Maine Abandoned and Discontinued Roads Commission October 7, 2022

Meeting Minutes

In attendance: Brian Bronson, John Monk, Cathy Nadeau, Roberta Manter, Vivian Mikhail, Peter Coughlan, Karla Black, Ryan Pelletier (via Zoom), Rebecca Graham (via Zoom), Steve Young (via Zoom)

Absent: Kris McCabe

The meeting was called to order by Vivian Mikhail at approximately I 0:25 a.m. A roll call was conducted of those members present. It was noted that Seat 7, which had remained vacant had just been filled by the Speaker of the House. Attorney Jim Katsiaficas of Perkins Thompson will fill the seat at the next meeting.

Commissioners briefly introduced themselves and stated their interest in the Commission.

Vivian Mikhail introduced the policy regarding remote meeting participation. She indicated we can discuss the policy today, but it needs to be posted and opened for public comment before the Commission can vote on it. Roberta Manter asked if the public could participate remotely, the answer is yes. Brian Bronson asked if it allowed participation by telephone, the answer is yes, but if the meeting goes into executive session the party calling in will need to be in a location where they cannot be overheard.

Before the Commission began reviewing the statutory duties of the Commission Roberta Manter briefly outlined her priorities for the Commission. She started by indicating a book she is reading has a relevant message-when a problem is too big for one, you shouldn't be competing with others, instead you should be working together to encourage others. All interests tie in together and constitutionality is a big issue. She cited the case *Jordan v. Canton* and said the case holds that property access is a right that requires due process and just compensation.

Roberta quoted Jordan as saying that property access is a right attached to property, and when that access is taken or even damaged, the Constitution requires both due process and just compensation. Jordan says that a public road with no public maintenance will inevitably be destroyed.

She said further that a public easement is a public road with no public maintenance, she sees that as a constitutional issue. She recommended instituting minimum maintenance roads as an alternative.

With Vivian Mikhail leading the discussion, the Commission went on to review the duties outlined in Public Law Chapter 743. The duties fall into 4 primary categories:

I. Primary Considerations

1. Matters to Prioritize
2. Recommendations to Develop
3. Legislation Review

A Com.mission report is due February 1, 2023 and annually thereafter.

The discussion turned to electing a chair. Ryan Pelletier nominated Pete Coughlan, seconded by Roberta Manter. Pete Coughlan declined the nomination. Ryan indicated he would then support Jim Katsiaficas as chair.

Pete Coughlan nominated Cathy Nadeau, Brian Bronson seconded. Cathy Nadeau declined the nomination.

Vivian Mikhail noted that in the absence of a chair, the designees from IF&W and Department of Agriculture can step in to call a meeting.

Rebecca Graham indicated she too would be supportive of Jim Katsiaficas as chair. She indicated he is an expert in this area and often provides training to bar members on these issues.

Pete Coughlan and Vivian Mikhail both agreed to reach out to Jim Katsiaficas to welcome him to the Com.mission and gauge his interest in becoming the chair.

The Com.mission discussion returned to the duties outlined in the statute. The first area for discussion was the Primary Considerations:

Property Owner Liability: Roberta Manter indicated that landowners can have liability for things like runoff, and the runoff might not be their fault and this should be considered.

Public Easement Retention over Abandoned or Discontinued Road Including the Scope of Permitted Public Use: Roberta Manter said this is number one on her list. She cited case law relevant to the issues surrounding public use.

Statutory terminology: Roberta Manter indicated there are at least 3 definitions of private way that conflict with each other. Definitions are scattered throughout the statutes and need to be clarified. Rebecca Graham indicated that Jim Katsiaficas' s bar training has the definitions broken down really well. He could also provide substantive history.

Vivian Mikhail will ask Jim Katsiaficas if he is willing to share this information.

Statutory Process: Might look to Jim Katsiaficas for this as well. Rebecca Graham said this essentially requires a deed ancestry which can be really expensive for either the property holder or the town.

The second area of focus is Matters to Prioritize--prioritizing the matters outlined in section

2(B). This will need some significant conversation.

Steve Young indicated recreation uses overlaps with the previous section. One of the biggest issues is ATVs. There could be some real conflicts particularly when it comes to snowsleds or designation of habitat.

Cathy Nadeau focused on number 5 regarding municipalities, indicated she would like to know what municipalities are doing about discontinued and abandoned roads or easements, are they on board?

Rebecca Graham said reaching out to the communities will help all of the commissioners understand the intersections and the problems associated with that directly from the people involved. Agrees that the recreational use is key. Should clubs have to bond for their maintenance. Many municipalities struggle to respond to landowner issues regarding roads that are discontinued.

Roberta Manter indicated that the big issue is when the road provides the only access to someone's home and the public is able to use it in any manner they please. Very little responsibility on the part of the municipality to repair any damage. Understands that municipalities don't have the resources but if there were a better mechanism for understanding what the public's rights are and responsibilities are. Rights and responsibilities go together and right now that's not the case. The rights are the public and the responsibilities are the private.

The remaining two duties are: Recommendations to Develop that will flow into the annual report in February and there may be legislation then to review as well.

Subcommittees and bylaws are premature right now.

Discussion was then had regarding getting notice to new property owners. Recent legislation that now requires real estate disclosures if access to property is not maintained by the public. Roberta Manter cited to several statutes regarding required disclosure including 33 MRS§ 173(6), 33 MRS§ 193 and 23 MRS§ 3121.

The Commission members agreed that including realtors and land surveyors as interested parties to the Commission made sense.

Vivian Mikhail is looking into getting an interested parties list and how/where to post Commission notices.

The Commission discussed next meeting dates. Vivian Mikhail will send a Doodle poll.

 A motion to adjourn was made by Pete Coughlan and seconded by Brian Bronson. It was unanimous. The meeting was adjourned at approximately 11:50.