

CHAPTER 10 HIGHWAYS AND BRIDGES

A. INTRODUCTION

As any selectperson knows, the condition of town roads is the source of much discussion among town citizens – especially during mud season and following the winter’s biggest storm. Roads also dominate discussion at many selectboard meetings, as Vermont statutes place town highways “under the general supervision and control of the selectmen ... [who] shall supervise all expenditures.” 19 V.S.A. § 303.

The specific duties and responsibilities of the selectboard regarding roads are enumerated in 19 V.S.A. § 304. This section lists 23 different areas of responsibility, from the broad taking of “any action consistent with the provisions of law which are necessary for or incidental to the proper management and administration of town highways” to the specific “receive grant funds and gifts” to be used toward town highway maintenance.

It is worth noting, too, that in many of Vermont’s smaller municipalities, the town road crew makes up all or most of the town’s paid staff. This draws the selectboard into the important areas of personnel management and workplace safety, in addition to road repair and bridge maintenance. For more information, consult the VLCT Municipal Assistance Center’s *Highway Handbook* (2001).

B. TOWN HIGHWAYS: CLASSES 1, 2, 3 AND 4

Town highways are divided into four classes (1, 2, 3 and 4), which determine maintenance requirements and state funding. For example, Class 1, 2 and 3 roads must be kept “in good and sufficient repair during all seasons of the year” but Class 4 highways need only be maintained to the extent required by “the necessity, ... public good and ... convenience.” 19 V.S.A. § 310. The State of Vermont appropriates highway funds for Class 1, 2 and 3 highways and their bridges, 19 V.S.A. § 306, but these funds are conditioned on the town meeting certain maintenance standards, and funds may be withheld or returned by the town if it fails to meet the standards. 19 V.S.A. §§ 302(b), 308. (See Section H below.)

In addition to the four classes of town highways, another type of town right-of-way is the town trail. State statutes define a trail as “a public right of way which is not a highway.” A trail may be an old town highway, 19 V.S.A. § 775, or it may be a new right-of-way laid out by the selectboard, 19 V.S.A. § 301(7). Towns are not responsible for any maintenance on trails. 19 V.S.A. §§ 301(c), 302 (a)(5).

C. CONDEMNATION

The selectboard has the authority to lay out a new town highway or alter an existing one, 19 V.S.A. § 304(12), two actions that usually involve the condemnation, or taking, of private property. The request to lay out or alter a road may be initiated by petition of five percent of town voters or landowners, or by the selectboard on its own motion. 19 V.S.A. § 708. (See also Section D below.)

Although the term “condemnation” is not found in the statutes that deal with laying out or altering town highways, the sense of these statutes is that the selectboard has the authority to take land “for the public good, necessity and convenience.” 19 V.S.A. § 710. If the board determines that a new, expanded or rerouted highway is necessary for the public good, it must next decide if the landowners affected by the change are entitled to damages. If so, the board must “pay or tender to him or her, damages as the selectmen determine reasonable.” 19 V.S.A. § 712. Such taking and payment of compensation for damages constitutes actual condemnation.

For guidance on the meaning of “necessity” and “damages” see 19 V.S.A. § 501. Though this chapter of the statutes deals with the State of Vermont Transportation Board, state highways, and condemnation, it is a helpful reference during the process of laying out or altering town highways.

As a final step in the condemnation process, the selectboard “shall fix ... the time within which the owner of the lands taken shall remove his or her buildings, fences, [etc.].” 19 V.S.A. § 713.

The landowner or other interested person has several remedies if he or she is dissatisfied with the selectboard’s decision. First, he or she may appeal the award for damages to “disinterested persons mutually selected” or to the district or superior court. 19 V.S.A. §§ 725-726, 740. Second, if he or she objects “to the necessity of taking the land, or ... with the laying out, altering or resurveying of the highway ...” he or she may apply to the superior court for relief. 19 V.S.A. § 740. An appeal of the amount of damages will not interfere with beginning work on the highway. However, an appeal as to the necessity of the taking of the land or the correctness of the plan generally will stay the opening of the highway until the court renders its decision. 19 V.S.A. § 743.

