

PLANNING AND DEVELOPING COMMITTEE

HB 5082 5092

We strongly feel that property owners should be directly notified when changes take place that could ultimately devalue or negatively impact their property in any way.

Our situation has been ongoing for over a decade, which makes it difficult to be brief, but I will do my best to explain it in as few words as possible.

Vinny's brother purchased 6 acres of land abutting Perry Road, in Lebanon, in 1998. He applied for a building permit, but was denied because he did not have unobstructed access to a public road. He successfully petitioned the town to discontinue the road in December 2002. After 1959, upon the enactment of CGS 13a-55, abutters rights were protected on discontinued roads.

We, then purchased this property in 2004, believing our rights were protected under our legal system. However, when we applied for a building permit, we were denied for the same reason. In the opinion of the town's attorney, Perry Road had long since been abandoned, and only a court could determine who had rights to the road.

So, in 2009, we sued the property owner who surrounded our property for the 300 foot right of way to the nearest public road.

The judge ruled that the town discontinued this road back in 1937, therefore we were not protected by virtue of 13a-55, and ultimately have no rights whatsoever to Perry Road. Our stipulated facts in the case were as follows: that the town of Lebanon was and always has been, responsible for the taxes for the road; the 1937 selectmen and the town voted to CLOSE the road, and produced no writing as to a discontinuance; the town held two subsequent meetings regarding Perry Road since it's closing in 37. You have to remember, if a town discontinues a road, they give up their legal rights to the road, and may not entertain any further action on something they no longer own.

CGS13a-49 clearly states "The selectmen of any town may, subject to approval by a majority vote at a regular or special town meeting, by a

writing signed by them, discontinue any highway . . “. The only thing those 1937 selectmen signed was to attest to the fact that a town meeting had taken place. The word they used was CLOSED, and this is not a precise act of discontinuance as the statute calls for. Our decision ultimately collapsed a two part process into one, and rendered the writing requirement useless. Our precedent, now makes closed and discontinued and abandoned all mean the same thing. In case law the terms discontinued and abandoned CAN be interchanged. However, closed may not.

Municipalities should not have a problem with having to send a certified letter to any abutters negatively affected by an action. There are dozens of cases on the books where towns are held compensable for the destruction of a person’s only access to their property; or for the devaluation of someone’s property. A certified letter is certainly less costly to the town than a potential law suit.

In our case, a year after Lebanon discontinued Perry Road, the town’s attorney wrote a three page letter stating the 2002 discontinuance did not gain us access to our property, and that a court would have to decide. This letter was placed in an obscure file in the selectman’s office, not accessible to the public. Had that information been mailed to the abutters, or better yet, placed on the property card for that land, we may have chosen not to purchase this property.

We feel the judge did not apply the law in the way the Legislature intended. We also know, that clarification of this statute can not help us with our landlocked land. However, YOU have the power to help preventing this from happening to anyone in the future. Why shouldn’t we do everything possible to protect the rights of the people?

For eleven years we have fought for our constitutional rights to enjoy our property. We hope you will realize the significance of improving a statute that has been misconstrued and miserably failed.

Thank you for your time and your efforts to help improve our laws.

Teri Davis and Vincent Savalle

We hired Gerry Stefon, a surveyor who's expertise is researching ancient highways. He has discovered that Lebanon was deeded Perry Rd. in 1769 and to present day, still owns the road. Lebanon legally has the authority to grant us a right of way, regardless of any court decision. We are in the process of applying for a permit.

Had Lebanon known the status of their road, we would never have spend 6 years in court fighting for rights we had all along.