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Municipal Ownership of Roads and Types of Roads

Municipal Ownership of Roads

Questions often arise about who “owns” a road or the land on which a road sits. As pertains to municipalities, the law does not use the term “ownership,” rather, it looks at the municipality’s legal title or legal interest in the road. Municipalities will have either a fee simple interest or an easement interest.\(^1\)

**Fee Simple Interest.** A fee simple interest is an absolute and unqualified interest in the land. At common law, this interest extends infinitely both above and below the surface of the earth, and includes mineral rights. The owner of a fee simple interest can use the land for any lawful purpose.

All roads accepted or taken by a municipality after December 31, 1976 are held in fee simple interest, unless the acceptance, deed or order of condemnation states otherwise.\(^2\)

**Easement Interest.** An easement interest is much more limited than a fee simple interest. An easement is the right to use land owned by someone else for a specified purpose. In the case of roads, the easement allows the public to travel over land owned by someone other than the municipality.

Most municipal roads in Maine “rest on” an easement interest rather than a fee simple interest. This is because most municipal roads are held as easements over property. Some roads accepted or taken before January 1, 1977 may be held in fee simple, but this must be stated clearly in the deed or other document by which the municipality obtained the property.\(^3\)

In some cases, municipalities own the fee interest in ancient roads and so-called “rangeways” that were established by grants of land from the English monarchy to the colonial proprietors of early Maine settlements. (In rare instances, the municipality may own the fee interest in the land beneath the road (e.g., through tax lien foreclosure); however, this does not necessarily mean that the road over such land is a town way unless the land has been accepted for road purposes.)

Because a municipality can accept an easement interest in a road rather than the entire fee to the road, the road so created may not include utility rights. Therefore, the deed conveying the easement and the warrant article accepting the conveyance should include those utility rights expressly.\(^4\) The owner of an easement or right-of-way interest created by deed executed on or after January 1, 1990 that does not expressly reserve the right to install utility services will not have that right by implication.
Types of Roads

Though the legal interest held by a municipality is important, it is the road type that determines the town’s maintenance obligation. Whereas legal interest defines or characterizes ownership rights, road type defines or characterizes legal status. It is the legal status of a road that decides whether a municipality is obligated to maintain a road or whether maintenance is discretionary. Questions about the municipality’s legal interest in a road generally arise with regard to activities in the right of way (cutting trees and brush, for example) and responsibilities for repair, plowing and maintenance of the road.

This Manual focuses on three types of local roads: (1) town ways; (2) public easements; and (3) privately owned roads. The “type” of road refers to its legal status, not to its physical condition (paved or gravel). State statute and case law identify other types of roads (such as “public ways” and state and state-aid highways), and these are discussed later in this Manual.

Town Way. A town way is defined as:

(A) An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle;

(B) All town or county ways not discontinued or abandoned before July 29, 1976; and

(C) All state and state-aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to 23 M.R.S.A. § 53.

Most town ways are created by some action of the municipality, such as dedication and acceptance, purchase and acceptance, eminent domain, or prescriptive use. These methods of creating roads are discussed in detail in Chapter 2, “Creation of Municipal Roads.”

Some town ways came into existence by operation of State law. County ways were transformed into town ways and effectively took the counties out of the road business in organized areas. This transformation of county roads into town ways only applies to those county roads which had not been abandoned or discontinued before July 29, 1976. So, it is important to review the history of any such road before deciding whether to maintain it.

Town ways also may be created by State classification. State law allows MaineDOT, through a rule-making procedure, to reclassify state and state-aid highways as town ways, or just the reverse, namely, to classify town ways as state-aid or state highways.
A municipality must keep all town ways "in repair so as to be safe and convenient for travelers with motor vehicles" and keep such ways passable if they become "blocked or encumbered with snow." Road maintenance obligations are discussed further in Chapter 5, "Road Maintenance and Repair," and liability for failure to maintain town ways is discussed in Chapter 9, "Liability."

