



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

Questions and Answers for Windham's Private and Special Legislation 1975 for Town Plowed Private Ways.

(This document has been modified to meet the law as modified and approved on April 4, 2022.)

1. Why did the Town request Private and Special legislation 1975 for Windham?

This legislation was requested by the Town to correct access rights by town vehicles, address private way improvements, liability protection, and ownership responsibility. The Town of Windham has had a longstanding policy of plowing a large number of private ways to ensure emergency access and passage to our residents on these roads; however, a 1989 Opinion of the Justices of the Maine Supreme Court determined that it is unconstitutional for a municipality to expend public resources on private property. The objective of [L.D. 1975](#) is to give us time to correct Windham's variance from this ruling that was issued years ago, so that we can continue this service with the proper legal allowances. The classification of this legislation as "private and special" means that it only applies to Windham and no other town. Other municipalities have discontinued this practice; Windham has the highest known number of Town plowed private ways being serviced in the State.

2. What is the Problem?

The Town needs a mechanism (ordinance) to address the access rights of these town plowed private ways by municipal vehicles during winter months, the responsibility of landowners to perform annual/summer maintenance during the year, storm water management drainage issues, the insurability of municipal vehicles on Town plowed private ways and the lack of local road associations to address private way needs. Current law does not provide a mechanism for addressing any of the above issues or unforeseen

future challenges. 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 way. Many towns throughout the state of Maine stopped when that occurred. Windham attempted to address these problems through agreements with property owners, but that practice was not effective. Simply put, the Town cannot legally continue to plow private ways unless the owners of those ways have given the Town the right to do so through grant of a public easement.

As you read through this Q & A, for the sake of clarity, all references “Private Ways” refer to private ways currently plowed by the town, as identified on [the list](#) of 101 roads.

3. Why did this practice start, and what is the History of Windham plowing private ways?

In short, from what has been researched, the Town started this practice many years ago to ensure emergency vehicle passage to existing properties.

In the mid 70’s to 80’s private roads located around many lakes/ponds in Windham were not accessible during the winter. This prohibited safe passage of emergency vehicles to existing properties. The Town entered into easement and/or road maintenance agreements with property owners at that time to allow the Town to plow the roads during the winter. Initially those signed agreements were up to date, but over the last 20 to 30 +/- years they have not been kept up to date. These winter maintenance agreements expired many years ago and were not recorded in the Cumberland County Registry. So, many of the original properties have new owners, and new properties created since then have owners who are not aware that a public easement was given to allow the plowing service, nor are they aware of the responsibilities of private landowners for continued winter maintenance services from the Town.

Additionally, most of the affected roads are within the watershed of a waterbody. Over recent years, the Town has been challenged by water quality issues, including surface water runoff, high levels of phosphorus and other concerns. We will make progress with some of the contamination concerns of these waterbodies/watersheds by reasonable improvements to these Town plowed private ways.

4. What is the Best Solution?

The Town sought this Private and Special legislation to allow the Town a means by ordinance to properly address the issues identified. This ordinance will identify the [101 roads](#) that are currently being plowed by the Town and provide a mechanism by which the Town may continue its longstanding practice of providing plowing services to these

roads, while leaving all other maintenance as the responsibility of landowners benefitted by the roads. This list is definitive, meaning no future private ways may be added. See the attached Private Way list and Road Classification Map. Attempting to enter into new agreements with potentially over 1,725 direct abutter landowners and approximately 400 additional abutters on subsidiary roads, off the main private ways, is not practical. The ordinance approach simplifies the solution and eliminates the need for special agreements, etc.

5. If I live on a private road which is not plowed by the Town does this affect my property?

No

6. If I live on a private way which is plowed by the Town does this affect my property?

Yes

7. What do owners on private ways need to do in order for the Town to continue plowing?

In order for the Town to continue this practice, LD 1975 requires that owners on private ways (1) grant a public easement to the Town; and (2) form a road association. The legislature approved this private and special legislation with 67% of the abutters signing an easement (see the Town's [website](#) for samples.) This must be completed before October 1, 2023.

8. What does "public easement" mean?

A public easement gives the Town the right – but not the obligation – to access a road for winter maintenance purposes. It also gives the general public the right to travel over the road. The Attorney General has opined that without public easements, the Town cannot legally justify continuing to plow public roads because this would be a use of public funds for private purposes. Note that we do not anticipate that these public easements will increase public use of these private ways. The Town will not advertise these roads as being open to the public or provide signage or any other indication on site that the roads are open to the public. That said, if owners are concerned about public rights being granted to their road(s), they may certainly choose not to grant the public easement and to forego Town-provided plowing.

9. If my private way road has a road association, do I need to do anything?

Generally, no, the Town will work with the Road Association for the continued service. The road association needs to be a formal structure not a simple verbal or written road maintenance agreement. Over 50% of the Private ways the Town plows for winter maintenance have road associations. The letter you received indicates you are on a designated way road.

However, please do help us update our records and have the association president or point of contact provide us with the

- Association Name and clarification on whether it is a “statutory” road association or registered nonprofit corporation;
- List of Directors;
- Street(s) or portion of street(s) included;
- Point of Contact; and
- Contact information including phone #, mailing address and email address.

