

Heidi Carlson

From: Stephen Roberts <SRoberts@hpgrlaw.com>
Sent: Wednesday, September 27, 2017 2:37 PM
To: Krautmann, Charles; Heidi Carlson
Cc: Frank Coughlin; Kevin Baum; Talmage Solar Engineering, Inc. (solarmarket@gmail.com)
Subject: Brentwood Dam Ventures, LLC
Attachments: 2017 9-27 Attachments to Brentwood Dam Letter (00388529xC637B).PDF

Heidi/Charlie:

Please allow this to address certain issues relating to the Brentwood Dam.

A representative of the owner, Brentwood Dam Ventures, LLC will not be present at the meeting this evening. After review of the many detailed questions (which we received less than 24 hours ago) it is clear that there are significant legal and other issues that Brentwood Dam Ventures, LLC will not be able to address. Neither Atty. Baum nor I are able to attend due to pre-existing commitments; we were not consulted as to the date and time of the meeting prior to its scheduling.

As to the specific legal issues posed, we provide the following responses:

Q. For many abutters, their property line ends 15 to 20 feet from the current river's edge. Who owns the property beyond our property line to the river?

A. We do not know; an answer would require a title search of the various properties. Brentwood Dam Ventures, LLC does not own that property. See deed attached and excerpt from Brentwood Tax Map.

Q. If a recreational sportsman injures himself while on the bank and/or the river, who is legally responsible for his injuries?

A. It depends on the circumstances of the event. Generally speaking, a landowner does not owe a duty of care to keep premises safe for use by others for outdoor recreational activities; see RSA 212:34 and RSA 508:14 attached. There are exceptions to those statutory immunity provisions and we encourage any prospective landowner to consult an attorney concerning this issue.

Q. Who is responsible for maintaining and cleaning up the exposed riverbank areas?

A. We do not know; perhaps the owner of the exposed riverbank. Brentwood Dam Ventures, LLC does not own that property. Other attendees may be able to address the process that occurred for the Exeter Great Dam removal.

I want to make it clear to the State/DES, the Town and the abutters that Brentwood Dam Ventures, LLC has determined that transfer of ownership of the dam to the abutters or similar group is in the best interest of all parties. Brentwood Dam Ventures, LLC would be willing to convey ownership of all right, title and interest of the dam and related property to the abutters for nominal consideration, i.e. \$1.00.

Please pass along this information at the meeting this evening. I would be willing to sit down with a representative of the abutters to discuss the transfer of ownership.

