

Town of Mount Desert
Board of Selectmen
Agenda
Regular Meeting
Tuesday, January 16, 2018
Location: Meeting Room, Town Hall, Northeast Harbor

Present were: Chairman John Macauley, Selectmen Rick Mooers, Matt Hart, Martha Dudman, and Wendy Littlefield.

Also present were Town Manager Durlin Lunt, Fire Chief Mike Bender, Treasurer Kathi Mahar, Public Works Director Tony Smith, Police Chief Jim Willis, Officer Kevin Edgecomb, and Town Clerk Claire Woolfolk.

Members of the public were also present.

I. Call to order at 6:30 p.m.

Chairman Macauley called the meeting to order at 6:30 PM.

II. Public Hearing(s)

A. Warrant for Special Town Meeting January 29, 2018

Discussion was held regarding the proposed Special Town Meeting scheduled for January 29, 2018, and the Moratorium Ordinance regarding the retail sale of Marijuana to be discussed.

Jerry Miller noted the Warrant Committee offered no recommendation on the Moratorium wording. The Warrant Committee felt it was more complicated than necessary. Chairman Macauley reported he had read it several times, and felt the wording was necessary to cover the intent of the Moratorium. Town Manager Lunt said this was boilerplate Moratorium wording provided by the Maine Municipal Association (MMA). The Town's Council reviewed it and deemed it appropriate.

Mr. Miller asked if Moratorium Ordinance wording is usually this long. Town Manager Lunt did not know the length of other past Ordinances; he had not encountered another Moratorium during his years with the Town. Selectman Mooers reported that the length of a Moratorium is usually based on the subject. This Moratorium seems to be the model being used in other Towns. The State itself is under a Moratorium until February. Many Towns are implementing Moratoriums to wait and see what the State does.

Town Manager Lunt noted that in the Bill currently drafted, there is an "Opt-In" provision. This means that a Town must take affirmative action to allow sales of marijuana, and until then the Town does not allow such sales. It has not been determined whether this will remain the final wording of the Bill, or whether the Governor will sign the Bill.

It was not known whether anyone had voiced an interest in opening a retail store in Mount Desert.

1 Phil Lichtenstein reiterated that this Moratorium was the Town's "wait and see" approach
2 to the issue. He asked why the issue could not wait till Town Meeting. Chairman
3 Macauley stated this was their effort to avoid being caught should the State fail to pass
4 Legislation. It's essentially insurance against any potential gap being created, and
5 applications for retail sales being submitted in that gap. A Moratorium gives the Town
6 breathing room to create policies appropriate for the community.
7

8 Selectman Dudman reminded those present that this is only a Moratorium that pauses the
9 process so the Town can create rules appropriate to their situation. Currently there are no
10 ordinances or rules in place for retail sale of marijuana. If an application came to the
11 Town right now, there is no framework in place to review it appropriately. Selectman
12 Mooers noted that a Town Meeting provides the opportunity for all interested citizens to
13 speak on the subject. They may very well vote down the Moratorium.
14

15 Mr. Miller asked if there was a process in place to draft the rules and ordinances. Mr.
16 Lunt noted the State needs to act first, so the Town knows what they're working with.
17 There's no way of knowing when the State will approve the bill. Mr. Miller felt the
18 State's wording would not be ready for approval until Town Meeting 2019. Mr. Lunt
19 agreed. He noted if the Town prefers not to have a Moratorium that's acceptable,
20 however he'd like the residents to have the opportunity to voice their feelings. Selectman
21 Mooers echoed Mr. Lunt's sentiment; the Town won't know how their ordinance should
22 read until the State provides their wording.
23

24 Mr. Miller noted that a Moratorium and an extension allows for approximately a year to
25 craft the Town's wording. He asked what process will be in place to move on creating
26 the Ordinance?
27

28 Mr. Lunt stated that if the Legislation passes in its current form, the Town is required to
29 do nothing, unless it wants to adopt retail sales. The community would have to come
30 forth and request such an adoption. At that point the process would be put in place to
31 create appropriate ordinances.
32

33 Public Works Director reiterated that a Special Town Meeting on the 29th allows the
34 voters the opportunity to state their case. Creating the Ordinance will take time.
35

36 Ellen Kappes inquired who will write the Ordinance. Town Manager Lunt guessed the
37 Planning Board would be involved, along with Police Department input, and perhaps
38 other interested parties. Selectman Dudman noted that in the past interested citizens have
39 been invited to be a part as well.
40

41 Steve Anastacia voiced concern over the wording of the Moratorium. He referred to
42 Section Two. Mr. Anastacia felt the wording, specifically parts using terms such as
43 "adverse health and safety effects", "potential illicit sales of marijuana", and "use by
44 minors" is biased to create fear and prejudice against marijuana. He hoped the
45 Moratorium could be worded to succinctly state without bias the Moratorium's purpose
46 and whether it would serve the Town or not. The wording should be based on the facts,
47 and not fears of what might happen.
48

1 Caroline Pryor voiced concern over holding a Special Town Meeting on January 29. She
2 felt that the constituents attending could be less than a true representation of the
3 community, particularly at this time of year. She cited electorate in 2016. She worried
4 that the representation would be skewed from the 2016 electorate. She opined that the
5 regular Town Meeting would be better attended and allow for a better forum of
6 discussion.

7
8 Chairman Macauley reiterated that the Moratorium is only a short stop-gap measure. It is
9 hoped that a Moratorium will allow the Town to get fully informed and fully prepared
10 before making decisions on the issue. The Moratorium will not prevent the Town from
11 having retail stores. It only provides breathing room so the Town can think about
12 structuring language for a Zoning Ordinance. It's the best way to be prepared for what
13 could be a significant development in the community.

14
15 Ms. Pryor asked whether the intent was to prevent a valid application that comes in
16 during the gap between February 1 and the Town Meeting from being approved?
17 Selectman Hart felt that the intent was to prevent the Town having to address an
18 application without appropriate information from the State, and having the appropriate
19 time to obtain citizen input. It was doubtful that multiple applications will be submitted.
20 He felt if the Town can take the time to get their ordinances and rules right, then it's
21 worth it.

22
23 Selectman Littlefield noted the Board had begun discussion of this issue back when they
24 believed the State would have information available on February 1st.

25
26 Brian Henkel felt it would be better to wait till Town Meeting. Both drafts of the
27 Legislation have included the opt-in clause that will require the Town to affirm their
28 desire for retail sales prior to allowing such. This will already protect the Town. He felt
29 a Special Town Meeting will not provide appropriate representation for such a vote.
30 Setting a Moratorium later in the year, at the Regular Town Meeting has better timing for
31 the Town to create what Ordinances and rules are deemed best. Setting a Moratorium
32 now, without the State's Legislation does not allow the Town to use the Moratorium
33 effectively. He noted that a Moratorium lasts 180 days and can only be extended another
34 180 days. If the State's Legislation lags, it could cause a real problem for the Town
35 under a Moratorium.

36
37 Selectman Dudman pointed out that the opt-in clause may not be there. Mr. Henkel
38 agreed it was a risk, however it was a risk either way. He noted that a Moratorium of
39 sorts is already in place because the State hasn't acted. He felt it was questionable
40 whether the State will have acted by the time of the Regular Town Meeting.

41
42 Selectman Mooers agreed that the Legislation would have to be enacted as Emergency
43 Legislation in order to take effect immediately.

44
45 Town Manager Lunt worried that Legislation could come to pass before May, especially
46 as they've already had Legislation vetoed and are working on the next iteration. They are
47 merely revising at this point. A Moratorium is not needed if the Opt-in clause was in
48 place.

1
2 Selectman Dudman asked if the Town voted to opt in, the Town would need to have a
3 plan in place. A Moratorium will most likely be necessary at some point. Mr. Lunt felt it
4 was just not known.

5
6 Ms. Kappes asked that if the State succeeds in a timely manner, how long will the Town
7 have to put together a Special Town Meeting. Mr. Lunt felt that even if the Legislation
8 passes, it still must be written. He guessed there would a good amount of time between
9 passing the Legislation and creating the regulations around that Legislation.

10
11 Mr. Miller noted that if the Opt-in is included, the Town can do that whenever they want.
12 The Ordinances and rules could be developed prior to opting in.

13
14 Selectman Hart noted that he wasn't willing to assume the opt-in would remain in the
15 Legislation, but even if they do pass Legislation, there would still be time to pull together
16 a Town Meeting and vote on a Moratorium. He noted there's approximately a 30-day
17 timeline to schedule a Town Meeting.

18
19 Selectman Dudman noted that the reason for the Town's haste is that they were under the
20 assumption that it would happen imminently. Mr. Lunt confirmed that the January 31
21 deadline will indeed happen, unless the State puts in an extension. It's anyone's guess
22 whether they extension will be in place.

23
24 Selectman Hart suggested that if the Town Meeting happens on January 29th, and the
25 Town can turn the Moratorium down, a Moratorium in the future was still a possibility.

26
27 It was noted a Special Town Meeting can be cancelled.

28
29 Selectman Mooers noted that unless the Legislation is passed as an Emergency, it will
30 still be 90 days until Legislation takes effect.

31
32 Chairman Macauley agreed that he did not want to waste Moratorium time before the
33 State had passed their Legislation. Selectman Dudman agreed, but wondered if the
34 Special Town Meeting should be scheduled, and then cancelled if deemed not necessary,
35 due to the State's action. Mr. Lunt would check into it.

36
37 Ms. Kappes felt that cancelling at the last minute would only confuse the residents.
38 Selectman Dudman suggested just having the Town Meeting and then voting it down. It
39 was suggested that perhaps a debate or organized discussion of both sides of the issue
40 could be held.

41
42 Chief Willis noted that if the Town wants to have the Special Town Meeting, the notice
43 must be posted by Friday, January 19th. It was felt that the Ordinance probably could not
44 be re-worded and edited before Friday. Several voiced their concern at the bias contained
45 in the wording. Mr. Henkel added that the wording makes no mention of the February 1
46 deadline; the very reason for having a Special Town Meeting. Mr. Henkel also noted the
47 Moratorium instructs the Town to review the Act. The State's Statutes regarding that Act
48 are what, in fact, the Town needs to review and not the Act itself.

1
2 Selectman Mooers mentioned that there are Towns who have instituted Moratoriums
3 already, without the State having passed any Legislation yet.
4

5 Ms. Kappes voiced concern that the 180-day Moratorium, plus an additional 180-day
6 extension, would put the Town to February 2019. This would create a rush to get through
7 the Warrant process before the Regular Town Meeting and create a three-month gap.
8 Voting in a Moratorium at the Regular Town Meeting puts the timeline out a bit further,
9 allowing the Town more time.
10

11 Chairman Macauley pointed out that if the opt-in clause is not in place, the Town may
12 have little choice should an application for a business come before the Town.
13

14 Ms. Pryor pointed out that the current situation with the State is a de facto Moratorium.
15 She suggested holding off a Moratorium now to allow the Town as much time as possible
16 once the State Legislation is passed. And if the Town feels they are vulnerable they can
17 schedule a Special Town Meeting at that time. She noted that it was stated earlier in the
18 meeting that it takes just 10 days to post a Town Meeting. Further, she hoped the
19 referendum wording was simpler, and not politically motivated rhetoric.
20

21 Selectman Hart noted the expense in writing and editing such wording. Is re-wording the
22 language worth that expense?
23

24 It was noted the "Whereas" clauses have no impact and can be easily deleted without
25 changing the meaning or the intent of the referendum. Chairman Macauley felt that
26 presenting the Town's attorneys with an edited version of the original boilerplate for their
27 review should be sufficient. Chairman Macauley offered to edit the document. It was
28 Chairman Macauley's opinion to delay the Special Town Meeting, work on the wording
29 for the Moratorium, and wait till the regular Town Meeting or till such time as a Special
30 Town Meeting was deemed necessary.
31

32 Ms. Kappes felt that the Town could write a Moratorium of their own, and legal counsel
33 was not necessary. It was noted that a legal opinion was necessary to ensure the
34 Moratorium was viable and would do what the Town intends it to do.
35

36 Gordon Beck asked that if a Special Town Meeting is held, and the Moratorium is voted
37 down, another proposal can be done at the regular Town Meeting. It was agreed that
38 another Moratorium proposal can be presented at a future Town Meeting.
39

40 MOTION: Selectman Hart moved, with Selectman Littlefield seconding, to close Public
41 Discussion. Motion approved 5-0.
42

43 Town Manager Lunt noted he would check with Maine Municipal to verify that if the
44 meeting hasn't been posted it can be cancelled. He felt a meeting must be posted for
45 seven days, which it has not. Town Clerk Woolfolk noted the newspaper posting will
46 come out on Thursday. It was felt the physical posting is the official. Mr. Lunt agreed to
47 look into it to verify the process.
48

1 **III. Minutes**

2 *A. Approval of Minutes from January 2, 2018*

3 MOTION: Selectman Dudman moved, with Selectman Mooers seconding, approval of
4 the January 2, 2018 Minutes as presented. Motion approved 5-0.

