**Terms Subcommittee Meeting Minutes (ADRC)**

August 24, 2023

Remote meeting was called to order at 1:10 pm.

In attendance-Jim Katsiaficas, Peter Coughlin, Roberta Manter, Ryan Pelletier

Roberta mentioned that she reviewed the Maine State Law Library compilation on private ways and put together a sheet with each statute and what it was and what she thought about the statute.

Jim felt that the key for the definition of what a public easement is, is Title 23 3021 (2), which incorporates all the old private ways that have been left over from discontinuance and it also talks about the former private ways under state statute. But even within Title 23 there's some inconsistencies because in the next section 3022, it talks about a limitation on public easements, that it's limited to rights of access by foot or motor vehicle as defined in 29 A, which means not snowmobiles, not ATVs, not motorized wheelchairs. The goal would be that public easement means the same thing in every statute, not just in that chapter of Title 23.

Peter stated that he agreed that if it's mentioned in five different statutes, they all should be consistent and refer to one basic definition. Peter gave the example of public ways around state buildings that have nothing to do with public ways.

Jim stated if you look at the term private way, private way is a public easement in Title 23, Section 3021 and then it's limited in 3022 but then the term private way is left undefined in Title 30 A, in Title 33, (real estate statutes), and Title 17 (Maine's Criminal Statutes for nuisances). Then It's defined in 29 A, (Highways and operation of motor vehicles) to mean a private road. Therefore, using the same term for multiple definitions for private way in different statutes creates confusion.

Roberta emailed her summary to the group and explained her method of going through the statute and terms. She feels the three different types listed in Title 23, Section 1903 for private ways are problematic, because they conflict with each other. Further confusion can be found in Section 3021 where private way means private driveway or public easement. She stated that unfamiliarity with the statutes and meanings leads to confusion and misunderstanding.

Jim agreed with Roberta and stated that there are two clauses in Title 23 §3021. He then explained the clauses and what they were created for and that he interprets them both as public easements now.

Jim and Roberta then discussed the statutes at Title 23, Sections 3021 and 3022, how private ways were created before 1976 and before modern roads, roads were laid out by town meeting for any occupant of land or for owners who had cultivated land in the municipality. These private ways were meant to provide access for the farmer who wanted to get crops to market, and that type of public easement is limited to the rights of access by foot or motor vehicle, excluding snowmobiles, excluding motorized wheelchairs, and excluding ATVs. Not all public easements are the same, and it's only the public easements that are created to provide someone a path to market that winds up being subject to the limitation on who will use it.

Jim asked if we were to propose to make that definition uniform and create a public easement, not a private way, would that allow ATVs and snowmobiles on those properties?

Roberta gave an example of Hebo Hybo Road in Lebanon which the court misinterpreted and ruled it to be a public easement. It was suddenly opened to public use and the ATVs have absolutely destroyed that road.

Jim proposed using Roberta’s list of where some of the glitches are or where some of the inconsistencies are to get started with, then put a joint memo together, with all these ideas , and create a summary that everybody on the Commission can look at to see where the problems are. Once we've identified the problems and some potential fixes, then we can talk about it at that meeting.

Peter would like a list of where these terms are listed, what they say and what are the corrections recommended, the intent, and some commonality if possible.

Jim asked if Heather could put together a matrix for each term and each statute.

Peter said it was amazing to see how many mentions of private way is in the statutes. It would be nice to suggest a bill that would radically change all this stuff and make it consistent.

Heather stated that she would put a matrix together on all the terms together and individually.

Roberta referred to her list where she did go through and comment on each of the places where the term private way appears in the statutes and what she thought meant privately owned road or whether it meant public easement in each instance.

Jim suggested that the group start with each of the terms, statutes, titles, sections, and comments as Roberta has provided. He then discussed some of issues with private right of way appearing in statutes where it could mean private way. Jim does not want to mess up case law by changing the definitions. Therefore, the Commission will need to be careful and thoughtful during the process.

Peter asked if from a legal perspective, is the intent to try to clarify and simplify these as much as possible looking forward and are the previous case law on decisions that have been made on all these different terms going to be affected by something we're doing going forward.

Jim stated that could be difficult because of the terminology changes after a case has been decided. There's clarity as to what the terminology meant at that time, and when the terms change, maybe the law and how it's to be applied changes. We must be careful of what mischief we create. We have been upset with the Legislature somewhat for creating these issues. We don't want to be guilty of the same crime.

Roberta raised the issues again of discontinued roads.

Jim agreed and stated now we have people moving out further and they are building on discontinued roads -- it’s becoming a bigger problem.

Jim thought that the first order of business is to construct the matrix for each of these terms, assign to each committee member a term, put the comments in and then put together a draft of comments to go with the term, because there's a lot.

Terms were divided:

Pete- Public way, way, town way

Roberta-Private way, Private Road

Jim-Public easement

Heather to request an additional law library search on way, town way, highway, and street.

Subcommittee made the decision to wait until they review the terms and break it down to discuss the list of titles, sections, and the potential problems.

Jim recommended that the subcommittee get back together on Thursday the 7th at 1 p.m. They will send their breakdowns of assigned terms to each other to look at the comments or other thoughts on what actions should be taken. Then the group can share with the Commission and figure out next steps and recommendations for the legislature.

Meeting ended at 2 p.m.