

**DEBRA PAUL vs. TOWN OF LIBERTY**  
**ROAD PETITION HEARING #2014-1**  
**NOVEMBER 13, 2014**  
**3:00 P.M.**

**PRESENT:** Waldo County Commissioners William D. Shorey, Amy R. Fowler and Betty I. Johnson; Petitioner - Debra Paul, represented by Attorney Riley Fenner; Defendants – Liberty Selectmen Stephen Chapin and James Caldwell, represented by Attorney William Kelly; Attorney Lee Woodward to assist the Waldo County Commissioners; County Clerk Barbara Arseneau and Deputy County Clerk Marilyn Saucier to record the minutes. Also present as observers were Roberta Manter of ROADWays (Residents and Owners on Abandoned and Discontinued Ways), George Paul, Autumn Birt, Adam Paul, Liberty Road Commissioner Tammy Reynolds, Judith A. Fuller, Andrea Caldwell, Susan Chapin, Thomas Birmingham, Wilbur Birmingham, Warren Steeves, John Roswarg, Liberty Fire Chief William Gillespie, Pamela Chase and one other gentleman whose name was illegible.

Prior to the start of the hearing, Attorney Lee Woodward asked the Commissioners and the other two attorneys to meet with him in the hallway to discuss potential issues with holding the hearing.

After the attorneys discussed matters, they met individually with the Plaintiff and then the Defendant to explain what had been discussed.

At approximately 3:20, Commissioner William Shorey opened the hearing and asked if there were any comments.

Defendants' Attorney William Kelly: There was a meeting between Lee Woodward, the County Commissioners attorney, as well Mr. Fenner, myself - Bill Kelly - and we talked about the very narrow limitations of what the statute regarding abandonment provides in terms of the scope of testimony today and about the eventuality of two selectmen out of three selectmen or some board members perhaps making a decision that the road in question has in fact been abandoned, which they have the statutory right to do and then their determination is binding until the court says otherwise. The petition of the petitioners is premised on the idea that there is an obligation of the Town of Liberty to maintain a portion of the Bolin Road in question, and if it has been abandoned as a town way, then that premise fails. In our discussion prior to the hearing, there was some recognition of the somewhat unusual nature of the statute in that what the town has to present to you today is a demonstration of the select board members having a good faith belief that the road is abandoned, not to demonstrate factually that it is beyond a question beyond some legal standard and we have, as was discussed as in the colloquy before the start of this hearing, we can present significant background information to demonstrate that these two select board members that will testify have that belief. We could go through all of that, have them stand up and testify that they do have such a good faith belief, and then we all would have been here for a long time without really much

satisfaction for anyone. We also discussed the fact that the proper forum for final determination as to the abandonment, or lack of abandonment of the section of the Bolin Road in question, would be in the Waldo County Superior Court, and so what we have discussed is that it might make some sense to, considering the homework the town has done and what their testimony would be, and sort of offering this as a proffer for the record, that we agree to disagree that we move forward from today without a finding by the County Commissioners and, therefore, there would be no prejudicial effect one way or the other should there be a declaratory judgment signed in Superior Court and that would be the pragmatic resolution. I suppose technically it would be a withdrawal of the petition. Perhaps it's just a stipulation that there be no finding; we haven't really gotten that narrow yet - whatever you prefer - it could go either way, I don't really care. But the major point that is on the record we've stated this is not prejudicial in any way regarding any claims that these petitions might have in the Superior Courts. So, that is what we talked about and that is something the Town is happy to participate in.

Plaintiff's Attorney Riley Fenner: Yes, that seems to reflect our discussion. I guess the other piece that we discussed was that there would be some findings by the Town Municipal Board on the abandonment issue forthcoming in the near future in terms of a municipal meeting of the select board that would - at which - that issue would be addressed and some findings would be made that prior to a Superior Court action.

W. Kelly: Right. By statute the select board has the, as I just mentioned, authority to determine the abandonment or non-abandonment of any particular town way. And I mentioned in our colloquy that when this petition was filed it could have occurred; the select board could have simply at one of its regularly scheduled meetings put an agenda item on and voted to file that this was an abandoned road. Frankly, we discussed that and decided that was a little bit too much of a shotgun approach. It didn't allow people the chance to at least participate in that process even though their belief is firm. At this point, based on what they've seen, and we can now have such a meeting and make that determination as you just described at the select board level at the Town of Liberty.

W. Shorey: [To R. Fenner and Plaintiff Debra Paul] So, you're in agreement?

R. Fenner: Yes, that that's the proper route to take going forward.

W. Shorey: O.K. How do we word the agreement?

L. Woodward: I would say that I think the cleanest approach is that the petition be withdrawn without prejudice. The only way I could see it coming back here is, I think we are all in agreement - the attorneys - that the County Commissioners have no authority to declare abandonment but it's clear that the Town does and the Town's decision controls until it's challenged by a declaratory judgment. I wanted to avoid the Commissioners hearing hours and hours of testimony which would clearly be undone once the selectmen had a meeting, so any decision they had would be short-lived and I think in this particular case the only way it would come back to the Commissioners would be if you're successful with declaratory judgment and it's still not maintained to the level that it needs

to be for vehicular traffic. Then they would, you know, if it turns out to be a very severe washboard type road and stays that way; that's the kind of decision that I see the County Commissioners making, not one where it's clearly a factual dispute on abandonment, and I was going to instruct them today the most they would be acting like is a grand jury - is there probable cause, reasonable belief to believe that it's abandoned and if it is they really could not hear any more and it would need to go to Superior Court. Ultimately, the decision you're looking for has got to be made at the Superior Court level. So, I would suggest to clean the record is that the petition be withdrawn without prejudice.

(Several yes responses from both Plaintiffs and Defendants).

W. Shorey: [To the Plaintiff] So, you agree?

Plaintiff Debra Paul: Yes.

L. Woodward: [To the Defendants] That would be if you accept it.

W. Kelley: The Town will stipulate to that.

W. Shorey: So this case is closed, I guess, for the time being?

(Several yes responses from both Plaintiffs and Defendants).

W. Shorey: Well, we thank you all for coming. Hopefully this will work its way through the system somewhere and everybody will get the relief that they want. Have a good day, Ladies and Gentlemen.

The hearing was adjourned at approximately 3:30 p.m.

Respectfully submitted by \_\_\_\_\_  
Deputy County Clerk