

APPENDIX 6 BETTERMENTS BULLETIN

SELECTMEN'S PUBLIC INFORMATION BULLETIN IMPROVEMENTS TO ROADWAYS/BETTERMENTS

Many citizens contact the Town of Westford Highway Department or Selectmen 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 policy is to provide citizens with a written summary of the steps necessary to expend Town funds on repairs for unaccepted or private roads. For further information please contact the Town Engineer.

This document addresses three types of unaccepted roads or roads which Town Meeting has not authorized the expenditure of public funds to repair and maintain; roads constructed before 1955, roads constructed after 1955 under the Subdivision Control Act abandoned by developers and private roads. These three road categories are all considered "unaccepted" by the Town whereas Massachusetts State Law defines all unaccepted roads as private. All roads constructed before 1994 and reasonably maintained are plowed and sanded as authorized by a vote of Town Meeting. Roads constructed after 1994, must be accepted by a vote of Town Meeting before snow removal services will be provided.

From time to time, the Planning Board approves the construction of a "private" way. Private ways typically service a particular interest such as a large commercial development or shared common driveway as in the case of condominiums or a limited number of single-family homes. Developers of private roads are given special considerations in exchange for designation as a "private way." A typical consideration would be that the road does not meet the minimum road width of 22 feet. Private ways are to be maintained in perpetuity by the property owners and not eligible for acceptance by Town Meeting and subsequent maintenance by the Highway Department.

1. **If Your Road is a "Private Way":** The Highway Department cannot legally provide repair or improvement to the roadway. The responsibility belongs to the abutting property owners and should be recorded in the property deed. See the property deed for details. (Deeds are on file at the Registry of Deeds in Lowell). Private Ways may not go through the street acceptance process because the expense of bringing this type of road to a

minimum acceptable standard exceeds what would be allowed by the Department of Revenue's memorandum on the assessment of betterments. The Town Engineer maintains a list of private ways so designated by the Planning Board. Contact the Highway Superintendent for repair advice and type of contractors who perform routine maintenance.

2. **If Your Road is "Unaccepted":** There are many roads in Westford that are not accepted public ways; which means that the voters of the Town have not authorized the expenditure of public funds for the repair and maintenance of the roadways. The property owners alongside unaccepted roads (the abutters) usually own to the centerline of the roadways that touch their parcels of land. See the property deed for details. (Deeds are on file at the Registry of Deeds in Lowell). It has been the practice in Westford for decades to not use public resources on unaccepted roadways except where specifically authorized by state law. Abutters to unaccepted streets have three options for having their roads improved:

A. In cases of roads constructed before 1955, and post-1955 abandoned subdivision roads, abutters own a portion of the roadway; individuals and 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 Highway Superintendent first for advice and suggestions.

B. Abutters of unaccepted roadways have the right to submit an article for inclusion on a Town Meeting Warrant seeking Town acceptance of the road and subsequent maintenance or improvement of the road. Since it has been the practice of the Town to improve roads under the Town's Betterment ~~Program~~ and developers are responsible to prepare paved roads prior to their acceptance by the Town, it is unlikely Town Meeting would support such an article. Contact the Board of Selectmen's office for advice on preparing a warrant article for Town Meeting and following the requirements of Massachusetts General Law for street acceptance.

C. 1. Abutters of unaccepted roads constructed before 1955, which have been open to the public for a period of two years, may submit a written petition to the Board of Selectmen 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 Selectmen will direct the Town Engineer to determine public necessity. 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 over a period of years, the expenditure must be approved by Town Meeting. Repairs cannot begin until Town Meeting authorizes the funding. Refer to the Town's Temporary Repairs to Private Ways Bylaw for additional details.

C. 2. Abutters of unaccepted roads constructed after 1955 under the Subdivision Control Act must first appeal to the developer to complete road repairs and improvements and bring it forward to Town Meeting for acceptance. Subdivision road acceptance is the responsibility of the developer. It is understood, the reasons for each unaccepted subdivision road may be unique and one policy may not cover each situation. If the Planning Board determines the developer has abandoned the road, any remaining bond money will be seized and a plan developed by the Town Engineer to apply the funds toward completion. When bond money is posted for a subdivision, it is the desire of the Board of Selectmen and Town in general, to bring all roads of a subdivision forward for acceptance simultaneously so that bond money is equitably used. If bond money is no longer available or insufficient to complete necessary road repairs, the cost of street completion may be required of abutters through the Town Betterment ~~Program~~.

Abutters to an unaccepted subdivision road may submit a written request to the Town Engineer for street acceptance and improvement under the Town's Betterment ~~Program~~. Roads are to be brought to the standard at the time of Planning Board approval of the definitive subdivision plan.

3. If You Own Property on a Town Way: Five accepted Town Ways in Westford are not paved. The unpaved Town Ways are Vose Road, Old Road, Wright Lane, Wing Road, and Flushing Pond Road. To have a Town Way paved, abutters may offer to finance the engineering, construction and material costs, proceeding under the Town's Betterment ~~Program~~, or submit a Town Meeting Warrant Article asking for Town funding for the project, (please refer to the Selectmen's Office for correct timing for submitting articles). The betterment of accepted Town Ways follows the same process as unaccepted ways.

**TOWN OF WESTFORD
IMPROVEMENT TO ROADWAYS
BETTERMENT ~~PROGRAM~~**

Citizens may submit a written request to the Board of Selectmen for street acceptance and/or improvement under the Town's Betterment ~~Program~~. Massachusetts General Law Chapter 80, sections 1 to 17, covers Town administration of betterments. The Massachusetts Department of Revenue, Division of Local Services, Memorandum on Betterments and Assessments, Assessment and Collection Procedures, (April 2001), offers further guidance.

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.

- To begin the betterment process, a minimum number of abutters must petition the Board of Selectmen, the Assessing Authority:

Temporary Repairs to Private Roads	75%
Subdivision Road Street Acceptance	51%
Paving of Town Ways	75%

- Betterment costs, including but not limited to engineering, materials, labor, plan preparation, bonding and legal expenses, will be included in the final assessment.
- Betterments will be assessed on a per lot basis or on the proportion of the lot on the way to be improved or other proportional method as may be required by vote of Town Meeting.
- Abutters will assume 100% of the cost of the betterment for street layout or improvement, temporary repair to private ways or paving of Town Ways.
- The betterment term will be mutually agreed upon between the Assessing Authority and petitioners, usually 5 to 20 years.

APPENDIX 7 – Unaccepted Roads Reference Document

Street Acceptance Reference for Subdivision Roads - Town of Westford

Statement of Purpose

The purpose of this document is to provide an understandable description of the process required to bring a road forward for acceptance.

Definitions

For the purposes of this document the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. As used in this document, the word “shall” always implies a mandate, not an optional directive.

For the purpose of this document the terms street, way, and road will be used interchangeably.

1. Resident – Citizen residing within the Town of Westford.
2. Unaccepted– Any road which has not been accepted by majority vote of Town Meeting, in accordance with Mass General Law (MGL) Chapter 82, Section 21, 22, & 23.
3. Definitive plan - The road must be completed to the specifications in the last approved site plan for the subdivision, and will be held to that standard for the road regardless of the year of completion. The Planning Board of Westford has approved a definitive plan for every subdivision in Town of Westford and this Definitive Plan is recorded at the Middlesex North Registry of Deeds.

This and other documents relating to a road and subdivision can be found online at the Middlesex North Registry of Deeds, Lowell Deeds web site, www.lowelldeeds.com. Simplify your search by selecting the Town of Westford, property, and enter the specific road name. Only approved documents can be found at this web site. Documents on sub-divisions which are not yet approved can be found in the Planning Board meeting notes. It may be necessary to review your deed for subdivision name, book and plan number, etc. to facilitate your search.

4. Standard for the road – The standard set by the Planning Board and specified in the definitive plan for the subdivision.
5. Betterment (B) – Charge to the resident to cover the cost of an improvement. This cost can be divided over a number of years to pay off construction costs incurred by the Town of Westford. This is a lien on the property and is usually paid through an addition to the resident's property tax. The resident may chose at any time to pay off the amount owed to the town. **The resident should be aware that the property cannot be sold until the lien is paid in full.**
6. Neighborhood Funded (NF) – Residents may privately fund the cost of bringing a road to acceptance. The advantage is that residents are not required to pay the prevailing wage that the Town of Westford is required to pay, thereby potentially reducing the overall cost. However it also means that the project must be funded at the time of completion.
7. Special Town Meeting – Any meeting other than Annual Town Meeting. **(MCL Chap 39 Sec 12)**
8. Warrant – A document issued by the Board of Selectmen and presented at Town Meeting consisting of a list of items be voted on by the registered voters in present at the Town Meeting. The Warrant may consist of numerous of Articles.
9. Article – The specific item included within the Warrant which will be brought before the town meeting for vote.
10. Motion - A formal proposal for action made to an assembly for discussion and vote.

