

Town of Hamilton Policy: Converting Private Streets into Public Ways

Affected: (x) All employees, (x) Boards, (x) Committees, (x) Elected, (x) Appointed, (x) Town Wide

Date of Vote: first reading February 4, 2019

Effective Date:

Policy Type: (x) New, () Amendment

This the policy of the Town of Hamilton ("Town") Board of Selectmen ("Board") to consider the handling of requests by multiple property owners to convert a private street into a public way.

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I. Response to Request for Layout of Public Way Informing Owners of Costs.

The Town's policy is for the property owners abutting the private street to be laid out as a public way to bear all costs for the layout and improvement of that street. When the Town first receives a request to convert a private street into a public way, the Board will provide proponents and other property owners a notice outlining the property owners' responsibilities to create the public way. A sample notice is attached as Exhibit 1.

II. A Strong Majority (approximately 75%) of Lot Owners to Confirm Assumption of Costs. Because the property owners will be required to bear all costs for the layout and improvement of the way, a strong majority — if not all — of the owners must represent to the Town in writing that they support the project and will assume a share of the costs and obligations related to the layout and improvement of the way. One way to accomplish this is to request each property owner to sign and return the sample outline attached as Exhibit 1.

All Benefited Lot Owners To Bear All Engineering and Legal Costs.

The property owners will bear all engineering and legal costs to create the public way. All affected property owners will be responsible to engage and to pay: (i) an engineer for all surveying, layout design, installing surveyor monuments, and any as-built plans, and (ii) an attorney for title work and title certification to the Town. The property owners will be directly responsible for these costs per arrangements with their engineer and attorney whether or not the public way is ever finally accepted.

IV. All Benefited Lot Owners to Bear All Construction Costs.

The property owners will be responsible to pay all construction costs to improve the way to a condition, as the Board shall determine, suitable for the Town to accept it, including but not limited to full-depth reconstruction of the existing street, conditions for any borrowing by the Town. To the extent the Board may assess more temporary methods of resurfacing and installing surveyor monuments, sidewalks and drains. Depending on the construction required, the property owners may be able to pay for construction costs through a combination of upfront payment or betterment assessment for a period not to exceed 10 years or other period allowed by law or otherwise advisable based on available rates and betterments, the Board will determine the shares that each property owner will be responsible to pay.

V. The Survey Plan.

The property owners, through their engineer and at their cost, must provide to the Town at least three copies of a survey plan showing the proposed roadway with precise linear measurements, area calculations, necessary property boundaries, grade, property owner names, property owner addresses and Town map and parcel numbers. A copy of the plan should be forwarded to the Town's E Department of Public Works ("DPW"). Once the Town's DPW determines that the survey is acceptable, the property owners' engineer will also be required to forward the Town a final version of the survey in mylar form.

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VI. Title

Once the Town's DPW determines that the survey is acceptable, the survey must be forwarded to Town Council for review together with a certification by the property owners' attorney regarding ownership of the affected parcels so that Town Council can confirm ownership and prepare easements for execution by the property owners.

Coordination by the DPW and Town Council for review of the survey may be appropriate when the Town first receives a survey to prevent the need for further modification to the survey and unnecessary costs.

VII. All Benefited Lot Owners to Grant the Town Easements for Property Rights.

Once title is confirmed, then all affected property owners will be required to grant to the Town an easement for the Town to use their properties for public way purposes, including any rights reasonably necessary for sloping, sidewalks or drainage that might be located outside the paved portion of the street, based upon the Town's standard form easement. A sample standard form easement (with exhibits for a plan and mortgagee assent) is attached as Exhibit 2.

VIII. Collection of Signed Easements before Board of Selectmen Meeting.

The proponents of the public way must ensure that all necessary easements to the Town are executed, collected and delivered to the Town at least 60 days prior to the deadline for the submission of articles for the annual Town Meeting warrant. All necessary easements should be so delivered prior to the Board meeting to create the public way. Once executed, the easements can be delivered to the Town and held in escrow until Town Meeting votes to accept the street as a public way and to authorize the Board to acquire the easements.

IX. Referral to Planning Board for Planning Board Report.

Once all easements have been collected, the Board must forward the Planning Board the survey pursuant to G.L. c. 41, § 811 for the Planning Board to make its non-binding report to the Board regarding the proposed layout, including the dimensions, condition and characteristics of the street and its recommendation as to whether the street should become a public way.

X. Meeting to Lay Out Way.

Once all necessary easements are executed and delivered to the Board and the Planning Board has issued its report (or 45 days have passed since the Board referred the matter to the Planning Board), the Board should meet to (i) find whether common convenience and necessity support laying out the street as a public way, and (ii) vote as to whether the way should be laid out as a public way.

