

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Town of Lincoln

v.

Joseph Chenard

Supreme Court Case No.: 2020-0316

APPEAL FROM FINAL ORDER OF GRAFTON COUNTY SUPERIOR COURT

BRIEF FOR JOSEPH CHENARD

By his attorneys,
Bruce J. Marshall Law Offices, PLLC

Dated: December 15, 2020

Bruce J. Marshall, Esq. (NH Bar #12313)
48 Grandview Road, Suite #3
Bow, NH 03304
(603) 715-8720
Email: bmarshall@marshalllawnh.com

The Appellant requests fifteen minutes of oral argument before the full court, to be presented by Bruce J. Marshall, Esq.

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TEXT OF RELEVANT STATUTES

236:90 Policy. – It is hereby declared to be the policy of this state and in the public interest to provide for effective control of the establishment, use, and maintenance of junk yards adjacent to the interstate and turnpike systems in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

236:91 Definitions. –

For the purpose of this subdivision, the following words and phrases shall be construed as follows:

- I. "Effective control" means that by January 1, 1968, all junk yards located within 1,000 feet from the nearest edge of the right-of-way or visible from the main traveled way of the interstate and turnpike systems shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.
- II. "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
- III. "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- IV. "Junk yard" or "automotive recycling yard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and

sanitary fills. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

V. The words "interstate system" shall mean any highways which are a part of the national system of interstate and defense highways described in subsection (d) of section 103 of Title 23, United States Code.

VI. [Repealed.]

VII. The words "turnpike system" shall mean all highways within this state which are a part of the Spaulding and the Central New Hampshire Turnpike established by RSA 237, and which are not defined as interstate system in paragraph V of this section.

VIII. The words "zoned industrial area" shall mean those areas zoned for industrial use pursuant to a municipal zoning ordinance, regulation or bylaw.

IX. The words "industrial activity" shall mean those activities generally recognized as heavy industrial by zoning authorities in the state. Except that none of the following shall be considered industrial activities:

- (a) Outdoor advertising structures;
- (b) Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to wayside fresh produce stands;
- (c) Activities normally and regularly in operation less than 3 months of the year;
- (d) Transient or temporary activities;
- (e) Activities not visible from the traffic lanes of the main traveled way;
- (f) Activities more than 300 feet from the nearest edge of the main traveled way;
- (g) Activities conducted in a building principally used as a residence;
- (h) Railroad tracks, minor sidings and passenger depots;
- (i) Junk yards, as defined in section 136, Title 23, United States Code.

X. The words "unzoned industrial area" shall mean the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within 500 feet thereof which is:

- (a) Located on the same side of the highway as the principal part of said activity, and
- (b) Not used for residential or commercial purposes, and
- (c) Not zoned by state or local law, regulation or ordinance.

236:111 Purposes. – This subdivision is adopted under the police power of the state to conserve and safeguard the public safety, health, morals, and welfare, and to further the economic growth and stability of the people of the state through encouragement to the development of the tourist industry within the state. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion. In addition, such an environment is considered essential to the maintenance and continued development of the tourist and recreational industry which is hereby declared to be of significant and proven importance to the economy of the state and the general welfare of its citizens. At the same time, it is recognized that the maintenance of junk yards as defined in this subdivision, is a useful and necessary business and ought to be encouraged when not in conflict with the express purposes of this subdivision.

236:112 Definitions. –

For the purposes of this subdivision:

I. "Junk yard" means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

(a) Automotive recycling yards, meaning a motor vehicle , as identified in subparagraph (c), the primary purpose of which is to salvage multiple motor vehicle parts and materials for recycling or reuse;

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.

II. "Local governing body" means the mayor and board of aldermen or the council of a city, the selectmen of a town, or the commissioners of a village district.

III. "Machinery" means any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of 500 square feet.

IV. "Motor vehicle" means "motor vehicle" as defined by RSA 259:60, I, namely, any self-propelled vehicle not operated exclusively upon stationary tracks, including ski area vehicles.

V. "Motor vehicle dealer."

(a) "New motor vehicle dealer" means every person principally engaged in the business of buying, selling or exchanging new and secondhand motor vehicles, or tractors on commission or otherwise who maintains in operating condition, and in operation, and at which the dealer does a major portion of his business a place of business capable of housing indoors in one building in an area of 1200 square feet, 5 average-sized automobiles, devoted to the motor vehicle, or tractor business and gives mechanical service on the same and who holds a written contract with a manufacturer giving such person selling rights for new motor vehicles, or tractors, or with a distributor of such vehicles who, as such distributor, holds a manufacturer's franchise or contract giving selling rights on new motor vehicles, or tractors.

(b) "Used motor vehicle dealer" means every person or firm principally engaged in the business of buying, selling and exchanging secondhand motor vehicles or tractors, who maintains in operating condition and in operation and at which the dealer does the major portion of his

business a place of business capable of housing indoors in one building, in an area of at least 1200 square feet, 5 average-sized motor vehicles devoted to the used motor vehicles, or tractor business, and gives mechanical service on the same and at which the repair of used motor vehicles, or tractors is subordinate or incidental to the business of buying, selling and exchanging the same.

(c) "Junk motor vehicle dealer" means any person or firm who has an established place of business at which he is engaged in the business of buying secondhand motor vehicles for the purpose of taking the same apart, or buying, and selling parts of secondhand motor vehicles, or tires, for the assembling of secondhand motor vehicle parts.

QUESTION PRESENTED

1. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT APPLIED RSA 236:11 et seq. TO PERSONAL BELONGINGS ON FOUR RESIDENTIAL NON-BUSINESS PROPERTIES?
2. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DETERMINED THAT THE PLACEMENT OF ITEMS LISTED IN RSA 236:112 ON FOUR PRIVATE RESIDENTIAL PROPERTIES CONSTITUTED EACH TO BE A JUNK YARD, REGARDLESS OF QUANTITY OF EACH ITEM AS TO EACH PROPERTY?
3. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DETERMINED THE RESPONDENT'S FOUR SEPARATE PROPERTIES TO CONSTITUTE A JUNK YARD AS DEFINED BY RSA 236:112?

STATEMENT OF THE CASE AND FACTS

This matter arises from the Town of Lincoln (hereinafter "Lincoln") seeking injunctive relief for an alleged violation on properties owned by Joseph Chenard (hereinafter "Chenard") pursuant to RSA 236:128 and RSA 236:111, et seq. Based on the above, Lincoln also sought costs and legal fees pursuant to RSA 676:17, II.

Chenard owns property described as Tax Map 107, Lots 42, 43, 44 and 61 (hereinafter "Properties") in Lincoln New Hampshire. *See Order @ p.1 and Trial Trans. @ p.8 l.-20-23.* The subject parcels abut that portion of Rte. 3 within the limited access right of way for Interstate I-93. *See Respondent's Trial Exhibit D & E attached in appendix hereto.* The Properties are

located in Lincoln's general use zoning district. *See Order @ p.1 and Trial Trans. @ p.11 l. 10-12.* In presenting its case Lincoln only provided plans depicting the approximate location of Chenard's various parcels. *Trial Trans. @ p.10, l.21,22.* Lincoln's zoning ordinance is devoid any definition of junk yard and it does not incorporate, by reference, New Hampshire's statutory definition. *See Order @ p.1 and Trial Trans. @ p.14, l. 16-18, p. 22, l. 13-19, p.22, l.13-19.* Lincoln doesn't even have a written town policy of any kind detailing how Lincoln addresses junk yards. *Trial Trans. @ p.23, l.12-15.* Despite this, Lincoln applied its interpretation of the State's definition of junk yard to Chenard's storage of personal property on four of his Properties. *Id. @ p.14, l. 16-25.* In doing so Lincoln claims a junk yard exists on only select properties owned by Chenard despite their complaint having initially claimed a junk yard existed on all property owned by Chenard. *Id. @ p.18, l.22-25, 9.19, l. 1-9.* More specifically, three lots plus Chenard's house lot. *Id. @ p.20, l. 7-19, p.27, l.20-25.* Yet the Town's Fire Chief/code enforcement officer never even inspected the subject Properties prior to the complaint being filed as he was relying instead on the Selectmen and Town Manager. *Id. @ p.31, l. 20-25.* To support their claim of the existence of a statutorily defined junk yard, Lincoln produced photos at trial that failed to differentiate one property from another. *Id. @ p.32, l.19-25.* In fact, Lincoln never confirmed the location of a single property line. *Id.@ p.35, l. 9-12.* At least three of the alleged junk yard lots are occupied by tenants. *Id. @ p.35, l. 24-25, p. 36, l. 1-4.* Lincoln never attempted to confirm if the alleged junk yard materials on the three properties were the property of Chenard or the respective tenants. *Id. @ p. 36, l.7-23.*

In any event, Lincoln only enforces junk yard uses in response to complaints from an abutter. *Id. @ p. 37, l.16-22.* Lincoln's zoning ordinance doesn't even restrict a residential

owner from storing personal belongings in their yard. *Id.* @ p.45, l. 1-6. Instead Lincoln waits until they make the subjective determination that enough personal items have been accumulated outside to meet their interpretation of New Hampshire's statutory definition of junk yard and then it investigates the subject properties. *Id.* Lincoln treats every separate lot of record individually with respect to enforcing its zoning ordinance. *Trial Trans.* @ p.46, l. 7-9.

Lincoln's zoning ordinance limits outdoor display areas for merchants only and as such it was not applied to Chenard's parcels. *Id.* @ p.46, l.24-25, p.47, l.1-10. Nor did Lincoln consider Chenard's use of his parcels to warrant action under Lincoln's zoning ordinance regarding obnoxious uses. *Id.* @ p. 47, l. 11-22. Lincoln's zoning ordinance doesn't even prohibit residents from hoarding personal belongings on their property. *Id.* @ p. 73, l.9-11. Nor does Lincoln's zoning ordinance prohibit residents from storing belongings outside or recycling materials on their residential properties. *Id.* @ p.74, l.1-4, 19-21. To the contrary, Lincoln permits outdoor storage in residential yards until they subjectively determine a quantity sufficient for them to consider it to be a junk yard. *Id.* @ p.75, l. 7-16. Lincoln does so without ever defining what constitutes a junk yard, instead relying on their interpretation of the State statute. *Id.* @ p. 75 l. 17-20. In the instant matter, the Town Manager merely inspected the Properties on September 9, 2019 and based on photos determined certain vehicles were unregistered. *Id.* @ p. 90, l. 15-25. In fact, he never even made a determination as to whether or not Chenard was even operating a junk yard business. *Id.* @ p. 92, l. 15-18. He simply walked the property and subjectively determined that it contained junk stored outdoors. *Trial Trans.* @ p. 92, l. 19-23.

He relied on RSA 236:11 *et seq.* to describe material that, when accumulated, would classify as a junk yard. *Id.* p. 93, l. 1-7. He did so without knowing the legislative intent of New Hampshire's

related junk yard statutes. *Id.* @ p. 94, l. 15-25. In the Town Manager's subjective opinion Chenard took it to an excess. *Id.* Lincoln, through its Town Manager, believes Chenard's outdoor storage of personal materials is lawful until it reaches a certain quantity as subjectively determined by the Town Manager. *Id.* @ p. 95, l. 17-25. A landowner in Lincoln has no way of knowing when they reach that magical quantity requiring classification as a junk yard until the Town Manager comes out and says so. *Id.* @ p. 96, l. 2-13. Lincoln admits that if enough of Chenard's personal property was under cover, they would not consider it a junk yard. *Id.* @ p. 96, l. 14-21. Lincoln's Town Manager also admits that if Chenard's personal property was left under cover and/or he couldn't see it then he would not consider it to be a junk yard under the statute. *Id.* @ p. 96, 97, l. 22-25, 1-17. If there were no complaints, the Town Manager would not consider Chenard's Properties to be junk yards. *Id.* @ p. 97, l. 19-25. Lincoln was looking for Chenard to reduce the quantity of his personal property that Lincoln subjectively determined to be junk, to an acceptable level in order that it not be considered a junk yard. *Id.* @ p. 101, l. 20-22.

Lincoln permits the outside storage of personal property. *Id.* @ p. 102, l. 8-10. Lincoln's Town Manager admittedly doesn't even know what it means to operate a junk yard. *Id.* @ p. 110, l. 23-25. Lincoln's Town Manager doesn't know if Chenard was ever operating a junk yard business. *Id.* @ p. 11, l. 1-3. Instead, Lincoln's Town Manager merely subjectively asserts Chenard is maintaining a junk yard. *Id.* Yet he was unable to testify as to how much of each type of material listed in the related statute was on each of Chenard's Properties. *Id.* @ P. 111, 112, l. 24-25, 1-5. What the Town Manager was seeking was for Chenard to be ordered to reduce the quantity of the personal belongings it perceived as junk. *Id.* @ p. 112, l. 6-12. This despite

Chenard providing undisputed testimony that he has never operated a junk yard on his properties. *Id.* @ p.113, l.10-12. In fact, all he has been doing is storing personal property outside in the same manner that his parents had. *Id.* @ p. 113, l.13-22. In addition, it is undisputed that Chenard has been recycling certain materials on his properties as is permitted by the Town. *Id.* @ p. 115, l. 1-7. Chenard currently has additional personal belongings temporarily stored outside as two of his structures have partially collapsed. *Id.* @ p. 116, l. 3-16.

Lincoln has a history of permitting Chenard to have outside storage, historically just wanting fewer unregistered vehicles. *Id.* @ p. 81, l. 221-23. Historically Chenard was also permitted to store his machinery outside. *Id.* @ p. 81-81, l. 24-25, 1-3. Yet, in the instant matter they now take exception to that which they had previously approved. As far as determining what constitutes a junk yard, Lincoln's Town Manager bases it solely on his judgment call. *Id.* @ p. 85, l. 14-20. Lincoln's Town Manager would subjectively make the determination that materials appeared to be junk and leave the property owner to prove otherwise. *Id.* @ p.86, l.6-16. Chenard has personal belongings stored both outside and inside the structures located on his various Properties. *Id.* @ p.2. All of the belongings on the various properties are for Chenard's or his tenant's personal use. *Id.*

Following trial of this matter, the Trial Court issued an Order finding that Chenard's storage of personal property on his various Properties constituted the operation of a junk yard in violation of RSA 236:114. *Id.* @ p. 9. More specifically, the Trial Court determined the subject parcels collectively be considered a junk yard by considering all of Defendant's personal belongings stored outside on numerous separate parcels of land as if they were all on one parcel. *See Order* @ p.2. In doing so, the Trial Court also determined that the subject parcels did not

comprise a junk yard pursuant to RSA 236:90 *et seq.* as their use was determined not to be a business. The Trial Court did however find that the subject parcels were a junk yard pursuant to RSA 236:111 *et seq.* The Trial Court also ordered Chenard to cease his alleged violation of RSA 236:114 and abate the alleged nuisance. *Id.* Chenard's request for reconsideration was denied and this appeal followed.

SUMMARY OF ARGUMENT

Upon rendering its decision in this matter, the Trial Court unlawfully determined that Chenard's storage of personal belongings outside the structures on his various Properties constituted the operation of a junk yard in violation of RSA 236:114 and therefore the properties were a nuisance. Yet the trial record is devoid any evidence as to what materials were found on which of Chenard's parcels or any proof a junk yard operation ever existed. Nor did the Trial Court cite any statute in support the proposition that separate residential parcels could be considered as one for the purposes of New Hampshire's junk yard statutes. Considering RSA 236:111 *et seq.*, as relied upon by the Trial Court, is devoid any reference to one's ability to consider separate parcels as one, when making a junk yard determination and that Trial testimony unequivocally proved Lincoln considered each parcel separate under their zoning ordinance, failure to determine same rendered a determination of junk yard status impossible as to each parcel.

Furthermore, RSA 236:111 *et seq.* is intended to apply to **businesses** given its reference to applying to junk yards as defined in the subdivision are a useful and necessary **business**. (*emphasis added*). As interpreted by the Trial Court's Order, RSA 236:111 *et seq.* is the

equivalent of a statewide subjective clean yard statute instead of the intended junk yard business statute specified in RSA 236:111.

The Trial Court's application of RSA 236:11 *et seq.* to non-business-related residential yards creates ambiguity and imposes an arbitrary and subjective interpretation of what and how such personal belongings stored outside on a property, constitutes said residential yard to be classified as a junk yard under the statute. The Trial Court has erroneously applied a detailed statutory scheme intended to address concerns the Legislature had with the operation of junk yard businesses, to residential storage of personal property. Given the location of the subject Properties abuts the limited access right of way for Interstate I-93, the Trial Court should have applied RSA 236:90 *et seq.* and dismissed the case as Chenard's use did not meet the definition of junk yard as it was not a business.

ARGUMENT

I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT APPLIED RSA 236:11 *et seq.* TO PERSONAL BELONGINGS ON FOUR RESIDENTIAL NON-BUSINESS PROPERTIES.

The Trial record is devoid any evidence as to what materials were found on which particular parcel. This fact was confirmed by Lincoln's Town Manager. *Trial Tran @ P. 111, 112, l. 24-25, 1-5.* Nor has any statute been cited to support the proposition that separate residential parcels can be considered as one for the purposes of New Hampshire's statutes. Considering RSA 236:111 *et seq.*, as relied upon by the Trial Court, is devoid any reference to one's ability to consider separate parcels as one, when making a junk yard determination and that trial testimony unequivocally showed Lincoln considers each parcel separate under their zoning ordinance, a determination of what material was on each particular lot was paramount prior to a

determination of junk yard status being made.

The Trial Court did not appear to have considered that the purpose of RSA 236:111 *et seq.* is:

“to conserve and safeguard the public safety, health, morals, and welfare, and to further the economic growth and stability of the people of the state through encouragement to the development of the tourist industry within the state. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion. In addition, such an environment is considered essential to the maintenance and continued development of the tourist and recreational industry which is hereby declared to be of significant and proven importance to the economy of the state and the general welfare of its citizens. At the same time, it is recognized that the maintenance of **junk yards as defined in this subdivision, is a useful and necessary business** and ought to be encouraged when not in conflict with the express purposes of this subdivision.” (*emphasis added*).

The Legislature clearly intended RSA 236:111 *et seq.* to apply to junk yard businesses when they wrote that junk yards **as defined in the subdivision** were useful and **necessary businesses**.

(*emphasis added*). Given this, the Trial Court’s finding otherwise is in opposition to the clear purpose and intent of the statute. The Trial Court cited the definition only, without consideration of the language of RSA 236:111 *et seq.* taken as a whole. As interpreted by the Trial Court’s Order, RSA 236:111 *et seq.* would be the equivalent of statewide subjective clean yard statute instead of the intended junk yard business preservation statute specified in RSA 236:111 *et seq.* and RSA 236:90 *et seq.*

The Trial Court’s application of RSA 236:11 *et seq.* to non-business-related residential yards creates ambiguity and imposes an arbitrary and subjective interpretation of what and how such personal belongings stored outside a residence constitutes such a residential yard to be classified as a junk yard business under the statute. Especially when one considers that Lincoln considers the state junk yard statutes to be dependent on quantity of material stored as opposed to whether or not a junk yard business is in operation. Recall Lincoln’s Town Manager testified

that it was dependent on his subjective determination. *Trial Trans.* @ p. 95, l. 17-25. Recall further that he testified that he could not specify to the Trial Court what quantity of personal belongings stored outside a residence triggered his junk yard classification while acknowledging that Lincoln regulations were devoid any restriction of same. *Id.* @ p. 96, l. 2-13, p.45, l. 1-6. The Town of Lincoln could not even specify what quantity of a given material constituted a junk yard under the statute. Nor could the Town offer any evidence as to what quantity of so-called junk was stored on each of Chenard's parcels. *Id.* @ p. 36, l.7-23.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DETERMINED THAT THE PLACEMENT OF ITEMS LISTED IN RSA 236:112 ON FOUR PRIVATE RESIDENTIAL PROPERTIES CONSTITUTED EACH TO BE A JUNK YARD , REGARDLESS OF QUANTITY OF EACH ITEM AS TO EACH PROPERTY.

RSA 236:112 defines junk yard to mean:

“a **place** used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

- (a) Automotive recycling yards, meaning a motor vehicle , as identified in subparagraph (c), the primary purpose of which is to salvage multiple motor vehicle parts and materials for recycling or reuse;
- (b) Machinery junk yards, as defined in paragraph III; and
- (c) Motor vehicle junk yards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:
 - (1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or
 - (2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.”

First and foremost, the statute is in reference to one “place” not places. Recall the instant matter involves several different and separate parcels of land owned by Chenard individually. Yet the

Trial Court Order is devoid any affirmation as to which of the lots are junk yards. Instead the Trial Court merely states Chenard is operating or maintaining a junk yard. Furthermore, considering the language of RSA 236:111, it escapes sound logic as to how one could be permitted to consider the storage of any of the items listed in RSA 236:112 on a given property to be a junk yard under the statute, absent a determination of an established junk yard business. Regardless Lincoln would have to prove a junk yard business was on each of the subject lots individually. Proof that was never provided at trial. In the instant matter, Lincoln acknowledges that Chenard is not operating a junk yard business, they instead maintain their junk yard determination based on their erroneous interpretation that RSA 236:111 includes residential storage of the materials referenced therein being visible to the public. No such inference can be reasonably drawn from the statute. Lincoln is merely attempting to use New Hampshire's statutes as a means to monitor the cleanliness of residential yards rather than developing their own ordinance to address same.

III. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DETERMINED THE RESPONDENT'S FOUR SEPARATE PROPERTIES TO CONSTITUTE A JUNK YARD AS DEFINED BY RSA 236:112.

First and foremost, RSA 236:112 pertains to junk yard businesses on a single parcel, not individual residential storage or personal property of tenants and landowners on separate parcels. Secondly, the subject parcels of land are within New Hampshire's limited access highway system for I-93. *See Respondents' Exhibit D and E attached.* As such, RSA 236:90 *et seq.* is the correct junk yard statute to apply in this case. RSA 236:90 defines junk yards, in pertinent part, as an **establishment or place of business** which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary fills. (*emphasis added*). As it is

undisputed that Chenard's parcels are adjacent to adjacent to the interstate system and he is not operating a junk yard business, RSA 236:90 *et seq.* requires Chenard's use of his Properties to fall outside its definition of junk yard. As such the Trial Court's Order is erroneous as the case should have been dismissed.

CONCLUSION

Lincoln has unlawfully attempted to subjectively apply New Hampshire's junk yard statute to Chenard's storage of his personal property and that of his tenants on four separate parcels as a substitute for its failure to enact ordinances to address their apparent concerns with the upkeep of residential properties in Lincoln. For these reasons and those detailed above, the Appellant, Chenard requests that this Supreme Court find that the Trial Court erred as a matter of law, vacate the Trial Court's Order and remand the matter to the Trial Court for findings consistent herewith.

REQUEST FOR ORAL ARGUMENT

Chenard respectfully requests oral argument, to be presented by Bruce J. Marshall, Esq.

The undersigned counsel hereby certifies that a copy of the appealed decision has been included in the appendix hereto.

Respectfully submitted,

Joseph Chenard

By and through his Attorneys,

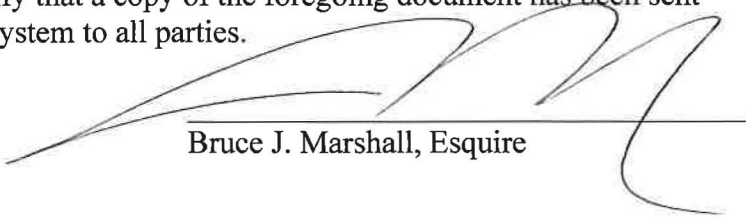
Bruce Marshall Law Offices, P.L.L.C.
48 Grandview Road, Suite #3
Bow, NH 03304
(603) 715-8720

Date: December 15, 2020


Bruce J. Marshall, Esq. NH Bar# 12313

CERTIFICATE OF SERVICE

I, Bruce J. Marshall do hereby certify that a copy of the foregoing document has been sent through the Court's electronic filing system to all parties.


Bruce J. Marshall, Esquire

APPENDIX

Final Decree.....18

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STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS.

Docket No. 215-2018-CV-167

Town of Lincoln

v.

Joseph Chenard

FINAL DECREE

The petitioner, Town of Lincoln (the "Town"), brought this action against the respondent, Joseph Chenard, seeking relief from alleged violations of New Hampshire's junkyard statute and the Town zoning ordinance. (Index #1.) The court conducted a final hearing on the merits on November 8, 2019, and March 4, 2020, including a view of the alleged junkyard properties on November 8, 2019. Based on the parties' arguments, the view, the evidence adduced at the final hearing, and the applicable law, the court finds and rules as follows.

Salient Facts

The respondent owns property located in Lincoln, New Hampshire, identified as Tax Map 107, Lots 42, 43, 44, and 61 (collectively referred to as the "Properties"). (See Pet'r's Ex. 1.) It appears that, based on the court's own observations of the Properties and evidence presented at the hearing, at least some of the Properties are located within 1,000 feet of the "interstate system," as defined by RSA 236:91, V. (See Resp't's Ex. E.) The Properties are located within the Town's "General Use" zoning district. (See Pet'r's Ex. 1.) Within the General Use district, "Junk Yards" are allowed by special exception only. (Pet'r's Ex. 2.) The Town zoning ordinance does not define the term "Junk Yard" and does not incorporate by reference any statutory definition of "junk yard." (See Pet'r's Ex. 4.)

CLERK'S NOTICE DATE

4/13/2020

CC: P. Malra, B. Marshall; J. Dennis; K. Bradley

Over the course of many years, the respondent has amassed large amounts of personal belongings that he stores at his Properties, both outdoors and in a number of sheds, which are generally in a dilapidated condition. (See Pet'r's Exs. 3A-3CC.) During its view of the Properties, the court observed old or used scrap metal including numerous machine or automotive parts, tires, wheels, cables and wiring, woodstoves, snowplows, construction debris, steel drums, plastic barrels, and other detritus. The court observed several automobiles that did not appear to be in working order, as well as old snowmobiles, lawnmowers, and ATVs, an old boat, and two semi-trailers. All of the materials stored on the Properties belong to the respondent and are stored there for his own personal use. The respondent has not obtained a license to operate a junkyard business at his Properties, and he has never received a special exception for Junk Yard use of his Properties.

Analysis

The Town now seeks injunctive relief, pursuant to RSA 236:128, I, enjoining the respondent from operating a junkyard at his Properties in violation of RSA 236:114. (Pet. Prayer B.) The Town also seeks the imposition of civil penalties, pursuant to RSA 236:128, III, and reasonable costs and attorney's fees, pursuant to RSA 676:17, II. (Pet. Prayers C and D.) The Town argues that the respondent's use of his Properties constitutes a "junk yard," as defined by RSA 236:112, I, and that he is therefore required to obtain a junkyard business license pursuant to RSA 676:114. Because the respondent has not obtained a license, the Town argues that it is entitled to injunctive relief abating the respondent's use of the Properties as a junkyard. Additionally, the Town argues that because the Properties meet the statutory definition of a junkyard, the respondent is required to obtain a special exception under the Town zoning ordinance for junkyard use of the Properties. Because the respondent has not received a special exception, the Town argues that his use of the

Properties violates the Town zoning ordinance and that, accordingly, the Town is entitled to recover its costs and attorney's fees in pursuing this action. The defendant has raised a number of arguments in opposition to the Town's requested relief. As the essential facts described above do not appear to be in dispute, the court will consider each of the respondent's arguments in turn.

The respondent first argues that to the extent his Properties would be considered a junkyard under RSA 236:111 *et seq.*, the provisions of that subdivision conflict with the provisions of RSA 236:90 *et seq.* The defendant contends that, pursuant to RSA 236:101, the disposition of this case is governed by RSA 236:90 *et seq.* because the Properties are located less than 1,000 feet from the "interstate system," as defined by RSA 236:91, V. The respondent argues that because his Properties do not constitute a junkyard under RSA 236:91, IV and RSA 236:9, IV, the Town is not entitled to injunctive relief. The respondent also asserts that, regardless of other statutory provisions, his use of the Properties is permitted under RSA 236:103.

The parties' arguments require the court to engage in statutory interpretation. When interpreting a statute, the court "first examine[s] the language of the statute and ascribe[s] the plain and ordinary meanings to the words used." *JMJ Props., LLC v. Town of Auburn*, 168 N.H. 127, 130 (2015). The court "interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." *Id.* "Furthermore, [the court] interpret[s] statutes in the context of the overall statutory scheme and not in isolation." *Id.*

In New Hampshire, junkyards are governed by two statutory subdivisions that are relevant to these proceedings. First, RSA 236:90 *et seq.* governs the regulation of junkyards located "less than 1,000 feet from the nearest edge of the right-of-way lines and

visible from the main traveled way of the interstate system.” RSA 236:96. Second, RSA 236:111 *et seq.* governs “all junk yards, as defined by RSA 236:112, I, including those approved under RSA 149-M and those subject to regulation under RSA 236:90–110.” RSA 236:111-a. RSA 236:111 *et seq.* therefore governs a broader range of junkyards than RSA 236:90 *et seq.* Nevertheless, “[i]f the provisions of [RSA 236:90–110] or the application of such provisions to any person or circumstances appear to conflict with the provisions of RSA 236:111-129 then the provisions of [RSA 236:90–110] shall take precedence.” RSA 236:101. The commissioner of transportation may bring an action to enjoin a violation of RSA 236:90 *et seq.*, whereas a “governing body, elected or appointed officers or other appointed agents of a town, city, or unincorporated place, or a private person” may bring an action to enjoin a violation of RSA 236:111 *et seq.* See RSA 236:107 and 236:128.

RSA 236:91 defines “junk yard” as “an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk.” RSA 236:91, IV. It defines “junk” as “old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.” RSA 236:91, II. In contrast, RSA 236:112, I provides, in relevant part, that a “junk yard” is “a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material.”

The primary difference in these two definitions is that RSA 236:91 contemplates that a junkyard is “an establishment or place of business” whereas RSA 236:112 contemplates that a junkyard is merely a “place.” To the extent the respondent argues that

a junkyard must be an establishment or place of business under RSA 236:112, the court disagrees. The use of the phrase “establishment or place of business” in RSA 236:91 demonstrates that if the legislature intended to impose a similar requirement in RSA 236:112, it would have done so. The court will not consider language that the legislature did not see fit to include in RSA 236:112. The court therefore rules that under RSA 236:112, an alleged junkyard need not be an establishment or place of business, but may be any “place” used for the purposes enumerated in that statute.

Applying this relevant statutory framework to the facts of the instant case, the court finds that the respondent’s properties are a junkyard within the meaning of RSA 236:111 *et seq.* Although the respondent is not operating an establishment or place of business at the Properties, but is instead storing personal belongings for his personal use, a junkyard does not need to be a place of business under RSA 236:112. Additionally, the respondent is using his properties to store and keep “old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material.” RSA 236:112, I. During its view of the Properties, the court personally observed that the respondent was storing most, if not all of the items identified in RSA 236:112, I, including old or scrap metal, trash, waste, and junked, dismantled, or wrecked motor vehicles or parts thereof. Pursuant to RSA 236:114, the respondent was therefore required to obtain a license to operate a junkyard business as well as a certificate of approval for the location of the junkyard on his Properties.

As the respondent correctly notes, however, RSA 236:90 *et seq.* takes precedence where its application appears to conflict with the provisions of RSA 236:111 *et seq.* The definition of a junkyard in RSA 236:90–110 contemplates that a junkyard is an

establishment or place of business and, as the court has already noted, the respondent's Properties are not being used as an establishment or place of business. The court does not find, however, that this results in a conflict between RSA 236:90 *et seq.* and RSA 236:111 *et seq.* Whereas RSA 236:90 *et seq.* governs junkyards located within 1,000 feet and in view of the interstate system, RSA 236:111 *et seq.* explicitly governs all junkyards defined in RSA 236:112, I, including all junkyards regulated under RSA 236:90 *et seq.* Compare RSA 236:96 with RSA 236:111-a. The effect of RSA 236:90 *et seq.* is to bring certain, narrowly-defined junkyards within the jurisdiction of the New Hampshire Department of Transportation. See RSA 236:92. In contrast, the effect of RSA 236:111 *et seq.* is to confer authority upon local governing bodies to regulate all junkyards within their municipalities. See RSA 236:111-a and 236:115. Accordingly, the fact that a property is not considered a junkyard under the narrower definition of RSA 236:90 *et seq.* does not preclude it from being considered a junkyard, and therefore regulated, under RSA 236:111 *et seq.* The court therefore rules that, while the respondent's Properties may not be subject to regulation under RSA 236:90 *et seq.*, the Properties are nevertheless subject to regulation under RSA 236:111 *et seq.*

To the extent the respondent argues that under RSA 236:103 he was not required to comply with licensure requirements, the court disagrees. That statute provides, in its entirety:

Notwithstanding any provision of this subdivision, junk yards, auto graveyards and scrap metal processing facilities may be operated within areas adjacent to the interstate system and the turnpike system which are within 1,000 feet of the nearest edge of the right-of-way and which are within a zoned industrial area, or which are within an unzoned industrial area but are used for industrial activities.

RSA 236:103. The statute provides only that junkyards "may be operated within" certain

areas. It does not provide that junkyards in those areas may be operated without a license, and the court declines to add words that the legislature did not see fit to include.

To the extent the respondent argues his use of the Properties is “grandfathered,” and therefore not subject to the provisions of RSA 236:114, the court notes that RSA 236:125 contains the following grandfather clause:

For the purposes of this subdivision the location of junk yards or automotive recycling yards already established are considered approved by the local governing body of the municipality where located and the owner of the yard considered suitable for the issuance of a license. Within 60 days from the passage of this subdivision, however, the owner shall furnish the local governing body the information as to location which is required in an application, together with the license fee, and the local governing body shall issue him a license valid until April 1, 1966, at which time the owner may apply for a renewal. The owner shall comply with all other provisions of this subdivision including the fencing requirements set forth in RSA 236:123.

In order to obtain a license to operate a junkyard under RSA 236:125, an owner of an established junkyard must comply with each of the requirements set forth in the statute. *Guy v. Town of Temple*, 157 N.H. 642, 657 (2008). By its plain language, the statute does not allow a person to operate or maintain a junkyard without a license. Based on its review of the evidence presented during the trial on this matter, the court finds that the respondent has failed to prove the applicability of this clause to his use of the Properties as a junkyard.

Having determined that the respondent’s Properties constitute a junkyard, as defined by RSA 236:112, and that RSA 236:111 *et seq.* governs the outcome of this case, the court next considers whether the respondent has violated the applicable junkyard statute. RSA 236:114 provides that “[a] person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard.” It is

undisputed in this case that the respondent has not received a license to operate a junkyard on his Properties. The court therefore rules that the respondent is operating or maintaining a junkyard in violation of RSA 236:114. Consistent with RSA 236:119, the court declares the respondent's Properties a nuisance. *See* RSA 236:119 ("Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance . . .").

Finally, the court addresses the Town's claim that the respondent's use of his property as a junkyard violates the Town zoning ordinance. Although Count III of the Town's petition asserts a claim for an alleged violation of the Town's zoning ordinance, the only relief sought is an award of reasonable costs and attorney's fees. (*See* Pet. ¶¶ 15–19.) Count III does not seek to enforce, by way of injunctive relief or otherwise, any violation of the zoning ordinance. (*See id.*) In contrast, Counts I and II seek injunctive relief arising from an alleged violation of the state junkyard statute, specifically RSA 236:111 *et seq.* RSA 676:17, II provides, in relevant part:

In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance . . . the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action.

In order to recover its costs and fees under this statute, the Town must be the prevailing party in an action to "enforce, by way of injunctive relief . . . or otherwise," a local zoning ordinance.

As the court has already noted, the Town's petition does not seek to enforce the zoning ordinance. Counts I and II of the petition specifically seek injunctive relief arising from an alleged violation of the state junkyard statute. Count III seeks an award of costs and fees arising from an alleged violation of the Town zoning ordinance. Importantly, the

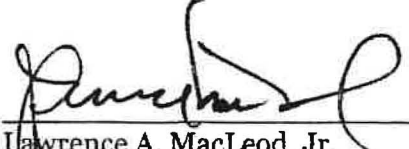
petition does not seek injunctive relief arising from the alleged violation of the zoning ordinance, and it does not otherwise seek to enforce the ordinance. Accordingly, the court finds that this is not an action to enforce a zoning ordinance and, therefore, the Town is not entitled to seek an award of its costs and attorney's fees under RSA 676:17, II. Because the Town is not entitled to the relief it seeks, the court declines to consider whether the respondent's use of his Properties constitutes a violation of the Town zoning ordinance.

Conclusion

In conclusion, the court rules that the respondent is operating or maintaining a junkyard in violation of RSA 236:114 and that his Properties are therefore a nuisance. The court hereby orders that the defendant shall end his violation of RSA 236:114 and abate the nuisance no later than August 10, 2020 at 12:00 a.m. *See* RSA 236:128, I ("The local governing body may obtain a mandatory injunction to end the violation."). Thereafter, the Town may, consistent with the authority granted by RSA 236:128, III, impose a civil penalty of up to \$50.00 per day for every day that the nuisance continues, until such time as the nuisance is abated to the Town's satisfaction. The court denies the Town's request for costs and attorney's fees.

To the extent the parties made arguments not addressed in this order, the court finds them to be without merit in light of the court's findings and rulings above. The parties' requests for findings of fact and rulings of law are GRANTED to the extent that they are consistent with this order and are otherwise DENIED.

SO ORDERED, this 13th day of April 2020.


Lawrence A. MacLeod, Jr.
Presiding Justice

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

Town of Lincoln

v.

Joseph Chenard

Docket No.: 215-2018-CV-00167

DEFENDANT'S MOTION FOR RECONSIDERATION

NOW COMES the Defendant, Joseph Chenard, by and through his attorneys, Bruce J. Marshall Law Offices, P.L.L.C., and hereby moves for reconsideration of this Court's Order dated April 13, 2020, stating in support thereof as follows:

1. This Court determined the subject parcels collectively be considered a junk yard by considering all of Defendant's personal belongings stored outside on numerous separate parcels of land as if they were all on one parcel. *See Order @ p.2*. In doing so, this Court also determined that the subject parcels did not comprise a junk yard pursuant to RSA 236:90 *et seq.* as their use was determined not to be a business. This Court did however find that the subject parcels were a "junk yard" pursuant to RSA 236:111 *et seq.*

2. The trial record is devoid any evidence as to what materials were found on which parcel. Nor has any statute been cited to support the proposition that separate residential parcels can be considered as one for the purposes of New Hampshire's junk yard statutes. Considering RSA 236:111 *et seq.*, as relied upon by this Court, is devoid any reference to one's ability to consider separate parcels as one, when making a "junk Yard" determination and trial testimony unequivocally showing the Town of Lincoln considers each parcel separate under their zoning

ordinance, such determinations were paramount prior to a determination of “junk yard” status could be made.

