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Town of New DURHAM, New Hampshire

Office *of the* Select Board

Public Announcement

April 2, 2021

Layout Petition Status

At the initial public hearing on the Bennett Road layout request, a Libby Road History document was discussed regarding the history of past town meeting votes ostensibly closing or discontinuing the same segment of road that is part of the Bennett/Libby Road layout petition. The public hearing was continued to 7 PM on April 12 Select Board meeting which will meet via Zoom (information on town web page <https://www.newdurhamnh.us/> , Zoom meeting # 819 2117 7457)

The parties that may be opposed to this layout may contend that one or several of the older warrant articles discontinued completely Libby or Bennett Road. This is relevant to the layout analysis that the Board must conduct because if some portion of the road to be laid out as part of the present petition was previously “discontinued completely” that means the public right-of-way (ROW) was extinguished and the town may need to acquire land rights from the private property owners abutting the road to re-create or re-establish the public ROW. If that is true, it would impact the layout test because the first step is to balance the rights of private property owners versus the public interest.

Historical Town Meeting Votes

In NH, there is a presumption against discontinuance of a public highway. The party asserting that a road has been discontinued has the burden of proving it by clear and satisfactory evidence. In the Libby Road History document, the referenced town meeting votes contained differing language to: discontinue subject to gates and bars; to close out; and/or to discontinue completely. The verbiage of these articles and the corresponding vote at town meeting are critical. A vote to “discontinue subject to gates and bars” creates a Class VI road, and so preserves the public ROW but relieves the town from the obligation to maintain it. On the other hand, a vote to “discontinue completely” is important as it means that all public rights were extinguished and the public ROW no longer exists.

Of the votes listed in the Libby Road History document, only one vote (Art 6 from 1935) may or may not prove relevant to the Bennett layout petition. The other referenced articles or votes concerning Libby or Bennett Road were subject to gates and bars and so preserved the public ROW. The 1935 vote is ambiguous because the verbiage “to close” a portion of the road is not found in statute, whereas discontinuing and discontinuing subject to gates and bars are found in statute and so the meaning is understood. The vote from 1935 is therefore unclear as to whether the town voted to extinguish the public ROW or merely to make the roads in question Class VI. Based on the presumption against discontinuance of public highways and the lack of any further evidence to establish the intent of the 1935 vote, the Board considers the 1935 vote as a discontinuance subject to gates and bars, making the road Class VI and preserving the public ROW.

If any party disagrees and believes that a prior town meeting vote, such as the one from 1935 or some other one, discontinued completely the road where the current layout petition is proposed, they have the burden to provide additional documentation to prove it by clear and satisfactory evidence. If any additional documents or argument are submitted on the question of historical town meeting votes, the Board will consider it when the layout public hearing continues.

John Scruton

Interim Town Administrator