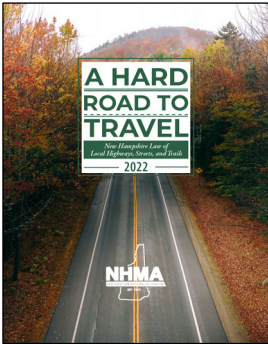



# A Hybrid - Hard Road to Travel

May 17, 2023



Stephen C. Buckley, Esq., NHMA  
Jonathan Cowal, Esq., NHMA



1

## Today's Presenters



**Stephen Buckley**  
*Legal Services Counsel*



**Jonathan Cowal**  
*Municipal Services Counsel*



[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)/603.224.7447/[www.nhmunicipal.org](http://www.nhmunicipal.org)

2

# Agenda

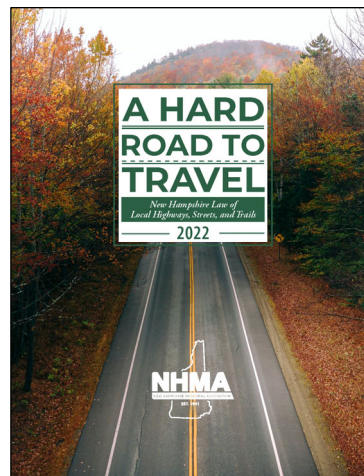


- ▶ Liability, Regulation & Maintenance  
- **Jonathan**
- ▶ Development on Class VI or Private  
Roads - **Steve**
- ▶ Weight Limits, Timber Hauling  
Operations & OHRV's - **Steve**
- ▶ Formation & Classification-  
**Jonathan**
- ▶ Hot Topics from Legal Inquiries

3

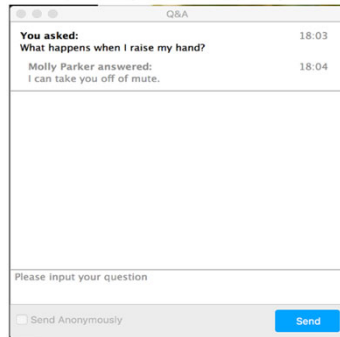
## *New A Hard Road to Travel*

- ▶ All electronic  
edition
- ▶ Statutory and case  
law updated
- ▶ New content  
Chapter 12 - Local  
Funding of  
Highways



4

## How Do I Ask a Question?



The screenshot shows a Zoom Q&A window with the following content:

| Q&A                                       |                                     |
|---|-------------------------------------|
| <b>You asked:</b>                         | 18:03                               |
| What happens when I raise my hand?        |                                     |
| <b>Molly Parker answered:</b>             | 18:04                               |
| I can take you off of mute.               |                                     |
| Please input your question                |                                     |
| <input type="checkbox"/> Send Anonymously | <input type="button" value="Send"/> |

The chat function for this workshop has been disabled.

In order to ask a question of our host or a panelists, open the Q&A function found in the Zoom toolbar. Type you questions in the Q&A and they will be answered in the order they are received.

Once your question has been answered, it will then appear under the *Answered* tab.

[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org) /603.224.7447/[www.nhmunicipal.org](http://www.nhmunicipal.org)



5

## Liability, Regulation & Maintenance


6



# Liability

- ▶ General Duty of Care to Travelers
- ▶ Liability to Abutting Landowners
- ▶ Discretionary Function Immunity & Other Protections

7



## General Duty of Care to Travelers

RSA 231:90 - :92

**Correct Insufficiencies after Notice**

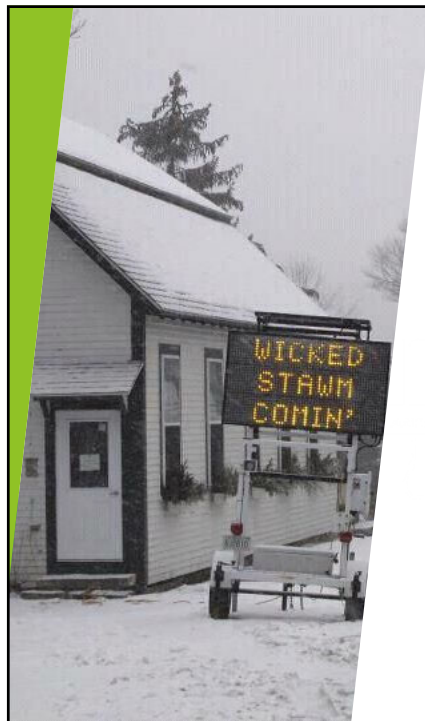
8

## Insufficiencies Caused by Weather



- ▶ Municipalities are provided enhanced protection for insufficiencies caused by bad weather, if they are properly prepared.
  - ▶ Even notice of an insufficiency may not make a city or town liable if they have an adequate winter weather policy
  
- ▶ Sidewalks are part of the public highway, and the statutory duty of care applies equally to sidewalks as it does to highways, so be sure to include sidewalks in any weather policy.

