**Subcommittee-Priority Meeting Minutes**

August 10, 2023

Called to order at 135 pm

In attendance: Roberta Manter, Karla Black, and Catherine Nadeau

Roberta Manter brought a list of items that was shared via shared screen on zoom

Roberta Manter- referenced the January 2023 meeting and local state committee recommendations made by the committee. The overall topics are:

1) access

2) maintenance

3) liability

See attached document for further information

Roberta stated that she brainstormed the issues being faced and solutions. She stated that it's so difficult to solve these issues and people are losing complete access to their home. Roberta stated that Kathy Maher was still having access issues.

Cathy asked what is the continued issue in Kathy Maher’s case? Roberta stated town is not willing to proceed and felt that under Title 23 section 3028, the town does have the right to make that declaration.

Cathy and Roberta expressed their concerns that MMA is siding with town government and not encouraging them to fulfill their duty to the people in the town.

Roberta expressed concern that towns and title insurance companies are not helping the little guy and when the little guy can’t afford an attorney in court and therefore loses, a bad decision is issued which sets bad precedent.

Cathy expressed her thoughts that it seems as if people either need an easement retained or a right of way. Those are the two things that should be explored. She wondered how to get the road information in a deed.

Roberta mentioned the 2017 real estate disclosure laws,( one for residential property and one for undeveloped land) was supposed to prevent the issue, but realtors rely on the seller for information and the seller is often wrong about the status of the road and therefore the Realtor form is unreliable.

Cathy stated that Sellers are going to say what they need to say, to sell the land.

Roberta replied that no one seems to know the status of all the roads, even the town and homeowners get bad information. There was further discussion of the story of Kathy Maher’s situation, and that there are no requirements for title searches in Maine if someone pays in cash. Mortgage companies do title searches when lending money, but the title searches are not always thorough, and they do not know what to look for. Roberta discussed the three cases she knows of that are being looked at by title insurance companies. There was a brief discussion of title insurance companies being able to pay money and not fight a title issue. Roberta described one of the cases, it was listed as a private road and shared maintenance by the abutters. It turns out that part of the road is no longer a road it was discontinued without easement. Years later someone owned property on both sides and blocked the road.

Cathy stated that she believes that the law states that even if you own on both sides of the road. The road is not owned by anybody in particular. Roberta pointed out that if it’s discontinued without an easement then it’s not the case.

Roberta then explained why and how abandoned common law works but felt there needs to be a better definition for determining abandoned roads. Karla asked that wouldn't the fact that there are houses on the road, sort of refute the fact that the road was discontinued or abandoned.

Roberta replied there are just still a host of problems establishing abandoned roads and public use/easement. She went on to describe the issues of private easement or public easement under the law.

Heather asked so where would you start to fix these issues? What are the top five priorities or legislation you'd like to see happen to fix these issues?

Roberta stated one thing would be to define that common law abandonment requires no use. Not just no public use, but no use by anyone. And one way to determine that is to look at the condition of the road. If there are 20-year-old trees growing in it then it is abandoned. The idea would be that the legislation at least gives the court a framework if the legislation says it must be no use by anyone including abutters. That gives the court something to go on. The question is, if we add that to the law now, does that make it retroactive?

Cathy would like to see access to all properties due to safety issues. No one should block the road with locked gates or place things in the road. Seconds count in an emergency .

Roberta mentioned Lamb v New Sharon, which said that abandonment does not result in a taking   She believes that decision overlooks the result of governmental action, which according to Jordan v Canton is that public use without public maintenance results in deprivation of access, you can't do that without compensating. In addition, people shouldn’t have to prove abandoned roads status. There is no knowledge that people can go to their county and follow the law to compel the town to maintain the road, so the road is not abandoned. She used her road as an example.

Roberta stated that the towns with these private, abandoned, or discontinued roads are getting free money that they can use elsewhere in town, shouldn't some of that money, some of that increase due to land being converted from tree growth to residential property be maintaining a road that is also a public easement.

Minimal maintenance was discussed as an option, the idea would be if a town keeps a public easement on a road, and if they permit people to build on it, and the property is taxed as residential properties they need to put minimal maintenance into that road.

The three areas that are important

1. Access
2. Maintenance
3. Liability

Cathy stated again that she feels safety should be added to access.

Cathy mentioned that Roberta had at one point provide material on NY statutes for minimum road maintenance.

Roberta briefly explained the minimum maintenance law is where you have different classes of roads, and each one gets maintained for its designated use.

There was brief discussion on whether instituted minimum maintenance would be using some of that money, that isn't currently being used.

There was a brief discussion on towns doing inventory followed by the fact that Peter at the MDOT has already done a huge chunk of the work and it should be whittled down from there.

Heather asked if something as the property card for taxes could list private roads or abandoned road or status if the town knew.

Roberta state the towns must start somewhere but then they could start with the easy ones and then they would probably start seeing once you start doing inventory, then the difficult ones can be tackled one at a time. And then it would be good for realtors and good for title companies. Access and Safety are the issues. When people can't get anyone to help, they get desperate, and they do things they would not ordinarily do. So, when you call the police and the police say, I'm sorry, there's nothing I can do about that. So then that person goes to court and files a restraining order, if the court denies it, and access is cut off to their house that causes desperation, and this is people start using violence against each other. In perfect world everybody has the right to access to their property rights.

Another priority discussed was a mechanism to help resolve the issues facing those locked out of their property or having road disputes. There should be a mediation, arbitration or some type of agency action that can help those who are struggling.

Roberta explained the public use easement definition, how Maine can retain public easement rights in discontinued roads but without any responsibility for public maintenance, and what the result is for property owners. In addition, if a town has said the road is a public easement and others want to make it private the town should allow them to make it private easement with a road association even if it is just part of the road where the abutters can agree.

Cathy stated again that locked gates are a big problem for her.

Roberta gave another example of someone’s story of buying property in a subdivision and then there was one hold out on who owned property on both sides of the road before the subdivision and would not grant access, so no one has been able to build.

Roberta requested another search from the law library to expand terms on our road searches.

Roberta also thought we should ask the Maine Supreme Court for an “Opinion of the Justices” on the constitutionality of public easements being public roads with no public maintenance.

Heather suggested that she would ask the Chair and Vivian as they are attorneys to see if they are familiar with the process.

Roberta also felt that prescriptive easement language needs to be cleaned up as the wording seems to indicate that twenty years’ use during the period of abandonment doesn’t count, so they must use the road for another 20 before it can vest.

Liability was discussed for those who are fixing roads on private easements. That limiting liability should make the list.

Karla stated that she felt the group needed to come up with three things that are concrete and manageable for the legislative committee.

There was concern among the commissioners present that if there is a long list sent to the legislature it'll get lost and they're not going to do anything.

The following list was compiled with the agreement that the three commissioners would review the list from January on recommendations and see what could be added or what would be the strongest three priorities that the commission could recommend that would pass:

1. Limited liability in maintaining road where there is a public easement and if the town closes a road in the winter the person still there would be able to plow the road.
2. All abandoned roads will be deemed abandoned with a public easement retained if the people would be landlocked. People should have more time to request a public hearing example six months. The threshold request for a public hearing of landowners should be one resident.
3. On 3026 A clarify that this statute can be used to extinguish a town way/public easement by the private granting of easements of those on the roads, 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. Discontinuing allowing gates on any access roads as no one should be obstructed and this should be the law, when the court case is pending or until the court has determined who should have road access.

Meeting adjourned by all at 4 p.m.