

**CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2015**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2015 to:
Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development,
One National Life Drive, Montpelier, VT 05633.

We, the members of the legislative body of **NEW HAVEN** in **ADDISON** 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	17.670				0.000
Class 3	31.23				0.000
State Highway	14.886				0.000
Total	63.786				0.000
* Class 1 Lane	0.000				
* Class 4	0.01	1.13		1.14	0.000
* Legal Trail	1.12				
* 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. Notes by

- NEW HIGHWAYS:** Please attach Selectmen's "Certificate of Completion and Opening". S. Moulton 3/13/2015
- DISCONTINUED:** Please attach SIGNED copy of proceedings (minutes of meeting).
- RECLASSIFIED/REMEASURED:** Please attach SIGNED copy of proceedings (minutes of meeting). TH-37
+1.13 mi CL4 former North-South Highway per Court order and Selectboard minutes dated June 17, 2014
- 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:

Kathleen Barnett Charles Roy
Cary Tall
Carole Neel Roger Boiso

T/C/V Clerk Signature:

Paula Kingman

Date Filed:

2/10/15

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:

3/13/2015

Vermont Statutes Annotated

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

Received

FEB 13 2015

Policy, Planning & Intermodal
Development Division

§ 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.

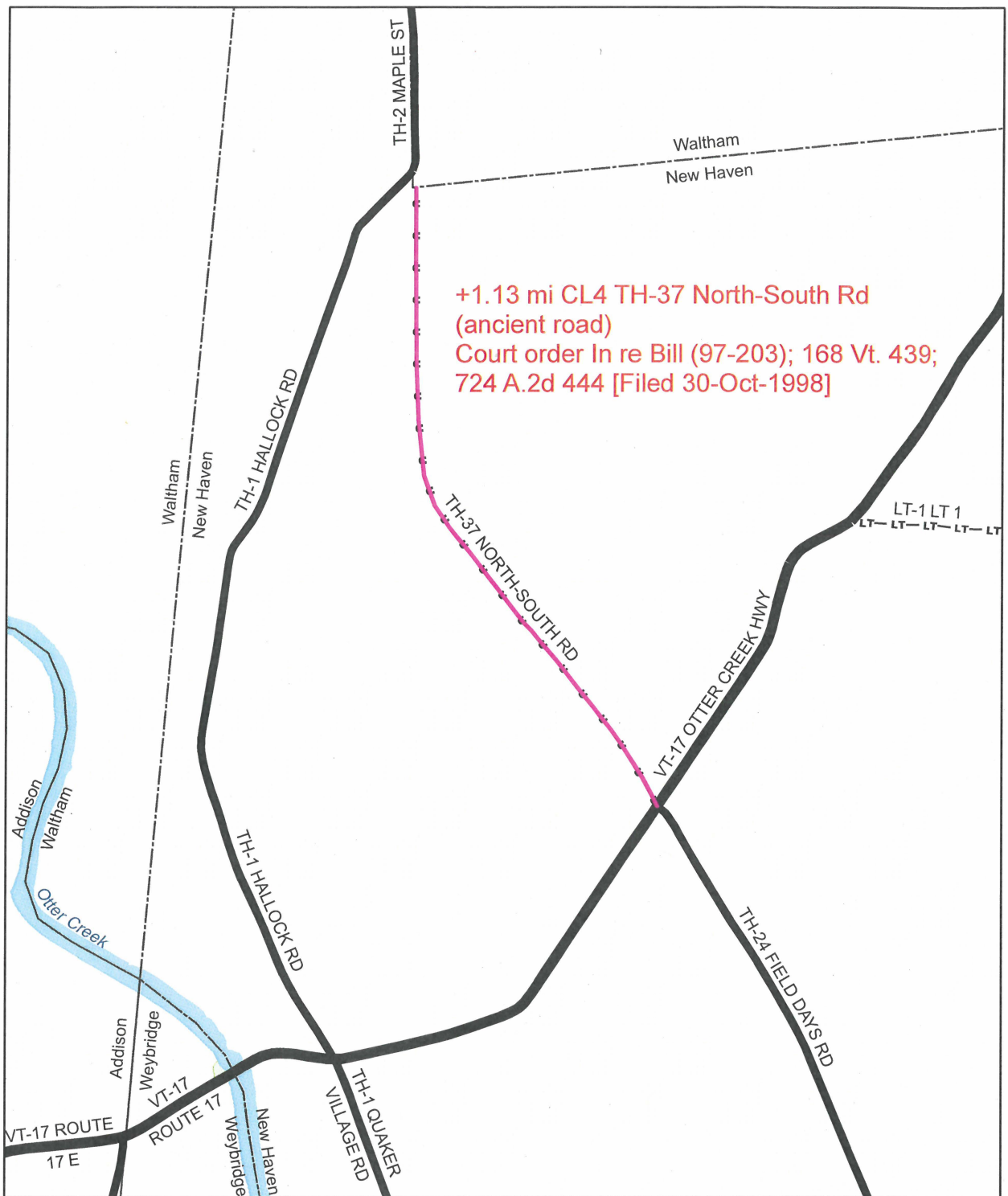
(e) The agency shall not accept any change in mileage until the records required to be filed in the town clerk's office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of 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>

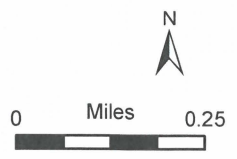
January 2015

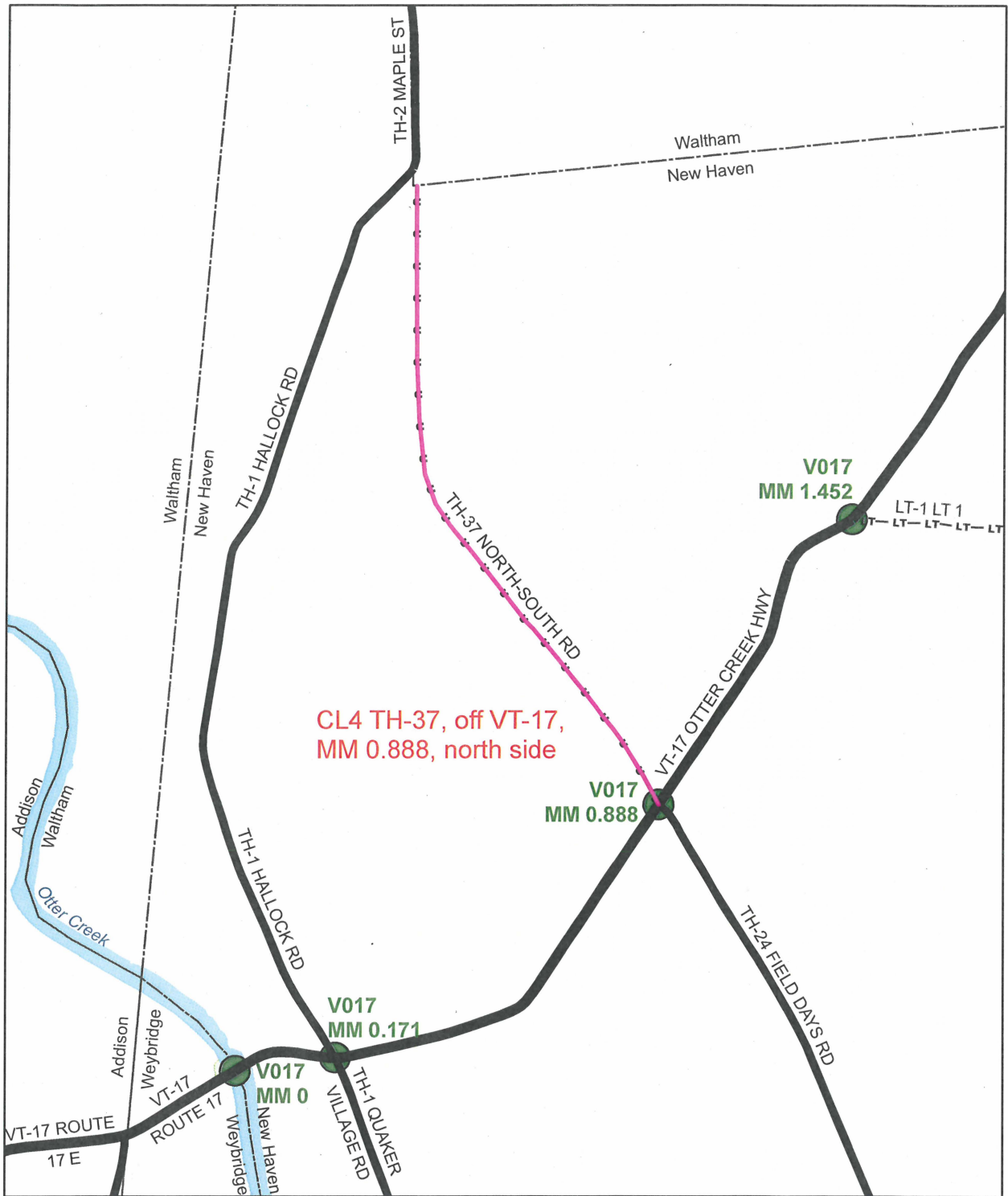


+1.13 mi CL4 TH-37 North-South Rd
 (ancient road)
 Court order In re Bill (97-203); 168 Vt. 439;
 724 A.2d 444 [Filed 30-Oct-1998]

**Mileage Certificate Change 2015
 NEW HAVEN**

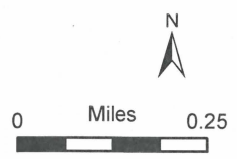
Mapping Section
 Division of Policy, Planning and Intermodal Development
 Vermont Agency of Transportation - March 2015





**Mileage Certificate Change 2015
NEW HAVEN**

Mapping Section
 Division of Policy, Planning and Intermodal Development
 Vermont Agency of Transportation - March 2015





State of Vermont

Division of Policy, Planning and Intermodal Development - Mapping Section

1 National Life Drive

Montpelier, VT 05633-5001

<http://vtrans.vermont.gov>

Telephone: 802-828-2109

Fax: 802-828-2334

Email: sara.moulton@state.vt.us

Agency of Transportation

December 18, 2014

New Haven

Kevin Bourdon, Selectboard Chair
Waltham, c/o Town Clerk
PO Box 175
Vergennes, VT 05491

Dear Mr. Bourdon:

Enclosed is a copy of the documentation that the Town of New Haven (Waltham's neighboring town) has submitted to VTrans in support of adding a Class 4 town highway to their town highway map. Part of their documentation includes a survey recorded with the New Haven town clerk in 1812 (a transcript is enclosed). The VTrans Mapping Section has plotted the survey and it appears that about 0.15 miles of the northern-most part of the survey extends into Waltham. About 0.11 miles of that 0.15-mile section coincides with the current alignment of Waltham's TH-2 Maple Street (see enclosed map titled "Proposed Mileage Certificate Change 2015 New Haven-Waltham").

We are seeking guidance or clarification from Waltham about the status of the remaining 0.04-mile section between the Waltham-New Haven town line and TH-4. Does the town have information in its records regarding this section of possible right-of-way in Waltham? If so, would you be able to send a copy of it to me?

Please let me know if you have any questions.

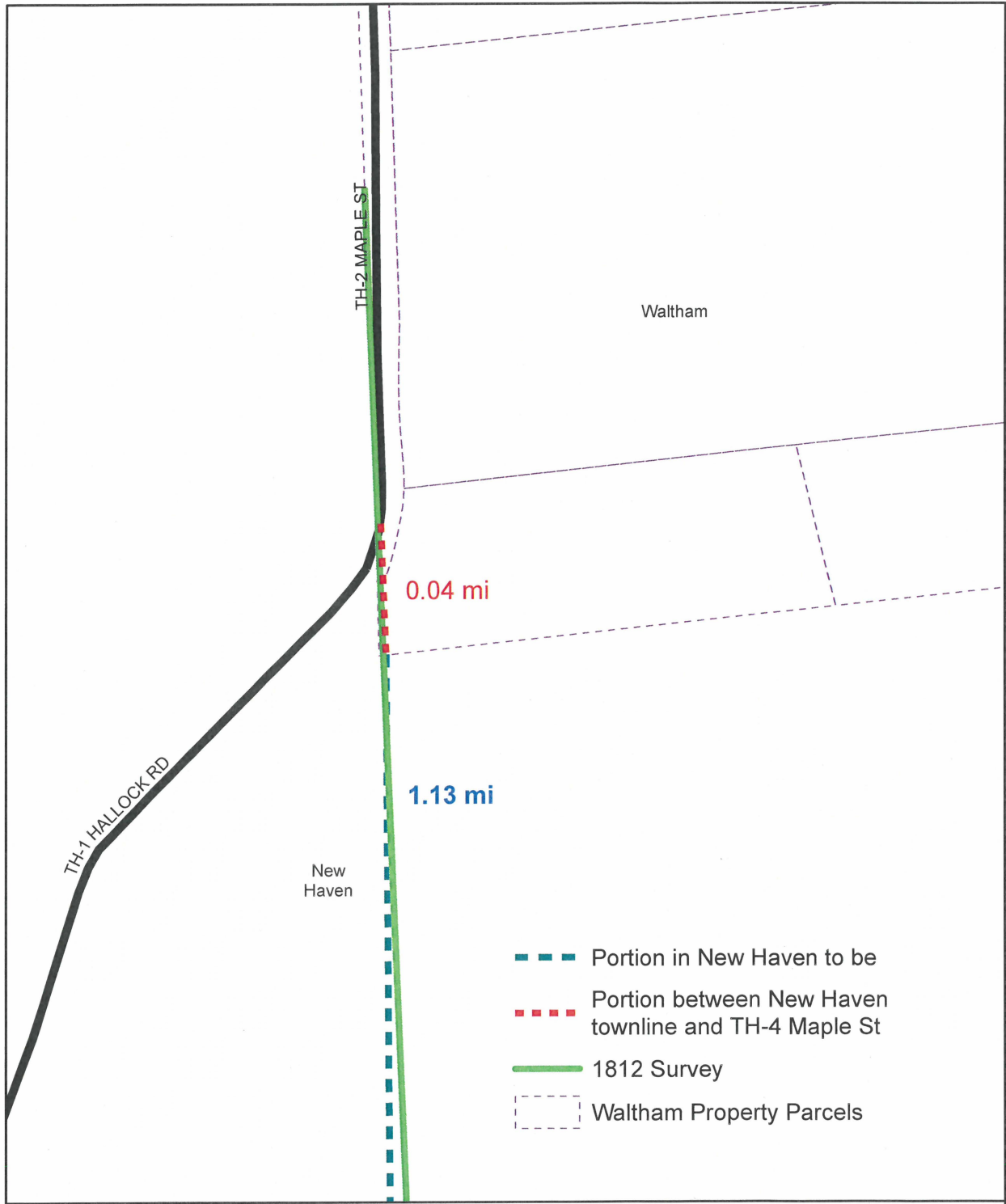
Thank you.

Sincerely,

Sara Moulton

Sara Moulton
Mapping & GIS Specialist

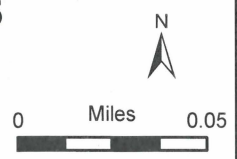
Enclosures



- - - Portion in New Haven to be
- - - Portion between New Haven townline and TH-4 Maple St
- 1812 Survey
- Waltham Property Parcels

**Proposed Mileage Certificate Change 2015
NEW HAVEN - WALTHAM**

Mapping Section
 Division of Policy and Planning
 Vermont Agency of Transportation - December 2014



Alley, Kerry

From: Croft, Johnathan
Sent: Thursday, August 07, 2014 3:41 PM
To: 'Katie Reilley'
Cc: rboise@gmavt.net; newhavenclerk; klbarrett@gmavt.net; Moulton, Sara; Smith, Gary S.; Alley, Kerry
Subject: RE: Town of New Haven Town Highway Addition

Good afternoon Katie,

Thank you for forwarding this data, we will review this information and add this to our pending file for 2015 and include the highway on the 2015 Mileage Certificate for New Haven. If there are any additional pieces of information needed, we will let you know.

Johnathan Croft
VTrans Mapping Unit
(802) 828-2600

From: Katie Reilley [<mailto:newhavenhighway@gmavt.net>]
Sent: Thursday, August 07, 2014 2:12 PM
To: Croft, Johnathan
Cc: rboise@gmavt.net; newhavenclerk; klbarrett@gmavt.net
Subject: Town of New Haven Town Highway Addition

Johnathan,

The Selectboard of the Town of New Haven has requested that the attached information provided by Selectboard member Doug Tolles be forwarded to you to support our request to add the so-called "North-South Highway" as a Class 4 road to the official VTrans map. Please be aware that while the road corridor is observable in the field, there has been no survey that links the observable trail to the road as mapped.

If there is additional information that you require, or if you would prefer a hard copy mailed to you, please let us know.

Thanks.

Katie Reilley
453 3516

Moulton, Sara

From: Croft, Johnathan
Sent: Thursday, July 17, 2014 10:55 AM
To: 'Katie Reilley'
Cc: Moulton, Sara; Smith, Gary S.; Alley, Kerry
Subject: RE: Certificate of Highway Mileage Addition

Good morning Katie,

Regarding the class 4 status and the Selectboard's action, for town highways, the Selectboard has input to the definition of class 1 and 2 highways subject of VTrans approval, and the Selectboard defines class 3. Any other highway that is legally established and not discontinued falls into the default category of class 4. Since the highway was laid out by the General Assembly (Legislature), this would be the action by the legislative body.

We would like to see the most recent court orders regarding the overturning of the discontinuance and any other key documentation regarding the highway. Regarding Waltham, if the road was laid out by the General Assembly and not discontinued by the Selectboard, Waltham may wish to include this highway on their Mileage Certificate and Town Highway Map. This shouldn't affect the process within New Haven, as there needs to be consultation with neighboring towns for discontinuance, but not necessarily laying out of a highway, with the exception of town line roads.

Johnathan Croft
VTrans Mapping Unit
(802) 828-2600

From: Katie Reilley [mailto:newhavenhighway@gmavt.net]
Sent: Thursday, July 17, 2014 10:44 AM
To: Croft, Johnathan
Subject: RE: Certificate of Highway Mileage Addition

Thanks, Johnathan, for your prompt reply!

I think you've hit all the bases, now I just have to clarify what documentation you would need. Regarding the actions of the legislative body, I'm unclear as to what action might be pertinent. The road was established by the legislature back in the 1780s or so and it's shown on the 1871 map, but to my knowledge no actions were taken by the Selectboard that specifically changed its classification. Is it automatically a class 4 due to condition, or does the Selectboard have to hold a public hearing to classify it as such?

Also, given the lengthy history of the road, would it be in the town's best interest to obtain a legal search to track down all court rulings? It was effectively discontinued for 70 years, until the original discontinuance was challenged. There was two court rulings at least regarding that challenge. There is also a question as to whether or not the road exists in one town or two (New Haven, Waltham). If you look at the New Haven tax map the right-of-way does not fully meet Hallock Road in New Haven, but would have to stretch to meet Maple Ave. in Waltham. Does that affect the addition process?

Thanks for your help!
Katie Reilley
453 3516

From: Croft, Johnathan [<mailto:Johnathan.Croft@state.vt.us>]
Sent: Wednesday, July 16, 2014 2:30 PM
To: 'Katie Reilley'
Cc: rboise@gmavt.net; klbarrett@gmavt.net; newhavenclerk; lawyerhill@yahoo.com; Moulton, Sara; Smith, Gary S.; Alley, Kerry
Subject: RE: Certificate of Highway Mileage Addition

Good afternoon Katie,

The method of adding a highway that has been legally established and never discontinued can be added to the map with municipality providing documentation regarding the laying out of the road. This does get complicated when you incorporate provisions from Act 178 of 2006 and Act 158 of 2008, which relate to "ancient roads". For the most part, the complication for a laid out highway is whether it is clearly observable as a highway or a trail, if it is, then the highway is Class 4, if not, then it is an "unidentified corridor". The later exists until July 1, 2015 and is discontinued by statute, unless the Selectboard reclassifies it to Class 4 or Trail. There would need to be a determination on whether the highway is clearly observable by physical evidence of their use as a highway or trail.

In the case of the "North-South Highway", there are some additional complications, but if the courts have rendered an opinion or ruling, this would be documentation to supply to VTrans Mapping as part of the packet when adding the highway back to the map.

The process to add highways to the Mileage Certificate, in the lens of Act 178 and Act 158 has been documented in the Ancient Road Practicum that can be accessed from the following link:

<ftp://vtransmaps.vermont.gov/Maps/Publications/AncientRoads/AncientRoadPracticum.pdf>

There is also additional Ancient Road references can be found at the following link:

http://vtransplanning.vermont.gov/maps/ancient_roads

I have also attached a checklist of documentation that we request with submittal of any changes to the Mileage Certificate.

I don't know if I have completely answered your questions, but please feel free to contact me with any questions or comments related to town highways, or mapping in general.

Johnathan Croft
VTrans Mapping Unit
(802) 828-2600

From: Katie Reilley [<mailto:newhavenhighway@gmavt.net>]
Sent: Wednesday, July 16, 2014 12:26 PM
To: Croft, Johnathan
Cc: rboise@gmavt.net; klbarrett@gmavt.net; newhavenclerk; lawyerhill@yahoo.com
Subject: Certificate of Highway Mileage Addition

Hi, Johnathan,

The New Haven Selectboard has asked me to contact you regarding a section of the old "North-South Highway", established in the late 1700s, in the western portion of New Haven. The road segment starts at Route 17, opposite Field Days Road, and continues northwesterly to Hallock Road.

To put it mildly, the existence of the road has had a checkered past. Without going into detailed chronology, the road was thrown up in 1926. That ruling was supported in 1996, then overturned. The road was reported to have been actively used, at least in part, in the 1920s. It is still apparent in places, although there's been no field truth as to the actual road location as mapped, nor has a legal search been done.

The Selectboard has been presented with a request to put the road on our Certificate Of Highway Mileage map as a Class 4 road. The road location has been on our town tax maps for some (?) time, but was never added to the state map. My question to you is: what process do we follow to legitimately put the road on our Highway Mileage map? In 2012, we added a trail that had been created in 2001, but that was a relatively recent and legally very clear documentation. This is also mixed in with the Antiques Road legislation bearing down on us. If the town does nothing, does the road continue to exist as a Class4 anyway?

If you have advice as to how we should proceed, it would be most appreciated.

Thanks.

Katie Reilley

CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2015

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2015 to: Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development, One National Life Drive, Montpelier, VT 05633.

We, the members of the legislative body of NEW HAVEN in ADDISON 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 6 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, and Unidentified Corridor.

* 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. Notes by

- 1. NEW HIGHWAYS: Please attach Selectmen's "Certificate of Completion and Opening". S. Moulton 3/13/2015
2. DISCONTINUED: Please attach SIGNED copy of proceedings (minutes of meeting).
3. RECLASSIFIED/REMEASURED: Please attach SIGNED copy of proceedings (minutes of meeting). TH-37 +1.13 mi CL4 former North-South Highway per Court order and Selectboard minutes dated June 17, 2014
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: Kathleen Barnett, Charles Roy, Kaye Tall, Carole Neel, Roger Boiso

T/C/V Clerk Signature: Pamela Hingeman Date Filed: 2/10/15

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: 3/13/2015

Peet J. Croft 7/29/14

Town Highway/Legal Trails Addition/Reclassification/Discontinuance Checklist

Submission of this checklist is not required, but is supplied to help municipalities organize the documentation required to process additions / reclassifications / discontinuances of 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)

court order

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)

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

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

A copy of any surveys of the affected highway or trail*

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

*Note: A survey shall not be required for class 4 town highways that are legally established prior to February 10, 2006. A survey is not needed for Discontinuances.

For Class 3 or Class 4

A Certificate of Comp While not required by statute document for the record.

If the highway or trail as a highway or trail", statute:

19 V.S.A. § 3C that is not clearly obse legally established pri (b) of this section, the

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.

Troverse has been generated

and run. Alignment of

6/1/1812 survey looks good.

GFC 9/17/2014

New Haven

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).

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In re Bill

In re Bill (97-203); 168 Vt. 439; 724 A.2d 444

[Filed 30-Oct-1998]

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

No. 97-203

In re Ruth Bill

Supreme Court

On Appeal from
Addison Superior Court

March Term, 1998

Matthew I. Katz, J.

Christopher D. Roy of Downs Rachlin & Martin, PC, Burlington, for Intervenor-Appellant.

John W. Whitcomb of Neuse, Smity & Venman, P.C., Middlebury, for Appellee.

PRESENT: Amestoy, C.J., Morse, Johnson and Skoglund, JJ., and Corsones, D.J., Specially Assigned

AMESTOY, C.J. This appeal arises from a decision of the Addison Superior Court granting Petitioner Ruth Bill's request to declare legally discontinued a segment of old highway within the Town of New Haven, a portion of which runs across her property. Intervenor Thomas Fisher, whose undeveloped parcel of land abuts a segment of the old highway, contends that the court erred in concluding that there was statutory authorization for a 1926 order by the New Haven selectboard purportedly discontinuing the segment at issue. We agree and, thus, reverse.

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of the permit's issuance, Bill employed a surveyor who discovered in the town land records a 1926 order of the New Haven selectboard purportedly discontinuing the highway segment. The notation read: "Highway Closed. The road leading from J.S. Marshall's to the residence of C.C. Tier was officially closed by the Selectmen W.H. Patterson and George Palmer." (FN1) The parties agree that the 1926 notation refers to the disputed highway segment. Following discovery of the 1926 order, the selectboard held hearings in late 1995 and early 1996 to address the highway's status. In January of 1996, the board concluded that the disputed segment remains a five rod, class four highway.

Bill petitioned the Superior Court, pursuant to 19 V.S.A. §§ 701 - 819, to overturn and vacate the selectboard's 1995 and 1996 orders respecting the disputed segment. In response to Fisher's motion that the petition be considered pursuant to V.R.C.P. 75, the court ruled that it would treat Bill's petition as a declaratory judgment action to determine whether the highway exists, focusing specifically on whether the 1926 action by the New Haven selectboard constituted a valid discontinuance under the General Laws of 1917, the law then applicable. The court concluded that the 1926 board acted within its authority. Fisher appeals.

The rule consistently applied in Vermont has been that "[t]he procedure to be followed in laying out or discontinuing a highway is wholly statutory and the method prescribed must be substantially complied with or the proceedings will be void." *In re Mattison*, 120 Vt. 459, 462, 144 A.2d 778, 780 (1958); see also *Town of Barton v. Town of Sutton*, 93 Vt. 102, 103, 106

A. 583, 584 (1919). We presume that action taken by a selectboard in the scope of its official duties is in accordance with statutory requirements. See *Traders, Inc. v. Bartholomew*, 142 Vt. 486, 489, 459 A.2d 974, 977 (1983). Nonetheless, because the selectboard of a town constitutes an inferior tribunal with certain quasi-judicial powers, see *Town of Shrewsbury v. Davis*, 101 Vt. 181, 187, 142 A. 91, 93 (1928), when a selectboard acts outside its statutory authority with respect to a discontinuance, the defect is akin to a lack of jurisdiction over the subject matter. See *Mattison*, 120 Vt. at 463, 144 A.2d at 780. The proceedings and order would be void and may be impeached in any way and at any time. See *id.*

The parties agree that the present-day legal status of the disputed highway segment turns on the validity and legal effect of the 1926 selectboard's purported discontinuation of the highway: if the board substantially complied with the then-existing statutory scheme for highway discontinuances, the highway is discontinued and no longer exists; if not, the highway still exists. (FN2) We pause to note matters over which there is no dispute. The parties agree that the disputed segment constitutes a portion of both the 1798 Legislative Highway and the 1812 Highway. Further, the parties agree that the disputed segment which was purportedly closed lies wholly within New Haven.

In relevant sections, the 1917 General Laws of Vermont provided as follows:

§ 4452. When towns in different counties; proceedings. An application to lay out, alter or discontinue a highway extending into or through two or more towns . . . where such towns lie in different counties, shall be made to the supreme court, which shall have the same power, and shall proceed in the same manner as the county court, when the towns lie in the same county.

§ 4453. . . . When the public good requires a highway to be laid out, altered or discontinued, extending into or through two or more towns in the same county, seven or more freeholders of such towns, or the vicinity, may apply to the county court; and such court . . . may render judgment, as when the highway is located

in only one town

§ 4482. Selectmen may alter or discontinue a highway laid out by a committee appointed by the general assembly; but if the highway is laid through two or more towns, the same proceedings shall be had as in laying, altering or discontinuing highways through two or more towns.

Bill argues that the 1926 selectboard derived its authority from the first clause of § 4482 because the highway had been laid out by a committee appointed by the general assembly and the highway being discontinued lay wholly within one town. Because the highway being discontinued was not "laid through two or more towns," *id.*, she contends that § 4453's requirement that the county court rule on such discontinuances was not triggered. The trial court adopted this reasoning and, accordingly, ruled that the selectboard had jurisdiction to order the discontinuance.

Fisher counters that the Legislative Highway as a whole must be considered to determine which body had jurisdiction to discontinue the disputed segment. Under Fisher's construction, where the entire highway extends through two or more towns, discontinuance of a segment located wholly within a single town nonetheless implicates the second clause of § 4482, and thus discontinuance is only valid when done by means of "the same proceedings . . . as in laying altering or discontinuing highways through two or more towns." *Id.* We are persuaded that Fisher's is the correct construction of the statute.

This Court has, on many occasions, addressed the jurisdictional issues raised in connection with highways extending into two or more towns. In *Mattison* we considered a challenge to the town of Manchester selectboard's alteration and reclassification of a highway segment within the town. At about the same time as Manchester's action, the selectboard of the town of Sandgate similarly altered and reclassified a section of the same highway within that town. Like the statute in this case, the applicable statute in *Mattison*, 47 V.S. § 5076, provided that when a highway extending into or through two or more towns in the same county was to be laid out altered, or discontinued, application was to be made to the county court. The Court

held that the Manchester selectboard was without jurisdiction to make the alteration to the highway segment within the town, stating:

[T]he highway in question commences in the town of Sunderland, crosses through a portion of the town of Manchester and runs into the town of Sandgate. The county court under § 5076 and not the selectmen had jurisdiction.

Mattison, 120 Vt. at 463, 144 A.2d at 780. The Court's reference to the three towns through which the highway traversed indicates its consideration of the highway as a whole rather than the segment to be closed, and undercuts Bill's contention that only the segment to be discontinued should control.

We applied similar reasoning in *Traders, Inc. v. Bartholomew*, 142 Vt. 486, 459 A.2d 974 (1983). There, an owner of a landlocked parcel sought a declaratory judgment to determine whether the town's 1908 discontinuance of a highway segment running over his land had been in conformance with applicable statutory law. The landowner claimed that the road itself had continued into the next town and, therefore, the county court, and not the selectboard, had jurisdiction over the discontinuance. The trial court found that the highway had not extended into the next town. We concluded that the court's finding was not clearly erroneous, and thus affirmed the court's ruling that the highway had been properly discontinued by the selectboard. See *Traders*, 142 Vt. at 489, 459 A.2d at 977; see also *Kelley*, 46 Vt. at 511 (where highway connecting multiple towns has been laid over older highway originally laid out solely within single town, though town board would have jurisdiction to discontinue its old town road, it would be powerless to discontinue the highway because it extended "into or through two or more towns." (quoting 24 G.S. § 52)).

Bill asserts that Fisher's construction of the statute would render the first clause of § 4482 superfluous. She contends that all highways laid out by act of the general assembly are laid through two or more towns, and, therefore, basing jurisdiction on the highway as a whole, rather than the segment to be discontinued, would always trigger the second clause of § 4482,

thus rendering the first clause superfluous. We are unpersuaded for the simple reason that we find in the session laws numerous highways commissioned by the general assembly which were confined to a single town. See, e.g., "An act appointing a committee to lay out and examine the roads in Woodbury, and for other purposes therein mentioned" Act of Nov. 6, 1813, reprinted in *Laws of Vermont of a Public and Permanent Nature: Coming Down to and Including, the Year ch. XLIV* at 61. Our construction of § 4482 gives effect to all parts of the statute.

We are mindful that strict adherence to statutory rules with respect to highway discontinuances could, theoretically, produce the absurd result of bringing back highways long since gone. See *Ferguson v. Town of Sheffield*, 52 Vt. 77, 83 (1879) (court would not apply strict common law rules of *res judicata* to highway proceedings where result would have absurd

result of perpetuating unnecessary highway: "Such a decision would involve the idea of permanency in our highways not heretofore entertained.").

Here, however, our decision does not lead to an absurd result, but rather allows for the use of a road that clearly has some continuing utility to a landowner whose land would otherwise be undevelopable and landlocked. The result, moreover, is consistent with the most recent determination of the New Haven selectboard that the highway still exists.

We therefore hold that because the highway was laid through two or more towns, the 1926 New Haven selectboard lacked jurisdiction to discontinue the town's portion of the highway. The selectboard's failure to comply with the then-existing statutory scheme voids its proceedings and order purporting to discontinue the highway segment, and, therefore, the highway still legally exists.

Reversed.

FOR THE COURT:

Chief Justice

Footnotes

FN1. The 1926 order was discovered in the town land records, rather than the town records, which fact is significant for two reasons. The town custom has apparently been to file surveys and notations affecting highways in the town records, not the land records. The misfiling of the highway closure notation accounts for why it went for decades without discovery by successor boards and, perhaps accounts partly for why the 1996 New Haven selectboard concluded that the road had never been properly discontinued.

FN2. This is so because, if the 1926 action was a valid discontinuance, subsequent selectboard orders declaring the highway as legally existing would be void for failure to follow the proper statutory procedures for laying out a highway.

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Town of New Haven Selectboard Meeting
7:00 pm
Tuesday, June 17, 2014
Town Offices

Present: Chair, Kathy Barrett, Vice Chair, Roger Boise, Carole Hall, Doug Tolles,
Treasurer, Barb Torian and Clerk, Pam Kingman

Absent: Charlie Roy

Visitors: Tom Fisher

AGENDA RESULTS:

VISITORS BUSINESS:

1. **Tom Fisher** came to discuss the old North / South Highway located near Hallock Road, which used to run from Bennington to Vergennes. The issue of the old road came to light because of the State wanting all old roads to be designated by the town as roads, trails or to discontinue them. The deadline for this is July 15, 2015.

In 1998, the Supreme Court ruled in favor of Fisher and the Town of New Haven and against the Bills, agreeing with Fisher and the Town that the North South Highway is still a road, because the process the Selectboard used at the time to discontinue was invalid as the Selectboard did not have the authority to discontinue the road. Back then there was a standing committee at the County Court who reports to the Legislature and the Legislature and Courts deems what will be done; taking it out of the Selectboard hands. Over time the road disappeared from the official State Highway map, but does continue to appear on the Town's tax and Zoning maps. Doug Tolles is concerned if the Selectboard were to not include that road on the highway map, the state could determine the road has been discontinued, and it may come back to haunt us because the Supreme Court has already said the road exists. Doug Tolles and Tom Fisher walked the road together earlier in the week. Town Attorney Cindy Hill also walked a portion of the road, and agreed with Doug that the road should be added to the Current Highway Map and the Certificate of Highway Miles. Doug said the road is currently not passable all the way through. He has spoken to all the landowners whose property border the old road (but one who is selling his land), and they all acknowledge that there is an old road there. One landowner has purposely built a large berm and put in drainage to divert water away from their farm, but in doing so has destroyed a portion of the road. A farmer installed fences for animals years ago, and the fencing has since been removed. In 1999 the Town installed a large culvert at the north end, which allows Mr. Fisher access to his property. If that wasn't there, his parcel would be landlocked. Cindy

Hill thought we should call the road a Class 4 Highway, but the road pre-dates classification of highways. Because of this it would up to VTRANS to classify. If it is Class 4, then the town is only responsible for bridges and culverts. Carole Hall wondered why we are the only towns discussing it if it used to run from Bennington to Vergennes. We don't know what other towns have done. Kathy Barrett said we can't discontinue a road without recognizing it first. We need to get it on the maps, and then we can discuss it further. Doug Tolles moved that the Selectboard affirms the North South Highway is a Class 4 highway, and instructs the highway department to file all necessary forms and documentation to VTRANS so this road is included on the Current Highway Map and Mileage Certificate for the Town of New Haven. The required application and documentation shall be sent to VTRANS by August 31, 2014. Motion seconded by Roger Boise. 4 yes / 0 no

TOWN OFFICE BUSINESS:

1. Doug Tolles made a motion to approve the State of Vermont Dept. of Taxes – Computer Assisted Mass Appraisal (CAMA) Cost Tables Services in the amount of \$238.81, seconded by Carole Hall. 4 yes / 0 no
2. Roger Boise made a motion to authorize the purchase of a Dri-Eaz dehumidifier for use in the Town Hall, at a cost of \$1,485, plus shipping and handling. Motion seconded by Carole Hall. 4 yes / 0 no
3. Doug Tolles made a motion to approve the quote from Countryside Carpet & Paint for flooring and installation in the Town Hall foyer upstairs as well as the back hallway downstairs (by boy's restroom) amount not to exceed \$2,000. Motion seconded by Carole Hall. 4 yes / 0 no
4. Doug Tolles made a motion to approve a Town Hall application from Jean Smith to hold a family reunion on Saturday, August 2, 2014 in the cafeteria. Deposit and fee have been received. Motion seconded by Carole Hall. 4 yes / 0 no

TREASURER'S REPORT:

1. Roger Boise made a motion to approve payroll in the amount of \$3,929.39, for the week ending 6/7/14, seconded by Doug Tolles. 4 yes / 0 no
2. Carole Hall made a motion to approve payroll in the amount of \$4,000.46, for the week ending 6/14/14, seconded by Doug Tolles. 4 yes / 0 no
3. Roger Boise made a motion to approve the pay orders in the amount of \$53,671.66, for the week ending 6/17/14, seconded by Doug Tolles. 4 yes / 0 no
4. Carole Hall made a motion to authorize the Treasurer to borrow up to \$435,000 for a line of credit from the National Bank of Middlebury at .95% rate for a Tax Anticipation Note, seconded by Doug Tolles. 4 yes / 0 no

5. Roger Boise made a motion to approve the May Financial Statements, seconded by Doug Tolles. 4 yes / 0 no

ROAD COMMISSIONER'S REPORT:

1. **Road Update:** Roger reported that David Miner has started the roadside mowing.
2. **Equipment Update:** There was a problem with the backhoe; it took several tries to acquire the correct part to fix it.
3. **2 bids were received for the Chipper:**
 - **Paul Davis from Bristol - \$2,600**
 - **J.D. Merrigan from Waltham - \$2,551**

Doug Tolles made a motion to accept Paul Davis' bid to purchase the chipper at \$2,600, seconded by Carole Hall. 4 yes / 0 no

4. **Pike Industries / Campground Road Agreement** – Pike Industries came to New Haven in 1971. Because of the heavy truck traffic an Agreement was drawn up between Pike Industries and the Town of New Haven stating Pikes would be responsible for the maintenance on Campground Rd from their entrance to Route 7. The last time the road was paved was in 1995, but it is unclear whether New Haven had to pay for it or not. Roger Boise has approached Pike Industries, and they claim they cannot find their copy of said Agreement. Roger would like town attorney, Cindy Hill to look into the matter and write Pike Industries a letter stating they are responsible for the upkeep of that portion of Campground Rd.
5. Roger Boise had asked Attorney, Cindy Hill about using money from one paving project for another project. Cindy said it is fine to use the money on a different road, provided there is no grant money involved. With Vermont Gas Systems proposing to come across Plank Road this summer; it doesn't make sense to pave Plank Rd.

Roger Boise made a motion to shim and overlay a portion of South Street from the Heisler's south to about the Shermans, using the monies that were budgeted for Plank Road. Motion seconded by Doug Tolles. 4 yes / 0 no

OLD BUSINESS:

1. Draft Lease Agreement with Beeman Elementary School – The Schoolboard has reviewed it and forwarded the Agreement to Superintendent, David Adams.

NEW BUSINESS:

1. Roger Boise made a motion to approve of the Addison County Fair & Field Days use of the Town generator during the week of the fair, August 5 – 9, 2014; with stipulations. Motion seconded by Carole Hall. 4 yes / 0 no

2. The Legislature significantly amended Vermont's Open Meeting Law this year. Changes include new requirements for posting meetings, creating and altering agendas, posting minutes onto a municipal website and for entering into executive session. Doug Tolles made a motion to designate the Village Green Market, New Haven Post Office, Town Offices and Website as designated posting places for all Boards and Committees. The motion was seconded by Roger Boise. 4 yes / 0 no

REGULAR BUSINESS:

1. Carole Hall made a motion to approve the minutes from June 3, 2014, seconded by Doug Tolles. 4 yes / 0 no

OTHER BUSINESS:

1. Town Attorney, Cindy Hill submitted the town's filing to the court against Vermont Gas Systems seeking waivers of required permits to allow immediate construction. They should not be allowed to get a permit for a waiver of construction. Doug Tolles made a motion to authorize Cindy Hill to object to allowing Vermont Gas Systems a waiver without all permits in place. Motion seconded by Carole Hall. 4 yes / 0 no

MISC. CORRESPONDENCE:

1. Madden Correspondence
2. Sheriff's Activity Logs
3. VLCT FY15 Dues
4. New Cingular Wireless PCS, LLC d/b/a AT&T Mobility

Adjourn:

Respectfully submitted:

Pam Kingman

Approved:

Kathleen Barrett
Chair, Kathy Barrett

Roger Boise
Vice Chair, Roger Boise

Carole Hall
Carole Hall

Doug Tolles
Doug Tolles

County-Town Code: 0113

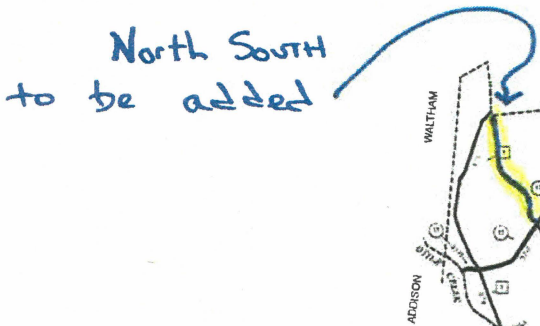
TOWN	LENGTH IN MILES	CLASS 1	CLASS 2
No.	3	4	
1	1.12		
2	4.20		
3	2.82		
4	1.82		
5	4.19		
10	0.72		
11	0.19		
12	1.12		
13	0.08		
14	0.05		
15			
18	1.30		
19	0.28		
20	1.53		
21	0.25		
22	2.20		
24	1.50		
25	1.41		
26	1.13		
27	2.81		
28	0.85		
30	0.35		
32	0.49		
33	0.70		
34	0.81		
35	1.50		
36	0.26		
TOTAL	31.78	0.01	

CLASS 1	CLASS 2
3,596	4,720
1,810	2,805
2,720	14,288
7,196	17,670
31,778	49,482
7,166	7,690
14,288	14,288

TOTAL TRAVELED HIGHWAYS, FEB. 10, 2013: 64,336
(Excludes Class 4 Legal Trail and Undersize Concrete Bridges)

LEGAL TRAIL	LENGTH IN MILES
No.	1.12
TOTAL	1.12

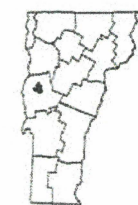
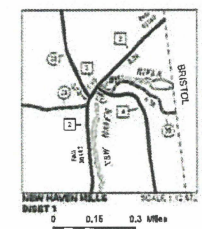
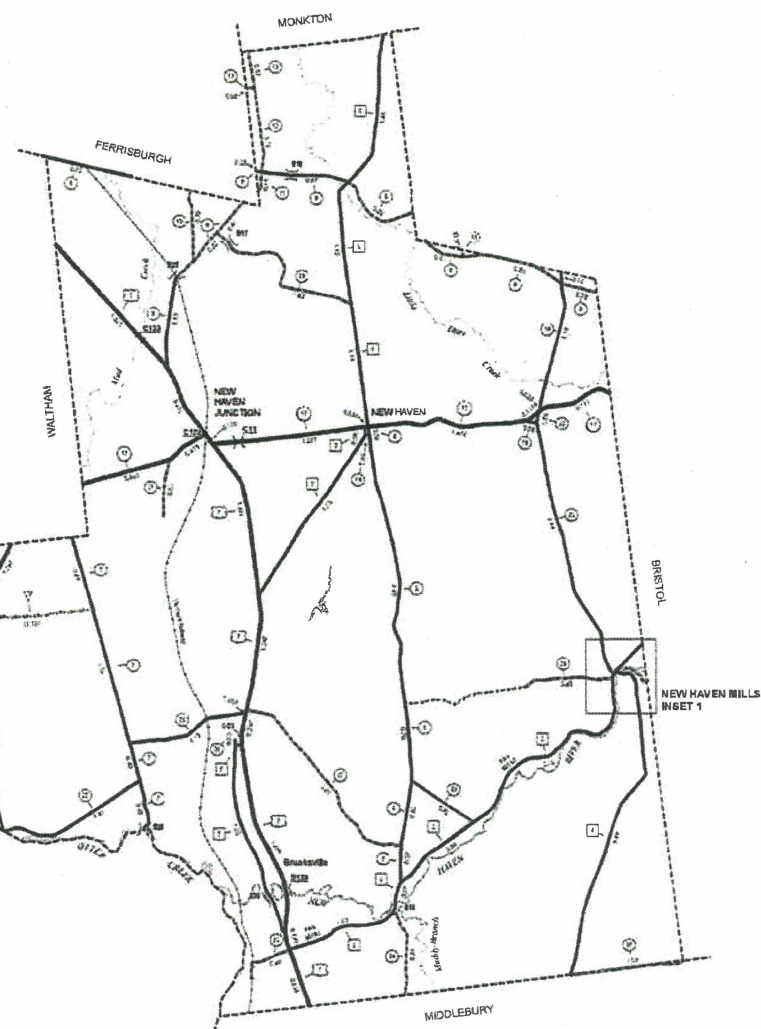
North South
to be added



- HIGHWAYS**
- INTERSTATE OR DIVIDED HIGHWAY
- STATE - HARD SURFACE OR PAVED
- TOWN - HARD SURFACE OR PAVED
- GRAVEL
- SOIL OR GRAVEL AND DRAINED EARTH
- UNIMPROVED OR FRONTIER
- IMPASSIBLE OR UNTRAVELED
- LEGAL TRAIL
- DESCONTINUED
- HIGHWAY CLASS CHANGE
- RAILROAD
- INACTIVE RAILROAD
- NATIONAL FOREST ROAD
- STATE FOREST HIGHWAY
- PARK AND RIDE
- FEDERAL LAND - GREEN MOUNTAIN NATIONAL FOREST
- FEDERAL LAND - SYSTEM UNICIPAL
- POLITICAL SUBDIVISIONS**
- STATE BOUNDARY
- COUNTY BOUNDARY
- TOWN BOUNDARY
- VILLAGE BOUNDARY
- UNINCORPORATED BOUNDARY
- WATER BODY
- STREAM OR BROOK
- BRIDGE OR CULVERT
- BRIDGE OR CULVERT GREATER THAN 20'
- BRIDGE OR CULVERT 5 - 20'
- STATE BRIDGE OR CULVERT IDENTIFIER
- TOWN BRIDGE OR CULVERT IDENTIFIER

DISCLAIMER
The untraveled highways (led-out town highways), discontinued highways, and legal trails herein are those of which the Agency of Transportation has record; others may exist.
Highways and bridge data by the Agency of Transportation. All other data from the Vermont Center for Geographic Information. Only named streams are shown.

Vermont State Plane Coordinate System
North American Datum of 1983
SPCC Zone Identifier 4028
Geoid, Reference System 69
4 000-meter grid, Easting - Northing



VERMONT
GENERAL HIGHWAY MAP
Town of New Haven
ADDISON COUNTY

Transportation District #5
Prepared by the
Vermont Agency of Transportation
Division of Policy, Planning and Intermodal Development
In cooperation with
U.S. Department of Transportation
Federal Highway Administration

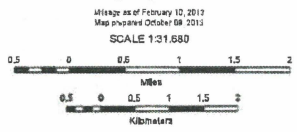
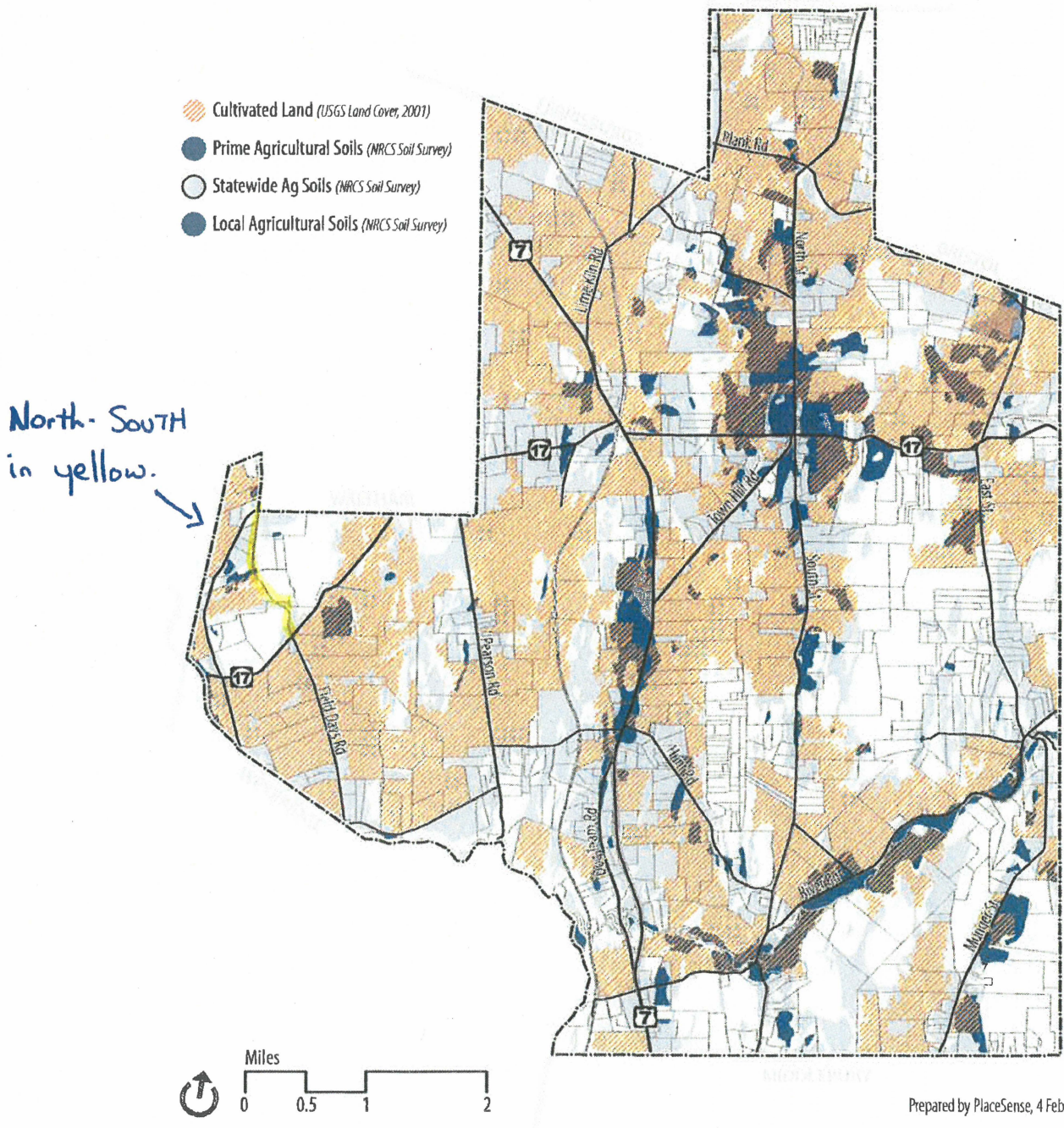


FIGURE 7. AGRICULTURE MAP



Prepared by PlaceSense, 4 Feb 2010

Town of New Haven Zoning Districts

