

After I spoke at Town Meeting last year, I realized the majority of people at Town Meeting were largely unaware of one of the major causes for The Town of Underhill's climbing legal expense budget. Since many of our legal voters are unable to make it to Town Meeting each year I am publishing the below letter in its entirety. My goal is to foster increased public accountability and support for protecting basic landowner rights against abuses of political power. There are far more issues relating to the way the Town of Underhill chooses to treat landowners than this relatively lengthy document can summarize but I firmly believe our Town governance should be supportive of, rather than antagonistic to, landowners within our Town. I chose to add my own clarifying commentary in the margins to elaborate on certain important details of the below situation without removing or altering the content of the original document in any way. In order to prevent even more of our tax money being wasted on legal fees, please help encourage The Town of Underhill Selectboard to do the right thing by restoring historic local landowner access to their properties.

Thank you,
David Demarest
Underhill, VT.

Christine A. Murphy
TOWN ADMINISTRATOR and PLANNING ADMINISTRATOR
TOWN OF UNDERHILL VERMONT

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October 8, 2009

Vincent Paradis, Esq.
Bergeron, Paradis & Fitzpatrick, LLP
PO Box 174
Essex Junction, VT 05453-0174

Dear Vince:

I am enclosing with this letter documents relating to the Crane Brook Trail in Underhill, VT. At issue is whether a Selectboard grant of access over the Trail is valid and if there is any way the Town could rescind the access. Here's the background:

On January 30, 2002 the Selectboard approved a Trails Ordinance which closed a section of New Road from vehicular traffic from November 1-May 1. Special permits could be issued for vehicular travel on the Trail if in the judgment of the Selectboard there was a "legitimate need" to operate a vehicle on Crane Brook Trail. Attached to the Ordinance is a copy of the "only acceptable permit" under the Ordinance under which access to the Trail could be granted. Ordinance and permit attached.

On December 8, 2004 Dave Demarest attended a Selectboard meeting and expressed concern about the proposed boulders that would be put across the beginning of Crane Brook Trail in November to block traffic. See Selectboard minutes 12/8/04. Sometime after that in an undated letter Demarest wrote to the Board outlining his concerns about access over the Crane Brook Trail.

I should probably explain that Demarest has a Fuller Road address, and has access off of Fuller Road. Fuller Road is the name of the Road where the Crane Brook Trail ends. See attached map. So to orient you, coming off Pleasant Valley Road onto New Road you go past the Town Garage. The Crane Brook Trail begins right past the Town Garage and goes past the Shera property and a very substantial class II wetland. Where the Trail ends Fuller Road begins, eventually intersecting with Irish Settlement Road.

The next Town record is of a letter dated February 8, 2005 from Stan Hamlet, Chair of the Selectboard written in response to Demarest's letter. In that letter Hamlet grants a compromise that would allow for the proposed boulders to be moved so Demarest can get his farming equipment in from the New Road end. At this point the Town records end.

Here are some additional facts:

- Under Town regulations and the Road Policy then in effect, the grant of access should have been given only if "the driveway was designed in accordance with the driveway specifications of the Underhill Road Policy." Underhill Zoning Regulations §III (A).
- The Road Policy states in the Road Design/Construction Approval Process section that an applicant must submit a sketch of the proposed drive; have a site visit by the zoning administrator and road foreman; the ZA must issue a written report within two weeks of the site visit; the Selectboard must review the report and may require engineering sketches; and a final inspection of the drive by the ZA and Road Foreman must take place and they must issue a written report that the driveway meets required specifications before use of the property can commence. See Road Policy pages 7-9. According to Kari Papelbon, current ZA, there is no town record that any of these procedures were followed or that an access permit was ever issued for Demarest's lot-either from the Crane Brook Trail or from Fuller Road.
- Since the downgrade and designation of a section of New Road as the Crane Brook Trail in 2002, the Town has not maintained the Trail and it has significantly reverted to a stream in sections.
- On September 10, 2008 at a joint meeting of the Selectboard, the Planning Commission, and the Trails Committee a site visit of the Crane Brook Trail was conducted with Julie Foley, state Wetlands Specialist, Chris Brunelle, State of Vermont Streambank Alterations Permit Officer, and Jens Hilke, State Wildlife Biologist. In the field it was agreed by all the state personnel that the Crane Brook area is critical wildlife habitat that should be preserved in as natural a state as possible.

The Conservation Commission and the Selectboard have been approached by Demarest with requests to maintain the trail so that it is passable for his equipment. The Conservation Commission is interested in limiting vehicular traffic year-round on the Crane Brook Trail.

So, here are our questions:

- Is the Hamlet grant of access to Demarest valid even though the permit required under the Ordinance was never issued?
- Can this permission be rescinded in light of the environmental impacts to this area that vehicular traffic creates and the fact that Demarest has access off the other end of the road onto Fuller Road?
- Can we amend the Ordinance if and prohibit all vehicular traffic year round on the Crane Brook Trail?

If you require more information, please contact Kari Papelbon, Zoning Administrator, until a new Administrator is hired. Any response can be sent to the Selectboard and the Planning Commission c/o Faith Brown, Interim Administrator at the addresses and phone numbers above.

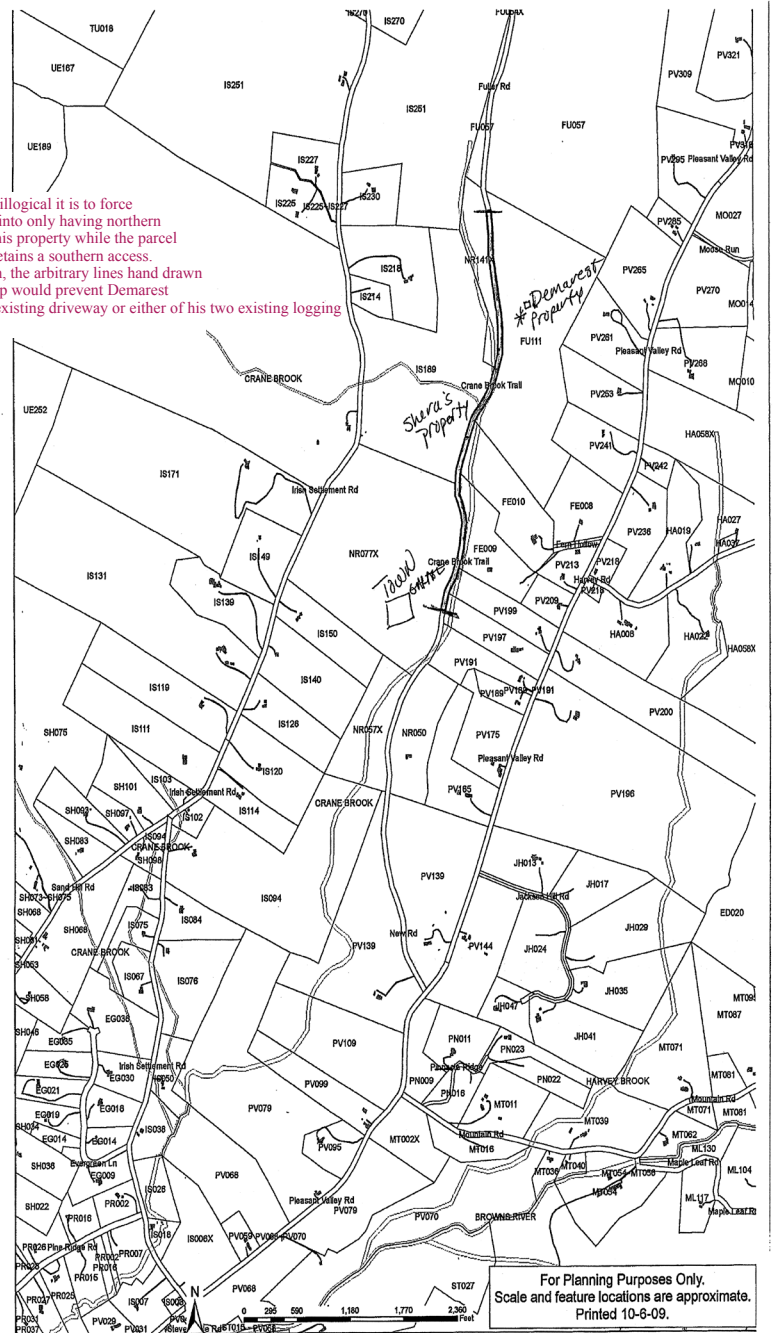
Thank you for your attention to this matter.

Sincerely,

Chris Murphy

cc: Selectboard
Faith Brown
Kari Papelbon

Note how illogical it is to force Demarest into only having northern access to his property while the parcel NR141x retains a southern access. In addition, the arbitrary lines hand drawn on this map would prevent Demarest using his existing driveway or either of his two existing logging roads.



UNDERHILL TRAIL ORDINANCE

TRAVEL ON TRAILS

SECTION 1. AUTHORITY. This is a civil ordinance adopted under authority of 24 V.S.A. §§ 1971 and 2291(14), and 19 V.S.A. § 304(5).

SECTION 2. PURPOSE. The purpose of this ordinance is to prevent environmental damage and pollution caused by vehicular traffic on the trail. Such damage and pollution are hereby deemed to be a public nuisance.

SECTION 3. DEFINITIONS. For purposes of this ordinance, the following definitions shall apply:

- Motor Vehicle* shall include all vehicles propelled or drawn by power other than muscular power, except tractors used entirely for work on the farm, vehicles running only upon stationary rails or tracks, motorized highway building equipment, road making appliances or snowmobiles, or implements of husbandry.
- Operate, operating or operated* as applied to motor vehicles shall include *drive, driving and driven* and shall also include an attempt to operate, and shall be construed to cover all matters and things connected with the presence and use of motor vehicles, whether they be in motion or at rest.
- Owner* shall include any person, corporation, co-partnership or association, holding legal title to a motor vehicle, or having exclusive right to the use or control thereof.
- Crane Brook Trail shall mean the Legal Trail on New Road (Town Highway #26).

SECTION 4. ACTIVITY PROHIBITED. The operation of a motor vehicle is prohibited on the Crane Brook Trail from November 1st until May 1st unless the operator of the vehicle has a valid permit issued by the Underhill Selectboard.

SECTION 5. PERMITS.

- Permits shall be issued only to persons who, in the judgment of the Selectboard, have a legitimate need to operate a vehicle on the Crane Brook Trail. For the purposes of this ordinance, "legitimate need" shall mean a compelling personal or business purpose.
- The only acceptable permit shall be one entitled "TOWN OF UNDERHILL PERMIT TO OPERATE A MOTOR VEHICLE ON THE CRANE BROOK TRAIL" and signed by the members of the Underhill Selectboard. One copy of the permit shall be issued to the permittee and one copy shall be filed with the Underhill Town Clerk.
- Permits shall be valid for residents and property owners so long as they continue to be residents or property owners. All other permits shall be renewed annually.

SECTION 6. PENALTIES. Any person who operates a motor vehicle on the Crane Brook Trail from November 1st to May 1st or who allows another person to operate their motor vehicle on Crane Brook Trail without a permit shall be fined \$50.00, with a waiver fee of \$35.00. If the owner and the operator of a vehicle being operated without a permit are not the same person, the owner and the operator shall each be liable for the fine of \$50.00 or the waiver fee of \$35.00.

Please note: David Demarest had already built his home under a building permit issued for his property on New Road BEFORE the Town of Underhill changed his legal address to Fuller Road. When Demarest's parcel was changed from NR144 to FU111, the parcel of property opposite his land retained a New Road address. This arbitrary and capricious abuse of power is inexcusable...

I believe The Town of Underhill is entrusted to impartially follow its own regulations consistently, and to retain all relevant documentation to that affect. The fact of the matter is the 2001 downgrade and claimed designation of a section of New Road as the Crane Brook Trail was never legally carried out. The Town received State AOT highway funding until 2010 to maintain a portion of New Road which was simultaneously claimed to be a Trail. The Vermont Superior Court ruled on May 11, 2011 the above claimed 2001 downgrade was legally invalid. The mostly private ownership and usage of lands encompassed in the "Crane Brook area" has restored critical wildlife habitat that was once fields, there is no reason to downgrade any portion of TH26 (aka New Road/Fuller Road) into a trail. Efforts to rescind historic landowner access by changing parcel names, failing to properly follow legal procedures, denying landowner's the right of impartial governance and due process, along with losing important records is entirely inexcusable.

The environmental impacts mentioned are due to the Town's refusal to continue maintenance of the road despite their legal obligation to maintain roads in a manner consistent with their classification. Shortly before this attempt to rescind David Demarest's access, he had merely requested a very minimal level of long overdue maintenance; under the mistaken belief the lack of maintenance was budget related, he even provided information on a grant with the potential to cover 80% of the estimated maintenance costs.

The very wording of definition "d" acknowledges the "Crane Brook Trail" is on a legal Town Highway.

Having homes, agricultural, and forestry operations with historic access by way of New Road is inherently a very compelling purpose. Landowners deserves to have the historic access to their property restored in a manner that preserves the public and private usability of the road instead of having their very own Town attempt to rescind previously promised access for the benefit of other property owner's resale values and the personal recreational interests of a handful of citizens.

Documents accompanying the Town of Underhill letter dated October 9, 2009 seeking to rescind landowner access to their property

Underhill Select Board Meeting

December 8, 2004

Present: Stan Hamlet, Chair, Marc Maheux, Bob Scudero, Carolyn Gregson and Sherri Morin.

Called to order at 6:00 p.m.

Carolyn Gregson, Stan Hamlet and Chris Brunell, Stream Alterations Specialist from ANR (Agency of Natural Resources) conducted a site visit at 38 Mullen Road (Michael Tatro) to view his driveway culvert situation.

WSI –Effective January 1, 2005 WSI will be increasing the cost of the trash stickers to \$3.35. The cost of printing 5000 stickers was \$900, which included setup costs. Marc Maheux made a motion to increase the cost of the trash stickers to \$3.50 for a 30lb bag effective January 1, 2005, the motion was seconded, all in agreement.

6:50 p.m. – Gil Churchhill and Dana Labrum present the 2005 library budget to the Select Board. Gil introduced the new Director of the Deborah Rawson Memorial Library. The Board has met and prepared a 1-year and 5-year budget comparison. The budget overall will increase 5.7%.

The annual meeting is scheduled for January 20 at 7:00p.m. Gil explained that in the past the warning was deficient in that the Library failed to get voter approval to carry over capital funds and to expend those funds. There is a 60-40 split with Jericho, with Underhill paying the 40%. Discussion on looking at the charter and seeing if there is a provision that would allow for the split to be adjusted, based on the census. Gil will look at the charter and provide the Board with an answer.

General discussion on the libraries future expansion, Dr. Rawson is selling a house on Evergreen and giving the chattels (personal property) to the Deborah Rawson Library. The library will be setup an expansion study committee.

7:15p.m. Jeff Sprout arrived for the 7:30p.m. meeting.

7:30p.m. – Dave Demarest and Jeff Moulton met with the Board to discuss the boulders on Crane Brook Trail. Jeff Moulton is concerned about where the boulders will be placed, and the cost to place them. Stan Hamlet explained that the boulders are to prevent vehicles from traveling on the trail from December 1 through May 1, per the trail ordinance. Stan explained that the boulders would be placed at the end of Fuller Road, beyond Dave Demarest's driveway and at the end of New Road, beyond the town garage.

Jeff Moulton and Dave Demerst are concerned that they will not be able to have log trucks access the land nor will they have agricultural access.

Jeff Moulton and Dave Demerst will outline in writing their concerns and requests. Carolyn Gregson will contact the State with regard to wetlands. Jeff Sprout explains that other towns issue special permits, which allow for specific activity.

Marc Maheux would like to see boulders at the New Road end with a closed sign on Fuller Road.

Motion to adjourn meeting was made by Stan and seconded, meeting adjourned at 8:15p.m.

Respectfully submitted,

Sherri Morin, Clerk

David Demarest, his friends, neighbors, and the public at large regularly drive on the portion of road which the Underhill Selectboard claims to be the "Crane Brook Trail," but there is no evidence of even a single time when the "Underhill Trail Ordinance" was actually enforced.

SECTION 7. ENFORCEMENT OFFICERS. Enforcement shall be performed by the Underhill Town Constable or by any officer of the Chittenden County Sheriff's Department or by any other Vermont law enforcement officer.

SECTION 8. SEVERABILITY. If any portion of this ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.

SECTION 9. EFFECTIVE DATE: This ordinance shall become effective 60 days after its adoption by the Underhill Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Stanton Hamlet, Chair _____
 Walter 'Ted' Tedford _____
 Peter T. Brooks _____

Wednesday, January 30, 2002 at 11:45 AM

Received for record: _____

Attest: _____
 Nancy C. Bradford, Town Clerk

ADOPTION HISTORY:

1. Agenda item at regular Selectboard meeting held on Wednesday, January 30, 2002.
2. Read and approved at regular Selectboard meeting on Wednesday, January 30, 2002 and entered in the minutes of that meeting which were approved on _____.
3. Posted on Friday, February 1st, 2002.
 Underhill Town Hall
 Underhill Country Store
 Jacob's IGA
 Underhill Center Post Office 05490
 Underhill Flats Post Office 05489
4. Notice of adoption published in the Burlington Free Press on Saturday, February 2, 2002 with a notice of the right to petition.

**TOWN OF UNDERHILL
 PERMIT TO OPERATE A MOTOR VEHICLE
 ON CRANE BROOK TRAIL**

PURSUANT TO THE ORDINANCE REGULATING TRAVEL ON THE CRANE BROOK TRAIL, as defined in the ordinance, the Underhill Selectboard hereby issues this permit to operate a motor vehicle on the trail to:

- A. _____ (land owner/resident of the trail) and his/her invited guests); such permit to be valid so long as he/she is an owner/resident; or
- B. _____, a person determined by the Underhill Selectboard to have a legitimate need to operate a motor vehicle on the trail, such permit to expire one year from this date.

 Date For the Selectboard

Tuesday, 8 Feb. 05

David Demarest
 PO Box 191
 Underhill Center, VT 05490

Dear David,

The Underhill Selectboard is in receipt of your undated letter concerning access to New Road from Pleasant Valley Road. Your letter, of course, makes reference to the Selectboard's meeting with you and Jeff Moulton on the evening of 8 Dec. 04, at the Underhill Town Hall, relative to the placement of boulders on the Pleasant Valley Road end of New Road as a deterrent to vehicular traffic.

First, a little history here: After numerous requests by many of the town's citizens that were using New Road for a variety of recreational purposes over the years, the Underhill Selectboard, by consensus, and with the approval of a number of citizens, opted to turn a portion of New Road into a +/- 4000 ft. long trail. As New Road, entering from Irish Settlement Rd., began experiencing development, further concerns about the future of New Road were expressed to the Underhill Selectboard by various citizens. In fact some of these concerns were expressed to the Selectboard in anger.

It is here, that I would like to respond to your comment in your undated letter about "the Chair of the Underhill Selectboard, Stan Hamlet, had clearly made up his mind on what he wanted, and then admitted that his wife strongly wanted to block the road, but pushed the decision through instead of professionally admitting to a conflict of interest...." I take issue with your comment. I was speaking at the time for a number of citizens when I made that statement. Somehow, that "number of citizens" never got out to the group in attendance that evening and for that, I apologize. Let me tell you, I still hear about that New Road trail situation to this day from various citizens. Relative to the two new members on the Underhill Selectboard, they were not on the Board at the time of turning a portion of New Road into a trail several years ago. Thus they had little of the history of the situation.

Now, Lets get back to business: First of all, your statement in your undated letter that "...it has already been legally established that a gate could not be placed there..." is not quite accurate. A pentgate, indeed, may legally be placed there. However, a pentgate

cannot be legally locked. Two reasons why we didn't use a pentgate: 1. We felt it would be too dangerous (witness the tragedy that occurred several years ago at Red Rocks in Burlington). 2. We didn't want to spend the taxpayers money for a gate that undoubtedly would be subject to vandalism. Hence, the discussion of the use of a pentgate was suspended. Inturn, the placement of boulders was brought to light.

At a subsequent Selectboard meeting (after our December 8th meeting), the Board, appreciating your need to have access to the road (trail), in order to move "farming" equipment and related items on to your site, would be willing to compromise, and have the boulders set aside on an as-needed-basis. When you need such access, simply contact Jeff Sprout at the Town garage and he will move the boulders. When you have completed your work for you immediate project, the boulders will be placed back onto the road by the road crew. You must remember that you do have access to Irish Settlement Road. Indeed, our compromise now allows you access to your property from two different directions.

If you have any questions relative to the above, please contact the Selectboard at the Town Hall.

Thank you.

Sincerely,


 Stanton Hamlet, Underhill Selectboard chair

Dear members of the Underhill Selectboard and fellow residents,

I am writing to express a number of concerns about the Selectboard's decision to place boulders on New Road to eliminate all motor vehicle activity on New Rd/The Crane Brook Trail between December 1 and May 1. My primary concern, since my land is accessed by this long-standing road (by too many names: Dump Rd, New Rd, Fuller Rd, Crane Brook Trail...), is that this will reduce my current ability to access my land. In addition, I believe the town may be not fully adhering to the law in blocking that section of road since it has already been legally established that a gate could not be placed there, which is the assumed reason for using the boulders; however, the legal definition of a "gate" includes anything used to block passage (including boulders).

In the meeting I attended in December to present these concerns and learn more about the decision making process, a number of additional problems became clear. Most importantly, the Chair of the Selectboard, Stan Hamlet, had clearly made up his mind on what he wanted, and admitted that his wife strongly wanted to block the road, but pushed the decision through instead of professionally admitting to a conflict of interest, stating his opinion and reasons for it, and then allowing his fellow Selectboard members to make the decision. I was also under the assumption that my right to access my land inherently gave me the ability to operate a vehicle on the trail section of the road which abuts my land (Section 5a), but it was implied that the Selectboard may not recognize this right. Furthermore, tractors or implements of husbandry I may use on my land and which are allowed in Section 3a. of the Underhill Trail Ordinance are also blocked by the boulders.

I urge the Selectboard to reassess the decision to block my road with boulders and quantify the true costs and benefits of this decision.

Sincerely,

 David Demarest
 P.O. Box 191
 Underhill Center, VT 05490
 (802) 355-6637

David Demarest wrote this letter sometime between December of 2004 and February of 2005, but he had no idea just how determined a small group of influential people in Underhill were. The abuses of their elected and appointed positions of power in the furtherance of their own personal agendas has cost our Town considerably. Besides the thousands of tax dollars in legal expenses which the Town continues to spend on this matter, there have been immense intangible costs including: a complete breakdown of trust between many residents and the individuals in The Underhill Town Hall, a loss of the sense of community and respect which previously enabled neighbors to be welcome guests on large tracts of private property, and more and more property owners feeling the necessity to post their land against trespassing.

David Demarest does not believe a "number of citizens" expressing their personal opinions in "anger" should override the rights of local landowners or the number of citizens which were opposed to reclassifying a historic Town Highway into a recreational trail. Zoning regulations and the Development Review process are the proper legal methods used to control development. Stan Hamlet chose not to listen to a number of citizens with very valid reasons to preserve the historic use of New Road.

Stan Hamlet vaguely refers to "a number of citizens" and "various citizen's" but he does not directly deny having a conflict of interest.

David Demarest historically had access to his property from both the Pleasant Valley and Irish Settlement ends of Town Highway 26 at all times, and the Selectboard had previously verbally promised the "Trail" would not negatively impact landowner access. The compromise promised by Stan Hamlet in this letter preserved enough access that David Demarest was lulled into the false belief the Town of Underhill would no longer continue efforts to further reduce his effective access. In hindsight, he should have sought legal advice the moment The Town of Underhill changed his address from NR144 to FU111.