



Salisbury Board of Selectmen

Meeting Minutes

May 18, 2022

Approved

Selectman Brett Walker, Chair	Present
Selectman John W. Herbert	Present
Selectman Jim Hoyt	Present
Town Administrator April Rollins	Present
Recording Secretary Jennifer King	Present

Attendees: Several Citizens attended the meeting in person at Academy Hall; a few people attended on Zoom.

1. **Open the Meeting**

Chairman Brett Walker opened the meeting at 7:00 p.m.

2. **Review and Approval of Draft Minutes**

Chairman Walker noted one change to be made to the draft minutes of May 4, 2022:

Under section 8, Public Comment, it should read that Tricia Thompson objected to the April 6th Board of Selectmen meeting minutes saying that she did not refuse to serve on the Zoning Board, but someone else had been elected, so the Selectmen rescinded their appointment.

Selectman Herbert **motioned** that they approve the draft meeting minutes of May 4, 2022 as amended.

Chairman Walker **seconded** the motion which passed with all in favor.

3. **Signatures**

Chairman Walker noted that the Selectboard had reviewed and signed Accounts Payable and Payroll Registers. They also reviewed the following, signing as required:

- Timber Yield Tax for (Map 204, Lot 1), (Tax Map 202, Lot 1), (Tax Map 216, Lots 3 & 5)
- Gravel Tax Levy
- Intent to cut (Map 241, Lot 17)
- Abatement (Map 221, Lot 5)

4. **Public Hearing – Class VI Road Petition, Old Center Rangeway, submitted by Charles & Joyce Rose**

Chairman Walker opened the Public Hearing at 7:03 p.m. to discuss a request to reclassify approximately Eight Thousand feet (8,000') of the Old Center Rangeway submitted by Joyce & Charles Rose, to return the road's status back to Class VI. He invited the applicants to speak about their request.

Joyce Rose stated that they have purchased several acres of land along Loverin Hill Road over the past couple of decades. They now own over 450. To reclassify this section of road would clear up any misconceptions about who may or may not have access to this area of Salisbury. There have been different changes made by the Selectboard over the years, but she doubts the intention of any of those changes made in the past was to restrict access. They have improved the current road over the past 20 years. Since the lockdown, many people have realized the value of outdoor recreation. They ask the Board to reclassify this portion of Loverin Hill Road for two reasons:

1. For clarification; specifically, who is allowed access;
2. So, more people in this area are not deterred and can enjoy an outdoor experience right here in Salisbury.

She acknowledges the objections to their request:

1. Conservation easement. They are not removing land from the easement; the right of way does not distinguish the easement.
2. Access. That is the most direct access to their property and it is preexisting.
3. A tax discussion which is purely speculative and not appropriate for this forum at this time.

Other members of the public shared their concerns on the matter:

Joe Schmidl is a landowner that would be affected should this petition go through. He has been a resident for over two decades. He granted a conservation easement extending across his property to Five Rivers Conservation Trust in 2012. He is a wetlands scientist and geologist, so his expertise is applicable. There are conservation issues that should be considered before changing that classification. Creating additional access to that area, particularly vehicular traffic, will badly affect the habitat out there. The Master Plan states that they are to preserve the rural character of Salisbury, and to conserve large blocks of protected land from being developed in order to preserve that rural nature and to promote wildlife. Any development or increased access would adversely affect several ecological resources. Mr. Schmidl provided the Selectboard with maps as well as a wildlife action plan. Mr. Schmidl stated that the petitioners do not need Class VI Road access on Old Center Rangeway because they are already able to access their property via a Class VI road. The right-of-way that exists there has been accessible to everyone in town, with the exception of a few vehicles out there mudding and tearing up the road. Those have been challenged, but general access has never been a problem. It is one of the reasons that he and his wife put 138.5 acres into permanent conservation; it cannot be changed. They want people to come out and visit not only their property, but the properties behind his as well.

This petition has no benefit to the town, only to the petitioner.

