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CITY AND TOWN WAYS:

A PRIMER ON THE PROCESS OF LAYOUT, ACCEPTANCE, AND ACQUISITION

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We are frequently asked about the process for creation of public ways. The procedures a municipality must follow are set forth in G.L. c.82, §§21-24. The purpose of this Memorandum is to explain the process, step by step, in an understandable and useful format. We also address some of the practical considerations involved in acquiring rights to use such ways for public way purposes. Finally, for your convenience, we include a synopsis of the procedural steps addressed in this Memorandum.

CITY AND TOWN WAYS
LAYOUT, ACCEPTANCE, AND ACQUISITION

PART ONE – CREATION OF PUBLIC WAYS

To create a public way, a city or town must take three main steps: layout, acceptance, and acquisition. First, the city council or board of selectmen must establish the physical boundaries, or layout, of the way. The city council or town meeting must then vote to accept the way as public. Lastly, the municipality must acquire the right to use the land within the layout of the way, and, if required to properly support and maintain the way, easements in lots abutting or near the way for drainage, access, or other related purpose. The same process applies to change the dimensions or location of a public way, an "alteration of layout", or to establish boundaries of a public way if they are uncertain, a "relocation"

A municipality must take all three statutorily required steps, in the order indicated, to properly establish a way as public.

I. LAYOUT PROCESS

The municipality must first lay out, or establish the physical location and dimensions, of the proposed public way.

A. Petition to Lay out Way as Public. The layout process may begin with a petition submitted in a city to the city council and in a town to the board of selectmen by one or more residents. If a separate board of road commissioners exists in a town, the petition may be filed with the road commissioners. For ease of reference, when addressing actions in towns, this Memorandum will only refer to the board of selectmen. The layout process may also be initiated by the municipality. G.L. c.82, §21.

B. Layout Plan and/or Description. In order to lay out a proposed way, a layout plan showing the dimensions and location of the proposed public way must be submitted to the city council or board of selectmen. A new survey or as-built plan is not necessary. Instead, a municipality may rely on a plan that is already on record provided that the metes and bounds of the way as shown on the recorded plan and as constructed on the ground are the same. When seeking to lay out and establish an existing way as public, care should be taken to ensure that the layout encompasses the way as it actually exists. An as-built plan is useful for this purpose. A municipality may refer to or use a legal description of a way in lieu of a layout plan. In our experience, it is common for persons petitioning a municipality to accept a way as public to provide the necessary plan and/or description.

A municipality must also consider whether easements on abutting lots for drainage, utility, access and/or other related purposes are needed to properly support and maintain the way. If such other easements are required, the plan on record should also show the boundaries of the

easement areas, or, alternatively, a separate easement plan may be prepared to be used with the layout plan.

C. Referral to Planning Board. Once the layout plan or description is ready, the city council or board of selectmen votes its intention to lay out the way as a public way. In municipalities having a planning board, the layout and the plan must then be referred to the planning board for its review. G.L. c.41, §§81G, 81I. The planning board has 45 days after the referral to submit to the city council or board of selectmen a verbal or written non-binding report. The planning board is not required by state law to hold a public hearing, but may be so required by charter, ordinance, or bylaw. Of course, a public hearing may be held if desired or customary in such circumstances.

The city council or board of selectmen may not lay out the public way until the planning board has made its report or 45 days have elapsed since the referral without a report from the planning board, whichever is earlier.

D. Layout Meeting.

(1) Towns. In a town, the next step is for the board of selectmen to vote at a public meeting to lay out the way as a public way. A town must, in accordance with G.L. c.82, §22, give written notice of the date, time, and place of the board of selectmen's layout meeting at least 7 days in advance to all landowners from whom the town intends to acquire land and/or easements by eminent domain for public way and related purposes. The statute requires such notice to be left at the usual residence of the owner, or delivered to the owner in person or to the owner's tenant or authorized agent. If the owner does not live in the town and has no known tenant or agent, then the required notice must be posted in a public place in the town at least 7 days prior to the layout meeting.

Although G.L. c.82, §22 does not mandate the remaining contents of layout meeting notice, we suggest that it include:

- a copy of the plan and/or a legal description of the proposed layout.
- the registry of deeds' book and page numbers if plan or description is already on record.
- the lots on which the town needs to take interests in land by reference to the street address and/or assessors map and parcel numbers, or, if such information is not yet available, a statement that the municipality intends to acquire by eminent domain for public way purposes rights in the land within the layout of the way and/or abutting lots.
- a statement of the place and time when the plan or description may be viewed.

