

Posted Minutes below:

November 30, 2023

Trails Committee: Legal Trails to Class 4?

Meeting to order at 6:03 pm

Trails Committee- Elisse Gabriel, Jonathan Bicknell, Rudi Ruddell, Susan Salster, Thornton Hayslett

Public: Peter Hayden, John Echeverria, Betty Brown, Allison Ericson, Amy Frost, Matt Frost, Brenda Fields, Lydia Flanagan, Maureen McCullough, Margaret Rogers, Ellen Hosford, Mariah Lawrence, Michael Sacca, Liz Williams, Sarah Heminway, Cal Heminway

Emails received from several parties (Anita Abbott on behalf of Priscilla Farnham), Cal Heminway,...

Only Legal Trail landowner feedback so far on LT reclassification to Class 4 has all been opposed, for varying reasons

John Echeverria presents at least 5 points:

says 'eminent domain', not simple redesignation; vehemently opposed and feels town effort to do this would fail; threatens that this would incur further costs (issue of eminent domain questioned by others afterwards, and no resolution or verified clarification came during meeting)

Peter Hayden 'agree to disagree with everything you have said', essentially boils down to obstruction of public's right to use the trails, now leading to deterioration due to lack of maintenance. Other residents (including Alisson Ericson, Amy and Matt Frost) voice agreement and note desire to pursue whatever means necessary to maintain public right of way

Amy (with support from others) notes climate change has some concerned about increased extreme weather patterns and flooding in the valleys. Access to high roads is important for recreation but should be available for contingency planning into the future. There is encouragement to get feedback from the road crew and emergency personnel on past, current and future needs.

Brenda Field notes that response following July 2023 flooding did not include the Legal Trails to any significant extent and is not sure this is really a pertinent issue

Ellen Hosford has submitted a letter to Jonathan Bicknell, highlights perceived disrespect of landowners, lists at least ten items of complaint with what this procedure would do – wants mediation/arbitration; cites 'no trust in public process'

Matt Frost echoes Peter Hayden's sentiments; not about trails, its about reclassification of a public right of way; notes Ordway upgrades after designation as Class 4; meets all of Ellen Hosford's checkboxes for quiet road; how do we maintain useable rights of way? Believes threats of eminent domain and other threats are smokescreen

Jonathan reads letter from Cal Heminway – opposed to this effort, feels it is 'overkill'

Anita Abbott email – relays info from Priscilla opposing efforts to reclass – thinks it would be expensive, not the best option; hopes other options are more practical

Ellen Hosford agrees to read poem from Mel Goetz concerning beauty and peace of Orchard Rd

Fern Strong opposes reclassification to Class 4, feels fragility would be exacerbated

Maureen McCullough (with support from others) notes complaints that the SB has not handled discussion well, and after several years it continues to be a divisive topic. Betty Brown disappointed selectboard didn't act in beginning, 'same info round and round'.

Rebuttal from others focused on ongoing litigation driving this journey, feel the complaints are misplaced, and SB should not be blamed. George White notes SB has been respectful, bent over backward to accommodate and hear out multiple perspectives

Other opinions pushing for a more collaborative approach to bring this to a mutually agreed upon conclusion

Comment that Class 4 are unmaintained roads, but may be worth reclassification if ambiguity is resolved on public rights. Several comments reflecting worry over costs to maintain or upgrade, but Peter Hayden notes huge range of levels of maintenance on class 4 roads.

VT Statutes 19 V.S.A. § 310 (b): "Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified..."

Sarah Heminway – welcome folks to walk on their land on Falls Hill, but feels Class 4 would invite vehicle traffic and opposes this option

John Echeverria: hoping for legal dispute over whether case is ripe to decide who has authority over maintenance of Legal Trails to be resolved in the next few weeks (basis? Case has gone to Supreme Court but has no date set at this point)

John claims he has never advocated for throwing up the trail – but is vehemently opposed to bikes

George White pushes back on this, John concedes this wasn't always his position, shifts discussion to re-routing bike trail

Cal logs on, feels charge to reclassify to Class 4 is overkill

Ellen Hosford and Lydia Flanagan note trail users like to go on trails that have no vehicles.

Sue Salster (as Trails Committee member): is this all Trails, or just Orchard Rd? Differing opinions offered in response; no consensus on whether reclassification would apply to all Legal Trails

Clarification desired on whether the SB is considering all legal trails to be reclassified as class 4 or just the Orchard Trail. This clarification has an impact on overall public reaction. Some also feel that if only Orchard trail then one landowner is being targeted in this decision.

