

TOWN OF NOTTINGHAM
Selectmen's Meeting
July 18, 2011

6:37 PM, Chair Anderson opened the meeting and asked all those present to stand for the Pledge of Allegiance.

Members Present: Gary Anderson; Mary Bonser, Hal Rafter

Members Absent:

Guest:

Others: Charles Brown, Town Administrator; Traci Chauvey, Recording Secretary; Chris Mills; Gail Mills; Judy Doughty; Jim Ovens; John Caldon; Rae Christy; Robert Christy; Frank Case; Peg Case; Therese Thompson; Sharon Symons; Karen Davidson; Clayton Button; Judy Cole-Baillargeon; John Rusnak; Kip Baillargeon; Robert E. Ernst; Marianne Ernst; Donald Rossi; Helen Rossi; Gary St. Pierre; Dave Galpin; Gwen Galpin; Ellie Crow; Victor Maslov; Patricia Duda; Chester J. Duda; Joanne Duda; Ed Kotowski; Sara Haverkamp; Liz Kotowski; Stephen Soreff; John Edwards; Harry C. Fensom, Jr.; Gail Fensom; Linda Morel; Donald Morel; Lucien Morel; Lorraine Morel; Cyndi McRae for Gemma Tirrell; Cheryl Zyla; John Morin; William Loconzolo; Robert H. Fleeson; Priscilla R. Johnson; Christos Limperis; Helen P. Limperis; Shirley Sauvageau; Charlene Andersen; Donna Danis; Andrew Martin; Lee Bartlett; Bill Bartlett; Paul Romano; Audrey Romano; William Netishen

Chair Anderson acknowledged the public in attendance. The selectmen agreed to postpone all business until after the Emergency Lane Policy discussion.

ADMINISTRATIVE BUSINESS

DEPARTMENT REPORT – Postponed

SIGNATURE FOLDER – Postponed

REVIEW OF DOCUMENTS – Postponed

APPOINTMENTS

7:00 PM – EMERGENCY LANE POLICY PUBLIC INPUT SESSION -

At 6:39 PM, Chair Anderson opened the public input session.

Chair Anderson explained to all that the selectmen have been working on an emergency lane policy for approximately eight weeks. This policy is to provide clarification and guidelines when making decisions regarding emergency lane status in Nottingham. Chair Anderson opened the floor to the other selectmen. Ms. Bonser noted that lots of good information and suggestions had been received over the past two weeks. She thanked Liz Kotowski for her re-write of the proposed policy, noting that much of the redundancy had been removed. Ms. Bonser indicated there seemed to be confusion between Class VI and private roads and clarified that Class VI roads are town roads, maintained or not, and private roads are private, which is not changed by

emergency lane status. Mr. Rafter noted he had received five or six e-mail over the past two weeks and clarified for all that, currently, the selectmen are focusing on the policy. He asked the public to be conscious of this focus while making comments this evening. He, also, noted he had a few changes to recommend based on comments he had received.

Chair Anderson informed all he would read through the draft policy, in its entirety, prior to opening the floor to public comment. Many members of the audience requested a copy of the policy to follow along. At 6:45, Mr. Brown left the meeting to make copies for the audience and returned at 6:50. While Mr. Brown was absent, Chair Anderson, again, noted he would read the selectmen's draft policy, then he would read through the draft submitted by Liz Kotowski. The audience requested more copies of the policy. At 6:51, Mr. Brown left to make more copies and returned at 6:55. While Mr. Brown was absent, Chair Anderson made the following public announcements:

- Nottingham Day will be held on September 17. Janet Horvath, Director of Recreation, is always looking for volunteers to help staff and run this event.
- The Blaisdell Memorial Library is available to residents for a place to cool down during the extreme hot weather we experience throughout the summer months.

Acknowledged by Chair Anderson, Mr. Ovens took the mic and, referring to the notice of public hearing he had picked up off the table, inquired about the RSA number. Ms. Bonser informed him the notice was the original 1995 notice, adding that no notice for a public hearing has been created for the current roads being put forth for consideration. Mr. Ovens read the section of the original notice dealing with Dolloff Dam Road, noting that, although not named, Lamprey Drive was included, since the notice was "Dolloff Dam Road (in main trunk to Paquette Map 70 Lot 24," adding that Paquette Map 70 Lot 24 was his house at 28 Lamprey Drive. There was a brief discussion around there being some open issues and confusion around what was actually established in 1995. The writing of the policy is the first step to correct the issue at hand. Mr. Brown returned with more copies and Mr. Ovens stepped down.

