



Ekberg and Associates, PLLC

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Donald M. Ekberg, Esq.

Located in the Red Barn - a symbol of honesty, integrity and traditional New England Values

September 10, 2025

Office of the Board of Selectmen
Chairman, Jackson Board of Adjustment
PO Box 268
Jackson, NH, 03846

RE: Site Disturbance Zoning Ordinance Violation
Property Owners: Katherine and David McNeil
Subject Property: 59 Middle Mtn. Trail
Parcel ID: VO8 - 212

Dear Chairman,

Enclosed please find our Memorandum, in support of the Appeal on behalf of the above-named property owners.

Please contact us if you have any questions or concerns.

Sincerely,

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

Enclosures as stated

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 **Memorandum**

6 NOW COMES Katherine and David McNeil, by and through their attorney, Donald M. Ekberg,
7 Esq., to supply additional information related to their *Appeal* and in support thereof says as
8 follows:
9

- 10 1. This is an Appeal of the Administrative Decision, issued by the Jackson Select Board on
11 August 12, 2025, that the owners of the property at 59 Middle Mtn. Trail are responsible for
12 a violation of the Site Disturbance Ordinance, Section 4 of the Jackson Zoning Ordinance,
13 brought forward following a complaint by Jean Goodine, one of the owners of the abutting
14 property at 209 Tin Mountain Road.
- 15 2. Katherine and David McNeil hired Dan Boris, of Boris Builders, to construct their home at
16 59 Middle Mtn. Trail; and,
- 17 3. Boris Builders subcontracted with Tom Rozek, of Elevated Excavation, to do the site work
18 and install the septic system; and,
- 19 4. The septic system was designed and amended by Robert Eich, of Great North Woods Septic
20 Design.
- 21 5. All three, Boris Builders, Elevated Excavation and Great North Woods Septic, would have
22 been responsible for all communication with the Town Engineer and Building Inspector
23 during the development of the McNeil property.
- 24 6. David and Katherine went back through their emails and correspondence to confirm they
25 have never received any written communication from the Town Engineer or the Building
Inspector regarding this matter. They have only ever had verbal communication with the

1 Building Inspector with regards to the runoff following Ms. Goodine's complaint, but they
2 never talked to the Town Engineer regarding this matter or any other matter.

- 3 7. Attached to this *Memorandum* is a 'statement' prepared by Katey McNeil outlining her
4 understanding of the situation and a copy of the fully executed *Driveway Permit*
5 *Application* where it clearly states "No Culvert Needed" by the Town of Jackson Road Agent.
- 6 8. The Town of Jackson and State of NH acquiesced by signing off on all permitting, including
7 but not limited to a building permit, driveway permit, septic permit, and occupancy permit,
8 for the development of the McNeil property; and,
- 9 9. It would appear that there is another source that should be viewed by the Town Engineer
10 pursuant to Katey McNeil's statement, in that there is an abutting lot that was recently clear
11 cut, and I am given to understand there has also been blasting in the area, that seems to be
12 the source that created the increase in water flowing onto both the McNeil and Goodine
13 properties.
- 14 10. Therefore, this Appeal is to overturn the decision issued by the Jackson Select Board that the
15 property owner's violated the Site Disturbance Ordinance, Section 4, because the Town of
16 Jackson approved all of the requirements.
- 17 11. As it stands now, our position is that estoppel and acquiescence applies because the Town's
18 approvals; however,
- 19 12. Please consider that we are attempting to gather more information and documents from the
20 builder, septic designer and excavator, and anyone else that worked for the McNeil's,
21 although, given that these folks might possibly be in an adversarial position to the McNeil's,
22 cooperation may be problematic.
- 23 13. If further investigation reveals different grounds for the Appeal, we will immediately notify
24 the Zoning Board of Adjustments (ZBA); rest assured that we will give this matter our full
25 attention.

1 14. We respectfully request that we be allowed ten (10) days to provide evidence of either a
2 'misinterpretation of the Zoning Ordinance' or 'that the Ordinance has factually not been
3 violated' or that these two counts be withdrawn and that we proceed on the acquiescence
4 and estoppel issues.

5 Respectfully submitted,
6 Katherine and David McNeil, by their Attorney,
7 Dated this 10 day of September, 2025

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9
10 Donald M. Ekberg, Esq. NHBA #743
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12 PO Box 1496, North Conway, NH 03860
13 (603) 356-5421 - ekberg@redbarnlegal.com
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In May, I, Katey McNeil was contacted by the building inspector of the town of Jackson. He stated that our neighbor's leach field was damaged due to water runoff from our property. He said he would get in touch with the excavation company that did the site work on our land. He said that the water runoff was coming from the culvert on our property. I told him that as part of our septic design plan, we were told by the state that we needed to extend the culvert down the side of our property. He said that when he saw that plan come across his desk, he said he questioned it to himself, but never relayed that information to us during the construction. The building inspector said he would contact the excavation company and get back to me. Soon after, I received a phone call from Jean Goodine, stating that the water runoff had damaged her leach field and asked me to see if it would be covered by our homeowners insurance. A few weeks later, David and I met with the building inspector and Tom from Elevated Excavation at our land. They had both met with the town engineer a week or two prior, but we were not at that meeting. At this meeting, the building inspector said that when the original culvert was in place, the water would flow through our property from the northeast corner to the southwest corner. Now with the culvert extended, the water flows straight down the eastern side of the property into the back portion of the neighbor's property and follows a path around the driveway to the front yard, where the leach fields are. The melting snow and heavy rains of the spring, washed out her leach fields. At this time, we told the building inspector that the state and town signed off on this plan and we were never informed of any possible problems that could be associated with it. In addition, there is a lot across the street from us that over the past year was clear cut. All of the water from that property flows down to the sluiceway on middle Mountain Trail, and then comes through the culvert onto our property. At the time of this meeting, Tom from elevated excavation, stated that it appeared as though a water vein may have been disrupted across the street because he noticed a constant stream of water coming from that driveway. The additional water coming from that property will increase the water flow that comes through the culvert. We also noticed during this meeting that the sluiceway on middle Mountain Trail is blocked so instead of the water flowing down the road and dumping out to an empty forest at the end, the water is directed to our property through the culvert. The building inspector told us that the town engineer had a plan for us to redirect the water from the culvert so that it travels down the mountain on the south western side. There is another house to the right and we were not comfortable proceeding with this idea, as there was no guarantee that the water would not impact the other neighbor.

We were never informed by the town or the builder that there would be a possible problem with the water runoff from the culvert, or that it could impact the neighbor below us. As far as we are concerned, the state and the town requested this culvert and approved it.

RECEIVED

DRIVEWAY PERMIT APPLICATION

JUL 19 2024

Town of Jackson

PO Box 268

Jackson, New Hampshire 03846

Phone: 603-383-4223 Fax: 603-383-6980

Selectmen's Office



PAID

\$35.00

CR# 909

Date: 7/18/24 MAP V8 LOT # 212 Street Name: Middle Mountain Trail

Property Owner(s) Name: David and Katherine McNeil

Mailing Address: 31 Nautical Way Plymouth M.A. 02360

Phone Number: 617-501-5721 Email: _____

Contractor's Name: Danny Boris Borisbuilders

Contractor's Phone #: 603-733-6493

X Is Property on a Class VI Road: YES or NO (circle)

X **Abutters:**
Name: 18/211 Michael Bailey - 108/213 Ed May

Name: 18/31 Norman Forniss

THIS SECTION TO BE COMPLETED BY ROAD AGENT:

Size of Culvert Approved by Road Agent: N/A

Type of Culvert Approved by Road Agent: _____

Installation of Erosion Stone in ditch line: Yes _____ No

Is there proper sight distance? Yes No _____

Is a bridge required for access? Yes _____ No

Comments or Conditions:



Lot on down Hill side of Town Road
No Culvert Needed

PLEASE READ & SIGN BELOW:

- **ALL WORK MUST COMPLY WITH TOWN OF JACKSON'S SITE DISTURBANCE ORDINANCE 4.1.6**
- **HOMEOWNER OR CONTRACTOR MUST NOTIFY THE SELECTMEN'S OFFICE WHEN DRIVEWAY ENTRANCE IS INSTALLED IN ITS FINAL LOCATION TO RECEIVE A PROPER E-911 ADDRESS**
- **DRIVEWAY CULVERTS:** Under RSA 238:13 VI, all private driveway connections, including structures like culverts, remain the continuing responsibility of the landowner-even if located within the right of way. It is immaterial whether the driveway connection pre-dates the town's permit system. If any driveway connection threatens the integrity of the highway due to the plugged culverts, erosion, siltation, etc., the Select board or its designee can require the owner to repair it. If the owner refuses to effectuate such repairs, then the town may perform the work and assess the cost to the owner.
- **ALL DRIVEWAYS, NEW OR ALTERED shall comply with the following documents attached hereto: (1) Typical Rural Drive In Fill Section, (2) Typical Driveway Layout, and (3) Proper Culvert Installation.**
- **ALL DRIVEWAYS, NEW OR ALTERED shall comply with the driveway standards contained in the town's ROAD DESIGN AND CONSTRUCTION STANDARDS (the latest addition available at the Selectmen's Office or at <https://www.jackson-nh.org/road-agent-highway>)**
- **This application satisfies the requirements for a driveway permit in the Town of Jackson. It is approved on the basis of information provided by the applicant regarding his or her ownership interest or legal right to utilize the property for this use. The applicant has the burden of ensuring that he or she has a legal right to use the property. The approval of this application in no way relieves the applicant of this burden.**
- **Homeowner hereby verifies that the proposed driveway does not encroach into the applicable setbacks. Note for example the 15 foot driveway setback from the property line contained in the Town of Jackson, NH Road Standards Exhibit B: Typical Driveway Layout, attached hereto. Homeowner is fully responsible if the driveway creates a setback issue and agrees to hold the town harmless if the driveway creates a setback issue.**