10. If my private way road does not have a road association, do I need to do anything?

Yes, if your road does not have a road association you or someone on your road will need to take the lead to set up the road association. You should review the Town’s [website](#) for information; and begin with the step-by-step process for you or your designated representative for implementing a road association, notifying the Town and completing the appropriate tasks. The Town will honor the commitment to continue plowing for winter season 2022-2023. If the road association is not in place by October 1, of 2023, the Town will serve notice of discontinuation on the plowing services as of November 1, 2023, for winter season 2023-2024. Note that we are attempting to get authority from the Legislature to extend the time to complete this process by another year, but at present these are our working deadlines. We will do our best to assist owners in forming these associations.

11. What does a road association provide and/or do?

Road associations allow residents to have one voice in communication with the Town and vice versa. They provide a centralized decision-making forum, open lines of communication among property owners/abutters on the road, legitimize the collection of members’ dues, set up an impartial means for managing association monies, and establish a legal authority. This is the most effective and simple way for continued winter services to work. Road associations will need to provide annual notice to the Town of their designated contact’s information.

12. What is the responsibility of the residents in these road associations?

The responsibility of the residents/abutters is defined in the by-laws. The primary responsibility of property owners on the identified Town plowed private ways will be to maintain the roads to a basic minimum standard, as recommended by the Road Commissioner (Public Works Director or his designee and a designated Councilor) on an individual basis, as each road may have unique concerns. [Article III Winter Maintenance of Designated Ways, of Chapter 204 the Streets & Sidewalks Ordinance](#), establishes this practice and will only apply to the identified Town plowed private ways. All roads will be driven yearly and then assessed on a three-year rotational basis. Identified improvements must be completed per the prescribed details within an adequate and noted timeframe.

13. We have decided to form a road association. Is a non-profit approach best?

The Town will allow your group to choose the type of road association to form. But from our knowledge of options, you should consider forming a standard statutory association, as it is lower cost, involves no annual filings, quick to form, and provides the necessary tools to organize owners and make assessments for maintenance and repairs. Obtaining a legal opinion on your best options for a road association would be our recommendation. The Town will work with any type of road association or homeowners' association (HOA).

14. What are the necessary steps to get organized if we do not have a road association?

The Town will send a letter to all property owners or abutters to the identified private ways alerting them to this issue and what steps should be taken to correct it.

The following step-by-step process is recommended:

- A. Review all the information on the Town [website](#) concerning this topic.
- B. Contact your neighbors and identify a contact person or person(s) to be the team leader. The Town is willing to answer questions, and the quickest and easiest way is by having a point of contact for each non-road association group. (The Town has over 50 roads that need to have an association, so having a singular point of contact is very important.)
- C. The Lead person(s) will need to notify the residents of a road association formation meeting. Information regarding all abutters who use the private way, based on our records, are available on the Town's [website](#) for your usage. Simply decide to form a road association or not.

If yes, The Town's (designated staff person) will educate the point of contact on how to form the association. Each Private Way Road that desires to form an association to continue receiving plowing services will be provided a booklet (3 ring binder) on the various forms for a statutory road association. This will be provided to the lead person. If you want the assistance of a town representative or volunteer at a meeting, please call for availability. (207.894.7079) Also on the Town website is a PDF of this booklet/3 ring binder.

- D. Once your group has made the decision to have an association or not, then take the necessary steps to complete the decision.
- 1) If the decision is to not form an association (and thus waive ongoing town-provided plowing), simply summarize the meeting and forward that decision to the Town Manager's Office. This letter should include at least 51% of the road abutter signatures. (email: dpwhelp@windhammaine.us; or mail to Town of Windham, Private Ways Help, 8 School Road, Windham ME 04062)
 - 2) If the decision is yes, we want to continue having the plowing service with conditions, then use the provided booklet to set up the road association and get organized.
- E. If you have decided to continue the service, you will need to:
- 1) Post the "Notice of Statutory Road Association";
 - 2) Vote to establish the road association;
 - 3) Vote on by-laws;
 - 4) Vote on the directors;
 - 5) Notify the Town, and we will meet with the President of the road association or designee(s) to review the road, provide a plan of improvements over three years, establish contact information, and complete other foreseen needs over time for the road(s) to continue receiving snow plowing from the Town; and
 - 6) Register the road association with the State.

15. There is a lot of information to understand. Will the town provide legal advice or guidance to move through this process swiftly?

The Town cannot provide legal assistance to the property owners/abutters of the non-road association town plowed private ways to form the association. What the Town has arranged are two levels of guidance. We can provide a checklist and forms for a person or group to get the Road Association organized and recorded. We have limited staff and do have some volunteers to assist in this process. Another alternative solution is an arrangement we have made with our Town Attorney to assist a road group through the process of forming a statutory or nonprofit road association. This cost will be paid by the

property owners/abutters of that road association and not the Town. Owners can of course also engage with an independent attorney to provide this service (a listing will be posted on our website). Again, we do have volunteers willing to help. Either way is acceptable, the self-help approach may seem complex but is quite simple.

16. Who pays for this new road association and ongoing cost of annual road maintenance?

The residents abutting the road will pay for costs associated with the Road Association and annual road maintenance.

