

**Town of Damariscotta, Maine
Board of Selectmen
Meeting Minutes
April 3, 2019
Damariscotta Town Hall**

The Board of Selectmen met on Wednesday, April 3, 2019. Board members (BOS) present were Robin Mayer, Amy Leshure, Louis Abbotoni, Mark Hagar, and Ronn Orenstein. Staff present were Matt Lutkus-Town Manager, Michelle Cameron-Town Clerk, Others present were Sara McKenzie-Que Rico, LLC, Ellen Kinney-Damariscotta River House, LLC, Penn Way-resident & business owner, Darrel Fraser-Colby & Gale, Inc, Dick McLean-resident, Haas Tobey-resident, Vicki & Alan “Buzz” Pinkham-residents and Maia Zewert-Lincoln County News.

I. Pledge of Allegiance

II. Public Hearings: R. Mayer opened the hearings at 5:30 pm

- 1. New Liquor & Entertainment License for Que Rico, LLC:** Sara McKenzie mentioned that she had written her business location wrong on her liquor license application. She said she had written 125 Main Street, but realized that the address is actually 115 Main Street. *The address correction had been submitted before the BOS signed the application.
- 2. New Liquor License for Damariscotta River House, LLC:** Mayer mentioned that the location of this new business is the little house right before the bridge. Dick Mclean mentioned that it is the first thing people see when they come into town and it’s nice to see it looking good. Ellen Kinney said she has installed a bunch of windows on the river side of the building.

Mayer closed the hearings at 5:33 pm

III. Call to Order: R. Mayer opened the meeting at 5:33 pm

IV. Board Action on Public Hearing Items: On motion, Mayer/Leshure moved to approve the Liquor & Entertainment License for Que Rico, LLC. Vote 5-0

On motion, Abbotoni/Orenstein moved to approve the Liquor License for Damariscotta River House, LLC. Vote 5-0

V. Minutes:

- 1. March 20 Meeting: On motion Orenstein/Abbotoni moved to approve the March 20 meeting minutes. Vote 4-0, Mayer abstained**
- 2. March 27 Meeting: On motion Abbotoni/Leshure moved to approve the March 27 meeting minutes. Vote 5-0**

VI. Financial Reports:

- 1. Accounts Payable Warrants 55 & 56: On motion Abbotoni/Orenstein moved to approve AP Wrnt #55. Vote 5-0**

On motion, Mayer/Orenstein moved to approve AP Wrnt#56. Vote 5-0

VII. Presentations: NONE

VIII. Citizen Comments and General Correspondence:

- 1. Letter from Department of Environmental Protection re: Town’s snow discharge permit:** Lutkus said that he had sent the BOS a copy of the letter and it is self-explanatory. He said that the Town and DEP take the snow discharge permit very seriously. We don’t want to run afoul of that because it would cost us approximately \$200,000 if we didn’t have permission from the State to push the snow into the river.

IX. Town Manager Items:

- 1. Update on Proposed Marijuana Ordinance:** Lutkus said he put together a re-draft of the Medical Marijuana Licensing ordinance using the notes from the previous workshop.

He said that if the BOS agrees with the changes, he would like to put it on the website. Lutkus recommended scheduling another workshop.

BOS agreed to hold another workshop after the next BOS meeting on April 17.

Lutkus said that it would be good to get the drafts completed. He mentioned that if the board had changes for the Adult Use licensing ordinance, they could email him so he can update the draft.

Mayer encouraged the board to go back and reread the State's marijuana law so they can decide which direction they want to go.

2. **Testimony Provided at State Capitol on March 27:** Lutkus stated that he provided testimony before the Taxation Committee on behalf of the board.

Mayer asked that the testimony be put on the website.

Dick McLean said, as a citizen he thinks that it is a superb idea because it spreads the burden out over a lot of folks. The one percent tax would be a minimal cost to folks and would help with the expenses that are generated by those who don't live here. He hopes that if the State does this, they are not too restrictive. They tried this several years ago and they were very restrictive about how we could use the money. McLean said he was glad that the BOS is in support of it.

3. **Update on Solar Array RFP:** Lutkus stated that Bremen would like to join us in our power purchase agreement. He will be meeting tomorrow night with their Board of Selectmen. We were able to include their numbers into our RFP, which helps. The way that would work would be that our town would still have the agreement with the investors and then we would have a memorandum of understanding or some type of Interlocal agreement with the town of Bremen.

Mayer asked how many facilities this would accommodate. She asked if there is a possibility that Skidompha Library and the ambulance service could be included in this to offset some of the costs.

Lutkus answered that potentially down the road, they could. There is legislation that is being proposed that would open this up quite a bit. Right now, we are limited to ten meters per site. The legislation that Senator Dow is sponsoring would increase that up to two hundred meters. Our particular solar array would be for municipal use.

Hagar said that the Damariscotta River Association is going to be doing something as well and that may fit into helping the non-profit organizations.

4. **Six Month Review of Town Hall Four-Day Workweek:** Lutkus said that when the office went to a four-day workweek six months ago, the Board asked to review how it was going after six months. Cheryl has put together a summary of how it has been going. Lutkus stated that it's been fairly well received and it gives the staff more work time. Mayer asked Michelle Cameron if the positives are greater than the negatives as far as comments.

Cameron answered, yes, on the conservative side, more than eight-five percent positive, but really more than that. We have really only had a few people complain, especially in the beginning. It has really helped that the town now offering online re-registrations.

Mayer asked how long it has taken people to get used to the new hours.

Cameron said, we still have some people mention it but most are good about it. People seem to really like the early morning hours.

Hagar said that he thinks it's a good concept.

Abbotoni said it seems that everyone is happy.

Mayer mentioned posting a "closed Fridays" reminder on the town's Facebook page and website.

Hagar said he feels it's important to have a staff that is happy working in today's environment.

Abbotoni asked if the board needed a motion to continue with the four-day workweek.

Lutkus said it was not necessary.

There were no objections for continuing with the four-day workweek.

5. **Hours for Polls to be Open on June 11:** Lutkus said he thinks it will be a very light turnout this year's election. We have two Board of Selectmen's seats open, one seat for the School Board, and one seat for the Sanitary District.

Cameron stated that we do not have any hot topics on the town ballot and we do not have a State election.

Lutkus said, we are thinking there is no need to keep the polls open for twelve hours.

Mayer expressed concern for the people who work out of town. Will they be able to get here by six o'clock to vote? Can we leave it open until seven?

Cameron said we were looking to save a little money and maybe have an earlier night.

Lutkus mentioned that absentee ballots are available thirty days before the election.

Mayer stated that she would hate to have someone say they missed the opportunity to vote because folks are used to have the polls open longer.

Orenstein said he thought the polls should be open until seven o'clock and promote absentee ballots.

Cameron said that the staff always promote absentee balloting. It's on our website as well.

On motion Orenstein/Mayer moved to approve the election poll hours to be from 8 am to 7 pm and the promotion of absentee ballots.

McLean mentioned that the town should advertise the new polling hours openly. Maybe a larger size advertisement.

Lutkus said that there will also be the school budget validation vote on that day as well.

Vote 5-0

X. Official Action Items:

1. **Warrant for April 17 Secondary Education Town Meeting:** On motion Mayer/Orenstein moved to approve the warrant for the April 17 Secondary Education Town Meeting to be held at 5:30 at the Town Hall. **Vote 5-0**

2. **Engineering Design and Construction Administration for Waterfront Project:**

Mayer said the agreement would be with Wright-Pierce.

McLean said the document refers to the storm water system on Water Street. Is that the thing on the corner by Rob Gregory's building?

Lutkus said that if the bids come in low enough, he would like to include that.

McLean stated that he would really like to see that repaired because it's getting worse.

Hagar asked if that would be an alternate on there.

Lutkus answered; yes, it would be an alternate.

McLean asked which side the sidewalk would be on.

Lutkus answered the Savory Maine side.

Mayer said that the other side has all of the Post Office parking.

There was discussion on access to the parking lot from Savory Maine.

Hagar asked, Are we are going to replace the sewer lines?

Lutkus stated, after we get this RPF out, we will continue the discussions with various property owners. He does have a cost figure of \$125,000 to \$150,000 to replace all of the sewer lines. This does not include replacing the Sanitary District sewer lines. At this point, that cost would have to be paid by the businesses.

Hagar stated that we should really have a plan to take care of that. We are going to go ahead and spend a million dollars and then cover up old sewer lines. Hagar said he didn't think the town is doing the right thing.

Lutkus said he could not agree more but where he differs is, that it's not a town expense. It's a business expense, assuming it's not a Sanitary District expense. Lutkus agrees that this would be the time to replace the lines but it's private land.

Hagar asked how it went when Lutkus met with the businesses.

Lutkus answered that he just had a preliminary meeting and it went well.

Mayer mentioned that we offered the business an option for financing, which may entice them.

Lutkus mentioned that the last major rebuild in that area was done in 1986 and it could have been done in that time. It makes sense to do it now, but the town does not have the responsibility to do that. He thinks legally there would be an issue with us doing something that is private property, and secondly, we do not have the money. We have the \$950,000 for the pavement and drainage lines.

Hagar said if it can't be done right then don't do it. Can we use part of the \$950,000 to do that?

Lutkus said the engineer's estimate for the pavement reconstruction and the drainage is 1.2 million dollars. He said he's hoping we hit a spot in the market where we make the \$950,000 go a long way.

Mayer stated that our funders have given the money to do certain things and have the expectation that we will honor that.

Hagar said if we need to go get a bond or something, we need to do things right.

Mayer asked if the taxpayers should pay for a sewer line for a business.

There was discussion on the history of the installing of the sewer lines and who originally paid for them.

Lutkus stated that we have time. The project won't be done until Columbus Day weekend. He said he will give the Board an update after he meets with the businesses.

Buzz Pinkham asked if the Board would look at "pay for parking" again.

Lutkus said that the Twin Village Alliance gave money to the town to help the town not implement "pay for parking". **On motion, Mayer/Orenstein moved to waive Town Charter Bid Guidelines and authorize the Town Manager to execute an agreement with Wright-Pierce for revisions to the construction bid specifications and for bid administration for the Town's waterfront parking lot project for an amount not to exceed \$20,025. Vote 5-0**

3. **Cemetery Deed and Perpetual Care Agreement with Allen J Corson and Yan Yuan Wu Corson: On motion, Abbotoni/Orenstein moved to approve the Cemetery Deed and Perpetual Care Agreement for Allen J. Corson and Yan Yuan Wu Corson. Vote 5-0**

4. **Construction Management Firm for Bristol Road Sidewalk and Drainage Project:** Mayer pointed out that on page 3, article six it says the consultant is not responsible for acts or omissions of the contractor, materials supplier, etc., in the first paragraph. In the second, it says the consultant does not assume responsibility for the contractor failure to perform the construction in accordance with the contract documents. When you turn to exhibit A, page 7, item number 2 says he has the authority to act on behalf of the client and all client instructions to the contractor shall be through the consultant. She said it seems like the consultant is supposed to be holding the contractor responsible and accountable. Those two statements are opposites.

Lutkus said we've gone back and forth with them on this. The Maine DOT project manager flagged that as well. Lutkus said he wouldn't mind going back to them and saying once again, you can't say that you don't have responsibility in that area.

Mayer stated that is what we are hiring them to do.

Lutkus stated that he could go back to them and tell them the contract is contingent on them removing that disclaimer.

Hagar mentioned that they are not the only consultants on the list.

Lutkus said we could ask other approved consultants to submit proposals as well. He said DOT told them that contract has to state what the consultant is responsible for and were okay with how they reworded it.

Mayer would like the wording to be consistent, if they are going to act on our behalf, then they have to be responsible.

Lutkus said Hoyle and Tanner had done work for some of the town's businesses. He had not realized that when he called them. Because this is a state project, the list of consultants is strict. For example, Wright-Pierce is not approved, the State is very selective on who we choose. Lutkus asked Mayer for her selective changes and he will tell the consultant this is what the Board of Selectmen want.

On motion, Mayer/Abbotoni moved to waive the Town Charter bid guidelines and authorize the Town Manager to execute an agreement with Hoyle Tanner & Associates for construction management services for the Bristol Road Sidewalk and Drainage Project for an amount not to exceed \$34,277.60 pending the acceptance of new language dealing with article 6, construction phase services. Vote 5-0

- XI. Selectmen's Discussion Items:** Orenstein updated the Board on what the Land Use Advisory Committee has been working on. He said they were reviewing and reformatting the Site Plan Review, Subdivision, and the Land Use Ordinances and looking at applying "Complete Street" ideas to the Town of Damariscotta.

Lutkus added that the group that had come before the Board to talk about "Complete Streets" is now meeting with Steven Hufnagel, himself and a few others to talk about their vision for transportation, mainly safe bicycle and pedestrian transportation. They are meeting again on the 11th to continue that discussion. Lutkus said he is trying to set up a meeting with Patrick Adams from the State who works on grants for sidewalks and bikeways. They are hoping for the 23rd for Patrick to come down and tell us what types of funding are available.

Hagar commented on the Clippership Condo Plan that is going to go in front of the Planning Board. There are 107 acres that is out there currently being valued at \$169,300 and part of it has been identified as commercial zoning. He said 87.8 acres that is going to the DRA and will be tax exempt. Hagar said he would like to see the town get some type of taxes out of DRA.

Lutkus confirmed that the DRA has acquired that property of 87.8 acres and two days ago submitted a request for the property to be tax exempt. He said the DRA will be at the next Board of Assessors' Meeting, which will likely be May 1. Lutkus said there might be alternatives to that property being exempt under the statute they traditionally use.

Hagar asked if the town was all set with the restrooms in regards to the contractor getting a performance bond.

Lutkus stated that he has not received verification of the performance bond and the town is withholding the check until we do.

Hagar asked if we are still on schedule.

Lutkus answered that we can be but it has to happen quickly.

Mayer asked if they had a drop-dead date for the performance bond.

Lutkus said, yes, they did but it has passed now. We need to get the bond before we can proceed and that it is on the top of his list.

Mayer mentioned that she is concerned about the condition of some of our new sidewalks.

Because we are using a tractor for plowing the sidewalks, some of them are getting cracked and damaged. For the future, can we make the sidewalks six inches wider so the wheels don't hit the sides or can we make the base better or thicker so they won't be damaged. Mayer stated that this did not have to be decided tonight but it's something to keep in mind.

Lutkus said that the Elm Street sidewalks were constructed with an increased standard. He said that the sidewalks will crack and have frost heaves, some of which will go back down. The Bristol Road sidewalks will be the five foot standard.

XII. Adjournment: On motion, Orenstein/Abbotoni moved to adjourn at 6:45 pm.
Motion rescinded by Orenstein/Abbotoni.

Alan “Buzz” Pinkham asked to address the Board. He said he had read the Lincoln County News about the Board’s position on cannabis sales. He said it seemed like the Board was going to go by Federal laws, or were they going to continue to have these discussions. Mayer answered; the Board was going to continue working on the marijuana ordinances. Pinkham said that in Maine, people can grow their own plants and he wanted to know if the Board will go by Federal law or State law.

Mayer said, at their last workshop, the Board took a straw poll regarding this. The straw poll results were that the Board was going to continue to work on the ordinances. She stated that, we have no control, as a town, over individuals growing marijuana. We only have control over adult use and medical marijuana commercial sales.

Pinkham asked if the BOS had settled the medical marijuana ordinance or are they still working on it.

Mayer said the Board is reviewing the revised ordinance, which will be posted on the town website, now. Amanda, the town attorney has agreed with the Lutkus’ revisions. If the Board agrees with the revisions and does not have any other questions or comments, the ordinance will be finalized for public hearings. The ordinance may be changed based on the results of the public hearings.

Pinkham stated that it sounds like the Board wants to limit medical caregiver’s ability to have a storefront. You can be a caregiver and raise the product, but you cannot sell it without the town’s permission.

Mayer said that is something the BOS has discussed, the difference between a caregiver and a retail store.

Lutkus stated the retail store is undefined in the statute. That is something the town will define. The statute is clear that towns, through their legislative bodies, need to opt in to allow retail. In his understanding of the statute, retail does not include the registered caregiver cultivator. It does include people who open up a shop, put out a sign, and say they have medical marijuana for sale for qualified patients. A retailer is acquiring a product from a variety of sources, including perhaps growing their own product. The caregiver is basically growing their own product for a certain number of qualified patients. If they have more marijuana than they can provide to their qualified patients, they can sell thirty percent to a retail store or another caregiver.

Pinkham stated that caregivers can serve an unlimited number of patients.

Lutkus said state law gives municipalities the authority to regulate marijuana retail businesses. If we don’t opt in for that, you cannot have retail shops.

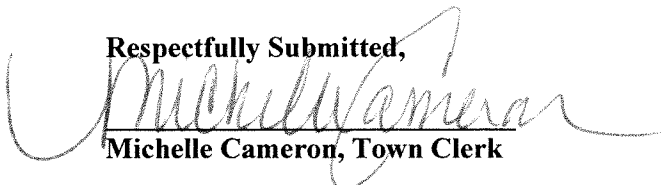
Mayer said that the Board will go to the state for some more guidance about the difference between caregivers and retail stores. She repeated that there will be public hearings scheduled.

Lutkus stated that anyone who is a caregiver and considers themselves a retail store, they are not allowed to operate as a retail store. This is how the state statute is worded, there has to be the licensing and zoning in place for retail business in town.

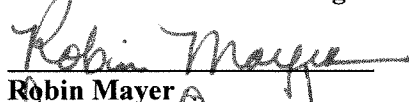
Pinkham suggested that the BOS go into the retail store downtown and look at it.

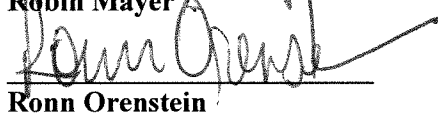
On motion, Abbotoni/Hagar moved to adjourn at 6:55 pm. Vote 5-0

Respectfully Submitted,

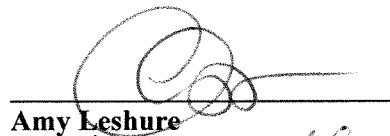

Michelle Cameron, Town Clerk

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


Robin Mayer



Ronn Orenstein

Mark Hagar


Amy Leshure


Louis F. Abbotoni

Town of Damariscotta, Board of Selectmen

 4/17/19

Date