

AGENDA
BOARD OF SELECTMEN
July 7, 2021 AT 6:30 PM
Pembroke Town Hall, Paulsen Room

- I. CALL TO ORDER
- II. CITIZEN COMMENT
- III. SCHEDULED MEETINGS:
 - a. Amanda Marusarz – Large Gathering Permit
- IV. OLD BUSINESS:
 - a.
- V. NEW BUSINESS:
 - a. Potential Selectmen Appointees
 - b. Housing Appeals Board Decision
 - c. Manifest/Abatements
 - d. Minutes 6/16/21
- VI. TOWN ADMINISTRATOR REPORT
- VII. COMMITTEE REPORTS
- VIII. OTHER/CITIZEN COMMENT
- IX. Non Public Session in accordance with RSA 91-A:3 II (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim of litigation has been fully adjudicated or otherwise settled.
- IX. ADJOURN



TOWN OF PEMBROKE

Large Gathering License Application

For office use only

Date Filed 6-30-2021

Fee Paid: N/A - nonprofit donating to local nonprofit

Issued/Denied by Board of Selectmen: _____

This application must be filed with the Town Administrator not less than sixty (60) days before the date of the event. A non-refundable application fee in the amount of \$100.00 made payable to "Town of Pembroke" is required with the completed application.

Name of Applicant or authorized agent:

Devoted Essentials NH Community Center

Address of Applicant: 53 Front St.

Pembroke, NH 03275

Home Telephone 603-921-3287 Work Telephone N/A

Cell phone: N/A Email: DevotedEssentialsNH@gmail.com

Is applicant a not-for-profit organization? Yes or No
(If yes, attach a copy of State of New Hampshire and IRS tax-exempt certificates.)

Name of Event: DENHCC Tri-Annual Art Show

Location where event will be held: Memorial Field

Is this property owned by the applicant? NO (if no, attach a copy of the contract with or letter of authorization from the owner allowing use of the property for the event.)

Name of Promoter (if different from above): N/A → Amanda Marusarz

Telephone #: N/A Address: N/A see above

Date(s) of Event: 07/24/21 Time (start and finish times): 3p to 8p

Expected Attendance: 100 people

RECEIVED

JUL - 1 2021

TOWN OF
PEMBROKE, NH

Description of Event (Attach a site plan and additional information if necessary)

This is a fundraising event for our non-profit. (See attached).

We will have 3 bands taking stage from 3p-8p. We have sold 57 tickets.

We have 7 artists (painters and crafters) set up beneath the pavilion.

Will food be sold and/or served at this event? Yes

Will alcoholic beverages be sold and/or served at this event? No

Description of Property:

A: Seating Capacity: permanent temporary X other

B: Standing Room: ? Square Feet Unknown

C: Number of toilets available permanent X portable

D: Number of parking spaces available: X on site off site

E: Are all parking areas lighted? (Applicable only if event runs into evening hours.)
 Yes X No If no, which lots are not lighted?

F: Source of potable water: Self provided

G: Refuse containers available (Number and Size): There are 4 trashcans within 20 ft.

H: Name of refuse disposal company (attach a copy of agreement to pick up refuse or describe plan for proper disposal of waste.) N/A

I: When will refuse be picked up? Devoted Essentials team will remove all waste by 9pm.

Public Safety:

J: Describe first aid/medical personnel and provisions: Our board member, LPN Jordan Patten will be attending for safety measure.

K: Describe fire/emergency equipment and availability: Extinguisher

L: Describe communication system: Unknown

M: Number of certified police officers: Unknown

N: Other security personnel (provide company name and qualifications): Unknown/N/A

Traffic Plan:

O: Description of routes persons attending the event are likely to take, include number of traffic controllers and deployment descriptions Parking will be done in basketball lot + in grass by shed.

P: Describe methods used to publicize alternate routes of reaching the scene of the event.

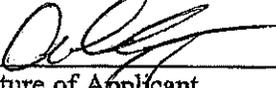
Q: Provide statement of availability of private towing firms to remove disabled vehicles Unknown

Other:

R. Name of liability insurance carrier (Attach proof of insurance) Evanston

S. Type of performance guarantee (i.e., escrow, bond, letter of credit): Unknown

I have received a copy of the Mass Gathering Ordinance of the Town of Pembroke and hereby submit this application, which is true and complete to the best of my knowledge and ability.



Signature of Applicant

Reviewed by: (Name and Date)

- _____ (Health Officer)
- _____ (Fire Chief)
- _____ (Police Chief)
- _____ (Public Works Director)
- _____ (Code Enforcement Officer)

Approved by: (Name & Date)

- _____ (Selectperson)



Town of Pembroke
Memorial Field
Facility Use Request

* Please JCE
back *

Date of submission: 6-30-21 Activity: Art Show
Sponsoring Organization/Resident: Devoted Essentials NH Community Center
Approximate number or people participating: 100
Date(s) Requested: 7-24-21
Event Times (start/finish): 3pm to 8pm

Request the use of the following: (Please check all that apply)

- Major Field
- Middle Field (Soccer)
- Point Field
- Softball Field
- Pavilion
- Other: Stage
- Volleyball
- Basketball Court
- Concession Stand
- Gazebo
- Bathroom

Person Responsible for Supervising and Paying Applicable Fees:

Name: Amanda Marusarz Tel. # 603-921-3287
Address: 53 Front St. Pembroke, NH 03275

I agree on behalf of the organization herein named that all members and guests will observe the regulations, and that we, individually, and as an organization, will assume full financial responsibility for any and all damages done to Memorial Field property during the aforementioned period of use. We also agree that our organization will at all times hereafter indemnify the town of Pembroke against any loss, because of the use of the facilities by our organization, and we will further hold said Town harmless for loss or injury of any kind in connection therewith.

I have received and understand the policy and regulations regarding the use of Memorial Field. [Signature]
(Initials)

Signed: [Signature], owner/operator Date: 6/30/21

Approved: Yes No _____ Date: _____
(Recreation Commission Representative)

Rental/User Fees? Yes No Received payment \$ _____ on _____

Completed Facility Use Request must attach a copy of insurance coverage and other permits/licenses as required by policy.

The Pembroke Recreation Commission is an equal opportunity committee appointed by the Town of Pembroke Board of Selectmen and will not exclude or discriminate, with regard to its services, programs, and activities regardless of race, color, religion, sex, national origin, age, or disability. Users of the Memorial Field facility are also required to provide equal access.

The organization should retain a copy of the approved facility request form and have on site/on hand during use of Memorial Field.

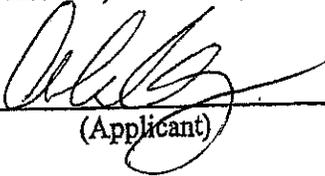
**Memorial Field
Facility Use Agreement
And Release/Indemnification**

A. In consideration for being permitted to use the facilities of the town of Pembroke, the applicant names below agrees to indemnify and hold harmless the town of Pembroke, its officers, employees, insurers, and New Hampshire Local Government Center Insurance Programs, from and against all liability, claims, and demands, which are incurred, made or brought by any person or entity, on account of damage, loss, or injury, including without limitation claims arising from property loss or damage, bodily injury, personal injury, sickness, disease, death, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the use of the facilities, whether any such liability, claims, and demands result from the act omission, negligence, or other fault on the part of the Town of Pembroke, its officers, or its employees, or from any other cause whatsoever.

B. By signing below, Applicant agrees that, in the event of any damage, loss, or injury to the facilities or to any property or equipment therein, the Town of Pembroke may deduct from the damage deposit the full amount of such damage, loss, or injury. Applicant further agrees that, if such damage, loss, or injury exceeds the amount of the damage deposit, Applicant will within thirty (30) days of filing reimburse the Town of Pembroke for all costs associated therewith upon billing by the town of Pembroke.

C. In addition, in consideration for being permitted to use the facilities, Applicant, on behalf of itself, and its officers, employees, members, and invitees, hereby expressly exempts and releases the Town of Pembroke, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, personal injury, sickness, disease, or death, that Applicant may incur as a result of such use, whether any such liability, claims, and demands result from the act, omission, negligence, or other fault on the part of the Town of Pembroke, its officers, or its employees, or from any other cause whatsoever.

Signed: _____


(Applicant)

Date: _____

6/30/21

All Visual + Performing Artists Signed this

Devoted Essentials NH

53 Front St
Pembroke, NH 03275
603-267-0399

DENHCC Art Show- Visual Artists

~~June 5, 2021 4:30P-5:30P~~

July 24, 2021 3pm-8pm

Overview

The DENHCC Tri-Annual Art Show will be held each February, June, and October of every year. Signing this form does NOT mean you will be in every show, nor does it mean you have to be! Our first show will contain three (3) musical acts and seven (7) visual artists. Our FIRST show will be held outdoors at Memorial Field in Suncook, NH from 3:00PM to 8:00PM. Artist's are expected to arrive by 2:00PM and are NOT required to maintain/ keep their booth open for the entirety of the show.

Goals

1. **Fundraising** • Although our mission and primary goal(s) at DENHCC are all about community, art, self-discovery, and wellness; this show is primarily intended to raise funds that can be used towards opening and maintaining a safe space and shelter for people in need to flourish. We will be donating a portion of our proceeds to the Concord Coalition to End Homelessness.
2. Without this safe space much of what we are trying to do will not be possible. ALL ticket sales act as donation. ALL artists will be required to supply DENHCC with a silent auction item on the day of the show. This item does not have to be related to your art. ALL sales from your art are YOURS to do with as you please! We recommend adding "cheap" prints and stickers to your table if this is your first show.

3. **Safety & Teamwork** • DENHCC will provide tables for your art. A map of table/ booth location will be sent out two weeks prior to the show. Nobody is expected to do anything other than be themselves—however poor execution of safe space and no effort of assisting our fellow artists will not go unnoticed.

By signing below, I agree that I have read and understand the terms of my participation.

Name: _____

Stage Name: _____

Type of Art/ Medium: _____

Do you require a stand for hanging? (For paintings, frames, etc): _____

Signature: _____

Date: _____

✓
David Jodoin

From: ROBERT E BOURQUE <rebets@comcast.net>
Sent: Sunday, June 27, 2021 1:00 PM
To: David Jodoin
Subject: Open Selectmen's Slot

David,

I saw your announcement on Mike Crockwell's resignation from the Selectmen's Board and that the Selectmen's Board is seeking a replacement until elections in March of 2022. I am asking for consideration to fill this slot. Please advise if you have other requirements for me to submit.

Thanks for your Time
Bob Bourque

David Jodoin

From: Marc Dumont <madmokely@yahoo.com>
Sent: Monday, June 28, 2021 7:02 PM
To: djodoin@pembroke-nh.com
Subject: Selectman opening

Hi Dave,
I am interested in the open selectman position and would like to be considered for it.
Sincerely,
Marc Dumont
36 Donna Drive
Pembroke NH

Sent from my iPhone

David Jodoin

From: cmartel929 <cmartel929@yahoo.com>
Sent: Tuesday, June 29, 2021 11:58 AM
To: djodoin@pembroke-nh.com
Subject: SELECTMAN Opening

David, I would like to toss my name in the hat for the position of Selectman. I have prior experience which might prove useful. Now that I no longer winter in Florida, I will be here full time.

