

October 2010

maine townsman

The Magazine of the Maine Municipal Association



FOWL ZONES
The Organic Movement
And Urban Farms

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maine townsman

The Magazine of the Maine Municipal Association

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The number of Mainers raising chickens for eggs and meat has tripled in the past seven years, a state official estimates. That means many municipalities are dealing with ordinances and zoning measures so that in-town residents – those with and without feathers – can co-exist.

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A Canadian economist explains why the politically popular notion of combining or regionalizing municipal governments is a statistical loser. Forced municipal “amalgamation” failed in Nova Scotia during the 1990s, he explains, as government costs went up, not down.

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MMA’s Risk Management Department delivered dividend checks totaling nearly \$1 million this fall. Also, read about how to care for vacant buildings and protect against identity theft.

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A new state law allows municipalities to defer senior citizens’ property taxes until they sell their properties or die. While the program is drawing interest in several Maine communities, tax collectors have concerns about implementation and municipal budgets could be affected.

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When should a municipality create an advisory board to solve a problem or take on a chore? How do the best boards and committees achieve their results? This article by a Florida expert examines the promise and pitfalls of advisory committees.

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COVER PHOTO: Chickens named “Blackie” and “Whitie” peer out of a chicken house at Patty Hopaluk-Gay’s home in Belfast recently. Hopaluk-Gay, her husband and three children have been raising chickens for about five years. (Photo by Jeff Pouland)



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A Message From MMA



by John Sylvester, MMA President, Selectman, Town of Alfred

Looking Back, Looking Ahead

So, what did you learn during your year as president? In my case, it's not so much what I learned as it is what was strongly reinforced.

Here's the easy stuff. Town officials across Maine know what needs to be done, they do it and they solve new issues as they arise.

Towns across Maine, generally, are great examples of well run, efficient organizations. Maine Municipal Association is nationally recognized for excellence and innovation. Staff members at MMA are not only experts in their chosen fields but also are people-oriented problem solvers who can be trusted and called upon to help.

Here's the hard stuff. Opinion leaders across Maine representing many disciplines continually call for a reduction in the number of Maine towns. These spokespersons usually state that larger is better, more efficient and less wasteful. While examples of municipal collaboration are cited and often repeated, not enough is reported or said about the many cooperative efforts that occur every day among Maine towns.

It is interesting to learn that when towns get challenged directly and examples of collaboration are cited in response, the challenger often expresses surprise that such efforts not only exist but they have for years.

Recently, a state Senator challenged a group of towns to share a service. He expressed surprise to learn that it was already occurring. One local official was surprised to learn that this service already was being provided across town lines in many parts of the state. This information had been shared with the Senator, who either didn't remember or was simply repeating the same tired line that towns don't work with each other.

What's the point? It is mandatory, not just important, that municipal officials establish and maintain trusting, respectful, ongoing relationships with legislators. Town officials must do this by every means available, creating new opportunities to communicate with legislators, while using

existing ways to talk to one another. In the absence of such a dialogue, legislators and other state government leaders will talk among themselves, and will do so using information that is often inaccurate. If we don't bother to provide the correct information, we pay the steep costs associated with legislation sponsored by anecdote and myth rather than data and facts.

Examples occur every day highlighting the gulf between state and local government. We are in the midst of an extremely important state election. While there are five candidates for Governor, few of their remarks have focused on any meaningful role for local government. That is nothing new, unfortunately.

It's also unacceptable. With more than 9,000 municipal officials in Maine, it is simply crucial that the candidates not ignore this resource and our collective wisdom, whether they are running for the Blaine House or the House of Representatives.

In my 17th year as an Alfred Selectman, I'm also aware that some towns across the state are not well-managed from time to time. We should be up front about this too, and need to help our colleagues when they experience problems. As our state and municipalities struggle to find a niche globally, our best effort must be given to meet today's challenges.

During my past nine-plus months as MMA President, I've become a much stronger advocate for local government. The challenges facing us are now well known. We also know how to respond to them.

I look forward to working with each of you during my remaining time as a member of MMA's Executive Committee. Thank you for the challenges and opportunities.

The future is, as always, full of hope and great moments. Although there is much work to be done, we should take pride in knowing that our model of local government, so successful for centuries, continues to work for Maine's 1.3 million citizens. [mm](#)



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A Chicken In Every Lot?

By Liz Chapman Mockler

Municipalities across Maine, including some of the largest, now allow residents to raise hens and other small animals within city or town limits in what one planner called a modern-day “back to the land movement.”

South Portland, Bath and Belfast are among the latest communities to approve land-use changes to allow for urban agriculture, with a focus on raising hens to produce organic eggs.

Orono, Camden and Brunswick are examples of other major municipalities that approved in-town chicken operations within the past year.

“It’s a real fad, it seems,” said Jeffrey Nims, Planner and Code Enforcement Officer in coastal Camden. “It caught on fast.”

There, town meeting voters in 2009 approved a referendum, inspired by a citizens’ petition, that allows any resident, regardless of the size of their property, to raise up to nine “small animals” – chickens and rabbits mostly, said Nims, who retired in September after 18 years.

There was no noisy debate during public hearings and the question passed easily, he said.

Roosters are not allowed, for obvious reasons, and raising hens has not raised Cain in the town of 5,200 residents.

“We’ve had no complaints,” Nims said.

TIMING IS EVERYTHING

The trend toward home-grown eggs started only a few years before the nation’s largest food recall – bad eggs from the Maine-linked DeCoster egg factory operations in Galt, Iowa,

last summer.

As of late August, the government had recalled a half-billion eggs traced to DeCoster, who received an unprecedented federal fine in the late 1990s for his poultry operations in Turner.

Because so much of Maine is already zoned for agriculture, the issue of small-time hen raising generally has not been an issue. In Camden, in 1992, residents could only raise small non-domestic animals on properties at least 2.5 acres in size. The 2009 vote removed the size requirements, since most in-town residents live on small neighborhood lots.

There are some restrictions, however. Nims said chicken farmers cannot slaughter their animals on their properties and they are banned from selling eggs or the manure they produce on a commercial basis.

Nims said he suspects some people may sell their products to neighbors, though.

Other restrictions include requiring the hens to be penned at all times. They also are not allowed on front lawns.

Like hens themselves, the idea of raising fowl within city limits didn’t get off the ground in Waterville, according to officials. Maine Senate Majority Leader Lisa Marrache started the discussion when she asked for a zoning

change to allow the practice.

But people in her neighborhood, and others around the city, said they were concerned about possible noise, stench and other issues that could result from urban chicken farms – however small and restricted. Marrache could not be reached for comment.

BANGOR COLLABORATION

In February, Bangor City Councilors initially balked at allowing urban chicken operations but Dan Wellington, Code Enforcement Officer, said he expects the council will endorse some form of the idea later this year.

Bangor planners collaborated with Portland and South Portland, using their ordinances as models for drafting changes to land-use laws allowing residents to raise hens. Dog kennels are allowed within city limits in Bangor, so many residents asked why they couldn’t raise chickens.

In 1974, the city outlawed urban farming by banning livestock and fowl in all residential zones.

“The idea was indefinitely tabled by the Council,” Wellington said, “but I believe we will probably pass something” in late 2010 or in early 2011.

He said an ideal time to pass a new ordinance would be during the winter months to give residents time to plan their chicken operations and city of-

COLLABORATION CORNER

This article continues a regular feature in the *Maine Townsman*, highlighting ways that municipalities work together to become more efficient and better serve citizens.

Liz Chapman Mockler is a freelance writer and editor from Augusta, lizmockler@hotmail.com

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officials time to develop a game plan should problems arise.

Wellington said some children invariably get chicks for Easter and then have no idea what to do with them once they grow into hens or roosters. What many people do, he said, is let them loose in the city forest or along the Kenduskeag Stream.

In one instance, someone's rooster ran away from home and "took to crowing at the traffic lights. The neighbors were wild," Wellington recalled.

People used to ask Wellington why he couldn't shoot the wayward roosters and chickens. "You can't shoot what you can't see," he said, noting that the critters are agile and it would take time to hunt them down.

