

**TOWN OF HAMILTON  
BOARD OF SELECTMEN  
EXECUTIVE SESION  
NOVEMBER 3, 2014**

The Board of Selectmen met at Hamilton Town Hall at 9:13 p.m. on Monday, November 3, 2014 with Scott Maddern, Jeff Hubbard, David Neill and Jennifer Scuteri present. Town Manager Michael Lombardo and Town Counsel Donna Brewer also present.

**Discuss legal advice on Town snowplowing and sanding of private ways**

Town Counsel Donna Brewer summarized how the Town does not have the legal right to suspend or ignore the by-law related to snowplowing and sanding of private ways in Hamilton. The Town has been ignoring the by-law since 1998. A provision under the law allows citizen taxpayers to challenge any appropriation for any expenditure of public funds if not in accordance with the law.

Brewer noted that there are some citizens who are unhappy that some of the Town's private ways have been plowed. The issue arose because one of the private ways being plowed has a resident who told a little girl riding her bicycle that she had to get off the road that it was private and not open to the public. The child's parent has questioned if the public is not allowed to use the private way why are taxpayer dollars being used to plow the street. Brewer opined that the Town has the right to stay with the status quo if the Board makes a policy decision to do so; however, this is not in accordance with the law. If the unhappy homeowner gets together with others a lawsuit could be filed and decision challenged forcing the Town not to plow the private way. Jennifer Scuteri mentioned that she had been made aware that other neighbors in the area are unhappy because they too have had their children on scooters and bicycles kept off private way.

Discussion ensued about how some of the residents at the Selectmen's meeting expressed concern about public health and safety but they are not allowing the private way where they live to be open to the public. Discussion addressed how the by-law specifies that in order for a private way to be plowed by the Town the private way has to be open to the public and there has to be a minimum of four houses on the road. Brewer opined that discussion is on modifying the by-law in how it is enforced because some of the private ways that have been plowed by the Town have less than four houses, and some of the roads with more than four have not been open for public use. Discussion was on how the Town officials should study this and potentially change the by-law. The related statute does not put any minimum number of houses on a private

way. The requirement is if the road is going to be plowed by the municipality it has to be open for public use. Discussion was on if the minimum number of houses requirement is no longer used, private ways with one house would then be plowed by the Town. Also reiterated was the importance of a private way being opened to the public if it is going to be plowed by Hamilton. Discussion ensued about the actual time it takes to plow the private ways (i.e., 20 minutes per road) and cost to the Town.

Also noted was if a private way has four or more homes and no deed restriction paperwork could be developed by Hamilton to petition the Town to continue plowing or if residents of a private way that has not been plowed to date by Hamilton follow this process then the road could be plowed. For private ways with four or more houses and deed restrictions, the by-law is permissive enough that if the process is followed and agreements are in place the Town could plow these roads as well but the Planning Board or Registry of Deeds may have to be involved. For the private ways with less than four houses the Town should not plow those roads to comply with the by-law.

Brewer opined that for situations where there are houses with deed restriction, or more than four houses and the residents are willing to sign an agreement, the Town could plow the private way without waiting to go through the Planning Board. Language in an agreement would call out that deed issues have to be clarified.

Discussion addressed the five private ways in Town that have less than four houses that the Town has been plowing and it should not be doing so. Town Manager Michael Lombardo stated that the Selectmen did not have the authority to contravene Town Meeting to continue to have these private ways plowed. Discussion ensued about how the Town Manager cannot proceed under the current by-law to have those five private ways plowed that have less than four houses. Brewer opined that the Selectmen have the right to make a policy decision that could override or disregard what the law says (although this could not be done legally). There are implications about taxpayers suing although suit is unlikely, and for Town Manager not following the law.

David Neill recommended the by-law be reviewed and this issue be taken to Town Meeting. The following private ways in Hamilton that have less than four houses are: Alexander Way (2), Bass Road (3), Dentali Road (2), Fairfield Drive (3), and Pierce Avenue (3). Jeff Hubbard concurred that the problem should be taken to Town Meeting, and suggested that due to the precedent of plowing already occurring and time of year the plowing of these private ways should continue for this year alone. He said moving forward if a road is being used privately then it cannot be plowed by the Town. Selectmen stated that private ways have to be open to the public in order for Hamilton

to plow them. Discussion ensued about if Town plows the five private ways this raises an issue if the 19 other private ways in Town have residents requesting Town snowplowing. Lombardo stated that if the Board creates a policy to allow plowing of private ways with fewer than four houses to occur relative to the by-law, he would seek legal advice about how this could impact his position as Town Manager.

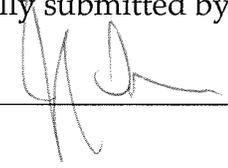
Brewer opined that the remedy to be in compliance with the law once the Town is aware of non-compliance is to stop plowing so the Town will not get sued. She added that it is unlikely that the unhappy residents would sue Hamilton and noted that the Town Manager has zero exposure legally since the policy decision would be done by the Selectmen, and Mass. Tort Claims Act protects the Town Manager. Lombardo referred to how the Special Act for Town Manager form of government defines times when he could be contrary to the Board's decision in his role as Town Manager.

Discussion ensued about how the policy decision by the Board would be published, that there would be political ramifications as well as the fact that the town of Essex just decided not to plow any of its private ways. Lombardo noted that he would speak to ICMA's Ethics Commission to seek legal guidance relative to his position on the matter. Discussion was on how a Special Town Meeting could not be held until March to address this issue. Lombardo described how historically throughout the country (even in Massachusetts) municipalities have not provided services for private ways.

Discussion ensued about the importance of the Selectmen developing a solution to notify residents so they can plan for the plowing season. Hubbard and Neill recommended a vote to allow Town plowing for this snow season, and suggested retracting the letter. Discussion was on how the Town officials could draft a petition for five private ways currently being plowed that have less than four houses for those residents to sign. The Board decided to meet on Thursday, November 6 at 5 p.m. to discuss the issue further including the other private ways in Hamilton relative to Town services and following the law as well as to learn what Lombardo had investigated on the matter. The Board reiterated how Town Meeting needs to address this issue.

Maddern entertained a motion for the Board of Selectmen at 9:47 p.m. to adjourn from Executive Session. Hubbard so moved. Neill seconded the motion. Roll call vote: Scuteri, yes, Hubbard, yes, Maddern, yes, Neill, yes.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST: \_\_\_\_\_  


Clerk