

**Kyle Urso Public Comment to Toomerfs, LLC proposal at 19-21 Main Street
December 15, 2021**

Kyle Urso, speaking again for the Urso family at 5 Smith Park Lane, where one or more of us have lived since 2007. But tonight, I am officially appointed in writing by my mother, Sandra Ceponis, to address formal legal issues that are being ignored in the proposal before you.

On July 20, 2021 my mom saw the Toomerfs behind her house, where Mr. Tim Murphy stated that something would be built on the land one way or the other, whether it be housing for the elderly or low income housing. She was urged that she would need to drop her opposition prior to the Planning Board's decision on the parking lot proposal at 19-21 Main Street.

Since then, we've researched the deeds with some professional assistance. Everything I am about to say can be verified in the Registry and will be provided to you at the conclusion of my comment.

We now know that every parking lot plan presented by Toomerfs has violated two different legal obligations that they acquired, per their deed, when they purchased their property in 2017.¹

First, my family is deeded a 16-foot-wide right-of-way from the back (western) edge of our property through the Toomerfs land connecting with Main St. That right-of-way extends into the 16-foot-wide right of way for the Hall property. The Toomerfs deed for Parcel 4 Tract II states, **QUOTE**: "This tract is subject to an extension of the sixteen (16) foot right of way as set forth in Tract I above for the benefit of the Hall property, said right of way having been granted by deed dated Dec 30, 1944, and recorded in Strafford County Registry of Deeds, Book 541, Page 34, and a further extension of said sixteen (16) foot right of way for the benefit of the McIntire (Now Urso) property, said right of way having been granted by deed dated July 14, 1950, and recorded in Strafford County Registry of Deeds, Book 582. Page 433."²

Our access to Main Street through the Toomerfs property is not to be blocked or restricted in any way. Our deed explicitly states it is to be **QUOTE**, "free and unobstructed".³

Our right-of-way is not to be blocked by retaining slopes, not blocked by parked cars, not blocked by landscape islands, not blocked by a snow-storage area, not blocked by any other obstruction.

Secondly, the Toomerfs are legally obligated to provide the owners of our land with the unobstructed 15 foot wide strip across their land that we currently use for our sewer line. They should know this. Their deed explicitly described their legal obligation. **QUOTE**: "This deed is given subject to any and all existing rights of any party or parties to maintain water and/or sewer lines across the property herein described and to enter upon said property and repair said lines as the need should arise."⁴

The original sewage line easement recorded with the Strafford Registry precisely locates the easement and states that no one will ever **QUOTE**: "locate or erect any buildings or structures on or within said right of way which would damage or prevent such maintenance, use, operation, repair or reconstruction."⁵ The easement further goes on to state **QUOTE** "that we and our heirs, executors and administrators shall warrant and defend the same to the said Bradford W. McIntire

¹ Register of Deeds, Strafford County, Book 4486, Page 0213-0217

² Register of Deeds, Strafford County, Book 4486, Page 0217

³ Register of Deeds, Strafford County, Book 3482, Page 0182 and 0183

⁴ Register of Deeds, Strafford County, Book 4486, Page 0216

⁵ Register of Deeds, Strafford County, Book 684, Page 409

& Helen S McIntire (Now Urso) and their heirs, executors, administrators and assigns forever against the lawful claims and demands of any person or persons whomsoever.”⁶

And yet, every plan for a parking lot at 19-21 Main Street submitted by the Toomerfs for your consideration, including the proposal presented tonight, has violated both of their legal obligations to us.

The proposed infringements are serious. We have learned that the access way we have always used to our home is not clearly deeded to us because of its ambiguous ownership, as the Community Church confirmed in its 1998 Community Church Survey P0051-0056 and as verified with the official opinion of CAI Technologies, the company redoing Durham’s tax maps.

We have always used Smith Park Lane to drive to our home, therefore we do not currently require the access right-of-way. However, our future access to that Lane is not guaranteed. We could be denied its use. Then our property would be landlocked. That is the reason the right-of-way to Main Street on what is now the Toomerfs property was provided in the first place. The developer who subdivided our lot out from the larger Red Tower estate did not own Smith Park Lane. Thus, he could not legally guarantee its use by the owner of our property.

Our deeded right-of-way through the Toomerfs property must be preserved in order to comply with the town’s road frontage regulations and to preserve the value of our home. A 16-foot-wide right-of-way for the Hall property has come and gone on the Toomerfs plans. But even when shown on the current proposal’s Norway Plains Associates, Inc. existing features plan and sheet E2 and C101 it is not correctly displayed. It neglects to show connection to our right-of-way which is also absent. As stated previously, the deed states that we have the right to use our right-of-way in common with the Hall right-of-way.

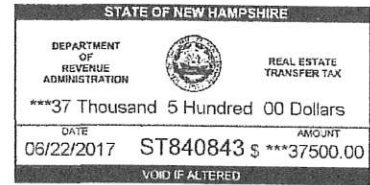
The violation of our sewage easement poses a different set of serious problems. Beyond interfering with future maintenance of the line, building the parking lot would require digging up our backyard and shutting down our sewage line for a period. It would require the Toomerfs to carry out construction work within the mandatory 5’ side buffer specified for Church Hill Zoning District. It would alter, without our permission the path for our sewage pipe that was guaranteed by the easement recorded in the Strafford Registry of Deeds at Book 684, Page 409.

It is our understanding that the value of the easement extends far beyond the ability to access and maintain a sewer line to what was a functional commitment explicitly guaranteed forever not to build any structures on that portion of the property.

Additionally, it is our understanding that the planning board cannot approve a plan that violates legal easements.

I have brought you each a copy of the Toomerfs deed and the original sewer easement which documents the specifics of the right-of-way and the Community Church Survey regarding Smith Park Lane ownership to encourage you to carefully review and acknowledge the legal infringements.

⁶ Register of Deeds, Strafford County, Book 684, Page 410



WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT KYREAGES, INC.,
a New Hampshire corporation, whose mailing address is PO Box 174, Eliot, Maine,
03903,

For consideration paid, grants to **TOOMERFS, LLC**, a New Hampshire limited
liability company, whose address is 37 Main Street, Unit O, Durham, New Hampshire,
03824,

With Warranty covenants the following described premises situate in Durham,
Strafford County, New Hampshire:

Parcel 1: 21 Main Street, Durham, NH:

A certain parcel of land with the buildings thereon, situate in Durham, County of
Strafford and State of New Hampshire, on the southerly side of Main Street, bounded and
described as follows:

Beginning at a stone wall on the southerly side of said Main Street at the northwesterly
corner of land formerly owned by Harold W. Loveren; thence running S 31° 13' W by
land of said Loveren a distance of One Hundred Seventy-four and four-tenths (174.4)
feet; thence turning and running N 58° 39' W by land formerly of John J. McCann a
distance of twenty-three and seven-tenths (23.7) feet; thence turning and running S 31°
21' W by land of said McCann one and four-tenths (1.4) feet; thence turning and running
N 58° 39' W by land of said McCann and land now believed to be of one Tamposi and
others to land formerly of Runlett and now of Cutter; thence turning and running N 31°
44' E by land of Cutter a distance of One Hundred Seventy-six and one-tenth (176.1)
feet, more or less, to Main Street; thence turning and running S 58° 19' E by and along
said Main Street to the point of beginning.

Being the same premises described in Warranty Deed of George Findell, Jr., to the within
Grantor dated March 1, 1978, recorded in Strafford County Registry of Deeds, Book
1011, Page 339.

Parcel 2: 12 Cowell Drive, Durham, NH:

A certain lot of land with the building thereon, situate in Durham and bounded and
described as follows:

BEGINNING at an iron pin driven in the ground at the Northeasterly corner of the land described herein, being Lot Number 5, said corner being the intersection of the Southerly sideline of Cowell Drive, so-called, and the Westerly boundary of land now or formerly of E. G. and V. M. Day (Lot Number Four) as shown on a "Plan of Land of Russell S. and Mildred W. Harmon, Durham, N.H., dated May 9, 1950," which plan is recorded in Drawer 6LL (now re-indexed as Plan #4, Pocket 4, Number 3) in the Strafford County Registry of Deeds; thence running South $74^{\circ} 52'$ W by the Southerly sideline of Cowell Drive, so-called, a distance of One Hundred Thirty-five and Ninety-eight Hundredths (135.98) feet to an iron pin driven in the ground; thence turning and running South $35^{\circ} 46'$ W a distance of Fifty-one and Thirty-eight Hundredths (51.38) feet to a point in a stone wall; thence turning and running Southeasterly along a stone wall, which is the Northerly boundary of land now or formerly of C. S. Parker, a distance of One Hundred Sixteen and Five Tenths (116.5) feet; thence turning and running Northeasterly along a stone wall a distance of Four (4) feet by land now or formerly of Harold W. Loveren; thence turning and running Southeasterly along a stone wall by land now or formerly of Harold W. Loveren a distance of Nine (9) feet, more or less; thence turning and running Northeasterly along a stone wall by land now or formerly of Harold W. Loveren a distance of Sixty (60) feet, more or less thence turning and running Northeasterly along the Westerly boundary of land now or formerly of E. G. Day and V. M. Day a distance of Ninety-three and Three Tenths (93.3) feet to the point of beginning.

The above described premises are conveyed with the right to use the roads, streets and passageways as shown on said plan for all purposes for which private ways and streets are commonly used in said Durham, and also subject to zoning laws and building restrictions of the Town of Durham.

Being the same premises described in Warranty Deed of Howard Vallance Jones, Jr. to the within Grantor dated June 15, 1983, recorded in Strafford County Registry of Deeds, Book 1102, Page 797.

Parcel 3: 18 Main Street, Durham, NH:

A certain parcel of land with the buildings thereon situate on the Northerly side of Main Street in the Town of Durham, County of Strafford and State of New Hampshire, known as #18 Main Street, bounded and described as follows:

Beginning at a point on the Northerly side of Main Street at the Southeasterly corner of land formerly of Powell and now of one Cutter; thence running in a Northeasterly direction by and along said land of Cutter a distance of One Hundred Fifty-Three (153) feet, more or less, to the Northeasterly corner of said Cutter land and land of New England Telephone and Telegraph Company; thence continuing in a Northeasterly direction by and along said land of New England Telephone and Telegraph Company; thence continuing in a Northeasterly direction by and along said land of New England Telephone and Telegraph Company, a distance of One Hundred Twelve (112) feet, more or less to the Southwesterly corner of land now or formerly of Jones; said land of Jones a distance of One Hundred Twenty-Five (125) feet, more or less; thence turning and running in a Southeasterly direction a distance of Two Hundred Sixty-Five (265) feet,

more or less to Main Street; thence turning and running in a Northwesterly direction by and along said Main Street a distance of One Hundred Forty-Five (145) feet, more or less, to the point of beginning.


Being the same premises described in Warranty Deed of Paul A. Dubois and Patricia D. Dubois to the within Grantor dated July 24, 1981, recorded in Strafford County Registry of Deeds, Book 1068, Page 186.

Parcel 4: 19 Main Street, Durham, NH:

A certain tract or parcel of land with the buildings thereon, situate in Durham, County of Strafford and State of New Hampshire, bounded and described as follows, to wit:-

TRACT I: A certain tract of land, with the buildings thereon, situate on the southerly side of Main Street in the Town of Durham, County of Strafford and State of New Hampshire, bounded and described as follows, to wit:

Beginning at a fence at the junction of the southerly line of Main Street and the westerly line of property belonging to the Congregational Church Society; thence running South $31^{\circ} 13'$ West along said fence and Congregational Church Society land a distance of one hundred sixty-five and seven tenths (165.7) feet, more or less; thence running North $59^{\circ} 40'$ West, a distance of thirty-seven and eight tenths (37.8) feet, more or less, to an 'iron pipe driven in the ground; thence running North 65° West, a distance of ninety-six (96) feet, more or less, to an iron pipe driven, in the ground; thence running North $58^{\circ} 38'$ west a distance of thirty-two (32) feet, more or less, to an iron pipe driven in the ground at the southeast corner of land known as the Wright property; thence running North $31^{\circ} 13'$ East a distance of one hundred seventy-four and two tenths (174.2) feet, more or less, to Main Street; thence running South $60^{\circ} 22'$ East, a distance of one hundred sixty-four and six tenths (164.6) feet, more or less, along Main Street to the point of beginning.

 This tract is subject to a right of way sixteen (16) feet wide extending through the property herein described to Main Street, said right of way to be used by the grantee in common with others.

TRACT II: A certain tract of land situate off the southerly side of said Main Street, in said Durham, bounded and described as follows, to wit:

Beginning at an iron pipe set in the ground at the easterly side of land now of one McCann, formerly of Hamilton; thence running in a northeasterly direction seventy-two (72) feet, more or less, to an iron pipe at land of one Hall; thence turning and running South $31^{\circ} 19'$ West two hundred (200) feet, more or less, by land of said Hall to an iron pipe at land of Bradford McIntire; thence continuing on the same course by land of said McIntire a distance of two hundred seventy-five (275) feet, more or less, to a stone wall; thence turning and running North $60^{\circ} 00'$ West and North $57^{\circ} 22'$ West by said stone wall a total distance of two hundred thirty-two and five tenths (232.5) feet, more or less, to an iron pipe at the intersection with another stone wall at land of Osgood; thence turning and

running North 35° 15' East by said other stone wall along land of said Osgood two hundred sixty-five and three tenths (265.3) feet, more or less, to an iron pipe at land now of McCann, formerly of Hamilton; thence turning and running South 58° 32' East by said McCann land one hundred sixty-four and four tenths (164.4) feet, more or less, to an iron pipe; thence turning and running in a northerly direction along said McCann land one hundred fifty-five (155) feet, more or less, to an iron pipe, the point of beginning.

This tract is subject to an extension of the sixteen (16) foot right of way as set forth in Tract I above for the benefit of the Hall property, said right of way having been granted by deed dated December 30, 1944, and recorded in Strafford County Registry of Deeds, Book 541, Page 34, and a further extension of said sixteen (16) foot right of way for the benefit of the McIntire property, said right of way having been granted by deed dated July 14, 1950, and recorded in Strafford County Registry of Deeds, Book 582. Page 433.

This deed is given subject to any and all existing rights of any party or parties to maintain water and/or sewer lines across the property herein described and to enter upon said property and repair said lines as the need should arise.

Being the same premises described in Warranty Deed of Nicholas Gegas and Beatrice Gegas to the within Grantor dated March 1, 1977, recorded in Strafford County Registry of Deeds, Book 993, Page 713.

Parcel 5: 19A & 19B Main Street, Durham, NH:

A certain tract or parcel of land, with the buildings thereon, situate in Durham, County of Strafford and State of New Hampshire, bounded and described as follows:

Beginning at a corner of the stone wall at land of one Alice Onderdock, Quinby; thence running S 58° 39' East along said wall thirty-nine and eight tenths (39.8) feet; thence turning a right angle and running one and four tenths (1.4) feet; thence running S 58° 39' E fifty-five and seven tenths (55.7) feet to an iron pipe driven in the ground; said pipe being located a distance of fifteen (15) feet from a weeping willow tree and twenty-seven and seven tenths (27.7) feet from a large apple tree; thence running S 15° 45' E sixty-eight and twenty-five hundredths (68.25) feet, more or less, to an iron pipe driven in the ground; thence running S 30° 20' W one hundred fifty-five (155) feet, more or less, to an iron pipe driven in the ground; thence running N 58° 39' W one hundred sixty-five (165) feet, more or less, to an iron pipe driven in the ground at a stone wall; thence northeasterly along said wall two hundred (200) feet, more or less, to the point of beginning.

Reserving to Harold W. Loveren and Madeline L. Horne, their heirs and assigns, now Kyreages, Inc., the right to pass over, inspect, maintain and repair sewers, water pipe lines and appurtenances as now exist within the bounds of the described property.

Granting to the Grantee, its successors and assigns, the free and unobstructed use of a sixteen foot wide right of way from the property herein described across land of said

Harold W. Loveren and Madeline L. Horne, now owned by the said Kyreages, Inc., to Main Street.

