



# TOWN OF CALAIS

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## TOWN OF CALAIS

NOTICE OF **RESCHEDULED** PUBLIC HEARING  
TO CONSIDER DISCONTINUANCE OF  
THE CLASS 4 SECTION OF TOWN HIGHWAY 7

**Monday, September 19, 2022 at 7:00 PM *Postponed***

**Rescheduled to  
Monday, October 10, 2022 at 7:00 PM**

**Location: Calais Town Hall (note no Zoom option)**

*This is a continuation of the **public hearing held on Monday, July 18, 2022**, to receive final testimony from all persons abutting, owning, or interested in the matter of discontinuance of Town Highway 7.*

*Persons wishing to comment, provide testimony or give evidence regarding the matter may do so in person during the continued hearing, or by submitting their comments or other information to [calaisbdenise@gmail.com](mailto:calaisbdenise@gmail.com), in writing, prior to or at the **continued** public hearing.*

*This is a link to the TH #7 documents on the Calais website  
<https://www.calaisvermont.gov/index.asp?SEC=99F455E4-0124-4B8C-9BDA-588D9A1D7AC8&DE=DA9DEA57-73ED-4D1E-BA8E-4C1F9D81A0A6>*

*If, after examining the premises and hearing from any and all interested persons, the Selectboard judges that the public good, necessity and convenience of the inhabitants of the Town of Calais warrants discontinuing or designating it as a legal trail the aforesaid section of Town Highway 7, it will be so ordered.*

**Present:** Sharon Winn Fannon (Chair), Denise Wheeler (Member), Rick Kehne (Member), John Brabant (Member), ORCA Media, Marc Mihaly (Vice Chair) Joseph McLean, Esq., Calais Town Attorney

Reed Cherington, Joshua Schultz, Kristin Schultz, Jennifer Flower, Charles Flower, Tim Cowan, Doug Lilley

Marc Mihaly called to order at 6:57 and facilitated this meeting, a continuation of the public hearing from July 18, 2022. He noted that the purpose of the meeting is to receive testimony. He noted that the selectboard had asked the town attorney to procure a survey of the land. This survey had been shared previously with interested parties. He invited Tim Cowan to summarize his survey, and then he expects to invite any of those present who would like to ask questions or provide further testimony. He expects that tonight will be the last night to receive testimony.

Tim Cowan, licensed land surveyor from South Burlington explained the request received by the town's attorney in the summer, to explore this piece of land and to determine where it begins and where it ends. He had provided written documents including a summary and maps of the land in question. He explained that the land begins at the east line of Alonzo York's land; he reviewed the surveyor's map showing the parcel of land. Mr. Cowan explained the description of the land and the conveyance of land as it was detailed in the 1800s.

He noted the monuments at the lot line and west county road; he stated that the monuments can't be easily mistaken - mistakes can be made in measurement or in the transcription of the measurements, but the use of monuments is very obvious. He explained an apparent error in recording lengths: 6 rods was noted whereas 35 rods was intended.

He shared a diagram and explained that the road begins at the lot line between 22 and 23 which is clearly marked with stone a wall, barbed wire and red blazes, and the other end is at center line at West County Road. (West County Road came in after the road in question came into existence)

Charles Flower asked , using the measurement recording from monument to monument - at what point would the difference that is in question be considered significant? He stated that the conclusion that Mr. Cowan makes changes the length of the land - how wrong can you be and have it be acceptable? He does not believe using monuments for measuring is reliable.

Tim Cowan noted that when you look at the original instrument it looks like there is a gap before the 6 - his theory is that what was meant was 36 versus 6.

Charles Flower stated that this is almost 500 feet and that he doesn't think it is appropriate to simply fill in a digit (before the six.)

Mr. Cowan reviewed the data that had been used to conjecture that the number "6" was meant to be written as "36."

Mr. Cowan explained that the first question had been, where was Alonzo York's east line? That is the beginning of the road.

Sharon Winn Fannon clarified that multiple data points have been used to determine the start and end of the road in question.

Gary Shultz stated that TH7 is on his property; the part that he can't agree with is a 600 foot mistake. He doesn't agree with the idea that a mistake was made; this logic could be applied to everything and anything to interpret written records.

Tim Cowan stated that it is evident from the data that was collected that the intent was to draw a line from Alonzo's east line to County Road.

Sharon Winn Fannon moved to enter Tim Cowan's exhibits including the map and report into evidence. Second by John Brabant, this motion carried unanimously.

Denise Wheeler reviewed/ read aloud a portion of minutes from the Conservation Commission's meeting around this issue. (August 3, 2022 meeting minutes.) This was entered into evidence as well.

Marc Mihaly reviewed that the evidence has been received and is on record. He invited any new evidence.

Doug Lilley stated that he has lived in this town for almost 80 years; he believes that the town needs to hold onto its own roads and land. Mr. Lilley made a statement about a roads commissioner.

Charles Flower, son-in-law of Mr. Shultz reiterated that 500 feet is an unacceptable amount of length to add to a roadway without a lot more review. He shared that many changes have come to this town over the past 160 years; one of the changes in the road in question is that it has ceased to be used as a road. He stated that the family is trying to safeguard the land because it is dangerous to have it as a right-of-way. It is not even a passable roadway; it may have served its purpose a long time ago; however, why is the town going through so many efforts to claim the road?

John Brabant asked whether Mr. Flower has any idea when the road went from being a useful road to a useless road.

Josh Shultz presented to the board. He will send electronically some photos depicting the extent of the damage to the road (washed out). He shared that it is rugged terrain. He stated that if you were a stranger walking up there, you would probably not realize it is indeed a road.

He spoke about the aerial photo from 1940 that was included in the survey. Josh Shultz stated that public access to the property still exists - it is not posted - there are no immediate intentions of posting it. He shared that his father allows snowmobiles to travel on the land, the boy scouts have used the land for camping; public are welcome - but they don't use TH7 on the property- it's too hard to walk. He stated that the people who have come out to oppose are the

same contingency of people that opposed the ancient roads - he stated that he understands that TH7 is a class four road but it really is like an "ancient road." He stated that there are some ancient roads that have been discontinued that probably would in fact be a better asset to the town. He stated that at that time an overwhelming number of people showed up and asked for the roads to be discontinued. He stated that the people that are opposing this- they were outvoted back in the day - he stated that the Shultz family is growing, generations to come; they are part of the town population as well, and they are here to represent that they would vote in favor of discontinuation.

He stated that no one has provided evidence to the board that they use the road/ that they will be impacted by its discontinuation; whereas, his entire family will be impacted positively by the discontinuation of the road. He shared a photo of many of the children in the family and asked the board to give consideration to them.

Reed Cherington spoke about the difference between the Ancient Roads issue and this particular issue. He stated that the ancient roads were roads that no one knew about and that some people did not know they had a claim to. He stated that it is not the same as discontinuing a known road. He stated that the discontinuation of Ancient roads was a wrenching process and that people came forward at that time that had no idea there was an existing road on their property. He stated that the property owner in this case knew about an existing road when the property was built.

John Brabant asked whether there is an update from the Trails Committee. Denise Wheeler shared the evidence from the Trails Committee in June 2022. The committee had asked for the Selectboard to take no action on the request from the Shultz family.

Sharon Winn Fannon asked for clarification - if we close the hearing at this time, the board will have the whole body of evidence for consideration. She asked - what if there are questions during the deliberation?

Marc Mihaly suggests closing the public hearing - we have now created the record - we have to make our decision based on the record - we go into deliberation (not in public), take the evidence, discussion, make a decision and write the decision explaining what we are doing and why we are doing it.

He restated the three options:

keep right of way as class 4 road

discontinue road

reclassify right of way as a trail

He noted that the decision has to be expressly based on the standard that we are acting on behalf of the public good and convenience of the town. He suggested, for example, if the board began deliberation and discovered there is something

very important that we want to ask, we would have to re-open, and notice, the public hearing, and allow the public to come and hear the question and the answer, provide feedback, then then close the hearing and go back to deliberation.

Denise Wheeler noted that we are entering the exhibit: Josh Shultz pictures on behalf of his father.

Denise Wheeler moved at 8:18 to close the public hearing.  
Seconded by Rick Kehne, this motion carried unanimously.  
Marc Mihaly thanked those who attended and for the kindness and respect shown to one another.

Rick Kehne moved to adjourn at 8:19 p.m.  
Seconded by John Brabant, this motion carried unanimously.

Marc Mihaly noted that the board has a 60 day timeline to render a decision.

Respectfully submitted,  
Lisa Grace, Board Recording Secretary