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Town of New DURHAM, New Hampshire

Office *of the* BOARD OF SELECTMEN

*FOR PUBLIC RELEASE*

TOWN OF NEW DURHAM

SELECT BOARD

DETERMINATION OF “OCCASION” WHEN CONSIDERING LAYOUT PETITION

RSA 231:8 authorizes the BOS to layout any public highway “for which there shall be *occasion*.”

Occasion is not defined in the state statutes but has been interpreted in several NH Supreme Court cases.

Reviewing for “Occasion” breaks down into three factors that must be balanced against each other:

1. The public convenience and the public necessity for the proposed highway;
2. The financial burden to be imposed upon the town’s taxpayers for construction and maintenance; and
3. The rights of owners, if any, whose land would have to be taken to locate the public ROW for the road.

The balancing works as follows:

* Step 1: balance the public interest in the layout vs. rights of the affected land owners if land must be taken or obtained for the public ROW
	+ If the rights of the affected land owners exceed the public interest, then the layout is NOT justified and there is no “occasion”
	+ If the public interest exceeds the rights of land owners, then go to Step 2.
* Step 2: balance the public interest in the layout vs. the burden imposed on the town
	+ If the public interest exceeds the burden, then there is “occasion” and the BOS must vote to layout the road
	+ If the burden exceeds the public interest, then there is no “occasion” and the BOS must deny the layout

**Public Interest vs. Town Burden**

Step 2 requires weighing the *public interest* vs. *town burden*. Each of those is described in further detail below.

The BOS should evaluate public interest vs. town burden based on *what is already presenting existing*. In other words, the BOS cannot consider the impact from any potential future development that may occur on Bennett Rd if this layout is approved.

The BOS cannot use the layout process as a kind of planning/zoning tool; that is not what was intended by the layout process. The Town has zoning and planning boards that have jurisdiction over those issues.

Public Interest Factors:

1. Integration within existing road system
2. Ease of existing traffic flow
3. Improvement to convenience of travel
4. Facilitation of transportation of school children
5. Improved accessibility to business district and employment centers
6. Improved accessibility for for fire, emergency, and police
7. Whether it would benefit a significant portion vs. small fraction of town’s tax base or yr round residents; and
8. Anticipated frequency of road use.

Town Burden Factors:

1. Anticipated construction costs to bring road up to town standards;
2. Ongoing maintenance costs for the road itself; and
3. Impact on town’s infrastructure due to town growth, i.e. increased costs for school, fire, police, emergency.