Lamoine Board of Selectmen

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Minutes – November 21, 2019

Chairman Bob Christie called the meeting to order at 7:00 PM.

Present were: Selectmen Robert Christie, S. Josephine Cooper, Gary McFarland, Kathleen Rybarz (arrived 7:35 PM), Administrative Assistant Stu Marckoon, Code Enforcement Officer Rebecca Albright, Mark Harris, Carol Mason, Ken Farkas, Michael Jordan, Marion & Richard Arnold, Jonathan Pottle, Cynthia Donaldson, John Holt, Amy Duym, Town Attorney Daniel Pileggi, and Mr. & Mrs. Jim Scott.

Agenda – Stu suggested moving up the addendum item regarding playground equipment so that the Lamoine's Little Children representatives would not have to wait for the executive session with the town attorney. There was no objection.

Minutes – November 7, 2019 – Gary moved to approve as written. Jo 2nd. **Vote in favor 3-0.**

Expenditure Warrant 12 – Selectmen signed the warrant in the amount of $137,932.68. Stu noted that the school payments and snow plowing made up the bulk of the warrant, and the firefighter stipends were included for payment on December 1, 2019.

Cash & Budget Reports – Stu said the reports as of this morning were in the packets, expenditures were where they should be and revenues were ahead of projection.

Audit – Stu said the year end balances are included with the written audit. Bob asked how long the auditors spend at the office. Stu said generally a couple of days – a preliminary transaction testing day and another day looking at expenses and revenues and the like.

Meeting with Code Enforcement Officer – Building Height/Board of Appeals Decision – Code Enforcement Officer (CEO) Rebecca Albright said there were no findings of facts or conclusions of law, and she was led to believe she was to follow the two motions in the Board of Appeals Minutes. She said the first motion approved was to reconsider the measurement and the 2nd was to remand the matter to her for reconsideration. She said she had problems with that. She said the definition of building height is ambiguous, which was brought up several times over the months of discussion. She said the other problem is that the town has as a policy requiring a surveyor only when closer than 125-feet to the shore, but there is no policy requiring a building height survey. She said there is an absence of a survey policy and the weak definition of building height. She said she and Planning Board Chair John Holt have been working on some wording in the past few months.

Gary asked if there has been a survey done on of the property. Ms. Albright said there was some survey that was not legal evidence during the road opening permit process. She said the house is 28-feet and 10-inches from bottom to top, and when measured

from bottom grade to top it averages 34-feet 10-inches, so it's close. Gary asked if it's possible to measure from original grade. Ms. Albright said she didn't think so.

Bob said he understood there are survey marks on either side of the property and one could go back to what it was. He said there was a change in height and grade. He asked if Ms. Albright was referring to policy or ordinance. Ms. Albright said the only place that requires a survey is the Shoreland Zoning Ordinance. Stu said that ordinance requires only the use of a surveyor to mark the 100-foot setback.
Bob said there was an existing building, it was razed, and fill was added and a new house was placed on top of that. He asked for clarification.

Planning Board chair John Holt said the foundation was put in and the fill put in to bring the grade up to the sides of the foundation. He said the footings were dug into the hill. He said there was a slope. He said the footings were put in, the foundation walls put in, and the house set on the foundation. Richard Arnold said a great deal of fill was brought in and the house put on top of it. Mark Harris said there are surveyor marks referred to in a letter sent to the Selectmen on November 19th. He handed a picture to the Selectmen. Stu reminded the chair that this is not a hearing, it's just a discussion with the Code Enforcement Officer. Bob said it is helpful in the respect that they're trying to advise the CEO on some sort of a direction to go.

CEO Albright says she has spent hours going over this in her mind, and she feels comfortable in a direction in which to go. She said the applicant has followed his word and has been true to his word and done what he said he would do. She said she would welcome directions from the board.

Mr. Harris said there are two survey marks on a utility pole near the property. Jon Pottle addressed the Board, representing the homeowners, Tom and Kathryn True. He said he agreed it's not a hearing. He said the Trues got a permit last November, they constructed the house according to plan, and no one appealed. He said there was a complaint to the CEO and the CEO responded, and the response was appealed to the Board of Appeals which took some time. He said the permit was not the subject of that proceeding. He said the Selectmen sometime get involved when something goes to court. He said the CEO alleged non-enforcement is a Board of Appeals (BOA) matter. He said the BOA didn't instruct the CEO to do anything other than to take another look at things.

Bob asked if the CEO had any recommendations, and where she might be going. CEO Albright said she intends to write up a statement next week. She said the BOA remanded the matter for reconsideration, but she is comfortable that the True house is OK. She said the house is 28-feet and the average height is under 35-feet and there was ample material in the application which is what they did. Bob asked if she's done the reconsideration. CEO Albright said attorney Collier who advised the Board of Appeals said Maine has very proud tradition of upholding property owner rights. She said that made a big impression on her. She asked Mr. Pottle if that's what he recalled in regard to property rights. Mr. Pottle said ambiguities are supposed to be construed to favor the property owner. He said there was a wide spectrum of options for the BOA. He

said reconsideration means to take a look at it, but the CEO does not need to reach a different conclusion. He said when a property owner has a permit and they rely on it, it's giving them vested rights. He said if they go outside of what is authorized on the permit, it's a violation. He said the CEO approved the plan that was built.

Mr. Harris he understood the Board of Appeals had remanded the height back to the CEO. He said the BOA said the CEO misinterpreted the code on building height. Bob said they have the BOA decision. Mr. Harris said consideration was given to conduct an independent survey. CEO Albright says she has issued hundreds of permits, and no one has ever had an original grade survey. She said to find fault with her for something that isn't done, this is not the way the town operates. Bob he understands the town has not applied that to the permits that are issued. He said it seems like the parties want to feel like they're being listened too. He asked if there is a need to have an additional survey. CEO Albright said she is bound to the two BOA votes. She said the first inspection is generally a setback inspection. She said she understands the BOA's intention was to have some sort of survey done, but that was not the motion that was approved. She said that is not what was on paper. A brief discussion of the BOA decision followed.

Bob asked if the CEO needs to reconsider in writing. CEO Albright said that would be the next step. Mr. Arnold said the attorney helping the BOA felt the building height definition was crystal clear. He said the homeowner has the responsibility to have a survey done on the original grade. He said an enormous amount of fill was brought in and the house placed on top of it and it's 45-feet tall.

CEO said she met with Mr. Scott whose company set the house. She said when the house was set, Mr. Scott had been in the hospital with an injury, so the initial setback inspection did not take place. She said the setback inspection would not have determined the building height.

Bob said it seems like the CEO will issue a written reconsideration. Gary said the Appeals Board request would be the next step for the CEO. CEO Albright said the town may wish to consider a survey for houses that are close to the height limit. Jo asked what would rectify the situation. Mr. Harris said a determination of the structure's height. Kenneth Farkas said he feels like the neighbors are not being represented. He said challenging the ordinance language is gamesmanship, and Mr. True was gaming the ordinance to get the maximum. He said the CEO needs to make sure the houses are conforming to the ordinance. Jo asked if they want it torn down. Mr. Arnold said all they are asking is to measure the house, and the Selectmen can take action if needed.

Bob said there was a 30-day period from the time from the permit was issued, and wonders if the abutters were notified. CEO Albright said Stu puts all the permits issued on line. Mr. Farkas said the plans changed and they had no idea. Carol Mason said the house could be lowered. She said her brother questioned the decision and the Appeals Board agreed. She asked how they could question anything until the saw the house going in.

Bob said it appears the Selectmen will have to pause until the CEO gets the reconsideration to the Board. Mr. Harris said the house should be professionally surveyed. Bob said the town is not in the position of conducting a professional survey. He said to the CEO that the Board needs the written reconsideration. CEO Albright said she understands it was the intent of the Board of Appeals to have a survey done, but the written decision in the minutes does not state that.

Attorney Pottle re-stated that no one has ever appealed the permit that was issued more than a year ago. He said there was confusion, and the person applying for a permit needs to supply information to the CEO which is used to issue a permit. He said to require the property owner to supply a survey is wrong. He said it's a good idea for a town to clarify its ordinances.

Appeals Board Secretary Michael Jordan said the biggest problem was that the Appeals Board could not listen to the case as a de novo case. He said Appeals Board simply sent the decision back to the CEO, and if the neighbors disagree with that, it goes to court. He said the Appeals Board is trying to work on an Appeals Board ordinance. He said Mr. Moldawer was the only complainant. Stu said Mr. Arnold was also a party to the appeal.

Bar Harbor Highlands Violation – CEO Albright said she has contacted the town attorney to continue with the notice of violation.

Gravel Permit Late Fees – Jo said that was informational only.

Playground Structure at Lamoine Beach – Cynthia Donaldson said they would like to order the equipment now in case the price goes up. She said town meeting approve the money and they hope to raise as much of the $10,000 as they could. She said they've raised $4,524 so far. She said they were turned down for a grant, but plan to apply for another one. Amy Duym described the proposed structure and location. Mrs. Donaldson said it's in keeping with the town's resolve in 2013.

Stu said his hesitation on ordering is that neither the Planning Board nor the State of Maine have yet approved of the project. He said he e-mailed the description to the State earlier in the day. He said he is reluctant to order something that hasn't been approved. A brief discussion about the play structure followed. Mrs. Duym said an alternate site could be found. Mrs. Donaldson said they're fine with waiting for the permits. Mrs. Duym said she wanted to make sure that people understand it will be at Lamoine Beach and NOT at Lamoine State Park.

A brief discussion about the structure's location followed. Stu said he would place it on the agenda once he hears back from the state.

Building Height Revisited – Mr. Arnold said the neighbors of the Trues are being targeted by petty complaints and accused the CEO of acting as an agent for the Trues. He said there was a recent silly complaint without factual basis that is wasting people's time. Jo suggested law enforcement issues should go to the Sheriff. Bob said the CEO

will respond to complaints as required. He said this sounds like a neighborhood dispute and the Selectmen will not get involved in that.

Executive Session – Jo moved to enter executive session pursuant to 1 MRSA § 405 (6)(E) to discuss litigation with the town attorney. Gary 2nd. **Vote in favor was unanimous at 8:00 PM. Out at 8:18 PM.**

Resignation – Jo moved to accept the resignation of Patricia Haslam from the Recreation Committee with regret. Gary 2nd. **Vote in favor was 3-0.**

Jo moved to accept the resignation of Connie Bender from the Budget Committee with regret. Gary 2nd. **Vote in favor was 4-0.**

Facilities Maintenance Director – Gary moved to sign a letter of recommendation to Edward "Rick" Gallegos who has resigned as Facilities Maintenance Director. Kathleen 2nd. **Vote in favor was 4-0.**

Stu reported the town had received 4 applications for the position and asked how the Selectmen wished to handle the hiring process. Bob suggested that Stu should interview them. Jo said she would like to hand that over to Stu who said he didn't mind, but that's more of a town manager role. He said the number of hours for the position varies and listed some of the job tasks – saying it's a task oriented thing instead of an hours oriented job. Bob asked how much was budgeted. Stu said about $10,000/year, but the actual has never been that high.

A brief discussion about the cupola repairs followed. Stu said he's still searching for a contractor.

Stu said he would be happy to schedule interviews and let Selectmen know when they'll take place so a Selectmen could also attend. There was no objection.
Budget Committee – Bob noted that a couple of budget committee members are needed. Stu said the most effective way is to ask someone in person.

Roads – Tree Trimming – Stu said two bids were received. He opened bids from Harald Huebner and Greg Gleason/Berry Cove Gardens. Mr. Huebner's bid for Walker Road was $8,000 and for Buttermilk Road was $6,800. Mr. Gleason was $6,800 for Walker and $5,950 for Buttermilk Road. Stu said both have worked for the town in the past and he's comfortable with either one. Gary moved to award the job to Mr. Gleason, Kathleen 2nd. **Vote in favor was 4-0.**

Storm Damage – Bloomfield Park – Stu reported a tree fell and whacked the kiosk at the park causing substantial damage. He said there was no money budgeted for repairs, and the repairs would not be enough to file an insurance claim. He recommended using the insurance deductible fund to pay for the repairs. Jo moved to do so, Kathleen 2nd. **Vote in favor was 4-0, Selectmen signed an order.**

Marlboro Beach Road Drainage Concern – Stu said the True driveway is draining onto the road and that's a potential problem in the winter. He said a big puddle has formed on the shoulder. He said Mr. True responded to a memo he wrote and he's working to get a contractor to fix it. Mr. Pottle confirmed it was a punch list item for the contractor. Bob asked what the time frame might be. Mr. Pottle said it was colder than expected and he said he would let his client know that a speedy repair is preferred.

Lamoine 150! – Jo said the committee is moving along. She said there was a problem with the recording of the presentation at the school. Stu said the school system needs an uninterruptable power supply unit as a power glitch stopped the recording. She said there is a presentation on December 7 at the grange. She said they're working on the parade for next August. She said they welcome anyone who wants to help. Bob said the presentation at the school was well attended and very informative.

Mr. Jordan asked if the power point could be obtained to be part of the archives.

Returnables – Jo moved to award the returnables for April 2020 to Lamoine Community Arts. Gary 2nd. **Vote in favor was 4-0.**

Solar Energy – Stu gave a brief update on the solar project. He said there was a conference call with SunPower on Monday and they requested help with easements. He said that was discussed with the town attorney during executive session.

Budget – The Selectmen reviewed budgets for Public Safety/Fire Department, Waste Disposal, Roads and Capital projects. The Budget Committee will meet on those budgets on November 25, 2019.

Other – Bob said it would be good to review the goals discussed a while ago at a future meeting. Stu reported the survey on the community center is coming along and the deadline is next week.

Next Meeting – The Board will meet next on Thursday, December 5, 2019 at 7PM. Stu reminded the board that he's on vacation next week.

There being no further business, the meeting adjourned at 8:59 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen