

Minutes
Nottingham Select Board Meeting
August 27, 2018

6:30 PM Chair Danis opened the meeting and asked all those present to stand for the Pledge of Allegiance.

Members Present: Donna Danis, Tiler Eaton, Charlene Andersen, Anthony Dumas, Benjamin Bartlett

Others: Town Administrator Chris Sterndale, Herbert Calvito, Audra Desilets, Lauren Chaurette, Ken Smart, Nancy Smart, PA Guarino, RJ Guarino, Joanne Marsh, Donna King, Judy Breen, Jim Breen, Cindy Gilpatric, Lori Andersen, Dick Westrick, Steve Soreff, Eric Danis, Niel Collins, Karen Collins, Susan Medeiros, Richard Smith, Robert Given, Karen Given, A Jackson, G. Paul

Approval of Manifest:

Motion: by Mr. Dumas, second by Mr. Bartlett to approve the August 27, 2018 accounts payable and August 28, 2018 payroll manifests.

Vote: 4 – 0 in favor.

Approval of Minutes: The July 30, 2018 minutes were postponed to the next meeting.

Select Board Department/Board/Committee Reports:

Budget:

Planning: Mr. Dumas reported the board voted on an application for a property on Route 4, and the board discussed their future plan for zoning changes. The board will meet on September 12, 2018.

300th: Chair Danis reported she attended the prior week Recreation concert in the park and the committee was hosting a BBQ. It was stated there has been approximate average of 100 people in attendance at the concerts.

Town Administrator Reports, Mail, Signature Items:

Water Testing: Mr. Sterndale reported the town received positive news from the results of the second round of water tests from the landfill and surrounding wells has been received. Nothing serious was found and has nothing to do with the landfill; perfect scores were found off site. The landfill continues to test high to unknown reasons, but surrounding wells are safe. Notice was sent to the homeowners.

The town has submitted their Ground Water Permit for the landfill to NHDES and expect to see an increase in testing with the found PFC's.

Recreation: The last concert of the series was held. Summer camp and Drama camp have also been successfully finished. There is optimism to continue working with the school to continue holding activities at the school building.

Assessing: The town attended a bench trial for the *Jannotti versus Town of Nottingham* property appeal on Friday, August 24, 2018. The town will submit closing briefs before a final verdict is received.

Solar: The solar panels on the Town Offices and at the Fire Department are active and are now producing electricity. Tracking the power results will be on the town website soon. The town is planning to purchase the panels within 7 years.

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General Business:

Meindl Road Town of Raymond Culvert: Chair Danis reviewed the situation of the broken culvert on Meindl Road, which is located in the Town of Raymond. The Town of Raymond completed emergency repairs when the beaver dam broke and the road washed away. Chair Danis stated many in attendance were at the meeting to express their concern about the condition of the road.

Chair Danis stated she felt it was a dangerous situation to leave the road in an unfinished state.

Mr. Duffy of Tuckaway Shores Road uses Meindl Road to get to his home. He was excited to receive the notice of the road repairs and asked Nottingham to confirm a rumored response that Raymond would not be repairing the culvert. Mr. Duffy stated he is unsure as to who owns the road and asked if there is another plan to repair the road.

Chair Danis reported there is no current plan to repair the road. The portion of the road in Raymond is a private road, which leads to the fork in the road leading to the Nottingham properties. Meindl Road in Nottingham has been declared an Emergency Lane and is cared for by Nottingham. Chair Danis doesn't understand the confusion Raymond has with it now being a private road and not being cared for.

Ms. Andersen stated she reviewed some of the surrounding property deeds in Raymond to determine road ownership and was unable to find anything definitive. However, Raymond has required filing of the private road deed waiver. References can be found for a Land of Pawtuckaway Associates and an older reference to a Pawtuckaway Shores Inc. from an older large subdivision.

Chair Danis asked if the other board members felt the road was safe for emergency travel. Ms. Andersen stated she would not comment on that matter.

Mr. Sterndale stated he assumes Raymond responded to the needed emergency repairs on an emergency basis due to the late hour to provide necessary emergency access. However, after the emergency passed a more in-depth review of the road circumstances realized it was private and they would not take further action.

It was stated the Emergency Lane designation is only on the Nottingham portion of the road.

Mr. Sterndale reviewed the legal status of towns not spending public monies on private property, which includes roads.

Mr. Duffy reviewed the history of the Emergency Lane designation, which allowed towns to assist with maintenance on a private road without taking a road over as a public road. Mr. Duffy stated he might be able to help in the deed research to determine who owns the road. Mr. Duffy stated he felt there could be a greater need for Nottingham to consider repairs because there is a higher number of houses on the Nottingham side versus the Raymond side, and a factor the board needs to consider is the cost of the repairs. However, he is concerned about the upcoming winter and the additional dangers it will mean for driving across the road and request Nottingham take any additional steps to determine what is needed to repair the road.

Mr. Calvitto stated the current repairs will not last long and continues to erode and expressed concern about the town driving large trucks over the existing roads.

