

MEMORANDUM

To: Members of the House Committee on Government Operations
From: Rep. Maxine Grad
Date: January 14, 2014
Subject: H. 587

Below please find background information on H. 587, an act relating to repealing the authority of selectboards to lay out rights-of-way for extracting lumber or other material from private property.

1. H.587 proposes to repeal a rarely used section of law that dates from 1880.
2. This law, 19 V.S.A. § 958, allows a selectboard of a municipality, upon receiving a petition, and after following a quasi-judicial process, to lay out a right-of-way through the lands of “any person” if “necessary for the practical removal of lumber, wood, or other material.”
3. In other words, this law allows one property owner who wants to move lumber or other material from his or her property to obtain a right-of-way through a neighbor’s property by petitioning the Selectboard.
4. In Moretown, this law was used by a private Trust which petitioned the Selectboard for a right-of-way over a neighboring property for the removal of lumber.
5. The Selectboard denied the petition because the Trust had alternative routes to remove the lumber, although these alternative routes were less convenient.
6. The Trust then pursued an appeal. The town retained attorneys to address the petition and then defend the matter on appeal; the property owner who did not want the right-of-way to be established over her property also retained an attorney to defend her rights. Both the town and the property owner had to spend time and money in order to respond to the Trust’s petition and appeal under this section of law.
7. I believe a person who purchases land with valuable resources to extract should be thinking about access to their property before they purchase any such land, and should be required to negotiate with their neighbors if they want a right-of-way over their neighbor’s land. A town Selectboard should not have to get in the middle of what is essentially a private property issue.
8. In 2012, the General Assembly passed S.106, a miscellaneous municipal law bill which repealed 20 V.S.A. §§ 3741–47. The sections of law repealed provided that a person could petition the selectboard for an award of damages for injury to sheep and other domestic animals caused by dogs. The rationale for repeal of these provisions is similar to the rationale for repeal of 19 V.S.A. § 958—selectboards should not be required to adjudicate what are essentially private disputes between private parties.
9. I was advised by Legislative Counsel that this section of law may be unconstitutional under the provision of the Vermont Constitution that requires that the taking of private property be for a “public use.” Leg Counsel can talk to you further about this issue.
10. For these reasons, I think this section of law should be repealed, and ask for your support in recommending H.587 favorably.