

TOWN OF ABINGTON

500 Gliniewicz Way
Abington, MA 02351

Board of Selectmen and Planning Board

Roadway Acceptance Procedures

The Planning Board and the Board of Selectmen of the Town of Abington set forth the following procedures (the “Roadway Acceptance Procedures”) for the layout and acceptance of subdivision roads and other ways as public ways. The Roadway Acceptance Procedures contain the procedures required by law and the guidelines of the Planning Board and the Board of Selectmen and must be followed by applicants who wish to submit roads created through the Subdivision Control Act or other roads for acceptance by the Town of Abington. Final approval of a Subdivision Plan by the Planning Board does not constitute the laying out or acceptance by the Town of any road or entitle the road to such acceptance.

All applicants who wish to have a private way be accepted as a public way, and their attorneys and engineers, must review, understand and follow these Roadway Acceptance Procedures, provide the required documents, and meet all deadlines. Compliance with these Roadway Acceptance Procedures and adherence to deadlines will minimize confusion, costs, and delay for all parties.

Compliance with the Roadway Acceptance Procedures is the legal and financial responsibility of the applicant. The Roadway Acceptance Procedures are not intended to give legal advice.

Applicants should consult with their own attorney to ensure compliance with the Roadway Acceptance Procedures.

The applicant is responsible for ensuring all documents are correct and that the Town boards, departments, and Town Counsel are satisfied with the supplied documentation. The applicant is responsible for all fees incurred by the Town in ensuring compliance with the Roadway Acceptance Procedures and completing the Roadway Acceptance Procedures, including, but not limited to, engineering review fees, legal fees, and fees payable to the Plymouth Registry of Deeds to record any and all easements, subordination of mortgages, plans, and other applicable instruments.

Acceptance of a road as a public way involves three (3) steps: First, the Board of Selectmen must lay out the road as a public way in accordance with the requirements of G.L. c. 82, §§21-24, which includes a referral of the layout to the Planning Board for its recommendations. Second, Town Meeting must vote to accept a road as a public way. Third, the Board of Selectmen must acquire by gift easements in the road and drainage, water, sewer, utility, access, buffer, and/or other related easements (the “appurtenant easements”) within one hundred twenty (120) days from the close of the Town Meeting at which the road is accepted as a public way. **Compliance with all three (3) steps is necessary for a road to become a public, Town way.**

Applicants are strongly cautioned to examine the title to the road they wish the Town of Abington to accept as a public way and to any lots on which the Town needs appurtenant easements **before** they commence the Roadway Acceptance Procedures. If the subdivision developer reserved the fee to the road and the appurtenant easements that need to be granted to the Town, the Grant of Easements may be signed only by the developer. However, if the developer did not reserve the fee to the road and/or the appurtenant easements, each and every person owning the fee to the road and/or the lots on which the Town needs the appurtenant easements must grant the Town such easements. The Town of Abington will exercise its right to acquire easements by eminent domain only under limited circumstances and in the sole and absolute discretion of the Board of Selectmen. As a condition of acquiring easements by eminent domain, all the owners of the roads and the lots subject to the

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appurtenant easement must sign a waiver of appraisal, damages, and relocation benefits. It is the Town's preference to acquire an easement in the roadway, rather than the fee; the Selectmen shall, at their discretion, determine if, in any particular instance, they are willing to accept fee or easement interests in the roadway.¹

Roadway Acceptance Procedures

Approximately 90-120 Days Prior to Town Meeting²

1. **Submit Petition and Documents to Board of Selectmen.** The applicant must petition the Board of Selectmen in writing to lay out a road as a Town way. The petition must include three (3) copies of the following:
 - a. *Title Certification:* A title certification prepared by an attorney licensed in Massachusetts, running to the benefit of the Town, listing the names and addresses of all persons currently owning the fee to the road (generally either the developer of the subdivision and/or the abutting lot owners) and the lots affected by drainage, water, sewer, utility, access, buffer, and/or other related easements (the "appurtenant easements") to be granted to the Town;
 - b. *Copies of Deeds and Other Instruments:* A copy of the deed into the applicant, if none of the lots have been conveyed. If any of the lots have been conveyed, the applicant shall also submit a copy of all the deeds out from the developer, deeds either granting or reserving easements to the developer, and any covenants, declarations or other instruments by which the developer retains or reserves the fee in the roadway and appurtenant easements. Unless the developer expressly states in the deed to a lot that the developer is reserving the fee to the road, it is presumed that the lot owner owns the fee to the centerline of the road abutting the lot;
 - c. *As-Built Plans:* A copy of the definitive subdivision As-Built Plan, prepared and stamped by a Massachusetts Registered Professional Engineer and Professional Land Surveyor, showing the existing roadway and all utilities, public and private, above and below grade, and in compliance with the other requirements of the Subdivision Rules and Regulations.
 - d. *Roadway Acceptance or Definitive Subdivision Plans:* A copy of the Roadway Acceptance, showing the metes and bounds of the road and any and all other easement areas, in recordable form, with a signature block provided for the Planning Board. This plan is referred to as the "Layout Plan." The definitive subdivision plan can be used as the Layout Plan, provided it shows the correct boundaries of the roads as built and the easement areas;

¹ The Roadway Acceptance Procedures refer to the Town being granted an easement in the road and to Grant of Easements. If the Selectmen agree to accept the fee to a road, all references in the Roadway Acceptance Procedures to easement in the road and Grant of Easements shall be deemed to refer instead to the fee in the road and to Deeds.

² The timelines suggested herein are recommendations. Applicants are encouraged to commence the Roadway Acceptance Procedures as early in the process as possible.

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- e. *Legal Descriptions*: Legal description, with metes and bounds, of the road and all other easement areas that are to be conveyed to the Town. Legal descriptions are not required if the metes and bounds of the road and the easement area is legibly shown on the Layout Plan; and
- f. *Fees*: The applicant can reimburse the Town for fees incurred by the Town during the layout and acceptance process. Alternatively, the applicant could be asked to provide a certified check in an amount sufficient in the Selectmen's discretion to cover the Town's engineering, legal, and related fees. The applicant shall reimburse or supplement such fees from time to time, as and when requested, to ensure that the Town is fully reimbursed. All funds remaining in this account after the completion of the Roadway Acceptance Procedures shall be returned to the applicant.

Approximately 80-90 Days Prior to Town Meeting

- 2. Vote of Intent to Layout as a Public Way. The petition is placed on the Selectmen's agenda and the Selectmen formally vote their intention to lay out the road as a public way.
- 3. Referral to Planning Board and Planning Board Review. The Selectmen forward the Layout Plan and legal descriptions to the Planning Board for its report (per G.L. c. 41, §§81G and 81I). The vote to refer to the Planning Board can be taken at the same time the Selectmen vote their intention to lay out the road as a public way. Once the Planning Board receives such notice, the Planning Board may solicit recommendations from the Highway Superintendent, the Police Chief, the Fire Chief, and/or other officers or boards. The Planning Board may forward the Layout Plan and legal description to the Town's review engineer for review and comment. The Town's engineer and/or the Highway Department may inspect the road and easement areas to determine if the road has been properly constructed and all subdivision improvements have been properly installed. The applicant must meet with the Planning Board or its designee, if so requested, to review any outstanding issues related to the road and/or the easement areas. The applicant shall correct any deficiencies, at its sole expense.

As Determined by the Board of Selectmen

- 4. Warrant Article. A warrant article is prepared for each road that the Selectmen vote to lay out.

Approximately 30 Days Prior to Town Meeting³

- 5. Notice to Owners. The Selectmen will notify owners and abutters by certified mail, at the applicant's expense, of the public meeting at which the Selectmen will vote to adopt the layout of the road as a public way. Notice will be given to owners and abutters at least seven (7) days prior to the public meeting.

³ Recommend that this step be taken earlier.

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Approximately 15-20 Days Prior to Town Meeting³

6. Adopt Order of Layout. Once the Planning Board has made its recommendations or 45 days lapse since the layout was referred to the Planning Board, whichever is earlier, the Selectmen hold a public meeting to determine if the road is ready for acceptance. The owners and abutters are asked for input in this decision. At this meeting, the Selectmen may vote to lay out the road as a public Town way, or decline to lay out the road, or may continue the matter to a later meeting in order to obtain additional information, i.e. Planning Board report, site visit, among others. Abutters will not be formally notified of the continued public meeting. For those roads that the Selectmen vote to lay out, a formal vote will be taken and an Order of Layout will be signed. The vote and Order of Layout cannot be taken until the Planning Board has made its recommendations or 45 days lapse since the layout was referred to the Planning Board, whichever is earlier.

At Least 7 Days Prior to Town Meeting³

7. File Layout with Town Clerk: The original signed Order of Layout, the Layout Plan, and the legal descriptions are filed with the Town Clerk.

Town Meeting

8. Town Meeting Vote: Town Meeting must vote on whether to accept the listed road as a public Town way, and authorize the Board of Selectmen to acquire the roadway easement and the appurtenant easements by gift, purchase or eminent domain and appropriate funds for the easement acquisition, if needed. A majority vote is needed to accept a road that is shown on an approved subdivision plan. A two-thirds (2/3) vote is needed to accept any other way. A two-thirds (2/3) vote is needed to appropriate funds for acquisition by purchase or eminent domain, if needed.

NOTE: roads do not automatically become public ways upon Town Meeting acceptance. In order to complete the Roadway Acceptance Procedures, the Town must obtain easements in the road and/or abutting lots within a certain period of time, as stated below.

Within 14 days of Town Meeting

9. Updated Title Certification. Promptly after Town Meeting, the applicant's attorney must submit to the Town an updated certification listing the names and addresses of persons then owning the fee to the road and all easement areas.

³ Recommend that this step be taken earlier.

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Within 120 Days of Close of Town Meeting at Which Road Is Accepted

10. Acquisition of Land and Easements. The Town must acquire the necessary easements by gift and record the easements and Layout Plan within one hundred twenty (120) days of the close of the Town Meeting at which the road is accepted as a public way. The Town must acquire the easements by grant of easements and/or by eminent domain.
11. Acquisition by Grant. The developer and/or the lot owners grant the Town the necessary roadway and appurtenant easements, if any, by gift. The following must occur:
 - a. *Grant of Easements*: The developer and/or lot owners must grant the Town roadway and appurtenant easements by gift. A form of Grant of Easements is attached (Attachment A). The form must be adapted to fit the particulars of each roadway acceptance;
 - b. *Subordination of Mortgages*: If the road and/or the lots to be subject to the Town's easements are encumbered by a mortgage (including lines of credit, whether used or not) or other lien, it is the applicant's responsibility to provide the Town with a signed Subordination of Mortgage from each and every mortgagee, expressly subordinating their lien to the Town's easement. A form of Subordination is attached (Attachment B). If the Town does not receive subordinations from all mortgagees, the Selectmen may decide, in their sole and absolute discretion, not to accept the road;
 - c. *Acceptance*: The Board of Selectmen will sign an Acceptance of the Grant of Easements, and attach to it a certified copy of the Town Meeting vote authorizing the acceptance; and
 - d. *Recording*: The Grant of Easements, the Layout Plan, the Acceptances and Town Meeting vote are recorded with the Plymouth Registry of Deeds within the aforesaid one hundred twenty (120) day period, at the applicant's cost.
12. Acquisition by Eminent Domain:
 - a. *Waiver of Appraisal, Damages, and Relocation Benefits*: Before the Town will exercise its powers of eminent domain, all persons owning the fee to the road and the lots that will be subject to the Town's easements must sign a Waiver of Appraisal, Damages, and Relocation Benefits. The Selectmen may, in their sole and absolute discretion, decide not to proceed with the Roadway Acceptance until all owners have signed the Waiver. The form of Waiver is attached (Attachment C);
 - b. *Indemnification*: If the road and/or the lots are subject to mortgages (including lines of credit, whether used or not) or other lien and the developer and/or lot owners has not obtained Subordination of Mortgages from the mortgagees, the Selectmen may, in their sole and absolute discretion, require indemnifications from the applicant and/or the lot owners, protecting the Town from liability if the mortgagees bring a claim against the Town. Such indemnification, if required, shall last for the period of time within which mortgagees may bring claims against the Town for the taking;

