

POLICY: SNOW REMOVAL ON PRIVATE/UNACCEPTED STREETS

SECTION I: PURPOSE: New Hampshire RSA 231:59 provides that municipal highway funds can be spent only on Class IV and V, town accepted highways. Further, in the case of *Clapp v. Town of Jaffery*, the NH Court supported the constitutional requirement that public funds be spent only for public purposes finding that plowing of private roads would only be legal if the activity is secondary and incidental to the town and that those benefiting from the plowing reimburse the town so that no public funds are spent.

As detailed in #WIN 02:00:24:11 "Winter Operations Policy", it is the goal and intent of the Town of Windham to provide timely, efficient and cost-effective winter maintenance operations on all officially accepted, municipally-owned roadways. The following policy has been adopted for the purposes of supplementing #WIN 02:00:24:11, in order to clearly define the means and manner in which the following, other roads in Windham may receive winter maintenance services from the Town:

- 1) Town Class VI roadways that have been declared as an "Emergency Lane" (see *Section III*), or;
- 2) Private roadways that are not within Planning Board approved subdivisions that have been declared as an "Emergency Lane" (see *Section III*), or;
- 3) Unaccepted roadways that are within Planning Board approved subdivisions that were approved prior to March 2, 2011 and have been declared as an "Emergency Lane" (see *Section III*), or;
- 4) Unaccepted roadways that are within Planning Board approved subdivisions that were approved after March 2, 2011 and for which the developer enters into an agreement with for the Town to perform Winter Maintenance Operations (see *section IV*).

SECTION II: AUTHORITY: This Policy is adopted in accordance with the following governing laws of the State of New Hampshire: RSA 41:11, RSA 231:59-a and Town of Windham Subdivision Regulations Section 904.5 c.

SECTION III: EMERGENCY LANES: In 1994 the NH Legislature enacted RSA 231:59-a "Emergency Lanes" (see *current law attached to this Policy*), as a means for communities, through a vote of the Board of Selectmen, to provide snow removal and minimal maintenance to private and Class VI roads in order to "render such way passable by firefighting equipment and rescue or other emergency vehicles", without requiring a municipality to reclassify or accept these as Class V roads with all the maintenance and liability responsibilities that accompany maintained roads.

Based upon the recommendations of a Private Road Committee established by the 1997 Town Meeting, the extent of maintenance on any roads declared as Emergency Lanes may be limited to plowing and sanding during the winter months. Any work required to bring the road to a plowable condition, as determined by the Town, will be the responsibility of the abutting landowners or, in the case of unaccepted roads within an approved subdivision, the developer.

In order to declare an Emergency Lane, the Selectmen must first hold a public hearing, and in the case of a private road, must notify by mail "all persons known to have an interest in the way" ten (10) days prior to the date of the hearing. No private way may be

declared as an Emergency Lane if one or more of the owners along the way deny permission at any time prior to or following a declaration that a road be an Emergency Lane. Class VI roads, which are owned by the town but which are not maintained, may be declared emergency lanes without the consent of the abutting owners.

Following the public hearing, the Selectmen must make a written finding that “the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane”.

It is important to note that the Selectmen are under no obligation to declare any Class VI or private way as an Emergency Lane and, once declared, they may rescind or disregard the Emergency Lane declaration at any time without notice. Decisions to declare ways as Emergency Lanes are under the sole discretion of the Board of Selectmen.

No person shall be entitled to damages by virtue of the creation of Emergency Lanes, or the failure to create them, or the maintenance of them, or the failure to maintain them, and no person shall be deemed to have any right to rely on such maintenance.

A) PUBLIC NEEDS CRITERIA: A Class VI or private way must meet at least one of the following three “public need” criteria in order to be considered for declaration as an Emergency Lane:

1. The road, while not formally accepted by the Town as a public road, is within a subdivision approved by the Planning Board and which was being plowed by the Town as of March 2, 2011.
2. A school bus must pass over and through the private road in route to a public road;
3. The road provides fire trucks access to a water source. This means that the truck is able to draft directly from the water source and does not mean a water source which is accessible by hoses only.

