

CHAPTER 36

MAINTENANCE OF PRIVATE ROADS

§36.1 **Legislative intent**

Properly maintained roads which are open to use by the general public are declared to be of importance to the health and safety of the inhabitants of this Village. The safeguarding of the material rights of the public against unwarranted dangers and hazards in said roads are deemed essential to the economy of the Village and the general welfare of its inhabitants. Improperly maintained public and private roads are detrimental to the health, safety and general welfare of the Village and can create serious hazards increasing the risk of injuries to passengers in motor vehicles, pedestrians and personal property.

§36.2 **Definitions**

As used in this chapter, unless the context or subject matter otherwise requires:

1. Private roads shall mean every road, lane, way or place in private ownership which is open to free, unrestricted use and general right of passage by the public for motor vehicle traffic.
2. Roadway shall mean that portion of the private road ordinarily used for motor vehicle traffic.
3. Owner shall mean the person(s) having record title to the real property on which a private road is located.

§36.3 **Owner of property required to maintain private road**

Every owner of a private road within the Village of Avon shall be required to maintain the private road as provided in this chapter.

§36.4 **Maintenance standards**

1. Potholes. It shall be unlawful for any owner of a private road to permit potholes to form, in a private road, which are more than three (3) inches deep; eight (8) inches in diameter; or so numerous as to constitute a hazard to motor vehicle traffic.
2. Dust. It shall be unlawful for an owner to permit the private road to be in a condition whereby dust is stirred up by motor vehicles during the normal use of the private road creating a risk of impairing the vision of motorists using the private road.

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3. Mud. It shall be unlawful for the owner of a private road to permit a condition to exist on a private road whereby the splashing of mud during the normal use of the private road creates a risk of impairing the vision of motorists using the private road or that the mud creates a risk of motor vehicles becoming stuck.

4. Grading and drainage. All private roads shall be crowned so that the center of the private road is at least six (6) inches higher than either of the edges of the roadway. It shall be unlawful for the owner to permit the road to be in a condition whereby standing water collects on the road.

5. Materials. All private roads shall be paved or have a minimum base of eighteen (18) inches of bank run gravel and a minimum of six (6) inches of crusher run gravel top. Private roads which are not paved or covered

with gravel as hereinabove provided shall be unlawful.

§36.5 **Enforcement Officer; powers and duties**

A. Designated:

The Zoning Enforcement Officer shall be the enforcement officer of this chapter.

B. Duty to inspect, service of notice.

He or she shall from time to time inspect all private roads within the Village of Avon. Whenever he or she determines that a private road is not being maintained, improved or repaired, in accordance with the provisions of this chapter, he or she shall serve a notice in writing either personally or by certified mail upon the owner or owners thereof demanding compliance with this chapter.

C. Contents of notice.

Such notice shall specify the work to be performed and establish a reasonable time to complete the work which in no event shall exceed thirty (30) days except when weather or other conditions make performance of the work impracticable. A request for an extension of the time to perform the work may be granted by the Zoning Enforcement Officer when appropriate. Such notice shall also contain a requirement that the owner or owners shall within ten (10) days after receipt of the notice advise the Zoning Enforcement Officer in writing that the work will be performed within the time limit specified or that a request for extension be made for good cause.

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D. Failure of owner or owners to comply.

Upon the failure of the owner or owners of the private road to notify the Zoning Officer or to perform the work within the designated time limit, the Zoning Enforcement Officer shall make a written report thereof to the Board of Trustees. [§36.5 amended by Local Law #4, 6/3/86]

§36.6 **Procedure where owner fails to maintain road**

A. Institution of proceedings.

Whenever the Board of Trustees shall determine that a private road is not being maintained as provided in this chapter, the Board of Trustees shall give notice to the owner or owners thereof by causing the owner or owners to be served personally with a notice of hearing, or in the event that the owner or owners thereof cannot be served personally in the State of New York, by publishing a notice in the official newspaper that a hearing will be held not less than ten (10) days after the date of service or publication of notice.

B. Contents of notice.

The notice shall contain the following information:

1. The date, time and place of public hearing before the Board of Trustees within the Village of Avon.
2. The condition of the private road which does not comply with the standards of this chapter.
3. The proposed work that the Village intends to perform to make the private road conform with the standards of this chapter.

4. An estimate of the total cost to perform such work including costs of service or publication; engineering, stenographic and legal services; the actual cost of construction and materials; together with a surcharge of twenty-five (25) percent of the foregoing costs to reimburse the Village for administering and supervising the work.

C. Public hearing.

At the time, date and place of hearing, the Board of Trustees shall conduct the hearing and shall hear all interested persons.

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The Board of Trustees may adjourn the hearing at any time without giving further notice, except to announce the time, date and place of the adjourned hearing at the close of the scheduled hearing.

D. Determination by the Board of Trustees.

As soon as practicable after the hearing, the Board of Trustees shall determine:

1. Whether or not the private road shall be maintained, improved or repaired, and the amount and type of work to be performed.

2. If the private road is to be maintained, improved or repaired, whether or not the Village shall perform the work by contract or by Village employees and the estimated cost thereof.

3. The owner or owners of the private road responsible for such work and if more than one (1), the proportionate share that each shall bear as may be just and equitable.

E. Filing with Village Clerk.

The determination of the Board of Trustees shall be filed with the Village Clerk and a copy of such determination shall be served either personally or by certified mail on the owner or owners responsible for such work. [§36.6 amended by Local Law #4, 6/3/86]

§36.7

Performance of work; letting of contract

A. If the Board of Trustees shall determine that work shall be performed by the Village of Avon, it shall cause same to be done either by Village employees or by contract.

B. In case the work is to be performed by contract, it shall comply with all the provisions of the General Municipal Law for the letting of contracts, in particular, Section 103 of the General Municipal Law. [§ 36.7 amended by Local Law #4, 6/3/86]

§36.8

Completion of work; assessment and levy of charges

A. Upon the completion of the work, the Zoning Enforcement Officer shall report to the Board of Trustees listing all costs chargeable to the owner or owners thereof as specified in §36.6(B)[4].

B. Action by Board of Trustees.

1. Upon receipt of the report from the Zoning Enforcement Officer, the Board of Trustees shall cause a notice of a public hearing to be served in the same manner as provided in §36.6(A).
2. Contents of notice. The notice shall contain the following information:
 - a. The time, date and place of the public hearing.
 - b. The amount to be assessed and levied as contained in the report of the Zoning Enforcement Officer.
 - c. The owner or owners' proportional share.
3. Conduct of hearing. At the time, date and place of hearing, the Board of Trustees shall conduct the hearing and shall hear all interested persons. Adjournments may be made as provided in §36.6(C).
4. Assessment and levy. Upon conclusion of the public hearing or as soon thereafter as practicable, the Board of Trustees shall assess the owner or owners of the private road. It may modify or correct the same but no assessment shall be increased without notice to the owner and the opportunity to be heard. The assessment shall be filed in the office of the Village Clerk, and it shall publish notice of such completion and filing in the official paper, and any person deeming himself aggrieved thereby may, within fifteen (15) days after the filing of such assessment, apply to a court of record for an order of certiorari to review said assessments. The apportionment, the assessments and the determination shall be deemed final and conclusive unless such an application be made within such fifteen (15) days.
5. Collection. All assessments levied against real property or herein provided shall be collected pursuant to §5-518 of the Village Law.

In case the assessment together with Village taxes remains unpaid after the lapse of thirty (30) days from the return of the treasurer, an action may be maintained pursuant to §1440 of the Real Property Tax Law and enforcement proceedings may also be taken in accordance with the provisions of §990 of the Real Property Tax Law. [§36.8 amended by Local Law #4, 6/3/86]

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Historical Note

Chapter 36 was added by Local Law #1 of 1980 and was substantially amended by Local Law #4 of 1986 to conform to the decision of *D'Angelo v. Cole*, 67 NY2d 65.

References:

- Authority: Vil L §4-414**
- Collection of local assessments. Vil L §5-518**
- Actions to recover unpaid taxes. RPTL §1440**
- Collection with annual Village tax. Vil L §5-518(3)**
- Delinquent assessments. Vil L 5-518(3)**
- Installments. Vil L §5-518(3)**
- Payment without penalty. Vil L §5-518(2)**
- Penalties; computation. Vil L §5-518(4)**
- Special assessment; crediting. Vil L §5-518(6)**

Supplementary proceedings to collect taxes. RPTL §990