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January 7, 2015

Joseph S. Ransmeier
1915-2010

Lawrence E. Spellman
1924-2001

¹ Also admitted
in Maine

² Also admitted
in Rhode Island

³ Also admitted
in Massachusetts

⁴ Also admitted
in Maine and
Connecticut

⁵ Also admitted
in New York

⁶ Also admitted
in Vermont

Shaun Mulholland, Town Administrator
Town of Allenstown
40 Allenstown Road
Allenstown, NH 03275

**Re: Town of Allenstown
Riverside Drive**

Dear Shaun:

After an extensive review of the archived Allenstown town files, I have located the pertinent documents in connection with Riverside Drive. Enclosed please find

1. The original writ of summons which the Riverside Park Association brought against the Town of Allenstown for damages and acceptance of the road;
2. An order dismissing all the claims of Riverside Park Association except the issue as to whether or not Riverside Drive is a Class 5 highway;
3. The court's order after trial finding in favor of the Town of Allenstown as the defendant in the case;
4. Requests for findings of fact and rulings of law submitted by both Riverside Park Association and the Town of Allenstown;
5. The order from the Supreme Court summarily affirming the trial court's decision; and
6. The superior court pleadings index showing the various documents filed in the action.

January 7, 2015
Page 2

I also enclose for your reference a copy of the letter regarding this matter which I wrote to the Board of Selectmen dated September 23, 2009. In an effort to complete your file in this regard, I also enclose copies of the Board of Selectmen meeting minutes evidencing designation of Riverside Drive as an emergency lane.

In summary, Riverside Park Association, which is comprised of a group of homeowners living along Riverside Drive, brought an action against the Town of Allenstown in 1984 seeking to compel the town to accept and treat Riverside Drive as a Class 5 public highway and to pay them damages for the lack of maintenance by the Town on the roadway. Following the filing of this action, the Town filed first a motion to dismiss and subsequently a motion for summary judgment seeking to obtain an order dismissing Riverside Park Association's case in its entirety without the need for trial. The court agreed in part with the Town in this regard dismissing the various damages claims that they brought. Riverside Park Association filed various motions to amend their writ of summons in an effort to avoid dismissal.

Following trial in this matter, the court found for the Town of Allenstown. The order in favor of the Town is not particularly illuminating and must be read in conjunction with the findings of fact and rulings of law submitted by the Town at trial. When read together, these documents evidence that the court rejected Riverside Park Association's claim because no one has ever gone through the appropriate process to lay out the road and make it comply with Town specifications, despite the action at the 1980 town meeting. Finally, Riverside Park Association took an appeal to the Supreme Court which was affirmed without briefing or argument by the parties.

Please let me know if any of this gives rise to additional questions or if I can be of further assistance in this regard. Thank you for your attention to this matter.

