SELECTMEN'S BUSINESS 6/23

6/23 (12)

TOWN OF ACTON
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Engineering Department

INTERDEPARTMENTAL COMMUNICATION

To*: Don P. Johnson, Town Manager** ***Date: June 20, 2003

From: ***Engineering Department***

Subject: Review of the 2003-04 Resident Petition for Winter Maintenance of a Private Way

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Enclosed is a revised and updated "Resident Petition for Winter Maintenance of a Private Way" for the Board of Selection to review. We have added a new criteria for plowing as requested by the Board of Selectmen during the previous winter season. The new criteria that has been added is as follows:

11. **Evidence that the existing storm drainage system has been properly maintained and is in good working condition. This includes cleaning sand from catchbasins sumps and detention/retention basins and insuring pipe lines and outfalls are unobstructed.**

12. **The road surface must have been swept to remove the sand from the previous winter.**

This petition will be offered to the residents of private ways in July as stated in the legal notice.

TOWN OF ACTON

RESIDENT PETITION FOR WINTER MAINTENANCE OF A PRIVATE WAY

We the undersigned residents and owners of the fee in or easements over the Private Way known as _____ hereby petition the Board of Selectmen to authorize the Acton Highway Department under the provision of M.G.L. Chapter 40 Section 6C to plow snow and apply sand/salt mixture for ice control on the above named Private Way during the winter of 2003 – 2004.

NAME (Please Print)	ADDRESS	LOT #

and further we the above owners and residents agree jointly and severally to indemnify and hold harmless the Town of Acton, its employees and contractors, from any claim for damage to said Private Way or from any claim for injuries to third parties arising out of any defect in said Private Way, caused by the Town, its employees or contractors. This means that you, both individually and jointly with the other owners of the Private Way, assume all responsibility for maintenance and repair of the way, whether or not the damage was caused by the Town plows, also you assume all liability for injuries to third parties resulting from defects in the way.

SIGNED:	Date:

The following information should be provided to support the petition:

1. The petition should include a copy of a plan of the Private Way and should show, by reference to deeds or otherwise, who owns the underlying fee simple interest in the Way and/or easements of travel over the Way.

2. The Massachusetts Supreme Court has ruled that "the primary purpose of such (snow & ice) removal is the benefit of the public to whose use the way is open". Please describe whether the Way is open to travel by all members of the public, or whether access and use of the Way has been closed or limited to abutters and their guests at any time over the last six years.

3. The petitioner should generally describe the Private Way in the space provided below with particular attention to how the Way complies with the ten criteria listed on Page 3.

NOTE: This petition must be signed by all owners and residents on the Private Way with the exception of condominiums where the Village Manager, Board of Directors, President of the Association, etc. can sign on behalf of all the owners provided that the condominium bylaws or vote of the unit owners has granted that individual such authority. Evidence to this effect should be included with the petition. The Way must meet the criteria outlined below and plans and/or sketches may be included with the petition to assist the Selectmen in determining compliance:

1. The Private Way must be at least twelve (12) feet wide.

2. The Private Way must have an adequate turnaround so that plow trucks do not have to back out. (The adequacy of the turnaround will be determined by the Highway Superintendent).

3. The Private Way must be paved and free of ruts and pot holes.

4. The Private Way must be open to the public with no gate or signs controlling access. (The general public must have free and unrestricted access).

5. The Private Way must serve a minimum of three (3) residences.

6. The maximum grade of the Private Way is not to exceed 10% (10 feet of rise in 100 feet of length).

7. The Private Way is not to have sharp curves or obstructions that restrict truck movements in the opinion of the Highway Superintendent.

8. The way must be plowable with standard snow removal equipment used by the Town, and sufficient space must be available along the way for snow storage.

9. Construction of the way must be completed to Town standards in effect at the time the plan of the way was approved and there can be no restrictions or conditions of record that preclude Town plowing. Partially completed subdivision roads will not be considered.

10. There can be no restriction by the Conservation Commission on the use of salt as a deicing agent.

11. Evidence that the existing storm drainage system has been properly maintained and is in good working condition. This includes cleaning sand from catchbasins sumps and detention/retention basins and insuring pipe lines and outfalls are unobstructed.

12. The road surface must have been swept to remove the sand from the previous winter.

The petitioner is further notified that the Board of Selectmen will hold a public hearing on this petition. At that time the petitioner should be prepared to supply satisfactory evidence that the Private Way complies with the above criteria and the petitioner should also be prepared to describe the benefit the general public will derive from the snow and ice removal provided by the Town. Furthermore, the petitioner should be aware that funds for removal of snow and ice from Private Ways are subject to yearly appropriation at the Annual Town Meeting.

Finally, the plowing by the Town will not create any responsibility for plowing or maintenance by the Town in future years nor will the way become through such plowing a Town way by the doctrine of prescription or otherwise. The owners of a Private Way should be aware that the General Public may gain adverse right to use of the way by the continued uninterrupted use of said way, but a Private Way can only become a Town way by following the statutory procedure contained in M.G.L. Ch. 82.