5
6 **IV. Appointments/Recognitions/Resignations**

7 *A. Appointment of Diana De Los Santos as Part-time Animal Control Officer for the*
8 *Town of Mount Desert at an hourly rate of \$10.00 effective January 17, 2018*

9 MOTION: Selectman Mooers moved, with Selectman Hart seconding, appointment of
10 Diana De Los Santos as Part-time Animal Control Officer for the Town of Mount Desert
11 at an hourly rate of \$10.00 effective January 17, 2018, as presented. Motion approved 5-
12 0.

13 *B. Appointment of Donna C. Beals to the Warrant Committee*

14 MOTION: Selectman Mooers moved, with Selectman Hart seconding, appointment of
15 Donna C. Beals to the Warrant Committee as presented. Motion approved 5-0.

16 *C. Appointment of Brian L. Henkel to the Warrant Committee*

17 MOTION: Selectman Hart moved, with Selectman Littlefield seconding, appointment of
18 Brian L. Henkel to the Warrant Committee as presented. Motion approved 5-0.

19
20 **V. Consent Agenda**

21 *A. Department Reports: Public Works, Wastewater*

22 *B. Warrant Committee Minutes of January 9, 2018*

23 *C. Hancock County Planning Commission 2018-2019FY Membership Dues*
24 *Memorandum*

25 MOTION: Selectman Mooers moved, with Selectman Hart seconding, approval of the
26 Consent Agenda as presented.

27
28 Treasurer Mahar requested the Treasurer's Report be added to the Consent Agenda.

29
30 MOTION: After review, Selectman Mooers amended his Motion, with Selectman
31 Littlefield seconding, to approve the Consent Agenda as presented, and including the
32 addendum. Motion approved 5-0.

33
34 **VI. Selectmen's Reports**

35 There were no Selectmen's Reports presented.

36
37 **VI. Old Business**

38 *A. Authorize Town Manager to sign Memorandum of Understanding agreement with*
39 *Time Warner Cable Northeast LLC for Broadband Project as Voted by the Annual*
40 *Town Meeting May 2017*

41 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding, to authorize
42 the Town Manager to sign a Memorandum of Understanding Agreement with Time
43 Warner Cable Northeast LLC for Broadband Project as Voted by the Annual Town
44 Meeting May 2017, as presented. Motion approved 5-0.

45
46 Selectman Hart commended Town Manager Lunt and the Broadband Committee on the
47 work done.

1 *B. Update on the Planning/Detour for the MDI Marathon*

2 Officer Edgecomb stated that traffic would be closed on the Northbound traffic lane on
3 Route 102 from the blinking light at the intersection of Route 102 and the Pretty Marsh
4 Road, to the traffic light at the intersection of Routes 198 and 102. Four officers would
5 be required. It was noted that emergency vehicles from Southwest Harbor would need to
6 be given the right of way. The five-ton weight restriction would have to be waived on
7 Whitney Farm Road for the time, and traffic would have to be diverted there. The
8 Church in Somesville on Route 102 would have to be notified to make them aware of the
9 change, so they can notify their parishioners. The time of this road closure would be 9am
10 to 12 noon.
11

12 Chief Willis noted the added cost to the Town will be approximately \$1200 - \$1500. The
13 Marathon has agreed to pay the extra cost.
14

15 Selectman Dudman asked whether there was parking nearby for Church parishioners,
16 particularly the elderly. Officer Edgecomb noted there was. Chief Willis noted that if
17 the event grows further, additional departments would have to be called in to help at
18 additional cost.
19

20 MOTION: Selectman Mooers moved, with Selectman Dudman seconding, acceptance of
21 the Detour as presented. Motion approved 5-0.
22

23 Chief Bender noted there will be two Firemen on duty that day. They can be available,
24 unless a call comes in. It was additionally noted that perhaps personnel from the Coast
25 Guard Station in Southwest Harbor could assist.
26

27 **VII. New Business**

28 *A. Warrant Committee Discussion of Registration of Votes*

29 Phil Lichtenstein broached the subject of showing the vote count for Warrants. Jerry
30 Miller suggested at the least wording along the lines of "recommend with dissenting
31 opinion". This would show the residents of the Town that Warrant Articles are not
32 simply unanimously passed through, and that discussion and dissent are had.
33

34 Selectman Hart felt that actual votes provided in the Warrant would make the process
35 more efficient. Chairman Macauley agreed that having the number would be good. It
36 may promote more discussion.
37

38 MOTION: Selectman Dudman moved, with Selectman Hart seconding, to include vote
39 count in the Warrant Articles as they appear at Town Meetings. Motion approved 5-0.
40

41 *B. Request for the Release and Expenditure of \$4,745.00 from the Communications*
42 *Reserve Account 4040800-24406 for the Purchase of Dell Server*

43 MOTION: Selectman Littlefield moved, with Selectman Hart seconding, release and
44 expenditure of \$4,745.00 from the Communications Reserve Account 4040800-24406 for
45 the Purchase of a Dell Server, as presented. Motion approved 5-0.
46

47 *C. Public Works Budget Review*

1 A review was made of the Public Works Budget. Public Works Director Smith noted the
2 budget is up approximately \$66,000. This increase is based on payrate increases and
3 benefits increases, and beyond the department's control. The Operations and
4 Maintenance portion is level.

5
6 Selectman Dudman inquired about the Buildings and Grounds account, which seemed
7 low. Mr. Smith noted the number had not been available at the time of printing the
8 budget and had since been corrected.

9
10 Mr. Smith noted that the Environmental Sustainability Budget was up slightly as well.

11
12 *D. Town Report Cover and Dedication*

13 Discussion ensued regarding the Town Report Cover and Dedication. Town Manager
14 Lunt was pursuing some suggestions from the Board.

15
16 Mr. Lunt agreed to provide some pictures for the Board to choose from for the Cover. It
17 was suggested a photo contest for the cover at some future date.

18
19 **VII. Other Business**

20 Selectman Littlefield noted that the first step was for Town Manager Lunt to verify with
21 Maine Municipal that the Special Town Meeting can be cancelled before it gets posted.
22 It can either be not posted and cancelled, or it can be posted, and cancelled at a later date.
23 Selectman Hart noted the Town has up to January 26th to cancel if it's posted. Mr. Lunt
24 felt better calling to verify.

25
26 If the meeting is posted, there would have to be a special Board of Selectmen's meeting.

27
28 Town Manager Lunt felt the best option might be to Table it, pending approval from
29 MMA to cancel, so the Board does not have to reconvene in a special meeting.

30
31 Selectman Dudman reiterated that if the Special Town Meeting is cancelled, and then the
32 State does not resolve the Legislation or extend, the Board would have to start the process
33 over.

34
35 MOTION: Selectman Littlefield moved, with Selectman Dudman seconding, to cancel
36 the Special Town Meeting pending verification that cancelling can be done prior to
37 posting the meeting. Motion approved 5-0.

38
39
40 **VIII. Treasurer's Warrants**

41 *A. Approve and Sign Treasurer's Warrant AP1842 in the amount of \$279,798.19*

42 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding, approval of
43 Warrant 1842 in the amount of \$279,798.19 as presented. Motion approved 5-0.

44 *B. Approve Signed Treasurer's Payroll, State Fees, and PR Benefit Warrants AP1840,*
45 *AP1841, and PR1816 in the amounts of \$1,466.50, \$60,358.53, and \$104,282.29,*
46 *respectively*

47 MOTION: Selectman Mooers moved, with Selectman Hart seconding, approval of Signed
48 Treasurer's Payroll, State Fees, and PR Benefit Warrants AP1840, AP1841, and PR1816 in

1 the amounts of \$1,466.50, \$60,358.53, and \$104,282.29, respectively, as presented. Motion
2 approved 4-0-1 (Littlefield in Abstention).

3 *C. Acknowledge Treasurer's School Board AP/Payroll Warrant 14 in the amount of*
4 *\$64,948.69*

5 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding,
6 acknowledgement of Treasurer's School Board AP/Payroll Warrant 14 in the amount of
7 \$64,948.69, as presented. Motion approved 5-0.

8
9 **X. Adjournment**

10 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding, adjourning.
11 Motion approved 5-0.

12
13 The meeting adjourned at 7:53PM

14
15 Respectfully Submitted,

16
17
18
19 Wendy Littlefield, Secretary
20