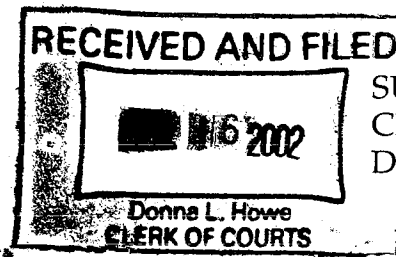


STATE OF MAINE
Oxford, ss



SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-02-001

ERNEST and ALBINA ST. GEORGE,

Plaintiffs

**DONALD L. GARBRECHT
LAW LIBRARY**

JUL 18 2002

v.

ORDER AND DECISION

TOWN OF DENMARK,

Defendant

The plaintiffs own real estate in the rural district of the Town of Denmark and have constructed a shed roof, which is attached to their barn, in order to provide a shaded area for their horses. The shed roof comes within 50 feet of an abandoned public way that passed through their property. Pursuant to Section 4.3 of the Zoning Ordinance of the Town of Denmark a 50 foot setback is required in their district from the "right-of-way line of a private road".

The plaintiffs built the shed without obtaining a permit, requested a variance, had the variance denied and have appealed to the Superior Court. The appeal turns on the issue of what, if any, setback is required by municipal ordinance from an abandoned public way.

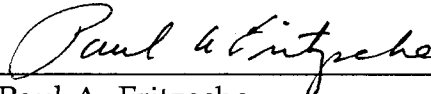
Pursuant to statute, 23 M.R.S.A. §§3028 and 3026, a public easement remains in the now abandoned formerly public way. The town ordinance, which must be strictly construed, has setback requirements for private roads and public roads. The abandoned public road is neither. While it may be advisable to maintain setback

requirements for abandoned public roads, the Town of Denmark has not yet done so in its ordinance. Therefore, no variance was required as no setback requirement applied.

The entry is:

Judgment for the plaintiffs. The decision of Denmark Board of Appeals is vacated. No variance was required.

DATED: July 15, 2002

A handwritten signature in cursive script, reading "Paul A. Fritzsche", is written over a horizontal line.

Paul A. Fritzsche,
Superior Court Justice

Date Filed 02-22-02 OXFORD Docket No. AP 02-01
County

Action ZONING APPEAL 80B

ERNEST ST. GEORGE AND
ALBINA ST. GEORGE

vs.

TOWN OF DENMARK

Plaintiff's Attorney

~~JOEL H THOMPSON ESQ~~

~~PRETI FLAHERTY~~

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Defendant's Attorney

GEOFFREY HOLE ESQ

BERNSTEIN SHUR SAWYER & NELSON

PO BOX 9729

PORTLAND ME 04104-9729

Date of
Entry

02-22-02	Complaint, Summary Sheet and Filing Fee of \$100 filed.
02-22-02	Notice and Briefing Schedule filed Copy to Joel Thompson, Esq., and Geoffrey Hole, Esq. on 02-22-02
03-12-02	Entry of Appearance filed by Geoffrey H. Hole, Esq.
03-14-02	Acknowledgement of Service filed by Geoffrey Hole, Esq.
04-02-02	Unopposed Motion to Extend Deadline for Filing of Plaintiff's Brief and Record filed by plaintiff.
04-09-02	Order filed on Motion to Extend Deadline: Motion Granted: Deadline extended to 04-17-02. S/Delahanty, J. Dated 04-09-02
04-17-02	Brief of Plaintiffs and Record filed.
05-07-02	Defendant's brief filed.
05-20-02	Reply Brief filed by Plaintiff.
06-19-02	Notice of Withdrawal filed by Joel Thompson, Esq.
06-19-02	Entry of Appearance filed by Sigmund Schutz, Esq.
06-25-02	Hearing held on 80B Appeal.
	Fritzsche, Justice Presiding, no court reporter, Sigmund Schutz, Esq. for plaintiff and Geoffrey Hole, ESq. for def.
	Case taken under advisement. Justice Fritzsche has file.