



# Town of Mont Vernon

## iTRaC Research Project Summary

October 12, 2008

### Research Request

The Mont Vernon Planning Board requested information to help them determine the pros and cons of having all new roads in town be public (town) roads and not allowing private roads or common driveways in the future.

### Findings

The following findings are based on the State of New Hampshire Revised Statutes Annotated (RSAs) and interpretations found in A Hard Road to Travel, published by the Local Government Center. A Hard Road to Travel provides interpretation and guidance on the legislative requirements of road layout, development and road maintenance.

According to A Hard Road to Travel, "It is not altogether clear whether a planning board can mandate that roads be dedicated as public highways" (p 131) RSA 674:36 (please see attached), does not explicitly state whether or not conditions can be placed on interior roads requiring roads to be public. There are no New Hampshire cases addressing such conditions. The Planning Board cannot guarantee town road acceptance and therefore should be more focused on ensuring that new roads are located and built to provide adequate access regardless of the road becoming public or private in the future see *Beck vs. Auburn, 121 NH 996 (1981)*. In this case the Planning Board determined that they could not approve 2 lots located on a Class VI road, as it was not improved and they did not have the authority to authorize improvements to the road and a reclassification from Class VI to Class V.

By focusing on construction of roads to a set of standards the Planning Board is protecting the public interest of the town (p 132). A Hard Road to Travel also cautions against altering road standards to accommodate private roads, as there is no guarantee that the land owners of the private road will not petition the town for acceptance at a later date.

"In *Davis vs. Town of Barrington, 127 NH 202 (1985)*, the plaintiff wanted to erect an eight unit condominium in one building serviced by a 900-foot "driveway." He claimed that since this road was intended to remain private, the planning board's subdivision road standards didn't apply. The court said:

*There is . . . simply no support for this claim. The statutory and regulatory provisions governing subdivision do not distinguish between condominium and other forms of property development. And there is no basis in policy that would support the plaintiff's position. Although a condominium subdivision under one roof will not entail multiple lot or dwelling ownership in the traditional sense, it will involve multiple unit ownership. Therefore if its common features are deficient in matters of health or safety, they must be seen as affecting the public, not merely one family . . . Hence the board's standards for street construction clearly do and should apply.*

(A Hard Road to Travel p 132)



## MUNICIPAL REGULATIONS

### Amherst

The Town of Amherst encourages private roads due to reduced maintenance costs. Private roads are required to be built to town standards however the Planning Board often grants waivers for a narrower roadway from 24’ to 18’ of pavement. Common driveways are permitted with no limit to the number of driveways. Covenants are developed for each common driveway addressing homeowners associations and requiring maintenance and plowing for emergency access.

### Hollis

The Town of Hollis addresses the issue of town owned and private roads on a case by case basis. Private roads must be built to town standards and undergo road inspections by town staff. Roads within elderly housing and condominium complexes tend to be private roads, narrower in width and maintained by their associations. Common driveways are permitted outright for two driveways and with a Special Exception for three driveways. All common driveways must have 20’ of hard surface. Four or more shared driveways constitute a private road similar to those located in elderly housing complexes.

### Wilton

The Town of Wilton has recently decided not to accept any new town roads. However, the Town is interested in ensuring that all new roads, including those that remain private, be designed and constructed to town standards. Common driveways are only permitted in cases of alternative lot configurations. This allows back lots, with narrow road frontage, to share access with the driveways on standard lots.

### Litchfield

The Town of Litchfield accepts all new roads except those located in older person developments. Roads in such developments remain private and are maintained by the association. Litchfield does not currently permit common driveways.

### Milford

The Town of Milford is anticipating an update of their subdivision regulations to ensure that all new roads are built to town standards and are ready for acceptance by the town. The updated regulations will have a provision for private roads in special cases where anticipated daily vehicle trips are below a certain threshold. However, the certified plans will have a note stating that the private road will not be accepted by the town at a future date. The Town will also require that signs be posted stating that a road is private upon issuance of the first Certificate of Occupancy and remain posted until the road is accepted by the town. Common driveways are permitted for up to two driveways and require an easement.

## PROS AND CONS

	PROS	CONS
<b>Public Road</b>	<ul style="list-style-type: none"> <li>• Roads are maintained to town standards.</li> <li>• Adequate emergency access.</li> <li>• Reduces conflicts from property owners requesting that their private road be accepted by the town.</li> </ul>	<ul style="list-style-type: none"> <li>• Additional maintenance costs to the town.</li> <li>• More difficult to budget annual maintenance costs, ie. plowing.</li> <li>• Greater costs for equipment and staff time.</li> </ul>



<b>Private Road</b>	<ul style="list-style-type: none"> <li>• Minimizes maintenance costs to the town.</li> <li>• Minimizes costs for equipment and staff time.</li> <li>• May be constructed at a narrower width minimizing impacts.</li> </ul>	<ul style="list-style-type: none"> <li>• Roads may not be maintained to town standards.</li> <li>• May increase emergency response time.</li> <li>• Property owners along the road may petition the town for road acceptance.</li> <li>• Town insurance may not cover vehicles such as school buses.</li> </ul>
<b>Common Driveway*</b>	<ul style="list-style-type: none"> <li>• Limits number of curb cuts, reducing potential conflict points with vehicles and or pedestrians.</li> <li>• Potentially minimizes paved area.</li> <li>• Minimizes maintenance costs to the town.</li> <li>• Minimizes equipment costs and staff time.</li> </ul>	<ul style="list-style-type: none"> <li>• Deeds must explicitly state how maintenance and costs will be shared amongst owners.</li> <li>• Common areas may not be maintained to town standards.</li> <li>• May increase emergency response time.</li> </ul>
<p>*Common driveways typically have an easement approved by town counsel and a maintenance agreement. The common section of the driveway is usually built to town standards for base, width and grade.</p>		

**Summary and Recommendation**

It is important to remember that the Planning Board cannot guarantee town acceptance of roads as it is under the jurisdiction of the Board of Selectmen or relevant legislative body. However the Planning Board can work with the governing body and determine which protocol is in the best interest of the town.

As you can see from the town practices listed above, there are a variety of options to address this issue of town owned versus private roadways. The main advantages of town owned roadways include maintenance to town standards, adequate emergency access, and reduced potential conflict from requests for town acceptance of private roads. The main advantages of private roadways include reduced costs to the town for roadway maintenance, equipment and staff costs.

As for common driveways they reduce the number of curb cuts onto the road and minimize potential conflict points where accidents could occur. By combining driveways, towns are often able to reduce the amount of pavement which minimizes environmental impacts.

Please note that it is always advisable for the town to seek input from town counsel prior to altering existing practices and regulations regarding town road standards, maintenance and acceptance. The board could also seek input from the road agent on how plowing additional miles of roadway will affect the turn around time of plowing the entire town. A determination could then be made regarding the need for additional staff time and equipment to maintain the roads.

The Planning Board would be best served to focus their efforts on ensuring that town standards are acceptable and will promote the future construction of adequate and safe roads. The town should consider inspecting all roads, either public or private, during construction. This will ensure that if a private road is accepted by the town at a future date, it will be built to town standards. The added cost of inspections could be bonded by the developer to defer additional costs to the town. The town could also require that appropriate covenants and easements be developed for all private roads and common driveways to ensure that adequate maintenance and snow removal will occur on all roadways. The Planning Boards main role is to ensure that the health and safety of the town is addressed through adherence to town standards and regulations.



## Resources

Additional information can be found at the following sites:

- 1) [A Hard Road to Travel](http://www.nhmunicipal.org/LGCWebSite/InfoForOfficials/publicationlist.asp), 2004, Local Government Center, for additional copies call: 603-224-7447  
<http://www.nhmunicipal.org/LGCWebSite/InfoForOfficials/publicationlist.asp>
- 2) State of New Hampshire Revised Statutes Annotated (RSAs)  
<http://www.gencourt.state.nh.us/rsa/html/indexes/>  
<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV.htm>
- 3) Office of Energy and Planning (OEP) Resource Library  
<http://www.nh.gov/oep/resources.htm>  
<http://www.nh.gov/oep/resourcelibrary/referencelibrary/index.htm>  
<http://www.nh.gov/oep/programs/MRPA/PlanningBoardFAQs.htm>
- 4) OEP - Roads - Guidance on Design, Construction and Approval for Local Planning Boards  
<http://www.nh.gov/oep/resourcelibrary/documents/12-roads.pdf>
- 5) New Hampshire Department of Transportation (NH DOT)  
<http://www.nh.gov/dot/business/municipalities.htm>
- 6) NH DOT - Suggested Minimum Design Standards for Rural Subdivision Streets  
<http://www.nh.gov/dot/municipalhighways/pdf/suggestedmindesign.pdf>
- 7) Nashua Regional Planning Commission, Road Standards Fact Sheet  
[http://www.nashuarpc.org/itrac/ref\\_roads.htm](http://www.nashuarpc.org/itrac/ref_roads.htm)
- 8) Nashua Regional Planning Commission, Traffic Calming Fact Sheet  
[http://www.nashuarpc.org/itrac/ref\\_traffic.htm](http://www.nashuarpc.org/itrac/ref_traffic.htm)