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Ms. Smart reviewed the history of the Tuckaway Shore Inc., which was owned by the Brussle family and was a way to help the family maintain the beach and boat launch and does not believe the current property owners own the road. Ms. Smart stated the town replaced the culvert in 2005 and was to help get larger trucks down to Meindl Road and creates an obligation on the part of the town. Ms. Smart stated she is concerned about getting emergency services to the residents and also asked to open up the access road on Moores Road. Chair Danis reported the access road on Moores Road is private property.

Ms. Chaurette asked if Raymond explained why they completed the emergency work on the night of the event. Mr. Sterndale stated he only heard from Raymond that they could take care the situation that night. Ms. Chaurette expressed the thought that the decision by Raymond to remove boulders and a portion of the culvert actually caused more damage to the road; it would have been better if they cleared out from in front of the culvert.

Mr. Potavin asked why the town isn't taking responsibility for the road, given the town plows the entire length of the road, what is the percentage of home in Raymond versus Nottingham, and what is the percentage of tax base from those living on Meindl Road; as asking for a small repair doesn't seem to be excessive. Mr. Sterndale stated the town does not have formal arrangement with other towns, the plowing is completed based on route design and truck accessibility; maintaining the road is more difficult from a financial and liability perspective, rather than financial, especially where the road is private. Mr. Sterndale didn't know the percentage of homes in Raymond versus Nottingham and does not currently have tax base information per neighborhood.

Ms. Collins stated she has a medical condition is concerned about receiving emergency services with the road in the current condition.

Mr. Givens asked for the board strategy on repairing the road. Chair Danis reported the board does not have a strategy, as this is the first time meeting since the problem, there are authority and challenges with that portion of the road being in the Town of Raymond, and the board will need to discuss possible solutions in repairing a road that isn't in Nottingham. Ms. Andersen stated she wanted to hear from the public, encouraged citizens to reach out to Raymond about how they are affected as well, and appreciates everyone to talking about the problem.

Chair Danis clarified that there is no state law that mandates all towns are required to provide emergency services on private roads. The road is a private road on the Raymond side and Raymond is not required to do anything to the road. Nottingham has declared the road an Emergency Lane, by law, and the town does care for the road. Ms. Andersen stated the Emergency Lane designation gives the town the ability to make road repairs so emergency vehicles can get down the road, such as removing a tree or repairing a culvert; the town is not required to maintain the road and it is the responsibility of the owner, but that is unknown.

Mr. Givens stated he would call the Attorney General's Office.

Ms. Andersen expressed that Nottingham has to be careful of misappropriation of town funds in replacing the culvert in the past, because the town was fixing a private road in another town, and needs to be reviewed. It isn't simple for Nottingham to spend town funds on a road in another town. Ms. Andersen stated she wanted to seek legal opinion about repairing the culvert.

Chair Danis stated she felt this was an emergency situation. Mr. Dumas asked if there is any liability to the Town of Raymond to maintain a road that Nottingham residents use to access their

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homes. Mr. Sterndale stated Raymond has zero liability to maintain a private road, in any scenario they cannot legally repair the road.

Mr. Paul stated he wanted to believe that Nottingham will make an effort to resolve the problem regardless of the legal status and financial responsibility, and he is willing to write to the state representative. There was a situation in the past where the fire truck was unable to get up the hill.

Chair Danis stated she understands the expressed concern as a resident of Meindl Road, but it must be repaired within what the law allows. Mr. Dumas stated the board could request the repairs, but they board members could be expelled from their positions.

Ms. Chaurette asked if the road would be watched for continued erosion and expressed concern about future erosion and a continued ability to driving down the road. Mr. Sterndale reported the Fire Chief will be watching the road.

Mr. Smith expressed his appreciation for the board hearing from residents and the work that the town has done on the road in the past, and is learning about the legal issues dealing with the road. However, the materials and labor to repair the culvert isn't that great and the town could do the repairs, and the liability of someone getting hurt or losing their lives could be greater. Chair Danis stated the financial cost of the repair isn't the biggest part of the problem, there are legal restrictions from taking the action.

Mr. Breen asked if the board has received a legal opinion and if there was case law regarding the matter of spending money on a private road. Chair Danis stated this is a law familiar to the board in dealing with the issue more than once. Ms. Andersen stated Mr. Breen would be disappointed in the case law because there is plenty about towns not spending money on private roads.

Mr. Bartlett asked to put some pressure on the Town of Raymond to continue the repairs on the road, with an obligation to the residents while also abiding by the law. Additional research and getting a legal opinion can be done, but it will take some time. The board will continue to work on a solution.

Mr. Dumas agreed with the life safety issue needs to be considered, as the current condition is dangerous and alarming.

Ms. Andersen asked for a legal opinion and any case law with the Nottingham Emergency Lane being accessed by the Town of Raymond private road, and can Nottingham use funds to repair a road that is in another town. While at the same time the Nottingham Select Board contacting the Raymond Select Board to determine if a group solution can be found, in addition to residents reaching out to the Town of Raymond.

Chair Danis clarified a legal opinion is needed on if there any circumstances that allow spending funds on a road in another town, as well as any options available to the town. Chair Danis also agreed to the Nottingham Select Board attending a Raymond Select Board meeting and recommended citizens also contact them. Chair Danis asked for the Fire Chief to continue checking on the safe travel of Meindl Road.

Discussion took place about a continued effort to measure the width of the road.

Discussion took place about how the Nottingham Select Board could effectively meet with the Raymond Select Board. Mr. Sterndale would reach out to the Raymond Town Administrator.

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Mr. Sterndale stated if the town is considering all scenarios, the neighborhood residents should also start to consider preparing to repair the road on their own. In many NH towns this wouldn't even be a discussion with the town, because it is a private road and the owners are responsible for caring for private property. Nottingham may receive a legal opinion that doesn't allow them to respond to the issue in the way the residents wants the town to respond and Raymond may not respond the way the residents or Nottingham would prefer. The road is privately owned, by someone, with the legal requirement to maintain that private property. The property owners on the road have received a legal right as a buyer to get to their property, understanding the road issues or not, but the owners and users of the road have a responsibility to maintain the road; and this happens in Nottingham and many other NH towns.

Ms. Andersen suggested residents also review their deeds to determine who might own the road.

Discussion took place about legal ability to access a private road, deeded interest in a road, ability to access homes over a private road, ownership of the road, and the legal permissions of the Emergency Lane designation.

Building Permits on Class 6 Roads: Mr. Sterndale reviewed the law, history and purpose for, and procedures of the new draft policy for Building Permits on Class 6 Roads. The intent is to provide citizens a policy and procedure to apply for a building permit on a class 6 road. The purpose is to protect the town from unplanned for road maintenance for development on class 6 roads, which could take place outside the Zoning Ordinances.

Discussion took place about the requirements of the Planning and Zoning Boards in working with the Zoning Ordinances, each board with their own specific legal requirements and what they can consider in approving or denying applications. Mr. Sterndale reported the Select Board has things they can consider with a request to building on a class 6 road that the other boards might not be able to consider, such as who owns the road and if the road can handle development. It was stated the Planning Board does weigh in with a recommendation on an application, but they don't have the authority to approve an application.

Mr. Sterndale stated this new policy will require filing a liability waiver form at the registry of deeds. There is also a provision for grandfathering existing prior approvals, as well as dealing with existing building lots that are undeveloped that are on current private roads throughout town.

Ms. Andersen provided Mr. Sterndale with language corrections, including providing a survey provided by a licensed surveyor, clarifying the title about the person responsible for managing road maintenance, and being specific for the statutory reference and language on the 1st page and 1st line of the application.

Chair Danis asked for possible additional clarification of the "the existing condition of the road" as it is subjective. Mr. Sterndale reported the Select Board could be very specific in requesting that the road conditions be the same as any other new development, and there are some towns that don't approve building at all.

It was stated the list of exempt roads that won't need to file the application could grow over time as additional information becomes available.

Mr. Sterndale would complete the recommended corrections and updates to the form. The board would review the final policy at the next meeting.

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NHMA Policy Meeting: It was stated the board would review the list and provide Mr. Sterndale with their recommendations regarding the NHMA policy list.

Mr. Dumas stated he may be able to attend the Policy Meeting.

Town Clerk Safety Concern: Mr. Sterndale reported the Town Clerk had an incident where she felt unsafe with a belligerent citizen. The Police Department was contacted, the video retained, and no criminal activity was determined. However, the idea for better workplace safety of town officials and staff was brought forward again.

The Town Clerk Tax Collector's Office will go through building safety renovation with a new counter and safety glass between the Town Clerk and the citizens. A review of the town panic buttons took place; when pushed an alarm is activated in the building and the police are automatically notified.

Appointments: None

NON-PUBLIC SESSION: The Board entered non-public under RSA 91-A:3 II(a).

8:36 PM Motion: Motion by Ms. Andersen, second by Mr. Dumas to enter non-public under RSA 91-A:3 II(a).

Roll Call Vote: Danis – Yea, Andersen – Yea, Dumas – Yea, Bartlett – Yea. 4 – 0 in favor.

9:15 PM Motion: by Mr. Dumas, second by Mr. Bartlett to exit the non-public session.

Roll Call Vote: Danis – Yea, Andersen – Yea, Dumas – Yea, Bartlett – Yea. 4 – 0 in favor.

Motion: by Mr. Dumas, second by Mr. Bartlett to seal the non-public minutes of August 27, 2018.

Roll Call Vote: Danis – Yea, Andersen – Yea, Dumas – Yea, Bartlett – Yea. 4 – 0 in favor.

The Selectmen made no decisions during their nonpublic session.

ADJOURNMENT: Having no further business,

9:16 PM Motion: by Mr. Dumas, second by Mr. Bartlett to adjourn.

Vote: 4 – 0 in favor.

Respectfully Submitted,

Dawn Calley-Murdough