

December 10, 2018

TOWN OF CANDIA
ROAD AGENT'S REPORT
Month of November 2018

Work Summary:

- There were 3 plowable storms & 8 sand/salt spreader runs.
- Repairs were finished to the North Road culverts.
- Road grading on Carrier Rd., Donovan Rd., Podunk Rd., Flint Rd., & Hook Road was done.
- Patching was done as needed.
- Hauled sand to stockpile


Dennis Lewis, Road Agent

No Crime Incident Event Breakdown

Event	Description	Total	%
911	911 Hang Up	0	00.0
ACP	Animal Complaint	5	01.7
AFE	Assist Fire/EMS	3	01.0
AIM	Aided Motorist	1	00.3
AL	ALARM	0	00.0
AOA	Assist Other Agency	20	06.8
ASC	Assist Citizen	28	09.5
BEA	BEAS Investigation	0	00.0
CF	Dog License Civil Forfeiture	0	00.0
CIN	Child In Need of Services	0	00.0
CIV	Civil Standby	1	00.3
CRA	Cruiser Accident	0	00.0
DCF	Discharge Firearm	0	00.0
DCI	DCYF Investigation	0	00.0
DIS	Disturbance	6	02.0
FPR	FOUND PROPERTY	1	00.3
IEA	INVOLUNTARY EMERGENCY HOSPITALIZATION	0	00.0
JUV	Juvenile Complaint	3	01.0
LPR	Lost Property	10	03.4
MED	Medical Call	0	00.0
MIP	Missing Person	0	00.0
MVC	MOTOR VEHICLE COMPLAINT	2	00.7
NC	Noise complaint	0	00.0
NDT	National Drug Take Back	0	00.0
NED	Neighbor Dispute	1	00.3
NO	NOTIFICATION	3	01.0
NTO	No Trespass Order	0	00.0
OD	DRUG OVERDOSE	1	00.3
OF	FATAL OVERDOSE	0	00.0
OHR	OHRV COMPLAINT	3	01.0
OTH	Other	1	00.3
PDB	Prescription Drug Box	0	00.0
PIN	Police Information	73	24.8
RAD	RADAR ENFORCEMENT	0	00.0
RH	Road Hazard	0	00.0
RPO	RETURN PROPERTY TO OWNER	0	00.0
SC	SHOOTING COMPLAINT	1	00.3
SDA	Suspected Drug Activity	1	00.3
SDT	Sudden Death	1	00.3
SEC	SECURITY CHECK	3	01.0
SGA	Suspected Gang Activity	0	00.0
SP	SERVE PAPERS	73	24.8
SPA	SUSPICIOUS ACTIVITY	11	03.7
SPM	SUSPICIOUS MOTOR VEHICLE	2	00.7
SPP	SUSPICIOUS PERSON	0	00.0
SUI	SUICIDE	3	01.0
SX	Sex Offender Registration	28	09.5
TE	Traffic Enforcement	0	00.0
TRU	Truancy	0	00.0
VIN	VIN VERIFICATION	0	00.0
WB	Well Being Check	6	02.0
---	Not Specified	3	01.0

Grand Total: 294

01/01/2018 - 11/30/2018

Offenses (State Law) By Month

	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>TOTALS</u>
FSA - Sexual Contact - Victim	0	0	0	0	0	0	0	0	1	0	0	1
Simple Assault; Physical Conta	0	0	0	0	0	1	0	0	0	0	0	1
Simple Assault; BI	0	0	0	0	2	0	0	0	0	0	0	2
DOMESTIC VIOLENCE	0	0	0	0	0	0	1	0	0	0	0	1
DV; Simple Assault; Physical C	0	0	0	0	1	0	2	0	1	0	3	7
DV; Simple Assault - BI	0	0	0	0	0	0	0	0	0	1	0	1
DV; Crim Threat; Fear of Bodil	0	0	0	0	0	0	0	0	0	1	0	1
Criminal Threatening - Conduct	0	1	0	0	0	0	0	0	0	0	0	1
Criminal Threatening - conduct	0	0	0	0	1	0	0	2	0	0	0	3
Stalking	0	0	0	0	0	1	0	0	0	0	0	1
Burglary Class A Felony	0	0	0	0	0	0	0	0	0	1	0	1
Burglary	0	0	0	0	0	0	0	0	0	1	0	1
Theft by Unauthd Taking \$0-\$10	0	0	0	0	0	0	1	0	0	0	0	1
Willful Concealment, theft	0	0	0	0	0	0	1	0	0	0	0	1
Burglary Class A Felony	0	0	0	0	0	0	0	0	0	1	0	1
Theft by Unauthd Taking \$0-\$10	1	1	0	1	0	0	0	0	1	0	0	4
Attempt To Commit	0	0	0	0	0	0	0	0	0	0	1	1
Theft by Unauthd Taking \$0-\$10	0	0	1	0	0	0	0	0	0	0	0	1
Forgery Govt Instrument, Check	0	0	1	0	0	0	0	0	0	0	0	1
Theft by Deception \$0-\$1000	0	1	0	0	0	1	0	0	0	0	0	2
Theft by Deception \$1501+	0	0	0	0	0	0	1	1	0	0	0	2
Theft by Unauthd Taking \$0-\$10	0	0	0	0	0	0	0	0	0	1	0	1
Credit Card Fraud, \$0-\$1000	0	0	0	1	2	0	0	0	0	0	1	4
Identity Fraud; Obtain Persona	0	1	0	0	0	1	1	0	0	0	1	4
Identity Fraud; Pose to get In	0	0	0	0	0	0	0	0	1	0	0	1
Criminal Mischief	1	0	0	1	0	0	0	0	0	0	0	2
Criminal Mischief	1	1	1	0	0	0	1	1	0	0	2	7
Possess >3/4 oz Marij or 5gms	0	0	0	0	0	0	0	0	0	1	0	1
Cntrl Drug: Sched 1 - 4; Posse	0	0	0	0	0	0	0	0	2	1	0	3
BENCH WARRANT-ELECTRONIC	0	0	1	0	0	0	0	0	0	0	0	1
Cruelty to Animals; Negligent	0	0	0	0	0	0	1	0	0	0	0	1
Issuing Bad Checks \$1001-\$1500	0	0	0	0	0	0	0	1	0	0	0	1
Loitering or Prowling	0	0	0	0	0	1	0	0	0	0	0	1
Riot	0	0	0	0	1	0	0	0	0	0	0	1
Disorderly Conduct	0	0	0	1	0	0	1	0	0	0	0	2
DRIVING WHILE INTOXICATED	0	0	0	0	0	0	1	0	0	0	0	1
DUI - impairment	0	0	0	0	1	0	0	0	0	0	0	1
DUI 2nd or 3rd; Impairment	0	0	0	1	0	0	0	0	0	0	0	1
DUI Aggrvtd Collision w/ Ser I	0	0	0	0	0	0	0	0	0	1	0	1
PROTECTIVE CUSTODY OF INTOXICA	0	0	0	0	0	1	0	0	0	0	0	1

