



DRAFT MINUTES
Legal Affairs Committee
November 13, 2014
Agency Meeting
KF:JTT:mp

**Legal Affairs Committee/Administration Committee
November 13, 2014**

The Legal Affairs Committee convened at 3:30 pm.

Legal Affairs Committee Members Present:

Karen Feldman, Chair, Arthur Lussi, Richard Booth, Sherman Craig and Bradley Austin (DED)

Administration Committee Members Present:

Leilani Ulrich, Chairwoman, Karen Feldman and Dierdre Scozzafava (DOS)

Other Members and Designees Present:

William Thomas, Dan Wilt and Robert Stegemann (DEC)

Local Government Review Board:

Frederick Monroe, Executive Director

Agency Staff Present:

Terry Martino, Executive Director, James Townsend, Counsel, Paul Van Cott, Associate Attorney, Jennifer McAleese, Senior Attorney and Mary Palmer

Approval of October Minutes

By motion of Mr. Lussi, seconded by Mr. Craig, the Legal Affairs Committee unanimously approved the October Legal Affairs Committee minutes.

By motion of Ms. Feldman, seconded by Ms. Scozzafava, the Administration Committee unanimously approved the October Administration Committee minutes.

Counsel's Report: Counsel noted the report on Jurisdictional Inquiries and FOIL requests for the month of October. He also noted that the response time for Jurisdictional Determinations has improved.

Mr. Townsend clarified the history of the review of variances and that the Delegation Resolution has been in discussion since 2009. He added that Paul Van Cott was assigned to this project before he became a Village Trustee.

Mr. Townsend added he wanted to address the comment letters that questioned whether Mr. Van Cott was being assigned to projects that come before the Board concerning projects in the Village of Saranac Lake. He said he wanted to clarify for record that Mr. Van Cott has recused himself as a Village Trustee, and as an Agency Attorney from any projects that may or may not come to the Agency that are taking place in the Village of Saranac Lake.

Lani Ulrich, Chairwoman, commented that she is proud and supportive of any staff that are involved in their communities above and beyond the service they provide to this Agency.

Delegation of Variances:

Paul Van Cott updated the Board on the progress of the proposed amendment to the Delegation Resolution. He added that some substantial improvements were made with the help of Legal, Regulatory and RASS staff.

Mr. Van Cott stated that the concept was brought to the Board in September, at the October meeting staff presented a draft proposal and the Agency modified it. He said staff took the proposal, put it on the website, and asked for public comment. In response the Agency received three public comments letters.

Mr. Van Cott said some of the legal issues raised in public comment were the Agency's authority to delegate, the scope of delegation allowed, how the delegation is made, and whether it can be done by resolution or if rule making is required. He added that because there is some confusion and concern in the public staff have withdrawn the proposal for a rule change by consensus.

Dierdre Scozzafava stated her concern that the transparency of the variance decisions should not be limited because of a desire to be efficient. Mr. Van Cott said when a variance request is received and a hearing is scheduled, the Agency submits notice to newspapers. He added that the Agency also notifies everyone within 500 feet of the project site.

Arthur Lussi stated that his concern was even through this proposal it seems like it would still take a lot of time for the applicant to go through a variance application. Richard Weber, Deputy Director - Regulatory Programs, stated that up to a board

presentation all work is the same. He added staff would put a mechanism in place to notify the Board in advance if staff felt a project was minor and was something that could be delegated to the Deputy Director.

Mr. Weber also stated that he supported what is recommended by staff and if it did not work out the way it was intended staff could look at it again. He added it would be applied conservatively. Sherman Craig added that he believed the Agency should move forward and agreed with Mr. Weber that if it did not work staff could make adjustments.

Richard Booth stated that he favored delegating minor variances. He added that he felt the three part statement of variance types makes more sense than the five items that staff had been looking at. Mr. Booth also said that he assumed it could be done by resolution but felt that there needs to be more discussion on it. He added that it seems that this variance delegation is the same as project delegation where the Board can object to any project and have it brought before the Agency.

Mr. Van Cott said that there is a difference. He explained that the delegation to the DDRP of permit approval authority is across the board in the regulations, and there is no call back. He said where that does occur is in the Delegation Resolution.

Karen Feldman suggested that the matter get tabled for more discussion. Mr. Townsend asked the Administration Committee to vote on tabling discussion of the Delegation Resolution at this time.

On motion of Ms. Scozzafava, seconded by Ms. Feldman, it was unanimously agreed to table further discussion of the proposed amendments.

Jennifer McAleese presented an overview of Development in the Adirondack Park (DAP) stating that it is not a policy document but guidelines. She said that the three new construction guidelines are energy, noise and biological surveys.

Ms. McAleese stated that DAP will be useful for project sponsors and consultants in designing proposals. She added that staff will also be able to use DAP as guidelines during project review.

Arthur Lussi asked how a project sponsor would be able to anticipate the noise level of a construction project. Staff member Shaun Lalonde noted that there are manufacturer tables that have decibel levels for the different types of equipment.

Mr. Lussi noted that this will be a hard thing to enforce. Mr. Booth added that there is difficulty in enforcing ordinances that have specific noise decibels and some communities have abandoned that requirement.

Sherman Craig asked if there is a biologist that strictly does biological surveys. Staff member Ed Snizek said that there are several people with different specialties. He added that staff want to make clear in the appendices the level of detail and when a specialist would be needed to do the actual survey.

Ms. Feldman asked if any feedback was received from outside the agency. Ms. McAleese said that while she has not received any from outside the agency, staff have used the guidelines and it has been very helpful.

Old Business

None

New Business

None

Karen Feldman, Committee Chair adjourned the meeting at approximately 5:05 pm.