

# Final Oral Arguments for the Estabrook Lawsuit Conclude

Nov 18, 2021

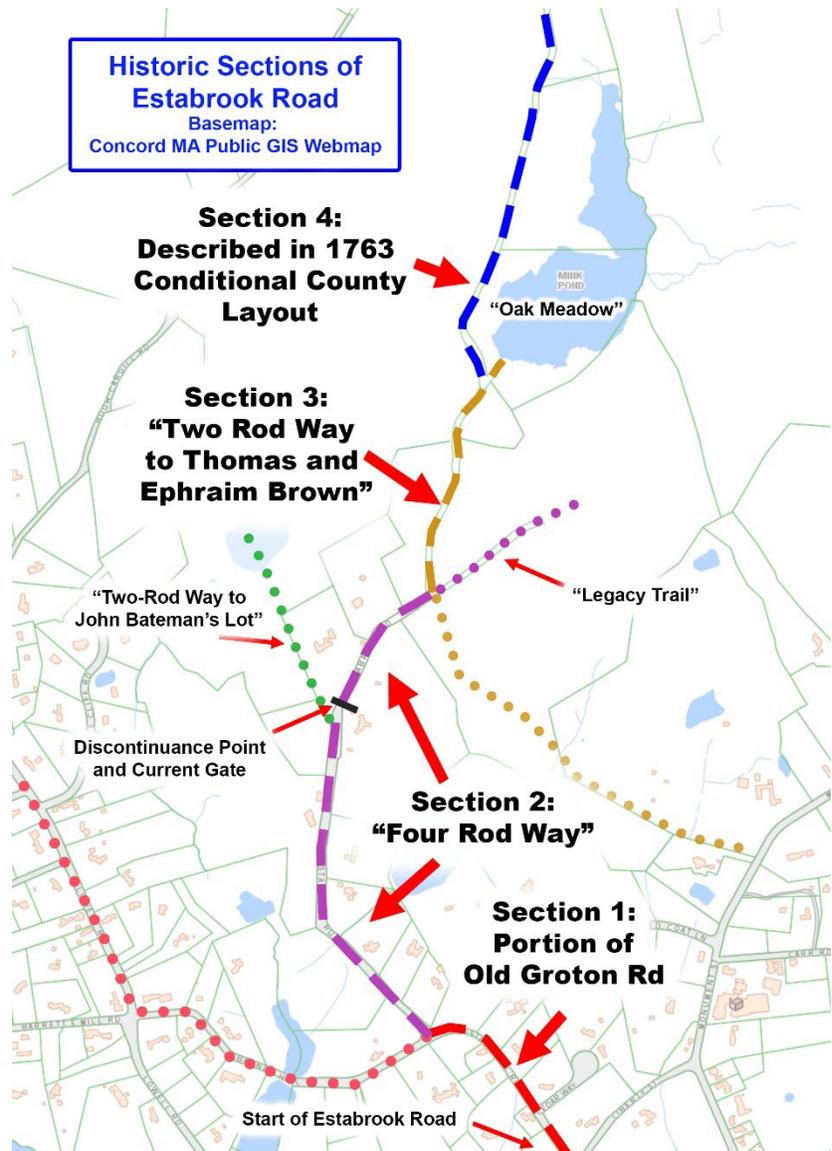
The parties have now made final oral arguments to the court. This follows years of discovery, a two-week trial in June of 2021, and final written arguments. By mid 2022, a decision will be rendered. Appeals may follow. The basis of the case has been changed many times by the Town Counsel which has caused the increasing cost to the taxpayers to pass \$1,800,000.

During oral arguments, the Town and three defendant parties each presented a summary of the issues in the case. Although many aspects of the historic facts are now undisputed, the parties continue to differ on the relevance of some facts, and on the meanings of certain historic laws.

The Town asks the court for two major findings that would establish wide-ranging new legal precedent. First, the Town asks the court to find that a historic public way can be demonstrated without any direct evidence it was created, but instead based on a premise that the way was laid out and accepted according to statute but the records were lost. No court has ever found a public way on this basis, instead requiring some evidence of formal creation by public authority according to statute.

Second, the Town asks the court to find that the discontinuance of a public way, using historic law, does not extinguish the public right to travel on it. No court has ever found that such discontinuance retains public rights in a way.

The defense provided evidence that Estabrook Road was created in sections over time from 1699 to 1763 (see adjacent map used in oral argument). Only a small portion of the Road between Liberty Street and Barnes Hill Road was created by public authority per statute in 1699. The evidence shows that the remainder of Estabrook Road was created in parts



as a private way, section 2 in 1720 by the owners, section 3 reserved in an owner's deed of 1730, and the northernmost section 4 created in 1763 as a conditional County way that was never legally completed. The defense provided evidence, including Town records, showing that the road was not maintained by the Town or used by the public, and was just a private logging road during its history.

There is no dispute that in 1932 the owners of the land along the road asked the Town if they could close the road, which was nearly impassible, to the public in order to prevent picnickers and fire hazard. At that time, the ancient town records were unorganized and un-indexed and there was no way for anyone to determine the history of the road and who had rights to close it. The Town agreed with the owners -- and petitioned the County to discontinue the road in order to ensure the owners could close it. A public hearing was called and there was no public objection to the discontinuance.

There is no dispute that the Trail was discontinued in 1932 and ordered to be henceforward a private way, and to be posted "to warn the public against entering thereon." The defense presented evidence that many old roads have been discontinued in the same manner in Concord, [in Middlesex County](#), and throughout the Commonwealth, and that all such roads are today wholly private with no public access rights. The Town Counsel argues that the required posting to "warn the public against entering" means "the public is invited to enter but notified that the road is not maintained." The Town Counsel asks the court to interpret the now-obsolete discontinuance laws to have granted the public rights to use the old Trail for all purposes which would include automotive use today. Such an interpretation regarding discontinued roads would not be limited to the Trail, but would dramatically affect 85 [private properties around Concord](#).

The case is now under advisement -- and the Court will sift through the extensive documentation, evidence, and applicable law to make a determination of the status of the way, which may take many months.

Additional information available at [www.estabrookfacts.org](http://www.estabrookfacts.org)