01 Meeting Log

Protective Custody - Alcohol	0	0	0	0	0	0	0	0	0	0	1	1
BENCH WARRANT-ELECTRONIC	0	1	0	0	0	0	0	0	0	0	0	1
Criminal Trespass	0	0	0	1	0	1	1	0	1	0	0	4
Assist Other Agency	0	0	0	0	0	1	0	0	0	0	0	1
Unlawful Activities; Litter Co	1	1	1	1	0	0	1	0	0	0	0	5
Violation of Protective Order	0	1	0	0	1	0	1	0	0	0	0	3
Negligt Discharge/Gun, Bow, et	0	0	0	0	0	0	0	0	0	1	0	1
Littering; Penalty	0	0	0	0	0	0	0	1	1	0	0	2
Procuring Dog License; Tag	0	1	0	0	0	0	0	0	0	0	0	1
Dog; Menace, Nuisance, Vicious	1	0	1	0	1	2	0	0	1	1	0	7
BENCH WARRANT-ELECTRONIC	0	2	0	0	0	0	0	0	1	0	0	3
Breach of Bail	0	0	0	0	1	1	1	0	0	0	0	3
Breach of Bail Conditions	0	0	0	0	0	0	0	0	0	0	1	1
Arrest Without a Warrant (Fugi	0	1	0	0	0	0	0	0	0	0	0	1
DV; Crim Threat; Fear of Bodil	0	0	0	0	0	0	0	0	0	1	0	1
Theft by Unauthd Taking \$1501+	0	0	0	0	0	0	0	0	0	1	0	1
Obstruct Govt Administration	0	0	0	0	1	0	0	0	0	0	0	1
Hindering Apprehension/Prosecu	0	0	0	0	1	0	0	0	0	0	0	1
Harassment	0	0	0	0	0	0	0	0	0	1	1	2
DOG RUNNING AT LARGE-Candia T.	1	1	0	4	1	3	0	0	0	0	0	10
POLICE INFO	0	0	0	0	0	0	0	1	0	0	0	1
ARREST ON ANOTHER AGENCY'S WAR	0	0	0	0	0	0	0	0	0	2	1	3
Conduct After; Property Damage	0	0	0	0	0	1	0	0	0	0	0	1
Suspension of Vehicle Registra	0	1	0	1	0	0	0	0	0	0	0	2
Unregistered Vehicle	0	0	0	0	0	1	0	0	0	1	0	2
License Reqd; Op w/o Valid Lic	0	1	0	0	0	0	0	0	0	0	0	1
Drive after Rev/Sus	0	0	0	1	1	0	0	0	0	0	0	2
Drive after Rev/Sus 265:79 or	0	0	0	0	0	0	0	0	0	0	1	1
Drive after Rev/Suspension	0	1	1	2	0	1	0	0	0	1	0	6
Conduct After Accident	0	0	0	0	0	0	1	0	0	0	0	1
Failure to Dim Lights	0	1	0	0	0	0	0	0	0	0	0	1
Speeding 11-15 mph over 55 lim	0	0	0	0	1	0	0	0	0	0	0	1
Speeding 16-20 mph over 55 lim	0	0	1	0	0	0	0	0	0	0	0	1
Reckless Operation	0	0	0	0	1	0	0	0	0	0	0	1
APPEAL OF ADMINISTRATIVE LICEN	0	0	0	0	1	0	0	0	0	1	0	2
Arrest - Bench Warrant	0	0	1	0	0	0	0	0	0	0	3	4
TOTALS	6	17	9	15	18	17	16	7	10	19	16	150

MEMORANDUM

To: Candia Board of Selectmen
From: Candia Police Chief Michael McGillen
Subject: Possible promotion of Richard Langlois to Corporal
Date: December 3, 2018
CC: file

Based on seniority, merit, and work performance, I recommend that Candia Police Officer Richard Langlois be promoted to the rank of Corporal effective immediately. I would suggest he start at Grade 7 Step 16 \$29.11hr. His current hourly rate is \$28.59.

Officer Rick Langlois has been with the Candia Police Department since July, 2000. He is the Departments firearms instructor and is the lead Field Training Officer, which trains newly hired officers. Officer Langlois has signed up for a leadership class in January 2019.

**Candia Volunteer
Fire Department
11 Deerfield Road
Candia, NH 03034
603-483-8588
603-483-0252 fax**

Memo

Date: December 10, 2018
To: Board of Selectmen
Re: Monthly Report

NOVEMBER 2018 HIGHLIGHTS

1. Regular Truck and Building Maintenance
2. Auto Extrication
3. Fire and EMS Call Reporting in Computer
4. Communication Protocol
5. EMS Training

Candia Volunteer Fire Department

Departmental Activity

Current Period: 11/1/2018 to 11/30/2018, Prior Period: 11/1/2017 to
11/30/2017

00:00 to 24:00

All Stations

All Shifts

All Units

Fire Alarm Responses, Dispatch/Remote Responses, Training Classes,
Activities (Non-Incident), Occupancy Inspections and Activities, Hydrant
Insp/Repairs, Hydrant Flow Tests, Equipt Maint/Testing, Departmental Events

