**Subcommittee Terms Meeting**

September 26, 2023

In attendance by Zoom meeting: Jim Katsiaficas, Roberta Manter, Peter Coughlan, Ryan Pelletier

Meeting called to order at 1:00 p.m.

Jim opened the meeting and asked if there was a motion to accept the Minutes from September 7, 2023, Ryan seconded, and motion carried.

Jim outlined that the group had moved forward with finding issues and will present recommendations for each term and Statute. Jim turned the meeting over to Peter to outline his recommendations.

Peter recommended the following changes:

Public Way in Title 23, Section 1903 **modify** to "Public way" has the same meaning as provided in Title 29A/101/59 .

Public Roadway in Title 29-A, (BICYCLE & ROLLER SKIS SAFETY EDUCATION ACT) §2322. **Modify to**"Public way" has the same meaning as provided in Title 29A/101/59 .

Roberta asked if there were any other statutes that would be affected by changing the Public Way definition as there were three that weren’t mention in Peter’s outline. Peter will check on the following statutes 30A, 2322, 2323 and 4358.

Jim suggested leaving out the second clause in Public Way which states “ is capable of carrying” so there will be no unintended problems with snowmobiles, electric wheelchairs or ATVS.

There was a brief discussion between Jim, Peter, and Roberta.

Jim was in favor of keeping the definition in 101 sub 59 public way as it is and not adding “and is capable of carrying Motor Vehicles.”

The subcommittee then heard from Jim who presented the changes that should be made to Public Easement Terms.

Jim recommended that there be one definition of Public Easement.

Roberta was concerned about this change allowing ATVs to cause damage to the road that is not being maintained by a town but is a public easement.

Ryan agreed with Roberta and wondered if it's a public easement and ATVs are using it,

causing damage, do municipal officers have the right to stop the ATVs from using the road or is it assumed that because it is a public easement anybody or vehicle can use it.

Jim said yes, they have the authority to stop someone from damaging the road, but Roberta asked will the town step in if they don’t have to repair the road.

Jim, Roberta, and Ryan discussed options for towns and abutting homeowners who might want to block the ATVS.

There was a follow up discussion on Abandoned and Discontinued roads, easements, cleaning up language and making it easier for towns and those who live on the abandoned and discontinued roads.

There was a brief discussion on Minimally Maintained Roads. Roberta outlined that the designation would be a case-by-case basis and there would need to be three criteria met, the first that someone is living there, the second they were granted a building permit and third the property is being taxed as a residence.

Jim raised the issue that older houses might not have gotten a building permit.

The discussion moved to property taxes being used for minimum maintenance roads and what would be included on the standard grade of the minimum maintenance roads.

Ryan raised that all houses must be taxed the same under the Maine Constitution.

Peter raised the issue that there is a significant amount of abandoned and discontinued roads that have had no maintenance at all and to convert them to minimum maintenance roads would take a lot of work. He thought that would cost towns a significant amount of money that might not be offset by property taxes.

Jim raised the issue that minimum roads maintenance would then have a fiscal note attached to it and would have to be a Municipal Mandate. He thought the bill would be killed.

There was a discussion on how the Commission could find the information on how many abandoned or discontinued roads this would apply. Roberta detailed her process of verifying the information on abandoned and discontinued roads. She wondered though if it would make sense to have someone at the state level or fund a position if towns would not review their roads and have it fold into the DOT.

Peter felt that it was unlikely because MDOT does not consider town roads their jurisdiction.

Roberta raised crowd sourcing to solve the issue, but Jim stated then the issue is it’s not official.

Jim felt it would be better to focus on Limited Liability for those on Public Easements, so they are not liable for damage to people or property. For example, the Recreation Limited Liability statute.

The Commissioners raised the idea of people on Public Easements forming a Road Associations.

Roberta raised the issue that because Public Easements are public, people can’t have a statutory road association because you can’t force people to pay for public property. Therefore, there can only ever be a voluntary road commission on Public Easements. She wondered though, if there could be a sign that people could put up warning that the landowners have limited liability for an injury or death occurring due to the condition of this road and/or damaging a public easement with a motor vehicle is a Class E crime.

Jim returned to his presentation and felt strongly that the Public Easement language needs to be cleaned up to reflect that common law abandonment and abandonment by Statute has the same effect and should have the same definitions and outcomes.

Jim moved on to Roberta’s recommended changes for **Private Roads.**

12 M.R.S.A. § 13106-A. Operation of snowmobile

 Operation of snowmobile is problematic for some towns as they mistakenly believe abandoned and discontinued roads are the same as when they close a road for winter. **Suggested Change**: A snowmobile may be operated on any portion of a public way when the public way has been closed to winter maintenance in accordance with Title 23, section 2953.

12 M.R.S.A. § 13157-A. Operation of ATVs

**Suggested Revision:**

5. Unlawfully operating ATV on private road.

A person may not operate an ATV upon a private road except as follows:

A. The owner(s) of the private road may grant written permission for the road to be used as an

ATV trail.

B. The members of a road association responsible for maintenance of the private road may by

majority vote grant permission for the road to be used as an ATV trail.

C. The owners of a private road or the members of a road association responsible for

maintenance of the private road may agree to allow use of the road or designated portions of the

road by ATV’s by other abutting landowners.

D. An owner of abutting land may use the road with an ATV where the road abuts his own

property, and may use the road with an ATV for access to his property with permission of the

other abutting landowners.

23 M.R.S.A. §1914. On-premises signs

(10). Approach signs. Uses the terms public way and public easement. Terms should be changed.

Jim, Peter, and Roberta talked about how it applies to road signs. Jim and Peter thought it would be better to leave it alone. Roberta is going to go through again and make sure that this statute only refers to signs.

23 M.R.S.A. § 3121:

A)Responsibility for cost of repairs to and maintenance of private roads

that benefit residential properties. No one is clear on the status of roads including Towns and Realtors. **Suggested Revision**: We require the realtor to obtain assurance in the form of a subdivision plan, or information from E-911. Maybe loans should not be granted for properties on such roads.

Jim proposed a tie in the realtor discloser to MDOT Public Map Viewer so that they know if the road is publicly maintained.

B.) The definition leaves out Commercial Properties and only mentions Residential for maintenance. **Suggested Revision**: Each commercial property owner, if any, shall share in a manner appropriate to their use of the road.\*For purposes of this section, each property may be assessed only one share toward the collective cost of repairs and maintenance regardless of whether there are multiple owners of record for one property. If any property owner or their agents or invitees causes damage to the road beyond normal residential wear and tear, that owner must restore the road to its previous condition at their own expense.

Ryan asked about the conflict passage. Roberta thought it would be fine.

Jim raised the issue that he thought woodlot owners would be upset and this would not pass.

29-A M.R.S.A. § 2053Right-of-way - 4.

Roberta stated that Private way entry is confusing. Recommended it be changed.

Jim and Peter thought it would be easier to put in Way as defined in 29A 101, 92.

There was a brief discussion between the three commissioners.

33 M.R.S.A. § 193. Disclosures

**Revision:** Require realtors to check the MDOT Public Map Viewer to determine if a road qualifies as a private road for purposes of this statute or if further research is needed to determine if the road has been discontinued, with or without easement.

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.

Also, change all terms **private way to public easements.**

Roberta then presented her findings/suggestion on **Private Ways**.

23 M.R.S.A. § 1903Definitions (Traveler Information Services)

Suggested Revision:

10-A. Private way. The historic term “private way” was once used to refer either to a

private road or driveway, or to a public easement as defined in 23 MRS section 3021. **Suggestion:** In the former instance replace with the term “private road,” and in the latter instance replace with the term “public easement.”

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. **Suggested Revision**: “8. Private way becomes Private Road “Private Road” then means a way privately owned and maintained for the

purposes of access to adjoining lands, over which the owner or owners may restrict public use or

passage.

THIS WOULD REQUIRE ALSO AMENDING THE FOLLOWING:

29-A M.R.S.A. § 2053, 2063, 2356Right-of-way – **change** Private way terms to Private entry.

In the following statutes, the term “private way” appears to apply to public easements.

TITLE 17 - CRIMES

17 M.R.S.A. § 2003-A .

17-A M.R.S.A. § 505

30-A M.R.S.A. § 3110

33 M.R.S.A. § 460

33 M.R.S.A. § 461

33 M.R.S.A. § 462

33 M.R.S.A. § 465

33 M.R.S.A. § 467-

In the following statutes, the term “private way” is ambiguous or will need further.

discussion.

TITLE 17 - CRIMES

17 M.R.S.A. § 2802

TITLE 23 - TRANSPORTATION

PRIVATE WAYS ACT - PROBLEMATIC

23 M.R.S.A. § 3101

23 M.R.S.A. § 3102

23 M.R.S.A. § 3103

23 M.R.S.A. § 3104

23 M.R.S.A. § 3105-A

23 M.R.S.A. § 3106

Jim and Peter discussed what would be the best format to submit a report of progress for the Commission. Jim felt the best way forward would be to write a memo to the Commission on the progress the Subcommittee has made. He will send a draft out to Roberta, Peter, and Ryan.

The next step will be to recommend legislation that the Commission can push forward.

Meeting ended at 2:54 pm