

Discontinuance of the Old Estabrook Road Trail

According to Town records, Estabrook Trail is an old private logging road that was never a public way or used by the general public. In 2016, a controversy developed regarding the status of the Trail, which led to considerable public confusion and misunderstanding regarding the history and status of the Trail.

All of the early Roads in the north of Concord were officially laid out and recorded by the Town as public ways, with the exception of Estabrook Trail. Official Town Roads must be “laid out and accepted” according to state statute, and the owners compensated for their lands, but none of this happened for Estabrook Road. Deed records show that the southern part was created by the owners on their own lands in the early 1700s. A later attempt to establish a Town road on the northern section of the Trail was voted down by Town Meeting in 1763. A few owners north of the Woods attempted to bypass the Town Meeting and petitioned the County for a road. The County declined to make a public way, but proposed the route of a private way for those northern landowners on the condition that the owners agree. At that same time, the people of the north formed their own church and Town Center in Carlisle and no longer needed the private way, the owners never did agree to it, and it remained a private logging road.

There is a myth that the Trail was used by around twenty minutemen of the north to reach the north bridge on April 19, 1775. The record shows that those minutemen came down Lowell Road. Minuteman *re-enactors* today are permitted by the owners to use the Trail as a parallel path for a more authentic experience.

The Trail does not show on Town maps of 1754, 1779, 1794, 1801, or 1820. The Trail first appears on a map in 1830, on a map specifically created to show both public and private ways. By 1860 the Trail was already locally known as “the deserted road”, according to Ellery Channing. In fact, the only Town record of use of the Trail part of the road was for private logging in 1879. In the Town records of 1891 it describes Estabrook Trail as “little better than ruts through a piece of woodland”. In 1932 the road commissioners said the Trail “has for a long period ceased to be in general public use”.

In fact, prior to the late 20th century, when the owners began to allow public use, there is no record of any member of the public ever traveling on the Trail at all. The only recorded users were the owners and their friends and neighbors.

When the owners in 1932 asked the Town to support their closure of the Trail to prevent its use by “picnickers,” neither the Town nor the owners had any system of records to determine the status of the old way, as the early records were not transcribed, organized, and indexed until years later. Without a way to determine if the road were ever made a public way, the discontinuance of the Trail in 1932 was the only option to definitively establish the status of the road. According to the Mass Executive Office of Environmental Affairs: “Following a discontinuance, the public’s easement of passage disappears and the land beneath the easement returns to the original landowner”.

In discussing discontinuance using this procedure, the famed Concord lawyer Samuel Hoar, of the firm Goodwin, Proctor, and Hoar, wrote the Concord Road Commissioners that “The suggested proceedings would definitely determine that the road was a private way and would have the effect of abandoning any rights that the Town has over the way if there are any such rights”.

At the public hearing in 1932, the County Commissioners found “no persons interested appearing to object to the discontinuance of a portion of said highway as a public way” and decreed that “said way hereinafter be a private way” and that “notices to warn the public against entering thereon” be posted.

After 1932, the owners closed the Trail and gated and posted it to prohibit public access. That gate has been present continuously for nearly 90 years in different forms.

The early records of Concord have now been systematically organized, and we now know that the discontinuance of 1932 was unnecessary, since the Trail was always private, never having been made a public road to begin with.

Estabrook Road today is recorded in the Town engineering department as ending where the pavement ends at the boundary to Estabrook Woods. The Trail itself is not recorded as a public way or a private way, but only as private land.

The Town admits that it has no land along the Trail and that the Trail itself is owned by the landowners and not the Town. The Town admits that the only purpose of the Trail is to access private land. The Town admits it cannot find records that the Town ever Established the Trail as a Town Way. The Town admits that the Trail was discontinued in 1932. The Town argues that the Trail must have been a public way prior to 1932 but that the records of *just this one road* were somehow lost, despite the Town having arguably the most complete set of early Town records of

any Town. The Town argues further that the discontinuance of 1932 did not really discontinue the road, despite the fact that roads all over the commonwealth discontinued the same way under the same statute are considered wholly private and obliterated, built over, gated, and posted no trespassing. Each of the three other roads discontinued under the same law in Concord are completely private today, and presumably would become public, if the Town were to prevail. In Concord, at least two homes sit right on top of a discontinued trail. In Acton there are over a dozen. If ancient, discontinued trails were suddenly declared public, over 100 land parcels in Concord would be impacted. The consequences around the Commonwealth would be incalculable.

The property owners currently have granted permission for people to use the trail, subject to posted rules.

The records of the discontinuance are provided on the following pages.

TOWN OF CONCORD, MASSACHUSETTS
Board of Road Commissioners
Wednesday, April 13, 1932.

