

**Board of Selectmen
30 July 2007
Minutes**

Attorney Wood stated, for the record, that Lois does an excellent job on the minutes. He said it is very important to have a complete record. Brian Forst said he has learned that the minutes can be a very good resource, and it is important that the minutes be accurate.

6:04 p.m. - Chairman Brian Forst called the meeting to order. Present were Chairman Forst, Selectmen Don Guarino and Dave Clairmont, Administrative Assistant Tim Warren and Clerk Lois Dionne.

Also present were Mary Ann Morrill and Attorney Patrick Wood and Conservation Chair Nanci Mitchell.

Gale/Donovan Road Upgrade Issue – Mary Ann Morrill and Attorney Wood were here to follow up on the meeting of July 9th regarding the specifications the Selectmen had given them to upgrade Gale and Donovan Roads to enable the Morrills to get a building permit.

Attorney Wood stated that at the last meeting, it had been his understanding that the Board of Selectmen needed to do some homework to get some answers to some questions they (Selectmen) had, and then get back to the Morrills. Attorney Wood said he had suggested that he try to get some information on Class V standards, and Chairman Forst had asked to first let the Selectmen see if there was any more information they could provide. He asked if the Selectmen had any information to share with them. Chairman Forst stated that Attorney Wood had mentioned getting a cost for bringing it (Gale Road) to a Class V road. He said the Selectmen hadn't gone to that extent because, when looking at the numbers, and knowing how much road there is, they were able to compare it to an ongoing project of upgrading a Class V road for which the cost is about \$300,000 without pavement. He felt to upgrade Gale/Donovan Roads to Class V with a betterment assessment would not be any cheaper for any party on that road. He felt the share of a betterment assessment would be comparable to the specifications we had put out, and the Morrills had come back with an estimate for. Brian added that he felt the specifications could be done for a cheaper amount than what is being discussed. Brian felt whether that is a reasonable or unreasonable request to make of the Morrills is the question.

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Attorney Wood responded that was the question they are facing. He said a couple of years ago the court had made it very clear that it is unreasonable to expect the Morrills to bring the road up to a Class V standard, and it was unreasonable to expect them to bear the entire cost of the improvements since there are other people who use the road. Attorney Wood asked what would be a fair and proportionate share of that cost, whatever the cost might be. He said if they went on a front-footage basis, they could go by how many lots have frontage on Gale and Donovan Roads, so they could get percentages to determine what the Morrills amount might be. Attorney Wood said this does not necessarily do the work that the Selectmen have suggested needs to be done, and he didn't have an answer as to whether a Class VI Road could be the beneficiary of a betterment assessment.

Chairman Forst stated that there are only three parties who could benefit from an improved Class VI Road. He said nobody else could build unless the road was brought up to a Class V standard. Attorney Wood stated that if the road were brought up to a Class V road through a betterment assessment, the money wouldn't have to be paid all at once; it could be paid over time. He said he was speaking without authority of his clients to offer that, but was putting it out as a way to possibly bringing this to some resolution. He said they were almost at the point of saying they might have to go to court to get the answer to their question, and they don't want to go back to court, but it is costing the Morrills a substantial amount of money to continue trying to get answers. Attorney Wood felt the cost of the proposed upgrades are substantial for one family to move their existing house to another location on the property, which is what the courts had felt wasn't fair. He said they want to find a fair solution.

Selectman Clairmont said one advantage of a betterment assessment is that the Town would be reasonably assured of how the road would be maintained, and they wouldn't have that assurance if the Morrills were to bring it up the standards they (Selectmen) had adopted. He asked if a percentage of the landowners who would be affected if there were a betterment assessment would have to agree to the betterment assessment before you could move forward with it. Tim Warren stated it is his understanding that if the landowners were benefiting from the improvements, then they are responsible for a share. Attorney Wood said that is his understanding also. He said once the Town makes the decision that it is in the Town's interest to improve the road, the landowners have the right, not to challenge the improvement to the road, but maybe the right to challenge their share of the cost.