Sincerely,



Biron L. Bedard

Email: bbedard@ranspell.com

BLB/dl
Enclosures

INDEX

Riverside Park Association vs. Town of Allenstown

vs. Frankel

vs. Allenstown

Document #	Document	Cash \$	Exhibits <input type="checkbox"/>
		25.00	
		10.00 mos	
1	7/18/84 Writ of summons ret July 3, 1984 (Frankel)		
2	Pltf's mo for late entry of writ & affid <i>Granted 8/9/84</i>		
3	Pltf's mo for ext of time to answ mo to dismiss & affid		
4	Richard F. Therrien app for def		
5	Def's mo to dismiss		
6	7/20/84 Pltf's obj to mo to dismiss & affidavit		
7	" Order-Motion to dismiss to be hd at the time of the hg on the merits		
8	7/26/84 Def's obj to pltf's request to ext time to enter writ		
9	Aug 7, 1984 Pltf's memo of law in spt of mo for late entry of writ		
10	Aug 9, 1984 Mo for late entry of writ granted; mo to dismiss to be heard ASAP		
11	Aug 13, 1984 Pltf's motion to amend writ of summons to Bill in Equity <i>Granted 8/10</i>		
12	Pltf's mo to continue hearing on motion to dismiss pending action motion to amend		
13	Aug 20, 1984 Def's objection to motion to amend writ and mo to continue hg on to dismiss		
14	8/24/84 Pltf's obj to a PT hg on def's mo to dismiss		
16	Sep 4, 1984 Order: Motion to amend writ to Bill in Equity granted (O'Neil, J.)		
15	Aug 29, 1984 Def's memo of law in spt of motion to dismiss		
17	9/12/84 Def's mo to ext time to answ interrog until action on mo to dismiss <i>to 12/1/84 - see order</i>		
18	10/1/84 Def's obj to mo for condtl deflt & mo for trial <i>Granted 10/1/84</i>		
19	Oct 15, 1984 Pltf's mo to schedule case for trial <i>Granted 10/15/84</i>		
20	Oct 19, 1984 Order dismissing all counts of writ; only question to be decided is whether road is a Class V road		
21	Feb 22, 1985 Def's Issues to Court pretrial statement		
22	Mar 4, 1985 Pltf's Issues to Court pretrial statement		
23	3/26/85 Def's obj to mo to amend		
24	3/27/85 Pltf's mo to amend <i>Denial 7/9/85</i>		

The State of New Hampshire

Supreme Court

No. 86-413

Riverside Park Association v. Town of Allenstown

TO THE CLERK OF MERRIMACK COUNTY SUPERIOR COURT

I hereby certify that the Supreme Court has issued the following order(s) in the above-entitled action(s):

Feb. 12, 1987 Decision below is summarily affirmed in accordance with Rule 25(1)(b).

MAR 5 8 43 AM '87
MERRIMACK COUNTY SUPERIOR COURT
CONCORD, N.H.

Attest:

Ralph H. Wood

Ralph H. Wood

Clerk

March 3, 1987

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THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

MERRIMACK, ss.

AUGUST TERM 1986

Riverside Park Association

v.

Town of Allenstown

84-C-364

PLAINTIFF'S REQUESTS FOR FINDINGS AND RULINGS

Granted:

2. through 6.

Denied:

1.

7. through 10.

DEFENDANT'S REQUESTS FOR FINDINGS AND RULINGS

Granted:

1. through 11.

12. But the court has considered the merits of the case
nonetheless.

14. through 20.

Neither Granted Nor Denied:

13.

The court finds for defendant.

Date

August 28, 1986

Presiding Justice

J. Pappajanian

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

APRIL TERM 1986

SUPERIOR COURT

84 - C - 364

Riverside Park Association

v.

Town of Allenstown

REQUEST FOR FINDINGS OF FACT AND ANSWERS OF LAW

NOW COMES the plaintiff in the above entitled matter, and requests the Honorable Court to issue, in its decision, the following findings of fact and answers of law:

1. Declaratory Judgment for Plaintiff, the road known as Riverside Drive, located in Allenstown, County of Merrimack, New Hampshire, is a Class V Public Highway as defined by RSA 229:1; costs and interest for Plaintiff.
2. Plaintiff Riverside Park Association possesses standing in the instant matter. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), *O'Neil v. Thomson*, 114 N.H. 155 (1974).
3. Under RSA Chapter 229, section 1 (RSA 229:1), dedication of Riverside Drive is legally established by registration at the Merrimack County Registry of Deeds of Subdivision Plat # 1647, registered March 25, 1960 by the subdivider, Romeo Plourde, with said Plat clearly showing the lay-out of Riverside Drive as the sole means of ingress and egress into the subdivided properties. *Polizzo & a. v. Town of Hampton*, 126 N.H. 398 (1985), *Vallone v. Cranston*, 197 A.2d 310

Received on August 27, 1986
Eppa

(S.Ct.R.I. 1964).

4. Under RSA Chapter 229, section 1 (RSA 229:1), dedication of Riverside Drive is legally established by submission of Articles 20 and 27 in the Allenstown Town Meeting Warrants for the years 1962 and 1964, respectively, by the subdivider, Romeo Plourde, to have the Town accept Riverside Drive as a town road. *Wason v. Nashua*, 85 N.H. 192 (1931), *State v. Atherton*, 16 N.H. 203 (1844).
5. Under RSA Chapter 229, section 1 (RSA 229:1), dedication of Riverside Drive is legally established by subdivider Romeo Plourde's, and his successor in interest, William and Mary Dobe's, acquiescence to the public use of Riverside Drive, and their otherwise treating it as a public highway. *State v. Atherton, supra, Wason v. Nashua, supra*.
6. Under RSA Chapter 229, section 1 (RSA 229:1), dedication of Riverside Drive is legally established by conveyance of subdivision lots with explicit reference to Plat #1646 which shows Riverside Drive as the sole means of ingress and egress to the lots conveyed. *Harrington & a. v. Manchester*, 76 N.H. 347 (1912).
7. Under RSA Chapter 229, section 1 (RSA 229:1), acceptance of Riverside Drive is legally established by the Town's affirmative vote of approval on Article 9 of the 1980 Town Warrant, which Article sought to have Riverside Drive, among other roads, accepted as a town road, *Polizzo v. Hampton, supra, State v. Atherton, supra, Kelly & a. v. Kenard & a.*, 60 N.H. 1 (1880).
8. Under RSA Chapter 229, section 1 (RSA 229:1), acceptance of Riverside Drive is legally established by the Town's affirmative vote of approval on Article 12 of the 1985 Town Warrant, which Article sought to appropriate \$10,000 to grade and resurface Riverside Drive. *Polizzo v. Hampton, supra, State v. Atherton, supra, Kelly & a. v. Kenard & a.*, 60 N.H. 1 (1880).
9. Under RSA Chapter 229, section 1 (RSA 229:1), acceptance of Riverside Drive is legally established by the Town's regular and periodic grading and snow clearing operations conducted on Riverside Drive

from 1977 through 1984. *Pepin v. Manchester*, 108 N.H. 223 (1967),
State v. Atherton, supra, Sarty v. Millburn Tpk., 100 A.2d 309
(S.Ct. N.J. 1953).

10. Under RSA Chapter 229, section 1 (RSA 229:1), acceptance of Riverside Drive is legally established by the Town's issuance of building and zoning permits, for properties with sole frontage on Riverside Drive, without requiring of applicants that extreme hardship be proven as required under Town of Allenstown Municipal Ordinances and RSA 674:41 where building permits are sought for properties without frontage on accepted streets.

Respectfully Submitted,

Riverside Park Association
By Its Attorney:



Edward E. Frankel
41 S. Main St.
Concord, NH 03301
603-225-2437

August 27, 1986

Copy of the above has been delivered as of this date to opposing counsel, Richard F. Therrien.


Edward E. Frankel

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

AUGUST TERM, 1986

SUPERIOR COURT
No. 84-C-364

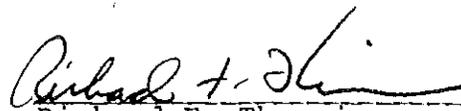
REQUESTS FOR FINDINGS OF FACT
AND RULINGS OF LAW

1. Riverside Drive is a private right of way within the subdivision plan of Riverside Park, Allenstown, New Hampshire recorded in the Merrimack County Registry of Deeds as Plan #1647 on March 25, 1960.
2. The developer and owner of Riverside Park land in 1960 was Romeo Plourde of Pembroke, New Hampshire.
3. At the Town Meeting held March 13, 1962 the Town defeated Article 20 which requested acceptance of a deed for a strip of land to be known as Riverside Drive.
4. At the Town Meeting held on March 10, 1964 the Town defeated Article 27 which requested acceptance of a deed for a strip of land to be known as Riverside Drive.
5. By deed of Romeo Plourde to William A. and Mary Dobe dated May 1, 1970 and recorded in Book 1074, Page 329 of the Merrimack County Registry of Deeds, the remaining tract or parcel of land of Riverside Park inclusive of the right of ways was conveyed to grantees.
6. The Plourde to Dobe deed does not specifically convey a right of way to pass and repass over said land signifying ownership of the said right of way in the name of grantees.
7. William A. and Mary Dobe have never offered the right of way to the Town and still retain ownership in fee simple.
8. The Town voted at its 1964 Town Meeting to adopt the provisions of RSA 36 Section 19-29 which delegates approval of plans for new streets to the Town Planning Board.
9. Said Riverside Drive does not conform to public road specifications as adopted by said Town in the 1965-1985 master plan.
10. The Town Planning Board has never received a petition for approval of Riverside Drive in accordance with RSA 674:40.
11. The Town Selectmen have never received a petition for conditional lay-out in accordance with RSA 231:28.

Received on August 27, 1986
[Signature]

12. Riverside Park Association or any other party seeking acceptance of Riverside Drive as a public street have failed to exhaust their administrative remedies.
13. Estimated costs to upgrade Riverside Drive to Town specifications is approximately \$350,000.00.
14. The Town's land use ordinance requires approval of proposed streets by the Planning Board to be in accordance with road specifications outlined in the Town's master plan.
15. Riverside Drive does not conform to the Town's land use ordinances.
16. The 1980 vote at the Allenstown Town Meeting to accept Riverside Drive is invalid for failing to comply with the Town's land use ordinance and RSA 36:25 now RSA 674:40.
17. Layout must be undertaken upon a petition to Planning Board and Selectmen. Amoskeag Industries v. Manchester, 93 N.H. 335.
18. Selectmen cannot legally lay out a highway upon a vote of the Town instructing them so to do. State v. Newmarket, 20 N.H. 519.
19. A municipality which has conferred upon a planning board platting jurisdiction shall not thereafter accept, lay out, open, improve, grade, pave or light any street . . . within any portion of the municipality unless such street has been accepted or opened as, or has otherwise received the legal status of a public street prior to the conferring of platting jurisdiction upon the planning board. RSA 674:40.
20. Conditional lay out of existing private right of ways is by petition to the Selectmen only and is wholly discretionary on the part of the Selectmen. RSA 231:28.

Respectfully submitted
The Town of Allenstown
By its Attorney


Richard F. Therrien

taxpayers in the state may give notice of such insufficiency" to a representative of the city. Once notice is given, Section 91 provides that the Town becomes "liable for all accidents that may happen at such place subsequent to the time said deficiency is given." The Court interprets the statute as permitting individual members of the association who are involved in accidents to sue for damages. However, this still leaves the question of whether the Association can step into the shoes of its individual members.

The Supreme Court of the United States summed up the prevailing Federal standard as to the standing of special interest groups in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Hart and Wechsler's The Federal Courts and the Federal System, (1981) Supplement), p. 61. The Court in Hunt recognized that "an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Id.

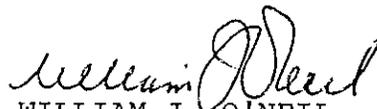
In Hunt, supra, the plaintiff was an agency created by statute whose purpose was to promote and protect the Washington State Apple industry. The Court in Hunt ruled that the agency met all three prongs of the above test and therefore had standing to contest apple shipping regulations. Id. at 344. The claims in Hunt, however, were only requests for declaratory and injunctive relief; no claim for damages was filed.

In the case at bar, the plaintiff presents what is essentially a hybrid between equitable relief and damages when it requests the Court to "issue a mandatory injunction directing the Town of Allenstown to

As to the third prong, individual participation in the lawsuit is unnecessary since the public or private nature of the road is independent to the matter of who lives there or who is injured upon it. See Hart, supra, at 443. In order for the second prong to be met, however, the plaintiffs must show how the interests at stake are germane to the organization's purpose. If the suit is shown to be central to the association's purpose, then standing exists, subject to the standard requirements that no other proceedings are available which would give adequate relief, Beaudoin v. State, supra, at 561, and that the action does not simply serve to confer advice as to future cases. Piper v. Meridith, 109 N.H. 328 (1969).

The Court dismisses all claims in this action except for the plaintiff's action for declaratory relief, and that action is restricted to a determination of whether the subject road is a Class V highway. As to that claim, the Court reserves judgment until a hearing is held on this matter.

DATED: October 19, 1984


WILLIAM J. O'NEIL
Presiding Justice

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

APRIL TERM, 1984

NO. 84-C-364

RIVERSIDE PARK ASSOCIATION

V.

