

TOWN OF STOUGHTON



STREET ACCEPTANCE MANUAL

August 25, 1999

Revised through July 10, 2000

Revised through May 10th 2001

STREET ACCEPTANCE MANUAL

8/25/99

Revised 7/10/00 per Town Counsel

Revised 5/10/01 per Town Counsel

IMPORTANT: If the requirements of Massachusetts General Laws as described in this manual are not adhered to, including time frames, then a streets public way status may be subject to challenge

The procedure is as follows:

1. The laying out of a town way is initiated by the **Board of Selectmen (BOS)** as Road Commissioners, or by petition to the BOS by **one** or more inhabitants of Stoughton. Due to the lengthy process involved to accept streets as public ways, the petition should be presented to the BOS by December 31st for consideration at the following Annual Town Meeting or four (4) months prior to a Special Town Meeting.
2. The **BOS** then vote their "intention" to lay out the way and refer the matter to the Planning Board for a non-binding recommendation. The **BOS** should also put the acceptance article on the warrant for the Town Meeting.
3. Within 45 days from referral, the **Planning Board** must submit its report back to the BOS. If no report is submitted to the Board of Selectmen, the Board of Selectmen may deem that there is no objection by the Planning Board and the process continues.
4. At this point the **petitioner** should assemble the metes and bounds plans and the layout descriptions and submit them to the **Engineering Dept.** for review and approval. If the petitioner is the Board of Selectmen or the Planning Board, the **Engineering Dept.** shall perform this step.
5. At least seven (7) days prior to the Board of Selectmen's meeting to lay out the way, the **BOS's office with the assistance of the Engineering Dept.** must send notice of the meeting to the owners of any land over which the right-of-way or any related easements are to be taken. The following is an example of the required notice:

OFFICE OF THE
BOARD OF SELECTMEN
TOWN OF STOUGHTON

On a petition by _____ to lay out as a Town Way a Private Way known as _____ . As an owner of said Private Way and/or land necessary for related easements you are hereby notified that it is the intention of the Board of Selectmen to lay out said way as a Town Way, and that a meeting of the Board of Selectmen will be held on _____ at _____ in the Great Hall, Town Hall, where all parties may appear and be heard on said petition. The layout plans are currently on file with the Town's Engineering Department, Town Hall, where they can be viewed during normal business hours.

Chairperson, Board of Selectmen

The above notice does not need to be advertised in the newspaper. The statute does not require notice to be sent to abutters who do not own an interest in the way, or to owners whose interest will not be taken. As a matter of Town Policy, however, the Engineering Department will send the notice via certified mail to all owners of property within or abutting the way. It is only required by statute to be left at the usual abode of the **owner(s)** or be delivered to the owner in person or to his tenant or authorized agent. If the owner does not live in the Town and has no known tenant or authorized agent, the notice must be posted in a public place in the Town.

Research needs to be done to verify who are the owner(s) of the road and easements. This information should be researched by the **petitioner** and submitted to the **Engineering Dept.** for review and approval. In some cases the fee in the road or easement over the road may have been kept by the developer, but in the majority of cases the owners may be the abutters, therefore notifying all the abutters / owners **is required** via delivery. If the developer kept the fee or easement over the road then it is only necessary to notify the developer via delivery or posting in order to satisfy the statutory requirements. Depending on the history of the way that is proposed to be accepted, the Town may choose to have a title search done by Town Counsel.

6. At the "laying out" meeting the **BOS** (if it chooses) needs to vote to adopt the layout per the metes and bounds plan and the layout description.
7. Notice of the vote taken by the **BOS**, the layout description and the plans must then be filed by the **Office of the Board of Selectmen** with the **Town Clerk**, who must record such description in a book kept for this purpose within ten (10) days. This step must take place at least seven (7) days prior to the Town Meeting vote.
8. If the way has been approved by the Planning Board under the subdivision control law and

it is not the intention to take the way and easements by purchase or eminent domain, only a majority vote of Town Meeting is required.

