

Memo

Date: 10/16/19

To: Kathleen Ramsey, Town Manager, Middlebury Selectboard members, Infrastructure Committee

From: Heather Seeley, Vice Chair Middlebury Selectboard; Chair Infrastructure Committee, Creek Road Task Force Member

Re: Creek Road – Response to Bill Kiernan’s Memo dated 10/3/19

After Mr. Kiernan’s proposal to install guardrails on the northern section of Creek Road was presented and alternatives were discussed and before meetings with landowners were held to discuss alternatives; information was provided by Kathleen Ramsey regarding Pent Roads, including several memos and documents that can be found in the Creek Road Task Force Document Library. After reviewing all of the information, in particular, Mark Sperry’s 11/9/79 letter to Town Manager David Crawford, it became very clear to me that the Middlebury Selectboard, at the direction of staff, has created and maintained an illegally closed road. While this letter is dated, I find the information it contains very relevant to the current situation with Creek Road. Passages of particular importance are as follows:

Page 1 Paragraph 2

“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. “

Page 2 Paragraph 3

“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”

From Garrett A. Baxter’s email to Kathleen Ramsey, 6/26/13

“As far as making a trail or road into a pent road, the process requires that the Selectboard discuss the issue at an open meeting and then issue a decision in writing as to whether permission will be granted to gate the road/trail”

“19 V.S.A. 304 (5) grant permission to enclose pent roads and trails by the owner of the land during any part of the year, by erecting stiles, **unlocked gates**, and bars in places designated.”

Of particular note in Garrett Baxter’s email , the reference to “unlocked gates” for a properly designated pent road. It is also important to note, that at no time has the Selectboard held proceedings per state

statue to change or otherwise reclassify Creek Road. Creek Road is a Class 3 Town Highway the “public has the right to travel over all parts of”. (Mark Sperry Letter, page 2 paragraph 1)

When the idea to close and gate the road for safety concerns was presented, I was supportive because the measure was presented as temporary and for safety reasons. However, as of today 10/16/19, the road has been gated and locked for 4 years and 4 months. In addition, there is no money or plan for keeping Creek Road “in good and sufficient repair at all seasons of the year” per state statue. In my opinion, while I agree the Town and the Selectboard has worked to find an affordable fix for the situation of Creek Road, “temporary” has been well and sufficiently exceeded.

The proposal approved by the Creek Road Task Force, 2-1 vote with 1 absent, and before the Infrastructure Committee to consider, expands the temporary guardrail option proposed by Bill Kiernan to the southern section of the road. This allows for the removal of the illegally locked and blocked Class 3 road. It is also a temporary measure and for safety reasons. The Creek Road Task Force is not recommending this as a permanent fix. It still does not fix the issue of “keeping in good and sufficient repair at all season of the year”. It does allow more time for the Creek Road Task Force to complete the work it was charged with.

In regards to safety, Creek Road has been an “unsafe” road for years. In my time in the neighborhood, 25 years, I know of 2 cars that have gone off the road and into the Otter Creek. It has always had sharp curves and small shoulders between the road and Creek. However, in that time, I am aware of no lawsuits upon the Town for an “unsafe Creek Road”. I am of the opinion that the southern section is safer than the northern section. If guardrails are sufficient to make northern section “safe”, then they are more than sufficient for the southern section. It also returns to the public its “right to travel over all parts of a class 3 highway” (Mark Sperry, 11/9/79, page 2 paragraph 1). It is my opinion, as long as Creek Road remains classified as a Class 3 Town Highway, “the Town does not have the right to prevent citizens from passing over its entire length”. (Mark Sperry, 11/9/79 page 2 paragraph 1)