

Notes - Oxford County Commissioners Deliberations, June 3, 2021

Following Closing Arguments by the Attorneys, the Commissioners began by concluding that the Petitioners had in fact provided the required 5 days' notice pursuant to their August 7, 2020 email.

Attorney Pross then informed them that they had to decide if Kezar Lake Road was reasonably safe and convenient for travel. Attorney Pross said there were 3 possible outcomes:

- A. Yes, it is safe and convenient
- B. No, it is not safe and convenient, or
- C. Due to repairs made by the Town, Kezar Lake Road is now reasonably safe and convenient, but it was not reasonably safe and convenient when the Petition was filed.

Attorney Pross said that if they agree with (B) above, then they will have to decide what repairs are needed and order the Town to make them.

If they agree with (C) above, then they will have to decide whether or not the Town should be ordered to reimburse Oxford County for the costs of this proceeding.

The Commissioners then approved a Motion (3-0) that the road was reasonably safe and convenient on May 21, 2020.

Discussion:

Pross – bear in mind the language of the statute – the date of your hearing. (Here Attorney Pross helped us by reminding the Commissioners that the date of the hearing was the applicable date for “safe and convenient”).

Merrill – impressed with condition of the road that day. “A lot safer than the ones I travel every day.” However, he noted that he did notice potential issues that needed to be addressed, such as a culvert that needed to be cleaned out, ditching/raised (false) shoulders, and a couple of problematic rocks. However, the road itself was good that day, although he is not convinced that the road was safe or convenient back in August of 2020.

Duguay – Wilfong said it’s not the best road, it’s not the worst road. He would have liked to have seen a traffic count. He said the most inconvenient thing that he saw was the dust. As a side note, he recommended that the Town consider “calcium” to keep the dust down. However, he has no doubt that the road was “not unsafe”, and he noted that Wilfong said that there’s more work coming. Duguay disagreed with Attorney Daggett that the town doesn’t have a plan. Duguay

thought Wilfong was appropriately relying on road experts, and the Selectmen were being fiscally responsible.

Turner – “My observations are similar – the road was in good shape.” Then, Turner noted that when he saw the pictures presented by the Petitioners, he realized that the road is probably not going to last that long. He also noted that he is a former State Trooper and under the applicable statute the speed limit is actually 45 mph, not 25 because of the distance between houses, etc. (if you read the statute). However, the Town has the right to post any speed limit it wants.

He agreed that the road was safe and convenient on May 21.

He said that another factor was that the Town had laid out a plan, over time, to fix the road – and they put it in the budget.

The Commissioners approved 2 Findings of Fact on this issue:

- #1 On May 21, the road was safe and convenient.
- #2 The Town’s budgetary allocations outweigh the concerns of the road deteriorating in the future.

Next Issue:

Was the road safe and convenient in August of 2020?

Duguay pointed out that someone said it wasn’t any better now than it was last August – which to him means that the road must have been in decent shape last August, because it’s in decent shape now. Plus the pictures don’t really support a defective road last August.

Turner – disagreed with Duguay – the road condition report and subsequent pictures satisfy him that the road wasn’t safe and convenient in August of 2020. Merrill agreed with Turner. This vote was 2-0-1 (Duguay abstained), that the road was NOT safe and convenient in August of 2020.

The Commissioners made the following Findings of Fact regarding this issue:

Exhibits 5, 6, 8 and 9 were instructive in this conclusion, and testimony by the residents was also instructive in arriving at this conclusion.

Next Issue:

Should the Commissioners award costs for these proceedings against the Town?

Pross pointed out that the standard is “if justice so requires.”

Merrill – can costs be divided?

Pross – no – it's either the County or the Town.

Duguay – said he would not assess the Town.

Merrill – for a certain period of time, the roads were in disrepair.

Turner – this petition forced the Town's hand.

The Motion to have the Town reimburse the County's costs was approved by a vote of 2-1.

The Commissioners made the following Finding of Fact regarding this issue:

The Town would not have done the repairs that they did in a timely manner but for the Petition.