

Beacon Falls Board of Selectmen
10 Maple Avenue
Beacon Falls, CT 06403



**BEACON FALLS BOARD OF SELECTMEN
Special Meeting – Oak Drive
May 12, 2014
MINUTES
(Subject to Revision)**

1. Call to Order/Pledge of Allegiance

First Selectman Chris Bielik called the meeting to order at 6:32 P.M.

Members Present: First Selectman Chris Bielik, Selectman Peter Betkoski, and Selectman Dominick Sorrentino

Others Present: Jim Galligan, Town Engineer; Atty. Steve Byrne, Town Land use Attorney; and 23 members of the public.

2. Discussion of Oak Drive

C. Bielik welcomed and thanked the homeowners of Oak Drive for attending tonight's meeting. This is an informational meeting that hopefully will be helpful for all. This started last fall, during the campaign season, when he was asked many times about Oak Drive. C. Bielik indicated that there was a lot of information on Oak Drive that he did not have and needed to gather the information about what the situation is to be able to discuss it constructively and intelligently. C. Bielik thanked everyone for their patience in giving us the time to gather information necessary to have a discussion and hopefully to bring to everybody information how the best way is to go forward, what the possibilities are, and what limitations there are on the town. C. Bielik wants everyone to understand and starting at the same place as far as the information, the restrictions, and all the aspects. There are statutes, ordinances, processes, and procedures that must be followed and everyone needs to understand before moving in a constructive direction.

C. Bielik introduced J. Galligan, Beacon Falls Town Engineer, who started with the engineering aspects of Oak Drive with some handouts. J. Galligan indicated that one of the handouts is just a brief description of what they tried to do and what they found with their investigation.

Oak Drive is about 2000' roadway which was built in about 1972. One of the problems of Oak Drive is that it is not only used by the residents of Oak Drive, but by the townspeople as well. In the month of April, an existing conditions investigation was done as well as some tests with the catch basins and the drainage. Oak Drive varies in width between 24' and 30', and the standard road width for the town of Beacon Falls under the road ordinance must be 30' in width. The pavement is in very poor condition, boulders coming through the bottom of the pavement, and a lot of storm drainage that is inadequate. In order for the town to take over Oak Drive, one of the things must be done is to have the road meet the town road standards, in which the ordinance requires the road to be 30' wide from curb to curb; that the road has curbs; that the road be built on a processed gravel base. Right now, there is no base under the pavement, only dirt. In order to rebuild the road and bring it up to town standards, the road needs to be widened where it doesn't meet the 30'. At the entranceway onto Cedar Circle, the road comes to a bad angle and would have to be built-out. That is a road requirement for and road design in the town of Beacon Falls. Some of the catch basins are only 12" in diameter and the piping seems to be stable after review. There will need to be additional drainage to get the water off the road. One of problems of Oak Drive is that the water stays on the road too long and doesn't get into the catch basin system and therefore destroys the pavement structure after icy in the winter. The asphalt breaks up and would need to be repaired. There are a number of basins that need to be replaced and a number of sections towards Munson Road that need to be repaired. There are a number of basins that are plugged. In order to fix the road, a foot and half would need to be dug out and put in some gravel, a draining material that helps the road from breaking up, process material, and then 2" of asphalt to meet the road standards of town of Beacon Falls. That would need to be done from Cedar Circle down Munson Road. All new curbing would need to be done as well as new aprons on every driveway that meets the road. These are the structural requirements that need to be done and only after that can J. Galligan can go to the Board of Selectmen, Board of Finance, and the Board of Planning and Zoning and certify that the road meets the standards. Once it meets the standards then a motion can be made to accept the road or not. The time that it would take to complete is approximately two to three months.

C. Bielik asked if anyone has any questions specifically for J. Galligan under the engineering part of it. Atty. Richard Volo introduced himself as an attorney representing some of the homeowners on Oak Drive. He asked that J. Galligan if the costs of the engineering changes be passed onto the homeowners. J. Galligan replied by stating that the costs are what they are and not deciding who is to pay for them. Atty. Volo asked who installed the original catch basins, the original storm drains, and if there is an easement to the town of Beacon Falls to drain surface water especially from Cedar Lane onto Cedar Drive and then into the Cedar Drive structure system. J. Galligan replied that he doesn't know the answers those questions and C. Bielik indicated that these questions may better be asked to the town's land use attorney. J. Galligan indicated that he is only looking at the construction costs of this road.

Atty. Volo then asked if the town has looked into the right to drain of surface water from a public road to a private road and J. Galligan replied that he didn't know. Atty. Volo then asked if the road ordinance exist when the re-subdivision of Laurel Ridge was built twelve years ago. J. Galligan replied that he did not know. Atty. Volo asked about the conformity of the road be an issue at that time.

Frank Semplenski, 8 Oak Drive, noted that there was a question of runoff anywhere coming into Oak Drive and indicated that they did and ran a pipeline down to try to divert the water. Tom Yoxall, 9 Oak Drive, had looked at the town website and there was a study done recommending the list of road within town. They broke the roads down into three categories: one being state highway, one being main roads getting heavy use, and then other roads. The recommendation for road, such as Oak Drive, was a width of 22'. The theory behind the study was that if the road were narrower, with on-street parking is unlikely; the traffic would drive slower since they are narrower. His question is that, since some roads in town are not 30', can this be conserved in their case. J. Galligan replied no, stating the qualifying reason. There are a lot of towns that are less than 30' and this is an ordinance that in play. We cannot change what the ordinance requires.

F. Semplenski responded that the intent was to turn the road over to the town all the time but there were a lot of issues out there. Kirk Shultz, 16 Oak Drive, asked if the road was up to standards back in 1972 to be accepted as a road and J. Galligan replied that he did not know. Lou Krokosky, 7 Oak Drive, indicated that his road on Donna Drive, bonded, in 1971, and was 24' wide and wanted to know if it changed. J. Galligan replied that he does not know and can only tell you what it is now. C. Bielik indicated that the problem from an ordinance standpoint is that we have an ordinance on the books day that must be complied with today. If there is a desire to change that ordinance, or create a new ordinance, there is a process that can be followed but it is not up to the Board of Selectmen or any planning commission in the town per say. It has to be submitted, then staffed out to the attorneys, then sent out through the entire process that it goes through, and then, only by a vote of the townspeople can the ordinance be changed. This is a check-and-balance in the system.

Joanne Larrow, 20 Oak Drive, noted that about one year ago there was a runoff problem coming off Cedar. J. Galligan indicated that a drain was put in by the town. J Larrow indicated that it started shifting the dirt into another's backyard. J. Galligan indicated that the pipes were put in to the end of Oak Drive because of the water problem up top. T. Yoxall asked who handled that and J. Galligan responded that the previous 2nd Selectman was in charge of that process. T. Yoxall asked for his name and C. Bielik indicated that it was Selectmen D'Amico.

P. Betkoski asked if it was hard-piped and buried, helping the drainage in the back. J. Galligan responded yes. P. Betkoski reminded everyone that there is a procedure and ordinances that must be followed, we are trying to help the residents of Oak Drive, questioning if the road can be modified.

We also have to go in front of the Planning and Zoning, and the Zoning Board of Appeals. P. Betkoski is concerned if the water issue behind the houses is still bad. Since it was piped down Cook Lane, ran up Cedar Circle, and was a big expense.

F. Semplenski indicated that the biggest problem on that street is that it is used as a causeway. There were barrels across the road, going up on lawns, moved things that were blocking the road, people not understanding that the road is private. The bottom line is, outside of making it a dead-end street, our objection is who is going to pay for the road. These people are all using it, and the residents have to maintain it. L. Krokosky asked the town engineer if the culverts are dug and hooked into the drainage line down at the bottom of Munson Road. J. Galligan indicated that it should be tied into the state system, to get the water off the road. L. Krokosky indicated that his follow-up is that he used to live on Dolly Drive, which was approved and bonded. The culverts were only half way up the road and emptied into a stream in the back of houses on Lasky Road.

Dave Anelli, 17 Oak Drive, asked what is going to be done with the upper storm drains that are clogged. J. Galligan asked for more details. D. Anelli indicated from his house and above, the three storm drains that are there are clogged and wanted to dumping on his property. J. Galligan indicated that all are going to be cleared out and the drain in front of his property will be connected to the ones that go by his property. D. Anelli asked about the ones on Cedar Circle and Cook Lane, are they going to be tied in too and J. Galligan indicated that he was not asked to look into that.

C. Bielik now introduced Atty. Steve Byrne, the town's land use attorney. Atty. Byrne began by saying he does the land use boards and the wetland planning and zoning, as well as the zoning appeals. Atty. Byrne indicated that he was asked to look into some of the legal questions about Oak Drive and was informed that there was some history of the town using the street to go back and forth. He looked into that issue, maybe that the town had accepted that it could be used by the public. As he looked into it, he was referred to certain state statutes which govern this process. The road was built in 1972, and as built, it doesn't meet town standards. The town was never accepted the road as a town road, always considered as a private road. If the town were to accept it, it would have to be approved by the Planning and Zoning Commission, working with the town Engineer, and must follow the town ordinance. It cannot modify or waive them or make exceptions. The first step is for the Planning and Zoning to accept a report from the town Engineer, and for that report to show that it meets town standards. Only then if P and Z signs off on it, then it goes to the next step, which is a town meeting and the town has to vote to accept the road as a town road. The state statutes that are in place are 13a-71 and 13a-48. The Supreme Court has interpreted these statutes and recognizes the two-step process.

Atty. Byrne noted that it comes down to an engineering issue. The road has to be brought up to the current road ordinance standards to provide a safe road.

Only then can it go to a town meeting. There were some other issues brought up as well. There were some other issues that were brought up such as, if the town accepts Oak Drive would they be setting a precedent accepting other private roads, and what about the town incurring liability if someone got hurt on the road. The state statutes must be followed until they are changed.

Atty. Byrne indicated that normally in a situation like Oak Drive today, a development would be required to form a homeowners association by Planning and Zoning. A plan in place would be done to maintain the private road. As seen, the road appears to be that Oak Drive is an ownership and an LLC. While it is in probate, there is an executive in charge of the estate and there is help to maintain the road. Once the estate is settled and out of probate, the heirs would be in charge and then an issue arises if they do not want the road. It would be in limbo and someone would end up owning the road. This is in out of Atty. Byrne's scope, and in his past experience, he has seen that like everyone would maintain the right to pass and repass on Oak Drive, and the piece of land in front of your property becomes yours. Now you own it and, if something happens, liability becomes yours. There is time to address the issues and steps that need to be taken. The two options that he saw are to have the town accept Oak Drive as a road once it meets the standards or to form a homeowners association.

F. Semplenski asked if they could stop people driving on the road. Atty. Byrne responded by stating by posting signs. F. Semplenski then asked if they are suggesting making it a dead-end road. Atty. Byrne responded that they are not suggesting anything at this time and it is a private road and it is the homeowners' road.

T. Yoxall asked if there is any case law to support that the road would become their property and they are the successor of the property that isn't theirs. Atty. Byrne responded that it is beyond his scope and it will go to someone. T. Yoxall asked if it becomes unclaimed property and the liability doesn't become theirs. The liability is for my property, my land parcel on record with the town. Atty. Byrne replied that as a right to pass and repass, with the benefit often comes responsibility.

Atty. Volo then questioned the three lots that were re-subdivided to create another lot in the early 2000's – why the town didn't require the road to conform to the road ordinance at that time since the ordinance was in effect at that time. Historically, the first that was recorded on this project called Oak Drive – Public Roadway. This was in 1983. The water company easement to Birmingham Utilities in 1984 called it a proposed public roadway. It was called a proposed public roadway all the way up until the time of the re-subdivision in the early 2000's. After the re-subdivision occurred, the label changed to private road. He was curious if that was done because the town realized that they should have, at that time, acted to mandate the conformity with road ordinance and overlooked.

Atty. Volo indicated that after the fact that legislation is passed after the people have owned their houses for twenty, and now they have to pay for this street. The town should have required this done in 2003 and did not. It was started being called a private road perhaps to cover up the fact the approval for the subdivision should not have been issued since the road didn't conform to standards. Planning and Zoning should never have approved the re-subdivision, but they did.

The LLC owes the road, not the sole heir, and what happens if the LLC is dissolved. You cannot force ownership on anyone. Atty. Volo asked who passed the bill to the legislator and C. Bielik indicated that he doesn't know, and does not know what bill he is mentioning. Atty. Byrne responded that it wasn't in this area. Atty. Volo repeated that, historically, this road was called a public road until the re-subdivision, and C. Bielik indicated that he would disagree with the based on the exact words that he used. It was called a proposed public road but never designated as a public road. Atty. Volo read from a public document that he got and read it into the record as "the undersign Mr. Thomas Wisniewski grants into Bridgeport Hydraulics Company a right-of-way over the road known as Oak Drive from Munson Road to Cedar Lane as shown on map entitled proposed public roadway". C. Bielik indicated that he would argue that proposed and actual public roadways are two completely separate concepts.

Atty. Volo mentioned page two of Atty. Byrne's handout indicating that the statutes require a two-step process for a public road. The CT Supreme Court also said that, in 1959, that in order to prove a road is a public road, we have to prove that there is a valid dedication of the road for the purpose. For valid dedication, there must be a manifested intent by the owner to dedicate the land in question for use by the public and an acceptance by the proper authority. The intent to dedicate can be expressed or implied. The Supreme Court went on to say in another case, with respect to an owner's intent to dedicate, the act or conduct of the owner may be such that the law will imply from them intent to devoted use.

