

1. Authority

The Town of Bar Harbor Comprehensive Plan adopted in November 1993, contained the following recommendation:

Policy 5J -- *To expedite the procedure for accepting Town roads.* The Town Council should review the standards for Town roads. Depending on the number of houses or other criteria deemed important, acceptance of the road by the Town should be automatic if built to the correct specifications.

Section 00.03.04.11 of the Town Charter authorizes the Town Council to accept roads on behalf of the Town. No Town Meeting action is required.

2. Purpose

The purpose of this Road Acceptance Policy is to place into effect the procedures needed to accomplish the Comprehensive Plan directive and to assign responsibility for each step in the procedure, in order to reduce confusion and assure that roads are properly accepted.

3. Policy

It shall be the policy of the Bar Harbor Town Council to consider for acceptance all roads built to meet Town Land Use Ordinance standards, provided that the tax revenue reasonably estimated to be derived from the properties served by the road shall be sufficient to pay the estimated maintenance cost of the road, and that the procedures outlined in this policy are followed.

The Maine Supreme Court has ruled that a road may not be accepted on a conditional basis, such as the occurrence of some future event. [*State v. Calais*, 48 Me.456 (1860); *Wardens of Christ's Church v. Woodward*, 26 Me.172 (1846)]. Accordingly, this policy shall not be construed as creating a legally binding commitment for the Town and, notwithstanding this policy, a decision as to whether to accept a road may only be made by the Town Council on a case by case basis.

4. Newly Created Roads

When an owner is in the process of building a new road intended to be offered to the Town for acceptance, the following steps shall be followed:

- 4.1 The developer shall follow the standards and procedures as required by the Town Land Use Ordinance.

- 4.2 Public Works Director certifies to the Planning Board that the road design either meets the requirements of the Land Use Ordinance or that he agrees that it would be in the best interest of the Town to waive specific requirements.
- 4.3 Planning Board approves the subdivision sketch plan.
- 4.4 Developer requests that Council accept the road. Said request to include:
 - A. Cover letter requesting road acceptance and describing the project, including the length of the road, the number of building lots and the total estimated value of the buildings to be served.
 - B. Ten copies of the proposed subdivision sketch plan, as approved by the Public Works Director.
 - C. Proposed language of a warranty deed that will be used to transfer *fee simple* title to the Inhabitants of the Town of Bar Harbor.
 - D. Evidence of clear title in the form of an attorney's title opinion or a title insurance commitment.
- 4.5 Town Council reviews the proposal at a Council Meeting. No formal action to accept the road can be taken at this time.
- 4.6 Planning Board approves the subdivision plan.
- 4.7 Developer records the approved subdivision plan at the Registry.
- 4.8 Developer advises the Public Works Director that construction will begin, so that the Director can arrange for inspection.
- 4.9 Road is constructed to town standards by the developer.
- 4.10 Owner dedicates road to public use and requests that the Town accept it by:
 - A. Providing to the Council a cover letter requesting acceptance and describing the project as provided in section 4.4.A.
 - B. (1) Filing with the Council a warranty deed specifically describing the location of the road and the owner's interest therein and stating that the owner voluntarily offers to transfer such interest to the Town without claim for damages; or (2) filing in the Hancock County Registry of Deeds an approved subdivision plot plan that describes the property to be appropriated for public use and providing the Council with three copies of the recorded plan; and

- C. If the owner has not done so pursuant to B(1) above, providing the Council with a warranty deed conveying to the Inhabitants of the Town of Bar Harbor *fee simple* ownership of the road; and
 - D. Providing to the Council either an attorney's title opinion or an owner's title insurance commitment indicating that upon the Town's acceptance of the deed no other party will have any interest in the road; and
 - E. Providing to the Council the Public Works Director's written certification that [road name] was built as required by the approved subdivision plan and in conformity with good construction practice.
 - F. Providing to the Council the Town Attorney's written certification that the proposed deed and the title opinion or title insurance commitment sufficiently protects the interests of the Town.
 - G. Providing to the Council a written warranty stating that for a period of one year from the date of Town of Bar Harbor acceptance the dedicating owner, [name] , will repair without cost to the Town any damage to the road as determined by the Bar Harbor Public Works Director, if said damage is caused by nature, heavy loads, washouts or poor construction practices, excepting snow plowing damage.
- 4.11 Town Council accepts the road by passing a motion: that (acting as the legislative body) the Town Council accepts the dedication made by [name of grantor] of title in *fee simple* in a strip of land bounded and described as shown on the plan recorded with the Hancock County Registry of Deeds in Plan File [number], No. [number], and to accept and establish a town way to be known as [name of road] on said strip of land.
- 4.12 Town Clerk records the deed at the Registry.

[Process Complete]

5. Donation of an Upgraded Private Road

It is the policy of the Bar Harbor Town Council not to accept existing roads unless and until they are in substantial compliance with the Land Use Ordinance road standards and the Town has been provided with good title. When the owners wish to have the Town assume maintenance of an existing road, the following steps shall be followed:

- 5.1 If there are more than three lots to be served by the proposed road, the owners elect a road committee of not more than three owners or advisors to work with the Town.
- 5.2 Owners or road committee meet with the Public Works Director to review road upgrade plan and discuss the Town's construction requirements.

- 5.3 Owners or road committee submits plans, profiles and cross-sections of the proposed road along with other construction details as required by the Public Works Director.
- 5.4 Public Works Director provides the Town Council with a letter, which certifies that the road design meets his/her requirements and those of the Land Use Ordinance with exceptions as noted or without exceptions.
- 5.5 Owners or road committee present a petition to the Town Clerk which is signed by all the parties having a property interest in the road. Said petition to read substantially as follows:

PETITION TO THE BAR HARBOR TOWN COUNCIL
REQUESTING ACCEPTANCE OF _____ ROAD

We the undersigned hereby request the Bar Harbor Town Council to accept the donation of _____ Road as a town way as described in the plan attached and agree:

- A. to improve the road so that it meets the road standards as previously agreed with the Public Works Director,
- B. to provide the Town with a warranty deed for a *fee simple* interest in the road,
- C. to provide the Town with evidence of clear title in the form of an attorney's title opinion or a title insurance commitment.
- D. to waive any claim for damages.

Signature	Printed Name	Map & Lot Number	Address	Phone
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- 5.6 Town Council reviews the proposal at a Council Meeting. No formal action to accept the road can be taken at this time.
- 5.7 Owners or road committee advise Public Works Director that construction will begin, so that the Director can arrange for inspection of the construction as it progresses.
- 5.8 Road is constructed to Town standards by the owners or road committee.

- 5.9 Public Works Director certifies to the Council that that [road name] was built as required by the approved plan and in conformity with good construction practice.
- 5.10 Owners or Road Committee record a copy of the approved plan at the Registry.
- 5.11 Owners or Road Committee provides Town Attorney with signed warranty deed, copy of the recorded plan and attorney's title opinion or title insurance commitment.
- 5.12 Town Attorney certifies to the Town Council that he/she approves the proposed deed and title insurance and forwards the deed to the Town Clerk.
- 5.13 Town Council accepts the road by passing a motion: that (acting as the legislative body) the Town Council accepts the donation made by [name of grantor] of title in *fee simple* in a strip of land bounded and described as shown on the plan recorded with the Hancock County Registry of Deeds in Plan File [number], No. [number] and to accept and establish a town way to be known as [Name of Road] on said strip of land.
- 5.14 Town Clerk records the deed at the Registry.

[Process Complete]

6. Amendment

This policy may be amended unilaterally by the Town Council at any time with notice as required by law.

LEGISLATIVE HISTORY

15-Apr-97 Policy first adopted by Town Council

16-Nov-99 Amended by Town Council