



TOWN OF CALAIS

3120 Pekin Brook Road
East Calais, Vermont 05650
802-456-8720

Public Hearing to consider discontinuation of the Class 4 section of
Town Highway 7 (also known as Carr Road)

Minutes

Monday, July 18, 2022 at Calais Town Hall

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

Paul Hannan, Millie Brumback, Tom Blachly, Reed Cherington, Neal Maker, Larry Bush, Erik Oberlin, Joshua Schultz, Kristin Schultz, Gary Schultz, Julie Hand, Scott Ciampi, Stephanie Kaplan, Jennifer Flower, Jill Schultz, Charles Flower

Sharon Winn Fannon called the meeting to order at 7:02 p.m.

Marc Mihaly thanked those for attending.
Selectboard members introduced themselves.

Marc Mihaly explained that the purpose of the public hearing tonight is to provide “a continuation of the public hearing held on Saturday, June 11, 2022, to receive testimony from all persons abutting, owning, or interested in the matter of discontinuance of Town Highway 7.”

He explained that the intention today is to take oral testimony, to accept into the record any communication that we have received since the last meeting. He stated that the selectboard is faced with three choices: (1) keep the right of way, (2) discontinue the road, or (3) reclassify the right of way to a trail.

He noted that the board expects to continue this hearing to another date.

Marc Mihaly explained why the selectboard may decide to continue the hearing to another date, close the hearing at a future date, deliberate as a selectboard, and within 60 days of the close of the hearing, will provide a written decision. The board’s decision needs to reflect the public good and necessity of the town.

Marc Mihaly invited any of the Schultz family to provide testimony.

<http://www.calaisvermont.gov/>

He swore in Gary Schultz, who lives on West County Road. He stated that he had sent two letters to the board; they are not published on the website yet because they are not yet entered into the record; however, they are entered as evidence tonight. Mr. Schultz indicated that TH7 as surveyed is a 1300 ft road going from the middle of the dam on Dugar Brook and ends on his property; he noted that it does not extend past his property line. Ever since he has lived there (since the 70s), several times a year, someone comes up the driveway driving fast; this is now even more of a concern to him because he has grandchildren who play in the driveway. His understanding is that most people who are opposed to this assume that the road goes beyond his road; this is not true - it is a dead end road, part of it is their driveway, and having others use it as a road is a hazard to his family.

Denise Wheeler asked, when he purchased the property did he know the road was there? Mr. Schultz indicated that the property has been in the family for four generations.

Sharon Winn Fannon asked whether there is a formal, certified survey of the property, which includes the road. He stated that there is such a survey and that it is part of the town records. Marc Mihaly clarified with Joseph McLean that if the survey is in the town records, it is a matter of public record.

Paul Hannan explained that there is an original survey dated to 1840 - part of the Calais Ancient Roads Team's work - the survey explains specific points on the property.

Joe McLean suggested that it would be wise to locate the survey and make it part of the record. Denise Wheeler will follow up on this and put it on the website.

Paul Hannan provided a copy of the survey.

Richard Kehne asked whether the survey verifies the existing property lines.

Gary Schultz stated that the report had noted that it was a "short survey" - that it did not go to the property line. Gary Schultz noted that he has never found any correlation between the Carr Farm and Yorks property.

Josh Schultz provided testimony; Marc Mihaly swore him in. He is a resident of Dugar Brook Road. He had submitted his testimony in writing. He noted that the survey is clear where the property starts and indicates that the road terminates on the Schultz's property in question. He noted that TH7 has been delineated for as long as there have been town records, it was designated as "untraveled" (UNT). He noted that it has never been a road that was "near and dear and loved" by anyone in town. He asked why a current map is different from the original survey (showing 0.5 mile road). He said that AOT told him that just because a road shows up on a map, it doesn't mean anything legally. He found that this was established in 1941 and at the time the property was not surveyed; it was scaled on a map; this does not have legal merit. He stated that many of the arguments in opposition to the road being discontinued are based on "what if" scenarios. He stated that the road is not good access to the land beyond; folks that want to access the property do so from the Woodbury Mountain Road. He recalled five or less people in his life that have even tried to venture up there on foot. He noted that it would

take a very concerted effort, including a bulldozer on the residential property, to establish any type of road. He does not feel it is realistic. He noted that some people access his parents land to hunt (with their permission), but they typically do not access that road to hunt, because it is so difficult to walk. He shared that the town has expressed a sentiment to support the landowners. He stated that if the board voted today to discontinue TH7, ten years from now, no one is going to care (except the Schultzes.) He spoke about the impact to the young children in his family of having ATVs and other vehicles using the property to attempt to get to TH7; he stated that it is time to clean this up and put it to bed. He stated that the most precious asset is the children. He asked the town to stand by the Schultz family.

Rick Kehne asked whether people are actually able to access TH7 - Josh Schultz stated that people turn around in the driveway when they realize that they can't access the road- they approach TH7 because they see it on a map. Josh Schultz indicated that this happens around three or four times a year.

John Brabant asked for clarification - how much of TH7 is visible beyond their driveway? Josh Schultz stated that if he didn't know it was a road, he would think it was a ravine.

Marc Mihaly invited other testimony.

He invited Reed Cherrington to provide testimony.

Marc Mihaly swore in Reed Cherrington. He had provided written evidence (map). Marc Mihaly asked him to designate on each map, TH7 and then initial each designation, to enter the documentation for this hearing. Marc Mihaly noted that on some of the earlier maps, he could not identify the road. The map that Reed Cherrington marked at tonight's meeting will be scanned (in color) and provided on the website. Reed Cherrington explained that in 1931, AOT began to keep town highway maps. At that time the official town highway map shows TH7 going to the Worcester Town line (1.1 miles). There is a 1942 aerial photograph which shows the details of the property at that time including houses that existed.

Larry Bush, from the Conversation Commission, asked about the survey - when was this done? What was the purpose? Will it be in the record?

Paul Hannan, South Calais resident, was sworn in.

He explained the survey. He stated that part of his profession is to deal with ancient roads. He noted that he has a bias that he does not like to have public roads discontinued; he sees them as public assets and that it does not matter whether you can drive them or not. He noted that the town maps are an expression of what the town believes to be true at the time they were created - they are not a legal document.

He spoke about the criteria for being able to drive "pleasure car" on a road as established in the 1930s. He explained that there might be some record of why the road changed in length. He explained that it is hard for a layperson to accept that monuments are more

important in surveying than measured lengths. Regardless of the distance, the goal of the designation of a road in 1840 was to get from one place to another.

Marc Mihaly reiterated that according to Mr. Hannan, to a surveyor, the more important detail is called out points or monuments versus measured distances.

Paul Hannan noted that the reason there was activity in 1973, is because that was the first year that road classification was created by AOT.

Paul Hannan stated that he does not believe that bad behavior by some drivers should dictate public policy. He thinks that closing the road could possibly negatively impact the Lumberjack property.

Paul Hannan stated that the unidentified corridors that were mass discontinued in the past, while well intentioned, were bad policy decisions - eliminating walking trails, hiking trails, access to people's land.

Josh Schultz noted that Lumberjack has accessed the property from another point; has never used TH7 to access the property. He shared that, while others have indicated that they live on Class 4 roads and "it's not a big deal," it IS a big deal to his family and the safety of the children.

At 8:04, Marc Mihaly explained that the selectboard is required to make a decision based on the record in front of them at the time. That is why they are being careful to continue the meeting to another date, to collect information, testimony, and evidence to support the deliberation.

Gary Schultz shared that it has never been his intention to limit access to his property; he allows access to hunters, etc; he has no desire to post the land and limit access.

Marc Mihaly asked - is it their position that the fact that the road is on a map, that this contributes to people accidentally pulling into their driveway and thinking they can access TH7? Mr. Schultz indicated, yes.

Marc Mihaly noted that the selectboard will continue to take written testimony until the hearing closes.

Sharon Winn Fannon stated that the next step would be for the board to deliberate, considering all of the testimony provided. The reason the board will not close the hearing today is to allow a period of time for testimony to be received.

Denise Wheeler asked for clarification of the process. The board can begin to deliberate before the hearing closes so that additional evidence can be provided?

John Brabant spoke about the decision in the past to mass discontinue unidentified corridors. He would like to know how unidentified corridors are defined. Joe McLean reminded him that unidentified corridors are not relevant to the discussion today.

Marc Mihaly noted that the next meeting related to this might be a formality - there may be no further evidence and the purpose of the meeting will be to close the hearing.

Denise Wheeler clarified the process: when the board asks for additional information, it is entered into the public record, this may be an ongoing process as the board deliberates.

Monday September 19, the meeting will be the continued hearing date. The board will meet and deliberate; if after deliberating, the board needs more information from the public, it will announce another continued hearing date. Marc Mihaly noted that the reason the board is taking its time is to collect evidence and allow all interested parties to provide input and to have the testimony and evidence made public.

Charles Flower was sworn in.

He noted that Paul Hannan had admitted to being biased. He stated that other licensed surveyors would not cast aside the survey based on distances and instead look for markers and monuments on the ground.

Paul Hannan explained the law and procedures and reiterated the importance of monuments versus distances. He explained some of the details related to the mass discontinuance of unidentified corridors.

Denise Wheeler listed the written testimony including emails that have been received to date.

Other documents that have not yet been admitted into evidence will be posted on the website for the public's information, with a note indicating such.

At 8:28 the board adjourned the hearing by consensus, to be continued on Monday, September 19th at 7 pm.

Respectfully submitted,
Lisa Grace, Board Recording Secretary