

TOWN WAY
LAYOUT AND ACCEPTANCE PROCEDURE

I. **LAYOUT BY BOARD OF SELECTMEN**

- A. Selectmen shall give notice of intent to lay out to any owners of land to be taken for the way at least 7 days prior to the meeting at which layout will be voted by mailing/ leaving notice at usual place(s) of residence of land owner(s), delivery in person or to owner(s) tenant(s) or authorized agent(s), or if an owner does not reside in the Town and has no known tenant or agent, by posting in a public place in the Town. (G.L. c. 82, §22). The notice should contain a metes and bounds description of the land within the proposed layout and of any other land to be taken, as well as the date, time and place of the meeting at which the layout will be adopted. Alternatively, reference may be made to the layout/taking plan and the place where it may be viewed.
- B. Selectmen vote at a public meeting to approve the layout as shown on the record plan and profile.
- C. The vote approving the plan and profile of the layout are filed with the Town Clerk, who, within 10 days, must record the description in a book kept for this purpose. This must be done at least 7 days in advance of any Town Meeting action on the question of acceptance of the way. (G.L. c. 82, §23).
- D. If possible, establish the anticipated land acquisition costs at this point, either by negotiation with impacted property owners or by appraisal.

II. **ACCEPTANCE BY TOWN MEETING**

- A. Selectmen place an article on the Town Meeting warrant regarding acceptance of the way. If land or easement acquisition is necessary, the acceptance article or a separate article should seek an appropriation of funds for taking and authorization for acceptance of a gift, purchase or taking.
- B. At least 7 days after the layout vote and plan have been filed with the Town Clerk, the Town Meeting may vote to accept the way.
 - 1) A majority vote is needed to accept a way which has been approved as part of a subdivision.
 - 2) A two-thirds vote is needed to accept any other way.
 - 3) A two-thirds vote is needed to authorize and appropriate funds for acquisition of necessary interests in land by purchase or eminent domain, where applicable.

III. ACQUISITION OF INTERESTS IN LAND (BY SELECTMEN)

A. Within 120 days after termination of Town Meeting, the Selectmen must either:

- 1) Acquire necessary interests in land (fee or easement) by purchase or acceptance of gift: or
- 2) Adopt an eminent domain order of taking under c.79; or
- 3) Institute proceedings for a taking under c.80A.

B. Eminent Domain Procedure. If an order of taking is adopted, the order must be recorded in the Registry of Deeds of the county in which the property lies and/or filed for registration in the proper registry district within 30 days of execution of the order by the Selectmen.

- 1) Award of Damages. The Board of Selectmen shall, at the time of the adoption of the taking order, award the damages sustained by every person in his property by reason of such taking. Such award may be amended by said board at any time prior to the payment thereof by reason of a change in ownership or value of said property before the right to damages therefor has become vested or for other good cause shown. (G.L. c. 79, §6).
- 2) Appraisal of Damages. At least one appraisal must be commissioned by the Selectmen before an award of damages is made, unless all persons entitled to damages by reason of the taking have agreed to a waiver of the appraisal, in which case nominal damages may be awarded. No appraisal shall be required if all persons entitled to damages by reason of such taking waive, in writing, their right to any damages. (G.L. c. 79, §7A).
- 3) Payment of Damages. Any check for the payment of such damages shall be issued either within sixty days after the right thereto becomes vested, or within fifteen days after demand therefor by any person entitled thereto. (G.L. c. 79, §7B).
- 4) Notice of Taking and Award of Damages. Immediately after the order of taking is recorded/ filed for registration, the Selectmen must give notice thereof to every person, including every mortgagee of record, whose property has been taken or who is otherwise entitled to damages on account of such taking. The notice shall be in writing and shall describe in general terms the purpose and extent of the taking, and shall state the amount of damages, if any, awarded for such taking (the “pro tanto payment”) and the time and place at which he may obtain payment thereof, or, if no damages have been

awarded, the time within which he may petition for an award of the same, and the time within which he may petition the Superior Court to determine his damages under G.L. c. 79, §14. (G.L. c. 79, §7C).

- 5) Service of Notice of Taking. The notice of taking/ award of damages may be served by personal service, or by leaving an attested copy thereof at the last and usual place of abode of the person to be notified if he is a resident of the Commonwealth, by any person authorized to serve civil process, or notice may be given to persons within or without the Commonwealth, by registered mail or other suitable means. (Id.).
- 6) Filing a Copy of Notice with Tax Collector. The Selectmen, immediately upon giving notice of a taking and an award of damages in accordance with section seven C, shall send a copy of such notice to the collector of taxes.
- 7) Petition to Court for Damages. A person entitled to an award of damages under G.L. Chapter 79 may petition for the assessment of damages, or for additional damages above the *pro tanto* payment, to the Barnstable Superior Court within three years after the right to such damages has vested, subject to an enlargement of the filing period in certain specified circumstances. (G.L. c. 79, §§ 15&16).