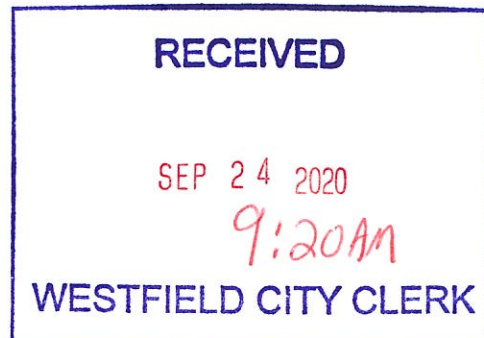


## CITY OF WESTFIELD, MASSACHUSETTS

# TRAFFIC COMMISSION

### COMMISSIONERS:

Michael McCabe/Captain Police/Chairman  
David Billips/ Director of Public Works  
Mark Cressotti/City Engineer  
Joseph Gadbois/Community Representative  
Richard Clark/Business Representative



Special Meeting  
The Westfield Traffic Commission  
Wednesday September 30, 2020  
6:00 PM  
Virtual Meeting  
**AGENDA**

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the City of Westfield **Traffic Commission** will be conducted via remote participation. Specific information can be found on the City of Westfield website at [www.cityofwestfield.org](http://www.cityofwestfield.org). For this meeting, members of the public who wish to listen to the meeting may do so by tuning into Channel 15 or online at [westfieldtv.org](http://westfieldtv.org). No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the City's website an audio recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting. All votes taken by the committee will be done by roll call.

Opening of Meeting

Roll Call of Traffic Commission Members

Approval and Release of Minutes dated June 24, 2020

Open Participation N/A

**1. Old Business:**

- A. Bailey Dr. Update – **Planning Board**-(private way)-request for ruling from Law Department.
- B. Notre Dame Street Crosswalk Concerns request to table until 3rd quarter commission meeting. Dearellano.

- C. Holyoke Road Truck Traffic-speed study-work with companies-engineering-leveling structures-noise ordinance
- D. Orange St. Truck Exclusion-Matthews-Kane
- E. Western Av. MDOT sign change request-Cressotti

2. **New Business:**

- A. Opinion from the City of Westfield Law Department regarding private ways. McCabe
- B. 7 Susan Drive- No Parking-Holt-Lisee
- C. Susan Drive Traffic-Berube
- D. Camelot Lane-Speed Bump (private way)-McCabe
- E. Breighly Way-Stop sign (private way)-McCabe
- F. Consideration of a cross walk on the Northside of the Horton Bridge-Burns
- G. Revisit RidgeCrest Dr. crosswalk connecting south side to Northside at RidgeCrest Cir.-  
Bean/Beltrandi
- H. Installation of two stop signs on Sgt. Tom Dion Way-HEKA-Mark Dupuis
- I. Add signage at Union Av. and Pochassic St.-Morganelli
- J. Broad St. at rotary add emphasis on stop sign-Figy/Matthews-Kane
- K. Lit crosswalk at Southampton Rd. School. Figy
- L. Broadway signage for left turns.-McCabe

Next meeting December 16, 2020 at 5:30 p.m.

Motion to Adjourn

## Memorandum

To: Capt. McCabe, Westfield Police Department

From: Assoc. Solicitor John Fitzgerald

Date: Sept. 23, 2020

Re: Traffic Commission Authority.

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### Question / Issue:

Does the Traffic Commission have the authority to regulate (or make improvements) “private ways” under the authority granted to it under Chapter 62 of the Acts of 2004?

### Legal Analysis:

The Traffic Commission was created by the Acts of 2004, Chapter 62, and granted the Commission “...authority to adopt, amend, alter and repeal rules and regulations not inconsistent with the General Laws...relative to vehicular street traffic...[on] any street...*under the control of the city...and subject to section 9 of chapter 89...*” [Emphasis added]. Thus, the power to regulate and improve is limited by both a constitutional analysis (public versus private ways), the General Laws, and relevant case law. Of note and emphasized above G.L. c. 89, sec. 9 specifically states that the authorization is limited to those ways under the “control” of the local authority.

Under the Acts of 2004 the Commonwealth expressly granted authority to the Traffic Commission for those ways which were / are under the “control” of the City mirroring the language of G.L.c. 89, sec. 9. The question then becomes are “private ways” under the control of the City? “Private ways” by their very definition and nature, are not under the control of the City. The City is not responsible to maintain private ways, but may choose to do so in a limited manner if there is a public use / purpose. The City is significantly limited to what actions it may take on private ways. For example, the City is allowed to clear snow and perform limited maintenance, but not perform a complete paving project or significant improvement. Private ways may be private, but open to the public. This public use / access does not make them “public ways” for which the municipality has the burden of liability and maintenance. “If a road has never been dedicated and accepted, laid out by public authority, or established by prescription, such road is private” *20 Seyon Street LLC v. City of Waltham*, WL 4262290 (2008). Very simply, if the way is not public, it is private, and therefore not subject to the control of the City or Town.

The Supreme Judicial Court stated that “[i]t is a fundamental principle, conforming to constitutional requirements and frequently declared, that ‘money raised by taxation can be used only for public purposes and not for the advantage of private individuals.’” *Opinion of the*

*Justices*, 313 Mass. 779, 783 (1943). However, this seemingly bright line rule was limited by the Court as they further stated that "...an expenditure is not necessarily barred because individuals as such may profit, nor is it necessarily valid because of incidental benefit to the public." *Id.* 784. This rationale was used to allow constitutionally for the expenditure of the removal of snow and ice from "private ways" as the limited action was primarily for a public purpose. While these rulings give some "constitutional" respite to what a town / municipality may do on a private way that the public has a right of access, it does not alter the clear language limiting authority to only those ways which are under the "control" of the agency, to wit: public ways.

Conclusion.

Accordingly, as the City of Westfield and the Traffic Commission does not and cannot possess the required "control" over private ways, the City and the Traffic Commission lacks the authority under the Acts of 2004 to enact regulations over private ways.

Respectfully submitted,

John M. Fitzgerald, II, Esq.

Associate City Solicitor