Atty. Volo indicated that Cedar Lane was developed before Oak Drive, and there is a sanitary sewer easement and utility easement going through the left side of the Mr. Wisniewski's personal lot that ties into Oak Drive. He couldn't find an easement from Oak Drive to Route 42 for the sanitary sewer easement that comes down that lot from Cedar Road. There is no easement for that so we have the carrying of public sewage from a public road from houses owned other people than Oak Drive, going through the easement of Mr. Wisniewski's own property, into a sewage system underneath Oak Drive without an easement, to Route 42. That is pretty solid proof that Mr. Wisniewski's intended that this use of his private road could be used for by the public. From the storm drains system coming from Cedar Road, there is the utilization, the natural flow of surface water from Cedar Lane, a public road, into the storm drain system underneath Oak Drive, as it presently exists, without an easement. That is a manifestation of intent to use the road as a public road. C. Bielik noted intent by the owner for the use of the road. He doesn't believe that anyone would dispute that Jim Wisniewski, or his father, had every intention of wanted the road of becoming a public road.

C. Bielick indicated that his perspective, as the CEO of the town, is to say what actions who taken by the town to finish the other 50% of the deal. By his understanding, and the research done by the town attorney, there were never any actions ever taken by the town to complete the second part of it.

Atty. Volo noted that there was same scenario with Bonna Street. Bonna Street was not a public street when that lawsuit was placed. P. Betkoski asked what does Bonna Street have to do with this. Atty. Volo indicated that the town didn't formally accept Bonna Street and there was a milar that was recorded, which is enough but it is evidence. The court concluded the utilization of that road in a manner of which it was done, manifested an acceptance of the road by the town. Likewise, we have the town of Beacon Falls using this street as part of its municipal storm drain system, using it as part of its municipal sanitary sewer system. The point is that these circumstances point to, just like the intent to dedicate, the intent to accept. To take these people and require them to pay these costs now is horrible. You have to look at the history of the use and we did an informal traffic study – 40 cars a day without intervention. There has never been intervention since day one. These are factors that we ask the town to analysis. Atty. Volo asked for us to have another meeting where we look at these factors and come to some conclusions. If not, the only result they would have is to wipe out their savings or ligate.

Richard Minnick, 147 Cedar Lane, indicated that one thing that needs to be corrected and put on the record properly is Laurel Ridge. He does not recall when the three houses were built down there. If you go through and look at the approvals, both of the Wetlands Commission and Storm Water Management, it did not approve of it. The original proposal was to have it go directly to Route 42. All the drains involved, by default at that time, went down to Route 42. I went and look, and didn't see anywhere those three houses of Laurel Ridge ever have a reversal or permission to have Oak Drive ever become a town road. I went through, but may have missed something. What was approved originally by the Inland Wetlands and by Planning and Zoning, was that the private road to go directly to Route 42. The developer petitioned, not sure who because he couldn't find the name in the minutes of ZBA or Zoning, to appeal for it to become Oak Drive. Wetlands never received notification of the change. In regards to the sewer easement that was mentioned by Atty. Volo, Oak Drive was constructed, already built, when that was put in. R. Minnick agreed regarding the drainage going down. That water goes directly over the road, into a catch basin, so there was no easement. That was addressed when the house was built down below. The sewer easement was after Oak Drive was constructed. R. Minnick doesn't know where Laurel Ridge ever got permission but doesn't mean it wasn't there.

C. Bielick announced that he is going to invoke parliamentary procedure now since this is a special Board of Selectmen meeting and all comments need to be addressed to the chair to avoid going into back-and-back, which is beyond the scope of the context of this meeting. He would like to recognize Atty. Byrne now.

Atty. Byrne wanted to bring to everyone's attention, on page 2 on his letter, the 3rd paragraph down. Atty. Byrne read "The obvious intent of Sections 13a-71 and 13a-48 and their predecessors is to prevent a landowner from filing a map designating proposed highways thereon and, without improving such highways in manner acceptable to the proper municipal authority, to impose upon the municipality the obligation of constructing and maintaining them. It is not permissible to circumvent the mandate of these statutes by a claim of common law dedication". Atty. Byrne explained that common law dedication is where the whole issue comes up with did the town have an easement to drain, does the town have 40 cars across the street per day. We are tied to these statutes. We would have to go to a town meeting and have the people vote to accept the road as a public road. Now, by actions of the public or by past, by the public works, there is no fact of public dedication.

C. Bielik indicated that we are 5 minutes away from starting the regular Board of Selectmen meeting for tonight. He would take a recommendation, with Atty. Volo making an interesting point that there is probably a lot more discussion that can and should be done on this topic. He doesn't want to rush to the end of a meeting just because of the time on the clock, and would entertain from someone on the Board of Selectmen to recess this meeting and to reconvene to another day and time to pick this back up again.

3. Adjournment

C. Bielik asked for a motion to recess tonight's meeting and to continue at another time. The date will be determined at another time once schedules are looked at for availability.

Motion to recess tonight's Board of Selectmen Special Meeting – Oak Drive at 7:25 P.M. and reconvene at a date to be determined at another time:
Sorrentino/Betkoski; no discussion; all ayes.

Respectfully submitted,

Marla Scirpo
Clerk, Board of Selectmen