

David Demarest
Currently residing in a home built under a building permit issued to New Road 144
with a mailing address of:
P.O. 191
Underhill Center, VT 05490

April 30, 2010

Town of Underhill Selectboard
Town of Underhill
P.O. Box 32
Underhill Center, VT 05490

Re: Petition to Reclassify a Portion of Town Highway 26

Dear Underhill Selectboard,

As you are undoubtedly aware I am opposed to the Selectboard's proposed reclassification of a portion of New Road (Town Highway 26). **I am already aware of, and strongly support, the numerous arguments fellow residents opposing the reclassification have brought to the attention of the Selectboard.** In addition, I intend to fully counter the few arguments that were brought up April 24th that were actually in favor of the proposed reclassification. Below are my **six compelling arguments against the proposed reclassification of TH26:**

1) It encourages people to treat private property like a public park

As a landowner with considerable acreage and road frontage along TH26, I have already had numerous problems with people told by the Town that the road I live on is a trail. People park at the Town garage and subsequently treat my entire property like a public park; this includes blatantly ignoring all signage that notifies them my property is private. The numerous people recreationally using my land without my permission when taken as a group have cumulatively:

- a) stolen thousands of dollars of personal and farm property (consisting of tires and rims of a trailer, studded snow tires with one season of wear, and numerous smaller items)
- b) startled my girlfriend less than 50' from my house when to quote them they "thought nobody was home"
- c) torn up my driveway and logging roads with 4x4s recreationally (note that by not maintaining the road the Town has created a "fun" place to go "off-roading")
- d) had the nerve to get upset at me for sustainably cutting firewood on my own land to heat my home

e) dumped trash illegally, both along my road frontage and further up into my property. While dumping on my private property is unfortunately a problem I must deal with personally as a landowner, the Town has refused to help remove trash along the road claiming that it has no maintenance responsibility on trails even though all this time it was still legally a road; over this time the Town has even received State Highway funds to maintain a portion of the proposed reclassification section.

f) my private property signs have been shot at, and I was even shot at once. Note, this has not been people hunting. This has to do with the lack of Town maintenance on the road creating the general perception that this stretch of road is "no man's land." I should also note my experiences with hunters have been very positive, such as a group of hunters that voluntarily picked up trash illegally dumped on the road as a thank you after I gave them permission to hunt on my land, which was after the Selectboard's only response to the trash being dumped was putting up signs saying "no dumping."

All of the above cumulative problems with recreationalists disrespecting me and my land have been specific individuals acting inappropriately. What I personally feel is worst of all though is that certain individuals have gone so far as to take elected and appointed positions of power within Town to further their own private agendas as opposed to working in the best interests of the Town. The years of effort and considerable tax payer expense by the Town to reclassify the public road I live on into a recreational trail for an elite few brought us to the legal proceedings on April 24th.

At this hearing I had difficulty understanding how the Selectboard could claim it wanted to work with landowners given the October 8, 2009 letter on behalf of the Selectboard and Conservation Commission asking "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?" My building permit was issued on New Road and the Town promised me access on New Road! Renaming a portion of New Road as Fuller Road as a way to deny me future access was incredibly unscrupulous, as was the "screening" process the Town had employed with prospective purchasers of my parcel. The prior owner of my property was forced to drop his asking price from \$70,000 to \$50,000 for the 51.64 acre I purchased because of the Town's improper actions.

It seems very clear to me that the Town's treatment of New Road has unjustly benefited some property owners at the cost of other property owners. Around the time I purchased my property, 50 New Road was sold for \$149,000 despite only being a 12.5 acre lot. Ironically, this 12.5 acre parcel now has a 4 acre subdivision described as "Rural, Secluded, Trail/Near Trail, Wooded" with an asking price of \$139,000. It seems as though the primary value of 50 New Road is from neighboring private property which is not owned by the seller combined with the Town's current improper road maintenance practices.

Currently it takes me an additional 10-15 minutes to get into Burlington than it did when I owned a pickup and was able to regularly use the southern route from my property. This increased commute time to Burlington also negatively impacts my property value. Considering that my entire road frontage has the same 3 acre zoning that benefits the current owner of 50 New Road, I will have no choice but to take legal action against the Town for my lost property value if my land is devalued by having any portion of my road frontage turned to trail.

2) The Town's intentional creation of an environmental problem

As an Environmental Scientist striving to live in harmony with nature, I find it particularly troubling that the Selectboard would strategically refuse to maintain TH26 so as to create an environmental problem where one did not previously exist. Obviously, the continued heavy use of ANY road in Town that historically needed a culvert would create environmental problems if the culvert were to be removed and not replaced. Simply passing a "trail ordinance" which to the best of my knowledge has NEVER been enforced despite regular vehicular use of New Road simply has not and will not work. Likewise reducing access to an old landfill that may require additional monitoring or remediation in the future does not work.

There are proven designs and methods of road maintenance that can allow the beaver pond and related sensitive ecosystems to coexist with a functional road useable by all. In 2001 many of these methods were not as well known, but a recently published book (2009) aptly titled "The Beaver Book" by Ben Marascalco documents exactly how to preserve the roadbed of TH26 and the sensitive ecosystems along it simultaneously.

3) Fairness

As a person that believes in fairness, the Town's refusal to maintain the public road I live on while simultaneously considering having the Town Highway Department spend time and/or money working on a private road is the epitome of unfair. Every small business owner can tell you how significantly overhead can affect their bottom line. I personally doubt that the full costs of the Town maintaining a private culvert, which is currently the responsibility of the Cloverdale Road Association, will be covered.

In order to assure accurate costs are assigned to the Cloverdale project detailed accounting of staff time and legal fees preparing the required documents and accurate future projections of the amount of staff time the Town will have to dedicate to responding to the numerous other private road and driveway maintenance requests that residents will make after the Town sets this precedent must be considered. Thursday April 29th, 2010 I filed a petition signed by over 5% of Underhill's registered voters titled "Petition of Fairness in Town Road Maintenance on Public and Private Roads." This issue only needs to come to a townwide vote if the Selectboard continues to oppose its content and demands, which simply reemphasize the way current public policy should be handled.

The injustice of considering reclassifying a portion of TH26 AFTER having been notified of the blatant road insufficiencies pointed out in the current litigation against the Town should also be considered. Residents are hearing and seeing arguments to turn a portion of this road into a trail which were created solely out of the Town's refusal to properly maintain the road in the first place. If the Town truly believed they had "substantially made it into a trail in 2001" there would have been no need for the Town to conduct the legal procedures to consider reclassifying a portion of New Road on April 24th, 2010.

It was also unfair to Underhill residents that deserve to have transparent government that the Selectboard made no mention of its impending plans to pursue reclassification of a portion of TH26 at this past Town Meeting. The Chair of the Selectboard acknowledged that he did not know how much the current litigation requesting the Town to maintain TH26 would end up costing taxpayers but made no mention of the Town's impending plans to incur additional costs by going through the reclassification efforts a second time.

4) Cost to taxpayers

I recognize it is within the Selectboard's legal authority to reclassify any and all Town roads. However, with all authority comes responsibility. The Selectboard must now determine if they want to take responsibility for the considerable tax payer expense of additional legal proceedings and financially compensating affected landowners if they go through with the currently proposed road reclassification. The taxpayers deserve to know how much money has been spent to date in efforts to unjustly restrict the use of New Road and where in the budget this money has come from. There is no justification for the considerable financial liability the Selectboard would incur by continued efforts to deny their statutory obligations.

5) Lack of justifiable arguments for the proposed reclassification

In attending the hearing on April 24, it was clear to me most of the people there were opposed to reclassifying the road and I am unaware of any landowners with road frontage along the proposed reclassification section that will not be adversely affected if the proposed reclassification takes place.

The few proponents of the reclassification wanted the road to become a trail for one of three reasons: they felt their recreational use of the road would be hindered by vehicular use, they saw the current environmental degradation caused by the Town's lack of maintenance and wanted to protect the environment, or they were concerned by the \$100,000 estimate the Selectboard gave to "upgrade" the road to Class 3 / Class 4 standards.

The primary purpose of a road is the conveyance of the Town's residents. I believe the first point of this letter fully addresses the problems that recreationalists supporting reclassifying this road into a trail have already caused.

I believe both the environmental and budgetary concerns that were brought up should not be used as arguments for the reclassification since neither would currently exist if the Town had been meeting its statutory obligations all along. The environmental and FEMA regulations mentioned by two of the recreationalists at the hearing on April 24 only apply to NEW roads, not the maintenance of existing roads. In any case, both the environmental and economic arguments mentioned were intentionally created by the Town's refusal to take any steps to maintain the area in question over the prior years when the Town was still legally obligated to do so.

6) Significant History of Use (and abuse)

I would prefer the current Selectboard respond appropriately to land owner opposition instead of simply summarizing it as "rehash of past arguments."
(Quoted from unofficial meeting minutes, provided by the Town's lawyer in lieu of official minutes, which reference the prior owner of my property opposing the original reclassification efforts of New Road, less than 5 years after he had generously donated over 10 acres to the Town. I believe the wording of these unofficial meeting minutes makes the personal agendas of those involved in the initial proposed reclassification clear.)

If the Town were to reclassify any portion of TH26 it is my belief that the entire Class 4 portion of TH26 should be upgraded to Class 3, with a reasonable variance for its width, so as to enable the Town to receive additional State highway funds, create increased tax base from resultant increased property values, and the public good and conveyance that would result in all the residents of the Upper Irish Settlement region of Town being able to take the shorter level route into Town year round, as was historically done.

In conclusion, I firmly oppose any and all efforts the Selectboard may make to downgrade any portion of the public road I have lived on the past 8 years for numerous legitimate reasons. **Since the methods in The Beaver Book were not substantially documented until recently, the Town has new ways at its disposal to solve the tensions between use of the road and environmental protection than were readily available to the Town when this topic came up in 2001.**

Sincerely,

A handwritten signature in black ink, appearing to read 'David Demarest', with a long horizontal flourish extending to the right.

David Demarest