

DEDHAM TOWN BYLAWS

Dedham Annual Town Meeting MAY 19, 2014

**BY-LAW: LAYING OUT & IMPROVEMENTS TO PRIVATE WAYS REQUIRES
MAJORITY VOTE**

ARTICLE THIRTY-THREE: *By Selectman Michael L. Butler and Planning Board Member Michael Podolski.* To see if the Town will vote to amend the Revised By-laws of the Town of Dedham by deleting Section 250-7, Repairs and Improvements to Private Ways, in its entirety and replacing it with the following:

*** Section 250-7. Temporary Repairs to Private Ways**

The Director of Public Works may, at his discretion, undertake such action as may be necessary to keep private ways which have been open to public

use for a period in excess of ten (10) years passable for emergency vehicles.

This By-law shall not be construed so as to allow complete repaving or rebuilding

projects for any private way, nor shall any such repairs exceed in cost the amount of one thousand five hundred dollars (\$1,500) for any given private way in any given fiscal year.

The liability limit of the Town for any claim arising from any such work on any private way shall be Five Thousand Dollars (\$5,000).

*** Section 250-8. Laying Out and Improvements of Private Ways**

Owners of land abutting any private way that is open to public use may petition the Board of Selectmen to lay out and accept such way as public and improve such way to standards acceptable to the Board of Selectmen. The Board may determine to approve such petition and establish standards for the improvement of such way in accordance with a policy implemented by said Board after due notice and hearing. The following conditions shall be met:

- a. 100% of the owners of land abutting on the private way or who otherwise own any part of the way shall agree to the laying out and acceptance of the way as public and the construction of such improvements to the way as the Board of Selectmen shall determine.
- b. 100% of said owners shall agree to pay such portion of the cost of laying out and improving the private way as the Board of Selectmen may determine to assess as a betterment, which assessment may be up to and including 100% of such costs. Such costs shall include the costs to the Town of ascertaining ownership of the way and related properties

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and obtaining such property rights as are necessary to public use and maintenance of the way. Said betterment assessment shall be equally assessed on all benefited properties if all benefited properties are existing or potential single family lots and otherwise shall be assessed proportionately pursuant to G.L. c.80, and pursuant to G.L. c.80, §13, interest shall be at a rate equal to 2% above the rate of interest chargeable to the Town for the project to which the assessments relate, as determined by the Town Treasurer. All improvements and/or assessments shall be in accord with applicable Massachusetts General Laws.

- c. Prior to any expenditure by the Town on construction, said owners and all others specially benefited by such layout and improvement or owning property in which rights must be acquired by the Town for use and maintenance of such ways shall, as applicable: (i) release the Town from all liability in connection with the project; (ii) agree to indemnify and hold harmless the Town from all claims of injury or damage by third parties; (iii) grant to the Town and its agents, contractors and employees a license to enter the way to perform the project; (iv) agree to provide for the ongoing maintenance and repair of said way unless and until said way shall be accepted as a public way; (v) waive rights to appeal the amount of the betterment assessment pursuant to G.L. c.80, §§5-10A; and (vi) waive claims for damages from any taking of land or easements for public way purposes in connection therewith, such agreement to be acknowledged by a notary public and to be binding upon successors and assigns of such property owners.
- d. Upon completion of the layout of the way as a public way by the Board of Selectmen, including referral of such layout to the Planning Board for its recommendation and filing of the layout plan with the Town Clerk pursuant to G.L. c.82, §§21-24, such private way shall be submitted to the next Annual Town Meeting for acceptance by the Town as a public way.

or take any other action relative thereto.

Voted: That it be so voted.

BY UNANIMOUS VOTE

DEDHAM B.O.S POLICY

Private Ways

Road Acceptance Policy and Procedures FAQ's

Q: What is the purpose of this policy?

A: The purpose of this policy is to establish a uniform and equitable procedure by which the Board of Selectmen will consider requests to lay out existing private ways in the Town as public. The policy is intended to improve the overall condition of those ways in Town open to public use, many of which were laid out and constructed prior to the adoption of formal planning regulations and road construction standards. It does not create rights in any property owner and does not in any manner create a legal obligation on the part of the Town, its officials and boards, to act in conformance herewith.

Q: When did Town Meeting approve this change?

A: Town Meeting approved this change in May 2014. It approved Article 33 which deleted Section 250-7 (Temporary Repairs to Private Ways) of the By-laws and replaced it with new language. It also added Section 250-8 (Laying Out and Improvements of Private Ways). The By-laws can be found on the Town website. <http://ecode360.com/documents/DE3083/source/543785.pdf>

Q: What is a private way?

A: A private way is a road that has not been accepted as a public road.

Q: What is the history of private ways in Dedham?

A: Private streets have a long history in Dedham, some as far back as the 1800's. The fact that they exist at all is not unique to Dedham; other communities also have private streets. There are about 18 miles of private streets in our town.

Most private streets were never constructed to acceptable standards. They often lack basic road requirements like proper drainage or a suitable foundation. Their origin can be traced to the days before the early 1950's when subdivision control laws were first adopted to regulate land development.

They represent an ongoing neighborhood and public works problem, The fact that private streets were constructed without meeting acceptable engineering standards is the reason they pothole, washout or erode and cause abutters to seek help from the Town. However, the help that the DPW can offer is limited because the street is private. Because it was never accepted as a public street, the town has no legal interest in the street and any service provided by the town needs to be in full accordance with state statutes that regulate how Dedham can spend public funds on private roads. By way of contrast public streets are those in which the town has a public interest and which were built to town standards.

Q: How many private ways are there in Dedham?

A: There are about 200 private ways totaling 18.7 miles in length. There are about 65 private drives totaling 3 miles in length.

Q: Who will pay for improvements to bring the private way up to the required standards?

A: In most cases, the Town will pay 100% of the cost of the improvements. There may be some cases where the town will pay only a portion of the cost. In these cases the Town would assess a betterment and the abutters would be required to agree to pay their share before construction began. The Board of Selectmen will make the decision on what portion of the costs should be paid by the Town.

Q: What is the timeline for doing this work?

A: There is no specific timeline. The current backlog of public roads awaiting improvements is 10 – 12 years. Private ways which are accepted through this process will be added to the list and addressed in accordance with the Town's Pavement Management Program . Work may be done sooner than 10- 12 years from now. It may not. It depends on how much money is invested annually in Town roads.

Q: How can I find out if I live on a public road, a private road or a private drive?

A: There is a master list of all Dedham roads, and their classification. Here is the link to the Town Clerk's website:

<http://www.dedham-ma.gov/index.cfm?cdid=26323&pid=12480>

Q: Isn't there a budget to maintain these roads of \$1,500 per year per private road?

A: There is no specific budget for Private ways. There is a by-law that stops the town from spending more than \$1,500 on a private way. It will do limited patching. It is not enough to do repairs to such roads in the conditions that many private roads are in.

Q: Can we just have a good bulldozer come to our private road and flatten it out and level it?

A: Town by-laws and state law do not allow us to do that on private property. This revised by-law, approved by the May, 2014 Town Meeting, will give private way abutters a way for them to have the private way accepted as a public road, which at some point will be rebuilt.

Q: How can we tell if a road is passable for emergency vehicles?

A: The Town will get a phone call from the trash collectors or Fire department saying they can't travel on a certain road.

Q: I am thinking about buying a home on a private way. What advice can you provide?

A: We recommend you speak with a lawyer so you understand your rights and obligations. You may also want to speak with an insurance agent to understand the implications of living on a private way.

Q: There are three houses on the street and one large lot of land. I know this street (Forest Street) will never become a public way so it is my understanding that the people who live on this street will have to pay for improvements to this street.

A: Forest Street is a Category 3 street. If all of the abutters sign a petition which has been designed for that purpose and go through the rest of the process it may become a public road.

Q: Do abutters pay any money out of their own pocket at all?

A: In most cases, no. For some existing private ways there may be a cost involved. The Board of Selectmen make the decision as to what share of the costs will be paid by the Town.

Q: I understand you need 100% but is there any flexibility there?

A: Town Counsel recommends, and the Board of Selectmen agrees, that 100% of abutters need to sign off the petition. If not all 100% of the abutters sign off then one of them can go to court and stop the process. This will mean the Town begins to incur legal costs, which it does not want to do.

Q What type of construction will we undertake? Is it just an overlay or are we talking about drainage and sewer systems also?

A: Every road is going to be on a case-by-case scenario. Some private ways are in very good condition and will only need routine maintenance such as filling in cracks. Most private ways are in complete disrepair and will need to be fully reclaimed. Depending on what type of rehabilitation is going to be required we will also be taking a look at what is below the road. Then we will know if there is a sewer line that has collapsed or a drain line that needs repair just like we do now with the public ways. Right now when it rains the water finds its way into the cracks and pot holes on the roadway. Once you have a new roadway you need to have that water redirected to a storm drain. That's another thing that needs to be looked at and again it is a case by case basis.

Q: What is the minimum width that is needed to become a Public way?

A: There is info again on the website that has details about the typical cross sections. Here is the link to the private way design standards developed by the Town's Engineering Department:

<http://www.dedham-ma.gov/dedham/file/Selectman/DRAFT%20Pvt%20Ways%20Design%20Standard%20-%20RS.pdf>

We are trying to figure out a roadway that can accommodate safety for everyone not just for vehicles but for emergency response and pedestrians, too. Depending on the right of way the width can be 22-28 feet.

Q: If it is going to become a public way are there going to be sidewalks on both sides or just one side?

A: As far as sidewalks they will only be installed on Group 1 and Group 2 roads. A Group 1 road is a private way that leads to a public facility. Obviously there is going to be a sidewalk there because it is heavily traveled. We want safety to

have access to those locations. Group 2 roads, which are private ways between 2 public ways, will have sidewalks because the Town wants to continue the walkability of that street and install a sidewalk on that road. We are really not looking at doing sidewalks on both sides. One sidewalk on one side is sufficient. Certain cases where we would not have a sidewalk is a private way that goes to a public way or another private way that does have a sidewalk now really doesn't need one. It would be unusual to have a sidewalk and it dead ended and didn't go anywhere. Another area we might do a sidewalk would be where there was one that previously existed before. Even if it did not go somewhere the people on that street might feel it is important to keep that sidewalk so we would do that for them, unless they all unanimously said let's get rid of it because it does not connect to anything. That would be a case by case basis also. There is a blue print of these plans if you go on the website mentioned above that shows the different designs. For example: Park Street is on the design and there would be a sidewalk because it joins to Mt. Vernon and East St.

Q: When I purchased my house I paved the front so I could park there. Will I still be able to do that?

A: Parking is a level of detail we cannot answer now. We can give you some insight into the way roads are being rebuilt now and how careful Engineering and DPW are when they take into consideration individual home owner's preferences. You can drive around town and see how new roads have been recently repaved. In some places you will see a green strip and in others it doesn't make sense to have a green strip.

Q: If they put sidewalks in and take away from my property will our taxes change?

A: It is unlikely it will affect taxes. You should talk to the assessor's office to see if it will affect your property values. You may also want to speak with a realtor.

Q: On Clough Road there are condominiums with about 40 owners and 2 abutters – are you saying that all of them need to attend the second meeting? The condo association has 5 board members. Will they be responsible for speaking on the owner's behalf?

A: They don't have to attend as long as they send in their signatures. Your attorney would have to refer to your master deed and bylaws. Once we have the

petition in-place and we have the agreement and the 2 documents that people have to sign you can take those to the condominium association attorney and get his or her opinion whether the deed allows the Board of Directors to make that decision.

Q: In some cases I would think that the property deed would need to be updated and if so the property owner would know before they have to sign.

A: Once the layout is adopted by town meeting the town must acquire certain property rights within the layout to establish the public way. We expect to do this by eminent domain, which requires the Selectmen to execute and record an order with the Registry of Deeds to take the necessary property rights. The property rights taken will be an easement for public way purposes throughout the layout, and any appurtenant easements needed for drainage and utilities. The recording of the order of taking will place notice in your title of the location of the layout. Because the town is taking only easements, the amount of property you own will not change, but the taking will alter the so-called street line if it is different than what is now shown by your deed and plans of record. We cannot say if it will change your property values.

Q: What is an easement?

A: An easement is a non-possessory right to use and/or enter onto the property of another to do a specific thing on that property. In this case the town is going to acquire an easement for public way purposes throughout the layout. Ordinarily, property owners own the land in front of their lot to the center line of any roadway they abut, and thus when the town acquires an easement in the layout it will be acquiring an easement in a portion of each abutter's property.

Q: The land at the end of Whiting Ave Extension was purchased from the railroad by a couple of abutters. It is a dead end Street – will they have to sign off?

A: From River Street to Quincy Ave would be done, so those particular abutters would not.

Q: How much does the Town spend on roads every year?

A: About \$2million a year is invested in roads – that does not always go to the roads with the lowest pavement condition index (PCI), a measure between 0 and

100 of what shape the road is in. What we try to do is tackle the most important roads but we also try to distribute it to the entire town. That means there may be a road in a neighborhood that is a 40 and gets repaired and another that is a 30 and does not get repaired.

Q: Is that a mix of public and private?

A: Right now it is 100% public but if that private road has a low PCI and becomes a public road and carries that PCI forward then again it is prioritized a little bit based on the low score, but not always.

Q: What rights and damages will I have to waive as an abutter?

A: The right to require the town to obtain an appraisal and the right to claim damages for the property rights the town is going to acquire by eminent domain to complete the layout. That would make it a so-called "friendly" taking. Essentially it is an agreement to let the town take the property rights in question.

Q: What vote is required at Town Meeting to accept a private way as a public road?

A: A majority vote is all that is required if the proposed layout follows the boundaries of a way as shown on a definitive plan approved under the Subdivision Control Law. Acceptance of a layout not shown on an approved subdivision plan requires a 2/3's vote of Town meeting.

Q: Does it really make sense for the town to ever invest in the sidewalks? Do the abutters have a say in what side of the street the sidewalk is and does it need to be 100% of the people to agree. For Example if one person on the left side of the street disapproves and everyone agrees on the right side what will the Town do?

A: We are going to come up with a proposal and listen to people's comments and decide which side the sidewalk should go on. Over time we want to develop a walkable area.

Q: Why is Jenny Lane listed in group 5? It seems like it should be in group 3. It has seven residents, it is a dead end street and it intersects a public way.

A: To answer the first question – We set up these categories based on our assessment to benefit the general public.

Q: Assuming all people sign to have the town layout the road and it takes 10 years to get to it, what happens if one person sells their property? In other words, if the request goes through the process and then to the Selectman and is approved and then someone sells their property, does the new owner have the right to reverse the process?

A: The answer would depend a lot on timing. If the 1st round of approvals was met and then the 2nd round was met the Selectman would lay it out and it would go to Town meeting for a vote. The town would have all the signed waivers and agreements at the time and it would be everyone, so after the town meeting the Selectman would execute the taking to acquire the necessary rights. If the property owners change after that point it doesn't matter. If they sell the property before that they will need a waiver from the new owner or need their approval.

Q: Will the Town provide any assistance getting through the 1st process of petitioning?

A: Yes. The necessary assistance will be coordinated through the Town manager's office.

Q: How can abutters find out who owns other properties?

A: The Town Manager's office will coordinate with the Assessors department to obtain the necessary ownership information.

Q: Is there a procedure that if not everyone agrees can it be addressed later if a new owner comes in?

A: If there was only one person that said no and a year later that person moves out and a new person moved in and agreed to go thru the process. You should go for it.

Q: I live on Nay Circle. We don't have 24 feet of width available. Will we be excluded from this process?

A: There are about a dozen roads that fall into that category. We hope but can't promise we can get to some solutions for the tax payers. There are at least a dozen roads around town that are not wide enough to allow the min 24 foot road. We do not have an answer at this time. A lot of these roads were laid out in the 1700 and 1800 for one reason or another. They were never accepted as public roads. As reasonable a proposal this is, it is not going to solve 100% of the issues.

There are some of the roads that are private that are not going to be addressed by this issue. Some situations will have to be a separate process all together.

Q: I live on Churchill Place. Anytime in the next 50 years will the road be fixed so that people can go down to see the baseball games at the field?

A: If 100% of the abutters agree to go through the process.

Q: So we don't have to worry about public taking of the land for the greater good of the town?

A: The Town does not intend to take any land. The process requires 100% of the abutters to sign first, the Public Way Layout Petition Form, and second, the Approval of Conceptual Overlay Map form. Only when 100% of the abutters have signed both forms will their request move forward to Town Meeting.

Q: So if the Churchill Place abutters go through the process and it is approved what will parking be like during softball games?

A: There is no obligation on the part of abutters to request a layout. It is recommended that all the neighbors get together to see what a layout would actually look like, to see what improvement might happen. Once they receive a layout but do not like it they can decline to move ahead. On the other hand a layout gives everyone better information with which to make an informed decision.

Q: What role does the Planning Board play?

A: The Selectmen will refer the proposed layout to the Planning Board for a "report". The Planning Board may report to the Selectmen on the proposed layout if it wishes but is not required to. If it chooses not to report, the Selectmen can move ahead with the layout after 45 days have passed following the referral. If the Planning Board does choose to report it may do so in any way it wishes. It may approve or disapprove the proposed layout, but does not have to take a position one way or the other. If it does report and makes a recommendation, the Selectmen may choose to follow or to ignore that recommendation. A positive recommendation is not required in order to allow the Selectmen to move forward with an order of layout. The Planning Board's report does not constitute approval under the Subdivision Control Law. Subdivision approval is a completely separate process by which land can be divided into two or more lots and private ways providing access to those lots. It

requires notice and public hearing and if successful results in a definitive plan endorsed by the Planning Board for recording showing the approved division of land and the layout boundaries of the new way(s). If the proposed layout of a public way follows the boundaries of the way as shown on an approved definitive plan, a majority vote of Town Meeting is sufficient to accept that layout as public. If the layout is not shown on a previously approved subdivision plan, a 2/3's vote of Town Meeting is required to accept the layout.

Q: Who submits the article to Town Meeting?

A: By law the Selectmen are given complete control over the layout of public ways and the submission of proposed layouts to Town Meeting for acceptance. An article to accept a layout of a way as public cannot be placed before Town Meeting by petition of registered voters pursuant to G.L. c.39, s.10. As a matter of law the primary beneficiary of laying out a public way is the public, although there is certainly an ancillary practical benefit to abutters.

The article could read: "By the Board of Selectmen" or "By the Board of Selectmen on behalf of the abutters of..."