

# TOWN OF ORFORD

Board of Selectmen  
Minutes of the Public Hearing  
January 18, 2023

MEMBERS PRESENT: John Adams, Jennifer Carter, Chase Kling

OTHERS PRESENT: Esther Dobbins-Marsh, Attorney Viggo Fish, Susan Hild, Steve Williams, Larry Taylor, Clifton Taylor, James Carter

## **Call Meeting to Order**

The meeting was called to order at 10:00 am

Public Hearing on 54 Upper Baker Pond Road re: Road Condition in front of the property

Attorney Fish, representing Susan Hild, thanked the Selectboard for its prompt response to the hearing request. He outlined the concerns of his client, Susan Hild.

- Hild only experienced water in her basement following the grading work completed in the summer of 2022. The first rain storm following this completed work is when she first discovered water in her basement.
- The family has owned the property for over 50 years, with the house being built in 1972. Jim Hook who has maintained the property for over a decade will also testify that he's never seen water in the basement until after the road work was completed.
- The road used to slope away from the Hild property and would drain into a channel on the opposite side of the road, which then flowed into a culvert that is under the road, and empties into Upper Baker Pond. The change of the grade is substantial and draining more water onto the Hild property. With no where to go, it's seeping into the ground, then into her basement.
- The condition of the road now creates run off on both sides of the road. There is a small ditch on the Hild side of Upper Baker Pond road that used to capture some runoff water and drain away from her house, which has been filled in.

Fish presented several photos to the Selectboard with explanations of what the photos showed:

### Exhibit 1

- Photo of the road prior to the material being added (taken in November 2020) which show the road was roughly level with the front lawn
- Road appeared graded to provide for appropriate drainage on both sides of the road, with crown diverting water towards the primary drainage channel on opposite side of Upper Baker Pond road.
- Water runoff is collected in small drainage channel and channeled along the road away from the Hild house.
- These conditions remained unchanged for approximately 20 years preceding the 2022 work.

### Exhibit 2

- Photo (taken end of summer 2022) reflects the height of the road raised dramatically above the preexisting grade
- Prior to regrading, the preexisting grade of the road was approximately equal to level of the front lawn area of the Hild property.
- The slope of the road directs increased water runoff onto the Hild property at an accelerated rate.
- The change in road height created significant access issues and hazardous, unsafe conditions for Ms. Hild and her guests.

#### Exhibit 3

- Photos (taken January 13, 2023) reflect the height change of the road to be approximately 20" above the preexisting grade. (they used a laser level to determine this)

#### Exhibit 4

- Photos (taken January 13, 2023) reflect water damage to the basement of the Hild house

In addition to the water damage, the water runoff has created public safety and personal safety hazards – very icy and difficult to walk in the area and to enter the house.

Fish discussed the intent behind the road work that was done, from information gathered, it's clear to him the road was over built more than intended. On June 30<sup>th</sup> Hild contacted Terry Straight, the Road Agent at that time, because she couldn't get out of her driveway because the back of her car was hitting the side of the road (this was before any water issues had occurred). His immediate observation when he arrived was that too much material had been put down. He told the road crew to put down 4 loads of gravel, but it looks like they put down 12 loads in this area. He understands June 30<sup>th</sup> was Mr. Straight's last day before his retirement from the Road Agent position. In the Road Advisory Committee meeting minutes of 6/13/22, Straight said the intent was to place gravel to a top deck of 6" With this information, it appears that a mistake was made in putting down too much gravel, Hild is requesting the mistake be remedied by removing the excess material.

Damages to Hilds property – she is not interested in pursuing monetary damages at this time. She just wants to remedy the situation to avoid future damages to her property. Every time it rains, water gets into her basement. She has to run dehumidifiers and industrial fans to try to keep the basement dry. Despite this, there are signs of water damage mold and mildew in her basement. (photos of exhibit 4, taken on 01/13/2023).

Kling asked how the water is coming into her basement – through the foundation or a crack in her basement walls? Attorney Fish said they have not explored how the water comes into the basement, as the standard is whether or not the town road work is causing this issue, as her property hasn't changed since 1972. It's not the burden on his client to assess how the water is entering her basement. This is immaterial to the issue being presented. The drainage was changed with the road work, causing water to come onto her property. Kling mentioned he had suggested to Ms. Hild that she consult a professional to determine whether her basement has experienced cracking or otherwise changed in a way that caused water in the basement; how does she know work on the road caused water to enter the basement? Attorney Fish stated that

what has changed is the water drainage, now running onto her property rather than draining on the opposite side of the road as it did before

Attorney Fish said the solution is to regrade the road in front of 54 Upper Baker Pond Road to equal or close to the prior grade, remove as necessary, the large chunks of material left after mud season, properly crown the road to allow runoff to drain to the western side of the road, and repair the drainage ditch on the east side that was filled in by the additional material, which should take care of all the issues being addressed. The spring thaw is only going to exasperate this issue, and feel the repair to the road needs to be done immediately or as soon as possible. They are open to other suggestions, as long as they address the issues raised by Hild.

Adams said there appear to be two problems – water and access. Regarding the grade, one is the absolute height and the pitch of the road not dumping water to the uphill side. Re-grading the road should take care of this issue, getting water into the ditch on the uphill side should be fairly easy. The material added to the road also changed the access to the property due to the transition from the road to property, which is exasperated because the property is at a low spot on the road. Kling asked about the location of the driveway – he feels Hild usually parks in the road right of way, and this creates an issue for the road crew when trying to work on the road. It also appears stairs on the property may be blocking the drainage on that side of the road.

Attorney Fish felt the parking issue doesn't pertain to the reason for the hearing and the request being made by Hild. The solution is clear – road material needs to be removed and the road regraded so water runoff doesn't go onto her property where it has nowhere to go except up against her foundation, then into her basement. Too much material was added and we are asking to remove it and allow water to drain where it used to in the existing drainage structure across the street. Fish also said his client is open to discussion of other options and compromise – if this work doesn't solve the issue, his client is open to exploring corrective action on her property, but the starting point is to address the cause, which is the regarding of the road.

Road Foreman Williams was asked by Adams about crowning gravel roads – what is normally done for a crown? Paved roads are normally 2%, gravel roads 2-4%, maybe 5% for the summer as in the winter it will come down some. The pitch was modified slightly this past fall, flattening out somewhat to about a 3% pitch. Adams asked whether it is within conventional expectations now? Williams said yes. Can the pitch be done to one side of the road? Williams said he could elevate the road, remove the crown and elevate to pitch to the west side. But this change is not usually done in winter months. Williams notes eaves of her house drop water onto her property and doesn't drain away from the house because it is pitched toward the foundation, not away to the lateral drainage. Adams said at the moment the discussion is about the road and pitch of the road toward her house, and addressing the pitch might demonstrate what is happening with the water. If that doesn't correct the drainage around the house, maybe it is a problem with Ms Hild's house. The other issue is the claim of buildup affecting access to the house.

Williams said the subbase of a gravel road is usually 12" with 6" top material. He noted that to take the road down a foot would be drastic. Fish stated again, his client is asking to remove material that was added in 2022, pitch the road to the pre-existing condition, which will allow the

runoff to go into the existing channel across the road, which will remedy the water runoff and access issues.

Attorney Fish cited RSA 231:75, which states “*The selectmen or their designee shall, at least 30 days prior to commencement of the work, give notice by certified mail, in the manner set forth in RSA 231:9, to adjoining landowners and any other owners whose land might reasonably be anticipated to be affected, describing the work to be performed*” Adams felt the work they intended to do was considered routine road maintenance for which no advance notice was required, and under RSA 231:75 (a) states “*No such notice shall be required in cases where none of the work is proposed to be done outside the limits of the highway right-of-way, and such work consists solely of (i) maintenance grading, or the cleaning or repairing of existing ditches, or (ii) the repairing or replacing of existing culverts or drainage structures without altering their size, depth, or positioning.*” Attorney Fish argued the road work was definitely more than regular maintenance, but Adams stated the Town looked at and felt this was routine maintenance, (at least what they intended to do). Kling stated during mud season Orford had 14 roads that were unpassable and Orford had to make these roads passable and safe to drive on. Adams said we are trying to move forward and solve the problem, which sounds like we have found a way to do.

Fish said his client is open to discuss the amount of material that needs to be removed, and at the site visit the Selectboard will get a better understanding of Hild’s concern. Kling notes Hild has asked different people for various amounts of material to be removed – what amount does she actually want removed? He’s concerned when the work is done, she will change her mind and demand that more material be removed. Adams asked Williams what would normally be done for a road of this type. Williams said he would put down 6” that would compact to 4” over time. If the lawn height is agreed to be the previous level of the road, then material would be 6” higher, if it had been the “routine maintenance” that was intended. Attorney Fish agrees that the need for maintenance grading has to be accounted for.

Comments from the public:

Larry Taylor said he was on the road the day the work was being done – had to wait a few times to get past. Understands the were covering up the large rock – He said that Road Agent Straight was there as more material was brought in. It created a hazard on this and other roads with high build-up causing deep ditches on the sides so vehicles can’t pull off to the side.

Clifton Taylor requested a board member park where Hild normally parks so they can better understand what she goes thru when trying to park at her property. Clifton also asked if taking the road down 1½ foot is drastic, but isn’t building it up that much drastic too?

James Carter said the SB aren’t road experts, and neither is he, but he’s lived on that road for 50 years. If you want to keep the same grade but want to have a better base, you remove the base you want to replace, grade it out and replace with hardpak so the road stay as it was. By doing this, the Town wouldn’t have wasted money and resources for extra material.

The meeting was recessed at 11:00 to be reconvened at 54 Upper Baker Pond Road

Meeting resumed at 54 Upper Baker Pond Road

The Selectboard and Road Foreman Williams observed that the road is pitched from the center line toward the Hild property, and the uphill is more or less flat. The Town will need to regrade the road to be flatter on the downhill side and pitched to the uphill side which should resolve the runoff situation. The road from approximately the mail box above the Hild property to power pole below the property will be regraded to adjust the height and pitch of the road. It might impact the existing culvert which Adams said the Town will deal with that if we have to.

The Town will lower the driving surface to 6" above the traditional front yard of the parking area of the Hild property and over time it will compress somewhat.

Attorney Fish, Susan Hild and the Selectboard all agreed this is a reasonable solution to the help solve the water runoff and access issue.

Williams asked to have a benchmark established so it is clear what the level will be for the work.

Respectfully Submitted,

Esther Dobbins-Marsh  
Administrative Assistant