

CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2011

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2011 to:
Vermont Agency of Transportation, Division of Planning, Outreach and Community Affairs, One National Life
Drive, Montpelier, VT 05633.

We, the members of the legislative body of **VERNON** in **WINDHAM** 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
Class 2	7.860				0.000
Class 3	17.29		0.0777 ^{0.08}	17.21	0.000
State Highway	11.640				0.000
Total	36.790			36.710	0.000
* Class 1 Lane	0.000				0.000
* Class 4	0.48				
* Legal Trail	1.03				
* Unidentified Corridor	0.00				

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

PART II - INFORMATION AND DESCRIPTION OF CHANGES SHOWN ABOVE.

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

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

Town Highway 11 could you please take discontinued part off map
Town Highway 11 take .18 off and change to .1023 pretend to paper work sent in in 2007

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

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

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

PART III - SIGNATURES - PLEASE SIGN.

Selectmen/ Aldermen/ Trustees Signatures: _____

T/C/V Clerk Signature: _____

Christiane Vorne
Susan J. Haller
assy. tart Town Clerk

Date Filed: 3/24/2011

Please sign ORIGINAL and return it for Transportation signature.

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

APPROVED: _____

Representative, Agency of Transportation
Johnathan Croft

DATE: _____

06/30/2011

Received

MAR 29 2011

Policy, Planning & Intermodal
Development Division

Vermont Statutes Annotated

19 V.S.A. § 305. Measurement and inspection

§ 305. Measurement and inspection

(a) After reasonable notice to the selectboard, a representative of the agency may measure and inspect the class 1, 2, and 3 town highways in each town to verify the accuracy of the records on file with the agency. Upon request, the selectboard or their designee shall be permitted to accompany the representative of the agency during the measurement and inspection. The agency shall notify the town when any highway, or portion of a highway, does not meet the standards for its assigned class. If the town fails, within one year, to restore the highway or portion of the highway to the accepted standard, or to reclassify, or to discontinue, or develop an acceptable schedule for restoring to the accepted standards, the agency for purposes of apportionment under section 306 of this title shall deduct the affected mileage from that assigned to the town for the particular class of the road in question.

(b) Annually, on or before February 10, the selectboard shall file with the town clerk a sworn statement of the description and measurements of all class 1, 2, 3, and 4 town highways and trails then in existence, including any special designation such as a throughway or scenic highway. When class 1, 2, 3, or 4 town highways, trails, or unidentified corridors are accepted, discontinued, or reclassified, a copy of the proceedings shall be filed in the town clerk's office and a copy shall be forwarded to the agency.

(c) All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015.

(d) At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.

(e) The agency shall not accept any change in mileage until the records required to be filed in the town clerk's office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of any surveys of the affected highway or trail, minutes of meetings at which the legislative body took action with respect to the changes, and a current town highway map with the requested deletions and additions sketched on it. A survey shall not be required for class 4 town highways that are legally established prior to February 10, 2006. All records filed with the agency are subject to verification in accordance with subsection (a) of this section.

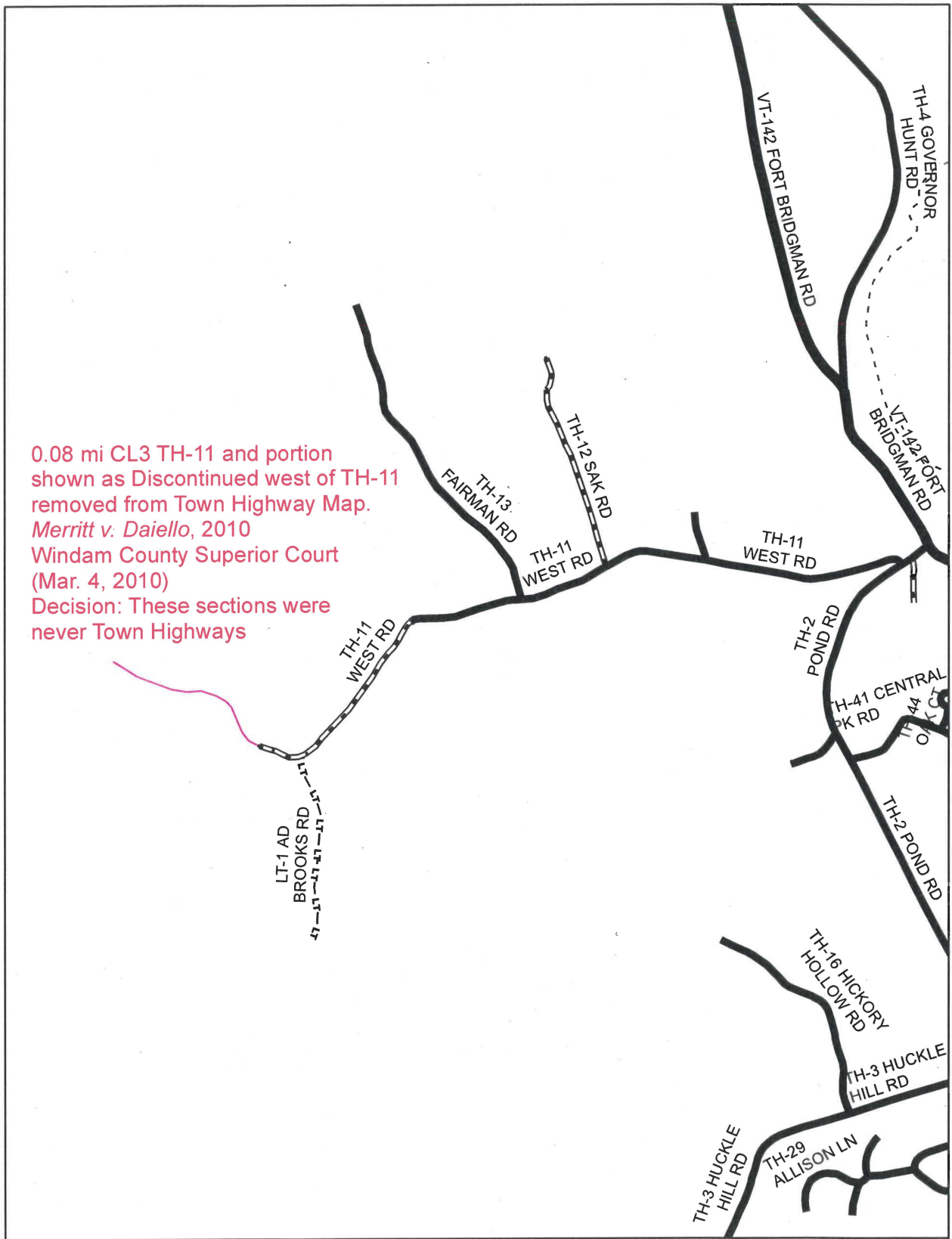
(f) The selectboard of any town who are aggrieved by a finding of the agency concerning the measurement, description or classification of a town highway may appeal to the transportation board by filing a notice of appeal with the executive secretary of the transportation board.

(g) The agency shall provide each town with a map of all of the highways in that town together with the mileage of each class 1, 2, 3, and 4 highway, as well as each trail, and such other information as the agency deems appropriate.

Excerpt of 19 V.S.A. § 305 - *Measurement and inspection* from Vermont Statutes Online located at –
<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=19&Chapter=003&Section=00305>

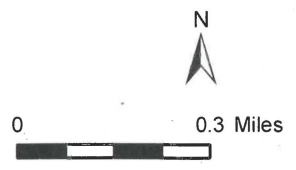
12/20/2010

0.08 mi CL3 TH-11 and portion shown as Discontinued west of TH-11 removed from Town Highway Map.
Merritt v. Daiello, 2010
Windam County Superior Court
(Mar. 4, 2010)
Decision: These sections were never Town Highways



Mileage Certificate Change 2011
VERNON

Mapping Unit
Division of Policy and Planning
Vermont Agency of Transportation -- April 2011



Town Highway 11 pass Merritt

House Only

STATE OF VERMONT
WINDHAM COUNTY, SS

DALE A. MERRITT and
BRENDA MERRITT,
Plaintiffs

v.

STEVEN DAIELLO, SANDRA DAIELLO,
JOSE TELLECHEA, MARYPAZ
TELLECHEA and DOOLITTLE MT
LOTS, INC.,
Defendants

SUPERIOR COURT
Docket No. 49-1-08Wmcv

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter for plaintiffs' request for relief by declaratory judgment came on for trial by court on December 15 and 16, 2009. Based on the evidence presented the court makes the following findings, analysis and conclusions of law, order and judgment.

Findings of Fact

A survey of what was labeled the Stebbins Road in Vernon, VT, dated 1801 and done by Samuel Sheppardson was recorded in the Vernon Land Record (Book 1, page 549). The actual survey is not available but the description was entered by metes and bounds. It described a road two rods wide (33 feet) running from a spot on a road now being Rte. 142 to the east line of the Town of Guildford. Rte 142 was also known as Fort Bridgman Road. The Land Records state as a preface to the description that "under the Special Directions of the Select Men of the Town of Hinsdale I surveyed a Town Road called Number Three." Hinsdale became the Town of Vernon in 1802.

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There is no record of the Vernon Selectboard approving the opening of this road or accepting it as a public road upon this survey. The recorded survey is attested to by Sheppardson but is not signed off on by the Board or "approved" in any written record.

In the warnings of the 1806 town meeting of Vernon there is an article "To see if the Town will open a road through Eliakim Stebbins' land or any part of it" and a further article as to if the town will "discontinue the road or any part of it that goeth through Eliakim Stebbin's land."

The town minutes show the 1806 meeting voted to create a committee to "treat" with Mr. Stebbins "relative to a road through his land" and named certain men to such and purported to give them the authority to either open such a road or discontinue any part of one and lay out a new one if appropriate. There is no following record of the selectboard acting on any action by this committee.

Again at the 1809 town meeting a warning article asked "if the town will discontinue the road by Eliakim Stebbins' and lay one by Samuel Brooks to said Warren's." This article was not approved at the meeting.

In 1813 in the leasing some land to one Joshua Burrows by the town the premises were described in part as "All that part of the three hundred acre Glebe Lot in Vernon southward of the road as it was laid from Eliakim Stebbins' to Guilford".

Eventually in 1841 the selectboard laid out, surveyed and opened a portion of the 1801 surveyed road described in that survey, but it terminated on the present lands of the plaintiffs in the location of a corn barn structure then on the land owned by Eli Lee. The court finds this structure was in the area a present barn of plaintiffs' is located in the cluster of buildings and residences of plaintiffs. The approved road did not go beyond

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this area of the plaintiffs' present property which is essentially where their residences and main structures are located. This vote opening this portion of a road was recorded in book 4, page 272 of the Vernon Land Records.

Then in 1904 there are records of the Town of Vernon discontinuing Stebbins Road. This is noted to be from the George Butterfield dwelling westerly to the Guildford Town line. This would be the present portion that goes from the plaintiffs' residences through more of their property and eventually to the defendants' lands lying to the west. Mr. Butterfield's home was on the Merritt land in the area of the barns and homes.

Maps and road designations from the 1800's on had this road marked out on them that traveled through the present plaintiffs' lands on past what would be the defendants' land and eventually to the Guilford line. The maps vary in the length and exact location of such road. Official town highway maps have the road on them, again with some variation in length. Some of the claimed lengths would have the road reaching defendant Diaello's drive or gate to his residence. The road was classified a class 3 or 4 road at times.

Evidence shows that the Vernon selectmen did formally approve roads after surveys and according to statutory process during this time in the 1800's that the Stebbins Road was dealt with and referred to. There were also other surveys of roads recorded without action by the selectboard noted concerning them. The court finds the Stebbins Road referred to during this time is the present disputed roadway with some small variations.

Plaintiffs, husband and wife, own about 200 acres of land in Vernon, VT. The land borders the disputed roadway on both sides from the location of their residence and **Filed**

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buildings on westerly to the border with land owned by the State of Vermont. Past this further westerly on the road is defendants Daiello's land. Defendants Tellechea's land is further west down the road bordering Daiello's land. Both defendants' properties lie on the north side of the roadway, the side that most of plaintiffs' land is also on. Mr. Merritt lived on the property he now owns since the 1960's when his uncle Guy Severance owned the property. Through inheritance Mr. Merritt became part owner with his father and grandmother since 1966. Plaintiffs now own it completely in their names alone. They have actually resided there since 1973. Before then the grandmother lived there during summers during the 1960's but during winters it was unoccupied. Plaintiffs live there full-time presently. Plaintiffs' son and his wife and young grandchild live at the property also. They are in a residence built in 1992 which is located very close to the main residence plaintiffs use.

There are other buildings on the property. Over the years plaintiffs built up a family farm operation with barns and outbuildings. They then entered the horse breeding and riding instructions business and there is now an indoor arena for riding and other buildings for such purposes. The residences and buildings are closely clustered in a general two acre site a short distance from town signs announcing "Dead End" and "Private Drive" with most of these being very close to the disputed road that essentially runs right by the main residence and larger barns and buildings. Some are on each side of the road.

The horse business consists of both breeding, showing and boarding of horses, mostly Morgan breed, and also providing riding lessons to people. The number of horses varies but can be as many as 30 to 40 or as few as 20 or so. The horses may be located at

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various areas of the property at any one time either being used for riding along trails, pastures or the road in dispute or simply being pastured in the fields. This part of the farm has operated since 1988.

The overall property is boarded by some privately owned land and by land owned by the State of Vermont which has been designated a part of the Roaring Brook Wildlife Management Area. The road runs through forest land for the most part on plaintiffs' land except for the area around the cluster of buildings, which is more pasture and cleared.

Defendants purchased their property in 2000. Mr. Tellechea purchased approximately 120 acres of land from Cersosimo Industries, Inc., in two separate parcels of 80 and 40 acres. The deeds mention "the discontinued Town Highway formerly known as Stebbins Road and now know as West Road and the Old Wright Road" and giving the purchaser any rights over such "if any there may be".

The Tellecheas then in 2001 sold the land to Doolittle Mountain Lots, Inc., a corporation in which Mr. Tellechea and Mr. Diaello were the officers and principals. The corporation then conveyed its interest in the 80 acre parcel to the Diaellos and the 40 acre lot to the Tellecheas. This was in 2007. The Diaellos and Tellecheas were friends residing in CT who had an interest in Vermont land for building either retirement homes or vacation homes that might later become retirement homes. Mr. Tellechea is older than Mr. Diaello and the latter interested him in looking into land in Vermont and eventually in the purchase of their properties. The Tellecheas have never built a residence on their property. The Diaellos have constructed a residence.

Mr. Diaello also purchased another 44 acres of land from Allard Lumber Co., Inc., in 2001. He conveyed this parcel to Doolittle also and the corporation continues to

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hold title to this parcel. This parcel is north of the Tellechea land and does not abut the road.

The disputed roadway through the Merritt land was formerly known as the Old Stebbins Road or the Stebbins Road. It runs east/west generally through the property. For decades prior to the plaintiffs sole ownership there was little traffic on this road. No one might use it other than plaintiffs' family for a week or two at a time. What other use there was consisted of hunters, logging work and state personnel involved in land management issues of the state land. The road was in generally poor condition. In winter it could be essentially impassable. Even for the first few years Mr. Merritt owned it in the late 60's into the 70's it was not maintained for the winter. Mr. Merritt would have to stop his vehicle some half mile from the present residences until later in the spring.

The town did not maintain the road past some residences that were east of the Merritt property for many years and at all prior to 1966. When Mr. Merritts' grandmother took to staying at the property in the late 1960's the town started plowing and maintaining the roadway up to the main residence area but still not beyond. During winter the stretch west beyond the residence area remained essentially impassable during winter. When the Merritts children came of school age in the 1980's the town put in a turn-around just past the main residence for the bus to use in transporting the children to school. The Merritts cooperated with this construction. Part of the turn around was on their land off of the road. Later in the 1990's the town ceased maintaining the roadway in front of the residences. It never worked on the roadway past the area of the residences and outbuildings to the west. This is the section between the Merritts property and the

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Diaello and Tellechea lands. The court does not find reliable evidence that school children traveled over the road in the 1970's and 1980's.

At selectboard meetings in the early 1990's there was discussion of the West Road, formerly the Stebbins Road, as it went past plaintiffs' residence. It was labeled in the minutes as a class 4 "unmaintained road" and in another meeting it was resolved not to maintain the 2.7 mile portion past the plaintiffs' residence and it would become a class IV road after a year without maintenance. This discussion inferred the road was a town highway.

Once the Merritts began to use the property and re-built the main residence for year round use, the road was somewhat improved generally by the Merritts, but it still generally saw little other use than the Merritts and the hunting and logging mentioned. It was common for hunters to ask the Merritts for permission to go on the road through the property and even loggers made such arrangements except for Cersosimo Industries which several times did operations in the area without getting any permission to use the roadway. Mr. Merritt understood loggers in Vermont had some greater rights of access to certain lands than the general public so he did not make an issue of such use of the roadway and did not oppose it whether asked or not. Other lumber operations did ask for plaintiffs' permission to use the road and do work on it for their vehicles. Some state personnel went up the road past the plaintiffs' residence without checking for permission. They were dealing with the state lands owned abutting plaintiffs' land and usually involved in environmental matters.

The Merritts did not initially make any concerted efforts to restrict the use of the roadway as it entered the property. The general condition of the road over the years had

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this effect. They had not placed signs or gates on the roadway to limit use or access. But in the 1980's they did take to placing a rope across the roadway just past the west point of their outbuildings, which were further west than the residences, to prevent or at least control to some degree use of the road beyond that point. The rope would not be kept up all the time. They would string it across at times they felt traffic had increased or at certain times such as during spring school graduations when they had experienced some young people trying to go up past their residences for partying and drinking.

In 1994 the Merritts put up a metal gate arrangement in this same location. They utilized it much as they had done with the rope arrangement. Once this present dispute went to court the plaintiffs have chosen not to increase the conflict and have not closed the gate so as to avoid confrontations with defendants until the court rules on the matter. The Diaello and Tellechea lands can be accessed by the Stebbins Road going past the Merritt lands or from coming from the westerly direction. Depending on where one is coming from the access from one direction or the other can be shorter or longer.

Several years ago the town put up signs on the road east of plaintiffs' residence that said "Dead end" and "Road Turns to Private Drive". This was about ¼ mile from the residence. In the mid 1990's the children of plaintiffs had put up a rough sign on a tree indicating either "no trespassing" or that beyond that point was private property. A town meeting discussed this sign and its appropriateness, but no specific action was noted.

When defendants were going through the purchasing process for their lands they had information that the road access through the plaintiffs' land might be contested or disputed by plaintiffs. Mr. Merritt informed them at one point that he did not understand there to be a public road through his land to theirs and there was not right-of-way or other

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access rights. He indicated this issue was because the road past his actual residence had been discontinued some years before, so he believed there was no access for others.

Defendants in purchasing their properties sought and obtained title insurance that purported to insure access under the so-called *Okemo* case, a VT Supreme Court ruling on access rights over old public roads. They did so since access issues had arisen in the process of purchasing the land. They had counsel, attorney O'Connor, who researched the issue and provided them with the title insurance affirming access relying on *Okemo* in large part. O'Connor wrote Mr. Merritt a letter at one point just before Mr. Tellechea made his purchase communicating his opinion there was access over the discontinued road. Mr. Merritt did not immediately respond to this. In October two months after the closing Mr. Merritt wrote offering to assist in getting defendants access through the Weinstein property (described further below). This communication asked that Mr. Tellechea relinquish any rights he had over the Stebbins Road.

Since Mr. Merritt had appeared to rely on the road being discontinued in 1904 the defendants relied on counsel's explanation that *Okemo* would provide access despite this known fact of the discontinuance action. Mr. Merritt at that time did not make any other argument as to why there was no right of access.

After construction of the residence on his land, Mr. Diaello requested the Public Service Board declare the old Stebbins Road be declared a public road as he needed access for power. The Board ruled it did not have jurisdiction to make such a ruling and denied the petition. The Merritts participated in this proceeding opposing the petition. Defendants appealed to the Vermont Supreme Court which affirmed the ruling in 2007.

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Defendants then sought a condemnation ruling from the Department of Public Service over the Merritt lands to run electrical lines through the property to service the Diaello residence. This involved an Act 250 process and that body declined to rule until access through or over the old Stebbins Road was legally determined.

Also in 2007 Mr. Merritt communicated with the Town over the status of the road. During this time attorney Cummings researched the issue for the Town. During this period and in various written communications the focus was on the apparent action in 1904 by the selectmen to discontinue the Stebbins road and how that affected the present status. All assumed the road had been "laid out" by the selectmen in 1801 or in that time period. Under *Okemo* this would have actually resulted in defendants having a strong claim of at least some use of the road through plaintiffs' land as a discontinued road still afforded a landholder some rights to use for access.

Plaintiffs were still under this impression even in filing this complaint as it used the term "discontinued" in describing the disputed road and asked this court to affirm that status. It was only through further research by Mr. Merritt, a surveyor himself by chance who has done extensive surveying work in the Vernon area that required examination of old maps and deeds and the like, that he discovered the records from the early 1800's appeared not to show the selectmen ever "laying out" the road under the requirements of statute and only showed a survey having been done in 1801 and the various warnings and articles noted above until the 1840's action laying out a portion of the road. Plaintiffs' complaint was amended to reflect this new information and to rely on the claim that no road having ever been laid out the *Okemo* ruling did not apply to help defendants.

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Mr. Diaello also contracted at one point with a cell tower company for the use of a portion of his lands for a cell tower. This lease is recorded in the Vernon Land Records.

The defendants did work on sections of the roadway between their properties and plaintiffs' property. This included some widening of it in places and putting down surfacing on it of rock to provide a firmer base. Some of this work was on portions of the road that were bounded on both sides by plaintiffs' property up past their buildings and on the way to defendants. Some of it involved some trees being cut along the edge of the road and a bucket shovel being used to smooth out edges and banks. Plaintiffs did not agree to such and have objected to it in various forms, but did not want to get into full blown confrontations while the court case was pending.

Defendant Diaello has put up a gate on his drive off of Old Stebbins Road and another gate actually across the road itself west of his drive. This is generally left open but can be closed. These were put in after the Diaellos had damage on their property and they felt traffic from the west of their plot was increasing and might be the cause of such trouble.

Defendants and guests of theirs have used the road through the Merritt property to reach defendants' properties. There have been confrontations about this use as the Merritts believed the vehicles were often speeding through the area where their residences and outbuildings were located causing risks to them and people there for the horse business and to the horses that might be on the road or crossing it. The residence of plaintiffs is literally only a few feet from the side of the road. The court does not find the defendants constantly speeding through this area, but they have gone faster at times than comfortable for the use of the Merritts property right around the residences and barns.

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The court does find that an agent of the defendants, Mr. Moore, has insisted on traveling the road at this faster pace and is much more confrontational with plaintiffs for some reason than the Diaellos or Tellecheas are. Mr. Moore has yelled at plaintiffs and family and had several verbal confrontations about his feeling delayed or blocked by their farm equipment moving on the road or loading horses which can temporarily block the road. The Tellecheas are actually the least involved in this level of the dispute between plaintiffs and defendants. Plaintiffs find Mr. Tellechea very considerate and non-confrontational when they have had contact with him, but he has had less contact and use of the road than the Diaellos and Moore.

The police have been involved a few times in these disputes. No one has been charged with an offense over them. Mr. Diaello has spoken to Mr. Moore about the complaints of his driving and attitude. Mr. Diaello did not know all details of the plaintiffs' complaints about Moore but told Moore to be careful in his driving and behavior. Both he and Mr. Tellechea did not want Mr. Moore causing deliberate friction between them and plaintiffs.

The use of the road by defendants and friends has greatly increased the traffic through the plaintiffs' property. Prior to this time even with the horse business operating and the road being in better shape only a few vehicles a week might be the usual traffic pattern over it and during some seasons even less than this unless some logging had been going on. In comparison, with the defendants' use of the road the traffic can be several vehicles a day when they are using the Diaello residence and weekend traffic is much more common.

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Plaintiffs had a well on the property close by one of the barns and very close to the edge of the roadway. This was used as a back-up well for some of their water needs but mostly for stock watering and was not drinkable. Plaintiffs believe the water has been further tainted by the use of the road by defendants and defendants work on the road just west of the well. The court cannot find the reliable evidence supports this conclusion. The well may not be as good as it was before, but the cause would need more expert testimony than plaintiffs' beliefs. Plaintiffs truck manure over the road at times and operate other machinery on it for the horse and farm business. What use by whom has had the most effect on this well is not to be determined from the limited evidence presented about the problem.

One of the abutting neighbors to defendants, John Weinstein, has discussed in very general ways access through his property to defendants. His land is north of defendants' and plaintiffs' lands. There is an old roadway through his property that leads to defendants. It is unpaved and not in that good of condition, but could be improved to allow smoother travel. Compared to the road through plaintiffs' land this proposed access is longer in distance from some points, but would be shorter for travel to and from Route 5 or Interstate 91, two of the major roads of the area. The evidence is disputed and not very reliable on the work and cost to make this access reasonable as far as the condition of the road for routine travel. The court cannot find the actual cost of such work. It is also clear that Mr. Weinstein has not actually agreed to a certainty that he would allow such access over his road or what terms he might try to demand be included in any agreement and how difficult those could be for defendants to meet or abide by.

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Analysis and Conclusions of Law

In *Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201, 207 (2000), the court re-affirmed the rule that an abutting landowner to a public road had a right of access to it. It also affirmed that right remained even if the town discontinued the road. *Id.* So the initial question herein is whether the Old Stebbins Road, now the roadway that all agree goes up by and through plaintiffs' property and residence, was a public road discontinued by the selectboard in 1904. If it was not, the analysis is different.

In *Austin v. Town of Middlesex*, 2009 VT 102, ¶ 1, ___ Vt. ___ (mem.), the court held that property owners had proven there was no public road across their land which the town was asserting did exist. The court referred to old maps showing a roadway and references in the land records of the town of a road in that location and a survey of it. It noted an entry indicating the road was "laid out by us" and surveyed under the "direction of the selectmen." ¶ 3. But it denied the town's claim that such documents and survey evidence had established an official town highway. The court noted the three requirements to the official creation of a town road at the relevant time. These were (1) a survey, (2) that the road is then "laid out" by a formal act of the selectboard or other official body and (3) that the selectboard had to issue a "certificate of opening" of this surveyed and laid out road. ¶ 8 [citations omitted].¹

In *Austin* no evidence showed the selectmen "laying out" the disputed road. The survey alone, even recorded, did not suffice. *Id.* at ¶ 9. Similarly here there is no evidence of the town "laying out" the road in dispute. The evidence shows a survey in 1801 duly recorded but no action by the selectboard. The surveyor's statement that he acted under authority of the selectboard may be taken as true, but is not the same as the selectboard

¹ The requirement of a certificate was repealed in 2000. See 1999, No. 156 (Adj. Sess.), § 21(2).

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then approving the road as required. These are separate steps. There are also then the following actions noted in the minutes and articles about the road, but none of these cure the initial missing authority. Many of these actually add to the doubts concerning the legal status of the road with various votes to lay out or discontinue roads over the Stebbins property. Finally, only in 1846 is part of the road previously surveyed then “laid out” by the town but this has been found to only deal with the road up to plaintiffs’ residences and buildings and not for the portion from there to defendants’ lands. This specific action would actually strengthen the argument that the town had not legally approved the road before then. So the discontinuance action in 1904 at best only applies to that section and does not assist the defendants in their claims.

The fact that other surveys are in the land records from the same 1801 general period and are not approved by the selectboard does not help the defendants. It may only put into question whether any of those surveys legally support the existence of the roads involved. If a selectboard of that era did not do their duty in legally laying out roads, the problem is not cured simply because they constantly did it.

The weight to be given the town’s inaction back in 1801 and the following years is emphasized by the fact that other entries at the time demonstrate the selectboard knew how to lay out a road and accept it. Surveys of roads at and around the same time as that involved in the parties case were noted as being accepted and legally laid out. This clearly indicates the selectboard then knew how to go about such duties and that the absence of such language is significant. See *Austin*, at ¶ 9 (two prior surveys that shared the same page as the disputed one in the town records state the described roads are “laid out by us [the selectmen]”).

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The various old maps and documents otherwise presented to the court cannot establish the actual creation of a town road versus simply evidence of location. *Id.* at ¶ 5, n. 2; see also *Oppenheimer v. Martin*, 2008 VT 78, ¶ 8, 184 Vt. 561 (mem.) (trial court properly relied on highway maps only for locations and length of roads and not for proof of the status of the road). Additionally, the various old maps here are conflicting at times as to length and exact location and how they relate to the present road and plaintiffs' land and buildings and are certainly not reliable enough for the determination of whether a road was legally laid out.

The court finds from the evidence noted and facts determined that the disputed roadway herein was never officially created by the town at least as to that portion from the area of plaintiffs' residences and buildings on westerly to defendants' land and, therefore, defendants did not obtain an abutting right of access that would survive later discontinuance action by the town. There is an lack of reliable evidence that the town took further steps to "lay out" this road. The various articles that mention adopting various roads across Stebbins' land and discontinuing other roads on the property only increases the lack of reliable evidence that the disputed road was legally laid out back then. This determination is not dependant solely on a lack of evidence of a certificate. See 19 V.S.A. § 717(a) ("The lack of a certificate of completion of a highway shall not alone constitute evidence that a highway is not public").

Nor does the court find from the evidence that the use of this roadway as it passed plaintiffs' buildings and present residence created any sort of public road by the theory of dedication. The evidence is clear that for years the road was not used during the winter and was essentially impassable well through spring. What limited use there was

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otherwise was by a few hunters and hikers who would ask plaintiffs' for their permission and some logging use that did and did not always ask for consent. Plaintiffs exercised control in blocking off the road at times and the town even established signs indicating it was a private road. Only the road up to the buildings and residence area was maintained by the town for some years, but even that was irregular. See *Town of South Hero v. Wood*, 2006 VT 28, ¶ 10, 179 Vt. 417 (landowner can dedicate land to public use for a road by either express or implied actions showing intent). While there is evidence that could also support an argument for dedication, the court does not find it as convincing as that showing no such intent by plaintiffs. *Id.* at ¶ 12 (court is to weigh conflicting evidence of intent to dedicate land or not). The cases where such dedication has been found by law had far clearer evidence of continued public use. *Id.*

Defendants argue they should have passage over the disputed portion of the road from plaintiffs' residence to their land due to necessity. But their land is not landlocked. *Myers v. LaCasse*, 2003 VT 86A, ¶ 16, 176 Vt. 29 (a finding of a way by necessity requires showing of a landlocked parcel as one element). They have clear access from the other approach from the west even if it is a longer distance by some miles depending on where one starts from. This small extra burden is not enough to find an easement by necessity.

Plaintiffs also raise the argument of having extinguished any private right of way, if the court finds that, by adverse possession. The court does not find it necessary to rule on this issue. Nor does it find it necessary to rule on the issue of if there was any right of access it is a very limited one rather than for general traffic and access.

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The last issue is that plaintiffs did not raise the issue of the road never having been laid out properly until late in the process, having initially relied on its alleged discontinuance in 1904; a theory that would have allowed defendants access under *Okemo Mountain*. The court does not find this fatal to plaintiffs. It would not be unexpected to work further backwards in land records after having some knowledge of the purported discontinuance decision and entry in 1904 and it would have been reasonable to presume earlier action had been legally performed. But having found and presented evidence that the selectboard never legally created the road plaintiffs should not be prevented from arguing the legal relief this provides them. Defendants could also have pursued the more in depth research that would have either assured them of their legal status or made them aware of the gap in the road authorization history. They took out insurance to apparently protect themselves against exactly such a problem and it is not plaintiffs' fault that research did not find the flaw in the alleged creation of the road.

The lot owned by the corporation defendant does not abut Stebbins Road and never did. This defendant has no claim under *Okemo Mountain* or otherwise to relief in this case.

Therefore, based on the findings and analysis, the plaintiffs are entitled to their declaratory judgment that defendants have no right of access over the Old Stebbins Road from at least the buildings and residence of plaintiffs through to the westerly end of plaintiffs' property as it abuts the road.

ORDER

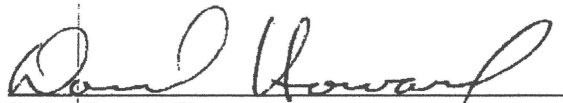
Judgment is entered for the plaintiffs. Defendants have no right of access over the so-called Old Stebbins Road through plaintiffs' lands.

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**Winham County
Clerks Office**

Dated at Bennington, VT, this 3rd day of March 2010.


Judge David Howard

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MAR 4 2010

Windham County
Clerks Office

cc: R. Stern
711-Nestor



State of Vermont
 Division of Planning, Outreach and Community Affairs - Mapping Unit
 1 National Life Drive
 Montpelier, VT 05633-5001
<http://www.aot.state.vt.us>

Telephone: 802-828-2109
 Fax: 802-828-2334
 Email: sara.moulton@state.vt.us

Agency of Transportation

Chair, Selectboard
 Vernon
 c/o Town Clerk
 567 Governor Hunt Rd
 Vernon, VT 05354

January 2011

TO: TOWN / CITY / VILLAGE CLERK AND SELECTBOARD / ALDERMEN / TRUSTEES

Enclosed is your 2011 **Certificate of Highway Mileage**. This Certificate must be completed in order to determine your town's share of state aid for town highways for Fiscal Year 2012.

Changes in mileage or highway classification, including any additions, alterations, or discontinuances made by your selectboard this past year, should be entered on this certificate. If there are changes that occurred before this past year that we have not shown on the Town Highway Map, please let us know so we can update our maps.

Also enclosed is a reduced size copy of your current Town Highway Map and a Certificate of Completion and Opening should you need it to document new town roads.

In filling out the Mileage Certificate, it is important to:

- >> Enter mileage and classification changes.
- >> If you have no changes, you may simply check the box in PART II of Certificate.
- >> Always sign Part III - Town Clerk, Selectmen, etc.

To effectively process all the mileage certificates in a timely manner and to assure the completion of the mileage summaries, it is important that towns submit the certificates on time. **Certificates must be postmarked on or before February 20, 2011. Certificates that are postmarked after February 20, 2011 may not be processed.**

After the Agency has approved and signed the certificate, we will send you a copy.

If you have any questions, please call me at 802-828-2109 or send e-mail to sara.moulton@state.vt.us

Thank you.

Sincerely,

Sara Moulton

Sara Moulton
 Mapping & GIS Specialist

Enclosures

*Spoke with Sara (3/22/11)
 OK to send out late!*



TOWN LENGTH IN MILES	HWY. CLASS	CLASS
NO.	3	4
4	1.25	
5	1.20	
6	0.81	
7	1.47	
8	0.18	
10	0.12	
11	1.63	
12	0.48	
13	0.76	
15	0.34	
16	0.35	
17	1.70	
18	0.76	
19	0.53	
20	0.20	
21	0.33	(0.24)
22	1.09	
23	0.17	
24	0.20	
25	0.14	
26	0.12	
27	0.10	
28	0.11	
29	0.33	
30	0.07	
31	0.07	
32	0.31	
33		(0.11)
34		(0.13)
35	0.15	
36	0.10	
37	0.15	
38	0.12	
39	0.36	
40	0.24	
41	0.62	
42	0.17	
44	0.14	
45	0.18	
46	0.16	
TOTAL	17.28	0.48

MILEAGE SUMMARY	
CLASS 2	
TH-1	2,150
TH-2	3,850
TH-3	1,820
TOTAL CLASS 2	7,860
CLASS 3	
TOTAL CLASS 3	17,290
TOTAL TOWN	26,160
STATE HIGHWAY	
VT-142	8,680
TOTAL STATE HIGHWAY	8,680
US HIGHWAY	
US-5	0,218
TOTAL US HIGHWAY	0,218
TOTAL STATE	8,898
INTERSTATE	
I-91	2,742
TOTAL INTERSTATE	2,742
TOTAL TRAVELED HIGHWAYS, FEB. 10, 2009:	36,790
<i>(Excludes Class 4 and Legal Trail Mileage)</i>	

