

Appendix D: HIGHWAY ACCESS ORDINANCE

TOWN OF SHAFTSBURY

TOWN HIGHWAY ACCESS ORDINANCE

ADOPTED JANUARY 7, 2013
Re-ADOPTED FEBRUARY 11, 2013
EFFECTIVE APRIL 12, 2013

Section I Authority and Purpose

- a) Under 19 V. S. A. § 1111, the Selectboard has the authority to regulate access onto Town Highways. The rules contained in this Ordinance will guide the Town of Shaftsbury, Board of Selectmen, Road Foreman, Zoning Administrator and the Development Review Board (DRB) in providing reasonable and safe access onto Town Highways, and in preventing adverse effects to the condition of Town Highways.
- b) In carrying out the provisions of this Ordinance, Town officials will be guided by the standards adopted by the Agency of Transportation, being: Sheet B-71 *Standards for Residential and Commercial Drive*, and Sheet A-76 *Standards for Town and Development Roads*, including any amendments thereto or replacements thereof.
- c) The Selectboard hereby authorizes the Road Foreman, the Zoning Administrator, and the DRB to review and determine the conditions under which access onto Town Highways shall be allowed for driveways and private roads. The Road Foreman, Zoning Administrator and the DRB shall act on applications for Access Permits consistent with the terms, conditions and procedures described in this Ordinance.

Section II General Provisions

- a) For purposes of this Ordinance, the term "Town Highway" includes roads classified as Class 1, Class 2, Class 3 and Class 4 Highways.
- b) No person shall construct or use an access from public or private land to a Town Highway without first obtaining an Access Permit from the Town. An applicant for an Access Permit shall submit a complete **Town Highway Access Permit Application** to the Zoning Administrator.
- c) At the site of the proposed access to a Town Highway, the applicant must physically mark the location of the proposed access, either with flags or other acceptable means, showing the precise location and width of the proposed access.
- d) No construction of a Town Highway access shall begin until the Town has issued a Preliminary Access Permit, consistent with the procedures described herein, and the applicant has delivered notification to the Road Foreman, as provided under Section III - Notification.

- e) A Final Access Permit allowing permanent use of an approved access shall be granted by the Zoning Administrator after construction of the access is complete and after the Road Foreman has viewed the access and certified the access has been constructed consistent with the requirements of the Preliminary Access Permit.

Section III Notification

- a) Upon issuance of the Preliminary Access Permit, the property owner shall provide the Road Foreman advance notice of the date and time construction will begin on the proposed access. The notice shall be in writing and shall be delivered to the Road Foreman ten (10) business days in advance of construction of the access. The property owner shall permit Road Foreman to observe and inspect construction of the access.
- b) Upon completion of the construction of the access, the property owner shall provide the Road Foreman with notice that construction of the access is complete, which shall be delivered to the Road Foreman within ten (10) business days of completion of construction of the access. The property owner shall permit the Road Foreman to inspect the completed access and determine whether the access has been constructed consistent with the requirements of the Preliminary Access Permit.

Section IV Liability

- a) The property owner, and any person who performs any work on the property owner's behalf, shall hold harmless and defend and indemnify the Town of Shaftsbury and its elected and appointed officials, from any and all damages that may occur as a consequence of the location, design, construction, maintenance and/or use of the access. The duty to indemnify shall include, but not be limited to the Town's reasonable attorney's fees.
- b) In the event that the property owner, or any person performing any work on the property owner's behalf, causes any damage to utilities, property and/or appurtenances, the property owner shall be responsible for the cost of repairing said damages. In the event of an emergency, the Town or utility company can make necessary and reasonable repair to said damages at the property owner's sole expense. It is the owner's responsibility to notify the proper agencies before performing any excavation work so as to minimize the possibility of damage to underground utilities.
- c) If, at any time, a Town Highway is damaged due to the design and/or construction, the lack of appropriate maintenance, the use of the access, or lack of appropriate water drainage, the property owner is solely responsible for the costs of making repairs and/or improvements necessary approved by the Road Foreman to repair the Town Highway and prevent future damage to the Town Highway. If repairs and/or improvements are not made within thirty (30) days of notice, or immediately in the case of an emergency, the Town may, in the exercise of its sole and absolute discretion, make said repairs and/or improvements at the property owner's sole expense.

Section V Permit Procedure

- a) A complete Access Permit Application consists of the following:
 1. Answers to all questions on the application form provided by the Zoning Administrator;
 2. A site plan, survey plat map or scale drawing showing:
 - i. location of the proposed access point;
 - ii. sight distances from the proposed access point up and down the Town Highway;
 - iii. location and distances of nearby driveways and road intersections;
 - iv. location and distances of existing culverts and ditches, including direction of water flow;
 - v. location and distances of brooks, streams and watercourses, including the direction of water flow;
 - vi. topography of the area, showing the slope of the proposed access, the slope of the land adjacent to the proposed access, and the grade of the Town Highway; and
 - vii. all work to be performed in, and changes to be made to, the Town Highway right-of-way.
 3. The signature of the property owner and the date the property owner signed the Application.
 4. The signature of the applicant and the date the applicant signed the Application, if the applicant is not the property owner.
- b) The Zoning Administrator and Road Foreman shall both participate in the review of the Access Permit Application.
 1. The Zoning Administrator shall review the Application to determine if the proposed access complies with the Town's Zoning Bylaws.
 2. The Road Foreman shall review the application, including conducting a site visit, to determine if the proposed access provides safe ingress to and egress from the owner's property to the Town Highway and will have no adverse impacts upon the Town Highway.
- c) A Preliminary Access Permit may be issued if approved by both:
 1. the Road Foreman; AND
 2. Zoning Administrator or Development Review Board.
- d) Once the Application is filed, the Zoning Administrator shall refer the Application to the Road

Foreman. The Road Foreman shall review the application and conduct a site visit. The Road Foreman can approve a Preliminary Permit with such conditions as the Road Foreman determines are necessary to protect the public safety and abate any potential adverse impacts on the Town Highway. The Road Foreman shall return the Application to Zoning Administrator, showing one of the following actions:

1. Approved;
2. Approved with conditions; or
3. Denied.

If the Road Foreman approves a Preliminary Access Permit with conditions, the Road Foreman shall state on the Preliminary Access Permit the conditions the applicant must satisfy when constructing the access. If the Road Foreman denies the Application, the Road Foreman will provide the applicant a brief written explanation stating the reasons the Application was denied.

- e) The Zoning Administrator may approve the Preliminary Access Permit if the proposed access meets all requirements of the Town Zoning Bylaws, and there is no issue which requires review by the DRB. If the proposed access does not comply with the Town Zoning Bylaws, the Zoning Administrator shall deny the Application. The Zoning Administrator may elect not to act on the Access Permit Application and refer the Application to the DRB when DRB review is required. (For example, if the proposed access requires a variance from the Zoning Bylaws, involves a conditional use, or affects a non-conforming use or non-conforming structure, the Zoning Administrator is required to refer the Access Permit Application to the DRB. The foregoing list is not an exhaustive list and there are other situations requiring the Zoning Administrator to refer an Access Permit Application directly to the DRB.)
- f) The DRB shall review the Access Permit Application, following the same procedures the DRB follows for acting on a Zoning Permit application. The DRB shall take one of the following actions on the Application:
 1. Approved;
 2. Approved with conditions; or
 3. Denied.

The DRB may not alter or amend the conditions imposed by the Road Foreman without the Road Foreman's prior approval. The DRB may not impose conditions which conflict with, or are contrary to, the conditions imposed by the Road Foreman without the Road Foreman's prior approval. If the DRB denies the Application, the Development Review Board shall provide the Applicant a brief written statement stating why the Application was denied.

- g) The Zoning Administrator shall issue a Preliminary Access Permit once the Application is both approved by the Road Foreman, and approved by either the Zoning Administrator or the DRB. The Preliminary Access Permit shall be on a Town form, stating all of the conditions imposed

by Road Foreman and/or the DRB.

Section VI Construction & Final Approval

- a) Once the Town issues the Preliminary Access Permit, the applicant shall provide the Road Foreman the notices required pursuant to Section III – Notification. After the applicant issues notice, the applicant may construct the access as approved by the Town, complying with all of the conditions imposed by the Road Foreman and/or the DRB.
- b) A Preliminary Access Permit shall be valid for one (1) year. The Preliminary Access Permit expires one (1) year after issuance if construction of the access is not completed consistent with the terms and conditions of the Preliminary Access Permit. Prior to the expiration of the one-year period, an applicant may obtain an extension of the Preliminary Access Permit. The Zoning Administrator may grant the applicant one (1) one-year extension. If the applicant does not complete construction of the access during the extension period, the Preliminary Access Permit shall expire and not be further extended.
- c) The Road Foreman shall conduct a final inspection of the constructed access after being provided notice, pursuant to Section III – Notification, above. The Road Foreman will determine if the access has been constructed consistent with the Preliminary Permit conditions and the requirements of the Ordinance. The Road Foreman shall also inspect the access to determine if the access has caused any unforeseen changes in water flow or drainage that has an adverse impact a the Town Highways or Town Right-of-Way. If the Road Foreman finds unforeseen adverse impacts, the Road Foreman may require the property owner to take additional remedial measures to abate the adverse impacts. If the Road Foreman determines that the access construction is complete and complies with the requirements of the Preliminary Access Permit and this Ordinance, and the construction has not caused any adverse impacts on a Town Highway or Right-of-Way, the Road Foreman shall issue the property owner a Final Access Permit