17. Do each of the identified town plowed private ways or areas have to form a Road Association or HOA?

Yes, this must be completed by October 1, 2023, by the property owners/abutters using this road. If your road has an HOA or road association, you simply need to have the president contact the Town Manager's office. HOA's are rare and are generally associated with newer subdivisions/condos. If you do not have a road association, the property owners/abutters to the private way have a choice between forming a non-profit road association or forming a statutory road association under 23MRS 3101-3104. If you choose not to form the road association as required by [Article III Winter Maintenance of Designated Ways, of Chapter 204 the Streets & Sidewalks Ordinance](#), the Town will discontinue plowing the road.

18. What if we (property owners /abutters) as a road group cannot find a point of contact (within our group) to organize the step-by-step process to set up the road association and subsequent obligations, or desire not to be involved?

The Maine legislature has provided the Town a specific path to formalize the continuation of the plowing services. The Town must have a point of contact (i.e., Road Association) to have a continued communication going forward. Once that time frame has expired the plowing services will be discontinued unless the Legislature has given the Town and owners more time to comply. Owners should not count on this legislative extension and should do everything possible to comply by October 1, 2023.

19. What are the private way road tallies, associations or not?

The following tables describe the scope of the plowing issue, with reference to related water bodies.

| Agreements (plowing/road associations maintenance) | | Private way road Associations | |
|--|-----|---|----|
| 16 roads | No | No Association or Information Outdated | 48 |
| 81 roads (whole and partial) | Yes | Association Registered & In Good Standing | 53 |

| A | B | C | D | E |
|--------------------|-----------------------------------|---------------------------------|--------------------------------------|-----------------|
| General Area | Miles of Town plowed private ways | # Signed Releases @ Origination | Current Homes & Owners/Abutters 2020 | Number of Roads |
| Sebago Lake | 10.22 | 486 | 575 | 30 |
| Highland Lake | 5.68 | 162 | 331 | 19 |
| Forest Lake | 3.23 | 48 | 167 | 9 |
| Little Sebago Lake | 15.78 | 562 | 694 | 43 |
| TOTAL | 34.91 | 1258 | 1767 | 101 |

20. We live on a private road not on the listing provided by the Town's website, can we have our road added to the winter maintenance list?

This cannot be done. [LD 1975](#) allows only those roads identified to be included in this process since the Town has serviced them for more than 20 years or by prior agreement. The objective for the Town is to not add any new or existing private roads to this listing.

21. What if a road or area no longer wants to have the Town plow the road and does not want to comply with the basic road maintenance?

The Road Association or property owners of the road areas can simply notify the Town to discontinue winter snow removal services in a letter signed by 67% of property owners or the Road Association president. The road (area) will then be taken off the winter maintenance listing permanently. The road cannot be placed back on the winter maintenance list.

22. Is there a listing of addresses on each private way road and a map?

Yes, our [website](#) has prepared lists which include owners of record as of August 2021 and a [searchable database](#) to our most current data on the property owners/abutters. (The prepared lists are a “snapshot” and may change if any owner sells or splits a property.) We also have a [Road Classification Map](#) available for your reference.

23. What is the cost of road improvements that may be necessary?

This is difficult to project based on many factors. That cost will vary based on profile of the road, ditching, limb maintenance, length of road, number of users, etc. The Town Road Commissioner will recommend improvements over three years to the Association, on a continuous basis. The improvements are the minimum standard for safe passage, we do not plan to have these Town Plowed private ways brought to the regular Town road standards since this simply would not work for these smaller roads.

24. Where can I find the Ordinance that was adopted regarding these Town Plowed private ways?

Please see the link on this [webpage](#) for [Article III Winter Maintenance of Designated Ways, of Chapter 204 the Streets & Sidewalks Ordinance](#). Council will be discussing this ordinance going forward and considering amendments.

25. Is my Private Road or Private Way defined in the Town Ordinances?

Yes, the private accesses (Private Ways) we are discussing were created prior October 22, 2009, around the lakes. The other two definitions in our ordinance are for roads constructed after 2009.

Definitions from our Land Use Ordinance:

Private Road, Major. A street constructed on or after October 22, 2009, that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves more than ten (10) lots.

Private Road, Minor. A street constructed on or after October 22, 2009, that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves ten (10) or fewer lots.

Private Way. A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in Section 911.M.5 “Traffic Conditions and Streets,” and that has not been accepted by the Town of Windham. Private ways do not include access ways typically referred to as tote roads or woods roads.

26. How does LD 192 “An Act to Define the Responsibilities of Residential Property Owners for the Maintenance of and Repair of Private Roads” affect Windham.

This legislation was introduced separately from Windham’s LD 1975 and applies to any town. It is basically a way for the group of property owners/abutters (four or less) on any road to complete maintenance on a private road or way and assess those cost equally to all. While this legislation provides a way to collect assessments on small private roads, it does not resolve our challenges concerning liability, ownership, point of contact, etc. and therefore does not avoid the need for a road association.

27. Is there a check off list or summary description of items the Town will be reviewing for basic maintenance?

Yes, there will be a [check list](#) that the Town will use in the rotation review of each road. The Public Works Director, Town Engineer and one Councilor will be the review team. Maintenance includes, but is not limited to, snowplowing, snow removal, sanding and ice control: grading, “crown” of road and adding gravel and surface material; installing, cleaning and replacing culverts, creating and maintaining ditches, drains, catch basins and other storm water management infrastructure including runoff; creating and maintaining sight distances on curves, intersections, straightaways; and cutting brush, trees and vegetation; moving obstacles to safe plowing standards, all in the right of ways as defined by each private way. The objective is to have a safe passable roadway addressing basic road maintenance issues for winter plowing and seasonal travel.

28. Will the street sign change from a private way sign to a public sign?

No, the road sign remains the same.

Summary –

We (the Council and Manager) understand that it is not common for a municipality to be involved in plowing private roads to the extent that Windham has for decades. We desire to address this issue with a balanced solution. Our objective is to bring the Town of Windham into alignment with the law without ceasing to provide a service which provides safe access to these identified properties and helps protect our many endangered watersheds. After considerable research and discussion, the Town does not see any other possible solution. Not addressing this situation places the community at risk on several levels. We look forward to working cooperatively with owners to put the necessary legal framework in place to continue this practice.

Q & A - FOLLOW UP QUESTIONS INCLUDING RESPONSES FROM 12/7/2021 and those answered individually since then with legal guidance

29. There are a number of properties on the right-of-way, but there is a section of road where the ownership is unknown/there is no deed. How can abutters legally sign the easement if the ownership of the road is unknown?

Legal Response: Where there is uncertainty about the ownership of the road, but we know who lives on the road and is benefitted by the road, our primary goal is to get public easements from those who live on the road and is benefitted by the road. There may be some people out there with latent interest in some of these roads, but there has been no complaint of the Town providing these winter maintenance services up to this point, and it isn't expected that people will materialize to do so. The concern mostly is to cover the Town and give the Town rights to the broader public that we need in order to defend against a challenge that what the Town is doing is unconstitutional.

30. Legal explanation of unconstitutional nature of providing winter maintenance services on private ways:

The reason there is a problem with plowing private roads with town funds is that it is of primary private benefit and while we have lots of great arguments that there are public purposes for why we have been doing this, predominantly the fact that so many of these are in watersheds we haven't been to court on the issue. We don't know if that would stand up. The Attorney General was consulted by the legislative committee who heard this bill and had some reservations. That's why we have to be extra careful and get these rights.

31. Legal explanation of what a public easement really means:

A public easement cannot just be an easement to provide the service that we are providing. As in, it can't just say the Town can enter with Town vehicles and provide maintenance because again that is just reinforcing that it's for a private benefit. There needs to be broader public access that's allowed. Unfortunately, for a lot of roads who would feel uncomfortable with that, it does mean that there has to be a grant of public access. I think there is a way to finesse that in the draft easement that we've prepared and will soon provide, that will make sure that the owners on these roads or the association will still be able to set reasonable use restrictions on the road. Not to say no one can come on them, but you could say, no ATV's, you could set speed limits, handle signage, all of that to make sure that you retain that control.

32. Does the easement need to be from under the umbrella of the Road Association, or from each individual property owner?

Legal Response: There are two kinds of road association. One is a statutory road association and that gives the owners of four or more properties that are benefitted by a particular private road the ability to essentially call a meeting and create a road association that then has the ability to make assessments for repairs and maintenance to the road.

There is another form that a road association can take and that is a non-profit corporation. That is formed like any other corporation in the sense that people are going to come together, form this entity, register it with the state, and now that entity is a legal being that can hold property.

So, a statutory road association cannot hold property because it is not a legal entity. Therefore, it cannot give an easement. The road association that is incorporated as a non-profit could do that because it is a legal entity and so, either directly by giving the road by deed into the association or by the association just voting to give that right to the Town. That form of association can accomplish this without having to go get signatures from each individual owner. But it's hardly any more simplified of a process because it is more complicated to form the non-profit corporation in the first instance and you still have to get buy-in from all of the owners. So, it's not like it will allow you to bypass this whole difficulty of going out and finding all of the owners on your road and getting signatures.

So, there are options, but one is not necessarily better than the other in the sense of doing what we need to do.

33. Is there a draft of easement language associations can use as a guide or a standard form that can be signed to grant the easement to the Town?

Yes, there are draft easement documents available for download on our [website](#).

If the road association, has assigned a coordinator for that road, they could capture signatures from each of these owners, and package that all up and provide it to the Town Manager's Office. We would take care of bringing it to the Cumberland County Registry of Deeds.

34. A concern is that some road associations may not be in a position to incur a load of legal fees. What can the town do to avoid or minimize this?

What we've tried to do on our website is provide many resources to help you with this process. We have a couple of citizens who have summer camps here who are very well versed in creating road associations and they have stepped to the plate to help those roads that do not have road associations, or if you have an association, they'll help you get organized. We've also created a binder with all the documents that you need to establish an association. This '[Resource Binder Materials](#)' link is also on our website.

After the holidays we may set up some time for our Town Attorney to be available to associations or property owners to pose questions. The future dates and times will be posted on our website and may require an appointment.

35. Can the easement be granted just by board members voting or does it need to be voted on in the annual meeting?

Legal Response: In order for a road association to be able to grant the easement in the first place, it has to be a non-profit corporation. So, this would be more like your subdivision homeowners' association typically, and that association is going to have bylaws that dictate what the association can do, what the quorum is, what kind of meetings it has, so it's hard to give a blanket answer. To generalize, usually a road association or homeowners' association will allow meetings, annual meetings and special meetings, and all matter of business can be undertaken at any of them. Usually, the budget is handled at the annual meeting. So, as long as there is quorum, there should be the ability to have a special meeting to address this, in that type of association.

36. Can the easement that we are required to provide be limited to only Town vehicles?

Legal Response: No, unfortunately, to limit it to only Town vehicles would not create the broader public access that a public easement requires.

37. On our street the transition from a town road to private road is near an intersection which currently has no notice of private road. Should the association install signage to note the start of the private road? Both roads are of the same name.

Legal Response: It is a good idea to demarcate the commencement of the private road portion of the road.

38. Can you identify any type of request the Town would consider using funds for on private roads under "The Great Ponds Act"? Or does L.D. 1975 eliminate that assistance?

Legal Response: L.D. 1975, that's our private and special act, only deals with winter maintenance. The Great Ponds Act is a statute that says that the Town may use Town funds to do repairs and its very specific about repairs on a private road as needed to protect the water quality of a waterbody. The two things are pretty distinct, and the Town would always be able to entertain a request to use Town funds, usually to address more emergent kind of erosion situations that are causing direct pollution.

39. I disagree with the "Opinion of the Justices" that it's unconstitutional for the town to use funds for private roads, I could see if these roads were sole owned roads. In the case of Basin and Hackett roads they are deeded access to a number of camps and year-round homes about (50). We all pay taxes to the town so being unconstitutional to use town funds to plow these roads, is hard to believe.

Legal Response: We understand. Everybody pays taxes and the people who are on public roads are not paying more taxes in order to get the service of being plowed. But this is the body of law that we are dealing with, and we would have to litigate the issue and potentially be unsuccessful to try to challenge that. Though again we think we have decent arguments, possibly not good enough to surmount the long-standing law on this.

40. What is the liability to the association? I realize this is being done because the town wants no liability for damage that may occur. What about if the town driver is injured or damage to the vehicle occurs? Who is responsible?

Legal Response: If the Town driver is injured or the vehicle is damaged in the normal course of plowing the road, nothing to do with the association or any defect in the road, then the Town's insurance would cover it and the Town would be responsible for the damage. If for instance the private road has allowed a large boulder to remain in the private road and the Town plow truck were able to be damaged then I believe the association, or the owners would potentially be liable. Which is actually no different than it's always been with the structure we've worked with.

41. An association has experience difficulty in finding a vendor to clean the two catch basins on their private road. Would the Town be willing to include these in its process/schedule to have them cleaned?

This comes back to the same expenditure of public funds for primary private benefit. We can't add the private roads to our maintenance schedule, but we can talk to our vendor and inquire if they can offer associations the same pricing, but bill associations directly. We may be able to help in that way.

42. One difficulty in this is that there is a patchwork of roads. Some roads require access to another road to get to their road. This becomes relatively complicated because, are you going to form an association for just your spur of the road or for the road that gets you there? Are there going to be two associations that are going to have to work together?

Legal Response: What I would say is for residents that have that kind of a situation, it would be ideal if, let's say there's one road with 6 residences, then another road with 6 and then another with twelve, if those twenty-four would get together for one association. Nobody says that just because there is Lake Road, Lake Road has to have its own association. We just need these roads, in whatever structure, to be under the umbrella of an association. Our suggestion is to start there, because we wouldn't want the end result to be that the Town has to pick up the plow for one stretch of road and then put it back down for the next one. This is a more workable solution too. It gives you more people to work with on the association, maybe not initially when gathering signatures in the first instance but makes it easier to manage everything going forward beyond that.

43. Let's say there are 100 homes on a designated private way and only 49 of the property owners want to grant the easement to the Town. What if only 51 property owners grant this permission? How does that work?

Legal Response: The way we've structured the ordinance right now, is that we have to get a public easement from at least 50% of the owners benefitted by that road. This is a way of accounting for the fact that on any large road there may be some piece of property that has been probate for twenty years and we don't know who the heirs are and to find them we have to do some comprehensive search. If we allowed just one property owner to ruin the whole thing that would be a problem, so that has been our workaround. Unfortunately, it does mean if only 49% the road would not qualify as a designated private way, that we are allowed to maintain under the ordinance as we have it written. Again, the 50%, truly to even do that, is a stretch legally, so we really want to try to stick to that because we are trying to establish that there is a public benefit here. If at least the 50% give the public easements we have a colorable right to these roads as public and I think personally gets us there, but we don't want to do it if we don't have that right from at least the majority.

Questions from Public:

44. I thought we already at one time created a public easement for the Town to plow the roads.

Legal Response: It's quite likely that a lot of the residents out here at one point or their predecessors signed something that was signed something that was called a public easement. There were administrative problems in the way that it was handled on the Town's end, some of those were not recorded and some were not public easements at all but were road maintenance

agreements which don't confer that public benefit that we need to pass the test. So, if you have that kind of document, we'd be happy to look at it and if it turns out the road has recorded easements that we didn't know about, great – that solves the problem.

45. It would be helpful if each road could be provided with what exactly we need to do, because some roads are going to have to do more or less than others.

Town Manager: We definitely can provide that. It was our plan to have the Public Works Director, one of the Councilors and the Town Engineer to drive the roads and map that out. We would be able to pull that together. It will certainly take a little time, but we can get that to you. We are trying to think in terms of a three-year plan, some items may require longer. We're going to work with what you have for your bounds and going to be fair in the assessment, i.e., tree branches, rocks, and boulders. If you have obstacles in the way that can either injure you while you're driving or one of our driver's vehicles, we're going to try to find a way around that. (Refer to our [inspection checklist](#).)

46. Can we just get a form letter for everyone to sign, is that all we have to do?

No, it has to be more than a letter. We are going to need a public easement signed by each resident if possible, that's what we really want. This document that is signed, has to be notarized. You get that back to us and we'll take care of the recording.

47. Comment by Councilor Nadeau: Barry, didn't the legislature request that all of these roads, at a minimum, have an association?

Yes, they did.

48. Comment by Councilor Nadeau - regarding resident's mention of money raised among abutters (informal arrangement) for shared maintenance of the road:

What I'm saying, is that there are two types of associations. That's the key. I live on a private road, we have an association, it's registered with the state, and it's registered as a non-profit. We have those rights that are allowed through that. A statutory association that is not built like that. There are differences there. With all the resources on the website you can find a footprint to walk through to form an association that is going to be required. If you don't have that association, we're going to have to stop plowing, because legally we can't do it.

Town Manager follow-up: So, what I'm hearing is you have an informal association, and you take care of all of this stuff, and it works great. What we're saying to you is let's just formalize it and we'll help you through that process. We have people that can help you. It's a little bit of paperwork, but once it's established it's really pretty simple. To start, call the Town Manager' Office and we can have someone provide you with resources.

49. We have one road that the Town plows, then there are several roads that come off of that that they don't plow. So, for a statutory road association, we'd probably include everybody that's on the roads that you don't plow because they have to use the road that you plow to actually get in and out. They would not have to have that public easement deed, right? Just the properties that actually touch the road that you plow, correct?

Correct. The way our statute and our ordinance read; it's required of the owners benefitted by the road.

So that's interesting actually, the other property owners do benefit from it. As a matter of just law, we would not need an easement from them in order to be able to open that road up to public use and maintenance, but as a matter of the Private and Special Law for Windham, that might require them to join in. We will have to provide additional feedback on this question. It may require an ordinance amendment.

50. Does the easement need to be notarized?

The easement gets notarized so that it can be recorded. You can have a document notarized here at Town Hall at no charge.

51. The road I live on is a dirt road. Nobody owns that road. It's in our deeds as a 50' right of way and everyone on that road has an easement to the town. So why is it considered a private road? We don't own the road. Our land goes out to it, that's where are boundaries are. How does that work?

Legal Response: There will probably be a number of roads that are in that situation, where developer, usually up to a certain point of development of that subdivision, will hold the rights to that road. Usually, and I'm generalizing, would convey that road to an association. The developer sometimes will never convey that road, to the owners, and never convey it to an association, but then sort of disappears. Who owns the road now? A lot of times it will be such and such corporation who has been disbanded since 1974, and we would have to go back and find the principals of that corporation and get a release deed from them, in order to establish the ownership of that road. Which is why I say, for our purposes, we really don't care. All I care about is that the people with the rights to that road today, and who are using that road today, are giving us the rights to do what we need to do.

52. Our deeds say that there is an easement for the Town. So, we don't really have to do anything do we?

Legal Response: Show us those deeds and we'll figure out what it all means.

53. Can I come to the Town Hall to look at the deeds?

We don't keep deeds at Town Hall anymore, they are stored at the Cumberland County Registry of Deeds. But you can research deeds online at no charge.

To simplify this, your situation may be a little bit unique, but for most people, we really think that the deed we have drafted, just conveys your interest to travel across that road to us. You're granting us that. We're not going to go back and do all the deed research because that is just a lot of money. So, you don't really need to do all of that research. You can just sign this document we have provided as well as form an association, which is a requirement of our ordinance.

54. What is the timing of all of this? When do you want the association to come see you? We have a lot of residents that are only here in the summer. What do we do?

Legal Response: So, we are trying to wrap this up by October 1, 2023 for the 2023-2024 plowing season. That's the current timing under the ordinance that the Council passed. To make sure that we don't have another season where this isn't solidified. That's our goal.

Town Manager: As soon as you want to come in we'll work with you. If you need to wait because you have some residents who aren't available right now, but plan to meet this summer or spring, work with us beforehand and we'll help you get prepared.

55. In terms of the type of association you have to form, either the statutory or non-profit corporation, either one of them qualifies, as long as you're not one of these informal arrangements?

Yes, that correct. You'll find a lot of literature out there on the Maine Alliance for Road Associations and the pros and cons. You may also refer to the Town's website.

56. I live on a one-way dead-end private road, that has a Maine state approved road association. Public easement provides public access. We have speed bumps, No Trespassing signs, Slow Sown signs, and 14 MPH signs. We have more signs than we need. The one sign we don't need is a public road. None of these signs work for the public. I've seen what happens at Raymond Beach. Now, people are putting up moorings, leaving vehicles at the parking areas and going out to their boats and living in boats in front of peoples' houses. I also have to remove people from my deck, my beach, my driveway, my picnic tables, my neighbor's dock, and party boats on docks. I don't want to live on a public road. If I live on a private way, I want to be private.

One other thing, just a question. Could you give everyone on our road a tax break or a credit, put it in an escrow account and we can hire the subcontractor to plow the road with the money in the escrow account? Don't know if that works.

Something mentioned earlier was that these private ways all go to lakes and ponds and rivers which are a higher tax bracket area. If someone wants to say that we don't pay, because we live on the water, we live on a dirt road, paved road, private road, way pay. We pay through the nose. We don't mind paying. We pay for what we have. We like what we have. We clean our own catch basins and pay someone to clean up the sand from the snow plowing. We've added new catch basins with approval from the Town and the Portland Water District this past year. If you live on a private road, you probably like it private not public. If it was called a municipal easement, not public that might be better.

Councilor Nadeau comment: The problem is that State says that taxpayer money cannot be spent on a private road. If you want to keep your road private, we can no longer plow that road. That's the way it is. If you want to keep the road private then you're going to have to start plowing that road. We realize that with some people in this group, that's going to fall out. We're just trying to explain to you that's what we're up against. The State says taxpayer money cannot be spent on a private entity. If that's the way you want to go, the easiest thing is to find someone to plow your road for you and you won't have to deal with any of this.

Councilor Jones comment: I was going to bring that forward. If anybody does not want to have a public easement on their road, that is fine, they don't have to. But they can't benefit from the Town plowing. It's their choice. You want to keep people out, I understand that. I live on a private road

that doesn't receive those benefits, so I understand what it costs to plow and maintain a road. If someone doesn't want to they can opt out.

57. Councilor Maxfield – question: Granting the public easement under this ordinance gives access to the road, not property, water or any of the rights conveyed to that road then conveyed to the public?

Legal Response: Correct. A member of the public would be able to drive down the road, do a three-point turn and leave, essentially. (Comment in audience – A three-point turn in your driveway.)

In real life they can do that today too. What we're trying to do to prevent that is to not change the street signage and also, to make sure that these easements have language that retains your right as an association to basic things to prevent that sort of thing.

58. I think I have an uphill battle to get passed the 50% threshold based on a straw poll I've been conducting. My issue is if the association decides to provide the public easement and thereby go it alone and plow themselves, where would municipal trash pickup fall? Would there still be municipal trash pickup on that road.

Trash pickup will be unaffected.

Councilor Nadeau comment: In regard to trash pickup, on the road that I live on, the Town plows it and there are six spurs off of it that plow themselves. But they are all part of the association. Once winter comes and trash pickup, the trash trucks will not go down those roads unless they are sanded. So, they all have to bring their trash out to the road that is plowed and sanded.

59. We have a what if question for you. We have a statutory association for Many Oaks Lane. The private section of Smith Road comes into Many Oaks, and they have a newly formed statutory road association that includes all spurs off the end of Smith Road. It's conceivable that they won't get 50% of the abutters giving an easement on Smith Road. Which would then leave Many Oaks and the other spurs with no path across to get to our property. My question is how do we avoid that?

Legal Response: That is by far the hardest legal and practical problem in this and how to resolve it. If we are in that situation, I think I would want to see a map of how it all works together, because when you have a town way for instance, there is a designated piece of road that is described in the deed and conveyed to the Town and accepted by the Council and everybody knows what that road is except for all the ancient once that we don't know where they came from. But when we're calling something a private way there is nothing necessarily saying that Smith Road is a private way and not the spurs of it for instance, or maybe there is a way to look at your particular area and say more or less this is all one private way and so we want to get the 50% or more from all of the owners. I think it's kind of fact specific, but hopefully there will be some work arounds there. It's a theoretical possibility for a lot of these.

60. Who is the point person at the Town to get these easement deeds?

Send them in to the Town Manager's Office. Town Manager, Barry Tibbetts, Assistant Town Manager, Bob Burns or Executive Assistant, Tammy Hodgman can be of assistance.

61. Riverside Ridge Road in relation to Lieutenants Drive – Seeking clarification to previous comment made by town plowed Riverside Ridge Road and private spur, Lieutenants Drive. And we would have to have the easement with the owners of the private road. Would the town consider not plowing roads if they are not able to do that because they intersect? Even though there is no benefit for those on Lieutenants Drive to do this. Why would a private property owner would want to sign off for a public easement, other than to say I can access Riverside Ridge, but I don't want to give access to my road for that?

I assume the Town is not going to adopt and plow that road. Riverside Ridge dead ends at a cul de sac and Lieutenants Drive comes off of that, before the dead end. Everyone on Lieutenants Drive accesses that road via Riverside Ridge. Gail Hawkes owns all the way up to Lieutenants Drive, then the property owners own the remaining part of Riverside Ridge beyond that. The 50% will be difficult to ask to the property owners to sign something that gives a public easement. I'm just curious possible land versus the 50%, where if you were chasing down a few people to get that, that would be a lot easier. 50% apply to abutters of the road

Legal Response: So, one way we can address that, which is something I'm thinking we should do, is make the 50% apply to the abutters of the road and not just everybody benefitted by it. But then for the purposes of your association, you really should try to roll those people in because they are benefitted by it and should be paying towards it.

Resident interjects: Lieutenants Drive has a statutory road association, formed several years ago, and everyone residing on Lieutenants Drive is part of the association. We're ahead of the game and Riverside Ridge has an association for their portion.

Legal Response: But even if we didn't change the ordinance, still they are benefitted by this program and should in order to continue that service which they need to access their road, they should want to sign off. They may not be as motivated as the rest of you.

