



Lamoine Board of Selectmen

606 Douglas Hwy
Lamoine, ME 04605
(207) 667-2242
town@lamoine-me.gov

Minutes of April 2, 2009

Chair Jo Cooper called the meeting to order at 7:01 PM

Present were: Selectmen Brett Jones, Kermit Theall, Cynthia Donaldson, S. Josephine Cooper, Richard Fennelly, Jr.; Administrative Assistant Stu Marckoon, Paul Davis, Kathleen DeFusco, Peter McDevitt, Michael Jordan (Deputy CEO), William Fennelly (Transfer Station Manager), Dan Bahr (County Ambulance), Gary McFarland, David Herrick (Harbor Master), and Kevin Murphy (Deputy Harbor Master)

Agenda Review – Jo said she would like to add one item in the “other” category later in the meeting.

Minutes – Richard had one change, Cynthia handed in a written change to clarify an item in the returnables program discussion, and Jo had a change in the Selectmen’s salary discussion. Richard moved to approve the minutes as amended. Cynthia 2nd.
Vote in favor was 5-0.

Expenditure Warrant 21 – Selectmen signed expenditure warrant 21 for \$46,684.70. Stu noted that he purchased a new typewriter as the other one broke.

Cash & Budget Report – Cynthia asked why the animal control and cable TV revenues were higher. Stu said the ACO revenues are up because several people paid late fees in February and March. He said the Cable TV fees are higher than budget because of the higher franchise fee income. He said the revenue budget for Cable TV has been the same \$5,000 for several years, which matches the expenditure budget line. Richard asked if budgeting more revenue for Cable TV would reduce property taxes. Stu said it’s a revenue neutral program, therefore if more income were received than budgeted; it would be closed into the Cable TV fund.

Excise Tax Report – Stu said it looks like a referendum will go to the voters in November to significantly alter the excise tax rates. He said he prepared a report of the impact on the Calendar Year 2008 excise collections if the new rates were in effect. Richard pointed out the dollar figure in the narrative was incorrect. There was a discussion on whether the impact on property tax might be beneficial to a property owner who registers more than one vehicle.

County Ambulance Contract – Jo said the Board wanted to meet with County Ambulance to hear the explanation about the proposed contract extension. Dan Bahr of County Ambulance said the current contract runs through June 30, 2010 at \$7/capita. He said some towns have asked for extensions so they could plan ahead.

Mr. Bahr said his company took a beating on diesel prices, but the price per capita was locked in. He said they’re asking for a \$0.75/per person increase with the two year extension.

Jo said she always grits her teeth on the ambulance contract, but she is glad to have an ambulance available. Richard said Mr. Bahr has heard his concern in the past that the town is purchasing a guaranteed service that is not really guaranteed. He said if County had a commitment in Ellsworth, they might not be able to respond to Lamoine. Mr. Bahr said they could not make a guarantee on every call, but County has never denied service to Lamoine. He said they do prioritize calls, and a heart attack in Ellsworth will get a priority over a broken limb in Lamoine. He said they do the right thing. Richard said he agreed, but he finds it distasteful that it's the only thing the town could do. Jo said if the town didn't have some assurance an ambulance would respond, the townspeople would be concerned.

Kathleen DeFusco asked why County Ambulance doesn't charge the City of Ellsworth. Mr. Bahr said Ellsworth is where most of their calls come from. He said the income from that volume of calls is pretty close to self-sustaining. He said the outside towns cost money. He said he does not know of another ambulance service in the state that charges towns a lower rate per person.

Richard said the town is paying only for County to be available. He said the patient pays for transport. Mr. Bahr said sometimes collection is difficult. A short discussion followed.

Cynthia moved to approve the 2-year extension with County Ambulance. Kermit 2nd. **Vote in favor was 5-0.** Selectmen signed the contract.

Roads – Sweeping Bid- Stu said the request for bids is identical to last year's. Richard asked if there were ever any complaints. Stu said there is the occasional dust complaint, and a few years ago people complained about the backup alarm when the roads were swept in the overnight hours. He said the complaints were rare.

There was no objection from the Board to sending out the bid requests.

Tree Removal – Stu reported that Harald Huebner had completed removal of the trees that fell in and beside the public roads during the last heavy snow storm. He said it was an expensive proposition and the bill was approved on the expenditure warrant earlier.

Road Posting – Stu said the town did not post the local roads this year. He said they were pretty much isolated by the City of Ellsworth and the MDOT postings. He noted Douglas Highway had a shorter section posted this year, apparently to accommodate truck traffic, and the road is pretty badly beaten anyway.

Frost Heaves – Richard thanked the Road Commissioner for getting a dip on Buttermilk Road filled in. Stu said it took a while to get it done.

Paving – Stu said he spoke with Roger Picard earlier in the day and several towns are in the same boat, waiting to see if town meeting will fund paving this year. He said Mr. Picard is waiting to go out to bid until later in the month.

Town Meeting Preview – Selectmen signed a resolve honoring a co-citizen of the year.

Selectmen questioned the reference on a letter from town attorney Beardsley in regard to the school house lot delineation. The reference said Simons, but the letter was about the school lot. Stu reported that an e-mail version had the correct reference.

Brett said he did not follow up on possible reconfiguration of the school/fire department lot. Cynthia asked if the Planning Board could be provided what they've asked for. A short discussion followed. Stu noted that whatever is transferred to the RSU would still be a non-conforming lot. Brett said he didn't think the final transfer would be radically different than the current proposal. Cynthia noted that the option suggested by the town attorney about taking the school back if the RSU is not going to use it is already contained in the consolidation agreement.

Budget Amendments – Stu said he'd found two errors on the town meeting warrant. He said there were two articles numbered "3", and the recommendation printed for the Administration Budget was incorrect due to a typo. He said he'd prepared two amendments to adjust the articles for administration and public safety to reflect lower heating fuel costs.

Selectmen reviewed the power point presentation. Stu noted there will be one more slide to reflect the recipients of the Conservation Commission awards.

Selectman Chair/Salaries – Jo said she had brought this up at the previous meeting because there was no job description for the Board Chair in the manual and she had heard concerns in regard to the chair's function. She said she wondered what thoughts other board members had about changing the salary structure. Richard said the present set up is not an issue with him. Brett said one major function of the chair is to set the agenda. Kermit said the Board selects the chair. He said he would not change the process or the salaries. Stu noted that the next meeting will select a new chair.

Policies – Building Use Application & Indemnity Form – Kermit said the forms looked OK to him. Cynthia remarked that things seem to be getting so complicated. Jo moved to approve both forms. Kermit 2nd. **Vote in favor was 5-0.**

E-mail Retention Policy – The Board briefly reviewed the draft policy. Among areas discussed for revision were:

- Personal e-mail
- Putting a retention term on general e-mail
- Offering expired DVD recordings to the Historical Society
- Spam deletion

Memorandum of Understanding – Stu reported Stacey Curtis had signed the latest draft of the Returnable policy Memorandum of Understanding. Richard asked about liability. Stu said the town is insured against harm caused by negligence on the town's part. Jo moved to sign the memorandum. Kermit 2nd. **Vote in favor was 5-0.**

Excise Tax Policy – Stu reported the policy requires a review every three years, and this would be the time. The Board reviewed the policy and offered no changes.

Richard asked about the report in for the first quarter of 2009, and the drop in revenue which has averaged around \$8,000 the past two quarters. There was a discussion about the number of new vehicles being registered.

Local School Advisory Committee Ordinance – Cynthia asked that references to “10-days” be changed to “10-business days”. There was no objection.

Unlicensed Dog Warrant – Jo moved to sign the dog warrant. Kermit 2nd. **Vote in favor was 5-0, Selectmen signed the warrant.**

Cell Tower Update – Stu reported that Verizon Wireless has submitted a pre-application for site plan review. He said an environmental engineer called him and will be looking over the site on Sunday.

Other Business – Jo noted that the clerk’s at the counter still can’t see who is coming in the door. She suggested looking into a mirror for the hallway.

Harbor Master David Herrick said he ran into the Small Harbor Improvement Program representative while at Harbor Master School this year and spoke with him about working with the Department of Conservation to improve the boat ramp at Lamoine State Park. Mr. Herrick said the gentleman (Kevin Rousseau of MDOT) would be willing to meet with the Selectmen. He said he’d like to get the park manager involved as well. Jo asked if Mr. Herrick would follow up with both Mr. Rousseau and park manager Jay McIntosh. Mr. Herrick said he would try to get Mr. Rousseau to meet with the Board on May 21, 2009.

Richard asked if the waterfront still needed a light pole. Mr. Herrick said they did. Richard said he would get one from his back yard. There was a brief discussion about Harbor Master School.

Stu reported he had submitted a permit application with Bangor Hydro to display the US flags on utility poles. A copy of the application was in the materials given to the Board this evening.

Stu said the Parks Commission wished to put out the maintenance of the Lamoine Beach privy to bid and that would be on the next agenda.

Stu reported he’d had a request for a town business directory being placed on the website. There was a brief discussion about having a Lamoine Chamber of Commerce. The matter will appear on a future agenda.

Stu said the use of debit and credit cards has become a more popular request and apparently some laws may be changing to relax the fees. That item will also be on a future agenda.

Personnel Matter – Jo said the employee involved, William Fennelly, has requested in writing that the matter be held in open session, therefore, there will not be an executive session to deal with this matter.

(In the following discussion references to "Mr. Fennelly" refer to Transfer Station William Fennelly, references to Selectman Richard Fennelly are attributed to "Richard". The following does not purport to be a transcript of the discussion, but is an attempt to summarize an often complex and heated series of exchanges between those present)

Jo said there are a couple of issues to discuss – one is an incident at the transfer station and the other is the expiration of Mr. Fennelly's contract with the town.

Richard said he didn't think there was an employee incident to address at this meeting. Jo said the incident has to do with a posting on one of the bulletin boards at the transfer station.

Richard asked whether, aside from this issue, the Board felt the transfer station attendant was doing his job. The Board universally said they believed Mr. Fennelly was doing a good job.

Jo said she thought the Board had addressed issues about the bulletin boards with a policy that was developed. Mr. Fennelly said he had not seen the policy before today.

Richard asked if anyone could show him where it was stated in the Transfer Station Attendant's job description that he was responsible for monitoring what was on the bulletin board. Richard said based on his review of the display policy, there is no reference to whom it applies. Stu said the policy applies to bulletin boards, not people.

Jo said there was a concern raised by Mr. Fennelly several months ago in regard to political postings on the transfer station bulletin board, and the Selectmen tried to address that in writing. She said the policy does not say who is going to monitor the bulletin boards and that needs to be straightened out. She said Mr. Fennelly brought the situation to the Board's attention, and the assumption was that Mr. Fennelly would monitor the bulletin boards at the transfer station. She said she didn't even know there was a bulletin board on the inside of the swap shop.

Richard said the notes from the previous discussion talked about the exterior bulletin board. Cynthia said the policy gives notice of to who copies were to be delivered, and the Transfer Station was not referenced. Jo said she didn't believe that Mr. Fennelly could be held responsible for the offensive posting in question. Kermit says it's not clear who is in charge of the bulletin boards. Richard restated that the policy does not address who monitors the bulletin boards, and it's not in the job description of the transfer station manager to do so.

Jo noted that Mr. Fennelly has written a letter as has Brett. She said Mr. Fennelly wanted to have this session in public. She said the bulletin board policy apparently was an accident waiting to happen. She said she feels that Mr. Fennelly took all the proper steps the day of the incident (March 21, 2009). She said that she had spoken to Brett earlier that day on an unrelated matter. She said Mr. Fennelly apparently left a message with her kids, and she returned the call, but left a message. There was a brief discussion of who was called. Stu said he did not have any message from Mr. Fennelly on his home or cell phone. Jo said the account from Mr. Fennelly was his point of view of the incident.

Cynthia said it was entirely appropriate that Mr. Fennelly called her. She said she went to the transfer station and decided to take down the posting. She said that Peter McDevitt told her he was bothered by the posting as were several others. She said she was less sure that she did the right thing by taking down the posting than she was that Mr. Fennelly did the right thing by calling.

Jo said she was not concerned so much by the detail of the incident, but she was concerned about actions that make an employee feel threatened.

Brett said he would like to have Mr. Fennelly read his letter verbatim. He said he had praise for Mr. Fennelly's job performance. Brett said the Board seems to blame the incident on him.

Richard said he had not discussed the matter with Mr. Fennelly. He said he was only speaking from the materials that were placed in his packet. Richard said he didn't think Mr. Fennelly did anything wrong. Richard said he did think Brett was out of line by saying to Mr. Fennelly that he got him his job. A heated discussion followed.

Brett said he supported Mr. Fennelly and had told him during the incident that he was happy with his work, and did not threaten his job. Richard said that his standards of ethical conduct and integrity were very different than Brett's. Richard said he was of the opinion that Brett was abusing his authority and the employee is being put in a bad light. He noted that there were two people named on the offending document, and only Brett complained.

Brett said while there was no technical violation of Board policy, Mr. Fennelly lied to him. Brett said Mr. Fennelly told him that he had spoken with a Selectman about the posting, but that story has changed. There was a heated discussion. Brett said another person had said he brought the flyer to Mr. Fennelly's attention earlier in the day, yet Mr. Fennelly told Stu that he wasn't aware the flyer was there. Brett said Mr. Fennelly has a history of lying. A very heated exchange followed.

Mr. Fennelly asked if Brett had received a phone call, would it have been a good idea to call another Selectman to come with him.

Jo said again that her concern was the inference by Brett that he told Mr. Fennelly he'd gotten him the job and that Mr. Fennelly felt threatened. She said this was not the proper way to handle it. Brett said he was angry with Mr. Fennelly, but the idea that he was a threat or a menace to Mr. Fennelly is a joke.

Paul Davis said he witnessed the incident and it was very disturbing. He said there was finger pointing and profanity. Jo agreed that it was not a proud moment.

Kermit said there are two accounts, and somewhere between the two is the truth. He said it's ridiculous at this point to nitpick. He said he was not present, and to sit in this meeting and try to formulate the truth is difficult.

Jo said there is a perception issue. She said Mr. Fennelly is an employee. She told Brett he is not the only supervisor of Mr. Fennelly. Brett asked if that gives Mr. Fennelly the right to lie to him. Jo said to Brett that he did not handle the matter in the right way. She said her name was on the offending posting. She said she would not have responded in the same manner. She said Mr. Fennelly was maintaining the facility for the public, and one has to be careful when dealing with the public.

Jo said she apologized for an incident that happened two meetings ago in regard to Brett. She said Selectmen are held to a standard of behavior.

Brett said what happened was that he explained to Mr. Fennelly that he supported his hiring last summer in the meetings where that happened. He said he explained that, maybe poorly, and said he felt that Mr. Fennelly had stabbed him in the back. Brett said that he did tell Mr. Fennelly that he felt he was doing a good job at the transfer station, and he was not trying to threaten his job. Brett said it was his contention that Mr. Fennelly knew the posting was there and that he supported the statements on the posting. He said again that he felt he'd been stabbed in the back. A brief and heated exchange occurred between Brett and Richard.

Kermit said he believes Brett wants to see Mr. Fennelly do a good job. He said that it would not be unreasonable to expect that if someone would call to let him know of it. He said bravado between guys who've served together in a firefighting setting is not unusual. He said he's not sure how Mr. Fennelly interprets things. Richard said there is an employee and town official relationship here. A short discussion followed in regard to that.

Jo said she's concerned with procedure. She said she doesn't like swearing, especially in public. Another heated exchange took place between Brett and Richard. Jo said the incorrect procedure was to confront the employee. She said the correct way was to bring the matter back to the board.

Mr. Fennelly said he didn't know how to handle the situation. Jo said if someone has a problem with what Mr. Fennelly is doing, it is best to bring it to the Board of Selectmen. She said one has to be careful with personal feelings in regard to job performance. She said she wasn't sure how to move forward, and she's not sure how to resolve the situation. Brett said he'd rather not dig a deeper hole.

Mr. Fennelly asked that if any Selectman is coming to the transfer station in their capacity as a Selectmen that they tell him so. Mr. Fennelly said he knew that Brett was already mad when he showed up. Jo said none of the Selectmen have singular authority, but the reality is that a Selectman is always a Selectman first in a small town. Brett asked if when a Selectman is dealing one on one with an employee, and the employee lies to the Selectman, is that no longer an infraction? Jo said the proper way was to bring the matter to the Board. She said to Brett that he had a list of proposed actions. Brett said they are meaningless as the board has already decided there was no violation. There was another heated exchange between Brett and Richard in regard to ethics.

Mr. Fennelly said he's had no incidents outside of this one in relation to his job performance. He noted that his contract expired in December. Jo asked if there were any suggestions on how the Board should proceed. Richard said he felt the incident should be dismissed because there was no authority given to the transfer station manager to enforce the display policy and it was not contained in his job description. There was a discussion about possibly taking down the bulletin boards.

Kermit said he thought that everyone can behave in an orderly fashion. He said the Board can't put Mr. Fennelly in a position to monitor the bulletin boards while running the transfer station operation. Richard said he would move to make it the responsibility of the Board of Selectmen to monitor the bulletin boards and that those Selectmen who cared to, could do so. Brett said the transfer station manager is there all day, the Selectmen are not. Cynthia said the policy that is in place says what cannot be posted; it does not say who is responsible. She said the Board should look at the policy, and until the Board does that, the locked board should stay up, and the inside board should come down. Kermit said if that was a motion, he would 2nd. **Vote in favor was 5-0.** Mr. Fennelly said he would take the bulletin board down tomorrow.

Cynthia said she didn't think it was the Board's place to talk about character and ethics of individual members or employees. She said this matter involves an employee. She said she didn't know how the Board should proceed. Mr. Fennelly said he didn't think people feel they can come to the town office to state an opinion, so they go to the transfer station instead. Jo said this was an unnecessary incident.

Jo said the Board will resolve the contract situation as soon as possible. Stu said he apologized for not realizing Mr. Fennelly's contract expired in December. He said most employee contracts have coincided with the end of the fiscal year in June. He said that could be on the next agenda, and encouraged Mr. Fennelly to allow that discussion to be in executive session.

Brett suggested that a future agenda item be a procedure on how to handle similar situations in the future.

Executive Session - Deputy Code Enforcement Officer Michael Jordan requested an executive session to deal with a personnel matter. Jo moved to call an executive session pursuant to 1MRSA §405(6)(a). Cynthia 2nd. **Vote in favor was 5-0.** In at 9:00 PM, out at 9:25 PM.

There being no further business, the meeting adjourned at 9:25 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst.