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March 19, 2021

Via email csterndale@nottingham-nh.gov

Board of Selectmen
Town of Nottingham
139 Stage Rd
Nottingham, NH 03290

Re: 2021 Town Warrant Petitioned Article #19

Dear Board:

You requested our review of Article #19, one of the petitioned articles on the 2021 Town Warrant. Article #19 states as follows:

To see if the Town will vote to accept Barderry Lane, Beach Head Road, Brustle Road, Cahill Lane, Cove Road, Dolloff Dam Road, Indian Run, Jampsa Trail, Lamprey Drive, Meindl Road, Meindl Road East, Sach's Road, Seaman's Point Road, Shore Drive, South Road (end of Mooers), Tuckaway Shores Road, and White's Grove Road in the Town of Nottingham as town roads. The Town has been maintaining these roads for decades. With this acceptance, these roads will be transferred to the Town of Nottingham, NH as Class V roads as is. Majority Vote Required. By citizen petition.

After research of state statutes and case law, this warrant article is valid and enforceable if so approved by Town residents. If the Town residents want to accept a road in any condition, this is within the authority of Town meeting. The acceptance of these roads is a policy decision to be considered.

Under RSA 229:1, there are four ways to create a public highway, including dedication and acceptance, prescription, highway layout, and deeded ownership. If the Town residents approve, the listed roads can be accepted through a dedication and acceptance procedure. The affirmative vote at Town meeting constitutes acceptance. Polizzo v. Hampton, 126 NH 398 (1985). This power to accept at Town meeting has been in existence since 1945.

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As policy matter for the Board, consideration should be given to efforts to educate the voters about the ramifications of the vote on this article. I have traveled every one of these roads, inspecting the with the Town Administrator. There are several roads that are insufficient and substandard; many are not in good condition. For example, I saw trees within the roadways that showed damage from Town plows and grading problems that caused standing water on some portions of the listed roads. Acceptance of these roads “as is” brings immediate needs to maintain and upgrade many of the listed roads. As you may expect, there are likely to be considerable costs associated with this, including a tax impact in the years to come. The Town will also need to re-work its current plan on Town road maintenance if this article is accepted to include the listed roads. It is my understanding that the Town has done some work to show the expense of capital improvements per mile of Town Road. I would suggest sharing these costs at the deliberative session.

In addition, the roads to be accepted are not defined within this article, which will give rise to disagreements between the Town and the abutting landowners. This article is not clear about where the road itself actually lies and what parts of the road are being accepted by this article. In one instance, a landowner has taken efforts to move a section of the private road on his property. This lack of clarity is likely to lead to litigation in the future whenever the Town undertakes action to maintain or upgrade these roads, such as cutting down trees or creating ditch lines.

I recommend that this article be amended in two ways to deal with these identified issues: (1) discretion must be given to the Board of Selectmen, in consultation with the Road Agent, to determine what needs to be done to each road before it is fully accepted, and (2) the road must be defined so the Town and the residents know what is being accepted.

Amendment #1 proposed language:

With this acceptance, these roads will be transferred to the Town of Nottingham, NH as Class V roads ~~as is~~ upon approval of the Board of Selectmen in consultation with the Road Agent.

This amendment is not meant to require each road be brought up to current Class V highway standards. This is meant to give the Board discretion to determine what steps should be taken before road is suitable for acceptance to help manage costs and tax implications. The Board could require ditch lines, culverts, grading, and other road work that will allow the town to operate the road when it receives it instead of having to rebuild the roads in the first instance.

Amendment #2 proposed language:

To see if the Town will vote to accept Barderry Lane, Beach Head Road, Brustle Road, Cahill Lane, Cove Road, Dolloff Dam Road, Indian Run, Jampsa Trail, Lamprey Drive, Meindl Road, Meindl Road East, Sach's Road, Seaman's Point Road, Shore Drive, South Road (end of Mooers), Tuckaway Shores Road, and White's Grove Road in the Town of Nottingham as town roads as shown on approved subdivision plans on record.

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This will address the lack of definition in the article about what is really being accepted. The Board should review what subdivision plans the Town currently has in advance of the deliberative session. I have attached all plans in my possession that were supplied by the plaintiffs in the Kelly, et al v. Town of Nottingham matter to ensure the Town has all information I have received.

There is a chance that litigation will result regardless of the attempted definition of the roads being accepted, but this amendment will help to limit this possibility. If the Town is not aware of where the road is, there may be issues of trespass when the Town attempts to perform maintenance on these roads.

Neither amendment nor the information proposed to be given at the deliberative session is meant to state whether the Town should vote to accept the roads. The voters, however, should be aware of what the Town is accepting with its vote. This is an article with few words but with considerable implications.

Please let me know if you would like to discuss this further with me. Thank you.

Very truly yours,



Susan Aileen Lowry
slowry@uptonhatfield.com

SAL/

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Board of Selectmen
Town of Nottingham
139 Stage Rd
Nottingham, NH 03290

Re: 2021 Town Warrant Petitioned Article #20

Dear Board:

You requested our review of Article #20, one of the petitioned articles on the 2021 Town Warrant. Article #20 states as follows:

To see if the Town will vote to rescind the Minimum Design Standards for Town Roads that the Nottingham Select Board put into place on December 7, 2020. Majority Vote Required. By Citizen petition.

After consideration and research for this article, I conclude this article is advisory only.

Much authority over roads, including maintenance and setting road standards, has been given to the Board of Selectmen by statute, including RSA 41:11 and RSA chapters 229 and 231. This is a direct delegation from the NH Legislature which cannot be taken away by a vote at Town Meeting.

Outlined within NH statutes is the Board's quasi-judicial authority to weigh the public interest and the rights of the landowners when laying out a public highway. RSA 231:8; Waismen v. Manchester, 96 NH 50 (9149). The authority to regulate all public highways not within the purview of the State Dept. of Transportation is specifically given to the Board. RSA 41:11. Under this statutory authority, the Board of Selectmen may, and should, set standards for roads within the Town. Furthermore, the Board has the obligation and authority to regulate road maintenance. This power remains with the Board regardless of a vote at Town meeting.

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In further support of the authority of the Board exists in RSA 674:38. Even if a Planning Board approves construction standards for a new road and the road is built according to the required standards, there is no presumption that this is a public highway. Id. It must be approved by the Board, or the Town meeting must accept it. RSA 674:40-a. The Board of Selectmen is given a considerable role to play in managing public highways by the state legislature. A warrant article cannot remove this statutory authority.

You may want to share this review with the Town Moderator for the upcoming deliberative session. I am happy to discuss this article further if you have questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sally", written in a cursive style.

Susan Aileen Lowry
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Board of Selectmen
Town of Nottingham
139 Stage Rd
Nottingham, NH 03290

Re: 2021 Town Warrant Petitioned Article #21

Dear Board:

You requested our review of Article #21, one of the petitioned articles on the 2021 Town Warrant. Article #21 states as follows:

To see if the town of Nottingham will vote to urge that the New Hampshire General Court, which is obligated to redraw the maps of political districts within the state following the federal census, will ensure fair and effective representation of New Hampshire voters without gerrymandering.

Additionally, to ask the town of Nottingham to urge the NH General Court to carry out the redistricting in a fair and transparent way through public meetings, not to favor a particular political party, to include communities of interest, and to minimize multi-seat districts.

Furthermore, as the New Hampshire State Constitution, Part 2, Article 11 allows town of sufficient population to have their own state representatives, not shared with other towns, for the town of Nottingham to petition the NH General for its own exclusive seat in the NH House of Representative if it does not already have it, ensuring that State Representatives properly represent the town's interest.

The record of the vote approving this article shall be transmitted by written notice from the selectmen to the state legislators for Nottingham informing them of the demands from their constituents within 30 days of the vote. By Citizen Petition.

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My conclusion after consideration is that this is a valid article and consistent with the practice of New Hampshire towns. New Hampshire courts have consistently stated that Town Meeting is where residents have the ability to discuss any Town business, including topics that are presented in the article. This includes articles that contain advisory requests such as this one.

The request for the NH General Court is advisory in nature, but the action outlined in the final paragraph is perfectly within the Town's authority to consider and carry out if so approved by the voters. There is no legal impediment to prevent discussion and a vote on this article.

Overall, this article is well written in that it clearly expresses the topic to be discussed and voted on, and the action requested is reasonable and within the authority of the Town to carry out.

You may want to share this review with the Town Moderator for the upcoming deliberative session. I am happy to discuss this article further if you have questions.

Very truly yours,

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