

ATTACHMENT A – Maine ROADWAYS

From: amosdog@juno.com <amosdog@juno.com>
Sent: Friday, December 10, 2021 2:02 PM
To: Caswell, Lynne <Lynne.Caswell@legislature.maine.gov>
Cc: RGraham@memun.org; tom@mainewoodlandowners.org
Subject: Re: Discontinued Roads Subcommittee

This message originates from outside the Maine Legislature.

Hi, Lynne -

My husband's original proposal was that if a town grants a building permit and/or taxes property on a public easement as being residential property, the town must provide sufficient maintenance to support that use of the road, (recognizing that this may involve far less than the "safe and convenient" standard required on town ways.) 23 MRS 3652 could provide a means of enforcement.

Here was the wording he proposed, before the Revisor of Statutes rewrote it:

23 MRSA 3651 is amended by inserting the following second paragraph:

When one or more residences depend for their sole access on a road that is a public easement held by the town, and when that town issues permits for residential use of, or taxes for residential use of, land that depends on the said public easement, the town must provide sufficient maintenance to keep the public easement passable for residential use. Nothing in this section shall require the town to keep the road to the full "safe and convenient" standard required under this section for town ways; however, as long as the road remains a public easement and is designated for residential use through permitting or taxation, it must be kept at a minimum to the lesser standard of "passable for residential use."

The number one legislative change we've been working to achieve all along is to bring the law into compliance with the US and Maine Constitutions, bearing in mind the Maine Supreme Court's decision in *Jordan v Town of Canton*, 265 A.2d 96 (1970), especially pages 99 to 100. - Here's a link: <https://law.justia.com/cases/maine/supreme-court/1970/265-a-2d-96-0.html>

That decision made it clear that **a public road with no public maintenance will inevitably be destroyed, resulting in the "taking" of property access.** I cannot fathom how a public easement gets around this fact. While it may be true that there are provisions for due process and just compensation in the laws that create public easements, and that these were both lacking in the creation of limited user highways, the future consequence of a public easement is identical to a limited user highway. That is, the public will have free use of the road, no public maintenance will be provided, and the road will inevitably be destroyed. This fact is not contemplated at the time a public easement is created by the discontinuance of a road. If it were, "just compensation" would mean compensating all the abutting landowners for loss of ALL access to their land.

In fact, even that would not be enough, because if the landowner rebuilds the road, public use can destroy it again - and again - and again. We have seen access destroyed on public easements over and over again, from one end of the state to the other, for decades. David Manter has had to repeatedly rebuild the public easement that gives access to his home, for the last FIFTY YEARS. Perry Lamb fought

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the injustice in New Sharon until he was in his nineties, and died before he saw any relief. I know of at least one other public easement victim who has died, many residents on public easements who have rebuilt their access at great private expense only to have it destroyed by public use, and numerous others who have been forced to cut their losses and move elsewhere. It's high time we found a way to put an end to this infringement of the Constitution.

Since the State's law got us into this mess, a state fund to help us get out of it may well be appropriate - including state funded professional mediation services to help work out if the public easement can be extinguished.

Sorry this is so long, but it appears not everyone understands what we were trying to achieve or why. Bottom line - public use **REQUIRES** public maintenance. MMA may not like it, but that's no excuse for violating the Constitutional rights of citizens.

Roberta Manter, Maine ROADWAYS