

# THE HISTORY AND LAW OF VERMONT TOWN ROADS by Paul Gillies, Esq. (11.3.14 version)

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The standard for deciding to lay out, or not to lay out, a highway, is the board's judgment that the "public good, necessity and convenience of the inhabitants of the municipality require" the laying out, alteration or reclassification.<sup>1</sup> It should be on everybody's mind throughout the process, stated aloud at the hearing and included in the written decision that follows.

### 3.2.3 Necessity

The only one of the three terms that is defined in statute is "necessity." The statutory definition is found in 19 V.S.A. § 501(1):

(1) "Necessity" means a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

- (A) adequacy of other property and locations;
- (B) quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking;
- (C) effect upon home and homestead rights and the convenience of the owner of the land;
- (D) effect of the highway upon the scenic and recreational values of the highway;
- (E) need to accommodate present and future utility installations within the highway corridor;
- (F) need to mitigate the environmental impacts of highway construction; and
- (G) effect upon town grand lists and revenues.

This does not mean "an imperative, indispensable or absolute necessity but only that the taking be reasonably necessary to the accomplishment of the end in view under the particular circumstances."<sup>2</sup> In one case, the court, reviewing the actions of a selectboard, found that evidence that "the roads would aid in fire protection, that the town tax revenues would increase without an undue burden in the cost of maintaining the highways, that they would connect two present dead-end town roads so that traffic could flow east and west on one town road and that they would permit more efficient and economic maintenance, particularly during the winter plowing seasons," sufficient to uphold a decision to lay out a highway.<sup>3</sup>

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<sup>1</sup> 19 V.S.A. § 710.

<sup>2</sup> *Cersosimo v. Town of Townshend*, 139 Vt. 594, 597 (1981).

<sup>3</sup> *Id.*