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April 29, 2021

Via email

Meghan Jop  
525 Washington Street  
Wellesley, MA 02482

**Re:   Hardy School Project; Hardy Road**

Dear Meghan,

The School Building Committee is considering a proposal for the reconstruction of the Hardy School, located at 293 Weston Road (the “Site”). The plan advises widening Hardy Road onto the Site to enable easier and safer access for students, teachers, staff, and parents. As described, the exiting Hardy Road will facilitate the flow of traffic towards the school from Weston Road. Traffic moving from the school to Weston Road will be relocated onto the school Site.

The School Committee has the care, custody, and control of the Site. There is a desire by the Committee to retain control of the entire Site to maintain the existing lot size. The Committee believes that decreasing the lot size will make permitting the project more difficult. As described below, Hardy Road may be expanded onto the Site without requiring the Committee to relinquish control of the area to be use for the public way.

In the case of modern subdivisions, it is common for the Town, acting by and through the Select Board, to obtain a fee interest in the land under a public way. However, that was not always the case. Historically, public ways were laid out on property owned by private parties. *See, M.G.L. c.183, §58* (Derelict fee statute states that abutting property owner owns to the center of a public way, subject to certain exceptions); *Opinion of the Justices*, 208 Mass. 603, 605 (1911) (“When a public street or highway is laid out . . . , the public acquires an easement in the land, which includes a right to occupy it for every kind of travel and communication of persons and every movement of property, that is reasonable and proper in the use of a public street.”). There is no legal requirement that the Town, or the Select Board for that matter, own a fee interest in the land upon which a public way is laid out. The School Committee may therefore maintain its ownership of the land under the portion of Hardy Road sought to be expanded.

To lay out a public way, the Town must take the following steps:

- Step 1 (School Committee Vote): The School Committee must vote to allow a portion of the Site to be used as a public way.
- Step 2 (Referral): At least 45 days prior to Town Meeting (see Step 8), the Select Board must refer the proposed expansion of Hardy Road to the Planning Board for its consideration.
- Step 3 (Survey): A survey plan showing the boundaries and measures of the way will need to be filed with the Town Clerk prior to Town Meeting acting on the request (see Step 7). I would advise that the Town complete the survey early in this process, if possible.
- Step 4 (Planning Board Hearing): 45 days from the date of the referral by the Select Board, the Planning Board must hold a hearing and submit its report regarding the laying out of the way to Town Meeting. If the Planning Board fails to make its report within 45 days, this reporting requirement is deemed waved.
- Step 5 (Notice of Intention): *M.G.L. c.82, §22* states: “Seven days at least prior to the laying out, relocation or alteration of a town way ... a written notice of the intention of the selectmen or road commissioners of the town to lay out, relocate or alter the same shall be left by them, at the usual place of abode of the owners of the land which will be taken for such purpose, or delivered to such owner in person or to his tenant or authorized agent.” Here, no land will be taken by eminent domain for the laying out of the way. Thus, a Notice of Intention is not required. However, I would advise that the Select Board nevertheless provide written notice of its hearing (see Step 6) to all abutters of Hardy Road, as well as the School Committee.
- Step 6 (Select Board Vote): The Select Board must vote to accept the laying out and expansion of the way at a public hearing at least seven days prior to Town Meeting.
- Step 7 (Filing with Town Clerk): A survey plan showing the boundaries and measures of the way and a copy of the Select Board’s vote must be on file with the Town Clerk not less than seven days prior to Town Meeting.
- Step 8 (Town Meeting Vote): Town Meeting, by majority vote, must vote to accept the laying out of the way.

After Town Meeting authorizes the laying out of the way, the Select Board, acting as Road Commissioners, would have the legal obligation to maintain the road for use by the public. The School Committee could not close the road, without the approval of the Select Board, the Police

Department, the Fire Department, or other public safety division authorized to close public ways. If, in the future, the public way is discontinued by a two-third vote of Town Meeting, the School Committee could use the property for any allowable School Department purpose.

Please let me know if you have any questions or concerns.

Sincerely,

Thomas J. Harrington