Report of Town of Bolton Select Board Findings:

Petition to Lay Out Town Highways
Mountain View Drive, Fern Hollow Road and Bear Mountain Road

This report of findings is submitted in response to the attached petition from voters and landowners to lay out town highways in the location of existing private rights-of-way known as Mountain View Drive, Bear Mountain Road, and Fern Hollow Road, as required under 19 V.S.A. § 711(a). Mountain View Drive intersects Town Highway No. 3 (Notch Road); Bear Mountain and Fern Hollow Roads extend off of Mountain View Drive.

Procedural History

The attached petition was received by the Town of Bolton Select Board on August 3, 2015. On advice of legal counsel, this petition has been considered as an application by petitioners to lay out town highways under 19 V.S.A. Chapter 7, Subchapter 2 – Laying Out, Altering, Reclassifying, Or Discontinuing Highways By Petition To Selectboard.

The Bolton Town Clerk determined that, of the 50 names on the petition, 47 were valid voters or landowners, representing 5% of all registered voters in town. As such, the Town Clerk confirmed that petition requirements under 19 V.S.A. § 708 had been met.

On September 10, 2015 the Select Board scheduled an examination of the premises for October 14, 2015, 4:00 pm, beginning at the intersection of Mountain View Drive and Notch Road; and a public hearing for October 14, 2015, 6:00 pm at the Smilie Memorial School, US RT2, Town of Bolton, to be noticed by the Town Clerk as required under 19 V.S.A. § 709.

Legal notice of the petition, examination and public hearing was sent on September 12, 2015 via certified mail to the Chair of the Bolton Planning Commission, and to 77 persons including petitioners and other identified persons owning or interested in lands (lien holders) abutting these roads. A copy of the notice and certificate of mailing are on file at the Bolton Town Office.

Legal notice of the petition, examination and public hearing was also posted on September 12, 2015 at the Bolton Town Office, the Bolton Store, the Smilie Memorial School, and on the town website. A copy of the legal notice as posted is on file at the Bolton Town Office.

Legal notice of the petition, examination and public hearing was also published in the *Burlington Free Press* on September 20, 2015, and in the October edition of the *Bolton Gazette*. Copies of the legal notice as published are on file at the Bolton Town Office.

The examination of the premises was held on October 14, 2015 as noticed, attended by several petitioners, the five members of the Select Board and the Bolton Road Foreman. The examination began at the intersection of Mountain View Drive and Notch Road, and proceeded by foot to the ends of Mountain View Drive, Fern Hollow and Bear Mountain Roads.

The public hearing was held on October 14, 2015 as noticed, beginning at 6:00 pm, at the Smilie Memorial School with the five members of the Select Board and Town Clerk, Amy Grover, present. Attendance and exhibit lists, and minutes of this hearing, are on file at the Bolton Town Office.

Hearing testimony was received from the following interested persons (abutters):

Melissa Bailey	Derek Howard
Daniel Champney	Michael Hauser
Melissa Cruz	Donald Whitman
Kimberly Ead	Leroy Yoder

Hearing testimony was also received from the following town representatives:

Eric Andrews, Road Foreman
Linda Baker, Planning Commission Chair
Sarah McShane, Development Review Board Assistant
Michael Rainville, Development Review Board Chair

The following information submitted at the hearing was entered into the hearing record:

