

**BOARD OF SELECTMEN  
TOWN OF DOVER-FOXCROFT  
MONDAY, DECEMBER 7, 2015 ~ 6:00 PM  
DOVER-FOXCROFT MUNICIPAL BUILDING  
MEETING ROOM  
SPECIAL MEETING  
MINUTES**

**I. OPEN MEETING**

A. Opening Ceremonies

Chairman Edgerly opened the meeting at 6:00 PM and led the Pledge of Allegiance.

B. Roll Call

Present: Chairman Edgerly, Vice Chairman Freeman Cyr, Jane Conroy, Gail D'Agostino, Stephen Grammont, Scott Taylor, and W. Ernie Thomas. Also present: Town Manager, Jack Clukey.

C. Adjustments to the Agenda

**II. NEW BUSINESS**

Proposed Community Bill of Rights Ordinance – 2015

Dr. Lesley Fernow thanked both the Citizen's Bill of Rights (CBOR) group that has been working on the proposed ordinance for three years and the Board of Selectmen for their willingness to meet with the group to discuss how to move forward with the proposed Citizen's Bill of Rights. Dr. Fernow said that she understands that the Board is working with the best interest of the town at heart and believes that both the CBOR group and the Board have similar feelings about the proposed corridor, she noted however the Board serves the municipality under State law, and has been advised against parts of the ordinance as unconstitutional or unenforceable, creating differences between the group and the Board that she hopes can be resolved.

Dr. Fernow talked about the concept of State pre-emption, nature as property, the concept of corporate privilege, and the concept of regulatory fallacy.

Dr. Fernow said that there are more than 200 bill of rights ordinances around the country and that these ordinances are different from land use ordinances because they are citizen's rights ordinances. Dr. Fernow said that she believes the comprehensive plan and land use ordinances are good tools, but believes that the CBOR would be most effective at protecting the town against undesired development.

Dr. Fernow said that the group would like to have a conversation about what aspects of the ordinance the Board has been advised as unconstitutional. Dr. Fernow said that it is not the

responsibility of the Board of Selectmen to make the determination that the ordinance is unconstitutional, but for the court system and a judge to decide.

Dr. Fernow talked about the rights of the people to change and create laws under the constitution and explained that the CBOR group is making a legitimate effort at law making.

Dr. Frasz expressed that it is important that the citizens of Dover-Foxcroft go on record in stating their rights in taking issue with the State or corporations exerting greater power over the citizens of the Town. Dr. Frasz said the ultimate right at law making falls with the citizens even if it conflicts with State law.

Sidney Mitchell said the group is using their constitutional right to put the town on a much clearer track before judges by proposing a citizen's bill of rights. She stated that the regulatory route is influenced by corporate rule.

Chairman Edgerly said that the Board based its decision on its attorneys' opinions that the proposed CBOR is unconstitutional and unenforceable. He said that in other States such ordinances have been dismissed, and feels that it is owed to all of the citizens of the town to present a document that will hold up in court.

Carol Boothroyd asked what aspects of the CBOR are considered to be unconstitutional or unenforceable. Chairman Edgerly referred to legal opinions submitted by Lynne Williams, Esq., and Timothy Woodcock, Esq. that list a section by section legal analysis of the proposed ordinance. Carol Boothroyd said that citizens have a right to challenge the law.

Selectman D'Agostino said that the legal opinions state that the CBOR would not carry weight in court, but final word should be from a judge in court. Selectman D'Agostino said that the Board should not shy away from such a decision as it is an attempt to assert what the people believe is right for the community. Dr. Fernow added that the Maine Constitution state that all powers are inherent in the people.

Selectman Grammont said that we are fortunate enough to have law making mechanisms provided by the State Legislature to make laws and change laws and we should move forward by working within the law making process that is designed by the State to work for us and not outside of it as this is a big issue for a municipality to manage.

Sidney Mitchell said that approaching the issue through the State Legislature has already been done. She said that the people have the right to draft an ordinance and circulate a petition for the ordinance to be voted on.

Vice Chairman Freeman Cyr said that in taking an oath to uphold the constitution, the Board is being asked to balance the responsibilities of protecting our community, and that the CBOR is a way for the people to reclaim law making rights as provided by the constitution. Vice Chairman Freeman Cyr said that the Town of Shapleigh passed a similar ordinance and that she feels strongly that the people of Dover-Foxcroft should vote on the ordinance, and if it is to be challenged it should be done so in a court of law.

Chairman Edgerly talked about the expense of court costs in a possible challenge at a time when the Town cannot afford the expense of maintaining its roads. Chairman Edgerly said that there is language in the ordinance that is bothersome to the town's attorney and that he is concerned about possible future expenses in defending the town in a law suit relating to the ordinance.

Carol Boothroyd talked about language specific to fines and penalties in the ordinance that could possibly be reworded in a way that the Board and CELDF would approve of.

Selectman Thomas said that the Board could not pass judgment on the legality of possible changes to the ordinance or that such changes to the document could be sufficient to address the concerns raised by the citizens.

CBOR members and the Board discussed both-- other towns that have passed similar ordinances that have not been challenged, and recent articles regarding similar ordinances that have been challenged or the ordinance dismissed as unconstitutional.

Selectman Grammont said that because an ordinance has not been challenged, it does not prove that it is effective. He also said that outcomes of decisions made by other towns would not necessarily be the same in our town.

Carol Boothroyd said that land use ordinances will not hold in court because of State preemption. She also said that land use ordinances would not stop the type of development that the CBOR would prohibit. She said that the group does not want a land use ordinance.

Selectman Grammont said that people in municipalities have successfully approached law making via local ordinances for hundreds of years.

Lisa Laser said that Supreme Court Justice Breyer expresses the notion that the constitution is a fluid document and there was never the intention that it would not change. She said that the petition for the CBOR Ordinance is a charge to change the law. Lisa Laser asked the Board if they would consider the existing comprehensive plan unconstitutional as it contains some language that is similar to the CBOR Ordinance.

Selectman Grammont said that the comprehensive plan is compliant with the law. He also said that the comprehensive plan does not have an enforcement section. He said that an enforcement section would appear in a land use ordinance.

Selectman Conroy said that she has a different view from the point that she signed the petition to put the CBOR on a ballot. She said that people need to understand the question and the issue. Selectman Conroy also asked what would happen if the ordinance went to a vote, but was defeated.

Lisa Laser said there should be an opportunity to find out.

Dr. Frasz said that hypothetically if the CBOR was defeated in court, there is an opportunity for other towns to consider a CBOR as a good idea and it could lead the issue to be addressed at the State level.

Sidney Mitchell talked about law making and how difficult it is for any community. She said that people want to participate, and the law allows us to bring back issues for a vote with each time getting closer to what the people are proposing. She said this is happening in many communities. Sidney Mitchell also talked about the costs associated with land use ordinances. She said that regulatory law requires a town to hire a lawyer but a CBOR is represented by CELDF attorneys pro bono.

The Board and CBOR members talked about the language of the ordinance. Chairman Edgerly said that any language put forth would have to be brought before a town attorney for a legal opinion. Sidney Mitchell said that CELDF attorneys would allow only small changes.

Dr. Frasz said that if a town attorney continued to look at the proposed CBOR the same way as before, he would say it conflicts. Dr. Frasz asked if it would be worthwhile to have a civil rights attorney give an opinion on the CBOR.

Selectman Thomas said that although he signed the petition to place the CBOR on a ballot, he believes that people will become complacent in believing the CBOR will have a desired outcome that it won't produce. Selectman Grammont agreed and said that Attorney Woodcock also said that as written, the ordinance won't achieve what it takes to oppose a corporation in a court of law.

Lisa Laser said that if there is no way to protect the town from development of a distribution corridor, she is concerned for people in town that do not have the means to get away from it. She said that the town will lose tax payers at a time when Dover-Foxcroft has many things happening.

Selectmen Grammont said that there are many things that the town can do, but there is no "silver bullet." He said that he is hopeful that a traditional land use ordinance can protect the community against undesired development.

Dr. Fernow said that aside from a land use ordinance the CBOR is one more piece of ammunition in how we defend ourselves and protect the individual rights of the people in the community.

Selectman D'Agostino expressed frustration that there are so many reasons we can't take action to defend something we hold so important.

Selectman Thomas said that some business owners are concerned about how we would go about separating their businesses from the corporations associated with the proposal of a distribution corridor and the possibility that if something is banned, it may have an unintentional negative effect on their business.

The Board of Selectmen consented to allow Paul Matulis to speak.

Paul Matulis said that Section 4, the enforcement section of the proposed ordinance is patently illegal. He said that it reads that any person may enforce the ordinance through direct action. He said that the Board is sworn to uphold the State Constitution and that the town is forbidden to enforce what is illegal. Another concern he expressed is that the "east-west" highway is not identified in the proposed ordinance and would open a flood-gate of concerns for the effects on other forms of development.

Dr. Fernow said the group was advised not to refer to the development as the "east-west" highway as it could be discriminatory.

Chairman Edgerly and Selectman Grammont both spoke of unintended consequences and the possible effects on local business and economic development.

Members of the CBOR group talked about their efforts in trying to create a grass roots movement, something that resonates with the people to prompt change for the purpose of protecting the community.

Dr. Fernow raised the question, “where do we go from here.” Dr. Fernow reminded the Board that she previously asked about changing the enforcement section and asked if there was a sense of what they see for the future of the CBOR. Dr. Fernow asked if the group can construct an enforcement section that the town’s attorney finds acceptable as well as the CELDF attorney.

The Board talked about the legality of the entire enforcement section and how the group is under certain limitations as far as changing the language because of CELDF requirements.

It was also discussed that the petitioners signed the petition based on the language of the CBOR Ordinance as written, making it impossible to place a revised ordinance on a ballot as a citizens initiative petition.

Town Manager Clukey said that there is always the possibility of a Board initiative to address the development of a distribution corridor.

Dr. Frasz asked how the Board would propose an ordinance that would serve the same purpose as the CBOR. Chairman Edgerly said the Board would consult similar ordinances and get a legal opinion. Dr. Frasz asked if there was any interest from either group to write a simple enforcement section.

Dr. Fernow said that she finds it interesting that there was nothing in the CBOR about money. She said that the lawyer advised against writing amounts, but this CBOR states that the amounts would be a court decision. Chairman Edgerly said that the town’s attorney said that the town is not empowered to enforce amounts. Town Manager, Jack Clukey added that the town’s attorney said that a municipality does not have the authority to create a criminal offense or to criminalize an activity.

Dr. Fernow said that it would likely be pointless to create a working group to make changes to the ordinance if the Board would require that its attorney be fully in agreement in the legal interpretation.

George McKay asked for the amount of attorney fees paid in association with this issue. The Town Manager said that at this time, \$8,000 has been paid in legal fees and he expects that it could exceed \$10,000 as he believes other bills may be pending.

Selectman D’Agostino said that she appreciates the collaboration between the Board of Selectmen and the CBOR group.

Vice Chairman Freeman Cyr said that there is the consideration of alternate ways of bringing the matter before the voters such as petitioning a notary.

### **III. ADJOURN**

The meeting was adjourned at 8:20 PM.

Respectfully submitted,  
Town of Dover-Foxcroft Board of Selectmen

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Elwood E. Edgerly, Chairman

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Jane K. Conroy

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Cynthia Freeman Cyr, Vice Chairman

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Gail D'Agostino

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Stephen G. Grammont

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Scott A. Taylor

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W. Ernie Thomas