

**BOARD OF SELECTMEN  
MINUTES OF MEETING  
JANUARY 27, 2014**

Selectmen present: Ladleah Dunn, Chair, Julia Libby, Vice-Chair, Rosendel Gerry, Jason Trundy and David Barrows.

The meeting was called to order by Chair Dunn at 6:00 p.m. at Lincolnville Town Office. The quote was read by Selectwoman Libby.

1. **5:30PM – Site Visit to Library:**
2. **(6:00PM +/- @ Town Office) Citizens' Forum:**

Christine Burstein introduced herself to the Board and informed them that she is running for the State Legislature on the Democratic ticket as a Clean Election Candidate. She has received her \$500 seed money and is working on her signatures. She hopes to represent District#96, which includes the Towns of Belmont, Liberty, Lincolnville, Montville, Morrill, Palermo and Searsmont.

Sheila Polson, Library Director, informed the Board that the new library was opening Saturday, February 1<sup>st</sup> from 9:00 a.m. to noon. The library will be open fifteen hours a week, Tuesday from 5:00 p.m. to 8:00 p.m., Wednesday from 2:00 p.m. to 7:00 p.m. or 9:00 p.m. on their program nights and Friday and Saturday from 9:00 a.m. to noon. On Wednesday, February 5<sup>th</sup> at 7:00 p.m. Jay Foster is going to give a talk about his grandfather who worked on the Civilian Conservation Corps crew that built Camp Tanglewood and a lot of Camden Hills State Park. Wednesday, February 19<sup>th</sup> there will be a concert, Diane O'Brien will tell stories. They will also hold workshops and programs on different subjects. Polson said the library will have services available; they are getting internet and phone service hooked up this week. She said they have been accepted as a Maine Public Library and starting in July they will have free internet service. This has all been made possible by more than 300 people and businesses that have donated to this project. She said this has been an amazing community project with no expense to the Town. Polson said they raised \$208,000 altogether, which will also cover their first year of operating expenses.

Librarian Kathleen Oliver said it has been wonderful to work with Lois Lyman who is also a librarian and Sheila Polson. Sheila is helping to pull together the needed infrastructure in addition to the library building itself. Being commissioned as a State of Maine Public Library was a goal right from the beginning when it was decided to have a brick and mortar library in town, which actually turned out to be wood. She said they set a goal they wanted to achieve within five years based on criteria the State established for them to meet, but were actually able to meet that goal in one year. Their consultant from the Northern Maine Library district, which they are now a part of, has been very impressed with this community's accomplishment to make the library a reality and also with the building itself and the infrastructure. The Board of Trustees put together their commission and in November the library was accepted as a Public Library. Oliver said what that means for them is just about everything. They can receive free Internet service through the Maine

Schools and Library Networks and reduced rates on their phone service. The State will loan the library, for six weeks, a whole package of tablets, iPads, notebooks and various devices that people like to use. The State will also provide someone to hold workshops for the people in the community so that they can learn how to use all of these different devices. The State also has a collection of books they can loan to the library for a number of months and when they are returned another collection can be loaned. All of the books in the library have been donated. They also have library cards with bar codes on them and a bar code reader. They have started to catalog all of their books using library software they purchased. Because members of the community will have library card numbers they can go to the Maine State Virtual Download Library from which they can download audio books, E-books for every type of device including the Kindle, the Nook and other E-readers.

Gerry asked if the library was still seeking funds and donations.

Oliver said they are always seeking funds and donations. They are hoping to start a “Friends of the Library” group that will be an ongoing fund raiser. They are not currently open for book donations because they are so backlogged on their cataloging. Oliver made a request to the Board for a street light in front of the library that would serve both the Boat Club and library.

John Burstein commented that he was proud to be living in this community and applauded the community’s efforts to take this project on and make it work. He also wanted to make one more mention about his wife, Christine, who is running for State Representative. If elected she can do something really effective and she will want to hear from the library and about the community’s needs because she really cares.

### **3. Administrator’s Report:**

David Kinney, Town Administrator, reported:

- There is only four days left before dog licenses are overdue. There will be a late fee charge after Friday, January 31<sup>st</sup>.
- Since the Board’s last meeting he has spent last week working with the contractor on the little odds and ends at the Town Office that weren’t completed. The work has at least a one-year warranty from the date of substantial completion, which was on or about the first of November. The contractor is planning to come back when the frost is gone and fix the back steps. The trim placed on the front of the steps after the paving had gone up to the steps and the gravel underneath the paving froze and heaved which caught the trim and lifted up the steps making opening the back door a little challenging at times. Kinney removed the trim and the steps have gone down part way and the door opens and closes now. It’s on the list of things to resolve.
- We are working diligently on budget preparations, which will be coming before the Board in February.
- Will Brown, Conservation Commission Member, who’s working with Central Maine Power on the tree trimming reports that thus far communications have been good and CMP is doing the job the way they said they would.

Dunn asked Kinney if there was any word on Revenue Sharing.

Kinney said we have to wait to see what the Legislature does. Last year the Legislature and the Governor decided in their budget that they would create a Blue Ribbon Commission to try to come up with \$40,000,000 worth of additional revenue. If they couldn't come up with the \$40,000,000 of additional revenue they were going to take \$40,000,000 out of the Revenue Sharing, which comes to towns and cities. In this current year, the Town budgeted zero for Revenue Sharing not counting on getting any, so that will be the starting point for this year's budget and we will see what happens again. He said the Town is receiving some Revenue Sharing this year.

**4. Meetings & Announcements:**

Town Administrator Kinney read the upcoming meetings.

**5. Upcoming Community Events:**

Gerry said Wednesday, February 5<sup>th</sup> the Town of Searsmont is holding their Bicentennial Founder's Day Celebration at the Town Community Building at 6:00 p.m.

There will be a pot luck benefit at the Lincolnville Grange Hall, Saturday, February 8<sup>th</sup> for an individual whose garage burned in a fire Christmas Eve. Starts at 1:00 p.m.

Lincolnville Community Library is holding their monthly show on Wednesday, February 19<sup>th</sup> with Diane O'Brien as guest speaker and music by the Icebreakers.

**6. Meeting Minutes:**

**Motion by Trundy, second by Barrows, that the Board approve the January 13, 2014 meeting minutes as presented. Vote: 5-0.**

**7. Searsport Harbor Dredging – Archibald Gillies, Chairman Islesboro Board of Selectmen:**

Dunn said Chairman Archibald Gillies from Islesboro cannot make the meeting tonight due to the weather on the bay. She asked what the Board's pleasure is regarding Islesboro's request for the Board's participation in urging a comprehensive Environmental Impact Study be done for the proposed Searsport Harbor dredging. Dunn asked if they should table this article until Chairman Gillies can attend a meeting in the future.

Gerry's response is to take no position on the matter.

Trundy said he is interested in Chairman Gillies' thought process that leads him to conclude that the Army Corps of Engineers didn't taken the appropriate steps up to this point and what they had already done wasn't sufficient.

Libby took the same position as Gerry and Trundy.

Dunn asked if the Town of Camden sent a letter to the Army Corps of Engineers.

Libby said they did, but it was pretty vague.

Barrows is concerned how this would affect the fisherman and he would like the Board to get more information. He said dredging the harbor so you have more depth is a no brainer, but as far as expanding the harbor the extra dredging will stir up materials that have been down there a hundred years and that's going to make a mess for the lobster, scallops and fish industries. Barrows said he realizes it's not our harbor.

Dunn said she hopes the Army Corps of Engineers have done their job. It's interesting that the several legislators chose to send a letter to them. Dunn would like to have the opportunity to ask Chairman Gillies more questions concerning this matter and why the Board should be compelled to throw their hat in the ring. Dunn asked the Board what they would like to do concerning this article.

Gerry said that at some point we have to let the Army Corps of Engineers do their job. He said they are under scrutiny all the time. They have rules and guidelines to go by when doing any project.

Dunn said the time period for public comments as passed. She asked Kinney if any letter from the Board, at this point, would have any bearing whatsoever.

Kinney said he has not seen an extension of the public comment period, but they haven't made any final decisions either. He said he could contact Colonel Samaris and ask if they are still accepting public comment.

Dunn said she would like to receive more information, but she agrees with Gerry it's not our harbor.

**Motion by Gerry, second by Libby, that the Lincolnville Board of Selectmen takes no position on this matter.**

Trundy said he agrees to some extent that when you have an agency like the Army Corps of Engineers you trust and expect them to do their job, but people or agencies don't always make decisions that are in the best interest of the public. Trundy requested that the Board table the article and seek additional information if the first motion failed.

Dunn stated they have a motion on the floor that the Board takes no position and she asked for a vote.

