

Northeastern Cave Conservancy News

Volume 2, Number 3, September 2000

At the Next Meeting...

- Reports from the Officers and Committee Chairs.
- Elections of the Officers by the Trustees. Talk with a Trustee about nominations before the meeting.
- Presentation and Board vote on the 2001 budget.
- Members vote on two bylaw changes. The bylaws under consideration are numbers 4 and 5 in the following summary of the previous board meeting.

A Summary of the September 30, 2000 Board Meeting

by [Bob Addis](#)

(The following is in no order of importance, rather chronological from the minutes. A full copy of the minutes with all seven attachments will be found on the NCC's website shortly.)

1. President's Report. I will work with the Treasurer to seek property tax exemption on the Knox Cave Preserve, saving us hundreds of dollars per year. (On 10/25, I received the forms and we have started to complete them.) The Treasurer has also been given forms to exempt the NCC from paying sales taxes on any NYS purchases. Getting "Knox Caverns" taken off maps in Verizon (formerly Bell Atlantic) Yellow pages has been a job of the President.

2. Treasurer's Report. \$4414.32 in the bank account, in excess of \$8120 being held by the National Speleological Foundation. Our Board members have been given a copy of the NSF's contract to study before signing it after the December 2000 meeting.

3. Chris Nicola's postponed motion for the NCC to join the NSS as an Institutional Member was passed.

4. Addis moved to add under Article IV, BOARD OF DIRECTORS, a new Section 3:

Between regularly scheduled meetings of the NCC Board, urgent business may be conducted by a majority vote of the Board by responding to either an electronic or a US Postal Service offering. There shall be no less than two (2) calendar weeks between the initial posting and the deadline for ballots to be received. There shall be an attempt to foster discussion by listing this on the NCC's electronic discussion group at the time of the initial posting. Results of the electronic or postal voting will be made available to the Board as soon as practical after the voting. 2nd. Porter.

(This is a Bylaws change, requires 21 days' notice to the membership and a 2/3's vote of those members attending the December meeting.)

5. Levinson moved to add under Article III: MEMBERSHIP, Section 3. Expulsion of Members

a. A member not exempt from paying dues shall be automatically dropped for failure to pay.

b. By a two-thirds vote the Board of Directors may expel a member for disregard of accepted safety or conservation practice or the rights of a cave owner or for other conduct detrimental to the

Organization. A member subject to expulsion is entitled to a private hearing before the Board. 2nd. McLuckie.

(This is a Bylaws change, requires 21 days' notice to the membership and a 2/3's vote of those members attending the December meeting.)

6. The Treasurer was authorized to invest part of our checking account (\$4414.32) in savings or certificates of deposit in order to receive more interest than we presently get from checking.

7. The Committee of the Whole is when the Board meeting is opened up to have the members in the audience speak about issues concerning them, and it usually is a good exchange of information and ideas. One point from Steve McLuckie was that the members elect the 7 Trustees in the spring and the Trustees elect the 4 Officers at the December meeting. He encouraged each officer to write a brief job description so he could circulate it to the other Trustees before the officer elections, and we have tried to include them in this issue of the newsletter. The Committee of the Whole wanted the ad hoc Bouck's Zourie Committee (Bill Folsom, Chuck Porter) to revisit the landowners there. The members also felt that our Legal Opinion (landowner's liability relief act in NYS, paid \$300 to an attorney) should be circulated to the Board and the Northeastern Caver for publication. If it's not in this newsletter, then it will be posted on the NCC's website shortly.

8. There was a closed session of the Trustees to nominate officers for the December elections.

Nominations: President - Addis, Folsom

Vice President - Addis, Folsom

Treasurer - Levinson

Secretary - Hay, Nicola

Several others are being considered and will be asked to run for office.

9. The Board ended up authorizing several expenditures that on the surface appeared to be micro-managing regular expenses, but were explained necessary due to inexperience with the first annual budget.

a. \$300.00 to Attorney Breen for his Legal Opinion on Section 9-103 of the NYS law. It was noted that \$100.00 had been donated specifically for that purpose previously, making the real cost \$200.00.

b. \$232.92 in 2000-2001 school taxes on the Knox Cave Preserve property.

c. \$335.69 in back property taxes to Albany County for the Knox property. See the President's Report above for future relief. It may take 1-2-? tax bills to get the application approved, but it is assured that our Knox property will be taken off the tax rolls.

10. Levinson moved to spend up to \$150.00 to hire a lawyer to review the NSF contract. That motion failed since the majority of the Board felt that the contract was a standard one used with several organizations and the NCC probably would have little to gain from this exercise.

11. The NCC will tell the NRO of its desire to affiliate with the NRO, and find out how to do it. (Chris Nicola has already provided us with the procedure, and it will appear on December's agenda.)

12. The next NCC Board meeting will be Saturday, December 2 at 10:30 AM at the Five Rivers Environmental Center.

Acquisitions & NCC Future

by [Christa Hay](#)

Carlisle Ice Cave is looking like a real acquisition soon. And even better for us it might be a donation! This cave has local history of producing ice in the summer but not in the winter. The ice would start forming around May and the local people would collect the ice through out the summer.

The cave entrance needs to be cleaned out and maybe we could get the ice phenomenon working again. There is a small stream nearby - where is that water going? Maybe a new cave? Since it's an easy, short cave, we could if we choose to do so, set it up as a local attraction with a small parking lot and an information board.

This would be a great start to our cave acquisitions. Yes, it's a small start but until we get more members we do not have the money for large mortgages. It would be better to start small and prove as a group that we are reliable than to run gung-ho into a large mortgage and fail. That being said opens another issue. For us to get the bigger caves we need more members and fund raising and believe it or not the Membership and Fund Raising chairman positions are open. So how about instead of complaining that the NCC is not moving ahead, volunteer for one of these positions and lets get going!

The SCCI

by [Bob Addis](#)

I visited the other conservancy's displays while at OTR, and picked up some information. One that is quite interesting is a 5-year growth record for the SCCI (see Table 1 on back page)

The page is divided into two sections, a statement of Activity (Profit and Loss Statement) and a Statement of Financial Position (Balance Sheet). As members of the NCC, I, we should take note of the SCCI's progress. A special request goes to the Board members to study this closely because the officers will be presenting the NCC's Annual Budget at the December meeting for board approval. Please be prepared to ask intelligent questions and probe the items.

The following are my personal comments based on only reading these two statements and may not be accurate. To be sure, I do not have full explanations behind each line. Notice the following in Table 1:

- Membership presently is 684/133 exp
- Under Revenue & Support, the largest contribution by far is Donations. I'm not certain what all is considered here, but the monthly credit card donations, I was told, is in excess of \$4000 /month.
- Also note that the non-cash donation of Lobelia Saltpeter Cave, WV (formerly owned by Peter Haver, past Boston Grotto Chairman and a NE caver) for a value of \$52,000 in Fiscal Year 98 skews or slants the 5 year statement. Obviously any conservancy would want such a distribution.
- Applications (Expenses) include bank charges, interest and lease payments, and varying amounts of legal services. Every year the SCCI spends a few hundred dollars on conferences, phone and office expenses, licenses and dues. Postage and printing seem low, but they pay thousands in taxes!
- When we jump down to Assets, we see reasonable amounts of cash and several restricted funds. (Although they list only one "restricted fund", the various cave funds are probably restricted for specific site use.) The \$359,400 in property assets is impressive, but subtracting from that is \$58,000 in mortgages due.
- Total Liabilities and Net Assets are quickly approaching a half million dollars, and that's an enviable position.

What Does It Mean To Be President Of The NCC?

by [Bob Addis](#)

I view the presidency as a controlling manager, one who is tasked to direct the efforts of many individuals into one forward-moving force with definite goals that can be achieved. As I have stated before, one of the NCC's best accomplishments in its first year as a membership organization was to hammer out a clear, concise mission statement. This was done by a committee of members who volunteered to condense the wide variety of opinions into two clearly worded sentences.

As a manager, the President can not hope to oversee every individual's efforts. The actual work gets done at the committee level, and the committees should each report to an officer. In turn, the officer has to motivate and direct the committees and report the efforts and outcome to the President.

A President must have vision to the future. Where does that person want the NCC to be in 5 years? 10 years? How do we get there?

Landowner's Liability

The following is a copy of the New York State's General Obligations Law, Section 9-103. The copy is from the late 1970's, and although a few changes may have been made since then, the general meaning and intent remain the same.

Next is the legal Opinion from our attorney, Michael Breen. It was prepared for and given to Callanan Industries as they study the South Bethlehem Cave project, and it obviously has value in any acquisition that we undertake in New York state.

It was the Board and the member's feeling that this should be circulated so it will also appear in The Northeastern Caver and on the NCC website.

ARTICLE 9 - OBLIGATIONS OF CARE TITLE 1. CONDITIONS ON REAL PROPERTY

§ 9-103. No duty to keep premises safe for certain uses; responsibility for acts of such users

1. Except as provided in subdivision two,
 - a. an owner, lessee or occupant of premises, whether or not posted as provided in section three hundred sixty-six of the conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, trapping, hiking, horseback riding, bicycle riding, motorized vehicle operation for recreational purposes, snowmobile operation or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;
 - b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act of persons to whom the permission is granted.
2. This section does not limit the liability which would otherwise exist
 - a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or
 - b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section two hundred forty-two of the conservation law; or

c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

3. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Opinion

General Obligations Law §9-103 confers upon the owner of property used for speleological activities (among others) broad protection against lawsuits by persons who are injured on the property while caving, so long as the owner does not charge consideration (money, services or other things of value) for the use. A portion of the property may be commercial in nature, but so long as the property accommodates caving, and no fee is charged for that use, the protection still applies *Iannotti v. Consolidated Rail*, 74 NY2d and *Albright v. Metz* 88 NY2d 656.

The statute states that an owner owes no duty to keep the premises safe for entry or use, to warn of any hazardous conditions of the premises. It says that by giving such permission, the owner does not extend any assurance that the cave is safe, creates no duty of care to a person using the cave, and does not "assume responsibility for or incur liability for any injury to person or property caused by any act of the person(s) to whom the permission is granted." This means that if a caver carelessly injures another, the owner is not responsible.

The owner is responsible for injury caused by "willful or malicious failure to guard, or to warn against a dangerous condition, use, structure or activity."

This law was originally enacted to encourage landowners to allow hunters access to their grounds but has been expanded over the years to other activities, including hand gliding and organized gleaning(!). The encouragement consists of a legislative guarantee that the owner will be protected from lawsuits for injuries caused by anything but the most egregious, irresponsible acts of the owner which cause injury. See *Ferres v. City of New Rochelle*, 68ny2D 446.

For example, the failure to install snow fences to prevent ice build up, or to warn of its existence, were not considered to be willful, malicious acts. *Garner v. Owasco River Railway*, 142 ad2D 61.

A chain stretching across a trail with which a snowmobile collided was not considered to be a willful or malicious act even though there was no warning sign of its impending danger. *Meyer v. County of Orange*, 123 AD2d 748; *Scuderi v. Niagara Mohawk Power Corp.*, 243 AD2d 1049.

The management plan and use which the Cave Conservancy proposes to put the cave is protected by this statute, and if the plan is followed, there would not be a risk of the owner paying damages for any personal injury attendant to caving by persons using the cave by permission, or to trespassers.