

District 5
Certcode 0412-0

**CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2019**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2019 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 ST. GEORGE in CHITTENDEN County
on an oath state that the mileage of highways, according to Vermont Statutes Annotated, Title 19, Section 305,
added 1985, is as follows:

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

Town Highways	Previous Mileage	Added Mileage	Subtracted Mileage	Total	Scenic Highways
Class 1	0.000			0.000	0.000
Class 2	0.370			0.370	0.000
Class 3	0.87	0.15 0.141 ^{0.15}		1.011 ^{1.02}	0.000
State Highway	3.693			3.693	0.000
Total	4.933			5.074 5.083	0.000
* Class 1 Lane	0.000			0.000	adjustments + notes by K. Alley (VTTrans) 3/29/2019
* Class 4	0.72			0.72	0.000
* Legal Trail	0.00			0.000	

* 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".

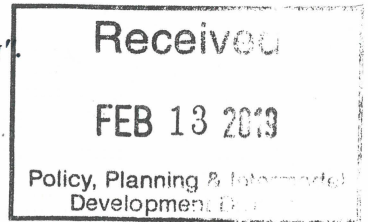
2. DISCONTINUED: Please attach SIGNED copy of proceedings (minutes of meeting).

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

+0.15 mi CL3 TH 5 (Winterbottom Rd) returned to map. 2017 discontinuance reversed by Court Order. Vermont Superior Court, Civil Division, Chittenden Unit, Docket No. 79-1-17 Cnev

remeasured 2017 by VTTrans: ~~Ayer Road TH4 +.111 miles~~
~~Willow Brook Lane TH4 +.03 miles~~

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



discontinuance reversal processed, because there is no superceding ruling. KAA 3/29/2019
These changes require reclassification, not remeasurement. KAA

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

PART III - SIGNATURES - PLEASE SIGN.

Selectmen/ Aldermen/ Trustees Signatures: W. R. Myer
Jeff Robbins
Sarah S. Josiah

T/C/V Clerk Signature: A. Alley Date Filed: 1/17/19

Please sign ORIGINAL and return it for Transportation signature.

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

APPROVED: [Signature] DATE: 4/18/2019
Representative, Agency of Transportation

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.

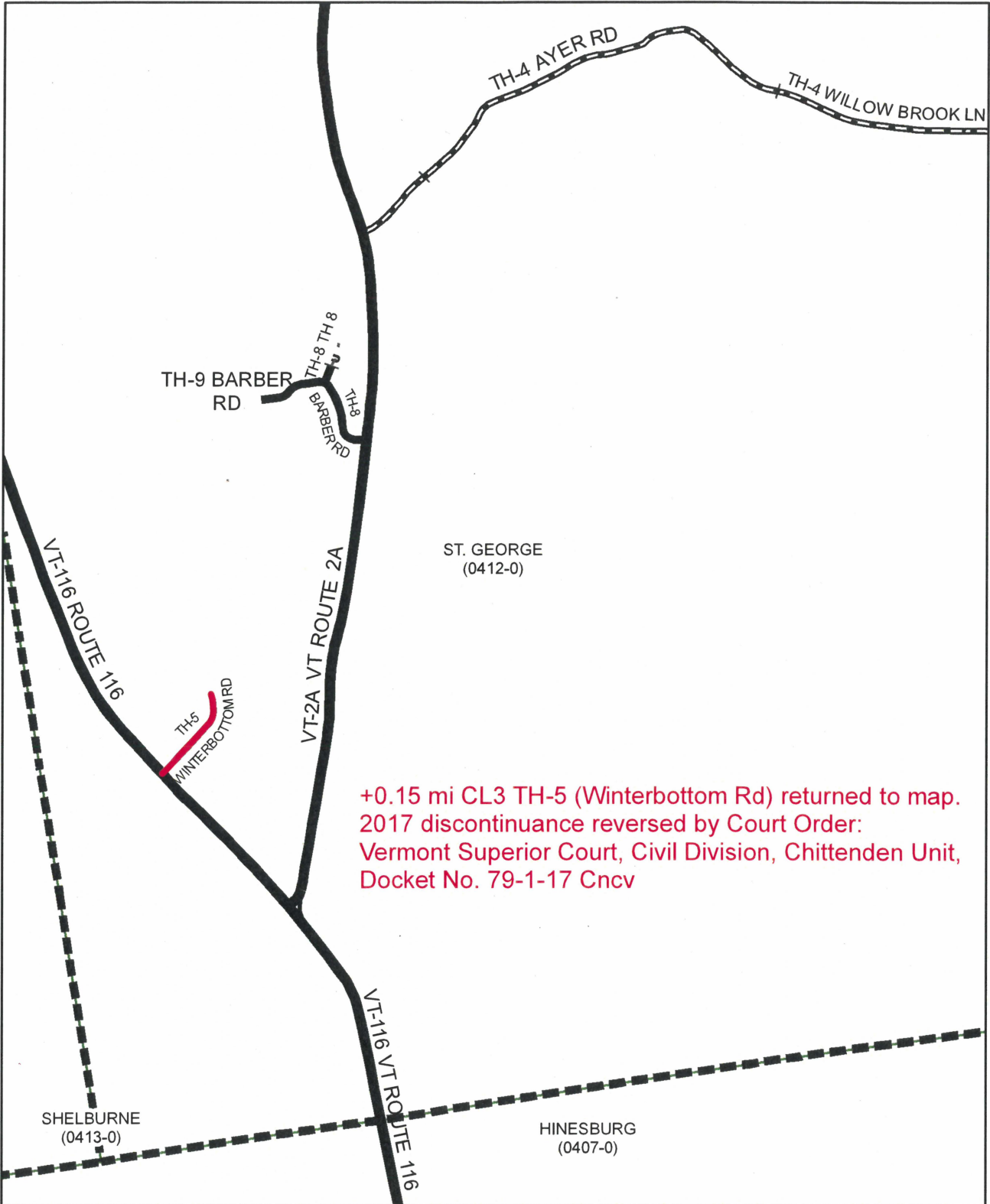
(e) The agency shall not accept any change in mileage until the records required to be filed in the town clerk's office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of 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 – <https://legislature.vermont.gov/statutes/section/19/003/00305>

December 2018



+0.15 mi CL3 TH-5 (Winterbottom Rd) returned to map.
 2017 discontinuance reversed by Court Order:
 Vermont Superior Court, Civil Division, Chittenden Unit,
 Docket No. 79-1-17 Cncv

Mileage Certificate Changes 2019

ST GEORGE

(0412-0)

Mapping Section
 Division of Policy and Planning
 Vermont Agency of Transportation -- May 29, 2019



Alley, Kerry

From: Trunzo, Michael
Sent: Wednesday, April 3, 2019 11:47 AM
To: Alley, Kerry
Subject: RE: TH-4 St. George
Attachments: TH-4.pdf

The point closer to 2A is the distribution line to 57 Ayer(see attached map). I forgot about the line to east you pointed out and didn't see it from where I was standing.

From: Alley, Kerry <Kerry.Alley@vermont.gov>
Sent: Wednesday, April 3, 2019 11:24 AM
To: Trunzo, Michael <Michael.Trunzo@vermont.gov>
Subject: RE: TH-4 St. George

Thanks Michael!! 😊

So the point closer to VT-2A is the culvert, and the next point is the power line?
(and both points should be shifted accordingly, so that the second lines up with the power line in the imagery?)

From: Trunzo, Michael <Michael.Trunzo@vermont.gov>
Sent: Wednesday, April 3, 2019 9:10 AM
To: Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: TH-4 St. George

Good morning Kerry,

The points I collected are in St_George.gdb:
<V:\Projects\Shared\Mapping\Field Inventory>

I was standing in the middle of the road for both features. The accuracy looks to be about 3-4'.

Michael Trunzo - Mapping Section
Vermont Agency of Transportaion
1 National Life Dr. Montpelier, VT 05633
802-828-3974



57 AYER RD

TH-4.pdf

CULVERT

POWER LINE

62 AYER RD

50 AYER RD

Alley, Kerry

From: Neil boyden <boydenn@gmavt.net>
Sent: Tuesday, April 2, 2019 11:10 AM
To: Alley, Kerry
Subject: RE: 2019 Mileage Certificate TH-4 clarifications

Apr 3, 2019

Neil called to confirm it is where we have it mapped.

Hi Kerry,

I will get out there either today or tomorrow and check it out.

Thanks, Neil

From: Alley, Kerry [mailto:Kerry.Alley@vermont.gov]
Sent: Monday, April 01, 2019 5:57 PM
To: 'Neil boyden'
Subject: 2019 Mileage Certificate TH-4 clarifications

Attachments:

- St George - TH4 - Ayer Rd - 1984.pdf
- " " - CIR - questions.pdf
- " " - terrain - questions.pdf
- St George - TH4 - Willow Brook Rd - turnaround.pdf

Good afternoon Neil,

As per our conversation earlier today, I've made a note on the St George 2019 Certificate of Highway Mileage to clarify that VTrans processed the reversal of the Winterbottom Rd discontinuance, even though it had been crossed out on the Certificate before being returned to us. If there is newer ruling changing the status of Winterbottom Rd again, I can update our records and the Town Highway Map if someone from the Town sends me copies of the new ruling.

I've attached two maps of Ayer Rd that are identical except for the background image. The maps show the extent and mileage total of the class 3 (CL3) portion of Ayer Rd that we have in our records (blue line) and the additional portion that is maintained to CL3 standards. Our records of the extent of CL3 are based on the documentation from the CL4 reclassification we processed in 1984. I have access to records that were unavailable to me the last time we spoke (due to a fire in our building last June), and just found a description of the CL4 section of Ayer Rd as "...extending from the second culvert and continues in a generally easterly direction to top of hill at existing bus turnaround..." (see attached). I couldn't be sure of the location of the 2nd culvert, though the terrain data suggests there is drainage northward from where we have the CL3-CL4 split mapped. This might be the clear description we needed to determine the extent of the legally reclassified portion of Ayer Rd. Can you confirm for me the location of the 2nd culvert on one of the maps? If Ayer Rd is maintained to CL3 standards beyond the second culvert, I would strongly encourage the Town to reclassify the additional portion! The "Orange Book for Town Officials"

(<https://vtrans.vermont.gov/sites/aot/files/operations/TheOrangeBook.pdf>) and our Mileage Certificate web page (<https://vtrans.vermont.gov/planning/maps/mileage-certificates>) both contain information regarding the statutory process of CL3 reclassification and the Mileage Certificate processing, respectively.

And now the easiest question: Is the other end of CL4 TH-4 mapped correctly in the last attached map? Previously we had mapped the CL4-CL3 transition on the east side of the drive to 881 Willow Brook Ln. Now our linework measure of the CL3 section more closely resembles the official mileage (0.477 mi compared to 0.47 mi), though an official remeasurement of +0.01 mi will depend on verification of the location of the town boundary, and a re-evaluation of the mileage distribution between St George and Williston.

Thanks again for your information regarding TH-4, and in advance for your interpretation of the attached documents!

Kerry

Kerry Alley | GIS Professional III
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-3666 | Kerry.Alley@vermont.gov
<http://vtrans.vermont.gov/planning/maps>

July 20, 1983 Selectmen's Meeting

Present: Mike Spernak, James Smith, Garry Lawrence and Shirley Vaux, Clerk

Audience: Arnold and Harriet Folliveau and Ken Pinkham.

Minutes of last meeting were read and unam. accepted.

No Audience communication.

At 7:30 P.M. the Three Selectmen and Mr. Pinkham went and inspected the Ayer road tax prior to discussing reclassification.

7:50 P.M. Selectmen reopened meeting and opened up to discussion from the audience. Mr. Beliveau and Mr. Pinkham were against reclassifying the road from class 3 to class 4.

see back page

Motion made by Mike Spernak and seconded by Garry - to change classification of Ayer road from the second culvert going east to the top of the hill to the present bus turnaround from class 3 to class 4. vote was unam.

James will contact Williston R.C. Emerson Miles to maintain the portion of St. George roads along with their road when they scrape and anything else that might have to be done at the same time.

Baseball funds - Motion made that the Town not get involved in the baseball team sponsoring. Unam.

Old Business: Selectmen asked Lister Beliveau when they were going to get the grand list figure. Lister Beliveau responded that she should be getting the grand list figure this week.

Question in our mind will we be able to give the discount now that it is so late. Mike will call attorney on this.

ROUTE 116 boundry line: Garry reported Attorney Spokes is going thru legislator to see if boundry has been legally defined. Will get back to us.

Ed King, Health Officer. Letter to the Health Department was signed recommending Mr. King as health officer for the Town.

Alternate Regional Planning Commissioner unam. appointed is
Greg. Voorheis.

minutes read.

Adjourned at 10:30 P.M.

** At a Board of Selectmen meeting held on July 20, 1983 it was decided to consider reclassification of a certain segment of Town Highway No. 4 from class 3 to class 4. This section is 0.600 mile beginning at the second culvert and continues in a generally easterly direction to top of hill at existing bus turnaround and has been known as the "Mayer Road".

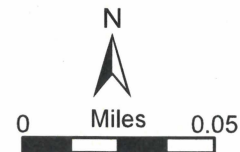
Unam voted to reclassify

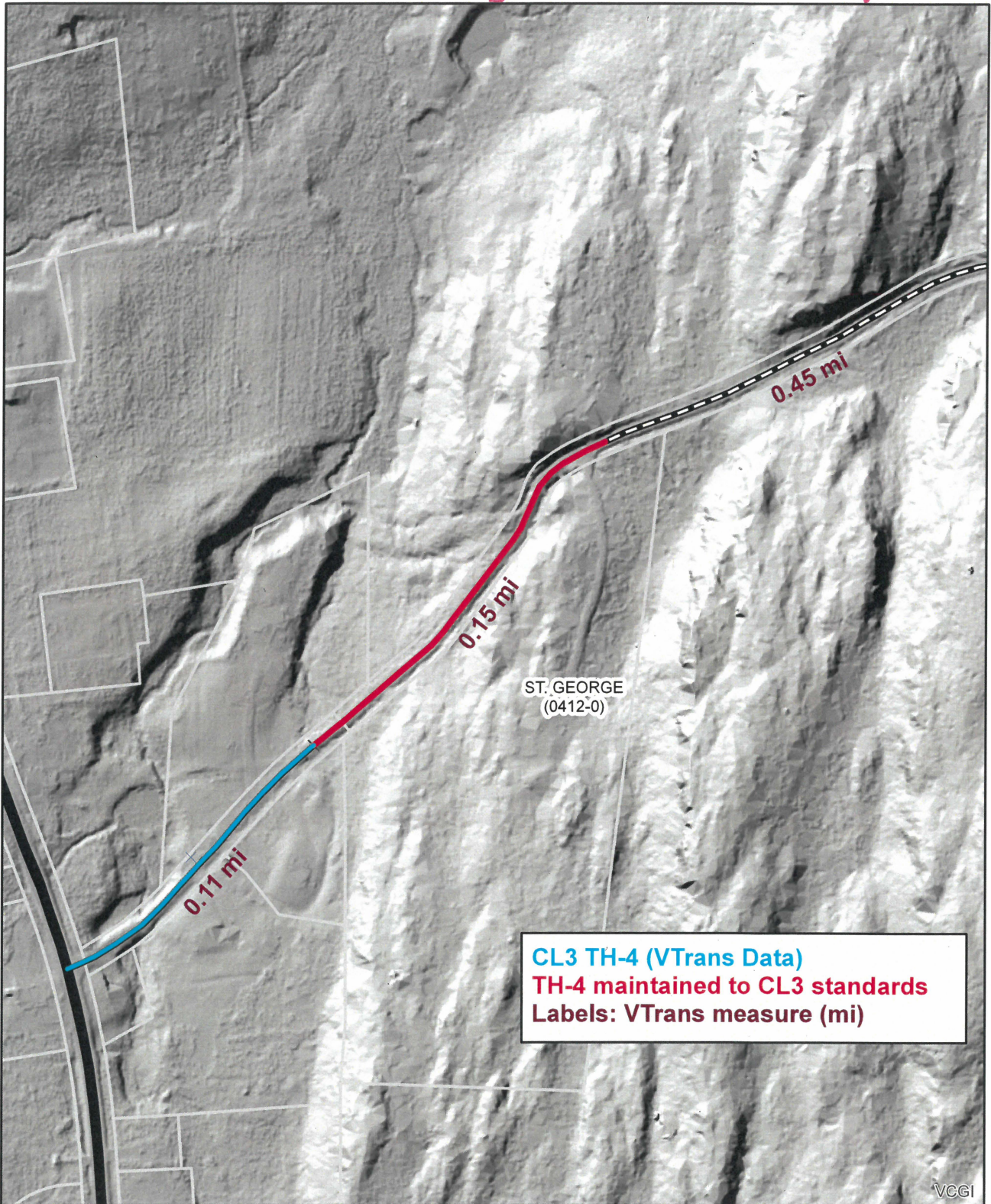


CL3 TH-4 and Parcels 2019
ST GEORGE

(0412-0)

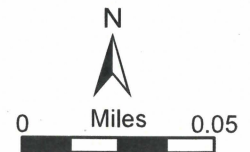
Mapping Section
Division of Policy and Planning
Vermont Agency of Transportation -- April 1, 2019

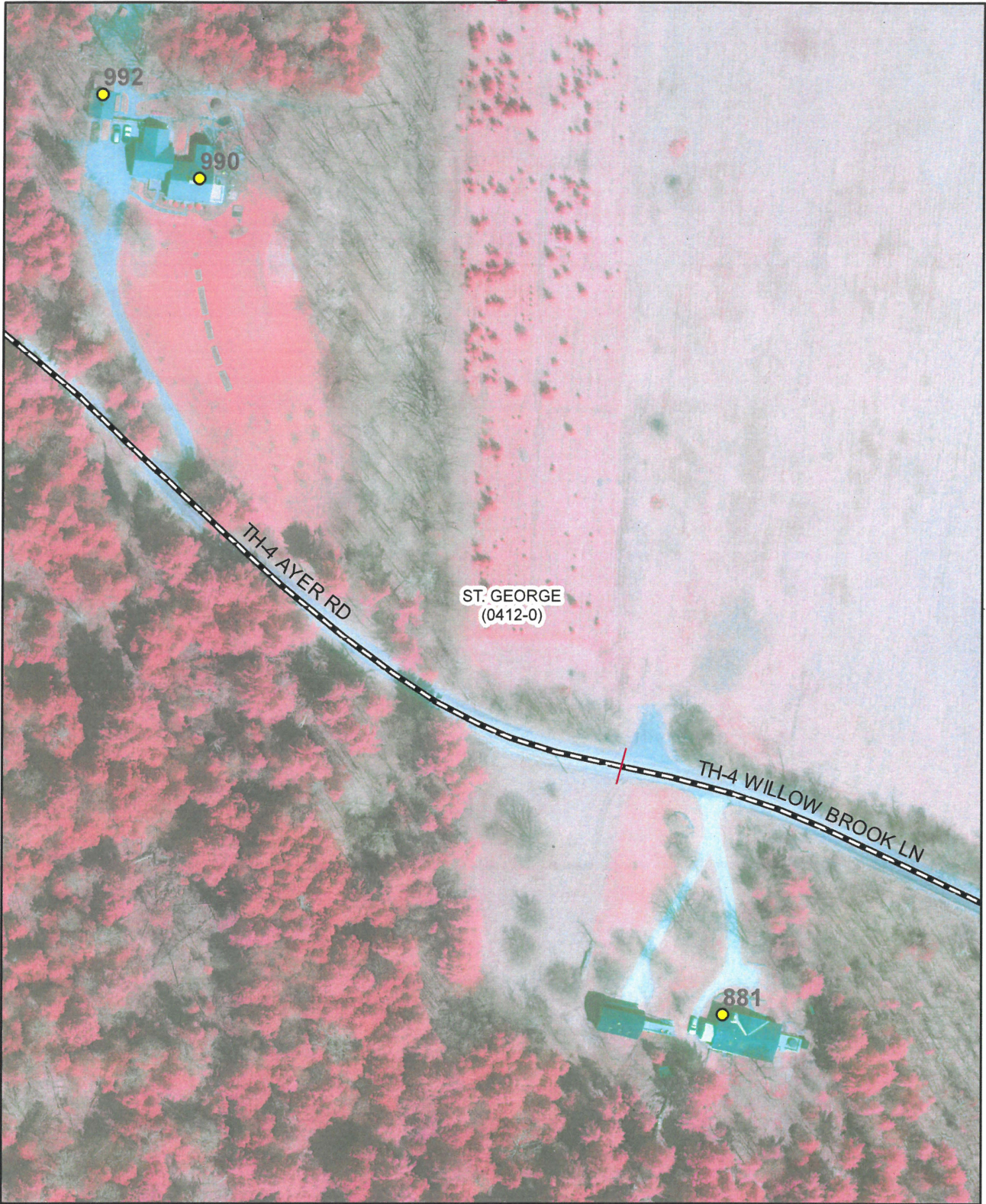




CL3 TH-4 and Parcels 2019
ST GEORGE
(0412-0)

Mapping Section
Division of Policy and Planning
Vermont Agency of Transportation -- April 1, 2019

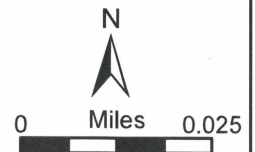




CL3 TH-4 Willow Brook Ln (Turnaround)
ST GEORGE

(0412-0)

Mapping Section
Division of Policy and Planning
Vermont Agency of Transportation -- April 1, 2019



Alley, Kerry

To: Maggie - Town Administrator; 'Neil boyden'
Subject: RE: 2018 Town of St. George Certificate of Highway Mileage

Hi Maggie,

Regarding Winterbottom Rd, we're all set to return it to the Town Highway Map in 2019, unless something changes between now and next spring.

Do you have documentation from the time that a portion of Ayer Rd (TH-4) was reclassified as class 4? I'm looking for something that can clarify that the class 3 portion extended to the drive of #104 Ayer Rd at that time. I believe it was in 1985 or 1986.

Regarding Willow Brook Ln, we were assuming that it ended just past (to the west of) the drive to #881 Willow Brook Ln? Or does it extend further?

Neil
434-2069

From: Maggie - Town Administrator <stgeorgevtta@gmail.com>
Sent: Thursday, November 1, 2018 9:44 AM
To: 'Neil boyden' <boydenn@gmavt.net>; Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: 2018 Town of St. George Certificate of Highway Mileage

Hi Kerry,

I just left a voice message on your machine regarding the Town of St. George 2018 Certificate of Highway Mileage. I am copying Neil Boyden, Road Commissioner for situational awareness.

Please let me know if there is anything needed from either Neil or I prior to the 2019 Certificate of Highway Mileage.

Thank you!

