

November 21, 2021

**Re: Illegal taking of private property for Drake Smith Road project on 10/26/21**

To Bristol Selectboard and Town Administrators:

We are writing to you as property owners of 75 East Street in Bristol, to alert you that the recent road improvement project on Drake Smith Road, which began on 10/26/21, was done in contravention of the relevant Vermont State laws and regulations. Since there was virtually no communication with private property owners impacted by the project, the ditch and road widening constitute *an illegal taking of private property for public purposes under Vermont law*, as detailed below.

**I. Illegal Process**

1. The Bristol Selectboard—who is responsible for legal right of way and easement claims under V.S.A 19 Section 923—did not formally communicate with the residents impacted by the project. No survey maps, documentation or other public communications were produced with respect to this project as is directed by Vermont state law. At public Selectboard meetings (on public record), there was no significant discussion or oversight of this project, and if private conversations happened, these were not communicated to residents.
2. Orion Lewis was working from home when the Roads Department was spray painting markings at 75 East Street. At that time, they *misrepresented* the scope and impact of the project, claiming that the project would only come into the property 2 feet, and that only two hastas on the hillside would be impacted. This evidence of these misleading claims are supported in a video of direct conversation on the day of the project, labeled exhibit A, as well as the markings in exhibit B used by the Roads Department to show the edge of the drainage ditch work.

**II. Harm**

1. Excessive taking of land without communication or compensation:
  - a. The drainage ditch on the east side of Drake Smith Rd was dramatically widened more than four feet beyond any previous, or existing, town claim.
  - b. To accommodate the expansion of the drainage project on the east side, the road was widened to the west side of Drake Smith Rd, representing a further taking of property at 73 East St. in Bristol.
2. Triggering erosion on our hillside:
  - a. While the depth of the drainage culverts on Drake Smith remained unchanged, Drake Smith Rd. was further raised with dirt and gravel and the resulting drainage culverts are improperly positioned at a depth of more than 3 feet, and there is nothing to mitigate further erosion into the culverts that were just cleared.
  - b. Approximately 10-15 hastas planted at homeowner expense and labor for erosion mitigation on the hillside were removed from 75 East St., valued at \$450 at

market prices. Grass seed was sprayed instead, which unsurprisingly, did not grow in November and has washed off into the culvert leaving the hillside open to erosion. Given the extensive tree canopy, only shade-loving plants will grow here, which is why we went to the expense of planting hastas.

3. Further property taking:
  - a. Approximately 5-6 yards of dirt were illegally removed from 75 East St. without owner's knowledge or consent. Valued at \$250 at Livingston Farm.
4. Concerns about future damage:
  - a. Bristol Roads Department used a large excavator at the base of a more than 150-year-old maple tree—one of the most historic and valuable in the Bristol village. They did this without property owner's consent, while the town's tree warden was working on the property. The Roads Dept. did not at any time consult the tree warden on the wisdom of such actions, and he expressed concern about damage to the roots system.

Drake Smith Road now has one of the largest drainage ditches in Bristol, without any rocks or other fill that would keep the culverts open. These are simply open pits or moats along the road that have already started to fill up with leaves, branches, dirt, grass seed, etc. The size and depth of this project has created unnecessary winter road hazards that threaten vehicular property and reduces the utility of remaining culverts, now served by much more treacherous ditches. The safety, risks, and utility of this project were never properly vetted and discussed with the citizens impacted. The result is poorly constructed and unnecessarily hazardous drainage ditch on a road with significant pitch and banking.

**III. Vermont Laws Regard Town Easements and Right of Way:** This project was *completed in contravention of all relevant Vermont laws and regulations.* Relevant laws and regulations are the following:

1. **Article 2 of the Vermont Constitution** states, "That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, *the owner ought to receive an equivalent in money.* [emphasis added]"
2. Title 19 of Vermont Statutes (**19 V.S.A. § 923**), outlines a "quasi-judicial" process selectboards are required to follow for road repair and improvement projects. This includes the following steps: notice, inspection of premises, decision on necessity of the project, notifying parties, and appeal.
3. With respect to road relocation, (**19 V.S.A. § 935**), states "When a highway is made impassable, or the width reduced to prevent the free and safe passage, by a landslide or washout, or a bridge is swept away by a flood, the selectmen may change the location of the highway or the bridge and may discontinue any resulting unnecessary parts of the old highway. They may take, damage, or affect such land as may be necessary at the location of the slide, or washout, for the purpose of re-establishing, repairing, rebuilding, or protecting the highway or bridge, and may proceed immediately to build or rebuild the highway or bridge and open the highway or bridge for work and travel."

4. At the same time (**19 V.S.A. § 936**), explains that “The selectmen shall follow the procedures established in section 923 of this title in giving notice, inspecting property, determining need, awarding damages, and satisfying appeals.
5. With respect to water diversion projects, (**19 V.S.A. § 940**), states “When it appears necessary to protect a highway damaged by or expected to be damaged by flood waters or ice jams, the selectmen may change the course of or widen a stream, or provide storage for accumulated ice, and for these purposes may purchase or take the necessary land. They shall follow the procedures established in section 923 of this title in giving notice, inspecting property, determining need, awarding damages, and satisfying appeals.”
6. Relevant decisions by the Vermont Supreme Court have upheld municipalities right to condemn land for right of way and easements, *but only after the towns followed the appropriate legal process*. For example, in *Munson vs. the City of South Burlington* (MUNSON\_V\_CITY\_OF\_S\_BURLINGTON.93-444; 162 Vt. 506; 648 A.2d 867), the Vermont Supreme Court found that the city did have the right to build sidewalks, but only because they issued the appropriate order and paid \$36,500 in damages to the property owner.

Given the facts in this matter, it is clear the Drake Smith Road improvement project did not have at least four of the five elements required by state law, (19 V.S.A. § 923): **notice, inspection of premises, decision on necessity of the project, notifying parties.**

#### **IV. Request for Damages:**

1. Our property at 75 East St was last appraised at \$275,000 in 2019 and sits on .3 acres of land. The land taken for the drainage ditch on the east side of Drake Smith Rd. was approximately six feet beyond the previous town drainage ditch, and runs for a distance of 100 feet. Thus, approximately 600 square feet of private land were appropriated for this project, representing .014/acre of land. Based on previous appraisals, this land is valued at \$12,833.
2. \$450 for removed hastas for erosion mitigation
3. \$250 for removed top-soil
4. **Total Monetary Damages=\$13,533**

In addition, the town of Bristol should take on the legal liability related to the potential destabilization of an old growth maple tree on our property, referred to above. Because the town has now excavated right up to the base of this tree, you should be liable for any damages to this tree caused by root failure, or the structural destabilization of its environment from unnecessary excavation—in other words any problems in the near term stemming from the base of the tree. This includes potential liability for neighboring property as well as potential damages to the tree itself created by this project.

Most importantly, we are requesting that the Bristol Selectboard **clarify and reform** its practices and procedures regarding oversight of public right-of-way and easement use claims. To our knowledge, the Bristol Selectboard was completely derelict in providing oversight of this project. We did not receive any formal communication regarding the nature of this project. The records from this past fall also show that public selectboard meetings that discussed this particular project did not in any way provide oversight regarding the details and nature of the project, or

evaluate necessity. Even though we attended those meetings, *we were still completely uninformed—and indeed misinformed--about the true nature of this project.*

Finally, we are asking the Bristol Selectboard provide a clear cease-and-desist order to the Bristol Roads Department regarding unnecessarily aggressive and legally dubious right-of-way and easement claims. As detailed below in evidence labeled exhibit F, the Bristol Road's Department keeps returning to our property without any notice and has now *painted new lines* on our property that presumably indicate new right-of-way claims that do not currently exist, and for which the town has provided zero documentation. These lines indicate that the town intends to take most of our front lawn, including our trees and raised garden beds. As we have outlined in this letter, such activities exist outside of the boundaries of established Vermont law, and unless they go through a formal legal process, they represent further illegal harassment of private property owners, voters, and taxpayers.

We have provided documentary evidence in support of this case below. Thank you for your prompt attention to this issue, and adopting a process that in the future follows Vermont state laws.

Sincerely,



**Orion A. Lewis**  
**Jessica C. Teets**

A. **Exhibit A:** Video of my discussion with roads Department 10/26/21  
<https://photos.app.goo.gl/LiraCmwjBnCHt4St7>

B. **Exhibit B:** Original project markings referred to as prior communication in **Exhibit A**. Wooden stake and markings were removed after discussion about project on 10/26/21, but are still visible shortly after on 10/29/21. Distance is a little more than 2ft from eastern edge of Drake Smith Rd.:



C. **Exhibit C:** excessive excavation to base of old growth Maple. Unlike original markings this drainage ditch come in far beyond 2 feet. Tape measure is over 100 inches in this photo—more than 5 feet beyond initial communication in exhibit B at conservative estimates.



D. **Exhibit D:** Culvert placed at improper depth without cohesive soil plug. Proper depth is under 12 inches of soil with measures to stop further erosion into the culvert. Without further erosion mitigation measures this excessive taking of land will be pointless.



E. **Exhibit E-** measurement of intrusion into neighboring properties. Below 75 East St, this project only entered property by two feet.



F. **Exhibit F** – pattern of illegal harassment by Roads Department. This picture—taken November 26, 2021—documents new markings that were placed on our property at 75 East St in recent weeks. As the selectboard is well aware, there has been no formal taking of this property by the town, nor has any documentation or evidence to such a claim been produced. As such this is a continued efforts by the Roads department to *unilaterally exert easement and right of way claims that do not exist*. As such, this represents further extralegal action and is bordering on harassment given the context of previous events. We are asking for clear cease-and-desist orders against this type of harassment outside of a formal legal process initiated by the Bristol Selectboard.

