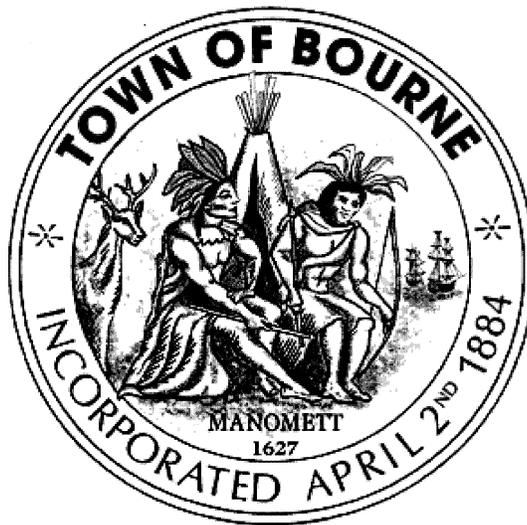


# TOWN OF BOURNE



## UNACCEPTED ROAD BETTERMENT AND ACCEPTANCE GUIDE

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POLICY SUBJECT TO CHANGE

BOURNE, MASSACHUSETTS

# Town of Bourne

Resident's Guide to the Town of Bourne Private Way Acceptance and Betterment Procedures



## INTRODUCTION

This guide was put together in the interest of Bourne residents to inform them about the history and repair options they have regarding private roads through assessing a betterment. In this guide, private roads will be referenced as “unaccepted ways” in the Town of Bourne. Many roads in the Town of Bourne are not Town Roads, or as described in this guide: accepted roads.

Many unaccepted roads are now found in disrepair due to age, use and poor construction. In many cases these roads do not have surface drainage causing damage to abutting properties and in some cases also the environment. The Town allows the repair or reconstruction of the road surface of an unaccepted road through an assessed betterment process. The Town also has an option to accept an unaccepted road at Town Meeting. The Town does not have a legal responsibility to repair unaccepted roads but once accepted, the Town will take care of the road in perpetuity.

In summary, the Town cannot spend public funds on private property and is limited in the services they can provide.

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1. Introduction
2. History of Private Roads in Bourne
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## HISTORY OF PRIVATE ROADS IN BOURNE

Private or Unaccepted roads are not unique to the Town of Bourne. Most unaccepted ways are neighborhood roads or cul-de-sac ways that the general public does not rely on in their everyday travels. Most unaccepted roads are unpaved dirt roads that were never constructed to acceptable standards. They often lack basic road requirements like proper drainage or a suitable foundation. The origin of these roads can be traced back to the days before sub-division control laws that regulated land development. Before 1950, anyone owning property in Bourne could record a plan dividing their property into new lots and new streets with no review or approval required. This resulted in roads potentially not being constructed or properly engineered. The enactment of the Subdivision Control Law has effectively eliminated the creation of substandard and often times dirt private roads that were common years ago.

The unaccepted roads that remain are an ongoing problem for residents and the Town alike. The unaccepted roads not built to proper standards wash out or erode due to poor design or construction. The Town's ability to help is limited because of ownership (it is not accepted) and therefore cannot spend public funds on private property. The Town offers plowing and trash services 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 until deemed an emergency by emergency services personnel. (Massachusetts State law, MGL Ch40 S.6C & S.6D, allow for municipalities to remove ice and snow and provide other minor maintenance without assuming further responsibilities or ownership of unaccepted ways.)

In total, all of the major arteries in the Town have been accepted by the Town or maintained by the State or Federal governments, the majority of minor roads and connector streets are also accepted and maintained by the Town, and some neighborhood roads that were constructed to state design standards have been accepted at Town Meeting on the recommendation of the Selectmen.

The Town of Bourne currently maintains 333 miles of accepted roads (about 443 segments) and comparatively, there are 288 miles of unaccepted roads (about 652 segments). There is also 163 miles of State roads as well as 70 miles of Federal roads (Corps of Engineers).

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>

## OPTIONS

If you are an abutter on a private street and want to have the road surface improved, the Town has the following two options that you can consider:

PRIVATE ROAD ACCEPTANCE

PRIVATE ROAD BETTERMENT

Private Road Acceptance - the following narrative is the Town Bylaw regarding the Acceptance of Private Ways:



### Section 3.1.37 Layout and Acceptance of Private Ways

- a. The layout and acceptance of any private way shall be in accordance with all applicable provisions of the Massachusetts General Laws, including Chapter 80 and 82 thereof.
- b. The Board of Selectmen shall not recommend to Town Meeting acceptance of any layout of a private way unless seventy five percent (75%) of the owners of the abutting property have agreed in writing to accept and pay the cost estimated to be apportioned to each abutter, or unless the Selectmen shall determine by a four-fifths vote of their Board that a compelling public necessity exists for the acceptance of a particular private way.
- c. No betterments shall be assessed to said abutters until after the acceptance of a road layout has been approved by the Town Meeting, nor for any private way that already has been accepted by the Town, prior to the approval of this Bylaw.
- d. The Town Meeting may levy betterments or costs in whole or in part, to meet and pay the expenses incurred to layout, accept, and to construct or reconstruct any private way as a public way in accordance with standards as established by the Town. The owners of land which abuts on said private way shall pay a proportional part of the whole of the cost based upon said lands primary frontage. The primary frontage of a corner lot shall be the frontage having the greater length. The length of the frontage of corner lots having a rounded street line shall be measured along the street line from the property line to the point of curvature, plus the curve radius or tangent distance, whichever is less.
- e. The payment, collection, and assessment of all betterments due pursuant to this Bylaw shall be under the general jurisdiction of the Board of Selectmen and the appropriate Town Officials so designated and as set forth in the applicable provisions of the Massachusetts General Laws.

NOTE: \* Various changes by Article 21, 2004 May ATM.

Private Road Betterment – the following narrative is the Town Bylaw regarding the Temporary Repairs of Public Ways in the Town of Bourne. This Bylaw was added by Article 55 of the 1978 Annual Town Meeting.

Section 3.1.28 Temporary Repairs of Private Ways

The Town may make temporary repairs on private ways which have been open to public use. Such repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof and installation and construction of drainage, if deemed necessary by the Highway Surveyor. Materials for such repairs shall, where practical, be the same, or similar to, those used for the existing surfaces of such ways, and may include construction, surfacing or resurfacing of such ways with bituminous materials. Said repairs shall be undertaken only if petitioned for by the abutters who own at least 50% of the lineal footage of such way and only if the Board of Selectmen shall declare that said repairs are required by the public necessity and convenience. The cost of such repairs shall be paid by the abutters by a cash deposit or by betterment assessment as hereinafter provided, and no work shall commence unless and until such cash deposit in the amount of the estimated cost of such repairs as determined by the Highway Surveyor to do the work is paid over to the Town or the Board of Selectmen have made a determination that betterments will be assessed. If the Selectmen determine that betterments will be assessed, the Selectmen shall assess betterments upon the owners of estates which derive particular benefit or advantage from the making of such repairs on any such private way. Such assessment shall be a sum equal, in the aggregate, to the total cost of such repairs and, in the case of each such estate, in proportion to that frontage thereof of such way. Except as otherwise provided, the provisions of Chapter 80 of the General Laws relating to public improvements and assessments therefor shall apply to repairs to private ways ordered to be made under this section; provided, that no assessment amounting to less than twenty-five dollars shall be apportioned and no assessment may be apportioned into more than five portions. Before any work commences, the Town shall be held harmless on account of any damages whatever caused by such repairs by agreements executed by the abutters who petitioned therefor.

