

A short primer on roads.

The status of roads is a confusing matter for owners, buyers and developers of property in New Hampshire. Before a buyer accepts a deed to any property and especially to undeveloped land, it is essential that he investigate thoroughly the application of local ordinances to use of the property. Among the most misunderstood items is the matter of access, whether on a public or private road or right of way.

A *public highway* is a road over which the public has a right to travel; it is subject to a *public right of way*. Private roads, private rights of way, and discontinued roads are NOT public highways.

Classification of roads under state statute (RSA 229:1) has nothing to do with the condition of a particular road. It defines what entity is responsible for maintaining a road (or is relieved of that responsibility). State highways are divided into 3 classes: Class I being major highways, Class II being secondary roads (usually maintained by the State but in some cases maintained by the municipality) and Class III, highways to State Parks.

Municipal roads come in two flavors: Class V, maintained by the town, and Class VI, roads which retain the public right of way, but are not maintained by the Town.

A road becomes Class VI in two ways: (1) by vote of the municipal legislative body (usually Town Meeting) to discontinue the highway "subject to gates and bars" or (2) failure by the Town to maintain the road for 5 years or more. A Town vote to "discontinue" a highway, without the "subject to gates and bars" language, completely discontinues the road, eliminating the public right of way. The owner of an otherwise landlocked parcel may retain a right of way to get to his land, but once discontinued, a road ceases to exist as a public highway.

Private roads and rights of way, often found in subdivisions created before towns adopted zoning and subdivision regulations, are generally sub-standard; some were never built and exist only on paper. Many private roads are too narrow and inadequate ever to meet Town road standards.

A confusing statute (RSA 674:41) provides in general that building permits should not be issued for parcels served only by Class VI or private roads. But there are numerous exceptions written into the law. Most towns have a policy guiding the issuance of building permits on roads that are not Town maintained. Unfortunately, real estate agents sometimes fail to

understand the Town policies or ordinances affecting a parcel and may mislead a potential buyer who is not familiar with State law on roads or with local regulations.