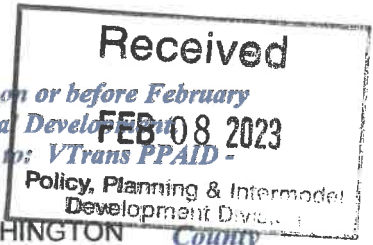


District **6**
 Certcode 1205-0

CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2023



Fill out form, make and file a copy with the Town Clerk, and submit the Mileage Certificate on or before February 20, 2023 to: Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development, Mapping Section via email to: aot.mileagecertificates@vermont.gov or if necessary via mail to: VTrans PPAID - Mapping Section, 219 North Main Street, Barre VT 05641.

We, the members of the legislative body of **CALAIS** in **WASHINGTON** 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			0.000	0.000
Class 2	18.450			18.450	0.000
Class 3	54.62			54.62	0.000
State Highway	6.902			6.902	0.000
Total	79.972			79.972	0.000
* Class 1 Lane	0.000			0.000	
* Class 4	11.96		1880' 0.50	11.46	0.000
* Legal Trail	0.66			0.66	

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

DS
Po

Mileage totals added by P. DeAndrea VTrans 3/2/2023 see correspondence 2/17/2023

PART II - INFORMATION AND DESCRIPTION OF CHANGES SHOWN ABOVE.

- NEW HIGHWAYS:** Please attach Selectmen's "Certificate of Completion and Opening".
- DISCONTINUED:** Please attach SIGNED copy of proceedings (minutes of meeting).
 TH #7 ~~1880'~~ total (see attached documentation)
 0.50 mi discontinued (0.36 mi formerly CL4 TH-7; 0.14 mi never public road)
- RECLASSIFIED/REMEASURED:** Please attach SIGNED copy of proceedings (minutes of meeting).
- SCENIC HIGHWAYS:** Please attach a copy of order designating/discontinuing Scenic Highways.

Mileage corrected and note added by P. DeAndrea VTrans 2/24/2023

IF THERE ARE NO CHANGES IN MILEAGE: Place an X in the box and sign below.

PART III - SIGNATURES - PLEASE SIGN.

Signatures of Selectmen/Aldermen/ Trustees: *Denise Wheeler, [Signature], [Signature]*

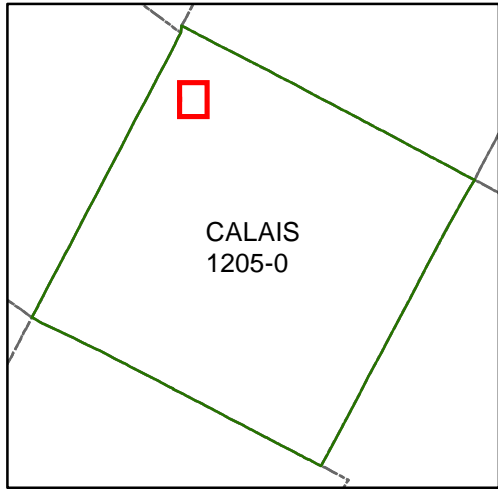
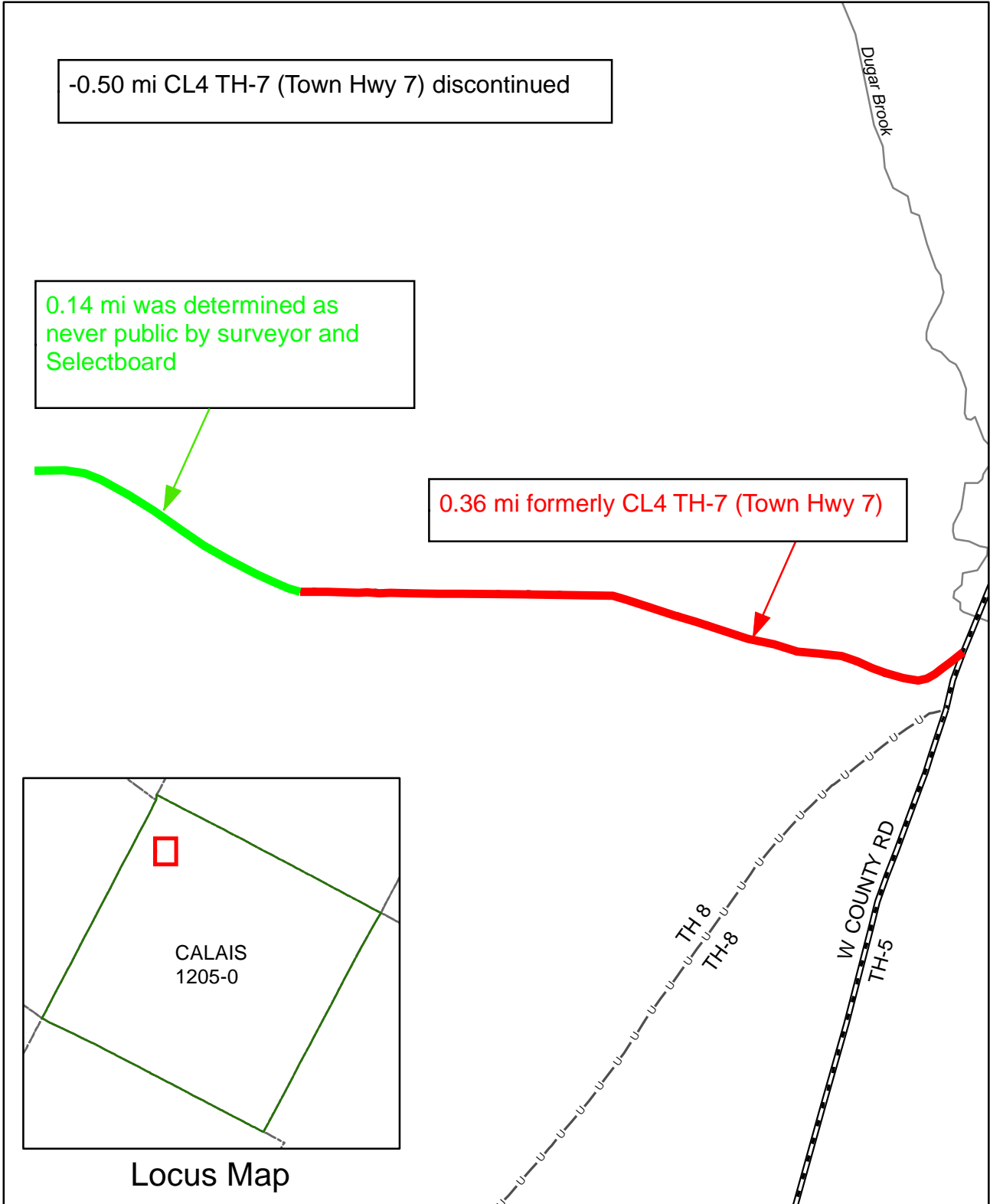
Signature of T/C/V Clerk: *[Signature]* Date Filed: 1/30/2023

Please sign ORIGINAL and return it for Transportation signature.

AGENCY OF TRANSPORTATION APPROVAL: Signed copy will be returned to T/C/V Clerk.

APPROVED: *Johnathan Croft*
 Representative, Agency of Transportation

DATE: 4/28/2023



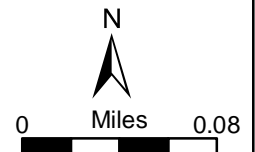
Locus Map

Mileage Certificate Changes 2023

CALAIS TH-7

(CTUA:1205-0)
(CERTCODE:1205-0)

Mapping Section
Division of Policy and Planning
Vermont Agency of Transportation -- April 26, 2023





TOWN OF CALAIS

3120 Pekin Brook Road
East Calais, Vermont 05650

February 27, 2023

Pamela DeAndrea,
AOT GIS Professional III, Mapping Section
Vermont Agency of Transportation
219 North Main Street
Barre, VT 05641

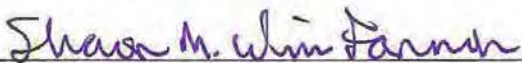
RE: Calais TH #7 VTrans Remapping Follow Up


Dear Pam:

Per your recent request this is a follow-up to the Selectboard's decision of December 10, 2022, for discontinuance of TH #7 in Calais for purposes of VTrans remapping.

The decisions intent was to discontinue TH #7 in its entirety. A thorough search of survey records was conducted and no survey of TH #7 west of the Schultz/Lumberjack parcel boundary was found. Therefore, the survey described in the discontinuance order and the Civil Engineering Associates, Inc. (CEA), report was historically the only public portion of TH #7. The discontinuance decision of the Calais Selectboard reflects the surveyed public portion of TH #7 with the understanding that the rest of the roadway is private.

Sincerely,
Calais Selectboard


Sharon Winn Fannon


Denise Wheeler


Marc Mihaly


Richard Kehne


John Brabant

cc. Gary & Jill Schultz
Calais Town Clerk for recording
Joe McLean, Esq.

<https://www.calaisvermont.gov/>



Denise Wheeler <calaissbdenise@gmail.com>

1-25-2023 Emerg. Mtng. Agenda for posting please

Joseph McLean <jmclean@firmspf.com>

Wed, Jan 25, 2023 at 10:36 AM

To: Denise Wheeler <calaissbdenise@gmail.com>

No, I believe that it is approx. 1880' total, per the "Location Study" plan that Cowen prepared and the Board adopted in its final decision (54 rods (891') + 24 rods (396') + 36 rods (594') = 1881).

[Quoted text hidden]

**TOWN OF CALAIS, VT SELECTBOARD
REQUEST FOR DISCONTINUANCE OF TOWN HIGHWAY #7
FINDINGS AND DECISION**

RE: Decision on Request to Discontinue Town Highway #7

INTRODUCTION AND PROCEDURAL HISTORY

On or about January 24, 2022, Calais landowners Gary and Jill Schultz (the “Schultzes”) asked the Calais Selectboard (hereinafter “Selectboard”), at its duly warned meeting on that same date, to discontinue Town Highway #7, which transects their property off West County Road.¹ Thereafter, the Selectboard approved a motion pursuant to 19 V.S.A. § 708(a) to set a time and date, upon proper notice to the Schultzes and to persons owning or interested in the lands through which the highway passes or abuts, for:

1. Inspection – or examination – of the premises by a quorum of the Selectboard, open to members of the public; and
2. A public hearing to receive testimony from all persons abutting, owning, or interested in the matter of discontinuance of the above-referenced Town Highway 7.

On March 14, 2022, the Selectboard gave 30-day notice, by certified mail, of a site inspection and public hearing on April 16, 2022, to those persons referenced above, as well as to the Calais Planning Commission, the Calais Trails Committee and the Commissioner of the Vermont Department of Forests Parks & Recreation. In addition, the Board posted a notice in the office of the Town Clerk and caused the notice to be published in a local newspaper of general circulation not less than ten days before the hearing, all in accordance with 19 V.S.A. § 709. Due to various conflicts, the site inspection and public hearing were subsequently rescheduled, with new notice issued, for June 11, 2022.

The site inspection of Town Highway #7 was held on June 11, 2022. Immediately following the inspection, a public hearing was opened at the Calais Town Hall and evidence was taken. To allow for a full presentation of evidence, the public hearing was continued to July 18 and October 10, 2022. A list of admitted exhibits is attached hereto as Appendix A.

FINDINGS

1. Gary and Jill Schultz reside at 2209 West County Road in the Town. Their property (original Town Lot 23, Division 3) is transected by Town Highway #7, a Class 4 town highway.
2. Town Highway #7 (sometimes called TH #7 or “Carr Road”) is a public highway located in the northwest corner of Calais, running from the common boundary line between the

¹ At various times through the years, the Schultzes have asked the Town to discontinue TH #7.

lands of Schultz and lands formerly owned by Lorenzo York (and now owned by Lumberjack, LLC) and West County Road (Town Highway #5). A survey bill dated June 13, 1840 (the "1840 Survey Bill"), corresponding with TH #7 is recorded in the Calais Land Records at Book 3, Page 282.

3. Town Highway #7 is shown on the Wallings Map of the Town, dating to 1858, and the Beers Atlas of Calais from 1873.
4. TH #7 is shown on the 2015 Vermont General Highway Map for the Town of Calais, prepared by the Agency of Transportation, as "impassable or untraveled," with approximately 0.5 miles shown as Class 4 Town Highway. Other AOT highway maps, dating to the 1930s, also depict TH #7, although the precise nature, classification and length of the road has changed somewhat over time.
5. The Schultzes have requested that the Selectboard discontinue TH #7 in its entirety.
6. A majority of the Selectboard completed a site inspection of TH #7 prior to commencing the public hearing on the requested discontinuance.
7. The Town does not receive State aid for TH #7 through the State Aid To Town Highways Program (19 V.S.A. § 306) and it does not maintain the same, in accordance with its Class IV Highways Policy.
8. The existing TH #7 is an old single-lane road bed that begins at the easterly line of lands formerly owned by York (and now owned by Lumberjack, LLC) (original Lot 22, Division 3), which is also the westerly line of the Schultzes' property (Lot 23, D 3). From this common boundary, the road extends in an easterly direction down a steep embankment (approaching 17% grade) that is overgrown and highly eroded in places, appearing like a stream-bed. As the road continues in an easterly direction toward the Schultzes' house, the topography is gentler and mostly open, with little clear evidence of the roadway. The roadway then generally parallels the existing Schultz driveway, although its original alignment was likely straighter than and southerly of the existing driveway. TH #7 then terminates, according to the 1840 Survey Bill, referenced above, at its intersection with the West County Road.
9. The common boundary between Schultz and Lumberjack is marked by a prominent stone wall, traces of barbed wire fence and recently re-painted red tree blazes. Proceeding westerly through a "gate" in the stone wall, there is some evidence of an old road (now a lightly used trail) leading to the cellar hole and remnants of the old Carr farm, but TH #7 terminates at the common boundary.
10. In its present condition, the full length of TH #7 is impassable by vehicles and bicycles; it can only be navigated by foot with extreme difficulty due to considerable vegetation blow down and extensive erosion within the road bed. Due to these conditions, it is

necessary in places to travel outside of the right-of-way to follow the road (which itself may have been located outside of the right of way, in particular locations, to avoid the conditions described above).

11. Given questions regarding whether TH #7 was located entirely on the Schultzes' property, where it begins and ends, and its precise length, the Town retained Timothy R. Cowan, L.S., of Civil Engineering Associates in South Burlington, to conduct independent research and surveying regarding TH #7. In response, Mr. Cowan produced a written report, last revised October 9, 2022, and a Location Study of TH #7. As depicted in the Location Study, Mr. Cowan concluded that TH #7 is located entirely on the Schultzes' property, running between their westerly boundary (shared with Lumberjack) and their easterly boundary adjacent to West County Road.
12. During the hearing, the Schultzes and their proponents disputed aspects of Mr. Cowan's report and Location Study, particularly related to the length of the road, given the courses and distances set forth in the 1840 Survey Bill. Mr. Cowan explained that there is an apparent scrivener's error in the 1840 Survey Bill (i.e., a distance in the third (final) course of the survey that is stated as "6 rods" was likely intended to be 36 rods) and that applying a well-established rule of construction (i.e., that a survey bill's terminal call for a physical or record monument trumps its distance call), he was able to retrace a roadway, as otherwise described in the 1840 Survey Bill, running between the common lot line of Schultz/Lumberjack, LLC (westerly terminus) and West County Road (TH 5) (easterly terminus).
13. In connection with the hearing, the Selectboard received testimony and other evidence from both opponents and proponents of discontinuance, with no clear majority view expressed. The Town of Calais Planning Commission, Trails Committee and Conservation Commission also did not express a clear consensus view on discontinuance — with the Planning Commission providing no direct testimony or evidence, the Trails Committee recommending that "no action" be taken with respect to the Schultzes' discontinuance request (while also committing not to pursue reclassification of TH #7 as a legal trail), and the Conservation Commission first submitting, and then withdrawing, a request to keep TH #7 a town highway.
14. The Vermont Department of Forest Parks and Recreation ("VDFPR") generally encourages municipalities to retain highways as public rights-of-way, but it had no specific comments on the proposed discontinuance of TH #7. During the hearing, several witnesses testified — consistent with the position of VDFPR — that highway rights-of-way are public assets with recreational and other values that the Town generally should retain as a matter of principle.
15. Adjoining landowner, Lumberjack, LLC, through its Trust Asset Manager, David Schneider of Cushman & Wakefield, did object to the discontinuance of TH #7 by letter dated March 31, 2022, and it sent a local representative to the site visit and initial hearing

on June 11, 2022. After the initial hearing, Lumberjack did not present evidence or participate in the continued discontinuance proceedings.

16. As discussed herein, TH #7 extends from the common boundary of Lumberjack, LCC, and Schultz easterly to the West County Road. However, the primary access to Lumberjack's property is located off the Woodbury Mountain Road; there is no evidence that Lumberjack has ever used, or plans to use, TH #7 for access purposes to any portion of its property, nor would it be practical or cost-effective to do so.²
17. Other than the Schultzes' house, there are no other year-round or part time residences or camps that are accessed off TH #7, nor does TH #7 provide access to other publicly-owned parcels or community service areas.
18. The Selectboard, subject to certain requirements, may designate a specific highway or portion of a highway proposed to be discontinued as a trail. 19 V.S.A. § 305(j), § 775. Retaining the TH #7 ROW gives the Town the option, but not the obligation, to establish a recreational trail within the right-of-way in the future. The Schultzes do not support the reclassification of TH #7 as a legal trail.
19. In places, the roadway deviates outside of the surveyed right-of-way (and may have had more than one path), probably to avoid highly eroded sections of road. Given these conditions, establishing and maintaining even a primitive walking trail within the right-of-way would be challenging.
20. The Schultzes have not historically posted their property. They allow access to their property for hiking, hunting, snowmobiling and similar activities. However, largely due to its steep, eroded condition, over approximately the last 75 years, TH #7 has seen only very infrequent public use or interest by hikers and other recreationalists.
21. One of the Schultzes' primary concerns with TH #7 is safety related — their many young grandchildren often play in or near their 9-foot wide gravel driveway, which roughly follows the alignment of TH #7. Motorists, including ATVs and "mud trucks," relying on maps and not realizing that TH #7 is not traversable, sometimes drive at high rates of speed, at all hours of the day and night, up their driveway looking for TH #7, only to turn around at the Schultzes' house when they realize that they cannot continue up the roadway.

² 19 V.S.A. § 717(c) provides that "[a] person whose sole means of access to a parcel of land or portion thereof owned by that person is by way of a town highway or unidentified corridor that is subsequently discontinued shall retain a private right-of-way over the former town highway or unidentified corridor for any necessary access to the parcel of land or portion thereof and maintenance of his or her right-of-way." Notwithstanding the discontinuance decision discussed herein, this Board does not have authority to resolve whether Lumberjack retains a private right of access over the TH #7 ROW. However, no evidence was presented during the hearing to substantiate that TH #7 is Lumberjack's sole means of access to its property, or a portion thereof, or that such access is necessary.

22. TH #7 leads straight into the heart of the town zoning map's "Resource Recreation District," within which development is extremely restricted, as well as into the largest and most significant wildlife habitat block in the Town. The purpose of the Resource Recreation District is to protect the natural resource value of those lands in Calais which are essentially undeveloped, are important wildlife habitat, could have high potential for commercial forestry use or other extractive enterprises, are unsuitable for commercial, industrial or higher density residential development, or are necessary to protect groundwater and aquifers, a fragile ecology, or significant recreational or scenic resources. Generally, only low density residential, and limited outdoor recreation, conservation and forestry uses, are allowed.
23. The goals and policies contained in the Transportation section of the Calais Town Plan require, among other things, protection of the public's interest in Town rights-of-ways and recognize their importance as shared public spaces.³
24. There is no substantial evidence that the current status of TH #7 has resulted in a legally cognizable injury to the Schultzes, although their concerns about potential harm and safety are legitimate and sincere. Concomitantly, there is no substantial evidence that continuing to maintain the current status of TH #7 serves the public good or the convenience of the inhabitants of the Town.
25. As noted above, the issue of creating a trail within the right-of-way of TH #7 was addressed by numerous commentators to this proceeding, including the Calais Trails Committee. The Trails Committee has no present intention to pursue a trail within the right-of-way of TH #7 and, as a matter of policy and practice, will not pursue a trail where an abutting landowner is opposed (as is the case here).

LEGAL STANDARD & CONCLUSIONS

The discontinuance of town highways is controlled by statute. Specifically, 19 V.S.A. § 771(a) states that "[t]he legislative body of a municipality may discontinue a town highway after following the procedures of section 708-711 of this title." Sections 708-711 of Title 19, respectively, (a) authorize the Selectboard to initiate discontinuance proceedings on its own motion, as here (§ 708(a) (last sentence)); (b) require the Board to "appoint a time and date both for examining the premises and hearing the persons interested," subject to specified notice requirements (§ 709); (c) require that any discontinuance be in writing setting forth a completed description of the highway (§ 710) (last sentence); and (d) require the Board to return "the original petition [if one exists] with a report of its findings and the manner of notifying the parties together with the ... discontinuance" order to the Town clerk for recording. (§ 711(a)). Although § 710 is ambiguous regarding the substantive legal standard applicable to the Selectboard's decision to discontinue a highway, and there is no Vermont Supreme Court

³ For purposes of this proceeding, the Selectboard takes notice of Town ordinances, policies and regulations that have been formally adopted by the Board and/or the voters of Calais.

decision directly on point, Vermont trial courts have generally evaluated whether the Selectboard's decision to discontinue a highway serves the "public good, necessity, and convenience of the inhabitants of the Town." See 19 V.S.A. § 710; *Mucherino v. Town of Marshfield and TAL, LLC*, [citation].

In the context of 19 V.S.A § 710, the substantive standard — public good, necessity and convenience — is not specifically defined.⁴ Ultimately, "the broad nature of the factors to be considered [by the Selectboard] necessarily involves a high degree of discretion." In exercising its discretion, however, the Selectboard may not act in an arbitrary or discriminatory fashion.

Based on the foregoing findings of fact and other record evidence adduced at hearing, and given the relevant legal standards, discussed above, the Selectboard concludes as follows:

As a preliminary matter, the Board finds that Mr. Cowan's report and Location Study of TH #7, which are based on both document research and field study, are credible and that his explanation of the apparent distance discrepancy in the final (third) course of the 1840 Survey Bill is logical considering the language of the Survey Bill and the situation on the ground (which includes evidence that TH #7 runs to West County Road). As noted above, it is a well-established rule of construction that a survey bill's terminal call for a physical or record monument trumps its distance call. Therefore, TH #7 terminates at West County Road, irrespective of the distance in rods for the final course stated in the 1840 Survey Bill. The Board accepts and adopts Mr. Cowan's description of the highway, as set forth in this report and location study.

Further, having given public notice, examined the premises, and held a hearing (over multiple days), all in accordance with 19 V.S.A., Chapter 7, the Selectboard concludes that Town Highway #7 should be discontinued. Discontinuance serves the public good, necessity and convenience of the inhabitants of the Town for the following reasons:

1. While it has been in existence since 1840, and at one time provided public access from the Carr farm to West County Road (and vice versa), there is little public interest or utility in the Town continuing to hold a highway right-of-way through this area, other than to have access for some future, undefined public purpose. The issue of discontinuing TH #7 has been raised by the Schultzes, at various times, for over 40 years. During that period, the Town has not identified or undertaken any public endeavor that would make use of TH #7. Consideration of the question of what to do with TH #7 has, however, consumed public monies, Selectboard time and resources, and the time and resources of other municipal boards, commissions and officials. Discontinuance will cut off these costs.

2. TH #7 is, and has always been, effectively a dead-end public road, providing access to only a small number of properties and residences. Today, only the Schultzes' house is accessed off of TH #7, a portion of which doubles as their driveway.

⁴ 19 V.S.A., Chapter 5, §501(1) (Condemnation for State Highway Projects) defines "Necessity," in part, to mean "a reasonable need which considers the greatest public good and least inconvenience and expense to the [Town] and to the property owner. Necessity shall not be measured merely by expense or convenience to the [Town] [C]onsideration also shall be given to the effect upon home and homestead rights and the convenience of the owner of the land." Further, the term "public good," while not formally defined by statute, generally means that which is beneficial to the community at large, not only a few members of a community.

3. Where it is visible west of the Schultzes' house, TH #7 is steep, wet, deeply eroded, and presents as a stream bed in places. While it is not obligated to do so under the Town's Class 4 road policy, if the Selectboard were inclined to upgrade and improve TH #7 for highway purposes, the cost to do so would clearly be prohibitive given existing budgetary constraints. In addition, such a road would not serve a current public purpose in that it dead ends at the Lumberjack property line. Given these factors, and others discussed herein, it is unlikely that the TH #7 right-of-way will ever again be used by, or be useful to, the public as a roadway (or trail).

4. TH #7 leads straight into the heart of the town zoning map's "Resource Recreation District," within which development is extremely restricted, as well as into the largest and most significant wildlife habitat block in the Town. The purpose of the Resource Recreation District is to protect the natural resource value of those lands in Calais which are essentially undeveloped, are important wildlife habitat, could have high potential for commercial forestry use or other extractive enterprises, are unsuitable for commercial, industrial or higher density residential development, or are necessary to protect groundwater and aquifers, a fragile ecology, or significant recreational or scenic resources. By eliminating direct public highway access into the Resource Recreation District, the Board is better able to protect the significant wildlife habitat and natural resource values of the largely undeveloped lands of both Schultz and Lumberjack, preserving their ecological and aesthetic qualities for future generations of Calais residents.

5. While the Schultzes (and Lumberjack) allow the public to access their property for low impact recreational purposes, the TH #7 right-of-way is not well suited for trail use due to the conditions noted above. Creating a public trail on TH-#7 would be potentially prohibitively expensive and could result in erosion and siltation downstream. For much of its length it is necessary to travel outside of the TH #7 right-of-way due to the erosion, blowdown and similar conditions. In addition, TH #7 does not lead to a formal or informal public trail network. Instead, TH #7 effectively dead ends on private property. The TH #7 right-of-way is also very infrequently used by the public for recreational access purposes. The Schultzes oppose its designation as a legal trail and the Trails Committee does not support establishing trails where landowner opposition exists. It is unlikely that reclassifying TH #7 as a trail would lead to significant public recreational use or that a trail in this location would ever serve as a meaningful community recreational resource.


