

④ Private Roads

DATE: OCTOBER 23, 2017
TO: BOARD OF SELECTMEN
FROM: NAN BALMER, TOWN ADMINISTRATOR
RE: PRIVATE ROADS (Large Hearing Room)

ACTION: VOTE TO ADOPT A POLICY ON PRIVATE ROADS AND VOTE TO DESIGNATE PRIVATE ROADS OPEN TO PUBLIC USE FOR SNOW REMOVAL

BACKGROUND:

The Board of Public Works requests that the Selectmen adopt a policy and list of private roads that will be plowed by the Town. The adoption of the policy and list would mean 14 locations on which about 45 residences exist would not be plowed. Residences that would be affected by this policy were notified of this public meeting through a flyer delivered to each household on 10/16 and 10/17 as well as through the normal meeting posting. The DPW Director, a representative of the Board of Public Works and Town Counsel will make presentations and public comment will be allowed. Attached are: 1) PowerPoint Presentation, 2) Draft Private Road Policy and 3) List of Private Roads in Wayland, 4) Private Roads: Comparison of Policies (Neighboring towns).

SUMMARY OF TOWN COUNSEL ADVICE:

- The Town accepted G.L. c. 40, s. 6C on March 4, 1968. This statute allows a Town to plow private ways open to public use as may be designated by the Selectmen. There are two necessary characteristics of any road in question:
 1. The road must be "open to the public use;" and
 2. The road must have been "designated" by the Board of Selectmen for snow and ice removal.
- These prerequisites indicate that not every private road in any town will qualify for the expenditure of public funds for plowing, sanding and so forth, and that the Board of Selectmen may exercise its reasonable discretion in deciding whether and how to expend the limited funds available to it for this purpose.
- As to the first requirement set out in the statute, that the road must be "open to the public use," this term has been held by the Supreme Judicial Court of Massachusetts (SJC) to mean that the way is "actually susceptible of use by the public other than for purposes that are merely incidental to the use of the way by the owner thereof, and also that the way is open to the public at large for purposes of travel, not merely incidental to its use by the owner thereof, in a manner similar to the ordinary use for purposes of travel of a public way of the same general nature".
- The designation by the Board of Selectmen which G. L. c.40, §6C requires must, therefore, at the least, be based upon the determination that by design and in fact, the road is adequate to accommodate general public traffic, and does in fact carry such public traffic. In addition, however, because public funds are finite and variable from year to year, a road which qualifies pursuant to Section 6C may nevertheless be excluded from plowing, even if plowed in a previous year. The statute charges the Board of Selectmen with making choices among the total number of roads which qualify for plowing under the Section 6C standard, depending on available funding, and, presumably, traffic patterns at the time of the Board's decision.

DRAFT

Private Roads Policy: Snow & Ice Removal



Review of Policy Recommendations
From Board of Public Works & DPW
To the Board of Selectmen

October 23, 2017

History: Plowing Private Roads

How we got here...

- We used to plow church parking lots long ago.
- In 1968 we adopted M.G.L. Chapter 40 sections 6C and 6D enabling towns to plow private ways having public use.
- Our insurer: Wayland isn't covered for damages on private ways.
- In 2015 we discontinued plowing on some short driveways/roads which lacked turnarounds.
- There were others we missed & we decided Wayland should have a uniform policy.
- Town Counsel gave us the legal basis for plowing private roads and said the Selectmen make the decision on which roads.
- Selectmen asked us for a draft policy & list of roads for 2017 season.

What do other towns do?

- Varies Considerably...

