

Town of New Castle Board of Selectmen Meeting

Public Session: 7:00 p.m.

October 5, 2020

Board Members:

Mr. William Stewart, Chair

Mr. Thomas Maher

Mr. Dave McGuckin

Others:

Ms. Jennifer Smith, Administrative Assistant, Select Board

Ms. Amelia Trapp, Board Secretary, Town of New Castle Select Board

Chairman Stewart called the meeting to order at 6:30PM. 3 members were present, and a quorum was established. Dave McGuckin made a motion to enter a non-public session, seconded by Tom Maher and voted on unanimously. The Board voted to return to public session at 7PM.

Approval of Select Board Minutes:

September 21, 2020 - Selectman Maher made a motion to approve the minutes as amended. Selectman McGuckin seconded. A roll call vote was taken, and all members were in favor.

Public Comments:

Tom Smith – He thanked the Board of Selectmen for choosing to use the hybrid option in support of those who do not wish to attend in public.

Curt Springer - He asked for the DPW updated. Selectman Maher said last Friday marked the 2-week period actively seeking applicants for the Superintendent position. They expect to renew the posting this coming Friday. Only a few candidates have applied, and they are looking to interview a few others before making their selection.

Terry Golter – She asked about the wetland area by Wentworth Road and said there may be a concern with the DPW and cemetery caretaker(s) moving piles of fill into that area. Chairman Stewart said they had previously determined that was not a wetland area. It would need to be reviewed again just to ensure they were appropriately caring for the area. Selectman McGuckin said the shed would be removed before the paving was started.

New Business:

- ≠ **Covid-19 Update** – Selectman Maher gave the update. The number of active cases declined as the summer closed. September ended with 231 cases statewide. 492 cases were reported yesterday. The active spots are on Rte. 93 and the Seacoast area has minimal cases, if any. The Board asks the community to maintain a degree of caution. Dr. Jim Zuckerman said the community ratio of positive cases is what determines whether school attendance is safe or not. He has prepared a presentation to put up in the post office to keep the city aware of the risk and preparation over the next season. Selectman Maher said they would make copies to put on the website. New Castle is low risk, and they need to maintain that safety level. The Board thanked him for his report.
- ≠ **Seacoast Regional Disposal District 53B** – Chairman Stewart discussed the bids given by the local waste management companies and he proposed that they revisit joining the Southeast Region 53B. The 53B Board's next meeting is October 21; if interested New Castle would need to send a formal letter requesting readmittance to the region. The other members were in full support of signing the letter and Chairman Stewart said he would attend their meeting.
- ≠ **CIP** – Selectman McGuckin said there was not a Chairman over the CIP and they needed to re-engage the group as they neared budget season. Selectman Maher said they had reallocated liaison positions after the election, and he asked Chairman Stewart to ask the former CIP Chairman to continue to hold that position. Chairman Stewart will take care of it and bring an update to the next meeting.
- ≠ **Water/Sewer Update** – Chairman Stewart gave the update. They have had good progress with the project and paving began today. More activity will be seen next Monday, and they expect the water project to be completed quickly. The private water lines have a specific program to help transition into the public system. There is \$450,000 for private roads to upgrade their system and they would need to express their interest by sending a letter to the town. Certain roads would be done based on Portsmouth water rules as they are a part of their water line. Selectman Maher asked for specifications on the water line(s). Chairman Stewart said homeowners would maintain their ownership of the water line, but they would benefit from the upgraded water line. It was based on the design and specifications of the road. Tom Smith asked for clarification on road looping and the water lines. Chairman Stewart said they were not discussing the road looping at this time but said that there might be funds available to do loops in the future. Patty Cone asked about the advantages of a looped road. The advantages of having a loop on Beech Hill Rd is that if there were a fire, they would have water from two different locations. The water quality is higher as well.
- ≠ **Town Projects Update** – Selectman Maher said the painting of the Town Hall continues as scheduled. They are looking to upgrade the air conditioning system in the building. Selectman McGuckin asked if any upgrades they made could be transferred to the town hall if they chose to do other renovations. Russ Bookholz had addressed these concerns, saying that was possible.

- ≠ **Halloween** – The Town will be celebrating on the day of and would be following Portsmouth's event plan as well. Selectman McGuckin said the School Board had met this evening. They were pleased with the door-to-door event more than the Trunk or Treat proposed earlier.

New Business – The Board discussed 28 Colonial Lane and Mr. Barker's request to build a stonewall and stone stairwell on his property. An abutting owner had sent a letter into the Town to discuss the area no longer being used for mitigating snow removal. The Building and Land inspectors have been made aware of the concerns and the area will not have reduced drainage due to the proposed build. The DPW is also comfortable with the location of the wall and the curve of the stone stairwell per the concerns of the snow plowing and removal. The town has the right to discuss all issues of travel on that road with Mr. Barker. **Selectman Maher made a motion to sign the agreement that has been drawn up by their attorney and Mr. Barker's attorney. Selectman McGuckin seconded the motion. A roll call vote was taken, and all members were in favor.**

Committee Reports

Selectman McGuckin read the Fire Department's monthly report into the record.

Future Meeting Dates: Remote Platform @ 7:00 p.m.

October 19, 2020 7:00 p.m. Regular Board Meeting

Meeting Adjourned:

Selectman Maher made a motion to adjourn and was seconded by Selectman McGuckin. A roll call vote was taken, and all 3 members were in favor. The Selectmen Board Meeting on October 5, 2020 was adjourned at 8:00 p.m.

Respectfully Submitted,
Ms. Amelia Trapp
Select Board Secretary

Return to:
Town of New Castle
Town Clerk
49 Main St., PO Box 367
New Castle, NH 03854

**TOWN OF NEW CASTLE
SELECT BOARD**

AGREEMENT - COLONIAL LANE

This **AGREEMENT**, is entered into this 6th day of October, 2020 between the Town of New Castle, New Hampshire a municipal corporation in the State of New Hampshire, in the County of Rockingham, with an official place of business of Town Hall, 49 Main Street, New Castle ("TOWN"); and P. Jonathan Dylan Barker a/k/a J.D. Barker ("Owner"), an individual owning property located at 28 Colonial Lane, in the Town of New Castle, NH shown on Tax Map 12, Lot 5, ("Property") (collectively, the "Parties"), as agreed upon with the New Castle Select Board at their public meeting held on October 5, 2020.

WHEREAS, the boundaries of the right of way for Colonial Lane at the area in front of the Property are disputed by the Parties and the Parties wish to reach an Agreement without the need for litigation (see attached shaded area showing the disputed right of way area on the Site Plan Site Plan prepared by Ross Engineering dated 9/14/2020 - "Site Plan");

WHEREAS, the area in front of the Property contains a steep slope which angles and drops to the edge of the pavement for Colonial Lane;

WHEREAS, there is an existing stone wall along the bottom of the slope inside of the paved edge of Colonial Lane which provides stability to the slope and protects the integrity of the paved, travelled-way of Colonial Lane and the stone wall is in significant disrepair in areas;

WHEREAS, the Owner claims the Property previously contained a set of stairs leading from the house to the traveled way of Colonial Lane that have since been buried by dirt and vegetation and the Owner desires to re-establish this access to the front of his house but it is necessary to extend the stairs into the disputed area of the right of way for such access and to stabilize the front area together with the stone wall;

WHEREAS, the Owner has requested permission to rebuild the stone wall and stairs in the disputed portion of the right of way, which will provide slope stability beneficial to both Parties, as shown on the attached Site Plan;

WHEREAS, the Owner has contracted with Lang's Landscape Services, Inc., of Greenland, New Hampshire to repair and rebuild the stone wall; and to construct the stairs and granite curbing;

WHEREAS, if the area where the stone wall and stairs are located do fall within the Town's right of way, the Town has the statutory right to grant limited encumbrances located within its right of way where necessary to protect the travelled portion of the road, in this case Colonial Lane and where the encumbrance will not interfere with the travelled portion of the road;

NOW, THEREFORE, for mutual covenants and matters set forth herein, as of the date set forth above, the Parties hereby agree as follows:

1. The Owner may rebuild the stone wall for slope stability as shown on the "Site Plan." The stone wall shall be rebuilt in its current location and shall not be moved forward or back.
2. The Owner may build the stairs as shown on the color digital-rendering attached as Exhibit 1; however, in order to protect the integrity of the paved travelled-portion of Colonial Lane and to facilitate winter plowing, the Owner shall further install a seven-inch tall granite curbing along the edge of paved area of Colonial Lane in front of the Property which connects to the bottom step of the stairs and through to where the Owner's driveway begins. This granite curbing is not shown on Exhibit 1 but will track the edge of the pavement. The Town Road Agent and Town Building Inspector shall be consulted for approval of the exact location and installation of the granite curbing prior to installation by the Owner.
3. **As Built Plan:** Upon completion of the work for the stone wall, stairs and curbing, the Owner shall provide an "As Built" plan acceptable to the Town's Building Inspector showing the locations of these items which shall attach to and become part of this Agreement as Exhibit 2. Future work or repairs on the wall, stairs, and curbing shall conform to the locations shown on said As Built plan.
4. **Maintenance & Repairs:** The Owner is responsible for all maintenance and repair of said stone wall, stairs and granite curbing within the disputed portion of the right of way and shall maintain same in good working order maintaining the safety and integrity of the paved travelled-portion of Colonial Lane; however, the Town has the right, at its sole option, to repair any portion of the stone wall, stairs and/or granite curbing within the disputed portion of the right of way if necessary to protect the integrity of the paved, travelled-portion of Colonial Lane or if necessary to ensure the safety of the travelling public on the paved, travelled-portion of Colonial Lane.

- a. Unless it is an emergency, any such work by the Town shall be preceded by 7 calendar days written notice to the Owner by US Mail and by posting at the Property.
 - b. Unless it is an emergency, any repair of the stone wall, stairs or granite curbing within the disputed-portion of the right of way by the Owner, beyond routine maintenance, shall be preceded by 7 calendar days written notice to the Town by US Mail and hand-delivery to the Town Clerk, Building Inspector or Road Agent.
 - c. The Owner shall not remove the granite curbing or the stone wall located within the disputed portion of the right of way once constructed without written permission from the Town.
5. **Waiver:** The Owner hereby waives, relinquishes, absolves and discharges the Town from any and all liability, damages, costs and expenses of any nature whatsoever resulting directly or indirectly from the Owner's the installation and maintenance of the stone wall, stairs and granite curbing that are located within the disputed right of way area. Without limiting the context of the foregoing, the Owner agrees to hold harmless the Town for any damages to the stone wall, stairs or granite curbing that is within the disputed portion of the right of way that is caused by Town plowing or Town road work, such as grading and paving.
6. **Indemnify and Hold Harmless for Negligence:** The Owner agrees to defend, indemnify and hold harmless the Town, its agents, officers, and employees from all claims, suits, causes of action or damages, resulting from any negligent construction by the Owner, including by his agents and contractors, of the stone wall, stairs and granite curbing that are located within the disputed area of the right of way.
7. **Term of Agreement & Release:** The Owner may release and waive the requirements of this Agreement by executing and recording a Release and Waiver with the Town, after first giving 14 calendar days' notice to the Town by in-hand delivery to the Town Clerk. The Town may release and waive the requirements of this Agreement after a Board of Selectmen's public meeting with 7 calendar days' notice to the Owner via US Mail and posting at the Property, after said public meeting at which the Selectmen vote to release and waive the requirements of this Agreement, the Town shall notify the Owner in writing and on the 14th calendar day after posting such notice at the Property (unless the notice is rescinded in writing by the Town during this period), this Agreement shall become null and void and the Parties will then separately address the issue of the disputed right of way if necessary and the removal by the Owner or the Town of any portion of the stairs or granite curb within the disputed portion of the right of way.
8. **No Waiver:** Nothing in this Agreement shall be construed as a waiver of any rights, remedies and/or authority of the Town pursuant to any laws, ordinances, codes, or regulations of the Town, and the Town reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, ordinance, code and/or regulation. Notwithstanding the above, nothing in this Agreement gives permission or authority for

the Owner, his agents, successors, assigns or future grantees to impede, damage or negatively impact the travelled-portion of Colonial Lane and if the above-described work impedes, damages or negatively impacts the travelled-portion of Colonial Lane, the Town reserves its legal rights including but not limited to RSA 236:19 and RSA 236:39.

9. **Covenant:** This Agreement constitutes a covenant running with the land and shall be binding on the Owner, successors, assigns and future grantees.

10. **Recording:** This Agreement will be recorded with the Rockingham County Registry of Deeds. Related minutes of meetings held by the Board of Selectmen relating to this Agreement are available for inspection at the Office of the Board of Selectmen at New Castle Town Hall, 49 Main Street.

IN WITNESS WHEREOF, the Parties hereto entered into this Agreement the day and year first written above,

OWNER

**P. Jonathan Dylan Barker
a/k/a J.D. Barker**




STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 7th day of October, 2020 by P. Jonathan Dylan Barker, also known as J.D. Barker, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.



Before me,


Notary Public/Justice of the Peace
My Commission Expires:

**TOWN OF NEW CASTLE
BY ITS SELECT BOARD:**

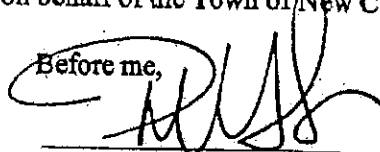

William Stewart


Thomas Maher


David McGuckin

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 6th day of April, 2020 by William Stewart, Thomas Maher, and David McGuckin, in their capacities as members of the New Castle Select Board, known to me (or satisfactorily proven) to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same for the purpose therein contained on behalf of the Town of New Castle.

Before me, 

Notary Public/Justice of the Peace
My Commission Expires 7/22/21

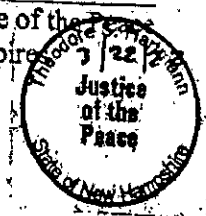


EXHIBIT 1



EXHIBIT 2

As-Built Plan

To be added after work is completed