

**Town of Mount Desert**  
**Selectboard Special Meeting Minutes**  
Thursday, May 27, 2021  
Location: Zoom Meeting

This Meeting was held via remote access.

Selectboard Members Present: Chair John Macauley, Martha Dudman, Matt Hart, Wendy Littlefield, Geoff Wood

Town Officials Present: Town Manager Durlin Lunt, Tax Assessor Kyle Avila, Public Works Director Tony Smith

Members of the public were also in attendance.

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

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

**II. New Business**

*A. Discussion on whether to request the Municipal Review Committee to call a special to review the changes associated with the sale of the Hampden based Coastal Resources of Maine waste solid waste treatment plant to a new company.*

Chair Macauley stated the meeting was called to discuss whether to request the Municipal Review Committee (MRC) to call a special meeting to review changes associated with the sale of the Hampden based Coastal Resources of Maine waste solid waste treatment facility to new purchaser Delta Thermal Energy (DTE).

Municipal Review Committee Executive Director Michael Carroll referred to the notice the Town received regarding the Fundamental Matters, meaning points in the waste supply or lease agreement that either party has requested to change during negotiations. Requested changes require MRC member notification. The matters are:

- Option to purchase the land - The current MRC lease agreement allows for the facility owner to purchase the land at the end of the initial term. In this type of acquisition lenders want the option of possible land ownership as part of the collateral. Land sale cannot happen until DTE shows long-term reliability and stable operation of the facility for nine consecutive months. July and August must be included in the nine consecutive months. No sale will occur for some time, and DTE is not required to purchase.
- Rebates – Currently gross revenue must hit a minimum of 16 million per year before rebates occur. MRC hopes to replace rebate language in the agreement with a shared tipping fee system. Shared tipping fees start once the nine-month performance test is achieved. At that point DTE will be required to refund back a specific dollar amount per ton.
- Terms – there are two agreements regarding terms, making this fundamental matter numbers 3 and 4. DTE is requesting to reset the clock on the current natural

1 waste supply agreement and also the lease agreement to a full 15 years to provide  
2 DTE the chance to recoup their investment. Both agreements are approximately a  
3 year and a half under way.  
4

5 If the nine-month period is not satisfactory, the MRC will not exercise the option to  
6 purchase the land. Ms. Dudman asked if there were other repercussions if DTE is found  
7 to be unsatisfactory. Would the MRC remain tied to this company? Consultant for the  
8 MRC George Aronson stated there is an outside date in the agreement. DTE will be in  
9 default if they fail to achieve sustainable, stable performance that meets diversion rates  
10 and other provisions of the agreement by that date. This makes it a requirement that DTE  
11 perform as indicated in the agreement, meet the diversion targets mandated by the DEP,  
12 and stay in compliance with the existing set of permits.  
13

14 Should DTE go into default there are options regarding how to proceed, depending on the  
15 type of default and what is necessary to repair it. If the default is due to technical  
16 performance the lenders can step in to cure the performance issue. If the lenders fail to  
17 act to cure performance issues, then MRC can terminate the site lease.  
18

19 If DTE has already purchased the land before going into default, there are protections  
20 within the site lease regarding the operation. The MRC's goal is to retain protection as if  
21 the MRC were the landlord, even if DTE owns the land. A number of provisions  
22 regarding DTE's performance transfer from the site lease to the Master Waste Supply  
23 agreement if the option to purchase the land is exercised. As an example, if DTE is not in  
24 compliance with the DEP permit the MRC will have the ability to enforce it under the  
25 Master Waste Supply Agreement, even if the site lease is terminated. Additionally, the  
26 MRC will have enforcement authority for maintaining diversion requirements.  
27

28 Phil Lichtenstein asked about ownership of the building and equipment on the land. Mr.  
29 Aronson noted the building and equipment are still under the technical ownership of  
30 Coastal Resources of Maine (CRM) which is in default, putting the property into  
31 receivership. Receivership allows the bond holders to sell the building and equipment to  
32 DTE. The MRC has never owned the building or equipment. If there is a default  
33 situation with DTE, then the MRC will negotiate to see what the next step is. Should this  
34 occur there are some things that give the MRC leverage:  
35

- 36 • The MRC represents the largest customer group. The current bond holders  
37 understand - and presumably the lenders moving forward will understand - that  
38 the facility is worth more as a going concern with the customer than as used  
39 equipment and scrap metal. This incentivizes DTE to negotiate with the MRC to  
40 maintain the facility's value as a going concern. To do this the facility must  
41 comply with the permits, diversion requirements and contractual obligations, and  
42 meet all the obligations for oversight as well as additional provisions for MRC  
43 approval. DTE is incentivized to perform the way the contract is written.
- 44 • Extra levels of oversight have been incorporated, so the MRC is more involved in  
45 the facility.

