

# SELECTMEN'S MEETING MINUTES OF PUBLIC HEARING 12-2-2013

Submitted by stoddard on Mon, 12/09/2013 - 3:37pm.

Town of Stoddard Board of Selectmen

Minutes of a Public Hearing on Aten Road Petition

December 2, 2013

Meeting convened at 7 PM

In Attendance: Selectmen: **Arnie Stymest, John Halter, Stephen J McGerty Chairman, Jim Coffey Town Administrator**

Others in Attendance: Harry Power Stoddard Compliance Officer, David Vaillancourt Road Agent, P.J. Lamothe Fire Chief, Town Atty. Sam Bradley and Maria Gavin, Members of the Stoddard ZBA, Atty Patricia Panciocco for Petitioners and members of the public

Chairman McGerty opened the meeting with the Pledge of Allegiance. He stated the purpose of tonight's meeting was to hear and consider a petition to layout and reclassify a portion of Aten Road, from it's junction with North Shore Road northerly for one mile.

Town Attorney Bradley announced there were copies of the petition available for anyone who wanted one. He then read RSA 231:8 reading the pertinent parts regarding Selectmen obligations to the town regarding the occasion of layout of highways to the tax payers. He also read the rules for participation: Patricia Panciocco will speak first, representing abutters on Aten Rd on the petition.

## Petitioners

ñ Atty Panciocco speaking for some of the abutters toward the lake end of the road stated they are having difficulty generating money to maintain the road because some property owners have refused to pay for road maintenance as certain abutters do not have to pay according to their deeds. There is no homeowners association but there is a covenant, in some of the deeds for road maintenance. When researching the deeds, she found a Stipulation for Judgment between the Town and Lakefalls Associates (owner/developer of the property along the road) dated 1986. Lakefalls had obtained counsel to upgrade Aten Road and eventually an agreement was made with the Town allowing Lakefalls to upgrade the road as long as the lot owners maintained it.

ñ Atty Panciocco stated Aten Road has been classified as a Class 5 public highway, since the 1800's and is present on all the area maps going from Stoddard through to Sullivan. A report evaluating the current condition of the road has been done and she is waiting for its presenter to arrive. The road is also defined as a Class 5 highway in the court stipulation. New Hampshire law states the definition of a Class 5 highway is that of a public road and as such, is to be maintained by the town. Which is why the petitioners are asking the town to take over the maintenance duties.

## Those In Agreement with the Petitioners

ñ Donall Healy asked Ms Panciocco to read the NH statute RSA 231:33 regarding the upgrading of a class 6 or private road to a class 5 road. Ms Panciocco read the Statute, which states the Selectmen, could take over the maintenance and repair of a road once it is brought up to Class 5 specifications.

ñ Atty Panciocco clarified that they were asking for maintenance on just the portion of the road outlined in the petition.

ñ When asked “could the developer now sell off lots between this portion on through to the

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Sullivan portion?” Ms Panciocco replied, “that would have to be brought forward at that time”.

ñ Nicholas Healy, a partner of Lakefalls Associates, stated he was not advised by the attorneys 20 yrs ago that the agreement stated the Town could take over the road.

ñ Donall Healy stated the Petition is confusing as it asks to reclassify Aten Rd as a Class 5 road. He states it is already a Class 5 road and that the Town assessors report shows homes there are on a Class 5 road.

ñ Buzzy McLaughlin, who works for Arkwood Road Association, stated he is responsible for the road maintenance for the homeowners and collects the monies for the maintenance from them. He stated the rates were: Land w/home =\$600 year, Land alone =\$300 year. He also stated there is one property owner who doesn't pay their share.

ñ In answering the question “Does the town receive money from the State for Aten Road being a class 5 road?” Jim Coffey stated that Aten Rd is shown on the State Highway map as a private road and the Town has not received monies from the State for it.

ñ When asked if there were legal consequences to the Town if a person on a Class 5 road was unable to receive emergency assistance do to road condition. Jim stated that our public services do their best. People on Class 6 roads are responsible to maintain a pathway to their homes for emergency personnel.

ñ Ms. Panciocco stated the Court described the road as a Class 5 highway in the 1986 Stipulation for Judgment. When Lakefalls did the subdivision they upgraded the road to 1986 State specifications and it has been well maintained since its inception.

ñ Jim Coffey stated that if a Town doesn't maintain a public road for more than a certain number of years it becomes a Class 6 road. Thus the addition to the petition to reclassify the road. He added, to reclassify a road, there has to be a benefit to the town in general.

ñ Atty Panciocco stated it would benefit the residents and give visitors access to a mass of conservation land. It is also part of the public way. Documents showing where the road was thrown up cannot be located.

ñ Donall Healy spoke, saying when Aten Road was put in; it was built to higher standards than the Town roads of today, which predate the development.

Those Opposed to the Petition

ñ Residents currently living on Private Roads in town spoke stating that many people in town live on private roads. They knew and agreed when they purchased their land and homes, that there would be a cost to maintaining their roads.

#### Public Input

ñ Jim Coffey was asked to speak regarding the highway budget. This year's budget for the highway is \$197,500. Of that \$14,500 goes to Boulder Rd and Valley Rd. Contracts for maintenance have been signed. There is no money in the budget this year for maintenance on Aten Road if it were voted in. If it is voted in it would be paved and have a 20 ft right of way. To upgrade it would increase town taxes.

ñ Mr. McGerty stated if this were voted in there would have to be some sort of agreement that it would not take place under this years Budget.

ñ Mr. Halter spoke regarding the road would increase the amount of Town roads in Stoddard by 6.7%. He referred to a case in New Ipswich where the Town took over a private road. The 8 factors of reason to take over the road in the New Ipswich case don't seem to relate to this case.

ñ A homeowner stated that since our tax bills state we are on a Class 5 road, we are already

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assessed a road tax and on top of it, are paying for the maintenance privately, so there should be no increase in taxes. Also, since there is a person already contracted to do the road - why not have the Town contract with that same person?

ñ In reply to the above statement, Mr. Coffey said he knows the tax bills do not show the class of road a property is on. He continued saying "Everyone pays for Town services that they don't use. Such as those who live on a State road pay for Town road use. The Town can take up the homeowners suggestion of use of Aten Road's current contractor for that road's maintenance".

ñ A homeowner asked why the Town is concerned with the need to upgrade and pave the

Road as it is already in existence, and meets a higher level of standard than the connecting Town road.

ñ Mr. Coffey replied the Town has not had an engineering study done on the condition of the road and current standards for new roads require a 20 ft right of way and a paved road. His opinion is that taking over the road would mean the Town would have to meet those standards.

ñ Mr. McLaughlin stated he has worked with an engineer for the past five years correcting problems with the road and there is currently no drainage or other problems with the road.

ñ Atty Panciocco stated she will fax the professional's report on the condition of Aten Rd to Jim Coffey tomorrow. The presenter of the report couldn't be here tonight do to bad weather.

ñ Atty Bradley reiterated that the agreement between the Town and Lakefalls was a contractual decision, that Lakefalls Associates could have their subdivision if the Town didn't have to maintain the road. He also stated that he hasn't read every deed of the lot owners on Aten Road but the ones he has read all state, the lot owner will be responsible for the upkeep of the road.

## Deliberation

ñ Chairman McGerty asked selectman if they wanted to deliberate now.

ñ Arnie Stymest replied he would like to deliberate now.

ñ John Halter replied would like to deliberate now.

ñ Steve McGerty replied would like to deliberate now.

ñ Mr. McGerty commented, "In his opinion, if all the deeds say that the landowners will be responsible for their roads it should remain that way".

ñ Mr. Stymest commented that he thinks it important to consider that other roads in town could come under the same decision, if it were accepted, and the projected cost to the Town would be unbearable.

ñ Mr. Halter clarified his signature is on the 1986 Stipulation. He states it was a quid-pro-

quo agreement. Not a perfect situation but a compromise and he feels little has changed since then but time.

Chairman McGerty called for a Vote on the Petition.

ñ Arnie Stymest voted nay

ñ John Halter voted nay.

ñ Steve McGerty voted nay.

The meeting adjourned at 8:25 PM.

Respectfully Submitted

Kathleen Ellis

Recorder

Approved

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Stephen McGerty

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Arnie Stymest

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John Halter