

**BOARD OF SELECTMEN
TOWN OF MADISON
FEBRUARY 12, 2013
MINUTES**

Selectmen Present: Chairman Michael Brooks, Josh Shackford, and John Arruda.

Others Present: Town Administrator Melissa Arias; numerous audience members; Madison TV Videographer Tim Hughes.

Where and When Posted: Town Hall upper & lower bulletin boards and Madison & Silver Lake Post Offices on January 2, 2013.

Meeting Called to Order: By the Chairman at 6:30 p.m.

PUBLIC HEARING – PETITION TO LAYOUT AND REMOVE SUMMER COTTAGE DESIGNATION FROM A PORTION OF LEAD MINE ROAD

- Brooks said the Selectmen will hold a public hearing on the layout petition received from Michael & Donna Veilleux. Brooks turned the floor over to Town Counsel Diane Gorrow who ran the hearing. Gorrow explained that the hearing will be conducted in accordance with RSA 231:81; RSA 231:8-12; RSA 231:23; & RSA 43. Gorrow said people wanting to be heard by the Selectmen will be sworn in under oath. Gorrow said the Selectmen are not obligated by law to make a determination tonight.

Gorrow said on October 29, 2012 the Board of Selectmen received a petition from the Veilleux's to layout or alter the designation of Lead Mine Road. Diane submitted for the record a copy of the petition, along with additional information submitted by the petitioners on January 5, 2013 and January 12, 2013. Gorrow said the public hearing notice sent to landowners of record along the proposed stretch of road including Mike & Donna Veilleux, William Goodwin, Susan Goodwin, The Nature Conservancy, Sarah Sherman Calderwood, Carrie Sherman Whiting, and Lawrence Sherman. Gorrow said certified receipts for these letters will be made part of the record, along with letters received from residents Ray O'Brien and Noreen Downs.

Russell Jones asked why the Selectmen are going through this hearing process. Gorrow explained the two methods of changing the designation of a road; being through vote at Town Meeting or a petition to the Board of Selectmen. Gorrow said the Selectmen need to first decide if there is occasion to layout the road. Robert King said the Selectmen could decide to not pursue what the petitioners are proposing, leaving the petitioners recourse to appeal to Superior Court. Gorrow said she advised the Selectmen to hold the Public Hearing and go through the consideration process so due diligence can be displayed during any potential court appeal. King said a hearing of this sort has a cost and time factor associated with it. King said the previous Town Meeting votes have made it clear that the voters don't want to support the Veilleuxs request which could have been considered cause enough to determine occasion doesn't exist.

Mike Veilleux asked Gorrow whether he will be able to comment on or rebut information that is provided during the hearing. Gorrow said he would have a chance to speak again at the end of the hearing.

Fay Melendy brought up the amendment proposed by Selectman Brooks at Town Meeting 2012 and voted by the voters which changed the intent of the original petitioned article. There are two types of layout petitions; the one the Veilleux's are requesting and the conditional layout process.

Mike Benoit asked Gorrow if there would be time constraints on testimony during the hearing like at Town Meeting. Gorrow said everyone will have an opportunity to speak without the need for a clock as long as the testimony doesn't become repetitive.

Mike Veilleux set up a color-coded poster board of the town tax map showing the entire length of Lead Mine Road. Veilleux said the Town currently maintains 1.8 miles of Lead Mine Road from East Madison Road to Black Brook Road. Veilleux said they are petitioning to receive year round maintenance from Black Brook Road just past their driveway. Veilleux said this would be beneficial for the access to other private and public properties. Veilleux said the 11 black dots on the map indicate dwellings off Lead Mine Road. Veilleux pointed out the location of Cooks Pond, which is a 28 acre State designated pond with a channel that leads into Silver Lake. Veilleux said the brown area is land owned by The Nature Conservancy and the blue area is Goodwin Town Forest land that was donated to the Town for recreational purposes. Veilleux said there are other public lands in the general vicinity that aren't shown on the map. Veilleux said there are a number of recreational activities that take place around this area, including hiking, biking, snow shoeing, cross country skiing, canoeing, hunting and trapping; none of which should be discouraged. Veilleux said the criteria to consider when laying out a road are (1) public need, (2) burden to Town, and (3) property damages resulting in the taking of land.

Veilleux continued by addressing the public need. He said access by emergency vehicles is currently limited due to the narrow nature of the road and the lack of a proper turn around. Veilleux said a red dot on the map shows the area suggested as a turn around for snow plowing and other vehicles. Veilleux brought up the dual usage status of the road and the Selectmen's Snowmobile Regulation. Veilleux showed photos taken from his driveway depicting the sightline difficulties with snowmobile traffic during the winter months, especially when plow trucks and large emergency vehicles are concerned. Veilleux said the intent of the petition is to improve the line of sight on the dual use road and correct dangerous safety situations that currently exist. Veilleux said eight or more months of the year a large turn around beyond his driveway is used by people wanting to recreate in the area.

Veilleux quoted from the Town's Master Plan - Transportation section. Veilleux said NH Electric Cooperative lines cross Lead Line Road in three locations as depicted on the map with bold red lines across the road. Veilleux said there is a need for electric utility, police, fire, and ambulance vehicles to access the area for safety reasons. Veilleux said Richard Clark will speak more to accessing this area with emergency vehicles later in the evening.

Veilleux read a citizens petition out loud showing support for access to the recreational resources in the Lead Mine Road area. Veilleux said the petition was signed by over 300 citizens. The petition was given to Gorrow for the record.

Veilleux addressed the burden criteria by saying the road exists and is ready to maintain in the winter without the need to take any property. Veilleux currently plows 0.7 miles from Black Birch Lane to just beyond his driveway. Veilleux said the Road Agent has stated that the Town can take on the plowing and stay within the budget. Veilleux referred to Robbin Rancourt as a road expert and a contractor that

provides management of Town owned properties for the Conservation Commission. Rancourt will speak later in the hearing. Veilleux said the Goodwin family has told him that a member of the Goodwin family will build a house on the vacant parcel of land across from the Veilleux's driveway in the future.

Mike Veilleux said there is ample evidence and occasion to change the designation of Lead Mine Road.

Joyce Elliott asked whether the Town has a 50-foot right-of-way along Class V Lead Mine Road. Gorrow spoke of newer developed roads having a specific right-of-way width but that many of the older roads have varying widths or are strictly just as wide as the traveled way.

Road Agent Bill Chick was sworn in. Chick said the Summer Cottage Road designation was made before anyone lived on this section of Lead Mine Road. Chick said the State Law requires towns to maintain Summer Cottage Roads up until midnight on December 10th. Chick said the Highway Department plowed a 14" storm before December 10th fairly easily a few years ago. Chick said the law also requires the road to be open on the 10th of April. Arruda asked how Chick would handle a winter with a large snowfall. Chick said the same way he handles heavy winters on other roads; the Town crew pushes the banks back as best they can with the equipment they have before using contracted services for loaders when snow needs to be relocated.

Robbin Rancourt was sworn in. Rancourt said three years ago a management plan was started on the Goodwin Forest for pitch pine. Part of this area was very close to the Veilleux's house. Rancourt said he talked with Veilleux about large equipment accessing the Goodwin Forest past his house and Veilleux had no issues with it. A logging company hired Rancourt's business to keep the road open in the winter during this management project which was easily achievable with a one-ton truck and sander.

Marcia McKenna was sworn in and clarified that her testimony is personal, not on behalf of the Conservation Commission. McKenna said the summer cottage designation prevents her and others from driving beyond Black Brook Road between December 10 and April 10 unless they have reason to be going to the Veilleux's. McKenna would like to encourage schools to snowshoe and use the recreational resources out Lead Mine Road but there isn't room to turn the bus around. McKenna said State and Federal monies went into acquiring The Nature Conservancy land on Lead Mine Road so the public should be able to use and access them year round.

Celeste Benoit was sworn in and read a letter written by Noreen Downs who was unable to attend. A copy of the letter was given to Gorrow for the record.

Mike Veilleux read a letter written by Ray O'Brien who was unable to attend. A signed copy of the letter was given to Gorrow for the record.

Jay Rancourt was sworn in. Rancourt wanted to reinforce what Marcia McKenna had said about recreational access. Rancourt said this is the most beautiful part of Town but access is limited during winter months when parking is a challenge. Shackford said the Town can't and won't be plowing out additional parking spots in the winter months as mentioned by McKenna and Rancourt.

Deb Noyes was sworn in. Noyes has been a Madison resident for 35 years. Noyes said there have been many issues before the Town that have divided the residents; this being one of them. Noyes said the

Town didn't plow North Division Road until after she and her husband built and occupied their home there. Noyes said the Town used to maintain this section of Lead Mine Road until the Selectmen [voters] designated it as a summer cottage road at Town Meeting. Noyes feels everyone in Madison should be treated equally. Shackford clarified that the Town of Madison has never plowed or maintained this portion of Lead Mine Road during the winter months. Shackford said the testimony from Noyes was incorrect.

Robert King was sworn in. King said the decision at 2012 Town Meeting is not what the Veilleux's current petition and this hearing will accomplish. King clarified the difference between a conditional layout and the petition currently submitted. King said the Veilleux's petition hasn't changed in the last four Town Meetings and it will appear again on the 2013 warrant as a petitioned article. King said Lead Mine Road came about by prescription and has always been a road to summer cottages. King said most of Madison's roads were created by prescription in the 1800's. King said this is a prescriptive summer road because it has always been left unmaintained by the Town during the winter months. King said the 2007 Town Meeting voted the summer cottage warrant article as a "house keeping" measure because the prescriptive road had no formal record of being designated as such, even though it was. Town Meeting voted to confirm the long standing prescriptive nature of the summer cottage road through the 2007 vote. King said there is a cellar hole across the street from the Veilleux's driveway, 0.7 miles in from Black Brook Road, where someone lived in the 1800's. King said the remainder of Lead Mine Road, from the Veilleux's driveway to East Shore Drive, was made for lead mining activity and connected to Class VI Iron Ore Road and onto Portland, Maine. King said before 1968 very little road width was created by public travel. King said what is currently on the ground on this section of Lead Mine Road isn't wide enough for Class V standards. King said what can be done plowing driveways is very different from what a Town must do from a liability standpoint when plowing a highway. King said the Snowmobile Regulation and dual usage road shouldn't come into play in the Selectmen's consideration. King said dual usage is allowed along roads that aren't maintained by the Town during winter months; it has nothing to do with the road classification. King said if the Fire Department is actually concerned about access they should come to the Selectmen and ask the Board to establish an emergency lane so the Town can legally maintain the road year round for emergency vehicle sufficiency without liability. King said emergency lanes can be made over private land as long as there is consent from the property owner. King said vehicular access for recreational purposes shouldn't be an issue because to recreate you "walk" into the recreation area, you don't drive your vehicle there. King said the area would be spoiled by making it a town maintained Class V Road year round. King said the Town's easement is so narrow that the Town would have to take land from private property owners in order to provide the requested turn around and parking opportunities. King said the only rights the people have along the road is for purposes of travel, not for parking. The landowners on either side of the road own the soil where parking has been taking place, which may look like an established parking place but doesn't make it right or legal. The Selectmen can't tell people they can park alongside the road. It could be considered trespass and reported to the Police Department. King said the Highway Department currently plows areas on either end of the Lead Mine summer cottage road for people who want to recreate. Gorrow noted that King was starting to get repetitive and asked him to present new testimony or wrap it up. King mentioned a couple of dangerous turns along the stretch of road. King said logging on non-maintained Town roads in the winter is common practice in NH without there being any liability to the Town. Chick erupted after hearing enough from King about plowing or maintaining Lead Mine Road. King said there are 14 residents living in Madison on roads that are not maintained in the winter by the Town. Gorrow ruled this as irrelevant

and asked King to move on. King said the 2013 Town Meeting could reverse the Selectmen's layout if they proceed in favor by amending the Veilleux's petitioned article.

Fred Ham was sworn in. Ham said he walks the summer cottage section of road midweek and sees signs that cross country skiers, snowshoers, and other walkers use the road on the weekends. Ham measured the narrow width of eleven feet near the Black Brook boulder. Ham said people aren't using the area like they used to since the Veilleux's have moved in. Ham said Conservation Commission Chairman David Riss petitioned a Town Meeting in the 1990's to designate Lead Mine Road as a scenic road so it couldn't be widened or have trees cut. This action seems contradictory to that Town Meeting vote.

Dick Eldridge asked a question about the Class V nature of the road and asked when it became a Class V Road.

Joyce Elliot was sworn in. Elliot agrees with O'Brien's letter that this has taken way too much time and attention. Elliot listed at least five other roads in Madison that don't meet Class V specifications but are plowed by the Highway Department – Pound Road, Modoc Hill Road, Colby Hill Road, North Division Road (and the roads beyond North Division Road), Bickford Road, Winter Road (after the Sherwood's), and Boulder Road (after the dump).

Russell Jones asked whether there is a difference between Class V and Class V Roads to Summer Cottages. Shackford said yes.

George Epstein was sworn in. Epstein gave his apologies to the Town as Town Meeting Moderator. Epstein would like to see a depersonalization to this issue. If Epstein were a Selectman he would try to determine what the dollar value is to having the Town plow the 0.7 miles versus having it plowed by amateurs. Epstein said liability, convenience, and accessibility should then be factored in. Epstein said the Road Agent could give a written estimate of the actual cost to plow the 0.7 miles from December 10th to April 10th even though the amount could vary year to year. Epstein said the emotion needs to be taken out of the situation and the value versus cost should be the only consideration of the Board.

Mike Benoit was sworn in. Benoit said the Selectmen should also consider any costs expended to date, including legal fees, along with potential legal fees should an appeal be filed in the future. Benoit said the amendment voted at Town Meeting didn't impair the Veilleux's right to petition the Selectmen for a layout as they're doing. Benoit said the Selectmen are the governing body that manages the prudential affairs of the Town and Town Meeting is the legislative body. Benoit said the topography and layout of the road is an accident waiting to happen and this is the Selectmen's opportunity to improve public safety.

Ed Bickford was sworn in. Bickford said snowmobilers are having increasing difficulty finding a trail system that leads across town. Bickford asked what would prevent a trail from being built on the Goodwin Forest or The Nature Conservancy land. Ham said the Town's deed from the Goodwin family doesn't allow snowmobile traffic except along a trail that existed at the time of the gift. It also doesn't allow for construction or excavation. Rancourt said a breach of the deed restrictions could result in the Goodwin's taking the land back but wondered if the Goodwin heirs might be willing to grant written permission to deviate from the deed restrictions.

Terry Whiting was sworn in. Whiting owns property at 877 Lead Mine Road. Whiting said his family is worried about an increase in traffic resulting from a possible future change that would open the entire length of Lead Mine Road on a year round basis.

Mike Veilleux gave some closing remarks that included the flavor of the hearing tonight and the divisive nature of the subject matter over the last four years. Veilleux liked the suggestion of a cost factor and said there wouldn't be an extra trip made by the town plow truck so determining the actual cost of plowing would be difficult. Veilleux said there would be a cost associated but he's been told it could be done within the existing budget. Veilleux repeated that he doesn't want hikers, bikers, hunters or other recreating people to lose their privileges to access and park in the area.

Arruda asked Chick whether plowing roads on a regular basis causes the amount of summer maintenance to increase or decrease. Chick said plowing has no impact on summer maintenance. Chick said there are currently 27.3 miles of paved roads in Madison and 21.6 miles of dirt roads. Arruda said it shouldn't be hard to determine the cost of plowing 0.7 miles of road based upon the Highway Department operating budget. Epstein said this per mile calculation wasn't his suggestion; he was indicating that marginal cost should be considered.

As the public comments dwindled, Gorrow told the Selectmen they could either deliberate tonight or at a later date. Shackford said the Selectmen have to consider public need versus cost and would like some time to contemplate the testimony tonight. Shackford said the cost factor needs to be considered but testimony tonight has indicated that residents on Class VI Roads could also petition the Selectmen for a conditional layout of the road they live on. This would potentially set a precedent which also has to be a consideration. Gorrow brought up RSA 231:23 whereby people benefiting personally from the layout can be made to cover the related costs.

Arruda said he's a dollars and cents kind of guy. Arruda said two local contractors provided proposals in early 2009 to bring the road up to Class V standards. The cost ranged between \$37,400 and \$67,500 at that time. King asked that the two proposals be included as part of the record. Arruda is concerned about laying out a dead end road and said the Planning Board doesn't allow new roads to be proposed or constructed at a length longer than 1,000 feet to a dead end. Arruda said the public use argument would be stronger if the road was opened all the way through, even though the Veilleux's probably wouldn't support that.

Sepp Meier was sworn in. Meier asked for clarification on the need to bring the road up to Class V specifications because the petition only asks for the 0.7 miles to be plowed by the Town, not upgraded.

Mike Benoit said he's confused about the cost issue. Epstein's suggestion to determine marginal plowing cost has nothing to do with the road improvement proposals. Benoit said the Road Agent continues to affirm that the road can be plowed as is. Benoit added that the Town already plows several dead end roads like Bickford Road, Downs Road, and others.

Russell Jones asked the Selectmen if they are feeling pressured tonight. Jones said if so they should refrain from making a decision tonight and let the voters decide at Town Meeting. Arruda said the Board has had a pretty good education on this issue between the last four Town Meetings and the testimony tonight.

Bob King said the Road Agent requested the proposals but didn't turn them over to the Selectmen in a timely fashion. Chick vehemently disagreed and asked King how he obtained copies of the proposals. King said the Town isn't in the business of plowing driveways; it's in the business of plowing Class V roads. King said conditional layouts do apply to roads other than Class VI and private roads.

Carrie Sherman was sworn in. Sherman said her parents bought the Lead Mine Road house in the 1960's and traffic has increased steadily over the years. Sherman said recreation is a welcome thing to see in Madison and this part of town has something special to offer people. Sherman can understand why people traveling to West Ossipee use Lead Mine Road as a cut through in the summer months. However, Sherman asked the Selectmen to consider what Lead Mine Road might become in the future, not just what is presently being requested.

Marc Ohlson was sworn in. Ohlson brought up the Solomon Harmon Road layout petition. Brooks said in that case the court found no occasion for the Town to layout the road. Ohlson said this is the ultimate question as to whether or not there is public occasion to layout Lead Mine Road. Shackford would like to have time to research the matter of occasion before making a decision.

Mike Veilleux said no private property should have to be taken by the Town. Veilleux said he and Donna only wanted to discuss occasion tonight; they weren't here to debate or argue the law. Benoit would like the Selectmen to make available during deliberation the estimated cost of judicial proceedings should an appeal be filed with Superior Court.

Jamie Calderwood was sworn in. Calderwood was concerned about the road eventually being opened year round the entire way through. Calderwood is concerned that roadway enhancements would have to be made in order to establish a turn around large enough to handle fire trucks. Calderwood said a portion of the Sherman property near the Black Brook Road intersection might have to be taken in order for larger vehicles to successfully make the turn.

Gorrow **CLOSED** the **PUBLIC COMMENT** portion of the hearing and the Selectmen decided to continue the deliberation portion of the hearing until the end of the next February 19, 2013 Selectmen's Meeting.

Motion: Arruda made a **motion** to continue deliberation to the end of the next Selectmen's Meeting agenda which will be February 19, 2013, seconded by Shackford, and so voted **3-0**.

Decision: Deliberation will be listed on the next meeting agenda.

Brooks asked to meet with Counsel upstairs before she leaves Town. Gorrow, the Selectmen, and Arias went upstairs to the Selectmen's Office before convening the posted Selectmen's Meeting to discuss the 2013 operating budget. Madison TV was asked to stay for the next meeting.

APPROVAL OF MINUTES – There were no minutes to approve at this meeting.

APPROVAL OF MANIFEST – There was no manifest to approve at this meeting.

SIGNATURE ITEMS – There were no signature items at this meeting.

9:05 PM - Meeting adjourned on a **motion** by Brooks, seconded by Arruda, and so voted **3-0**.

Respectfully submitted,

Melissa S. Arias, Town Administrator
Recording Secretary