- The MRC is a Maine entity. They have relationships with the DEP, suppliers, and the municipalities. These relationships are important to any successful endeavor.

Mr. Aronson asserted that the best way for members to manage MSW with a maximum diversion rate from landfill and incineration is to reopen this facility. This relationship with DTE is the best chance for that to happen.

Mr. Lichtenstein believed having contractual agreements and permits in place should make such an operation attractive to any buyer. He asked if a nine-month performance record is enough to feel comfortable handing over the land.

Mr. Aronson believed the purchase value was approximately \$7 million. With regard to the question of nine months, Mr. Aronson felt there were a couple of points to consider:

- The length of nine months is the outcome of negotiation and the best the MRC was able to get.
- The facility was at one point up and running, providing insight into its operational strengths and weaknesses. There is some knowledge of what needs to be done.

Regarding operation, improvement is needed in the back end of the processing. Data has been monitored since the first truckload arrived in April 2019 through suspension of operation in May 2020. The facility has unique elements, including a back-end process oriented toward pulp production. It's believed the pulp production operation might be a good potential partner to some of the existing mills in Maine. There are other operations on the East coast similar to this facility that have been operating successfully. The MRC is in contact with other facilities.

Mr. Carroll clarified the nine months does not start when the deal is closed. DTE must provide a two-week notice to the MRC regarding when they would like the clock to start. Two perfectly operating weeks are required before the clock can start on the nine months. There are provisions throughout the agreement regulating ramp-up time and when waste needs to hit the floor. The MRC, just as the Municipalities, want the facility up and running. Mr. Aronson noted this was Phase 1. Phase 2 and 3 include additional beneficiation facilities on site.

Mr. Lichtenstein felt comfortable with the front end of the process. He voiced concerns regarding the back end of the process. He pointed out the last operator had difficulties with the back end of the operation.

Mr. Lichtenstein recalled the original Zoom meeting with DTE. They suggested at that time that sludge from out of State might be brought for processing. Mr. Lichtenstein felt this was an unpopular suggestion among Municipalities. DEP permits would be required for bringing in out of State materials. Mr. Aronson noted the MRC is equally concerned about the possibility. The document language is clear that the facility will open using the existing technology. Looking further down the road, questions could arise regarding next steps and expanding the campus. Provisions in the site lease preclude out of State waste. There could be a question regarding how enforceable they are. It's been the MRC's

1 intention that this facility serves Central Maine. Economically speaking, there's ample  
2 material in Maine to meet the facility's need, including wastewater treatment sludge  
3 should the facility get to that point at some future time.  
4

5 Chair Macauley asked what percentage of the solid waste made it through the  
6 fermentation process and into methane gas.  
7

8 Mr. Aronson noted methane production is part of the back-end difficulties. Methane  
9 production was lower than originally anticipated. Methane is recovered from organics.  
10 That part of the processing module never got to the point of fully functioning. Methane  
11 is also recovered from the pulping process. The low production has been attributed to the  
12 plastics in the waste stream. Plans are in place for improving plastic recovery. There are  
13 relationships with potential customers of the product, and there is a relationship with the  
14 UMO chemical engineering department and their product research program. If the  
15 process is successful, the operation will be able to create from mixed paper a pulp or  
16 chemical product, thus increasing its value. The hope is to work on achieving higher  
17 levels of diversion.  
18