Chair Anderson read the selectmen's draft policy dated June 30, 2011. He stressed that, as far as he was concerned, although there are some definite considerations listed in the policy, it was a guideline for the board to use and every road would be a separate consideration. He then opened the meeting to public comment. It was determined that all those wishing to speak would sit at the mic at the selectmen's table.

Acknowledged by Chair Anderson, Ms. Fensom took the mic. She clarified with the selectmen that once a road has been designated, the town provides maintenance on the designated road. She then questioned the policy on rescission of a road based on lack of maintenance. Chair Anderson and Ms. Bonser indicated that section referred to maintenance issues beyond the towns control such as obstructions in and close to the road. Ms. Fensom read the section, noting it specifically states "the failure to maintain the condition of a road according the to the criteria enumerated above,...", and asked the selectmen to clarify this issue in their final policy. Mr. Brown stated this has been an issue for him all along, adding that there are maintenance issues that the town does not take care of such as damages from logging. Ms. Bonser feels that Ms. Kowtowski's version clarifies this issue by stating, "abutters failure to maintain the condition of

the road according to the criteria enumerated in road conditions 2 and 3 above,...." Ms. Davidson inquired as to whether they were reviewing the selectmen's proposed policy or Ms. Kotowski's. Ms. Bonser and Chair Anderson agreed that, although the selectmen's proposed policy was being reviewed, Ms. Kotowski's recommendation were part of the public comment and some of the suggestions would be incorporated into the selectmen's policy.

Acknowledged by Chair Anderson, Ms. Thompson took the mic and inquired about how the recommendations from the road agent, town administrator, fire chief and police chief, listed under the Preliminary Determination section, would be received and whether they would be public. Chair Anderson informed her that the selectmen would seek out the recommendations either at a public meeting or in writing during the time between the meeting with the residents requesting designation and the public hearing. Ms. Bonser noted the recommendations would be public information.

Acknowledged by Chair Anderson, Charlene Andersen took the mic. She informed the selectmen she had recommendations for clean-up of the proposed policy and, also, had some questions. In the Introduction section, Ms. Andersen, referencing the RSA, recommended the selectmen change the word *maintenance* to *repair* in the second line. She suggested that the second sentence begin a new paragraph or that it state, "*This policy sets forth the following procedure and criteria that must be employed for a way....*" and that the last line be omitted since the same thing was stated later in the policy.

Ms. Andersen suggested the selectmen consider numbering the different sections in a manner such as 1.0 Introduction, 2.0 Procedure for Declaring and Emergency Lane (EL), etc..

Under the section, Procedure for Declaring and Emergency Lane (EL), Ms. Andersen recommended the word *future* be added to the first sentence between "..., *the Board of Selectmen at a*" and "*Board of Selectmen's public meeting....*" and proposed the end of this sentence be changed for "...***Preliminary Determination*** using the criteria below." to "*Preliminary Review consisting of the following.*" She recommended that the Preliminary Determination Criteria section be bulleted with the last four (the list of recommendations to be reviewed) being indented. Ms. Andersen voiced the same question as Ms. Thompson regarding the form for the recommendations to be reviewed and inquired as to whether the selectmen would provide a form of some sort for each to complete in order to remove any subjectivity. Under the Vote to Hold a Hearing section, Ms. Andersen suggested they change the first sentence to say, "...*the Board of Selectmen will vote on whether to proceed with a public hearing. The public hearing notice will indicate which ways shall be considered for an EL designation at the public hearing.*"

Under the Public Hearing and Final Determination section, Ms. Andersen recommended the selectmen add either "*10 days prior to the hearing*" or "*in a time allotted by law*" to the end of the first sentence, indicating that the second option would be a better choice in case the RSA changes. In the next to the last sentence in this section, she suggested the selectmen remove "*each of*" and change "*roads*" to "*ways*" for consistency.

