

New Hampshire Council on Resources and Development

Office of Energy and Planning
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FINAL MINUTES COUNCIL ON RESOURCES AND DEVELOPMENT SEPTEMBER 3, 2009

MEMBERS PRESENT

Joanne Morin, Chair, Director, NH Office of Energy and Planning
Bill Carpenter, Designee for NH Department of Resources and Economic Development
Richard Cook, Designee for NH Fish and Game Department
William Ray, Designee for NH Housing Finance Authority
Elizabeth Muzzey, Designee for NH Department of Cultural Resources
Tim Drew, Designee for NH Department of Environmental Services
Robert Beaulac, Designee for NH Department of Administrative Services
Richard Uncles, Designee for NH Department of Agriculture, Markets & Food

OTHERS PRESENT

David Mikolaities, NH Army National Guard
Michael Connor, NH Department of Administrative Services
Bruce Kimball, NH Adjutant General's Office
Ken Gallager, NH Office of Energy and Planning
Tracey Boisvert, NH Office of Energy and Planning
Steve Walker, NH Office of Energy and Planning
John L. McGowan, Attorney for John and Carol Hutton - Donahue, Tucker and Ciandella PLLC
Jennifer Czysz, NH Office of Energy and Planning
Dari Sassan, NH Office of Energy and Planning

I. ROLL CALL AND INTRODUCTIONS

The meeting was called to order at 1:31 PM. Council members introduced themselves by name and affiliation.

II. MINUTES

A. Approval of Council on Resources and Development (CORD) Meeting Minutes of June 16, 2009.

ACTION: MOVED by Mr. Beaulac, seconded by Mr. Carpenter, THAT the minutes of the Council meeting held on June 16, 2009 be approved. The motion passed unanimously.

III. DISPOSAL OF STATE OWNED LAND REVIEW (SLR)

Concord

SLR 09-008

Request to confer a utility easement for overhead and underground electrical lines and conduits.

Mr. Kimball explained that his agency is reconstructing a new portion of building resulting in relocation of utilities. He said, in order to do so, Unitil had requested an easement.

Mr. Sassan read the following comments:

- **NH Department of Environmental Services-** *“The simple conveyance of utility easement rights for this 20-foot wide right-of-way does not appear to involve any immediate environmental impacts. DES’s Land Agent also reviewed this request and found no issues. However, if and when future construction activities occur along this easement, DES permits may be required before proceeding. DES has no further interests or concerns with the conveyance of this utility easement.”*

- **NH Department of Administrative Services-** *“...The State of New Hampshire currently has in place, four underground conduits, varying in depth between 18 and 30 inches, laid under the center of the sidewalk, approximately 30 inches west of the utility pole. The conduit contains fiber optic cable which is crucial to communications used by the State. Our request is that any construction within the immediate ROW of Pole #7 be coordinated with the State prior and during construction. Of greatest consequence would be during pole replacement or underground attachment to the pole.”*

Mr. Kimball said that he would work with the Department of Administrative Services to draft language within the agreement with Unitil that would prohibit disturbance of fiber optic cables.

ACTION: MOVED by Mr. Ray, seconded by Mr. Drew, to APPROVE SLR 09-008 as submitted subject to no receipt of adverse comment within the comment period extending through September 22, 2009. The motion passed unanimously.

IV. LAND CONSERVATION INVESTMENT PROGRAM

A. Ossipee Lake Natural Area

Ms. Boisvert explained that a parcel within the Ossipee Lake Natural Area containing a boat launch was acquired through the Land Conservation Investment Program in 1989.. She said that the Department of Resources and Economic Development (DRED) is currently assigned the property, adding that DRED is proposing to reassign part of the parcel to the Fish and Game Department (F&G). Ms. Boisvert explained that, according to NH RSA 162-C:9, II CORD has a responsibility to weigh in on the reassignment.

Mr. Carpenter explained that the boat launch has gone into disrepair and that Executive Councilor Raymond Burton had requested that DRED work with F&G to remedy the situation. Mr. Cook explained that the F&G Director has asked his department to facilitate the transfer and improvement of the site. Mr. Cook added that the site is large enough to accommodate enhancement and to handle increased traffic in the future.

Ms. Muzzey requested that DRED and/or F&G check with Dick Boisvert at the Division of Historical Resources (DHR) to ensure that any historic or archeological resources that might exist on-site are addressed. Mr. Carpenter said that he would indeed consult with Mr. Boisvert. Mr. Cook said that if his agency were to do an expansion, it would consult DHR.

Mr. Drew asked if the enhancement of the site would involve new construction. Mr. Cook said that new construction would not be necessary, adding that portable toilets would be brought in.

ACTION: MOVED by Ms. Muzzey, seconded by Mr. Ray, to APPROVE the reassignment of the Pine River Boat Launch Area at Heath Pond Bog Natural Area, Ossispee, NH from DRED to F&G with the commitment of DRED to ascertain whether there is archeological impact within the 2.9 acres of the parcel. The motion passed unanimously with one abstaining.

V. LEGISLATIVE UPDATE

B. Chapter 227 (HB 45) – relative to the water supply land conservation program

Ms. Czysz said that discussions in the Legislature regarding possible CORD involvement with review of water supply land conservation matters had been discontinued.

C. Chapter 254 (SB 107) – relative to the leasing of state owned real estate on public waters

Ms. Czysz circulated a handout entitled “New Policies for Leasing State Owned Land on the Shores of Public Waters.” The handout is available online at:

http://www.nh.gov/oep/programs/CORD/documents/sb_107_summary.pdf

Mr. Drew asked if the HB 710 Commission had been able to draw a clear line between residential and commercial. Ms. Czysz said that, in a condominium association or a home office would qualify, but a motel would not. Mr. Cook asked if the renewal of existing leases would be impacted. Ms. Czysz said that all existing leases can be renewed for 5-year periods provided that the lessees are good stewards of the land, are on time with lease payments, meet all lease conditions, and that they receive and adhere to all necessary permits.

Ms. Czysz added that “persons who can demonstrate the intent to provide a public use or benefit” might be able to lease state owned land even if it were not associated with a residential use. Council members expressed concern that this provision might create a large loophole. Ms. Czysz responded that the state agency that holds the land still has control over whether or not to lease.

VI. OTHER BUSINESS

Proposal to Federal Board on Geographic Names to name Mt. Reagan

Chairperson Morin said that in 2003, a NH legislative bill renamed Mount Clay to Mount Reagan. She said that someone has submitted a petition to the US Board on Geographic Names (BGN) to make the same change at the federal level. Chairperson Morin stated that CORD has been asked to comment and to answer the question of whether or not the name is currently in common use.

Mr. Gallager said that he had been contacted on this matter because of his affiliation with GRANIT (*New Hampshire's Statewide Geographic Information System Clearinghouse*). He said that, as a result of the renaming bill, NH is on record as a supporter of the name change. Chairperson Morin said that BGN is asking how, and to what degree, the name change has been implemented. She asked CORD members for input on how to proceed. Mr. Cook said that he would speak with individuals involved with law enforcement at F&G if they have found the new name to be in common use. Mr. Carpenter and Mr. Drew said that they would check with their agencies. Mr. Gallager asked CORD members to submit comments to him through email. Chairperson Morin requested that CORD members provide the names of parties that should be contacted for comment on the matter.

IV. LAND CONSERVATION INVESTMENT PROGRAM (continued)

B. Keniston Easement, Lee, NH

Chairperson Morin said that she wanted to go through the history of the easement. She asked CORD members to consider what information they need to obtain and what questions they need answered. Chairperson Morin said that at the next CORD Meeting, CORD members could consider what their legal obligations and roles are in the matter and that at a future meeting the landowners could be invited.

Ms. Boisvert said that the easement is held by the Town of Lee and was purchased in 1991, adding that the Town is responsible for the enforcement of the easement. She said that CORD’s role is to make sure the Town is monitoring and enforcing the easement. Part of the Town’s

responsibility, continued Ms. Boisvert, is to monitor the property annually. She said that in August of 2008, the Town of Lee notified the Conservation Land Stewardship Program (CLS) that activities might be occurring that constitute a violation of the easement. Ms. Boisvert distributed pictures taken during a July site visit of structures relating to a Halloween event. Ms. Boisvert said that the Town asked whether the structures would be prohibited by the easement.

Ms. Boisvert summarized various correspondences between the CLS program and the landowners and/or their attorney as well as on-site meetings with the landowners, their attorney, representatives from the town, CLS staff, and the NH Attorney General's Office. She also described, for CORD, the sections of the easement that were in question.

Mr. McGowan asked to speak, introduced himself and said that he had come to represent the Huttons. He said that his comments were limited and that he had found out about the meeting at the last minute. Mr. McGowan requested that the person recording the minutes accurately capture his comments.

Mr. McGowan explained that the matter is one of significant gravity to his clients and that it has serious financial implications, adding that he and his clients are concerned with the process and its protracted nature. He said that the current meeting had presented a one-sided story and contended that prior to the July on-site meeting he and his clients had provided an abundance of information regarding the site's compliance with the easement.

Mr. McGowan said that during the meeting, it was agreed that the NH Office of Energy and Planning (OEP) would request information and said that on the same day as the meeting, he and his clients provided OEP with further information. He said that the information had not been provided to CORD members and that it would need to be provided to CORD members.

Mr. McGowan said that OEP never responded and that he was not notified of the current meeting, adding that he found out only through his own due diligence. He asked CORD members if they were aware that they are in a position of determining the Hutton's fate, expressing concern over the informality with which the matter had been addressed. He said that he first wanted the Council to establish jurisdiction and said that there must be at least 7 voting members present to proceed. Mr. McGowan said that the current meeting could only be informal at best and that he and his client would have to object to commencement. Mr. McGowan said that it appeared that the Council was attempting to issue a ruling and said that, in future meetings, there must be adequate notice. He said that Internet sites related to the Halloween event have little relevance to what is actually occurring at the farm.

Mr. McGowan said that he would follow with something in writing. He proposed that the process take on more formality to reflect the gravity of the potential impact to his client.

Chairperson Morin confirmed that a meeting quorum had been established and said that the current meeting was to serve as an introduction as indicated at the start of the meeting and not to provide for deliberative proceedings. She said that she had already stated the Council's intention to invite the landowners to a future meeting. Chairperson Morin said to Mr. McGowan that she would keep him informed and that the Council would incorporate his comments. Chairperson Morin said that legal counsel would be consulted to establish a process for future CORD discussions.

Mr. McGowan said that he appreciates what the Council does and that he does not anticipate an adversarial process. He added that, to him and his clients, it had not been clear where the matter was going. He said that Ms. Boisvert has been great but that there are many parties involved.

Ms. Boisvert said that materials provided by Mr. McGowan and his client had not yet been distributed to CORD members because Mr. McGowan had sent them as “proprietary.” Ms. Boisvert asked Mr. McGowan if he would like her to distribute the proprietary materials that he had referred to in his comments. He said that he would want the materials distributed to CORD members and said that he would provide written consent authorizing the distribution of the materials.

Chairperson Morin suggested that CORD members could consider attending the Halloween event. Mr. McGowan said that it would be reasonable for CORD members to attend and document what they see.

CORD members listed questions about the various definitions relating to interpretation of the easement, precedence as it relates to other easements, and about whether any other entities had been consulted on the matter.

VII. CORD 2009-10 PROPOSED MEETING SCHEDULE

November 5, 2009	
January 7, 2010	July 1, 2010
March 4, 2010	September 2, 2010
May 6, 2010	November 4, 2010

All meetings will be held at the Office of Energy and Planning, 4 Chenell Drive, 2nd Floor, Concord, NH, unless otherwise noted. Meetings begin at 9:30 AM and are open to the public.

VIII. ADJOURNMENT

ACTION: MOVED by Mr. Ray, seconded by Ms. Muzzey, to ADJOURN the September 3, 2009 CORD Meeting. The motion passed unanimously. The meeting adjourned at 3:20 PM

Respectfully Submitted,

Joanne O. Morin
Chair

JOM/das