**Abandoned and Discontinued Road Commission Minutes**

September 12, 2023

Hybrid Meeting

Augusta, Maine

Meeting was called to order at 1:05 p.m.

**Attended:** Brian Bronson, Peter Coughlan, Vivian Mikhail, Rebecca Graham, Karla Black, Jim Katsiaficas, Steve Young, Ryan Pelletier, John Monk, and Roberta Manter.

**Absent:** Cpl. Kris MacCabe, Hon. Catherine Nadeau.

Jim opened the meeting and asked if there was a motion to approve the March 28, 2023, minutes. Motion was made by Vivian and seconded by Brian and unanimously carried.

Motion was made to approve the August 3, 2023, minutes by Jim seconded by Roberta and was unanimously carried.

Heather gave an update and showed the final website design to the Commission.

Motion was made to approve the website by Vivian, seconded by Roberta, and unanimously carried.

Jim summarized that the Commission’s mission is to review and suggest changes on the use of the following terms: “private way,” “public way,” “private road,” and “public easement” in the Maine Revised Statutes. Due to the voluminous amount of material, the Commission established two subcommittees, one to look at these terms, and the other to look at suggestions from their previous recommendations to the Legislature that could provide immediate relief. Jim introduced the Terms Subcommittee and turned the meeting over to Peter for his presentation.

Peter presented on the issues regarding the terms for Town Way, Ways, and public ways. He recommends that the following issues should be addressed:

1) There should be one definition for Public Way in motor vehicle and transportation statute.

2) Public ways in the Safety Education Act definition could be eliminated and referred to either 23 or 29-A for the definition of a public way.

3) In Title 29-A definitions for street or highway means a public way, eliminate that language, and use public way everywhere.

4) The Traveler Information Act in Title 23 uses the term “state highway or highway” and is another place where we could use the term “public way.” We should also include the definition of a “highway” which is “all the right of ways that have been laid out by the state, county, or a town.”

5) Consolidate the general terminology in the classification statutes that talk about state highways, state aid highways and town ways would help.

There was brief discussion by the Commissioners on public ways, town ways and highways being broad terms and how that changing those definitions would change a lot of the statutes.

The meeting then turned to Jim for his outline of the following issues for Public Easements.

1) There are two different definitions of “public easement” in Title 23 for public easement and the definition and enforcement depend on how the public easement was created.

2) Public easements that are set out for recreational purposes cause confusion.

3) That these different types of public easements are compounding the misunderstanding for towns and police officers on what type of vehicles are allowed and what individuals are allowed to do with the road.

4) Title 23 as well as under 3101 through 3105 are problematic because the first four sections deal with private roads but use the term “private ways,” which means public easements, while the fifth section uses the term “private ways” and means “public easement.”

There was a brief discussion on recreational vehicle use, Title 29A, (limits on ATV’s and snowmobiles on certain types of roadways) and why these vehicles were limited.

Roberta gave an extensive overview on public ways terms being changed to public easements, the issues it has caused, issues with recreational easements and the impact on public easements.

There was a brief discussion on when the State created the statute how a municipality could discontinue roads, with a discussion of the law in the 1800s, the law in 1965, 1976 and the most recent changes.

Rebecca pointed out that there is a need for the term private ways because there are several locations that have the expectations of public use. Ex.: parking lots, fairgrounds, or liability issues. It can also prevent losing the underlying ownership.

Jim asked if it makes sense to have the two different definitions or uses for a public easement in 3021 and 3022. Would it be better to have the definition on whether it is maintained by the town and not how it is created for ATV and snowmobile issues?

Brian stated if a homeowner owns both sides of the roads even if the town owns an easement he still is recommending to ATV and Snowmobile clubs that they get landowner permission especially on the ATV side.

Jim raised the issue then should that be the case for all ATVs and snowmobiles? Would it be better than to say that snowmobiles and ATVs are only allowed on public easements where they have landowner permission?

Rebecca asked if they (ATVs, snowmobiles) are allowed to use the municipally owned public easement.

Jim clarified the language, not municipally owned public easement but a municipally maintained.

Rebecca said language could be municipally laid out roads for recreational purpose or municipally owned lands.

Rebecca also pointed out that there are two bills making their way through the legislature which would reclass ATVs and this may no longer be an issue.

Jim proposed again one definition for public easement and that all vehicles can be used on the easement.

Roberta raised the issues of logging trucks, snowmobiles crashing into vehicles on plowed roads and ATVs that are irresponsible.

Jim turned the meeting over to Roberta to present her information on Private Way/Private Road and the issues. She covered the following Statutes and issues:

1. 23 M.R.S.A. § 1903Definitions are problematic as it is a self-contradictory definition. Private ways are public easements now, but the term “private ways” is still used and thus the confusion. Solution definitions need to be clean up.
2. 23 M.R.S.A. § 3021Definitions - “problematic as this is the statute that defines private ways as being public easements. Section 3026 and 3028 and now 3026-A and 3028-A retain a public easement when a road is discontinued or abandoned. (Unless otherwise specified.) Solution: because public access makes those who live on the road liable for any road maintenance they perform to use it, let property owners have a choice whether to make it a private easement or public easement if they can’t agree so everyone has access to their house. Further if they need to keep the public easement, then the town must state the reason for maintaining a public easement and the town then maintains it for that purpose.
3. 23 M.R.S.A. § 3022problematic because it adds another aspect to the definition by saying that public easements (defined in 3021 as including private ways) prohibit ATVS and snowmobiles etc.
4. 29-A M.R.S.A. § 101Definition - “Private way” is problematic because it says the way is privately owned and maintained, which refers to a private road. It rightly grants the ability to restrict use or passage. But then it says it “includes a discontinued way even if a public recreation easement has been reserved.” So, while the first half of the definition says the owner can restrict access, the second half says you can’t.