Wellington said there are eight to 10 Bangor residents "pushing hard" for the change and he suspected that because of dog kennels, veterinarian offices and crematories within city limits, the council eventually will approve the idea.

As with other municipalities, raising chickens in the city will come with restrictions should the council pass an ordinance change, Wellington said.

STATEWIDE TREND

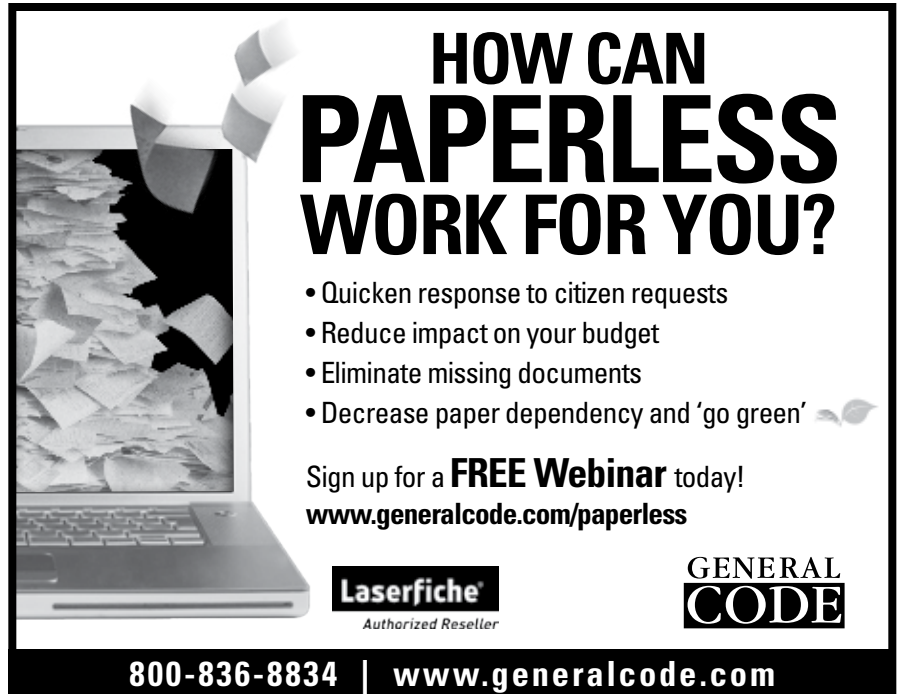
Bill Morrison, a poultry health ex-

pert for the state Department of Agriculture, estimated that the number of Maine cities and towns allowing chicken operations has tripled in the seven years he's worked for the department.

No firm figures are kept, so Morrison said his estimate is based on on-

the-ground experience over the years.

Morrison said the state has no law or regulations regarding in-town chickens; it's a purely local control issue. But he confirmed that most municipalities do not allow in-town residents to own roosters because they



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THE BIG PICTURE IS CUSTOMER SATISFACTION

crow too much.

He said there should not be any sanitary or disease concerns from “backyard poultry” as long as people keep their hens away from wildlife, including wild birds, and practice good sanitation in the hen houses.

Morrison said some people consider their hens not only egg producers but pets as well.

“When I was a boy, chickens were chickens,” said the North Carolina native. “Now (some) people treat them like pets. Some even let them in their houses, which is something I would not recommend.”

According to Morrison, people are increasingly upset about reports of how large chicken factories treat the birds – such as cutting off their beaks and keeping them in small cages with little or no room to move.

Some don’t like the idea of buying eggs from chickens that have been fed antibiotics. One alternative is raising their own chickens, even if the cost is higher.

“It costs more to raise your own chickens for eggs than it does to buy them in a store, but people want their own eggs,” he said. “They want just enough to feed their families.”

SIX HEN LIMIT

Belfast City Planner Wayne Marshall does not expect a problem with the city’s new residential zone changes that will allow property owners to raise up to six hens in their backyards.

Marshall said the idea came from a resident, through the council and then to the Planning Board. He said there were no serious concerns aired about the idea when it was passed on Aug. 3. Marshall also predicted there would not be problems in the future if residents respect their neighbors by taking care of their hens responsibly and abiding by the new rules.

The zoning changes “were targeted to some densely developed residential zones” inside the Belfast bypass – in other words, between the major Routes of 1 and 3 and in the downtown shopping district.

Like many Maine communities, Belfast already allowed farming in agricultural zones. The changes were made so families could operate small-time and personal chicken operations in non-agricultural zones. The chickens are supposed to be raised for

eggs, but city officials know that some people will likely kill the birds to feed their families, in addition to gathering eggs, Marshall said.

Under the recent Belfast zoning changes, chickens will not be allowed along the waterfront or in industrial parks.

“I think this is A-OK to do it,” Marshall said. “If everything is done well and people are respectful of their neighbors, I think there will be very few questions or concerns.”

Belfast officials also relied on ordinances from other Maine municipalities, including Brunswick, Westbrook and South Portland.

As with Camden, Belfast residents

must keep the chickens enclosed at all times, meaning the eggs will be “organic” but they do not come from “free range” chickens, Marshall said.

Hens cannot run wild or peck around the front yard under the new Belfast rules. Roosters are prohibited in the residential zones.

Nothing changes for property owners living in agricultural zones, Marshall emphasized.

Belfast residents will be asked to pay a one-time \$25 fee to erect a chicken house on their property. That permit may be transferred should the family sell their property.

Marshall said city officials were aware that a half-dozen families were



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already raising hens in residential zones before they made the ordinance changes. The Council and Planning Board gave them six months to comply with the new rules.


FINE IN FORT KENT

Kenneth Michaud, Fort Kent Police Chief since 1977, used to raise 50 roosters and other small animals such as geese and pheasants on his residential property. He gave it up because it became too much work, Michaud said recently.

There are many families in the northern Maine town that already raise chickens on their properties – even any town ordinance that the chief knows about, he said.

“There are five (homeowners) in the residential area” who are raising hens ... but they say they’re pets,” Michaud said. “What are you going to do?”

Another homeowner raises baby goats, he said.

As long as the town doesn’t get complaints, “we don’t bother them,” Michaud said of the small-scale animal farmers. “We’ve had no complaints about chickens at all.” 



Patty Hopaluk-Gay looks at a fresh egg after gathering it from a small chicken house in the backyard of her Belfast home recently. Hopaluk-Gay, her husband and three children have been raising chickens for about five years. Hopaluk-Gay said they get about two eggs per day from three chickens they have on their property. (Photo by Jeff Pouland)



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MRRA was formed with the intent to foster professional solid waste management practices in the recycling and solid waste arena.

MRRA is committed to the development of environmentally sound solid waste practices and other forms of resource recovery that will benefit Maine communities.

Some of the goals of the organization are as follows:

- Facilitate communication between Association members, recycling markets, equipment suppliers, State and Federal government, and national associations, as well as information exchange among members.
- Assist with the marketing of recyclable and reusable materials.
- Compiling information relevant to the education and technical needs of Maine recycling programs.
- Promoting market development and providing cooperative marketing opportunities.

***The September 2010 issue of The Scrap Paper, MRRA's newsletter, is now available for download:
http://mrra.net/admin/assets/Scrap_Paper_2010_September.pdf***

Our Mission

The Purpose of Maine Resource Recovery Association is:

- To foster professional solid waste management practices;
- To further the development of recycling and other forms of resource recovery as cost-effective components of environmentally sound solid waste management in Maine communities; and
- To assist with the marketing of recyclable and reusable materials.

The Goals of the Association

- Promoting communication and information exchange between Association members and markets, equipment suppliers, State and Federal Government, and other State and national associations, as well as information exchange among members.
- Compiling and development of other information relevant to the education and technical assistance of Maine solid waste management and recovery programs.
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Nice Theory, Too Bad it Doesn't Work

By Brian Lee Crowley

A lot of people believe that government spending can be cut by having fewer towns and school boards. It is an attractive theory that Maine political leaders such as Angus King and John Baldacci have endorsed. It is back in the news with the looming state elections. But does it work? Does it provide the promised savings and efficiencies? Long experience and recent research both give a lot of grounds for skepticism.

