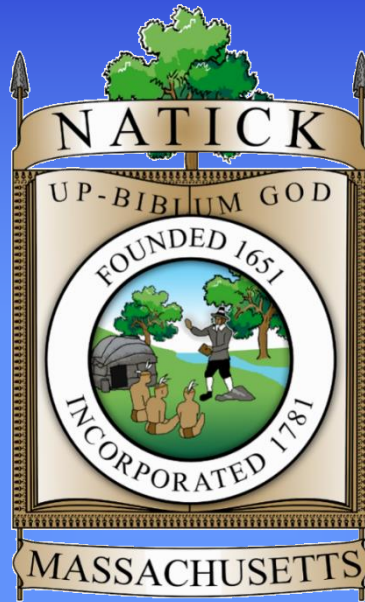


# **Town of Natick Department of Public Works**



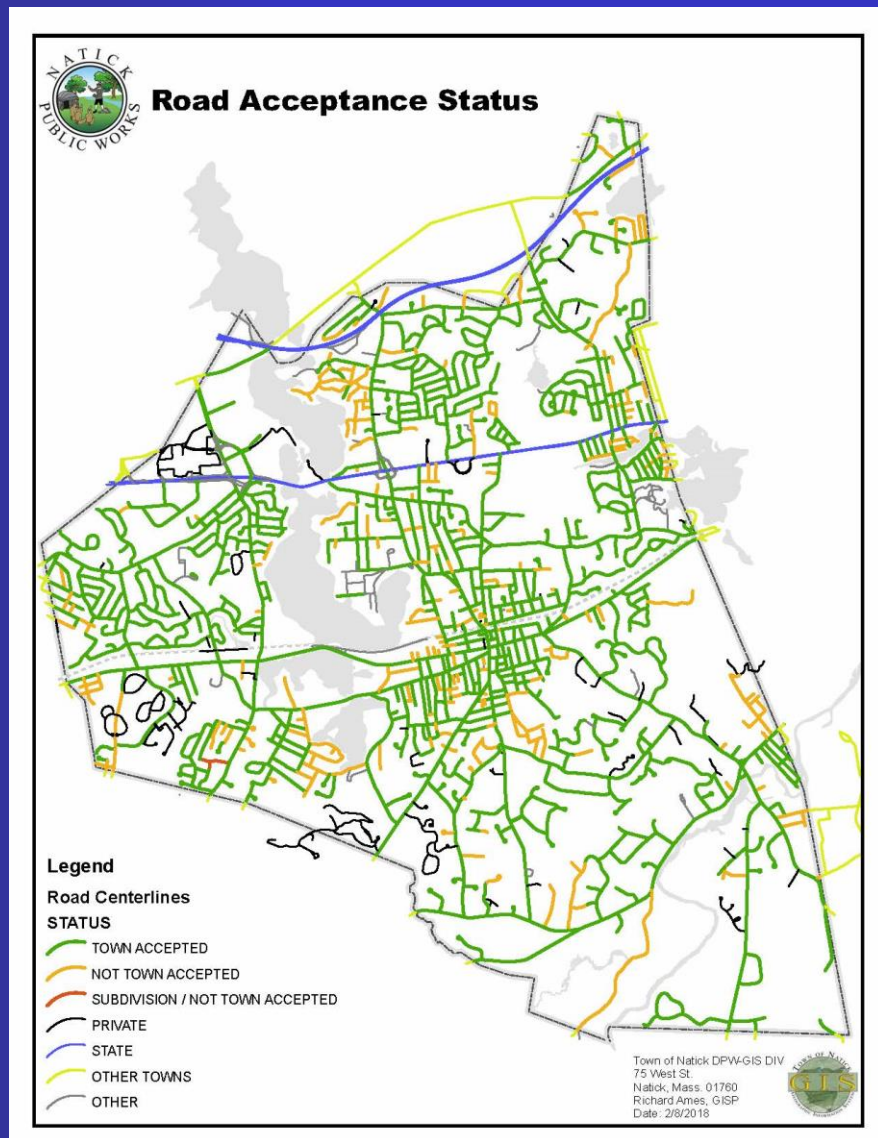
## **Unaccepted/Private Roadways and Street Acceptance**

