

CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2017

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2017 to:
Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development, Mapping Section
One National Life Drive, Montpelier, VT 05633.

We, the members of the legislative body of BARNARD in WINDSOR 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.

Table with columns: Town Highways, Previous Mileage, Added Mileage, Subtracted Mileage, Total, Scenic Highways. Rows include Class 1, Class 2, Class 3, State Highway, Total, Class 1 Lane, Class 4, Legal Trail.

* Mileage for Class 1 Lane, Class 4, and Legal Trail 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).

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

0.73 mile segment of TH-91, deleted by AOT on July 1, 2015, is resubmitted under determination of Sept. 28, 2016 by Selectboard (attached).

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:

Handwritten signatures of Robert Edmund and another individual.

T/C/V Clerk Signature:

Date Filed:

2.14.17

Please sign ORIGINAL and return it for Transportation signature.

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

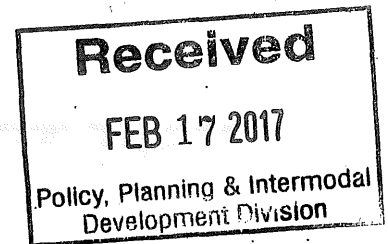
APPROVED:

Representative, Agency of Transportation

DATE:

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://legislature.vermont.gov/statutes/section/19/003/00305>



State of Vermont
Policy, Planning & Intermodal Development Division
Mapping Section
One National Life Drive
Montpelier, VT 05633-5001
<http://www.aot.state.vt.us>

Agency of Transportation

Telephone: 802-828-2600
Fax: 802-828-2334
Email: johnathan.croft@vermont.gov

February 22, 2017

Rock Webster, Selectboard Chair
Town of Barnard, c/o Town Clerk
PO Box 274
Barnard, VT 05031-0274

Dear Mr. Webster:

The Vermont Agency of Transportation (VTrans) has received the 2017 Certificate of Highway Mileage from the Town of Barnard, and it notes the addition of 0.73 miles of class 4 town highway. Under Part II -3, the addition is described by the Town as the following:

"0.73 mile segment of TH-91, deleted by AOT on July 1, 2015, is resubmitted under determination of Sept. 28, 2016 by Selectboard (attached)."

Based on the attached documentation with the Certificate, it appears that this addition reflects a section of TH-90 (Charles French Road, BRC-119) and not TH-91. VTrans has responded to the determination by the Town of Barnard regarding TH-90 and TH-91 in a letter to the Selectboard on October 12, 2016.

The VTrans decision to drop a section of TH-90 from the Town Highway Map in 2015 has been appealed to the Transportation Board by the Selectboard in Barnard. In advance of the appeal proceedings, both parties have agreed to a site visit, with VTrans performing a GPS mapping of the alignment of the Charles French Road, which is scheduled for April 4, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Johnathan Croft".

Johnathan Croft
AOT GIS Database Administrator
VTrans Mapping Section

Enclosures

cc: John Dunleavy, Assistant Attorney General
Toni Clithero, Assistant Attorney General
Michele Boomhower, VTrans Director – Policy, Planning & Intermodal Development Division
Tammy Ellis, District Transportation Administrator
Jackie Cassino, VTrans Transportation Planning Coordinator

CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2017

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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 | 15.640 | | | | 0.000 |
| Class 3 | 42.59 | | | | 0.000 |
| State Highway | 9.615 | | | | 0.000 |
| Total | 67.845 | | | | 0.000 |
| * Class 1 Lane | 0.000 | | | | |
| * Class 4 | 42.88 | 0.73 | | 43.61 | 0.000 |
| * Legal Trail | 2.45 | | | | |

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

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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:

[Handwritten signatures]
Robert [unclear]
T/C/V Clerk Signature: *[Handwritten signature]* Date Filed: 2.14.17

Please sign ORIGINAL and return it for Transportation signature.

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

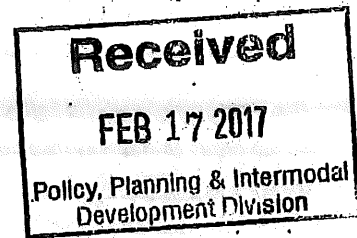
APPROVED:

Representative, Agency of Transportation

DATE:

Vermont Statutes Annotated

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



§ 305. Measurement and inspection

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(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.

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Agency of Transportation

Telephone: 802-828-2600
Fax: 802-828-2334
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October 12, 2016

Rock Webster, Selectboard Chair
Town of Barnard, c/o Town Clerk
PO Box 274
Barnard, VT 05031-0274

Re: Town of Barnard Selectboard Determination of Charles French Road, aka TH-90

Dear Mr. Webster:

The Vermont Agency of Transportation (VTrans) has received the document entitled – *"Town of Barnard, Vermont - Determination That Charles French Road, Also Known As Town Highway 90, Is A Class 4 Town Highway"* dated September 28, 2016.

I write to clarify the position of the Vermont Agency of Transportation (VTrans) concerning former TH-90 (Charles French Road, BRC-119) and TH-91 (Old Hathorn Road, BRC-120) that VTrans removed from the Barnard Town Highway Map in 2015. That action was taken after review of the survey descriptions provided with the 2010 submittal of the Mileage Certificate by the Town of Barnard, several requests from VTrans to the Town of Barnard for clarification, details and documentation regarding the legal establishment of the roads as town highways, either through the statutory process or through "dedication and acceptance" and, ultimately the transmission of a letter by VTrans to the Selectboard dated, January 22, 2014, giving a year under 19 V.S.A. §305(a) to provide information justifying the establishment of the roads in question. The Town did not supply this documentation, which caused the VTrans Mapping Section to remove the roads from the map.

VTrans recognizes the Selectboard's authority to lay out, alter, reclassify, and discontinue town highways, as well as legal trails pursuant to the processes defined in 19 V.S.A. Chapters 3 and 7. VTrans also understands that proper documentation is needed to show legal establishment of town highways and trails before they may be added to the Town Highway Map.

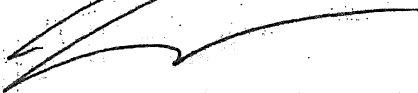
Although, the original Act 178 of 2006 and subsequent Act 158 of 2008 had broad allowances of documentation for the addition of highways that were laid out in the 18th and 19th century for



addition to the town highway maps, there has been a significant amount of case law following the passage of those Acts that has clarified the need for proper documentation showing legal establishment of highways through the statutory process or "dedication and acceptance". A defining case raising the bar on documentation is *Austin v. the Town of Middlesex*, 2009 VT 102, which dealt with a road that VTrans had been mapping as class 4 town highway for over 40 years. The Vermont Supreme Court determined the road was not a town highway, which resulted in VTrans' removing this road from the map. This case, as well as others have prompted a higher requirement for documentation for highways and trails before they may be added to the town highway maps. Additional cases include the following, Vermont Supreme Court Decisions – *Merritt v. Daiello* (2010) (entry order; three-justice panel) and *Kirkland v. Kolodziej*, 2015 VT 90. Also, there is the Washington Superior Court decision in *Virginia Houston and Jean Damon v. Town of Waitsfield* (2010). Simply put, a town highway needs the appropriate level of documentation as evidence to legal establishment, either through the statutory process or through "dedication and acceptance" for inclusion on the VTrans produced general highway maps.

In summary, the VTrans Mapping Section will not add the Charles French Road, BRC-119 or the Old Hathorn Road, BRC-120 to the Town Highway Map of Barnard without proper documentation showing legal establishment through the statutory process or "dedication and acceptance." There will be no further action by VTrans regarding these two roads in Barnard, unless the Selectboard provides the appropriate documentation, or the courts provide a decision that these roads are indeed town highways.

Sincerely,



Johnathan Croft
AOT GIS Database Administrator
VTrans Mapping Section

cc: John Dunleavy, Assistant Attorney General
William Rice, Assistant Attorney General
Michele Boomhower, VTrans Director – Policy, Planning & Intermodal Development Division
Tammy Ellis, District Transportation Administrator
Jackie Cassino, VTrans Transportation Planning Coordinator
Col. Jason Batchelder, Vermont Fish & Wildlife Department
Jeremy Turner, Meadowsend Timberlands Ltd.
Pieter van Loon, Vermont Land Trust

Town Highway/Legal Trails Addition/Reclassification/Discontinuance Checklist

The following includes a checklist of the documentation to be supplied to the Vermont Agency of Transportation (VTrans) when adding / reclassifying / discontinuing highways and trails. The documentation is subject to verification by VTrans.

Check the box if the information is included as part of the documentation submitted.

A description of the affected highway or trail

Vt. Stat. Ann. tit. 19, § 305(e)

A current town highway map with the requested deletions and additions sketched on it

Vt. Stat. Ann. tit. 19, § 305(e)

Minutes of meetings at which the legislative body took action with respect to the changes (include copies of the meeting minutes) Vt. Stat. Ann. tit. 19, § 305(e)

Evidence of written notice to adjoining landowners

(include a copy of the newspaper notice and a copy of the letter sent to adjoining landowners)

Vt. Stat. Ann. tit. 19, § 709

Not required

A copy of any surveys of the affected highway or trail

Vt. Stat. Ann. tit. 19, § 305(e) Vt. Stat. Ann. tit. 19, § 704

Not required

For Class 3 or Class 4 town highway additions

A Certificate of Completion and Opening

While not required by statute, a Certificate of Completion and Opening form is a helpful document for the record.

Not required

All records filed with the agency are subject to verification in accordance with 19 V.S.A. § 305 (a) and 19 V.S.A. § 305 (e).

Vermont Agency of Transportation
Division of Policy, Planning and Intermodal Development, Mapping Section
1 National Life Drive, Montpelier, VT 05633-5001

CERTIFICATE OF HIGHWAY MILEAGE

YEAR ENDING FEBRUARY 10, 2017

TOWN OF BARNARD

Description of added mileage:

A portion of TH-90 (Charles French Road), being the 0.73-mile section from the intersection with TH-91 (Old Hathorn Road) south to the intersection of TH-48 (Hayes Brook Road).



Town of Barnard, Vermont

Chartered July 17, 1761

P.O. Box 274
Barnard, Vermont 05031
(802) 234-9211

SELECTBOARD MINUTES SEPTEMBER 28, 2016

Present: Rock Webster, Tim Johnson, Bob Edmunds

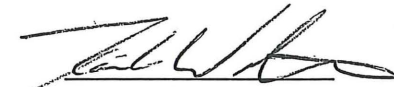
Guests: Dan Leavitt, Jeff Tracy (Road Foreman), Preston Bristow (Selectboard Asst.), Curt Peterson (VT Standard)

1. **Call to Order:** the meeting was called to order at 7:00 PM.
2. **Additions to agenda:** Sign at The Grove
3. **Public Comments:** none
4. **ECFiber Annual Report:** Dan Leavitt, Barnard representative to the ECFiber Board, reported steady growth with 1,200 customers at the end of 2015. ECFiber's overall plan is to complete the build-out of the unserved regions of its 24 member municipalities by 2019.
5. **Event Permit – Runamuck 50K:** this item was tabled until next meeting because event organizer Jonathan Vass was unable to be present.
6. **Broad Brook culvert:** Maine Drilling & Blasting was selected as the low quote to performing drilling to determine depth to bedrock at the Broad Brook culvert site. The state Standard Grant Agreement for the Town Highway Structure Program grant to pay for this culvert (a \$147,514.50 award) was signed.
7. **Review Highway Operations:** the new town dump truck has arrived and is in use. Placing a dead end or no outlet sign on Grove Road was approved.
8. **Dog Ordinance Amendment:** the current dog ordinance adopted on May 27, 2015 was a generic VLCT model ordinance with certain options left unspecified. The proposed amendment clarifies jurisdiction as extending only to off-premise dog bites, sets impoundment fees, and makes completion of a responsible dog owner training course optional and not a requirement. The Amendment is being introduced at this meeting and will be voted on at the next meeting on October 12, 2016.
9. **Tennis Court budget overrun:** the approximately \$5K overrun on the tennis court repairs was allocated to the Selectmen's Office-Contingency Expense.
10. **TH-90 (Charles French Road):** the document entitled "Determination that Charles French Road, also known as Town Highway 90, is a Class 4 Town Highway" was signed. This Determination with attached legal opinion of July 27, 2016 from attorney Peter Vollers will be sent to the VTrans Mapping Section, the VF&W Enforcement Division, Meadowsend Timberlands Ltd, and the Vermont Land Trust. The reported log barrier across the road will be removed by the highway department.
11. **Emergency Services Facility:** the structural progress prints from engineer Tim Schaal were reviewed. The BVFD officers will be asked to review them as well. Last Friday's pre-bid meeting had eight excavation firms in attendance. Bids are due on October 7.

12. **Transfer Station:** the previous decision to keep the transfer station open on Wednesday afternoons until October 5 was extended to October 12 pending Wes Hennig's availability. The Selectboard can then review use levels at their October 12 evening meeting.
13. **Review/Approve Minutes:** the minutes of 9/14/16 were approved.
14. **Review/Approve Town and Highway Orders:** the orders for 9/20/16 and 9/28/16 were approved.

The next regular meeting is Wednesday, October 12 at 7 pm. Adjourned 8:05 pm. Minutes prepared by Preston Bristow. All votes unanimous unless otherwise indicated.

Selectboard:



Rock Webster, Chair



Timothy Johnson



Robert Edmunds

TOWN OF BARNARD, VERMONT

DETERMINATION THAT CHARLES FRENCH ROAD,

ALSO KNOWN AS TOWN HIGHWAY 90, IS A CLASS 4 TOWN HIGHWAY

It is the position of the Select Board of the Town of Barnard that Charles French Road, also known as Town Highway 90 (hereinafter referred to as "TH-90") appeared on the Certificate of Highway Mileage and Town Highway Map maintained by the Agency of Transportation prior to July 1, 2010, that TH-90 is not an unidentified corridor as defined in 19 VSA § 302(a)(6) because it is clearly observable both by physical evidence and by its use as a highway, and that TH-90 is not subject to statutory discontinuance as of July 1, 2015.

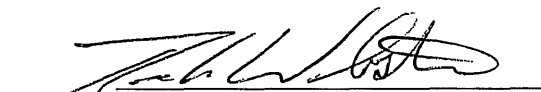
It is the position of the Select Board that the southerly 0.73-mile section of TH-90 was dropped from the Certificate of Highway Mileage and Town Highway Map by the VTrans Mapping Section of the Agency of Transportation by letter dated July 1, 2015, contrary to Vermont law because Select Boards have the sole right to determine their class 4 town highways under 19 VSA §302(a)(4).


The Select Board takes these positions pursuant to a legal opinion by attorney Peter K. Vollers dated July 27, 2016, a copy of which is attached to this determination.


Therefore, the Select Board of the Town of Barnard, Vermont, hereby again determines and declares that the Charles French Road, also known as Town Highway 90 (TH-90) is a class 4 town highway under the authority of 19 VSA §302(a)(4). The Select Board orders that signage be provided at each end of TH-90 indicating that TH-90 is an unmaintained class 4 town highway and that any gates or other obstructions to use of TH-90 be removed.

Dated this 28th day of September, 2016.

BARNARD SELECT BOARD


Rock Webster, Chair


Timothy Johnson


Robert Edmunds

LAW OFFICE OF
PETER K. VOLLERS, PLC

T'Other House
4 The Green, Woodstock, VT 05091
802-457-2420 (phone) 802-457-9960 (fax)
www.vermontoverland.com

PETER K. VOLLERS, Esq.
(pvollers@vollerslaw.com)

Kimann R. Vollers, Legal Assistant
(kvollers@vollerslaw.com)

July 27, 2016

Town of Barnard Selectboard
115 North Road
Barnard, VT 05031
Via email

Re: THs 90 and 91

Dear Barnard Selectboard:

The board retained me a few weeks ago to investigate laying out THs 90 and 91 located in the Mt. Hunger region on the westerly side of town as said roads have been removed from the VTRANS-produced version of Barnard's town highway map. My investigations and research have revealed the following:

- a) TH 90: Contrary to VTRANS' findings, TH 90 enjoys a layout that is as accurate as most are from the 1800s. Further, the road appeared on the VTRANS town highway map prior to July 1, 2010 and is clearly observable by physical evidence of its use as a highway and is therefore not an unidentified corridor subject to statutory discontinuance as of July 1, 2015. As such, it's my opinion that TH 90 is and shall remain a Barnard town highway regardless of whether VTRANS includes it on their map.
- b) TH 91: While TH 91 was timely reported to VTRANS as a Barnard Town Highway prior to July 1, 2010 and is therefore not an unidentified corridor subject to statutory discontinuance, the majority of said highway is not clearly observable as a highway and the layout evidence for said highway is vague. As such, it's my advice that the town let this highway go and not assert rights to same.

Vermont law provides that town Selectboards have the sole right to determine which highways are Class 4 roads. This differs from the determination of Class 1, 2 and 3 roads, which require VTRANS approval. 19 VSA § 302(a) provides:

§ 302. Classification of town highways

(a) For the purposes of this section and receiving State aid, all town highways shall be categorized into one or another of the following classes:

(1) Class 1 town highways are those town highways which form the extension of a state highway route and which carry a State highway route number. **The Agency shall determine which highways are to be class 1 highways.**

(2) Class 2 town highways are those town highways selected as the most important highways in each town. As far as practicable they shall be selected with the purposes of securing trunk lines of improved highways from town to town and to places which by their nature have more than normal amount of traffic. The selectmen, **with the approval of the Agency**, shall determine which highways are to be class 2 highways.

(3) Class 3 town highways: (A) Class 3 town highways are all traveled town highways other than class 1 or 2 highways. The selectmen, **after conference with a representative of the Agency** shall determine which highways are class 3 town highways.

(4) Class 4 town highways are all town highways that are not class 1, 2, or 3 town highways or unidentified corridors. **The selectboard shall determine which highways are class 4 town highways.**

Further, VTRANS relies on the provisions of 19 VSA § 305(e) for authority to verify submitted Class 4. A plain reading of said statute reveals that it applies to submissions requesting a "change in mileage" for purposes of state aid appropriation for Class 1, 2 and 3 highways. Class 4 highways are not regularly maintained and are therefore ineligible for state aid appropriation. When highways are submitted by towns for the change in mileage, such submissions are indeed subject to VTRANS review, however, said review only extends to Class 1, 2 and 3 town highways. 19 VSA § 305(e) provides:

(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.**

Subsection (a) provides:

(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.

As is provided by the above statutes, town Selectboards have the sole right to determine their Class 4 town highways. They do so, obviously, subject to possible landowner challenge. They do not do so subject to challenge from VTRANS. VTRANS is obligated by statute to accept the Class 4 roads the town Selectboards submit. As per statute, VTRANS' verification rights extend only to Class 1, 2 and 3 town highways as the latter are the basis for state monetary appropriation to the towns. Class 4 roads are not included for said appropriation, therefore it stands to reason that VTRANS may accept the town's submissions without scrutiny, knowing that the town will be fully subject to landowner challenge and it's the town, not VTRANS, that must defend its position on any given Class 4 road.

Lastly, lack of inclusion of a Class 4 road on VTRANS' map does not invalidate a Class 4 road. It just means that VTRANS is acting contrary to Vermont law in not including the road.

For the foregoing reasons, it's my advice that, as to TH 90, the Barnard Selectboard should erect clear signage at each end of said road indicating that the road is an unmaintained Class 4 road and clearly stating any seasonal closure dates. In fact, it's my advice that all Barnard Class 4 roads should be marked as such. This will serve to put both landowners and users on notice that the road is open to public travel subject to seasonal closure. If the underlying landowners challenge the signage and Barnard's position as to this road, we can consider all options available if and when that happens. As for TH 91, as stated above, it's my advice to let this road go as it serves little benefit to the town and its residents.

Thank you and please do not hesitate to contact me with any questions.

Law Office of Peter K. Vollers, PLC



Peter K. Vollers, Esq.

Ec: Preston Bristow, Barnard Administrative Assistant