

January 14, 2019

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

Work Summary:

- There were 2 plowable storms & 9 sand/salt spreader runs.
- Brush & tree removal on Blevens Drive
- Tree removal on Critchett Road
- Patching was done as needed
- Graded all dirt roads due to very muddy conditions
- Hook Road improvements: tree removal, ditching, 300yds of gravel added and grading were done using the Moore Highway funds



Dennis Lewis
Road Agent

No Crime Incident Event Breakdown

Event	Description	Total	%
911	911 Hang Up	0	00.0
ACP	Animal Complaint	6	01.8
AFE	Assist Fire/EMS	3	00.9
AIM	Aided Motorist	1	00.3
AL	ALARM	1	00.3
AOA	Assist Other Agency	28	08.3
ASC	Assist Citizen	35	10.3
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
COM	Community Outreach	0	00.0
CRA	Cruiser Accident	0	00.0
DCF	Discharge Firearm	0	00.0
DCI	DCYF Investigation	1	00.3
DIS	Disturbance	11	03.2
DOG	Dog At Large / Loose Dog	0	00.0
FIN	Fingerprinting	0	00.0
FPR	FOUND PROPERTY	1	00.3
IEA	INVOLUNTARY EMERGENCY HOSPITALIZATION	0	00.0
JUV	Juvenile Complaint	3	00.9
LPR	Lost Property	13	03.8
MED	Medical Call	0	00.0
MIP	Missing Person	0	00.0
MVC	MOTOR VEHICLE COMPLAINT	2	00.6
NC	Noise complaint	0	00.0
NDT	National Drug Take Back	1	00.3
NED	Neighbor Dispute	1	00.3
NO	NOTIFICATION	3	00.9
NTO	No Trespass Order	0	00.0
OD	DRUG OVERDOSE	2	00.6
OF	FATAL OVERDOSE	0	00.0
OHR	OHRV COMPLAINT	3	00.9
OTH	Other	1	00.3
PDB	Prescription Drug Box	0	00.0
PIN	Police Information	82	24.2
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	00.9
SGA	Suspected Gang Activity	0	00.0
SP	SERVE PAPERS	78	23.0
SPA	SUSPICIOUS ACTIVITY	11	03.2
SPM	SUSPICIOUS MOTOR VEHICLE	2	00.6
SPP	SUSPICIOUS PERSON	0	00.0
SUI	SUICIDE	3	00.9
SX	Sex Offender Registration	30	08.8
TE	Traffic Enforcement	0	00.0
TRU	Truancy	0	00.0
TWD	Tree / Wires Down	0	00.0
VIN	VIN VERFICATION	0	00.0
WB	Well Being Check	10	02.9
---	Not Specified	0	00.0

01/01/2018 - 12/31/2018

DUI Aggrvtd Collision w/ Ser I	0	0	0	0	0	0	0	0	0	1	0	0	1
PROTECTIVE CUSTODY OF INTOXICA	0	0	0	0	0	1	0	0	0	0	0	0	1
BENCH WARRANT-ELECTRONIC	0	1	0	0	0	0	0	0	0	0	0	0	1
Criminal Trespass	0	0	0	1	0	1	1	0	1	0	0	0	4
Unlawful Activities; Litter Co	0	1	1	1	0	0	1	0	0	0	0	0	4
Protective Custody - Alcohol	0	0	0	0	0	0	0	0	0	0	1	0	1
Violation of Protective Order	0	1	0	0	1	0	1	0	0	0	0	0	3
Negligt Discharge/Gun, Bow, et	0	0	0	0	0	0	0	0	0	1	0	0	1
Littering; Penalty	0	0	0	0	0	0	0	1	1	0	0	0	2
Procuring Dog License; Tag	0	1	0	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	1	8
BENCH WARRANT-ELECTRONIC	0	2	0	0	0	0	0	0	1	0	0	0	3
Breach of Bail	0	0	0	0	1	1	1	0	0	0	0	0	3
Breach of Bail Conditions	0	0	0	0	0	0	0	0	0	0	1	0	1
Arrest Without a Warrant (Fugi	0	1	0	0	0	0	0	0	0	0	0	0	1
DV; Simple Assault; Physical C	0	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	0	1
Theft by Unauthd Taking \$1501+	0	0	0	0	0	0	0	0	0	1	0	0	1
Obstruct Govt Administration	0	0	0	0	1	0	0	0	0	0	0	0	1
Hindering Apprehension/Prosecu	0	0	0	0	1	0	0	0	0	0	0	0	1
Harassment	0	0	0	0	0	0	0	0	0	1	1	1	3
DOG RUNNING AT LARGE-Candia T.	1	1	0	4	1	3	0	0	0	0	0	0	10
POLICE INFO	0	0	0	0	0	0	0	1	0	0	0	0	1
ARREST ON ANOTHER AGENCY'S WAR	0	0	0	0	0	0	0	0	0	2	1	0	3
Conduct After; Property Damage	0	0	0	0	0	1	0	0	0	0	0	0	1
Suspension of Vehicle Registra	0	1	0	1	0	0	0	0	0	0	0	0	2
Unregistered Vehicle	0	0	0	0	0	1	0	0	0	1	0	0	2
License Reqd; Op w/Expired Lic	0	0	0	0	0	0	0	0	0	0	0	1	1
License Reqd; Op w/o Valid Lic	0	1	0	0	0	0	0	0	0	0	0	1	2
Drive after Rev/Sus	0	0	0	1	1	0	0	0	0	0	0	1	3
Drive after Rev/Sus 265:79 or	0	0	0	0	0	0	0	0	0	0	1	0	1
Drive after Rev/Suspension	0	1	1	2	0	1	0	0	0	1	0	0	6
Conduct After Accident	0	0	0	0	0	0	1	0	0	0	0	0	1
Failure to Dim Lights	0	1	0	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	0	1
Speeding 16-20 mph over 55 lim	0	0	1	0	0	0	0	0	0	0	0	0	1
Speeding 16-20 mph over limit	0	0	0	0	0	0	0	0	0	0	0	1	1
Reckless Operation	0	0	0	0	1	0	0	0	0	0	0	0	1
APPEAL OF ADMINISTRATIVE LICEN	0	0	0	0	1	0	0	0	0	1	0	0	2
Alc Intrlock Tamper w/Ign Inte	0	0	0	0	0	0	0	0	0	0	0	1	1
Arrest - Bench Warrant	0	0	1	0	0	0	0	0	0	0	3	1	5
TOTALS	5	16	9	15	18	16	16	7	10	19	16	18	165

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

Memo

Date: January 8, 2019
To: Board of Selectmen
Re: Monthly Report

DECEMBER 2018 HIGHLIGHTS

- 1. Regular Truck and Building Maintenance
- 2. Medical Training for Fire Fighters
- 3. EMS Training
- 4. Review of year 2018 training and preview of 2019 training

Candia Volunteer Fire Department**Departmental Activity**Current Period: 12/1/2018 to 12/31/2018, Prior Period: 12/1/2017 to
12/31/2017

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, Equipmt Maint/Testing, Departmental Events

Category	Current Period		Prior Period	
	Count	Staff Hrs	Count	Staff Hrs
Dispatch/Remote Station Incidents*				
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				
Chemical release, reaction, or toxic	1	4.10	0	0.00
Combustible/flammable spills & leaks	1	0.81	0	0.00
Controlled burning	0	0.00	1	0.10
Electrical wiring/equipment problem	0	0.00	1	1.84
Emergency medical service (EMS) Incident	24	82.60	21	60.73
False alarm and false call, Other	0	0.00	1	4.59
Fire, Other	1	0.18	0	0.00
Good intent call, Other	5	4.83	1	1.05
Overpressure rupture from steam (no	0	0.00	1	2.80
Smoke, odor problem	1	1.48	0	0.00
Steam, Other gas mistaken for smoke	1	3.78	0	0.00
Structure Fire	2	6.11	2	13.82
System or detector malfunction	4	16.43	0	0.00
Unintentional system/detector operation	2	3.42	3	5.20
Wrong location, no emergency found	1	1.40	0	0.00
	<u>43</u>	<u>125.14</u>	<u>31</u>	<u>90.13</u>
Non-Incident Activities				
Association Event	11	33.00	22	132.00
Communications Work/Maintenance	0	0.00	1	4.50
Duty Sunday	13	73.00	25	48.00
Fire Permits (Forestry)	0	0.00	2	6.00
Station Standby - Town Coverage	0	0.00	3	12.00
Station Work	0	0.00	1	2.50
Training	0	0.00	16	21.25
	<u>24</u>	<u>106.00</u>	<u>70</u>	<u>226.25</u>

* 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***Departmental Activity***

Current Period: 12/1/2018 to 12/31/2018, Prior Period: 12/1/2017 to
12/31/2017

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
Occupancy Inspections/Activities				
OBSERVATION - Other	1	0.00	0	0.00
	1	0.00	0	0.00
Training				
Administrative Procedures	11	27.50	0	0.00
Emergency Medical Services	5	10.00	16	32.00
EMT-I Cardiology	0	0.00	6	12.00
	16	37.50	22	44.00

* 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.

December, 2018 Building Activity Report Summary

	December 2017	December 2018
Permits Issued	37	24
New Code Enforcement Cases	0	0
Open Code Enforcement Cases	3	4
Code Enforcement Cases Closed	0	0
Inspections Performed	97	86
CO's/CC's & Closed Permits	30	26
Renewed Permits	5	4



Revenue December, 2017
 $\$1,340.00 + \$590.80 = \$1,930.80$

Revenue December, 2018
 $\$1,164.00 + \$108.72 = \$1,272.72$

Revenue YTD, 2017
 $\$21,219.52 + \$1,930.80 = \$23,150.32$

Revenue YTD, 2018
 $\$25,067.40 + \$1,272.72 = \$26,340.12$

Submitted by:  Date: 1/8/2019

December 2018**INSPECTION BREAKDOWN Including CO's****Commercial, Mixed, L1, L2**

Building (BP)	
Electrical (EL)	
Gas Piping (GP)	
Plumbing (PL)	
Use Permit (USE)	
Place of Assembly (POA)	2

Residential

Building (BP)	17
Chimney (CH)	2
Electrical (EL)	14
Gas Piping (GP)	7
Plumbing (PL)	6
Gas Burner (GB)	3
Oil Burner (OB)	
Gas Furnace (GF)	
Fireplace (FP)	1
Roof (RF)	1
Septic (SE)	
Sprinkler (SP)	1
Mechanical (ME)	
Underground Tank (UG)	6
Finals/CO's	26
Violations (VI)	

Total Inspections: 86**BREAKDOWN PERMITS ISSUED****Permit's issued Breakdown**

Building (BP)	2
Demolition (DE)	
Electrical (EL)	8
Gas Fireplace (FP)	3
Gas Burner (GB)	1
Gas Piping (GP)	3
Gas Tank (GT)	1
Mechanical (ME)	1
Oil Burner (OB)	
Plumbing (PL)	1
Underground Tank (UG)	3
Use/POA/FC/Life Safety	1

Total Permits: 24

December 2018

The Municipal Solid Waste (MSW), at the Candia Recycling Center totaled **69.77** tons during December 2018. The C&D totaled **27.34** tons for December 2018. The Candia Recycling Center processed **97.11** tons of waste during December 2018.

Recyclables

Mix paper – 13 bales = **21,051** lbs. = **10.53** ton

Cardboard - 10 bales = **13,912** lbs. = **6.17** ton

#1 -#7 plastics – 4 bales = **5292** lbs. = **2.65** ton

Alum. Cans – 2 bales = **1876** lbs. = **.94** ton

#2 Natural Plastics – 1 bale = **747** lbs. = **.37** ton

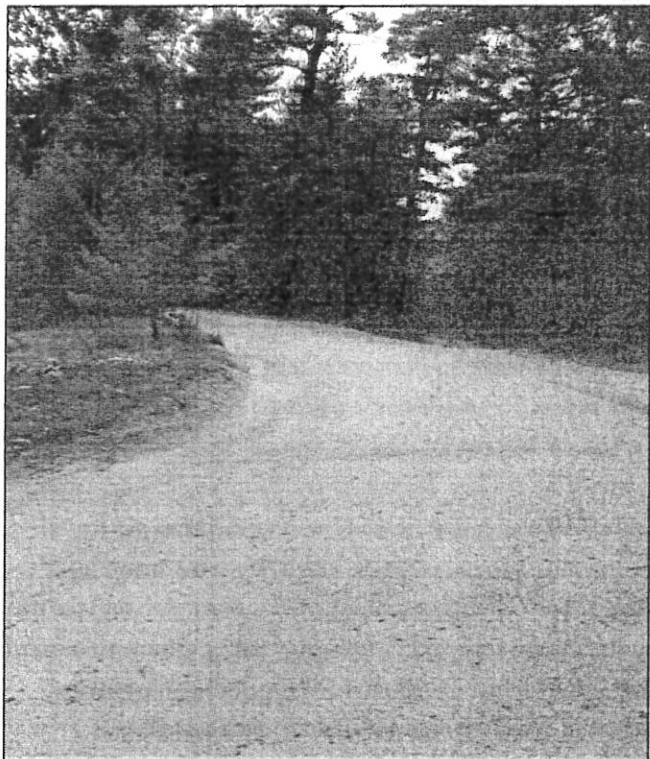
The **30** bales created during December 2018 weighed **42,900 lbs.** = **21.45** tons, there was one (1) electronics swap out which **2.44** tons, this gives the Candia Recycling Center a total of **23.89** tons recycled.

On 12/31 there was a mixed paper/cardboard load marketed, the totals are not yet available.

The Candia Recycling Center generated **\$54,777.92** in revenue during the 2018 calendar year.

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 *Turco 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." Municipal-

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

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 1/14/2019

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

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

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

Attachment from Candia Selectmen's Meeting on 1/14/2019

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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.

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.

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

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. –

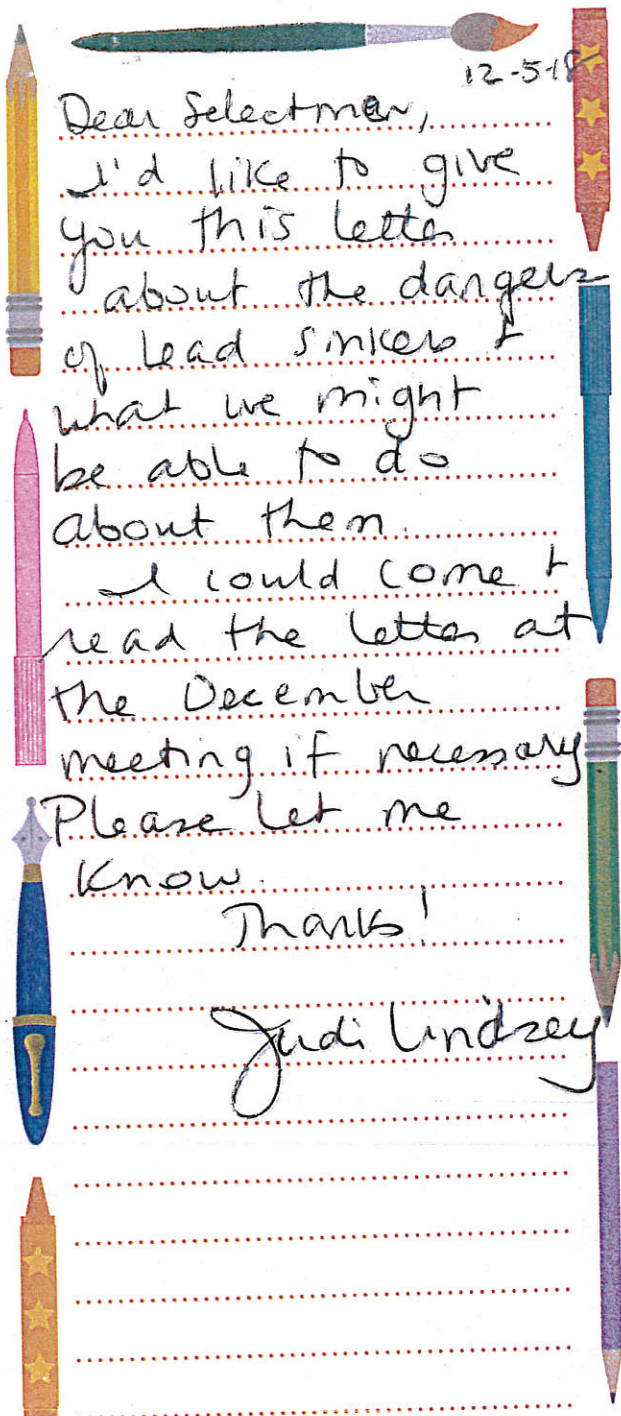
All class VI highways, whether such class VI status resulted from a layout pursuant to RSA 231:21, a discontinuance subject to gates and bars pursuant to RSA 231:45, or by the failure of the town to maintain and repair such highway in suitable condition for travel thereon for 5 successive years or more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

RFP's – 2019 Statistical Update

Commerford, Nieder, Perkins, LLC.	\$22,000
Whitney Consulting Group, LLC. *Appeals and Utilities will be an additional cost	\$29,600
Vision *Cama Version 8 upgrade \$8,000	\$33,000
KRT Appraisal *Includes 2 days of appeals (additional abatement appeals \$75/hour)	\$35,000



12-5-18

Dear Selectman,
I'd like to give
you this letter
about the dangers
of lead smelting &
what we might
be able to do
about them.

I could come &
read the letter at
the December
meeting if necessary.

Please let me
know.

Thanks!

Judi Lindsey



Wings of the Dawn
Wildlife Rehabilitation Center and Bird Sanctuary
PO Box 53
Henniker NH 03242
603 428-3723

LOOK
PLEASE READ
C.R.
S.R.
RD
BR

10/4/18

Dear Selectmen,

Although fishing with lead has been banned in NH, in 2018, four of the six loons treated at Wings of the Dawn in Henniker, NH suffered from lead poisoning due to the use of lead sinkers and jigs on fishing tackle. The lead on fishing tackle is responsible for nearly half the deaths of adult loons in New Hampshire, reducing the bird's population in the state by 43 percent. Wings purchased metal boxes with slots for the collection of lead fishing tackle. These boxes are labelled "DISPOSE OF LEAD FISHING TACKLE HERE" and are securely mounted at various towns such as Bradford, Henniker, Hillsborough, Keene, New Boston, Warner and Weare. Participating towns are listed at <https://fishleadfree.org/nh/>.

Wings plans on distributing boxes throughout NH transfer stations. The attendants will have a key to the box. Although each box costs \$40.00, there is no cost for the box. The size of the box is 15"(h) x 12"(w)x 5"(d). The lead can be disposed of with the spent batteries collection or with the metal collection.

Please consider allowing us to secure a lead tackle disposal box at your transfer station. If you have any questions, please contact me at 603 428-3723.

Thank you,

Maria Colby

Director



The Selectmen to approve the request for funds from the Moore Highway Trust Fund

Hartman Enterprises	\$ 3,552.00
Road Agent & Crew	\$ 7,257.60
Road Agent & Crew	\$ 2,258.10

Total \$ 13,067.70