

TOWN OF DERRY

Town Council Private Roads Workshop
Derry Municipal Center

July 17, 2007
Tuesday 7:00 pm

Member Present:

Chairman Bulkley
Councilor Coyle
Councilor Chirichiello
Councilor Ferrante
Councilor Fairbanks
Councilor Carney
Councilor Metts

Staff Present:

Alan Cote

Town Administrator Gary Stenhouse
Attorney, Steve Clark, Ed Boutin
Town Clerk Recording, Denise Neale

Salute to the flag led by Neal Ochs. Notice of Fire Exits and Handicap Access. Turn off Cell phones and pagers.

Roll call: Fairbanks, Carney, Metts, Coyle, Chirichiello, Ferrante, and Bulkley

Private Roads Sub-Committee Present: Neil Ochs-Vice Chair, Chris Reisdorf, Neil Weatherbee, Ron Goldthwaite, Paul Berube, Bruce Neale, and Alan Cote.

Chairman Bulkley reminded everyone of the 180th Anniversary of the Incorporation of the Town of Derry to be held July 18, 2007 at the First Parish Congregational Church. Everyone is invited.

Chris Reisdorf and Neil Ochs gave an overview and highlights of the Private Roads Subcommittee report. There were four options presented: Betterment, Winter Maintenance, Prescription and Emergency Lanes. Road Standards were discussed- if these roads were to be accepted.

Alan Cote stated that because of the existing conditions of these roads they would have to be accepted with the 1960 Road Standards, as they could not meet present road standards.

Councilor Chirichiello stated for the record that he has a business interest on one of these roads and would step down on opinions if the rest of the Council wished.

Chairman Bulkley stated that since they were not in a voting position he would allow Councilor Chirichiello to participate. Councilors agreed.

Councilor Ferrante stated that they had two sets of information present to assist them. The Subcommittee's report and Councilor Carney's Ordinance.

Chairman Bulkley suggested that they review Councilor Carney's Ordinance.

Councilor Carney took each numbered item in order with questions and the thought behind each.

Counsel for the Town of Derry Attorney Boutin and Attorney Clarke were present for Council questions on the Ordinance.

Discussion & Questions:

1. Definition of Accepted Roadways: remove ten-year period and one-year period.

Councilor Ferrante and Councilor Chirichiello asked it be replaced with, "a reasonable amount of time." Attorney Boutin explained the Rainbow Lake lawsuit and the stipulations made on the town to accept the roads as public but they did not have to upgrade the condition of the roads.

2. Petitions offered to the Town Council must be submitted to Town Clerk within six months.

The Town Charter and State RSA make specific reference to time frames involved for petitions.

Attorney Boutin stated that it could be added in that the Town Council can extend the time frame for Council discussion. You want to protect the abutters. Looking at an ordinance that is going to actually set a threshold and the bar is lower under your ordinance as opposed to the state threshold. Anyone has a right to bring a petition for road acceptance according to RSA 229:1 outside of this procedure. You can grant or deny according to state law. Anyone who is affected can appeal to Superior Court for damages.

Councilor Carney asked if it would make more sense when we are looking at the criteria for petitioning to work this into the criteria for acceptance. You can petition but you are going to still have to meet the criteria for acceptance.

Chairman Bulkley gave a scenario regarding the participation of residents of a private road not all agreeing with becoming a public road.

Atty Boutin explained that under this ordinance the Council would not have to accept the petition. However if one of the residents came in under 229:1 (Layout of a road) and the Council decides to do it and some abutter object then it goes to Superior Court with the Town.

Councilor Coyle was concerned that the Council maybe pre-empting the state law according to RSA 674:40 paragraph III, without the Town having an official map.

Attorney Boutin: it should be submitted to the Planning Board for comment.

3. Town Council must accept or reject all petitions no later than March 30, 2008. When making a decision on a petition the burden will be placed on the Town of Derry to show why a petition should be rejected.

Discussion and agreement to remove time limit and "the burden will be placed on the Town of Derry to show why a petition should be rejected.

4. Property cards must clearly indicate the type of road the property has access to.

Chairman Bulkley asked if this could be done now. The question was raised whether this information should be on the property tax card.

Atty Boutin: Putting it on the card might be seen as way to inform a buyer, essentially it's a way to protect them against brokers. At the same time it is then a burden that the Town puts on itself that the information is accurate.

5. The Town must create an Official Map of the Town of Derry. Must be approved by Town Council and must clearly indicate the nature of all roads in the Town of Derry.

Alan Cote suggested before the Town considers this according to RSA 674:9-15 a Town Map is used as a tool for the Planning Board to layout future roads. Be cautious to adopt a Town Map, as the Town has not done this before.

Chairman Bulkley asked counsel is it legally better to have an official Town Map or not?

Attorney Boutin stated, that it a useful tool when adopting the Master Plan, he doesn't see any impediment. Only public streets go on the official map. He does have a problem putting a time frame on the upkeep. GIS is information and evidence, the official map has it's own legal significance. Timeframe should be when Master Plan is updated. The Planning Board approves the map then sends it to the Council to approve or disapprove.

6. Application criteria: may apply if the Town of Derry has placed sewer service under a roadway; completed significant upgrades to a roadway including but not limited to: paving; installing of drains; improved roadway shoulders; or provided and /or laid millings on a roadway.
Exemptions: private ways that service five or fewer homes are not subject to this ordinance.

Alan Cote – Sewer on Beaver Lake some of these roads have never been maintained by the town. Town should be cautious to say if it has sewer on it, it's a Town Road. Also some of the roads to become public or are public have 5 or fewer homes on them. (i.e. Julian Rd)

Councilor Carney asked Attorney Clark to address the argument that can be made under state RSA, that if the Town puts in sewer those roads can become public. Refers to RSA 674:40 Improvements to an un-approved street.

Attorney Clark stated this has come up over the years. One of the things that came up was if there was sewer under the road it must be a town road because the sewer has to maintain it. He had asked Alan Swan if the Town had acquired easements for these roads. The answer was yes. What the court looks at is what the Town had done over the road in years, it factors in a lot of things including surface and subsurface.

Chairman Bulkley asked would it help to add into the ordinance those specific roads that we do have easements for? Would it may it clearer in the ordinance?

Atty Boutin stated that sewer under a road is not going to turn a case. The Town has to have easements in place if the town uses these as a threshold for petition acceptance. Reword the ordinance so that the presence of sewer isn't a determining criteria unless something else is present for acceptance.

Councilor Coyle was concerned that nothing is in the ordinance about the Town getting ROW from abutters and they are going to need easements to improve some of these roads. Suggested that the Town would need these.

Atty Boutin replied that the Town would need slope, drainage, construction and snow removal easements, in order to improve these roads. RSA 231:8 Layout statue is eminent domain for roads.

Chairman Bulkley asked that Councilor Carney update this ordinance as discussed and submit it to the Town Administrator. The Town Administrator would forward it to Town Counsel for review. Town Counsel would provide comments and recommendation. The Town Council later will schedule the Private Roads for a Public Hearing or another workshop.

Councilor Metts asked Alan Cote how many other Private roads the Town had other than on the list provided by the Sub-Committee?

Alan Cote stated the roads on the list are roads that the Town has done work on or Winter Maintenance. There are others and the list could be expanded.

Councilor Metts questioned how many other private roads that have had any maintenance and infrastructure improvements.

Attorney Boutin under the State RSA anyone can come forward and petition the town.

Councilor Fairbanks asked Alan Cote how the Town was able to lay public sewer on these private roads.

Alan Cote replied the Town obtained easements.

Atty Boutin stated the RSA is to prohibit a town from presuming that it has a right to make improvements in areas where it doesn't have an easement.

Alan Cote asked if the roads the ordinance doesn't address if a road remain private can it continue to have Winter Maintenance by the town do we want the option of charging the road or let the residence plow it themselves. His concern is if you call a private road Winter Maintenance are we going to continue plowing.

Atty Clark spoke on the RSA that you cannot expend public funds for private purposes. If the Town continues this it has the right to be reimbursed but you don't want to get into private contracting.

Councilor Chirichiello questioned how you would charge the residents of the road?

Atty Boutin answered, "This is not a road the Town should be going down." If you give sufficient notice you can do this. (Stop plowing) The Statutes are clear enough. You are taking on a problem that hasn't been addressed and making rules that make it a somewhat less complicated process for situations that are questionable.

Alan Cote asked based on the time frame scheduled should the Council authorize Public Works to plow until the issue is resolved.

Chairman Bulkley instructed him to have Mike Fowler put it on the agenda.

The next Town Council Meeting will be held August 14, 2007. A Non-Public session will be held prior to the meeting. The Abutters of Private Roads will be notified of the Public Hearing approximately in the fall.

Adjourned 8:30 p.m.