

MINUTES OF MEETING
Board of Selectmen
October 13, 2009 @ 6:00 P.M.
American Legion Hall Upstairs Meeting Room

I. Call to Order/Roll Call: 6:02p.m. Present: Trudy Bickford, Ralph Dunbar, Jr., Kristin Hutchins, Berten Willey, Dorr "Skip" Wilson, Town Manager, Robin M. Bennett

Visitors: Town Attorney, Chadbourn Smith, Town Attorney, James Collier, Susan Griffith, Jeff Crafts, Mark Good, Greg Johnston, Sharon Gilley, Christie Parsley, Nan Lincoln, Tim Woodcock, Susan Buell, Jim Colquhoun, Ian Marshall, Jean Marshall, Dana Moos, David Chapais, Greg Moos, Erica Bates, John Bennett, Rick Evangelista, Gordon Wissinger, Andrew Hamilton, Dennis Dever, Anna Demeo, Sandy Johnson, Larry Eaton, Meg Eaton, Jim Geary, Ann Judd, Andrew Peterson, Mary Vekasi, Janice Roberts, Bunny Roberts, Dick Atlee, David Shook, Lee Worcester, Susan Dreier, Erika Schriener, Bob Bosserman, Mary Ann Perlman, John Wellington, Marianne Wellington, Scott Alley, Don Lagrange

II. Visitors to be heard not on the agenda: none

III. Approval of Minutes: September 22, 2009 and October 6, 2009
It was moved (Hutchins) and Seconded (Bickford) to accept the minutes of 9/22/09 as presented. Vote in favor 5 – 0;
It was Moved (Hutchins) and Seconded (Bickford) to accept the minutes of 10/6/09 as presented. Vote in favor: 4 – 0 – 1 (Willey abstained).

IV. Warrants: Administration 53-63 Water 21 – 23 Sewer 12, 13
Fire 5 Water Project 3 Police 4 .

V. Old Business

a. Police Station Update: Bennett reported that Police Department building renovations are moving ahead. At the construction meeting there will be a discussion of a 6 week extension of contract. This includes the one month extension discussed earlier. There was a meeting on the Water Project earlier today. The intake pipe was coming apart because rip rap was added, and a section of pipe has been replaced with a pipe of more flexible material. Rip rap had caused the initial problem.

b. Water Project Update: This project is on track and the next shut-down day is expected to be 29 October.

VI. New Business

a. Moratorium: Town Counsel, Chad Smith said it is the Town's prerogative to reject this petition as unlawful. The petitioner's remedy would be that a Town Meeting could be called by a notary public, or if there are one or two projects, the petitioners could ask the Town to change the zoning ordinance retroactively. He feels that accepting this moratorium petition as it stands now could lead to highly technical arguments, and a floodgate could be opened. Town Attorney, James Collier said a pending proceeding is one that has had substantive review, and shouldn't be looked at by any other law. Moratoriums are meant to be prospective, while ordinance changes can be retroactive. Town Attorney's opinion is that the safer course for Selectmen should be to not accept the petition, and the remedy for the petitioners is go to a notary public and have a Town meeting called. To accept this petition as it stands, would mean each portion of it would have to be examined to sever out the illegal parts of the petition. Hutchins asked if it would be possible to take the petition and remove the last paragraph that refers to retroactivity. Collier said that taking out that portion was recommended by the MMA attorney, as it is unlawful to vote on one ordinance and have that affect all other ordinances. Legal counsel advised the Selectmen not to accept the petition at all, and said the petitioners had recourse to seek other remedy.

Bickford stated that if there should be an ordinance change, it should be done in the proper way, through the Planning Board. Dunbar asked if the petition was not accepted, because of the legality of the wording, could they bring it back with different wording. Collier said they could. Dunbar asked: if the zoning ordinance changes that are in the process of being reviewed by the Planning Board currently, be invalid if the moratorium is voted. Collier: no. Hutchins said she is satisfied with the attorney's advice that there is a better way to do it. Dunbar said he hates to vote down things brought to the Board by the voters, but as the attorneys believe this is not a clearly lawful document he would have to vote against it. Willey agreed. Hutchins agreed.

Visitor Sandra Johnson asked the Board to consider the conversation of two meetings ago where Wilson put forth the option of a petition, and the Board said they should gather signatures on a petition. They did that, and the Board has the ability to make changes to allow the petition to be accepted.

Collier said it could be done, with a lot of time and money, but it would not be bullet proof. Johnson reiterated that it is within the realm of the Selectmen to make this moratorium petition right. Lynn Williams from Bar Harbor who is an attorney for the petitioners notified the Board that if the Selectmen do decide to not accept the petition, they will go the route of the Notary Public. Hamilton acknowledged that the petitioners have a problem with the multi-unit definition, and they have a right to disagree, but they do not have a right to put the Town in legal jeopardy. Dick Atlee asked James Collier, referring to Title 1, to clarify. Collier said it re-states the fact that you cannot change the rules for anyone mid-stream. Susan Buell asked who could go to the Board of Appeals. Collier: abutters, and neighbors of a potential development who spoke out on the Planning Board level are the people who can make the appeal. Demeo said that the application before the Planning Board currently, is the largest in the history of the Town; all the moratorium does, deleting the retroactive clause, is allow time for changes to be made. It allows the Town to say 'no more applications'. It was Moved (Hutchins) and Seconded (Wilson) that the Board rejects the moratorium as presented, and cause to be written, a change of language that will be lawful and appropriate to meet the spirit of the petitioners. Discussion: Bickford would like the Planning Board to do this ordinance change and get it to the voters in May. Hutchins is trying to show respect for the work that has done, but feels the Board has some responsibility. Dunbar would like the motion presented in two stages first the denial and second the motion to come up with a more lawful language. Hutchins withdrew her motion and Wilson withdrew his second.

It was Moved (Hutchins) and Seconded (Wilson) to reject the moratorium petition as presented. Vote in favor 5 – 0.

It was Moved (Hutchins) and Seconded (Wilson) that the Selectmen cause new moratorium language to be drafted with more lawful language, omitting the retroactivity reference, while maintaining the intent of the petitioners. Vote 4 – 1- 0 (Bickford) Motion carried.

Discussion: Wilson notified attendees that no further public discussion would be heard. Attorney Collier was instructed by the Chairman of the Board of Selectmen to begin work on the re-drafting of the wording of the moratorium.

b. Liquor License – Gilley’s Head of Harbor – It was Moved (Bickford) and Seconded (Willey) to grant the liquor license change for Gilley’s Head of Harbor. Vote in favor: 5 – 0

c. ANP Commission: Lee Worcester – He briefed the Board on the purpose of the Commission. He spoke of the most recent meeting concerning wind power and the evaluation of experimental sites to develop wind power in the State of Maine. It was not a discussion of wind power. Bickford suggested the Board communicate with Worcester and express their interest or concerns relative to the subjects being discussed at the Commission meetings. Worcester will provide the Selectmen with agenda’s prior to the three meetings held each year.

d. Conservation Commission: Ann Judd – Judd asked James Geary to present the financial report for the conservation commission, and asked the Town to consider the \$2,000 match this year at Town Meeting.

e. Shellfish Commission: Jim Colquhoun. Town wide enforcement has been a concern of the Committee for some time. They need minimal time from the Harbormaster to enforce the ordinance. Colquhoun said if the Town has insufficient enforcement the State has the ability to revoke the Town’s Shellfish Ordinance. The Dept. of Marine Patrol will not enforce a local ordinance, but will enforce the State Rules and Laws. Dunbar expressed concern that the most enforcement would be at a time when the Harbormaster is at his busiest. Harbormaster agreed. Michael Mansolilly asked if a volunteer would be a choice. Dunbar asked if the Police would be better served to take on the 20 hour a year position. Chapais said it could be a possibility. It was Moved (Dunbar) and Seconded (Willey) to ask the Police Department to act as Shellfish Enforcement. Vote in favor: 5 – 0 motion passed. Mansolilly was asked by Colquhoun to come to the next Shellfish Commission meeting to discuss the possibility of being an additional Shellfish Warden.

f. L.P. Bids: Bennett said there were five bids and the recommendation was for the fixed price from Acadia Fuel. It was Moved (Dunbar) and Seconded (Hutchins) to accept Acadia Fuel’s bid for LP fuel. Vote in favor: 5 – 0 motion passed.

g. Street Sweeper: Bennett said that Fairfield would provide a 3 year lease for \$34,000: \$10,000 the first year, \$12, 000 the second and third years. Alley discussed the type of maintenance schedule the equipment would perform. Dunbar voiced opposition, saying there is no place in the budget for purchase. It was Moved (Hutchins) and Seconded

(Bickford) to enter into a lease agreement with Fairfield to purchase the used street sweeper and vacuum. Vote: 4 – 1 (Dunbar) motion carried.

VII. Manager's Report: Lower Town Dock work will begin October 19th; Hutchins and Bennett attended the MMA Annual convention; the movie filming at Long Pond is scheduled for Thursday 15 October and there are no problems foreseen by the engineers working at the pumping station. Interviews were held for the Assistant Operator position and references are now being called, along with background checks. Penobscot Cable Television Consortium agreement will be up for renewal in 2014 – it takes 3 years to go through the process of renewal; October 20th is the public forum on Dispatch Services to be held at the Fire Station. Colored notices will be posted.

VIII. Other Business: Dunbar inquired as to the sidewalk project from Town to Manset Corner. Lagrange said the spec sheets are out; quantity of material is needed in order to go out to bid. Street lights complaints were referred to by Willey; Wilson said that lights that there have been complaints about should be turned back on. Chapais will check the pole numbers and talk with Hydro. It was Moved (Willey) and Seconded (Wilson) to instruct the Police Department that the two lights that were shut off, and have been complained about should be turned back on. Vote in favor: 5 – 0.

Selectmen's Agenda – new business should be posted on the cable channel

Newsletter: Hutchins reviewed topics for the Board as possible subjects. The Board asked Hutchins to draft a newsletter. She will bring it for review prior to the start of the Public Meeting on October 20th, at the Fire Station.

IX. Sign Warrants: It was Moved (Bickford) and Seconded (Hutchins) to approve the warrants as presented. Vote in favor: 4 – 0 – 1 (Wilson)

X. Adjournment: It was Moved (Hutchins) and Seconded (Bickford) to adjourn the meeting at 8:40 p.m.