Maine Abandoned and Discontinued Roads Commission

January 25, 2023

Meeting Minutes

In Attendance:  Corp. Kris MacCabe, Karla Black, Roberta Manter, Jim Katsiaficas (by Zoom), Vivian Mikhail, Peter Coughlan, Ryan Pelletier (by Zoom), Rebecca Graham, Steve Young (by Zoom)

Absent: Brian Bronson, John Monk, Cathy Nadeau

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:06 pm, followed by a roll call of the members present.

The Commission considered the Minutes of the January 11, 2023, meeting. Pete and Jim noted some additional suggestions to the last version Vivian circulated. The Commission unanimously accepted the minutes of the January 11, 2023, meeting, with the requested edits, based on a unanimous roll call vote. Vivian will make the edits and circulate the final version. [note: final emailed to Commission members 1/26/2023]

Jim opened the meeting, turning it to Vivian for an update on the Commission’s online presence. Vivian

Reported that she followed up with the IT office of the legislature and got confirmation that it cannot host or fund a webpage for the Commission. The Commission also cannot display its meetings on the legislature’s calendars unless it meets in legislative space.

Vivian shared that the remaining paralegal candidate declined an offer for the job and said the posting will stay up.

Pete and Jim revisited the prohibitive $500/month cost of a site through maine.gov, and Roberta wondered about free web hosting services. Vivian’s prior inquiries to OIT confirmed free sources to be disallowed by the state. Pete raised “govtoffice.com” as a lower cost option if we could link to a state website. Pete guessed that this option could cost as little as $40 per month. He said he would look into it, and believes it offers a mailing list option as well. Jim noted we would still need a place to list any Commission site somewhere on maine.gov. Steve said he would think that would not be a problem, as all Commissions should be listed, and Roberta said we may need legislation to make this part of the process easier.

Jim turned to a review of the Commission’s updated draft Report to the legislature, with the goal being to agree to and approve it. Steve said he entrusted last grammatical and stylistic changes to Vivian. Pete noted it’s a great effort and suggested an executive summary upfront would be helpful to legislators who won’t read voluminous pages.

 Steve read the rough the updated report and had no recommended changes. He noted some confusion about the status of certain roads as the report reflects is an issue.

Jim then walked through the structure of the draft and Roberta’s submitted edits. He restated the Commission’s identified priorities.

Roberta wanted some mention of the unconstitutionality issue resulting from public roads that have no public maintenance and raised the possibility of asking the legislature for an opinion of the justices on it.

Jim said that a “solemn occasion” could prompt the legislature to ask for such an opinion. He suggested that the Commission’s Report attribute the constitutionality piece as the number one issue of Maine ROADways and would incorporate it likely before the “recreational users” language.

Turning to the section on Property Owner Liability, Pete asked whether the Commission was okay with the recommendation of creating a statutory limitation on liability. Kris noted that mirrors existing law, so long as there is not maliciousness involved.

Jim reviewed the Public Easement Retention section and noted that the issue was avoiding landlocked situations, and that he tried to capture varying ideas. Roberta said she wants to avoid always resulting in a public easement, which Jim noted was the favoring of the majority. Pete agreed with Roberta that it should not be automatic. Steve noted that if a change of ownership comes down the line, the problem comes up again if there has been no agreement. Rebecca said this comes up often and public easement is how it is managed. Jim explained that every time you change the law, you get essentially get different “classes” of public easements.

Ryan gave the example of private roads that are never discontinued but towns eventually accept them as public easements. Jim agreed that all kinds of public easements are created at different times in different ways.

Roberta commented that there are actually a lot of towns declaring private roads as public easements for purposes of winter plowing. The problem arises when ATVs then tear them up and addressing enforcement issues would help that situation.

Jim turned to a review of the Statutory Terminology section, noting the updated Report covers well the need for consistency. Roberta suggested also mentioning the Hepler/Vitelli legislation there.

Pete raised the question of who is going to do the “further work” around terminology. The Commission is best suited to do that, as others may unintentionally make it worse. Pete asked is we should add suggestions at this juncture.

Jim agreed that the Commission will probably be the ones to do the work, and that we can suggest to the legislature that it involve us.

Steve raised Ryan’s example of adopting a public easement versus a town way and asked what that does to snow removal. Ryan said it’s the town’s option. Steve noted this is important in terms of incentives to towns. Roberta agreed with Steve, who said that there should be an exception for property owners to use ATVs and snowmobiles themselves. Kris explained it becomes an issue when another landowner complains and the warden may have to step in, probably encouraging them to talk and straighten it out.

Turning to a review of the Statutory Process section, Rebecca noted from a municipal perspective, court involvement and due process rights are how it plays out. Giving an extra year does not usually help because without agreement a public easement is often all that’s left. It seems that Roberta’s experiences and examples are historic and complicated by the numerous legislative changes. Much that’s come up points to individual responsibility to know what you are buying, e.g., what “seasonal” actually means in a listing. Pete noted MMA’s step-by-step resource. Roberta said some towns are not even looking for guidance, and Pete responded that most towns do want to get it right.

Steve mentioned a new neighbor in Frenchville who purchased property because he thought he had snow sled access and found out later that it was not guaranteed. Kris noted this is never guaranteed because owners can change access at any time. Jim mentioned real estate forms being a source of this information and Roberta suggested a pamphlet of possibilities re: seasonality, trail access, etc.

Roberta said that retrospective legislation is problematic due to all the changes in the law. Pete suggested including the Commission’s willingness to work with the legislature on upcoming bills in the last long paragraph on page 4 of the updated draft.

Jim turned to the bottom of page 4 and the identified priorities and noted the many outstanding tasks and questions that a road inventory would involve, and the Commission discussed examples of why this is such a complicated undertaking (including where it would live and who would be responsible for maintenance). Pete stated that MDOT cannot be the repository because it really has nothing to do with DOT and there is not staffing for that.

Jim said he will edit the report to capture the meeting discussion and mention the Resolve Roberta raised previously.

Steve and Ryan agreed that unorganized territory roads should be included in a future inventory, and Ryan emphasized that this is a huge lift. Jim brought up the issue of paper streets as another complication and Ryan agreed it is a highly complex component.

Pete asked if we are really talking about overgrown roads that are not even really roads anymore? Roberta suggested we start with clearer ones, one step at a time, and not all at once. Jim agreed with an incremental approach.

Jim advised he would make edits and Vivian would review so that the Commission could read through the report once more before the 2/1 deadline. The Commission will stand by for the State and Local Government Committee to request input during session or continue this work. The Commission agreed that it did not need to schedule a next meeting at this juncture.

Vivian will file the Report and will continue to respond to public requests for it and for meeting videos until there is another online mechanism or a paralegal. Commission members should feel free to encourage the public and interested parties to email the Roads Commission general email account (info.abandonedroadscommission@maine.gov) with such requests.

The meeting adjourned at approximately 2:55 pm.