

Are abutters “liable” for improvements made to the road?

Generally, no. Short of blatantly negligent or intentionally tortious conduct, private abutters would not be held liable for improvements they make to private roads with public easements. Or for damages incurred while traversing private roads with public easement.

Taxpayer should be entitled to road maintenance.

The obligation to pay taxes is not contingent on the services received. There is no obligation to purchase property and those who purchase property abutting discontinued roads are not automatically entitled to have their road reopened to public maintenance. The amount collected from abutters would have to be proportional to the expenditure on that road were that to be the case. Currently, a well-constructed road costs \$1 Million a mile. Roadway or driveway gravel can cost \$1,500-\$6,000 per square foot. Passable standards would include winter maintenance and currently many public roads are closed to winter maintenance where usage and cost outstrip locally available resources.

Should municipalities maintain discontinued roads that maintain a public easement?

Roads are not discontinued overnight, and when they are discontinued it is either after decades of non-maintenance, or with damages paid to abutters when more recently maintained. Still, the retention of a public easement is often important for the purpose of preserving access to otherwise landlocked parcels, and/or utilities, and/or public lands and water bodies. Often it is the only tool to continue access to other parcels for owners who simply are poor neighbors. Payment of damages is the compensation for discontinuation of public maintenance.

Should public easements automatically remain when roads are discontinued?

The answer to this question is in the control of state government. Prior to 1965, the default standard in state law was the discontinuation of public easements along with the discontinuation of public roads. Since 1965, the state has favored the retention of public easements when roads are discontinued to public maintenance. Public easements protect access for individuals to traverse over private property to maintain and preserve historic, ancient, and established family cemeteries, are a tool for municipalities when neighbors are unwilling or unable to exercise their rights to act against an abutter restricting access to property, for historic recreational access to lands to exercise public trust rights and access to great ponds and shores for the same purpose. (Think loss of access to working waterfront, traditionally used natural trails and mountain hikes, and hunting grounds.)

Additionally, installation of utilities on private roads is not allowed unless expressly stated. Such installation and repair could be considered a cost for the abutting owner rather than a utility use of a right of way.

As with discontinuance when a municipality must pay the abutter damages as a result of that maintenance decision, the public purpose doctrine generally prohibits granting publicly owned items to private citizens without compensation. This is the reason for the extensive process of

discontinuing a public easement and why some easements that provide to access other public trust rights are not always a municipal choice.

Abutters have all of the responsibility and none of the control. Injustices result when private individuals are forced to maintain, at private expense, roads which are open to public use and abuse.

Abutters can seek criminal, injunctive, compensatory, and possibly punitive relief for damage to a private road with a public easement. They now have legal authority to place liens on abutters who do not buy into the maintenance obligations. In the Manter's situation the road was discontinued prior to their purchase, and this status was noted on the deed. The 127th Legislature enacted two separate laws to allow for civil and criminal actions against persons who damage public easements in an effort to address concerns expressed by the Manters. Damage to a private road is both a civil and criminal offense. This law has not been used as the remedy to the problem to MMA's knowledge and is already an existing solution to damage to public easements spoken of today.

Any newly created law mandating maintenance will not solve historic issues without widespread disproportionate impact on communities that have often tried to work with residents and retained the easement out of necessity or to preserve public trust doctrine rights. Municipalities already naturally accept roads back into maintenance when development pressure and local desire ask them to do so.

Disclosure at the time of sale doesn't mean understanding what it means to have property on a private road with public easement.

Buyers voluntarily pursue the purchase of property. It is not a municipal obligation to insert local government into this process. If greater education is needed for buyers, this is a real estate lawyer, agent, and funder responsibility. It is incumbent on the purchaser to know all the facts of the property for which they are agreeing to purchase. Real estate disclosures are extensive across a number of areas and this is why a purchaser should retain their own attorney as part of the process.

Possible solutions from municipal view:

Most complaints seem to be about historic discontinuances rather than existing process which have multiple points for public processes. Additionally, nothing in current law prohibits an individual going to their town and requesting assistance in maintaining that public easement, placing it for a town vote based where those impacted have input instead of forcing an impact from the state level that isn't universally necessary or desirable.

Rather than forcing municipal maintenance on roads that have already received a public process as part of their discontinuance and abutters have received compensation at the time of that discontinuance, a better option would be to create a state level fund that abutters on historic discontinued roads can use to pursue damage claims, reduce the legal barriers to forming road associations or provide a low interest loan fund reducing burden of the great expenditure to maintain such roads couple with lien authority for abutting property. This will become a larger

issue as private roads will be impacted by other weather-related factors. Future “damages” that would normally go to abutters from the municipality as a result of discontinuance processes could be directed to this fund as a way of encouraging road association development and buy in.