January 18, 2024

Lancaster Select Board

701 Main Street

Lancaster, MA 01523

Re: Hawthorne Lane

Dear Members of the Select Board

It is my understanding individuals residing along Hawthorne Lane have asserted that the Town of Lancaster has an ownership interest in the way obligating the Town to maintain the way. Alternatively, the residents claim that the Town should take ownership of the way and maintain it as a public way. *The history of this way and the siting of the water booster station on the Open Space Parcel warrant a future, more detailed letter and analysis*. However, for our purposes today, it is important to establish that the Town does not have any duty to maintain the private way. To the extent the Town wants to accept the way, it must go through the standard process to accept and lay out a way or take the way by eminent domain.

Hawthorne Lane is shown as “Proposed Minor Street” on a plan entitled “Definitive Subdivision Plan, Land in Lancaster, Mass. owned by Poras Realty Trust”, dated October 6, 2015.[[1]](#footnote-1) Hawthorne Lane is a portion of a subdivision approved by the Planning Board in January of 2016.[[2]](#footnote-2) The development is also subject to a Flexible Development Special Permit, issued in December of 2015.[[3]](#footnote-3) Neither the Subdivision Approvals, nor the Flexible Development Permit, require the Town to take ownership of the private way.

Currently, Melanson Bros., Inc. (“Melanson”) owns the fee interest in the way.[[4]](#footnote-4) Although Melanson deeded out various lots in the subdivision, Melasnon continues to hold the fee interest in the way. Melanson also created a Hawthorne Lane Homeowners Trust to maintain the way (critically, this is not a homeowners’ association).[[5]](#footnote-5) The purpose of the Trust is to maintain the right of way “until such time as ownership of the Common Area [e.g., the roadway] shall be accepted by the Town of Lancaster.”

On December 1, 2023, the Town recorded an instrument of taking over the Open Space Parcel in the subdivision.[[6]](#footnote-6) While the Town has a “tax title” over this parcel, a tax title is a limited form of ownership and the fee owner – here, Melanson – still has the right to redeem the property. It is also my understanding that the Town has not initiated the tax lien foreclosure process in land court.

Critically, the Town’s limited interest in a parcel abutting the private way does not covert the private way into a public way. Moreover, the Town’s limited ownership interest in the abutting parcel does not obligate the Town to maintain any portion of the private way. In fact, municipalities may own property along private ways without converting that way to a public way or obligating the Town to any form of maintenance.

Nothing in the record demonstrates that the way is public and the Town is obligated to maintain it as such. To the extent that the Town wishes to maintain Hawthorne Lane as a public way, it must go through the standard process for accepting a way as a public way or take the way by eminent domain.

1. Worcester Registry of Deeds Plan Book 934, Plan 43. [↑](#footnote-ref-1)
2. Worcester Registry of Deeds Book 58643, Page 271; Worcester Registry of Deeds Book 58643, Page 280. [↑](#footnote-ref-2)
3. Worcester Registry of Deeds Book 58643, Page 266. [↑](#footnote-ref-3)
4. Worcester Registry of Deeds Book 58783, Page 374. [↑](#footnote-ref-4)
5. Worcester Registry of Deeds Book 62435, Page 196. [↑](#footnote-ref-5)
6. Worcester Registry of Deeds Book 69948, Page 163. [↑](#footnote-ref-6)