

**Town of Epsom
Board of Selectmen Meeting
Saturday, August 1, 2009**

Bob _____
Joanne _____
Keith _____

Final _____
Accepted _____
Accepted as Amended _____

In Attendance: Bob Blodgett, Chairman; Keith Cota; Darlene Phelps, Recording Secretary

Not In Attendance: Joanne Randall, Vice Chairman

Also In Attendance: Ed and Glenna Nutter; Todd Fahey (legal counsel for the Nutters); Adam Towne; Dan Deschenes (legal counsel for Adam Towne); Dave Noyes; Gordon Ellis

9:00 AM Bob called the meeting to order on site of the Nutter’s property on Center Hill Road.

Keith stated the purpose of today’s onsite meeting is to find the factual history of the work completed in this area that may have affected the rock wall in question; to discover what happened, and why and how it happened, what type of wall was here, and how it was impacted. Keith pointed out that Mother Nature (act of God) appears to have been a major contributing factor to the damage of the wall.

The wall in question is from the corner of Sanborn Hill road to the Towle property. The wall on the Towle property was not affected.

Gordon gave a timeline:

Many years ago the rock wall was built by earlier farmers. In 2007 the Mother’s Day flood took out the bridge and the road. As a result, water from the brook came down the road. In addition, overland water from the Nutter’s property also cascaded over sections of the wall and into the town road. As a result of the storm event, sizable rocks and debris was left behind after the erosion subsided.

When the road was cleaned up, any rocks that had been washed into the road – were placed in holes and valleys caused by the flood erosion and/or removed. Many of the large rocks within the existing stone wall and some sections of the stone wall were not disturbed. The stone wall is the boundary of the Town’s Right-of-Way along the Nutter’s property. Gordon indicated that several large trees and stumps were removed along this section of roadway with some of the trees near the existing stonewall.

Adam Towne (DBU Construction) won the public bid for the replacement of the bridge. As part of his contract, he replaced the bridge and repaired a portion of the road under contract. At the request of the Road Agent, he agreed to extend the work westerly to the limits of the current improvement at no additional charge to the town. This included cleaned up of the debris and rocks within the road, raising the roadbed, paving the roadway, constructing the ditches along both sides of the town road, installation of the stone-lined ditch and placement of 4 inches of loam for seeding along the embankment slopes adjacent to the stone wall. The ditch reconstruction was done without impact the existing stone wall left. The excavation was done from the base of the existing stone wall into the town Right-of-Way. As part of the DBU construction, the stone wall under discussion was not disturbed or stones removed by his construction workers.

Ed Nutter stated that he did not see runoff from his property go over the wall, and believe that not many rocks from the stone wall were in the ditch after the storm event. Mr. Nutter indicated that the existing wall was similar in shape as the wall along the Towle property before the construction work was completed.

Gordon disagreed that the condition of the stone wall along Mr. Nutter's property looked like the Towle's stonewall. He pointed out several locations along the existing stone wall that represented the type of wall that existing prior to the May 07 Mother Day flood event.

Adam Towne provided pictures taken right a landowner during the after mass of the Mother's Day flood, which shows water in the road, and large rocks washed into the road. Atty. Deschenes stated that DBU Construction did not touch, destroy or rebuild the wall. They do not claim to know what the wall looked like before – they simply state DBU's activity did not destroy it – nor rebuild it.

Bob provided pictures taken in 2008 when DBU was ditching and rebuilding the road. These pictures clearly show that there were a lot of rocks in the road and existing stone wall intact.

Gordon stated that the original ditch was level with the road. DBU raised the road about 18", and ditched from the base of the stone wall to the road. Gordon indicated the areas where he repaired the stone wall due to the stump removals and where he had his road crew add stones to the existing stone wall in 2008. The other sections remain as it existed before and after the reconstruction work. Gordon pointed out the locations this activity occurred and that the rest of the wall was untouched. The attendees were in general consensus as to the locations where the wall was not disturbed by looking at the natural vegetation along the front of the stone wall. The base of the existing wall consist of large stones with some smaller stones intermixed within between them.

Mr. Nutter said during construction, he came down to this area and found many of the smaller rocks were removed. He doesn't know who took them. He stated it was either Adam Towne's 'people' or the Road Agent. He stated a great deal of the wall disappeared, and that someone removed a lot of stones. He said it is highly unlikely that an outside person or entity came to the site & took the stones. He said a lot of neighbors commented on the disappearance of the wall. Dave Noyes said he noticed the wall had changed. However he did not see anyone taking the rocks. Keith explained that unless Mr. Nutter has actual eye-witness or documentation to support his claim, the Board of Selectman will be rendering a decision based upon facts not suspicion or accusations.

Adam reiterated that he or his staff did not remove any stones. He noted that Gordon called him after the project was completed to explain that Mr. Nutter was upset about the wall along his property. Based upon this discussion, Adam provided a tri-axle load of stones (at no charge) obtained from his property and brought to the site. Gordon, with his staff used those stones to enhance portions of the existing wall where it was exposed. Gordon felt that the wall he enhanced was certainly aesthetically better than the way it looked 2007 (although missing lichen and moss). The original base rocks were not ever disturbed; Gordon indicated that he added the smaller rocks on top of them to build up the wall sections.

Keith stated that the BOS is only interested in fact, and must have proof showing who was taking the rocks if they did exist. He summarized that in 2007 there was a "100 Year Storm" event, which brought 6" – 7" of rain, which is a lot of water coming through this area. It was an Act of God. The town has done due diligence in replacing the bridge and fixing the road. He also acknowledged the additional work to the roadway beyond the contract bridge limits was done by DBU at no additional charge to the town. A great deal of vegetation was removed from the face of the existing stone wall when the ditching was done. And the heavy vegetation that was did exist would conceal what the shape and configuration of the original wall, similar to several existing sections that were not removed. Also he noted that several large trees and

stumps were removed, which could have impact some limited sections of the wall. The areas where the trees appear to have been removed, including a large pine tree across from the Yeaton's home, Gordon used donated rocks to re-enhance the stone wall over the existing large stones that already established the base of the wall.

Mr. Nutter reiterated that the embankment along the wall is too high and flood waters did not flow over it washing away the rocks as suggested by Gordon. Adam and Bob both indicated that there was no effective ditch along this section of the town road prior to 2007. The construction work completed by DBU excavated the embankment to reshape the ditch, and added 4" of loam along the existing wall.

Attorney Deschenes stated that the pictures they have presented show the state of the wall in 2007. DBU didn't work in the area until 2008. Given the information and discussion presented at this site visit, he indicated that it clearly shows that Mr. Nutter incorrectly accused DBU of wrong in his July letter to the Board of Selectman. DBU did not cause any damage to the rock wall in question.

Keith and Bob stated that the next meeting of the BOS will be on Monday, August 10 at 6:15 PM. If anyone has any further factual information for submission, they should submit it by noon on Friday, August 7, with a request to be placed on the August 10 agenda. The BOS will then have further discussion of this matter at that time.

9:55 PM Keith made a motion to adjourn. Bob seconded the motion. All in favor.