

***Statement by the Concord Select Board  
Regarding Estabrook Litigation***

On Tuesday, October 15, 2019, the Concord Select Board voted, unanimously, to significantly limit the scope of the ongoing litigation regarding Estabrook Road by directing Town Counsel not to pursue one of the Town's claims. The Board took this action in an effort to minimize both rising litigation costs and the burden on individuals who are not parties to the litigation. The Board will continue to pursue its claim of public access to Estabrook Road based on historical documentation and expert opinions that demonstrate the legal status of the Road.

Throughout this process, the Select Board's only goal has been to secure the public's right to enter upon and walk along the portion of Estabrook Road that runs through Estabrook Woods, subject to rules to protect these important resources – an objective recommended by the Estabrook Woods Access Study Committee in November of 2016. Until now, the litigation has largely involved the exchange of historical records and the preparation of expert reports concerning the legal status of Estabrook Road before 1932 when the currently unpaved portion of the Road was “discontinued” by the County. That discontinuance relieved the Town of its obligation to maintain that portion of the Road as a public way open to all travel, including vehicles, but did not surrender the public's right to access the Road. The Town believes that these historical records, its experts' analyses, and the legal effect of the discontinuance all demonstrate that the public has continued to retain the right to access Estabrook Road, including the unpaved portion through the Estabrook Woods, for recreational uses that are consistent with the preservation of the Woods.

The Town also made another claim that even if the historical records do not establish the public's right of access, the public nevertheless has gained that right through the continuous and unimpeded use of Estabrook Road following the 1932 discontinuance. The Select Board has chosen not to pursue this claim, which would be based on the depositions of dozens of individuals – mostly Town residents – who regularly have used the unpaved road through Estabrook Woods, as well as depositions of former landowners or their family members. We are not pursuing this legitimate claim to spare the community, and those who would be deposed, the expense and burden of this additional process.

We have been asked many times why we would pursue legal action against our fellow Concordians. The simple answer is that the Select Board reasonably believed that the Town was facing impending legal action that would have threatened the public's access to Estabrook Road. The Board and Town Counsel believed at that time that attempts to resolve the dispute had been unsuccessful and it was in the Town's interest to promptly seek a judicial resolution. With the benefit of hindsight, the Board acknowledges that the reasons for this approach were not communicated clearly, which has created concern in the community. Additionally, while it was a legal requirement to name all the abutters to the disputed portion of Estabrook Road in the lawsuit, the Board regrets that not all of the abutters were aware of the situation prior to the commencement of legal action.

Throughout the debate over and process of litigation, the Board has acted only in the interest of protecting public rights on behalf of Concord residents now and for all time. While much of the Board's deliberation about the lawsuit has happened during executive session – a provision of the law that protects the confidentiality of communications with Town Counsel– at no time did the Select Board act without careful consideration.

By taking this action to limit the scope of the litigation, the Board is showing that we have heard the community's concerns while continuing our obligation to protect a public right. It is our sincere hope that this matter will be resolved by judicial action or mutual agreement as soon as possible.