

Wymans Falls Rd (Class 4) — Public Comment Record

Submitted by: Kirk MacGinnis (Abutting Landowner)

Date: October 1, 2025

Location: Chester Selectboard

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(Begins: *"Chair and Members—thank you. I'm here with a narrow lawful ask..."*)

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ADA Public Comment — Wymans Falls Rd (Class 4)

Speaker: Kirk MacGinnis, Abutting Landowner

Date: October 1, 2025

Location: Chester Selectboard

Chair and Members—thank you.

I'm here with a narrow, lawful ask: **pause the bridges, parking, and trail work on Wymans Falls Road and the brook corridor until the Town completes the required process and confirms permit coverage.**

1) Statutory Process (Class 4 Highway)

Under **19 V.S.A. §§ 709–710**, before altering a town highway's layout, improvements, or use in a way that burdens abutters or the public, the Board must **warn and schedule a site visit and public hearing, with mailed notice to abutters**. That has not occurred. Proceeding without §§ 709–710 is procedurally defective.

2) Stream Work (DEC Authority)

Work in or adjacent to the perennial stream—including bridge approaches, in-channel disturbance, excavation/fill, or grading within top-of-bank—**triggers DEC review under 10 V.S.A. § 1021 (Stream Alteration)**. No proof of permit or emergency authorization has been produced.

3) ADA Compliance (Public Access)

As a municipal program/facility, any new or altered trailhead, parking, or bridge must satisfy **Title II of the ADA and 28 C.F.R. Part 35** (program accessibility; new construction/alterations). There is no ADA analysis in the record. Denying accessible parking and route is unlawful and excludes wheelchair users—including my wife, who is widely regarded as a Wymans Falls steward and host.

4) Court Status (Rule 65)

I have **submitted a request for a Temporary Restraining Order** in Vermont Superior Court. Rule 65 considers **irreparable harm, likelihood of success, and equities**. Given the skipped §§ 709–710 process, missing § 1021 coverage, and ADA exposure, the **status quo should be preserved** by this Board—voluntarily—tonight.

Requests (Actionable, Minimal, Fast)

A. **Vote to pause** all construction, staging, and installation on Wymans Falls Rd and within the brook corridor **until**:

1. A noticed **§§ 709–710 site visit + hearing** occurs with mailed notice to abutters.
2. **DEC** confirms Stream Alteration coverage or determines none is required.
3. The Town completes a **Title II ADA review** with a written accessibility plan.

B. **Warn and schedule** the §§ 709–710 site visit and hearing within **30 days**, with mailed notice to all abutters.

C. **Direct production** within **3 business days** under the **Public Records Act (1 V.S.A. §§ 315–320)** of: plans, emails, bids/contracts, grant files, permits/DEC requests, ADA analyses, and any enforcement correspondence.

Record & Reservation

Please note my **objection** on the record to any further work absent these steps. Nothing herein waives any rights or remedies. If the Board declines to pause, I **request a roll-call vote** and **written findings** explaining:

- (a) why §§ 709–710 do not apply,
 - (b) why § 1021 coverage is unnecessary, and
 - (c) how Title II ADA is satisfied.
-

Closing

This is simple: **Pause, Notice, Permits, ADA**.

Preserve the status quo, follow the statutes, and protect the Town from avoidable liability.

Thank you.

Request to Warn Reclassification / Discontinuance — Wymans Falls Rd (Class 4)

Submitted by: Kirk MacGinnis, Abutting Landowner

Date: October 1, 2025

Location: Chester Selectboard

Formal Request

I respectfully request that the Chester Selectboard **warn and hold a proceeding** under the Vermont highway statutes, including **19 V.S.A. §§ 708–710**, to consider:

1. **Reclassification** of the Wymans Falls Road corridor; or
2. **Discontinuance**, with appropriate findings and disposition of interests.

Required Elements

- **Notice & Site Visit:** The Board must **warn the matter**, schedule a **public hearing and site visit within 30 days**, and **mail notice to all abutters of record**.
- **Record:** The Board must receive plans, maps, photographs, traffic/safety/environmental information, and any DEC materials relevant to the corridor and brook crossing(s).
- **Findings:** Written findings must address public necessity, convenience, safety, environmental/stream impacts, and effects on abutters. Findings must cite the statutory authority relied upon for any action.

If the Board Declines

If the Board declines to warn this proceeding, I request **written findings** explaining the reasons for denial and citing the statutes relied upon to decline.

Reservation of Rights

Nothing herein waives any rights or remedies, including judicial review.

I further request:

- **Roll-call votes** on all motions,
- Inclusion of this request in the **minutes**, and
- Placement of this request in the **project file**.

Respectfully submitted,

Kirk MacGinnis

Conflict of Interest / Recusal Request Form

Wymans Falls Rd (Class 4)

Submitted by: Kirk MacGinnis, Abutting Landowner

Date: October 1, 2025

Location: Chester Selectboard

Meeting Information

Meeting/Body: Chester Selectboard

Date: _____

Agenda Item: Wymans Falls Rd (Class 4) — Bridges/Trail/Improvements

Officer(s) With Potential Conflict

Name(s): _____

Nature of Conflict or Appearance of Conflict

Statement of Request (to be read into the record)

Pursuant to Vermont's Municipal Code of Ethics, municipal officers must avoid any conflict of interest or the appearance of a conflict of interest, and when confronted with one, must recuse. See **24 V.S.A. ch. 60**, including **§ 1984 (conflict prohibition)** and **§ 1992 (recusal)**.

I respectfully request that the named officer(s) disclose the interest on the record and **recuse** from discussion, deliberation, influence, and vote on this matter.

If the officer declines to recuse, I request that their non-recusal statement, along with the Board's inquiry and recommendation, be entered into the minutes.

Reservation of Rights

If recusal is declined, the public may pursue remedies under the **Open Meeting Law (1 V.S.A. §§ 310–314)** to correct or cure improper participation.

Signature

Submitted by: _____ (printed name)

Signature: _____

Date: _____

Vermont Open Meeting Law — Recording, Minutes, and Complaint Process

Statutory Authority: 1 V.S.A. §§ 310–314

1) Right to Attend & Record

- All meetings of a public body are open to the public (§ 312(a)).
 - The public **may record** so long as it is not disruptive.
 - Officials may set neutral rules on placement/noise but **cannot prohibit recording outright**.
-

2) Minutes Must Be Accurate

- Minutes must be available within **5 days**.
 - They must show:
 - Members present
 - Active participants
 - All motions/proposals/resolutions considered
 - Results of votes
 - Minutes must give a **true indication of the business of the meeting** (§ 312(b)(1)).
-

3) If Minutes Are Altered or Inaccurate

- You may submit **written corrections** to be attached to the record.
 - Keep your own recording to verify accuracy.
-

4) Complaint Process & Deadlines (§ 314)

- If you believe the Open Meeting Law was violated (exclusion, false minutes, denial of recording, illegal executive session):
 - Send a **written notice of complaint** to the public body.
 - The body must respond **within 10 days** acknowledging or denying violation.
 - If violation acknowledged → cure must occur within **14 days** (e.g., correct minutes, re-take action in open session).
 - If no response in 10 days → treated as a denial; you may file in Superior Court.
-

5) Public Records Backstop

- Under the **Public Records Act (1 V.S.A. §§ 315–320)**, you may request:
 - Audio/video recordings
 - Draft and final minutes
 - Emails and correspondence
-

6) Statement You Can Read

"For transparency and accuracy, I am making my own audio recording, which is permitted under Vermont's Open Meeting Law (1 V.S.A. § 312). If the minutes later omit or mischaracterize today's business, I will submit written corrections and, if needed, a formal complaint under 1 V.S.A. § 314 within the statutory timelines."

Selectboard Motion Sheet — Wymans Falls Rd (Class 4)

Prepared for meeting use; any member may read aloud and move as written.

Motion 1 — Pause Work

"I move that the Selectboard vote to pause all construction, staging, or installation activity on Wymans Falls Road and within the brook corridor until required process and permits are documented."

Motion 2 — Warn Site Visit & Hearing (19 V.S.A. §§ 709–710)

"I move that the Selectboard warn and schedule a site visit and public hearing under 19 V.S.A. §§ 709–710 within 30 days, with mailed notice to all abutters."

Motion 3 — DEC Stream Alteration Confirmation (10 V.S.A. § 1021)

"I move that the Selectboard direct the Town Manager to obtain DEC confirmation of Stream Alteration coverage under 10 V.S.A. § 1021, or a written determination that none is required, before any further work proceeds."

Motion 4 — ADA Review & Accessibility Plan (Title II)

"I move that the Selectboard direct the Town Manager to complete a Title II ADA review of the proposed trailhead, parking, and bridges, and produce a written accessibility plan."

Motion 5 — Enter Written Submissions into Record

"I move that the Board enter Mr. MacGinnis's written submissions into the minutes and the project file as part of the official record."

Motion 6 — Conflict Inquiry & Recusal (24 V.S.A. Ch. 60)

"I move that the Board inquire into potential conflicts of interest under 24 V.S.A. Ch. 60 and request recusal where applicable; if an officer declines, the non-recusal statement and the Board's inquiry/recommendation shall be recorded in the minutes."

Supporting Documents — Index & Evidentiary Statement

Wymans Falls Rd (Class 4) • Submitted by: Kirk MacGinnis (Abutting Landowner) • **Date:** October 1, 2025

Indexed Materials Provided

- **Exhibit A** — ADA Public Comment Script (one page).
- **Exhibit B** — Request to Warn Reclassification/Discontinuance under 19 V.S.A. §§ 708–710 (one page).
- **Exhibit C** — Conflict of Interest / Recusal Request Form under 24 V.S.A. ch. 60 (one page).
- **Exhibit D** — Vermont Open Meeting Law One-Pager (recording, minutes, complaint) (one page).
- **Exhibit E** — Selectboard Motion Sheet (six motions) (one page).
- **Exhibit F** — **Copy** of Temporary Restraining Order (TRO) request, Vermont Superior Court, Windsor Unit (Civil); docket number pending clerk assignment; judge-on-call notified.
- **Exhibit G** — **Copy** of DEC Rivers Request **No. 375**, Stream Alteration inquiry under 10 V.S.A. § 1021 for the perennial brook at the Wymans Falls Rd corridor; status pending program review.

Digital Evidence — Availability & Authentication

Original, timestamped **photos and videos** documenting construction/staging activities, equipment presence, material deliveries, and stream/bank conditions are preserved by me in their original digital form. Source files retain embedded **EXIF metadata** (date/time/device). For evidentiary integrity, I maintain **unedited originals** and, where sharing is required, provide derivative working copies. Upon request from the Board, Town staff, DEC, or the Court, I will make these items available promptly via secure electronic transfer or physical media.

Cryptographic hash values can be supplied for file verification if needed.

Chain-of-Custody & Notes

I am the **sole custodian** of the original media captured on my devices at or near Wymans Falls Rd and the adjacent brook. All dates/times are in local time. Any annotations or crops used in handouts are clearly identified as such; the original files are retained and unaltered.

Agency & Court Communications (Status as of Sept 26–Oct 1, 2025)

- **TRO Request** — Submitted to Vermont Superior Court, Windsor Unit (Civil). **Docket pending**; judge-on-call notified for potential Rule 65 relief.
- **DEC Rivers Request No. 375** — Stream Alteration review requested; awaiting DEC confirmation whether **10 V.S.A. § 1021** coverage is required or a written determination that no permit is necessary.

Certification

I certify that the foregoing index and statements are true and correct to the best of my knowledge and belief. I request that this page and all listed exhibits be attached to the minutes and the project file.

_____ Date: _____

Kirk MacGinnis