

KELLY & ASSOCIATES, LLC
ATTORNEYS

William S. Kelly, Esq.

96 High Street
Belfast, Maine 04915
e-mail: kellylaw@roadrunner.com

(207) 338-2702
(207) 338-0328 fax

January 19, 2009

John K. Hamer, Esq.
RUDMAN & WINCHELL
P.O. Box 1401
Bangor, ME 04402-1401

Re: Bennett v. Town of Freedom
Bennett v. Beaver Ridge

Dear John:

Thank you for your two letters dated January 8, 2009, relating to settlement in the above captioned matters. This communication is for settlement purposes only.

The Town of Freedom declines to engage in discussion regarding a lump sum payment relating to the Code Enforcement Officer's Decision that has been appealed to the Law Court. I don't believe the Town of Freedom has the legal authority to offer any money in a case regarding the legalities surrounding the expiration of a building permit. Thus, I must decline any monetary discussions relating to Docket #08-647 in total.

With regard to Docket #CV-2008-24, the road cases, it appears to me that there is significant evidence of public use of the **Deer Hill Road** and the **Sibley Road**, based on the testimony of folks running back as far as the 1930s. It appears that maps and other historical references indicate that the roads in question have existed for over a hundred and fifty years. The roads in question were discontinued for maintenance only, and there does not appear to be requisite period of abandonment as is required under applicable law. Further, I don't think that the Town of Freedom is authorized to stipulate that "private easements" over the roads exist. The Town's only concern is defending the public rights in the roads in question.

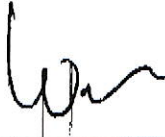
With regard to the Beaver Ridge (Hill) Road, it appears to me that there is a factual evidence which could support a decision by a Judge that a portion of the Beaver Hill or Beaver Ridge Road has been abandoned. It is my view that that portion of the road is by and along where Lot 3, as depicted on the Pitcher Subdivision plan, is located as it abuts the Beaver Ridge Road. It seems clear on the testimony that those who either drove, snowmobiled, walked, hunted, recreated on the Beaver Ridge Road essentially went through Ron Price's property, through an existing road that goes through the fields, around the "backside" of Lot 3, through the narrow portion of land owned by Ron Price and

then out an existing traveled surface to a point on the Beaver Ridge Road near the "gate" on the Beaver Ridge Road. Thus, I can support, by way of a settlement agreement a recommendation to Town meeting that the portion of the Beaver Ridge Road above described has been abandoned. That portion would need a descriptive clarification, likely requiring installations of monumentation and a surveyor's description. The two Select Board members will follow that recommendation as well.

The evidence presented during the depositions was fairly compelling to me in terms of the breadth of knowledge and the number of years that the deponents could testify to with personal knowledge. I don't think you will find in that testimony factual representations that support abandonment. My further discussions with Carol Richardson and other witnesses with personal knowledge who have not been deposed, confirm that the Town will be able to present significant evidence of continued use through the mid-90's of the Sibley Road and the Deer Hill Road as a continuous traveled loop. Beaver Ridge Road, however, is not so clear and thus, the predicate for my offer in terms of what could be recommended at a Town meeting regarding the Beaver Ridge Road.

Those are my thoughts. I look forward to hearing from you.

Sincerely,
KELLY & ASSOCIATES, LLC

By: 

William S. Kelly

WSK/kjc
cc: Town of Freedom