

MINUTES

ROAD CLOSURE APPEAL - WYNES VS TOWN OF HODGDON - SEPTEMBER 8, 2023 - 1:00 PM
SHERIFF'S OFFICE BUILDING – 25 SCHOOL ST, HOULTON
2ND FLOOR CONFERENCE ROOM

PRESENT

Paul J. Underwood, Chair, County Commissioners
Norman L. Fournier, County Commissioner
William T. Dobbins, County Commissioner
Ryan D. Pelletier, County Administrator
Tammy Pelletier, Operations Assistant
Stephen Wagner, Attorney - Rudman Winchell
Ryan Licanecz, Associate - Rudman Winchell
Deborah Jagow Wynes, Co-Appellant
Timothy Wynes, Co-Appellant
Robert Burgess III, Property Owner, London Rd
Richard Currier, Attorney - Currier, Trask, Dunleavy
Jacob Flewelling, Associate - Currier, Trask, Dunleavy
Darcy Oliver, Town Manager - Hodgdon
Shiela Murchie, Selectman - Hodgdon
Roger Larson, Selectman - Hodgdon
Joel Duff, Selectman - Hodgdon
John Gaddis, Selectman - Hodgdon
Clayton Quint, Selectman - Hodgdon
Richard Tidd, Head Selectman - Hodgdon
Sam Henderson, Selectman - Hodgdon
Dean Porter, Resident of Hodgdon
Clarissa Porter, Resident of Hodgdon

ART. 1. Chair Paul J. Underwood called the meeting to order at 1:00 pm.

ART. 2. A) Chair Paul J. Underwood requested an amendment to Article 2 to include 2. B) Disclosure statement by Commissioner William T. Dobbins.

MOTION:

Motion by Norman L. Fournier and seconded by William T. Dobbins to approve the agenda as amended.

VOTE:

Motion voted on and passed.

B) Commissioner William T. Dobbins read a disclosure statement that he was a select person for the Town of Hodgdon between April 2018 and June 2022. Currently, there is no conflict of interest with his personal or professional circumstances in hearing this appeal.

Attorneys Stephen Wagner and Richard Currier had no objections to Commissioner Dobbins hearing the appeal.

ART. 3. Chair Paul J. Underwood provided the structure for the hearing. The Appellant will present their case first, and the Town of Hodgdon will go second, followed by questions from both sides and

the Board of Commissioners. A decision will be made within 30 days and sent by mail to all parties. Chair Underwood reiterated to everyone that this is not a court of law.

Mr. Ryan Pelletier, County Administrator, administered the Oath to Witness for Mr. Stephen Wagner, attorney for the Appellant. Mr. Wagner began by summarizing the position statement previously submitted to the record. In order for a town to discontinue a road for winter maintenance it must be deemed unnecessary based on population, use, and travel. The town vote improperly focused on cost, which is not part of the statute for determining a winter road closure. 2 supporting affidavits were also received by the Commissioners' Office on September 7, 2023. Mr. Robert Burgess III is attending in person to support his statements, and a notarized copy of the statement from Mr. James Buchanan was admitted to the record. Additionally, exhibits containing a Google map of London Rd and additional Facebook posts were also submitted to the record after no objections from Mr. Currier, attorney for the Town of Hodgdon.

Commissioner Dobbins asked Mr. Wagner for the definition of population. Mr. Wagner indicated that the statute does not include a specific definition. He believes that population in this instance is not only the population of the area of London Rd, but the surrounding population that would use the road, including visitors to the area. Population is not necessarily referring to a head count of people who have a domicile on London Rd, but any population that could make use of the road if it were to be open year-round.