Across the Gulf in Nova Scotia in the 1990s, we tried it as well – in a big way. It didn't work. In fact, it backfired. Amalgamating smaller municipalities into larger units drove the cost of government services up, not down.

Opinion polls have found that citizens were less satisfied with the services provided by the larger governmental entities than they were when the services were provided locally.

How did it happen? We have in Nova Scotia a government culture of what I like to call "executive personalism." That's the fancy term. You might call it pigheadedness, thinking uninformed by real information.

If an idea sounds good to the people in power, things happen. In Canada, that has brought us useless heavy water plants, white elephant Olympic

stadiums and municipal amalgamation, to name a few examples. You may have witnessed executive personalism in Maine as well.

The truth, for people willing to dig a little, is that vast amounts of academic research and literature show that regionalization, or amalgamation, rarely works, for several reasons:

- Local government is not just about supplying municipal services; it also exists to find out what services people want and how much they are willing to spend on them. The smaller the unit, the better they are at finding out. The evidence is very strong that local government is closest to the people.

- Creating larger government monopolies doesn't reduce costs – it increases them. It levels costs up to the highest common denominator and seems to result in higher trends of growth over time.

- Researchers broadly agree that most municipal services enjoy no economies of scale. There are some exceptions but generally services such as public works, police protection, recreation and others can be provided less expensively within small municipal units than at a regionalized governmental entity.

- Often overlooked when regionalizing government services is how much it costs up front. In Nova Scotia's example, a consultant estimated implementation costs to be \$10 million. The final tally, including a new financial management system and renegotiated labor agreements, was four times that much.

The small scale of local governments has other advantages. Organized minorities and pressure groups benefit from centralized political power because that means they can concentrate their lobbying on one point



Brian Lee Crowley

ABOUT THE AUTHOR: Brian Lee Crowley is Managing Director of the Macdonald-Laurier Institute, a national think tank in Ottawa, Canada. He was the founding President of the Atlantic Institute for Market Studies in Halifax, Nova Scotia, has written four books, is a frequent media commentator and earned a doctorate in political economy at the London School of Economics. Dr. Crowley recently spoke to the Executive Committee of the Maine Municipal Association.

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of authority. When power is widely dispersed to small units of government, their lobbying power is reduced because it is spread so thinly.

Another positive consequence of a large number of local government units is that it allows successful experiments to be copied by other local, and even more senior, governments. Decentralization, when linked to competition among municipalities, increases the likelihood of spreading local policies and practices when they are successful and getting rid of them when they are not.

None of these positive effects can be realized without a vital element of competition. At the local level, competition takes place in two ways.

First, there is competition within municipalities. This happens in many rural towns, where municipalities use competing private businesses and contractors to supply services, rather than hiring government employees.

Another kind of competition happens *between* municipalities. One thing that drives local governments to be practical and consider reform is the ease with which people vote with their

feet.

If a municipality provides many services at a high cost, residents may opt for lower taxes somewhere else. Or, if a community is renowned for having quality schools while keeping taxes affordable, people may move in for that reason.

This movement toward what we in Canada call municipal amalgamation often is driven, ironically, by the business community, which can believe

there are “too many governments.” Yet, as Lehman Brothers and GM have eloquently proven so recently, being big in itself is no guarantee of anything.

Maine politicians and voters would do well to remember that academic research and experience in Canada and elsewhere show there are good reasons for thinking that bigger government is less efficient and responsive than smaller governmental units. **mc**



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totaling \$998,797. Both governing boards are very pleased with the results of their respective programs and our membership for their support and continued participation. Good management practices and sound loss prevention measures on the part of all of the members have contributed to the success of these programs.

The Maine Municipal Association offers three self-funded pools for municipal and quasi-public entities in Maine; the Workers Compensation Fund formed in 1978, the Property & Casualty Pool formed in 1987 and the Unemployment Compensation Fund formed in 1978. The programs



Town of Thomaston (Valmore Blastow Jr. Town Manager, Marcus Ballou MMA, John Fancy Sanitation Superintendent, James Connon Public Works Director, Kevin Haj Police Chief)

are overseen by governing boards of elected and appointed municipal officials. Each year the boards review the programs' loss experience to determine if dividends may

be paid. Patricia Kablitz, Director of Risk Management Services for MMA, said more than 75 percent of program participants receive dividends each year for their good risk management practices and loss experience. To qualify for a dividend the Member must be a current participant of the Workers Compensation

Fund, Property & Casualty Pool or the Unemployment Compensation Fund and must have been a participant for three full consecutive years. If a member participates in both the Workers Compensation Fund and the Property & Casualty Pool, they earn an additional 1% dividend in each program. Dividends are not guaranteed from year to year, and their award depends not only on the claims experience

of the individual member but also on the overall claims experience of the Pool and the Fund(s).

All of us at MMA Risk Management Services would like to take this moment to congratulate the efforts of our Membership. 🏠



Town of St Albans (Rhonda Starks, Town Manager)



Town of Troy (Sharon Moody, Clerk, Tax Collector/Treasurer)



Town of Waldoboro (John Daigle Public Works Director, Bill LaBombarde Chief of Police, Eileen Dondlinger Finance Director and Mike Monk EMS Director)

Preventing Losses in Vacant Properties

Economic times have created many hardships for Maine municipalities. One hardship is the maintenance and upkeep of buildings, compounded by the influx of tax acquired properties. Unfortunately, municipalities are finding that funds are not always available to keep the buildings in a usable condition. Allowing continued occupancy or a productive use for a building simply is not an option. The municipality is left with the elevated exposure of vacant properties, but this should not also become a claim waiting to occur.

A municipality can deter that risk presented by vacant properties by implementing some basic considerations:

Maintenance

- Complete repairs prior to securing the building.
- Perform scheduled visits at a minimum of one recorded visit per week to inspect all areas of the building.
- Immediately repair damage and graffiti due to vandalism.
- Keep the area clean of the buildup of trash from illegal dumping.



The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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Editor: Marcus Ballou

Layout Designer: Jaime G. Clark

P.O. Box 9109, Augusta, ME 04332-9109
1-800-590-5583 or (207) 626-5583

- Maintain a fire barrier by removing all combustible items within 25 feet of the building and keep vegetation cut short.

- Test all fire protection system alarms quarterly if the building is equipped. Be sure to winterize the system to prevent freezing.

Security

- Secure all entrances to prevent unauthorized entry.
- Consider covering windows with plywood. If the building has skylights, verify that they are secure.
- Consider a fenced enclosure.
- Illuminate the location if practical.
- Patrol the area and inspect the building's condition.

Weatherization

- Drain plumbing and heating systems that will not be used, clear the water system, and label all winterized items. This will help prevent costly water damage loss due to frozen pipes.

- Attempt to maintain the building's temperature to at least 40 degrees Fahrenheit.

- Plan for environmental hazards such as rain, high winds, ice and snow.

- Make sure the roof is in good condition to prevent water damage.

- Check windows and doors to ensure that they maintain good seals.

By their very nature, vacant buildings are an attractive nuisance. By keeping these buildings well maintained and well monitored, you will reduce their likelihood of becoming a target and a claim. 🏠



Workers Compensation Fund Renewal Applications Are On the Way

It is renewal time again and we are here to help. The renewal applications for the Workers Compensation Fund are due by mid October 2010 and we want our Membership to know that help is available. If you would like assistance with the completion of your application or just have questions, please contact Marcus Ballou (mballou@memun.org) or Judy Doore (jdoore@memun.org) at 1-(800)590-5583, so that we may provide assistance and ensure that your entity receives the proper level of service and protection.

