

**BOARD OF SELECTMEN
TOWN OF DOVER-FOXCROFT
TUESDAY, SEPTEMBER 8, 2015 ~ 6:30 PM
DOVER-FOXCROFT MUNICIPAL BUILDING
MEETING ROOM
SPECIAL MEETING
MINUTES**

I. OPEN MEETING

A. Opening Ceremonies

Chairman Ederly opened the meeting at 6:30 PM and led the Pledge of Allegiance.

B. Roll Call

Present: Chairman Ederly, Vice Chairman Freeman Cyr, Jane Conroy, Gail D'Agostino, Stephen Grammont, Scott Taylor, and W. Ernie Thomas.

Also present: Town Manager, Jack Clukey.

II. ADJUSTMENTS TO THE AGENDA

III. UNFINISHED BUSINESS

IV. NEW BUSINESS

Legal Opinion - Citizens Petition: Community Bill of Rights Ordinance 2015

Lynn Williams, Esq. and Timothy Woodcock, Esq. (Eaton Peabody) were present to give legal opinions on the Community Bill of Rights 2015.

Attorney Woodcock referred to the memos he prepared for the legal analysis of the Community Bill of Rights Ordinance (CBOR). He reviewed his conclusions regarding the legal validity of sections of the proposed ordinance (attached to these minutes).

Attorney Woodcock concluded that the question would be as to whether the severability clause would leave enough validity in the ordinance to have the intended outcome, and if it is legally enforceable. He said that given the complexity of the CBOR Ordinance, with respect to the Board's authority in placing the ordinance on a ballot, it is not obligated to do so if there is a reasonable basis for not putting it on the ballot. He said in this case his opinion is that the ordinance would not achieve the objectives that the CBOR has set out to achieve and that Sections 3-7 are invalid and not enforceable. He also said that the Board of Selectmen has a reasonable basis for not placing the ordinance on the ballot because of the number of invalid sections he described in his opinion.

Attorney Lynn Williams also submitted an opinion on the CBOR (attached to these minutes). Attorney Williams said that she has advised other groups on rights based ordinances that have been drafted by town residents with the assistance of the Community Environmental Legal Defense and Education Fund (CELDF) which she is not affiliated with. Attorney Williams said that she does concur with Attorney Woodcock in that various sections of the ordinance are unconstitutional. She said also noted that no court has ruled against a CBOR in Maine at this time. Attorney Williams said that the severability clause allows other parts of the ordinance to remain if others are struck down by a court. She also agreed that there is a question as to whether the CBOR leaves enough substance if the invalid sections are struck

down. Attorney Williams said that she prefers to err on the side of placing it on the ballot if there is a question regarding whether the entire ordinance is invalid.

Both Attorney Williams and Attorney Woodcock agreed that the Board has qualified immunity as elected officials that they could not be sued for putting the CBOR on a ballot.

Attorney Williams advised that although there is no harm in passing a CBOR, she encourages towns to look to traditional land use ordinances. She said that although there have been no lawsuits to overturn a CBOR, there might be in the future.

Selectman D'Agostino asked each attorney why they would not put the CBOR on a ballot and asked if "legally invalid" meant the same as "illegal". Attorney Williams said that she would answer the question by looking at each section of the ordinance and determining if there is enough substance left after removing the sections that would likely be thrown out in a court of law.

Chairman Edgerly asked if after pulling out those sections, whether the ordinance would serve the purpose that it intended to serve. Attorney Woodcock said that there are certain sections of the ordinance that would infringe upon statutory rights and the town could be liable for the costs of litigation and in some cases liable for damages.

Attorney Williams said that there would be an issue with the legality of some sections of the ordinance, but that the Board should consider that there is a real public concern that should be addressed.

Attorney Woodcock said that he and Attorney Williams agree that a local land use ordinance could serve as a significant legal obstacle to projects such as the east-west highway.

Selectman Conroy asked if there is a time limit in challenging an ordinance. Attorney Woodcock said that there is no time limit and that an ordinance can stay on the books for many years before being challenged.

Chairman Edgerly asked if there could be other outcomes of the ordinance besides being an impediment to the east-west highway, such as if the State wanted to acquire land to work on Route 7. Attorney Woodcock said that the term "corridor" is extremely broad and this type of project could potentially fall within the limitations of the ordinance.

Selectman Grammont ask if there could be a disclosure in land use ordinance regarding the legal authority for certain entities involved with projects such as the corridor. He said that he is aware of land already under legal contract acquired by private persons and through trusts and that certain pieces of land already acquired could very well be for the purpose of being part of a corridor.

Attorney Woodcock said that a purchaser does not have to disclose the purpose of purchasing land and can build on it many years later and that such a disclosure requirement might not always be specific enough to be meaningful.

Selectman Conroy asked Attorney Williams if she agreed with Attorney Woodcock that Section 7 infringes on a person's first amendment right by requiring community meetings if there is an attempt to overturn the provisions of the ordinance.

Attorney Williams agreed with Attorney Woodcock that a person has a right to petition the government and is constitutionally permitted to do so without conditions.

Selectman Thomas asked Attorney Williams if she thought that there was enough substance in the CBOR to go before the voters.

Attorney Williams said that she always tries to err on letting the voters make their choice. She said that there are sections of the ordinance that are very problematic. She suggested that if this ordinance is not placed on the ballot in November an option would be to work on a revised document and have the Board place it on a ballot next year.

Chairman Edgerly said that the ordinance seems unenforceable. Attorney Williams expressed that the enforcement section is “out there”, but said that she senses the Board is sympathetic to the goals of the ordinance and suggested fixing the deficiencies and putting it on a ballot at a later time.

Selectman Thomas asked Attorney Williams if she agreed with Attorney Woodcock that there could be costs of litigation to the town if the ordinance was challenged.

Attorney Williams said that she hasn't observed litigation but thinks that there is a real issue with a corporation being able to prove standing and that she has concerns about the ordinance but that litigation is not one of them.

Selectman Taylor asked if farmers could be adversely affected by the ordinance under the ecosystem section.

Attorney Woodcock said that the efforts of the ordinance focus on transportation corridors and had not thought of the ordinance in that type of context although the definition of ecosystem in the CBOR is very broad. He also noted that the definition of a transportation and distribution corridor is very broad.

Carol Boothroyd said that the CBOR wouldn't apply to Route 7 as it only applies to distribution/transportation corridors.

Attorney Woodcock said that there is a question as to whether an extension of Route 7 were to occur funded by private/public capital if it were to fall under the limits of the CBOR and it would not be clear what the MDOT would do in such a case.

Chris Maas asked what the alternative town meeting process would be if the Board was to refuse to place the question on the November ballot.

Attorney Williams said that the citizens would call upon a notary to call a town meeting and all of the same town meeting requirements would need to be followed such as public notice requirements. Attorney Woodcock noted that another action as a result of the Board not putting the ordinance on the ballot could be a court challenge by the Petitioners to compel it to be put on the ballot.

Lisa Laser said that there has been much talk of protecting the laws of the State and Federal Government, but asked who is going to protect her. She asked if she could sue for her losses if a project as described in the ordinance took or diminished the value of her land.

Chairman Edgerly said that he has taken an oath to uphold the laws of the Constitution of the State of Maine and feels that with knowing an action is illegal, there is a liability in taking the action.

Vice Chairman Freeman Cyr said she is interested in knowing what the group would like the Board to do.

Sidney Mitchell said that all over the world people are challenging corporations. She said that the planet is deeply threatened and asked the Board to put the CBOR on the November ballot and if challenged, it can be dealt with later.

Chairman Edgerly said he is not questioning the intentions of the CBOR, but asks why not consider a land use ordinance that would stand up in court.

Sidney Mitchell said that the CBOR is a tool that can be used as well as an ordinance and that some citizens are excited about direct democracy and civil rights for people and that corporations are not people.

Paul Matulis said that the CBOR doesn't refer specifically to the east-west highway but any corridor, electricity, railway, gas line, and rebuilding of road that doesn't deliver to Dover-Foxcroft appearing to make Dover-Foxcroft not viable for any new source of energy.

Selectman D'Agostino said that the definition is meant to interpret for delivering of those services outside of town. Attorney Woodcock said that there is definitional ambiguity.

Chris Maas asked if the issues causing the concerns regarding the validity of the ordinance are fixable.

Attorney Williams said that there are clearly constitutional violations with the ordinance and that language can be tweaked but the issues cannot be fixed if the Board puts the ordinance on a ballot because the Board does not have the authority to change the ordinance the petitioners submitted. He said if the ordinance doesn't go on the ballot due to concerns that the ordinance is invalid then a new revised ordinance can be developed and brought to the voters.

Jaime Gaudion said that the town has already been impacted through fear and uncertainty. She expressed that businesses, realtors, and young people looking at property are impacted due to concerns of the proposed corridor. Mrs. Gaudion said that there has been a loss of real estate sales and homeowners have concerns about noise, air pollution, risks of spills, as well as their property values, and asked if there is recourse for property owners or realtors for these losses.

Attorney Woodcock said that because there has been no corridor project, Mrs. Gaudion's concerns are unrealized. He said there is no legal recourse for compensation for unrealized concerns. Attorney Woodcock said that most of the issues of concern Mrs. Gaudion has stated could be addressed in a land use ordinance with setback criteria and regulations. Selectman Grammont said that the town cannot control speculation and should be concerned with unintentional consequences of any proposed ordinance. Selectman Grammont said that the ordinance should be as specific as possible to avoid negatively impacting local businesses and people trying to help people.

Louise Ringle said that if the Board is not going to place the issue on the November ballot, if the Board would work with an attorney such as Lynn Williams on a land use ordinance.

Selectman D'Agostino asked if any member of the group would speak regarding what they would like to see happen as a result of the legal opinions. Louise Ringle said if the Board chooses not to vote on the CBOR and putting it on the November ballot, her desire is that the Board works with an environmental attorney preferably an attorney like Lynn Williams on an ordinance to protect against the east-west highway.

Selectman Grammont said that the town has incurred considerable costs in getting legal opinions that contain a great amount of detail that can be of very valuable moving forward with a future ordinance.

Resolution #048-090815

MOTION: Taylor, seconded: Conroy, to decline placing the Citizens Bill of Rights Ordinance 2015 on the November 3, 2015 Ballot. Voted: (Yeay: 4-Nay: 3).

Motion passed.

Resolution #049-090815

MOTION: Conroy, seconded: Taylor and voted unanimously (7-0) that the Board of Selectmen will work with the Community Bill of Rights group to develop an ordinance in which to serve the purpose intended by the Community Bill of Rights in protecting the town against transportation/distribution corridors. Motion passed.

V. CORRESPONDENCE

Memo From: Donald Benjamin, Re: Bill of Rights, 090215

Memo From: Paul Matulis, Re: Bill of Rights, 090815

VI. ADJOURN

Resolution #050-090815

MOTION: D'Agostino, seconded: Conroy and voted unanimously (7-0) to adjourn at 8:50 PM. Motion passed.

Respectfully submitted,
Town of Dover-Foxcroft Board of Selectmen

Elwood E. Edgerly, Chairman

Jane K. Conroy

Cynthia Freeman Cyr, Vice Chairman

Gail D'Agostino

Stephen G. Grammont

Scott A. Taylor

W. Ernie Thomas