

Road Law Basics¹

A variety of questions may arise concerning municipal streets and roads.² Because all roads are not created equal, the details of how a road is created may be a good place to start in addressing these questions.

Primary Methods of Street or Road Creation

Most roads that currently exist were created by one of the following methods:

- **Eminent Domain.** At some time in the past, the land was taken or condemned by a unit of government through an official legal procedure. These procedures may have involved the appointment of road viewers, a specific eminent domain power, or the exercise of this general power pursuant to the Eminent Domain Code.³
- **Dedication and Acceptance.** Roads are routinely laid out and offered to a municipality when a proposed development is being undertaken. Just as routinely, municipalities accept these roads. However, projects sometimes fail to come to fruition, or there are extreme lapses in time that can have effects on the dedicated and accepted roads. Many times these “paper roads” appear on official maps or in ordinances, but have never been developed on the ground.
- **Continued or Constant Use.** For whatever reason, some roads have ‘just always’ been there or have ‘just always’ been maintained as public roads. Long term use and/or maintenance can give rise to the presumption that the road is legitimately a public road.⁴ A road that achieves public status by virtue of continual public use is referred to as a public road by *prescription*.⁵

¹ For a more detailed discussion of the facets of municipal road law and road law issues, see *Solicitor's Handbook*, 4th ed., Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, Pa., 2019, pp. 146-152.

² Some of these questions include: Can the road be abandoned (vacated)? How are municipal rights and responsibilities in the road eliminated? Can the road be expanded and where? What rights do utility companies or private users of the road retain? Where do the abandoned public rights in the road repose? Is the road actually a private road and not within municipal jurisdiction?

³ Eminent Domain Code, 26 Pa.C.S. § 101 et seq.

⁴ See, e.g., The Second Class Township Code, Act 69 of 1933, § 2307 (53 P.S. § 67307); *Lagler v. Upper Milford Tp. Zoning Hearing Bd.*, 446 A.2d 712 (Pa. Cmwlth. 1982). (“[A] road not of record which has been used for public travel and maintained and kept in repair by the expenditure of township funds for a period of at least twenty-one years and upwards shall be deemed to be a public road of the width of thirty-three feet notwithstanding the fact that there is no public record of the laying out of such road or a dedication thereof for public use.” *Id.* at 713.)

⁵ See also 22A Summ. Pa. Jur. 2d Municipal and Local Law § 17:100 (2d ed.)(2020); *Deskbook* article, “Title by Adverse Possession & Easement by Prescription.”

- **Local or Special Laws.** During the formative years of the Commonwealth, laws often dealt with highly specific local concerns. Subsequently, laws could be enacted that impact on the parameters of local roads, such as rights and locations.
- **Other.** For example, some early public school statutes provided for public school building access, thereby creating “public” roads. Such roads may have remained public roads or reverted to underlying property owners. An exhaustive study of the origins of roads would likely uncover numerous other unlikely sources for the creation of public roads.

How Wide is the Road?

A primary issue regarding roads is: Where exactly does the road “end” and the private property of neighbors abutting the road “begin”? This issue may arise if a landowner, in good faith, builds an improvement within what is later asserted by the municipality to be its right-of-way in a public road. Initially, reference should be made to relevant law. For example, both the General Road Law and the Second Class Township Code provide for a minimum road width of 33 feet.⁶ It appears, however, the simple assertion that a road width is 33 feet is actually a refutable presumption. A historic road of narrower dimensions, or a road where land is held in fee simple by the municipality, will not be automatically expanded by these provisions of law. The 33-foot standard is merely a command to municipalities that roads, henceforth, shall not be of a narrower dimension.

Vacation and Loss of Public Rights

“Vacation” of public roads is a procedure by which a municipality *voluntarily*, or by petition of citizens, severs the public’s right to utilize, and the municipality’s obligation to maintain, a road. The various municipal codes provide vacation procedures, usually involving public notice, a hearing, and an opportunity for affected citizens to appeal the vacation ordinance. There are instances, the circumstances of which may vary depending on the class of municipality, in which the public rights may be lost through nonuse, usually due to the municipality’s failure to open a road that had been laid out.⁷

⁶ The General Road Law, Section 5, dictates that “the width of a public road shall not be less than thirty-three feet.” Act 169 of 1836 (36 P.S. § 1901). Similarly, the Second Class Township Code, Section 2306, provides that “the width of the right-of-way of a public road in townships shall not be less than thirty-three feet or more than one hundred and twenty feet.”

⁷ If the municipality obtains a road or street through a deed, nonuse may not extinguish the public character of the road or street.

Rights Remaining After a Road Is No Longer “Public”

Generally, private rights of property owners are not lost due to nonuse or vacation. If a dedicated road loses its public character, the abutting landowners typically take title to the centerline of the road, subject to a private easement of other abutting landowners to travel the road.⁸ The private easement, however, may be extinguished by adverse possession.⁹

Resolution of Road Disputes

In theory, reference to the provisions of the General Road Law, the appropriate municipal code and other relevant statutes should be sufficient to resolve most road disputes. In fact, there are occasions when truly contentious road dilemmas arise, and there may be no recourse but to institute proceedings before the county court of common pleas.¹⁰ Historically, the courts of quarter sessions (now common pleas) played a supreme role in all road activities. The various road laws, including the General Road Law, conferred on the local courts the burden of resolving road issues. Of course, this in itself presents some difficulties in determining the outcome of some road questions because different county courts may have resolved seemingly similar cases with dissimilar remedies.

⁸ See *Ferko v. Spisak*, 541 A.2d 327 (Pa. Super. 1988), *aff'd*, 522 Pa. 503 (1989); see also 7 Summ. Pa. Jur. 2d Property § 10:20 (2d ed.) (2020).

⁹ For example, if public rights are lost due to a lack of public use, an abutting landowner may attempt to plant grass, fence off, or otherwise occupy and exclude others from a portion of the road. If the land is exclusively occupied for 21 years, the landowner may be able to assert title to the road and legally prohibit passage by his or her neighbors. See also the *Deskbook* article, “Title by Adverse Possession & Easement by Prescription.”

¹⁰ Such contentious issues often involve older or more arcane elements of common law and statutory law. In 1910, William Loyd commented on the historic laying out and opening of roads: “The subject has reached dimensions that can hardly be contained in a text book of reasonable size. The extraordinary number and variety of the statutes, with the decisions interpreting them, might drive a Bentham to despair . . .” The subject, more than 100 years later, is no less daunting. William H. Loyd, *The Early Courts of Pennsylvania*, The Boston Book Company, Boston, 1910, p. 270.