

TOWN OF LYNDEBOROUGH

Joint Board Road Policy

Meeting Minutes

Citizens' Hall

September 9, 2021

Final

Present:

- Board of Selectmen: Chairman Fred Douglas and Selectman Mark Chamberlain
- Town Administrator Russ Boland.
- NRPC Circuit Rider Jay Minkarah
- Planning Board: Tom Chrisenton, Ray Humphreys, Mike Decubellis, Bob Rogers, Julie Zebuhr, Charlie Post, and Paul Best
- Conservation Commission: Kris Henry, Sharon Akers, John Pomer, and Mike Decubellis
- ZBA: Karen Grybko, Jon Lavoie and Ray Humphreys
- Police Department: Chief Rance Deware and Officer Sean MacFadzen
- Road Agent Mark Chase
- Code Enforcement Officer/Building Inspector Leo Trudeau

Public present:

Jessie Salisbury, Maria Brown, Steve Brown, Anna Meigs, Ginny Chrisenton, and a few additional residents

New Business:

Discuss Roads Policy

NRPC Circuit Rider Jay Minkarah reviewed RSA 674:41, which empowers the Board of Selectmen to issue permits on Class VI roads. (*see end of minutes for RSA*)

An appeal starts by providing an application process. Residents can apply to the Select Board after review and comments by the Planning Board. There is a list of what an applicant needs to provide. The driveway has to be within 600-feet of a Class V road but there are provisions.

Building on a private road is different than building on a Class VI road.

Key agreements that need to be followed, based in statutes.

Release of Liability form to be filled out for building on a Class VI road and also similar one for a private road. It releases the Town from liability and ensures the property owners are fully aware that the Town is not obligated for upgrading or maintaining the road. The property owner is responsible for upgrading or maintaining the road.

Bob Rogers felt that Class VI and private roads are different animals therefore should be dealt with differently. The Town and Boards should have less jurisdiction of private road on private

property, especially if the owner(s) are willing to sign a waiver of liability. Mr. Rogers said after that, the Town should keep their hands off it.

Jay Minkarah said that Class VI and private roads are treated differently but they are in the same RSA. An alternative is to have two different ordinances.

Julie Zebuhr gave an example on New Road where she has seen a "No Trespassing" sign on a Class VI road, which seemed they wanted to be private and didn't want hikers to pass through. Jay Minkarah said that raised a good point. Class VI roads can be confusing. Historically it's difficult to figure out where a Class VI road starts and ends.

Russ Boland said when the Town becomes aware of a situation, such as what Julie mentioned, they try to reach out to the property owner. For example, there was a sign in the right-of-way (ROW) that needed to be taken down so they had a conversation with the owner.

Bob Rogers said under a Waiver of Limitation, think in terms of a single house. If there are multiple houses in a subdivision, that is dealt with by the Planning Board. There are very few roads in this town that don't meet Class V standards. It would be ludicrous to ask them to upgrade the road to have access to one house.

Mike Decubellis says it contradicts 5B. Emergency lanes were discussed as well as 6C.

Resident Steve Brown wondered what brought this discussion forward and asked if they are anticipating future events, concerns, or trying to solve a problem. Selectman Chamberlain said this policy has been worked on by previous Boards for several years. The catalyst is a resident purchased property, sight unseen, and didn't know the property was on a Class VI road. The original signed a Waiver of Liability, and the second owner knew about it. The property is 800-feet from the Class V road portion of the road. This new resident is very upset the Town does not plow his portion of the road and has safety concerns for his family. A key thing this policy does is to ensure the Waiver of Liability is recorded so that information comes up in a title search and perspective buyers don't have to rely on the previous owners or the real estate agent to inform them of the road status. It's fine tuning the process.

Paul Best asked about the maintenance responsibility for a private road and if the owners are informed of their responsibilities. He asked if this document includes the rules and any issues with building permits rather than focus on that responsibility. He asked about the scope of the document.

Mark Chamberlain replied the Selectmen wanted to have a policy to help the Boards understand the issues and Waiver of Liability release. A couple of things here are life safety. Is the access going to be adequate for different situations? You can issue a permit for a cart path but is that wise? Down the road, when somebody wants this Class VI to be taken over by the Town, and it's a driveway, it will be very expensive for the Town to take that over.

Mike Decubellis said he has no problem with defining procedures on how to determine 674:71 however he has a concern with property owners signing a Waiver of Liability, which releases the Town, and worry about them coming back and suing you or taking over the road. We have been independent of allowing them to sign that liability. He felt the number of 600-feet is arbitrary. If someone wants to build a road 200-feet into the woods, then that is on them.

Steve Brown would like to piggyback on what Mike Decubellis just said, it leaves him with a “bad taste” with two things together; Sign the Release of Liability and to have to upgrade the road. He felt the Town can’t have it both ways.

Bob Rogers said with regards to life safety issue, he understands it fully but noticed it references access for 12 months of the year and said there are some homes that are seasonal. He felt this was a slippery slope for the driveway policy to require the driveway be plowed in the winter when no one is living there. That issue should be between the seasonal house and their insurance company.

Jay Minkarah explained there are more than one way to read that. Any document (policy) could have enforcement issues. The intent is probably more to make you aware it’s your requirement and you are assuming your responsibility. In terms of emergency access, if there is a signed release of liability, he is not sure that police or fire departments would look for a release prior to responding. Access could put some town vehicles at risk.

Steve Brown said he believes that our town’s emergency personnel would try to get to a house no matter where that house is.

Charlie Post asked who is liable if the ambulance flips over, or some gets hurt, or the fire truck is damaged, is that the landowner or town?

Leo Trudeau said he is hearing a voluntary grouping of a driveway and a street and said they are not the same. The driveway will give access to one residence unless there is a common driveway. A street gives access to multiple residences or lots of records. He has not seen, requirement that the driveway needs to be maintained in any way other than what the owner wants to do. He added, a driveway has to be built to a standard. If it’s a common driveway providing access to more than one home, that may trigger a bit more. A street is a street. Every road is a street, RSA 672:13 (1) covers that. There is an obligation to have, provide access to emergency vehicles to get up the street to multiple residents, different than one lot. It is important to keep that distinction.

Paul Best said it appears a good number of properties in town are on Class VI or private roads. He felt that fire department or police department in a rural community should have a policy to access those locations and have rules such as maybe you can’t go there or only go there under certain conditions. Being able to access every residence or part of the community by the fire or police departments and wondered do they have the ability to say, “it’s not reachable”.

Mike Decubellis said he would like to see large lots remain in Town from a conservation perspective. If people in the woods figure out they can’t use their lane, they will sell to developers who could build paved roads. What we have been doing has worked magnificently for the Town, otherwise it would be built up by now.

Selectman Chamberlain said it’s a misunderstanding between a policy and regulation. This is a policy. There is a difference. Class V roads are not all paved. To say they are all going to have to be paved is incorrect.

Julie Zebuhr discussed a problem with people having accidents in woods such as horseback riders, hunters, loggers and so forth and accessing them when they need help.

Ray Humphreys wanted to make a point of clarification and said he does not believe the 600-feet is an arbitrary number. It’s documented in the RSA. He asked people to consult the book, “Hard Road to Travel” on pages 148 and 131.

Case law in New Hampshire in a 1989 court upheld the policy of building on a Class VI road if it's more than 500-feet. There is jurisdiction of over 600-feet.

Mike Decubellis said the Selectmen can work under RSA 641:41, the limit was upheld. This was debated if there is a restriction in the RSA.

Mike Decubellis' point was this caselaw is laid out in 671:41 procedure and that is fine but he does not like putting down a hard definition that beyond that distance you can't do anything.

Chairman Fred Douglas wanted to go back to how this first started. Someone bought a property on a Class VI road and that information was not in his deed and not recorded at the Registry of Deeds. The property owner came to the Select Board asking how he can make this a Class V road. We spent taxpayer's money for an engineering study. The resident decided not to do a Petition Warrant asking the voters to take the road over. I sat there and thought, what is the Town's due diligence. The policy never allowed for the Town to record the Waiver of Liability at the Registry of Deeds. If the policy was to have waivers, it would have been there. A waiver was in the property file. The real estate agent came to the office and looked at the records, but never disclosed it. I don't ever want to see this again in the Town of Lyndeborough. I invite anyone to sit in this chair of Selectmen and also listen to his plight.

