

**TOWN OF NEW DURHAM BOARD OF SELECTMEN**

**May 17, 2021, 6:00 P.M.**

**Virtual Meeting, New Durham, NH 03855**

*DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. The draft will be posted on the website as a draft copy for public informational use only.*

*In accordance with Governor's Executive Order #12, pursuant to RSA 91-A: 2; Attendees log into: Join Zoom Meeting (note meeting # changed from 5/10); <https://us02web.zoom.us/j/8613600531?pwd=djB0U0dpOGU5ZmNTWnBFeUFlNlI1dz09>; Meeting ID: 861 360 0531 Passcode: 312962 via telephone number: 1-646-558-8656;*

*Technical difficulties contact J. Scruton at [ndadmin@newdurhamnh.us](mailto:ndadmin@newdurhamnh.us), phone 603-332-0652;*

*Note: Town of New Durham offers no security assurances to those connecting via PC to a third party software and hardware not configured or controlled by our IT Service provider.*

**PRESENT**

David Swenson, Chair, Board of Selectman via Zoom

Cecile Chase – Board of Selectman via Zoom

Dorothy Veisel – Board of Selectman via Zoom

**ALSO PRESENT (All Via Zoom)**

John Scruton, Interim Town Administrator

Nicole Zoltko, Town Administrator

Mike Gelinis, Resident / Powder Mill Snowmobile Club

David Bennett, New Durham Highway Department

Don Vachon, New Durham Road Agent

Stephen Whiteley, Esq., Town Counsel

Attorney Lanzetta, Esq., Applicant's Representative

Peter Rhoades, Applicant

Terry Jarvis, Resident

David Bickford, Resident

**CALL TO ORDER**

Chair Swenson called the meeting to order at 6:00 p.m.

Chair Swenson stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, 2020-04, the Town is authorized to meet electronically. He stated there is no physical location to observe this meeting. However, in accordance with the Order it was confirmed that they are providing public access to the meeting by telephone with additional access possibilities by video (Zoom); all members of the Board of Selectmen and Town Administrator have the ability to communicate contemporaneously during this meeting; the public has access to contemporaneously listen and participate via links posted on the agenda. Chair Swenson confirmed the meeting was posted appropriately with access numbers. He stated in the event the public is unable to access the meeting it would be adjourned and rescheduled. Chair Swenson stated in the event they need to go into non-public session a separate phone number will be used for the Board of Selectmen members to use and they will then enter nonpublic session. Chair Swenson stated all motions would be taken by roll call vote; roll call attendance was taken for those participating in the Zoom meeting.

## **AGENDA REVIEW**

Chair Swenson added under Old Business: Update on TA Transition; Revisit Current Situation Opening Town Hall.

Selectman Veisel stated she has a request from the Parks and Recreation Commission for the Board to address parking at the Town Beach and this was added to the Agenda.

## **APPOINTMENTS / ANNOUNCEMENTS**

Mike Gelinas, Resident / Powder Mill Snowmobile Club, shared plans for installing gates at the trails where certain Town properties are located. Mr. Scruton explained the gates would be installed on Town property on Stockbridge Corner Road, Ham Road, Brackett Road, Chelsey Road, Middleton Road, Marsh Hill Road, and the Devils Den area for a total of 12 gates.

Selectman Chase asked the purpose of the gates. Mr. Scruton replied the gates would keep unauthorized vehicles off the trails. Mr. Gelinas explained every year they have to go out and place rocks to block the trails from vehicles; if they don't place the gates on the Town properties he would have to go to numerous land owners. The gates will prevent ATVs from accessing the snowmobile trails. Mr. Gelinas stated that was a condition with the permissions granted from many of the private land owners.

**Selectman Chase made a motion to allow the Powder Mill Snowmobile Club to place 12 gates on Town of New Durham right-of-way properties to prevent unauthorized access to the trail system and authorize the Town Administrator to sign on behalf of the Board of Selectmen. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.**

## **PUBLIC INPUT**

None.

