


# WORKSHOPS



*A Virtual -A Hard Road to Travel*  
October 9, 2020

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1

## Today's Presenters

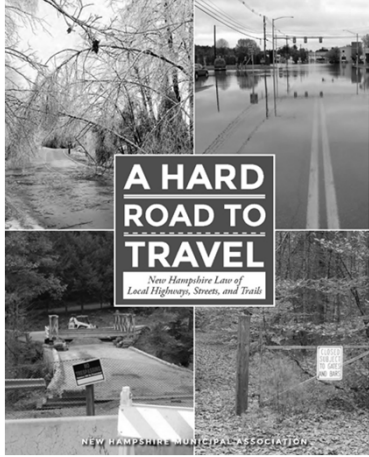


*Stephen Buckley*  
*Legal Services Counsel*



*Natch Greyes*  
*Municipal Services Counsel*

2



**Presentation Materials**

2020 *Hard Road to Travel* Supplement

Copy of this PowerPoint

3

## Today's Presentation

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**Steve**  
Formation, Classification, Discontinuance  
& Authority

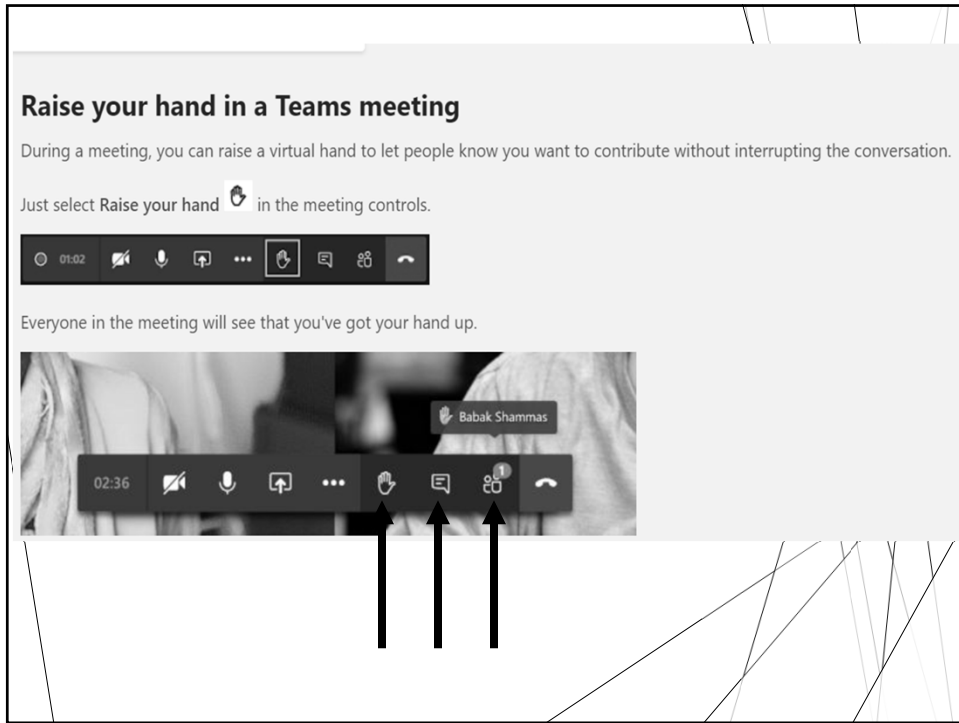
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**Natch**  
Liability, Regulation & Maintenance

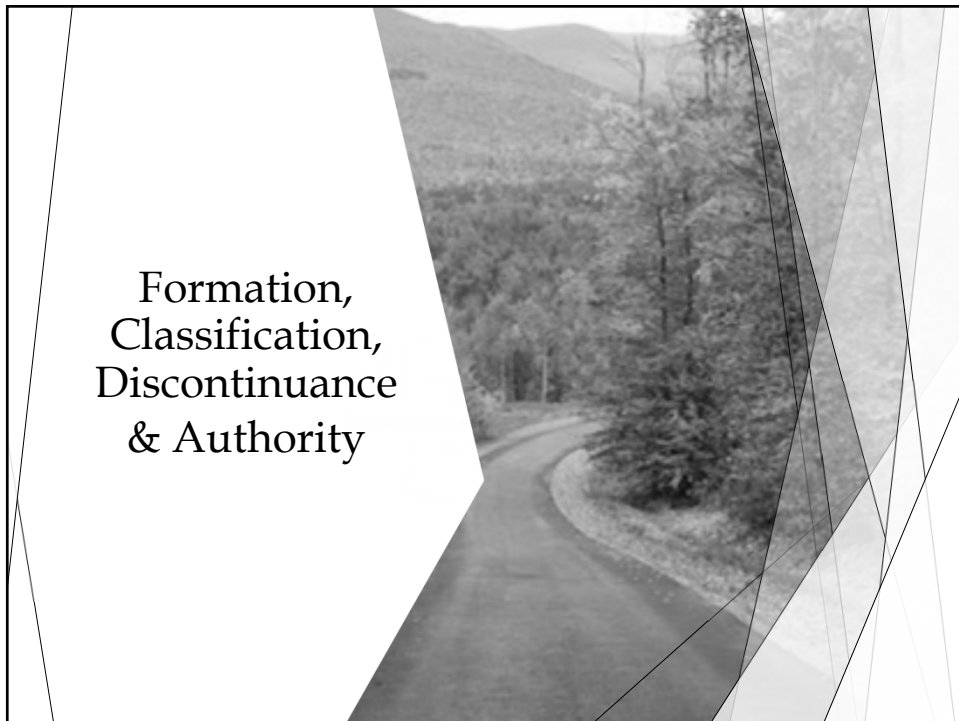
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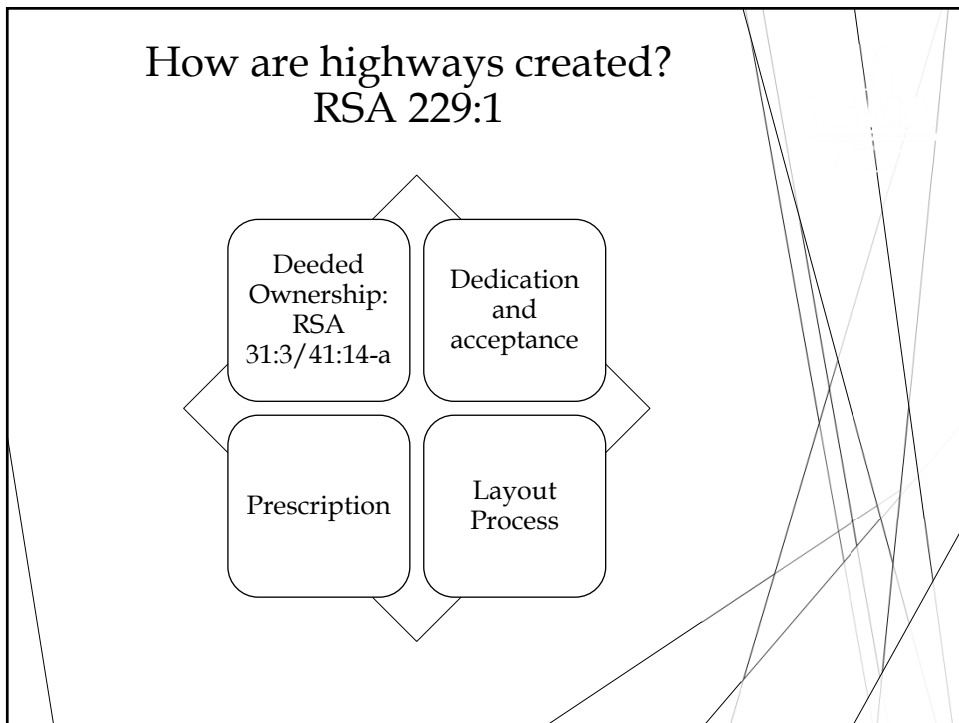
6



### What is a public highway?

- Highway = Road
- Easement for viatic use
- **Public** use
- RSA 229:1 – Not really a “definition”
- Ownership separate from easement