Audience member Mr. Christie stood to address the Chair and asked that comments be limited to content, not grammar. Ms Andersen responded that the meeting was for public input and she had

put much time into review of the policy and wanted time to provide her input. Acknowledging the large number of people in attendance, Chair Anderson agreed to hear Ms. Andersen.

In the General section, under Criteria for Acceptance, Ms. Andersen recommended the selectmen add "*a Class VI highway or private way*" and asked for clarification of the third bullet regarding two or more owners, abutters, or residences. Chair Anderson explained they were attempting to make the determination that the way was not a driveway. Ms. Andersen feels, as written, it is too vague. Moving on, she asked for explanation of the Public Welfare or Safety Requirements section regarding the "public need for keeping such way passable." Ms. Bonser stated that that was quoted from the RSA and read 231:59-a II, third line down. Ms. Andersen noted this was only part of the sentence. There was a brief back and forth between Ms. Bonser and Ms. Andersen about what this section allows. Mr. Rafter noted the law is vague, adding that paragraph IV of the RSA does talk about maintenance. Ms. Andersen argued that paragraph IV is about rescission. Mr. Rafter noted that this section of the policy was to provide specific examples of public safety. Ms. Andersen inquired about why the public safety issues would differ from roads currently being maintained and roads rescinded two to three years ago. Chair Anderson reiterated that the document they are reviewing provides general guidelines, noting that one issue alone does not justify emergency lane declaration or rescission. Acknowledged by Chair Anderson, Ms. Davidson took the mic with Ms. Andersen. Mr. Christie became frustrated and asked Ms. Davidson to sit down. At Chair Anderson's direction, Ms. Davidson remained and read from the RSA, noting that that what is missing is a capital reserve fund or a trust for this maintenance. Ms. Davidson was informed that the RSA allows the town to create these things, it does not require the town to. She thanked the selectmen and returned to her seat. Ms. Andersen suggested this section be looked at some more. Under the Road Condition Requirements, Ms. Andersen indicated the 16 foot requirement should say "*must*" not "*should*" and requested the selectmen omit the word "*road*" from the fourth bulleted item for consistency. She questioned bullet seven, reiterating that the RSA says repair, not maintenance. Chair Anderson agreed to note this and come back to this issue.

Moving on the Rescinding of Emergency Lane Declaration, Ms. Andersen suggested the selectmen remove "*However, this will generally result from*" at the beginning of the sentence and add "*will result in rescinding a ways designation.*" to the end.

Addressing the Failure to Maintain Road Conditions, Ms. Andersen voiced lots of concern for the onus placed on the town. She believes this opens a management nightmare. Ms. Bonser informed her this is already the practice. Ms. Andersen noted the RSA does not mention plowing. Ms. Andersen also feels that, since it is allowed by law, a capital reserve fund should be established to keep the appropriations separate from the general fund. She feels this is in the best interest of the town and that it will help improve budgeting and forecasting for budgets. Chair Anderson noted this is an area they have not discussed but noted it is something to consider. Ms. Andersen stepped down.

Acknowledged by Chair Anderson, Ms. Mills suggested that those wishing to speak be switched back and forth between private road residents and town road residents. Chair Anderson replied that he was seeking someone with a different kind of input, someone who had something to add to the process.

Acknowledged by Chair Anderson, Mr. Caldon took the mic and inquired as to whether the Local Government Center (LGC) had been contacted. Mr. Rafter informed him the town's attorney has reviewed the proposed policy. Mr. Caldon suggested he take another look, adding that he feels language from the RSA regarding barred gateways and private property be included. At Mr. Brown's inquiry, Ms. Bonser informed him the RSA being referred to was 231:21. Mr. Caldon feels the public benefit and access section needs further looking into. Chair Anderson noted that the RSA is very vague and this section has been much of the focus for this policy. Mr. Caldon stepped down.

Acknowledged by Chair Anderson, Mr. Kotowski took the mic. He noted the emergency lane policy does refer to maintenance and he believes maintenance includes plowing. He requested the selectmen consider reducing the 16 foot requirement, noting he had purposely traveled many of the private roads and some of the dirt town roads recently, and many do not meet this criteria on all sections of the road. Chair Anderson informed all that the 16 feet came from the road agent himself as being what was needed for safe operation of the highway equipment. Ms. Bonser noted this to be the reason the policy is written as "should" and not "must"; there are exceptions to all the rules. Mr. Kotowski stepped down.

Acknowledged by Chair Anderson, Ms. Kotowski took the mic. She suggested the use "an average width of 16 feet", which would account for those roads that are not 16 feet in all areas. Ms. Kotowski stepped down.

Acknowledged by Chair Anderson, Ms. Mills took the mic. She stated that one problem has been that the people do not know the criteria. She wants to see it be made legal and if things in the RSA are not clear, she feels clarity should come from the Attorney General prior to completion of the policy. Referring to the criteria listed in the policy, she questioned the water rescue aspect, noting that Mr. Brown has reported the fire chief only uses three access points. Mr. Brown stated there are three predetermined places used by the fire chief, however, that does not rule out other access points. Ms. Mills would like to know how many other access points the fire department has used over the last 10-15 years. She noted that the three predetermined points are not emergency lanes. She went on to state that the public welfare section of the policy implied protection for those living on the private roads. She believes this is against the spirit of the RSA, adding that there is supposed to be a quid-pro-quo, a real benefit, to the town for the monies expended under this RSA. She recommended a second opinion by an attorney not affiliated with anyone living in town (either on a private or town road). Referencing the last requirement, Ms. Mills inquired about public infrastructure. Since town infrastructure has not been determined, she feels this needs to be removed. She believes that unless the policy meets the law, there will be strife in town and a citizen may sue. Ms. Bonser talked about the difference between public welfare and public purpose, noting that the RSA talks about public welfare. She believes it is a public interest to protect the towns staff and equipment when they need to respond to emergencies on these roads. Ms. Mills suggested the selectmen check on the definition of public interest as she believes, based on her conversations with Attorney Fillmore, this definition meets the law. Ms. Mills stepped down.

Acknowledged by Chair Anderson, Mr. Netishen took the mic. Mr. Netishen feels the policy needs to acknowledge and 'grandfather' roads that have been declared emergency lanes in the past. He suggested the selectmen be more specific when regarding 'subsequent meetings' noting that not all residents are full time residents but may wish to attend the meetings/hearing around this issue. He is opposed to a capital reserve fund for maintenance, feeling it will provide no benefit to the town unless they plan to do something such as replace all the culverts in one given year. Although the selectmen received a recommendation from the road agent on the 16 width, he was curious about the fire trucks. He noted that some of the trucks are longer than 16 feet and the policy does not address an available area for them to turn around. Mr. Netishen further believes the selectmen should be more specific regarding the road conditions and feels this would help meet the law. He believes the public need could be written in better terms. Mr. Netishen noted that under the Failure to Maintain Road Conditions, the third bullet refers to providing notice to owners abutting the EL. He pointed out that there are private roads on which the owners do not abut the road and abutters are not necessarily owners. He feels this needs to be both owners and abutters. He inquired as to what the selectmen are thinking of when using the term Preliminary Determination. He questioned when the "determination" takes place and when it is no longer preliminary. Lastly and acknowledging that not all recommendations will be included, he recommended Ms. Andersen supply the selectmen with a copy of her recommendations and asked the selectmen to keep the comment period open for a while, allowing others to send it written comments/recommendations. He thanked the selectmen for their time and effort on this issue. Mr. Netishen stepped down. Chair Anderson encouraged anyone who has comments/recommendations to forward them to the selectmen for consideration.

Acknowledged by Chair Anderson, Mr. Ovens took the mic. Mr. Ovens inquired about the signage requirement for Class VI or private roads, noting he did not see anything in the RSA for this requirement. Chair Anderson informed him it is, in part, for the protection of the residents. He noted that some people do not realize they are buying on a private way. Ms. Bonser informed him it is, also, that it is a liability issue, noting that since the roads are not noted as private ways or Class VI, someone could damage their car or themselves and blame the town for the way not being noticed as private or Class VI. Mr. Ovens stepped down.

Acknowledged by Chair Anderson, Mr. Mills took the mic. Mr. Mills informed the selectmen he had contacted several surrounding towns to inquire about their policies on emergency ways. He reported that Northwood, Deerfield, Lee, and several others do not have emergency lanes and do not maintain private roads. He further stated that the road agent in Deerfield informed him that he goes out on every emergency call and if access is needed, he provides it at that time. Ms. Bonser indicated this is not timely noting that minutes count in an emergency situation. She further stated that \$170,000 dollars of tax payer money, including private road residence owners, was raised and appropriated to completely redo Gebig Road where Mr. and Mrs. Mills live. She asked about the social justice of Mr. and Mrs. Mills position on this issue. There was a short uproar of clapping and talking. Chair Anderson gained control and asked for anyone who had not had a chance to speak.

Acknowledged by Chair Anderson, Mr. Baillargeon, a resident of Barderry Lane, took the mic. He relayed a near death story of needing an ambulance after eating bad shrimp. He talked about public interest asking if private road residents, of which there are many, were not part of the

public. He inquired the drop in home values if the town discontinued maintenance. He noted that most residents on the private roads are older people. Mr. Baillargeon stepped down. Chair Anderson and Ms. Bonser noted for the record that those roads declared in 1995 would not be reviewed. This policy started because there was question regarding some of the roads being maintained that were not on the 1995 notice. Chair Anderson felt he needed some guidelines beyond the RSA to help himself through the process.

Acknowledged by Chair Anderson, Mr. Fensom took the mic. He agrees with comments made by Mr. Netishen regarding grandfathering of the roads; however, he feels that the existing roads should meet the criteria established in the policy; he does not think the policy should have more stringent or strict criteria than roads already declared. He, also, feels the policy is too subjective and needs to be more clear. He stated that the people coming forth with requests should be able to read the policy and be assured that the policy is in line with what they are presenting. Mr. Fensom stepped down.

Acknowledged by Chair Anderson, Ms. Doughty took the mic. She acknowledged this is an emotional and complicated issue. Ms. Doughty informed everyone she, also, had contacted several surrounding towns and got the same response as Mr. Mills; they do not have emergency lanes. She further noted there are pluses and minuses to buying on a private road; the minus is that they are maintained by the residents. She is concerned that every private road in Nottingham is going to be designated an emergency lane and feels this goes beyond the spirit of the RSA. She believes every private road resident will line up to have their road declared an emergency lane and this will open the town to law suits. Asked about who would sue, Ms. Doughty indicated a resident on a private road could sue for not getting quick emergency service. At Chair Anderson's inquiry, Ms. Doughty reported she was not informed as to whether the other towns had any kind of policy on emergency lanes because they do not have emergency lanes. Noting that these other towns have not been sued, she believes we should look at what they are doing right. Ms. Bonser informed all that the attorney has reviewed the policy and has indicated the selectmen are heading in the right direction. She noted that most towns do not have the number of private road or residents living on private roads that Nottingham has. She, also, has spoken with representatives from other towns such as Bow and has been informed that, although Bow does not have 'emergency lanes', they have 'fire lanes'. She is not sure maintenance on these roads is legal since they have not been designated as emergency lanes. Acknowledged by Chair Anderson, Ms. Stevenson informed all that Lee, also, has fire lanes.

Acknowledged by Chair Anderson, Ms. Johnson took the mic. She noted that the town had been through this in 1995. She heard a rumor that this began because the minutes were lost. She inquired about documenting the facts from people's memories. She specifically remembers there were lots of heated arguments and specific conversations. She remembers that all of Barderry was included in the determination. She inquired as to whether the selectmen were anticipating 100% of the road requesting designation, noting that the impression being left by some speakers is that this will become a burden on the tax payers. The selectmen indicated they do not believe there will be requests for 100% of private roads. Mr. Brown informed Ms. Johnson that the minutes from the public hearing have been lost, as well as the written findings from that meeting, with the exception of a draft from the fire department. Ms. Bonser informed her the selectmen are working off the notice from 1995; however, a couple of roads that were being maintained are

missing. Ms. Bonser further informed her that public hearings will be held to address these three roads. Ms. Johnson noted she lives on a spur off Barderry, which has been and currently is being maintained.

Mr. Soreff took the mic. He inquired as to the next steps, asking if there will be more opportunity for public input or if the selectmen will decide. Ms. Bonser feels the selectmen need to hold a workshop to incorporate whatever changes they intend to make based on the public comments, send out for review by an attorney, put the new draft policy on line for public review, and bring it back to another meeting.

Acknowledged by Chair Anderson, Mr. Netishen took the mic, again. Mr. Netishen suggested that if a study was to be done of the surrounding towns, questions could not be left open ended, such as how many emergency lanes does the town have. He noted that in conjunction with that, the question of how many private roads does the town have; and how many people live on those private roads. He further noted that a study should include all private roads, not just lake roads. Because this issue arose out of a monetary concern (budgeting) he feels it is important to, also, ask what is the contribution to the tax base of those on private roads and what is the contribution to the tax base of those who live on town roads. He noted that Nottingham has three large bodies of water and indicated we will not find this with the other towns. Mr. Netishen stepped down.

Acknowledged by Chair Anderson, Ms. Kotowski took the mic, again. Another question she felt would be important to ask is how many dirt roads are Class V roads, noting that some towns have changed this classification to get around the law. She does not want people to assume that all dirt roads are private roads. Ms. Kotowski stepped down.

At 8:35, Chair Anderson closed the public input session. A break was called while the public disbursed. At 8:47, Chair Anderson reconvened the meeting.

The selectmen discussed incorporating suggestions from the public comments into the draft policy. Ms. Bonser really prefers Ms. Kotowski's proposed policy to the selectmen's proposed policy. Mr. Brown wants a copy of Ms. Andersen's recommendations.

There was a brief discussion around the request to grandfather existing ways. The selectmen concurred the policy before them was for the declaration of an emergency way and should not affect those that have previously been declared. Ms. Chauvey noted that the only section that affects those that have already been declared is the section on rescission of a way. Ms. Bonser suggested removing it from the policy. Mr. Rafter stated it is part of the RSA. Mr. Brown noted the town should not be responsible for damage caused by outside influences such as logging operations. He suggested the abutters/owners be contacted in these cases and informed of the damage and by whom so they are able to follow up on the repairs. Ms. Bonser feels the notice for rescission should be a six month period. She feels that if it is October or November and the owners are noticed, it does not give enough time for repair before bad weather hits.

Mr. Rafter suggested removing Class VI road signage requirements as the town cannot require abutters to supply signs for town roads. He, also, recommended removing "or year round residences" under the General section. There was discussion around this between Ms. Bonser

and Mr. Rafter as to whether or not this would leave the town open to plowing driveways. Mr. Rafter pointed out that one person could own two residences on a way. He considers this a driveway. Ms. Bonser disagrees and feels if there are two residences, both residences are entitled to emergency services. There was no consensus on this issue.

Ms. Bonser suggested they remove the word "initial" from the title of Ms. Kotowski's proposed draft. All selectmen concurred. Ms. Bonser will mark-up Ms. Kotowski's proposed policy with comments from this evenings meeting and send to the other selectmen. The selectmen will hold a workshop on Monday, July 25 at 7 PM to review, discuss, and finalize changes to be sent to an attorney.

MINUTES

JULY 5, 2011 (Meeting)

Line 73: Change *Strafford County House of Corrections* to *a security position at Seabrook Station*

Line 81: Remove the last sentence.

Line 85: Add *inspections*

Line 206: Change *his* to *Mr. Brown's*

Line 215: Change *want to go there* to *think it was feasible*

Line 232: Change *cases* to *case*

Line 239: Change *focused* to *refocused* and *on the* to *from archiving to the*

Motion: Bonser, second Rafter to accept the minutes of the July 5, 2011 meeting.

Point of Order: *After making the motion and addressing the changes, Ms. Bonser and Mr. Brown left the room to attend to an individual who appeared at the door and needed help. They left the room at approximately 9:11 PM. At approximate 9:14 PM, when it became apparent they would not be immediately returning, the following motion and vote took place.*

Motion: Rafter, second Anderson to approve the minutes of the July 5, 2011 meeting as amended.

Vote: Rafter and Anderson in favor, Bonser absent from room. Motion passed: 2-0

Having no further business,

Motion: Rafter, second Anderson to adjourn the meeting.

Vote: Rafter and Anderson in favor, Bonser absent from room. Motion passed 2-0

Meeting adjourned at 9:15 PM.

Respectfully submitted,

Traci Chauvey

Recording Secretary

Approved as amended at the August 1, 2011 meeting.