

From: Eric Jones [<mailto:legacyforest@gmail.com>]
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To: Monroe, Pamela; Eric Jones; Jones, Margaret Jane
Subject: Eric Jones Comment Docket (2016-03)

Pam

TITLE XX TRANSPORTATION

CHAPTER 231 CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Lines of Telegraph and Other Companies in Highways

Section 231:161

231:161 Procedure. – Any such person, copartnership or corporation desiring to erect or install any such poles, structures, conduits, cables or wires in, under or across any such highway, shall secure a permit or license therefor in accordance with the following procedure:

I. Jurisdiction.

(a) Town Maintained Highways. Petitions for such permits or licenses concerning town maintained highways shall be addressed to the selectmen of the town in which such highway is located; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(b) City Maintained Highways. Petitions for such permits or licenses concerning city maintained highways shall be addressed to the board of mayor and aldermen or board of mayor and council of the city in which such highway is located and they shall exercise the powers and duties prescribed in this subdivision for selectmen; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(c) State Maintained Highways. Petitions for such permits or licenses concerning all class I and class III highways and state maintained portions of class II highways shall be addressed to the commissioner of transportation who shall have exclusive jurisdiction of the disposition of such petitions to the same effect as is provided for selectmen in other cases, and also shall have like jurisdiction for changing the terms of any such license or for assessing damages as provided herein. The commissioner shall also have the same authority as conferred upon the selectmen by RSA 231:163 to revoke or change the terms and conditions of any such license. The commissioner is hereby authorized to delegate all or any part of the powers conferred upon him by the provisions of this section to such agent or agents as he may duly appoint in writing; he shall cause such

appointments to be recorded in the office of the secretary of state, who shall keep a record thereof.

(d) The word "selectmen" as used in the following paragraphs of this section shall be construed to include all those having jurisdiction over the issuance of permits or licenses under paragraph I hereof.

II. Permits. The petitioner may petition such selectmen to grant a permit for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a permit for erecting or installing and maintaining such poles, structures, conduits, cables or wires. Such permit shall designate and define in a general way the location of the poles, structures, conduits, cables or wires described in the petition therefor. Such permit shall be effective for such term as they may determine, but not exceeding one year from the date thereof, and may, upon petition, be extended for a further term not exceeding one year. A permit shall not be granted to replace an existing utility pole on any public highway unless such replacement pole is erected at least 20 feet from the surfaced edge or the edge of public easement therein, provided, however, that for good cause shown the selectmen may waive the 20-foot requirement.

III. Effect of Permit. Except as otherwise provided herein, the holder of such permit shall during the term thereof be entitled to have and exercise all the rights, privileges and immunities and shall be subject to all the duties and liabilities granted or imposed hereby upon the holder of a license hereunder.

IV. Licenses. The petitioner may petition such selectmen to grant a license for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a license for erecting and installing or maintaining the poles, structures, conduits, cables or wires described in the petition.

V. Provision of Licenses. The selectmen in such license shall designate and define the maximum and minimum length of poles, the maximum and minimum height of structures, the approximate location of such poles and structures and the minimum distance of wires above and of conduits and cables below the surface of the highway, and in their discretion the approximate distance of such poles from the edge of the traveled roadway or of the sidewalk, and may include reasonable requirements concerning the placement of reflectors thereon. Such designation and definition of location may be by reference to a map or plan filed with or attached to the petition or license.

VI. Effect of License. All licenses granted under the provisions hereof shall be retroactive to the date the petition therefor is filed. The word "license" as hereinafter used herein, except in RSA 231:164 shall be construed to include the word "permit". The holder of such a license, hereinafter referred to as licensee, shall thereupon and thereafter be entitled to exercise the same and to erect or install and maintain any such poles, structures, conduits, cables, and wires in approximately the location designated by such license and to place upon such poles and structures the necessary and proper guys, cross-arms, fixtures, transformers and other attachments and appurtenances which are required in the reasonable and proper operation of the business carried on by such licensee, together with as many wires and cables of proper size and description as such poles and structures are reasonably capable of supporting during their continuance in service; and to place in such underground conduits such number of ducts, wires and cables as they are designed to accommodate, and to supply and install

in connection with such underground conduits and cables the necessary and proper manholes, drains, transformers and other accessories which may reasonably be required.

Source. 1881, 54:3, 4. PS 81:2. 1903, 81:1. PL 97:2. 1935, 100:1. 1937, 102:1. RL 113:2. 1943, 126:1. 1945, 188:1, part 24:2. RSA 254:3. 1959, 223:1, 2. 1981, 87:1. 1985, 402:6, I(b)(3).

This New Hampshire Law seems to support the notion that the Towns.....and not the SEC or the DOT.....have jurisdiction and control over Town Roads and the area above and below these roads and that they alone can accept or deny any petition for a permit.

It seems ironic, when we acknowledge the sanctity of private property, that this issue only questions whether the Towns or the SEC or the DOT control these rights and no mention is made of the primary right of the owner of the land upon which the limited right-of-way rests.

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Eric Jones

(941) 475-1039 (Winter)

(603) 989-8004 (Summer)

mrsmargaretjanejones@gmail.com

legacyforest@gmail.com

margaretjanejones.com (Margaret's Website)