9



### ▶ Inclement Weather Maintenance Policy:

▶ *What's Your Plan?*  
RSA 231:92-a



10

## Snow Plows



- ▶ RSA 265:6 and 265:6-a
  - ▶ Municipalities have some protections from liability when the town is actually engaged in work upon a road
  - ▶ Other vehicles are required to yield the right-of-way to vehicles engaged in road work
- ▶ Make sure that you are following proper safety precautions
- ▶ Consider including plow damage in your winter maintenance policy

11

## Americans with Disabilities Act



- ▶ All roads and sidewalks must comply with applicable ADA regulations
- ▶ *Tinker v. Tilton*
  - ▶ Plaintiff sued town claiming that a particular town sidewalk on which he frequently traveled in his wheelchair was not cleared of snow and ice, blocking his path
  - ▶ The town argued that under their policy, the sidewalk was closed during the winter
  - ▶ The Court did not accept this argument and ruled that the town needed to make the sidewalk accessible by removing snow and ice
  - ▶ Very limited opinion that raised a lot of questions

12

## Class VI Roads



- ▶ RSA 231:50 relieves towns and cities of “all obligations to maintain, and all liability for damages incurred in the use of, discontinued highways or highways discontinued as open highways and made subject to gates and bars”
- ▶ Therefore, towns need not worry about insufficiencies, noticed or otherwise, on Class VI roads.
- ▶ However, if a town is performing some function on a Class VI road, they should take care not to act negligently.

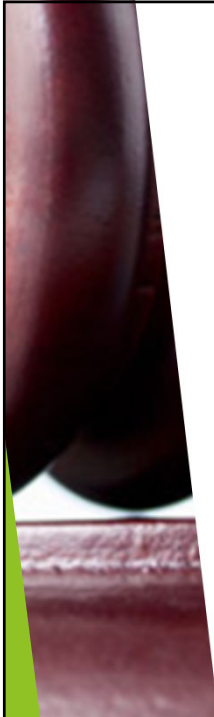
13

## Liability Protections



- ▶ **RSA 231:50** - Towns are not liable for Class VI or discontinued roads
- ▶ **RSA 231:93** - Municipalities shall not be deemed to have any duty of care whatsoever with respect to the construction, **maintenance or repair of class I, III, III-a or VI highways...**


14



## Discretionary Function Immunity

- Who does it cover?
- Does the municipality really have “discretion”?
- Is it really a policy decision?
- Was the decision carried out properly?

15



15



## RSA 31:105: Indemnification of Municipal Officials

Shields officials from individual liability from negligence or other acts . . . if acting in the scope of employment or office.

16



16



## *Tree falls on the road . . .*



▶ **Duty to cut and maintain RSA**  
**231:150**

▶ **Hazardous Tree Declaration RSA**  
**231:145**

17



▶ **What if the hazardous trees are along a scenic road?**

▶ **RSA 231:158**

18

## RSA 231:75: Damages from Grade or Drainage Change

- Give Notice of road work to be done to abutters
- Schedule hearing for opportunity to be heard
- Grant hearing upon request



19

## Liability to Abutting Landowners

- ▶ Road Salt Contamination → RSA 231:92 won't protect!
- ▶ Liability for Trespass
- ▶ Right to access highway



20

20

## Liability for Damage to Town Roads



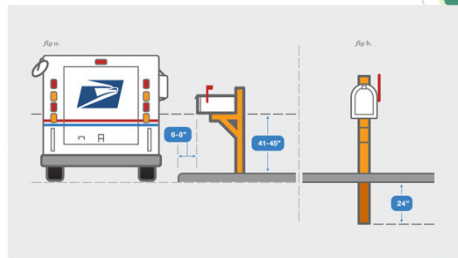
- ▶ Criminal Liability - RSA 236:38
- ▶ Civil Liability for Damage - RSA 236:39
- ▶ Restoration - RSA 236:11
- ▶ Diverting Water - RSA 236:19
- ▶ Snow Obstruction- RSA 236:20- **STATE ROAD ONLY**

21

## Mailboxes



- ▶ Town may be liable for damage
- ▶ “Properly placed”



<https://www.usps.com/manage/mailboxes.htm>

22

# REGULATION

23

## Driveways - RSA 236:13



- **Planning Board or Governing Body authorized to approve driveway permits on town roads.**
- **Must adopt driveway regulations.**
- **Delegate permit issuance and enforcement to Road Agent or other designee**
- **Continuing authority over any driveway even if no permit issued.**
- **Property owner can be ordered to fix driveway that is hazard to traveling public or threat to road integrity**

24

## Street Names & Numbers

- Assigning names—RSA 231:133
- Assigning numbers—RSA 231:133-a
- E-911



25

## Street Signs

- ▶ All signs must comply with Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD). RSA 47:17, VIII(a).
- ▶ "Unauthorized" signs, signals, markings, or devices are prohibited under RSA 265:14.



26

# Discontinuance



## Complete Discontinuance

- ▶ Vote by Legislative Body for a complete discontinuance.
- ▶ Should not add any additional words b/c law favors continuance. (See: *Town of Goshen v. Casagrande*).
- ▶ Roads cannot be lost by adverse possession.

## Subject to Gates and Bars

- ▶ Still Class VI road
- ▶ Allows installation of a gate or bar.
- ▶ The gate or bar cannot interfere with the public's use of the highway, meaning they cannot be locked.

27

## Effect of Discontinuance

- ▶ Extinguishment of public right of access and travel
- ▶ Does not create a private road
  - ▶ Nothing in statute about how private roads are created or how they are different from, e.g., an easement including a private right-of-way.
- ▶ However, discontinuance does not eliminate any private lots from being able to access their properties along the former highway.



28

## Private Roads

- No authority to regulate outside of street names and numbers for E-911 purposes.
- No duty or authority to maintain.
  - So stop plowing private roads!
  - (See *Clapp v. Jaffrey*)
- If you maintain them, you may have accepted them under *Hersh v. Plonski*



Gunther Ct  
PRIVATE ROAD

29

## Regulating Class VI Roads



- ▶ Under the provisions of RSA 41:11, select boards are afforded the same authority as city councils to regulate local roads as provided in RSA 47:17, VII, VIII and XVIII.
- ▶ RSA 47:17 allows regulations pertaining to:
  - ▶ VII: Use of Public Ways
  - ▶ VIII: Traffic Devices and Signals
  - ▶ XVII: Parking

30

## Limiting Access to Certain Persons

**NHMA**  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
EST. 1941

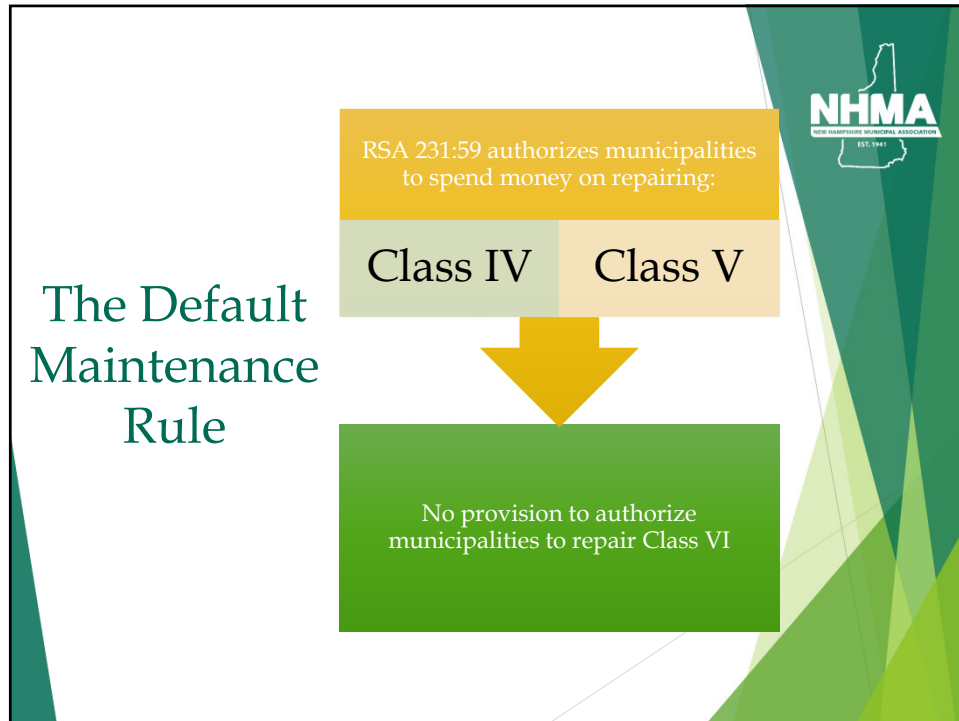
- ▶ Although all Class VI roads are deemed subject to gates and bars, the select board must still regulate such structures to assure public access. [RSA 231:21-a,1.](#)
  - ▶ The public, including motor vehicles, cannot be barred from using a Class VI road, except as weight limits, seasonal or otherwise, prohibit. [RSA 231:191.](#)
- ▶ Limiting access to a Class VI road requires discontinuance – making it a quasi-private road – or reclassification as a Class A trail under [RSA 231-A:2.](#)
  - ▶ Class A trails can be used by owners of land abutting the trail, land served exclusively by such trail for non-developmental use (agriculture/forestry), or access to existing structures.

31

# MAINTENANCE

32





33

**Emergency Lanes: How Class VI Roads May Be Maintained by the Town**

- ▶ RSA 231:59-a - Requires a layout and public hearing by select board on any Class VI or Private Road.
- ▶ Must receive information of a concrete public safety need.
- ▶ Allows the municipality to undertake such “work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles roads.”

**NHMA**  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
EST. 1941

34

## RSA 231:81-a: Private Roads & Maintenance



- ▶ **In the absence of an express agreement or requirement governing maintenance of a private road**, when more than one residential owner enjoys a common benefit from a private road, **each residential owner shall contribute equitably to the reasonable cost of maintaining the private road**, and shall have the right to bring a civil action to enforce the requirement of this paragraph.
- ▶ **Any owner of a residential property abutting a private road who directly or indirectly damages any portion of such road shall be solely responsible for repairing or restoring the portion damaged by such owner.**

35

## RSA 231:81-a: Solves Municipal Headaches



- ▶ In the case of all private road disputes, municipal officials can point to RSA 231:81-a.
- ▶ The statute resolves two of the most common complaints about private roads –
  - ▶ Who is in charge of repaving/ plowing/ or other maintenance?
  - ▶ Who is liable if the road is damaged by one of the persons with rights to the road?
- ▶ Note that it focuses on residential properties...but contains a “savings provision” for other disputes – telling owners to go to court (with one another) – and keeps the municipality out of it.