Steve

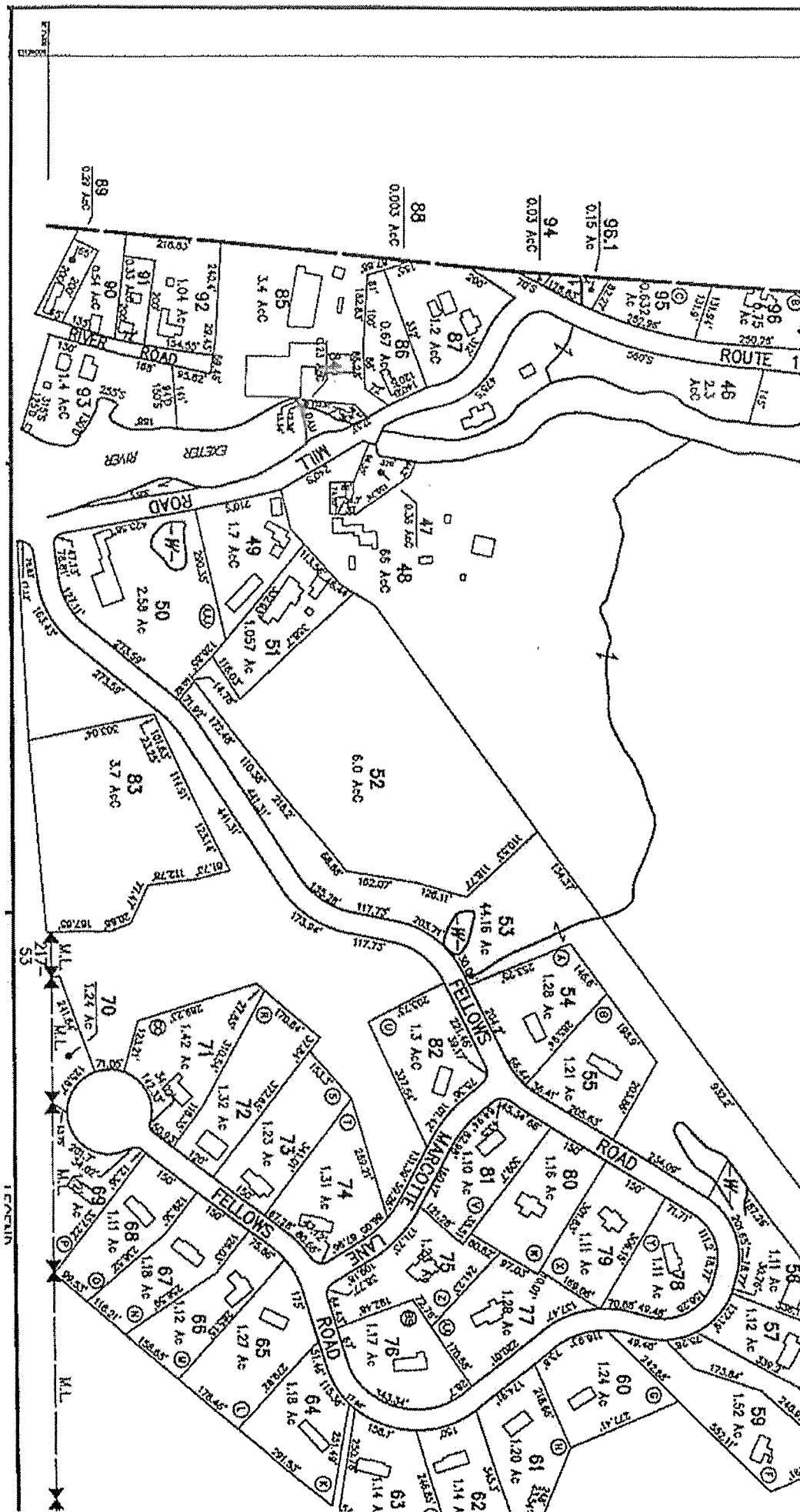
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Revised Statutes Annotated of the State of New Hampshire
Title XVIII. Fish and Game (Ch. 206 to 215-D) (Refs & Annos)
Chapter 212. Propagation of Fish and Game
Liability of Landowners

N.H. Rev. Stat. § 212:34

212:34 Duty of Care.

Effective: January 1, 2016
Currentness

I. In this section:

- (a) "Charge" means a payment or fee paid by a person to the landowner for entry upon, or use of the premises, for outdoor recreational activity.
- (b) "Landowner" means an owner, lessee, holder of an easement, occupant of the premises, or person managing, controlling, or overseeing the premises on behalf of such owner, lessee, holder of an easement, or occupant of the premises.
- (c) "Outdoor recreational activity" means outdoor recreational pursuits including, but not limited to, hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling as defined in RSA 215-C:1, XV, operating an OHRV as defined in RSA 215-A:1, V, hiking, ice and rock climbing or bouldering, or sightseeing upon or removing fuel wood from the premises.
- (d) "Premises" means the land owned, managed, controlled, or overseen by the landowner upon which the outdoor recreational activity subject to this section occurs.
- (e) "Ancillary facilities" means facilities commonly associated with outdoor recreational activities, including but not limited to, parking lots, warming shelters, restrooms, outhouses, bridges, and culverts.

II. A landowner owes no duty of care to keep the premises safe for entry or use by others for outdoor recreational activity or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph V.

II-a. Except as provided in paragraph V, a landowner who permits the use of his or her land for outdoor recreational activity pursuant to this section and who does not charge a fee or seek any other consideration in exchange for allowing such use, owes no duty of care to persons on the premises who are engaged in the construction, maintenance, or expansion of trails or ancillary facilities for outdoor recreational activity.

III. A landowner who gives permission to another to enter or use the premises for outdoor recreational activity does not thereby:

- (a) Extend any assurance that the premises are safe for such purpose;
- (b) Confer to the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed; or
- (c) Assume responsibility for or incur liability for an injury to person or property caused by any act of such person to whom permission has been granted, except as provided in paragraph V.

IV. Any warning given by a landowner, whether oral or by sign, guard, or issued by other means, shall not be the basis of liability for a claim that such warning was inadequate or insufficient unless otherwise required under subparagraph V(a).

V. This section does not limit the liability which otherwise exists:

- (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity;
- (b) For injury suffered in any case where permission to enter or use the premises for outdoor recreational activity was granted for a charge other than the consideration if any, paid to said landowner by the state;
- (c) When the injury was caused by acts of persons to whom permission to enter or use the premises for outdoor recreational activity was granted, to third persons as to whom the landowner owed a duty to keep the premises safe or to warn of danger; or
- (d) When the injury suffered was caused by the intentional act of the landowner.

VI. Except as provided in paragraph V, no cause of action shall exist for a person injured using the premises as provided in paragraph II, engaged in the construction, maintenance, or expansion of trails or ancillary facilities as provided in paragraph II-a, or given permission as provided in paragraph III.

VII. If, as to any action against a landowner, the court finds against the claimant because of the application of this section, it shall determine whether the claimant had a reasonable basis for bringing the action, and if no reasonable basis is found, shall order the claimant to pay for the reasonable attorneys' fees and costs incurred by the landowner in defending against the action.

VIII. It is recognized that outdoor recreational activities may be hazardous. Therefore, each person who participates in outdoor recreational activities accepts, as a matter of law, the dangers inherent in such activities, and shall not maintain an action against an owner, occupant, or lessee of land for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the outdoor recreational participant assumes as a matter

of law include, but are not limited to, the following: variations in terrain, trails, paths, or roads, surface or subsurface snow or ice conditions, bare spots, rocks, trees, stumps, and other forms of forest growth or debris, structures on the land, equipment not in use, pole lines, fences, and collisions with other objects or persons.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

Editors' Notes

HISTORY

Editor's note--2005. 2005, 210:11, eff. July 1, 2006, which amended RSA 212:34, did not include par. IV as added by 2005, 172:2, eff. Jan. 1, 2006.

ANNOTATIONS

Willful or malicious failure to guard against or warn

A plaintiff may not invoke RSA 212:34 if the plaintiff's injury was caused by a willful or malicious failure to warn or guard against the activity that resulted in the injury; although the statute does not define willful, RSA 212:34 defines the term as a voluntary act committed with an intent to cause its results' under any reasonable definition, the plaintiff's actions don't rise to the level of willful conduct. *Collins v. Martella*, 1994, 17 F.3d 1.

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N.H. Rev. Stat. § 212:34, NH ST § 212:34

Updated with laws current through Chapter 155 and Chapters 157 to 168, 172, 181, 189, 190, 192, and 193 of the 2017 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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Revised Statutes Annotated of the State of New Hampshire
Title LII. Actions, Process, and Service of Process (Ch. 506 to 513) (Refs & Annos)
Chapter 508. Limitation of Actions (Refs & Annos)

N.H. Rev. Stat. § 508:14

508:14 Landowner Liability Limited.

Effective: February 3, 2006
Currentness

I. An owner, occupant, or lessee of land, including the state or any political subdivision, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage.

II. Any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.

III. An owner of land who permits another person to gather the produce of the land under pick-your-own or cut-your-own arrangements, provided said person is not an employee of the landowner and notwithstanding that the person picking or cutting the produce may make remuneration for the produce to the landowner, shall not be liable for personal injury or property damage to any person in the absence of willful, wanton, or reckless conduct by such owner.

Notes of Decisions (27)

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N.H. Rev. Stat. § 508:14, NH ST § 508:14

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