Mr. Pelletier administered the Oath to Witness for Mrs. Deborah Jagow Wynes, Co-Appellant. Mrs. Jagow Wynes, verified that the statements made in the materials submitted to the Commissioners by Mr. Wagner were accurate and true. She and her husband purchased the property on London Road in 2002. They were aware that the road was posted as closed during the winter. They had numerous conversations with the prior town manager, Mr. Jim Griffin, regarding the road closure and the process. During those conversations, they were led to believe that the road could be opened in the future as more land was developed and there became a need. Mr. Griffin had shared that there was a five (5) year plan to spread out the cost of the improvements needed to open the road during the winter in the future. In 2010, they built their home on the property. In 2012 she lost her job in New York and they moved to Maine. They own a home in Monticello where they reside during the winter months. They have made many improvements to the land including a foundation, buildings, installing power lines, septic, and well systems. Very busy road in the summertime. They appealed the winter road closure for London Road in 2013 to the Board of Commissioners, which was denied. Since that time, they have opened a popcorn stand and are in the process of installing a commercial kitchen to support their business on the property. Mrs. Jagow Wynes indicated that it is her family's hope to be able to move to the property full-time. They have a disabled relative who is going to need to come to live with them and they are building a living space for her in the same building as the commercial kitchen. In 2018, they requested a road review which was also declined. They made the request in 2022 to see if the road could be opened for the winter. The town created a Road Committee to determine what needed to be done to bring the road up to standards that would make it safe to plow and determine the costs involved. Mrs. Jagow Wynes indicated that the specifications and standards kept changing and becoming more expensive. During the June 7th meeting, the town discussed the contract for plowing, for which they said the 0.6-mile portion of London Road would be \$13,500 per year. The contract indicated that the fee was \$5,400/mile with all additional routes needing to be negotiated. Her husband had gotten bids that were much lower and he could speak to that. There was no bidding process for the plowing of London Road. There were bids for bringing the road up to the standards recommended by the road committee in order for it to be open/plowable. The costs involved were highlighted in several Facebook posts which Mrs. Jagow Wynes felt were inflammatory due to the language and the use of all capital letters in the portion of the notice that was relevant to London Rd. Mrs. Jagow Wynes went to the town office to talk with Mrs. Darcy Oliver, Town Manager, about the post. She refused to take it down and said it was not how she meant it. It was just how she talked and she used those

terms regularly. Mrs. Jagow Wynes believes that the Facebook posts and subsequent discussions during town meetings only focused on the cost of opening the road and the potential that it would increase taxes for residents. There was no focus on how the property has been developed by the Wynes', how another property has since been built, how their business brings in tourists/travelers to the area, or any of the things that had positive impacts on the land and town. They need the road open in the winter in order to start living there year-round. Her husband plows when he is able, but he is gone for weeks at a time for his job, so the snow can pile up and make it difficult to access their property and buildings. Not having access in the winter has liability issues and prevents them from properly maintaining their buildings. Mrs. Jagow Wynes stated that the town advised her that they neither give permission nor condone private citizens plowing roads that the town has closed for the winter months. She also indicated that at one of the town meetings, another resident had indicated that he was also plowing a road that the town had closed for winter so that he could access his property. Mrs. Jagow Wynes indicated that the town made no comment to this gentleman like they had to her and her husband.

Mr. Pelletier administered the Oath to Witness for Mr. Richard Currier, attorney for the Town of Hodgdon. Mr. Currier then asked Mrs. Jagow Wynes about the need for a turnaround for the plow truck. She responded that she has seen other areas of town where the plow truck will turn in someone's driveway. She said no one had discussed that with her but that she and her husband were not opposed to letting the town use their driveway as the turnaround without the need to have to modify the road to accommodate a plow turnaround. Mr. Currier asked about private maintenance of roads which was discussed at the meeting on June 7, 2023. Mrs. Jagow Wynes responded that yes, others indicated that they plow roads that are closed for the winter to access their properties. The town did not respond or make comment about the private plowing of closed winter roads. Mr. Currier asked Mrs. Jagow Wynes if she believed if cost should be a consideration for the town when determining if a road should be open or closed for the winter. Mrs. Jagow Wynes responded "yes."

Mr. Wagner asked Mrs. Jagow Wynes if she was an attorney or an expert who understood the statutes that govern winter road closure in the state of Maine, to which she responded she was not. Mr. Wagner reiterated that the statute was specific to 'population, use, and travel' with no mention of cost as a factor.

Chair Underwood asked if the Wynes' had gotten town approval to put in the power lines, to which Mrs. Jagow Wynes responded in the negative. She stated that were conversations with the prior town manager, Mr. Griffin, but that there was no formal request or approval made when power lines were installed on that portion of London Road to accommodate their property.

Commissioner Fournier asked about the 2 affidavits that were received overnight that were unsigned/unnotarized, to which Mr. Wagner responded that the statement from Mr. James Buchanan has been notarized and that copy was submitted to the Commissioners at the beginning of the hearing. The second affidavit was from Mr. Robert Burgess III, who was present at the hearing to provide in person testimony in support of the road opening in the winter.

Mr. Pelletier administered the Oath to Witness for Mr. Timothy Wynes, Co-Appellant. Mr. Wynes confirmed his wife's statements that he does, in fact, plow the road during the winter when he is home, but that his work keeps him away for periods of time and so he is unable to keep the road clear consistently for access to their property. He has been plowing the road for 8 years on his own using a truck with a plow and a tractor with a blower if the situation requires it. The road doesn't drift much if he is able to keep it clean versus having to wait a week after a storm where the wind has blown all the snow. Mr. Wagner asked if others benefited from his plowing of the road, to which Mr. Wynes responded that they do. He's seen multiple vehicles use the road in the winter and has even seen a Dead River truck come up the road in the winter. Mr. Wagner asked about the bids he had received for plowing that section of London Road. Mr.

Wynes responded that he has gotten quotes from others to plow the road when he is not able to and it was \$100/hour which is huge difference between the bid the town got for plowing.

Mr. Currier asked Mr. Wynes details about plowing the road, what equipment is used, if he finds it difficult or dangerous. Mr. Wynes reiterated his prior testimony that he uses a truck with a plow and sometimes a tractor with a blower attachment. He has never had any problems plowing and once it is done a few times, a bank forms on the right-hand side of the road that would stop cars from sliding over the side of the slope. Mr. Currier clarified that the bids Mr. Wynes obtained for plowing were simply a per hour, per occurrence and not a full bid for doing the plowing year-round. Mr. Wynes confirmed that the bid was hourly and per occurrence. Mr. Currier asked if Mr. Wynes believed that cost should be a consideration when determining if the town should maintain a road in the winter. Mr. Wynes responded "yes."

Mr. Wagner asked Mr. Wynes if he was an attorney or an expert who understood the statutes that govern winter road closure in the state of Maine, to which he responded he was not. Mr. Wagner reiterated that the statute was specific to 'population, use, and travel' with no mention of cost as a factor.

Mr. Pelletier administered the Oath to Witness for Mr. Robert Burgess III, a property owner on London Road. Mr. Wagner asked Mr. Burgess III where he lived and why he made the trip up to Maine for this hearing. Mr. Burgess III responded that he lives in Rhode Island with his wife and 2 young children. He made the trip because his and his wife's schedules allowed for this time off and since he was going to be in the area, he wanted to support the need to open the road. He purchased the property in 2018 and built his home in 2019. He was aware that the road was closed in the winter when he purchased the property and when he built his home. He had many conversations with the prior town manager, Mr. Griffin, that were always optimistic about opening the road. Mr. Griffin indicated to Mr. Burgess III that they were doing a little work at a time to the road so that it could be opened to the public in the future. Since those conversations, the town has widened the road and the cleared the trees back to make it possible to plow in the winter. Mr. Burgess III admitted that he did not really understand everything that went into closing a road or opening a road, but that he felt reassured by Mr. Griffin that it was a possibility. He stated that he comes here to get rid of all the drama and have peace. He has been to prior town meetings on this subject, but has never spoken publicly or made a request to the town regarding the road in order to avoid the drama. He visits his home at least 2 times per month in the summer and at least 1 time a month in the winter. He parks his vehicle at a neighbor's home where the road is plowed and then snowmobiles into his property. His wife and children are not able to come with him when he goes to the property in the winter as his children are only 1 and 3 and are too young to be snowmobiling in to a home that has no winter road access. Mr. Burgess enjoys all seasons and wants to be able to enjoy all that the area has to offer all year round with this family and eventually plans to move his family there permanently. He is also concerned with any emergency or maintenance to his property over the winter months. A delay in access could be devastating for his property.

Chair Underwood asked if there were any other witnesses for the Appellants, to which Mr. Wagner replied 'no.' Chair Underwood then advised Mr. Currier that he could begin with his presentation.

Mr. Pelletier administered the Oath to Witness for Mrs. Darcy Oliver, Town Manager, Hodgdon. Mrs. Oliver stated that she is new to the Town Manager role and admits that she does know a lot about town business, but does not know anything about roads. The prior town manager was in place for 30 years and knew everything. The decision was made to form a road committee that would review all roads, not just London Rd, and make recommendations to the town about road maintenance, closures, etc. Mrs. Oliver stated that the portion of London Road in question has never been opened during the winter months. The road is very dangerous. It is narrow,

slope/slant to one side and a steep slope on the right makes it dangerous for the road to be plowed. The road is not a thruway or connector for point A to point B and does not require year-round access. Mrs. Oliver confirmed that the town did not put out a request for bids for plowing the road. In the past, no one would bid on it due to the significant danger it posed to the contractors. The only bid was from A. Quint and the bid was higher than his standard per mile rate due to the danger posed by plowing the road. The town did get bids for bringing the road up to standards. Those standards did change from the first recommendation the Road Committee submitted because members of the Selectboard did not believe that the first set of standards/requirements were accurate. The town had the estimates redone using the proper tools to ensure that they had a full understanding of what was needed to bring the road up to a safe, plowable standard. They did get 3 bids, of which they selected the lowest one at \$148k. Mrs. Oliver explained that her Facebook posts were simply how she spoke and common phrases she uses. They were not meant to be inflammatory, but rather to be informational to the residents of Hodgdon so they could be fully informed of the town business and the matter at hand regarding the request to open London Road and what that would require, including how much that would cost the town and taxpayers. London Road was the only winter road closure that was being brought up for discussion. During the meeting, a resident indicated that he was plowing his closed road to access his home. Mrs. Oliver said the town was unaware that this was happening and that they did not make comment at the time of the meeting. They had previously advised the Wynes' that the town could not approve or condone private plowing of a town road. Mrs. Oliver also noted that if anyone was using a posted closed road, that it was against the law and they would be driving on that road illegally. The town voted overwhelmingly to keep the road closed. There were over 200 registered voters at the town meeting where road closures were being voted on. 5 voted to keep this section of London Road open while the remaining voters voted for its closure instead of approving the costs needed to bring the road up to a safe standard that would allow the road to be traveled on year-round. Mrs. Oliver reiterated that the town has not ignored the requests from the Wynes'. At each occurrence that this has been brought up, the town has taken steps to determine what is needed and the costs involved to allow the road to open. They have entertained every request to the best of their ability. The road is simply not safe for travel in the winter and requires an excessive amount of work and funding in order to make it safe. There are not enough year-round residents or thruway traffic to make it necessary to keep the road open in the winter. Mrs. Oliver stated that the Wynes' and other property owners were fully aware of the winter road closure before they even purchased their properties. There was never a guarantee that the road would ever be open over the winter months. The town did agree to review London Road every 5 years instead of every 10 at the request of the Wynes'.

Mr. Pelletier administered the Oath to Witness for Mrs. Sheila Murchie, Selectman of the Town of Hodgdon. Mrs. Murchie stated that the road is dangerous, steep, requires a lot of work to make it safe to plow. The road needs to be widened, ditches need to be dug, guard rails need to be put in place, the slant/slope of the road needs to be engineered to be the complete opposite the way the slant/slope is now to allow for proper runoff of water from the mountain and to prevent vehicles from sliding off the road way and down the mountain on the right-hand side of the roadway. Cost needs to be a part of the decision because you can't bankrupt a town to keep a dangerous road open that only 2 families live on seasonally and the business located on the property is also seasonal. Mrs. Murchie explained that her understanding of population was the residents of the property where the road would be closed. In this case, that's 2 seasonal homes, 1 season business and 1 undeveloped property that is currently starting to be built upon. The Wynes' account for 1 home, 1 business and are currently developing another building. It doesn't make sense to open a dangerous road for 2 people or have the town incur the cost to make it safe to be open year-round when the town is already struggling to stay within its budget.

Commissioner Dobbins asked Mrs. Murchie how she would classify the road and she responded "as a farm rd."

Mr. Pelletier administered the Oath to Witness for Mr. Roger Larson, Selectman of the Town of Hodgdon. Mr. Larson stated that this portion of London Road is dangerous and will be very expensive to be made safe for everyday travel in the winter. He believes that the town has already spent too much of its money on work trying to improve the road. There are other more traveled roads that should be getting the attention than this small section of road is getting. He believes the town needs to stop spending money on London Road.

Mr. Pelletier administered the Oath to Witness for Mr. Joel Duff, Selectman of the Town of Hodgdon. Mr. Currier asked Mr. Duff about his knowledge and experience with roads. Mr. Duff explained that he has built and maintained roads for many years. He knew that the first specifications recommended by the road committee were not accurate. He explained that measurements were done using a board on the road to determine the amount of material needed to build up the road so it slanted the correct way. He went and used the proper tools to determine what was needed for material and it was significantly more than what the first recommendation indicated. The revised recommendation is what was put out to bid. Mr. Duff explained that the road needs a lot of work to be brought up to standards and for it to be deemed safe for winter travel and winter maintenance. The road is a significant danger to anyone who drives on it in the winter. The road is on the side of a mountain, it slopes the wrong way, there are no ditches for water runoff, so all the water comes down the mountain across the road and there is no bank or rail on the other side so if you slide, you will topple down the side of the mountain as there is nothing to catch you or keep you on the road. Building up the road so that it slants the correct way for water runoff to not cross over the road, will only cause the steepness of the slope on the side of the road to become even more steep, still posing a danger should anyone ever go off the road. The only place to go is down the mountain.

Commissioner Fournier asked Mr. Duff if the road would ever meet state DOT standards, to which he responded, "no."

Mr. Wagner impressed upon the Board of Commissioners that the statute is clear that when determining to close a road, that the only thing that plays a part in that decision is population, use and travel. Cost is not part of the statute. That might be bad policy, but we have to stay within the bounds of the current statute. In order for a road to close, winter maintenance must be deemed unnecessary based on population, use, and travel. In this instance, you have 3 property owners who all have plans to live year-round on their properties on London Rd. However, the road closure prevents that. The statute does not indicate that cost should be a deciding factor, or whether a road is dangerous, or safe should have any impact on the winter road closure process. It is simply a matter of necessity based on population, use, and traffic. The Wynes' have significantly improved their property, as have other property owners and they require year-round access. Mr. Wagner cited 2 cases to support his position that population, use, and travel are exhaustive lists and no other factor should be included in determining road closure; 2012 ME 53 Page 21 & 2008 ME 184 Page 13.

Mr. Currier impressed upon the Board of Commissioners that cost needs to be a factor in all town decisions as they operate under a strict budget. The town has a liability if the road is not made safe to be open and so the cost to make that road safe must be considered. Property owners knew this road was closed in the winter months when they purchased and subsequently built on their properties and made improvements. The Town of Hodgdon followed all the rules and regulations required to designate the winter road closure for this section of London Road and the town's vote should be upheld.

ART. 4. Adjournment.

MOTION:

A motion was made by Norman Fournier and seconded by William Dobbins to adjourn the meeting at 4:07 pm.

VOTE:

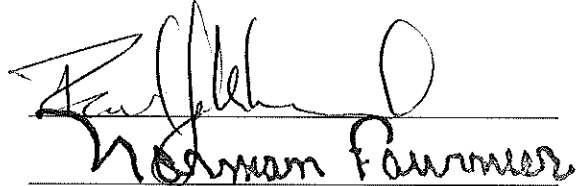
Motion voted and passed.

ATTEST: A True Copy

of Commissioners' Meeting



Ryan D. Pelletier
County Administrator



AROOSTOOK COUNTY COMMISSIONERS
DATE: September 20, 2023