Maine Abandoned and Discontinued Roads Commission November 17, 2022

Meeting Minutes

In Attendance: Corp. Kris Maccabe, Brian Bronson, John Monk, Catherine Nadeau, Karla Black, Roberta Manter, Jim Katsiaficas, Vivian Mikhail, Peter Coughlan, Ryan Pelletier, Steve Young (via Zoom)

Absent: Rebecca Graham

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:08 pm, followed by a roll call of the members present.

The Commission unanimously accepted the minutes of the October 27, 2022 meeting, based on a roll call vote.

Jim opened the meeting with a resumption of the discussion about how to get word out to the public to maximize participation in meetings, advising the Commission that Vivian Mikhail's research confirmed a monthly fee of approximately $500 for a website hosted by maine.gov.

Vivian confirmed that a Commission email is available and will circulate it when formally notified by her office's IT lead. She explained the process she has attempted to set up a YouTube channel for the Commission and its video meetings and past recordings and is awaiting confirmation by mail of the online registration steps she has taken thus far. Using MailChimp as a way for the public/interested parties to sign up for Commission updates is still in limbo, as OIT for the State of Maine has not approved its use.

Jim suggested it would be ideal to get the next agenda out two weeks prior to the next meeting on December 14 (therefore, 12/1as a goal). It ideally would include the remote meeting policy, with notice of all sufficient if published in the *Kennebec Journal.* The next meeting is intended to have time dedicated to taking public comment.

Jim noted that other state commissions have websites, e.g., the Right to Know Commission, and stated that it seems logical that this Commission should have similar resources available to it. Jim said he would follow up with the IT contact the AGs Office has been in touch with early next week to try and appeal to them, if we don't get different information sooner. He also wondered about perhaps linking to the legislature's website somehow to house Commission notices, statement of purpose, reports, etc.

Eventually members of the Commission will also post similar information on their affiliated entities' websites where practicable.

Brian Bronson reported that his office's response was that the Commission needs its own stand-alone site, versus somehow linking to ACF's website. Brian stated that if this is to be an ongoing/permanent Commission, obviously $500/month for webhosting is not going to work.

Jim then delivered "Overview of Municipal Roads -Abandonment and Discontinuance", a presentation he noted he's given with Pete Coughlan in the past. The written materials (that Jim's presentation tracked) are attached to these minutes.

Ryan Pelletier noted that many roads never went through formal processes and inquired whether the 30-year standards are applicable to all. Jim said that if it's a town way, yes. Ryan followed up, asking how it can be discerned what the roads were/are. Jim responded that presumptive abandonment applies, offering the example of a case in Livermore. In that matter, county books/records from the 1800s that offered descriptions such as "the road by the oak tree, near so-and-so's house" were relevant.

Roberta Manter then had the floor to present information she has tracked, compiled and collated, in large part during her founding and leadership of the organization Roadways, which represents 20-30 years of accumulated issues raised by others she has worked with. She described she maintains a map with a pin in each town that has at least one road problem, and that she has received on average one new complaint per week for the past year.

Roberta then went through a handout capturing results of a Survey Monkey survey Roadways conducted, which is attached to these minutes.

Roberta explained that the biggest issues stem from what used to be through roads that towns stop maintaining- public easements that are not maintained, noting that private ways usually end at a destination (e.g., a home, a mill, etc.). Another problem she described is when an easement is not retained and a road becomes landlocked when discontinued (e.g., road is essentially gone).

Roberta gave an example of another problem around the cessation of winter maintenance of roads:

-Some towns say that private owners can't plow either.

-Then what? No access to a home and no compensation for the taking.

Ryan queried whether that issue example really falls within the Commission's purview and opined that it does not.

Roberta responded that Ryan's point was an interesting one, while noting it is a recurring issue that may still be one of the easier issues before the Commission to resolve (e.g., a section regarding winter plowing in real estate disclosures; prohibition on towns from ceasing winter plowing if there is a year­ round resident).

Jim agreed with Ryan that plowing/winter maintenance is not within the scope of the Commission's work, and turned to highlighting the top five areas from Roberta's survey:

1. Constitutionality of statutory abandonment law (Jim noted this has been litigated)
2. Figuring out the actual status of a road (Pete noted that the DOT map viewer tool is of utility and help here, and Roberta said that those roads are the clearer ones- it's the ones discontinued by the counties that present the difficult determinations)
3. Defective or ambiguous action by a municipality, leaving legal road status uncertain
4. Prohibitive cost of litigation (Roberta mentioned existing low-cost mediation, including existing resources (e.g., Family & Community Mediation, Maine Agricultural Mediation Program), and the need to encourage people to attempt mediation before real feuds ensue; Jim noted that mediation is required when a suit is filed; Roberta brought up the up-front costs of filing as a barrier to low-income people of accessing that intervention)
5. Lack of information or faulty disclosure of information regarding road status at time of sale (Roberta noted that the use of weapons in such situations has gone up because people are so frustrated, taking matters into their own hands when there seems to be no other recourse,

including machetes, battle axes and assault rifles; this triggers PTSD that would be good to mitigate; Ryan suggested a sort of "Road Relations" mediation board for these matters; Cathy asked about the number of violent episodes, which Roberta does not have data on; Jim agreed that all property issues heighten tensions)

Ryan raised an overarching concern about how this Commission can change anything for those already struggling with such issues.

