

Brandon Select Board Hearing
Discontinue All of Creek Road (Town Highway #57) and, Throw Up and
Discussion all of Town Highway #57 Located Between Its Intersection with
Town Highway #4 (Known as Pearl Street) and Westerly to the Town of
Sudbury Town Line
April 8, 2019

Board Members Present: Seth Hopkins, Doug Bailey, Brian Coolidge, Tracy Wyman, Tim Guiles

Also in Attendance: David Atherton, Brent Buehler, Kirk Thomas, Alyssa Mollz, Ellen Sheffer, Gordon Nailor, Russell Jones, Bill Powers, Susanne Wetmore, Charles Powell, Paul Quesnel, Paul, Stone, Sharon Stearns, Jason Martin, James Eikenberry, Derek Larsen, Heather Nelson, Bruce Bove, Erin Gallivan, Kjell Thompson, Shari Vaccacella, Lindsey Berk, Matthew Orchard, Sylvia Howland, Wayne Howland, Marielle Blais, Bernie Carr, Sue Gage, Karl Fjeld, Jeff Stewart, Robert Murphy, Lou Faivre

1. Open Hearing

Seth Hopkins, Board Chair, opened the hearing at 6:30PM.

Seth Hopkins reported there has been a request to discontinue all of Creek Road and throw up Highway #57 located between its intersection with Town Highway #4, known as Pearl Street, and westerly to the Town of Sudbury Town Line. A site visit was conducted at 6:00PM. The Select Board has received a number of letters in opposition to the closing of the Road (See Attachment). Mr. Hopkins noted the Select Board meeting will convene at 7:00PM. Mr. Hopkins advised this is not an initiative, but is a process that has to be followed when a landowner initiates the process. A petition has been received from a landowner that sets the process in motion, which includes a public notice, site visit and hearing. After the hearing, the Select Board will deliberate and a decision made within 30 days.

Mr. Hopkins opened the floor to public comment.

Gordon Nailor asked the reason for the petition. Paul Stone, petitioner, asked the road be discontinued when he purchased the land in 1997. The deed did not indicate there was a road. Mr. Stone provided maps to the Select Board. Currently, the road is not maintained at all and the landowners that access the land have to maintain the road. Seth Hopkins advised the Town is not required to maintain a Class 4 road. Mr. Stone stated there was an attempt to discontinue it in 1990 that was not properly carried through and he would like it discontinued, as it would make it easier to sell an easement to the NRCS. They own part of an easement and this would fulfil the goal for a permanent use for hunting, fishing and camping; giving up his right to cut timber. Mr. Stone does not intend to stop landowners who are landlocked to the south of accessing their property. State law indicates that landowners cannot be landlocked and they have a right of way to an existing road. There is some language in his deed that indicates there is already a right of

way across his land to other landowners to have access to their land. Mr. Stone stated there was discussion of reducing the road to a trail, which may serve his purpose, but before he commits, he would like to consult the attorney for the NRCS.

Mr. Eikenberry advised the USDA can acquire the land as is, but it would be less land if the road were not thrown up and this would add up to several acres.

Paul Quesnel agreed with Mr. Stone. As a landowner along the road, he noted there is a lot of garbage including tires, wrecked vehicles, batteries, etc. that has to be cleaned out every year from others using the road. He stated there could be an issue with water quality from battery acid and if it were a trail, there could be some access restriction.

Bruce Bove, resident of Brandon, was concerned the Town would give up the rights to a road that could be used in the future for recreation, access, etc. He questioned why the Town would give away property that is worth something and is used now and in the future. He stated recreational use of Class 4 roads and trails should be a priority in this area, as it is the reason many people live here. It is also potentially a great draw for tourism with the recreational opportunities for people that are visiting the region to use this area.

Erin Gallivan sympathized with Mr. Stone's situation. She noted that she uses the road for recreation and thought it makes the Town a better place to live.

Bill Powers asked if it goes into Sudbury and it was noted the road ends at the Sudbury town line. James Eikenberry confirmed there is no town road on the Sudbury side.

Sharon Stearns stated she did not see record of anything in Sudbury, but Old Creek Road would not have existed without a road in Sudbury and with some research, she believes it is a history issue on the Sudbury side.

Wayne Howland advised that he just recently drove through the road.

Lou Faivre stated in looking at a VTrans map, it shows a Class 4 road only meeting the Creek and then it shows as a trail. He had been back as far as the Creek on a tax complaint. It was noted that one can drive through it from one end to the other, as long as the Creek is low. Seth Hopkins stated there is a designation of "not up to standard". Mr. Eikenberry stated the map shows the road goes from Pearl Street to Sudbury as a Class 4 road.

Karl Fjeld asked if there is a cost associated with Class 4 roads. Seth Hopkins advised that Class 4 highways are not maintained by the Town and there is no cost to the Town.

Wayne Howland stated when he owned the land; it was maintained by the Town several years ago.

Gordon Nailor stated there are still people that go down the road to watch the deer runs even though it is rough and is no longer used for agriculture. Mr. Nailor would like to see the Town go down with a brush hog once a year to keep it cleared for cross-country skiing and biking. The

reason the culvert was washed out is that someone cut trees along Otter Creek and it got washed out.

Dave Atherton has been speaking to the Vermont Department of Conservation that did a site visit and the issue is that there would need to be a Wetland permit to place any fill, or the Town would be in violation. There would also need to be a Stream Alteration permit due to the bank erosion. Mr. Atherton submitted the information received as testimony. The State is planning to come to the next Select Board meeting to provide findings on it. Mr. Atherton noted in addition to the Wet Lands permit and Stream Alteration Permit, the Town would need to follow the regulations for the River Corridor to maintain the Class 4 road, as it would have to be brought up to standard. This is a concern that it would cost the Town money. Seth Hopkins stated this is what the State has indicated the Town would need to do, which leaves the option to leave it as is, bring it up to a class that is passable, make it a legal trail or throw up the road. The Select Board will not be making a decision tonight. There will be deliberation and a recommendation at a future Select Board meeting with a decision made within 30 days.

Sharon Stearns noted she has lived in Brandon for 31 years and has used this road for horse rides to Sudbury. She has concerns with the USDA signage that she can't go past the green signs as marked. There needs to be concern for public property and she would like to see the road remain with the Town. Ms. Stearns owns businesses in the community and uses the land and brings people from other areas to ride horses with her that supports Brandon's businesses. She thinks it is a way to bring people to the community. Ms. Stearns submitted a 425-person petition to support the trails in Brandon. She hopes it is kept open for the public as she also sees people using the trail for walking and cross-country skiing. Ms. Stearns noted concern with riding horses on the other roads, due to the speed of the cars, and thought it important to keep the trails open. She stated this is how people got from Brandon to Sudbury at one point and she thinks it is important to maintain. Ms. Stearns thanked everyone for coming out to support this effort and to send a message to keep Class 4 roads for the residents.

Kjell Thompson thought that the road would have been grandfathered in, as changes could not be made to Long and Short Swamp roads. Dave Atherton stated those roads are currently being maintained. Seth Hopkin advised this road has been designated as "not up to standard" and has lost its grandfathered clause for maintenance. Had the Town maintained the road, it would have been treated the same as Long and Short Swamp Roads, with the right to do it without the permits.

Kurt Thomas spoke in support of not throwing the road up. He noted that the Town is weighing the benefits of a couple of people to the benefits of many people. There is concern that the land is for recreation. There was recent investment and reconstruction behind the old Churchill House Inn for access to Moosalamoo and he is concerned for giving up this access. He stated this provides a dirt road loop, as opposed to fighting the traffic, for those wishing to use it for horses and noted concern of giving up this option for the benefit of a few.

Karl Fjeld stated the area is used for cross-country, biking and hunting and cars drive down part way for access as some of the people are elderly. This is a recreation opportunity for sportsmen as well and it is used by a broad spectrum of people.

Paul Stone stated it is not his intention to limit the access to his land and he welcomes fishermen and hunters. Paul Quesnel would like to see better care taken of the road; if someone is using the trail, they should pick up garbage that is seen.

Sue Gage thanked Mr. Stone for not posting his land. She respects people who do not post their land, but the problem is that if he parts with his land, the future landowner could post it and she thinks it important to keep this land unposted.

Sharon Stearns stated the USDA signs restrict access to that area. James Eikenberry advised there is an easement, but the area is not restricted. The landowner retains the rights and the USDA does not have a say in whether the land is posted. The Vermont Fish and Wildlife own six of these easements and it was hoped that this could be the same situation for this land. Ms. Stearns stated the signs are obtrusive and intimidating and suggested the signs should be changed.

Paul Stone's long-range plan is to turn this property over to the Vermont Fish and Wildlife. The State is interested and he thinks it will happen.

Kjell Thomson stated the signs are intimidating and make people stay away.

Doug Bailey thanked everyone for attending the hearing to share comments and noted the Select Board will take this under advisement within the next 30 days.

2. Close Hearing

Seth Hopkins closed the hearing at 7:08PM.