STATE OF VERMONT

SUPERIOR COURT Franklin Unit	CIVIL DIVISION Docket No. 472-10-13 Frcv
Lee Tillotson, Susan Tillotson, Plaintiffs v. Town of Bakersfield, Samuel Ruggiano, Kimberly Ruggiano, Terri Gates, Lindsay Gates, Defendants	OPINION AND ORDER ON PENDING MOTIONS FOR SUMMARY JUDGMENT (Motions 5 &6)

This civil matter involves a dispute over the status of a road or private drive located in Bakersfield, Vermont.

The Plaintiffs, Lee and Susan Tillotson ("Plaintiffs" or the "Tillotsons"), own a residence, along Vermont Route 108 in Bakersfield, Vermont. A dispute has arisen between the Tillotsons, and their neighbors, Defendants Terri Gates and Lindsey Gates (collectively "the Gates Defendants") and the Town of Bakersfield, Vermont (the "Town"). The dispute involves whether the roadway that passes over the Tillotsons' property was formerly a town road, later converted to a public trail, or if it is a solely private road over which the Gates defendants may have prescriptive easement rights only. The Gates Defendants and the Town take the position that the roadway segment was a town road and later converted to a public trail. The Tillotsons contest that position.

The Tillotsons sued the Gates Defendants and the Town for a declaratory judgment action. The Tillotsons and the Gates Defendants filed competing motions for summary judgment pending before the court. The Town is one of the non-moving parties as to the motion for summary judgment filed by the Tillotsons, but has not filed any opposition memoranda in response.

The court has considered the motions and materials submitted in support of the motions and makes the following findings of fact (for summary judgment purposes) and conclusions of law:

1. The subject road, drive or trail, which the Gates Defendants identify as "Kimberly Hill Farm Road", starts on the west side of Vermont Route 108 in Bakersfield, near a Methodist Church. It runs approximately 0.2 miles through land presently owned by

Plaintiffs, then through lands presently owned by Terri Gates, and then on to lands owned by Lindsey Gates.

2. The court refers to this road, drive or trail as the "Shared Roadway" below for purposes of identification. The Shared Roadway's physical composition (that is, the extent to which it is "improved" and its physical appearance) and/or the extent to which it has been used by persons owning land along its course, or by Town residents, are at issue. The court's choice of the "Shared Roadway" nomenclature in referring to the road, drive, or trail is made as a matter of convenience for this opinion.
3. Lee and Susan Tillotson purchased their home on September 25, 1969. It was previously owned from 1932-42 by Lee Tillotson's great-grandparents, Elmer and Ila Taylor. They transferred it to Lee Tillotson's grandparents, Sylvia and Harry Lee Tillotson, in 1942. Harry Lee Tillotson died, and Sylvia Tillotson owned the property until sometime in 1969, when she conveyed it to two married couples, namely Ira and Celona Elwood, and Chester Talcott and Evelynn Talcott. The Ellwoods and Talcotts conveyed the property to the Tillotsons on September 25, 1970.
4. The Gates Defendants' parcels were previously owned by Earl and Hyla Gates. They acquired the lot in 1942, when it had no residence on the lot. The parcel served as a wood lot. During their ownership of the lot., Earl and Hyla Gates let Edward Robtoy build a shack on a portion of their property.
5. The Shared Roadway crossed the Tillotson parcel and passes onto the Gates property.
6. According to affidavits submitted by various persons, the Tillotsons and the Gates, and Mr. Robtoy, passed over the Shared Roadway getting to and from their properties.
7. There was disputed testimony over whether, or to what extent, the Town maintained the Shared Roadway.
8. Samuel Gates, a relative of the Gates Defendants, lived near the Tillotson home/ Shared Roadway in 1942 to 1955, when he was 5 to 18 years old. He recalls the Town plowing the Subject Road after every significant snow storm in front of the Tillotson home. He recalls seeing a bulldozer with a snowplow on the front being used some times. He recalls the town plow truck plowing up to the Tillotson house, and then backing out, leaving a snowbank that he used to shovel out to help get to the Gates property (that then had no residence on it), to give access to the Gates woodlot.

