

## MEMORANDUM

TO: VDOE Commissioners  
FROM: Laura Spector-Morgan, Esquire  
DATE: November 21, 2025  
RE: Oak Ridge Road

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You have inquired as to whether the Village District must allow the development of the Oak Ridge Road “stub” to access the property that Vertex Tower Development proposes to develop with a telecommunications tower. The answer to that question is that the Village District almost certainly must allow the owner of the property to use that stub to access its property.

Although the Village District owns the fee under the Oak Ridge Road stub pursuant to a deed from the Great Northern Land Corporation dated May 15, 1980 and recorded in the Carroll County Registry of Deeds at Book 783, Page 349, it does so subject to certain restrictions found both in the deed itself, and in the law. The deed conveys the roads “subject to the rights of others in and to said roadways . . . and all other easements of record.” In addition, GNLC reserved “the right to continue to convey to its Grantees the right to pass and repass along said roads for the purpose of access to lots to be conveyed in the future.” Therefore, like any abutter to a road, while the Village District technically owns the land under the public right of way, that ownership is limited by the public’s right to use the roads for viatic purposes.

Although this particular stub has not actually been developed as a road, common law provides many roads (pun intended) by which the owner of this property would have

a right to use the stub, even if the deed to the Village District did not have these reservations. First, if GNLC conveyed the property to the current owner's predecessor in title, and identified the stub as a boundary of the lot (as it almost certainly would have), the current owner has a right to use the stub to access the property. See Loeffler v. Bernier, 173 N.H. 180 (2020)(Where property is conveyed in a deed and one or more of the calls is an abuttal on a private way there is a grant or at least a presumption of a grant of an easement in such way when the way is owned by the grantor. In those circumstances, the grantor, and all claiming under him, are estopped by deed from denying such an easement exists, and it is of no consequence that the fee to the private way remains in the hands of the original grantor or his assigns, or that the grantor did not intend to grant an easement, or that the easement is not one of necessity. Such an estoppel is one by deed because the deed on its face makes either an express grant or one arising by necessary implication and prevents the grantor from denying the representation made). Although that case involved a private road, it would apply with equal force to the Village District's undeveloped public roads.

Even if GNLC did not convey the lot to the current owner's predecessor in title, New Hampshire law provides that if the lot was sold with reference to a plan that showed the stub, the deed also conveyed an implied easement to use that road for access to the property. See, e.g., Duchesnaye v. Silva, 118 N.H. 728 (1978).

Finally, if I'm reading the tax maps right, it appears that this stub is the only public road access to this particular piece of property, Oberwald Place and Brunig Place appearing to be private roads.



If that is true, then in addition to everything above, there is also an easement by necessity. Because this is the only way to access the property, and because it is a road over public property that was conveyed to a public entity subject to the rights of others to use it as a road, the Village District would not prevail were it to attempt to stop Veretex from using the stub to access the property. See, e.g., Burke v. Pierro, 159 N.H. 504 (2009)(*quoting* Restatement (Third) of Property (Servitudes)(2000),§ 2.15 comment d at 207)(“Necessary’ rights are not limited to those essential to enjoyment of the property, but include those which are reasonably required to make effective use of the property. If the property cannot otherwise be used without disproportionate effort or expense, the rights are necessary within the meaning of this section. Reasonable enjoyment of the property means use of all the normally useable parts of the property for uses that would normally be made of that type of property.”).

It is therefore my opinion that the Village District must allow Vertex to use the Oak Ridge Road stub to access the property upon which it proposes to construct a telecommunications tower. Please let me know if you have any questions or concerns about this opinion. Thank you.