Maine Abandoned and Discontinued Roads Commission

Meeting Minutes, March 24, 2023

In Attendance: John A Monk, Rebecca Graham, Steve Young, Jim Katsiaficas, Peter Coughlan, Corp. Kris McCabe, Brian Bronson, Roberta Manter, Karla Black, Megan Russo

Absent: Ryan Pelletier, Vivian Mikhail, Catherine Nadeau

Meeting was called to order by Chair Jim Katsiaficas at approximately 10:00 am, followed by roll call of the members present.

Jim Katsiaficas opened the meeting with a discussion of:

1. LD 461, a bill that was before the State and Local Government (SLG) Committee of the Maine Legislature to fix the understanding or definitions of “private way” and “private road” and;
2. A proposed amendment of LD 461. The cover letter with the proposed amendment for the LD 461 references 30-40 changes that are needed to State road laws.

Roberta Manter provided that she had spoken to Attorney John Cunningham, who had written the cover letter and is an attorney with extensive experience on road issues. Attorney Cunningham told Roberta that his list of changes to the statutes needs more work and so he is not submitting it to the Legislature at this time. Roberta further provided that there is another attorney who is also reviewing the statutes and hopes to see what terms should be revised.

Jim stated that LD 461 has 14 sections, and the Commission should go through and review the sections so that he can put together a letter of finding for the Legislature.

Roberta recommended looking at the amended version as that is what they are trying to get through now. Jim responded that LD 461 is what is before the Commission, not the Amendment so the Commission should work on LD 461.

Peter stated that LD 461 is coming up next week before SLG and was wondering if this Commission will be able to get through it or should recommend that SLG table the bill to allow the Commission time to review. Peter stated that he was not convinced that the Commission could complete that task before the hearing.

Roberta stated that there are two sections of LD 461 the Commission should look at:

1. The confusing terminology.
2. The requirement that Towns must inventory their roads.

Roberta further recommended that instead of mandating the towns to inventory all the roads, the State should just have the Towns inventory the roads they are currently maintaining. Also, can we use the 911 lists or system and MaineDOT to identify all town roads, so we have them all.

Peter agreed. He noted that anyone can see the roads maintained by MaineDOT with the Public MapViewer. He said there are no lists, but that anyone should be able to print out any town roads with the Public MapViewer, and that he’ll work to get a permanent list on the website to make it even easier.

Roberta provided that her biggest concern is that the list needs to be accessible to the public so that when people are purchasing property or trying to figure out the status of the road, they have a place where the information is centralized, and everyone can have a starting place on the road’s status.

Peter said that MaineDOT can use their road information to put together spreadsheets per town with the roads lists and will work to have it on the website for public access. Roberta noted that even though MaineDOT Public MapViewer has the information on their website, that location isn’t the most obvious place for people to look. Jim asked if MaineDOT’s Public MapViewer has the resources and could provide the links and spreadsheets per town of the roads so that people could access it online. Peter stated yes and that he could coordinate with 911 and get their combined list so the list would show private and public roads.

Jim stated that if this is the case then there is no need for the towns to do this due diligence but instead could rely on MaineDOT Public Map Viewer. Peter confirmed that this was the case. Jim suggested then that the Commission should recommend that Section 12 (which would require the towns to prepare an inventory of their roads) be removed from LD 461.

Roberta queried if there needs to be something in the bill to require MaineDOT to provide this information on the website or to collate the information as suggested by Peter. Peter responded that this is part of what he does for MaineDOT and that he spoke with MaineDOT’s web people and foresees no issue with gathering and providing this information on their website.

Jim asked for confirmation that the MaineDOT Public MapViewer tool will tell only whether the roads are publicly maintained or not but not the current legal status of a road. Peter confirmed that is all it would be able to tell everyone. Jim suggested that if the Legislature requests towns to provide the current legal status of roads, it would end up being an unfunded state mandate and resulting in a fiscal note. Rebecca agreed with Jim’s assessment. Jim stated that it also would not tell us if the road is maintained by the town and that is the issue.

Roberta noted that if people have a list of the roads that are maintained then it will make that much easier to have a starting place to determine the status of those roads that aren’t maintained. Each road that isn’t maintained by the town or state can be reviewed as to its legal status, which would take time to assess. She further recommended to those working on the amendment to LD 461 that they should take out public easement language as that would complicate things.

Peter provided that the majority of the towns/cities have mostly town ways and only a few are public easements.

Jim queried if the Commission wanted to make a motion or if there was a consensus that the Commission wanted to remove Section 12 from LD 461 because of the MaineDOT Public MapViewer and that MaineDOT will prepare a spreadsheet that is easily available to people who need it.

Steve suggested that print copies in addition to the web-based information would be a good idea for people to be able to pick up at the local town offices especially for those who do not have access or are not savvy with computers. Peter suggested that the town office should be able to go to the MaineDOT website and print off the list for anyone who asks at the town office as the town offices have access to that information.

Karla asked Peter if the list will need to be updated and maintained. Karla further wondered if that would create a burden for Peter or MaineDOT. Peter replied that MaineDOT does not go out and update anymore with the towns. The town E911 addressing officer is required to let PUC know so that they put it in the system. Peter confirmed that he has a good working relationship with them and when something is registered with them or anything that happens with a road, they send the information over to MaineDOT, but sometimes a town addressing officer doesn’t do his job and PUC doesn’t know.

Roberta queried if someone comes into the town office and asks the status of a road, if the town could pull up MaineDOT Public MapViewer, and if the town could then see if the road was labeled incorrectly and let everyone know. Peter answered that that was correct and that hopefully at that point the addressing officer or town would notify the PUC so that information could be updated for 911 and MaineDOT.

Rebecca raised a question on whether the County or Unorganized Territory (UT) has an addressing officer who should be notifying the PUC - what is the link that LPUC tells PUC of new development? Peter confirmed that if people are living there, every county or town has an addressing officer in that community. Rebecca stated that it seems as if a loop is broken because a lot of times there is no notification, and it causes issues. Peter responded that it is an issue and that a lot of the addressing officers are also code enforcement officers, and sometimes they just forget to do their job and there can be a lot of turn over, and because it is not done routinely the roads aren’t always corrected registered with MaineDOT.

Jim noted that the road commissioner or public works director maintains the roads, and you wouldn’t necessarily get what roads are being maintained anyway from the E911 PUC information. That information obtained from E911 would be used as a starting point to fill in those roads not being publicly maintained. Peter agreed further stating that the MaineDOT relies on the addressing officer, but that the MaineDOT also does an inventory review routinely with towns and will sit with them, their road commissioner and get roads ironed out. He feels that the map is accurate.

Jim closed the discussion on Section 12 of LD 461 bill and queried if there was a motion for a Commission recommendation to SLG on this. Pete motioned that it was not necessary to have Section 12 of LD 461 since we already have that information. So, he suggested that the Commission should move to scratch the whole paragraph. Jim further provided that Section 12 of LD 461 is not necessary because MaineDOT has the information on its website of what are the public roads being maintained and people will be able to download a list. Peter stated that was correct and that they would be able to see whether the road is listed as a state highway, state aid road, town way or seasonal road. Roberta raised the issue if Peter will continue to work with the E911 system to get all the private roads/ways listed. Peter stated that it will be a bit of a challenge but that he will reach out to them so that there is a list.

Jim called for a vote on Peter’s Motion to remove Section 12 from LD 461. Rebecca seconded the motion, and was followed by a roll call vote. The commission unanimously voted to recommend removal of Section 12 from LD 461.

Next, Jim pointed out there are three sections of the bill that require municipalities to establish minimum requirements for private road construction: Sections 6 and 13 reference rules on private roads and a time requirement to adopt them in a year. Jim noted that if he wanted to put a road and it would be private, he wouldn’t want to follow municipal ordinance. If it is being maintained for a private subdivision, that is something that towns or cities regulate by ordinances and therefore Jim thought that there is no need for this provision. Roberta agreed and thought it was too burdensome as towns/cities already have something on private roads subdivisions and that the reason this wording was place in LD 461 was because there have been instances where a contractor does shoddy work and then hands it to the road association and the road association finds that they can’t afford to fix the road as is. Jim explained that that it is incumbent on the town planning board to require a performance bond for the road work so that these issues do not arise. However, a lot of planning boards don’t do that and then associations are left holding the bag. Jim stated that is no need for the State to require this, as the towns and planning boards already have the necessary tools and therefore no legislation is needed.

Steve raised a question on the current environmental law to protect against negative impact on road construction on private property. Peter queried on where that is in the bill? Steve provided that someone mentioned restriction on placing a road on the back 40 but that he would assume there are environment laws to cover that. Jim responded that is correct that people need permits from DEP for wetlands alteration to cover the development of roads in those situations.

Jim returned to Sections 6, 13 and 14 of the bill and asked if the Commission would recommend that these sections will be taken out and if so, who is making a motion.

Brian raised a question on whether these sections would negatively affect large landowners who are building roads, if those sections are not removed from the bill LD 461.

Jim called for a vote on the Motion that Roberta proposed to remove from bill LD 461, Sections 6, 13 and 14. Jim queried if there was a second.

Karla had a question about whether those sections were removed in the proposed amendment; Roberta confirmed. Jim noted that the Commission is reviewing LD 461 and that the proposed amendment that includes 30-40 changes isn’t in front of SLG which makes it hard to respond to the amendment, but thought the Commission could state that these sections should come out of LD 461.

Then there was then discussion about the proposed amendment and how to handle the proposed amendment. The Commission decided that the amendment could be addressed in a work session.

Brian felt there should a recommendation from the Committee that those sections on the original bill should be removed. Jim agreed with Brian’s assessment and Pete called for vote to remove Sections 6, 13, and 14 from LD 461. Jim called for a vote to remove Section 6, 13 and 14 from LD 461 as it was already proposed and seconded. It was followed by a roll call vote to unanimously recommend removal of Sections 6, 13, and 14 from LD 461.

Jim noted that the purpose of the bill LD 461 is to clean up the language of private roads, easements etc. There is a proposal in LD 461 to leave to municipalities to decide definitions for private road. Jim noted that the State uses the definitions anyway and that it would be better if there was one definition for the whole State for each type of road. Peter queried if Jim was talking about the definitions of roads in Titles 23 and 29A and all the other legislation so that there is no more confusion, and the terms would be the same throughout the statutes. Jim stated that in a perfect world Title 23 and Title 29 A would have the same consistent definitions.

Rebecca provided that some of the terms would then need to change such as 29-A MRS Section 2356 some of the enforcement would change such as traffic infractions on overweight vehicles and that would exclude only private ways or roads.

Pete observed that the term private road is not in the definition list for Title 23/29A, but “way” is. If the Commission changes the wording to private road, we will need a definition for “private road.” We already have a definition of way and private way, public easement, town way. Jim responded that is because private ways became public easements in 1977. In Title 23, the first five “private ways” sections deal with how to put together a road association and have a road commissioner; if the town isn’t maintaining the road, the owners can do it on their own if four or more owners. The 2006 act then added to this confusion using the private ways terminology because Section 3106 authorizes municipalities to plow private ways, but the Legislature meant public easements - not private ways. So, you have private roads, private ways and easements but they all mean different things within the terms of statutes and are used interchangeably, and it is extremely confusing.

Roberta gave an example of the confusion with the names and definitions in Title 23, Section 21. She provided that in this section a private way is said to be a public easement but there is another definition in that same section further down that states that a private way is private road or driveway, and the owner may restrict use or passage.

Peter raised the issue that there are already definitions of private ways in the statutes but if the Commission goes with private road won’t the Commission need a definition for road. Roberta queried if we could do a private way/road as the name and definition or would that make more of an issue. Rebecca suggested that the Commission should go through the statutes referencing private roads and easements and then make recommendation on cleaning up the language because it is nuanced. Peter provided that in his mind that a way is a broader term than road, and that it could even be a path.

Jim queried as to where Peter was relying on the definition of way. Peter responded that he was looking at the definition in Title 29-A definition Section 101 92. Jim provided that he was looking at the State’s road statute and that it does not address the term way.

Jim responded that the Commission and municipal perspective are more concerned about Title 23 issues or layout, abandonment, and discontinuance of ways and not the Title 29-A operation of vehicles perspective. Brian queried about Title 12 and the definition in Title 12. Kris stated that Title 12 only talks about public way and that he has seen that on private roads or ways people can ride the unregistered snowmobiles or whatever they want because it was private. Kris clarified that Title 12 only pertains to a public way, state road or highway. Peter asked if it refers to or encompasses Title 23. Brian read out the Title and it does refer to Title 23 definitions. So, Title 12 mirrors the definitions in Title 23. Jim and Kris agreed with that assessment.

Brian, Karla, Peter and Kris agreed that the definition requires much more in-depth discussion.

Peter further stated that the Commission should be the board that makes it right before it goes to the SLG Committee because the problems could be made worse.

Jim responded with the idea of a letter back to the SLG Committee with regard to the LD 461, that the Commission feels the State doesn’t need to have the municipalities put together the list of roads and agree that Sections 6, 13, 14 should be removed. Further, the biggest issue for the Commission is where should we be saying private road, private way, public easement, public way and how the language and definitions used are to be cleaned up and tied together in Titles 12, 23 and 29-A. Finally, that the Commission requests more time to be able to investigate and flush this out and ask that the bill be held over and be assigned to study to report back for the next session.

Roberta pointed out the inconsistencies that can occur in the same statute and once again how confusing it is and that this is very important. There was further Commission discussion on the confusing terms among these Titles. Following the discussion, Jim suggested that there needs to be a comprehensive look at the definition of the different types of roads/ways and easements. He asked the Commissioners if it makes sense to them to hold the bill over to permit this comprehensive review.

Peter responded yes and queried whether the Commission should submit what the Commission supports about the bill LD 461 and what they don’t agree with. Jim stated that he believed that the Commission is supposed to look at the bill LD 461 and then report back. Jim volunteered to do a rough draft of the Commission recommendations and circulate it to all Commission members and then submit those recommendations on Tuesday March 28, 2023.

Roberta mentioned that Commission could have the bill withdrawn but felt that holding bill LD 461 over is better and maybe then have a public hearing on it and the more comment on it the better.

Jim provided that he would then work on the draft providing the Commission’s thoughts on LD 461. He queried to see if Peter would be able to make the Legislative Hearing, but Peter stated he would be teaching a class.

Meghan stated that her department of MaineDOT is who the bill was assigned to but that she wasn’t planning on attending. She thought a letter from the Commission was a great method where the Commission could take a neither-for-nor-against position and then could ask for the Commission to be allowed time to look at the language to assist with clearing up misconceptions and request that the bill be carried over.

Jim asked if the Commission wanted to do a motion for recommendation to the SLG Committee to hold over the bill LD 461.

There was a discussion on how the Legislature would deal with bill LD 461 and the request for it to be held over and how that impacts the bill. Meghan stated that the Commission would be asking for more time because the Commission is not done.

Rebecca suggested that the recommendation would be that the Commission is unanimous about removing these pieces and does not want the same situation of conflicting legislation. Time is needed so that all pieces of law and definitions can change for enforcement and public easements and access for all Mainers.

Jim stated again that he would put together a draft letter by this afternoon and didn’t feel that the Commission needed a motion on the letter, and that the letter would get the Commission’s point across that the Commission should meet this summer to discuss more of the road issues.

At least two people will be attending the SLG hearing independent of the Commission, Roberta Manter and Karla Black.

The Commission meeting concluded at 11:00 am.