

# Town of Canaan, N.H.

## *Class VI Highway/Private Road Policy*

April 1, 2008

### 1. STATEMENT OF PURPOSE

Under RSA 674:41, the Board of Selectmen has the discretion to authorize the issuance of building permits on certain Class VI highways and certain private roads, after review and comment by the Planning Board.

The Board of Selectmen has adopted these guidelines to help guide the decision-making process when it is presented with such an application. The Board will consider any factor relevant to the authorization of a building permit in a particular case. Therefore, this statement of guidelines is not intended to describe an exhaustive list of considerations, but to be a guide for both the Board of Selectmen and applicants for such building permits.

The purpose of these guidelines to ensure that any structures built on Class VI town highways and private roads are reasonably accessible throughout each year. With adequate access, the safety and property of people occupying or using those structures will not be unreasonably placed at risk, the safety of emergency response personnel or their vehicles and equipment will not be unreasonably endangered, and service, delivery and school vehicles will have safe and reasonable access.

### 2. DEFINITIONS

**Road Giving Access** – Means the road where the lot has frontage and that frontage has the primary driveway for the lot. “Road giving access” does not mean the driveway upon the lot unless that driveway services another lot.

**Private road** – A strip of land over which one or more individuals has the right to pass in a highway vehicle, and which is not a Class I through VI highway and is not an Official Trail.

**Class I through III Highway** – State public roads which are maintained by the state. See RSA 229:5 for exact definition.

**Class IV and V Highway** – Town public roads which are maintained by the town. See RSA 229:5 for exact definition.

**Class VI highway** – All other existing public ways that are NOT maintained by the town. A Class VI highway is a public way in every respect except town maintenance. See RSA 229:5 for exact definition.

**Official Trail** – Means a state or municipal trail legally established per RSA 216-F, RSA 230:74 & 75, or RSA231-A.

### 3. EFFECTIVITY

RSA 674:41 requires the following:

This policy applies to all building permits where the road giving access to the lot is a class VI highway or a private road, unless either of the following conditions exists:

- a) The road is shown on a subdivision plat approved by the planning board after March 8, 1971.
- b) The road is shown on a subdivision plat approved by the selectmen prior to March 9, 1971, and was constructed prior to July 23, 2004, and has a building on another lot on the same road.

Note: March 9, 1971 is the date when the town meeting authorized the planning board to approve subdivision plats. July 23, 2004 is the date RSA 674:41 I (e) became effective.

#### **4. APPLICATION**

Every application shall be made in writing and accompanied by a map drawn to scale showing:

- a) the location of all proposed structures;
- b) the distance from town-maintained road to the location for which the building permit is sought;
- c) the width of the traveled way;
- d) the width of the right-of-way;
- e) the condition of the road bed including the depth and quality of gravels;
- f) curve radii and grades;
- g) existence of large rocks or ledge in the road bed;
- h) the location of areas which may flood during seasonal rainy periods;
- i) areas with impeded access due to mud or poor drainage during rainy periods;
- j) the condition of any existing culverts and the need for new culverts;
- k) the existence and condition of any bridges on the road;
- l) identification of all abutters to the road;
- m) the location of existing dwelling units accessed from the road;
- n) emergency vehicle turn around specifications;
- o) any other condition of the road that would affect its suitability for development;
- p) fire chief's assessment of road & drive accessibility compared to fire code.

#### **5. USE OF ROADS**

- a) The public has the right of travel over public roads including Class VI highways. (See A Hard Road to Travel, 2004 , page 19, Viatic Use.)
- b) The public has the right of access to lots on public and private roads. (See A Hard Road to Travel, 2004, page 37, 4<sup>th</sup> paragraph, last sentence.)

#### **6. SUBDIVISION OF ABUTTING PROPERTY**

Subdivisions of land on Class VI highways and private roads will be reviewed by the Planning Board to insure they are not scattered and premature. See Canaan Subdivision Regulations Section III B and Canaan Master Plan Sections II, IV, and X.

#### **7. MAINTENANCE AND IMPROVEMENTS**

- a) Maintenance of a private road is the responsibility of the abutters of the road, which may be an owner association. Each owner has the right to maintain the entire length of the private road for public access to his lot. (*see A Hard Road to Travel, 2004, page 67 paragraph 1*) Road improvements and maintenance shall not impact land beyond the bounds of the private road easement. Care should be exercised to preserve stone walls, trees and other valued assets. Agreements and disputes amongst abutters are a private matter, which does not involve the town. However a private road must be maintained to satisfy fire code regulations and any other applicable regulation.
- b) It is the intent of the town not to maintain, repair or improve Class VI highways. (see RSA 239:51-a) With written permission of the board of selectmen, a person may excavate or disturb the ditches, embankments or traveled surface of a Class VI highway.

The select board may regulate such private roadwork and may require a bond for the satisfactory restoration of the road.

## **8. PUBLIC UTILITY EASEMENTS**

- a) If there is no private utility easement on a Class VI highway, an easement may be granted by the select board.
- b) If there is no private utility easement along a private road, such an easement may be negotiated with abutters on whose land the easement will be placed.
- c) Any highway completely discontinued before 1992 did also discontinue public utility easements, unless the warrant article specified otherwise. Any highway completely discontinued after 1992 preserves the public utility easements as long as they remain in active use, unless the warrant article indicates otherwise. (See A Hard Road to Travel, 2004, page 67, 3<sup>rd</sup> paragraph.)

## **9. OFF HIGHWAY RECREATIONAL VEHICLES**

There is no automatic right for off-highway recreational vehicles (OHRVs) to travel on Class VI highways. The board of selectmen may, following a public hearing, allow the use of Class IV, V, or VI highways by OHRVs.

## **10. FIRE CODE REGULATION**

When issuing building permits, the town is required by law to comply with the state fire code. These codes require certain minimum standards for all roads and driveways including width, height, length, slope, and other parameters. See Appendix A.

## **11. PUBLIC HEARING**

Pursuant to RSA 674:41, the application shall first be presented to the Planning Board for their review at a public hearing. Following this hearing the comments of the Planning Board become part of the application. The Board of Selectmen will then consider the application at an additional public hearing.

During each public hearing, the applicant must be prepared to discuss the following questions:

- a) Is there a plan for road maintenance to at least state fire code standards at all times? If the road or way will serve more than two dwelling units, what is the plan for maintaining the road at Canaan's roadway-related subdivision specifications?
- b) If the permit is for building with access from a Class VI highway, has the applicant requested written road maintenance permission from the Board of Selectmen pursuant to RSA 236:9?
- c) Are you aware that you and your successors are totally responsible for road maintenance and repair, as is each other applicant who receives a permit under this policy? You are encouraged to form an association for road maintenance with equitable cost shares, but that does not relieve you or other applicants from each being 100% liable for road upkeep.
- d) Are the public roads leading to the Class VI highway or private road adequate to handle increased traffic?
- e) What impact on municipal services can be expected to result from the building?
- f) How will the proposed development affect neighboring properties and how well does the proposed development "fit" in to the general growth/development patterns in Canaan? Factors to consider are neighboring lot size, lot frontage, dwelling density, property

values, commercial sites, seasonal properties, open space, historic features, traffic volume, public utilities, and other similar criteria.

- g) What recreational and/or conservation uses has the road been serving?
- h) Is the issuance of said building permit compatible with Canaan's Master Plan?

**12. NOTICE TO BE RECORDED**

Prior to the actual issuance of any building permit authorized by the Board of Selectmen, the applicant shall provide the Town with an executed notice to be recorded at the Grafton County Registry of Deeds to the effect that the Town of Canaan neither assumes responsibility for maintenance of the Class VI highway or private road nor liability for damages resulting from the use thereof, pursuant to RSA 674:41, I (c) (3) and RSA 674:41, I (d) (3). Such notice shall be recorded by and at the expense of the applicant.

**13. DECISION**

The Board of Selectmen may issue building permits on Class VI highways or private roads when it is demonstrated by an applicant, and approved by the Board of Selectmen based on the above criteria and the comments of the Planning Board, that any building constructed based on issuance of said permit will meet state building code requirements, is not scattered and premature development, and will not have a negative impact upon the Town.

**14. OCCUPANCY PERMIT**

No occupancy certificate will be issued until requirements for road improvements have been met and approved by the Board of Selectmen or their designee.

BOARD OF SELECTMEN

Robert Reagan

April 1, 2008  
Date Signed

[Signature]

4/1/08  
Date Signed

[Signature]

4/1/2008  
Date Signed

## **Appendix A: Reference Material**

### **Fire Code**

Fire code requirements are found in NFPA 1 Chapter 18 which is a part of the state fire code (Chapter Saf-C 6000) and which is adopted under RSA 153:5. In addition, the state building code, RSA 155-A:2 III, requires "...buildings shall conform to the requirements of the state fire code...".

**The State Fire Code requires the following:** (Applies to all roads and driveways)

Roads and driveways to every facility, building, or a portion of a building hereafter constructed or relocated shall be at least 20 feet wide with at least 13.5 feet of vertical clearance. This width and clearance shall extend to within 50 feet of a building entrance door, and shall also extend to within 150 feet of any point on the building perimeter.

- a) These roads and driveways shall be maintained and be kept in a passable state for fire apparatus in all weather conditions.
- b) The Fire Chief shall approve any turning radius, grade, or dead-end turn-around on these roads and driveways. The Chief has approved the following:
  - (1) The turning radius shall be greater than 35 feet from the centerline.
  - (2) The grade shall not be greater than 10%.
  - (3) Any dead-end exceeding 150 feet shall have a circular turn-around with an outside diameter of at least 90 feet.

#### **Exceptions and Waivers specified by the fire code:**

- a) The Fire Chief may modify the above state fire code requirements when there are not more than two one- and two- family dwellings. The Fire Chief may also modify these requirements for private garages, carports, sheds, and agricultural buildings. For other situations waiver requests must be submitted to the Fire Marshal.
- b) The Fire Marshal may waive any requirement where substantially equivalent safety can be demonstrated. The procedure is specified in the state fire code Part Saf-C 6005
- c) Additional relief is available for buildings with sprinkler systems.

#### **Notes:**

- a) The above summary is not a complete summary of the fire code and the exact fire code supersedes this summary. Contact the Fire Chief to determine what is needed for your situation.
- b) The NH fire code does not always use the latest NFPA editions. For example NH currently uses the 2003 edition of NFPA 1. As the Fire Marshall adopts later editions those will become effective immediately in this policy.

**NH Office of Energy and Planning Reference Library**  
**"Standards for Dead-End Streets", Carol J. Thomas AICP, APA PAS**  
**Memo, November 1985**

**DIAMETER OF CUL-DE-SAC:**

Common practice is to require a 90-foot diameter, paved. The rationale for these standards is that older fire equipment and garbage trucks may have a turning radius of only 50 to 55 feet. New fire equipment generally has a smaller turning radius. Nevertheless, in a northern climate, where snow may be plowed to the side of the paved area, the larger diameter should still be required.

**NH DOT Suggested Minimum Design Standards for Rural Subdivision Streets 12/04/03**

- a) **DEAD-END STREETS:** Dead-end streets, designed to be so permanently, shall not be longer than 300m (1,000 ft.) and shall be provided with a turn around having an outside roadway diameter of at least 30 m (100 ft.).
- b) **GRADES:** Street grades, where feasible, shall not exceed 10 percent, nor shall any be less than 0.50 percent. Special care shall be taken to provide flat grades at all intersections.

**Turning Radius**

Turning radius of 35 feet to centerline is derived from 90 foot cul-de-sac diameter. A 90 foot outside diameter is a 45 foot outside radius. With a 20 foot roadway, the radius to centerline would be 35 feet.

## **Appendix B: Checklist**

### **BUILDING PERMITS ON CLASS VI & PRIVATE ROADS**

- Road giving access to lot is a Class VI highway or private road
- Road is not shown on a subdivision plat approved by Planning Board
- Road is not shown on subdivision plat approved by Selectmen; or is shown but road was built on or after 7/23/04; or is shown and there are no buildings on other lots.

**Note:** If any of above three boxes is not checked, stop here since this policy does not apply

- Limits of responsibility and liability have been recorded in the Grafton registry of deeds
- Map is drawn to scale
- Map shows building location
- Map shows distance from building to town or state maintained road
- Map shows width of road right-of-way and width of traveled way
- Map show road bed condition and depth and gravel quality
- Map shows curve radii and grades
- Map shows flood, mud, and poor drainage areas
- Map shows existing and new culverts
- Map shows bridges and bridge condition
- Map shows all abutters
- Map shows location of existing dwelling units accessed by road
- Map shows emergency vehicle turnarounds
- Map shows acceptance by fire chief
- Written permission from Selectmen to alter or maintain road, if a Class VI highway
- Any required utility easements are in place
- Plans for long term road maintenance, including any abutter or association agreements
- Capacity of public roads to handle increased traffic
- Impact upon municipal services
- Compatibility with Master Plan
- Current recreation and conservation uses of road

## **Appendix C: Limits of Liability Form**

**Town of Canaan, NH  
Office of the Selectmen**

P. O. Box38  
Canaan, NH, 03741

(603) 523-9881

Fax (603) 523-4526

**NOTICE OF THE LIMITS OF MUNICIPAL RESPONSIBILITY AND  
LIABILITY FOR CLASS VI HIGHWAYS AND PRIVATE ROADS**

(As required by RSA 674:41)

The undersigned has applied for a building permit to be issued for the erection of a building at property located in Canaan, New Hampshire. Said property is identified on Canaan's tax maps as: Map #\_\_\_\_\_, Lot #\_\_\_\_, Sub #\_\_\_\_. The access to the lot is from\_\_\_\_\_, which has been designated as a Class VI highway or private road.

The undersigned acknowledges that the Town of Canaan neither assumes responsibility for maintenance of such Class VI highway or private road, nor liability for any damages resulting from the use thereof.

This notice is signed and executed by the undersigned as a condition to the issuance of a building permit by the Town of Canaan and this notice shall be recorded in the Grafton County Registry of Deeds and shall be binding upon the undersigned and all heirs, executors, administrators and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Owner

STATE OF NEW HAMPSHIRE  
GRAFTON COUNTY, ss

Personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes therein contained.

Before me, \_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires \_\_\_\_\_

**NOTICE TO REGISTRY OF DEEDS:**

Please index this statutory notice form under the name of the undersigned as Grantor and the Town of Canaan as Grantee.