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**Class VI Roads: Defining the Relationship
Between the Town and Abutting Properties**

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I. Introduction

Class VI roads are roads which the public has a right to use, but which municipalities do not have an obligation to maintain and for which municipalities are not subject to liability.

Municipalities and owners of property which abut Class VI roads define their relationship by determining what, if anything, the property owner can do to the roadway, and under what circumstances the property owner can develop the property which abuts the Class VI road. The search for developable land, particularly in certain sectors of the state, puts increasing pressure on municipalities to focus on these questions and to recognize the long term ramifications of their decisions on these matters.

Additionally, RSA 674:41 was amended recently to create a system for issuing building permits on private roads. The system tracks the statutory process for issuing building permits on Class VI roads. Municipalities should ensure that they adhere to the provisions of RSA 674:41 both regarding building permits for Class VI roads and for private roads.

II. Issuing Building Permits on Class VI and Private Roads

To properly implement the provisions of RSA 674:41, municipalities should do the following:

- Verify that the road is private, or in the case of a Class VI road, that the road is designated as such in town records. Verification of the status of the private road should preferably be done by reviewing the owner's deed; in the alternative, town records can be researched.
- The Planning Board should review and comment on the request for a building permit. Although the statute does not indicate what the Planning Board should review, we recommend that the board develop concrete criteria for review; such criteria should at a minimum include whether the road is accessible by emergency vehicles. The Planning Board should work with its planner and/or the regional planning commission to formulate these criteria. Also, for building permits on private roads, the review should be conducted in accordance with your zoning ordinance provisions which address private roads.
- The local governing body must vote to authorize the issuance of a building permit. The vote must provide authority to construct on a particular road (or a portion thereof).
- Permits can be issued only if the municipality declines to accept maintenance responsibilities for the Class VI or private road and indicates that it will not be liable for any damages resulting from same.
- The applicant must record, at the Registry of Deeds, a document setting forth the applicant's responsibilities regarding the Class VI road or private road. The document should be preferably drafted by Town counsel; at a minimum it should be reviewed and approved by Town counsel prior to recording at the Registry of Deeds.

III. Improvements on Class VI Roads

RSA 41:11 provides that unless roads are regulated by the Commissioner or the Department of Transportation, the Selectmen may regulate the use of all public highways, sidewalks, and commons in their respective towns. RSA 236:9 provides that it shall be "unlawful to excavate or disturb the shoulders, ditches, embankments or services improved for the travel of any Class I or Class III highway or state-maintained portion of any Class II highway for any purpose whatever without prior permission from the Commissioner of Transportation or District Engineer, or any other highway without written permission from the selectmen or highway agent of the town..."

Reading these statutes together, it is the Selectmen alone that have authorization to grant authority for the excavation, improvement or alteration of Class VI roads. If a private property owner wishes to perform maintenance work on the road, he must obtain written authority from the Selectmen or Town road agent prior to commencing road work on any Class VI road. The operative statute, RSA 236:9, does not mandate that the municipality grant permission to

perform any particular type of improvement or for any particular purpose. The decision to grant permission will ultimately be based on policy; however when considering whether to grant such permission, the following factors may be included in the analysis by the Board of Selectmen:

- Does the applicant provide a plan of specific proposed task and a time frame for completion.
- Are there reasonable conditions or limitations that can be imposed to protect the interest of the town generally and of any other properties which abut the road in the vicinity of the proposed improvement or alteration.
- Did the applicant agree to enter into a hold harmless agreement with the town if the proposed improvement creates any potential for damaging other properties.
- What are the benefits to the town of granting the request for improvements? What are the potential detriments?

IV. Summary

Class VI roads are a valuable component of a municipality's infrastructure because they provide a mechanism for citizens to access and use public property which lies in a relatively undeveloped state for recreational, forestry and other activities. The roads also serve as a valuable planning and economic development tool for municipalities because, with proper planning, they can be transformed into Class V roads to facilitate the development of abutting land. The decision to alter the manner in which Class VI roads are used, whether by granting permission to an abutting property owner to improve the road, or by granting a building permit on the road, should be done carefully, deliberately, and with sensitivity to the fact that such decisions will be scrutinized in the face of similar requests in the future.