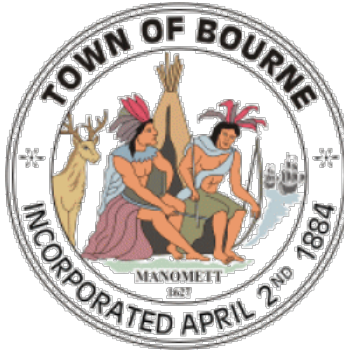


Town of Bourne

Select Board

Policies and Procedures



PUBLIC ROAD LAYOUT AND ACCEPTANCE

ADOPTED:

APRIL 2, 2024

SELECT BOARD MEMBERS:

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AMENDMENTS:

Table of Contents

1. AUTHORITY.	3
2. PURPOSE.	3
3. PRELIMINARY REQUIREMENTS	4
4. LAYOUT.	4
4.1 Petition Process (<i>Prior to July 1st</i>)	4
4.2 Content of the Petition (<i>Prior to July 1st</i>)	4
4.3 Engineering Review and Preliminary Select Board Vote (<i>Prior to September 1st</i>)	5
4.4 Recommendation (<i>September</i>)	6
4.5 Notification of Layout Public Meeting (<i>October</i>)	6
4.6 Action (<i>October/November</i>)	6
4.7 Article for Annual Town Meeting Warrant (<i>February/March</i>)	7
4.8 Town Clerk Filing (<i>April</i>)	7
5. ACCEPTANCE (TOWN MEETING – TYPICALLY 1ST MONDAY IN MAY)	7
6. ACQUISITION (WITHIN 120 DAYS AFTER TOWN MEETING)	7
7. WAIVER	8

1. AUTHORITY

In accordance with MGL Ch. 82, §§17-32 and Section 3.1.37 of the Town of Bourne General Bylaws: “Layout and Acceptance of Private Ways,” the Select Board adopts this Public Road Layout and Acceptance Policy. This policy supersedes all previous Town of Bourne Select Board policies related to “Laying Out of Town Ways”, and any previously policy is hereby repealed.

2. PURPOSE

This policy has been prepared to ease and facilitate the process by which private roads are laid out and accepted as public ways within the Town of Bourne and further to ensure a thorough and complete review of all ways proposed to be accepted as public ways.

This policy contains the procedures required by Massachusetts law, Town bylaw, and the Town of Bourne’s other requirements that must be followed by petitioners and others to lay out and accept an existing private roadway as a public way. Compliance with this policy is the financial and legal responsibility of petitioners and not the Town of Bourne. This policy is not intended and should not be construed as providing legal advice.

Petitioners and all other interested parties should note that the layout and acceptance of a road as a public way involves three steps:

1. The Select Board must “lay out” the public way by establishing the metes and bounds and physical location of the way, in accordance with MGL Ch. 82, §§21-24, which includes a referral of the proposed layout to the Planning Board.
2. Town Meeting must vote to accept the way, as laid out by the Select Board, as a public way and to authorize the Select Board to acquire the necessary ownership interests for the same.
3. The Select Board must then acquire the fee or an easement in the street and all necessary easements for appurtenances, including drainage, utility, access, slope, and other similar items.

Each of these three steps must be completed (some under specified statutory timeframes) for a road to become a public way and there is no legal obligation that the Town approve any of the three steps, even if some have previously been completed.

This policy is not intended to and shall not create any legal rights or entitlements of any kind for any person. This policy is solely and completely intended to serve as guidance to create an orderly procedure for the Select Board’s review of petitions for the layout and acceptance of private ways. The Select Board’s decision-making under this policy shall be solely at its discretion and the Select Board reserves the ability to amend this policy at any time for any reason.

3. PRELIMINARY REQUIREMENTS

As appropriate, the Planning Board process for subdivision road construction and oversight shall be completed prior to petitioning the Select Board for Road Layout and Acceptance of a subdivision road.

4. LAYOUT

The “laying out” process establishes the metes and bounds and physical location of the way. It does not, by itself, constitute either the acquisition of an interest in the underlying land or acceptance of the way as a public way. The laying out process is, however, an essential prerequisite to the formal vote of acceptance by Town Meeting.

4.1 **Petition Process (Prior to July 1st)**

The laying out of a town way may be initiated by the Select Board /Road Commissioners or by one or more inhabitants of the Town of Bourne (MGL Ch.82, §§17 and 21). In conjunction with Section 3.1.37 of the Town of Bourne General Bylaws, the petition shall be submitted prior to July 1st in order to be considered for acceptance at the Annual Town Meeting in the following May.

The Select Board shall only consider the first four fully completed petitions containing all the documents required to be submitted with the petition as set forth below, for consideration for the following fiscal year. This may be exceeded by the Select Board if the Town determines it is within their best interest to do so. The remaining petitions will be put on a list in the order in which they are fully completed for consideration for the following fiscal year. Inclusion on this list shall not create any right, entitlement, or property interest of any kind. This list shall be maintained solely as an aid for the Town’s and Select Board’s subsequent year review of petitions. The Town and Select Board reserve the right to modify or otherwise deviate from this list at any time for any reason.

Petitions will only be considered for layout of roads that are determined by the Engineering Department to be in good condition, free of significant defects, and that meet the standards specified in the Planning Board's Subdivision Rules and Regulations. Petitions for roads not meeting these criteria may be considered by the Select Board provided that the abutters of the subject road(s) agree to betterments to be assessed by the Town for one hundred (100%) percent of the costs to improve the road(s) in accordance with the aforementioned criteria.

Prospective petitioners are encouraged to meet with DPW and Engineering Department staff prior to submission to review the layout and acceptance process.

4.2 **Content of the Petition (Prior to July 1st)**

The layout petition shall include the following comprehensive documentation to be considered for layout and acceptance:

- a) Petition - copy of the petition for road layout and acceptance as a public way by 75%

of the owners of the abutting property agreeing to accept and pay the cost estimated to be apportioned to each abutter or;

If the petition for road layout and acceptance is less than 75% of the owners of the abutting property agreeing to accept and pay the cost estimated, proof of a prior 4/5ths certified vote from the Select Board shall be necessary;

- b) Signed and notarized originals of the approved legal documents (ie. deeds, easements, title search, etc.) ready to be executed by the Select Board. These documents will be held by the Select Board until Town Meeting approval, and then the acquisition process will commence;
- c) a certified list of abutters from the Town Assessor's Office of all property owners having frontage along the way that is proposed to be accepted as well as any land owners of the way to be laid out and any other owners of property that contain easements associated with the way (ie. slope, drainage, utility, etc.);
- d) a metes and bounds legal description of the way including a metes and bounds legal description of all easements to be included as part of the way;
- e) two (2) paper plots of the layout plans (full-sized) and seven (7) paper plots (half-scale) showing all metes and bounds of the proposed public way as well as any associated easements. The layout plan and profile of the existing roadway shall meet the requirements of the Town of Bourne Planning Board Subdivision Rules and Regulations for an "as-built" plan, prepared and certified by a Massachusetts Registered Professional Land Surveyor. These layout plans shall show information and notes as is required for recording at the Barnstable County Registry of Deeds. One mylar copy is to be provided at the time of the layout meeting for signature.
- f) Coring and/or test hole logs showing existing pavement structure performed and certified by a Massachusetts Registered Professional Engineer approved by the Town of Bourne Engineering Department. Said corings and/or test holes shall be taken at the limits of the petitioned road and at points every 300 feet in between, or at the midpoint if less than 300 feet.

4.3 **Engineering Review and Preliminary Select Board Vote (Prior to September 1st)**

The Engineering Department will conduct a preliminary review of all petitions, which may include an onsite inspection of the road proposed for layout and shall prepare a brief, written report of its findings and recommendations addressed to the Select Board.

At the discretion of the Engineering Department and the Town Administrator's Office, the Town may require a preliminary legal review, by Town Counsel's office, of any petition and its supporting documents. The Town may require that petitioners agree to reimburse the Town for the reasonable costs incurred by the Town for such a review.

Once the Engineering Department has completed its preliminary review of the petitioned road, the Select Board may hold a preliminary vote of intent to layout the road as a public way. Alternatively, if the Engineering Department concludes that one or more requirements for road acceptance are not met, the Engineering Department will review materials submitted with the petition and other such materials as may be appropriate and will develop a list of road conditions not meeting current Planning Board Rules & Regulation Standards and submit to the Planning Board.

4.4 **Recommendation (September)**

Following an affirmative preliminary vote to layout a road as a public way, pursuant to MGL c. 41, §81G, the Select Board will refer the matter to the Planning Board for a recommendation. Upon receipt of the Planning Board's report or 45 days having elapsed since the petition was referred to the Planning Board, whichever is the earlier, then the Select Board may hold a meeting to vote on the layout of the road as a public way.

The Engineering Department will then develop preliminary estimates of betterment including legal and survey costs, in order for the road to be laid out as a public way and determines cost per abutter based on appropriate method (i.e. per lot, frontage, etc.). The Select Board then notifies each abutter by certified mail of the estimated betterment cost. The notice shall include the terms for the payment of the betterment.

If at any point the petition doesn't meet the signature requirement of 75% of abutters, the petition will be removed from consideration or the petitioners will require a 4/5ths vote from the Select Board.

Upon approval from the Engineering Department, a letter from Town Counsel indicating that all necessary legal documents (ie. deeds, easements, title search, assents of mortgages, subordination agreements with the lender, etc.) are acceptable as to form and an original title certification for all roads, ways and easements being petitioned along with a letter from Town Counsel indicating the document is acceptable as to form will be provided to the Select Board.

4.5 **Notification of Layout Public Meeting (October)**

At least seven (7) days prior to laying out the way, notice of the meeting at which the layout will be considered must be given to owners of any land or easements to be taken for the roadway, including any slope, drainage, or other easements. Notification shall be by U.S. Mail and shall be posted in a public place in the Town. The notice shall contain a metes and bounds description of the proposed layout and a description, by reference to assessors map and parcel numbers, or all land or easements to be taken, as well as the time and place of the layout meeting and shall also advise of the time and place the layout plans may be viewed. The Select Board/Road Commissioners shall be responsible for providing notice of this public meeting.

4.6 **Action (October/November)**

Once the meeting has been held concerning the layout, the Select Board/Road Commissioners may vote to adopt the layout as shown on the metes and bounds plan.

For any petition where 75% or more of the abutting property owners have agreed in writing to accept and pay the cost estimated to be apportioned to each abutter, said vote of the Select Board shall require a simple majority for approval. (General Bylaws Section 3.1.37(b)). For all other petitions, said vote of the Select Board shall require a 4/5 majority for approval with a finding by the Select Board that a compelling public necessity exists for layout and acceptance of the road in question. (General Bylaws Section 3.1.37(b)).

4.7 Article for Annual Town Meeting Warrant (February/March)

The Select Board shall place an article on the Town Meeting Warrant for acceptance of the road as a public way at the beginning of February. If land or easements need to be acquired by the Town, the Article should authorize the acquisition of the land or easements by purchase, gift or eminent domain and, if necessary, appropriate funds therefor. If an Article is placed on the warrant, the Petitioner shall submit Layout Plans, and Construction plans if necessary.

Final estimated betterment costs are calculated using lowest acceptable construction bid at this time.

4.8 Town Clerk Filing (April)

The layout description, as voted, including any plan, must then be filed with the Town Clerk (c. 82 §§22 and 23), who must record such decision in a book kept for this purpose within 10 days (c. 82 §32) and no later than 7 days preceding the Town Meeting date on which a vote of acceptance is to be taken as to said road (c. 82, §23).

5. ACCEPTANCE (TOWN MEETING – TYPICALLY 1ST MONDAY IN MAY)

“Acceptance” is the procedure whereby Town Meeting votes to recognize and accept responsibility for the street layout adopted by the Select Board/Road Commissioners. In order for acceptance to occur, the Select Board shall have voted positively to layout the way as a public way and all of the backup documentation required under Sections 4.1 and 4.2 herein shall have been submitted and approved in final form prior to warrants closing for the Annual Town Meeting.

6. ACQUISITION (WITHIN 120 DAYS AFTER TOWN MEETING)

If the Town will be acquiring the land or an easement in the way or any necessary easements associated with the way, such as slope or drainage easements, the Select Board/Road Commissioners must, within 120 days after the termination of the Town Meeting at which the public way was accepted, either:

- 1) acquire the land by gift or purchase, or
- 2) adopt an order of taking under MGL c. 79, or
- 3) institute proceedings for a taking under MGL c. 80A (c. 82, §24).

If an order of taking is adopted under MGL c. 79, that order must be recorded in the Barnstable County Registry of Deeds within 30 days of such adoption (c. 79, §3).

Town Counsel prepares the necessary documentation for the grant of easements to the Town or taking of easements by the Town and records all documents and plans at the Barnstable Registry of Deeds or the Barnstable Registry District of the Land Court once they have been executed by the Select Board or the property owners, depending upon the circumstances.

If necessary, the Town will undertake the necessary improvements to the way in accordance with the bidding procedures under the Massachusetts Public Construction Laws.

Upon completion of the betterments, each abutting owner shall be billed for their proportionate share of the actual total costs of laying out and accepting the road as a public way, and not the estimated costs. The assessment of betterments shall be governed by the applicable provisions of the General Laws.

7. WAIVER

The Select Board/Road Commissioners may waive any part of this policy as regards to the timing and/or deadlines provided that all statutory requirements are complied with for the purpose of public street layout and acceptance.