

# Spring Selectboard Institute

## Rules of the Road Vermont Local Highway Law

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# Rules of the Road

- **Creation of Town Highways**
- **Highway Classification & Maintenance Obligations**
- **Limiting the Use of Highways**
  - **Speed limits**
  - **Weight limits**
  - **Seasonal closures**
  - **Snowmobile / ATV use**



# What is a Town Highway?

- The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements and structures.

19 V.S.A § 1(12)

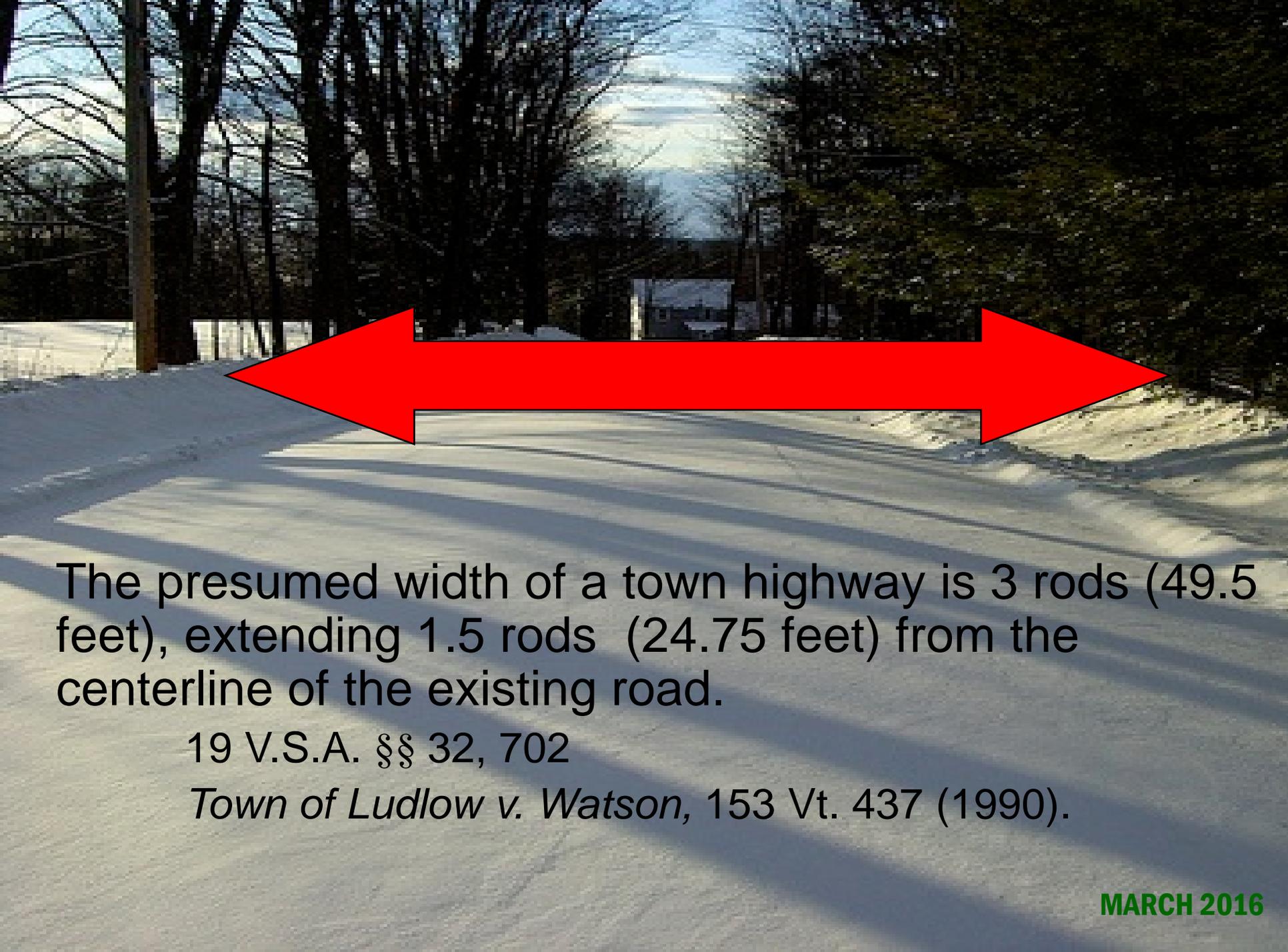


# What is a Town Highway?

- A road over which the public has a right to pass and which the government has the obligation to maintain.
- To which adjoining landowners also have a private right of access.

*Okemo Mountain, Inc. v. Town of Ludlow,*  
171 Vt. 201 (2000).





The presumed width of a town highway is 3 rods (49.5 feet), extending 1.5 rods (24.75 feet) from the centerline of the existing road.

19 V.S.A. §§ 32, 702

*Town of Ludlow v. Watson*, 153 Vt. 437 (1990).

# Who Owns a Town Highway?

- Sometimes the town is the owner of the “fee interest” - the town actually owns the property underlying the highway.
- More often than not, the town is the holder of an easement over the property (i.e. the right to use the property for a right of way) but the property itself is owned by someone else.
- The nature of the town’s ownership interest is dependent in large part on how the highway was created.



# How is a Town Highway Created?

1. Dedication and acceptance;
2. Statutory condemnation;
3. Court decision;
4. State Legislature;
5. Prescription; or
6. Other means.



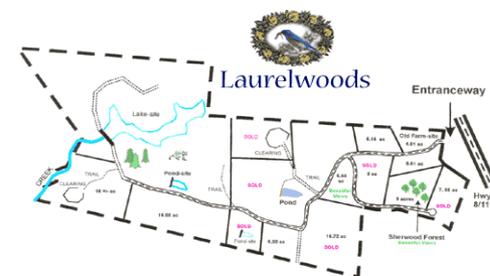
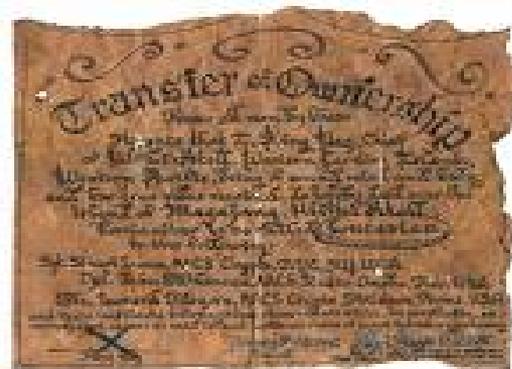
# Dedication and Acceptance

- “Dedication” is the setting apart of private land for public use, either expressly or by implication of law.
- The essential element is landowner intent, which must be clear
- Dedication may be express or implied from the acts of the owner.



# Express Dedication and Acceptance

- Deeded conveyance of a fee or easement interest in land from the property owner to the town, typically referencing a survey plat, both of which are recorded in the land records.
- Most commonly created in conjunction with residential subdivisions.



# Implied Dedication and Acceptance

- The owner's intent can be proven by acquiescence to public use and allowance of repairs at public expense.

*Town of Springfield v. Newton* 115 Vt. 39 (1947).



# Dedication and Acceptance

- “Acceptance” means receipt of the right of way needed for a new highway.
- There can be no “dedication and acceptance” without “acceptance.”
- Even where dedication is proven, acceptance must still be shown prior to imposing a duty to maintain on the town.





**Acceptance can be proven by evidence  
the town has voluntarily assumed the duty  
of maintaining the road by the expenditure  
of public money and labor.**

***Town of Springfield v. Newton, 115 Vt. 39 (1981)***

# Prescriptive Use

- A public easement may be created by prescription.  
*Gore v. Blanchard*, 96 Vt. 234 (1922)  
*Buttolph v. Eriksson*, 160 Vt. 618 (1993).
- The issue is whether the public's use was open, notorious, adverse, and under a claim of right, continuous for the requisite period (15 years).
- May create a *public way* but not necessarily a *public highway*. No governmental duty to maintain.  
*Okemo Mountain, Inc. v. Town of Ludlow ZBA*, 164 Vt. 447 (1995)



# Statutory Process

- **The process for laying out, altering, reclassifying, or discontinuing a highway is controlled by Title 19 of the Vermont Statutes.**
- Basically the same process for all actions
- Selectboard's actions are void if there is not "substantial compliance" with the statutory procedure. *In re Bill*, 168 Vt. 139 (1998).



# Statutory Process

"**Lay out**" means to create (by statutory process). This is an exercise of condemnation authority.

"**Discontinue**" (aka "to throw up") means that the municipality rids itself and the public of all rights to and responsibility over the highway.

