

Board Meeting Minutes 01/08/18

NATURAL RESOURCES BOARD MEETING:
TUESDAY, January 08, 2019
11 A.M.

Location of Meeting:
NRB
10 Baldwin Street
Montpelier, VT 05633-3201

Present at Meeting:
Diane B. Snelling – Chair
Brad Aldrich (via telephone)
Steve Larrabee (via telephone)
Dominic Cloud (via telephone)
Marty Illick

Staff:
Donna Barlow Casey, Executive Director
Evan Meenan, Associate General Counsel
Gregory Boulbol, General Counsel
Kimberley Lashua, Business Director
Katie Emerson, Legal Technician
Pamela Morin, Legal Technician
Michaela Stickney, Enforcement Officer

11 :03 A.M. Board Meeting Called to Order.

Approval of Minutes (All minutes approved):

- November 13, 2018 – Chair Snelling asked for a Motion to approve the minutes. Dominic made a motion to approve, Steve seconded the Motion – Chair Snelling – Yes, Dominic – Yes, Steve- Yes, Marty – Yes.
- Sept. 19, 2018 – Chair Snelling asked for a Motion to approve the minutes. Dominic made a motion to approve, Steve seconded the Motion – Chair Snelling – Yes, Dominic – Yes, Steve- Yes, Marty – Yes.
- Aug 14, 2018 - Motion to Approve: Chair Snelling asked for a Motion to approve the minutes. Steve made a motion to approve, Marty seconded the Motion – Chair Snelling – Yes, Dominic – Yes, Steve- Yes, Marty – Yes, Diane Yes, Steve - Yes, Marty Yes - Approved conditional on clerical changes (Pam and Katie will make changes).
- June 12, 2018 - Chair Snelling asked for a Motion to approve the minutes. Dominic made a motion to approve, Marty seconded the motion – Chair Snelling – Yes, Dominic – Yes, Steve- Yes, Marty – Yes.

Public Comment:

- No public present for meeting.

Chair Snelling asked the Board if it would be acceptable to move forward with agenda – they will give the public another opportunity to comment if someone arrives.

Greg Boulbol, General Counsel, mentioned that we received a letter from Ed Stanak that he asked to be distributed. Executive Director, Donna Barlow-Casey send out two letters from Ed Stanak in NEMG Issue.

- Chair Snelling summarized Mr. Stanak’s letter which concerned a Jurisdictional issue at the Rock of Ages/NEMG site in Graniteville.

- Greg remarked that the Board does not make formal jurisdictional decisions. Jurisdiction needs to be made by the District Commission in the first instance. However, Greg also noted that an implicit jurisdictional determination is made by the NRB in determining whether to initiate an enforcement action.

Office and Budget Update:

Kimberley Lashua, Business Director:

- We have two new staff members. Michael is the new Enforcement Officer, she started in December.
- Jessica Mason is the new NRB Technician at the Essex Office, she started this week.
- Seven new employees were hired in 2018 (one employee changed position) and we are not currently in recruitment.

Budget:

Kimberley:

- We are waiting for the budget target, which we normally receive in December. We had a strong first half of the year with fees and are hoping for the rest of the year, will be the same.

Chair Snelling asked if we are busier than usual.

- Kimberley stated: According to numbers from currently being compiled for the annual report, they are consistent with last year. Coordinators and support staff have reported being busier this December.

Took some final steps towards paperless applications.

- No longer requiring backup documentation (paper) from applicants except for site plans and checks.
- New IT Program Manager, moving forward soon on testing/training phase of project.

Annual Report:

- Started to work on report. Have received feedback from the Act 47 commission and should be able to incorporate some of that feedback in this year's report.

Action on Pending Appeals and Enforcement Actions:

Chair Snelling ask Greg for an update.

Greg reported that Appeals have dropped off recently.

Enforcement: continuing to work on enforcement matters.

- Drop off on enforcement is because transitioning from Aaron to Michaela.
 - Looking forward to addressing matters.
 - Greg - noted that the drop in number of appeals and enforcement is timely because the legal department is spending a great deal of time on Act 47 matters.

Chair Snelling added that Board members may have heard about the Kindle farm in Newfane, Vermont in the news.

- Had permits to have yurts for three years
- Instead of taking the yurts down per the permit, they put another one up and did additional building.
 - NPR portrayed the NRB in a negative light by potentially having Kindle Farm take down yurts.
 - Pending case

Forum examining the evolving role of the Natural Resources Board

Discuss Act 47 Report:

Chair Snelling/Greg /Marty:

Chair Snelling: Some of the same issues addressed in the Act 47 report were addressed by working with Agencies and reflected in the Governors Bill.

Opportunities for discussion, possibility for a middle ground.

Change for jurisdiction:

- In designated centers the municipalities will do the review to see if all criteria have been met
- Many people think this change will not appealing to developers or municipalities.
- Updated language for plans/ adding forest blocks and flood plains.

Marty:

- Water/Flood Plan:
 - Flood Hazard Areas: only fluvial erosion was given addition. We need to make sure all water issues are addressed (inundation flooding, flood plains).

Disagreement Act 47:

Chair Snelling: They want to go back to more like the e-board, to review condition decisions (be more of an active board to participate in all decisions)

Developers do not want to change they like using the court instead of using an active board.

General Discussion as to what the justifications are (or are not) for the change?

Act 47 Commission's proposals:

Three Tiers of Jurisdiction - trigger Act 250 earlier in higher resource areas, later in already developed areas.

- Greg: it is unclear if this would replace the 1 acre vs. 10-acre rules.

Evan gave an update regarding Presumptive Permits

- The commission recommended lowering the bar to rebut a Presumptive Permit (any rebuttal to a permit, would dismiss the permit)

Other Changes - Chair Snelling and Evan

- Act 47 Commission is not interested in exemptions for: AOT, VTrans, & Farm accessory businesses
- Changed the burden of proof for agriculture accessory businesses. Changed: burdens - the burden of showing the impact of natural resources in on the applicant and the burden of production is still on the applicant but in an appeal the burden of persuasion is on the appellant.
- Commission proposes to eliminate the slate exemption

Slate issue: NRB has heard from a person who moved by a slate quarry that was non-active, but then became operational; therefore, new owner has issues.

Evan has a chart that compares the Governors Bill and the Act 47 Commission report.

Chair Snelling asked for feedback from the Board regarding the proposed changes to the board.

Discussion on the board structure.

Marty - discussed two different hats that the Board holds.

- Why does there need to be a different title (name of board)?

Greg remarked that the commission wants to change the name to the Vermont Environmental Review Board (VERB):

- Changes would include the board hearing Act 250 appeals and ANR permit appeals. Our work load would significantly increase. Instead of giving general advice, the NRB legal team would staff appeals that currently go to the environmental court (except those involving municipalities).

Dominic:

Professional board, more like the PUC.

In such arena big shift of who is the client and the arena.

- Lawyers jobs change significantly

- NRB lawyers would be staffing the board (significant staff changes).
- Currently counsel to board, changes inevitable.

Chair Snelling – currently the attorneys advise the district commissioners and the Board simultaneously. This change would require a fire wall between the Commissions and Board.

General discussion regarding how the Chair should convey the NRB's message at legislature this coming session.

New/Other Business:

Marty: What are the next steps for this report of recommendations?

- The document will go through legislative counsel, get a number and be introduced, by end of the week.
(Diane): Amy Sheldon working on presenting a bill soon.

Greg: Consideration: There are some issues that have been left open for more input including: trails, habitat, and forest fragmentation, so it may be some time before a bill from the Act 47 Commission is introduced.

Marty asked if she should provide specific feedback regarding the proposed language.

Greg and Diane: a little early to give feedback on specific language in the bill. There will be opportunity to later.

Chair Snelling:
Anything else?
Nothing else.

Great to have all the board together at the same time:

Chair Snelling made a motion to Adjourn:
Marty seconded the motion. All in favor
Meeting Adjourned at 11:53am