We truly appreciate your coopera-

tion in this process as it is critical to having a successful renewal. The continuing prosperity of the Workers Compensation Fund cannot occur without the participation of the Membership. 🏠



December: Identity Theft Protection and Awareness Month

In a time when most of us find ourselves conducting business in front of a computer, it is no surprise that the personal and financial information of businesses and individuals is only a click away. Computers are used by practically all of us to find, generate and store data that is used to transact our daily operations. Due to their ease of use, computers have become a necessary business tool for many of us, but computers are also a tool for others who choose to abuse them for their personal gain. Identity theft can be defined as fraudulently obtaining an identity of another for the purpose of using that person's identity to steal or commit offenses. There are many ways to steal an identity so it is important that you protect yourself and your municipality. You can help to protect your municipality by adopting an internet/computer use policy and by the implementation of some risk management techniques.

Follow these Risk Management suggestions to protect yourself online:

- **Develop and implement procedures for internet and computer usage.** Sample Internet Policies for Municipalities are available on the Maine Municipal Association website: http://www.memun.org/members/infopks/Legal/appropriate_use.htm.
- **Limit personal information that you post in e-mail, instant messages or on the Web.**
- **Avoid storing sensitive information like credit card numbers or Social Security numbers on a computer.**
- **Compliance with the Red Flags Rule is required for entities that regularly permit deferred payments for goods or services.** Such

an entity is required to adopt an identity-theft prevention and detection program. For more information and sample forms please visit: http://www.memun.org/members/infopks/Legal/red_flags_rule.htm

- **Restrict access to data which contains the personal information of others.**
- **Do not open files, download programs or click links contained in e-mails or in instant messages.**
- **Dedicate one credit card for online purchases only.**
- **Ensure that your Web browser is updated so that you have the latest security features installed.**
- **Before disposing of a computer, be sure to "wipe" all data from the hard drives.**
- **Have installed and up to date tools such as firewall, anti-virus and anti-spyware security software.**
- **Use strong passwords that include a combination of upper and lower case letters, numbers and symbols.**

- **Don't enable a login screen to save your username and password**

It is also important to protect data when you are offline as well. These are some basic steps you can take to protect against offline identity theft.

- **Shred all documents that contain personal information such as financial documents and credit applications.**
- **Memorize your passwords and other account numbers.**
- **Limit the number of bank accounts you have and develop a**

policy for the opening of new bank accounts.

- **When ordering new checks, request to pick them up from the bank.**
- **Use secured mailboxes** 📬

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Maine Municipal Association Risk Management Services is excited to announce an expansion of the on-line training courses available thru the MMA website. We offer courses in safety, health and human relations which are geared specifically to municipal operations. Risk Management Services continues to offer the courses at no cost to the Membership as a value-added service.

An *ADDITIONAL FIVE COURSES* have been added, bringing the total offering to thirty-six courses. The New topics are:

- Accident / Incident Investigation
- Effective Law Enforcement Communication
- Occupational Disease Prevention for Firefighters
- Safety Awareness for Seasonal Employees
- Safety Awareness Program for Supervisors

The website also offers demonstration courses for prospective new users, provides more reports for program administrators and an expanded resource library. More than 10,000 users have taken over 58,000 courses since MMA first offered online training in October 2004.

For more information about online training, visit the website at www.memun.org/RMS/LC/default.htm or contact Deb Balmer in the Loss Control Department of Risk Management Services at 626-5583 or 1-800-590-5583 ext. 2240.

<http://www.memun.org/RMS/RMS.htm>

**Available to Members of MMA's Property
& Casualty Pool and Workers Compensation Fund**

Debate Over Senior Property Tax Deferrals

By Douglas Rooks

Kathleen Chase served for 16 years as the assessor for Wells. Back in the 1980s, when property values along the Route 1 commercial zone began skyrocketing, she came across an elderly woman who was trying to hold onto her home and large plot of land, but couldn't afford to pay the escalating property taxes.

"In the course of a few years, the value of her property went from \$160,000 to \$800,000," Chase said. "She was trying to pay a \$7,500 tax bill with an income of less than \$25,000. She was legally blind and she had no family to help."

This was back when the state's circuit breaker tax relief program had started, and for a few years "that worked just fine," Chase said. But when state revenues began declining, the Legislature capped reimbursements and the woman ultimately sold her property and moved away.

Chase decided that, if she ever had a chance to do something for people like that elderly woman, she would. This year, she did.

In her second term as state representative for Wells, she became ranking minority member on the joint Taxation Committee. From that post, she convinced her committee colleagues, and then the full Legislature, to unanimously adopt her bill, LD 1121, which authorizes municipalities to adopt tax-deferral programs for seniors. Wells is now one of the towns considering such an ordinance.

But the prospect of a new locally administered property tax relief program concerns some municipal officials – and the debate over whether,

and how, to design such programs has just gotten started.

In general, tax assessors like Chase have the most sympathy for elderly residents who feel they are being taxed beyond their ability to pay. She notes that the criteria to qualify for tax deferrals is fairly stringent – seniors must be 70 or over, have lived in their home- stead for at least 10 years, and have incomes less than 300 percent of federal poverty guidelines.

Property taxes are deferred, not forgiven, and the heirs or property buyer must pay the full amount, plus interest, when the resident dies or the property is sold.

QUESTIONS FROM TAX COLLECTORS

Tax collectors, however, have many questions about the program. Vera Parent, Tax Collector for Peru and president of the Maine Municipal Tax Collectors and Treasurers Association, wonders whether the existing system couldn't serve elderly taxpayers in this situation.

"There are no limits on the town's ability to abate taxes," she said. "There are other ways to handle the situation some taxpayers find themselves in."

Others wonder whether, if the Legislature considers this such a high priority, it couldn't create a state program to accomplish the same end, without asking towns and cities to take it on.

As it happens, the state did authorize such a program not long after the circuit breaker was enacted, but only a handful of taxpayers are still enrolled. When Chase first proposed her bill, it took the form of reopening applications to this nearly forgotten state program, enacted in 1989, that helps pay the property tax bills for seniors in exactly this situation.

David Ledew, director of Maine Revenue Services' property tax division, said 175 taxpayers signed up for the program before the Legislature, amid falling revenues, suspended enrollment.

"They reopened applications briefly twice, but then closed them for good," Ledew said.

In its peak year, fiscal 1992, the state was reimbursing municipalities \$132,000 for 158 taxpayers who had taxes deferred. As residents died or sold their properties, enrollment dwindled to just 14 taxpayers by fiscal 2005. Only seven remain today, and their cases need to be administered each year.

In the meantime, concern about excessive property taxes rises each time there's a real estate boom – including the latest that ended with the 2008-09 recession – and various solutions are offered.

Chase and Ledew both said that by January of this year, when the Taxation Committee was again discussing the held-over bill, there was no possibility of a state appropriation.

The state also enacted significant reductions in the circuit breaker tax relief program for individuals, reducing the maximum reimbursement from \$2,000 to \$1,600. The Legislature cut the Homestead Exemption from \$13,000 to \$10,000, only half of which is reimbursed by the state.

By that time, Chase had decided a local program might work better anyway.

"There's a reluctance among some people, particularly elderly people, to get involved in a state program. They're more comfortable with something closer to home," she said.

Ledew essentially said there are some reasons why a state program

Douglas Rooks is a freelance writer from West Gardiner and regular contributor to the Townsman, drooks@tds.net

might work better, at least under the original design.

"In theory, this could be administered more efficiently at the state level. The state has expertise and knowledge, and can do things that municipalities are not as familiar with," he said.

Before the Legislature cut back, MRS planned to add staff to handle applications and write rules – hiring that was never carried out.

Ledew said a lack of reliable funding has been a problem for senior deferrals and other state tax relief programs, including municipal revenue sharing.

He noted that in the mid-1990s, tax-deferral reimbursements were briefly cut to 90 percent, which prompted a number of taxpayers to leave the program.

Municipal and state budgets are fundamentally different in the way they are constructed, Ledew said.

"When the state faces a revenue shortfall, it starts looking for somewhere to cut, and that usually means everything," he said.

Municipalities, by contrast, "start with a budget plan, and then assess the taxes to pay for it," he said. Towns may cut back programs, but look at funding them first before making that decision. Under these circumstances, it seems a better bet that a municipal tax deferral program will continue as envisioned than one administered and funded by the state.

TOWNS HAVE A CHOICE

The new law permits, but does not require, municipalities to run their own property tax deferral programs. It became effective in July and towns are now discussing whether they want to participate. Among municipal officials, opinions differ about the need for and practicality of the program.

Assessors like Chase tend to be the most supportive. They often work with annual or periodic revaluations of property and see the effects of dramatic rises in the assessed value of commercial property or shoreline lots on the coast and interior lakes.

Tax collectors, who would administer the program, have more reservations. Paul Labrecque, Lewiston's tax collector, said situations where elderly taxpayers face unaffordable tax bills are rare. Over two decades, he can think of only a half dozen cases where sub-

stantial abatements were requested. Applications for poverty exemptions are even rarer.

Labrecque is concerned about the ability of municipalities to administer such programs. "The way I read this, the municipality has to file a lien on the property every year," he said. "Otherwise, the claim isn't legal."

Ledew confirms that this is the case – each year, the state files a list with the county registries. That recurring work is something for municipalities that don't have managers or that elect their tax collectors and treasurers to consider, before enacting local ordinances.

"If you have new people on the job, without the institutional memory, it could be an issue," Ledew said.

Labrecque said that Lewiston does set up payment plans and finds other ways to help people pay taxes. "We'll work with them to the umpteenth degree if they ask."

Whether many elderly taxpayers are "taxed out of their homes" can be seen in different lights. Some observers, such as Rep. Chase, say that most people would rather sell and move than ask for what they see as a form of charity. It is this group, supporters say, who would be most likely to use the deferral program.

INTEREST IN BELGRADE

Dennis Keschl, town manager of Belgrade, says there is considerable interest among the board of selectmen in offering a deferral program. Last

GOING DOWN

In 1989, the Legislature approved a state-run plan to help seniors with their property taxes, administered by the Maine Revenue Services. Initially, it was somewhat popular, but participation dwindled over time.

Fiscal year	Number participating	Avg. tax bill
1991	73	\$1,089.92
1992	158	\$835.72
1993	113	\$909.98
1994	90	\$1,260.26
1995	75	\$1,392.17
1996	70	\$1,340.64
1997	64	\$1,322.83
1998	56	\$1,361.54
1999	50	\$1,104.50
2000	48	\$1,047.08
2001	35	\$1,239.23
2002	30	\$1,394.50
2003	25	\$1,606.20
2004	23	\$1,690.09
2005	14	\$1,874.64
2006	14	\$1,995.07
2007	14	\$1,968.14

(Source: Maine Revenue Services Department)

year, Belgrade was one of a number of towns setting up a program, authorized by the state the previous year, that allows seniors to volunteer to work for the town and be forgiven up to \$750 of their tax bills.

"We have a lot of lakefront and typically those lots have greatly increased in value," he said. "We don't expect to have dozens of applicants – maybe there would just be two or three – but it may really help certain individuals."

Keschl has seen how some elderly residents struggle on fixed incomes. He recalled one case when a couple whose home had been in the family for seven generations had to come up with \$11,000 for a drilled well.

"I don't know how they did it, and now the well is contaminated, too," he said. "We're trying to help them raise enough money so they can afford to buy a filter."

A committee will begin meeting shortly with the goal of writing an ordinance that can be considered at the 2011 Town Meeting. Figuring out how budget for the program, and whether there need to be any additional eligibility requirements, will be part of the discussion, Keschl said.

Another municipality actively considering a program is Wells. Selectmen Chairman Bob Foley said it was clear after an initial meeting in July that, "We like the concept of the program

and see the need."

There are a number of issues that need to be addressed, however. One is that Wells has a number of homesteads where ownership has been transferred

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to a family trust or other legal entity, but whose residents – with lifetime tenancy – might be eligible.

“I don’t see that the state law addresses that situation, so we might have to,” he said.

There are also instances where mobile homes are located on leased lands, or where the owners have an agreement to convey the property to a land trust. “We don’t want to discourage people from applying but we have to make sure we’re covered legally,” he said.

LOCAL BUDGET IMPACT?

Perhaps the biggest municipal concern is how deferred taxes will be reflected in the annual budget.

“At some point, the program should pay for itself,” said David Ledew at MRS. “There will be enough properties exiting the program and producing revenue for the town to balance the ones being enrolled.”

Ledew acknowledged that the break-even point “is somewhat hypothetical.” In some towns, it might take four years to reach, in others 10 or more.

In Lewiston, Labrecque wonders whether smaller towns might have more difficulties finding the right balance.

“We have a revenue stream of \$45 million so it’s hard to see much of an impact there,” he said. “But what about a town with a much smaller budget?”

Ledew thinks one advantage of a local program is that it’s easier to keep

tabs on the properties enrolled. In one case, a taxpayer involved in the state program moved to a nursing home but the property remained unsold and deteriorated for years before the taxpayer died.

“We were concerned about whether we’d even get our money back. We did, barely, but that’s the kind of situation you need to watch,” he said. **me**



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How to Help Advisory Boards Succeed

By Tom Taylor

Boards and committees are formed to perform a task or solve a problem and then are expected to go off and do their work. Unfortunately, like most groups, many meet and continue to meet with limited results.

The missing ingredient often is “good facilitation.” The goal of facilitation is to produce practical, fair products that all can be proud of. This article offers suggestions for achieving facilitation objectives, talks about who can facilitate and offers ideas for improving facilitation of your boards and committees.

COMMITTEE PURPOSE

The first step is shaping a mission that everyone can identify with. Often, elected officials or administrators give the committee a charge (and sometimes they don't). The key is to hear from all members about their expectations and those of the groups they represent. It also helps to identify which expectations are in conflict.

This provides a basis for shaping a work plan and a schedule for addressing the priority issues. Too often, groups have one meeting after another with little understanding of the steps needed to get their job done. Similarly, agendas for each meeting need to be more than a list of topics. Meeting plans should include desired products, facilitation techniques to be used, background material and worksheets.

Many times, the chair or staff plan

Dr. Tom Taylor was the associate director of the Florida Conflict Resolution Consortium for 20 years. He is now a private consultant and may be contacted via e-mail at ttaylor@fsu.edu. This article was reprinted with permission from the Florida League of Cities' magazine, "Quality Cities."

presentations based on their professional disciplines: law, business, science, etc. Long, irrelevant presentations discourage continuing participation. It is helpful to develop consensus on the priority questions to be answered, the information needed to answer the questions and whom to bring in as experts. This will greatly improve the quality of the presentation and the attention it receives.

It is important to remember that everyone has a piece of the truth and no one has all the truth. Committee members and others need to be able

to ask questions and share insights. Different perspectives – expert and stakeholder – are critical for arriving at practical, creative solutions.

Adversarial sessions get the adrenaline going, which can shift the mental functioning from the rational to the reptilian “fight or flight” mode. A key role of facilitation is to engage the group in exploring possibilities instead of arguing over positions. Structured exercises and questions can quickly have an angry group creating lists, laughing and surprising themselves with what they come up with.

When Is It a Good Idea to Use Advisory Boards and Committees?

When To Use Them

- The issue needs more study than is feasible at council or selectmen's meetings.
- There is not an obvious solution; creativity is called for.
- There are conflicting groups and interests; negotiation is needed.
- Commitment from different groups is needed for implementation.
- There is adequate technical and logistical support available.

When Not To Use Them

- The purpose is to distract activists and keep them out of the council's or selectmen's hair.
- The decision already has been made.
- Critical interests are not invited or willing to participate.
- There is not a clear charge or scope of work.
- There is inadequate time to do a good job.
- There is inadequate technical and logistical support.
- There are no resources to implement the recommendations.
- The task would be better done by experts.

CONSENSUS DECISIONS

Majority voting at its best is simple and efficient. At its worst, it makes half the group “losers” who want to get back at the “winners” and who may not want to come back to a group that does not care about their concerns.