Driveway Permit Fee	\$ 10.00
All Permits Require a Non Refundable Administrative Fee	\$ 25.00
TOTAL FEES	\$ 35.00

*PLEASE MAKE CHECK PAYABLE TO THE: TOWN OF JACKSON

Owner(s) Signature: <u></u>	Date: <u>7/18/24</u>
Owner(s) Signature: <u></u>	Date: <u>7/18/24</u>
Road Agent Approval: <u></u>	Date of Approval: <u>8/05/24</u>
Selectmen Approval: <u></u>	Date of Approval: <u>8/5/24</u>

Permits are valid for 1 year from date of issuance.



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

**APPROVAL FOR CONSTRUCTION
OF INDIVIDUAL SEWAGE DISPOSAL SYSTEM (ISDS)**

AS AUTHORIZED BY THE NH DEPARTMENT OF ENVIRONMENTAL SERVICES, WATER DIVISION PURSUANT TO RSA 485-A, WATER POLLUTION AND WASTE DISPOSAL AND ENV-WQ 1000, SUBDIVISION AND INDIVIDUAL SEWAGE DISPOSAL SYSTEM DESIGN RULES.

APPLICATION APPROVAL DATE: 7/11/2024

APPROVAL NUMBER: eCA2024071119

I. PROPERTY INFORMATION

Address: MIDDLE MOUNTAIN TRAIL
JACKSON NH 03846
Subdivision Approval No.: 208
Subdivision Name: TYROL
County: CARROLL
Tax Map/Lot No.: V8/212

II. OWNER INFORMATION

Name: KATHERINE MCNEIL
Address: 31 NAUTICAL WAY
PLYMOUTH MA 02360

III. APPLICANT INFORMATION

Name: ROBERT J EICH
Address: GREAT NORTH WOODS SEPTIC DESIGN
386 BOG RD
STRATFORD NH 03590

IV. DESIGNER INFORMATION

Name: ROBERT J EICH
Address: GREAT NORTH WOODS SEPTIC DESIGN
386 BOG RD
STRATFORD NH 03590
Permit No.: 01750

V. SPECIFIC TERMS AND CONDITIONS: Applicable to this Approval for Construction

Please read **VI. General Terms and Conditions** on the reverse side of this approval.

A. TYPE OF SYSTEM: ADVANCED ENVIRO-SEPTIC

B. NO. OF BEDROOMS: 2

C. APPROVED FLOW: 300 GPD

D. OTHER CONDITIONS AND WAIVERS:

1. This approval is valid for 4 years from date of approval, per Env-Wq 1004.13.
2. No waivers have been approved.

RECEIVED SEP 10 2025

Noah D. Bucker
Subsurface Systems Bureau

VI. GENERAL TERMS AND CONDITIONS: Applicable to all Approvals for Construction

- A. This Approval for Construction is issued to construct the ISDS as identified on Page 1 of this Approval.
- B. This Approval is valid until 7/11/2028, unless an Approval for Operation has been granted.
- C. By exercising any rights under this approval, the parties have agreed to all terms and conditions.
- D. No liability is incurred by the State of New Hampshire by reason of any approval of any Approval for Construction. Approval by the Department of Environmental Services of sewage and waste disposal systems is based on plans and specifications supplied by the Applicant.
- E. The system must be constructed in strict accordance with the approved plans and specifications.
- F. The installed system must be left uncovered and cannot be used after construction until it is inspected and has received an Approval for Operation of Individual Sewage Disposal System (ISDS) by an authorized agent of the Department.
- G. **This system must be installed by an installer holding a valid permit. An owner may install the system for his or her domicile. Env-Wq 1002.18 defines "Domicile" as that place where an individual has his or her true, fixed, and permanent home and principal establishment, and to which, whenever he or she is absent, he or she has the intention of returning. An individual might have more than one residence, but has only one domicile. Accordingly, an owner may only install a replacement system and may not install the system at a property he or she intends to make their future domicile. A person's domicile is considered to be at the address listed on his or her driver's license and/or where he or she is registered to vote.**
- H. This Approval for Construction does not supersede any equivalent or more stringent local ordinances or regulations. State standards are minimal and must be met statewide.

WORK NUMBER: 202402913
APPROVAL NUMBER: eCA2024071119
RECEIVED DATE: July 11, 2024
TYPE OF SYSTEM: ADVANCED ENVIRO-
SEPTIC

RECEIVED SEP 10 2025