

**Minutes**  
**Nottingham Select Board Meeting**  
**August 28, 2018**  
**Emergency Meeting**

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

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

Others: Town Administrator Chris Sterndale, variety of Nottingham citizens, Lauren Chaurette, Robert Givens, Tom Duffy, John Fernald,

**General Business:**

Meindl Road Repairs: Mr. Sterndale reviewed the list of answers to the questions asked at the August 27, 2018 meeting. The Town of Raymond is not willing or in a position, financial or in otherwise, to complete any repairs on the culvert; they will not spend public money on privately owned property. There is the expectation that Raymond does not plan on and will not do any future work on the private road. Chief Vilchok previously stated he was comfortable getting equipment down the road. Through Mr. Sterndale, the town attorney responded to the Select Board expressing the concern about the situation, along with all the legal problems, including misuse of the Emergency Lane statute, the precedent it could set, providing benefits to Raymond residents, and the obligation of public health and safety to Nottingham Residents. The Select Board is presented with competing rights and wrongs. There is an unknown if the Select Board will be challenged for taking action and repairing the culvert.

Mr. Sterndale stated the Select Board still has to address the long term solutions regarding the Emergency Lane situation with legal and town opinions.

Chair Danis stated the Emergency Lane situation comes up for discussion every few years; and asked if the town have access to the previously received legal advice. Mr. Sterndale reported there is some available information, including a specific set of minutes of a board meeting where it was discussed.

Mr. Dumas asked if Raymond would be willing to contribute materials for the repair. Mr. Sterndale stated the Raymond would not contribute in any way, any more than they have already done in the late night emergency situation and they may wish they hadn't responded.

Mr. Bartlett asked how Raymond would respond during a future emergency. Mr. Sterndale stated there is the expectation that Raymond will not respond to future emergencies.

Chair Danis stated Nottingham could review the situation regarding Raymond and future issues, but the Nottingham needs to address the current situation.

Ms. Andersen stated the Nottingham Select Board agreed to talk to the Raymond Select Board, which hasn't happened; the road is still passable. Mr. Sterndale reported Raymond is willing to have the Nottingham Select Board meet with the Raymond Select Board to discuss the matter. However, concern was expressed about when that would be able to happen.

Chair Danis stated the town appears to have received advice that the risk to repair the culvert isn't that significant to the town, the repair costs aren't significant, and there is concern about safety. Ms. Andersen asked if the town is aware of the costs. Mr. Sterndale reported the cost for repairs are similar to other culverts replaced in town and would use a similar repair plan to other culverts; approximately \$6,000.00 to \$7,000.00.

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Ms. Andersen asked if Nottingham has jurisdiction to repair a culvert in another town. Mr. Sterndale reported the Select Board would authorize the work and does not have jurisdiction. Chair Danis stated she understands the road is passable, but there are also other safety concerns associated with the current state of the road; further delay may cause greater safety concerns.

Ms. Andersen expressed concern that the repairs are rushed and an emergency meeting called because one member of the Highway Department staff was going on vacation; the town hasn't done all their due diligence or considered all available options and felt precedent may be being set.

Chair Danis stated she doesn't believe the town would receive any additional information two weeks from now and it is an emergency situation. The board can revisit policy and the situation for future consideration; it isn't fair to slow down emergency needed repairs.

Ms. Andersen felt the town should follow through on the actions they agreed upon, completing the research and receiving legal opinions before taking action; the Chair usually asks for additional data and research before taking action. Chair Danis stated she does ask for more data, however this is a time pressing situation, and the board has the authority to make the decision for the repairs.

Ms. Andersen asked about the liability to the town for making repairs that might be considered not correct.

Mr. Dumas expressed concern about the town technically illegally spending taxpayer money but also completing work in another town; it's never been done before. However, he does see both sides, he is concerned about the public safety, but would love to have a meeting with the Raymond Select Board even knowing they won't change their mind. Mr. Dumas stated he does not want to leave Nottingham families stranded on the other side of the culvert. Mr. Dumas stated he is willing to support the culvert repairs but to avoid future liability there is a need for the Select Board to consider a long term solution. Mr. Dumas stated he wishes there had been more time to gather more data, and agrees with Ms. Andersen that the decision is rushed but it is an emergency situation.

Mr. Bartlett stated he also sees both sides of the story, is disappointed that Raymond is unwilling to take action while understanding their position of not working on a private road. Nottingham has an obligation to ensure public safety and residents have access to their homes. Mr. Bartlett stated he is willing to support emergency repairs but expects the Select Board to continue to review the legality of the issue.

Ms. Andersen stated if the town makes the emergency repairs, and asked how the board feels about correcting the precedent.

Chair Danis stated the board starts with the advice from the town attorney and review what other towns do. More information is needed and additional research should be completed.

