

Approved November 24, 2014



Stephen M. Feller, Municipal Manager

**Municipality of Mt. Lebanon
Private Street Policy**

I. BACKGROUND

Over the years, the Commission has discussed the issue of private streets and the potential cost of upgrading them in connection with their change of status to public streets of the Municipality. The Commission recognizes the need for a private street policy and associated guidelines.

Policy Need

Given the number of private streets in the Municipality, a policy is needed to address situations when the Municipality receives requests for a private street change of status to a public street from residents or a recommendation from municipal staff/engineer.

For the purpose of this policy, a private street is any street which is not a public street of the Municipality or of Allegheny County or of the Commonwealth of Pennsylvania, pursuant to applicable law.

The Commission recognizes that a policy is needed to ensure that all requests are treated uniformly, property owner issues are addressed and that private streets to be changed in status are held to defined street construction and design standards, while at the same time recognizing the inherent differences in each private street.

Policy Objectives

The goal of the Municipality is to manage requests/recommendations for private street changes in status and to establish procedures and general requirements for such changes.

In order to allow equal opportunity for residents living on private streets to access this policy, especially on through streets, the Manager will send a letter together with a copy of this policy after adoption to the residents of private through streets. The policy will be accompanied by a reasonable deadline for submission of a petition. The Manager may utilize this procedure at other times and for other types of streets when, in the Manager's discretion, it is advisable to do so.

Policy Assumptions

Consideration of a change in status for a private street can be initiated by a written request from affected property owners or by a recommendation from municipal staff/consultant.

When applicable, the Municipal Engineer, in accordance with municipal ordinances and regulations and existing conditions, will recommend minimum street design and construction standards.

Once the change in status is complete as evidenced by execution of documents required by the Municipality and enactment of an ordinance by the Commission, the Municipality will maintain the street and will be responsible for all maintenance costs associated with the resulting municipal street.

II. GENERAL REQUIREMENTS

The Municipality will consider a change in status for a private street when a request is received in writing from all property owners abutting the street, or subject portion of such street or a recommendation is received from Municipal staff/consultant.

- Requests will be reviewed by the Municipal staff and Engineer based on the guidelines established in this policy and other applicable legal, engineering and public policy considerations.
- The Municipal staff and Engineer may recommend changes in status to the Commission.
- The Commission will prioritize streets to be considered for change in status based on:
 - Engineer/Staff recommendation.
 - Level of public usage, including volume of traffic and origin/destination data.
 - Condition of private street.
 - Public policy considerations.
 - Budget funds available for improvements to such streets and contribution levels from affected property owners.

III. CATEGORIES

Category 1 – Private Streets with a significant level of public usage

Applies to private streets that convey through traffic and are regularly used by the general public, e.g., private streets that provide a connection to other public streets or public places.

- Street improvements shall generally meet all current municipal street standards, subject to such differences recommended by the Municipal Engineer and approved by the Commission.

Category 2 - Private Streets with a lesser level of public usage

Applies to private streets that are primarily used by immediate abutters.

- Streets shall meet design and construction standards set by the Commission based on Municipal Engineer's review and recommendation as follows:
 - Streets not of standard width may be considered upon recommendation of Municipal Engineer.
 - Drainage to be reviewed on a case by case basis.
 - In recommending construction standards, the Engineer will consider, among other items, the level of public use, future public maintenance requirements, and existing conditions.

IV. DETAILED PROCESS

- Residents may initiate the process by submitting a petition, the form of which is attached hereto) indicating the streets or portion thereof that are requested to be made public. The petition must be signed by all the property owners on the affected street(s). The petition must be accompanied by a written explanation that identifies the primary resident contact(s)' reason for the request. The petition must be accompanied by a \$1500 deposit which will be used for engineering and other expenses.
- The petition must include a sign off by the property owners that indicates they are willing to contribute to necessary upgrades for repair/reconstruction of the street and donate the required rights of way.
- Upon receipt of a request for change of status, the Commission shall direct staff to evaluate the request, perform an inspection of the subject street and prepare an initial review sufficient to obtain a preliminary cost estimate.
- Upon further direction from the Commission, the Municipal Engineer shall prepare plans showing, as applicable:
 - New grades
 - Required right-of-way
 - Location of improvements (storm, sanitary, etc.)
 - Location of private drives, walks, walls and plantings, which will be disturbed or moved so that there is a clear understanding of the consequences of improvement to each abutting property.
- The engineer's cost estimate will include the non-municipal share that must be borne by the residents.

- The municipal contribution (if applicable) will be based only on engineering costs and the costs of improvements to the physical cartway of the street.
- The Municipal contribution will be determined utilizing the following:

Category	Maximum Level of Municipal Contribution
1) Significant level of public usage	75% of cost
2) Moderate level of public usage	50% of cost
3) Low level of public usage	25% of cost

- The engineer's estimate, including the estimated non-municipal share amount will be communicated to the primary resident contact.
- If the primary resident contact indicates that the amount is acceptable, then the request will be forwarded to the Commission, along with any other streets that have also advanced to this point in the process. The Manager will recommend a priority (subject to Commission approval) based on relevant circumstances including: street condition; cost of project; degree of funding required; usage of the street by residents; usage of street by persons not living on the street.
- If a street is selected, formal right of way and waiver documents will be prepared, and bid specifications drawn up.
- In order to proceed to bid, all property owners abutting the private street shall indicate a general (but nonbinding) willingness to:
 - Pay the contribution estimated by the engineer
 - Provide a complete waiver of any property damages, including for compensation and change in grade and all damages that could be asserted under the eminent domain code, as set forth in the attached deed of dedication.
 - Convey at no cost to the Municipality any required right-of-way.
 - Acknowledge that upon change in status of the street to public, applicable traffic and parking regulations shall apply.
 - Acknowledges and accepts the improvements and construction standards recommended by the Municipal Engineer and waives any claims or rights to seek revisions to said standards unless recommended by the Municipal Engineer and approved by the Commission.

- After bids are received and before awarding a contract for construction, the Municipality will need to receive from the abutting property owners: (i) dedication and waiver documents satisfactory to the Municipality and its solicitor, and (ii) the final non-municipal share (based on actual bid prices), unless other arrangements have been made.
- The Municipality will agree that if the street is improved to standards established by the Commission, the street will be accepted as a public municipal street and publicly maintained.

Limitations:

The purpose of this Policy is to assist the Commission in evaluating, selecting, and implementing options relative to private streets by outlining the underlying philosophies and processes to be followed by the Commission. It is intended that this Policy provide a meaningful framework to accomplish these objectives while remaining flexible to allow the Commission to be responsive to future changes in the economic environment, budgets, overall direction and the competing needs of residents, the community and the Municipality. Accordingly, the Commission may adjust or disregard one or more of the provisions listed herein, or employ other considerations not listed herein, where the Commission has determined that such action is desirable in its discretion. Without limiting the generality of the foregoing, the Commission may require additional consents, easements, documents, liens and funding regardless of anything contained herein to the contrary. The decision to proceed or not to proceed with any private street is always within the discretion of the Commission, is subject to any conditions the Commission may choose to attach to any decision, and no decision to proceed with one street will serve as precedent for any other street. This Policy may be discontinued at any time and for any reason, and remains subject at all times to having available funds, which the Commission is under no obligation to provide or to allocate to any particular street.

This instrument was prepared by and after recording should be returned to:



DEED OF DEDICATION

This Indenture is made the ____ day of _____, 2014, by _____ and _____ (“Grantor”) to **MT. LEBANON, PENNSYLVANIA**, a municipal corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (“Grantee”).

WITNESSETH:

Grantor, for and in consideration of the advantages to it accruing, as well as for numerous other considerations affecting the public welfare which it seeks to advance, has granted, bargained, sold, aliened, released and confirmed and grants, bargains, sells, aliens, releases and confirms to Grantee, its successors and assigns, a right-of-way in, over and under all that certain lot or piece of ground more fully described on Exhibit A attached hereto, and graphically depicted on a drawing attached hereto as Exhibit B, located in Mt. Lebanon, Allegheny County, Pennsylvania, for the sole purpose of expanding, widening, improving, maintaining, repairing and replacing that certain portion of the private road known as _____ (the “**Right-of-Way**”).

To have and to hold the said Right-of-Way to Grantee, to and for the only proper use of Grantee, its successors and assigns forever as a public road, and as may be convenient now or in the future, including, but not limited to any of the following: (i) culverts, drains, roadway, curbing, sidewalks, storm water improvements, lighting, landscaping, striping, utilities and signage; and (ii) for such other purposes incidental or convenient to any of the foregoing.

Grantor, for itself, its successors and assigns, covenants, promises and agrees to and with Grantee, its successors and assigns, that neither Grantor, nor its successor or assigns, shall, nor will, at any time hereafter, ask, demand or recover or receive of or from Grantee, its successors and assigns, any sum or sums of money for this Right-of-Way conveyance to Grantee, it being recognized that Grantor has received just compensation for this grant.

UNDER AND SUBJECT TO covenants, rights of way, easements, restrictions, reservations, exceptions, rights, agreements, encumbrances, and matters which would be disclosed by a physical inspection of the property or which would be apparent upon an accurate survey of the property, and any and all recorded matters in the Department of Real Estate of Allegheny County, Pennsylvania.

