

**Town of Damariscotta, Maine
Board of Selectmen's Meeting
Minutes
Wednesday, November 16, 2005**

I. Pledge of Allegiance

II. Call To Order

The Board of Selectmen met at the Municipal Facility on Wednesday, November 16, 2005 to conduct town affairs. Chairman Richard McLean called the meeting to order at 6:30 p.m. Members present were Richard McLean, Scott Gove, Walter Hilton, William Earle and Joshua Pinkham. Staff present was Town Manager William Post, Police Chief Steve Drake and Fire Chief Doug Clark. Others present were George Parker and Mary Kate Reny of the Land Use Committee, James Phillips, Norman Hunt, Brent Hollowell, Dennis Hilton, Eleanor Kinney, Karen O'Bryan (LCTV), several unidentified members of the public and three members of the media.

III. Public Hearings

1. Entertainment License Application of Augustine Lett, d/b/a Augustine's Backstreet Restaurant.

McLean opened the public hearing at 6:30 p.m.

McLean asked what type of music would be offered. Lett stated that he hoped to have a variety of local artists perform.

Gove asked if the hearing was advertised properly. Post stated that it was.

There were no public comments for or against the application. McLean closed the public hearing at 6:33 p.m.

On motion of McLean/Gove, the Board VOTED: To approve the Entertainment License application of Augustine Lett d/b/a Augustine's Backstreet Restaurant as submitted (Vote: 5 – 0).

IV. Old Business – None

V. Communications – None

VI. Official Action

1. Act on Recommendations of Land Use Committee.

Parker stated that the Land Use Committee has been meeting weekly to discuss the big box issue. At first, the committee thought they had time to look at the issue rationally by using a survey to determine what the community wanted in that regard. Then there were conversations with Bob Faunce stating that a retailer could build a 100,000 square foot store in the existing Commercial 2 zone. The committee then began discussing size limits. The petition was then submitted and the committee realized that they would not be able to negotiate with the circulators of the petition for different language. The committee then thought about preparing separate amendments with a different size limit, but they thought that this would split the vote and both sets of amendments would fail because of

the existence of the other. The committee then started to define “retail” and other terms that are in the petitioned amendments, but decided to not amend or attempt to clarify the petitioned amendments because the [public should vote on them as they stand.

Eventually, the committee decided to make three recommendations to the Selectmen in regards to this issue. They recommend that the Board schedule a meeting as soon as practical to deal with the petitioned amendments, that the Board not put forward a competing amendment, and that the Board put additional non-binding opinion questions on the ballot that would be answered if the voter voted “no” on the petitioned amendments. These questions would be used to gauge the opinion on different size caps, such as 55,000 s.f. or approval of 100,000 and larger retail stores.

Additionally, on another topic, there is amendment that the committee recommends that would reduce the lot size required in the C2 zone for a dwelling unit from 6,000 s.f. to 5,000 s.f. Post stated that the language for that amendment has not been drafted yet, but would be ready for a future meeting.

Pinkham asked what the committee would do next. Reny stated that she appreciates the support from the Board through this process, hopes that they support the three recommendations put forth, and would like to know what the Board would assign for their next task.

Pinkham stated that he would like the committee to move on to the next project on their list.

Gove asked how the committee feels about adding an additional non-binding question that would ask for no size cap. Parker stated that the second question that asks if the voter supports retail stores 100,000 s.f. and larger should cover that question, but the language is only a recommendation.

On motion of Pinkham/Earle, the Board VOTED: To accept the recommendations from the Land Use Committee for discussion (Vote: 5 – 0).

2. Act on Citizen’s Petition to Amend the Land Use Ordinance, Article 5.

Post stated that a citizen’s petition was submitted to the Town Clerk on November 1st that asked the Board to schedule a special town meeting within 60 days to consider amending the Land Use Ordinance, Article 5 to essentially limit the size of retail stores to 35,000 s.f. in the aggregate in the C2 and C1 zones. The petition was validated by the Town Clerk to contain 288 registered voters’ signatures and is a valid petition. By state law, the Board must place the petitioned amendments on the next scheduled warrant for a town meeting. Despite the language in the petition asking for a meeting within 60 days, the Board does not have to do that, but they can if they choose.

Post stated that he had met with representatives of Wal-Mart today and they announced their intentions of building a retail store in Damariscotta with a size of 186,000 s.f. At this point, they stressed that they do not have an application for the development ready for the Planning Board and will need to ask for a zone change in order to build a store of that size.

Hilton and Gove motioned to place the petitioned amendments on the warrant at the annual town meeting in June.

Gove stated that the Land Use Committee discussed the legality of the wording in the petitioned amendments, and specifically the definitions of retail and of the term “in the aggregate”. He asked if the Board could change the language or create another amendment that could change the petitioned language. Post stated that the language of the petitioned amendments must be voted on as it is and cannot be changed. However, additional amendments could be voted on after the petitioned amendments on the warrant. This would amend the amendments if all were approved by the voters.

Gove stated that, at some point, if Wal-Mart wishes to build a store of the suggested size, they need to approach the Town for a zone change. Post stated that was correct, as the 186,000 s.f. store would not fit realistically in the 500 foot C2 zone that exists on the Hunt and Phillips property.

Gove stated that he is concerned about the impacts that this type of development will have on the Town and that by waiting to hold the vote, it will give the citizens and the Town time to discuss the impacts and determine what they are. If the impacts are substantial, additional language can be drafted to help protect the town.

McLean stated that the type of impact analysis necessary for this type of development is beyond the capability of the committee and that a neutral professional consultant would need to be hired to do that analysis.

On motion of Hilton/Gove, the Board VOTED: To place the petitioned articles on the next annual town meeting warrant (Vote: 4 –1, McLean opposed).

3. Review Proposals for Real Estate Agent for Church Street Property.

Post stated that he had sought proposals from real estate agents in Damariscotta for the 27 Church Street property as instructed by the Board at their last meeting. He received three proposals from Coldwell Banker Burton and Associates, Newcastle Square Realty and Farrin Properties. Coldwell suggested a list price of \$225,000 for the property and a commission of 5%. Newcastle Square Realty suggested a list price of \$149,000 and a commission of 6%. Farrin Properties suggested a list price of \$159,900 and a commission of 4%.

Hilton suggested that the Board select Farrin Properties.

Gove asked why there was such a large difference in the list price suggested by Coldwell Banker and that maybe the list price should be somewhere between the low and the high suggested list prices. Post stated that they all supplied Comparative Market Analysis (CMA) and each suggested a different price.

Pinkham stated that the property should be listed at \$199,000 withy Farrin Properties. Hilton agreed.

Gove stated that Farrin aggressively markets their properties, but that Newcastle Square Realty may be more aggressive.

Earle stated that a price of \$200,000 is too high.

McLean asked Hilton why three different brokers suggest three different listing prices. Dennis Hilton stated that each agent wants the listing and each has a different opinion as to what the property will sell for.

Post recommended that the Board select Farrin Properties to list the property as they are offering the lowest commission at 4%. All agencies will use similar techniques and advertising to sell the property.

Gove asked if the lower commission would result in other agents not wanting to cooperate in selling the property. Post stated that Farrin has offered to split the commission with 2.5% going to the buyer's agent and 1.5% for Farrin Properties.

On motion of Pinkham/Hilton, the Board VOTED: To utilize Farrin properties as the listing agent at 4% commission and to list the 27 Church Street property at \$199,000 (Vote: 3 – 2, Gove, Earle Opposed).

On motion of McLean/Gove, the Board VOTED: To authorize the Town Manager to sign the listing agreement for the Town (Vote: 5 – 0).

VII. Town Manager's Discussion

1. Biscay Beach Property.

Post stated that the survey work has been completed for the Biscay Beach property and the deed is currently being prepared. He anticipates that it should be ready for the Board's review and acceptance at the next meeting.

VIII. Consent Calendar

1. Regular Meeting Minutes of November 2, 2005.

On motion of Gove/Hilton, the Board VOTED: To approve the minutes of November 2, 2005 as submitted (Vote: 5 – 0).

2. Financial Reports:

- a. Payroll Warrant #22 General Fund Warrant #23.

On motion of Gove/Hilton, the Board VOTED: To approve Payroll Warrant #22 and General Fund Warrant #23 as submitted (Vote: 5 – 0).

IX. Other Business

1. Pinkham asked if there was any more information on when the open house would be scheduled. Post stated that he received the bronze plaque today for honoring the Castners and R.H. Reny. It was decided to hold the dedication of the police department separately, as George Hutchings wife is out of state for the winter. Post has asked Chief Drake to find a date in the spring that relates to Hutchings' career with the department.
2. Pinkham stated that in the budget process last year, it was mentioned that the Philbrook Fund may be used to help pay for agency requests. He asked if that had been pursued. McLean stated that he agreed to speak with the agencies to determine if any of their rules or regulations would be compromised by the Town utilizing those funds. He has not done that, but will contact the agencies.
3. Pinkham stated that he would like the superintendent and school committee to appear at a meeting so that the Board could stress to them the importance of keeping the budget down.
4. Hilton asked about the Main Street Project. Post stated that he has not heard from the MDOT yet, but expects to within a week or so.
5. The Board allowed Eleanor Kinney to address them. She stated that two land use attorneys reviewed the language of the petitioned amendments and they assured that the language was legally defensible. Also, the definition of retail may be an issue, but the language was researched before it was circulated.

X. Executive Session - None

XI. Adjournment.

On motion of Gove/Hilton, the Board VOTED: To adjourn at 7:42 p.m. (Vote: 5 – 0).

Respectfully Submitted:

William S. Post, Town Manager