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Matthew Pineo, Town Manager
Town of Sangerville
P.O. Box 188
Sangerville, Maine 04479

RE: Legal Status of Gray Road; Recommendations

Dear Town Manager Pineo:

As requested, I am writing this letter regarding the legal status of a portion of the Gray Road in advance of tonight's Board of Selectmen's meeting for its review and consideration. As set forth below, based on the information provided to me in this matter, it is my opinion that the portion of the Gray Road from the utility pole at or near the Lentini driveway easterly to where the Gray Road intersects with the Flanders Hill Road is abandoned pursuant to statutory law regarding road abandonment for non-maintenance, with a public easement retained along this same portion.

Maine Law Governing the Status of Town Ways. There are three general areas of the law that govern the legal status of previously established Town ways. These are the common law doctrine of road abandonment, the statutory presumption of abandonment due to non-maintenance, and the discontinuance of Town Ways. Each legal area is distinct, and has its own legal principles and procedures (or lack thereof).

Under the common law doctrine of road abandonment, if there is sufficient evidence of nonuse for 20 or more years, intentional or involuntary desertion of a road, and/or acquiescence in the discontinuance of an old road combined with use of a new road, then a Town way may be abandoned. *See, e.g., Shadan v. Town of Skowhegan*, 700 A.2d 245 (Me. 1997). Under such circumstances, all public rights are terminated. *Id.* Under the statutory presumption of abandonment due to non-maintenance for 30 or more consecutive years, a Town way is abandoned; however, a public easement is retained along this abandoned area. 30-A M.R.S. § 3028. Both of these legal principles involve non-action by the public and/or public entities. In this respect, please note that common law abandonment is determined by courts; whereas a municipal officer can make road status determinations under the statutory presumption of abandonment due to non-maintenance subject to judicial review. There are no statutorily prescribed procedures for municipal officers to make determinations under the presumption of abandonment for non-maintenance statute, beyond conducting a valid meeting and vote.

Conversely, discontinuance of a Town way requires an affirmative vote by the legislative body. *See* 30-A M.R.S. 3026-A. In municipalities such as Sangerville, this legislative body constitutes the voters acting at Town Meeting. The Board of Selectmen does not have authority to discontinue Town ways (or, for example, to establish a Town way by accepting a dedication

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voluntarily or by purchase, or to lay out a Town way by eminent domain – these require legislative approval). See 30-A M.R.S. §§ 3021 *et. seq.* There are specific statutory procedures that govern discontinuance of Town ways. See 30-A M.R.S. 3026-A. These statutory procedures, however, do not apply to the above-referenced common law doctrine of road abandonment or the statutory presumption of abandonment due to non-maintenance.

Gray Road Status. Based on the materials provided the following facts appear to be operative. In June 1995, the Board of Selectmen voted that the Gray Road was discontinued by abandonment (this is the statutory presumption of abandonment due to non-maintenance), which followed a May 1995 letter by Attorney Jon Huntington that opined that the portion of the Gray Road at issue was statutorily abandoned due to non-maintenance. (Note: In 1995, this road area was known as the Flanders Hill Road, and was subsequently named the Gray Road). In November 2013, the Board of Selectmen issued a clarification vote on the statutorily abandoned portion addressed in the 1995 vote, since the minutes describing the 1995 vote only referenced the Flanders Hill Road (now the Gray Road), though the background documents state only a portion of the Flanders Hill Road was being considered in this respect. In August 2016, the Board of Selectmen voted to “rescind” these prior votes on the basis that the discontinuance procedures were not properly followed.

It is my view that the August 2016 vote to rescind is invalid and/or has no impact on the legal status of the portion of the Gray Road at issue. First, the basis of the rescind vote is incorrect. As noted above, the discontinuance procedures do not apply to the statutorily abandoned town ways. Second, to the extent the Board of Selectmen was attempting to lay out that portion of the Gray Road or accept it as a dedication, a rescind vote would be invalid because that is not the proper procedure for this purpose and the Board does not have this legislative authority. Finally, the rescind vote was not based upon newly discovered evidence that affirmatively demonstrated that from 1945 to the present day there was regular maintenance of the portion of the Gray Road at issue in 30-year time increments (the applicable analysis under the statutory presumption of abandonment due to non-maintenance). Indeed, based on the Town records we were provided, the lack of regular maintenance for the above time period supports the conclusion that the portion of the Gray Road at issue was statutorily abandoned, but still retains a public easement.

Recommendations. The current legal status of the portion of the Gray Road will continue to be subject to fact-specific inquiries, because the abandonment statute requires such fact-specific analyses. See 30-A M.R.S. § 3028. If the Town finds this current posture acceptable, then it does not need to do anything regarding the legal status of this portion of the Gray Road.

If the Town desires absolute clarity on the status of this portion of the Gray Road, there are essentially two options: (1) prosecute or defend a lawsuit that seeks a judicial determination of its legal status (not recommended due to expenditure of time and money); or (2) have the legislative body determine the status of this portion the Gray Road (recommended, if the Town desires absolute clarity) through discontinuance, a dedication/lay out of a Town way, or a combination of both.

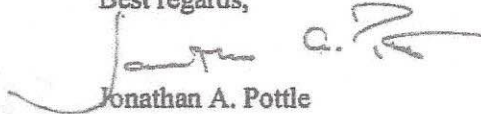
Under option 2, absent a citizen petition, the Board of Selectmen could present the question or questions to the voters on whether to (i) discontinue this entire portion of the Gray Road and retain a public easement; (ii) accept a dedication voluntarily or by purchase, or alternatively lay out this entire portion of the Gray Road as a Town way; or (iii) discontinue a section in combination with accepting a dedication (voluntarily or by purchase) or laying out the remaining section of this portion of the Gray Road.

If the Town pursues option 2 and one of the possible combinations, please note it would be prudent to follow the correct procedures and conduct due diligence on any damages (if eminent domain is used, as opposed to a dedication), if any, that may result from a Town Meeting action, as well as economic considerations for any purchase or maintenance obligations that the Town may incur. Again, if option 2 is pursued, the scope and nature of the Town's potential obligations and procedures it would follow are dependent on the precise combination of questions that the Board of Selectmen may present to the voters regarding the desired status of this portion of the Gray Road and/or sections thereof. *See 30-A M.R.S. §§ 3021 et. seq.* (describing the requirements and various methods to establish a Town way and the requirements to discontinue a Town way).

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I appreciate the opportunity to provide legal advice to the Town on this matter. If you should have any follow-up questions or require additional information, please contact me at any time.

Best regards,


Jonathan A. Pottle