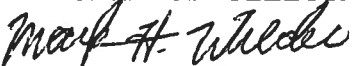


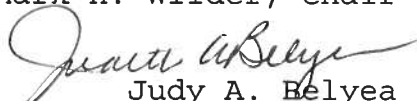
CLASS VI ROAD UPGRADE POLICY

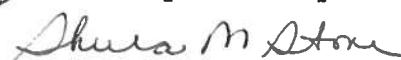
It is the policy of the Board of Selectmen that for class VI road upgrades made pursuant to RSA 231:28 the following shall apply with respect to design and construction criteria:

1. The Board of Selectmen may for any road upgrade require, at the applicant's expense, stamped engineered drawings and independent monitoring of construction.
2. As a general rule, applicants for projects involving a road upgrade of less than 400' with slopes less than 6% will not be required to hire the services of an engineer for design or construction monitoring.
3. As a general rule, applicants for projects involving road upgrades of more than 400' or projects with slopes in excess of 6% will be required to hire the services of an engineer for design or construction monitoring.
4. In cases that involve a class VI road that continues in length beyond the upgraded section, a "transition area" will be constructed as part of the project with a finished slope not to exceed 20%. This transition area will be considered part of the class VI portion of the roadway.
5. At the time the road upgrade is found to be complete, applicants may either agree to plow the new roadway through a winter/spring cycle or post with the town security in the amount of 20% of the construction costs. Posting funds with the town will result in the road being accepted immediately toward compliance with RSA 674:41. Applicant maintenance of the roadway will not result in acceptance until after a final inspection is completed the following spring. Security funds will be released to the applicant once the road has passed a final inspection by either the town's Road Agent or a designated engineer.

BOARD OF SELECTMEN


Mark H. Wilder, Chair


Judy A. Belyea


Sheila M. Stone

signed 10/28/98, amended 12/2/98, transition slope 5 to 1

Ordinance 1993-01

Whereas, RSA 674:41 restricts the issuance of building permits in cases where the street giving access is not a Class V or better highway;

Whereas, the Town of Plainfield Master Plan recommends that the "Town should attempt to discourage development among Class VI roads," [V1-6] and further that "Class VI roads subject to gates and bars should be kept available for future recreation use, but not upgraded..." [X1-10];

Whereas, the lack of maintenance to Class VI roads may inhibit the delivery of emergency services to persons or property on such roads;

Whereas, the Town may have liability to parties who might occupy properties along such roads;

Whereas, the Board of Selectmen is given the authority under RSA 47:17 to make Bylaws and Ordinances;

Whereas, it has been the policy of the Town of Plainfield to restrict the issuance of building permits on Class VI roads since August 1, 1987;

Whereas, an applicant, having been denied a building permit, may appeal from the decision to the Zoning Board of Adjustment, as allowed in RSA 674:41;

Whereas, the Zoning Board of Adjustment has the power to authorize or issue a permit, subject to such conditions as it may impose and as permitted by law;

Now Therefore, after review and comment by the Planning Board, the Board of Selectmen has enacted the following ordinance:

Ordinance 1993-01

Issuance of Building Permits on Class VI Highways

1. No building permits shall be issued for new buildings where the street giving access to the lot upon which the building is proposed is a Class VI road.

2. No building permit shall be issued for any addition to an existing building where the street giving access to the lot is a Class VI road, if any increase in the need for municipal services or increased impact on the Class VI road results.

This ordinance was adopted by an affirmative vote of the Board of Selectmen on November 10, 1993.


PLAINFIELD BOARD OF SELECTMEN



Benjamin R. Judy, Chair



Judith A. Belyea



Jay D. Waldner

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*Admitted in N.H. and Vt.
**Admitted in N.H. and Mass.

July 26, 1993

Stephen Halleran
Administrative Assistant
Town of Plainfield
HC #64, Box 16A
Meriden, NH 03770

Class VI Road Ordinance

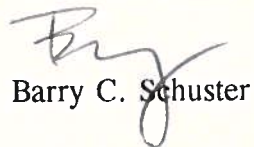
Dear Steve:

Enclosed is a revised version of the Class VI road ordinance. I have divided it into two sections, one for buildings and one for additions. From my reading, I thought that there was an intent to cover those two different situations; is that correct?

Also enclosed is a model notice of municipal liability for building of a Class VI road which is to be signed by a landowner in the event that a permit is granted. The notice gets recorded, at the cost of the applicant, in the Registry of Deeds at the time the building permit is issued.

Any questions or comments, just call.

Very truly yours,


Barry C. Schuster

BCS/sf

Draft Ordinance 1993-01

Whereas, RSA 674:41 restricts the issuance of building permits in cases where the street giving access is not a Class V or better highway;

Whereas, the *Town of Plainfield Master Plan* recommends that the "Town should attempt to discourage development along Class VI roads,"[VI-6] and further that "Class VI roads subject to gates and bars should be kept available for future recreation use, but not upgraded..."[XI-10];

Whereas, the lack of maintenance to Class VI roads may inhibit the delivery of emergency services to persons or property on such roads;

Whereas, the courts have found that the offer of immunity is not sufficient to protect the Town from liabilities to third parties who might occupy the properties at some time;

Whereas, the Board of Selectmen is given the authority under RSA 47:17 to make Bylaws and Ordinances;

Whereas, it has been the policy of the Town of Plainfield to restrict the issuance of building permits on Class VI roads since August 1, 1987;

Whereas, an applicant, having been denied a building permit, may appeal from the decision to the Zoning Board of Adjustment ;

Whereas, the Zoning Board of Adjustment shall have the power to authorize or issue a permit, subject to such conditions as it may impose, *if the issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality;*

Now Therefore, after review and comment by the Planning Board, the Board of Selectmen has enacted the following ordinance:

Ordinance 1993 - 01
Issuance of Building Permits on Class VI Highways

In the case where the street giving access to the lot upon which such building is proposed to be placed is a Class VI highway, no building permit will be issued for any new building, or for any addition to an existing building which might increase the need for services or increase the impact of that existing building on said Class VI road.

This language opens door for allowing new house

"IMPACT"

Draft Ordinance 1993-01

Whereas, RSA 674:41 restricts the issuance of building permits in cases where the street giving access is not a Class V or better highway;

Whereas, the *Town of Plainfield Master Plan* recommends that the "Town should attempt to discourage development among Class VI roads," [V1-6] and further that "Class VI roads subject to gates and bars should be kept available for future recreation use, but not upgraded..." [X1-10];

Whereas, the lack of maintenance to Class VI roads may inhibit the delivery of emergency services to persons or property on such roads;

Whereas, the Town may have liability to parties who might occupy properties along such roads;

Whereas, the Board of Selectmen is given the authority under

RSA 47:17 to make Bylaws and Ordinances;

Whereas, it has been the policy of the Town of Plainfield to restrict the issuance of building permits on Class VI roads since August 1, 1987;

Whereas, an applicant, having been denied a building permit, may appeal from the decision to the Zoning Board of Adjustment, as allowed in RSA 674:41;

Whereas, the Zoning Board of Adjustment has the power to authorize or issue a permit, subject to such conditions as it may impose and as permitted by law;

Now Therefore, after review and comment by the Planning Board, the Board of Selectmen has enacted the following ordinance:

Ordinance 1993-01

Issuance of Building Permits on Class VI Highways

1. No building permits shall be issued in cases where a building permit is sought for a building where the street giving access to the lot upon which the building is proposed is a Class VI road.

2. No building permit shall be issued for any addition to an existing building where the street giving access to the lot upon which the addition is proposed is a Class VI road if there would result any increase in the need for municipal services or increase on the impact of said Class VI road.

TOWN OF PLAINFIELD

Notice of Limits of Municipal Responsibility and Liability
Pursuant to RSA 674:41

The undersigned acknowledges that notice of the limits of municipal responsibility and liability has been received from the Town of Plainfield in connection with the undersigned's application for the issuance of a building permit for the erection of building(s) on a Class VI highway. The Class VI highway is:

_____.

The undersigned acknowledges, agrees, and accepts that the Town of Plainfield does not assume any responsibility for the maintenance of said Class VI highway, nor liability for any damages resulting from the use of said highway.

A signed and acknowledged copy of this notice shall be recorded in the Sullivan County Registry of Deeds prior to the issuance of the building permit and shall be indexed under the name(s) of the undersigned as grantor(s).

Dated this _____ day of _____, 199__.

Landowner requesting permit for the erection of a building(s) on a Class VI highway

(print name):

(print name):

STATE OF NEW HAMPSHIRE
COUNTY OF SULLIVAN

_____, 199_

Personally appeared _____ known or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged the same to be his/her/their voluntary act and deed. Before me,

Justice of the Peace/Notary Public

TOWN OF PLAINFIELD

ORDINANCE

PURSUANT TO RSA 674:41 AS OF AUGUST 1st, 1987 IN THE
TOWN OF PLAINFIELD, NO BUILDING PERMITS SHALL BE ISSUED
FOR CONSTRUCTION OF ANY BUILDINGS, THE ACCESS TO WHICH
IS A CLASS VI HIGHWAY.

Bruce W Baird
Bruce Baird, Chairman

Judith A Belyea
Judith Belyea

Peter W Haubrich
Peter Haubrich

BOARD OF SELECTMEN

ADOPTED June 3, 1987

REVISION NOTICE

The original Class VI Road Policy presented on the previous page has been revised by Boards of Plainfield Selectmen in the following ways:

This policy was amended on June 24, 1987 in the following manner:

- a) Permits are transferable with ownership
- b) Require proof that applicant has applied for septic approval if appropriate.
- c) Renovations to existing buildings will require permits before August 1st, 1987 -none after- can renew permits.

The Policy was further amended on January 6th, 1988:

- a) Present holders of Building Permits on Class VI roads will be allowed to transfer this permit only once.
- b) Building permits will be issued on Class VI roads for additions which do not include living area.

231:4. Village Districts not Eligible for Road Funds.

