

**BOARD OF SELECTMEN
TOWN OF MADISON
September 20 and 22, 2022
MINUTES**

PUBLIC HEARING

Pursuant to RSA 231:8 to 231:12 – Petition for Layout of Danforth Lane

Selectmen Present – Josh L. Shackford, Michael A. Mauro, John Arruda

Others Present – TC/TC Fire Chief Michael Brooks; Town Administrator Linda Shackford; Chief Robert King, Jr.; Officer Jake Martin; Officer Mike Mosher; Foreman Justin Chick; DPW Dave Swift; Rec Chairman Adam Price; MadTV Videographer Carol Dandeneau; Gary Bent; Nick Robbins; JP Goodwin-Rogers; Tom Rogers; Marc Ohlson; Jay Buckley; Patty Curotto; Paul Marks; Paulette Lowry; Bruce Gove; Julie Towne; Greg Prittie; Land Use Consultant Craig Salomon; Ambit Engineering John Chagnon

Where and When Posted – Town Hall upper & lower bulletin boards and Madison & Silver Lake Post Offices on August 17, 2022. The Conway Daily Sun on August 18, 2022. Notification by certified return receipt on August 17, 2022 to:

- 120-004 Jo P. Goodwin-Rogers Revocable Trust
- 120-005 Tayzach Realty Trust
- 120-006 R. Bruce Gove
- 120-007 Stephen Weeder and Patricia Hanson 2022 Trust
- 240-003 David B. Werner Family Trust

Meeting Called to Order – By J. Shackford at 5:00 pm.

J. Shackford read aloud: Pursuant to RSA 231:8 to 231:12, the Town of Madison Board of Selectmen are holding a public hearing on the petition of Jerome Ken Sakurai, Trustee of Tayzach Realty Trust, to reclassify a portion of Danforth Lane by layout of a Class V highway over an existing Class VI highway. The portion proposed to be reclassified begins at the southerly end of the Class V portion of Danforth Lane and runs south to and includes a cul-de-sac abutting parcel 5 on Tax Map 120 of the Town of Madison.

J. Shackford explained the procedures that will be followed for this hearing. The petitioner will be invited to speak, then the Board will go and review the site and then return for public input.

J. Shackford invited the petitioner to approach the Board.

Craig Salomon, Land Use Consultant employed by Tayzach Realty Trust introduced himself and John Chagnon, Engineer with Ambit Engineering.

Salomon stated he is here to ask the Selectmen to reclassify a portion of Class VI Danforth Lane to Class V to a cul-de-sac that appears on a plan commissioned by the Town 2019. Salomon offered history of how the Town acquired the former Werner land through tax deed. In 2019 the plan was recorded and at that time portions of the former Werner property were conveyed to abutters and portions conveyed to the Town from abutters. Salomon finds that significant because the plan is captioned a

Boundary Line Adjustment and Right of Way Plan and he states the intent of the plan to vest title to a 50' wide strip that includes the cul-de-sac that abuts the Tayzach property which is designated at Class VI.

Tayzach purchased the approximate 7-acre parcel from the Town and earlier this year approached the Madison Planning Board with an application for a 3-lot cluster subdivision. The plan submitted is consistent with the Zoning Ordinance with one exception. The engineering design was consistent with the Town Subdivision regulations specifically with their road specifications.

Salomon continued his testimony by saying that the Planning Board couldn't take jurisdiction because Madison's zoning only allows one residence on a Class VI highway and there were two more dwellings being proposed. Salomon stated that he is here tonight to ask the Selectmen reclassify that portion of the road to Class V. If that should be granted then the applicant would re-submit their application to the Planning Board.

Salomon recognized the concerns of neighbors and stated that any engineering submitted to the Planning Board is subject to review by an engineer designated by the Planning Board at the applicant's expense.

Salomon went on to site the benefits to the Town should the Selectmen reclassify the road that included emergency vehicle access improved, properties assessed as private road would be on public street and increase in value and if the request for subdivision is approved there would be two new homes added to the tax base.

Salomon requested to reserve the right to make comments in addition to those just made after a return from a physical review of the site. J. Shackford stated that he would allow comments upon our return.

J. Shackford announced a recess to go to the site on Danforth Lane and invited all in attendance to join the Selectmen. J. Shackford asked that public comments be limited at the site and saved for our return to Town Hall.

*At the location of Danforth Lane, Chagnon used a copy of the Boundary Line Adjustment and Right-of-Way Plan to explain the portions of the Class VI road being petitioned to be reclassified to Class V.

Upon return to the Town Hall J. Shackford stated that the New Hampshire Supreme Court has established a two-step process that should be used to determine whether there is occasion to lay out a road. First, the selectmen balance the public interest in the layout against the rights of the affected landowners. If the rights of affected landowners outweigh the public interest, there is no occasion for the layout, and the petition should be denied. If there is a public interest that outweighs the rights of affected landowners, that public interest should then be balanced against the burden imposed on the town, which consists primarily of the cost to upgrade and maintain the road. In determining the public interest there is a long process with no specific formula; the more criteria that weigh in favor of reclassifying the road, the stronger the public interest is. A benefit to just one person or a very small number of persons does not satisfy the public interest requirement.