## **Town Administrator's Report**

Mr. Scruton distributed the Consent Signature Manifest for review by the Board:

1. Accounts payable check register 4/28/21 for \$19,439.30
2. Accounts payable manifest for 4/28/21 for \$19,439.30
3. Payroll register for 5/3/21 for \$36,420.31
4. Payroll direct deposit for 5/3/21 for \$33,445.46
5. Payroll checks for 5/3/21 for \$2974.85
6. Payroll register for 5/17/21 for \$35,540.99
7. Payroll direct deposit for 5/17/21 for \$32,696.11
8. Payroll checks for 5/17/21 for \$2844.88
9. Culvert Permit- Bethel Builders, Meader's Point Road, conditional on bond/certificate of insurance.
10. Intent to Cut, Map 256, Lot 10
11. Intent to Cut, Map 270, Lot 17
12. Tax Levy, Map 268, Lot 7, \$1141.21
13. Purchase Order – Rescue Defender, \$25,592 from HK Power Sports

### **Additional Grader Repairs**

Mr. Scruton stated there were additional repairs needed on the grader for a total of \$12,000. More parts were replaced due to excessive wear than initially thought.

### **DTC Lawyers Joint Representation and Revised Intermunicipal Agreement**

Mr. Scruton stated the Board previously approved the waiver for conflict of interest between DTC Lawyers and Intermunicipal Trust and revised agreements were presented for review. He stated it is a different lawyer representing someone in Town before a land use board than is representing the Town with the cable TV agreement.

**Selectman Chase made a motion to authorize the Town Administrator to sign the Joint Representation Agreement with DTC Lawyers and conflict waiver documents. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.**

### **Boodey Farmstead Fundraising Training**

Chair Swenson stated the Select Board and Budget Committee had asked for expanded collaboration between the Meetinghouse Committee and Boodey Farmstead and strongly encouraged the Meetinghouse Committee to initiate non-taxpayer funding. Interim TA Scruton stated the response from the Boodey Farmstead Committee Chair was they have been in contact with a consulting firm to seek information on fund raising training. The committee is working on developing a campaign plan per advice from the consultant.

Selectman Chase stated the 1772 Meeting house Committee has arranged for a recycled clothing bin to be placed at the Solid Waste Facility and is happy to see that plan brought to fruition. Chair Swenson confirmed the use of Town property was previously approved by the Select Board for that use.

### **Cleargov (Budget Transparency Software)**

Interim TA Scruton stated an invoice was received from ClearGov in the amount of \$3,500 for next year's payment. He stated it is software posted on the Town website; he explained the data he gathered through research indicated the page is underutilized and suggested not renewing. Mr. Scruton suggested if they want the information still available to residents it could be easily prepared to present in a spreadsheet format. The Board concurred with discontinuing ClearGov.

**Chair Swenson made a motion to discontinue the use of the ClearGov internet software for reasons that it is not being well utilized by Town residents. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.**

### **Raffle Signatures / Approvals**

Ms. Zoltko stated a Raffle Request was received from the New Durham Firemen's Association which needs Board approval. The Board reviewed the application.

**Chair Swenson made a motion to approve the Raffle Request from the New Durham Firemen's Association to be held at the New Durham Fire Department on June 22, 2021. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman**

**Veisel – aye; Chair Swenson – aye. Motion passed 3 -0-0.**

**Other**

Interim TA Scruton stated they would be interviewing candidates for the Administrative Assistant position this week; advertising for a Light Equipment Operator is ongoing and will be reposting that for additional positions.

**NEW BUSINESS**

**Department of Public Works – Priorities for FY21 Work**

Chair Swenson stated there have been discussions with the Highway Department for the upcoming year and indicated a need to review priorities. He stated there are many projects for FY21 including Birch Hill Road, water quality projects, chip sealing, etc., and while some items are contracted out, there is still a lot for the Highway Department.

David Bennett, Highway Department, stated they are down three fulltime employees at the moment and presented a list of their recommended prioritized projects. Mr. Bennett stated many of the things on the list will be difficult to complete with the current limited number of crew.

