

Chapter 4

Municipal Roads

Road Boundaries

Road Boundaries

One of the more common problems related to municipal roads is defining the legal boundaries of roads. Most roads are wider than the traveled portion of the way, and include a non-traveled portion of the right of way. For example, a 3-rod road is 49.5 feet wide, but often only 25 to 30 feet is paved or graded for the passage of vehicles. Questions arise when abutters or others want to use the land which is outside the traveled way but still within the right of way or when the municipality needs to widen the road: how much property does the municipality own outside the traveled way, and does it need to purchase or take more property?

Outlined below are several methods for determining road boundaries.

Deed and Survey Descriptions

In some cases, particularly for roads established since the 1960's, there will be an exact description of the road contained in a deed, subdivision plan, or survey. For roads created by purchase and acceptance, dedication and acceptance, or eminent domain, it is likely that one or more of the documents involved will accurately define the road's boundaries; check both the registry of deeds and the town office for information on the road in question. However, do not rely solely on the description of a road boundary in a tax map; tax maps are not generally reliable as a source of legal descriptions. If the road in question is a former county road, contact the DOT Right of Way Division, 16 State House Station, Augusta, ME 04333 or call (207) 287-2363 for information. That office has records on most old county roads and can often help determine the road's bounds. The county commissioners' files also may be useful sources of information for former county roads.

Lost Boundary Statute

When a road's boundaries cannot be determined, the municipal officers may treat it as a 3-rod road (49.5 feet wide) under 23 M.R.S.A. § 2103. This width is measured from the center of the traveled way, i.e., one and one-half rods on each side of the centerline. However, the municipality must award damages to abutters whose property is taken as a result of the municipality exercising its rights under this law. For example, if an existing road is 30 feet wide (15 feet either side of the centerline), and the municipal officers wish to make it a 3-rod road, compensation must be paid for the additional 20 feet of unimproved land (10 feet either side of the existing road) so taken. The determination and award of damages must be in accordance with 23 M.R.S.A. § 3029. The municipality does not take fee simple title to property under the Lost Boundary Statute — it takes an easement interest (see Chapter 1 for discussion of title).

Longtime Buildings and Fences Law

The boundaries of a road may be changed by the long existence of buildings and fences in the right of way (23 M.R.S.A. § 2952). The length of time required will depend on whether the road boundaries are known or unknown in the first place. This law is an exception to the well-established rule that public property cannot be taken by adverse possession (*Town of Sedgwick v. Butler*, 1998 ME 280, 722 A.2d 357) or by prescriptive use (*Libby v. Tobey*, 82 Me. 391 (1890)). This law is not really a method to establish road boundaries; it is more accurately a limitation on the town's ability to set road boundaries.

Boundaries Unknown. Where the road boundaries are *unknown* and cannot be made certain by records or monuments, any buildings or fences fronting the road which have been in existence more than *20 years* will be deemed to be the true bounds of the road. For example, if the road boundaries are unknown, and there is a 100-year old stone wall abutting each side of the road, those walls will be the boundaries. *This law should not be used by the town to take property for highway purposes.* For example, where the boundaries of a road are unknown, but there is a stone wall 200 feet back from the travel way, the town should not claim that the stone wall is the road boundary, because that wall does not really “front” the road. In that situation, it is more appropriate to use the Lost Boundary Statute or some other method for determining the true bounds.

Boundaries Known. Where the road boundaries are *known*, any building or fence which encroaches within these bounds and is allowed to remain there for *40 years* or more will be deemed to exist legally, and thus will narrow the true boundary of the road. It is very important, therefore, to prevent such encroachments. Note that this provision applies only to the extent that the building or fence physically exists. For example, a road is 2 miles long and 40 feet wide (boundaries are known). A 200-foot long chicken barn was built 50 years ago and it encroaches 4 feet into the road boundary. The barn is now legally allowed to remain, and the road width is 36 feet for the length of the barn. The remainder of the road is still 40 feet wide.

In view of 23 M.R.S.A. § 2952, municipal officials should be attentive to buildings and fences near or within road boundaries, and should take steps to remove them (see Chapter 6) before the statute protects their encroachment. MDOT has the authority to establish the boundaries of state and state aid highways under 23 M.R.S.A. § 653.

Agreement with Abutters

Another means of clarifying the boundary of a road is to enter into an agreement with each landowner whose property abuts the road and with all others who have a legal interest in the road. Any such agreement must be in writing should be in the form of a deed (or “deed indenture”), should be prepared by an attorney and should be recorded in the registry of deeds. It also may require the services of a surveyor. This method can be quick and

inexpensive or incredibly cumbersome, depending on the number and personalities of the abutters. It normally will be less expensive than litigation, however, and for that reason is worth trying first. Before entering negotiations or signing any agreements as to boundaries, the municipal officers must obtain the authorization of the legislative body. This authorization should include a provision allowing the municipal officers to execute and accept all documents and deeds relating to the agreement.

Eminent Domain

Eminent domain (see discussion in Chapter 2) is a process by which the municipality can take private property for highway purposes. The landowner must be compensated for this taking, but it is a useful method if the property in question is critical to the municipality and the landowner is unwilling to sell voluntarily. Just as an entire road can be created by eminent domain, an unknown boundary can be established by taking the necessary property by eminent domain.

Petition to the County Commissioners

The municipal officers can petition to have the county commissioners determine road boundaries which are doubtful, uncertain or lost (23 M.R.S.A. § 2101). As part of this procedure, the commissioners may order the municipality to pay damages to the abutting landowners.

Court Action

In some cases it may be necessary to file a civil action in court to determine the legal boundaries of a road. This is usually done through a declaratory judgment action (14 M.R.S.A. § 5951) or perhaps a quiet title action (14 M.R.S.A. § 6651). Court action will require the services of an attorney. The court will review all pertinent evidence and issue a decision establishing the road's boundaries. Given the high costs and slow pace of litigation, it may be less expensive and faster to take the disputed property by eminent domain. Eminent domain does require the payment of damages, but it will establish the legal boundary of the road. Eminent domain is discussed in detail in Chapter 2.