

## **H. STONE WALLS - BREACH & REMOVAL.**

Some folks have strong feelings about roadside stone walls. Symbols of our agrarian past, they exude a rugged permanence epitomizing the granite Yankee character. Can they be protected? And against whom? RSA 472:6, enacted in 1983 makes it a misdemeanor to deface, alter or remove a stone wall or monument "made for the purpose of designating a point, course or line in the boundary of a tract of land." The wall or marker can be moved without penalty only by authority of the legislature or a court, or **"by mutual agreement between all landowners whose property lines are affected by the moving of the boundary."**

The question is, does this law apply to roadside stone walls? I've heard it claimed that it doesn't. The argument goes that since the abutter's "soil" rights go to the center of the roadway, the wall isn't really the "boundary of a tract of land." But I would argue the statute does apply, for the following reasons:

(a) First, the scenic road law at RSA 231:158, IV states that designation of a scenic road doesn't affect a landowner "with respect to work on his own property . . . **except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls**" This cross-reference is a clear legislative recognition that 472:6 is intended to apply to roadside walls.

(b) Secondly, stone walls usually are boundary markers – indeed, often the best evidence of where the right-of-way line is located (see *Hoban v. Bucklin*, 88 NH 73 (1936)). Besides, an owner's right of possession to a highway (unless it's discontinued) is virtually non-existent. Thus for all practical purposes, the right-of-way line is a boundary, and a very important one.

(c) Finally, as we see from *Holbrook v. Dow, Inc.*, 116 NH 701 (1976), even when an owner's title runs to the center of a highway, the remainder of that tract is often **measured** from its **edge**. That wall may therefore be just as crucial to identifying a tract as any line between two private owners. It thus clearly comes within the class of boundaries the legislature intended to protect under the statute (see statement of intent, Laws of 1983, 21:1).

If I'm right, then under RSA 472:6, 11(a) removal of a roadside stone wall requires "mutual agreement" between the abutting owner and the town. If an owner applies for, and a town grants, a driveway permit under RSA 236:13 (or "curb cut" as it's often called), that's probably enough of a "mutual agreement" for the owner to breach the wall at the driveway site. If the highway is a scenic road, RSA 231:158 imposes additional requirements, including planning board permission, to satisfy the town's half of the "mutual agreement." But in my view landowner agreement is still required as well – unless of course the town condemns additional width, and the wall is no longer a boundary. [Of course this is merely one lawyer's opinion. Check with your town's own attorney. Let him or her who disagrees with me cast the first stone!]