

History of Wayland Plowing Rights-of-Way and Private Roads

- 1900-** In addition to public roads, the Town has been plowing more than 50 private roads and rights-of-way for at least 80 years, according to town records and residents' oral histories.
- 1982**
- August 16** The Board of Road Commissioners vote unanimously to cease plowing any private roads or Rights-of-Way within the Town limits. They request that Town Counsel confirm this decision before they vote.
- Nov 4** Town Counsel confirms that the Road Commissioners' decision to stop plowing is OK. Letters are sent to all affected 30 homes.
- Late Nov.** Residents attend next Road Commission meeting; express outrage. Commissioner gives reason: "clarifying its policy." *Wayland Town Crier* article of December 2 reports that "the commission is now waiting for Town Counsel's written verification that the Town cannot be held liable if it doesn't maintain these private ways. Chairman [Diane] White said that the commissioners have received verbal verification, but 'want it in writing'. Under the **Massachusetts General Laws, plowing of private ways is a 'proper use' of municipal funds**, but the Commissioners decide that a new policy should be established to clarify that only officially accepted Town roads and streets would be plowed."
- Dec. 20?** At the meeting immediately preceding December 23 (when it was reported in the *Town Crier*, so most likely December 20), after huge outcry, Road Commissioners vote to rescind August 16 "no plow" decision. The Commission also decides to establish for use after July 1, 1983 a firm policy to designate roads that the Town will not be responsible for plowing.
- 1983**
- April** In order to comply with MGL Chapter 40 Section 6C, (which passed at Wayland's 1968 ATM), Selectmen vote to designate common driveways temporarily as "private ways open to public use" in order to legitimize the Road Commissioners' decision to rescind, and continue plowing all affected homes, so that funds could be allocated at ATM for snow removal. (Reported in the *Town Crier*).
- April 27** At ATM, Town votes to allocate these funds.
- Aug 15** Board of Selectmen meet, agree to request that the Road Commissioners direct the Highway Department to continue plowing all of the more than 50 private roads traditionally plowed by the Town. According to the *Town Crier* (August 18): "*Members acknowledged that removing snow from the private ways the Town has plowed in the past may be illegal. Board had previously been advised by Town Counsel that private ways cannot legally be plowed with public monies unless they are truly open to public use. Town Counsel is now reviewing a betterment recommendation.*"

Selectmen decided in April to give the roads temporary public status with intentions of seeking a betterment policy put in place before a final decision not to plow private ways is made. The betterment policy would be a procedure available to residents of private roads who want to upgrade their road so it can be accepted by the Town as a public way, and receive Town plowing service."

2015

Oct. 20 BPW votes to stop plowing "common driveways."

Nov 5 Residents are informed **AFTER** the vote, by certified mail (which did not reach some residents in a timely fashion).

Nov 16 Public is invited to this meeting to air their concerns, and are informed in advance that the Board's vote will not be reversed; the meeting is to "clarify any confusion." The minutes read as follows: "Brown notes that the Town had been plowing areas that it had no legal right to be on, which is confirmed by the Town Surveyor and Town Counsel.

Lowery notes that there is a difference between private ways, where the public has a right of access versus private driveways, where the public has no right of access."

Mr. Brown requests that Mr. Lanza provide a legal description of the terms: "public road," "private road," and "private drive." Mr. Lanza offers a lengthy description of the process by which public ways come into existence in Wayland.

Mr. Lanza notes that the general rule is: "that no private ways can be plowed using public funds, unless the Town accepts the law that private ways open to the public could be plowed."

2015/16 Residents hire private plows. This presents economic and/or logistical hardships to several of the affected residents, many of whom are seniors; some of whom are disabled.

2016

January Some affected residents apply for tax abatement; they are refused because year in question was 2015, not 2014. They try again next year, again are refused because rising tax rates are not based on services received.

January 13 Email from Ms. Balmer states that the reason for the cessation of plowing was that in 2013, the Town plow hit a fence, the insurance company paid. Then in 2015, the plow hit the same fence, and the DPW asked the homeowner if Town crew could repair instead (we assume so as to not raise our insurance rate from too many claims).

August 29 To try to help us understand why the Road Commission reversed its 1982 decision to stop plowing, Brian Bell submits a Public Records Request for the minutes of the pertinent meetings. The BPW responds that the records have been lost.

Sept 1 Correspondence on the matter is sent from Mr. Lanza to Mr. Brown, and is sent to Malcom Astley and Cynthia Lavenson, two affected residents.

Questions arising from Mr. Lanza's correspondence (and some affected residents' comments [in blue] regarding same) are as follows:

"Since the terms common driveway and private way are not defined in the Towns' bylaws or in state law,"

"This statement is not entirely true. Section 301-5 of Wayland By-Laws, appropriately titled "Definitions" **does clearly define** "private ways," "streets," and "public ways" (but not "common driveways"). We are still not sure why that took the better part of a year to figure out."

"The attached document compares the typical common driveway to the typical private way. Such ways could have specific variations depending on the documents that created them."

"The 'attached document' is entirely inadequate, and is unusable as a legal document, as it bears NO author, NO date, and NO citation of sources for the information. I am quite displeased that my tax dollars were used to produce this inadequate document."

"It's #9 that's relevant and critical, yet he [Mr. Lanza] provides no legal basis for it – AND THAT'S WHAT WE REQUESTED (not his summary of differences)"

2017

Sept. 12 The Agenda for the Board of Public Works meeting contains this item:
"Review of Town Counsel's Legal Opinion Concerning the Status of Private Ways"

Some residents feel this language was insufficiently specific; state they would have attended the meeting to express their concerns had they been informed that plowing was once again up for review.

"What was the impetus for bringing this up again now?"

"What can we do to ensure that the Town will resume plowing our roads? For many of us, this is a health and safety issue."