1. Memo from Mountain View Association, dated October 13, 2015, regarding converting Association roads from privately to town maintained roads.
2. Schematic Map from Mount View Association, no date, generally indicating road widths by segment and turn-arounds.
3. Section 12–Required Frontage and Rights-of-Way, *Bolton Zoning Ordinance* (revised March 1989).
4. Section 500–Roads, *Subdivision Regulations, Town of Bolton* (revised Apr 2001).
5. Letter from Eric Andrews, Road Foreman to Bolton Development Review Board, re Patrick Smith 8-Lot subdivision, dated November 15, 2001.
6. Development Review Board Public Hearing Minutes – Patrick Smith 8-Lot Subdivision, December 5th , 2001 and February 20th, 2002.
7. Town of Bolton Development Review Board, Notice of Decision–Patrick Smith 8-Lot Subdivision, March 26, 2002.
8. Letter from the Bolton Select Board to Patrick Smith re engineer certification of proposed road and driveways, dated April 24, 2002, as recorded in the Bolton Land Records (V. 65, p. 705).
9. "Survey of Land of Patrick Smith, Mountain View Road, Bolton, Vermont," dated August 2001, prepared by Tami Bass (LS No. 640) as recorded in the Bolton Land Records on July 3, 2002 (23-H).
10. "Declaration of Covenants, Conditions, Easements, Obligations, Liens, Rights and Restrictions for Patrick Smith Subdivision, Bolton, Vermont" dated July 24, 2002, as recorded in the Bolton Land Records (V.57, pp.553-64).
11. Letter from John H. Stuart, PE, dated February 5, 2003, certifying that road construction, upgrades and related improvements were completed as indicated on approved plans.
12. "First Amendment to Declaration...," dated February 7, 2003, as recorded in the Bolton Land Records (V.59, pp. 673,673)
13. Second Amendment to Declaration...," dated December 19, 2004, as recorded in the Bolton Land Records (V. 66, p. 984).
14. Third Amendment to Declaration...," dated March 16, 2005, as recorded in the Bolton Land Records.
15. Estimated mileage, state aid and annual road maintenance costs (grading, resurfacing, and plowing) submitted by Eric Andrews, Road Foreman, October 13, 2015.
16. *2012 Bolton Town Plan* – plan policy re acceptance of private roads (p.24).
17. Written statement from Joss Besse, Bolton town resident –received for review, but not considered as evidence.

Findings

Within 60 days after examining the premises and hearing interested parties, the Select Board is required to issue a report of its findings and a determination of whether "the public good, necessity and convenience of the inhabitants of the municipality require the highways to be laid out ... as claimed in the petition" (19 V.S.A. §§ 710, 711). Our findings in this matter are presented as follows:

1. Rights-of-way in question include Mountain View Drive, Fern Hollow Road and Bear Mountain Road. The estimated total mileage of rights-of-way included in the petition is 0.91 miles.

2. Mountain View Drive is approximately 0.68 mile in length, as measured from its intersection with Notch Road to its terminus at Fern Hollow Road, and provides direct access to eight year-round dwellings and one seasonal dwelling. An additional four dwellings are accessed off of Mountain View Drive from Meadow Lane, which is not included in the petition.

3. Fern Hollow Road is approximately 0.06 mile from the intersection with Mountain View Drive to the turnaround at its terminus, and provides direct access to three dwellings and access to state land used and maintained by the Green Mountain Club to access the Long Trail.

4. Bear Mountain Road is approximately 0.17 mile in length from its intersection with Mountain View Drive to the turnaround at its terminus, and provides direct access to four dwellings.

5. Rights-of way under consideration were clearly established and have since been maintained as private rights-of-way.

6. Mountain View Drive was initially laid out within a 30-foot wide right-of-way from its intersection with Notch Road to the Champney lot line, through subdivisions of land recorded in the 1980s that predated town regulations; and, for its remaining length (east of the Champney lot line), within a 60-foot right-of-way established as part of the Patrick Smith 8-lot subdivision, approved by the Bolton Development Review Board (DRB) on March 26, 2002.

7. Fern Hollow and Bear Mountain Roads are generally indicated on the Patrick Smith subdivision plat as unnamed private rights-of-way, serving Lots 1-4 and Lots 5-8 respectively. As noted on the plat, the Bear Mountain Road right-of-way is 60-feet wide; the Fern Hollow Road right-of-way is 30 feet wide.

8. Rights-of-way serving three or fewer lots were then classified as private driveways, rather than private roads, under subdivision regulations in effect at the time the subdivision was approved in 2002. They would similarly be classified as private driveways under the current Bolton Land Use and Development Regulations (as amended through 2010).

9. The town has had a longstanding policy to not take over private roads as town highways, as specified in applicable development regulations, and as stated in the 2012 Bolton Town Plan, to "Continue the existing Town practice of not accepting new, privately built roads" (p.24).

