

**Minutes**  
**Nottingham Select Board Meeting & Road Workshop**  
**December 27, 2018 / 6:00 pm**

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, Secretary Dawn Calley-Murdough,

**Approval of Manifest:**

**Motion:** by Mr. Dumas, second by Mr. Eaton to approve the December 31, 2018 accounts payable and December 31, 2018 payroll manifests.

**Vote:** 5 – 0 in favor.

**Approval of Minutes:**

Motion: by Mr. Eaton, second by Mr. Bartlett to approve the minutes of the December 17, 2018 meetings as written.

Vote: 4 in favor and 1 abstained.

**Select Board Department/Board/Committee Reports:**

Budget: Mr. Bartlett stated the committee reviewed and discussed the 2<sup>nd</sup> draft school budget.

Planning: Mr. Dumas stated the board hasn't met since his prior report.

**Town Administrator Reports, Mail, Signature Items:** None

**Appointments:** None

**General Business:**

Encumbrances: Mr. Sterndale reviewed the proposed list of encumbrances of 2018 funds.

1. Highway: For Ledge Farm Road, the proposed encumbrance fits into the multi-year plan for engineering and paving the remaining gravel portion. The full engineering costs for the project are estimated at \$57,500.00 and can be covered from the Road Reconstruction funds and unspent general operating funds.
2. Library: Replacement of well tank and softening system for \$4,000.00.
3. Cemeteries: Replacement of fencing at New North Cemetery in the amount of \$22,000.00.

Ms. Andersen asked if the town received quotes for the requested engineering work. Mr. Sterndale reported a quote was received.

**Motion:** by Ms. Andersen, second by Mr. Eaton to hereby encumber the following 2018 funds for contracted work: From the 2018 Road Reconstruction Article \$77,750.00 for Advanced Paving and CMA Engineers; and from the 2018 Operating Budget \$39,858.00 for CMA Engineers, Brentwood Fence, and Dunn Plumbing & Heating.

**Vote:** 5 - 0 in favor.

Cell Tower Easement Extension: Mr. Sterndale reported the town is being asked to sign a six month extension to the cell tower lease. This will allow the town additional time to negotiate a long term lease with outside assistance.

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**Motion:** by Mr. Eaton, second by Mr. Dumas authorizes the Town Administrator to enter into a six month lease extension with SBA Towers, LLC, for the cell tower on town owned property.

**Vote:** 5 - 0 in favor.

Recycling Center: Mr. Sterndale reported a new contract was received for hauling, which would cover the next a five years.

The board had no questions and the contract would be signed.

**Road Workshop:** Chair Danis opened the road workshop.

Chair Danis reviewed the history of private roads and emergency lanes in Nottingham. This issue has been discussed a couple of time in the past, once in 1995 and 2011 where roads were declared emergency lanes. The town has plowed and maintained the emergency lanes in accordance to the existing policy. The board has reached a point where some board members have expressed concern about the legality of working on the emergency lanes and risk to the town, as prior designations of assigning emergency lane status was based on a loose interpretation of the law. Chair Danis reported this isn't a budget issue, but a legal issue. There is also consideration of those who have lived on the road for many years and have come to expect such service.

Chair Danis reviewed some of the options the town is considering in regards to private roads.

- Option 1 is to continue maintaining emergency lane roads as it has been doing since 2011.
- Option 2 is to continue maintenance on those emergency lanes that meet a specific standard. However, given the current status of some roads this could cause some problems and elimination of some roads.
- Option 3 is to eliminate maintaining private roads with a six-month notification period.
- Option 4 is for owner to improve their roads per town standard and submit a warrant article to accept the road as a town road with Town Meeting approval.
- Option 5 is for the town to offer assistance to citizens in the creation of a road village district to pay for road maintenance.

Chair Danis stated the Select Board does not have the power to accept roads, as it can only happen during a Town Meeting.

Chair Danis reported the board has not made any decisions about any of the options.

Ms. Andersen stated the Emergency Lane law and policy is to consider an annual review to make sure those roads with an emergency lane designation meet a specific standard, as well as reviewing the law to determine the specific types of maintenance that is allowed under the legal definition of Emergency Lane.

The discussed and reviewed the pros and cons of each of the options.

Mr. Dumas stated if the town continues with the status quo, there should still be some adjustments to the level of maintenance required, per the town policy. This would include setting some maintenance standards, holding a periodic review of the roads designated as emergency lanes, and hold the road owners liable for helping to maintain their road. The town is currently not enforcing the policy by determining that landowners are to provide some of their own maintenance, as they are obligated and expected to do.

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Chair Danis reviewed that in some cases there is difficulty in determining who the landowner of the physical road is. However, there are also some cases where property owners only have a right of way to access their property with no specific mechanism to pay for road maintenance.

Ms. Andersen reviewed the emergency land law, which is specific in allowing the town to access the road for emergency services, and not ongoing maintenance. Mr. Sterndale read the law and its specific purpose. This includes repairs for removal of brush, repair of a culvert, or other work deemed necessary to keep the road passable for emergency vehicles. Legal counsel has indicated the Select Board has the right to define the level of road work.

Mr. Sterndale explained the underlying legal concern, which states the public need for keeping roads passable by emergency vehicles is identified by a public welfare, safety interest, which surpasses any private benefits abutting the road. In short the overall general public must benefit from the repairs, more so than only those living on the road.

Chair Danis asked for clarification about what could be considered a public benefit. Mr. Sterndale stated public benefit can be identified as public infrastructure, pump house, power lines or substation, or even connecting plow routes.

Ms. Andersen expressed her concerns of the road maintenance policy, stating there are definitely instances that the policy should be clarified and refined. There are areas where a few citizens could take advantage with loopholes. The board hasn't received information from the Fire Department about specific access points. There are some emergency lanes that don't meet minimum road requirements. The town should receive a list identifying what roads might be considered as access to a forest, per the policy example.

Mr. Dumas stated he has stated before that the town needs a policy that is better refined, as it is currently vague and has some holes.

Mr. Eaton reviewed that there is some concern about making sure the Fire Department has access to power lines, especially given what recently happened in California and the significant fires.

Chair Danis stated she felt the Select Board at that time felt they approved a policy that was appropriate. However, there does appear a need to review and refine the policy. There was agreement that Option 2 would be considered with reviewing and refining the policy for future changes to emergency lane designation.

Chair Danis stated it appears that if the board accepted option 1 and determined the town would continue maintaining roads it appears there is also a need to refine the current policy.

Mr. Eaton stated Option 1 and stopping all work wasn't an option. Ms. Andersen stated she agrees that Option 1 isn't acceptable. Mr. Dumas stated he also agrees, and believes there needs to be some roads that must be brought up to a standard, as well as a way to refine what roads could be accept roads by the town, and those that can continue to hold an emergency lane designation.

Chair Danis reported in order for the town to accept roads at town meeting is to determine a clear set of road standards.

Chair Danis stated if the town was to consider any type of road village districts, additional work would be needed to determine the best options in making it work. A decision to create a village district then means it is the responsibility of property owners and not the town, but a tax would be administered by the town to those assigned to that district. General discussion took place about the

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process of establishing and management of a village district. Village District creation and participation is based on a specific set of criteria, such as physical location. Village districts are created and managed by those meeting that established criteria and then operate in a similar manner creating rules for and management of their district to manage, with a specific tax billed by the town.

It was stated that new housing developments have clear and specific guidelines set by the Planning Board in establishing a road, with the eventual plan for town acceptance of that road.

Ms. Andersen reviewed the law that allows use of public monies for private benefit, and private roads are a private benefit. The emergency lane designation allows the town to maintain private roads with the assigned designation, but it isn't a requirement.

Chair Danis stated assigning emergency lane designation in 1995 and 2011, the policy allowed for snow plowing and maintenance, under the "other" category. There is also the consideration of continuing a service that has provided for many years.

Ms. Andersen stated she has asked the NHMA about plowing private roads, and the answer has been there should be no plowing of private roads. In addition to receiving comments from other town leaders expressing concern about Nottingham's decision to plow private roads. The Nottingham Select Board needs to consider fairness for all in the community. There are some who live on a class 6 road and complete their own maintenance and plowing, there are those who live on the state road and don't receive any town services, as well as those who live on a town road.

Mr. Bartlett stated it isn't going to be an easy fix, but the board has an obligation to both sides of the problem, as well as making sure the town follows the letter of the law. The goal is to find a compromise that will serve the needs of the entire community. Mr. Bartlett stated we are one community

Mr. Dumas asked what other towns do with emergency lanes. Mr. Sterndale reported there are no town abutting Nottingham that utilize the emergency lane designation; it appears there are only six or seven throughout the state that use the designation. There are only two or three that will only plow roads an emergency lane, but they won't provide any road maintenance. Nottingham is unique in doing what they do for private roads.

The board agreed they would hold additional workshops to continue discussing and finding a solution to the issue.

Mr. Eaton stated the board appears to agree to not stop providing services. There should be a different mechanism to accept roads that have been built to the required specification. When he moved to town into a development, he was required to pay a road association fee before the town accepted his paved road during a town meeting.

Mr. Sterndale reviewed the emergency lane law, as well as the definition of a private road. Mr. Sterndale reported in many other lake communities there are many owners who have local associations for road maintenance and the associations are self-managed and separate from the town. Village districts have a form of government and are then taxed through the town.

Discussion took place about the potential challenges with road associations versus a village districts.