Atty. Paul Alfano represents abutters Al and Cindy Romano. They are opposed to this layout. One of the questions back in 1976 when a road is discontinued, the abutting land owners are granted an easement to access their properties. In order to layout the highway, there are certain criteria that need to be met:

1. **Is there a public need?**
2. **Is old Center Rangeway integrated within the town's current road system?**
The road dead-ends to the west. The area there is steep, wet, and is wildlife habitat. Mr. Alfano distributed excerpts from the town's Master Plan.
3. **Will the highway ease existing traffic flow?**
There is no traffic problem to be solved here.

4. **Will the new highway improve the flow of traffic in town?**
5. **Will the new highway improve access for local fire, rescue and police services?**
No, and there is no turnaround area for emergency vehicles
6. **Will the new highway improve access to business district and employment centers?**
7. **Will the new highway benefit the majority or just a portion of the town's tax base?**
He would argue that it worsens the access because any class VI road is subject to gates and bars, as permitted by state law.
8. **Is the new highway consistent with the town's desire to keep large commercial development in a particular section of town?**
Atty. Alfano displayed sections of The Master Plan where it states that this is the least suitable area for development, and that the majority of residents do not want development there.

Atty. Alfano said that to grant this petition would be to violate the NH Constitution which states: "No part of a person's property shall be taken by Eminent Domain and transferred directly or indirectly to another person when the taking is for the use of private development."

Tracy McCusker is an abutting landowner. Her family has owned property on West Salisbury Rd since 1974. They object to the reclassification of the road. On the question of who would be allowed to access the property, and the answer to that is everyone, because it will become a public way. She cited liability and maintenance concerns. She also has concerns that their taxes will in fact increase, and she doesn't feel that it is speculative at all. This would not be beneficial to abutting landowners or to the town, so they object.

Jeffrey Evans, Director of Conservation at Five Rivers Conservation Trust expressed objection to the proposed Class VI Road layout of the old Center Rangeway. He read a prepared statement:

"Good evening. My name is Jeffrey Evans. I am the Director of Conservation at Five Rivers Conservation Trust. I am here tonight to present and explain Five Rivers' objection to the petition to layout the Old Center Rangeway as a Class VI road."

Five Rivers is a non-profit land trust. Our purpose is to help landowners conserve their land to protect it from future development by holding conservation easements on their land. Through our work, we help protect open space, agricultural land, and working forests in the Capitol region of New Hampshire for both public and private use.

Some people here may be unfamiliar with exactly what a conservation easement is. A conservation easement itself is a type of property or real interest, and it stays attached to the land from owner to owner. It is not temporary like a current-use tax classification. An easement stays with the land in perpetuity.

An easement functions as an embodiment of a property's development rights separated from the property itself. When a landowner wants to conserve their land, they may donate or sell the development rights, in the form of a conservation easement, to a municipality or a land trust like Five Rivers. Unless the land is donated as well, the land remains the private property of the landowner. The easement holder is obligated by law to protect the easement from infringement or harm in perpetuity.

In New Hampshire, donated conservation easements, like the Schmidl-Owens easement help by Five Rivers, are considered a type of charitable trust and are overseen and regulated by the

Charitable Trusts Unit of the Attorney General's office. They cannot be altered or extinguished without approval of the Attorney General's office.

With this background in mind, I would like to read from a letter submitted to this Board on behalf of Five Rivers by our attorneys."

Mr. Evans read from a letter from their attorney regarding the Joseph Schmidl and Cynthia Owen property in which they expressed their concern over the private property rights at stake. They feel that the decision must be based upon a balancing of the public interest and landowners' rights.

(Please refer to Board of Selectmen May 18, 2022 Meeting Minutes Addendum)

Mr. Evans continued reading from his statement:

"Five Rivers has spoken with the Charitable Trusts Unit at the Attorney General's office about this matter. They confirmed that in a situation like this, without having all the facts in hand, they believe this is something they would object to. They further confirmed that they would have to be involved in this process, as noted in the letter from our attorney. Because the land is protected by a conservation easement, the town cannot make the decision to layout a roadway on its own without approval from the Attorney General's office and probate court.

Thank you."

