

District 9  
Certcode 1017-1

**CERTIFICATE OF HIGHWAY MILEAGE  
YEAR ENDING FEBRUARY 10, 2018**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2018 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 NORTH TROY VILLAGE in ORLEANS 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	0.961			0.961	0.000
Class 2	0.290			0.290	0.000
Class 3	3.80			3.80	0.000
State Highway	2.035			2.035	0.000
<b>Total</b>	<b>7.086</b>			<b>7.086</b>	<b>0.000</b>
* Class 1 Lane	0.000			-	
* Class 4	0.05		0.05	0.00	0.000
* Legal Trail	0.00			-	

\* 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.**

Mileage totals by  
K. Alley 4/2/2018

- NEW HIGHWAYS:** Please attach Selectmen's "Certificate of Completion and Opening".
- DISCONTINUED:** Please attach SIGNED copy of proceedings (minutes of meeting).  
-0.05 mi CL4 TH-409 (Main St Ext) removed from map due to court order: not a town highway. (Docket No. 12-1-16, Vermont Superior Court, Orleans Unit, Civil Division)
- RECLASSIFIED/REMEASURED:** Please attach SIGNED copy of proceedings (minutes of meeting).
- 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:

Mary Santow  
H. Sgf.

T/C/V Clerk Signature:

Susann Hansen

Date Filed:

3-27-18

Please sign ORIGINAL and return it for Transportation signature.

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

APPROVED:

Representative, Agency of Transportation

DATE:

4/10/2018

**Received**

**APR 02 2018**

**Policy, Planning & Intermodal  
Development Division**



**State of Vermont**  
**Division of Policy and Planning - Mapping Section**

1 National Life Drive  
Montpelier, VT 05633-5001  
<http://vtrans.vermont.gov>

Telephone: 802-828-2600  
Fax: 802-828-2334  
Email: [johnathan.croft@vermont.gov](mailto:johnathan.croft@vermont.gov)

*Agency of Transportation*

March 9, 2018

Chair, Board of Trustees  
North Troy Village  
c/o Village Clerk  
PO Box 514, 160 Railroad St  
North Troy, VT 05859

To Town Clerk and Selectboard:

In early January, the Vermont Agency of Transportation mailed the annual Certificate of Highway Mileage to you for completion and return. To date, your town's certificate has not been received. We use this certificate to confirm highway mileage for the purpose of allocating state aid for town roads. If we do not receive a completed mileage certificate from you by March 31, we will assume there are no changes from last year's certificate and state aid will be based on those mileages.

The completed mileage certificate should be returned to:  
Vermont Agency of Transportation  
PPIDD - Mapping Section  
1 National Life Drive  
Montpelier, VT 05633-5001

Please feel free to contact me with any questions or comments regarding the Mileage Certificates or the process. I can be reached via telephone at (802) 828-2600 or via email at [johnathan.croft@vermont.gov](mailto:johnathan.croft@vermont.gov).

Sincerely,

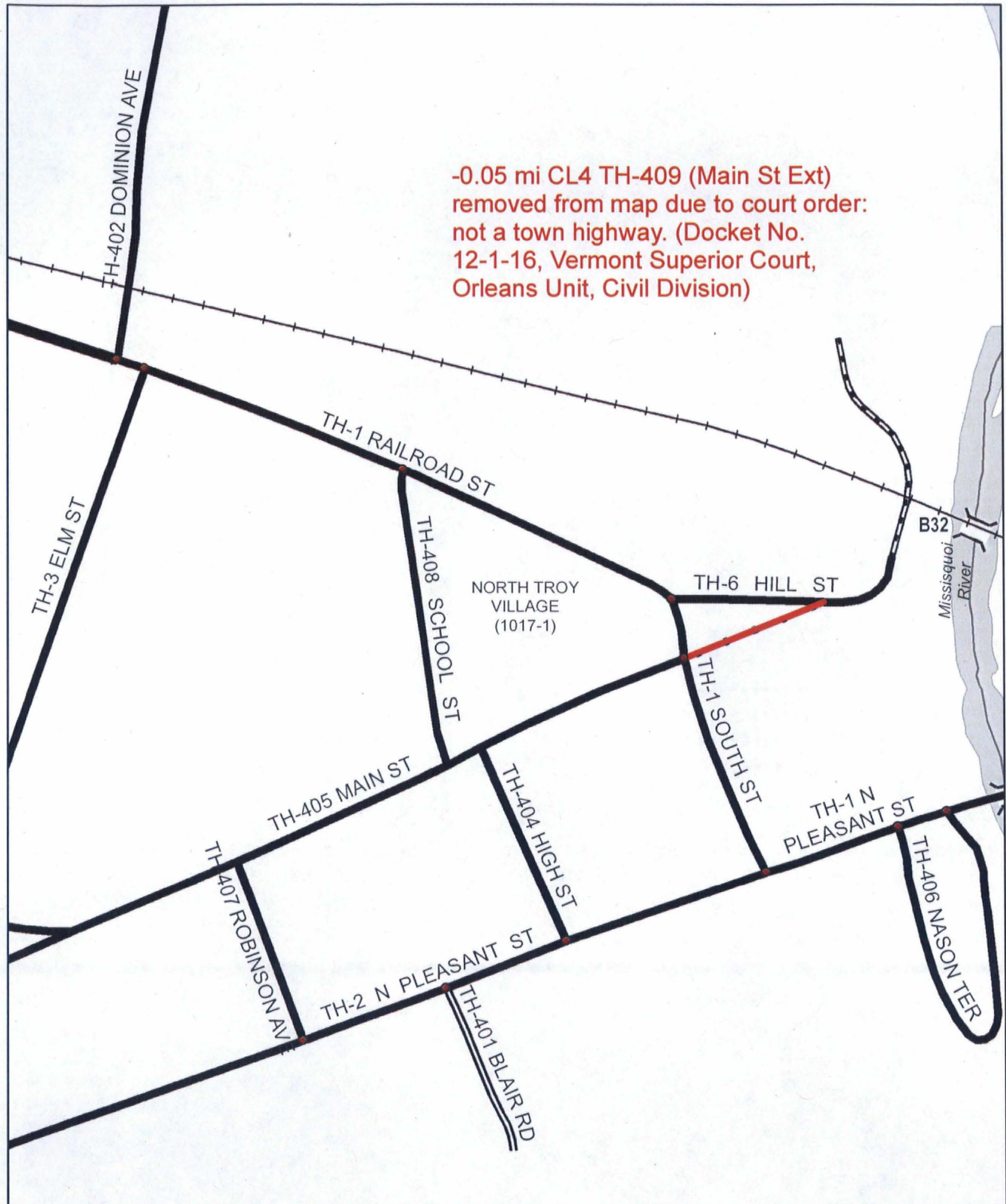
A handwritten signature in black ink, appearing to read "Johnathan Croft".

Johnathan Croft  
AOT GIS Database Administrator

JFC/kg

cc: Mileage Certificate File

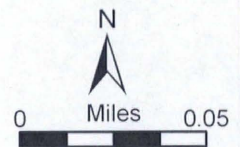
-0.05 mi CL4 TH-409 (Main St Ext)  
removed from map due to court order:  
not a town highway. (Docket No.  
12-1-16, Vermont Superior Court,  
Orleans Unit, Civil Division)



**Mileage Certificate Changes 2018**  
**NORTH TROY VILLAGE**

(1017-1)

Mapping Section  
Division of Policy and Planning  
Vermont Agency of Transportation -- April 16, 2018



STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CIVIL DIVISION  
Docket No. 12-1-16 Oscv

LeGrand et al vs. Village of North Troy

ENTRY REGARDING MOTION

VERMONT SUPERIOR COURT

Count 1, Declaratory Judgment (12-1-16 Oscv)

Title: Motion for Summary Judgment (Motion 2)  
Filer: Paul LeGrand  
Attorney: Paul S. Gillies  
Filed Date: February 27, 2017

APR 26 2017

FILED  
ORLEANS UNIT

Response filed on 04/07/2017 by Attorney Laura L. Wilson for Defendant Village of North Troy

This is a dispute over a claimed town road in the Town of North Troy, Vermont (the "Town"). The Plaintiffs are Paul LeGrand and Donna Scata, represented by Attorney Paul S. Gillies. The Defendant Town is represented by Attorney Laura L. Wilson.

The Plaintiffs have filed a motion for summary judgment, which the Town opposes. The motion is fully briefed and both parties' counsel attended oral argument on the motion.

Pertinent undisputed and (where applicable and noted) disputed material facts are as follows:

Plaintiffs own a triangular piece of real estate, shaped like an isosceles triangle, with two 210' sides and a 86' foot base or side. The westerly 210' side runs next to a parallel to a town road Hill Street. The disputed alleged roadway segment, sometimes referred to as "North Main Extension" lies within the lot, along the other 210 foot easterly side of the parcel (assuming that the alleged roadway is indeed a road). The court refers to the claimed roadway as the "Disputed Road".

Plaintiffs' surveyor contends a search of Town records could find no old maps or surveys or select board minutes ever showing the Disputed Road appeared on town highway maps.

Plaintiffs contend there are no Town minutes showing that the Disputed Road was ever expressly laid out. Apart from town-reclassification proceedings in 2009, and a 2016 road map, both discussed below the Town has produced no evidence of any former proceedings showing the Town was surveyed or laid out, or that there are periods for which the records of such activities have been lost or destroyed in the intervening years.

In 2006, the State legislature adopted Act 178, further discussed below, to deal with legal issues involving so-called "ancient roads". Ancient roads in essence are old town roads or claimed roads

LeGrand\_v. Village\_of\_North\_Troy-Superior Court Decision.pdf

for which do not appear on town roadmaps are not readily discernible. The Act started a process by which towns had to investigate and prove and designate such roads, or loose rights to them. Minutes from a 1/23/07 trustee meeting shows the trustees reviewed some letter from the 1980's about a request for a right of way to park next to the post office. The trustees were going to have the clerks check if the town had "5 years from Act 178 enactment in 2006 to decide on keeping the road or not". (Def. Ex. K)

On May 12, 2009 the Town attorney at the time wrote the select board about the steps to "reclassify Main Street Extension as a class 4 town highway" under 19 V.S.A. sections 708-717. Details on the process were describe. (Def. Ex. D)

A motion to reclassify the Main Street Extension to a class 4 road was made 11/24/99 Plaintiff Ex. 4), and between 12/9/09 and 11/24/99 written notice was given to abutting landowners and public notice published for a 1/11/10 public meeting (Def. Exhibits E, F and G)

At its January 11, 2010 trustee meeting, per the meeting minutes, the town Trustees discussed "reclaiming Main Street Extension as a class 4 road" to provide a spot to store Main Street snow and voted to approve the measure. It appears the "reclaiming" phrase included in the minutes was meant to refer to a vote on the noticed road reclassification proposal. (Def. Ex. C)

The Disputed Road was depicted as a road in a 6/25/10 survey the Town commissioned (Def. Ex. H)

By 2013 the Disputed Road was an item of discussion between Plaintiffs and the Town in or around November 18, 2013, Mr. LeGrand offered to buy the Disputed Road from the Town, but the Town did not want to sell the Disputed Road. (Def. Ex. A)

Plaintiff sought to make improvements on their property, and sought a zoning variance to the extent the Disputed Road was a lawful road. After the application was denied at the town level, an appeal was pursued in the Environmental Division on 7/22/14 (See Plaintiffs' Ex. 3, page 1). *LeGrand and Scata Variance Application*, Vermont Superior Court, Environmental Division, Docket No. 110-8-14 Vtes.

On 7/17/15 the Plaintiffs here in that environmental court claimed any road rights of the Town reverted to them via 19 V.S.A. section 302(6)(G) (See Plaintiffs' Ex. 3, page 1)

The Disputed Road appeared on a town road map on 7/21/16 (Plaintiff Ex. 1).

#### Legal Analysis and Conclusions of Law

Under Rule 56 a party is entitled to summary judgment in its favor if the movant shows that, there is no dispute as to any material fact and the movant is entitled to judgment as a matter of law. In determining whether genuine issues of fact exist, the non-moving party is to receive the benefits of all reasonable doubts and inferences. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22 (1996); *Messier v. Metro. Life Ins. Co.*, 154 Vt. 406 (1990). Motions for summary judgment are and may be used to determine whether genuine issues of material fact exist, warranting the need for a trial. *Bennett Estate v. Travelers Ins. Co.*, 138 Vt. 189 (1980); *Sykas v. Kearns*, 135 Vt. 610 (1978).

The pivotal issue in this case is whether the Disputed Road was a town road or town highway. Plaintiffs claim that the Town cannot establish sufficient material facts to support a showing that a reasonable factfinder could find that the Disputed Road is or was a town road.

The Town, on the other hand, contends that it has established, or at least raised material issues of fact over whether the Disputed Road was a valid town road, and one that has been reclassified to a Class 4 road substantially following the "ancient road" statute.

The "burden [is] on the Town to prove any right it had to the property," that is, whether it had lawfully condemned, and had duly established a public road across Plaintiffs' land. *McAdams v. Town of Barnard*, 2007 VT 61, ¶ 13 (7/20/07). "The burden [is] thus fairly placed on the Town to review its own records and discern whether any [lawfully established] roads existed" in the disputed environs of Plaintiffs' property, and to come forward with such record evidence sufficient to create a triable issue on the *de jure* existence (or not) of so-called town road. *Id.*; *Kelly v. Town of Barnard*, 155 Vt. 206, 300-302 (1990); See also *Town of Bethel v. Wellford*, 2009 VT 100, Para. 8, 186 Vt. 612 (citing with approval *McAdams* for the proposition it places the burden on towns to prove title to even "ancient roads")

A town road may be established one of two ways: [1] by the Select Board laying it out as the statutes proscribe or [2] by dedication and acceptance. *Town of Springfield v. Newton*, 115 Vt. 39, 43 (1947); *Okemo Mtn. Inc. v. Town of Ludlow*, 164 Vt. 447, 454 (1995).

#### A. Laying Out

Vermont statutes have long described the process to "lay out" a road and to make a record of the Town's activities in doing so. See, *In re Town Highway No. 20 of Town of Georgia*, 2003 VT 76, Paras. 6-7, 175 Vt. 626, 627-628 (discussing 1782 and 1808 road law); *Kelly v. Town of Barnard*, 155 Vt. 296, 302 (1990) (discussing 1816 and 1817 road law); *Austin*, *supra* at Para. 8 (describing the 1824 road law).

To determine if a claimed public road was properly laid out as a public highway through statutory condemnation, a town must show that the applicable statutory requirements "must be substantially complied with or the proceedings will be void." *Kirkland v. Kolodziej*, 2015 VT 90, ¶ 19, 199 Vt. 606, 616-17, citing *Austin v. Town of Middlesex*, 2009 VT 102, ¶ 8, 186 Vt. 629, 987 A.2d 307 (mem.) ¶ 7 (quoting *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) ("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.").

Title 19 V.S.A. § 302(a)(6) requires proof that a highway was "laid out as [a highway] by proper authority through the process provided by law at the time [it was] created." The Town has made no suggestion of any date when the Disputed Road was allegedly laid out. The court cannot look for compliance with applicable laying out statutes in effect at the time of the road's alleged laying out if the Town cannot specify when that allegedly occurred.

The court recognizes the Disputed Road may be one that was created a long time ago, but the Vermont Supreme Court has provided guidance on the necessity or level of proof in such circumstances:

[W]e have acknowledged that “the difficulty in determining whether abandoned roads still legally exist stems from inconsistent, and sometimes incomprehensible, town records dating back two centuries or more,” *Wellford*, 2009 VT 100, ¶ 8, 987 A.2d 956 (quoting *McAdams v. Town of Barnard*, 2007 VT 61, ¶ 13, 182 Vt. 259, 936 A.2d 1310), but, as discussed in detail below, we consistently have required proof of such records when considering whether the town undertook the proper statutory formalities in laying out a road. See, e.g., *Austin*, 2009 VT 102, ¶ 9, 987 A.2d 307 (finding no public highway where there was no official act of selectboard in laying out highway); *Kelly*, 155 Vt. at 303–04, 583 A.2d at 618–19 (finding public highway because, even though no certificate of opening was found, road was surveyed and recorded and thus likely opened prior to passage of statute requiring certificate); *Bacon v. Boston & Me. R.R.*, 83 Vt. 421, 432–34, 76 A. 128, 133–34 (1910) (finding no public highway where there was no certificate of completion).

completion).

*Kirkland v. Keiocheta*, 2012 VT 99, ¶ 12. The *Kirkland* case has a discussion where specific proof of the lost or destruction of town records may be considered as part of the evidence on whether a road was laid out. However, the *Kirkland* Court also noted that mere speculation records must have existed and been lost is not sufficient. *Id.*, at ¶ 12.

The court notes it does not find the fact that the Town sought to “reclassify” the alleged road, starting in 2009, to be sufficient to raise a disputed issue of fact as to whether the road was properly laid out in the first instance. The court’s ability (and obligation) to consider the legality of the road creation is independent of the road discontinuance proceedings. The *McAdams* Court found that the issue of whether the Town had properly discontinued a road was different than the issue of whether the town road existed in the first place. 2007 VT 61, ¶ 13. The *McAdams* Court determined that consideration of whether the statutory procedures to validly discontinue a road were followed did not preclude court adjudication of the issue of whether there are any existing public roads on a property.

Similarly here, the court believes that the issue of whether the Disputed Road ever was a town road is a separate issue from the issue of whether the Town properly reclassified the alleged road as a class 4 road in 2009 – 2016. See also, *Tillotson v. Gates*, Docket No. 472-10-13 Frcv (Vt. Superior Court)(2/15/17)(Harris, J.)(reaching the same conclusion). Here as noted, prior to the reclassification proceedings initiated in late 2009, there is no evidence the Disputed Road appeared in any survey or town road map, or that town records covering road creation proceeding materials from the alleged time of its creation, are missing or were destroyed.

The Town cannot re-characterize the 2009-10 reclassification activities as a laying out of the road under the provisions then in effect. The notice was one to “reclassify”, not to lay out. It appears no site visit was made as 19 V.S.A. section 710 requires, and no proceedings to determine compensation of affected landowners was held. See Section 712.

The Town has failed to raise material issues of fact that the Disputed Road was laid out.

#### ***B. Dedication and Acceptance***

To create a road by dedication and acceptance, there must be clear evidence showing that [1] the owner of the land intended to set apart his or her land for public use and [2] the municipality intended to accept the dedication. *Okemo, supra*, 164 Vt. at 454-455, citing *Town of Springfield*, 115 Vt. at 44 (1947) and *Druke v. Town of Newfane*, 137 Vt. 571, 574 (1979).



Dedication by the owner has been described as follows:

Dedication is the setting apart of land for public use, either expressly or by implication by law. It may be shown by the owner's writings, affirmative acts, acquiescence in public use, or some combination thereof, so long as the owner's intent to dedicate clearly appears.

*Druke*, 137 Vt. at 574 (1979), citing *Town of Springfield, v Newton*, 115 Vt. 39, 43 (1947) and other authorities. The essential element is the intent of the owner. *Okemo, supra*; citing *Newton*, 115 Vt. at 43-44. "Where the evidence is conflicting, the question of dedication is one of fact." *Okemo, supra*, citing *Newton*, 115 at 44.

Here, no evidence of historic deed references to the Disputed Road have been shown in Plaintiffs' or their predecessors' -in-title deeds, as is true in some cases, where such proof helps infer the impaired parcel property owners' intent to dedicate. See *Druke, supra*; *Okemo Mountain, Inc., supra*.

The Vermont Supreme Court further described inferred dedication where the owners' intent is not expressly shown:

Because dedication may be express or implied, the offer to dedicate need not come in the form of a writing or an affirmative act by the owner. *Druke*, 137 Vt. at 574, 409 A.2d at 995. For example,

[l]ong acquiescence in use[ ] by the public, if the attending circumstances clearly indicate an intent by the owner to devote the land to public use, is evidence upon which a dedication may be predicated. The allowance by the owners of repairs at public expense is one circumstance that strongly tends to show the intent to dedicate.

*Id.* at 575, 409 A.2d at 996 (citations omitted). This follows because the "theory underlying dedication is that owner-permitted use of private property by the public creates ... an expectation of continued use that estops the owner from preventing it." *Town of Newfane v. Walker*, 161 Vt. 222, 226, 637 A.2d 1074, 1076 (1993); see also *Druke*, 137 Vt. at 576, 409 A.2d at 996 ("[D]edication is actually a form of estoppel in pais, in which the offer by the owner is the representation, and the use by the public is the reliance that completes the estoppel."). Thus, in the context of an implied dedication, the public's use of the land or resource in question looms large. See *Walker*, 161 Vt. at 226, 637 A.2d at 1076 (noting that "[u]se, not ownership, is the crux of dedication").

*Town of South Hero v. Wood*, 2006 VT 28, 179 Vt. 417.

The Disputed Road is adjacent to a post office parcel in town, but scant evidence is in the record as to the use of the Disputed Road area. Some recent minutes make reference to use for some parking in the area by town contractors. Occasional use of the area to park by town employees or contractors, is not the same as longstanding use to transverse the area by the public at large. It is the temporal duration, frequency and nature of the use (especially by the general public) that gives rise to a reasonable reliance of ongoing public use by the public that "completes the estoppel" and justifies the inference of the owner's intent to dedicate.

There is one mention, in the 1/11/10 meeting minutes when the Town sought to "reclassify" the Disputed Road that it could be used as a spot to push snow onto. No history of snow storage in the area is shown.

Although the Town's 1/11/10 vote to reclassify the road to a class 4 road might or might not be valid (see discussion above and below), and towns need not maintain such roads, there is no evidence of any kind that the Town maintained the Disputed Road prior to 1/11/10. The Town's counsel argues that if snow had been placed there or cars parked in the area, maintenance may or should be assumed. The court does not agree such raw supposition is sufficient to infer the outlay of any significant maintenance expenditures at the town's expense. Beyond mention in one set of recent minutes there is no proof of snow regularly or historically being placed in the area, or even of significant parking.<sup>1</sup>

Nor is there evidence that the area was historically traversed by vehicles. Plaintiff's surveyor could find no evidence of road-like features. (Hannon Affidavit). The Town has submitted two photos to try to rebut that contention. They merely show that the area is relatively flat and not overgrown. There could be a myriad of reasons for this portion of the subject lot being kept mowed our cut.<sup>2</sup>

There really seems to be no proof shown that the subject area was used *as a road*, but at most a place to perhaps "park snow" or park some undefined vehicle(s) at undefined time(s). Dedication "passes an easement to use the property in a manner consistent with the dedication." *Town of South Hero, supra*, quoting *Walker*, 161 Vt. at 226, 637 A.2d at 1076. Because the dedication of an area as a road is based in part on the public's long use of the land *as a road*, even the scope of the alleged dedication here is not that of a road.

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<sup>1</sup> Further, mere use by the Town or its knowledge of some public use, when it has been shown to occur, is not sufficient to show an acceptance intention for the town. "The use of a road for public travel, however extensive it may be, is not, standing alone, sufficient to show an acceptance of it as a highway, and an adoption of it as such. Neither is a mere consent of the town authorities to such use, or their knowledge that one travelling thereon supposes it to be a highway. But such acceptance and adoption may be inferred from evidence that the town acting through the proper officials has voluntarily assumed the burden of maintaining the road and keeping it in repair, and where it is found that labor or money has been expended and repairs made thereon the conclusion is justified that the town has recognized the public character of the road and that it is a highway." *Town of Springfield v. Newton*, 114 Vt. 39, 44-45 (1947)(citations omitted).

<sup>2</sup> Even if the subject area had some marks in the area where cars sometimes parked, without more that would not be enough to show common law dedication and acceptance as discussed in this Part B of the opinion. The parties focused on the "clearly observable by physical evidence of . . . use as a highway or trail" portion of the 19 V.S.A. section 302(6)(a)(ii) "unidentified corridors" statutory definition. However, as described in the last section of this opinion (Part C) such ancient roads/ unidentified corridors still must be proven to be a valid road. The "clearly observable" portion of the unidentified corridors definition was included in the statute to give warning to the towns of just which otherwise legal roads they would lose to reversion if they were not otherwise researched, proven and placed on a map or reclassified. See Discussion in Part C., *infra*.

Nor does the court find that the reference by the Plaintiffs of the area as a road in their prior Environmental Court proceedings, or offer to purchase the Town's rights (in the Disputed Road) forms a sufficient basis to show an acquiescence or defense to Plaintiffs' claims. Plaintiffs have tried to work with the Town to obtain a variance and use their parcel to make improvements, despite the Disputed Roadway, but to no avail. Any offer to purchase the Town's rights appears to be an offer to settle or compromise the matter. A road dispute such as this is at heart a quiet title action. Once Plaintiffs show that they own the parcel on which the alleged road lies, the burden to prove a road (and superior title to that extent) lies with the Town. See *McAdams, supra*.

The court determines that the Town has failed to raise material issues of fact that the Disputed Road became a road through dedication and acceptance.

### *C. The 2009- 2016 Road Classification Proceedings*

As noted, starting in 2009 the Town went through reclassification proceedings to try to reclassify the Disputed Road as a Class 4 road and get it on a town road map, under Act 178, the "ancient road" law. "Ancient Roads" are in essence old town roads, that were properly created, but have not appeared on town maps. Because roads, once created, can remain in existence until formally "discontinued", over time Vermont municipalities became riddled with multiple old (or "ancient") roads, that were not on any road maps, and increasingly hard to discern on the ground. Conflicts between private landowners and towns arose, particularly when public access advocates argued that rather than abandoning such old roads, they should be converted or used as town trails in some instances.

In 2006, the Vermont Legislature passed Act 178, giving towns the option of researching the existence of ancient roads, holding public hearings on these roads, and adding the roads to town highway maps by 2010. 2005, No. 178 (Adj.Sess.), § 1 (codified at 19 V.S.A. § 302(a)(6)(A)); see also E. Goldwarg, Note, *Known Unknowns: Ancient Roads in Northern New England*, 33 Vt. L.Rev. 355 (2008). The Act (later codified and amended) used the term "unidentified corridors" for these old roadways which had been called "ancient roads". Under the Act as codified and amended all "unidentified corridors" / ancient roads not reclassified to another road or trail by July 1, 2015 were to revert to "unidentified corridors," and on July 1, 2015, all unidentified corridors were to be discontinued and the right of way in these corridors vested to the adjoining property owner(s). 19 V.S.A. § 302(a)(6)(A) and (G) and (7).

The statute defines "unidentified corridors" as follows:

"(A) Unidentified corridors are town highways that:

- (i) have been laid out as highways by proper authority through the process provided by law at the time they were created or by dedication and acceptance; and
- (ii) do not, as of July 1, 2010, appear on the town highway map prepared pursuant to section 305 of this title and

19 V.S.A. § 302(a)(6)(A)(emphasis added). This law resolved the problems created by ancient roads/ unidentified corridors by giving towns plenty of forewarning (10 years), to research, identify and prove, and then reclassify and map any old existing roads within their boundaries. As the Vermont Supreme Court has noted the Act was passed to help “quell the uncertainty that the existence of ancient roads places on private property rights.” *Town of Bethel v. Wellford*, 2009 VT 100, Para. 7, 186 Vt. 612. However, Act 178 did not grant independent authority to create or lay out new roads where none ever existed. It created a procedure where previously created roads, not appearing on maps or of evident physical location, could be researched, proven and properly classified and mapped before they would revert to the owners of parcels on which they were located.

Under Section 302(6)(A)(i), before it can be recognized, classified and mapped, an unidentified corridor must have *previously existed as a road* that was properly laid out, or dedicated and accepted. As noted above, none of those can be shown for the Disputed Road. Under the statute’s clear terms an unidentified corridor that can be reclassified and mapped is not just a location where a Town has an interest in use, or has made some prior use of an indefinite nature. It must be shown to have the legal attributes of a lawful road. The law has a “prove it, and show it, or lose it” approach, not a “propose it and show it to get it, or lose it” process. The intent of the law was to eliminate old, previously valid and legal roads, when their use had been effectively discontinued and their locations reverted to a natural state. The law did not create shortcuts to create wholly new roads where they might be desired.

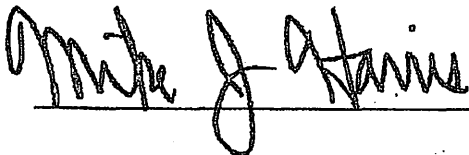
As the Town has not shown that the Disputed Road has the prior lawful road attributes, the Town’s procedures to reclassify, survey and map the Disputed Road do not give it an existence as a class 4 road – even assuming that substantial compliance with the 19 V.S.A. Section 302(6)(G) otherwise suffices to meet its terms.

#### ORDER

Based on the foregoing, the court GRANTS Plaintiff’s summary judgment motion and declares that the area designated by the Town of North Troy as the Main Street Extension on the Town survey and on 2016 town road map is not a town road.

Plaintiffs may prepare a proposed judgment order, pursuant to V.R.C.P. 78(d), consistent with this opinion, and file it with the court.

Electronically signed on April 25, 2017 at 04:03 PM pursuant to V.R.E.F. 7(d).



Michael J. Harris  
Superior Court Judge

#### Notifications:

Paul S. Gillies (ERN 3786), Attorney for Plaintiff Paul LeGrand  
Paul S. Gillies (ERN 3786), Attorney for Plaintiff Donna Scata  
Laura L. Wilson (ERN 4042), Attorney for Defendant Village of North Troy

## Alley, Kerry

---

**From:** Susan Hansen <villagenorthtroy1@comcast.net>  
**Sent:** Thursday, March 29, 2018 1:10 PM  
**To:** Alley, Kerry  
**Subject:** Re: 2018 Certificate of Highway Mileage

Hi Kerry,

I put the original in the mail today. The scanner is not working. Should see it soon.

Thanks

Susan

On March 27, 2018 at 12:39 PM "Alley, Kerry" <Kerry.Alley@vermont.gov> wrote:

Attached: 2018\_Cert\_NorthTroyVillage.pdf;

Hello Susan,

Here is a copy of the pre-loaded certificate for North Troy Village. If you can obtain the selectboard signatures and sign/date it yourself this week, it would be very helpful to me. Also, if you can email a scan of it to me ahead of the original (address below), that would also be helpful! 😊

Thank you!

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>

**Alley, Kerry**

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**From:** Croft, Johnathan  
**Sent:** Thursday, December 14, 2017 1:52 PM  
**To:** Alley, Kerry  
**Subject:** FW: #2 Railroad Street, North Troy VT  
**Attachments:** scan0001.jpg; scan0002.jpg; scan0003.jpg; scan0004.jpg; scan0005.jpg; scan0006.jpg; scan0007.jpg; scan0008.jpg

see: Legrand-v-Village-of-North-Troy-Superior-Court-Decision.pdf

FYI – I have copied these files to the following directory and also joined them into a single PDF.

Z:\PPID\PPAndRBureau\Mapping\TOWNS\_RPCs\North\_Troy\_Village

**Johnathan**

Johnathan Croft | Mapping Section Chief  
Vermont Agency of Transportation  
1 National Life Dr | Montpelier, VT 05633  
802-828-2600 | [johnathan.croft@vermont.gov](mailto:johnathan.croft@vermont.gov)



**From:** Paul & Donna [<mailto:coffeeandprayer@gmail.com>]  
**Sent:** Thursday, December 14, 2017 1:44 PM  
**To:** Croft, Johnathan <[Johnathan.Croft@vermont.gov](mailto:Johnathan.Croft@vermont.gov)>  
**Subject:** Re: #2 Railroad Street, North Troy VT

When I spoke with the Village Clerk, Sue Hanson, she said it was my responsibility to notify you of the change, and I challenged that notion. Unfortunately, the Trustees may be bitter about the outcome, even though I tried to mediate before returning to court, and may be reluctant to follow through on their part.

Enclosed are scans of the 4/26/17 Superior Court decision.

Thank you,  
Paul

On Thu, Dec 14, 2017 at 1:02 PM, Croft, Johnathan <[Johnathan.Croft@vermont.gov](mailto:Johnathan.Croft@vermont.gov)> wrote:

Good afternoon Mr. LeGrand,

Can you provide a copy of the Superior Court Decision related to the North Troy Village? This will aid in our review of this and also an understanding of what the outcomes were.

We don't have this as a pending changed for North Troy, to my knowledge, we haven't received anything from the Village yet.

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**From:** Paul & Donna [<mailto:coffeeandaprayer@gmail.com>]

**Sent:** Thursday, December 14, 2017 11:25 AM

**To:** Croft, Johnathan <[Johnathan.Croft@vermont.gov](mailto:Johnathan.Croft@vermont.gov)>

**Subject:** #2 Railroad Street, North Troy VT

Mr. Croft,

Following a Superior Court decision regarding our lot and the non-existent R.O.W., I had asked the N. Troy Village clerk on 9/5/17 to please amend the lot records to accurately portray the lot characteristics. It is my hope that you have received this information from the village.

Please inform me if you have not, and I will take appropriate measures to follow up.

Thank you,

Paul LeGrand

(802) 355-6005



## Alley, Kerry

---

**From:** Croft, Johnathan  
**Sent:** Tuesday, February 13, 2018 12:49 PM  
**To:** Paul & Donna  
**Cc:** Alley, Kerry  
**Subject:** RE: #2 Railroad Street, North Troy VT

Good afternoon Mr. LeGrand,

We have not received the Mileage Certificate from North Troy yet, but we do expect to make the changes defined in the Superior Court Decision related to "Main Street Extension" in North Troy Village.

Johnathan

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**From:** Paul & Donna [<mailto:coffeandaprayer@gmail.com>]  
**Sent:** Tuesday, February 13, 2018 12:28 PM  
**To:** Croft, Johnathan <[Johnathan.Croft@vermont.gov](mailto:Johnathan.Croft@vermont.gov)>  
**Subject:** Re: #2 Railroad Street, North Troy VT

Mr. Croft, I am following up on our previous email of 12/14/17 regarding the correct mapping for this lot in light of the Superior Court decision.

Please advise me of any progress.

Thank you,

Paul LeGrand

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