

## WEST WINDSOR SELECTBOARD

Draft Minutes

December 21, 2009

Present: Bruce Boedtke, Tom Kenyon, Phil Arvidson, Peter Vollers, Matt and Lynne Birmingham, Karl Hanson, Ted Siegler, Deb Daniels Mithoefer, Peter MacEwen, Sue Greenall, Gareth Henderson, Dennis Lemire, Cathy Boedtke, Mary Fenn, Erik Schutz, Peter & LeeAnn Manke, Merle and Leone Bushkin, Jim Kenyon, Cathy Archibald, Randy Perry, Julie Gaudette, Jim and Joy Axten, Jim Lyall, Bob Smith, Barbara Gerstner, Barbara Ackley, Nancy Gaynor, Martha Harrison

- 1) Call to Order – Selectboard Chair Phil Arvidson called the meeting to order at 6:30 PM, opened the public hearing on the possible addition of a pent road to the town highway map and sworn statement, and asked those wishing to speak to give their name and address and to keep their comments civil. Phil noted that the town is represented by Peter Vollers because Town Attorney Matt Birmingham has a conflict of interest. Ted Siegler provided background information on the ancient roads issue and Act 178. Ted said the Conservation Commission (CC) received a grant to research West Windsor's ancient roads and hired Surveyor Deb Daniels to help them with the research. Ted said the CC started by identifying roads that had physical evidence or were included on one of the old maps. The CC also examined historic records at both the Windsor and West Windsor Town offices, and at the West Windsor Historical Society, where the Kittredge records are located. Ted said according to Act 178, any road with documentation of its existence, but no physical evidence, has to be on the town highway map by February 2010 or it will become an "unidentified corridor." Ted said the CC started with about 20 potential ancient roads but narrowed the list to six. Ted said the pent road in question tonight was laid out by the town and the CC has found no evidence that it was subsequently "thrown up." Ted said the CC made a recommendation that the Selectboard place it on the highway map, which gives the town until 2015 to either throw it up or keep it as a Class 4 road or a trail. Deb said she and the CC have made an exhaustive search for information both in Windsor and West Windsor. Deb said the Historical Society has some very helpful information done by a woman named Mrs. Kittredge, who identified all the West Windsor property owners in 1956 and then researched previous owners as far back as she could. Deb said for the pent road under discussion, she was only able to identify the starting and ending points of the road and an old bridge abutment, so the road location sketched on the map is approximate. Deb said if the pent road is not placed on the highway map it will become an unidentified corridor on July 1, 2010. Ted said the CC's intent, in recommending that the pent road be placed on the town highway map, is to give the town and the land owners until 2015 to determine whether it is or is not a road. Ted said the CC and the Selectboard are aware that it doesn't make sense to put 50 roads on the map. Ted said the value of this particular road is that it runs parallel to an existing trail, which has been on the verge of closure many times, and could replace the existing trail if it were closed. Peter MacEwen said his land, when he bought it, was just forest and there was no evidence of any road. Peter MacEwen said his land is crisscrossed with deep ravines. Peter MacEwen said he has the VAST trail on his property and he has never prevented anyone from crossing his land but it's nice to have the option to shut it down if people don't respect the property. According to Peter MacEwen, this legislation plays "gotcha" with landowners who are already generous. Peter MacEwen said it doesn't seem like a hardship if the existing trail gets shut down and trail users have to go an extra ½ mile down Sheddsville Road. Peter MacEwen said the proposed road would kill property values and the location of the road would be arbitrary. Mary Fenn read from a letter she wrote. Mary said the pent road is not shown on the 1869 Beers map. Mary said by definition, a pent road is a public road which may be closed at its terminals. Mary said when she and her husband purchased property in West Windsor in 1969 there was a legal right-of-way on the property and a number of logging roads but none that qualified as a town highway trail. Mary said she and Fran have always shared their land with the public with certain restrictions - no motorized vehicles except snowmobiles. Mary said it is unnecessary and unfair for the town to reclaim an 1860

road from landowners who purchased their land unaware that it might contain an old road. Barbara Ackley said if there is concern about landowners closing portions of the existing trail, the pent road wouldn't help trail users get to Rowe Hill. LeeAnn Wetherell Manke said she and her husband are happy to have neighbors use their property but opposed to establishing a legal trail. Leann said there is a farm road on her property to access the back field for mowing but it's not an ancient road. LeeAnn said the way the pent road is drawn on the map, it would pass in front of their home and through their barn. LeeAnn said she has no problem with people using her land but she wants to keep it on an informal basis. Matt Birmingham said the proposed pent road is not a road, it's his driveway. Matt said the CC found an 1860 petition asking the Selectboard to open up a pent road or a bridle path. Matt agreed with Mary Fenn's definition of a pent road, which can be closed at both ends. Matt asked the Selectboard to kill the proposal now and not put the pent road on the highway map. Matt asked everyone to imagine that their driveway is now a public road. Matt said there is a difference between "permission" and "obligation." Matt said everyone affected by this proposal is present and united in their opposition to the proposal. Matt said the only person who could conceivably use this pent road is a very hale and hearty person on foot due to substantial ravines. Matt said the proposed road goes through three front yards and four side yards. Matt gave the Selectboard a copy of the 1860 petition along with a translation of what the petition actually specifies: the beginning point, the ending point, and the general direction of the pent road. Matt said there are no stonewalls, large maples, or other monuments to indicate the actual layout of the road. Matt said he already allows non-motorized use of his property. Matt said the petition is not a petition to open a highway. Matt said a legal trail is "a trail which is not a highway, which was previously designated as a town highway." Matt said this road was not set up as a town highway, it was set up as a pent road. Matt said he has consulted with Paul Gillies, the king of ancient roads, who said the survey for this road is seriously defective in having no metes and bounds description and therefore he predicted that the Agency of Transportation would never accept it. According to Matt, Paul also stated that trails are public rights of way, laid out formally, in the same manner as roads; there were no trails before the 1920s, when the legislature first authorized the creation of trails, so if West Windsor wanted to make [Matt's] private land into a trail they would have to have a full hearing, site visit, compensation for "taking," and appeal to the Superior Court. Matt closed by reading an excerpt from a book on local history by Earla Scull and noted that he thinks the Selectboard should have called the eight affected landowners. Merle Bushkin said he doesn't own property adjacent to the proposed pent road, but everyone who buys property in West Windsor has a title search done and should be able to rely on it. Merle said he and his wife allow people to walk or ride horses on their property but they don't allow motorized vehicles. Merle said he doesn't understand why the town is looking for ancient roads and encouraged the Selectboard to turn down all proposals to add ancient roads to the highway map, and stop spending money and wasting time. Sue Greenall said she has legal easements on her property because she realizes that just because she allows people to use the trails on her land doesn't mean the next owner will allow people to use them. Sue said she has seen trails closed when property changes hands. LeeAnn said she agrees that we need open space and should let people have access but she doesn't want the people who were here in 1860 to decide what she does. LeeAnn said Cowshed Trail used to be a true trail, only accessible part of the year using a 4-wheel drive vehicle, but now it's a town road and that's what she is afraid will happen with the proposed trail. Dennis Lemire said he supports maintaining legal corridors for recreational purposes because once they're gone, we'll never get them back again. Jim Lyall agreed with Dennis that the town should retain legal corridors, but he's not sure that's the case in this situation, which is too nebulous. Tom Kenyon said there are 35 or 40 actual road petitions at the historical society. Tom said petitions, in 1854 and 1869, to "lay out a public highway" indicate that the people back then knew the difference between a public highway and a pent road. Tom said the pent road in question was laid out to resolve a dispute between a Mr. Pierce and a Mr. Perkins. Bruce said the trails in West Windsor make the community very attractive and he is concerned that, as property owners change, trails can be discontinued. In this case, Bruce said, he thinks the information is too nebulous and it would be prudent to move on. Phil said he is not

persuaded that there is sufficient evidence to add this road to the map. Phil said property owners have a right to rely on title searches and he does not think the benefit to the town is sufficient to adversely affect abutting property owners. **Bruce made a motion to reject the proposal to add the pent road, as described, to the town highway map. Tom seconded the motion, which passed unanimously.**

- 2) Conservation Commission resignation and possible appointment – Phil said he has no problem with either of the candidates proposed by the Conservation Commission. Martha said she had an email from Ted Siegler stating that the Commission has no preference either. **Tom Kenyon nominated Cathy Boedtker to fill the position on the Conservation Commission vacated by Sue Greenall, with the understanding that Klaus Lubbe is available if another member of the Commission resigns. Phil seconded the motion, which passed with Bruce abstaining.**
- 3) Application for fence in Silver Hill Road right-of-way – Tom said the fence is 8 feet from the road and six feet from the house. Tom said the purpose of the fence is to keep kids and pets from running into the road. Karl Hanson presented a photo showing the style of fence (three rail) being proposed. Karl said the fence will be six feet farther from the Brownsville-Hartland Road than the old split rail fence that Harvey Hastings had. Tom said he would like the property owner to give permission to remove the ash tree across the road. Karl said the property owner has said that the town can take down the tree but he doesn't want to pay for it. Tom asked Karl to have the owner send the town a note to that effect. Karl showed the SB where he'd like to put the fence. Karl said there are some maple trees very close to the side of the road and the fence would be further off the road than the maple trees. Tom said the highway foreman is going to look at it. Tom said he doesn't have a problem with the fence with the understanding that the town is not responsible for any damage to it. Karl said if Mike has a problem with the location of the fence as proposed would the Selectboard consider it if it were moved three feet further off the road. Phil said he has a problem with building in the town right-of-way unless there is some good public reason for the town to allow it. Bruce said the only thing unusual about this situation is that the house itself is in the right-of-way so the applicant is stuck between a rock and a hard place. Bruce said he would like Mike to weigh in but he is more comfortable with the fence being three feet from the house. Tom said he would like to see the road moved to the north a few feet. Under those circumstances, Phil said he would not have a problem with the fence. **Bruce suggested putting this issue on the January agenda. Tom and Phil agreed.**
- 4) Approve Minutes: November 20, 2009; December 14, 2009 – Phil suggested deferring consideration of the minutes to the January meeting. By unanimous consent, the Selectboard members agreed.
- 5) Other Business – Ambulance contract: Jim said the Selectboard is running out of time to discuss the ambulance contract. Tom said Windsor's contract price is \$15,600 and includes a provision that the town pays any ambulance fees that residents don't pay within 180 days. Tom said Golden Cross's price is \$9,600 and the town would not be liable for any unpaid bills. Tom said it would be nice to know what Reading is going to do. Phil said he talked to FAST Squad Director Nancy Gaynor, who strongly advised against accepting Windsor's contract proposal. Bruce said the clause requiring the town to pay all fees not paid by residents is totally unacceptable. Phil agreed and said Nancy Gaynor thinks Golden Cross might locate an ambulance closer to West Windsor if Hartland and Hartford were to buy in. Phil said he would only consider Windsor's proposal if West Windsor presented a counter-proposal. Jim said the contract is due January 1<sup>st</sup>. Bruce suggested making a counteroffer to Windsor. Jim suggested getting in touch with Bob Allen in Reading to find out what they're going to do. Phil asked Jim to give Bob a call. Phil suggested that the Selectboard put together a counteroffer when they have their first budget meeting.
- 6) Adjourn – **Tom made a motion to adjourn at 7:50 PM. Bruce seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison