
MEMORANDUM – DEVELOPMENT & INSPECTIONAL SERVICES

TO: Rob McNeil, Superintendent of Utilities & Facilities
FROM: Adam D. Gaudette, AICP, ODIS Director
SUBJECT: ACCEPTING PRIVATES ROADS AS PUBLIC WAYS
DATE: February 10, 2009
CC: J. Mulhall, File



This is in response to your inquiry of the procedures required to accept a private road as a town way. I have provided below the State (MGL) and Local (Subdivision Regulations) policies for road acceptance. To summarize I have provided a recommend SOP for the Town of Spencer. I am available to meet and discuss this with you at your convenience.

Massachusetts General Law

MGL sets out the procedure for the acceptance of public ways in Ch. 82, Sections. 21-24:

1. Section 21 establishes the Board of Selectmen or road commissioners of a town as the authority to lay out ways.
2. Section 22 requires that at least seven (7) days prior to the laying out of the road as a town way, notice must be sent to the owner(s) of the (private) road notifying them the Board intends to lay out their road as a public way.
3. Section 23 requires that the layout plans (“boundaries and measurements”) for the proposed public way be submitted to the Town Clerk, and not less than seven (7) days after can the road be accepted at a town meeting.
4. Section 24 requires the acceptance of the road by the Town Meeting; and within one hundred twenty (120) days the town acquire the land by purchase or otherwise.

Town of Spencer Subdivision Regulations (April 3, 2007)

Section 2.3.F – Definitive Plans, Construction

6. As-built survey. Upon completion of the roads and infrastructure and prior to final release of any covenant and/or surety, the developer shall submit four copies of an as-built survey to the Planning Board. The as-built survey shall show the boundary lines of the rights-of-way and lots within the subdivision, the location of the streets, the names of the streets, sidewalks, drainage structures, underground utilities (including sewer, water, stormwater, electric, telephone, cable television, and gas), fire cisterns, signage, street lights, and street trees. The as-built survey shall be prepared and stamped by a land surveyor or professional engineer licensed in Massachusetts, and shall include a statement that all improvements have

been constructed to meet the requirements of the approved definitive subdivision plan and the Subdivision Rules & Regulations for the Town of Spencer. In addition, an electronic copy in compliance with Level III of the current version of the MassGIS Standard for Digital Plan Submission to Municipalities (available at the Office of Development & Inspectional Services or at www.mass.gov/mgis) shall be filed along with the paper copies. The Planning Board may waive this requirement or allow a submission in compliance with Level I of the Standard upon written request which must include a statement as to the reasons electronic submission is not possible. For Level III submissions, the coordinate system to be used shall be the Massachusetts Coordinate System, North American Datum 1983, with units of US Survey Feet, and the vertical datum shall be the North American Vertical Datum 1988.

7. Final disposition.

- a. Timing. For subdivisions that have been approved to have the streets become public ways, the developer may request in writing seven months in advance of a Town Meeting that the streets be accepted as public ways. Such request shall not be made until the roads (complete with top course) and other infrastructure have survived one full year.
- b. Required documents. A survey plan showing the boundaries of the streets (edge of pavement), all rights-of-way proposed to become public property, and all easements (including the beneficiary of the easement and its purpose) must be submitted along with the written request, and shall be submitted to the Office of Development & Inspectional Services.
- c. Inspections. Upon receipt of the request, the Director of ODIS will request a final inspection of the subdivision by the inspecting engineer and applicable Town officials (e.g. Superintendent of Utilities & Facilities, Superintendent of the Sewer Department, and the Tree Warden), said inspections to be completed within fourteen (14) days of the Director's request.
- d. Deficiencies. Upon receipt of the inspecting engineer's report and any other reports, the Director shall notify the developer as to whether any deficiencies were found or not. If deficiencies were found, the developer is responsible for any action necessary to correct them and shall notify the Director when they are complete.
- e. Planning Board action. If no deficiencies are found, or upon notification and follow-up inspections that deficiencies have been corrected, the request will be placed on the next available Planning Board agenda for their review and recommendation to the SelectBoard and Town Meeting. If or when no deficiencies exist and the approved subdivision plan specified the roads would be public ways, the Planning Board shall recommend to the SelectBoard and Town Meeting that the road be accepted as a public way.
- f. Costs. The developer is responsible for the costs associated with this process, as well as any legal and recording costs associated with the transfer of title to the Town of Spencer.

Recommended Town Procedure for Accepting Private Roads (subdivision or existing) as Public Ways

1. Upon completion of all the infrastructure related to the way, including the top course of pavement on the road and sidewalks, utilities, drainage, etc., the proponent should request road acceptance by submitting the following documents to ODIS not less than seven (7) months prior to a scheduled town meeting:
 - Cover letter requesting acceptance,
 - Four (4) copies of an as-built survey,
 - Four (4) copies of the layout plans,
 - Four (4) copies of the legal descriptions for the way and any associated easements,
 - Warrant article by petition with the appropriate signatures.
2. Upon receipt of the acceptance documents, ODIS will contact the Planning Board's reviewing engineer (if applicable) and the Superintendent of Utilities & Facilities to request, final "acceptance" inspections, and will submit one copy of the as-built survey to each for use during these inspections. Additional inspections by other departments will be coordinated as needed (e.g. fire department). Inspections shall be conducted within 14 days of the request. Also, upon receipt, ODIS will forward the layout plans, legal descriptions, and warrant article to Town Counsel for review.
3. Upon ODIS' receipt of the inspection reports (due within 21 days of the request) and Town Counsel's review, the applicant is to be notified of the status of the request. If there are deficiencies, they will need to be addressed prior to the Board of Selectmen voting their intent to lay out the road as a town way.
4. Once all deficiencies (if any) have been corrected, which may involve additional inspections by the appropriate engineer and staff, and Town Counsel is satisfied with the lay out plans and legal descriptions, the request for acceptance will be placed on the next available Planning Board meeting agenda for recommendation of Town Meeting approval to the Board of Selectmen.
5. Once the Planning Board has made their recommendation, the request for acceptance will be placed on the next available Board of Selectmen meeting agenda for placement on the Town Meeting Warrant and to vote their intent to lay out the road as a town way.
6. Once the Board of Selectmen have voted their intent to lay out the road, a notice must be sent to the owner(s) of the (private) road notifying them the Board intends to lay out their road as a town way.
7. Not less than seven (7) days after the notification of their intent, the Board of Selectmen must again meet and vote to lay out the road as a town way.
8. After the Board has voted to lay out the road as a public way, a certified copy of their vote and the lay out plans are to be filed with the Town Clerk, not less than seven (7) days prior to Town Meeting.
9. If the Town Meeting votes to accept the road, then within one hundred twenty (120) days, the lay out plan along with a certified copy of the Town Meeting vote must be recorded with

the Worcester District Registry of Deeds in order to transfer title of the road over to the Town of Spencer. A copy of the recorded documents must be provided to the Town Clerk and ODIS.

10. At that point the Town takes over responsibility for the maintenance of the roadway and infrastructure, with the exception of any provisions of the Planning Board approval requiring Homeowners Association responsibility for specific elements (such as drainage basins).