

## BOARD OF SELECTMEN MEETING MINUTES

Meeting held July 25, 2017 at 6:05pm

**Board Members Present:** Matthew Puntin, James Consolati, Michael Curtin

**Community and Others Present:** Michael Rudy, Mark Curtin, Peter Shaffer, Elisabeth Goodman (Lawyer representing Cooper Creek), Noah Choquette, Joseph Janis, William DeSantis Sr., William Desantis Jr.

Mail and review of previous meeting minutes were read/approved at 5:30pm (open to public)

**Meeting Opened:** 6:05pm

### **Public Comment:**

Mark Curtin asked the Select Board about the possibility of detouring traffic during the play "Our Town" which will be held on August 4<sup>th</sup> & 5<sup>th</sup> and 12<sup>th</sup> & 13<sup>th</sup>. He stated that when traffic goes by the church, voices do not project and the detour would only be needed for 2 to 2 1/2 hrs. He stated the barriers could be removed for emergency vehicles should the need arise and that traffic would be rerouted to go over McCarty Road. Noah Choquette stated him nor Patrick Holian (not present) are comfortable with this as McCarty Road is not wide enough for two vehicles nor can really handle larger vehicles. Mike Curtin suggested possibly utilizing officers on either end to slow traffic as they head north or south to dull the sound. Matt Puntin stated it was short notice to comfortably make a decision without more information and time to access and Jim Consolati stated he would like to keep it open for safety reasons. The board members did not approve closing Main Road during the play.

Noah Choquette wanted to update the board on how the trials of removing DPW vehicles from the Town Hall on the weekends. He stated the first Friday it took a 1 1/2 but that was because they had to shift some vehicles around to make room and the second weekend was quicker. He said he is not opposed to doing this every weekend but he does not want there to be an issue if for some reason, there is equipment left there over a weekend due to a project or an issue develops Friday afternoon which impedes timing to move vehicles. Matt Puntin said as long as it is not habitual, he does not see an issue with vehicles being left here on the weekends when issues arise. Noah Choquette also wanted to remind them that this is only for the spring to fall as in the winter, they need to keep the machinery here necessary for snow removal/road maintenance. All agreed and thanked Noah Choquette and his team.

Nikki Choquette has resigned effective today as janitor of our Municipal buildings. We will be posting an ad for this position.

Noah Choquette notified the board that he will be dropping the Health Insurance however, he will need to remain on the Dental Insurance (family plan). He asked about receiving 1/2 of the Town's Share for compensation of Individual plan in lieu of not taking Health Insurance. The voted unanimously to this.

### **Agenda:**

**Cooper Creek:** Peter Shaffer from Cooper Creek came to the meeting with a lawyer (Elisabeth Goodman) on behalf of the residents on Cooper Creek. Elisabeth Goodman gave the Select Board a packet supporting why she believes the road is open to public use as well as cases heard in re to this. He stated he was surprised to receive the letter stating the town would no longer maintain their road in the winter. Cooper Creek has done all the improvements suggested by our DPW as well as made drainage improvements and continues to maintain the roads as asked and above what is asked. The association does a walk through with Noah Choquette annually and he agreed that Cooper Creek has done what has been requested of them. He also stated to make it easier for plows to turn around, he has allotted some of his land for the plow to do as such. Elisabeth Goodman made the case for why she believes it is open to public use which was that anyone can drive down Cooper Creek and there is no signage restricting such access. Another point she had was

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that residents that live up there have guests that go up there to visit them as well as service their homes, which are members from the public/community. She also feels it would be a benefit to the town to maintain the roads because if an emergency were to occur, emergency vehicles would need to get through. She feels the issue of public use is separate from the funds that were approved for appropriation for the maintenance of the roads, which were already approved by the voters at the Annual Town Meeting.

Bill DeSantis Jr. stated he goes on Cooper Creek to fish and no ever says anything.

Joe Janis stated that the public use Lakeside all the time and are not asked to leave. He stated that people are either driving or walking on Lakeside Drive weekly to view the home of Jan Brett so he states the public do use these private roads.

Mike Curtin stated that if not approved, he would suggest when they hire a contractor that they let them know up front that they need to maintain the roads accordingly when there is a storm. Mike Curtin also asked Elizabeth Goodman what would happen if the public did go up on these roads, could they get arrested for trespassing. She stated that would be hard to do if the person was not doing anything to warrant that. He also asked if he public could go up and park on these roads to go fishing or whatever and they said no as there is no room for safe parking and the homes are private property so there is no access to the water from the road.

Jim Consolati addressed his concern over what was considered public use and stated he views visitors and service providers as those invited by the residents which is different than someone from the public going up to utilize that road. Jim Consolati stated he would like to address the above issues noted with Town Counsel and continue this till the next meeting. Elizabeth Goodman will also get in touch with Jeremia Pollard to discuss the above issues.


Mike Rudy asked if this decision would also apply to Lakeside Drive and stated that impediments in the road should be looked at and he does not feel neither Lakeside nor Cooper Creek have any. Jim Consolati stated that they will address each road on a case-by-case basis and if Lakeside's concerns are identical to Cooper Creek, it should receive the same consideration.

The above discussion led to the discussion of Ridge Street, which members would like the town to maintain and plow. Noah Choquette does not feel that the town should be maintaining Ridge St. as this is a private road. Bill DeSantis Sr. asked why the town never went through with possibly taking over Ridge St. He asked if the town has approached the owners to purchase the property. Joe Janis suggested an informational be held to discuss this. The Select Board will look into what has been done in the past in re to this and what the Town would need to do to take over Ridge St. This discussion needs further review at this time.

Meeting Adjourned: 7:16pm

  
James Consolati, Chairmen

  
Matthew Puntin, Clerk

  
Michael Curtin, Member

BOARD OF SELECTMEN / BOARD OF HEALTH

Date: July 25, 2017

Time :  
5:40

Name:  
Michael Rudy

Mark J. Curtin

6:00

Peter Shaffer

Elisabeth C. Goodman

6:00

Noah Choquette

6:00

JOSEPH JANIS

6:00

William DeLante Sr.

6:00

William J. DeSantis

# CAIN HIBBARD

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**Elisabeth C. Goodman**

July 25, 2017

**BY HAND DELIVERY**

Mr. James Consolati,  
Mr. Mathew Puntin and  
Mr. Michael Curtin  
Board of Selectmen  
Town of Tyringham  
116 Main Road  
Tyringham, MA 01264

*Re: Snow Removal from Cooper Creek Road*

Dear Members of the Board of Selectmen:

This law firm is counsel for the Cooper Creek Homeowner's Association, Inc. I am writing in response to your letter dated June 27, 2017, in which you stated that the Town would not agree to provide snow removal services for the road because it is not open to the public.

To authorize snow removal on a private road, the applicable statutes are:

GL c. 40 Section 6C: Removal of ice and snow from private ways; conditions. A city or town which accepts this section in the manner provided in section 6D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

Section 6D. Section 6C shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council

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thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:

On February 19, 1968, at the annual town election the Town of Tyringham voted to accept a petition which stated:

Shall the Town vote to accept the provisions of sect six C of chapter forty of the General Laws, which authorize cities and towns to appropriate money for the removal of snow and ice from private ways therein open to public use?

Thus, the Town can appropriate funds for snow removal on private ways. The Town Meeting voted in favor of plowing Cooper Creek Road and other roads on May 12, 2015 (Article 15) and apparently approved a similar vote on May 10, 2016. We have also attached a copy of the agreement regarding snow removal on Cooper Creek Road for 2016.

“[T]owns that have accepted the provisions of G.L. c. 40, § 6C,6 are expressly authorized to do snow removal on private ways open to the public, and more extensive upkeep of private ways can be found to be expenditures for a public purpose if done for the benefit of the public.” *Rivers v. Town of Warwick*, 37 Mass. App. Ct. 593, 597, 641 N.E.2d 1062, 1065 (1994).

Your letter of June 27, 2017 asks whether Cooper Creek Road is “open to public use.”