A public easement differs from a town way in that while the general public has a right of unobstructed access by motor vehicle or foot over a public easement, a municipality is not obligated to maintain the easement.

**Public Easement.** A public easement is defined in State law as "an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute" prior to July 29, 1976. Do not confuse the term "public easement" with "easement interest," which is a type of legal interest in property (see the first section of this chapter).

Prior to 1976, public easements were called "private ways" or "private roads subject to gates and bars." This term should not be confused with "private roads" or "privately-owned roads," which are discussed further below. Note that neither State statute nor local ordinances are consistent in the use of the term "private way."

A public easement differs from a town way in that while the general public has a right of unobstructed access by motor vehicle or foot over a public easement, the municipality is not obligated to maintain or repair a public easement. A municipality's legislative body may authorize the repair and maintenance of public easements, but it is not required to do so. When a municipality does maintain public easements, it is not required to maintain them to the same level or degree of maintenance as town ways. Since the decision to maintain is discretionary, the level of maintenance is likewise up to the legislative body. Additionally, the municipality is not liable for defects in or lack of repair to public easements but may be liable for injuries caused by negligent acts or omissions in its ownership, maintenance or use of vehicles or machinery and equipment on such roads. Liability is discussed in Chapter 9.

Private landowners cannot prohibit public access to public easements, but they can erect gates and bars for the purpose of discouraging excessive traffic.

As to the "gates and bars" language often found in older references to private ways, the purpose of gates and bars was to allow abutting owners to "lessen the hazard of unwarranted or casual intrusion on their property due to it being opened to easy access from the main highway. In spite of the erection of gates and bars the public still would have the right to use the way in the same manner as the parties who are primarily interested in it." The Legislature removed this phrase from the public easement statute in 1976 (P.L. 1975, c. 711).
Private Road. A privately owned road, commonly called a “private road,” is a road over which neither the municipality nor the general public has the right to pass by vehicle or on foot. Anyone using or repairing a privately owned road without the owner’s permission is subject to an action by the owner for trespass.17

In general, a municipality has no legal right to spend public funds to repair, maintain or plow privately owned roads.18 In emergency cases, such as a house fire in the winter, it is probably legal to send a snowplow down a privately owned road so that the fire truck can get in, but the owner is responsible for ensuring that the road is sufficiently maintained to allow the plow to get through. This and other issues, such as school bus and mail access, are discussed in Chapter 5, “Road Maintenance and Repair.”

Other References to Roads

As previously discussed, the term “town way” is defined in State law. Sometimes State law includes within this definition the terms “way” and “public way.” For example, the term “public way” used in the criminal statutes includes town ways and public easements, and also includes roads to which the public has access as invitees or licensees, such as the access roads and parking lot of a shopping center.19 In the statutes regulating motor vehicles, the term “way” means the entire width between boundary lines of a road, highway, parkway, street or bridge, whether public or private.23 Also, a municipal ordinance may use the terms “road” or “street” differently than does any State law. It is important, therefore, to read local ordinances carefully and to be aware of possible discrepancies between the ordinance and State law. For example, roads in a subdivision may be “public ways” for subdivision review purposes, but unless or until accepted by the municipality, they are not necessarily town ways which the municipality must accept or maintain.

Determining the Legal Status of a Road

There is no simple formula for determining the legal status of a particular road. One road, over portions of its total length, may be a combination of a town way, a public easement and a privately owned road. The status of a road depends on its creation, its history of use and maintenance, and its discontinuance, if any. It may even require court action to finally resolve the legal status of a road or portion of a road. Chapter 10 of this Manual, “Creating and Maintaining a Road Inventory,” describes some techniques that local officials can use to determine a road’s status.

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1 It is theoretically possible to have a leasehold interest as the basis of a public road, but we are not aware of this form of legal interest in Maine; therefore, we will not discuss it further in this manual.
2 23 M.R.S.A. §§ 3023 and 3025.
See 33 M.R.S.A. § 460, where it provides that effective October 3, 1973, a conveyance of property abutting a town or private way conveys all of the grantor’s interest in the abutting way, unless the grantor expressly reserves title to the way.

4 See 33 M.R.S.A. § 458.
5 23 M.R.S.A. § 3021.
6 23 M.R.S.A. § 3021(3)(B).
7 23 M.R.S.A. § 3021(3), which cites 23 M.R.S.A. § 53.
8 Under 23 M.R.S.A. § 754, these highways must be in good repair when the State “turns back” state or state-aid highways to a municipality.
9 23 M.R.S.A. § 3651.
10 23 M.R.S.A. § 3201.
11 23 M.R.S.A. § 3021.
12 23 M.R.S.A. § 3022 and 17-A M.R.S.A. § 505.
13 23 M.R.S.A. § 3105. Although 23 M.R.S.A. § 3105 refers to the “town meeting” as authorizing the repair of public easements, it should be read to include city or town council actions as well. See also 23 M.R.S.A. § 2.
14 23 M.R.S.A. § § 3651, 3655.
15 14 M.R.S.A. § 8104-A(1).
18 See opinion of the Justices, 560 A.2d 552 (Me. 1989).
19 17-A M.R.S.A. § 505.
20 29-A M.R.S.A. § 101(92).
Creation of Municipal Roads

There are three basic methods for creating municipal roads:\(^1\) (1) dedication and acceptance; (2) laying out and taking under State law,\(^2\) which includes purchase and acceptance and eminent domain; and (3) prescriptive use.\(^3\) The first two methods are “formal” in the sense that documents are executed and there is a prescribed process by which the road is accepted. The last method, prescriptive use, is “informal” in the sense that it occurs over time without following any statutory procedure, and usually does not involve the exchange or recording of documents.

In addition, town ways can be created by operation of law\(^4\) or by MaineDOT reclassification.\(^5\) Also, a town way may result from the discontinuance of a State highway.\(^6\) These methods are outside the municipality’s control.

Dedication and Acceptance\(^7\)

| Roads must be accepted by the municipal legislative body before becoming town ways or public easements. The exception is for roads created by prescription. |

By State statute, dedication and acceptance is a two-step process.

**Dedication.** First, the landowner must file with the municipal officers (selectmen or council) a “petition, agreement, deed, affidavit or other writing” describing the property that the owner intends to dedicate (give) to the municipality for highway purposes, and stating that the owner waives any claim for damages. Dedication also may be accomplished by the sale of lots with reference to a subdivision plan, recorded in the registry of deeds, which shows or describes the property as a road. (If more than one person has a legal interest in the road, all must join in the dedication.) In either event, the better practice is to memorialize the dedication in a deed that the municipality’s legislative body can accept (see Appendix A for a sample warrant article for acceptance and Appendix B for a sample road deed).

**Acceptance.** Second, the legislative body of the municipality must vote to accept the dedication,\(^8\) and once the dedication is accepted, the municipality acquires a fee simple interest in the property (see Chapter 1 for discussion of the nature of title interest). A fee simple interest is granted by default, unless the dedication document (deed) or acceptance article states otherwise.\(^9\) Note that before December 31, 1976, municipalities generally acquired easement interests, except where the municipality acquired the fee interest in the so-called “rangeways” laid out by the colonial proprietors of Massachusetts or where a deed expressly conveyed the fee interest.
Municipalities should record the deed to the road and, although not required by law except for eminent domain and for discontinuance, should record a certification of the acceptance in the registry of deeds to create an official record of the acceptance.

Alternative Means of Acceptance. A vote by the legislative body is not the exclusive means by which a municipality may accept a dedication of property for road purposes. A municipality also may accept a dedication by prescription (at least twenty consecutive years of use by the public), or by some affirmative act, such as the reconveying of the property subject to the rights of the public to use it as a public street. Because acceptance of a road as a town way creates significant municipal responsibilities and liabilities (discussed later in this manual), it is better for a municipality to affirmatively accept the dedication of a way by vote of its legislative body than to accept it informally by long public use or by some other affirmative act.

Conditional Acceptances Not Valid. A very important legal limitation on dedication and acceptance is that a road may not be accepted on a conditional basis, such as the occurrence of some future event. Maine courts have declared conditional acceptances void. For example, a town meeting vote to accept a road provided (or on condition) that it is widened to fifty feet and paved is a conditional acceptance, and so is invalid.

Purchase and Acceptance

A municipality may obtain property for road purposes by purchase and acceptance. This differs from a dedication in that the landowner is paid for the property; it is not a gift to the municipality. Purchase and acceptance is voluntary: the landowner agrees to sell and the municipality agrees to buy the property, as opposed to eminent domain, which is a forced sale.

The municipal officers should contact the owners of the land in question and discuss the purchase price. It may be appropriate for the municipal officers to hire an expert real estate appraiser, depending upon the type or amount of property to be purchased, in order to arrive at an agreed upon fair price that will minimize the need for the municipality to take the property by eminent domain. At this point, the municipal officers cannot sign any contracts or otherwise bind the municipality to purchase the property unless the contract expressly is contingent upon approval by the legislative body. The municipal officers should make it clear to prospective sellers that the purchase will require approval of the legislative body, both to accept the property and to appropriate the money to buy it.

Appendix A contains a sample article authorizing purchase and acceptance of property for highway purposes. Appendix B contains a sample deed that can be used to convey property or interests to municipalities for road purposes.
Eminent Domain

Eminent domain, also called “laying out and acceptance” or “condemnation,” is a process which allows the municipality to purchase private land for public use even if the landowner objects. A municipality may use eminent domain to take property for many purposes but the discussion in this manual is limited to road purposes.

Eminent domain can be used to create either a town way or a public easement. Title to land taken by eminent domain (for road purposes) after December 31, 1976 is in fee simple unless otherwise specified in the condemnation documents.

Eminent domain is available if “the municipal officers determine that public exigency (necessity) requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective.” We recommend that the municipal officers first ask the owner to sell voluntarily for a reasonable price; if no reasonable amount is agreed upon, the municipality then may use eminent domain.

Procedure: By State statute, eminent domain is a multi-step process which is described below. Appendix C contains forms for this process.

- **First,** the municipal officers, either upon petition or on their own initiative, give written notice of their intentions to take certain property, to include a description of the proposed way. This notice must be posted for at least seven days in two public places in the municipality and in the vicinity of the proposed way.
- **Second,** they meet at the scheduled time and place to determine the location of the proposed way and whether circumstances require a taking.
- **Third,** they file with the clerk an order of condemnation, specifying the property to be taken and the damages to be paid to the landowners of record. (The determination of damages is a critical matter and is discussed further below). In a town meeting community, a copy of the order is sent to the owners by registered mail, but no check is issued until the voters approve the transaction. In a town or city council municipality where the municipal officers have been granted the power of appropriation by charter, the condemnation order and a check for damages are served upon the owners.
- **Fourth,** and only in a town meeting municipality, the voters approve the taking and appropriate the money to pay damages, and a check is served upon the owners of record. (This is one of the rare instances in which the town meeting may vote to increase the dollar amount (for damages) in a warrant article).
- **Fifth,** a deed or a certificate evidencing the taking and attested by the town clerk is recorded in the registry of deeds. The taking is complete and title to the property
passes: (1) to the town (in a town meeting community) when the check is served or the certificate is recorded, whichever occurs first, and (2) to the town or city in a council community when the order and check are served or the certificate is recorded, whichever occurs first.\textsuperscript{21}

**Damages.**\textsuperscript{22} The damages to which the landowner is entitled include not only the fair market value of the land taken, but also may include “severance damages,” which is the reduction in value to the remaining land as a result of the taking.\textsuperscript{23} Municipal officers should obtain the services of a real estate appraiser for any major taking. An expert’s determination will be given great weight if the matter goes to court. Underestimating damages can be costly to the municipality, as the court may fix a substantially higher price than was anticipated and litigation can be costly. Also, an expert appraisal should provide the public with greater assurance of the fairness of the amount of damages being offered and may reduce the likelihood of appeals on the issue of damages.

**Appeals.** A party may appeal an eminent domain proceeding to Superior Court. The time allowed for an appeal depends upon whether the issue on appeal is the amount of damages or the necessity for the taking. Appeals of the damages award must be made within sixty days after the taking.\textsuperscript{24} If, however, the landowners feel that the taking itself was not for a public use or a public exigency (necessity), they must appeal within thirty days of the taking, pursuant to Rule 80-B of the Maine Rules of Civil Procedure.\textsuperscript{25} The courts are unlikely to overturn the legislative body’s determination that a public use and a public necessity exist to support the taking unless the determination has no rational basis.\textsuperscript{26}

**Prescriptive Use**

A public road can be created by long-term public use, without any formal acceptance or taking by the municipality. Prescriptive use is recognized at common law and by statute.\textsuperscript{27} A road created in this manner is called a “prescriptive easement.” Depending upon the type of use that has been made of the road, a road created by prescriptive use can be a town way, a public easement, or even a private right-of-way. These distinctions are discussed later in this section.

Prescriptive use is similar to adverse possession (commonly known as “squatter’s rights”), except that the user is entitled only to the use of the property, not to full ownership and possession of it.\textsuperscript{28}

**Elements of Prescriptive Use.** The requirements for creation of a public road by prescription parallel those for establishment of a prescriptive easement.\textsuperscript{29} Prescriptive use has several elements: (1) there must be continuous, uninterrupted use by the municipality, the general public or private individuals for at least twenty consecutive years; (2) the use must be “under a claim of right, adverse to the owner, with his knowledge and
acquiescence, or a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed.\textsuperscript{30} A prescriptive easement will not arise where the use is with the landowner’s permission or agreement. For example, if a municipality has plowed and maintained a school bus turn-around on privately-owned land adjacent to a public road for twenty-five years with the landowner’s permission, the turn-around has not become part of the public way. Similarly, where a municipality has (illegally) plowed a private road for a number of years at the request of the homeowners along that road, the homeowners’ permission to do so shows a lack of adverse use that may defeat their argument that the municipality must maintain their road.

Also note that a town way also will not arise by prescription where the municipality holds a right-of-way over property and simply permits the public to use it as access to a public facility.\textsuperscript{31} This principle was emphasized in a case where the abutters to a town owned right-of-way argued that the Town was required to maintain the so-called “Dump Road” because for over fifty years, the Town had allowed the public to travel over this road in order to access the town dump. The Town did not accept the road as a right of way, nor did it own the fee in the road, nor had there been a dedication of a town way to the Town when it acquired the right-of-way. After the Town ceased to use the road for access to the dump, it closed the road by placement of a pile of gravel and then ceased to keep the road in good repair (although it did perform some plowing and maintenance on the road at the request of abutters to this road). The Law Court observed that the use of the road by neighbors (one of whom owned the fee in the road) and by the public was permissive—not adverse—and so did not create a town way by prescription.

Sporadic, minor repairs financed by the municipality are not enough to create a town way or public easement by prescriptive use.\textsuperscript{32} Also, occasional recreational use by the public (hiking, hunting, fishing, cross-country skiing, snowmobiling or using all-terrain vehicles) is not sufficient to create a public way by prescription; there is a rebuttable presumption that such use is permissive, and not adverse.\textsuperscript{33}

\begin{center}
\begin{tabular}{|l|}
\hline
Prescriptive use can cut both ways. A municipality can rely on it to exercise legal control over a road and to keep abutters from blocking the road. On the other hand, it may be used against the municipality by landowners who assert that the municipality has a duty, based on past maintenance, to continue to repair and maintain a road. \\
\hline
\end{tabular}
\end{center}

