

cc: 88 11/15/16

Kathleen Ramsay

From: Benjamin Putnam <Benj@ndp-law.com>
Sent: Monday, October 31, 2016 4:47 PM
To: Kathleen Ramsay
Subject: RE: Creek Road Closure

Hi Kathleen,

I reviewed the statutes and did not find any specific procedure to be followed in the case of a temporary road closure. The Selectboard has general authority under Title 19, and particularly 19 V.S.A. 304, to manage the operation of Town highways. I think it would be reasonable to take the position that this general grant of authority encompasses the right to temporarily close a road for safety purposes.

The statutes impose formal notice and hearing requirements for certain activities, such as laying out, altering, reclassifying, or discontinuing a highway, but I don't see how the current closure falls into any of those categories. If the Town decided to make a permanent change in the status of the road, it would need to follow the procedures in 19 V.S.A. Chapter 7.

The Selectboard should be aware that the Town does have an obligation to maintain Class 3 highways "in good and sufficient repair" under 19 V.S.A. 310(a). This is a separate issue from the question of what procedure is required to temporarily close a road, but the longer the situation continues, the higher the risk that someone will make an issue out of this. Under 19 V.S.A. 971, any three citizens or taxpayers may pursue relief from the County Road Commissioners or the Superior Court if a road is out of repair or unsafe for travel, or if the Town is not taking steps to make repairs "in good faith and with reasonable dispatch." In this case, if the Town puts together a reasonable plan for getting the road back open, I think the Commissioners and/or the Court would be understanding, but if the plan is to keep the road closed indefinitely, it would be best to reclassify the road.

We can discuss reclassification options if you are interested – these could include reclassifying as a "provisional" Class 3 highway, reclassifying as Class 4 or a trail, or discontinuing altogether.

I hope this is a helpful overview. If you would like a more formal memorandum or expanded opinion, just let me know.

Regards,
Benj

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From: Kathleen Ramsay [mailto:KRamsay@TownOfMiddlebury.org]
Sent: Friday, October 28, 2016 10:59 AM
To: Benjamin Putnam
Subject: Creek Road Closure

Benj,

Is there any particular procedure the Board needs to follow to close Creek Road? Or any road for that matter? This is an excerpt from the Infrastructure Committee meeting minutes of Thursday, October 27:

Rheaume said the Town has illegally closed this road and kept it closed and the engineer at the public meeting couldn't provide a reason for it to be closed. Shashok said if he wanted to review the road closure it needed to be done properly. Seeley said she had ridden down there when the road was being graded and she would like to have the Selectboard go and look at it again. Shashok told Rheaume that if he had evidence the road was closed incorrectly then he needs to go to the Selectboard and they can request the Committee to review it again.

Dean Rheaume said nothing has been done on Creek Road and it's still closed. He said it's 20' wide, which is wide enough for vehicles and he has watched large, heavy farm equipment going through the closed off section with no problems. Shashok said there are still repairs that need to be done before she is comfortable opening it, and there is not a lot of money in the budget to go towards those repairs.

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Thanks!
Kathleen

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