The New Hampshire Supreme Court has made it clear that in deciding whether there is occasion to lay out a road, the selectmen may not consider the effects of future development, either in determining the

public interest or in estimating the cost to the town. This may seem strange, but it is very clear that you cannot consider potential development, including the petitioner's proposed three-lot subdivision.

J. Shackford offered Salomon the opportunity to offer more information before opening it up to the public.

Salomon stated that they believe that based upon the history the only owners impacted by this petition are the Town and Tayzach because the Town rights from Werner and received deeds from abutters. Salomon spoke regarding future development that the applicant would bear full expense.

JP Goodwin of 341 Danforth Lane gave the Board a letter dated September 20, 2022 that was read aloud by J. Shackford submitted by Bruce Gove, Roger & Dorothy Anderson, Russ Jones, Nicholas Robbins, Julie Towne, Greg Prittie, David Sweeney, Jo P. Goodwin Rogers and Thomas Rogers:

"We the aggrieved neighbors of Danforth Lane are against overdevelopment of our rural oasis. We have collectively chosen to invest over 200 years and our hard-earned funds to preserve this quiet, wooded haven for wildlife with which we coexist.

It is an affront to our peace of mind to think that big, out of town money can destroy this area placing in jeopardy the homes and any of us who reside around this proposed road. This road's runoff will exacerbate the already challenging drainage issues that this natural habitat presents; it has already impacted some of us.

Since all of us live downhill from the proposed road and development, flooding of our homes will only increase ... water seeks the lowest levels no matter who designs the drains. The increase of heavy traffic due to the development already undertaken by Tayzach R T at 363 Danforth Lane is to the detriment of our narrow, inconsistently ditched lane. There is already damage to our quiet lane and unrest among residents.

We are asking you to consider us, long time taxpayers first before deciding to destroy this beautiful, historic Danforth Farm property. We have all come to inhabit what we believed to be peaceful, wild woodland. Help us maintain this."

Goodwin asked who the citizen is that is petitioning the Board. J. Shackford responded that the petition was requested by Jerome Ken Sakurai, Trustee as trustee of Tayzach Realty.

Bruce Gove expressed concern of road runoff and how it could impact his well with Goodwin adding that she is getting water runoff in her basement already and the Tayzach property is uphill of everyone in the area including Hidden Lane and Winter Road residents.

J. Shackford looked into trying to find out how to determine future costs to maintain the road should it be improved. J. Shackford asked Foreman Chick if he was able to obtain any estimated costs from work done by the Town of Tamworth but Chick did not receive a return call in time for this hearing. Arruda expressed concerns of future drainage issues.

Greg Prittie of 76 Hidden Lane, agreeing with Goodwins runoff concerns, made note of a culvert that goes under the road that would have to handle extra drainage. Prittie also noted that he is seeing increased traffic in the area at night.

Julie Towne of 76 Hidden Lane sees the area already not safe because of new traffic with Goodwin adding some places on the road are only 15' wide.

Nick Robbins of 391 Winter Road stated he owns much of land that fronts the end of Danforth Lane that connect to Winter Road. Robbins agreed with Prittie's statements and added that increased traffic on the road would make cause for a safety concern. Having three children we chose this location for its rural environment and adding two more houses would increase the traffic and with more drainage issues aside we already struggle with water. Goodwin concurred with Robbin's statement.

Patty Curotto, Silver Lake resident, expressed her concern of the cost to the Town that would be caused by controlling water runoff.

J. Shackford asked Salomon how long the portion of road to be improved is. Salomon deferred to engineer John Chagnon who showed a plan highlighting the existing gravel section of road and the telephone pole that was questioned on site that is not in the middle of the proposed road. Chagnon explained that the from the end of the pavement, which is the end of the Class VI demarcation, to the end of the cul-de-sac is 345'.

Marc Ohlson, Planning Board member, asked where does the Class VI road end. Chagnon showed on the plan that it runs out to Winter Road. Ohlson asked if the Board can lay out the cul-de-sac if is not a Class VI road? J. Shackford could not answer that and suggested he would need legal advice. Brooks explained that the cul-de-sac is a paper road that was done in the process of cleaning up the old configuration by exchanging land with abutters which preserved the right-of-way and cul-de-sac for the Town's use. Olson asked why it was done that way. Brooks responded for the future, reminding all that the property was originally owned by Werner and it was not clear of the classification from Winter Road to Danforth Lane. At one point there were two structures on opposite ends of the property that made it difficult for the Selectmen to deal with selling the property sensibly.

Goodwin noted that even though the road is paved, the line of the Class VI road begins at Hidden Lane claiming the road was paved in error in approximately 2010. The road has been both private and Class VI.

Brooks, to answer Ohlson's question, the reason to lay out the cul-de-sac is that the Town does not own the land where the snow plows currently turn around. A handshake agreement with the owners allows us to turn around and if the ownership should change and that agreement goes away, this cul-de-sac would allow a place for turnaround. Goodwin stated the turnaround is on her property and that agreement was made with the previous owner Dumke.

Mauro asked Chick where would the plowed snow be stored without filling in any driveways. Chick can see if there are several driveways it would be difficult without filling them in. Chagnon showed on the plan a location where it could be plowed straight in. J. Shackford reminded all that they cannot consider future development.

Goodwin expressed concern of blasting the ledge to build a cul-de-sac and the impact on her 200-year-old home. Chagnon explained that they would be staying above the ledge and creating the road over the ledge; to which Goodwin again expressed the problem of water draining into her basement.

Chagnon stated the road design would include a raised grade on the east side and a curb that would assist in plowing. Chagnon expressed his knowledge that the Planning Board would look carefully at the design. The current driveway is low and runoff will be spread out creating a better situation that allows for runoff to be spread out.

Michael Mosher, Madison resident, asked what the shaded area on the backside of the cul-de-sac is. Chagnon explained that the shaded area is the part where the existing small wetland pocket is to be filled.

Salomon noted that the applicant has obtained a dredge and fill permit for that area and looking at it as it exists today, you'll see that Chagnon explained that they will work with the Planning Board to improve the drainage situation. Improving the drainage situation would be to the public interest.

Salomon told of a formal complaint to NH DES and that NH DES has put in writing that they will not be taking any enforcement action regarding the complaint. Salomon read the email.

Salomon feels that by working with the Planning Board the runoff issues will be improved; the cluster subdivision will address the overcrowding by leaving open space. The cost of maintenance will be supported by the proposed two new homes generating taxes to help improve the road to assist with Fire and Police services.

Salomon noted that the Town owns the 50' right-of-way because the abutting property owners deeded their rights over with the execution of the Boundary Line Adjustment. Salomon surmised that the Selectmen created the lot with 200' of frontage when they did the Boundary Line Adjustment even though it was on a Class VI road so that it would conform should it ever be changed to Class V.

After Salomon stated that he was not a traffic engineer he stated it appears that if a cul-de-sac were created it would have the tendency to slow traffic coming from the Winter Road side. Salomon cited public interest in slowing of traffic, improved drainage and better emergency vehicle access; any downsides the neighbors spoke about would be addressed by the Planning Board. The concern that the applicant addresses is to be sure to not increase the volume or velocity of water on to abutting properties.

Chagnon asked the neighbors if there is a preponderance of drivers that cut from Winter Road to Danforth Lane with Robbins seeing more recreational drivers and the concern of a paved road making travel speedier. Chagnon feels the public is generally speedier not the residents or new owners.

Tom Rogers of 341 Danforth Lane has heard so far, no benefit to the area or residents, only detriment.

Goodwin quoted “run off increased” in the notes on the applicant’s plan. Chagnon clarified that because of the widening of the road it creates more impervious surface creating a modest increase but that will be dealt with by the Planning Board.

Ohlson asked, if granted the classification change to Class V, when would the Town take responsibility of the road. It was determined that would happen once the Planning Board approved the final construction and the construction is acceptable to the Town. Salomon stated that the petition before the Board would not take effect until the road was built or bonded to the satisfaction of the Planning Board.

Salomon suggested, unrelatedly, to the neighbors that they could petition the Board of Selectmen to make the Class VI highway subject to gates and bars to control who goes on the road to which Arruda added as long as it is not locked.

Salomon expressed his appreciation for the Selectboard’s time.

J. Shackford closed the public hearing.

J. Shackford suggested continuing this hearing to a later date where the Board can discuss and render a decision. The Board reviewed their calendars and announced at 6:25pm that the hearing is continued to **September 22, 2022 at 3:00 pm** here at Town Hall.

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J. Shackford opened the continued hearing from September 20, 2022 at 3:00 pm on September 22, 2022. This portion of the meeting was for deliberation and decision making.

Arruda began by stating that based upon NH Supreme court findings we take the road into consideration as it stands today, regardless of any future development that may or may not happen. The part to be extended is roughly 350’ and will only benefit the petitioner and no benefit to the Town as a whole. In the list of items to consider there are very few that fit. The Fire Chief clearly stated yes to getting a fire truck to the area. Therefore, I find no public interest to reclassify that portion of road from Class VI to Class V and no occasion to layout the road.

Mauro stated that taking into consideration the eight points, he cannot see where a change from Class VI to Class V changes any of the points that include transportation of school children, improvement of business centers, improvement of fire and police response adding that he spoke with both the Fire and Police Chiefs and they have no problem getting to the one home or over to Winter Road. I don’t find the public would benefit from a change of Class VI to Class V.

J. Shackford stated that he is on the same page, he can see no question that upgrading that road would make it better but there is a benefit to one person or a very small number of people and that does not satisfy the public interest requirement; add the fact that just about all of the abutting land owners spoke that they were not in favor of the change. We cannot look at any future development.

Motion by J. Shackford, seconded by Mauro to deny the layout of the Class VI Road Danforth Lane as presented. The motion passed **3-0**.

Motion by J. Shackford, seconded by Mauro to adjourn the hearing. The motion passed **3-0**. The hearing adjourned at 3:04 pm.

Respectfully Submitted,

Linda Shackford,
Town Administrator