B) MINIMUM ROAD STANDARDS: Any Class VI or private way which meets the “public need” criteria, must also be in a minimum condition prior to the town assuming winter maintenance operations. The following criteria will be used to evaluate whether the road(s) meet the “minimum condition” requirement:

1. For private ways within a subdivision approved by the Planning Board:
 - a. The private road must contain one or more individually owned and occupied residences, not developer owned in existence, and constructed prior to March 2, 2011 with each residence fronting on the private road.
 - b. The road shall be open to the public and shall be constructed in accordance with all applicable Planning Board approvals, including but not limited to travel width and surface type.
2. For Class VI or private ways not within a subdivision approved by the Planning Board:
 - a. The private ways must contain one or more individually owned and occupied residences, not developer owned in existence.
 - b. Minimum travel width of 20 feet.

- c. Minimum Right of Way (ROW) width of 30 feet.
 - d. Surface to be graded gravel or pavement.
 - e. Roadway must have adequate drainage.
 - f. All hazards on the side of the road be removed or flagged.
 - g. Only sand will be used (no salt).
3. For all roads (both subdivision and non):
- a. The private way must be safe for plowing equipment to enter the area. The road surface of the private way must be surfaced in a manner acceptable to the Highway Agent and be in good repair.
 - b. The private way, at the time of plowing, must be clear of vehicles.
 - c. The height clearance shall be no less than (14') feet from the road surface. This is to ensure access to snowplows and emergency vehicles.
 - d. The roadside shoulder shall be free of any obstacles on both sides of the traveled way, including vegetation, fences, stonewalls, rocks, shrubs, trees, or any other object that may interfere with snow removal equipment.
 - e. There must be ample room for emergency vehicles to turn around if the road is a dead end. Space at the end of the road should be sufficient size for emergency vehicles and/or Town plows to be able to turn around in a safe manner.
 - f. All private roads/ways shall have a visible street sign installed and maintained in accordance with the specifications set forth in the manual on uniform Traffic Control Devices, published by the Federal Highway Administrator.
 - g. All owners of property on said private way must sign an agreement releasing and waiving any liability against the Town, its agents, officers, servants or employees, and agreeing to indemnify and hold harmless the Town, its agents, servants, officers or employees, from any damages whatsoever. This agreement must be executed each year.
 - h. Any road declared will have yearly inspections performed by the highway agent to check to see if the roadway is in an acceptable plowing condition.

SECTION IV: SUBDIVISION ROADS APPROVED AFTER MARCH 2, 2011: For those subdivisions approved since March 2, 2011, private ways which have been constructed in accordance with the Rules and Regulations of the Windham Planning Board, but are not yet accepted as public ways, or for which a Planning Board decision or a covenant places that the responsibility with the homeowners, will be maintained in accordance with the Town of Windham's Winter Maintenance Policy (#2:00:24:11) under the following conditions: Winter operations will commence at the time of issuance of the first Certificate of Occupancy for any dwelling or structure accessed by a subdivision street, provided the developer shall, by November 1st of each applicable year:

1. Provide the Town with a signed statement acknowledging the Town's assumption of winter maintenance duties in no way constitutes any form of public acceptance of subdivision streets and/or infrastructure in whole or in part.

2. Pay a yearly maintenance fee based on the length of unapproved roadway.
3. Provide the Town with a signed statement holding the Town harmless from any and all liability claims in the event the Town's winter maintenance activities cause damage to persons or property.
4. Provide signed agreements by all occupants along the unapproved roadway which acknowledges that they will comply with the town's winter maintenance rules and regulations including but not limited to adhering to parking bans and refraining from placing snow in the travel way and that they hold the Town harmless from any and all liability claims in the event the Town's winter maintenance activities cause damage to persons or property.

SECTION V: EXCEPTIONS: In cases of Police, Fire, or Medical emergency only the provisions of these policies may be, effectively, waived for the purposes of emergency services response. Should an individual at any unaccepted or private road require emergency assistance, the Town of Windham Highway Department will, upon request of emergency response personnel, take reasonable steps to attempt to provide access for such emergency services via plowing and/or sanding as necessary, but that the Town shall not be liable in the event of the failure to provide such access.

SECTION VI: WAIVERS:

The Windham Board of Selectmen reserves the right, for good cause shown, to make special exceptions and/or waive any portion of this Policy.

SECTION VII - AMENDMENTS:

This Policy may be amended from time to time by the Board of Selectmen, following a public hearing, notice of which shall be posted pursuant to State and local laws in two (2) or more public places, or published in a newspaper of general circulation not less than ten (10) days prior to the public hearing.

SECTION VIII: ADOPTION: The Town of Windham has adopted the Snow Removal on Unaccepted Streets Policy effective June 20, 2011.

Ross McLeod, Chairman
Bruce Breton
Roger Hohenberger
Kathleen DiFruscia
Phil Lochiatto
Board of Selectman

LETTER RELATIVE TO MAINTENANCE AGREEMENT TO DEVELOPERS

Date:

Developers Name
Developers Address

RE: SNOW REMOVAL AND SANDING OF **NAME OF STREET**

Dear **Name of Developer**:

Until such time that approved subdivision roads have been accepted by the Windham Board of Selectmen the developer of same is responsible for its maintenance including performing winter maintenance operations to ensure the road remains open for both the residents of the road as well as the Town’s public safety responders.

In accordance with the Town’s Subdivision regulations as well as its Snow Plowing of Unaccepted Roads Policy you may choose to enter into the enclosed winter maintenance agreement with the Town of Windham. The intent of this agreement is to enable the Town to keep the roadway clear of snow and ice in accordance with its Winter Maintenance Policy and to allow the School Department to access the roadway to serve those homes within your project to which occupancy permits have been issued.

If you elect to enter into this agreement all items specified in the agreement must be completed by November 1, 2011. In addition the Right of Way (ROW) must be cleared of all construction material for it to be plowed.

Please send a certified bank check in the amount noted payable to the Town of Windham to the address below and be sure to include an original signed copy of the attached Maintenance Agreement.

Address: Windham Highway Department
c/o Administrative Offices
4 North Lowell Road
PO Box 120
Windham, NH 03087

Amount of Check - **\$XXXXXX** Amount is based on \$640/10th of a mile

If you have any questions please feel free to contact either Jack McCartney, Highway Agent, at 965-1211, or Dana Call, Assistant Town Administrator/Finance at 432-7732

Sincerely,

David Sullivan
Town Administrator

Enclosure

WINTER MAINTENANCE AGREEMENT FOR UNACCEPTED STREETS

Winter Season: 2010 - 2011

The Windham Highway Department has estimated a cost of \$640 per one tenth (1/10th) of a mile (\$6,400 per mile) to maintain the roadway, or section of roadway, during the winter. The Highway Department will only be responsible for removing snow and ice in accordance with the provisions of the Town’s Winter Maintenance Policy. Until the roadway is completed and accepted by vote of the Board of Selectmen the developer of the subdivision is responsible for the following prior to November 1, 2011:

- Payment of the yearly fee based on the length of unapproved roadway;
- A right of way permit shall be applied for and approved by the Windham Highway Department prior;
- The roadway shall be in such condition that will not cause difficult or unsafe conditions to the plow operators, bus transportation and public safety;
- An agreement shall be made with all occupants along the unapproved roadway that the town’s winter parking ban will be adhered to and that they will hold the Town harmless for any damages caused by the Town’s performance of winter operations;
- The Highway Agent and if required the Town’s consultant engineer shall review that the roadway is safe in accordance with federal and state standards;
- No structures, including buildings, permanent or portable signs, lights, displays, fences, wall, etc. shall be permitted on, over or under the highway right-of-way;
- To hold harmless the Town of Windham and its duly authorized agents and employees against any action for personal injury and/or property damaged sustained by as a result of deficiency in the roadway or damages caused by others and any other damage incidental to the plowing operation;

I agree to the conditions contained herein

Developers Name

Name of Roadway/Section of Roadway

Contact Phone #

Date

Office Use Only

Review by Highway Agent

Date

**LETTER RELATIVE TO EMERGENCY LANE DECLARATION REQUEST
PUBLIC HEARING NOTICE
APPROVED SUBDIVISION ROADS**

DATE:

NAME OF PROPERTY OWNER
ADDRESS OF PROPERTY OWNER

RE: Emergency Lane Petition Relative to NAME OF STREET, Windham, NH

Dear Property Owner of ADDRESS, known as TAX MAP IDENTIFICATION

The intent of this letter is to advise you that a petition has been filed with the Windham Board of Selectmen’s Office by one or more property owners on NAME OF STREET requesting that this private road be declared as an Emergency Lane under the provisions of RSA 231:59-a. If the Board declares this road to be an Emergency Lane, the town may perform work “deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles.” Such work to be limited to winter maintenance operations. Any work required to bring the road to a plowable condition as determined by the town will be the responsibility of the abutting landowners.