**Vote: 2-3 (Barrows, Dunn and Trundy opposed) Motion Failed.**

**Motion by Trundy, second by Barrows, that the Lincolnville Board of Selectmen table Article 7 until Chairman Archibald Gillies from Islesboro can attend and speak at a future Board Meeting. Vote: 3-2 (Gerry and Libby opposed). Motion Passes.**

**8. Fernald's Neck Road – Alex Kuli:**

Alex Kuli from Fernald's Neck Road was at the last Selectmen's meeting and talked about his desire to relocate the road because it presents a hazard because there is a blind spot coming up the hill. He is also concerned about dust from traffic and that people are driving too fast. He said at that meeting he was presented with two options: one was to discontinue the road, which would make the road private and the second was to keep the road public, but relocate it away from his house and discontinue 600 feet of the existing road. He said either way it would require approval by Town vote. Kuli spoke with all of the affected parties, which includes Coastal Mountains Land Trust, the Harknesses and the Coles and all of them wanted the road to remain public. He would like to proceed on that basis and work with the Town planners and Board of Selectmen to relocate the last 600 feet of Fernald's Neck Road. He asked the civil engineering firm Gartley & Dorsky from Camden to do a site plan, topography survey and plan as to where and how the road should be constructed. He said he would come before the Board with a more detailed plan. He asked what needs to be done to get on the Town warrant.

Kinney replied approval from three of the five Board members to say the project can move forward. He said what is needed is an agreement that would outline what Kuli was planning to do, what the Town needed to do and at whose expense. If the Board is to accept putting forward this idea to the voters at Town Meeting then the Board needs the details of the concept. The concept plan by Gartley & Dorsky needs to show where the new section of road would be located. The survey would show the part of the property including the new section of road being gifted to the Town and the Town in turn would discontinue the current portion of Fernald's Neck Road that would no longer provide public access. The Town would want to oversee the construction of the road and make sure it meets certain standards. All that would have to be spelled out in the agreement between the Selectmen and Kuli.

Kuli said he would develop that kind of documentation with Gartley & Dorsky.

Kinney said if the Board is accepting of the concept of relocating Fernald's Neck Road then he will work with Kuli to send him in the right direction with Gartley and Dorsky and work with counsel to make sure the Town has an agreement.

Trundy said if he understands what Kinney was saying the Board would basically be taking the concept to the voters not necessarily any construction of the road being done prior to that.

Kinney said the road could not be constructed prior to town vote. He envisions that the area to be gifted to the Town, which would be the right away for the road, will be identified by a survey and the area containing the section of road to be discontinued would also be similarly identified. For the area where the new road will be located we will need to agree on what standards the road will

need to be built to. All of the details will have to be spelled out in an agreement so that if it is approved by the Town's people everyone will know what they are suppose to do next.

Gerry said our Town Attorney would have to be involved so it would be an expense to the Town.

Kinney said we would certainly want the agreement to be reviewed by our Town Attorney.

Kuli said he mentioned last time that he would cover all expenses, which would include the cost of developing an agreement.

Libby said she assumes when this gets approved proper construction of the road will also give access to all emergency vehicles.

Kinney said the road would be constructed to similar or even better standards than those used for subdivision or town roads.

Libby said they would have to address the Central Maine Power poles.

Kuli had Bill Lane from Gartley & Dorsky come out to look at that situation and it turns out that there are no poles affected because it's all underground. Central Maine Power has told Kuli that the underground portion is owned by Kuli the property owner.

**Motion by Gerry, second by Barrows, that the Board instruct the Town Administrator to work with Mr. Kuli to prepare the necessary documentation to bring to the Board for review and consideration an article that could be placed on an upcoming town meeting warrant outlining the terms and conditions necessary for the relocation of approximately 600 feet of Fernald's Neck Road and any other items necessary to facilitate such a change. Vote: 5-0.**

**9. Report of the Consumer Fireworks Ordinance Committee – Don Heald, Chair:**

Donald Heald said the committee met repeatedly every Thursday evening until reaching what was considered to be a final document to be passed to the Board. This was, as with any committee project at times, a thankless and uncomfortable task because it attempts to create change in and regulation of public behavior. He said they have come up with a document that sets forth where and when use of consumer fireworks is permitted. It doesn't prohibit the use of consumer fireworks in the Town. It identifies clearly what times consumer grade fireworks are able to be discharged by the public and where they are prohibited from discharge. The ordinance sets forth in the shoreland zone a prohibition on discharge of fireworks four days a week and that begins on the calendar date from April 1 to October 31, which shall be considered the summer cycle for the purpose of this proposal ordinance. The ordinance sets aside Friday, Saturday and Sunday evenings beginning at 7:00 p.m. and ending at 10:00 p.m. for the discharge of fireworks in the shoreland zone with the duration of such use not to exceed one hour per day per event. If it's raining on one or two of those three days it allows the public some time during that weekend they were going to set off fireworks the latitude to do that. This does not apply outside the shoreland

zone, for that area the regulation reverts to current State law. This allows private landowners who wish to discharge fireworks outside of the shoreland zone the right to do so in accordance with State law, which does not include the time limits we have proposed for the shoreland zone.