Chair Danis opened up the workshop to public comment asking everyone speaking to be respectful.

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Public Speakers: Kip Baillargeon, Pamela Kelly, Marcia Carey, Kyle Murdock, Ed Viel, Steve White, Liz Kotowski, Dee Decker, Ryan Melchionno, John Terninko, Paul Martin, Curtis Vanepps, Gary Benard, Barb Hyer, Bill Forrestt, John Fernald III, Arthur Mello, Jenny Gibson, Fred Howe, Dan Morel, Matt Pitkin, Hal Rafter, Lisa Carey, Bill Michonne,

The public expressed questions, thoughts, and concerns about the following topics:

- Tax money paid by those living on emergency lanes should also be used to taking care of private roads.
- Who has the responsibility for maintaining the roads?
- Finalize the issue so it can't be brought up again.
- The need to understand why there is a recent review and consideration by the Select Board of why the town would consider stopping maintenance on private roads.
- Should the court be utilized to determine the correct determination of maintaining private roads and emergency lanes?
- Concerns with creation and enforcement of a Village District.
- Concerns of all property owners paying their taxes and impact of nonpayment of property taxes on the town.
- Agreement to refine the emergency lane designation.
- Concern about damage to private vehicles.
- The need to consider upgrades to some of the roads because they are so narrow.
- Do property assessments change between homes that are on a private road versus an emergency lane?
- Damage to town vehicle by plowing emergency lane designated roads and the trouble some of the roads are to plow.
- Need to continue the review road maintenance policy and establish a long term road maintenance plan.
- Can private roads be used by everyone, are they public roads? Is it considered trespassing by non-residents to drive down the private roads?
- Concerns with new buyers being able to receive financing for homes that are not maintained by the town and what it will do to property values.
- Continuing a road maintenance that has been provided for many years.
- Having the town identify and update current town documents that seem to indicate the town will maintain emergency lane roads.
- Additional public benefits can be access to logging, access to DES for lake and river monitoring, access to NHEC to maintain powerlines, public water rescue, access for forest fires, and access for hunters.
- Creation of a method for the town to maintain emergency lane roads to the level it sees fit.

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- Need for definition of road maintenance.
- Concern with eliminating emergency lane designation.
- Concern about maintaining access to emergency services.
- Concern about continuing or an ability to buy home owners insurance.
- Concern with impact to property values with the elimination of emergency lane designation.
- Concern with the impact to elderly residents living on a private road.
- Concern with the potential legal liability by eliminating the emergency lane designation.
- Concern with maintaining and improving many other town dirt roads and determining how much money is being spent on continued repairs on dirt roads.
- Establishing a better history of road maintenance expenses.
- Are state or federal monies available to help maintain private roads?
- Concern with the change in property ownership allowed by the town with the transition from season to year round living and increased use and impact on the road.
- Is there personal liability to the property owners who live on a road where ownership cannot be determined?
- Request to continue current levels of road maintenance with the amount of property taxes being paid.
- How can the town raise funds to widen and pave roads to try and help eliminate continued maintenance costs?
- Can the town take action to prevent being sued?
- Concern with being able to leave home and/or return home with bad road conditions.
- The human factor and safety should be considered for all properties.
- How can road be brought up to better standards?
- There are town roads that don't meet a 16 feet requirement.
- Precedence has been set by the town maintaining the roads in the past and the town should continue to do so.
- Impact to small business owners who reside in town by not being able to access homes on private roads and/or emergency lane roads.
- What type of damage are the roads causing to emergency response vehicles?
- Why are dead end roads accepted as town roads when there isn't any public benefits to a dead end road?
- Concern about a recent reduction of road maintenance services. Leaving paved roads that are paved and maintaining them in good condition.
- What is the plan to try and replace the Road Agent?
- Should the form Road Agent be replaced with two people?

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Ms. Andersen explained to attendees that the Select Board started their review of road maintenance on all town roads earlier in the year, to determine the best methods and setting up future repair plans. The issue was brought to the forefront with the failure of a culvert on Meindl Road, a private road in another town, and more recently on Barderry Road.

Chair Danis asked Mr. White to provide the town with data about the price differences between houses that are on emergency lanes and those without the designation.

Chair Danis explained the town has attempted to hire a new Road Agent with expanded duties, as a Public Works Director. The town has been unable to find a person that has the qualifications to fill the position. Additional searches have been attempted to try and find an employee for either a Public Works Director or a Road Agent, and the same scenario happened.

Chair Danis closed the workshop and stated the board would continue to review and discuss the road situation.

**ADJOURNMENT**: Having no further business,

**8:56 PM Motion:** by Ms. Andersen, second by Mr. Eaton to adjourn.

**Vote:** 5 – 0 in favor.

Respectfully Submitted,

Dawn Calley-Murdough