

**CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2009**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2009 to:
Vermont Agency of Transportation, Policy and Planning Division, One National Life Drive, Montpelier, VT 05633.

We, the members of the legislative body of **DORSET** in **BENNINGTON** County

on an oath state that the mileage of highways, according to Vermont Statutes Annotated,
Title 19, Section 305, added 1985, is as follows:

PART I - CHANGES TOTALS - Please fill in and calculate totals.

Town Highways	Previous Mileage	Added Mileage	Subtracted Mileage	Total	Scenic Highways
Class 1	0.000	0.00	0.00	0.00	0.000
Class 1 Lane	0.000	0.00	0.00	0.00	
Class 2	13.850	0.00	0.00	13.850	0.000
Class 3	25.57	0.00	0.71	24.86	0.000
State Highway	13.671	0.00	0.00	13.671	0.000
Class 4	0.00	0.55	0.00	0.55	0.000
Legal Trail	0.00	0.00	0.00	0.00	
Total	53.091	0.55	0.71	52.931	0.000

* Mileage for Class 1 Lane, Class 4, and Legal Trail classifications is NOT included in total. 52.381

PART II - INFORMATION AND DESCRIPTION OF CHANGES SHOWN ABOVE. Total by S. Moulton

1. NEW HIGHWAYS: Please attach Selectmen's "Certificate of Completion and Opening".

NONE

2. DISCONTINUED: Please attach SIGNED copy of proceedings (minutes of meeting).

QUARRY RD. SEE ATTACHED TH-32 - 0.16 mi. Notes by S. Moulton 2/19/09

3. RECLASSIFIED/REMEASURED: Please attach SIGNED copy of proceedings (minutes of meeting).

UPPER KIRBY HOLLOW RD. FROM CLASS III TO CLASS IV SEE ATTACHED
TH-9 0.55 mi CL 3 → CL 4

4. SCENIC HIGHWAYS: Please attach a copy of order designating/discontinuing Scenic Highways.

NONE

IF THERE ARE NO CHANGES IN MILEAGE: Check box and sign below. []

PART III - SIGNATURES - PLEASE SIGN.

Selectmen/ Aldermen/ Trustees Signatures:

[Handwritten signatures]

[Handwritten signature]

T/C/V Clerk Signature:

[Handwritten signature: Sandu Linsman]

Date Filed:

2/6/2009

Please sign ORIGINAL and return it for Transportation signature.

AGENCY OF TRANSPORTATION APPROVAL:

Signed copy will be returned to T/C/V Clerk.

APPROVED:

[Handwritten signature]
Representative, Agency of Transportation

DATE:

4/2/2009

Vermont
Agency of Transportation

FEB 10 2009

Policy & Planning Division

Ketchum, Saddlebrook Farm Trust and North Farm Trust v. Town of Dorset (2010-165)

2011 VT 49

[Filed 29-Apr-2011]

ENTRY ORDER

2011 VT 49

SUPREME COURT DOCKET NO. 2010-165

NOVEMBER TERM, 2010

Lisa Ketchum and Thomas Ketchum,
Individually and as Trustees for
Saddlebrook Farm Trust and North Farm
Trust and Pauline Ketchum

v.

Town of Dorset

}
}
}
}
}
}
}
}

APPEALED FROM:

Bennington Superior Court

DOCKET NO. 475-12-08 Bncv

Trial Judge: John P. Wesley

In the above-entitled cause, the Clerk will enter:

¶ 1. Plaintiffs appeal the Town of Dorset’s decision to reclassify a town road from a class 3 to a class 4 highway. Plaintiffs argue that the court erred in reviewing the selectboard’s reclassification using a deferential standard instead of a de novo procedure involving appointment of a panel of commissioners. In the alternative, plaintiffs contend that, even under a deferential standard, the court’s decision is erroneous because the findings are not supported by the evidence and they were denied an opportunity to supplement the record on appeal. We affirm.

¶ 2. Plaintiffs own property that is serviced by a town highway known as Upper Kirby Hollow Road. There is one residence on the road, and the remaining properties are undeveloped. Some of the property is under a conservation easement and open to the public for recreational activities. In October 2008, the Town provided notice that it intended to consider altering the classification of certain town highways, including a 0.55 mile section of Kirby Hollow Road. The selectboard made a site visit to the property. The Town also held a public meeting and heard from interested parties. Plaintiffs attended and spoke against reclassification. Other members of the public also opposed reclassification and questioned whether it would have an impact on the public’s ability to use the conserved property. The Town road foreman supported reclassification and testified that the road is dangerous to maintain and snow plow because it is narrow and steep. In December 2008, the Town issued a written decision,

finding, among other things, that: the road's width is too narrow to allow two vehicles to safely pass one another or for access for emergency vehicles; Town snow removal vehicles have slid off the road causing danger to the vehicles and impairing snow removal of other roads; and the cost to improve the road is prohibitive. The Town also found that the road services only one seasonal residence with limited winter usage. The Town concluded that continuing summer maintenance and winter plowing did not serve the public good of the Town and reclassified the road.

¶ 3. Plaintiffs appealed the decision, citing Rule of Civil Procedure 74 and 19 V.S.A. § 740. Rule 74 allows a party to appeal from a decision of a "state board, commission, department or officer" when "any party is entitled by statute to seek review." Section 740 states:

When a person owning or interested in lands through which a highway is laid out, altered, or resurveyed by selectboard members, objects to the necessity of taking the land, or is dissatisfied with the laying out, altering or resurveying of the highway, or with the compensation for damages, he or she may appeal, in accordance with Rule 74 of the Vermont Rules of Civil Procedure, to the superior court in the same county, or in either county when the highway or bridge is in two counties.

19 V.S.A. § 740(a) (Cum. Supp. 2010). In their notice of appeal, plaintiffs asked the superior court to stay the selectboard's decision pending appeal and to appoint three disinterested landowners to review the reclassification decision pursuant to 19 V.S.A. § 741.

¶ 4. The court held a hearing on the motion to stay. At the hearing, the court questioned the basis for its jurisdiction under Rule 74. Plaintiffs argued that § 740 applied to allow review under Rule 74, but, in the alternative, requested to amend the notice of appeal and plead relief under Rule 75 instead. Following an off-the-record conference, the court concluded that it would take evidence on whether to grant a stay, assuming the appeal was made pursuant to Rule 75. Cf. 19 V.S.A. § 743 (providing for automatic stay upon petition of interested person of decision to lay out, alter or resurvey road). Plaintiffs presented testimony from four witnesses, including one of the plaintiffs, who testified that one residence is used in the summer and for a couple of weekends a month in the winter. He also expressed his opinion that the road was safe for passage and there had not been a problem with clearing the snow. He noted that lack of plowing would have an impact on plaintiffs' ability to reach their properties, and have utility trucks deliver propane. A neighboring farmer who pastures cows on plaintiffs' property explained that the lack of maintenance would make it difficult for him to reach his cows. He plows plaintiffs' driveway past the road and opined that the Town's difficulty in plowing was due to a new, larger truck. A forester testified that lack of maintenance would have a negative impact on recreation and logging activity on the conserved property. Finally, the Town's road foreman testified concerning the practical and safety problems with plowing the road given its narrow width and steep incline. He stated that the section could be plowed by a four-wheel drive pickup truck for \$50.

¶ 5. The court, Judge Suntag presiding, denied the motion for stay. The court concluded that

there was no statutory authority providing for review of the reclassification and therefore the only jurisdiction for the appeal was pursuant to Rule 75 in the nature of certiorari. Applying the stay factors, the court concluded that: plaintiffs' appeal had little likelihood of success under this narrow standard; no irreparable injury would result from denial of a stay; there could be injury to other parties without a stay; and the interest of the public was not served by issuing a stay. See Gilbert v. Gilbert, 163 Vt. 549, 560, 664 A.2d 239, 245 (1995) (setting forth criteria for stay). The court also denied plaintiffs' subsequent motion to reconsider.

¶ 6. Plaintiffs then moved for appointment of commissioners to review the selectboard's decision. Plaintiffs acknowledged that no statute explicitly granted de novo review by commissioners of a decision to reclassify a road from class 3 to class 4, but that "the case law and statutory history makes clear that this is the appropriate procedure." The court, Judge Wesley presiding, denied the motion, concluding that without more specific direction in the statute, its review was in the nature of certiorari pursuant to Rule 75. Hunt v. Vill. of Bristol, 159 Vt. 439, 439-40, 620 A.2d 1266, 1266 (1992) (explaining that review of governmental action is governed by Rule 75 when legislation is silent on method for review). Under this standard, the court explained that its task was to determine "whether there is any competent evidence to justify the adjudication." Id. at 441, 620 A.2d at 1267 (quotation omitted). Thus, the court held that it would render a decision limited solely on "the record made before the selectboard . . . [without] additional evidence." Following further briefing, the court issued a final decision in the Town's favor. The court concluded: "The record as evidenced by the minutes of the October 21 meeting is more than adequate to uphold the Board's determination against any charge of the arbitrary exercise of authority."

¶ 7. On appeal, plaintiffs first argue that the superior court erred in holding that the selectboard's decision was subject to deferential review under Rule 75 when other decisions regarding the laying out, altering or resurveying of town highways are subject to de novo review by court-appointed commissioners.

¶ 8. The necessary procedures for reclassifying a road are defined by statute, and therefore we begin with a review of the pertinent statutory sections. See Sagar v. Warren Selectboard, 170 Vt. 167, 171, 744 A.2d 422, 426 (1999) (explaining that a town's duties "with respect to roads are entirely statutory"). The process to reclassify a town highway may be commenced by petition or at the selectboard's own initiation. 19 V.S.A. § 708(a). After hearing from interested parties and examining the premises, the selectboard can then reclassify upon a finding that it is for the "public good, necessity and convenience of the inhabitants of the municipality." Id. § 710. These sections also apply to laying out or altering of a road. The statute further explains that if an interested party "is dissatisfied with the laying out, altering or resurveying of the highway, or with the compensation for damages, he or she may appeal, in accordance with Rule 74 of the Vermont Rules of Civil Procedure, to the superior court," id. § 740(a), and the court shall appoint three commissioners "to inquire into the convenience and necessity of the proposed highway, and the manner in which it has been laid out, altered or resurveyed," id. § 741.

¶ 9. On two bases, plaintiffs seek to apply the appeal and review procedures set forth in §§ 740 and 741 to their case even though reclassification is not enumerated in either section. First, plaintiffs contend that reclassification is a method of altering a road and therefore included in the statute. Second, according to plaintiffs, “[t]here is no discernable rationale” for excluding reclassification from the same processes as for laying out, altering or resurveying.* Therefore, plaintiffs urge us to construe the statute to apply the § 740 and § 741 procedures to a selectboard’s reclassification decision to avoid what they deem an absurd or irrational consequence of applying the statute as written. See Braun v. Bd. of Dental Exm’rs, 167 Vt. 110, 117, 702 A.2d 124, 128 (1997).

¶ 10. When interpreting a statute, “our obligation is to effectuate the intent of the Legislature” by first looking at the language of the statute. Brennan v. Town of Colchester, 169 Vt. 175, 177, 730 A.2d 601, 603 (1999). We “presume the Legislature intended the plain, ordinary meaning of the language” and will not read language into a statute unless “necessary.” Id. (quotations omitted). When “the statute is unambiguous and the words have plain meaning, we apply that meaning.” Sagar, 170 Vt. at 171, 744 A.2d at 426.

¶ 11. With this in mind, we turn to the language of the statute. The statute sets forth the types of decisions that are reviewable under Rule 74 and subject to review by a panel of commissioners. Significantly, reclassification is not included in the list. Therefore, a plain reading of the statute reveals that the superior court’s review is not pursuant to Rule 74 in cases involving reclassification of a class 3 to class 4 road.

¶ 12. We find no merit to plaintiffs’ argument that “altered” includes reclassification. While the precursor statute included reclassification in the definition of alteration, see Whitcomb v. Town of Springfield, 123 Vt. 395, 396, 189 A.2d 550, 551 (1963) (quoting former statute, which defined alteration to include “a change in the order of a highway, as between open highways, pent roads and trails”), when the statute was revised, the Legislature decided to use a different definition of alter and separately defined reclassification. The subchapter now defines altered as “a major physical change in the highway such as a change in width from a single lane to two lanes.” 19 V.S.A. § 701(2). Classification of a town highway is not a mandate about the road’s physical appearance, but about its categorization. This is underscored by the fact that the same subchapter now separately defines “[c]lassification” as “the categorization of all town highways.” Id. § 701(3). While plaintiffs argue that the Legislature simply overlooked adding reclassification to the list of reviewable decisions in § 740 after separating it out from altering, they offer no evidence to support this theory. Reclassification is not included in § 740, and therefore we must presume that the Legislature omitted it for a reason.

¶ 13. We also reject plaintiffs’ argument that we must read the requirement into the statute to avoid an absurd and irrational result. We cannot say that it is wholly irrational for the Legislature to choose to have a different standard of review for the selectboard’s decision to reclassify a town highway than for the altering, laying out or resurveying of a highway. All of the latter decisions implicate a town’s eminent domain power because they may require a taking of land abutting the town highway. In contrast, downgrading a road does not involve a taking. See Whitcomb, 123 Vt. at 399, 189 A.2d at 553

(explaining that reclassifying a road to a trail does not involve the condemnation of land). While there may be reasons to adopt a different procedure than the one set forth in the statute, “we must implement the Legislature’s policy choice rather than the court’s.” Town of Calais v. Cnty. Rd. Comm’rs, 173 Vt. 620, 624, 795 A.2d 1267, 1271 (2002) (mem.). We will not second-guess the Legislature’s unambiguous direction by inserting words into the statute.

¶ 14. Therefore, because the statute in this case was “silent on the mode of review” and did not affirmatively indicate that the selectboard’s decision is final, review by certiorari through Rule 75 provided the proper procedure for appeal to the superior court. Hunt, 159 Vt. at 440, 620 A.2d at 1266. In this posture, the court’s jurisdiction is usually confined to reviewing questions of law and consideration of evidentiary questions is limited to determining “whether there is any competent evidence to justify the adjudication.” Id. at 441, 620 A.2d at 1267 (quotation omitted).