TOWN OF ALLENSTOWN

MEMORANDUM OF LAW

IN SUPPORT OF THE MOTION TO DISMISS

The following facts are admitted for the purpose of this memorandum only.

Plaintiff filed a writ alleging case and seeking relief in the form of a "mandatory injunction". The plaintiff appears to complain about the disrepair and maintenance of a highway known as Riverside Drive located in Allenstown, County of Merrimack and State of New Hmpshire.

Defendant filed a motion to dismiss the action at law brought by plaintiff on the grounds, inter alia, that RSA 507-B:2 prohibits recovery for negligence as alleged as it applies to sidewalks and streets. Defendant further contended that the equitable relief sought in the action at law was improper. Subsequently, plaintiff filed a motion to amend writ stating that he wished to amend said writ from an action at law to a bill in equity. The motion to amend writ was submitted without affidavit and was not sworn to regarding the facts alleged. Furthermore, the prayers sought in plaintiff's bill asks nothing more than what said defendant is currently doing which is: acknowledging and acting upon its statutory and legal obligations and duties as it applies to Riverside Drive.

ISSUES

- I. Is the writ and the motion to amend and substitute a bill in equity procedurally defective.
- II. Is Riverside Drive, a public Class V highway.
- III. Is RSA 231:28 the only available remedy.

DISCUSSION

A. Plaintiff's writ in case should be dismissed on the basis that it is barred by RSA 507-B:2. The pertinent provisions of said statute provides that a governmental unit may be held liable for damages in an action for bodily injury, personal injury or property damage regarding all premises except public sidewalks and streets. The touchstone of this entire complaint is whether or not Riverside Drive is a public or private highway. Whether it is or is not will be discussed further along in the argument.

Nevertheless, regardless of the legal status of Riverside Drive, the statute prohibits any liability as to claims of negligence pertaining to public highways. Since defendant is uncertain of plaintiff's intentions in filing the motion to amend not knowing if it believes the amendment is in addition to the bill in equity, this argument is made so that this Honorable Court may act on the writ to avoid any later doubt on this question.

The only conceivable basis under which defendant could not make its legitimate argument to dismiss is the possible effect of RSA 412:3. Defendant knows of no insurance company who would underwrite coverage of streets and sidewalks due to

staggering premiums. Since there is no insurance coverage in the instant case, there is effectively no waiver of immunity under RSA 507-B:2. American Home Assurance Co. V. Fish, 122 N.H. at page 714 (1982).

B. Plaintiff's motion to amend writ to a bill in equity is defective on its face.

Throughout these proceedings, plaintiff's counsel has asserted facts and attempted to prosecute this claim as though he were acting pro se. For example, without affidavit or proof and accompanying documents, he individually and personally states that Riverside Drive was dedicated to the Town of Allenstown as a public road. Such a fact is not made by affidavit or under oath. Defendant believes that either counsel for plaintiff is ignorant of how highways are dedicated or he is deliberately attempting to deceive this Court through allegations of intentions of a deceased individual. Plans filed with the Registry are not indicative of dedication and are not public records within the meaning of Rule 57 of the Superior Court.

Rule 57 provides that "the Court will not hear any motion grounded upon facts, unless they are verified by affidavit, or are apparent from the record or from the papers on file in the case . . ."

Plaintiff further contends that said road as accepted as a Class V town road by affirmative majority vote. Not only is this assumption made without proper documentation or affidavit, it is legally unsound. See State v. Newmarket, 20 N.H. 519; Kelley V. Kennard, 60 N.H.1.

Understanding that the Court has wide discretion as it applies Rule 57, plaintiff was allowed to amend and correct its

pleadings by this Court at the August 9, 1984 hearing. As the Court correctly pointed out, it could not give advice to plaintiff's counsel but suggested the action be modified to come into compliance as a matter of law. The amended pleadings have changed nothing as to compliance as it relates to the motion to dismiss and this Court should now impose and enforce the Court Rule. Town of Bedford v. Brooks, (1981) 121 N.H. 262. The motion to dismiss having been set for hearing August 29, 1984, plaintiff has had ample opportunity to properly amend its pleadings.

