

**TOWN OF HAMILTON
BOARD OF SELECTMEN
NOVEMBER 6, 2014**

The Board of Selectmen met at Hamilton Town Hall at 5:00 p.m. on Thursday, November 6, 2014 with Scott Maddern, Marc Johnson, Jeff Hubbard, David Neill, Jennifer Scuteri present. Town Manager Michael Lombardo, Town Counsel Donna Brewer (arrived at 5:14 p.m.), DPW Director Bill Redford also present.

Call to order

Scott Maddern called the meeting to order at 5:00 p.m. and mentioned that Richard Boroff was recording the meeting.

Plowing and sanding of private ways

Scott Maddern described how the Town Manager had reviewed 1998 minutes relative to Town Meeting and ballot vote. When Town Meeting occurred a ballot vote had been scheduled for voters to decide whether the Town should plow private roads. The ballot vote was initiated by a citizen petition. A motion was made by a member of the Board of Selectman that if the ballot vote passed, that the Town not be required to plow private roads that had less than 4 houses and also imposed additional requirements on private roads to require Town plowing.. The Town Meeting vote passed by a majority voice vote. The ballot vote passed with 550 in favor and 400 opposed. This meant that the standing by-law requires the Town to snow plow certain private ways that had four or more houses on a street.

Town Manager Michael Lombardo reiterated his concern about a Board vote to establish a policy that may or may not preempt a by-law. He had researched the law with legal experts/entities where it was determined that imbedded in M.G.L. Chapter 40, Section 6(c), and the vote of the Town, the BOS has power to establish or change policies related to plowing and sanding of private ways. Town Meeting does not have power over the BOS relative to the Town plowing and sanding private ways. He noted that voters at Town Meeting may have thought the by-law was the governing principle in this matter. Lombardo suggested that the Board could maintain the status quo and recommended not rushing to change the by-law since there are other ways and roads to consider. Also, the Finance and Advisory Committee should weigh in (i.e., cost implications of plowing a driveway versus public way).

Discussion ensued about public asking the Board for reconsideration of not plowing some of the private ways that have been historically plowed for this snow season at the BOS's Monday night meeting. David Neill reiterated that he is in favor of status quo and suggested research be done to understand what private roads had been grandfathered to have plowing continue (i.e., Black Brook Road and Fairfield Drive). Lombardo commented that regardless of what the Board might have adopted in the late 1990s, Mass. General Law states that in order for a private way to be maintained by a municipality it has to be open to the public. Neill recommended that the Board not make any changes and go back to Town Meeting.

Discussion with Jennifer Scuteri was about understanding history and risk that a filing could occur with Attorney General and result could cost Hamilton money. She summarized the risks since approving votes were for plowing private ways with four or more homes although practice has continued with plowing of private ways with fewer than four homes. She noted possibility of residents paying to have private roads plowed independently from the Town who might raise the unfairness aspect and concurred with Neill about the timing for residents relative to snow season. She stressed that no one living on a private way that is being maintained by the Town can deny public access.

Jeff Hubbard was in favor of Lombardo's recommendation to move forward to plow the same five private ways that were plowed in the past given public safety factors and inconvenience to residents due to timing of approaching snow season. Discussion ensued about how residents of private ways with four or more houses would be petitioning Town officials relative to plowing and an agreement would be signed between property owners and the Town that includes terms and conditions as well as waivers for potential damage and sanding and that any private way involved in such an agreement would be open to the public. Town Counsel Donna Brewer opined that the agreement would be put in place for this winter season and the matter of changing the by-law would be brought to Town Meeting going forward.

Marc Johnson spoke to timing of notice and compliance with state law. Also, that creating a policy for roads with four houses or fewer would be difficult due to range of quality of road or driveway, although five private ways would be grandfathered for this year. He believes purpose of by-law for four or more houses was logical and should be continued.

Maddern noted that Ipswich and Essex do not plow private ways. He reiterated if the Town is going to plow any private ways then public access is essential. He agreed with

grandfathering for this year but noted that more research is necessary to determine next steps moving forward.

Discussion was on how adopted by-law offers residents of private ways with four or more homes the opportunity to petition the Town for snow plowing. Also to be analyzed is how long it takes the Town to plow private ways that it has done historically so the Finance and Advisory Committee can quantify cost. The private roads considered for grandfathering that have less than four homes and were plowed by Hamilton last year and need to go through the petition process consist of: Alexander Way, Bass Road, Dentali Road, Fairfield Drive and Pierce Avenue. Four more private ways with deed restrictions were plowed and sent a letter from the Town advising that Hamilton would no longer plow these ways including Bancroft Way, Black Brook Road, Carriage Lane, Gail Avenue and Sagamore Farm Road. Private ways with four or more homes that were plowed and sent a different letter describing need for standard petition were: Beech Street extension, Berrywood Lane, Birch Road, Don Byrne Way, Norris Road, Paddock Lane, Sunset Lane, Villa Road, and Woodland Mead.

Other private ways with four or more houses that were not plowed included: Junction Lane, Overhead Drive, and Smithwood Terrace. DPW Director Bill Redford explained that there are at least 19 private ways in Hamilton with fewer than four homes that were not plowed last year and did not receive letters. Lombardo recommended that the homes with deed restrictions could follow the same process for this year but going forward ramifications from deed restrictions have to be clarified for next year; possibly going back to Planning Board or decisions reached with property owners. Johnson noted that newer private ways built in the last decade that have deed restrictions are the result of permitting process and maintenance agreement.

Doug Smith, Fairfield Drive, was in favor of grandfathering and residents deciding if they would agree to become public and be plowed by the Town or remain private and develop a plowing solution amongst private way residents. He said Fairfield Drive had an agreement with the Town (former Selectmen and Town Administrator) to be plowed after residents expended funds to bring road to a condition where it could be plowed.

Jane Magro, Pierce Avenue, stated that going forward the Pierce Avenue residents were interested in having the road be a public way but expressed concern about standards associated with public way (i.e., width). Discussion ensued about distinction between public way access and a road being built to a public way standard (i.e., culverts, stormwater, fire hydrants, underground utilities, sidewalks) that can be waived by the Planning Board; state law requires public access. Robin McMath, Pierce Avenue, noted

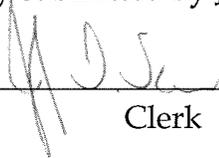
that all documentation she has for her house states she lives on a 100' dead-end public road so she had no idea that Town classifies it as a private way. Scuteri suggested that residents living on private ways interested in having their road be public should be educated on next steps in the process.

Lombardo suggested the following motion for the Board and Town Counsel Donna Brewer concurred: that the private ways maintained for the purpose of plowing and sanding for the 2013-2014 season be continued for the 2014-2015 season with the terms and conditions specified in M.G.L. Chapter 40, Section 6(c) and Sections 2-8 of the Hamilton Town By-law Chapter X, Section 12 be adhered to. Hubbard so moved. Scuteri seconded the motion. VOTE: Unanimous.

Maddern entertained a motion at 5:45 p.m. to adjourn. Johnson so moved. Scuteri seconded motion. VOTE: Unanimous.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST: _____


Clerk