



# TOWN OF NATICK MASSACHUSETTS

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DIRECTOR

Subject: Private Way Maintenance and Acceptance

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Private ways are roadways and streets that have not been formally accepted by the Town as public roadways (private ways may also be referred to as “unaccepted ways”). The Town has little authority and responsibility for the maintenance and improvement of private ways. In general, with exceptions, the property encompassing private ways is owned by the adjacent private properties. Absent Town Meeting Approval and Betterments prescribed by Town Bylaw Article 70 Section 6, the Town is restricted by State Law from expending public monies for maintenance of and improvements to private ways. Additionally, the Town’s Traffic Rules and Orders may not apply to private ways.

There are over 26 miles of constructed private ways within Natick (constructed and accepted public roadway mileage within Town is approximately 128 miles). Based on a cursory review of these private ways, it is estimated that it would cost \$8 million to improve their pavement condition and \$35 million to reconstruct these private ways to current standards (curbing, sidewalk, drainage, etc).

The procedure for the layout and acceptance of a public way by a town is set forth generally in MGL c. 82 §§ 17 through 32. The Board of Selectmen are responsible for “laying out” the proposed public way, which establishes the physical location of the way, then Town Meeting must vote to accept the way as a public way.

The following steps/requirements are necessary for the acceptance of public ways (however specifics may vary):

- Town receives petition from one or more inhabitants of the town requesting the Board of Selectmen to lay out a way as a public way. For ways created by under the Subdivision Control Law through Planning Board Subdivision approval, the subdivision developer is commonly the petitioner.
- The existing condition of the way and related infrastructure is assessed. The existing roadway pavement, curbing, sidewalk, stormwater management infrastructure, water distribution piping, sanitary sewer collection piping, and other appurtenances are inspected. The petitioner may be required to have tests performed by professional consultants and utility service companies to verify existing conditions. If deficiencies are found, the petitioner may be required to correct or alternate funding sources jointly agreed to by the petitioner and Town (i.e. betterments or other).

- Board of Selectmen votes that the Board “intends” to lay out a particular street as a public way at a duly posted Board of Selectmen meeting.
- Board of Selectmen refers intention to lay out public way to Planning Board for a report. Planning Board then has 45 days in which to make its report. The Subdivision Rules and Regulations provides guidance regarding the Planning Board’s Determination of Completion for subdivisions and related ways that were reviewed, approved, and created through the Subdivision Control Law.
- Roadway Layout Plan showing the metes and bounds of the proposed roadway layout and a Roadway As-built Plan depicting the existing roadway, curbing, sidewalk, utilities, stormwater drainage facilities, and all related appurtenances is prepared and submitted by the petitioner for review and approval by Town Counsel and the Engineering Division. The Layout Plan and As-Built Plan are prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. Once the Roadway Layout Plan is approved, the Engineering Division and Town Counsel draft the Roadway Layout Document.
- All land encompassed by the proposed roadway layout must be deeded by fee interest or permanent roadway easement to the Town of Natick. Further, all other required easements outside of the roadway layout needed to properly maintain the proposed public infrastructure must be formally transferred to the Town of Natick. This may be accomplished by gift, purchase, or eminent domain taking. If eminent domain takings are anticipated the Board of Selectmen must provide notice and a public hearing to any affected property owners. Typically for the purposes of roadway acceptance, the petitioner would be expected to provide the fee interest and/or easements to the Town via gift or “friendly” taking. For private ways with numerous abutting parcels the task of verifying ownership to ensure clear title of the way can be a complex and time consuming task (often portions of private ways are owned by numerous entities). The petitioner’s attorney and Town Counsel would assist in this process. The numerous owners of the way should obtain consensus regarding the petition for Town acceptance and the funding that may be required to correct deficiencies and improve the way to acceptable standards.
- A copy of the Board of Selectmen’s vote to lay out the way along with the Roadway Layout Plan must be filed with the Town Clerk at least seven days prior to the date that the Town Meeting will vote to accept the public way.
- Town Meeting votes to accept the road as laid out by the Board of Selectmen as a public way. Any and all land or easements that are required as part of the acceptance must be deeded to the Town within 120 days after the Town Meeting vote to accept the public way.
- If eminent domain takings are required, after the Town Meeting vote, an order of taking must be prepared for the Board of Selectmen to vote and sign. The Board of Selectmen then vote and sign the order of taking at a duly noticed public meeting. The Order of Taking is then filed at the Registry of Deeds. Notice of Takings and Offer of Pro Tanto, for all interested parties, are then signed as appropriate by the Board of Selectmen. Copies of all documents are served on all interested parties. If the taking is a “friendly” taking, a Waiver of Damages and Eminent Domain release are prepared. If damages are to be paid, real estate appraisals may be required to place value to the damages. Following signing of the Order of Taking Documents damages must then be offered and paid. If damages are refused the funds must be placed in escrow.
- After an affirmative Town Meeting vote, the Roadway Layout Plan and Document are endorsed by the Board of Selectmen and recorded at the Registry of Deeds within a time set by statute.