6. Although it is the public interest, and not the Schultzes' private property rights and interests, that are of paramount concern in this proceeding, it cannot be ignored that the Schultz family – which includes 17 individuals, including many grandchildren – are themselves members of the public. By discontinuing TH #7 as a public highway, the Selectboard can minimize the risks associated with motor vehicles travelling up the Schultz driveway, at all hours and sometimes at high speeds, looking for a mapped, but long impassable, roadway. It is in the public interest to take reasonable steps to avoid conflicts and accidents between such vehicles and some of the Town's youngest residents, who play in or near the driveway. One such step is to discontinue TH #7 so that motorists are no longer legally authorized to drive up the Schultz driveway in search of the upper, inaccessible portions of the roadway. That is the step the Board believes to be most appropriate and reasonable in this case.

DECISION

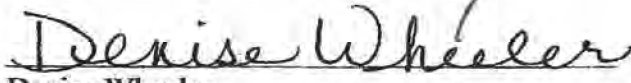
THEREFORE, for all of the foregoing reasons, the Calais Selectboard orders that Town Highway #7, as described in the 1840 Survey Bill, shall be discontinued. Moreover, the Selectboard declines to reclassify Town Highway #7 as a legal trail for the reasons discussed herein.

DATED at Calais Vermont, this 10th day of December, 2022.


Sharon Winn Fannon



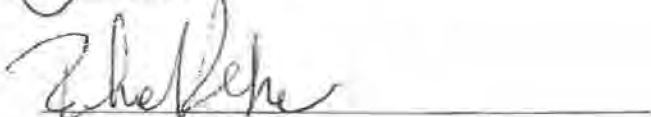
Marc Mihaly



Denise Wheeler



John Brabant



Rick Kehne

EXHIBIT A - TH #7 EXHIBIT LIST

Exhibit Number	Submitted by	Dated	Entered into the Record
1	Reed Cherington	6/9/22	6/11/22
2	Conservation Commission	5/31/22	6/11/22
3	Jan Ohlsson	6/8/22	6/11/22
4	Weisbart email- Weisbart's requested removal	6/7/22	6/11/22
5	Weisbart email Weisbart's requested removal	4/16/22	6/11/22
6	Jamie Moorby email	4/13/22	6/11/22
7	Rebecca Washburn, Director, Lands Administration and Recreation Division, Forest, Parks and Recreation	4/13/22	6/11/22
8	David Schneider, Trust Asset Manager, Cushman and Wakefield agent for Lumberjack, LLC	3/31/22	6/11/22
9	Charles Flower email	6/9/22	6/11/22
10	Reed Cherington – Maps and other materials relating to TH #7	6/11/22	6/11/22
11	Planning Commission 4/5/2022 minutes	4/5/2022	7/18/22
12	Lorie Bayne email	6/13/22	7/18/22
13	Trails Committee email	6/11/22	7/18/22
14	Jody Bayne email	7/11/22	7/18/22
15	VanVeghten letter sent via email	7/13/22	7/18/22
16	Jill & Gary Schultz letter sent via email	7/13/22	7/18/22



.com

10 Mansfield View Lane
South Burlington, VT 05403

Phone: 8028642323
Fax: 8028642271
EMail:

Civil Engineering Associates, Inc.

Report on Town Highway 7 Town of Calais, Vermont Revised Oct. 9, 2022

Lot 23
Schultz

We were asked by attorney Joseph McLean this summer to conduct research and surveying of Calais's Town Highway No. 7, sometimes known as "Carr Road", in order to determine or verify its location and terminal points.

A "Survey Bill" dated June 13, 1840, corresponding with this roadway, appears in the Calais town records (Records Book 3 Page 282) (copy attached). The survey bill calls for an associated 3 rod wide (49.5') right of way. Following is a discussion comparing each part of the survey bill to the evidence remaining on the ground. (This report was revised due to road name confusion in our September 30 draft.)

Point of Beginning

The 1840 description of the centerline of the highway begins at its westerly terminus *"on the east line of Lorenzo York's land at a point about 6 rods [99'] northerly of the northeast corner of Willard Handford"*.

In 1838 Lorenzo York was conveyed all of [town] Lot 22 Division 3 by deed of Justin Ely (Land Records Book 7 Page 154). In 1839 York conveyed the southerly ½ of the lot to Willard Handford, retaining the north ½ of the lot for himself (Book 7 Page 155). York and Handford still owned their portions of Lot 22 in 1840 when the public right of way was described and recorded by the Calais Selectmen.

Through time the north and south halves of Lot 22 have been rejoined and recently (2020) both halves were conveyed, along with other adjoining lands in Calais and Worcester, to Lumberjack, LLC, a Delaware corporation (Calais Book 54 Page 346).

This easterly line of L22 D 3 is also the westerly line of L23 D3, most of which is currently under title of Gary and Jill Schultz (Book 28 Page 272 among other deeds), and this common boundary is clearly perpetuated today by a prominent

Exhibit 23
and oversized

Cowan
Revised
10/9/22

stone wall, traces of barbed wire fence, and recently re-painted (red) tree blazes. There still remains clear evidence of a roadway passing through a wide "gate" in this stone wall.

Town Hwy. 7

10/9/22

Pg. 2

Vague evidence of the roadway continues westerly for an unknown distance, currently in the form of a lightly-used trail.

First Two Courses

From its Point of Beginning at the currently common boundary between Lumberjack, LLC and Schultz, the 1840 centerline description runs the following two courses:

“Thence South 81° East 54 rods” (891'±)

“Thence South 64° East 24 rods” (396'±)

The bearings listed are evidently magnetic (compass) bearings circa 1840. The historic declination (difference) between Astronomic North and Magnetic North 1840 is reportedly around 9°37'. We found that using a declination of about 8°15' west of grid north (used in our survey) achieved better correlation with remaining physical evidence (“gate”, roadway evidence, east/west stone wall). This difference of about 1.25 degrees is not unusual when comparing surveys of this age in our experience.

We found remaining evidence of a roadway, highly eroded in places, corresponding with the first course of about 891'. In the westerly half of this course the roadway deviates significantly south of the record description, probably swerving in that direction through time to avoid highly-eroded sections of road. It is also possible that the 1840 survey simply named a single bearing and distance from the top to the bottom of this steep (average nearly 17%) section of the roadway.

In much of this section, the former “dugway” road is deeply eroded, now appearing like a stream-bed and there are places where there is evidence that the road may have had more than one path in order to avoid this erosion. Such deviations can be observed on 1942 aerial photographs.

In the second course (approximately 400') there currently remains little evidence of the roadway. The topography here is gentler and mostly in open (unforested) land. There remains a line of trees and a few disorganized stone piles on the southerly side of the former roadway in this section, which ends just westerly of the end of the current Schultz driveway where their driveway turns northerly toward their barn.

Town Hwy. 7
10/9/22
Pg. 3

Third (Final) Course

The final centerline course is described as follows:

“Thence South 70° East 6 rods [sic] to the center of the west County Road about 6 rods south of the south end of Brown’s Mill dam, now occupied by a road.”

This segment of the original roadway is difficult to discern today, mainly because of the construction of the Schultz driveway (about 9’ wide, gravel) which is constructed, with a more meandering alignment, roughly astride the old roadway. An older, straighter alignment can be observed on 1942 aerial photographs, one of which is included in our plan (accompanying this report) titled “Location Study, Town Hwy. 7, “Carr Rd.” and dated October 9, 2022. Remaining physical evidence of the roadway’s location, in our opinion, includes a 165’ length of stone wall lying southerly of the present Schultz driveway.

The dimension of this final segment, given in the 1840 Survey Bill as “6 rods” (about 99 feet) is, in our opinion, a scrivener’s error, since it is clearly more distant to the named terminal point of “the west County Road”. This distance is likely meant to be “thence 36 rods”, about 594 feet, which would extend the centerline to the center of the present West County Road (TH 5). It is a nearly universal rule of construction (interpretation of legal descriptions) that the terminal “call” for a physical or record monument (in this case the “west County Road”) trumps its distance call (in this case 6 rods).

This final course also specifies that its intersection with “west County Road” is to be approximately 6 rods (99’) southerly of the south end of Brown’s mill dam. This call for a mill dam corresponds with the 1836 record of an alteration of West County Road. This alteration is recorded in Town Records Book 3 at page 271 and altered the roadway to pass along the top of a mill dam in our area of interest. The mill dam no longer exists, but we have located a large culvert where the former mill stream crosses beneath West County Road roughly 120’ northerly of the Schultz driveway.

Town Hwy. 7
10/9/22
Pg. 4

Conclusion

The mostly untraveled roadway now designated as Town Highway No. 7, described in an 1840 Survey Bill, recorded in the Calais Town Records, was retraced through a combination of record and remaining physical evidence. A westerly portion of the evident roadway deviates southerly from the record right of way, but does terminate within the record right of way near its westerly terminus. The westerly terminus is coincident with the lot line between Lot 22 (on the west) and Lot 23 (on the east) both in the 3rd Division of town lots. The right of way (and evidence of the roadway) runs easterly across Lot 23, over lands of Gary and Jill Schultz, approximately 1880 feet to intersect and connect with Town Highway 8 (currently untraveled) and Town Highway 5, also known as West County Road. Approximately the easterly 550' of the right of way is currently occupied by a 9-foot-wide gravel driveway apparently maintained by the Schultz family. The majority of the road westerly of the Schultz house is mainly impassable (by vehicle) due to heavy erosion. The western-most 800' of the road has an average slope (upward, westerly) of nearly 17%.

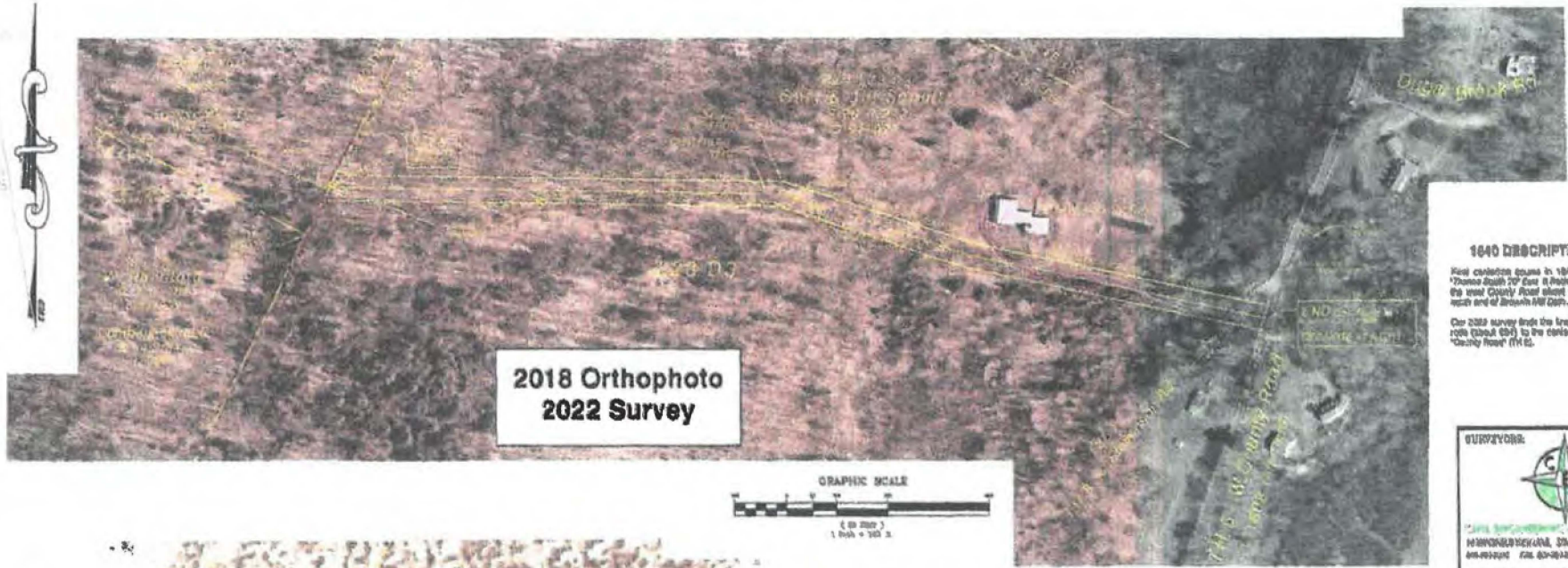
It is evident from record and remaining physical evidence that the purpose of the highway at the time of its creation was to provide a public way connecting landowners on both Lot 23 (now Schultz) and Lot 22 (now Lumberjack, LLC) to the West County Road. The public way does not continue westerly beyond the east line of Lot 22.

CIVIL ENGINEERING ASSOCIATES, INC.

Timothy R. Cowan, LS

Attachments

Revised 10/9/2022



**2018 Orthophoto
2022 Survey**



1840 DESCRIPTION NOTE
 Field collection done in 1840 Survey the width
 "Thence South 20° East 80 feet 00" to the center of
 the road County Road about 6 feet south of the
 north end of Section 104 East...
 Our 2022 survey finds the true course may be 89
 feet (about 60") to the center of the road which
 "County Road" (11 ft).

SURVEYOR:

CHAS. B. BROWN, INC.
 140 W. COUNTY ROAD, SOUTH VERMONT VT 05494
 802-253-2121 FAX 802-253-2122 www.chasbrown.com

DATE	TRC
COMES	XXX
APPROX	XXX
DATE	XXX
DATE	
DATE	
DATE	
DATE	

**Location Study
Town Hwy. 7
a/k/a "Carr Rd."
Cains, Vermont**
See Accompanying Report

DATE	REVISION NUMBER
OCT. 8, 2022	1
SCALE	
1" = 100'	
2025. 00	
22187	



1942 Aerial Photo
Approximate 1" = 100'

From: [DeAndrea, Pam](#)
To: tcowan@cea-vt.com
Cc: [Joseph McLean](#); [AOT - Mileage Certificates](#)
Subject: RE: Calais TH 7
Date: Thursday, February 9, 2023 11:36:00 AM

Thank you very much Tim,

It was great speaking with you this morning and getting more information on TH-7.

Best,

Pam

Pamela DeAndrea (she/her) | AOT GIS Professional III, Mapping Section
Vermont Agency of Transportation
219 North Main Street | Barre, VT 05641
802-793-7555 | pam.deandrea@vermont.gov



From: Tim Cowan <tcowan@cea-vt.com>
Sent: Thursday, February 9, 2023 10:36 AM
To: DeAndrea, Pam <Pam.DeAndrea@vermont.gov>
Cc: Joseph McLean <jmclean@firmspf.com>
Subject: FW: Calais TH 7

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Pam –

Resending - Below. I didn't spell out "Vermont" in your e-address.

From: Tim Cowan <tcowan@cea-vt.com>
Sent: Thursday, February 9, 2023 10:16 AM
To: 'pam.deandrea@vt.gov' <pam.deandrea@vt.gov>
Cc: 'Joseph McLean' <jmclean@firmspf.com>
Subject: Calais TH 7

Hi Pam –

I enjoyed speaking with you this morning when you called from VTrans.

For your reference I've attached PDFs as follows:

1. Our exhibit titled "**Location Study Town Hwy. 7 a/k/a "Carr Rd."**", dated September 30, 2022, CEA Project Number 22187.
2. Our report of the same date

3. A scan of the 1840 highway layout from Page 282 of Town Records Book 3.

Our map was prepared by field surveying remaining visible evidence of a roadway between TH 5 "County Rd." and the west line of Lot 23 Division 3 and then overlaying the 1840 record alignment (layout) onto the physical evidence.

It is our opinion that the westerly terminus of this public highway was coincident with the Lot 23-Lot 22 line.

The fact that the layout description BEGINS at that lot line and runs east, without mention of any road further west, indicates that any roadway west of that line to the so-called Carr homestead was private. It is my understanding that there would have been no reason for a public road beyond that point, as it would only serve the owners of Lot 22 at that time.

Our analysis indicates the centerline of TH 7 had an original total length of 114 rods (1881 feet), but that a scrivener's error left a recorded total of 84 rods (1386 feet). This discrepancy is described in our report. Our 2022 surveyed distance was surprisingly close to 1881' (within 3' -5' depending on the interpretation of the centerline of TH 5.)

As discussed, it appears that the historical and contemporary town highway maps have given the length of the road based on measurements shown on Beers' Atlas (ca. 1873), and that that distance of 160 rods was all the way from County Rd. to the "Carr" homestead.

Thanks,
Tim

Timothy R. Cowan, LS
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403
(802) 864-2323 Extension 316

From: [DeAndrea, Pam](#)
To: "[Denise Wheeler](#)"; [Paul Hannan](#)
Subject: RE: TH-7 Discontinuance
Date: Friday, February 17, 2023 11:32:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi Denise,

I spoke with Paul yesterday and he was very helpful. He confirmed with me what Tim Cowen had said that no other survey was found for TH-7 despite an exhaustive search of Town records. I also discussed with my supervisor, Johnathan Croft, and we think the best way forward is the following:

- We will re-map TH-7 based on the survey provided by Tim Cowen but retain the western portion on the map noted as "not originally laid-out as public" or something like that
- The surveyed portion will appear discontinued on the updated Town Highway map
- It would be good also to have a statement from the selectboard, preferably in a signed letter that states something like "It is the intent of the Calais Selectboard to **discontinue TH-7 in its entirety**. A thorough search of survey records was conducted and **no survey of TH-7 west of the Schultz/Lumberjack parcel boundary was found**. Therefore, the survey described in the discontinuance order and the Civil Engineering Associates, Inc.(CEA), report was historically the only public portion for TH-7. The discontinuance decision of the Calais Selectboard reflects the surveyed public portion of TH-7 with the understanding that the rest of the right-of-way is private."

This should clear up any confusion moving forward if someone looks into it years from now.

Thank you so much and feel free to give me a call with any questions.

Have a good weekend,

Pam

Pamela DeAndrea (she/her) | AOT GIS Professional III
Policy, Planning & Research Bureau – Mapping Section
Policy, Planning & Intermodal Development Division
Vermont Agency of Transportation
219 North Main Street | Barre, VT 05641
802-793-7555 phone | pam.deandrea@vermont.gov
<http://vttrans.vermont.gov>



From: Denise Wheeler <calaissbdenise@gmail.com>
Sent: Thursday, February 16, 2023 9:26 AM
To: DeAndrea, Pam <Pam.DeAndrea@vermont.gov>; Paul Hannan <vermontlandsurveyor@comcast.net>
Subject: Re: TH-7 Discontinuance

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Pam - Paul Hannan was going to catch up with you about this. Did you two connect?

On Mon, Feb 13, 2023 at 8:56 AM DeAndrea, Pam <Pam.DeAndrea@vermont.gov> wrote:

Hi Denise,

It was great speaking with you today. After reviewing the 2023 Mileage Certificate and supporting documentation we need a little more clarification on the original public right of way of TH-7 (Carr Rd) and the intent of the discontinuance. I left Paul Hannon a message on Friday and will confirm with him that there are no other surveys available for this road other than what Tim Cowan used for his report.

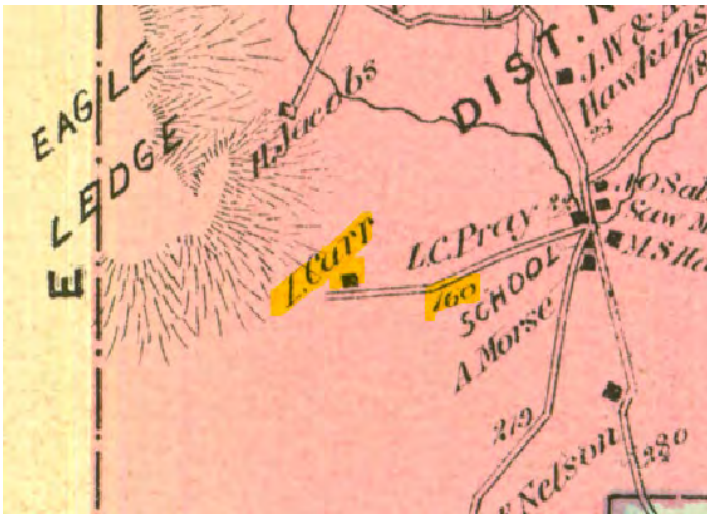
Here are some findings that lead us to request the clarification for the historic laying out of TH-7:

1. The Beers Atlas from 1873 shows that TH-7 (Carr Rd) went all the way to the Carr Farm (see image #1). The distance from County Rd to the Carr Farm noted on the Beers map is 160 rods = 0.50 miles. This is not evidence of public road but gives us clues as to what was traveled back in the day.
2. VTrans currently has TH-7 mapped as 0.50 miles, 0.15 miles past the boundary of the Schultz/Lumberjack property line described in the discontinuance report (see image #2)
3. The current Parcel boundaries (in red in the image) show the ROW that extends to the old cellar of the Carr homestead that is very visible on elevation data (see image #2)
4. As part of Act-63, TH-7 was reported by the Town as having 0.50 miles and was added to the Class 4 mileage (see attached)
5. The next Town Highway Map from VTrans was in 1986 and showed TH-7 as 0.50 miles, which has carried through to today (see 3rd image)
6. The survey provided to VTrans with the 2023 Mileage Certificate was only for the portion of TH-7 that is east of the Schultz/Lumberjack boundary to County Road with a total of 1880 = 0.36 miles
7. According to Tim Cowan, LS from Civil Engineering Associates, Inc.(CEA), there were no other surveys available within the Town records. Also he confirmed that the section west of the Schultz/Lumberjack boundary was never public road since there was no official laying out documentation found in the records research. He deduced that the Town Highway maps and the Act 63 designation of the road length was assumed from the Beers Atlas and not from actual historic surveys.
8. If the Town does have a survey of the western section of the road, VTrans needs that documentation as part of the Mileage Certificate packet.
9. We will need to alter the subtracted mileage reported on the 2023 Mileage Certificate from 1,880 feet to 0.50 miles to accurately reflect the new Class 4 mileage total

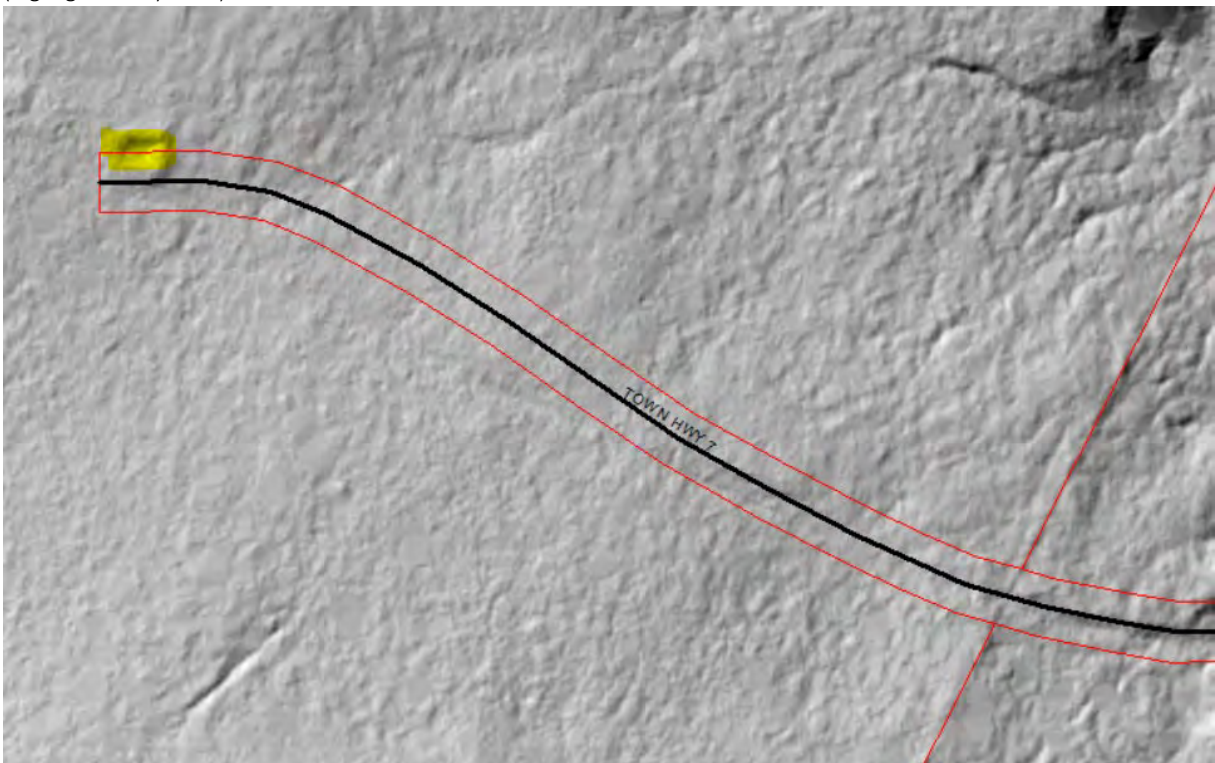
If there is no survey for the western section of the road, we would recommend the following be sent to VTrans in a correspondence (email is fine) to be included with the 2023 Mileage Certificate packet:

- The Calais SelectBoard has decided to discontinue TH-7 (Carr Rd) in its entirety
- Town records research conducted for the TH-7 discontinuance found no survey or original laying out information for the portion of TH-7 that extends west of the Schultz/Lumberjack property boundary noted as the beginning of the road in the CEA report
- The Calais SelectBoard considers this portion of TH-7 to never have been public road and inaccurately designated as such historically including the mileage reported as part of Act63

Beers Atlas



Currently mapped TH-7 west of the Schultz/Lumberjack property boundary, parcel data, and the old Carr cellar (highlighted in yellow)



1986 Calais Town Highway Map

