

The Commonwealth of Massachusetts

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SPECIAL REPORT OF THE DEPARTMENT OF  
PUBLIC WORKS RELATIVE TO PUBLIC  
ACCESS TO DUNHAM POND IN THE  
TOWN OF CARVER.

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JANUARY 9, 1931.

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts.*

The Joint Board constituted under the provisions of chapter 453 of the Acts of 1923 submits the following report relative to a right of way for public access to Dunham Pond in the town of Carver. Chapter 453 is as follows:

Chapter ninety-one of the General Laws is hereby amended by inserting after section eighteen the following new section:— *Section 18A.* Upon petition of ten citizens of the commonwealth that in their opinion public necessity requires a right of way for public access to any great pond within the commonwealth, the division of waterways and public lands of the department of public works and the attorney general or a representative designated by him sitting jointly shall hold a public hearing and receive such evidence thereon as may be presented to them. The joint board may make such additional investigation as it deems desirable and if it appears to said board that such a right of way exists it shall present a petition to the land court for registration of the easement. If it appears that no right of way exists it shall submit a report, together with recommendations thereon, to the general court on or before January first of the following year. This section shall not apply to any body of water used as a source of water supply by the commonwealth or by any town or district, or water company, nor shall it affect the right of the commonwealth or any town or district or water company to the use and control of the waters of any such pond for the purpose of a water supply, nor shall it affect or diminish any existing right to the use of the water of any such pond for mercantile or manufacturing purposes.

In accordance with this statute, a petition suitably signed was filed with the Department of Public Works on November 18, 1930, reading as follows:

We, the undersigned citizens of the Commonwealth of Massachusetts, respectfully request that in accordance with chapter 453 of the Acts of 1923 a right of way be established to Dunham Pond in the town of Carver, Massachusetts, and located on the westerly side of Tremont Street.

The Attorney General designated Assistant Attorney General Roger Clapp to represent him on the Joint Board created by the above statute.

A public hearing, duly advertised, was held on December 17, 1930, at which all persons were given full opportunity to be heard and to submit evidence.

An examination of the pond has been made by one of the engineers of the Department.

It appears that Dunham Pond, situated in the south central part of the town of Carver, about one and three-quarters miles from South Carver, is a natural pond about 47 acres in area. The pond is not used as a source of water supply nor for manufacturing or mercantile purposes other than for flooding cranberry bogs. This use of the water of the pond will not be affected by providing a means for public access.

The petitioners ask for the establishment of a right of way 100 feet wide extending northwesterly from Tremont Street in Carver to Dunham Pond. This way is described by the engineer as follows:

Beginning at an iron pipe at or near the northerly side line of Tremont Street in Carver and running north  $46^{\circ} 09'$  west approximately 140 feet to Dunham Pond; thence running northeasterly by said pond approximately 102 feet; thence running south  $46^{\circ} 09'$  east approximately 139 feet to a point at or near the northerly side line of said Tremont Street; thence running south  $36^{\circ} 41'$  west in the northerly side line of Tremont Street 100 feet to the point of beginning.

The Board is of the opinion that public necessity and convenience require the establishment of a right of way to Dunham Pond.

The Board, therefore, recommends that the county commissioners of Plymouth County be authorized and directed to provide a right of way for public access to Dunham Pond.

The Board submits the attached bill for carrying out this recommendation.

Respectfully submitted,

THE DEPARTMENT OF PUBLIC WORKS.

F. E. LYMAN,

*Commissioner.*

RICHARD K. HALE,

HERMAN A. MACDONALD,

*Associate Commissioners.*

ROGER CLAPP,

*Assistant Attorney General.*

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-One.

An Act providing for the Establishment of a Right of Way for Public Access to Dunham Pond in the Town of Carver.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The county commissioners of Plym-  
2 outh county are hereby authorized and directed to lay  
3 out a right of way in the town of Carver from Tremont  
4 street to Dunham pond in said town for public access  
5 to said pond, in accordance with plans to be approved  
6 by the department of public works and showing the  
7 location and dimensions of such right of way. If it is  
8 necessary to acquire land for the purpose of laying out  
9 such right of way the commissioners shall at the time  
10 such right of way is laid out take such land by eminent  
11 domain under chapter seventy-nine of the General  
12 Laws. Any person sustaining damages in his property  
13 by the laying out of such right of way, or by specific  
14 repairs, or improvement thereon shall be entitled to  
15 recover the same under said chapter seventy-nine;  
16 provided, however, that the right to damages, if any,  
17 shall vest upon the recording of an order of taking by  
18 the commissioners, and that no entry or possession for  
19 the purpose of constructing a public way on land so  
20 taken shall be required for the purpose of validating

21 such taking or for the payment of damages by reason  
22 thereof.

1 SECTION 2. The selectmen of the town of Carver  
2 from time to time may make specific repairs or im-  
3 provement to such way as they may deem necessary,  
4 but the county of Plymouth, or any city or town  
5 therein, shall not be required to keep such right of way  
6 in repair, nor shall they be liable for injury sustained  
7 by persons traveling thereon; provided, that sufficient  
8 notice to warn the public is posted where such way  
9 enters upon or unites with an existing public way.

1 SECTION 3. All expenses incurred by the commis-  
2 sioners in connection with such right of way shall be  
3 borne by the county of Plymouth, or by such cities and  
4 towns therein, in such proportion as the commission-  
5 ers may determine.

1 SECTION 4. Said right of way shall not be discon-  
2 tinued or abandoned without authority therefor from  
3 the general court.

1 SECTION 5. Nothing in this act shall be so con-  
2 strued as to limit the powers of the department of pub-  
3 lic health, or any local board of health under the  
4 general laws or any special law.





