

**Selectboard Answers to
Questions Raised at Selectboard Public Input meeting on Private Roads 9/12/17
& Correspondence Received Through 9/22/17**

Why are we addressing this issue now?

The Selectboard has received petitions from homeowners on private roads not plowed by the Town stating that it is unfair for the Town to plow some private roads but not others. The Governance (Charter Review) Committee also recommended the Selectboard adopt a formal policy as called for by the Town's Charter.

Why not leave the current practice in place?

This is a question that the Selectboard will be deciding upon in enacting a public policy with respect to winter maintenance on private roads in Town.

Don't Town taxes pay for the plowing of these private roads?

Yes.

Who pays for engineering required to bring a private road up to public road standards?

The owners of the private road.

What is a private road?

A private road is any named street or roadway that has not been duly accepted by the Town as a public road.

If the Town stops plowing private roads, should taxpayers on private roads expect a decrease in property taxes? Similar question posed: Does Town plowing of private roads increase the value of homes accessed by the private road?

Property taxes are based on the fair market value (FMV)(what a willing buyer pays a willing seller) of the parcel, not on the level of services enjoyed by the parcel owner. State law requires all towns to appraise all properties for property taxes to 100% of FMV. The avoidable costs of discontinuing the plowing of private roads has been estimated at \$20,000 per year. This is about two tenths of one percent of the Town's total budget. If the Town were to elect to remove this \$20,000 from its \$12.45 million budget, taxes would be reduced for all properties in Town with an average priced home of approximately \$300,000 seeing an annual tax reduction of \$1.90. If the FMV of a property falls as the result of the Town's discontinuance of plowing, the parcel owner's taxes may go down depending on the assessed value of the property.

How possible is it for these roads to meet public road standards and be considered plow able?

To be plow able, a roadway needs to meet the Selectboard's minimum standards for public roadways per our Public Works Technical Specifications. They would also need to be turned over to the Town as a public roadway (dedication via a deed) at which point the Town would become responsible for all public maintenance, including new stormwater mitigation requirements.

Can the Selectboard legally stop plowing private roads?

Yes, under Section 104 (7) of the Town Charter, the Selectboard has the authority to plow, or not plow private roads.

Has the Town accepted the private roads of Mills Point under a theory of “dedication and acceptance”?

No. Dedication and acceptance is a fact-specific inquiry which requires that a landowner prove that the property has been dedicated to public use. The Vermont Supreme Court has stated that the essential element of dedication and acceptance is the intent of the owner, and this is a fact-specific determination by a court of law. Some facts that would help us resolve these questions are: 1) are there any deeds of record that indicate the Association’s (or other landowner’s) intent to dedicate the road solely to public use? 2) Are there people with personal knowledge from when the roads were constructed that could tell us what the Association’s intent was in creating the roads? 3) Has the Association freely allowed the public to park on the road without prohibiting access? It is clear that the Association or other landowners have not dedicated the roads to public use. They have taken steps to preserve the private features of the road to exclude members of the public. Further, the Town has not accepted the road as a public road.

Is Town exposed to liability lawsuits if it continues to plow private roads?

Yes, legal counsel advises that the Town may not have a sovereign immunity defense and may not have insurance coverage. The Selectboard is weighing these risks in determining its policy on this issue.

Does eliminating plowing by the Town increase the risk to protect health or property in an emergency situation?

This depends on the quality of the plowing by private contractors hired by the owners of private roads once plowed by the Town.

Why does Colchester zoning permit development on private roads?

The purpose of zoning regulations is to regulate land development in a manner that will promote the general welfare. There is nothing in the zoning regulations prohibiting development on private roads. New private roads are permitted with the understanding that they are private property and must be maintained by the property owners. Planned private roads benefit both the Town and landowner because the Town receives tax revenues with no road maintenance costs and the landowner is not burdened with upfront construction costs needed to bring a road up to public standards.

Why do we all pay taxes if roads are not plowed?

Collectively, property taxes are used to fund all municipally funded services everywhere in Town (emergency services, parks/recreation, library, property records, planning and zoning, capital improvements, etc). Levels of service and infrastructure can vary from street to street depending upon density, rural versus more suburban neighborhood character, need, and governmental jurisdictions. Sewer is paid by user fees in areas where sewers have been determined to be needed. Water is similar; however, is not a governmental function of the Town. Water systems are owned and operated by Fire Districts and paid for with user fees, not Town taxes.

Town approved Outer Bay development and required them to have a second access.

What happens if they no longer get plowed by the Town to this 2nd access? If the Board discontinues private road winter plowing, will it still plow this private road for emergency access?

