

Town of Bolton
3045 Theodore Roosevelt Highway
Bolton VT 05676
Select Board Minutes
August 22, 2016

Board members present: Gene Armstrong, Josh Arneson, Jen Dudley-Gaillard, Chair, Ron Lafreniere, Sharon Murray
Board members absent: none
Also present: Sarah McShane, Bolton ZA, Bill O'Brien, F. Joseph O'Brien, Petitioner, Maureen Matthews
Clerk: Amy Grover

1. **The meeting was called to order at 6:02 p.m. by Jen with a quorum of 5 members present.**
2. **Additions or deletions to the agenda: none**
3. **Public comment: none**
4. **Public Hearing:** Jen made introductions, reviewed the hearing procedure, and read the hearing notice as follows:

The Town of Bolton Select Board will meet to address a petition from F. Joseph O'Brien, filed under 19 V.S.A. § 958, proposing the laying out of a temporary right-of-way by the Select Board for the removal of lumber across the land of Joji Fillmore, located at 2634 Stage Road (Tax Map #05-0032634) in the Town of Bolton. The 31.6 acre O'Brien property to be logged is located off of Stage Road, also in the Town of Bolton (Tax Map #05-0032580).

The Select Board will meet at the Bolton Town Office at 4:00 p.m. on Monday, August 22, 2016 and then conduct a site visit, before returning to the Town Office for a formal hearing on the petitioned request, scheduled for 6:00 p.m.

This process is authorized by 19 V.S.A. § 958. No testimony will be taken on the site visit, other than for the petitioner, landowner or their representatives, to point out the location of the proposed route and other geographical features that may be important to the parties, but evidence of what is seen at the site visit shall be made a part of the record at the hearing.

Jen asked for testimony from the petitioner. Mr. Joe O'Brien stated that:

- He is the owner of a 31 acre parcel that abuts Joji Fillmore's property, the land has been in his family for several decades, and has not been logged for 50 years. He wants to be able to clean up property and harvest wood for firewood, for family, friends and/or to sell.
- He is requesting a five year access, as he does not know what is on the property, the condition it is in, or how long the harvesting will take.
- The length and width of the temporary access would be as follows: the Prelco survey shows Stage Road to his lot is 1200'. 1000' of that is on the A. Johnson Company's existing logging road, which leaves 60 yards remaining from the clearing to his property, with an 8' wide right of way.
- There is an inability to access his property from any other point; the nature of the land is difficult, and the safest, flattest way to access the property is across the Fillmore property. The right of way is already laid out for A. Johnson Company. There would be very little impact to the right of way, and he would pay for any damages.

Sharon asked if Mr. O'Brien had an idea of the damages that would be paid for use of the road. Mr. O'Brien stated that they would pay with harvested wood, he did not feel it was appropriate to pay with money.

Mr. Joe O'Brien continued:

- It would be a small logging operation utilizing chain saws and pickup trucks, and perhaps a trailer, with no logging during mud season.

Mr. Bill O'Brien stated that:

- He had conversations with assessors on the impact to Fillmore's property, and noted that it would not adversely affect the use of Fillmore's property at all, and they were fully prepared to pay for the road.

Sharon noted the damages were for entering the Fillmore property, not for the road damage.

Mr. Bill O'Brien continued:

- With respect to damages, he had copies of orders from 1964 that he would like to file for the record (Book 21, pages 370 – 371, and 383 – 385): a five year right of way for a logging company in Bolton for \$5 a year, for a total of \$25. They would set damages in that range, or nominal, to that effect.
- They recognized that this was an unusual petition. They tried to cooperatively gain access and were not successful, this is a measure of last resort. The fact that Mr. Fillmore was not present is consistent with the lack of communication with him over the last couple of years. This request is not affecting his use, enjoyment, or ownership of the property. The A. Johnson Company has a commercial right of way over Fillmore's lot as does Maureen Matthews; they want to be good neighbors.

Sharon asked if deeds were being submitted for the record. Mr. Bill O'Brien stated yes, he was submitting the deed recorded in Book 87, pages 694-695. Maureen Matthews stated her deeds were here on file in the vault.

Mr. Bill O'Brien continued:

- Submitted for the record:
 - 1: a Property Plan for Prelco, Inc. by Daniel H. Hudson, dated June 1993.
 - 2: a survey for Lee Fiske by John Marsh dated 1/28/1980, showing the entire parcel.
 - 3: A Superimposed plan. It was noted that 1993 plan shows existence of 8' "Woods Road" running from Stage Road 1200' to the boundary line. He spoke with Mr. Hudson's business partner who accessed the file, and superimposed the Prelco Plan onto the survey to show the "Woods Road" when it reaches his property.

Jen asked if a professional forester would be overseeing the harvesting. Mr. Bill O'Brien stated they were interested in getting a professional for consultation, and would take the advice and execute harvesting.

Sharon asked if the property was in current use, and or had a management plan. Mr. Bill O'Brien stated no, not currently.

Mr. Bill O'Brien asked if the reappraisal was complete. It was noted it was, and they were provided with a copy of the reappraisal listing that was mailed.

Jen asked if they would be willing to post bond, or some other surety, for reparations to the road. Brief discussion noting a bond may be required by the town,

Sharon noted that the stream crossing would have to be addressed, and asked what logging practices they would be following. Mr. Bill O'Brien stated that they did not have knowledge of logging practices, but would probably follow minimum accepted practices. Sharon noted that there were different levels of management, and it would be helpful for the town to know what level of management was proposed. Mr. Bill O'Brien stated that they had not looked that far into practices as they have not been able to access their property.

Sharon asked if they had looked into more permanent access options; including going to court or purchasing the Fillmore property which was for sale. Mr. Bill O'Brien stated that they did not intend to sue for access, and didn't know the parcel was for sale until today, and had previously tried in earnest to work out a compromise with Mr. Fillmore. He noted they were not in a position to purchase the parcel, and did not know if there was a permanent solution.

Jen asked if Maureen Matthews had testimony. Ms. Matthews stated that:

- She questioned the reference of 60 yards from the landing to the O'Brien property line, as the entire right of way was on land owned by Fillmore. She and A. Johnson Company have deeded access, adding that it was an important distinction – that Johnson did not own the right of way.

➤ Her concerns were:

1. The impact to the road with any kind of logging operation, be it commercial or low impact, especially in the summer, and the length of time; 5 years. When she purchased that property she knew that Johnson would log every 20 years, which is very different than free access for five years, it infringes on her privacy. Three people utilizing a right of way is very different than two.
2. About the seasonal stream which runs all the time and feeds the wetlands on other side of Stage Road.
3. How the condition of the right of way would be maintained; how would it be assured and monitored.

Sharon noted that the condition would typically be monitored by the land owner, and that a maintenance agreement was never filed.

Sharon asked what Ms. Matthews deeded access rights were for. Ms. Matthews stated for walking, hiking, and logging.

Ms. Matthews continued:

- What percent of the land is in the “bowl,” and what percent of the land could be more easily accessed from Stage Road?

Jen asked if the Fiske subdivision explored other options. Mr. Bill O’Brien stated that in 1980 there was no home on Ms. Matthews’ lot; there existed an 8” logging road that ran through Ms. Matthews’ driveway. He noted that on the Richmond side there are now homes that make access impossible, and that it made no sense to ask to access his property in Bolton from Richmond. His initial instinct was to go through Ms. Matthews’ property, a straight shot.

Mr. Bill O’Brien stated that he had spoken with Ben Putnam of A. Johnson Company, and that A. Johnson had no problem allowing access over their right of way, free, with no restrictions, except for a maintenance agreement to return the road to its original condition. Jen asked if A. Johnson would put that in writing. Mr. Bill O’Brien stated yes, and that he had not specifically asked for that.

Sharon asked if their request met the statutory definition of necessity. Mr. Bill O’Brien replied yes.

Ms. Matthews stated that she had spoken with Tom Jaeger, and that Johnson cannot legally give permission to utilize a right of way that is not on their property; they do not have the legal right to give permission to use a right of way on someone else’s property.

Jen asked if Sarah McShane, ZA had information to enter for the record. Sarah stated yes and entered for the record:

1. A copy of the 2016 Town of Bolton Tax Map – Map ID 0032580.
2. The DRB decision dated October 13, 2010 for a two-lot subdivision by Applicant Richard Streeter.
 - Lot #1, 12.1 acres with frontage on Stage Road and a single family home.
 - Lot #2, 16.5 acres with frontage on Stage Road to be retained as a wood lot. Condition of approval – in order to designate a building envelope on lot #2 would require additional DRB review.
3. The DRB decision dated November 9, 2011 for a subdivision amendment to establish a residential building envelope. Condition of approval to record the amended plat in the land records within 180 days. Plat never submitted, DRB decision expired.
4. The DRB decision dated May 4, 2016 for a subdivision amendment to establish a residential building envelope. Denied by the DRB because the Applicant failed to provide a plat with steep slopes and very steep slopes identified; the building envelope and driveway were not configured to avoid adverse impacts to productive forestland; and the applicant did not provide documentation that the road and improvements would be maintained.
5. Site Plan/Subdivision Plat provided by Mr. Fillmore showing his property lines, building envelope, and right of ways.
6. Streeter Plat recorded April 11, 2011, Map Slide 40-C.

Jen noted that Kermit Blaisdell, Assessor, had written information on the value on the Fillmore property to enter for the record:

1. A statement noting that a log road for temporary purposes would not impact the value of the Fillmore property.
2. A Google map showing the Fillmore property.
3. The Lister card for the Fillmore property, valued at \$77,900.

Jen asked the O'Briens why the request was for five years. Mr. Joe O'Brien stated that the best case would be permanent access, but that 5 years was based on the earlier 1964 decision noted, that it seemed like a number that could be easily granted, and a number that would allow them the time to assess and steward their land.

Sharon asked if they would be in favor of the board conditioning specific practices, again noting the stream issue that would need to be addressed. Mr. Bill O'Brien stated they were not familiar with different practices, and they did not know the status of their property, but would clearly agree to conditions the board thought appropriate. Brief discussion on contacting a county forester. Sharon noted that the board would need to follow and make findings under the legal definition of necessity in terms of granting access.

Ron asked why the request was only for an 8' right of way, noting that would limit equipment, and that the wet area would require a culvert or fill, and added that they may have a difficult time harvesting the wood. Mr. Bill O'Brien stated that 8' right of way was clearly based on historical references. Gene stated that a much larger right of way was needed for larger equipment; 25' – 50.' Sharon noted that there was no specified width on the A. Johnson right of way, and the need for specific numbers in order to calculate any damage assessment. Mr. Bill O'Brien stated that they would now request a 16' right of way, for five years, not during mud season, and they would be willing to put up a small bond.

Sharon asked if Ms. Matthews if she had thought about damages for the use of her right of way. Ms. Matthews stated she was not concerned about that, her concerns were as noted: damage to the road and to the stream. Ron asked if Ms. Matthews' right of way allowed vehicle access. Ms. Matthews stated yes, and asked who would be responsible for monitoring the road for damage. /Sharon noted that was an issue, usually it was the landowner, and in this case, the landowner is absent. Mr. Bill O'Brien stated that they are respectful neighbors and that there is a clear understanding they would return the road to its previous condition. Ms. Matthews stated that there is no assurance except for Mr. O'Brien's word, and again noted that, A. Johnson does not have the legal right to give permission to use their right of way on land that they do not own. Ron noted the need for a discussion with A. Johnson Company to clarify. Brief discussion on the gate access.

Jen noted the need for the A. Johnson Company deed – it was provided and entered into the record; Book 21, pages 125-126.

Brief discussion on continuing or closing the hearing, and the tight timeline to issue a decision; 10 days after the close of the hearing. Sharon noted the need for more information in order to make findings on: environmental impacts, review of ANR maps, features on the right of way, exact width and length of the requested right of way, and specific start dates for harvesting. Brief discussion on damages, noted the town attorney suggested using VTrans formulas for determining damages. Noted: the DRB records were not part of this hearing, and that this was an unusual request, one that towns do not see very often.

Mr. Bill O'Brien suggested that in lieu of continuance, the record be kept open for 72 hours. Sharon stated she did not understand the urgency. Mr. Bill O'Brien noted they would like to begin the assessment of the property now, and apologized for his frustration. Brief discussion on foresters and noted by Sharon that depending on the property management objectives, a forester should be consulted before starting any work, and that best management practices might assist the O'Briens on deciding the right of way size. Mr. Bill O'Brien stated to clarify the intent was to access the property via the gate, drive in, address the stream with temporary bridging or a culvert, to research best practice for low impact logging, to assess and to devise a plan, with forester's input, to clean up and harvest their property, for a fee of \$25 for five years, per 1964, adjusted for inflation. Noted: Kermit Blaisdell's testimony that the right of way request would have no impact to Fillmore's property.

Jen stated it would behoove the town to continue the hearing to Monday, August 29, 2016 at 6 p.m.

Gene made the motion at 8:20 p.m. "to enter deliberative session." Josh seconded. There was no further discussion. All were in favor and the motion passed (5-0). Gene made the motion at 8:40 p.m. "to exit deliberative session." Josh seconded. There was no further discussion. All were in favor and the motion passed (5-0).

5 Recurring Business:

- Minutes August 15, 2016: Gene made the motion "to approve the August 15, 2016 minutes." Josh seconded. There was no further discussion. All were in favor and the motion passed (5-0).
- Warrants: Signed.

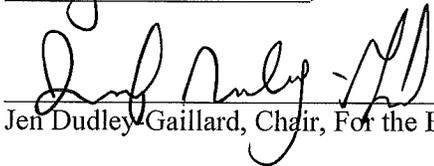
6. Any Other Business: none

7. **Closing:** No other business was brought before the Board at this time. Gene made the motion "to close the meeting." Josh seconded. There was no further discussion. All were in favor and the motion passed (5-0) at 8:55 p.m.

Attest: Amy Grover, Clerk

Minutes are unofficial until approved. These minutes were read and approved by the Bolton Select Board on:

August 29th, 2016



Jen Dudley Gaillard, Chair, For the Board

