

Melissa, you have asked me to provide advice with respect to the status of Lincoln Lane. According to the information provided to me, Lincoln Lane is a through street that connects to a public way (Lincoln Street) at both ends. A portion of Lincoln Lane is recognized by the Town as a public way, and is a paved street with a forty foot wide layout. A portion of Lincoln Lane, commencing at the property line of property owned by Paradies according to the Assessors' map, is recognized by the Town as a private way which is unpaved and appears to be approximately 16 feet wide.

In my opinion, based on the information I have reviewed to date, I have not found a deed or other instrument conveying ownership of Lincoln Lane to the Town, and therefore cannot state that the Town owns Lincoln Lane. The Town, as the owner of certain parcels of land abutting on Lincoln Lane, may own to the centerline of Lincoln Lane by virtue of the Derelict Fee statute for the portion of Lincoln Lane abutting the town land.

According to the Town Clerk's records, by letter of November 16, 1951, E.W. Pettigrew reported that the land through which Lincoln Lane runs was originally acquired by Alden Clark, who subdivided and sold off various lots. In each case, the property lines were to the sides of a 16 foot wide right of way, now known as Lincoln Lane, which was to be kept open to provide access to the parcels and other land owners.

Mr. Pettigrew prepared a plan entitled "Layout of Lincoln Lane for Acceptance by the Town of Sudbury", dated December 9, 1950, consisting of two sheets, and marked "Preliminary". The first sheet shows a section of Lincoln Lane from Lincoln Road near Sherman's Bridge for a distance of approximately 2200 feet. Sheet 2 showed the layout of the remainder of Lincoln Lane, for a distance of approximately 1500 feet, ending again at Lincoln Road.

In January of 1957, the town received petitions to place two articles on the annual town meeting warrant, one to accept the portion of Lincoln Lane shown on Sheet 1 of the Pettigrew plan, and another to accept the portion of Lincoln Lane shown on Sheet 2. The Board of Selectmen held a public hearing on January 29, 1957, and voted that public convenience and necessity required that Lincoln Lane be laid out as a public way, and apparently voted two separate layouts, one for Sheet 1 of the Pettigrew plan, and one for Sheet 2. The 1957 town meeting voted under Article 35 to accept the vote of the Board of Selectmen laying out the portion of Lincoln Lane shown on Sheet 1, and authorized the Board "to acquire in behalf of the Town for street purposes the land described in said report by eminent domain or otherwise", and appropriated money to defray the cost of acquiring the land and constructing that portion of Lincoln Lane, and authorized the Board to assess betterments for the cost of the eminent taking and the construction of the way, with 90% of the cost to be paid by the abutters, and 10% by the Town. Under Article 36, the town meeting voted essentially the same for the portion of Lincoln Lane shown on Sheet 2.

Following the town meeting vote, the town engineer, George D. White, prepared a "Layout of Part of Lincoln Lane", dated September 4, 1957, which was endorsed by the Planning Board as an approval not required plan (ANR) and recorded at the Middlesex South Registry of Deeds as plan number 1418 of 1957. The recorded plan shows only the portion of Lincoln Road that is currently paved, it does not include the entire length of the road.

Based on the information provided to date, in my opinion, it cannot be stated that the town is the owner of Lincoln Lane. In my opinion, ownership of land is established of record by instruments recorded at the Registry of Deeds or by determinations made by a court of competent jurisdiction. So

far, I have not found a deed to the town or an order of taking by the town that would establish the town owns all of Lincoln Lane. It would require a title search to determine record ownership of Lincoln Lane.

In addition, pursuant to the Derelict Fee statute, the abutters to a public or private way generally own to the center line of the road, even if the deeds do not so state. General Laws c. 183, §58 “establishes an authoritative rule of construction for all instruments passing title to real estate abutting a way, whether public or private and whether in existence or merely contemplated.” Tattan v. Kurlan, 32 Mass. App. Ct. 239, 242 (1992). See also Brennan v. Decosta, 24 Mass. App. Ct. 968 (1987). General Laws. c. 183, §58 incorporates the common law principle that presumes that a grantor of land intended to pass title to the center of a way unless a contrary intent can be “ascertained from the words used in the written instrument [the deed] in light of all the attendant facts.” Tattan, 32 Mass. App. Ct. at 243. General Laws c.183 §58 provides that:

Every instrument passing title to real estate abutting a way, whether public or private . . . shall be construed to include any fee interest of the grantor in such way...unless (a) the grantor retains other real estate abutting such way . . . in which case (i) if the retained real estate is on the same side, the division line between the land granted and the land retained shall be continued into such way...as far as the grantor owns, or (ii) if the retained real estate is on the other side of such way...between the division lines extended, the title conveyed shall be to the center line of such way...as far as the grantor owns, or (b) the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line. (emphasis added).

Thus, the fact that the deeds do not state that the lots on Lincoln Lane run to the center line of the road is not the determining factor, unless the deed expressly reserves or excepts the fee in Lincoln Lane. Mr. Pettigrew’s report in 1951 indicates that the deeds did not explicitly reserve or except the fee in Lincoln Lane.

This opinion is provided to the Town and is not intended to be and should not be relied upon by any other person or entity.