C. Finally, plaintiff's allegations in the amended bill in equity re-alleges negligence on the part of the Town. In other words, he is seeking to have it both ways. He seeks an action at law and a bill in equity. As previously pointed out, such pleadings are barred by RSA 507-B:2. Additionally, the prayers sought by plaintiff in having defendant acknowledge and act upon its "substantial" statutory and legal obligations is vague, ambiguous and improper. Locke Development Corp. v. Barnstead, 115 N.H. 642. The defendant is acting within its legal boundary and the plaintiff's requested relief of a "mandatory" injunction is already being performed by the defendant.

II

Riverside Drive is a private road which was never dedicated nor ever taken by condemnation by defendant Town. See defendant's affidavit filed with the Court with its motion to dismiss.

There are two acceptable methods of creating public highways in the State of New Hampshire. The first method is

by dedication. Where highway has been dedicated to the public use and accepted by the proper authorities, the procedure is sufficient to constitute the same a public highway. Perrotto v. City of Claremont, (1958) 101 N.H. 267; Locke Development Corp. v. Town of Barnstead, supra. Consequently, it is not enough to merely suggest a dedication due to a recorded plan as is claimed by plaintiff but rather, the elements of the giving and the accepting by the proper authorities must be shown. State v. Atherton, (1844) 16 N.H. at page 209.

In the case at bar, plaintiff presents no evidence of a deed or conveyance by which the intent to dedicate can be shown. To the contrary, the exhibit incorporated herein which is a deed of the developer, so-called, of Riverside Park granted all right, title and interest to all lands excepting the previous conveyed lots. (See exhibit deed of Romeo Plourde to William A. Dobe et al Book 1074, Page 329 of the Merrimack County Registry of Deeds.) This cannot be considered an express dedication to the municipality by a plan recorded in 1960 when a deed conveying all lands to William Dobe et al is dated May 1, 1970. See Wason v. Nashua, (1931) 85 N.H. 192.

Conversely, in order to show dedication acceptance by public authorities must be shown. This can be done by their acceptance of a deed or by evidence of public use. Whitcher v. State, (1935) 87 N.H. at 412. By its own pleadings, plaintiff states that a vote was taken in 1979 dealing with the issue of dedication. As previously discussed, such votes are not binding on the Selectmen but are merely advisory. State v. Newmarket, supra. Nevertheless, for purposes of this discussion as it applies to the issue of acceptance, the residents of Riverside

Park have continuously requested the Town to accept the substandard streets in Riverside Park since their efforts in winterizing their summer camps for year round residency. Pepin v. City of Manchester 108 N.H. 223. Unfortunately, their requests have not been made by acceptable legal procedures and they have attempted to shift their burden and cost of up-grading repair and maintenance from the abutters within their park to the general tax-paying population of the Town. State v. Atherton, supra; 19 Pick:410. This circumstance brings defendant to the next argument below. See Amoskeag Industries v. Manchester, 93 N.H. 335.

III

Plaintiff should be seeking relief under RSA 231:28 et seq, Plaintiff cites RSA 231:8 in his original writ wherein it seeks equitable relief. The statute quoted is necessarily a discretionary provision of law and does not bind the Selectmen to lay-out highways, Williams v. Babcock 116 N.H. 819. However, plaintiff does not allege nor can he show that a petition was ever filed to the Selectmen. Review of such petitions by this Court is restricted to evidence or allegations that the decision of the Selectmen is motivated by fraud or is the result of gross mistake. Grossman v. Town of Dunbarton, 118 N.H. 519. Without a petition to begin with, there is nothing for this Court to review. Factors to be considered for lay-out of public highways is the public need and the burden the highways will impose on the Town.

In connection with the above, the statutory scheme for lay-out of Riverside Drive, the private way under discussion, falls within RSA 231:28 which calls for a public hearing. Review

by the Court, therefore, cannot take place until the local administrative remedies have been exhausted. Appeal procedures are contained within said statute under RSA 231:34. Plaintiff failed to follow the statutory scheme and is therefore not entitled to relief and defendant's motion to dismiss should be granted.

Also, plaintiff as a voluntary association is not an abutter to the area, is not a taxpayer generally within the Town and, as a result, has no standing to complain since it holds no right, title and interest to land in Riverside Park. Bennett v. Tuftonborough, (1903) 72 N.H. 63. Said plaintiff is not even entitled to receive notice of hearing as required by RSA 231:28.

CONCLUSION

For the reasons outlined above, Plaintiff's writ and motion to amend to bill in equity should be dismissed.

Respectfully submitted,

The Town of Allenstown

By its Attorney:



Richard F. Therrien

August 29, 1984

Copy of the foregoing has this date been given to Edward E. Frankel, Esquire, opposing counsel.

RICHARD F. THERRIEN
ATTORNEY AT LAW
57 MERRIMACK ST.
MERRIMACK, N.H.
03101



Richard F. Therrien

MERRIMACK, SS

THE STATE OF NEW HAMPSHIRE

APRIL TERM, 1984

SUPERIOR COURT

RIVERSIDE PARK ASSOCIATION

V.

TOWN OF ALLENSTOWN

AFFIDAVIT

The Board of Selectmen of the Town of Allenstown, through one of its members, on oath deposes and says that Riverside Drive, to the best of their knowledge and belief, is not a town owned road and not classified as a Class V public highway in the Town of Allenstown but rather has been known as a private road since its inception.

Town of Allenstown
Board of Selectmen

BY:

Galileo Donasuet

DATED: June 27, 1984

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

WRIT OF SUMMONS

SUPERIOR COURT

Riverside Park Association

v.

Town of Allenstown

To the Sheriff of any County or his Deputy:

We Command You To Summon Town Clerk and Selectman, for the Town of Allenstown, Town Hall, Allenstown, New Hampshire

if to be found in your precinct, to appear at the SUPERIOR COURT at Concord in said County of Merrimack, on the first Tuesday of July 1984, to answer to the Riverside Park Association, a duly registered voluntary association under the laws of the State of New Hampshire, Riverside Drive, Allenstown, New Hampshire.

In a plea of 1. CASE, for that the defendant has intentionally and wantonly neglected the maintenance and repair of the Class V public highway known as "Riverside Drive", located in Allenstown, New Hampshire; that defendant had and continues to have a duty to keep such highway in good repair suitable for safe travel thereupon; that defendant has continually breached said duty by neglecting the repair and maintenance of said public highway; and that as a direct, proximate and foreseeable result said highway has been in a state of disrepair unsuitable for and dangerous to travel thereupon, thereby causing plaintiff to suffer considerable direct, proximate and foreseeable hardship and injury; AND IN THE ALTERNATIVE, IN A PLEA OF 2. LAW, for that defendant has intentionally and wantonly neglected the maintenance and repair of the Class V public highway known as "Riverside Drive", located in Allenstown, New Hampshire, in violation of defendant's statutory duties under New Hampshire Revised Statutes Annotated, Chapter 231:8 et seq., (1955 as amended 1981); for that defendant has failed to post notice on said highway as to a state of disrepair and to commence repair on said road after receiving a Notice of Insufficiency pursuant to RSA 231:90, on or about May 8, 1984, in violation of RSA 231:91.

WHEREUPON THE PLAINTIFF WOULD RESPECTFULLY PRAY FOR THE HONORABLE COURT to award relief in the form of a mandatory injunction directing defendant to repair and maintain said public highway, award reasonable attorney's fees and other costs as the Court may find just and equitable, and such other relief as the Court may find just and equitable.

To the damage of the plaintiff, as he say, the sum of

\$100,000.00 dollars,

and make return of this writ with your doings therein.

Witness, RICHARD P. DUNFEY, Esquire, the

fourteenth day of June A.D. 1984

Riverside Park Association

By: *[Signature]*
Edward E. Frankel

Attorney

[Signature]
James R. Star

Clerk

MERRIMACK COUNTY SUPERIOR COURT

JUN 14 1984