In accordance with the above mentioned statute, the Board of Selectmen will hold a public hearing on DATE AND TIME in the Community Development Meeting room to consider whether or not to declare this road as an Emergency Lane. As a landowner abutting NAME OF STREET, you are entitled to this official notification that the public hearing will take place and furthermore to understand that you have the right to deny permission to the town to declare the road as an Emergency Lane or to withdraw your permission any time after a road maybe declared. Such declaration must be based on a finding that “the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits of landowners abutting such lane” (RSA 231:59-a, II). Note that an Emergency Road declaration “shall not be deemed to alter the classification or legal status of any highway or private way, or to limit or restrict the authority of towns to regulate the use of Class VI highways” (RSA 231:59-a, VI).

The Board of Selectmen have established the following three prong “public need” criteria under which they would evaluate roads being considered for Emergency Lane declaration. In order to be considered an unaccepted road must meet at least one of these three criteria:

1. the road, while not formally accepted by the Town as a public road, is within a subdivision approved by the Planning Board and which was being plowed by the Town as of March 2, 2011.
2. a school bus must pass over and through the private road in route to a public road;
3. the road provides fire trucks access to a water source. This means that the truck is able to draft directly from the water source and does not mean a water source which is accessible by hoses only.

In addition, the Board has established that any private road within a subdivision approved by the Planning Board that meets the “public need” criteria, must also be in a minimum condition prior to the town assuming winter maintenance operations. The following criteria will be used to evaluate whether the road meets the “minimum condition” requirement:

1. The private road must contain one or more individually owned and occupied residences, not developer owned in existence, and constructed prior to March 2, 2011 with each residence fronting on the private way.
2. The road shall be open to the public and shall be constructed in accordance with all applicable Planning Board approvals, including but not limited to travel width and surface type.
3. The private way must be safe for plowing equipment to enter the area. The road surface of the private way must be surfaced in a manner acceptable to the Highway Agent and be in good repair.
4. The private way, at the time of plowing, must be clear of vehicles.
5. The height clearance shall be no less than (14') feet from the road surface. This is to ensure access to snowplows and emergency vehicles.
6. The roadside shoulder shall be free of any obstacles on both sides of the traveled way, including vegetation, fences, stonewalls, rocks, shrubs, trees, or any other object that may interfere with snow removal equipment.
7. There must be ample room for emergency vehicles to turn around if the road is a dead end. Space at the end of the road should be sufficient size for emergency vehicles and/or Town plows to be able to turn around in a safe manner.
8. All private roads/ways shall have a visible street sign installed and maintained in accordance with the specifications set forth in the manual on uniform Traffic Control Devices, published by the Federal Highway Administrator.
9. All owners of property on said private way must sign an agreement releasing and waiving any liability against the Town, its agents, officers, servants or employees, and agreeing to indemnify and hold harmless the Town, its agents, servants, officers or employees, from any damages whatsoever. This agreement must be executed each year.
10. Any road declared will have yearly inspections performed by the highway agent to check to see if the roadway is in an acceptable plowing condition.

If you have any question, please free to contact me at 432-7732.

Very truly yours,

David Sullivan
Town Administrator

**LETTER RELATIVE TO EMERGENCY LANE DECLARATION REQUEST
PUBLIC HEARING NOTICE
PRIVATE WAYS NOT WITHIN AN APPROVED PLANNING BOARD
SUBDIVISION**

DATE:

NAME OF PROPERTY OWNER
ADDRESS OF PROPERTY OWNER

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In accordance with the above mentioned statute, the Board of Selectmen will hold a public hearing on DATE AND TIME in the Community Development Meeting room to consider whether or not to declare this road as an Emergency Lane. As a landowner abutting NAME OF STREET, you are entitled to this official notification that the public hearing will take place and furthermore to understand that you have the right to deny permission to the town to declare the road as an Emergency Lane or to withdraw your permission any time after a road maybe declared. Such declaration must be based on a finding that “the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits of landowners abutting such lane” (RSA 231:59-a, II). Note that an Emergency Road declaration “shall not be deemed to alter the classification or legal status of any highway or private way, or to limit or restrict the authority of towns to regulate the use of Class VI highways” (RSA 231:59-a, VI).