Atty. Rob Miller from Sheehan & Finney in Manchester represents the Roses. He stated that there have been a number of submissions made at this meeting that they have not received copies of, so it would be difficult to respond to each point raised here this evening.

He also learned tonight that they may have a conflict of interest as his wife sits on the Board of Five Rivers Conservation Trust.

Atty. Miller said he believed the Town's Attorney Walter Mitchell may also have a conflict due to donating to Five Rivers Conservation Trust in the past.

Atty. Miller requests a continuance on behalf of the Roses to analyze the situation for potential conflict and to also have time to review the materials submitted tonight.

Atty. Alfano said that in terms of damages, it is the town that would pay the damages. He also noted that it is a matter of public record that the Five Rivers easement was there. They would like the matter to be closed as quickly as possible.

Lorna Carlisle questioned the issues raised about access and wanted to know what the problems are there. She said that there are plenty of opportunities to access that area of town to recreate and wondered what evidence or examples they had in not being able to access their property.

Petitioner **Joyce Rose** said they were being restricted from accessing their land by neighboring landowners. She stated that there have been instances where their friends would go their property and be stopped by the Romanos asking what they were doing there. That is restricting access for them and they would like to be able to access their land.

Atty. Alfano said that their access is not being blocked and that it is a private / civil matter.

Chairman Walker **motioned** that this discussion be continued to June 15. Selectman Herbert **seconded** the motion which passed unanimously.

Seeing no further public comment, Chairman Walker **motioned** to close the Public Hearing at 7:41 p.m. Selectman Herbert **seconded** the motion which passed with all in favor.

The Select Board took a brief recess at 7:42 p.m. to confer with counsel.

The Select Board reconvened at 7:52 p.m.

5. **Public Hearing – Class VI Road Application/Municipal Liability Waiver – Robie Road**

Chairman Walker opened the Public Hearing at 7:53 p.m. to discuss a Class VI Road Application/Municipal Liability Waiver for (Map 247, Lot 6) owned by Bradley Weyandt and Alice Ogden.

Selectman Herbert said that the application was recommended by the Planning Board

Chairman Walker asked for further public comment. There was none.

Chairman Walker motioned that they accept this application and grant this waiver. Selectman Hoyt seconded the motion. Selectman Herbert expressed concern that on the waiver it requires certain road conditions to be met; he feels they need to waive those. He also feels that it is important to note that this is not a residence; no one can live there. Chairman Walker noted that it does state that it is a warming hut/shelter, but suggested they add the phrase “Not for human habitation” to the waiver.

Chairman Walker **withdrew** his previous motion, Selectman Hoyt **withdrew** his second.

Chairman Walker **motioned** to waive the requirement for improvements to the roadway. Selectman Herbert **seconded** the motion which passed with all in favor.

Chairman Walker **motioned** to add a specification to the application approval that it is not for human habitation. Selectman Herbert **seconded** the motion which passed with all in favor.

Seeing no further public comment, Chairman Walker **motioned** that they close the Public Hearing at 7:55 p.m. Selectman Herbert **seconded** the motion which passed with all in favor.

6. **Department/Board/Committee Reports**

1.a. Road Agent/Fire Chief

Road Agent William MacDuffie Jr. expressed concerns over rising fuel costs. They are going to have to make some adjustments to offset fuel costs. Chairman Walker noted that they certainly didn't budget for the increased prices and suggested they defer any repairs they don't need for summer maintenance in order to stretch their dollars.

Selectman Herbert asked about the projected start date for Raccoon Hill repaving. Road Agent MacDuffie said that is planned for when school is out. He has checked in with the paving contractor and their numbers are still good. They can at the very least get a base coat down and follow with top-coat later as another possible cost-saving measure.

1.b. Transfer Station

Transfer Station Manager Bert LaFlamme said that things are good at the transfer station, and currently has nothing new to report.

Chairman Walker said that they received a preventative maintenance agreement for their generator (\$670) and extended warranty from Generator Connection. Selectman Herbert said that it is an important piece of equipment, so it is necessary to make sure it stays in working condition.

Chairman Walker **motioned** that they accept the preventative maintenance agreement from Generator Connection in the amount of (\$670).

Selectman Herbert **seconded** the motion which passed with all in favor.

Discussion occurred on where they could find the money to put toward the extended warranty for the generator.

Resident Jeff Blanchard wondered if it would be worth looking at third party extended warranties. Selectman Hoyt would like to take time to review their options for the extended warranty before making a decision.

Chairman Walker **motioned** to table discussion on the extended warranty for the generator until the meeting on June 1. Selectman Herbert **seconded** the motion which passed with all in favor.

1.c. Transportation / Municipal Solid Waste

Chairman Walker said that they've already spent \$20,000 of the \$21,000 budget for MSW costs. There are \$12,000 of that that he needs to review. They have spent \$7,879 on household waste hauling and they budgeted \$21,500. The compactor will be installed in July which will help to alleviate some of that strain.

1.d. Old Home Day

Selectman Herbert said things are progressing and they are moving along well.

Dora Rapalyea said that there are about 50 old wooden chairs at the Town Hall that are no longer in use. She would like to know if the Town can legally get rid of them, whether someone takes them for free or pays for them. They are only taking up space. Brett Walker said they can certainly use the space, and the chairs will not be used again. Gayle Landry suggested they try and sell a dozen on Saturday. A suggestion came from the floor to set it up as donation.

Chairman Walker **motioned** to offer the chairs to the public for donations. Selectman Herbert **seconded** the motion which passed with all in favor.

Chairman Walker noted that there are also some tables and desks on the stage. They aren't in the greatest shape. They could possibly offer those as well if there is any interest.

1.e. Planning Board

Selectman Herbert reported that the Planning Board reviewed the request for Robie Road at their last meeting and recommended granting the Robie Road Waiver.

7. New Business

NH State Police Stats – will review at next meeting.

Chairman Walker **motioned** that they accept and pay the invoice for the Revaluation using \$5000 from the Revaluation Capital Reserve Fund. Selectman Hoyt **seconded** the motion which passed with all in favor. The Selectboard will forward the invoice to the Trustees for payment.

8. **Old Business**

Land purchase – Highway Dept: In reference to the Call's property adjacent to the Maplewood Park, Selectman Hoyt noted that the offer is off the table, so there is not much more to discuss.

A posted notice that the Town was looking for land has been up for a couple of months. No offers have been received. They cannot use the Capital Reserve Fund for this, so they will need to take it to Town Meeting. He would like to discuss where they go from here at the meeting of June 15.

9. **Selectmen's Report**

None.

10. **Public Comment**

Cemetery Trustees: will be working in the Baptist cemetery in back of the meetinghouse, and they want to clean around the stone walls. One stone wall abuts a piece of Town property. They would like some permission to clean that area out (cut small trees, clean out around the stone wall). It would improve the look of the area.

Chairman Walker **motioned** to grant permission to the Cemetery Trustees to clean up the area around the stone wall at the Baptist Cemetery. Selectman Herbert **seconded** the motion which passed with all in favor.

Chairman Walker asked if they had begun their spring cleanup. They replied yes and no. Mowing will be completed by May 30. Flags will be put up on May 29.

11. **Town Administrator's Report**

TA Rollins reported that the second check for the generator has gone out. Also, the Town Warrant has been printed. The first tax bill will be due July 6.

12. **Nonpublic Session**

Chairman Walker **motioned** that the Selectboard enter into nonpublic session in accordance with RSA 91-A:3,II (c). Selectman Hoyt **seconded** the motion.

Roll-call vote: Hoyt-aye; Walker-aye, Herbert-aye.

The Selectboard entered non-public session at 8:23 p.m. and reconvened the public session at 8:46 pm. Chairman Walker announced that no decisions were made.

Chairman Walker **motioned** to seal the minutes of the non-public session permanently. Selectman Herbert **seconded** the motion and the motion passed with all in favor.

The next scheduled meeting is on Wednesday, June 1, 2022 at 7:00 p.m. at Academy Hall.

Respectfully Submitted,

Jennifer L. King

Recording Secretary

*These minutes were approved at the Board
of Selectmen's meeting of June 1, 2022.*