19 Mr. Aronson explained that one of the objectives moving forward is to retain the  
20 incentives for Towns to move forward with waste reduction. Solid Waste requires long  
21 term commitments to make the capital necessary for operation. There is a natural tension  
22 between these two drives. No individual Municipality has a delivery guarantee. Delivery  
23 guarantee is pooled among all members of the MRC. Commercial waste coming from  
24 outside the MRC community counts toward the MRC delivery guarantee. Additionally,  
25 the operator is obligated to take more waste if they have the capacity. If a Town like  
26 Mount Desert reduces its waste, it makes room for the operator to take in more waste at a  
27 higher tipping fee. This incentivizes DTE to work with the MRC on waste reduction.  
28 Additionally, the original rebate structure has been revised. The complicated sharing  
29 formula was replaced with DTE paying the MRC by the ton. If the MRC reduces its  
30 waste, then DTE makes a smaller payment. This incentivizes DTE to work with the  
31 MRC on waste reduction.  
32

33 Chair Macauley asked Mr. Carroll to clarify the role of the MRC as the relationship  
34 moves forward.  
35

36 Mr. Carroll explained that monthly stakeholder meetings between the MRC and DTE are  
37 part of the agreement. DTE must share their operational plan with the MRC, and the  
38 MRC approves the plan and any changes made to it. The MRC will receive reports on  
39 waste coming in and product going out. DTE has been required to get a performance  
40 bond in case the MRC is required to step in at some point. This will provide available  
41 funds to keep the plant operating. Mr. Carroll confirmed the MRC will continue in the  
42 role of collective bargaining agent and mediator.  
43

44 Mr. Aronson added that the MRC has required DTE to require its representative and  
45 general manager to live in Maine and be based at the plant. The MRC has been involved  
46 in the hiring process for the general manager.

1  
2 Mr. Hart mentioned that the previous operator had issues with permitting delays,  
3 specifically with the briquettes they intended to produce. He asked the status of that  
4 permit. Mr. Carroll confirmed that permit is in place. The MRC has been working  
5 closely with the DEP, and all permits are in place and have been preserved. The DEP has  
6 assured the MRC that those permits can be transferred to the new operator.  
7

8 Mr. Hart believed the Selectboard's responsibility, based on the agenda, is to review the  
9 requested changes to the contract and decide if there is an issue with any of the issues in  
10 any combination. Those changes include:

- 11 • Option to purchase the land
- 12 • Change in the rebate structure
- 13 • 2-year extension of the Master Waste Supply Agreement
- 14 • The site lease

15 Mr. Hart asked if any of the Board members had concerns about any of the changes.  
16

17 Ms. Dudman noted there has been concern voiced in the community. To consider those  
18 fundamentals, the Board must have an understanding of the overall setup. Mr. Hart  
19 agreed. However, if it comes to calling a membership meeting of the MRC, the Town  
20 has agreed such a meeting would be called only to address the changes proposed. He  
21 cautioned that it's easy to stray from these proposed changes.  
22

23 Chair Macauley believed it went beyond the four points. He was concerned with rumors  
24 that the MRC would at some point withdraw from their role overseeing the process and  
25 providing management. Ms. Dudman agreed; she would not feel comfortable with the  
26 option to potentially purchase the land without some oversight of that process.  
27

28 Resident Caroline Prior believed a major issue to be the buyer of the operation, Delta  
29 Thermo Energy, and their suitability. She voiced concern about the possibility of land  
30 sale and the transfer of the solid waste agreement to the operator. Who is DTE, who is  
31 behind DTE, and what is their track record? These questions need answers before a 15-  
32 year, multi-million-dollar agreement is signed. There are concerns about the integrity of  
33 this company.  
34

35 Mr. Aronson stated that the MRC's preference would be to have the original operator in  
36 place diverting 80% of the waste from landfill. Instead, that company defaulted on their  
37 loans, and the lenders are now in receivership and in control of the facility. It is the  
38 lender's decision who to sell to. The MRC is not the owner and has no leverage on the  
39 lender's decision. Like it or not, the lenders are moving forward with DTE. The MRC's  
40 options are to either find a way to work with DTE or to terminate the relationship, at  
41 which point the facility would likely be liquidated and sold for scrap.  
42

43 Ms. Prior agreed it was a desperate situation. She believed the MRC was shirking their  
44 responsibility by passing blame to the lenders. She detected the MRC's enthusiasm for  
45 the qualifications of DTE. Mr. Aronson stated that he has spoken only in reference to the  
46 deal. The MRC's intention has been to negotiate a deal with controls, protections, and

1 requirements in place that will meet the needs of the members. If the operation can be  
2 made to succeed it will be an asset as a waste diversion facility in Maine. The MRC  
3 began sponsoring the facility in 2013 as a way to divert waste from landfills and  
4 incineration to the greatest extent possible. Under the circumstances, Mr. Aronson felt  
5 the current situation is the best deal the MRC could get. He's negotiated with many solid  
6 waste operators and believes it best to find a deal with incentives, necessary control  
7 protections, and one which provides the services desired. The MRC believes that is  
8 where the situation stands.

9  
10 DTE has been working toward this agreement for several months. They contacted the  
11 bondholders in July of 2020. They've exhibited evidence of commitment and persistence  
12 since that time moving towards a deal. They've assisted with support in winterization and  
13 securing the facility.

14  
15 Ms. Prior requested Mr. Aronson speak to DTE's experience in terms of the operation of  
16 such a facility. Ms. Prior asserted that DTE's resume is fraudulent and asked about the  
17 MRC's comfort level with DTE. Mr. Aronson stated the MRC is comfortable proceeding  
18 in a deal with protections in place. This is the best chance, in the MRC's opinion, to  
19 achieve the goal of managing MSW and reopen the facility.

20  
21 Ms. Prior asked what the Town's exposure was in the deal. Manager Lunt stated the  
22 Town is a member of the MRC. There are 115 MRC member communities. The Town  
23 pays dues. There are provisions regarding withdrawal from the organization if it is  
24 deemed in the Town's best interest. The Town's exposure is the same as other member  
25 Towns in Maine. Manager Lunt felt the greater risk to the community is the chance the  
26 facility could be liquidated.

27  
28 Ms. Dudman requested an overview of the terms of the 15-year lease. What happens if  
29 the facility does not work, or if DTE goes into default? Can either party get out of the  
30 lease?

31  
32 Mr. Carroll answered that depending on the severity of the default, the MRC can put  
33 DTE on notice of default.

34  
35 Mr. Wood asked that if something happens during the length of the 15-year lease and the  
36 Town is unhappy with the way the MRC handles a default or other performance issues,  
37 does the Town have the option to withdraw from the MRC at any time without penalty?

38  
39 Mr. Aronson stated that the Town of Mount Desert does not have an option to withdraw  
40 from the MRC. If at some point during the term the Town decides to send their waste  
41 elsewhere, they would be in default of the joinder agreement. What would happen at that  
42 point would depend on the circumstances. The Town can contact the MRC with  
43 problems, and the MRC will try to solve those problems. The Town has some flexibility.  
44 There is no specific delivery obligation. A swap can likely be arranged if another Town  
45 were interested in joining. The MRC's goal is to meet the needs of their members. But  
46 ceasing delivery of waste to the site without notice would result in default.

1  
2 Mr. Hart added that with regard to the joinder agreement, the Board was in favor of it  
3 when the Town became a member of the MRC.  
4

5 Ms. Prior stated that the purpose of this meeting is to request the MRC hold a true public  
6 meeting. Other MRC meetings are structured so public comment is limited and kept  
7 under time constraints. Ms. Prior hopes the Town will facilitate for a true exchange  
8 between the MRC communities. The MRC should have no problem with such a meeting  
9 in the spirit of democratic process, in light of the changes being considered, and the fact  
10 that the Town is unable to get out of the agreement. Ms. Prior hopes the Town will find  
11 it appropriate to ask for a public meeting. In the face of a 15-year contract, such a  
12 meeting would be time well spent.  
13

14 Mr. Carroll stated that the MRC has had several special meetings. All meetings are  
15 advertised. Members are able to ask questions at those meetings. Representatives of the  
16 operation have been in attendance at two of the meetings.  
17

18 It was noted that in order for a meeting of all members to occur, 60,000 tons must be  
19 represented as supporting such a meeting. Mr. Carroll noted the Town of Bar Harbor,  
20 representing 5,000 tons, has voted to request a member meeting. Bar Harbor is the only  
21 Town to have done so.  
22

23 Mr. Hart reiterated that the changes proposed to the four fundamental matters stated are  
24 the reasons for which a member meeting can be called. He asked again if any members  
25 of the Board had issue specific to any of those matters. Concerns outside of the  
26 fundamental matters can be addressed through questions and emails to the MRC or  
27 discussion with MRC representatives. Selectboard members can participate in meetings  
28 the MRC holds.  
29