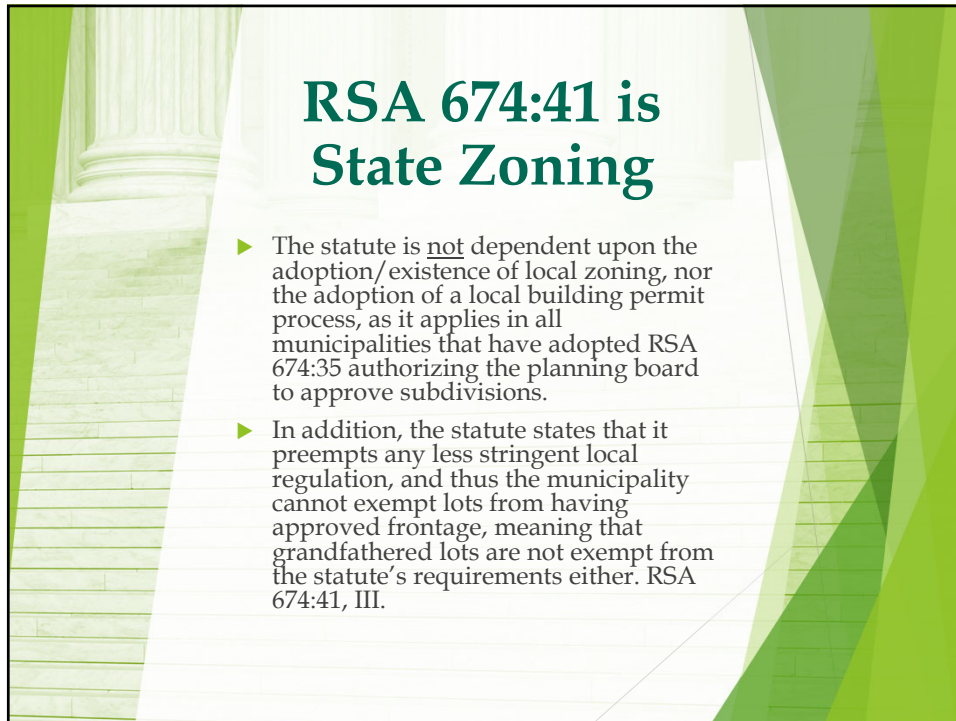
36



37



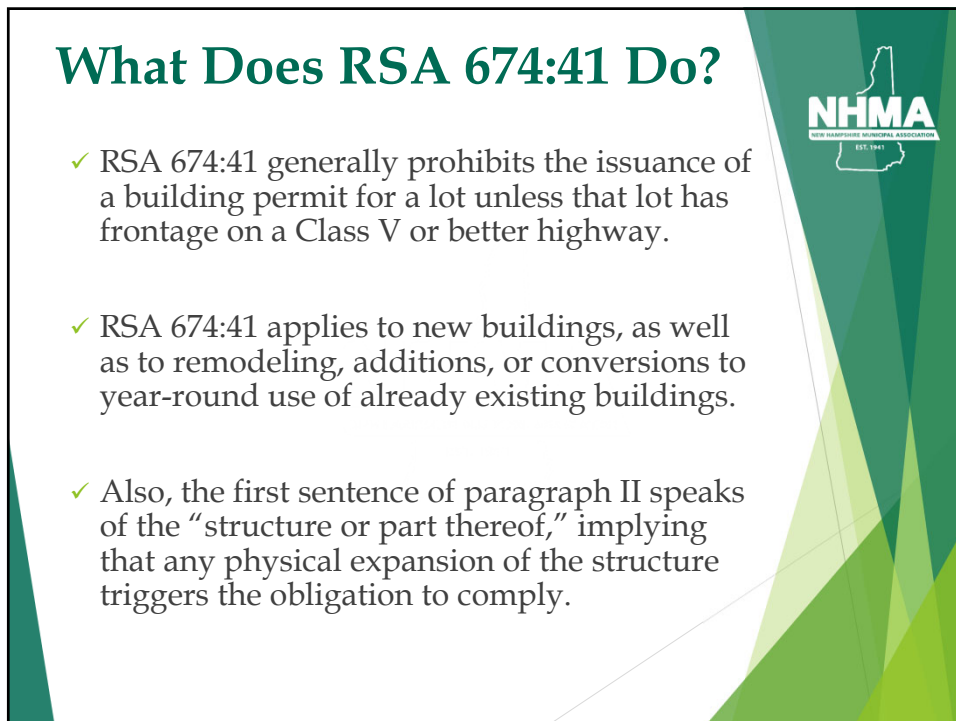
38



## RSA 674:41 is State Zoning


- ▶ The statute is not dependent upon the adoption/existence of local zoning, nor the adoption of a local building permit process, as it applies in all municipalities that have adopted RSA 674:35 authorizing the planning board to approve subdivisions.
- ▶ In addition, the statute states that it preempts any less stringent local regulation, and thus the municipality cannot exempt lots from having approved frontage, meaning that grandfathered lots are not exempt from the statute's requirements either. RSA 674:41, III.

39



## What Does RSA 674:41 Do?

- ✓ RSA 674:41 generally prohibits the issuance of a building permit for a lot unless that lot has frontage on a Class V or better highway.
- ✓ RSA 674:41 applies to new buildings, as well as to remodeling, additions, or conversions to year-round use of already existing buildings.
- ✓ Also, the first sentence of paragraph II speaks of the "structure or part thereof," implying that any physical expansion of the structure triggers the obligation to comply.



