

TOWN OF BARNSTABLE

TEMPORARY REPAIR PROGRAM FOR CERTAIN PRIVATE WAYS

(Revised October 11, 1995, February 13, 2006)

ADMINISTRATIVE PROCEDURES

I. Program authority

The program for temporary repairs to certain private ways as set forth herein shall be conducted pursuant to Article XXXI, Chapter III of the General Ordinances of the Town of Barnstable.

II Program Purpose

The private road temporary repair program is intended as a means by which the Town can provide professional engineering and contract funding assistance to abutters of private roads open to public use for more than five (5) years requiring road surface and drainage repairs of a temporary nature in order to extend the service life of these roads for a period of up to 15 years when such is economically possible. It is not a program to build new roads or for the Town to accept any private roads as public roads.

III Abutter of Private Roads

As used herein, the term “abutters of private roads” shall mean:

- a. All those property owners whose properties physically abut the section of sections of the road to be repaired, **and**
- b. All those property owners who reside on connecting roads but must use the private road to be repaired as the sole means of accessing their property.

IV Private Road Temporary Repair Fund

The repair fund serves both as a source against which contracts for materials and work associated with repair projects are funded and as a source from which expenses associated with engineering and administration of the program are paid. Since the fund is a “revolving fund”, all costs charged to the fund must be recovered as part of the project costs. Accordingly, engineering, administration and contract repair costs for labor and materials used to accomplish a project must be included in the cost of each of the individual temporary repair projects. All monies collected regardless of the method of repayment are redeposited to the fund.

V. Private Road Temporary Repair Fund Financing

The passage by both the Town Council and the Massachusetts Legislature of home rule legislation authorized the Town to borrow from time to time as authorized by a 2/3 vote

of the Council such sums of money as may be necessary, not to exceed an aggregate amount of \$10,000,000, to perform repairs to private ways within the Town. This was passed as Order 94-143 by Town Council on April 7, 1994 and by the Legislature on December 31, 1994. Appropriation and Loan Orders must be passed periodically by the Town Council to provide sufficient funds to carry out the program and are held in the Private Road Temporary Repair Fund for expenditure. The debt service for the monies borrowed must be repaid by abutters through betterment assessments.

VI. Methods of Repayment

Where the total cost of the repair divided by the number of abutters results in a cost of \$499 or less per abutter, the total cost of the repair must be paid to the Town before any work is undertaken.

Where the total cost of the repair divided by the number of abutters results in a cost of \$500 or greater per abutter, the town will bill the abutter for the full amount in the form of an assessment of the property. At the time the betterment is assessed, the abutters will have the option of paying it in full or paying the assessment over a period of up to 10 years. In the latter case, the cost per abutter is divided by the number of years the abutter selects and the resulting amount plus interest on the unpaid balance is added to the tax bill each year.

VII. Department of Public Works Commission

The Town Council appointed the Public Works Commission to serve as a committee to develop and keep current a prioritized three (3) year list of private roads for which abutters have submitted petitions for repairs and written notification has been received stating that consensus has been reached by a majority of abutters on moving ahead with the agreed to repairs. The list shall be closed temporarily at any time the estimated total cost of repairs for the roads on the list exceeds the amount of funds expected to be available during the forthcoming three (3) year period.

VIII. Prioritization of Roads Petitioned for Repair

Prioritization of roads on the list shall be based on:

- i. pavement condition index as determined by the Pavement Management System;
- ii. importance of the road in terms of the local road network and number of properties served; and
- iii. the order in which the petition is received.

With the assistance and advice of the Director of the Department of Public Works and the Project Manager, the Public Works Commission shall periodically review and update the prioritization of roads on the list awaiting repair. At the time the prioritized list is updated by the Public Works Commission, it shall be forwarded to the Town Manager for review and approval.

IX. Submission of Petitions for Road Repairs

Petitions shall be submitted to the Department of Public Works by using the petition form shown in Attachment 1 to these procedures. Copies of the form may be obtained in the Department of Public Works Office, 4th floor of the School Administration Building, 230 South Street, Hyannis, MA. The petition shall be signed by at least fifty-one (51%) percent of the abutters. The name of the person who will act as the “Petition Contact Person” must be entered on the form. A nonrefundable fee of one hundred dollars (\$100.00) must accompany each petition to cover the costs of preliminary research, inspection, and the development of rough cost estimates.

X. Evaluation of Repairs and Rough Cost Estimates

Upon receipt of the petition, the Project Manager shall conduct an on-site inspection of the road’s condition and develop alternative repair scenarios with rough cost estimates. The on-site inspection of the road shall be conducted in the presence of the Petition Contact Person. The Project Manager shall meet with the abutters at a time arranged by the Petition Contact Person where hopefully a majority of the abutters will be present. The Project Manager will provide the abutters with a full report on his findings along with a range of alternative repair scenarios, if such is possible. The scenarios provided will be detailed as to physical improvements and each will be assigned a rough range of costs so that the abutters can determine the level of repairs they want or they can afford for their road. Should there be a consensus on moving ahead with the repairs at a level of cost acceptable to the majority of the abutters in attendance at the meeting, the Project Manager will proceed with the development of detailed cost estimates. If the consensus is achieved by a majority of abutters and is presented in writing within the succeeding ninety (90) days, the Public Works Commission shall be notified and the road will be placed on the prioritized three year list. If the Petition Contract Person cannot develop the required consensus within ninety (90) days the project will be placed at the bottom of the Project Manager’s priority action list and will not receive further attention until a consensus petition is received by the Project Manager.

XI. Detailed Cost Estimates

The preparation of detailed cost estimates will be based on the repair approach chosen by the abutters at the group meeting in which consensus was reached. It is possible that more than one cost estimate will be required. If there are several repair projects including possible progressive multi-year plans that would address several expensive repairs over time.

The cost estimates will be calculated using either the most recent unit bid prices derived from the Department of Public Works road repair contracts or from bids obtained by the Project Manager specifically for the Temporary Repair Program. No cost estimate can be guaranteed beyond the period of time specified in the bids. The cost estimate shall, in addition to the actual cost of repair, include all administrative and engineering expenses

associated with the repair to ensure full recovery of all expenses directly associated with the repair and to preserve the soundness of the repair fund.

XII. Consent and Acknowledgment Agreement

The Project Manager shall notify each abutter by letter of both the total cost and per abutter cost of the repair and the approximate time when it will be accomplished. One hundred twenty (120) days preceding the date of the scheduled repair, a Consent and Acknowledgment Agreement (referred to hereinafter as the "Agreement"), either Attachment 2 for Betterment Assessment or Attachment 3 for Advance Cash Payment to these procedures, will be mailed to each abutter of the road under cover of an explanatory letter. The Agreement shall list the specific repairs to be made, the estimated costs of the repair items, an estimate of the life expectancy of the repairs, the approximate date repairs will be made, the cost to each abutter and the submission deadline. Fifty-one (51%) percent or more of the abutters must agree to the repairs by signing the Agreements and returning them to the Project Manager via the Petition Contract Person not less than 60 days prior to the approximate date repairs will commence. If the Petition Contact Person does not return the required number of Agreements to the Project Manager by the specified date, the road will be dropped from the Repair Plan and placed at the bottom of the prioritized three year list

XIII. Repair Plan

As an adjunct to the prioritized three (3) year list, the Public Works Commission shall maintain and publish a Repair Plan, updated semi-annually, containing a listing of roads to be repaired during the succeeding 12 months and the approximate dates that the repairs will be accomplished. The Project Manager shall maintain periodic contact with the Petition Contact Persons for each of the roads on the three year list apprising them of where their respective roads stand on the priority list. As roads are placed on the Repair Plan, the Project Manager shall review and update the repair estimates and advise the Petition Contact Person of any changes that may have occurred since the detailed estimates were provided.

XIV. Payment of Temporary Repair Costs

If the abutter cost is \$499 or less, a certified check made payable to the "Town of Barnstable" in the full amount of the agreed to cost of the repairs must accompany the Consent and Acknowledgement Agreements at the time they are submitted to the Project Manager by the Petition Contact Person. Although 51% of the abutters must agree to the repairs being made, it is not mandatory that all 51% provide the funds necessary to accomplish the repairs. If those abutters willing to pay are also willing to pay for those who are either unwilling or unable to pay their share that will be their decision. The Town's only requirement is that the full cost be on deposit with the Town 60 days in advance of the work being undertaken.

If the abutter cost is \$500 or greater, each and every abutter shall be assessed an equal share of the cost of the repair. This will be the case whether or not any one abutter is or is not a petitioner. At the time the assessment is made, the abutter may either elect to pay

the amount assessed in full or elect to pay the amount assessed in equal payments over a period of up to 10 years. Billing will be made as described in paragraph IV above.