11. Punchlist – List of items to be completed or corrected on a specific road, issued by the Town Engineer.
12. Running – Legal terminology used to grant perpetual_unlimited access.
13. Form G – section of Subdivision Rules and Regulations.

Street acceptance - an affirmative vote of the Town Meeting

Resident should be aware that street acceptance can only be granted by a majority vote at Town Meeting. Street acceptance has historically been reserved for the Fall Special Town Meeting whenever possible due to both weather and requirements of the Highway and Engineering departments (See *Timeline for Street Acceptance section*).

Residents have a right to petition for street acceptance

Massachusetts law states that a resident may place Articles on the Warrant without approval by the Selectmen by petitioning to insert the Article. Petitions to insert an Article on the warrant for an Annual Town Meeting require ten signatures. Petitions to insert an Article on the Warrant for a Special Town Meeting require 100 signatures or the signatures of ten per cent of the registered voters in the town, whichever is less.

It is however always advisable to have discussed the petition for street acceptance and received concurrence from the responsible Town Boards, since Town Boards will be asked for their opinions and recommendations at Town Meeting.

Resident should also be aware that a Timeline for Street Acceptance does exist and under Mass General Law it must be followed (See *Timeline for Street Acceptance section*).

Prior to street acceptance the Town Engineer must assess road condition

Town Engineer and Highway Superintendent will assess roadway conditions and determine items to be completed. Some of these items are weather dependent. This means that they cannot be properly performed if there is snow, frost, or cold-weather present. Performance of most items would not meet standards if they were done in winter or early spring and would therefore result in premature failure or deterioration that the Town of Westford would ultimately be financially responsible for. This is the main reason for the requirement that work is not started prior to April 15th. Additionally, inspection of many items would be very difficult and sometimes impossible during winter or early spring. A few examples are-, the inspection of bounds covered by snow-and the observation of the health of deciduous trees during winter months. An additional concern is that it is the practice of the Town of Westford to observe the roadway through the course of one winter to ensure there are no defects that could result in immediately necessary repairs. Of the utmost importance is to observe the function of the drainage, including infiltrating systems and detention basins, through an entire winter. Annual Town Meeting date does not afford adequate time for this full observation and appropriate repairs to be made for a roadway unless it has gone through a previous winter. When reasonably possible it is recommended and preferred that road acceptance applications be presented at Special Town Meeting.

Subdivision Developer Responsibilities

It is the responsibility of the builder of a subdivision to build all roads to the standard which was approved in the Definitive Plan. Prior to starting the subdivision the developer and Planning Board have agreed upon the standard – it is specified in the definitive plan. The developer has also assumed responsibility for bringing his subdivision roads before Town Meeting for acceptance. The resident should therefore turn to the developer with initial questions about road acceptance to verify that all of his responsibilities have been met.

In the case where the developer has abandoned the subdivision it shall become necessary for the resident to work with the Town to complete this process. The primary town liaison is the Town Engineer who will assist the resident(s) with their effort to bring the road forward for approval.

Costs

Any costs involved in the process are the responsibility of the resident. These costs are dependent upon what remains to be done and are discussed below. When available the Town of Westford will make every effort to expend bond money as delineated on Form G of Subdivision Rules and Regulations.

A number of legal documents are required to complete this process and it is the responsibility of the resident to complete all documents and cover whatever costs are associated with the compilation and completion of those documents.

Governing Laws

Street Acceptance is governed by both the Town of Westford Subdivision Rules & Regulations and the Mass General Law (Zoning - Chapter 40A). *These documents can be found online.*

Should your road be unaccepted, please continue with the steps listed below.

A number of the following items in this process should have already been completed by the subdivision developer. Should that be the case the resident may only need to complete missing items or update items that are deemed to be outdated. The resident should first meet with the Town Engineer to define what remains to be done and to create a plan for completion.

The following steps are taken from the Westford Subdivision Rules and Regulations, Chapter 218, and the Code of the Town of Westford, Edition: October 25, 2004. In this document we have tried to make the code more understandable however it is the responsibility of the resident to verify that the code has not been updated. In all instances the most recent code will apply. The Code can be found on the Town of Westford web site by selecting "Documents Online", then "Subdivision Rules and Regulations".

1. Resident should request a meeting with the Town Engineer to determine road status. The Town Engineer will provide the resident with the following information and status:
 - Definitive plan – containing the original construction specifications for the road
 - Results of the last inspection done on the road
 - Bond money remaining – seized or existing bond monies to be used as delineated in Form G of Subdivision Rules and Regulations.
2. Citizens may submit a written request to the Board of Selectmen for street acceptance and/or improvement under the Town's Betterment **Program**.
3. The Town Engineer will provide an estimate for completion of the road. This estimate will be based on the standard for the road established in the definitive plan.
4. No application for street acceptance may be made until the following minimal requirements are met.
 - a. All conditions listed on the Town Engineer punch list must be met (Street Acceptance Procedure (SAP) Article VIII Sec. 218-28 B).
 - b. Upon completion of all work the road must have the approval of the Highway Superintendent (SAP Article VIII Sec. 218-28 A).
 - c. The resident will request a certificate of compliance from the Conservation Commission in the case where an order of conditions has been issued for the construction of the roadway and/or its drainage system (SAP Article VIII Sec. 218-28 C, 218-30 E).

[Resident should contact the Conservation Director to discuss compliance (name and phone number can be found on the Town of Westford web site).]
 - d. Create a Street Acceptance Plan - Mylar plan and four (4) paper prints showing the street or streets to be accepted and all appurtenant easements by bounds, courses and distances (SAP Article VIII Sec. 218-30, and MGL 40B which only requires 1 paper copy of the Street Acceptance Plan with meets and bounds).

Using the certification of monuments form (Form M) the applicant shall produce certification that the granite bounds were placed as required by the approved planning board definitive plans and this form shall be stamped by a Registered Land Surveyor (SAP Article VIII Sec. 218-30 J).

[Form M can be found in the appendix of the Town of Westford Subdivision Rules & Regulations) If possible the resident should contact the original surveying company to get the most cost effective pricing for this work. The name of the surveying company should be found on the Definitive Plan documents.]

- e. The Town Engineer will provide instruments suitable for recording running to the "Inhabitants of the Town of Westford" for all easements which are not a part of the street or streets (including, but not necessarily limited to drainage, water and other utilities). These instruments must be signed by all parties having an interest or rights in such easement (SAP Article VIII Sec. 218-30 B).
- f. The Town Engineer shall provide a deed for the street itself, running to the "Inhabitants of the Town of Westford". This deed shall contain a legal description of the street named in the acceptance application and shall be signed by all parties having any rights or interests in such street (SAP Article VIII Sec. 218-30 C).
- g. A statement from the Westford Fire Chief certifying that all fire protection requirements, including but not necessarily limited to installation of hydrants and cisterns, have been provided and are satisfactory *[Contact the Westford Fire Chief to get this form and information. Name and phone number can be found on the Town of Westford web site.]* (SAP Article VIII Sec. 218-30 F).

Necessary documents:

1. Petition for road status.
2. Certificate of compliance from the Highway Superintendent stating the utilities & drainage are built according to the plan.
3. Definitive plan.
4. Statement of Compliance from the Conservation Commission (SAP Article VIII Sec. 218-30 E).
5. Statement of Compliance from the Westford Fire Chief certifying that all fire protection requirements, including but not necessarily limited to installation of hydrants and cisterns, have been provided and are satisfactory SAP Article VIII Sec. 218-30 F).
6. Create a Street Acceptance Plan - Mylar plan and four (4) paper prints showing the street or streets to be accepted and all appurtenant easements by bounds, courses and distances (SAP Article VIII Sec. 218-30 A).
7. Form M (*found in the appendix of the Town of Westford Subdivision Rules & Regulations*) completed and stamped by a Registered Land Surveyor (SAP Article VIII Sec. 218-30 J).

Timeline for Street Acceptance

For presentation at any Town Meeting (Annual or Special):

90 days before	Deadline for submittal of all street acceptance application materials to the Town of Westford Town Clerk (SAP Article VIII Sec. 218-29 A).
90 - 75 days before	Review period for application materials submitted.
75 - 60 days before	Resident must correct incomplete items and/or deficiencies and notify appropriate Town Departments for inspection (SAP Article VIII Sec. 218-29 B).

Appendix

- a. Petition for road status
- b. Petition to apply for road acceptance
- c. Petition for street improvement
- d. Petition against street improvement
- e. Example of a road acceptance warrant article
- f. Indemnity Agreement
- g. Street acceptance flowchart

Appendix A
PETITION FOR ROAD STATUS TO THE TOWN OF WESTFORD BOARD OF SELECTMEN

The undersigned residents of _____,
[Name of Street(s)]
hereby request the following information on the status of the aforementioned road(s) within
subdivision

_____ (Subdivision Name)

1. The definitive plan for the road and subdivision (*the last specification of the planning board*)
2. The results of the last inspection done on the road (*what is left to do*).
3. The amount of any bond monies remaining for the completion of the road(s), or subdivision.

Petitioners' Signature:

Address:

The board may contact our representative*,
_____ (Name)

_____, at

_____ (Address)

_____ (Phone and/or Email)

*** To facilitate communication, the Town requests the neighborhood representative(s) keep all abutters informed.**

Appendix B
PETITION TO APPLY FOR ROAD ACCEPTANCE (formally the BETTERMENTS PETITION)

This petition and waiver dated for convenience, but actually executed in some instances at various dates subsequent thereto.

We, the undersigned, hereby request and petition the Board of Selectmen of Westford to take all necessary action required to lay out a portion of the private way known as_____.

We further request and petition said Board to insert an appropriate Article in the Warrant for a Town Meeting to be held as soon as practicable relative to the acceptance by said Town of said way, the improvement thereof, and the assessment of betterment's therefore, pursuant to the applicable provisions of the General Laws, as most recently amended.

And in consideration of the construction, reconstruction or improvement of said way by the Town, we do hereby for ourselves, our heirs and assigns, severally and jointly waive any and all causes of action we may have under any provision or provisions of Chapters 79 and 80A of the General Laws, as most recently amended, or under the provisions of any other award of damages which may result from any eminent domain proceedings necessitated by said layout and/or improvement of said way; but the foregoing waiver of rights relative to damages is made on the understanding and condition that no land, rights or interest shall be taken by the Town except such land, rights and interest as are included within the line or limits of said _____ as the same is/are now located and shown on a plan of land entitled " _____ " which plan is recorded with the Middlesex North District Registry of Deeds, Plan Book _____, Plan _____

NAME	NAME
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NOTE: Only the owners of premises abutting on _____ should sign the foregoing petition. IMPORTANT: Signatures should in all cases be identical with the names of the owners on then* deeds. If record title stands in the names of more than one owner, all owners must sign.

Appendix C
Town of Westford Petition for Street Improvements

Date: _____

Board of Selectmen
Town of Westford
55 Main Street
Westford, MA 01886

Petition for street improvements.

Dear Board Members:

I/we

_____ (Print Name)

Of

_____ (Print – Street number & Name)

Petition the Town of Westford, through its Selectmen to improve the Street / Road known as

_____ (Print Street or Road Name)

To be improved as a public town street in accordance with the current Town of Westford policy for street improvements. The cost of said improvements to be paid for by the Town of Westford, with the street residents being assessed a betterment cost of one hundred (100%) percent of the cost of said improvements.

Signatures:

_____ (Signature) (Signature)

_____ (Signature) (Signature)

The following information will be provided by the Assessor's Office:

Tax Map # _____

Lot # _____

Add additional pages for names, addresses, and signatures as needed.

Appendix D
Town of Westford Petition against Street Improvement

Date: _____

Board of Selectmen
Town of Westford
55 Main Street
Westford, MA 01886

Petition against street improvements:

Dear Board Members:

I/we

_____ (Print Name)

Of

_____ (Print – Street number & Name)

Petition the Town of Westford, through its Selectmen NOT to improve the Street / Road known as

_____ (Print Street or Road Name)

I/we request that NO improvements, to the above listed street be made at any expense to me/us.
I/we do not want to be burdened with the cost of said improvements.

Signatures:

_____ (Signature) (Signature)

_____ (Signature) (Signature)

The following information will be provided by the Assessor's Office:

Tax Map # _____

Lot # _____

Add additional pages for names, addresses, and signatures as needed.

Appendix E
Example of a road acceptance warrant article

To see if the Town will vote to accept the layout of the following streets as Town public ways pursuant to Massachusetts General Laws Chapter 82: (street names go here)

Or act in relation thereto.

Appendix F

Indemnity Agreement

1. No repair of a private way shall be undertaken until the Board of Selectmen has in its possession agreements executed by at least 85% 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:
 - that the Town assumes no liability to such owners by making the repairs;
 - 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;
 - 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;
 - 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;
 - 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 a number of years.