

Tunbridge Planning Commission

Legal Trails Policy Discussion

Resource Guide – annotated

3/7/21

Policy versus ordinance:

- Vermont League of Cities and Towns (VLCT):
<https://www.vlct.org/sites/default/files/documents/Resource/Municipal%20Policies%20and%200Ordinances%20Info%20Sheet.pdf>
- If the policy specifically disallows bikes and people continue to use the trail for cycling, what recourse does the town and/or landowner have:
 - Response from VLCT: The town would have to adopt an ordinance that provided for a civil ticket (fine) penalty for violators. Landowner couldn't really do much if it was a town owned trail. I suppose they could seek a nuisance lawsuit against the bikers or the town.

Landowner liability and considerations:

- Vermont Statutes Online: <https://legislature.vermont.gov/statutes/fullchapter/12/203>
 - The purpose of this chapter is to encourage owners to make their land and water available to the public for no consideration for recreational uses by clearly establishing a rule that an owner shall have no greater duty of care to a person who, without consideration, enters or goes upon the owner's land for a recreational use than the owner would have to a trespasser.
- Response from VLCT:
 - Landowners are generally not liable for injuries on town owned trails, unless they e.g., took some action to affect the trail which caused an injury. The town doesn't have any specific protection from liability per state law relating to town trails, but the town does have some protection under sovereign immunity and official immunity (see: <https://www.vlct.org/sites/default/files/documents/Resource/Sovereign%20Immunity%20Info%20Sheet.pdf> and [https://www.vlct.org/sites/default/files/documents/Resource/Immunity for Public Officials Info Sheet.pdf](https://www.vlct.org/sites/default/files/documents/Resource/Immunity%20for%20Public%20Officials%20Info%20Sheet.pdf)).
- How much consideration do landowners get as to their particular requests for trail usage (response from VLCT): Generally, the town should accept feedback regarding what to do with town owned trails consistently from all town citizens. It's also reasonable to say that the Selectboard could decide to give more weight to those who are adjacent to the trail.

Trail usage and limiting for groups, working lands access, and/or during certain times of year (all responses from VLCT):

- The Selectboard can control use of a trail to protect the trail - for example, restrict traffic during mud season or restrict the weight allowed. In the case of use for logging, the town could allow use by heavy equipment with the written agreement that any damage would be repaired by the user. It could also make agreements with loggers that they would have to make certain improvements (grading, ditching, etc.) up to town standards in order to prevent damage.
- The Selectboard could adopt an events ordinance that would require certain permits/insurance before an event of a certain size can take place.
- Trail usage can be limited during sensitive times of year (like mud season or if vernal pools exist) most effectively by ordinance.

Who is responsible for trail upkeep, signage, and/or damage repair:

- Response from VLCT:
 - The town is responsible for maintenance of town owned property, including trails. Note that towns generally aren't required to perform any specific maintenance or upkeep on trails, unless there's some policy that it adopted saying it will, it has agreed to do so with certain neighbors, or if it has continually maintained the trails to a certain degree in the past, creating an expectation that it continues to do so.

Example policies:

- Stowe:
 - https://www.townofstovevt.org/vertical/Sites/%7B97FA91EA-60A3-4AC6-8466-F386C5AE9012%7D/uploads/Class_4_legal_trail_policy.pdf
 - Definition of a legal trail: A Legal Trail is a public right-of-way which is not a highway and which previously was a town highway having the same right of way width as the highway, or other width if so designated, or a new public right-of-way laid out as a trail by the Selectboard for the purpose of providing access to abutting properties or for recreational use. The primary purpose of a legal trail is to provide recreational access and with approval of the Selectboard, and occasional access for logging activities. Legal trails are not to be used to access properties for residential use. The Town has no responsibility to maintain trails but may choose to do so for recreational or emergency management purposes. The Selectboard may order trails to be gated or otherwise blocked off from public travel by a motor vehicle during all seasons of the year. Legal trails are to be used for non-motorized recreation only, except that snowmobiles may be allowed by permission of the Selectboard.
 - Existing use: Existing rights-of-way of Class 4 highways and trails as of the date of adoption of this policy shall be retained by the Town of Stowe for purposes of recreational multi-use activities, access to private property and agricultural and forest management.

- Hardwick, Wallingford, Cabot:
 - <https://hardwickvt.org/wp-content/uploads/2017/01/Class-4-Road-Trail-Policy-2012-1.pdf>;
 - <https://www.wallingfordvt.com/trail-policy/>;
 - <https://cabotvt.us/wp-content/uploads/2019/05/Class-4-Roads-and-Trails.pdf>
 - Trail means a public right-of-way which is not a highway and which: (A) previously was a designated highway having the same width as the designated town highway, or a lesser width if so designated, or (B) a new public right-of-way laid out as a trail by the Select Board for the purpose of providing access to abutting properties or for recreational use.
 - Existing use: Existing rights-of-way of class 4 highways and trails as of the date of adoption of this policy shall be retained by the Town for purposes of recreational multi-use activities, access to private property, and agricultural and forest management.
- Annotated sample policy (older, but references existing statutes and case law)
 - https://www.nvda.net/files/Class4Roads_TownPolicy.pdf

Example ordinance:

- Pomfret: https://pomfretvt.us/files/1014/0068/3275/trails_ordinance_policy.pdf
 - Prohibits vehicular traffic and allows for non-motorized recreational use
 - As an ordinance, there are monetary fines for non-permitted motorized use

State process:

- Roads (All classes and trails) – identification and appearance on highway map requirement
 - <https://vtransmaps.vermont.gov/Maps/Publications/AncientRoads/AncientRoadPracticum.pdf>
 - Legal trails definition: The term “legal trail” is used to describe a trail that is defined by the following statute and is different from a foot trail or other trail that has not been legally established. According to 19 V.S.A. § 301(8): "Trail" means a public right-of-way which is not a highway and which: (A) previously was a designated town highway having the same width as the designated town highway, or a lesser width if so designated; or (B) a new public right-of-way laid out as a trail by the selectmen for the purpose of providing access to abutting properties or for recreational use. Nothing in this section shall be deemed to independently authorize the condemnation of land for recreational purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1991, No. 47, § 1.)
 - As a result of Act 178 of 2006, and subsequent amendments to the statute in Act 158 of 2008, municipalities have a requirement to map all class 1, 2, 3, and 4 town highways and legal trails for which the town wishes to retain public access rights.
- If we downgrade a Class IV road, is it automatically a legal trail and does it get treated the same as all other existing legal trails
 - Response from VLCT: See 19 VSA 775 (<https://legislature.vermont.gov/statutes/section/19/007/00775>) :If a selectboard goes through the process of reclassification, it can either vote to give up ownership or vote to

make it into a town owned trail. If the discontinued highway is not designated as a trail, the right-of-way shall belong to the owners of the adjoining lands. If it is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side.

Town Plan references to legal trails usage:

The February 24, 2021 Public Forum on Legal Trails hosted by the Tunbridge Planning Commission (one of a series of four Public Forums in February-March 2021) noted understandable confusion over existing “policy” regarding Legal Trails. In short, there is no existing policy and the Selectboard asked the Planning Commission for help with development. The Public Forums are part of that process.

By statute, the Selectboard has ultimate responsibility for public rights-of-way on town highways, including legal trails (19 V.S.A., esp. 19 V.S.A. § 303 and 19 V.S.A. § 304).

The Town Plan is a planning document but does not have authority over highways. References in Tunbridge Town Plans of 2013, 2017 and 2021 are not mandated uses.

Legal Trails references posted below are excerpted from Tunbridge Town Plans subsequent to Act 178 (2006), which started a process for trying to get 4th Class roads and Legal Trails onto the VTrans “official” General Highway Maps and annual Mileage Certificates. (Previous to 2006, 4th Class roads and Legal Trails often did not appear on the “official” maps because they received no state funding and were thus not closely tracked).

Tunbridge Town Plan 2013 (adopted 4/16/2013):

Ancient Road discussion on bottom of p 52 to top of p 53. Legal Trails: pp 54-56.

Legal trails text reference on bottom of p 54 to top of p 55; ‘Policies’ reference, #7 on p. 56. ‘Policies’ was not an accurate characterization for #7, and this passage was moved to the more appropriate ‘Recommendations’ section in the 2017 Town Plan.

Tunbridge Town Plan 2017 (adopted 10/24/2017):

Ancient Road discussion from 2013 plan was removed from 2017 Town Plan due to continuing evolution of the statutory process explained there (and interpretations of it), with legal rulings regarding that process still unfolding in 2021.

Legal Trails text reference on top of p. 54. Former ‘Policies’ reference #7 (2013 plan) was moved to ‘Recommendations’ #5 on bottom of p. 55 of the 2017 Plan.

Tunbridge Town Plan 2021 (Public Hearing was 12/10/2020; Selectboard Hearing TBD):

Legal Trails text reference on top of p. 53 in Draft for Public Hearing 12/10/2020 was altered from previous versions based on public input.

‘Recommendations’ #5 (2017 Plan) is now ‘Recommendations’ #4 on p 55 in 2020 Draft for Public Hearing, which is now due for Selectboard Hearing (TBD).

‘Recommendations’ #10 added that the Selectboard should establish a policy regarding Legal Trails.

