

PETER F. LANGROCK
MARK L. SPERRY
FRED L. PARKER
JON C. STAHL

SUSAN F. HUMPHREY
ELLEN MERCER FALLON

LANGROCK SPERRY PARKER & STAHL

ATTORNEYS AT LAW
15 SOUTH PLEASANT STREET
P. O. DRAWER 351
MIDDLEBURY, VERMONT 05753

802-388-6356

November 9, 1979

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David A. Crawford
Town Manager
Municipal Building
Middlebury, Vermont 05753

Re: Trails

Dear Dave:

You have requested an opinion from me as to what procedure the Selectmen must follow if they wish to block off a part of Charles Avenue; I understand the intent to be that vehicles proceeding northerly from Cross Street would at some point meet a barrier and be forced to turn back, and vehicles proceeding southerly from the High School would likewise meet a barrier. The facts as I understand them are that Charles Avenue is a town highway for its entire length, and that approximately mid-way there is part where the Middlebury Union High School District is the only abutting property owner on each side. The Selectmen would like to place dead end signs at the intersection of Cross Street and Charles Avenue, and likewise where Charles Avenue starts southerly from the High School. They would also like to erect some kind of barrier or barriers in the area where the High School owns on both sides.

Charles Avenue is a class 3 town highway.

19 V.S.A. §931 requires a town "to keep in good and sufficient repair at all seasons of the year" its class 1, 2 and 3 highways. 19 V.S.A. §1331 provides that when a highway is "unsafe for travel", citizens can initiate a proceeding to require that it be made safe for travel. The Vermont Supreme Court has held that the public's right in a town highway, includes: "using the highway as an open passage or thoroughfare". Abraham v. Dougherty (1947) 115 Vt. 71. It has also held that a town can be required to keep its class 3 roads open for travel in the winter. Gilbert v. Brookfield (1974) 134 Vt. 251. The intent of these statutes, therefore, appears

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to be that the public has the right to travel over all parts of a class 3 highway, and in my opinion, as long as Charles Avenue is so classified, the Town would not have the right to place barriers in it or otherwise prevent citizens from passing over its entire length.

If a portion of the highway were re-classified as a class 4 highway, the result would be the same. The Town would not have the same obligations of maintenance or repair, but the public would have the right to pass over it, free from artificial obstructions placed there by the Town.

In my opinion, the best way to accomplish what the Selectmen intend is to discontinue that portion of the highway adjacent to the school lands pursuant to 19 V.S.A. §531. In effecting the discontinuance, the Selectmen may either:

(A) Continue the discontinued portion as a trail under 19 V.S.A. §535. If that were done they could then allow the trail to be enclosed by the Middlebury Union High School District by whatever barriers, gates or bars the District should deem appropriate. The authority for this action is 19 V.S.A. §1481. The Town could also erect such barriers on its own.

(B) The Selectmen could discontinue the portion of the highway without continuing it as a trail, in which case the lands within the right of way would revert to the abutting property owner, namely the school. Thereafter the Town or the school could place barriers at either end.

In either instance, the standard for discontinuance, as set forth in §531, is a finding by the Selectmen after examining the premises and public hearing, that the public good and necessity require the discontinuance.

Should the Selectmen desire to discontinue part of the highway but continue part of it as a trail, they may also designate the trail as a bicycle trail under the authority of 19 V.S.A., Chapter 23.

The only alternative I see to discontinuance would be an amendment to one of the Town's traffic ordinances, designating a specified area southerly of a mid-point barrier as one way going south and a specified area northerly of the barrier as one way going north, thereby making it impossible to lawfully proceed over part of the

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roadway. This is a highly artificial way of accomplishing a discontinuance, and I do not think it would be authorized under the Selectmens' ordinance making powers. A court would probably say that any such ordinance was in effect a discontinuance, which should be set aside because it was effected without following the procedures in §531.

If you would like me to prepare discontinuance papers, please let me know.

Sincerely yours,



Mark L. Sperry
MLS/ger