

ROADS COMMITTEE MINUTES
Town Council Conference Room
September 8, 2014 – 5:30PM



Committee Members

Councilor William Crocker JR. Chair
Vice President of Town Council Ann Canedy
Councilor James H Crocker Jr.
Councilor Sara Cushing
Councilor Philip Wallace

Meeting was called to order by Chair of the committee Councilor William Crocker Jr. at 5:30pm
Roll Call was done by Administrative Assistant Cynthia A. Lovell

IN ATTENDANCE:

Chair of Committee; William Crocker Jr, Vice President to the Town Council Ann Canedy, Councilor James Crocker Jr, Councilor Philip Wallace, **Arrived late:** Councilor Sara Cushing
Others in Attendance: Town Engineer; Roger Parsons, Attorney Ruth Weil, Attorney David Houghton.

Chair William Crocker opened the meeting with an introduction of Town Engineer, Roger Parsons and his explanation as to the edits made in the section of the Temporary Repairs to Private Roads Policy

Program Purpose: (see attachment) to the Temporary Repairs to Private Roads Policy. In the first paragraph the committee asked the following: question: Is "**service**" the word intended here? or "**surface**"? Mr. Parsons answered: The word **service** is appropriate to describe the life of the road. The next question asked by the committee was since some bonds can be extended to 20 years; do we want to change this to "up to 20 years"? Mr. Parsons answered that the proposed repair as acceptable to the abutters may not have a 20 year life. It appears the original 15 year life was a compromise. In addition the actual life of the road improvements is dependent upon maintenance. Summary: suggest remain unchanged. Town Attorney David Houghton explained his edits to the same paragraph Program Purpose as the following :”(see attachment from the Legal Department.)

Attorney Houghton also removed: with an explanation as follows; Persons assessed betterments for their properties have the right to repay over up to a twenty year period (G. L. c. 80 § 13), but see section VI infra re St. 1992 c. 174 for the Board of Assessors’ authority to fix a different repayment period.

The next section of the document was **Abutter of Private Roads**. Vice President Canedy had asked for clarification on the meaning of abutter first so the committee had a clear understanding of the definition. Attorney Houghton gave the meaning as the following; “abutter” and “abutters” means all or any of the owners of real property which has an existing connection by boundary or other part to the private way under repair unless so severed as to be impractical for re-establishment at the time of the repairs or within a reasonable time thereafter. If a property is bounded or connected to one or more other ways, private or public, any cost of the repairs under the program may be apportioned or exempted accordingly.

The Chair of Committee asked the rest of the committee members how they wanted to look at each document and discuss the changes proposed by both the Town’s Legal Department as well as the Town Engineer/DPW suggested changes. The committee decided to take each paragraph and have both parties comment on the changes made and an explanation as to why.

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Private Road Temporary Repair Fund: Mr. Parsons suggested in this paragraph to revise the sentence starting with the word **accordingly** to read as follows: Accordingly, engineering design, permitting, administration and construction contract repair costs for labor and materials used to accomplish a project must be included in the cost of each of the individual repair projects. Certain engineering design and permitting costs need to be expended in the development phase of the projects and authorized by the Town Council. All monies collected regardless of the method of payment are re deposited to the fund.

Private Road Temporary Repair Fund Financing: Attorney Houghton described the next strikethrough in regards to the Home Rule Petition filed this year that is awaiting Senate approval by removing the following and adding in, **Pending Special Legislation** authorized the Town to borrow from time to time as authorized by a 2/3 vote of the Council such sums of money as may be necessary, not to exceed an aggregate amount of \$15,000,000, to perform repairs to private ways within the Town. This was passed as Order 2014-134 by Town Council on May 1, 2014 and by the Legislature on XXXX. Appropriation and Loan Orders must be passed periodically by the Town Council to provide sufficient funds to carry out the program and are held in the Private Road Temporary Repair Fund for expenditure. The debt service for the monies borrowed must be repaid by abutters through betterment assessments.

Recovery of Repair and Financing Costs (Legal Department title change) inserted the following language.

In order for the program to be available from time to time for as many repairs as practicable, the program policy is to recover 100% of the entire cost of the repairs, including without limitation design, permitting, bidding and financing, by assessing betterments to the abutters based on the presumption that abutters benefit from the repairs to that extent.

Betterments are assessed by the official(s) signing the contract for and issuing the notice to proceed with the repairs unless otherwise specifically assigned. Betterments are paid in either one installment within thirty (30) days of notice from the tax collector or in equal installments determined at the option of the property owner(s) up to twenty (20) years unless otherwise fixed by the Board of Assessors (St. 1992 c. 174). NOTE SEPARATE POLICIES MAY BE NEEDED TO IMPLEMENT C. 174. Applications for abatement of betterment assessments under the program are processed by the same official(s).

Attorney Houghton made the following suggestions in the next paragraph:

Where the total cost of the repair divided by the number of abutter's results in a cost of \$499 or less per abutter, the total cost of the repair must be paid to the Town before any work is undertaken. Where the total cost of the repair divided by the number of abutters results in a cost of \$500 or greater per abutter, betterments may be assessed

Attorney Houghton explained this change in this section as supra re rights to establish repayment period, therefore different periods cannot be imposed for small repairs. Consideration may need to be given to a threshold for participation in the program; i. e. if the repairs will only cost a certain amount per property the marginal intangible cost may be too high to justify applying program resources.

Administering the Program

The Town Council is the appropriating authority for the program and authorizes assessment of betterments. The Town Manager submits program appropriation orders once the petition process is complete based on the available balance of the fund, the work schedule of the Department, the level of need for the repairs, and the pendency of any other pending petitions.

The Department of Public Works administers the program. Within the department, staff is assigned to receive citizen inquiries about the program, send correspondence and distribute and receive petitions and consent and acknowledgment forms. Each project is assigned to a project manager who prepares a plan of the area which is the subject of the property, specifications and bid documents

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based on the acceptance by the designated representatives of the abutters of the project area, design(s) and estimate(s) prepared by either the project manager or the designers selected by the abutters' representatives.

As previously noted, the official who signs the contract to expend the appropriation for the repair work is the "officer ordering the repair" for betterment purposes and as such assesses the betterments and processes abatement applications. The duties to assess and abate are not delegable but the responsible official may seek and establish a process to receive advice on each. After signing the contract and notice to proceed, the officer so ordering the repairs is responsible for preparing and recording, or causing preparation and recording, of the order, plan of the area and an estimate of any betterments to be assessed.

There was a suggestion made for a possible special Roads Committee/ subcommittee could be formed? This Committee should work closely with and meet with the DPW Director and Project Managers. Mr. Parsons felt that the DPW could handle this task and no committee was necessary, Attorney Houghton agreed with DPW comment. The commission or a committee could play an advisory role for periodic review such as is taking place now or if program demand does reach a level where prioritization becomes necessary.

Process

Petitions shall be submitted to the Department of Public Works by using the petition form shown in Attachment 1 to these procedures. Copies of the form may be obtained in the Department of Public Works office, 382 Falmouth Road, Hyannis 02601. The petition shall be signed by at least fifty one (51%) percent of the abutters. The name and contact information of the person who will act as the "Petition Contact Person" must be entered on the form. A nonrefundable fee of one hundred dollars (\$100.00) must accompany each petition to cover the costs of preliminary research, inspection, and the development of rough cost estimates. Attorney Houghton explained his position by saying an important decision needs to be made about the relationship between the Town, contact person and ultimately the abutters. The Town can either implement the decisions of the abutters communicated by a representative with checks and balances supplied by the Town's expertise or become more directly involved in communicating and formulating the abutters' ultimate decisions. There has been at least one project where serious disputes arose among abutters about who was involved and who was not and "campaigning for and against the project" with the Town "lobbied" by both sides.

Evaluation of Repairs and Rough Cost Estimates

Upon receipt of the petition from fifty one (51%) percent or more of the owners, the Director of Public Works shall appoint a Project Manager. The Project Manager shall conduct an on-site inspection of the road's condition and develop alternative repair scenarios with rough cost estimates. The on-site inspection of the road shall be conducted in the presence of the Petition Contact Person and/or representative. The Project Manager shall meet with the abutters and or Representative) (at a time arranged by the Representative). It shall be the responsibility of the project Manager or Representative to notify all abutters. The Project Manager will provide the abutter and/or their Representative with a full report on his findings along with a range of alternative repair scenarios, if such is possible. The scenarios provided will be detailed as to physical improvements and each will be assigned a rough range of costs so that the butters) can determine the level of repairs they want or they can afford for their road. Should there be a consensus on moving ahead with the repairs at a level of cost acceptable to the Representative

and/or a majority of the abutters in attendance at the meeting, the Project Manager will proceed with the devacting on behalf of a majority of abutters and is presented in writing within the succeeding ninety (90) days, detailed cost estimates may be prepared under section XI. If the Representative cannot develop the required consensus within ninety (90) days the project will not receive further attention until