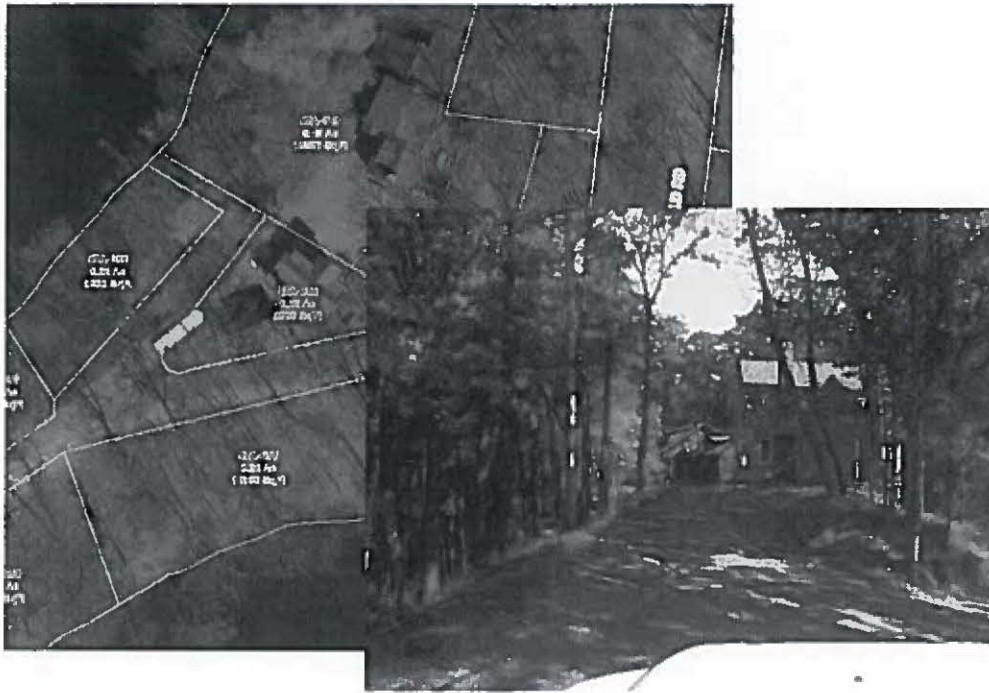
<u>Town</u>	<u>Snow & Ice Removal – Private Roads</u>
Framingham	Yes to limited few who are open to Public Use
Franklin	No
Hingham	No, only streets built to be public
Lincoln	No
Littleton	Open to Public Use - 3 Dwelling Min - If Paved
Medway	No
Natick	Yes, only those open to Public Use
Sudbury	No - Currently under Discussion
Wellesley	Yes per website FAQ
Weston	Yes

Consideration: **Safety**

- Our #1 concern is maximizing safety of DPW staff and other drivers.
- Backing up a large snow plow during a snow storm is difficult.
- Backing up into a travelled road can be dangerous.
- Narrow roads, curving roads, and drop-offs are dangerous.

Consideration: Safety - examples

Pine Road



Steep, narrow, no turn around, drop-off to pond
– truck slipped here.

Curtiss Rd



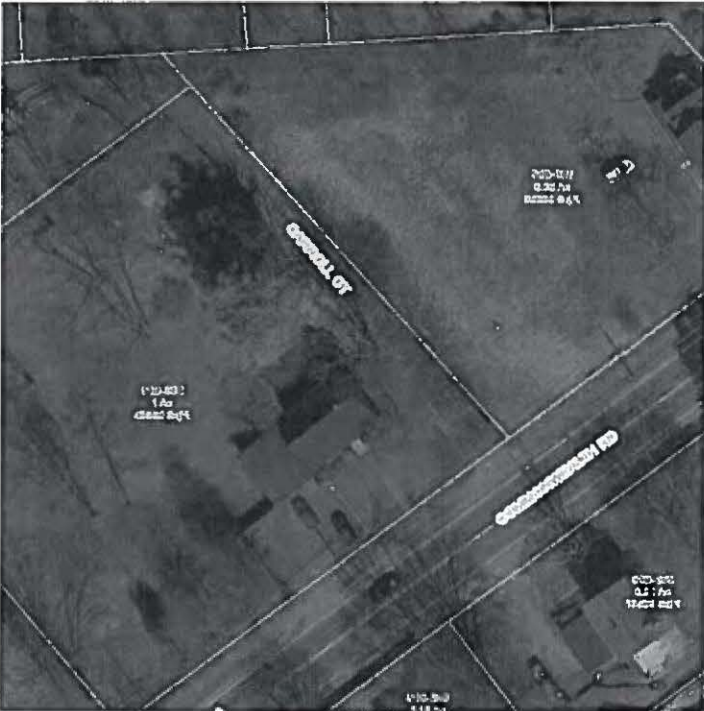
One home, truck backs up into
Main Street

Consideration: **Legalities**

- **Plowing:** Wayland accepted G.L. c. 40, s. 6C on March 4, 1968. This statute allows a Town to plow private ways open to public use as may be designated by the Selectmen.

