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COPY

**Donald M. Ekberg, Esq.**

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

September 19, 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: V08 - 212

Dear Chairman,

Enclosed please find our Supplement to Memorandum of Appeal, 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

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5 **Supplement to Memorandum of Appeal**

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 say as  
8 follows:  
9

10 First, we wish to convey three important points:

- 11 A. The McNeil's did nothing wrong, intentionally, and wish to be good citizens.
- 12 B. We have prepared our Memorandum and this supplement on the basis of the  
13 information we have. If we receive additional or different information that changes  
14 anything, we will supply said information and amend this Memorandum accordingly.  
15 Please note that we have filed a 'RSA 91-A *Right to Know*' Request' that was hand-  
16 delivered on Wednesday, September 17, 2025.
- 17 C. We will fully cooperate with all parties to resolve the problems.

18 This supplement to our Memorandum is designed to clarify the issues of our Appeal. Some of  
19 the issues we are raising are:

- 20 1. Did the Select Board apply the correct Ordinance? The Chronology is as follows:
  - 21 a. June 23, 2024, the McNeil Septic Plan was submitted to the Town of Jackson.
  - 22 b. July 8, 2024, the McNeil Septic Plan was returned by Burr Philips, after being  
23 reviewed, and it was "*Approved As Noted*" with his notations appearing in 'red'.
  - 24 c. July 11, 2024, the McNeil Septic Plan was Reviewed and Approved by the NH  
25 Department of Environmental Services.
  - d. August 1, 2024, the McNeil Building Permit was issued, and in the normal course  
of business the Septic System was installed, as it appears on the Septic Plan, by

1 Tom Rozek, of Elevated Excavation, who installed the septic system including the  
2 culvert down the side of the McNeil property which he confirms empties into a pit  
3 with erosion gravel to disburse the stormwater pursuant to the plan.

4 e. March 8, 2025, the McNeil's were issued a *Certificate of Occupancy* confirming  
5 that they were in compliance with the "*State of New Hampshire List of Adopted*  
6 *Building and Fire Codes that were issued for this permit*", and that "*Zoning*  
7 *Requirements: Originally adopted on November 16, 1971 and amended on March*  
8 *14, 2023.*"

9 f. March 11, 2025, the Town of Jackson adopted the revised Site Disturbance  
10 Ordinance, Section 4, which was significantly expanded to its current form from  
11 the 2023 and 2024 Site Disturbance Ordinance; therefore, it would appear that the  
12 'old' Ordinance applies to this matter and not the 'new' Ordinance in relation to the  
13 McNeil's property.

14 2. Do the 'old' or the 'new' Zoning Ordinance apply? Of the Zoning Violation Notice, the  
15 letter dated August 12, 2025, sent to the McNeil's does not adequately spell out the  
16 alleged violations under the current Zoning Ordinance:

17 a. Per 4.1.6.1, were the McNeil's required to file a 'Notice of Intent'? Was a 'Notice of  
18 Intent' filed and granted along with the building permit that was issued and were  
19 the McNeil's provided with the guidelines of what they could and could not do with  
20 regards to Site Disturbance during construction?

21 b. Per 4.1.6.3, were the McNeil's required to file a written plan? If not, what was  
22 submitted that would lead the Town to reach the conclusion that the McNeil's are  
23 in violation of the Zoning Ordinance?

24 c. Per 4.1.6.4, was the McNeil's Site Disturbance area under 7,500 square feet?; or,

25 d. Per 4.1.6.5, was the McNeil's Site Disturbance area over 7,500 square feet, and did  
the Town of Jackson require an 'erosion control plan' drawn by a professional

1 engineer? If not, again, what was submitted with regards to the Site Disturbance  
2 that would lead to the conclusion that they are in violation?