XI. Town Meeting Acceptance.

If the Board votes to lay out the street as a public way, then (i) Town Meeting must accept the street as a public way, and (ii) the easements (or any order of taking) must be recorded at the Registry of Deeds within 120 days of the Town Meeting, unless betterments are to be assessed, in which case the Town should record the easements together with any initial order for betterments within 90 days of Town Meeting acceptance. A sample warrant article is attached hereto as Exhibit 3.

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XII. Betterments for Layouts.

In furtherance of a Town policy to require benefited property owners to pay for all construction costs related to the layout, the Board may order a betterment (i.e., a special tax) to be assessed against each of the benefited property owners for their proportionate share of the costs for the improvement of the way. As part of this policy, the Board has determined that all road and other improvements and associated necessary for acceptance, as determined by the Board, will be borne by the property owners as (i) a full sum payment per agreement with the Board paid to the Town before the Board votes to layout the street as a public way, (ii) a betterment assessment, or

(iii) some combination thereof, as determined by the Board in the Board's sole discretion, based upon any relevant factors and all applicable laws, regulations and bylaws. The duration of any betterment assessment not to exceed 10 years or other period allowed by law or otherwise advisable based upon available rates, terms and conditions for any borrowings by the Town and to seek guidance from the Town's Finance Director with respect to the duration of the assessments.

XIII. Conveyance of Benefited Parcels of Land

Upon conveyance or refinance of any benefited individual parcel of land, the remaining amount of its proportionate share of the betterment assessment must be paid in full to the Town at the time of such conveyance and or refinance. No failure to pay the Town in full at the time of such conveyance or refinancing shall terminate or affect the responsibility of any current or prior owner of any benefitted parcel or any successors in interest to such parcel to pay the Town the full amount assessed nor the validity or enforcement of any order or lien related to or arising from a betterment assessment.

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EXHIBIT 1, Sample Outline for Property Owners

Notice to Property Owner of Town Policy to Create a Public Way

The creation of a public way generally requires (1) a survey to show the boundaries of the public way; (2) grants to the Town by you and your neighbors of permanent property rights for the Town to use your properties for a public way; (3) Planning Board review and report to the Board of Selectmen regarding the creation of the public way; (4) a public meeting of the Board of Selectmen to determine whether your street should be laid out as a public way; (5) acceptance by Town Meeting of your street as a public way; and (6) the recording of instruments granting property rights (easements and orders for takings or betterments) at the Registry of Deeds in the chain of title for your property.

The Town is not guaranteeing or representing to you that a public way will ever be laid out or accepted by the Town, even if you have undertaken necessary steps toward the creation of the public way and incurred costs in doing so.

All expenses incurred by you in connection with the creation of the public way are at your risk, even if no public way is ever created or accepted by the Town.

You will be responsible, at your cost, for all engineering and legal work for the creation of the public way, whether or not your street is ultimately laid out or accepted street as a public way.

You will be responsible, at your cost, for all expenses to improve your street to a suitable condition of the Town to accept as a public way through a payment, betterment assessment (i.e., a special tax) or a combination payment/betterment assessment. No betterment will be assessed until after meeting has accepted your street as a public way.

Because you and your neighbors will be required to pay the costs to create the public way, the Town will wish to see neighborhood support to have your street accepted as a public way. To indicate neighborhood support, the Town requests that you provide the Town a written representation, signed by a strong majority (approximately 75%) of the affected property owners that you support and are willing to pay the costs for the creation of the public way.

The work and costs will at minimum include the preparation of a survey of the street showing the boundaries of the street and title work and certification for all affected properties.

The survey should show precise linear measurements for the boundaries of the street and all parcels comprising a portion of the street, area calculations, names of current owners, Town map and parcel IDs, and title reference information. |

The title work should include names of current owners, names of all current mortgagees and lien holders, appropriate title reference information for deeds, mortgages and liens for such parties, and a title certification by the property owners' attorney regarding ownership of the affected parcels.

Once title is confirmed by the Town, you and all affected property owners will be required to sign the Town's standard form easement (copy attached) to grant to the Town a permanent right to use your property for the public way.

Once all easements are signed, collected by the neighborhood and returned to the Board of Selectmen, the Board will consider holding a public meeting to lay out your street as a public way.

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The Board of Selectmen may consider not holding a public meeting to determine whether the public way should be created until all executed easements are obtained and delivered to the Board. If even one easement is not obtained, then the Town may not create the public way.

Because the Town may elect not to consider creating the public way without a voluntary grant of all the easements, you should strongly consider whether and how all affected property owners should agree to bear the engineering, legal and construction costs required to create the public way prior to incurring any costs.

If betterments are assessed to assist with financing improvements, it may affect your sale or refinancing of your property.

Please sign below and return this form to the Town to indicate that you have read and understand the above and that all expenses you incur are at your own risk without any warranties or representations by the Town that your street will be established as a public way, even if you have incurred expenses for such purposes.

