



# Lamoine Board of Selectmen

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## Draft

### Minutes of April 24, 2014

Chairman Gary McFarland called the meeting to order at 7:00 PM

Present were: Selectmen S. Josephine Cooper, Gary McFarland, Bernie Johnson, Nathan Mason, Heather Fowler; Administrative Assistant Stu Marckoon, Steve Salsbury, Planning Board Chair John Holt, Conservation Commission Chair Larry Libby, Walter Grenier, Fire Chief George "Skip" Smith and Code Enforcement Officer Michael Jordan.

**Agenda** – Stu reported an issue came up earlier in the day at the fire station that should be discussed when the fire chief arrives.

**Minutes – April 3, 2014** – Gary said he found some minor corrections, as did Jo and Nathan. Heather moved to approve the minutes as corrected. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Expenditure Warrant 20** – Selectmen signed warrant 20 in the amount of \$39,767.23. Stu said he would have to move some money from the investment account to cover the checks.

**Cash & Budget Report** – Stu reported that excise tax collections are ahead of budget.

**Meeting with Conservation Commission Chair** – Larry Libby reported the town was approved for the trail grant to construct a parking lot for the Simon Trail. He said the town will need to get bids. Stu asked who administers the project. Mr. Libby said the town would. Stu asked about matching funds. Mr. Libby said they are required and it will mostly be time involved used as a match. He said the match was all worked out. Nathan asked who will be responsible for maintenance. Mr. Libby said the Conservation Commission would be – it was part of the proposal.

Mr. Libby said he was also present to bring the Selectmen up to date on a submission the Conservation Commission intends to make to the City of Ellsworth regarding water quality testing. He said the Commission got a notice last summer regarding availability of funding, and the Commission has talked about the idea. He said the Department of Environmental Protection made a grant to the City of Ellsworth as it relates to an oil disposal site in Ellsworth Falls. He said any community on the aquifer was eligible to apply. He said the program included fixing home heating fuel tanks that might be leaking, failing septic system and protecting drinking water sources.

Mr. Libby said the Conservation Commission has held two working sessions and discussed oil tanks and septic systems. He said there was some skepticism from those in attendance whether Lamoine could handle oil and septic matters, so the group moved ahead with water quality studies along the aquifer, which is the target area.

Mr. Libby said it's still early in the grant application process and read the lengthy title of the proposal. He said the idea was to set up a testing program for the usual household water tests, and to have the University of Maine analyze the water. He said it would be a two-year project with 12-sampling sites. Six would be from residential wells and six would be from wells in abandoned gravel pits that have been excavated below the separation minimum. He said they would take samples four times a year from the home wells and would have to drill wells in the pits. He said landowner permission would be required. He said the idea is to collect a consistent set of data. He said there is an educational component to the project and that would be sharing the test results with the town so that there is more of an awareness of water quality.

Mr. Libby said the project would be completed in four phases; 1-identifying test sites, 2-drilling wells in abandoned pits, 3-sampling analyzing water, and 4-education. He said the Conservation Commission is prepared to put together the proposal. He said they have yet to hear from the City of Ellsworth on the actual application process.

Jo asked if there is an application deadline. Mr. Libby said they are waiting on Michelle Gagnon from the City of Ellsworth, but he suspects it will be sometime in late summer. Gary asked how much funding might be expected. Mr. Libby said there is \$500,000 available, so maybe \$50,000. Nathan asked about a recommended 25% match. Mr. Libby said that is recommended and would likely be an in-kind match, as the University of Maine is contributing a significant amount of time. He said the Frenchman Bay Conservancy might be another matching funds source.

Nathan asked how this is different from the GETWET program. Mr. Libby said it's more systematic and the same sites would be sampled 4 times a year and use more sophisticated testing. He said while the school program is good, it can't test for arsenic PH, and petroleum. He said the school samples are random.

Gary asked about the wells in the abandoned pits and whether the wells would be abandoned after two years. Mr. Libby said the Commission was talking two years, but they might be able to continue testing beyond that. He mentioned that former planning board chair Doug Coleman had suggested long term water testing for the town. He said additional testing would take more funding. Nathan asked if the Commission was dedicated to conducting the sampling and testing. Mr. Libby said U-Maine grad students would gather the samples and conduct the tests.

Mr. Libby said the public information component is very important. He said the Conservation Commission meets on May 14, 2014 at the school. He said they are interested in feedback on the proposal. He said the funding comes from the damage compensation fund awarded to the City of Ellsworth. Nathan asked where the funds would go. Mr. Libby said it would be the town's project. Nathan asked if the University of Maine had recommended the abandoned pits for wells. Mr. Libby said that was the Commission's idea after working with Willem Brutsaert. Nathan asked if the property owners would be contacted. Mr. Libby said that was correct. Nathan remarked that there is a lot involved in this process.