A meeting of the Board of Road Commissioners was held this evening at 7:30 o'clock. All members present. Superintendent Joslin present.

Mr. Robert Bygrave appeared before the Board representing Raymond Emerson, Stedman Buttrick and Russell Robb and requested the Road Commissioners to petition the County Commissioners for the closing of Esterbrook Road from a point just northerly of Raymond Emerson's bungalow to the Carlisle line as a public way. His reasons for this being that the road is now almost impassable and is used only by picknickers and is a serious fire hazard. There are no houses on this stretch of road in Concord. The Board voted to grant Mr. Bygrave's request and requested him to draw the necessary petition and submit it to the Board for their signature.

1752

Commonwealth of Massachusetts

Middlesex, ss

To The County Commissioners
For The
County of Middlesex

PETITION IN RE

ESTABROOK ROAD, CONCORD, MASS.

Filed June 10, 1932.

*Wednesday June 29
10 AM. Selectmen's
Room Town Hall
Concord*

*Concord Herald
printed at Concord
(1)*

FROM THE OFFICE OF
H. R. BYGRAVE
50 STATE STREET
BOSTON, MASS.

C. C. 1752

The Road Commissioners of the Town of Concord, Petrs., that a portion of Estabrook Road, in said Concord, be discontinued as a public way, and thereafter be a private way.

FINAL RETURN

Filed July 7, 1932.

Commonwealth of Massachusetts.

PETITION

MIDDLESEX, SS.

At a meeting of the County Commissioners for the County of Middlesex,
at Cambridge, in said County, on the first Tuesday
of June, in the year of our Lord one thousand nine
hundred and thirty-two, to wit, by adjournment
at said Cambridge on the
tenth day of June A.D. 19 32.

On the foregoing petition, Ordered, that the Sheriff of said County, or his Deputy
give notice to all persons and corporations interested therein, that said Commissioners
will meet for the purpose of viewing the premises and hearing the parties at the
Selectmen's Room, Town Hall, Concord in said County, on Wednesday,
June 29, 1932, at ten of the clock in the forenoon,

by serving the Clerk of the town of Concord,

with a copy of said petition and of this order thereon, fifteen days at least before said view,
and by publishing the same in the Concord Herald, a
newspaper printed at Concord, one weeks successively, the last
publication to be seven days at least before said view, and also by posting the same in
two public places in the said town of Concord,
seven days before said view; and that he make return of his doings herein, to said
Commissioners, at the time and place fixed for said view and hearing.

Charles T. Hughes
Asst. Clerk.

~~Copy of petition and order thereon~~

~~Attest~~

~~Clerk~~

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

TO THE COUNTY COMMISSIONERS FOR THE COUNTY OF MIDDLESEX

RESPECTFULLY represent Oscar E. Beckvold,
Hugh F. Leith and Edward F. Sheehan; that they are the duly
elected and acting Road Commissioners of the Town of Concord
in the County aforesaid, and have charge of the public ways
therein; that Estabrook Road, so-called, in said Town of
Concord, is a public way, and that common convenience and
necessity no longer require that such way shall be maintained
in a condition reasonably safe and convenient for travel from
a point on said Estabrook Road, at the entrance to R. Emerson
driveway, as indicated by a drill hole in rock in said way,
and shown on the plan hereto annexed (which said point is
2,344.05 feet from the middle of the traveled way of Barn^s Hill
Road, at its junction with said Estabrook Road), to the boundary
line between the Town of Concord and the Town of Carlisle, on
said Estabrook Road; that said way from said point at the en-
trance of said R. Emerson driveway, has for a long period ceased
to be in general public use; that there are no residences served
by that portion of said way sought to be discontinued as a public
way; and that it would be an inordinate and unreasonable expense
upon the said Town of Concord to keep said way in a condition

reasonably safe and convenient for travel.

WHEREFORE the said Road Commissioners hereby pray that the County Commissioners adjudicate that said way shall hereafter be a private way, and that the Town of Concord shall no longer be bound to keep the same in repair, upon condition that the said Town give sufficient notice to warn the public against entering thereon by the posting of adequate notice or notices where such way enters upon or unites with an existing public way.

Respectfully submitted,

Oscar E Beckwith

Edward W. Shuman

Hugh F. Leith

Road Commissioners of the Town of Concord

The Law under which the Town discontinued the Estabrook Trail is shown below. This is the law that was in effect at the time of the discontinuance in 1932. The law clearly provides for the discontinuance of roads and that a road discontinued under this procedure is no longer a public way, and that such a discontinued road be posted "to warn the public against entering thereon".

AN ACT RELATIVE TO THE DISCONTINUANCE OF CERTAIN WAYS *Chap.289*
AS PUBLIC WAYS.