If the Town intends to take the land or easements by eminent domain, if the Town seeks an appropriation of money for the acquisition of the land or easements, or if the way has not been approved by the Planning Board, a two thirds (2/3) vote is required.

In the majority of cases it is recommended to take the necessary land or easements by eminent domain.

The following article is a sample of an eminent domain taking without an anticipated purchase (only recording costs):

Article XX

To see if the Town will vote to accept the way(s) known as _____, _____, and _____ as Town ways as laid out by the Board of Selectmen, acting as Road Commissioners, according to plans and descriptions now on file in the Town Clerk's Office, and to authorize the Board of Selectmen to take the necessary easements in and adjacent to same by eminent domain with no land damages to the Town; and to see if the Town will further vote to raise and appropriate, transfer from available funds in the Treasury, if any, and/or borrow a sufficient sum of money to pay for recording the same: or take any other action relative thereto.

Petitioner: Board of Selectmen requested by _____

9. The law states that within 120 days after the termination of the Town Meeting, the BOS must either: (a) acquire the way and/or easements through purchase or acceptance of the deed(s) as a gift, or (b) adopt an Order of Taking by eminent domain under G.L. c. 79 or institute proceedings for a taking under G.L. c. 80A. The **Engineering Dept.** and the **Office of the Board of Selectmen** shall prepare the Order of Taking if an eminent domain taking is required.

The following is an example of an order of taking (only taking an easement over the road not the fee):

ORDER OF TAKING

The BOARD OF SELECTMEN of the Town of Stoughton in the name of and on behalf of the Town of Stoughton, a municipal corporation situated in the County of Norfolk and Commonwealth of Massachusetts, pursuant to a vote taken under Article ___ of the warrant of the 199__ Annual Town Meeting, pursuant to Massachusetts General laws, Chapter 79, as amended, and pursuant to every other power hereto enabling, do hereby take by eminent domain an easement in and to the way known as (street name) in the Town of Stoughton, hereinafter more particularly described, _____ (#) construction and slope easements, _____ (#) utility easements, all hereinafter described, in connection with (street name). Taken hereby in connection with said construction and

slope easements are the right to enter upon the easement areas, grade the easement areas and repair and maintain the grade of the easement areas. Taken hereby in connection with said utility easements are the rights to install structures, flow road drainage, sewerage, water supply, etc. in, under, over and through the utility easement, to maintain and store water in the easement area and to enter, construct, reconstruct, maintain and repair ditches, pipes, culverts, detention facilities, retention facilities, pump stations, structures, force mains, and any other utility facilities within the easement area. The taking of the easement in the way, construction and slope easements and utility easements as provided herein shall be for municipal purposes, to wit, for public way purposes of the Town of Stoughton. The way shall be used pursuant to the easement taken hereby for all purposes for which public ways are used in the Town of Stoughton. The way shall be a public way of the Town of Stoughton.

The way which is the subject of this Order of Taking is known as (street name) and is bounded and described by the layout description and plans on file with the Town Clerk of the Town of Stoughton. Said description is hereby incorporated by reference in this Order of Taking. (Street name) is also as shown on a plan entitled _____, dated _____, drawn by _____ and recorded herewith (if acceptance / as-built plan. Reference previous recorded plan, book and page or certificate numbers if referencing original subdivision plan, etc.). The construction and slope easements hereby taken are as shown on said plan. Each is identified on the plan as "(name of easement)". The easements are located on Lots __, __, __, etc. on said plan. The utility easements are as shown on said plan. The easements are located on Lots __, __, __, etc. on said plan and are identified on the plan as "(name of easement)".

If the name of the owner(s) are not correctly stated, the name of the supposed owner is being listed as of the Order of Taking. It is understood that in such instance the land referred to is owned by an owner or owners unknown to us.