Your signature below may have legal consequences. The layout of public ways and the ordering of betterments are legal processes that will create binding legal obligations and that will affect your rights to your property. If not understood, we recommend you consult with an attorney.

UNDERSTOOD AND AGREED:

Signature Name: Address:	Date	Signature Name: Address:	Date
Signature Name: Address:	Date	Signature Name: Address:	Date
Signature Name: Address:	Date	Signature Name: Address:	Date

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EXHIBIT 2, Standard Form Easement for Public Way

Grant of Permanent Easement for Public Way

[NAME] of [ADDRESS], Hamilton, Massachusetts ("Grantor"), for consideration given, do hereby grant to the TOWN OF HAMILTON, a body politic and corporate having an address of 577 Bay Road, Hamilton, Massachusetts (the "Town"), acting by and through its Board of Selectmen, with quitclaim covenants, a permanent right and easement over that portion of Grantor's Premises located at [XXX], Hamilton, Massachusetts and shown as " " (the"Easement Area") on the plan entitled [XXXXX]", " dated [XXX], prepared by [XXX] and recorded at the Essex County Registry of Deeds ("Registry") in Plan [XXX]

Book [XXX] and Plan No. [XXX] ("Plan") for the Town and the general public for access, travel and use for all other purposes for which ways are used in the Town of Hamilton and Commonwealth of Massachusetts, including but not limited to entering upon and traveling over the Easement Area by foot and by vehicle, installation of utilities, and the construction, maintenance, grading, sloping, repair, replacement and removal of asphalt paving, sidewalks and other such improvements.

A reduced copy of the Plan is attached hereto as Exhibit A. An assent by the current holders of a mortgage Grantor's property, if any, is recorded herewith. For Grantor's title, see the deed dated and recorded at the Registry in Book [XXX]

EXECUTED under seal this _____ day of _____

GRANTOR:

[NAME]

[NAME]

Commonwealth of Massachusetts Essex County, ss.

On this _____ day of _____, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were photographic identification with signature issued by federal or state governmental agency, under oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person(s) whose names are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

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Acceptance of Easement

The undersigned, constituting a majority of the Town of Hamilton Board of Selectmen, hereby accept from Grantor the rights and easements granted hereby pursuant to the Town Meeting vote on Article PON of the Town's [XXX] Town Meeting.

EXECUTED under seal this [xx] day of [oo<]. TOWN OF Hamilton, By its Board of Selectmen

Chairman

Selectman

Clerk

Selectman

Selectman

On this day of , before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were photographic identification with signature issued by federal or state governmental agency, under oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person(s) whose names are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

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Exhibit A to Easement, Copy of Street Acceptance Plan

[insert 8.5" x 11" copy of plan]

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Exhibit B for use with Easement, Standard form Assent by Mortgagee

[LENDER], a Massachusetts banking institution having a usual place of business at [XXX] and the present holder of that certain mortgage to [PROPERTY OWNER NAME] ("Owner(s)") dated [XXX] and recorded at the Essex County Registry of Deeds ("Registry") in Book [xxx] Page [oa] (the "Mortgage"), hereby assents to the grant to the Town of Hamilton by Owner(s) of that certain Grant of Permanent Easement for Public Way related to the property known as [Joo] Hamilton, Massachusetts and recorded at the Registry herewith ("Easement"), and agrees for itself and its successors and assigns that the Mortgage is subordinate to the Easement and that no action or proceedings to enforce the Mortgage shall result in the termination of any rights or obligations in such Easement.

Executed as a sealed instrument on this _____ day of _____

[LENDER]

By:
Name:
Title:

Duly authorized

Commonwealth of Massachusetts Essex County, ss.

On this [xxl day of [xxx], before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were photographic identification with signature issued by federal or state governmental agency, under oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person(s) whose names are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

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EXHIBIT 3, Sample Warrant Article

Article to Lay out [XXX] as a Town Way.

Article [xxx]. To see if the Town will vote to accept [xxx] in Hamilton as a public way where it intersects with [xxx] as recommended by the Planning Board and laid out by the Board of Selectmen pursuant to G. L. c. 41 and c. 82 more particularly described by the plan entitled [xxx], dated [xxx], prepared by [xxx] and on file with the Town of Hamilton Board of Selectmen; to see if the Town will authorize the Board of Selectmen to acquire by purchase, gift or eminent domain the land or easements in all or any portions of those parcels of land abutting and listed below, as shown on the above-referenced plan for access, grading, drainage, utilities, sloping, trails, public access and all purposes related to the creation and maintenance of a public way; to see if the Town will vote to appropriate, borrow pursuant to any applicable statute or transfer from available funds, a sum of money for such purposes; and further to authorize the Board of Selectmen and Town officers to take any and all related actions necessary or appropriate to carry out the purposes of this article; or to take any other action related thereto.

Property Address:

Town Assessor ID: