

Pontoosuc Roads and Rights-of-Way Committee Report #1 draft 1/4/14

Recommendations on Private Rights-of-Way Leading to the Lake in Pontoosuc Subdivisions

In March, 2012, the Lanesborough Board of Selectmen established a Committee to analyze issues with the roads and rights-of-way in residential neighborhoods on the west and north shores of Pontoosuc Lake. Committee members: Bob Barton, Bill Gero, Lee Hauge, Ron Tinkham, Jack Hickey, Nancy Wituszynsky, and Pat McColgan. This report contains the Committee's conclusions/recommendations for private/neighborhood rights-of-way (RoWs) in the Wilbur (Pontoosuc West), Dunreath, Dunreath Annex, and Gunn's Grove Subdivisions. Report #2 deals with the roads in all 4 sub-divisions.

Fundamentals:

As the committee worked on this project, several legal and historic fundamentals emerged that are important to summarize:

- In the sub-divisions other than Gunns Grove, nearly all RoWs we reviewed were/are "private" in the sense of being owned by individuals, not the town. All of these were/are for use by residents of a certain subdivision, not by 1-2 specific property owners, nor by the public at-large. We now call these "neighborhood" RoWs.
- Rights-of-way may be indicated on a subdivision or tax assessor's map, but to be "real" and legal, they must be described on the deeds of properties whose owners would have use of the RoW.
- RoW's (and other "private" ways) on a subdivision or assessor's map may appear to belong to the community or town, but according to MA law (M.G.L. c.183, s/s 58), they belong to the abutters, typically to the mid-point of the RoW unless otherwise specified in the deeds (there are cases where deeds indicate one abutter owns the whole RoW).
- Assessor's maps cannot be relied on to confirm legal boundaries of a property. This requires "meets and bounds" detailed in the relevant deeds.
- Because of private ownership, Lanesborough (or any town) has little to say about what goes on in/with this type of RoW. This reality has kept our recommendations pretty simple.
- Despite the private property issue, 1988 Lanesborough annual town meeting passed a By-Law requiring these RoWs be usable as Emergency Fire Lanes (detail below). While there are repeated issues of "blockage" with some the "Wilburs" RoWs, this isn't a regular issue in the Dunreaths.
- The committee found no private rights-of-way leading to the lake in the Gunn's Grove subdivision, however, the extensions of private/unaccepted streets Aqua, Superior, and H go to the lakeshore, and we suggest these be treated as neighborhood rights-of-way. These are discussed in Report #2.

1988 By-law: Parking on Private Ways: Fire Lanes

- A. It shall be unlawful for any operator to park or leave a vehicle unattended in a private way which furnishes means of access for fire apparatus to any building, and upon which the fire department has by written order, authorized placement of signs indicating that such activity is unlawful.
- B. Any person violating this By-Law shall be punished by a fine of \$10.00.
- C. This By-Law shall be enforced by the chief of police and his designees in accordance with the provisions of General Laws 20A1/2, Chapter 90.

What about the "Wilburs" Rights-of-Way?:

According to approved subdivision documents, the Wilbur RoWs are 10 ft. wide and extend from Narragansett Ave. to the lake. Abutters own to the centerline of each RoW (M.G.L. c.183, s/s 58). The subdivision docs. state the RoWs are for use by residents of

the sub-division for customary foot traffic. After the original subdivision, however, one or more of these lots were split, forming a “lake-front” lot and a “road-front” lot (see attached map). The lake-front lots use the RoWs as their access driveways. These and/or certain other Wilburs RoWs have reportedly been used occasionally for beach or boat launch parking, and in the winter by snow mobiles, 4-wheelers, or motor cycles/dirt bikes.

What about the Dunreath RoW's:

According to subdivision documents, there are three RoW's in Dunreath subdivisions:

1. A 10 ft. wide RoW, the eastern edge of lot R in the Dunreath subdivision map. This runs perpendicular to Katherine St. starting at its eastern, “paper” end, and runs southeast into the lake. It is reserved “for the benefit of Arabella Baglee, her heirs and assigns, and her former grantees, ... for all the usual purposes of a road or way...” Today, this list of beneficiaries may include several property owners in Dunreath Park and Dunreath Annex, but this needs verification through deed review, property-by-property. However, this narrow RoW is today mainly a drainage ditch and seemingly not useful for passage, so may not merit much research effort.

2. A 10 ft. wide “extension” of Grove Ave. from Narragansett Ave. into the lake, shown as “Lot C” in the subdivision map (in 2013 part of McCluskey property). This RoW is to be available for residents of Dunreath Park whose deeds provide use for “the usual purposes”, including vehicular passage (presumably for boat launching/hauling). This RoW might also be usable by certain owners in the Dunreath Extension, but we did not find mention in the few deeds we researched.

3. The 50 ft. wide extension of Orchard Ave. from the eastern edge of Katherine St. to the lake. There is a defensible belief that the final 10 ft. of this extension (closest to the lake), has a different owner than the section closer to Narragansett. This and more westerly sections of Orchard are presumably owned by the abutters (M.G.L. c.183, s/s 58), though this should be researched fully when any significant changes are considered. Ownership aside, Orchard Ave. east of Katherine, all the way to the lake is a neighborhood right-of-way based on language in deeds we reviewed (e.g. Baglee Ave. property transfer from Ponusky to Appleton).

Wilburs Drainage/Run-off Crisis:

There are numerous dirt roads uphill from the Wilburs RoWs. Silt drains downhill, across Narragansett Ave., and across the downhill properties into the lake. The resultant ecological damage was identified in the *Pontoosuc Lake Watershed Management Plan* as the top priority requiring action. In years past, the town installed catch basins on the west side of Narragansett Ave. at the base of several of the “offending” streets and, in some cases, ran a drain pipe under-ground in the RoW, to the lake (see map). This “direct” drainage-without-settlement system may actually worsen run-off damage. Further, because the RoWs are private property, the town should have secured easements to allow these drainage installations, and this was apparently not done.

Recommended actions:

1. Administration—Selectmen should appoint a member of Town Hall staff as Administrator for Lake Area Roads and Rights of Way. This person would be knowledgeable about this committee's reports and the general history, be an information source for residents, assure implementation of actions or policies approved by Selectmen, receive or be copied on all information requests and complaints about these roads and RoWs, and support resolution of complaints, including assuring that Lanesborough Police enforce the 1988 By-law requiring Private Ways to be kept clear for emergency purposes.

2. Communications—See Report #2.

3. Tax Assessments—Over the next 1-2 years, Town Assessor should review abutter/owner lot dimensions to assure consistent evaluation. Although we recognize that property valuation decisions are solely the responsibility of the assessors, it is the opinion of this committee that the area of a parcel which is a RoW is typically not as valuable to the property owner as the rest of the parcel, and may in-fact be more of a detriment than an asset. Therefore excluding the ROW in calculating the taxable area may be appropriate. We believe this has been the practice in the past for most, if not all the parcels which include a ROW. A better alternative might be to include the ROW area, but assign it a low value. We must leave final decision on treatment to the assessors.

4. Storm-water run-off—In coming years, Lanesborough needs to respond to the lake-area run-off/silting problem. The solutions are unclear at this time, but they will likely require the town to modify the current drainage system that uses several of the ROW's. We recommend the town develop a Comprehensive Technical Plan to deal with this issue as well as others. See Report #2.

5. RoWs as driveways—There are cases where lots on Narragansett Ave. were split, resulting in a lake-front lot with the only vehicle access being over the abutting RoW. Presuming the town approved splitting a particular lot, we recommend the town stay “mum” on the driveway issue, but aggressively enforce the 1988 By-Law prohibiting parking in RoWs.

6. Signage—We recommend new signage for the Wilburs RoWs, but nothing for Dunreath. As provided in the 1988 By-Law, Selectmen should request a “written order” from the fire department authorizing placement of signs indicating that parking is prohibited (police should be advised to enforce if/when called). We recommend the town purchase these signs and have our Highway Department install them near the “head” of each ROW, on the “public shoulder” of Narragansett Ave., as is done with other signs placed by the town. Signs to read:

Use of this Way limited to sub-division residents

No motorized traffic of any kind.

No parking/blocking,

per order Lanesborough Fire Dept.