A copy of the layout plan or description, whether or not on record, should be placed on file with the town clerk.

The board of selectmen is not required by statute to provide notice of the layout meeting if the town does not intend to take land or easements by eminent domain in the course of establishing

the public way, although it may do so as a matter of custom or practice. If a local charter, special act or bylaw, and/or custom, requires that notice be provided, those procedures must be observed. As the need for an eminent domain taking may not become apparent until later in the layout process, unless the town already owns the land, it is often advisable as a best practice for the town to provide written notice of the layout meeting to all the owners from whom the town needs to acquire land or easements.

If the board of selectmen decides to lay out the way, the board must vote at or after the layout meeting to adopt the layout of the way as shown on the layout plan or as described and then place the matter on the warrant for a town meeting for further action.

General Laws c.82, §23 requires towns to file the layout description and/or plan with the town clerk prior to Town Meeting. Town meeting may not vote on the public way acceptance unless at least 7 days have passed since the filing.

(2) Cities. The layout process applicable to towns is applicable to cities, except as follows. A city is not required under G.L. c.82, §22 to give written notice of the city council meeting at which the layout is to be considered to owners from whom land and/or easements may be taken by eminent domain. Where the city council both lays out the proposed way and accepts it, cities are not required file the layout with the clerk prior to the city council vote to accept the layout. The city council must, however, vote to adopt the layout as shown on the layout plan or as described. G.L. c.82, §21.

II. ACCEPTANCE

A. Acceptance Vote. Once the layout process has been completed, the next step is for the city council or town meeting to vote to "accept" the way as public. In a city, the council may vote at the same meeting, and in the same order or motion at the council's discretion, to lay out and accept a way as public, unless a local charter or ordinance provides otherwise.

Municipalities are not generally required to record with the registry of deeds an accepted layout description or plan. However, if the municipality needs to acquire rights in a way or in abutting lots, the layout description or plan must be recorded unless the municipality is relying on an already-recorded plan.

B. Quantum of Vote; Filing. If the way to be accepted is shown on a subdivision plan approved by the planning board, the city council or town meeting may accept the way by majority vote, subject to any applicable charter provisions. If the way to be accepted is not shown on an approved subdivision plan, a two-thirds vote of the legislative body is necessary to accept the way as public. G.L. c.41, §81Y.

Under G.L. c.82, §32, the city or town clerk must record the layout description or reference the layout plan in a book kept for this purpose within 10 days after the legislative body has accepted the way as public.

III. ACQUISITION OF INTERESTS IN LAND

To complete the process of making a way public, the municipality must acquire property rights in the land within the layout sufficient to allow for the requisite public and municipal use.

As discussed in further detail below, G.L. c.82, §24 requires towns to acquire, within 120 days of the close of the town meeting at which a public way is accepted, any land needed for public way purposes. If a town fails to act during this period, the town needs to repeat the layout and acceptance process, including a new town meeting vote. Acquisition of easements on abutting lots for drainage, access, utility, slope, and/or other purposes these easements is not mandatory and the 120-day requirement for acquisition of rights within the layout of the way is not applicable to such easements. Similarly, the 120-day rule does not apply to cities.

A. Fee or Easement. A municipality should consider whether to acquire the "fee interest," that is, full ownership, in the land within the layout of the way or an easement to use the way for public way purposes. Either interest will provide the municipality and the public the requisite rights, although ownership of the fee interest carries with it liability for the existing condition of the land. For example, a fee owner of land contaminated by hazardous waste is, as a rule, strictly liable under G.L. c.21E for such contamination, regardless of who caused the contamination (unless certain exceptions apply). For that reason, municipalities frequently acquire only easements in the layout for public way purposes. An easement acquired for public way purposes is entirely sufficient to provide the municipality and the public with all necessary rights of travel and associated use of the way, including the installation of utilities.

B. Legislative Authorization. A vote of the city council or town meeting is required to authorize the acquisition of rights in the land within the layout of the way and, as necessary, certain rights in abutting land (except as may otherwise be authorized by charter). A majority vote of the legislative body is sufficient to grant such authorization. However, a two-thirds vote is required to appropriate funds, if required for the acquisition of interests in land. G.L. c.40, §14. Therefore, if the appropriation vote is combined with the public way acceptance vote, the entire motion will require approval by a two-thirds vote. Alternatively, the municipality may use separate articles or orders, or take separate votes under a single article or order, to (1) accept the way as public and authorize the acquisition of the land and/or easements (majority vote if the way is shown on an approved subdivision plan), and (2) appropriate the funds (two-thirds vote).

If a city council or town meeting seeks to secure for the municipality maximum flexibility, the city council or town meeting vote accepting a way as public should also authorize the acquisition by gift, purchase, or eminent domain of any interests of land in the layout and related easements. This broad authority enables municipalities to respond to unanticipated challenges, such as title defects, without having to return to the city council or town meeting for additional authorization.

C. Time Constraints on Towns Only. While cities and towns must both acquire sufficient property rights within a layout in order to complete the process of making a way

public, G.L. c.82, §24 requires towns do so no later than one 120 days from the dissolution of the town meeting at which the public way was accepted, either by: (1) acquiring the land/easements by gift or purchase, (2) adopting and recording an order of taking to acquire such rights by eminent domain under G.L. c.79, or (3) instituting proceedings for a taking under G.L. c.80A. Although G.L. c.80A permits municipalities to adopt an intention to take land or easements by eminent domain, establish through court action the value of such rights and betterments, if any, and then proceed with the taking, this complicated procedure is rarely used.

D. Completion of Public Way Process. Once all necessary rights within the layout are obtained and recorded, the public way process is complete and the way is public.

E. Strict Compliance with Public Way Process. The above-described statutory requirements are not mere formalities, but must be followed strictly. Jeffries v. Swampscott, 105 Mass. 535, 536 (1870) (statutory layout procedures establish the "indispensable conditions" a municipality must follow to lawfully acquire the right to use private property for public use). If such steps have not been complied with fully, the way never becomes a public way. Even subsequent legislation enacted by the General Court to correct procedural defects cannot cure a "failure to comply with substantive provisions of existing statutes." See Loriol v. Keene, 343 Mass. 358, 363 (1961).

F. Failure to Acquire Rights. We are aware that some municipalities choose not to acquire land or easements through formal procedures, believing that the vote of the city council or town meeting to accept the way as public is sufficient to automatically confer upon the municipality and the public the right to use the land as a public way. There is no support for this practice in the General Laws or case law, in our opinion. The acceptance vote, at best, creates a license to pass and repass that can be revoked by the landowners at any time. See Morse v. Stocker, 1 Allen 50 (1861).

In summary, unless the way is located on land that the municipality already owns, the acceptance vote taken by the city council or town meeting is not sufficient to vest in the municipality and general public the legal right to use the private land within the layout of the way. Thus, in order to complete the process of making a way public the municipality must acquire, in a lawful manner, property rights within the layout of the way sufficient to allow for the requisite public and municipal use.

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PART TWO - ACQUISITION OF RIGHTS IN WAYS AND LOTS

In Part One, we reviewed the steps cities and towns must take to acquire the legal right to use, and allow members of the public to use, land within the layout of an accepted way.

Part Two addresses the process for acquiring such rights and suggests practical resolutions for complications that may arise. While both cities and towns must acquire such rights, towns are often challenged to acquire the necessary rights in the way within the 120-day period imposed by law. To streamline the process, it is worthwhile to consider planning earlier in the process for the acquisition of rights within a way proposed to be accepted as public, particularly if the matter appears uncontroversial and is supported by the city council or board of selectmen.

I. TITLE RESEARCH

Municipalities must ensure that they acquire rights in the way from persons owning the fee interest in the way. Failure to properly identify the owners may expose the town to significant risk, including costs to remove improvements or loss of the right to use certain portions of the way or the right to drain stormwater from the way.

Generally, only owners of land can grant property rights in the land to others. Occasionally, however, a municipality may obtain such rights from a developer that has properly reserved and has the ability to assign rights in the way and on abutting lots.

General Laws c.183, §58, known as the Derelict Fee Statute, creates a presumption that each owner of a lot abutting a way owns the fee to the centerline of the way, as it abuts his or her lot. Further, the presumption exists that when an owner of a land abutting a way conveys the lot, the owner also conveys to the grantee the fee interest to the centerline of the way abutting the lot. However, this presumption may not always be valid. For example, the current owner may have only an easement in the way if a prior owner in the chain of title expressly reserved the fee interest in the way.

Title research is often necessary to determine who owns the land within the way. The municipality may need to review the title to the way itself and all abutting land back to the point in time when the fee in the way and abutting lots were owned by the same person. Such research will likely include deeds by which the original owner/developer conveyed each lot, and the subsequent deeds to each lot. Similarly, if the municipality needs to obtain drainage or other easements in abutting lots, the title to such lots will also likely need review.

It is often the case that lot owners abutting a way will own the fee to the land within the way, and the municipality must acquire rights in the way from the lot owners. Acquiring these interests from multiple owners may take considerable time and effort and, in turn, be costly.

II. DELAYS FOR TOWNS

Towns often experience difficulty in acquiring rights in land within 120 days from the dissolution of the town meeting at which the way was accepted. Delays may occur for various reasons, including if town meeting fails to authorize the board of selectmen to acquire the necessary interests in land or appropriate needed funds at the same meeting in which it authorizes acceptance of the way, the extensive work required to establish rightful owners of the land within the layout, or because petitioners fail to timely execute documents.

To avoid delay, therefore, consideration may be given to addressing title issues earlier in the layout and acceptance process. This is more likely when there is widespread support for acceptance of a particular way, in that the board of selectmen is in favor of moving forward with the process and anticipates town meeting's support for such action.

III. RECORDING FEES; COSTS

While a municipality may conduct the foregoing title research itself, such research often requires considerable staff time and/or review by municipal counsel, and can be costly and time consuming.

One option may be to have persons petitioning for acceptance of the way provide the municipality with a title certification from an attorney licensed in Massachusetts confirming that the municipality will obtain good title to the land and/or easements. Municipal counsel may be asked to confirm the certification.

It is also expensive to record deeds, easements, orders of taking, and plans. Thus, a municipality may wish to consider requesting the petitioners (usually, the abutting lot owners) to pay the municipality's legal and recording fees. While G.L. c.82, §§21-24 do not require such payment, abutting lot owners are often willing to incur such costs, possibly because once a way has been made public, the owners are relieved of the responsibility and cost of maintaining the way, including removing snow and ice.

IV. EMINENT DOMAIN

While a full discussion of eminent domain is not within the scope of this Memorandum, we address basic eminent domain requirements.

A. Generally. General Laws c.82, §24 authorizes municipalities to acquire interests in land for public way purposes by eminent domain. Persons affected in their property by a taking are entitled to damages caused by the taking, valued just prior to the date of the taking, and an appraisal of the property. G.L. c.79, §§6, 12. A municipality intending to acquire land or easements by eminent domain must therefore obtain at least one appraisal of the damages prior

to adopting an order of taking, unless the landowner waives the right to an appraisal. G.L. c.79, §7A.

B. Damages. If damages are to be awarded, the city council or town meeting must appropriate funds sufficient to pay those damages, unless the owner waives the right to damages. Damages are awarded at the time the municipality adopts an order of taking. G.L. c.79, §§6, 12. A municipality acquires the interests in the way and easements identified in the order of taking once the order has been recorded. Recording the order of taking also triggers the municipality's obligation to pay damages, if any have been awarded. G.L. c.79, §7B. An owner, lender, or other person having an interest in the land taken has three years from the date the order of taking was recorded to file a petition with a court for an assessment of damages. G.L. c.79, §16.

C. Use of Eminent Domain – Policy Considerations. Whether and how often to use the power of eminent domain is a matter of policy. Some municipalities choose to use eminent domain powers only if a landowner refuses to make a voluntary grant of rights. Other municipalities prefer to exercise their eminent domain powers by doing a "friendly" taking as an alternative to acquiring easements from a large number of landowners on an individual basis. It is often time consuming to acquire individual easements, as each such easement must be signed, notarized, and recorded. The municipality may, instead, execute and record a single order of taking, acquiring land or easements from all the lot owners in one document.

D. "Friendly" Takings. To ensure that the taking is "friendly," the municipality should obtain a waiver of appraisal and damages prior to the taking. If a municipality has agreed to pay the landowner, the municipality should obtain a waiver from the landowner of the right to damages in excess of the agreed-upon sum. Waivers are typically not recorded are not required to be notarized.

