



Lamoine Board of Selectmen

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

Minutes – February 18, 2021

Chair Kathleen Rybarz called the meeting to order at 6:31 PM. The meeting originated from the Lamoine Town Hall and was held virtually over Zoom meetings.

Present were (at the town hall): Selectman Nathan Mason, Planning Board Chair John Holt, School Board Chair & Appeals Board Alternate Brett Jones, Administrative Assistant Stu Marckoon; (via Zoom meetings) – Selectmen Kathleen Rybarz, Bob Christie, Gary McFarland, S. Josephine Cooper; Kathleen DeFusco, Kimberly Murphy, Kathryn Gaianguest, Terry Towne, Thomas True, Alan Moldawer, Carol Mason, Mark Harris, Planning Board member Don Bamman, Margaret Stewart, Rachel Noble, and two unknown attendees identified only as “jon” and “pint sized”.

Chairman Rybarz thanked those in attendance.

Public Hearings – Chairman Rybarz opened the public hearing on the following question at 6:32 PM: a. “Shall the Town of Lamoine authorize the State to permit the operation of agency liquor stores on days other than Sunday?”

Carol Korty said she understood that the Lamoine Marketplace could sell liquor before and asked what changed. Kathleen said the store could not sell hard liquor, only beer and wine. She asked if the town had ever sold hard liquor. Jo said during prohibition there might have been a guy selling moonshine from a truck. Kathleen said if passed, it would allow the store to become an agency liquor store. Bob asked about question “b” which involves Sunday liquor sales. Kathleen said that was a separate question.

Bob asked about nip bottles, and noted that he’d seen them inappropriately disposed of along the roadside. He asked if there is a need for the store to profit from alcohol. He said safety is an issue.

Stu noted that passage of the question would not necessarily guarantee that the agency liquor store license is issued to the Lamoine Marketplace, but that one license in town could be granted. Ms. Korty asked if store owner Kimberly Murphy could share her thoughts.

Mrs. Murphy said she has sent out a letter with highlights of what prompted the request for the vote which may arrive shortly. She said after 20-years of owning the store, they have made several changes but they had never pursued liquor sales. She said she’s asked to add that to the mix. She said the store they owned in Trenton sold liquor, and her staff is trained, and they’ve been a pretty responsible licensee. She said this would add another service for their customers.

Kathleen asked if the nip bottles are returnable. Mrs. Murphy said they are. Bob asked if Mrs. Murphy still planned to sell the market. Mrs. Murphy said they have removed the for sale sign. She said the three stores they owned had stretched them pretty thin and

they did have the store on the market. She said they would be pretty fussy to whom they would sell, but now their son is in the store, and they're not going anywhere.

Kathleen closed the hearing at 6:43 PM.

Question "b" - "Shall the Town of Lamoine authorize the State to permit the operation of agency liquor stores on Sundays?"

Kathleen opened the hearing at 6:43 PM. Bob asked why it would not be possible to leave one day a week where liquor isn't sold, and said he might be sounding like his mother and father. There was no further comment, and Kathleen closed the hearing at 6:44 PM.

Question "c" - To request the towns people of Lamoine to Amend the Shoreland Zoning Ordinance, Tax map 13 lot 50 Owned by Glenn and Donna Crawford from limited Residential Zone to Commercial Fisheries and Maritime Activities Zone. (This article was requested by a citizens' petition).

Kathleen opened the hearing at 6:45 PM.

Kathryn Gaianguest asked if anyone representing the Crawfords was present. Stu said the only people at the town hall are Mr. Holt, Mr. Jones, Nathan and himself. Nathan said he'd been provided an anonymous letter that was not from the petitioners.

Ms. Gaianguest said she had four questions and the first was "what is being planned?". Kathleen said no written plans have been submitted. Ms. Gaianguest said any plan should meet the conditions of the Shoreland Zoning Ordinance. Brett Jones noted that this is a request for a zoning change, and not a particular project.

Bob said this seems like putting the cart before the horse. He said there has been ample chance to reveal a plan beyond the vague description of activity when they met with Mr. Crawford. He said he feared that townspeople might not realize what they are voting on. He said Mr. Crawford stated at a previous meeting that a change might reduce his property taxes.

Carol Mason asked if the petition was available to look at. Stu said it's a public document that is held at the town office. He said the question on the warrant is the question that was on the petition. Kathleen said the petitioners gathered enough signatures to force the ballot question as petitioned.

Ms. Kory said she was surprised, since this property is located in the limited residential zone. She said it's a sizeable lot but not particularly large, and found it strange to re-zone just one lot, and questioned why the zone change would apply to only one lot.

Gary said a person had asked him anonymously whether the Crawfords could keep their residence if the zoning changed. Kathleen said that was a good question. Planning Board Chair John Holt said the Commercial Fisheries and Maritime Activities District

cannot have a residence within that zone. He said that could present a problem. He noted that the Commissioner of the Maine Department of Environmental Protection would have to approve any zoning change, and could reject the change if it's not justified.

Ms. Gaianguest said she was concerned about what the Harbor Master might have to regulate. Stu said the Harbor extends to the Bar Harbor Town Line only at the State Park Boundaries. Kathleen said this lot does not abut the state park.

Nathan said he had an anonymously submitted comment. Mr. Holt questioned whether such a comment could be submitted anonymously. Stu said the advertisement for the public hearing allowed written comment. Nathan read the letter as follows:

"I respectfully request that the following comments, which I would like to submit anonymously, be read at the Board of Selectmen public meeting on Thursday, February 18th at 6:30 p.m., concerning a request to Amend the Shoreland Zoning Ordinance to change a Lamoine Beach Road property from Residential Zone to Commercial Zone:

I am a Senior Citizen, and I am worried about the property-tax implications of Lamoine allowing what I believe is called "spot re-zoning."

If I understand it correctly, if the petitioner has his land spot re-zoned from Residential to Commercial and then receives a reduction in his property taxes, then my property taxes, and the property taxes of others in Lamoine, will consequently have to be increased to compensate for the loss of revenue to the town. Can that concern please be addressed at the meeting before a vote?

Additionally, I worry that if one person gets a tax reduction because of a spot re-zoning, that might lead other waterfront property owners to then be encouraged to find ways for their shorelands also to be re-zoned as Commercial in order that they, too, can get a property tax reduction.

Also, if this concept of spot-rezoning is introduced, I don't think it will be limited to shore-front property in the future. Residents away from the shore can also try to get their properties spot re-zoned.

I am wondering if my property taxes would increase every time this happens? As a Senior Citizen, I cannot absorb repeated tax increases without having to think about leaving the area, which I do not want to do.

I request that spot-rezoning does not come into play in Lamoine.

Thank you for listening.

Bob said the statement spoke volumes and asked good questions. Kathleen closed the hearing at 7:02 PM.

Question “d” - To see if the town will vote to amend the Building & Land Use Ordinance dated March 17, 2021 Part I Section 5 Subsection 1 Non Conforming Structure. A copy of this amendment identified as Amendment 1 is on file with the Lamoine Town Clerk’s Office.

Planning Board Chair John Holt opened the hearing at 7:02 PM. He explained the purpose of the proposed amendment.

Ms. Korty asked if the term “to the greatest practical extent” is up to the Code Enforcement Officer. She said it seems vague. Mr. Holt said the CEO consults with the Planning Board on that determination.

Mr. Jones asked if the town would compel a property owner to follow the option the town chose, or if the property owner could choose which option to comply with. Mr. Holt said the property owner could not make a project more non-conforming. He said the language was patterned after the Shoreland Zoning Ordinance. A brief discussion between Mr. Holt and Mr. Jones followed.

Nathan said the language seems to follow that which the Land Use Regulatory Commission uses for unorganized territory.

Mr. Holt closed the hearing at 7:09 PM.

Question “e” - To see if the town will vote to amend the Building & Land Use Ordinance dated March 17, 2021 Part II Section 12 Subsection G. Setbacks, Side and Rear Yard Widths and Buffers. A copy of this amendment identified as Amendment 2 is on file with the Lamoine Town Clerk’s Office.

Mr. Holt opened the hearing at 7:09 PM. He explained the purpose of the amendment regarding setbacks from private subdivision roads. Mr. Jones commented that it might make sense to have differing road setbacks depending on the neighborhood. Mr. Holt said that was a good comment and a brief discussion followed. Mr. Holt closed the hearing at 7:13 PM.

Question “f” - To see if the town will vote to amend the Building & Land Use Ordinance dated March 17, 2021 Part III Section 17 Subsection B. Definitions. A copy of this amendment identified as Amendment 3 is on file with the Lamoine Town Clerk’s Office.

Mr. Holt opened the hearing at 7:13 PM. He said this was to clarify confusing language in the ordinance regarding building height and read the proposed new definition as follows: *Building Height – The vertical distance between the highest point of the structure and the average final grade of the ground adjacent to the foundation or the vertical distance between the highest point of the structure and the average grade of the original (pre-construction) ground adjacent to the foundation, whichever distance is greater.*

Ms. Korty asked if the term should be called maximum building height. After a brief discussion it was clarified that this is just the definition of building height in the

ordinance. Ms. Korty said she's not sure how this prevents confusion. Mr. Holt said there are two measurements that could be taken. Mr. Jones offered a further explanation.

Mr. Hold closed the hearing at 7:19 PM.

Question "g" - To see if the town will vote to amend the Lamoine Site Plan Review Ordinance dated March 13, 2013 Section J General Review Standards, Subsection 1 Preserve and Enhance the Landscape. A copy of the proposed amendment identified as Amendment 1 is on file with the Lamoine Town Clerk's Office.

Mr. Holt opened the hearing at 7:19 PM. He read the purpose of the proposed amendment and said it simply restructures the section. Ms. Korty said it seems to make a lot of sense. She asked if the Code Enforcement Officer determines the greatest extent possible. Mr. Hold said the Planning Board reviews Site Plan permits, not the Code Enforcement Officer. After a brief discussion, Mr. Holt closed the hearing at 7:23 PM.

Question "h" - To see if the town will vote to amend the Lamoine Site Plan Review Ordinance dated March 13, 2013 Section M Appeals. A copy of the proposed amendment identified as Amendment 2 is on file with the Lamoine Town Clerk's Office.

Mr. Holt opened the hearing at 7:23 PM. He read the purpose of the proposed amendment and said the existing language is retained, but is restructured. Ms. Gaianguest remarked "well done". Mr. Jones said he was reticent to the idea of the Appeals Board being told by another body how to look at appeals. He said there should be an all-encompassing Appeals Board agenda that should not limit the ability of the Appeals Board by another board. Mr. Holt said the Planning Board is not limiting the appeal – the townspeople would. Mr. Jones said the amendment was written by the Planning Board.

Mr. Holt closed the hearing at 7:28 PM.

Question "i" - To see if the town will vote to amend the Lamoine Site Plan Review Ordinance dated March 13, 2013 Section P Construction of Language. A copy of the proposed amendment identified as Amendment 3 is on file with the Lamoine Town Clerk's Office.

Mr. Holt opened the hearing at 7:28 PM. He said the change in the height definition would be identical to the proposed change to the Building and Land Use Ordinance. He noted that the definition of height is different in the Shoreland Zoning Ordinance as that definition is provided by the State.

Mr. Holt closed the hearing at 7:29 PM.