30 Ms. Littlefield agreed. She has no issue with the proposed changes. She's worked to  
31 educate herself on the issue, and while there are concerns, those concerns do not fall  
32 under the reasons for calling a meeting.  
33

34 Mr. Hart believed part of the delay in the process has been due to the MRC's due  
35 diligence efforts. If a problem arises, the Town has the ability to discuss them through  
36 Town officials, or MRC representatives. The Town will not have to try to work directly  
37 with the operator. Everyone's opinion is genuine; however, the four fundamental matters  
38 stated are the reason for holding a meeting.  
39

40 Mr. Wood wondered if this was an opportunity to call a meeting to review the whole  
41 process. Is the Board behaving responsibly if they pass on such an opportunity?  
42

43 Mr. Hart believed the agreement allows for a meeting to be called when changes are  
44 considered. The concerns stated so far are not with the four fundamental matters. Mr.  
45 Wood pointed out that part of the question is whether the company will be able to live up  
46 to the changes.

1  
2 Public Works Director Tony Smith recommends the acceptance of the four fundamental  
3 matters. Resetting the Term limit provides DTE with the same timeframe the previous  
4 operator was given, plus the benefit of the previous operator's learning curve and a larger  
5 funding source. Regarding the rebate structure, the one suggested is more  
6 straightforward. With regard to the land purchase option, this was requested by the  
7 lenders. Director Smith pointed out the MRC bylaws state a special meeting is called  
8 specifically to address changes to the fundamental matters. Such a meeting is not  
9 intended for a discussion such as this one.

10  
11 Chair Macauley agreed the four points are clear. His hope was to bring some clarity to  
12 the Town. He thought a meeting with MRC might help do so.

13  
14 Ms. Prior reiterated her assertion that DTE's resume is fraudulent. She challenged the  
15 Public Works Director to name specific facilities and communities DTE has operated in.  
16

17 Chair Macauley restated that the operation is in a foreclosure. The MRC and the Town  
18 have no choice in who is allowed to buy it. The choice of the buyer is in the hands of the  
19 bond holders. DTE is the buyer.  
20

21 Director Smith felt the MRC was fortunate to be allowed to be involved with the sales  
22 process. Mr. Carroll and Mr. Aronson have worked hard, and Director Smith trusts their  
23 efforts. The Town was asked to participate. Every step taken in this sale was made with  
24 the goal of protecting the MRC members. There are monthly meetings regarding the  
25 situation at which the MRC and the DEP are in attendance.  
26

27 MOTION: Ms. Dudman moved, with Mr. Wood seconding, to request the Municipal  
28 Review Committee to call a special meeting to review changes associated with the sale of  
29 the Hampden based Coastal Resources of Maine solid waste handling and processing  
30 plant to a new company.

31 Motion denied, 1-4 (Macauley, Hart, Dudman, and Littlefield opposed).  
32

33 Mr. Wood explained that he has a lack of faith in the company purchasing the operation,  
34 and their ability to adhere to any of the agreements. He wants more information. He  
35 understands those who have spoken have worked hard and they've done everything they  
36 can to put safeguards in place. The MRC must approve any operational changes, but if  
37 this company chooses to ignore that oversight, there is no substantive recourse. This  
38 company has a less than perfect history of following rules and telling the truth.  
39

40 Ms. Dudman agreed with Mr. Wood. She believed the MRC to be doing the best job  
41 possible with a bad situation.  
42

43 Ms. Littlefield agreed it was a difficult situation. She felt she had to put trust in the MRC  
44 to do their best.  
45

46 Ms. Dudman thanked those for attending the meeting.



1  
2 Mr. Carroll noted the Board can always reach out to him. He's been calling all members  
3 since the notice of change went out. Mr. Aronson thanked those in attendance for their  
4 input.  
5

6 **III. Other Business**

7 There was no Other Business.  
8

9 **IV. Adjournment**

10 MOTION: Ms. Dudman moved, with Mr. Hart seconding, adjournment.  
11 Motion approved 5-0.  
12

13 The Meeting adjourned at 7:46PM.  
14

15  
16 Respectfully Submitted,  
17

18   
19  
20 Wendy Littlefield