E. Mortgaged Property. If an owner voluntarily grants a municipality rights in land subject to a mortgage, the municipality may request that the lender provide a written subordination of its mortgage. By signing a subordination, the lender agrees that the easement granted to the municipality by the owner is superior to the lender's rights under the mortgage, even though the mortgage was recorded first. A subordination will ensure that a foreclosure of the mortgage will <u>not</u> terminate the municipality's easement. While the risk of foreclosure may be small in any particular case, there is a risk in acquiring an interest in land under such circumstances, particularly if the municipality is acquiring an easement on a large portion of a lot, potentially reducing its value considerably. As a practical matter, however, obtaining subordinations from lenders is often difficult and time consuming, particularly if the lender is not local.

In the alternative, a municipality may choose to acquire rights in land subject to a mortgage using its powers of eminent domain. A municipality is not required to obtain the lender's consent to take interests in land, and foreclosure of a mortgage cannot terminate an easement acquired by eminent domain. If such a taking is "friendly", a waiver of appraisal and damages should be obtained from the landowner.

F*. *Risks. Any decision to take land must weigh potential risks. If a taking negatively impacts the value of the property, such action may expose the municipality to a claim for damages unless the owner and lender have waived the right to damages. Moreover, the risk of a claim is heightened if a municipality acquires an easement affecting a significant portion of a lot. The risk of a claim may not be as high if the municipality acquires an easement that minimally impacts the lot or an easement only in the land within the layout of the abutting way. The costs of litigation can be significant. If litigation were to ensue, courts consider whether the burden of the easement is outweighed by the benefit of having a lot with frontage on a public way and/or having the municipality, rather than the lot owner, be responsible for maintenance of the way.

There are various factors involved in the decision as to how to acquire rights in land within the layout of a public way. In our experience, it is generally useful for a municipality to have the legal authority to exercise any or all of such rights so as to preserve the greatest degree of flexibility to respond to potential challenges and to give the municipality the greatest degree of leverage in the transaction. Thus, we recommend that consideration be given to seeking authorization to acquire rights in a proposed public way by gift, purchase, or eminent domain.

V. BETTERMENTS

Municipalities are often wary about accepting a way in disrepair that may require significant improvements to bring it to a standard comparable to other public ways. A detailed discussion of betterments is beyond the scope of this Memorandum. However, if a city or town wishes to undertake roadway improvements to a way being made public, authority exists under G.L. c.80 to assess betterments on the landowners to recover all or a portion of the cost of such improvements.

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PART THREE – CHECKLIST OF PUBLIC WAY PROCEDURES

This checklist sets forth the statutorily mandated steps a municipality must take to lay out and accept a public way, or to relocate or alter a public way, and to acquire rights in such way. G.L. c.82, §§21-24. This checklist also contains practical resolutions to address potential challenges to the process, *which guidance is shown in italics*.

I. LAYOUT

A. A petition shall be submitted to the city council or board of selectmen (or if a board of road commissioners exists, to such board; to simplify the checklist, reference will be made only to the board of selectmen) to lay out a way as a public way, or the city council or board of selectmen may initiate the layout. G.L. c.82, §21.

B. The petitioner shall provide to the city council or board of selectmen a layout plan showing the metes and bounds of the layout, or the city or town may prepare such a plan. A plan already on record (usually a subdivision plan) may be used as a layout plan provided that the recorded plan accurately describes the way as it is actually constructed on the ground. A legal description may be used instead.

C. *To ensure that land and/or easements are acquired from the proper parties, title research will likely be required to ascertain who owns the fee in the way, and the abutting lots if drainage, slope, utility or access easements are required on such lots. Title research will also need to be done to determine if mortgages or other monetary encumbrances exist that, if foreclosed upon, would terminate the municipality's rights in the way. To minimize municipal costs, the petitioner may be requested to provide to the city council or board of selectmen a title certification prepared by an attorney licensed in Massachusetts or the city solicitor or town counsel may conduct title research. The services of the city solicitor or town counsel are often required in the layout process to prepare and/or confirm the title certification and/or to conduct such research, and the fees to record easements, takings, and plans are often high. Thus, the municipality may also wish to ask the petitioner to pay for the municipality's costs.*

D. The city council or board of selectmen must vote its intention to lay out the way as public and refer the petition and layout plan to the planning board. G.L. c.41, §§81G and 81I.

1) The planning board has 45 days from referral to make a non-binding report to the city council or board of selectmen. A public hearing is not required by statute, unless separately required by charter, ordinance, bylaw, or held as a matter of custom or practice. The planning board's report may be brief.
2) The public way proceedings may continue only when the planning board has made its report or 45 days have passed since the referral without a report, whichever is earlier.

E. In a town, the board of selectmen is required to give written notice to the owners from whom the town intends to acquire land or easements by eminent domain of the meeting at which the board will consider the layout. G.L. c.82, §22. This notice provision does not apply to cities.

1) The board of selectmen must give notice at least 7 days prior to the meeting at which the layout will be voted.

2) The notice shall be left at the usual place of residence of the landowner or delivered in person to the owner or the owner's tenant or authorized agent. Notice can be sent by registered mail to create a record. If an owner does not reside in the town and has no known tenant or agent, the notice of the meeting must be posted in a public place in the town at least 7 days prior to the layout meeting.

3) There is no statutory requirement for notice to be given to landowners from whom the town does not intend to acquire land or easements by eminent domain. *However, since the need for eminent domain may not become apparent until later in the layout process, notice may be given to all landowners from whom the town needs an easement.* Charters and other local legislation must be reviewed to determine if there are additional notice requirements that must be met.

4) The notice must identify the way to be laid out and state the date, time and place of the meeting at which the layout will be adopted. *To provide the greatest degree of notice, it may contain a description of the physical location and dimensions of the way. If a plan has been prepared, the notice may refer to the plan instead and state where it may be viewed (usually, the town clerk's office), or, if the layout plan is already on record, refer to the registry of deeds' plan book and page numbers. A copy of the plan may be filed with the town clerk.*

5) The notice may also request landowners to donate the land/easements to the municipality, and include a Waiver of Appraisal and Damages, in case the municipality elects to take the land/easements by eminent domain.

F. Provided that the planning board has submitted a report, or 45 days have elapsed since the referral to the planning board, and, in a town, that notice has been given to the landowners, the city council or board of selectmen must hold a public meeting and vote to approve the layout as shown on the layout plan. A public hearing is not required unless otherwise specified in a charter, ordinance, or by-law. *The city council or board of selectmen may wish at this time to request that owners voluntarily grant the municipality land and easements for nominal consideration, if such request has not been made already.*

G. The vote approving the layout and the layout plan must be filed with the town clerk at least 7 full days prior to town meeting. This filing requirement does not apply to cities. G.L. c.82, §23.

H. *Cities and towns should establish the anticipated acquisition costs prior to this point, either by negotiation or appraisal, so that a funding source may be identified and the necessary funds appropriated.* If land/easements are to be taken by eminent domain, the municipality must arrange for an appraisal to determine the amount of damages. *If a taking is contemplated, landowners may be asked to sign a Waiver of Appraisal and Damages.*

II. ACCEPTANCE

A. In a town, the board of selectmen places an article on a town meeting warrant for acceptance of the way. If land/easements need to be acquired, the acceptance article, or a separate article, must seek authorization for the municipality to acquire such interests in land by purchase, gift, and/or eminent domain, and, if necessary, an appropriation of funds therefor.

B. In a town, the layout vote and plan must be filed with the town clerk no less than 7 days prior to the date of the meeting, and failure to do so will prevent town meeting from voting to accept the way. G.L. c.81, §23.

C. In a city, the matter is placed before the city council in accordance with any applicable provision of the charter or council rules. If land or easements need to be acquired, the city council must also vote to authorize the acquisition of the rights, whether by purchase, gift, and/or eminent domain, and, if necessary, appropriate funds therefor. The city council may adopt the layout and accept the way as a public way at the same meeting if such action may be taken consistent with the charter and council rules.

D. The quantum of vote applicable to the acceptance vote is as follows:

1) A majority vote is required to accept a way shown on an approved subdivision plan. G.L. c.41, §81Y.
2) A two-thirds vote is needed to accept any other way. G.L. c.41, §81Y.
3) A two-thirds vote is needed to appropriate funds to acquire land/easements by purchase or eminent domain. G.L. c.40, §14.

III. ACQUISITION

A. For towns only, within 120 days after the dissolution of the town meeting at which the way was accepted, the board of selectmen is required under G.L. c.82, §24 to:

1) Acquire the necessary land/easements by purchase or gift; or
2) Adopt an order of taking under G.L. c.79 and award damages, if any; or
3) Institute proceedings for a taking under G.L. c.80A.

B. If an order of taking is adopted by a city council or board of selectmen, the order must be recorded within 30 days from the date of the order in the registry of deeds for the county in which the property lies. G.L. c.79, §3.

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