Steve noted a situation in Frenchville where the municipality plowed a short private way, which legislative action terminated, and a feud resulted.

Roberta raised the issue of town equipment on a private way, specifically, e.g., such equipment can be used to plow public easements but not private roads (because they are no public funds are to be spent on private roads), and said perhaps an easement would allow public use and therefore legitimate use of public equipment and dollars/resources

Roberta then shared a handout entitled "Small Tweaks" drafted to address some of the issues and situations raised in the meeting thus far. She referenced the case of *Jordan v. Canton,* which involved limited user highway law. The town argued that under the law it could just decide not to maintain a road because it is not of enough value to the public. The court disagreed saying that a public road that's not maintained will eventually be destroyed. It is not necessarily the legal status that determines a situation, but the facts and circumstances of what has happened to the road that bear on the rights and responsibilities. Roberta quoted the decision extensively. She joked that Maine ROADWays' motto is "Build a better public easement and the world will beat the pathway to your door!", and then said that it alludes to a sort of repeat taking, for which traditional one-time taking compensation is not just.

Steve raised the question of environmental liability in these situations. Roberta offered the example of run-off from ruts into bodies of water, such as the silt ending up in Lake St. George from property in the town of Liberty. She also noted that is why you see the words "hill", "bog" and "swamp" in a lot of discontinued road names.

Ryan queried as to when a road is laid out/created, it must be recorded at the Registry of Deeds, but when if it is discontinued, does that happen at the town level? Roberta responded that the law now says at the Registry of Deeds and DOT. Given all that, Ryan wondered about having town reports submitted to the State library from now on (and about past records as well). Roberta said the library does have a

lot of this information, although towns do forget to file and some do not include warrants and/or votes on warrants. Ryan clarified that the charge of the Commission is to move forward and not go back in time, which Roberta agreed with but noted it would be ideal to go back and fill in some existing gaps. Ryan guessed that might be very hard to do because there is not always a report. Jim said that as of 1959 there is a requirement to file a certificate of discontinuance, and before then such documentation was very rare. Roberta agreed, saying towns were not always aware of the need to file because the language of the law was quite ambiguous.

Steve raised a question regarding conservation efforts in the town of Hamlin and noted limited available public access to certain roads in harvest. Ryan noted state agency action to create access for harvest time.

Brian said roads built to cut wood may be open to public use for, e.g., hunting, with categorization for different uses (e.g., gravel road for ATV usage).

Ryan mentioned a group of landowners that controls access in the North Maine Woods. Brian said Down east tried something similar, but such organization was rejected.

Brian revisited the definition of "public easement" vis a vis ATV and similar use in Roberta's materials. Ryan then asked if definitions of such are the same or not. Jim said this could raise a similar situation as with two definitions of "private way" that exist.

Jim then turned to the statutory categories of consideration to focus the work of the Commission, and said we need public input to determine next steps and how to address concerns. Ryan said we need to limit the amount of time, and also accept written submissions. Vivian recommended a three-minute time clock, and Jim agreed with that and Ryan's comments.

Steve asked about the effect of road decommissioning on ATV and snowmobile usage. Brian responded that the law contains conflict, saying the easement is available for use. Cpl. Kris Maccabe noted that the snowmobile and ATV statutes are very distinct, likely violating Title 12.

Brian said that a town "gives" permission to use access routes maintained by the town (and that there is no access route permissible on a discontinued road). The town often directs working out a situation with the landowner, such as offering maintenance assistance to help with the landowner's costs.

Roberta noted that it only takes one person to do donuts and ruin it for all.

Brian gave the example of a late mud season when ATVs are prohibited, and impatient regular vehicles use a road to fish and ruin the trails. The only option there is to gate out the ruinous users.

Brian went on to say that ATVs/trucks are not permitted on snowmobile trails and vice versa unless there is permission from the landowner-and there can be a split in landowners' positions. Ryan asked about getting multiple permissions in such a situation-does it come down to keeping a piece of paper with it documented on your person to use the road? Brian said you're good to go having gotten permission, and that an ATV taskforce in 2019 made clear that the landowner has the final say- which needs to be cleaned up and clarified.

Kris mentioned reverse posting on land in general, as with ATV permissions. Brian commented that it's a lot of work to track it all and that owners have a right to know. For one example (of so many), Brian described a situation with a cabin in the Rumford woods wanted as a house, needing road bridge/road upgrades or resulting in blocking off the town and other uses.

Jim noted we need a longer meeting and public comment on December 14. Pete asked how to streamline the process and give the public guidance as to how to structure their comments. Ryan suggested the Chair can encourage avoiding repetition, which Jim agreed with.

Jim went on to say we will need subcommittees to tackle recommendations in the Commission report to the legislature. Roberta mentioned that previous stakeholders have only come up with written suggestions and then the legislature creates the subcommittee and then it comes up with language that loses the meat of the work.

Pete will give an overview of the DOT website and map viewer at the next meeting.

The December 14 meeting will begin at 10 am to accommodate the agenda developed throughout this meeting, specifically:

1. Remote Participation Policy vote
2. Overview of MOOT map viewer tool
3. Public Hearing
4. Discussion of Commission Priorities
5. Formation of Commission Subcommittees

John moved to adjourn the meeting, seconded by Kris and Steve. The meeting was adjourned at 3:48 pm