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- c. *Order of Taking*: The Selectmen sign an Order of Taking, taking easements by eminent domain. A certified copy of the Town Meeting vote authorizing the taking is attached to and recorded with the Order of Taking;
 - d. *Recording*: The Order of Taking, the Layout Plan, and certified Town Meeting vote are recorded with the Plymouth Registry of Deeds within the aforesaid one hundred twenty (120) day period, and within thirty (30) days of the Selectmen's execution of the Order of Taking, at the applicant's cost; and
 - e. *Notice of Taking*: The Town will send notice of the taking by certified mail to the owners and mortgagees affected by the taking, at the applicant's cost.
13. Waiver. The Selectmen may waive any of the Roadway Acceptance Procedures that are not mandated by statute if, in their sole and absolute discretion, the circumstances warrant a waiver.

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ATTACHMENT A

GRANT OF EASEMENTS

_____ (the "Grantor"), having an address of _____, for consideration of One Dollar (\$1.00) paid, hereby conveys and grants to the **Town of Abington** (the "Town"), a Massachusetts municipal corporation acting by and through its Board of Selectmen, having an address of 500 Gliniewicz Way, Abington, Massachusetts, with Quitclaim Covenants, the following easements on the Grantor's land:

1. A perpetual easement, for all purposes for which public ways are used in the Town of Abington, in, on, and under a parcel of land shown as "_____" (the "Roadway Easement Premises") on the plan entitled "_____" dated _____, prepared by _____, recorded herewith (the "Plan"). Said Roadway Easement Premises are described more particularly in Exhibit A, attached hereto and incorporated herein.

2. A perpetual easement to construct, inspect, repair, remove, replace, operate and forever maintain and abandon in place (a) a sanitary sewer or sewers with any manholes, pipes, conduits and other appurtenances, (b) pipes, conduits and their appurtenances for the conveyance of water, and (c) a covered surface and ground water drain or drains with any manholes, pipes, conduits and their appurtenances, and to do all other acts incidental to the foregoing, in, over, under, through, across, upon and along the Roadway Easement Premises, including the right to pass along and over the Roadway Easement Premises for the aforesaid purposes.

3. *If applicable:* A perpetual easement to construct, inspect, repair, remove, replace, operate and forever maintain and abandon in place a drain or drains with any manholes, pipes, conduits, basins, detention ponds, retention pond, and other drainage facilities, and to do all other acts incidental to the foregoing, in, on, and under the parcels of land shown on the Plan as "_____" "_____" and "_____" (the "Drainage Easement Premises"). Said Drainage Easement Premises are described more particularly in Exhibit B, attached hereto and incorporated herein.

4. *If applicable:* A perpetual easement to construct, inspect, repair, remove, replace, operate and forever maintain and abandon in place sewer pipes, conduits, pump stations, manholes and other sewer facilities and to do all other acts incidental to the foregoing, in, on, and under the parcels of land shown on the Plan as "_____" "_____" and

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“_____” (the “Sewer Easement Premises”). Said Sewer Easement Premises are described more particularly in Exhibit C, attached hereto and incorporated herein.

5. *If applicable:* A perpetual easement to construct, inspect, repair, remove, replace, operate and forever maintain and abandon in place water lines and pipes, conduits and other appurtenances (the “Water Easement Premises”) for the conveyance of water appurtenances and to do all other acts incidental to the foregoing, in, on, and under the parcels of land shown on the Plan as “_____,” “_____,” and “_____” (the “Water Easement Premises”). Said Water Easement Premises are described more particularly in Exhibit D, attached hereto and incorporated herein

If applicable: The Grantor also hereby conveys to the Town the sewer, water and drainage facilities within the Roadway Easement Premises, except that the Grantor does not convey and the Town does not accept the sewer laterals, that is, the particular sewers from the sewer main to the individual lots in the subdivision.

The Town shall have the right of entry upon and passage over said Roadway Easement Premises, the Drainage Easement Premises, the Sewer Easement Premises, and the Water Easement Premises (collectively, the “Easement Premises”), together with all reasonable rights of ingress and egress across the Easement Premises for all purposes stated herein and uses incidental thereto, by, without limitation, foot, motor vehicle, and heavy equipment.

The Grantor may grant any easements, leases or licenses to the Easement Premises to others provided that as the use of the Easement Premises by others will not interfere with the Town's rights and easements on the Easement Premises or result in the Town incurring any additional cost or expense. Any easements, leases or licenses granted in violation of this provision shall be null and void.

The Grantor agrees that the Town may assign the rights granted pursuant to this Easement.

For the Grantor’s title, see deed recorded with the Plymouth District Registry of Deeds in Book _____, Page _____.

The Town’s Acceptance of this Grant of Easements is attached hereto and recorded herewith.

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Executed as a sealed instrument as of this _____ day of _____, 20____.

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

(Official Signature and Seal of Notary)

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ACCEPTANCE OF EASEMENT

The Town of Abington, acting by and through its Board of Selectmen pursuant to the vote taken under Article ____ of the _____, 20____ Annual/Special Town Meeting, a certified copy of which is attached hereto, G.L. c. 82, §§ 21-24, and any other authority in any way appertaining, hereby accepts the foregoing Grant of Easements from _____ on this ____ day of _____, 20____.

TOWN OF ABINGTON,
By its Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss

On this ____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, Selectman of the Town of Abington, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Abington.

Notary Public
My Commission Expires

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ATTACHMENT B

SUBORDINATION OF MORTGAGE

_____, having an address of _____, the present holder of a mortgage from _____, dated _____ and recorded with the Plymouth Registry of Deeds in Book _____, Page _____, for consideration of \$1.00 paid, the receipt and sufficiency of which is hereby acknowledged, hereby subordinates the lien of said mortgage to the Grant of Easements granted to the Town of Abington by the mortgagor, recorded with said Deeds in Book _____, Page _____ or recorded herewith, as if said Grant of Easements had been recorded prior to said mortgage.

Executed under seal this _____ day of _____, 20__.

By: _____
Name:
Its:

THE COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared the above-named _____, who proved to me through satisfactory evidence of identification, which was a _____, to be the person whose name is signed on the above signature line of the attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of _____.

Notary Public
My Commission Expires:

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ATTACHMENT C

TOWN OF ABINGTON, MASSACHUSETTS

Waiver of Appraisal, Damages, and Relocation Benefits

_____ (the "Owner"), having an address of _____, is the owner of property located at _____ in Abington, Massachusetts, and described in a deed recorded with the Plymouth Registry of Deeds in Book _____, Page _____ (the "Property"). The Owner, in consideration of the sum of \$1.00 paid, hereby acknowledges such consideration to be full compensation for all damages sustained by the Owner on account of an eminent domain taking to be made by the Town of Abington (the "Town"), by and through its Board of Selectmen, pursuant to an Order of Taking to be recorded forthwith, of a permanent public way easement in, on, under, and along the roadway shown as "_____" on a plan entitled "_____" dated _____, prepared by _____, to be recorded with said Deeds [*if applicable*: and an easement on a portion or portions of the Property, as shown on said plan], and, for himself/herself/themselves and his/her/their successors and assigns, hereby waives, releases and forever discharges the Town and its successors and assigns from all debt, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages, liabilities, and any and all other claims of every kind, nature and description whatsoever, both in Law and Equity, from or in consequences of said taking, consents to said taking, waives an appraisal of damages, waives all rights to damages for said taking, and further waives all relocation benefits under G.L. c. 79A. The Owner acknowledges that the Owner has received a copy of the Order of Taking and the aforementioned plan.

Executed under seal on this _____ day of _____, 20____.

[name]

Name: _____

By:

Title: