

THE STATE OF NEW HAMPSHIRE

MERRIMACK, S.S.

SUPERIOR COURT

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ATV WATCH

v.

05-E-085

NH DEPARTMENT OF RESOURCES  
AND ECONOMIC DEVELOPMENT,  
BUREAU OF TRAILS

\* \* \* \* \*

STATUS CONFERENCE

TRANSCRIPT OF ENTIRE STATUS CONFERENCE  
MERRIMACK COUNTY SUPERIOR COURT, CONCORD, NEW HAMPSHIRE, ON  
NOVEMBER 9, 2005, BEFORE THE HONORABLE KATHLEEN MCGUIRE  
PRESIDING JUSTICE

Appearances:

For the Plaintiff: Andrew Walters, its Director  
Pro Se

For the Defendant: Anne Edwards, Esq.

Court Monitor: Karen Anderson

Transcriber: Mary Mielke  
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Stratham, NH 03885  
(603-778-0286)

1 (Call to Order of the Court at 9:40 a.m.)

2 DEPUTY CLERK: ATV Watch v. Resources & Economic  
3 Development. It's 05-E-085. Is this Mr. Walters?

4 MR. WALTERS: Yes.

5 DEPUTY CLERK: Andrew Walters is present on behalf of  
6 ATV Watch. Attorney Edwards is present for the Department of  
7 Resources & Economic Development. The matter scheduled is a  
8 Status Conference.

9 THE COURT: Okay. All right. Yes, let me just, all  
10 right, where exactly, I see that the appeal has been withdrawn  
11 at the Supreme Court?

12 MS. EDWARDS: The Supreme Court dismissed it, Your  
13 Honor, as being premature. The, the position that the case is  
14 in right now is, you issued an order on April 7th last, earlier  
15 this year.

16 THE COURT: Yes.

17 MS. EDWARDS: And you requested that the State brief  
18 additional issues regarding confidential documents that the  
19 State was claiming need to be released, and they were the  
20 financial appraisal of the property, certain e-mails and memos  
21 that dealt with the property's value during that negotiation  
22 period.

23 The State submitted a Memorandum on April 18th in which

1 the State further argued the new case law that had been decided  
2 by the Supreme Court. I see in our Memo that we did also offer  
3 to submit the Legislative history behind one section of the  
4 changes to the Right to Know Law where drafts of notes don't  
5 need to be produced. We have not done that. We're happy to do  
6 that, if you'd like it.

7 And we offered the documents to the Court for in-camera  
8 review. And at that point, then, Mr. Walters filed a Motion  
9 for Reconsideration. The State objected. The Court denied  
10 that but the original, from the original order, that initial  
11 issue of, that needed to be rebriefed, hasn't been dealt with.

12 THE COURT: We've met - -

13 MS. EDWARDS: And that's why the Supreme Court  
14 dismissed the appeal.

15 THE COURT: The Paris issue?

16 MS. EDWARDS: Yes, the Paris issue with respect to  
17 those financial documents.

18 THE COURT: All right. So you've briefed that now?

19 MS. EDWARDS: I did, further, on April 18th, Your  
20 Honor. It's number 7 in our index.

21 THE COURT: Oh, yes. Okay, I see it. And you have  
22 not responded to that, Mr. Walters?

23 MR. WALTERS: Yes, I have, Your Honor.

1           THE COURT: We had a Motion to Reconsider, oh, yes, I  
2 see it. Okay. All right. I'm behind the eight ball here, as  
3 I have not read those. Now, are you okay with me deciding  
4 those on the pleadings?

5           MR. WALTERS: I have a request. If I could just  
6 revisit what I, where I think the case is. There are four,  
7 four items in the Petition. Items C, E, G and H that have not  
8 been addressed by the Court.

9           THE COURT: Yes.

10          MR. WALTERS: Since, since our last hearings, I've  
11 received a significant amount of information relatively  
12 recently from DRED regarding these issues and other issues. I  
13 would request that the Court give me ten days to submit some of  
14 that information to the Court that I've recently received,  
15 which I believe will demonstrate that DRED violated the Right  
16 to Know Law in, in having not, you know, released that  
17 information previously.

18          And, as a matter of fact, the, right now the issue is  
19 purchase of property in Berlin, and the Executive Council has  
20 postponed that issue for the very reason that the public  
21 doesn't have enough information on the issue which is what I've  
22 been fighting for almost a year to have relief.

23          THE COURT: Okay, so now that you've got that

1 information, that's since, is that since the, that since you  
2 filed that Memo?

3 MS. EDWARDS: It is, Your Honor. It happened last  
4 week because the information became publicly available under  
5 the State's interpretation of the Right to Know Law as the  
6 matter went on the Governor's Council's executive agenda.

7 THE COURT: Okay.

8 MS. EDWARDS: To be voted on.

9 THE COURT: So given, now that you've given that  
10 information, is there any information that was requested by ATV  
11 Watch that has not now been given over?

12 MS. EDWARDS: No. In fact, Your Honor, attorney-  
13 client privilege documents were accidentally released to ATV  
14 Watch as part of that final release of documents, so ATV Watch  
15 has every document in the possession of DRED at this time  
16 that's related to this matter.

17 THE COURT: Okay. So are you seeking any more  
18 information?

19 MR. WALTERS: I, I am seeking, I, I do not believe  
20 that we have the actual appraisal. The actual appraisal  
21 document I have been able to find nowhere.

22 THE COURT: Is that the only document now that  
23 remains?

1           MR. WALTERS: No, other documents are referenced in  
2 the Governor Executive Council meeting, the document referring  
3 to potential value of the property. I have no document showing  
4 potential value of the property. There was a document where  
5 DRED indicated that they had evaluated the ability of DRED to  
6 maintain the additional property that they were proposing to  
7 purchase, as well as existing properties.

8           THE COURT: What, what's that third document?

9           MR. WALTERS: It's a document, some sort of financial  
10 document that they referenced. They didn't reference the  
11 document itself, but they, they referenced that they had done  
12 an analysis showing that they could maintain additional  
13 properties, as well as existing properties. And I haven't seen  
14 that analysis.

15           THE COURT: A document, a financial analysis that  
16 maintains?

17           MR. WALTERS: It apparently shows they have the  
18 funding to be able to maintain existing properties, as well as  
19 - -

20           THE COURT: That, that who can, DRED?

21           MR. WALTERS: DRED.

22           THE COURT: That they can do what now?

23           MR. WALTERS: That, that they have the financial

1 ability - -

2 THE COURT: Yeah.

3 MR. WALTERS: To maintain existing properties - -

4 THE COURT: Yeah.

5 MR. WALTERS: As well as take on an additional  
6 property. There was discussion at the Governor Executive  
7 Council meeting regarding that issue. But they said they had  
8 done an analysis.

9 THE COURT: Okay.

10 MR. WALTERS: I would like the ability to submit some  
11 of the documents that have recently been released to me which,  
12 I think, demonstrate that DRED, that these should not have  
13 been, because they were open to the public.

14 THE COURT: Okay. So right now, though, you're only  
15 missing three documents that you think, an, an appraisal of  
16 the, of the property, a document relating to the potential  
17 value of the property, and a financial analysis that shows that  
18 DRED, that DRED maintains, that it can maintain the existing  
19 property as well as take on the new property?

20 MR. WALTERS: I think those are the only documents  
21 that I'm aware of at the moment.

22 THE COURT: All right. Let's stick with that right  
23 now. What about those three documents, Attorney Edwards?

1 MS. EDWARDS: Your Honor, I thought the appraisal had  
2 been released, and I will confirm that. The second document -  
3 -

4 THE COURT: All right, you don't object to releasing  
5 it? If he doesn't have it, you'll get it?

6 MS. EDWARDS: I, I don't object to having it released  
7 with redacted financial information regarding the landowner  
8 itself. So, and when I say that, the only thing I'm thinking  
9 of is timber values. If there are actual timber values on  
10 there, or if there is financial information in that document  
11 showing how much money the landowner has made off of that  
12 property in the last so many years, based on the timber  
13 harvest.

14 That's, that the State would take the position is  
15 proprietary information for the landowner, that could end up in  
16 an appraisal. I don't know if it's in that, but if it is, the  
17 State would redact that information and give the remaining  
18 information of the appraisal to ATV Watch.

19 The second document, the Governor Council document with  
20 values, it's my understanding that Mr. Walters was handed every  
21 piece of paper that went to Governor Council. If there is a  
22 piece missing, I will make sure that it's found and it's  
23 released.

1           The final document, I don't think there's ever been a  
2 Right to Know request that covers that. An analysis of the  
3 maintenance costs for DRED's existing properties means all  
4 State parks and all State forests. And the fact that they can  
5 take on an additional property, this sounds to me like this is  
6 some type of budgeting document that was created by DRED to  
7 show available funds in the park fund and the forest fund and I  
8 don't know of any Right to Know request that covers that.

9           At one point, Mr. Walters had a Right to Know request that  
10 asked for information relating to how DRED expected to finance  
11 this plan, whether it was going to mixtures of grants, or how  
12 they were funding, which might possibly be brought in to  
13 include that analysis. But as far as I know right now, off the  
14 top of my head, I don't have a Right to Know request for that.

15           If he makes one, which I assume he is doing today, I will  
16 find out what that information is and I will make a position, I  
17 will either advise DRED that it can be released, or we take a  
18 position, depending on how much - -

19           THE COURT: Right, you'll have to put in - -

20           MS. EDWARDS: Information is in that.

21           THE COURT: A Right to Know request.

22           MR. WALTERS: My Right to Know request covered all  
23 documents concerning the potential property purchase.

1 THE COURT: Okay. But that - -

2 MR. WALTERS: So I believe my additional request - -

3 THE COURT: What I, I want you, just request that  
4 specifically.

5 MR. WALTERS: Yes, Your Honor, I will.

6 THE COURT: Okay? All right. So no objection to the  
7 other two. And now you want, now, what's, doesn't that moot  
8 out your request now?

9 MR. WALTERS: No, no, it doesn't. I don't believe it  
10 does, Your Honor. I think the public has been disadvantaged in  
11 the, by the actions of DRED and the Attorney General's Office  
12 by not previously, under the Right to Know law, releasing  
13 information on their activities concerning the purchase of this  
14 property.

15 The Governor and Council apparently believed that. They  
16 voted to table this project specifically because the State had  
17 not released enough information to the public. They asked for  
18 the State for a public hearing. There are documents here,  
19 within what the State has recently released, they're documents  
20 that should have been released earlier.

21 THE COURT: Okay, but given that the Governor and  
22 Council voted not to proceed on this because they felt that the  
23 public needed more information, the public then is not

1 prejudiced, even if the Right to Know law had been violated.

2 MR. WALTERS: And I believe the timing of it, the  
3 intentional timing of the release of the information by the  
4 State disadvantaged the public in being able to speak out  
5 previously as to what was going on here. Some of the documents  
6 that the State refused to release specifically indicated that  
7 the principle purpose of this property was to develop an ATV  
8 park.

9 They withheld that information from the public and the  
10 Governor's Executive Council. That information, I do not  
11 believe, should have been withheld and the public should have  
12 months to look into the issues surrounding what DRED was up to.

13 THE COURT: Okay, but assuming that you're correct,  
14 and I don't know, but assuming that you are, nothing, the  
15 Governor's Council refused, according to what you're saying,  
16 and I don't know, but assuming that you're correct, the  
17 Governor and Council refused to act on it until the public had  
18 more information.

19 MR. WALTERS: Some of the documents withheld should  
20 have been released prior to January 12th which is when the  
21 Governor and Council approved an appraisal.

22 THE COURT: I'm, I'm not, you know, but they're not  
23 approving the park yet, correct?

1           MR. WALTERS: They're staking to approve it next  
2 week. And my position is that, that the State's timing,  
3 intentional timing, and failure to comply with what I believe  
4 the Right to Know law puts forth is that the public has been  
5 disadvantaged in learning what they were up to.

6           THE COURT: Well, what are, I guess, what are the,  
7 if, if the government violates the Right to Know law, what are  
8 the consequences for that, Attorney Edwards?

9           MS. EDWARDS: Well, Your Honor, I know one thing  
10 would be an order from this Court instructing the agency what  
11 it did wrong, or what it did to violate the law to make sure  
12 that it doesn't do so again. Also, if there's a violation of  
13 the law, there is a right to have attorney's fees and costs  
14 paid, or attorney's fees. There isn't attorney's fees involved  
15 here.

16           Those are the two possible remedies available at this  
17 time. I mean, there's the ability to have it corrected, if it  
18 can be corrected. In this case, all of the documents have been  
19 released at this point, so there isn't a correction to be made  
20 if there's.

21           Also, Your Honor, I disagree with the representation that  
22 the Governor and Council felt that DRED hadn't released enough  
23 information. This matter was presented to Governor Council.

1 It was discussed for more than an hour before them. The  
2 Governor Council did decide that the public should have access  
3 to a public hearing which occurred on Monday night in Berlin.  
4 And the outcome of that hearing was overwhelming support for  
5 this project.

6 And the other concern I have, Your Honor, is if Mr.  
7 Walters files a pleading with this Court, he has in his  
8 possession attorney-client privileged documents which he has  
9 been informed, as of last Tuesday night, he needed to return  
10 those to DRED. Not only has he not returned those to DRED, he  
11 has released to the Concord Monitor. And I expect that he will  
12 release them to this Court.

13 And those documents have not been released from the  
14 attorney-client privilege, and they should be returned to DRED.

15 THE COURT: Well, apparently what you're asking for,  
16 at this point, sir, is to, you want me to hold some kind of a  
17 hearing to determine whether DRED violated the Right to Know  
18 law, and then if so, you want a finding that it prejudiced the  
19 public?

20 MR. WALTERS: Yes, Your Honor, and also to award any  
21 fees and costs that I've incurred. Also to direct DRED under  
22 RSA 981 to not violate the law again.

23 THE COURT: Well - -

1           MR. WALTERS: If I could say, again I would disagree  
2 with what the Governor's Executive Council, the information  
3 that was provided at that, at that time. One Executive  
4 Councilor described DRED's actions in this matter as acting  
5 like it was the Manhattan project.

6           Another Executive Councilor said, well, when we're looking  
7 at a project like this, we have an obligation to be as open  
8 with the public as possible, because the public deserves more  
9 to know about it.

10           Another Executive Councilor said they don't know enough  
11 about the details of the, this proposal, because there has been  
12 no public process. Councilor Peter Spaulding said he  
13 understands the State's refusal to disclose the purchase price  
14 but he thinks the Department is required to state how they will  
15 pay for it.

16           Councilor Debra Pignatelli said, you've not only been  
17 secretive, you've been deceptive when you've been talking to us  
18 Councilors. And that was said at the Governor Executive  
19 Council meeting.

20           And I have no intention of turning over any attorney-  
21 client, attorney-client privileged documents to the Court  
22 unless I'm instructed to do so.

23           THE COURT: Why don't you give them back?

1           MR. WALTERS: I would be glad to. I was waiting for  
2 a letter. Attorney Edwards said she would be sending me a  
3 letter asking for those documents back. I've been waiting for  
4 that letter and I will certainly be willing to turn those back  
5 over to her.

6           THE COURT: Okay. I'll take it under advisement.

7           (Court concluded at 9:56 a.m.)

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1 I, Mary Mielke, a court approved transcriptionist, do  
2 hereby certify that the foregoing is a correct transcript from  
3 the official electronic sound recording of the proceedings in  
4 the above-entitled matter, to the best of my professional  
5 skills and abilities.

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8 Mary Mielke

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