

MAINE ROADWAYS (Residents & Owners on Abandoned & Discontinued Ways)

Our website: maineroadways.blogspot.com or google “discontinued roads Maine” - our website & public facebook page are at the top. “Seeking solutions for Maine’s orphaned roads.”

Our experience with abandoned & discontinued roads includes David Manter (50 years), Roberta Manter (40 years), and our daughter Elizabeth (37 years) - total 127 years

THE CHALLENGE: Huge expense of keeping little-used roads to full town road standard.

Solution #1 - before 1965 (town roads) or 1976 (county roads), roads that were discontinued ceased to exist - land reverted to individual property owners on each side.

Problem: Often left people *legally land locked*, reducing value of land to zero: *Constitution* requires just compensation for loss of value - impossible for towns looking to reduce expenses.

Solution #2 - Many towns and counties tried to keep a “private way” for use by the landowners.

Problem: No law allowed this. Moreover, Brown v Warchalowski 471 A.2d 1026 (1984) declared it *unconstitutional*: “...the establishment of any road... must be for a public use and its requirement must be in response to public exigencies.”

Solution #3A - Discontinuance law changed in 1965 (1976 for counties) - now keep a “public easement;” previous private ways are declared (ex post facto) to be public easements.

Solution #3B - Law passed in 1976 allows abandonment of roads not kept in repair for 30 years - abandoned roads are also kept as public easements.

Problem: “Limited User Highway” law passed 1967; repealed 1973- Jordan v Canton 265 A.2d 96 (1970) declared a public road with no public maintenance *unconstitutional* because it “will inevitably be destroyed.” **Access is “a property right attached to the land.”** Damage to access requires both due process and just compensation. You cannot justly compensate if every time the landowner rebuilds his access, the public destroys it again. If it’s unconstitutional to establish a road for which there is no public need, how can you discontinue but keep a public easement?

Maine ROADWAYS’ thinking: If all possible solutions are unconstitutional, we should pick the one that causes the least damage to the fewest people.

Towns and counties tried to keep *private ways for landowners* without a law to allow it - yet it worked in many cases, and it was decades before it was overturned in court.

Maine ROADWAYS’ Solution #1 - MAKE IT OPTIONAL. Let landowners choose:

(A) Voluntarily grant each other shared private access - owners can negotiate terms, use will be limited to landowners and guests, and those who use it will be responsible for maintenance
OR (B) to avoid land locking, town must keep a public easement - it will allow unlimited public use, and no one will be responsible for maintenance. Take your pick!

23 MRSA 3026-A, was amended in 2017 to allow this - currently being tested in several towns.

Precedent - County was asked to discontinue a road in Newburgh in 1976, just before jurisdiction over county ways passed to towns. They said they couldn’t discontinue the public road unless the abutters granted each other private access. They did so, and it’s still working!

Maine ROADWAYS’ Solution #2 - MINIMUM MAINTENANCE ROADS - Precedent in several other states - Allow roads to be kept just passable for their intended use. Reduces costs for town, fulfills need to preserve access to abutting land, reduces lawsuits.

Maine ROADWAYS Statistics: Over the years we have identified 250+ towns with problem roads, 60+ Superior Court cases, 75+ ME Supreme Court cases, 3000+ discontinued County roads, and countless discontinued or abandoned Town roads, many undocumented.

Problems include: destruction/obstruction of access; public use/private maintenance; landowner feuds; missing records; misapplied laws; conflicting decisions; trash/vandalism; conflict between ATVs, 4wd’s, loggers, snowmobiles, & residents; unfair taxes; permitting; setbacks; disclosures.