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2. a school bus must pass over and through the private road in route to a public road;
3. the road provides fire trucks access to a water source. This means that the truck is able to draft directly from the water source and does not mean a water source which is accessible by hoses only.

In addition, the Board has established that any private road which is not within a subdivision approved by the Planning Board that meets the “public need” criteria, must also be in a minimum condition prior to the town assuming winter maintenance operations. The following criteria will be used to evaluate whether the road meets the “minimum condition” requirement:

1. The private ways must contain one or more individually owned and occupied residences, not developer owned in existence.
2. Minimum travel width of 20 feet.
3. Minimum Right of Way (ROW) width of 30 feet.
4. Surface to be graded gravel or pavement.
5. Roadway must have adequate drainage.
6. All hazards on the side of the road be removed or flagged.
7. Only sand will be used (no salt).
8. The private way must be safe for plowing equipment to enter the area. The road surface of the private way must be surfaced in a manner acceptable to the Highway Agent and be in good repair.
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12. There must be ample room for emergency vehicles to turn around if the road is a dead end. Space at the end of the road should be sufficient size for emergency vehicles and/or Town plows to be able to turn around in a safe manner.
13. All private roads/ways shall have a visible street sign installed and maintained in accordance with the specifications set forth in the manual on uniform Traffic Control Devices, published by the Federal Highway Administrator.
14. All owners of property on said private way must sign an agreement releasing and waiving any liability against the Town, its agents, officers, servants or employees, and agreeing to indemnify and hold harmless the Town, its agents, servants, officers or employees, from any damages whatsoever. This agreement must be executed each year.
15. Any road declared will have yearly inspections performed by the highway agent to check to see if the roadway is in an acceptable plowing condition.

If you have any question, please free to contact me at 432-7732.

Very truly yours,

David Sullivan
Town Administrator

CHAPTER 231 CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Repair of Highways by Towns (as of May 1, 2011)

231:59-a Emergency Lanes. –

I. Notwithstanding RSA 231:59 or any other provision of law, a town may raise and appropriate, and the selectmen may expend, money for the repair of any class VI highway or private way which has been declared an emergency lane under paragraph II. Such repair may include removal of brush, repair of washouts or culverts, or any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles. A capital reserve fund under RSA 35 or a trust fund under RSA 31:19-a may be established for this purpose.

II. No expenditures shall be made under paragraph I unless the selectmen, following a public hearing, declare the relevant class VI highway, private way, or portion thereof, as an emergency lane, and make written findings, recorded in the minutes of the meeting, that the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane.

III. In the case of a private way, notice shall be mailed to all persons known to have a legal interest in the way, 10 days prior to the hearing, and the emergency lane shall not be declared if permission is denied by any person with a legal right to deny such permission. Neither the appearance nor non-appearance of such persons at the hearing shall prevent such permission from later being denied or withdrawn.

IV. A declaration under this section may be rescinded or disregarded at any time without notice. This section shall not be construed to create any duty or liability on the part of any municipality toward any person or property. Utilization of this section shall be at the sole and unfettered discretion of a town and its officials, and no landowner or any other person shall be entitled to damages by virtue of the creation of emergency lanes, or the failure to create them, or the maintenance of them, or the failure to maintain them, and no person shall be deemed to have any right to rely on such maintenance. This section shall not be deemed to alter the classification or legal status of any highway or private way, or to limit or restrict the authority of towns to regulate the use of class VI highways pursuant to such statutes as RSA 41:11, RSA 236:9--13, and RSA 674:41, or to authorize any person to pass over any private way when permission has been denied. This section shall not be deemed to alter the duties or powers of any party under RSA 227-L concerning forest fires.