Sent from Samsung Galaxy smartphone.

David Jodoin

From: Joseph DeVuono 2 <jedevuono2@gmail.com>
Sent: Tuesday, June 29, 2021 3:54 PM
To: djodoin@pembroke-nh.com
Subject: Board of Selectman

Goodafternoon David,

My name is Joseph E DeVuonoII. I live at 101 Smith Ave. I am interested in volunteering for this position. I do not have any town experience. I believe I do have experience that may apply.

Freemason(10yrs)-Pembroke Jewell Lodge

US Army 1995-2001 Sgt

Loss Prevention District Mgr Walmart 3 yrs

Store Manager for Walmart and Hobby Lobby 74 million a year in sales. 250 associates. Completed yearly budgets and maintained payroll.

Compliance Manager Ocean State Job Lot 1yr

Store Planning Mgr /Project Mgr. Ocean State Job Lot 2yrs and current. - source all fixtures,build and open stores through New England.

If you are interested or think I may be a good fit please let me know. 6037853292 or by email.

Thank you for your time

Joseph E DeVuono

David Jodoin

From: Dan Driscoll <dand2920@comcast.net>
Sent: Tuesday, June 29, 2021 4:54 PM
To: djodoin@pembroke-nh.com
Subject: Selectmen's Position

Hi David,

I am writing to express interest in filling the open Selectmen's position through the election in March 2022. As a former Pembroke School Board member, I have a good understanding of the level of commitment required to successfully serve in this position and am committed to putting in the time and effort to be an effective member of the board. The following is a brief list of my related experiences and accomplishments.

- Pembroke School Board member for nine years (3 as board chair)
- Assisted in the development and implementation of shared board priorities and goals for the Pembroke School District
- Balanced the needs of the district and the taxpayers to develop fair and balanced budgets
- Served two years on the Pembroke Municipal Budget Committee
- Member of Pembroke Sewer Commission for 4+ years
- Successfully negotiated three contracts with the Teachers Labor Union (2 as primary negotiator and 1 as assistant)
- Currently employed as the Wastewater Division Superintendent with the City of Concord developing and managing a \$4,000,000 operating and \$2,000,000 capital improvement budgets.
- Good working knowledge of construction means, methods, and budgeting
- Over 15 years of experience working in the municipal environment

If you should have any questions or would like to discuss my experience further please feel free to contact me at dand2920@comcast.net or on my cell phone at 603-320-1301.

Sincerely,

Dan Driscoll

David Jodoin

From: Paul Hanson <paul@trymediapath.com>
Sent: Tuesday, June 29, 2021 5:23 PM
To: DJodoin@Pembroke-NH.com
Subject: Selectmen Post

David,
If needed, I will volunteer.
Paul Hanson

Sent from my iPhone

✓

**THE STATE OF NEW HAMPSHIRE
HOUSING APPEALS BOARD**
Governor Hugh J. Gallen State Office Park

Johnson Hall, Room 201
107 Pleasant Street
Concord, NH 03301
Telephone: (603) 271-1198
TDD Access: Relay NH 1-800-735-2964
Email: clerk@hab.nh.gov
Visit us at <https://hab.nh.gov>



CASE NAME: William Evans, Trustee v. Town of Pembroke
CASE No.: BSA-2021-02

ORDER

The matter before the Housing Appeals Board is the Town of Pembroke ("Town") Board of Selectmen's 19 January 2021 denial of the Applicant's (William Evans, Trustee of the William Evans Irrevocable Trust and the Mary Lou Evans Irrevocable Trust) request to reclassify or return a portion of Beacon Hill Road from Class VI status to its former Class V status to allow for the development of the Applicant's abutting, 45-acre property.

FACTS:

On 26 March 2019, the Applicant, William Evans, Trustee, along with Steve Lewis had a conceptual review¹ with the Town of Pembroke Planning Board regarding a 96-unit, multi-family affordable housing proposal to be located on 45 acres of land in the Town's Medium-Density Residential (R-1) zone² and the Wetland Protection District. (Certified Record (CR) at 3). Although the size and scope of the project was discussed, there was no specific discussion of the need to reclassify a portion of Beacon Hill Road from Class VI status to Class V status to meet the Town's road-frontage requirements for development on the parcel.

Several months later on 02 October 2019, the Applicant met with the Town of Pembroke Technical Review Committee ("TRC") to further discuss the multi-family affordable housing proposal to be located on Beacon Hill Road. (CR at 17). At the TRC meeting, the issue of improving 250 feet of Beacon Hill Road was briefly discussed. The Applicant indicated he would be meeting with the Selectmen regarding improvements to a portion of Beacon Hill

¹ Conceptual discussions are allowed under RSA 676:4, II (a).

² Multi-family dwellings are allowed in this zoning district.

Road using the 4th Range Road as the access point. Comments from the Pembroke Department of Public Works and Ambulance services proposed the opening of the “lower section” of Beacon Hill Road to connect with Pembroke Street since emergency response time would be reduced from that point rather than the 4th Range Road. All participants agreed that the road reclassification would need to “go before the Selectmen.” (CR at 19).³

Prior to filing a formal request with the Town of Pembroke Board of Selectmen to layout/reclassify a portion of Beacon Hill Road, on 21 October 2019 the Applicant met with the Town of Pembroke Board of Selectmen to discuss the possibility of reopening approximately 250 feet of Beacon Hill Class VI Road. (CR at 26). Although Beacon Hill Road was discussed, a significant part of the comments were directed to the proposed project. (CR at 26-27). However, there was brief discussion about the portion of Beacon Hill Road to reclassify, specifically Upper Beacon versus Lower Beacon; also discussed was the fact that government funding for the project might require opening the entire Class VI portion, about 1,100 feet as calculated from the later plans submitted to the Housing Appeals Board. Likely, because of Board of Selectmen comments made on 05 November 2019, the Town of Pembroke Roads Committee again reviewed the Beacon Hill Road layout/reclassification issue. At that meeting, the proposed project was discussed along with the prior TRC comments regarding the opening of Beacon Hill Road. (CR at 35).

On 07 November 2019, the Applicant submitted a formal request for the layout of a portion of Beacon Hill Road for project access. No specific length was specified, but the application directed the Selectmen’s attention to a conceptual plan indicating the proposed location for access to the site. (CR at 37). At the Board of Selectmen meeting on 18 November 2019, the petition to reopen was discussed under “New Business.” The Town of Pembroke Town Administrator, David Jodoin, echoed thoughts advanced by the Town of Pembroke TRC; “...they would like to see the entire [Class VI portion] of the road opened.” Mr. Jodoin then

³ The day before the TRC meeting, the Town of Pembroke Roads Committee met and recommended “...that traffic access should include Lower Beacon hill Road to Pembroke Street and necessary upgrades be made.” (CR at 23).

indicated the property was marked for the Selectmen to see if they visited the site. No further action was taken at that meeting by the Board of Selectmen. (CR at 46).

On 02 December 2019, the Board of Selectmen again discussed the Applicant's reopening request. At that meeting, the Applicant shared with the Board of Selectmen that when he purchased the parcel in 1985, Beacon Hill Road was a Class V town road and that a portion of the road, including his road frontage, was reclassified to Class VI in 1990. No one clearly recalled the rationale for this town action. The Selectmen also discussed entering the parcel from a different road, specifically the "3rd Range Road," but all agreed that a portion of Beacon Hill Road would still need to be opened, and the alternate access point could impact the proposed conservation area. In addition, there was discussion by Selectman Bean about creating a "double driveway" 140 feet from existing pavement in order to reduce the length of the reclassification request. The Applicant agreed to "look at that." No vote was taken. (CR at 52).

At the 16 December 2019 Board of Selectmen meeting, and after further discussion about the proposed length to be reclassified, a motion was made by Selectman Bean to deny the Applicant's petition. After the motion was seconded there was discussion about opening the "whole road." Selectman Bond questioned whether the Applicant would be willing to open the "whole road." Mr. Jodoin responded by saying he thought that was the case but was not certain. Interestingly, at that point, Selectman Bean withdrew his motion to deny the petition and the matter was tabled to get an answer to the question regarding the opening of the entire Class VI portion of Beacon Hill Road. (CR at 60).

At the 06 January 2020 Board of Selectmen meeting, Beacon Hill Road was again on the agenda. Further discussion ensued over the length of the proposed Beacon Hill Road reclassification. Although not categorically stated, the minutes reflect that the Applicant would dedicate any of his land needed for Beacon Hill Road reopening and would meet any federal or state requirements for the road. Although the submitted plans seem to indicate 1,100 feet of Beacon Hill Road would need to be reclassified to connect it to existing Class V roads, a length

of 600-700 feet was advanced at the meeting. The matter was again tabled without a vote. (CR at 67).

At the 23 January 2020 Board of Selectmen meeting, the Applicant stated his willingness to wait for a road-reclassification vote until after the upcoming Town elections. (CR at 7). Then, on 30 July 2020, an application for road layout/reclassification identical in substance⁴ to the prior 07 November 2019 application (CR at 37) was filed with the Town of Pembroke Board of Selectmen. (CR at 72).

Prior to the Board of Selectmen hearing on 16 November 2020, the Board of Selectmen noticed a scheduled site walk (Public Hearing) for 14 November 2020 at 10:00 AM. This notice in the Certified Record on page 73 is important because it focuses on the proposed “age restricted housing,” including the proposed development plan. The Board of Selectmen’s focus was to “...merely do a site walk and listen to the project.” Then, at the 14 November 2020 site walk, the minutes reflect the purpose “...is to hear a presentation from Mr. Evans on his proposed elderly housing project.” (CR at 74).

At the 16 November 2020 Board of Selectmen meeting, the proposal starts with a 300-foot reopening discussion. Interested citizens provided input, but most of the concerns were project related—not road related—to be heard in the future by the Town of Pembroke Planning Board. At that meeting, the Applicant’s representative again commented on road reopening length and appeared to concede that, if required, the entire Class VI portion would be upgraded by the Applicant. To wit: “The opening of the road all the way is not something Bill Evans is requesting but is something the Fire Department will likely require but that isn’t Bill Evans making the argument to open it.” No vote was taken. (CR at 79-80).

The Town of Pembroke Selectmen met on 04 January 2021. Again, the Public Hearing Notice not only included the Beacon Hill Road reclassification request but also the notice of the project, “...to construct approximately 101 units of phased age and income restricted housing on the property in conjunction with New Hampshire Housing Finance.” (CR at 108).

⁴ Only the word “recent” was omitted.

Interestingly, this notice includes 250 feet to be reclassified, not the 300 feet prior mentioned. After further citizen and Applicant discussion, the matter was again tabled with the Chair looking for a full board in attendance prior to voting.⁵ (CR at 113).

At the 19 January 2021 Board of Selectmen meeting, the Selectmen were provided a checklist for their use in determining if “occasion” existed to reopen/reclassify a portion of Beacon Hill Road. The Vice-Chair, Selectman Goulet, read a proposed statement to the other Selectmen highlighting the fact that many concerns are zoning and planning related, and should not be the focus of the Board of Selectmen. “In other words, our job is to be laser focused on only the question of whether to make this part of Beacon Hill Road Class V.”

