

Trial Portion of the Estabrook Lawsuit Concludes

June 11, 2021

The 2-week trial portion of the Estabrook lawsuit has concluded. Land Court cases include a trial portion when facts and evidence are introduced. By mid 2022, a decision will be rendered. Unlike a jury case where the trial leads to a decision, in the land court the trial is an intermediate step towards the preparation of legal arguments. After the legal arguments are submitted in the fall of 2021, the court will have considerable time to consider the extensive evidence and legal history. From the evidence at trial, many of the confusing issues in this case were cleared up, and it is now possible to focus on the issues where a dispute remains.

In this lawsuit the Town attempting to seize control of a private trail that leads only to private land. The Town, at the urging of some residents, sued the owners and seeks to exploit the owner's land for unlimited recreational purposes including dog walking, mountain biking, and other uses. The owners of the land seek to manage their lands as a nature preserve and limit the types of public use. This case, brought by the Town, has cost Concord citizens over one million six-hundred thousand dollars and is still climbing.

There is no dispute that the disputed and discontinued Estabrook Trail (the Trail) is a private trail leading only to private land. There is no dispute that the Town must demonstrate two things to make their case: that the Trail was once a public way with public rights, and further that it was **not** discontinued as a public way in 1932. There is no dispute that the Trail was discontinued in 1932 and ordered to be henceforward a private way, and to be posted "to warn the public against entering thereon." There is no dispute that many old roads have been discontinued in the same manner in the Commonwealth, and no such road has ever been found by a court to have public rights.

Many of the conflicting statements and myths about the history of the Trail were resolved in trial through evidence and testimony.

There are very few relevant issues of history that remain in dispute. The Town admits an absence of direct evidence that the Trail was ever a road, but argues by inuendo that it "must have been a public way." The defense replies that these theories are speculation, that the evidence shows the Trail to be private and unused by the public throughout its history, and that there is ample evidence that Lowell Road and Monument Street were the roads north that were occupied, maintained, and used by the public for travel.

The Town's own historic records have only a few mentions of the Trail at all, which describe it as a "wood (logging) road...little better than ruts through a piece of woodland" used for "teaming of wood," and "this road has little travel excepting that which is caused by the owners of land near it."

The core legal question of ***the effect of the 1932 discontinuance*** is whether the road was actually discontinued or not. The Town agrees that the discontinuance action took place, and made the Trail private, but proposes a new theory that it did not make it *truly* private, but rather privately owned with a public easement of passage. The Town

further agrees that the Trail is supposed to be posted “*to warn the public against entering thereon*” but argues such a sign does not mean the public is not to enter, but instead means that the “that the road is unmaintained” and the public is invited to enter. No court has ever accepted these arguments.

In theory, the law says that owners of land have a right to decide who can use it and for what purpose. In this case, the owners began in the 1990s to allow public use of some of their lands as “neighborly accommodation.” By 2015, the owners’ hospitality was overwhelmed and the growing number of visitors on their Trail was compromising the owners’ common goal to keep the land as a nature preserve. The owners sought the help of the Town to fix the problem, but were sued. Some visitors expressed entitlement, a mistaken belief that the land was public, and demanded the Town seize control of the owner’s land. This case reminds landowners of the extreme risks of allowing the public on private land.

Additional information available at www.estabrookfacts.org