

## **ARTICLE 22. USE OF PRIVATE WAYS**

### **Section 22.1 - Temporary Repairs to Private Ways**

**22.1.1** The town may make temporary repairs on private ways which have been open to public use for a period of six (6) years or more, provided the repairs are for the protection of the health and safety of the general public using such roads, subject to the provisions of this bylaw.

**22.1.2** No repairs shall be made on private ways that have not been released from covenant and/or bond.

### **Section 22.2 - Minor Temporary Repairs**

**22.2.1** The town may make minor temporary repairs upon a private way in the town. Such repairs shall be made only after the board of selectmen determines that, based on recommendation from the highway superintendent, the repairs are required by public necessity. No petition by abutters shall be necessary for the town to make such minor repairs.

**22.2.2** Minor temporary repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof. Materials for such repairs, where practical, should be the same as, or similar to, those used for the existing surfaces of such ways, but may include surfacing the ways with bituminous materials, including but not limited to bituminous concrete.

**22.2.3** minor temporary repairs shall be limited to minor work such as filling, patching and not more than grading or scraping twice per year. Such repairs shall not include surfacing, resurfacing, installation of drainage of any kind or the original construction of sidewalks, curbing or street construction.

**22.2.4** The cost of such minor temporary repairs shall be borne entirely by the town, subject to funds being available through an appropriation voted by the town; no betterment shall be assessed against the abutters; and, no cash deposit shall be required.

### **Section 22.3 - Major Temporary Repairs**

**22.3.1** The town may make major temporary repairs on a private way in the town. Such repairs shall be made only after a petition has been filed in the office of the board of selectmen. Such petition shall identify the repairs to be made and shall be signed by the owners of no less than fifty (50) percent of the lineal frontage of said way. Following the submission of said petition, the board of selectmen shall conduct a public hearing, at which hearing interested persons may present evidence relative to the petition.

No repairs shall be made until the board, by a majority vote of its members, and following such hearing, determines that such repairs are required by public necessity, and until the town meeting has appropriated funds for such repairs.

**22.3.2** Following such determination by the board that said repairs are a public necessity, the board shall issue an order stating on its face that betterment are to be assessed upon the owners of estates which derive particular benefit or advantage from making of such repairs.

Such assessment shall be a sum equal, in the aggregate, to the total cost of such repairs, and, in the case of each estate, shall be in proportion to the frontage thereof upon such private way.

**22.3.3** Such repairs may include surfacing, resurfacing and the installation of drainage, but shall not include the original construction of sidewalks, curbing or street construction. No cash deposit shall be required.

**22.3.4** Drainage easements, if necessary, shall be the responsibility of the petitioners.

#### **Section 22.4 - Assessments**

**22.4.1** Except as herein otherwise provided, the provisions of Chapter 80 of the General Laws, as it relates to public improvements and assessments therefor, shall apply to major temporary repairs, as defined in this by-law, to private ways where such repairs are ordered to be made under authority of this by-law.

**22.4.2** Any assessment made in accordance with the provisions of this by-law upon the owner of an estate shall be paid within six (6) months of the date that such assessment is levied, where the total assessment is less than two hundred dollars (\$200.00).

**22.4.3** Where the total assessment amounts to two hundred dollars (\$200.00) or more, the owner of the estate may divide the payment of such assessment into not more than ten (10) equal payments, the final installment payment to be made not later than five (5) years from the date of the levy of the assessment.

**22.4.4** Assessments made under this by-law shall constitute a lien upon the land assessed in accordance with the provisions of section 12 of chapter 80 of the General Laws.

#### **Section 22.5 - Liability**

**22.5.1** In no event shall the Town of Sutton be liable for bodily injury, death or damage to personal property caused by reason of a defect or want of repair in any private way.

**22.5.2** The Town of Sutton shall not be liable or accountable for any damage caused by repairs made pursuant to this by-law.

**22.5.3** Massachusetts General Laws, Chapter 84, Section 25 shall not apply.

*Adopted: October 9, 1989*