It is well settled that “‘open to public use’ as applied to a private way naturally means that such way is actually susceptible of use by the public other than for purposes that are merely incidental to the use of the way by the owner thereof, and also that the way is open to the public at large for purposes of travel ... in a manner similar to the ordinary use for purposes of travel in a public way of the same general nature.” *Coon v. McCabe*, No. 98 MISC 249621 HMG, 2014 WL 7466543, at \*41 (Mass. Land Ct. Dec. 31, 2014), citing *Opinion of the Justices*, 313 Mass. 779, 783, 47 N.E.2d 260, 263 (1943).

We and our client believe that Cooper Creek Road is open to public use and eligible for snow removal services as set forth in G.L. c. 40, Section 6C.

# CAIN HIBBARD

Cain Hibbard & Myers PC | Counselors at Law

Board of Selectmen

Town of Tyringham

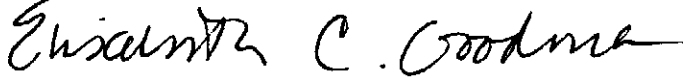
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Please let us know if you have any questions regarding this matter.

Very truly yours,

CAIN HIBBARD & MYERS PC

A handwritten signature in black ink, appearing to read "Elisabeth C. Goodman". The signature is fluid and cursive, with the first name "Elisabeth" written in a larger, more prominent script than the last name "Goodman".

Elisabeth C. Goodman

Enclosures

# Town of Tyringham



116 Main Road • P.O.Box 442 Tyringham, MA 01264  
Ph.(413) 243-1749 Fax.(413) 243-4942 www.tyringham-ma.gov

## Agreement between Tyringham Board of Selectmen and Cooper Creek Homeowners Association, Inc.

The residents / landowners of Cooper Creek Road, herein referred to as The Cooper Creek Homeowners Association, Inc. have continued to maintain Cooper Creek Road in order to have the Town of Tyringham plow and sand this road with approval and appropriation from Town Meeting.

The Cooper Creek Homeowners Association will be responsible for the following :

- The road will be a smooth surface with no ruts.
- Only preapproved stone and gravel will be used for road improvement.
- All ditches and culverts will be cleaned.
- Road will be kept clear of any brush and debris 5 feet from the edge of both sides of road, with the exception of trimmed shrubs and bushes, to the satisfaction of the Board of Selectmen.
- Limbs hanging over the road that could damage Town Trucks will be removed.
- Vehicles will not be parked on the edge of the road or in the turnaround from October 1<sup>st</sup> thru May 15<sup>th</sup>.
- All culverts and stones shall be marked with stakes to be visible above snowbanks.
- The road was inspected by the Highway Superintendent on 10-31-16 and all of the above stated conditions have been met.

The Town of Tyringham is not responsible for any damage to the road or surroundings.

Contact persons will be provided in case there are any issues that need attention. Contacts should be year round residents of Cooper Creek Road with the authority to have repairs made to the road at any time.

- Peter Shaffer (617) 285-3371
- Todd Briggs (413) 822-4148

All maintenance and or repairs shall be acceptable to the Tyringham Board of Selectmen and the Highway Superintendent.

# Town of Tyringham



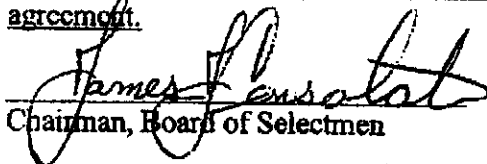
116 Main Road • P.O.Box 442 Tyringham, MA 01264  
Ph.(413) 243-1749 Fax.(413) 243-4942 [www.tyringham-ma.gov](http://www.tyringham-ma.gov)

If the above conditions are not met, or the road deteriorates in the winter, The Cooper Creek Homeowners Association, Inc. understands that the town reserves the right not to plow and sand the roads until all conditions are met.

The Town agrees to plow and sand Cooper Creek Road with the same frequency as other town gravel roads.

This agreement is to be reviewed annually.

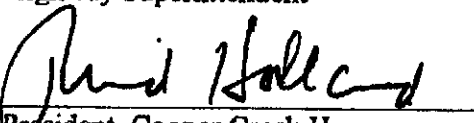
The President by signing below warrants that he or she is authorized to execute this agreement.

  
Chairman, Board of Selectmen

11-15-16  
Date

  
Highway Supcrintendent

11-9-16  
Date

  
President, Cooper Creek Homeowners Association, Inc.

11/18/16  
Date