

## **SECTION 631**

## **PRIVATE WAYS**

(ATM, 5/14/07, Art. 28) (Amended, ATM, 5/13/19, Art. 47)

1.01 The Town may, subject to appropriation therefore in advance at the previous annual Town meeting, make temporary repairs to a private way on which there is more than one owner abutting the private way, subject to limitations expressed in the following sections of this By-Law, which shall not constitute a rebuilding of the road by replacing the gravel base, binder course and top coat, but which would be limited to patching degraded portions of the asphalt or regrading gravel roads or minimal snow plowing to allow for emergency access by public emergency vehicles and practical access to accommodate public necessity. See Section 1.03 below.

1.02 Drainage improvements shall not be made at the time of the making of such temporary repairs unless necessary to provide access by emergency vehicles to more than one home abutting the private way and then only to the extent to which the temporary repairs are necessary to provide such emergency access by public emergency vehicles and practical access to accommodate public necessity.

1.03 Temporary repairs will not be made unless there is a public necessity for the repairs, and not merely an inconvenience to a property owner on a private way who is either the sole owner abutting the private way or an owner of property adjacent to the private way at the end of the private way, but not abutting the private way. The private ways eligible for temporary repairs under this By-Law shall have been in existence prior to August 9, 1946 when the subdivision control law became effective in Wilbraham or shall have been constructed (or in the process of construction) in accordance with a plan approved and endorsed under the subdivision control law. The term “public necessity” shall mean a need by public emergency vehicles including fire, police, and ambulance; or Town snow removal vehicles, school buses, and other vehicles customarily used by delivery services and utility and home appliance service vehicles to access the homes abutting the private way.

1.04 In order for the Town to make temporary repairs on a private way, in addition to the rest of the requirements set forth herein, there must first be a petition for such temporary repairs presented in writing to the Town and signed by 51% of the owners abutting the private way.

1.05 Neither betterment assessments nor any other fee shall be assessed to owners abutting the private way when temporary repairs are made. However, notwithstanding the petition of 51% of the owners abutting the private way, said owners shall pay to the Town a sum of money equal to the amount estimated by the Director of Public Works to be the cost of materials to be used in the temporary repairs including, but not limited to, oil, stone, bituminous asphalt and pipes, said sum of money to be apportioned among said owners as they deem appropriate.

1.06 Notwithstanding the petition of 51% of the owners abutting a private way, the Town shall not make temporary repairs unless those owners who have title to and abut the private way itself shall first execute a document presented by the Town which establishes a one hundred (\$100.00) dollar limit of liability for the Town on account of damages caused by or during such repairs to that private way.

1.07 The Town may also offer the owners abutting the private way the opportunity to hire the Town's paving contractor if and when the Town's paving contractor is performing other work for the Town in the vicinity of the particular private way(s), when such an opportunity would represent the likelihood of a substantial savings to the owners abutting the private way in an instance where more extensive repairs or a complete reconstruction of the road is preferred by the owners abutting the private way. Nothing herein shall be construed to impose a requirement that the Town take any such action or create or offer such an opportunity to the owners abutting the private way.

1.08 Notwithstanding anything in the foregoing to the contrary, no temporary repairs or other repairs or services, including but not limited to snowplowing as referenced in Section 1.01 above, shall be construed to constitute the acceptance by the Town of a private way as a public way or to otherwise convert a private way to a public way.