Chair Swenson stated he would suggest to try and do the grant-funded projects to avoid losing those funds. There was discussion about which projects could possibly be postponed and which must be addressed. Selectman Veisel suggested looking into having more work contracted out. Road Agent Vachon agreed with looking into that; he stated some items could be postponed but many are top priority that need to get done. Road Agent Vachon will obtain quotes on some of the projects outlined, specifically catch basins and culverts. Chair Swenson asked for the quotes to be obtained in time for review at the next Board meeting, if possible. The Board by unanimous consensus indicated that the Birch Hill project must remain a top priority.

**Update on Town Hall Re-Opening**

Chair Swenson stated a member of the public asked at the last meeting when Town Hall would be reopened to the public. It was indicated at that time the Board would revisit the circumstances in June and Chair Swenson asked the Board if they are still in agreement with that timetable. Selectman Chase stated that while CDC guidelines have been updated since that time there has been no update received from the State of New Hampshire. Mr. Scruton confirmed no guidance has been received at this time from the State. The Board agreed by unanimous consensus to hold off on reopening Town Hall until more information is received and reviewed by the Board.

**Parks and Recreation Commission Request**

Selectman Veisel stated the commission would like guidance from the Board in regards to parking at the Town Beach parking area. She stated the beach will be opening soon with a swim instructor and beach attendants; the question came up at the last meeting as boat trailers are allowed at times to park seasonally in the area of the beach and she wants to clarify signs will be placed for excluding trailers and out of town parking. Selectman Chase stated in the past there was a permanent sign that indicates the dates for restricted parking. Mr. Scruton will confirm those signs are still in place.

**PUBLIC HEARING**

**Petition for a Portion of Bennett Road from Class VI to Class V**

***(continued from 3/22/21 and 04/12/21 with 5/10/21 meeting cancelled)***

*In accordance with RSA 231:8 Applicant Seeking To Convert Portion Of Bennett Rd From Class VI To Class V.*

Chair Swenson reopened the public hearing at 7:00 p.m. He stated the continuance was to be to May 10, 2021 but due to an error in the public posting Town Counsel advised to reschedule to May 17, 2021 at 7 p.m. The continuance was made by mutual agreement between the Applicant and the Board of Selectmen.

Chair Swenson indicated the primary objective for this continuance was to obtain input from the Road Agent along with any other information determined germane from the Applicant. Road Agent Vachon stated they reviewed the information regarding the costs of maintaining the additional portion of road and their summary was presented for review by the Board. He stated they used State of NH guidelines for wage rates as well as for costs of materials. The maintenance includes plowing, salt / sanding, grading, ditching, and gravel. The average cost per year for winter and summer maintenance of this road is calculated at \$6,394 annually (See separate Kinmond / DPW Memo dated April 26, 2021).

Josh Lanzetta, Esq., representative for applicant, stated they have reviewed the calculations.

Attorney Lanzetta stated he found the comments from the Fire Chief confusing but is happy to see the calculated estimates by the Road Agent to be lower than suggested by the prior Town Administrator. Mr. Lanzetta stated it seems that Jenkins Road may not be in great condition either and should be upgraded.

Terry Jarvis, resident, stated she is confused whether this proposal is to upgrade the road from a Class VI to Class V and it remaining a private road or whether it would be a Town road. She stated she understood current property owners own to the center line of a Class VI road. She stated she feels the Bennett Road should be upgraded in accordance with all Town and State regulations along with certification it meets all applicable standards. All costs for a Town engineer should be borne by the applicant; an emergency vehicle turn around should be constructed in accordance with the Police and Fire Chiefs requirements. Ms. Jarvis that this seems to be a precursor to a development and suggested the Town should not be responsible for the maintenance of it should it become a Town road for at least 25 years. She suggested there be an agreement for maintenance between all property owners and a waiver of liability is needed between the applicant and the Town. Ms. Jarvis stated if any property owners have to give up property to complete this upgrade an independent valuation should be done and if any stone walls are moved they should be done by qualified professionals. She stated if this is approved by the Board they should ensure there is no subdivision for at least 10 years.

Chair Swenson asked Town Counsel if it is correct that property owners along a Class VI road own the property to the center line of the road. Mr. Whitley stated it is possible and is generally the case in New Hampshire but it is something reflected in titles. He stated there was question whether this portion of the road had, at some point, been discontinued, subject to gates and bars, , effectively terminating a public way and, in that case, the Town would no longer have any responsibility for maintenance.

David Bickford, resident, stated he does not see why they would want to add additional Town maintained road which at this point has a single house. He stated he has not seen anything for a

subdivision and would want to know why they would take on more roads at this time. Chair Swenson reiterated that the Select Board will not consider future development in this process. Mr. Bickford then indicated historically a request to change a Class VI road to another classification has gone through Town Meeting.

Mr. Whitley stated one way to have a new public road created in Town is through Town Meeting although there are other ways which include the way this applicant has been done.

Chair Swenson again stated they will not entertain any discussion in regards the suggestion this is for a subdivision, per State RSA.

Selectman Chase asked Mr. Whitley if some of the suggestions made by Ms. Jarvis could be utilized.

Mr. Whitley stated if it is a Class VI road the Town has no obligation to maintain it. The Town only has maintenance obligations for Class V road or better.

Attorney Lanzetta stated Mr. Rhoades is the most affected property owner and owns the greatest amount of property here. He stated the applicant is volunteering to undertake a public infrastructure project to upgrade the road to safer standards for a road that is being used. He stated they are not requested a betterment assessment but have put together a plan that addresses a number of factors.

Hearing no further public input for the Public Hearing Chair Swenson closed the Public Hearing at 7:33 p.m.

Chair Swenson stated the Board has had the opportunity to get public and legal input and opinions and asked the Board if they are ready to make a decision. Selectman Chase stated they have received a lot of input over the last few months and it comes down to the costs of maintaining the road for the Town. She stated there are large pieces of raw land with a single home on the road and asked what the benefit would be for taking on the additional costs. Selectman Veisel stated the residents in the single house gave input and are not in favor of the road upgrades.

Chair Swenson asked the Board if they were ready to make a decision and the Board indicated they were ready to do so. Chair Swenson then indicated he had formulated his thoughts and stated the following:

The Applicant (Peter Rhoades) and his representative (Attorney Lanzetta) have come before the New Durham Select Board with an application to convert Bennett Road, currently a Class VI road, to a Class V road. This Select Board has carefully reviewed the application and has held a Public Hearing on March 22, 2021 which was continued at the request of the Applicant on April 12, 2021 with a further continuance with mutual agreement between the Town and the Applicant to May 17, 2021. The purposes for the Public Hearing including the continuance dates were to enable the important process as required by law to allow abutters and interested parties to provide relevant input to this application.

It is important to note that the New Durham Select Board's review of the applicant's layout petition is limited to what is presently existing and the Board cannot and does not consider the impact of future developments that may occur if this layout is granted. Because of that required / defined scope, any comments from both the Applicant and the interested Public along with any rationale for the Board's decision on this application is limited to what is before this particular

Board and must avoid any potential impacts from possible future development.

RSA 231:8 authorizes the BOS to layout any public highway “for which there shall be *occasion*.” Occasion is not defined in the state statutes but has been interpreted in several NH Supreme Court cases. Reviewing for “Occasion” breaks down into three factors that must be balanced against each other:

Factor 1: The public convenience and the public necessity for the proposed highway;

Factor 2: Balance the public interest in the layout vs. the burden imposed on the Town. The financial burden to be imposed upon the Town’s taxpayers for construction and maintenance; and

Factor 3: Balance the public interest in the layout vs. rights of the affected land owners if land must be taken or obtained for the public right of way (ROW). The rights of owners, if any, whose land would have to be taken to locate the public ROW for the road vs. the public interest in the layout.

#### **New Durham Select Board Position:**

We will deal with Factor 1 and Factor 3 initially and provide additional detail regarding Factor 2:

**Factor 1:** Based on the information presented by the Applicant along with that offered during the Public Hearing by those providing public input during that process, the Select Board understands there is no ROW at issue in this application. **However, it appears when considering Factor 1 there is no greater public convenience or public necessity for the proposed change in road classification from that which is now in existence.**

**Factor 3:** Attorney Lanzetta (Applicant’s Representative) stated no other land owners are being affected in the sense that their property is being “taken” by this proposal.

Mr. Lanzetta indicated in his opinion the primary thing to look at is safety and not just safety to an abutter but to the entire Town.

**Therefore, because there are no ROW’s or related factors in this application, the Board agrees that Factor 3 is not applicable in the Select Board’s decision.**

**Factor 2:** The Applicant’s position is that the requested classification change improves public safety and that is the primary factor the Town should consider in this Application. The Applicant and / or his representative Lanzetta further stated there is no betterment assessment, no additional tax, the proposed change is not affecting any other land owner, and the affected road is over private property and not Town owned property or other owner’s property. Additionally, Attorney Lanzetta noted there is not a tax, levy, or assessment being made with this proposal.

The Applicant has noted the proposed road layout will be paid by the Applicant for the entire cost of the project.

From the Town's public safety viewpoint, Fire Chief Varney during the April 12, 2021 Public Hearing stated the proposed layout is one of the options presented to them and confirmed he is satisfied with the turn-around area plans. However, the other parts of the road may not hold the fire vehicles. He stated that unless other roads are properly upgraded there is no real additional public safety protection with this proposed classification change.

It was noted the proposed changes from the Applicant does not integrate with existing road systems and, therefore, does not improve public safety, there is no convenience to improved travel as it would be a dead-end road, there is no bus used as the school bus stops at Ridge Road, there is no business and so no improvement there, either.

Finally, it is important to reiterate the Board's review of the layout petition is limited to what is presently existing and the Board cannot and will not consider the impact of developments that may occur in the future.

**Chair Swenson made a motion as follows: Because a) there is no public safety improvements as noted by the Town's public safety personnel as described herein, b) the incremental annual increase in cost to the Town as calculated from Road Agent Vachon and other inputs is in excess of \$6,300 without any Town revenue recovery, and c) the extremely small percentage of the Town's population being affected by this proposed classification change, the Applicant has not proven satisfactorily to the New Durham Select Board there is "occasion". Therefore, the New Durham Select Board believes the benefit of the proposed changes as presented by the Applicant does not outweigh the Town's burden.**

**Because there is no "occasion" and the proposed changes from the Applicant do not outweigh the Town of New Durham's burden the New Durham Select Board denies the Applicant's Petition For A Portion Of Bennett Road From Class VI to Class V.**

**Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.**

Hearing no other public business to cover at this time Chair Swenson continued with the meeting's agenda.

**Chair Swenson made a motion to enter nonpublic session pursuant to RSA 91:A-3 II (a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted; (b) The hiring of any person as a public employee; (c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant; (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against the public body or any subdivision thereof, or by or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law,**



with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.

The Board entered nonpublic session at 7:53 p.m.

The Board reentered public session at 9:33 p.m.

Chair Swenson made a motion to seal the minutes of the nonpublic session of the May 17, 2021 meeting for reasons that it may adversely affect the reputation of one other than the Board. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.

Chair Swenson made a motion to advertise for another position of Administrative Assistant at a similar rate of what is currently advertised for the open position. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.

Chair Swenson made a motion to accept the resignation of the Interim Town Administrator John Scruton effective May 28, 2021 and thanked him for his work with New Durham. Mr. Scruton will continue in a consulting role up to two hours per week until June 28, 2021 and will be available to the Town Administrator as needed during that period of time. Selectman Chase seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3 -0-0.

#### ADJOURN

Chair Swenson made a motion to adjourn. Selectman Veisel seconded the motion. Roll Call Vote: Selectman Chase – aye; Selectman Veisel – aye; Chair Swenson – aye. Motion passed 3-0-0.

The meeting was adjourned at 9:36 p.m.

Respectfully Submitted,

*Jennifer L. Riel*

Jennifer Riel, Recording Secretary