"**Alter**" means to make a major physical change in the highway such as a change in width from a single lane to two lanes. 19 V.S.A. § 701(2).



# Start of Process

There are 4 ways process may be started:

1. **Petition by voters or landowners. 19 V.S.A. § 708(a)**
2. **Decision by the Selectboard. 19 V.S.A. § 708(a)**
3. **Agreement between the Selectboards of two towns regarding a highway or bridge that will run between the two towns. 19 V.S.A. § 790**
4. **Court action**



# Selectboard's Steps

- Schedule site visit and public hearing**
- Give notice of the site visit and the hearing**
- Have road surveyed (if laying out or altering)**
- Conduct site visit**
- Conduct public hearing**
- Issue written decision**
- Take post-decision actions**



# Hearing and Site Visit

**Public may attend the site visit but may not offer evidence or testimony.**

**Public may attend and participate in the hearing.**

**Hearing is a “quasi-judicial” proceeding.  
Selectboard takes testimony / comments and receives evidence.**



# Decisions to be Made

- 1. Whether “the public good, necessity and convenience of the inhabitants of the municipality” requires the action. 19 V.S.A. § 710.**
- 2. Determination of compensation ("damages") to affected landowners for loss of property or loss of an interest in property. 19 V.S.A. §§ 33(h), 712.**
- 3. If discontinuance: whether to make highway into a public trail (continue public right of access but cease maintenance obligations).**



# Written Report (Decision)

## Includes:

- **What, if any action is being taken (laying out, etc);**
- **Written description of the highway (refer to the survey plat, if any);**
- **Identification of affected land holders;**
- **Manner of notification to affected land holders and other interested parties;**
- **Amount of compensation to be paid for damages (if any); and**
- **Deadline by which obstacles must be removed.**



# Post-Decision Actions

- Decision sent to individuals whose property abuts the highway (or will abut the highway is altered or laid out) with copy of survey plat and notice of rights of appeal. 19 VSA § 33(f).
- Record the decision and related documents in official town records. 19 V.S.A. § 711.
- Pay compensation (“damages”) to landowners. 19 VSA §§ 712, 725, 726.
- Send written notice to AOT. 19 V.S.A. § 305.



# Potential Appeal

## Appeal may be taken by:

- Persons owning or interested in land through which the highway was laid out, altered, or resurveyed. 19 VSA § 740
- Persons dissatisfied with selectboard's action (including reclassification). VRCP 75
- Landowners not satisfied with an award of damages. 19 VSA § 726
- Landowners or voters when the selectboard fails or refuses to act. 19 VSA § 750



# What Happens After Discontinuance?

## Creation of a Trail

If selectboard or State Commissioner of the Department of Forests, Parks and Recreation designates the discontinued highway as a trail:

- Right-of-way continues at the same width.
- Municipal obligation to maintain the highway ceases.  
19 VSA § 310(c)



# What Happens After Discontinuance?

## Total Discontinuance

- All public rights to use the highway cease.
- The property underlying the former highway belongs to the original property owner. If the original property owner cannot be determined, it gets divided between the owners of the lands on each side of the highway. 19 VSA §§ 305, 775.
- Individuals continue to have a right of access to their property. 19 VSA § 717(c). If multiple owners: must decide whether and how to maintain.



# Questions





# The Highway Classification System and Maintenance Obligations

# Town Highway Classification

## Four Classes of Municipal Highways

**Class 1 highways:** form an **extension of a state highway route** and carry a state route number; determined by VTrans.

19 V.S.A. § 302(a)(1).

**Class 2 highways:** selected as the **most important highways in each town** by the town's selectboard (with VTrans approval).

19 V.S.A. § 302(a)(2).



# Town Highway Classification

**Class 3 highways: all traveled town highways** other than class 1 or 2; determined by the selectboard after conference with VTrans Board representative.

19 V.S.A. § 302(a)(3)(A).

**“Provisional class 3 highway”**: does not currently meet class 3 standards, but will meet all class 3 standards within 5 years.

19 V.S.A. § 302(a)(3)(C).

**Class 4 highways: All other town highways;** determined by the selectboard.

19 V.S.A. § 302(a)(4).



# Town Highway Classification

**Town Trail: A public right-of-way which is “not a highway.”**

A trail may be either:

- a former town highway that has been reclassified as a trail; or
- a new right-of-way laid out as a trail to provide access to abutting properties or for recreational use.



19 V.S.A. § 301(8).

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# Town Highway Classification

**Pent Road:** A town highway that, with written permission of the selectboard, is enclosed by adjoining landowners with *unlocked* stiles, gates and bars.

**A pent road is *not* a separate classification of highway.**

19 V.S.A. § 301(4).



# Reclassification

## Reclassification:

Follow the same process as for laying out, altering, and discontinuing. Found in 19 VSA § 708 et seq.



# Reclassification

## Reclassification of class 4 to class 3:

- Consider whether increased traffic and development potential likely to result from the reclassification is desirable or is in accordance with the town plan. 19 V.S.A. § 708(b).
- Don't need to reclassify merely because there exists within a town one or more class 3 highways with characteristics similar to the class 4 highway. 19 V.S.A. § 708(b).
- May require petitioner to bear the cost of upgrading. 19 V.S.A. § 711(b).



# Highway Maintenance Obligations

## Control of Town Highways

- Town highways are under the general supervision and control of the selectboard of the town where the roads are located.
- Selectboard has duty to supervise all expenditures on town roads, maintain town roads, and regulate their use.

19 V.S.A. §§ 303, 304.



# Highway Maintenance Obligations

## Class 1 Highways

**Must be kept “in good and sufficient repair during all seasons of the year.”** 19 V.S.A. § 310(a).

- **Towns are responsible for general maintenance**

Includes: spot patching, traffic control devices, curbs, sidewalks, drainage and snow removal, and major reconstruction.

19 V.S.A. § 306a(a)-(c).

VTrans is responsible for scheduled surface maintenance at no expense to the town.

19 V.S.A. § 306a(a).

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# Highway Maintenance Obligations

## Class 2 Highways

Must be kept “**in good and sufficient repair during all seasons of the year.**” 19 V.S.A. § 310(a).

BUT

The **selectboard may decide not to plow a class 2 road in winter based upon “safety considerations for the traveling public and municipal employees.”**

An aggrieved property owner may appeal to the VT Transportation Board. 19 V.S.A. § 310(a), (d).



# Highway Maintenance Obligations

## Class 3 Highways

Must be kept **“in good and sufficient repair during all seasons of the year.”**

19 V.S.A. § 310(a).

- **Minimum standards:** negotiable under normal conditions all seasons of the year by a standard manufactured pleasure car (includes sufficient surface and base, adequate drainage, and sufficient width capable to provide winter maintenance).

19 V.S.A. § 302(3)(B).

**BUT the selectboard may decide not to plow in winter based on “safety considerations for the traveling public and municipal employees.”**

19 V.S.A. § 310(a).



# Highway Maintenance Obligations

## Class 4 Highways

- **May** be “maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town.”

19 V.S.A. § 310(b).

- **Unlike class 1, 2, and 3 highways, a town is *not* required to regularly maintain a class 4 highway.**



# Highway Maintenance Obligations

**Trails:** A town is not responsible for construction, maintenance, repair or safety of trails, including culverts and bridges on trails.

19 V.S.A. §§ 302(a)(5), 310(c).

## **Bridges and Culverts:**

- Town *must* maintain on class 1, 2, and 3 highways.
- Obligation to repair on class 4 highways is *probably* discretionary.



# Questions



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# Enforcing Repairs

- **Any three citizens or taxpayers of the State** may give the selectboard **written notice** of a highway or bridge that is out of repair or unsafe for travel.
- **Notice must include:**
  - signatures;
  - location of the highway or bridge; and
  - nature of insufficiency.

19 V.S.A. § 971.



# Enforcing Repairs

- **Selectboard has 72 hours to**
  - **deny the allegation** of insufficiency,
  - **commence work, OR**
  - **continue work in “good faith” with “reasonable dispatch.”**
- **If allegation is denied or work undone, petitioners may file written complaint with county road commissioner or Superior Court.**

19 V.S.A. § 971.



# Enforcing Repairs

- **County road commissioners:**
  - **set** a time and place for a **hearing**.
  - **examine** the highway or bridge, and
  - **report** their findings.
- **If out of repair or unsafe for travel AND the public good demands repair, report will describe repairs and estimate costs and order town to perform work.**
- **No town will be required to spend more than 20 cents per hundred dollars on its grand list in any one year.**
- **Commissioners may appoint an agent to do the work and enter a judgment against the town if it fails to comply with their order.**

19 V.S.A. §§ 970-979.



# Enforcing Repairs

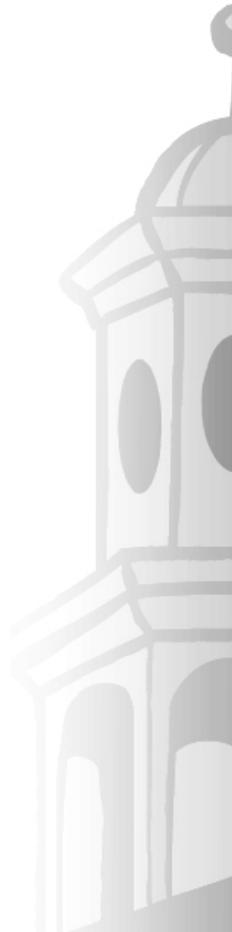
- **BUT for Class 4 highways, the standard of review is different. Commissioners or Court may only consider whether the selectboard's decision was arbitrary or discriminatory.**

*Town of Calais v. County Road Comm'rs, 173 Vt. 620 (2002)*

*Demerest v. Town of Underhill, 2016 VT 10*



# Questions



# Limiting the Use of Highways

## Means by which to limit the use of highways:

Winter maintenance

Speed limits

Weight limits

Temporary restrictions or closures

Snowmobile / ATV use



# Setting Speed Limits

**Selectboards are granted the authority to regulate the speed of motor vehicles using the highways under their jurisdiction...**

**19 V.S.A. §304(a)(7)**

**“The legislative body of a municipality may establish, on the basis of an engineering and traffic investigation, a speed limit on all or part of any city, town or village highway within its jurisdiction...”**

**23 V.S.A. §1007(a)**



# Setting Speed Limits

Based on an **engineering and traffic study**, the limit may be set between 25 and 50 miles per hour and may be in effect at all times or only during certain times, so long as appropriate signs are posted.



23 V.S.A. §1007(a)

# Setting Speed Limits on Unpaved Highways

For unpaved town highways, the legislative body, after considering factors such as the character of the neighborhood, abutting land use and the physical condition of the highway, may establish a speed limit not less than 35 miles per hour or more than 50 miles per hour **without an engineering and traffic investigation**, and must post signs at the points of change from one speed limit to the next.

23 V.S.A. §1007(a)(1)



# Speed Limits on State Highways in Cities vs. Towns

## Cities

The legislative body of a city may establish a speed limit on state highways within its jurisdiction which is no less than 25 or greater than 50 miles per hour, on the basis of an engineering and traffic investigation.

23 V.S.A. § 1007(b)



## Towns

A town is not permitted to regulate the speed limit on a state highway.

State v. Yorkey, 163 Vt. 335  
(1995)

# How Does a Town Go About Changing State Highways Speed Limits?

- 1. The selectboard writes a letter to the Traffic Committee Coordinator at the state level requesting the change indicating the route, the exact location and the reasons for the change.**
- 2. A copy of the letter should be sent to the District Transportation Administrator.**
- 3. The State's Traffic Committee will conduct their traffic and engineering study and present their findings to the Traffic Committee at an open meetings with town official to present testimony before a ruling is determined.**



# Traffic and Engineering Studies

**It is not necessary to hire a professional engineer to conduct a study.**



# Traffic and Engineering Studies

Following criteria are the minimum requirements for a traffic study:

1. Consideration of the road itself: travel surface, shoulders, road's alignment, sight distance, width, etc.
2. Monitor the speed at which vehicles are traveling.
3. Look for roadside development and culture: residential area?, school zone?, commercial?, rural?, etc.



# Traffic and Engineering Studies

- 4. Determine the safe speed for curves or other hazardous locations within the zone, such as intersections.**
- 5. Record the parking practices and pedestrian activity in the area.**
- 6. Record the reported accident experience for a recent twelve month period.**



# Traffic and Engineering Studies

**Lack of evidence of a traffic and engineering study will not invalidate a local speed limit ordinance as adopted or amended under this section after five years following the day on which the speed limit ordinance took effect.**

**23 V.S.A §1007(e)**



# Traffic Ordinance

**To be enforceable, speed limits (and other traffic regulations) must be set by a duly-adopted traffic ordinance.**

**Ordinance adoption process is governed by Title 24, § 1971 et seq.**

**Ordinances are adopted by the selectboard and go into effect unless there is a voter-backed petition for a vote.**



# Traffic Ordinance

**Follow the statutory process to  
avoid legal challenge!**



# Speed Limit Signage

**In order to enforce such speed limits, a municipality must adequately warn motorists of the regulations in effect of the highways on which they are traveling. Vermont state law requires municipalities to post speed limit signs pursuant to the Manual on Uniform Traffic Control Devices (MUTCD).**

**23 V.S.A. §1025(a)**



# Speed Limit Signage

**MUTCD requires speed limit signs to be posted “at points of change from one speed limit to another.”**

**Moreover, “additional speed limit signs shall be installed beyond major intersections and at other locations where it is necessary to remind road users of the speed limit that is applicable.”**

**MUTCD § 2B.15.**



2012

# Setting Speed Limits- A Guide for Vermont Towns



Vermont Local Roads

Saint Michael's College

Updated May 2012



<http://localroads.vermont.gov/sites/localroads/files/files/resources/materials/Setting-Speed-Limits-Guide-Update-May2012.pdf>

# Questions



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# Weight Limits

- **Default limits set by the State** in 23 V.S.A. § 1392
- **But selectboard may set different limits** on class 2, 3, and 4 town highways or bridges based on its judgment of the best interest of the town.

23 V.S.A. §1396.

- **Process:**
  - Selectboard resolution at a duly-warned open meeting.
  - Post signs at each end of each restricted highway or on the approaches to each restricted bridge. 23 V.S.A. § 1397.
  - Maintain documentation of the time and date a highway or bridge is posted, and keep all current restrictions on file with the Department of Motor Vehicles. 23 V.S.A. § 1400b.



# Weight Limits

## Exemption from Weight Limits for:

- State and municipal fire-fighting and construction machinery; and
- Agricultural service vehicles that weigh less than 60,000 pounds.

23 V.S.A. §§ 4(71), 1399, 1400d



# Weight Limits

## Violation of Local Weight Limits:

- Traffic violation. May be issued a state traffic ticket from a law enforcement officer.
- Penalties for violation of weight limits are established in 23 V.S.A. § 1391a and may not be changed by the municipality.
- In addition to ticketing, the town may sue the offender in Small Claims Court or Superior Court for the cost of any damage caused to the road.



# Questions



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# Temporary Restrictions and Closures

**Selectboard may impose restrictions regarding the use of a town highway or close that town highway temporarily when necessity demands.**

**19 V.S.A. §§ 303, 1110**

May have physical barriers placed in the highway to prevent travel as long as those barriers are clearly visible and are accompanied with clear signage.

**23 V.S.A. § 1112.**



# Temporary Restrictions and Closures

## Process:

1. selectboard resolution at duly-warned open meeting; and
2. signs provided by the Agency of Transportation “conspicuously placed” at each end of the portion of the highway that is restricted.
3. May also give notice to DMV (recommended but nor required)



# Temporary Restrictions and Closures

**There is no provision in statute that exempts any kind of vehicles from temporary restrictions or closures.**

**Penalty is limited by 19 V.S.A. § 1110:**

- 1. Traffic ticket with fine of not more than \$100.00; and**
- 2. Potential liability to the town (requires court action)**



# Questions



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# Snowmobile / ATV Use

- **State law allows snowmobile and ATV use on all public highways that are not maintained by the town for vehicle use in winter.**

**23 V.S.A. §§ 3206, 3506.**

- **A municipality may not prohibit such use during the winter.**



# Snowmobile / ATV Use

- A municipality may impose restrictions regarding the time and manner of operation of snowmobiles and ATVs on those highways.

23 V.S.A. §§ 3210, 3510 and 24 V.S.A. § 2291(4)

- May regulate the *time, manner, or location* of use
- May prohibit use on town trails or town property
- May not take away rights granted in State law (e.g. right to travel on unmaintained highways)

Only an ordinance is enforceable (a policy is not)



# Snowmobile / ATV Use

## Granting additional rights to use:

- A municipality may allow for the use of snowmobiles and ATVs on any of its maintained highways and sidewalks after posting by the town. 23 V.S.A. §§ 3206, 3506.
- Selectboard policy or resolution is sufficient to open. BUT if the town wishes to impose any enforceable restrictions on the time and manner of such operation, those restrictions must be imposed in an ordinance.



# Questions