62. We talk about maintenance in a public easement, the concern is that if you looked up Riverside Ridge you know that it parallels the river, and people will want to park and access the river. With a public easement they'll have the ability to do that, and that's problematic for us if we have suddenly a parking lot and we're trying to get to our space. That can happen. It's concerning.

If we are to sign easements, how does that affect other services? What about police? Speed is a problem on our road.

The Police can't enforce speed on a private road.

Councilor Maxfield Comment: This is for winter plowing. It's quite simple. If we want to keep plowing we have to do these rules. This isn't a Council thing. This isn't a Windham thing. This is the Town of Windham has been breaking the Maine Constitution for over three decades and we have to clean it up. So, we don't have a lot of options here. Our options are stop plowing or find a solution. These are the solutions that come on high. On high is up in Augusta. So, if we don't like a lot of these rules that we are talking about we have legislators in our town and all over the state that you need to be talking to, because we are just trying to put this genie back in the bottle without telling thousands of residents, a service that you've had for decades is gone immediately.

A lot of us sit on those same roads and we're all in the same bucket, and Windham with 50% private roads we're an anomaly in the State which is why we had to work with the legislature and we're lucky to have a town manager and team that was able to get that done. Please keep in mind, we fill up this room lots of times with ideas that the Town Council comes up with and that heat we can take, but this is us trying to fix a problem that needs to be fixed because if it doesn't, actually as taxpayers we're all opened up to more liability not fixing this problem.

63. ...Three decades. I don't think the A.G. is knocking on the door threatening litigation to the Town because you're using public funds or public tax money to plow private roads. If that was actually going on, I think we'd hear a lot more about that.

Councilor Nadeau Comment: Wait a minute, we stood on our head to get this legislation through to prevent the stoppage of this. The legislature at the very beginning was not in favor of this. They wanted us to cease and desist. It took a lot of work to get this private and special law for Windham through just for us, so that we could maintain this. The deal with the whole thing is, it was a legal liability that were assuming for years that we had to put a stop to. The only way we could put that stop to it was to get that legislation through the legislature. That's why they gave us only one year, in fact it's less than one year because we have to report to them in February, and they are looking for 50% compliance, or they might pull the rug out from under us. They gave us two years to finish the whole task, but we have to show a real good footprint at the beginning in February. A lot of the complications your mentioning, we can't do anything about because we don't have that control. The only thing we can do is continue doing what we're doing.

Councilor Maxfield Comment: And to boot, we went to the A.G. with our first pass of the ordinance and the law that went to the State. Our legal counsel, staff, the manager, the council we threw the whole kitchen sink and the whole kitchen at them. We have a document that came back from the Attorney General's Office that said, "Nope, nope, nope, nope, nope." Finding a public benefit to these roads is our only potential option. Still, not even a guarantee that the state or legislature will sign off on that. If we're going to save this for what it's been for the residents who have been provide these services, these are our options.

So, no they're not kicking our door, but what if a plow truck rolls over on your road this winter and someone gets hurt or injured. Who's responsible?

Councilor Nadeau Comment: Our insurance won't pay for it.

Councilor Maxfield Comment: These are the types of things we have to look out for. Each one of us are taxpayers too and there's another side of the coin that we pay on, it's not just plowing. We pay for accidents or legal liability.

Legal Response: There is also a range of taxpayers in the town who would love to challenge the use of their tax money for this purpose. This is to protect against that kind of challenge as well. The other thing I wanted to say the legislature is frankly very sick about hearing about private roads. Every year there are one or two bills about private roads, and the reason that there's never been a comprehensive solution that lets towns step in but maintain private control, is that most towns are the complete opposite of Windham. They do not want the responsibility to plow private roads and they would fight and have fought tooth and nail against that kind of legislation. So we are in the unique position of being a town that is trying to continue this practice, and that is why we had to get

a private and special law, because frankly there is very little change that there is going to be a global solution to this kind of thing.

64. Is there any thought from the town of adopting some of these roads and making them public roads?

Councilor Maxfield Comment: Do you want to pay more taxes? I mean that's the question. We could adopt every road in here, we just have to pay for it.

Councilor Nadeau Comment: I was a councilor that drove down many of these roads for years with Doug. The majority of these roads are not maintained at all. They don't meet any space needs; you know they're not fifty feet. This is also a way for these roads to have people put skin in the game for what they get out of it. The plowing service and get these roads up to some type of standard. As far as accepting them, none of them meet the standard that the Town has.

Measure your road, and side road, turn around and get an estimate for what it would cost to get it plowed and sanded. Tell people if it doesn't get done like that, they have to take their trash out to River Road. Get those things, then see how many people sign on the dotted line really quick.

65. There are a number of people who have to sign the easement document. If I have 25 people in my association, 15 sign, how many signatures are required to be notarized? (This answer has been modified to meet the law as modified and approved on April 4, 2022.)

Legal Response: You want to get as many as you can. It doesn't require all twenty-five. It's 67% or more. The legislature identified this number to be 67%. You are in a better position as individual associations and we are in a better position as a town if everybody really does their part to try to get 100%. If you have a couple of stragglers so be it, but the goal should be 67%.

66. Our sign states that it is private. Can we continue to leave that on our sign?

Yes.

67. My attorney also stated that if we do a homeowner's association, we need 100% participation. If we form a statutory association, is that correct that we only need four homeowners? It would behoove us to form a statutory association.

Yes.