**ABANDONED AND DISCONTINUED ROADS COMMISSION MEETING MINUTES**

**November 15, 2024**

**REMOTE MEETING**

**In Attendance**: Jim Katsiaficas, Roberta Manter, Peter Coughlan, Vivian Mikhail, Steven Young, Rebecca Graham, and Catherine Nadeau.

While waiting for a quorum the following items were discussed as housekeeping issues.

1)There was a brief discussion between Roberta and Jim on a questionnaire for towns on Public Easements.

2) Jim asked if any had any comments or mistakes on the draft report to fix. Roberta had issues with some of what was written, she will send her thoughts to Jim.

3) Peter stated on page 4 of the executive summary road categories instead of MDOT taking charge of all roads definitions, Peter thinks the 911 office would be a better fit as they keep track of all the roads.

4) Jim will change the language to offer options of MaineDOT or Emergency Services Bureau or the Community Service office.

Jim, Peter, Roberta and Steven talked about the issues surrounding the listing of abandoned and discontinued roads and lack of funds for towns to be able to track or take inventory.

The meeting was called to order by Jim Katsiaficas when a quorum was reached at approximately 1:20 pm.

The commission unanimously accepted the amended minutes of October 25, 2024, meeting, based on a roll call vote.

Jim reminded the Commission that he is working on a draft of questions to send to towns to see the extent of issues with abandoned and discontinued roads. Jim thanked Roberta for her assistance. He hopes to have a draft ready for review by the next meeting.

Jim then reminded the commission of the report due on February 5, 2025 and opened discussion of changes to the executive summary. Jim asked Roberta to share her screen with her recommended changes.

Roberta has an issue on the draft of how the Limitation on Private Landowner Liability summary is currently worded. She takes issue with the wording “May maintain the easement if the public does not.” Roberta feels that an easement will not continue to provide access if no one maintains it and that it creates at least two constitutional issues. 1)The abutters are likely to be forced into involuntary servitude of the public access without due process or just compensation. 2) the abutters would be forced not only to pay their property taxes to support town road maintenance but also to expand their additional personal funds to retain their and the general Public's right for use of the public road creating a double taxation situation for the abutters.

Jim responded that the benefit of the public easement is that it allows people who live on the public easement to have access to their property who otherwise would have no access.

Roberta stated that her concern is that the public destroys the public easement, and private homeowners are paying to fix the road

Jim how do you fix it?

Roberta feels towns should be maintaining or providing tax relief in an amount to alleviate maintaining the road or allowing homeowners to discontinue the public easement and keep a private easement.

Jim said it would go against the current law. He explained common law abandonment and discontinuance without a public easement means that landowners would have no private rights to their property and would be land locked. So, the public easement has some utility but there is also a burden. The Commission can’t solve that except to have more teeth on policing the easement to protect from damage.

Jim stated right now with the proposed Limited Liability statute we are trying to make sure the people maintaining the road are protected and allow some policing to protect the integrity of the road. If we make all Public Easements into a minimum maintenance roads category with mandatory maintenance and we bring it before the Legislature, then there would be a fiscal note and the Legislature will kill it entirely. That is why we are talking about an option for the town to provide some maintenance. It would allow towns to do more but no less.

Roberta raised her concern that this is still only an option, that the towns/municipalities are not mandated to help people on these roads. Towns are getting a free ride.

Jim replied that the town has the option and if they agree to maintain it, the road will be maintained until the town votes to terminate maintenance of the road.

Steve raised the concern that some people where he is in northern Maine bought in the willy wags way off from a main road. Even though towns try to be accommodating, a town or municipality should not be responsible for plowing when a homeowner wants to live off grid. The homeowner should have known at the time of purchase what would be needed. There should always be a discussion with the town or public works before purchasing a home.

Roberta brought up her own experience and that their road was discontinued in 1945, but the court did not rule that way.

Steve pointed out though that the recommended changes will better clarify the status of the road and hopefully prevent people from suffering or being promised something that doesn’t exist as in Roberta’s case.

Roberta agreed that the changes to the Real Estate disclosure has helped tremendously but there are issues included in Section 3121 which states when two or more residents share a road one person can ask for reimbursement of the maintenance cost but that wasn’t supposed to be applied to public easements.

Cathy feels that the best way forward to get the legislature to pass a bill that requires maintenance of these public easements would be to frame it as the safety issue it is, especially for 911. Cathy pointed out this coming year is the first year of the legislature and the best chance to get anything through with a fiscal note. Towns do not want people to die because they can’t get to them in an emergency.

Roberta gave examples of what her and her neighbors have faced on her road with their health issues and fires and why it is an issue.

Jim asked what if the wording is changed to “require where a public easement is retained as a result of discontinuance or abandonment by statute then the public easement must be maintained to be at least sufficient to permit emergency vehicle access up to the driveway of the furthest year-round resident on that road.” Jim stated that would mean **at the time** (not retroactively) of discontinuance or at the time of abandonment that you would be measuring what would be maintained to that emergency access standard. If somebody builds a quarter mile down the road that wouldn't be covered by this statute but at least take a snapshot as of the time of discontinuance or abandonment and you've got the current furthest house on the road would be maintained to a level sufficient to permit emergency access.

Jim asked if that sounded okay to Cathy.

Cathy replied that I would add to that that either the town take care of it for emergency vehicles or allow the landowner to maintain it without liability.

Jim stated, however, it would be an issue though to leave it to homeowners.

Roberta stated it wouldn’t help her though because it wouldn’t apply to her road.

Steve asked couldn’t it be retroactive.

Jim felt that the Legislature could enact a retroactive law, but it would be very expensive and even in the first session fiscal note because most roads that could be are already discontinued but we're not going to see so many more discontinued in the future. So prospectively it works better than retroactively.

Roberta’s concern is that towns have stopped discontinuing roads and now still have the loophole of abandonment, so they wait 30 years and have no maintenance, then the road is abandoned.

Jim brought them back to Cathy’s idea for 911 or emergency services access and minimum maintenance roads. Jim thought it should be up to the town to maintain emergency services standards rather than an individual.

Steve felt that the towns would prefer to do their own maintenance to their own standard.

Brief discussion by Roberta, Catherine, and Jim on town maintenance and on the idea that roads where people are living cannot be discontinued or abandoned.

Jim asked if that would be something the Commission would like to pursue.

Cathy said that people who are living on the roads are paying taxes and expect a degree of safety and therefore those who pay taxes should have some degree of safety. Cathy feels that if someone has gotten a permit to build and pay taxes, they have an expectation of safety for the road. Cathy thinks that type of bill will pass the legislature because people care about safety.

Jim restated the proposal by Roberta and Cathy that a town could no longer abandon or discontinue a road that people live on without retaining a public easement unless the road isbe maintained to allow emergency services.

Jim worries however, that the towns will just discontinue the roads and not reserve a public easement, which in turn will cause people to not have any access.

Roberta replied if it is a residential property where people are paying taxes they should be providing access for EMS services. Let the town turn down people who want to build on these roads if they cannot provide maintenance. Some people will complain but at least then the towns won’t allow people to build where they won’t provide any maintenance and private landowners are not paying for the public to use their roads.

Cathy believes this will open a dialog between the town and landowner. It will allow the landowner and town to discuss how to proceed.

Roberta thinks people should get something for paying taxes. Roberta doesn’t think it takes much but something should be offered.

Jim clarified that they are suggesting a proposal that would-be for mandatory municipal maintenance of a public easement for emergency vehicle access whenever that public easement may have been established, even if established 50 years ago, where it meets the following criteria: 1)the town has issued building permits and 2) the town has assessed taxes on year-round residential dwellings on that road. He added that we would want to prevent municipalities from being able to extinguish that public easement once it has issued those permits because then the landowners would no longer have that public easement right of access anymore.

Roberta thinks section 3026 A would allow the landowners to work with the town to make the road private as an alternative to the roads being public easements. She laid out the issues with the current statute and how that should also be repaired. Her hope is to get some of these public easements converted into private roads.

Jim asked if there is unanimous approval of the Commission to go forward with this?

Peter said no. He understands the desire to place emergency vehicle access standards on public easements. However, even though people live on those roads, the roads have not been maintained in some cases for over 50 years, and it would cost a fortune to make the road passable. Additionally, he is concerned that if there is an option of either the town or landowner to make the road passable for 911, people will fight over whose responsibility it is to do so, and nothing will be done on the road.

Jim asked if people want to form a private road association to pay to allow fire trucks to come down the road, as it is expensive to widen a road.

Cathy says most towns have a smaller pumper truck for firefighters that work just fine on those roads. Cathy also pointed out that the landowners on her dirt road helped to clear themselves because their cars needed to go down the road to get out to work or groceries. If people are living on the roads they are usually passable.

Roberta suggested asking fire departments on what type of roads they need to be able to make the road passable.

Peter said they will say it needs to be wide enough to get the truck down the road and not get stuck. He said there are no small trucks where he lives.

Cathy raised whether the state contracts with a tree service that clears the trees on the side of the road or whether is that CMP doing this work.

Peter said yes that is CMP. He doesn’t believe that MMA will agree to this type of a law.

Jim said If we propose this, we will hear from police and fire chiefs, and they likely will say the level of repair and maintenance necessary for emergency vehicle use of public easements will be more than what people are doing on their public easements right now. So where does this leave us? The concern is this could be cost prohibitive for landowners who live on these roads or for municipalities.

Jim reiterated that the initial proposal the Commission worked on was for limited liability on these roads where the town is not doing the work to protect the landowners on the road from liability. There are two paths the Commission can take. We can either put forward our current proposal on limited liability to help those currently being affected, or start looking at more of the options raised by Cathy, where we might not have unanimous agreement on the Commission and therefore might not be able to forward these proposals to the Legislature.

Roberta thinks the Commission should keep going forward with these ideas but if we can’t make the recommendations this year, do what we can for now.

Peter feels that it is still very important to allow the people to decide if they want to spend funds on a public easement.

Jim raised that would work with the minimum maintenance road option for the town and then landowners could then go to the town to ask for funds.

Roberta asked if it would be possible to tie it to taxes. If they don’t provide services the taxes are reduced. She feels if the towns are not incentivized to aid they will not do so.

Jim said in most cases it will have to be financial, and it will be from someone.

Peter asked if the recommendation would be that towns could not abandon or discontinue a road, but it would only apply to year-round residents instead of summer residents?

Jim replied yes.

General discussion by the Commissioners on fire roads and that they usually aren’t much more than a dirt track and issues that have been raised by firefighters and EMS. The conclusion was that there should be a plan if there is a fire or emergency by the town on who is responding and how would they get to the person.

Cathy will check with the fire commission on what their expectations of a road would be.

Peter stated he had a discussion with one town about public easements and the town stated it will help when a road gets really bad. He will talk to the town fire chiefs he knows and see what is expected.

Jim brought the commissioners back to abandoned and discontinued roads and whether there should be a prospective prohibition on discontinuing town ways or statutorily abandoning town ways if there were year-round residents on those roads.

There was a discussion between Jim, Roberta, and Peter on the best way forward with whether or not to prevent discontinuance.

Peter argued that the best way forward is that the Commission should include the question to towns in the questionnaire on abandoned and discontinued roads, review the responses and then come to a conclusion.

There was a general agreement to see what would constitute an emergency passable road and to check with MMA and LUPC and their members as that might be the best way forward.

Jim clarified that he would draft language for an amendment to Section 3026 A and 3028 A for the Commission to review on the idea of not allowing a discontinuance or statutory abandonment if someone lives on the road unless there's an agreement to retain a private easement and a structure for maintaining the road.

There was a discussion between Roberta and Jim about prescriptive use and abandoned roads.

The Commission then heard Public Comments from Margaret Cardoza from Windham. (Please see attached transcript)

Jim will work on the narrative and draft legislation and try to incorporate the feedback from Roberta and Peter. He hopes to send out the final revisions as soon as possible.

The meeting ended at approximately 3:00 pm after unanimous agreement.