

**Brandermill Community Association, Inc.**  
**Snow Removal Policy Review**  
**Updated, January 28, 2016**

**General Overview**

The streets in Brandermill are maintained by VDOT, including snow removal.

The BCA has for years only provided follow-up assistance to VDOT on the major parkways and loop roads in Brandermill. The major parkways and loop roads are Millridge Parkway, Brandermill Parkway, Sandyridge Parkway, Harbour Point Road, North Beach Road, Planter's Wood Road, and the Sunday Park Loop. VDOT also provides the BCA with a small sand spreader that fits in the back of a pick-up truck and a little bit of sand for us to use on certain known problem areas and ice spots (such as Ridge Creek & Brandermill Parkway and Turtle Hill & Brandermill Parkway).

The BCA maintenance crews clear snow from the common area property owned by the Association. These areas include: the office, Harbour Pointe Clubhouse, the Landing, and Sunday Park.

**Budget History**

Budget records provide some insight into the history of snow removal.

Years 1986, 1987, 1988, (three years) we budgeted zero for snow removal.

Years 1989 to 1996 (eight years) we budgeted mostly \$7,500 a year and spent less than budgeted each of those years. The exception was 1996 when we spent almost \$42,000 on snow removal.

Beginning in 1997 and through 2004 (eight years), we budgeted \$10,000 a year for snow removal. During that time, again, we spent considerably less than budgeted each year. The one exception was in 2000, when we spent almost \$18,000 for snow removal.

Year 2005, the budget amount was reduced to \$7,000 and zero was spent.

In 2006, the budget amount was reduced to \$1,000 and zero was spent. This was the case for the four years (2006-2009).

Since 2010 (6 years), the BCA has budgeted zero for snow removal.

***In summary, the BCA has spent no funds on snow removal directly in the neighborhoods in the last decade.***

## **History**

The BCA maintenance crew, long ago, used to provide snow removal throughout the community. The work was done by the in-house crew as well as various contractors.

***In 1995, the BCA maintenance work was outsourced and the staff, at that time, was reduced to two employees. As a part of that outsourcing, all of the snow removal equipment was auctioned off except for one plow blade.***

***Since 1995 (twenty-one years), the BCA maintenance department has NOT been directly clearing snow from the neighborhood roads in Brandermill.***

Since 2005, the BCA has not provided contractual vendors to clear snow covered roads in Brandermill.

The only snow removal that the BCA has undertaken in the last decade has been to assist VDOT on the major parkways and loop roads.

The BCA has three pick-up trucks outfitted with front blade plows and two tractors. In addition, VDOT provides us with some sand and a small, pick-up bed sand spreader. VDOT has directed that the use of the sand be limited to the major parkways only and certain trouble spots; the sand is not to be put down in each neighborhood. VDOT has a limited supply of sand and they do not regularly address every neighborhood with a sand application.

## **Insurance Issues**

Liability concerns are abundant with regard to snow removal. Presently, the BCA is covered by a general liability policy with AIG. If the BCA were to pursue a more deliberate, programmed removal of snow on our own, the following would need to be taken into consideration.

1. Our General Liability premium, which is about \$28,000 now, would go up a minimum of 25% at renewal (\$7,000)
2. There would be additional cost to insure any new trucks and any associated equipment (plow blades and attachments) that would have to be purchased in order to accomplish the work
3. Workers Compensation would go up if extra staff were hired in order to accomplish the work

Also, if the BCA were to undertake snow removal from the neighborhood streets, there is assumed liability which would follow and could result in General Liability or Directors & Officers claims. For example, if Mrs. A's street is not clear and she can't get to the hospital, airport, etc., Mrs. A is likely to sue the BCA, since we would now be responsible. Currently, Chesterfield County, through VDOT, has the responsibility to clear the streets in Brandermill. Our insurance broker recommends that we maintain the current way of doing things.

## **Legal Issues**

Legal counsel has reviewed the 3rd Restatement ("Declaration") in regard to the question of snow removal. With respect to the BCA's authority to expend funds for snow removal on public roads, doing so would be harmonious with the broad powers and purposes contained in the BCA's Articles of Incorporation. With respect to the Declaration, there are three provisions that merit mentioning:

1. Article V, Section 2, which provides, in pertinent part, that Annual and Special assessments shall be used "to provide services which the Association is authorized to provide."
2. Article VI, Section 2(a) establishes that the Association is authorized "but not required to provide" .....[c]leanup and maintenance of all roads, roadways, roadway medians, parkways, lakes and Common Properties, within the Properties and also all public property which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

3. Article VI, Section 2(w) establishes that the Association is authorized to "render services of a governmental nature not furnished by the local government in the case of maintenance of property not owned by it;"

Therefore, with respect to roads in general, the legal obligation for "maintenance" includes the obligation for reasonable snow removal. Thus, in light of the foregoing, it is counsel's opinion that the BCA has the authority to use assessment funds for snow removal services on public roads IF it is a service that is not being provided by Chesterfield County or the state. Note, counsel mentioned Article VI, Section 2(a) above, but distinguished it from Article VI, Section (w) because they do not believe that snow removal is a service that is performed to "affect the appearance of the Properties as a whole". Rather, it is a service that is intended for safety and to facilitate more efficient transportation. Consequently, counsel believes that the basis for the BCA being able to provide snow removal services on public roads flows from Article V, Section 2 and Article VI, Section 2(w), but not Article VI, Section 2(a) of the Declaration.

To this end, it is important to identify whether the public roads in and around the Brandermill community are maintained by VDOT (a state agency) or the County. Factually, most of the public roads in Chesterfield are maintained by VDOT. With this said, counsel concludes that in order for the BCA to be able to properly use assessment funds for snow removal services on public roads in and around the community, a condition precedent would be to conclude that snow removal on public roads was a service that was not being provided by Chesterfield County or the state.

With respect to the funding issue, counsel sees three important summary conclusions:

1. There is the authority for the BCA to potentially use assessment funds for snow removal on public roads within or around the Brandermill community;
2. This authority is limited to the parameters of Article VI, Section 2(w) of the Declaration; and
3. The BCA has NO OBLIGATION to provide snow removal services on any public road within or around the Brandermill community.

With respect to other important issues pertaining to snow removal services, counsel also recommends that we consider the following:

- A. Cost. If the BCA elected to provide snow removal services on public roads, the cost would be significant. It would be extremely shortsighted politically and, arguably

challengeable, if the BCA elected to provide such services on only a portion of the public roads (i.e. that benefited less than all of the Owners). Thus, from a practical matter, the issue would need to be viewed as an "all or nothing" proposition. If one were to run the numbers for scheduled snow removal on all of the public roads within and around Brandermill, one would quickly conclude that assessments would have to be increased significantly to make the service viable.

B. Liability. This has been addressed in a previous section of this report. Two additional areas of concern however are raised by counsel: a) road damage; and b) damage to persons or personal property (other cars, mailboxes, etc). Road damage can occur when plows inadvertently scrape below the level of snow or ice. This happened to three Brandermill neighborhood roads during the 2014 snow events. That damage was done by VDOT plows (or their contractors). Of course the cost of such repairs were borne by the state. If the BCA were to have done the clearing and created the damage to the roads, then, even though the state would accomplish the repairs, the bill for the repair would have to be paid by the BCA. That gets us back to the issue of cost, and as one knows from the general cost of road work, repair costs would be significantly into the tens of thousands of dollars and likely could occur each year.

### **Special Circumstances**

Where the BCA crews can help in the neighborhoods is in the area of special circumstances. We will continue to spread sand in areas that are known to be troublesome, as well as on the occasional anomaly location where there may be ice, like at an intersection. Additionally, the BCA is receptive to occasional and limited calls for assistance. If we are asked to help in a situation, there is no legal requirement to assist and thus no liability incurred should we choose not to help. However, as a good neighbor and in the spirit of community, the association would like to help the members when we can. If an emergency situation exists, the BCA, along with other sources (county, VDOT) may try to do what we can to assist residents.

For example: In the aftermath of the storm of January 22-24, BCA maintenance responded to a few resident requests for help in removing snow that was piled up by the VDOT plows in front of their driveways. This was done for those residents who had physical limitations and who had demonstrated a need to get out of their neighborhood – ie: for medical appointments and the like.