

**Greensboro Select Board
In the Matter of Laying Out a Class 4 Highway Right of Way, Old Perrin Road**

Following notice as required by law, this matter came on for an administrative hearing before the Town of Greensboro Select Board, commencing with a view of the area known as Old Perrin Road at 6:00 PM on August 1st, 2012 followed by an open evidentiary hearing at the Town Hall at 6:30 PM.

A sign up sheet was circulated which indicated the participation of Willie Smith, Cornelia deSchepper, Janet Long, Marion Babbie, Clive Gray, Nancy Hill, Jenny Stoner, Lydia Makau, John Makau, Laurie Randall, David Massey, Thomas M. Hurst, Lee Wright, Erika Karp, Devon Burgess, Steve Mitchell, Kim Greaves, Valdine Hall, Auriel Gray, Aaron Cochran, Robert W. Hurst, Wayne Mutrux, Marsha Gadoury, Glenn Howland, Sue Wood, Peggy Lipscomb, and Josh Karp. Anne Stevens and June Cook also attended but did not sign the sign up sheet.

The Board met pursuant to the authority set forth under Vermont Statutes Annotated, Title 19 Chapter 3 §304(a)(12) to "lay out, alter, classify and discontinue town highways, pursuant to chapter 7 of this title."

The Board takes official notice of 19 V.S.A. Chapter 3 §304(a)(12) and of 19 V.S.A. Chapter 7, which sets forth the process by which the Select Board may lay out, discontinue or alter a Town highway. This hearing was convened to receive evidence and hear testimony pertaining to the question before the Select Board on its own motion, which is whether the Town shall lay out a class four public highway right of way on the site of the Old Perrin Road in Greensboro.

The Board must make findings of fact which address whether the public good, necessity and convenience of the inhabitants of the Town require that the public way be laid out. Title 19 also requires the Select Board to provide an opportunity for any person claiming damages as a result of the Board's action (if any), to come forward and state their claims and this hearing was for that purpose as well. Finally, 19 V.S.A. § 704 provides that, in the event the Select Board does decide to lay out a class four road, it must then commission a survey to document where the road is to be laid out.

All witnesses were sworn in. Wayne Mutrux testified and gave evidence on behalf of the Town. David Massey cross examined Mr. Mutrux, and also testified on his own behalf as an affected property owner. Other members of the public testified as owners of affected property, as former owners with knowledge helpful to resolution of the question, and otherwise as interested parties. The evidence was closed and the Board adjourned to deliberative session at 8:15 PM.

Based on the evidence and testimony at hearing, the Board makes the following FINDINGS:

1. Public Notice of the hearing was given in accordance with state statute requirements.
2. Old Perrin Road, so-called, is a right of way adjacent to the south side of the Willey's Store property which extends towards Greensboro Brook past the old Tannery property.
3. For over a hundred years, Old Perrin Road was commonly viewed as a means of access to properties along Greensboro Brook from Town Highway No. 2.

4. Multiple historical references are found to properties having a right of record to use the access and it has been long treated as a public right of way.
5. This matter came to hearing because the status of Old Perrin Road as a public right of way, and the related interests of private parties to pass or to control the access along Old Perrin Road by others, became matters of serious contention which have not otherwise been amenable to resolution.
6. This dispute has gone on for years and has been made more intractable by the infirm record status of the road itself. No Town survey or other evidence that Perrin Road was ever laid out as a Town highway right of way is found in the Greensboro land records. The original laying out of the road may have been among the Town records reportedly lost in the fire of 1831, as related in a footnote appearing in the *Vermont Historical Gazetteer*, edited by Abby Maria Hemenway. Orleans County – Greensboro Chapter: By Rev. James P. Stone. Published by Claremont Manufacturing Co in 1877, of which the Board takes Official Notice, pages 209-215 : (*The town records were destroyed by fire, with the store, and extensive stock of goods, belonging to Storrs and Langdon, Aug. 9, 1831.*)
7. Adding to the confusion is the status of adjoining properties, the deeds of some of which reference a boundary line not at the center line of the Perrin Road access or right of way, but instead to the edge of Perrin Road. The consistency of the language in these deeds makes sense assuming Perrin Road to be a public way, but the language creates ambiguity and confusion if, at the time these deeds were drafted, Perrin Road afforded only private rights of access.
8. The Board infers from this that throughout the 20th Century, adjoining property owners held a belief that Perrin Road was a Town highway right of way and so acted. However, such an inference is not sufficient to allow the Board to conclude that Perrin Road was in fact a public way.
9. The presumed status of Old Perrin Road as a public way has led to years of reasonable, if perhaps erroneous reliance by members of the public and by the Town itself. A practicable way to resolve the confusion and potential for constant and future quarreling over property rights, including rights of access, is to establish a record access upon which all may rely without question. A Class 4 highway right of way will accomplish this goal with minimum disruption.
10. The establishment of a Class 4 highway right of way may also respect the apparent understandings of the drafters of the deeds abutting the Old Perrin Road, that the properties benefited from access to a public way.
11. The Town of Greensboro retained Wayne Mutrux, a land surveyor, to research the area around Old Perrin Road and to determine, if possible, an equitable route that approximated the location of Old Perrin Road as a potential class 4 highway right of way.
12. The Town's objective was not necessarily to establish the actual historical location of the access, because recorded data necessary to establish the location are missing.

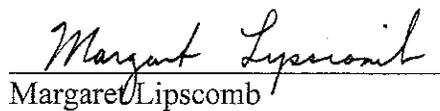
13. Mutrux sought to arrive at a right of way as narrow as practicable, to minimize adverse impact on adjoining properties, yet still provide a usable access. He plotted a 20' wide right of way in such a manner as to allow all adjoining landowners access, without impairing any one landowner unnecessarily.
14. The Mutrux preliminary draft of the proposed right of way was committed to a survey plat and was admitted as Exhibit B.
15. David Massey owns one of the adjacent parcels upon which stands the former Dow Shop building located immediately north of Old Perrin Road. Mr. Massey also owns property at 2637 The Bend Road on the eastern side of Greensboro Brook. He testified of his concern about noise and public access across the brook to his 2637 Bend Road property, raised privacy concerns, and suggested that if the Board wanted to proceed with the public access, it consider an alternative route passing by the former Dow Shop to the brook, thereby avoiding conflict with his 2637 Bend Road property.
16. The Board finds the alternative route suggested by Mr. Massey is practicable and serves the public necessity and convenience as well as the originally proposed route.
17. The Board takes official notice of the quit claim deed from the Drown Brothers to David Massey, dated May 2, 2008 and recorded in book 43 at pages 4 - 5 of the Greensboro land records, and the deed from Drown to Drown Associates recited therein dated March 15, 1982 and recorded in Book 4 at page 454. Mr. Massey's deed includes a reference to the northern boundary of Old Perrin Road as the southern boundary of the parcel itself, yet which provides no private right of access to or across Old Perrin Road. The deed also references any remaining rights in an access described in the earlier deed dated March 15, 1982 from Drown to Drown Associates, along the northerly line of the "firehouse property."
18. However, the language to be found in the March 15, 1982 deed confuses matters instead of clarifying them, as the Grantor therein completely "reserved and excepted" from the conveyance the same parcel later sold to Mr. Massey, without reserving and excepting any of the rights of access necessary to reach the Massey parcel.
19. Because of the questionable rights of access to each of the properties abutting Old Perrin Road, and the lack of record evidence to clarify those questions, the Board sees no evidence that any parcel crossed or abutted by the proposed right of way would be impaired if the right of way were to become public.
20. Instead, the evidence suggests that the value of each parcel abutting the proposed right of way would be enhanced, if affected at all, because these issues of rights to access would be put to rest for each property owner, including for Mr. Massey.
21. Mr. Massey testified as to funds expended in maintaining portions of the Old Perrin Road over the years. Thomas M. Hurst testified that he and David Drown each spent \$10,000 repairing the road over the years, as both of them used it. However Mr. Massey also testified that the Town was not proposing to remove gravel or fill, or otherwise interfere with his access to T. H. No. 2.

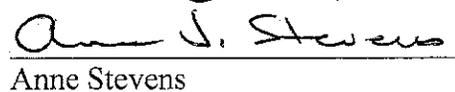
He reiterated that his primary concern was the potential loss of privacy with respect to the property he owned which lay on the north side of Greensboro Brook.

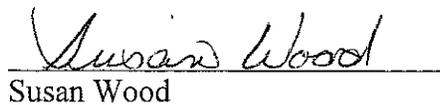
22. As proposed, the edge of the highway right of way may pass over or otherwise intrude with part of the septic system serving the Willey's Store. The decision to create a Class 4 right of way is not the same as a decision to commence improvements on the right of way. The area in question may be examined and its location marked in such a manner so as to avoid disruption if and when the access is maintained or improved.
23. No other property owner produced evidence of damages.
24. The public good, necessity and convenience of the inhabitants of the Town of Greensboro require that a class 4 public highway right of way be laid out in such a manner as to provide approximately the same access to adjacent properties as the historical Old Perrin Road, yet in a manner so as to maximize equity to abutting landowners, members of the public and to persons relying on actions, decisions and published records of the Town with respect to access over the Old Perrin Road right of way.
25. The Board concludes that the public interest served by laying out a class 4 highway right of way shall best be documented by a survey, for which Wayne Mutrux is hereby commissioned, to be based upon the draft survey admitted as Exhibit B, but which shall terminate the Perrin road right of way easterly of the path which runs northerly along the east side of Mr. Massey's former Dow Shop property to the Greensboro Brook, and which shall instead follow that path northerly to the brook, thus allowing for a place for vehicles to turn around.
26. Although Mr. Massey's privacy interest is noncompensable, the Board has decided to alter the right of way (that which was proposed in Exhibit B) according to Mr. Massey's suggestion, passing immediately to the east of his Dow Shop property. The road will terminate at Greensboro Brook to the east of the Dow Shop property.
27. Having heard no evidence of damages to any party for which compensation is both allowable and claimed, the Board concludes that no damages shall be paid.
28. The Class 4 highway right of way is hereby laid out.
29. It shall be memorialized as appears on the revised survey to be prepared by Wayne Mutrux consistent with these findings, and shall be named "Perrin Road."
30. This Order and the revised survey shall be recorded in the Greensboro Land Records pursuant to 19 V.S.A. §711.
31. NOTICE: Any person aggrieved by the Decision of the Select Board is advised of a right of appeal pursuant to 19 V.S.A. §726 by petition to the Civil Department of the Superior Court, and as may otherwise be provided pursuant to V.R.C.P. 74 and / or 75, which must be filed within 30 days following entry of this Order. A petition for appeal may be filed with the Superior Court or by tendering to the Greensboro Town Clerk together with the applicable filing fee, as published by the Superior Court fee schedule.

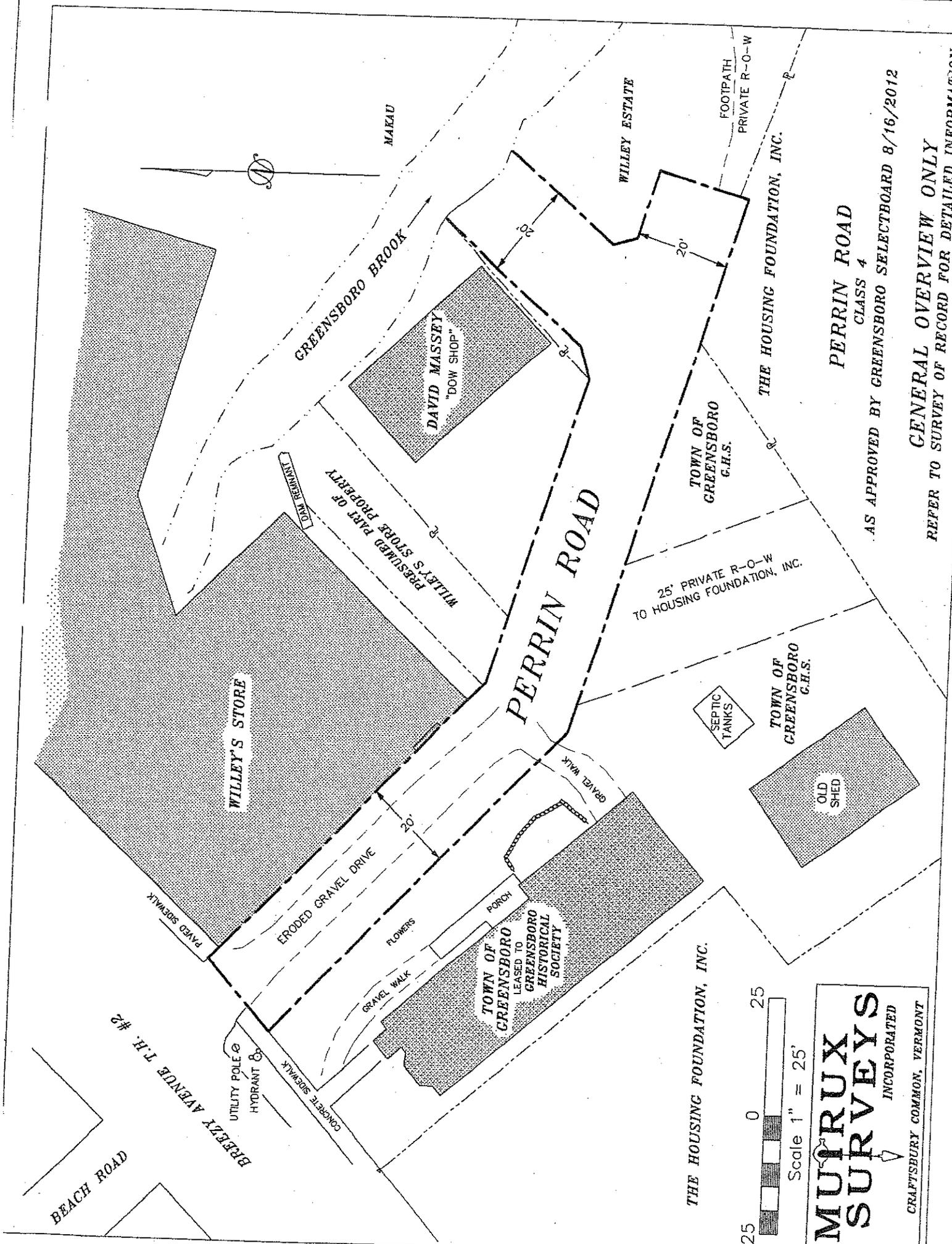
So Ordered as of this 30th day of August, 2012, by a majority of the Greensboro Select Board:


Marsha Gadoury, Chair


Margaret Lipscomb


Anne Stevens


Susan Wood



BEACH ROAD

BREZZY AVENUE T.H. #2

UTILITY POLE & HYDRANT

PAVED SIDEWALK

ERODED GRAVEL DRIVE

GRAVEL WALK

FLOWERS

TOWN OF GREENSBORO
LEASED TO
GREENSBORO
HISTORICAL
SOCIETY

PORCH

PERRIN ROAD

WILLEY'S STORE PROPERTY
TO BE REPAIRED

DAVID MASSEY
'DOW SHOP'

GREENSBORO BROOK

MAKAD

WILLEY ESTATE

FOOTPATH
PRIVATE R-O-W

SEPTIC TANKS

TOWN OF GREENSBORO
C.H.S.

OLD SHED

25' PRIVATE R-O-W
TO HOUSING FOUNDATION, INC.

THE HOUSING FOUNDATION, INC.



MURRUX SURVEYS
INCORPORATED
CRAFTSBURY COMMON, VERMONT

PERRIN ROAD
CLASS 4

AS APPROVED BY GREENSBORO SELECTBOARD 8/16/2012

GENERAL OVERVIEW ONLY
REFER TO SURVEY OF RECORD FOR DETAILED INFORMATION