**ABANDONED AND DISCONTINUED MEETING MINUTES**

November 16, 2023

Hybrid Meeting

**In attendance**: Jim Katsiaficas, Roberta Manter, Brian Bronson, Peter Coughlan, Rebecca Graham, Kris MacCabe, Vivian Mikhail, Catherine Nadeau, Ryan Pelletier, John Monk, Steven Young, Karla Black

The meeting was called to order by Chair Katsiaficas at 12:10 pm.

Jim asked if there was a motion for the adoption of the October 19, 2023, meeting minutes, there were some corrections made, then a roll call vote which was unanimously carried.

Jim asked about any new business for the Commission.

Heather informed the Commission of the Report due at the end of the year to the Secretary of State.

Peter Coughlan presented MDOT’s work on a PDF of Maine Municipal Road Inventory that will be on MDOT website. The inventory will breakdown roads by municipalities and indicate last known maintenance status but will not list legal status.

Roberta brought up her correspondence with Kyle at MDOT. Kyle stated that if towns send their road records, they could scan them and create a list including discontinued and abandoned roads.

Peter was concerned as Kyle is a technician and not sure his supervisor will agree but Peter will talk to them.

The meeting discussion turned to LD 461 and the Commission’s task to review the use of

the following terms in the statutes: private way, public way, private road, public easement, to determine whether changes to current law would improve understanding of these terms throughout the statutes. A report to the legislature to the Joint Standing Committee on State and Local government is due January 5, 2024.

Jim stated that we have two more meetings scheduled: December 6th, 2023, at 9 a.m. in Room 600 and the other December 19, 2023, at 1 p.m. in State and Local Committee Room with public comment.

He further discussed how he is working on putting together the content for the report with the help of Heather and the process of how he was putting together draft legislation.

Jim then proceeded to go through the memo dated 11-08-2023 to the Commission on terms and what the Terms subcommittee had researched and compiled.

1. The subcommittee did not find any issue with the Way definition and recommended leaving it intact.
2. The subcommittee recommended adding to Public Way Section 59. The definition of “public way” found in the Maine Highway Traveler Information Act or the Maine “Billboard Law” (at 23 M.R.S. §1903(11)).”
3. The subcommittee recommended the repeal of 23 M.R.S. §1903(11) and a change to 23 M.R.S. §1914(10) to require on-premises signs to be located outside the public right-of-way limits within 300 feet of the junction of the public way and private ways, private roads, driveways, or public easements as defined in sections 3021 and 3022.

The Commission turned to “public easements” and Jim recommended combining the two existing types to make it easier for law enforcement or towns/cities to be able to enforce the law on public easements and alleviate confusion.

Roberta didn’t think it made sense to combine easements as she felt section 3021 is a definition and section 3022 is the process of establishing an easement. She was also concerned about prohibiting ATVs and snowmobiles.

Kris, Brian, Jim, and Roberta discussed, who is considered landowner in Public Easements and who should be allowed to grant access, the town, or landowners.

Roberta, Kris, and Ryan discussed the issues around Public Easements, history and who should control permission.

John, Roberta, Karla, and Rebecca discussed access for ATVs and Snowmobiles. Concerns were raised on damage caused by ATVs, who should automatically have access and who should control access, impact and marking roads for snowmobiles when a road is plowed.

Roberta raised the issue that if a town wants to continue public use of a road, they should contribute minimum maintenance. In addition, towns should state the purpose of the retained public easements and if requested by landowners release these roads to the landowners.

Jim pointed out that many of these roads exist, if they are made minimum access, would it be prospectively and who would be responsible and who would pay?

Roberta stated prospectively and if it is the public, public pays, if private, then landowners.

Kris, Roberta, Jim, Steve, Rebecca, and Brian discussed ATV/Snowmobile trespass and access issues, postings, issues changing public easements, issues around Landowners on public easements who want to form a road association, damages, and liability for landowners when they are responsible for the road, who can approve and who should be able to approve for regulation of trails.

Cathy felt if a town issues a permit to build, because they receive taxes on houses built and the public is allowed to use these roads, then the town should pay for the upkeep of the road.

Roberta thought any changes to these types of roads should be going forward. The towns should use some of the increased tax revenue that the town receives when a parcel of land is converted from tree growth to residential property and put that towards minimum maintenance of the road that generated increased revenue. In addition, if it is a minimum maintenance road, there should be limited liability for the landowners and both town and landowners should help maintain the road.

Jim shared that some of the terms committee felt the same and that minimum maintenance roads should exist, and that the municipality should share in the costs.

Jim suggested a straw poll.

Roberta added that there should be a path for landowners to make Public Easements private roads.

There was a discussion among the Commission of how and the issues surrounding that.

Jim stated if we change the law going forward on discontinued or abandoned roads then municipalities would be required to maintain public easements to assist with maintenance of the road.

Jim, Cathy, Peter, and Steve discussed if this would force towns to build a road where the land or road is abandoned, if towns and landowners can work together to make the road passable, the standards for these roads, liability and break down on how much the municipality would pay.

Roberta, Rebecca, Ryan, and Jim discussed breakdown costs, who would be responsible, the impact, limited liability and possibility of courts having to decide.

Karla stated that her group would support minimal maintenance roads if it included commercial.

Cathy did raise that there are wheelchairs people can go hunting with and so wheelchair access should be included.

Discussion of Public Easement and Minimal Maintenance Roads was set aside to be continued at the next meeting.

Jim transitioned to the draft legislation proposal for limited liability for landowners who are maintaining an abandoned or discontinued road and public easement where the town has not maintained the road.

Karla agreed with the draft but would like to see protection for environmental damage. Karla handed out her presentation.

Commission took a ten-minute break to allow Heather to scan and email those Commissioners who are remote Karla’s presentation.

Karla presented her draft that would address issues for environmental damage.

There was a brief discussion on how to report or document environmental damage.

Straw poll was taken on who would agree to the limited liability, including Karla’s language, and the consensus was unanimous in favor of the proposal.

Jim will prepare draft legislation to review next time.

The Commission also paused on Private Ways, as it is intertwined with Public Easement.

Commission moved on to Private Roads.

Jim talked about his draft legislation which recommends deleting the definition of private way in Title 29-A 101 (58) and replacing it with “private road.”

Roberta, Rebecca, and Jim discussed public rights on private road such as Windham, parking lots and police’s ability to enforce the law.

Roberta would prefer that the definition for Private Road reflect the ability to restrict public use.

Jim and Roberta discussed the definition, Jim proposed the following definition:

Title 29-A, Section 101 (58) defines private way, would be repealed, and replaced with a definition of the term “private road” and which “would mean a way privately owned and maintained over which the owner(s) may restrict public use or passage.”

Brian asked if it would change if the State helps maintain a way for snowmobiles or ATVs?

Jim said we will take out the “maintained” part.

There was further discussion among the commissioners on Private Road vs public, maintenance, and liability issues.

Jim stated he would check with John Cunningham about his concerns on defining private road.

Jim reiterated that the idea would be to make that change to the definition to get rid of the

“private way” definition.

The Commission then discussed Title 29-A MRS Section 2322, bicycle and roller skis safety education act and recommendation to change public roadway to public way.

Roberta presented her recommendations for changes to legislation from the Priority Group.

1. 23 M.R.S.A. § 1903 Definitions – Remove paragraph 10-A (Public Easement) and put the wording in to section 1914, paragraph 10.
2. 29-A M.R.S.A. § 2356 Operation of a vehicle exceeding registered weight Applies to weight limits but has an exception for “private ways:” Cross out “ways” and replace with Road. And “This subsection may not be construed to limit the authority of the owner(s) of a private ~~way~~ road or the owner of private property to restrict or allow overweight vehicles on the owner's private ~~way~~ road or private property”.

The following titles recommend change the term “private way” to “privately owned road”:

## 12 M.R.S.A. § 10001 Definitions

## 12 M.R.S.A. § 12304-B (4).

## 12 M.R.S.A § 13106-A. (6) (7)

## 14 M.R.S.A. § 159-A

## 17 M.R.S.A. § 3853-C

## 17-A M.R.S.A. § 104 5 (b)

## 17-A M.R.S.A. § 361-A

##  23 M.R.S.A. §1914.

##  23 M.R.S.A. § 7229

##  28-A M.R.S.A. § 221 (2)

##  29-A M.R.S.A. § 2063 B.

##  29-A M.R.S.A. § 2356 (6)

##  30-A M.R.S.A. § 3252 4.

##  35-A M.R.S.A. § 2503

##  38 M.R.S.A. § 1151

**The below listed statutes should c**hange the term “private way” to “public easement”:

1. 23 M.R.S.A. § 3105-A
2. 23 M.R.S.A. § 3106
3. 30-A M.R.S.A. § 3110
4. 33 M.R.S.A. § 460
5. 33 M.R.S.A. § 461 Prior conveyances
6. 33 M.R.S.A. § 462
7. 33 M.R.S.A. § 465
8. 33 M.R.S.A. § 467

Roberta had a list of ambiguous terms for homework.

Roberta than went over her handouts on the newspaper and legislative notes on when public easements, abandonment etc. was created.

Due to her review, Roberta stated the commission should request that Section 3028-A be repealed and sunset Abandoned Roads altogether.

Jim replied the reason why Section 3028-A) is still there, is to codify an objective measure of abandonment by common law, which still exists.

Roberta felt that there should be a better definition of what constitutes common law abandonment.

Jim and Roberta had a discussion on common law abandonment.

Cathy mentioned winter maintenance issues.

Rebecca mentioned winter maintenance is the liability issue and if they could fix the liability issue then maybe those on those roads can plow.

Ryan, Rebecca, and Roberta had a brief discussion on the liability of winter maintenance.

Jim then opened the floor to the Title 12 Subcommittee to make their recommendations.

Rebecca presented that the current statute defines the appropriate governmental unit as the municipal officers which means that if you have a public process where the town votes to establish an ATV trail then it's still not the town's place or purview to make that decision. She recommended changing that section of law to shift away from the municipal officers to the legislative body of a municipal or the town meeting or council.

There was then a discussion on how to fix the current statute, so everyone has a say in ATV/snowmobile access to trails and make it a more public process.

Roberta asked who would revoke the trails once granted.

Rebecca replied it would be the town again for the town granted access.

Rebecca, Brian, Kris, and John will work on further changes on draft legislation for Title 12.

Jim asked if there was a motion to adjourn, it was so moved by John, seconded by Cathy, and unanimously carried.