

MINUTES
BOARD OF SELECTMEN MEETING
March 20, 2019 5:30 pm
at the Damariscotta Town Hall

Members: Roberta Mayer, Chairperson (via Skype); Ronn Orenstein, Vice-Chairperson; Mark Hagar, Amy Leshure; and Louis Abbotoni.

Members Absent : None

Staff Present: Matt Lutkus, Town Manager; Hugh Priebe, Road Commissioner; John Roberts, LUAC; Karen O'Bryan, video recorder; Lynda Letteney, recording secretary

Others Present: Kathy Andrews; Larry Sidelinger, PumpkinFest; Andrew Henrich, Gartley & Dorsky; Josh Pinkham; Bernie Delisle; Paul Kando; Hass Tobey; Brent Hallowell; Samuel True; Susan Murphy; Bobby Weir, Marva Nesbit Maia Zewert, Lincoln County News

I. Pledge of Allegiance

II. Public Hearing: New Liquor and Entertainment License for Cupacity

Susan Murphy, owner of Cupacity, 133 Main Street, (formerly Buzz Main) is an applicant for a liquor and entertainment license. Hours for the establishment would be 6:30-9:30 p.m. with 2-3 days of operation. Entertainment is not a music/dance operation, but rather piano, storytelling, acoustic guitar and singing, poetry reading, etc. Liquor is wine by the glass. **Ronn Orenstein** asked why #17 on page 3 of the application was left blank. **Ms. Murphy** explained that since she was applying for food and liquor licenses she had applied simultaneously and is awaiting responses for both from the state. With no further questions from the Board or Public, the Public Session was closed at 5:35 p.m.

III. Call to Order: Meeting was called to order at 5:30 p.m. by **Vice-Chairperson Orenstein**.

IV. Board Action on Public Hearing Item

On motion (Orenstein/Abbotoni) to approve the liquor and entertainment license for Cupacity

Vote: 5-0-0

V. Minutes

On motion (Orenstein/Leshure) to approve the minutes of 2-20-19

Vote: 4-0-1

(Abstention: Abbotoni)

On motion (Abbotoni/Orenstein) to approve the minutes of March 6, 2019

Vote: 3-0-2

(Abstentions: Hagar and Mayer)

VI. Financial Reports

1. On motion (Orenstein/Leshure) to approve Payroll Warrant #50

Vote: 5-0-0

2. On motion (Orenstein/Abbotoni) to approve Accounts Payable Warrant #51

Vote: 3-0-2

(Abstentions: Hagar and Mayer)

3. On motion (Orenstein/Leshure) to approve Accounts Payable Warrant #52

Vote: 4-0-1

(Abstention: Mayer)

VII. Presentations

1. PumpkinFest Transportation Plan Update – **Larry Sidelinger** presented 5-6 weeks ago to the Board a draft plan for safety and traffic flow for the PumpkinFest in October. He has contacted 80% of the businesses on Main Street and has had only one response from them regarding the plan, with no negative feedback. He is asking the Board, “Where do we go from here?” “What are your suggestions?” **Mark Hagar** asked if the police had been involved in the plan development. Response: Yes. About \$2500 in bicycle rack rentals had been secured to use as barriers from Saturday morning through Monday night. There would be 30+ parking spaces left in the back lot. If plan is okay he will begin talks with Newcastle and other off-site venues for parking. There seems to be more interest than ever in this year’s festival. **Robin Mayer** asked about more off-site parking. **Larry** said he hadn’t talked with Foster’s yet, but will be after this meeting. He is planning on coming back to the Selectmen in a couple months with an update. **Mr. Roberts**, representing the fire company, stated they had not been involved at all in these plans, and would have appreciated input before finalization. **Penn Way** stated that as a downtown business, he had not received any email or other correspondence. **Larry** asked if he was a sponsor? He used the sponsor list for contact information. **Mark Hagar** suggested getting in touch with fire department ASAP. **Matt Lutkus** stated that the fire chief had gotten the minutes from the last meeting and had recommended going with the plan. **Ronn Orenstein** suggested involved departments talk amongst themselves.

A Public Works representative asked about Water Street and when it was closed. Response: It will be closed Saturday and Sunday; open Monday for busses only; shuttle available 8-9 a.m. until 6 p.m. They are encouraging employees to park off-site and use the shuttle. They can have an early shuttle for employees starting at 7 a.m. Someone asked if they had parking space, could employees use it. **Susan Murphy** asked about tenants who rent above a Main Street business. She has three tenants and doesn’t have control over if and when they come and go, but they have private parking spaces in back lot. Response: Can leave before 8 a.m. and after shuttle stops (5-6 pm) **Larry** also stated they have extra barricades and could block an entrance/exit path for tenants. It is still a work in progress.

Larry continued by saying this is the most dramatic change since the inception of PumpkinFest. Dealing with the throngs of people before and after the parade and staging the busses in the back parking lot are completely different. **Susan Murphy** also commented on the parade timing itself. She stated it didn’t seem coordinated, with long gaps between performances so crowd was unsure if parade had ended. This led to kids running into the street when it was not safe. She hoped they could address the lag time. **Larry** commented that while this was not an issue he was dealing with, he was aware of the issue and another committee was addressing it. The first full festival committee meeting is 3/21/19 and this is an agenda item. **Robin Mayer** said her main concern is public safety and believes closing the street is the best option. She agrees moving the barriers at night is too cumbersome, but there is a need for more busses and more parking. She also feels there needs to be more room for pedestrians, especially those with strollers or in wheelchairs, etc.

On motion (Orenstein/Hagar) to approve the draft plan allowing for flexible changes **Vote: 5-0-0**

Matt Lutkus told the Board he had sent a letter to the businesses that, as in the past, they could use the outside area in front of their businesses to display and/or sell merchandise.

IX. Town Manager Items

1. Contract for town Paving Projects (tabled from March 6, 2019)

This item was moved up in the agenda to accommodate the presenters/involved parties. Bidders from Wellman Paving and Hagar Enterprises were present, Jason from Pike Industries did not reply to the invitation. Eric Wellman was questioned first. **Ronn Orenstein** asked why the hand placement of materials was left blank. Also, there was a 'per ton' rate, but no total. Response: Bid was due on 3/5/19 and job wasn't slated to begin until July 1st. The cost per ton can vary greatly in that time frame. The total for the bid is fixed and they would adjust that cost within the budget. As far as hand placement, the only specification for that was the center island on Belvedere Extension, which was cited. Everything else is machine placed. **Robin Mayer** asked about manhole covers, drainage areas and driveways. If you're using from "category above", it means you're taking from another category. **Ronn Orenstein** clarified that it means less in bottom category. **Mr. Wellman** stated that all driveways were specified at a 1 foot apron and that would be machine placed. **Matt Lutkus** inserted that although they had not used Wellman Paving before, Hugh Priebe had called references and they received very positive recommendations.

Seth Hagar stated he appreciated the opportunity to speak, as he did not view this as one contractor against another, but he had concerns about the process. Some bid specifications were unclear, and when he or someone else asked questions, was that information passed on to all other bidders? The specs had a lot of gray areas with regard to depths of asphalt. Since the thickness wasn't given, but the tonnage was the same- is it for 1" or 2" thickness. One bidder had a 10% contingency; the other built it in and planned accordingly. An example was that info was given to one bidder about Vine Street, but Seth's company, did not receive any call about it. After the bid, he received information about the removal of an escalator, but he was unsure a revision after the bid was received would be accepted. He feels there are knowledgeable people in the area whose brains could be "picked" when developing the RFP. Obviously, those that help in a process like that would not be bidding on that RFP. He feels the process needs to do more, be more specific to reflect real needs and costs- example he feels driveways need hand-placed asphalt and a larger apron than one foot. **Matt Lutkus** recommended that the Board go with Wellman Paving bid; he stated the RFP was reviewed by the Board and by the Local Road Division of the DOT. He stated that two more RFP's are coming in the next two weeks. One is for Bristol Road and is being overseen by DOT (RFP and Bids) for a \$750,000 project; the other is for the back parking lot. Both are open to competitive bidding.

Josh Pinkham is on the Public Works Committee with Lou Abbotoni and George Parker. They always look at materials used first, not price. They are looking at what is best for the town first. Wellman's references were good, the product is good, and the difference in pricing came down to \$20/ton (\$73 VS. \$93). **Robin Mayer** stated she appreciated Seth's input about perceived flawed processes.

On motion (Orenstein/Leshure) to accept the bid from Wellman Paving
(Abstention: Hagar)

Vote: 4-0-1

Lou Abbotoni said that Seth had brought up some good points and that the Board should get advice. **Mark Hagar** agreed saying that he felt they did need to reach out to get help with these details. **Robin**

Mayer asked if there were standards as to thickness of asphalt on the road. **Hugh Priebe** said that the DOT and MUTCD (Municipal Uniform Thickness, Crowning and Drainage) regulations are available and were referred to in the specifications. He also clarified that anyone he talked to, everyone else got the same information. As for Pike Industries they never called or responded back.

Prior to the **Citizen's Comments**, **Robin Mayer** asked if there would be information on the restroom project. Since she was present via Skype, she needed to attend a meeting and would be signing off. **Matt** said they were still aiming for a June 30th completion date.

VIII. Citizen Comments and General Correspondence:

Bobby Weir and Marva Nesbit, hosts of the local TV show Whatz Up, wanted to comment on the marijuana ordinances. Bobby related a story about being in Washington State recently, and visiting a quaint little town very similar to Damariscotta. He asked his friend, who was a resident, what all the colorful flags were for-Were they for an upcoming celebration? The friend said, "No, those represent establishments that sell marijuana. " The friend stated that it took 7 years to get to this point, and sales happen in many other businesses. He said tourism had gone down and he didn't know why. **Myra**, from Newcastle, spoke stating she also hosted a show called What's Up. She indicated that every week she had someone calling in, saying that their town was struggling with marijuana sales. She was pleased that there apparently are going to be some restrictions as Damariscotta is "a real lively little town" and she "wants it to stay that way as long as possible."

Ronn Orenstein shared with her that next week the Board is holding a workshop to review all input they have received (oral, email, letters, etc.) in order to finalize the wording for both ordinances (Licensing and Zoning). This is not a public input meeting, but rather a workshop for the Board. **Matt Lutkus** explained the process to date. The town approved the sale of marijuana at last fall's vote. Since then, the Selectmen have held Community Conversations on both marijuana ordinances. Next week is just for the Board to review all correspondence and complete a final draft. There will be a straw vote by the Board for recommendation to the Town. After that there will be a formal Public Hearing on zoning and licensing. Lastly, the ordinances will go to Town Meeting for a formal vote. There are three parts to the vote: 1) opt-in; 2) approve the ordinances; and 3) awaiting approval of state regulations for enactment

Dick Mayer, a resident, former law enforcement officer, retired lawyer from Maryland, and taxpayer, presented the Board with a five page position paper on legalization of marijuana. He feels a substantial number of residents are concerned that the Town is going down the wrong path by legalizing marijuana while it is still a federal crime. The paper outlined nine specific points that he felt the Board needed to consider.

1. Rule of Law: He believes that the "thing that binds and perpetuates a free society is the rule of law." An essential component of that is "voluntary compliances with the law, which is good citizenship."

2. Essence of the Issue and Applicable Laws: He cited the Constitution as the basis for this argument. Under the Federal Controlled Substance Act marijuana is listed as a controlled substance with manufacturing, distribution and possession punishable by federal law. He cited case law from June 2018 in the Maine Supreme Judicial Court case of *Bourgoin vs Twin Rivers Paper Company* (2018 ME 77, 187

A.3d 10)

3. Conflict of Laws Issue: Because there is federal law against the activities of manufacturing, distribution and possession of marijuana in place, State law and town ordinances are in conflict with federal law. This conflict between state and federal law “may be resolved by referring to the Supremacy Clause of the U.S. Constitution and the doctrine of federal preemption”

4. Status of Maine Law on the Conflicts of Laws Issue: In *Bourgoin vs. Three Rivers Paper Company* “the Court ruled that federal CSA law preempted Maine State law ostensibly legalizing medical marijuana.” Mr. Mayer pointed out that the federal law includes “aiding and abetting.” The Board maybe putting Damariscotta town workers in jeopardy of “aiding and abetting” by issuing licenses for grow operations or sales.

5. Guidance from Maine Municipal Association: Matt Lutkus told the Board after attending an MMA workshop last year that the attorneys there felt there was no problem proceeding with the development and enactment of ordinances to regulate marijuana under State law; a position Damariscotta voters had verified by “opting –in”. On March 3, 2019, the Town attorney provided the Town Manager with a copy of MMA “*adult use marijuana*” packet. *In that packet is, in part, the statement, “individuals engaging in state authorized use, cultivation, transfer, and sale of adult use marijuana ca still be prosecuted under federal law.”* Although Matt had been told by MMA it was okay to ahead, they failed to tell him no written legal opinion was available and failed to alert him to the *Bourgoin* case.

6. Legal Opinions: Mr. Mayer wonders why Matt has not received a written, unqualified legal opinion on these matters from either the Town Attorney or MMA. He feels without this, the Board is putting the town in legal jeopardy.

7. Relevant Questions: Mr. Mayer posed several questions he felt the Board needed to ask and address before moving forward. Why is it a cash only business? Why won’t banks accept marijuana related business as customers? Why can’t credit or debit cards be used in conducting business? Why doesn’t the IRS accept business related expenses as deductions? Why is Damariscotta in such a hurry to promote regulation over a business that is currently prohibited by federal law?

At this point in the comments, **Amy Leshure** stated that there is usually a 3-5 minute time limit, and he had exceeded 7 minutes. Where there was a lot more on the agenda, and there had already been considerable public comment, she respectfully requested that the Board read the remainder of the position paper before the Workshop, and that Mr. Mayer’s presentation come to an end.

IX. Town Manager Items

1. Preparation for the March 27 Workshop on Proposed Marijuana Ordinances

The Board will be reviewing all received in-put in order to make some key decisions. 1)whether to proceed with the licensing and zoning ordinances for commercial adult –use and marijuana establishments, and, if so, 2) the specific provisions in those ordinances and ordinance amendments. Voters approved adult-use commercial establishments by 54% and approved medical marijuana establishments by 69%. Because of citizen concerns over conflict of interest with Federal Law, we will have legal opinion available at the workshop.

2. Progress on the Solar Energy Project

Item was moved to the end of Official Action items for discussion purposes

3. Secondary School Budget

The secondary school budget will see a decrease of 4.16%. This reflects a reimbursement for funds advanced over the last few years for front-ended funding needed for Special Education. \$354,000 will be given back from the fund balance, retaining some for the 2020 budget. (This is similar to school bus funding where this district funds up front and receives the reimbursement 2 years later.) Overall student enrollment numbers are down. Matt Lutkus suggested April 17th for the school budget meeting with the Board approving the Warrants on April 3rd.

4. Correspondence on Marijuana Ordinances

Becky has copies of all written correspondence for the marijuana ordinances posted on the website. It is all public information.

X. Official Action Items

1. Town Paving Contract – Done earlier in meeting

2. Amendment to Agreement for Design/Engineering for Downtown Restroom

Wright-Pierce submitted an amendment to the downtown restroom "Task Order No. 6-Amendment No. 2" This is required because of several changes to the original contract that was approved and amended. The \$7,000 cost of these changes is already in the current proposed budget. Primarily this is for a hip roof, as the year-round heating was in the original design plan so winterization is not needed. Sherwin-Williams has donated the paint for the project. Total cost remains at \$374K.

On motion (Orenstein/Abbotoni) to approve the amendment for design/engineering on the restroom project **Vote: 4-0-0**

3. Preliminary Contract with Medomak Construction for the Construction of Downtown

Restrooms Because of delays in the finalization of design, there have been delays in the final work construction contract. We could prefund some materials costs in order to get started or wait for the bond completion, Bond is scheduled to be completed at 1 p.m. on March 27th, next Wednesday. Matt recommended tabling this item until after the bond is done.

On motion (Abbotoni/Orenstein) to table this item until after March 27, 2019 **Vote: 4-0-0**

4. Project Engineer for Miles Street Reconstruction/Sidewalk Project

After reviewing the Gartley & Dorsky estimates with representatives from LincolnHealth, Hugh Priebe, Matt Lutkus and Jim Donovan and Brooke Betts reached a tentative agreement with between the Town and LincolnHealth to share equally in the estimated maximum project cost of \$323,000.

Recommendation is for the Town to pay its share (\$161,900) over the next three years. Matt will work on a Memorandum of Understanding for the Board to review in the next few weeks.

On motion (Abbotoni/Orenstein) to waive Town Charter Bid guidelines and authorize the Town Manager to execute an agreement with Gartley and Dorsky for design and engineering, permitting and bid administration for Mile Street roadway, retaining wall reconstruction and sidewalk

construction in an amount not to exceed \$24,800 with the understanding that 50% of this cost will be paid by LincolnHealth and that the allocation of funds for these services is contingent upon approval of funding at the Annual Town Meeting. **Vote: 4-0-0**

5. Request for Proposals for Bristol Road Sidewalk and Drainage Project

Matt plans to advertise the RFP in the next couple weeks. Rule 403 has changed and needs DOT approval.

On motion (Leshure/Abbotoni) to approve the notice for a Request for Proposals and associated documents for the Bristol Road Sidewalk and Drainage Project **Vote: 4-0-0**

IX. 2. Solar Energy Project

Paul Kando and **Hass Tobey** reported out on the Solar Energy Project. The plan is to establish a solar array on the old dump site. A third party bidder/contractor would be the owner. They would lock in a rate with the Town for 7 years. There is a 30% tax reduction for such projects for the owner. There are no up front costs. The investor and/or contractor gets the tax break. Minor expenses such as site prep are the town's responsibility. The design is predicated on an inverter that converts DC to AC current. The size is expandable. For example you could provide for Town offices and Fire Department initially and expand to other venues down the road. In the summer you create much more power than you can use and get credit toward winter bills, or it can be used when there is less sun. There are no handling costs such as the way the bill is split now. CMP is the storage device and you contract for a specific duration of time. **Ronn Orenstein** asked how long before savings are seen? **Matt Lutkus** responded that the proposal would give a fixed price equal to today's price or less. No cost to the Town after 6th year. At that point a lump sum payment is made and you own it outright or you can get 7-10-15 year financing. **Mark Hagar** asked if at the end of seven years, can we get out if we want to. **Mr. Kando** said you can renegotiate, but you always own the land. **Mark Hagar** asked if we will know upfront the 7th year cost. **Paul Kando** stated that you start with three options with room to negotiate. The urgency is that the 30% tax break goes down to 26% at the end of the year so starting small and getting in is key. With the expandable option, the schools might be interested in getting in with you later.

Matt stated that Paul has volunteered to review the RFP. He asked Mark if he wanted to be on the panel. John Roberts will also be on the review committee. Paul has spent a lot of time to get all of our energy invoices and convert gallons of oil to kilowatt hours for comparison purposes.

On motion (Abbotoni/Leshure) to pursue the photovoltaic array project with expandable options

Vote: 4-0-0

Matt Lutkus wanted to update the Board on two grant proposals.

1. Shellfish Restoration Resiliency Fund: We received a grant in the amount of \$13,173 to study resources, past and where we are today, with regard to shellfish resources. It is a study for today with projections for the future. It will allow us to make management decisions regarding our resources (i.e. how many permits?)

2. Floating PumpOut Station: This grant is for 2 years and is 90% federally funded with 10% coming from the oyster industry. This is a renewable grant from the Federal Recreation Funds which pays for its

operation. \$2500 a year for two years is the award (total of \$5000).

On motion (Orenstein/Abbotoni) to accept the Floating Pump Out Station Grant

Vote: 4-0-0

XI. Selectmen's Discussion Items

1. Land Use Advisory Committee Update- Selectman Orenstein

The subdivision ordinance is complete. The open space subdivision is also complete both are ready for Town Meeting

2. Site Plan Review

This has been formatted to conform with the other ordinances but is on hold awaiting the marijuana ordinance update

3. The Land Use Ordinance

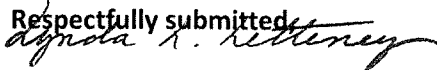
This has been reviewed and reformatted but is on hold awaiting marijuana ordinances determination.

4. Ronn Orenstein announced that he is not seeking re-election to the Board of Selectmen. He has served 9 years and it is time to move on. Regrets were expressed from his colleagues. He hoped someone listening to the meeting might consider taking out papers.

XII. Adjournment

On motion (Abbotoni/Orenstein) the meeting was adjourned at 7:35 p.m.

Respectfully submitted,



Lynda L. Letteney

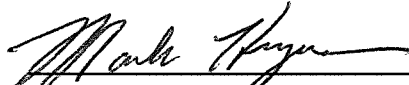
Recording Secretary

We, the undersigned, do hereby approve as written, or with corrections as noted, the minutes of the above-designated Board of Selectmen meeting.

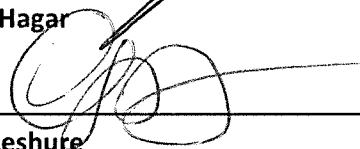
Roberta Mayer, Chairperson



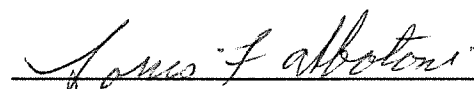
Ronn Orenstein, Vice-Chairperson



Mark Hagar



Amy Leshure



Louis F. Abbotoni

Town of Damariscotta, Board of Selectmen, signed this date: 4/3/19