Jo said the town does not have consistent water quality information, and this would be good to have. Mr. Libby said GET WET coordinator John Peckenham has published a good article about that program. Gary asked that Mr. Libby keep the board informed on the process. Mr. Libby said the Selectmen would be the first to see the proposal.

**Contract with Transfer Station Manager** – Nathan moved to sign a contract with Chris Meyer. Bernie 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Street Sign Replacement** – Stu said several street signs have been swiped since last fall, and estimated the cost to replace would be at least \$700. Gary said an amnesty program worked in the past. Stu said he wouldn't bank on such a program returning the stolen signs this time. Jo moved to purchase the signs and hardware as proposed. Gary 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Road work list** – Selectmen reviewed a list of proposed work for the spring. There was no objection to proceeding to assign the projects. There was a brief discussion about sweeping and paving.

**Limb Cleanup** - Stu reported limbs from the December 2013 ice storm seem to be finding their way into piles alongside the public roads. He said he was concerned that folks are getting the impression that the town is going to chip up their brush. Gary said he doesn't think the town needs to bear the expense of private cleanups. He said there are several private contractors that do such work and people could clear up their own limbs. There was no disagreement with the Road Commissioner's recommendation not to do a roadside brush cleanup.

**Meeting with Fire Chief** – Chief George "Skip" Smith said there is a problem at the fire station, and he's not sure of the extent, but a piece of siding blew off this afternoon, exposing a rotted header. He said it was across one of the apparatus bay doors, and the rot likely extends beyond that area. He said there was no flashing installed on the doors when the siding was put on during construction in 1991. Heather asked the chief if he was concerned about the garage doors. Chief Smith said he thinks they will be OK. He said he wanted to recommend getting someone to fix the problem and suggested Mike Jordan and Maury Oliver from the fire department. He said he suspected the affected areas are above all four doors.

Stu said he planned to contact the town's insurance carrier to see if this might be covered. Heather asked how old the station was. Chief Smith said it was built in 1991. There was no objection to having Mr. Jordan and Mr. Oliver look over the situation. Gary asked that the Selectmen be kept up to date on the findings.

**Rescue Boat Grant** – Chief Smith reported there is a good chance to apply for a rescue boat grant and wondered if it would be OK to look into that. Nathan asked what strings are attached. A brief discussion followed about the Port Security Grant. Bernie asked who would write the grant. Chief Smith said Stu would. Heather asked how big the current rescue boat is. Chief Smith said it's 12-feet long and this looks like a good opportunity to replace. There was a discussion about size needed and the frequency of

marine rescue calls. Nathan noted that maintenance and storage are potential long term expenses that could be a concern. A discussion followed about specifications. Chief Smith said he suspected a new boat and motor would cost about \$80,000. He said the department has an excellent training record for the current boat. There was no objection to having Stu move on the grant.

Chief Smith said he would like to discussion future plans for the fire department in the not too distant future.

**Request to delay enforcement of well placement in conditionally permitted gravel pits.** – Stu said the Selectmen had received privileged answers via e-mail from the town attorney to the questions posed at the previous meeting. Gary said there doesn't seem to be anything in the answers that is not public knowledge. Bernie said the questions were developed in public.

Gary said it looks like the issue is a matter of timing. Heather said that was how she reads it. Nathan said there is an option of a consent order. He said that apparently would be in advance of any action by the Code Enforcement Officer. He said in the absence of a consent agreement, the CEO must issue a notice of violation.

Gary said the Gravel Work Group met last Thursday and discussed well issues, including the reason for having them, their use, and testing requirements. He said the discussion expanded into what the Conservation Commission was talking about tonight. He said there is no baseline for water quality. He said the work group did not take any action and there was a feeling that there is a need for baseline testing. Planning Board chair John Holt said he thought that's what the work group was thinking. Gary said the monitoring wells were just proposed for the gravel pits, and there seemed to be a consensus to go further than that. Bernie said whatever comes out of the work group could help guide the Selectmen in the future, but the request is before the board now.

Jo said there is an ordinance in place, and the Selectmen cannot change that. Bernie said it does not seem that the Board is in the position to have a delay of enforcement. He said on May 1 the CEO would issue a notice of violation. He asked what happens after 30-days.

Jo said the issue for the Selectmen was whether the Board could set aside the condition placed on the permits. She said she favored working out a compromise and was concerned by the thought by the pit owners' representative that because the gravel work group was formed, that would set aside enforcement of the gravel ordinance. She said the Selectmen do not have the authority to do that.

Gary said the town has to wait until May 1 to act. Jo said she didn't think the town could delay enforcement. Nathan said the town is not allowed to tell the pit owners they do not have to install the required wells. Bernie read a portion of the town attorney's advice. Nathan said that means that a notice of violation would move forward. A brief discussion followed on options available to the Selectmen.

Nathan said he was bothered that the pit owners have not attempted to put in any wells. He said it would be one thing if they had installed wells and asked for delays on other well installations. He said he's all for compromise, but the pit owners were adamant that they were not going to do it at all.

Mr. Salsbury said his clients agreed with the town attorney on formation of the work group. Heather asked if the work group was a condition of dropping the lawsuit. A discussion followed.

Mr. Salsbury said his clients should have known in March – he said the town attorney said changes would go before the town meeting in March and they thought it would be resolved by then. Nathan said the Selectmen are up against legal obligations. He said it's difficult to determine how long it will take the work group to finish its work.

Heather said there are a couple of options – a notice of violation can be issued, or the Selectmen could discuss a consent agreement at the next meeting on May 8. Bernie said it is clear to him that the water testing issue is going to remain in some form. Mr. Salsbury said he doesn't know what form that would be. Bernie said one water quality testing well for each pit might be the bare minimum. Mr. Salsbury asked how often it would be tested. Rev. Holt said the ordinance requires an annual test. A lengthy discussion followed about water quality and separation monitoring wells.

Bernie asked what the discussion was before the work group. Mr. Salsbury said there was discussion of having water level monitoring with no requirement for all the wells to have quality testing. A brief discussion followed. Rev. Holt said the gravel ordinance is intended to monitor water quality by establishing a baseline and track changes over time on water level and water quality. He said it is simply a monitoring tool.

Gary said it looks like the Selectmen cannot legally decide on any sort of enforcement delay. He said the town attorney could talk with the pit owners' attorney and possibly reach some sort of good faith agreement. Stu asked if the Board wished to talk with the town attorney at the next meeting. Rev. Holt said the Selectmen have had no discussion on what they wish to do, and why would the Board want to talk with the attorney, as he's not heard any discussion about how the Board wishes to proceed.

Nathan said the last meeting asked what authority the Selectmen have. He said he doesn't like the matter over hanging the outcome of the work group. He said if there is an agreement, it cannot permanently exclude the ordinance. He said the conditional permits go into violation if the required wells are not installed by May 1. He said that starts the process toward a stop work order. He said the town has no choice but to enforce the ordinance.

Gary said he hoped the work group would bring something to the Selectmen soon. He said 30-days after a notice of violation is issued, a stop work order could be imposed. CEO Jordan said he would not be able to issue a Notice of Violation until May 5, 2014 as that would be his next scheduled work day. He said the pit owners would have 30-days

to come into compliance, and they could appeal the notice, and they could also appeal a stop work order. A discussion of the appeals process followed.

Rev. Holt said the Planning Board issued conditional permits for the 9 pits in question. He said the condition was that the wells would be installed by May 1, 2014 with data supplied to the Planning Board. Nathan asked what would be revoked. Rev. Holt said if the conditions of the permit were not met, the pit owners would be operating without a permit.

Bernie said this ought to be a lot easier to come to some center point. Gary said the Selectmen cannot make a decision tonight. Nathan asked if a consent agreement could come after a violation. Stu said that is generally is how an appeal is settled.

Mr. Salsbury said the pit owners brought suit because they thought the ordinance was not legal. He said they called a truce because the town agreed to form the work group and they believed that things would be resolved faster than they have been. Bernie said May 1 seemed to be a long way off back in December.

Mr. Salsbury asked to change the subject to the request of the gravel work group to have a geologist provide some advice. Jo said the town was willing to do that at the start. Mr. Salsbury suggested seeing what a geologist says is fair and equitable. Bernie said it's clear people are interested in testing. Mr. Salsbury said he would like to see what level of testing is reasonable. Gary said the discussion before the working group was not to get out of water testing, but to give overall advice for the town. Stu said the conversation at the work group was just in regard to the gravel pits, the number of wells that should be quality tested and the frequency of those tests.

Jo asked who would be OK for a geologist. Stu asked if there was anyone from the state who could assist. Mr. Salsbury said that was doubtful. He said Robert Gerber might cost about \$2,000 for a night, and the pit owners would pay for half of that. Bernie asked if the working group was far enough along. Mr. Salsbury said now would be the time to do it. Rev. Holt said the Planning Board has hired Mr. Gerber to review an application and there is a great deal of respect for him.

Jo moved to authorize the gravel work group to expend up to \$1,000 along with the pit owners to hire Mr. Gerber. Rev. Holt said he was concerned that having pit owners help fund this might give a tainted impression of the information. Jo then amended her motion to approve the working group's request for geologic advice and recommend that Robert Gerber be hired and that the budget not exceed \$2,000. Heather 2<sup>nd</sup>. **Vote in favor was 5-0.** A brief discussion followed on who would contact Mr. Gerber.

Stu asked what the Selectmen wished to do with Mr. Salsbury's request. Gary said the only way to discuss an agreement is to speak with the town attorney. He moved to consult with Dan Pileggi at the May 8, 2014 meeting to discuss options regarding a consent agreement on the test well requirement of the conditional permits. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Letter from Mike Keene** – Stu summarized the letter from Mr. Keene who is concerned that the 2013 gravel ordinance puts much of his pit off limits to excavation and renders it relatively worthless. Bernie read a passage of the letter aloud and a brief discussion followed. Rev. Holt said he would be happy to send a courtesy letter to Mr. Keene explaining the setback reduction possibilities. Stu said the Selectmen could respond to Mr. Keene saying that his letter was referred to the Planning Board, and that Mr. Keene would hear from them shortly. Gary asked Rev. Holt to copy them on the letter he would send to Mr. Keene.

**Special Town Meeting/Education Budget** – Stu reported the budget committee had made the same recommendations as the School Committee on the 2014/15 education budget. Nate said the budget was higher than they had hoped. Stu said it should be much better in 2015/16 because the one time debt payment would be gone and the tuition for secondary students would be lower. Gary said this has been a lot of work for the school committee. Heather said she attended a budget meeting and was impressed by how much work has been done.

Stu reviewed the proposed May 22, 2014 special town meeting warrant. Jo moved to sign the warrant. Bernie 2<sup>nd</sup>. **Vote in favor was 5-0, and the Selectmen signed the warrant.**

**Annual Town Meeting follow up** – Selectmen signed clean copies of the Building and Land Use Ordinance passed at the April 10, 2014 town meeting and the Gravel Ordinance as amended by the same town meeting.

**Comprehensive Planning Committee** – Gary asked if this was to authorize to advertise for committee members and advise on how to do so. Stu said that was correct. He suggested a newspaper ad in addition to electronic means of reaching out to citizens. The Selectmen settled on a 7-member committee and to indicate interest to the town office by July 1, 2014.

**Town Hall Heating System RFP** – Stu asked how the Selectmen wished to handle a new heating system for the town hall. There was discussion about asking for proposals for design, installation and annual operating costs. Stu said he would draft up something.

**Computer Replacement** – Stu reported the Cable TV committee recommended a replacement for the computer in his office as it is the only machine in the office using Windows XP which has become obsolete. Jo moved to authorize purchase of a new Windows 7 computer from the CTV fund. Heather 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Accounting Program** – Stu reported the accounting program (Sage/Peachtree) is being discontinued and will have to be upgraded soon. He suggested waiting until the 2014/15 budget is in place.

**Veterans Graves** – Nathan said he spotted some typos in the latest potential contract draft. Stu reported he spoke with the town's insurance carrier and they advised simply

stating that the cemetery association complies with state laws instead of going into detail regarding workers comp. He said he had e-mailed the latest potential contract to Richard Fennelly Jr., but had not heard back, so he would get in touch with Mr. Fennelly soon.

**Request for Funding – Hodgkins Fund** – Stu reported that Bar Harbor Banking & Trust had sent a request it received for funding to the town. He said it's from a veteran's organization that is trying to build some sort of monument, and since the town already has one, this would not seem to be in keeping with the Hodgkins Trust stipulations. Jo asked questions about whether the fund could be utilized by the Historical Society.

**Acadia National Park Centennial** – Stu reported a big celebration is planned in 2016 for the 100<sup>th</sup> birthday of the park and any group that wants to jump in on the fun is welcomed to.

**Contracts** – Stu reviewed the various contracts that expire in June and in coming years.

**Next Meeting** – Selectmen asked if the meeting with the town attorney could happen at 6:30 PM. Stu said he would ask and would let the board know if that is OK with Mr. Pileggi.

Selectmen discussed the schedule to conduct job performance reviews and negotiate employee contracts.

**Water Testing** – Stu reported he was able to conduct residential water testing near the former landfill on all but two of the wells tested annually.

The next meetings will take place at 6:30 PM on May 8, 2014 and after the special town meeting on May 22, 2014 at the school. The Board expressed a desire to meet once monthly in July and August – Stu said he would propose a date at the next meeting.

There being no further business, the meeting adjourned at 9:30 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen