



Natural Resources Board – DRAFT Minutes
August 6, 2019

Attendance:

In Person:

Diane Snelling, Chair
Brad Aldrich, Member

By Phone:

Marty Illick, Vice Chair
Steve Larrabee, Member
Don Turner, Member

Staff:

Kimberley Lashua, Business Director
Greg Boulbol, General Counsel
Evan Meenan, Associate General Counsel
Katie Emerson, Legal Technician
Lori Grenier, NRB Technician

Public Meeting: The Vermont Natural Resources Board convened at 11 A.M. at 10 Baldwin Street, Montpelier, VT, Chair Diane Snelling presiding.

11:05 a.m. Review and action on Minutes of June 4, 2019.

Before the Board approved these minutes, a discussion was held regarding the Stretch Code discussion on 06/04/19 to change the energy efficiency requirements. Steve Larrabee asked if the public hearings mentioned in the minutes were held by the Dept of Public Service? Greg Boulbol replied that the Board has not taken any action and he is willing to check in with Barry Murphy, again to get more details. The Board will vote on any proposed changes to the Code.

Marty Illick made a motion to approve the minutes and was seconded by Steve Larrabee. The motion was approved in a roll call vote.

Diane Snelling – Yes
Marty Illick – Yes
Brad Aldrich – Abstained
Steve Larrabee – Yes
Don Turner - Yes

11:08 a.m. Opportunity for public comment on non-agenda items

No members from the public attended.

11:10 a.m. NRB office and budget updates

Business Director, Kimberley Lashua gave the Year-end (fiscal) update. As predicted, we closed FY 19 with a negative balance in the Act 250 Special Fund. This is not uncommon for Special Funds. We will continue to work with Finance and Management over the next many months regarding the short-fall and future budgeting. Possible solutions include: requesting a larger portion of General Funds, restructuring Act 250 fees and increasing fees.

FY 2020 Budgeting Work - We start each new fiscal year by recognizing Steps and COLAS which are not included in the approved budget. Preliminary budgeting starts now. We receive instruction in September. Work continues and NRB is in communication with F&M until December when we receive our target from the Administration. Proposed budgets are presented to the legislature by the Chair.

Marty Illick asked to be provided with a more detailed budget and examples from past years.

Chair Snelling offered making the last five years available and that last year's budget is also in the annual report.

Don Turner inquired about what has been done from a budget perspective to address start of year shortfalls?

Kimberley Lashua responded that the NRB keeps expenses in check regardless of what our Spending Authority is each year. We speak with finance and management regularly to inform them of issues along the way as we rely so heavily on special fund which makes up 80% of fee structure. We check in with the district offices to see what projects are coming in, but it is difficult to count on projects applying for a permit in any given year

Rutland Office Update

Chair Snelling reported that the NRB is moving forward to hire a full time NRB Technician based in Rutland, and we would like to open recruitment soon. This solution will offer the best service to Rutland area and any extra time could be used to workshare across the state.

Executive Director Update:

Chair Snelling informed the Board that Donna Barlow Casey, the Executive Director has resigned. As with any vacancy, we will look at job description and see if duties can be filled in any other way. Consideration will be given to what our resources are and what our future needs will be. Donna's last day will be Friday; we have been working on how to best fill the duties in the meantime.

A discussion followed and Don Turner asked if the Board has any say in the decision to hire a replacement?

Vice Chair Marty Illick suggested an exit interview, and Chair Snelling noted one was already scheduled.

Don Turner asked– how long was Donna in this position?

Kimberley replied, Just over two years, previously was another executive director Lou Borie.

Board Member, Don Turner would like the board to have a role in deciding if an executive director is necessary with a full-time chair and wants to revisit the Boards delegation of authority at the next meeting.

Vice Chair, Marty Illick would like to hear from the staff about what they feel the Executive Director position provides. For next meeting, Chair Snelling can share the job responsibilities. The Executive Director is one of four members of leadership team and supervises all the coordinators and ensures workflow between the districts

Board Member, Brad Aldrich asked about the process of reviewing the job duties, he wanted to make sure that waiting until the next board meeting won't delay the process. He mentioned the possibility of a special meeting.

Board Member, Don Turner mentioned that applications are down, shouldn't that translate into more capacity and less workload?

Chair Snelling replied that doesn't always translate that way. We would be happy to include the Board in receiving the Universal Docket each week, to share just a portion of what the districts are working on each week. The Universal Docket was instituted by Chair Snelling to identify what projects were in what districts and where they are in the process.

Board Member, Don Turner asked: How often does workshare happen?

Kimberley Lashua replied that it happens virtually (electronically) in most cases. We do work via workshare, on a regular weekly basis.

11:38 a.m. Legislative and Legal Updates – Greg Boulbol & Evan Meenan

Greg Boulbol gave an update on the Kazanbach Appeal. The Katzenbach's were granted an Act250 permit to open a gravel pit in the Northeast Kingdom. Neighbors appealed the project a few years ago, and the court denied the permit on appeal. Act250 rules state that who have been denied a permit can reapply within 6 months of the denial to take advantage of positive findings and address any parts of the application that were lacking. Katzenbach received a permit and a portion of the neighbors appealed again. This is an unusual trajectory, Greg Boulbol will update the Board when we have more information.

Evan Meenan gave an update on the Sprague Creation Appeal and the Michael Lee Enforcement action.

Sprague Creations

Evan Meenan hasn't been able to schedule a meeting with the applicant's attorney, so we will skip the Sprague update for this meeting.

Michael Lee

Michael Lee owns Lee Small Engine/ New Haven Power Equipment in New Haven. The business filled in several acres of prime agricultural soil to the point where it cannot be remediated, constructed several additions, built an elevated display area and installed lighted signs (all with no permits). Mr. Lee was responsive to town enforcement actions (which he lost), but has not been responsive to our enforcement attempts. There does not appear to be any legitimate reason for the lack of response. The next step is a contempt of court hearing on 8/19/19, which will include testimony from several NRB staff. If Mr. Lee doesn't show up, the judge could reschedule, issue a warrant for arrest, or simply make the decision without him

Vice Chair, Marty Illick asked if there was any precedent? Evan Meenan replied that he conducted some case research on this issue and could not find any; NRB and ANR enforcement actions have never reached this point.

The Board has the authority to engage in a civil action to foreclose on the property – not ideal situation for anyone. For now, the NRB will move forward with the contempt action but we should have a discussion on how far the Board wants to pursue this enforcement action.

Vice Chair, Marty Illick asked what the role of Vermont Housing Conservation Board was?

Evan Meenan replied that as part of the town's enforcement action, the judge imposed fine rather than requiring Lee remove the fill. The NRB wanted off site mitigation to preserve the same number of acres of prime agricultural land through a conservation easement or off-site mitigation fee to the Vermont Housing and Conservation Board.

Vice Chair, Marty Illick inquired: When judge or anyone makes decision to not remove soil from prime agricultural land - Do they consult with experts/ have a technical decision-making process?

Evan Meenan responded, that while we were not parties in that action, based on transcripts he doesn't recall technical experts testifying. We usually rely on technical staff from other State entities to provide technical expertise. This case was different in that the judge had already decided to not require the removal of the fill. AAFM helped us to determine the compliance directive.

Vice Chair, Marty Illick stated that it is important to know what was in the soil. Evan responded that due to the length of time the fill has been there, and possible risks of moving it they were making the best of a bad situation.

11:40 Development of Policy for 2020 Legislative Session - Highlights

Victory Hills Trails

Chair Snelling brought up the issue of increased media attention on trails. In Victory, VT the town clerk asked for a jurisdiction opinion on Victory Hills Trails. Victory Hills Trails is an 1,100 acres trail network. The District Coordinator's JO found that it was subject to jurisdiction. The owner closed all the trails and said it would not be subject to Act 250. There have been several news stories containing incorrect information.

For the past 2.5 years there has been a stakeholder conversation on trails. One of their questions is if trails weren't regulated by Act 250 how would they be regulated? The Governor has been asking for a type of exemption for trails from Act 250 –the stakeholders are still working on their collective position.

Board Member, Steve Larrabee commented that Victory Trails JO is based on current law, not sure that there is the political will to change. This has been a major blow to the northeast kingdom, and there is misinformation out there that it was the Board's decision.

Chair Snelling and Greg Boulbol wanted to clarify that the NRB did not require the trails business to stop operating, they could continue to operate while getting a permit or appeal the JO to see if a permit was necessary. Also, the coordinators follow existing law when deciding if jurisdiction applies, it is not up to a given coordinators discretion.

Other Highlights

Chair Snelling shared that we have been asked to look at what it would look like if the NRB was a part of ANR. NRB has developed 4 or 5 scenarios to share with Secretary Moore.

Chair Snelling shared that the House Natural Resources Committee wants a stakeholder group to look at the repeal of the slate quarry exemption. The direction is to start with the mapping of slate quarries. Mapping is already 90% done, we can start with looking at where quarries are and discuss and respond to that.

Chair Snelling stated that we are unsure what the Governor will want to add to his proposal for the next year for changes to Act 250.

Chair Snelling invited the Board to the NRB Annual Meeting on November 7th at the Middlebury Inn

12:06 p.m. Adjourn

Marty Illick made a motion to adjourn, seconded by Brad Aldrich, and approved in a roll call vote.

Diane Snelling – Yes
Marty Illick – Yes
Brad Aldrich – Yes
Steve Larrabee – Yes
Don Turner - Abstained

Next Meeting: October 8, 2019 at 11:00am