Selectman Guarino said if the Town made the decision that it was an advantage to the Town to bring any Class VI road up to a Class V standard, then he could see the Town doing it, and telling people they would be responsible for a certain amount, but Don added that if you were a private individual owning property on a Class VI road, he couldn't imagine another individual telling you that you need to spend thousands of dollars to upgrade the road.

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Attorney Wood said the Morrills couldn't compel the Town to spend money on a Class VI road, nor could they expect other people on the road to contribute to the cost of maintenance, but said the court felt that in the concept of fairness, they should. Attorney Wood stated that if the Town faced continued litigation over this issue, and the potential of losing everything, if the court says the road is fine the way it is, and the Morrills have the right to built their house, so they should be given a building permit, the Town would have spent a lot of time and money to get to a point where nothing happens to the road other than what the Morrills are willing to do to it for their access. Attorney Wood stated that the Selectmen have the ability, on behalf of the Town, to make a decision to balance those different concerns to find a reasonable approach. He said he is not saying necessarily a betterment assessment; that is one option.

There was a discussion as to whether a road upgraded through a betterment assessment would still have to go before Town Meeting to be accepted as a Town road. It was felt that it wouldn't need to be, as it would already be a Town road and would be maintained by the Town.

Selectman Clairmont asked if the Morrills had any dialogue with the other owners of property on the road to see if they would be willing to share the cost of the upgrade to the road. Attorney Wood said there had been conversation with the Donovans and, initially, he thought they would be willing to share, but as the conversation went on, it was very clear that they were unwilling to share the cost. He said they hadn't talked with any of the other abutters, but had talked with a couple of people who would be willing to share the cost of upgrading, if the road were brought up to a class V road.

Mary Ann Morrill stated that one couple wanted to make a residence and had been going to upgrade the road to a Class V in order to get in. She said they were going to take the whole expense upon themselves to upgrade down to their driveway, but had been in to see the Selectmen and were told to wait until the Selectmen were done with the Morrills before they spoke with them. Chairman Forst stated that the Selectmen, at that point, were working on getting specifications. He said the Morrill's case is an ongoing situation, and they hadn't wanted a new situation to try to be coat tailed into the Morrill's situation. There was a brief discussion about the other properties on the road, and how their situation is different from the Morrills because the Morrills already have a residence on the property, and the road would have to be brought up to a Class V road before building permits could be issued on any of the other properties, and at this time there is a moratorium on upgrading Class VI roads to a Class V standard.

Attorney Wood said they want a fair solution to the problem, and if it couldn't be achieved, their next step would have to be to go to Superior Court. He stated that the first finding of the court was that the roads are not in bad condition, and the Town never challenged the finding. He said a solution they would like to see is to have the roads stay as they are, and the Morrills would be willing to see that the drainage is taken care of and to upgrade and maintain the portion of the road from just past the Donovan's drive to just

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past the Morrills drive to the standards the Selectmen had set. Attorney Wood reiterated that it was unfair and unreasonable to expect the Morrills to start where the Class V portion of Gale Road ends, and to carry it all around and make all the improvements on their “nickel”. Chairman Forst asked if he was, basically saying, that the specifications the Selectmen had given from the end of the Donovan’s driveway to the entrance to the Morrill property would be acceptable? Attorney Wood said that was right. Brian asked if there would be some adjustments made to any specifications from the Donovan property out to the Class V portion of Gale Road that involved correction of drainage, but not major change to the road the Morrills would do that. Attorney Wood agreed they would.

Selectman Guarino stated that he knew the case had been to court a number of times, and that Attorney Wood had referenced the first case a couple of times this evening. He asked why the courts hadn’t ruled exactly what Attorney Wood had just stated; the portion of the road where the Class V ended down to the Donovan’s drive was acceptable, and the Morrills were only responsible from the Donovan’s driveway, and that would had ended the case right there. Attorney Wood replied that the courts don’t want to become super zoning boards; they want the town to find a solution. Attorney Wood read the court’s finding in part - The court notes that the road, as presently exists, is a fairly wide hard-packed surface, and is well-groomed and maintained – Requiring bringing it up to a Class V that meets subdivision standards, including the potential of paving is unreasonable based on the present condition of the land -. He said the court also said it would be unreasonable to require the petitioners to upgrade the entire roadway from their proposed driveway to the nearest Class V road, in light of the fact that the petitioners are not, and will not be the only ones using the roadway. Selectman Guarino stated that the Courts don’t want to be the decision makers, but if the Town went to court to take it a step further than we are now, doesn’t the Court become a decision maker, if they overrule the Town of Gilmanton. Attorney Wood replied that could happen, and if they are forced into making that decision, they would. He said there have been cases when the Court has overruled the ZBA.

Chairman Forst stated that Attorney Wood had mentioned that the Morrills only wished to have one dwelling on their 42 acres of land, and had no interest in future subdivision of the property. He asked if that terminology would be placed in the deed restriction. Attorney Wood replied that State Law says that if that type of commitment is made to a Zoning Board or Planning Board, even if it isn’t in writing, it is a legal commitment (a legally binding contract) enforceable by the Town. Brian stated that he was just concerned about the future. Brian said it sounded as if Attorney Wood was asking for the Selectmen to make a decision as to whether they are going to stick to the specifications they had given them, or if they would make deviations from the specifications or if they were going to look at a Class V Road Betterment Assessment. Attorney Wood agreed that was the case. Brian stated that if the Selectmen were to change any specifications, they would have to hold another public hearing.

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Marry Ann Morrill stated that they have to go on the advice of their attorney, and they (Morrills) are committed to maintaining Gale Road, but didn't feel they should have to absorb the cost of it since the Town has a Town Forest down there, that they have held off logging waiting for the Morrills to upgrade the road, and put their finances into it. She added that they don't feel it is fair for them to upgrade the road for logging. Chairman Forst apologized if that was the perception that had been put forth because it wasn't their intention. He said there had been quite a bit of discussion about the Town improving the road for the purpose of the logging operation. Brian said they didn't feel it was pertinent, at that point, given the ongoing situation, for the Town to step in to put money into a Class VI road to maintain it only to have it come back and "bite" them. Brian said legally if the Town maintained and improved the road to the Town forest during the logging operation, it wouldn't become a Class V road. He added that there is also the argument that anyone has the right to access their property, so the Town has the right to access their property to log it. Attorney Wood asked if the Town wants to make improvements for Town purposes, why couldn't they work in partnership to do that. Selectman Guarino stated that in terms of a financial commitment, it was as simple as correcting the left side of the hill to control the water. Don stated that there was an estimated financial cost to the Town of \$3,000. It was stated that the bulk of the work was to have been done when the ground was frozen, and that would help support the weight of the logging truck, but in the spring it wouldn't support the weight of an emergency vehicle. Selectman Clairmont stated that another reason for postponing the logging was that the forester had moved, and we had to find another forester, and also the timber prices had fallen off to a degree that we had decided to wait a year to do the logging.

There was discussion about the quote the Morrills had received for the upgrade of the road. It was felt to be high. They also discussed what it might cost to upgrade the road from the Donovan's drive to the Morrill's drive. Chairman Forst said the Selectmen would discuss the matter later in the meeting, and let Attorney Wood know their decision.

Taping Selectmen' Meetings - Mary Ann Morrill asked about the taping of the Selectmen's meetings. She said there were a lot of meetings missed from April through June, and the June 25th one has been playing repeatedly. Tim explained that there had been problems with the camera, and we hadn't taped at all in April and part of May. He said when they show the tape is strictly up to the television station.

