

Select Board Site Inspection and Hearing for Skinner Hill Rd.
Tuesday, October 20, 2020

Select Board in attendance: Lance Lawyer, Josh Goss, Gary Denton, Terri Gates

Absent: Sam Cribb

Residents/Guests in attendance for site inspection: Mac Newitt, Steve Jones, David Westcom, Tami Brennan

Residents/Guests in attendance for Hearing: Mac Newitt, David Westcom, Kathy Westcom, Doug Nelson, Tami Brennan, Mike Gawne-Town Attorney

Josh Goss, Gary Denton, David Westcom, Lance Lawyer, Steve Jones, Terri Gates, Tami Brennan and Mac Newitt began to walk the Class IV section of Skinner Hill Rd. from the North end at 5:00pm on Tuesday, Oct. 20.

Josh, Gary, Mac, David Westcom and Steve Jones walked the entire length of the road.

Josh, Gary, Lance, Terri, Mac, Kathy Westcom, David Westcom, Doug Nelson, and Tami Brennan met Mike Gawne back at the Town Hall for a hearing regarding a request from Skinner Hill Residents to discontinue the Class IV section of Skinner Hill Rd.

Mike Gawne began the Hearing by summarizing...The Residents got together and came to us as a united front.

Doug Nelson asked Mike Gawne a question about the process to change the designation of a road. Particularly, if it required more than 5% of the town residents needed to agree. Mike said no...if there is not a petition supported by 5% of the voters, the Select Board can act on their own initiative.

Mike said that he had contacted everybody that needed to be contacted:

- the people who own properties that join or abut the road
- the people who have an interest in any of the properties, ie. Mortgage, etc.
- any one affected by an easement...i.e VT Electric Co-op
- Jamie Curtis Maple LLC regarding sugar rights on Jones property
- people with road frontage on Skinner Hill Rd.
- The warning/notice was published in the St. Albans Messenger.
- The warning/notice was posted at the Bakersfield Town Clerk's office and on the Town website.
- The Bakersfield Planning Commission was notified.
- The Vermont Dept. of Forest, Parks and Recreation was notified.
- Mike noted that VAST does not need to be notified.
- Mike held up the 19 certified mail return stubs for the 19 people that he had sent a certified letter regarding the Skinner Hill.

Rebecca Washburn, the Director of Lands Administration and Recreation Division, sent a letter to the Select Board to notify the Select Board that the policy of FPR is to encourage municipalities to keep their highways as public ROW's but that the FPR staff will not be attending the hearing and had no

comments concerning the proposed reclassification. She requested that the letter be recorded as part of the official proceedings in this matter.

During the site inspection, Josh, Mac and Gary observed where the Class IV section of the actual Skinner Hill Rd., deviated from the private road that Steve Jones has created and maintained. Josh said that considering the condition that the actual Skinner Hill Rd. is in right now, he believed that a four-wheel drive vehicle could make it through, except for the two sections on Steve Jones' property that deviate from Steve's private road and have not been maintained by private residents. Josh believed that those sections of Skinner Hill Rd were only passable on foot or horseback.

Lance reminded those present that the municipality's duty to maintain a Class IV road, per Vermont State Statutes, is to ensure that the road is passable by a standard pleasure car one season out of the year, i.e. the summer.

Mike said that municipalities cannot gate a Class IV road. A Pent road is any town highway that is enclosed by gates in such places that the Select Board designates and has to be maintained by the town. A trail is a public ROW, not a highway.

Josh said in order to leave the road in its present state, it would have to be downgraded to a trail. There are trees growing up in the middle of the route.

Mike Gawne said that he agreed unless the town wants to upgrade their responsibility.

Lance noted that no one is pushing the Select Board to keep that road open for traffic one season a year. Mike said that the benefits of having a Class IV road is that the town only has to upkeep the highway for one season a year and the residents upkeep the road for the other three seasons. The town may have an obligation in reference to bridges/culverts to keep them in place to be passable. Even on a Class IV road, if a bridge fails, the town has to do something. Class IV roads need to be maintained in regards to water.

Gawne read Title 19 Sec.952- The town shall properly maintain the drain, ditch, or watercourse and keep it in good and sufficient repair, until, upon notice and hearing, it is discontinued.

And Title 19 Sec.985- If damage occurs to a person, or his or her property, by reason of the insufficiency or want of repair of a bridge or culvert which the town is liable to keep in repair, the person sustaining damage may recover in a civil action.

The witnesses were sworn in to give testimony: David Westcom, Kathy Westcom, Doug Nelson, Mac Newitt, and those who inspected the road. All swore to tell the truth and if anything previously said needed to be corrected, that they would make the correction at this time.

Doug Nelson stated that he has been fixing the road and water bars every year for 30 years and he doesn't feel that he should have to keep it up. He said that the water doesn't go down into the ditch but runs right down the middle of the road. The Town highway 13 gets no dirt work.

When Mike Gawne asked for testimonies as to whether removing the road from the town map would benefit the town or the public good. David Westcom stated that Skinner Hill Rd has never served the public other than the 4-wheelers that have become a problem. The landowners on Skinner Hill have always taken care of the road themselves, not the town, for at least for the 35 years that he has lived there.

The road was totally overgrown until Steve carved out the private Rd and put gravel down. He sees no reason for the town to keep it and spend the money to maintain it.

Mike Gawne asked a question about where drivers would be able to turn around when they reach the end of the Southern Class III section of Skinner Hill Rd, if the Class IV section is discontinued. Mac said there was a turn around already there at Doug Nelson's at the end of the Class III section. Mike asked Doug if he was ok with having the turnaround right there and Doug said he wasn't really ok with it but people have been turning around there for 34 years and because of the trucks, the space to turn around has gotten bigger. He said he sees no other place to have it, but he would be happy if the town would replace the gravel that needs to be replaced to keep it up.

Mike Gawne said that it was the Town's responsibility to replace the gravel, since it's a Class III section of road. Doug said that he has no problem with the Status Quo, but he would like something in writing to record its existence. Lance agreed if the turn around is established on Doug Nelson's property, the town is responsible to maintain it.

Mike said that there were three ways for a road to become a Town road.

- Petitioned by the community

- By Deed

- By implied dedication/acceptance, even though there was no survey or dedication.

David Westcom wanted to make sure that if the road is discontinued, that the easements for Doug and Claude to use the road would remain the same. Mike said that when a road is discontinued, the owner of the property retains the sole means of reasonable access. The owner keeps a private easement, an implied easement. David wanted to make sure that Doug and Claude would have access/easement to use the private road from the north end. Mike said since Doug can access his property from the southern section of Skinner Hill, he would not qualify for an easement by necessity and his right to use the northern section of may disappear.

It was asked that if the road is discontinued, could a statement be placed in a deed, that all residents and their heirs, would have access through the private road from the southern section to the northern section. Mike said it would have to put in all the individual deeds of the landowners, not given from the town, and that it wouldn't have to be a deed, it could be an agreement that is made

reference to in the Titles, and recorded by the Town Clerk in Bakersfield, so that it could be found during a title search.

Mike said that if somebody divided their land into one acre lots hereafter, absent an agreement of the land owners, there may be an issue. Based on act 250, that area designates a minimum subdivision of 10 acres per lot. Mike noted that since not all of that land would have road frontage, it would have an implied easement. When asked of Mike, if the owners could still subdivide their land, Mike said yes. There would be an assumed ROW of 3 rods wide and a private easement of 3 rods as well. An Easement agreement between residents would have no effect on the town and no effect on further subdivisions. The Planning commission may take the nature of the access into account if there is an agreement. There would be a need for road frontage on a town highway or the approval of the planning commission. The Planning Commission can approve the use of a non-public road with conditions.

Dave had a question about a VSA statute...the abandonment of a road with a time frame of 20-30 years, that if the road has nothing done to it for 30 years, it's automatically taken off the books. Mike said that pertained to ancient highways, roads that were not on the town maps. Doug asked if the Select Board measured Skinner Hill Road each year for the town map. If they did not, then that would speak differently to the status of the road. The Select Board said that they submit any changes in the road measurements for the annual Town Mileage map but if there are no changes, then the measurements carry over. Josh explained that unless there was an increase or decrease in a road, there would be no change.

Josh acknowledged to the testifiers, for the Select Board, that the Select Board had heard their testimonies.

Mike Gawne read the proposal of what the board may decide, that he had prepared in anticipation of the outcome of the hearing, so the board could hear and alert Mike of any changes to be made. He said that he would change the intro of the proposal since there had been no petition presented with the plea for discontinuance.

When Mike read the portion of the proposal that spoke of the Land conveyer, He asked the Select Board who would be the Land conveyer and Lance was appointed to be the Land Conveyer. Mike Gawne said that if the Board decided to discontinue Skinner Hill road, that he would write the deeds conveying the property on which the discontinued road now lies, to the land owners. Mike was not sure if the landowners were entitled to damages if there was a discontinuance.

The Select Board voted to go into executive session to make a decision about Skinner Hill Rd at 7:30pm until 8:00pm.

The Board voted to downgrade Skinner Hill Rd to a legal trail and to place Gates at both ends which will be installed and maintained by the Town at the Town's expense and to ban ATV travel on the trail. Both the northern and

southern sections of Skinner Hill Rd that are currently Class III status, will remain Class III road.

The motion to adjourn the meeting at 8:15pm was made by Josh, seconded by Terri and passed by a vote of 4-0.

Meeting minutes recorded by Tami Brennan.