

06/24/24

Dear Stony Road Resident,

This letter is being sent to you on behalf of the Bolton Board of Selectmen. It concerns a proposed parking area and access off of Stony Road to the Nathan Hale Greenway. The Nathan Hale Greenway is partly in the Town of Bolton and partly in the Town of Coventry. It is an open space that was taken by the State many years ago for the purpose of roadway construction. Due to many obstacles the roadway construction never occurred, and the property was given to the two towns. Unfortunately, the access from Bolton is very limited but we are encouraged by this opportunity on Stony Road. Please see the attached map depicting the area. (attachment to be added)

We have considered an area on South Road which would require crossing the street and is on a corner. We have considered two places on Hop River Road, and both have sightline and traffic concerns. We have considered accessing the area from the rear England Plaza, but we do not own or control that property and there and the geography is not suitable. We also reached out to the owner of the property at the end of Howard Road whose property we would need to cross to gain access to the Greenway. He did not grant permission.

The proposed access from Stony Road is not in close proximity to any homes. It is an old home site and would not take great effort or expense to create. We believe we can provide safe access from this location. Traffic on Stony Road does not reach high speeds. As we consider the various points of access to provide all residents with an opportunity to enjoy the space this location makes the most logical sense. Please know that our goal is to provide access to the greenway for all from a location that makes the most logistical sense.

We would appreciate any feedback that you wish to share with us, and you may submit comments to us through HR@boltonct.gov

Thank you,

Facilities and Public Safety sub committee members

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MARTIN S. MICHELSON
(1954-1982)

August 16, 1993

Board of Selectmen
222 Bolton Center Road
Bolton, CT 06043

Opinion No. 77

Attn: John C. Guinan,
Administrative Officer

Re: Private Roads/Maintenance

Dear Mr. Guinan:

The Selectmen have asked that the undersigned consider issues concerning private roads in the Town of Bolton and the possible maintenance thereof by the Town.

Background

There are a number of private roads within the Town of Bolton and the Town's policy has been to leave the maintenance of such roads to the property owners. The exception to this has been the Town's policy to plow these roads if they are not otherwise plowed, when there is an accumulation of four inches or more of snow. This is done to provide for the passage of emergency vehicles to properties located on these roads.

In prior correspondence you have posed some of the concerns of the Selectmen:

1. If the Town were to perform yearly maintenance (grading and drainage) in these roads, would that set a precedent for all private roads?
2. Does the Town have the responsibility for seeing that these roads are maintained in such a condition that emergency vehicles are able to pass?
3. What liability will the Town incur if it begins to maintain private roads?

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4. If the Town wanted to take the roads over, what would the procedure be?

5. If the Town agrees to do yearly maintenance on private roads, will this precedent require the Town to continue to do such maintenance and perhaps do additional work in the future?

6. What effect does the notation "approved" by the Board of Selectmen and the Zoning Commission have on the Rosedale map in 1953? Does this imply approval of the roads as well as the lots? (Does this imply acceptance of the roads?)

The Town has received requests from owners of property located on specific "private" roads for assistance in maintaining the roads. Apparently, the developers responsible for laying out the roads and developing the abutting lots have abrogated and/or disavowed responsibility for their maintenance. This has left the roads in a situation where passage, particularly in the spring, can be a problem.

Discussion

In responding to your inquiry, we have researched the law on dedication of highways in general, both under the statutory framework and under common law. We have researched the issue of the Town's obligation and/or liability with regard to providing maintenance on non-Town owned roads. We have reviewed the maps provided by Mr. Grillo as well as selected Minutes of the Selectmen's meetings and the Town meetings with regard to particular actions taken in the past. We have reviewed the Municipal Services Corporation's index of the opinions of other municipal attorneys concerning the issues of private roads and we have reviewed treatises on municipal law and Law Review articles on the issues you raise. As indicated in your prior correspondence, this is a complex area of inquiry which raises many, many considerations.

Issues

I. Private road or public highway.

The distinction is important because the duties and liabilities of a town with regard to a road arise upon it being defined as a "highway." The key factors in determining whether a road is a "highway" are whether control of the road is vested in the state or a political subdivision thereof and whether it is open to the public. The physical characteristics of the road are largely irrelevant. Thus, the distinction between a public highway and a private road has been summarized as follows:

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the essential feature of a highway is that it is a way over which the public at large has a right to pass. Accordingly, the term highway is ordinarily used in contra-distinction to a private way over which a limited number of persons have the right to pass.

Namphassuc Point Property Owners Ass'n v. Public Utilities Commission, 154 Conn. 674, 680, 228 A.2d 513 (1967).

Over the years, four methods have developed by which a public highway can be established:

1. Through direct legislative action;
2. Through court proceedings pursuant to C.G.S. section 13a-63;
3. Through town proceedings pursuant to C.G.S. sections 13a-61, 13a-7; or
4. Through the private dedication of land and its acceptance by the public.

9 Practice Book, section 49.2 at 785 (1993).

We are concerned with the last alternative, the private dedication of a roadway and its acceptance by the public. This is a common law doctrine, meaning that it is a doctrine developed through court decisions.

The two essential elements of a common law dedication of a road are:

- (1) The owner's intention to dedicate, which intention may be either express or implied; and
- (2) An acceptance of the dedication by the proper authorities or the general public.

DiCioccio v. Wethersfield, 146 Conn. 474, 479, 152 A.2d 308 (1959). Whether there has been a dedication or an acceptance are both questions of fact. Id. at 479; Phillips v. Stamford, 81 Conn. 408, 411, 71 A. 361 (1908).

Once there has been a dedication by a land owner, there must also be some form of acceptance by the public for a "highway" to be established. An acceptance, like a dedication, may be either expressed or implied. Acceptance can be implied from a variety of circumstances, but the two most telling are the actual use of the road by the public and

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the conduct of the Town with respect to the dedicated tract. DiCioccio v. Wethersfield at 479. With respect to the Town's conduct, the Supreme Court has stated:

Where a municipality grades and paves a street, maintains and improves it, removes snow from it, or installs storm or sanitary sewers, lighting, curbs, or sidewalks upon it, there exists a factual basis for finding an implied acceptance of the street by the municipality.

Meshberg v. Bridgeport City Trust Co., 180 Conn. 274, 283, 429 A.2d 865 (1980). Exemption of the road from taxation is also a factor pointing toward acceptance by the municipality. Id.

With regard to the roads in question, the owner's/developer's failure to maintain the roads could be considered evidence of intention to dedicate the land. Based upon the facts as we understand them to be, and notwithstanding the Town's limited snowplowing, the Town's conduct does not seem to have reached the common law standard of acceptance of the developer's dedication. Moreover, since our understanding is that the roadways in question are not "thoroughfares" in the sense that they are conduits for public travel, there probably is no evidence of acceptance of the dedication by general public usage.

II. Effect of dedication and acceptance.

Were it found by a court of law that the private roads had been dedicated by the developer and that the Town through its conduct with regard to the road or the public with regard to its use of the road accepted such dedication, this would give rise to a responsibility on the Town to maintain such roads as "highways."

III. Signing of maps by Board of Selectmen and/or
the Planning Commission.

Beginning in 1951, maps showing the layout of lots and some of the roads in question were submitted to the Selectmen and/or the Planning Commission. In several instances, the Board of Selectmen and/or the Planning Commission signed these maps as "approved."

Maps or plans which would fall into this category and which involve some of the roadways in question are:

1. "Map of Rosedale Bolton and Vernon, Connecticut Property of the Holl Investment Company Scale 1" = 100' Jan. 1934 Hayden L. Griswold C.E. Revised

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November 1950" which was signed by the Selectmen on July 27, 1951.

2. "Map of Lakeside edition number 2 Bolton, Conn. Property of the Holl Investment Company Scale 1" = 40' July 1944 Hayden Griswold C.E." approved July 27, 1951 by the Board of Selectmen.

3. "Revised portion of Bolton section map of Rosedale Bolton & Vernon, Conn. Property of the Holl Investment Co. Scale 1" = 50' Jan. 1953 Hayden L. Griswold C.E." which was approved March 16, 1953 by the Board of Selectmen and on March 23, 1953 by the Zoning Commission.

4. "Hickory Valley subdivided property of Ueuclid Reopell Town of Bolton Bolton, Conn. Survey: May 1959 by A. V. Giacomini, Surveyor Scale 1" = 100'" which was approved by the Bolton Planning Commission November 15, 1960.

Absent evidence of the dedication and the acceptance of such dedication referred to above, the signing and approving of the maps showing the lots and the layout of the roads by the Board of Selectmen and/or the Planning Commission would not constitute public acceptance of these roads as "highways."

An analogous situation would be the Planning Commission today approving the layout of a private common driveway in a subdivision. The approval of the physical layout is not the equivalent of public acceptance of the private drive as a "highway."

IV. Removal of snow by the Town of Bolton.

As indicated, the Town of Bolton, like other towns in the area, will remove snow from these private roadways when the snow accumulation reaches a depth of four inches or more. This limited service intended to leave these roadways open for the passage of emergency vehicles, is not conduct, in our opinion, sufficient to constitute Town acceptance.

V. Authority of the Town to maintain private property.

Since the roadways in question have not yet attained the status of "highways," they must be considered as private property. What is the Town's authority for maintaining private property?

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We believe the Town has authority under its police power to protect the health and welfare of its citizenry and if this requires removal of snow from private roadways to ensure the passage of emergency vehicles, it is authorized to do so.

The second inquiry, however, is more difficult. That is, what is the Town's authority to maintain private roadways beyond such limited and necessary snowplowing? There is a dearth of authority on this issue. However, it can be safely stated that municipal powers are limited to those expressly granted by statute, special act or charter. In some instances, the powers may be implied. There is no statute nor special act authorizing the maintenance by the Town of private roadways. The Town Charter, 5.1(C)18., provides in pertinent part that the Board of Selectmen:

May administer in whole or in part the maintenance of any public building, park, playground, road or other facility under the care of any office, board, commission or agency of the Town except any thereof under the care of the Board of Education;

(Emphasis added.)

Therefore, the statutes and the Charter are silent as to the authority of the Town of Bolton to maintain private property. Certain functions of municipalities have been held to fall within the proprietary business powers of a municipality and not within its government functions. This rule has been applied to municipalities securing electrical or water service for its inhabitants as well as to making street improvements.

In such work the City is sometimes viewed as an agent of the property owners whose property is required to pay for the improvements.

McQuillan, Municipal Corporations, § 37.03 (3rd Ed.).

Therefore, while Bolton lacks authority to conduct maintenance in its governmental capacity on private roads, it would be able to do so as the "agent" of the property owners. Under our circumstances, it would seem to be beneficial to categorize the Town as the agent of the private road owners. Doing so would make it much more difficult to imply acceptance on the part of the Town.

Given this background, it seems that a possible solution to this problem would be to come to an arrangement with the various owners of the private roads by which they would petition the Town to act as their agent in securing

improvements for the roadways in question. If the Selectmen are not desirous of accepting such roads, the petitions should expressly deny an intent to dedicate the roads to the Town and would waive any right of the owners of the private roads, and their successors, to bring an action to force the Town to either formally accept, or further improve said roads. In order to put further weight behind the agency relation, it would be appropriate to assess the road owners some charge for the improvements.

VI. Title questions.

We have not searched the land records with regard to the abutting property owners. There is some indication that these owners were originally granted the right to pass and repass over the roadways in question by the developer. This would indicate that the title to the roadway probably remained in the hands of the developer. There is further indication that the executor of E. J. Holl's estate, may have executed deeds reconveying some roadways to the abutting property owners.

Any agreement reached with the property owners would have to be based upon an underlying title search as to who those owners are.

VII. Creation of an association.

Mr. Guinan had suggested that perhaps the property owners could create a non-profit association for the maintenance of the roads. This certainly would seem to be a positive step. If it were done, the Town could, perhaps, contract directly with the association.

I am not sure if there are associations involved in some of these neighborhoods. Forming an association will take cooperation among the property owners. This may or may not be feasible.

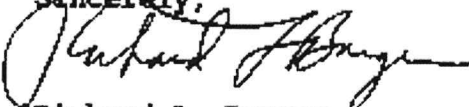
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Conclusion

Hopefully, the foregoing will assist the Selectmen in their consideration of the issues here involved. The Selectmen are meeting tonight to discuss this matter further. I will attend their meeting and be available for any assistance they would like me to render.

Best regards.

Sincerely,



Richard L. Barger

RLB:ant

Location	Pros	Cons
<p>New Town Hall</p>	<p>Keeps government where it has been Keeps us close to existing building for extra vault space and meeting space. Can be connected to community septic system In keeping with vibrant communities study Natural Gas available</p>	<p>Adding on to historical building can be more difficult and costly Significant wetlands disturbance likely to require Army Core approval but may be able to do self verification Parking development may be challenging</p>
<p>Addition to Town Hall</p>	<p>Same as above except would have to extend gas main</p>	<p>Not as easy to access existing building Would need to develop a new well Not as visible</p>
<p>Next to Resident Troopers</p>	<p>Will be a clean developable site Has natural gas Has public water supply Has septic system Proximal to Senior Center Proximal to Highway and Buildings & Grounds Not far removed from town center 30k cistern on site Proximal to room A and B meeting spaces</p>	<p>Not in keeping with vibrant communities study Looses power more often than current location Great site for future community center, do both fit?</p>
<p>Notch Road</p>		