

The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

Title 10: Conservation And Development

Chapter 35: Drainage Of Low Lands

§ 851. Landowner's duties

When the public good or the necessity or convenience of individuals requires the opening of a ditch or watercourse to drain low or swamp lands, to enable owners or occupants thereof to cultivate the same, such owners or occupants shall open such ditch or watercourse in proportion to their several interests.

§ 852. Dispute between landowners; notice to selectboard; investigation

When there is a dispute between parties as to the opening of a ditch or watercourse or the width, depth, or extent that a person shall open, either party may notify in writing the selectboard of the town in which the lands are located of the dispute and ask for an investigation.

§ 853. Hearings; orders; charges; lien

On receiving such notice, the selectboard shall notify all the parties interested of the time when it will examine the premises and hear the parties and their witnesses. They shall apportion the ditch or watercourse among the several parties having regard to the interest of each party in the opening thereof, and shall decide what time each party shall have to open his or her share of the ditch or watercourse, and they may order such ditch or watercourse or a part thereof to be covered, or the selectboard may, if it deems it advantageous and with the written consent of three-fourths of the landowners concerned, place one or more contracts covering all or such portions of said ditch or watercourse as it may deem advisable, and allocate costs in proportion to the benefits received by the interested parties. Such charges shall become a first lien on the property after taxes, and shall be paid to the town treasurer at such time as shall be directed by the selectboard. Funds shall be paid out by the town treasurer on order of the selectboard for costs incurred in drainage. When lands affected lie in more than one town, the selectboard of each town shall appoint one of its own number with authority to act jointly with a similarly appointed representative or representatives from the other town or towns to act in determining the necessity of drainage, allocation of costs, entering into contracts, and other powers as set forth herein.

§ 854. When only part of landowners to open drain

When it appears to the selectboard that the owner or occupant of a piece of land is not sufficiently interested in opening the ditch or watercourse to be required to perform or pay for any part thereof, but it appears necessary for the other parties that such ditch or watercourse should be constructed across such land, they may award that the same be

done at the expense of such other parties. The parties in whose favor the award is made, may open the ditch or watercourse across such land at their own expense without being trespassers.

§ 855. Land damages

When an owner of land through which a drain is to be constructed claims damages therefor, the selectboard shall hear the parties interested therein, and may award reasonable damages to be paid by the parties benefited in such proportions as the selectboard deem just. In estimating such damages, the benefit that the person may receive thereby shall be taken into consideration.

§ 856. Expenses, paid by whom

All expenses under this chapter shall be paid by the parties interested in such proportion as the selectboard orders, and the selectboard shall receive the same compensation as for other services.

§ 857. Decision; written and filed

The award of the selectboard shall be in writing, signed by a majority of them, and they shall lodge it, or a certified copy thereof, in the office of the town clerk. The clerk shall keep it on file, and the selectboard shall deliver a copy to each of the interested parties. Such award shall be binding on the parties.

§ 858. Depth of drainage

An owner of land shall not be required to make or assist in making a ditch or watercourse of greater depth than is necessary for draining his or her land.

§ 859. Cleaning or repairing ditches

Ditches or watercourses opened under the provisions of this chapter shall be kept free for the passage of water into and through the same. If a person fails to do his or her proportionate share of cleaning or repairing a ditch or watercourse, the same proceedings may be had as in case of opening ditches or watercourses.

§ 860. Opening on noncompliance with order

When a person does not open a ditch or watercourse, or his or her proportion thereof, in accordance with the order of the selectboard, a person interested who was a party of record in the proceedings may open such ditch or watercourse and collect pay for the same of the party who was directed by the order of the selectboard to open such ditch or watercourse.

§ 861. Discontinuance

Ditches and watercourses opened under the provisions of this chapter may be discontinued by the same proceedings and under the regulations provided for opening the same.

§ 862. Appeal from award; recognizance

A person owning land through which a drain or watercourse is to be laid may appeal from the award of the selectboard to the Superior Court, by entering into a recognizance with sufficient sureties, before the board, in such sum as it requires, conditioned that the appellant will prosecute his or her appeal to effect and pay intervening damages and costs in case the award is affirmed. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 863. Procedure on appeal; commissioners

When the appeal is entered in the Superior Court with the report of the selectboard in writing, in its discretion, upon hearing, the court may accept or reject the award, or may appoint a commission consisting of three disinterested freeholders of the vicinity, who shall make examination of the premises. After notice to the parties and hearing, such commissioners shall make report thereof to the court within 30 days thereafter, or within such further time as the court upon request may fix. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 864. Duties of court

The Superior Court shall make necessary orders and render judgments to carry out its decisions and tax costs as seems just. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 865. Copy of award and judgment filed

A certified copy of the award of the selectboard or of the report of the commissioners, finally accepted by the Superior Court, with the orders and judgments of such court, shall be recorded in the office of the town clerk where the lands are situated. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)