While prescriptive use may obligate a municipality to maintain a town way, at common law neither prescriptive use nor adverse possession can be used to take interests in real property away from the State or municipalities.\textsuperscript{34} The “longtime buildings and fences” law, creates one exception to this doctrine that a person cannot acquire property interests from the sovereign by adverse possession or by prescriptive use (this law is discussed further in Chapter 4 regarding road boundaries).\textsuperscript{35}
**Type of Road Created.** The type of road created by prescriptive use will depend on the particular facts of use and maintenance. If, for example, the general public uses a privately-owned road for twenty years in the requisite manner and the municipality maintains it at a level consistent with the maintenance of other town ways, then it is likely that the road will be declared a town way. However, unlike a private road established by prescription, the use of a town way “is not restricted by the type or extent of traffic which utilized the road during the prescriptive period”; the level of use of the public way may increase or decrease with the demands of the public.\(^{36}\)

Whether the town way or public easement is created by prescription rather than by dedication and acceptance, purchase and acceptance, or eminent domain, does not change the municipality’s obligation to maintain the road. The municipality’s obligation to maintain a town way and its right (but not the obligation) to maintain a public easement are based on the type of road (town way, public easement or private road), and not on how the municipality acquired its legal interest in the road. Therefore, the fact that a town way was created by prescription rather than by a formal method does not reduce the municipality’s maintenance obligation.

Not all roads created by prescriptive use are open to the public. For example, if a particular individual crosses a neighbor’s property in an open and notorious manner for over twenty years, that person may have obtained a private right to continue doing so, but this right is to use a private road, and is not available to the general public. The scope and nature of a prescriptive easement for a private road (as compared with a town way or public easement acquired by prescription) are determined by its use and its users during the prescriptive period.\(^{37}\)

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**How Prescriptive Use is Determined.** Usually, this is done through a declaratory judgment action.\(^{38}\) As noted above, the mere fact of use for twenty years is not alone sufficient to prove prescriptive use. The party seeking to prove prescriptive use also must establish the other elements. This can be difficult since there usually are no documents (deeds, town meeting records, and so on) accompanying the prescriptive use process. Municipal officials often must piece together the history of use and maintenance and make their own preliminary decision about the existence of a prescriptive easement and what type of road it is. That decision is subject to court review, if contested. Municipal officials may find that it is cheaper and faster to take a road by eminent domain rather than to litigate the issue of prescriptive use.

**Boundaries of Road Created by Prescriptive Use.** The actual use and maintenance of the road determines the width and location of a road created by prescriptive use. Ditches and areas beyond the traveled portion of the road may be part of the prescriptive easement, but only if the municipality has exercised control over those areas for the
requisite time and manner. If there has been no maintenance or control of land outside the travel way (as is often the case with public easements), then the public right of way is limited to the traveled way only.39

Paper Streets

The laws surrounding paper streets are complex. To understand how they operate, it is necessary first to understand what a paper street is. A “paper street,” referred to in State law as a “proposed, unaccepted way,”40 is a road shown on the face of a subdivision or plan, but which never actually was constructed on the face of the earth. Upon the sale of lots with reference to a recorded subdivision plan, the public acquires rights of “incipient dedication” to accept the streets shown on the plan when and if the municipality’s legislative body deems it appropriate to do so (usually after the developer has constructed the road in accordance with local road standards). The individual lot owners also acquire private rights over all of the streets shown on the plan.41

State law establishes the nature and duration of public and private rights in paper streets in subdivisions recorded on or after September 29, 1987.42

For subdivisions recorded prior to September 29, 1987, the nature and duration of public and private rights in paper streets are established by 23 M.R.S.A. § 3032 and by court decisions. See Callahan v. Ganneston Park Development Corp. and Glidden v. Belden. (See Chapter 3, “Disposing of Municipal Roads,” for a discussion of the nature and duration of public and private rights in paper streets.

