

## Notes on Lempster Coach Road - Class VI

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### Lempster Coach Road - Class VI

- The Town of Goshen voted to make a portion of Lempster Coach Road a Class VI subject to gates and bars at the Town Meeting March 11, 1930, (recorded in Town Records Volume 6 Page 180).
- A Class VI highways shall consist of all other existing public ways, and shall include all highways discontinued as open highways and made subject to gates and bars (RSA 229:5 VII.)
- Municipalities shall not be deemed to have any duty of care whatsoever with respect to the construction, maintenance or repair of class VI highways (RSA 231:93)
- According to the Municipal Association, a municipality that undertakes Class VI road maintenance exposes itself to the risk of liability for damage or injury resulting from that work.

### Goshen Enacts Emergency Lane in 2020 (RSA 231:59):

- The Town of Goshen enacted the Emergency Lane order on Aug 24, 2020 in order to work on the Class VI portion of Lempster Coach Road in order to be able to get emergency services to & from and to allow landlocked residents on the Class V portion of Lempster Coach Road access while the bridge over Trow Brook would be replaced. Estimated cost was \$10,000 for completion of that road.
- Upon declaration that a Class VI highway is an emergency lane, the town may then repair washouts or culverts, or do any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles. A capital reserve fund or expendable trust fund can be established for the purpose of paying for repair and maintenance of an emergency lane.

### **How Emergency Lane works:**

- A town may raise and appropriate, and the selectmen may expend, money for the repair of any class VI highway or private way which has been declared an emergency lane. Such repair may include removal of brush, repair of washouts or culverts, or any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles.
- No expenditures shall be made by the selectmen, (unless) the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane (RSA 231:59-1 II).
- A declaration under this Emergency Lane order may be rescinded or disregarded at any time without notice. This section shall not be construed to create any duty or liability on the part of any municipality toward any person or property. Utilization of this Emergency Lane order shall be at the sole and unfettered discretion of a town and its officials, and no landowner or any other person shall be entitled to damages by virtue of the creation of emergency lanes, or the failure to create them, or the maintenance of them, or the failure to maintain them, and no person shall be deemed to have any right to rely on such maintenance. (RSA 231:59-a IV.)

### **Possibility of Fixing the bridge over Babb Brook on Class VI portion of Lempster Coach:**

- A bridge that is on a Class VI highway is deemed to be part of that highway and itself is also a Class VI Road. Towns are only authorized to spend public money on the repair and maintenance of Class IV and Class V highways. (RSA 231:59; RSA 231:62.) A bridge that is part of and deemed to be included in a Class VI cannot be repaired, replaced or maintained at public expense unless the bridge and related portions of the Class VI Road is declared to be an emergency lane under RSA 231:59-a.
- According to the Municipal Association, even though at one time and Emergency Lane declaration was made for some part of a Class VI Road this does not bind the town to continue to carry out supplemental improvements such as building the bridge. The Emergency Lane order from last year does not obligate the town to replace the bridge.

**Is the Town liable while the Emergency Lane issued:**

- As provided in RSA 231:93, “Municipalities shall not be deemed to have any duty of care whatsoever with respect to the construction, maintenance or repair of class . . . VI highways.” If an injury or other accident occurs on the subject Class VI Road, even if the road was previously declared an emergency lane, the town is not legally liable.

**Goshen Policy Regarding Building On a Class VI Road:**

- An applicant for a building permit on a lot whose "access" (as defined in RSA 674:41, III) is upon a Class VI Highway or upon a private road which has not been approved by the Planning Board as part of a subdivision or street plat, must, if the permit is granted, sign a waiver form to acknowledge that the Town assumes no responsibility for any maintenance of a Class VI Highway or private road nor liability for any damages resulting from their use [RSA 674:41, I(c) and I(d)]. The waiver form must also acknowledge that the Town is not responsible for provision of emergency services and may at times be unable to provide police, fire, and ambulance service.
- The Class VI Highway or unapproved private road, or portion thereof used to access the building site, shall be maintained, if at all, by the applicant or his/her successor in interest. In the case of a Class VI Highway, the extent and manner of such maintenance must be approved in advance by the Board, in accordance with RSA 236:9-: 12 and RSA 231:21-a; however in either case such maintenance specifications may be approved at the time of the issuance of the permit, as a condition of the permit.

**Question of Safety Services on Class VI:**

- There is no statutory requirement for any municipality to create a fire department and provide fire services.
- In regard to liability not providing fire fighting and emergency response services, refer to the Municipal Association’s publication *Knowing the Territory* (pages 192-193):

Monday, October 25, 2021

1. The “public duty rule” in RSA 154:1-d shields a municipal or state-certified private fire department from liability for a variety of emergency response actions.
2. This statute provides protection from liability for the failure of the department to respond to a fire or other emergency; undertake particular inspections; maintain any level of personnel, equipment or facilities; provide equivalent allocation of resources; or adopt, use or avoid any particular strategy or tactic in responding to a fire or other emergency.
3. This protection from liability extends to any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the fire chief (or his or her designee), or who is participating in a fire department activity sanctioned by the select board, and it includes indemnification for civil rights damage under RSA 31:106 and for any other accidental damages under RSA 31:105 if the town has adopted that section.
4. The fire chief and his or her subordinates are also protected from liability for decisions concerning the allocation and assignment of firefighters and equipment, so long as there is an absence of malice or bad faith, “even when such decisions are made rapidly in response to the exigencies of an emergency.” RSA 154:1-d.