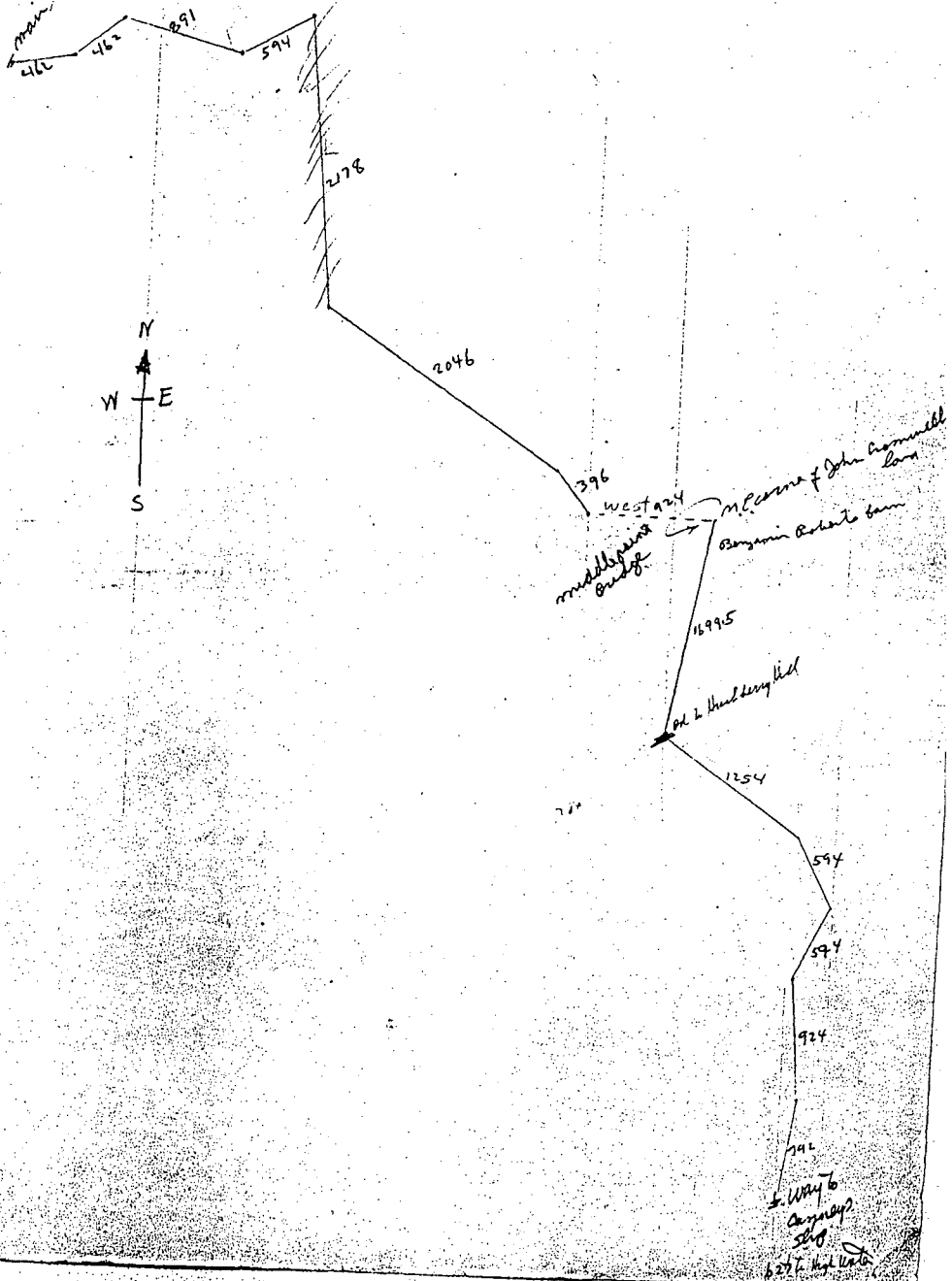
Cromwell
 Bickford
 Hanson
 Hartford

1767 road
Oct 6 pg 21
Open
Cave

Main Rd. connects to Kilton Pond



Grade 11-1500'



Way to
Cave
Slope
627 ft. high

