



Town of Brewster

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OFFICE OF:
COLETTE WILLIAMS MMC/CMMC
TOWN CLERK

To Whom It May Concern:

This letter is to certify that at the Special Town Meeting, held Monday, November 13th, 2023, with a quorum being present, the following article was adopted unanimously:

9:07pm

TOWN BYLAW AMENDMENT/PRIVATE ROAD REPAIR AND BETTERMENT

ARTICLE NO. 6: To see if the Town will vote to amend the General Bylaws by deleting the text and title of Article VII, Private Road Repair (Sections 157-11 through 157-19) and further by revising the text of Article VII, Temporary Road Repair (Section 157-20), to read as follows:

Please note that a redlined copy of this bylaw, with text to be deleted noted by strikethrough and text to be inserted shown in **bold and underlined, is included as an addendum at the end of the warrant book for your reference.*

Section 157-20

A. In the event that a group of property owners each of whom own property abutting and having rights on a private road, which has been open for public use continuously for at least the last five years, wish the Town of Brewster to finance the repair of their private road, they shall engage a professional engineer licensed to practice in Massachusetts and experienced in road construction and repair who shall develop a proposal for the repair of the private road, including a certified survey plan of the private road to be repaired, or relevant portion thereof. Eligible repairs include, without limitation, any or all of the following: new or additional drainage and stormwater facilities; new berms; driveway aprons; striping; the filling of existing cracks; patching; road-bed repair; and the application of one or more layers of bituminous concrete. As used herein, a private road 'open for public use' includes a road open to public invitees whose access is not actively and openly restricted with gates, signage or the like. Further, a private road, which includes a private street or private way within its meaning, is a road that has not been laid out, dedicated, or adjudicated by a Massachusetts court as a public way but has either been laid out under the subdivision control law or is otherwise a matter of record with the Barnstable Registry of Deeds or the Town Clerk. The official record of public roads in the Town of Brewster is kept at the Town Clerk's office, and shall be amended from time to time.

B. The proposal shall specify the projected useful life of the repaired private way, and in no event shall the projected useful life be less than the financing term, which may be allowed up to 15 years. All costs of preparing the plan, obtaining cost estimates and preparing the petition described below shall be the exclusive responsibility of the petitioners.

C. The proposal shall include at least three bids from licensed and insured contractors experienced in road construction and repair to complete the work outlined in the survey plan and other proposal documents. Other objective sources to establish costs may be used instead at the discretion of the Town, including current construction costs recognized and maintained by Massachusetts Department of Transportation. After receipt of the bids, or otherwise substantiating estimated costs to the satisfaction of the Town, the property owners shall prepare a petition to the Select Board for the Town of Brewster to finance the work in an amount certain, including a ten-percent contingency amount. The petition shall list the properties subject to the petition by tax map and parcel number together with the owners' names of record from the most recent tax list with a space for each owner to place his or her signature. The petition must state that each signature represents an irrevocable agreement by each signatory to repay to the Town of Brewster, through the mechanism of a betterment added to each owner's real estate tax bill, his or her pro-rata share of the total amount to be financed plus interest and administrative costs, which administrative costs shall not exceed 4% of the project. The petition shall not be presented to the Select Board, nor shall the Select Board recognize such a petition, unless a majority of the owners shall have agreed to the proposal and its financial commitment by having signed the petition.

D. The petition, accompanied by the proposal documents, including the cost estimates and survey plan, shall be submitted to the Select Board's Office. The Select Board shall refer every such petition to the Assessor's Office for verification that signatories are the owners of record of the subject properties, and confirmation that a majority of such owners have signed. The Select Board shall consider all submitted petitions that are passed by the Assessor's Office, and will hold a public hearing on the proposed project, inviting abutters on the private road. If the Select Board determines that the proposed repairs are in the public interest and are within the financial capability of the Town, the Select Board may place the petition on the Warrant for any special or annual Town Meeting. The Select Board shall thereafter send out proxies to the owners noting scope and cost changes, if any. The proxies must be returned at least 45 days prior to the Town Meeting at which they are to be considered. If the proxies are returned within such time, the Select Board may place the petition on the Town Meeting Warrant, provided that a majority of owners have signed said proxy.

E. Long-term financing may be issued for said project by the Town for up to a 15-year term. If the Town Meeting votes to authorize financing for the project, an engineer representing the owners, and preferably the engineer who prepared the original plan and proposal, shall be named "Project Manager." He shall prepare a new request for quotations with the bids to be directed to the Town Manager. The Project Manager and the Town Manager shall select the best bid to do the work. The Project Manager shall advise the Director of Public Works 48 hours in advance of each phase of the project and certify, in writing, to the Director of Public Works that each phase of the work has been completed to the Project Manager's satisfaction. The Director of Public Works shall inspect the completed work and advise the Town Finance Director that the work has been completed according to the endorsed petition, including the survey plan therein, so that payment can be made. After

completion of the project, residents can choose to apportion their assessment into equal portions to be paid yearly over a period of up to 15 years.

F. The petition procedure set out herein shall apply equally to a petition involving a group of private roads within a subdivision provided that where a lot has frontage on, and derives access from, more than one road, the owner of such lot shall be entitled to only one vote. Owners of lots that are assessed as unbuildable and lots that may not be built upon pursuant to a conservation restriction or the equivalent shall not be entitled to vote, and such lots shall not be subject to betterment assessments hereunder.

G. The Town of Brewster shall incur no liability for any damages of any nature whatsoever arising from the project by virtue of the Town's agreeing to carry out any repair of a private way. The owners who benefit from the repair and are assessed betterments shall be deemed to have indemnified and held the Town harmless against any and all claims. The Town makes no warranty or guarantee concerning the completed betterment project.

H. Any private way improved under the provisions of this Article need not be brought up to full Town road standards. Any private way improved under the provisions of this Article shall continue to remain a private way but nonetheless open for public use.

I. Except as otherwise provided in this Article, private road betterments shall be assessed and committed according to MGL Chapter 80 and Chapter 373 of the Acts of 2006. Betterments shall be recorded and serve as record liens against the subject properties.

J. Authorization of the private road betterment petition does not relieve the private owners from obtaining all necessary permits and approvals for the road work.

K. The repairs allowed hereunder shall be considered and are permissible within the meaning of GL c. 40, Section 6N.

L. The Director of Public Works may, at their discretion, direct Town employees to make minor or temporary repairs on private roads under the purview of maintenance activities or unusual circumstances. These repairs shall not include construction, reconstruction and/or resurfacing of the ways.

(Select Board)

(Majority Vote Required)

Motion by Select Board Member David Whitney: I move to approve Article 6 as printed in the warrant.

ACTION: Adopted Unanimously. Voter Cards.

Sincerely,

Colette M. Williams
MMC/CMMC
Town Clerk
Brewster, MA