

**TOWN OF COLCHESTER
SELECTBOARD FINDINGS
AND
POLICY RELATING TO WINTER MAINTENANCE OF PRIVATE ROADS**

Background:

Since at least 1970, the Town of Colchester has provided varying levels of winter road maintenance to approximately 15 miles of the Town's 44 miles of privately owned roadways. The appropriateness of this practice has been debated and citizen advisory votes have been held many times over the years.

In March of 1997, the voters of Colchester amended the Town Charter with language to provide authority: *"To establish a policy whereby the Selectboard may determine it to be in the public interest to plow those private roads serving two or more year-round residences, which had previous to January 1, 1997, have the Town providing winter road maintenance."* See 24 V.S.A. Chapter 113 Town of Colchester Charter § 104(7).

Since the Charter change in 1997, the Selectboard has never formally determined whether it is in the public interest to plow/sand private roads, so the practice continued. It is surmised by the current Selectboard that a policy relating to winter maintenance on private roads has not been done because of the political consequences of: a) unilaterally terminating a beneficial and popular service for those residents living on these roads; or b) creating a policy that would benefit some but not all of the property owners on private roads.

In 2015, Colchester's Governance Committee recommended further examination of the private road issue as part of its review of the Charter. In 2016, the Town received petitions from some residents living on private roads not plowed by the Town, alleging discriminatory and unfair treatment by the Town because they pay taxes, but do not receive the same level of services enjoyed by citizens residing on private roads plowed by the Town prior to 1997. They suggested that the Town remedy this unfair treatment by plowing all private roads in the Town. Under Vermont law and the Town's Charter, the Town has no legal authority to expand plowing service to private roads not plowed prior to 1997. The remedy suggested is not possible without an unlikely change to state statutes giving the Town legal authority to maintain private property and to use taxpayer dollars in violation of the Proportional Contribution Clause of the Vermont Constitution.

Therefore, for the reasons above and below, the Selectboard has determined that it is not in the public interest to seek an amendment to the Town Charter, nor can a vote such as this give the Town the power to plow all private roads as it would be in conflict with Vermont law and the State Constitution.

Recent History:

Recognizing that it was under an obligation under the Town's Charter to determine whether it is in the public interest to plow private roads and based upon the 2015 recommendation of the Governance Committee to reexamine the issue, in the Spring of 2017 the Selectboard directed the Administration to address the issue of the plowing of private roads in Colchester. The Selectboard asked the Administration to examine the following issues:

1. The political history of plowing private roads in Colchester;
2. Inventory of private roads plowed by the Town and not plowed by the Town;
3. Advice from the Town's legal counsel on liability to the Town and consequential expense to taxpayers if the practice continues;
4. Input from the Department of Public Works; and
5. Confirmation from the Town's insurance carrier as to whether it would provide coverage for accidents occurring on private roads involving town equipment and personnel.

The findings of the Administration were published as a draft in August of 2017 and revised in October 24, 2017, based upon public input and Selectboard discussion. All of these findings and public input were considered by the Selectboard prior to making its final decision.

The Selectboard held public hearings on September 12 and October 2, 2017 and received numerous comments from the public on the issue of whether the current practice of plowing private roads should be discontinued, expanded, or continued in a different form. The information and public comments were evaluated by the Selectboard as part of its duty to determine whether the current practice conformed to the public interest.

On October 10, 2017 at a regularly scheduled meeting, the Selectboard determined that the plowing of private roads was not in the public interest and voted unanimously to discontinue the current practice of plowing/engaging in any winter maintenance on private roads commencing with the 2018-2019 plowing season. The Selectboard's decision was based, in part, upon the following:

1. The current policy discriminates against taxpaying residents who live on unplowed private roads. It is not in the public interest nor is it constitutional for Town policy to favor one group over another. There is no justifiable reason why the Town plows Spaulding's East Shore, but not Spaulding's West Shore. The residents of Spaulding's East Shore receive more in exchange for their property tax dollars than the residents of Spaulding's West Shore. Further, the Town is plowing and/or sanding several commercially owned mobile home parks, but not others. This is unfair and should not continue.
2. The current policy may expose the Town to liability for crashes/property damage involving Town equipment on private roads because the Town's insurance carrier, PACIF, may not cover such a loss. Any such loss and the legal defense of the lawsuit would have to be paid by the Town taxpayers.

3. The current policy may expose the Town to liability for damages involving Town equipment on private roads because the Town may not be able to assert a "sovereign immunity" defense, nor will its insurance carrier agree that claims generated as a result of plowing roads will be covered or paid by its policy. "Sovereign immunity" is generally only available to a municipality exercising a genuine government function resulting in the advancement of the general public good. Because plowing private roads is essentially a private function, the Town may not be entitled to assert a sovereign immunity defense. Without insurance coverage, the taxpayers would pay for the defense of any negligence claim and ultimately pay a judgment in a successful lawsuit.
4. The current policy may expose the Town to claims brought by private snow plowing contractors seeking to plow private roads in Colchester. The Town's plowing of 15 miles of private roads takes away business that would otherwise be performed by private contractors. Under Vermont Supreme Court case law precedent, a private plowing contractor might seek an injunction and money damages against the Town, arguing that the Town unfairly competes with the private sector. The taxpayers would ultimately pay for the defense of any claim and would pay money damages to the successful contractor.
5. The current policy is not in the public interest because it benefits property owners residing on private roads at the expense of property owners on public roads. Taxpayers living on public roads derive no benefit from the plowing of private roads because they have no legal right to use them.

Therefore, the Colchester Selectboard hereby adopts the attached Private Roads Winter Maintenance Policy:

PRIVATE ROADS WINTER MAINTENANCE POLICY

For the reasons as stated above, the Colchester Selectboard has unanimously determined that it is not in the public interest to plow and/or sand those private roads which had previous to January 1, 1997 received winter road maintenance or any other private roads not subject to that distinction.

Therefore, the Selectboard directs the Town Manager, the Town Public Works Director and the Highway Department to discontinue providing winter road maintenance to private roads in the Town of Colchester as of May 1, 2018, notwithstanding the following:


The Colchester Selectboard has determined the need for exceptions from this Policy. These exceptions are considered unique circumstances where the application of this Policy subjects the Town of Colchester, its employees, and the public to additional risks or liabilities than those associated with continuing the practice of plowing private roads per the following:

- In the event of an unforeseen combination of circumstances, or an urgent need for assistance that calls for immediate action to protect the health or property of a taxpayer, the Town shall attempt to plow any road in order to protect and serve a Colchester property owner.

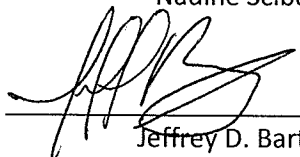
- Where the plowing of a private road is necessary to facilitate a rapid response of emergency services personnel for a specific incident to the benefit of the entire community and the general commuting public.
- To comply with a legally binding contract requiring the Town to plow government owned or private property, whereby the Town is unable to legally terminate said contract.
- To allow and facilitate the orderly and efficient process of snow removal on the public transportation system where no other practical option exists.
- In the event of any of the foregoing circumstances, the Town Manager, and the Town Public Works Director, on behalf of the Highway Department, are authorized to instruct applicable employees to plow a private road, or portion of a private road. Any decision to plow a private road or a portion of a private road is a one-time decision that shall not have any precedential effect.

The Colchester Selectboard recognizes that private roads subject to this policy will now need to be privately maintained, and that the plowing of those roadways may involve the use of heavy equipment that must travel on public roadways with special weight restrictions as outlined on the Town's Municipal Excess Weight Permit. Upon receipt of evidence that a contractor has been contracted for snow removal services for these private roads, the Town will provide relief from the special weight restrictions as appropriate. Such relief will be at the discretion of the Town after considering road conditions and proposed equipment weights, and will not be unreasonably withheld. The Town reserves the right to alter or suspend such relief in the event that contractors with overweight loads are traveling on restricted roadways for purposes other than contracted snow removal, or as may be necessary to avoid significant damage to the public transportation system.

ADOPTED BY THE COLCHESTER SELECTBOARD THIS 10TH DAY OF APRIL, 2018.



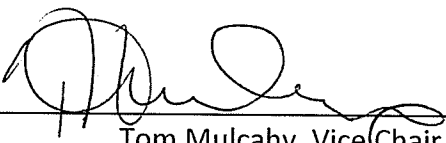
Nadine Scibek, Chair



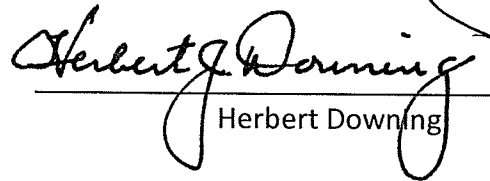
Jeffrey D. Bartley, Clerk



Jacki Murphy



Tom Mulcahy, Vice Chair



Herbert Downing