

**BOARD OF SELECTMEN
TOWN OF PEMBROKE, NH
August 18, 2021 at 6:30 PM**

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

Staff: Town Administrator David Jodoin, Town Counsel Stephen Whitley, Esq.

I. Call to Order:

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

II. Citizens Comment:

None

III. Scheduled Meetings

Public Hearing per RSA 31:95-b III (a) Acceptance of Local Fiscal Recovery Fund Monies

Selectman Bond opened the public hearing at 6:32pm.

David Jodoin explained the funds are coming from the federal government in the amount of \$754,080 to help subsidize some of the issues at the Water Department. Selectman Yeaton asked if this amount is to be completely set aside for the well issues. David answered that it will be, however. it will not cover the cost of the entire project.

Selectman Bond closed the public hearing at 6:33pm.

Selectman Goulet made a motion to accept the funding from the Local Fiscal Recovery Funds in accordance with RSA 31:95-b III (a) in the amount \$754,080. Selectman Yeaton seconded the motion. Motion passed 5-0.

Public Hearing – William Evans – The Board will be holding a hearing to consider the layout petition filed by William and Mary Lou Evans to lay out 560.29 feet of Beacon Hill Road in accordance with RSA 231:8. The proposed layout does not extend all the way to Pembroke Street (US Route 3). The Board will take new testimony not previously provided on the layout of a portion of Beacon Hill Road to change its classification from Class VI to Class V. Application William and Mary Lou Evans, owners of Tax Map 563-15, propose to layout a portion of Beacon Hill Road from Third Range Road to their parcel.

Selectman Bond read a statement explaining the Board had originally denied this petition in January 2021. William and Mary Lou Evans then appealed the decision to the New Hampshire Housing and Appeals Board. The Board issued a decision asking the Select Board to re-hear the layout request. The Select Board is not to consider any potential future impacts of any future development. Consideration has to be restricted to the site as it currently exists. Traffic, water, sewer, and other issues related to the proposed development cannot be considered at this time.

Selectman Bond opened the public hearing at 6:37pm.

Bob Best, Attorney at Sulloway & Hollis PLLC, representing William and Mary Lou Evans, presented the Board with the plan for the site of the roadway they are requesting to be open up, letters of support from the members of the community, and a narrative of the Supreme Court decision that guides the layout decision. There are no intentions to open the full length of the roadway. There is support from the Police and Fire to open the road to Route 3 but they would likely need to acquire property in order to do that and they do not want to put the Selectmen in that position. They are requesting 560.29 feet as shown on the plans with a hammer head turn around at the end of the road to assist plow trucks or anyone else who needs to turn around. There is no turn around currently. There currently is no access to the property off a class 5 or better road.

Attorney Best discussed the two parts to the analysis and the first step to weigh is the public interest against the burden on land owners whose land would be taken to open the road. In this case, there is no land being taken. Since no land is being taken, step one is satisfied that there is a public interest. Step two is essentially balancing public interest factors versus burdens on the town.

The following criteria was used in the determination of “occasion” when considering a layout petition and how the applicant views them:

Public Interest Factors:

1. Integration within existing road system - The addition of a few hundred feet is easily integrated into the existing road system. No other changes or alterations need to be done to the existing roadway.
2. Ease of existing traffic flow - This is not really applicable because the extension only really adds access to one parcel.
3. Improvement to convenience of travel - This does include ease of convenience to the property.
4. Facilitation of transportation of school children - Likely not applicable. The school bus could turn around at the hammerhead if a school bus was to use the road.
5. Improved accessibility to business district and employment centers - Likely not applicable.
6. Improved accessibility for fire, emergency, and police - Access to this parcel is improved by opening the road if they need to get to this parcel.

7. Whether it would benefit a significant portion vs. small fraction of town's tax base or year-round residents - This parcel could impact a small portion of the tax base but there will likely be an increase in tax revenue from the parcel as it will now be accessible and more valuable.
8. Anticipation frequency of road use - It is the only access to the property and they would use it as much as anyone would use their driveway.

Town Burden Factors:

1. Anticipated construction costs to bring road to town standards - The petitioner would cover the costs of construction.
2. Ongoing maintenance costs for the road itself - There are currently 49.33 miles of town roads. There would be 49.43. David interjected there are more than 49.33 miles of roadway in Town. Attorney Best explained that regardless of the exact mileage, the added 560 feet is not a large addition to the overall mileage that needs to be maintained and adding a hammerhead would make it easier for snow removal.
3. Impact on town's infrastructure due to town's growth – There can be no consideration of impact from any potential future development proposed for this property if the layout is approved. There would be no impact to the Town's infrastructure based on the property as is.

Selectman Gaygi stated looking at public interest factors should mean the public at large and not just the one person. Attorney Best explained that usually a road would likely mean a road that impacts large amount of people but many roads only effect a small population of the Town. The weight of the public interest factors needs to be proportional to the request. There are several cul-de-sacs in Town currently that only service 6 houses. If the public interest of the entire Town was needed to take into consideration, none of those roads would exist.

Selectman Bond asked whose property does the 60 feet of the hammerhead sit on. Attorney Best explained they are not 100% sure and assumed it would be part of the Town right of way but they have no intention of putting the hammerhead on anyone else's property and would shift it over to ensure it does not.

Dan Boyer, 223 Beacon Hill Road asked if the hammerhead would be blocked off or connected so traffic can flow down. Selectman Bond explained they would not be blocking off the road because the rest of the road is town owned.

Kerstin Dumas, 318 Beacon Hill Road, explained the hill on the road ices over and the buses cannot make it back up. All of the children on the road travel to the corner of 4th Range Road. Kerstin also provided a petition against opening the road with 311 signatures.

Rosemarie Michaud, 340 Beacon Hill Road, at Town Meeting the Town voted to change the classification of the road and asked why it is not going back to Town Meeting to reverse that decision. Attorney Whitley, Pembroke Town Counsel, stated

that it could but what they are asking the Board of Selectmen to do is another way to do it and there is no requirement to go back to Town Meeting. The Selectmen cannot now bring this Town Meeting. Rosemarie stated she is against changing the classification of the road.

Selectman Gagy asked if they decided this is no vote, can he go to Town Meeting. Attorney Whitley explained they do have the ability to it to Town Meeting if it fails at this meeting.

Mark Dumas, 318 Beacon Hill Road, presented the Board with a zoning map of the area, assessors report showing the property was sold in 2010, and read from the Pembroke Master Plan.

Attorney Best answered a few of the comments made. From the hammerhead from to route 3, the Town has that ability because it is a class 6 roadway and those are subject to gates and bars. That is decision completely for the Selectman. Selectman Goulet answered they have no plans to do that. The buses may not currently go down the road but if the bus wanted to come down, they would have the benefit of the hammerhead. That is a decision for the School District. There is a discussion of Range Roads and this road is coming off Beacon Hill and not Third Range Road. Agrees with Attorney Whitley that this issue does not need to go to Town Meeting and there is no reason to vote no simply to punt the issue to Town Meeting. None of the discussions about how the property is zoned, can be considered since development of the property is out of the bounds for this vote.

Nathan Foster, 206 Beacon Hill Road, part of if there is occasion is that there is no land to be taken from land owner. Is there still the risk if they are required to open to Route 3. Attorney Whitley explained the Board needs to focus on the application in front of them where they are not requesting to open to Route 3. If someone comes forward tomorrow to connect all the way down, then that application could be considered at that time.

Stephen Smith, 561 Pembroke Street, what would be the towns liability if any proposed development for this land was not approved by the planning or zoning boards. Attorney Whitley explained tonight they need to look at the road as it presently exists. Assuming they get an approval tonight and then they decide to do a development and is denied, they would still need to bring the road up to town standards but all of those questions will need to be addressed at the planning and zoning board stages and not at the Select Board.

Selectman Bond closed the public hearing at 7:19pm.

The Board took a short recess to have a discussion with Town Counsel at 7:21pm.

The Board resumed at 7:46pm.

Selectman Yeaton read her statement on her decision. For the occasion test, step one, there are no land owner rights being violated. There is a public interest and there is an occasion. The road is currently a dead end. This petition does not change that but rather moves the dead-end location by 560 feet. The new layout also includes a hammerhead and that is a difference from what exists now. DPW currently uses private property to turn around trucks. That permission can go away at any time. When looking at the public interest factors and town burden factors in step two, Selectman Yeaton looked at them as a benefit or not a benefit.

Public Interest Factors:

- Integration within existing road system. - No Benefit.
- Ease of existing traffic flow. - No Benefit
- Improvement to convenience of travel. - Benefit.
- Facilitation of transportation of school children. – No Benefit
- Improved accessibility to business district and employment centers. – N/A
- Improved accessibility for fire, emergency, and police - Benefit
- Whether it would benefit a significant portion vs. small fraction of town's tax base or year-round residents. - Benefit
- Anticipation frequency of road use. – N/A

Town Burden Factors:

- Anticipated construction costs to bring road to town standards. – No Burden
- Ongoing maintenance costs for the road itself. – There is a Burden
- Impact on town's infrastructure due to town's growth. – No Burden

When scoring the Public Interest Factors, 3 show a benefit, 4 show no benefit, and two are not relevant. When scoring the Burden Factors, two show no burden and one shows a burden to the town. There is an occasion, there is public interest, and there is some town burden. She needs to weigh does the public interest outweigh the burden of the town.

Selectman Goulet gave her responses to the public interest and town burden factors:

Public Interest Factors:

- Integration within existing road system. – Not an integration
- Ease of existing traffic flow. - No ease of traffic flow
- Improvement to convenience of travel. – There would be an improvement.
- Facilitation of transportation of school children. – N/A
- Improved accessibility to business district and employment centers. – N/A
- Improved accessibility for fire, emergency, and police – Would be an improvement.
- Whether it would benefit a significant portion vs. small fraction of town's tax base or year-round residents. – Would be a benefit to the taxpayers
- Anticipation frequency of road use. – There would be road use

Town Burden Factors:

- Anticipated construction costs to bring road to town standards. – No Burden
- Ongoing maintenance costs for the road itself. – There would be ongoing maintenance.
- Impact on town's infrastructure due to town's growth. – N/A

Selectman Bean gave his responses to the public interest and town burden factors:

Public Interest Factors:

- Integration within existing road system. – Not an integration
- Ease of existing traffic flow. - No ease of traffic flow
- Improvement to convenience of travel. – There would be an improvement.
- Facilitation of transportation of school children. – Yes.
- Improved accessibility to business district and employment centers. – No
- Improved accessibility for fire, emergency, and police – Would be an improvement.
- Whether it would benefit a significant portion vs. small fraction of town's tax base or year-round residents. – Would be a benefit to the taxpayers
- Anticipation frequency of road use. – No

Town Burden Factors:

- Anticipated construction costs to bring road to town standards. – No Burden
- Ongoing maintenance costs for the road itself. – There would be ongoing maintenance.
- Impact on town's infrastructure due to town's growth. – No Burden

Selectman Gagyi feels that the only public interest factor that stands out is improved accessibility for fire, emergency, and police and it has been working so far so that is a weak public interest benefit at best. The only town burden factor that changes anything is the ongoing maintenance of the road itself.

Selectman Bond gave her responses to the public interest and town burden factors:

Public Interest Factors:

- Integration within existing road system. – Yes.
- Ease of existing traffic flow. - N/A
- Improvement to convenience of travel. – N/A
- Facilitation of transportation of school children. – N/A
- Improved accessibility to business district and employment centers. – N/A
- Improved accessibility for fire, emergency, and police – Would be an improvement.
- Whether it would benefit a significant portion vs. small fraction of town's tax base or year-round residents. – N/A
- Anticipation frequency of road use. – N/A

Town Burden Factors:

- Anticipated construction costs to bring road to town standards. – No Burden
- Ongoing maintenance costs for the road itself. – There would be ongoing maintenance.
- Impact on town's infrastructure due to town's growth. – N/A

Attorney Whitley explained some of the board members did homework before coming tonight and would like each member to answer whether or not they were still open to the presentation and the comments from the public in the deliberations and when casting their vote.

Selectman Yeaton answered she was open to hearing the comments and questions and had made adjustments to her prepared statements based on what she heard.

Selectman Bean feels the School Board needs to discuss getting children picked up down the hill. Selectman Bean stated he did show up with an open mind and changed his vote.

Selectman Goulet stated she showed up with an open mind and a prepared statement. What she heard changed her remarks.

Selectman Gagyi stated he showed up with an open mind.

Selectman Bond stated she stayed open to comments and concerns.

Selectman Goulet made a motion to grant the lay out request by Williams Evans as proposed here tonight. Selectman Yeaton seconded the motion. Motion passed 4-1.

Roll Call Vote:

Selectman Yeaton - Yes
Selectman Bean – Yes
Selectman Goulet – Yes
Selectman Gagyi – No
Selectman Bond – Yes

Selectman Bond suggested adding a condition to build the class five standards and specifications done at the applicant's expense and the hammerhead should be on the applicant's property and Town right of way and DPW, Fire and Police have to give approval on size.

Selectman Yeaton made a motion to accept the conditions as presented by the Chair on the approval of the layout. Selectman Goulet seconded the motion. Motion passed 4-0-1.

Roll Call Vote:

Selectman Yeaton - Yes
Selectman Bean – Yes
Selectman Goulet – Yes
Selectman Gagyi – Abstain
Selectman Bond – Yes

IV. Old Business:

None

V. New Business

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 8/4/21

Selectman Yeaton made a motion to accept the minutes of August 4, 2021 as presented. Selectman Bond seconded the motion. Motion passed 3-0. Selectman Goulet & Gagyí abstained.

VI. Town Administrator Report:

The people working to put a sign at the dam in the Village are meeting with VJ to discuss alternatives because the land they proposed is owned by the condo association and they do not want it on their property.

Energy Committee made a request for Pembroke to join the Community Power Coalition of NH. Town Council is reviewing the agreement for Pembroke to join and David is also going to speak with the City Manager of Lebanon to discuss this.

VII. Committee Reports:

Selectman Yeaton – CIP met at PA to review the Recreation requests and School requests. Rec is looking to fix the tennis courts and put \$10,000 a way to redo the stage roof in 5 years. The School has many requests that do not line up with the CIP process and may not receive a vote as they did not last year.

Selectman Bean – None

Selectman Bond – None

Selectman Goulet – None

Selectman Gagyí – None

VIII. Other Citizens Comment:

None

IX. Adjourn:

Selectman Bond made a motion to adjourn at 9:00PM. Selectman Goulet 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.