

From: [Carl Andeer](#)
To: [Peter DeGraff](#)
Cc: KRamsay@TownOfMiddlebury.org
Subject: RE: Creek Road Committee
Date: Thursday, November 14, 2019 2:30:40 PM
Attachments: [image001.png](#)
[LRN Demerest v Underhill.pdf](#)
[VLCT Model Class 4 Highway Policy and Guidance.docx](#)
[LRN Fitzgerald vs Town of Ira.pdf](#)

Hi Peter,

You asked:

- What are the Town's legal obligations to property owners having frontage on a Class 3 Road. Should the Town choose to downgrade the road to Class 4, what rights do the property owners have?
- What obligations does the Town have toward the maintenance of Class 4 Roads if any?
- What is the legal difference between Class 4 Roads and Trails?

You also stated: The Town has a section of roadway that has experienced damaged due to its proximity to Otter Creek and current repairs/future maintenance are anticipated to be very expensive. The road serves five property owners (only two dwellings). Under consideration is the down grade of a portion of the road which provides access only to farm fields and a parcel controlled by VT Fish and Wildlife from Class 3 to Class 4 or Town Trail.

What responsibilities does the Town have to the farmers and Fish and Wildlife to maintain access on this Road and do the maintenance requirements differ if it is downgraded to a Trail rather than a Class 4? Throwing up the road altogether is also an option under consideration, however, this would result in landlocked parcels and some have expressed interest in continued recreational access along the ROW.

Obligations for class 4 road generally:

State law makes clear that the town has no duty to maintain class 4 roads. Nineteen V.S.A. § 310(b) provides "Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town" Section 711 (b) of Title 19 adds: "Nothing in this section [dealing with the selectboard's decision on classification of roads] shall be construed to require a town to maintain a class 4 highway or to upgrade a highway from class 4 to class 3."

Whatever maintenance the town chooses to do on class 4 highways, it should adopt a policy. A policy that is clear to property owners what kind of maintenance a class 4 highway will receive and when will help protect the town from lawsuits. See the attached VLCT news articles that explain how the courts will treat maintenance. Also see the attached VLCT model policy for class 4 highways.

Bridges and Culverts on Class 4 highways:

Unfortunately, the answer isn't clear from statute. VLCT can see arguments for both sides: i.e., 1) that a town must maintain class 4 bridges and culverts to a reasonable extent, even if the town doesn't maintain the highway generally, or 2) a town has no obligation to maintain class 4 bridges and culverts where the town doesn't maintain class 4 highways.

To support the argument that a town must reasonable maintain class 4 bridges and culverts, we've looked to 19 V.S.A. § 302(a)(5), which states, with regard to trails, that towns "shall not be responsible for any maintenance including culverts and bridges," which carries the negative implication that towns are responsible for maintaining culverts and bridges on class 4 highways.

On the other hand, in reviewing the statutory scheme as a whole, it makes little sense that the State would mandate a town to maintain bridges and culverts on a class 4 town highway but make the maintenance of the highway itself discretionary. This interpretation could lead to, in our opinion, an irrational result of having rutted, muddy, unmaintained class 4 highways with new culverts and bridges. This interpretation is supported further when you read other provisions of Title 19. While 19 V.S.A. Section 310(a) states that class 1-3 "highways and bridges shall be maintained . . .," in contrast, 19 V.S.A. Section 310(b) omits the word bridges: "Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in section 302 of this title." 19 V.S.A. § 310(b). The silence in 19 V.S.A. § 310(b) with respect to bridges implies that towns are not responsible for maintaining bridges on class 4 highways. Additionally, 19 V.S.A. § 985 provides that towns will be liable for personal or property damage caused "by reason of the insufficiency or want of repair of a bridge or culvert which the town is liable to keep in repair." This implies that there are bridges and culverts for which the town is not liable to repair (i.e., those on class 4 town highways and trails). Finally, because the term "highway" includes "rights-of-way, bridges, drainage structures, signs, guardrails", 19 V.S.A. § 1(12), it would follow that if a town is not responsible to maintaining class 4 highways, then that would include both the bridges and culverts that are a part of it.

In light of the statutes, we think a town's obligation to maintain the bridges and culverts on its Class 4 roads is discretionary. To the best of my knowledge however this is an issue of first impression, i.e. there is no published court decision addressing the issue directly and therefore if, e.g., there are residents that live on a class 4 highway and their only way to access their homes is over a class 4 highway bridge that is in need of repair, I would consult with the town attorney before making a decision to refuse to repair the bridge.

Trails:

Trails are not considered to be highways and towns are clearly not responsible for their construction, maintenance, repair or safety, including culverts and bridges along them. 19 V.S.A. §§ 302(a)(5), 310(c). A legal trail is still a right of way of the municipality, and like all other town

highways and rights of ways, the town can still regulate it: e.g., the adjoining landowners have no right to obstruct the right of way, or to put up or remove a bridge on the trail.

Reclassification process:

Whether the town reclassifies or discontinues (throws up) a highway, it must follow the process as laid out in Title 19. This starts at section 708 “petition” and continues:

<https://legislature.vermont.gov/statutes/chapter/19/007>. I can provide more information on reclassification if you’d like. I’ve attached another VLCT news article on some standards for this process.

Throwing up a road:

Throwing up a road wouldn’t necessarily result in a landlocked parcel. The law says that if a town discontinues a road, the selectman can make it a trail OR the state can designate it as a trail. Otherwise, the right of way will belong to owners of the adjoining lands and “if it is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side.” 19 VSA Section 7775.

Obligation to fish and wildlife:

Unless the town has some agreement for their access or access standards, their standards are the same as the other owners. In short, the town can choose to reclassify to class 4, or trail, or throw up the road, and property owners on these roads can argue at the reclassification hearings/process (as describe above) that the town shouldn’t do so. They may also appeal the selecboard’s decision to superior court.

Regards,



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