



Town of Shelburne, Vermont

CHARTERED 1763

P.O. BOX 88 5420 SHELBURNE ROAD SHELBURNE, VT 05482

Clerk/Treasurer (802) 985-5116	Town Manager (802) 985-5111	Zoning & Planning (802) 985-5118	Assessor (802) 985-5115	Recreation (802) 985-5110	FAX Number (802) 985-9550
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Memorandum

To: Selectboard, All Staff, Public
From: Ann Janda, Management Intern
Date: September 22, 2015
Re: Update on Private Railroad Crossings Issues

For several years now, the Town of Shelburne has been trying to assist residents who own homes on the west side of private railroad crossings without official easements. After the recession began, mortgage lenders started to deny prospective buyers loans based on the crossings being "farm crossings" only.

Initially VTrans and the Railroad put forth a general private crossing agreement solution for the residents. However, the terms of the agreement were overwhelmingly unfavorable to residents, burdening them with millions of dollars of liability for the crossings.

In a joint effort by Shelburne's legislative representation, their legislative attorney, a new VTrans project manager, our Town Attorney, and Town Staff, I believe we have made substantial progress on a much less onerous solution for at least two of the crossings, Champlain Drive and Pine Haven Shores. Both of these roads are currently public up to the crossings. We have drafted agreements between VTrans, the Railroad, and the Town of Shelburne to provide for the laying out of a class 4 road in a westerly expansion of each for at least 30 feet. This solution would enable the crossings to become public without the Town needing to take responsibility for maintenance and would enable the residents to have a public crossing without the cost of bringing their private roads up to class 3 standards. The Town would only be responsible for "railroad advance warning" on the approaches outside of the railroad right-of-way.

We believe the next steps for Champlain Drive and Pine Haven Shores are for the Town to consider signing the draft agreements with VTrans and the Railroad and to develop a policy for recouping the costs of laying out a public town highway. Shelburne's Town Attorney estimates that the laying out costs for these two crossings could be anywhere from \$6,000 to \$10,000. He also advises the Town not to sign the draft agreements until the residents have signed an agreement with the Town that guarantees repayment of these costs and that the residents will not petition the Town to make any further improvements on the new length of public road. The Town Attorney and I have already been in contact with representatives of the residents of both of these crossings to prepare them for this potential process.

The third crossing we have been working on is at Windmill Bay Road. This crossing is not the same in that it is private beginning on the west side of Route 7, which creates multiple complications for the Town in identifying a solution.

The purpose of this agenda item is to have a general discussion about the progress made to date, answer any questions the Selectboard may have, and enable further reflection to ensure the Selectboard can be prepared to consider next steps at a future meeting.

**AMENDMENT NO. 1 TO
MARCH 25, 2015 AGREEMENT
BETWEEN
STATE OF VERMONT, JOINED BY
VERMONT RAILWAY, INC.,
AND
TOWN OF SHELBURNE
REGARDING
EXTENSION OF PINE HAVEN SHORES ROAD (TH #21)**

THIS AGREEMENT, made and concluded this _____ day of _____, 20___, by and between the State of Vermont, a sovereign state, acting through its Agency of Transportation, with its principal office at National Life Building, One National Life Drive, Montpelier, Vermont 05633-5001 (the "STATE") joined by Vermont Railway, Inc., a Vermont corporation with its principal office at One Railway Lane, Burlington, Vermont 05401-5290 ("VTR" or "Railroad"), and the Town of Shelburne, a Vermont municipal corporation with its principal place of business at P.O. Box 88, Shelburne, Vermont 05482 (the "MUNICIPALITY").

WITNESSETH:

WHEREAS, on March 25, 2015 the parties entered into an Agreement regarding the MUNICIPALITY's laying out westward extension of Pine Haven Shores Road (TH #21) across the STATE-owned railroad right-of-way, thus making the Crossing a public crossing ("the Project"); and

WHEREAS, the March 25, 2015 Agreement is recorded in the Shelburne Land Records at Book 424, Pages 606-611, having been received for record on April 2, 2015; and

WHEREAS, the MUNICIPALITY now desires the option of classifying the westward extension of Pine Haven Shores Road (TH #21) as a Class 4 town highway;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and premises herein set forth, the parties agree as follows:

1. Paragraph 1 of the March 25, 2015 Agreement is deleted and the following is substituted in its place.

1. Westward Extension of Pine Haven Shores Road (TH #21).

The MUNICIPALITY, in accordance with 19 V.S.A. Chapter 7 (Laying out, discontinuing, and reclassifying highways), will lay out a westward extension of Pine Haven Shores Road (TH #21) across the STATE-owned railroad right-of-way along the location of the existing private road, so that the Crossing will become a public crossing.

The parties agree and understand that the MUNICIPALITY may choose to classify the westward extension of Pine Haven Shores Road (TH #21) as a Class 4 town highway. The parties further agree and understand that the MUNICIPALITY, because of special considerations involving the westward extension of Pine Haven Shores Road (TH #21), may choose to establish a Special Assessment District or other financing mechanism for allocating maintenance costs among the properties located westerly of the Line which will be served by the Crossing. Nonetheless, the MUNICIPALITY, with respect to the STATE and VTR, will have the same responsibility for the Crossing as for any other public highway crossing within its boundaries involving a town highway, subject to the provisions of this Agreement.

2. Paragraph 2 of the March 25, 2015 Agreement is deleted and the following is substituted in its place:

2. Necessity. The STATE and VTR stipulate that the public good, necessity, and convenience of the inhabitants of Shelburne require the westward extension of Pine Have Shores Road (TH#21) as set forth above. The STATE and VTR also agree that they will not challenge the westward extension of Pine Have Shores Road before the Transportation Board (see 5 V.S.A. § 3566) or in any other forum.

3. Except as amended by this Amendment No. 1, the March 25, 2015 Agreement shall remain in full force and effect, and the remainder of its terms, conditions and provisions are not modified by this Amendment No. 1.

4. The Town of Shelburne, at its own expense, will be responsible for recording this Amendment No. 1 in the Shelburne Land Records.

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this ___ day of _____, 20___, by Susan M. Minter/Christopher J. Cole, its [Deputy] Secretary of Transportation and duly authorized agent.

STATE OF VERMONT

By: _____
Susan M. Minter/Christopher J. Cole, Its
[Deputy] Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this ___ day of _____, 20___, personally appeared Susan M. Minter/Christopher J. Cole and acknowledged the foregoing instrument, by him/her as [Deputy] Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,

Notary Public
(My commission expires Feb. 10, 2019)

APPROVED AS TO FORM:

DATED: _____

ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, Vermont Railway, Inc. has caused this instrument to be signed in its corporate name by David W. Wulfson, its President and duly authorized agent, this _____ day of _____, 20__.

VERMONT RAILWAY, INC.
("VTR")

By: _____
David W. Wulfson, Its President and
Duly Authorized Agent

STATE OF VERMONT)
CHITTENDEN COUNTY, ss.)

At Burlington, this _____ day of _____, 20__, personally appeared David W. Wulfson and acknowledged the foregoing instrument, by him as President of Vermont Railway, Inc. subscribed, to be his free act and deed and the free act and deed of Vermont Railway, Inc.

Before me,

Notary Public
(My commission expires Feb. 10, 2019)

DRAFT

IN WITNESS WHEREOF, the Town of Shelburne has caused this instrument to be signed in by Joseph N. Colangelo, its Town Manager and duly authorized agent, this _____ day of _____, 20__.

TOWN OF SHELBURNE
("MUNICIPALITY")

By: _____
Joseph N. Colangelo, Its Town Manager
and Duly Authorized Agent

STATE OF VERMONT)
CHITTENDEN COUNTY, ss.)

At Shelburne, this _____ day of _____, 20__, personally appeared Joseph N. Colangelo and acknowledged the foregoing instrument, by him as Town Manager and duly authorized agent of the Town of Shelburne, subscribed, to be his free act and deed and the free act and deed of the Town of Shelburne.

Before me,

Notary Public
(My commission expires Feb. 10, 2019)

DRAFT

**AGREEMENT
BETWEEN
STATE OF VERMONT, JOINED BY
VERMONT RAILWAY, INC.,
AND
TOWN OF SHELBURNE
REGARDING
EXTENSION OF CHAMPLAIN DRIVE (TH #29)**

THIS AGREEMENT, made and concluded this _____ day of _____, 20___, by and between the State of Vermont, a sovereign state acting through its Agency of Transportation, with its principal office at National Life Building, One National Life Drive, Montpelier, Vermont 05633-5001 (the "STATE"), joined by Vermont Railway, Inc., a Vermont corporation with its principal office at One Railway Lane, Burlington, Vermont 05401-5290 ("VTR" or "Railroad"), and the Town of Shelburne, a Vermont municipal corporation with its principal place of business at P.O. Box 88, Shelburne, Vermont 05482 (the "MUNICIPALITY").

WITNESSETH:

WHEREAS, the STATE is the owner of a line of railroad extending through the Town of Shelburne ("the Line"), described more particularly in the January 1, 1964 Quit-Claim Deed from the Rutland Railway Corporation, Grantor, to the State of Vermont, Grantee, which is recorded in the Shelburne Land Records at Book 39, Pages 374-382, having been received for record on April 6, 1964; and

WHEREAS, VTR leases and operates the Line under a September 19, 1990 lease with the State of Vermont, Lessor, a Memorandum of Understanding which is recorded in the Shelburne Land Records at Book 133, Page 473, having been received for record on October 30, 1990 ("the Lease"); and

WHEREAS, a Class 3 town highway of the MUNICIPALITY, known as Champlain Drive (Town Highway ("TH") #29), presently extends from the westerly boundary of the state highway known as U.S. Route 7 (Shelburne Road) to the easterly boundary of the Line; and

WHEREAS, it is the position of the STATE and VTR that the existing grade crossing at railroad milepost 117.47 (U.S. Department of Transportation No. 851-409D) ("the Crossing") is a farm crossing; and

WHEREAS, the MUNICIPALITY, to resolve questions of legal access to properties lying between the westerly boundary of the Line and Lake Champlain, now desires to lay out a westward extension of Champlain Drive (TH #29) across the STATE-owned railroad right-of-way, thus making the Crossing a public crossing ("the Project"); and

WHEREAS, the STATE and VTR, subject to the terms of this Agreement, wish to cooperate with the MUNICIPALITY to advance the Project;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and premises herein set forth, the parties agree as follows:

1. **Westward Extension of Champlain Drive (TH #29).** The MUNICIPALITY, in accordance with 19 V.S.A. Chapter 7 (Laying out, discontinuing, and reclassifying highways), will lay out a westward extension of Champlain Drive (TH #29) across the STATE-owned railroad right-of-way along the location of the existing private road, so that the Crossing will become a public crossing.

The parties agree and understand that the MUNICIPALITY may choose to classify the westward extension of Champlain Drive (TH #29) as a Class 4 town highway. The parties further agree and understand that the MUNICIPALITY, because of special considerations involving the westward extension of Champlain Drive (TH #29), may choose to establish a Special Assessment District or other financing mechanism for allocating maintenance costs among the properties located westerly of the Line which will be served by the Crossing. Nonetheless, the MUNICIPALITY, with respect to the STATE and VTR, will have the same responsibility for the Crossing as for any other public highway crossing within its boundaries involving a town highway, subject to the provisions of this Agreement.

2. **Necessity.** The STATE and VTR stipulate that the public good, necessity, and convenience of the inhabitants of Shelburne require the westward extension of Champlain Drive (TH #29) as set forth above. The STATE and VTR also agree that they will not challenge the westward extension of Champlain Drive (TH #29) before the Transportation Board (see 5 V.S.A. § 3566) or in any other forum.

3. **Waiver of Appraisal and Compensation.** The STATE and VTR acknowledge and agree:

- a. They have been informed of their right to receive just compensation based upon an appraisal for property and/or rights to be acquired from them by the Town of Shelburne for the Project;
- b. They have been informed of the full effect of the Project on their property and leasehold; and
- c. They have been duly informed of any and all their rights and eligibility under the "Uniform Relocation and Assistance and Land Acquisition Policies Act of 1970," as amended.

Having been so informed, the STATE and VTR do hereby waive their rights to appraisal, compensation, payments and/or other benefits to which they would be entitled as a result of the MUNICIPALITY's laying out of a westward extension of Champlain Drive (TH #29).

4. Federal Railroad Administration (FRA) Crossing Inventory. The MUNICIPALITY will notify the STATE and VTR when it accepts the Champlain Drive extension as a town highway. The STATE and VTR then will take necessary action to notify the FRA to update its Highway-Rail Crossing Inventory to reflect that the legal status of the Crossing is now that of a public crossing.

5. Inspection, Maintenance and Rehabilitation of the Crossing. Once the MUNICIPALITY accepts the Champlain Drive extension as a town highway, the parties will allocate responsibility for inspection, maintenance and rehabilitation of the Crossing in the same manner as provided in existing agreements for other public crossings along the Quiet Zone between milepost 115.11 (Harbor Road, Shelburne) and milepost 115.42 (Flynn Avenue, Burlington). Should the Quiet Zone ever terminate, the parties will treat the Crossing as a public crossing, subject to generally applicable federal and state statutes and rules governing inspection, maintenance and rehabilitation of public crossings along VTR's line, as well as Lease provisions applicable to public crossings.

6. Entire Agreement. This Agreement constitutes the entire agreement among the parties relating to conversion of the Crossing to a public crossing, supersedes all prior oral or written negotiations, agreements, understandings and courses of dealing between the parties relating to this subject matter and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may only be modified by a writing, which states that it modifies or amends this Agreement, and which is signed by all parties.

7. Utilities; Flagging and Inspection Services. The parties agree and understand that the STATE and VTR except and reserve the right to license use of the STATE-owned railroad right-of-way by utilities, including but not limited to municipal utilities, and that any such utilities may also need to obtain permits and approvals from the MUNICIPALITY for use of its town highway right-of-way. In addition, the parties agree and understand that the MUNICIPALITY and/or its contractor, in connection with future projects for rehabilitation of or improvements to the Crossing, may need to enter into one or more agreements with VTR regarding project-related matters, including but not limited to flagging and inspection services.

8. Section Headings. The section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

9. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

10. Recording. The Town of Shelburne, at its own expense, will be responsible for recording this Agreement in the Shelburne Land Records.

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this ___ day of _____, 20___, by Susan M. Minter/Christopher J. Cole, its [Deputy] Secretary of Transportation and duly authorized agent.

STATE OF VERMONT

By: _____
Susan M. Minter/Christopher J. Cole, Its
[Deputy] Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this ___ day of _____, 20___, personally appeared Susan M. Minter/Christopher J. Cole and acknowledged the foregoing instrument, by him/her as [Deputy] Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,

Notary Public
(My commission expires Feb. 10, 2019)

APPROVED AS TO FORM:

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