Meeting adjourned at 6:50 pm

Email from Fern Strong on 11/22/2023

"I am sharing my opinion of the proposal by the select board to change the legal trails to 4th class roads.

I think it is a very BAD idea. The legal trails are fragile during parts of each year. By doing this, the motorized vehicles that use 4th class roads would harm them irrevocable! I have seen the damage done to the 4th class road near me. The ruts caused by trucks, jeeps, ATV's, etc. have made it difficult to traverse and would destroy these trails. To say nothing of the trash left by these people who are only out for a joy ride.

I hope the select board will reconsider this scheme.

Fern Strong
Gifford Hill Rd"

Email from Cal Heminway on 11/28/2023

I, together with my four children, am a landowner concerned with legal trail #4 which begins and ends on our land off Falls Hill Road.

We do not support the LT process as imposed upon us in 2010-13 and have tried unsuccessfully since discovering the existence of LT #4 in 2020 to obtain a position from the Selectboard.

Attempting to Convert the LTs to class 4 Roads is not, in our opinion, a workable solution to any of the identified concerns. We oppose it.

Below is our understanding of the issue as it impacts us and our understanding of impacts upon the other players

I

I have a conflict on 11/30 and therefore have elected a written mode instead. My hope is for Zoom to be working

Thanks,

Tunbridge Selectboard proposal to assess conversion of Legal Trails to Class 4 Roads

ISSUES

- LT structured to invite user trespass - LT #4.
- State statute not properly addressed in 2010-2013 application.

Convert to class 4 roads

Tunbridge Taxpayers

- Fund town between \$30, 000 and \$55,000 “replacement” expense
- Fund negotiated individual owner reduction in sale value.
- Fund fees associated with gaining (or being denied) state approval and for administrative/legal opinions regarding reclassification and processing from legal rails to class 4 highways
- Fund annual future operating expense.
- Orange Book (OB) recommends town retain attorney for setting up roads.

General Public

- Use as per Class 4 specs.

Tunbridge Elected Officials

- Develop regulations (OB 13). {Would there be separate regulation for “regular” class 4 highways and a separate set for former LTs? Could this work in practice? If so, former LTs would possibly assume the presence of 4 wheel motor vehicles and electric bikes on the new class 4 highways.}
- Assume any additional obligations associated with upgrade from LT to class 4 highway
- Include estimated annual operating expense

Affected Abutting Landowners

- Fund attorneys for conversion negotiation
- Who would assume risk of loss for possible ROU litigation

Goodwim Hill, LLC
Cal Heminway
Sarah Heminway
Deborah Heminway
Seth Heminway
Bill Heminway
November 30, 2023

Email from Anita Abbot on 11/29/2023

"Hello Jonathan:

Just a quick note to you with one more voice for the Tunbridge Trails Committee meeting tomorrow night.

I just spoke with Priscilla Farnham, a neighbor and friend, who wanted to let you know she opposes turning the legal trails into Class 4 roads.

Her principal reasons were feasibility and cost: The Crossroad would need extensive draining, many culverts, etc., additionally, the growing yearly maintenance costs of repairing and keeping these proposed class 4 roads to the town and taxpayers. Lastly, she thought this idea to be a poor solution, and hoped other plans were more practical.

Sincerely,
Anita Abbot"

Email from Felicity Swayze on 12/2/2023

"Hello Jonathan.

This is just to let you know that, as a landowner in Tunbridge, I cannot support converting trails to Class 4 roads. It would be seriously damaging intrusion into our cherished woods and fields.

Felicity Swayze
802 281 6005"

Physical Mail received from Herbert and Mel Goertz on 11/30/2023

Orchard Road October 8, 2020

This is no ordinary road.
People come from afar
to walk it in the morning
when the trees are brightening
and mountains arise
out of the night.

A dirt road that ends
with a pond
and a trail into the woods,
a road for dogs and horses,
deer and coons.

There is little traffic here
and much friendliness,
a hello or good morning
as we pass
awakened to the new day
by Nature's footsteps.

Mel Goertz

Dear Jonathan Bicknell,

November 27, 2023

We understand that there are some proposals to upgrade the trail running south beyond Orchard road to a Class 4 Road. While at present there are no formal hearings on the matter, we would like to register our strong opposition to any such change. We would be glad to explain at any future hearings, but at this stage we just want to make it clear that on a scale of 1 to 10 (with 1 being in favor of reclassifying the trail to a Class 4 Road, and 10 strongly opposed) we are a 10.

Best regards,

A handwritten signature in cursive script that reads "Mel Goertz". The signature is written in dark ink and is positioned above the printed name.

Herbert A. Goertz
Mel Goertz

44 Orchard Road
Tunbridge, Vermont 05077

Paper received from Attendees at the TC meeting on 11/30/2023

Hi Jonathan,

The following is the written version of my thoughts about 'Orchard Road Legal Trail' being changed to a class 4 road. I will share these thoughts at the 11/30/2023 Trails Committee meeting as well as sending in written form to you. It is my intention to listen as well as speak and I will add an addendum if I hear anything that shifts my thoughts and beliefs on this matter. I will also attach the letter I sent to the select board when they asked for letters.

1. Changing any of the legal trails to class 4 roads is stupid and disrespectful of all landowners and taxpayers in Tunbridge.
2. It exacerbates the conflict.
3. It does not solve the conflict.
4. It inflicts greatly increased legal fees on town taxpayers for no gain. \$30,000+ has already been spent for what?
5. Lack of decision-making and prolonging what has been a very negative process sets a bad precedent for town relationships with private landowners and for conflict-resolution processes in the future.
6. There is no respect for the environment nor the town plan based on retaining town's agrarian nature. There has been no talk about how nice it would be to have trails on which there is no traffic and/or a simple nature trail for quiet enjoyment and education.
7. What about the cost of maintaining more class 4 roads when town has trouble staying on top of current class 4 roads.
8. Very, very expensive and time-consuming given the number of town residents making use of legal trails/class 4 road(s).
9. Opens the door for ongoing conflict regarding motorized vehicles accessing all the class 4 roads in town.
10. This conflict regarding Legal Trails is mismanagement by the select board. There needs to be mediation/arbitration to resolve this matters in a collaborative way. It is not helpful to take a 'winner/loser' position nor to engage in upping the ante to win. Personal feelings need to be separated out and a neutral arbitrator needs to lead the process to a fair solution. That is a better use of town money.
11. This is a divisive issue and there is no trust that this matter could be presented to the town public in a fair and factual way should the select board want a public vote on this matter.
12. The town needs arbitration/mediation to find the way through to a compromise that is respectful and leads to working together to develop a town asset with imagination (nature trail) (bike path route) and utility.

Maura McCallough
Susan Salote
C. H. Hagan
Margaret Rogers

Betty Brown
Al Appel

Email from Susan on 12/5/2023

Hi there, Jon.

I was unable to attend the November 30th meeting regarding the legal trails.

But I do want you to know that I am opposed to turning them into 4th class roads.

Thank you for your commitment to the community. It is very much appreciated.

Susan

Email from John Echeverria on 12/12/2023

SB Members,

Attached is the letter I gave to Jonathan this evening and which I intended to have my lawyer email Jonathan earlier. The author of the letter is Fritz Langrock, who specializes in highway condemnation issues, He explains in this letter why establishing a Class 4 Highway would involve the laying out of a highway (not a reclassification) and why doing so would involve the use of eminent domain.

John Echeverria

Attachment on email from John Echeverria



December 11, 2023

Jonathan Bicknell, Chair
Tunbridge Trails Committee 271 Vermont Route 110
Tunbridge, VT 05077

Re: Tunbridge Trails

Dear Mr. Bicknell:

I am writing to you on behalf of my clients John Echeverria and Carin Pratt. I understand in your capacity as Chair of the Tunbridge Trails Committee you are gathering feedback on the idea of establishing Class 4 Highways on the paths of the Legal Trails in Tunbridge to promote bicycle recreation. Because I have experience representing landowners in connection with transportation projects and associated condemnations, John and Carin asked me to submit these comments to you.

I understand one issue under discussion is whether establishing Class 4 Highways on existing Legal Trails in Tunbridge would involve exercise of the eminent domain power entitling affected landowners to financial compensation from the Town. In my opinion, the Town could not undertake this without paying financial compensation to the landowners. (There is also the question whether the Town can lawfully take the land to establish Class 4 Highways in these circumstances.)

Title 19 of the Vermont statutes draws a fundamental distinction between highways and trails. "Town highways" are defined as "Class 1, 2, 3, and 4 highways." 19 V.S.A. § 1(23). See also 19 V.S.A. § 301(7) (same). A trail is defined as "a right-of-way that is not a highway." 19 V.S.A. §301(8); see also 19 V.S.A. § 302(a)(5) ("[t]rails shall not be considered highways").

Because the existing Legal Trails in the Town are, by definition, not highways, establishing Class 4 Highways on the paths of the trails would necessarily involve the creation of highways, that is, the "laying out" of highways. See 19 V.S.A. §§ 708 to 714 (setting forth the process for laying out highways). See also 19 V.S.A. §§ 740-743 (setting forth the process for judicial review of town decisions to lay out highways). When a town seeks to lay out a highway it must pay or tender to affected landowners appropriate monetary "damages," 19 V.S.A. § 719, and a town's offer of damages is subject to subsequent reexamination in court. See 19 V.S.A. § 740. In this context, recoverable damages are defined as "the value of the most reasonable use of

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A Limited Liability Partnership Including a Professional Corporation

Jonathan Bicknell, Chair
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the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property.” 9 V.S.A. § 501(2). See also 19 V.S.A. § 740(b) (indicating that the word “damages” as used in section 740 “shall have the same definition as set forth” in 19 V.S.A. § 501(2)). The statutory command to pay damages for laying out highways conforms with Chapter 1, Article 2 of the Vermont Constitution, which provides: “That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person’s property is taken for the use of the public, the owner ought to receive an equivalent in money.”

The most important part of the damages claim is what is called severance damages. That is the amount that the taking decreases the value of the remaining property of the landowner. If the town were to layout a Class 4 Highway on their land, it will likely decrease the total value of John and Carin’s property significantly.

John and Carin and other affected landowners would be entitled to monetary compensation in these circumstances because the laying out new Class 4 Highways would deprive landowners of valuable property interests. As you are aware, John and Carin have contended in court that owners of lands subject to Legal Trails possess the legal right to determine whether and how to maintain and/or repair the trails crossing their properties. If the Town laid out Class 4 Highways on the Legal Trails, it would appropriate this legal right from John and Carin and other landowners for the Town’s own use.

I understand it has been suggested that establishing Class 4 Highways in the path of the Legal trails would involve the “reclassification” of a highway, rather than the laying out a highway. That is not correct. 19 V.S.A. § 708 addresses the procedure for having a “a highway . . . reclassified.” Under this language, the necessary starting point for a highway reclassification is the current existence of a highway. Again, a legal trail, by definition, is not a highway. Thus, highway reclassification would have no relevance to establishing Class 4 Highways on the path of existing Legal Trails.

Thank you for your consideration.

Very truly yours,



Fritz Langrock
flangrock@langrock.com
FHL:jmj
2068773.1

Email from John Echeverria on 12/13/2023

Jonathan,

I believe this portion of the SB minutes badly mangles what I said. So, for the record, I maintain that this portion of the minutes is not accurate. If you would like corrections, please let me know.

John

John Echeverria: hoping for legal dispute over whether case is ripe to decide who has authority over maintenance of Legal Trails to be resolved in the next few weeks (basis? Case has gone to Supreme Court but has no date set at this point) John claims he has never advocated for throwing up the trail – but is vehemently opposed to bikes George White pushes back on this, John concedes this wasn't always his position, shifts discussion to rerouting bike trail

Email from John Echeverria on 12/14/2023

There is no possibility that the Supreme Court will decide the case in the next few weeks and I am sure I never said. In reality, the decision is likely to come in early to mid spring.

I frankly cannot recall saying anything about the timing of the Supreme case.

But if you want to ascribe some statement to me on this topic you could say John Echeverria predicted a decision from the Supreme Court sometime in the next several months. He said no argument date has been set yet.

On the second part, "John claims he has never advocated for throwing up the trail – but is vehemently opposed to bikes George White pushes back on this, John concedes this wasn't always his position, shifts discussion to rerouting bike trail."

Better, I think: "John stated that he has never called for throwing up the legal trail, but instead says he has advocated for moving the legal trail to accommodate the bikers. George responded by saying that he understood that John's current position was that if a new trail were created the current trail would not necessarily need to be discontinued. John agreed that he has now adopted that position in response to public comment."