

Town Manager

From: Zmistowski, Thad <TZmistowski@eatonpeabody.com>
Sent: Friday, June 19, 2015 10:20 AM
To: 'tmsangerville'
Subject: FW: Sangerville / Discontinued Road---- Attorney Client Protected

Hey Ken---
See below.

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From: Cunningham, John
Sent: Wednesday, June 17, 2015 11:51 AM
To: Reinhart, Sarah
Cc: Zmistowski, Thad
Subject: Sangerville / Discontinued Road

The Board has asked several questions about the discontinued portion of Easler Road.

1. Can the town turn a discontinued road over to the adjoining property owners?

No, the town can never transfer a road, as a road, to anyone else. That is, the town can never transfer to anyone else the right to use a public way or a former public way over land of others. If a road is discontinued, then it ceases to be a public way, and a public easement may or may not be retained. If no public easement is retained, then the town has no further rights, so it has nothing it could turn over to anyone else. If a public easement is retained, then it is held by the town and cannot be transferred to anyone else.

2. Does the public retain the easement right to use a discontinued road, including ATV use?

If the road was discontinued before 1965, no public rights were retained, and the public had no right to use the discontinued road for any purpose.

If the road was discontinued after 1964 and the discontinuance order specified that no public easement (formerly called status as a private way) was retained, then the result was the same as above: the public had no right to use the discontinued road for any purpose.

If the road was discontinued after 1964 and the discontinuance order doesn't say otherwise, then a public easement was retained. A public easement is statutorily defined as being for the purpose of public access to land or water not otherwise connected to a public way. 23 MRS § 3021(2). A public easement arising from the discontinuance of a road also includes an easement for public utility purposes. 23 MRS § 3026. The public easement retained after the discontinuance of a road does not include the right of recreational use, such as by ATVs. The road abandonment statute (23 MRS § 3028) provides that when a road is abandoned pursuant to that statute, then the old road takes on the same status as if it had been discontinued, except that the municipality may vote to make it an easement for recreational use. If recreational use were already included in the public easement following a discontinuance, then that provision in

the abandonment statute would make no sense. Therefore, it must be that recreational use is not included in the public easement retained after a discontinuance.

3. Can the town prohibit ATV use of the town discontinued easement road?

Yes, but to be technical, ATV use of the discontinued road is already not allowed, by virtue of the law (see above). The public easement is not held by individuals; it is held by the town and can be enforced by the town. As the public easement does not include rights of recreational use (see above), the town can take action against any violators. Also, the landowners whose properties are crossed by the discontinued road can also take action to stop recreational use, because the public easement in the discontinued road does not include rights of recreational use. However, if the landowners give permission for ATVs to be used on their land, then that's a private matter that the town cannot prevent. In that case, the ATV users would not be using any public easement rights; they would be acting pursuant to private permission of the landowners. They would need permission from each landowner whose land they cross.

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