¶ 15. Plaintiffs argue that even if review is pursuant to Rule 75, the court erred in denying their request to supplement the record on appeal. Review by certiorari under Rule 75 ordinarily “provides only for review of legal issues,” Richards v. Town of Norwich, 169 Vt. 44, 48, 726 A.2d 81, 84 (1999), and is therefore usually “restricted to the record” from the administrative proceeding, Hunt, 159 Vt. at 442, 620 A.2d at 1268. See Burroughs v. W. Windsor Bd. of Sch. Dirs., 141 Vt. 234, 237, 446 A.2d 377, 379-80 (1982) (review in superior court by certiorari is on-the-record and any deficiency in the factual record requires a remand to the administrative agency). We have explained that there may be instances where it would be proper to take evidence in the context of a Rule 75 appeal. See Chapin Hill Estates, Inc. v. Town of Stowe, 131 Vt. 10, 13, 298 A.2d 815, 817 (1972) (noting that “review in the nature of certiorari may not be limited only to the facts as found in the record”). Generally, however, “judicial review of administrative decision is deferential absent a clear statement of contrary intent.” Rhoades Salvage/ABC Metals v. Town of Milton Selectboard, 2010 VT 82, ¶ 9, 188 Vt. ___, 9 A.3d 685 (mem.) (quotation omitted) (applying deferential standard of review to selectboard’s decision denying junkyard permit to landowner). “[O]n-the-record review is particularly appropriate in contested cases where there has been an adjudication in the agency and where the adjudicative body has special expertise.” Id. (quotation omitted).

¶ 16. Here, the facts and circumstances of the selectboard’s decision favor on-the-record review. The statute is silent on the method of review, and the decision was made following a quasi-judicial procedure by the town selectboard in which plaintiffs freely participated. See Hansen v. Town of Charleston, 157 Vt. 329, 335, 597 A.2d 321, 324 (1991) (“[T]he Legislature has placed the selectmen in a quasi-judicial role to hear classification petitions . . .”). Consequently, we conclude that the court’s role was simply to determine if there was adequate evidence to support the selectboard’s decision, and the superior court correctly denied plaintiffs’ request to supplement the record on appeal.

¶ 17. Plaintiffs argue that even under a deferential standard the court’s decision is erroneous and unsupported by the evidence. As an initial matter, we address plaintiffs’ argument that the court erred in relying on the minutes of the selectboard’s meeting because they were never formally introduced into evidence. Plaintiffs have not preserved this claim for appeal because they failed to

object to the court's consideration of the minutes after the Town appended them to their February 8, 2010 responsive memorandum. Follo v. Florindo, 2009 VT 11, ¶ 14, 185 Vt. 390, 970 A.2d 1230 ("In general, issues not raised at trial are unpreserved, and this Court will not review them on appeal."). Further, plaintiffs do not argue that the minutes misrepresent the evidence submitted at the hearing and therefore fail to show any prejudice from consideration of them. Thus, we conclude that the superior court did not err in considering the minutes.

¶ 18. As to the content of the Town's decision, we conclude, like the superior court, that it is adequately supported by the evidence. The Town found that Upper Kirby Hollow Road is too narrow to allow two cars to pass safely and that this unsafe width has posed a problem for the road crew, requiring them to back down a narrow, steep section to allow another car to pass. In addition, the Town found that the steep incline of the road made snow removal unsafe as evidenced by the fact that snow removal vehicles have slid off the road. This situation has also caused a delay in removing snow from other town highways. These findings are all supported by the road foreman's testimony. All of these findings in turn support the Town's ultimate conclusion that it is not in the public good, necessity or convenience to continue to maintain the road as a class 3 highway. Plaintiffs argue that their opinions and evidence should have been weighed more heavily, but the selectboard did not err in resolving the competing considerations in the manner that it did. The decision was within the Town's authority and not erroneous.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

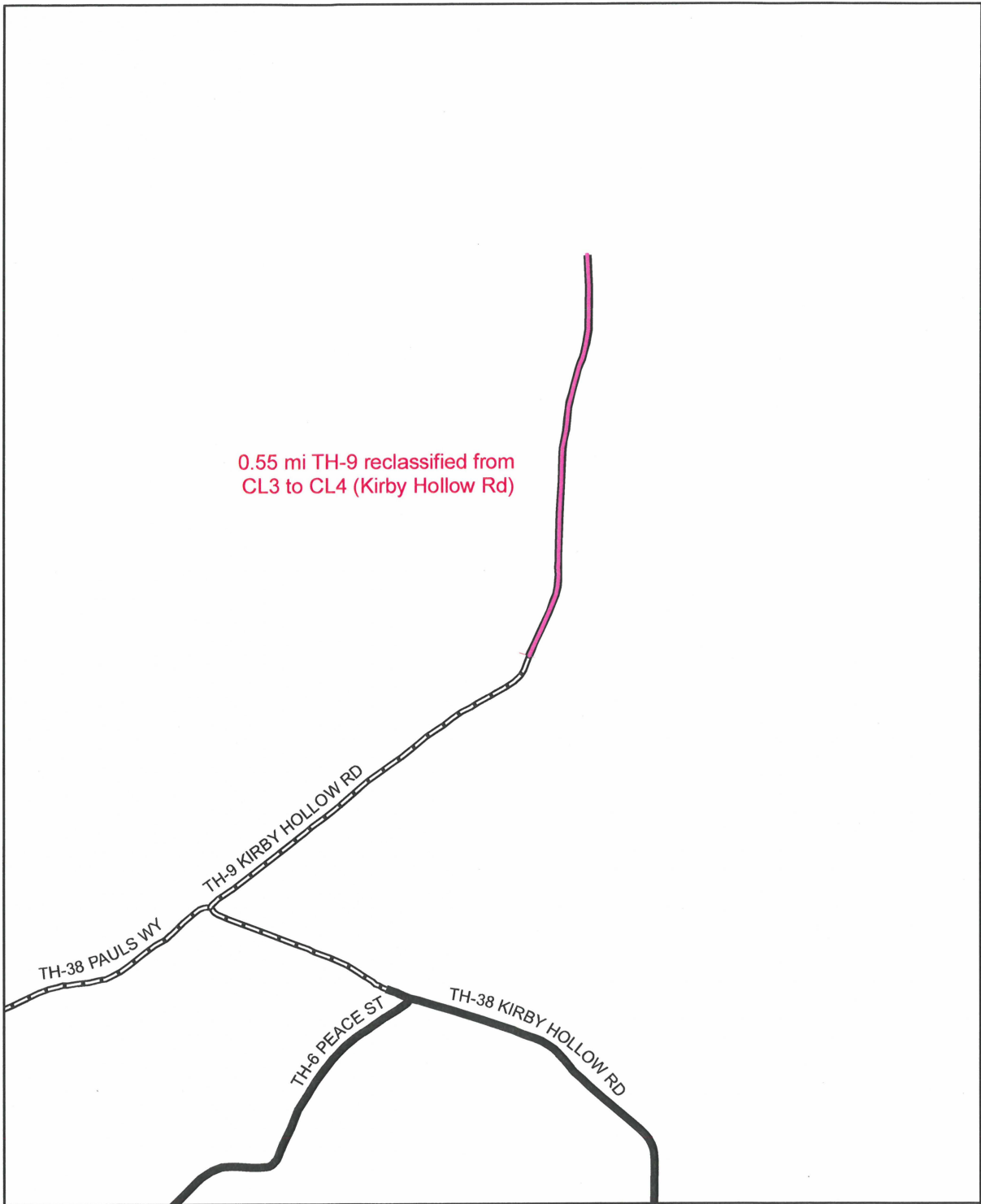
Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

* Plaintiffs also claim that applying a deferential standard in this case would be inconsistent with our prior cases, which they read as condoning the de novo procedure of appointing a panel of

commissioners to a selectboard's decision not to reclassify a class 4 to a class 3 road, Hansen v. Town of Charleston, 157 Vt. 329, 597 A.2d 321 (1991), and to reclassify a class 3 road to a trail, King v. Town of Craftsbury, 2005 VT 86, 178 Vt. 623, 883 A.2d 771 (mem.). While these cases proceeded by an appeal to superior court and review by a panel of commissioners, the issue of the proper scope of the superior court's appellate jurisdiction was not raised in either case. Therefore, we do not find them controlling. Furthermore, Hansen is distinguishable because the statute specifically explains that reclassification of a class 4 highway is to be done "using the same procedures as for laying out highways," 19 V.S.A. § 310(b), and the decision relied on this language. There is no parallel directive for reclassification of a class 3 road.



0.55 mi TH-9 reclassified from
CL3 to CL4 (Kirby Hollow Rd)

TH-38 PAULS WY

TH-9 KIRBY HOLLOW RD

TH-6 PEACE ST

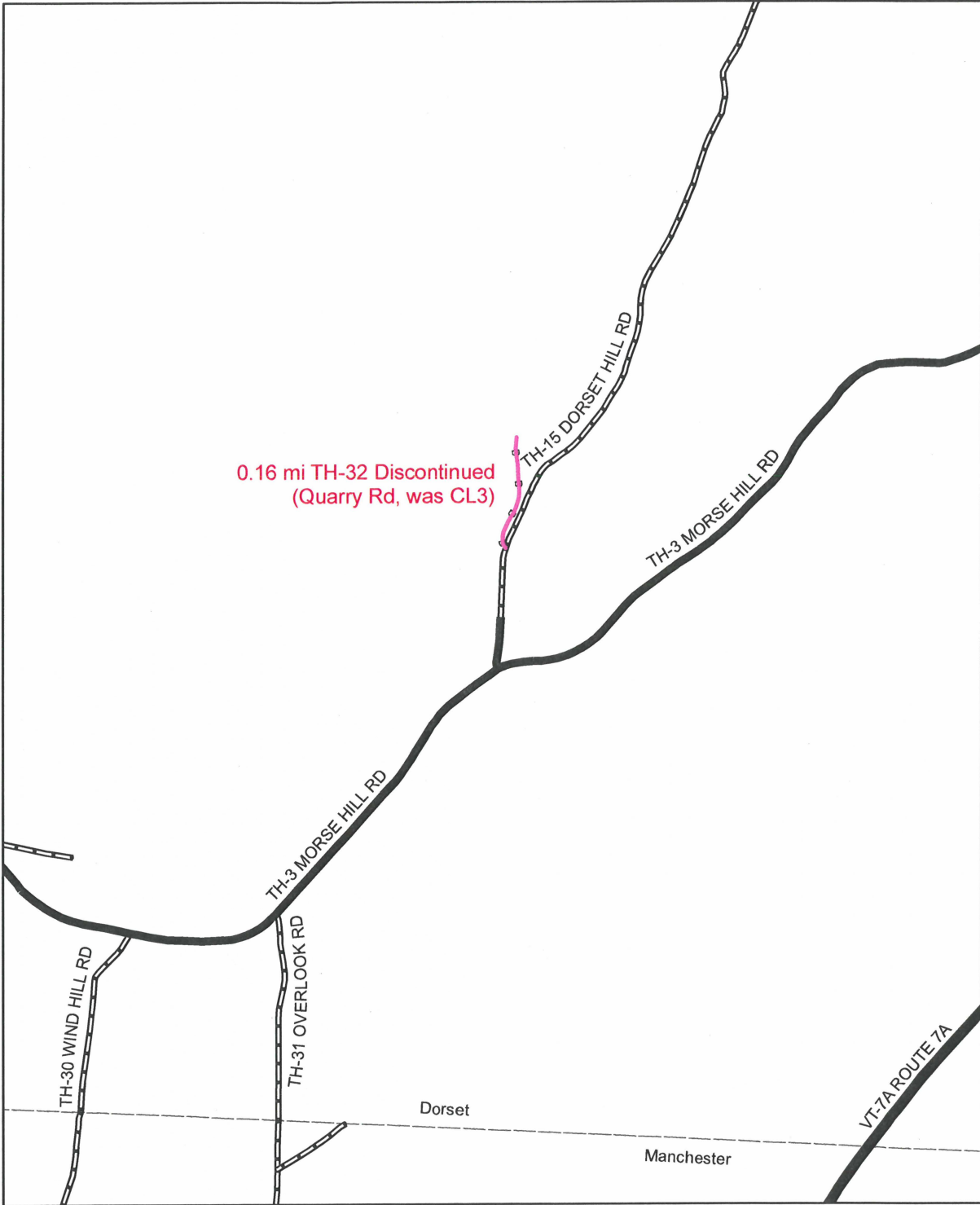
TH-38 KIRBY HOLLOW RD

**Mileage Certificate Change 2009
DORSET**



Mapping Unit
Policy & Planning Division
Vermont Agency of Transportation -- February 2009





**Mileage Certificate Change 2009
DORSET**

Mapping Unit
 Policy & Planning Division
 Vermont Agency of Transportation -- February 2009



TOWN OF DORSET

MUNICIPAL OFFICE
112 MAD TOM ROAD
P.O. BOX 715
EAST DORSET, VT 05253-0715

Telephone (802) 362-4571
FAX (802) 362-5156

December 19th 2008

Findings

Quarry Road

- Unsafe width
 - Unsafe turn
 - Unsafe incline
 - Unsafe turnaround for town trucks
-
- Of particular concern to the Selectboard is a steep inclined turn with a dangerous drop-off ditch. The Turnaround is problematic with current town snowplows and maintenance vehicles. We find this road to be dangerous for town employees and the public.

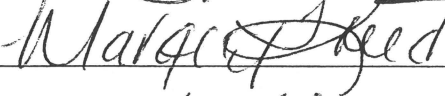
Finding: The road is to be given up to the adjacent land owners.

DORSET SELECTBOARD:


December 19, 2008



Chris Brooks, Chair



Margery Freed, Vice Chair



Michael Oltedal



Michael Connors



Brad Tyler

TOWN OF DORSET

MUNICIPAL OFFICE
112 MAD TOM ROAD
P.O. BOX 715
EAST DORSET, VT 05253-0715

Telephone (802) 362-4571
FAX (802) 362-5156

December 19th 2008

Findings

Frost Road


- Safe width
- No turns, flat road
- Safe turnaround for our trucks

Finding: The road remains a class 3 road


DORSET SELECTBOARD:

December 19, 2008

 Chris Brooks, Chair

 Margery Freed, Vice Chair

 Michael Oltedal

 Michael Connors

 Brad Tyler

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December 19th 2008

FINDINGS

UPPER KIRBY HOLLOW ROAD

In accordance with 19 VSA 708, the Selectboard initiated proceedings to alter, reclassify, or discontinue Upper Kirby Hollow Road.