LEGAL TRAIL	LENGTH IN MILES
NO.	LEGAL TRAIL
1	(0.40)
2	(0.63)
TOTAL	1.03

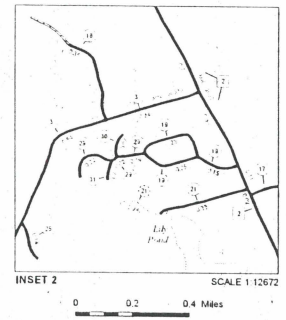
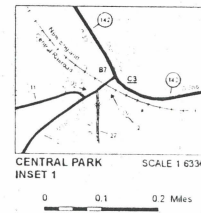
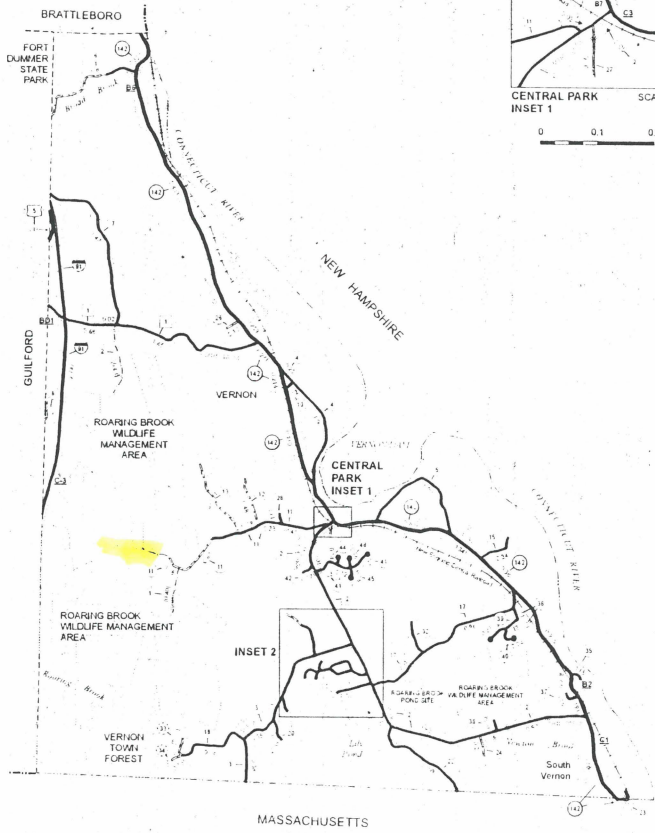
- HIGHWAYS**
- INTERSTATE
 - U.S. ROUTE
 - STATE ROUTE
 - CLASS 1
 - CLASS 2
 - CLASS 3
 - CLASS 4
 - LEGAL TRAIL
 - INTERSTATE OR DIVIDED HIGHWAY
 - STATE - HARD SURFACE OR PAVED
 - TOWN - HARD SURFACE OR PAVED
 - GRAVEL
 - SOIL OR GRADED AND DRAINED EARTH UNIMPROVED OR PRIMITIVE
 - IMPASSABLE OR UNTRAVELED
 - LEGAL TRAIL
 - DISCONTINUED
 - HIGHWAY CLASS CHANGE
 - RAILROAD

- PUBLIC LAND
- POLITICAL SUBDIVISIONS
- STATE BOUNDARY
- COUNTY BOUNDARY
- TOWN BOUNDARY
- VILLAGE BOUNDARY
- URBAN COMPACT BOUNDARY
- WATER BODIES
- STREAM OR BROOK
- BRIDGE OR CULVERT
- BRIDGE OR CULVERT GREATER THAN 20'
- BRIDGE OR CULVERT 6' - 20'
- TOWN SHORT STRUCTURE
- STATE BRIDGE OR CULVERT IDENTIFIER
- TOWN BRIDGE OR CULVERT IDENTIFIER
- FEDERAL CLASSIFICATION IDENTIFIER
- URBAN ARTERIAL OR COLLECTOR
- MAJOR ARTERIAL
- MAJOR COLLECTOR
- MINOR COLLECTOR
- PRINCIPAL ARTERIAL

STRUCTURES - SURFACE WATER NOTE

STRUCTURES
Town short structures (bridges or culverts from 4 feet to less than 20 feet) are drawn from the Vermont Online Bridge & Culvert Inventory Tool (VOCBIT) database.
NOTE: Town shorts are not consistently tagged actual VOCBIT. The surface waters are from the Vermont Hydrological Dataset (VHD). Only the named streams are shown.

DISCLAIMER
The unimproved highways (dashed town highways), discontinued highways, and legal trails shown here are those of which the Agency of Transportation has record; others may exist.
Vermont Online Bridge & Culvert Inventory System, North American Datum of 1983, NAD83, 2-m resolution, 4000 Street Reference System of 4000-meter grid, Esri, Inc. copyright.
Highways shown are those by the Agency of Transportation. All other data from the Vermont Center for Geographic Information.



VERMONT
GENERAL HIGHWAY MAP
Town of Vernon
WINDHAM COUNTY
Transportation District #2

Prepared by the
Vermont Agency of Transportation
Division of Planning, Outreach
and Community Affairs
in cooperation with
U.S. Department of Transportation
Federal Highway Administration

Map Date as of February 17, 2009
Map Version: February 21, 2009

SCALE 1:31,680

0.5 0 0.5 1 1.5 2

Miles

1 0 1 2

Kilometers