- 3 3. Were the changes or alterations done by the McNeil's mandated by the State of New  
4 Hampshire and subsequently approved by the Town of Jackson? According to the  
5 Approved Septic Plan, '*Approved as Noted*' returned on July 8, 2024, the McNeil's plan  
6 shows an 'existing culvert' that directs water from the opposite side of the street that was  
7 in place before their property was developed. Per the Septic Plan, a '*culvert or swale to*  
8 *direct outfall of road culvert*' which was installed down the side of the McNeil property  
9 and required it to '*terminate in stone pit to lessen impact on abutting lots*' which was  
10 done or the installation would not have been approved for use. The Septic Plan also  
11 denotes, in red writing, '*No connection to Town Culvert and no pipe in R.O.W. allowed*';  
12 therefore, how is it possible for the Town determine that all of the water that damaged  
13 the Goodine property originated from the McNeil property alone? It would make sense  
14 that the clear cutting of lot V08-222 has to have contributed to an increase in stormwater  
15 runoff.
- 16 4. Was it premature to issue a violation to the McNeil's based on one neighbor's complaint,  
17 without investigating where the water may have actually originated? According to Ms.  
18 Goodine's complaint, dated July 30, 2025, the damage to her leach field occurred in May  
19 of 2025 and that four individuals viewed the damage, Burr Phillips, Kevin Bennett, Eric  
20 Limmer and Curtis Milton. She goes on to say, "*All four concluded that the damage was*  
21 *the result of the redirection of the stormwater discharge from the McNeil property*",  
22 however, none have provided a report of their investigation, photographs of the water  
23 course, or any other information to support their finding and Ms. Goodine's complaint  
24 does not say 'when' the McNeil's 'redirected' the stormwater discharge, just that they had.  
25 How could all of the water that damaged the Goodine property come solely from the  
McNeil property and no other property uphill? During one of the driest summers on

1 record, did they find evidence on the ground that shows the McNeil property is the only  
2 property responsible?

3 5. Did new site development on Middle Mountain Trail contribute to the increase in water  
4 over the McNeil property? There has been ongoing development of Middle Mountain  
5 Trail, with the clear cutting of trees and blasting, including on September 10, 2025 when  
6 Attorney Ekberg and his paralegal attempted to view the McNeil property and were  
7 discouraged, then turned around for imminent blasting of another site on that road. It is  
8 well established that the clearcutting of trees significantly increases water runoff, leading  
9 to more water flowing across the surface rather than being absorbed into the ground.  
10 Beginning in 2023, V08-222 Middle Mountain Trail a building permit was issued, and  
11 extended on May 13, 2025, began with the clearcutting of trees and blasting [please see  
12 Appendix A] and is the property that shares the 'existing culvert' with the McNeil  
13 property and said 'existing culvert' is fed by two larger culverts on the opposite side of the  
14 road that terminate across from the McNeil property. There are multiple new homes and  
15 lots that have been cleared of trees across from the McNeil property, and the lack of trees  
16 is contributing to an increase in stormwater runoff. Did the Town address a potential  
17 increase in stormwater runoff when the other properties started being developed?  
18 Another possibility is that during the blasting of the other properties, that a seam of  
19 water was disrupted and also contributed to the increased the flow of water, all  
20 possibilities that need to be explored.

21 6. Did the McNeil's comply with what the State of New Hampshire and Town of Jackson  
22 experts required? The Septic Approval and Certificate of Occupancy would indicate that  
23 they had, but we are unclear as to which Zoning Ordinance they fall under and what, if  
24 anything, did they do in installing their septic system that was not in line with the permits  
25 as issued.

- 1 7. Is there sufficient causation to fine the McNeil's for a violation of an ordinance that was  
2 not in place at the time of construction? With specificity, we ask that the Town of  
3 Jackson spell out exactly what part of the Zoning Ordinance the McNeil's violated and  
4 how.
- 5 8. The McNeil's received an approved building permit, approved septic plan, approved  
6 driveway permit and approved occupancy permit which support that they complied with  
7 the Zoning Ordinance for the construction of their home.
- 8 9. Was the McNeil property also damaged due to stormwater runoff? It appears to us that  
9 the soil above the culvert, installed underground, on the McNeil property has also been  
10 disturbed in a similar manner to the Goodine property. Pursuant to Road Design and  
11 Construction Standards, Section 9.1 General, 1.2 says "*Maintain natural flow paths and*  
12 *avoid concentrating the flow at the property lines.*" and 1.3 says "*Drainage calculations*  
13 *shall be provided and reflect the potential development on abutting land, as well as the*  
14 *road construction.*" The 'natural flow path' that contributed to the damage to both the  
15 McNeil and Goodine properties was caused by an increase in water from the clearcut lot  
16 at Vo8-222, into two large culverts that converge into the one 'existing' smaller culvert,  
17 under the street, and along the McNeil property, therefore, the increase in water flow did  
18 not originate on the McNeil property.
- 19 10. Pursuant to Section 4.1.6.7, the Select Board has the authority to 'relax the plan  
20 requirements' for a Site Disturbance. We are requesting the Zoning Board of Adjustment  
21 vacate the Administrative Decision, issued by the Jackson Select Board on August 12,  
22 2025, and find that it is not appropriate to hold the McNeil's accountable to the 'new' Site  
23 Disturbance Ordinance after their property development was completed prior to it being  
24 adopted, that the Town of Jackson will address the water entering the existing culvert at  
25 the McNeil property, and that the 'existing culvert', which belongs to the Town of  
Jackson, may need to be revised or repaired to redirect the stormwater runoff in an

1 appropriate manner to prevent the excess stormwater runoff from crossing the McNeil  
2 property.

3 Conclusion:

- 4 1. The water did not originate from the McNeil property, it came from clearcut property  
5 being developed above and the water passed through the McNeil property.
- 6 2. There is a difference between:
  - 7 A. Following all Town and State requirements, ordinances, and laws, which we say the  
8 McNeil's followed; versus,
  - 9 B. Water flowing downhill even after the McNeil's did everything right.
- 10 3. If the McNeil's did everything right and the water still flooded Ms. Goodine's property,  
11 why should they be responsible and fined?
- 12 4. We cannot tell from the Select Board's letter what the Town says the McNeil's did wrong.
- 13 5. There appears to be a lot of construction since the McNeil's received their approvals,  
14 specifically V08-222 which started in 2023, and is still under construction with a renewed  
15 permit in 2025, and we find two culverts on the edge of the road that are apparently  
16 directing more water than the so called 'existing culvert' abutting the McNeil property can  
17 handle.
- 18 6. It is difficult to notify the ZBA with what is being appealed in the Ordinance because we  
19 are not convinced that the 'new' Zoning Ordinance applies. If it does, the letter does not  
20 spell out the specific violations.
- 21 7. We are claiming that the Select Board misinterpreted the Ordinance by applying the 'new'  
22 Ordinance when the 'old' Ordinance applied.
- 23 8. We are also claiming that the Zoning Ordinance (old or new) has not been factually  
24 violated as the McNeil's followed all Town and State procedures and received all the  
25 appropriate approvals.

1 9. We are also contesting that factually the May 2025 stormwater runoff overflow, that Ms.  
2 Goodine claims, resulted from any action, inaction, or violation on the McNeil's part.

3 10. The cause of said May 2025 stormwater runoff overflow has not yet been determined,  
4 therefore, we assent that it was premature on the Select Board's part to assume that there  
5 was a violation of either the 'old' or the 'new' Zoning Ordinance by the McNeil's.

6 11. The Select Board erred by assuming, without adequate evidence, that the water flow was a  
7 result of the McNeil's violation of a Town Zoning Ordinance.

8 Respectfully submitted,  
9 Katherine and David McNeil, by their Attorney,  
Dated this 19 day of September, 2025

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12  
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Appendix A:

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