



Town of Windham

Office of the Town Manager
8 School Road
Windham, ME 04062

Barry A. Tibbetts, Town Manager
batibbetts@windhammaine.us

207.892.1907 voice
207.892.1910 fax

To: Residents and Landowners on Private Roads
From: Barry A. Tibbetts Town Manager
CC: Town Council
Re: Town Plowed Private Roads
Date: November 4, 2021

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's Road Classification Map, on our website <https://www.windhammaine.us/DocumentCenter/View/7454/Road-Classification-Map>), based on past agreements (now expired) and in some cases with no agreements. Under Maine Law the Town cannot place public vehicles on private roads for service. This was decided in 1989 by the Maine Supreme Court who 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 Maine Department of Transportation (MDOT) have advised towns that it is not legal for a town to plow private roads.

The Council was advised of the issue in 2021, and a request was made to the Maine Legislature to assist the Town in a solution for these identified private roads, 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 in this category, which equates to 34+ miles.

The effect of the LD 1723 legislation allows 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 borne by the Road Association.
- C) The Town has enacted a special private road plowing ordinance (Winter Maintenance of Designated Private Ways) 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 meet public Town Standards for a roadway. This ordinance basically allows access on these roads for plowing over a public access easement approved by the road owners.

- 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) The owners of the properties benefited by the road must grant a public access easement to the Town. This is necessary in order for continued plowing at Town expense to be constitutional.
- F) When the road association members agree to the ordinance and public access easement, 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 owners grant and the Town Council votes to accept it as such).
- G) A detailed Q and A is on our website along with additional information.
<https://www.windhammaine.us/758/Private-Roads-with-Winter-Maintenance>

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 the snow plowing 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 the plowing service. All the necessary forms to organize and operate a road association are posted on the website.

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

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 **December 7, 2021**, at the Town Hall Council Chambers. For those who wish to watch and listen from home the workshop will be televised on Windham TV (Channel 7) and broadcast on Facebook. Please send in questions. Those attending will be required to wear a mask. Please email dpwhelp@windhammaine.us or call 894-7079 with questions.

The Town wants this to be a simple transition but also has limited staff and fortunately a few very dedicated residents who are willing to assist in this educational transition/setup. We are pleased to be of assistance 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.