

**Heritage Commission  
Danville, NH  
Minutes of August 10, 2016 Meeting**

**Members Present:** Carol Baird (Chair), Mary Ann DiStefano (Vice Chair), Michele Boyd (Alternate), Marguerite Guilmette (Alternate)

**Also Present:** Laurie Crevatis (Clerk)

**Absent & Excused:** Judi Cogswell (Selectperson Member), Aamber-Rose McIntyre (Member), Linda Roth (Member)

Carol called the meeting to order at 7:30 p.m. The meeting was televised. Carol appointed Michele and Marguerite as voting members in place of Aamber-Rose and Linda.

**Draft Minutes of July 13, 2016**

The draft minutes of the July 13, 2016 meeting were reviewed. Mary Ann made a motion to accept the minutes of July 13, 2016 as revised. Marguerite seconded the motion and it passed unanimously.

**Draft Minutes of July 27, 2016**

The draft minutes of the July 27, 2016 meeting were reviewed. Michele made a motion to accept the minutes of July 27, 2016 as revised. Marguerite seconded the motion and it passed unanimously.

**Draft Non-Public Minutes of May 11, 2016, May 25, 2016 and June 8, 2016**

Carol suggested deferring review of these minutes until more members who were present at them will be available, and everyone agreed.

**Mail/Announcements**

- A calendar was received from the New Hampshire Humanities Council.
- An email was received from the Seacoast Area Heritage and Historical Meeting Group. On October 15, 2016 there will be a meeting among various heritage and historical commissions in North Hampton from 9:30 a.m. to 1:00 p.m. Nadine Miller of the New Hampshire Division of Historical Resources will speak about Section 106, the New Hampshire Historic Preservation Act. Carol said she attended one of these meetings in the past and it was excellent and interactive with great speakers. Also, it was a good networking experience. Carol will notify the board when registration begins. If there is a cost involved, Heritage has money allocated for this in its budget. It is sponsored by the New Hampshire Historic Commission, as well as the Rye and Stratham Historic Commissions.
- An employee policy manual was received for Laurie Crevatis.

**Discussion**

50  
51 **1. Old Home Day**

52  
53 Bill Gard informed Carol he is scheduled for hip surgery next week and he asked if a Heritage  
54 member could man the Old Meeting House if he is unable to.  
55

56 Carol spoke to Linda Roth and she is going to drop off more brochures at Carol's house as  
57 well as costumes and Carol will give the brochures to Aamber-Rose to fold.  
58

59 Carol refilled the box at the town hall porch with brochures. There are 75 left now. Carol  
60 asked Linda to drop off some blank paper in order to print 50 more. Mary Ann offered to do it if  
61 Janet is busy and needs help.  
62

63 **2. October 29 Event**

64 Old Meeting House Permission Letter

65  
66  
67 Carol suggested sending a letter to the Board of Selectmen putting them on notice and asking  
68 their permission for this event to take place at the Old Meeting House. Carol will draft a letter  
69 to review at the next meeting.  
70

71 Speaker

72  
73 The speaker emailed Carol and said he does not have a microphone, but he has a loud voice.  
74 He does not think he needs one. His presentation is only one hour long. He will come early  
75 and Carol will meet with him. He will pick certain headstones to focus on. The speaker  
76 inquired as to what will happen if it rains. His alternate plan would be a slide show that can be  
77 shown in the Old Meeting House. Carol emailed Stacy of the Recreation Committee asking if  
78 we should think of an alternate activity in the event of rain. A generator may be needed as  
79 well. Carol will ask if he needs power for a slide show.  
80

81 History Info Displays

82  
83 A large informational sign was done many years ago for the entrance to Tuckertown Road.  
84 Carol will look for that. Carol suggested placing signs along the way pointing out historical  
85 information about the area and putting up displays inside the Old Meeting House.  
86

87 **3. Status Update – Meeting House Subdivision**

88  
89 Carol announced there is going to be a meeting between Carol, Mr. Hatch, and town counsel  
90 to go over research gathered and try to come up with a consensus. The meeting is tomorrow.  
91 The developer signed a request for continuance. Carol explained that once the Planning  
92 Board accepts the developer's application they must act within a certain number of days. If  
93 there is no consensus, a surveyor will be selected to determine the boundary markers of the  
94 Old Meeting House and cemetery and to review deeds.  
95

96 **4. Terra Realty Trust Graveling Operation, Tuckertown Road & Old Meeting**  
97 House

98 Terra Realty attended the Board of Selectmen's recent meeting and indicated they wish to  
99 proceed with the gravel operation they first started in 1995.

