

TO: Aroostook County Commissioners
FROM: The Town of Hodgdon, Maine
RE: 23 M.R.S. § 2953(5) Appeal of London Road Winter Closure
DATE: September 6, 2023

POSITION STATEMENT

Petitioners have filed an appeal of the decision made at the Hodgdon Town Meeting on June 14, 2023, to approve the Select Board's order to close for winter maintenance a 0.60 miles section of the London Road (TW1506), beginning at the intersection of Westford Hill Road continuing east 0.60 miles on the London Road to address 126 London Road for a period of five (5) years during the months of November, December, January, February, March, and April. The Town of Hodgdon (the Town) respectfully requests that, based on the record and additional evidence to be provided at the hearing, the Commissioners find, pursuant to 23 M.R.S. § 2953, that it is unnecessary to maintain the 0.60 miles long portion of London Road during the months listed above; deny the Petition; and uphold the vote on Article 8 of the June 14, 2023 Town of Hodgdon Town Meeting.

Background

At issue in this appeal is a 0.60 miles long portion of London Road that is on the face of Westford Hill in the town of Hodgdon Maine. This portion of London Road is on a relatively steep slope of Westford Hill with a majority of the road being exposed and barren, making it prone to treacherous conditions as a result of wind and snow in the winter. Due to the dangerous conditions created by this terrain during winter, the Town has not maintained this portion of London Road in the winter for at least fifty-five (55) years and to the best of the knowledge of the Board of Selectmen the road has never been maintained by the town. Because of the location and condition of the road, it is not practicable to attempt to repair and replace this portion of London Road to make it possible for winter maintenance to be conducted.

As the former Hodgdon Town Manager, Jim Griffin, testified to when Petitioners previously appealed the closure of this portion of the London Road to the Aroostook County Commissioners, Petitioners were told when they purchased their land that this portion of the London Road has historically been closed to winter maintenance and would likely continue to be closed to winter maintenance for the foreseeable future. This statement is reinforced by the fact that there is signage at the entrance to the road which states the road is closed to winter maintenance. Both Petitioners and the other seasonal residential owner on this portion of London Road were aware of the winter road closure when they purchased their properties and planned accordingly by currently owning or purchasing other residences to serve them year-round. In fact, the other seasonal occupant has made arrangements with a nearby landowner to park his vehicle on their property and use an off-road vehicle to access his property when London Road is not passable.

In 2013, when the Town voted to close this portion of London Road to winter maintenance, the Wyneses petitioned the Aroostook County Commissioners to overturn the Town's decision. However, the Aroostook County Commissioners denied that petition in 2013 and found in favor of the Town. In response to that petition, the Aroostook County Commissioners upheld the decision of the Town finding that it was unnecessary to keep that portion of London Road open during the winter months. As such, the portion of London Road at issue in this petition continued to be closed to winter maintenance every year from 2013 to the present. Once again, Petitioners have brought the issue of the closure of this portion of London Road before the Aroostook County Commissioners on appeal, when the only minor changes in circumstances since the last appeal include construction by Petitioners and the construction of a seasonal residence that was clearly constructed with the understanding and intent that it could not be accessed via London Road during the months when it is closed to winter maintenance.

Argument

The Commissioners should uphold the Town's decision to close the section of the London Road on appeal because the Town has clearly demonstrated that winter maintenance of this particular portion of the London Road is unnecessary.

Under Maine law, a town may close any road or portion thereof, in the municipality that is 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. 23 M.R.S. § 2953(1).

If on appeal, the Commissioners find that winter maintenance of the road is unnecessary, as was found by the Town, the Commissioners must uphold the decision of the Town. The Petitioners argue that the list of factors to be considered when determining if winter maintenance of a road is unnecessary is exclusive. However, this logically cannot be the case. First of all, the statute does not contain any language that upon its reasonable interpretation purports to limit the factors for consideration when closing a road to the population, use, and travel thereon. Reference to these factors simply means that a decision cannot be rendered without taking these three things into consideration. Using the Petitioners' logic, any road that has even one person living on it, using it, or traveling upon it at any time during the winter, cannot be closed and must be maintained because the cost of that maintenance cannot be considered in determining whether it is appropriate to close the road. If that is the case, municipalities would only be able to close roads that are not used by even a single person during the winter. Municipalities would also be forced to expend whatever amount of money is necessary to plow any road that a resident intends to travel upon in the winter even if they are the only person who intends to travel upon that road and the cost is exorbitant. This is an unreasonable interpretation of the language in the statute and simply could not have been the intention of the legislature when the statute was drafted. Should the Commissioners adopt the interpretation of the statute put forth by the Petitioners, it would essentially render § 2953 a nullity, as all it would take is one person stating they intend to use the

road in the winter to prevent a municipality from being able to close that road to winter maintenance.

The Petitioners argue that they have demonstrated a sufficient population, use and travel on London Road to prohibit the town from closing it for winter maintenance because there are three (3) seasonal residential structures and one (1) seasonal business on this portion of London Road. However, two (2) of the seasonal residential properties and the seasonal business belong to the petitioners and the owner of the third seasonal residential property has not expressed any need or desire for London Road to remain open throughout the winter months throughout the entire road closure process. The Petitioners' claim that there has been an increase in population and traffic on this section of London Road since the last time this issue was before the Aroostook County Commissioners. However, the only increase in population and traffic comes during the time when London Road is open to maintenance, as the only other seasonal occupant of the closed portion of London Road has not expressed any desire to have the road open in the winter. The Petitioners reference an intent to relocate to one of the residential properties full-time, that intensity of use may increase, and a possibility that lots may be further subdivided and the population could increase. Again, the petitioners seek to impose an insurmountable burden on towns seeking to close a road to winter maintenance. Based on the argument put forth by the petitioners, any road that hypothetically could be further developed at some point in the future cannot be closed to winter maintenance because someone could possibly plan to move onto a portion of the closed road at some point in the future. Furthermore, the Petitioners have admitted that all development on London Road has been undertaken with an understanding that access to that portion of the road will be seasonal unless and until the Town decides to keep the road open in the winter.

The closing of a public way in the winter does not in any way encourage the violation of Maine law. This is the equivalent of saying that because a municipality has not demolished tax acquired property, it is encouraging people to violate Maine law by trespassing upon the property. The Legislature has put forth a statute providing a mechanism for municipalities to use when it has decided the closure of a road to winter maintenance is appropriate.

The Petitioners allege that the Select Board routinely overruled the recommendations of the Road Committee and arbitrarily increased anticipated costs of the project to repair London Road. However, the opinions expressed by Arthur Sloat that Petitioners attribute to the Road Committee are in fact personal opinions of Mr. Sloat, and they do not reflect the opinions expressed by the three (3) person Road Committee and the advising grader operator as a whole. Petitioners attribute Mr. Sloat's opinions to the Road Committee due to the fact that he is the chairman of the committee, but this is not the case due to the fact that the other two members of the Road Committee have expressed the complete opposite viewpoint. Also, when petitioners asked about these "unnecessary" expenses, the Board explained its legitimate reasons for the expenses the petitioners believe are "unnecessary." The reasons set forth by the Select Board include the safety of travelers on the road (referencing the width of road), the liability of the town (referencing the use of a turnaround instead of using the Petitioners' driveway), and the

desire to fix the road the right way the first time and not waste limited municipal funds by having to come back and fix the road again in a few years. Cost is a factor that must be considered in every decision made by a municipality or else all municipalities would provide each and every service or opportunity that has even a remote chance of providing a benefit to a single resident. While cost was likely a factor in making this decision, it was not the only factor in making the decision. In fact, the cost was considered relevant to the population, use and travel on London Road to conduct a cost benefit analysis prior to determining that the town must close the road because opening the road for potential use by one family cannot justify the expense of improving the road so it can be plowed and the additional expense of plowing the road all winter long. The Petitioners also assert that the Facebook post used to inform townspeople of the Town Meeting inappropriately emphasized the cost of providing winter maintenance to London Road. However, there was no suggestion in the Facebook post that the costs of keeping the road open were high. The post simply stated that part of the discussion around whether or not the road would be closed was to include discussion of the costs.

The Petitioners make reference to decisions rendered by the Knox County Commissioners in support of their argument. However, the decisions rendered in Knox County arose out of significantly different facts than the situation at hand. Those decisions were based on a professional caretaker routinely gaining access to multiple residences, all owned by different owners, and multiple year-round residents on the island of Vinalhaven. In that situation the group of petitioners included year-round residents living on the closed roads, the closure was sought to be reversed because routine access to the properties was required due to habitation and construction on the closed roads, and most importantly, the municipality supported the alteration to the order of closure, but was powerless to do anything because it had not been a year since the closure determination was made and 23 M.R.S. 2953 prevents the municipality from altering the closure determination within one year of the initial determination. Thus, the decisions put forth by petitioners are not analogous to the situation at hand where one couple is seeking reversal of the closure determination because of an intent to potentially access seasonal homes, built with the understanding that access would be limited in the winter for the foreseeable future, when the Town has determined winter maintenance on that portion of the road is unnecessary.

Conclusion

For the above mentioned reasons, the Town of Hodgdon respectfully requests the Commissioners find that, pursuant to the language set forth in 23 M.R.S. § 2953, it is not necessary for the Town to provide winter maintenance to the 0.60 miles long portion of London Road, identified above, during the months of November through April; uphold the decision of the Town to close that portion of London Road during the months of November through April; and deny the petition.

Yours truly,

CURRIER, TRASK & DUNLEAVY

Richard L. Currier, Esq.
RLC/jtf