### **Overview**

**June 19, 2018**



# Roadway Profile



Type	Miles
Town – Accepted	128.07
Town - Unaccepted	25.98*
<b>Total</b>	<b>154.05</b>

- \* Unaccepted Amount includes:
- 24.89 miles Paved Roads
  - 1.09 miles Gravel Roads



Available at Town Clerk

# Engineering Division Webpage

<http://natickma.gov/259/Engineering-Division>

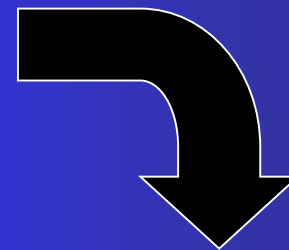
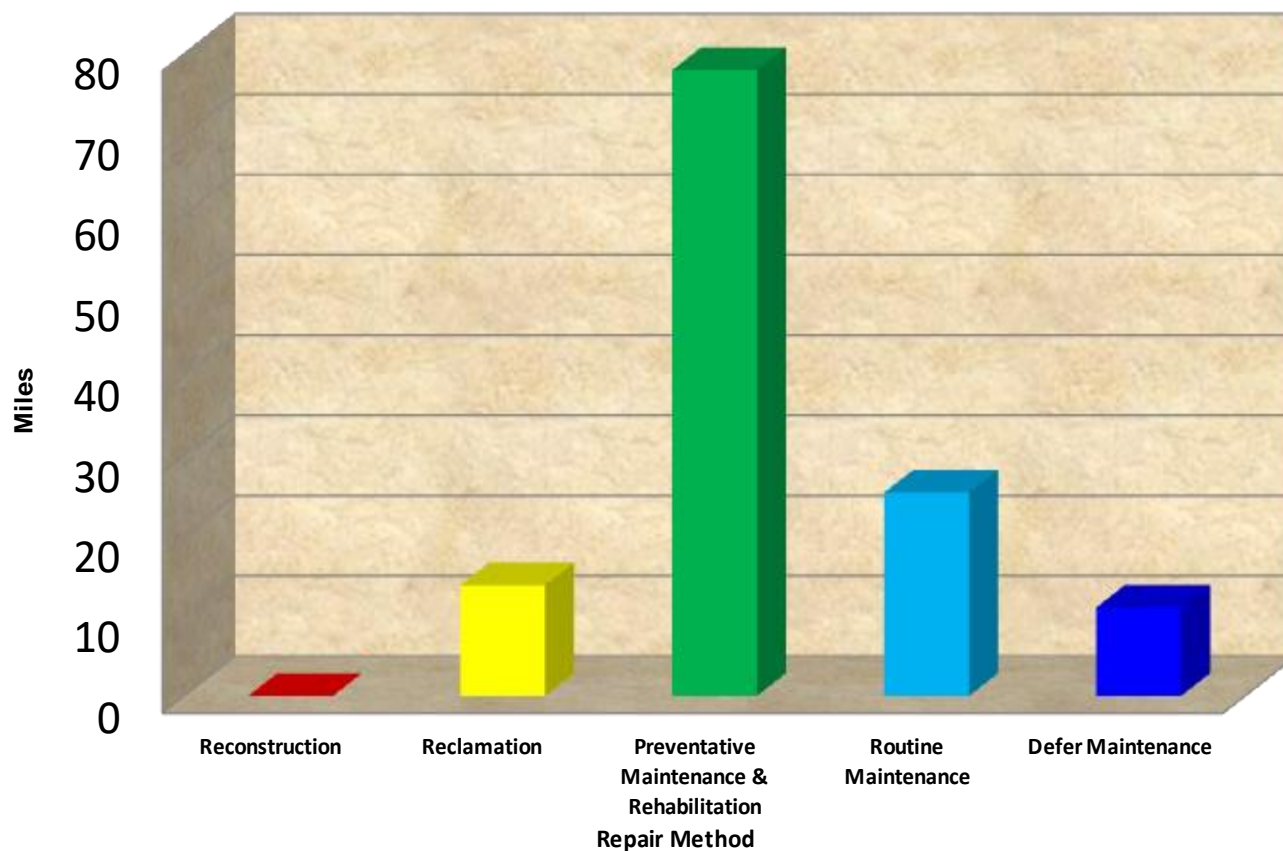




# Pavement Management Program

## Existing Conditions Summary

### General Rating by Mile (Town Accepted Roadways)



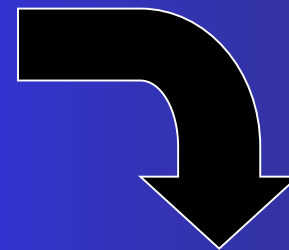
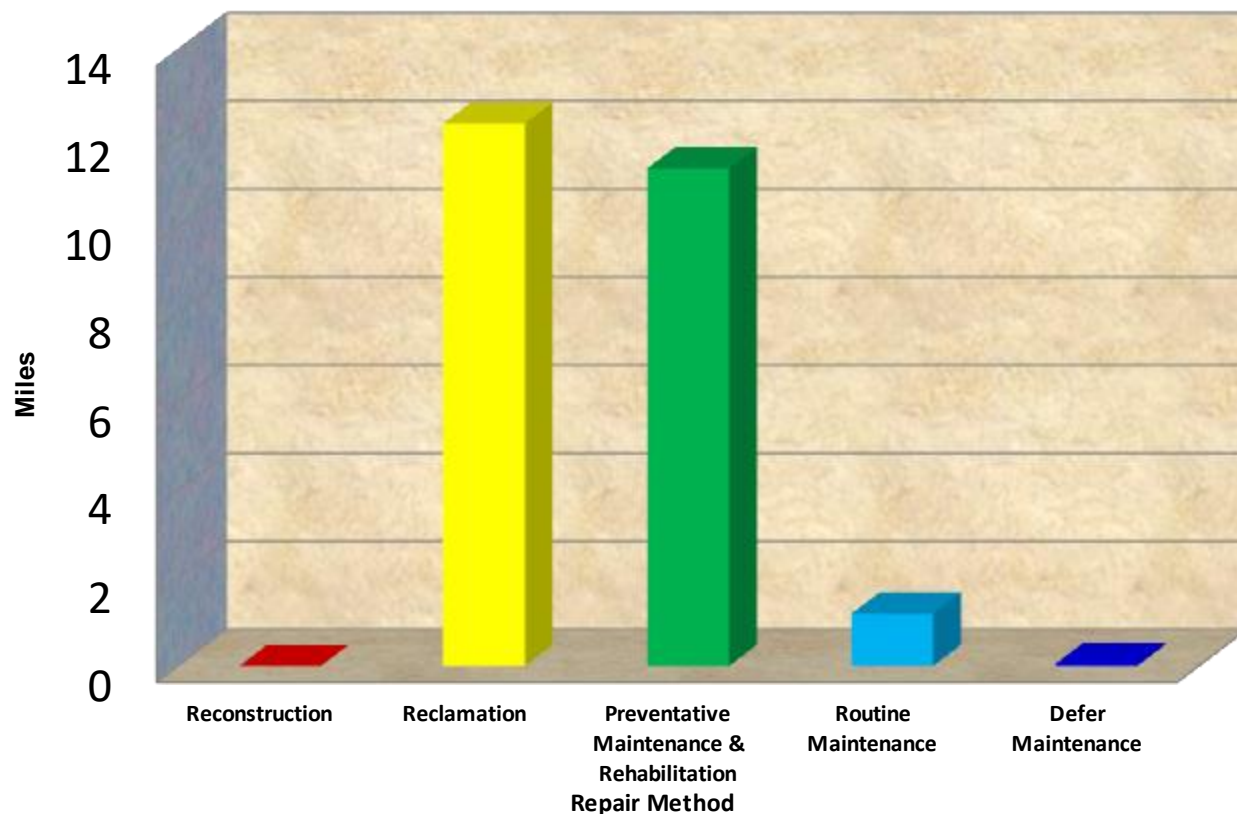
**Approx. 128.07**  
**Road Miles**  
**RSR = 76.45**  
**Backlog =**  
**\$33 Million**



# Pavement Management Program

## Existing Conditions Summary

### General Rating by Mile (Unaccepted Roadways)



**Approx. 24.89**  
**Road Miles**  
**RSR = 63.37**  
**Backlog =**  
**\$8.9 Million**

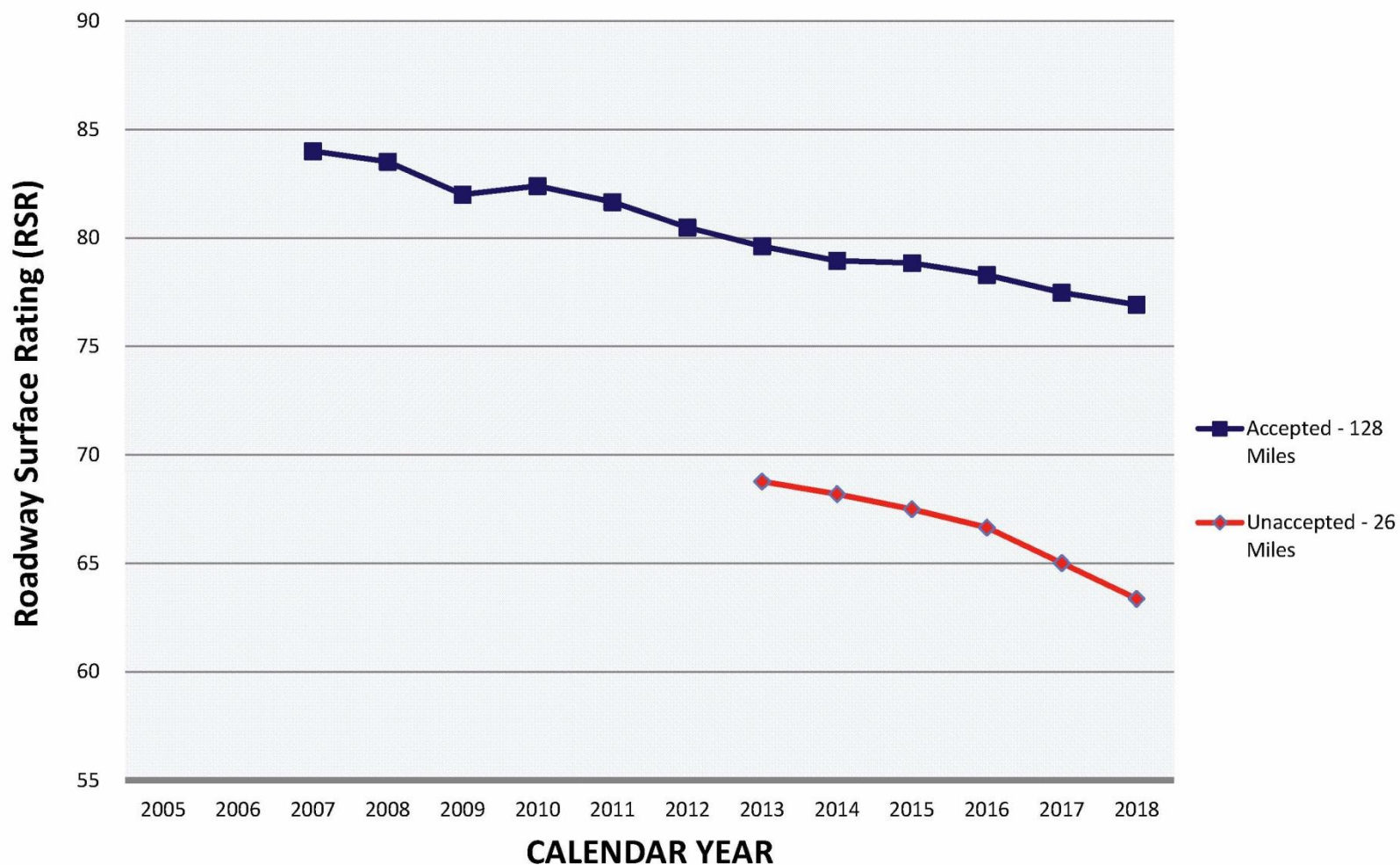




# Pavement Management Program

## Historical Condition

**ROADWAY CONDITION TREND**





# Private Way = Unaccepted

“If a road has never been dedicated and accepted, laid out by a public authority, or established by prescription, such a road is private.”

*W.D. Cows, Inc. v. Woicekoski, 7 Mass. App. Ct. at 19, 385 N.E.2d at 522*

“A Way is not public unless it has become such in one of three ways (1) a laying out by public authority in a manner prescribed by statute; (2) prescription; or (3) prior to 1846, a dedication by the owner coupled with acceptance by the public”

*Fenn v. Town of Middleborough, 7 Mass. App. Ct. 80, 83-84, N.E. 2d 740, 742-743*



# Case Law

- The burden of proof as to whether a way is public or private can no longer be met, as it was in 1915, by a “presumption” that all necessary public actions were accomplished
- The burden of proof as to the status of the way as public or private is on he or she who claims it is public
- The proponent that a way is public must prove it “conclusively”

*MCLE Chapter 23 Streets and Ways, 2008*





# Public Street Acceptance Process

## MGL c. 82 Sections 17 through 32

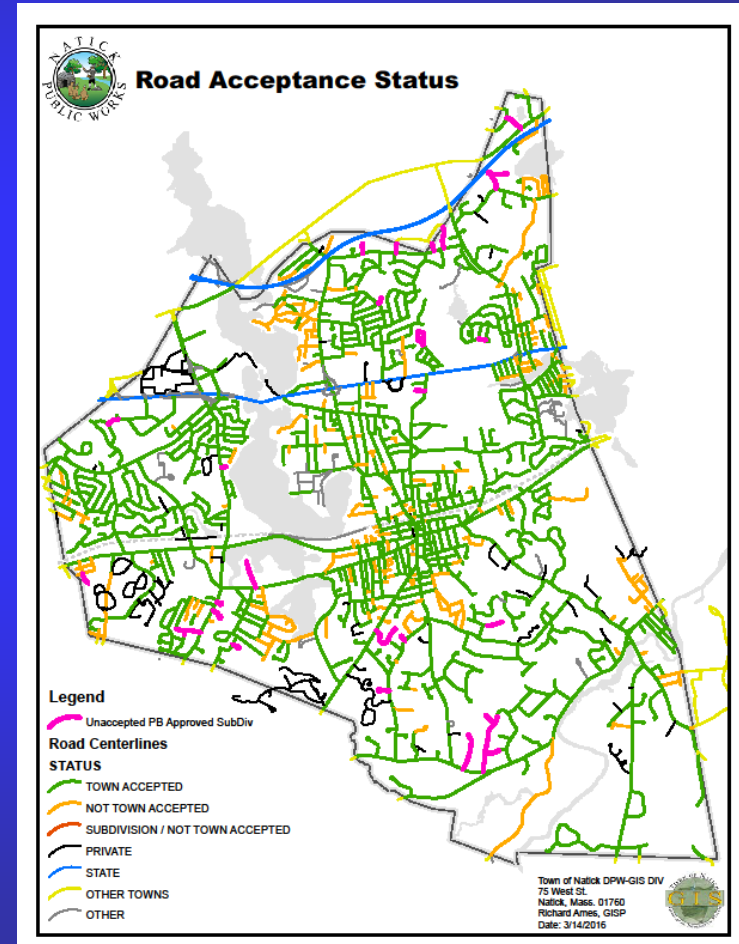
- Petition received by Town requesting Selectmen lay out a way as a public way. Board then vote that they “intend” to lay out way.
- Referral to Planning Board for a report. Planning Board has 45 days to make report.
- Roadway Layout Plans and Layout Document prepared.
- All land encompassed by proposed roadway layout must be deeded by fee interest or permanent easement to the Town of Natick. This may be accomplished by gift, purchase, or eminent domain taking.
- Town Meeting votes to accept the road as laid out by the Selectmen as a public way. Town Meeting authorizes Selectmen accept interest in land via gift, purchase, or taking. All interest in land must be formalized and deeded to the Town within 120 days after Town Meeting vote.
- If acquisition is via taking, then eminent domain process must be followed.
- After affirmative Town Meeting vote, the Roadway Layout Plan and Documents are endorsed by the Selectmen and recorded at the County Registry within a time set by statute.



# Simplified Street Acceptance Process

## Chapter 271 of the Acts of 2016

- Enabled by special legislation of the General Court Acts of 2016
- “Streamlined” the procedures for the public acceptance of subdivision streets
- Reduced requirements for deed research and street acceptance plan preparation
- Approximately 12% of unaccepted roadways (20 separate streets) may be accepted using the “Simplified Acceptance Process”





# Private Way Maintenance

## *MGL Chapter 84 Section 23*

“A way opened and dedicated to public use, which has not become a public way, shall not ... be chargeable upon a town has a highway or town way unless laid out and established in the manner prescribed by statute”

## *MGL Chapter 84 Section 12*

Private ways are maintained at the expense of abutters



# Removal of Ice and Snow from Private Ways

## *MGL Chapter 40 Section 6C*

“A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.”

Adopted by Natick Town Meeting 1952



# Private Ways; Temporary Repairs

## *MGL Chapter 40 Section 6N*

“Cities and towns may by ordinance or by-law provide for making temporary repairs on private ways. Such ordinance or by-law shall determine (a) the type and extent of repairs; (b) if drainage shall be included; (c) if the repairs are required by public necessity; (d) the number of percentage of abutters who must petition for such repairs; (e) if betterment charges shall be assessed; (f) the liability limit of the city or town on account of damages caused by such repairs; (g) if the ways shall have been opened to public use for a term of years; and (h) if a cash deposit shall be required for said repairs.”





# Current Practice in Natick

- Town provides snow plowing on unaccepted ways
- Town provides curbside sanitation collections on unaccepted ways
- Town repairs pot holes and winter plow damage on unaccepted ways
- Unaccepted ways not included in town roadway repair or improvement plan
- Town Bylaw Article 70 Section 6 - Betterments



# Examples from other Communities

## Needham

- Accepted MGL Chap 40 Sections 6c and 6n
- Town Bylaw Article 2.2.5.1.2 Acceptance of New Streets
- Town Bylaw Article 2.2.5.6 Private Ways
  - Board of Selectmen Policy BOS-DPW-008 Private Ways
  - Snow and Ice Removal
  - Temporary Repairs – abutters pay expense

## Wellesley

- Accepted MGL Chap 40 Sections 6c and 6n
- Town Bylaw Article 29.10 Temporary Minor Repairs to Private Ways
  - Formal Petition to Board of Public Works Required
  - \$20,000 annual operating budget appropriation
- Board of Selectmen Street Acceptance Policy



# Examples from other Communities

## Dedham

- Town Bylaw Section 250-7 Temporary Repairs to Private Ways
- Town Bylaw Section 250-8 Laying out and Improvements of Private Ways
- Private Ways Road Acceptance Policy and Procedures

## Westford

- Unaccepted Roads Committee Report
- Selectmen Street Improvement/Betterment Policy
- Temporary Repairs to Private Way Bylaw
- Street Acceptance/Improvement Flow Chart and Reference Document
- Posting “Private Way” Signs

## Middleton, Canton

- Board of Selectmen Street Acceptance Policy and Procedure



# What Next?

- **Adopt MGL Chapter 40 Section 6N – Temporary Repairs to Private Ways**
- **Adopt Town Bylaw for Maintenance of Unaccepted Roadways**
  - Needham, Westford, Dedham, Wellesley
- **Create Board of Selectmen Policy for Maintenance of Unaccepted Roadways**
  - Needham, Westford, Wellesley
- **Adopt Town Bylaw for Street Acceptance**
  - Needham, Dedham
- **Create Board of Selectmen Policy for Street Acceptance**
  - Canton, Middleton



# Reference Documents

- Cost Study of Unaccepted Ways – Engineering Division Webpage
- Massachusetts Continuing Legal Education (MCLE), Chapter 23 Streets and Ways, 2008
- Massachusetts Practice Series, Chapter 23.5 Public and Private Ways – Generally, Westlaw 2010
- Municipal Services on Private Ways Town of Bourne, Robert Troy ESQ, 2002