7

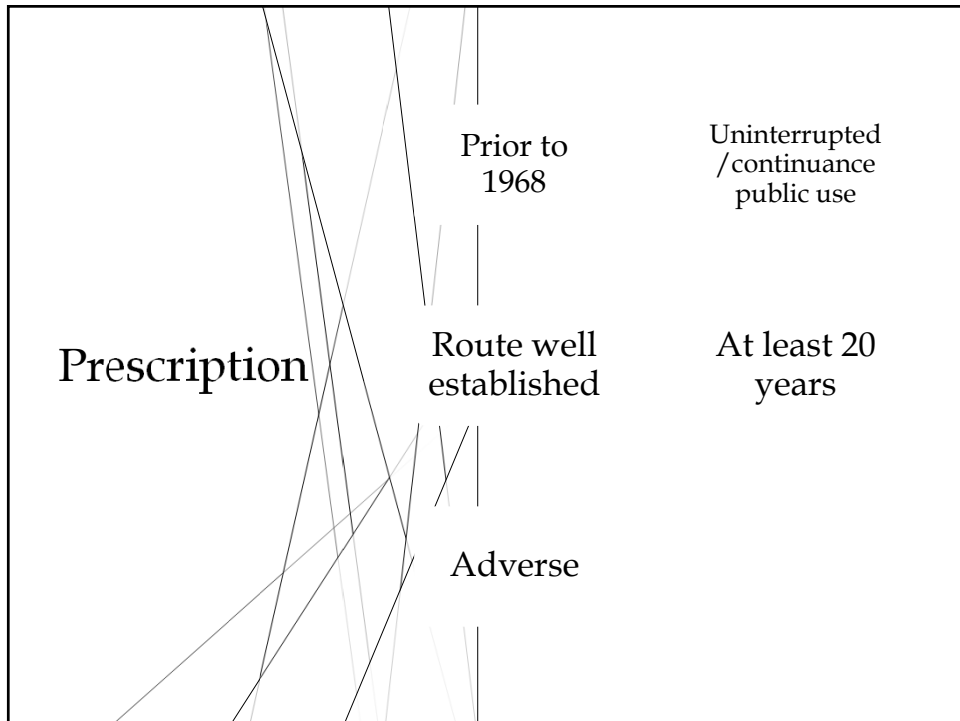


8

# Dedication vs. Acceptance

Dedication	Acceptance
<ul style="list-style-type: none"> <li>• Case law/RSA 231:51 (<i>Duchesnaye</i>)</li> <li>• Clear &amp; unequivocal <u>intent</u></li> <li>• Filing &amp; recording subdivision plan</li> <li>• May be implied</li> </ul>	<ul style="list-style-type: none"> <li>• Vote of legislative body</li> <li>• RSA 674:40: planning board, then town meeting</li> <li>• May be implied (<i>Hersh v. Plonski</i>)</li> <li>• RSA 674:40-a: delegated acceptance to select board</li> </ul>

9



10

Statutory  
Layout  
RSA  
231:8

- ▶ Right to appeal
- ▶ Petition required
- ▶ “Occasion”
- ▶ Steps:
  - ▶ Notice
  - ▶ Planning Board, then legislative body
  - ▶ Hearing
  - ▶ Return
  - ▶ Damages

11

Conditional  
Layout  
/  
Betterment  
Assessments

- ▶ RSA 231:23 (“conditional layout”); RSA 231:28 through :33 (“betterment assessment”)
- ▶ Betterment is better!
  1. Hearing
  2. Abutters Petition
  3. Apportionment
  4. Collection

12

## State Highway Classification

Class I	Primary State System
Class II	Secondary State System
Class III	State Recreational Road
Class III-a	Boating Access Roads

13

## Municipal Highway Classification

Class V	RSA 229:5, VI & 231:3
Class VI	RSA 229:5, VII & 231:21-a
Class IV	Urban Compact Section Highways - RSA 229:5, IV
Class II	Unimproved Class II - RSA 230:4

14

# Reclassification



- ▶ Reclassification
  - ▶ RSA 229:5, VII: Class V → Class VI
  - ▶ RSA 231:22-a & 229:5, VI: Class VI → Class V
- ▶ State → Municipal Road

15

# Other Common Issues



Always get a deed, whether fee or easement



What is the width of a road?