With the appurtenances: To Have and to Hold, the same to and for the use of the said Grantee, its heirs and assigns, forever, and the Grantor for itself and its successors and assigns, hereby covenants and agrees that it will WARRANT SPECIALLY the property hereby conveyed.

The Grantor releases and forever discharges Grantee and its past, present and future attorneys, agents, servants, representatives, officials, officers, members of the Commission, employees, contractors, and subcontractors, of and from any and all past, present and future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on or under a tort, contract, statute, constitutional or other theory of recovery, and whether for compensatory, punitive or other damages, which Grantor now has or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of the Right of Way or the exercise of rights under this Deed. Without limiting the foregoing, this release and discharge specifically applies to any claim or cause of action in any way related to or for: inadequacy of the road design (including width and grade); application of Municipal rules (including parking restrictions); a taking of property; condemnation of property; inverse condemnation of property; compensation or just compensation; damages for change in grade; damages related to runoff; severance damages; damages related to relocation; removal transportation; and removal or reinstallation of personal or real property. Nothing contained herein shall release any contractors or subcontractors of the Grantee from any liability to Grantor as a result of the negligence of said contractor or subcontractor.

This Deed and all the provisions hereof shall constitute covenants running with the land and shall be binding upon and inure to the parties hereto and their respective successors and assigns. The grant of rights herein is perpetual.

This transfer by dedication is exempt from real estate transfer taxes pursuant to Section 8102-C.3(1) of the Pennsylvania Realty Transfer Tax Act (72 P.S. § 8101-C et seq.) which excludes from such tax transfers to political subdivisions of the Commonwealth of Pennsylvania by dedication.

NOTICE---THIS DOCUMENT MAY NOT/DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE/HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement and the date first written above.

WITNESS

GRANTOR

NOTICE THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966, AS AMENDED 1980. Oct. 10, P.L. 874, No. 156 § 1.

WITNESS:

CERTIFICATE OF RESIDENCE

I do hereby certify that the **Tax Bill Address** of the within named Grantee is:

Mt. Lebanon, Pennsylvania
Mt. Lebanon Municipal Building
710 Washington Road
Pittsburgh, PA 15228

I do hereby certify that the **Owner Mailing Address** of the within named Grantee is:

Mt. Lebanon, Pennsylvania
Mt. Lebanon Municipal Building
710 Washington Road
Pittsburgh, PA 15228

Witness my hand this _____ day of _____, 2014.

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT OF WAY

ALL that certain lot or piece of ground situate in Mt. Lebanon, Pennsylvania, in the County of Allegheny and Commonwealth of Pennsylvania, bounded and being more particularly described as follows:

CONTAINING: _____ Sq. Ft.

BEING a portion of the same property conveyed by [•] to Grantor herein pursuant to that certain deed dated [•] and recorded in the Allegheny County Department of Real Estate in Deed Book Volume [•], Page [•], Lot and Block _____.

EXHIBIT ‘B’

Graphic Depiction of Right-of-Way

FORM OF PETITION

TO THE COMMISSION OF MT. LEBANON, PENNSYLVANIA:

We, the undersigned, being all the owners of record of all property which abuts the private street known as (*add Street description*) (the "Street"), and intending to be legally bound, do hereby agree to the following:

1. We are petitioning to have the Street upgraded with the goal that it will become public (the "Project"). We have attached a description of the work we have done on the Street, which includes the dates of the work and amounts spent.

2. We agree that this Petition serves as a temporary license to Mt. Lebanon to enter onto and use our property in studying the feasibility and cost of the Project to see if the Project will go forward.

3. We understand that we each must dedicate a permanent right of way to Mt. Lebanon for its use in upgrading and maintaining the Street, and that the Project will not go forward without such a right of way from every owner. We understand further that in the right of way document we waive all rights we have to damages as a result of the Project. We have reviewed the form of right of way and are prepared to sign it without substantive modification.

4. We understand that it is our responsibility to determine what, if any, consents are required from any mortgage or lien holders on our property.

5. We further understand that if the Street becomes public, the entire easement area will be subject to the rules and regulations of Mt. Lebanon.

6. We understand that we will have to contribute to the cost of the Project (including related engineering and legal fees) as determined by the Commission, with the contribution to be determined on front foot basis. For streets that are not through streets, the share will be 100%. The resident costs will need to be paid to Mt. Lebanon before any contracts related to the Project will be awarded.

7. Finally, we understand that Mt. Lebanon reserves the right to proceed or not to proceed with the Project, in its sole discretion.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this ____ day of _____, 20__.

Resident

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