

Maine ROADWays' Comments/suggestions on proposed revision of abandonment

First, let me say that I find Option 2 to be preferable. Option 1 would need considerable work to make it a viable option.

Option 1

Introductory Paragraph

§3028-A Abandonment of Public Ways. After October 1, 2020, a town way may not be discontinued by abandonment unless the municipality or county complies with the requirements of this section. A municipality or its officials, or a county or its officials are not liable for nonperformance of a legal duty with respect to a town way discontinued by abandonment in accordance with this section.

All county ways within organized townships became town ways in 1976. This option seems to lump county authority in with town authority, i.e. it sounds as if a town way can be abandoned by a county. The statute needs to make it more clear that the county's authority to abandon roads applies only to county ways within unorganized townships. At times this proposal seems to apply only to town ways. If so, the county doesn't need to be in the process at all until it comes to appeals. If this is also supposed to allow counties to abandon county ways, (as I think section 3028 was intended to,) then it needs to set out the process towns are to use for town ways, AND the process counties are to use for abandonment of county ways.

1. Process of abandonment. A town way may be discontinued by abandonment if:
 - A. For a period of 30 or more consecutive years the town way was not kept passable for the use of motor vehicles at the expense of the municipality or county. Isolated acts of maintenance by the municipality or county without other evidence that shows a clear intent by the municipality or county to consider or use the town way as if it were a public way does not negate evidence that the way was not kept passable for the use of motor vehicles;

All county ways within organized townships became town ways in 1976, which is more than 30 years ago, so county maintenance of a former county way that is now a town way would by now be irrelevant to its abandonment for a claimed 30 year period of lack of maintenance *beginning* any time after 1976. Or should we say that the abandonment has to be for the most recent 30 years prior to the claim? Otherwise, there is the potential for a town to resume maintenance, say in 2007, and in 2020, decide to stop maintenance based on a claim that it did not maintain the road from 1976 to 2006?

- B. For a period of 30 or more consecutive years, the municipality or county did not receive Local Road Assistance Program funds pursuant to Title 23, ch. 19, subchapter 6 for any portion of the town way to be abandoned.

Do counties receive LRAP funding? I may be mistaken, but I thought that was only for Towns. Ambiguous wording - "any portion of the town way to be abandoned" - does that mean that if LRAP funding was spent on any portion of the town way, that none of the town way can be abandoned? I think what you mean to say is, "For a period of 30 or more consecutive years, the municipality or county did not receive Local Road Assistance Program funds pursuant to Title

23, ch. 19, subchapter 6 for any of the portion of the town way to be abandoned.

C. The municipal officers or county commissioners vote to discontinue the way by abandonment at a regularly scheduled meeting of the legislative body.

I thought "legislative body" of a town was the people, not the municipal officers? So can the municipal officers vote to abandon a road, but only at Annual Town Meeting? Again, the county commissioners' authority should only be with regard to county ways.

If the municipal officers or county commissioners vote to discontinue a town way by abandonment they must also vote on whether a public easement is retained.

It needs to be clear that the public easement cannot be discontinued if doing so will leave any property land locked, *whether or not* that property has actual frontage on the road in question. This is where I suggest changing the term "abutting property" to "affected property," and defining the new term as, "any property that depends on the road in question for access, whether or not that property abuts the road, even if that property is in another town."

As used in this section, "affected property" means, "any property that depends on the road in question for access, whether or not that property abuts the road, even if that property is in another town."

D. If the road in question provides the sole public access to any affected property, a public easement must be retained.

2. Notification of proposed discontinuation by abandonment. The municipal officers or county commissioners shall give best practicable notice of the proposed discontinuation by abandonment to all abutting affected property owners of the town way at least 30 days prior to the meeting required in subsection 1, paragraph C. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, to abutting affected property owners whose addresses appear in the assessment records of the municipality or county.

The notice must include information regarding the potential retention of a public easement, including the abutting affected property owners' maintenance obligations for and right of access to the way if a public easement is retained, the right of access to the way by the public if a public easement is retained and information regarding the rights of abutting affected property owners to enter into agreements regarding maintenance of and access to that way, including the right of abutting affected property owners to create private easements;

If the town way proposed to be discontinued by abandonment is the only means of access to residential property in an adjacent municipality or county, the municipal officers or county commissioners shall cause a written notice of the proposed abandonment to be published in a newspaper of general circulation in the adjacent municipality or county at least 30 days prior to the meeting required in subsection 1, paragraph C.

Why are only owners of *residential* property in an adjacent municipality to be notified? Isn't it just as critical for the owner of *any* property to be notified if that property is about to become land locked, even if that property is not yet developed? How can a land owner harvest his wood, or build a house on his lot, or subdivide it, if it has become land locked by the abandonment of a

road that crosses a town line? The value of a land locked parcel is effectively reduced to zero. And why should those on the other side of the town line get lesser notice? A land owner who doesn't live in the town is unlikely to see the notice. Moreover, the way this is worded, even someone who lives on a piece of property that is about to become land locked could be excluded from notice if he doesn't happen to subscribe to the local newspaper.

The simplest fix would be to simply change the terminology in paragraph 2 and in the first bulleted paragraph under paragraph 2 to "affected property," and eliminate the second bulleted paragraph entirely; however, it might be just as well to change the second bulleted paragraph to the following, to emphasize the obligation to notify those in another town:

If the town way proposed to be discontinued by abandonment provides the only means of access to any property, whether or not it abuts the way in question, and even if it is in an adjacent municipality or county, the municipal officers shall give best practicable notice of the proposed discontinuation by abandonment to all affected property owners of the town way at least 30 days prior to the meeting required in subsection 1, paragraph C. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, to affected property owners whose addresses appear in the assessment records of the municipality or county within which the property lies.

I would also argue that in cases where abandonment of a road in one town will leave properties in an adjacent town land locked, the municipal officers of the adjacent town should also be notified, as the tax value of those properties will be reduced to zero if there is no access. Therefore I propose adding the following:

If the town way proposed to be discontinued by abandonment provides the only means of public access to any property in an adjacent town, The municipal officers shall give best practicable notice of the proposed discontinuation by abandonment to the municipal officers of that adjacent town.

3, Public hearing. The municipal officers or county commissions shall hold a public hearing prior to voting whether to discontinue a town way by abandonment upon receipt of written request signed by at least 50% of the abutting property owners. The written request for a public hearing must be received by the municipal or county clerk no more than 20 days after the notification issued pursuant to subsection 2.

One of the great objections to the abandonment statute is that there is no public hearing. So why would we want to make the public hearing contingent upon having more than 50% of the abutting landowners request it? There may be multiple owners of wood lots who don't care if the road is abandoned, and also one year round resident who has evidence that the road does not qualify for abandonment because the town did in fact provide much more than isolated acts of maintenance during the last 30 years, and collected LRAP funding based on the road's mileage. Yet that resident will be denied any hearing because more than half of the land owners don't care. If you think this will never happen, or that no town would attempt to abandon such a road, I can give you examples of where it has in fact happened. This is one of the reasons why this law must be changed.

Another major concern is the lack of any record of the evidence used to make the determination of abandonment. I propose adding the following:

The municipal officers shall record the evidence both for and against abandonment that is presented at the hearing, and keep the record on file.

4. Status of public way discontinued by abandonment. If the municipal officers ~~or~~ ~~county commissioners~~ vote to discontinue a town way by abandonment, the interests of the municipality or county in the abandoned town way pass as follows:

If the municipal officials ~~or~~ ~~county commissioners~~ vote not to retain a public easement in the abandoned town way because no property will become land locked by the abandonment, all interest of the municipality in the way, if any, pass to the abutting property owners to the center of the way.

If the municipal officials or county commissioners vote to retain a public easement in the abandoned town way all other interest of the municipality or county in the way, if any, pass to the abutting property owners to the center of the way. If the municipal officers or county commissioners vote to retain a public easement in the abandoned town way the public easement is limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. If there are already existing utilities within the way, an easement for utilities also remains.

5. Filing with registry of deeds. If the municipal officers ~~or~~ ~~county commissioners~~ vote to discontinue a town way by abandonment the municipal ~~or~~ ~~county~~ clerk shall record an attested certificate of the discontinuance by abandonment in the registry of deeds in the county where the abandoned way is situated.

The certificate may not be filed before the appeal period in section 6 has passed or if an appeal is filed before the appeal process has ended;

The certificate must describe the town way, whether a public easement was retained and the date of the vote by the municipal officers or county commissioners; and

The registry of deeds shall record the certificate under the name of the town way, the name of the municipality or county and the names of the abutting property owners. The municipal or county clerk shall provide a photo copy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

The date the certificate is filed is the date the town way is discontinued by abandonment.

6. Appeal. Notwithstanding section 3029, any person affected by a vote to discontinue by abandonment a town way may appeal the decision by filing a written appeal request within 10 days of the vote as follows:

With the municipal clerk for an appeal of a vote by the municipal officers in a municipality with a board of appeals authorized to hear the appeal

With the county clerk for an appeal of a vote by the municipal officers in a municipality that does not have with a board of appeals authorized to hear the appeal; or

With the county clerk for an appeal of a vote by the county commissioners

Within 15 days of receiving an appeal request filed pursuant to paragraph B or paragraph C, the county clerk shall schedule a hearing on the appeal before the county

commissioners to occur no more than 30 days after the appeal request is received. The county clerk shall provide written notice of the hearing date to the municipal officers and the person or persons filing the appeal request no less than 20 days before the hearing.

Any person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this subsection may appeal the decision to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

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

7. Previously abandoned town ways. Nothing in this section alters the status of a town way abandoned by a municipality or county under the terms of former section 3028 provided the municipal officers or county commissioners file with the registry of deeds before October 1, 2021 a record of the abandonment determination in accordance with former §3028(5) for town ways abandoned between July 29, 2016 and October 1, 2020.

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

Why is the above paragraph lined through? If the way is a town way or public easement, it should not be gated. If it is *abandoned* and *no public easement* is retained, then the municipal or county officers should not have authority to remove gates.

OPTION 2 - Amend §3026-A

Incorporate Abandonment into discontinuation statute

Section 1. 23 MRSA § 3026-A is amended as follows:

§3026-A ABANDONMENT OR DISCONTINUANCE OF TOWN WAYS

As used in this section, "affected property" means, "any property that depends on the road in question for access, whether or not that property abuts the road, even if that property is in another town."

A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality abandoning a town way after October 1, 2020 or discontinuing a town way or public easement in this State must meet the following requirements.

1. Notification of proposed abandonment or discontinuance to abutting affected property owners. The municipal officers shall give best practicable notice to all abutting affected property owners of a proposed abandonment of a town way or discontinuance of a town way or public easement at least 30 days prior to the meeting required in subsection 2. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting affected property owners whose addresses appear in the assessment records of the municipality within which the affected property lies.

A. For a proposed abandonment or discontinuance of a town way, the notice must include information regarding the potential ~~discontinuance~~ or retention of a public easement, including the abutting affected property owners' maintenance obligations for and the right of access to the way if a public easement is retained, ~~under the discontinuance or retention of a public easement, the right of access to the way by the public if a public easement is retained~~ and information regarding the rights of abutting affected property owners to enter into agreements regarding maintenance of and access to the abandoned or discontinued way.

B. For a proposed abandonment or discontinuance of a town way that provides the sole public access to any property, is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting affected property owners to create

private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B do not apply to town ways that are discontinued as of October 1, 2018.

~~For a proposed abandonment of a town way that is the only means of access to residential property in an adjacent municipality or county, the municipal officers shall cause a written notice of the proposed abandonment to be published in a newspaper of general circulation in the adjacent municipality or county at least 14 days prior to the meeting required in subsection 2.~~

(See my comments on the above paragraph under Option 1)

1-A. Discontinuance after October 1, 2018 of a town way with abutting affected property not otherwise accessible. A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way provides the sole public access to any property ~~is abutted by property not otherwise accessible by a public way~~, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting affected property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting affected property owners and their lessees and guests.

B. After the one-year waiting period required in paragraph A, ~~the municipal officers may:~~

(1) The municipal officers may Proceed with the discontinuance process pursuant to this section, as long as a public easement is

retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting affected property owners and their lessees and guests have been filed with the registry of deeds, the municipal officers shall proceed with the discontinuance process without retaining a public easement.

1-B. Abandonment of a town way after October 1, 2020. A town way not abandoned in accordance with former section 3028 prior to October 1, 2020 may be abandoned by a municipality after that date if:

· For a period of 30 or more consecutive years the town way was not kept passable for the use of motor vehicles at the expense of the municipality. Evidence of isolated ~~isolated~~ acts of maintenance by the municipality without other evidence that shows a clear intent by the municipality to consider or use the town way as if it were a public way does not negate evidence that the way was not kept passable for the use of motor vehicles;

B. For a period of 30 or more consecutive years the municipality did not receive Local Road Assistance Program funds pursuant to Maine Revised Statutes, Title 23, ch. 19, subchapter 6 for based on claimed year-round or seasonal maintenance of any of the portion of the town way to be abandoned: and

C. The municipal officers vote to abandon the town way at a regularly scheduled meeting of the legislative body. If the municipal officers vote to abandon a town way they must also vote on whether a public easement is retained.

2. Municipal officers meet to discuss proposed abandonment or discontinuance and file order of abandonment or discontinuance. The

municipal officers shall discuss a proposed abandonment of a town way or discontinuance of a town way or public easement at a public meeting and file an order of abandonment or discontinuance with the municipal clerk that specifies:

A. The location of the town way or public easement;

B. The names of abutting affected property owners;

B-1. The location of any bridge, as defined in section 562, subsection 2, on the town way or public easement and the status of negotiations with the department with respect to the disposition of the bridge pursuant to section 566, subsection 3-A;

C. In the case of discontinuance, the amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and

D. Whether or not a public easement is retained in the proposed abandonment or discontinuance of the town way.

If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance; otherwise, the public easement is retained. ~~If a public easement is retained, all other interests of the municipality in the discontinued way, if any, pass to abutting property owners to the center of the way. If a public easement is not retained, all interests of the municipality in the discontinued way pass to abutting property owners to the center of the way.~~

3. Public hearing for abandonment or discontinuance of a town way or public easement. The municipal officers shall hold a public hearing on the order of abandonment or discontinuance of a town way or public easement filed pursuant to subsection 2. In the case of abandonment, the municipal officers shall keep a record of all evidence presented both for and against abandonment.

~~3-A. Public hearing for abandonment of a town way. The municipal officers shall hold a public hearing on the order of abandonment of a town way upon receipt of a written request signed by at least 50% of the abutting property owners of the proposed abandoned town way filed pursuant to subsection 2. The written request must be submitted to the municipal clerk no more than 20 after the meeting required in subsection 2.~~

(See my comments under Option 1)

4. Approval of order of abandonment or discontinuance and damage awards. The municipal legislative body must vote upon the order of abandonment or discontinuance submitted to it:

A. To approve the order of abandonment or discontinuance and the damage awards for a discontinuance and to appropriate the money to pay the damages for a discontinuance; or

B. To disapprove the order of abandonment or discontinuance.

The vote required by this subsection for an order to abandon or discontinue a town way or public easement must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a town way that is not discontinued as of October 1, 2018 or abandoned as of Oct 1, 2020 in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

~~The vote required by this subsection for an order to abandon a town way must be conducted 30 or more days after the meeting required in subsection 2, unless a public hearing is requested pursuant to subsection 3-A in which case the vote must be conducted 10 or more business days after a public hearing.~~

(See my comments under Option 1.)

5. *Certificate of discontinuance filed.* The municipal clerk shall record an attested certificate of abandonment or discontinuance after a vote by the municipal legislative body under subsection 4 in the registry of deeds. The certificate must describe the town way or public easement and the final action by the municipal legislative body. The date the certificate is filed is the date the town way or public easement is abandoned or discontinued. The registry of deeds shall record a certificate of abandonment or discontinuance under the name of the town way or public easement, the name of the municipality and the names of the abutting affected property owners. The municipal clerk shall provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

5-A. Status of abandoned town way or discontinued town way or public easement. If the municipal officers vote to abandon a town way or discontinue a town way or public easement, the interest of the municipality pass as follows.

- If the municipal officials vote not to retain a public easement in the abandoned or discontinued town way or vote to discontinue a public easement all interests of the municipality in the way, if any, pass to the abutting property owners to the center of the way.
- If the municipal officials vote to retain a public easement in the abandoned or discontinued town way all other interest of the municipality or county in the way, if any, pass to the abutting property owners to the center of the way. If the municipal officers vote to retain a public easement in the abandoned town way the public easement is limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42.

6. *Utility easement.* An easement for already existing public utility

facilities necessary to provide or maintain service remains in ~~a~~ an abandoned or discontinued town way regardless of whether a public easement is retained. ~~Upon approval by a municipal legislative body of an order to discontinue a town way and retain a public easement, unless otherwise stated in the order, all remaining interests of the municipality, if any, pass to the abutting property owners in fee simple to the center.~~

Note: If a public easement is not retained, then either the land is private, or there is a private easement in common, and the private property owners should hold the power to grant utility easements in the future. The public should not hold the right to grant utility easements in the future over private land, but existing utility easements (as well as the right to maintain them) should remain.

7. Appeal. Notwithstanding section 3029, any person affected by vote to abandon a town way or discontinue a town way or public easement may appeal the vote by filing a written appeal request within 10 days of the vote as follows:

A. The written appeal request must be filed with the municipal clerk in a municipality that has a board of appeals authorized to hear the appeal; or

B. The written appeal request must be filed with the county clerk in a municipality that does not have a board of appeals authorized to hear the appeal.

Within 15 days of receiving an appeal request filed pursuant to paragraph B, the county clerk shall schedule a hearing on the appeal before the county commissioners to occur no more than 30 days after the appeal request is received. The county clerk shall provide written notice of the hearing date to the municipal officers and the person or persons filing the appeal request no less than 20 days before the hearing.

Any person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this subsection ~~6~~ 7 may appeal to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

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

8. Previously abandoned town ways. Nothing in this section alters the status of a town way abandoned by a municipality under the terms of former section 3028 provided the municipal officers file with the registry of deed before October 1, 2021 a record of an abandonment determination in accordance with former §3028(5) for town ways abandoned between July 29, 2016 and October 1, 2020.

Section 2. 23 MRSA §3028 is repealed.

Maine ROADWays' proposal for amendment to 23 MRSA §2953. Closing of roads in winter

1. Announcement of winter closing of roads. The municipal officers may on their own initiative, or upon petition by 7 legal voters of the municipality, at any time between May 1st and October 1st of any year, set forth that any road or roads, or portion thereof, in the municipality are so located with reference to population, use and travel thereon, that it is unnecessary to keep the road or roads maintained and open for travel during the months of November, December, January, February, March and April or any part of these months. No road shall be closed in winter beginning after Oct. 1, 2020 without the consent of all persons whose year-round or seasonal residence depends on the road in question for access, whether or not that residence has actual frontage on the road in question. No resident granting such consent shall be prohibited from providing snow removal at his own expense, but the municipal officers shall post the road to warn the public against entering thereon, and the resident shall have limited liability for any injury or property damage resulting from the condition of the road in winter.

[1981, c. 215, (NEW) .]

2. Notice and hearing. Prior to an announcement under subsection 1, the municipal officers shall hold a hearing on the proposed winter closing of a road or roads or portion thereof. The municipal officers shall place a written notice of the hearing in some conspicuous, public place in the municipality at least 7 days before the hearing, and shall provide "best practicable notice" to all owners of "affected property" as those terms are defined in 23 MRSA section 3026-A. Owners of affected property shall be allowed to speak at the hearing.

[1981, c. 215, (NEW) .]

3. Order of closing. After a hearing under subsection 2, the municipal officers shall file with the municipal clerk any order specifying the location of the road, the months or portions thereof for which it is to be closed and for how many years, not to exceed 10, the closing shall be operative. The legislative body of the municipality shall by vote either approve each order or provide that orders so made by the municipal officers shall be a final determination. Owners of affected property shall be allowed to vote on the proposed closing, whether or not they are registered voters of the municipality.

[1981, c. 215, (NEW) .]

4. Alteration of order. The municipal officers may on their own initiative, or upon petition by 7 legal-voters taxpayers of the municipality, at any time subsequent to one year from the date of a final determination, after notice and hearing, annul, alter or modify the original determination. The municipal officers shall file with the municipal clerk an order specifying any decision to annul, alter or modify, which shall not become final until the legislative body of the municipality by vote either approves each order or provides that orders so made by the municipal officers are a final determination.

[1981, c. 215, (NEW) .]

5. Appeal. The final determination by the legislative body or the municipal officers may be appealed to the board of county commissioners of the county in which the municipality lies, upon petition by 7 legal-voters taxpayers of the municipality within 30 days after the final determination is made. In an appeal before a board of county commissioners, the decision of the commissioners shall be governed by the standards set forth in this section.