

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2108

H. P. 1920

House of Representatives, January 27, 1976

Referred to the Committee on Local and County Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Kauffman of Kittery.

Cosponsor: Mr. Morton of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Town Ways.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 23 MRSA § 2051, as amended by PL 1965, c. 168, is further amended to read:

§ 2051. Power of commissioners

County commissioners may lay out, alter, close for maintenance or discontinue highways ~~within the unorganized areas of their counties leading from town to town~~ and grade hills in any such highway. The county commissioners may close county roads for maintenance and preserve the right-of-way for the use of abutting landowners, and any others using said way for the access to their property, and public utilities and corporations with facilities legally located within said way, at their own risk. ~~Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter, close for maintenance or discontinue county roads within the limits thereof~~ Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading, closing for maintenance or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds.

Sec. 2. 23 MRSA § 2057, 1st sentence is amended to read:

If any person's property is damaged by laying out, altering or discontinuing a county highway ~~or town way~~, the county commissioners ~~or the municipal~~

~~officers of towns~~ shall estimate the amount, and in their return state the share of each separately.

Sec. 3. 23 MRSA § 2057, last sentence is amended to read:

Said commissioners ~~or officers~~ shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of construction or use.

Sec. 4. 23 MRSA § 2060, as amended by PL 1971, c. 593, § 22, is further amended to read:

§ 2060. Discontinuance where new state highway

When the Department of Transportation has constructed a highway over substantially the same route as that of a county ~~road~~ or town way and has recorded the plans of same in the registry of deeds, the county commissioners or municipal officers may, on their own motion, after notice and hearing, proceed to alter or discontinue the portion of said ~~county road way~~ not within the limits of said highway. They shall give notice and proceed as provided in ~~sections 2052 and 2054 to 2058~~ this chapter or chapter 304, as applicable, including serving any public utility having facilities located in said portion to be discontinued, and any aggrieved person shall have an appeal as therein provided. The plans prepared by the department and on record in the registry of deeds may be referred to in describing those portions of the county ~~road or town way~~ to be discontinued.

Sec. 5. 23 MRSA § 2062 is repealed.

Sec. 6. 23 MRSA c. 209 is repealed.

Sec. 7. 23 MRSA c. 303, as amended, is repealed.

Sec. 8. 23 MRSA c. 304 is enacted to read:

CHAPTER 304

ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§ 3021. Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meaning.

1. Highway purposes. "Highway purposes" means use as a town way or recreational access way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways or recreational access ways, including the securing of materials therefor; provision for the health, welfare and safety of the public using town ways or recreational access ways; provision for parking places, rest areas and preservation of scenic beauty along town ways or recreational access ways.

2. Public easement. "Public easement" means an easement held by a municipality for highway purposes or for purposes of public access to land

or water not otherwise connected to a public way. Private ways created pursuant to law and not subsequently discontinued before January 1, 1977, are public easements.

3. Recreational access way. "Recreational access way" means an area or strip of land designated and held by a municipality for use by the general public for the passage of pedestrians, horses and certain types of recreation vehicles, including bicycles, motorbikes, motorcycles and snowmobiles.

4. Town way. "Town way" means an area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle and all town or county ways not discontinued or abandoned before January 2, 1977.

§ 3022. Laying out of town ways and public easements

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way.

Any person may petition the municipal officers to lay out, alter or widen a town way.

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement.

§ 3023. Eminent domain

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective.

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first.

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or

owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first.

Unless specifically provided in the order of condemnation title to property taken for highway purposes after December 31, 1976 shall be in fee simple absolute.

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose.

§ 3024. Recording of proceedings

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect to it.

§ 3025. Dedication and acceptance

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily offers to transfer such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use.

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body.

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1976 shall be in fee simple.

§ 3026. Discontinuance of town ways

A municipality may terminate in whole or in part any interests held by it for highway purposes through discontinuance procedures or by abandonment. A municipality may discontinue a town way or public easement after the municipal officers have given actual or reasonable constructive notice to all abutting property owners and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.

Upon approval of the discontinuance order by the legislative body, and unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained for the purpose of permitting public access to property abutting the discontinued way and all remaining interests of the municipality shall pass to the abutting property owners to the center of the way.

§ 3027. Vacation of proposed town ways in land subdivision

Where proposed town ways have been described in an approved subdivision plan and lots have been sold with reference to the plan, the municipal officers may on their own initiative or petition of the abutting property owners, or on petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The procedures shall be the same as in the discontinuance of accepted town ways, except that damages and reasonable costs as determined by the municipal officers shall be paid by the petitioners.

A dedication of property or interest therein to the municipality described in an approved subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and filed with the appropriate registry of deeds.

§ 3028. Presumption of abandonment

A county or town way that has not been kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 20 consecutive years next prior to January 1, 1977, shall be presumed to be abandoned and thereby discontinued by operation of law. Any person affected by such a discontinuance, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. No municipality or its officials shall be liable for nonperformance of a legal duty with respect to such ways if it has in good faith relied upon a presumption of abandonment.

A discontinuance of a town way by abandonment shall relegate the status of the way to that of a public easement for access to abutting property.

§ 3029. Damages; appeal

Damages shall be determined using the methods in sections 154 through 154E except that references to the "commission" or the "board" shall mean the "municipal officers" and references to the "state" shall mean the "municipality."

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto.

Any person aggrieved by the action or nonaction of municipal officers or the municipal legislative body in proceedings under this chapter, other than a determination of damages, may appeal to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

§ 3030. Purchase; prescription

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use.

Sec. 9. 23 MRSA c. 309, as amended, is repealed.

STATEMENT OF FACT

The purpose of this bill is to clarify the authority and procedures by which municipalities acquire or terminate interests in property used for town ways or recreational access ways. It defines the confusing term "private way" to mean "public easement," consistent with court interpretations. (*Browne v. Connor*, 138 Me. 63 (1941)). It provides a method of relieving the public from the responsibility of restoring old abandoned roads that have never been formally discontinued. It clarifies municipal responsibility with respect to proposed town ways in land subdivisions. It eliminates involvement of the county in proceedings relating to the laying out and discontinuance of town ways. Under existing law the county commissioners may nullify actions taken by the municipal officers or the town meeting. This bill provides for an appeal directly to Superior Court at any stage of the proceedings. Consistent with current law, damages must be computed in the same manner as the State computes damages for land taken for highway purposes.