



2015 TOWN OF FAIRFAX

**SPECIAL SELECTBOARD MEETING
SITE VISIT AND HEARING ON THE DISCONTINUENCE OF BESSETTE ROAD
MONDAY, July 27, 2015**

The drafted minutes presented below are unapproved subject to corrections and/or additions at the next Selectboard meeting. Those corrections and/or additions will be written to an amended version of the minutes, which will also be made available to the public.

Selectboard Members Present: Tom Fontaine, Chair, Randy DeVine and Leebeth Ann Lemieux.

Property Owners/Abutters and Interested Parties Present: Liam L. Murphy, Esq., Katelyn Ellermann, Associate MSK, Belinda Gardner, Keith Gallup, Joshua and Heidi Silman, Kurt Magnan, James Magnan, Dana Decker and Linda Smith. Kevin Brown and Bill Hannon - interested party status not established.

3:00 PM - A site visit was held at the border of the Fairfield town line and Bessette Road, TH 6.

Call to Order: Tom called the hearing portion of the meeting to order at 4:07 p.m.; testimony/evidence will now be taken.

Keith Gallup presented a highway map, dated 1981. A page from a deed recorded December 6, 1982, stating in the description Lot No. 1: Being a parcel of land with buildings thereon, located on the easterly side of Town Road #6 (abandoned) in the Town of Fairfax an aerial view of the property and a letter from Bellows Free Academy, dated January 12, 1996. Mr. Gallup stated that he has lived on the property for thirty-five years (SV0197). He stated that there are four ways to exit the property located in Fairfield. He feels that due to the family circumstances of the current owners, the Silman's (BS0161), one has to be careful even driving into the driveway to not hit the child. Mr. Gallup stated that to put a road through there would be nothing short of "cruel". Mr. Gallup also had a concern as to where the bus would turnaround.

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Bill Hannon, a Fletcher resident, addressed the Board about his concern with the "Notice" and that it wasn't a real meeting. He stated that there was a meeting at 4 pm., but that it didn't say where it was; he stated that the notice says there's a site visit a 3 pm., but doesn't say where it was; that there's a site visit but you list three highways on the notice, Bessette Road, TH 5 and Scenic Vista Road. The warning doesn't state the time and place of the meeting. Mr. Hannon doesn't see how we can have a meeting when you don't state the time and place. (Please see the notice attached to these minutes.) Linda Smith, abutter to the property, asked Mr. Hannon who he was. Mr. Hannon stated his name. Linda asked him if he lived around there, for which he replied that he lived in Fletcher. Mr. Hannon stated that he didn't know what road we were talking about. Mr. Hannon stated that he used that road, referring to TH 5. He was asked if he wanted to see a map, which he replied no. Mr. Silman told Mr. Hannon that there was a typographical error and that a memorandum had been sent prior to the meeting informing people of the error. The memorandum regarding the error was sent out from the office of Murphy, Sullivan and Kronk on July 22, 2015. Mr. Hannon was asked which road he uses which he stated TH 5 (Brick Church Road). He was asked in what way he used it. He stated that he uses it sometimes in the winter to travel to and from work when the roads are bad and for commerce. Mr. Hannon was asked by Ms. Lemieux, SB member, if he was at the last meeting, for which he replied yes. Ms. Lemieux stated you knew what road we were talking about. Mr. Hannon stated that it was not what it says. Ms. Lemieux asked if the road has nothing to do with TH 5, why are you here? Mr. Hannon was informed that a letter/memorandum was sent out from MSK, as noted above. Since Mr. Hannon wasn't an abutter/property owner, he did not receive the memorandum. Mr. Hannon read verbatim a section of the first paragraph of the notice stating that the notice is intended to provide information to the public and interested persons, about the process for the purpose to consider certain changes to a section of the road. Mr. Hannon stated that he had been sitting here now and hasn't heard Mr. Fontaine offer any information. He asked Mr. Fontaine if he was going to offer any information, and why do you want to close the road? Mr. Fontaine stated that they are here to collect testimony. Mr. Hannon stated that the notice stated that they (the SB) were going to offer information. Mr. Fontaine asked Mr. Hannon if he was here just to argue with the SB. Mr. Hannon replied no that he was here to say that this is bogus and that it's not a meeting. Tom asked the abutters that would be impacted by the decision if they understood the warning, or were confused by this. All agreed they understood the warning. Mr. Hannon stated that it doesn't mean anything. Mr. Hannon asked where is this meeting supposed to be held, as it don't say.

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Again, the notice was read to Mr. Hannon. Mr. Silman stated that not to play the devil's advocate, how did you know to show up here? Mr. Hannon stated that he didn't. Again, Mr. Hannon stated that he didn't think this was a legal meeting if you want to keep going you can keep going. Mr. Fontaine stated that if Mr. Hannon wants to talk about the issue to please continue, we heard you last time if you have more to add. Mr. Hannon - so this is your second try at it, I don't know where you are getting your advice or information, probably from someone who's incompetent; as how I read this, you know, I just don't see you going through the process properly. You are going through this a second time now and I think you've already made up your mind that you are going to discontinue the highway, otherwise you wouldn't be going through it again and you will probably be going through it a third time. I think you've already made up your mind and I think it's irrelevant. I know that there was testimony at your last meeting and I look at the minutes of your last meeting and you didn't even acknowledge who was here or what they had to say. So, there again, I don't really think what people have to say is going to make any difference. Mr. Hannon was told that there was an attendance list for the meeting which was attached to the minutes, as noted in the minutes. The minutes don't really reflect anything that was said at that meeting and that it was kind of late. Mr. Fontaine offered to have Mr. Hannon review the tape of the testimony given at that meeting - he declined. He doesn't know why it wasn't in the minutes. Ms. Lemieux asked Mr. Hannon what he was really here for as she's not sure. He stated that he thinks what we are doing is wrong. He doesn't want to be here but he is. Mr. Hannon had some questions that he handed out to the Board, which he also read to the Board. Please see the list from Mr. Hannon attached. Tom stated that his questions will be addressed and he will receive a reply. Mr. Hannon stated that he's not mad at anyone; that he just doesn't understand why this is going on. He thinks it's discrimination. He was informed that the minutes of the June 9th hearing reflects that there is a sign-in sheet of attendees if he would like to see it.

Tom asked if there was anyone else that wanted to offer testimony or evidence at this time.

Liam L. Murphy, Attorney for Josh and Heidi Silman. For the record: Attorney Murphy provided town highway maps and how they have developed from the 1930's to the present. This portion of Bessette Road, which is the last little portion of Bessette Road, has not been used since the 1940's. It shows on the 1948 map in Fairfax and the 1949 map in Fairfield that they were listed on the state maps as "primitive or untraveled" since 1948. The notice that was put in the St. Albans Messenger, dated July 15, 2015, was also put into record.

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A letter from MSK, dated 7/23/15, stated the protocol that you have to go through to make this determination. Some pictures showing the current condition of the road that were taken at the first hearing/site visit on June 9th. The area hasn't changed from the time it was visited in June to the visit today. Attorney Murphy addressed the Board that their job is to determine if it's in the public good to keep the road open or to discontinue it. He asked us to think about it in a different way than normal and that is if this road were not shown on the map would you be sitting here thinking that we should open this portion of the road. What benefit, what is the public good and necessity to the Town of Fairfax for having this little end portion of a road opened. He doesn't think there is any. Therefore, since the road hasn't been used for decades, that it doesn't provide access to any properties within the town, that the only result of opening this road could be to increase your road maintenance cost because more people would be using it as a cut through to your town and the result would be more highway maintenance, that it really would not benefit to leaving it open for any other trail or recreational purpose. Attorney Murphy stated he thinks you could make a finding on just those issues, outlined in the MSK letter. Attorney Murphy asked if there were any questions. The Board didn't have any questions.

James Magnan, an abutter, stated that in the 1960's he used to drive his car through there. His only concern that he has now is, instead of taking that road, some snowmobilers and pick-up trucks go through his field to cross into Fairfield.

Mr. Gallup stated that everyone should note that they (Gallup and Gardner) paid for that road from the brow of the hill all the way up almost a mile out of their pockets. A lot of people have had the use of the road over the years. Scenic Vista road is basically nothing more than their driveway.

Linda Smith, BS0121, Wade and she are all in agreement with Attorney Murphy, wondering if there were absolutely no road there would Fairfax, for whatever reason, say gee I think there ought to be a road there - let's put one in. To me essentially the way that the "road" is now there would have to be a substantial amount of town money spent to bring it up to code to be able to use for whatever, open traffic, or just for a lesser grade road. To use, even if it's a lesser grade road possible, it's still going to take a huge amount of money. Tom informed Linda that the only thing the town would pay for are culverts and bridges. Linda stated that their fears would be what would the speed limit be if the road was opened up. A lot of people walk their dogs on the road and children ride their bikes. The reason they bought and built there twenty-seven years ago was because it was a road that didn't go through and it would be a disappointment. She stated that they wished the road would stay closed for good.

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Kevin Brown, question of interested party status, asked if anyone had approached the landowner as to what his plans are with the road. Does he plan to open it? Mr. Gallup stated that he wanted to build a home there. Again Mr. Gallup reviewed exit options for the landowner in Fairfield. Mr. Gallup stated that the Fairfield landowner told him that he planned to put a housing development in. Mr. Gallup referred to the Town of Fairfield's SB minutes of August 15, 2014 stating "we gave permission to trim brush only. No new road. Mr. Gallup stated that the trees were trimmed and the ditches were cleaned out. He stated that sometime this summer crushed rock was brought in two-thirds of the way up the road.

Dana Decker, asked the Board what was stopping the landowner from driving through there now. Attorney Murphy stated that the SB has controls of the road as it's currently labeled as a Class IV road and that a permit needed to be obtained. The issue is that if it's not discontinued anyone can cut through from town to town.

Adjourn:

*Leebeth made a motion to adjourn the special meeting at 4:47 pm., seconded by Randy - so moved.

The minutes were respectfully submitted by Stacy Wells, Adm. Asst. to the Selectboard.

Tom Fontaine, Chair
Fairfax Selectboard

TF/sw