Notwithstanding the provisions of RSA 231:1 and any other statutes to contrary, village districts shall not be eligible to receive funds pursuant to RSA

Source.

RSA 232:2-a. 1975, 455:4. 1981, 87:1. 1983, 122:1, eff. July 1, 1983.

Amendments

—1983. Substituted "RSA 235" for "RSA 2 or RSA 235:32" at the end of the section.

231:5. Class IV Highways Financed by Federal Aid Funds.

Class IV highway projects financed in whole or in part with federal aid highway funds shall be laid out under the procedures set forth in RSA 230 for class I and class II highways, except for the payment of expenses by the state under RSA 230:31. The commissioner of transportation shall keep an account of the cost of the land and other property taken or acquired, and of the cost of the services and the expense of the commissioners, appointed to lay out the highway, and the cost of litigation incurred by the commission in the taking of the land and property, and he shall make these costs and expenses a charge against the federal aid highway project.

Source.

RSA 232:1-a. 1967, 157:1. 1981, 87:1. 1985, 402:6, I(b)(3).

portation" for "commissioner of public works and highways" at the beginning of the second sentence.

Amendments

—1985. Substituted "commissioner of transportation"

Effective date of 1985 amendment

See note preceding RSA 231:1 regarding effective date of 1985, 402:6, I.

231:6. Highways to Public Waters.

Highways to public waters, when not a part of the primary or secondary highway system, may be laid out as class V highways by the mayor and aldermen of the city or the selectmen of the town in which such highways are located, or may be laid out as hereinafter provided by a commission appointed by the governor and council.

Source.

1945, 188:1, part 3:3. RSA 232:3. 1981, 87:1, eff. April 20, 1981.

231:7. Applicable Provisions.

The provisions of RSA 230:9, 10, 11 and 12 are applicable to the mayor and aldermen of the city, the selectmen of the town and commissioners of a village district, in laying out class IV, V or VI highways.

Source.

RS 49:9-11. CS 52:9-11. GS 61:9-11. GL 67:9, 10, 13. PS 67:10, 11, 14. PL 74:10, 11, 14. RL 90:11,

12, 15. 1945, 188:1, part 3:4-6. RSA 232:4-23, 1959, 294:1. 1981, 87:1, eff. April 20, 1981.

231:8. Petition.

Selectmen of a town, upon petition, may lay out any new class IV highway or highway financed in whole or in part with federal aid highway funds, and class V or class VI highway or alter any such existing highway within their town for which there shall be occasion.

Source.

RS 49:1. CS 52:1. GS 61:1. GL 67:1. PS 67:2. 1921, 31:1. PL 74:2. RL 90:2. 1945, 188:1, part 5:1. RSA 234:1. 1967, 157:3. 1981, 87:1, eff. April 20, 1981.

Cross References.

Petition to lay out previously discontinued highway, see RSA 231:22.

Petition to lay out right-of-way for removal of lumber, see RSA 231:40.

NH RSAs



petition to superior court to lay out highway, see 231:38.

NOTES TO DECISIONS

Analysis

Generally

Authority to layout highway—Generally

—Private roads

Factors considered in decision

Occasion

Location of highway

Conditions

Petition—Necessity

—Amendment

—Sufficiency

—Delay or failure to act on

Collateral attack of layout proceedings

Generally

Laying out of highways under this section was a matter within jurisdiction of selectmen and generally highways so laid out must have been for public good. *Williams v. Babcock*, 116 N.H. 819, 368 A.2d 166, 1976 N.H. LEXIS 477 (1976). (Decided under prior law.)

Property could not be taken for a highway except for a public purpose. *Underwood v. Bailey*, 59 N.H. 480, 1879 N.H. LEXIS 208 (1879). (Decided under prior law.)

2. Authority to layout highway—Generally

Power of selectmen to lay out highway was confined to their town. *Drew v. Cotton*, 68 N.H. 22, 42 A. 239, 1894 N.H. LEXIS 12 (1894). (Decided under prior law.)

Power to lay out highways could not be transferred from selectmen of town to commissioners of fire district. *Henry v. Haverhill*, 67 N.H. 172, 37 A. 1039, 1891 N.H. LEXIS 35 (1892). (Decided under prior law.)

Vote by the inhabitants of city upon construction of highway was merely advisory and did not control action of city councils. *Kelley v. Kennard*, 60 N.H. 1, 1880 N.H. LEXIS 49 (1880). (Decided under prior law.)

Majority of board of selectmen could legally lay out and return a highway. *Hall v. Manchester*, 40 N.H. 410, 1860 N.H. LEXIS 167 (1860). (Decided under prior law.)

3. —Private roads

Laying out of roads in manner prescribed by this section was not limited to creation of new roads, but included also making into public highways private roads already in existence. *Locke Dev. Corp. v. Barnstead*, 115 N.H. 642, 349 A.2d 598, 1975 N.H. LEXIS 385 (1975). (Decided under prior law.)

4. Factors considered in decision

Legislature did not intend for a board of selectmen to use its authority to determine occasion for the layout or upgrade of a highway under RSA 231:8 as a vehicle for effectively conducting land

use planning or zoning. Thus, a board of selectmen, or a superior court upon de novo review, cannot consider the anticipated impact associated with the development that may result from the upgrade of a Class VI road to Class V status. *Green Crow Corp. v. Town of New Ipswich*, 157 N.H. 344, 950 A.2d 163, 2008 N.H. LEXIS 68 (2008).

Record supported a town's findings that the public interest outweighed rights of affected landowners and the burden which road improvements would impose on the town, and the court sustained the town's decision to allow road improvements which a company that wanted to build a supermarket agreed to fund. *Rodgers Dev. Co. v. Town of Tilton*, 147 N.H. 57, 781 A.2d 1029, 2001 N.H. LEXIS 170 (2001).

Factors to be considered in determining the public need for the roads are the public exigency and convenience and the rights of affected landowners. *Wolfeboro Neck Prop. Owners Ass'n v. Town of Wolfeboro*, 146 N.H. 449, 773 A.2d 633, 2001 N.H. LEXIS 94 (2001).

Among factors to be considered by selectmen or commissioners in arriving at decision relating to laying out of road were public need for road and burden road would impose upon town. *Locke Dev. Corp. v. Barnstead*, 115 N.H. 642, 349 A.2d 598, 1975 N.H. LEXIS 385 (1975). (Decided under prior law.)

Where it is claimed that laying out of way was not based upon a judgment that it was necessary, but upon an improper agreement, proof of the fact must have been clear and explicit to control presumption that it was rightly done. *Proctor v. Andover*, 42 N.H. 348, 1861 N.H. LEXIS 111 (1861). (Decided under prior law.)

Laying out of highways upon inducements or considerations other than public good was illegal. *Gurnsey v. Edwards*, 26 N.H. 224, 1853 N.H. LEXIS 52 (1853). (Decided under prior law.)

5. Occasion

RSA 231:28 incorporates the requirement of RSA 231:8 that occasion exist for the layout of a road. Accordingly, petitioner requesting permission from a board of selectmen to upgrade a class VI road to a class V road must show that occasion exists for the layout of that road. *Green Crow Corp. v. Town of New Ipswich*, 157 N.H. 344, 950 A.2d 163, 2008 N.H. LEXIS 68 (2008).

Superior court's decision as to whether or not an "occasion" for the laying out of a public road existed will be upheld if it is supported by some evidence and is not based on fraud or gross mistake; this standard encompasses errors of law. *Wolfeboro Neck Prop. Owners Ass'n v. Town of Wolfeboro*, 146 N.H. 449, 773 A.2d 633, 2001 N.H. LEXIS 94 (2001).

When undertaking the equitable balancing required to determine whether there is an "occasion" for the laying out of public roads, the trial court

should not have considered any "burden" the town may have had in laying out the roads caused by its own unreasonable actions. *Wolfeboro Neck Prop. Owners Ass'n v. Town of Wolfeboro*, 146 N.H. 449, 773 A.2d 633, 2001 N.H. LEXIS 94 (2001).

"Occasion" for layout of public roads exists if public interest requires town's acceptance of roads; this determination involves balancing public need for roads against burden roads would impose upon town. *Rockhouse Mountain Property Owners Ass'n v. Conway*, 133 N.H. 130, 574 A.2d 380, 1990 N.H. LEXIS 41 (1990).

Superior court's conclusion that occasion exists for public layout of roads must be supported by some evidence, and its determination will not be disturbed in absence of gross mistake or fraud. *Rockhouse Mountain Property Owners Ass'n v. Conway*, 133 N.H. 130, 574 A.2d 380, 1990 N.H. LEXIS 41 (1990).

Superior court erred in ruling that occasion existed for town to lay out roadway system in housing development, where it was clear that burden to town of laying out roads far outweighed any benefit public could receive. *Rockhouse Mountain Property Owners Ass'n v. Conway*, 133 N.H. 130, 574 A.2d 380, 1990 N.H. LEXIS 41 (1990).

"Occasion" for laying out a road under this section means public need for road at the place where petitioners request road. *Caouette v. New Ipswich*, 125 N.H. 547, 484 A.2d 1106, 1984 N.H. LEXIS 396 (1984).

6. Location of highway

In laying out of highway, boundary line of state was in law a good terminus. *Crosby v. Hanover*, 36 N.H. 404, 1858 N.H. LEXIS 83 (1858). (Decided under prior law.)

A bridge being a highway, a road could be laid out the termini of which were upon the banks of a river. *Crosby v. Hanover*, 36 N.H. 404, 1858 N.H. LEXIS 83 (1858). (Decided under prior law.)

Highway could not be properly laid out unless it was connected with other highways or unless it was of such extent that it could be useful as a public highway to persons resident upon it. *State v. Canterbury*, 28 N.H. 195, 1854 N.H. LEXIS 58 (1854). (Decided under prior law.)

It was not a valid objection to proceedings of road commissioners that highway laid out was of less width than that specified in petition. *Raymond v. Griffin*, 23 N.H. 340 (1851). (Decided under prior law.)

Highways were required to be laid out in conformity with prayer of petition. *Wiggin v. Exeter*, 13 N.H. 304, 1842 N.H. LEXIS 47 (1842). (Decided under prior law.)

Highways could be laid out only where public convenience and necessity required them. *Dudley v. Butler*, 10 N.H. 281, 1839 N.H. LEXIS 12 (1839); *Dudley v. Cilley*, 5 N.H. 558, 1832 N.H. LEXIS 35 (1832). (Decided under prior law.)

7. Conditions

Where person applying for laying out of a highway did not object to a condition attached thereto, other landowners could take advantage of illegality resulting from imposition of such condition.

Underwood v. Bailey, 56 N.H. 187, 1855 N.H. LEXIS 237 (1855). (Decided under prior law.)

8. Petition—Necessity

Highway which an individual proposed to build at his own expense to take the place of another was required to be legally laid out upon petition to selectmen. *New London v. Davis*, 73 N.H. 72, 59 A. 369, 1904 N.H. LEXIS 15 (1904). (Decided under prior law.)

Selectmen could not legally lay out a highway upon a vote of the town instructing them so to do (*State v. Newmarket* (1846) 20 N.H. 519, 1846 N.H. LEXIS 107) or appointing them a committee to lay the road. *Clement v. Burns*, 43 N.H. 609, 1862 N.H. LEXIS 119 (1862). (Decided under prior law.)

Selectmen had authority to lay out highways only in cases where applications were made to them for the purpose. *Wiggin v. Exeter*, 13 N.H. 304, 1842 N.H. LEXIS 47 (1842); *Prichard v. Atkinson*, 3 N.H. 335, 1826 N.H. LEXIS 2 (1826). (Decided under prior law.)

9. —Amendment

Petition could be amended at any stage of the proceedings. *Fox v. Tuftonborough*, 58 N.H. 18, 1876 N.H. LEXIS 14 (1876). (Decided under prior law.)

10. —Sufficiency

Petition fixing terminus of way "at or near dwelling of named individual was sufficient definite. *Proctor v. Andover*, 42 N.H. 348, 1851 N.H. LEXIS 111 (1861). (Decided under prior law.)

Petition was not required to state width of proposed road. *Kennett's Petition*, 24 N.H. 139, 1851 N.H. LEXIS 14 (1851). (Decided under prior law.)

Petition describing road as commencing at known monument was sufficient though distance of monument from other known points misstated. *Knowles's Petition*, 22 N.H. 361, 1851 N.H. LEXIS 90 (1851). (Decided under prior law.)

Petition for new highway in two towns would support laying out of a highway in one town. *Sumner's Petition*, 14 N.H. 268, 1843 N.H. LEXIS 46 (1843). (Decided under prior law.)

Petition for highway giving termini without any intermediate bounds was not necessary for a way upon a straight line between those termini, but was to be construed as an intermediate course in discretion of commissioners to determine intermediate course. *Wiggin v. Exeter*, 13 N.H. 304, 1842 N.H. LEXIS 47 (1842). (Decided under prior law.)

11. —Delay or failure to act on

Appeal could be taken to court where selectmen failed to act upon petition. *White v. Leathers*, 12 N.H. 128, 1857 N.H. LEXIS 51 (1857). (Decided under prior law.)

Undue delay by selectmen in acting upon petition warranted resort to court. *Stratton v. New Ipswich*, 21 N.H. 44, 1850 N.H. LEXIS 120 (1850). (Decided under prior law.)

12. Collateral attack of layout process

Laying out of highway by selectmen impeached or set aside in collateral

requirements. *Nashua v. Gaukstern*, 117 N.H. 30, 369 A.2d 211, 1977 N.H. LEXIS 258 (1977). (Decided under prior law.)

231:10. Owner of Property; Notice.

Owners shall include tenants for life or years, remaindermen, reversioners, or holders of undischarged mortgages of record whose mortgages are dated not earlier than 20 years prior to date of filing such petition.

I. When the owner resides or lives within the state, notice shall be given to him in person or left at his abode or may be sent to him by certified mail.

II. When the owner does not reside or live within the state, notice may be given to the person, if any, who has the care or possession of the land or may be sent by registered mail to the owner's last known address.

III. If the owner is a person under guardianship or conservatorship notice shall be given to his guardian or conservator. If the owner is under any legal disability a guardian or conservator may be appointed.

IV. When the owner, or his residence, is unknown or uncertain, a copy of such notice, when posted in 2 public places in the city or town in which the land is situated, at least 30 days previous to hearing, shall be deemed sufficient notice to such owner.

Source.

RS 49:3, 5, 6. RS 52:4. CS 52:3, 5, 6. GS 61:3-6. GL 67:3-6. PS 67:4-7. PL 74:4-7. RL 90:5-8. 1945, 188:1, part 5:3-7. RSA 234:3-7. 1955, 56:3. 1973, 174:1. 1981, 87:1. 1989, 28:2, eff. June 3, 1989.

Amendments

—1989. Paragraph IV: Substituted "30" for "14" preceding "days".

NOTES TO DECISIONS

Guardian ad litem

Apart from this section, a guardian ad litem could be appointed in a highway proceeding for an

infant landowner. *Clarke v. Gilmanton*, 12 N.H. 515, 1842 N.H. LEXIS 55 (1842). (Decided under prior law.)

231:10-a. Expenses Paid by Petitioner.

All expenses in connection with any title search and notice to abutters and landowners required under this subdivision shall be borne by the petitioner requesting the reopening of an existing highway which has been subject to gates and bars.

Source.

1987, 17:1, eff. June 2, 1987.

231:11. Hearing.

At the time and place so appointed the selectmen shall make a personal examination of the several routes proposed, and of the highways for which such highway is designed to be a substitute, shall hear all parties interested who may attend and any evidence they may offer, and may adjourn as they see cause.

Source.

RS 49:7. CS 52:7. GS 61:7. GL 67:7. PS 67:8. PL

74:8. RL 90:9. 1945, 188:1, part 5:8. RSA 234:3-7. 1981, 87:1, eff. April 20, 1981.

NOTES TO DECISIONS

Purpose

Purpose of notice and hearing was to provide board of aldermen with evidence on which to base their approval of proposed alteration of a highway, and hearings before board of public works or before committee of board of aldermen, when highways were concerned, did not meet statutory

requirements. *Nashua v. Gaukstern*, 117 N.H. 30, 369 A.2d 211, 1977 N.H. LEXIS 258 (1977). (Decided under prior law.)

Cited:

Cited in *Merrill v. Manchester*, 124 N.H. 923, 1983 N.H. LEXIS 352 (1983).

231:12. Layout.

They may lay out such highway over any ground they may deem most suitable, and alter any highway as they judge proper, without regard to intermediate limits or particular monuments described in the petition.

Source. 74:9. RL 90:10. 1945, 188:1, part 5:9. RSA 234:9. 1981, 87:1, eff. April 20, 1981.
RS 49:8. CS 52:8. GS 61:8. GL 67:8. PS 67:9. PL

NOTES TO DECISIONS**Analysis**

1. Conformance to petition
2. Use of existing highway

1. Conformance to petition

Discretion provided selectmen by this section in the matter of location of a road is limited by jurisdictional requirement that highway as laid out must be such a way only as is described by a reasonable construction of petitioners' language. *Caouette v. New Ipswich*, 125 N.H. 547, 484 A.2d 1106, 1984 N.H. LEXIS 396 (1984).

Road laid out was to be substantially the same as that represented in petition to be required by public exigencies. *Cole v. Canaan*, 29 N.H. 88 (1854), overruled in part, *Spaulding v. Groton*, 68 N.H. 77, 44 A. 88, 1894 N.H. LEXIS 36 (1894). (Decided under prior law.)

Line within terminal named in petition could vary, according to feasibility of route, at discretion of selectmen or commissioners. *Ford v. Danbury*, 44 N.H. 388, 1862 N.H. LEXIS 74 (1862). (Decided under prior law.)

231:13. Joint Action.

The selectmen of 2 adjoining towns, acting jointly and by a vote of the major part of each board, may lay out any new highway, or alter any existing highway within such towns, for the accommodation of the public in the same manner as selectmen are authorized to do in their respective towns; and they shall make return thereof as required in case of laying out by selectmen in their town, and cause the same to be recorded by the clerk of each of the towns.

Source. 74:20. RL 90:21. 1945, 188:1, part 5:10. RSA 234:10. 1981, 87:1, eff. April 20, 1981.
1859, 2219:1. GS 61:17. GL 67:21. PS 67:20. PL

NOTES TO DECISIONS**Analysis**

1. Independent action
2. Bridge

1. Independent action

Town could not by itself lay out a part of a highway an extension of which into another town would be required for public accommodation. *Grif-*

fin's Petition, 27 N.H. 343, 1853 N.H. LEXIS 202 (1853). (Decided under prior law.)

2. Bridge

Towns could act jointly to convert a toll bridge across a boundary stream into a free bridge. *Proprietors of Pemigewasset Bridge v. New Hampton*, 47 N.H. 151, 1866 N.H. LEXIS 18 (1866). (Decided under prior law.)

Loughlin
on roads

- 11 Rockhouse Mt. Prop. Owners Ass'n v. Conway, 127 N.H. 593, 503 A.2d 1385 (1986) (it was unrealistic to levy betterment assessments against lots on private roads since the cost for bringing the road up to town standards would be so high).
- 12 RSA 231:34.

§ 10:24. Conditional Lay Out for Existing Class VI Highways

Until 1989, the method by which a developer could cause a Class VI highway to be upgraded to a Class V highway was unclear. The developer could have petitioned the selectmen for a lay out pursuant to RSA 231:8, however, since the lay out would be costly and often primarily of benefit only to the developer, it was unlikely to be granted.¹ The status of the roadway is important because the developer often cannot get subdivision approval unless he has a Class V highway.² Developers who own substantial amounts of property on a Class VI highway were often willing to pay for the cost of upgrading it to town standards, but there was no convenient legal mechanism to do so. In 1989, the Legislature provided the mechanism.³ RSA 231:28 was amended to provide for the conditional lay out of Class VI highways, as well as private rights-of-way, so that a petition may be brought to lay out a Class V highway over an existing Class VI right-of-way.⁴

- 1 Id.; Jackson v. Ray, 126 N.H. 759, 497 A.2d 1191 (1985) (involved a petition for lay out of a private way and not a Class V highway, however court upheld finding that a lay out of approximately .6 miles of private road would chiefly have benefited the developer and not the general public).
- 2 Beck v. Auburn, 121 N.H. 996, 437 A.2d 289 (1981) (plaintiff was denied subdivision approval for two lots he sought to create on a Class VI highway. He then agreed to bring the road up to town standards, but was again denied on the basis that it was outside the planning board's jurisdiction and the Supreme Court affirmed that roads such as this must be approved by the town and not the planning board).
- 3 Laws 1989, Ch. 134.
- 4 Id.

NOT
in our
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Petitioner
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paid

§ 10:25. Betterment Assessments for Petitioned Highways

If a petition to lay out a private roadway as a public highway or a petition to lay out a Class V highway over an existing Class VI highway is granted by a municipality pursuant to RSA 231:28, the municipal officials may assess against all property owners abutting or served by such a highway an amount not exceeding the entire cost of constructing, reconstructing or repairing the roadway.¹ The amount assessed by the municipal officials must be reasonable and proportional to the benefits accruing to the land

served.² The assessments may be made payable in one year or payment may be prorated over a period not to exceed ten years, in the discretion of the appropriate governing board.³ All such assessments are valid and binding upon the owners of land abutting or served by the betterments.⁴

For good cause shown, the municipal officials may abate a betterment assessment made by them or their predecessors.⁵ After the improvements funded by the betterment assessments have been completed, the municipality is responsible for all further repair and maintenance of the roadway without further assessment.⁶

1 RSA 231:29.

2 Id.

3 Id.

4 Id.

5 RSA 231:32.

6 RSA 231:33. Even though there may be no assessments for additional maintenance, the actual betterment assessments may be paid over a ten-year period. RSA 231:29.

§ 10:26. Liens for Assessments

All assessments which are made under the provisions of RSA 231:29 create a lien on the lands on account of which they are made.¹ That lien continues until fully discharged.² The assessments are subject to interest and such other charges as are applicable to the collection of delinquent taxes, and landowners have the same appeal process as exists for assessment of taxes.³ The betterment assessments must be committed to the tax collector with a warrant under the hands and seal of the governing body.⁴ The collector has the same rights, authority and remedies as in the collection of other taxes.⁵

1 RSA 231:30.

2 Id.

3 Id.

4 RSA 231:31.

5 Id.

§ 10:27. Appeal of Lay Out Matters to Superior Court

Any person who is aggrieved by the decision of municipal officials in the laying out or altering of a highway, or in the assessment of damages, may appeal to the Superior Court.¹ The appeal must be filed within sixty

days of the filing of the lay out return with the municipal clerk.² Upon the filing of an appeal on the question of damages, the municipal officials may deposit with the clerk of the Superior Court a sum equal to the damages assessed to the petitioner.³ If such action is taken by the municipal officials, interest will not accrue on that amount, but will only accrue on the amount of final judgment in excess of the amount offered.⁴ The clerk of the Superior Court is required to pay over the sum deposited upon demand to the petitioner and acceptance of the deposit by the petitioner will not affect or prejudice his right of appeal or be admitted in evidence to trial by jury on the issue of damages.⁵ If the sum paid to the petitioner exceeds the amount of final judgment, the court will enter a judgment against the petitioner for the amount paid to him in excess of the amount of final judgment.⁶

In addition to having a right to appeal decisions of selectmen regarding lay out or altering of highways or assessment of damages, petitions for laying out or altering of Class IV, V, or VI highways may be filed with the Superior Court when the selectmen have neglected or refused to lay out or alter a highway.⁷ Petitions may also be filed in the Superior Court when a highway which has been laid out by the selectmen is discontinued by the town within two years.⁸

The statutory provision which provides that "any person aggrieved" may appeal from a decision of the selectmen in laying out a highway has been interpreted to be limited to only those who are interested in or affected by a lay out proceeding in some manner not shared by the public generally.⁹ The appeal of lay out proceedings is purely statutory.¹⁰ A person dissatisfied with the assessment of damages or the laying out of a highway is entitled to neither injunctive relief¹¹ nor a petition for mandamus.¹² A person appealing the decision of a municipality to lay out a highway does not have a right to a jury trial on the question of necessity.¹³ A person appealing a decision regarding a highway lay out to the Superior Court is entitled to a trial *de novo* before the Superior Court on the issues of occasion and necessity.¹⁴

1 RSA 231:34.

2 Id.

3 RSA 231:35.

4 Id.

5 RSA 231:36.

6 RSA 231:37.

7 RSA 231:38, I.

8 RSA 231:38, II.

or Official Map does not exist. The classification of new streets shall be as determined by the Board in accordance with Section 5.1D following.

D. Standards for Street Design: The following standards of design shall apply to new streets.

STANDARDS FOR STREET DESIGN

22'
Road

	<u>Local (1)</u>		<u>Collector</u>		<u>Arterial</u>
	Minor	Major	Minor	Major	
a. Average Daily Traffic (2)	0-48	49-96	97-248	249-400	401-up
b. Minimum Right-of-Way (4)	50	60	70	80	50-100
c. Minimum Travel Surface Width in Feet (4)	18	20	22	24	(5)
d. Minimum Shoulder Width in Feet Each Side (4)	2	2	3	4	(5)
e. Minimum Distance from Center of Road to Center of Ditch in Feet (4)	18	20	22	(5)	(5)
f. Minimum Horizontal Curve Radii in Feet	(5)	(5)	(5)	(5)	(5)
g. Minimum Vertical Curve Length in Feet	(5)	(5)	(5)	(5)	(5)
	In no case less than 20' for each 1% difference in grade.		In no case less than 30' for each 1% difference in grade.		
h. Minimum Length of Tangents Between Curves	(5)	(5)	(5)	(5)	(5)
i. Maximum Grade	10%	10%	8%	8%	5%
j. Minimum Vertical Sight Distance	(3)	(5)	(5)	(5)	(5)

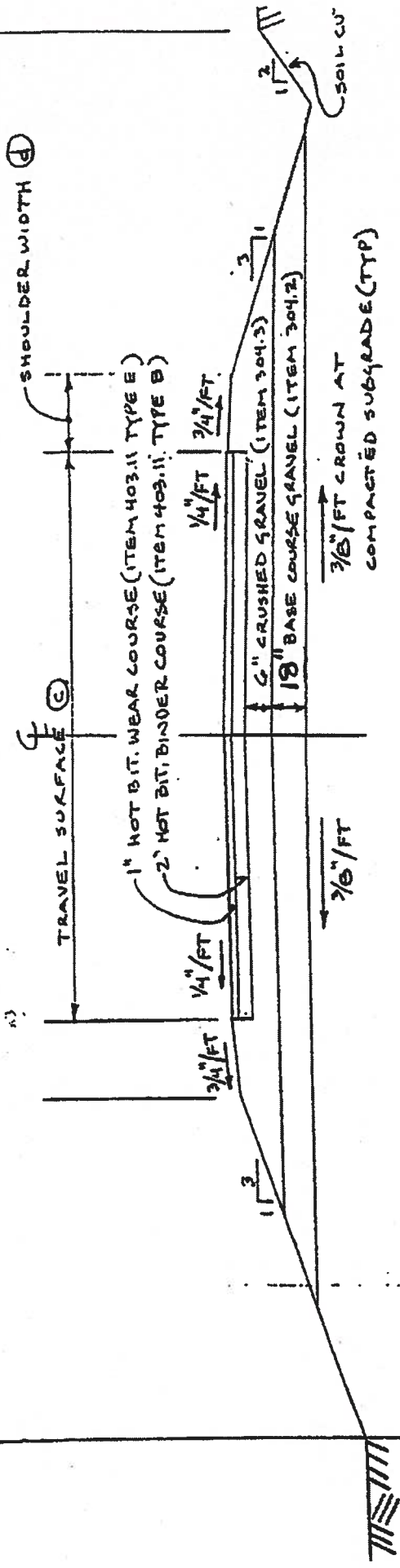
- (1) Local streets cover not only lightly developed through streets, but also dead end and margin access streets.
- (2) Shall be future anticipated traffic. (Assuming 8 trips per day per dwelling unit.)
- (3) Sight distance shall be measured between two points along the centerline of the street on a straight line entirely within the street right-of-way and clear of obstructions, one of the points to be at the surface and the other thirty-nine (39) inches above the surface.
- (4) All cross-section horizontal distances shall be measured perpendicular to straight-line sections and radial to curved sections.
- (5) Curve radii for local roads shall be established based on a minimum design speed of 35 MPH. Curve radii for local roads shall be subject to approval of the Board after being reviewed by an Engineer designated by the Board. The length of vertical curves and minimum length of tangents between curves shall be subject to approval of the Board after being reviewed by an Engineer designated by the Board.

The Board may modify the maximum and minimum gradient for short lengths of streets where, in its judgment, existing topographic conditions or the preservation of natural

Plainfield Road

Specification

R.O.W. (B)



- NOTES:**
1. WIDTH DIMENSIONS VARY ACCORDING TO ROAD CLASSIFICATION. REFER TO SECTION 5.1 OF SUBDIVISION REGULATIONS FOR DIMENSIONS DESIGNATED BY LETTER SYMBOL; I.E. (B)
 2. ITEM NO.'S REFER TO THE NHDPMH STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.

TYPICAL ROAD SECTION

NOT TO SCALE

TOWN OF PLAINFIELD, N.H.	
SUBDIVISION REGULATIONS	
APPROVED	
NO.	DESCRIPTION
	REVISIONS