Each of the four (4) members present at the meeting itemized the factors in an effort to support their respective positions. (CR at 117). After this review upon motion duly made and seconded to approve the Beacon Hill Road motion, the motion was denied on a 2-2 vote. (CR at 122). This appeal followed.

LEGAL STANDARDS:

As both parties are aware, the Housing Appeals Board does not sit as a substitute for the Board of Selectmen and ordinarily may not substitute its judgment in rendering a decision in the case. *Wolfeboro Neck Prop. Owners Ass’n v. Town of Wolfeboro*, 146 N.H. 449 (2001). The Board of Selectmen’s factual findings are to be treated as prima facie, lawful, and reasonable in reviewing any appeal, unless there are “...errors of law or if the [housing appeals] board is persuaded by a balance of the probabilities, on the evidence before it, that said decision is unreasonable.” RSA 679:9, II.

DISCUSSION:

In accordance with RSA 231:8: “[t]he Selectmen of a town, upon petition, may lay out any new...class V or VI highway or alter any such existing highway within their town for which there shall be occasion.” Unfortunately, “occasion” is not a defined statutory term but has been

⁵ A theme throughout the many Selectmen meetings was to wait in order to have a full board (five (5) members) for voting. That never occurred as the 19 January 2021 vote reflects.

judicially interpreted. The New Hampshire Supreme Court in *Green Crow Corp. v. New Ipswich*, 157 N.H. 344 (2008) provided standards in evaluating whether “occasion” exists in road layout requests. *Green Crow* provides guidance in evaluating “occasion,” especially since *Green Crow’s* genesis was an interlocutory appeal from the Superior Court requesting rulings on two questions:

“(1) Does RSA 231:28 require a petitioner requesting permission from the Selectmen to upgrade and reclassify an existing Class VI road to Class V standards to show occasion exists for the layout?”

The answer of the Supreme Court was “yes.”

“(2) If the Court finds that the occasion analysis applies to the upgrade and reclassification under RSA 231:28, may the Selectmen consider as part of the occasion analysis the anticipated impact associated with the development that may result from the upgrade of the Class VI road to Class V status?”

The answer of the Supreme Court was “no.”⁶

Therefore, in reviewing and considering the *Green Crow* factors itemized by the Supreme Court, the project itself is not a material criteria or condition and should play no role in evaluating “occasion.” However, the Certified Record is at odds with this directive. At every turn, starting with the Planning Board discussions in March of 2019 through the final vote on 19 January 2021, the project was front and center.

⁶ While *Green Crow’s* statutory premise was RSA 231:28, RSA 231:8 is the proper procedural statute in this case since all highway improvements were to be paid by the Applicant. Like RSA 231:8, RSA 231:28 allows the Town Selectmen to layout a Class V highway over a Class VI highway subject to betterment assessment. RSA 231:28 does not state whether “occasion” is required for a conditional highway layout. *Green Crow* applied the “occasion” requirement of RSA 231:8 to RSA 231:28 and created criteria to assist with the “occasion” analysis.

This likely is not an unusual occurrence since if one is appearing before any municipal board with a road reclassification request that board will likely ask the question: *for what purpose do you need a road layout?* It would be illogical to think the requesting party would say: *"I'm not going to tell you, since it isn't relevant, nor should it be considered when reviewing my request."* Obviously, there must be a middle ground, and that requires all Board members to focus on the facts—and the law—in making a decision. As most judges will point out: "this is not easy." Vice-Chair, Selectman Goulet, was on target when she opined: "In other words, our job is to be laser focused on only the question of whether to make this part of Beacon Hill Road Class V." (CR at 122).

Deliberations regarding the requested layout occurred at the 19 January 2021 Board of Selectmen meeting. (CR at 118-122). That meeting reveals thoughtful discussion by the four (4) Selectmen who participated in layout discussion. Each gave their opinions regarding the "occasion" criteria they had been provided.

While three (3) Selectmen generally adhered to the proper "occasion" standards, one did not. Selectmen Bean, in his review of the "public interest factors," specifically points 3, 4, and 8, clearly brought the proposed multi-family residential use into the mix. This is not consistent with *Green Crow*.⁷ While parenthetical, collateral reference to the project might not be considered fatal to Selectman Bean's analysis,⁸ there are three (3) distinct references to the proposed use which likely influenced his consideration and negative vote. In addition to the foregoing issue, the Selectmen's discussion and motion refers to opening "300 feet of Beacon Hill Road." (CR at 122). Prior to the 19 January 2021 vote, the Certified Record references in no particular order:

- 1) 140 feet; (CR at 52)
- 2) 200 feet; (CR at 46)
- 3) 250 feet; (CR at 18, 35)

⁷ Points 3, 4, and 8 were project-related: 3)...number of people who will be in the development; 4) no one in the complex will have a child; 8) up to two people in each apartment....(CR at 121).

⁸ See, *Oakley Merriam v. Town of Salem*, 112 N.H. 267 (1972). While a Zoning Board of Adjustment case, the Supreme Court felt that the subjective comments of one member is not relevant to the question of whether the Board's decision is one that could be reached by reasonable people given the evidence presented.

- 4) The entire Class VI portion of Beacon Hill Road that differed from the plan by an estimated 600-700 feet, which scaled it at 1,100 feet.⁹ (CR at 46, 67, 79, 87).

As an example, at the 16 December 2020 Board of Selectmen meeting, (CR at 60), the following exchange occurred:

“David stated that it is his understanding that if it was decided that the whole road needed to be opened, the petitioner would do that. Selectman Bond asked if he has said at any point that he would definitely be willing to open the whole road and assume all the costs associated if he was asked to. David said he it was his understanding that he would but he can’t say for certain.”

This caused Selectman Bean to withdraw his motion to deny the layout petition, which was then tabled until the next Board of Selectmen meeting.

Layout road-length likely was on the minds of some, if not all, the Selectmen.¹⁰ The final motion was to reclassify 300 feet of Beacon Hill Road, but there was apparently little additional discussion regarding layout road-length options. This is problematic since the Town of Pembroke Roads Committee recommended traffic access include Lower Beacon Hill Road to Pembroke Street. (CR at 23). Later, the Certified Record reflects that the Applicant would improve that portion of Beacon Hill Road as well. (CR at 79).

This raises the question of how much, if at all, the layout road-length and location impacted each Selectman’s layout “occasion” analysis. The Certified Record reveals the Selectboard’s collective comments indicating this may have been an issue. As an example, one factor was improved accessibility to the business district and employment centers, in

⁹ This distance was confirmed by the Applicant’s counsel during oral argument. In fact, the Applicant’s request filed with the Selectboard on 30 July 2019 and 07 November 2019, (CR at 37, 72), refers to an attached plan for length guidance. Various plans do not carefully define the requested layout length.

¹⁰ At the 02 December 2019 Board of Selectmen meeting, Selectman Bean referenced a possible reclassification length of 140 feet. (CR at 52).

addition to improved accessibility for fire and police services. Contrast one of Selectman Goulet's reasons, specifically number three (3), "[t]here is no improvement to convenience of travel," (CR at 121), with her belief that the reclassification will "improve accessibility for fire, emergency, and police." On the other hand, Selectman Yeaton and Selectman Bean felt this factor was not applicable to the project. (CR at 121). Again, while the focus appears to be on a 300-foot road opening based on the motion, the separate findings by each Selectman is problematic.

The road layout length gives pause regarding the focus of each Selectman in arriving at their individual analysis. The Housing Appeals Board chooses not to attempt "to read the minds" of each Selectman. Each approached the layout issue with diligence at the time of the final vote, but road-length and the possible weight Selectman Bean may have placed on the actual project itself is a violation of *Green Crow*. Each Selectman's clear expectation of layout road length is unknown, and deserves clarification to fairly determine the Applicant's request in light of the *Green Crow* criteria.¹¹

Selectman Bean's vote caused the failure of the motion to reclassify. While Selectman Bean had his own rationale for his no-vote, were those reasons by a balance of the probabilities influenced solely by the road layout petition requested by the Applicant, or were they influenced by the Applicant's proposed project?

The Housing Appeals Board VACATES the Board of Selectmen's decision to deny the Applicant's request, and REMANDS the case back to the Board of Selectmen who shall conduct a public hearing within 45 days of this order for further review and determination of:

- 1) The road length being considered for reclassification to ensure clear application of the "occasion" criteria; and

¹¹ In addition to road length, the scope of the project was highlighted by the public notices of the 14 November 2020 site walk meeting, (CR at 73), and the 04 January 2021 Board of Selectmen meeting. (CR at 108). This set the stage for a discussion of the project at various meetings, culminating in the 21 January 2021 vote.

- 2) A review of the "occasion" factors consistent with *Green Crow*, which factors shall not include any consideration of the proposed residential project.¹²

**HOUSING APPEALS BOARD
SO ORDERED:**


Elizabeth Menard, Clerk

Date: June 30, 2021

¹² Of course, this entire discussion still has an unanswered issue: if only 300 feet of Upper Beacon Hill Road is reclassified, what happens if the Town of Pembroke Planning Board reviews the plan and, in considering the TRC comments, wants all of Beacon Hill Road reclassified to allow a through-road? Clearly, the project would need to return to the Board of Selectmen for a revised road layout starting the RSA 231:8 process anew.

**BOARD OF SELECTMEN
TOWN OF PEMBROKE, NH
June 24, 2021 at 6:30 PM**

DRAFT,

Present: Selectman Richard Bean, Selectman Karen Yeaton, Selectman Ann Bond, Selectman Sandy Goulet

Staff: Town Administrator David Jodoin

I. Call to Order:

Chairman Ann Bond called the meeting to order at 6:31pm.

II. Citizens Comment:

None

III. Scheduled Meetings

Public Hearing Illicit Drainage Ordinance

Selectman Bond opened the public hearing at 6:31pm

Matt Monahan, Central New Hampshire Regional Planning, called in to the meeting. Matt explained the illicit discharge order is a requirement of the MS4 permit that all Towns involved in this program have to adopt. It prevents anyone from pumping into the sewer system. This ordinance is based on a template from other small towns and a lot like the one Allentown just adopted. The purpose is to protect water quality in Pembroke while providing for the health, safety, and general welfare of the citizens of the Town. MS4 stands for municipal separate storm sewer systems. They are publicly owned and operated facilities by which storm water is collected such as roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, etc. Section 5 of the order clarifies that if a person responsible for a facility, site, or operation has information on an illicit discharge, that person shall take necessary steps to ensure the discovery, containment, and cleanup of such release to minimize the effect of the discharge. If the substance poses an immediate health or safety concern, the State of NH Emergency Services shall be notified. If the substance does not, the Town of Pembroke Health Department should be notified as soon as possible. Residential property owners will have 60 days from the effective date of the ordinance to remedy any illicit discharge into the storm water sewer system. The Department of Public Works will be responsible for administration. DPW will have the authority to enter a private property to conduct investigations into alleged illicit discharges within 48 hours of becoming aware of the potential discharge. DPW will need to provide advance notice to the property owner. DPW will have the authority to issue

a written notice of violation and fines to any entity or person who violates the ordinance. A property owner will have 30 days to appeal the violation and fines to the Board of Selectmen. Fines are not to exceed \$10,000 per day.

Selectman Yeaton asked if there is any federal or state funding to administer this. Matt has heard that there might be future funding but it is unlikely.

Selectman Goulet asked for clarification about chlorine swimming pools. Matt explained that the chlorine needs to be allowed to dissipate before backwashing.

Selectman Bean asked who wrote the document. Matt explained they took a copy that other towns were already using and simplified it.

Selectman Bond asked if the Town's legal counsel has seen it. David Jodoin answered they have.

Selectman Yeaton asked what is driving the need for the ordinance and are there any spots in town that are currently being measured that a bench mark could be set to revisit in a couple years to measure the effectiveness. Matt explained the town has to have an ordinance or regulation for the MS4 stormwater permitting process. The outflows from the Town are going to be monitored in accordance with the EPA mandated program. Mike Vignale, Town Engineer, clarified that right now, there is no testing being done but screening will start this summer. Mike explained how they took the federal regulations, extracted what is needed so the Town is in compliance, and created a simplified document. The Town is required by the federal government to adopt an illicit discharge regulation to be put into place by June 30th on year three of the process. The Town is in year three.

Selectman Yeaton asked how the Town would collect the fines. As part of the ordinance the collection would be set by the Board, and ultimately could require court action.

Selectman Yeaton shared concerns that this regulation will place a higher burden on Department of Public Works and for the ability to go onto private property to manage and investigate complaints. David explained that eventually the Town will need to hire additional personnel to administer the program and the Town has no choice in the matter. Anyone who has sat through budget discussions, it has always been made very clear by the Public Works Director that this would be time consuming and expensive.

Selectman Bond closed the public hearing at 7:14pm.

Selectman Goulet made a motion to approve the illicit discharge ordinance as presented and authorize the chair of the board to sign. Selectman Bond seconded the motion. Motion passed 3-1.

Public Hearing Main Street Project

Selectman Bond opened the public hearing at 7:20pm.

Mike Vignale, Town Engineer, presented the Main Street Project. The plan is to replacing the existing pavement on Main Street from Broadway up. Existing roadway is 30 feet wide on each end and narrows to 25 feet. The goal is to make the road consistent all the way through. The drainage system is in poor condition and will need to be replaced. There have been previous public hearings on this project and there was a lot of discussion surrounding sidewalks. On the Church Street side of the road, the sidewalks will remain where they are now and on the other side, they will exist from Broadway up to Turnpike. Utility poles will be moved to the other side of the street. Eversource and Consolidated Communications who own the poles, said they are prepared to move the poles.

Maranda Twombly, 178 Main Street, asked if there be any interruption in service while poles are being moved. Mike stated that he doubts there will be but residents will be notified of when they are being moved.

Earl Phair, 179 Main Street, asked if they planning to re-do the sewer lines. Paulette Malo, Sewer Commission, answered that they do not currently plan to redo them because the sewer lines are in really good shape. Water Works may be replacing some lines.

Amy Doyle, 178 Main Street, asked if they know a timeline of construction. Mike answered it will take about 3-4 months from start to finish. They are hoping to start early spring. Amy asked if parking spaces are going to moved or remain where they are. Mike explained that it is his understanding the parking will remain the same as it is now.

Theresa Phair, 179 Main Street, stated there used to be granite under the street but overtime they have repaved over it, will they get rid of that granite to widen the road. Mike stated yes, they will. There will be a vertical 6-inch granite curb on each side.

Jennifer Boff, 175 Main Street, asked if someone is going to notify them if their retaining walls are getting touched. Selectman Goulet explained that they will not know anything until the plans are finalized but they will be notifying them.

Paulette Malo stated the Roads Committee was hoping to get input on the sidewalk on the north side of the street. The Town has to maintain sidewalks year-round and they would like to know how they feel about eliminating it.

Jason Anderson, 201 Main Street feels that on Main Street, the sidewalks should be on both sides. There are a lot of families moving to the area and the bus goes up and down each side of the street.

Earl Phair, 179 Main Street, asked if it will still be a no truck zone and if it is, could they properly sign it. VJ Ranfos, Public Works Director, explained there is a sign on either end of the street that says no through trucks.

Amy Doyle, 178 Main Street, asked for the purpose of the road reconstruction. Mike answered the road is falling a part and can no longer be repaired.

Selectman Bond closed the public hearing at 7:46pm.

Selectman Bean asked if they had considered underground utilities. The Board explained that was asked in 2018 and the cost came out to approximately \$1,000 a foot.

Selectman Yeaton asked why the Roads Committee wanted to eliminate a sidewalk. Paulette explained the man-power hours for clearing after a snowstorm were a large part of the concern. Where it is located is not very safe for the equipment to be run on. There have been some accidents with the trackless. If the sidewalk is moved to street level, that would be ok but if it remains where it currently is, there are some issues.

Public Hearing Town Code Chapter 160 Cemetery Fees

Selectman Bond opened the public hearing at 7:50pm.

Selectman Bond closed the public hearing at 7:51pm.

Selectman Goulet made a motion to accept the changes to Chapter 160 - Cemetery Fees as written. Selectman Yeaton seconded the motion. Motion passed 4-0.

Chief Gilman - OHRV

Selectman Goulet made a motion to authorize Chief Gilman to enter into a contract on behalf of the Town and to allow him to sign all necessary documents. Selectman Bond seconded the motion. Motion passed 4-0.

IV. Old Business:

Execute Eviction Notice - Tax Deeded Property

Selectman Goulet made a motion to sign the eviction letters for tax map lot 632-11-120. Selectman Bond seconded the motion. Motion passed 4-0.

V. New Business

Letter from Mr. Mrazik RE: Eversource tree removal

David discussed the issue Mr. Mrazik brought to the attention of the Board regarding the new pole locations that have been identified in order to reach the San-Ken property and what trees have to come down. The tree inside the Town Pound has to come down but the pole will go outside the pound closer to the Road. Eversource has stated they cannot upgrade the lines coming from 4th Range Road. They need to come up Pembroke Hill. VJ Ranfos stated they are not opposed to taking down the tress by the Town Pound because they are in rough shape and should come down regardless of the decision of which lines are upgraded. The costs for new poles, new transformers, and tree removal will be covered by Eversource.

Selectman Yeaton asked if they are doing anything to make sure the stone wall of the pound is not disturbed since the tree has grown through it in places. VJ is not sure if they plan to remove the whole tree or just take off the top of it. He will discuss keeping the integrity of the wall in place with Eversource.

Selectman Goulet made a motion to move forward with the pole location as suggested by Eversource on Pembroke Hill Road. Selectman Bond seconded the motion. Motion passed 4-0.

Selectman Crockwell Letter of Resignation

Selectman Goulet made a motion to accept with regrets the resignation of Selectman Mike Crockwell effective immediately. Selectman Yeaton seconded the motion. Motion passed 4-0.

Appointments

Selectman Goulet made a motion to appoint Andrew Yonchak to the Capital Improvement Committee. Selectman Bond seconded the motion. Motion passed 4-0.

Acceptance of Unlicensed Dog List from Town Clerk

Selectman Goulet made a motion to accept the unlicensed dog list as presented from the Town Clerk. Selectman Bond seconded the motion. Motion passed 4-0.

Manifests/Abatements

Selectman Goulet made a motion to accept the manifests and abatements as presented. Selectman Yeaton seconded the motion. Motion passed 4-0.

Minutes 6/2/21

Selectman Bean made a motion to accept the minutes of June 2, 2021 as presented. Selectman Bond seconded the motion. Motion passed 3-0. Selectman Goulet abstained.

VI. Town Administrator Report:

Selectman Goulet made a motion to allow the Town Administrator to sign the State PA 28 form Selectman Yeaton seconded the motion. Motion passed 4-0.

Building Committee met to look at all Town buildings. The library has the same issues with insulation and roof as previous years. The Safety Center has major roof repairs needed to prevent further leaking. The seals on the glass on the windows have also gone. There was also some noted interior work needed such as touch up paint. The Public Works building has the same issues with the windows and the leaning wall is still a major issue. They have not come up with costs for these projects. These issues may lead to a larger CIP warrant article this year to address them.

Perry Brother Monument sent a quote for \$225 for the POW/MIA color insignia on the granite bench at Town Hall. There is a 2-3 month wait. After some discussion, the Board decided to get a price on a more general statement to honor all those who served. There will be flag raising ceremonies at several sites in Town on June 26th for the POW flags. The schools will raise their flags in September.

There is a request from a member of the Planning Board to see if the Board will put a HEPA air filter on the meeting room. David will get price quotes.

The signs for the new OHRV restrictions on the Range Roads came in and the wording is unenforceable by the Police Department. Ammy Heiser will be in in July to discuss it further.

The Assent to Motion for Voluntary Nonsuit for San-Ken Homes went through. They removed their suit against the Town for not opening up the Range Roads.

The Energy Committee met with the Community Power Coalition of New Hampshire. It is a new nonprofit with the mission of helping communities organize their own energy plans. Membership to this Coalition is free. The Committee wants to discuss what a community power plan looks like for this Town and what the overall goal would be. David reached out to Eversource to discuss an energy audit and available grants.

David discussed the likelihood of another revaluation similar to 2017 due to home sales being so much higher than the current assessed values. The Town will have a better idea when the ratio is set by the State.

Selectman Yeaton asked VJ Ranfos for clarification on the long-term goals of the chip seal after there were some complaints by residents. VJ presented the Board with a pamphlet they gave to the residents prior to the work being done and they did not receive any calls. Since it has been completed, they have received some calls. When it first goes down, it resembles a gravel road. Two days after it is laid, they do

a sweeping to pick up loose stone. As the traffic drives over them, the roads will smooth out. Hemlock Hill in Loudon was done last year. If residents would like to see how the road will look, they can drive that road for reference. This process will ultimately prolong the life of the roads and save the Town money.

David cautioned the Board that when they speak with residents that they inform them that they cannot approve anything without a vote of the Board and that anyone that they talk with on an issue should contact Town Hall and request to be placed on the agenda.

VII. Committee Reports:

Selectman Yeaton – Conservation met with the gentlemen looking to sell his piece of property on the Range Road. Conservation will be running the parcel through their appraisal sheet and do a walk through. Pembroke Pines came in to discuss the 15 acres they plan to donate to conservation. They will review the acres to ensure the parcel meets their specifications.

Recreation met to discuss the summer concert series, summer recreation, and the annual Regatta.

Selectman Bean – None

Selectman Bond – None

Selectman Goulet – None

VIII. Other Citizens Comment:

None

IX. Adjourn:

Selectman Bean made a motion to adjourn at 8:58 PM. Selectman Yeaton seconded the motion and it was approved unanimously.

Ann Bond, Chairman

For more detailed information, the meetings are now taped and can be seen on www.townhallstreams.com click on Pembroke NH and look for the day of the meeting under the month.