

STATE OF NEW HAMPSHIRE

CITY OF LACONIA

BELKNAP COUNTY

LACONIA CITY COUNCIL

**TAYLOR COMMUNITY'S ANSWER, OBJECTION, AND AFFIRMATIVE DEFENSES  
RELATIVE TO PETITION TO LAY OUT A CLASS V HIGHWAY**

The Taylor Community ("Taylor"), by and through its counsel, Sheehan Phinney Bass & Green, PA, respectfully answers and objects to the "Petition to Lay Out a Highway" over a cul-de-sac located on Taylor's property (the "Petition"), stating as follows:

1. By the Petition, the Mayor and Council are asked to lay out a public highway over a Cul-De-Sac located at the end of a dead end road, which does not connect to any other public streets, and which is used sparingly by a small number of citizens.
2. The Petition lacks merit, and must be denied, for multiple reasons.
3. First, there is no occasion to lay out the Cul-De-Sac as a public highway, as required by state statute.
4. Second, there is no public need for the Cul-De-Sac to be accepted as a public highway, as required by City code.
5. In conducting the occasion and public need analyses, the Mayor and Council should note the Cul-De-Sac's status as private property is the subject of litigation to which the City is a party, which has been ongoing since December 2019. In connection with that litigation, the City took no position with respect to summary judgment motions pursuant to which the other parties disputed whether the Cul-De-Sac was Taylor's private property or a public highway. In taking no position on those pleadings, the City implicitly demonstrated its view that there is no occasion or public need for the Cul-De-Sac as a public highway. Any decision by the City to now take the opposite position would constitute reversible error.

6. In addition, Taylor's alleged offer to deed the Cul-De-Sac to the City in 1987 is irrelevant to these proceedings. To the extent Taylor made any such offer, the City did not act on it for thirty-five years, and Taylor, in reliance on that lack of action, has now spent a significant amount of money, not to mention time associated with a years-long litigation, fighting in court to protect its ownership of the Cul-De-Sac. Given the City's lack of action, and Taylor's reliance thereon, the alleged dedication cannot be considered as a factor which would support a decision to grant the Petition. If the City does grant the Petition, Taylor expects and demands just compensation which accounts for the impact that the taking will have on Taylor's ability to develop its property as a whole.

7. For the foregoing reasons, and for the reasons set forth in Taylor's accompanying Memorandum, Taylor respectfully requests that the Mayor and Council deny the Petition.

#### AFFIRMATIVE DEFENSES

1. There is no occasion for a layout of the Cul-De-Sac, as required by state statute.

2. There is no public need for the Cul-De-Sac as a public highway, as required by Laconia City Code.

3. The doctrine of waiver bars the City from relying on Taylor's alleged 1987 dedication of the Cul-De-Sac in connection with a decision to lay out the Cul-De-Sac.

4. The doctrine of laches bars the City from relying on Taylor's alleged 1987 dedication of the Cul-De-Sac in connection with a decision to lay out the Cul-De-Sac.

5. The City is judicially estopped from concluding that there is an occasion or a public need for the Cul-De-Sac to become a public highway.

6. In the event the City takes Taylor's private property, Taylor is entitled to just compensation.

Respectfully submitted,

**TAYLOR COMMUNITY**

By and through its attorneys,

SHEEHAN PHINNEY BASS & GREEN, PA

Dated: April 4, 2022

By: /s/ Megan C. Carrier

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**Certification of Service**

The undersigned certifies that a true and correct copy of this Memorandum, and all related Exhibits, was provided to the Petitioners' Counsel, Stephan T. Nix, and to Matthew J. Lahey, at the addresses provided in their Petition to Layout Class V Road.

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Megan C. Carrier, Esquire