

**SUPPORTING DOCUMENTATION
FOR
ARTICLE 22**

TEMPORARY REPAIRS TO PRIVATE WAYS

INTRODUCTION

Many citizens contact the Town requesting repairs or improvements to their street only to learn that it is an Unaccepted or Private Way and public repairs cannot reasonably be undertaken under penalty of Massachusetts State Law. Most unaccepted ways are neighborhood roads or cul-de-sac ways that the general public does not rely on in their everyday travels in the Town of Kingston.

Privately owned or Unaccepted ways are not unique to the Town of Kingston and throughout Massachusetts. The Town of Kingston currently maintains 79.39 miles of accepted roads, including Routes 27 and 106, and comparatively, there are 34.8 miles of unaccepted roads. There are also 20.92 miles of State roads, maintained by the State. In the past few decades, State funding to the municipalities in support of local road and bridge maintenance and repair (Chapter 90 funds) has essentially leveled off, while costs have continued to rise, putting a strain on local governments to keep up with the costs of maintaining the public ways.

The unaccepted ways are an ongoing issue for residents and the Town alike. The Town offers plowing on these roads but only if these roads are maintained well enough to not damage the plows or other Town vehicles. Once in disrepair, the Town can elect to not service these roads. (Massachusetts State law, MGL Ch40 §6C & §6D, allow for municipalities to remove ice and snow and provide other minor maintenance without assuming further responsibilities or ownership of unaccepted ways.)

Many unaccepted roads are now found in disrepair due to use and older, sometimes poor construction methods. In many cases these roads do not have surface drainage, causing damage to the road surface, to abutting properties and in some cases also the environment.

Through adoption of this Bylaw, the Town can allow for the repair or reconstruction of the road surface of an unaccepted road through an assessed betterment process. This process allows the town's professional staff and consultants to use their expertise to oversee improvements, and provides some cost savings to private road owners in this way. Additionally, the town may be able to secure lower material costs due to the overall work being done, and this savings can be passed along to the private road owners.

The scope of work performed, the repair technique and the materials used will be determined by the Board's designee. Factors such as the extent of repairs, material costs and availability of manpower and equipment will be considered components of any decision to proceed with a repair.

Abutters/owners will assume 100% of the cost of the betterment for improvement, and the betterment term will be mutually agreed upon by the Assessing Authority and the petitioners, usually 5 to 20 years. For more information regarding betterments, please see MGL c.80 Sections 1-7.

For further information please see the State website relating to laws about roads and streets in the following link:

<https://www.mass.gov/info-details/massachusetts-law-about-roads-and-streets>

ARTICLE ___: AMEND GENERAL BYLAW BY ADDING NEW CHAPTER ENTITLED TEMPORARY REPAIRS TO PRIVATE WAYS To see if the Town will vote to amend the current text of General Bylaws to insert the following language, AND to allow the Town Clerk to renumber the General Bylaw to include this new chapter, or take any other action relative thereto:

ARTICLE __: Chapter __ Temporary Repairs to Private Ways

Section 1 Purpose Pursuant to G.L. c. 40, §6N, the purpose of this article is to provide for the permanent or temporary repair or construction of private ways in the interest of public safety.

Section 2 Repair of Private Ways. The Town may perform temporary repairs to private ways if such repairs are determined by the Board of Selectmen or their designee to be required for public safety vehicles. Said repairs shall be considered necessary to abate the immediate hazard caused by the defect and shall not be considered as maintenance of the private way nor shall the way be considered a public way. The Town shall not be liable for any damage incurred by the defect, subsequent repairs, or failure to make repairs to private ways. Defects, such as potholes, shall be repaired with materials similar to the road surface and base. Such repairs shall be subject to the following:

2.1 The Town may make temporary repairs on private ways, provided the repairs are for the protection of the health and safety of the general public. Such private ways are subject to the provisions of this Bylaw.

2.2 No repairs shall be made on private ways that have not been released from covenant and/or bond or other security instrument if constructed through subdivision approval.

2.3 The scope of this article does not apply to Unconstructed or Paper Ways, which are those ways or portions thereof that have been created on paper by a deed, easement, plan or other instrument or by subdivision approval, but have not yet been paved, improved or otherwise constructed on the ground.

2.4 The scope of work performed, the repair technique and the materials used will be determined by the Board or their designee. Factors such as the extent of repairs, material costs and availability of manpower and equipment will be considered components of any decision to proceed with a repair.

Section 3 Minor Temporary Repairs

3.1 The Town may also make minor temporary repairs upon a written request from 75% of the owners and abutters of a private way in the Town. Such repairs shall be made only after the Board of Selectmen or their designee determine the repairs are required by public necessity.

3.2 Minor temporary repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof. Materials for such repairs, where practical, should be the same as, or similar to, those used for the existing surfaces of such ways, but may include surfacing the ways with, bituminous materials, including, but not limited to, bituminous concrete.

3.3 Minor temporary repairs shall be limited to minor work such as filling, patching and not more than twice per year. Such repairs shall not include surfacing, resurfacing, installation of drainage of any kind or the original construction of sidewalks, curbing, street construction, or brush cutting and tree removal.

3.4 Dirt Roads- Excepting grading activities on dirt roads that are, as of the effective date of this bylaw, conducted at the Town's discretions, no additional dirt roads will be added to this list, unless betterments are assessed and/or funding is allocated by Town Meeting.

3.5 A betterment may be assessed, at the discretion of the Bord of Selectmen, against the owners and abutters for the purposes of making such temporary repairs; and no cash deposit shall be required.

3.6 The Town may only make temporary repairs on private ways which have been opened to public use.

3.7 The Town shall not be liable on account of any damage whatever caused by such repairs. The Board of Selectmen may require an indemnity agreement executed by the said petitioning abutters indemnifying the Town for all claims and damages which may result from making such repairs.

Section 4 Major Temporary Repairs

4.1 The Town may make major temporary repairs on a private way in the Town. Such repairs shall be made only after a petition has been filed in the office of the Board of Selectmen. Such petition shall identify the repairs to be made and shall be signed by the owners of no less than 90% of the linear frontage of said way. Where a property is owned by more than one person or entity, each such person, and where appropriate, each trustee and/or representative, must sign the petition in order for that property's frontage to count towards the frontage percentage.

Following the submission of said petition, the Board shall conduct a public hearing, at which time, interested persons may present evidence relative to the petition.

No repairs shall be made until the Board, by a majority vote of its members, and following such hearing, determines that such repairs are required by public necessity, and until the Town Meeting has appropriated funds for such repairs.

4.2 Following such determination by the Board that said repairs are a public necessity, the Board shall issue and order stating on its face, that betterments shall be assessed upon the owners of estates which derive particular benefit or advantage from making of such repairs.

The formula for such assessment shall be at the reasonable discretion of the Board but shall be a sum equal, in the aggregate, to the total cost of such repairs.

4.3 Such repairs may include, engineering, surfacing, resurfacing and the installation of drainage, but shall not include the original construction of sidewalks, curbing or street construction. No cash deposit shall be required.

4.4 Drainage easements, if necessary, shall be the responsibility of the petitioners. If petitioners cannot secure adequate drainage easements, no improvements will be performed until such time as easements are available and conveyed to the Town.

Section 5 Assessments

5.1 Except as herein otherwise provided, the provisions of G.L. c. 80, as it relates to public improvements and assessments thereof, shall apply to minor and major temporary repairs, as defined in this Bylaw, to private ways where such repairs are ordered to be made under authority of this Bylaw.

5.2 Assessments made under this Bylaw shall, in no event, extend beyond twenty (20) years to complete the payment.

5.3 Assessments made under this Bylaw shall constitute a lien upon the land assessed in accordance with the provisions of G.L. c. 80, §12.

Section 6 Liability

6.1 In no event shall the Town of Kingston be liable for bodily injury, death, or damage to personal or private property caused by reason of a defect or want of repair in any private way.

6.2 The Town shall not be liable or accountable for any damage caused by repairs made pursuant to this Bylaw.

6.3 G.L. c.84 §25 shall not apply to any repairs made hereunder.

The following sections are informational only and are not intended to be included in the warrant article.

Timeline of Process

Application for the Road Betterment process is ongoing and the review process and repairs are at the discretion of the Board of Selectmen, Town Administrator, and Board of Selectmen's Designee. The following timeline is to be used as a guide and is subject to change:

Step 1. Abutters make the decision to petition the Board of Selectmen and carry out the process of gathering the required notarized signatures consisting of owners of at least 75% of the lineal footage along the private way for minor repairs, and 90% along the private way for major repairs. A liaison should be chosen by the group for correspondence prior to any public meeting at this time.

**A meeting amongst all abutters should commence at this time to voice concerns and opinions prior to involving the town. Work that can be done without involving the Town should be discussed and a mutual understanding of the work requested can now be presented to the Town.*

Step 2. Submission of the petition to the Board of Selectmen. Town staff will verify that at least 75% for minor repairs, or 90% for major repairs, of road frontage has been signed for. If confirmed, the Board of Selectmen's Designee makes an assessment of the private way and the construction required. Prioritization of each petition submitted will be considered on a rolling basis.

Step 3. The Board of Selectmen's Designee and with his/her consultants will meet the private way liaison on site to discuss the work being requested and come to an agreement of what work will be performed.

Step 4. The Board of Selectmen's Designee and his/her consultants will estimate the cost of materials, time, fees, and other associated costs, and any costs incurred during this process shall be included in the associated costs to perform the work being petitioned. At this time the Board of Selectmen will set a meeting date to meet all abutters in order to understand the participation level now that estimated costs are known.

Step 5. The Board of Selectmen or Town Administrator's office will notify all abutters by certified mail of the Public Meeting. Estimated cost will be provided on said notice.

Step 6. A Public Meeting will commence where the Board of Selectmen will discuss the process and ultimately declare that said repairs are required by the public necessity and convenience. At this time, abutters will also be requested to support the work to be done. The Board of Selectmen will take a vote in order to place the Private Way Betterment Article on the next Town Meeting Warrant.

Step 7. Vote of the Article for the Temporary Repair of Private Way Betterment at Town Meeting shall take place. *This is a legally binding agreement and final consideration by the abutters/petitioners should be taken at this time.*

Step 8. If approved, a timeline of work will be tentatively scheduled by the Board of Selectmen's Designee in order to coordinate any work the abutters choose to pursue beyond the work being performed under the Betterment.

**Any work not done in concert with Town work may compromise the Betterment.*

Step 9. The Town borrows the approved funds.

**See the Treasurer for more information on this.*

Step 10. The Board of Selectmen hold a hearing to vote on the Order of Betterments. The recording of the Order and estimates are filed with the Plymouth County Registry of Deeds.

Step 11. The Board of Selectmen's Designee assigns the paving work and potentially put any drainage or engineering work out to bid at this time. A schedule of work would be at the discretion of the Board of Selectmen's Designee.

Step 12. Work is completed. Final Betterments are assessed and recorded at the Plymouth County Registry of Deeds. Notification is sent to the Abutters requesting form of payment as a lump sum or consecutive payments.

**TOWN OF
KINGSTON,
MASSACHUSETTS**

**PETITION
FOR WORK ON PRIVATE WAY**

Pursuant to the General Bylaws Article ___ Section _____ the undersigned persons, who are the owners of at least circle one: 75% (minor repair) *or* 90% (major repair) of the lineal footage along _____, a private way in the Town of Kingston, respectfully petition the Board of Selectmen to declare that the following work on said private way is required by the public convenience and necessity:

We further petition that the Town of Kingston perform said work and that the cost of same be paid as follows:

(CHECK ONE)

- By a cash deposit to the Town in the amount of the estimated cost of such repairs.

- By betterments assessed upon the owners of estates which derive particular benefit or advantage from the making of such repairs on such private way.

In consideration of the Town performing said work, the undersigned agrees to indemnify and save harmless the Town of Kingston, its agents servants and employees , on account of any damage to persons or property resulting from said work.

Primary contact for the Owners signing this Petition:

Name:
Address:
Email:
Phone:

We the undersigned acknowledge that we are signing a petition to be made to the Town of Kingston for repairs to _____, a private way in the Town of Kingston, to the Board of Selectmen to declare that the work described on said private way is required by the public convenience and necessity. We further petition that the Town of Kingston perform said work and that the cost of same be paid as follows:

(CHECK ONE)

- By a cash deposit to the Town in the amount of the estimated cost of such repairs.
- By betterments assessed upon the owners of estates which derive particular benefit or advantage from the making of such repairs on such private way.

In consideration of the Town performing said work, the undersigned agrees to indemnify and save harmless the Town of Kingston, its agents servants and employees , on account of any damage to persons or property resulting from said work.

**** All information shall be filled out in the presence of a Notary Public ****

Printed Name

Address

City/Town, State
Zip Code

Signature

Date

THE COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss _____, 20__

Then personally appeared before me the above-named

, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing instrument and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires: