

**ALBERT & DEBRA LUDDEN vs. TOWN OF JACKSON**  
**February 14, 2006**  
**10:00 A.M.**  
**(TAPES 1 A)**

**PRESENT:** Commissioners John M. Hyk, Greg Boetsch and Amy Fowler. Defendants: Town of Jackson Selectmen Cindy Ludden, John Work and David Greeley. Petitioner: Albert and Debra Ludden. Also present were members of the press, County Clerk Barbara Arseneau and Deputy County Clerk Veronica Spear.

Commissioner Hyk convened the meeting at 10:00 a.m.

J. Hyk read the rules for the hearing. Commissioner Hyk asked all parties with the Defendants and Plaintiffs to introduce themselves and to swear to tell the truth.

**PETITIONER:**

D. Ludden: First of all I am going to open by saying that we are requesting that the .1 mile of the West Chase Road be taken off the 10 year list of closings and open to year round maintenance. Back in the 80's and 90's when we first moved in there 24 years ago, the road was pretty quiet and we were happy with that. We were happy that it wasn't maintained year round, in fact several occasions when we called John Work when he was the commissioner back then and asked him not to do any work on the road unless we specifically called and asked them to. We like the privacy, as the years went on you pretty much couldn't even get through there with a pick up truck. Over the last couple of years a gentleman by the name of Rick Borden and his wife Maxine, first they went to the town and asked for the towns help on fixing the road up on a couple hundred acre piece that they own on the West Chase Road beyond us. They were unsuccessful at that so they put money in the road themselves. Last spring Rick and Maxine again put some additional gravel added a bit further in distance on their road. Also last spring the road washed out just east of our house. Just below our house there is a brook and just beyond the brook the road washed out a big huge gully and it was really important to get that filled in, but in addition to filling that hole in, the town hired some local construction people to do the work on the road. Those people went further up the road to meet where Rick and Maxine Borden had hauled additional gravel and hauled in gravel on a discontinued road. We started to get a lot of traffic at that point and we've continued to get a lot of traffic ever since then. You can drive a car through there now. In fact we heard, and this is only a rumor, they were told to fix the road so a car could go through it. That could be true and it could not be true, I do not know that, but that is what we had heard. Cars do go through; in fact cars are still going through there even though it is not plowed. We have had such a slow winter. We do not sand the road. We have lived there 24 years and we know how to drive in and out of that road. We do not sand it, so we are pulling people out. The other day a big oil truck came through from the other end up through to Route 7. We do understand that it is dangerous to pull out into Route 7 from our road. It is dangerous for us and it has been that way for 24 years. The state is fixing up route 7 and they are going to cut down that portion of the road on Route 7 that makes it so hard to see when you are pulling out. We also heard that the State is going to come down our road 20 feet or so with tar. We thought that we'd sent this letter on August 17, 2005 to the town asking them to consider

opening our road to year round maintenance and working with the State to fix the top of the hill so that it is a safer intersection to pull out of.

We didn't hear back from the town on that request until about a little over 4 weeks later after the meeting that was held in the town of Jackson to discuss roads that would be extended for the 10 year discontinued. We did not attend that meeting. I surely thought that our letter to the town would be sufficient enough to explain our feelings about wanting that road to be opened. At that meeting, the letter that we received said that the people who attended the meeting would not disagree with any of the road closings so therefore we are continuing to keep these roads closed. Many of the people who were there were there because they were concerned that the town was going to re-close some of the roads that had been opened. In fact there have been several roads opened in the town of Jackson over the last 10 years. I know of four roads specifically, one of them being the other end of my road, which also has a hill except the only difference, is that you are not pulling out into a major highway. I guess with all of that said, we would like the town and the county commissioners to reconsider opening our road to year round winter maintenance with us understanding that it cannot be done immediately. We know that the town has to budget for it. I did some work yesterday. It cost the town of Jackson for 19.5 miles of road \$2,315.00 per mile. It would make the cost to plow our .1 section of road about \$231.50 which is far less than what it costs them to put gravel in on a discontinued road in the spring. With all of that said, we thank you and appreciate all of your help and I appreciate all of the help that you have given us over the last few months.

J. Hyk: Amy, Greg, any questions?

G. Boetsch: I guess, this is so important to you and I can tell it is, I would have to really ask why you folks weren't there to lobby at that meeting. Did you forget, or you didn't realize it was going to be that important? If something like this was coming up with me, I would be right there after these folks and you have done your homework, so I find it odd at that you weren't at that meeting.

D. Ludden: Had we realized how important it was going to be we definitely would have been there. We didn't really understand what the meeting was. I don't read the paper, I have a very busy job, a lot of stress and I don't sit down at night and read the newspaper.

G. Boetsch: You have this whole gang of people here that could have been there and voiced.

D. Ludden: Had we known we definitely would have been there.

G. Boetsch: See, that is the political process. You have to speak to your representatives, which you are doing know but the "horse is out of the barn."

D. Ludden: My question is we sent them the letter on August 17, 2005. Why didn't they let us know that our road was going to be talked about that evening?

A. Fowler: Has there been any new development on your road in the last 20 years?

D. Ludden: No there isn't, the only new development is our age, we are not getting any younger. Right now we are denied ambulance service; if our house caught on fire and our road was slippery it would burn flat. There are just things that we didn't think about when we were younger that we are thinking about now.

A. Fowler: Living on a back road myself, I appreciate the solitude and quietness but then it tends to kick you in the butt.

A. Ludden: What she mentioned earlier, and is one of my biggest concerns, is the increase of traffic that we have in the winter time. I mean, what if this oil truck is half way up the hill? I've already had one person in the woods across from my road, thinking that this road is open because like she says in the summertime you can drive a car through there. More and more traffic are using it. The other end is plowed, they look at my end and we plow it; they think that this road is opened. I mean, an oil truck sliding backwards on this steep hill. It is a dangerous situation and that is my concern. Pulling people out of this road with my equipment; what kind of liability does that put on me? In the middle of the night they are there, I have to pull them out, what can I do?

G. Boetsch: This goes right back to my question – with how important this is to you, you guys should have been right there at that meeting.

A. Ludden: I deal with the public quite a bit myself sir and in writing is “suffish” to any process that you are going to. I mean if there is something formally in writing that is binding, that is what you are there for. Another thing that I would like to say, please, is sometimes in our town some of the municipal offices let their personal feelings affect their judgment and how we are treated in the town. I don't want to get into specifics on that. When we go to the town municipal offices sometimes we don't feel like we have been treated respectfully and small town politics, I am sure that you understand this. So we took the paper trail figuring that this would be fine. I will say the same thing “at 20/20,” perhaps we should have been at that meeting fighting for it.

G. Boetsch: Do you know if your letter was looked at?

D. Ludden: We didn't know prior to that.

G. Boetsch: The person that was there, did they that your letter was brought up at the meeting?

A. Ludden: It was not. We interviewed several folks that were on our list. It seemed rather odd that right after we mailed that letter that, bang, all of a sudden the meeting came up and we didn't know what the deal was with that.

D. Ludden: I did find out yesterday that they do have to hold that meeting every ten years prior to October 1<sup>st</sup>.

A. Fowler: If I might just add Mr. Chairman, I attended that meeting only because I try to get to area selectmen's meetings, and the only reason why I knew that meeting was coming was

they have a lit up billboard out front and it said "Special Town Meeting" that night. There was nothing on TV.

A. Ludden: I am not saying that I did not know the meeting occurred. I knew darn well the meeting was going to take place, I just assumed that something in writing and voicing our opinion that we wanted something changed.

A. Fowler: Is there a sign, is it posted on your road that it is not maintained in the winter?

A. Ludden: I put the sign up there myself.

J. Hyk: Is this road is a tenth of a mile, about 520 feet long in total, from one end to the other or just a piece in the middle that is close to winter maintenance?

D. Ludden: That is the piece that we are asking to be plowed from the top to Route 7 to our house is .1 mile.

J. Hyk: So from Route 7 in, the first 520 feet is what is closed. What is the rest of it?

D. Ludden: Between that section and the other point where it begins to be plowed is discontinued.

J. Hyk: What year was that discontinued, do you know?

D. Ludden: '85, I think, or '95. No, 1995.

J. Hyk: So it becomes, by law, a public easement. The land did not revert to the property owners. So it is a public easement. So anyone can really go up and down this thing anytime they want regardless of snow or ice because that is the way it is. I live on one; its 8,000 feet long and I maintain it. It is one mile and two tenths long, so I am sympathetic to what you are saying. I know it about 8 times more than you do. So when the road was closed for winter maintenance this last time, was it done by a vote of the selectmen or by vote of the municipal body by the voters of the town?

D. Ludden: The selectmen.

J. Hyk: I understand, but sometimes people work it differently.

D. Ludden: What the letter said was that no one attended the meeting.

A. Ludden: Can I say one quick thing? Are we using the correct terminology on this road? Discontinued or abandoned?

A. Fowler: So long as the town retained its easement or right of way that means they never gave it back to the abutters of the road. So anybody can go up and down that road as they see fit. It's just the town says, "You know what? We don't want to maintain it."

J. Hyk: If it is discontinued it is not abandoned, it's discontinued. Abandonment is a funny word; it really doesn't sort of apply. It is either discontinued or it is something else.

A. Ludden: I received information from this office. Clearing the terminology up, it is a statute. Abandoned road – no maintenance, public can use the road. Any maintenance done on the road is to be done by the people using it. That is what kind of put a sour taste in my mouth when all of a sudden the town takes an abandoned road and puts hundreds of dollars in it, but they can't see to plow and sand a road where a resident has been there for 24 years.

A. Fowler: I believe that you brought up that the road was washed out, therefore where the people have the right to pass back and forth. Maine Municipal Association states that a town can, indeed, spend money on an abandoned/discontinued road as they see fit so as not to cause injury or harm. I live on one also, and there is a bridge on our road and you just wait for someone to go through there. So technically they can spend money on your road to upkeep it or do a good deed every few years.

A. Ludden: So I am seeing they want to continue to fix this road and make it more accessible to the public. I just can't see why they are having such a time with doing one tenth of this road. Perhaps we will find out here in a few minutes.

J. Hyk: I am going to recognize people to speak and that way it will go more smoothly. I was under the impression that your presentation was over when we began asking questions. (There was discussion on the proper order to conduct the meeting.)

D. Ludden read the letter that town had sent to the Ludden's.

**DEFENDANTS:**

C. Ludden passed out a packet of information to everyone and described what was in it. (See Exhibit A.)

C. Ludden: When you asked a question if this was a selectmen decision or a town decision, go to your last page. In our town meetings since the '60's Article 17, the townspeople tell the selectmen, "Yes, you go ahead, go over these roads and you close them as you see fit, done deal." So it was a two for yes, yes the townspeople told us to do it and yes, we went ahead and did it. So I believe the town of Jackson takes the stand, historically we would not have an issue if there was more growth on that road.

D. Greeley: Nothing to add only that there are a number of properties in town that are in a similar situation. You have houses that are built on town road that are not maintained. We feel that we need to be very deliberate about opening those roads because it sets a precedent to the other five or six properties in town that are in a similar situation. I think that in the long run, because this road is maintained from the east end in approximately ½ mile then there is about a mile to your place that has no dwellings on it and is therefore not open as a discontinued status. If there is development on that road in the future it would probably be looked at as something that we might be able to open. We haven't really based our decision on the fact that it is a very difficult one tenth of a mile to maintain, but that is a factor, as you pointed out. It is downhill and very steep. One of the things that often happens when you

open a road is there is a push to get the school bus down there and there are a number of complications. Some of those may be modified by the work that the State does on the road this summer. One other thing that I wanted to mention is that I live near that road. Because of the construction on Route 7 this summer, I took that road a couple of times to avoid construction and I found that it wasn't worth while in terms of time. I mention that because that may have been somewhat responsible for the increase in traffic this summer.

J. Work: They pretty much have it all summed up as far as I am concerned. One thing to add as far as the reconstruction is going to go; as far as I am concerned, the State is going to make it worse and I realize they are going to pave the very top of that but one of the things they are going to do is make a perch because it is real steep. What they are going to do is make a perch so when you get up there you can set there and then take off. Well, in turn, that is going to push the hill out further, which you carry that down and it is going to make it steeper. To me they are shooting themselves in the foot by even messing with the intersection; they would be better off to pave it the way it is and leave it. I don't know how you would fix it. It is not a good situation. But to sum up what was going on, on the other end of the road, when the Borden's talked with us, we told them the exact same thing; if there is more population, the way things have always historically been done, any road or portion of road that we have opened there has always been two factors. There have always been school buses involved and there have been two or more houses.

C. Ludden: I do feel bad for the people who do get down in your road. It is a very steep, steep hill but on top of the hill is the state or town sign saying that it is not opened for winter maintenance. Which is all that is required.

J. Work: We probably should have one on the other end. Usually it is clear by the way it is plowed but this year it isn't.

G. Boetsch: Cindy, can you show me here in the minutes where their letter was brought up at the meeting?

C. Ludden: I didn't type the minutes, no I cannot.

A. Fowler: I really appreciate the history that you guys have shown on both parts. I sympathize with Mr. and Mrs. Ludden because, as I say, my road is maintained-it is abandoned down past me. I know exactly what you are talking about with people that go down your road and they have no reason to be down there. It puts us all in a bind and you have to get them out and everything else. As far as I can see from the beginning, the town has done exactly as they were supposed to do. It is my belief.

#### **DELIBERATION:**

A. Fowler: I appreciate all the information that both sides have brought to us. You are right; we were getting off road maintenance vs. winter maintenance. I would be curious to see what the State has in writing that says that they are going to work on your road. I know it is only .1 of a mile and that is only 500 something feet but, as I say, my first thing is "Doggone it, why didn't you go to that meeting?" Did you send the letter to the town office certified?

D. Ludden: No.

A. Fowler: As foolish as it sounds, I am looking at every possible loop hole conceivably; they might not have received it. I am just saying the town did exactly, and according to date from your figures that I have seen, 10 years ago you had to renew this meeting. I think there has got to be some communication. In our town when I was a selectman, you have to take that before your annual town meeting and see if you can wind up the people and get an article on there and get that road taken back. I appreciate the fact that you folks do look into re-opening a road or maintaining it more in the winter when there is more of a tax basis on that road. That makes sense.

G. Boetsch: The town has done the four things that State law requires. You folks didn't represent yourselves at the meeting to influence the vote that night. I find it really hard for me to go against what the selectmen of the town of Jackson have come up with. So you know how my vote is going to be when it comes to vote.

D. Ludden: Are we allowed to talk?

J. Hyk: No, we are deliberating. (Brief discussion of understanding the issues with the road.)

J. Hyk: I understand the situation where someone is trying to say, "When we get a certain amount of development we will try to do something." I understand that, but as you know in the state of Maine it is unlawful to assess or base taxation on services. What we are doing here is, we are at the point where we are going to grant the appeal or deny the appeal. I have a natural inclination to try to protect the poor person in the situation. I can't see where there is any other way, that the town has "done what's required of it," as you have so admirably stated. I am of a like-mind, although I am very open minded if someone wants me to convince me of something different. But I am convinced at this point.

G. Boetsch: Well you know John, they can still lobby their selectmen to get a warrant article on their next town meeting or their next special town meeting; this time for them to show up in full force because if it was to come up at a special town meeting their would only maybe be 15 people there. This is not a dead issue; they can bring this back to surface if they can get an article on the next special or regular town meeting and get it to go their way this time. This is not the end. This could end at the next town meeting. My point is, I can't go against what the Title 23 says here.

**\*\*G. Boetsch moved, Amy Fowler seconded to move that we deny the petition of the Ludden's. No discussion. Unanimous.**

D. Ludden asked about the process of going to the state. J. Hyk said he was not sure and he was not "practicing law today."

D. Ludden: I wanted to know if a letter sent to the town signed by us to all three selectmen and the town is a legal document for this matter that you say we didn't show up for. I am still upset.

A. Fowler: I see where you are going. We can all complain to our commissioners and selectmen, we can write notes and do whatever; you need to be there.

J. Work: Even at that meeting if it had come down that there was a lot of discussion, I personally would have said, "My feeling is, let's put this on the warrant in March when we have the majority of people together and we will let them decide." I think that, personally as a selectman that we have guidelines and boundaries that we have to try to follow. When it comes to making major decisions, I like to try to get as many people involved as possible.

A. Ludden: The vote didn't go our way, but I am still encouraged because what I was concerned of is once this vote for the 10 years was put out there, we had no say. This is what I was hoping for and I wasn't sure we could because the town has voted to let the selectmen handle these things, so I was under the assumption that I would have nothing to say for 10 more years. I am all for going to the town and have them vote. I want the community to decide whether they think that we should have our road open.

**\*\*A. Fowler moved, G. Boetsch seconded to adjourn the meeting at 10:45a.m.  
Unanimous.**

Respectfully submitted by *Barbara L. Arseneau*  
County Clerk