



Project No. 10087
May 17, 2010

Board of Selectmen
Town of Carroll
Post Office Box 146
Twin Mountain, New Hampshire 03595

Subject: Old Town Road – research and opinion

Dear Members of the Board,

I have reviewed the matter concerning the width and status of Old Town Road. To date, the following documents have been considered:

1. Various email correspondence between Attorney Whitelaw, Matthew Low of HTA, surveyor Burke York, this office, and the Town.
2. Road layout dated May 16, 1848 – Volume 1 Page 474 Carroll town records
3. Right of Way and Track Map, Boston & Main Railroad dated June 14, 1914
4. Plan of "Fahey Road" by surveyor Richardson, on file at Dartmouth College Library, sheets 2 & 3.
5. Deed "William J. Fahey, Sr. & Margaret M. Fahey to Town of Carroll" dated November 6, 1930, recorded in CCRD book 261 page 138.
6. Superior Court order dated July, 1988 regarding Gadbois, et al v. Town of Carroll, et al.
7. "Agreement Re Road Location and Confirmation as to Status of Road" dated October 10, 1988 recorded in CCRD.
8. "Plan for Donald Gadbois Carroll, N.H." dated July 8, 1987 by Cartographic Associates, recorded in CCRD.
9. "Subdivision Plan for Donald Gadbois Carroll, NH" dated June 27, 1977 by David C. Garcelon, recorded in CCRD.
10. "Plan of Carroll N.H." by W. I. Richardson (town lotting plan).

At the heart of this matter are two issues; the width and status of Old Town Road. Concerning the width, I concur with Burke York that the road layout (Item 2) is most likely the Old Town Road. When plotted and overlaid onto a USGS map, the layout generally conforms to the location of the road. The layout point of beginning refers to a birch tree "two rods east of the Clapboard Mill on Lot Number 3 in the 13 range". The road (and overall subject premises) are located in Lot 3, Range 14. This makes sense, as the road generally extends easterly into Range 14. The width of the right of way is stated as four rods (66 feet).

The B&M track map (Item 3) depicts Old Town Road where it crosses the railroad tracks, as 66 feet wide. This is further confirmation supporting the layout of four rods. I noted that the Route 3 crossing is depicted as 49.5 feet (three rods). I have performed surveys in the past where the only road record evidence has been railroad track maps, and I have confidently used those data in my right of way width determinations.

Item 4, the Fahey Road map, is a center line alignment plan of the road with offsets to the "outer limit of wheel tracks". This alignment generally corresponds with the direction of the actual road along the river. The purpose of this plan is unknown. This plan does not show a right of way, or state a right of way width. I would not interpret the "outer limits of wheel tracks" as a reference to such.

Item 5, the deed from Fahey to the Town of Carroll, appears to refer to the Federal Aid Project for Route 302. The deed refers to the "new cement road" and I don't believe this is a reference to Old Town Road.

I spent some time reviewing the Superior Court ruling (Item 6) and resultant agreement and plan (Items 7 and 8). I don't need to summarize the whole lawsuit, as I am sure you are familiar with this litigation. As far as confirming or establishing the width and status of Old Town Road, the documents do not state the width of the right of way, and appear to only affect the portion of road in front of the Gadbois' house. The plan (item 8) depicts the "proposed road location" which appears to be only the travelled portion of the road and not the right of way. This is likely because the record right of way width of four rods was not known at the time due to lack of research by the surveyor and parties to the litigation. I would consider this document a reliable record of the location of the road in front of the house, but would not rely on this document as evidence for the width of the right of way. It certainly would not trump the 1848 layout width of four rods in my opinion. Mr. Gadbois' claim that Old Town Road is only nine feet wide may be due to the misunderstanding that the travelled way of the road depicted on this plan is the actual right of way.

Concerning the status of Old Town Road, the road appears to have been properly laid out and accepted by the Town in 1848 per Item 2. The railroad track maps list the Town of Carroll as the Grantor for the portion of the road conveyed to B & M Corporation, so clearly the status was that of a town road in 1914. The status of a road is a question of law, and can be affected by various actions (or inactions) of the town such as formal discontinuance, lack of use and maintenance and expenditure of public funds for maintenance. Considerable time could be spent researching these issues. I am not fully prepared to state my opinion regarding the status of the road without additional research of records at the Town of Carroll, which have not been made available. I also have questions regarding the past litigation and Superior Court order and whether or not these actions are in accordance with New Hampshire law concerning road relocation and reclassification.

To summarize, based on the evidence I have reviewed and listed in this letter, my opinion is that the right of way is four rods wide. Without additional research of town records I am not prepared to state my opinion on the classification of the road.

Regards,



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