

Sent by email October 8th, 2020

Town of Underhill Selectboard
PO Box 120
Underhill, VT 05489

Dear Underhill Selectboard,

Introduction:

On this, the 11 year anniversary of the October 8, 2009 letter in which selectboard member Daniel Steinbauer played a central role in the malicious decision of members of the Underhill Selectboard and Underhill Conservation Commission to seek legal advice on, “whether a Selectboard grant of access over the trail is valid and if there is any way the Town could rescind the access” it should go without saying how important it is that board members should begin to recuse themselves from matters in which they have a conflict of interest. Since getting back on the Selectboard, **Dan Steinbauer should have recused himself from all executive sessions (and decisions) involving perpetuating the problems he initiated in relation to Demarest vs The Town of Underhill.** Under 24 V.S.A. § 1984 (b)(1): conflict of interest means “a direct personal or pecuniary interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed.” In short, a conflict of interest exists when there is an incompatibility between the public responsibilities of a public official and their private interests (such as the furtherance of a willful and malicious desire to break a written agreement which a prior Selectboard had entered into with a resident). Needless to say, it is not within a Selectboard member's public duty or individual authority to push a Town into breaking prior promises when it creates recreational opportunities for some while eliminating the rights of others.

Pursuant to the Town of Underhill's Conflict of Interest policy [Article 8], Daniel Steinbauer should recuse himself from all legal matters involving the Town of Underhill's efforts to rescind David Demarest's previously promised access to his home and land, and all other decisions involving either David Demarest, or Demarest's home and land (currently FU-111, previously NR-144). If Daniel Steinbauer is unwilling to recuse himself from these matters on his own volition, David Demarest officially asserts that Daniel Steinbauer is in violation this town policy by a demonstrated pattern and practice of willfully disregarding his public duties as a Selectboard member in furtherance of an improper personal agenda.

Having been involved in Underhill's governance for so many years it strains credulity to believe Daniel Steinbauer is ignorant as to the impropriety of his blatant conflicts of interest involving himself and other Jericho Underhill Land Trust members causing both the town's initial efforts and recent pernicious efforts in the Vermont Supreme Court to rescind David Demarest's previously promised rightful access to his home. There is absolutely no excuse for Daniel Steinbauer to be allowed to continue his efforts to prevent the Town of Underhill from keeping previous promises while incurring additional taxpayer expenses and hiding behind the closed doors of executive sessions to minimize public accountability.

Any one of the below listed 5 historical facts taken on it's own is sufficient for Daniel Steinbauer's fellow Selectboard members to recognize Daniel Steinbauer should recuse himself from all decisions involving David Demarest. *Title 24 Chapter 33 Subchapter 4 § 901 (b)* provides a clear avenue by which Underhill taxpayers can reduce the financial exposure caused by Daniel Steinbauer's malicious efforts to *rescind* David Demarest's previously promised access to his home and land, "The municipality shall assume all reasonable legal fees incurred by an officer **when the officer was acting in the performance of his or her duties and did not act with any malicious intent.**"

Looking at all 5 of the below historical issues in unison clearly demonstrates Daniel Steinbauer's pattern and practice of acting with malicious intent and in a clearly discriminatory manner while serving in an official capacity as an Underhill Selectboard member in 2009 and 2010. He should not be involved in any future decisions involving David Demarest or landowners in Underhill with properties abutting Fuller Road or the Crane Brook Trail.

Point 1) Steinbauer's Motivation Behind October 8, 2009 letter to rescind Town's prior promises

By wrapping himself in the Selectboard's cloak in the furtherance of his own personal agenda and biases, Dan Steinbauer has been able to create excessive legal expenses for Underhill tax payers and local landowners without having to spend his own personal money in the furtherance of his improper efforts to rescind a landowner's previously promised access to their home and land.

In 2009, under the mistaken belief that past refusals to do long overdue work on the central portion of TH26 was due to Underhill's budgetary constraints, David Demarest discussed a potential grant with Daniel Steinbauer, as the Selectboard representative, and the members of the Underhill Conservation Commission (UCC) in good faith. Quite literally, if Daniel Steinbauer had been open to the option of spending a mere \$1600 out of the town budget of 2009 or 2010 all the legal expenses that have been paid in litigation in efforts to *rescind* prior access could have gone to any number of far more constructive public uses such as a large local conservation project being properly implemented with integrity, lower taxes for all residents, AND a few other things thrown in for good measure like the ~\$18,000 being spent on the town's tennis courts that were only supposed to cost \$12,000 without Underhill having to go an extra \$6000 of debt. Daniel Steinbauer's personal agenda exerted an excessive influence given his role as a representative of the Selectboard at an Underhill Conservation Commission meeting in which he perverted an honest inquiry about the willingness of The Town of Underhill to apply for the grant potentially capable of covering 80% of the desperately needed road work on TH26 into something that would make it permissible for the Town of Underhill to seek legal advice on how to rescind prior promises.