Rebecca apprised that this statue is to allow police officers to have access or enforce the law. Brian and Rebecca explained how it is used. Brian agreed with Roberta that it is not clear.

Steve pointed out that it seemed in this definition one is access, and one is about enforcing rules. Are owners able to restrict indiscriminately and that should be looked at.

Roberta stated that the definitions are confusing law enforcement officers, as they aren’t even sure what the definitions mean.

Roberta then moved on to the issues with Private Road Terms.

1. 29-A M.R.S.A. § 2053Right-of-way – is problematic as the statute itself defines “private way” as follows: “For the purposes of this subsection, ‘private way’ means any way or road access onto a public way, including an alley, driveway, or entrance.” The fact that it refers to some means of access *onto* a public way implies that “private way” intends something that is not public.

**2)** 23 M.R.S.A. § 3101 is problematic because of the name of the“Private Ways Act,” in which the term clearly refers to private roads maintained by a road association that may or may not have a public easement. Solution should be “Private Roads Act” and change the language.

1. 12 M.R.S.A. § 13106-A. Operation of snowmobile is problematic because

 **a**) the phrase, “plowed private road, or public road plowed privately” implies privately owned roads and either public easements, or town ways that are closed to winter maintenance.

 **b**)Paragraph 5C has caused some confusion, as it allows snowmobiles on “closed” roads and cannot be plowed by those who live on it. Discontinued roads, on the other hand, may be privately plowed and therefore not safe for snowmobiles. Towns confuse the two.

**4**) 12 M.R.S.A. § 13157-A. Operation of ATVsis problematic because the statute does not contain the term “private road.” It was amended in 2015 to repeal subsection 5, which formerly prohibited operating an ATV on a private road, but subsection 1-A says, “A person may not

operate an ATV on the land of another without the permission of the landowner or lessee.

1. 23 M.R.S.A. § 1903. Definitionsis problematic becausethis definition says that privately owned roads and driveways are the same as public easements.
2. 23 M.R.S.A. § 3121is problematic
3. because realtors depend on the seller to tell them if the access to property qualifies under this statute, and sellers rarely know about their road. Solution: Accurate database that realtors must check against*.*
4. And where it states that “*each property owner* is responsible for a share of the cost of

repairs to and maintenance of that private road” Solution: Everyone who lives or owns a business on the road must share the cost.

**7)** 29-A M.R.S.A. § 2053. Right-of-way is problematic because it refers to an entry onto a public way which indicates that it intends entry from something other than a public way, in other words, a “private road.”.

**8)** 33 M.R.S.A. § 193. Disclosures is problematic becausea 2019 amendment repealed the subsections that contained the term “private road.” However, the use of the phrase, “any means other than a public way” includes private roads.

**9)** 33 M.R,S,A, § 173. Required Disclosures is problematic because it uses the phrase,

“Any means other than a public way” which includes private roads.

**10)** 23 MRSA 3101-3106 To avoid confusion, the heading on the subchapter should be changed to Private Roads, as that is really the primary focus of the subchapter.

***Commission took a short break***.

Roberta presented Priority Subcommittee findings and discussed the following issues:

**1.** Limited liability for landowner maintaining road where there is a public easement; and if the town closes a road to winter maintenance, the person still residing there should be able to plow the road. (Should a town be able to cease winter maintenance if anyone lives there year-round?)

**2**. When a road is deemed abandoned, a public easement should be retained if any property would be landlocked. People should have more time to request a public hearing, and a public hearing should be required on request of *any* landowner (not 25%).

**3**. On 3026-A, clarify that this statute can be used at any time to extinguish a public easement by the landowners agreeing to voluntarily grant each other shared private access, so no one is landlocked.

**4.** Consider Minimum maintenance roads, perhaps funded by the increase in property tax revenue when land changes from undeveloped land to residential property.

**5.** Gates or obstructions should not be allowed on any roads that are required for property access as no one should be denied access. Even when the court is determining who should have road access or until a court decision no property owner should be allowed to bar access. Access is a property right attached to the land. (But I would add that there should be protection against overburdening of the easement, and that access over a discontinued road should not be required if the property has other public access.)

**6.** Alternate Dispute Resolution **-** How can this be made more available for those who cannot afford to go to Court? Plug into MAMP or FCM? (Maine Agricultural Mediation Program or Family and Community Mediation.)

**7.** Would it be possible to get a funded position to catalog Town way discontinuances from Town Meeting Warrants, similar to what the DOT did for County way discontinuances from County Commissioners’ records in the late 1970's or early 1980's.

Motion was made to end the meeting, seconded, and so moved.

End time 4:05 p.m.