Mr. Munsey asked where the microphones were. He said each Selectman should have one so they could be heard on the tapes. Tim replied that people have said they can hear us, but there is a lot of background noise. He said we do have microphones, and if enough people say they can't hear us, we would put them out. Tim said the microphones were mainly for when we had to meet upstairs in a larger area, and the acoustics are bad.

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7:00 – Public Input – There was no one present for public input. It was decided to wait about ten minutes to see if anyone showed up before entering into a non-public session with the Code Enforcement Officer.

FYI's & Other Business

Bridge Report – Tim reported that the Town had received the bridge report from DOT (Department of Transportation), and all the bridges had passed the test. He said there were a couple of bridges that needed new signage for weight limits.

Plourdes Way – Tim said a road sign had been put up on Plourdes Way, and Ms. Hamilton had been in the other day, and was unhappy the sign had been put up. He said she had said if she had to live with the name, she would like the sign down, because none of the other roads off Rte 106 have signs up. Tim reported that the signs have been ordered for South Road, and Paul Perkins was surprised that the signs for the other two roads weren't up; he had thought they were. Tim said Paul would check to see if the signs are at the shop, and if they were he would put them up. There was a discussion that the signs used to be there, and it defeats the purpose of the 911 system not to have the signs up. It was agreed that the Plourdes Way sign should remain, and the other signs should go up.

Town Vehicle – Tim had a draft of a mileage record log he had made up for the old police vehicle that will be used by Town employees. The Selectmen reviewed the log and made a couple of changes they felt would make it easier to keep track of mileage, gas and the expense to run the vehicle. It was also agreed to fix the vehicle cosmetically because paint is peeling off the hood, a dent in the rear panel, and the bumpers need painting. They felt by fixing the vehicle it would last longer, and bring a better price, if we decided it wasn't feasible to keep as a town vehicle. The vehicle will be taken to get an estimate to fix it cosmetically.

7:12 p.m. - Enter into non-public session as per RSA 91-A:3, II(e)

Selectman David Clairmont moved to Enter into non-public session as per RSA 91-A:3, II(e) –Discussion of pending or threatened (in writing) litigation against the Town or Town Officials, Board Members or Employees. Selectman Guarino seconded. Motion passed 3-0.

The Selectmen discussed a code enforcement issue with Code Enforcement Officer Bob Flanders.

7:35 p.m. – Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

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7:36 p.m. - Enter into non-public session as per RSA 91-A:3, II(c)

Selectman Guarino moved to Enter into non-public session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Clairmont seconded. Motion passed 3-0.

The Selectmen discussed a code enforcement issue with Code Enforcement Officer Bob Flanders.

7:41 p.m. - Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

7:42 p.m. Enter into non-public session as per RSA 91-A:3, II(c)

Selectman Guarino moved to Enter into non-public session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Clairmont seconded. Motion passed 3-0.

The Selectmen discussed a code enforcement issue with Code Enforcement Officer Bob Flanders.

7:45 p.m. - Out of non-public session

Selectmen Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

7:46 p.m. - Enter into non-public session as per RSA 91-A:3, II(c)

Selectman Clairmont moved to Enter into non-public session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Guarino seconded. Motion passed 3-0.

The Selectmen discussed an on-going issue.

7:58 p.m. - Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

7:59 p.m. - Enter into non-public session as per RSA 91-A:3, II(e)

Selectman Guarino moved to Enter into non-public session as per RSA 91-A:3, II(e) - Discussion of pending or threatened (in writing) litigation against the Town or Town Officials, Board Members or Employees.

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The Selectmen discussed a legal issue.

8:27 p.m. – Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

8:28 p.m. - Enter into non-public session as per RSA 91-A:3, II(e)

Selectman Guarino moved to Enter into non-public session as per RSA 91-A:3, II(e) – Discussion of pending or threatened (in writing) litigation against the Town or Town Officials, Board Members or Employees.

The Selectmen discussed a legal issue.

8:35 p.m. – Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Guarino seconded. Motion passed 3-0.

MOTION – Selectman Guarino moved to seal the minutes of the last non-public session. Selectman Clairmont seconded. Motion passed 3-0.

FYIs & Other Business

Class VI Road Policies – Selectmen Clairmont asked if there had been any response to the letters we had sent to other towns regarding their Class VI Road policies. Tim reported that we had several responses, and Lois gave the Selectmen copies of the responses for them to take home to review.

DOT – Selectman Clairmont asked if another letter had been sent to the DOT (Department of Transportation) regarding the intersections and Crystal Lake Road. Don Guarino said he had stopped at the DOT Office in Gilford, and had spoken with Mark Morrill. Don stated that Mr. Morrill had told him a survey crew had been sent, and had surveyed both intersections, and they were going to send the information to the design bureau.

Vault – Selectman Clairmont asked if there had been any information for the completion of the vault project. Tim replied that they were supposed to be here tomorrow to work on the completion of the railings. He said they had thought they would be here last week for the excavation work, but there had been problems, but he felt they would be here this week to level the hill. Tim said they had asked if once they got the hill leveled and loamed, they could hydro-seed it. Tim said he had told them that he didn't feel that would be a problem. The interior of the vault is completed.

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Salt/Sand Shed – Currier Hill Road – Selectman Clairmont noted that there is still a silt fence and hay bales at the salt/sand shed site on Currier Hill Road. Tim will contact Justin Caldon to get that taken care of.

Cat Alley – Dave reported that, to this date, there is no change on the Allison Lake issue on Cat Alley.

Safety Building – Selectman Clairmont asked if anyone had contacted either the fire or police chief to discuss the ideas that had been discussed at previous Selectmen meetings to forego the plan for a new safety building, and renovate the existing buildings. Fire Chief Tim Robbins entered the meeting at this time.

There was considerable discussion during which the Selectmen explained the ideas that had been previously discussed. Tim Robbins stated that some of the ideas were the same as the fire department had presented previously. He wasn't sure if they could be accomplished. A major concern was the parking available at the Corners Station. Tim said he would be open to having the options explored. The Selectmen said they still want to talk with the police chief before pursuing it.

Letter – Darbyshire Sub-division – Tim Warren asked Chief Robbins if he had given the Planning Board a letter regarding the Darbyshire sub-division on Route 140. Chief Robbins stated that he hadn't yet. Selectman Clairmont stated that they needed it before the next planning board meeting.

Fire Truck Refurbishing - Chief Robbins reported that the third bidder they had been waiting for to get a price on refurbishing the fire truck had never gotten back to them, so they have two, and he had met with the officers of the department before coming to the Selectmen's meeting, and they have a bidder they are recommending.

There was considerable discussion of the work that was to be done on the truck and the two bids that were received. One was considerably less than the other, but didn't have specific costs on several things, while the other had a definite cost. The Selectmen reviewed the bids, and decided they would like to discuss them later at length and would get back to Chief Robbins with their decision.

9:17 p.m. – Enter into non-public session as per RSA 91-A:3, II(a)

Selectman Guarino moved to Enter into non-public session as per RSA 91-A:3, II(a) - Dismissal, promotion or setting compensation for public employees or the investigation of any charges against him, unless the employee affected has a right to a meeting or requests that the meeting be open, in which case the request shall be granted. Selectman Clairmont seconded. Motion passed 3-0.

The Selectmen discussed a fire department personnel issue.

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9:37 p.m. – Out of non-public session

Selectman Guarino moved to come Out of non-public session. Selectman Clairmont seconded. Motion passed 3-0.

Approval of Minutes – The Selectmen reviewed the minutes of the last meeting.

MOTION – Selectman Clairmont moved to accept the minutes of July 16, 2006 as amended. Selectman Guarino seconded. Motion passed 3-0.

MOTION – Selectman Clairmont moved to adjourn the meeting. Selectman Guarino seconded. Motion passed 3-0.

Respectfully submitted,

Lois Dionne
Recording Clerk