Daniel Steinbauer and other members of the Jericho Underhill Land trust, unlike the vast majority of other land trusts and their members, have demonstrated a willingness to use underhanded methods as governmental officials to pursue securing personal recreational opportunities and plans for properties they don't actually own (and were unwilling or unable to purchase...). By wrapping themselves in the cloak of being an Underhill Selectboard or Conservation Commission member it has been possible for JULT and its members to have legal authority and a seemingly unlimited legal budget to support the furtherance of devaluing certain properties, such as all private property on the road north of the Town Garage to increase the value of their nearby properties and personal recreational opportunities which they personally envisioned. Land trusts lose community trust when they are readily willing to pursue recreational goals by any means possible; this does a great disservice to all legitimate conservation efforts and the Town of Underhill governance loses community trust when Conflicts of Interest like Daniel Steinbauer's are not properly addressed.

Point 2) Refusal to consider benefits of Demarest's inquiry prior to lawyering up

As *the* central intermediary between the Underhill Conservation Commission and Underhill Selectboard of 2009 it is obvious that Daniel Steinbauer's willful and purposeful disregard for personal accountability to *all* town tax payers was evidenced by his desire to maliciously *rescind* previous written promises made by the Underhill Selectboard of 2005 (which were a dramatic lessening of the promises made to David Demarest in an official Underhill Selectboard meeting David Demarest attended in 2002 prior to purchasing his land, but the "compromise" of 2005 functioned as a manageable option relative to David Demarest's only other recourse being litigation against a municipality...).

Point 3a) Steinbauer's failure to differentiate JULT interests from Town of Underhill interests

In 2010, Daniel Steinbauer and other Jericho Underhill Land Trust (JULT) members, while acting under color of law as Town of Underhill officials, feigned an earlier improper "reclassification" of a Class III and Class IV segment of New Road as legally valid while simultaneously putting town tax payers through the expenses of a hearing process and subsequent litigation in order to reclassify a portion of New Road into "The Crane Brook Trail."

A road reclassification can not be simultaneously valid and invalid; it is unconscionable that Daniel Steinbauer was able to further his own personal agenda and that of fellow Jericho Underhill Land Trust members by simply hiding behind the very differential standard of review of Rule 75 appeals and a fictional earlier "reclassification." The Shakespeares, as former owners of Demarest's land, vehemently opposed the fictional earlier "reclassification" about 5 years after they had generously given a 10.19 acre parcel of land (NR141x) to the Town of Underhill. It is well worth noting the unofficial meeting minutes of the fictional New Road reclassification simply summarizes landowners' opposition to reclassifying a Class III/Class IV segment of New Road into a trail as a rehash of past arguments.

There is no plausible way that Daniel Steinbauer did not know in 2010 that the claimed initial fictional New Road reclassification was not valid; it had never been filed in the land records as an unapologetic way to circumvent landowners' rights and abilities to appeal a reclassification (which other JULT members had claimed while cloaked in the authority of being members of Underhill boards and commissions), indeed the Town of Underhill even received Vermont State Agency of Transportation funds to maintain a Class III segment of New Road up until 2010.

Point 3b) Steinbauer's lead role in the predetermined 2010 New Road Reclassification Hearing

In personally leading the Underhill selectboard's *sua sponte* 2010 New Road Reclassification hearing Daniel Steinbauer again took a very central personal role in furthering his interest in the Town of Underhill breaching prior agreements. The 2010 New Road Reclassification was nothing more than a legal strategy to circumvent the Notice of Road Insufficiency David Demarest filed in 2009 *after* Demarest learned of the Selectboard plotting to *rescind* his previously promised access to his home and land. As the leader of that reclassification hearing Daniel Steinbauer personally made a number of representations *not under oath* and did not ensure *any* of the evidence for or against 2010 New Road reclassification was substantiated by a legal oath or affirmation. Daniel Steinbauer literally had a central role in having the Town's lawyer claim to The Court that a fictional reclassification was valid for just long enough that Daniel Steinbauer could take the lead in conducting a hearing to rush through the technical legal formalities to circumvent Demarest's first-filed Notice of Road Insufficiency.