100  
101 Carol explained there are lots of documents that go back a long way and they involve Heritage  
102 to some extent. The Board of Selectmen have historically included Heritage in their  
103 comments. If they proceed, there will be public hearings.

104  
105 Carol gave a brief history and passed out an "Overview of the Project" which she created  
106 dated August 11, 2016. She also passed out a "Conditional Excavation Permit" dated May 3,  
107 1999 and a copy of the case of Eugene A. Cormier, Trustee of Terra Realty Trust v. Town of  
108 Danville Zoning Board of Adjustment (a May 14, 1998 NH Supreme Court decision), and a  
109 May 25, 2000 letter to the Board of Selectmen following a joint walk on Tuckertown Road by  
110 various boards of Danville with Terra Realty Trust outlining concerns

111  
112 The Conditional Excavation Permit lists the protections put in place back in 1999. Some of the  
113 concerns that are addressed in the Conditional Excavation Permit are as follows:

114  
115 The Meeting House must be monitored for damage from vibration caused by trucks. Heritage  
116 has documents for NHDHR on potential for damage and what to look for and what can be  
117 done.

118  
119 Some of the impacts on the public could be dust, truck traffic, noise, and potential  
120 environmental damage to aquifer, water, soil, wildlife. There will be limited use of Tuckertown  
121 Road for recreation.

122  
123 Terra is exempt from the Historic District Ordinance because the Ordinance was established  
124 after the Supreme Court decision.

125  
126 The Board of Selectmen also discussed a recreation area Terra is planning, but no one knows  
127 anything about it. Mary Ann said they want to make it look like a park.

128  
129 Marguerite asked if there was a way in and out of the area and Carol explained there may be a  
130 way on the west. There is a new development there. She does not know if anyone looked at it  
131 or if it would work. There are also wetlands out there. Carol showed a map of their land in  
132 relation to Tuckertown Road.

133  
134 Nothing has been done since 1999 on this and there has been no activity from Terra. Carol  
135 asked that the Summary, Conditional Permit, Supreme Court decision, and letter to the Board  
136 of Selectmen be properly scanned and emailed to the clerk for attaching to these minutes.

137  
138 Mary Ann made a motion to electronically scan and email to Laurie the following documents:  
139 Supreme Court decision, Tuckertown Overview of the Project, the letter to the Board of  
140 Selectmen dated 5/25/00, and the Excavation Permit of 5/3/99, to be attached to the minutes.  
141 Michele seconded the motion and it passed unanimously.

142  
143 Per Carol, Heritage may be asked to participate by the Planning Board in some of the terms, or  
144 for our input. Tonight's discussion was just informational for all. There are lots of steps and  
145 reports to be done. The next Planning Board meeting is August 25. Carol does not know if we  
146 will be asked to be part of this project.

148 Carol stressed the importance of the people who live near the area to attend any public  
149 meetings by the Planning Board on this project as it may affect their lives and what protections  
150 will be put in place for their water, etc. She wanted people watching to learn the scope of this  
151 project and why it has been a long hard process for the town.

152  
153 The Planning Board is the one to issue the final permit.

154  
155 Per Carol, this will be on the agenda for the next meeting to see if anyone has any questions.  
156

157 **Adjournment**  
158

159 Mary Ann made a motion to adjourn the meeting at 8:55 p.m. Marguerite seconded the motion  
160 and it passed unanimously.  
161  
162  
163

164 **MINUTES PREPARED BY LAURIE CREVATIS**

165  
166 **Amended/Approved on August 22, 2016 by majority vote of the Commission.**  
167  
168

169 **Next meeting: August 22, 2016 at 7:30 p.m.**  
170  
171

**Terra Realty Trust**  
**Overview of the Project**

**Heritage Commission**  
**August 11, 2016**

- Scope:** Excavation of up to 800,000 tons of gravel by Terra  
(per conditional excavation permit filed with court)
- Excavation site:** 53 acres north and west of historic district/town forest
- Access:** Over town-owned land - Dirt roadway under power line and Tuckertown Road  
Power company has granted permission; court ordered as to Town  
  
Tuckertown Road to be used "as is" with exception of agreed upon truck  
turn outs and cutting of brush and small trees as allowed by scenic road RSA  
  
Terra to repair any damage to Tuckertown Road.  
Repairs must not improve the road beyond its condition at start of the project
- Duration:** 3-5 years & up to 8 years, depending upon rate of excavation by Terra  
potential for up to 40 trucks trips per day-Tuckertown Road onto Route 111A
- Hours:** Monday through Friday,  
6:30 am employee site entrance;  
7:00 am-4:00 pm truck departures/arrivals  
No trucking on weekend days or Federal holidays
- Truck sizes:** capacity no larger than 20 cubic yards; gravel hauling trailers not permitted
- Meeting House:** to be monitored for damage from vibration caused by trucks.  
Must be decided who will monitor  
Heritage has documents for NH DHR on potential for damage
- Impact on the public:**
- Dust
  - Truck traffic
  - Noise
  - Potential environmental damage – aquifer, water, soil, wildlife
  - Limited use of Tuckertown Road for recreation

**Many other conditions & requirements for Terra in conditional permit; must now go to  
Planning Bd**

# **Terra Realty Trust**

## **Brief History**

### **Heritage Commission**

**August 11, 2016**

1954 – Town voted to close Tuckertown Road – no longer maintained by Town

1973 – Town voted to designate Tuckertown Road as scenic road (RSA 231:157, :158) that "should remain closed in an unimproved (unpaved) condition 'to protect the scenic and historic character' of the road."

- Terra required ZBA special exception to excavate gravel commercial operation in residential/agricultural zone
- Numerous public hearings began in April 1993 with first ZBA application; hundreds attended
- Terra submitted two applications to ZBA
- Both applications were denied by ZBA;
- ZBA denials were appealed to Superior Court on several consolidated appeals
- Final denial based on detriment to natural and historic features of Tuckertown Road and detriment to public health, safety and welfare
- Judge Coffey presiding justice in Superior Court; walked the road herself in March
- Judge Coffey upheld ZBA decision and ruled in favor of the Town
- Terra appealed to Supreme Court
- Supreme Court decision rendered May 14, 1998:
  - Reversed Judge Coffey's decision and remanded it back to her in Superior Court
  - Reasons: ZBA decision unsupported
  - One of reasons: There is no evidence that the town has undertaken any other steps to preserve the road as a historic landmark or to designate the area as a historic district.
- Judge Coffey ordered the parties to hammer out an agreement
- Agreement that was reached is contained in the May 1999 Conditional Excavation Permit, which was signed by all parties and filed with the court
- 2000- board members walk road with Terra to agree on truck turn outs and brush/tree cutting; Terra requests permission to lay gravel and fill on road (no action)
- 2006-Terra requests permission from Selectmen to lay inches of gravel on road-denied

### March 1999

Town voted to establish Historic District by overwhelming majority (90%?) despite zoning protest petition

Entire width & length of Tuckertown Road was included in Historic District, along with many town-owned properties

Terra is exempt ---Historic District established after Supreme Court decision

May 25, 2000

Board of Selectmen  
Town of Danville  
P. O. Box 11  
Danville, NH 03819

**RE: Proposed road changes by Terra Realty – Tuckertown Road**

Gentlemen:

The Heritage Commission would like to address several issues that surfaced when members of the various town boards recently walked Tuckertown Road with Sean Savage and Gene Cormier of Terra Realty Trust:

**Terra's proposed request to overlay the entire length of Tuckertown Road with one foot (plus or minus) of fill:**

- The Heritage Commission is opposed to this and we are respectfully requesting that you either deny any request by Terra to do this or send them to the Planning Board for a public hearing as outlined in the agreement they signed. You may also wish to seek input from town counsel on this issue, which we would encourage and support.
- As you know this issue surfaced early in the group's walk on Tuckertown Road but it was decided that further discussion would take place at another time. Our position is based on several things: (1) the Supreme Court's decision which gave Terra the right to use the road but did not give them the right to change the road; (2) the agreement which Terra entered into with the Town whereby they agreed to use the road "as is" or appear before the Planning Board for a public hearing regarding proposed changes to the road; (3) the fact that Terra has been using the road recently without difficulty and this overlay appears to unnecessary; (4) the potential for such an overlay to significantly impact the existing character and ambiance of the road.
- Finally, we have reviewed the scenic road statute (RSA 231:158). We do not agree with Sean Savage's contention that he has a right to overlay the length of the road with fill because the scenic road statute allows him "to maintain the road." While the statute clearly states that scenic road designation shall not affect rights of any landowner with respect to work on his own property, we are unable to find any clause in the statute giving Terra the right to maintain the road, which is the town's property.

**Agreed Upon Changes to the Road and Documentation:**

There are two places in the road where gravel is being proposed to reinforce wet areas.

- One of the areas is very wet and the road is actually covered by water in that area. It is our understanding that the Conservation Commission and the Selectmen will be looking into more beaver boxes to help lower the water in this section and that ENSR will look into a type of gravel that may not silt into the wetlands as readily. Hopefully these two solutions will limit the amount of gravel that will be used over time.
- The second area concerns seasonal run-off crossing the road in a small flow from a steep slope on the north side of the road into a vernal pool on the south side. It is our understanding everyone present agreed the vernal pool on the south side could be adversely impacted unless Terra is allowed to install a temporary drain on the south half of the road and gravel on the north half for stabilization. It is our understanding that these are the only changes for this area and they are for this section only. We further understand no trenches to drain off the level of the vernal pool on the south side of the road will be allowed.
- We strongly recommend that the above changes to the road and any others that may be agreed upon be fully documented with a reason as to why they are being allowed; i.e., to prevent wetland impact, for conservation purposes, safety, etc. Fully documented foundation and reasons for any changes will help the Town avoid setting inadvertent precedents that could affect the character of Tuckertown Road in the future.

**Turnout near Sanborn Tavern remains:**

- This is the first proposed turnout on the north side of Tuckertown Road as you enter from Main Street. It was observed during the walk that Terra's stakes are extremely close to the stone wall and foundation of the tavern. This is all the town has left of this historic landmark. Sean Savage indicated everything will be cut within the turnout and the soil will be dug to level the ground. We are very concerned that dirt may be accidentally pushed into or dropped onto these historic remains. There is also the potential for damage from the close proximity of heavy equipment. We are hoping the Selectmen can renew discussion with Terra about this area and perhaps reach agreement on something else that may not pose such a potential threat for damage.



Board of Selectmen  
Town of Danville  
Page 3  
May 25, 2000

Thank you for including the Heritage Commission in this walk and for consideration of our comments in this letter.

Sincerely,

Carol Baird, Chairman  
Danville Heritage Commission

**CONDITIONAL EXCAVATION PERMIT  
(CONFORMED COPY)**

May 10 8 55 AM '99

**Issued By:** Danville Board of Selectmen - Excavation "Regulators" Under Danville Zoning Ordinance and RSA 155-E

**Issued To:** Gene Cormier and Shawne Savage, Trustees, Terra Realty Trust

**Location:** Property north of Tuckertown Road. Tax Map #8, Lot 1-46

**Issue Date:** May 3, 1999

In accordance with the authority of the Danville Board of Selectmen to regulate the excavation of gravel pursuant to RSA 155-E and consistent with the remand order of the New Hampshire Supreme Court in *Eugene A. Cormier, Trustee of Terra Realty Trust v. Town of Danville Board of Selectmen*, 142 N.H. 775 (5/14/98), the Town of Danville issues this excavation permit. This permit is conditionally granted subject to the conditions precedent listed below and subject to the operational conditions listed below.

**CONDITIONS PRECEDENT**

This permit shall become effective upon completion of the following conditions by the Trustees of Terra Realty Trust (hereinafter "Terra"). Until these conditions precedent are satisfied, no excavation shall occur and no grading or cutting shall occur in preparation for excavation. All conditions spelled out in this agreement, whether conditions precedent or conditions subsequent, shall remain in effect throughout the duration of the graveling operation. The conditions precedent to the use of this permit are as follows:

**A. Tuckertown Roadway Improvements and Public Service Right of Way Improvements:** Terra shall submit plans to the Board of Selectmen describing the details of all changes to be made to Tuckertown Road and the Public Service Right of Way. The Town reserves the right to request the State to review/comment on the plans. These plans shall show the location of the roadwork, any repairs to existing culverts, resulting changes in the road and proposed turnout locations and dimensions, and shall show how the wetland areas and drainage areas will be protected during roadwork and during road use by gravel trucks. All road improvements and future road repairs shall be in compliance with the New Hampshire Wetlands Board Code of Administrative Rules, Wt. 100-800 and Stormwater Management & Erosion & Sediment Control for Urban and Developing Areas in New Hampshire (uncoded). No road work shall be permitted unless and until the Board of Selectmen have approved the plans. Inspection of road changes by the Town consultant shall be reimbursed in addition to paragraph H. No boundary markers shall be disturbed by any type of

roadwork or road repair. Damage to any section of the road caused by Terra's activities shall be repaired by Terra under the supervision of the Town consultant. Road repair work cannot change the dimensions of the surface elevations shown on the road improvement plan approved by the Selectmen. All improvements shall be constructed in strict compliance with the plan at the sole cost of Terra. Because this roadway is a scenic road, any changes regulated pursuant to RSA 231:157-158 shall require the approval of the Planning Board after a public hearing prior to the Selectmen's approval.

If road work has an impact on a wetland area, Terra shall submit a Dredge and Fill application to the State for approval and provide a copy of the application to the Board of Selectmen for approval.

Tuckertown Road may be used "as is" (with brush cutting on the side of the road - two feet out from the edge of the road, road turnouts, existing culvert repair, and with overhead limb cutting up to 11 feet, 6 inches above the surface of the road) without a public hearing. The design of the road turnouts and the culvert repair will be subject to the approval of the Board of Selectmen. The limited road work and future road repairs shall be in compliance with the NH Wetlands Board Code of Administrative Rules Wt 100-800, and Stormwater Management & Erosion & Sediment Control for Urban and Developing Areas in New Hampshire (uncoded). Use of the road "as is" will also require that Terra repair any road damage that occurs. The performed repairs must not improve the road beyond its condition relative to when the limited road work was performed originally at the start of the project.

Terra will indemnify the Town for potential accidents related to road work, fuel release (on and off-site), and road use by Terra (and its subcontractors).

**B. Reclamation Plan:** Terra shall submit to the Town a reclamation plan in accordance with the regulations of the Town of Danville and the requirements of RSA 155-E. The Reclamation Plan must describe the details of reclamation for Tuckertown Road, the temporary wetland crossing, the turnouts, entrance to Tuckertown Road in the State right-of-way, the site ponds, the site land, the over-sized rocks not removed from the site, and the removal of the refueling pad/spill containment tank. Reclamation Plan must be approved by the Board of Selectmen prior to the start of graveling.

**C. Escrow Account:** Terra shall establish an escrow account with the Town to cover the cost of inspections, oversight and meetings by the Town's consultant(s) to determine compliance with the terms of this permit and the approved plans. A minimum balance of \$8,500 shall be maintained in the escrow account by Terra.

**D. Reclamation Bond:** A bond or other security approved by the Town counsel and the Board of Selectmen shall be posted pursuant to RSA 155-E:8 by Terra in the amount of \$175,000.00 to insure completion of the reclamation of the gravel site, the site ponds, the temporary wetland crossing, Tuckertown Road (including the turnouts),

the entrance to Tuckertown Road and the removal of the refueling pad/spill containment tank. The bond (or other security) shall be filed with the Board of Selectmen prior to the commencement of graveling.

**E. Notice of Restriction on Land:** Terra shall record in the Registry of Deeds a notice of restriction on the land satisfactory to the Board of Selectmen which indicates that Terra shall deed the Terra Realty land to the Town upon completion of graveling 800,000 cubic yards of gravel or upon the earlier completion of graveling (less than 800,000 cubic yards) by Terra Realty (whichever occurs first).

**F. Redrafting of Excavation Site Plan:** Terra shall redraw the excavation site plan (in the event Terra wishes to gravel in areas other than what is currently shown) to reflect the pre-graveling elevations and the final graveling elevations (total gravel volume with remain 800,000 cubic yards assuming the notice of restriction referred to above is recorded), otherwise total graveling will be restricted to 400,000 cubic yards. This revised excavation site plan shall be submitted to the Board of Selectmen and shall be reviewed by the Town's consultant (and approved by the Board of Selectmen) prior to the beginning of excavation. Review of revised site plan by Town's consultant will be reimbursed in addition to paragraph H below.

**G. Wetlands Plan:** All wetlands shall be field located and re-flagged by a recognized wetlands expert hired by Terra and the Town consultant jointly. The expenses for the Town consultant will be reimbursed by Terra. Minor changes in the wetlands delineation, 5 (five) feet or less, shall be drawn on the existing site plan jointly by Terra and the Terra Wetlands experts. Significant changes (wetland delineation changes greater than five (5) feet) in the wetlands shall be shown on a surveyed drawing prepared by a State licensed land surveyor at a "one inch equals one hundred feet scale." The Wetlands Protection Plan shall contain a detailed description of the erosion control measures and must be approved by the Board of Selectmen prior to issuance of the gravel permit. Excavation shall not commence until the wetlands buffer siltation fence is in place for the excavation area. The Wetlands Protection Plan shall include requirements of the New Hampshire Wetlands Board Code of Administrative Rules Wt 100-800, the Stormwater Management and Erosion & Sediment Control for Urban and Developing Areas in New Hampshire (uncoded).

**H. Reimbursement for Review of Plans:** Pursuant to RSA 155-E-11, III, Terra shall reimburse the Town for all consulting expenses related to: (1) the negotiations that resulted in the issuance of this permit; (2) the review of documents and plans associated with Terra's gravel application related plans; and (3) meetings to discuss plans/documents. These expenses are to be reimbursed prior to the issuance of a graveling permit and prior to the release of the pre-graveling conditions on this permit and shall include all expenses incurred by the Town's consultant(s), (ENSR and Town Engineer) up to a limit of \$13,000.00.

**I. Refueling Site:** The Board of Selectmen must approve the plans and specifications of a refueling site (refueling pad/spill containment tank) at the excavation prior to beginning the stationery refueling paid site construction. The Board of Selectmen must also approve the refueling approach for hard to move equipment prior to this permit becoming effective. The refueling pad/spill containment tank installation must be completed and approved by the Town consultant prior to the removal of any gravel from the site.

The Town shall be reimbursed for time spent by its consultant in reviewing the refueling plan and refueling pad/spill containment tank design and in addition shall be reimbursed for inspections made by the Town's consultant(s) to the site to confirm the proper construction of the refueling facility. (Inspection costs are in addition to paragraph H).

**J. Groundwater/Surface Water Monitoring Plan:** A Groundwater/Surface Water Monitoring Plan must be submitted by Terra to the Board of Selectmen consistent with the Town guidance previously provided. The plan must be approved by the Board of Selectmen prior to the start of graveling. The monitoring wells must also be installed and sampled prior to the removal of gravel from the site.

**K. Spill Prevention Plan:** A Spill Prevention and Response Plan shall be submitted by Terra and approved by the Board of Selectmen. The Plan shall cover: (1) Terra's response to failure of the refueling pad; (2) Terra's response to leakage of fuel (or other petroleum products) from the equipment/vehicles present on the site or using Tuckertown Road and the Public Service Right of Way road; (3) Terra's response to a spill release on the refueling pad; (4) Terra's response to a spillage of fuel associated with the hard to move equipment; (5) inspection procedure and frequency of inspection of the refueling pad; (6) description of the leak testing method for the spill containment tank and associated piping; (7) frequency of leak testing the tank and piping; (8) leak test pass criteria as defined by the State (Env-Wm 1401.13); (9) Terra's response to a leak test failure of the spill containment tank or associated piping; (10) materials to be stored at the site for spill containment; (11) materials to be stored on fuel truck for spill containment; and (12) a list with names, organizations, and phone numbers to be contacted immediately upon the occurrence of a spill.

**L. Temporary Wetland Crossing:** Terra shall provide a detailed plan and specifications for temporary wetland crossing(s) for approval by the Board of Selectmen and the State. Terra shall submit the plan and specifications directly to the State and provide a copy to the Town. Approval by the State and the Board of Selectmen is needed prior to constructing the wetland crossing. Any additional information or permit applications required by the State will be copied to the Board of Selectmen.

## **OPERATIONAL STANDARDS**

Upon satisfaction of the conditions precedent listed above, Terra may commence excavation subject to the following operational standards:

1. **Hours of Operation:** Monday through Friday (except Federal holidays) excavation equipment would not enter the site or be started up or otherwise begin operations before 6:30 AM. The departure time for the first truck shall not be before 7:00 AM. The last truck shall leave no later than 4:00 PM and employees shall vacate the premises by 4:30 PM.
2. **Weekend Days and Federal Holidays:** No excavation work, refueling, graveling associated site work, screening, or grading associated with graveling shall occur on the Terra property on weekend days and Federal holidays, and no work or large truck/equipment travel shall occur on roadways (Tuckertown Road and Public Service Right of Way) leading to that property at any time other than Monday through Friday as specified above. The exception is that on Saturdays between 7 AM and noon, work at the excavation site on Saturday mornings shall be strictly limited to maintenance work on site equipment, staking for site control, grading of pit associated with reclamation activities, maintaining silt fencing, and reclaiming areas of pit (as long as there is no graveling performed). No road maintenance work is permitted on weekends or on Federal holidays.
3. **Size of Gravel Hauling Trucks:** Trucks hauling gravel from the Terra excavation site shall not have a gravel carrying capacity larger than 20 cubic yards. Gravel hauling trailers are not permitted to be used. The only exception to this restriction shall be the trucks used to carry stamps off site (their physical size cannot exceed 8 feet, 6 inches wide; 40 feet long; and 11 feet, 6 inches high).
4. **Project Manager/Contact Person:** Terra Realty shall designate and name an individual who will at all times be responsible for all excavation operations and all trucks entering or leaving the Terra site. This person shall be capable of being contacted by telephone/pager at all times to handle any complaints or concerns of Danville. Those persons from the Town of Danville authorized to deal with the Terra project/contact person shall include the Board of Selectmen; the Town's consultant(s); and the town engineer.
5. **Dust/Gravel Spillage Control - Trucks:** Each truck and its cargo will be sprayed with a water wash down mister (or other appropriate device) prior to leaving the excavation site (to wash dust and gravel off of the truck and to wet the top surface of the gravel cargo). Each truck load will be within the weight limits permitted under State law/regulations/guidelines and shall be covered with a tarpaulin (no holes) or other appropriate covering device. Terra shall be permitted to install a well(s) on the site to provide water to meet this requirement (no more than two wells at a time). The well opening shall be covered and locked to prevent accidents and sabotage. These wells must be closed by removing any well casing (or well structure), backfilling with soil, and compacting the backfilled dirt. Well closure shall be performed as needed to

**NOTICE:** This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Clerk/Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire 03301, of any errors in order that corrections may be made before the opinion goes to press. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <http://www.state.nh.us/courts/supreme.htm>

## THE SUPREME COURT OF NEW HAMPSHIRE

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Rockingham

No. 96-261

EUGENE A. CORMIER, TRUSTEE OF TERRA REALTY TRUST

v.

TOWN OF DANVILLE ZONING BOARD OF ADJUSTMENT

May 14, 1998

Sheehan Phinney Bass + Green, P.A., of Manchester (Peter F. Kearns and Thomas M. Closson on the brief, and Mr. Kearns orally), for the plaintiff.

Loughlin & Wade, of Portsmouth (Peter J. Loughlin on the brief and orally), for the defendant.

JOHNSON, J. The plaintiff, Eugene A. Cormier, Trustee of Terra Realty Trust, appeals from the Superior Court's (Coffey, J.) denial of three consolidated petitions for appeal from decisions of the defendant, the Town of Danville Zoning Board of Adjustment (board). We reverse in part, vacate in part, and remand.

The Danville Zoning Ordinance (ordinance) prohibits excavation in Danville except by special exception obtained from the board through a procedure outlined in the ordinance. In April 1993, the plaintiff and a co-trustee filed an application for special exception with the board to obtain permission to conduct commercial sand and gravel excavation on a parcel of land in Danville owned by Terra Realty Trust (trust). The board denied the application and the plaintiff appealed to the superior court. See RSA 677:4 (1986) (amended 1994, 1995, 1996). The plaintiff filed a second application with respect to the same parcel in March 1994. The board denied the second application and the plaintiff filed a second appeal, which was consolidated with the prior appeal.



Following an in-chambers conference with counsel, the Superior Court (Goode, J.) issued a remand order that directed the plaintiff to submit to the board a revised application containing two proposals: "(a) application without any excavation below a point 3' above the seasonal high water table [part A]; (b) application with excavation creating up to 3 separate ponds below the seasonal high water table [part B]." The order also required the board to expeditiously review the application and provided that the plaintiff could challenge an adverse ruling of the board in an appeal that could be consolidated with the prior two applications.

The board denied part A of the revised application because it found that the proposed use of Tuckertown Road for access to the excavation site would be detrimental to the historic and natural character of Tuckertown Road; be detrimental to the public health, safety, and welfare; and constitute a nuisance. Based upon a 1995 amendment to the ordinance that prohibited excavation below three feet above the seasonal high water mark, the board declined to consider part B of the revised application.

The plaintiff again appealed to the trial court, which held a hearing and conducted a view of the property. Agreeing with the board's finding that the proposal is incompatible with and detrimental to the historic and natural character of Tuckertown Road, the trial court denied the plaintiff's appeal without examining the other reasons for the board's denial. The court also found that although the board's refusal to consider part B of the application was questionable in light of the date of the plaintiff's applications and the court's remand order, the error, if any, was harmless because part B also proposed to use Tuckertown Road for access. The plaintiff challenges both rulings on appeal.

We will uphold the trial court's rulings unless they are not supported by the evidence or are erroneous as a matter of law. See Belluscio v. Town of Westmoreland, 139 N.H. 55, 56, 648 A.2d 211, 212 (1994). Under the applicable provisions of the ordinance, a special exception must be granted if the board finds:

a. That the excavation and/or removal is compatible, and not detrimental or injurious to any one of the following:

- 1) existing residential or commercial retail and service land uses as defined in Zoning Ordinance, in the general area of the proposed excavation;
- 2) public health, safety and welfare;
- 3) natural features, i.e., including but not limited to, groundwater, surface water drainage, wetlands;
- 4) historic landmarks or other historic structures.

b. The excavation will not damage a known aquifer

....

c. That the excavation will not constitute a nuisance due to any and all forms of hazards and/or disturbances.

