



**DEPARTMENT OF PUBLIC WORKS
TOWN OF WAYLAND**

*Entrusted To
Manage The
Public
Infrastructure*

Thomas M. Holder
Director

Joseph Doucette
Superintendent

Don Millette
Superintendent

Paul Brinkman
Town Engineer

To: Selectmen
From: Thomas Holder | DPW Director
Date: May 30, 2018
Subject: Private Ways Plowing – Appeal Process
Copy: Nan Balmer | Town Administrator
Board of Public Works

The purpose of this writing is to offer suggestions toward implementing an appeals process whereby Wayland residents can formally appeal to the Board of Selectmen to have plowing services of their Private Ways be performed by DPW. In the recently approved Private Ways Plowing Policy, there is a provision to enable residents to make this appeal.

This Private Ways Plowing Policy states the Selectmen shall direct DPW to plow private ways that can be demonstrated are:

- a) *not a driveway, and*
- b) *open to public use, and*
- c) *connect two public roads or has more than three homes, and*
- d) *can be plowed without undue risk*

Residents who reside on Private Ways not receiving Town plowing services and believe their private ways meet the Policy criteria as outlined above may exercise the appeal provision. A suggested appeal approach would include:

- o An Appeal Application to be completed by resident(s) advocating for plowing services
- o A review by DPW of justification elements claimed on Application (property ownership records, use of road, access to Town amenities etc.). This would be new information not previously presented during the May 2018 evaluation process.
- o DPW would reply back to Selectmen with comments made on the Application stating its findings.
- o Selectmen would compile Applications submitted by an established date on any given year; consider each application justification along with DPW comments and then make their annual determination of Private Ways to receive plowing services.

Please let me know if I can provide anything additional to assist with this process.

Respectfully

HIGHWAY - WATER - PARKS - CEMETERIES - TRANSFER STATION - ENGINEERING

DPW FACILITY | 66 RIVER ROAD | WAYLAND MASSACHUSETTS 01778 | TEL 508-358-3672

RESIDENTIAL PRIVATE ROAD SNOW & ICE POLICY

TOWN OF WAYLAND, MASSACHUSETTS

Accepted by Board of Public Works October 10, 2017

Accepted by Board of Selectmen May 16, 2018

Policy Effective November 1, 2018

DEFINITIONS for the purpose of this policy:

- 'Road' or 'Way' An open way for the passage of vehicles.
- 'Residential' Having at least half of the linear length of the road owned or rented for residential use.
- 'Private Roads Open to Public Use' It must be demonstrated that the private residential road under consideration is open to public use and is actually susceptible to use by the public other than for purposes that are merely incidental to the use of the private residential road by the owner or owners thereof. Furthermore, the private residential road must be open to the public at large for purposes of travel, not merely incidental to the use by the owner or owners thereof, in a manner similar to the ordinary use for purposes of travel of a public road of the same general nature.
- 'Private Road' A road or portion of a road where the abutters have deeded rights of ownership, access, control, and maintenance responsibility.
- 'Public Road' A road or portion of a road where right-of-way owned and maintained by the Town of Wayland or the Commonwealth of Massachusetts.
- 'Driveway' A private access, owned by abutter(s) from a road to one to three properties.

BACKGROUND:

- The Town has accepted Massachusetts General Law Chapter 40, section 6C (and by reference, section 6D), which allows the Town to appropriate money for the purpose of plowing private ways that are open to public use and designated by the Selectmen. These prerequisites indicate that not every private road will qualify for the expenditure of public funds for plowing and sanding.

- A road becomes a public road after its layout has been accepted by the Board of Public Works, and after it has been accepted as a public road by town meeting.
- The Town Clerk maintains a list of public and private roads, which is updated after Town Meeting actions.
- The Town GIS has a layer of information which depicts public and private roads, and another layer which depicts driveways.
- The Town as a general matter has no power to expend municipal funds or to utilize funds for the benefit of a private road. If the Town uses public resources to repair or plow private roads the owner or owners of the road clearly receive a benefit. It follows from this restriction that the Town has no inherent power to spend municipal funds or use municipal resources to maintain private roads. The Department of Revenue holds that public funds may not be expended for the benefit of private parties unless there is a definite public purpose and/or benefit to the public at large.

IN GENERAL:

- Responsibility for the care, maintenance, and snow removal of a road or driveway is the responsibility of the entities that own the road or driveway.
- The Town does not plow nor maintain driveways except those owned by the Town.
- Pursuant to G.L. c. 40, § 6C, the Town may plow private residential roads as authorized by the Selectmen provided the roads serve the general public, have more than one connection to public roads, and can be plowed without undue risk.
- The Town may perform specific, one-time, temporary repairs to private roads initiated by abutter requests and voted by the Board of Public Works or if requested by Public Safety Officials.

SPECIFIC PROVISIONS:

1. If it can be demonstrated that a private residential road
 - a) is not a driveway, and
 - b) is open to public use, and
 - c) connects two public roads or has more than three homes, and
 - d) can be plowed without undue risk,

then the Board of Selectmen may, on an annual basis, direct that snow and ice be removed from the private road.

2. Not every private residential road in the Town will qualify for the expenditure of public funds. The Board of Selectmen may exercise its reasonable discretion in deciding how to expend the limited funds available for this purpose.
3. It must be demonstrated that the private residential road under consideration is open to public use and is actually susceptible to use by the public other than for purposes that are merely incidental to the use of the private residential road by the owner or owners thereof. Furthermore, the private residential road must be open to the public at large for purposes of travel, not merely incidental to the use by the owner or owners thereof, in a manner similar to the ordinary use for purposes of travel of a public road of the same general nature.
4. The designation by the Board of Selectmen must therefore, at least, be based upon the determination that by design and in fact, the private residential road is adequate to accommodate general public traffic, and does in fact carry such public traffic.
5. The Board of Selectmen will determine among the total number of private roads which qualify for care, maintenance, and snow removal, depending on available funding and public usage at the time of their decision.
6. Abutters who own private residential roads who believe their road qualifies as open for public use may apply, in writing, to the Board of Selectmen for snow and ice removal. The application should state the reasons why the road qualifies for the expenditure of Town funds for snow and ice removal in the next winter season.
7. Notwithstanding the above, snow and ice removal and maintenance of some private roads is controlled by special permit from the Town or development agreement with the Town. Such agreements are controlling.
8. DPW will continue its protocol to respond to a plowing request from Public Safety Officials for first response necessities.

K.P. LAW - GUIDANCE TO THE SELECTMEN

"Open to the public use" has been held by the Supreme Judicial Court of Massachusetts to mean that the way is actually open to use by the public for purposes of travel, not merely incidental to its use by permission of the owner(s). Money raised by taxation can be used only for public purposes and not for the advantage of private individuals, therefore, the road must be of such design and location that the general public is able to use the road, other than as a guest or invitee of abutters to that road."

Opinion of the Justices to the Senate, 313 Mass. 779, 783 (1943).

In determining sufficient design, the qualifying factors are:

- The road must be a minimum of 15 feet wide.
- Roadside clearance of any obstacles, including vegetation, shall be at least two (2) feet from the edge of the road surface on each side.
- Height clearance shall be no less than fourteen (14) feet from the road surface.
- The road surface must be paved or hard packed gravel and capable of being plowed without causing damage to plowing equipment. The road must be free of defects (potholes or rutting) exceeding three (3) inches in depth. Defects in the road surface must not deviate from grade more than three (3) inches including manhole covers, catch basins, and roots. All potholes and ruts shall be filled to the approximate level of the surrounding roadway by the owners prior to any plowing taking place.
- There must be a turnaround area sufficient to accommodate a snow plow truck, if needed.
- There must be a designated area for the placement of plowed snow that is not on private property unless written permission and waivers are provided by the property owners.
- The road may not be a shared driveway.