

ISSUE PAPER SERIES

Protecting Town Roads From Snow Plowing Demands: A Checklist

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NEW YORK STATE TUG HILL COMMISSION

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The Tug Hill Commission Technical and Issue Paper Series are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The Technical Paper Series provides guidance on procedures based on questions frequently received by the commission. The Issue Paper Series provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission. Please call us or visit our website for more information.



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Protecting Town Roads From Snow Plowing Demands: A Checklist

Background

This paper is intended to outline reasonable measures a town can take to limit its responsibilities to plow seasonally used roads. Towns face an uncertain legal climate with regards to the plowing issue, so it would be prudent to take advantage of every means possible to protect against land-owner plowing demands.

There are several reasons that towns choose to keep some roads unplowed:

Fiscal Limitations – Most unplowed roads are in a very primitive condition, never intended to be snow plowed. They lack the necessary geometry, width and surface treatment to be plowed. It has been estimated that many Tug Hill roads would cost over \$100,000 per mile to be reconstructed to a plowing standard. The scattered residential development of these roads would never provide the necessary revenues to offset these capital expenses alone, much less the ongoing plowing and continuing road maintenance costs and other community services demanded by residents. (See *Cost of Development* paper at the commission's website:

<http://www.tughill.org/wp-content/uploads/2011/10/CostOfDevelopment2006.pdf>)

Physical Limitations of Rights-of-Way – Virtually all unplowed roads are prescriptive highways - easements by the public for travel purposes only. They are limited to the width of the highway actually used as a travel way. Widening roads to a plowable width would usually necessitate encroaching on property outside the existing travel way, and require either voluntary dedications by adjacent landowners or condemnation and purchase by the town. In many cases, seasonally used roads traverse or border properties of the State of New York, making road widening either extremely difficult, if not impossible.

Recreational Trail Disruptions – Many miles of unplowed roads serve as winter recreational trails used by snowmobilers and skiers. Plowing many of these roads would disrupt critically important trail corridors, many of which connect key regional trail systems.

Environmental Connectivity Issues – Many parts of the Tug Hill region are vital to wildlife species connectivity from area to area on the hill, as well as with the adjacent Adirondack region. One of the issues identified as important for safe species travel and connectivity is the narrowness of the roadway and the proximity of suitable vegetation from side to side on the road. Widening and plowing roads will have a negative impact on connectivity.

A note on seasonal road designation: Many towns designate seasonal use roads through the provisions of NYS Highway Law Section 205-a, and this is often incorrectly thought to be insurance against land-owner demands to plow. Seasonal designation is a statement by the town highway superintendent that the town does not intend to plow a particular highway segment until a legitimate demand to plow has been made by a resident or business located on the road. Both the statute and the case law, however, make plain that any demand placed upon a town to plow a road by a residence or business along the road must be acquiesced to under this provision of law, and thus provides no protection for the town against plowing demands by businesses or residents.

Planning Activities

There are some planning activities that would be useful to undertake to provide a sound, rational basis for limiting snow plowing on designated roads.

1. Road Map

It is important to inventory the roads that the town has current responsibility for. Usually the annually updated *Comprehensive Highway Improvement Program (CHIPS)* inventory is an excellent guide to existing town roads. But sometimes these lists are missing roads, and are not useful guides to determining the status of what have been locally considered to be abandoned roads.

Often, former roads that were prescriptive highways and that have been abandoned have not had their abandonment officially recorded in the town records, or the recording has been lost over time or destroyed. Revisiting the road inventory and adopting a map of the town roads through the Official Map statute, NYS Town Law Section 270, which “shall be final and conclusive with respect to the location and width of streets and highways...,” can help clarify the existing road system. The official map may then be used to document and record the abandonment of any former road segments not shown on the map.

The town may also wish to consider pursuing a qualified abandonment of all eligible roads. Qualified abandonment would allow the former road right-of-way to be traveled by the public, but remove the road from the town highway inventory and any responsibility for plowing and maintenance.

An official road map can also be a useful part of a town comprehensive plan (see below).

2. Low-volume Road Designation

Once a complete inventory of the existing town roads is completed (i.e. road map), it’s important to classify them according to the standards of the *Local Roads Research and Coordination Council Manual: Guidelines for Rural Town and County Roads*. This manual is used to classify roads into six low-volume road classifications. Two of the six low-volume road classifications may be eligible for road maintenance regimes that do not include winter plowing, these being the agricultural land access and the recreational land access classifications. Classification of roads into these two classifications is a prelude to establishing them as minimum maintenance roads by local law.

Low-volume road classification can also be useful as part of a town comprehensive plan (see below).

3. Comprehensive Plan

A comprehensive plan adopted pursuant to NYS Town Law Section 272-a can provide a rational basis for the zoning measures which control land use along the road system, and the reasons for limiting the snow plowing of certain roads segments. Such a plan may be instrumental in providing legal support for the provisions of local laws regulating both the road right-of-way as well as land along the roadway. A plan may provide a rationale and support for low-volume road designations,

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seasonal use designations, and minimum maintenance road designations and guidance to zoning changes, variances and special use permits that affect both land use along roads and road designations.

Regulatory Activities

1. Minimum Maintenance Road Law

Minimum maintenance road designation as described in *Local Roads Research and Coordination Council Manual: Guidelines for Rural Town and County Roads* allows towns to control maintenance regimes for designated road segments, including snow plowing. This designation may be applied by local law to low-volume roads classified as agricultural land access and recreational land, and upon notification of adjacent property owners.

2. Seasonal Use Zoning Law

While a minimum maintenance road law controls the maintenance regime of the roadway, a zoning law adopted pursuant to Article 16 of the NYS Town Law is a tool to control the use of land ADJACENT to the roadway. Most rural communities wish to allow uses such as seasonal camps along unplowed roads, and generally wish to issue zoning permits for them and allow them to thrive as long as they do not become a year-round plowing burden. Zoning laws can be tailored to allow new uses along unplowed roads by defining them as seasonal activities that do not require a plowed road for access.

Uses predating any revised zoning measure are granted constitutionally protected nonconforming status, and may remain, although often with some restrictions. Such nonconforming uses may still remain a snow plowing burden in the future if they have not been initially approved as a seasonal use. (See Appendix A)

3. Highway Access Law

The interface between the roadway and the land along the road may be controlled through a highway access law adopted pursuant to NYS Town Law Section 130(7-a). Such a law may require town approval of driveway entrances to property adjacent to a road, and reinforces enforcement of zoning requirements. This regulatory tool provides the town and property developers greater flexibility in that it may be used to allow year-round land use permits for uses having access to both minimum maintenance and year-round roads, as long as the access is only to the year-round road. (See Appendix B)

4. Subdivision Road Controls

A subdivision law adopted pursuant to Article 16 of NYS Town Law may ensure that new roads being laid out in the town are either privately owned and the responsibility of the subdivision's land owners, or are dedicated to the public and designed and constructed in such a way that they may be easily and efficiently plowed by the town. A subdivision law allows the town to review and approve the geometry, width and construction of subdivision roads, and require a performance guarantee before lots may be sold. Such an approval is important even for roads not immediately

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being offered for public dedication, as it protects the town in the case of unforeseen future pressures to accept subdivision roads as public highways.

Additional Resources

New York State Statutes

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

NYSDOT Local Highway Inventory (pdf)

<https://www.dot.ny.gov/highway-data-services/lhi-local-roads>

NYSDOT Local Highway Inventory (Excel spreadsheet)

<https://www.dot.ny.gov/divisions/engineering/technical-services/highway-data-services/inventory-listing>

Guidelines for Rural Town and County Roads – Local Roads Research and Coordination Council Manual

<https://cornell.app.box.com/clrp-pb-mgrtcr>

Highway Standards for Low-volume Roads – Cornell Local Roads Program

(includes a model local law for designating low-volume road classifications)

<https://cornell.app.box.com/clrp-pb-hslvrnys>

Questions and Answers about Low-volume Road Designation – NYS Tug Hill Commission

<http://www.tughill.org/wp-content/uploads/2011/10/QuestionsandAnswersAboutLowVolumeRoadDesignation2003>

Procedures for Implementation of Low-volume Roads Designation – NYS Tug Hill Commission

<http://www.tughill.org/wp-content/uploads/2011/10/ProcedureForImplementationofLowVolumeRoadsDesignation2003.pdf>

Cost of Development – NYS Tug Hill Commission

<http://www.tughill.org/wp-content/uploads/2011/10/CostOfDevelopment2006.pdf>

Comprehensive Planning – NYS Department of State James A. Coon Local Government Technical Series

https://www.dos.ny.gov/lg/publications/Zoning_and_the_Comprehensive_Plan.pdf

Appendix A. Model Seasonal Use Zoning Classification

Amendment to the Town of _____ Zoning Law
Seasonal Use Classification

Amend the Town of _____ Zoning law as follows.

Add the following definitions:

Use, Seasonal: A use which will not have access to a snow-plowed or winter maintained public road or be provided with vehicular public services such as, but not limited to, emergency services, school busing or postal delivery during the winter snow season.

Minimum Maintenance Road: A road designated as minimum maintenance by Local Law No. ___ of 20__.

Add a new Section ___ as follows:

Section ____ . Seasonal Use Classification

1. Purpose: The purpose of this regulation is to provide for the reasonable use of recreational, agricultural and forestry properties which are accessed solely by minimum maintenance roads. This regulation allows for the reasonable use of such lands for seasonal uses without the prohibitively expensive public cost of providing for wheeled vehicular access through the snow-plowing and the winter maintenance of minimum maintenance roads.
2. Seasonal use classification is a use classification in addition to the use classifications of Section ___ of this law. Application for seasonal use classification may be made for any use which intends to have its principal access to a minimum maintenance road.
3. For a use to be established with its principal access to a minimum maintenance road, it must, in addition to the allowed use requirement of Section ___ of this law, also be classified as a seasonal use.
4. Where a use has access to both a minimum maintenance road and to a non-minimum maintenance road, such use shall have its principal access to the non-minimum maintenance road unless classified as a seasonal use.

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Appendix B. Model Driveway Installation Law

Town of _____ Driveway Installation Law

Section 1. Purpose

The Town Board of the Town of _____ finds that the improper construction of private driveways intersecting town highways may be hazardous to the public and poses unnecessary expense to the town and that installation of driveways according to specific standards as monitored by the Town of _____ Highway Superintendent will be in the best interests of the health, safety and welfare of the citizens and property of the town.

Section 2. Title

This law shall be entitled the "Driveway Installation Law of the Town of _____."

Section 3. Permit required

No person, owner and/or contractor shall hereafter install a driveway opening onto a town road without first obtaining a driveway installation permit from the Town of _____ Highway Superintendent.

Section 4. Application procedures

- A. An application in writing shall be filed with the Town of _____ Highway Superintendent upon application forms which he shall prescribe, which application shall state the nature, location, extent and purpose of the proposed driveway opening, and the use of the property as identified on any coincident zoning application.
- B. All applications shall include maps and plans which shall indicate the location and boundaries of the subject property for which a permit is requested and shall show the location, elevation, size and type of all existing and proposed driveways and buildings, underground utilities, service facilities, parking layouts and drainage facilities.
- C. It shall be the responsibility of the applicant to arrange a meeting with the town highway superintendent at the site of the driveway opening.

Section 5. Zoning Permit

- A. A driveway installation permit under this law shall be applied for coincidentally with the application for a zoning permit to commence the excavation for or the construction or erection of any structure regulated by the Town of _____ Zoning Law, as amended.

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- B. No driveway installation permit shall be issued for any use on a minimum maintenance road as established in Local Law No. __ of 20__, as amended, unless it is classified as a seasonal use pursuant to the Town of _____ Zoning Law.

Section 6. Fees

The application shall be accompanied by such fee or fees as the town board shall prescribe from time to time by resolution not exceeding the approximate reasonable cost of processing and reviewing the application and making any necessary inspections.

Section 7. Violations and Penalties

Any person, firm or corporation who or which shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than _____.