XV. Program Proviso

It is important the petitioners/abutters understand that:

- Other than the time of the group meeting(s) where repair scenarios are discussed directly with the Program Manager and consensus arrived at, the remainder of the process including subsequent questions should be directed through the Petition Contact Person.
- Even though the date of receipt is a factor in determining prioritization of the road on the 3 year list, it is not the controlling factor.
- Prioritization decisions made by the Public Works Commission are final.
- Even though their road may be at the top of the priority list for repair, the actual commencement of repairs may not occur before repairs of a different nature are commenced on a road further down the list. Repairs involving asphalt paving and crack sealing cannot be done in the winter months, whereas, for example, it is often possible to do drainage work. Additionally, the complexity of the repairs may result in prolonged delays in implementing the repair.

Attachment 1 Petition

Attachment 2 Consent and Acknowledgement for Betterment Assessment

Attachment 3 Consent and Acknowledgement for Advance Cash Payment

TOWN OF BARNSTABLE
TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS
PETITION

We, whose names, signatures and addresses appear below, are owners of property abutting*

_____, located in the Village of _____.
As such, we hereby request that the following repairs be made to the above named private way.

Name (print)

Signature

Street Address

(Use additional sheets for additional names, signatures and addresses)

We hereby appoint _____, whose name appears above, to represent us as the **Petition Contract Person**.

We understand that the \$100 fee accompanying the petition is **nonrefundable**.

***As used herein the term “PROPERTY ABUTTING” shall, in addition to those physically abutting the road to be repaired, include all properties whose sole access t the property is over the road petitioned for repair.**

Date received by the Department of Public Works: _____

TOWN OF BARNSTABLE
TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS
CONSENT AND ACKNOWLEDGEMENT AGREEMENT
FOR BETTERMENT ASSESSMENT

THIS AGREEMENT, made this _____ day of _____, 2006, is between the Town of Barnstable and _____, with a legal address of _____.

WHEREAS fifty-one (51%) percent of the abutters to _____ petitioned the Town to make temporary repairs to said road;

WHEREAS following a group meeting or meeting of the abutters to _____ in which the Town's Private Road Repair Project Manager outlined one or more repair scenarios and the associated rough costs, the abutters present reached a consensus to have certain repairs made to said road;

WHEREAS based on the consensus reached by the majority present at the group meeting or otherwise so derived, the Town's Private Road Repair Project Manager prepared detailed cost estimates and provided each abutter with the following:

<u>Type of Repair</u>	<u>Location of Repair</u>	<u>Cost</u>	<u>Est. Life Expectancy</u>
-----------------------	---------------------------	-------------	-----------------------------

WHEREAS I understand that:

1. The term abutter, as used in this program, includes all property owners whose properties physically abut _____ and all those property owners who reside on connecting roads but must use _____ as the sole means of accessing their property;
2. Fifty-one (51%) percent of the abutters must sign and return a Consent and Acknowledgement Agreement on or before _____, 2006 in order for the Town to proceed with the repairs described above, otherwise the repair project will be dropped from active consideration;

3. The life expectancy of the repairs noted above is strictly an estimate based on similar work performed in the past under similar conditions and that the Town makes no warranty in the event that the repairs should fail at an earlier time than indicated;
4. The repairs may be delayed due to weather and other work related considerations;
5. The abutters to said road may suffer temporary inconvenience in the use of the road during the time repairs are being made;
6. The Town shall not be liable for any damages caused by any activity associated with the repair;
7. Upon completion of the repairs, the Town shall assess betterments to each and every abutter in an amount not to exceed \$ _____ per abutter

NOW THEREFORE, I hereby agree that the Town may arrange for and implement the repairs described above at a time to be determined by the Town.

ABUTTER

RECEIVED BY

Name

Name

Address

Title
Town of Barnstable

Telephone

**TOWN OF BARNSTABLE
TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS
CONSENT AND ACKNOWLEDGEMENT AGREEMENT
FOR ADVANCE CASH PAYMENT**

THIS AGREEMENT, made this _____ day of _____, 2006 is between the Town of Barnstable and _____ with legal address of _____.

WHEREAS fifty-one (51%) percent of the abutters to _____ petitioned the Town to make temporary repairs to said road;

WHEREAS following a group meeting or meeting of the abutters to _____ in which the Town's Private Road Repair Project manager outlined one or more repair scenarios and the associated rough costs, the abutters present reached a consensus to have certain repairs made to said road;

WHEREAS based on the consensus reached by the majority present at the group meeting or otherwise so derived, the Town's Private Road Repair Project Manager prepared detailed cost estimates and provided each abutter with the following:

<u>Type of Repair</u>	<u>Location of Repair</u>	<u>Cost</u>	<u>Est. Life Expectancy</u>
-----------------------	---------------------------	-------------	-----------------------------

WHEREAS I understand that:

1. The term abutter, as used in this program, includes all property owners whose properties physically abut _____ and all those property owners who reside on connecting roads but must use _____ as the sole means of accessing their property;
2. Fifty-one (51%) percent of the abutters must sign and return a Consent and Acknowledgement Agreement on or before _____, 2006 in order for the Town to proceed with the repairs described above, otherwise the repair project will be dropped from active consideration;

3. The life expectancy of the repairs noted above is strictly an estimate based on similar work performed in the past under similar conditions and that the Town makes no warranty in the event that the repairs should fail at an earlier time than indicated;
4. The repairs may be delayed due to weather and other work related considerations;
5. The abutters to said road may suffer temporary inconvenience in the use of the road during the time repairs are being made;
6. The Town shall not be liable for any damages caused by any activity associated with the repair;
7. If the Petition Contact Person is unable to deliver a certified check to the Town Treasurer in an amount equal to the full cost of repair on or before _____, 2006, the repair project will be dropped from active consideration.

NOW THEREFORE I hereby agree that the Town may arrange for and implement the repairs described above at a time to be determined by the Town.

ABUTTER

RECEIVED BY

Name

Name

Address

Title

Town of Barnstable

Telephone

**TOWN ORDINANCE AND POLICIES GOVERNING
REPAIR, LAYOUT AND ACCEPTANCE OF PRIVATE WAYS AND
BETTERMENT ASSESSMENTS – PRIVATE AND PUBLIC WAYS**

Temporary Repairs for Certain Private Ways (Ch 3, Art. 31, Town Ordinance)

Upon petition of 50 percent or more of the abutters thereof, the town may in the discretion of the Town Manager, provide temporary repairs including drainage, the nature of which is not likely to have a service life expectancy greater than 15 years and is required by public necessity, on any private way which has been open to public use for more than five (5) years. The town shall not be liable for any damages caused by any activity herein provided. A one hundred dollar nonreturnable cash deposit shall be required with the submission of the petition to cover the cost of field inspection and initial cost estimates. Where all administrative, engineering and repair costs associated with the temporary repairs is less than \$500 per abutter, a cash sum shall be deposited with the Town Treasurer equal to the costs of repair prior to the work being commenced. Where the cost per abutter is \$500 or greater for repairs made under this Article, betterments will be assessed. Any abutter may, by paying the full amount of his share, avoid the assessment of the betterment of his land.

Town of Barnstable Policies Regarding Layout and Acceptance of Private Roads (Art L7, May, 1989 ATM)

As it is in the best interest of the town to acquire the right of passage over some of the private roads located within the town and to ensure their continued upkeep to facilitate the movement of traffic and to ensure public safety, and since the town is presently confronted with a disproportionate inventory of private roads, numbering some 1,060, whose combined length exceeds 198 miles and most abutters would like the town to lay out and accept said roads, it is essential that certain guidelines be followed. To this end, the following systematic management strategy for laying out and accepting many but not all private roads located within the town is instituted:

- A. A road committee shall be formed consisting of one member of the Town Manager, one member of the Department of Public Works Commission and one member of the Planning Board who shall make recommendations on all roads being considered for layout and acceptance.
- B. Roads to be considered for layout and acceptance by the Town Manager shall first be qualified by the Road Committee as to their relative importance within the town's overall hierarchy of roads providing for intratown traffic movements and public safety.
- C. Based on a recommendation of the Planning Board and with the concurrence of the Road Committee, the layout and acceptance of some new subdivision roads which meet all subdivision standards and are important within the town's hierarchy of roads should be accepted as a matter of policy within a prescribed period of time after completion.
- D. Based on a recommendation of the Planning Board and with the concurrence of the Road Committee, the layout and acceptance of some relatively new subdivision roads that meet most subdivision standards and would require no significant foreseeable cost to the

town within the next five (5) year period and are important within the town's hierarchy of roads should be accepted as a matter of policy.

- E. A road brought to the attention of the town for layout and acceptance via the petition process shall be evaluated for the application of standards and guidelines of the town's subdivision control bylaw and as to its placement within town's overall hierarchy of roads by the Road Committee. Should the road qualify for layout and acceptance, the road should be reconstructed or repaired to meet the standards established under the then current subdivision control regulations as a condition of acceptance.
- F. Certain private roads which are not covered under the three categories outlined in paragraphs C, D, and E above but are of significance to the town for public safety or traffic movement, as determined by the Road Committee, may upon recommendation by the Planning Board or the Department of Public Works be placed before the Town Council in an appropriation order for acceptance after having been laid out by the Town Manager.
- G. The cost of necessary repairs to roads being considered for layout and acceptance shall be borne by the benefiting property owners under the provision of the town's betterment policy.

Town of Barnstable Policies Regarding Assessment of Road Betterments (Art L8, May 89 ATM)

In consideration of the town's need to repair and rebuild many of the roads located within the town and the benefits to be derived by its citizens and recognizing its financial constraints, the town shall endeavor to meet these needs through the assessment of betterments as provided under the general laws to owners of properties so benefiting from such improvements. The cost of such improvements shall be apportioned in a manner which is both equitable to the beneficiaries and assures maximum cost recovery to the town as follows:

- A. Private Ways
 - 1. It will be the intent of the town to finance improvements made to its private roads through long-term debt. All long-term debt and interest charges along with all direct and indirect costs associated with the road improvement project including layout costs, when applicable, shall be apportioned by the Selectmen with the assistance of the Department of Public Works to the owners of properties abutting the road as well as the town and other benefiting owners of properties and the total assessed costs shall not exceed the total estimated costs calculated in accordance with the formula described in paragraph B hereof.
 - 2. In instances where the total cost of temporary repairs made to private roads under Article XXXI of the town's Bylaws (Temporary Repairs for Certain Private Ways) qualify for assessments, 100 percent of the total cost shall be apportioned to the owners of properties abutting the private road.

3. All repairs, reconstruction or upgrading associated with qualifying a private road for layout and acceptance by the town shall be paid for by owners of properties benefiting from the improvements who shall either be assessed up-front cash deposits or when the cost is sufficiently large be assessed betterments for 100 percent of the total costs as described in paragraph a.1 hereof.
4. In some rare instances where a private road has been in public use for an extended period of time (greater than 10 years) and where there is a significant benefit to the town to maintain intratown traffic flows and/or ensure public safety, the Selectmen may choose to alter the net cost amount used to calculate betterment assessments. The reductions shall be based on the ratio of through traffic flow carried by the roadway as compared to abutter generated traffic. In no case however, will the net cost be reduced by a factor greater than 50 percent. This reduction will result in an adjusted net cost.

B Public Roads

Under the general direction of the Town Manager, 100 percent of the net cost of all major repairs or reconstruction performed on public roads, where the improvement has an expected useful life of 15 years or more and where a direct benefit can be assigned to adjacent property owners shall be apportioned to said property owners and betterments assessed on accordance with the formula described in paragraph C hereof.

A regional traffic factor shall be applied to reduce the net cost and shall be directly associated to the level of betterment derived by the benefiting property owners when calculated on the traffic generated by the benefiting road. This reduction will result in an adjusted net cost. The betterment to be assessed by the Selectmen shall be 100 percent of the adjusted net cost.

C. Betterment Calculation

Betterments shall be apportioned by the Town Manager through the following formula:

1. Determine the total cost to the town of the road work.
2. Where appropriate deduct all state or federal grants to determine total net cost.
3. Where appropriate deduct a percentage of the project cost assigned to general community traffic movement to obtain an adjusted net cost.
4. To determine the assessable portion of the project cost: Multiply the adjusted net cost of the project by the appropriate percentage of assessment.
5. Determine the number of existing and potential single family units or equivalent thereof based on automobile trip generation and divide the assessable project cost by the number of units; this will provide a cost per single family unit or the equivalent thereof. Hereafter, for purposes of calculations, to be called units.
6. Total cost to each benefiting property: multiply the number of units as calculated based on automobile trip generation by the cost per unit.

D. Special Situations

1. Where traffic generation calculations are required, they will be performed by the Department of Public Works and shall be based on generally accepted traffic engineering trip generation reference sources and when appropriate on-site traffic counts.
2. Where public entity property abuts the way receiving an improvement, the public entity should pay its fair share of costs and shall be included in the formula for a share of the betterment charges.
3. An abatement strategy will be available to any property owner who does not have access nor is likely to ever have access to the improved road. The abatement process will be administered by the Department of Public Works with appeals of decision being made to the Town Manager.