Maggie Kerrin
St. George Town Administrator
E911 Coordinator
21 Barber Road, St. George VT 05495
PH 802-482-5272
FX 802-482-5548
Hours: By appointment
www.stgeorgevermont.com

Alley, Kerry

From: Alley, Kerry
Sent: Thursday, November 1, 2018 3:23 PM
To: 'Maggie - Town Administrator'; 'Neil boyden'
Subject: RE: 2018 Town of St. George Certificate of Highway Mileage

Follow Up Flag: Follow up
Flag Status: Completed

Hello Maggie and Neil,

I apologize for not getting back to you earlier today! I need to finish preparing some rough maps of TH-4 that will help ensure we are all referring to the same locations and landmarks. That will be later this afternoon or early tomorrow. If we happen to receive our Town Highway Records today or tomorrow morning, I will also take a few moments to see what we have on file.

Is the Selectboard considering further action regarding Winterbottom Rd (TH-5)? At this time, I have a copy of the court ruling that clarifies that TH-5 still exists.

I will get back with you today or tomorrow,

Kerry

Kerry Alley | GIS Professional III
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-3666 | Kerry.Alley@vermont.gov
<http://vtrans.vermont.gov/planning/maps>

From: Maggie - Town Administrator <stgeorgevtta@gmail.com>
Sent: Thursday, November 1, 2018 9:44 AM
To: 'Neil boyden' <boydenn@gmavt.net>; Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: 2018 Town of St. George Certificate of Highway Mileage

Hi Kerry,

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Please let me know if there is anything needed from either Neil or I prior to the 2019 Certificate of Highway Mileage.

Thank you!

Maggie Kerrin
St. George Town Administrator
E911 Coordinator
21 Barber Road, St. George VT 05495

PH 802-482-5272
FX 802-482-5548
Hours: By appointment
www.stgeorgevermont.com

Alley, Kerry

From: John H. Klesch <JKlesch@firmspf.com>
Sent: Monday, April 30, 2018 8:54 AM
To: Alley, Kerry
Cc: 'Neil boyden'; Kerrin, Maggie (stgeorgevtta@gmail.com); jpillsburysgselectboard@gmail.com
Subject: RE: Town of St. George - Winterbottom Road (T.H. # 5)
Attachments: 18-01-26 Ruling on Discontinuance Appeal.pdf

Kerry:

Here is the Court's decision. Thank you for your assistance to the Town.

John

From: Alley, Kerry [mailto:Kerry.Alley@vermont.gov]
Sent: Monday, April 30, 2018 8:53 AM
To: John H. Klesch
Cc: 'Neil boyden'; Kerrin, Maggie (stgeorgevtta@gmail.com); jpillsburysgselectboard@gmail.com
Subject: Re: Town of St. George - Winterbottom Road (T.H. # 5)

Good morning John,

Thank you for clarifying the situation with Winterbottom Rd!

Could you or someone from the town send me a copy of the court order? I will also be in contact with the town regarding the other changes they submitted on the 2018 Mileage Certificate, and hopefully we can have everything ready for next year's mileage certificate processing (including changes that might occur in the meantime).

Thanks again,

Kerry

Get [Outlook for Android](#)

From: John H. Klesch
Sent: Sunday, April 29, 4:32 PM
Subject: Town of St. George - Winterbottom Road (T.H. # 5)
To: Alley, Kerry
Cc: 'Neil boyden', Kerrin, Maggie (stgeorgevtta@gmail.com), jpillsburysgselectboard@gmail.com

Kerry:

I represent the Town of St. George and have been involved in matters pertaining to the status of Winterbottom Road, so I thought perhaps I can respond to your March 22, 2018 email. My apologies for the delay.

Winterbottom Road was discontinued effective December 29, 2016. That discontinuance was appealed and, on January 26, 2018, the Superior Court reversed and remanded the discontinuance back to the Selectboard. Thus, at the time the February 2018 highway mileage certificate was submitted, Winterbottom

Road was once again a Class 3 highway despite no statutory process to re-establish it. The remand from the Superior Court requires the Selectboard to further review possible discontinuance, and so an additional change of status for Winterbottom could yet be possible. However, any such change would not be retroactive.

I hope this answers your questions; if not please let me know.

Sincerely,

John

John H. Klesch
Stitzel, Page & Fletcher, P.C.
171 Battery Street
P.O. Box 1507
Burlington, VT 05402-1507
Telephone: 802-660-2555
Fax: 802-660-2552
jklesch@firmspf.com
Website: www.firmspf.com

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In accordance with IRS Circular 230, we inform you that any tax advice contained in this communication was not written or intended to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code, or promoting, marketing or recommending to another person any transaction or matter addressed in this communication

From: Alley, Kerry [<mailto:Kerry.Alley@vermont.gov>]
Sent: Thursday, March 22, 2018 3:16 PM
To: Town Administrator
Cc: RoadCommissioner@StGeorgeVermont.com; Selectboard_Group@StGeorgeVermont.com
Subject: 2018 Certificate of Highway Mileage

Hello Maggie,

I am reviewing St. George's 2018 Certificate of Highway Mileage that was sent in to VTrans in February, and want to confirm whether or not I am interpreting the described changes correctly. Are the changes to TH-4 remeasurements ore reclassifications? I'm asking because our requirements for updating our records are slightly different depending on whether the change reflects a "remeasurement" of a clearly define section of road (without changing its maintenance or classification), versus changing how a portion of the road is maintained/classified (a "reclassification"). My best guess is that the maintained portion of Ayer Rd has been extended since the class 4 portion of TH-4 was established (as shown on this [Town Highway Map from 1986](#)), but it's less clear to me whether the change on Willow Brook Ln is a remeasurement or a reclassification.

If either or both of the changes are reclassifications, then I also want to bring it to your attention that we need documentation demonstrating that such changes occurred via the process outlined in State Statutes (including the 30 day notice, a site visit and hearing, and selectboard action). Remeasurements simply need verification

of the mileage based on a pre-existing description of where the change in classification occurs along the highway.

I have one more request... Can you provide me with more information about the status of Winterbottom Rd? My understanding is that Winterbottom Rd was recently discontinued, based on the documentation sent to me with the 2017 Certificate of Highway Mileage. Winterbottom Rd is also shown as an addition (without documentation) on the 2018 Certificate. Under normal circumstances, once discontinued, the full statutory processes is required to re-establish a town highway, so I'm wondering if there is additional information that I might be unaware of?

Thank you in advance for shedding light on the changes submitted on the 2018 Mileage Certificate,

Kerry

Kerry Alley | GIS Professional III
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-3666 | Kerry.Alley@vermont.gov
<http://vtrans.vermont.gov/planning/maps>

Vermont Superior Court
Chittenden Civil Division
175 Main Street, PO Box 187
Burlington, Vermont 05401
www.VermontJudiciary.org - Civil (802)863-3467

ENTRY REGARDING MOTION

Patunoff et al vs. Town of St. George

79-1-17 Cncv

Title:

Motion to Amend Pleadings,

No. 11

Filed on: December 26, 2017

Filed By: Klesch, John H., Attorney for:
Appellee Town of St. George

VERMONT SUPERIOR COURT
FILED

JAN 26 2018

CHITTENDEN UNIT

Response filed on 01/08/18 by Attorney Klesch
Appellee's Reply Memorandum in Support; Response filed on 01/08/18 by Attorney Safar
Appellants' Opposition;

Granted Compliance by _____

Denied

Scheduled for hearing on: _____ at _____; Time Allotted _____

Other

*This motion is now moot because the Court has
reversed the discontinuance order.*



Judge

1-26-2018

Date

Date copies sent to: *1/26/18*

Clerk's Initials *JEM*

Copies sent to:

Attorney Claudine C. Safar for Appellant Alan R. Patunoff
Attorney Claudine C. Safar for Appellant Pamela A. Patunoff
Attorney John H. Klesch for Appellee Town of St. George
Attorney William J. Pettersen IV for party 1 co-counsel
Attorney William J. Pettersen IV for party 2 co-counsel

Vermont Superior Court
Chittenden Civil Division
175 Main Street, PO Box 187
Burlington, Vermont 05401
www.VermontJudiciary.org - Civil (802)863-3467

ENTRY REGARDING MOTION

Patunoff et al vs. Town of St. George

79-1-17 Cncv

Title:

Motion to Strike Section IV of 11/20/17 Memorandum,
No. 12

Filed on: January 18, 2018

Filed By: Klesch, John H., Attorney for:
Appellee Town of St. George

VERMONT SUPERIOR COURT
FILED

JAN 26 2018

CHITTENDEN UNIT

Response filed on 01/22/18 by Attorney Safar
Appellants do not object.

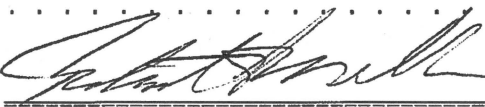
Granted Compliance by _____

Denied

Scheduled for hearing on: _____ at _____; Time Allotted _____

Other

.....
.....
.....
.....
.....
.....



Judge

1-26-2018

Date

Date copies sent to: 1/26/18

Clerk's Initials AKM

- Copies sent to:
Attorney Claudine C. Safar for Appellant Alan R. Patunoff
Attorney Claudine C. Safar for Appellant Pamela A. Patunoff
Attorney John H. Klesch for Appellee Town of St. George
Attorney William J. Pettersen IV for party 1 co-counsel
Attorney William J. Pettersen IV for party 2 co-counsel

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 79-1-17 Cncv

ALAN R. PATUNOFF & PAMELA A.
PATUNOFF,
Plaintiffs,

v.

TOWN OF ST. GEORGE,
Defendant.

VERMONT SUPERIOR COURT
FILED

JAN 26 2018

CHITTENDEN UNIT

RULING ON RULE 75 APPEAL AND REQUEST FOR DECLARATORY JUDGMENT

This is an appeal from a town selectboard's decision to discontinue a town highway. The Selectboard of Defendant Town of St. George ("Town") issued an order discontinuing Winterbottom Road. Plaintiffs Alan R. Patunoff and Pamela A. Patunoff appeal the order under Rule 75 and seek declaratory judgment that the discontinuance statute, 19 V.S.A. § 710, is unconstitutional as written and/or applied. Their amended complaint also asserts a takings claim, which will not be addressed in this ruling. The parties have briefed the Rule 75 appeal and the request for declaratory judgment, and the Court heard oral arguments on January 5, 2017. Claudine C. Safar, Esq. and William J. Pettersen, IV, Esq. represent Plaintiffs, and John H. Klesch, Esq. represents Defendant.

Background

The Court issued an order on October 20, 2017 determining that the record of the Selectboard's discontinuance proceedings is sufficiently adequate to enable the Court to conduct an on-the-record review of the Selectboard's decision to discontinue Winterbottom Road. The record includes minutes from a site visit and hearing that the Selectboard conducted on December 15, 2016, a memorandum and other materials submitted by Plaintiff's counsel to the Selectboard, evidence of notice, and the written order that the Selectboard issued on December 29, 2016.

The following facts are recounted from the record as background to the Court's decision regarding the Rule 75 appeal and do not constitute findings of fact. According to the Selectboard's minutes, the Selectboard conducted a site visit at Winterbottom Road at 2:30 p.m. on December 15, 2016 and a public hearing at 6:30 p.m. the same day. Exh. 5. The Selectboard also conducted a site visit to a second town highway, Goose Creek Road, and conducted a hearing regarding discontinuance of Goose Creek Road the same day. Three members of the Selectboard attended the site visit and all five members attended the public hearing. Selectboard Chair Charles Scott called the meeting to order and began by expressing the Board's concern that

over 200 private home owners in St. George “not only hav[e] to pay for maintenance of their own roads, but also hav[e] to pay for maintenance of Goose Creek and Winterbottom Roads[,] which house only 10-12 homes, and are not used by the general public as they are dead end roads, not through roads.” *Id.* The Town’s attorney David Rugh spoke about the discontinuance procedure generally and what would happen with the land under the Town’s right of way once the roads were discontinued. He noted that the right of way for Winterbottom Road was 24 feet wide and 750 feet long, extending easterly from the edge of the right of way for Route 116.

Wayne Elliot, an engineer, spoke about the maintenance costs for Winterbottom Road: \$4,900, plus \$7,500 to re-do the apron. He said that the cost to upgrade the road to Class 3 would be approximately \$100,000. Scott then stated that the Town’s budget, excluding the education budget, was approximately \$200,000.

Claudine Safar, Esq., representing the Patunoffs, argued against discontinuance and submitted a memorandum to the Selectboard. She noted that the Town would lose \$228 per year from VTrans as a result of discontinuing Winterbottom Road. She also noted the safety issues with the road, including the steepness of the road near its intersection with Route 116 and limited sight distances at the same intersection. The average daily traffic on Route 116 north of the intersection of Route 116 and Route 2A is 6,000 vehicles. Safar stated that due to the number of homes on Winterbottom Road, it would not be in the public interest to discontinue it. The memorandum states that the average cost for maintenance of Winterbottom Road over the last five years was \$70.13 per household/lot, and the plowing and sanding costs for Winterbottom Road amounted to \$394.38 per household/lot. The memorandum characterized both costs as “relatively small.” Sam Ruggiano, an engineer, also noted that the road should be maintained for safety reasons. He also spoke about the issues he has seen with private maintenance of roads. Several other residents spoke, objecting to discontinuance.

The Selectboard issued its Order Discontinuing Town Highway Right-of-Way on December 29, 2016. Exh. 2. The Order begins with a description of Winterbottom Road and its dedication and acceptance in 1945. The Order states that the lands and premises on the northerly and westerly sides of the road are owned by Deborah Fuller and Karen Brasel, James and Janet Doyle, Robert and Janet Duell, Kim Marie Duell, Jeffery and Susan Duell, and Elizabeth Downs. The lands and premises on the southerly and easterly sides of the road are owned by Alan and Pamela Patunoff, Robert and Janet Duell, and Michael Downs.

According to the Order, notice of the site visit and hearing was posted in the Town’s office on November 8, 2016 and delivered to the Town’s planning commission the same day. The Selectboard also caused the notice to be published in the Williston Observer on November 16, 2016. On November 9, 2016, notice was sent by certified mail to “interested parties.” *Id.*

The Order includes a summary of the statements of the individuals who spoke at the hearing. The summary notes that an engineering analysis prepared by Wayne Elliot’s firm was entered into the record. According to the Order, Neil Boyden, the St. George Road Commissioner, testified regarding the costs and expenses of the Town’s maintenance of the road, and referenced the 5-Year Roads Expenditure Report in the Town’s Annual Report. Boyden

stated that the average maintenance cost of approximately \$3,700 per year was “quite high for a 0.15-mile long roadway.”¹

The Selectboard’s Order concludes as follows:

Having conducted the public hearing and examination of the premises, the Town of St. George Selectboard hereby determines, based on testimony and evidence submitted at the public hearing, that the right-of-way for Winterbottom Road (Town Highway No. 5) be discontinued. This action was taken for the public good, necessity and convenience of the inhabitants of the Town of St. George pursuant to 19 V.S.A. § 708, et seq.

Exh. 2.

The Order states that the right of way for Winterbottom Road is discontinued immediately and reverts to the landowners for access to their properties. Finally, the Order contains a description of the discontinued road. Selectboard members Charles Scott, Wayne Ring, and Jeff Pillsbury signed the order. The signature lines for Selectboard members Nina Fiscia and Harry Bower are blank.

Discussion

It is settled law that a town decision to discontinue a highway is void unless the town substantially complies with the statutory process. In re Town Highway No.20 of Town of Georgia, 2003 VT 76, ¶ 10, 175 Vt. 626 (mem.); see In re Bill, 168 Vt. 439, 442 (1998) (“[B]ecause the selectboard of a town constitutes an inferior tribunal with certain quasi-judicial powers, . . . 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.”); Town of Barton v. Town of Sutton, 93 Vt. 102 (1919) (“The 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.”). “Substantial compliance means actual compliance in respect to the substance essential to every reasonable objective of the statute.” 3 Sutherland Statutory Construction § 57:26 (7th ed.) (quotation omitted).

The legislature has authorized municipal legislative bodies to discontinue town highways “after following the procedures” of 19 V.S.A. §§ 708–711. 19 V.S.A. § 771(a). Voters and landowners in a town may petition the selectboard to discontinue a town highway, or the selectboard may initiate a discontinuance proceeding on its own motion. 19 V.S.A. § 708(a). The selectboard must set a date and time for a site visit and hearing, then give 30 days’ notice, by certified mail, “to persons owning or interested in lands through which the highway may pass or abut,” and must “also give notice to any municipal planning commission in the town, post a copy of the notice in the office of the town clerk, and cause a notice to be published in a local

¹ The Court notes that although the minutes state that Neil Boyden attended the hearing, the minutes do not contain any summary of his testimony.

newspaper of general circulation in the area not less than ten days before the time set for the hearing.” 19 V.S.A. § 709. The statutes further provide as follows:

After examining the premises and hearing any interested parties, and if the selectmen judge that the public good, necessity, and convenience of the inhabitants of the municipality require the highway to be laid out, altered, or reclassified as claimed in the petition, they shall cause the highway to be surveyed . . . if the highway right-of-way cannot be determined and shall place suitable monuments to properly mark the bounds of the survey. If they decide to discontinue a highway, the discontinuance shall be in writing setting forth a completed description of the highway.

19 V.S.A. § 710.

The parties disagree about the construction of section 710. The Patunoffs argue that although the statute requires a finding of “public good, necessity, and convenience of the inhabitants of the municipality” in order to support laying out, altering, or reclassifying a road, it contains no standard at all for discontinuance. The Patunoffs contend that because the statute is standardless, it is unconstitutional. In the alternative, the Patunoffs argue that no evidence supported the discontinuance based on public good and necessity. They also assert that the Selectboard improperly relied on testimony from Scott and Rugh.²

The Town argues that under the applicable standard of review, the Court should affirm the discontinuance order if any competent evidence justified the Selectboard’s decision to discontinue Winterbottom Road. According to the Town, there was sufficient evidentiary basis to conclude that “public good, necessity, and convenience” supported discontinuance. The Town further contends that the Court should not rule that 19 V.S.A. § 710 is unconstitutional because the Patunoffs lack standing, and the statute is not unconstitutionally vague.

Construction of 19 V.S.A. § 710:

The Court first addresses the parties’ dispute over the construction of section 710. The Patunoffs argue that section 710 should be read as “two-tiered,” whereby the first sentence provides for a procedure for laying out, altering, or reclassifying road, and the second sentence provides for a procedure for discontinuance. According to this construction, a decision to lay out, alter, or reclassify a town highway requires that the selectboard members have judged such action to be required by “the public good, necessity, and convenience of the inhabitants of the municipality.” 19 V.S.A. § 710. However, “[i]f they decide to discontinue a highway, the discontinuance shall be in writing setting forth a completed description of the highway.” *Id.* The Patunoffs construe the second sentence to mean that the selectboard members do not need to

² The Patunoffs also argue that the discontinuance is void because the Town failed to provide proper notice to one of the abutting landowners. The Town moved to strike the Patunoffs’ argument about notice because the Patunoffs conceded in their Second Amended Complaint that the Town provided proper notice. The Patunoffs did not oppose the motion, and the Court granted the Town’s motion to strike.

judge that the public good, necessity, or convenience require the highway to be discontinued, that there is no standard at all, and that the statute simply empowers a selectboard to discontinue a town road at any time and for no reason.

The Patunoffs cite Freund v. Town of Hartland in support of their construction of section 710. Nos. 223-4-04 Wrcv, 227-5-04 Wrcv, 2005 WL 5872176 (Vt. Super. Ct. Sept. 13, 2005) (DiMauro, J.). In Freund, the court concluded that section 710 provides that a selectboard must find that the public good, necessity, and convenience require laying out, altering, or reclassifying a town highway, but that the statute did not require such a finding in the case of discontinuance. Id. The court reasoned that laying out, altering, or reclassifying a road would require a town to “take on new responsibilities” whereas discontinuing a road “will generally divest the town of former responsibilities; such a decision would rarely, if ever, be truly necessary.” Id. Construing the statute in this manner, the court affirmed a discontinuance that lacked any basis in “the public good, necessity, and convenience.”

If the Court applied the reasoning of Freund to this case, it would conclude that the Town’s decision to discontinue Winterbottom Road was valid regardless of whether the Selectboard based its decision on evidence related to public good, necessity, and convenience. The Town could have simply issued a written order including a description of the discontinued road. See also 19 V.S.A. § 711 (requiring municipalities to report their findings and to record their order). Of course, the Patunoffs are not advocating that the Court should affirm the order. Instead, they construe the statute to allow a standardless determination of discontinuance in order to argue that the statute is unconstitutional.

For several reasons, this Court declines to follow Freund. First, the Selectboard’s own order shows that the Town understood section 710 to require the Selectboard to judge whether the public good, necessity, and convenience of the inhabitants of St. George warranted discontinuance. The Selectboard expressly concluded that Winterbottom Road should be discontinued “for the public good, necessity, and convenience of the inhabitants of the Town of St. George.” In other words, the Town construed the first sentence of section 710 to mean that in the site visit, hearing, and required conclusion regarding public good, necessity, and convenience applied to discontinuance as well as any decision to lay out, alter, or reclassify a road. According to this reading of the statute, the reason for the two sentences is not to indicate that discontinuance decisions are standardless, but rather, to clarify that when a selectboard orders a road to be laid out, altered, or reclassified, it must order a survey, whereas a discontinuance order requires a writing that includes a complete description of the discontinued road. The findings related to public good, necessity, and convenience are required in any case.

In Mucherino v. Town of Marshfield et al., a trial court construed sections 709 and 710 to require notice, a site visit, a hearing, and application of a “substantive standard—public good, necessity, and convenience—” for discontinuances. No. 299-5-13 Wncv (Vt. Super. Ct. March 14, 2014) (Toor, J.) In Mucherino, the court reversed the Town of Marshfield’s discontinuance order because it failed to substantially comply with the statutory procedure, which requires a site visit. However, the court also analyzed “whether the record includes evidence that supports the

conclusion that discontinuance benefits the public good, necessity, and convenience.” *Id.* The Town of Marshfield’s discontinuance recited a summary conclusion “that the public good, necessity, and convenience supported discontinuance,” but did not explain why, and the selectboard also “expressly stated that the exclusive purpose of the discontinuance was to cure [a landowner’s] zoning violation.” *Id.* The court ruled that the Town of Marshfield selectboard had abused its discretion by ordering a section of a public highway to be discontinued merely to serve an individual landowner’s private interest, rather than the public good.

This Court agrees with the holding in *Mucherino* that section 710 requires selectboards to apply the “public good, necessity, and convenience of the inhabitants” standard, whether the issue before the selectboard is the establishment, reclassification, or discontinuance of a public highway. Any other interpretation would be illogical. If the standard did not apply to discontinuances, then a selectboard could arbitrarily discontinue any public highway at any time, no matter how essential the highway might still be to the public good, necessity, and convenience of the inhabitants. The Court will not give the statute an interpretation that would lead to irrational results. *Roy v. Woodstock Cmty. Tr., Inc.*, 2013 VT 100A, ¶ 55, 195 Vt. 427.

The construction of section 710 in *Mucherino* is also consistent with the general rule that “[a] street or alley cannot be vacated for a private use, i.e., for the purpose of devoting it to the exclusive use and benefit of a private person or corporation, but it may only be vacated to promote the public welfare.” 11 *McQuillin Mun. Corp.* § 30:190 (3d ed.) (noting that “the public welfare may be promoted effectively by placing street lands in private control”) (footnotes omitted). “The true rule seems to be that a municipality cannot vacate a street or a part thereof for the sole purpose of benefiting an abutting owner, and that the power to vacate streets cannot be exercised in an arbitrary manner, without regard to the interest and convenience of the public or individual rights.” *Id.* (footnotes omitted).

The Court cannot agree with the Patunoffs that section 710 is standardless with regard to discontinuances. To give the statute such a construction would be tantamount to encouraging selectboards to act arbitrarily when deciding to discontinue town highways. It is black-letter law that government officials may not act arbitrarily. See *Ketchum v. Town of Dorset*, 2011 VT 49, ¶ 6, 190 Vt. 507 (mem.) (trial court concluded that “[t]he record as evidenced by the minutes . . . is more than adequate to uphold the Board’s determination against any charge of the arbitrary exercise of authority”); *Demarest v. Town of Underhill*, 2013 VT 72, ¶ 17, 195 Vt. 204, 212 (“The trial court recognized that the Town’s discretion was not boundless, and that it could not act in an arbitrary or discriminatory manner, but found no record evidence that would support a finding of arbitrary or discriminatory decisionmaking on the part of the Town.”).

Moreover, “[w]here a statute is susceptible of two constructions, one of which supports the act and the other renders it unconstitutional, the former will be adopted though the latter may be the more natural interpretation of the language used.” *Reed v. Allen*, 121 Vt. 202, 206–07, (1959). Because the Court construes section 710 to require that a selectboard consider the public good, necessity, and convenience to the inhabitants before ordering a public highway to be discontinued, it will not offer an opinion about whether the statute would be unconstitutionally

standardless if the Court adopted the Patunoffs' construction. The Court will instead opt for the statutory construction that presumes that the legislature did not intend to render its own statute unconstitutionally standardless.

The sufficiency of the evidence to support the discontinuance:

The next question is whether the Selectboard had a sufficient basis to order the discontinuance. As noted above, the Court has decided that this appeal is on the record. As such, with regard to evidence, the Court's role is "simply to determine if there was adequate evidence to support the selectboard's decision." Ketchum v. Town of Dorset, 2011 VT 49, ¶ 16, 190 Vt. 507 (mem.); accord Demarest v. Town of Underhill, 2013 VT 72, ¶ 27, 195 Vt. 204. The Town argues that the evidence was sufficient for the Selectboard to conclude that the public good, necessity, and convenience supported discontinuance. The Patunoffs argue that the evidence did not show that the discontinuance was necessary or for the public good. According to the Patunoffs, none of the Town's cited financial reasons, including the \$100,000 cost to maintain Class 3 status, support a conclusion that discontinuance was necessary.

It is clear from the record that the Selectboard based its discontinuance on the following considerations: (1) seven families reside on Winterbottom Road; (2) the road is 0.15 miles long; (3) the road is a dead end; (4) it costs the Town \$3,700 per year to maintain the road; (5) it will cost the Town \$100,000 to bring the road back up to Class 3 standards; and (6) the great majority of private homeowners in the Town live on private roads that they maintain themselves.³ It appears that the Selectboard gave no consideration to the significant public safety concerns, exposed by the plaintiffs and others at the Selectboard hearing, that arise from the steepness of the road near the intersection with Route 116 (one of Chittenden County's most heavily travelled highways) and the limited sight distances at that intersection.

By requiring a selectboard to conduct a site visit and hearing, and to make specific findings regarding the public good, necessity, and convenience to the inhabitants of discontinuing a public road, section 710 clearly requires that any decision to discontinue a road must contemplate what is particular to the road in question. The selectboards in Demarest and Ketchum, for instance, considered not only maintenance costs, but other factors unique to the roads with respect to the public good, necessity, and convenience to the inhabitants. In Demarest, the town considered environmental concerns, public use of the trail for recreation, and the costs that would be associated with repair and maintenance of the Class 3 and Class 4 portions of the road, and then weighed the costs of maintaining the road against the "limited benefits of doing so." 2013 VT 72, ¶ 23. In Ketchum, the town considered the ways in which maintenance of the road, due to its particular features, actually caused unsafe conditions for the road crews, and delayed snow removal on other town roads. 2011 VT 49, ¶ 18.

³ The Patunoffs' counsel submitted the Town Plan, Exh. 6, with her memorandum to the Selectboard on December 15, 2016. The Town Plan states that most of St. George's residences are accessed by private roads and that it is "unlikely that the town will change its policy on accepting development roads, as long as doing so is a financial liability for the town." Exh. 6 at 19.

In this case, the Selectboard took evidence that most residents and landowners of St. George maintain their own private roads. The Selectboard raised the relevant question of why the Town should pay for this particular road when most other residential access roads in the Town are privately maintained. However, the Selectboard also took evidence of very serious safety issues that are unique to the part of Winterbottom Road that intersects with Route 116. Unfortunately, however, the Selectboard never addressed the question of whether the particular safety issues presented by Winterbottom Road necessitate public maintenance so that the public at large is not endangered by the unsafe conditions that exist at the intersection. No analysis of the public good, necessity, and convenience to the inhabitants of discontinuing Winterbottom Road could be complete without addressing how the proposed discontinuance would affect the safety issues that were raised at the hearing. It appears that the Selectboard gave no consideration to whether the public good would be better served by having the Town continue to maintain at least that portion of Winterbottom Road that intersects with Route 116. After the Selectboard weighs and analyzes the evidence, it may well conclude that the public good, necessity, and convenience to the inhabitants still require discontinuance of Winterbottom Road, but without such consideration, the discontinuance order was an abuse of discretion. **The Court concludes that by failing to analyze and weigh the significant public safety issues that were raised at the hearing, the Selectboard did not substantially comply with the statute. For this reason, the Court reverses the Selectboard's discontinuance of Winterbottom Road.**

Whether Selectboard member "testimony" is grounds for reversal:

Although the Court reverses the discontinuance for the reasons stated above, it will address the question of whether Selectboard Chair Charles Scott and Town Attorney David Rugh, Esq. improperly "testified" at the hearing, and whether such testimony requires reversal of the order. The Patunoffs argue that Scott's testimony violated Vermont Rule of Evidence, which states that "[a] judge sitting at the trial may not testify in that trial as a witness." V.R.E. 605. They request that the Court declare the discontinuance void, or in the alternative, either disregard all of Scott's testimony when considering if there is sufficient evidence, or disregard Scott's vote.

The parties dispute whether Rule 605 applies to the discontinuance hearing. The Patunoffs point to this Court's decision in Dein v. Town of Shelburne et al., No. 90-1-17 Cncv (Vt. Sup. Ct. Feb. 3, 2017) (Mello, J.), in which this Court ruled that selectboard members could not act as both witnesses and adjudicators in a hearing to remove another selectboard member. In Dein, Rule 605 applied because the Vermont Rules of Evidence apply to hearings conducted under the Municipal Administrative Procedure Act. That Act does not apply to the Selectboard's hearing in this case, however. 24 V.S.A. § 1206(b). The Patunoffs cite In re Odessa Corporation to support their contention that Rule 605 applies to Selectboard members. 2006 VT 35, ¶ 11, 179 Vt. 640. Odessa is similarly inapposite to this case because it relates to the question of whether a board member can judge and testify in the context of a contested proceeding under the Administrative Procedure Act, 3 V.S.A. §§ 800-849, which does not apply to discontinuance hearings in St. George.

In Whitcomb v. Town of Springfield, the Vermont Supreme Court addressed the question of whether members of a town's selectboard could testify at an appeal hearing before commissioners. 123 Vt. 395, 399 (1963). The Supreme Court stated that the selectboard members were parties to the hearing before the commission, unlike in the original selectboard hearing to reclassify a road as a trail, in which the selectboard members "were sitting in a quasi-judicial position." The Supreme Court has elsewhere referred to selectboard proceedings regarding laying out, altering, reclassifying, or discontinuing roads as quasi-judicial. See In re Bill, 168 Vt. 439, 442 (1998) (stating that "the selectboard of a town constitutes an inferior tribunal with certain quasi-judicial powers"); Town of Shrewsbury v. Davis, 101 Vt. 181 (1928) (noting that "the selectmen of a town constitute an inferior tribunal having certain quasi judicial powers, with special and limited jurisdiction as to the matter of discontinuing certain highways"); see also Ketchum, 2011 VT 49, ¶ 14 (referring to reclassification proceeding as an "adjudication"). Although the Rules of Evidence do not apply to proceedings under 19 V.S.A. § 708 et seq., our case law already established prior to the adoption of the Rules of Evidence that "[i]t is the rule in Vermont that a judge may not be a witness in a cause before him." See State v. Kelly, 131 Vt. 582, 585 (1973) (citing Ricci v. Bove's Administrator, 116 Vt. 406, 412 (1951); In re Hildreth Estate, 113 Vt. 26, 29 (1942); and State v. Bissell, 106 Vt. 80, 95 (1934)).

The Town insists that even if Scott should not have been permitted to vote after having testified, his vote was not needed because in addition to Scott, three other Selectboard members voted in favor of discontinuance. The discontinuance order was only signed by three members of the Selectboard, including Scott. There is nothing in the record indicating that a fourth member, who did not sign the order, voted in favor of discontinuance. The Town submits affidavits as additional evidence of the vote. However, the Court already decided in its October 20, 2017 ruling, at the Town's urging, that this appeal would be conducted on the record and without additional evidence. Therefore, the Court will not consider the Town's affidavits to resolve this issue.

Scott testified that almost all homeowners in St. George access their properties via private roads, and stated that the Town should not "subsidize" road maintenance expenses for Winterbottom Road residents when most homeowners pay to maintain their own roads. He also stated that Winterbottom Road did not meet Class 3 standards and that it would cost "a substantial sum" to bring it up to those standards. Later in the hearing, he stated that the total town budget, excluding the education budget, was approximately \$200,000. All of the facts that could be construed as evidence in Scott's testimony were repeated in other testimony taken at the hearing, or contained in other evidence submitted. For instance, the facts related to Class 3 standards and costs were repeated, and offered in greater detail, in Elliott's testimony and the engineering report. The facts about the majority of homeowners in St. George using private roads for access to their properties were also presented in the Town Plan, which Attorney Safar submitted to the Selectboard along with her memorandum. Even if Scott had not spoken at the meeting, the Selectboard would have had the same factual evidence upon which to base its decision. If there was error in allowing Scott to testify at the hearing, then it was harmless.

Moreover, the legislature provided that a selectboard may initiate proceedings on its own motion for laying out, altering, reclassifying, or discontinuing a town highway. This implies that

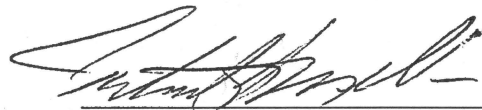
a selectboard may already favor the proposed action. The statutes do not specifically disqualify a Selectboard member from voting in a discontinuance decision that the member proposed. In that light, Scott's statements appear to have been a presentation of the basic reasons why the Selectboard initiated the proceeding, and need not have been taken as "testimony," as paraphrased in the Town's order. As noted above, even if Scott's statements presented some factual evidence as testimony, the Selectboard need not have relied upon this evidence because it was repeated by other witnesses or documents. Therefore, the Court will not reverse the Town's order based on Scott's testimony and participation in voting for the discontinuance.

Similarly, Attorney Rugh's statements regarding the applicable law and procedure were not testimony. The Court sees no reason to reverse the Selectboard's discontinuance order based upon Attorney Rugh's statements.

Order

For the reasons stated above, the Town's December 29, 2016 discontinuance order is *reversed and remanded* for proceedings consistent with this ruling. The Patunoffs' request for declaratory judgment that 19 V.S.A. § 710 is unconstitutional is *denied*. Having reversed the discontinuance, there is no need for the Court to address the takings claim.

Dated this 26th day of January, 2018.


Robert A. Mello, Superior Judge

Alley, Kerry

From: Neil boyden <boydenn@gmavt.net>
Sent: Thursday, April 5, 2018 11:35 AM
To: Alley, Kerry
Cc: 'Maggie - Town Administrator'
Subject: RE: 2018 Certificate of Highway Mileage

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Kerry,

Getting back to you or at least partially on your questions from your e-mail of March 22, 2018.

Both Ayer Road and Willow Brook are remeasurements. Both roads reflect with this remeasurement what is actually be maintained as Class 3 Town Highway over at least the last 15-20 years. If you need further verification of this beyond what we sent you, please feel free to contact.

Regarding Winterbottom Road, I will have to get back to you at a later date regarding it's status.

Regards,

Neil Boyden

Road Commissioner
Town of St. George

From: Alley, Kerry [mailto:Kerry.Alley@vermont.gov]
Sent: Thursday, March 22, 2018 3:16 PM
To: Town Administrator
Cc: RoadCommissioner@StGeorgeVermont.com; Selectboard_Group@StGeorgeVermont.com
Subject: 2018 Certificate of Highway Mileage

Hello Maggie,

I am reviewing St. George's 2018 Certificate of Highway Mileage that was sent in to VTrans in February, and want to confirm whether or not I am interpreting the described changes correctly. Are the changes to TH-4 remeasurements or reclassifications? I'm asking because our requirements for updating our records are slightly different depending on whether the change reflects a "remeasurement" of a clearly define section of road (without changing its maintenance or classification), versus changing how a portion of the road is maintained/classified (a "reclassification"). My best guess is that the maintained portion of Ayer Rd has been extended since the class 4 portion of TH-4 was established (as shown on this [Town Highway Map from 1986](#)), but it's less clear to me whether the change on Willow Brook Ln is a remeasurement or a reclassification.

If either or both of the changes are reclassifications, then I also want to bring it to your attention that we need documentation demonstrating that such changes occurred via the process outlined in State Statutes (including the 30 day notice, a site visit and hearing, and selectboard action). Remeasurements simply need verification of the mileage based on a pre-existing description of where the change in classification occurs along the highway.

I have one more request... Can you provide me with more information about the status of Winterbottom Rd? My understanding is that Winterbottom Rd was recently discontinued, based on the documentation sent to me with the 2017 Certificate of Highway Mileage. Winterbottom Rd is also shown as an addition (without documentation) on the 2018 Certificate. Under normal circumstances, once discontinued, the full statutory processes is required to re-establish a town highway, so I'm wondering if there is additional information that I might be unaware of?

Thank you in advance for shedding light on the changes submitted on the 2018 Mileage Certificate,

Kerry

Kerry Alley | GIS Professional III
Vermont Agency of Transportation
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<http://vtrans.vermont.gov/planning/maps>