DOCKET NO. LLI-CV-21-5013836-S	:	SUPERIOR COURT
MACCHIAROLI, ANTHONY	:	JUDICIAL DISTRICT OF LITCHFIELD
v.	:	AT TORRINGTON
GRECO, DAVE, ET AL.	:	DECEMBER 23, 2022

PLAINTIFF'S BRIEF IN SUPPORT OF CLAIM REGARDING DISCONTINUANCE OF COOK ROAD

Pursuant to the Court's November 16, 2022 Order, Plaintiff Anthony Macchiaroli ("Plaintiff") respectfully submits the following Brief in support of his claim that Defendants David and Angela Greco, Dark Entry Forest, and David Colbert (collectively, "Defendants") did not, and cannot, meet their burden of proving that the Town of Cornwall (the "Town") strictly complied with the statutory requirements for discontinuing Cook Road. Because the lawful discontinuance of Cook Road has not been established, Plaintiff continues to have a public right to travel along that Road.

I. INTRODUCTION

A central issue in this case is whether Defendants have met, or can meet, their burden of proving that the Town validly discontinued Cook Road in 1903. There is no dispute that under the applicable Connecticut statute in force in 1903, an action to discontinue a highway required: (a) a vote to discontinue by the Selectmen; (b) a writing signed by the Selectmen evidencing such vote; and (c) a vote to discontinue by the Town. The vote by the Selectmen can come before or after the vote by the Town. See Clark v. Town of Cornwall, 93 Conn. 374, 378 (1919).

At the temporary injunction hearing, Defendants did not carry their burden of proving strict compliance with these statutory requirements and, based on the available record, they will not be

able to do so at the trial on the merits. Simply put, there is no evidence that the Town Selectmen themselves voted to discontinue Cook Road, or that they executed a writing evidencing such a vote. The only records bearing on this matter are the notice for the October 5, 1903 Town meeting, which generically references some action "to discontinue" Cook Road, and the meeting minutes, which reference a Town vote to discontinue Cook Road. But these records contain no reference to any action by the Town Selectmen in regard to Cook Road either before or after the Town vote. Moreover, as evidenced by the facts in Clark v Town of Cornwall, supra, the Selectmen in Cornwall have a history of voting to discontinue after the Town vote. Under well-established precedent, the notice and meeting minutes, standing alone, do not establish or allow for a presumption that the Selectmen either voted to discontinue Cook Road or executed a writing to evidence the same. See, e.g., Greist v. Amrhyn, 80 Conn. 280 (1907); Mackie v. Hull, 69 Conn. App. 538 (2002). As stated in Clark, "[b]oth the action of the town and of the selectmen should be formal and definite." 93 Conn. at 378 (emphasis added).

Based on the above, Plaintiff will be entitled to a declaration that Defendants have unlawfully blocked his use of Cook Road to access his property. In addition, Plaintiff seeks to vacate the Court's preliminary injunction order barring him from traveling on Cook Road to reach his property.

II. BACKGROUND/PROCEDURAL HISTORY

Plaintiff recognizes the Court is familiar with the facts and procedural history of this case. In brief, in August 2021, Plaintiff, then appearing pro se, filed a complaint seeking, among other relief, a temporary injunction to prevent Defendants from impeding Plaintiff's use of Cook Road to access to his 13 acre parcel of property at 85 Cook Road. In response, Defendants argued, among other things, that in 1903 the Town discontinued Cook Road as a public road, and that

Defendants now own the portion of Cook Road that passes by their respective properties. Defendants sought their own temporary injunction to prevent Plaintiff from "trespassing" on their alleged property.

A. Evidence Offered By Defendants to Establish Discontinuance

At the temporary injunction hearing, the Grecos introduced a certified copy of the handwritten notice (the "Notice") for the Annual Meeting of the Town of Cornwall to be held October 5, 1903. See Defendants' Exhibit C (Notice). The Notice stated the Annual Meeting was being held --

> *"for the following purposes Viz ~~~ To elect town officers of said town to fill any and all offices which may by law be filled by the town; to take action upon a vote to discontinue the 'River Road' so called extending northerly from the school-house in Cornwall Bridge; and also to discontinue the old 'Cook Road' from near the residence of Richard Brophy to the point of intersection with the road leading from the Warren Road; also a ballot will be taken to determine whether any person shall be licensed to sell spirituous and intoxicating liquors; to lay a tax to defray the expenses of said town; to receive and act upon the reports of town officers of said town, and also to do any other business proper to come before said meeting..."*

Id. (emphasis added).

The Grecos also introduced a certified copy of handwritten meeting minutes (the "Meeting Minutes") for the Town's 1903 Annual Meeting. See Defendants' Exhibit C (Meeting Minutes). The Minutes read, in part, as follows:

> *"It was voted ~ That all the highway leading North from Cornwall Bridge called the River road be discontinued from a point six rods North of the South line of Hough F. Bailey's land;*
>
> *Voted ~ That the highway known as the "Cook Road" from near the residence of Richard Brophy to the point of intersection with the road leading from the Warren road past the residence of Jacob English be discontinued."*

Id.

At the temporary injunction hearing, Defendants did not present a writing signed by the Selectmen to evidence a vote taken by them to discontinue Cook Road. Nor did Defendants present any other evidence that the Selectmen considered or took any action with respect to the discontinuance of Cook Road.[1]

On August 12, 2022, the Court issued its Memorandum of Decision denying Plaintiff's application for temporary injunctive relief, while granting the applications for temporary injunction relief filed by Defendants. In the Decision, the Court made preliminary factual findings to include that "Cornwall's discontinuance of Cook Road satisfied the statutory requirements in effect at the time." Decision at 17.

B. Investigation By Plaintiff For Other Records Relevant to the Continuance of Cook Road

Following their engagement in this matter, Plaintiff's counsel conducted a thorough investigation to identify the existence of any other records bearing on the discontinuance of Cook Road. Plaintiff's counsel reviewed records maintained at the Cornwall Town Hall of votes cast by the Town and the Town Selectmen in the period of 1903; no evidence was found of any vote by the Selectmen to discontinue Cook Road. Plaintiff's counsel also subpoenaed the Town of Cornwall for any records in the Town's possession bearing on the discontinuation of Cook Road. To date, no records have been produced. At this point, Plaintiff is not aware of any records – apart from the Notice and Meeting Minutes – relating to the 1903 alleged discontinuance.

[1]During the temporary hearing, it does not appear Defendants or Plaintiff (then appearing pro se) called to the Court's attention the fact that the statutory requirements for road abandonment in 1903 required both a vote by the Selectmen and a writing signed by the Selectmen evidencing such a vote. As discussed below, Defendants bear the burden of proof on this issue.

C. The Court's Subsequent Order Regarding the Discontinuance of Cook Road

On November 15, 2022, the Court conducted a status conference. During the conference, Plaintiff's counsel informed the Court of the status of their investigation into whether the Town's actions satisfied the statutory requirements for discontinuing Cook Road. They also advised that Plaintiff intended to move for leave to file an Amended Complaint that includes a claim for declaratory judgment that Cook Road was not discontinued, and to add the Town of Cornwall as a party defendant.[2]

On November 16, 2022, the Court issued an Order to clarify the reasoning underlying its preliminary decision as to the discontinuance of Cook Road. In the Order, the Court found that the Notice and Meeting Minutes allowed for an inference of a written discontinuance by the Selectmen. Specifically, the Court pointed out that the Notice indicates a purpose of the Town Meeting was to "receive and act upon the reports of the town officers of said Town," and the Meeting Minutes refer to the Selectmen having submitted a report. In addition, the Court construed the Notice as indicating that the agenda for the Town Meeting included acting "upon a vote to discontinue" two roads, one of which was Cook Road. The Court found that this evidence, taken as a whole, "necessarily implies that a vote to discontinue had been taken by the Selectmen." Finally, the Court cited two Connecticut Supreme Court decisions, City of New London v. New York, N.H. & H.R. Co., 85 Conn. 595 (1912) and Brownell v. Palmer, 22 Conn. 107 (1852), for the proposition that, in the absence of proof to the contrary, there is a legal presumption that town officials acted in accordance with the law.

[2] On December 20, 2022, Plaintiff filed a Motion For Leave to File an Amended Complaint, together with a proposed Amended Complaint.

On November 18, 2022, the Court conducted a hearing to permit the parties to respond to the November 16 Order. At the hearing, Plaintiff's counsel pointed out that in cases involving closely analogous facts, such as Greist v. Amrhyn, 80 Conn. 280 (1907) and Mackie v. Hull, 69 Conn. App. 538 (2002), Connecticut courts have held that evidence of a town appropriation, standing alone, is insufficient to support an inference that the town selectmen met their separate statutory obligations. Plaintiff's counsel also noted that City of New London and Brownell do not hold that a town's compliance with the statutory requirements for discontinuing a road can be presumed. Furthermore, Plaintiff's counsel pointed out that that the Court's preliminary interpretation of the Notice is inconsistent with the language and punctuation of the Notice. In particular, while the Notice states that one agenda item would be "*to take action upon a vote to discontinue River Road*," this phrase is separated by a semicolon from the next agenda item, to wit, "and also to discontinue the old 'Cook Road'…" Accordingly, as written, the phrase "to take action upon a vote" applies only to the referenced River Road, but does not modify the next listed agenda item concerning Cook Road. Finally, as the Court noted, the vote of the Selectmen could come before or after the Town vote. As stated above, the Town of Cornwall has a history of voting after the Town vote. Clark, supra, at 379. Here, there is simply no evidence that the Selectmen voted either before or after the Town, and it is improper to presume that such a vote occurred.

At the conclusion of the hearing, the Court directed the parties to submit simultaneous briefs addressing the issue of whether the evidence at the temporary hearing is sufficient to support a finding that the Town discontinued Cook Road.

III. ARGUMENT

A. Defendants Have the Burden of Proving the Statutory Requirements For Discontinuance Were Strictly Followed

A public road "may be extinguished by direction action through governmental agencies, in which case it is said to be discontinued; or by nonuser by the public for a long period of time with the intention to abandon, in which case it is said to be abandoned." Mackie, 69 Conn. App. at 547 (quoting Greist, 80 Conn. at 285).[3]

"The methods of discontinuing a highway through governmental agencies … are prescribed by law and must be strictly pursued." Mackie, 69 Conn. App. at 547 (quoting Greist, 80 Conn. at 285, emphasis added). "Both the action of the town and of the selectmen should be formal and definite." Clark, 93 Conn. at 374; Greist, 80 Conn. at 288 ("In discontinuing a highway the selectmen act as agents of the law, and can exercise no powers except as conferred by statute. Their action, and the action of the town approving it, therefore, should be formal and definite …" citation omitted).

As the parties arguing in favor of discontinuance, Defendants have the burden of proving that the statutory requirements for discontinuing Cook Road were "strictly pursued." See Monanaro v. Aspetuck Land Trust, Inc., 137 Conn. App. 1, 21 (2012) ("The burden of proof is on him who seeks to establish the abandonment of a highway, and the continuance of the street will be presumed until satisfactory evidence is produced to rebut it" quoting Appeal of St. John's Church, 83 Conn. 101, 105 (1910)).

[3] Here, the Court did not, in its preliminary ruling, consider or make any findings on whether Cook Road was abandoned by nonuse, and addressed only whether the Town discontinued the Road. Defendants also presented no evidence on this issue at the temporary injunction hearing, and Plaintiff submits they will not be able to meet their burden of proving that Cook Road was abandoned by nonuse.

B. The Operative Statute Requires a Signed Written Discontinuance By the Selectmen

As of 1903, the Connecticut statute then in effect governing the discontinuance of public roads, General Statutes § 2056 (copy attached at **Tab A**), provided, in part:

> The selectman of any town may, with its appropriation, by a writing signed by them, discontinue any highway, or private way therein, except when laid out by a court or the general assembly, and except where such highway is within a city, or within a borough having control of highways within its limits.

(Emphasis added.)

In evaluating whether the Town strictly complied with Section 2056 here, this Court "must construe [the] statute as written," and "may not by construction supply omissions ... or add exceptions merely because it appears that good reasons exist for adding them." Viera v. Cohen, 283 Conn. 412, 431 (2007).

Of note, the statutory requirement of a written discontinuance by the selectmen did not appear in prior versions of the statute. See Comp. Gen. St. Ch. 2, § 23 (1849) ("the selectmen of any town may, with the appropriation of such town, discontinue any public highway") [copy attached at **Tab B**]. The Legislature amended the statute in 1875 specifically to add this requirement. See Comp. Gen. St. Ch. 7, § 35 (1875) [copy attached at **Tab C**]. This fact underscores the conclusion that the requirement of a signed writing is a stand-alone statutory element that must be strictly followed. See M. DeMatteo Const. Co. v. City of New London, 236 Conn. 710, 714 (1996) ("Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject ... is significant to show that a different intention existed.... That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them," citations omitted; internal quotation

marks omitted); see also Plourde v. Liburdi, 207 Conn. 412, 416 (1988) ("the use of different words [or the absence of repeatedly used words in the context of] the same [subject matter] must indicate a difference in legislative intention").

C. Evidence of a Town Vote Is Insufficient to Establish Strict Compliance With the Statutory Requirements

Applying the above standard, Connecticut courts repeatedly have held that proof of a town vote, standing alone, is insufficient to establish that the selectmen strictly followed their independent statutory requirements for discontinuance – under the prior and amended version of the statute.

Mackie v. Hull, supra, is on point. There, the Appellate Court determined that the trial court improperly found that a valid discontinuance had occurred based on town meeting minutes alone. Similar to the instant case, while the trial court received evidence that the Town of Morris voted at a town meeting to discontinue a certain road, "there was no evidence indicating that the selectmen produced a signed writing to discontinue the road." 69 Conn. App. at 549. As such, the Appellate Court held: "We cannot presume, from evidence of town approbation alone, that the selectmen produced the necessary signed writing. Such an evidentiary presumption would effectively collapse two statutory elements into one, rendering the writing requirement meaningless." Id.

Similarly, in Greist. v. Amryhn, the Supreme Court reversed a trial court's ruling that the Town of Woodbridge lawfully discontinued a road, where there was no evidence of a vote by the town selectmen for the discontinuance. The case arose after the plaintiff, in 1901, acquired a tract of land, and then erected gates across an old road on the land that plaintiff claimed had been discontinued decades earlier. At trial, the plaintiff presented evidence that in 1840, the town voted to grant plaintiff's predecessors in title "a quitclaim of the old road," and also voted that the owners

could secure the road, at their expense, "with well-erected gates and bars." 80 Conn. at 283. The road discontinuance statute then in force provided that "the selectmen of any town may, with the appropriation of such town, discontinue any public highway." Id. at 286.[4] The Supreme Court held that even if the town's vote were construed as a vote to discontinue the road, the "law requires that the selectmen shall themselves act upon the question whether there shall be a discontinuance." Id. at 288. Even though there was evidence that, after the town vote, fences were built across the road at the selectmen's direction, the Supreme Court held that this evidence was "equivocal," and did not demonstrate that the selectmen in fact voted to discontinue the road. Id. at 289.

In its November 16 Order, the Court, citing Brownell v. Palmer and City of New London, noted that "in the context of road discontinuance cases," Connecticut courts have held "that in the absence of proof to the contrary, there is a legal presumption that town and its officials acted in accordance with the law." However, neither Brownell nor City of New London holds that this presumption may be applied to establish that town selectmen strictly complied with the statutory requirements for discontinuing a road. Indeed, applying such a presumption would be directly contrary to cases such as Greist and Mackie, in which the Courts held that the selectmen's compliance with the law could not be presumed from evidence of a town vote to discontinue, or even from the selectmen's subsequent closing of a road.

Brownell concerned a road that been in use in the Town of East Haddam "from as far back as any living witness could remember." 22 Conn. at 117. The plaintiff, who claimed the road had been lawfully discontinued, established beyond doubt that in 1825 the Town Selectmen executed a writing discontinuing the road, and that the Town then voted to approve the discontinuance. The

[4] As noted above, the statute later was amended to require a signed written discontinuance by the selectmen.

question was whether the road was originally laid out by the Selectmen, in which case they had the authority to discontinue it in 1825, or instead was laid out by the General Assembly or county court, in which case the Selectmen would not have had the authority. Although no records existed to show the road was laid out by the Selectmen, the Supreme Court noted that before 1773, the Selectmen were authorized by statute to lay out highways without recording or reporting their proceedings to the town. Under these circumstances, the Supreme Court held it was appropriate to presume that the Selectmen appropriately concluded in 1825, based on the facts then before them, that the road was originally laid out by their predecessors. Id. at 119.

City of New London involved facts that parallel Brownell: it was undisputed that the City of New London and its Selectmen strictly complied with their statutory requirements when they discontinued a road in 1845, and the question again was whether the road was originally laid out by the City. City of New London, 85 Conn. at 595. The Supreme Court, following its prior decision in Brownell, held "[i]t was not necessary that evidence should be offered that this road was not laid out by the court or General Assembly," since it could presume "the town and its officials acted in accordance with the law." Id. at 600.

In Brownell and the City of New London, the Supreme Court neither presumed that the Selectmen complied with the statutory requirements to discontinue a road, nor suggested that compliance could be presumed where, as here, a statute explicitly requires a record to commemorate that the conduct of a public official complied with the law.

D. Defendants Have Not Carried Their Burden of Proof

Here, Defendants have not carried their burden of proving that the Town Selectmen strictly complied with their separate and independent statutory requirements to lawfully discontinue Cook Road.

1. The Notice and Meeting Minutes Do Not Establish That the Selectmen Voted

To start, the Notice and Meeting Minutes do not demonstrate that the Selectmen ever voted to discontinue Cook Road.

In its November 16, 2022 Order, the Court construed the Notice as indicating that the Town Meeting agenda included "passing upon the discontinuance of two roads, one of which was Cook Road." The Court interpreted the phrase "*to take action upon a vote to discontinue*" as applying both to the referenced "River Road," and to the subsequent reference in the Notice to "old Cook Road." However, this interpretation is inconsistent with the language and punctuation of the Notice. Moreover, the Notice is too vague to satisfy the requirement of a "formal and definite" vote of the Selectmen.

In particular, while the Notice states that one agenda item would be "*to take action upon a vote to discontinue River Road*," this phrase is separated by a semicolon from the next agenda item, to wit, "and also to discontinue the old 'Cook Road'…" Accordingly, as written, the phrase "to take action upon a vote" applies only to the referenced River Road, and it does not modify the next listed agenda item concerning Cook Road. The use of semicolons has independent significance and should not be ignored to change the meaning of the Notice. See, e.g., Moore v. Continental Cas. Ins. Co., 252 Conn. 405, 414 (2000) ("We cannot rewrite the insurance policy be adding semicolons any more than we can be adding word."); see also Drinkwater v. State, 230 N.W.2d 126, 132 (Wis. 1975) (explaining that semicolons are used to separate independent clauses).

Furthermore, even were it appropriate to ignore the significance and effect of the semicolon in the Notice, and to treat the phrase "to take action upon a vote" as applying to the reference to Cook Road, there is no basis to assume from this language that the Selectmen already voted to

discontinue. The reference to "vote" could just as easily be construed to mean a future vote by the Town or the Selectmen, as opposed to a vote that had already occurred when the Notice was written.

Given the procedure used by the Town of Cornwall in Clark v. Town of Cornwall, 93 Conn. 374 (1919), it more likely that the Selectmen would not have voted, if at all, until after the Town voted to discontinue Cook Road. In Clark, the Supreme Court held that because the Town of Cornwall legally discontinued a road at a June 15, 1915 town meeting, a subsequent effort to annul the discontinuance was without legal effect. In reaching this conclusion, the Court recited evidence establishing that on June 8, 1915, the Town Selectmen issued a notice for a special town meeting for June 15, 1915. Id. The notice stated that the purpose of the meeting was "To take action and pass any vote which may be deemed necessary to discontinue" sections of a highway described in the notice. Id.; see also **Tab D**.[5] The meeting minutes then recorded that at the June 15, 1915 meeting, the Town voted in favor of the discontinuance to take action to discontinue portions of a highway, and the road "was declared closed by the Chairman." Id. Thereafter, on June 25, 1915 the Selectmen executed a separate report stating: "The undersigned Selectmen of the Town of Cornwall, respectfully report that pursuant to the vote at the Special Town Meeting held on the 15th day of June, 1915, they have discontinued two certain portions of highway." Id.; **Tab D**.

[5] Because the trial record for the Clark case no longer exists, Plaintiff obtained from the Town of Cornwall actual copies of the notice, meeting minutes, and report of the Selectmen that were introduced into evidence and are described in detail in the Supreme Court's decision in Clark. Those records are attached as **Tab D**. Plaintiff is mindful of this Court's statement concerning supplementing the record. These records are not therefore offered as evidentiary exhibits at this time, but instead are offered as legal authority related to the Clark decision.

Clark demonstrates that the Town of Cornwall understood the statutory requirements for discontinuing a road. In this case, in contrast to Clark, there is no evidence of separate votes by the Town and the Selectmen.

2. The Absence of a Writing By the Selectmen is Fatal to Defendants' Position

Even assuming the Notice and Meeting Minutes could be construed to sufficient to establish that the Selectmen did vote to discontinue Cook Road (and Plaintiff submits this is not the case), there is absolutely no basis to conclude that the Selectmen satisfied the separate requirement of a signed writing commemorating their vote. Again, Mackie v. Hull, supra, is directly on point.

Defendants may point to the difficulty of locating Town records that would document what the Selectmen did in 1903. The Superior Court considered, and rejected, a similar argument in Brown v. Novak, 17 Conn. Supp. 76 (1950). There, the Court refused to find that a highway had been lawfully discontinued, holding that there was no evidence the town selectmen voted discontinue the road, and that the vote of the town standing alone was not enough. The Court acknowledged the potential difficulty of proving that actions taken by town officials many years earlier met the statutory requirements for discontinuance, but nonetheless confirmed that the law requires nothing less:

> I appreciate the difficulty that beset the plaintiffs with record votes substantiating their position and I realize what the passage of time does to public officials who in the time and day of the town's actions might well have saved the situation here. Their meetings and doings should be as regularly recorded as the votes of a town meeting. Of course, it could be the selectmen of that time did absolutely nothing, but the law seems to be relentless in requiring 'that the selectmen shall themselves act upon the question whether there shall be a discontinuance. Discontinuance is the result of judicial investigation and determination." … Certainly a town in town meeting could not discontinue a highway.

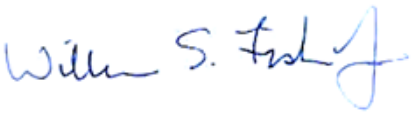
Id. at 78 (quoting Greist v. Amrhyn, supra) (emphasis added).

IV. CONCLUSION

Because Defendants have not adduced evidence either of a "formal and definite" vote by the Cornwall Selectmen to discontinue Cook Road, or of a writing signed by the Selectmen evidencing such a vote, Defendants have not met their burden of proving that the Town of Cornwall lawfully discontinued Cook Road. Accordingly, Plaintiff respectfully requests that the Court vacate its temporary injunction order only as it pertains to Plaintiff's right to access Cook Road for ingress and egress to his property at 85 Cook Road.

THE PLAINTIFF,

ANTHONY MACCHIAROLI

By 

William S. Fish, Jr.
Christopher H.M. Carter (PHV)
David A. DeBassio
Hinckley, Allen & Snyder LLP
20 Church Street, 18th Floor
Hartford, CT 06103-1221
Phone: (860) 331-2764
Fax: (860) 278-3802
Juris No. 428858
ccarter@hinckleyallen.com
wfish@hinckleyallen.com
ddebassio@hinckleyallen.com

63238039

CERTIFICATION

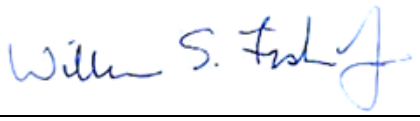
I hereby certify that a copy of the foregoing was sent via electronic mail on this 23rd day of December, 2022 to the following counsel of record:

Kent Mancini
Cramer & Anderson
46 West Street
P.O. Box 278
Litchfield, Connecticut 06759
kmancini@crameranderson.com

Joseph Blyskal
Thomas C. Blatchley
Gordon & Rees LLP,
95 Glastonbury Boulevard, Suite 206
Glastonbury, CT 06033
jblyskal@grsm.com
tblatchley@grsm.com

Frank J. Garofalo III, AAG
Office of the Attorney General
110 Sherman Street, Hartford, CT 06105
Frank.Garofalo@ct.gov

Keith Ainsworth
51 Elm Street, Suite 201
New Haven, CT 06510
keithrainsworth@live.com



William S. Fish, Jr.

TAB A

§ 2047. Highways laid out near railroad need approval of judge. 1878. Rev. 1888, §2700. No highway which does not cross a railroad track shall be laid out or opened to the public within one hundred yards of any railroad track unless the layout has been approved by a judge of the superior court, after notice to all parties in interest, and his written approval lodged in the office of the town clerk of the town in which the proposed highway is situated. No judge shall approve any such layout unless he finds that public convenience and necessity require such highway to be within such distance, and upon such approval the judge may require any town opening a highway to the public within such distance to erect and maintain such a fence between such highway and the railroad track as in his opinion the safety of the public may require.

§ 2048. Person aggrieved may apply to the superior court. 1852, 1856. Rev. 1888, §2701. 1893, ch. 56. 73 C. 504 Any person aggrieved by the doings of the selectmen in laying out a highway or private way may, within eight months after the survey thereof is accepted by the town, apply to the superior court in the county in which such town is for relief, causing such selectmen to be cited to show cause why such relief should not be granted; and said application shall be heard and determined by a committee of three disinterested persons to be appointed by the court; and if said committee shall find that said highway is not of common convenience and necessity, or that said private way is not of private convenience and necessity, said court shall set aside such layout thereof; and in case said court shall set aside such layout, the costs shall be paid by the town; but if they shall find that such highway is of common convenience and necessity, or that said private way is of private convenience and necessity, the application shall be dismissed with costs; and said committee may confirm, change, or set aside the layout of a private way; but their report may be set aside by the court for any irregularity or improper conduct on their part.

§ 2049. Cities' and boroughs' power; public and private ways. 1866. Rev. 1888, §2702. 74 C. 363. In cities and boroughs, whose charters do not authorize them to lay out, alter, grade, and discontinue highways within their limits, the court of common council of cities and the warden and burgesses of boroughs may exercise such power, both as to public and to private ways, in the same manner as selectmen of towns.

§ 2050. Width of streets. Opening of streets restricted. 1899, ch. 205. 1905 ch. 254 § 1. No person, company, or corporation, excepting municipal corporations, shall lay out any street or highway in this state less than three rods in width, unless with the prior written approval of a majority of the selectmen of the town, or of the burgesses of the borough, or of the common council of the city, wherein such street or highway is located. No street or highway shall be opened to the public until the grade, width, and improvements, of such street or highway shall have received the written approval of the selectmen of the town in which such street or highway is located, or, in case the location is within the limits of a city or borough, until such grade, width, and improvements shall have received

§ 2050. 1911 Ch. 216.

§ 2047. Judge shall consider danger more than expense. 64 C. 256.

§ 2048. Procedure under this section. 25 C. 597. In fixing width of highway, existing public use of adjoining land may be considered. 38 C. 526.

§ 2049. Grant in charter to common council of power about highways, not a repeal of powers of court. 25 C. 46. Notice to "owner" of mortgaged land means notice to mortgagor. 45 C. 303.

charter, may assess, or cause to be assessed, the benefits accruing to any person by the layout, grading, or any alteration of any highway therein, upon giving written notice to the parties to be benefited of the time and place of meeting therefor; and order such benefits to be paid by the parties assessed, respectively, to the city or borough, as the case may be, within such time as they shall appoint; and they may be collected in the same manner as town taxes are collected.

1868. Rev. 1888, §2706. 1899, ch. 182. 73 C. 503

§ 2054. 85 Conn. 2, 503.

§ 2054. Damages or benefits from ways, how ascertained. If the selectmen of any town, and any person interested in the layout, opening, grading, or alteration of any highway or private way therein, cannot agree as to the damages sustained by, or the benefits accruing to, such person thereby, the selectmen shall apply to any judge of the superior court, who, having caused reasonable notice to be given to the parties interested, shall appoint a committee of three disinterested electors, to estimate and assess to each person injured or benefited the damages sustained by or the benefits accruing to him by such layout, opening, or alteration of such way; and such committee having thereupon given at least ten days' notice to the parties interested of the time and place of their meeting, shall under oath make such estimate and assessment, and forthwith report their doings to the superior court in the county in which the land is situated. Notice of the time and place of the meeting of such committee may be given to the parties interested, if they are residents of the state, personally, or by leaving written notices at their respective places of abode, or by depositing in the post-office, postage paid, notices addressed to them respectively; or, if they are nonresidents, by like notice to the person having charge of the land.

1873. Rev. 1888, §2707. 73 C. 503

§ 2055. 85 Conn. 2.

§ 2055. Remonstrance to report of damages or benefits. Any person interested in such estimate or assessment may appear before said court, and remonstrate against the acceptance of said report for any irregularity or improper conduct; and thereupon the same proceedings shall be had by said court in accepting or rejecting said report, and in ordering a jury to reassess the damages and benefits, or either, as provided in the case of applications brought to said court against towns for the layout or alteration of highways; and said jury, and the court in acting upon the report of said jury, shall proceed as in case of such applications.

1799. Rev. 1888, §2708. § 2056 76 C. 61, 68 69, 70

§ 2056. 80 Conn. 285.

§ 2056. 85 Conn. 2, 596.

§ 2056. Discontinuance of highways and private ways. The selectmen of any town may, with its approbation, by a writing signed by them, discontinue any highway, or private way therein, except when laid out by a court or the general assembly, and except where such highway is within a city, or within a borough having control of highways within its limits. Any person aggrieved

§ 2054. State property not assessable for public improvement, unless by special legislative provision. 50 C. 89. Selectmen may submit to arbitration damage to adjoining owner from change of grade. 64 C. 88. Elements of damage to land from change of grade. 66 C. 320. Landowner cannot sue for damage from change of grade till he and selectmen have failed to agree, and latter have refused, or unreasonably neglected, to apply for committee. 73 C. 351.

§ 2056. Nonuser of highway *prima facie* evidence of abandonment. 7 C. 125. Where discontinuance by selectmen, approved by town, was acquiesced in by public over twenty years, highway presumed one which selectmen could discontinue, although no record of layout or evidence of dedication shown. 22 C. 107. Selectmen cannot discontinue town highway, originally turnpike. 30 C. 286. A town has no power to agree, for a valuable consideration, to discontinue a highway. 50 C. 470. On removal of highway, canal, or railroad, adjoining owner's fee freed from incumbrance. 52 C. 250. Committee's only duty to decide question of common convenience and necessity. 55 C. 409. Approbation of town may precede or follow selectmen's action. 61 C. 397.

may be relieved by application to the superior court, to be made and proceeded with in the manner prescribed in § 2048.

1876. Rev. 1888, §2709. **§ 2057. Discontinued turnpikes remain highways.** All discontinued turnpikes and parts of turnpikes shall be and remain public highways in the town or towns where situated; but any town may discontinue the whole or any portion of such road within such town in the manner provided in § 2056.

1885. Rev. 1888, §2710. **§ 2058. Benefits assessed where highway is dyke against tides.** Whenever any town shall lay out any public highway, either by action of its selectmen or by a decree of the superior court, across any meadow or low lands, and such meadow or low lands are open to the overflow of the tides, and such highway is capable of being used as a dyke to prevent such overflow, the selectmen of such town may assess, or cause to be assessed, the benefits accruing to any owner of such low lands, by reason of the same being protected from the overflow of the tides, on account of the construction of such highways and the construction of proper tide gates at suitable points, to permit the egress of water; *provided* that not more than one-half the cost of opening and constructing such highway over such low lands shall be assessed upon the owners of said lands, under the operation of this section. The cost of constructing proper gates to prevent the ingress of water may be included as a part of the cost of such highway for the purposes of this section. If the selectmen of any town and the owners of such low lands cannot agree concerning the benefits accruing to such owners severally, the same proceedings may be had as are provided in §§ 2054 and 2055, and any town constructing a highway across low lands under the provisions of this section shall have full power to, and shall, construct the necessary dams and tide gates across streams and watercourses, and shall maintain the same at the expense of such town.

1877. Rev. 1888, §2711. **§ 2059. Material for repair of highway taken from private land.** Whenever necessary material for making or repairing any public highway in any town cannot be obtained without great inconvenience from land sequestered for highways, but may be found on land abutting on the highway, other than in a home lot, the selectmen of such town may take such material from said land, on payment to the owner thereof of a reasonable compensation therefor, to be ascertained before any such taking, either by agreement between the selectmen and such owner or by the same proceedings as are provided in § 2054. And after said compensation shall have been so determined, said material shall not be taken until the town in lawful town meeting shall have approved the transaction, if the owner of said material shall within one month thereafter make a request in writing to the selectmen that the town shall take action thereon.

1866. Rev. 1888, §2712. **§ 2060. Highway unsafe by railroad occupation altered by court.** The superior court of the county in which is any highway, or any portion thereof, taken for railroad purposes by any other corporation than a street railway company, unless such highway or portion thereof is in a city or borough which has control of its highways, or has been constructed since such railroad, may, upon the petition of any party interested, served upon said company as other civil process, appoint a committee of three to inquire whether such highway or portion thereof is unsafe for travel by reason of such railroad, or whether any alteration of such highway or the construction of a new highway is thereby rendered necessary for the public safety and convenience; and

TAB B

THE

REVISED STATUTES

OF THE

State of Connecticut,

TO WHICH ARE PREFIXED

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTION OF THE STATE OF CONNECTICUT.

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PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY.

HARTFORD:
CASE, TIFFANY AND COMPANY.
1849.

any person who shall declare himself aggrieved by laying out the same, shall be opened or occupied, until the expiration of twelve months after the laying out of such way shall be accepted by said town, that such person may have opportunity to apply for relief as is hereinafter provided, and also have time to fence and secure his inclosure.*

Persons aggrieved may apply to the county court for relief.

SECT. 22. If any person shall be aggrieved by the doings of the selectmen in laying out a public or private way, or by the estimate of the damages, such aggrieved person may, within eight months after the same is laid out and accepted by the town, apply, to the county court in the county in which such way is laid out, for relief, causing said selectmen to be duly cited, to show reason, if any they have, why such relief should not be granted; and if said aggrieved person, in his said application, shall allege that said way is not of common convenience and necessity, the same shall be heard and determined, by the county commissioners, and proceeded with, in the manner prescribed in the twenty-fourth section of this act; and if said commissioners shall find that said way is not of common convenience and necessity, said court shall set aside the laying out of such way by the selectmen; but if they shall find that such way is of common convenience and necessity, and the applicant shall move for a jury to reassess the damages, or if the application is made for a reassessment of damages only, said court shall order a jury, who shall be summoned and proceed in the manner hereinafter prescribed, in the case of highways laid out by the county court; and if the damages allowed to the applicants, shall not be increased by the jury, the application shall be dismissed with costs; but if such damages shall be increased by the jury, the the court shall order the same to be paid to the applicant, with the costs of the application.

Discontinuance of ways by selectmen, &c.

SECT. 23. The selectmen of any town, may, with the approbation of such town, discontinue any public highway, or private way, which may have been laid out by them or their predecessors in office; or which may have been laid out by the proprietors' committee of said town, or in any other manner, except by the county court or general assembly; and if any person shall be aggrieved by the doings of the selectmen in discontinuing any way, he may be relieved by application to the county court, to be made and proceeded with in the manner, prescribed as aforesaid, for persons aggrieved by the doings of the selectmen in laying out highways; and in all applications relating to highways, any person may

* Appointment of appraisers, a ministerial act. Crane v. Camp, 12 C. R. 464. Damage may be assessed to other persons than the actual owners of the land. Windsor v. Field, 1 C. R. 279. Notice of the appointment need not be given. Same.

remonstrate, and may appear himself, or by counsel, and be heard in relation thereto.*

When and how county court may lay out highways.

SECT. 24. When any new highway from town to town, or from place to place within the same town when the selectmen of that town neglect or refuse to lay out the same, shall be necessary, or where old highways shall require alteration, any person or persons may make application therefor to the county court in the county where the highway proposed to be made, or altered, is; but the persons, so applying, shall, at least twelve days before the sitting of the court to which they shall make application, cause a citation to be served on one or more of the selectmen of the town within which such highway is, to appear, if they see cause, at said court, and make their objections, if any they have, against such highway being laid out or altered; and such application, unless the parties shall agree as to the judgment that shall be rendered in said case, shall be heard and decided by the county commissioners, at such time and place, and with such notice to those interested therein, as said county court shall order, and no trial as to the necessity and expediency of laying out or altering such highway, shall be had before said county court; and if said commissioners shall be of opinion that such highway, or such alteration, will be of common convenience and necessity, they shall survey and lay out the same, and assess the damages which will thereby accrue to individuals, and shall make report, in writing, of their doings, to said court, and said court may set aside the doings of said commissioners for any irregular or improper conduct in the performance of their duties.†

Persons interested may remonstrate, and reassessment of damages, how made.

SECT. 25. All persons interested in or affected by the laying out or altering of such highway, may appear before said court and remonstrate against the acceptance of said report, for any such irregular or improper conduct; and if, upon a hearing of the objections to the report of the commissioners, the court shall be of opinion that it ought not to be accepted, the same may be set aside; but if the court shall be of opinion that such report ought to be accepted, and if before the acceptance thereof a jury shall be moved for to reassess the damages, or if any person shall complain of the assessment of damages only, and move for a jury to reassess the same, said court shall order such jury, to consist of six able

* Non user of highway is evidence of abandonment. Beardsley *v.* French, 7 C. R. 125.

† Petition for a highway, how addressed. Husted, *v.* Greenwich, 11 C. R. 383. Necessary allegations. Lockwood *v.* Gregory, 4 Day, 407; Windsor and Suffield *v.* Field, 1 C. R. 279; Waterbury *v.* Darien, 8 C. R. 162; Treat *v.* Middletown, 8 C. R. 243; Waterbury *v.* Darien, 9 C. R. 252; Plainfield *v.* Parker, 11 C. R. 576; Southington *v.* Clark, 13 C. R. 370; Torrington *v.* Nash, 17 C. R. 197. Citation may be against the town. Plainfield *v.* Parker, 11 C. R. 576. May be served on selectmen. Winchester *v.* Hinsdale, 12 C. R. 88.

The survey must define the highway with reasonable certainty. Beardsley *v.* French, 7 C. R. 125. What reservations may be made. Windsor *v.* Field, 1 C. R. 279. Report to be accepted entire. Winchester *v.* Hinsdale, 13 C. R. 132.

TAB C

Connecticut Laws, statutes, etc. Revised statutes.
Oct. 1, 57

REVISION OF 1875.

THE

GENERAL STATUTES

OF THE

STATE OF CONNECTICUT,

WITH THE

DECLARATION OF INDEPENDENCE,

THE

CONSTITUTION OF THE UNITED STATES,

AND THE

CONSTITUTION OF CONNECTICUT.

Published by authority of the State.

HARTFORD:
THE CASE, LOCKWOOD & BRAINARD CO., PRINTERS.
1875.

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place of their meeting, shall under oath make such estimate and assessment, and report their doings to the Superior Court, next to be holden in the county in which the land is situated.

1873. Persons interested may remonstrate.

SEC. 34. Any person interested in such estimate or assessment may appear before said court, and remonstrate against the acceptance of said report for any irregularity or improper conduct; and thereupon the same proceedings shall be had by said court in accepting or rejecting said report, and in ordering a jury to re-assess the damages and benefits, or either, as provided in case of applications brought to said court against towns for the lay-out or alteration of highways; and said jury, and the court in acting upon the report of said jury, shall proceed as in case of such applications.

1799. Discontinuance of ways by selectmen.

SEC. 35. The selectmen of any town may, with its approbation, by a writing signed by them, discontinue any highway, or private way therein, except when laid out by a court or the General Assembly; and any person aggrieved may be relieved by application to the Superior Court, to be made and proceeded with in the manner prescribed in the twenty-ninth section of this Part.*

1866. Proceedings to alter a highway taken by a railroad company.

SEC. 36. The Superior Court of the county in which is any highway, or any portion thereof, taken by any other than a horse railroad company for railroad purposes, but not in a city, nor constructed since such railroad, may, upon the petition of any party interested, served upon said company as other civil process, appoint a committee of three to inquire whether such highway or portion thereof is unsafe for travel by reason of such railroad, or whether any alteration of such highway or the construction of a new highway is hereby rendered necessary for the public safety and convenience; and such committee shall hear said parties and report their opinion thereon to said court, which may make any proper order in the premises; and if it shall order any such alteration or construction, and said company shall refuse to comply with such order, said town shall alter or construct such highway and may recover the expense thereof from said company.

1856. When and how Superior Court may lay out and alter highways.

SEC. 37. When the selectmen of any town shall refuse to lay out any necessary highway, or to make any necessary alterations in any existing highway, any person may prefer an application therefor to the Superior Court of the county in which such town is, accompanied by a summons, signed by proper authority, to be served in the same manner as civil process on one of such selectmen, to appear and be heard thereon; and unless the parties shall agree as to the judgment to be rendered, such application shall be heard and decided by a committee of three disinterested persons to be appointed by the court.†

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* Where selectmen, with approbation of town, expressly discontinued highway, as one laid out by their predecessors, and such discontinuance was, for more than twenty years, acquiesced in by the public, but there was no record of the laying out of such highway by the County Court or town, and evidence of dedication, it was held that the jury would have a right, from these facts, to presume that the highway was laid out by such predecessors, and was one which selectmen could discontinue. 5 Conn., 167. *Non user* of highway is evidence of abandonment. 5 Conn., 305; 7 Conn., 125; and see 2 Conn., 288. When selectmen may not discontinue highway. 30 Conn., 286.

† Petition for a highway, how addressed. 11 Conn., 383. Necessary allegations. 4 Day, 407; 1 Conn., 279; 8 Conn., 162; *Id.*, 243; 9 Conn., 252; 11 Conn., 576; 13 Conn., 370; 17 Conn., 197. Highway running from one county into another may be laid out by the Superior Court in either county. 2 Conn., 231. Petition, if denied, a bar to one afterwards brought by other parties for same highway. 35 Conn., 32. Citation may be against the town. 11 Conn., 576. May be served on selectmen. 2 Conn., 88. Service on one sufficient. 25 Conn., 597. The town is the party. 30 Conn., 35. Persons interested. 27 Conn., 414. Assent to the appointment of a tax payer as committee, a waiver of disqualification. 35 Conn., 32. Facts found by committee. 29 Conn., 490. This section authorizes construction of a draw bridge. 38 Conn., 219.

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TAB D

Notice.

Special Town Meeting.

The Legal Voters of the Town of Cornwall are hereby warned and notified that a special Town Meeting will be held at the Town Hall in said Town on Tuesday, June 15th, 1915 at 2. O'clock in the afternoon for the following purposes.

To take action and pass any vote which may be deemed necessary to discontinue all that section of the highway (or so much of same as is deemed advisable and expedient) which runs northerly from the residence of Andrew M Clarke, land of John Finn, deceased, land of Seymour Cunningham, and land of Geo. B. Farnham, more particularly described as follows

Starting at a point in said highway northerly of the residence of Andrew M Clark, thence northerly up and over the mountain to a point near the old Stratman house foundation on North side of highway, thence Easterly to a point North Easterly of the residence of William H. Baldwin where the highway intersects with a highway running Easterly to Goshen and Westerly to Cornwall, and also that short section of highway running Northerly from the highway above described through land of Geo. B. Farnham and William H Baldwin, and connecting said highway with the highway running Easterly to Goshen and Westerly to Cornwall, more particularly described as follows:

Starting at a point in said highway Easterly of the old Stratman house where the highway intersects with the highway running Easterly and westerly past residence of William H. Baldwin above described, thence Northerly to a point where this

highway intersects with the highway running Easterly to Bucksville and Westerly to Cornwall.

Also to consider and take such action as may be deemed best regarding the School facilities at Cornwall Bridge and to pass any vote relating thereto.

Also to do any other business proper to come before said meeting.

Dated at Cornwall this 8th day of June, A.D. 1915

William A Preston,
Samuel R Seville
W.P. Kennedy.
} Selectmen of Cornwall.

Received for record June 14 A.D. 6 o'clock P.M. and Recorded by

Whiting J. Wilcox
Town Clerk.

Pursuant to the foregoing Notice the meeting was called to order by Wm A. Preston. First Selectman.

Geo H. Beers was elected as chairman.

W.J. Wilcox Clerk.

Voted: The Vote upon closing the road or highway mentioned in the foregoing notice was, 66 No, 67 Yes, by the Chairman, the motion was declared passed. (The result of the vote having been declared, the road was declared closed by the Chairman) said vote taken as follows.

Voted It was also voted to have the Selectmen make the necessary repairs and build extra additions on the school house at Cornwall Bridge

Meeting was adjourned. W.J. Wilcox T. C.

To the Town of Cornwall:

The undersigned, Selectmen of the Town of Cornwall, respectfully report that pursuant to the vote of said Town passed at the Special Town Meeting held on the 15th day of June, 1915, they have discontinued two certain portions of highway within said Town described as follows:-

(1) All that section of the highway which runs northerly of the residence of Andrew M. Clark, through land of said Clark, land of John H. Stiles, deceased, land of Seymour Cummings Estate, and land of George B. Farnham; particularly described as follows: Starting at a point in said highway northerly of the residence of Andrew M. Clark, thence northerly up and over the mountain to the point near the old Stratman house foundation on north side of highway; thence easterly to a point northeasterly of the residence of William H. Baldwin, where this highway intersects with a highway running Easterly to Goshen and westerly to Cornwall.

(2) Also that short section of highway running northerly from the highway above described through land of George B. Farnham and land of William H. Baldwin and connecting said highway with highway running Easterly to Goshen and Westerly to Cornwall, particularly described as follows: Starting at a point in said highway easterly of the old Stratman house foundation where this highway intersects with the highway running easterly and westerly past residence of William H. Baldwin above described, thence northerly to a point where this highway intersects with a highway running easterly to Goshen and westerly to Cornwall.

Dated at Cornwall this 25 day of June, 1915

W. A. Preston, M. P. Kennedy, S. R. Seindle. Selectmen of the Town of Cornwall.