Kathleen closed all hearings at 7:30 PM

Minutes – February 4, 2021 – Bob said he wanted to clarify that he'd received an appointment for a vaccination, not the shot itself. Jo moved to approve the minutes with that correction. Nathan 2nd. **Rollcall Vote in favor was 5-0.**

Expenditure Warrant 20 – Stu said the warrant is for \$155,745.39, noting that school expenses accounted for about \$111,000, a couple of tax refunds and plowing among other bills. **Rollcall vote in favor was 5-0.**

Cash & Budget Reports – Stu said he'd e-mailed the link to the reports earlier in the day. Nate remarked that expenditures seem to be right on the money with the percentage of the year that has passed. There were no questions regarding the reports.

Communication from Alan Moldawer – Mr. Moldawer asked if the Board had a chance to read his letter that he had submitted just prior to the last meeting. He said the issue is not so much about the height of the house in question, but more about the integrity of the process. He said he is asking the Board of Selectmen to step in and set aside the Code Enforcement Officer's height determination. He said the CEO needs to take the direction of the Board of Appeals.

Mr. Moldawer said the grade on the lot in question was raised before construction on the house began. He said he questioned the building height and the CEO and Mr. Holt twice measured the height. He displayed a picture of the True house on the zoom display. He said the CEO had stood by the determination that 34-feet 9" was the height from rough final grade, which he claimed was raised by several feet, but now that she has performed the calculation, the height is 34-feet 8". He said he knows that number is not right. He said he originally filed an appeal in March 2019 then provided a lengthy recap of the Board of Appeals process.

Mr. Moldawer said the last thing the neighborhood wants is to file a third appeal. He said he was asking the Selectmen to tell the CEO to get the measurement done the way everyone involved in the matter wants it done. He said he assumes the house is in violation, but that's not the issue. He said it should be done the right way. He said the Board of Appeals asked the question of why not have a surveyor determine the height. He said if the building is two feet too high, it would not have been too high if the lot had not been raised by two feet. He said that's why he was here. He said if this is not done, he's faced with filing a third appeal which should not have to be done.

Kathleen asked if the Selectboard wished to take any action. She said it appears that Mr. Moldawer is asking us to grant more time. Mr. Moldawer said he was asking that the CEO withdraw her determination until a proper height determination could be made. Kathleen said February 21st is the date that Mr. Moldawer was working with. Mr. Moldawer said the height determination report from the CEO was sent to him on January 28th.

Gary asked if the Board of Appeals has reviewed the findings. Mr. Moldawer said there is nothing pending before the Board of Appeals.

Jo said she understood Mr. Moldawer's frustration. She said she was not sure if the Selectmen should get involved, as it's not a Selectboard matter. She said if Mr. Moldawer didn't like the answer from the CEO, he could appeal. Mr. Moldawer said he did not agree with Jo because the CEO answers to the Board of Selectmen and the Board could ask her to hold back the determination. He said there has not been compliance with the Board of Appeals ruling. Jo said that's a matter of opinion.

Mr. Moldawer said the Board of Appeals has twice expressed an opinion. Brett Jones said he did some math, and the height determination seems to be off by two inches, and the height is actually 34-feet 10". He said the methods used had no specificity on the locations. He said the CEO has frequently said that she has neither the tools nor qualifications to perform the measurements. He said it puts the town in a bad spot if this goes to court. He said Selectmen provide oversight of the CEO, and Mr. Moldawer's request seems like the proper thing to do.

Kathleen asked Mr. Jones if he was a regular or alternate Appeals Board Member. Mr. Jones said he is an alternate member, but had been sitting in on this case. Kathleen said the Selectboard authorized the CEO to speak with an attorney and a surveyor. Both Nathan and Gary said they didn't recall the surveyor authorization. Mr. Moldawer said the neighborhood had offered to pay for a surveyor. Mark Harris said he recalled there was a motion including an attorney and a surveyor. Nathan said the surveyor part was not approved, but the town did obtain an attorney and the Board spoke with him. Mr. Moldawer asked if that meeting was in executive session and suggested it should have been public. Stu said it was in executive session and the law allows the Board to discuss matters with their attorney in executive session and the discussion is privileged much like it would be between Mr. Moldawer and his clients.

Kathleen said there has been no motion to act on and thanked Mr. Moldawer for his time.

Town Report – Stu said the town report has been delayed because the audit is not yet complete. He said he spoke with auditor Ron Bean earlier today and the hold-up has been the error in the property tax commitment in 2019 which will result in a management letter. He said he expects that the trail balance will be ready shortly and he will plug that into the treasurer's report and write that the publication of the full audit was not available at press time but will be available at the town office and on the website for public view. Jo asked about the audit matter and Stu provided further clarification and a very brief discussion followed.

Open Town Meeting – Kathleen said she was hoping the Governor would change the meeting limits, but they remain at 50. Gary said he'd had inquiries about town meeting and told people that it's required that the town meet on the 17th. He said at that meeting, there can be a motion to recess to a later date. He said several people were concerned about the meeting. Jo noted that the recess option was used last year, so that's doable. She said the Board will avoid doing anything unsafe, and the town meeting will have to

wait until it is considered safe to do so. Stu said he expects to know better information by the next meeting.

Kathleen said Election Day is still March 9th. She said absentee ballots are available. Ms. Gaianguest asked if there will be a message about absentee ballots. Kathleen said the drop box has not been reopened yet. Stu said a new drop box that is more weatherproof has been purchased and will have to be installed. He said he hopes that gets done this weekend. He said as far as promoting absentee ballots, the message is up on the web site and the electronic sign, it would be up to others to promote that type of balloting.

Efficiency Maine – Heat Pumps – Stu noted that a message from Efficiency Maine promoting a heat pump program was in the packets. He said the town installed the propane furnace just a few years ago and it's working fine. Brett asked about air conditioning. Stu said there are two in the building that get used maybe a couple of times in the summer when it gets very hot in the clerk's office. There was no interest in pursuing heat pumps. Kathleen noted the organization also has a consumer program.

Workers Comp Program – Stu reported Maine Municipal Association is offering a discount on premiums if the town implements a complex safety program. He said the savings would be less than \$300, and the time it would take might not make it worth pursuing. After a brief discussion, the Board took no action.

Lamoine 150! – Jo said the committee continues working on the final hoo-rah for August 15, 2021 and the ideas keep expanding. She said they're trying to make things work. She said the committee discussed a time capsule and is taking suggestions on what to put into it.

Report from Conservation Commission regarding request from Bar Harbor's request on a sustainability coordinator – Kathleen said the message from the Conservation seemed confusing as it implied that the request was to help Bar Harbor pay for a sustainability coordinator. Stu said that seems exactly correct. Nathan said he agreed with the LCC. Bob moved to thank the LCC and to send their message to Bar Harbor Town Councilor Jill Goldthwait. Gary 2nd. Nathan said he would like to amend the motion to make sure the Conservation Commission was OK with the letter going out the way it is written. Bob moved to amend his motion to include that, and Gary 2nd the amended motion. **Rollcall vote in favor was 5-0.**

Broadband Expansion – Stu said it looks like this might have to wait for another meeting as Mr. Lippold was not present tonight Kathleen reported that a Trenton Selectman approached her to see if the towns might be interested in working together in regard to broadband. Rachel Noble, a Selectperson from Trenton, was in attendance and said she would be happy to listen and learn. She said they've formed a broadband committee and asked if Lamoine was willing to share information. A lengthy discussion with Ms. Noble followed.

Mr. Jones noted that a new satellite service is up and running called Star Link and extolled its virtues. He said technology is improving daily, and used this as an example of how to bring broadband to unserved areas wirelessly.

Other Matters

- Bob noted that wildlife is on the move, having spotted signs of bobcats, coyotes, deer and rabbits.
- Kathleen noted that someone had suggested that if there isn't much snow during the winter, the town should receive a break. Stu said the contractor has blown through a lot of salt. Nathan said if that were the case, no one would bid on plowing.
- Gary thanked the road crews for handling the icy conditions earlier in the week.

The next meeting will be on March 4, 2021.

There being no further business, the meeting adjourned at 8:38 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen