

WHAT IS THE PROCESS FOR DISCONTINUING A HIGHWAY THAT RUNS THROUGH TWO TOWNS?

The process for discontinuing a town highway that continues into another town is essentially the same as that for laying out, altering, reclassifying or discontinuing a class 3 or class 4 highway wholly within one town. (Discontinuing a class 1 or class 2 town highway requires the prior approval of the secretary of transportation). The procedure is laid out in 19 V.S.A. §§ 708-711 and may be initiated by the selectboard or by a petition signed by “persons who are either voters or landowners, and whose number is at least five percent of the voters, in a town.” 19 V.S.A. § 708.

The first step is for the selectboard to “promptly” set a time and date to examine the premises and hold a hearing. The selectboard must provide 30 days notice of the examination and hearing by certified mail to the petitioners, persons owning or interested in lands through which the highway passes or abuts, and the municipal planning commission. The notice must also be posted in the town clerk’s office and published in a local newspaper at least 10 days before the hearing. 19 V.S.A. § 709.

Following the inspection and hearing, the selectboard must make a decision based on whether “the public good, necessity and convenience of the inhabitants of the municipality” require the highway to be discontinued. If the selectboard decides to discontinue a highway, “the discontinuance shall be in writing setting forth a completed description of the highway.” 19 V.S.A. § 710. The original petition (if one exists), the selectboard’s order of discontinuance, a report of its findings and manner of notifying all concerned must all be filed with the town clerk for recording within 60 days of the examination and hearing. 19 V.S.A. § 711. The highway can be totally discontinued, in which case the right-of-way reverts to the owners of adjoining land. Alternatively, the selectboard may designate the discontinued highway “as a trail, in which case the right-of-way shall be continued at the same width.” 19 V.S.A. § 775. The selectboard must also notify the commissioner of the Department of Forests, Parks and Recreation of its decision who may decide, with the approval of the selectboard, to designate the discontinued highway as a trail.

The only difference between discontinuing a town highway that runs wholly within one town and discontinuing one that runs between two towns is that in the second case, the selectboard must take the additional step of notifying the selectboard of the adjacent town. If that selectboard is aggrieved by the other’s decision to discontinue the highway, it may appeal its decision to the State Transportation Board.

As is the case with discontinuing any town highway, it is very important to substantially comply with the statutorily prescribed process. Otherwise, the proceedings could be voided and the highway could maintain its legal status. This was exactly what happened in the Vermont Supreme Court case of *In re Ruth Bill*, 168 Vt. 439 (1998) in which the Court held that the “selectboard’s failure to comply with the thenexisting statutory scheme voids its proceedings and order purporting to discontinue the highway segment, and, therefore, the highway still legally exists.”

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