

**AGENDA**  
**BOARD OF SELECTMEN**  
**Special Meeting**  
**December 15, 2022 AT 5:00 PM**  
**Pembroke Town Hall, Paulsen Room**

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- I. CALL TO ORDER
- II. Review proposed Building Permit Policy on Class VI Roadways and Limits of liability policy
- III. ADJOURN

**Town of Pembroke Policy**  
**Building Permits on Class VI or Private Roads**

**1. Purpose and Intent**

Under RSA 674:41, the Board of Selectmen has the discretion to authorize the issuance of building permits on Class VI or private roads within the Town, after review and comment by the Planning Board.

The Board of Selectmen has adopted these guidelines to help guide the decision-making process when presented with such an application. It is emphasized that the Board of Selectmen will consider any factor relevant to the authorization of a building permit in a particular case. Therefore, this statement of guidelines is not intended to be an exhaustive list of considerations, but to be a guide for both the Board of Selectmen and applicants for such building permits.

The New Hampshire Supreme Court has said that one of the purposes of RSA 674:41, I(c) is to prevent scattered and premature development; that the decision of whether to allow building on Class VI roadways or private roads is a major policy decision; and that unrestricted building can have a major impact on the Town's budget if the Town is forced to subsequently upgrade substandard, unmaintained roads. The Board is mindful that development along a Class VI or private road may tend to drain existing Town services and force increased costs to the Town to provide additional services. It is therefore the purpose of these guidelines to minimize development along Class VI and private roads. It is also the purpose of these guidelines to ensure that any structures built on Class VI or private roads are reasonably accessible to emergency vehicles twelve months each year. In that way, the safety and property of people occupying or using those structures will not be unreasonably placed at risk, nor will the safety of emergency response personnel, or their vehicles and equipment, be unreasonably endangered.

**2. Application**

Every application to the Board of Selectmen requesting that the Board authorize the issuance of a building permit on a Class VI or private road shall be made in writing and accompanied by a map drawn to scale showing:

- a. The location and the size of the lot and its relation to the Class VI or private road providing access, and the distance to the intersection with the Class V or better road which gives access to the Class VI or private road;
- b. The specific location of all proposed and existing structures;
- c. The location and length of the driveway giving access to the structures from the Class VI or private road;
- d. Existing features along the length of the Class VI or private road from the proposed structure to the intersection with the Class V or better road providing access;
- e. Proposed improvements to the Class VI or private road;
- f. Any other information which the Board of Selectmen may reasonably require.

### **3. Criteria to Be Considered**

The Board of Selectmen may authorize a building permit upon a Class VI or private road only when it is demonstrated by an applicant, and determined by the Board of Selectmen, that issuance of the permit will not have a negative impact upon the Town and that the Class VI or private road in question provides safe, sufficient, and adequate all-season access. The Board of Selectmen should evaluate applications, in consultation with the Planning Board, using the following criteria (as well as any other criteria they deem relevant):

- a. Conditions of the Class VI or Private Road:
  - whether the road has adequate drainage,
  - whether the grade is suitable to handle increased development and use,
  - whether the surface is suitable for increased use and/or weight, including by public safety personnel, and
  - whether public safety personnel, vehicles and/or equipment would have difficulty reaching the property, creating increased risks to those occupying or using the proposed structure(s) as well as increased risk to the responding public safety personnel, vehicles, or equipment.
- b. The nature, condition and grade of the Class VI or private road from its intersection with a Class V or better road to the driveway of the subject property.
- c. Length of travel to reach the nearest intersection with a Class V or better road (see Section 4 below).
- d. Conditions of connecting roads and intersections: whether they are adequate to handle increased traffic.
- e. Whether issuance of the building permit would tend to distort the Town's official map or Master Plan.

### **4. Distance to Class V Road**

No building permit will be authorized if the driveway access to the principal structure from the Class VI or private road begins more than two hundred (200) feet from the intersection of the Class VI or private road and the Class V or better road giving access. Applications that meet the 200 feet distance will not automatically be approved as this is but one criterion to be considered.

The Board of Selectmen may consider waiving the 200 feet distance:

- i. Where the deviation from the 200 feet distance is insignificant and the Board finds the issuance of the permit is not contrary to the spirit and intent of this policy; *or*
- ii. Where the applicant proposes to physically bring the relevant portion of the Class VI or private road up to the Town's Class V standards; and
- iii. The Board requires the applicant to properly maintain the improved portion of the Class VI or private road; and
- iv. The Board finds that the issuance of the building permit is not contrary to the spirit and intent of this policy.

## **5. Improvements to Class VI or Private Roads**

- a. Before beginning any work within the limits of the Class VI road (including the traveled way and any shoulders, drainage structures, or associated areas), the applicant must obtain written permission from the Board of Selectmen pursuant to RSA 236:9-:11, and shall be subject to the penalties provided by RSA 236:14 and any other applicable statute or ordinance for failure to secure or comply with the terms of that permit. This requirement for permission shall not apply to private roads.
- b. When a Class VI or private road is to be brought "to Class V standards," the standards to be met are those set out in the Town's Subdivision Regulations.
- c. At a minimum, the Board of Selectmen shall require the following standards in all seasons for the Class VI or private road providing access to the property, from the intersection with the Class V road providing access to the driveway of the subject property:
  - A traveled way width of at least 20 feet;
  - A height clearance of at least 13.5 feet;
  - A grade of no more than 12%; and
  - A suitable driving surface to accommodate the weight of fire apparatus or other emergency vehicles.
- d. The Board of Selectmen will require that the proper completion of the improvements be secured by providing to the Town security in a form and amount to be determined by the Board of Selectmen.
- e. The Board of Selectmen will also require that all such work, whether to Class V standards or some other standard, be completed to the satisfaction of the Department of Public Works.
- f. Any action taken by the Board of Selectmen on an application shall not be deemed a representation or certification as to the location of the Class VI traveled way within the public easement and shall have no bearing on any private rights of abutting land owners and/or claims of encroachment.

## **6. Notice to Be Recorded**

Prior to the actual issuance of any building permit authorized by the Board of Selectmen for construction on a Class VI or private road, the applicant shall provide the Town with an executed notice to be recorded at the Merrimack County Registry of Deeds. The Town will have the notice recorded at the applicant's expense prior to issuance of the building permit. The notice shall include all of the following information:

- a. The property owner's name and contact information
- b. Description of the property (address and/or map and lot number)
- c. Book and Page number of the property owner's deed as it is recorded in the Registry
- d. Name of the Class VI or private road and the fact that it is a Class VI or private road
- e. Statement that the Selectmen, after review and comment by the Planning Board, adopted a policy under RSA 674:41 that allows building on Class VI or private roads under certain circumstances

## *DRAFT*

- f. Statement referring to RSA 674:41, I(c) or I(d), as applicable, and RSA 231:93, that the Town of Pembroke has no legal duty to maintain the road (including plowing, grading, drainage, paving, etc.), nor does it assume or have any liability for damages resulting from the use of the road. Further, the statement should provide that municipal services such as police, fire, ambulance, school bus transportation, and others, may be unavailable at times.
- g. The owner agrees to these limitations of Town responsibility and liability, and the owner is responsible for any road improvements, maintenance, and/or repair work.
- h. For Class VI roads only: Prior to performing any road repair or maintenance work on a Class VI road, the owner will obtain approval of the Board of Selectmen or road agent under RSA 236:9. Describe, if any, the types of work the owner has standing written permission from the Town to perform, together with any conditions.
- i. For Class VI roads only: The road is a public highway and the owner shall not prohibit unauthorized use
- j. For Class VI roads only: Pursuant to RSA 41:11, the Board of Selectmen retains full authority to regulate the public use of the road, including the owner/applicant's use, and the installation of unlocked gates or bars.
- k. Witnessed signatures of the owner(s) and the Board of Selectmen.

### **7. Occupancy Certificate**

No Certificate of Occupancy will be issued by the Town of Pembroke until the requirements of road improvements, if any, under a permit issued pursuant to this policy have been satisfied and signed off on by the Board of Selectmen or their designee. If the building is occupied without a Certificate of Occupancy, the occupants and/or owner shall be subject to penalties according to all applicable Town ordinances and State laws.

Adopted: \_\_\_\_\_; effective immediately upon adoption.

#### **Pembroke Board of Selectmen**

\_\_\_\_\_  
Karen Yeaton

\_\_\_\_\_  
Sandy Goulet

\_\_\_\_\_  
Richard Bean

\_\_\_\_\_  
Rick Frederickson

\_\_\_\_\_  
Peter Gagy

**Notice of Limits of Liability/Responsibility  
Pursuant to RSA 674:41**

The Board of Selectmen of the Town of Pembroke, New Hampshire, hereby authorizes issuance of a building permit pursuant to New Hampshire RSA 674:41 for the erection of building on the premises described below, subject to the following conditions. This completed and signed form must be recorded at the Merrimack County Registry of Deeds before issuance of the building permit.

**Landowner name(s) and address(es):** \_\_\_\_\_

\_\_\_\_\_

**Property Description (Map/Lot Nos., physical location):** \_\_\_\_\_

**Property Deed Recording (Book, Page):** \_\_\_\_\_

**Class VI Highway name:** \_\_\_\_\_

*or*

**Private Road Description:** \_\_\_\_\_

**Describe when/how road was designated as Class VI (if known):**

\_\_\_\_\_

\_\_\_\_\_

**Proposed use(s) of building:** \_\_\_\_\_

**Class VI Highway Construction and Maintenance Standards:**

With the exception of snow removal, sanding, filling, and grading, any maintenance work the owner does undertake must have prior approval of the governing body or Department of Public Works. Prior to any such approval being granted, the owner must demonstrate that all permits required by state or federal agencies for such work have been issued. The responsibility for preparing all submissions and information required for the issuance of all such permits shall lie with the owner. All maintenance work to be completed, as well as purchase and installation of culverts and bridges and other material, will be undertaken by the owner at the owner's expense.

## Notice of Limits Pursuant to RSA 674:41

Other construction and maintenance standards:

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### **Class VI Highway or Private Road Maintenance, Use, and Provision of Other Services:**

The Town of Pembroke has no legal duty to maintain the Class VI Highway or private road specified above, nor any intent of doing so, nor does the Town assume any liability for damages resulting from the use of the highway or private road. The Town will not plow, sand, grade, maintain or repair in any fashion the Class VI Highway or private road listed above. The Town will not provide trash or recycling carts to any property located on the Class VI Highway or private road and it shall be the owner's responsibility to transport their trash and recycling to the Town transfer station or dispose of the trash in some other lawful manner.

The Permit Holder shall be responsible for maintaining access to the subject property and does hereby forever release and discharge the Town, its officers, agents, and employees from the obligation of maintaining the Class VI or private road portion of \_\_\_\_\_ and from any claim of any nature, whether in tort or otherwise, which the Permit Holder might have against the Town for any loss or damage, including those incurred through failure to provide any municipal service, including police, fire, and ambulance services, arising out of the condition of the roadway from the point wherein \_\_\_\_\_ is a Class VI Highway or private road.

The Permit Holder agrees to indemnify and hold harmless the Town, its officers, agents, and employees, from any liability, including but not limited to attorney's fees and costs, for any loss or damages which may result from any third party claim arising out of the use of the Class VI or private road portion of \_\_\_\_\_ to access the parcel known as Tax Map \_\_\_\_\_, Lot \_\_\_\_\_.

There will be no school bus transportation on the above Class VI Highway or private road and it shall be the owner's responsibility to transport school children to the nearest school bus stop.

### **Class VI Highway Use and Access:**

The Class VI Highway listed above remains a full public highway, and the owner shall not prohibit members of the public from utilizing the highway for any purpose for which public highways may be used.

The Select Board retains full authority to regulate the public use of the highway, including its use by the applicant; such regulation may include installation of unlocked gates or bars.

### **Binding Effect of These Provisions:**

All provisions of this notice and the conditions contained therein shall run with the land and shall be binding upon the heirs, successors, and assigns of the Permit Holder.

Notice of Limits Pursuant to RSA 674:41

Dated: \_\_\_\_\_

**Pembroke Board of Selectmen**

\_\_\_\_\_  
Karen Yeaton

\_\_\_\_\_  
Sandy Goulet

\_\_\_\_\_  
Richard Bean

\_\_\_\_\_  
Rick Frederickson

\_\_\_\_\_  
Peter Gagy

Witness: \_\_\_\_\_

Date \_\_\_\_\_

The undersigned being the Permit Holder, accepts this Notice of Limits with all conditions contained therein and agrees to be bound by these conditions and all other provisions of the Town's policy for buildings on a Class VI Highway or Private Roads as well as any conditions of issuance of the building permit.

**Permit Holder(s):**

\_\_\_\_\_  
[Print Name]

Date \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Date \_\_\_\_\_

Witness: \_\_\_\_\_

Date \_\_\_\_\_