Interestingly, there is a flip side to the condemnation powers of the selectboard. In 19 V.S.A. §§ 750 et seq., persons who are dissatisfied with the selectboard’s decision not to lay out, alter, build or open a new highway may apply to the superior court for relief.

D. LAYING OUT HIGHWAYS

The authority to lay out, alter, classify or discontinue town highways is given to the selectboard in 19 V.S.A. § 304(a)(12). The procedure for each option is roughly the same. 19 V.S.A. §§ 708 et seq.

As noted in Section C above, proceedings to create or change a town highway may be initiated by the selectboard or by a petition signed by “persons who are either voters or landowners, and whose number is at least five percent of the voters, in a town.” 19 V.S.A. § 708. The selectboard’s next step is to set a time and date for inspection of the premises and for a hearing. Notice requirements for the hearing are fairly extensive and are spelled out in 19 V.S.A. § 709. The hearing is quasi-judicial, as defined in 1 V.S.A. § 310(5). Following the hearing, the board has 60 days in which to make a decision based on “the public good, necessity and convenience of the inhabitants of the municipality.” 19 V.S.A. § 710. It is worth noting that regardless of the origin of the request, it is ultimately the selectboard’s decision whether or not to change the status of a town highway.

Until recently, the board’s decision in these matters was treated with great deference by the courts. However, in 1991 the Vermont Supreme Court upheld a superior court decision that required a town to upgrade a Class 4 road even though the selectboard had decided not to.

Hansen v. Town of Charleston, 157 Vt. 329 (1991). That decision threatened to have severe financial implications for towns since it meant that courts could force towns to spend thousands of dollars on road construction and upgrading. However, much of the financial impact of that case was mitigated by a subsequent amendment to 19 V.S.A. § 711 that provides that the town may require the petitioner to bear the cost of upgrading a road and may require that payment to be made within a stated time.

Class 4 roads are often the subject of petitions to upgrade, as more and more landowners build on them or seasonal homes located on Class 4 roads become occupied year round. Many towns have adopted a Class 4 road policy that sets forth the type and extent of maintenance the town will do on Class 4 roads. (Work ranges from minimal repairs to bridges and culverts in the summer to more extensive, year round grading and snowplowing.) It may also state the terms upon which the selectboard will consider reclassifying the road to Class 3 status. A Class 4 road policy ensures that the town treats all town residents who live on Class 4 roads equally and that people who seek to move to or build on a Class 4 road are aware of the level of road maintenance they can expect from the town, if they inquire.

A good Class 4 road policy does not mean a town won't be petitioned to upgrade a Class 4 road, or be sued over the road's maintenance. It will, however, go a long way toward clarifying the town's position in any such proceeding. Note that the selectboard should reconsider the Class 4 road policy each year. A new selectboard is not bound by the previous board's policy and may change it to reflect what the board believes is "the public good, necessity and convenience of the inhabitants of the municipality." Contact the VLCT Municipal Assistance Center (800-649-7915) or the Vermont Local Roads Program (800-462-6555) for sample Class 4 road policies.

If the selectboard decides in favor of laying out a new highway or altering an existing one, the town may have to pay damages to persons through whose land the road passes or abuts. 19 V.S.A. §§ 808 et seq. (See also Section C above.) Laying out or altering highways and bridges that lead from one town to another is addressed in 19 V.S.A. §§ 790 et seq.