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a consensus petition is received by the Project Manager. Mr. Parsons agreed with this insertion from legal, Attorney Houghton went on to say per the previous comments, the decision should be made whether the project manager should be directly involved in all aspects of the project development by arranging and conducting meetings with abutters or perform a role limited to providing technical expertise in implementing the choice(s) made by the abutters.

Completion of Petition and Appropriation Processes

After preparation of detailed cost estimates, (abutters' Representative or the Project Manager shall notify each abutter by letter of both the total cost and per abutter cost of the repair and the approximate time when repair will be accomplished. One hundred twenty (120) days preceding the date of the scheduled repair, a Consent and Acknowledgment Agreement (referred to hereinafter as the "Agreement"), either Attachment 2 for Betterment Assessment or Attachment 3 for Advance Cash Payment to these procedures, will be mailed to each abutter of the road under cover of an explanatory letter. The Agreement shall list the specific repairs to be made, the estimated costs of the repair items, an estimate of the life expectancy of the repairs, the approximate date repairs will be made, the cost to each abutter and the submission deadline. Fifty one (51%) percent or more of the abutters, whether original petitioners or not, must agree to the repairs by signing the Agreements and returning them to the Project Manager via the Representative , not less than 60 days prior to the approximate date repairs will commence. Upon timely return of sufficient number of the signed agreement forms, the project will be considered fully petitioned and submitted to the Town Manager for consideration for an appropriation order. If the Representative does not return the required number of Agreements to the Project Manager by the specified date, the road will be dropped from the Repair Plan and placed at the bottom of the prioritized three year list. The committee questioned if the time periods were doable, Mr. Parsons stated the time period after the agreement is too short. Preparation for the public bidding process (final documents) and the bidding process itself (advertising, pre bid conference etc.) require more time – suggest 120 days. In addition the time of year of the approval via the Consent Agreement will impact the construction start date. A comment was made regarding the enabling legislation notes "50%" and the Policy states "51%". Mr. Parsons said this amount should be consistent. Attorney Houghton made clear that the bidding and contracting should occur after the consent agreements and appropriation, not before.

Repair Plan

The Project Manager shall maintain periodic contact with the Representative before and after submission of an appropriation order. Mr. Parsons explained this as-in practice, DPW has responded to public demand on a first come first serve basis only. The past 8 years has resulted in little "backup" due to sparse demand. An increase in demand would result in a backup. DPW maintains communication with the "contacts" on a consistent basis.

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Payment of Repair Costs In Lieu of Betterment

If the abutter cost is \$499 or less and if those abutters willing to pay are also willing to pay for those who are either unwilling or unable to pay their share that will be their decision. The Town's only requirement is that the full cost be on deposit with the Town 60 days in advance of the work being undertaken. If the abutter cost is \$500 or greater, betterments shall be assessed, each and every abutter shall be assessed an equal share of the cost of the repair

Program Proviso

It is important the petitioners/abutters understand that other than the time of the group meeting(s) where repair scenarios are discussed directly with the Program Manager and consensus arrived at, the remainder of the process including subsequent questions should be directed through the Abutters' Representative.

The Town is not responsible for the conduct of the petition contact person(s) or representatives of the petitioning private road. Decisions made by the Town and Town officials are final.

The Committee has asked that there be a clean copy with all the proposed changes made to the Temporary Repairs to Private Roads Policy is given to the Committee for consideration at the next meeting scheduled for October 6, 2014 at 5:30.

Committee members have asked that the legal department be invited to the next meeting as well as Mr. Parsons to discuss the policy as well as recommendation on staffing for the Temporary Repairs to Private roads Policy changes.

The meeting minutes of August 4, 2014 were approved.

Adjourned: 7:30PM

Next Meeting Monday October 6, 2014 at 5:30PM

Transcribed by Administrative Assistant Cynthia A. Lovell, Town Council Office

The minutes of September 8, 2014 meeting were approved at the meeting on November 3, 2014

and were filed with the Town Clerk on November 13, 2014

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