

Maine Revised Statutes

Title 23: TRANSPORTATION

Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§3028. ABANDONMENT OF PUBLIC WAYS; DETERMINATION OF STATUS OF ANY TOWN WAY OR PUBLIC EASEMENT

1. Presumption of abandonment. It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way.

[1991, c. 195, (NEW) .]

2. Status of town way or public easement. The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status.

[1991, c. 195, (NEW) .]

3. Removal of obstructions. If the municipal officers have determined under subsection 2 that the way is a town way or public easement and a court has not ordered otherwise, the municipality or an abutter on the way, acting with the written permission of the municipal officers, may remove any gates, bars or other obstructions in the way.

[1991, c. 195, (NEW) .]

4. Quasi-judicial act. The determination of the municipal officers regarding the status of a town way or public easement pursuant to subsection 2 is a quasi-judicial act under Title 14, section 8104-B, subsection 2.

[2009, c. 59, §1 (NEW) .]

5. Filing. If after the effective date of this subsection the municipal officers, either on their own or after being presented with evidence of abandonment, determine that a town way has been discontinued by abandonment pursuant to subsection 1, the municipal clerk shall file a record of this determination with the registry of deeds. The absence of a filing of a determination of discontinuation by abandonment may not be construed as evidence against the status of abandonment. The registry of deeds shall record a document

regarding an abandoned town way under the name of the town way, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a copy of the document regarding an abandoned town way to the Department of Transportation, Bureau of Maintenance and Operations.

[2015, c. 464, §7 (NEW) .]

SECTION HISTORY

1975, c. 711, §8 (NEW). 1977, c. 479, §4 (AMD). 1979, c. 127, §154 (AMD). 1979, c. 629, (AMD). 1989, c. 395, (AMD). 1991, c. 195, (RPR). 2009, c. 59, §1 (AMD). 2015, c. 464, §7 (AMD).

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