



Understanding Easements & Addressing Concerns with Landowners

Securing the right-of-way for a potential trail and addressing concerns with landowners and neighboring property owners early on is critical to the successful development of a greenway trail.

Private Easements

For some greenway trails, fully purchasing the trail may not be an immediate option - and may never be possible. As an alternative, easements can be granted allowing for the use of private lands. An easement is a legal permission to use private land for a specific purpose. Easements are commonly used for hiking trails, especially long-distance hiking trails, but can also be used for greenway trails. Easements are often permanent, although it is possible to establish an easement with a limited term, or an easement that only allows use of land for a portion of the year. Establishing an easement involves recording the agreement between the landowner and the trail organization or municipality with the property deed at the local county clerk's office. In some instances, the use of easements may qualify a landowner for income and estate tax benefits. A trail use easement may also be paired with a conservation easement, which protects wildlife habitat, farmland, wetlands, scenic areas, or other special characteristics of private property which landowners may wish to preserve.

Addressing Liability

Minimizing risk, and addressing liability concerns before they become a problem, should be factored into the initial design phase of trail development. Potential hazards and dangerous locations should be identified and avoided. In addition, permitted trail uses and the risks associated with each should be clearly identified so that the trail can be designed and constructed in accordance with applicable laws and guidelines. Private landowners who grant use of their land for trail purposes are protected from unwarranted lawsuits by New York's Recreational Use Statute (General Obligations Law 9-103). The recreational use statute clarifies that property owners who give permission to others to use their land for a specific, limited list of activities - including hiking, cross-country skiing, horseback riding, bicycle riding, motorized vehicle operation for recreational purposes, or snowmobile operation- have no legal responsibility to give warning of any hazardous condition or use of the property, owe no duty of care to those using the land, and do not assume responsibility for or incur liability for any injury to person or property by those using the land.

Addressing Concerns of Landowners and Neighbors

Many greenway projects are delayed or entirely prevented from coming to fruition due to opposition from adjacent landowners or other neighbors. This opposition is usually fueled by a lack of information and unanswered criticism of trail proposals. Trail opponents will cite issues such as property rights, concerns over loss of property values, liability, and fears of littering, trespassing, burglary, vandalism, and other crimes. As opposition grows, it can become entrenched, leading to acrimony and conflict, and at worst, the discontinuation of a project. However, if concerns can be addressed early on, and answered openly and honestly, this opposition can be met, and opponents can be turned into project supporters. A majority of those who were initially opposed to trails often find that their fears about the trail never materialize. While there are studies that have refuted claims that greenway trails increase crime, lower property values, or introduce new liability claims, adjacent landowners may be intrinsically skeptical about a new project. Over time, adjacent landowners can become the most avid, enthusiastic trail users and supporters once a new greenway is in place. However, this change in opinion can take time and patience.

Tips for Dealing with Opposition

The Rails-to-Trails Conservancy has **outlined ten techniques** that can be effectively used to deal with project opposition:

- 1. Reach Out:** Don't wait for nearby residents to learn about your proposal by reading about it in the newspaper. Talk to them directly, either by traveling door-to-door, circulating an open letter or giving a presentation at a community gathering.
- 2. Listen:** Take time to understand why adjacent landowners are opposed to the trail. Many of their concerns stem from fear of the unknown. Listen carefully, address specific concerns and try to arrive at solutions that benefit as many people as possible. While you may think these concerns are unreasonable, your opponents take their interests, however misinformed they might seem to you, seriously. Never trivialize your opposition's concerns.
- 3. Find Allies:** Among the people who live adjacent to the proposed rail-trail, you may find bicyclists, walkers, runners, horseback riders, families with active children or individuals with disabilities—all of whom represent likely trail supporters. Seek out these individuals, explain the trail's benefits, and urge them to get involved in supporting the project.
- 4. Get Involved:** Establish a trail advisory committee and ask adjacent residents to serve along with advocates and user groups. Often, when given a chance to participate in the process, a group of adjacent landowners may be more willing to work toward developing solutions.
- 5. Enlist Converts:** If your group has some travel money, invite an articulate landowner who was once opposed to a rail-trail to come and speak in your community. Hearing the story of how an opponent became a trail advocate can help allay the concerns of future trail neighbors.
- 6. Build Consensus:** If you are having difficulty building consensus, consider enlisting a third party to identify the concerns of trail opponents and trail supporters. Bring in someone who is respected and trusted by both sides, such as an official from the National Park Service's Rivers, Trails, and Conservation Assistance Program or the New York State Department of Environmental Conservation.
- 7. Be Positive:** Although it may be difficult at times, do not react in anger to claims that trail opponents make. No matter how unpleasant a discussion becomes, always treat everyone with fairness and sincerity. Be firm, factual and reasonable.
- 8. Work Hard:** Don't let outspoken opponents sidetrack your project. Identify milder opponents of the trail and those individuals who are still undecided. Work hard to address the concerns of these individuals and convert them to your cause; they can add to your majority and help persuade other detractors.
- 9. Differentiate:** A completed rail-trail is quite different from an abandoned railroad corridor. Clearly inform people who are unhappy with a littered, overgrown and unmanaged corridor that a developed rail-trail is managed and maintained, has permitted uses and trail rules and often enhances the surrounding landscape.
- 10. Work the Media:** Favorable coverage in the media helps defuse the opposition and generate support for your cause. Give your project the best opportunity for positive exposure by supplying television, radio and newspaper reporters and editors with interesting and accurate factual information.