

TOWN OF SOUTHWICK, MASSACHUSETTS
CHAPTER 84 – TEMPORARY REPAIR TO PRIVATE WAYS
Adopted at the May 15, 2018 Annual Town Meeting

§84-1 General

Pursuant to the provisions of M.G.L. c. 40, §6N, the Board of Selectmen may authorize temporary repairs to be made to private ways that have been open to the public for a minimum of ten (10) years, out of funds appropriated for this purpose by the Town Meeting. In all cases the entire cost shall be assessed as a betterment upon those properties which benefit from the repairs and owners of such properties shall be required to make a cash deposit for all or any portion of the cost of such repairs.

§84-2 Types of Repairs

The repairs must be temporary in nature, such as filling, grading, patching and surface coating, may include such repairs to drainage swales, conduits and structures as are necessary to preserve the integrity of surface repairs to the roadway, and shall not be such as to constitute a reconstruction of the roadway. All repairs must be determined by the Public Works Director to be required by public necessity.

§84-3 Petition

A minimum of fifty-one (51%) of the owners of property abutting the portion of the way proposed to be repaired must petition for the repair, with each ownership entity counting as one.

§84-4 Betterment Charges

If betterments are to be assessed, they shall be assessed upon each parcel of land benefiting from such repair in proportion to linear frontage on the proportion of the way to be improved or other proportion to linear frontage on the proportion of the way to be improved or other proportional method as may be required by vote of the Town Meeting.

§84-5 Status of Way

This bylaw does not confer any obligation or duty on the Town or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair. The making of such temporary repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the Town of such private ways as public ways, nor does it constitute a way being "maintained and used as a public" under the Massachusetts Subdivision Control Law.

§84-6 Liability

The Town, in making repairs under this section shall not be liable for any damages to persons or property caused by negligent repair or maintenance of the private way.

§84-7 Indemnity Agreement

No repair of a private way shall be undertaken until the Select Board has in its possession agreements executed by at least 75% of abutting owners on the portion of the way to be repaired holding the Town harmless from any additional damage arising from any negligent repair, and which includes the following provisions:

- (i) that the Town assumes no liability to such owners by making the repairs;
- (ii) jointly and severally, to indemnify and hold harmless the Town with respect to such statutory liability and any and all other liability for claims of injury, death or property damage to such owners or third parties caused by alleged defects in the way, including attorneys' fees and other costs of defense;
- (iii) that should the Town decide not to continue to provide temporary repairs to such way, the owners will themselves keep such way in good repair so as to minimize the liability of the Town for having undertaken such repairs;
- (iv) that such repair shall not constitute "maintenance" of such way, so as to give the way the status of a way "maintained and used as a public way" under the Massachusetts Subdivision Control Law;
- (v) that if betterment assessments are assessed for the repairs, the owners will not appeal the amount of the assessment and agree that the assessment may be apportioned over five years.

§84-8 Continually Open to Public Use

Repairs or maintenance under this section shall not be performed on private ways that do not remain open to public use, or on private ways that are posted as restricted to private use.