The Town's plowing of this roadway has no relationship to the reciprocal agreement. The Town began plowing this road many years prior to the agreement. The agreement simply required the developer to obtain an easement from the road owner for emergency access and was silent to whether it needed to be plowed, who would plow it, etc.

Is there an option to have this second access road maintained by Town to provide this emergency access?

This is a private road and this is a decision to be made by the Selectboard in its deliberations.

The Town of Montgomery, VT varies maintenance on its town roads according to four classifications. Why can't we do this?

Roadway classifications are covered by the Vermont State Statutes. Class 1-3 roadways are considered public and must be maintained for year-round travel. Class 4 roadways are publicly owned, and maintenance may vary at the discretion of the Town. None of these statutory classifications have any direct relationship to municipal roadway standards as may be adopted by legislative bodies throughout the State. Like Colchester, Montgomery must maintain and plow its Class 1, 2, and 3 roads.

Could there be a budget item to plow all non-public, private roads and the Town hires contractors?

Yes, if this is a decision made by the Selectboard. We understand that the Town of Greensboro, Vermont does this; however, they have less private roads than Colchester. There still remains the issue legality liability and the Town using public funds to pay for the maintenance of private property for the Board's consideration.

Could road associations upgrade their private roads to a standard and provide a written waiver to the Town releasing it from any liability?

This proposal has been submitted to the Selectboard for consideration.

What does a private road sign cost?

About \$35. Could be more/less depending on size, etc.

Why are some private roads plowed and some are not? Have there been any roads added to receive winter maintenance since the 1970's?

In 1970 and 1976, voters approved ballot items permitting Town equipment to plow private roads. In 1997, the voters approved a charter change authorizing the Selectboard to adopt a policy to plow private roads plowed by the Town prior to 1/1/1997 if the board determined it was in the public interest to do so. The Town has no legal authority to plow roads not plowed prior to 1997. Citizens from private roadways not plowed by virtue of the historical votes came before past Selectboards throughout the 1980's and early 1990's and requested that the Board begin plowing their roadways. Past Selectboards approved some of these requests. We don't know why some roads were approved, and some were not. Around 1997, the Board at that time recognized the legal and liability issues with plowing private roads and voted to not add any more private roads to the list being plowed by the Town.

Why is the Town worried about liability?

If a Town plow is involved in an accident on a private road, the Town could be sued. Because the Town is under no legal obligation to plow the private road, it may not be entitled to the defense of sovereign

immunity, and may not be entitled to coverage under its policy with our insurance carrier. The costs of defense and the payment of the claim would be borne by all taxpayers.

Has the Town been sued for accidents on private roads?

Not to the Town's knowledge.

Will the Town avoid significant expense if it stops plowing private roads?

No. Discontinuing it would only reduce expenses such as fuel, salt, sand, etc. It would not result in the reduction in overall staff or equipment because these resources are needed year round for all other maintenance functions unrelated to snow and ice removal. There will be some savings to all taxpayers, but it will be minimal.

Can't services the Town provides all be contracted out?

Some can, some cannot.

Other than plowing, what service do property owners on private roads receive for their taxes?

All taxpayers on private roads receive and/or have available Town services from Police, Fire, Rescue, Recreation, Library, Planning & Zoning, Clerks Office, Assessor's Office, Finance and Administration, water quality management, capital improvements, among many other services. (See Town's Annual Report.) Taxpayers also benefit from equipment maintenance for all transportation needs and highway maintenance services to 92 miles of public roads that are available for use 24/7.

How many Selectboard members live on private roads?

None.

Do other towns in Chittenden County plow private roads?

Most towns do not plow private roads and it is the responsibility of the landowners to maintain and plow these roads. In 1995, the Public Works Department did a survey of all towns in Chittenden County. Of these 16 towns, approximately 81% of them had no involvement in the plowing private roads. A few communities did so only after residents upgraded these roads to Town standards at their expense. Private roads plowed in other towns were statistically insignificant. Colchester is unique because it plows so many private roads that may never meet public road standards.

If the Town stops plowing will school buses stop picking up kids who live on private roads?

The Colchester School District administration has directed Mountain Transit not to go on private roads to avoid liability issues. There may be instances where Mountain Transit assumed a private road the Town was plowing was public. This is presently being reviewed by the District with the contractor. Ultimately, it's an issue between the District and its contractor.

A variety of alternatives have been offered including having associations absolve the Town of liability and creation of a public/private partnership whereby the road remains private, if is brought up to a certain reduced or accepted standard and the Town continues to plow it. Another alternative is for the Town to oversee private contractors to plow the roads. Are these acceptable?

All alternatives/proposals submitted by the Public are being considered by the Selectboard in its decision on this issue.