Questions frequently arise concerning the status of roads and streets created in private developments. Even though town planning and zoning authorities have approved developments and plats, Vermont law states that new streets and highways "shall be deemed to be ... private ... until formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body." 24 V.S.A. § 4463(c). That said, there are some actions that, if taken by a town on a regular basis, can blur the distinction between a private and a public road. It is worth a note and warning that if the town appears to take over some of the private road's maintenance by activities such as plowing snow and fixing potholes, it may be deemed to have acquired the road by "dedication and acceptance." In this case, the town might have inadvertently taken on a new street or highway with all of its costs and liabilities.

When petitioned by citizens to take over a previously private road, many selectboards refer to their town's highway acceptance policy, or general highway ordinance that include standards which must be met (and paid for) by the owners of the road before the town will take it over. The Vermont Local Roads Program (c/o St. Michael's College, One Winooski Park, Colchester, VT 05439, telephone 800-462-6555) is a good source of technical standards and advice when developing a highway acceptance policy. You can also visit the Vermont Local Roads website at http://personalweb.smcvt.edu/vermontlocalroads/welcome_home_page.htm.

The selectboard may also discontinue town highways. 19 V.S.A. §§ 701, 771. The highway can be totally discontinued, in which case the right-of-way reverts to the owners of adjoining land, or the highway may be designated “as a trail, in which case the right-of-way shall be continued at the same width.” 19 V.S.A. § 775. In each case, the selectboard must weigh the costs (upkeep, liability, etc.) to the town of keeping ownership of the right-of-way with current and future benefits the right-of-way confers on its citizens (recreational use, access to remote areas of town, use by loggers and farmers, suitability for future growth, etc.). Note, too, that when the selectboard decides to discontinue a highway, it must notify the commissioner of the Department of Forests, Parks and Recreation of its decision. The commissioner may then decide to designate the discontinued highway as a trail.

If your town has a town plan and zoning bylaw, they should be consulted by the selectboard before making a decision on discontinuing a town road. The town plan’s transportation section should also be consulted before other major decisions are made with regard to expanding or shortening the town’s highway system.

For sample Class 4 road policies, highway acceptance policies and general highway ordinances, please contact the VLCT Municipal Assistance Center.

E. RIGHTS-OF-WAY

“The right-of-way for each highway and trail shall be three rods wide unless otherwise properly recorded.” 19 V.S.A. § 702. (One rod equals five and a half yards, or 16' 6".) At times, there is no survey data to define the exact location of a road, in which case one can “presume that the width of a highway is three rods, and that the width is to be measured from the center line of the currently existing highway.” *Town of Ludlow v. Watson*, 153 Vt. 437 (1990). According to 19 V.S.A. § 775, a public trail resulting from downgrading a road retains the width of the road.

Permits are required for any work done in the town’s rights-of-way and are issued by the selectboard. 19 V.S.A. §§ 304(a)(21), 1111. Projects must comply with local zoning and highway ordinances and regulations. Applicants must apply in writing for the construction, installation or alteration of driveways, fences, buildings, ditches, culverts, sewers, pipes and wires. When issuing permits, the selectboard takes into consideration highway protection and safety standards, while allowing reasonable access to abutting properties.

One of the most common requests for a right-of-way permit is for a “curb cut,” or driveway access to a town highway. Many towns have specifications for driveway access written into their highway ordinance or included in a separate curb cut policy adopted by the selectboard. This policy or ordinance generally addresses issues of drainage (appropriate installation of culverts, slope, etc.) and safety (adequate sight lines, angle of entry, location vis-à-vis intersections, etc.). Towns that undergo continuing development should be aware of the authority granted to selectboards by 19 V.S.A. § 1111(f) to eliminate access previously permitted and require the construction of a common frontage road as a condition for a new permit.

Placement and relocation of utility wires also prompts many requests for right-of-way permits, and is specifically addressed in 30 V.S.A. §§ 2502-2504.

F. REPAIRS, MAINTENANCE AND IMPROVEMENTS

The selectboard has “the duty and responsibility” to properly maintain the town highways. 19 V.S.A. § 304. Maintenance and repair are addressed in 19 V.S.A., Chapter 9, which discusses brush removal, curb cuts, crosswalks, change of grade, snowfences, etc.

Most of the town’s road repair and maintenance will be done within the town’s right-of-way. While Vermont statutes grant the town the authority to perform work within, and in some cases even beyond, its highway right-of-way, this authority does not completely negate the abutting landowner’s rights to his or her property. Thus, when the selectboard’s maintenance and repair decisions on behalf of the town conflict with the individual rights of property owners, the board must follow the quasi-judicial process described in 19 V.S.A. § 923, allowing for notice, a right to be heard, and the payment of damages where appropriate. Such a situation would occur, for example, when the town decides to put snow fences up on private property, divert streams or lay out temporary logging roads – all activities that must follow a proper hearing. Also, keep in mind that before altering any streams or other watercourses, a town must receive the appropriate permits from state environmental agencies.

Maintenance for general safety purposes and road crossing accommodations for persons with handicaps are addressed in 19 V.S.A. §§ 901-906. Municipalities must also “erect or cause to be erected” warning signs in school districts. 19 V.S.A. § 921. Finally, two or more towns that share a road are granted the authority in 19 V.S.A. § 910 to jointly undertake a maintenance project on the road.

Towns are liable for injuries and damages that occur as a result of bridge or culvert defects, including problems with guardrails and abutments. Liability extends to any defective bridge or culvert where the town officers knew or should have known of the existence of the defect. However, damages suffered as a result of crossing a bridge or culvert with a vehicle weighing more than the posted weight limit are not the responsibility of the town. Please note, too, that unless written notice of damage or injury is given to a member of the selectboard within 20 days of the incident, the town will not be held liable. 19 V.S.A. § 987.

G. PROTECTION OF HIGHWAYS

Highways are to be kept open and safe for people and cattle and are to be protected from undue damage. 19 V.S.A., Chapter 11. Artificial lights that create a traffic hazard may be removed or altered by the selectboard. 19 V.S.A. § 1104. Any unauthorized obstruction of public highway or trail that hinders traffic or causes injury may result in fines, actual damages and attorney’s fees. 19 V.S.A. §§ 1105-1106. Cattle crossings are addressed in 19 V.S.A. § 1107.

Wanton or willful damage to highways or bridges and damage caused by obstruction or diverting water or by dragging logs or other objects are also subject to fines and damage awards. The Agency of Transportation or the selectboard may restrict the use of highways under some circumstances in order to protect them. 19 V.S.A. §§ 1109-1110. In particular, section 1110 allows municipalities to post roads, as necessary, for conditions such as mud and other restrictions on travel. Postings under this section are designed to be temporary, in response to unique conditions, and do not have to be registered with the State Department of Motor Vehicles (DMV) as outlined below for permanent local weight limits.

Vehicle weights allowed by state statute on state highways and local roads are listed in 23 V.S.A. § 1392. Those weights apply unless the local legislative body establishes lower weight limits on its local roads and bridges. 23 V.S.A. § 1396.

In order for local limits (other than those set forth in the statutes) to be enforceable, the board must set the weight limit, post both ends of the highway or bridge with signs “of a permanent nature” and file a complete copy of local weight limits with the Vermont DMV no later than February 10 of each year. 23 V.S.A. §§ 1393, 1396 and 1400b. The listing with the DMV must include a complete list of local weight limits, the time of year they are in effect (such as mud season), and the person responsible for local permits. 23 V.S.A. § 1400b(a). The selectboard may vary the weight limits on roads and bridges throughout the year but limits become effective only if the town notifies the DMV within three working days of such posting. 23 V.S.A. § 1400b (a) and (b).

Each municipality is responsible for issuing permits to allow vehicles to operate in excess of the legal road limit on its Class 2, 3 and 4 highways. (Permits issued by the state are valid for travel on Class 1 highways.) The law requires that towns wishing to issue permits use a uniform permit form developed by the commissioner of motor vehicles. 23 V.S.A. § 1400a(b). Sample forms are available from the DMV (802) 828-2064. Towns may charge a \$5.00 administrative fee for each annual permit. As an alternative, upon payment of a \$10.00 fee, an applicant may obtain a permit to operate all of his or her registered vehicles in that municipality. When such a fleet permit is obtained, individual permits need not be carried in each vehicle. 23 V.S.A. § 1400a(c).

Municipalities may retain fines for violation of local weight limits (minus a \$6.00 administrative fee) if “the fines are the result of enforcement action on a town highway by an enforcement officer employed by or under contract with the municipality.” 23 V.S.A. § 1391a(d).

H. STATE AID

A wide variety of grant programs is available for towns to assist them in maintaining their highways, bridges and culverts. First and foremost is the state aid for town highways grant program. 19 V.S.A. § 306(a). The state distributes the bulk of its transportation assistance to towns through this program. Towns need not apply for the grants; they receive funds based on the number of miles of roads they maintain. Class 1 town highways receive the most aid per mile, with Class 2 receiving less and Class 3 receiving the least per mile. Towns having Class 1 town highways of greater than two lanes receive a larger per mile figure. State aid funds for highways depend on keeping an up-to-date record of miles and classes of town highways, on maintaining highways to an acceptable standard, and on the town annually appropriating at least \$300.00 per mile for its class 1, 2 and 3 highways. 19 V.S.A. §§ 305, 307, 308. The amount of state aid is calculated according to the formula in 19 V.S.A. § 306(a)(1-5). Interestingly, selectboard members can be held personally liable to the state for unauthorized expenditures of state highway funds. 19 V.S.A. § 306 (a)(5).

Separate funds for bridges over six feet in length are available and are distributed after towns go through an application process and get on a bridge project list. 19 V.S.A. § 306 (c). This is a multi-year process where the Agency of Transportation (VTrans) annually reviews the list of hundreds of town bridges needing repair or replacement, and subjects them to the same process it uses to replace or repair state bridges. The state does all the work, including planning, engineering, right-of-way acquisition and the actual construction.

Other programs for state aid for town highways are available. Nineteen V.S.A. § 306(e) provides a program for towns to apply for and receive assistance in repairing bridges, culverts, and other structures intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways. There is also a grant program for reconstruction and resurfacing projects on Class 2 town highways. This program is similar to the “bridge and culvert” program in that the funds are available on a competitive basis, and the town is responsible for getting the project done. 19 V.S.A. § 306(h). Finally, there is an emergency aid program for repairing class 1, 2, and 3 highways and bridges damaged by natural or man-made disasters. 19 V.S.A. § 306(d).

Since 1993 the state has been responsible for all scheduled surface maintenance for Class 1 town highways. 19 V.S.A. § 306a. There is no local match required for projects funded under this program. Class 1 town highways have now become part of the state highway system for purposes of resurfacing scheduling. The town retains jurisdiction over Class 1 town highways, including, but not limited to, spot patching, traffic control devices, curbs, sidewalks, drainage and snow removal. Major reconstruction of Class 1 town highways continues to be the responsibility of the town, but is eligible for federal and state matching funds as part of the state transportation capital plan. These projects would be handled by the state.

VTrans is responsible for marking all paved Class 1 and 2 town highways with “painted center lines.” Towns must notify the Agency when repaving has obliterated these markings. Towns remain responsible for other pavement markings. 19 V.S.A. § 311.

Other types of town highway work, including repairs, construction and pavement markings, may be done by the state on a contractual basis or as a shared project under 19 V.S.A. § 309.

VTrans also offers financial assistance in the form of low-interest loans for municipal purchases of highway construction and snow removal equipment. For more information on its Heavy Equipment Loan Fund, contact VTrans Financial Services, 133 State Street, Montpelier, VT 05633-5001, (802) 828-2631.

There is also interest in the development of bicycle routes that may be “lanes” (part of the paved highway) or “paths” (separated from the highway). 19 V.S.A. § 2301. It is state policy to facilitate the development of an integrated bicycle route system. VTrans may acquire property for that purpose and shall assist other groups in the development and construction of local and regional projects. 19 V.S.A. Chapter 23. Municipal legislative bodies have many of the same powers as VTrans for the purpose of developing bike routes along town highways. 19 V.S.A. § 2307. Helpful resources are VTrans for financial and technical assistance, (802) 828-2093, and the State Department of Forests, Parks and Recreation, (802) 241-3655, for recreational path planning and funding.

I. SCENIC ROADS

A town highway may be designated or discontinued as a “town scenic highway” by the legislative body after a public hearing. If a road becomes a “scenic highway,” the town may then have to meet certain standards set by the transportation board. 19 V.S.A. § 2502. A town will receive normal state highway funding and may qualify for special funds “for the purpose of enhancing or establishing designated scenic roads.” 19 V.S.A. § 2504. Adjacent landowners may develop their properties “so long as the development is in accordance with existing law or ordinance.” 19 V.S.A. § 2505.

J. TRAFFIC ORDINANCES: SPEED LIMITS, STOP SIGNS, PARKING

The selectboard has the authority to set speed limits on town highways. 19 V.S.A. § 304(a)(7). Based on a rudimentary engineering and traffic study, the limit may be set between 25 and 50 miles per hour and may be in effect at all times or only during certain times, so long as appropriate signs are posted. 23 V.S.A. § 1007(a). Cities may also regulate speeds on some state highways. 23 V.S.A. § 1007 (b). Many towns incorporate their speed limits into a general traffic ordinance, which addresses parking, crosswalks, one-way streets and other regulations involving the use of town highways. Towns enact traffic ordinances under the authority granted to the legislative body to regulate the operation, use and parking of motor vehicles on town highways and streets. 23 V.S.A. § 1008; 19 V.S.A. § 304(a)(6). However, adequate notice must be provided and traffic signs must meet the standards of the U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control Devices. Unauthorized signs, signals and markers are prohibited under 23 V.S.A. § 1027, and a municipality may not regulate parking on state highways within its borders without the authorization of the traffic committee. 23 V.S.A. § 1025.

K. STREET NAMING AND NUMBERING

Selectboards are granted the authority to name and address streets by 19 V.S.A. § 304(17) and 24 V.S.A. § 4421. Boards usually find that the process of formally naming or renaming streets can provoke a great amount of public sentiment. Because of the adoption of the enhanced 911, selectboards should refer to the State of Vermont Enhanced 911 Board's Addressing Handbook. Copies of the Addressing Handbook, guidelines, and general information on addressing are available from the State of Vermont Enhanced 911 Board, 94 State Street, Drawer 20, Montpelier, VT 05620, (800) 342-4911. Visit their website at <http://www.state.vt.us/e911>. For sample address ordinances, contact the VLCT Municipal Assistance Center.

L. REGISTRATION OF MUNICIPAL VEHICLES

Motor vehicles owned by municipalities, volunteer fire fighting organizations or rescue squads and used exclusively for official purposes are charged a reduced fee for registration. All such vehicles must be plainly marked on both sides to indicate their ownership. 23 V.S.A. § 376.

M. COIN DROPS

From time to time, municipalities will receive requests from charitable organizations to hold "coin drops" on a town road. This fundraising practice, which involves a person standing in the road soliciting contributions from passing motorists, is regulated in 23 V.S.A. § 1056. Only not-for-profit and municipal organizations may conduct coin drops, and permission must be obtained from the selectboard before conducting a coin drop. The selectboard must ensure that the organization has liability insurance that provides adequate coverage for the municipality, and the board has the option of denying permission if it feels the coin drop would create safety hazards or undue traffic congestion.