

# APPROVED

## Town of Grantham – Board of Selectmen Public Meeting to discuss Miller Pond Road Bridge Monday, August 13, 2012

The meeting of the Board of Selectmen to discuss the Miller Pond Road Bridge was called to order at 4:05pm on Monday, August 13, 2012 by Chairman Warren Kimball. The meeting was held in the Grantham Town Building, Jerry Whitney Memorial Conference Room at 300 Route 10 South, Grantham, NH.

Present: Chairman Warren Kimball; Selectman Ken Story; Selectman Constance Jones; Town Administrator Melissa White; Administrative Assistant Ann Jasper; Town Counsel John Teague; Police Chief Walter Madore; Fire Chief Jay Fountain; Road Agent Joe Newcomb; Richard Eastman, Logger; Don Miner and Karyn Miner

### **ADMINISTRATIVE**

#### ***For Approval/Signature – APPROVED***

- ✓ Plodzik & Sanderson Risk Assessment

### **PURPOSE OF MEETING**

- ❖ This meeting is being held to discuss a problem that has occurred concerning the Miller Pond Road Bridge. Don and Karyn Miner have hired Logger, Richard Eastman, to work on their property. The Miller Pond Road Bridge has a posted weight limit of 15 tons and it was estimated that there would be 10 logging trucks per day for the next 10 – 12 weeks going over the bridge that grossly exceed the posted weight limit. The Logger was issued a Cease and Desist Order on August 9<sup>th</sup>, 2012 by the Town of Grantham on advice of Counsel.

### **PUBLIC APPEARANCES**

- Chairman Kimball welcomed everybody to the meeting to discuss the situation with the Miller Pond Road Bridge. He stated that there is an obvious problem with the bridge having a weight limit of 15 tons and most of the logging equipment and trucks are at least at that weight when they are empty and certainly exceed that when they are full. Chairman Kimball asked that if anyone has any ideas on how to resolve the problem, to please present them.

Richard Eastman introduced himself as the President of 3D Logging Co. Inc. and is logging a parcel of land on Miller Pond Road. He stated that they are currently operating under a

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Cease and Desist situation and he is waiting to see what the Town has to offer. He said he was there to listen to the Board of Selectmen first before proposing any alternatives. He reported that he has been doing research on this and it appears to him that the Town has as serious a problem with the bridge as he does, because the bridge is posted for 15 tons. Eastman continued that he does not have one piece of equipment in the operation that weighs less than 15 tons. He stated the Cease and Desist that the town has served on him does not even allow him to remove any of his equipment; therefore the town is probably going to own his equipment if they don't let him get it out. Eastman said that he has two grapple skidders, a chipper, a feller buncher, a delimer, a crane and a slasher in the operation right now and the lightest piece of equipment is 32 tons. He reported that last Monday, August 6, 2012, he met with Chief Madore and gave him a worst case scenario on what was going to happen on Tuesday, the following day, when they would be bringing their delimer which weighs 52,000 pounds and is 14 feet, 6 inches in height and doesn't clear the underpasses on Miller Pond Road. Chief Madore in turn talked to Road Agent, Joe Newcomb. Eastman said he advised Chief Madore of what they were going to have to do, which was unload the delimer from the low bed when they get there, put some planks down on the road, drive the delimer through the underpass, put it back on the low bed and continue forth. Eastman felt that everybody was on the same page at that stage of the game and Road Agent Newcomb gave him permission provided that they didn't tear up the road. Eastman said that he believed that if he was bringing in a piece of equipment that was so big that it didn't go through the underpass, that should have been the first red flag for the town. Nobody mentioned anything about it at that time.

Selectman Jones asked Eastman if he ever has to obey the laws, specifically if he sees a bridge that is posted for 15 tons, did he realize that perhaps he might need to do some research as to whether or not he could go across that bridge on a small road like Miller Pond Road.

Eastman responded by saying that none of the trucks are his trucks. He stated that he told Chief Madore that they all have their overweight permits and that it's really up to the drivers.

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Selectman Jones inquired about the skidders and asked Mr. Eastman if the skidders belonged to him. Mr. Eastman responded that he does own the skidders but they are hauled on a hired truck. Selectman Jones asked how much the skidders weigh. Eastman reported that the lightest skidder is 32,000 pounds (16 tons), which exceeds the weight limit the bridge is posted for.

Don Miner commented that for the last five years even when he was cutting on a smaller scale, the trucks that were rolling out of there were the same weight as what Eastman is running. He added that they had the misfortune of having a driver make an error and went off the bridge going into Sherwood Forest two years ago which is his privately owned bridge. He stated that it was a tractor trailer that was fully loaded and that the bridge didn't fail, the truck went off the side and that was clearly a driver error which was pointed out by the Department of Transportation. He stated that truck was the same weight as the truck they are talking about now. Miner expressed to the Board of Selectmen that as property owners, they are miffed that it's the same trucks that are rolling now, just a little more often than what they were running before, and it wasn't a problem before.

Richard Eastman stated that he has copies of four years of Intents to Cut signed by all the Selectmen that has allowed logging on that same road for other years. He added that he has copies of records that Administrator White provided to him that say the bridge has been posted since at least 1998. He stated that he did the research to make sure that the bridge wasn't posted after the most recent Intent to Cut was signed by the Select Board. He added that if the Board is asking him if he did his research, the answer is yes, he did his research and there have been past practices of the same logging operations happening on this road for five years. He remarked that nobody had received a Cease and Desist until last Thursday.

Attorney John Teague, Counsel for the Town of Grantham, clarified that an Intent to Cut is a tax document and is not a permit. He stated that it may be noticed that you intend to go and do some logging but it does not address the what and wherefores of it. Don Miner interrupted Attorney Teague to state that the Intent to Cut further gives the people listed on the Intent to Cut permission to cut and asked Attorney Teague if he was right. Attorney Teague responded that we shouldn't exaggerate what the Intent to Cut is. Miner replied that he didn't think he was exaggerating, he was asking if the town was conveying

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permission to the landowner and the logger to cut the property and also to report accurately the timber yield to the town and to the state. Miner further stated that it's an assumption on their part (Miners) the town knew there was going to be a log truck moving timber off the property.

Richard Eastman, in re-addressing the Board asked if any research had been done, said that he has been in the logging business for 24 – 25 years and has had instances where an Intent to Cut has been filed with the town and the first thing that happens is the town requires a bond to be posted on the road, etc. Eastman stated that this property has been logged with the same type of equipment that he is using except that they are doing it at a bigger volume.

Don Miner added that Michael Carter owned the property prior to Karyn Miner's father acquiring the property in 1996 and they were logging in there at a grand scale. He stated they logged the entire 850 acres and he believes the logger then was the person that came in there because there was a problem with the Conservation Commission and the way the logging was conducted. He stated that the logger at the time was one of the biggest loggers in the area and that they were running trucks over the bridge. He expressed that they are at a loss as to why this just happened all of a sudden to them. He advised that they are not trying to break the rules and that they don't want anyone getting hurt on the bridge, they want to make this work asked the question, why now?

Attorney Teague informed everyone that there are a few facts about the bridge that haven't been talked about yet. He explained the history of the bridge being that it was built in 1964 when the interstate went through and there was bridge aid available for the town to build a bridge there. At that time the town decided on a 10 ton bridge which is what that bridge is designed for and the state feels that they have been liberal in allowing a posting of 15 tons but reiterated it is designed for 10 tons. It has since, like every bridge, begun to deteriorate, has cracks in the deck, water is getting through which means every winter they will expand and deteriorate faster. It's still in pretty good shape but it is red lined by the state as a bridge that is of limited capacity and it's down to about 78 percent. Teague continued that on a scale of 1 to 9, it's rated as a 6. It is beginning to deteriorate and is a 6 which is still good, but still restricted to the 15 tons. Attorney Teague reported that he asked the person he spoke with at the Department of Transportation if 16 tons would

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collapse the bridge and he was told no, that it's built in to their way of assessing tonnage that there is a margin so that he is pretty confident that Mr. Eastman can get his equipment out but the real question is, is there a way to continue the operation when the posted weight limit would be grossly exceeded. Teague said the town would like to discuss options such as to reinforce the bridge or to maybe install a temporary bridge, and think about other things besides how angry you are and we certainly do understand.

Richard Eastman responded that there is a certain amount of anger but he felt he wasn't conveying that. He stated that he is interested in what the town is going to do. He said it's fine if the town wants to enforce the bridge limit with his logging trucks but wants to know what the town intends to do with oil delivery trucks, Public Service utility trucks, town plow trucks, town dump trucks and lumber trucks that are delivering materials to residents that are doing renovations on their home because each and every one of those vehicles that he just mentioned are in excess of 15 tons. He reported that he has some solutions but wants to hear for his own satisfaction what the town is planning to do with all the rest of those vehicles.

Attorney Teague explained that he advised the town that it had no choice, because once the town is put on notice as they were of the usage of the bridge in that amount of excess, they become liable if there is an accident, or if there is personal injury. He stated that personal injury is not something that one can bond against and explained that with property damage you can talk about bonding but with a safety issue like this, he felt he had no choice but to put the parties on notice of the facts and make sure that it got notice. Teague restated that the town is interested in talking to both parties about moving on.

Richard Eastman expressed that he is too and that he is absolutely going on record as not being in an adversarial situation. He reiterated that he had done some research on some possible solutions but needed to hear what the town's situation was on all the other use which the town cleared up. He said let's go forward and talk about what we are going to do to fix it. He reported that he is in a very tough situation because he has been shut down since Thursday and that it is costing him between \$7,000.00 to \$10,000.00 per day in lost production, he added that as far as public safety is concerned, he does not want his trucks to go through the bridge and cause all of those residents any havoc. He remarked that he

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is not looking for anybody to turn a blind eye, he wants to find a solution to this so the Miner's can continue to log the property because they have that right. He addressed John Teague by saying he assumes that as the attorney he knows that there is an RSA in the State of New Hampshire that states that a landowner has the right to harvest and have access to their land. He restated that he has some solutions but is waiting to hear what everybody else is thinking.

Chief Walter Madore interjected by pointing out that the aforementioned home heating oil trucks, Public Service trucks, fire apparatus and highway maintenance equipment are all exempt from the weight limits per New Hampshire RSA. Richard Eastman countered by stating that everyone is talking about public safety and went into detail about weights and axles of his trucks versus the weights and axles of the exempt vehicles. Eastman felt that his trucks, being longer in length, do not have the entire weight on the bridge at one time unlike the exempt vehicles which have the entire vehicle and weight on the bridge at one time.

White asked Eastman if he has ever had to install a Bailey Bridge to get to a parcel of land during his career as a logger. Eastman passed around some information regarding portable bridges from ADM Welding & Fabrication located in Warren, Pennsylvania and advised that they have two forty foot portable bridges in their inventory that could be delivered here within two days. The portable bridges are rated for 45 ton vehicular loads. He stated that the downside is that they are a one lane bridge with a 12 foot, 6 inch travel lane. Eastman said that he doesn't have any trucks that are hauling 45 tons. He explained that it takes about one hour to set up the bridge. In answer to White's question, Eastman stated that he has hauled loads well in excess of the legal weight over these bridges. Eastman said he explained the situation to the person at ADM Welding and Fabrication and that they suggested a 40 foot bridge. He described the portable bridge as being flat on the bottom and when it's in place, it is 22 inches high and that means 22 inches of material would have to be put in as an approach to the bridge. Eastman stated that he has a relative currently in Virginia right now and we could have that bridge here tomorrow.

Chairman Kimball asked Eastman if he subcontracts any of the logging trucks. Eastman reported that they are all subcontracted. Chairman Kimball asked if they are all certified

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for 99,000 pounds and Eastman responded that they are all certified for 104,000 pounds and they all have their overweight permits in the states of New Hampshire and Vermont.

Selectman Jones asked how the portable bridges are installed. Eastman explained that the bridge comes complete with side rails on a flat bed folded in half and is lowered in place and bolted down and ready to drive on. Eastman stated that the representative of the company told him that in this situation the portable bridge would be put over the existing bridge. White asked Eastman, if the portable bridge is put over the top of the existing bridge, how does it release the weight of the existing bridge. Eastman replied that the portable bridge does not touch the existing bridge because of the 22 inch height and that it is supported on each end. Eastman also added that this is a more portable Bailey Bridge and that one advantage is that it can be rented from this company instead of purchased. White asked who holds the responsibility for insuring that the installation is done correctly and if this company is able to provide the Town of Grantham with a certificate of insurance listing the Town as additionally insured by endorsement. Eastman stated he didn't get that far. White asked if ADM Welding is the closest vender to which Eastman responded yes.

Selectman Jones asked if the portable bridge could be placed beside the existing bridge if work is being done on the existing bridge. Eastman said that would probably be the time for a true Bailey Bridge. Road Agent Newcomb said that he believes in that case, that one lane could be open on the existing bridge while the other lane was being worked on.

Newcomb stated his concern for the existing bridge and asked if there would be an engineer that would certify that no damage would be done to the existing bridge if a portable bridge is placed on top of it. He also expressed concern regarding the sharpness of the corner coming off the bridge and how building up the portable bridge will affect the road. There was discussion regarding trucks with 5 axles versus trucks with 6 axles and the formula used to determine the weight of a vehicle by the number of axles.

Road Agent Newcomb asked if a professional bridge engineer could look at the bridge to give an opinion of how the portable bridge would affect the existing bridge before making a decision. White responded that the town will consult with town counsel for advice on that as well as the Department of Transportation. Attorney Teague recommended that the town consult with an engineer for assistance. He furthermore said that the Department of Transportation generally does not like having their engineer involved because they will

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firmly hold to the 15 ton limit with the understanding that there is a range but obviously not up to the amount we are talking about with Eastman's logging operation. Department of Transportation did volunteer that one of the solutions might well be a temporary bridge over this bridge but that doesn't mean that we wouldn't want an engineer there to advise the town on whether that is a good idea.

Road Agent Newcomb thought there were some alternate routes to exit Miller Pond Road without going over the bridge. Don Miner asked if he was talking about Leavitt Hill Road to which Newcomb said yes. Miner reported that they were informed at a previous Selectmen's Meeting by Jeremy Turner that Leavitt Hill Road was discontinued back in the 1940's and the property was converted back to the property owners. Miner agreed that an engineer should be consulted to see what the best plan would be.

Eastman reiterated that he is losing money every day until this problem is resolved and urged the Board of Selectmen to contact the company who has the portable bridge to ask questions. He re-emphasized that the portable bridge is rated for 45 tons and that they don't even have one truck in his logging operation that comes close to that. Miner pointed out that even though Eastman's trucks are certified for 104,000 pounds, there are a few things that prohibit him from transporting that much, one being the height of the underpass. Selectman Jones asked Eastman if he has ever been in a situation where he takes small loads to a log landing site and then moves them out in bigger quantities from there. Eastman responded that he can't do that with a load of chips which is mostly what they are hauling from the Miners' property. Miner explained that they are doing mostly a chipping operation and were focusing on creating a field for bison and/or cattle which has been discussed previously and that the area of the property that they started working on is an area that the Conservation Commission would like to have access to. He explained that he put a lot of thought into doing the chipping so it wouldn't be detrimental for people to walk in. Chairman Kimball asked if it was hard wood chips or soft wood chips and Miner responded that it was a mix but predominantly soft wood. Attorney Teague asked if they were bringing out any logs and Eastman stated they were, that they were harvesting a conventional operation with the addition of a whole tree operation so the public can walk there without having to climb over a bunch of slash that's left behind from a conventional logging operation. Eastman went on to say that they are taking the whole tree out and merchandising the logs, the firewood, the pulp, the pallet logs and the chips. Attorney

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Teague asked Eastman to describe the range of weight from the lightest to the heaviest load. Eastman reported that he had one pulp truck last week that left that was 92,000 pounds gross weight, with 27 tons of net load. He stated that chips generally run between 28 and 32 tons and it is more difficult to estimate because it depends on the ratio of soft wood to hard wood. Eastman confirmed the range for the average loads are 90,000 to 105,000 pounds and in terms of round wood loads, which is pulp and logs; that his trucks are rated to carry more than they are hauling out of this operation because of the height restriction of the underpass. Eastman added that there is a bridge in Shelburne, New Hampshire that is one of this companies' bridges that he has driven over with 57 tons of net weight, that's 114,000 pounds of net weight. Road Agent Newcomb questioned how much lower the loads are because the height of the underpass is 13 feet, 3 inches, and the legal height is 13 feet, 6 inches so it's not that much of a difference. Eastman replied that on a 48 foot pulp trailer an extra six inches can put an extra 5 tons of wood on it.

Teague advised that it certainly is a dilemma and he knows there is enormous pressure to get something done right away but that it is a complicated problem and he doesn't believe that the town is in a position to rush to a solution. He stated that if there is an obvious one that can be done in a short period of time, he was in agreement. He stated that although the views vary slightly as to how we got here, the town is interested in a solution. Teague believes that it's unrealistic to think that something can be done in 24 hours. Eastman informed Attorney Teague that he honestly didn't expect to get this done in 24 hours but that he is very emphatic that this is costing him \$7,000.00 to \$10,000.00 per day and repeated his earlier assertion that the same kind of trucks have been logging on the same road for years and that we are talking about an adversarial discrimination. Attorney Teague responded if he had spoken to an attorney, that attorney would say just because you get picked up going 80 miles per hour and you can point to all the people that just went by you at 90 miles per hour is not a defense. Eastman stated he understood that but thinks we are nitpicking the situation. Attorney Teague informed Eastman that the Board of Selectmen and Administrator White are very sincerely interested in a solution and that he advised them that they would be liable if they did not do what they did and something happened but really nothing that he has heard creates an obligation for the town to continue doing what you say they did before. Eastman expressed that he was fine with that as long as everybody else is stopped from hauling on that bridge just like he is.

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White asked Attorney Teague if he recommends that the Board hire an engineer to get a professional opinion. Teague said absolutely, that an engineer is the kind of expertise that is needed. White mentioned that the town has been utilizing Erin Darrow, who is a certified bridge engineer, for the bridge going into Olde Farms over Skinner Brook and asked if that is somebody she should contact. There was discussion about different companies and engineers and White stated she would like to choose someone who is available right away.

Miner asked if they are to patiently wait for Administrator White to call them. White stated that she could probably give them an update as to the status of where it stands by Wednesday. Selectman Jones emphasized that the town is certainly going to be working on this now that they have been made aware that it will certainly be addressed.

Eastman expressed again that he is losing money and Selectman Jones informed him that they understood that. White asked Attorney Teague if it is feasible for the town to allow Eastman to get his equipment out of there if he chose to. Attorney Teague said that it would be reasonable for the town to allow him the one time use of the bridge for the purpose of removing his equipment, which is a lot different than 5 loads a day for 10 weeks. Teague informed the Board of Selectmen and Town Administrator that the statute provides that you can do a temporary weight limit waiver if you are convinced that the safety issue is taken care of. Teague stated there is no imminent safety hazard from allowing Eastman to remove his equipment. Teague stated that he doesn't see it, that the bridge is still in fairly good shape and is rated as a 6, not a 3. White asked Teague if a Motion by the Board is adequate for that purpose and Teague responded that it is. Don Miner asked if, in considering that, would it be permissible to finish processing what they have on the land which is probably 7 to 8 loads and get it out and the equipment to follow. Teague stated that to remove just the equipment alone, the Board could make a motion immediately but to remove the equipment loaded, the Board should wait to consult with the bridge engineer. Eastman interjected to clarify that he would have to make seven low bed moves to get all of his equipment out of that operation and that the low bed alone weighs 46,000 pounds empty.

A motion was made by Chairman Kimball to allow Richard Eastman a one time removal of his equipment, empty (with no timber product), over the Miller Pond Road Bridge; seconded by Selectman Story. ***Unanimously approved.***

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Eastman accused the Board of Selectmen of making a negative judgment on the landowner as they are on him, the operator, and stated that if he was the owner of that property, he would be looking into donating the property to the federal government right now in some kind of wild life issue and stated that the town probably would not garner any property tax income from that property ever again because they are basically ruling that the piece of property is virtually worthless because the property has a lot of timber on it that could produce a large amount of timber tax for the town. Eastman commented they are going to give him permission to get his equipment out so he can take a million and a half dollars of equipment out of an operation that he was planning on working on from now until probably Christmas at least. He declared they are impacting the income of six employees, six families, the landowner, but they were giving him permission to take his equipment out. Selectman Jones responded to Eastman that he gave her the impression at the beginning of the meeting that he was upset because he now couldn't get his equipment out and explained that what they were saying is, if he felt that he must get his equipment out and take it someplace else until they can get this settled, they were giving him that opportunity now. White pointed out to Eastman that she wanted to be sure that he had that opportunity and didn't want him to think that we were not going to be working on fixing this problem. Eastman reiterated that it's a situation where it's not just him that's going to be stopped on that road, it's every other use on that road and if they are going to treat him like this, they have to treat everybody else like that too. He pointed out again that he has had experience with temporary bridges and provided them with the information and urged them to call the company and their engineers to ask questions and added that it's a cheap cost at \$50.00 per day rental for that bridge plus \$100.00 to load it and \$100.00 to unload it when you bring it back and if this operation were to work through to spring and that's a worst case scenario, they were looking at a \$9,500.00 fix for him to log \$150,000.00 of taxable timber on this land that they're going to get. Eastman felt that the town would get more in timber tax than the cost of that bridge and he wanted to be very emphatic that he has provided them with all of the information to do that. He restated that the rent for the temporary bridge for everybody to use from now until spring would be less than \$10,000.00 and then he would be out of their hair. He stated that he did appreciate the fact that they were giving him an opportunity to get his equipment out. He reported that White did say she was willing to work with him and said he hoped the Board understands that he is in business to make money and that he is not being adversarial at

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this point. White said that the town needs to take care of the bridge in the best interest of public safety and Eastman agreed and stated that when he spoke with her it wasn't an issue that he was challenging public safety, that he understands that there are a whole lot of homes in there. He repeated that he just wants everybody else that is using that road from an Irving Oil truck to a building materials truck, etc. to be treated the same way as he is being treated in the Cease and Desist order and stated he needs assurance from the board that that is going to happen. Selectman Jones said she is guessing that Irving Oil is not going to be trucking 5 loads a day up there and if he thinks that the Board is going to stop a fire truck or the home heating oil truck from going up there on a once or twice a month basis, Eastman interrupted Selectman Jones and asked how many homes were up there to which she responded 65. Eastman asked if 65 homes have to have oil delivered once a month through the winter, that's 65 trips on that road. Selectman Jones and White responded that they understand his point. Eastman said he would stop and they could call Mark Zawacki at ADM Welding tomorrow. Eastman added that he agrees with Road Agent Newcomb that adding 5 feet to that bridge could pose an alignment issue for a truck; that he measured it because he is concerned about it too but he thinks there is enough room there. Eastman offered to pay for the expense of trucking the bridge from Pennsylvania if it means that it will expedite things but he is going to be looking to the town to help with the approaches and everything else.

White thanked everyone for coming to the meeting to talk about this. Upon leaving, Karyn Miner told White that she could talk to her husband, Don Miner, regarding the property and White asked Karyn Miner for her brother's address. White reported that she would be in contact with all the parties when she has an update. The Miners and Richard Eastman left the meeting at 5:40 pm.

The Board of Selectmen and Town Administrator consulted with Town Counsel, John Teague, who advised having a bridge engineer guide them through this. He also stated that the town has the right to put a time limit on a temporary permit if they so choose, such as November 1<sup>st</sup> or before snow. He believes that would be a reasonable condition to put on any temporary permit, if one was granted, the bigger question is solved in terms of what will be done to fix that bridge. Chairman Kimball noted that the bridge report is dated January 2012 so he doesn't feel that anything that happened prior to that is pertinent. Attorney Teague agreed and felt that it was a failure on Eastman's part to check and do

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what is called "due diligence" especially since he was investing that kind of money in an operation. Teague felt Eastman should have gone over to the Department of Transportation and ask them about the bridge. Teague told the Board that just because someone gets away with something, that does not give them the right to keep getting away with it. Attorney Teague advised that if an engineer were to report that a single use by one oil truck per month is not going to put an unnatural strain on this bridge but 5 loads per day, day after day, is going to pretty much tear it up, then there is a basis for making a distinction between the two. Attorney Teague applauded the Board of Selectmen for giving them a quick hearing which the law doesn't require them to do at all, but they did, which shows that they are acting responsibly. He told the Board that they have an obligation to the community and the 65 homes that are on that road.

White informed the Board of Selectmen that she will reach out to Bridge Engineer Erin Darrow because she is probably the most easily accessible.

### **ADJOURNMENT**

A motion was made by Selectman Jones to adjourn the meeting; second by Selectman Story. The Board voted unanimously to adjourn at 6:15pm.

*Respectfully submitted,*

*Ann Jasper  
Administrative Assistant*