3. This Court’s Order does not appear to have considered that the purpose of RSA 236:111 *et seq.* is:

“to conserve and safeguard the public safety, health, morals, and welfare, and to further the economic growth and stability of the people of the state through encouragement to the development of the tourist industry within the state. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion. In addition, such an environment is considered essential to the maintenance and continued development of the tourist and recreational industry which is hereby declared to be of significant and proven importance to the economy of the state and the general welfare of its citizens. At the same time, it is recognized that the maintenance of **junk yards as defined in this subdivision, is a useful and necessary business** and ought to be encouraged when not in conflict with the express purposes of this subdivision.” (*emphasis added*)

The Legislature clearly intended RSA 236:111 *et seq.* to apply to junk yard businesses when they wrote that junk yards **as defined in the subdivision** were a business. (*emphasis added*) Given this, this Court’s finding otherwise is in opposition to the purpose and intent of the statute. This Court cited the definition only, without consideration of the language of RSA 236:111. As interpreted by this Court’s Order, RSA 236:111 *et seq.* is the equivalent of statewide subjective clean yard statute instead of the intended junk yard business statute specified in RSA 236:111. Said purpose is devoid reference to the importance of the maintenance of residential yards.

4. This Court’s application of RSA 236:11 *et seq.* to non-business-related residential yards creates ambiguity and imposes an arbitrary and subjective interpretation of what and how such personal belongings stored outside, on a residence, constitutes such a residential yard to be classified as a junk yard under the statute. Indeed, at trial the Town of Lincoln even acknowledged, through testimony, that they made such a determination subjectively. Recall, trial testimony confirmed that the Town of Lincoln could not specify to this Court what quantity

of personal belongings stored outside a residence triggered a junk yard classification while acknowledging that Town regulations were devoid any restriction on same. The Town of Lincoln could not even specify what quantity of a given material constituted a junk yard under the statute. Nor could the Town offer any evidence as to what quantity of so-called junk was stored on which parcel of the Defendant.

5. Regardless, this Court's Order directs the Defendant to abate the alleged nuisance on or before August 10, 2020 at 12:00 a.m. Given the Town's inability to specify what quantity of which materials on which parcel constitute a junk yard in their ever-changing subjective opinion, it is an unfair and unjust for this Court to expect the Defendant to comply to that which the Town of Lincoln to date has been unable to define.

6. Finally, given the uncertainty of the current Covid-19 crisis and its impact on Defendant's ability to remove certain personal belongings from his various yard areas, Defendant respectfully requests that should this motion be denied that he be granted 180 days from the date Covid-19 restrictions are lifted to complete any ordered acts.

WHEREFORE, Defendant respectfully request that the Court:

- A. Reconsider its Order of April 13, 2020 as stated above; and
- B. Grant such other and further relief as appropriate.

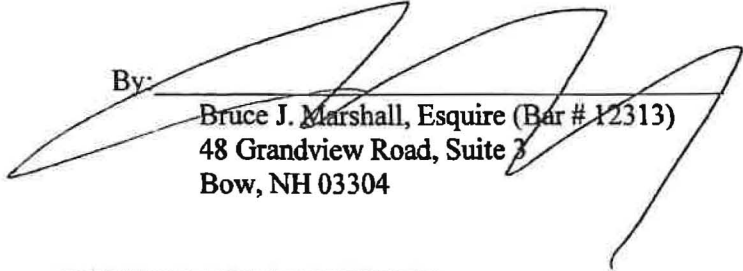
Respectfully Submitted,

Joseph Chenard

By his Attorneys,
Bruce J. Marshall Law Offices, P.L.L.C.

Date: April 23, 2020

By:



Bruce J. Marshall, Esquire (Bar # 12313)
48 Grandview Road, Suite 3
Bow, NH 03304

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to Peter J. Malia, Jr., Esq. on the above date via first class mail.



Bruce J. Marshall, Esq

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS.

Docket No. 215-2018-CV-167

Town of Lincoln

v.

Joseph Chenard

ORDER

The petitioner and respondent have both moved for reconsideration of this court's Final Decree dated April 13, 2020. Motions for reconsideration must "state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present." *Super. Ct. Civ. R. 12(e)*. Upon review of the respondent's motion, the court finds that it did not overlook or misapprehend any point of law or of fact. Accordingly, the respondent's motion for reconsideration (Index #29) is DENIED.

The court rejects the arguments raised in the petitioner's motion to the extent that they do not identify any points of law or of fact that the court overlooked or misapprehended. Upon examination of the petitioner's motion and the court's April 13, 2020 Order, however, the court believes it overlooked a point of law that has not been specifically identified in the course of these proceedings. RSA 676:15 provides, in relevant part:

In case...any land is...used in violation of...any local ordinance,...the building inspector or other official with authority to enforce the provisions of...any local ordinance... may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, alteration, or reconstruction.

CLERK'S NOTICE DATE

6/19/2020

CC: K. Bradley; J. Dennis; P. Melia, B. Marshall

(Emphasis added.) The petition in this case did not explicitly seek to enforce the Town zoning ordinance beyond seeking an award of attorney's fees for an alleged violation of the ordinance. The court finds, however, that under RSA 676:15, the petitioner's action to enforce the state junkyard statute was an "other appropriate action or proceeding to prevent, enjoin, abate, or remove" the alleged junkyard from the respondent's property. The court therefore finds that, because the petitioner sought to enjoin the respondent's use of his property pursuant to RSA 236:128 and also alleged a violation of the Town zoning ordinance, this was an "action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15" the zoning ordinance, as contemplated by RSA 676:15 and 676:17, II. The court concludes, therefore, that the petitioner was entitled to an award of attorney's fees under RSA 676:17, II, if it met its burden of proving that the respondent violated the Town zoning ordinance.

Upon review of the evidence presented at trial, however, the court rules that the petitioner failed to prove a violation of the zoning ordinance. The court made the following findings in its previous order:

The [respondent's] Properties are located within the Town's "General Use" zoning district. (*See* Pet'r's Ex. 1.) Within the General Use district, "Junk Yards" are allowed by special exception only. (Pet'r's Ex. 2.) The Town zoning ordinance does not define the term "Junk Yard" and does not incorporate by reference any statutory definition of "junk yard." (*See* Pet'r's Ex. 4.)

(April 13, 2020 Order at 1.) The court also found that the respondent "has never received a special exception for Junk Yard use of his Properties." (*Id.* at 2.) In addition, the court now finds that at trial, the petitioner introduced evidence, specifically testimony from Carole Bont, the Town planner, and Ronald Beard, the Town code enforcement officer, that the Town applies the definition of "junk yard" contained in

RSA 236:12 to determine whether a landowner's use of his property constitutes a junkyard under the Town zoning ordinance.

Based on the foregoing, the court must determine whether the petitioner's use of his Properties constituted a "Junk Yard" use under the Town zoning ordinance.


"Interpretation of a zoning ordinance requires [the court] to determine the intent of the enacting body." *Feins v. Town of Wilmot*, 154 N.H. 715, 719 (2007) (quotation and ellipsis omitted). The court "use[s] the traditional rules of statutory construction when interpreting zoning ordinances." *Id.* "Thus, the words used in a zoning ordinance will be given their ordinary meaning unless it appears from their context that a different meaning was intended." *Id.* (quotation omitted). The court "determine[s] the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases." *Id.* (quotation omitted).

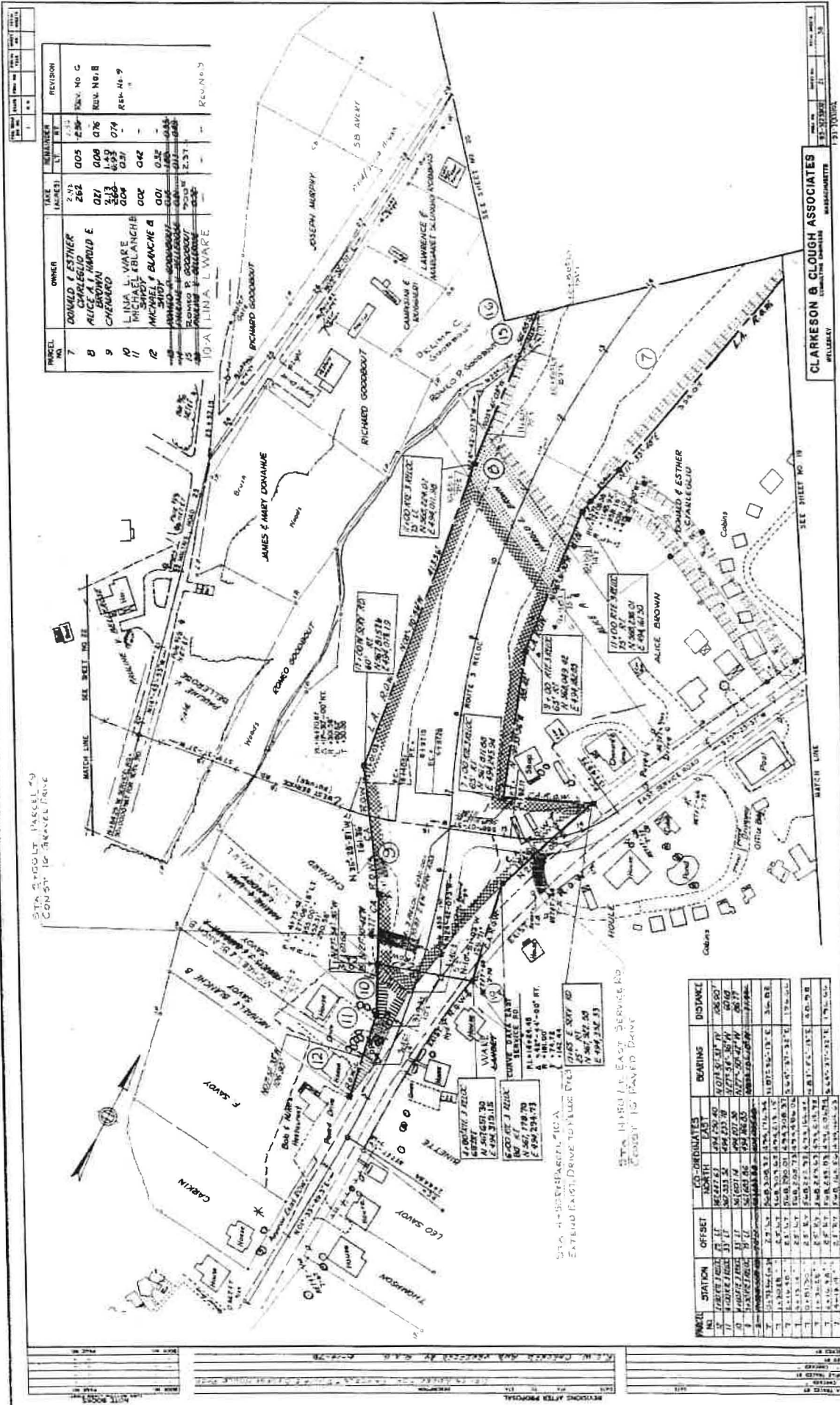
Because the Town zoning ordinance neither defines the term "Junk Yard" nor incorporates by reference a statutory definition, the court finds that the ordinance does not, on its face, express the intent of the enacting body. Although the petitioner introduced evidence at trial that the Town presently interprets the term "Junk Yard" in the ordinance as the term is defined in RSA 236:112, the court does not find this competent evidence of the enacting body's intent. The court therefore gives the term "Junk Yard" its plain and ordinary meaning. A "junkyard" is defined as "a yard used to keep usu[ally] resalable junk." Webster's Third New International Dictionary at 1227 (Unabridged ed. 2002). This definition is more in keeping with the definition found in RSA 236:91, which requires that a junkyard be an establishment or place of business, than the definition found in RSA 236:112, which does not. The court therefore rules that under the Town zoning ordinance, a "Junk Yard" must be devoted, at least to some

extent, to the selling or reselling of junk. The court found in its earlier order, however, that “[a]ll of the materials stored on the [respondent’s] Properties belong to the respondent and are stored there for his own personal use.” (4/13/20 Order at 2.) The court therefore rules that under the provisions of the Town zoning ordinance, the respondent is not using his Properties as a “Junk Yard.”

For the foregoing reasons, the court rules that the petitioner is not entitled to recover its attorney fees under RSA 676:17, II. The petitioner’s motion for reconsideration (Index #28) is GRANTED to the extent consistent with this order and is otherwise DENIED.

SO ORDERED, this 8th day of June 2020.


Lawrence A. MacLeod, Jr.
Residing Justice



PARCEL NO.	OWNER	TAKE (ACRES)	REMAINER	REV. NO.
7	DONALD F. ESTHER	2.97	2.97	REV. NO. C
8	CHARLEGGIO	262	005	REV. NO. B
9	ALICE A. MARILLO E	071	076	REV. NO. 8
10	BROWN	1.43	074	REV. NO. 9
11	CHEGGIO	263	037	
12	LINA L. VIVAR E	004	042	
13	MICHAEL BLANCHE B	001	032	
14	SANDY	001	032	
15	AMANDA	001	032	
16	ROMEO P. GOODBOUT	001	032	
17	ROBERT E. CHEGGIO	001	032	
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CLARNSON & CLOUGH ASSOCIATES
 CONSULTING ENGINEERS
 WILMINGTON, MASSACHUSETTS

PARCEL	STATION	OFFSET	CO-ORDINATES	BOARINGS	DISTANCE
1	1+00.00	0.00	100.0000	0.00	0.00
2	1+00.00	0.00	100.0000	0.00	0.00
3	1+00.00	0.00	100.0000	0.00	0.00
4	1+00.00	0.00	100.0000	0.00	0.00
5	1+00.00	0.00	100.0000	0.00	0.00
6	1+00.00	0.00	100.0000	0.00	0.00
7	1+00.00	0.00	100.0000	0.00	0.00
8	1+00.00	0.00	100.0000	0.00	0.00
9	1+00.00	0.00	100.0000	0.00	0.00
10	1+00.00	0.00	100.0000	0.00	0.00
11	1+00.00	0.00	100.0000	0.00	0.00
12	1+00.00	0.00	100.0000	0.00	0.00
13	1+00.00	0.00	100.0000	0.00	0.00
14	1+00.00	0.00	100.0000	0.00	0.00
15	1+00.00	0.00	100.0000	0.00	0.00
16	1+00.00	0.00	100.0000	0.00	0.00
17	1+00.00	0.00	100.0000	0.00	0.00
18	1+00.00	0.00	100.0000	0.00	0.00
19	1+00.00	0.00	100.0000	0.00	0.00
20	1+00.00	0.00	100.0000	0.00	0.00
21	1+00.00	0.00	100.0000	0.00	0.00
22	1+00.00	0.00	100.0000	0.00	0.00
23	1+00.00	0.00	100.0000	0.00	0.00
24	1+00.00	0.00	100.0000	0.00	0.00
25	1+00.00	0.00	100.0000	0.00	0.00
26	1+00.00	0.00	100.0000	0.00	0.00
27	1+00.00	0.00	100.0000	0.00	0.00
28	1+00.00	0.00	100.0000	0.00	0.00
29	1+00.00	0.00	100.0000	0.00	0.00
30	1+00.00	0.00	100.0000	0.00	0.00
31	1+00.00	0.00	100.0000	0.00	0.00
32	1+00.00	0.00	100.0000	0.00	0.00
33	1+00.00	0.00	100.0000	0.00	0.00
34	1+00.00	0.00	100.0000	0.00	0.00
35	1+00.00	0.00	100.0000	0.00	0.00
36	1+00.00	0.00	100.0000	0.00	0.00
37	1+00.00	0.00	100.0000	0.00	0.00
38	1+00.00	0.00	100.0000	0.00	0.00
39	1+00.00	0.00	100.0000	0.00	0.00
40	1+00.00	0.00	100.0000	0.00	0.00
41	1+00.00	0.00	100.0000	0.00	0.00
42	1+00.00	0.00	100.0000	0.00	0.00
43	1+00.00	0.00	100.0000	0.00	0.00
44	1+00.00	0.00	100.0000	0.00	0.00
45	1+00.00	0.00	100.0000	0.00	0.00
46	1+00.00	0.00	100.0000	0.00	0.00
47	1+00.00	0.00	100.0000	0.00	0.00
48	1+00.00	0.00	100.0000	0.00	0.00
49	1+00.00	0.00	100.0000	0.00	0.00
50	1+00.00	0.00	100.0000	0.00	0.00
51	1+00.00	0.00	100.0000	0.00	0.00
52	1+00.00	0.00	100.0000	0.00	0.00
53	1+00.00	0.00	100.0000	0.00	0.00
54	1+00.00	0.00	100.0000	0.00	0.00
55	1+00.00	0.00	100.0000	0.00	0.00
56	1+00.00	0.00	100.0000	0.00	0.00
57	1+00.00	0.00	100.0000	0.00	0.00
58	1+00.00	0.00	100.0000	0.00	0.00
59	1+00.00	0.00	100.0000	0.00	0.00
60	1+00.00	0.00	100.0000	0.00	0.00
61	1+00.00	0.00	100.0000	0.00	0.00
62	1+00.00	0.00	100.0000	0.00	0.00
63	1+00.00	0.00	100.0000	0.00	0.00
64	1+00.00	0.00	100.0000	0.00	0.00
65	1+00.00	0.00	100.0000	0.00	0.00
66	1+00.00	0.00	100.0000	0.00	0.00
67	1+00.00	0.00	100.0000	0.00	0.00
68	1+00.00	0.00	100.0000	0.00	0.00
69	1+00.00	0.00	100.0000	0.00	0.00
70	1+00.00	0.00	100.0000	0.00	0.00
71	1+00.00	0.00	100.0000	0.00	0.00
72	1+00.00	0.00	100.0000	0.00	0.00
73	1+00.00	0.00	100.0000	0.00	0.00
74	1+00.00	0.00	100.0000	0.00	0.00
75	1+00.00	0.00	100.0000	0.00	0.00
76	1+00.00	0.00	100.0000	0.00	0.00
77	1+00.00	0.00	100.0000	0.00	0.00
78	1+00.00	0.00	100.0000	0.00	0.00
79	1+00.00	0.00	100.0000	0.00	0.00
80	1+00.00	0.00	100.0000	0.00	0.00
81	1+00.00	0.00	100.0000	0.00	0.00
82	1+00.00	0.00	100.0000	0.00	0.00
83	1+00.00	0.00	100.0000	0.00	0.00
84	1+00.00	0.00	100.0000	0.00	0.00
85	1+00.00	0.00	100.0000	0.00	0.00
86	1+00.00	0.00	100.0000	0.00	0.00
87	1+00.00	0.00	100.0000	0.00	0.00
88	1+00.00	0.00	100.0000	0.00	0.00
89	1+00.00	0.00	100.0000	0.00	0.00
90	1+00.00	0.00	100.0000	0.00	0.00
91	1+00.00	0.00	100.0000	0.00	0.00
92	1+00.00	0.00	100.0000	0.00	0.00
93	1+00.00	0.00	100.0000	0.00	0.00
94	1+00.00	0.00	100.0000	0.00	0.00
95	1+00.00	0.00	100.0000	0.00	0.00
96	1+00.00	0.00	100.0000	0.00	0.00
97	1+00.00	0.00	100.0000	0.00	0.00
98	1+00.00	0.00	100.0000	0.00	0.00
99	1+00.00	0.00	100.0000	0.00	0.00
100	1+00.00	0.00	100.0000	0.00	0

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E
D

COMMISSIONERS' RETURN
 OF
 HIGHWAY LAYOUT
 LINCOLN I-93-3(33)102 - P-8604-C
 1971

The Governor and Council after a public hearing conducted at the Lincoln High School in Lincoln on March 30, 1968, in accordance with Chapter 238, RSA, approved the Report of the Special Committee on a Limited Access Highway bearing in the Town of Lincoln, dated April 18, 1968, and in accordance with the provisions of the law referred to above on April 29, 1968, appointed:

Charles A. Burke, Manchester
 Maurice H. Cummings, Newport
 Robert A. Goodrich, Tilton

a Commission to lay out and assess property damages incident to the laying out of Interstate Route 93 in the Town of Lincoln.

On May 29, 1968, Governor and Council appointed Guy J. Fortier of Berlin to replace Maurice H. Cummings as a member of the Commission; and on September 17, 1969, Governor and Council appointed George O. Thurston of Errol to replace Charles A. Burke as a member of the Commission.

And we, the undersigned being duly sworn, and having proceeded with the duties to which we were appointed, in accordance with the location determined by the Commissioner, Department of Public Works and Highways, do hereby describe the lands, rights and easements acquired by purchase or as laid out hereby which are necessary for the construction of said highway in the Town of Lincoln.

Beginning at a point in the existing Northerly Side Line of Pollard Road one hundred ninety (190') feet Westerly of and opposite South Bound Construction Centerline Station 161 + 02.5; thence running Northerly to a point that is one hundred seventy-three (173') feet Westerly of Station 169 + 00 S; thence continuing Northerly to a point one hundred fifty-six (156') feet Westerly and directly opposite Station 179 + 00 S; thence continuing Northerly to a point one hundred fifty (150') feet Westerly of and directly opposite Station 188 + 00 S; thence continuing Northerly to a point one hundred fifty (150') feet Westerly of and directly

C.A.F.
M.H.C.

Recommendation to Commissioners' Return Recorded Book 1167 Page 4
 Reproduction Recorded Book 1156 Page 532

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opposite Station 194 + 81.47 S; thence continuing Northerly to a point one hundred fifty (150') feet Westerly of and directly opposite Station 200 + 00 S; thence running Northwesterly to a point one hundred fifty (150') feet Westerly of and directly opposite Station 205 + 00 S; thence running Northwesterly to a point one hundred fifty (150') feet Southwesterly of and directly opposite Station 210 + 00 S; thence continuing Northwesterly to a point one hundred fifty (150') feet Southwesterly of and directly opposite Station 218 + 86.23 S; thence continuing Northwesterly to a point that is one hundred fifty (150') feet Southwesterly of and directly opposite Station 222 + 80 S; thence continuing Northwesterly to a point one hundred fifty (150') feet Southwesterly of and directly opposite Station 224 + 00 S; thence running Northwesterly to a point one hundred sixty-five (165') feet Southwesterly of and directly opposite Station 224 + 40 S; said point being in the U. S. Route 3 existing Northerly Side Line; thence running Northwesterly to a point two hundred thirty (230') feet Southwesterly of and directly opposite Station 225 + 75 S; thence turning and running Southwesterly to a point that is three hundred thirty four (334') feet Southwesterly of and directly opposite Station 224 + 93 S; thence turning and running Northwesterly to a point four hundred forty (440') feet Southwesterly of and directly opposite Station 227 + 08 S; thence turning and running Southwesterly to a point that is seventy-five (75') feet Easterly of and directly opposite Station 11 + 00, Route 3 Relocated; thence running Southeastery to a point that is sixty-five (65') feet Easterly of and directly opposite Station 9 + 00; thence running Southeastery to a point that is sixty-five (65') feet Easterly of and directly opposite Station 7 + 00; thence turning and running Northeastery to a point in the Route 3 existing Northerly Side Line, said point being twenty-five (25') feet Northwesterly of and directly opposite Station 13 + 00, East Service Road; thence turning and running Southeastery with the said Side Line to a point eighty (80') feet Easterly of and

G.F.F.
D.C.G.

Page -3.-

directly opposite Station 6 + 00; thence turning and running Southwesterly to a point fifty-three (53') feet Westerly of and directly opposite Station 4 + 00; thence turning and running Northwesterly to a point seventy-five (75') feet Westerly of and directly opposite Station 5 + 00; thence running Northwesterly to a point sixty (60') feet Westerly of and directly opposite Station 17 + 00, West Service Road; thence turning and running Northerly to a point seventy-five (75') feet Westerly of and directly opposite Station 11 + 00, Route 3 Relocated; thence running Northerly to a point ninety-five (95') feet Southwesterly of and directly opposite Station 23 + 83.00, South Bound Off Ramp; thence turning and running Northwesterly to a point one hundred fifteen (115') feet Southwesterly of and directly opposite Station 22 + 40, South Bound Off Ramp; thence running Northwesterly to a point seventy-five (75') feet Southwesterly of and directly opposite Station 20 + 00; thence running Northwesterly on a course $N 10^{\circ} 59' 22''$ West, a distance of approximately three hundred ten (310') feet to a point in the thread of the stream of Harvard Brook; thence turning and running Northerly and Northeastery with the thread of the stream to a point in a line between a point that is two hundred fifty (250') feet Easterly of and directly opposite the North Bound Center Line, Station 245 + 80 and a point that is two hundred fifty (250') feet Easterly of and directly opposite Station 244 + 00; thence turning and running Southeastery to the point last-named; thence running Southerly to a point one hundred (100') feet Easterly of and directly opposite Station 19 + 16.84, North Bound On Ramp; thence turning and running Southeastery to a point one hundred (100') feet Northeastery of and directly opposite Station 12 + 83.70; thence turning and running Northeastery to a point seventy (70') feet Northwesterly of and directly opposite Station 27 + 80, Route 3 Relocated; thence running Northeastery to a point thirty-three (33') feet Northwesterly of and directly opposite Station 29 + 45; thence turning and running Northeastery

G.F.
L.R.

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across Route 3 to a point in the existing Easterly Side Line, said point being approximately thirty-three (33') feet Easterly of and directly opposite Station 30 + 25, Route 3 Relocated; thence turning and running Southeastery to a point fifty-three (53') feet Easterly of and directly opposite Station 29 + 20; thence running Southerly to a point eighty (80') feet Easterly of and directly opposite Station 28 + 15; thence running Southeastery to a point one hundred eighteen (118') feet Easterly of and directly opposite Station 27 + 20, said point being in the Division Line of land now or formerly of Amos and Lena Strickland and land now or formerly of Harry Serabian; thence turning and running Southeastery by said Division Line to a point that is five hundred ten (510') feet Easterly of and directly opposite Station 27 + 75, said point being in the center of the stream of the Parigewasset River; thence turning and running Southeastery to a point three hundred thirty (330') feet Northeastery of and directly opposite North Bound Center Line, Station 226 + 50; thence turning and running Southeastery to a point one hundred fifty-five (155') feet Northeastery of and directly opposite Station 214 + 00 H; thence turning and running Southeastery to a point five hundred sixty-four (564') feet Northeastery of and directly opposite Station 208 + 07 H; thence turning and running Southerly to a point three hundred six and thirteen hundredths (306.13') feet Easterly of and directly opposite Station 201 + 00 H; thence running Southerly to a point two hundred sixty-two and forty-three hundredths (262.43') feet Easterly of and directly opposite Station 195 + 18.16 H; thence running Southerly to a point two hundred forty-three and sixty-four hundredths (243.64') feet Easterly of and directly opposite Station 185 + 00 H; thence running Southerly to a point two hundred twenty-five and eighteen hundredths (225.18') feet Easterly of and directly opposite Station 175 + 00 H; thence continuing Southerly to a point two hundred seven (207') feet Easterly of and directly opposite Station 165 + 15 H; thence running Southeastery to a point in the first mentioned existing Northerly Side

C.F. Kelly

Page -E-

Line of Pollard Road, said point being one hundred (100') feet Easterly of and opposite Station 161 + 37a H; thence turning and running Westerly with said Side Line to the point of beginning;

TAKING ALSO WITH THE ABOVE LANDS all rights of access, light, air and view over, from and to the same from the remainder of abutting lands at the time of taking with the following exception:

PETER CHEVARD: One (1) point of access fifty (50') feet in width to the West from U. S. Route 3 Relocated.

AND TAKING the following two (2) parcels for the reconstruction of U. S. Route 3:

Parcel # 1: Beginning at a point in the existing Route 3 Westerly Side Line and in the Division Line of the two parcels of land of Michael and Blanche Savoy; thence running Northerly to a point in the Division Line of land now or formerly of said Savoy's and land now or formerly of Maxine and Lina Landry, said point being thirty-three (33') feet Westerly of and directly opposite Route 3 Relocated, Station 4 + 00; thence running Northwesterly to a point in the Limited Access Right-of-Way of the parcel first described, said point being fifty-three (53') feet Westerly of and directly opposite Station 4 + 60; thence turning and running Northeasterly with the said Limited Access Right-of-Way Line to a point in the aforesaid existing Route 3 Westerly Side Line; thence turning and running Southerly with the said Side Line to the point of beginning.

Parcel # 2: Beginning at a point in the Limited Access Right-of-Way Line of the first described parcel, said point being thirty-three (33') feet Westerly of and directly opposite Station 29 + 45, Route 3 Relocated; thence running Northeasterly to a point thirty-three (33') feet Westerly of and directly opposite Station 33 + 00; thence turning and crossing Route 3 to a point thirty-three (33') feet Easterly of and directly opposite Station last-named; thence turning and running Southwesterly to a point in the Limited Access Right-of-Way Line in the first described parcel, said point being thirty-three (33') feet Easterly of and directly opposite Station 30 + 25; thence turning and running with

C. F. [Signature]

Page -6.-

the Limited Access Right-of-Way Line in the parcel first described to the point of beginning.

AND TAKING the following described parcel for the relocation of Maltais Farm Road:

Beginning at a point in Maltais Farm Road existing Westerly Side Line, said point being ten (10') feet Westerly of and directly opposite Station 31 + 00, Maltais Farm Road Relocated; thence running Northwesterly to a point eleven (11') feet Southerly of and directly opposite Station 34 + 25, said point being in the Southerly Side Line of a town road leading Northwesterly from Maltais Farm Road; thence turning and running Southeasterly to a point in the Limited Access Right-of-Way Line of the parcel first described, said point being approximately twenty-one (21') feet Southwesterly of Station 38 + 41a; thence turning and running Southeasterly with the said Limited Access Right-of-Way Line to a point in the aforesaid Maltais Farm Road existing Westerly Side Line and near Station 31 + 92, Maltais Farm Road Relocated; thence turning and running Southeasterly with the said Side Line to the point of beginning.

AND TAKING the following described parcel for the construction of a turn-around:

Beginning at a point in the first described Limited Access Right-of-Way Line, said point being one hundred fifty (150') feet Southwesterly of and directly opposite Station 222 + 60 S; thence running Southwesterly to a point two hundred sixty (260') feet Southwesterly of and directly opposite Station last-named; thence turning and running Northwesterly to a point in the existing Route 3 Southerly Side Line, said point being Southeasterly of and directly opposite East Service Road Center Line, Station 8 + 00; thence turning and running Northeasterly with the said Side Line to a point in the aforementioned Limited Access Right-of-Way Line and near Station 223 + 83 S; thence turning and running Southeasterly with said Limited Access Right-of-Way Line to point of beginning.

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In laying out this portion of the lands, rights and easements described above, the Commission includes herewith the right to extend beyond the limits of said layout, the right to construct and maintain drainage in accordance with the plan referred to above, and any damage which may be occasioned by the extension of the slopes and embankments or drainage is included in the amounts which we award or have already paid to the several landowners as set forth hereinafter.

And for land taken and for other easements necessary for the above construction, and in accordance with the before-mentioned plan, we award damages to owners of land as listed below:

State of New Hampshire	Previously Acquired
Carl A. SURABIAN and Fred K. SURABIAN and Harry M. SURABIAN, Jr.	\$ 67,000.00
Alice A. BROWN and Harold E. BROWN	\$ 500.00
Peter CHENARD and Coline CHENARD	\$ 9,000.00
Lina L. MACE	\$ 200.00
Michael SAVOY and Mary Blanche SAVOY and Plymouth Guaranty Savings Bank	\$ 450.00
Michael SAVOY and Blanche SAVOY	\$ 800.00
Dellme Christie GOODBOUT	\$ 250.00
Amelia MATTESON	\$ 9,700.00
Dakley T. STIKE and Mary G. STIKE	\$ 5,600.00
Alexander J. BOUCHARD and Lena M. BOUCHARD	\$ 7,600.00
Edward J. MC HALLY, Jr. and Anne M. MC HALLY	\$ 1,800.00
Pasquale RUGGIERI and Peter CAMPISANI and Anthony SANTILLI	\$ 3,300.00
Frank TROTTI	\$ 1,700.00
Salvatore MAGGIACOMO and Ann M. MAGGIACOMO and Robert MAGGIACOMO and Sally MAGGIACOMO	\$ 3,400.00
John G. MARTIN and Constance J. MARTIN	\$ 50.00
Walter ZELENIAX and Caroline ZELENIAX	\$ 200.00

GJE
1/10/04

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Anthony ANDRIOLE and Antonetta ANDRIOLE	\$ 2,000.00
Joseph ANDRIOLE and Ida ANDRIOLE	\$ 300.00
Katherine A. CLARK	\$ 18,000.00
Ernest DUROIS and Yvette DUROIS and Plymouth Guaranty Savings Bank	\$ 62,000.00
Earle A. BURT and Helen B. BURT and Roy R. MC GUIRE and Gertrude MC GUIRE	\$ 2,000.00
Amos E. STRICKLAND, Jr. and Lena E. STRICKLAND and Granite State Trust Co.	\$ 1,000.00
Donald D. CIARLEGLIO and Esther P. CIARLEGLIO and Plymouth Guaranty Savings Bank	
Second Presidential Corp.	\$ 6,100.00

Given under our hands this 9th day of February

A.D., 1971.

Carl F. ...
Robert M. ...

COMMISSIONERS'

Prepared by
RAS

Received and recorded Feb. 9, 1971 3:30 P.M.

Charles A. Wood
Charles A. Wood, Register

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532

AMENDATION
TO
COMMISSIONERS' RETURN
OF
HIGHWAY LAYOUT
LINCOLN I-93-3(33)102 - P-5604-C
1971

We, the Commission appointed by Governor and Council on April 29, 1966, May 20, 1968 and September 17, 1969, do hereby amend our Return of Highway Layout, dated February 9, 1971, by:

Deleting Line 13, Page 6, and

Substituting the followings

"approximately twenty-one (21) feet Southwesterly of Station 33 + 41.1"

Deleting Line 26, Page 7, and

Substituting the followings

"Lena M. BOUCHARD \$ 10,600.00"

Deleting Line 17, Page 8, and

Substituting the followings

"Plymouth Guaranty Savings Bank \$ 22,000.00"

Adding after Line 8, Page 8, the followings:

Town of Lincoln \$ 1.00

Given under our hands this 27th day of DECEMBER, A.D., 1971.

George C. Thurston
John L. Foster
Robert W. Goodrich

COMMISSIONERS

Received and recorded December 27, 1971 8:30 A.M.


 Charles A. Wood, Register

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SECOND
REVISION
TO
COMMISSIONERS' RETURN
OF
HIGHWAY LAYOUT
SECTION 2-95-3(3)128 - 1-504-4
1971 -
1972

We, the Commission appointed by Governor and Council on April 29, 1966, May 29, 1968, and September 17, 1969, do hereby further amend our Return of Highway Layout, dated February 9, 1971, by:

Adding after Line 38, Page 6 of our Return of Highway Layout, the following:

" **AND TAKING** for a Connector Road from East Service Road formerly known as U. S. Route 3 to Route 3 Relocated, a strip of land fifty (50') feet in width, said strip being twenty-five (25') feet Southwesterly of and twenty-five (25') feet Northeasterly of Connector Road Construction Center Line as shown on the Plan; further described as:

Beginning at a point in the East Service Road Westerly Side Line and in the Division Line of land of Donald and Esther Chiaraglio and land now or formerly of Alice Brown; thence running Northeasterly with the said Division Line to the Northwest corner of land of said Alice Brown; thence continuing on a curve twenty-five (25') feet Southwesterly of the said Construction Center Line to a point in the Relocated Route 3 Easterly Limited Access Right-Of-Way Line of the parcel first described; thence turning and running Northeasterly with the said Limited Access Right-Of-Way Line to a point twenty-five (25') feet Northerly of the Connector Road Construction Center Line; thence turning and running Northeasterly on a curve twenty-five (25') feet Northerly of said Construction Center Line to a point twenty-five (25') feet Northerly of and nearly opposite Station 1 + 12; thence continuing Easterly parallel with the said Center Line to a point in the said East Service Road Westerly Side Line; thence turning and running Northeasterly along said Side Line to point of beginning.

S.O.J.
 2/17
 R/109

- Continued on Page 2 -

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- Page 2 -

AND ALSO RESERVING the right to enter upon other lands of Donald and Esther Charlotte Northerly of and near Comstock Road Center Line Station 2 + 70 for the purpose of removing building which is partially located outside the limits of the above-described Eight-Cr-By.

AND ALSO Deleting Line 19 of our Exemption to Return of Highway Layout, dated December 21, 1971, and

Substituting the following:

" Flycatch Quarry Savings Bank (\$20,000.00)
Given under our hand: this 15th day of June
A. D., 1972.

George O. Thornton
Commissioner
Robert G. Goodrich

COMMISSIONERS

Received and recorded June 23, 1972 8:30 A.M.

Charles A. Wood Register

FOURTH
AMENDATION
TO
COMMISSIONERS' RETURN OF
HIGHWAY LAYOUT

THURTON-WOODSTOCK I-93-3(53)93 P-7889-L (RM)
THURTON-WOODSTOCK I-93-3(50)93 P-7889-C (Const.)
THURTON-WOODSTOCK I-93-3(47)95 P-7889-D (Const.)

1968

We, the Commission appointed by Governor and Council on April 29, 1966, and May 29, 1968, to lay out a highway in the Towns of Thornton and Woodstock, do hereby further amend our Return of Layout dated March 20, 1968, and amended on September 19, 1969, November 8, 1969, and February 9, 1970, by:

ADD LINE on Page Two, after Line 25:

"AND TAKING for service road purposes, without any limitation of access to same, that section of the old, old Daniel Webster Highway beginning at the property of Jack O'Lantern, Inc. and running northerly a distance of

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