Be it enacted, etc., as follows:

Chapter eighty-two of the General Laws is hereby amended by inserting after section thirty-two the following new section: —

Section 32A. Upon petition in writing of the board or officers of a town having charge of a public way, the county commissioners may, whenever common convenience and necessity no longer require such way to be maintained in a condition reasonably safe and convenient for travel, adjudicate that said way shall thereafter be a private way and that the town shall no longer be bound to keep the same in repair, and thereupon such adjudication shall take effect; provided, that sufficient notice to warn the public against entering thereon is posted where such way enters upon or unites with an existing public way. This section shall not apply to ways in cities.

G. L. 82, new section after § 32.

Discontinuance of certain ways as public ways.

Proviso.

Not applicable to ways in cities.

Approved April 24, 1924.

FINAL RETURN

Commonwealth of Massachusetts.

MIDDLESEX, SS.

At a meeting of the County Commissioners for the County of Middlesex, holden at.....Cambridge....., within and for said County, on the first Tuesday of.....June....., in the year of our Lord one thousand nine hundred and thirty-.....two.....

The Road Commissioners of the Town of Concord

in said County, by their petition to said Commissioners—among other matters—pray that a portion of Estabrook Road, in said Concord, be discontinued as a public way, and thereafter be a private way,

as will more fully appear, reference being had to the petition filed of record in the case.

The petition was presented to the County Commissioners at their meeting holden at.....Cambridge....., within and for said County, on the first Tuesday of.....June....., A.D. 1932, when and where notice was ordered given to all persons and corporations interested therein of the time and place when and where said Commissioners would meet for the purpose of viewing the premises and hearing the parties as by their order of notice on file and of record will more fully appear.

And at the time of said view and hearing, no person interested appearing to object to the discontinuance of a portion of said highway as a public way, said Commissioners found that common convenience and necessity no longer require such way to be maintained in a condition reasonably safe and convenient for travel, and adjudicated that said way shall hereafter be a private way, and thence said petition has been continued to this time.

And now the said Commissioners make.....final.....return of their proceedings in the premises, as follows: said Commissioners having given notice as the law directs, met at.....the Town Hall.....in said.....Concord....., on the.....twenty-ninth.....day of.....June....., in the year nineteen hundred and.....thirty-two....., when and where the parties appeared, to wit, the petitioners by.....H. R. Bygrave, Attorney, and Elmer L. Joslin, Supt. of Roads and Bridges of said Town of Concord and the respondent—by.....and no person appeared to object.

The premises having been examined, and the parties fully heard, said Commissioners

in accordance with said petition determine that common convenience and necessity no longer require the way described in said petition to be maintained in a condition reasonably safe and convenient for travel, and adjudicate that said way shall hereafter be a private way, and that the town shall no longer be bound to keep the same in repair.

This discontinuance extends from a point on said Estabrook Road at the entrance to R. Emerson driveway, as indicated by a drill hole in the rock in said way, and shown on the plan annexed to the original petition (which said point is about 2,344.05 feet from the middle of the traveled way of Barnes Hill Road, at its junction with said Estabrook Road), and the discontinuance is to extend from said drill hole to the boundary line between the Town of Concord and the Town of Carlisle, on said Estabrook.

And said Commissioners further provide that in accordance with Chapter 289 of the Acts of 1924 this junction shall take effect provided that sufficient notices to warn the public against entering on said way are posted where said road enters upon or unites with the existing public way at said Emerson driveway, and also at the town line between Carlisle and Concord.

IN WITNESS WHEREOF, WE, the said County Commissioners, have hereunto set our hands this ninth

day of July in the year of our Lord one thousand
nine hundred and thirty-two.

Walter C. Wardwell

Frederick S. Burlew

Nathaniel S. Bondick

COMMONWEALTH
OF MASSACHUSETTS

Middlesex, ss.

To the County Commissioners for
the County of Middlesex.

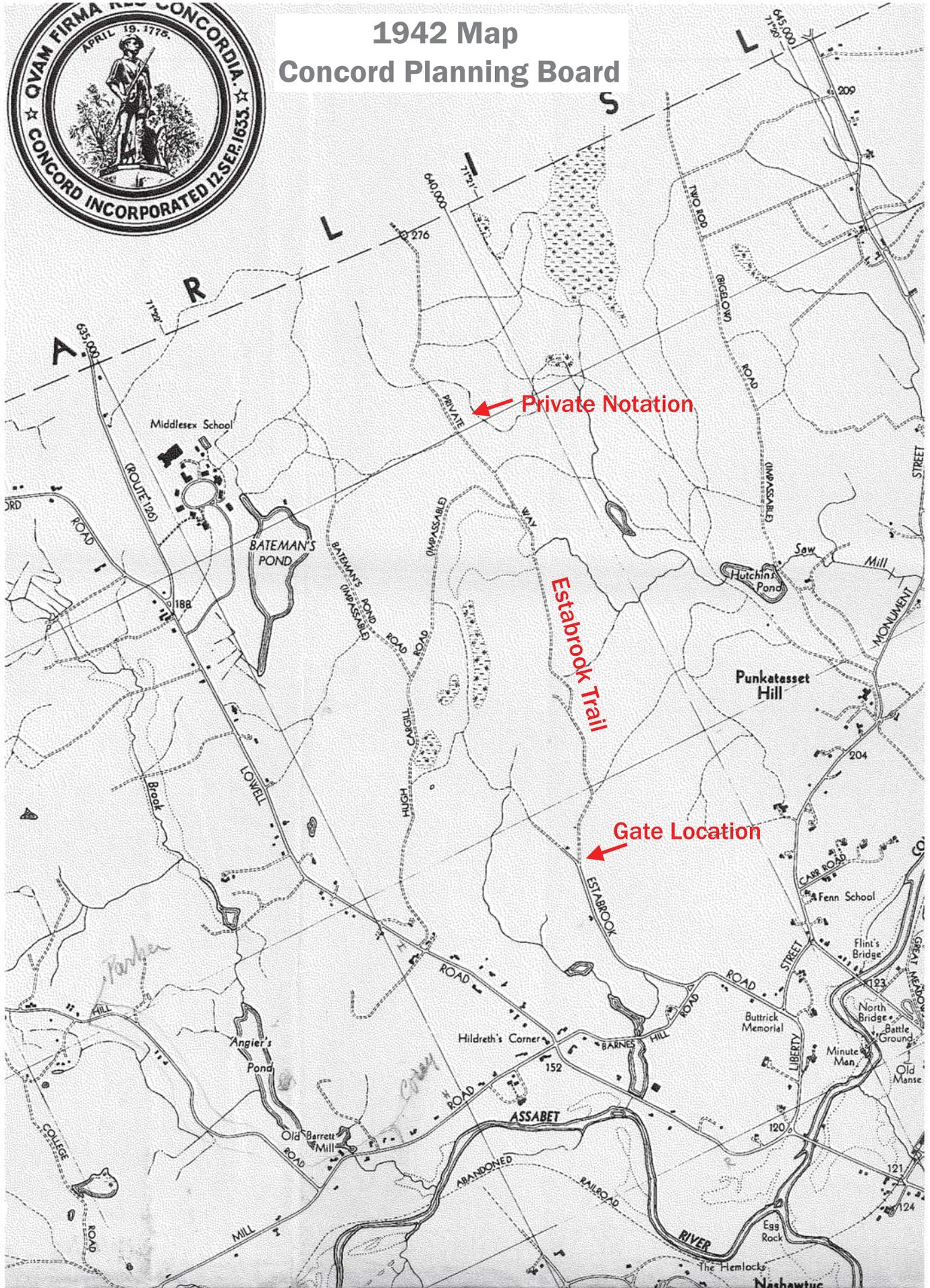
Respectfully represent Oscar E. Beckvold, Hugh F. Leith and Edward W. Sheehan; that they are the duly elected and acting Road Commissioners of the Town of Concord in the County aforesaid, and have charge of the public ways therein; that Estabrook Road, so-called, in said Town of Concord, is a public way and that common convenience and necessity no longer require that such way shall be maintained in a condition reasonably safe and convenient for travel from a point on said Estabrook Road, at the entrance to R. Emerson driveway, as indicated by a drill hole in rock in said way, and shown on the plan annexed to the original petition (which said point is 2,344.05 feet from the middle of the traveled way of Barnes Hill Road, at its junction with said Esterbrook Road), to the boundary line between the Town of Concord and the Town of Carlisle, on said Estabrook Road; that said way from said point at the entrance of said R. Emerson driveway, has for a long period ceased to be in general public use; that there are no residences served by that portion of said way sought to be discontinued as a public way; and that it would be an inordinate and unreasonable expense upon the said Town of Concord to keep said way in a condition reasonably safe and convenient for travel.

Wherefore the said Road Commissioners hereby pray that the County Commissioners adjudicate that said way shall hereafter be a private way, and that the Town of Concord shall no longer be bound to keep the same in repair, upon condition that the said Town give sufficient notice to warn the public against entering thereon by the posting of adequate notice or notices where such way enters upon or unites with an existing public way.

Respectfully submitted,
OSCAR E. BECKVOLD,
EDWARD W. SHEEHAN,
HUGH F. LEITH,
Road Commissioners of the Town
of Concord.



1942 Map Concord Planning Board



Private Notation

Estabrook Trail

Gate Location