

KOPELMAN AND PAIGE, P.C.

MEMORANDUM TO MUNICIPAL CLIENTS

August 9, 2004

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affirmative agreement that these abutters will provide for the future maintenance and repair of these ways.

II. Snow Removal

Snow removal is treated somewhat differently. With respect to snow removal, I call to your attention Mass. G.L. c.40, §6C which provides that:

"A city or town which accepts this section in the manner provided in section six D 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 provides:

"Section six C shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council 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:

Shall the city (or town) vote to accept the provisions of section 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?

If a majority of the votes in answer to said question is in the affirmative, then said section shall thereupon take full effect in such city or town, but not otherwise."

Please note that such ways must be "open to the public use." Whether private ways are "open to the public use" depends on whether or not the streets are actually susceptible of use by the public and are open to the public at large for travel purposes. Opinion of the Justices, 313 Mass. 779, 783 (1943).

III. Implications for Subdivision Approval

An additional issue is posed with respect to matters of subdivision approval. Under subdivision law, persons fronting upon private ways sometimes attempt to benefit from an