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October 15, 2025

Town of Jackson
Zoning Board of Adjustment/Select Board
PO Box 268
Jackson, NH 03846

RE: Appeal of Site Disturbance Zoning Ordinance Violation

Property Owners: Katherine and David McNeil

Subject Property: 59 Middle Mtn. Trail / Parcel ID: VO8 – 212

To Whom it May Concern;

Attached please find our Proposed ZBA Decision, for your reference and review ahead of the October 17, 2025 meeting regarding the above-entitled matter.

Please be sure to contact us if you have any questions.

Sincerely,

Lisa A. Vertigen, Paralegal to
Donald M. Ekberg, Esq.
NHBA #743

DME:lav
cc: Client

1 Appeal of Site Disturbance Zoning Ordinance Violation
2 Property Owners: Katherine and David McNeil
3 Subject Property: 59 Middle Mtn. Trail
4 Parcel ID: Vo8 – 212

5 **Proposed ZBA Decision**

6 NOW COMES Katherine and David McNeil, by and through their attorney, Donald M. Ekberg,
7 Esq., to propose the following related to their *Appeal* and in support thereof say as follows:
8

9 **Introduction:**

- 10 1. We apologize in advance if there is some duplication from the *Memorandums* that have
11 already been filed.
- 12 2. The McNeil’s did nothing wrong, intentionally, they wish to be good citizens, and they are
13 committed to solving the issues and will fully cooperate with all parties to resolve the
14 problems.
- 15 3. On June 22, 2016, the McNeil’s were deeded a parcel of raw land.
- 16 4. On March 21, 2024, the McNeil’s began having their septic system designed, which was
17 submitted to the Town of Jackson on June 13, 2024 and following revision(s), it was
18 approved on June 23, 2024.
- 19 5. On July 19, 2024, the McNeil’s applied for a building permit, which was issued on August
20 1, 2024.
- 21 6. On November 7, 2024, following its installation, the New Hampshire Department of
22 Environmental Services (NH DES) approved the McNeil’s septic system installation; and,
- 23 7. On March 8, 2025, follow the completion of construction, a *Certificate of Occupancy* was
24 issued to the McNeil’s.
- 25 8. On October 14, 2025, it was brought to our attention that in March of 2024, the septic
system on the Goodine/Furniss property, at 209 Tin Mine Road, was redesigned, with an

1 amended septic tank and sewer line locations, presumably with the leach field being
2 relocated at the same time, and said installation was approved June 17, 2024.

3 **Issues on Appeal:**

- 4 1. Did the Select Board apply the correct Zoning Ordinance? On March 8, 2025, the
5 McNeil's were issued a *Certificate of Occupancy* confirming that they were in compliance
6 with the "*State of New Hampshire List of Adopted Building and Fire Codes that were*
7 *issued for this permit*", and that "*Zoning Requirements: Originally adopted on*
8 *November 16, 1971 and amended on March 14, 2023.*", and on March 11, 2025, the Town
9 of Jackson adopted the revised Site Disturbance Ordinance, Section 4, which was
10 significantly expanded to its current form from the 2023 and 2024 Site Disturbance
11 Ordinance; therefore, it would appear that the 'old' Ordinance applies to this matter and
12 not the 'new' Ordinance in relation to the McNeil's property.
- 13 2. Pursuant to the Select Board's Zoning Violation Notice, the letter dated August 12, 2025,
14 it does not adequately spell out the alleged violations under the Zoning Ordinance:
- 15 a. Per 4.1.6.1, were the McNeil's required to file a 'Notice of Intent'?
 - 16 b. Per 4.1.6.3, were the McNeil's required to file a written plan?
 - 17 c. Per 4.1.6.4, was the McNeil's Site Disturbance area under 7,500 square feet?; or,
 - 18 d. Per 4.1.6.5, was the McNeil's Site Disturbance area over 7,500 square feet, and did
19 the Town of Jackson require an 'erosion control plan' drawn by a professional
20 engineer?
- 21 3. Were the changes or alterations done by the McNeil's mandated by the State of New
22 Hampshire and subsequently approved by the Town of Jackson? The McNeil's Septic
23 Plan also denotes, in red writing, '*No connection to Town Culvert and no pipe in R.O.W.*
24 *allowed*'; therefore, how is it possible for the Town determine that all of the water that
25 damaged the Goodine/Furniss property originated from the McNeil property alone?
Also, the plan denotes, below the red "*Approved as Noted*" box, which says, "*Do not*

1 *change the stormwater discharge direction from the property unless written permission*
2 *is granted from those impacted.”* and not marked with the ‘condition’ that says ‘*do not*
3 *relocate*’ which Burr Philips believes they did after he told them not to. The McNeil’s did
4 not change the ‘direction’ of the stormwater runoff, it continues in the same direction and
5 with no connection to the Town Culvert, how does the water know to go through the
6 McNeil’s culvert? It is the opinion of the Septic Designer and Excavation Contractor that
7 the McNeil lot should never have been developed due to too much water crossing it.

