Special Selectboard Meeting

Friday, June 2, 2017

6:30 am

Present: Doon Hinderyckx, Jim Bowen, Tom Schnabel

Guests: Norm Smith, Nancy Beattie, Norm Arseneault, Bruce Hyde

Meeting called to order at 5:58 am. Discussion about Oak Lodge Road ensued. Norm explained that when Fitzpatrick’s owned a home (heading to the right off the turnaround on the section of road that Nancy believes was discontinued in 1948) John Fitzpatrick came to Selectboard meetings to demand that the Town maintain up to his driveway. At that time, the School Board also got involved out of concern for the children, and the board agreed to maintain that road to the driveway. There was never any intent to improve that section of road. He died, and the road was basically forgotten about with no maintenance done. His opinion is that there was never any maintenance done on the pent road (Fitzpatrick driveway). At the time the road (Fitzpatrick driveway) to the right was discontinued, the property belonged to the town of Braintree, not Rochester. Norm believes that is where the records of discontinuance would be. He does not believe that Nancy’s information is correct. Discussion ensued. If the road in question was a town road, no right of way would have been necessary to give to the Harvey lot by Matthews. There are newer laws in place now that will have an effect on the status of the road including the inability to land lock a timber lot. Act 178 states that a road that has not been kept passable by a municipality for 30 or more consecutive years is automatically discontinued. Isolated acts of maintenance (replacing a culvert 10 or so years ago) does NOT fall into maintaining the road. Norm believes that it will eventually have to be decided by a judge. Doon noted that the intent was to have the road temporarily opened due to Irene, and the Rochester board never intended to have the road be used continually after the agreement was concluded. Lengthy discussion continued. Norm showed the board on the map where he believes the discontinuance began.

Doon explained that the board felt it was important for Norm Smith to share his remembrances of what happened with the roads in the area when he was on the Selectboard. Nancy pointed out the portion of road that she believes was discontinued in 1948. She does not believe that the portion of road was reinstated as the Matthews believe, but Norm explained that that same portion is actually down by Fiske Road. Discussion ensued about this .4 mile section of road, where it begins and ends. Norm noted that the main road from Fiske Rd up was not maintained in the 70s until people started moving up there. Nancy noted that to reinstate a discontinued road would involve a lot of paperwork, and there is none. The property reverts back to the landowner when a road is discontinued. All reviewed the state highway map. Discussion continued. Doon noted that the question has to do with the legal status of that road. What is the overall desire to happen as it was used for emergency for a period of 2 years. Now, people have become used to using the road. The board has received a lot of information from all sides, but he feels that it will be up to a judge to decide. Norm explained again the need for opening up the Fitzpatrick driveway for the sake of the children, but that there was never any intent to reuse the discontinued road into Granville. Nancy read old town records where Mr. Fitzpatrick claims to live on a class 4 road. Discussion continued as to how to solve this situation. The Town has paid for legal and surveying information. Norm A suggested that the board make a decision and let it go from there. Norm S asked if there is any indication that Granville was notified about this discontinuance, and Norm A told him that there is not. Discussion continued about the notifications that happened in 1948. Nancy’s records show that two landowners were omitted from the discontinuance notification. She gave information from Judy Jensen and Howard Cardin who both used that road in the 50s, 60s and 70s. The road was used by the police when chasing residents at the time, so Act 178 (30 year statute of limitations) is not in effect. Tom spoke about the statute of Act 178-If a road is not used for 30 or more consecutive years, it is presumed to be effectively discontinued. Isolated acts of maintenance (culvert installed by Rochester Road crew) do not have effect on the discontinuance. Norm A again reiterated that there is no evidence that Granville was ever notified about a discontinuance in either Granville or Rochester. All agreed that this will end up in court. Discussion continued about the 1948 discontinuance and the vagueness of the reporting. Norm Smith advised that this go to court and let the judge make the final decision. Nancy reviewed the documentation she has gathered with the board and how she came to the decision that town road #3 to Granville was not discontinued. Deb Matthews feels that this discontinuance cam about around the same time that in 1947-48, the state changed discontinuance notification laws to say “shall be notified” instead of “may be notified”. All agreed that there are many complications involved in this situation.

The board thanked the guests for attending and giving their input. Norm A asked to be informed of any new information that may come up. Once again, Norm Smith advised the board that it is time to let the legal experts answer this question. Discussion of possibly attorneys and how to move forward ensued. Doon will contact VLCT legal department to see if any other town has been in this situation and how it was handled.

Meeting adjourned at 8:15am.

Respectfully submitted,

Joanne McDonnell