

PLANNING BOARD



PO BOX 500
CANTERBURY, NH 03224

AGENDA FOR THE MEETING OF MAY 12, 2020 at 7:00 p.m.

Due to the COVID-19 crisis and in accordance with Governor Sununu's Emergency Order #12 and Executive Order 2020-04 this meeting is being conducted telephonically.

The public has access to listen to and participate in this meeting by calling 1-866-678-6823. When prompted, enter Guest Passcode 8863361#. All callers must identify themselves for the minutes. For each item below, board members will discuss the item and the Chairman will then open discussion to members of the public to speak.

For any questions, please call Tyson Miller (Acting Chairman) at 783-4538.

1. Call to order by the Chair.
2. Review draft Minutes of February 25, 2020.
3. Nomination and vote for PB Chairman and Vice Chairman. Vote by text to Lori.
4. Road waiver recommendation request for Rum Brook Rd. (Map attached)
5. Road waiver recommendation request for Hancock Rd. and email from abutters and others. (Map and email attached)
6. Discussion of Class VI Road Waiver policy and proposed check list.
7. Discussion of Hiltz excavation permit on Intervale Rd.
8. Items handled by Acting Chairman during Covid delay.
9. Overview of things to do. Applications received for scheduling/New Freedom Academy.
10. Other Business.

Town of Canterbury
Selectmen's Office

DATE: April 8, 2020

TO: Planning Board
Highway Department
Police Department
Fire Department
Conservation Commission