Danville, N.H. Zoning Ordinance art. V, § F(2) (1993). "Exceptions provide relief from the operation of the ordinance, and the conditions for granting them must be found in the ordinance and may not be varied." Town of Goffstown v. Thibeault, 129 N.H. 454, 460, 529 A.2d 930, 934 (1987) (quotation



omitted). The board must grant the special exception if the conditions are met, "although the board does have authority to place reasonable conditions on the granting of the exception." Geiss v. Bourassa, 140 N.H. 629, 632, 670 A.2d 1038, 1040 (1996) (quotation omitted).

The town maintains that the plaintiff failed to show compatibility with and an absence of detriment to "natural features" and "historic landmarks." In particular, the town asserts that Tuckertown Road is itself a historic landmark and a natural feature. The trial court supported this view in finding that "the proposal [would be] incompatible and detrimental to the natural features and historic structure of Tuckertown Road." We conclude that this finding is unsupported by the evidence.

While we have described a state administrative agency's determination of adverse effect on "historic sites" as a "general discretionary finding[]," we have recognized that "the law demands that findings be more specific than a mere recitation of conclusions." Society for Protection of N.H. Forests v. Site Evaluation Comm., 115 N.H. 163, 173-74, 337 A.2d 778, 787 (1975). Here, the board failed to support adequately not only its finding of adverse effect, but also its implicit finding that the road constitutes a historic landmark within the meaning of the ordinance. The stipulated facts show only the following: Tuckertown Road was laid out in 1766. In the early 1800s, an epidemic devastated the area's population, and the land was allowed to grow over with trees. The road was closed in 1954 by vote of the town meeting and was designated in 1973 as a scenic road that "should remain closed in an unimproved (unpaved) condition 'to protect the scenic and historic character' of the road." See RSA 231:157, :158 (1993).

Other than the road's age and the town's assertion that it "provides a physical and aesthetic link to the 18th century Tuckertown settlement," there is no evidence of or finding as to the historic significance of the road. Cf. RSA 227-C:1, VI (1989) (defining "[h]istoric property" as "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation"). Although the town used the word "historic" to describe the road in the 1973 vote to designate it a scenic road, we are unwilling to infer solely from the town's use of a procedure expressly addressed to preserving scenery that the town considered Tuckertown Road a historic landmark. See RSA 231:157, :158. There is no evidence that the town has taken any other steps to preserve the road as a historic landmark or to designate the area as a historic district. See RSA 674:46 (1996).

The trial court's finding of incompatibility with and detriment to a natural feature is similarly unsupported. In reviewing the court's finding, we must first determine what the term "natural" means for purposes of the ordinance. The interpretation of a zoning ordinance is a question of law, and we are not bound by the construction placed on the ordinance by the board, see Brennan v. Winnepesaukee Flagship Corp., 122 N.H. 524, 526, 446 A.2d 1175, 1177 (1982), or the trial court, see Healey v. Town of New Durham, 140 N.H. 232, 236, 665 A.2d 360, 365 (1995).

In general, the traditional rules of statutory construction will govern here. Thus, the words and phrases of an ordinance should always be construed according to the common and approved usage of the language, but where the ordinance defines the term in issue, that definition will govern. Further, when the language of the ordinance is plain and unambiguous, we need not look beyond the ordinance itself for further indications of legislative intent.

Id. (quotation and brackets omitted).

The common meaning of the word "natural," in the context of the ordinance, is "existing in or produced by nature: consisting of objects so existing or produced: not artificial." Webster's Third New International Dictionary 1506 (unabridged ed. 1961). We are unable to conclude that Tuckertown Road itself, a man-made structure, is a natural feature as contemplated by the ordinance. Cf. Department of Public Works & Bldgs. v. Keller, 316 N.E.2d 794, 797 (Ill. App. Ct. 1974) ("[T]he word 'natural' means untouched by man or by the influences of civilization; wild; untutored. Natural condition of the land is used to indicate that the condition of the land has not been changed by any act of a human being."), aff'd, 335 N.E.2d 443 (Ill. 1975). Neither the court nor the board specifically found incompatibility with or detriment to any natural feature distinct from the road itself.

In the absence of supportable findings that the project would be incompatible with or have a detrimental impact on natural features or historic landmarks, we must reverse the trial court's decision. Because we have reversed the trial court's basis for finding that the board's refusal to consider part B of the revised proposal was, if anything, harmless error, we vacate that ruling and remand for further consideration.

Reversed in part; vacated in part; remanded.

THAYER and BRODERICK, JJ., did not sit; the others concurred.