10. It is clear from the 2002 DRB decision and associated "Declaration of Covenants, Conditions, Easements, Obligations, Liens, Rights and Restrictions for Patrick Smith Subdivision, Bolton, Vermont" that Mountain View Drive and associated private driveways (Bear Mountain and Fern

Hollow Roads) were approved as private rights-of-way to be maintained by a homeowner's association, as required under the regulations (Section 500).

11. As specified in Article III of the Declaration of Covenants on file in the land records of the town (p.5):

> **3.2 Shared Private Driveways.**
> A. To facilitate the shared maintenance, use and enjoyment of Mountain View Drive, this Declaration sets forth the rights and obligations of the Declarant and Site Owners purchasing from the Declarant and the heirs, successors and assigns.
> B. For driveways accessing Mountain View Drive or internal roadways not part of Mountain View Drive, the users thereof shall share equally the costs associated with such driveways and internal road for those portions of the same which they use.
> **3.3 Maintenance and Repairs.** As a condition of the approval of the Subdivision creating the Sites the costs for regular maintenance and repair of the entire length of Mountain View Drive until it leaves the Property at is southeasterly border shall be shared equally by all Site Owners as part of their Association obligations and may be shared by such other users whose title does not derive for the Declarant as join the Association to contribute for that part of Mountain View Drive which they use. A maintenance schedule shall be agreed upon by the Site Owners as necessary.

12. According to hearing testimony, current property owners are aware of and adhere to shared maintenance requirements; these apply, however, only to those property owners who are members of the association. Other property owners along Mountain View Drive do not share in the cost of, but benefit from road maintenance by the association.

13. The roads in question, including the full length of Mountain View Drive, are well-maintained by the association for access by residents and emergency vehicles. Significant damages resulting from June 2015 flooding were repaired in a timely fashion, reportedly at considerable expense to association members. As noted during the hearing, unlike the town, the association does not qualify for federal and state public disaster assistance. Having the town take over road maintenance has been proffered by petitioners, as taxpayers, as a more equitable solution for long-term maintenance.

14. The Bolton Road Foreman has estimated that taking over the roads in question at minimum would add $11,500 per year to the town's highway maintenance budget, but result in only $1,384 in additional state aid, based on estimated mileage. No additional property tax revenues would be generated by existing properties served by these roads to help offset added maintenance costs.

15. Vermont Agency of Transportation A-76 "Standards for Town and Development Roads" have been adopted by the town as referenced under previous and current subdivision and zoning regulations, and for the issuance of town highway access permits. These standards require a minimum right-of-way width of 50 feet.

16. From the 2002 hearing record and decision issued by the Development Review Board for the Patrick Smith 8-lot subdivision, and from subsequent correspondence between the Bolton Select Board and the project engineer, it is also evident that the rights-of-way established in 2002 and under previously recorded subdivisions were not designed or constructed to meet town highway (A-76) standards, as subsequently certified by the project engineer.

17. It was observed during the site examination that existing rights-of-way are not monumented on the ground, and vary both in width and location from those indicated on recorded subdivision plats. The Mountain View Drive right-of-way also abuts the I-89 right-of-way for much of its length, which

would limit options for widening or relocation. There is also evidence of construction (e.g., structures, fences) within the road right-of-way.

18. Existing rights-of-way would need to be resurveyed, widened, potentially relocated and cleared of obstructions in order to meet current town highway standards. In the absence of dedicated rights-of-way and drainage easements, affected property owners would be entitled to damage payments from the town. As reported in the 2002 hearing record, several property owners abutting Mountain View Drive objected to any widening of the existing 30-foot right-of-way.

19. Current petitioners do not include or represent all abutters or interested parties along Mountain View Drive; and no evidence or information was presented during the current proceeding with regard to the willingness of petitioners or other parties to dedicate widened or relocated rights-of-way to the town.

20. Significant road reconstruction and drainage upgrades also would be required in order to meet A-76 standards. These standards specify a minimum 15"-18"subbase of gravel, a 24-foot wide road surface (12-foot travel lanes), 2±-foot shoulders, and recommend a maximum grade of 10%.

21. Mountain View Drive, Fern Hollow Road and Bear Mountain Roads have road surfaces that consist of compacted dirt and gravel, and that vary in width from 12 to 23 feet, averaging around 18 feet, as measured and reported by the petitioners.

22. Existing grades vary from 0-3% to more than 15% and, according to testimony from Road Foreman Eric Andrews, would require extensive drainage improvements. There are also very steep side slopes along some sections that would require guardrail installation.

23. Petitioners have not offered or agreed to cover the cost of upgrading the roads in question to meet current town highway standards.

24. Mountain View Drive and Fern Hollow Road provide access to state land; but as dead-ends, none of the three rights-of-way connect town highways, serve through traffic, or otherwise benefit Bolton residents who do not live on these roads.

Conclusion

The Select Board's findings lead to the conclusion that there is no general public need for the proposed town highways. The lack of substantial current or anticipated public use of the proposed town highways, other than by the private property owners who abut the existing private roads, and the fact that said private property owners currently have deeded access to their properties, demonstrate there is little public benefit or convenience in laying out the proposed town highways.

The Town of Bolton has held to a longstanding policy to not accept nor take over private development roads, such as the roads in question. Based on the above findings, the anticipated cost of right-of-way surveys and acquisitions, the potentially significant cost of upgrading existing private roads to meet town highway standards, and the assumption of ongoing maintenance costs that will not be offset by additional state aid or property tax revenues, we conclude that there is no compelling reason to act contrary to this policy as requested by petitioners.

While we understand that current road maintenance costs arrangement may be inequitable, the roads in question were clearly established and have since been maintained as private roads. The issue of maintenance costs appears to us a private matter among the abutting property owners and, in any event, it is of doubtful relevance to our task of weighing public good, necessity and convenience to the town at large. Laying out Mountain View Drive, Bear Mountain Road and Fern Hollow Road as town highways would result in considerable expense to the town, without any discernible benefit generally serving the public good, necessity and convenience of all Bolton town residents.

In light of these conclusions, the Select Board hereby declines to lay-out the town highways proposed by petitioners.

Dated December 7, 2015.

Town of Bolton Select Board:

Ronald Lafreniere, Chair

Gene Armstrong

Josh Arneson

Jen Dudley-Gaillard

Sharon Murray

Attest:

Amy Grover, Town Clerk

We, the residents, registered voters and/or landowners of the town of Bolton Vermont, petition the Town of Bolton and its Select Board to accept responsibility for the management of Mountain View Dr., Bear Mountain Rd and Fern Hollow Rd including plowing, grading and any and all maintenance and repairs as required by Title 19; Chapter 7; subchapter 2; □§ 708

Title 19 : Highways
Chapter 007 : Laying Out, Discontinuing, And Reclassifying Highways
Subchapter 002 : Laying Out, Altering, Reclassifying, Or Discontinuing Highways By Petition To Selectboard
□§ 708. Petition□(a) Persons who are either voters or landowners, and whose number is at least five percent of the voters, in a town, desiring to have a highway laid out, altered, reclassified, or discontinued, may apply by petition in writing to the selectboard for that purpose. A person who is a landowner in a town, desiring to have an unidentified corridor which passes through or abuts his or her land discontinued or altered, may apply in writing to the selectboard for that purpose. The selectboard may also initiate these proceedings on its own motion.

Name	Address	Phone #	Signature
1. ✓ Michael Hauser	78 Bear Mt. Rd	802-338-0382	
1. ✓ Maria Steyaart	78 Bear Mtn Rd.	907-305-0430	

(2)

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	Name	Address	Phone #	Signature
O. ✓	Shirley Nemethy	74 Bear Mt Rd Bolton	434-2817	
O. ✓	Randy Bergeron	1875 Huntington Rd	434-4398	Randy Bergeron
O. ✓	Patricia Bergeron	1875 Huntington Rd	434-4398	Patricia Bergeron
V. ✓	Justin Bird	29 Mtn. View	434-3030	
O. ✓	AL NEMETHY	74 BEAR MT. RD.	434-2817	

(5)

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Name	Address	Phone #	Signature
1. ✓ Jerry Chabot	Bear Mtn Rd		Jerry Chabot
2. ✓ Sabine Chabot	Bear Mtn Rd		Sabine Chabot

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Name	Address	Phone #	Signature
r.v Melissa Bailey	72 Bear mtn Rd	434-4629	Melissa Bailey
r.v Leroy Yoder	72 Bear mtn Rd	434-4629	Leroy Yoder
v.v Kristen Watrous	191 Mountain view Dr	578-7161	K Watrous
v.v Kathleen Costello	3277 Stage Rd	434-5445	Kathy Costello

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Name	Address	Phone #	Signature
O. ✓ SCOTT HENDRICKSON	76 SPRUCE ST	233-7006	
O. ✓ GEORGIA HENDRICKSON	BURLINGTON	238-2714	

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(1) page

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	Name	Address	Phone #	Signature
v. ✓	Amanda Caron	1873 Notch Rd.	434-5679	Amanda Caron
v. ✓	Britt Haselton	2453 Notch Rd.	318-2081	[illegible]
v. ✓	Lexie Haselton	2453 Notch Rd.	318-1296	[illegible]
v. ✓	Amy Ludwin	2103 Notch Rd	434-4901	Amy [illegible]
v. ✓	Steve Peery	2103 Notch Rd	434-4901	[illegible]
v. ✓	[illegible]	2169 Notch	8812056	[illegible]
v. ✓	Tom Watrous	191 Mt View	8025783568	[illegible]
o. ✓	Anne Minor	143 Green Mtn. Dr.	802-324-586	[illegible]
o. ✓	Mike Steding	143 Green Mtn Dr	802-578-2974	[illegible]
v. ✓	Suzanne Loring	91 Thacher Rd	802-434-7407	[illegible]
v. ✓	Gribbin Loring	91 Thacher Rd	802-434-7407	[illegible]
v. ✓	Brian Rooney	81 Fern Hollow	802-825-5339	B Rooney
v. ✓	Amy Antonacci	223 Thacher Rd	802-434-6001	Amy Antonacci
—	John Chaste	223 Thacher Rd	802-944-3848	[illegible]
v. ✓	Kelly Diglio	183 Thacher	609-405-2213	Kelly A. Diglio
v. ✓	Stephen Diglio	183 Thacher	856-981-1944	[illegible]
v. ✓	Wayne Deslauriers	30 Champlain	802-434-3844	Wayne Deslauriers

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(2)page

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	Name	Address	Phone #	Signature
v. ✓	Kimberly Ead	65 Fern Hollow Rd	303-717-4448	Kimberly Ead
o. ✓	Derek Howard	65 Fern Hollow Rd	303 718 9043	
o. ✓	Hannah Bonneau	29 Country Club Dr	802-355-4074	
v. ✓	Sarah Thompson	124 Sports Club Dr. 130	802-238-9273	S Thompson
v. ✓	Ross Thompson	124 Sports Club Dr 130	802-338-2361	R Thompson
v. ✓	Chris Barup	124 Joiner Brook Ln	802-363-8106	Chris Barup
o. ✓	Nick Barup	124 Joiner Brook Ln	802-363-5462	
v. ✓	Ean Breie	27 Native Trail	#208 802 287-	
v. ✓	Lauren Breie	"	" 9166	

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Name	Address	Phone #	Signature
✓. ✓ DANIEL Champney	450 Mt View Dr Waterbury Vt 05676	802-434-3356	Daniel Champney
✓. ✓ Melissa Cruz	450 Mt. View Dr. Waterbury VT	802-434-3356	[illegible]
✓. ✓ Benjamin Champney	548 mt view drive Waterbury VT 05676	802-917-2534	[illegible]
✓. ✓ ALAN DOUSE	269 MTN VIEW DR WATERBURY	802-434-2117	[illegible]
✓. ✓ Bill Atwood	1044 THEODORE Roosevelt Hwy Waterbury	802-244-7495	Bill Atwood
✓. ✓ Sharmayne Atwood	1044 Theodore Roosevelt Hwy Waterbury, VT	802-244-7495	[illegible]
✓. ✓ Lisa L Fuller	8251 T. Roosevelt Hwy Bolton, VT	802 434-2570	Lisa L Fuller

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Name	Address	Phone #	Signature
Nicole Mitchell	78 Bear Mt. Rd. Bolton, VT 05676	802-505-0123	
Matt Whalen	78 Bear Mt. Rd Bolton, VT 05676	843-240-8366	

(2)