

Town of Colchester, Vermont
Winter Maintenance of Private Roads
White Paper

by:
Dawn Francis, Town Manager
and
Bryan Osborne, Director of Public Works
August 3, 2017

Executive Summary and Context:

Since 1970, the Town of Colchester has been involved in the practice of providing varying levels of winter road maintenance to a portion of the Town's 41 miles of privately owned roadways. The appropriateness of this practice has been discussed and voted on many times over the past 47 years. This discussion has included legal opinions and assessments of the insurability of this practice. Generally, these assessments characterized the practice as outside of the Town's legal authority thereby creating liability for the Town and its citizens.

An extensive study of plowing private roads was conducted by the Public Works Department in 1995. In 1997, in an attempt to minimize the risks to the Town for this practice, the voters of Colchester approved an amendment to the Town's Charter which enabled the Selectboard to establish a formal policy regarding the practice. To date, the Town has chosen to simply continue the practice and no formal policy has been established.

In 2013, the Town Selectboard formed a citizen group known as the Governance Committee. Charged with examining a variety of governance issues as well as a review of the Town's charter, the committee reviewed the Town's practice of providing winter maintenance to some of the Town's private roadways. In 2015, the committee made a recommendation to the Selectboard that a formalized private road policy be developed and the charter language pertaining to this issue removed. More recently, an increasing number of citizens have expressed concerns over the fairness and equity in this practice, as only about 34% of the Town's private roads receive winter maintenance while the remaining 66% do not.

At this time, the Selectboard is considering whether to continue winter operations maintenance of 14 miles of the Town's 41 miles of private roads. The three options include:

- 1) Continue with the status quo (provide winter maintenance to 14 miles of the 41 miles of private roads); or
- 2) Discontinue winter maintenance of these private roads; or
- 3) Begin providing winter maintenance to all private roadways (27 additional miles) if they meet certain standards and are converted to public roadways.

This white paper contains information pertinent to the evaluation of this practice so as to assist the Selectboard in determining its future policy and direction on this issue.

Voting History

The issue of the Town providing winter maintenance (plowing and/or sanding/salting) to some private roads and not others in the community has been debated since the 1970's. There have also been five previous community votes with mixed results on whether the town should plow these roads. (Current and past legal advice to the Town recommend against town-wide votes as ***“the voters do not have any legal authority to make decisions regarding highway matters.”*** Opinion from Attorney Richard Whittlesey dated 3/31/1995.) The most recent votes are shown below. For a full history of all votes on this topic, see ***Attachment A History – Private Road Votes compiled by Town Clerk, Karen Richard***)

- In 1990, 2,154 voters turned out at Town Meeting and by a margin of 162 votes, voted to discontinue winter maintenance. At a subsequent meeting to reconsider the question, only 586 voters turned out and in a 108 vote margin, the question was reconsidered.
- The latest community vote was a Charter amendment passed in 1997 which added the following language under Section 104 (7) “Additional Powers. The Selectboard’s intent was to reduce the liability concerns through approval of this amendment.

To establish a policy whereby the Selectboard may determine it to be in the public interest to plow those private roads serving two (2) or more year-round residences, which had previous to January 1, 1997, have the Town providing winter road maintenance. Vote passed 1,617-953.

To our knowledge, no policy has been established as a result of this charter change.

Facts and Figures (Attachment B)

- Total public and private roadway mileage is approximately 133 miles. Of this total, the Town provides winter maintenance to all 92 miles of public roads and 14 miles of private roads. No maintenance is provided to the remaining 27 miles of private roads.
- In the 1995 report, the estimated additional annual ***operating*** costs associated with performing winter maintenance on private roads was \$9,237. At that time, the discontinuance of private road maintenance would have resulted in an annual savings of that amount, and would have also allowed for a consolidation of the Town’s equipment fleet and the avoidance of additional staff and equipment needed to maintain an acceptable level of winter maintenance on all roadways. However, with a decision to continue the practice, the additional annualized ***operating and capital costs*** associated with performing winter maintenance on private roads totaled approximately \$41,785. At that time, private contractors estimated the cost to plow these private roads at \$46,000 to \$52,000.
- More recently, the Public Works Director provided the Governance Committee a rough updated ***operating*** cost estimate of \$20,000 per year to continue the practice of performing winter maintenance on private roads.
- Current preliminary estimates indicate that the additional operating and capital costs to begin performing winter maintenance on all private roads would be approximately \$392,081 in year one and \$191,281 annually thereafter. This is based upon the rationale that each current plow route is approximately 13 miles long, and that the addition of another 27 miles of roadway would result in at least two additional routes, requiring two additional trucks and operators. It is acknowledged that these additional costs are substantially higher than any corresponding savings associated with the discontinuance of the current practice. This is due to the significant labor and equipment expansion needed to perform this additional work, whereas the discontinuance of the current practice would not allow for a reduction of existing staff and

equipment. Currently the Town's highway division is significantly under staffed throughout the entire year with or without the responsibility of performing winter maintenance on private roadways.

Number of properties affected

- There are 922 parcels on private roadways that we presently maintain in the winter, of which 736 properties have mailing addresses in town. Without further research, we don't know how many are seasonal versus occupied year round, but a rough assumption could be made the ones with Colchester mailing addresses are year round.
- Five hundred (578) of the 922 parcels are mobile homes in mobile home parks owned by commercial interests. (The majority of these mobile homes recently had their assessments reduced by the town assessor.)
- Assuming the properties with Colchester mailing addresses are year round, we estimate 158 units outside of the mobile home parks are on private roads which are approximately 2 % of the 7,140 dwelling units as of the 2010 census.

Legal Issues

As part of the 1995 study, legal opinions were received from the Town Attorney and the Vermont League of Cities and Towns. These opinions indicated that the practice of performing winter maintenance on private roads was outside of the Town's legal authority thereby creating liability for the Town and its citizens. (**See Attachment C**) Recently, the Selectboard requested an updated legal opinion from Brian Monaghan of Monaghan, Safar, Ducham.

A summary of the findings is as follows:

- Plowing private roads may be considered to be beyond the Town's authority.
- The Town's charter provision passed in 1997 is "not crystal clear that...confers sufficient authority to plow private roads, or whether that provision would withstand legal scrutiny." (B. Monaghan, Esq legal opinion dated 7/27/2017)
- It may violate the Proportional Contribution Clause of the Vermont Constitution.
- The practice shows favoritism and unfair use of town equipment for private gain.
- Liability from accidents with our equipment operating on private roads is significant.
- Competition with the private sector – the Town may be liable due to the taking of business away from private enterprise and unfair competition.
- Concern will be even greater on the part of private contractors if we were to take existing business away (as in the case of the Town expanding plowing to all private roads).
- State aid for highways is not being collected for these roads as they are private.
- "The Town's voters elected the Selectboard members to make difficult decisions on their behalf. On this issue, the voters have absolutely no direct authority to set municipal policy; only the Selectboard does."
- There is no implied obligation on the part of the Town Selectboard in proposing the 1997 charter language that the Town would continue to plow certain roads.

Governance (Charter Review) Committee

Recently, the Colchester Governance Committee reviewed the Town's Charter and issued a Final Report on 8/25/15. (**See Attachment D**). This report recommends that "*the Selectboard establish an equitable policy regarding the publicly financed plowing of some private roads in Colchester.*" The report also recommended removal of the 1997 Charter provision that establishes the Selectboard's authority to determine it to be in the

public interest to plow some private roads. Town Attorney Monaghan is recommending that it is unnecessary to remove the Charter language “because it does not obligate the Town to take any course of action” and it is “an issue that is really within the purview of the Selectboard.”

Community Concerns (Attachment E)

- Sunset View Campers Association submitted a petition on 9/7/16 calling for a “charter change concerning the plowing and maintenance of private roads be addressed and resolved by the Selectboard in such a way as to provide equity in the maintenance of town roads.”
- David Cohen, on behalf of sixty property owners of Spaulding West Shore Association submitted a request on 12/6/16 calling for snowplowing of their roads as it “is a lingering issue that ...is discriminatory and unfair with respect to snowplowing done by the town.”
- Frank Motter of Lost Cove Association wrote in an email to Public Works Director on 7/21/16 that, “I am having difficulty try [*sic*] to understand that 40% of private roads are serviced by the town ...the rest are not.”
- A compilation of community concerns from 1990 Selectboard minutes.
- In 2013 and again in 2015, the Governance Committee (see previous section) recommended addressing the private roads issue by adopting a policy and removing the charter language pertaining to the plowing of private roads.

Other Issues To Consider

Town Maintenance Issues

- The practice increases the Town’s total maintenance cycle time by 13% which decreases the overall level of service to the community at large. Cycle time is defined as the total time it takes to complete a plow route one time, including de-icing, preliminary scraping, and full scale plowing.
- The Town’s private roads are dispersed throughout the community and are generally not part of the more orderly public transportation system. This results in significant travel time to reach these dispersed areas often with smaller trucks with limited material carrying capacity requiring multiple trips to reload with materials.
- The private roads are built to a standard that is far less than public roads and therefore are more dangerous to plow than public roads and cannot be plowed as efficiently.

Impacts on Landowners/Taxpayers

- If the Town no longer plows some of the community’s private roads, these road owners will see an increase in their costs. (However, the cost to be borne would be consistent with residents who live on private roads not currently plowed by the Town).
- While some of these private roads may serve lower income neighborhoods, they also serve very high-end neighborhoods. In either case, it is unfair and inequitable to the rest of the taxpayers who do not receive the same public service and expenditure of taxpayer dollars.
- Commercial enterprises such as Westbury Trailer Park and Porter’s Point Trailer Park are being plowed or sanded/salted by the Town whereas other trailer parks are not being maintained to the same level or at all. Therefore, the Town is using municipal tax dollars to subsidize some commercial enterprises and not others.

Emergency Access

- Emergency access to many of the private roads whether winter maintenance is provided by the Town or not, is a challenge due to their narrow widths, curves, lack of turn arounds and condition.
- If private roads are not plowed, there have historically been concerns about emergency accessibility. However to the extent that this issue exists, it would be no worse than for the over 200 private roads that the Town does not currently plow. (The Town can under Section 2.2 of the Town's Snow and Ice Removal Policy and under the State's Good Samaritan law, "plow any road to protect and serve a citizen of Colchester" and allow access in the event of an emergency.)
- The Fire Departments may request smaller truck(s) to allow for access to these private roads in the event the Town discontinues maintenance.

Benefits to the Private Road Owners of being provided the Service by the Town

- The private road landowners receive a service that other private road landowners have to pay for above and beyond their property taxes.
- Leases for those property owners on leased land or in mobile home parks *may* be artificially lower because the landowner does not have to pay for private road maintenance.

Proposed Next Steps:

- 1) The Board should determine if the updated legal opinion from Brian Monaghan should be released to the public.
- 2) At a warned public meeting in September of 2017 (after summer vacations), the Selectboard should invite town legal counsel and staff into discuss this white paper and the legal issues surrounding the current practice at an open, regularly scheduled meeting.
- 3) Provide summary of issues for widespread public distribution - press, social media, website.
- 4) In advance of the warned public meeting, identify homeowner's associations and residents living on private roads, and invite these individuals to the meeting via a direct mailing. Other stakeholders include mobile home park owners, fire chiefs and recent petitioners (Sunset View, Spalding West Shore Assoc.).
- 5) Selectboard may want to reach out personally to various homeowners associations to invite them to the meeting.
- 6) Selectboard should establish/concur they agree with legal counsel's advice that the Selectboard is the sole authority to set policy on road maintenance.
- 7) Once public input obtained, prepare and adopt a formal policy which includes a determination of the public interest based upon public input, legal advice and staff input.

I:\Public Works\Private Roads\privateroadsmemo.docx