9. Samuel Gates also recalls town workers working on the stone culvert on the Shared Roadway one time, near where it passes onto the Gates' land.
10. In contrast, Lee Tillotson's aunts, Frieda Perry and Marjorie Rich, lived in the Tillotsons' home along the Shared Roadway from 1938-58 and again from 1959 to 1961 (Ms. Perry) and from 1938- 1948 (Ms. Rich). Both of these women contest that the Town plowed or upkept the Subject Roadway. They both state that their father, Harry Lee (Chubb) Tillotson, who served as the Town Road commissioner from 1948 to 1952, used his personal plow truck to both plow town roads and to plow his own property, such as the Subject Roadway.
11. Lee Tillotson, who lived in Town from his birth in 1948 to 1969, spent considerable time at his then grandparents' house. During those years (starting with his early memories) the only persons he saw using the Subject Road were the Tillotson family (to access the Tillotson home), Edward Robtoy (to access his shack, by foot or bike) and Earl Gates (to access his wood lot).
12. After the Tillotsons purchased the Tillotson home, in 1970, Plaintiff Lee Tillotson saw the same usage pattern for the Shared Roadway. Once the Gates mobile home was placed on the site in 1985, there was usage of the Shared Roadway by the Gates or their guests to access the mobile home. For a time (1990's to 2012), Samuel and Kimberly Ruggiano made use of the road/ drive, as described below.
13. In addition another Tillotson relative, Norris Tillotson, who lived a little north of the Tillotson home, on Route 108, from 1935 to 1954, and who frequented the TIllotson home, states he never saw the Shared Roadway plowed or maintained by the Town.
14. No party has found any town records showing that the Shared Roadway was laid out by the Town as a town road.
15. The Town records (town reports) for the years 1890, 1906, 1922, 1934, 1945-48, 1950-53 and 1955 – years encompassing the childhood/teen years of the affiants concerning presence or absence of Town maintenance for the Shared Roadway - facially list no sums identified as being expended on the Shared Roadway during those years. It appears earlier records of town road expenditures are missing (assuming the Town in fact previously kept such records).

16. In 1970, the Town sought to discontinue certain roads in Town. On 10/6/70 the Town sent notices of a 10/23/70 hearing to property owners owning land near the affected roads.
17. The noticed hearing was generally about a hearing to discontinue certain town roads or highways and to designate them as town trails. The 10/6/70 Notice had two sections. The unnumbered first part provided notice of plans to discontinue as roads, and designate as trails, eighteen numbered Town Roads, identified by town road number and location.
18. Part II of the Notice extended to "[s]uch highways or supposed highways" to be discontinued, and included reference to the Shared Roadway as a "Unnumbered Supposed Road".
19. The Town held a hearing in October, 1970. The Town Select board issued a town report, on 10/29/70, concerning certain town roads.
20. The Town's 10/29/70 report in pertinent part stated "An Unnumbered Supposed Road, extending westerly from Route 108 at a point approximately opposite from the Methodist Church, by the Tillotson Place, so-called, to the end of the road, is hereby discontinued as a Town Highway and designated as a Trail".
21. The Town mailed copies of its 1970 order to certain landowners owning land near the roadways described in the order. Although the Tillotsons purchased their property shortly before (9/25/70) the Town proceedings were noticed (10/6/70), the hearing held (10/23/70), and the town report mailed (10/29/70) - the Town did not mail the Tillotsons a copy of the 1970 notice of hearing or order.
22. Following the 1970 town action, the Town depicted the subject road as a "LT 48" on its 1976 map. The town map designation "LT" refers to legal trails on the map legend.
23. Mr. Tillotson served as a selectman for the Town from in or around 1975 to 1979. Ms. Tillotson served on the Town Planning Commission. They each at some point learned of the Town's designation of the Shared Roadway as a public trail, but did not agree with such designation.
24. The Gates Defendants' physical occupancy of their lot began in 1983, when Lindsey Gates and Earl and Hyla Gates applied for a town permit to site a mobile home along the Shared Roadway, to the north of the roadway/drive.

25. In 1985 a Lindsey Gates renewed or obtain a permit to place a mobile home on the site, which was done soon thereafter. Around the time of this permit, Hyla and Earl Gates deeded the property to Lindsey Gates.
26. Both Gates permits had a sketch that depicted the Shared Roadway as a "Legal Trail" passing onto the Gates land where the mobile home was to be placed.
27. Prior to the Gates mobile home being placed on the Gates property in 1985, it does not appear that automobiles were used on the portions of the Subject Roadway that extended beyond the Tillotson home. Mr. Robtoy had a shack on the Gates property, that he accessed by foot or bike. There had been horse drawn wagon access to the Gates' wood lot. There were no structures beyond the Tillotson home, being regularly accessed by motorized vehicle, along the Shared Roadway.
28. The Robtoy shack had deteriorated and was gone by 1970.
29. In 1990, Samuel and Kimberly Ruggiano purchased property to the north of the Tillotsons' and the Gates Defendants' properties, but also along the west side of Route 108. With permission, the Ruggianos made some improvements to the Shared Roadway, as it approached and passed onto their land.
30. Prior to the filing of this action, tensions arose between the Tillotsons, the Gates Defendants, the Town and the Ruggiano's over the legal status and use of the Shared Roadway. The Town got involved.
31. As tensions flared up, the Town in essence took a position that the passageway was a town public trail, and in 2004 informed the Tillotsons they could not park along the road/drive/trail (that is the Shared Roadway). The Tillotsons did not agree with that position, but have honored the Town's request while reserving their right to have their legal rights decided, in an action such as this one.
32. By 2012 the Ruggianos made arrangements to directly access Route 108 from their own property, and discontinued their use of the Shared Roadway. In 2014, Tillotsons and the Ruggianos exchanged a quit claim deed and release of claims, and the Ruggianos are no longer part of this dispute.
33. Certain other details about the parties' deed histories are set forth in the Legal Analysis that follows below.
34. The issue has arisen in this case if the Shared Driveway way was a "postal road" laid out by the federal congress in 1810. The Eleventh Congress did "lay out" some roads, such

as the Cumberland Road Eleventh Congress, Sess. II Chapter VIII, p. 555-556 ("laying out" or "making" Cumberland Road); Chapter XXI, p 569 ("make" public road in D.C., including appointment of commissioners to for the road to be "laid out" and surveyed).

35. The Eleventh Congress also "established" certain post roads in New England. One post road so established covered several towns in Massachusetts and Connecticut. Id., Sess. II, Chapter XXX, p. 579-80. Another federal postal road was established in Vermont, and which passed through about 20 Vermont towns including Bakersfield. (*Id*).

Legal Analysis and Conclusions of Law

The pivotal issue in this case is whether the Shared Road was a town road or town highway. The Tillotsons claim that the Gates Defendants and Town cannot establish sufficient material facts to support a showing that a reasonable factfinder could find that the Shared Drive is or was a town road.

The Gates Defendants, on the other hand, contend that they have established as a matter of law that the Shared Roadway was a valid town road and/or that the Tillotsons were bound by the 1970 road discontinuance proceedings and cannot contest the public trail designation.

The burden of proving the existence of a public road normally rests on the Town. *McAdams v. Town of Barnard*, 2007 VT 61, Para. 13. The Town here has not taken a position on the pending motions. The Gates Defendants claim that their property had town road access over the Tillotson property, which town road was properly re-classified to a trail by the Town in 1970. The court finds that the Gates' Defendants bear the burden to prove the Subject Roadway was a prior town road. The court notes as to the Tillotsons' motion for summary judgment, they do not have to prove the non-existence of the road, just that, after an adequate time for discovery, that the Gates Defendants and Town "'fail[ed] to make a showing sufficient to establish the existence of an element" essential to his case and on which [they have] the burden of proof at trial'". *Poplaski v. Lamphere*, 152 Vt. 251, 254- 55 (1989), citing and quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986)(construing F.R.C.P. 56); *Burgess v. Lamoille Housing Partnership*, 2016 VT 31, ¶ 17, 145 A.3d 217, 223.

The court's ability (and obligation) to consider the legality of the road creation is independent of the road discontinuance proceedings. The *McAdams* Court found that the issue of whether the Town had properly discontinued a road was different than the issue of whether the town road existed in the first place. The *McAdams* Court determined that consideration of whether the statutory procedures to validly discontinue a road were followe did not preclude court adjudication of the issue of whether there are any existing public roads on a property. Similarly here, the court believes that the issue of whether the Shared Roadway ever was a town

road is a separate issue from the issue of whether the Town properly reclassified the passage as a town trail in 1970.

A town road may be established one of two ways: [1] by the Select Board laying it out as the statutes proscribe or [2] by dedication and acceptance. *Town of Springfield v. Newton*, 115 Vt. 39, 43 (1947); *Okemo Mtn. Inc. v. Town of Ludlow*, 164 Vt. 447, 454 (1995).

Laying Out

To show that a town has laid out a town road the statutory method must be substantially complied with or the proceeding is void. *Austin v. Town of Middlesex*, 2009 VT 102 Para. 7, 186 Vt. 629, 630 (citing cases). Vermont statutes have long described the process to "lay out" a road and to make a record of the Town's activities in doing so. See, *In re Town Highway No. 20 of Town of Georgia*, 2003 VT 76, Paras. 6-7, 175 Vt. 626, 627-628 (discussing 1782 and 1808 road law); *Kelly v. Town of Barnard*, 155 Vt. 296, 302 (1990)(discussing 1816 and 1817 road law); *Austin, supra* at Para. 8 (describing the 1824 road law).

The court agrees with the Tillotsons that there is no evidence that the Town ever laid out the Subject Roadway as a town road. The 1970 road discontinuance proceedings do not help the Gates Defendants show a laying out. Under *McAdams, supra* they must prove there was a legal road to discontinue in 1970.

Moreover the 1970 select board order is scant, and legally insufficient, authority to serve as a discontinuation order absent other prof the road existed, for another reason. On its face the discontinuation meeting notice spoke of the Select board's intent to discontinue "highways or *supposed* highways". (emphasis added). The 1970 road discontinuance meeting minutes refer to the road or drive as an "Unnumbered Supposed Road". A town lacks power to discontinue a "supposed" highway or a "supposed" road. It appears all that the 1970 proceedings attempted to do was just that – that is discontinue some right of way on the mere supposition it could be a town road.

In reaching this conclusion the court has considered the Gates' argument that the Shared Roadway was "laid out" by the federal Congress in 1810 as it "established" the postal roads. The court agrees with the Tillotsons that the Eleventh Congress' "establishment" of post roads appears to have done no more than to designate existing roads to be used to deliver mail. When the Eleventh Congress indeed wished to create a new road, or "lay out" a new road, it did so expressly, such as when it laid out the Cumberland Road and the District of Columbia road as part of its proceedings.

In addition, all that the Eleventh Congressional act tells us is that somewhere in Bakersfield, Vermont a postal route was selected along exiting roads. The federal Congress' actions did not give rise to a new road within the Town. One cannot tell what existing road the Eleventh Congress' pronouncement referred to.

Mr. Samuel Gates' conclusory reference to unspecified persons in the Town ,that "the reputation in the community" was that Shared Driveway was the old post road, before Route 108 was re-routed, on its face gives no guidance as to the source(s) or accuracy of the information. The court recognizes that the statement may be admissible as non-hearsay under

Vermont Rule Evidence, Rule 803(20). Cases applying the similar Federal Rule of Evidence 803(20), or similar state rules, recognize such evidence may vary in its probative character. *Ute Tribe v. State of Utah*, 521 F. Supp. 1072, 1150 (Cen D. Ut. 1981)("To have significant probative value, the matter in question 'must be one of general interest, so that it can accurately be said that there is a high probability that the matter underwent general scrutiny as the community reputation was formed.'", citing *McCormick on Evidence* s 324, at 750 (2d ed. 1972)); *Kent Co. Road Commission v. Hunting*, 428 N.W.2d 353 (Mich. App. 1988)(declining to consider alleged reputation evidence, under Michigan Rule Evid. 803(20), about the prior planting of trees, based on statements attributed to three deceased persons not shown to have been discussing an issue of general interest to all members of the community). As the Advisory Committee Notes to the Federal Rules of Evidence, Rule 803(20), point out:

> 'Trustworthiness in reputation evidence is found "when the topic is such that the facts are likely to have been inquired about and persons having personal knowledge have disclosed facts which have thus been discussed in the community; and thus the community's conclusions if any has been found, is likely to be a trustworthy one."

Id, citing, 5 *Wigmore* § 1580, p. 444,

While Mr. Gate's statement of general community reputation might meet the bare minimum to be admissible, the court finds the statement fails to provide a material fact sufficient to show that the Shared Roadway was part of a Town Road. Mr. Gates was born 127 years after the postal road designation. As noted, that designation did not establish roads – the town select board would have. The court has no information as to who Mr. Gates may have heard this comment from, or when, or in what context. There are no records that the Town laid out the Shared Roadway as a town road, or "moved" a town road to the present Route 108 location. The Gates' reputation statement appears as likely as not to be part of incorrect local folklore circulating in town during Mr. Gate's life.

Dedication and Acceptance

To create a road by dedication and acceptance, there must be clear evidence showing that [1] the owner of the land intended to set apart his or her land for public use and [2] the municipality intended to accept the dedication. *Okemo, supra*, 164 Vt. at 454-455, citing *Town of Springfield*, 115 Vt. at 44 (1947) and *Druke v. Town of Newfane*, 137 Vt. 571, 574 (1979).

Dedication by the owner has been described as follows:

> Dedication is the setting apart of land for public use, either expressly or by implication by law. It may be shown by the owner's writings, affirmative acts, acquiescence in public use, or some combination thereof, so long as the owner's intent to dedicate clearly appears.

Druke, 137 Vt. at 574 (1979), citing *Town of Springfield, v Newton*, 155 Vt. 39, 43 (1947) and other authorities.

Here the court finds insufficient evidence of dedication by the Tillotsons or the Gates of the Subject Roadway for public use. The Gates have presented no evidence of the Tillotsons' (or their predecessors in interest's), or the Gates' predecessors in interest's, intent or actions to devote the Shared Roadway to public use. There is no evidence that the Shared Roadway was used by the general public at any time.

The Gates Defendants have produced disputed evidence that the Town did some snow plowing of the Shared Roadway, up to the Tillotson house, and one incident of alleged gravel spreading and stone culvert repairs, many years ago. While the former property owner, Harry Lee Tillotson (who was a former Town road commissioner), may have acquiesced to such steps being taken (if they indeed they occurred) such acquiescence does not "clearly show" the Tillotsons' intent to dedicate the Shared Roadway to the public's use. At most they show acquiescence and acceptance of some limited road improvements and plowing, along a very short drive or road segment leading to Mr. Tillotson's then existing home; not acquiescence to the use of a town road in the area by the public at large. There is no showing of any records showing public funds were spent on the Shared Drive. There is no showing that anyone other than the Gates' property owners or specific invitees ever traversed the Shared Roadway.

The acquiescence to such plowing and improvements, solely serving the Tillotson parcel, do not "clearly indicate an intent by the owner to devote the land to public use*" (Druke v. Town of Newfane*, 137 Vt. 571, 575 (1979)), rather than to accept a wholly private benefit[1]. In *Druke*, the owner charged with the intent to dedicate the land to public use, reserved rights of public access in his deeds. In *Druke*, the plaintiffs' land was unquestionably and regularly transversed by many members of the public to access a popular swimming hole. No such evidence is present here. Diversion of town labor or resources, by or to a town official - to benefit his or her own private parcel – may not be "proper", but it does not support an inference of public dedication or public usage by such town official. Of course, in the days of yore, the fact that a town road commissioner, who used his or her own equipment to help perform town road duties, might have the snow cleared along his or her driveway, may have been a common neighborly accommodation in small town circles. It is significant that contemporaneous town records, during the time of the observed snow plowing of the Tillitson house "drive" or "road" show no town road expenditures for the Shared Roadway.

The court rejects the argument that the Town's largely facially proper proceedings[2], to discontinue the Subject Roadway as a town road, and re-classify it as a town trail, establish that the roadway was in fact previously established as a town road.

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[1] To the extent the disputed, one time stone culvert work, which appears to have been performed on the Tillotson parcel, to assist the Earl Gates' private woodlot access, might have benefitted Earl Gates as well as the Tillotsons – the Tillotsons' acquiescence in such one time improvements, assuming they occurred, is insufficient to show an owner intent to have the Shared Roadway dedicated to public use, rather than simple accommodation to a next door neighbor.

[2] Because of the lack of evidence that the Shared Roadway was ever a town road to be discontinued, the court need not address the Tillotsons' arguments about the lack of a post discontinuance survey as the alleged town road was changed to a public trail.

The court has considered the caselaw the Gates Defendants cite to the effect that the 1970 Town road discontinuance proceedings should be given a presumption of validity. As noted, the Gates Defendants, standing in the place of the Town, have the burden to prove the establishment of a town road. While the town proceedings may carry a presumption of being performed properly, that doctrine can only go so far. The court agrees with the Tillotsons that the issue here is not whether the Town properly transformed a town road to a trial by the road discontinuance procedure – the issue is whether the path of travel that was the subject of the proceedings (the Subject Roadway) - was ever a town road to begin with. The Town cannot declare an area a road by the act of "discontinuing" a path of travel that the Town never established as a road. See *McAdams, supra; Bacon v. Boston & Maine R.R.*, 83 Vt. 421, 435 (1910).

As the court previously noted even the Town's purported discontinuance of the Subject Roadway as a town road was tentative in its 1970 statement of the area's status. The notice of hearing described a highway or "supposed highway". The discontinuance order referred to the Subject Roadway as the "Unnumbered *Supposed* Road". (emphasis added). From this reference it appears that in 1970 the Town itself could point to no precedent that established the Subject Roadway as a town road or highway.

The court has considered the parties' reliance on deeds and old surveys contained in their Fall 2016 supplemental pleadings. The court agrees with the Tillotsons, that the contention that any road references in the Gates' title chain is the current Route 108, not the Shared Driveway, is supported by several factors including:

~ the old surveys (particularly the 1857 Walling survey), and to some degree the 1871 Beer's survey, showing no indication of the Shared Roadway as a prior road, at the time the various deeds were given;

~ the existence of the Kittell dwelling (Methodist parsonage), 32 rods north along Route 108 (and the lack of a residence or foundation 32 rods north along the Shared Roadway), as described in the 6/15/1848 deed to Henry J. Moore, and lack pf a residence or foundation 32 rods along the Shared Roadway, as one proceeds north;

~ the deeds in the Habedank chain, from Wilson to Ewings and Ewings to Woodward, showing the "east line of the highway" and the "east line of the road" as the Habedank westerly border around the time of the Walling survey;

~ the lack of any showing that the northerly end of the Shared Driveway was ever connected to current Route 108; and

~ the presence of the Methodist Church; S.B. Hazeltine (now Lamore); C. Ewing (now Habedank); H. Smith; Methodist Parsonage (now Kittell), all along the current Route 108's easterly road border in or around 1850 (Walling Survey) and 1871 (Beers survey), and the lack of any former homes aligned along the Shared Roadway.

In the end, the court concludes that the Tillotsons have properly shown that there is a lack of proof that the Shared Roadway ever became a town road or highway for the Town of Bakersfield, Vermont. The Gates Defendants have failed to provide sufficient proof on the issue (on which they carry the burden of proof). The Town, by its failure to file any opposition to the

Motion for Summary Judgment against it also, has also shown material issues of fact sufficient to prevent partial summary judgment in favor of the Tillotsons on the issue. Orders consistent with this opinion are set out below.

Prescriptive Easement

The court's ruling on the road issues leaves for resolution the nature and extent of any prescriptive easement rights the Gates' Defendants may hold. It appears from the pleadings that the Tillotsons do not contest the concept that the Gates Defendants may hold some prescriptive easement rights. The extent and nature of those rights (including the width of the area of allowed passage) appears in dispute. The depictions on the Ruggiano-filed survey, depicting widths of the Shared Roadway, do not establish the location, extent or width(s) of the claimed prescriptive easement along its length. Historic **use** of the area is instead key.

As stated in *Kirkland v. Kolodziej*, 2015 VT 90 at ¶40:

> In general, a prescriptive easement may be established by a showing that the use was "open, notorious, continuous for fifteen years, and hostile or under claim of right," *Schonbek v. Chase,* 2010 VT 91, ¶ 8, 189 Vt. 79, 14 A.3d 948 (quotation omitted).

While the doctrine of prescriptive easements is similar to adverse possession, the elements are not exactly the same. Adverse possession has the additional requirement that "the claimant must maintain exclusive possession of the claimed property during the statutory period," while, for prescriptive easements, the "use need not be, and frequently is not, exclusive." *Schonbek, supra*, quoting, *Restatement (Third) of Property: Servitudes* § 2.17 cmt. a (2000).

Thus the existence, nature and scope of the Gates' Defendants' prescriptive easement rights to the Shared Roadway portion present on the Tillotson lot, will need to be established through an evidentiary hearing. As noted below, the court will hold a hearing on such issues, unless the parties agree to enter a stipulation as to the prescriptive easement after their review of this order.

ORDER

Based on the foregoing it is ORDERED:

1. The motion for summary judgment as to Lee and Susan Tillotson is GRANTED against all Defendants to the extent it relates to the status of the Shared Roadway.

2. The Shared Roadway, currently designated on the Town Highway map, is hereby declared to be a private drive, and not a public town trail.

3. The Tillotsons may remove the Town road sign placed along the Shared Roadway.

4. The Motion for Summary judgment filed by Terri Gates and Lindsey Gates is DENIED.

5. The Town's 1970 declaration of discontinuance of the Shared Roadway as a road, and declaration that it is a public trial, is declared void as to the Shared Roadway only.

6. Within three weeks of entry of this order, the Tillotsons and the Gates Defendants, through counsel, will inform the court how soon they can be ready for a trial on the remaining prescriptive easement issues, how much trial time is requested for such a hearing, and how much scheduling "lead time" they request between the sending of the court hearing notice and the court hearing date.

7. Lee and Susan Tillotson may file a proposed partial judgment order for entry by the court consistent with this opinion and order. Defendants shall have five days to review and file any comments or opposition to the proposed judgment order, pursuant to V.R.C.P. 58.

Electronically signed on February 15, 2017 at 09:36 AM pursuant to V.R.E.F. 7(d).

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Michael J. Harris
Superior Court Judge