



Town of Windham

Office of the Town Manager
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To: Residents and Landowners on Private Roads
From: Barry A. Tibbetts Town Manager
CC: Town Council
Re: Town Private Plowed Roads
Date:
Hello,

You are receiving this notification because your home or property is on, abuts or is accessed by a private road which the Town is currently plowing as part of winter road services in Windham.

The Town for many years has plowed this road (as identified on the Town Plowed Private Road Map on our website <https://www.windhammaine.us/privateroads/streetmap>). based on past agreements (now expired) and in some cases with no agreements. Under Maine Law the Town cannot be placing public vehicles on private roads for service. This was decided in 1989, the Maine Supreme Court issued an "Opinion of the Justices" stating that it would be *unconstitutional* for a town to use town funds for the private purpose of maintaining a private road. Since then, Maine Municipal Association (MMA) and the DOT have been advising towns that it is not legal for a town to plow private roads.

The Council has been made aware of the issue in 2021, and a request was made to the Maine Legislature to assist the Town in a solution, hence LD 1723 was enacted to allow the Town to continue the practice (snow plowing) with certain conditions being met. The Town has 101 private ways which equates to 34+ miles.

The effect of this legislation LD 1723 was to allow the Town to continue winter plowing service on an interim basis with these requirements.

- A) Each major private road plowed by the Town needs to form a road association. If there are multiple private roads that are interconnected, each road would have the option to decide to join as one association or separate as individual road associations. This is a good opportunity for property owners to formalize handshake agreements with their neighbors.

- B) Having regular inspections by the Town (Public Works, Director) to ensure that the road meets a minimum standard for plowing vehicles. Per a special new ordinance for these private roads, the road association would ensure the minimum improvements are met each year or within the designated three-year cycle as identified by the Public Works Director. Costs for maintenance are born by the Road Association.
- C) The Town will enact a special private road plowing ordinance which identifies each currently plowed private road and the minimum road standards necessary. This special private road plowing ordinance will not require these roads to be to Town Standards for a roadway. This ordinance basically gives an easement for access on these roads for plowing.
- D) Any private road within this special classification can discontinue the town service with an association vote of 51% at any time. No re-admittance to this plowing service is permitted. No new or existing private roads will be allowed within this special legislation.
- E) When a road association agrees to the ordinance, this allows public vehicles to traverse on the road with no liability to the Town and without the road ever becoming a town way (unless the Town Council votes to accept it as such).
- F) A detailed Q and A is on our website along with additional information.

<https://www.windhammaine.us/privateroads>

In receiving this letter, you will fall into one of the two solutions listed below:

- A) If you have a home (property) on a private road with a road association and want to continue with Town plowing services, the Town will work with the road association leadership moving forward. If you want to discontinue that arrangement you should talk with your association.
- B) If you do not have a road association the Town recommends you follow the information provided on our website with particular attention to the Q and A section. Our objective is to help you to get organized with a road association and its function so we can ensure the continuation of service. All the necessary forms to organize and operate a road association are posted on the website.

In Windham we have a significant number (over 40%) of private roads that fall into this category of receiving municipal plowing during the winter for more than 20 years. We have been working with a many road association on yearly maintenance plans (about 50%). We need to bring all the roads to the same functioning position. The Town wants to respect the privacy rights on private ways with a road association while complimenting the need to offer plowing services, ensures that emergency and fire dept vehicles can reach our citizens most expeditiously.

The Town will provide a video presentation/discussion on October XX. This will be rebroadcast on our local TV channel. Prior to this the Maine Alliance for Road Associations will have a Conference on October 2, where two of the state's best road attorneys will be speaking on the Formation and Operations of a Road Association. Please follow this link for information on the

Maine Alliance for Road Associations. [Maine Alliance for Road Associations - Events \(maineroads.org\)](https://maineroads.org)

More information will be provided on the Town Website. The Town will also hold a special meeting for any interested property owners or abutters to the private way on October XX at the Windham High School Auditorium. Those attending will be required to wear a mask.

The Town wants this to be a simple transition but also has limited staff and fortunately a few very dedicated residents are willing to assist in this educational transition/setup. We are pleased to help but need your help on the non-road association roads to take the necessary steps.

Thank you for your patience and understanding in learning about this challenge and the proposed solution.