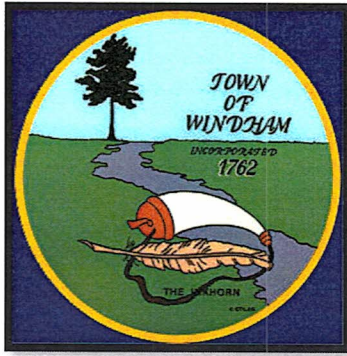


MAINE STATE LEGISLATURE

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Town of Windham

Office of the Town Manager
8 School Road
Windham, ME 04062

Barry A. Tibbetts, Town Manager
batibbetts@windhammaine.us

207.892.1907 voice
207.892.1910 fax

January 27, 2022

Honorable Senator Joseph Baldacci, Chair
Honorable Representative Ann Matlack, Chair
Members of the Joint Standing Committee on State and Local Government
100 State House Station
Augusta, ME 04333-0100

Dear Senator Baldacci and Representative Matlack:

Since our Legislative Committee discussion and action on LD 1723, the Town of Windham has actively been pursuing a solution to alleviate the private road dilemma created by the Town's long history of plowing private roads without obtaining the appropriate public rights to do so. I believe we have made significant progress but I must admit COVID has been challenging to work around.

To put this into context we are working with 101 roads, have contacted over 2,100 residents and compiled a number of aids for our residents.

The Joint Standing Committee asked for a report covering these items: a description of the Town's progress; Fire-Rescue Chief's and Police Chief's assessment with regard to operational impacts on private ways; an assessment of the environmental impact of maintenance on area waterbodies; and an assessment from the school department with regard to operational impacts on private ways.

The first challenge was creating the roster map and master listing within sixty days. We notified 2,179 residents who either directly abut an identified designated way or an identified side road that traverses the designated way. The correspondence detailed the issues, new private way legislation, what the Town was asking to occur and directions on how to opt out. (See attached letter.)

Prior to the mass mailing and afterwards the Town has had an extensive information campaign. The following dates indicate all public meetings. These meetings were either via Zoom or hybrid.

- March 23, 2021 - Council Order 21-069 (Authorized Town Manager and Attorney to work with Legislators)
- August 10, 2021 - Council Discussion CD 21-101 (State Legislation, Draft Local Ordinance and Public Information)
- September 14, 2021 - Council Discussion CD 21-127 (Draft Local Ordinance and Public Information)
- September 28, 2021 - Council Discussion CD 21-135 (Draft Local Ordinance, Inspection List and Q & A)

- October 12, 2021 - Council Order 21-190 (Public Comment Local Ordinance - action postponed to 10/26/21)
- October 26, 2021 - Council Order 21-190 (Public Comment continued & vote which approved the ordinance)
- December 7, 2021 – Council Special Meeting – (Public Information and Question & Answer opportunity with our Town Attorney available)
- January 11, 2022 - Council Order 22-007 (Public Hearing and Action on amendment to section 210-25 of Ordinance)

Within 100 days of the meeting with the legislative committee the Town launched a comprehensive website with detailed information on the who, what, why, when and how to move forward. This website link was also provided in our mass mailing: <https://www.windhammaine.us/758/Private-Ways-with-Winter-Maintenance>

The Town also created a book (also in digital format) with all the necessary documents to form a statutory road association with appropriate legal document templates for each road association.

Following the meetings outlined above, the Town created its Winter Maintenance of Designated Private Ways Ordinance (attached), which dictates parameters for the Town's ability to continue plowing of these ways, to include formation of a road association to handle maintenance and repairs, requirement to obtain a public easement from at least 50% of abutters, and formation of standards to which these roads will be held as a condition of maintenance.

Staff and the manager have handled numerous calls which mirrored questions in the prepared Q&A. We have also allocated Town Attorney time via Zoom, phone and in-person meetings with numerous road associations to resolve unique issues. (See attached “Stat Sheet”)

Based on the Attorney General’s letter we choose to focus on two areas – public easement approval and environmental impact.

With regard to public easement rights, these must be conveyed to the Town as a condition of continuing public maintenance on these private ways, and we have been very clear both in our adopted ordinance and in communications that this is a deal “breaker” if not obtained. We have provided sample language for this public easement, drafted by the Town Attorney. (See attached single & group signoff language.)

Several other issues arose at the December 7 Special Meeting:

- Need for and format to allow those in (or forming) statutory road associations to sign off on public easements.
- Sections of road that no one could determine ownership after they had spent years and considerable dollars to attempt to determine.
- Whether to include in a road association those who access their properties through, but do not abut, a designated private way.
- How to address a situation where one or two property owners are inaccessible or will not sign off. (This has been addressed in the Ordinance by requiring sign off from over 50% of abutters and by those who do sign off granting rights to Town as invitee to perform maintenance).

- Some residents complained that the timeline provided to complete the process is too short, especially since many of the properties served by designated private roads are summer homes.

I would say 98% of all attendees and correspondence/calls want this to work and are willing to work towards the requirements in a reasonable time frame.

The next major issue is the environmental impact. To be very upfront, I was unable to coordinate with the D.E.P. but I have been able to have our staff develop a report. Our staff is:

- Bob Burns, Assistant Town Manager, Professional Engineer, MS4 Certified
- Mark Arienti, P.E., Town Environmental Engineer, MS4 Certified
- Gretchen Anderson, Environmental & Sustainability Coordinator

My staff is well versed in the protection of our lakes, ponds, rivers, tributaries and wetlands. They have prepared a summary of the environmental issues for your edification. We believe the Town should have the ability to guide road associations to proper maintenance and care thus limiting the environmental impact. Please see the attached environmental summary.

The Fire-Rescue Chief, Police Chief and Public Works Director all have a depth of experience with private roads. A brief summary of their concerns are attached.

Additionally, I have discussed with Mr. Mike Kelley, RSU#14 Transportation Director, his concerns regarding operations on roads with private road status. Please see the attached summary.

After working through all the above, these are the asks that would bring resolution to this issue, provide stability to residents, a framework for equity amongst our tax payers and equally important correct the long-standing practice of the Town of Windham to fit within Maine law:

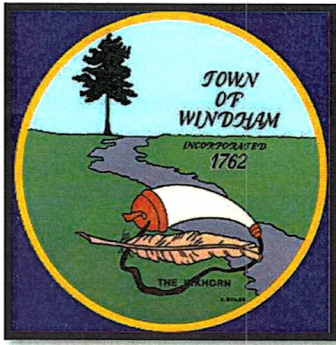
1. Two-year extension to complete the process of forming all of the road associations and obtaining public easements. This is a massive amount of work to complete and for many of these roads requires detailed review of title records and difficulty in contacting all owners.
2. Accept the 51% majority sign-off for the public easement.
3. Accept the framework set forth in the Town's ordinance as a valid means of establishing the legality of this practice.
4. Convert the law to having permanent effect without need to report to the Legislature or further renew.

The Town thanks you for your continued public service and dedication to helping Maine be the way life should be. Our community has had extensive discussions, all very positive, and our desire is to put this item in the right order and move onto other pressing needs within the community.

Sincerely,



Barry A. Tibbetts
Town Manager



Town of Windham

Office of the Town Manager
8 School Road
Windham, ME 04062

Barry A. Tibbetts, Town Manager
batibbetts@windhammaine.us

207.892.1907 voice
207.892.1910 fax

To: Residents and Landowners on Private Roads
From: Barry A. Tibbetts Town Manager
CC: Town Council
Re: Town Plowed Private Roads
Date: November 4, 2021

Hello,

You are receiving this notification because your home or property is on, abuts or is accessed by a private road which the Town is currently plowing as part of winter road services in Windham.

The Town for many years has plowed this road (as identified on the Town's Road Classification Map, on our website <https://www.windhammaine.us/DocumentCenter/View/7454/Road-Classification-Map>), based on past agreements (now expired) and in some cases with no agreements. Under Maine Law the Town cannot place public vehicles on private roads for service. This was decided in 1989 by the Maine Supreme Court who issued an "Opinion of the Justices" stating that it would be *unconstitutional* for a town to use town funds for the private purpose of maintaining a private road. Since then, Maine Municipal Association (MMA) and the Maine Department of Transportation (MDOT) have advised towns that it is not legal for a town to plow private roads.

The Council was advised of the issue in 2021, and a request was made to the Maine Legislature to assist the Town in a solution for these identified private roads, hence LD 1723 was enacted to allow the Town to continue the practice (snow plowing) with certain conditions being met. The Town has 101 private ways in this category, which equates to 34+ miles.

The effect of the LD 1723 legislation allows the Town to continue winter plowing service on an interim basis with these requirements:

- A) Each major private road plowed by the Town needs to form a road association. If there are multiple private roads that are interconnected, each road would have the option to decide to join as one association or separate as individual road associations. This is a good opportunity for property owners to formalize handshake agreements with their neighbors.
- B) Having regular inspections by the Town (Public Works Director) to ensure that the road meets a minimum standard for plowing vehicles. Per a special new ordinance for these private roads, the road association would ensure the minimum improvements are met each year or within the designated three-year cycle as identified by the Public Works Director. Costs for maintenance are borne by the Road Association.
- C) The Town has enacted a special private road plowing ordinance (Winter Maintenance of Designated Private Ways) which identifies each currently plowed private road and the

minimum road standards necessary. This special private road plowing ordinance will not require these roads to meet public Town Standards for a roadway. This ordinance basically allows access on these roads for plowing over a public access easement approved by the road owners.

- D) Any private road within this special classification can discontinue the town service with an association vote of 51% at any time. No re-admittance to this plowing service is permitted. No new or existing private roads will be allowed within this special legislation.
- E) The owners of the properties benefited by the road must grant a public access easement to the Town. This is necessary in order for continued plowing at Town expense to be constitutional.
- F) When the road association members agree to the ordinance and public access easement, this allows public vehicles to traverse on the road with no liability to the Town and without the road ever becoming a town way (unless the owners grant and the Town Council votes to accept it as such).
- G) A detailed Q and A is on our website along with additional information.
<https://www.windhammaine.us/758/Private-Roads-with-Winter-Maintenance>

In receiving this letter, you will fall into one of the two solutions listed below:

- A) If you have a home (property) on a private road with a road association and want to continue with Town plowing services, the Town will work with the road association leadership moving forward. If you want to discontinue the snow plowing arrangement you should talk with your association.
- B) If you do not have a road association the Town recommends you follow the information provided on our website with particular attention to the Q and A section. Our objective is to help you to get organized with a road association and its function so we can ensure the continuation of the plowing service. All the necessary forms to organize and operate a road association are posted on the website.

In Windham, a significant number (over 40%) of private roads fall into the category of receiving municipal plowing during the winter for more than 20 years. We have been working with many road associations (about 50%) on yearly maintenance plans. We need to bring all the private roads in this category to the same functioning position. The Town wants to respect the privacy rights on private ways but to comply with State law we need a public easement and a road association for operation efficiency. Our goal is to continue to offer plowing services while ensuring that emergency and fire dept vehicles can reach our citizens most expeditiously.

More information will be provided on the Town website. The Town will also hold a special meeting for any interested property owners or abutters to the private way on **December 7, 2021**, at the Town Hall Council Chambers. For those who wish to watch and listen from home the workshop will be televised on Windham TV (Channel 7) and broadcast on Facebook. Please send in questions. Those attending will be required to wear a mask. Please email dpwhelp@windhammaine.us or call 894-7079 with questions.

The Town wants this to be a simple transition but also has limited staff and fortunately a few very dedicated residents who are willing to assist in this educational transition/setup. We are pleased to be of assistance but need your help on the non-road association roads to take the necessary steps.

Thank you for your patience and understanding in learning about this challenge and the proposed solution.

Town-Plowed Private Roads

- 1 Aerie Dr.
- 2 Aimhi Woods Rd.
- 3 Allen Dr.
- 4 Anglers Rd.
- 5 Atlantic Dr.
- 6 Basin Rd.
- 7 Bay View Ave.
- 8 Beach Rd.
- 9 Belanger Ave. (Partial)
- 10 Blueberry Ln.
- 11 Brass Ln.
- 12 Brentwood Rd.
- 13 Brick Hill Rd
- 14 Brown Cove Rd.
- 15 Bruschi Rd.
- 16 Buckfield Dr.
- 17 Candlewyck Rd.
- 18 Carmichael Ln.
- 19 Clairmont Rd.
- 20 Collins Pond Rd.

- 21 Cornerbrook Development Includes: Cornerbrook Circle, Quartz Circle, Provost Drive
- 22 Cotton Dr.
- 23 Crescent Ave.
- 24 Cyprus Hill
- 25 Davidson Dr.
- 26 Eagle Dr.
- 27 Emerson Dr.
- 28 Fall Ridge Rd.
- 29 Fern Ave.
- 30 Fieldcrest Rd.
- 31 Forest Ave
- 32 Four Seasons Ln.
- 33 Glendale Rd.
- 34 Goodwin Rd.
- 35 Great Falls Rd.
- 36 Hackett Rd.
- 37 Hague Rd.

38 Half Moon Cove Rd.
39 Harrison Rd.
40 Haven Rd.
41 Hemlock Dr.
42 Highland Shore Rd
43 Hutchins Rd.
44 Indian Cove Rd.
45 Intervale Rd.
46 Island Drive
47 James Way
48 Johnson Rd
49 Keeps Way
50 Kennard Rd.
51 Lake Ave
52 Lakehurst Ave.
53 Lakeside Dr.
54 Laskey Rd.
55 Linnell Rd.
56 Lower Beach Rd.
57 Many Oaks Ln.
58 Mineral Spring Rd.
59 Moores Dr.
60 Moose Point Rd.
61 Mount Hunger Shore Rd.
62 Mourning Dove Ln.
63 Mt. View St.
64 Neighborly Way (Portion)
65 Northwood Dr.
66 Old County Rd. (Portion)
67 Orchard Rd.
68 Outlet Cove Rd.
69 Overlook Rd.
70 Percy Hawkes Rd.
71 Pettingill Rd.
72 Phil Hunt Rd.
73 Pilgrim Ln.
74 Pleasant Point Rd.
75 Pottersville Rd.
76 Pride Ln.

- 77 Prosperity Ln.
- 78 Richards Rd.
- 79 Riverside Ridge Rd.
- 80 Rousseau Rd.
- 81 Sabbady Point Rd.
- 82 Sandbar Rd.
- 83 Sandy Toes Ln.
- 84 Sebago Ave.
- 85 Shore Rd.
- 86 Smith Road
- 87 Sokokis Point Rd.
- 88 Sposedo Rd.
- 89 Summer Ave.
- 90 Swan Rd.
- 91 Terrace Dr.
- 92 Thornbury Way
- 93 Trails End Rd.
- 94 Tucker Dr.
- 95 Vacation Ln.
- 96 Vanessa Dr
- 97 Vista Dr

- 98 Windemere Estates Development
- 99 Wintergreen Circle
- 100 Woodland Rd (portion)
- 101 Wright Rd

Includes: Woldbrook Drive, Heather Lane, Freeman Court, Henderson Court

STREETS & SIDEWALKS

Chapter 210

ARTICLE I Excavations

Section	Description
210-1	Permit Required
210-2	Application for Permit
210-3	Time Limits and Restrictions
210-4	Responsibility of Applicant
210-5	Fees
210-6	Guaranty; Bond
210-7	Proof of Insurance
210-8	Maintenance of Street and Sidewalk Safety
210-9	Removal of Trees or Shrubs
210-10	Breaking Through Pavement in Streets
210-11	Backfilling
210-12	Emergencies
210-13	Winter Excavation
210-14	Excavations in Reconstructed Streets
210-15	Inspections
210-16	Town Liability
210-17	Violations and Penalties
210-18	Appendix A – Pavement Repair Diagrams

ARTICLE II

Winter Maintenance of Designated Ways

210-19	Purpose and Authority
210-20	Definitions
210-21	Winter Maintenance of Designated Private Ways
210-22	Identification and Declassification of Designated Private Ways
210-23	Maintenance Standards
210-24	Suspension and Termination of Designated Private Ways
210-25	Termination of Authority
210-26	Winter Maintenance of Private Ways Not Adopted as Designated Private Ways

[HISTORY: Adopted by the Town Council of the Town of Windham: Art I, at time of adoption of Code; See Ch 1, General Provisions, Art I. Amendments noted where applicable. Amended by the Town Council of the Town of Windham: July 13, 2010]

ARTICLE II
Winter Maintenance of Designated Private Ways

210-19 Purpose and Authority

This Article is adopted pursuant to Chapter 10, P&S Law 2021, “An Act Regarding Winter Maintenance on Private Roads in the Town of Windham.” The purpose of this Article is to allow for continued winter maintenance by the Town of designated private ways to (1) ensure safe passage by residents over private ways comprising a large portion of the Town’s road network; and (2) ensure responsible and appropriate winter maintenance in order to protect Windham’s endangered waterbodies and watersheds. This Article further clarifies the status of and the Town’s obligations toward those private ways for which the Town has provided winter maintenance at Town expense over a period of at least 20 years.

210-20 Definitions

- 1. Designated private way.** “Designated private way” means a private way located in the Town of Windham that satisfies the criteria listed in Section 210-22.
- 2. Private way.** “Private way” has the same meaning as in the Maine Revised Statutes, Title 23, section 1903, subsection 10-A.
- 3. Road association.** “Road association” means a road association created pursuant to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.
- 4. Town way.** “Town way” has the same meaning as in the Maine Revised Statutes, Title 23, section 3021, subsection 3.
- 5. Winter maintenance.** “Winter maintenance” means snow removal and surface treatment, including sanding and salting, performed on designated private ways.

210-21 Winter Maintenance of Designated Private Ways.

Town equipment may be used to perform winter maintenance on a designated private way, provided it remains compliant with the provisions of this Article.

210-22 Identification and Declassification of Designated Private Ways.

1. The Town Council may identify a private way as a designated private way if:
 - A. There is evidence that the Town of Windham has performed winter maintenance on the private way for at least 20 consecutive years prior to June 17, 2021;

B. The Town Road Commissioner has determined that the private way cannot meet standards developed or required by generally applicable ordinances for acceptance of the private way as a town way.

2. All private ways identified by the Council as designated private ways shall be listed on a roster and depicted on a map of such ways. The roster and map shall be kept up to date by the Town Road Commissioner and Town Manager.

3. A private way may be removed from the roster and map of designated private ways if:

A. The Council accepts the private way as a town way; or

B. A road association with authority over the private way, or a majority of the owners of property benefited by the private way, present a petition to the Council for the vacation of any public easement and removal of the private way from the roster and map of designated private ways.

210-23 Maintenance Standards

1. The Town Road Commissioner shall, in consultation with the Council, develop basic maintenance standards for designated private ways. These maintenance standards shall guide the Town Road Commissioner in determining the necessary repairs or maintenance that must be made to a private way in order for it to be eligible for designation as a designated private way for which the Town may provide winter maintenance in a given winter season. The purpose of the maintenance standards is to ensure that Town staff and equipment are not put at risk due to unsafe conditions on private ways.

2. Within 60 days of identification of a designated private way by the Council, the Town Road Commissioner shall mail a copy of this Article and the approved maintenance standards for designated private ways to the designated contact of the road association or to all the owners of property benefitted by designated private ways.

3. Each year during which this Ordinance remains in effect, the Town Road Commissioner shall survey designated private ways and provide mailed notice to the designated contact of the road association or to the owners of property benefitted by those private ways of any maintenance necessary in order to comply with the posted basic maintenance standards and otherwise to ensure safe passage of the Town's winter maintenance equipment and school buses, where applicable.

210-24 Suspension and Termination of Designated Private Ways

1. The Town may suspend or cease to perform winter maintenance on a designated private way as follows:

- A. The Town will not perform winter maintenance on a designated private way in a given winter season if maintenance required by the notice described in subsection 3 has not been performed as of September 1 preceding that winter season.
- B. The Council may remove from the roster and map of Designated Private Ways any private way for which those owners benefited by the private way, as of two years following enactment of this Article, have not formed a road association with authority to make improvements to the private way and assess owners for related costs.

210-25 Termination of Authority.

Beginning October 1, 2022, the Town will cease providing winter maintenance on designated private ways unless an association with authority over the private way or the owners of at least 50% of the owner(s) or abutters(s) of the designated private way or portion thereof have given and the Town has accepted a public easement over the private way or portion thereof.

210-26 Winter Maintenance of Private Ways not Adopted as Designated Private Ways.

For any other private way that has not been identified as a designated private way but for which the Town has provided winter maintenance prior to enactment of this Ordinance, the Town will cease winter maintenance on October 1, 2022 unless an association with authority over the private way or all owners benefited by the private way or portion thereof have given and the Town has accepted a public easement over the private way or portion thereof and executed a road maintenance agreement that (1) obligates the benefited owners to comply with stated maintenance standards for the way, and (2) holds the Town harmless for performance of winter maintenance.

Town of Windham
Designated Private Way Stats

Mailing, early November

Approximately 1750 property owners on designated private ways (1747 actual)

Approximately 430 property owners on subsidiary roads off of private ways (432 actual)

December 7, 2021 Special Meeting

In-person attendees, approximately 30

Watched Live by 10 viewers

Watched afterwards by 22 viewers

Website - Private Ways with Winter Maintenance Page

Has had 391 page views

Visits were an average of 2 minutes and 22 seconds, then users exited the site

Calls, Emails, Drop-ins @ Office

50-75 individuals; considerable uptick after special meeting then again after the holidays

More inquiries about setting up a new association

Easements Received

1, fully executed (Non-profit) Mt Hunger Shore Association

Expect 2 more this week, both from Non-profit Associations

PUBLIC EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS that _____, [a Maine incorporated road association with a principal place of business in Windham, Cumberland County, State of Maine] [an individual whose mailing address is _____] (“Grantor”), does hereby grant to the TOWN OF WINDHAM, a municipal corporation existing under the laws of the State of Maine with a mailing address of 8 School Road, Windham, Cumberland County, Maine 04062 (“Town”), its successors and assigns, with warranty covenants, a public easement over a portion of the private road described as _____ and depicted as “Easement Area” on Exhibit A attached hereto and incorporated herein (“Public Easement”).

Together with the right to enter the Public Easement at all times with persons, vehicles and machinery, as necessary to provide winter maintenance to the Public Easement, including sanding, salting and plowing the roadway pursuant to the terms of the Town of Windham Ordinance regarding Winter Maintenance of Designated Ways, and the right to access, as invitee of the Grantor, any other portion of roadway necessary for access to the Public Easement to which the Grantor has rights of access, for the purpose of performing winter maintenance on the Public Easement. The Public Easement must remain in compliance with the Ordinance regarding Winter Maintenance of Designated Ways, or successor ordinance, in order to remain eligible for winter maintenance to be performed by the Town.

To the extent Grantors lack title to the Easement Area sufficient to give a public easement, Grantors hereby grant to the Town the right of access to the Easement area as invitee of the Grantors to perform winter maintenance as outlined herein and extend to the public rights of access as would otherwise be conferred through a public easement.

Grantor agrees and covenants for itself, its successors and assigns, not to construct or erect or cause or allow to be constructed or erected any building, structure or other obstruction within the limits of the Public Easement herein conveyed.

IN WITNESS WHEREOF, Grantor, has hereunto set his/her hand and seal this ___ day of _____, 20__.

Witness:

By: _____

Print Name: _____

[Its _____]

STATE OF MAINE

CUMBERLAND, ss. _____,

Date: _____

Personally appeared before me the above-named _____, [_____ of _____], and acknowledged the foregoing instrument to be his/her free act and deed [and the free act and deed of _____].

Attorney at law/Notary Public

Print Name

PUBLIC EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS that the below-named grantors:

GRANTOR NAME	MAILING ADDRESS

(“Grantors”), do hereby grant to the TOWN OF WINDHAM, a municipal corporation existing under the laws of the State of Maine with a mailing address of 8 School Road, Windham, Cumberland County, Maine 04062 (“Town”), its successors and assigns, with warranty covenants, a public easement over a portion of the private road described as _____ and depicted as “Easement Area” on Exhibit A attached hereto and incorporated herein (“Public Easement”).

Together with the right to enter the Public Easement at all times with persons, vehicles and machinery, as necessary to provide winter maintenance to the Public Easement, including sanding, salting and plowing the roadway pursuant to the terms of the Town of Windham Ordinance regarding Winter Maintenance of Designated Ways, and the right to access, as invitee of the Grantors, any other portion of roadway necessary for access to the Public Easement to which the Grantors have rights of access, for the purpose of performing winter maintenance on the Public Easement. The Public Easement must remain in compliance with the Ordinance regarding Winter Maintenance of Designated Ways, or successor ordinance, in order to remain eligible for winter maintenance to be performed by the Town.

To the extent Grantors lack title to the Easement Area sufficient to give a public easement, Grantors hereby grant to the Town the right of access to the Easement area as invitee of the Grantors to perform winter maintenance as outlined herein and extend to the public rights of access as would otherwise be conferred through a public easement.

Grantors agree and covenant for themselves, their successors and assigns, not to construct or erect or cause or allow to be constructed or erected any building, structure or other obstruction within the limits of the Public Easement herein conveyed.

IN WITNESS WHEREOF, Grantors, have hereunto set their hand and seal as of the date noted below.

Witness:

By: _____

Print Name: _____

STATE OF MAINE

CUMBERLAND, ss. _____,

Date: _____

Personally appeared before me the above-named _____, and acknowledged the foregoing instrument to be his/her free act and deed.

Attorney at law/Notary Public

Print Name

Town of Windham

Opinion on the Environmental Impact of Winter “Private Way” Road Maintenance on Surrounding Water Bodies

January 25, 2022

The winter road maintenance of private ways clearly has an environmental impact on the surrounding water bodies. The impacts from sand and salt on the environment are now well documented. It is important to recognize that whether the Town performs this maintenance or private way residents have it performed independently of the Town, winter road maintenance will occur regardless as year-round homes exist on them and must be accessible. The issue then becomes one of if the Town can perform this maintenance in a more environmentally responsible manner which we believe we can and we do.

Sand applied to roadways collects in ditches, catch basins, at outfalls and streambeds. It can reduce water quality and clarity if unchecked. Concentrations of salts in roadway runoff have been found to affect vegetation and introduce other deleterious chemicals into the environment under certain conditions. The utilization of proper winter road maintenance techniques can serve to lessen these impacts to the maximum extent practicable. The Town provides annual training for its road crew on winter maintenance that includes review of the highlights of the Maine Environmental Best Management Practices (BMP) Manual for Snow and Ice Control developed by MaineDOT, DEP and MTA. The Town facilitates standardization of the approach to winter maintenance amongst the Town road crew and its contractors which will allow the most efficient use of vehicles and equipment and chemicals and abrasives that can be achieved. Private operations independent of the Town quite likely would not receive training like this. Furthermore, the Town controls the salt content (10% by volume) that is applied to these roads. Private operations independent of the Town would be free to adjust this salt content upward potentially worsening environmental impacts or apply sand more frequently or at greater amounts than necessary.

The Town will assess the condition of designated private roads annually to make sure they are maintained properly in order for the Town to agree to continue providing winter maintenance. This assessment will address drainage and erosion issues related to poor road surfacing, unstabilized ditches and swales, culverts lacking inlet and outlet control, etc., which if uncorrected could adversely impact runoff to nearby streams, ponds and wetlands. Having these issues corrected will pay dividends in protecting the environment.

Another important aspect is that with the Town performing the winter maintenance activities, the private road associations and or homeowners will be able to use their limited resources to focus on these summer maintenance items and capital improvements on these roads that are determined to be needed.

A secondary benefit of Town maintenance is that the Town will likely perform a more systematic consistent winter maintenance program which likely equates to less vehicle accidents which have the potential to release harmful materials into environment. It will also provide a more passable roadway condition for emergency services vehicles to respond to structure fires and or vehicle crashes...again lessening impacts to the environment.

In summary, we believe that by providing direction on proper road maintenance and construction and by providing a well-trained winter road maintenance crew that the ultimate environmental impacts from private ways can be lessened to the maximum extent practicable.



Town of Windham

Fire - Rescue Department

375 Gray Road
Windham, ME 04062
Business 207-892-1911
Fax 207-892-0544

MEMORANDUM

To : Barry Tibbetts, Town Manager
From : Brent Libby, Fire-Rescue Chief
Date : January 26, 2022
Re : Private Roads

I am writing in response to the need for an assessment regarding the use of Fire-Rescue vehicles on private ways. With almost 50% of our roads in town being private and our average of nine to ten emergency calls per day we are on a private road almost daily. Winter and Spring conditions are by far the worst for responses.

Shortly after I arrived here in 2015 a neighborhood of nine private roads that were left with extended response times and reduced coverage when the Town of Cumberland notified us, they could no longer honor a long-standing automatic aid agreement to cover this area. They were not able to continue the agreement because the road conditions were in such terrible shape resulting in damaged and stuck apparatus. The town has been able to work with these residents to establish road associations and to make improvements to the road network.

Additional incidents over the years include being unable to access a structure fire with apparatus off Mount Hunger Shore Road, we have had an engine sideways on Pemberly Drive (photo attached) following a medical emergency and on numerous occasions have had to plow or sand our way into and out of emergency scene to safely get the needed apparatus to the location. Three years ago the town budgeted for and outfitted one of our response pick up trucks with a plow and sander to help ensure we could access residents when needed.

In the spring many of the private dirt roads are in very poor condition as the frost leaves that ground. While I don't have any specific incidents anecdotally apparatus and vehicles have to slow or reduce our responses to avoid further damaging the road or our vehicles.

We are committed to sending a response anytime someone calls for our service. The process set out through LD1723 further ensures that we will be able to serve the citizens of Windham in their time of need.

12/21/2016 Pemberly Drive – In this instance the truck broke free on ice and slid sideways down the road. As a result, two police officers were stuck on the dead-end side of the engine. The truck had to be towed out by a large wrecker after the road was sanded.





Windham Police Department



James C. Boudreau
Support Services Captain

Kevin L. Schofield
Chief of Police

William T. Andrew
Patrol Captain

MEMORANDUM

To: Barry Tibbetts; Town Manager
From: Kevin L. Schofield; Chief of Police
Subject: Private Road challenges
Date: January 26, 2022

Please accept this memo as a general outline of issues concerning private roads as they pertain to police response and patrols in the Town of Windham.

Narrow Roads: As you are aware, many of our older private roads are narrow, the challenge this creates is when motor vehicles are parked alongside of the road that restrict emergency vehicle access, particular large vehicles like fire truck and ambulances. Our rule of thumb is if there is less than 10 feet we tow any vehicle blocking the road after a reasonable effort to contact the registered owner fails.

Poor Road Conditions: On occasion there have been times, particularly in the winter and early spring when potholes, ice and ruts in the road make routine travel difficult. There have been occasions when I have instructed officers to only respond to calls for service and emergencies on roads to avoid damage to our police cruisers.

Shortly after I began my employ with the Town in 2015, the Towns of Windham and Cumberland were engaged in discussions around the agreement between the two towns for the Town of Cumberland to provide emergency response to the Forrest Lake neighborhood which consist of private roads. To paraphrase the issue, the overall conditions of the roads were concerning enough for the town of Cumberland to insist on improvements, or they would not continue with their agreement.

Poor Winter Maintenance: With most police cruisers now being AWD, this problem has been mitigated. However, a few years ago when Police and Fire response to an ice covers private road, the Fire Truck jacked knifed on the road, blocking the road with two police cruisers behind it, thus causing two emergency vehicles to be out of service until a large truck was on scene to tow the fire truck.

Traffic Enforcement: Traffic infractions such as speeding and stop sign violations, cannot be enforced on private roads. The challenge this creates is responding to citizen concerns of speeding in their neighborhood. We do offer advice on traffic calming techniques and limited speed sign deployment, but enforcement is not an option.



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Traffic Crashes: a quick overview of traffic crashes on some of the large private ways in the past two years revealed 4 Crashes.

- vehicle went off road and hit 2 parked cars
- vehicle went off the road and hit a tree (distracted)
- 2 vehicles travelling in opposite directions, one was larger and the smaller felt he was run off the road.
- 2 vehicles drove too close to a logging truck who was off to the side of the road.

While this is not a thorough analysis, preliminary review of these crashes indicates that narrow road ways and or poor road condition may have been factors in these crashes.

Town of Windham

Department of Public Works
185 Windham Center Road
Windham ME 04062

Doug Fortier, Director

Phone: 207-892-1909

drfortier@windhammaine.us

Fax: 207-892-0542

To: Barry Tibbetts, Town Manager
From: Doug Fortier, Public Works Director
Date: January 27, 2022
RE: LD 1723

I am very supportive of a town ordinance that allows the town to regulate the improvements on the private roads that both the town and contractors perform winter maintenance on. It would allow us to do a better job plowing and sanding these roads, and the residents would have a better road year-round. This could also help environmentally with runoff as most of these roads are around water bodies.

I have been with the town 30 years and some of the most critical issues we have on these roads that can make plowing difficult are the following

- Buildup of sand and gravel on the sides of the road creating poor or no drainage which can cause icing issues
- Rocks, Stumps, Trees, Fences right on the edge of the road creating issues getting snow off the road
- Road surface either paved or gravel in such dis-repair that large rocks are protruding, large potholes in the travel ways, no crown to the road so stormwater stays in the road
- Brush and Branches of trees overhanging the road low enough so when loaded with snow or ice can hit trucks and equipment causing damage
- No or poor turnarounds on some of these roads causing us to back out of the road

These are some of the issues on these roads that we face while performing winter maintenance on these roads.

It would be a positive step in having this ordinance in place.

“Working in the Public interest”

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R.S.U. #14
Transportation Summary
On Private Ways

When the Town of Windham and Raymond formed R.S.U.#14 they discontinued private road bus stop pickups. The objective was to consolidate bus stops. Parents are responsible for children to be at the consolidated bus stops which can be on private land.

There are a few exceptions, when a private way serves as a connector between public roads, these are used to have more timely access for pickups.

The R.S.U. does have a number of minivans which are used to pickup special education students at private homes. They have had issues over the years with excess ice, snow, turnarounds, etc. The Director was very encouraged to hear the Town is desirous to remedy the maintenance of some of these roads. The potholes, poor sight visibility and tight areas are his concerns. Mike referred to some roads as "torture tracks" when driving them for pickups.

Large buses are not allowed to traverse on these roads.