



# TOWN OF WAYLAND

41 COCHITUATE ROAD  
WAYLAND, MASSACHUSETTS 01778

LOUISE L.E. MILLER  
TOWN ADMINISTRATOR  
TEL. (508) 358-7755  
www.wayland.ma.us

## BOARD OF SELECTMEN

LEA T. ANDERSON  
MARY M. ANTES  
THOMAS J. FAY  
CHERRY C. KARLSON  
DOUGLAS A. LEVINE

August 28, 2019

**RE: PRIVATE ROAD PLOWING:  
BOARD OF SELECTMEN'S PROCESS TO APPEAL A DECISION NOT TO PROVIDE SNOW  
PLOWING SERVICE**

Dear Wayland Resident,

The Board of Selectmen has approved an appeal process for residents living on private roads to appeal the Board's decision not to plow a private road in the Town of Wayland.

If you would like to submit an appeal of the Board's decision not to plow a private road on which you reside, please:

1. Complete the attached application form along with any supporting documentation. In completing the appeal application, please refer to the Residential Private Road Snow & Ice Policy.
2. Submit your application no later than Tuesday, September 17, 2019 to the Office of the Board of Selectmen, located in Town Building, 41 Cochituate Road Wayland, MA 01778.
3. *Please note:* If you submitted an appeal that was previously denied, please include additional/new information on which your appeal is based. Without such information your appeal may be denied.

The Board of Selectmen will compile submittals, solicit Department of Public Works' findings, and make a determination on the appeal no later than Monday, November 4, 2019.

Please contact Louise Miller at (508) 358-3620 for information and guidance

Best Regards,

  
Louise L.E. Miller  
Town Administrator

## Attachments:

1. Residential Private Road Snow & Ice Policy
2. Appeal Application 2019



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## RESIDENTIAL PRIVATE ROAD SNOW & ICE POLICY

### APPEAL APPLICATION

(Please refer to attached policy)

Please provide the information below as your basis for an appeal of the Town's decision not to plow a private road. Please attach additional sheets as necessary. Appeals are due to the Office of the Board of Selectmen, 41 Cochituate Road Wayland no later than **Tuesday, September 17, 2019**. Please attach any property information that would help in the evaluation of this appeal such as deeds, special permits, Planning Board decisions etc. **Please note: If you submitted an appeal that was previously denied, please include additional/new information on which you base your appeal. Without this information, your appeal may be denied.**

.....  
**I. CONTACT INFORMATION:**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_ Email: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Private Road Name: \_\_\_\_\_  
Was a prior appeal denied? \_\_\_\_\_

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**II. BASIS FOR APPEAL:**

- a) Do you live on a residential private road as defined in the Town's "**Residential Private Road Snow & Ice Policy**?" (Y/N) \_\_\_\_\_ If Yes, please provide the road name and your interest in the road (homeowner / tenant?)
  
- b) Is your private road a driveway as defined under the policy? (Y/N) \_\_\_\_\_
  
- c) Is your private road open to public use as defined under the policy? (Y/N) \_\_\_\_\_  
If Yes, please explain:
  
- d) Does your private road connect two public roads? (Y/N) \_\_\_\_\_  
If Yes, please name the two connecting public roads:

e) Does your road have more than three homes? (Y/N) \_\_\_\_\_

If Yes, please list the house numbers located on your private road:

f) In your opinion can the private road be plowed without hazard to snow plow driver? (Y/N) \_\_\_\_\_

Please describe any hazards and how to address them:

g) Is there an allowable means to turn a vehicle around while remaining within the private roadway? (Y/N) \_\_\_\_\_

If Yes, please describe the size and location of the turnaround. (Attach schematic with dimensions of turnaround)

**III. ACTION BY TOWN (for Town office use only)**

**A. Department of Public Works**

Findings:

DPW Director's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**B. Board of Selectmen**

Findings:

Board of Selectmen: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## RESIDENTIAL PRIVATE ROAD SNOW & ICE POLICY

TOWN OF WAYLAND, MASSACHUSETTS

Accepted by Board of Public Works October 10, 2017

Accepted by Board of Selectmen May 16, 2018

Policy Effective November 1, 2018

### **DEFINITIONS** for the purpose of this policy:

- 'Road' or 'Way'      An open way for the passage of vehicles.
- 'Residential'      Having at least half of the linear length of the road owned or rented for residential use.
- 'Private Roads Open to Public Use'      It must be demonstrated that the private residential road under consideration is open to public use and is actually susceptible to use by the public other than for purposes that are merely incidental to the use of the private residential road by the owner or owners thereof. Furthermore, the private residential road must be open to the public at large for purposes of travel, not merely incidental to the use by the owner or owners thereof, in a manner similar to the ordinary use for purposes of travel of a public road of the same general nature.
- 'Private Road'      A road or portion of a road where the abutters have deeded rights of ownership, access, control, and maintenance responsibility.
- 'Public Road'      A road or portion of a road where right-of-way owned and maintained by the Town of Wayland or the Commonwealth of Massachusetts.
- 'Driveway'      A private access, owned by abutter(s) from a road to one to three properties.

### **BACKGROUND:**

- The Town has accepted Massachusetts General Law Chapter 40, section 6C (and by reference, section 6D), which allows the Town to appropriate money for the purpose of plowing private ways that are open to public use and designated by the Selectmen. These prerequisites indicate that not every private road will qualify for the expenditure of public funds for plowing and sanding.

- A road becomes a public road after its layout has been accepted by the Board of Public Works, and after it has been accepted as a public road by town meeting.
- The Town Clerk maintains a list of public and private Roads, which is updated after Town Meeting actions.
- The Town GIS has a layer of information which depicts public and private roads, and another layer which depicts driveways.
- The Town as a general matter has no power to expend municipal funds or to utilize funds for the benefit of a private road. If the Town uses public resources to repair or plow private roads the owner or owners of the road clearly receive a benefit. It follows from this restriction that the Town has no inherent power to spend municipal funds or use municipal resources to maintain private roads. The Department of Revenue holds that public funds may not be expended for the benefit of private parties unless there is a definite public purpose and/or benefit to the public at large.

#### **IN GENERAL:**

- Responsibility for the care, maintenance, and snow removal of a road or driveway is the responsibility of the entities that own the road or driveway.
- The Town does not plow nor maintain driveways except those owned by the Town.
- Pursuant to G.L. c. 40, § 6C, the Town may plow private residential roads as authorized by the Selectmen provided the roads serve the general public, have more than one connection to public roads, and can be plowed without undue risk.
- The Town may perform specific, one-time, temporary repairs to private roads initiated by abutter requests and voted by the Board of Public Works or if requested by Public Safety Officials.

#### **SPECIFIC PROVISIONS:**

1. If it can be demonstrated that a private residential road is
  - a) *not a driveway, and*
  - b) *open to public use, and*
  - c) *connects two public roads or has more than three homes, and*
  - d) *can be plowed without undue risk,*

then the Board of Selectmen may, on an annual basis, direct that snow and ice be removed from the private road.

2. Not every private residential road in the Town will qualify for the expenditure of public funds. The Board of Selectmen may exercise its reasonable discretion in deciding how to expend the limited funds available for this purpose.
3. It must be demonstrated that the private residential road under consideration is open to public use and is actually susceptible to use by the public other than for purposes that are merely incidental to the use of the private residential road by the owner or owners thereof. Furthermore, the private residential road must be open to the public at large for purposes of travel, not merely incidental to the use by the owner or owners thereof, in a manner similar to the ordinary use for purposes of travel of a public road of the same general nature.
4. The designation by the Board of Selectmen must therefore, at least, be based upon the determination that by design and in fact, the private residential road is adequate to accommodate general public traffic, and does in fact carry such public traffic.
5. The Board of Selectmen will determine among the total number of private roads which qualify for care, maintenance, and snow removal, depending on available funding and public usage at the time of their decision.
6. Abutters who own private residential roads who believe their road qualifies as open for public use may apply, in writing, to the Board of Selectmen for snow and ice removal. The application should state the reasons why the road qualifies for the expenditure of Town funds for snow and ice removal in the next winter season.
7. Notwithstanding the above, snow and ice removal and maintenance of some private roads is controlled by special permit from the Town or development agreement with the Town. Such agreements are controlling.
8. DPW will continue its protocol to respond to a plowing request from Public Safety Officials for first response necessities.

## K.P. LAW - GUIDANCE TO THE SELECTMEN

"Open to the public use" has been held by the Supreme Judicial Court of Massachusetts to mean that the way is actually open to use by the public for purposes of travel, not merely incidental to its use by permission of the owner(s). Money raised by taxation can be used only for public purposes and not for the advantage of private individuals, therefore, the road must be of such design and location that the general public is able to use the road, other than as a guest or invitee of abutters to that road."

*Opinion of the Justices to the Senate, 313 Mass. 779, 783 (1943).*

In determining sufficient design, the qualifying factors are:

- The road must be a minimum of 15 feet wide.
- Roadside clearance of any obstacles, including vegetation, shall be at least two (2) feet from the edge of the road surface on each side.
- Height clearance shall be no less than fourteen (14) feet from the road surface.
- The road surface must be paved or hard packed gravel and capable of being plowed without causing damage to plowing equipment. The road must be free of defects (potholes or rutting) exceeding three (3) inches in depth. Defects in the road surface must not deviate from grade more than three (3) inches including manhole covers, catch basins, and roots. All potholes and ruts shall be filled to the approximate level of the surrounding roadway by the owners prior to any plowing taking place.
- There must be a turnaround area sufficient to accommodate a snow plow truck, if needed.
- There must be a designated area for the placement of plowed snow that is not on private property unless written permission and waivers are provided by the property owners.
- The road may not be a shared driveway.