Subject to Sewer Easement granted to Selectmen of Durham, NH, by John J. McCann, Jr., and Kathleen McCann, dated December 15, 1955, recorded at Book 655, Page 189.

Being the same premises described in Warranty Deed of John J. McCann, Jr. to the within Grantor dated July 25, 1977, recorded in Book 1000, Page 674.

These parcels are not homestead property.

Signed this 22nd day of June, 2017.

Kyreages, Inc.

Clarence Kyreages

By: Clarence Kyreages, Vice President

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 22nd day of June, 2017, by Clarence Kyreages, as Vice President of Kyreages, Inc., a New Hampshire corporation, on behalf of the corporation.

Before me,

[Signature]

Notary Public

My commission expires



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and under said premises to the said Bradford W. McIntire and Helen S. McIntire, their administrators, heirs, executors and assigns, for their own use and benefit forever.

And we do hereby, for ourselves and our heirs, executors and administrators covenant with the said Bradford W. McIntire and Helen S. McIntire and their heirs, executors and administrators and assigns that we are lawfully seized in fee simple of the aforesaid premises; that they are free from all encumbrances, that we have good right to sell and convey the rights as aforesaid; and that we and our heirs, executors and administrators shall warrant and defend the same to the said Bradford W. McIntire and Helen S. McIntire and their heirs, executors, administrators and assigns forever against the lawful claims and demands of any person or persons whomsoever.

And for the consideration aforesaid, I Inez G. Loveren, wife of the said Harold W. Loveren, hereby release unto the said grantees, their administrators and heirs, executors and assigns, all of the right of and to dower and homestead and all other rights and interests in the rights and easements herein contained and conveyed.

And I, Madeline L. Horne, am a widow.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 8th day of June, 1953. 1953

Signed, sealed and delivered in the presence of:

J. E. Brimes
to his signature

Harold W. Loveren

Madeline L. Horne

Inez G. Loveren

STATE OF NEW HAMPSHIRE
STRAFFORD, SS

June 8 1953
1953

Personally appeared the above named Harold W. Loveren, Inez G. Loveren and Madeline L. Horne and acknowledged the foregoing instrument to be their voluntary act and deed, before me

Joseph E. Brimes
Notary Public
My Commission expires Nov. 7, 1956



RECEIVED 2:40 P. M. Feb. 4, 1958

EXAMINED BY Walter W. Holmes Register

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KNOW ALL MEN BY THESE PRESENTS THAT We, Harold W. Loveren of Durham, County of Strafford and State of New Hampshire and Madeline L. Horna of Dover, in said County and State, for and in consideration of the sum of One Dallar and other valuable considerations to us in hand paid by Bradford W. McIntire and Helen S. McIntire, of said Durham, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto said Bradford W. McIntire and Helen S. McIntire, as joint tenants and not as tenants in common, with rights of survivorship, a permanent right of way Fifteen (15) feet in width, lying equally on each side of the center line of the hereinafter described parcel of land, for the purpose of installing, maintaining, using, operating, repairing and reconstructing a sewer line connecting the house to be built on the said McIntire land and the sewer main leading from houses of the grantors to the sewer main at the River, consisting of pipes with other fixtures and appurtenances thereunto appertaining, upon, over, under, and across the following described tract of land:

Beginning at a point in the Westerly boundary of land conveyed to the grantees by deed of the grantors dated July 14, 1950 and recorded in the Strafford County Registry of Deeds, Book 582, Page 433, said point being approximately Two Hundred Twenty (220) feet Southerly of the Northwesterly corner of grantees' land and land of one Hall; thence running S 31° 19' W a distance of Seven and One Half (7½) feet; thence running Westerly to the sewer line located on land of the grantors; thence continuing on the same course a distance of Seven and One Half (7½) feet; thence running Northerly, parallel to said sewer line, a distance of Fifteen (15) feet; thence running Easterly and parallel to the Southerly bound of this tract of land above described to land of the grantees; thence running S 31° 19' W a distance of Seven and One Half (7½) feet to the point of beginning.

Together with the right of ingress thereto and egress therefrom, along, on, and within said right of way, for any and all purposes connected with the proper installation, maintenance, use, operation, repair, reconstruction, and patrolling thereof, and for any and all purposes and uses pertaining thereto or connected therewith.


And we do hereby, for ourselves and our heirs, executors, administrators and assigns covenant and agree with the said Bradford W. McIntire and Helen S. McIntire and their heirs, executors, administrators and assigns, that we will not locate or erect any buildings or structures on or within said right of way which would damage or prevent such maintenance, use, operation, repair, or reconstruction.

TO HAVE AND TO HOLD the above granted rights and privileges in, upon, over,

Return to:

Timothy L. Cripe, Dawn E. Cripe, Michael F. Urso and Sandra A. Ceponis
5 Smith Park Lane
Durham, NH 03824

PLA

STATE OF NEW HAMPSHIRE			
DEPARTMENT OF REVENUE ADMINISTRATION			REAL ESTATE TRANSFER TAX
****	THOUSAND	0 HUNDRED AND 50	DOLLARS
01/12/2007	308359	\$	****4050.00
VOID IF ALTERED			

WARRANTY DEED

John Barbour, married, of 5 Smith Park Lane, Durham, NH, for consideration paid grant to Timothy L. Cripe and Dawn E. Cripe, husband and wife, of 34 Batchelder Road, Raymond, NH and Michael F. Urso and Sandra A. Ceponis, husband and wife, of 421 Hillcrest Lane, Lombard, IL as joint tenants with rights of survivorship, with warranty covenants;

A certain parcel of land with the buildings thereon situated in the Town of Durham, bounded and described as follows:

Beginning at an iron pipe driven in the ground at the Southeast corner of the premises conveyed then running N 83° 53' W, a distance of One Hundred and Fifty-one and Five Tenths (151.5) feet by land of Forrest Smart to an iron pipe driven in the ground;

1. Northerly on a curve to the right with a radius of sixty five and two tenths (65.2) feet, a distance of Forty and One Tenth (40.1) feet to an iron pipe driven in the ground;
2. N 31° 19' E, a distance of Three Hundred and Twenty on (321) feet to an iron pipe driven in the ground;
3. Turning an angle of 90° and running S 58° 41' E, a distance of One Hundred Thirty three and Four tenths (133.4) feet by land of Harry H. Hall and Mary Jane Hall to an iron pipe at the base of the stone wall;
4. S 30° 00' W, a distance of One Hundred Fifty (150) feet to a right of way hereinafter described to an iron pipe driven in the ground;
5. S 27° 33' W, a distance of One Hundred and Seventeen and three tenths (117.3) feet by said right of way to an iron pipe driven in the ground;
6. S 21° 38' W, a distance of Twenty-seven and Four tenths (27.4) feet to the point of beginning.

Together with the right to use in common with others the roadway leading from the main road in Durham Village just north of the Durham Community Church for purposes of entering said property from the easterly boundary of said property together with the free

BK 3482PG0182



and unobstructed use of a sixteen (16) foot right of way across land herein described to Main Street; being the same right of way granted to Harry W. Hall and Mary Jane Hall and Clarence F. Hamilton.

Together with a fifteen (15) foot right of way for the purpose of a sewer line contained in a deed from Harold W. Loveren to Robert W. McIntire dated June 8, 1955 and recorded at the Strafford County Registry of Deeds at Book 684, Page 409

Meaning and intending to describe and convey the same premises as conveyed to the within Grantor by Deed of Beatrice R. Bamford a/k/a Beatrice E. Bamford, dated August 24, 1984 and recorded in Book 1142, Page 732 of the Strafford County Registry of Deeds.

Valerie, B. Barbour, spouse of John Barbour, hereby releases and all homestead rights/interest in the described property.

5 Smith Park Lane, Durham, NH 03824

Executed this January 10, 2007.

John L Barbour

 John Barbour

Valerie B Barbour

 Valerie B. Barbour

STATE OF NEW HAMPSHIRE

Rockingham SS

The foregoing was acknowledged before me this January 10, 2007 by John Barbour and Valerie B. Barbour.

BK 3482 PGO 183



Kelly A Shea

 Notary Public Justice of the Peace
 My commission expires:

JL
VB
 MFUBYSAC POA SAC

 Buyer Initials