

TOWN OF MARLBORO
SELECT BOARD REPORT

Decision Whether to Lay Out a Portion of Private Road at
The North End of Whitaker Farm Road as Public Highway
July 25, 2013

At 2:00 pm on June 14, 2013, the select board held a site inspection, and at 3:45 pm convened a hearing at the Marlboro Town Office for the purpose of taking testimony on whether the public good, necessity and convenience of the inhabitants of Marlboro requires the laying out of a public highway of the present private road, a distance of 0.4 miles (2,112 feet) beginning at the north end of Whitaker Farm Road.

Select board members Pieter van Loon and Andy Reichsman were present. Also present were the following residents who live along the private road and represent two of the five homes: Nancy Romer, Lew Friedman and Renee Wachtel. Also present were Anthony Gordon, town resident; David Elliott, Road Foreman; and Marcia Hamilton, Select Board Assistant. All persons named attended both the site inspection and hearing.

History of the Road

Town Highway 15 was laid out running generally north-south by the selectmen of the Town of Marlboro on August 31, 1790 (Town Records, Vol. 1, Page 101). It extended from present day Augur Hole Road to South Road. On June 27, 1933 the selectmen of the town discontinued approximately two miles on the south end, as indicated in Town Records, Vol. 4, Page 42. In the 1970s CD Associates, Inc. developed the area, built up a road over a portion of the road that had been discontinued and sold house sites. A fifty-foot wide strip of land was deeded to the Town in 1987 by a quitclaim deed (Land Records, Book 29, Page 168) from Cersosimo Lumber Company to the Town. Part of that strip was acquired by Cersosimo in a deed from Dunklee & Bahre at Land Records, Book 22, Page 399. The Select Board designated the 0.5 mile Class 3 road as Town Highway 49 in 1989 and it appeared on the Vermont Agency of Transportation Certificate of Highway Mileage dated January 11, 1990 which was approved by the state on January 22, 1990. The road was subsequently named Whitaker Farm Road.

The portion of Town Highway 15 that was not discontinued in 1933 is known as Lahar Road.

The Class 3 portion of Whitaker Farm Road, Town Highway 49 begins at the intersection with Church Hollow Road, Town Highway 20, and proceeds north for a distance of approximately 2,640 feet, or approximately 0.5 miles. The private portion, which is the subject of this action, continues for approximately 2,112 feet, or approximately 0.4 miles.

Background

On October 15, 2012 the Town Clerk validated a petition with 72 valid signatures of registered voters of the Town of Marlboro requesting the following:

We, the undersigned registered voters and/or landowners, taxpayers of the Town of Marlboro, petition the Select Board to include the last .4 miles portion, presently a private road, of Whitaker Farm Road into the Marlboro Town Road system, making it a public road. This will assure access during an emergency, make snow clearance and road repair more sustainable and systematic, and allow the five houses on that portion of the road to receive the same services as others on the Town road system. Thank you for your attention.

The select board met October 25, 2013 at a regularly scheduled meeting and voted to accept the petition from Whitaker Farm Road residents, and decided to schedule a site inspection and hearing at a March meeting. According to the Town Highway Ordinance, Section 2.07, Completion Deadline, No roads will be inspected or accepted after October 15th. The board, at its regular meeting on March 28, 2013, it set June 14 for the site inspection and hearing.

The Select Board gave more than thirty days' notice, by certified mail, to persons owning or interested in lands near Whitaker Farm Road; gave notice to the Town Planning Commission and Town Road Foreman; posted copies of the notice inside and outside of the Town Clerk's office, and on the Town Web Site; and caused a required notice to be published in the *Brattleboro Reformer*.

During the site inspection, the board and others walked the road, inspected the culverts and drainage ditches and overall construction of the road. The select board heard testimony from three residents and the Marlboro Highway road foreman. Based on the evidence observed during the site inspection and presented at the hearing, the board makes the following findings and decision:

1. The 0.4 miles of private road had not been brought up to Class 3 standards as required by the Marlboro Highway Ordinance and the Town Road and Bridge Standards. "...The standards include management practices and are designed to: ensure the safety of the traveling public, minimize damage to road infrastructure during flood events, and enhance water quality protection by minimizing sediment delivery to surface waters..." Further, "...Any new road...to be conveyed to the municipality shall be constructed according to the minimums of these standards..."
2. The petitioners were provided a copy of the Marlboro Highway Ordinance and the Town Road and Bridge Standards.
3. The five residents will remain eligible for emergency services as they have been all along during their residency.
4. The five residents will continue to receive the same consideration as other town residents on private roads and driveways in Marlboro.
5. Even if the 2,112 feet in question met the highway construction standards, it is the board's judgment that there would be no public benefit to including it in the town

highway system. The board feels there would be no the public good, necessity and convenience of the inhabitants of the municipality to require the laying out of the private 2,112 feet.

Based on the preceding findings, the Marlboro select board orders no action be taken regarding the 2,112 feet of private road.

Any person interested in this Decision by the select board to take no action to lay out or reclassify the private 2,112 feet north of Whitaker Farm Road may appeal this Decision to the Windham Unit of the Civil Division of Superior Court in writing within 30 days of the Decision.

Dated: July 25, 2013 at Marlboro, Vermont.

TOWN OF MARLBORO SELECT BOARD

Not Present
Andrea Livermore

Pieter van Loon, Acting Chair

Andrew Reichsman

TOWN OF MARLBORO
Select Board Hearing
On The Private 2,112 Feet North Of Whitaker Farm Road
Friday, June 14, 2013

ATTENDANCE:

Present were select board members Pieter van Loon, acting chair, and Andy Reichsman. Also present were homeowners Lewis Friedman, Nancy Romer and Rene Wachtel; town resident, Tony Gordon and Select Board Assistant, Marcia Hamilton.

The hearing came to order at 3:50 pm.

Pieter van Loon, acting chair read the Hearing Notice dated May 8, 2013 which was mailed Certified, Return Receipt Requested to all abutters of Whitaker Farm Road including the .4 miles which is the subject of this hearing.

All those present were sworn in and signed the oath to give truthful testimony under pains and penalties of perjury.

David Elliott stated the address of the Town Office is 510 South Road and not 524 South Road, as stated in the hearing notice.

Pieter read the rules of a quasi-judicial hearing and stated testimony will be gathered today. The select board will deliberate and render a Decision within 60 days. He also read background information from the Marlboro Highway Ordinance.

Nancy Romer read testimony, which she submitted, supporting her request for .4 miles of private road to be accepted into the town highway system. She said her group has two reasons to change the private road to a town road, (1) safety of the road year around and accessibility for emergency workers; (2) equity. "The first .5 miles of Whitaker Farm Road is part of the Town Road system, but the last .4 miles has historically been a private road. We are no longer a "development" with a profit making structure but rather owners of five homes with the vast majority of the land in the Current Use Program. We don't have much traffic at all."

David Elliott reported on his inspection of the road construction. All culverts met standards although some had wear that might diminish effectiveness over time. Between the fourth and fifth culvert he noticed some bigger rocks and crust coming up through the gravel indicating the correct amount of gravel had not been used. The culvert near the turn-around needed some cleaning around on it. The ditch around the turn-around needed to be reworked to align the flow to the culvert. One culvert has become oval now which reduces the life of it. He feels there are a sufficient number of culverts on the road.

He had concerns about the construction of the road. There was a soft spot in the road. He noticed ledge in the ditch so he assumed there probably was ledge under the road under the soft spot. The solution would depend on where the ledge is and how the water flows in that area.

David said the road does not meet the building standards because in some places there is not enough cover material over the base.

David provided details and estimated the annual cost of maintaining .4 mile to be \$8,900. He estimated \$4,860 for materials, labor, trucking, and \$4,015 for six to seven culverts.

Nancy Romer asked about cost of repairs to bring the road up to standards.

David said his year-round maintenance estimate is \$4,859.76 which is typical for a .5 mile section of road. David thinks it is possible to bring it up to standards. The only

way to do that would be to do test holes to see how much additional gravel would be required. Some trenches would also have to be made.

David does not see any benefit to the town to take over the .4 miles. If the road went all the way to Lahar and Collins Road it would be a benefit. With regard to emergency services, as Fire Chief, David feels the road is sufficient for emergency vehicles to access the way it is. He feels their private road is like other long driveways and development roads in town that are private.

Nancy Romer asked whether the road could be fixed up to meet standards within a year. David said until there are test holes to determine how much more material is required, it would be difficult to determine.

There was discussion about whether there was any advice David could offer their contractor for bringing the road up to standard. David stated he did not feel comfortable offering advice to someone over whom he has no control. He stated they were given the road standards and they told their contractor what they wanted him to do.

The hearing closed 4:48 pm.

Respectfully submitted,
Marcia L. Hamilton, Select Board Assistant