

Bethel “Roads Diary”

Public Rights-of-Passage / Ancient Roads / Unidentified Corridors Documentation Project

*** Diary of Notes by Victoria Weber ***

This is a diary of the notes Mary Pavone and I have taken while assisting John Dutton to document paper records for Class 4 roads in Bethel, Vermont. Most of the comments are by John. For most of his life John has been a roads researcher and historian, and his work is known throughout the state. He is also a former teacher, surveyor and town lister. Mary and I are citizen volunteers who acted as ‘scribes’ to record the work which John Dutton has gathered and researched over many decades. NOTE: *Victoria’s comments, questions or clarifications are in brackets []. Disclaimer: all of this information is as I heard or understood it – it may not be 100% correct. –V.W.

The intent of this “Roads Diary” is to create an educational resource for others to help them learn about and appreciate the history of, and the complexity of, these historic public rights-of-passage.

 ① January 12, 2007

Dell Cloud (Bethel Town Manager), Mary Pavone, Victoria Weber, Abbie Sherman (Asst. to Bethel Town Manager)

The Ancient Roads Law [Act 178, actually labeled “Unidentified Corridors” – the term ‘ancient roads’ never appears in the law] is convoluted.

Abby went to a UVM Extension Service program about it in Fairlee, and Dell attended a meeting in Sharon lead by Johnathan Croft of the AOT Mapping Service

Many answers to questions the law brings up won’t be answered until there is litigation.

Working Draft Map:

The town hired John Dutton in 1980’s to do a mapping project of the 4th class roads. He walked them all, researched them in the records to find legal descriptions, and drew those we should keep on map. These have been digitized and now appear on the Bethel parcel map. This working map is a recent (but not most current) parcel map. Abby has highlighted in yellow the 4th class roads we are concerned with. Some are also highlighted in green as they have already been sent to AOT and appear on AOT maps, so we are not concerned with them here.

6 Types of Roads we need to focus on. Our objective is to get them on to the AOT map. John may be aware of (or have found in the past 20 years) some more, but Dell thinks we have all (or almost all) the ones we need to deal with.

All yellowed roads are currently 4th Class roads by statute. They could become “unidentified corridors”.

Per Act 178, Class 4 roads NEED:

- 1- legal definitions (= John’s 1980’s project)
- 2- may need to be physically evident on ground. The law can be read different ways on this.
- 3- needs to be on a map [an AOT map????]
- 4- selex’s certification for a filing w/ AOT on Feb. 10th of each year.

A LEGAL DESCRIPTION of a road

- description by court or prior selex. They went through a procedure to lay out a legal highway with a survey of center-line
- could be a gift to the town giving right of way by landowners
- just referred to in deeds
- just considered to be a public right-of-way by will or dedication [= use].

5 Sets of Highways to deal with

1. In green, already on map and to AOT
2. Readily findable – easy – just need to go to Selex @ Jan 22nd meeting. Selex 'certify' them in their minutes and they'll put the road on the AOT map
3. Some we cannot do quickly, like the easily identifiable ones above. These may take a while to find a description. Want to put on map w/o public hearing or dealing with property owners. These ARE used, evident and known.
4. Tougher. Have legal description so John has on map, but no physical evidence on the ground. So Description, but no clear use. May need site visits by selex, etc., and to go through notification and hearings.
5. Others we won't bother locating on ground and we'll discontinue because they serve no public need = mass discontinuation (as set out in Act 178). A committee will help make these decisions.

Some of the yellow ones may be in category 4 or 5 – if there is any debate about physical evidence.

By January 22 Dell wants 1-5 or more roads that we can easily find legal descriptions of that we can have Selex certify, put green line on, and send to AOT. So, get a few done.

By Feb. 10, 2008 Dell wants every road we want to keep:

- 1- INTO the hearing process - OR –
- 2- heading to the mapping division of AOT without need for a hearing because it is clearly evident on the ground and used.

Descriptions of the roads probably should be double checked (verified) in the town records. Dell expects that our filings are made in good faith, even if the book and page # are found to be in error. AOT does not need this info (the description) – would just be of our use in Bethel, and especially if there were a hearing or dispute.

Book of Roads = This is a volume of all actions concerning roads since 19__.

Select Board's Policy: The Selex view these as public rights of passage and we should keep all those it would be sensible to keep. So they want to err toward keeping these roads. The public should keep these rights because we don't know how they will be needed in the future. If the public loses the right of passage it is prohibitively expensive to get it back. So they lean toward keeping them for unknown future uses.

However, roads that begin and end on one property or are dead end, or don't connect anything may be exempted.

[We then brainstormed fields of information to include in a form to gather together info.]

Who Does What:

Mary and I do not want to be on an eventual committee which shall make recommendations to selex. I don't want to spend the time once gardening weather comes.

There will be a committee to advise Selex. Rick Wright (who has a road on his land he wants thrown up) is only person who has volunteered so far.

Mary & I describe ourselves as 'scribes' to help John Dutton to get the info he has down on forms and maps.

The mass discontinuation process is nebulous. There may be problems between towns when a road extends into adjacent towns.

The town needs to declare them in order to discontinue them. If they are not known about and are not 'declared', they remain in some shadow form and lurk as possible problems.

Definitions:

' Acceptance data' =by the Selex who acknowledge/certify (& it is included in their minutes) that it is a road.

 ② **January 14, 2007**
Mary Pavone, Victoria Weber, John Dutton

Roads crossing into Neighboring Towns

John Dutton says he is in contact with Rochester (which does have a committee) Stockbridge and Royalton.

On roads that cross a town line – we will need to consult with neighboring/abutting towns about them. [Also we have been checking and noting whether the roads which cross town lines ARE included on the AOT maps for those towns.]

[We are using field # 12 –“Other notes including if a road continues into another town” – to record if a road crosses into another town as we will need to work with that town in future.]

AOT needs from towns:

1- “Geodetic alignment control”. = They need information to get it (a road) in the right place. Probably best to give them the most recent form of the tax map which they can then trace.

2- One of the bits of information from our form = the paper trail in one of the sets of town, state or county records, occasionally including court or historical records.

Widths? Are there standard widths to roads? John says there are several different standard widths. Records will take care of that – it will be in the original record and people could get that info from the land records OR there is a statute to tell them what to do if there is no information for a particular road.

Names for roads?

John says names never work and the first time there were legal names was with the recent 911 road-naming process. Abbie's numbers at each end and each intersection (which then demark 'segments') may be an advance.

We will use names John uses for the roads, and also any 911 name or alternative names we are aware of.

Bethel Neighborhoods

John suggests we label each road by which of 14 well-known Bethel neighborhoods it is in. John supplied a map. This will serve as a quick index for the general location of the road.

[I believe John's files are also organized by these neighborhood names.]

Beers' Atlas Maps of Vermont Towns

Beers' Atlas' task was "to show all main traveled roads" that were clearly in public use in 1869. Beer's employees did quick "course and direction" surveys of each of the roads by driving their wagons over them, and at each turn they used a compass mounted on the wagon to plot the direction and then they used an odometer mounted on the wheel of the wagon to measure the 'course', or distance to the next bend. The double solid lines on the map are a series of connected straight lines (an 'open polygon'), not a continuous curving line. At each house they stopped and asked the name of the occupants and wrote that in on the map too.

Some other roads are included in *Beers'* based on hearsay of the surveyors in their wagon. They were "reputed to be roads" at the time of *Beers'*, but were not surveyed by *Beer's*. If they asked neighbors and were told there was a house 'up yonder', they would draw a double dashed line to where they thought that house was. These roads were not surveyed, and appear curved and drawn in onto the maps freehand. They are NOT evidence of a public road the way the double solid lined surveyed roads in *Beers'* are.

These double solid lines are clearly public and in use in 1869, and cannot be anything but public. By statute towns had to make roads public.

Pre-1800 there were so many settlers and roads that many roads became public because they were in use. For example, Christian Hill Road which served a significant neighborhood. You cannot question if they were public, just like main roads now. For example, you cannot question whether Rt. 12 is a public road now. By its use and maintenance, it IS.

Birth of roads. John has researched the many ways roads were 'born' pre-1800. It could be:


- 1- by action of the select board
- 2- by a vote at town meeting
- 3- there were people living along it and it was in use so it was used as such.
- 4- other roads may have come into existence but may not have been treated as, or maintained as, roads.
- 5- mandate from the state legislature or state courts

Almost all roads physically came into existence because they were paths, then tracks and were used, and that use led to more use. [So, they grew up organically.]

The Second Stage Road to Rochester was first laid out in 1785 and surveyed in 1795 but it is not in *Beers'* because Camp Brook Road had superseded it by 1869 when Mr. Beers did his surveying. The fact that mills grew up along Camp Brook led to more

people living there than along the direct bee-line route the stage road was laid out along, starting at Davis Road off Rt. 12 just north of Norm Case's place.

Search for Discontinuances. Along with the legal record, or saying *Beers' Atlas* is a source, we need a statement from John Dutton saying he has searched all town records after 1869 for discontinuances of each road, and there are none. Discontinuances are filed by each town. Different towns file them in different locations, but town clerks can find them. In Bethel these are in the town records, or, after it was begun, in the *Roads* book.

 **3 January 15, 2007**
John Dutton & Victoria Weber

On **class 4 roads** only pre-existing bridges and culverts need to be maintained by the Town.

John's dream is that towns will realize the value of many of these class 4 roads and trails and that they need to place restrictions on the use of ATV's and against abuse of these roads in order to preserve the roads.

ATV's are the reason these road issues came up (and Act 178 got enacted in 2005). Select boards cannot let everyone use them or erosion will ruin the roads and the roads and their rights-of-way will be lost. In Chelsea there is a road which has been lost due to erosion caused by jeeps and ATV's and it will never be usable again. This happened over time and the selex did not notice and so let it happen. So the town is to blame for the loss of this right of passage, and it could be landlocking some property owners.

If ATV users would turn water off the road and fix the damage they do, it would be alright, but they don't seem to repair damage, and all too often they intentionally – or unintentionally - create erosion and damage.

Ideally the spots on these roads which are physically hazardous or physically fragile would be identified, monitored and protected.

On being in *Beers' Atlas* being enough [to 'prove' a road is public]

Court cases concerning roads ask two questions:

1- Have you proved there is no valid discontinuance of record?

It that question is answered, then you are asked:

2- Have you proved it ever was a public road in the first place?

Often question #2 is not taken up in court because the road is in *Beers'* [as a double solid line, not double dashed line]. John does not think a court has ever specifically ruled on whether being in *Beers'* makes a road public because lawyers all have copies of [the reprint editions of] *Beers'* and if it is included, they do not even try to say the road is not public.

Paul Gillies is the only Vermont lawyer John knows of who specializes in ancient roads.

Republic of Vermont's adoption of laws

When the Republic of Vermont was first set up, it adopted the common law its parent colonies had accepted [originally from England]. Most settlers came from Rhode Island, Massachusetts, New Hampshire and Connecticut. Our laws are probably mostly the child of Connecticut and Rhode Island, since Vermont and Connecticut and Rhode Island do not use counties.

Bethel record books

Most of the roads records we are researching will be found in the “Town Records Books” [which are red-bound books stamped on the spines ‘**Bethel Proceedings**’. For other spine titles in this series, see the January 29th entry]. These were the books that contained everything BUT the land [or deeds] records. They included birth of children, fence divisions, town meetings, all the stuff the town did.

[Note that we fill in this information in data form field #23, ‘Other info locations’.]

[So from first settlement until sometime around the turn of the 20th century roads records are in the town records, *Bethel Proceedings*, and after that in separate Roads books.]

Guy Wilson was the town clerk in Bethel from 1890 to 1930 or so. He was very good, although his handwriting was very poor – he was one of the first people in the state to get a typewriter. He set up a separate “Roads Book” [labeled as such on its green spine]. This book continues to be used as the repository for information about roads.

Searching for discontinuances

Because towns could not cope on their own with all the road damage after the flood of 1927 the Vermont Agency of Transportation [AOT, now VTrans] was formed in 1930. So the state highway system begins in 1930. Prior to that the towns had all the road authority, although the legislature and courts always had the power to overrule towns.

So 1930 is the cut-off date of John’s needing to search the Bethel records for roads discontinuances. After 1930 AOT will have a record, so one can ‘take a short cut’ by calling AOT and asking them whether a road has been discontinued. [It is not clear to me what identifying information one gives to AOT in order for them to search, although it may be the Town, and then the town highway (TH) number. – V.W.] Current discontinuances are such a notorious argument now that John hears about them.

Reasons towns may have discontinued roads

In all towns discontinuances are surprisingly scarce. There are several types. Most are connected to re-locations of a road which detour around a bad spot and then the old spot is discontinued. This is especially true in the early years.

After about 1880 back farms were abandoned and in some cases roads to them were discontinued. However, it is still rare that these roads were formally discontinued. In most cases the roads were abandoned when the farms they serviced were abandoned, and the towns just did nothing.

 ④ **January 15, 2007**

Dell Cloud, Abbie Sherman & Victoria Weber

Dell says that *Beers’ Atlas* has been accepted as a major point of information and is probably enough because if a road is shown in *Beers’* (as a solid double line) it is because in 1869 it was a public way that was used.

The need for ‘physical evidence on the ground’ needs to be to our satisfaction so that we (Bethel) can certify it and so if someone takes the town to task Dell can produce that. “The test is physically evident on the ground as to its use as a highway.”

✿ ⑤ January 12, 2007

Dell Cloud & Victoria Weber – phone call to clarify re the law

The goal is to not lose these public rights of way by default. If we do lose them, we want to do it consciously.

The law (Act 178) creates a new category of roads, “unidentified corridors”. They are not readily identifiable and they are not class 4 roads. The roads John mapped in the 1980’s and that were digitized on our maps as parallel solid lines are now being evaluated by us to see if they are class 4 roads. **To be class 4 they need legal descriptions/paper trail/record evidence AND to be evident on the ground.**

“**Evidence on the ground**” ultimately will be the Select Board’s call. In the first round the select will typically look to surveyor’s or researcher’s work, not just physical things like tree lines (rows of trees that were often planted along roads), stone walls and ditch lines. The question becomes: when you may also have uncertainty of legal description may need to ask the public about how we want to regard them. We will need to create a list of criteria.

John Dutton has said that sometimes the physical evidence is that the road cannot have gone anywhere BUT one way, such as around buildings. It would not have gone through buildings, and if they were there, it had to go around them. That is the physical evidence according to John. Also sometimes a road can only have fit in a narrow path beside a stream.

Dell’s criteria at the outset for possibly discontinuing a class 4 road or unidentified corridor includes:

- it is all on one parcel;
- it dead ends and does not connect to anything;
- it runs into a barrier such as the I-89 corridor;
- it is a short spur with no connectivity.

✿ ⑥ January 18, 2007

Victoria Weber & Jeannie Goss of Randolph Ancient Roads Committee

Randolph has 7 people on a committee and they have been working for 5 months. Their group includes a title searcher and Ken Goss who was a professional aerial photographer and mapper, first as a Marine, and later in private business. They are doing a combination of searching the land (deed) records, reading all the select board’s minutes, starting at the present and going backwards to the charter of 1781.

They are using resources from the Vermont Historical Society in Barre, an 1858 map which shows the layout of Randolph, roads mapped by the original settlers, the AOT maps back to 1940 or so. Ken is doing overlays of the maps to find the ones that did exist and no longer are evident as well as those that are evident now, but not earlier. Ken is also anxious to get out on the ground and do ground-truthing.

The Randolph policy is: if in doubt, keep a road.

Selectwoman Peggy Ainsworth in Royalton says that the 2 people leading their effort are JoJo Levasseur (sp?) and Bushrod Powers.

 7 January 19, 2007

Working session with John Dutton & Victoria Weber

Abbie Sherman has made files for each road we have filled out a form for. She has plotted the length of the road in miles, and added “Town View” aerial ortho-photos with parcel lines, streams and roads added that she downloads off the Internet.

Numbers to identify the roads. Dell does not want to assign sequential (or other) numbers yet before there is finality about the roads. It would break the continuity of the numbering system of the town highways that exists now. So we are using the segment numbers and the name John has assigned to each one to identify the folders with each road.

Note that John sometimes wants to begin identifying a road by segment numbers that are beyond its yellow line on the map – and into 3rd class roads, for instance. This is because that point may be where the original survey began.

Early Highway Districts and “Highway surveyors”

From the time of settlement until about 1890, early roads were organized into about 30 ‘highway districts’ (not by school districts) for the purpose of maintaining them.

At town meeting ‘highway surveyors’ were elected for each district. These men did not survey in the sense of measuring the roads, but in the sense of looking out for them and keeping accounts of who maintained them.

Typically they would have had printed forms that they kept in a little notebook and they kept track of the roads needs and the physical work done on them. The Highway Surveyor usually hired from within his neighbors within his own district and he kept track in his ledger of money amounts the work was worth, which he billed the town for. He would record that so-and-so worked for half a day along with his team or his hired man, and that was worth so much money. They did not use cash. Typically the workers deducted the work done from their town taxes. If one man had a large family and little income, the surveyor might give him extra road work so that he could help pay his taxes. If one person who had been assigned [and we assume agreed to do] work, but did not do it, the surveyor would have to get someone else to do it.

Besides this assigned work, folks back then were conscientious about not abusing a road. Everyone carried a shovel in their wagon, and if they came to a place where water was running onto the road, they would stop and ‘turn it out’, so that erosion did not get out of hand. Also they kept track of the conditions of the roads, and did not try to use them if conditions were adverse.

Because each district took responsibility for their own roads, there was no jealousy that some other neighborhood had roads that were in better condition, as we typically hear today.

Early on, roads were rolled in the winter and pretty much left untraveled during mud season. Plowing probably started when gasoline power could push a plow.

Road Surveys

95 % of road surveys (often called ‘center-line surveys’) were of existing tracks. Only about 5 % went through virgin woods and created a new road.

Physical Evidence on the Ground & the Need for it

What constitutes physical evidence on the ground?

- two parallel stone walls
- two parallel rows of old trees
- ditches
- stream crossings like bridge abutments and culverts
- evidence of 19th century stone or earthwork like retaining walls to create a level roadbed across a slope. This includes the earth cut on the uphill side.

Knowledgeable surveyors have learned to read natural changes in the land, some of which result from the presence of a road. For instance a road may have been the initial cause of erosion which can be seen on the land, even if the road itself is no longer evident.

Surveyors tend to be good at seeing things on the ground, but not necessarily good at communicating these things, especially if they are not there, at the location.

The most important thing a committee will do is to go out and get data on the ground. However, in Bethel, it may not matter to have clear evidence on the ground if we have someone who can testify that the road was there 20 years ago. That person is John Dutton, and he usually had someone with him, although it may be difficult to identify who joined John at each road.

Physical evidence: it is always possible to have one person on the ground who can see an old road, but another person might say "I don't see it" (especially if they do not want the road to be there). So there is no way to get around that. It is like having 2 expert witnesses for opposite sides of a court case.

Because of this, the law (Act 178) is made more cloudy by saying that physical evidence is needed. Physical evidence should not have anything to do with it. The issue should be the public records.

The Class 4 roads project John did in the 1980's

This project evolved from John's prior work. Going back to the 1950's he was starting road research in Barnard (so he knew Barnard and Stockbridge better than Bethel). Around 1980 the "tax map" (aka "parcel maps" or "base maps") idea came into being. John had been so interested in maps that he volunteered to do the tax maps in Bethel. Also new at the time was aerial photography (called 'ortho photos' as they are corrected some to accommodate the angle the plane was to the ground underneath. That is, they were adjusted and made measurable). John used the ortho photos for a base for mapping, plus he had his files and could question older people about other older people.

Concerning the roads, he did not want to do a sloppy job (as Braintree had done because they had hired a company to do it). Most first tax maps ignored roads, except Class 3 roads, and this is still the case.

Of 250 towns in Vermont, half have tax maps, and only about 4 that John knows about have even thought of putting the roads on their tax map. This is one of the reasons Act 178 came into being. Most tax maps are created by outside mapping companies which do not know the town, and they prefer not to be burdened with the extra work of

including the roads. Also, digitizing software constrains the map and tends to repeat and amplify any mistakes.

The finished products will show parcels which look **landlocked** because they haven't put the class 4 roads on. By then John knew they weren't really landlocked. In Bethel there are just a few.

Some people have paid less taxes because they were listed as landlocked. Some parcels have become landlocked by a nasty neighbor who kept them from their land and whose lawyer would say they had not contested when they were first labeled as landlocked.

The average Vermont town is about 7 miles x 7 miles – 50 square miles.

8 Session with Mary Pavone and John Dutton. January 21, 2007

Discontinued roads are not shown on Bethel base maps.

Bethel's base/tax/parcel maps are now created by Cartographic Technologies in Brattleboro, VT. Bethel's new base map does not show discontinued roads. [So there are some road differences between the working map we are using which includes some roads which have been discontinued and so are eliminated from the newer Cartographic Technologies map on the wall closest to Abbie's office.] Bethel has decided, on any map that Bethel pays for, to only show roads that are in public use and not roads which have been formally discontinued.

“**Hill**” had different meanings early on. When the original proprietors were describing different desirable land that could be sold for development, they divided the town into 4 sections. The ‘intervale’ land, or valley lands were along the stream valleys. The other 3 sections of town were hill lands in 3 areas called “hill land”. So, for example, ‘Christian Hill’ was all hill land, or uplands, in an area between the 2nd and 3rd branches of the White River, NOT particular hills or geographic peaks.

The first lots which the town proprietors set out and sold were all 100 acres. The “**Great Mill Lot**” was not part of the original division of town lands. It had no lot #, and was large – 400-500 acres and was designed to give away to anyone who would build a mill. The only obligation was to build and get a mill operating in 1-2 years. Originally there was no goal or idea of creating a town center/village. The proprietors just wanted to make land deedable and sellable for people to buy and live on it. Having a mill would support the people who settled by milling their grain and timber. Joel Marsh got the first “mill lot”. He later gave a piece of it to the Town Common.

When they applied for a charter of the town, Stockbridge and Randolph were empty and unsurveyed. But Barnard and Royalton had a few settlers each. Royalton's first charter was from New York and was nullified. So the new charter issued to Royalton was for land already surveyed. They took 2 tiers away from Royalton and gave them to Bethel. This is the reason why early lots on the east edge of the Bethel map are at an angle to the other tiers of lots further to the west. [See the map in the area by the vault.]

Early maps: The *Walling* map, done 1855 is not generally useful because it was drawn freehand, rather than surveyed.

By contrast, the *Beers' Atlas* maps include roads drawn with 2 solid lines (which are subtly ziz-zagged, rather than flowing). These roads were surveyed and so did exist at

the time the map was created for each town. The *Beers' Atlases* also include some roads shown with 2 dashed lines. These roads were NOT surveyed, but are drawn in based on hearsay from neighbors along the solidly drawn roads.

Town Records:

There are 3 types of town records/documents that we are using: books of town records (which have different spine labels), books of deeds or land records, and a Roads book.

At the beginning, EVERYTHING but deeds were recorded in the (generic term) town records books. This included records of town meetings, births of children, adoptions, petitions of all sorts, including roads, road surveys, road discontinuances, and other things. Most of the records we have done have been in these volumes. At a certain date, all the roads information was grouped into a single book, which is green, and which we are still using.

The **land records or deeds books** contain “metes and bounds” descriptions of lands when they were transferred. We have not had references in these. Roads appear in these books when the boundary of a parcel is a road. When a parcel’s description includes a road, that is called a ‘**road call**’ and shows that a road did exist there at the time. Sometimes surveys help locate roads because if the road serves as a boundary of 2 parcels, you can determine where (that stretch of) the road was located.

 **January 22, 2007, John Dutton and Victoria Weber**

Roads showing up on older maps: There will be many roads without surveys or written evidence, but we’ll have other evidence. One is if a road is on *Beer’s Atlas* as a solid double line, and another is if it is on the 1924(1926) U.S. Geological Survey topographical map. There was another USGS topo map done in 1957. There is also the first AOT map from around 1930.

Apparently Dell Cloud wants more than a road showing up on a map. John agrees with this for some maps, but for the surveyed roads on *Beers’*, he feels this should be tacit acceptance, and should be enough for AOT and for the town. At *Beers’* time – 1869 in Bethel – if use was heavy enough, no one cared about what record there may have been, the road was simply There and Used by the public for everyday transportation.

Abbie is attaching aerial map prints of each road from a CD of information called “**Town View**” which she has from a Brattleboro firm. This program (and data I assume, but not sure, since ortho photos are not created very often) is about 3 years old. Even though these are ortho photos, there is some distortion. For instance, in the village boundaries often look as though they go through houses.

We should differentiate “recreational roads” from those with legal descriptions and substantial history of more than 10 years, that allowed public access. In these instances probably the landowner has given permission, or at least has knowledge of, this use – often by snowmobile clubs. Some of the recent recreational roads are visually very evident on the ground, but that does not mean they are long-term public rights-of-way.

The correct name of what is called **Gilead Brook** is Ordway Brook.

✿ 10 January 26, 2007 John Dutton and Victoria Weber

Plotting the courses: As part of his studies of Bethel roads in the past, John has created “plots” of most of the roads which were surveyed. This is an exercise he did at a desk (rather than on the ground) and consists of drawing the shape of the road using the directions and distances (metes and bounds). He uses a **draftman’s protractor** to identify the direction, and then draws a line (with a ruler) going the distance the survey shows, but at a much reduced scale. He uses an **engineer’s scale** which converts distances into different scales to translate the distance into a scale like 1: 24,000. Scales are used to make measurements on maps that are created as different scales. When you Xerox a map, and perhaps change the scale, you should draw a line on the map which equals 1 mile before you Xerox it. If you say “one inch = 1 mile”, but then an inch is no longer an actual inch long, you can skew distances and therefore the use of the map.

After John has drawn one mete, he draws a little line perpendicular to the course he has just drawn. Then, at the next change in direction, he re-directs his line based on the new direction and draws a line the distance of that course, etc.

The result is a line made up of straight stretches which shows the basic shape of the road. This can be overlaid on a map and – **if the 2 are at the same scale** – can show a road.

One of the biggest problems of locating old rights of way based on records is identifying just where the starting point of the survey is. It is easy to make assumptions and be in an entirely incorrect location. Usually the surveys begin with some local knowledge, such as “at the house of _____” = the current property owner at the time the survey was done. One needs to use the “chain of title or descent” to know who owned what land when.

✿ 11 January 28, 2007. Mary Pavone and John Dutton

On Pond-Herraden Road there is a site of an unknown but significant mining operation mid-19th century. This is quite an impressive mine shaft on Pickle (Fred) Davis’ site. It is uncertain as to the type of mining. Possibly gold, but much more likely magritite (sp) (iron).

There was a good deal of mining speculation. Often shafts were dug looking for one mineral or another. In Bridgewater people still believe there is gold, and there was probably never was any.

“Salting a community”. John explained that there were a number of scam operations where someone would plant a rumor that there was a vein of some valuable mineral. After the rumor had spread and folks had gotten excited, a corporation would form to mine it. People would buy stocks and put their money in and then the scam artists would leave town with these investments.

“Old” Pickle Davis had 4 sons – all called Pickle. North Main Street’s “Pickle” Davis (wife Patricia) was named Ellsworth.

Some road terminology:

As segment of road got **“reduced to pent”** which was a colloquial term because of being on low trafficked roads.

A “**Pent road**’ had a gate across it (unlocked) in order to restrict roaming cattle and sheep. The antonym is ‘**open road**’.

“**Barways**” were gates made out of bars of wood (or metal).
Some **stiles** exist – as on North Road where there are stone stiles into the cemetery.
Shaped like a horizontal Y with an I inserted in the V of the Y. -----< -----

At least until Act 178, the state cannot discontinue a road, only a town can. The state can **relinquish** a road to a town, which can then discontinue it. For instance the Poplar Manor road was relinquished and returned to Bethel.

“**Station numbers**” are points along state road surveys 100 feet apart.

Watch the exact language used in discontinuances: “**Discontinuing a road as an open public road**” was not a total discontinuance. It just turned a road into a pent road. By contrast, if a record says “**Discontinue as a public open road**”, that would be true discontinuance in the modern usage of the term and the land would revert to the property owners.

The old **quarry railroad** going up to the Rock of Ages quarry off Sanders Road on Christian Hill is not a right of way. It is a parcel of land – a strip – which the quarry and railroad company had surveyed and purchased, and continue to own.

The Select board has the power to limit and designate the usage on Class 4 roads. They should limit the usage to harmless types of uses and at harmless times of year. Landowners should have some leverage with the selectboard concerning their own land when the select board is designating uses of class 4 roads.

Fordways across the White River. There are only a few possible places to ford the river. One of the main ones is off Rt. 107/River Street just easterly (a few rods easterly) of the mouth of Locust Creek – just easterly of the island there,. This fordway was in place in 1780 and still is. Should bridges go out, these fordways would be invaluable.

 ① ② **January 29, 2007. John Dutton and Victoria Weber**

Town Records is a generic term for the books of proceedings, adoptions, births, fence disputes, and many other things – everything BUT generic “land records” which are the books of deeds, etc. These books of deeds are all labeled “Land Records”. Most of the records describing roads are found in the early town records volumes. In Bethel each volume of town records has a different spine label.

Proprietor's Records 1777-1844
V. ½ *Town Records* (no date, but before V. 1)
V. 1 *Town Records* 1778-1819
V. 2 *Town Proceedings* 1818-1846
V. 3 *Town Meeting Records* 1849-1886
V. 4 *Town Meeting Records* 1887-1909
V. 5 *Town Meeting Records* 1908-1964
V. 6 *Town Record*
V. 7 *Town Records*

Note that the **book that contains the current Select Board meeting minutes** is located in the Town Manager's vault (between Delta and Jean) and is spine labeled "*Bellows Falls Village Corporation*".

The town was not incorporated in 1779, as the town stationary says. 1779 was the date of the Charter. The Town would have been 'incorporated' the day of the first town meeting.

 **1 3 January 31, 2007. Phone Conversation with Trevor Lashua of Vermont League of Cities and Towns**

"We still don't know what the problems with Act 178 are."

There is no central **clearinghouse of information about Act 178**, and how to carry out its mandates. Several groups are helping : Vt League of Cities and Towns has done some seminars. Searching their website brings up a number of articles from their past newsletters on ATV's and public rights of way, etc. See also

http://resources.vlct.org/u/ga_06_07.pdf

VT Dept. of Housing and Community Development has given grants to the towns. Go to their Ancient Roads Research And Mapping Municipal Grant Program page for links to useful documents and information

<http://www/dhca.state.vt.us/Planning/AncientRoadsGrantProgram.htm>

The VTrans mapping division, specifically **Johnathan Croft 828-2600 <johnathan.croft@state.vt.us>** is very involved. He is the GIS Database Administrator. He can help with finding actions the state took to 'relinquish' portions of roads, etc. VTrans also has a Right of Way section which might be helpful. And the regional planning commissions are helping towns in their regions. A listserv is being established by Vermont Planning Information Center. Go to <http://list.uvm.edu/cgi-bin/wa?AO=ANCIENTROADS> to sign up.

Each town should begin by thinking about what its goals are. Then use these as guidance to create criteria which reflect the goals, and then apply those criteria. There needs to be a local discussion on how to use these rights of way.

On adding these roads to the AOT maps: The first hurdle of adding them to the AOT maps is low. However the "unspoken component" is that there may be challenges from landowners later on that the town must defend. Ideally the research will make a reasonable case. The question to ask about the documentation is "can it withstand a challenge?"

Some of these roads may be turned into **trails**. You can do this after you discontinue a road. You can place restrictions on a trail, including gating it. You cannot gate a road, although you can close a road seasonally, such as for mud season.

Interested trail groups in an area may press to discontinue a class 4 road and designate it as a **legal trail**, or give it back to landowners.

I asked 'What is public recreation?' Answer: that is a good question and Trevor was not sure. There is an umbrella organization, the **Vermont Trails and Greenways Council**.

'When is "physical evidence on the ground" necessary?' - only with unidentified corridors.

✿ ① ④ **January 29, 2007. Phone conversation with Pete Fellows of Two Rivers Ottaquechee Regional Planning Commission <pfellows@troc.org>**

Watch out for “**intertown roads**” which cross boundaries. Towns on both sides must take identical actions or they will not be valid. Hence it will be necessary to interact with roads researchers in each of the town which border Bethel. We have obtained AOT highway maps for each of the abutting towns and they are located in the carton above the map file cabinet in the meeting room.

Pete is putting together a contact list or roads researchers in our region.

Bruce Reid is involved in Rochester <bdpireid@verizon.net> also Bruce Flewelling
In Pittsfield: Sarah Gray <gordsarah@verizon.net> 746-8056
In Granville: Norman Arseneault <norma@together.net>

On using *Beers’ Atlas* as the authority that a road existed and was in public use in the 1860’s: *Beers’* alone is not really enough. Is the road also on the first AOT highway map in about 1930? *Beers’* is ranked high as a source, but if it were the only piece of evidence, The coordinators at VTrans would be nervous. Town records are the best documents, and maps are not considered ‘town records’. However, having said that, for these counties – Windsor – a solid double line on a *Beers’ Atlas* is probably right.

Final comments on Act 178: “We can’t set up an absolute rule on any of this.” There are so many different towns with different ways that things were set up historically. Also some towns have lost their records to fire, etc. But this is good, as it gives towns flexibility to put together their mileage certificate information (to send roads to AOT). The aim is to help towns, not make it harder for them.

✿ ① ⑤ **February 9, 2007. Working session John Dutton and Victoria Weber**

Long term town clerk Guy Wilson numbered all the roads chronologically and wrote in that # in blue pencil in whichever record book describes the road.

Guy Wilson’s Notes on roads in *Beers’ Atlas* Districts # 2 # 10 (= Christian Hill neighborhood).

17??	GW # 1	Earliest recorded road in town. From Francis (Tom) Willis’ down Dearing Road.
1788	GW # 2	Rt. 107 up Christian Hill, then at 4 corners left up Dearing Road to Fred Arnold Road to John Anhorn’s house at town line with Randolph.
	GW # 4	From the Sanford Farm – Benjamin Crane’s near Fish Hill - = TH (Town highway) 15 near Dubois Road - on down to the village center (what is now the back side of Sanders Road down to North Main Street.)
1791	GW# 9	Wilson Road upper part to Sanders
	GW# 13	in East Bethel
1794	#23	Oxbow Road to East Bethel. Also later opened another one – see #12.
	#50	is a minor alteration on lower Sanders Road near North Main Street
	#53	Complicated. This is not on our Draft map. John will research it more
1818	#61	
	#73	not shown on map, but on Wallace farm. It may be segment #'s 34-35 along the south boundary of the old Wallace (Eddy) farm between it and Fago’s land

- #77 also near Wallace farm
- #125 relocation of Smith Road [Jackie and Mert Smith's I believe]
- #133 alteration at lower Fago land area
- #134 lower Wilson Road – the new version. Had used road across lower Fago land first. [I believe this 'Wilson' is what is called Sanders Road post 911.]
- #138 Jones Pent Road
- #141 relocation along Christian Hill [could be near Dave Eddy's – the "S curve"]
- #143 status change
- #148 a "winter road". John did not show this on the town road maps.

Because:

Winter Roads

When the roads were snow rolled rather than plowed there were places where this was impossible due to drifting [there was much less tree cover in 19th century]. So alternate routes, called "winter roads" were set up for use in winter. They were not legal in summer so they are of no interest to us. [Also they probably went right across fields, etc and had other uses in summer. No clear roadbed resulted from this brief use in winter.]

Road documentation can be hit or miss in what got into records in the 18th century, and some records got thrown away or burned. Documentation can be deeds or surveys. Surveys were done of roads because – until about 1810 – it was customary for a town clerk to record anything brought in. People asked to have new births put in with the name and date. By 1810 people did not bother with this, and it was not required . In 1856 a law was passed which required the recording of births, but it took people 100 years to do it regularly.

There was another new Vermont law in the 1700's – probably after 1790 - requiring towns to survey their roads and to put a copy in the records. The oldest surveys in Bethel are from late 1780's, so roads were on the ground and in use for about 8 years. People began living in Bethel in 1779 or 1780. Some roads did get surveyed after the law, but others did not. When the law came to the towns, the towns couldn't afford to have all their roads surveyed, so they did a few at a time, and sporadically. But no one really kept track of the ones which had been surveyed or which needed to be surveyed.

This 1790's law to create center-line surveys caused select boards to contract with surveyors to do some roads as they had the money. Probably the law was triggered by towns making small detours in roads to provide better passage. Property owners may have fought over whether their line went to the new road or the old one. Note that these were disputes over actual ownership, not about whether people can block these rights of way.

How road records appear in deeds - 'Road Calls':

When you convey land in a deed you should say something about the boundaries of the land you are selling. You begin with one conceptually identifiable point of beginning and then you create a closed polygon coming back to that point.

You are given courses and distances all around the closed polygon, often from a certain point (corner), for example "beside the now traveled road, going x number of feet along said road on the north side". So you get one little segment of a road that serves as a boundary between parcels and if the road is mentioned as a boundary in enough deeds, you can link them together and get the location of the road.

A “road call” is a description of a plot of land where there is a reference to a road which at that time (time of the deed) serviced that parcel. A road could go through a parcel or next to in, but in any case, that place is serviced by the road.

Ideally you would read all the deeds in a town and hence you could identify all the road calls and identify all the pieces of roads and also you could determine when they came into being and when they went out of use. A slightly simpler method would be to go back through all the deeds of parcels where you think there is a road.

① ⑥ **March 5, 2007. John Dutton and Victoria Weber**

Surveys begin at a point, usually at a road and the owner is identified. Their endings are less specific. Often “until we struck a road”, or “at so-and-so’s property line” or “at someone’s house” if the road dead-ended. Remember that almost all roads connect with other roads, which in turn connect with still other roads. It is all connected. When roads do not connect, they have little value.

Dead end roads to be discontinued

Any dead end road can be discontinued so long as it does not land lock any property. Especially those roads which hit I-89 should be discontinued as they will never be bridged.

① ⑦ **March 12 working session with John Dutton and Victoria Weber**

Surveys were always done of roads that were already there. In all the work John has done he has never run across a survey of a road that was not already built. He has never seen a center-line survey with the road on the ground where it was not obvious that the road was built and was built before the survey was done.

The early settlers quickly learned where the good, deep and not rocky, soil was. The Wallace farm and Chatfield fields (across from Nan Brigham’s) were probably open as early as 1792.

Lilliesville is named after a son of Mr. Lillie who lived at Hank Paine’s place on the lower end of Sanders Road. He moved over to the west of town and set up a tannery(??) and folks began calling the area Lilliesville.

The valleys were settled first, and then the uplands to the east of the 3rd Branch = the Christian Hill Uplands. Some of the oldest farms were: The oldest farm is probably where the brick mansard house now owned by Victor Menza is on Dearing Road, next, Francis (Tom) Willis’ place, then the Sanford farm up by the Dubois, and also the present Sanders farm at the top of Sanders Road.

① ⑧ **March 15 conversation between John Dutton and Victoria Weber**

Following 3/15/07 *Herald* article about Jim Gilberti and Kristin Smith’s visit to Selex meeting about the “2nd Stage Road to Rochester” going through their home:

Mr. Dutton says the road probably does not go through the Gilberti/ Smith house (which they constructed in early 1990’s). It is not uncommon for houses to be located on old

public rights-of-way, and that the answer is to just re-route the right-of-way around the house. This has happened many times.

Select boards are charged by statute to protect ancient roads. John would like clarification in law that it is the Select board's responsibility to protect public rights-of-way, particularly if they, and the land around them, are fragile. An example in another town is where mud and sediment washed down from a road into a lake and impacted the lake.

Drainage always has to be controlled. Water can cause the most damage. **It is the Select Board's responsibility to protect these roads for the future by keeping them from being eroded.** They should inspect these roads and be alert to when damage is being done, and direct care to prevent damage.

At the Gilberti location, the tax/base/parcel map probably needs to be corrected to show 2 parallel roads from 2 different surveys (Guy Wilson Road # 83 and Guy Wilson Road #21). Presently the maps look like these 2 roads are on the same road beds at their westerly end. However, they actually diverge some and this should be shown on the tax map. They are actually parallel but separate. They appear on the map as one due to the scale – they are so close that they appear to be in the same place on the map which is much smaller than the land it represents.

Mr. Gilberti should be able to re-route the public right of way anywhere on his land so long as it connects with town Highway (TH) 31 – Campbell Road (which was Dustin Road) and connects to Charlie Wilson Road to the north. The relocated right of way could go wherever it best fits topographically, or along one of the boundaries of Mr. Gilberti's property.

Who gives permission for the uses of these public rights-of-way? The power to give permission for uses of roads lie with the Select Board. However, they are not the final judge and jury because any decision by Select Board can be challenged by voters and put before a special town meeting. The Selex can regulate the kind of use and the time of year (which can have a big impact on potential erosion – spring being the most fragile time). Most select boards are reluctant to take on the duty of regulating which uses and when, and tend to just want to open up uses. This is unfortunate and has long-term consequences.

What rights do landowners have when a public right-of-way is on their land? Basically, the public can be bodily present on the right of way, but may not make any alteration – such as cutting brush, alter drainage, fixing it up with a bridge, put down planks or corduroy logs or other things to make it useable to ATV. Also people may not be off the right of way. If they are on it, they are not trespassing, but if they step off it they are.

① ⑨ **March 16, 2007 Working session with John Dutton and Victoria Weber and Conversation with Dell Cloud**

Dell says all the roads marked in green on the working map should be looked at/researched/documented, including those already sent to AOT. It will all depend on what the selex ask a committee to do. Each map really needs to be looked at separately. We need to get them on a map and save them from mass forfeiture (mass discontinuance). It will take a long time to look at them all and hold hearings on some.

Trails

Dell suggests that we might designate some as 'trails' (which is another category of rights-of-way described in VT statutes and in Act 178) rather than Class 4 roads.

John asks whether they can be physically narrow enough to in fact be paths only and to exclude vehicular traffic.

2 0 March 23, 2007 Working session with John Dutton and Victoria Weber

“**Right of Passage**” is the older term and really means you, like a deer or a woodchuck, can walk through, but not necessarily your ATV.

John had noticed in many towns, over many years, that road crews and select boards are very nonchalant about what erosion can do. They focus more on big projects using large equipment and are not focused on small things like ditches and noticing where the water comes and when and controlling it.

People used to do this. Everyone would stop his wagon and take out the shovel he always carried and correct a rivulet of water coming onto the road and thus avoid a larger problem.

3 rods, or 50 feet, is the usual right of way limit. This defines ownership. No one, including the town “owns” these rights of way in the sense that they could sell them. But the public “owns” them as a public right of passage. They are in the “public domain” = land never owned by anyone before.

The **Reversionary Interest** is the half of a road once it is discontinued which reverts to the owner on that side (assuming the road formed the boundary between 2 parcels).

2 1 March 30, 2007 Final Working session with John Dutton and Victoria Weber

John asks if the town is going to **transcribe the content of the legal records** we have cited and attached to the data forms for each of the 40 or so roads we have researched. These records are pretty much illegible. If there were a challenge they would need to be available. John could slowly read them to Abbie and she could transcribe them into the forms. They are typically less than one page in handwritten form, so are not too lengthy. This would round out the documentation and create complete, legible files/datasets for each road for all future uses.

[For more information, see my “methodology” memo to the Bethel Select Board, dated April 9, 2007 – attached below. – v.w.]

TO: Bethel Select Board
FROM: Victoria Weber, roads documentation scribe
DATE: April 9, 2007
RE: Methodology for proceeding with 'public rights-of-passage' work

In trying to understand Act 178, to understand the town's charge, and to place it in context of existing Vermont law about public rights-of-way I gathered information from a number of sources and talked with 3 or 4 state-level individuals involved with Act 178.

One thing I learned is that "public rights-of-way" or "rights-of-passage" are much more accurate terms than is "ancient roads".

I have come to the end of the time I can volunteer to help Mr. Dutton research these roads and create a database of them, but I do want to pass on the highlights of what I have learned. My hope is that this information will help you, and also any committee you may appoint, to help determine the final status of public rights-of-way in Bethel.

There are many aspects that need to be brought together. For example, roads are public assets which benefit people in the town, and they also have significant impacts on the land itself. There are ecological impacts, public benefits, and there are issues of property rights. It is a balancing act where all the elements need to be included before decisions are made. The central thing is that people need to be educated on the issues and involved in the process.

I have thought at length about what you and a committee might proceed, and have identified 6 steps.

These boil down to: first create theoretical criteria and procedures, then apply them.

1- Create clear criteria as to why roads should be discontinued or kept. Theoretical criteria. These should cover as wide a range of the impacts of these roads as possible.

You will find many ideas for these criteria in the accompanying *Bethel "Roads Diary"*.

Besides societal benefits, these criteria should include erosion issues, impacts on streams, on birds and animals, and the rapid intrusion of invasives plants (roads are vectors which rapidly carry them deep into the interior). As an example, invasive cowbirds come into the edge habitat created by even narrow roads and prey on songbirds who otherwise eat huge numbers of insects which affect trees like maples, which in turn impact foliage tourism and the maple industry. The scientific literature (I attach a bibliography and one article) has identified many effects of roads which may

not be noticed with a quick look, but which do take place and cause ripple effects.

On June 16, 2006 Two Rivers map specialist Pete Fellows, in connection with doing the build-out analysis for the Bethel Planning Commission, has asked what stood out to him about Bethel. He replied that, among other things, we have habitat connections, a.k.a. wildlife corridors, and we need to keep them. Roads of any sort interrupt the use of wildlife corridors for some species.

2- Create clear procedures (maybe using a weighting system) to apply these theoretical criteria to specific instances, specific locations, specific landowners and specific landowners' desires, as well as the public's desires about specific rights-of-way.

3- Clarify which uses may be allowed, and how that allowance/ permission is given, and by whom? The Select Board? Landowners? Ex.: hikers, bikers, mountain bikers, horses, ATV's, cross country skiers, snowmachines, etc. What is legal? What does Bethel want to do?

Besides who has the power to determine uses, who enforces these uses and any conditions of use? What happens if these conditions are violated? What happens if damage is done to the public road bed itself? What happens if damage is done to the private land on either side of it? Who monitors the condition of these roads so that damage is not done? Who corrects damage? Can a use be withdrawn because of damage? The Select Board is charged with protecting these roads, and that includes the roads themselves and the land they pass through, as well as the actual right of passage.

4- Clarify what rights landowners have concerning all of the above. My understanding is that although one can be on the roadbed itself without trespassing, the moment a person steps off the roadbed, or changes it (cuts brush for instance) or causes any impact off the roadbed (erosion for instance), they are violating the landowners' rights. What rights and remedies do landowners have concerning damage to their land?

5- Publicize this information and make it available to the people.

6- Then, and only then, discussions or hearings can be held about the status of individual roads. So, talk about the issues widely and theoretically first. Then apply that understanding to specific instances, locations and landowners.

This is a good law in that once the steps have been completed and it is clear which roads are class 4 roads or trails, surprises such as Mr. Gllberti's

current situation will never happen again. The purpose of the Act 178 process is to eliminate surprises in the future.

I hope our work has been beneficial to the town.