



MINUTES OF MEETING
Board of Selectmen
June 22, 2010 @ 6:00 P.M.
Southwest Harbor Town Office

I. Call to Order/Roll Call: The meeting was called to order at 6:00 p.m.

Present: Town Manager, Robin M. Bennett, Selectmen Trudy Bickford, Berten Willey, Skip Wilson, Ralph Dunbar, Jr., Kristin Hutchins.

Visitors: Heath Higgins, David Chapais, Eric Clark, Mark Good, Dennis Dever, Sandra Johnson, David Mincton, George Jellison, Jr., Pat Biegler, Donald Lagrange, John Corvano, Leslie Watson.

II. Visitors to be heard not on the agenda: Sandra Johnson asked about the sidewalk on Main Street – it is more like a paved shoulder, and there is no curb for a good portion of the area. Wilson said what has happened is not what was planned. He expected a 4” raised sidewalk. Eric Clark said he thought there was a drain across from the old Grindle’s store and it looks like it was paved over. Bennett asked if Lagrange would address that. Lagrange said from the traveled lane going in to where the sidewalk begins there was to be a shoulder provided and a swale, and it was supposed to drain the water to the catch basins. The State wanted as much as 2’ if possible. Johnson asked the Board to check the document that was used to get the bid for the project. Skip said the contractor felt that 4” of gravel was too much and that public works OK’d the change. Biegler said she was asked if they wanted the roll all the way down and she said no because it would be a problem for the snow plows. Bickford said she thought the Board was agreed to no curbing. Johnson expressed concern over the safety of pedestrians. Eric Clark asked if the sewer water infrastructure repairs go through, will that work be dug up. It would. Bickford said the issue is with the State. Dunbar suggested a review the contract, and if it doesn’t fulfill the contract, it needs to be fixed. Wilson said this is as bad as it was before. Johnson said if we paid and contracted for something that was raised, we should insist on it. Clark said someone in the Town Office should have a detailed contract on this project. The taxpayers have a right to expect that. Dunbar suggested getting the contract out and sitting with the contractor as soon as possible.

Dianne Novella spoke for Harbor House. She asked the Town to declare the July 17th weekend official Flamingo Days, as was done last year by the Board of Selectmen. It was Moved Dunbar, and Seconded Willey, to declare the weekend of July 17th as Official Flamingo Days in Southwest Harbor. Vote: 5 - 0

III. Approval of Minutes: June 8, 2010: It was Moved Dunbar, and Seconded Hutchins/Bickford vote to accept the minutes of June 8, 2010 as presented. Vote: 5 – 0

IV. Warrants: Administration 195-203 Water 17
Sewer 38

V. Old Business

a. **Water Project Update:** no new report

b. **Lower Town Dock Update:** Dever said there has not been much change and the dock is still not near substantial completion. The ramp bracket in place had flaws, raising it up 3” above the dock, and the contractor is fixing. Electrical is only 10% done, and the storm drain is to be taken care of tomorrow. Clark said the project has dragged on for a long time. Contractor is on notice that the Town is unhappy with the date, and a fine of \$300 could be levied. Bickford asked if the contract could be terminated and should the Board discuss that. Dever said the fine is taken out of the cost of the project, and is simply taken off the bill at the end. Bennett said the Town has called and put the contractor on notice that they will be fined. Hutchins said there were a number of change orders, but feels there is no response from the contractor. Have they said anything? Bennett said the contractor’s plan was to get it done the week of the 14th of June. Dever said the running of the conduits was left up to the contractor. With the changes that plan changed and the electrical contractor had concerns about the materials specified as it was not water tight. The conduit would be submerged at high tides, and changes were made to accommodate the running of the conduit to avoid it being submerged. Johnson asked why the Town would not fine the contractor now. Wilson said the fine would be assessed once the project was done. Clark asked who wrote the spec for the conduit for the project – Bennett and Wilson said it was Kleinschmidt. Clark asked what the cost was for Kleinschmidt, and Bennett said it was around \$40,000. Clark feels that the engineer should be liable for their specs, the conduit being one item. Bickford asked if it was time for the Board to have a meeting with these people. Dever does not know when the ramp hanger would be done. Dunbar said the Chairman of the Board should make a call to McQuinn to find out what is going on with the project. Bickford agreed. Wilson will do that.

VI. New Business

a. **Liquor License Renewal:** Moorings Restaurant: Bickford asked if the abutters were notified. Bennett had the information in her package. It was Moved Hutchins and Seconded Bickford to accept the renewal of the Moorings Restaurant Liquor License as presented. Vote: 5 - 0

b. **Special Amusement Permit:** Moorings Restaurant – Mr. Higgins said it will be the same as last year – June 15 – October 15. John Cordano, representing the Moorings Inn expressed concerned about noise as the properties are very close. In Section F, 4 of the Special Amusement Permit Ordinance, there is reference to the disturbance of people, and he asked what would be in place to deal with excessive noise. The Inn would like more clarification on the noise issue. Lagrange said enforcement of this section of the ordinance rests with the Chief of Police, as there is no noise ordinance in Southwest Harbor. Chapais said the word “unreasonable” is the key. An officer is called, and the officer will visit the site, and usually say it is not unreasonable and will be challenged on that. Cordano said the ordinance is meant to protect the guests at the Inn. Chapais said that any time they have been called, the Moorings has accommodated by closing doors and windows. It may be a reasonable noise to the officer, but not to the Inn guests. Hutchins: there is a basic design flaw if there is a bedroom 7’ from a restaurant. In order to resolve this, the Board may have to choose, and she can’t envision a

compromise that is going to be satisfactory. Dunbar said the only compromise would be to set hours in the restaurant when entertainment is allowed. Higgins said the Moorings has tried to be considerate, but under the Ordinance, even a radio is a class E permit. Leslie Watson said the amplification seems to be the problem with windows and doors open. She would just like to run her business. Dunbar asked if this was the same request as last year, and was informed it was the same. Dunbar asked how many times were the Police called for noise. Chief said he didn't have the number but it was very minimal. Wilson suggested a 10pm limit on amplified entertainment until Labor Day and until 11pm after Labor Day until the restaurant's closing in October. Dunbar asked would he like the time limit on class E or no time limit set on A, B, or C. Higgins said amplification stopping at 10pm during the summer is ok. It was Moved Dunbar and Seconded Bickford to permit Special Amusement Class E at the Moorings Restaurant until 10pm through Labor Day, and until 11pm at the Moorings Restaurant from Labor Day through their close of season with non-amplified entertainment being allowed through closing until the end of the season. Vote: 5 - 0

c. **Annual Appointments:** Boards and Committees: Bickford said that Colton Sanborn and Sam Jacobson are no longer on the Waste Prevention Committee. The Board of Selectmen expressed concern over the lack of membership on the Conservation Commission. However, having no information on Dr. William Freels, for appointment to the Conservation Commission, the Board decided to take the matter up at the July meeting. Dr. Freels must submit a Volunteer Request Form and meet the Board before appointment to the Commission. It was Moved Bickford and Seconded Willey, to accept members to the Boards and Committees as presented with the exception of Dr. Freels, Colton Sanborn and Sam Jacobson. Vote: 5 - 0

Municipal Appointments for one year ending June 30, 2010. Chad Smith, Town Attorney; It was Moved Bickford, and Seconded Willey to appoint Chad Smith as Town Attorney. Discussion: Johnson asked if there any merit to changing that person periodically; Bickford asked Bennett her feelings. Bennett said the Board should do what they think is in their best interest, and if the time has come, the Board should request proposals. Johnson said she thinks that firm has been representing the Town for too long. Dunbar said his dealings with Mr. Smith have shown him to be very professional and he always explained the law and its interpretations, and was very easy to work with. Wilson said he could envision different attorneys for different Boards or purposes. Bennett said it would be reasonable to go out to an RFP. Clark said someone who knows the Town would be a better choice than someone who needs to spend time and the Town's money getting up to speed. Hutchins asked how long Smith was representing the Town, and Willey and Wilson said at least 20 years. Vote: 2 - 3 motion failed. It was Moved Hutchins and Seconded Bickford to put the attorney services out to bid. Vote 3 - 2 (Dunbar-Willey). Motion passed.

Tax Assessor: It was Moved Bickford and Seconded Wilson to accept Robert Duplisea as Tax Assessor to the Town of Southwest Harbor. Vote: 5 - 0

Harbormaster: Clark spoke to the Board saying there is a pool of Harbor Committee members, who should be able to analyze whether they are happy with Dennis' performance or not. Lot of people are unhappy. As a taxpayer, he feels it would be in the Board's interest to straw poll the Harbor Committee. Clark feels the Board is not looking at the big picture. He feels the Committee should be allowed to present their feelings to the Board concerning the Harbormaster's performance. The Board should make the point to ask them how they feel about his performance over the last year. Bickford said State Statute defines the Boards authority. Committees should be focusing

on assisting the Harbor. Hutchins said this is not an appropriate venue to deal with personnel issues. It was Moved Hutchins and Seconded Bickford to reappoint Dennis Dever as Harbormaster. Clark said he doesn't feel the Board should just give the Harbormaster another year without addressing issues. Wilson said he feels Dever is trying to work with the Committee and do what's best for the harbor, and this is a personnel issue. Clark said the Coast Guard is within 500 yards, and will act as the policing force in the Harbor. The Town needs a Harbormaster who will paint the floats. He said there is so much money being thrown out the window – what is the job description – is it just enforcement? Why hire out having the floats painted – isn't maintenance part of the job of the Harbormaster? Bennett said she sees the Harbormaster doing work, but there are times when jobs are contracted out. Dunbar said he feels Dennis is the wrong person for this job, and has given it a good try. The Harbor is in distress, and a lot of people are unhappy. Hutchins said it is inappropriate to have this conversation in this context. Wilson said it is not the job of the Board to address this issue. It was Hutchins and Seconded Bickford to appoint Dennis Dever as Harbormaster. Vote: 3 – 1 (Dunbar) – 1 (Abstain Willey) Motion passed.

Emergency Management Director. It was Moved Bickford and Seconded Hutchins, to appoint Patricia C. Biegler as Emergency Management Director for the Town of Southwest Harbor. Vote: 3 – 2 (Willey & Dunbar).

Confirmation of Manager Appointments: It was Moved Bickford and Seconded Hutchins to confirm the appointments of the Town Manager. Vote: 5 – 0.

d. **BOS Chairman Election:** It was Moved Bickford and Seconded Hutchins to appoint Skip Wilson as Chairman of the Board of Selectmen. Discussion: Bickford said with two new board members coming on the Board in July, it would be helpful to have the experience. Clark: he feels it's time for Skip to sit and listen, and not be chairman. Vote: 2 – 2 (Dunbar, Willey) -1 (abstain Wilson) motion failed. It was Moved Hutchins and Seconded Willey to appoint Ralph Dunbar as Chairman of the Board of Selectmen. 4 – 0 – 1 (abstain Dunbar).

e. **BOS Vice-Chairman Election:** It was Moved Bickford and Seconded Willey to appoint Skip Wilson as Vice Chairman of the Board of Selectmen. Vote: 4 – 0 – 1 (Wilson)

f. **Summer Meeting Schedule:** Bennett reminded the Board that traditionally there is one meeting a month for July and August unless there is something urgent that needs attention. She suggested July 27th and August 24th as Board had no objections.

g. **MMA Legislative Policy Committee:** Bennett said the packets contained the ballot for the legislative committee: It was Moved Bickford and Seconded Willey to accept the two candidates to the MMA Legislative Policy Committee as presented. Vote: 5 – 0.

VII. Manager's Report: The Hook property work is finished as of this afternoon; the Harbor House/Town of Southwest Harbor Community Development Block Grant has been invited to proceed to the 2nd phase. There will have to be a Special Town Meeting at a later date. There was an inspection from the Safety Works part of State Department of Labor, to identify areas of concern. It went well and a final written report will be received in the next few weeks. The office is working on new sewer rates; There will be a bike rodeo sponsored by the Police Department on June 26th. Public Works has hired Chad Erwin as the new Assistant Water Operator; Jason Blocker & wife

had a little girl this past week. Reminder to all Board Members to fill out a new contact forms. Chapais said Sarah Exley has been hired as of July as a Reserve Officer.

VIII. Other Business: Hutchins said the Comprehensive Plan Committee has further edited the draft and posted an updated version on the web site. They will send a draft to State Planning by the end of this week. The deadline to have the voters approve or not is in November. Dever said the Harbor Committee wishes to emphasize that wood is preferred for fender pilings and he does have quotes on three types of wood. Dunbar – re the Manset dock – the nose of the dock is a dangerous area, and there should be some kind of railing system around the nose. Dever asked if the Board wanted curbing or a railing. Clark said since it is near the finger floats, and can't be used to unload, so curbing should be fine. Hutchins asked if there were funds for this. Wilson said it would not be much. Dever thinks he can find materials for this without expense. Dever asked the Board again to consider wood instead of fiberglass piles. The cost would be \$60,800 for fiberglass, \$50,490 for greenheart and \$45,800 for southern pine. Bickford said she would like to put it on another agenda. Dever said money appropriated would do about half and some pilings need to be replaced as soon as possible. Dunbar agreed with Bickford to discuss this item at the next meeting. Dunbar said it has been a pleasure working with Hutchins & Willey over the past couple of years. Board members all agreed. Gifts were presented. All members of the Board expressed their gratitude.

IX. Sign Warrants: It was Moved (Bickford) and Seconded (Hutchins) to sign the warrants as presented. Vote 4 – 0 – 1 (Wilson abstained)

It was Moved (Bickford) and Seconded (Willey) to go into Executive Session at 7:36 p.m. Vote: 5 – 0

X. Executive Session pursuant to 1 M.R.S.A. §405(6)(D), Labor Negotiations

It was Moved (Hutchins) and Seconded (Bickford) to come out of Executive Session at 7:49 p.m. Vote: 5 – 0.

It was Moved (Hutchins) and Seconded (Dunbar) to accept the Public Works Union Contract as presented and authorize the Town Manager to sign a one year extension of the current contract and the new contract for January 1, 2011 – December 31, 2015. Vote: 5 – 0.

XI. Adjournment: It was Moved (Hutchins) and Seconded (Willey) to adjourn the meeting at 8:50 p.m. Vote: 5 – 0.