

**Town of Damariscotta
Board of Selectmen Meeting
Minutes
Wednesday, May 7, 2008**

I. Pledge of Allegiance

II. Public Hearings-

1. Shellfish Ordinance Updates

Gove opened the public hearing at 6:31 and asked Sid if this updated ordinance would be the same as Newcastle's'.

Sid stated it would, and since the two towns share the harbor and Warden, it makes it easier to monitor and enforce.

Gove closed the public hearing at 6:32p.m.

2. Board of Appeals Ordinance

Gove opened public hearing at 6:32 p.m.

McLean asked if this new ordinance is replacing the current one.

Zinser said it is a new ordinance for administration corrections, and adds variance types such as the undo hardship and disability variance, and variance from dimensional standards.

Gove felt Section II c. should be changed to Town Manager, instead of the Board of Selectmen, also stated the definition of notice in hearing is described in the Charter.

Also thought the elected officials should take the extra steps and workshops to learn the requirements of their position. This is an important step in the legislative process.

Zinser stated he would add the new training requirement to take place within first year of being on the Board, or first available MMA training course.

McLean felt #3 F. Organization, this section seems a little loose.

Gove suggested taking it out all together.

McLean asked why the ordinance stated that in case of a tie, the chairman votes.

Zinser said the lawyer suggested it.

Gove closed the hearing at 6:40 p.m.

3. Amendment to Site Review Ordinance

Gove opened the public hearing at 6:41p.m.

Zinser informed the Board the amendments are administrative, and would allow the ordinance to not conflict.

Gove expressed concern for the equality of the fee schedule, feels there should be a renovation section. As it stands now, the business can be doing a small renovation and still have to pay for the full square footage of the entire building, even if it's just renovating a small bathroom.

McLean agreed with Gove and would like to not lose site of this.

Gove closed the public hearing at 6:44p.m.

III. Call to Order

The Board of Selectmen met at the Municipal Facility on Wednesday, May 7, 2008 to conduct town affairs. Chairman Scott Gove called the meeting to order at 6:45p.m. Members present were Scott Gove, Josh Pinkham, Dick McLean, and Dave Wilbur. Vicki Pinkham was absent. Staff present was Town Manager, Greg Zinser, Town Clerk, Cheryl Pinkham and Shellfish Warden, Sid Geyer. Others present were Karen O'Bryan from LCTV, Brent Hallowell, Rob Gardiner.

IV. Communications-None

V. Town Manager Discussion

1. Amendment of size cap from 35,000 sq. ft. to 55,000 sq. ft.

Gove urged the Board to support this increase, and stated the size of Hannaford is currently 55,000. If the Town is going to have a size cap, then it should pick the largest building in the Town and cap it at that same size. Seems like the fair thing to do.

McLean agreed, and felt initially both numbers were tossed around 35,000 or 55,000, and we opted with 35,000 thinking we could revisit and increase easier than having to decrease.

J. Pinkham said he personally remembers leaning towards the 55,000 back when this first came to the Board, he felt we should have started with the biggest building in the Town and cap it at that.

Gove pointed out that as the ordinance reads now, if Yellowfront wanted to build a store the same size as Hannaford, they wouldn't be able to allow that.

J. Pinkham agreed and would like to have the residents have their input on this topic. It brought out a lot of dialogue last time.

McLean agreed with J. Pinkham.

Gove asked if having a public hearing on the 21st of May, and have it go on the Town Warrant if the people approve, and if the public over-whelmingly says no, then fine, it's a no.

Zinser stated this could be accomplished in the time frame left before Town Meeting.

McLean questioned how it would appear on the Annual Warrant, would it just appear as a change in the size cap from 35,000 to 55,000 with no other wording.

Stelzer felt the Board should take their time with this. The size debate was a big issue, the politics of it, and the fact that one is requesting an increase, just feels there needs to be more time instead of putting this to vote in a few weeks.

Gove feels residents will support this, and believes there is time for dialogue, and time for people to decide.

J. Pinkham said at this point, the Board has been asked to increase the size cap. We have one building in town already that's larger than the cap, we would just be recommending this article be placed on the warrant. Yes it's happening quickly, but we'll leave it to the Town to decide. If people aren't happy, we don't do it.

Gove reiterated that it's only fair to have the cap the same size as Hannaford

On motion of McLean/J. Pinkham moved to place on Annual Town Warrant for June 11, 2008 to see if the Town will change size requirement to 55,000. Vote 4, 0, 0

2. Amendment to Site Review Ordinance

McLean informed the Board that the Land Use Committee is recommending that each amendment to the SRO as separate articles. 1- is an addition to section 11 in regards to existing building under 7500 sq. ft for commercial and residential building, modifications in the general appearance, standard lighting and glare control. 2 is section 12 in regards to the large scale development over 7500 sq. ft.

J. Pinkham asked where the size 7500 came from, and if other communities are using the same figure.

McLean stated as a committee the 7500 was agreed upon, and other communities are using around 10,000.

J. Pinkham had a problem with the landscaping requirements. If you have an upper and lower parking lot, these requirements are not feasible. What if you have a sharp incline in the property, are we going to require them to plant trees there too.

McLean pointed out that the Planning Board could waive or modify those requirements for that purpose.

He went on to state the committee members went to other Towns for research, and found most of them include tree plantings. We are trying to eliminate a mass of asphalt.

Gardiner felt if he initially had to follow these requirements, he would not be able to have the size parking lot he does now. Maybe there could be a meeting point between what a 'mom & pop shop' versus big box store feasibility.

J. Pinkham agreed and felt a new medium could be found.

Wilbur asked Hallowell why he voted against this ordinance while on the LUC.

Hallowell stated the Site Review Ordinance did very well to keep it at property lines, but this might be a bit overboard.

McLean stated the balance act was very difficult.

Zinser believed the word guidelines was very clear. When he looks at the ordinance it appears to be pretty clear allowing standards to be altered, it's a guideline. Used to guide.

Gardiner thought that would leave the Town open for a law suit, what decides the guidelines that are able to be waived, or modified.

McLean believed if something was impractical, that would constitute waiving.

Gardiner asked if money would be considered impractical.

McLean thought it would probably not.

Hallowell asked McLean if anything had been resolved with.....(McLean answered before full question was complete)

McLean replied if a building in abandoned past four years, we could use money to maintain or tear down the building. The attorney is not comfortable. State statute enables, if a building becomes a public safety issue, can go to court for money. The Town doesn't need this in the Ordinance, because the State Statute covers the Town.

McLean said the committee is officially recommending these be placed on the Annual Warrant.

Gove thought the Board of Selectmen needed to take this draft from the LUC and work on it also.

Zinser suggested the Board hold a workshop for next week to discuss this, and then the following week would allow for a public hearing.

McLean asked to have the LUC also attend this work shop, there were a few parts that were debated for 2 or more meetings.

Gove didn't want the workshop to become a 'defend your reasoning' type of meeting.

On motion of Gove/J. Pinkham moved to hold a workshop next Wednesday at 6:30 to adjust changes for the SRO and to invite the LUC. Vote 4, 0, 0.

VI. Official Action

1. Town Roads Snow Removal Contract

Zinser informed the Board that pg 6 section 26 has 3 different options. The draft that went to the Board stated that the cost of the grader would be borne by the Town at \$125/hour. The second option stated that the cost for the grader would be borne by the contractor and the third option stated that if a grader is needed it will be at the discretion of the Road Commissioner.

J. Pinkham asked about donating the cost like they said.

Zinser reminded the Board that they did not take formal action that night.

Gove said he is ready to sign this contract with Option 1

J. Pinkham pointed out pg 1, 'if significant changed, mandated by the State, the Town will not hold contractor liable', and wanted to know why this was in there.

Gove used an example of the Town of Jefferson just had the State pull their plowing responsibility and 'dump' in onto the Town. If that happened in Damariscotta, don't you think the Hagar's should be compensated for that extra work.

J. Pinkham said no.

Zinser told J. Pinkham that this was the exact same wording in the contract for the Downtown Snow Removal Contract, with the same contractor that the Board signed already. This language has been in this contract all along, while the Board has been making all the other adjustments. There isn't anything new here.

McLean felt if the circumstances were beyond the contractors' control, they should be compensated, it was only the fair thing to do.

Gove agreed with McLean, it would be unfair to the contractor to hold them responsible for something out of their control.

J. Pinkham still felt it was not. He's concerned with being fair to the Town, not the contractor. Continued on through the contract in regards to pg 2 section 7 'additional service for emergency services,....be paid within 30 days. J Pinkham stated that the RFP made no mention of compensation for responding to emergencies outside the scope of the contract.

Gove believed it would mean if the fire department had a call in the middle of the night and Hagar has to come out to clear snow, or drop some salt due to water from a structure fire that would be extra.

Zinser told Pinkham it was for work performed outside the scope of work.

J. Pinkham doesn't believe the contractor should be compensated for this either. Its part of their contract, and they should do this emergency work at no cost to the Town.

McLean felt it was ethically inappropriate.

Hallowell said when Rice did the plowing it was just all part of the contract.

J. Pinkham wants the section to be stricken out.

Wilbur suggested checking the RFP before striking anything out.

J. Pinkham said in Hagar's portfolio they only have 1200 yards of sand listed and that the RFP called for 1500. Zinser stated that they tightened up the wording to say 1500 yards or whatever is needed. Also questioned the timing of clearing of the snow.

Gove said when the conditions were hazardous they would go out.

J. Pinkham said his version of hazardous conditions is different from Goves'. J. Pinkham is just looking out for the Town

Gove suggested J. Pinkham be reasonable.

McLean felt the timing would be organized with bus schedules, etc.

J. Pinkham would like to see the word "shall" on page 2/3 in State of Emergency be changed to "may".

Gove said if a state of emergency is declared, Hagar needs more man power and hires additional contractor to help remove snow, we would have to pay any state funds to them.

McLean said he was comfortable with the wording.

Wilbur asked if this was in the last contract. And if not, how did it get in this one.

Zinser said it was not, and through contract negotiations it was placed there.

Gove read shall give him all that money; he feels this should be totally at the discretion of the Board.

Wilbur noted to Gove and J. Pinkham that it says if the majority of the Board agrees to pay, and a list of expenses is required. That sentence covers the difference between shall and may.

Zinser told the Board money is just not handed out from the State of Federal government, it can't be that way, you need to maintain situation with relationships. What do you plan to do, sit on the revenue and not reimburse the contractor.

McLean said the Town would not 'just get money' because we need it or had a bad storm. If the contractor incurs 50,000 in extra cost, get 75% back from the state and the Board would be able to reimburse the contractor the 75%.

The Board continued to argue the shall and may meanings for several more minutes.

J. Pinkham said the last sentence on pg 3, surety bond, or line of credit. Are we cutting Hagar a check, or paying the bond.

Zinser said the bond, and told Pinkham he would be sure to get a receipt for it.

J. Pinkham asked if the Road Commissioner and Contractor don't agree, what happens then.

Zinser replied that the Road Commissioner operates under the Town Managers discretion.

J. Pinkham told Zinser that he (Zinser) operates under the Boards discretion. Also added that there needs to be steps in place to resolve an issue if the contractor, road commissioner and town manager all disagree.

Zinser said there are remedies built into the contract.

J. Pinkham pointed out pg 5, lump sum this doesn't include the bond, or fuel circuit breaker.

Zinser said he was correct, it'll be \$2400 to purchase a joint bond, if you do it separately it would be \$5000.

J Pinkham also stated that he thinks the bonds should be kept seperate

Wilbur said he would disagree whole heartedly.

J. Pinkham asked if the bond was a 3 yr contract.

Zinser stated it would not be advantageous to do it for that length. Will find out for next meeting.

2. Town Meeting Warrant

On motion Gove/McLean to make article 57 modification to see if Town will vote to change size cap from 35,000 to 55,000. Vote 4, 0, 0.

Gove asked how much money would need to be raised and appropriated.

Zinser stated \$250,000 for the Municipal side.

Gove asked what effect that will have on the mil rate.

Zinser is waiting for the school information.

J. Pinkham asked if the county tax was going up or down.

Zinser said that the average impact to homeowners is \$76, not including the schools.

J. Pinkham wants to go back to the budget and cut more then.

Wilbur reminded J. Pinkham in his infinite wisdom to cut the mil rate by 3/10 of a mil is part of the issue here.

J. Pinkham disagreed and felt that had nothing to do with this.

McLean agreed with Wilbur on this and told J. Pinkham that had everything to do with this.

Gove agreed with Wilbur and McLean.

Zinser read through articles 36, 37; told the Board the SRO would be 3 separate articles. Checked with the attorney and this is okay to present it to the Town in separate articles, there was concern as to whether or not we had to pass another article accepting a new SRO with the individual amendments McLean stated Article #50, the 7500 sq ft. would like to see adjusted. Article 49 adjust.

On motion of Wilbur/McLean moved to accept Annual Town Warrant as amended.

Vote 4, 0, 0.

3. RFP for general road maintenance.

Zinser stated there were a few issues; culverts and location of the culverts. This information was sent to the Board before Zinser left for vacation. To date there is only one change. The question was asked if the Town could provide traffic control, the answer is yes. Town may or may not provide flaggers, we'll have to see which way is best.

J. Pinkham wanted to know how much the flaggers would be paid.

Zinser \$25/hour.

Gove pointed out a typo and would like to see guarantee instead of warrantied.

J. Pinkham said the preconstruction meeting would meet after the bid is awarded.

Zinser will make the changes requested and send the new RFP to the selectmen. The new one would be 20802. He would also ask if the Board would act on RFP 20802 to reflect the changes and allow the advertising to go forth.

On motion of McLean/Wilbur moved to accept RFP20802 as amended.

4. Signatures for Special Town Meeting Warrant, School Validation Referendum

On motion of McLean/Wilbur moved to accept and sign Warrant.

Vote 4, 0, 0.

5. BOS Annual Report

J. Pinkham did not like the reference to EMT, made it sound like it was the ambulance personnel.

Gove said it meant Emergency Management Team.

J. Pinkham said it should say that then.

Zinser will make the change to read Emergency Management Teams instead of EMT's.

Wilbur thought a brief LD1 explanation stating we're above the 88,000.

On motion of McLean/Wilbur moved to accept the letter as amended.

Vote 4, 0, 0.

6. Snow Removal Ordinance

Zinser said this has been in limbo, he has spoken with the Damariscotta Region Business Association, and they feel the town should continue as previous. Their position to continue status quo, but he needs to talk with the building owners, and the Board has not stated their pleasure.

McLean feels it's a struggle to come up with right way to have a fair and workable ordinance. This is a high priority issue and we need to keep up on this, but it seems a lot to put before the voters in this short period of time.

On motion of McLean/Wilbur moved to go through this coming winter remaining status quo.

J. Pinkham felt there was enough time to pull it off. We've talked about it already, draft a letter to the building owners.

Zinser said he would write the letter and say what... "we are doing this and will require you..." Right now the bulk of the ordinance is completed, we need small modifications, and we need to lead as we lead as when Main St gets cleared.

Wilbur thought with all the work, time, and effort being put into expanding of the sidewalks, traffic enhancements, and making the Town more walkable, and then to not take care of them did not make sense. Zinser told the Board they have received a \$20,000 grant and are a finalist for \$100,000 grant, and 3 or 4 other grants, CDBG, DOT grant for sidewalk reconstruction. In applying and receiving these grants, a big commitment to maintenance is a factor when determining receivers of the grant. We're looking for grants to help defray costs, but you had 85 people come to a meeting in regards to the sidewalks and they all want

the Town to maintain them. We can't accomplish this without the grants, and we aren't going to be attractive in the grant process if we are not willing to maintain and upkeep the sidewalks. J. Pinkham said we looked at the maintaining status quo of the sidewalks and the expense and all decided to cut. Now we're taking it back on and adding more sidewalks to add to it. Stelzer felt this was a service to the Town's people and no less important than fire department, and police department, etc. It's a safety issue, and he feels the Town should stay the way they are at the upkeeping. J. Pinkham 'then I want \$22,000 back from the budget.

Vote 3, 1, 0. (J. Pinkham opposed)

J. Pinkham stated the parking fines needed to go up above \$2,400 or go away. The parking fines were suppose to support the parking officers' pay.

VII. Old Business

1. Photo of Board of Selectmen

Photo will be for FY 2008 Town Report. Vicki missing from photo.

VIII. Consent Calendar

Regular meeting minutes of April 16, 2008

On motion of J. Pinkham/McLean moved to accept minutes of 04/16/08. Vote: 3, 0, 1. (Gove abstain)

1. General Fund Warrant #58

J. Pinkham questioned the paint bill, and Res. Officer Norton's mileage reimbursement, and FEMA money, if we put in for that much.

Zinser said the Town has spent \$1,000 to maintain the back parking lot, we will be going out to bid for overlay of 20X300 swath. FEMA says this is what has to be done.

On motion of J. Pinkham/McLean moved to accept General Fund Warrant #58. Vote: 4, 0, 0.

2. Payroll Warrant #51

On motion of McLean/Wilbur moved to accept Payroll Warrants #'s 57 & 56. Vote: 4, 0, 0.

IX. Other Business

J. Pinkham asked if the light at Main/Bristol can be switched to blinking.

Zinser informed the Board that the Town has been notified that they are a finalist for the Orton Foundation Grant. There will be a meeting here and then a tour of the Town. Miles will be donating the bus for that, and Zinser will be going, he would like to know how many Board members will be attending, he already knows Wilbur, and McLean will be attending.

Gove said he wished to attend also.

J. Pinkham would not be attending, work schedule conflict.

Hallowell asked if public comment would be heard before pursuing. He didn't feel the Town needed to be spending \$60,000.

Zinser explained there would be an awarding of the grant first, and then it will be determined how to work the money, and also involvement from DPAC (Damariscotta Planning Advisory Committee)

Wilbur also said the money could be fund raised, it did not have to be added to the tax bills.

Zinser presented a proposed RFP for a generator, stated he is not an electrician, however Steve Case offered to come by and said yes, this will cover you for your needs. No technical advice.

J. Pinkham knows Steve Case and trusts if he says it will suffice for our needs, then that's enough for him.

On motion J. Pinkham/McLean moved to accept RFP200803. Vote 4, 0, 0.

On motion of J. Pinkham/McLean moved to adjourn the meeting at 9:10pm. Vote 4, 0, 0.

Respectfully submitted,

Cheryl M. Pinkham, Town Clerk