Beyond the question of rights in paper streets is the question of ownership of the land under a paper street. Ownership is determined by the date of dedication. For streets dedicated prior to December 31, 1976, abutters own to the centerline.43 For streets dedicated after December 31, 1976, the municipality acquires fee simple interest in the way, unless otherwise provided.44 This means the municipality will own all rights in the road (subject to utility easements) and the land beneath it (upon acceptance).

Note: where a paper street was dedicated prior to December 31, 1976, and where the fee (title to the land) is otherwise reserved for transfer after December 31, 1976, or where the municipality has not yet accepted the incipient dedication of the street, the abutters own to the centerline unless the developer has specifically reserved title.45

Because many subdivision plans have been recorded depicting streets that never have been constructed or used, and yet lots in such subdivisions have been sold, questions have arisen frequently about the status of public and private rights in these roads. In addition, the existence of these paper streets has constituted a legal obstacle to other uses of the property that underlies them, given the uncertainty regarding the existence of public and private rights to pass over this property. For these reasons, terminating rights in paper
streets is an important topic which is discussed in Chapter 3, “Disposing of Municipal Roads.”

1 Avant v. Town of Gray, 634 A.2d 1258 (Me. 1993); Hartwell v. Stanley, 2002 ME 29, 790 A.2d 697.
2 23 M.R.S.A. § 3022 and 3023.
4 23 M.R.S.A. § 3021(3)(B) regarding former county ways.
5 23 M.R.S.A. § 53 and 3021(3)(C).
6 23 M.R.S.A. § 651.
7 23 M.R.S.A. § 3025.
8 Gildean v. Belden, 684 A.2d 1306 (Me. 1996); Comber v. Inhabitants of Dennistown, 398 A.2d 376 (Me. 1979); and Harris v. City of South Portland, 118 Me. 356, 108 A.326 (1919).
9 23 M.R.S.A. § 3025.
10 Gildean v. Belden.
12 State v. Calais, 48 Me. 456 (1860); and Wardens of Christ’s Church v. Woodward, 26 Me. 172 (1846).
13 23 M.R.S.A. § 3030.
14 23 M.R.S.A. § 3022, 3023.
15 See for example 30-A M.R.S.A. § 3101, 4746, 5108 and 5204.
16 23 M.R.S.A. § 3022.
17 23 M.R.S.A. § 3023.
18 23 M.R.S.A. § 3022.
19 23 M.R.S.A. § 3023.
20 23 M.R.S.A. § 3024.
21 Luce v. City of Portland, 556 A.2d 656 (Me. 1989).
22 Damages in an eminent domain proceeding are determined in accordance with 23 M.R.S.A. § 3029 and 23 M.R.S.A. § 154-154E.
24 23 M.R.S.A. § 3029.
25 23 M.R.S.A. § 3029.
27 14 M.R.S.A. § 812 and 23 M.R.S.A. § 3030.
28 For a detailed discussion of these concepts, see Creteau, Principles of Real Estate Law (1977); Cowan, Maine Real Estate Law and Practice, Vol. 1 (1990); and McKenna v. Searsmont, 349 A.2d 760 (Me. 1976).
32 Comber v. Inhabitants of Plantation of Dennistown, 398 A.2d 376 (Me. 1979); Articles: Maine Roads and Easements, 48 Me. L. Rev. 197 (1996).
33 S.D. Warren Co. v. Vernon; Comber v. Inhabitants of Plantation of Dennistown; and Inhabitants of Town of Kennebunkport v. Forrester.
34 Portland Water Dist. v. Town of Standish, 2006 ME 104; Town of Sedgwick v. Butler, 1998 ME 280, 722 A.2d 357; Flower v. Town of Phippsburg, 644 A.2d 1031 (Me. 1994); Phinney v. Gardner, 121 Me. 44 (1921); Carey v. Whitney, 48 Me. 516 (1860).
35 Title 23 M.R.S.A. § 2952.
36 King v. Town of Monmouth, 1997 ME 151, 697 A.2d 837; and McKenna v. Searsmont, 349 A.2d 760, 762-763 (Me. 1976).
38 14 M.R.S.A. § 5951, et seq.
39 See Jost v. Resta, 536 A.2d 113 (Me. 1988) (nature and scope of prescriptive easement, including width, are factual issues).
40 23 M.R.S.A. § 3031.
41 See Glidden v. Belden, 684 A.2d 1306 (Me. 1996); and Callahan v. Ganneston Park Development Corp., 245 A.2d 274 (Me. 1968), which discuss the creation of public and private interests in rights-of-way through the depiction of “paper streets” on recorded subdivision plans.
42 Title 23 M.R.S.A. § 3031.
43 Unless the developer has specifically reserved title; see 33 M.R.S.A. § § 460, 469-A.
44 23 M.R.S.A. 3025.
45 This is not the case if the dedicated paper street is a “rangeway,” see Glidden v. Belden.
Creating and Maintaining a Road Inventory

Given the responsibilities and liabilities that accompany a municipality's ownership of roads, municipal officials may find it helpful to keep a "road inventory." Ideally, this inventory would describe both the legal status of each road (town way or public easement) in the municipality and its physical condition. A road inventory is a book (or computer disk) containing practical information about the roads in a community. There is no statutory requirement that such an inventory be kept; it is designed solely to help local officials answer questions about roads. A road inventory typically contains information such as the name of the road, its legal status (town way, public easement or privately owned way), its length and width, whether it is posted (for weight) or closed in the winter and its condition. The inventory can be as brief or as comprehensive as the local officials wish. A good inventory can be a wealth of information for current and future municipal officials. Appendix S contains a Maine Townsman article explaining how to establish a road committee to prepare and maintain such an inventory. Appendices T and U discuss how to prepare and maintain a road inventory and Appendix R is a sample form that may be used to set up a road inventory.

**Inventory of Legal Status of Roads.** Information that would be helpful in documenting the legal status of each road includes: the date on which the road was established; whether the road or any portion has been discontinued; whether the road (or any portion thereof) is a town way, public easement or private road; the history of major maintenance and improvements; and the level of current maintenance of the road. Sources of information for this inventory are described in detail in Appendices T and U, and include the following:

- **MaineDOT, Right of Way Div., 16 State House Station, Augusta, ME 04333.** This office keeps records on numerous roads, including county roads that have been abandoned or conveyed to municipalities. This resource is particularly useful if there is a question about a road's boundaries.

- **Division Offices of MaineDOT.** There are seven regional offices of MaineDOT throughout Maine. See Appendix V for a map and the addresses and phone numbers for these division offices.

- **Registry of Deeds.** Each county in Maine has a registry of deeds that keeps records of land transactions in that county. Many documents recorded in the registry may contain information about roads. For example, subdivision plans, surveys, deeds, easements and eminent domain orders generally are available in the registry.
Annual reports of the municipality. A municipality’s annual reports often contain information about roads, such as articles to create or discontinue a way, or to raise money for road maintenance and repair. The foregoing sources will not answer every question about every road, but should make the search for information more thorough and efficient. In some cases a road’s history will remain shrouded in mystery, but the fact that a thorough search was done at some point will save other local officials from duplicating futile effort in the future.

Inventory of Physical Condition of Roads. In addition to a road inventory that contains information about a road’s legal status, a municipality may want to establish an inventory pertaining to the physical condition of roads. The main purpose of this inventory is to enable a municipality to learn what condition its roads are now in, and how best to plan for future repair and maintenance (or whether to change the road’s legal status if repair is too costly and/or the road no longer is needed). An excellent physical inventory is the Road Surface Management System (RSMS) recommended by the Maine Local Roads Center. MaineDOT also has mileage information for every public way in each municipality. For further information contact the Maine Local Roads Center, Community Services Division, MaineDOT, 16 State House Station, Augusta, ME 04333, or call (207) 624-3266.