

**Frequently Asked Questions
for
Temporary Repairs to a Private Way
Town of Southwick, MA**

Many citizens contact the Southwick Select Board or Public Works Department requesting repairs or improvements to their street only to learn it is unaccepted or private and that repairs cannot reasonably be undertaken under penalty of Massachusetts State Law. The purpose of this document is to provide citizens with answers to common questions regarding the maintenance of private roads.

Q. What is a private road?

A: A private road is a road in which Town Meeting has not authorized the expenditure of public funds to repair and maintain.

Q. How did private roads develop in Southwick?

A: Most private roads arose through one of the following three manners:

1. The original developer intended the road or subdivision to be private and it has maintained that status since it was built.
2. The original developer did not build the road or subdivision in accordance with acceptable standards. They lack basic road requirements like proper drainage or a suitable foundation. As such, they do not meet current standards required for a road to be accepted as a public road. Some of these roads were built prior to the Subdivision Bylaws being adopted in the early 1950's.
3. The original developer built the road in accordance with acceptable standards, but for some reason did not follow through with the road acceptance process. This could be due to abandonment, running out of funds, selling all lots and relinquishing any further responsibility, requests by the property owners to keep the road private, or some other reason.

Roads that fall under categories 2 and 3 above are considered "unaccepted" by the Town. However, Massachusetts State Law defines all unaccepted roads as private.

Q. When was the Temporary Repairs to a Private Way Bylaw adopted?

A. Voters adopted to adopt the Temporary Repair to Private Ways Bylaw at the May 15, 2018 Annual Town Meeting under Article 23 (see Southwick Code, Section 84).

Q: Who is the legal owner of private roads?

A: In most cases, the legal owner of a private road is the original developer. In some situations where the developer has relinquished their ownership rights, the property owners along unaccepted roads own to the centerline of the roadway that touches their parcel of land.

Q: How can I find out if I live on a public or a private road?

A: There is a master list of all Southwick roads and their classification listed on the Town website under the "Maintenance of Private Roads" link.

Q: What services can the Town provide on a private road?

A: Since the road was never accepted as a public street, the town has no legal interest in the street and any service provided by the Town must be in full accordance with state statutes that regulate how Southwick can spend public funds on private roads. No repairs or work can be done by the Town unless it follows the process specified in the Temporary Repair to Private Ways Bylaw.

Q. The Town has been maintaining my road for years. Why can't the Town just continue the maintenance as it has in the past?

A: This is a legal issue that has recently come to light. Once this issue became known, the Town cannot simply ignore the law and revert to prior practice that is not consistent with Massachusetts General Law.

Q. My private road needs repairs. How can this work be done?

A: Abutters to private roads have two options for having their roads improved:

1. Individuals and/or groups of abutters may hire private contractors to fill in holes, repair drainage structures, and otherwise improve the roadway. It is recommended to check with the Public Works Department first for advice and suggestions.
2. Abutters of unaccepted roads may submit a written petition to the Select Board that the street be improved under the Town's Temporary Repairs to Private Ways Bylaw as a matter of public necessity. Upon receipt of a petition, the Select Board will direct the Public Works Director to determine the public necessity of such repairs. If repairs are needed and voted affirmatively by a majority of the Board, temporary repairs may be undertaken and abutters will be assessed betterment charges. Because the Town is funding repairs up-front, with the cost being paid back by abutters, the expenditure must be first approved by Town Meeting. Repairs cannot begin until Town Meeting authorizes the funding.

Q. What is a betterment?

A: Generally, a betterment or special assessment is a special property tax that is permitted where real property receives a special benefit or advantage from the construction of a public improvement. Assessment of the project costs must be reasonable and not substantially in excess of the benefit received. Public improvements, which may be subject to betterments include, but are not limited to, street layouts, temporary repair to a private way, water, sewer and sidewalks. A betterment or special assessment is a lien on the property benefited.

Q. How do I get my private road to be accepted as a public road?

A. Massachusetts General Law and Town bylaws have set forth a process to convert unaccepted roads to public roads. The process is generally described as follows:

1. Abutters to an unaccepted road may submit a written request to the Select Board to lay out the road and for street acceptance. The Select Board then refers the proposed road acceptance to the Planning Board.
2. Planning Board will hold a Public Hearing to review the application and solicit comments from residents and recommendations from various Town Departments, including DPW, Police, Fire, and others. DPW will report whether the road has been properly constructed and meets current design standards. Planning Board will vote whether to recommend the road layout and acceptance.
3. The Select Board will hold a Public Hearing to discuss and vote whether to lay out the road as a public way as recommended by Planning Board. If voted favorably by the Select Board, a warrant article will be drafted for a future Town Meeting.
4. Town Meeting votes to accept the road as a public Town way and authorize the Select Board to acquire the rights.
5. The Town will obtain the deeded rights and record the deed, easements, and layout plan. At this time, the road is accepted as a public way.

Q: Isn't there a budget to maintain private roads?

A: There is no budget to maintain private roads.

Q: I am thinking about buying a home on a private road. What advice can you provide?

A: You are recommended to speak with a lawyer so you understand your rights and obligations.

You may also want to speak with an insurance agent to understand the implications of living on a private road.

Q: How can I find out who owns other properties on my private road?

A: The Assessor's Office maintains ownership records for all properties in Town.