Section VII Section VII Inspections

- a) The applicant is responsible for coordinating a meeting with the Road Foreman to review the application and for permitting the Road Foreman to conduct a full site inspection. During the site inspection the Road Foreman shall be permitted to assess all conditions which potentially affect road safety, water run-off, and adverse impacts on the Town Highway.
- b) During construction, the property owner shall permit the Road Foreman to make such inspections of the construction of the access as the Road Foreman deems necessary or appropriate.
- c) The applicant is responsible for coordinating a site inspection with the Road Foreman when all construction of the owner’s access is complete, consistent with the requirements of Section III – Notification. The property owner shall permit the Road Foreman to conduct whatever inspection the Road Foreman deems reasonably necessary to determine if the access has been constructed consistent with the terms and conditions of the Preliminary Access Permit.

Section VIII Minimum Design Requirements for Driveway or Private Road Access

to a Town Highway

- a) For Access Permit Applications involving unique situations posing difficult or questionable conditions, the Road Foreman or the DRB may require a professionally engineered access design, at the sole expense of the applicant or owner. The engineer shall address all of the design criteria outlined below, plus any unique circumstances adversely impacting public safety and/or the Town Highway.
- b) Driveways within the limits of the Town Right-of-Way for a paved Town Highway shall have a minimum depth of twelve (12) inches of gravel or crushed stone, sized between three-fourths inch ($\frac{3}{4}$ ") to one inch (1") as sub-base material. Private roads within the limits of the Town Right-of-Way for a paved Town Highway shall have a minimum depth of fifteen inches (15) inches of gravel or crushed stone, sized between three-fourths inch ($\frac{3}{4}$ ") to one inch (1") as sub-base material.
- c) Gravel driveways within the limits of the Town Right-of-Way for a graveled Town Highway shall have a minimum depth of six inches (6) inches of gravel or crushed stone, sized between three-fourths inch ($\frac{3}{4}$ ") to one inch (1") as sub-base material.
- d) No access shall be permitted that results in water draining or washing directly onto a Town Highway or Right-of-Way and potentially erodes the Town Highway.
- e) All driveways and private roads shall be constructed so as not to impair drainage within the Town Right-of-Way, alter the stability of Town Highway or improved areas, or change the drainage of adjacent areas. If there is no drainage ditch along the road frontage, the property owner shall drain any water from the driveway or private road onto the owner's own property so that the water drainage shall not affect the Town Right-of-Way or Town Highway. Water drained from a driveway or private road shall be dispersed into vegetated areas to prevent road erosion and to avoid overburdening culverts and ditches.
- f) The maximum gradient of driveways and private roads may not exceed eight percent (8%). Steeper grades may be allowed provided:
 - 1. more stringent erosion controls will be effective in minimizing erosion of the Town Highway;
 - 2. sight distances are more than adequate to protect the traveling public; and
 - 3. other measures are required to address conditions which potentially adversely affect public safety and/or the integrity of the Town Highway and the Town Right-of-Way.
- g) Entrance width for a driveway shall be between twenty five (25) and thirty (30) feet, The Road Foreman may authorize a variance in the width of the driveway, but in no case shall a driveway be less than twelve (12) feet. The Road Foreman has the discretion to determine the width of the driveway depending upon the amount of anticipated traffic, public safety and impacts on the Town Highway and Town Right-of-Way.

- h) Entrance width for a private road shall be no less than twenty (20) and no more than twenty-four (24) feet.
- i) Entrances should be constructed with no more than a three percent (3%) grade away from the road edge for at least twenty (20) feet, and entrances should be nearly level with the road surface of the Town Highway.
- j) The apron for a driveway and a private road having access to a paved Town Highway shall be paved. The paved apron shall be the minimum width permitted by the Road Foreman, as described in this Section, and shall extend back from the Town Highway a minimum length of twenty (20) feet.
- k) Driveways and private roads should intersect the Town highway at a ninety degree (90°) angle, but the Road Foreman may, when special conditions exist, allow angles of not less than sixty degree (60°) angle. The Road Foreman has the discretion to determine whether a variance from ninety (90) degrees is appropriate considering issues of public safety and impacts on the Town Highway and Town Right-of-Way.
- l) The turning radius at each side of the driveway or private road shall be not less than fifteen (15) feet. The Road Foreman shall have the discretion to require a larger radius, considering site conditions, traffic, public safety and potential adverse impacts on the Town Highway and Town Right-of-Way.
- m) A vehicle operator preparing to exit the access and enter onto a Town Highway should be able to see oncoming vehicle and pedestrian traffic without obstruction. The field of view should be clear for a minimum of 150 feet in either direction. The chart contained in the Vermont Agency of Transportation's *B-71 Standards*, showing safe sight distances, shall be followed when the posted speed limits exceed 25 miles per hour.

Section IX Culverts

- a) The Road Foreman may require the owner to install a polyethylene culvert with flared "trumpet" style end sections having a minimum diameter of fifteen (15) inches to accommodate uninterrupted water drainage under the access. The owner shall install the culvert in a good and workmanlike fashion consistent with directions provided by the Road Foreman. The Road Foreman may permit the owner to install a culvert that is smaller than 15 inches in diameter if water and field conditions demonstrate a smaller culvert will allow adequate water flows and controlled drainage that do not adversely impact the Town Highway or the Town Right-of-Way. The Road Foreman may require the owner to install a culvert that is larger than 15 inches in diameter if water and field conditions demonstrate a larger culvert is needed to allow adequate water flows and controlled drainage that do not adversely impact the Town Highway or the Town Right-of-Way. The Road Foreman or the DRB may require, at the owner's expense, an engineering analysis to determine the appropriate size for a culvert and the appropriate location for the culvert.
- b) The Town shall be responsible for routine maintenance and repair of roads, ditches and culverts

lying within the Town Right-of-Way that are the result of normal wear and tear. The property owner shall be responsible for the cost of repairing damage to a culvert, with the except of damage resulting from normal wear and tear. If a culvert needs to be replaced, the owner shall be responsible for the cost of replacing the culvert.

- c) The Town shall install culverts placed in the Town Right-of-Way that are required by a Preliminary Access Permit. The property owner shall be responsible for the cost of the culvert and culvert installation.
- d) The property owner shall maintain sufficient gravel and/or asphalt material on the driveway to properly cover the culvert(s). The depth of the material shall be sufficient to prevent crushing and to prevent changes to the direction of the water flow from the driveway or private road. A crushed culvert due to traffic is considered damage and not normal wear and tear. The Town may replace the crushed culvert, at the property owner's sole expense, after providing the property owner with five business days (5) days prior written notice mailed to the property owner's last known address.
- e) Changes to the direction of the water flow from the owner's property or driveway, from a private road, or from an adjacent property shall not be permitted to increase the water flow onto or through a culvert lying within the Town Right-of-Way.
- f) The Selectboard shall determine if the Town or property owner shall bear the cost of replacing or upgrading culverts upstream of the property owner's access to the Town Highway access, taking into account how the owner's development of the owner's property has affected water flows, drainage, the Town Highway and/or the Town Right-of-Way.

Section X Enforcement and penalties

- a) Violation of this Ordinance shall be a civil offense and enforced in accordance with the provisions of 24 V. S. A. §§ 1974a and 1977. A civil penalty of not more than Seven hundred (\$700.00) dollars may be imposed for each violation of this Ordinance and the waiver fee shall be set at
 - 1. One hundred (\$100.00) dollars for the first offense;
 - 2. Two hundred (\$200.00) dollars for a second offense occurring within one (1) year of the citation for the first offense; and
 - 3. Three hundred (\$300.00) dollars for all subsequent offenses occurring within two (2) years of the first citation.

Each day a violation of this Ordinance occurs shall constitute a separate violation of this Ordinance.

- b) For purposes of this Ordinance, the Selectboard may designate any of the following persons as enforcement officers: a member of the Selectboard, the Town Agent, a Constable, an attorney retained by the Town, or a law enforcement officer who is providing contract services for the Town.

- c) Violation of any provision of this Ordinance, of a Preliminary Access Permit, or of a Final Access Permit shall be grounds for revocation of the property owner’s Preliminary or Final Access Permit. The Zoning Administrator may revoke a Preliminary or Final Access Permit for a violation of this Ordinance or the owner’s Access Permit.
- d) A property owner may appeal the Zoning Administrator’s decision to revoke the property owner’s Preliminary or Final Access Permit. The appeal shall be heard by the DRB, following the same procedures the DRB follows for hearing

Section XI Fees

The Select Board shall set the fees for Access Permits and shall have the Treasurer maintain any Security Instruments in accordance with applicable provisions of Vermont State Law (Title 19 – Highways).

The Select Board may require the applicant to reimburse the Town for the cost of inspections and special engineering services, testing or third party inspection that the Town may incur during the permit process.

Section XII Effective Date

This ordinance shall become effective sixty (60) days after the adoption date shown below, unless a petition is filed within 44 days after adoption.

Adopted this 7th day of January 2013.

Shaftsbury Selectboard

Chair, Lon McClintock

Craig Bruder

Vice-Chair, Karen Mellinger

Carl Korman

William Obenauer