

Statutory Road Abandonment Process Outline –

- A town way may be abandoned, pursuant to 23 M.R.S. § 3028-A, if:
 - It was not kept passable for the use of motor vehicles at the expense of the municipality for a period of 30 or more consecutive years.
 - “Isolated acts of maintenance” do not prevent abandonment unless they demonstrate a “clear intent by the municipality or county to consider or use the town way as if it were a public way.” 23 M.R.S. § 3028-A(2)(A).
 - A town may not declare a town way abandoned if evidence is presented that it received funds from MDOT for any portion of the way for more than 7 years (84 months) of the period of 30 or more consecutive years. 23 M.R.S. § 3028-A(2). Based on this, the town should check to see if:
 - The town way is listed on the municipal maintenance inventory reported to the State as part of requesting funding from MDOT; and/or
 - The town’s road repair and maintenance logs may note any work being done on the relevant town way.

- In the event that the town wants to move forward with the statutory abandonment process, it must follow the process outlined below.

- 1. Notice –The Select Board must give “best practicable notice” to all the property owners affected by the abandonment of the town way. This notice must be provided at least 30 days prior to the regularly scheduled meeting at which the town plans to vote to abandon the town way. 23 M.R.S. § 3028-A(3).
 - “Best Practicable Notice” - At minimum, this means the mailing of notice by the USPS, postage prepaid, first class, to owners of affected property whose addresses appear in the assessment records of the town. 23 M.R.S. § 3028-A(1)(B).
 - “Affected Property” – Defined as real property that abuts the town way to be declared abandoned and real property for which the town way is the only access route. 23 M.R.S. § 3028-A(1)(A).
 - The notice must contain the following (23 M.R.S. § 3028-A(3)(A)(1-3).):
 - Information explaining that the public may retain a public easement over the town way.
 - An explanation of the affected property owners’ maintenance obligations for the abandoned town way and their right of access to it, if any.
 - The right of access to the town way by the public if a public easement is retained.

- Information regarding the rights of affected property owners to enter into agreements regarding maintenance of and access to the way, including the right of affected property owners to create private easements.
 - If the town way to be abandoned is the only means of access to property in an adjacent municipality or county, then the town must also provide written notice of their meeting to be provided to the municipal officers or county commissioners of the adjacent municipality or county at least 30 days prior to the meeting.
- 2. Public Hearing – A public hearing must be held only if the municipal officers receive a written request by 25% of the affected property owners. The request for a public hearing must be received by the municipal clerk no later than 10 days after the notice of the proposed abandonment has been given. (While there is no requirement to hold a public hearing if this threshold is not met, there is nothing that prevents it.)
- 3. Vote to Abandon – At the regularly scheduled meeting, the municipal officers can vote to abandon the town way. 23 M.R.S. § 3028-A(2)(B).
 - If the municipal officers vote to abandon the town way, they must also vote on whether to retain a public easement. 23 M.R.S. § 3028-A(2)(B).
- 4. Recording of Vote – Following the vote to abandon the town way, the municipal clerk must record an attested certificate of the abandonment in the registry of deeds in the county where the abandoned town way is located. 23 M.R.S. § 3028-A(6).
 - The certificate of abandonment must include: (1) the date of the vote by the municipal officers to abandon the town way; (2) describe the abandoned town way; and (3) state whether a public easement was retained. 23 M.R.S. § 3028-A(6)(B).
 - The certificate of abandonment may not be filed before the expiration of the appeal period or, if an appeal is filed, before the appeal has been resolved. 23 M.R.S. § 3028-A(6)(A).
 - The register of deeds must record the certificate under the name of the abandoned town way, the name of the municipality, and the names of the affected property owners. 23 M.R.S. § 3028-A(6)(C).
 - The municipal clerk must provide a photocopy of the certificate of abandonment to the MDOT, Bureau of Maintenance and Operations. 23 M.R.S. § 3028-A(6)(C).
- 5. Appeal – A person affected by the vote to declare a town way abandoned may appeal the decision within 10 days of the vote. 23 M.R.S. § 3028-A(7).
 - In order to appeal, a person must file a written appeal with:
 - The municipal clerk, for an appeal of a vote by the municipal officers, if the municipality has a board of appeals authorized to hear the appeal. 23 M.R.S. § 3028-A(7)(A).
 - A county clerk, for an appeal of a vote by the municipal officers, if the municipality does not have a board of appeals authorized to hear the appeal. 23 M.R.S. § 3028-A(7)(B).

- A county clerk for an appeal of a vote by the county commissioners. 23 M.R.S. § 3028-A(7)(C).
- Within 15 days of receiving a written request for appeal, the municipal or county clerk must schedule a public hearing on the appeal before either the municipal board of appeals or the county commissioners. The clerk must provide written notice of the hearing date to both the municipal officers and the person filing the appeal request. 23 M.R.S. § 3028-A(7).
- The public hearing must be scheduled no later than 30 days after the appeal request is received. 23 M.R.S. § 3028-A(7).
- Any person aggrieved by the subsequent decision of the municipal board of appeals or the county commissioners may appeal the decision to the Superior Court in the county where the abandoned town way is located, pursuant to Maine Rules of Civil Procedure, Rule 80B. 23 M.R.S. § 3028-A(7).

Statutory Road Abandonment Process Timeline –

- Notice – The sending of the notice starts the clock on the abandonment process. The notice can be sent at any time but must be sent at least 30 days before the regularly scheduled meeting at which the vote to abandon the town way will take place.
- Public Hearing (if needed) – At least 30 days after Notice.
 - Must be received by the Town Clerk no later than 10 days after Notice.
- Vote to Abandon – At least 30 days after Notice; can be taken immediately after closing of Public Hearing (if desired).
- Appeal Period – 10 days after Vote to Abandon. During this period the abandonment is effectively frozen.
 - If an appeal is requested, a public hearing on the request must be scheduled within 15 days of the date of the receipt of the appeal request. The public hearing must occur within 30 days of the receipt of the appeal request.
- Recording of Vote – Certificate of Abandonment may be filed immediately after the Appeal Period runs (if not appealed), or after the appeal is resolved (if an appeal is requested).