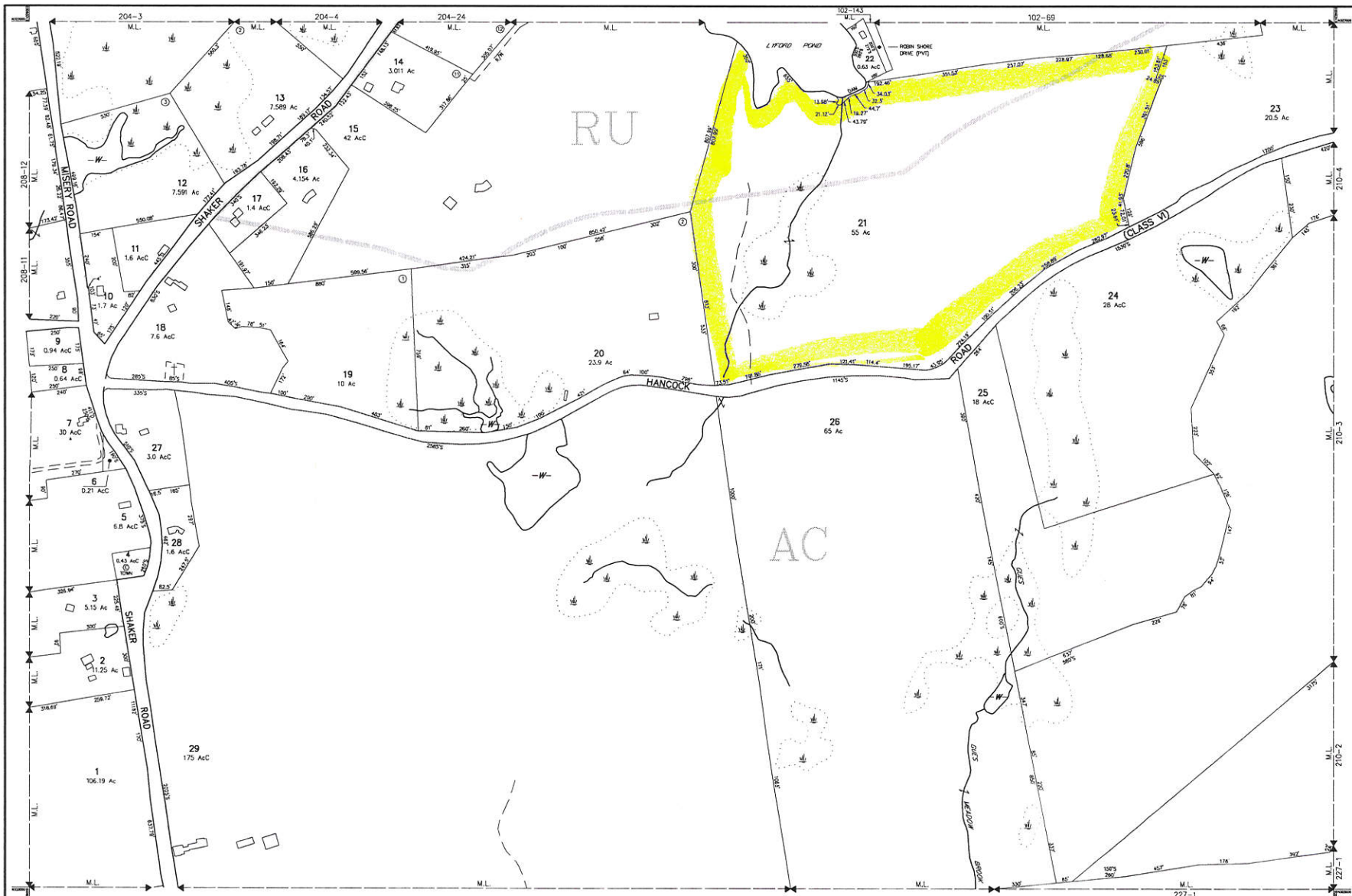
Tax Map # 209 Lot # 21

Name of Road: Hancock Road

Parcel Size: 55 Acres

Zone: Rural

Please review this application and return your comments to the Selectmen's Office no
later than April 30, 2020.



THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE.
 THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM, NAD 83.
 PHOTOGRAPHY DATE: APRIL 26, 2007
 COMPLETION DATE: NOVEMBER 30, 2007

PRODUCED IN 2007 BY
CARTOGRAPHIC ASSOC. INC.
 PROFESSIONAL GIS CONSULTANTS
 MUNICIPAL MAPPING - GIS - PUBLIC WORKS INFORMATION MANAGER
 15 PLEASANT STREET, LITTLETON, NEW HAMPSHIRE 03561
 (603)444-8762 - (603)327-4542 - FAX (603)444-1366 - WWW.CAI-INFO.COM

LEGEND
 AREA SURVEYED: AC
 AREA QUOTED: AC
 RECORD DIMENSION: 100'
 SCALED DIMENSION: 100'
 WATCH LINE: M.L.
 WATER: W
 WETLANDS: W

LEGEND
 EXISTING PROPERTY: SUBDIVISION LOT NO.
 BUILDING: B
 RIGHT OF WAY/ACCESS: Z
 ZONING DIMENSION: Z
 WETLANDS: W

SCALE 1" = 200'
 FEET: 0 100 200 400 600
 METERS: 0 100 200
 REVISED TO: APRIL 1, 2009

PROPERTY MAPS
CANTERBURY
 NEW HAMPSHIRE

INDEX DIAGRAM
 205 206 207
 208 209 210
 211 212 213

MAP NO.
209

MEMORANDUM & COMMENTS

May 4, 2020

To: Canterbury Selectmen
Canterbury Planning Board
Canterbury Conservation Commission
Canterbury Agricultural Commission
Canterbury Historic District Commission
Canterbury Road Agent
Canterbury Fire Chief
New Hampshire Department of Environmental Services
New Hampshire Dep't of Natural and Cultural Resources, Division of State Parks
Canterbury Shaker Village
Five Rivers Conservation Trust
Edward and Jean Therrien
Canterbury Sno-Shakers
Douglas Pounds & Jacqueline Pounds

From: Mike Saviano & Caroline, 1 Hancock Rd., Canterbury
Mike Pinard and Lynda Pinard, 49 Robin Shore Dr., Canterbury
Lisa Shapiro & Joshua Gordon, 569 Shaker Rd., Canterbury

Re: *Incomplete Application for Development of Property of Douglas and Jacqueline Pounds,
Canterbury Tax Map 209/Lot 21*

* * * * *

We are landowners, abutters, and residents in the vicinity of Hancock Road, in Canterbury, New Hampshire. It has come to our attention that there has been a proposal for development of one of the lots on Hancock Road.

Although this memorandum is lengthy, it is our attempt to notify the Town of Canterbury of issues regarding development on Hancock Road, especially as it is anticipated that opportunities for comment will be limited by constraints on public meetings presented by the coronavirus pandemic emergency.

I. Process for a Building Permit on a Class VI Road in Canterbury

The Town of Canterbury has a Class VI road policy, which provides that its purpose is to:

- “Prevent the premature and scattered development in the community that may endanger the safety and well-being of residents.”
- “Protect the Town from absorbing burdensome costs of upgrading substandard Class VI and private roadways to service premature and scattered development.”
- “Preserve the character of Class VI or private roadways.”
- “Protect the health and welfare of the community.”

TOWN OF CANTERBURY, CLASS VI/PRIVATE ROAD POLICY. The policy mimics state statute. RSA 674:41. It requires that for a building permit on a Class VI road, a building permit application be authorized by a vote of the Selectmen, after review and comment by the Planning Board. The policy also requires that the Town assume no responsibility for maintenance of the road, and that such waiver of responsibility be recorded in the Registry of Deeds.

“The purpose of this limitation on building on class VI highways is to provide against such scattered or premature subdivision as would necessitate the excessive expenditure of public funds.” *Glick v. Town of Ossipee*, 130 N.H. 643, 649 (1988) (quotations omitted). Towns can thus “relinquish responsibility for maintaining roads that are rarely traveled and that do not furnish access to sites of commercial or residential development.” *Id.* at 648. Without such limitations, “a private developer could single-handedly require an increase in the municipal tax burden.” *Land/Vest Props., Inc. v. Town of Plainfield*, 117 N.H. 817 (1977).

To qualify for a building permit on a Class VI road, an applicant must submit an application that includes:

- “The location and size of the lot and its relation to the Class VI or Private Road and the Class V or better road which gives access to the Class VI or Private road.”
- “The specific location of all propose structures as required by the building application.”

- “The location and length of driveway giving access to the structures from the Class VI or Private Road.”
- “If wetlands exist; wetlands delineation, by a certified wetlands scientist on the subject property or adjacent property that could be impacted, and indication whether a State Wetlands Permit has been submitted.”
- “A written road maintenance agreement if there is one party residing on the road, or the applicant agrees in writing to assume 100% of the road maintenance costs for the portion of Class VI or Private Road affected. Applicant shall address the need for a potential turnaround for emergency vehicles in order to avoid or eliminate a dead end road.”

TOWN OF CANTERBURY APPLICATION TO BUILD ON A CLASS VI HIGHWAY OR PRIVATE ROAD. To get a waiver specified in the last paragraph of the building permit application, the applicant must submit a packet which contains:

- “The Application to Build.”
- “The Agreement and Release.”
- “The Road Upgrade Agreement.”
- “Copy of the Class VI/Private Road Policy.”

TOWN OF CANTERBURY PROCEDURE FOR CLASS VI OR PRIVATE ROAD WAIVER. Based upon a submitted application:

- “The Road Agent will coordinate with the Fire Department, Police Department, Building Inspector and applicant for a site visit.”
- “Comments will be added to the appropriate areas of the application.”
- “The Road Agent will coordinate with the applicant for any required upgrades which will be listed on the ‘Road Upgrade Agreement.’”
- “The completed packet will be forwarded to the Planning Board for comments.”
- “The Board of Selectmen will review the packet and sign.”

Id.

Canterbury's policy specifies that the "Board of Selectmen will evaluate applications for building permits upon Class VI roadways ... in consultation with the Fire Chief, Police Chief, Road Agent and Canterbury Planning Board." The Board of Selectmen are required to apply the following criteria:

- "Conditions of the road – does that road have adequate width, drainage, and grade to handle increased development?"
- "Conditions of connecting roads – are the roads leading to the Class VI ... adequate to handle increased traffic?"
- "Effects of municipal services – will the contemplated development result in a need for increased police, fire, etc."
- "Will the issuance of the permit to result in 'occasion' to lay out the road as a Class VI road?"
- "How will the proposed development affect neighboring properties and how well does the proposed development 'fit' in to the general growth and development patterns in the Town, as well as the goals and objectives of the Master Plan?"
- "Will the issuance of said building permit tend to distort the Town's road map or Master Plan?"

TOWN OF CANTERBURY, CLASS VI/PRIVATE ROAD POLICY. The Selectmen can approve an application "only when it is demonstrated by an applicant, and determined by the Board of Selectmen, using the above criteria, that issuance of said permit will not have a negative impact upon the Town, i.e. the planned development is not deemed 'scattered and premature.'" *Id.*

To our knowledge, this procedure has not been commenced with a completed application. However, we are aware that, regarding the property of Douglas and Jacqueline Pounds, Map 209/Lot 21, various Town departments have already conducted site visits and provided official comments.

II. Description of the Area

For a variety of reasons, the consideration of any further building permits on Hancock Road involve not merely the consideration of a single application, but a development decision. The Town must make the development decision before it can apply the standards in the rules and policies listed above.

Hancock Road originates at Hills Corner on Shaker Road, and ends about a 1¼ miles east at a “T” intersection.

At the “T” the road leading south to Rt. 106, possibly known as Ames Road, is believed to be a private road, ceded to a private landowner at some earlier time, and thus not open to the public except at the convenience of the owner. Because of the propensity for some to use Ames Road as a cut-through, during race weekends there is generally law enforcement posted at the Rt. 106 intersection.

Also at the T, there is an unnamed road leading north to the Gilmanton town line. The unnamed road also intersects Old Gilmanton Road, which goes west back out to Shaker Road, and is the northern extent of the Sherwood Forest development.

At the western end of Hancock Road, just after it leaves Shaker Road, Hancock Road goes steeply down. It is also narrow, bermed on both sides. The road tends to erode, and is saved from further erosion by the relatively low traffic volume, and by the efforts of Hancock Road’s single resident.

Down the steep slope, Hancock Road then passes through a wetland. The road and the wetland are at essentially the same elevation, meaning that the road is frequently submerged, depending upon the wetness of the season and year. That wetland is the headwater of the “Shaker Ditch,” a canal built by the Shakers for their water power. The Shaker Ditch begins immediately south of the wetland, is part of the Shaker ponds system, and can be traversed on foot from Hancock Road to Shaker Village.

Further along Hancock Road, there is a culvert, through which passes perennial Gues Meadow Brook, which drains Lyford Pond. The culvert is partially effective, but Hancock Road at that point is very wet and washes out during some seasons and some years. Gues Meadow Brook runs southeast, and crosses Rt. 106 near the racetrack.

After the T, on the unnamed road north about half-way to Gilmanton, the road is crossed by a perennial river which drains New Pond. At the river crossing, there have been past efforts to prevent the road from washing out, which appear to have recently been

successful. However, there is no culvert, and depending upon the season and the year, the river crossing is impassible except on foot. The brook also runs southeast, and crosses Rt. 106 just south of Rocky Pond.

There is a single residence on Hancock Road, built probably around 2004. Not long after that, the then-owner sought to subdivide, in an effort to build another house. At that time, the Planning Board conducted a site walk, and denied the subdivision, largely because of the road's submergence by the wetland, and because of the steep slope. From the perspective of an on-looking member of the public, it was understood that the general sense of the Planning Board at the time was that the residence was an example of unplanned development, and the result of the tail-wagging-the-dog. That is, the road agent had made a recommendation, and the building inspector allowed a permit, but no long-term planning was considered regarding whether development should be allowed on Hancock Road generally. It is believed that the episode may have been the genesis of Canterbury's current Class VI policy.

III. Granting a Building Permit on Hancock Road Will Inevitably Lead to Further Unplanned Development on a Class VI Road

This attention to geography is important for several reasons, because Hancock Road presents several hazards, making it a poor place for further development.

First, Hancock Road is in effect a very long cul-de-sac, with poor opportunities for turn-around. At the T, a traveler encounters either a private road allowing no exit, or a river crossing. Road standards generally allow 800- or 1000-foot cul-de-sacs, and are generally required to end in a circle allowing for a turnaround. Consequently, stuck vehicles have been observed over the years.

Second, the steep slope is susceptible to erosion, and any further development is likely to exacerbate the problem.

Third, while the wetland crossing, which is maintained by the single current resident, may not be a great problem for low-volume traffic, it cannot sustain further development. It is probable that DES would be interested in reviewing the submergence of the road, wetland setbacks, and mitigation of wetland impacts.

Fourth, if further development is allowed, as the road looks more and more official, and upkeep to Class V status is enforced, traffic will be encouraged. The public will be misled into thinking it is a passable road, travelers will be misled into thinking that services will be available to stuck vehicles, and as a consequence, in the event of an emergency, EMT and fire services will be prone to danger.

Fifth, to the extent that further residences are allowed on Hancock Road, and it remains a non-town-maintained road, it is essentially a shared driveway. Canterbury has experienced numerous disputes among landowners who live on Class VI roads. Examples of this were provided to the Planning Board, and are reflected in its minutes dated October 8, 2019. The Town entering into agreements with the various owners immediately creates potential disputes among the owners, if one is not satisfied with the maintenance standards of another.

Sixth, there are several properties that, if Hancock Road were open for development, would easily be subdivided and developed. The property of Douglas and Jacqueline Pounds, Map 209/Lot 21, is the one now being addressed. The next obvious candidate for development (while nothing is known about the intentions of the owners) is the lot directly across Hancock Road from the Pounds's, currently owned by Kaylin Stankatis, Map 209/Lot 26, which has been thoroughly logged. While there are ledge and wetlands, all the other lots

along Hancock Road are many times the minimum zoning size, and thus could be subdivided and developed. There is also a lot, recently logged, north of the "T" on the road to Gilmanton. Neighbors believe it would not be surprising if in the future there is a proposal to subdivide and develop that. If the Pounds's lot is allowed to be developed, there will be little basis to prevent concerted development of these roads and lots, and there will be pressure to complete and develop the potential loop created by Hancock Road, the unnamed road leading north from the "T," and Old Gilmanton Road.

Seventh, if such further development is allowed, disputes regarding maintenance can be expected to multiply. Some owners will be paying for maintenance enjoyed by others, and it is likely that there will eventually be a citizen's petition to for the Town to take over the road and assume maintenance.

Eighth, the land at the end of the T, owned by Edward and Jean Therrien, Map 210/Lot 5, overlooks an unnamed pond. It is believed to have won NH Tree Farm Status, *see* <<https://www.nhtreefarm.org/>>, and is believed to be in conservation easement, managed by the Five Rivers Conservation Trust. *See* <<https://5rct.org/>>.

Ninth, the area bifurcated by Hancock Road has been identified and mapped by the Canterbury Conservation Commission as one of Canterbury's contiguous undisturbed tracts, important for wildlife and environmental preservation. The area is bounded by Lyford Pond/South Road/Rocky Pond and the Gilmanton town line to the north, Shaker Road on the west, and Rt. 106 on the east. It stretches beyond Shaker Village and Asby Road to the South, all the way to Beck Road in Loudon. It is understood that the Canterbury Conservation Commission has an interest in the contiguous undisturbed tract, especially because the area contains the protected Therrien Tree Farm, the historic Shaker Ditch, Shaker State Forest, and Shaker Village. Because Hancock Road bifurcates this mapped contiguous tract, development of it will permanently terminate its contiguous nature.

Tenth, it appears that the Town is requiring *both* an upgrade to Class V standards, *and* a wavier of Town responsibility. We note that state law does not require both, RSA 674:41, as it is not logical to require *both* an upgrade *and* a wavier.

Eleventh, it is believed there is no right to develop land situated on Class VI roads.

Twelfth, regardless of liability waivers, it is believed that insofar as the Pounds intend to build a house on Hancock Road, it has been overheard that the Pounds's are nearing retirement age, and intend to retire there. It is therefore not realistic that they will not expect emergency services, or that emergency providers in the midst of an emergency will withhold services upon learning that a waiver was filed in the Registry.

Thirteenth, there is the possibility of future commercial use. During the past several years, Pounds operated a campground on their property, which they advertised on the internet, and which was the subject of a cease-and-desist order by the Town. It is believed that the Pounds have nonetheless indicated that they intend to continue to operate a campground. There are multiple tent platforms on the land, which are currently reflected on the property's tax card, and Mr. Pounds was in the last few weeks overheard discussing with town officials his intent to host the Boy Scouts. The Pounds have also erected a zipline across a portion of Lyford Pond, which has resulted in at least one injury. It is believed that campers on the land have defecated in Lyford Pond, and have had campfires in a vicinity where it is unlikely that fire suppression services are available on a timely basis. Even if camping is conducted informally, it is believed there is no water or waste disposal facilities, and it would not be fair to campers, who will expect emergency services which have been waived.

Because of these and other problems, consideration of a building permit on the Pounds's lot is not an isolated issue. This application (if a completed application is made) is a planning decision what will likely permanently affect the future of Hancock Road, the other roads in the area, the health of Lyford Pond, and the contiguous tract of undeveloped land. Moreover, Hancock Rd. is not the only Class VI road that faces development pressure. It is therefore important take into account all of Canterbury's Class VI roads in considering this application.

IV. Requests

Given that the Class VI road policy for the town of Canterbury includes to:

- “Prevent the premature and scattered development in the community”;
- “Preserve the character of Class VI or private roadways”;
- “Protect the Town from absorbing burdensome costs of upgrading substandard Class VI ... roadways to service premature and scattered development”; and

Given that among the criteria the Selectmen must apply is in determining whether to allow such development is:

- “[W]ill the proposed development affect neighboring properties and how well does the proposed development ‘fit’ in to the general growth and development patterns in the Town, as well as the goals and objectives of the Master Plan?”

First, we request that further opening and encouragement of traffic on Hancock Rd. be avoided.

Second, we note that the single current resident of Hancock Rd. had done a passable job of maintaining the road sufficient for the use of the single resident, and consequently there need not be any over-enforcement of road maintenance. Further, the recommendations of the road agent in widening the road may encroach on steep slopes, a cemetery, and neighboring property, could unnecessarily change the character of the area, and will likely lead to ongoing disputes about maintenance.

Third, we seek a fully notified public hearing on this matter. Because of the potentially dramatic impacts on the future of this area of Canterbury, there should be notification of the hearing to all abutters of the Pounds’s land, Hancock Road, the road known as Ames Road, and the unnamed road leading north from the “T.”