

Statutory Road Association - Warrant for First Meeting

August 9, 2021

The usual disclaimer is that I'm not an attorney and cannot give legal advice or interpret law. But I can offer you what I've learned through years of experience, and you can take it or leave it for what it's worth. You are advised to seek legal counsel if you have questions or concerns after reading what follows.

I suggest starting by reading the Private Ways Statute (PWS) itself, 23 MRS §§3101 - 3104, which can be found here:

<http://legislature.maine.gov/legis/statutes/23/title23sec3101.html>

If you have not already done so, you should get familiar with this section as well as with the three sections that follow, which you can see by clicking on the arrow in the upper right-hand corner of that page. Here is what the statute says about calling the initial meeting:

"PWS §3101, subsection 2. Call of meeting. When 4 or more parcels of land are benefited by a private road, private way or bridge as an easement or by fee ownership of the private road, private way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting. The notary may issue a warrant or similar written notice setting forth the time, place, and purpose of the meeting. Copies of the warrant or similar written notice must be mailed by means of the United States Postal Service to the owners of all the parcels benefited by the private road, private way or bridge at the addresses set forth in the municipal tax records at least 30 days before the date of the meeting. The notice must inform the owners of the planned meeting's agenda and specify all items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be called in the same manner or by a commissioner or board appointed at a previous meeting pursuant to subsection 5."

In short, the initial meeting needs to be called by a NOTARY, and requires the signatures of three owners. If you choose to hire an attorney to help with drafting by-laws or other association matters, select one with actual experience doing road associations, as it's a very specialized area. I've seen

attorneys unfamiliar with the PWS misinterpret the law or even apply the wrong law.

You can find sample by-laws that have already been vetted by road attorneys, on the Resources Page on the MARA website, both near the top of the list and farther down the page under paragraph 7 of "Useful Links.". There are even road associations that operate just fine with no bylaws, and the statute does not require you to have any.

The important thing about calling your first meeting is to make sure you notify EVERY owner of "benefited property." You must send to owners of all developed and undeveloped lots. That means anyone who can use the road for access to their property, regardless of whether they actually do use that access. For example, they may have frontage on another road as well, and use that as access, but they are still considered a "benefited property" because they COULD use the association's road as access. If, upon notification, they tell you they have no intent of ever using the road, you may want to specify in your assessment formula that properties using other access will owe no dues unless or until they start making use of the association road.

The best way to identify all benefited properties is to go to your town's tax maps (usually available online) and look for all the properties that touch the road, plus any property that doesn't touch any other road and may have a private easement from your road to their land. (To find that out, you would have to look up the deed to the property in question and see if it includes an easement or right of way.) Once you have identified the benefited lots, go to the town's tax commitment book (also usually available online) to find the name and address of the owner of each lot. If there is an online listing in order by map and lot number, that makes it easy. If there is only an alphabetical listing, try pressing Ctrl F and then doing a search for the map and lot numbers, typed in the same format as the listing uses. Doing a search for the name of the road may not always work, as seasonal residents and owners of undeveloped land will have an address elsewhere. But it may allow you to identify the owners of many of the lots with just one search.

You are responsible for sending a copy of the warrant to each owner, using US Postal Service and the address set forth in the municipal tax records. (The statute doesn't say it has to be certified mail. If you use first class mail postage prepaid, and the address from municipal tax records, and someone does not receive what you mailed, you have fulfilled all that is required by the law.) You should get this ready before you have the notary

issue the warrant, as you must mail it at least 30 days before the meeting. The notary is responsible for issuing the warrant. There is a sample "Application to Notary Public" form and sample "Warrant First Meeting" form in the Resources tab of the MARA website, again under that paragraph 7 of Useful Links. Alter them or fill in the blanks as appropriate.

On the Warrant for First Meeting, pay particular attention to the "assessment structure" under Article 6. Before your meeting, you should decide on a "DRAFT formula" for assessments, put it in writing, and send it with the warrant. Your members may decide that everyone should pay the same amount, or that year-round residents pay one amount and seasonal residents pay less, or that undeveloped lots pay less, or pay nothing until developed. It's up to the membership. The important thing is that whatever you say in your adopted formula, you apply the formula to everyone. The PWS just says your formula must be "fair and equitable," and the courts have so far allowed lots of flexibility as long as you stick to what you wrote down. Many associations find it's easiest to just charge everyone the same. Stay away from complicated formulas based on footage of road used, frequency of use, real estate value, etc. The statute does limit the amount that can be assessed for a property to 1% of the property's municipal property valuation (before deductions such as tree growth) in any calendar year. So, if there are small undeveloped lots, you may not be able to charge them the full assessment. For example, if your formula and budget state that everyone will pay \$300 per year, but there is a lot that is only assessed at \$25,000, you can only charge \$250 for that lot. So, while you are looking at the tax commitment book, you should check on that as well.

Addressing the issues I have mentioned is probably the most challenging part of getting a road association going. It can take a bit of time identifying the benefited parcels if it's a long road, but it's well worth the benefits once you get it up and running. On our Resources Page, be sure to check out a viewer favorite, "FORMING AND RUNNING ROAD ASSOCIATIONS UNDER MAINE STATUTE, A Leadership Manual" by our Founder, Betsy Connor Bowen.

Hope this helps - be sure to use the MARA website's searchable Discussion Forum if you run into more questions.

Sincerely,

Roberta Manter, Board Member/Legislative Liaison
Maine Alliance for Road Associations