The supposed owners of the above described way and easement areas and the holders of any other interests therein are set forth below together with the damages which are hereby determined to have been caused by this taking and are hereby awarded:

SUPPOSED PROPERTY OWNER(S)

<u>LOT</u>	<u>AND OTHER PARTIES INTEREST</u>	<u>DAMAGES</u>
1. (Lot #)	Name and address	None
2. (Lot #)	Name and address	None

This order was adopted and is dated this _____ day of _____, 199__.

TOWN OF STOUGHTON
BY:

BOARD OF SELECTMEN

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS: _____, 199__

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be the free act and deed of the TOWN OF STOUGHTON and its BOARD OF SELECTMEN, before me,

Notary Public
My commission expires:

10. If an order of taking is adopted, the order must be recorded at the registry of deeds or Land Court (if applicable) within thirty days of said adoption. This is to be done by the **Engineering Dept.**
11. **Immediately** after the order of taking has been recorded the **Engineering Dept.** must send a Notice of Taking via certified mail to the owner(s). The following is a sample of a Notice of Taking:

NOTICE OF TAKING

To: (Name of Property Owner) _____ Date: _____
(Address)

Notice is hereby given that by an Order of Taking dated _____, 199__, an easement in and to the way known as (street name) and related construction and slope easements and utility easements, all hereinafter described, were taken by the Board of Selectmen of the Town of Stoughton for purposes of a public way of the Town of Stoughton. Said order was recorded in the Norfolk County Registry of Deeds (and/or Land Court if applicable).

The way which was the subject of said Order of Taking is known as (street name) and is bounded and described in a certificate of the Town Clerk of the Town of Stoughton and a related order of the Board of Selectmen of the Town of Stoughton recorded in the Norfolk County Registry of Deeds (and/or Land Court if applicable) in (insert Order of Taking recording information) Book _____, Pages _____ through _____ (and/or Certificate # if Land Court). Said description is more particularly found in (insert Order of

Taking recording information) Book _____, Pages _____ through _____ (and/or Certificate # if Land Court) in said registry. Said description was incorporated by reference in the Order of Taking. (Street name) is also shown on a plan of land entitled _____, dated _____, drawn by _____ and recorded in said registry in Plan Book _____ as Plan Number _____ of 199__. The construction and slope easements hereby taken are as shown on said plan. Each is identified on the plan as "(name of easement)". The easements are located on Lots __, __, __, etc. on said plan. The utility easements are as shown on said plan. The easements are located on Lots __, __, __, etc. on said plan and are identified on the plan as "(name of easement)".

The Board of Selectmen of the Town of Stoughton has awarded no (if applicable) damages on account of said taking to the owner(s) of said way and related easements or other parties who have or may have any interest in the way and related easements by reason of said taking.

Notice is also given that under Massachusetts General Laws (ter. Ed) Chapter 79, a person entitled to an award of damages under said chapter may petition for the assessment of such damages to the Superior Court of the County in which the property taken or injured was situated within three (3) years after the right to such damage has vested, or such further time as the law allows.

Chapter 79 provides in part that a person entitled to damages may request an offer either in full settlement of, or as a payment pro tanto, from the Town of Stoughton, at any time after the right to damages has become vested.

The right to damages vested on _____, 199__, the date of recording of said Order of Taking with the Norfolk County Registry of Deeds (and/or Land Court if applicable).

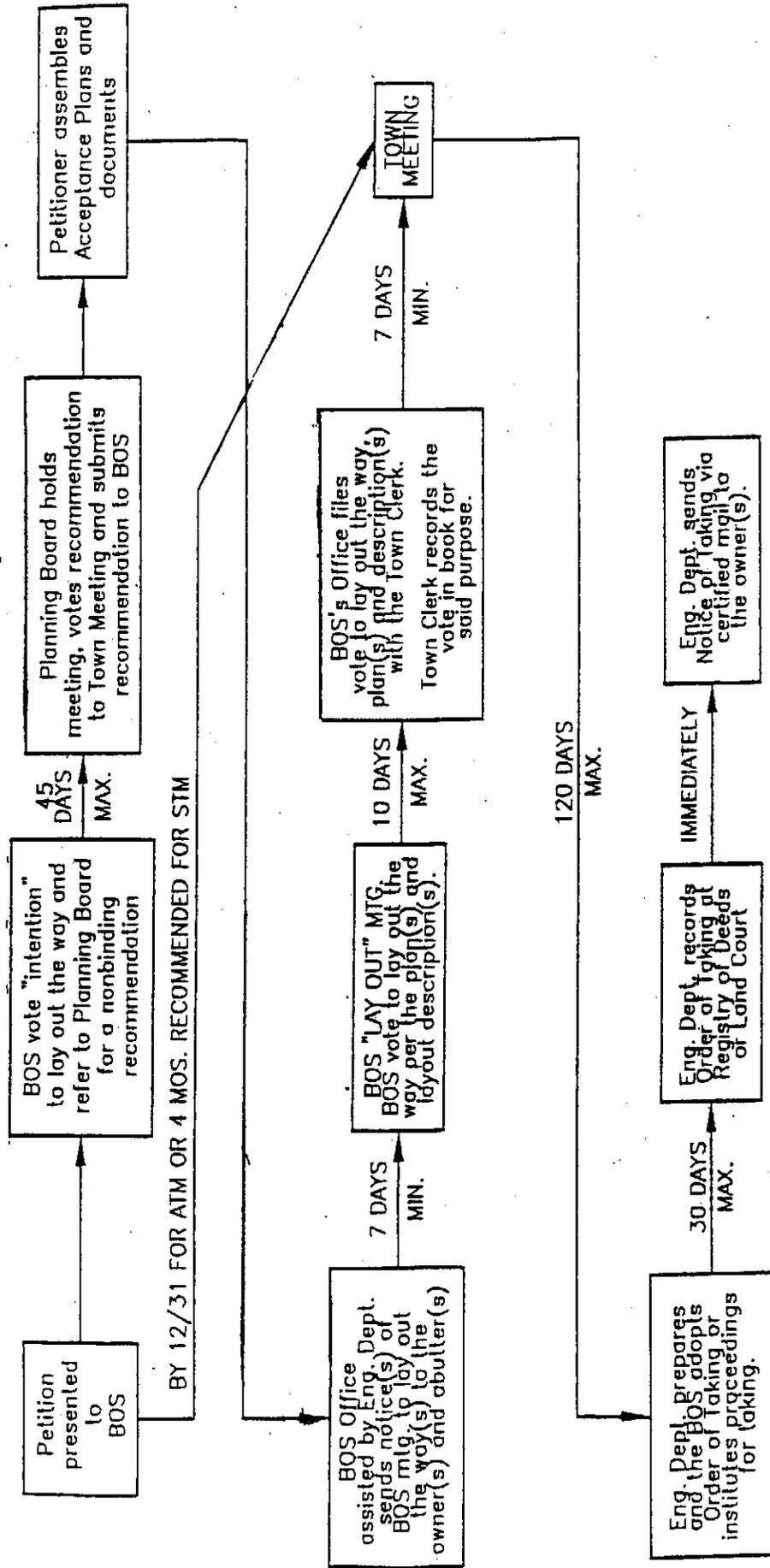
A copy of the Order of Taking is attached.

BOARD OF SELECTMEN
TOWN OF STOUGHTON
BY:

Chairperson

Street Acceptance Manual adopted by the Stoughton Board of Selectmen: November 30, 1999
Revised (sample Order of Taking) by the Engineering Dept. per Town Counsel: July 10, 2000

TOWN OF STOUGHTON, MA STREET ACCEPTANCE MANUAL FLOWCHART *



* Please see Street Acceptance Manual for a more specific procedure.