Category	Current Period		Prior Period	
	Count	Staff Hrs	Count	Staff Hrs
Dispatch/Remote Station Incident*				
EMS Incidents	0	0.00	0	0.00
NFIRS Incidents	0	0.00	0	0.00
	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0.00</u>
Fire Alarm Situations				
Combustible/flammable spills & leaks	2	10.82	1	1.85
Electrical wiring/equipment problem	2	121.90	1	2.80
Emergency medical service (EMS) Incident	17	45.97	19	55.66
False alarm and false call, Other	1	0.52	0	0.00
Good intent call, Other	3	1.24	0	0.00
Mobile property (vehicle) fire	1	4.90	1	13.02
Rescue or EMS standby	1	0.60	1	1.80
Search for lost person	0	0.00	1	3.00
Service call, Other	0	0.00	1	2.88
Smoke, odor problem	0	0.00	1	0.68
Structure Fire	0	0.00	2	43.68
System or detector malfunction	1	1.20	1	3.01
Unintentional system/detector operation	2	3.75	0	0.00
Water problem	1	1.80	0	0.00
Wrong location, no emergency found	2	4.18	0	0.00
	<u>33</u>	<u>196.88</u>	<u>29</u>	<u>128.38</u>
Non-Incident Activities				
Administrative	0	0.00	1	3.00
Association Event	19	75.50	18	84.00
Communications Work/Maintenance	0	0.00	1	1.00
Company Training	0	0.00	9	0.00
Duty Sunday	23	66.50	34	70.50
Equipment upkeep	2	10.50	4	2.50
Explorers	3	6.00	0	0.00
Explorers Training	3	6.75	0	0.00
Fire Permits (Forestry)	2	4.00	10	10.50
Public Education	0	0.00	1	4.50

* Staff hours for Fire Alarm responses that have an associated EMS alarm record are considered shared hours. Shared hours are posted only with the EMS alarm responses to avoid duplication of staff hours in totals.

Candia Volunteer Fire Department

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Fire Alarm Responses, Dispatch/Remote Responses, Training Classes,
Activities (Non-Incident), Occupancy Inspections and Activities, Hydrant
Insp/Repairs, Hydrant Flow Tests, Equipt Maint/Testing, Departmental Events

Category	Current Period		Prior Period	
	Count	Staff Hrs	Count	Staff Hrs
Non-Incident Activities				
Station Standby - Town Coverage	1	4.50	4	14.50
Station Work	1	2.00	0	0.00
Training	2	11.00	0	0.00
	56	186.75	82	190.50
Testing/Maintenance of Equipment				
Weekly Check	1	0.00	0	0.00
	1	0.00	0	0.00
Training				
Auto Extrication	12	33.00	0	0.00
Cardiovascular System	0	0.00	6	12.00
Emergency Medical Services	7	14.00	0	0.00
Firehouse Reporting Software	0	0.00	14	17.50
Smoke Behavior	10	10.00	0	0.00
Technical Rescue	0	0.00	32	64.00
Training Burn	0	0.00	8	40.00
	29	57.00	60	133.50

* Staff hours for Fire Alarm responses that have an associated EMS alarm record are considered shared hours. Shared hours are posted only with the EMS alarm responses to avoid duplication of staff hours in totals.

November, 2018 Building Activity Report Summary

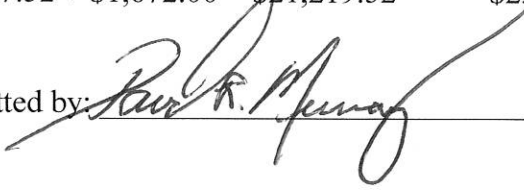
	November 2017	November 2018
Permits Issued	24	36
New Code Enforcement Cases	0	0
Open Code Enforcement Cases	3	4
Code Enforcement Cases Closed	1	3
Inspections Performed	106	118
CO's/CC's & Closed Permits	37	43
Renewed Permits	2	2

.....
 Revenue November, 2017
 \$1,612.00+ \$60.00 = \$1,672.00

Revenue November, 2017
 \$1,649.00 + \$133.00 = \$1,782.00

Revenue YTD, 2017
 \$19,547.52 + \$1,672.00 = \$21,219.52

Revenue YTD, 2017
 \$23,285.40 + \$1,782.00 = \$25,067.40

Submitted by:  Date: 12/10/2018

November 2018

INSPECTION BREAKDOWN Including CO's

Commercial, Mixed, L1, L2

Building (BP)	1
Electrical (EL)	
Gas Piping (GP)	1
Plumbing (PL)	
POA/FC/Use	1

Residential

Building (BP)	21
Demo (DE)	2
Electrical (EL)	15
Gas Piping (GP)	9
Plumbing (PL)	10
Oil Burner (OB)	2
Gas Burner (GB)	4
Underground Tank (UG)	3
Pool (PO)	1
Roof (RF)	2
Sign (SI)	1
Solar (SO)	1
Septic (SE)	1
Finals	43
Violations (VI)	

Total Inspections: 118

BREAKDOWN PERMITS ISSUED

Permit's issued Breakdown

Building (BP)	5
Demolition (DE)	1
Electrical (EL)	7
Gas Piping (GP)	9
Plumbing (PL)	4
Mechanical (ME)	1
Oil Tank (OT)	1
Underground Tank (UT)	2
Gas Burner (GB)	3
Roof (RF)	2
Signage (SI)	1
Use/POA/Life Safety	

Total Permits: 36

November 2018

The Candia Recycling Center (CRC) had land-filled **55.47** tons of Municipal Solid waste (MSW) during November 2018. The CRC sent **45.14** tons of C&D debris to a C&D recycling Center during November 2018. There was **100.61** tons of Waste processed in November 2018.

Recyclables

Mix Paper – 8 bales = **12,867** lbs. = **6.43** ton

Cardboard – 8 bales **11,219** lbs. = **5.61** ton

#1 -#7 plastics – 3 bales = **3628** lbs. = **1.81** ton

Aluminum Cans – 2 bales **1544** lbs. = **.77** ton

Tin /Steel cans – 3 bales = **4179** lbs. = **2.09** ton

The **24** bales created during November 2018 weighed **33,420** lbs. or **16.71** tons. On 11/30 there was one load of glass recycled that weighed approximately **23,620** lbs. or **11.81** tons. There was a grand total of **57,040** lbs. or **28.52** tons recycled during November 2018.