Heald said the ordinance is written to create more harmonious use of the shoreland zone, which is needed because of the numerous rentals and increase in summer activity. He said for people who have waterfront property the sound of fireworks are more intense because of fewer trees on the lake to buffer it. Heald said the ordinance proposes a four day--three day split that basically gives the public a chance coming in and going out on the weekends to enjoy three days where some fireworks can be used. During the other four days of the week it brings more peace and harmony for the public to enjoy the lake. This is the direction in which the committee went after meeting with the Lakes and Ponds Committee and hearing their concerns. We were trying to set forward reasonable uses.

Heald said in regard to violations of the ordinance there are teeth under Section 6. Penalties for the first offense for someone found in violation of the ordinance is a \$500 fine. A second offense is a \$1,000 fine. He said they want to encourage responsible use of consumer fireworks by the public. The ordinance considers the impact on wildlife from fireworks and tries to provide peace and harmony for them as well as for the public. He said the committee was seeking a better balance without the ordinance being an all or nothing approach.

Gerry asks who was going to police the ordinance.

Heald said under Section 7. Enforcement the ordinance shall be enforced by the Town's duly authorized law enforcement provider, which in this case is the Waldo County Sheriff's Department. He said the last thing they want to do is to pull the Sheriff's Department away from having to deal with a violent or drug related crime. However, the Sheriff's Department is a great asset to the Town and that's who enforces our laws. The ordinance allows the Selectmen to assign others to enforce this ordinance if necessary.

Whitney Oppersdorff said they limited the use of fireworks in the shoreland zone because Justin Twitchell, Lincolnville Lake Warden, could be involved in this if there were complaints. The committee also thought the Code Enforcement Officer might be involved because the ordinance affects the shoreland zone.

Gerry was opposed to having the Town's Code Enforcement Officer involved in any way. He has no problem with Justin Twitchell or Waldo County Sheriff being involved.

Trundy said his concerns are around the enforcement of the ordinance. He had a conversation with the Sheriff in regards to this issue and they looked up the State statute on what can and cannot be enforced by the Sheriff's Department. They found an ordinance cannot be enforced by the Sheriff's Department or State Police unless the Sheriff's Department has entered into a contract with the town. Trundy said the Sheriff was very reluctant to do that because his concern was that if the Sheriff's Department signed a contract with one town to enforce ordinances then that would spread very quickly to the other twenty five towns that do not have organized police departments

and once you start enforcing twenty-five community ordinances you are talking about a considerable workload. The other concern is the funds required to support the extra workload. The only way to do that is to pass the cost onto the towns. Trundy is not sure the citizens would be willing to do so. He said one of the options is to assign a constable or have our Town Attorney involved, but we just got a notice from the Town Attorney that their current bill is going to go up to \$160 an hour.

Kinney said the enforcement section was written generically not knowing what we will have in the future for law enforcement beyond the Inland Harbor Master. Without a contract no law enforcement agency is charged with enforcing a local ordinance. He said it certainly is enforceable by our Inland Harbor Master.

Trundy ask if anyone had a conversation with Justin Twitchell regarding the fireworks.

Oppersdorff said he attended one of their meetings.

Trundy ask if Twitchell was comfortable with the idea of providing enforcement.

Heald said Twitchell cautioned them to be very specific about what they did with that because he could see it being a Pandora's Box. That was the reason we approached the issue of having the Code Enforcement Officer involved to begin with because we didn't know what would happen with this enforcement wise. Heald said the Code Officer would send out a notice to the land owner that an infraction had taken place and a fine would be assessed.

Libby said her real concern is trying to enforce the ordinance and the cost to the Town. She said handing a piece of paper to somebody is not going to work you would have to go directly to the site when it's happening.

Trundy would be interested in knowing if there's a statute that speaks specifically to a Code Enforcement Officer being able to deal with that kind of situation. He said that if you were to charge someone with an ordinance violation that it would be similar to any civil or criminal infraction, you would have to investigate and once you got court you would have to be able to prove that a violation of the ordinance occurred.

Oppersdorff said Justin Twitchell communicates very effectively with the public in these types of situations. He has the training to talk with people and explain the laws. He is on the ponds and responses to residents who call him. She suggested the Board should have a conversation with Twitchell concerning this matter. She said the use of consumer fireworks is prohibited on any day rated a fire danger class 4 and 5.

Ben Hazen, Fire Chief, said fire danger days class 4 and 5 are dealt with by the Maine Forest Service. He said he does not issue fire permits on class 4 or 5 days.

Libby asked Hazen if the ordinance requires the public to seek a permit to discharge fireworks.

Hazen said it does not. The only permit he issues is through the Maine Forest Service for burning brush.

Dunn said she thinks the enforcement will be a huge challenge.

Heald said late night events with people who have been drinking lighting off fireworks are more of an issue about disturbing the peace, which falls under the Sheriff's Department.

Trundy said the Sheriff's Department adheres to a ten o'clock rule, which basically if there's a noise complaint for disorderly conduct the Sheriff's Department won't entertain that until at least 10:00 p.m. Trundy said he likes the overall ordinance and he thinks there's a lot of people who will comply with the ordinance. His only reservation about this whole thing is if there is some group that is going to ignore the ordinance knowing there is no enforcement then it loses some of its effectiveness. Trundy made a suggestion that the Board ask the Town Administrator to do some research on the enforcement of the ordinance and possible cost to the Town.

Gerry said a lot of the complaints have been regarding rentals. He suggested it would be easy for the property owners of these rentals to put in a contract that fireworks would be limited within the dates and times. He said the lake associations could send out notices to the property owners on the lakes and ask for their help with this.

Oppersdorff said the lake associations are already planning to put this information in their spring newsletter and suggest that those who rent put in their contract no fireworks. She said fireworks are prohibited on any public property owned by the Town.

Trundy commented on the penalty section that the fines are too high and you may find a lot of hesitancy from any law enforcement officer to write that kind of a ticket because of the hardship it puts on the public financially.

Heald said he appreciates the feedback. He said a lot of this is a trial balloon because the committee didn't have a bench mark to pin it to. The heart of it is to create an ordinance that will preserve an activity that people enjoy and for those who like the peace and quiet they can have that too at other times. Heald thanked the Board for allowing the committee to create an ordinance.

Dunn said the Board will have Heald come back at a later date and continue the conversation. She thanked the committee for their time spent on creating the ordinance.

**Motion by Trundy, second by Libby, that the Board ask the Town Administrator to research the enforcement aspect of the Consumer Fireworks Use Ordinance for clarity on what the Board could or couldn't do and to put this issue back on the agenda and to notify the Committee and anyone that wants to attend. Vote: 5-0.**

**10. Septage Disposal Agreement with Moore's Septic:**

**Motion by Gerry, second by Barrows, that the Board approve the proposed two-year agreement with Moore's Septic of Swanville for the acceptance of septage in the contract amount of \$2,875 annually provided the appropriation is approved by Town Meeting. Vote: 5-0.**

**11. Authority to Post Roads for Seasonal Weight Limits:**

**Motion by Trundy, second by Libby, that the Board of Selectmen authorize the Road Commissioner to post the roads for weight limits as he deems to be in the best interest of the Town and further that the Board authorizes the use of our signature stamps on these postings. Vote: 5-0.**

**12. Treasurer's and Payroll Warrant(s) – Approve and Sign:**

**Motion by Libby, second by Barrows, that the Board approve the Treasurer's and payroll warrants. Vote: 5-0.**

**13. Executive Session: Disposition of Publicly Held Property – Title 1 MRSA Section 405 (6)(C):**

**Motion by Gerry, second by Libby, that the Board enter into executive session to discuss the disposition of publicly held property pursuant to Title 1 MRSA Section 405 (6)(C).  
Vote: 5-0.**

**14. Executive Session: Annual Performance Evaluation of the Town Administrator – Title 1 MRSA Section 405 (6)(A):**

**Motion by Gerry, second by Libby, that the Board enter into executive session to conduct the annual performance evaluation of the Town Administrator pursuant to Title 1 MRSA Section (6)(A). Vote: 5-0.**

**15. Adjourn:**

**Upon returning to open session, Motion by Gerry, second by Libby, to adjourn. Vote: 5-0.**

Respectfully submitted,  
Cheryl Ten Broeck  
Administrative Assistant