

TOWN OF WEATHERSFIELD, VERMONT

Report of the Selectors for the Town of Weathersfield, Vermont, on proceedings to discontinue a highway in Weathersfield

On the seventeenth day of February, 2005, A.D., we, the undersigned Selectors of the Town of Weathersfield, Vermont, a municipal corporation in Windsor County, State of Vermont, prepared a notice, in writing, of the proposed discontinuance of a highway in the Town of Weathersfield, in accordance with the provisions of Title 19, Chapter 7, Sub-chapter 2, of the Vermont Statutes Annotated.

The highway to be discontinued is described as follows:

A portion of what was formerly known as U.S. Route 5, which was relinquished to the Town of Weathersfield on September 17th, 1937, beginning at a point in the center of the old traveled way, thirty-three feet (33') left of Survey Station 218+24 of Emergency Relief Project E.R. 1, and extending southerly along the former location of U.S. Route 5 a distance of two and thirteen-one hundredths (2.13) miles, more or less, to a point thirty-eight feet (38') left of Survey Station 329+72 of Emergency Relief Project E.R. 1.

In a public notice dated February 17th, 2005, posted at the Weathersfield Town Clerk's office and the U.S. Post Office in Ascutney, and published in the newspaper of record for the Town on March 2nd and March 23rd, 2005, it stated that the Select Board would meet at 9:00 o'clock, A.M., on the twenty-sixth day of March, 2005, at the Frank A. Brunot residence, 3101 Route 5, to consider a proposal by Henry C. Cobb, Jr., to discontinue the highway.

A copy of this notice was mailed, by certified mail with return receipt requested, to the following abutting property owners on February 25th, 2005:

Betty L. Brooks
JoAnn Theriault
Leon E. Saucier
359 Roberts Road
Weathersfield
Springfield, Vermont 05156

Frank A. Brunot, Trustee
Frank A. Brunot Living Trust
Post Office Box 64
Ascutney, Vermont 05030-0064

Henry C. Cobb, Jr.
Laurie F. Cobb
Post Office Box 707
Ascutney, Vermont 05030-0707

Jack L. Cronenwett
Debra A. Cronenwett
1 Juniper Lane
Hanover, New Hampshire 03755

Frederick W. Crowley
Anna B. Sykas
2433 Route 5
Weathersfield
Springfield, Vermont 05156

Daniels Family Revocable Trust
c/o Patricia Wilson Daniels, Trustee
321 Dake Hill Road
Weathersfield
Springfield, Vermont 05156

Steven J. Dauphin, II
Post Office Box 401
Ascutney, Vermont 05030-0401

William H. Fellows
Janet A. Fellows
Post Office Box 634
Ascutney, Vermont 05030-0634

Inga J. Johnson
1210 S E Park Avenue
Corvallis, Oregon 97333

Timothy Grieve
Kathleen T. Grieve
216 Dartmouth Street
Marlborough, Massachusetts 01752

Mark C. Johnson
Holly Whipple Johnson
1859 Route 5
Weathersfield
Springfield, Vermont 05156

Stuart B. McNeil
Deborah A. Baptistella
34 Melody Lane
Weathersfield
Springfield, Vermont 05156

Aneek Singh
Glenn S. Fisher
1973 Route 5
Weathersfield
Springfield, Vermont 05156

James A. Neuhaus
Betsy Neuhaus
2347 Route 5
Weathersfield
Springfield, Vermont 05156

Scott Smead
1497 Route 5
Weathersfield
Springfield, Vermont 05156

Peter G. Mitchell, Living Trust
2217 Route 5
Weathersfield
Springfield, Vermont 05156

STATE OF VERMONT
Department of Forests, Parks,
and Recreation
Administrative Services
Montpelier, Vermont 05602

W. Denison Rounds
Paulette M. Rounds
2217 Route 5
Weathersfield
Springfield, Vermont 05156

Lawrence L. Wight
Dolores J. Wight
Post Office Box 264
Ascutney, Vermont 05030-0264

they being the owners of the land abutting the said highway to be discontinued. The notice was also recorded in the records of the Town of Weathersfield.

At 9:00 o'clock, A.M., on Saturday, March 26th, 2005, the Select Board met at the Frank A. Brunot residence, 3101 Route 5 in the so-called 'Weathersfield Bow' section of the Town of Weathersfield, for the purpose of examining the highway to be discontinued. Selectors Henry C. Cobb, Jr., and Patricia W. Daniels recused themselves from this hearing as they are involved property owners. The public hearing began at 10:00 o'clock, A.M., on the same day, at Martin Memorial Hall in Ascutney, to hear the parties interested.

When it was ascertained that the public electric, telephone, and cable television utilities still utilized portions of the former right-of-way, the public hearing was recessed until 7:00 o'clock, P.M., on Tuesday, April 12th, 2005. Notification was sent, via certified mail with return receipt requested, to the following:

Adelphia Communications
Kevin Zaloudek, Chief Technician
539 Charlestown Road
Springfield, Vermont 05156

Verizon
Karen Farnham, Right-of-Way Agent
800 Hinesburg Road
South Burlington, Vermont 05401

Central Vermont Public Service Corporation
William J. Jakubowski,
Right-of-Way Coordinator
77 Grove Street
Rutland, Vermont 05701

After the Select Board's examination of the premises, and receiving testimony and other information from those parties participating, the following facts were determined:

1. Prior to September, 1937, the right-of-way under discussion was a State highway, designated as U.S. Route 5.
2. During 1937, because of continued erosion of the Connecticut River bank, U.S. Route 5 was relocated to the west pursuant to an "Emergency Relief Order Project E.R.1."
3. The relocated highway is still in use as a State highway.

4. Significant portions of the relinquished right-of-way were along the top of the Connecticut River embankment and, due to erosion, have collapsed into the River. This includes sections on the Wilgus State Park, Brooks, and Crowley/Sykas properties.
5. Approximately twenty per cent (20%) of the relinquished right-of-way still has visible pavement; the other eighty per cent (80%) has deteriorated and become overgrown.
6. The Cobb residence, which was constructed during the 1980's, is located within the relinquished right-of-way. There is no physical evidence of the right-of-way at this location.
7. There are two (2) buildings constructed within the relinquished right-of-way at the Neuhaus residence.
8. The Rounds residence is constructed within the relinquished right-of-way.
9. A portion of the Crowley residence is constructed within the relinquished right-of-way.
10. A swimming pool has been installed within the relinquished right-of-way at the Fellows residence.
11. The Wight residence was purchased by the current owners in 1975, and the prior owners had possessed the property since 1935. Anecdotal information received from the prior owners indicate the right-of-way has not been used since the highway was relocated.
12. The Cronenwett property was purchased approximately two and one-half (2^{1/2}) years ago. At the time of the purchase, there was no evidence of an active right-of-way.
13. A portion of the remaining right-of-way serves as a common driveway serving the Dauphin residence at 1507 Route 5. In addition, contained within the relinquished right-of-way, is a deeded easement, fifteen feet (15') wide, which follows the remaining pavement to the River bank.
14. There is no evidence that the relinquished right-of-way has been used as a public highway since the transfer from the State of Vermont to the Town of Weathersfield in 1937.
15. Central Vermont Public Service Corporation requested, in a letter dated April 1, 2005, that the Town reserve a permanent easement along the relinquished right-of-way for Central Vermont Public Service and Verizon New England.
16. Verizon New England has approximately one thousand, six hundred feet (1,600') of utility poles and lines along the relinquished right-of-way.
17. Adelphia Communications, in a letter dated April 5, 2005, notified the Town that Adelphia rents space on the poles and, if it was determined that the utilities would have to relocate, Adelphia would be obligated to move to the new pole line.
18. Adelphia further noted that it was obligated, by the State of Vermont, to start construction along Route 5 this year, and that construction will begin on, or around, April 11, 2005.

19. Based upon evidence and identification on the utility poles themselves, the utility line is actually owned by Verizon New England. There was no formal response from Verizon's representatives to the hearing notice.
20. Mr. Cobb testified that the utility lines within his property follow and fall within the relinquished right-of-way. This was substantiated by photographic evidence submitted by Mr. Cobb.
21. Mrs. Brooks testified that the utility lines within her property did not appear to be within the relinquished right-of-way which runs across her property. This was substantiated by photographic evidence submitted by Mrs. Brooks.
22. Of the two and thirteen-one hundredths (2.13) miles of relinquished right-of-way, only one thousand, six hundred feet (1,600') of the utility lines do not fall within the right-of-way for the current U.S. Route 5.
23. The Vermont Department of Forests, Parks, and Recreation, in a letter dated April 5, 2005, encouraged the Town to continue ownership of highway rights-of-way as a trail where there is sufficient length, or in a location to be of value to recreational users.
24. The pavement from the relinquished right-of-way behind the Crowley residence has been slumping into the Connecticut River for several years.
25. There is an area to the north of the Crowley residence where a large pothole has formed due to the relinquished right-of-way eroding into the River.
26. Mr. Crowley testified that erosion continues at a noticeable rate along the relinquished right-of-way, and has since they purchased their property in 1983.
27. The relinquished right-of-way would not serve as a functional recreational trail due to the unsafe conditions, as the steep river banks continue to erode into the Connecticut River; there are structures located within the relinquished right of way; and, due to these conditions, the relinquished right-of-way is now a series of non-contiguous parcels.
28. It was the prior belief of the Town that the relinquished right-of-way had previously been legally discontinued; however, there is no recorded documentation of the discontinuance.
29. As evidence of its belief that the relinquished right-of-way had been discontinued, the Town has taxed the properties as though it was private land; zoning permits had been issued for construction within the relinquished right-of-way; and subdivision permits have been granted involving the relinquished right-of-way.

Based upon the foregoing findings of fact, the Select Board has made the following conclusions of law, in accordance with Title 19, Section 710, of the Vermont Statutes Annotated:

- A. The public good requires the right-of-way be discontinued.
- B. The public necessity requires the right-of-way be discontinued.
- C. The convenience of the inhabitants of the Town of Weathersfield requires that the right-of-way be discontinued.

Therefore, the Selectors of the Town of Weathersfield, Vermont, hereby discontinue and extinguish the former right-of-way for U.S. Route 5 as relinquished to the Town in 1937.

Dated at Town of Weathersfield, Windsor County, State of Vermont, this twelfth day of May, 2005.

C. Peter Cole, Chairperson
Norman John Arrison, Board Clerk
Daniel E. Boyer, Selector