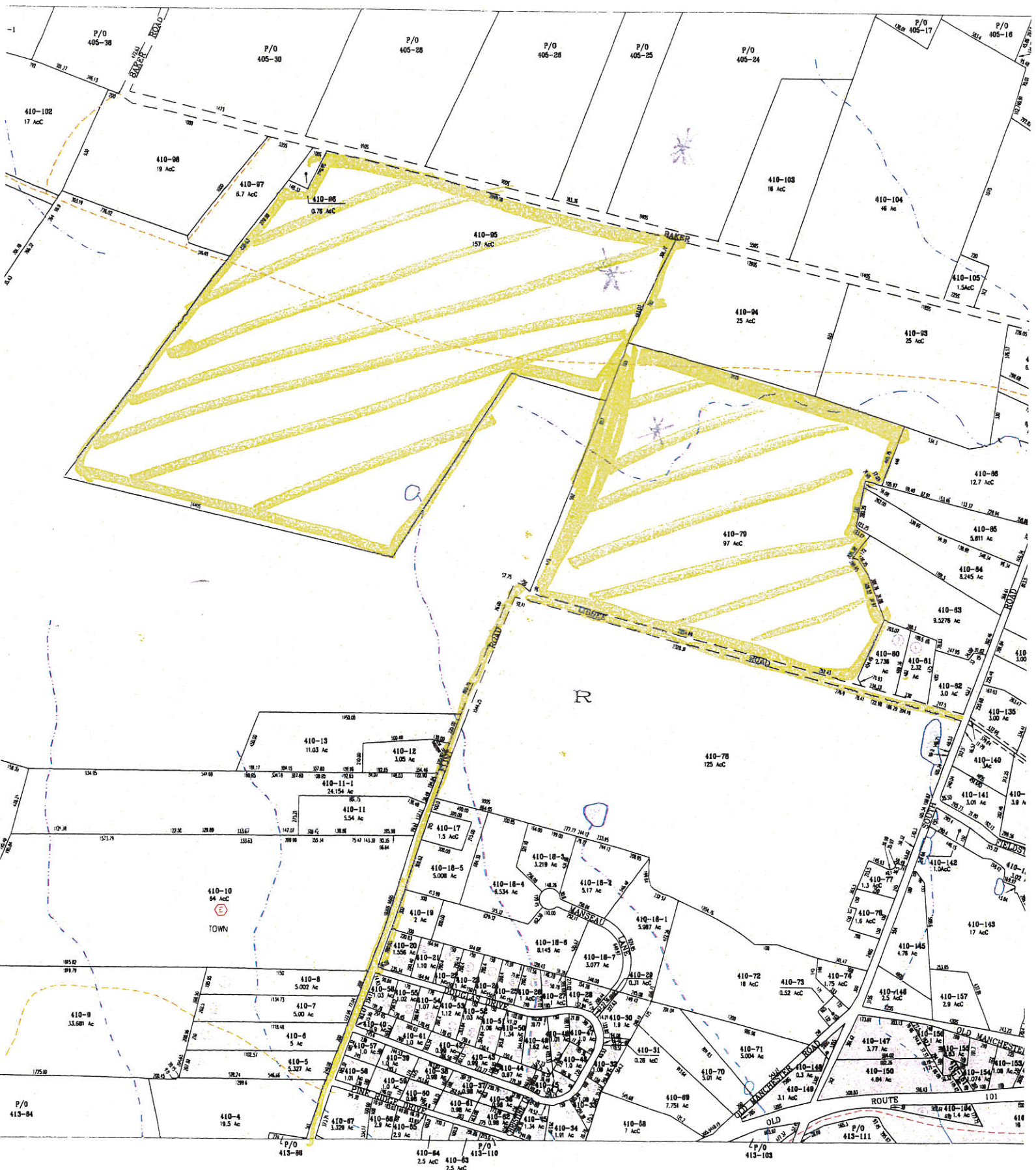
There were a total of **4** loads of scrap metal marketed for recycling, on 11/9 two loads approx, **16 -18** tons were sent out and on 11/30 two more loads were also sent out approx. another **16-18** tons. The check has not yet been received.

On 11/9 – there were **38** Freon devices evacuated.

On 11/30 - **10.22** tons of cardboard were marketed and generated **\$459.90** in revenue.

On 11/30 – approx. **11,000** lbs. of #2 natural plastics were marketed. The check has not yet been received.

There was approx. **\$3680** in scrap metal revenue generated, there was approx. **\$4290** from #2 natural plastics and there was **\$459.90** generated from cardboard during November 2018 for a total of approx. **\$8430**. As of 11/20, the CRC (Candia Recycling Center) has generated **\$51,379.43** in revenue during 2018 YTD.



TITLE XX TRANSPORTATION

CHAPTER 231 CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Laying Out Highways

Section 231:21-a

231:21-a Uniform Provisions Governing Class VI Highways. –

All class VI highways, whether such class VI status resulted from a layout pursuant to RSA 231:21, a discontinuance subject to gates and bars pursuant to RSA 231:45, or by the failure of the town to maintain and repair such highway in suitable condition for travel thereon for 5 successive years or more as set forth in RSA 229:5, VII, shall be subject to the following provisions:

I. All such highways shall be deemed subject to gates and bars; provided, however, that any gates or bars maintained by private land owners shall be erected so as not to prevent or interfere with public use of the highway, and shall be capable of being opened and reclosed by highway users. The selectmen may regulate such structures to assure such public use, and may cause to be removed any gates or bars which fall into disrepair or otherwise interfere with public use of the highway.

II. Even though, as set forth in RSA 231:93, class VI highways are not subject to any municipal duty of care or maintenance, 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, to regulate the excavation or disturbance of such highways pursuant to RSA 236:9 through 236:11, to regulate driveways and other access pursuant to RSA 236:13, and to establish weight limits pursuant to RSA 231:191.

Source. 1999, 113:1, eff. Aug. 9, 1999.

2004 Class VI Road List
Prepared by Road Agent Dennis Lewis on 3/31/04

North Road- Approximately 900 feet West from Merrill Road Intersection

Baker Road- from High Street to Peter O'Neil's property known as Map 410, Lot 098 and from South Road to Tamara and Scott Cambell's property known as Map 410-103.

Donovan Road- from Chester Turnpike to the driveway entrance adjacent to the residence located on the property owned by Richard and Priscilla Blevens known as Map 404, Map 027.

Knowlton Road- approximately 200 feet from the intersection of High Street.

Libbee Road- from South Road to Flint Road

Flint Road- south from Libbee Road for approx. 900 feet.

Pione Hill- south road to old Candia, (43/01)

Class VI Highways

Introduction

A Class VI road is 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 [new boating access highways], 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*. RSA 229:5, VII (emphasis added).

Although neither the state nor its political subdivisions are required to maintain them, Class VI highways are public roads. As such, Class VI roads are generally subject to the same legal principles that govern all highways, including:

- Abutters' rights issues (Chapter 1);
- Methods of public highway creation (Chapter 2); and
- Towns regulatory authority (Chapter 6).

Formation of a Class VI Highway

In 1925, all non-maintained public highways were classified as Class VI. The gist of the Class VI category is the absence and/or discontinuance of maintenance. The law provides four ways roads may qualify for Class VI status:

- Lapse (absence of maintenance for five years);
- Discontinuance subject to gates and bars;
- Layout subject to gates and bars; and
- Department of Transportation's discontinuance of a Class I or II highway.

LAPSE: ABSENCE OF MAINTENANCE FOR FIVE YEARS

The overwhelming majority of Class VI highways resulted from simple neglect, a consequence of rural population decline. The lapse or statute of repose component of RSA 229:5, VII, provides that a road falls within the Class VI classification if it has not been maintained and repaired in suitable condition for travel for five successive years or more.

'Suitable Condition for Travel.' It is immaterial whether the road is "suitable for travel" so long as the town has not maintained and repaired the road for a period of at least five consecutive years. For instance, although a road that has not been maintained and repaired may be traveled, it does not become a Class V highway. *Glick v. Town of Ossipee*, 130 NH 643 (1988). In *Glick*, the trial court erroneously held that the Ossipee Mountain Road was a Class V road because, among other things, it had been traveled continuously for 30 years. The Supreme Court reversed, holding that a Class V road must be both traveled and maintained. The Glick Court concluded:

[T]he legislature's construction recognizes that if roads could be designated [C]lass V highways [as opposed to Class VI] solely because they are "traveled," even those roads that have been discontinued subject to gates and bars would be [C]lass V highways deserving of regular town maintenance because people continue to travel them. The legislature clearly seeks to avoid this incongruous result by restricting the [C]lass V designation to highways that are both "traveled"

From *A Hard Road to Travel - New Hampshire Law of Local Highways, Streets and Trails*, edited by Susan Slack, Legal Services Counsel, Local Government Center, 2004

and "maintained."

Resumption of Maintenance. Resumption of maintenance of a Class VI highway now affects its classification status, as a result of a 1999 amendment to RSA 229:5,VI. A Class V road that attains Class VI status as a result of a lapse of maintenance (see above) will revert to Class V status again if the town has maintained it for at least five consecutive years. The "illegal" maintenance and repair must be "regular" and "on more than a seasonal basis" so that the road is in "suitable condition for year-round travel." Class VI roads that have been maintained after having been declared emergency lanes under the procedures outlined in RSA 231:59-a do not revert to Class V status because of such maintenance.

If a town seeks to perform some minimal maintenance to a Class VI road, it should do so under the emergency lane statute. See Chapter 5. Independent of liability concerns, the emergency lane law (RSA 231:59-a) is an exception to RSA 231:59, which requires road maintenance monies be spent only on Class IV and V highways.

Also, a town's performance of maintenance or repair work may arguably be the basis for municipal estoppel arguments – that is, in a lawsuit involving a landowner, a town may be barred from arguing that it is not required to maintain a road due to its Class VI status. *Turco v. Barnstead*, 136 NH 256 (1992).

DISCONTINUANCE SUBJECT TO GATES AND BARS

RSA 229:5, VII authorizes a town to vote to discontinue an open highway and have it made subject to gates and bars. Importantly, the vote must be by town meeting and not the board of selectmen. When drafting a warrant article or vote by the legislative body to convert a highway to Class VI, the wording should closely reflect the language of the statute – "discontinue subject to gates and bars."

Prior to 1903, a town could only discontinue a highway completely. Only after the Legislature promulgated Laws of 1903, Chapter 14:1, could a town discontinue an "open" highway and subject it to gates and bars. The term "gates and bars" is not expressly defined by statute, but the term historically refers to an owner's right to enclose premises for his or her own benefit – usually to confine livestock. The owner required public travelers to open and close the gates or bars as a condition to travel. The term "gates and bars" first became associated with Class VI highways in 1925, when the legislature enacted Laws of 1925, Chapter 12:1, which provided a town had no duty to maintain any highway that had been closed subject to gates and bars.

LAYOUT SUBJECT TO GATES AND BARS

A town may categorize a strip of land as a Class VI road through the "layout" process. RSA 231:21 permits a highway to be laid out "subject to gates and bars." It states, in relevant part: "Any highway may be laid out subject to gates and bars... In such case it shall be determined... by whom the gates and bars shall be maintained." RSA 231:21 The town's authority to lay out a road subject to gates and bars is also found in RSA 231:22 (titled, "Previously Discontinued Highway") and RSA 231:23 (titled, "Conditional Layout"). However, towns rarely exercise the "gates and bars" authority because it is unlikely that any such prospective roads would satisfy the "public convenience and necessity" test. See Chapter 2.

DISCONTINUANCE OF CLASS I OR II HIGHWAYS

The commissioner of Transportation has the authority to discontinue a Class I or II road as a state highway. In such instances, the highway may revert to the town as either a Class V or Class VI highway. RSA 230:57. The statute is silent regarding the classification criteria for determining whether a discontinued highway shall become a Class V or VI road. According to the

Attachment from Candia Selectmen's Meeting on 12/10/2018

From *A Hard Road to Travel - New Hampshire Law of Local Highways, Streets and Trails*, edited by Susan Slack, Legal Services Counsel, Local Government Center, 2004

Department of Transportation, the commissioner has the discretion to make such determinations.

ALL CLASS VI ROADS SUBJECT TO GATES AND BARS

In 1999, the legislature enacted RSA 231:21-a, which clarified for the first time that all Class VI roads, regardless of how created, "shall be deemed subject to gates and bars." The gates and bars may not interfere with public use, and must be capable of being opened and closed by users of the road. The selectmen are authorized to regulate the structures to assure public use.

Development Along Class VI Highways

As stated above, Class VI roads are public highways for purposes of the public's right to use. However, they are distinct from other public roads for purposes of abutters using the road as access for an adjoining development.

CLASS VI ROAD NOT AN 'APPROVED STREET'

RSA 231:45 provides, in relevant part: "Any [C]lass IV, V or VI highway... may be discontinued as an open highway and made subject to gates and bars... Such a discontinued highway shall not have the status of a publicly approved street." The statute was intended to alleviate pressure exerted by developers against towns to improve roads subject to gates and bars. In *King v. Town of Lyme*, 126 NH 279 (1985), the Court stated:

The purpose of the act was to make it clear that towns were not responsible for maintaining highways discontinued subject to gates and bars...The act amended RSA 231:45 in the face of growing concern that many areas were opening up to development and that developers might try to force towns to improve highways subject to gates and bars.

Although RSA 231:45 prohibited public improvements to roads that were discontinued subject to gates and bars, it did not expressly impose a similar restriction on Class VI roads that resulted from the five-year lapse period. Further, the statute did not address private development along Class VI roads. Depending on the condition of a particular road, each town dealt with private development differently. Such piecemeal planning predictably resulted in a lack of uniformity.

BUILDING ALONG CLASS VI HIGHWAYS: RSA 674:41, I (C)

In 1983, the legislature enacted RSA 674:41, I (c), to address the disparate approaches taken by municipalities to permitting development along Class VI highways. Under RSA 674:41, I (c), in order to construct a building along a Class VI highway, the following is necessary:

- The local governing body (board of selectmen), after review and comment by the planning board, has voted to permit building.
- The municipality assumes neither responsibility for road maintenance nor liability for any damages arising out of road use.
- Prior to the issuance of a building permit, the applicant produces evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds.

Authority to Deny Construction Along a Class VI Road. RSA 674:41, I (c) allows a town to prohibit building along Class VI highways. In *Vachon v. Town of New Durham*, 131 NH 623 (1989), the Court upheld a town's policy of prohibiting any building along a Class VI road if the driveway was more than 600 feet from the nearest Class V or better road. In doing so the Court

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rejected the landowner's argument that the landowner had the right to build so long as it offered the town a release from liability.

In lieu of denying a building permit, many towns have adopted policies restricting building along Class VI roads unless the owner/applicant agrees to upgrade the road for reclassification as Class V.

Exception from the Zoning Board of Adjustment. When the local governing board rejects an application for a building permit, an aggrieved owner can request an exception from the zoning board of adjustment, RSA 674:41, II.

Record Notice of Limitations at Registry of Deeds. For purposes of satisfying the statutory notice of limitations requirements, RSA 674:41, I (c) does not require any particular form. However, the following information should be provided as part of any notice:

- Landowner's name and contact information.
- Description of the property.
- Location of owner's deed at the registry of deeds (that is, book and page).
- Road's name.
- Road's status as a Class VI highway.
- Circumstances surrounding road's classification (for example, discontinued subject to gates and bars, five years of non-maintenance, etc).
- After the planning board's review and comment the governing body has adopted a policy under RSA 674:41, I (c) that allows building on this particular Class VI highway. The notice should also detail when the policy was adopted and its location on file.
- Details regarding the issued building permit and its location on file.
- With reference to RSA 674:41, I(c)(2) and RSA 231:93, a statement that the municipality has no legal duty to maintain (for example, plowing, grading, drainage, etc.) the highway or any liability for damages resulting from road use. Further, the notice should provide that municipal services (for example, police, fire, ambulance, school bus transportation, etc.) may be unavailable at times.
- The owner agrees to these limitations of town responsibility and liability, and the owner is responsible for any road maintenance and repair work.
- Prior to performing any road repair or maintenance work, the owner must obtain approval of the governing body or highway agent under RSA 236:9. The notice should also describe types of work where the owner has permanent recorded permission to perform, together with any conditions.
- The road is a public highway, and the owner shall not prohibit authorized public use.
- Pursuant to RSA 41:11, the governing body retains full authority to regulate the public use of the highway, including the applicant's use, and the erection, of unlocked gates or bars.
- Witnessed signatures of the owner(s) and the local governing body.

The statutory notice requirement should not be taken lightly. At least one New Hampshire court has found that a town is required to provide maintenance to a Class VI highway where the landowner was unaware of a road's legal status. In *Turco v. Town of Barnstead*, 136 NH 256 (1992), the Court held that a landowner had justifiably relied on a building permit as a representation that the town would provide some road maintenance.

Reclassification of Class VI Road to Class V

The law provides two instances in which a municipality may reclassify a Class VI highway as a

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Class V.

LEGISLATIVE BODY VOTE

Pursuant to RSA 231:22-a, the legislative body (town meeting) may reclassify a Class VI highway "by vote ... as a [C]lass V highway, or as a [C]lass IV highway if located within the compact sections of cities and towns." The statute allows a town to reclassify a road irrespective of whether the Class VI status arose under the five-year lapse provision or by discontinuance subject to gates and bars.

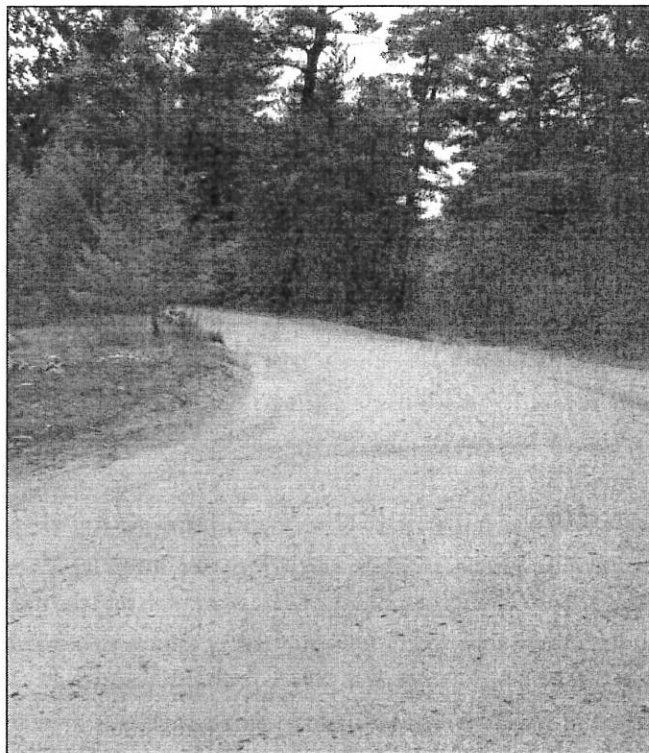
Importantly RSA 231:22-a allows the legislative body to delay the effective date of any reclassification, thereby affording a town an opportunity to upgrade or effectuate any repairs to a road prior to any status change. A town may also condition any reclassification upon compliance with betterment assessments as provided in RSA 231:28 through 231:33. Property owners abutting or served by the road have the same rights and remedies as provided in these statutes, including the right to submit a petition not to conditionally reclassify the highway. Finally, the costs assessed against the owners cannot reflect construction standards any higher or more stringent than those reflected in the best town road giving access to the reclassified highway.

RECLASSIFICATION BY LAYOUT

A town may reclassify a Class VI road to Class V status through the layout process this process involves laying out a Class V road over an existing Class VI road. Under this method the town's governing body is responsible for laying out the "new" highway. The betterment assessment option detailed under RSA 231:28 et seq. is available under the layout process.

Legal Q&A, Class VI Roads and Maintenance Issues

By Susan Slack, Counsel, Local Government Center



Highway repair and maintenance projects are usually well underway at this time of year, prompting questions about maintenance of Class VI roads. There are lots of misconceptions about Class VI roads, so here are some reminders.

Q. What is a Class VI road?

A. In the state's highway classification system, which is defined in RSA 229:5, Class VI roads are "all other existing public ways," meaning public ways not otherwise classified as Class IV or Class V roads. Class VI roads include those that have been discontinued subject to gates and bars, as well as those that have "not been maintained and repaired by the town in suitable condition for travel" for five successive years or more. (See RSA 229:5, VII.) The two important keys to this statutory definition are that Class VI roads are *public* ways, and they are roads that the town has no duty to maintain. Note that the definition of a Class V road is one that the town does have a duty to maintain. (See RSA 229:5, VI.)

Q. Can the town appropriate money to maintain or repair Class VI roads?

A. RSA 231:59 authorizes municipalities to spend money to repair Class IV and V highways, not Class VI roads. One of the basic tenets of New Hampshire municipal law is that towns and cities have only that authority granted to them by the state legislature. Without a specific grant of authority, towns and cities do not have authority to act.

Q. Can private parties maintain or repair Class VI roads?

A. Yes, with permission of the municipality. RSA 236:9 prohibits anyone from excavating or disturbing the ditches, embankments or traveled surface of any town road, including a Class VI road, without the written permission of the municipality's governing body (board of selectmen or town/city council) or the road agent. RSA 236:10 provides that the municipality may regulate such private road work and may require a bond for the satisfactory restoration of the road. RSA 236:11 requires anyone who excavates or disturbs town roads to restore them to the satisfaction of the authorized local official.

Q. What happens if the municipality maintains or repairs a Class VI road?

A. There are several important reasons to avoid maintenance and repair projects on Class VI roads. First, municipalities enjoy protection from liability for damage or injury due to the condition of a Class VI road. RSA 231:93 provides that municipalities have no duty to maintain or repair Class VI roads. The highway maintenance duty established in RSA 231:90 through 92-a applies only to Class IV and V highways. A municipality that undertakes Class VI road maintenance exposes itself to the risk of liability for damage or injury resulting from that work. Second, performance of maintenance or repair work could result in stopping municipal arguments, meaning that in a lawsuit involving a landowner, a municipality may be barred from arguing that it is

not required to maintain a road due to its Class VI status. See *Turvo v. Barnstead*, 136 N.H. 256 (1992). Third, a Class V road that attains Class VI status as a result of the lapse of maintenance will revert to Class V status again if the town maintains it for at least five consecutive years. The “illegal” maintenance and repair must be “regular” and “on more than a seasonal basis” so that the road is in “suitable condition for year-round travel.” See RSA 229:5, VI.

Q. What if there are public safety reasons for occasionally repairing or maintaining Class VI roads?

A. If a municipality wishes to spend money on Class VI road, it should do so under the emergency lane statute, RSA 231:59-a, which was enacted in 1994. That statute authorizes municipalities to raise and appropriate money for the maintenance of any Class VI road (or private road) that is declared an emergency lane by the governing body. The procedures required for making this declaration include a public hearing and written findings “that the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane.”

Q. What kind of maintenance or repair of Class VI roads is authorized by the emergency lane statute?

A. RSA 231:59-a, I provides that such repairs may include “removal of brush, repair of washouts or culverts, or any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles.” The municipality can establish a capital reserve or trust fund for this purpose. Maintenance or repair of Class VI roads undertaken in accordance with the emergency lane statute does not create any duty or liability for the municipality. See RSA 231:59-a, IV.

Q. Can gates or fences be put up on Class VI roads?

A. Yes, but RSA 231:21-a, I requires gates or bars maintained by private landowners to be erected so as not to interfere with public use of the Class VI road. Such gates or bars must “be capable of being opened and reclosed by highway users.” Municipali-

ties are authorized to regulate these structures “to assure public use” and they have authority to have gates or bars removed if they have fallen into disrepair or if they interfere with public use of the Class VI road.

Q. What does the term ‘gates and bars’ mean?

A. Prior to 1903, a town could only discontinue a highway completely, meaning it was no longer a public way. Only after the state legislature enacted Laws of 1903, Chapter 14:1 could a town discontinue an “open” highway and subject it to gates and bars. The term “gates and bars” is not expressly defined by statute. Nevertheless, the term historically refers to an owner’s right to enclose premises for his or her own benefit—usually to confine livestock. The owner required public travelers to open and close the gates or bars as a condition to travel. The term “gates and bars” first became associated with Class VI highways in 1925, when the legislature enacted Laws of 1925, Chapter 12:1, which provided that a town had no duty to maintain any highway that had been closed subject to gates and bars.

Q. Are there other ways in which municipalities may regulate Class VI roads?

A. RSA 231:21-a, which was enacted in 1999, provides that all Class VI roads—regardless of how they obtained Class VI status (by layout, discontinuance subject to gates and bars, or lapse of maintenance of Class V roads)—are deemed subject to gates and bars. The statute clearly authorizes municipalities to regulate their use under the provisions of RSA 41:11; RSA 47:17, VII, VIII and XVIII (highway ordinances); RSA 236:9 through 11 (excavation and disturbance); RSA 236:13 (driveway access); and RSA 231:191 (weight limits).

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New Hampshire Town and City July/August 2004

Issue: Historically Significant Facilities

Common Problem:

City governments may believe that they have no duty to make changes to historically significant buildings and facilities to improve accessibility for people with disabilities.

Result:

Many city programs, services, and activities are conducted in buildings that are historically significant. In addition, many cities operate historic preservation programs at historic sites for educational and cultural purposes. If no accessibility changes are made at these facilities and locations, individuals with disabilities are unable to visit and participate in the programs offered. For example, people who use wheelchairs would not be able to reach the courtroom or clerk's office located in a historic nineteenth century courthouse if no physical changes are made to achieve access.

Requirement:

Historically significant facilities are those facilities or properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law. Structural changes to these facilities that would threaten or destroy the historical significance of the property or would fundamentally change the program being offered at the historic facility need not be undertaken. Nevertheless, a city must consider alternatives to structural changes in these instances — including using audio-visual materials to depict the inaccessible portions of the facility and other innovative solutions.

If alterations are being made to a historically significant property, however, these changes must be made in conformance with the ADA Standards for Accessible Design, ("the Standards"), 28 C.F.R. Part 36, § 4.1.7, or the Uniform Federal Accessibility Standards, ("UFAS") § 4.1.7, to the maximum extent feasible. If following either set of standards would threaten or destroy the historical significance of the property, alternative standards, which provide a minimal level of access, may be used. This decision must be made in consultation with the appropriate historic advisory board designated in the Standards or UFAS, and interested persons should be invited to participate in the decision-making process. 28 C.F.R. §§ 35.150(b)(2); 35.151(d); Standards § 4.1.7; UFAS § 4.1.7. **If these lesser standards would threaten or destroy historically significant features, then the programs or services conducted in the facility must be offered in an alternative accessible manner or location.**



An accessible side entrance was added to this historic facility.

ARTICLES OF ORGANIZATION

SMYTH MEMORIAL BUILDING BOARD OF TRUSTEES

ARTICLE ONE: STATEMENT OF PURPOSE AND INTENT

In recognition of the historical significance of the Smyth Memorial Building, there is hereby established a Board of Trustees whose purpose shall be to maintain and preserve the physical structure of the building in a condition suitable for use by the town and its citizens, and who shall be charged with these further responsibilities:

To make the building accessible to the citizens of Candia as an historic site.

To investigate and recommend such future uses of the building as may be appropriate commensurate with its historic character.

To raise funds for the maintenance and preservation of the structure and to make renovations and improvements to promote such uses as the Town of Candia may determine, in keeping with the historical nature of the building and to recognize and promote the Smyth Memorial Building as an historical landmark.

To evaluate and assess possible income to be derived from uses of the building.

To prepare an annual operating budget for the maintenance and use of the building.

To perpetually reassess uses of the building that would benefit the Town of Candia.

To act at all times in the best interests of the Town of Candia regarding the use and function of this valued piece of Candia's heritage.

To make such recommendations to the Board of Selectmen as the Board of Trustees shall determine and to respond to such reasonable requests as the Board of Selectmen may make to the Board of Trustees.

ARTICLE TWO: MEMBERSHIP

There shall be five (5) trustees comprising the Smyth Memorial Building Board of Trustees. The Trustees shall be appointed by the Board of Selectmen. The initial terms shall be for one to five years as set forth in this Article. Thereafter terms shall be for five years. Each Trustee may serve one additional five year term upon recommendation of the Board of Trustees and appointment by the Board of Selectmen. Initial appointments shall be structured to expire as follows:

<u>Trustee</u>	<u>Expiration of Term</u>
#1	June 30, 2015
#2	June 30, 2016
#3	June 30, 2017
#4	June 30, 2018
#5	June 30, 2019

The Smyth Memorial Building Board of Trustees may recommend to the Selectmen that a Trustee be removed from the Board for cause. Such cause shall include, but not be limited to, continued unexcused absence from meetings and failure to carry out the functions of the Trustee.

ARTICLE THREE: OFFICERS

Officers of the Board shall be a Chairman and a Clerk who shall be elected annually by members of the Board at its initial meeting in June each year to carry out the customary duties of each office.

ARTICLE FOUR: MEETINGS

Meetings shall be held monthly or at such times as the Board may determine on a date convenient to the Trustees. Special meetings may be called by the Chairman as needed or at the request of two or more Trustees. Meeting dates shall be published at least seven days in advance. A member of the Board of Selectmen shall attend such meetings as the Board of Selectmen may determine. All meetings shall be open to the public and shall be governed by the provisions of the Right to Know Law, RSA 91-A.

ARTICLE FIVE: FINANCES

The Trustees to recommend to the Board of Selectmen an annual budget for the maintenance and use of the building. No Trustee shall receive compensation beyond necessary expenses incurred in carrying out his or her Board responsibilities.

ARTICLE SIX: BY-LAWS

The Trustees may recommend such by-laws as they deem appropriate for approval by the Board of Selectmen.

MEMO

To: All employees
From: Board of Selectmen
Date: January 1, 2019
Re: 2019 Holiday Schedule

The Board of Selectmen has approved the following list of 2019 holidays to be observed:

Office Employees/Police officers

Tuesday, January 1	New Year's Day
Monday, January 21	Martin Luther King Day
Monday, February 18	President's Day
Monday, May 27	Memorial Day
Thursday, July 4	Independence Day
Monday, September 2	Labor Day
Monday, November 11	Veteran's Day
Thursday, November 28	Thanksgiving Day
Friday, November 29	Day after Thanksgiving
Wednesday, December 25	Christmas Day

In addition, there are two floating holidays per year.

Recycling Center Employees

* Tuesday, January 1	New Year's Day
* Monday, February 21	President's Day
Sunday, April 21	Easter Sunday
* Monday, May 27	Memorial Day
Thursday, July 4	Independence Day
* Monday, September 2	Labor Day
* Monday, November 11	Veteran's Day
Thursday, November 28	Thanksgiving Day
Friday, November 29	Day after Thanksgiving
Wednesday, December 25	Christmas Day

* Holidays that fall on a day that is the employee's regular day off (Monday or Tuesday), will be moved to a floating holiday (Easter is given in lieu of Martin Luther King Day)

In addition, there are two floating holidays per year.