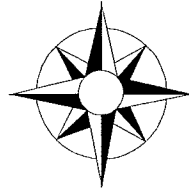


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GILFORD, NH 03249
603-524-4963, (fax 524-1978),
snix@metrocast.net



January 4, 2022

Scott Myers, City Manager
City of Laconia
45 Beacon Street East
Laconia, NH 03246

Re: Petition to Layout a Class V Highway – Cottonwood Ave. cul-de-sac
Our file number:

Dear Mr. Myers:

Please find enclosed a Petition to Layout A Highway requesting that the City Council find that there is an occasion to layout a Class V highway over the Cottonwood Ave. cul-de-sac filed on behalf of Nancy Ettelson and Matthew Lahey. Also attached is a Memorandum in Support of Petition to Layout a Class V Highway Over the Cottonwood Avenue Cul-de-Sac.

I have also enclosed a USB thumb drive with the Petition and related documents for ease of circulation to the Council.

Please contact me if you need additional information. Thank you in advance for your consideration in this matter.

Sincerely,

Stephan Nix

cc via email:

N. Ettelson
M. Lahey
Laura Spector-Morgan, Esq.
Joseph Driscoll, Esq.
Megan Carrier, Esq.
Christopher Cole, Esq.

CITY OF LACONIA

STATE OF NEW HAMPSHIRE

CITY COUNCIL

PETITION TO LAYOUT A HIGHWAY

To: The Mayor and Council of the City of Laconia, Belknap County, New Hampshire

Date: December 18, 2021.

The undersigned represent that for the accommodation of the public, there is occasion to layout a Class V highway at the following location:

A certain cul-de-sac at the north end of Cottonwood Ave. depicted on a plan entitled "The Taylor Home, Laconia, New Hampshire, Taylor Retirement Community, Subdivision Plan" dated June 1987, by RistFrost Associates, Inc. on file in the records of the City of Laconia Department of Public Works (attached hereto and made a part hereof), more particularly described as:

Beginning at an iron pin found at the end of stone wall on the easterly side of Cottonwood Ave. at the northwest corner of land now or formerly of Bernard Lacroix;
Thence N 34° 3' 30" E, a distance of 42.63' to an iron pin set;
Thence on a curve to the right with a radius of 37.64' and length of 36.77' to an iron pin set;
Thence on a curve to the left with a radius of 70.00' and a length of 61.32' to an iron pin set at land of Taylor Community;
Thence on a curve to the left with a radius of 70.00' and length of 219.91' to an iron pin set;
Thence S 02° 36' 35" W, a distance of 54.49' to an iron pin set;
Thence on a curve to the right with a radius of 149.18', length of 81.88' and delta angle of 31° 26' 55" to an iron pin set at the northeast corner of land now or formerly of Richard Perley on the westerly line of Cottonwood Ave.;
Thence N 57° 49' 18" W, a distance of 50.11' along the north end of the existing Cottonwood Ave. to the point of beginning.
Containing 0.42 acres more or less.

The undesigned Petitioners therefore request that the City Council layout a Class V highway within the above described area.

Signatures to follow.

PETITION TO LAYOUT A HIGHWAY
COTTONWOOD AVE., LACONIA, NEW HAMPSHIRE

Daniel Schipani
Print Name:
Address: 1 Gattynwood Ave
Laconia NH

Date: 12-18-21

Donald H. Hartman
Print Name:
Address: 1 Cottonwood Ave
Donald H. Hartman

Date: 12-18-21

Erica L. Duncan
Print Name:
Address: 72 Walker St
Erica L. Duncan

Date: 12-18-21

Kristen J. Bostrom
Print Name:
Address: 68 Walker St
Kristen Bostrom

Date: 12/18/21

BRIAN WENTWORTH
Print Name:
Address: 54 WALKER ST
LACONIA NH

Date: 12-18-21

Sheryl A. Weaver
Print Name:
Address: 38 Walker St
Laconia NH 03346

Date: 12/18/21

Print Name: _____
Address: _____

Date: _____

Add additional signature pages as necessary.

PETITION TO LAYOUT A HIGHWAY
COTTONWOOD AVE., LACONIA, NEW HAMPSHIRE

James Arsenault
Print Name: James Arsenault
Address: 71 Cottonwood Ave
Laconia NH 03246

Date: 12/18/21

Beth Arsenault
Print Name: Beth Arsenault
Address: 71 Cottonwood
Laconia, NH 03246

Date: 12/18/21

Jeff Belli
Print Name: Jeff Belli
Address: 30 Cottonwood Ave
Laconia, NH 03246

Date: 12/18/21

Michael Brady
Print Name: Michael Brady
Address: 30 Cottonwood Ave
Laconia NH 03246

Date: 12/18/21

John Gattuso
Print Name: John Gattuso
Address: 23 Cottonwood
Ave Laconia 03246

Date: 12/18/21

Janet Brough
Print Name: Janet Brough
Address: 17 Cottonwood Ave
Laconia NH

Date: 12/18/21


MICHAEL BROUGH
Print Name: MICHAEL BROUGH
Address: 17 COTTONWOOD AVE.
LACONIA, N.H. 03246

Date: 12 18 21

Add additional signature pages as necessary.

PETITION TO LAYOUT A HIGHWAY
COTTONWOOD AVE., LACONIA, NEW HAMPSHIRE

NANCY ETTELSON
Print Name:
Address: 79 COTTONWOOD Ave
LACONIA, NH

Date: 12/18/2021


KRIS LAHEY
Print Name:
Address: 48 COTTONWOOD AVE
LACONIA NH

Date: 12/18/2021

MATT LAHEY
Print Name:
Address: 48 COTTONWOOD AVE
Mina Falls

Date: _____

Print Name: _____
Address: _____

Date: _____

Print Name: _____
Address: _____

Date: _____

Print Name: _____
Address: _____

Date: _____

Print Name: _____
Address: _____

Date: _____

Add additional signature pages as necessary.

STATE OF NEW HAMPSHIRE

CITY OF LACONIA

BELKNAP COUNTY

LACONIA CITY COUNCIL

MEMORANDUM IN SUPPORT
OF PETITION TO LAYOUT A CLASS V HIGHWAY
OVER THE COTTONWOOD AVENUE CUL-DE-SAC

Now comes Nancy Ettelson, by and through her attorney, Stephan T. Nix, Esq., and Matthew Lahey, pro se, and jointly file this Memorandum in Support of Petition to Layout a Class V Highway Over the Cottonwood Avenue Cul-De-Sac. The following is offered in support hereof:

1. Nancy Ettelson, Trustee of the Nancy J. Ettelson Living Trust, owns her home located at 79 Cottonwood Ave., Laconia, N.H. (Tax Lot 390-267-5).
2. Mathew Lahey and Krista L. Lahey, Trustees of The Lahey Family 2015 Trust, own the home at 48 Cottonwood Ave., Laconia, N.H. (Tax Lot 408-267-4).
3. The Taylor Community (“Taylor”) owns property located at 80 Cottonwood Ave., Laconia, N.H.
4. Taylor owns property located at the end of Cottonwood Ave. (Tax Lot 391-220-18-1), (the Taylor Community campus).
5. *See Ex. A*, Laconia Tax Map.
6. Cottonwood Ave. was originally depicted on a plan entitled “Laconia, N.H. Plan of Cottonwood Avenue Showing Adjacent Lots” dated September 1944, by A. E. Hoxie, C.E., recorded in the Belknap County Registry of Deeds at Plan Book 2, Page 123. *Ex. B*. The road dead ended without a turnaround.
7. On July 13, 1987, the Laconia Planning Board approved a two lot subdivision plan entitled “The Taylor Home, Laconia, New Hampshire, Taylor Retirement Community,

Subdivision Plan” dated June 1987, by RistFrost (the “Taylor Home Subdivision Plan”).

Ex. C, attached hereto.

8. The land depicted on the Taylor Home Subdivision Plan was deeded to the Taylor Home Incorporated by Claude D. & Gladys N. Plummer and Paul L. Normandin by deed dated December 18, 1986, recorded at the Belknap County Registry of Deeds at Book 981, Page 334. (hereinafter “BCRD Bk./Pg.”),
9. Although not recorded in the registry of deed, the Subdivision Plan is filed with the Laconia Department of Public Works.
10. The Subdivision depicts a cul-de-sac at the end of Cottonwood Ave. with the notation “To Be Deeded to the City of Laconia.”
11. The 2 lots depicted on the Subdivision Plan were conveyed by The Taylor Home, Inc. to the following:
 - a. To Paul L. Normandin by deed dated July 29, 1987, at BCRD 1014/603 (now Ettelson, 79 Cottonwood Ave.). *Ex. D*.
 - b. To Claude D. & Gladys N. Plummer by deed dated July 29, 1987, at BCRD 1014/605 (now Taylor, 80 Cottonwood Ave.). *Ex. E*.
12. Under state law there are four methods to create a public road (RSA 229:1):
 - a. Layout by mode prescribed by statute;
 - b. Road constructed on land conveyed to the City by deed;
 - c. Dedication and acceptance; and
 - d. Use by the public for 20 years prior to January 1, 1968.
13. “Dedication is the devotion of land to a public use by an unequivocal act of the owner of the fee manifesting an intention that it shall be accepted and used presently or in the

future for such public use. ... Once a dedication is effective, the public (represented by the municipality) gains land for a public purpose without cost." Hersch v. Plonski, 156 N.H. 511, 515 (2007).

14. By filing the Taylor Home Subdivision Plan, Taylor dedicated the cul-de-sac to the City.

“An offer of dedication of a street may be made in several ways, among them by the filing of a subdivision plan with a planning board.” Polizzo v. Hampton, 126 N.H. 398, 401 (1985)

15. The cul-de-sac was constructed according to City standards in 1987 – 1988.

16. To date Taylor has not deeded the cul-de-sac to the City of Laconia.

17. To date the City of Laconia, City Council, has not formally accepted the cul-de-sac.

18. In October of 2019, Taylor filed a site plan application with the Laconia Planning Board to reconfigure the boundary lines of the circular cul-de-sac to create a “Y” shaped turn-around. *Ex. F.*

19. Nancy Ettelson and Mathew Lahey objected to the proposed changes in the boundary lines of the circular cul-de-sac arguing in part that the proposed “Y” will force all vehicles to perform multi-point turns to turn around where the cul-de-sac allows people to drive around.

20. At their December 3, 2019, meeting the Planning Board denied Taylor’s application for reasons outlined in the minutes of the meeting. *Ex. G.*

21. Taylor appealed the Planning Board decision to the Superior Court. *See Taylor Community v. City of Laconia*, et al, Belknap Superior Ct. Docket 211-2019-CV-00377.

22. Ettelson and Lahey joined the lawsuit and counterclaimed, among other things, that:

- a. The Taylor Home dedicated the cul-de-sac to the City by filing the 1987 Taylor Home Subdivision Plan; and
 - b. That the cul-de-sac was implicitly accepted by the City through public use and maintenance.
23. Through cross motions for partial summary judgment, the Court has determined that:
- c. The cul-de-sac was dedicated to the public in 1987 (as stipulated by the parties).
 - d. The dedication has not been released by the City Council under the provisions of RSA 231:51.
 - e. The dedication remains in effect; and
 - f. The dedication has not been implicitly accepted as public road.
24. Although other issues in the suit remain to be settled; Taylor waived their appeal rights that the cul-de-sac dedication remains in effect by not filing a motion for reconsideration of the Court's amended findings in its November 2, 2021, Order on the motions for summary judgment. *See N.H. Superior Ct. R. 12(e)* and State v. Mouser, 168 N.H. 19, (2015) and DiMinico v. Centennial Estates Coop., Inc., 173 N.H. 150, (2020).
25. The Cottonwood Ave. cul-de-sac remains dedicated to public use but not yet accepted.
26. The attached Petition requests that the City Council layout the cul-de-sac as a Class V highway pursuant to statute. *See* RSA 231:1 – 33.

Occasion to Layout a Highway

27. The layout procedure may be used to layout a Class V highway over a dedicated street that has not been formally accepted. *See Local Gov't Center, A Hard Road to Travel*, (2004), p. 40. *See also* Locke Development Corp. v. Town of Barnstead, 115 N.H. 642 (1975). *See also* *Alfano, Roads Revisited*, 46 NHBJ 56, 59 (Fall 2005), (*See* §III.A.1

where “[l]aying out highways requires municipalities to compensate affected property owners. No compensation is required, however, when a road has already been dedicated to public use, such as by being shown on a recorded plan or by being referenced in deeds”). *See also Local Gov’t Center, A Hard Road to Travel, New Hampshire Law of Local Highways, Streets and Trails*, p. 41, (2004).

28. There is a two-step process in determining whether there is an occasion for laying out a road as outlined in Crowley v. Town of Loudon, 162 N.H. 768 (2011):

- g. Balance the public interest in the layout against the rights of the affected landowner. If the rights of the affected landowner outweigh the public interest, there is no occasion for laying out the road.
- h. If, on the other hand, the public interest justifies taking the land without the landowner's consent, then the court must engage in a second step, which is to balance the public interest in the layout against the burden imposed upon the town. If the balancing required by the second step favors the public interest, occasion for the layout exists.

Balance the public interest in the layout against the rights of the affected landowner.

29. In Crowley v. Town of Loudon, 162 N.H. 768 (2011) the New Hampshire Supreme Court outlined what the City Council may consider, among other factors, when assessing the “public interest”:

- i. Integration within an existing road system;
- j. Ease of existing traffic flow;
- k. Improvement to convenience of travel;
- l. Facilitation of transportation for school children;
- m. Improved accessibility to business district and employment centers;
- n. Improved accessibility for fire, emergency and police services;

- o. Whether it would benefit a significant portion or just a small fraction of the town tax base or year-round residents; and
 - p. Anticipated frequency of road use.
30. The Cottonwood Ave. cul-de-sac is at the end of the dead end Walker Street and Cottonwood Ave. From the intersection of Walker Street with Butler Street to the dead end cul-de-sac is about 1,800 feet.
31. There are approximately 30 houses with frontage on the dead end portions of Walker Street and Cottonwood Ave. and that rely upon the cul-de-sac to turn around vehicles with trailers and large trucks and vehicles. All vehicles that are not using a private driveway to turn, must use the cul-de-sac to reverse direction.
32. In this case the Cottonwood Ave. cul-de-sac is integrated into the existing road system by providing a 70' diameter circular cul-de-sac at the end of an 1,800' dead end road (Walker Street and Cottonwood Ave.) in the densely developed portion of Laconia.¹
33. Ease of existing traffic flow and improvement to convenience of travel is provided by the circular cul-de-sac allowing vehicles to drive forward around the circle avoiding multi point turns and turning in private driveways. Cottonwood Ave. is traversed by tractor trailer trucks, delivery trucks, electric-telephone-cable utility trucks with trailers, landscaping trucks with trailers, residences & their guests with vehicles and trailers; all of which use the cul-de-sac on a daily basis to drive forward around the circle. "T" or "Y" or the elimination of the turn-around will require large vehicles to negotiate multi-point turns to reverse direction. This option is unsafe and a waste of time.

¹ Although the Petition is for the "statutory layout" of the cul-de-sac the cul-de-sac as designed and constructed meets the requirements of City of Laconia Code Ch. 197, "Streets, Acceptance of." §197-4.A requires "harmony and coordination with the existing street system of the City." §197-8, "cul-de-sacs" requires a "one end permanently closed (cul-de-sac) shall be provided at the closed end with a turnaround roadway having a minimum radius for outside curve of at least 60 feet." The Cottonwood Ave. cul-de-sac meets these requires with a radius of 70'.

34. There is currently a special needs child living on the street that is picked up and dropped off during school days by a school bus. The school bus uses the cul-de-sac twice daily to turn around.
35. The cul-de-sac provides improved accessibility for fire apparatus, ambulances, police, public works plow trucks, public works sewer & water maintenance trucks. All municipal services provided to Walker Street and Cottonwood Ave. will require additional time and resources to negotiate multi-point turns to reverse direction. The lost time will cost additional taxpayer dollars.
36. There are 32 properties (30 houses and 2 lots), not including the Taylor Home main campus, that front on the dead end Walker Street and Cottonwood Ave. The combined assessed value of the properties is \$6,775,400. This is a significant portion of the tax base in Laconia. Using the 2020 Laconia tax rate of \$19.72, the properties generate \$133,581.17 in tax income to the City per year. The marginal cost to the City of maintaining the cul-de-sac is negligible compared to the tax generated.
37. The cul-de-sac is used on a daily basis by the City, residents, service vehicles, emergency vehicles and others. Common sense dictates that the use of the cul-de-sac to reverse direction on Walker and Cottonwood Ave. occurs all day long given the amount of traffic that 32 residential properties generate.
38. Taylor's intended purpose of reconfiguring the cul-de-sac is for the construction of one additional residential unit within the land area of the cul-de-sac. *See Ex. H*, "Easement Plan – Option 3 ... For The Taylor Community" dated June 1, 2020.
39. The interest of the City in laying out a circular cul-de-sac that provides a safe and efficient traffic flow for an 1,800 ft. dead end street with 30 houses far outweighs

Taylor's desire to construct one additional residential unit. Taylor's one additional unit will cause all traffic (including trucks, fire engines, police, ambulances and service vehicles) to negotiate unsafe and time consuming multi-point turns to reverse direction.

40. Therefore, the first test has been satisfied and the City Council must balance the public interest in the layout against the burden imposed upon the City.

Balance the public interest in the layout against the burden imposed upon the town.

41. In this case, Taylor dedicated the cul-de-sac for public use. The City of Laconia gained the land for a public purpose without cost. See Hersch v. Plonski, cited above.

42. The cul-de-sac is already constructed and has been in use since 1987 (34 years). The design of the cul-de-sac meets the standards for a public highway in Laconia. There is no evidence that the condition of the cul-de-sac is deteriorating or will be costly for the City.

43. This City has been historically plowing and maintaining the cul-de-sac for 34 years. The marginal cost to continue to plow and maintain the cul-de-sac is negligible.

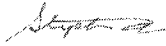
44. The benefit to the public far outweighs potential burdens imposed upon the City.

Conclusion

The evidence supports that the City Council may find an "occasion to layout" the cul-de-sac at the end of Cottonwood Ave. as a public highway.

Respectfully submitted:

Nancy J. Ettelson, Trustee
By her attorney



Stephan T. Nix, (NH Bar # 12923)
25 Country Club Road, Suite 502
Gilford, NH 03249
603-524-4963
snix@metrocast.net

Date: January 4, 2022

/s/ Matthew J. Lahey
48 Cottonwood Avenue
Laconia, NH 03246
Tel: 603-524-4494
NH Bar 1415
matt@laheylawnh.com

Date: January 4, 2022