**Priority Group Minutes**

August 28, 2023

Meeting started at 1:02 p.m.

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

All agreed to take public comments first.

The group heard testimony from the following:

1. Kathy Maher, Cornish Maine (update)
2. Kay Shepardson, Cornish Maine
3. Jennifer McCoy, Avon Maine

Public Testimony ended at 1:18 p.m. The Group then turned to elaborating their recommendations on what the priorities should be for the Commission.

Roberta provided the group with an in-depth handout (attached) and started the meeting off discussing the following points:

1. Limiting liability for people who maintain roads that have retained a public easement. The Commission should draft something similar to Title 14 Section 159 a limited liability for recreational as a model and maybe Title 7 Section 4103.
2. Building permits granted by a town on a public easement should make the town responsible for keeping the road in the conditions suitable for what the permit has been issued for and a town shouldn’t be able to deny a building permit without compensating somebody for the loss of value of their land on a discontinued road.
3. If a town said a person can’t build on a public easement without a building permit, but they then build their property anyway, the town can’t tax for any created increase in the value of that property. (Roberta I was unclear on what you were stating here)
4. Prohibit winter closings of a road even if just one resident lives on the road as that causes a functional discontinuance for several months of the year. If someone moves onto a road that's already closed to winter maintenance, the town shouldn't have to resume winter maintenance until the end of the scheduled period that they determined the road should be closed for but that Resident on that road can snow plow, maintain the road and the resident gets a refund on his taxes.

Cathy brought up an idea that if there are powerlines on that road there should be no closing the road.

Karla asked if winter closings were beyond the scope of our work?

There was discussion on whether it fell under the Commissions’ jurisdiction. Roberta made the point that by closing the road in the winter and not allowing an individual to clear the road it is a functional discontinuance.

Roberta referred to her draft language for limited liability for Road Maintenance on public easements. She used the equine activity law to draft a similar proposed law for liability.

There was a discussion between Cathy and Roberta about using the word Reckless in the draft. Cathy thought that could be open to interpretation. Roberta and Cathy would think to see if they could find a better word.

Roberta brought up the abandonment statute and that the Commission would like to see that sunsetted entirely. Cathy and Karla agreed.

There was a brief discussion on how the legislature wouldn’t get rid of the Abandonment statute.

Roberta raised the point that the abandonment statute was supposed to be a one-time remedy to clean up the status of roads that had been forgotten or lost through the records, according to the legislative discussion on the bill on roads, that had not been properly discontinued. It was to apply only where there was a period of no maintenance whatsoever from 1946 to 1976. Just that one period. If a town did anything to the roads during those 30 years, it didn’t qualify for abandonment. She then discussed the changes made to the abandonment law and the issues it created such as isolated acts of maintenance will not prevent abandonment, and no clear definition of maintenance. She went on to discuss LRAP funding and that it is unfair to pay taxes and not have the town maintain the roads of the people who live in the town.

Roberta pivoted back to abandonment, requirements for towns on what can and can’t constitute abandonment and changes such as automatic public easement, so that people do not become landlocked. In addition, she recommended the following changes:

1. if those on the road would like to change to private, they should be allowed to do so and
2. anyone who disagrees with the abandonment or discontinuance should be able to request a hearing rather than a threshold of 25% of road owners.
3. Public hearing should be scheduled no less than 60 days after request for hearing.
4. a way must not be declared abandoned by common law except when there's proof that either NO property will be legally landlocked or the road has been entirely unused even by the owners of the abutting property for a period of 20 or more consecutive years, as shown by physical obstruction for the requisite period, or by evidence of the age of tree growth within the traveled surface of the road.

Roberta went on to discuss issues with discontinuance and needed changes:

1. Clear language on how to discontinue a public easement. So that people living on a private way with public easement can decide to make the road private.
2. If any property will be left legally landlocked a public easement must be retained, unless at any time the abutting landowners negotiate a shared private easement(road association) over the road, or any inner portion thereof.
3. That the town shouldn’t get a vote after abutters on the road have negotiated a “private easement in common”.

Roberta than gave the examples of private road owners ability to negotiate to allow access, and roads where public easements have been to residents’ detriment.

The group moved on to the discussion of minimum standard roads, what that would entail, maintenance on the road, types of roads, and who would do the maintenance.

There was a discussion on when or how gates should be allowed to be used on roads, especially abandoned roads. Everyone agreed that if there's a road that provides main access to other properties, you shouldn't be able to gate or block.

There was a brief discussion that there needs to be a mechanism or a way to document people asking the town to maintain a road, so a road isn’t labeled as abandoned. It can’t be people requesting help and the town allowed to disregard.

The group discussed MDOT housing a road registry as they already have the mapviewer database.

There was discussion on whether the state should appoint someone to go over all the roads and determine the status of each road as the state is the one who created this mess and perhaps that appointed individual could be housed under MDOT. Since it was MDOT that cataloged records of discontinued county ways years ago, it seems logical that they might take on the task of a similar catalog of records of discontinued town ways.

There was discussion of how to educate police officers and towns. They should know there are statues they can use to keep a public easement clear and that should apply to private ways, abandoned and discontinued roads.

Karla had a question what the committee is expecting from them before the September 12 meeting.

Heather answered that Jim had stated for the group to come up with as much of a list as possible. And then one of the group can present it to the Commission, and then discuss.

A brief discussion occurred on what information should be presented to the Legislature and how the Commission can fix the issue with recommendations.

Roberta proposed a mediation program under the agricultural mediation program, ( which provides mediation if there is farmland involved) or the family and community mediation program.

A brief discussion followed on what a mediation program should look like and where it should go with the group settling on making a recommendation for a mediation program with teeth that people can rely on.

Roberta suggested perhaps the Commission could work with the historical society and towns to put forth a plan to get a final list of what the status of roads. If not then the towns should have to go through their records and archives. Roberta is more than happy to train or work with them.

Heather then listed the five areas that the group had flagged last time as things that should be a priority. 1) Limited liability for landowners who provide maintenance for private ways/private easements 2) abandoned roads will be deemed abandoned with public easement retained if people would be landlocked, a longer time to request a public hearing, and any homeowner can request a hearing, no minimum threshold. 3) Discontinued roads statute should be clarified that is allows discontinuance of public easements in statute 3026-A. 4) Minimum maintenance roads should be created and tied to taxes 5) discontinuing allowing gates on access roads 5) Safety issues. The Group then added 6) ADR/Mediation 7)Appointment for someone to index the roads in Maine.

There was a discussion on who and how they would present to the Commissioners.

Karla would review the information Roberta put together and see if she wanted to add anything. Roberta had made notes on the changes discussed and will type up the changes.

Meeting end by unanimous agreement at 3:15 p.m.