

PRIVATE WAY REPAIR/BETTERMENT ORDER PROCEDURE

1. Upon request, the Board of Selectmen's Office sends to the contact person/abutting property owner this packet, which includes:
 - ***Private Way Repair/Betterment Order Procedure***
 - ***Repair of Private Way Petition Form***, and;
 - ***Town Bylaws - Repairs to Private Ways***
2. The contact person/abutting property owner needs to:
 - go to the Assessors' Office for names of owners of abutting properties making sure all abutters are contacted.
 - contact the Engineering Department to coordinate the scope of work.
 - fill out the petition and get a minimum of 2/3 of the abutter signatures in approval of the project and return the form and signatures to the Board of Selectmen's Office.
3. The Engineering Division determines whether the street falls within the confines of the private way repair act and will perform an initial site visit with abutters to discuss concerns and make recommendations. The Engineering Division prepares a cost estimate of the recommended scope of work and forwards a copy to the contact person and the Board of Selectmen's Office.
4. The contact person/abutters solicit proposals from private contractors to perform the scope of work determined by the abutters and Town Engineer. The Engineering Division recommends obtaining a minimum of three quotes/proposals. Return the accepted and signed proposal of the scope of work to the Selectmen's Office.
5. The Board of Selectmen's Office will send out:
 - abutter notification of cost estimate per lot letter,
 - ***Ballot Signature Sheet*** and self-addressed envelope, and;
 - ***Town Bylaws - Repairs to Private Ways***
6. Upon return of 2/3 approved ballots for private way repair, the Board of Selectmen's Office schedules a public hearing, including:
 - placing the legal notice in the Arlington Advocate (for 2 successive Thursdays)
 - sending abutter meeting notification (not less than seven days prior to hearing).
7. At the public hearing the Board of Selectmen votes to accept or reject the private way repair petition. If the Board votes to accept the petition, then the Selectmen will sign a formal Betterment Order. Before work can begin, 1/3 deposit of the total estimated cost of the completion of the repair project must be received from the abutters and deposited by

the Selectmen's Office in the private way repair account. Any and all such deposits shall be deducted from the equalized share of the property owners actually paying.

8. No repair shall commence until all the petitioners have signed an agreement with the Town holding the Town harmless from any additional damages arising from any negligent repair. Evidence shall also be provided indicating appropriate insurance and bonding for the selected contractor that is satisfactory to the Town. The Selectmen's Office will send out:

- ***Private Way Repair Agreement*** and self-addressed envelope

9. Upon completion of the private way repair, the Engineering Division will inspect the private way work to confirm that the contractor has completed the scope of the proposed work to the Board of Selectmen's Office. Any necessary cost adjustments caused by changes in the scope of work shall be incorporated into the final Betterment Order. The Board of Selectmen's Office will then calculate the final cost per lot for billing and mail the final cost figure to all abutters. Abutters can either pay off the balance of the final cost or choose to place it on their tax bill to be paid over a five- year period to include an interest at 5 percent or 2 percent above the cost (including Town oversight and administration costs) of any bond issued to fund the repair in question. The Selectmen's Office will notify the Board of Assessors' Office and the Treasurer's Office of the tax bill payment choice.
10. If an abutter hasn't paid or notified the Board of Selectmen's Office to place the final cost on their tax bill, then a second letter of notification will be sent with a deadline date before a lien is placed on the property. The Assessors' Office in conjunction with the Town Tax Collector will commit such amount to the respective abutter's property tax bill and the Engineering Division of the Public Works Department will cause same to be recorded at the Registry of Deeds so that same runs with the land.

PETITION FORM

TOWN OF ARLINGTON
REPAIR OF PRIVATE WAY PETITION FORM

Petition for Estimate of Cost of Repairs of a Portion of the Private way, namely_____

Type of Repairs Requested:
(Please Check)

- ☐ Drainage
- ☐ Filling in of Potholes
- ☐ Armor Coating
- ☐ Grading of Dirt Roadways
- ☐ Resurfacing

To the Board of Selectmen of the Town of Arlington:

We, the undersigned owners of property situated on the Private Way called _____
_____ from _____

to _____ respectfully request that your Board have prepared, an estimate of the cost of repairing the area of the street abutting the properties of the petitioners who have signed this application.

(Contact Person): _____

Phone No. (W) _____ (H) _____

Name	Address
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[illegible]

TOWN BYLAWS – REPAIRS TO PRIVATE WAYS

ARTICLE 3

REPAIRS TO PRIVATE WAYS

Section 1. Classification

The Town Engineer and the Director of Public Works upon request of the Board of Selectmen acting in its capacity as the Board of Public Works shall recommend the classification of private ways in the Town according to the state of their construction and repair. The Board may then adopt such classifications with any modifications it may deem appropriate.

Section 2. Definition and Authorization

(ART. 20, ATM – 05/04/92) (ART. 23, ATM – 04/28/04)

The Board may vote to direct the Town Manager to make temporary repairs to private ways. Temporary repairs shall be limited to the filling of potholes, temporary patching, skimcoating, thin asphalt overlays, armor coating and grading of dirt roadways providing however, in the case of said grading, the petitioners agree to enter into a contract with a private contractor or the Town to pave the roadway forthwith. Drainage may be included when necessary as determined by the Public Works Director, to prevent further erosion.

Section 3. Criteria

(ART. 35, ATM – 05/18/05)

The Board shall in making its determination as to the advisability of making temporary repairs take into consideration the following factors:

- A. The accessibility of the properties on the private ways to emergency vehicles such as police, fire and rescue.
 - B. The volume of traffic that utilizes the private way i.e. deadend as opposed to feeder or connecting streets.
 - C. The percentage of abutters on the particular private way petitioning the Board for the repairs.
 - D. The number of years that the way shall have been open to public use.
 - E. Such other considerations that the Board deems appropriate.
- F. Public Safety.

Section 4. Petition

The Board of Selectmen shall consider any private way or portion thereof for temporary repairs after having been petitioned to do so by at least two-thirds of the total number of abutting property owners on the Private Way who directly abut the portion to be considered for temporary repairs.

The Board may after careful consideration, elect to do the entire portion which was petitioned for, or a lesser portion, provided at least two-thirds of the abutting property owners on the lesser portion to be done are in favor of such action. The Board shall upon receipt of a petition with at least two-thirds of the abutters' signatures affixed thereto shall hold a public hearing on the advisability of ordering the repairs and the kind and extent thereof. All abutters shall be given written notice of the hearing not less than seven (7) days prior thereto.

Section 5. Alternate Petition

Notwithstanding the provisions of Section 4 above, the Board may also consider a number of private ways for repair as a whole project when these private ways are ways where a majority of abutters are members of an association of abutters whose major purpose has been the maintenance and repair of those ways upon which these members' properties abut.

The Board may only consider these private ways to be repaired as a whole project when having been petitioned by two-thirds of the total number of abutters who abut all of the ways represented by the association. The Board upon receipt of such a petition shall hold a public hearing on the advisability of ordering the repairs and the kind and extent thereof. All of the abutters on all of the ways represented shall be given written notice of the hearing not less than seven days prior thereto.

Section 6. Assessment of costs

(ART. 23, ATM – 04/28/04) (ART. 35, ATM – 05/18/05)

The costs of all labor and materials and processing shall be assessed equally to all abutters on the private way, or portion thereof, or if the Board votes to order any repairs pursuant to a petition filed under Section 5 all the abutters on all the private ways to be repaired without regard to linear frontage.

A *one-third deposit* of the total estimated cost of the completion of the repair project shall be required before any work can be commenced. All remaining costs shall be apportioned, assessed and collected on a per-property basis pursuant to the procedures provided in Chapter 80 of the General Laws, the Betterment Act, including the placing of liens on the affected property and the collection of apportioned costs by means of property tax collection.

Any and all such deposits shall be deducted from the equalized share of the property owners actually paying.

Section 7. Collection of Apportioned Share

(ART. 35, ATM – 05/18/05)

The Board of Selectmen before authorizing any repairs shall adopt a formal Betterment Order which shall require each abutter to pay his/her property's unpaid apportioned share of the repair cost over a five-year period to include interest at 5 percent or 2 percent above the cost (including Town oversight and administration costs) of any bond issued to fund the repair in question. The Assessors in conjunction with the Town Tax Collector will commit such amount to the respective abutters property tax bill and the Engineering Division of the Public Works Department will cause same to be recorded at the Registry of Deeds so that same runs with the land.

Section 8. Liability

(ART. 35, ATM – 05/18/05) (ART. 19, ATM – 05/04/92)

There shall be a limitation of liability on the Town of Five Hundred (\$500.00) Dollars for any damages arising from any negligent repair of the private way which shall include damage from surface water run-off.

No repair shall be commenced until all the petitioners have signed an agreement with the Town holding the Town harmless from any additional damages arising from any negligent repair and providing evidence of insurance to the satisfaction of the Town. However, nothing in this paragraph shall excuse the Town from damages to property caused by the Town or agents thereof, during the repair process.

ABUTTER PACKET-COST/BALLOT

OFFICE OF THE BOARD OF SELECTMEN



TOWN OF ARLINGTON
MASSACHUSETTS 02476-4908

Date: _____

Dear Resident:

The Arlington Board of Selectmen's Office is in receipt of a private way repair petition from two-thirds of the abutters of the private way known as _____. There will be a public hearing on this petition received in accordance with Arlington Town Bylaws, "Repairs to Private Ways" at a future date.

The total estimated cost of the work to be done is \$_____. The estimated assessment, per lot, to the abutting property owners is \$_____. If the Selectmen approve the project, one-third of the total estimated cost \$_____ is required prior to the start of the project. The remaining balance will be due upon completion, or if you choose, it can be assessed on your tax bill for payment over a five year period with interest, in accordance with M.G.L. Chapter 80, the Betterment Act.

Should you have any questions regarding this, please do not hesitate to contact me. Enclosed, please find a copy of "Repairs to Private Ways" of the Town Bylaws, a response sheet, a contractor proposal and a self-addressed envelope.

Very truly yours,
BOARD OF SELECTMEN

Marie A. Krepelka
Board Administrator

MAK:fr

Enclosures

ABUTTER PACKET-COST/BALLOT

Lot No. _____

**KINDLY CHECK ONE OF THE TWO BLOCKS BELOW AND RETURN TO THE
OFFICE OF THE BOARD OF SELECTMEN IN THE ENCLOSED ENVELOPE BY
FRIDAY APRIL 18, 2014.**

I am in favor of repairs to the private way known as _____
_____ at an estimated per ☐
lot cost of \$_____. Total estimated cost of the work to be done is
\$_____, as stated in the proposal provided by _____
with the applicants' submittal received at the Selectmen's Office
on _____.

I am opposed to repairs to the private way known as _____. ☐

Signed _____

Date _____

Printed Name _____

Address _____

PRIVATE WAY REPAIR AGREEMENT

Property Address _____

Property Owner(s) _____

BE IT KNOWN, that the above-referenced property owner(s) in consideration of the Town of Arlington causing certain repairs to _____, a private way in the Town of Arlington, do hereby agree that the Town may place a lien upon our property in the amount of \$ _____ and may record this document at the Middlesex South Registry of Deeds.

I/we agree that this obligation to the Town of Arlington may be collected as a betterment pursuant to Massachusetts General Laws Chapter 80 and may be collected over a period of five years beginning on the next ensuing tax bill attributal to my/our property at the above referred address in equal installments over a five year period. I/we likewise agree that the Town may assess five percent simple interest on any remaining unpaid obligation until the entire amount is satisfied.

I/we do hereby to forever hold harmless and discharge the Town of Arlington, of and from all manner of actions, causes of action, suits, debts, covenants, contracts, controversies, agreements, promises, claims and demands whatsoever, which I/we or any personal representative heir, successor, grantee, or assign shall or may have against the Town of Arlington for any and all actions for damages (including property damage) arising out of or in any way relating to the aforesaid road repair to _____.

IN WITNESS WHEREOF, I/we have hereunto affixed our hands and seals this _____ day of _____, 201__.

Owner No.1 _____ Signature

Owner No.1 _____ Printed Name

Owner No.2 _____ Signature

Owner No.2 _____ Printed Name

Owner No.3 _____ Signature

Owner No.3 _____ Printed Name

Owner No.4 _____ Signature

Owner No.4 _____ Printed Name

BETTERMENT ORDER

BETTERMENT ORDER
TOWN OF ARLINGTON
MIDDLESEX COUNTY, MASSACHUSETTS

DATE: _____

Order relating to: _____ **Roadway Improvements.**

Moved and Seconded that the Board of Selectmen acting pursuant to G.L. c. 40 § 6N, c. 80 §§ 1-16, and Article 3 of Title III "Repairs to Private Ways" of the Bylaws, hereby issue the following order to assess betterments for:

- (1) Betterments are to be assessed for work done in accordance with the project entitled "_____".
- (2) Betterments shall be assessed equally upon each parcel of land benefiting from such roadway improvements based upon the number of parcels whose address, as assigned by the Town Engineering Department is on _____
- (3) Betterment Costs, currently estimated not exceed \$_____ shall be assessed over a five year period at an interest rate not to exceed 5%; and
- (4) Final assessment of betterment costs shall be determined after the work is completed in accordance with the above Plan and as accepted by the Town.

By Order, Board of Selectmen

, Chairman

, Vice Chair

