

CERTIFICATE OF HIGHWAY MILEAGE year ending FEB. 10, 1999

Fill out form, make & file COPY with the Town Clerk, & mail ORIGINAL before Feb. 20, 1999 TO:
Vt. Agency of Transportation, Planning Dept., 133 State Street, Montpelier, Vt. 05633.

We, the Selectmen or Trustees or Aldermen of WOODSTOCK VILL, WINDSOR COUNTY
on an oath state that the mileage of highways, according to Title 19, V.S.A., Sec#305, added
1985, is as follows:

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

DISTRICT 4

TOWN HIGHWAYS	PREVIOUS MILEAGE	ADDED MILEAGE	SUBTRACTED MILEAGE	* TOTAL	* SCENIC HIGHWAYS
CLASS 1	2.885			2.885	*
* CL1 LANE	.066			0.066	*
CLASS 2	.750			0.750	*
CLASS 3	6.240		0.30	5.94	* .140
STATE HWY	.259			0.259	*
TOTAL	10.134			9.834	* .140
CLASS 4	.000			0.000	*

* Class 1 Lane Mileage is NOT added into the total.

PART II - INFORMATION & 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).
Sewer Plant Road, see attached

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

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

PART II - CHECK BOX IF NO CHANGES IN MILEAGES AND SIGN BELOW []

PART III - SIGNATURES - PLEASE SIGN.

SELECTMEN/ALDERMEN/TRUSTEES
SIGNATURES:

Robert Swallace
Raymond A. Kacicot
Will [unclear]
Ann [unclear]

CLERK SIGNATURE: Donald R. Wheeler
Please sign ORIGINAL & return for Transportation signature.

DATE FILED 2-8-99

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

APPROVED: Donald C. Harvey
Representative, Agency of Transportation

DATE: 2/25/99

State of Vermont
County of Windsor
Town of Woodstock

**ORDER OF DISCONTINUANCE
SEWER PLANT ROAD**

WHEREAS at Woodstock on the 28th of September, 1998, the duly elected Trustees of the Village of Woodstock did give public notice that they had scheduled a public hearing to be held on November 23 rd 1998 at 7:30 P.M.

WHEREUPON the said Trustees did order and appoint that on the 23 rd of November 1998 they would conduct a site inspection to be held at 3:30 pm. They did give notice hereof by publication in the Vermont Standard on November 5, 1998, and mailing a copy of the notice to the Commissioner of Forests and parks and adjoining landowners by certified mail, posting at the Town Clerk's office, Norman Williams Public Library, the Woodstock Post Office, Public Bulletin Board on Central Street, and Grand Union, and giving a copy of said notice to the Woodstock Planning Commission.

ON the 23 rd day of November 1998 the said Trustees, to wit: Robert Wallace, Raymond Racicot and Anita Clark did meet and conduct said site inspection. At such meeting there appeared Philip B. Swanson, George Finn, John D. Doten Jr., Byron Kelly, Jean Kelly, Gordon Fish, Charlie Stimetz, Les Berge, Joan Wing, Jim Ford Jr., Allen White.

TESTIMONY

Rob Wallace read the warning for the discontinuance

Phil Swanson Described the Sewer Plant Road. As beginning at Route 4 and following the traveled way. All present walked the length of the road, stopping for comments at several locations.

At the buildings owned by Leonard's Gas and Electric Phil Swanson explained that the land under the buildings is owned by the Village. This arrangement is per the deed by which the Village acquired the parcel.

The road is 0.30 mile long. The first tenth of a mile is on Village land with a corner of it on land owned by Bill Alsup. The second tenth is on land owned by JBW ending at or near the front door to Sunset Farm building, the third tenth goes down toward the main gate to the sewer plant.

The buildings formerly owned by CVPS is the railroad engine house and round table.

Les Berge explained that he and his partners maintained the ditch along land owned by JBW, have paved a stretch of the road in front of the Sunset Farm building, and have maintained signs for a " Fire Lane".

Sunset Farm maintains a parking lot along the edge of the traveled Sewer Plant Road. The front step into the Sunset Farm bldg. Is at the edge of the traveled way of Sewer Plant Road.

Structures exist within the 50 foot right of way of the Sewer Plant Road.

Byron Kelly stated that if the road is proven to be a public highway that the parties who paved the road should be reimbursed for it.

All walked the road back to the point of beginning. At this time Rob Wallace asked people for comments.

Comments:

George Finn stated that he does not believe the road should be discontinued because it is the only access for emergency vehicles and personnel responding to and from the emergency services building should an accident occur at Richmond's corner and block the road.

Byron Kelly stated that he believes the Sewer Plant Road protects more than just Richmond's corner as it would allow an alternate route for vehicles and emergency vehicles anywhere between the white building (owned by Peter Saman), and along Route 4 to the Sunset Farm building.

George Finn stated that earlier this year when Mr. Alsup blocked the road with a large steel reel the Town Manager told him to move it because it was blocking a Village Street.

Joan Wing, attorney for Mr. Alsup stated that the reel was placed to mark Bill's boundary and not to block the road.

Mr. Kelly stated that if the hearing concludes that this is a public highway, the road will be where it is now, over Mr. Alsup's land.

Charlie Stimetz stated that he has been in town since 1935 and in his opinion there is no question that this is a public highway because of the continued and perpetual use of the road by the public.

Mr. Stimetz stated that he believes it would be a mistake to discontinue the road because it is a perfect detour.

Gordon Fish stated that the Sewer Plant Road is a handy road to use, and save congestion at Richmond's corner when cars turn to go up Hartland Hill Road. He further stated that Richmond's corner is a "Devil's Corner", and a bypass around it is convenient.

John Doten stated that he believes it is a public highway because it has been used for so many years and it would be a mistake to discontinue the road. He stated that any time you give up a right of way it comes back to bite you.

Allen White stated that he used to work at a warehouse and every one always used the road. John Doten stated that he also worked at the warehouse and he remembers people using the road then

PUBLIC HEARING On the 23 rd of November at 7:30 pm the duly elected Trustees of the Village of Woodstock did conduct a public hearing regarding the proposal to discontinue the Sewer Plant Road. The said Trustees, to wit: Robert Wallace, Anita Clark, Rupert Leonard, Michael Ricci and Raymond Racicot did hold a public hearing. At the public hearing there appeared the following people: Philip B. Swanson Mary Riley, Michael Brands, Byron Kelly, Jr., Roy Bates, Susan & Les Berge, Sylvia & John Doten, Susan Feinberg, Jim Ford, Tom Hayes, Casey Horner, Pam & Ron Jaynes, Jean & Byron Kelly, Sr. Benjamin Lewis, Don Marietta, Sonny Saul, Sally Shane, Mr. and Mrs. Charlie Stimetz, Shirley Wagner, Allen White Joan Loring Wing.

TESTIMONY The following testimony was received:

The Public Hearing for Discontinuance of Sewer Plant Road was continued from the site visit which took place earlier in the day.

Mr. Wallace invited Mr. Swanson to explain the components related to the issue of determination of ownership of so called Sewer Plant Road.

Mr. Swanson's presentation consisted of an overhead projected series of documents which supported the July 1998, determination by the Board of Trustees that Sewer Plant Road is legally a private road. The State Agency of Transportation has included Sewer Plant Road on maps indicating Town and Village roads since 1972. Following notification that the Sewer Plant Road was determined to be private, the State informed Woodstock that the road must be discontinued by a properly warned hearing with notification as required by Statute.

Public documents were reviewed and the past history of the road was explained. Specific documents that were reviewed were:

A letter dated 8/2/81 from Deborah J. Sisco, Asst. to Jane Duncan, Municipal Manager to Thomas P. Wright page two states "Finally I would note that the so called Sewer Plant Road is not a public highway (Town or Village highway) although portions are municipally owned and maintained, other portions are privately owned."

Woodstock Planning Commission, Notice of Decision 8/7/81, site: Spooner Barn, item 2 states "The so called Sewer Plant Road, a private access road runs through the property."

Item 11 "Access to the development is presently existing via an access from Route 4 leading to the sewer plant and other businesses including PMD Ltd. Which has in the past maintained the access."

Village Zoning Board of Adjustment- Notice of decision, RE: Spooner Barb Assoc. V-557-82 7/26/82

Item 11. E, "To some degree the impact of traffic entering and exiting via the common drive may be reduced because of the availability of the connecting private roadways leading north through the CVPS property and south to Pleasant St. However no evidence was submitted to indicate that the applicant holds a right of way over these two routes for access and egress."

Applicant's Master Act 250 application, Criterion 5. Traffic - Fifth sentence first paragraph states "Additional access is available through the Town property to the west and the east by the CVPS Corp. Building."

A memorandum from Sarah T. Richmond re: Act 250 hearing states that "In addition the Fire Department requires that fire lanes be established along the traveled way to prevent the parking of vehicles that might interfere with fire fighting capabilities."

A letter from Ron Jaynes to Philip B. Swanson dated 7/6/98 which states in paraphrase form that as an owner of the Spooner Barn the road was closed in 1983 several times during construction again in April of 1986 the road was closed and L.D. Sutherland, Jr. representing the fire department advised Mr. Jaynes not to close the road in the future without first notifying Woodstock Emergency Services.

A letter from Mr. Alsup's attorney , Ms. Joan Wing requesting that the Village stop using a portion of Mr. Alsup's land (Poma factory lot) for the traveled roadway.

Woodstock property tax map showing the area in question that does not show a public highway through the area, in the location of the so called Sewer Plant Road.

A copy of the Woodstock Village State of Vermont highway map that shows the Sewer Plant Road as a public class III highway.

Statutes from Title 19 V.S.A. sections 708, 709, 710 and 715 which outline the process for adopting town highways were shown.

The "Certificate of Opening a Highway For Public Travel date 2/29/72 was shown and the inadequate record of posting, holding meetings and recording a decision were explained. Mr. Swanson stated that he was unable to locate any records of meetings.

A Warranty deed from Sherman and Mae Bailey to the Town of Woodstock was shown. This is the deed that was submitted to VAOT with the above certificate. This deed is for land not where the Sewer Plant Road is located.

Mr. Swanson stated that the Village of Woodstock has performed maintenance on the Sewer Plant Road. In the form of grading, graveling , plowing and sanding. He also stated that the owners have performed maintenance of the road in the form of plowing, paving, ditching and grading.

The road is 3 tenths of a mile long, the first tenth is on Village lands, the second tenth extends to the front door of the Spooner Barn and the third tenth extends down to a point near the main gate to the Woodstock Sewer Treatment Plant.

Mr. Swanson explained that the village has maintained all of the road, summer and winter where the Village owned the land under the road. This is known as the "Jungle parcel" and is the westerly one tenth of the Sewer Plant Road. The Village and the private land owners owning Spooner Barn have performed maintenance on the land between the village parcel and the intersection of the access rd. To PMD and other business'. The owners have paved the road,

maintained the ditches, plowed snow in the winter. The Village has graded, graveled, and plowed and sanded part of this section that is not paved. The final leg of the three tenths of a mile turns northerly along the above referenced access road serving PMD and other business' continuing to a point at or near the main entrance to the Woodstock Wastewater Treatment Plant. The Village has not done any maintenance to this section of Sewer Plant Road. The owners of the land have performed the maintenance on this road.

Evidence concerning ownership of road was presented.

The process for laying out a road as stipulated in Vermont Statutes was explained.

In consideration of the documents researched by Mr. Swanson Trustees determined the process by which this road was added to the State highway map to be incorrect and incomplete.

In the early 1970's a certificate of opening a road was sent to Montpelier, and the road was put on the map.

Trustees agreed there was considerable doubt supporting the road as a public highway, hence their July, 1998 decision.

Byron Kelly, Sr. stated it was unfair to the public to show the requirement for a road becoming a municipal highway only as explained by Mr. Swanson this evening. He asked Mr. Swanson to explain the dedication and acceptance procedure.

Mr. Swanson explained that in addition to the process detailed in the statute of laying out a highway, traveled ways can also become highways under a process known as "dedication and acceptance" Mr. Swanson explained that the process is both simple and complex.

Mr. Kelly asked what changed the Trustee's mind regarding the status of the road being a public highway.

Mr. Wallace replied that new evidence has been brought forward, that the Trustees believed at their 7/31/98 meeting sufficiently proved that the road was a private road.

Mr. Kelly asked what new evidence was brought forward.

Mr. Wallace replied there are several pieces of evidence, all of the land development permits from 1982 refer to this road as a private road, 2) owners have been paying taxes on the road, and when the owners approached the town listers to lower the value on the property to reflect the public highway- the listers did not lower the value because the road is private as it does not show up on the land records map. This opinion was also stated by the Woodstock Board of Civil Authority when they heard the appeal of the owners tax valuation. 3) The manner and method by which the road was added to the State of Vermont highway maps was improper as the required public hearings were not held and the deed filed with VAOT is for land not near the road.

Mr. Kelly stated that the most exhaustive title search will not show the presence of a road that is created through the process of dedication and acceptance.

Mr. Kelly asked if the Trustees hired Atty. Mayhew to conduct another review of the question as to whether this is a private or public road.

Mr. Wallace stated that no the Village did not.

Mr. Kelly asked if Atty Mayhew has seen the new evidence

Mr. Swanson replied that he had shown the new evidence to Atty Mayhew.

Mr. Kelly asked what Atty. Mayhew thought of the new evidence.

Mr. Swanson stated that Atty. Mayhew thought that there was a series of facts that were often contradictory some evidence indicating a private road exists and other evidence indicating a public road exists. Different people will draw different conclusions from the same facts and evidence.

DEDICATION AND ACCEPTANCE

Essentially there are two components to dedication and acceptance First, the landowner must dedicate the land to the use of a public highway. This dedication need not be in writing. By allowing the public uninterrupted enjoyment of lands for a road, the owners of the are dedicating these lands to use of a road.

The second part of the formula is “ acceptance “. The governing body of the municipality must accept the land and adopt the land for a highway from evidence that the town acting through its proper officials has voluntarily assumed the burden of maintaining the road and keeping it in repair. The power to authorize road maintenance and repairs rests with the legislative body not with either individual board members or the road commissioner. The board must take action to accept the road.

Quoting directly from page four of the text, Attorney Mayhew writes “Given the assumed facts, otherwise unexplained and undisputed, it appears that under the guideline summarized above (Excerpts from Vermont Supreme Court cases explaining the process of dedication and acceptance) the Road is a legal public highway established by dedication and acceptance”.

Quoting from the excerpts from Vermont Supreme Court cases , found at the top of page 4, Mr. Mayhew writes “ If the act relied upon to evidence the Selectboard’s acceptance of a highway has mandatory statutory requirements such as the filing a writing or other record with the town clerk, evidence must also be shown that the statute was complied with. Otherwise the act will not be deemed to be a legal act of the Selectboard.

Further Mr. Kelly suggested the issue be tabled tonight, and the Village go through the courts to determine whether the road in question is public or private.

A search of public record by the Village attorney was discussed. Based on documents reviewed at that time, it appeared the road was public, but after further search of public record. Mr. Swanson determined the property deeded to the public was not the property of Sewer Plant Road and the process of Sewer Plant Road being included on the state highway maps was not valid.

Mr. Kelly pressed the Board about why the Trustees and Mr. Swanson want to close the road.

Mr. Jaynes apparent part owner of part of the road stated it is not a question of the road being open or closed, only the intent of formally establishing in public record ownership of the road.

The Public Hearing warned for this evening is for Discontinuance of a Public Highway, and not a hearing to close a road.

The Public Hearing is being held, because determination made in July by Trustees that Sewer Plant Road is actually a private road, and the State said it is a public road until the road is formally discontinued.

Charlie Stimetz a Selectmen in Woodstock, elected in 1964 and, later Town Manager (Woodstock's first Town Manager) stated the road has always been used as a public way.

He said that in the early days of his public office there were several roads for which Woodstock was not getting funding from the State for maintenance expenses. The Town requested the State give aid for some roads that were connecting links, within the Town and Village. An engineer came to Town, looked over the roads, and if roads did not meet requirements, there was no funding given and the State did not accept the roads as public highways. Mr. Stimetz stated that engineers looked very carefully to make determination if roads were acceptable. Since the Village has been getting funding, it appears the engineers must have considered the road met the criteria sufficiently to receive funds.

On the other hand, evidence presented this evening makes this theory doubtful.

When Mr. Stimetz came to Woodstock in 1935, the road was in existence, and Woodstock Electric, the precursor of CVPS was located on the road, but the road was never closed to public traffic other than for maintenance.

Noting that his opinion is not legal, and that the public needs the road, he said it could be important to the people of Woodstock if travel around Richmond's corner becomes a problem.

Mr. Jaynes stated that taxes have been collected by the Village for the property on which the road sits, and until recently there was never an issue about the road being a public way. The listers and Board of Civil Authority, through activities of each Board have indicated the road to be privately owned. In addition, George Finn, E-911 coordinator, has posted emergency location signs which indicate the road has private destination.

The assumed owners, who have paid taxes on the property have also maintained the road which has been closed periodically for road maintenance and road repairs. The prior owner also closed the road and this practice has continued.

Don Marietta suggested some assurance that the road will remain open through perhaps an agreement between the Village and owners.

Tax relief for the owners and an agreement for public use was suggested by Mr. Stimetz.

Joan Loring Wing, attorney for Mr. Alsup, owner of Poma and an owner of part of the privately owned road indicated all new information supports private ownership of the road and nothing new indicates differently. She stated it appears a wrong line was placed on a map. Discontinuance of the road will correct the error.

Mr. Kelly stated that one 15 year period of uninterrupted use of a road by the public constitutes the road becoming a public highway.

Mr. McDonald stated the Trustees should move to accept the road and make it public.

Closings of the roadway were reviewed:

Rockefeller's representative, Jaynes & Berge and CVPS and its predecessor Woodstock Electric Co. have closed the road for maintenance from time to time.

Mr. Lewis stated he was an employee of Woodstock Electric and it was his job to set up blocks for barricades and close road, when it was partly owned by Woodstock Electric. This was in 1939 or 1940.

Discussion about securing right of way for the traveling public was suggested by many.

The road from Route 4, off Pleasant Street, is partially village owned, partially owned by Mr. Alsup, and the JBW partnership, as far as a point beyond Sunset Farms toward the sewer plant where it meets the next privately owned section of road.

There are many owners along the road, and Mr. Jaynes stated he cannot guarantee whether all owners will agree to keep the road open.

John Doten said it is the sense of the public at this meeting that the road should remain open as public highway, and it is the only reasonable access for emergency service vehicles along that roadway. He also suggested that a legal decision should be made by the courts and not by the Trustees.

Ron Jaynes stated that a negotiated travel way with the owners may be arranged for use by the public without the road becoming a public highway.

The final issue of discussion was the requirement for the width of a roadway.

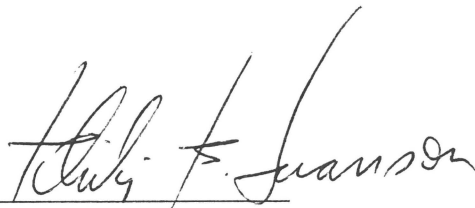
DELIBERATION the Trustees considered all of the testimony heard tonight and concluded that the road was improperly laid out as a highway on February 29, 19972; further, that the principles of "Dedication and Acceptance" were not met.

ORDER OF DISCONTINUANCE Under authority contained in V.S.A. Title 19 Chapter 7, the Board of Trustees voted to discontinue the Sewer Plant Road from Pleasant Street, (US Route 4), easterly a distance of three tenths of one mile, as shown on State of Vermont highway map of the Village of Woodstock.

FURTHER the Trustees found in the aforesaid hearing that no damages accrued to any of the parties hereunder. Lands, with appurtenant rights and title thereto, shall set and belong to the respective parties pursuant to 19 V.S.A. sec. 775.

DATED at Woodstock, Vermont in the County of Windsor and State of Vermont on the 28th day of December 1998.

WITNESS:


Philip B. Swanson

BOARD OF VILLAGE TRUSTEES

