

Long and Winding Ancient Roads Discussion Comes to End

Important Deadlines Loom in Future Years

After three years of debate, many proposed solutions of varying quality, gnashing of teeth and pulling of hair, the Legislature passed Act 178 – effectively setting in motion the end of the ancient roads discussion in Vermont.

The legislation attempts to solve the problems potentially caused by legally established town highways that have gone unused – and, in some cases – unnoticed for decades or even centuries. As towns, interested citizens, and property owners rediscover these Class 4 highways, conflicts have arisen over their reclamation, access and use, and structures that may have been built within their rights-of-way. In a few communities, the conflict has escalated into protracted legal wrangling between the towns and property owners.

Act 178 is an effort to resolve the problems created by these hard-to-see and somewhat forgotten roads, by allowing towns an opportunity to add them to their maps as Class 4 roads or trails, to give them up in a public discontinuance process, or to let them fade into obscurity and discontinuance on their own in nine years.

The focus of much of the mapping and research efforts towns will undertake is on those rights-of-way that are not easily seen. In fact, the bill attempts to define these roads as entities “not otherwise clearly observable by physical evidence of their use as a highway or trail.” There is still some question as to who will define what is “clearly observable” and what is not. For example, a surveyor may enter an area and see signs that clearly indicate to him or her that a road runs through it, whereas an average citizen may not see any evidence of that road at all.

Municipalities will be given until July 1, 2010 to add any of those Class 4 highways described above to their town highway map, which they file annually on February 10 with the Vermont Agency of Transportation (VTrans). The highway map is submitted, along with a sworn certificate, to certify the amount of Class 1, 2, and 3 highway mileage in a town. VTrans uses those mileage numbers to determine what the municipality receives for state highway grant aid, as well as what changes need to be made to the town highway map. There has never been a financial incentive for municipalities to add Class 4 roads or trails to the sworn certificate or map because neither figures into the grant aid calculations. Some cities and towns, however, do submit that information to VTrans anyway.

In order to add unobservable highways to the sworn certificate and highway map, the municipality needs to follow the same process it does when filing its information with VTrans for the other classifications of road. The request to change the mileage recorded requires the selectboard to include additional information for the highways it wishes to add, such as:

- a description of the highway or trail;
- a copy of any surveys of the highway or trail;

- minutes from the meeting where the legislative body decided to make the mileage changes and add the highway or trail; and
- a current highway map with the changes (additions or deletions) sketched on it.

More detailed guidance on what the VTrans Mapping and GIS Unit will need from cities and towns in order to do its job is expected later this year.

Municipalities are required, before adding any Class 4 highways to the highway map that “are not otherwise clearly observable by physical evidence of their use,” to notify property owners whose parcels the highway passes through or abuts of any proposed changes. This must happen at least 45 days before a duly warned public hearing is held to discuss and act on those changes.

After the July 1, 2010 deadline passes, those Class 4 highways that are not observable by physical evidence of their use become “unidentified corridors.” The municipality has no responsibility to maintain an unidentified corridor, nor is it considered to create a subdivision (for zoning, tax, or septic purposes). Like a Class 4 highway, the unidentified corridor remains open and accessible to the public, however, it must be used in a manner consistent with its use in the 10-year period before January 1, 2006. Who determines what uses are consistent with those of the past decade is not clear.

On July 1, 2015, unidentified corridors are automatically discontinued, and the land reverts back to the owner(s) of land the highway passed through or abutted. A town can reclassify an unidentified corridor as a Class 4 highway or a trail in that period between 2010 and 2015, but it must follow the process established in statute (19 V.S.A. § 7) for the laying out of highways or trails – a process which may also include compensation to an affected landowner.

The Act also states that by July 1, 2015 all sworn statements and highway maps filed with the VTrans include all Class 4 town highways and trails.

There is some funding made available to towns by Act 178, with at least \$100,000 in grants offered annually through 2012. The grants will be administered by the Department of Housing and Community Affairs (DHCA) through the municipal and regional planning fund and will be made available for researching and mapping the unobservable highways a town wishes to keep. The forms, maximum grant amount, and timeline for applying for a grant are in the process of being finalized.

The Act includes a provision that allows cities and towns that are happy with their highway maps and sworn certificates a chance to discontinue all other highways not appearing on either. The mass discontinuance provision allows a town to discontinue all highways not on the sworn statement, provided they follow a process that includes a public hearing. The process allows voters and landowners to save a highway from discontinuance or to request that the selectboard designate a highway (or portions of it) as

a trail. The voters or landowners must present the selectboard with a petition that includes signatures from five percent of the registered voters in the town.

The selectboard must post a notice of the mass discontinuance hearing at least 30 days prior to the hearing, and include a copy of the town highway map indicating which highways will remain on it. The chairs of the local planning and conservation commissions must receive the notice and map, which must also be sent to the regional planning commission, the commissioner of the Department of Forest, Parks, and Recreation, and the selectboards of abutting municipalities as well.

Voters may also overturn a discontinuance decision made by the selectboard as long as a petition (again with signatures from five percent of the registered voters) is filed with the board within the 44-day window to do so. The petition would require a special meeting to be held in which a majority of voters can reverse the decision to discontinue a highway.

The earlier municipalities begin their work on researching and mapping unobservable highways, the easier it will be to navigate the process and ensure that public resources local officials and residents wish to keep are not inadvertently lost.

VLCT is working with VTrans, DHCA, and representatives of the Vermont Planners Association and the regional planning commissions to make sure the implementation of Act 178 goes as smoothly as possible for all municipalities.

- Trevor Lashua, Associate, Legislative and Information Services

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