The following breakdown is a hypothetical breakdown of the costs associated with the options available:

OPTIONS	RESULTING IMPROVEMENTS	COST TO PROPERTY OWNER	FINANCING
Private Street Conversion	Street made public and paved to Town standards. Town will maintain in perpetuity.	\$140 to \$180 per linear foot of frontage	5% for 20 years
Private Street Betterment	Street paved but not to the same standards as public streets.	\$100 - \$130 per linear foot of frontage	5% for 20 years
Have the Street Privately Paved	Extent and quality of work is determined by property owners.	Property owners pay entire cost. No city involvement.	N/A

## GUIDE TO BETTERMENT PROCEDURES

The following guide for temporary repairs to private ways is the procedure and practice of the Town of Bourne under Article 3.1, **Section 3.1.28 Temporary Repairs of Public Ways** in the Town of Bourne Town Bylaw. This bylaw was added by Article 55 of the 1978 Annual Town Meeting.

### I. Section 3.1.28

**Temporary Repairs of Private Ways.** The Town may make temporary repairs on private ways which have been open to public use. Such repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof and installation and construction of drainage, if deemed necessary by the Highway Surveyor. Materials for such repairs shall, where practical, be the same, or similar to, those used for the existing surfaces of such ways, and may include construction, surfacing or resurfacing of such ways with bituminous materials. Said repairs shall be undertaken only if petitioned for by the abutters who own at least 50% of the lineal footage of such way and only if the Board of Selectmen shall declare that said repairs are required by the public necessity and convenience. The cost of such repairs shall be paid by the abutters by a cash deposit or by betterment assessment as hereinafter provided, and no work shall commence unless and until such cash deposit in the amount of the estimated cost of such repairs as determined by the Highway Surveyor to do the work is paid over to the Town or the Board of Selectmen have made a determination that betterments will be assessed. If the Selectmen determine that betterments will be assessed, the Selectmen shall assess betterments upon the owners of estates which derive particular benefit or advantage from the making of such repairs on any such private way. Such assessment shall be a sum equal, in the aggregate, to the total cost of such repairs and, in the case of each such estate, in proportion to that frontage thereof of such way. Except as otherwise provided, the provisions of Chapter 80 of the General Laws relating to public improvements and assessments therefor shall apply to repairs to private ways ordered to be made under this section; provided, that no assessment amounting to less than twenty-five dollars shall be apportioned and no assessment may be apportioned into more than five portions. Before any work commences, the Town shall be held harmless on account of any damages whatever caused by such repairs by agreements executed by the abutters who petitioned therefor.

### II. 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 DPW Director. 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 signatures consisting of owners of greater than 50% of the lineal footage along the private way. A liaison should be chosen 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. The Town Engineer will verify that greater than 50% of road frontage has been signed for. If confirmed, the Highway Surveyor makes his assessment of the private way and the construction required. Prioritization of each petition submitted will be considered on a rolling basis.

Step 3. The DPW Director and Town Engineer 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 DPW Director and Town Engineer will estimate the cost of materials, time, fees, and other associated costs. 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 show favor in the work to be done. The Board of Selectmen will take a vote in order to send the Private Way Betterment to vote to place an 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 should be

Step 8. If approved, a timeline of work will be tentatively scheduled by the Highway Surveyor 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.

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

Step 11. The DPW Director would assign 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 DPW Director.

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

### **III. Petition For Work On Private Way Form**

The following form is to be completed and signed by property owners abutting greater than 50% of lot frontage on said Way:

**TOWN OF BOURNE**

**MASSACHUSETTS**

**PETITION**  
**FOR WORK ON PRIVATE WAY**

Pursuant to Section 3.1.28 of the Bourne Bylaws, added by Article 55 of the 1978 Annual Town Meeting, the undersigned persons, who are the owners of at least 50% of the lineal footage along \_\_\_\_\_, a private way in the Town of Bourne, respectfully petition the Board of Selectmen to declare that the following work on said private way is required by the public convenience and necessity:

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We further petition that the Town of Bourne 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 Bourne, its agents, servants and employees, on account of any damage to persons or property resulting from said work.

**Name**

**Address**

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