

**TOWN OF JAMAICA
SELECTBOARD**

In re: Road to Town Office)
Proposal to Convert a Right-of-Way)
Owned by the Town into a Town Highway)

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION**

On June 22, 2009, the Jamaica Selectboard held a hearing, following formal notice, on whether to lay out a Class 4 town highway along the route of its existing town right-of-way that runs from Routes 30 and 100 to the Town Office and from there to Pikes Falls Road, over land owned by Henry David and Toby Ruth Schwartz.

Based on the evidence presented at the hearing, the Board makes the following

Findings of Fact

1. The Town of Jamaica owns a right-of-way that runs from Route 30/100 to the Town Office and from the Town Office to Pikes Falls Road, which was originally granted as a private right-of-way by the former owners of the Schwartz property. The route was established in the late 1960's, and over the years, it was enlarged to the current width. The route was paved in 1976.
2. Henry David (Hank) and Toby Ruth Schwartz own the corner lot on which the right-of-way is established. Dennis Vincent-Maheux and Frederick Maheux own the land southwesterly of the right-of-way as it emerges from Pikes Falls Road. Charles and Elaine Murray own the land easterly of the right-of-way as it connects to Routes 30 and 100.
3. In November of 2008, Mr. & Mrs. Schwartz (together with their attorney) challenged the Town's right-of-way as currently laid out, and argued that they had the right to redefine the location of the right-of-way. They presented a survey to the Jamaica Selectboard that showed the Schwartz's desired location of the right-of-way, which would have substantially altered the existing route.
4. In response to the assertions of Mr. and Mrs. Schwartz, the Town retained its own legal counsel to research the status of the right-of-way. As the existing location has been maintained for many years, the Board concluded, based on the advice of legal counsel, that there was a reasonable likelihood that the used portion of the route had, over time, converted into a town highway by the principle of dedication and acceptance. But to clarify that point for all concerned, the Board decided to follow through on a public hearing process to formalize the status of the route as a public highway, and to clarify its boundaries.
5. A proposed conversion of this route to a town highway is illustrated by a March 25, 2009 survey by Dauchy-Creamer Associates, LLC, copies of which were available at the hearing.

6. Three witnesses gave evidence at the public hearing, beginning with Mr. Dennis Vincent-Maheux. Mr. Vincent-Maheux testified that he would like the Town to move the proposed alignment of the highway to run along the edge of his building, in order to allow him to enter and exit his garage without the permission of Mr. & Mrs. Schwartz, who own a small strip of land between the Town's existing right-of-way and the Vincent-Maheux property. Mr. Vincent-Maheux also testified that there is a dispute between him and Mr. and Mrs. Schwartz.

7. Mr. Tim Brown expressed his opinion that the whole effort was a waste of time and that the Town will gain nothing from this process.

8. Mr. Henry Schwartz testified that he was not expecting payment of money, but that he would prefer changes in the alignment on both the eastern and western legs of the proposal, on the easterly side to stay with the pavement and not run right along the side of the building and on the westerly side to move the line beginning at Pikes Falls Road northwesterly to fit with the edge of the pavement.

9. Mr. Charles Peck, Chair of the Jamaica Planning Commission, supplied the Board with comments in writing, confirming the Commission's conclusion that the action is appropriate and its unanimous support for the need to clarify and define the boundary to maintain safe and adequate public access to the Town Office.

Based on the findings, the Selectboard makes the following

Conclusions of Law and Decision

The public good, necessity, and convenience of the inhabitants of the Town of Jamaica justify the conversion of the existing right-of-way to a Class 4 town highway. The alignment shown on the Dauchy-Creamer survey, however, does not reflect how the Selectboard wishes the boundaries of the road to be set. The Board agrees with Mr. Schwartz that the easterly leg (Route 30 towards the Town Office) should be moved, to the extent that it is feasible, to align with the western edge of the pavement, shifting it easterly, away from the Schwartz building, so that the width measures at least 15 feet, without encroaching upon the land of Charles and Elaine Murray. An exception will be the portion of the easterly leg that cannot be shifted completely to the edge of the pavement, due to space limitations at the eastern edge of the Schwartz property, as illustrated on November 2008 survey presented by Mr. & Mrs. Schwartz (prepared by Kathleen Martin). The Board also agrees with Mr. Schwartz that the westerly leg (Pikes Falls Road towards the Town Office) should be moved westerly (or northwesterly) a few inches, so that it aligns with the northwestern edge of the pavement.

The Board declines, however, to adjust the westerly leg in a westerly direction to satisfy the concerns of Mr. Dennis Vincent-Maheux. While the Board is sympathetic to his concern, it cannot conclude that the statutory standard for this process, as stated in the first sentence of this section, can justify a public taking of private property to settle a dispute between two private landowners.

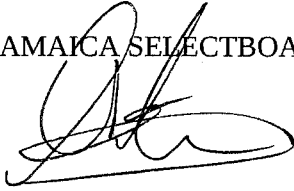
Dauchy-Creamer Associates, LLC will prepare a new survey reflecting these changes to the highway. This decision and the survey shall be recorded in the Jamaica land records.


As Mr. Henry Schwartz did not ask for compensation for this action, the Board awards none to him as the sole affected landowner.

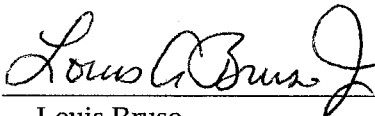
Pursuant to 19 V.S.A. § 740, interested persons may appeal this decision to the Windham Superior Court within 30 days of the date of this decision.


Dated this 30th day of June, 2009, at Jamaica, Vermont.

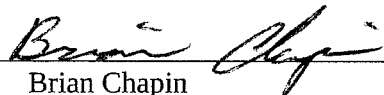
JAMAICA SELECTBOARD

By: 
Oliver Olsen, Chair


Joel Beckwith, Vice-Chair


Louis Brusio


Alexandra Clark


Brian Chapin

cc: Mr. Henry Schwartz & Mrs. Toby Schwartz
Mr. Tim Brown
Mr. Dennis Vincent-Maheux
Other Attendees of the June 22, 2009 Public Hearing
Jamaica Planning Commission