NOTE: Town obligations may be limited by subdivision agreements, permits or deeds.

Consideration: **Legalities –**
We can't spend public funds for private purposes



Carroll Court – one dwelling



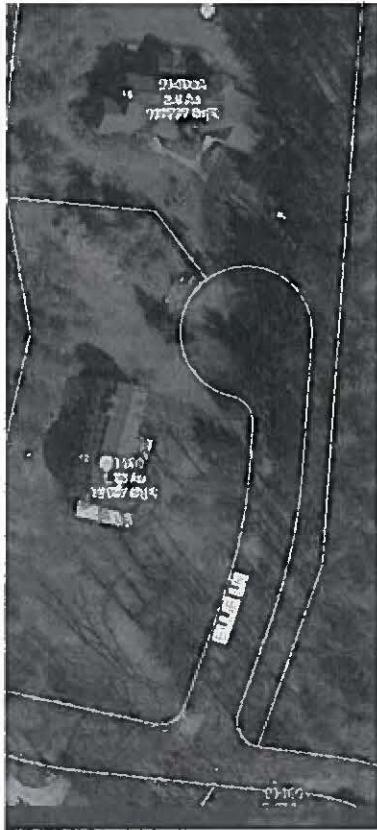
'Riverview Terrace' – one dwelling

Consideration: **Equity**

- All residential private roads receive snow and ice removal under common, understandable policies that satisfy legal requirements of public purpose.
 - a) Open to and has public use,
 - b) Connects two or more public roads, OR
Serves more than three dwellings
 - c) Can be plowed safely as determined by DPW
 - no backing up, has turnarounds, safe width/pitch

Consideration: Equity- examples

Ellie Lane



Two homes – not plowed

Hemlock Road



Two homes – proposed change to no plowing

Recommendations: **Snow & Ice Removal Policy**

Provide snow and ice removal to private residential roads which:

1. Are not driveways (for one to three homes), and
2. Are open to and have public use, and
3. Connects two or more public roads or serve more than three homes, and
4. Can be plowed safely as determined by DPW.
– no backing up, has turnarounds, safe width/pitch

Annual review by Selectmen & DPW of proposed additions & deletions.

DRAFT

RESIDENTIAL PRIVATE ROAD SNOW & ICE POLICY

TOWN OF WAYLAND, MASSACHUSETTS

Accepted by Board of Public Works October 10, 2017

Accepted by Board of Selectmen _____

Policy Effective November 1, 2017

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 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 it's 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 is
 - a) *is not a driveway, and*
 - b) *is open to public use, and*
 - b) connects two public roads or has more than three homes, *and*
 - c) 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 Selectman 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.

PRIVATE ROADS

10/10/2017

Road	Dirt	Length (Ft)	No Plow Date	Access	# of Homes
Adelaide Ave		565		Access Lakeshore & West Plain	6 Homes
Amev Rd				Fuller Rd No Turn Around	11 Homes
Audubon Rd		785		Standish Rd No Turn Around	2 Homes
Bennett Rd				Boston Post Rd. Limited Turn Around	13 Homes
Birch Rd				Sycamore Rd - Hawthorne	2 Homes
139 Boston Post Rd	X		2015	Boston Post Rd	2 Homes
Carroll Ct	X	211		Commonwealth Rd. No Turn Around	1 Home
Cedar Crest Rd	X			Indian Rd. Limited Turn Around	8 Homes
Center St (partial)	X			Center St. Hill St.	1 Home
Chesnut Rd	X	264		Hawthorne Rd - Sycamore Rd	3 Homes
Cormans Ln	X	317		Main St. No Turn Around	2 Homes
Covered Bridge Lane					
Crest Road (partial)					
Cross St	X	98		Doran Rd No Turn Around	1 Home
Curtiss Rd		122		Main St.	1 Home
Doran Rd	X	792		Main St. - Mathews Dr	9 Homes
Dudley Rd (partial)				Dudley Rd Turn around	
Dunster Ave		350		East Plain. No Turn Around	3 Homes
Elizabeth				Access Rice Rd with Turn around	2 Homes
Ellie Lane				Access Lincoln Rd	2 Homes
Erwin Rd	X	450			6 Homes
Fields Lane				Access Plain Rd No Turn Around	1 Home
Glen Rd				Access Boston Post Rd & Millbrook	11 Homes
Hammond Rd			2015	East Plain No Turn Around	1 Home
Heard Rd				Pelham Island Rd Turn Around Conserv. Area	5 Homes
Hemlock Rd	X	270		Lakeshore Dr No Turn Around	2 Homes
Hereford Rd			2015	Alpine Rd No Turn Around	2 Homes
Herland Way	X			Old Conn Path West - Coch Rd	2 Homes
Highfields Rd					6 Homes
Hill St	X	528		East Plain, South St. Center St.	2 Homes
25,27,29 High Rock			2015	High Rock No Turn Around	3 Homes
33,35,37 High Rock			2015	High Rock No Turn Around	3 Homes
Jennison Rd	X	212		Main St. No Turn Around	2 Homes
Lakeshore Drive (partial)				Multiple Access	
Lewis Path				Access Concord Road w/Turn around	4 Homes
Lundy Ln				White Rd - Rich Valley - Sylvan Way	7 Homes
Maple St	X	370		Main St. No Turn Around	1 Home
Mathews Ave	X			Main St. Mathews Dr	5 Homes
Mathews Dr	X			Main St. Pond	7 Homes
Mayflower Path	X			Pineridge Rd Limited Turn Around	7 Homes
Mitchell St (Rear)			2015	Mitchell St. No Turn Around	1 Home
Old Oxbow Rd	X			Oxbow Rd Both Ends	7 Homes
Pesce Dr				Access Oxbow Rd w/Turn around	6 Homes
Pine Rd		160		Dudley Rd No Turn Around	2 Homes
Pond Dr (partial)	X	1056		Main St. Crest Rd	4 Homes
Priscilla Path	X	423		Maiden Lane both	7 Homes
Quincy Rd	X	317		Pemberton Rd. No Turn Around	3 Homes
Ravine Rd				Access off Wallace No Turn Around	2 Homes
Reservoir Rd Ext.		400		Access Reservoir Rd No Turn Around	4 Homes
River Terrace		110		Old Stonebridge No Turn Around	1 Home
Rose Hill Ln				Access off Glezen No Turn Around	2 Homes

Rowan Field Rd				Access Draper Rd	2 Homes
Sequin Path	X	106			
Shaw Dr (partial)				Access Old Conn Path, Fox Meadow	
15 Shawmut Ave Ext	X	245	2015		
Shawmut Ave Ext	X			Pemberton Rd. Town Beach Lot (seasonal)	9 Homes
Stanton St				Damon St. - Commonwealth Rd	9 Homes
Sweet Grass (partial)					
Sycamore Rd	X			Old Conn. Path - Chesnut,	
Trudeau Ter					1 Home
Wampum Path		634		Lakeshore Dr No Turn Around	2 Homes
Weir Meadow Path				Access off Oxbow No Turn Around	1 Home
Wildflower Lane				Access of Plain Rd No Turn Around	3 Homes
Willard St				Main St - Winter St	6 Homes
Winthrop Place		188		Winthrop Place No Turn Around	2 Homes
Woodland (partial)					
2,4,6,8 Plain Rd				Plain Rd No Turn Around	4 Homes
201 West Plain		255	2015	West Plain No Turn Around	3 Homes
231,229,227,225,223,221 Concord				Concord Rd No Turn Around	6 Homes
235,239,243 Concord Rd				Concord Rd No Turn Around	3 Homes
298,300,302 Concord Rd				Concord Rd No Turn Around	3 Homes
Yeager Way				Access Cochituate Rd w/Turn around	4 Homes

LEGEND

Public access or more-than-three Homes - Currently Plowed

No defined public access or proper turn around proposed to discontinue maintenance

No defined public access or proper turn around currently not maintained

H

Private Ways - Comparison

<u>Town</u>	<u>Plow</u>	<u>Maintain</u>
Framingham	Yes to limited few who are open to Public Use	No
Franklin	No	No
Hingham	No, only streets built to be public	No
Lincoln	No	No
Littleton	Open to Public Use-3 Dwelling Min-Paved	Undetermined
Medway	No	No
Natick	Yes, only those open to Public Use	Pothole Repair
Sudbury	No-Currently under Discussion	No-Currently under Discussion
Wellesley	Undetermined	Only those open to Public Use as determined by BoPW
Weston	Yes	Only if Paved - For a Fee if Resources allow