40

## A Class V Road or Better



- ▶ “Class V or better” road previously laid, or appears on an official map, or has been accepted.
- ▶ RSA 674:41, I(b) - The street giving access corresponds in its location and lines with:
  - ▶ A street shown on the official map (RSA 674:10); or
  - ▶ A street on a subdivision plat approved by the planning board; or
  - ▶ A street on a street plat made by and adopted by the planning board; or
  - ▶ A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40.

41

## Why Does RSA 674:41 Limit Building?



“The purpose of this limitation on building on class VI highways is to provide against such scattered or premature subdivision as would necessitate the excessive expenditure of public funds.”

*Glick v. Town of Ossipee*, 130 N.H. 643, 649 (1992).

42

## Municipalities Not Obligated to Allow Construction

- ▶ Municipalities empowered to regulate by means of a zoning ordinance frontage requirements, which exclude access routes unsuited for expeditious travel.
- ▶ Basic purpose of requiring frontage is to ensure that a dwelling may be reached by the fire department, police department, and other agencies charged with the responsibilities of protecting the public peace, safety, and welfare.

43

## But what about “Grandfathering?”

- ▶ Some municipal zoning ordinances “grandfather” existing lots. However, such zoning clauses do not make existing lots exempt from the state frontage requirement of RSA 674:41. Paragraph III:
  - ▶ “This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section.”

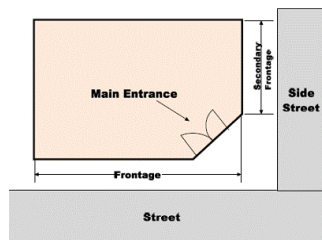
44

## RSA 674:41 Applies to Building Permits in General

- ▶ The statutory title implies that the statute *only* applies to subdivisions, but that is untrue.
- ▶ RSA 674:41 is not limited to only those building permits issued through the subdivision process.
- ▶ Challenged in *Vachon v. Town of New Durham Zoning Bd. of Adjustment*, 131 N.H. 623 (1989), and the challenger lost.

45

## How Much Frontage?



- ▶ Statute is concerned that there is frontage on Class V road, not how much.
- ▶ *Amount* of frontage is governed by local zoning ordinance, not statute.



46

## Minimal Steps to Allow Development on Class VI or Private Road?

Governing body, after review and comment by planning board, votes to authorize building permit.

Municipality clearly disclaims responsibility for maintenance and liability for damages resulting from use of road.

Applicant consents to filing with Registry of Deeds a notice of the limits of municipal responsibility and liability prior to issuance of the permit.

47

### What to Consider When Considering Whether to Allow Development?



Condition of the road



Width and grade of the road



Drainage infrastructure



Extent of demands on public services



Likelihood of future lay out / connection to existing road network

48



## ROW Cannot be Only Access to Property

- ▶ “Street giving access” means “a street or way abutting the lot and upon which the lot has frontage.” RSA 674:41, III.
- ▶ Definition was a legislative change in response to the Supreme Court’s decision in Belluscio v. Westmoreland, 139 N.H. 55 (1994), where the Court held that an easement was sufficient access.

49

## What’s the Waiver?

- ▶ The landowner must execute and record a release and indemnification agreement prior to issuing the building permit.
  - ▶ Note: Any item recorded at the registry of deeds binds all future owners and puts them on notice of the terms.
- ▶ Necessary to protect the municipality from potential liability that could arise in the event there is an injury at the property due to condition of the road.
- ▶ *Prior* because they won’t do it afterward, even if you plead.

50

## Common Terms in a Waiver

- Municipality assumes no responsibility for maintenance, including snow plowing, nor liability for any damages resulting from the use of the road
- Landowner is responsible for maintaining the road and the access to the subject property and releases and discharges the municipality from any maintenance obligation, and from providing any municipal services, including police, fire and ambulance services.
- Landowner agrees to indemnify the municipality from claims, whether brought by the Landowner or third parties, arising out of the use and occupation of the Landowner's property and the maintenance or repair of said road.
- Landowner is responsible for transporting any children to the nearest regular school bus stop.

51

## What if the Application is Denied?

- ▶ Appeal to the ZBA.
- ▶ RSA 674:41, II allows ZBA to “make reasonable exception” to the requirements of RSA 674:41.
- ▶ ZBA may issue the building permit directly on appeal, and subject to conditions if it chooses, if it finds that issuing the permit will not:
  - ▶ tend to distort the official map
  - ▶ increase the difficulty of carrying out the master plan
  - ▶ cause hardship to future purchasers or undue financial impact on the municipality

52

## What Must the Applicant Demonstrate Under 674:41, II?

Applicant must demonstrate:

- ▶ “practical difficulty or unnecessary hardship,” and
- ▶ the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets.

What does “practical difficulty or unnecessary hardship” mean?

- ▶ Not defined in statute...but we probably know what they mean...
- ▶ Refer to the unnecessary hardship test for variances in RSA 674:33, I(b)(5). *Merriam Farm, Inc. v. Town of Surry*, Case No. 2011-311 (decided July 18, 2012).
- ▶ *Merriam Farm* was an unpublished decision, meaning not binding.



53

## ZBA Decision Denying Relief Under 674:41, II

**Vachon v. Town of New Durham Zoning Bd. of Adjustment, 131 N.H. 623 (1989).**

ZBA decision upholding Board of Selectmen’s denial of a building permit under RSA 674:41, II, was affirmed where ZBA found:

Due to bare rocks, narrowness, swampy areas, ledge outcroppings, close bankings, and seasonal flooding, Webster Road probably one of the worst class VI roadways in the town.

The ZBA found that police, fire, and rescue vehicles would have serious difficulties in reaching the properties - substantially increased risk for the inhabitants

Increased possibility of financial impact to the municipality due to injury to town employees and/or damage to Town equipment in trying to reach those properties in emergency situations, etc.

The ZBA also found that it would be inconsistent with the town's master plan to allow erection of the plaintiffs' buildings.

54

## Legislative Body Authorizing Exception. RSA 674:41, II-a

- ▶ Provides another way for a lot to be exempted from the frontage requirements of the statute. The legislative body (town meeting or town/city council) may vote in the same manner as it would vote on a zoning ordinance to grant an exception from the law for any lot, including island lots for islands served exclusively by boats.
- ▶ In town meeting towns, the vote may occur at an annual or special meeting.
- ▶ The question must first be submitted to the planning board for its approval. If the planning board approves, a simple majority vote of the legislative body is sufficient; if the planning board disapproves it, a 2/3 legislative body vote is needed.



55

## Weight Limits, Timber Hauling Operations & OHRV's

56

## Using the Weight Limit Statutes: RSA 231:190 - :191

No requirement that the town have a weight limit ordinance.

The select board/governing body must establish weight limits under RSA 231:190 and RSA 231:191.

These statutes permit the select board to enact maximum weight limits on Class IV, V and VI highways, both seasonally and year-round.

Enactment must be approved by a majority of the members present at a public meeting.

57

## Weight Limit “Seasonal or Otherwise”



- ▶ A road weight limit (whether year-round or seasonal), should be supported with testimony or evidence from the road agent or highway engineer.
- ▶ The hearing record should reflect that the limit was necessary “to prevent unreasonable damage or extraordinary municipal maintenance expense,” citing facts and experience as much as possible to back up this conclusion.
- ▶ Municipalities can consider public safety in addition to road damage when making a determination to impose a weight limit. *Brentwood Distribution LLC v. Town of Exeter*, No. 2014-0729 (N.H. July 7, 2016)

58

## Weight Limit Posting, Granting Exemptions

- ▶ Weight limits must be posted legibly and conspicuously at all entrances from other highways using “weather resistant materials.” RSA 231:191, II.
- ▶ The names of those officials legally authorized to grant exemptions must be posted in the town hall.
- ▶ Exemptions must be granted “in an expeditious manner.”
- ▶ A municipality must grant an exemption if the weight limit would entail “practical difficulty or unnecessary hardship” by causing “significant interference” with a commercial enterprise.
- ▶ Such an exemption may, of course, be subject to reasonable conditions and bonding. However, the exemption may be denied if it “would be detrimental to public safety.” RSA 231:191, V.

59

## Weight Limit Exemption Hearing upon Request

- ▶ If a commercial or industrial company located in the municipality is impacted by a weight limit, it may request a public hearing on the matters by sending the request via certified letter to the governing body.
- ▶ The hearing must be held within 15 working days of the receipt of the request; otherwise, enforcement of the weight limit must be suspended for the remainder of the year or until the hearing is held. RSA 231:191, VII.



60





## Timber Hauling Operations and Driveway Permits

- ▶ Municipalities can require a temporary driveway permit for a logging operation.
- ▶ That driveway permit could ensure safe sight distance and temporary signage warning of trucks entering and exiting
- ▶ Permit could also require installation of an apron at the driveway to protect the adjacent road surface.

61

## Timber Hauling Operations and Bonding



-  A bond may be required to ensure any damage to the adjacent road is repaired due to operations over a temporary driveway, or due to an operation granted an exception to a weight limit due to difficulty or hardship.
-  The bond requirements must be equitably and reasonably applied to similarly situated vehicles using the highway.
-  The type of commodity being transported “shall not” be the determining factor for requiring a bond or for the dollar amount of the bond. RSA 236:10.
-  The person or entity providing the bond shall determine the type of bond furnished, and it may be in the form of cash, letter of credit acceptable to the municipality, or a bond

62

# OHRV's & SNOWMOBILES

63



City or town councils and boards of selectmen may regulate the operation of OHRVs within city or town limits. **215-A:15, IX**

No person can operate an OHRV on any public right of way of unless permitted by the city or town councils or select boards. **RSA 215-A:6, II.**

64



## Procedure to approve OHRV use on a designated road or a sidewalk – RSA 215-A:6, IX



- ▶ Governing Body must hold duly noticed public hearing advertised at least 14 days in advance in a public location in the city or town.
- ▶ Give notice to abutters of the affected road/sidewalk by verified mail.
- ▶ Following a duly noticed public hearing, except in the case of an emergency closure, local authorities may change the allowable usage of a class IV, class V, or class VI highway by OHRVs by giving notification to the supervisor of the bureau and removing any signs that no longer apply.
- ▶ If there is a private petitioner seeking opening of a road to OHRV use that petitioner shall bear the expense of verified mail notification to abutters of property


65

## OHRV's Operational Limitations



- ▶ Where OHRV operation is permitted on town roads speed limit is 20mph.
- ▶ OHRV operators must keep to the extreme right and yield to all conventional motor vehicle traffic
- ▶ When crossing a town road the operator must:
  - ▶ Cross at a 90 degree angle
  - ▶ Bring OHRV to a complete stop at edge of road
  - ▶ Yield to all oncoming traffic
  - ▶ Must possess valid driver's license

66



City or town councils and boards of selectmen may authorize the operation of snowmobiles on sidewalks and class IV, class V or class VI highways & bridges.  
RSA 215-C:8, IX

No person can operate a snowmobile on any public right of way of unless permitted by the city or town councils or select boards.  
RSA 215-C:8, II

67



**TAKE A 10-MINUTE BREAK**

**COFFEE BREAK**



68

# Formation & Classification

69

## Road Terminology

- ▶ Right of Way
  - ▶ "a right to pass over another's land more or less frequently according to the nature of the use to be made of the easement"- *Jean v. Arsenault*, 85 N.H. 72
- ▶ Private Road
  - ▶ Can refer to a discontinued road, a class VI road, subdivision roads that are still under development, etc. Main factor is that municipality has no duty to maintain, however public may still have a right of way.
  - ▶ The term "private road" is commonly used to describe municipal responsibility, not necessarily the public's right to access.
- ▶ Public Road
  - ▶ Roads subject to reasonable regulation by public authorities, duty to maintain, and where the town, city or state holds the right of way.



70

## State Roads


|             |                         |
|-------------|-------------------------|
| Class I     | Primary State System    |
| Class II    | Secondary State System  |
| Class III   | State Recreational Road |
| Class III-a | Boating Access Roads    |

71

## Municipal Roads

|          |  |
|----------|--|
| Class VI | RSA 229:5, VII & 231:21-a                      |
| Class V  | RSA 229:5, VI & 231:3                          |
| Class IV | Urban Compact Section Highways - RSA 229:5, IV |
| Class II | Unimproved Class II - RSA 230:4                |

72

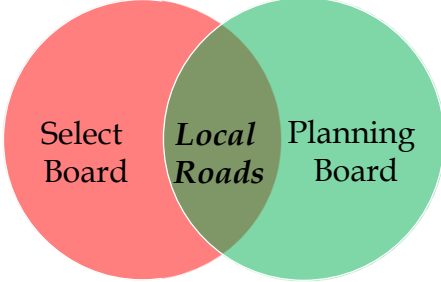


## What's a Public Highway?

**NHMA**  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
EST. 1941

- Highway = Road
- Ownership separate from easement
- Easement for viatic use
- **Public** use
- RSA 229:1 – Not really a “definition”

73



**NHMA**  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
EST. 1941

- Layout of new roads – *Select Board* RSA 231:8
- Acceptance of new roads – *Select Board* 674:40-a
- Maintenance of existing roads – *Select Board* 231:65
- Town Road Construction Standards – *Select Board* RSA 41:11, RSA 47:17, VII, VIII, XVIII
- Approval of new subdivision Roads – *Planning Board* RSA 674:36
- Planning for new and existing roads – *Planning Board* RSA 674:2, II
- Capital Improvement Planning for roads – *Planning Board* Subdivision & Site Plan Road Construction Standards – *Planning Board* RSA 674:36, I, (e); RSA 674:44, II, (d) (c) (f)

74

# NHDOT Geometric Design Standards For Local Roads



September 1990

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
MINIMUM GEOMETRIC & STRUCTURAL GUIDES FOR LOCAL ROADS AND STREETS

| Average Daily Traffic (Veh./Day) | 0-50    | 50-200                         | 200-750                        | 750-1500                       | 1500 & OVER |
|----------------------------------|---------|--------------------------------|--------------------------------|--------------------------------|-------------|
| Pavement Width (Feet)            | 18 min. | 20                             | 20                             | 22                             | 24          |
| Shoulder Width (Feet)            | 2       | 2                              | 4                              | 4                              | 8-10        |
| Center of Road to Ditch Line     | 15      | 18                             | 18                             | 19-21                          | Varies      |
| Pavement Type                    | Gravel  | Asph. Surf. Hot Bitum. Treated | Asph. Surf. Hot Bitum. Treated | Asph. Surf. Hot Bitum. Treated | Hot Bitum.  |
| Slope of Roadway                 | 4%      | 3%                             | 2%                             | 2%                             | 2%          |
| Base Course Depth-(Gravel)       | 12"     | 12"                            | 12"                            | 12"                            | 18"         |
| (Cr., Gravel)                    | -       | -                              | 4"                             | 6"                             | 8"          |

Notes

1. Gravel surface should be paved where steep grades occur.
2. For average daily traffic over 1000 veh./day paved shoulders should be considered
3. Base course depths may need to be increased in areas of poor soils

TYPICAL CROSS SECTION

► <https://www.nh.gov/dot/org/projectdevelopment/planning/documents/SuggestedMinimumDesignStandardsforRuralSubdivisionStreets.pdf>

# How are highways created? RSA 229:1



## Dedication vs. Acceptance



### Dedication

- Case law/RSA 231:51 (*Duchesnaye*)
- Clear & unequivocal intent
- Filing & recording subdivision plan
- May be implied

### Acceptance

- Vote of legislative body
- RSA 674:40: planning board, then town meeting
- May be implied (*Hersh v. Plonski*)
- RSA 674:40-a: delegated acceptance to select board


77

## Statutory Layout RSA 231:8

- ▶ Petition required
- ▶ "Occasion"
- ▶ Steps:
  - ▶ Notice
  - ▶ Planning Board, then legislative body
  - ▶ Hearing
  - ▶ Return
  - ▶ Damages
- ▶ Right to appeal



78



## Conditional Layout / Betterment Assessments

- ▶ RSA 231:23 (“conditional layout”); RSA 231:28 through :33 (“betterment assessment”)
- ▶ Betterment is better!
  1. Hearing
  2. Abutters Petition
  3. Apportionment
  4. Collection

79

## Hot Topics in Legal Inquiries

80





*Our Town received an application to construct a house on a lot that only has access by way of a discontinued road, not Class V or Class VI, does RSA 674:41 apply in this situation?*

► If a road was discontinued, that means the ownership of the roadbed would have reverted to the abutting property owners, and under the right circumstances, this may create a private right-of-way. If that is the case then in order to receive permission to build on that private right-of-way the provisions RSA 674:41, I would apply:

- The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and
- The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and
- Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought




81

*What is the authority of the town for requiring Driveway Permits on Class VI Roads and/or Private Roads?*

► The ability of the town to require driveway permits only extends to roads within the town's jurisdiction. The town only has jurisdiction over Class IV, Class V and Class VI highways. Thus, the town can require driveway permits on Class VI roads, but would have no jurisdiction over driveways on Private Roads.

► However, a driveway permit could be required for the intersection of a Private Road and a Class IV, Class V or Class VI highway.



82

*A subdivision plan before the planning board is proposing that the town re-classify a portion of a Class VI road as Class V. Does this require town meeting approval??*


- ▶ There are two ways to reclassify a Class VI road as Class V:
  - Town Meeting can reclassify a Class VI road as Class V. RSA 231:22-a.
  - In the alternative, the select board can layout a Class V highway over a Class VI highway. RSA 231:28.
  - In either instance the re-classification can be made subject to betterment assessments as provided in RSA 231:28-33.

83

*We have a road that was discontinued as an open highway and a resident who owns property on both sides has blocked the discontinued part of that road with some boulders and this is preventing another landowner from accessing his landlocked property further down on this road. How does RSA 231:43 III apply in this situation? .*


- ▶ RSA 231:43, III states that upon a vote of town meeting to discontinue a road as an open highway: “No owner of land shall, without the owner’s written consent, be deprived of access over such highway, at such owner’s own risk.”
- ▶ The NH Supreme Court has stated that the phrase “deprived of access” as found in RSA 231:43, III refers to a landowner’s reasonable means of ingress and egress. A right of access over a discontinued highway does not exist unless it is reasonably necessary for a landowner’s ingress and egress. *Bellevue Props. v. 13 Green St. Props.*, 174 N.H. 513, 518 (2021).
- ▶ Whether the barrier placed by the property owner is impeding access reasonably necessary for the landlocked property owner would be a private property dispute to be resolved between those private property owners.

84



*Does allowing a resident to improve a Class VI road, increase or change the town's liability regarding that road?*


- ▶ Under RSA 231:93 a municipality has no liability for, nor a duty of care, with respect to the construction, maintenance or repair of a Class VI highway, and this is not modified by work done by third parties, such as a resident, to improve a Class VI road.
- ▶ Nevertheless, it would be imprudent to permit a resident to do any work on a Class VI highway unless that work was approved and supervised by your road agent. Any such work should only be conducted after the select board has give written permission to do such work that is plainly and clearly specified in a Street Opening Permit granted by the board.



85

*I have heard that towns can only post seasonal weight limits on roads for 30 days. What vehicles are allowed to operate on posted roads?*

- ▶ Under RSA 231:191 the select board has the authority to establish a weight limits whether year-round or seasonal and the board can establish any necessary period of time, 30 days or longer, to set and maintain mud seasons weight limits.
- ▶ The following are the statutory exemptions from posted weight limits:
  - RSA 231:191 permits landowners and commercial enterprises which use the road to be granted an exception to mud season weight limits if they show that “practical difficulty or unnecessary hardship” will result from the weight limit.
  - RSA 236:3-a excludes heating fuel trucks, trucks delivering processed milk products, trucks carrying sap for maple syrup production and septic pumper trucks from seasonal weight limits.
  - RSA 266:19-a exempts firefighting equipment from the restrictions.
  - RSA 266:21 exempts winter maintenance equipment that is owned, leased or rented by the state or any political subdivision of the state.
  - RSA 266:21-a exempts damaged, disabled, or abandoned vehicles being towed by a tow truck for a reasonable distance to the nearest safe haven off the highway.
  - RSA 266:24 exempts “implements of husbandry” (farm equipment) from the restrictions.



86



**THANK YOU**

*For attending our Workshop!*

**NHMA'S MISSION**

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.

**legalinquiries@nhmunicipal.org**  
**603.224.7447**  
**www.nhmunicipal.org**

**NHMA**  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
EST. 1941

Contact Us

87