**ABANDONED AND DISCONTINUED MEETING MINUTES**

**December 21, 2023**

**Hybrid Meeting**

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

**Absent**: John Monk

The meeting was called to order by Chair Jim Katsiaficas at 1:30 pm.

Jim discussed that due to the severity of Monday’s storm, the Commission was forced to move the meeting from December 19, 2023, to December 21, 2023.

Jim recommended that due to the severity of Monday’s storm we delay a vote on adopting the December 6, 2023, minutes and therefore there will be a vote on the minutes on the next meeting date January 3, 2024.

Jim opened the meeting discussing the Commission’s report due January 5th, 2024, and the work that has been done so far in formatting the report, drafting legislation, and that the Commission would be working through the draft and recommendations today.

Jim then opened the public hearing.

Roberta raised the issue that a lot of people did not know about the changes to the date and time of the hearing.

Heather responded that she sent notice via the listserv and had updated the webpage frequently to get notice out of the meeting. The Commission would accept written testimony thru Friday December 22, 2023.

The Commission than heard testimony from:

1)Kathy Maher, 96 Cole Road, Cornish, ME

2)Frank Partridge, Gullies Road, Bucksport, ME (Heather read written testimony)

Jim transitioned to the report and draft legislation. He asked if the Commissioners wanted to work through each term. They agreed.

Jim started with Way, and Public Way recommendations in the report.

Jim wondered if the definition of Public Way includes Public Easements and would it create an issue.

Rebecca raised the point that all public roads are public easements, and not all Public easements are maintained.

Jim responded that while town ways and public easements may both be types of public roads, town ways are not the same thing as public easements. There are differences in how these roads are held in maintenance responsibilities. Municipalities may own in fee those town ways that were accepted from colonial grants from the king as rangeways and town ways accepted after the 1976 passage of legislation that presumes fee ownership of dedications. Many town ways were laid out and accepted between colonial times and 1976, and these ways rest on a “public easement of passage,” but this is different from the statutory “public easement.” State law requires a municipality to keep a town way, however established, “safe and convenient for passage by motor vehicle, while for public easements a municipality has a lesser degree of maintenance responsibility – the right, but not the obligation to maintain to the level set by the legislative body.

Roberta argued that it is still a public easement though.

Rebecca asserted that the Towns don’t own the land under the road only an easement over them.

Jim responded they don’t for those roads that are not rangeways and not accepted in fee after 1976, but they hold all the rights to the road and hold more rights (and responsibilities) than the statutory public easement.

Rebecca disagreed.

Rebecca, Brian, Roberta, Peter, and Jim discussed the issue on whether a public easement is a public way and how State roads are held.

Jim proposed that the Commission recommend keeping the definition for Public Ways the same but put a footnote in the report noting a concern that public easements may be considered Public Ways, whether or not maintained by municipalities.

Jim then transitioned to the term Private Ways and moved through the list where Private Way terms are found. After a brief discussion the Commission moved on to Limited Liability proposed legislation.

Jim, Roberta, Steve, Peter discussed the language and provisions for Limited Liability proposed legislation.

Karla and Jim discussed number 7 in the limited liability proposed legislation and a change in language from “may” to “shall.”

Karla raised the issue that her group wants included in the proposed statute that if there is environmental damage and the person who committed the damage is not found, then the municipality should be liable for the environmental damage.

Rebecca said it was already in the environmental statute specific to hazard.

Karla rebutted this was broader than water.

Jim asked if the owner is not liable, is the municipality in these cases under the current law?

Rebecca reiterated that it depends on the situation. She gave an example.

There was then a discussion on this matter between Rebecca, Jim, Roberta, Kris, Brian, and Karla.

Jim then reiterated that the current recommendation would include the changes to the Limited Liability draft except for the requirement that the Municipality would be liable if the perpetrator is not found.

Jim then asked how the Commission wants to proceed on deciding on what to put in the report.

There was then a discussion amongst the Commissioners on how to proceed.

Jim stated that Commissioners seem to agree with the draft recommendations on the first three terms: way, public way, and public roadway.

Discussion continued on the structure of voting to determine what to recommend to State and Local Committee.

In the middle of the discussion, there was a discussion by Kris and Brian about access on Public Easements and concerns about funding trails if changes are made that would allow landowners who live on a Public Easement that are not maintained by the town to say no to ATV/Snowmobile trails.

Jim then went through the history of discontinued and abandoned roads and how Public Easements are created and what that means for landowners.

There was a discussion between Brian and Jim on issues of changing Public Easements and ATV use.

Roberta pointed out that the ATV statute, states that if the road is being used by motor vehicles, they can’t use the road, which would apply to most landowners who live on these Public Easements.

Jim further responded that with the draft legislation would allow whoever is maintaining the road for vehicle use to give permission to ATV use. For instance, if the town is maintaining the public easement, then they can give permission for ATV trails, if it is those who live on the road maintaining it then it would be the landowners who can give permission.

There was a discussion between Brian and Jim about how Brian’ s office currently establishes trails and how do they obtain landowners permission.

Jim asked Rebecca what she thought of this draft legislation. Rebecca asserted that under Title 12 only the town can designate trails and felt there were issues with the current Title 12 statute stating legislative officers rather than legislative bodies.

Jim, Roberta, and Brian, discussed access, public access routes, types of roads, maintenance, public access trails, ATV routes, and statutes that currently exist.

Jim asked the Commissioners if the Commission should set aside to a future meeting the proposed ATV and snowmobile changes. The Commissioners agreed.

Jim returned the discussion to how the Commissioners should vote. He suggested that the Commissioners take a break and think about how to proceed. The options are Majority/Minority, Supermajority, unanimity, or by consensus (where you may not receive your first choice but can live with the group’s choice).

The Commissioners took a ten-minute break to allow members to think on how they would like to proceed.

Upon return from the break the Commissioners continued discussing how they wanted to vote.

Motion was made by Jim for the Commission to act on proposals by majority vote of the total membership of 12 (majority will equal seven votes) and write a majority report. Those in dissent may write why they disagree with the majority and what they feel the outcome of legislation should be and it will be included in the report. Catherine seconded the motion.

Roll Call Vote Breakdown:

|  |  |  |
| --- | --- | --- |
| **Name** | **Yes** | **No** |
| Karla Black | x |  |
| Brian Bronson | x |  |
| Peter Coughlan | x |  |
| Rebecca Graham | x |  |
| James Katsiaficas | x |  |
| Kris MacCabe | x |  |
| Roberta Manter |  | x |
| Vivian Mikhail | x |  |
| John Monk | ABSENT | ABSENT |
| Catherine Nadeau | x |  |
| Ryan Pelletier | x |  |
| Steve Young | x |  |
|  |  |  |
| **TOTAL** | **10** | **1** |

Motion carried, 10 in favor, one against. Commission will vote and a simple majority will carry the motion.

Motion was made by Jim on recommending that there should be no changes to the definition of Way as it exists in the current statutes, seconded by Roberta.

Roll Call Vote on Leaving definition of Way as is:

|  |  |  |
| --- | --- | --- |
| **Name** | **Yes** | **No** |
| Karla Black |  | x |
| Brian Bronson | x |  |
| Peter Coughlan | x |  |
| Rebecca Graham | x |  |
| James Katsiaficas | x |  |
| Kris MacCabe | x |  |
| Roberta Manter | x |  |
| Vivian Mikhail | x |  |
| John Monk | ABSENT | ABSENT |
| Catherine Nadeau | x |  |
| Ryan Pelletier | x |  |
| Steve Young | x |  |
|  |  |  |
| **TOTAL** | **10** | **1** |

Motion Carried, 10 in favor and one against. Commission will recommend leaving the definition of “way” as is.

Motion made by Jim to leave “Public Way” definition as it currently exists in statute except for a question on whether it includes Public Easements, Seconded by Vivian.

Roll Call Vote on Leaving Public Way definition as is:

|  |  |  |
| --- | --- | --- |
| **Name** | **Yes** | **No** |
| Karla Black |  | x |
| Brian Bronson | x |  |
| Peter Coughlan | x |  |
| Rebecca Graham | x |  |
| James Katsiaficas | x |  |
| Kris MacCabe | x |  |
| Roberta Manter | x |  |
| Vivian Mikhail | x |  |
| John Monk | ABSENT | ABSENT |
| Catherine Nadeau | x |  |
| Ryan Pelletier | x |  |
| Steve Young | x |  |
|  |  |  |
| **Total** | **10** | **1** |

Motion carries, 10 in favor, 1 against. Commission will recommend leaving the definition of “public way” as it is.

Motion by Jim on recommendation to repeal the term “Public Roadway” and replace with “Public Way” in the statutes. Seconded by Catherine.

Roll Call Vote on repealing “Public Roadway” and replacing with “Public Way”:

|  |  |  |
| --- | --- | --- |
| **Name** | **Yes** | **No** |
| Karla Black |  | x |
| Brian Bronson | x |  |
| Peter Coughlan | x |  |
| Rebecca Graham | x |  |
| James Katsiaficas | x |  |
| Kris MacCabe | x |  |
| Roberta Manter | x |  |
| Vivian Mikhail | x |  |
| John Monk | ABSENT | ABSENT |
| Catherine Nadeau | x |  |
| Ryan Pelletier | x |  |
| Steve Young | x |  |
|  |  |  |
| **TOTAL** | **10** | **1** |

Motion carries 10 in favor, 1 against. Commission will recommend that Public Roadway be repealed and replaced by “Public Way.”

Motion made by Jim to recommend Limited Liability Legislation on Public Easements without included language of requiring municipalities to be responsible if no culprit is found, seconded by Roberta:

Roll Call Vote

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Yes** | **No** | **ABSTAINED** |
| Karla Black |  | x |  |
| Brian Bronson |  | x |  |
| Peter Coughlan |  | x |  |
| Rebecca Graham |  |  | x |
| James Katsiaficas | x |  |  |
| Kris MacCabe |  | x |  |
| Roberta Manter | x |  |  |
| Vivian Mikhail | x |  |  |
| John Monk | ABSENT | ABSENT | ABSENT |
| Catherine Nadeau |  | x |  |
| Ryan Pelletier | x |  |  |
| Steve Young | x |  |  |
|  |  |  |  |
| **Total** | **5** | **5** | **1** |

Motion did not carry, 5 in favor and 5 against with one abstaining. Commission will table Limited Liability Legislation until next session.

Jim then brought forward Title 23, Section 9, subchapter 2 section 3101-3106. The Private Roads and Public Easements draft legislation to change language from “Private Ways” to “Public Easements” and allow those on public easements to form Road Associations to aid with maintaining the road where towns are not maintaining their Public Easements.

Roberta stated that people should not be forced to be part of a road association who live on a public easement because then you are forcing them to pay for public use of the public easement.

Jim disagreed with her characterization

Ryan asked if that was her opinion or law of the land. Ryan felt that law of land says otherwise.

Roberta responded that is why the Maine Supreme Court should be asked.

Brian asked if that was our role. Roberta responded that is one of the problems and our role is to review Abandoned and Discontinued Road issues which include public easements.

Catherine felt that it is not unreasonable to ask the Justices to weigh in.

Steve suggested that the Commission could put a footnote on the recommendation saying it could be an issue.

Peter felt this was not on our level and it should be resolved at a higher level.

Jim asked for a Motion to approve the draft legislation with a footnote on asking for an Opinion of the Justices of the Maine Supreme Court on the Constitutionality of requiring private landowners to spend funds to maintain a public easement.

There was further discussion on Sections 3105-A and 3106, what Private Ways means and that in these sections Private Way is truly referencing Public Easements.

At the conclusion of the discussion a vote was then taken for the draft legislation to change language from Private Ways to Public Easements and allow those on Public easements to form Road Associations to aid with maintaining the road where towns are not maintaining their Public Easements with a footnote:

Roll Call Vote

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Yes** | **No** | **Abstained** |
| Karla Black |  | x |  |
| Brian Bronson | x |  |  |
| Peter Coughlan | x |  |  |
| Rebecca Graham |  |  | x |
| James Katsiaficas | x |  |  |
| Kris MacCabe |  | x |  |
| Roberta Manter | x |  |  |
| Vivian Mikhail | x |  |  |
| John Monk | ABSENT | ABSENT |  |
| Catherine Nadeau | x |  |  |
| Ryan Pelletier | x |  |  |
| Steve Young | x |  |  |
|  |  |  |  |
| **TOTAL** | **8** | **2** | **1** |

Motion carries, 8 in favor, 2 against and 1 abstention. Commission will recommend 23 MRSA Sections 3101-3106 be amended with footnote.

Jim then brought forward the issue of changes in Titles 17, 17A, and 29-A MRSA from Private Way to Private Road to help alleviate the confusion around these terms.

There was a discussion between Jim and Brian about recommended changes. Brian was concerned changes would prevent the police from enforcing laws on a private parking lots.

Roberta thought there should be a separate statute for public parking lots.

Rebecca rebutted that there are only a few laws that can be enforceable on private roads.

Roberta asked if we had asked the Maine State Police, Heather answered yes and read into the record the letter, the State Police had no objections at this time to the proposed legislation.

Brian was concerned that the Commission was not talking about the same items that were proposed.

Therefore, the Commission voted unanimously to postpone any recommended changes to Title 17, 17A, and 29-A MRSA from Private Way to Private Road until future meetings.

Jim will work on changing the report to reflect the decisions of the Commission. He asked for all comments and objections to be submitted by December 27, 2023. Jim will submit the report on Friday December 29, 2023, for Commissioners review.

Roberta raised the snowmobile and stop sign issue. However, Jim pointed out that the changes recommended for Private Way language had been tabled.

Motion was made to end meeting, seconded, and carried. Meeting ended around 5:00 p.m.