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June 26, 2023

BY EMAIL

Town Selectboard Members
c/o Mariah Cilley, Town Clerk
PO Box 6
Tunbridge, VT 05077
tunbridge.adm.assist@gmail.com

Re: Falls Hill Trail

Dear Members of the Tunbridge Selectboard,

My client, Goodwin Hill, LLC (Cal Heminway), spent most of 2020 and 2021 learning that the Town had attempted to create a legal trail on its property starting almost ten years earlier and then trying to work with a planning committee which generally ignored him. Unfortunately, the Town's attempt resulted in a trail of only .3 miles long, the "trail to nowhere", terminating in the middle of my client's land and leaving users with the choice of either making an abrupt about face or committing trespass. The trail actively encourages trespass, and trespass has occurred and has resulted in damage to my client's land. My client's offer to exchange LT #4 for permission for the public to legally walk across the full width of the land was an attempt to let the Selectboard gracefully eliminate many of the errors caused in 2010-2013 and create a situation which he believed would satisfy all/most parties including the public. It would not, however, eliminate the question of trespass, as the Selectboard has pointed out, but rather would make it a problem for an adjoining landowner. My client's offer was a sweetener that we believe led Selectboard member O'Brien to suggest a public/private partnership that would benefit everyone, but this was not seriously followed up on, and the Selectboard never engaged us in meaningful discussion on a resolution.

We are now in receipt of a May 30, 2023 email from Mariah Cilley informing us that the Selectboard has rejected my client's offer, and are instead offering what appears to be nothing in return for the selectboard's proposal that LT #4 be voluntarily continued through the rest of Goodwin Hill, LLC's property. It appears that the Selectboard has misunderstood the situation and our proposal, and we are treating the Selectboard's response as a formal rejection of the offer.

In light of the Town's rejection of our client's offer, we renew our request that the Selectboard discontinue LT #4 and address the problems associated with the original attempt to create LT #4 as set forth in our December 7, 2021 letter.

As discussed in our initial letter of December 7, 2021, there is no evidence that LT #4 was ever laid out as a public highway or properly as a trail. In fact, it does not appear on any ancient highway maps or on any official VTrans highway maps from 1931 (the earliest year available) until 2013 when the ancient roads committee asked the state to add it without going through the formal procedure to lay out a public highway. We have heard it suggested that LT #4 was part of an ancient military road, but there is no persuasive evidence that this is true and the ancient roads committee undertook no investigation or surveying to establish the veracity of this claim beyond looking at a hand-drawn sketch not drawn to scale and without any landmarks. Importantly, no survey or legal description of LT#4 has ever been produced. Furthermore, the Town cannot rely on the ancient roads statute, because the only reason LT #4 is visible on the ground is because it has been maintained as a result of periodic selective logging underwritten and managed by the landowner.

Because of the failed attempt to lay out LT #4, it is not a public road or a legal trail. The Town's attempt to create it as such without providing our client with the prior notice or a hearing required by law was a violation of the procedures for laying out a public right of way in 19 V.S.A. § 305. Additionally, the Town was required to provide the Vermont Agency of Transportation with a survey and legal description of the trail when the Town purportedly laid it out. See 19 V.S.A. § 305. No such survey or legal description has ever been filed. As such, LT4 was never legally created, and the Town is required to remove it from the Town Highway Maps. Also, we should not forget that the Town's attempt resulted in a trail of only .3 miles long, the "trail to nowhere", terminating in the middle of my client's land, and leaving users with the choice of either making an abrupt about face or committing trespass.

Finally, even if the Town had properly created LT #4 as a public right of way, under both the Vermont Constitution and the United States Constitution the Town would be required to pay our clients just compensation for the taking of a public right of way.

Our client's proposal to grant an easement was intended to be a win-win. Given the Selectboard's rejection of that proposal, we request that the Town clean up this morass and discontinue any interest it has in "Legal Trail 4" forthwith. As noted above, LT #4 actively encourages trespass and damage has occurred to my client's land as a result. The Town is officially on notice of this situation and my client reserves the right to hold the Town fully accountable for any subsequent damage if it fails to address the problem.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.

/s/ Nathan H. Stearns

Nathan H. Stearns

cc: J.C. (Cal) Heminway, Jr.