

Senator Carney, Representative Kuhn, Members of the Committee on Judiciary,

My name is Roberta Manter, I live in Fayette on a discontinued road, and I am the founder of Maine ROADWays, which is an acronym for Residents & Owners on Abandoned & Discontinued Ways. I represent people all over the state who have problems with such roads, and I get about 1 to 1.5 new complaints per week on average. I am also a Board member of MARA, which puts me in an awkward position here. I want to support their hard work to improve the statute, but I have other concerns they did not wish to address.

Lack of Access: I was here when Section 3121 was passed for the specific purpose of assuring lenders that a residential property they are financing will remain accessible because there is some mechanism in place to provide maintenance. If the lender knew there would be NO access to the property because the road was discontinued without easement decades ago, I'm sure they would not want to finance it. Roads discontinued before 1965 usually retained NO easement, while those discontinued after 1976 usually were retained as *public* easements. Where no easement was retained. The former road became private property, often leaving parcels legally land locked.

Constitutional Problems: If, on the other hand, the road was discontinued with a public easement remaining, the public has no obligation to provide any maintenance. According to Jordan v Canton, a public road with no public maintenance "will inevitably be destroyed." But a public easement IS a public road with no public maintenance. Mandating that the abutters must share in the cost of maintenance of a public road raises Constitutional questions about whether private individuals can be forced to use their private resources to maintain a road for public use. So why would a lender want to finance a purchase of property on ANY discontinued road, whether a public easement has been retained or not?

That's why when section 3121 was originally proposed, I insisted they limit it to private roads. But evidently the word "private" in the first sentence of section 3121 has been insufficient to prevent sellers from claiming that section applies to property on a discontinued road.

3121 Used to Assure Access Where There Was None: I now know of five families who bought property with assurance under section 3121 that the access was on a private road with shared maintenance, only to find out later that they were denied access. They went back to the Title insurer to try to set things straight. The Title Insurer then had a choice of either going to Court to try to prove access, or compensating the buyer for the purchase price of the land. In some instances, there might be a case for access by prescription, based on the previous owners' uninterrupted use for twenty or more years. In other instances there might be a case for statutory abandonment, which would result in a public easement. But either of those options would likely require lengthy and expensive court action to prove it. In two cases, the Title Insurer refunded the money and walked away.

I also know of one case where the Title Insurer went to mediation, and instead of submitting the available proof that the road was abandoned by statute and therefore remained a public easement, he took the easy way out. He agreed (over the objections of his client) that the opposing party owned the road and could set whatever terms he wanted for a road association, in return for

assurance that he would allow the owners of the two houses to use the road so long as they paid whatever dues he determined, and abided by his terms for use of the road. (To add to the injustice, the person who claims to own the road was hired to frame one of the houses to which he later denied access.)

Possibilities for Amendment: What might be done to fix section 3121? It could possibly be amended to specify that it MUST NOT be applied to property on abandoned or discontinued roads, period. *I believe that is the simplest and probably the best solution.* Someone will probably object that doing so stops them from getting financing to buy the one property they can afford, which is on a discontinued road. But should a lender finance a property which is (or may become) inaccessible?

Perhaps it could be amended to say it must not be applied to property on a road that was discontinued or abandoned unless a public easement was retained. The trouble with that is, you run into the Constitutional objection. Besides, the information as to status of roads is not always readily available. In fact, MMA has refused to allow passage of a law that would require towns to inventory their abandoned and discontinued roads because they say the process would be time consuming and expensive, possibly requiring an attorney or even court action to determine whether or not an easement was retained. So if a town doesn't know, how is either the seller or the buyer supposed to be able to find out?

Perhaps it could be amended to say it must not be applied to property on a road that was discontinued or abandoned unless a PRIVATE easement was retained. That would solve multiple problems, as evidence of a grant of private easement should be easy to find at the Registry of Deeds. But I can still see a problem with it, as I have seen deeds where someone granted access over a discontinued road which they did not own, and which they therefore could not grant. If a title searcher was on his toes, he should know enough to go back and see if the person who granted it had any right to do so - but if every title searcher was that careful, we shouldn't even have the problems we are having with people not knowing they have no legal access.

While excluding *all* discontinued roads (including those where a public or private easement may have been retained) may result in some loans being denied initially, there are other methods by which a road maintenance agreement could be reached.

Enforcement Clause Deficient: I'm also troubled by the fact that while the first line says that each property owner is responsible for a share of the cost, the Enforcement section only allows an owner of residential property to sue another residential property owner. That means that there is no way to enforce payment by a commercial or industrial property owner who may make much heavier and more abusive use of the road than the residents, and then leave the residents to pay the whole bill. I know that the logging industry put up huge objections and demanded exemptions, based on the fact that they may not use a road for years and therefore should not have to pay when they are not using it. But what about other commercial or industrial property owners? I know of roads where there is a gravel pit, stone quarry, or lumber mill, all of which may have heavy trucks using the road daily. Why should they be exempt from the enforcement

clause? For that matter, there could be a retail business with multiple customers coming and going daily, and tractor trailers delivering goods. Even that would cause more wear and tear than residential use. Why should only the residents be forced to pay?

As for wood lot owners, they nevertheless benefit from the road having been kept up or even improved during the years when they were not using it. Perhaps there could be something similar to the "tree growth" tax exemption, where a land owner pays a reduced rate unless or until they take the land out of tree growth, and then they must pay a whopping penalty. So a wood lot owner might pay minimal dues in the years when he is not doing a harvest, and maybe just has his forester come in to look at how the trees are growing, but then when they do a harvest they have to pay at a rate that will repair the damage heavy loads do to a road. Or perhaps they could be required to post a bond when they do a harvest.

Due Process Lacking: Another concern is due process. Section 3121 mentions due process in passing, but says nothing about how that is to be accomplished. I can see a scenario where a newcomer moves in, thinks that the road should look like the one he left in New Jersey, and hires a contractor to do major work. The first notice the other abutters get may be when they receive a bill for "their share" of work they did not authorize. Maybe there could be more reference to section 3101 - perhaps where 3121 says, "after reasonable due process and notice," you could add, "as outlined in section 3101." However, roads covered under section 3121 are different from those covered under 3101, so the two should not be too closely connected.

Testimony of those denied access: You can read the stories of some who were assured of access where there was none by going to the 2025 Annual Report of the Abandoned and Discontinued Roads Commission and scrolling down to Appendix J.
<https://acrobat.adobe.com/id/urn%3Aaaid%3Asc%3AVA6C2%3Ab3933b80-f3ea-41d7-8da8-e137ebc49612/?promoid=29NMCDMP&mv=other&filetype=application%2Fpdf&viewer%21megaVerb=group-p-discover>

Read the testimony of Kathy Maher, Ildiko Mizak and Timothy Johns. I will not give out names of the others or specific locations of their roads without the people's permission, but one is in Limerick and the other is in Rumford.

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