Reaching consensus may take a little longer but the dividends include better results, more commitment to implementation and improved relationships. Consensus does not mean everyone loves the outcome. It means that, at a minimum, they feel they have been heard and, therefore, will not block actions desired by the group. In some cases, nobody is too happy because everyone has had to give a lot to get an acceptable agreement. Ranking the acceptability of options on a scale of 1 to 5 or 1 to 3 allows the group to focus discussions on items on which agreement is possible. This avoids wasting time talking about issues on which there already is agreement, or on those on which agreement is unlikely.

GROUPS IN CONFLICT

We all have seen groups that spend endless hours arguing, or ones that avoid critical issues because they are controversial. Conflicts require different facilitation techniques from problem solving or consensus seeking. Like a mediator, the facilitator helps the

parties understand each other’s needs and helps shape agreements that optimize their priority interests.

If members still are not able to resolve differences, they can agree on next steps that may include getting an expert opinion, or asking the commission or an administrator to make the decision. It is best to include these procedures in the instructions to the board or committee.

A NEED FOR ACTION

All talk and no action leaves everyone frustrated. Every recommendation should specify who is responsible, set deadlines and discuss resources. Without these practical necessities, people may be happy with the pleasing platitudes but implementation will be uncertain at best. If no answers are agreed upon, the group needs to specify tasks and responsibilities for

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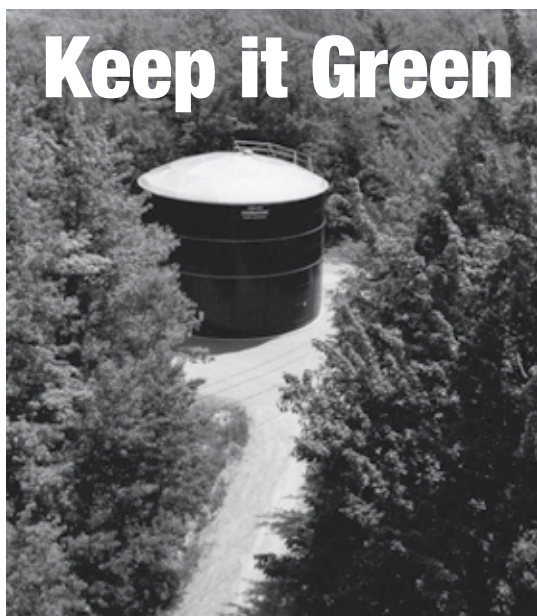
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Good facilitation allows people to express their desires and uncertainties and feel accepted. Trust builds as people see each other as whole beings, rather than villains and victims. Allowing people to tell their stories, sort out commonalities and differences and seek mutually acceptable solutions builds lasting relationships and commitment to implementation. This level of commitment is stronger than what comes from voting by adversaries.

Good facilitation is a combination of art and science, learned skills and intuition. In most cases, the responsibility for facilitation falls to the chair or president. Sometimes there is a staff member or outside facilitator.


Having a neutral facilitator can pay big dividends. Often, it means the group can get much more done in less time and it allows the chair to contribute to the discussion. Anyone who understands good group process and facilitation techniques can ask the right questions and offer process suggestions that build shared understanding, solve problems and help reach consensus.

BUILDING CAPACITY

Facilitation skills are something we use every day, but most of us never get any instruction. The productivity of local government boards and committees could be doubled if chairs and staff could get training and support. Educational materials also can be provided.

Committee charges, charters and protocols can be written to encourage problem solving and consensus processes. Meeting and committee progress evaluations help achieve continuous improvement.

Advisory boards or committee chairs and members need to be informed advocates and to contribute to the group's productivity. It is a challenge to do both. Facilitation training and written guidelines are important.

When possible, it pays to have a neutral facilitator. Efforts to assure good facilitation usually are repaid many times over in better-quality products, less time spent by members and staff, stronger commitment to implementation and improved relationships. 

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

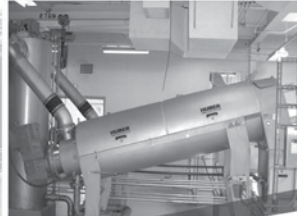
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John Bubier

Biddeford City Manager **John Bubier** has received the *Linc Stackpole Manager of the Year Award* by the Maine Town and City Management Association during

the group's recent annual Manager's Institute in Northport.

Bubier has worked for more than three decades in Maine municipal government, including nine years as city manager of Bath and the past five as Biddeford's chief executive. The award recognizes managers who have shown extraordinary leadership and service to municipal management, the public and their colleagues.

Meanwhile, Old Town City Manager **Peggy Daigle** received the 2010 Leadership Award from the MTCMA for her handling of the shutdown and redevelopment of the town's paper mill.

Longtime former Caribou Police Chief **Rufus Bernard** died in July at the age of 99. The Fort Fairfield native joined the Caribou department in 1962 after serving both his hometown and the State Police as an officer for more than 20 years. He was Caribou chief for 12 years.

Fairfield Town Manager **Paul Blanchette** died Sept. 4 at a local hospital of an apparent heart attack. He was 52. Scores of mourners, including past and present elected and appointed officials, attended Blanchette's funeral. Blanchette began serving as Fairfield manager in March 2000. He is survived by his wife and three teenage children. Selectmen have hired former longtime Pittsfield manager **Dwight Doherty** as interim manager.

Donna Lightbody, president of the town of Madison's Fire Department Auxiliary for nearly 15 years and wife of the town's fire chief, **Roger Lightbody**, died of a stroke in August at the age of 63. Hundreds of people attend-

ed Lightbody's graveside ceremony and were enclosed by 14 fire, rescue and police vehicles. In addition to her many lifelong volunteer efforts for the town, Lightbody helped raise 35 foster children.

Margaret Wilcox, 80, a town selectman in Unity, was killed in a one-car crash in mid-August. Wilcox died at the wheel, officials said, and her vehicle tumbled off the road and onto its side in a town park.

Denise Beckett, longtime assistant to the Belfast city manager, has been promoted to city clerk, replacing **Roberta Fogg**, who accepted the same job for the City of Auburn.

Rick Briggs was hired as Newburgh town manager in September following a thorough search by selectmen. Briggs, a former Hampden mayor, will work part-time through the 2011 annual town meeting "and see what happens then," according to the Bangor Daily News. The town's top candidate twice turned down the job. Briggs, 49, was not part of the original group of candidates for the job.

Amanda Brooker has been named Limestone Parks and Recreation director. The University of Maine at Orono graduate worked for the department during all four years of high school.

Sanford Town Council Vice Chairman **Kevin Chabot** and Arundel Councilor **Byron Kindley** both resigned recently because they are moving out of their communities. Sanford councilors will select a replacement for Chabot, whose term expires on Dec. 31. Kindley's vacant seat will be filled by voters in November.

Scott Gonya, chairman of the Milinocket Town Council, recently resigned for personal reasons. The board elected Selectman **John Davis** to serve as chairman. Gonya, who


was re-elected in 2008, had one more year to serve on his term. Voters will choose a one-year replacement in November.

Kristina "Kristy" Gould was hired as Human Resources director for the City of Augusta in September, after serving in the same role in Westbrook for two years. Gould, 39, will replace **Ellen Blair**, Augusta HR director for the past 11 years, who accepted a similar position in Scarborough. Gould, who lives in Gardiner, was among 73 applicants for the job.

Ludlow town government opened for business in September for the first time in six months after selectmen hired **Diane Hines** as the new town manager in late August. Hines is presently manager of the Aroostook County town of Hammond, where she lives. She will work as Ludlow manager three days a week and maintain her one-day-a-week service to Hammond, where she has served for five years. Ludlow municipal government was closed in February by the state after problems were discovered in financial reporting and management.

Augusta Police Chief **Wayne McCamish** will retire in December after 37 years with the department, the last 18 as chief. McCamish said his decision to retire resulted from the city's plan to eliminate health insurance benefits for retirees beginning in 2011.

Dan McClung has been hired as Mars Hill town manager, effective in August. McClung replaces **Raymond Mersereau**, who retired on Aug. 1 after 18 years.

Jeffrey Nims, Camden planner and code enforcement officer, retired in September after 18 years with the town with hopes of doing new things with his life and time. Nims, 60, is a selectman for the town of Union. 

PHOTOS: If your municipality submits a news item for the Townsman, consider sending a corresponding photo to: Eric Conrad or Jaime Clark (econrad@memun.org or jclark@memun.org)

Bangor: The City Council was not able to recruit its top candidate for city manager in September. Weeks of talks ended when councilors concluded the unnamed applicant had not shown genuine interest in moving to Bangor. Veteran City Manager Edward Barrett resigned last year and was approached to manage Lewiston, Maine's second-largest city. Bangor Assistant Manager Robert Farrar, who has not applied for the job, will remain in his temporary position.

Dayton: Town officials have installed solar panels on the south side of the municipal office, using \$74,000 in federal funds to complete the \$82,000 project. The panels are expected to last 40 years and produce 21,000 kwh of electricity annually. Last year, town office energy costs totaled just under \$25,000.

Eastport: The city received a \$1.4 million federal grant to help build the nation's first marine energy manufacturing facility. The grant is expected to stimulate another \$23 million in private investment. The renewable hydro-power operation, to be established in a near-vacant factory owned by the city, could create as many as 70 jobs once the operation is ready to go.

Freeport: A trio of residents is suing the town over its decision to consolidate emergency dispatch operations with neighboring Brunswick. The suit alleges the council in April endorsed the consolidation by order and not ordinance, as is required under the town charter. Two petitions to overturn the decision by a referendum vote failed to make the ballot earlier in the year.

Machias: The city has been accepted into the Maine Downtown Network program that provides advisers from the Maine Downtown Center to take tours and make recommendations on the strengths and weaknesses of the downtown area.

Pittsfield: The town will use \$1.1 million in federal money to develop six new lots in the industrial park created a decade ago by elected officials for future growth. The town will receive \$880,000 in new stimulus funding and


combine it with a previous \$220,000 federal grant to finance the project, which was expected to be completed this fall. The work includes new roads, and sewer, water and electrical services.

Saco: The city has been honored for outstanding financial reporting for the sixth straight year for fiscal year 2009. The national award, presented by the Association of Government Accountants, recognized the town's easy-to-understand and useful reporting to residents, taxpayers, elected officials and municipal staff.

Sanford: The town's Sewerage District is considering foreclosing on property liens as unpaid residential and business bills reached \$500,000 this summer. The district has never foreclosed on property owners before, officials said. Some of the 300 customers in arrears owe money dating back five years. About 40 new liens are placed on

properties each month, officials said.

Southwest Harbor: Early reports indicate the new town-run thrift store at the municipal transfer station, opened in mid-September, has been successful in lightening the garbage load for the island community. A town committee has recruited volunteers to run the shop, which already has expanded, and hope to reduce tipping fees for next year's budget.

Statewide: Four Maine communities were named among Yankee Magazine's "The Top 25 Foliage Towns in New England:" Bethel, Camden, Rangeley and Blue Hill. Vermont scored the highest number at eight. Cities and towns were nominated for the distinction by regional tourism officials and magazine staff. Communities were judged on 14 criteria, from color intensity and vistas to the number of farm stands and covered bridges. 

CORRECTION: An article on PSAP consolidation in the July issue of the *Maine Townsman* should have said the Penobscot Regional Communications Center is the largest and busiest in Maine, in terms of volume of calls.

NEW ON THE WEB

Here are some highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

- **Highway Simplification.** Information is available at our site and the Maine Department of Transportation website about the Highway Simplification Study. A Policy Working Group has been examining this study and proposal for many months. MMA remains interested in municipal feedback about the study. Feel free to contact Kate Dufour, Advocate with MMA's State & Federal Relations staff, at kdufour@memun.org or 1-800-452-8786.
- **Conservation and Economic Development.** Two new cases studies have been posted that underscore the relationship between conservation and economic development. Topsham and Bar Harbor are the municipalities featured in the most recent reviews.
- **Candidates for Governor.** If you haven't done so, please take some time prior to the Nov. 2 election to watch videos of the five candidates for Governor. The candidates, who recently met with the MMA Executive Committee, answer municipal-oriented questions. The segments have been "uploaded" nearly 5,000 times since they were posted in late July.
- **Citizen Education.** Posters, handouts and a newly narrated presentation of how property taxes work and what services they pay for are available from the MMA in a branded "toolkit" that municipal leaders can use to answer common questions about local government.

www.memun.org



Municipal Bulletin Board

ELECTED OFFICIALS: MACHIAS, MOUNT DESERT

MMA officials will hold Elected Officials Workshops on Oct. 19 in Machias and Oct. 20 at the Somesville Fire Station on Mount Desert Island. Both workshops will run from 4:30 to 8:30 p.m. and include light meals. Registration begins at 4 p.m.

The workshops are “musts” for both newly elected and veteran officials as they provide updates to legal requirements regarding: your rights as officials; open meeting requirements; conflicts of interest; liability issues; and, the Maine Freedom of Access law. Officials who attend the entire sessions meet the state’s Right to Know training requirements and receive certificates. A new section on media relations and communications recently was added to these workshops.

The cost is \$40 for MMA members and \$60 for non-members. Registration is available through the MMA website at www.memun.org.

PLANNING BOARD/BOA: SACO

MMA’s Legal Services Department will host a session for local Planning Board and land use Board of Appeals members from 5:30 to 9 p.m. on Nov. 18 at the Ramada Inn off Interstate 95.

The workshop is designed as an introduction for new or less experienced members but veterans may find an update useful as well. Among the topics to be covered: jurisdictional issues; conflicts of interest and bias; public notice requirements; site visits; procedure for decisions; and, variances.

The cost is \$40 for MMA members and \$60 for non-members. Registration is available online from the MMA website.

PLANNING BOARD/BOA: DOVER-FOXCROFT

MMA’s Legal Services Department also will host a session for local Planning Board and land use Board of Appeals members from 5:30 to 9 p.m. on Nov. 29 at the Town Office in Dover-Foxcroft.

These workshops are designed as introductions for new or less experienced members but veterans may find

the updates useful. Among the topics to be covered: jurisdictional issues; conflicts of interest and bias; public notice requirements; site visits; procedure for decisions; and, variances.

The cost is \$40 for MMA members and \$60 for non-members. Registration is available online from the MMA website.

ELECTED OFFICIALS: ROCKLAND

MMA staff will hold an Elected Officials Workshop on Nov. 30 at the Maine Lighthouse Museum in Rockland. The workshop will run from 4:30 to 8:30 p.m. and includes a light meal. Registration begins at 4 p.m.

The workshop is a “must” for both newly elected and veteran officials as it provides updates to legal requirements regarding: your rights as officials; open meeting requirements; conflicts of interest; liability issues; and, the Maine Freedom of Access law. Officials who attend the entire session meet the state’s Right to Know training requirements and receive certificates. A new section on media relations and communications recently was added to these workshops.

The cost is \$40 for MMA members and \$60 for non-members. Registration is available through the MMA website at www.memun.org. [mt](http://www.memun.org)

All of the upcoming workshops can be found on the MMA website.
Use the following link:
<http://www.memun.org/public/MMA/svc/training.htm>

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Free or nominal rate distribution		
Outside County	299	293
In-County	58	67
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Outside the mail	38	40
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Total distribution	4,555	4,528
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I certify that the statements made by me above are correct and complete.

Eric Conrad, Editor



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SPITE FENCES

Questions: What is a “spite” fence and what is a municipality’s role, if any, in disputes involving spite fences?

Answer: According to Maine law, a spite fence is “[a]ny fence or other structure in the nature of a fence, unnecessarily exceeding 6 feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property” (17 M.R.S.A. § 2801).

Spite fences almost always evidence a private dispute of some kind between neighbors, where the fence is meant to annoy, irritate or frustrate an abutter. Unless an ordinance regulates them in some fashion, however, spite fences are a private civil matter between the parties and a municipality has no legitimate role in resolving such disputes. The statute cited above deems a spite fence to be a private nuisance, for which the injured party may sue for damages and/or an order to abate or remove it.

Note that spite fences are different from “partition” or line fences (for example, between abutting pasturelands). Partition fences must be maintained by the owners of adjoining lands in equal shares and are subject to the lawful orders of municipal fence viewers where they exist (see 30-A M.R.S.A. §§ 2951-2966).

For a summary of Maine laws on fences, see “Fence Laws,” Maine Townsman, “Legal Notes,” July 1999. (By R.P.F.)

LAND USE APPEALS – TWO NEW DECISIONS

The Maine Supreme Court issued two decisions recently that should be of interest to all local officials involved in land use appeals.

In *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, the Law Court upheld a board of appeal’s dismissal of an appeal by a group that failed to prove it was an “aggrieved party.” The group, which was unincorporated at the time and had no official members, could not demonstrate either (1) that it had participated below in the planning board’s review, or (2) that

it or any of its members would suffer a “particularized injury” distinct from the harm posed to the public at large. In order to have “standing” to appeal either to a board of appeals or to the courts, a would-be appellant must prove both. (For another recent Law Court decision on standing and particularized injury, see “Only ‘Aggrieved Party’ Has Standing to Appeal,” Maine Townsman, “Legal Notes,” July 2009.)

And in *Farrell v. City of Auburn*, 2010 ME 88, the Court dismissed an appeal from a board of appeals’ decision for lack of subject matter jurisdiction and because the decision was advisory only. The appellant, who had been issued a notice of violation, appealed it to the board, which upheld the notice. His appeal to the Law Court failed, though, because no ordinance gave the board jurisdiction over violation notices, so its decision was at most advisory and not subject to judicial review. (For another case where the Court refused to review an

advisory decision by a board of appeals, see “Board of Appeals Jurisdiction Redux,” Maine Townsman, “Legal Notes,” February 2001.)

Although decided on totally separate grounds, both *Friends of Lincoln Lakes* and *Farrell* remind us that the courts will not waste their time on appeals where the appellant has no special stake in the matter or where the underlying decision is not binding on anyone. (By R.P.F.)

NO LIABILITY FOR BLEACHERS

The Maine Supreme Court has held a municipality and school department immune from liability for defective bleachers adjacent to a school athletic field.

In *Searle v. Town of Bucksport*, 2010 ME 89, a spectator sued for injuries after falling through an opening in the bleachers due to a missing plank. Because the Maine Tort Claims Act (MTCA) grants governmental enti-

The logo features a stylized blue 'M' with a house-like shape on top, followed by the words 'Municipal Calendar' in a blue serif font.

BY NOVEMBER 1 — Any governmental subdivision holding tangible or intangible property presumed abandoned under 33 MRSA §1953 must make report to the Administrator of Abandoned Property of the State Treasury Department, pursuant to 33 MRSA §1958.

BY NOVEMBER 1 — Or 30 days after the date of commitment, whichever is later, the municipal assessors and assessors of primary assessing areas shall make return to the State Tax Assessor all information as to the assessment of property and collection of taxes. The forms of such return shall be supplied by the State Tax Assessor (36 MRSA §383)

NOTE: Failure to file this return in a timely manner could result in loss of tree growth reimbursement (36 MRSA §578).

PRIOR TO NOVEMBER 3 — Election Day. Registrars of voters shall accept registration prior to the November 3 election according to the time schedule of their population group (21-A §122[6]).

— The Registrar shall publish his/her

time and hourly schedules in a newspaper having general circulation in the municipality at least 7 days before it becomes effective. In municipalities of 2,500 or less population, this publication is discretionary rather than compulsory (21-A MRSA §125).

— The hourly schedule for voter registration established by 21-A MRSA §122 may be changed by the municipal officer according to the needs of the municipality (21-A MRSA §122[8]).

NOVEMBER 11 — Veteran’s Day. A legal holiday (4 MRSA §1051).

ON OR BEFORE NOVEMBER 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333 [22 MRSA §4311].

NOVEMBER 26 — Thanksgiving Day, a legal holiday (4 MRSA §1051; 20-A §4802)

ties general immunity from liability, he had to argue that the bleachers came within the MTCA's "public buildings exception" to immunity. This exception permits recovery for negligent "construction, operation or maintenance of any public building or the appurtenances to any public building" (14 M.R.S.A. § 8104-A(2)).

Since the bleachers were not physically affixed to, specially adapted to, or intended to be a permanent part of any building or real estate, however, they were not "fixtures" and therefore did not meet the majority's definition of "appurtenance." The majority also held the defendants immune under the MTCA's immunity for facilities used by the public in connection with public outdoor recreation (see 14 M.R.S.A. § 8104-A(2)(A)(3)).

A strongly worded dissent countered that the bleachers were functional appurtenances and the majority's fixation on fixtures was too narrow. The dissent also urged that recreation contemplates active participation, not passive observation, and that spectators are therefore not engaged in recreation.

For more on the MTCA's "building appurtenance" exception, see "Tort Claims Liability & Public Buildings III," Maine Townsman, "Legal Notes," July 2004.

For more on the MTCA's immunity for outdoor recreation, see "No Liability for Public Outdoor Recreational Facilities," Maine Townsman, "Legal Notes," July 2006. (By R.P.F.)

WINTER ROAD CLOSURES: VOTE REQUIRED BY OCT. 1

Here's a reminder to local officials responsible for winter road maintenance: Winter road closure orders may be approved only between May 1 and Oct. 1. In other words, to close a road to maintenance from November through April of the next winter, a municipality must act no later than Oct. 1.

Winter road closure orders must be approved by the municipal legislative body (the voters in a town meeting form of government) unless this authority has been delegated to the municipal officers (selectmen). The

following warrant article would accomplish the latter:

Article ___. To see if the Town will vote that the orders made by the Municipal Officers pursuant to 23 M.R.S.A. § 2953 to close roads to winter maintenance, or annul, alter or modify such orders, are and shall be a final determination.

Unlike winter road closure orders, which (again) may be approved only between May 1st and October 1st, a warrant article delegating final authority to the municipal officers may be approved at any time of year.

Winter road closure orders, by whomever made, may be operative for up to 10 years if so specified. Orders may be altered on the initiative of the municipal officers or upon the petition of seven voters at any time after one year following the original approval.

For more on closing roads to winter maintenance, see MMA's Municipal Roads Manual, available free to members at www.memun.org. (By R.P.F.)

PESTICIDE ORDINANCES – NOTICE & FILING A 'MUST'


The Maine Board of Pesticides Control has asked us to alert local officials that proposed pesticide ordinances are subject to important State notice and filing requirements.

Last year's premiere of an anti-pesticide documentary film ("A Chemical Reaction") has evidently spurred renewed local interest in regulating pesticides. Maine law authorizes pesticide ordinances (see Central Maine Power

Co. v. Town of Lebanon, 571 A.2d 1189 (Me. 1990)), but 22 M.R.S.A. § 1471-U requires the municipal clerk to (1) give the board notice and a copy of the ordinance at least seven days before the meeting of the legislative body or the public hearing at which adoption of the ordinance will be considered, and (2) notify the board within 30 days after adoption of the ordinance. Failure to notify and file a copy of the proposed ordinance with the board means the ordinance is void and unenforceable until the ordinance is readopted after the required notice and filing.

These requirements have been the law since 1989 and apply to any ordinance specifically regulating the storage, distribution or use of pesticides. "Pesticide" includes any insect, rodent, disease and weed controls, insect and animal repellants, plant growth regulators, defoliants and desiccants, disinfectants and sanitizers, wood preservatives, etc.

Contact information for the Board of Pesticides Control and a current list of ordinances are available at www.maine.gov/agriculture/pesticides.

Pesticide ordinances are of course only one of several types of ordinances that must be filed with the State – in most cases before adoption. Others include farm operations, firearms discharge, general assistance, shellfish conservation, shoreland zoning, solid waste disposal facilities, timber harvesting, and water levels and minimum flow. For full details, see "Some Ordinances Subject to State Filing & Review," Maine Townsman, "Legal Notes," December 2006. (By R.P.F.) 



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