

WESTFORD TOWN BYLAW

Unaccepted Roads Committee

March 2012

APPENDIX 5 - Bylaw

Chapter XXX Temporary Repairs to Private Ways

§ XXX-1 Purpose and applicability.

1. The Town is authorized to make temporary repairs to private ways, constructed prior to 1955, which have been open to the public for a period of at least six (6) years, out of funds appropriated for said purpose by Town Meeting. In all cases, the entire cost shall be assessed as a betterment on those properties which benefit from the repairs. Repair does not mean new construction.
2. The repairs will be required by public necessity, including but not limited to (a) the necessity of providing adequately drained ways so as to reduce ecologically harmful runoff into the Town's brooks and ponds, and (b) the necessity of providing adequate passable ways for public safety vehicles from public ways to residences, Town facilities and resources including access to Town conservation land. The Board of Selectmen shall make the determination of public necessity by a majority vote.

§ XXX-2 Types of Repairs.

1. The repairs must be temporary in nature, such as filling, grading, patching and surface coating, and may include such repairs to drainage swales, conduits and structures as are necessary to preserve the integrity of surface repairs to the roadway, and shall not be such as to constitute a reconstruction of the roadway.
2. The temporary repair shall have a minimum expected life equal to the bond term or 20 years.
3. Temporary repairs may be undertaken on a way subject to this bylaw, or to a contiguous portion of such way, which begins and ends at an intersection or conjunction with another way.

§ XXX-3 Petition.

1. A minimum of seventy five percent (75%) of the owners of property abutting the portion of the way proposed to be repaired must petition for the repair, with each ownership entity counting as one. The Board of Selectmen are authorized to waive this requirement.

§ XXX-4 Betterment charges.

1. The owners of land abutting such way who derive benefit from said repairs shall be assessed betterment charges by the Board of Selectmen. Betterment charges, in an amount of 100% of the aggregate cost to plan, prepare and improve the

private way shall be assessed on a per lot basis or on the proportion of the lot on the way to be improved or other proportional method as may be required by the Board of Selectmen.

2. The Town may be considered an abutter, if property under the care, custody and control of the Town abuts said way, to be improved.
3. A cash deposit shall not be required.

§ XXX-5 Status of way.

1. This bylaw does not confer any obligation or duty on the Town or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair.
2. The making of such temporary repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the Town of such private ways as public ways, nor does it constitute a way being "maintained and used as a public" under the Massachusetts Subdivision Control Law.
3. Any private way improved under the provisions of this bylaw need not be brought up to full Town standards and may continue to remain a private way. Improved private ways may be brought to Town Meeting for acceptance as a public way by completing the steps outlined in the Town's Street Acceptance procedure, which may be amended from time to time.

§ XXX-6 Liability.

1. The Town, in making repairs under this section shall not be liable for any damages to persons or property caused by negligent repair or maintenance of the private way.

§ XXX-7 Indemnity Agreement.

1. No repair of a private way shall be undertaken until the Board of Selectmen has in its possession agreements executed by at least 85% of abutting owners on the portion of the way to be repaired holding the Town harmless from any additional damage arising from any negligent repair, and which includes the following provisions:
 - A. that the Town assumes no liability to such owners by making the repairs;
 - B. jointly and severally, to indemnify and hold harmless the Town with respect to such statutory liability and any and all other liability for claims of injury, death or property damage to such owners or third parties caused by alleged defects in the way, including attorneys' fees and other costs of defense;

- C. that should the Town decide not to continue to provide temporary repairs to such way, the owners will themselves keep such way in good repair so as to minimize the liability of the Town for having undertaken such repairs;
- D. that such repair shall not constitute "maintenance" of such way, so as to give the way the status of a way "maintained and used as a public way" under the Massachusetts Subdivision Control Law;
- E. that if assessed for repairs, the owners will not appeal the amount of the assessment and agree that the assessment may be apportioned over a number of years.

§ XXX-8 Continually Open to Public Use.

1. Repairs or maintenance under this section shall not be performed on private ways that do not remain open to public use for the duration of the bond.