

## 5. Private Roads

### 5. Private Roads

**DATE: MAY 16, 2018**

**TO: BOARD OF SELECTMEN**

**FROM: NAN BALMER, TOWN ADMINISTRATOR**

**RE: PRIVATE WAYS OPEN TO PUBLIC USE: MEET IN COUNCIL ON AGING**

**REQUESTED 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 asks the Board of Selectmen to take action on a policy regarding private roads open to public use for snow removal and a list of qualifying roads.

**Attached are:**

1. Public Meeting Notice
2. Draft Policy: Residential Private Road Snow & Ice Policy
3. List of private roads open to public use recommended by Board of Public Works
4. Spreadsheet from DPW Director : Categories of Private Roads
5. Materials from the meeting of October 23, 2017



# TOWN OF WAYLAND

41 COCHITUATE ROAD  
WAYLAND, MASSACHUSETTS 01778

## \*\*\* MEETING NOTICE \*\*\*

The Board of Selectmen will hold a public meeting at the Town Building in the Large Hearing Room on

**Wednesday, May 16<sup>th</sup> at 7:30 p.m.**

to discuss a policy on plowing of private roads. Because your property may be affected by the policy, we are inviting you to attend.

All the materials provided to the Board of Selectmen, including those related to private roads, will be posted on the afternoon of Friday, May 11<sup>th</sup> to the Board of Selectmen Agendas web page.

**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:

<b>'Road' or 'Way'</b>	An open way for the passage of vehicles.
<b>'Residential'</b>	Having at least half of the linear length of the road owned or rented for residential use.
<b>'Private Road'</b>	A road or portion of a road where the abutters have deeded rights of ownership, access, control, and maintenance responsibility.
<b>'Public Road'</b>	A road or portion of a road where right-of-way owned and maintained by the Town of Wayland or the Commonwealth of Massachusetts.
<b>'Driveway'</b>	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.

<b>Private Roads to be Plowed (5/10/2018)</b>
ADELAIDE AVE
ALCOTT LN
AMEY RD
BENNETT RD
CEDAR CREST RD
CENTER ST (partial)
CHESTNUT RD
DECOLORES DR
DORAN RD
DUDLEY RD (partial)
DUNSTER AVE
ERWIN RD (partial)
HEARD RD
HERLAND WAY
HILL ST
JOYCE RD
KLEMPNER RD
LAKESHORE DR (partial)
LIBRARY LN
LINWAY RD
LUNDY LN
MATHEWS AVE
MATHEWS DR
MAYFLOWER PATH
OLD OXBOW RD
MICHAEL RD (partial)
OLD VINEYARD WAY
PESCE DR
PLAIN RD (2,4,6,8)
POND DR (#1)
PRISCILLA PATH
SEQUIN PATH
SHAW DR (#2)
SHAWMUT AVE EXT
STANTON ST
SWEET GRASS LN (#2)
SYCAMORE RD
TROUT BROOK RD
VILLAGE LANE
WADSWORTH LANE
WILLARD ST
WILLOW BROOK DR
WOODLAND RD (#2)
YEAGER WAY

Driveway?	Private on Town Clerks List	Plan Board CC, SP, MSP	Unpaved?	Fire Hydrant	Appox Length (ft)	No Plow Date	Town Access	Mailbox on plow road?	Has Sign?	Access1	Access2	Must Reverse?	Has driveway # homes	Cluster Condo Appt	Area Name
	Y		N	Y	565			Y	Y	Lakeshore Dr	West Plain St		10		
	N		N							Claypit Hill Rd			2		
	Y		N	N	750					Fuller Rd			10		
	N	MSP				never				Old Sudbury Rd	Boston Post Rd	Y	0	Y	Town Center
	Y	SP				never				Turkey Hill Rd			19	Y	
at end	Y			Y	785	proposed		N		Standish Rd		Y	2		
	N (Condos)					never								Y	
	Y			Y	1160		Consv			Boston Post Rd		Y	13		
	Y			N	480	never				Hawthorne Rd			1		
	Y	SP				never				Turkey Hill Rd			14	Y	
	Y					never				Boston Rost Rd				Y	Lee's Farm
	Y		Y		211	proposed				Commonwealth Rd			1		
	Y		Y							Indian & Woodland Rds			4		
	N		Y							Center St	Hill St	Y	5		
	Y		Y		264					Hawthorne Rd	Sycamore Rd	Y	3		
	Y	SP				never				Mainstone Rd			18	Y	Mainstone
	Y		Y		317	proposed				Main St			2		
	Y	CC				never				Rice Rd		Y	10		
	Y	SP			930	never				Turkey Hill			11	Y	
	Y		Y		98	never	Consv.			Doran Rd/Mathews Dr		Y	1		
	Y	SP				never				Rice Rd		Y	9	Y	
	Y				122	proposed				Main St			2		
	Y	SP				never				Mainstone Rd			46	Y	Mainstone
	N (Condos)					never				Magnolia Dr				Y	
	Y	SP				never				Turkey Hill Rd		Y	9	Y	
	N (Condos)														
	Y		Y		792					Main St	Mathews Dr		8		
	N				1570		Dudleyp			Bayfield Rd	Dudley Rd		22		
	Y				350					East Plain St	Hillside Dr		4		
	N (Condos)	MSP				never				Andrew Ave	Andrew Ave	Y	0		Town Center
	Y	SA				never				Rice Rd		Y			
	N	SA				never				Lincoln Rd					
	Y		Y		450					Pelham Island Rd			4		
	Y	SP			430	never				Turkey Hill			10	Y	
	Y					never				Claypit Hill			2		
	N	SA				never				Plain Rd					
	Y	SP				never				Turkey Hill Rd		Y	11	Y	
	Y	SP				never				Mainstone Rd			33	Y	Mainstone
	Y				1430					Boston Post Rd	Millbrook Rd, Plain Rd		9		
	Y					2015				East Plain St					
	N (Condos)	MSP				never				Andrew Ave	(loops)	Y		Y	Town Center
	N (Condos)	SP				never				Curling Way		Y	9	Y	Mainstone
	Y				715		Conserv.			Pelham Island Rd		Y	4		
	Y		Y		270	proposed				Lakeshore Dr			2		
	Y					2015				Alpine Rd		Y	1		
	N		Y		1050					Old Connecticut Path West	Cochituate Rd		2		
	Y					never									
	Y		Y		528					E Plain St, South St, Center St			2		
	Y	SP				never				Mainstone Rd	various	Y	121	Y	Mainstone
	Y	SP				never									Mainstone
	N		Y		212	proposed		N		Main St		Y	5		
	N														
	N			Y			DP Park	Y	Y	Multiple Access	Multiple Access	N	40		
	Y	SP				never				Mainstone Rd		Y	8	Y	
	N					never				Concord Rd		Y	3		

Driveway?	Private on Town Clerks List	Plan Board CC, SP, MSP	Unpaved?	Fire Hydrant	Appox Length (ft)	No Plow Date	Town Access	Mailbox on plow road?	Has Sign?	Access1	Access2	Must Reverse?	Has driveway # homes	Cluster Condo Appt	Area Name
	N				400	never				Lincoln Rd			2		
	N				180					Concord Rd	Old Sudbury Rd	N	1		
	N	MSP				never				Andrew Ave	Elissa Ave	Y		Y	Town Center
	Y				950					White Rd	Rich Valley Rd, Sylvan Way	Y	7		
	N (Condos)					never				Rice Rd	Rice Rd			Y	
	Y		Y		370	proposed				Main St		Y	1		
	N		Y		260					Mathews Rd		Y	4		
	Y		Y		1060					Main St	Pond Dr		7		
	Y		Y		500		town lots			Pineridge Rd		limited	4		
	N									Glen Rd			7		
	N														
	Y				690					Access Oxbow			5		
	Y	SP				never						Y	56	Y	Mainstone
	Y		Y		120	proposed				Dudley Rd		Y	2		
	Y		Y		1056		Recreation			Main St	Crest Rd		3		
	Y		partial		423					Maiden Ln	Maiden Ln		8		
	N		Y		330	proposed				Pemberton Rd		Y	2		
	N					never				Wallace Rd					
	N (Condos)	MSP				never				Andrew Av				Y	Town Center
	Y					never				Glezen Ln		Y	2		
	N					never				Draper Rd	Draper Rd		3		
	N		Y		106					Maiden Ln	Lakeshore Dr		0		
	N		Y		860		Beach			Pemberton Rd	Town Beach Lot		9		
	Y				660					Damon St	Commonwealth Rd		6		
	Y					never				Mainstone Rd			21	Y	Mainstone
	Y		Y		1600					Old Connecticut Path	Chestnut St		20		
	N (Condos)														
	Y					never									
	N (Condos)														
	N (Condos)														
	Y				634	proposed				Lakeshore Dr		Y	2		
	Y					never				Old Oxbow Rd			2		
	N					never				Plain Rd			2		
	Y									Main St	Winter St		6		
	Y														
	Y				188	proposed				Winthrop Pl			2		
	Y	SP				never				Magnolia	Magnolia		19	Y	
	Y														
	Y			Y						Cochituate Rd			4		
Y	address		Y			2015				Boston Post Rd			0		
Y	address					never				Concord Rd		Y	5		
Y	address					never				Concord Rd		Y	3		
Y	address					proposed				Concord Rd		Y	2		
Y	address					2015				High Rock Rd		Y	3		
Y	address					2015				High Rock Rd		Y	3		
	address					2015				Mitchell St		Y	6		
Y	address									Plain Rd		Y	4		
Y	address				550					Reservior Rd		N	4		
Y	address				60	proposed	N			Old Stonebridge		Y	2		
Y	address		Y		245	2015				Shawmut Ave Ext		Y	1		
Y	address				255	2015				West Plain St		Y	2		
CONTINUE TO PLOW			NEVER BEEN PLOWED			STOPPED PLOWING IN 2015			PROPOSE TO STOP PLOWING IN 2018						



**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 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 with turnarounds.
- There were others we missed & we decided Wayland should have a policy.
- Town Counsel gave us the legal basis for plowing private roads and said 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 &amp; 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
- 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.**

10/23/17

Curtiss Road



**One home, truck backing up  
Main Street**

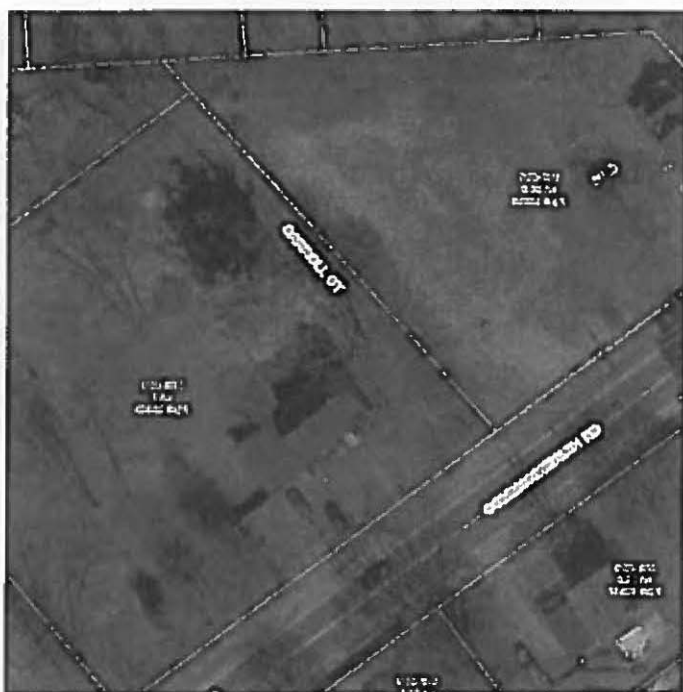
Private Roads Policy: Snow & Ice Removal Recommendations

## Consideration: **Legalities**

- **Plowing:** Wayland accepted G.L. c. 40, s. 6C on March 4, 1997. This statute allows a Town to plow private ways open to public use that have been designated by the Selectmen.

*NOTE: Town obligations may be limited by subdivision agreement, easements, permits or deeds.*

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



Carroll Court – one dwelling



'Riverview Terrace' – one dwelling

10/23/17

Private Roads Policy: Snow & Ice Removal Recommendations

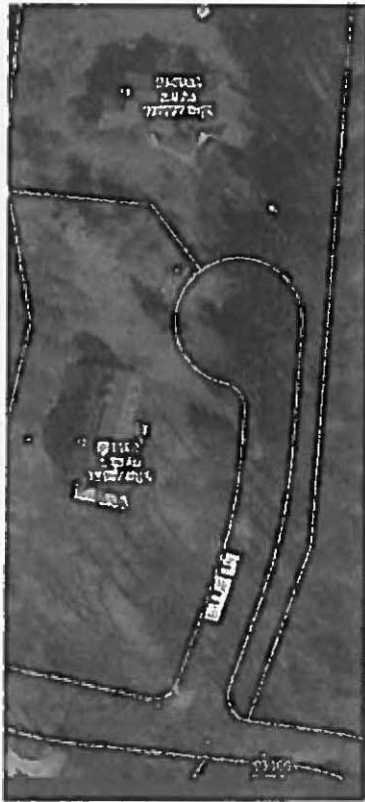


## Consideration: **Equity**

- All residential private roads receive snow and ice removal under understandable policies that satisfy legal requirements of public
  - 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

10/23/17

Private Roads Policy: Snow & Ice Removal Recommendations

## **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/pit**

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

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**BACKGROUND:**

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- The Town GIS has a layer of information which depicts public and private roads, and another layer which depicts driveways.
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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.

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#### **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 Ways - Comparison**

**Town**

**Plow**

**Maintain**

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

Undetermin

Medway

No

No

Natick

Yes, only those open to Public Use

Pothole Rep

Sudbury

No-Currently under Discussion

No-Currently under

Wellesley

Undetermined

Only those open to Public Use a

Weston

Yes

Only if Paved - For a Fee if