Mr. Dumas asked if the owners of the road is found can they be held responsible for the costs to repair the culvert.

Ms. Andersen asked if the town repairs the culvert can the town request reimbursement, could the town seek a liability waiver from each resident after the repairs, and what is the timeframe for the board to correct future precedent. Mr. Sterndale stated the town does not know who owns the road and collecting reimbursement would be difficult. The best method possible way to compel private

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maintenance on a private road is for the people who have an easement to access their property to enforce the easement and request repair of the road by the owners of the road. Mr. Sterndale stated there are ways to assign specific costs to different residents, such as TIF(tax increment financing) districts, but asking for a waiver after the fact is difficult. The situation is documented as being an emergency and isn't setting policy for the future.

Chair Danis felt this is an emergency situation and agreed that addressing roads is a needed priority. Mr. Bartlett agreed, but felt putting a timeframe on solving the issue means applying a change to all; there is a lot of research to be done. Mr. Dumas stated the town is setting a precedent on taking illegal action, agrees against setting precedent, despite the low risk.

Chair Danis asked if it is precedent if the work has been done all along. Mr. Dumas stated while things have been done all along that shouldn't have been, were done passively without direct knowledge of the board or board decision, which is different than the board giving direction to take action on something that shouldn't be done.

The board agreed to consider the long-term implications as a priority, did not set a specific time to solve the issue, and would continue to discuss the matter. The board agreed to try and meet with Raymond to continue discussion possible solutions. Chair Danis asked Mr. Sterndale to put the topic on an upcoming agenda.

General discussion took place about possible legislative solutions. Mr. Sterndale reported the legislature has given the town legal authority to act, as much as possible to work around spending public money on private property. Nottingham is unique in the use of Emergency Lanes, the majority of other NH towns do not use the statute.

Ms. Chaurette asked why Raymond isn't asked to determine who owns the road and make Raymond enforce repair to the culvert. Mr. Sterndale reported the easement and repair is a private matter between the easement holder and land owner.

Mr. Givens stated this is a safety issue, feels precedent has already been set by completing reviews in the past, and reviewed the answer from the Attorney General's Office that the residents should write to the Select Board for a legal opinion, and the Attorney General could help in reviewing the statute and case law. Mr. Givens stated the town may have liability if something happens to someone crossing the road and it is up to the board to determine how to make repairs under the Emergency Lane statute.

Mr. Duffy stated the towns have a precedent with safety related issues and the board can act under the designation of the Emergency Lane status. Can the Town of Raymond be compelled to act given their recent repairs on a private road? Mr. Duffy stated when looking at taxation the town should also look at assessment, and if the board makes a decision to stop taking care of private roads, there is a strong case for lower assessments on properties located on the lake.

Mr. Dumas stated there is a difference in emergency situation between the Mother's Day floods and the current situation, and shouldn't be considered a precedent.

Mr. Fernald stated he felt Nottingham would waste time working with Raymond, because they have never worked on private roads, and Nottingham has always maintained the culvert. The original work on the road was completed when there were only a couple of families; it was a different time during the 1940's.

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Ms. Andersen asked Mr. Fernald if the Meindl Road culvert should have a higher level of construction, similar to the Barderry Lane culvert. Mr. Fernald stated if the town replaces the four foot culvert on Meindl Road it should be enough to keep it in good repairs, but the town should also consider the area surrounding the pond to determine what is going on with the amount of water in the pond.

Mr. Fernald stated he didn't tell anyone but he spent his personal money to repair the Barderry Lane culvert because it is owned by him and his brother and recommended that the board make a decision to fix the road before winter comes.

Ms. Andersen asked the Chair to recuse herself from the vote, given that she lives on the road. Chair Danis recused herself from the vote.

**Motion:** by Mr. Dumas to authorize the emergency repairs of Meindl Road including the one-time repair of the culvert located in the Town of Raymond to restore safe access for Nottingham Residents. Second by Mr. Bartlett.

**Vote:** 2 in favor, 1 opposed.

Mr. Sterndale reported the work should start on Wednesday, August 29<sup>th</sup>. Residents should be able to travel the road, with some minor delays.

Mr. Sterndale would notify town council about the repair work taking place. Chair Danis asked everyone to notify their neighbors of the repairs.

Chair Danis stated the town is well served when there are board members who may disagree with each other but are able to hold civil debate to come to a solid decision. Ms. Andersen agreed and feels the board takes the time needed to make quality decisions; and will support the board's decision.

**ADJOURNMENT:** Having no further business,

**7:37 PM Motion:** by Mr. Dumas, second by Mr. Bartlett to adjourn.

**Vote:** 4 – 0 in favor.

Respectfully Submitted,

Dawn Calley-Murdough