



TOWN OF WELLFLEET

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MEMORANDUM

TO: BOARD OF SELECTMEN
FROM: HARRY SARKIS TERKANIAN, TOWN ADMINISTRATOR
SUBJECT: PLOWING AND MAINTENANCE OF PRIVATE ROADS
DATE: 5/28/2015
CC: DPW DIRECTOR AND ASSISTANT DIRECTOR

Use of public funds to benefit private interests is generally prohibited by law. The Commonwealth has, by statute, permitted limited exceptions to this rule in connection with repairs to and snow removal from private ways¹.

Repairs: Authorization to make repairs to private ways is contained in chapter 40, section 6N. Section 6N allows a town to adopt a bylaw to implement the section. Such ordinance or by-law shall determine (a) the type and extent of repairs; (b) if drainage shall be included; (c) if the repairs are required by public necessity; (d) the number of percentage of abutters who must petition for such repairs; (e) if betterment charges shall be assessed; (f) the liability limit of the city or town on account of damages caused by such repairs; (g) if the ways shall have been opened to public use for a term of years²; and (h) if a cash deposit shall be required for said repairs. The Town adopted a private road repair bylaw at the November 4, 1985 special town meeting (Article 7.) The bylaw appears in the General Bylaws, Article VII, section 28 and provides as follows:

Section 28. To allow for the ready passage of emergency and other vehicles, the Highway Surveyor may, as he deems necessary in consultation with the Selectmen and the Police and Fire Department Chiefs, smooth out irregularities on private primary residential access roads in Wellfleet on the following conditions in accordance with Chapter 40, Section 6N of the Massachusetts General Laws: (a) That those roads have been open for public use for six

¹ With few historical exceptions, public ways are ways that have been laid out and accepted by a governmental entity for public use. In Wellfleet some public ways have been laid out by the Commonwealth (e. g. Route 6 and Main Street) by the County (e. g. Chequessett Neck Road and Lieutenants Island Road) and by the Town. All other roads are private. Many, but not all, private roads have been laid out in connection with the subdivision of land. With rare exceptions, there is no public right of passage over private ways. Roads understood by the Town to be public have been given green street signs; private roads blue street signs.

² "Open to the public" has been defined in at least one case by the Supreme Judicial Court in the following terms: "Open to the public use as applied to a private way naturally means that such way is actually susceptible of use by the public other than for the 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." Opinion of the Justices 313 Mass. 779, 783 (1943).

years; (b) That fifty (50) percent of the abutters sign an agreement with the Town that (1) the task of major maintenance, repair, drainage, and surfacing remains the obligation of the abutters regardless of the action of the Town under the authority of this article; (2) instead of any betterment charges being assessed, the road, while remaining private, be open for public use for the purposes for which public roads are commonly used, and that signs reading "Private Road Public May Use at Own Risk" be posted; (3) the Town would be indemnified and held harmless, as at present, in connection with any personal and property injury resulting from any Town work on or any defects in such road, such agreement to be recorded in the Barnstable Registry of Deeds, and the Highway Surveyor to maintain a record of labor costs, equipment use and materials to be reviewed by the Selectmen and Finance Committee each January.

Pursuant to this bylaw the Town had entered into a small number of private road agreements. It should be noted that the bylaw gives the Highway Surveyor (now the DPW Director), in consultation with other Town officials, discretion in whether to make repairs and the extent of repairs to be made. The bylaw does not compel the Town to make repairs. It is also important to note that neither section 6N nor the Town's bylaw deal in any way with the removal of snow and ice from these roads.

Removal of Snow and Ice: Removal of snow and ice from private ways is governed by General Laws, chapter 40, sections 6C. This section permits (but does not require) a town to appropriate funds for the removal of snow and ice from private ways which are open to the public as determined by the selectmen. Section 6C requires acceptance by a vote of the town at an annual town election. Wellfleet accepted this section at the September 14, 1982 state primary election by a vote of 324 to 105.

General Laws, chapter 40, section 7 allows a town to appropriate money to remove snow and ice from sidewalks.

At the October 25, 1982 Special Town Meeting under Article 5 the Town voted by voice vote to transfer \$10,000 to the snow removal account "for the removal of snow and ice on public or designated private ways."

At the 2006 Annual Town Meeting three articles related to funding for plowing of private roads. Article 32 proposed an appropriation to purchase an additional street sweeper. Article 32 was approved by town meeting by a 142 – 71 vote, but the required proposition 2 ½ debt exclusion lost at the annual town election by a vote of 492 – 506 and the sweeper was not purchased. Article 33 proposed an appropriation of \$52,000 to fund an additional DPW position. Although not stated in the article, I am led to understand that one of the purposes was to provide manpower for plowing. Article 33 was defeated by a vote of 105 – 110. Article 34 proposed the appropriation of \$34,000 "for the purpose of funding contract services and materials for snow removal on private roads." Article 34 was adopted by a voice vote.

I am presently unaware of additional town meeting actions related to snow removal on private roads other than the operating budget appropriation for snow removal.

The criteria for plowing private roads have changed over the years. Attached is a copy of a 1982 notice setting forth criteria for approving private roads for plowing and inviting requests. A

1993 document³ indicates that plowing of private roads will be done only during normal DPW operational hours (i. e. no overtime.) During November and December, 2012 the selectmen debated and adopted a policy setting out the conditions under which the Town would remove snow and ice from private ways. That policy limited snow and ice removal to paved private roads which meet the standards articulated in the policy. The policy is posted on the Town web site.

Town practice in emergency situations: The fire & rescue service, police and department of public works have a practice of reacting to requests for emergency assistance, whether medical or habitability related (e. g. heating outages, etc.) by applying the available public works and police department resources to assist the fire department with medical emergencies and to assist fuel vendors and utility repair crews with access over roads without regard to the public or private nature of the road. Some roads will always get plowed later than others. Even inclusion of a road on the list of roads to be plowed does not guarantee that it will be plowed at the time a medical emergency occurs.

Cost estimates: A combination of DPW equipment and manpower and contractor services has been utilized in recent years. Different equipment is required for roads in poor condition. Typically the DPW uses front end loaders rather than plows on unpaved roads. Any new equipment will require a capital outlay and continuing operating appropriations for fueling, maintaining, insuring and housing the equipment. Additional manpower would be needed to inspect roads for eligibility based on condition, to operate additional equipment during snow removal operations and to address damage claims after snow removal. The Town would incur expanded liability and after the fact cleanup and repair costs. Road improvements would be required to facilitate plowing.

Historical Snow Removal Costs:

FY 2004: \$35,000 with an additional \$29,626 supplemental appropriation.	Total:\$64,629.
FY 2005: \$35,000 with an additional \$40,000 supplemental appropriation.	Total: \$75,000.
FY 2006: \$35,000.	Total: \$35,000.
FY 2007: \$35,000 with an additional \$34,000 under Article 33.	Total: \$69,000.
FY 2008: \$69,000.	Total: \$69,000.
FY 2009: \$69,000 with an additional \$84,873 supplemental appropriation.	Total: \$153,873.
FY 2010: \$69,000 with an additional \$23,703 supplemental appropriation.	Total: \$92,703.
FY 2011: \$69,000 with an additional \$50,237 supplemental appropriation.	Total: \$139,273.
FY 2012: \$69,000 with a transfer of \$10,000 out of the appropriation.	Total: \$59,000.
FY 2013: \$93,300 with an additional \$57,485 supplemental appropriation.	Total: \$150,485.
FY 2014: \$93,300 with an additional \$70,000 supplemental appropriation.	Total: \$163,000.

³ December 27, 1993 memorandum from the DPW to then Town Administrator Enroth.

FY 2015: \$93,300 with an additional \$180,000 supplemental appropriation. Total: \$273,300.

FY 2016: \$93,300. Unknown whether a further appropriation will be required after the 2015 - 2016 winter.

Without adjustment for inflation, the average snow removal expenditure for FY 2007 through FY 2015 has been \$129,959. In 11 of the last 15 years a supplemental appropriation at the spring town meeting has been required to cover the additional costs. In FY 2012 there was a small (\$10,000) surplus.

Practices of Other Cape Towns: Eastham and Truro do not plow private roads. Barnstable plows private roads as long as they are not marked as “residents only”, “no trespassing” or signage of similar import. Brewster has a Snow Removal from Private Roads/Ways Policy which sets forth standards of snow and ice removal operations. Examples of the policy standards include inspection of roadways during the summer to address deficiencies, travel width shall be ten (10) feet and free of defects, and that there be ample room for emergency vehicles. The Town of Harwich has a Private Roads Snow Removal Policy which establishes minimum standards such as road width, roadside clearance, height clearance, access requirements for emergency vehicles, absence of defects, visible street signs and seasonal inspections to determine road eligibility.

Current Plowing DPW Operations: The current practice of the DPW is to plow paved roads first and then plow unpaved public roads. The DPW plows approximately 95.45 lane miles⁴ of public roads and about 50.25 lane miles of paved private roads. Included in the 95 miles of public roads are 14.20 lane miles of unpaved public roads which are plowed. Some storms can require 3 or 4 passes to keep up with falling snow. It takes one employee with a front end loader approximately 8 hours to plow the unpaved public roads. Loaders are used on unpaved roads because it is difficult to clear unpaved roads down to the dirt surface without risking damaging equipment or injuring operators. Exceptions to this order of plowing are made for health and safety emergencies as detailed above. Snow removal operations are dependent on severity and duration of storms, available manpower and response to emergencies, therefore the time by which a particular road will be plowed can not be predicted with certainty.⁵

Current plowing operations represent the limits of present DPW capabilities. Equipment breakdowns and employee injuries have been experienced. There are still two employees receiving workers compensation benefits from snow removal operations this past winter. Existing DPW employees cannot be asked to work longer shifts during snow removal operations. The length of employee shifts has to be controlled to protect against risk of injury or damage to property due to employee fatigue.

For historical context attached is a July 27, 2005 memorandum on the subject from Mark Vincent to then Town Administrator Tim Smith. It also appears that at one point the Town plowed private roads only after public roads were plowed and then only without incurring overtime costs.⁶

⁴ “Lane miles” refers to the total number of travel lanes. A four lane highway would have four lane miles per road mile while a one lane road would have one lane mile per road mile.

⁵ The Town Administrator file on snow plowing dates back to 1982 and contains almost two dozen lists of streets to plow and many requests for plowing services on private roads, the majority of which date back to 1982.

⁶ Memorandum from the DPW to then Town Administrator Julia Enroth dated December 27, 1993.

Incidental Costs: In addition to the obvious costs, there are some incidental costs that relate to the use of private contractors. First, the Town does not escape liability for damage caused by plowing operations conducted by contractors.⁷ Private contractors must pay their employees the prevailing wage during plowing operations.⁸ Private contractors must provide workmen's compensation insurance for employees but are not required to do so for owner operators. If they do not provide coverage for themselves (most do not because the cost is prohibitive) then the worker's compensation premium for the total amount paid to the contractor (including amounts for equipment hire and wages to covered employees) is charged to the Town.

Unpaved Private Roads: There are about 60.5 lane miles of unpaved private roads in Wellfleet. Based on the DPW's experience with unpaved public roads, to clear 60 or more lane miles of unpaved roads might require as much as 35 additional hours of operator and machine time. Present limitations on both staff and equipment mean that it would take several additional days to complete unless additional DPW staff is hired and capital equipment purchased. Alternatively, sufficient additional private contractors would have to be hired with the attendant administrative and supervisory overhead.

If unpaved private roads are to be plowed at Town expense the existing policy should be revised to provide standards for determining eligibility of unpaved roads for plowing. Additional inspections would be required as the number of roads under consideration increases. Other questions would have to be answered about priorities, providing emergency services, dealing with roads where during the winter there are no occupied dwellings, how to deal with roads which lack surveys, etc. The statute (section 6C discussed above) requires that selectmen make a determination that each of the roads to be added is open to the public.

A detailed cost estimate has not been prepared, but three additional front end loaders represent a capital cost of about \$550,000. Four additional DPW staff represents about \$300,000 additional annual salary expense (including estimated benefits) to which the cost of operating, maintaining, housing and insuring the additional equipment must be added. Also the Town must consider whether additional DPW employees and equipment would be useful outside of snow removal season. Costs to hire additional private contractors are unknown (but probably lower.) But the need to double or triple the number of contractors hired may affect price and it may be difficult to find private contractors with the required equipment and who are willing to give up private plowing opportunities. If private contractors with the required equipment can be located and hired the capital costs of additional equipment and the operating expense for additional employees and equipment would be avoided in whole or in part. No funding for expanded snow removal operations has been included in the fiscal 2016 operating or capital budgets. It would not be possible to expand the list of private roads eligible for snow removal without an additional appropriation. It will be difficult to fit such a additional appropriations within proposition 2 ½ levy limits.

⁷ Memorandum to All Municipal Clients from Kopelman and Page dated February 7, 2005.

⁸ Memorandum to All Awarding Authorities from the Attorney General dated January 22, 1999. See Also MGL c. 149, s. 27F.

TOWN OF WELLFLEET
PUBLIC NOTICE

The Board of Selectmen is accepting requests for the removal of snow and ice on private ways in Wellfleet.

Consideration will be given to those roads meeting the following specifications:

1. Minimum width twelve (12) feet
2. Provisions for turn around of Town equipment
3. Road surface must be hard and smooth

An inspection of each road will be made by the Board of Selectmen and Highway Surveyor to determine its acceptability.

The Town of Wellfleet will not be liable for damage to private property resulting from snow removal.

Deadline for requests is November 1, 1982, at 4:00 p.m.

Benson R. Moore, Chm.
Warren H. Rhodes
Wilbur C. Rockwell
Wellfleet Board of Selectmen

9/21/82

**TOWN OF WELLFLEET
Department of Public Works
220 West Main Street
Wellfleet, MA 02667**

**Mark Vincent
Director**

**Phone 508-349-0315
Fax 508-349-0315**

MEMO TO: Tim Smith, Town Administrator

FROM: Mark Vincent, DPW Director

DATE: July 27, 2005

RE: Snow removal

The following information related to snow and ice removal by the DPW throughout the town is the same that was provided to the board in December 2004 with one exception. Under the categories of the town providing services, I have separated the figures according to initial capital outlay and operational costs.

Please keep in mind that all of these figures are estimated averages and that some of these costs may have increased since December, such as fuel, etc.

TOWN OF WELLFLEET
DEPARTMENT OF PUBLIC WORKS
ROAD INVENTORY

359 total roads, which includes:

101 public roads (80 paved, 21 dirt)
258 private roads (147 paved, 111 dirt)

Roads that are currently plowed, sanded and swept by the Department of Public Works:

80 paved public roads
21 dirt public roads
117 paved private roads

Remaining private roads not plowed and sanded by the DPW:

111 dirt roads
30 paved roads

Options for the Board of Selectmen to consider:
 (Please note the figures are estimated averages)

Option A:

Town stops providing this service to all private roads.
 The town will only maintain 80 public paved roads and 21 public dirt roads.
 Cost savings to the town:

Material	\$24,800.00
Overtime	\$20,000.00
Fuel	\$ 4,800.00
<u>Maintenance</u>	<u>\$ 4,000.00</u>
Total savings:	\$53,600.00

Option B:

Plow **all** public and private roads, which includes 227 paved roads and 132 dirt roads.
 In addition to the current snow removal expenditures, the following costs would be incurred:

Using Private contractors:

Contract services	\$68,000.00
Materials	\$ 7,000.00
Sweeper	\$180,000.00
Personnel (1)	\$35,000.00

Total additional cost: \$ 290,000.00
(Initial capital outlay: \$180,000
ongoing operating costs: \$110,000)

Town providing services:

Personnel:	\$140,000.00 (4@35,000)
Overtime:	\$ 25,000.00
Equipment:	\$120,000.00 (2 trucks \$60,000 ea.)
Equipment:	\$240,000.00 (2 loaders \$120,000 ea.)
Sweeper:	\$180,000.00
<u>Materials:</u>	<u>\$ 7,000.00</u>

TOTAL: \$712,000.00
(Initial capital outlay for equipment : \$540,000 /
Ongoing operating costs: \$172,000)

Option C:

Plow all public roads (101) and all paved private roads that meet DPW requirements (147).
 In addition to the current snow removal expenditures, the following costs would be incurred:

Using private contractors:

Contract services	\$18,000.00
Materials	\$ 7,000.00
<u>Additional needs:</u>	
Sweeper	\$180,000.00
<u>Personnel:</u>	<u>\$ 35,000.00</u>

Total additional cost: \$240,000.00
(Initial capital outlay: \$180,000
ongoing operating costs: \$60,000)

Town providing services:

Personnel:	\$ 70,000.00 (2@35,000)
Overtime:	\$ 9,000.00
Equipment:	\$120,000.00 (2 trucks \$60,000 ea.)
Sweeper	\$180,000.00
<u>Materials:</u>	<u>\$ 7,000.00</u>

TOTAL: \$386,000.00
(Initial capital outlay: \$300,000
ongoing operating costs: \$86,000)

TOWN OF WELLFLEET
Department of Public Works
220 West Main Street
Wellfleet, MA 02667

Mark Vincent
Director

Phone 508-349-0315
Fax 508-349-0315

March 8, 2005

Requirements for Plowing and Sanding Private Roads

1. There must be at least two (2) occupied year round homes on a road to be accepted for winter maintenance.
2. Roads must be paved with asphalt and free of defects or obstructions and maintained that way year round. Pavement must be a minimum of sixteen (16) feet wide. In the case of dead end roads a paved turn around area or cul-de-sac must be provided. Potholes, cracks, or patches must be kept at a depth level no greater than two (2) inches from the road surface.
3. The roadsides must be brushed back and free of obstructions a minimum of four (4) feet from either side of the road pavement. Over hanging branches, wires and any other obstructions must be kept at a level no lower than thirteen (13) feet from the road surface. Roadsides and overhead must be maintained year round.
4. Roads must be kept free of any signs or other restrictive devices which would prohibit or exclude the public from access to a roadway. A way shall be considered not open to the public by the posting of any sign or device indicating public access denied (i.e., "No Trespassing", "Residents Only", etc.) or the physical blockage of a way.
5. Roads shall be kept free from speed restrictive devices either paved or removable speed bumps year round.
6. Roads shall have a two (2) sided street name sign visible at each intersection that meets the Wellfleet Department of Public Works standard. All signs shall be kept in good condition and legible and free of obstructions year round.
7. Where applicable all catch basins or water run offs shall be kept clear and free of obstructions year round. Catch basins shall be cleaned to a minimum depth of four (4) feet.
8. The Wellfleet Department of Public Works shall conduct annual road inspections in September for the upcoming winter plow season. Any deficiencies shall be noted and the residents of the road shall find them published in the Cape Cod Times and the Provincetown Banner. Any corrections shall be made immediately and residents shall schedule a reinspection with the Wellfleet Department of Public Works prior to November 15 of each year.

9. Copies of the Requirements for Plowing and Sanding Private Roads shall be kept on file at the Wellfleet Department of Public Works for residents to pick up as needed.

10. The Wellfleet Department of Public Works shall set the schedule and or criteria for the order in which private roads are plowed and sanded. Each storm is different and a determination shall be made by the supervisor on duty during any event and is not subject to challenge or change by resident requests.

11. The Wellfleet Department of Public Works may suspend any operation being conducted on a private road in which the supervisor feels there is a hazard to Department personnel or equipment. In this event he or she may take any action he or she determines to be appropriate, up to and including a termination of the operation until such time as the problem is corrected. The Department may suspend any operation on a private way if the supervisor has knowledge of any legal actions being taken against the Town of Wellfleet which may result from the operation or prior operations.

This Policy shall be subject to reevaluation and review on an annual basis.