

Town of Concord Partially Abandons Estabrook Lawsuit

Oct 23, 2019

The Town as of October 21, 2019 has announced they will abandon a part of the lawsuit regarding the Estabrook Trail. The Town will no longer seek to obtain rights to the landowners' Trail based on recent public use, but will limit the lawsuit to the claim that the Town has rights due to the historic legal status of the Trail.

The original claim by the Town that the public had gained rights because of "long standing public use" has now been withdrawn. *That claim never had any foundation in the law.* The law does provide for *individuals* to petition courts for rights over private land by "open, notorious, continuous, and unpermitted use over a 20 year period", and courts can award such rights as a documented "prescriptive easement". However, the Town's claim in this case always had the problem that no court has ever found that *the public* has obtained rights on private land due to recreational use. A key reason why the courts have never found such rights is because it would essentially force all landowners to fence their properties to prevent the problem where a few people walking on their land can give rise to public rights over time; such a legal precedent would likely result in closure of most trails on private land in Massachusetts where landowners have allowed public use.

In this case, the fact that the landowners had very specifically permitted the public on their land, installed signs, and even built a parking area for the public, made it clear that public use was permitted, and courts have consistently ruled that if the owners permit use then users in any case are prevented from gaining prescriptive rights.

The claims regarding "public use" made the case very complex, requiring the testimony of many witnesses and citizens. The withdrawal of these claims will dramatically simplify the case. Unfortunately, a great deal of cost of this suit to the Town and the owners has been due to the "public use" aspects of the case, costs which could have been avoided if the Town had evaluated these ill-conceived claims earlier.

The Town has said it will now focus the case on the claim that the Estabrook Trail is an old public way, despite the fact that the Town has been unable to produce any documentation to support that claim. No court has ever found a way with the history of Estabrook Trail to be a public way or to have a public right of way. Concord and surrounding Towns have always treated such old trails as completely private. The Town in fact now admits that the Trail is privately owned.

Many of the historical facts and issues important to this case are known by long-term Concord citizens. Unfortunately, this knowledge was not considered, due to the fact that this lawsuit was developed in secret, in violation of the Open Meeting Laws, and without any public comment or input.

Estabrook Trail leads to no public lands; the landowners intend to protect their lands as a nature preserve and continue to assert that they, like any private landowners, have the right to manage the nature and volume of public use of their land.

Additional information available at www.estabrookfacts.org