Daniel Steinbauer made a number of misleading statements and patently false claims throughout the 2010 New Road reclassification hearing; the choice to not administer oaths or affirmations was clearly not innocent or immaterial to the very predictable outcome of The Selectboard's *sua sponte* 2010 New Road Reclassification.

Point 4) Steinbauer's refusal to respect the demands of a petition signed by 119 registered voters

Dan took a significant role as one of the three Selectboard members that blatantly disregarded the will of all 119 voters which signed the "Petition On Fairness in Town Road Maintenance on Public and Private Roads." After David Demarest properly submitted the petition on April 29th, 2010 with the required number of signatures to come to a vote, but Daneil Steibaur and the two other Selectboard members at the time merely took the approach of claiming the Town of Underhill was doing what the petition demanded despite refusing to actually abide by the petition. This dereliction of public duty was central to forcing the last decade of legal expenses onto town tax payers.

The last decade and counting of litigation could have been entirely avoided if Daniel Steinbauer and the other two Selectboard members of 2010 were willing to faithfully execute their duties with integrity responding to the 2010 Petition On Fairness in Town Road Maintenance on Public and Private Roads. To create a dead end to the democratic process when a registered voter properly submits a petition is not just a blatantly malicious action against David Demarest, it also steps way outside of a Selectboard's legal authority when lying is the only way to circumvent their legal duties to properly respond to the demands placed upon The Town of Underhill by **all** the voters supporting the above mentioned petition.

Point 5) Steinbauer walking away from problems he created for tax payers the first time around

Daniel Steinbauer didn't even bother to run for reelection after saddling Town tax payers with the expenses of the past three trips to the Vermont Supreme Court over the past ~11 years. Daniel Steinbauer was well within his rights to not run for reelection, or years later to apply for appointment to the interim Selectboard vacancy he filled and then managed to retain that position in an unopposed election supported by 17.5% of Underhill's registered voters; but it is deplorable to have Daniel Steinbauer's own private interests and malicious actions towards landowners cause year after year of litigation between the Town of Underhill and landowners that once thought it was inconceivable that their own town would ever so diligently work against the reasonable interests of tax paying residents that own larger parcels of private property.

Nothing can be done to get back the past years of litigation and legal expenses caused by a handful of Selectboard members' personal interests trumping common sense and their fiduciary responsibility as town officials to handle the town's business in the best interests of all our town's voters (and simply to protect residents from having the town decide to break previous promises that were made...), but moving forward Daniel Steinbauer should not be permitted to perpetuate litigation in the furtherance of his own personal agenda at Underhill tax payer expense.

Conclusion

As one of the central characters that caused the Town of Underhill to become enmeshed in all these years of litigation it is a true travesty that Daniel Steinbauer has already been able to resume a central role in using the Town's seemingly unlimited legal budget to further his own agenda to *rescind* town promises and to inhibit the ability of a landowner to enjoy their rightful ability to access to their home and land the way everyone else in Underhill takes for granted.

Daniel Steinbauer has established a pattern and practice of unprovoked and blatantly malicious

efforts to purloin David Demarest's rights as a resident to the common benefits which The Town of Underhill government should provide to *all* residents, and then simply walked away from the problems he instigated while on the Selectboard about a decade ago. There is no excuse or potential justification for Daniel Steinbauer to reemerge as an influential decision maker that is heavily involved in litigation Daniel Steinbauer started against David Demarest at the expense of the Town of Underhill tax payers.

The historical record is VERY clear as to what Daniel Steinbauer wants and is willing to do to get what he wants. The historical record is also very clear how Daniel Steinbauer's personal interests in *rescinding* a landowner's access rights was far more important to him than his responsibilities as a Selectboard member to respect the rights of *all* Underhill's residents, or to uphold the contractual obligations that the Town of Underhill had previously entered into. What Daniel Steinbauer personally wanted also took precedence over what 119 residents demanded in the 2010 *Petition On Fairness In Town Road Maintenance on Public and Private Roads*. It is bad enough that 11 years ago Daniel Steinbauer played such a central role in pursuing legal advice on *any ways* the Town of Underhill could break previous promises and *rescind* a landowner's rightful access to their home and land; **there is absolutely no excuse for Daniel Steinbauer to not recuse himself from all legal matters in which his own personal interests will undoubtedly continue to conflict with the responsibility a Selectboard member has to perform their official duties to the best of their abilities for the betterment of their town and *all* its residents.**

Sincerely,

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