

**HYDE PARK ROADS COMMITTEE
MEETING MINUTES
January 12, 2015**

*All minutes are draft until approved by the Committee;
please check future minutes for approval of these minutes.*

Members Present: Greg Paus, Mike Dubie, Brian Jones, Troy Hayford, Jim Heath
Members Absent: None
Others Present: Ron Rodjenski, Town Administrator; Jim Fontaine – Diggins Road; Duncan and Nancy Tingle, Tingle Road; Town Clerk Kim Moulton; Paul Gillies, Esq.

Ron opened the meeting at 9:00 a.m.

1. **Introductions** – The committee members and members of the public introduced themselves and special guest Paul Gillies, Esq. introduced himself, noting that he worked under Jim Douglas as Deputy Secretary of State, was a former Selectboard member and also has ancient roads researching experience in addition to assisting a number of small towns in Vermont on road issues.
2. **Paul Gillies** – Paul spoke about many finer details of road reclassification, policy and ordinance adoption and impacts on property owners, including the following:
 - Property owners do not have a vested right to continued town maintenance, whether on a town highway or on a private road currently being maintained by the municipality. The Selectboard may consider changes based on the public's best interest. However, Selectboard actions must be taken following thoughtful consideration of the public good, necessity and convenience of the inhabitants of the entire town. Selectboard members must refrain from offering personal opinions that single out one class of people or an individual as a reason for make a decision. Diplomacy is key in this process.
 - No payment is due to property owners along a road that is discontinued. Those landowners will be burdened with the new cost to them and their neighbors to maintain the road/access.
 - Reclassifying to a trail is recommended in many situations as it preserves the public right-of-way for future generations and may also provide utilities with the easement they need to extend service to new customers. Title 30 provides some rights to electric utilities within public highways, but if the ROW is discontinued, private utility easements would then be needed. Trail designation is established at discontinuance under 19 VSA 305 (j) states:

(j) The legislative body may designate a specific highway or portion thereof proposed to be discontinued as a trail, in which case the right-of-way shall be continued at the width provided for in section 702 of this title. A designation of a highway or portion thereof as a trail under the provisions of this section shall be in writing, setting forth a complete description of the highway or portion thereof so designated. For all highways not designated as a trail and discontinued pursuant to this section, title to the rights-of-way shall belong to the owners of the abutting lands. If the right-of-way is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side. The legislative body shall return a report of its actions to the town clerk's office and the agency of transportation.
 - If a Class 4 town highway is being maintained by the landowners using the road, they should receive a Title 19, VSA 1111 highway use permit from the Selectboard and they should understand that if there are any injuries or property loses on the town highway, then they may be personally liable for damages, not the town.

- Class 4 landowners, and private road owners, should have road maintenance agreements in place to determine maintenance cost sharing. These agreements do not involve the town, but assist in clarification of responsibilities. The state law requires these agreements to ratably determine the fair share – which leaves it up to the drafters to define the method.
- Recently, the legislature has authorized that Class 3 town highways, historically believed to require year-round town maintenance, can receive limited maintenance. However, the Selectboard must establish clear reasons for the limitations and adopt proper procedures for implementing the reduced level of service, including an ordinance. A proportionate amount of state highway maintenance money would be withheld during the months of no maintenance.
- Class 4 town highways may be plowed by the town in the winter, and there is no penalty for the town to do it, but it creates confusion and inequities with other Class 4 roads that are only receiving the statutorily required “culvert and bridge repairs” and no plowing or summer grading. A Class 4 maintenance policy would be good to limit confusion. Generally, town highway maintenance practices across the town should be easy to understand for taxpayers and landowners.
- Regarding changing current road classifications and maintenance practices, it is recommended to have as much discussion as possible before making changes, to ensure any changes are justified and the reasons well documented.
- Some towns set a minimum number of developed lots before the town will consider taking over the road as a town highway. Seven developed lots is one example to justify public maintenance and another is whether or not the road connects to another town highway.
- If landowners on a Class 4 town highway wanted year-round maintenance; then the road should be upgraded to a Class 3 town highway. The costs for the upgrade include the physical road improvements as well as the costs for inspections and hearings. Whether or not the town is already maintaining the Class 4, the landowners could be required to pay for the upgrade costs.
- Courts will decide appeals on whether the changes are done for the traveling public not just the landowners along a road being modified, i.e. public good, necessity and convenience of the inhabitants. As long as a transparent and legal process is followed, and the decision is free of any discriminatory words, public good should be acknowledged by the courts. Necessity is defined in Title 19 and can include a balancing of costs and benefits provided.
- Selectboard decisions need standards and the policies that the Committee is considering are helpful to define the town’s intent and reasons for moving forward with changes. Excellent notice to landowners helps in providing everyone with an opportunity to participate in the decision process.
- Procedural mistakes and misstatements can undo a Selectboard decision. In that case, the Town could restart the process and correct the errors and then the Court will likely affirm the Selectboard’s decision, deferring to the experience and expertise of the board. Courts are unlikely to go against town policy if decisions are sound.
- Public highways provide the right to travel, but not to park, and the Town can prohibit parking on public highways.
- The Official General Highway Maps for Vermont towns have improved greatly over the years, but final determination of public highway locations are done by survey and deed.
- The July 1, 2015 deadline to have “old roads” or “ancient roads” added to the town’s Official Town Highway Map may have a soft ending due to a provision in 19 VSA 305(d) that allows observable ancient roads (not on the current Official Town Highway Map) to continue to exist and later be added to the town highway system – thus they would not be extinguished on July 1st as intended in the statute. 19 VSA 305 states, in part, with underlined for emphasis:

(c) All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015.

(d) At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.

- The Town has not pursued mapping of “unidentified corridors” in anticipation of the July 1, 2015 deadline as there is general agreement that the existing road network is sufficient for the future development of the town.
- The Committee should continue its pursuit of policy and standards to assist in developing the recommendations for the Selectboard. However, the Selectboard’s decision should be based on the process established in an ordinance, not a policy. The policy would be the foundation for an ordinance and the ordinance would then be enforceable while a policy alone is not enforceable. However, if a policy only sets out a process using existing statutory provisions, then an ordinance is not required.
- Village highways are treated the same as town highways, unless a Village is maintaining the roads. Any work in public right-of-ways not done by the town highway department, such as new Village sidewalks, signs and structures as well as new residential or commercial driveways, should receive a 19 VSA 1111 permit from the Selectboard.
- Susan Bulmer from the State Forest and Parks Department will be attending the next Committee meeting on February 9 to review the State’s interest in continuing the existing level of town maintenance to Green River State Park visitor area off Green River Dam Road and their forest area off Diggins Road. The State is also interested in discontinuing the last ½ mile or so of the Class 4 section of Diggins Road, which is on State land. The Class 4 now extends the public’s vehicular right into a conserved area which otherwise prohibits public motorized travel.
- If the town prefers to retain the ROW into the State land, reclassification as a trail would allow the installation of locked gates and the Selectboard can also adopt an ordinance to prohibit motorized vehicles on the trail.
- The four private roads currently being maintained by the town should be treated as town highways, with no classification. This would be true for any private road that receives any regular public maintenance. Once there is regular maintenance the town accepts it as a town highway, even if the developer failed to complete promised construction and did not offer survey or deeds to the town road.
- Private roads that are being maintained by the town, being “town highways” due to regular maintenance, should go through the formal discontinuance process. The Town could also provide a transition period, maybe five years, for the landowners to complete the promises of the developer, but at the landowners’ cost. If the deed, survey and road improvements are not completed by that deadline to the satisfaction of the Selectboard, then town maintenance would stop and the road would be discontinued.
- Title insurance may be available to help the landowners, but that funding is difficult to access.
- The Committee thanked Paul for his insight and clarification on many issues.

3. **Minutes** – December minutes deferred to February meeting.

4. **Other Business** – None

5. **Next Regular Monthly Meeting** – February 9, 2015 at 4:30 p.m., Municipal Offices

6. **Adjourn** – Motion by MD to adjourn at 10:15 a.m., with no objection.