

Pontoosuc Roads and Rights-of-way Committee Report #2 draft 1/4/14

Recommendations on Roads in the Wilburs/Pontoosuc West, Dunreath Park, Dunreath Annex, and Gunn's Grove Subdivisions

In March, 2012, the Lanesborough Board of Selectmen established this Committee to analyze issues with roads and rights-of-way in neighborhoods on the west/north shores of Pontoosuc Lake--the Wilburs/Pontoosuc West, Dunreaths, and Gunn's Grove Sub-divisions. 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 Roads. Report #1 deals with Rights-of-Way.

The color-coded maps and Roster summarize what the Committee has learned about the roads in these subdivisions. Several highlights:

- The maps are accurate enough to be very helpful. They are not, however, the final story on any particular road, right-of-way, or piece of property. On a case-by-case basis, details will need to be checked vs. official records on file with the Northern Berkshire Registry of Deeds and/or the Town. As changes are made as a result of this report (or for any other reason), we strongly recommend that records at the Registry and in the Town be officially/legally updated.
- Originally, all these roads/streets (other than Bull Hill/Balance Rock) were owned by the abutting property owners and were "unaccepted" by the town. Most of them were and still are used as public roads by neighbors and the general public and are plowed and maintained by Lanesborough Highway Dept. Over time, some were surveyed and accepted by the town, but most continue their odd history of public use and private ownership. Throughout these reports we use the terms "private" and "unaccepted" interchangeably to indicate this odd legal status. (See attached maps and excerpts from Town Meeting Articles).
- Many roads issues seem to reflect "unfinished business"—planned roads or sections that would be useful but have never been built; roads that seem built for access by construction crews, and improved a bit over time but never brought to town (or anyone's) standards.
- When Lanesborough took/accepted private roads, it did not always follow the proscribed procedures (e.g., Selectmen did not always adopt an "order of taking" within 120 days and record title with the Registry of Deeds). One result of the administrative sloppiness is some town roads are not included in Mass. Highway's roster of Lanesborough roads and mileage, so we miss out on a bit of annual Chapter 90 funding.
- Some of these roads engender major safety issues for residents and visitors. Examples: if the Narragansett causeway failed or was blocked, there is no way in/out of the Wilburs section (150? homes); fishing from this and the Bull Hill causeways is very dangerous, particularly given the speed of some passing vehicles; some Gunn's Grove roads are steep and either dead-end or lead to tiny cross streets—impossible for fire and other emergency vehicles, and even for regular vehicles in bad winter weather.
- Planned/mapped road widths vary, one subdivision to the next, ranging from 15 ft. (the "letter" streets in Gunn's Grove) to 50 ft. (in Dunreath). The "travel ways" are usually far narrower than the planned roads (e.g. Orchard is mapped 50 ft. wide, but the travel way is about 15 ft.)
- There are "paper" roads in all subdivisions—show as roads on plans/maps, but are in fact only woods or fields. The failure of owners/abutters to develop and maintain these as roads means that some potential home sites are land-locked, and it also causes certain other roads to dead-end, making plowing, maintenance, and emergency services more difficult.
- According to state law (M.G.L. c.183, s/s 58), unless the deeds clearly state otherwise, abutters to a private way (real or paper) own to the centerline of that way. Our assessors' maps are inconsistent on this, and some abutters don't know they own part of the road they abut.
- Lanesborough Highway Dept. has for many years plowed and sanded most of the unaccepted roads in these subdivisions without town meeting approval, despite state law requiring this

- approval (M.G.L. c. 40, s/s 6C and 6D).
- Hwy Dept. has also done “temporary repairs” and maintenance without Town Meeting adopting the required enabling bylaw (G.L. c. 40, Section 6N). (Note, expenditure of public funds to remove ice and snow does not make the private way become public. *Bruggeman v. McMullen*, 26 Mass. App. Ct. 963 (1988), *Rivers v. Warwick*, 37 Mass. App. Ct. 593, 597 (1994).
- Because many of the roads are steep, unpaved, and close to the lake, storm water run-off/erosion is a major challenge. The situation is apparently exacerbated by seemingly far-away construction in recent years such as west end of Miner Rd., near top of Bull Hill Rd..
- Most houses in these subdivisions are on private septic systems. Septic technology is improving, and slowly more homes are getting connected to Pittsfield’s sewer line; over time the lake will be better protected, and there will be opportunities for residential development.

Special concern—Storm water run-off:

As stated in Report #1, there are numerous, often steep dirt roads in these subdivisions and in the hills north and west of them. The run-off causes ecological damage cited in the *Pontoosuc Lake Watershed Management Plan* as the top priority requiring action. In years past, the town installed two storm-ceptor systems, as well as numerous catch basins and culverts in strategic places (see maps). In some cases drainpipes were installed under-ground, emptying into the lake or simply onto low ground. This “direct drainage-without-settlement” system may actually worsen run-off damage. Further, some of the systems are on private property, and in most cases, the town has not secured easements.

Recommended actions:

1. Admin. clean-up—

- A. To minimize future legal hassles, we recommend Selectmen review the 2009 “acceptances” and decide whether there are steps needed to make them fully viable.
- B. To assure we are getting proper Chapter 90 credit, we recommend the Hwy. Dept./Town Administrator verify Mass. Highway’s roster and lengths of town roads.
- C. Before the town accepts any more roads, we recommend review and updating the 1945 By-law which lays out procedures and requirements for road acceptance.

2. Comprehensive Technical Plan (“CTP”): We recommend the Town develop a plan to indicate the most cost-effective, environmentally sensitive way to develop and manage these lake-area roads (and rights-of-way) to handle storm water run-off, underground utilities, and ease maintenance, as well as for wholesome use by vehicles, pedestrians, and bicycles. The plan will need specific road-by-road recommendations due to their diverse nature. For example, despite their 15 ft. width, some “letter” streets in Gunn’s Grove need acceptance (and possible widening, particularly near the ends) for emergency access and/or storm water management. Further example, run-off from the dirt sections of many roads includes fine particles in suspension that require days to settle out, meaning neither the current catch basin nor storm-ceptor systems are adequate. Because of cost, we recommend the CTP become a multi-phase project:

Phase I. What will it cost to develop such a plan in enough detail to allow seeking grants and other funding? We suggest the town get guidance from Berkshire Regional Planning Commission regarding firms qualified to do this work. We recommend that in 2014 Lanesborough put out an RFP to several engineering firms to ascertain plan development cost and to get acquainted with folks who might be considered for eventually developing the plan. We believe the planning and estimating shouldn’t presume that one solution will fit all roads due to varying width, steepness, current surfacing and drainage systems, etc. We suggest that solutions need to consider Berkshire Regional Planning Commission’s “Unpaved Roads Best Management Practices Manual.”

Phase II. Once we have a clear estimate of cost to develop the needed plan, we suggest the amount be requested at the 2014 Annual Town Mtg. as part of the 2015 Town budget.

Phase III. Presuming phases I and II are completed on schedule, a firm could be selected and a contract executed in summer 2014, and we could expect to have a Comprehensive Technical Plan before June, 2015.

Phase IV. With the CTP in hand, we could start implementing the priority elements of the plan that depend only on local resources, and we could begin seeking funds for the elements of the plan that may be attractive to outside funding sources. We could also begin to integrate CTP with a 10-20 year maintenance plan for all town roads.

3. Legal Footing: If when the town is ready to accept a “private” road, the owners don’t collectively support this action (in financial, legal, and/or political senses), the Board of Selectmen must consider how best to proceed. It may make sense to leave the road as private and terminate town plowing and maintenance. In cases of continuing environmental damage however, the town may need to ask the Conservation Commission to step in to force corrective steps, or it may make sense for environmental or other reasons for the town to take the road by eminent domain.

4. Town Ownership: We recommend Lanesborough acquire, as quickly as practicable, almost all the unaccepted roads the town plows/maintains in these sub-divisions. These 18 roads total about 2.5 miles in length—nearly 1 mile in Dunreath and Gunns Grove sub-divisions, and 1.5 miles in Wilburs (including Hobomack at .6 miles). While the committee recommends doing this as quickly as possible, the process might need to include a “conditional agreement” phase, where abutters agree to town acceptance, subject to survey and certain other steps. A rough estimate of the cost of surveying is \$25,000, and the Committee recommends that half this amount be included in the town’s budget for 2015, and half for 2016. A provision of \$10,000 for legal fees may be wise as well. While this will be a cumbersome, expensive process, it has many benefits:

- Improve access for emergency vehicles such as fire and ambulance
- Make it permanently legal for the Hwy. Dept. to plow/maintain these roads.
- Make it easier, safer, less costly to do the plowing/maintaining
- Facilitate implementing a Comprehensive Technical Plan, including, among other things, reduction of storm-water reaching the lake with unchecked silt and debris.
- Improve prospects for residential development (access will be provided to 15-20 lots that are currently land-locked)

Road-by-road recommendations are indicated in the attached Roster. These are subject to engineering, environmental, cost, and political considerations which will be developed as each recommendation moves closer to implementation. We suggest certain roads should be accepted only if certain other events occur, e.g. Aqua St. should not be accepted unless there is a safe way for town/emergency vehicles to use it and return to Bull Hill Rd. without a “20-point” turn or backing up the hill.

5. Continue Plowing/Maintaining: We currently plow/maintain ALL the traveled unaccepted roads in these sub-divisions, in violation of MA laws against expending public resources on private property without voter consent. Subject to counsel recommendations, we suggest trying for town meeting approval of continuing to plow and maintain these roads for the foreseeable future. This would give time to work out longer-term solutions. If town meeting turned this down, Town Admin. would need to consult with Town Counsel about next steps.

6. Reduced Road Grading: We believe that due to run-off issues and cost, the Hwy. Dept.’s annual grading of lake-area roads should be reduced and should be decided on a road-by-road, section-by-section basis, with grading and filling done only where absolutely necessary. Practices recommended in

the “Unpaved Roads BMP Manual” (Berkshire Regional Planning) should be used as a guide until such time as we have a Comprehensive Tech. Plan (see 2. above).

7. “Paper” Roads: Typically, where current maps show these roads, there is only woods and undergrowth (blue on our maps), or in some cases they are private driveways (pink on maps). These illusory roads appear in the old sub-division plans recorded at the Registry of Deeds, and they still have legal weight today. For example, they provide legal frontage allowing a lot to be “buildable.” We suggest private paper roads be shown on assessors maps as dotted lines (or some other method) to flag the difference between them and “real” roads.

8. Cleaning of Catch-basins and Storm-ceptors—we recommend the Town Administrator check each year to assure that at the time of road repair each spring, catch basins and culverts are appropriately maintained/cleaned.

9. Tax assessments—Given that some “roads” are non-existent “paper” streets, others are simply driveways, many unaccepted and others public, there are questions about whether current assessments are “fair.” Changes in roads stemming from this report may raise other assessment issues. We suggest that at the time of their tri-annual revaluation of properties, town assessors give particular attention to properties in these neighborhoods. See report #1 for related comments

10. Recreation/Safety—

- A. We join the Recreation Committee in suggesting the Town create/maintain a canoe/kayak launch and parking area on town property at the intersection of Sunrise and Bull Hill Rd..
- B. We also join them in urging that the Narragansett and Bull Hill Causeways be made safer for people fishing, possibly with lower speed limits and plowable speed “humps” to slow traffic. We should assure that these safety issues are raised at any public hearing held by MA Hwy as they plan renovations to the Narragansett causeway (2015?).
- C. We strongly recommend that the Board of Selectmen develop an emergency plan for vehicles to drive into Pittsfield at the south end of Narragansett Avenue. This route is currently blocked by the condominium gate and would be vital should anything happen to the Narragansett causeway, especially a lengthy issue like renovation/replacement.
- D. We also agree with Recreation that signage and enforcement are needed to properly direct parking at Wampatuck Park and the causeways.
- E. Causeway parking--Bull Hill causeway fishing could use the town lot at the north end of Sunrise for parking. Narragansett causeway currently has no legal spaces, but people fishing park along the roadside in a dangerous fashion. We recommend the town acquire an easement or actual ownership of the small property at the corner of Grove Ave. and Narragansett Ave. owned by Beverly Brown to provide parking for the public and for the two lake-front houses, McCluskey and Brown, that already use the property for parking.
- F. We also recommend creating legal parking near Town Beach on Sunrise St. This could be done by acquiring easements or title to a 10-foot strip of land from the beach to G Street. We would also like to see signs along Sunrise and Town Beach and Ocean St. to advise the public about parking and use of the beach and boat launch.
- G. We suggest annual maintenance/clean-up of Wampatuck Park boat landing area
- H. Speed limit on Narragansett Ave. should be reduced to 25 mph.
- I. We suggest the Energy committee review street lighting to assure adequacy at the Bull Hill and Narragansett causeways and at Wampatuck Park.

11. Signage—We suggest:

- A. At south ends of Sunrise and Ocean signs saying something like: “Town Property—No life

guard. Parking XYZ??. Best boat launch is in Pittsfield, off Rt. 7, south end of lake”.

B. At Wampatuck landing: “Town Property—No swimming, no life guard. Best boat launch is in Pittsfield, off Rt. 7, south end of lake.”

C. At north end of Sunrise: “Town Property—No swimming, no life guard. Town residents may park, launch kayaks, fish.”

D. At both ends of Narragansett causeway, if the Brown property is usable for parking: “Limited parking in marked spaces close to Grove Ave., or use spaces beside Wampatuck Park.”

E. 3-4 signs for 25 MPH between the Narragansett causeway and the park/playground.

12 Communications—

A. We will introduce this report to Selectmen on Jan. 13, and then post a “discussion draft” on the town web site.

B. This web posting will invite comments to the Committee before February 1, 2014, and this will allow the committee to finalize the report for presentation at a public hearing at a Selectmen’s meeting in late February, 2014.

Related documents:

Maps, Roster, Town Meeting road acceptances