Kris Henry said he was happy to read this and that the Selectmen are taking action. It has been a long time coming and it's a guide for the Selectmen. If someone wants to come in and develop or build on a Class VI road, this helps prevent things like this from happening. From my own personal experience and with the COVID pandemic, which super-charged people with lots of money who want to get out of the city. Lots of people I know have had land and homes bought sight unseen. I feel that frustration and at the same time I think we need to be prepared for the influx of what is coming into Lyndeborough and work with the Master Plan to maintain contiguous tracks of land and rural values.

Ginny Chrisenton asked if the Town will be installing "Class VI, not maintained after this point" signs.

Road Agent Mark Chase said not all roads have been marked and mentioned Nichols Road, French Road and Warner Road. The signs are being made and will be installed.

Ginny Chrisenton said if you are putting up the signs, people will know it's not maintained after that. Why put up the sign? Then you have a policy that does not seem like it's a guideline.

There is nothing to preclude people from going over a Class VI road with a registered vehicle, right to the end. There was an issue on both ends of Richardson Road. A homeowner covered the road by seeding and making it a lawn so now Richardson Road runs right through what appears to be their "lawn". If somebody wants to go out there they can but the former homeowner tried to prevent people from driving on the road.

Office Sean MacFadzen added people can't ride an HOAV on Class VI roads.

Tom Chrisenton said they have a Class VI road going through his property which has wetlands. Someone can drive a car there, but they will get stuck. Mike Decubellis said it's illegal. Tom Chrisenton added, if you open it up there are 4 wheelers and Jeeps that want to get all muddy but they do it at our expense because we own both sides of the roads. The provision, gates & bars, but they can walk down there.

Jay Minkarah said there is a procedure to close a road, subject to gates and bars.

Bob Rogers asked how will this policy get to a perspective buyer? How do they know that you can't build a house there if it's too far from a Class V road. Jay Minkarah said the policy itself will not be recorded, the buyer will have to do due diligence, maybe find it on the website. If the policy goes into effect, there will be a limitation on the property and any subsequent owner will know this.

Tom Chrisenton said it's not the responsibility of the Town to provide due diligence for a buyer. The buyer has to go to the Town to ask if they can get a building permit, then they are doing due diligence.

Tom Chrisenton had an issue with the document being too similar to Allenstown's wording because they are in Merrimack County and do not have the same elevation as Lyndeborough. He talked about roads and salt limits and talked about 12% restrictions.

Leo Trudeau said the reason we are all here tonight is to develop a policy that makes good sense for Lyndeborough is equitable and provides the best possible solution at the end of the day for the municipality, for everyone who owns the properties and wants to live here in the future and right now. I think 12% restriction is not good. Tonight, is to discuss a draft policy and get ideas. Mr. Trudeau talked about a "default policy". If the provisions and procedures to waive some of the requirements. If the procedures are not met, the waivers are not met. Until we have a policy, this is the speed limit we have to go by. He added that RSA 674:41 becomes easier and to understand if you re-read it a lot.

Ginny Chrisenton said there is no provision of a policy for a private road that has a signed private road maintenance agreement because those agreements are recorded at the registry. I'm maintaining our roads so the police and fire can get up it during an emergency.

Ray Humphreys mentioned "A Hard Road to Travel" and highlighted a 2004 edition, a major change to paragraph 2A. It references that municipalities may accept any lot including island lots served by boats and talked about the requirements. (*see book for more info*)

The consensus of some people in attendance is the Town had large lots and has worked on the Master Plan in the past and worked on conservation issues. They want Lyndeborough to maintain its rural character with large lots.

Selectman Chamberlain said he is not sure where this wording originally came from. This was a product of two prior attempts to make a policy. We are looking at Lyndeborough, not other towns. He also pointed out that other Boards have used drafts from other towns such as Mr. Chrisenton crafting a Rule of Procedures policy from Hancock's procedures. There was a discussion that this was on the agenda for months and that towns can look at other regulations that work for their town, so it's not written from scratch.

Kris Henry asked if there is a suggestion for a length that is agreeable. He added, this Select Board is not going to be the Board of the future so it's important to have this. We all want to enjoy the rural character of Lyndeborough.

Tom Chrisenton said to have the Fire Chief come out and see if they can get up there. Ray Humphreys suggested the Road Agent works in conjunction with the Fire Chief.

The document was made in 2002, almost 20-years old. It needs to be updated and the transportation has to be maintained. The 2005 edition of "A Hard Road to Travel" was mentioned. The RSAs should be added in the Master Plan.

Jay Minkarah mentioned that people can register for an online Hard Road to Travel seminar at NRPC to be hosted on Sept. 22.

Paul Best said that people can buy property on a Class VI road. A goal is to expect people to live on a private road and have a private road agreement and willing to waive their rights with a respect their rights to live a little bit more remote.

It was discussed when people buy a property without seeing it they expect it to be a buildable and expect what to get.

John Lavoie said he heard two solid suggestions from Mr. Chrisenton regarding the distance and also Mr. Trudeau with the percentage.

Mike Decubellis said he agrees with Paul Best's statement. We are trying to regulation a distance from a Class VI road. There are people's driveways that are longer than 600 feet. If you have the fire on a Class VI road some vehicles may have a hard time getting in, even without a liability. I hope we are not withholding permits.

Currently, the Town goes by RSA 674:41, because that is the default.

Leo Trudeau said he is still hearing this joining of driveways and street. A driveway serves 1-4 homes. Any "way" and it's called a "street". Any street that serves multiple lots of records, has to be built to road standards and that is our speed limit. It's a variable speed limit based on factors.

Mike Decubellis said even on a long driveway it needs to be easily plowable even if it only assesses one residence. Trying to group them together does not do anything good. It's important to keep in mind a driveway is not a street.

There was another long discussion regarding road maintenance agreements and Waiver of Liability agreements recorded for the Town. Most members felt it was a good idea to help protect the Town.

This is a working document and residents are welcome to attend meetings or voice their opinions.

It was discussed for the Planning Board to schedule this topic and update the Master Plan. The Master Plan drives the zoning regulations.

A woman asked about their liability regarding accidents happening on Class VI roads because they are not in best condition. Are they responsible as property owners living on that road? She sees a lot of alcohol bottles on the roads. Jay Minkarah said a Class VI road is a public road so abutting landowners are not responsible for what people do on that road.

Fred Douglas strongly suggested taking up the issue of E911 numbers. It is mandated to update E911 when a new street is put in. This has not been done in a while, 2001. Some members asked if there is a document for E911 and were informed it's available online.

Police Chief Rance Deware said that this was not clarified until 2004. They have to verify the lot number, street address and phone numbers. It was a big process. For emergency purposes, the

street number needs to be on the mailbox or have a sign at each driveway. Chief Deware added, "It's for everyone's safety".

Add to the October Planning Board Agenda:

- Road Policy and Procedure Manual
- E911
- Discuss when to start the Master Plan

Adjournment:

The meeting adjourned at 8:35 p.m.

Respectfully Submitted,

Kathleen Humphreys, Transcriber

Chairman Fred Douglas_____

Selectman Mark Chamberlain_____

Selectman Robert Howe_____

Audio

801-2017 Silver Recorder (labeled 801-2017_9-9-21_Road Policy Meeting-Joint Meeting

Black Recorder: 210823-0036_9-9-21_Road Policy Meeting_Multi Boards)

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:41

674:41 Erection of Buildings on Streets; Appeals. –

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving

access to the lot upon which such building is proposed to be placed:

(a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or

(b) Corresponds in its location and lines with:

(1) A street shown on the official map; or

(2) A street on a subdivision plat approved by the planning board; or

(3) A street on a street plat made by and adopted by the planning board; or

(4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40; or

(c) Is a class VI highway, provided that:

(1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or

(e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street.

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with RSA 674:14 and 674:15, including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

(a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or

(b) If disapproved by the planning board, approved by not less than 2/3 of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, " the street giving access to the lot " means a street or way abutting

the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

Source. 1983, 447:1. 1988, 131:2, 3. 1989, 266:20. 1995, 291:10. 1998, 344:6. 2002, 270:1, 5. 2004, 154:1, 2. 2005, 226:1, 2, eff. Sept. 3, 2005.