

CLIFFORD H. BENNETT vs. TOWN OF BROOKS
ROAD PETITION HEARING #1-2007
AUGUST 28, 2007 (Revised 10-04-07)
8:00 A.M.

PRESENT: Waldo County Commissioners John M. Hyk, Chairman, Amy R. Fowler and Donald P. Berry, Sr.; Petitioner Clifford H. Bennett accompanied by his son, Matthew Bennett; Defendants Brooks Selectmen Raymond Shute, Linda Lord, Benjamin Lufkin accompanied by road contractor Clayton Larrabee, Town of Brooks legal counsel Michael Clisham and Court Reporter Lisa Fitzgerald. Recording minutes for the Waldo County Commissioners was County Clerk Barbara Arseneau.

All parties met at 8:00 a.m. at the Waldo Town Office, it being the closest Town office to the South Brooks Road. Commissioner John Hyk informed those present that they would all drive to the South Brooks Road and the hearing would commence at that road in Brooks.

All parties drove to the South Brooks Rd. and met again. J. Hyk opened the hearing at approximately 8:16 a.m. by reading the rules of the hearing and asking all to introduce themselves for the record. The Petitioner and Defendants were then sworn in. The Petitioner was allowed to speak first.

PETITIONER:

Clifford H. Bennett directed the parties to Pole #35 and requested that the Commissioners examine the road between that pole and Pole #36. He told the Commissioners that this is where the gravel stopped. He stated that it skipped his son's driveway and indicated that in front of his daughter's house, after rains and during spring season, "it becomes mud" and was "like cake batter." He explained that Mr. Larrabee, as road contractor, could not bring in his heavy equipment at times because the road conditions were so poor.

J. Hyk asked for clarification regarding where the good gravel started and ended.

C. Bennett explained that there was about 150' between the poles and that between those two poles, the town had not put good gravel down.

J. Hyk instructed all to walk down the road until they reached the culverts that were also in question. All walked about 75' to view the two culverts. C. Bennett described conditions during heavy rains and explained that water would pool and move over the road because the culverts could not handle the flow of water. One of the culverts was larger than the other. C. Bennett explained that last spring the entire section washed out for two days straight and there was water running across the road. He stated that "about a million gallons a day were coming over." He said that he recorded nine different incidents of water across the road in one year. He pointed to one culvert and noted that it was one foot above the culvert line in the ditch and that without air in a culvert, with a lot of water flow, it gets inundated.

M. Bennett explained that one culvert is not level but was tilted at one end.

C. Bennett expressed concerns about the road because a school bus will be picking up his school-age grandson, another grandson also attends a school, his wife is “an ambulance person,” and the families also had to go to work. He asked the Commissioners if they wished to walk up through the wooded area to see how far the water would run. The Commissioners declined because they felt they could see fairly well from the road.

C. Bennett informed the Commissioners that the snow plow cannot come down through that section of road. He had to plow twice himself last winter because the heavy equipment could not get in there. He did remark favorably about the recent ditching work that had been done.

The group moved to the end of Clifford Bennett’s drive way. C. Bennett showed the Commissioners where the plow driver had gone partway off the road. He explained that the dual tires nearly went off the road. He pointed out the ruts that were still visible. He also showed washed-out areas at the end of his driveway.

M. Bennett provided photographs of the road during the rainy and muddy season. It was explained that the pictures were taken prior to the ditching work. Copies of the photos were submitted to the County Commissioners.

C. Bennett commented that it took 4-wheel drive to get in and out for two weeks during that time of year.

M. Bennett told the Commissioners that the area where they had just parked their vehicles would be where the bus would be coming. The bus person came to review that area. This was the first year they had been able to put mailboxes on that road, now that it had been ditched. Originally they were located by the intersection of Littlefield Road.

M. Bennett showed several areas where there was no crown – “no place for the water to go.” C. Bennett stated that grass “burms” prevent water flow.

Both Bennetts pointed out to the Commissioners where the bus would need to turn around.

J. Hyk told the Defendants that they may question the Petitioner, if they so desired.

L. Lord asked who had come to look at the bus stop area. C. Bennett told her it was Johnny Ludden. L. Lord asked if Mr. Ludden had expressed any other concerns other than to compliment him on the work he had done preparing the place for the bus to turn around. C. Bennett stated there had been no concerns expressed.

R. Shute asked C. Bennett if his wife was an active member of the ambulance department. C. Bennett replied in the affirmative.

M. Clisham, to C. Bennett, stated that he could see that Mr. Bennett had a front-end loader. He asked Mr. Bennett if he ran dump trucks on that road. C. Bennett said yes, from May to December. M. Clisham asked if the weight of the trucks was 75,000 lbs. C. Bennett said yes. M. Clisham asked how often the trucks ran. M. Bennett replied that they ran two days a week this year. M. Clisham asked how many trucks there were. M. Bennett said there were three. C. Bennett explained that the “wheeler-class” trucks ran two to three trips per day. M. Clisham asked if those were 75,000 lbs. C. Bennett explained that those were tractor-trailer trucks. His were “wheeler-class” trucks at 55,000 lbs.

There were no further questions of the Petitioner by the Defendants.

J. Hyk commented that B. Lufkin had stopped and pointed out to him that the Brooks Town line starts right before the railroad tracks. Up to that point, the South Brooks Road had been over the Waldo Town line.

J. Hyk told the Defendants that they make their presentation.

DEFENDANTS:

M. Clisham referenced the standard, by Maine Revised Statutes Annotated Title 23. Towns must keep safe and convenient for travelers with motor vehicles, according to subsection 3651. When unsafe, the Commissioners can order repairs. (He continued to read from the statute, including subsection 3652.) M. Clisham stated that there was no requirement that an entire road be kept safe. This was not a case of “absolute safety,” but “reasonable” safety. He stated that the hearing today is on the present condition of the road and offered his opinion that it was safe and passable. He further stated that this was also in agreement with case law. M. Clisham asked R. Shute to detail the repairs that had been done to the road, which, because it is dirt, makes it more expensive.

R. Shute stated that last year, the Town of Brooks spent nearly \$16,000.00 on ditching the South Brooks Road. One of the culverts is lower because it cannot be level by law. It must be tipped for beavers. The slope is so that too much water won't take the culverts out and downstream. The Town has applied for a grant. If the Town puts in two feet of gravel and a new culvert, this would mean having to build out twenty feet on each side. He stated that the cost would be substantial.

R. Shute related the plowing schedule that Mr. Larrabee recorded this year. He explained that, just as in cities, the main roads are plowed first, then the side roads. He noted that there are three ways to find out about road work, which are by contacting the Town Office, Mr. Larrabee or the Selectmen. Documentation of the work done on the road could be submitted later, if desired.

C. Bennett asked J. Hyk if he could ask a question. J. Hyk said he wanted to be sure the presentation of the Defendants was concluded first.

M. Clisham asked if the Selectmen had contacted the School Department about the South Brooks Road. R. Shute stated that Mr. Ludden, Transportation Director for MSAD #3, had written a letter regarding the condition of the South Brooks Road as being as good as or better than many he had driven on. A copy of this letter was submitted to the County Commissioners.

B. Lufkin asked if the photos the Bennetts had taken were of the April rain storm. A. Fowler, who was looking at them, noted that it said "January" on them.

M. Clisham asked if Mr. Larrabee had anything to add. C. Larrabee said it was not up to the Town to furnish a turn-around for the bus. He commented that he could not get the plow turned around in that spot.

R. Shute stated that all roads and road work are documented. He said he couldn't speak for previous years, but the small culvert was added about three years ago.

M. Clisham asked R. Shute to further detail work that had been done on the South Brooks Road. R. Shute said that two small culverts were added, it was ditched on both sides and commented, "It's a half mile long road. He shimmed it and did a decent job – first rate."

M. Clisham stated that there were two significant cases that make the point that the Town does not have to maintain the entire road. One was Perkins vs. Fayette, which states that it must be sufficient width. M. Clisham stated, "The road is four rods wide. Not all four rods have to be convenient."

R. Shute stated that at a selectmen's meeting, which Clifford Bennett had attended, they agreed to bring in gravel and level off the section.

M. Clisham asked if L. Lord had anything to add.

L. Lord asked C. Bennett how he had managed to pull out the snowplow when it got stuck and asked if he had done it with one of his trucks. C. Bennett explained that he had pulled out a car, not the snowplow.

M. Clisham stated that he had nothing further at this time.

C. Bennett stated that his was the first residence on this road. He said that they didn't have any dirt pushed out into the road. He explained that he didn't want two more feet of gravel, he wanted a culvert.

M. Bennett said when the Town came to do the work, they created a two-foot hump. Frost didn't break it up.

J. Hyk reminded all that this was the time for questions, not additional presentation.

M. Bennett said he was trying to establish foresight. His concerns were in the spring and late winter and it was hard to address problems in the winter when there was snow on the ground.

C. Bennett started to comment further and L. Lord interjected that she assumed the record would show that there were no questions being asked, but only comments being given.

M. Bennett clarified that there was a question and it was if the Town would have the foresight to deal with road conditions now before they became difficult in the winter.

C. Bennett asked where the school bus would turn around, since the Town wasn't going to plow. R. Shute stated that this was between the school and Mr. Bennett.

J. Hyk instructed C. Bennett to stand back. He asked if there were any further questions.

C. Bennett asked where the plow would go. R. Shute replied that Mr. Larrabee will be down the road to plow so that they could turn around in the area designated for that.

J. Hyk asked if this answered Mr. Bennett's question and was told yes by C. Bennett. J. Hyk then asked if the Commissioners had any questions.

A. Fowler asked if the Town had to go to the DEP to get the culvert information. R. Shute answered that he couldn't speak for back then, but they had come out since. The DEP said the Town could not go into the swamp area near the right side of the culvert and "needed to let mother nature take its course." He reminded all again that he had applied for a grant to do more work on the road.

M. Clisham stated that the road was maintained to Reynold's Cemetery and this had been the case since 1968. He submitted copies of this information to the County Commissioners.

A. Fowler asked how many residences there were on the road. R. Shute replied that there were three.

C. Bennett stated that he had lived in his house for nine years. M. Bennett stated that he had been living on that road since April of this year.

A. Fowler asked if the school bus has traveled down the South Brooks road before. C. Bennett replied that it had not.

A. Fowler then inquired about the ditching. R. Shute referred to his documentation and stated that it had been done on December 5 through the 8th by F.E. Works.

A. Fowler asked Mr. Larrabee if he would be snowplowing. C. Larrabee said he would do it the same time as the rest of the plowing.

J. Hyk asked if there would be any future work done on the road. R. Shute stated again that he had applied for a grant from FEMA and others to do “rip-rapping” along with harder materials for a “One-Hundred-Year-Flood” or beaver dam issues. Otherwise, like all other roads, there would be prioritizing and planning.

J. Hyk asked for clarification of whether the selectmen had mentioned they would be putting material in the near afore-mentioned driveway. R. Shute replied in the affirmative and stated that they had hoped to do it by now, but the road contractor has been busy.

J. Hyk asked if the Bennett’s would create a turn-around before snow, to which they replied in the affirmative.

D. Berry asked what the road conditions were like during the April flood. R. Shute stated that water was over the road on the west side of the culvert. He added that as soon as he could, they would add gravel. They would then add more and grade it out before winter sets in.

J. Hyk thanked all for being civil and polite. He next asked the other Commissioners if they wished to render a decision now or wait. All agreed to render it immediately.

****A. Fowler moved, D. Berry, Sr. seconded that the Commissioners deny the petition for Bennett vs. Brooks.** Discussion: A. Fowler informed the Bennetts that she, too, lived on a dirt road and knew how the road can be in the spring. She stated that she was impressed that the Town had a plan, applied for a grant, etc. She was also impressed with the three residents, who had kept up their driveway and the rest of the road as it was, and that the bus driver was willing to come through.

D. Berry, Sr. said that the town road he lived on was much worse than the South Brooks Road. He stated that residents on his road “would be delighted” to live on the South Brooks Road.

J. Hyk informed the group that he would spare them all his thoughts.

The vote passed unanimously.

The hearing was adjourned at 9:20 a.m.

Respectfully submitted by Barbara L. Arseneau
Waldo County Clerk