

FACT SHEET: CLASS VI ROADS

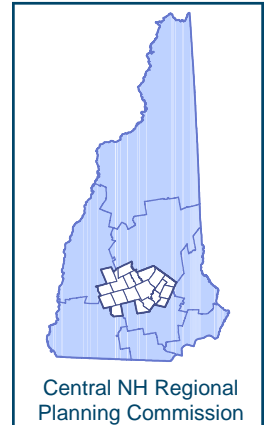
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The following Fact Sheet was created to provide basic information regarding Class VI Roads and the statutes governing them. For more specific information or a legal analysis, please review the NH Statutes carefully and speak with your municipal attorney.

Class VI highways are defined as: “... all other existing public ways, and shall include all highways discontinued as open highways and made subject to gates and bars, except as provided in paragraph III-a [boating access highway], and all highways which have not been maintained and repaired by the town in suitable condition for travel thereon for 5 successive years or more except as restricted by RSA 231:3, II.”

(RSA 229:5, VII)

Keep in mind that while Class VI Roads are defined as “subject to gates and bars,” any such structures must not interfere with the lawful public use of the road as defined by the local ordinances. The Board of Selectmen has the authority to regulate said structures. “Gates and bars” were historically erected by abutting property owners to confine livestock; however, today, the associated liability potential is much greater and should be carefully considered.



Two ways for a Class V road to become a Class VI road:

1. Discontinued subject to gates and bars
(RSA 231:45 and 229:5, VII)
 - Requires a vote by the Legislative Body (Town Meeting or City Council).
 - The warrant article should explicitly describe the location and that the road would be “discontinued subject to gates and bars”.
2. Not maintained for a period of at least 5 successive years (RSA 229:5 and 231:45-a)
 - Historically, most of the State’s Class VI roads are a result of this provision.
 - Roads that became discontinued because of this provision could revert to Class V status if they are regularly maintained for a period of at least 5 successive years by the municipality. (RSA 229:5, VI)

Building on Class VI Roads

Three steps must be taken for building to be allowed on a Class VI Road (RSA 674:41 I(c)) :

1. 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 Class VI highway or a portion thereof; and
2. The municipality neither assumes responsibility for maintenance of said Class VI highway nor liability for any damages resulting from the use thereof; and
3. 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.

A key to successfully managing development on Class VI roads is for the town to adopt a consistent policy. While a number of considerations may become part of a thoughtful policy, there are a couple common approaches:

- Allowing development with the appropriate waivers of liability.
- Limiting development to within a certain distance, e.g. 600 feet, of a Class V or better road.
- Requiring that the developer bring the road (or the portion between the development and the nearest better class road) up to Class V standards.

Any decision by the Board of Selectmen not to approve a building permit may be appealed to the Zoning Board of Adjustment which may grant an exception. (RSA 674:41, II)

Class VI Road Liability

“Towns shall be relieved of all obligation 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.” (RSA 231:50)

A good practice for municipalities to follow is the posting of signs at the beginning of Class VI roads notifying the public that the road is unmaintained and traveled at the users’ own risk.

Regulation

One of the most asked questions about the regulation and use of Class VI roads is concerning Off Highway Recreational Vehicles (OHRVs).

- Defined in RSA 215-A:6, "*Off highway recreational vehicle*" means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle."
- "With bylaws or ordinances city or town councils and boards of selectmen may regulate the operation of OHRVs within city or town limits, providing they do not conflict with provisions of this chapter." (RSA 215-A:15 I)
- There is no automatic right for OHRVs to travel on Class VI Roads. Through RSA 215-A:6 IX, Boards of Selectmen and Town/City Councils may, following a public hearing, allow the use of Class IV, V, or VI roads by OHRVs.

Regarding snowmobiles, RSA 215-A:7 II specifies that Boards of Selectmen or Town/City Councils may authorize the use of Class IV, V, or VI roads that are not maintained during the winter for use by snow traveling vehicles.

The Board of Selectmen of a municipality has the power to regulate local highways without requiring any action at a town meeting. (RSA 41:11)

The Board of Selectmen is given the same powers as a Town or City Council provided in RSA 47:17.

Regarding Class VI roads, "...the municipality shall have the same regulatory authority over such highways as is the case with class V highways, including but not limited to the authority to regulate their use pursuant to RSA 41:11 and RSA 47:17, VII, VIII and XVIII." (RSA 231:21-a II)

Complete Discontinuance

While Class VI roads are "discontinued subject to gates and bars," that standing is very different from being completely discontinued.

Municipalities have the power to completely discontinue a road by a vote at town meeting. (RSA 231:43) The effect of completely discontinuing a road is the dissolution of the public right of way. With the ending of the public interest, the land returns entirely to the control of the abutting land owners.

In some situations, the municipality holds a fee simple title to the land beneath the right-of-way. While this more unusual for older roads, it has become

increasingly common with newer development roads. The intent of the town to keep or relinquish the fee simple title should also be addressed in the warrant article concerning the discontinuance of the road.

While the town may vote to completely discontinue a road, any private easements that follow the public right of way, e.g. utilities, would still be intact.

In situations where the discontinuance of a road is in question, the burden of proof that it has been discontinued resides with those who wish to show it as discontinued. In other words, public rights of way are presumed to exist until proven otherwise.

Additional Resources:

A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails. Local Government Center, 2004
New Hampshire Planning and Land Use Regulation. New Hampshire Office of Energy and Planning, 2004
Model Class VI Building Permit Policy. <http://www.cnhrpc.org/planning/ClassVIBuildingPolicy.pdf>, 2001

For more information, please contact Nicholas Alexander, Transportation Planner, Central NH Regional Planning Commission at 226-2020. Please contact us with any suggestions for future Fact Sheet topics.