- 8 4. Was it premature to issue a violation to the McNeil’s based on one neighbor’s complaint,
9 without investigating where the water may have actually originated? Did new site
10 development on Middle Mountain Trail contribute to the increase in water over the
11 McNeil property? and, Did the Town address a potential increase in stormwater runoff
12 when the other properties started being developed? - There is a lot of construction on
13 Middle Mountain Trail, before and since the McNeil’s received their approvals,
14 specifically V08-222 which started in 2023, is still under construction and began with the
15 clear-cutting of trees and blasting. V08-222 is the property that shares the ‘*existing*
16 *culvert*’ at the McNeil property, which is fed by two larger culverts on the opposite side of
17 the road that abut V08-222.
- 18 5. Is there sufficient causation to fine the McNeil’s for a violation of an ordinance that was
19 not in place at the time of construction?
- 20 6. Was the McNeil property also damaged due to stormwater runoff? Pursuant to the Town
21 of Jackson’s Road Design and Construction Standards, Section 9.1 General, 1.2 says
22 “*Maintain natural flow paths and avoid concentrating the flow at the property lines.*”
23 and 1.3 says “*Drainage calculations shall be provided and reflect the potential*
24 *development on abutting land, as well as the road construction.*”, both contributing
25 factors to the increase in water flow.

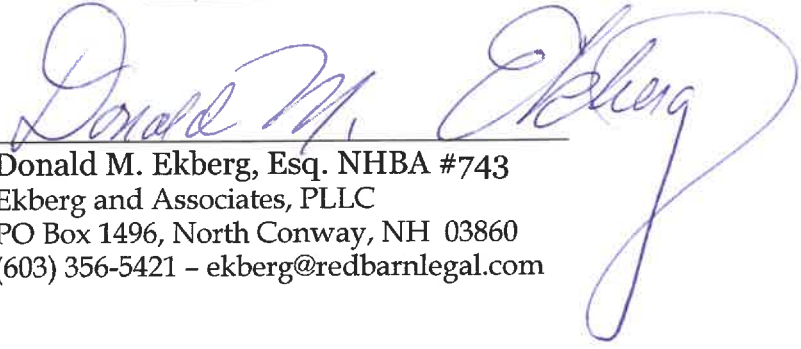
- 1 7. Did the Town of Jackson do work to alter the water course? It appears that the ditches
2 across from the McNeil property have been dug deeper and that the 'existing culvert' has
3 been 'blocked', which can be viewed in person.
- 4 8. Were there multiple contributing factors that increased the water flow over the McNeil
5 property? From the time the McNeil's broke ground to present, there has not been a
6 problem with the stormwater runoff.
- 7 9. Was this a one-time event or did it occur over multiple events? Attorney Ekberg spoke
8 with Ms. Goodine who does not know if it happened once or multiple times or if it has
9 happened since.

10 **Proposed Decision:**

- 11 1. We are requesting the Zoning Board of Adjustment vacate the Administrative Decision,
12 issued by the Jackson Select Board on August 12, 2025, and find that it is not appropriate
13 to hold the McNeil's accountable to the 'new' Site Disturbance Ordinance after their
14 property development was completed prior to it being adopted.
- 15 2. Find that the Town of Jackson will address the water entering the existing culvert at the
16 McNeil property, and that the 'existing culvert', which belongs to the Town of Jackson, be
17 revised or repaired to redirect the stormwater runoff in an appropriate manner to prevent
18 the excessive amount stormwater runoff from crossing the McNeil property.
- 19 3. Find that the cause of said May 2025 stormwater runoff overflow has not yet been
20 determined, and that it was premature for the Select Board to assume that there was a
21 violation of either the 'old' or the 'new' Zoning Ordinance by the McNeil's.
- 22 4. Find that the Select Board erred by assuming, without adequate evidence, that the water
23 flow was a result of the McNeil's violation of a Town Zoning Ordinance.
- 24 5. Our Agent, Tom Rozek, of Elevated Excavation will meet with Town Officials as soon as
25 possible, October 18, 2025 if possible, to explore solutions.

- 1 6. Adjourn the Zoning Board of Adjustments (ZBA) meeting on the McNeil's Appeal to allow
- 2 Mr. Rozek and Town officials to meet.
- 3 7. That Mr. Rozek and Town officials shall explore all viable solutions.
- 4 8. To hold on all fines and penalties in abeyance until the parties have met and come up with
- 5 a proposed solution.
- 6 9. During the Adjournment period, the McNeil's will also contact abutting neighbors to
- 7 address any other concerns regarding stormwater runoff on Middle Mountain Trail.

8 Respectfully submitted,
9 Katherine and David McNeil, by their Attorney,
10 Dated this 15 day of October, 2025

11 
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