RSA 231:27: Reestablish boundary lines






Street Plat 674:40, I(b) & :40-a

16







Discontinuance

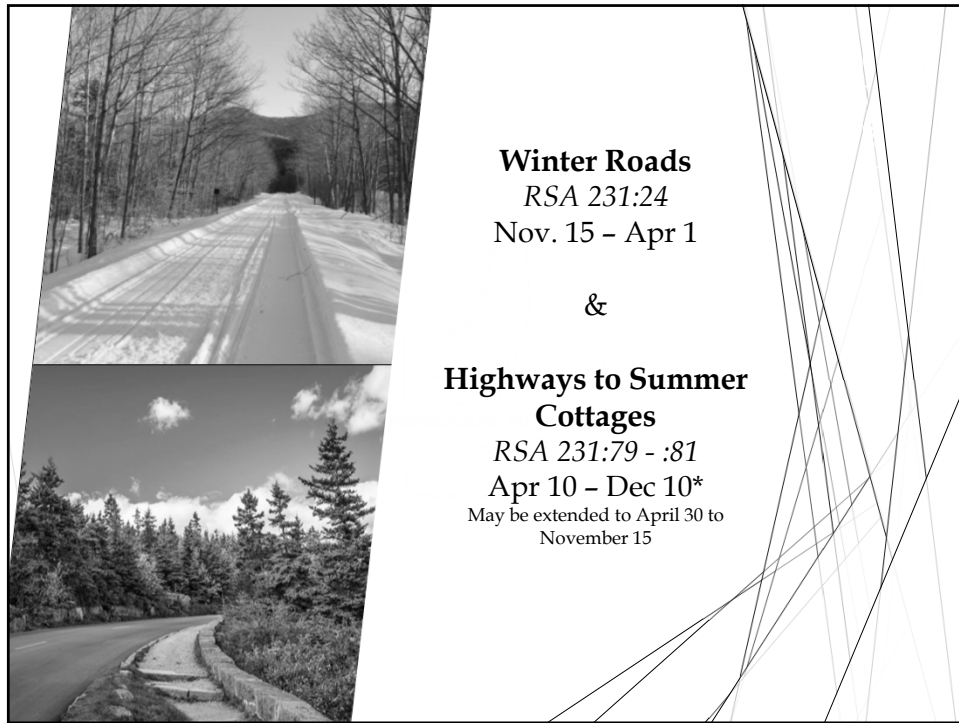
-  Law favors continuance
-  Discontinuance subject to gates and bars v. complete discontinuance
-  RSA 231:43 - :50

17

Special Categories of Highways

-  Highways to Summer Cottages
-  Winter Roads
-  Scenic Roads
-  Emergency Lanes

18

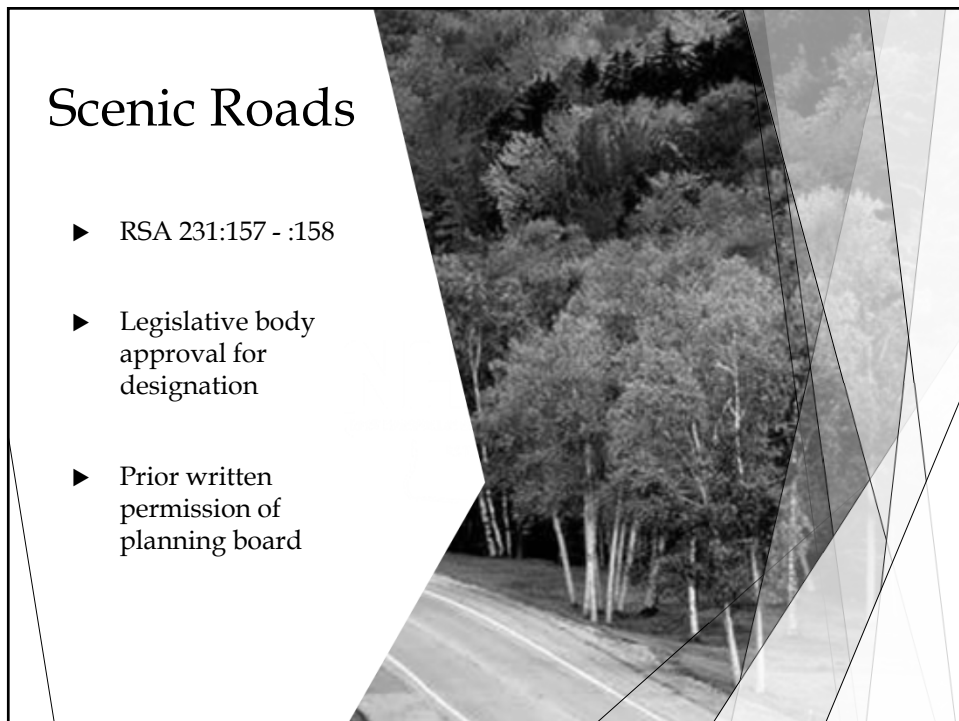


**Winter Roads**  
RSA 231:24  
Nov. 15 - Apr 1

&

**Highways to Summer Cottages**  
RSA 231:79 - :81  
Apr 10 - Dec 10\*  
May be extended to April 30 to November 15


19



**Scenic Roads**

- ▶ RSA 231:157 - :158
- ▶ Legislative body approval for designation
- ▶ Prior written permission of planning board

20



## Class VI Roads

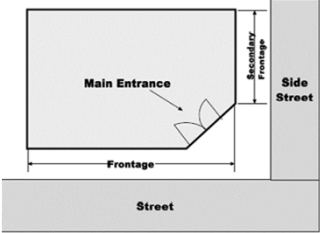
- ▶ RSA 229:5, VII
- ▶ “Subject to gates and bars”
- ▶ Public Roads
- ▶ No duty to maintain v. negligent conduct
- ▶ Warning signs

21

21

## Frontage

- ▶ Statute is concerned with *location* of frontage
- ▶ *Amount* of frontage is governed by your zoning ordinance, not statute
- ▶ Most zoning ordinances do require frontage on Class V or better



22

22

## Do we have to allow building on Class VI/Private Road?

- Municipalities may enact policies to allow construction on Class VI highways and/or private roads



- ▶ Municipalities may decide on case by case basis
- ▶ Municipalities are not obligated to allow *any* construction on Class VI highways or private roads

23

## Private Roads

- No authority to regulate
- No duty or authority to maintain
- Public purpose?
- No liability protection
- Remember *Hersh v. Plonski*?



24

## Class VI Road & Trail Designation

- ▶ Limiting access to a Class VI road requires discontinuance or reclassification as a Class B trail under RSA 231-A:2.
- ▶ Although all Class VI roads are deemed subject to gates and bars, the select board must still regulate such structures to assure public access. RSA 231:21-a, I. This means that the public, including motor vehicles, cannot be barred from using a Class VI road, except perhaps for weight limits, seasonal or otherwise. RSA 231:191.
- ▶ If the town wants to restrict the use of a portion of a Class VI so that vehicular traffic is prohibited that could be accomplished by vote of the town meeting to reclassify the road, or a portion of the road, as a Class B trail. RSA 231-A:2, I.
- ▶ As part of the Class B trail designation the town meeting could also impose public trail use restrictions, such as “prohibition of motor vehicles, prohibition of wheeled vehicles, prohibition of off highway recreational vehicles, or restriction to specified modes of travel such as horse, bicycle, or foot.” RSA 231-A:4.





25

## Emergency Lanes

- ▶ RSA 231:59-a
- ▶ Selectmen lay out/Public hearing & notice
- ▶ Class VI or private road
- ▶ Public safety need

26


**Create local road files!**

-  Information pertaining to the history of the road
-  Any survey or subdivision plats of land fronting that road
-  Copies of any governing body votes establishing regulations on that road
-  Copies of construction or reconstruction plans


27

**The Governing Body's Authority to Regulate: RSA 41:11**

- ▶ *...may regulate the use of all highways, sidewalks, and commons...may exercise all off the powers conferred on city councils by RSA 47:17, VII, VIII, and XVIII, and by any other provisions of the laws upon the subject."*



28



## RSA 47:17

- ▶VII: Use of Public Ways
- ▶VIII: Traffic Devices and Signals
- ▶XVII: Parking

29

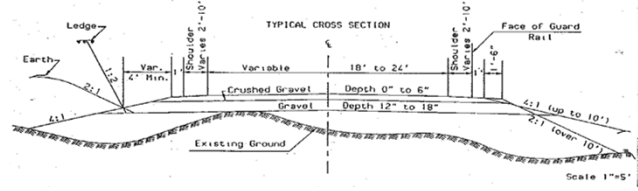
## NHDOT Geometric Design Standards For Local Roads

September 1990

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
MINIMUM GEOMETRIC & STRUCTURAL GUIDES FOR LOCAL ROADS AND STREETS

Average Daily Traffic (Veh./Day)	0-50	50-200	200-750	750-1500	1500 & OVER
Pavement Width (Feet)	18 min.	20	20	22	24
Shoulder Width (Feet)	2	2	4	4	8-10
Center of Road to Ditch Line	15	18	18	19-21	Varies
Pavement Type	Gravel	Asph. Surf.	Hot Bitum.	Hot Bitum.	Hot Bitum.
Slope of Roadway	4%	3%	2%	2%	2%
Base Course Depth-(Gravel)	12"	12"	12"	12"	18"
(Cr., Gravel)	-	-	4"	6"	8"

Notes 1. Gravel surface should be paved where steep grades occur.  
2. For average daily traffic over 1000 veh./day paved shoulders should be considered  
3. Base course depths may need to be increased in areas of poor soils



Scale 1"=5'

- ▶ <https://www.nh.gov/dot/org/projectdevelopment/planning/documents/SuggestedMinimumDesignStandardsforRuralSubdivisionStreets.pdf>

30

**Select Board**      **Local Roads**      **Planning Board**

- Layout of new roads - *Select Board RSA 231:8*
- Acceptance of new roads - *Select Board 674:40-a*
- Maintenance of existing roads - *Select Board 231:65*
- Town Road Construction Standards - *Select Board RSA 41:11, RSA 47:17, VII, VIII, XVIII*
- Approval of new subdivision Roads - *Planning Board RSA 674:36*
- Planning for new and existing roads - *Planning Board RSA 674:2, II*
- Capital Improvement Planning for roads - *Planning Board Subdivision & Site Plan Road Construction Standards - Planning Board RSA 674:36, I, (e); RSA 674:44, II, (d) (c) (f)*


31

**Take a Break**

**See You in 10 Minutes**

32





PROCEED WITH CAUTION

WEIGHT LIMIT  
8 T  
12 T  
16 T

No Parking

Liability, Regulation & Maintenance

33

Liability


- ▶ General Duty of Care to Travelers
- ▶ Liability to Abutting Landowners
- ▶ Discretionary Function Immunity & Other Protections

34

General Duty of Care to Travelers

RSA 231:90 - :92

► Correct Insufficiencies after Notice



35

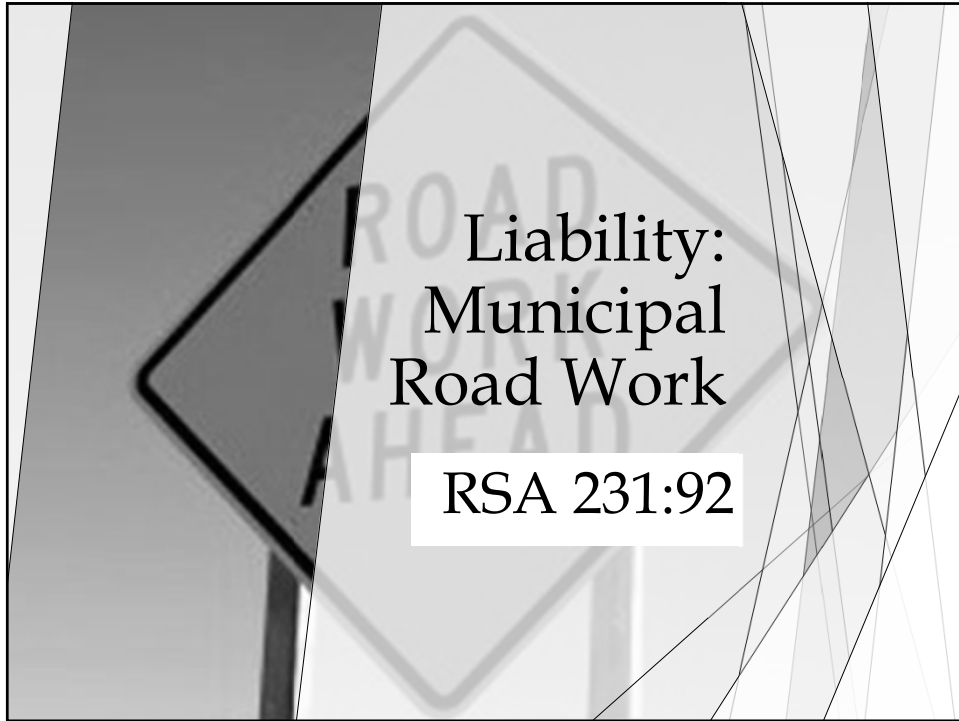
Inclement Weather Maintenance Policy:

*What's Your Plan?*

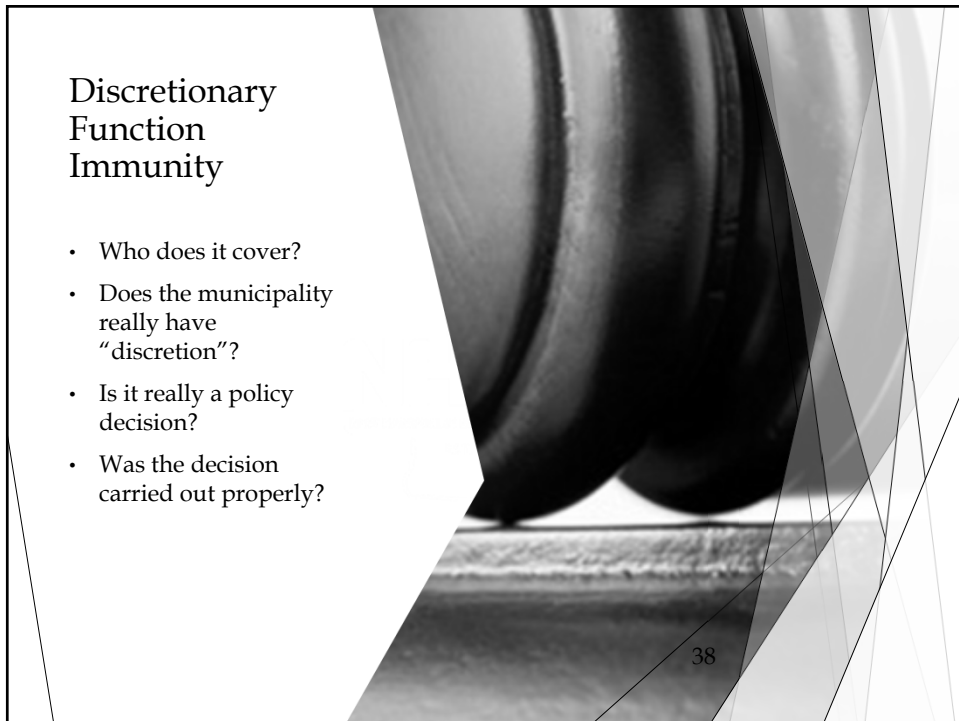
RSA 231:92-a



36



37



38

### RSA 31:105: Indemnification of Municipal Officials

Shields officials from individual liability from negligence or other acts . . . if acting in the scope of employment or office.

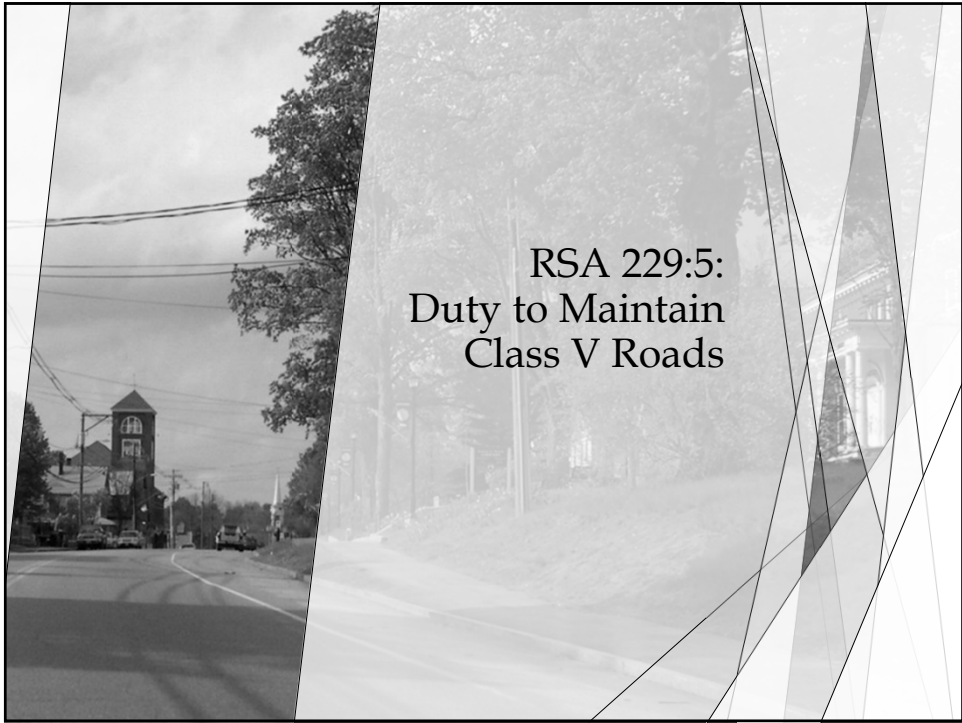


39

## Road Agents

- ▶ The statutes are written to provide that either the town by default has an elected road agent, or, the town meeting has voted to have an appointed expert agent (who could be called "Superintendent of Public Works"). This is provided in [RSA 231:62](#) and [RSA 231:64](#).
- ▶ Elected Road Agents - elected every year, or every two years, or every three years (RSA 231:62, 62-a and 62-b).
- ▶ Whether road agents are elected or appointed, they must perform their duties "under the direction of the selectmen." RSA 231:62.
- ▶ The select board has authority to adopt written general policies regarding highway maintenance, such as the winter maintenance snow and ice policy.
- ▶ The select board evaluates the work of the road agent in achieving the financial goals it has set, the satisfaction of the public with the condition of roads, and the physical maintenance of town roads, bridges, and sidewalks

40




41



42

What if the hazardous trees are along a scenic road?


RSA 231:158



43

Drainage Easements

- Express
- Implied (Existing Roads)
- By Prescription



44

## Liability to Abutting Landowners

- ▶ Road Salt Contamination → RSA 231:92 won't protect!
- ▶ Liability for Trespass
- ▶ Damage to Grade: RSA 231:75 - :78
- ▶ Right to access highway



45

## RSA 231:75: Damages from Grade or Drainage Change

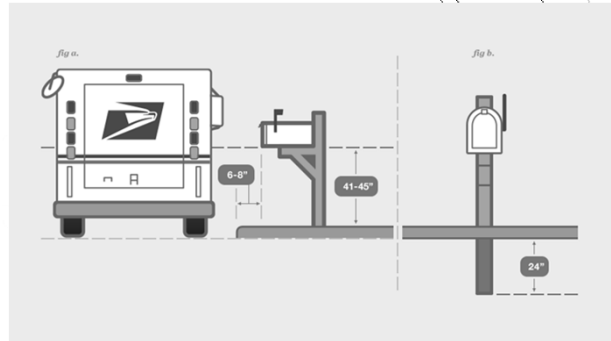


- Give Notice of road work to be done to abutters
- Schedule hearing for opportunity to be heard
- Grant hearing upon request

46

## Mailboxes

- ▶ Town may be liable for damage
- ▶ “Properly placed”



<https://www.usps.com/manage/mailboxes.htm>

47

## Driveways – RSA 236:13



- **Planning Board authorized to approve driveway permits on town roads.**
- **Must adopt driveway regulations.**
- **Delegate permit issuance and enforcement to Road Agent or other designee**
- **Continuing authority over any driveway even if no permit issued.**
- **Property owner can be ordered to fix driveway that is hazard to traveling public or threat to road integrity**

48



## **Liability for Damage to Town Roads**

- ▶ Criminal Liability - RSA 236:38
- ▶ Civil Liability for Damage - RSA 236:39
- ▶ Restoration - RSA 236:11
- ▶ Obstructions - RSA 236:15
- ▶ Diverting Water - RSA 236:19

49

## **Law Allowing Local Street Regulations**

- ▶ Under the provisions of RSA 41:11, select boards are afforded the same authority as city councils to regulate local roads as provided in RSA 47:17, VII, VIII and XVIII.

50

## Procedures for Adopting Local Street Regulations

- ▶ Steps:
  - ▶ Hold a Public Meeting
  - ▶ Provide Due Process Notice
  - ▶ Conduct a Public Hearing
  - ▶ Keep a Record of Enactment

51

## Weight Limits

RSA 231:190  
& :191



52

## Street Names & Numbers

- Assigning names—RSA 231:133
- Assigning numbers—RSA 231:133-a
- E-911



53

## What About Obstruction by Snow?



- ▶ RSA 236:20 - Applies to State highways only!
- ▶ Towns must enact local regulations to prevent obstruction by snow.

54

# Street Signs



- ▶ All signs must comply with Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD). RSA 47:17, VIII(a).
- ▶ "Unauthorized" signs, signals, markings, or devices are prohibited under RSA 265:14.

55



Off Highway  
Recreational  
Vehicles  
RSA 215-A

Snowmobiles  
RSA 215-C

56

56

## OHRV's: New in 2019!

- ▶ Prior to 2019 legislative session, the governing body of a municipality could vote to allow (or not allow) OHRVs to use local highways, with no notice or hearing requirements.
- ▶ Now, the governing body is required to have "a duly noticed public hearing advertised at least 14 days in advance in a public location in the city or town and notification to abutters by verified mail pursuant to RSA 451-C:1, VII" in advance of any change in local rules. The cost of the notice to abutters is to be borne by the person or organization asking the governing body to alter the currently existing local rules.
- ▶ Only applies to OHRVs, not snowmobiles.

57





**for joining us for this workshop today!**



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58