In accordance with 19 VSA §709, the Selectboard gave notice to persons owning or interested in lands through which Upper Kirby Hollow Road passes for a time when they would inspect the site and receive testimony. The Selectboard also gave notice to the Dorset Planning Commission and posted a copy of the Notice in the office of the Town Clerk and caused a copy of the Notice to be published in the Bennington Banner on Oct 11th 2008.

The Notice indicated that the Selectboard would convene to examine the highway on Monday, October 20, 2008 beginning at 5:00 pm.

The Notice also warned of a public hearing on October 21, 2008 beginning at 7:00 pm at the Dorset Town office to hear all parties with respect to the alteration, reclassification or discontinuance of Upper Kirby Hollow Road.

The Board did convene at the site of Upper Kirby Hollow Road on October 20, 2008 at 5:00 pm and reviewed the highway under consideration.

On October 21, 2008 at 7:00 pm the Selectboard convened a meeting at the Dorset Town Offices to hear all interested parties with regard to the alteration, reclassification or discontinuance of Upper Kirby Hollow Road. At that time extensive testimony was taken and the Board heard from those in support of the alteration, reclassification, or discontinuance of the Road and those opposed.

After reviewing the Road, and after hearing testimony from interested persons, the Selectboard makes the following Findings:

Kirby Hollow Road is of an unsafe width. The Selectboard found that the narrow width of the Road precludes in several stretches the ability of two vehicles to pass each other. In fact, at times, if two vehicles met, one would have to back up to a pull-over area to allow the other to pass. The lack of width and ability to pass has been a serious problem for the Town roadcrew when maintaining Kirby Hollow Road. The lack of width also impairs access for emergency vehicles.

Further, should any vehicle park along the roadway, the parking vehicle would block the road. At times the Town trucks encounter parked vehicles and have had to back down Kirby Hollow Road which is narrow, steep and unsafe for that type of driving.

At times the Town's snow removal vehicles have slid off Upper Kirby Hollow Road and, in specific instances over the last two years, the Town snow removal vehicles have slid off the road causing other highways within the Town to be delayed in their snow removal to the detriment of the Town highway crew and the other residents of the Town of Dorset.

Upon the testimony of the Town Road Foreman and the viewing by the Selectboard, the cost to the Town to improve Upper Kirby Hollow Road to an appropriate Class III standard is prohibitive.

Based upon the testimony received by the Selectboard, that portion of Upper Kirby Hollow Road which is under review services one (1) seasonal residence with limited winter usage. The continuing summer maintenance and winter plowing of Upper Kirby Hollow Road does not serve the public good of the citizens of Dorset as it jeopardizes municipal equipment and municipal employees and endangers lives while having to plow the road and, in many instances, delays plowing to other residents while stuck vehicles are extracted from Kirby Hollow Road

Of particular interest to the Selectboard was the testimony of the Town road foreman that the highway crew finds plowing Upper Kirby Hollow Road dangerous and they fear for their physical well-being. There are portions of the road which are steep and narrow with inclines above and below, and in the event a plow truck were to lose traction or slide off the road at any of these points there is a real and present danger of serious bodily harm to the operator of the vehicle.

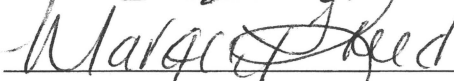
There was testimony that there is considerable public use for hiking and recreational purposes, none of which will be prevented by a change in the classification of the road from a Class III highway to a Class IV highway. As a Class IV highway the public will still have the right to cross Upper Kirby Hollow Road and gain access to the lands which abut it. The summer maintenance and winter plowing of Upper Kirby Hollow Road does not serve the convenience of the inhabitants of the municipality as it serves only one residence and, again, as the inhabitants will be able to gain access to lands which are abutted over what amounts to a public trail as a Class IV highway.

For the above reasons, the Selectboard of the Town of Dorset finds that it is NOT in the public good necessity or convenience to maintain Upper Kirby Hollow Road as a Class III town highway but believe it to be in the public good, necessity and convenience of the inhabitants to reclassify Upper Kirby Hollow Road as a Class IV road and therefore do find from the date of these findings forward Upper Kirby Hollow Road shall be carried on the Town Highway maps as a Class IV highway.

DORSET SELECTBOARD:

December 19, 2008

 Chris Brooks, Chair

 Margery Freed, Vice Chair

 Michael Oltedal

 Michael Connors

 Brad Tyler

NOTICE

RECLASSIFY SELECTED CLASS 3 HIGHWAYS

Pursuant to the laws of the State of Vermont, all abutting landowners, persons interested in abutting lands and other persons who desire to be heard with respect to the ALTERATION OF THE CLASSIFICATION, of the sections of highway, situated in the Town of Dorset, Vermont described as follows:

1. Town Highway #40: (0.09 mi.) (Frost Road) Beginning at the intersection of Vermont Route 7 in East Dorset, continuing in a northerly direction approximately 475 feet (0.09 mi.) to the driveway of the property owned as of this date by Clyde W. and Sarah L. Frost. Adjacent property owners as of this date are: Marbledge, Frost, Inc., and Clyde W. & Sarah L. Frost - NOT CHANGED

2. Town Highway #32: (0.16 mi.) (Quarry Road) Beginning at a point approximately .17 miles from the intersection of Morse Hill Road and Dorset Hill Road bearing left in a northwesterly direction from Dorset Hill Road approximately 845 feet (0.16 mi.) to the driveway of the property owned as of this date by Mary E. Combe. Adjacent property owners as of this date are: Mary E. Combe and Green Peak Estates.

3. Town Highway #9: (0.55 mi.) (Kirby Hollow Road) Beginning approximately at the easterly border of the Ransom property continuing north approximately 2900 feet (0.55 miles) to the northern end of the Town Highway #9. Adjacent property owners as of this date are: Saddleback Farm Trust, Liza, Richard and Thomas Ketchum, Thomas B. and Pauline D. Ketchum, Ransom et al., The Nature Conservancy, the Vermont Land Trust, and the State of Vermont Current Use.

You are hereby notified that the Board of Selectmen will examine said sections of said highways on Monday, Oct. 20, 2008 beginning at 5:00 p.m. in the order set forth above until the Board is satisfied with the examination of all highways described.

You are further notified that a public hearing will be held on Tuesday, Oct. 21 beginning at 7 p.m. at the Dorset Town Offices in East Dorset to hear all parties with respect to the alteration of the classification of said sections of highways and with respect to claims for damages from such alteration of the classification. All interested persons, including all abutting property owners or their representatives will be welcome.

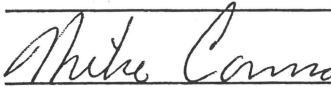
All persons also are notified that a decision of the Board of Selectmen, with respect to the matter hereinbefore set forth, will thereafter be issued according to law.

Dated at Dorset, Vermont, this 18th day of October, 2008.


Chris Brooks, Chairman


Marge Freed

Mike Otedal


Mike Connors


Brad Tyler

Regular Meeting of the Dorset Select Board

October 21, 2008

Minutes

Present: Chris Brooks (Chairman), Marge Freed Mike Connors, Brad Tyler, Michael Oltedal

Absent:

Also, present: Peter Webster (Town Manager), Lt. Matthew Snyder (Bennington County Sheriff's Dept.), Daniel Ransom, Thomas Ketchum, John Straus, Liza Ketchum, Ethan Marrow, Alan Calfee, Gillian Chinn, Austin Chinn, Tracey Mathyas, Rob Woolington, Diana Gren, Joan Menson, John P. Stannard, Ryan S. Downey, Daniel A. O'Leary, Scout Proft, Marilyn Kinney, Marilyn Hand, Doug Colson, Sandra Pinsonault, Danny Pinsonault, Joseph J. O'Dea (Town Attorney), Jim Hewes (Road Crew Foreman)

C. Brooks, Chairman, called the meeting to order at 7:05 p.m.

Approve Minutes of September 16 and October 8, 2008

M. Oltedal moved and M. Freed seconded to approve the September 16, 2008 minutes as presented. Motion carried 4-0.

M. Oltedal moved and B. Tyler seconded to approve the October 8, 2008 as presented. Motion carried 4-0.

Public Hearing on Possible Road Re-Classification

C. Brooks noted that the SB was acting in a quasi-judicial manner seeking information and will listen to testimony, but will not answer any questions. The Board will deliberate and then issue a written notification within 60 days.

Frost Road ~ Town Road #4

J. Hewes felt that this road should be re-classified as it is only 200-300 feet long exiting onto Route 7 which can sometimes be difficult. It has a small turn-around and would also save the Town money if not plowed. D. Colson asked what the estimated savings would be and J. Hewes replied that it would vary each year due to the type of weather, wear and tear on the trucks, and the amount of sand used.

Quarry Road ~ Town Road #32

J. Hewes explained that this road was similar to Frost Road as it is a 0.16 mile section of driveway with no turn-around. The Town truck has gotten stuck on the road which causes another road crew member to be pulled off his current job to pull the truck out of the ditch. M. Hand, Attorney for Mary Elizabeth Coombs, stated that the Coombs family owns all of the property on Quarry Road except for a small section at the top (Green Peak Estate) and the family

would like to have the road discontinued so that it can be a private driveway.

Kirby Hollow Road (Saddleback Farm) ~ Town Road #9

Interested parties: Ransom Family, Vermont Land Trust, Nature Conservancy, and the State of Vermont Current Use Program.

J. Hewes stated that this was a very narrow road which is high maintenance in the winter using a lot of materials. The Town plow has gotten stuck three to four times last winter. C. Brooks asked if the crew had gotten stuck on other roads and J. Hewes responded only one time. B. Tyler inquired about summer grading and J. Hewes replied that the road was graded twice a year as there is not a lot of traffic and approximately 100-150 yards of gravel is used per year. C. Brooks asked what it took to free a plow truck once it got stuck and J. Hewes responded that the Road Crew has to come with another truck or the grader (which is kept in East Dorset) to pull out the truck. When this happens, the plowing of other roads such as Mad Tom or Dorset Hill Road and the roads all along West Road are delayed. C. Brooks asked if parking was a problem and J. Hewes answered that it was a problem only in the winter. The road is only 12 feet wide and the truck cannot back down the road.

D. O'Leary noted that it would be safer to plow the road with the smaller dump truck loaded with sand to avoid getting stuck. When the single axle dump truck was used, it did not get stuck. He noted that a bulldozer was used to pull out a stuck truck with no charge to the Town. D. O'Leary commented that he has plowed the upper road for many years without getting stuck and he felt that the smaller, four-wheel drive truck should be left in Dorset to plow the smaller roads. B. Tyler asked if the smaller truck would push the snow uphill during heavy storms and J. Hewes responded that it would have to be done multiple times if the snow was too heavy.

T. Ketchum explained that his family was concerned about the road re-classification as the property has been openly used since 1962 for recreation by many people (hunting, fishing, biking, skiing, etc.) and is not posted. D. O'Leary's livelihood would be in jeopardy if the road was not plowed as he would not be able to reach the cows. T. Ketchum felt there was a range of issues such as emergency services, safety and a substantial impact on the value of the property which should be taken into consideration before re-classifying the road. The offer of a compromise was suggested by T. Ketchum with regard to the turn-around as they would be happy to work on widening this. The Ketchum family would like to discuss a compromise before a decision is made. C. Brooks asked if it would have a negative impact on the current use program if there was no parking all the way up the road and T. Ketchum replied that he did not think so, but it would impact the people using the road. He proposed moving the turn-around up further.

A. Calfee read a prepared statement into the record (copy attached). Discussion ensued regarding current use tax offsets and taxes paid to the Town (approximately \$12,000 to \$15,000). M. Connors asked what the tax revenue was and A. Calfee replied that he was not prepared for that question. A. Calfee and M. Waite had inspected the turn-around area and calculated that a 50 foot by 50 foot area would be sufficient to provide a turn-around - taking out two maple trees and a fence - grading and graveling the area. Saddleback Farm would provide an easement to the Town. They proposed moving the gate to another turn-around so that the hunters could park up

further and there would be no parking in the lower turn-around. C. Brooks asked if the family had discussed widening the road and A. Calfee responded that they had not discussed that option.

M. Freed asked what happened when the Town plow went up the road and cars are parked there in a significant snow storm. J. Hewes replied that the truck has to sit and wait for car owners to return or try to back down the road. R. Menson commented that a trip was planned for 40 people to study the bear habitat and a school bus was used and was able to use the turn-around in the winter. R. Downey asked what the width of the Town plow truck and the small truck were and J. Hewes answered that the plow truck was 11 feet and 4 extra feet is needed when using the wing. R. Downey asked if the road could be brought to Town standards and C. Brooks replied it would be very expensive. R. Downey felt that the small truck could be used and J. Hewes commented that with one foot of heavy snow the truck would not make it up the road. R. Downey volunteered to plow the roadway with the Town truck and asked that if allowed to do so, that he could also plow the Ransom's driveway with the Town truck.

J. Sutor, Headmaster of Long Trail School, noted that the Ketchum's were neighbors to the school and encouraged the Board to have a spirit of cooperation as it would be helpful to find a solution. The area has educational value and the school would be happy to partner with the Ketchums' in opening their parking lot to the public who use the property. E. Marrow, Liza Ketchum's son, noted that his brother, sister-in-law and he spend a significant amount of time at the house and that there is a great deal of traffic using the road. He supports what T. Ketchum has already stated.

J. Stannard noted that he had spent 15 years on the SB and he drove up the road twice tonight. He expressed that the road was 30% wider than it used to be and he didn't recall any problems plowing the road. He felt it was a bad precedent to end the plowing on this road and that it was more difficult to plow the Town green. D. Colson remarked that he commends the Board for looking at safety and costs, but felt that it would be helpful to qualify the costs of what the savings would be so it would give perspective to the process. He stated that his taxes have doubled with the reassessment, but he was still in favor of continued maintenance of the road.

M. Ransom remarked that not maintaining the road would decrease real estate values and D. Ransom noted that the road has been plowed for a very long time and the Town should assess the tools used for the job, perhaps using a smaller truck. A. Chinn urged the SB not to downgrade any of these roads especially the Ketchum roadway as it is publicly used and a haven of safety. If the road is downgraded, the benefits of the property will not be there in the future. J. Straus stated that individuals have rights to services of the Town as taxes are paid and they had made the choice to use their home for retirement putting a lot of effort and money into upgrading it and expecting to use the house all year round. M. Freed asked how far up their house was and J. Straus replied that they maintain ¼ mile beyond the turn-around with D. O'Leary's help who really depends upon maintenance of the main roadway. L. Ransom explained that when she purchased the land from D. Ketchum in 1964, it was said that the SB of the time had granted maintenance of the road in perpetuity, but it appears there is no documentation. She felt lack of maintenance would create a serious problem when they turn their extra building on their property into a garage. M. Freed asked J. Hewes how far past the Ransom property does the Crew plow and he responded that they plow past the Ransom property driveway, but not to the shed area.

Discussion ensued regarding the plowing area and how the plowing was accomplished. L. Ketchum expressed that it seemed there has been miscommunication and is hopeful that something can be worked out. She presented an email letter from the Vermont Land Trust (copy attached). B. Tyler asked where the Land Trust easement started and L. Ketchum responded that it was at the turn-around and above and they have an agreement for access with them for all times of the year.

C. Brooks closed the hearing at 8:26 p.m.

Bennington County Sheriff's Department Contract

M. Oltedal moved and M. Connors seconded to move to Executive Session at 8:29 p.m. Executive Session ended at 8:45 p.m. with no action taken.

Delinquent Tax Collector's Update

D. Pinsonault reported that the delinquent taxes are \$79, 412 (18 parcels) and five parcels posted quickly for tax sale. P. Webster noted that he and M. Kinney had attended a delinquent tax seminar. M. Freed expressed concern for higher delinquencies in March and D. Pinsonault suggested that people start to make payment plans now.

Marble Sidewalk Committee Findings/Recommendations

P. Webster reported that the Committee looked into repair of the marble sidewalks and received estimates of \$34/40 per linear foot for replacement to maintain the sidewalks historically and accurately. He noted that a marble sidewalk was cracked on Village Street during the pipe replacement and the Crew will repair it in the spring. It was suggested that the SB make a decision on how to proceed. M. Connors stated that ownership of the sidewalks was an issue. P. Webster explained that, according to K. O'Toole, along Route 30, the sidewalks are in the State right-of-way and he believes that on Church Street, the Town has control of the sidewalks. C. Brooks asked if there were any suggestions about what to do with the tree roots and P. Webster replied no suggestions were given. C. Brooks noted that the cost of trees were not included in the estimate and asked about liability. P. Webster answered that the Town has liability where infrastructure is concerned and it has liability insurance, but winter maintenance was not discussed with regard to purchasing equipment and clearing the sidewalks. Discussion ensued regarding Federal monies, Federal regulations, and maintenance. B. Davison commented that he was never informed that the Road Crew would be touching the marble sidewalk in front of his house and didn't believe it was possible to piece together a repair of the panel. M. Connors offered to help work something out to repair the sidewalk. P. Webster is to speak to the Road Crew before they move any more marble panels on Village Street.

Transition Issues

P. Webster listed the following transition issues:

- Safety Committee
- Sidewalk Committee
- Conservation Commission
- Energy Commission
- Budget

Special Meeting of the Dorset Select Board

October 8, 2008 Minutes

Present: Chris Brooks (Chairman), Marge Freed Mike Connors, Brad Tyler, Michael Oltedal

Absent:

Also, present: Peter Webster (Town Manager), Joseph J. O'Dea (Town Attorney)

C. Brooks, Chairman, called the meeting to order at 7:02 p.m. noting that this was an informational meeting regarding the proper procedure for the possibility of discontinuing three roads (Frost Road, Quarry Road and Kirby Hollow-Ketchum).

P. Webster reported that a certified letter was sent to all abutters to the above mentioned roads in order to comply with the 30-day warning notice and there will be a site visit to each road on Monday, October 20, 2008 starting at 5 p.m.

Discussion ensued with J. O'Dea clarifying that most of the site visit dialogue should be held at the Town office during the SB meeting and all facts should be discussed at a convened meeting. C. Brooks asked about creating a list of facts and J. O'Dea noted that this would be called the "proposed findings" and everything found has to be done during that meeting. C. Brooks asked if a Class 3 road has to be plowed and J. O'Dea responded no. J. O'Dea cited the Warren (Lincoln Gap) case regarding the responsibility for snow plowing a road and noted that reclassifying these roads from a Class 3 to a Class 4 removes all responsibility to maintain them and no damages would be due to anyone. An argument can be made if the roads are left as Class 3 and not snowplowed as the Town receives State aid to maintain them, but if changed to Class 4, the aid is given up and there is no need to maintain them. C. Brooks outlined the three options: (1) do nothing; (2) reclassify and (3) discontinue snowplowing.

Discussion continued regarding giving back the road to the landowner with J. O'Dea explaining that when roads are given back to the property holder, the Town might have to survey the land at their expense and it is better to reclassify the roadways. A landowner can waive a survey as long as there are no other property owners involved or they can agree to bear the cost of the survey themselves. He mentioned three other reasons besides economic for not maintaining roadways: public good, convenience and necessity. It was advised that the SB members cannot testify or engage in debate during the meetings and are entitled to go into Executive Session if necessary as this is a quasi-judicial decision.

J. O'Dea noted that he was asked by a property owner's lawyer to present to the SB members that he would like to discuss options with them and C. Brooks commented that there had been four meetings with no ideas given previously and questioned why they hired a lawyer.

M. Oltedal moved and M. Connors seconded to move to an Executive Session at 7:30 p.m. to discuss litigation issues. Motion carried 4-0. Executive Session ended at 8:05 p.m. with no action taken.

M. Freed moved and M. Oltedal seconded to move to Executive Session at 8:06 p.m. to discuss personnel issues. Motion carried 4-0. Executive Session ended at 9:45 p.m. with no action taken.

Meeting dates are as follows:

Zoning Board of Adjustment	October 13 th
Hydrogology Meeting	October 14 th
Special Select Board Meeting	October 16 th (5:00 p.m.)
Select Board Site Visit Meeting	October 20 th (5:00 p.m. – Frost Road)
Regular Select Board Meeting	October 21 st

M. Freed moved and M. Oltedal seconded to adjourn the meeting at 9:55 p.m. Motion carried 4-0.

Respectfully submitted,

Nancy Aversano

9/16/08

Continuing Discussion of Road Reclassification

Quarry Road ~ no discussion

Frost Road ~ no discussion

Upper Kirby Hollow Road ~ C. Brooks noted that a letter had been received from Richard Ketchum and the SB was gathering information with no decision being made yet. L. Ransom explained that she is a landowner on this road and was dismayed that she had not received notice of tonight's meeting. C. Brooks commented that notification was being sent out for the next meeting which would be a quasi-judicial meeting following State statute. L. Ransom expressed that her family has enjoyed the use of the road since 1964 and understood from Mr. Ketchum that there were rights to the road in perpetuity for maintenance. It would be extremely inconvenient if maintenance was stopped and the property would be devalued.

R. Woolmington asked if a petition has been filed yet and P. Webster responded that the SB, as a governing body, could act without a petition, as the proposal was to reclassify the road to a Class 4. C. Brooks noted that the Board was gathering information and P. Webster noted that October 21st is designated as a public hearing which would be warned by certified letter. R. Woolmington expressed everyone of record, such as the Vermont Land Trust, would need to be notified and was concerned that proper procedure was not being followed. M. Connors stated that the Board was just gathering information as it was asked to look at the three roads by residents and the Road Crew. R. Woolmington commented that if the Town holds a formal hearing, then it must be done properly giving a purpose for the discontinuation. He stated State statutes must be followed such as notification, inspection of property, outlining the purpose and addressing the concerns of the Town and residents. C. Brooks noted that a proposal has not been made yet and M. Oltedal said that this is the discovery phase and the proposal is only being discussed. P. Webster read 19 VSA §708. R. Woolmington asked if engineers have looked at the road yet and C. Brooks responded that this is a small Town and he did not believe it was necessary to spend the extra money at this time. R. Woolmington commented that everyone in Town should be treated equably.

Residents Tuttle, Mathyas and Chinn noted that many people use the Ketchum land for recreation purposes and reclassifying the road would affect more than just one family. They asked how much money would be saved by the change and after 45 years of maintenance, why should it be changed. J. Straus stated that the Ketchum family would not be able to maintain the roadway themselves which would become impassable in time causing the loss of use of their home. He felt this was not fair treatment of all taxpayers. M. Bickford asked if the road was being discontinued or reclassified and C. Brooks replied that they will discuss and gather information on both options.

M. Bickford remarked that there may be good reasons for both discontinuing and reclassifying these roads such as safety and that circumstance may dictate which way they are done. M. Connors asked how M. Bickford felt about his road and M. Bickford responded that since it was a dead end, he leans more towards discontinuing the road than reclassifying it. The road does not conform to road standards and is very steep. He noted that the argument that people who pay

a large amount of tax should be given greater consideration has nothing to do with the decision to change a road designation. M. Bickford went on to say that safety was an important factor in addition to the cost of maintenance and maybe it was possible to negotiate the reconfiguration of the roadways for continued maintenance. M. Bickford stated that it was the policy of the Town to look at public safety – if one person is served by the road, then maybe it should be discontinued, but if 3 to 4 people are served, then the Town may want to maintain it in the interest of public safety. J. Straus asked if it would help to take down a tree to make an easier turn-around and C. Brooks noted that safety was a main issue for the road crew and there may be options to work on. L. Ransom asked why the smaller Town truck could not be used on the road and C. Brooks answered that to keep a high level of maintenance, the larger truck has to be used first in a storm and it was more expensive to switch to the smaller truck for one road. R. Woolmington suggested delaying the official hearing and having an onsite meeting to discuss options of what could be done to resolve the safety issues.

Finance Report

P. Webster reported that the report shows the budget at 19% after ten weeks. The grant money has been received for the ground water project.

Other Business

P. Webster explained that he would like the SB's permission to have the Energy Commission review the street lighting in Town so that they could make recommendations for light eliminations. The preliminary report identified six to ten lights. M. Connors asked if this was a volunteer committee and P. Webster responded yes. It was the consensus of the Select Board members to allow a review of the street lighting in Dorset.

A copy of Manchester's Vendor Ordinance was given to the Board for review and comment. P. Webster talked to Mr. Ammerman regarding the vendors outside the horse show and Mr. Ammerman does not have any control over them. C. Brooks asked if a vendor ordinance was adopted would it affect the inside vendors too.

Marble sidewalks – P. Webster asked the Board how far he should pursue this issue as the Town received a grant of \$350, but a consultant has already submitted a bill for \$780. M. Oltedal suggested putting the job of replacing/repairing the marble sidewalks out to bid to get estimates and an idea of the cost. T. Tyler asked who owned the sidewalks. C. Brooks recommended that P. Webster ask the Town Attorney to look into who owns the sidewalks before continuing with the project. M. Oltedal reminded the Board about the liability issues that could ensue.

P. Webster mentioned the Route 7 bike path and noted that with the Scenic Byway (Route 30), there may be grants available to pursue this effort. M. Oltedal asked what would happen with regard to the width of the roadway in the Village near the Post Office. P. Webster commented that a bike path should be a regional issue.

P. Webster reported that J. Hewes felt that McNamara and Danby Mountain Roads would be his choice of roads to pave. A rough estimate was presented and P. Webster noted that this was a difficult year due to the rains and run-off. M. Connors noted that these are tough times for residents and did not want to place a large sum on their backs all at once. P. Webster remarked

8/19/08

setting a precedent in allowing abatements for hardship as there should be one standard for everyone.

Continuing Discussion of Road Reclassification ~ Quarry Road, Frost Road and Upper Kirby Hollow Road

P. Webster noted that this was the beginning of a dialogue regarding the reclassification of three roads (listed above) from Class 3 to Class 4.

L. Ketchum commented that the Town has maintained Upper Kirby Hollow Road for 40 years. The road serves three property owners (4 parcels) and the proposed change would negatively & economically impact the landowners and local residents. L. Ketchum listed five ways that downgrading the road would impact the landowners, contiguous landowners and the local community:

1. The property is now accessible to residents for sports and recreation and without Town maintenance, the roadway would quickly degrade.
2. Use as a farm by D. O'Leary who relies on the maintained roadway to reach his livestock during all seasons. The pastures are enrolled in the Current Use Program for agriculture and the Federal Government gives money for sustaining a Wildlife Habitat Improvement Program.
3. Use of the property for education, research and conservation ~ it is recognized as an important bear corridor and wildlife habitat and the Vermont Land Trust monitors and oversees the forestry programs on a good portion of the property. Road access is needed for the staff that monitors these programs.
4. A sustainable forestry plan has been in place for over forty years by the Ketchum's who are enrolled in the Current Use Program for forestry. Logging operations managed by A. Calfee are done every few years and downgrading the road would have a negative effect on this logging by reducing the net proceeds of the timber sale activity. A reduction in logging revenues would create a hardship, as they rely on these revenues to pay taxes and maintain the property.
5. The upper property is now used as a private, year-round residence since 1996. If road maintenance is discontinued, access for fire, rescue and service vehicles would be impaired.

L. Ketchum noted that discontinuing Town maintenance of the roadway would create serious economic consequences for the landowners and a loss of property values. They would like to work with Town for a solution. It was observed that there is not enough room for the double axle Town truck to turn around on the roadway. M. Freed asked about the posted signs with the name Ketchum on them and D. O'Leary responded that less than 20 acres were posted. M. Ransom stated that he supports L. Ketchum's stand regarding the road maintenance.

C. Brooks asked P. Webster to post a warning and notify the property owners about the Public Hearing for all three roads on October 21, 2008 and P. Webster will send certified letters.