

Orford Ordered to Pay Widow \$20,000 for Digging on Her Land

By **MARK DAVIS**
Valley News Staff Writer

NORTH HAVERHILL — A Grafton County jury has ordered Orford to pay an elderly widow \$20,000 for improperly digging a large trench on her property, causing significant damage, without her permission.

After three hours of deliberation, a jury last week found that Orford officials failed to follow eminent domain procedures and other

laws when they performed work on Ella Tobelman's property off Mud Turtle Pond Road in July 2008 to help improve drainage on the road.

Tobelman, 78, had never given permission for the town to build a drainage ditch on her property, and expressed concern to town officials after she discovered the work. But the officials ignored her pleas for a year, Tobelman's attorney said, prompting her to file a lawsuit.

"If the government can just go onto your property and damage it and change it and alter it without your permission, then the law is useless," her attorney, George Spaneas, of Lebanon, said in an interview. "That's what we stood up for."

Orford's attorney, Bernie Waugh, of Lebanon, declined to comment for this story, and Orford Selectboard Chairman Paul Dalton could not be reached for comment.

In court documents, the town argued that

road crews had to access Tobelman's property to improve drainage on the Class IV road, and had not acted unreasonably.

In August 2008, the town replaced an aging culvert that ran under the road with a larger culvert. As part of that work, they dug the trench, where the water from the culvert would collect.

The trench they dug on Tobelman's property was 22 feet long, four to five feet wide, and three feet deep. It often filled with

water that overflowed onto Tobelman's lawn, creating a de facto stream and causing significant damage that remains to this day. The water floods a portion of her 75-acre property that Tobelman said would make an ideal building site, should she ever decide to sell or subdivide.

"The town's right to direct water onto an abutter's property on the downhill side of the roadway is part of the town's duty to maintain

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Orford to Pay Landowner

\$20,000 for Unauthorized Digging

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proper highway drainage,” the town wrote in a court filing. “The town has reasonable discretion in how it manages the highway’s drainage.”

Generally, communities have rights to intrude on private property to maintain roads and other infrastructure as long as the actions are “reasonable.” In his instructions to the jury, Judge Peter Bornstein said that the town had the right to perform work on a trench below a culvert if “such actions were reasonably necessary for proper drainage along and under the road.”

But Spaneas successfully argued that the town had not acted reasonably: Officials never notified Tobelman and acted without her consent, and completed a large project that had a significant impact on her property.

Indeed, Tobelman learned about the project only when she returned from walking her dog one day and discovered that a trench had been excavated on her property.

After discovering the trench, Tobelman repeatedly voiced frustration, asking the Selectboard to undo the work and prevent water from flooding over her property.

After waiting for months to have officials explain how they would fix the problem, Tobelman wrote a series of letters to the Selectboard about what she called the “unfortunate situation,” but received little feedback, according to court documents.

“I waited for them for a good long time before I wrote them, and after I wrote them and hand-delivered the letter, I (still) got no answer,” Tobelman said in an interview. “I warned them there was a principle here that was very important — landowner’s rights.”

“They blew her off,” Spaneas said in an interview. “The attitude was they were going to do what they are going to do, and I think that’s wrong.”

The \$20,000 award came after a two-day trial in Grafton Superior Court in North Haverhill last week. The jury returned verdicts on counts of trespass, nuisance and illegal taking.

Tobelman said she is unsure what she will do with the money, but noted the cost of filing the lawsuit was significant.

Mark Davis can be reached at mcdavis@vnews.com or 603-727-3304.

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