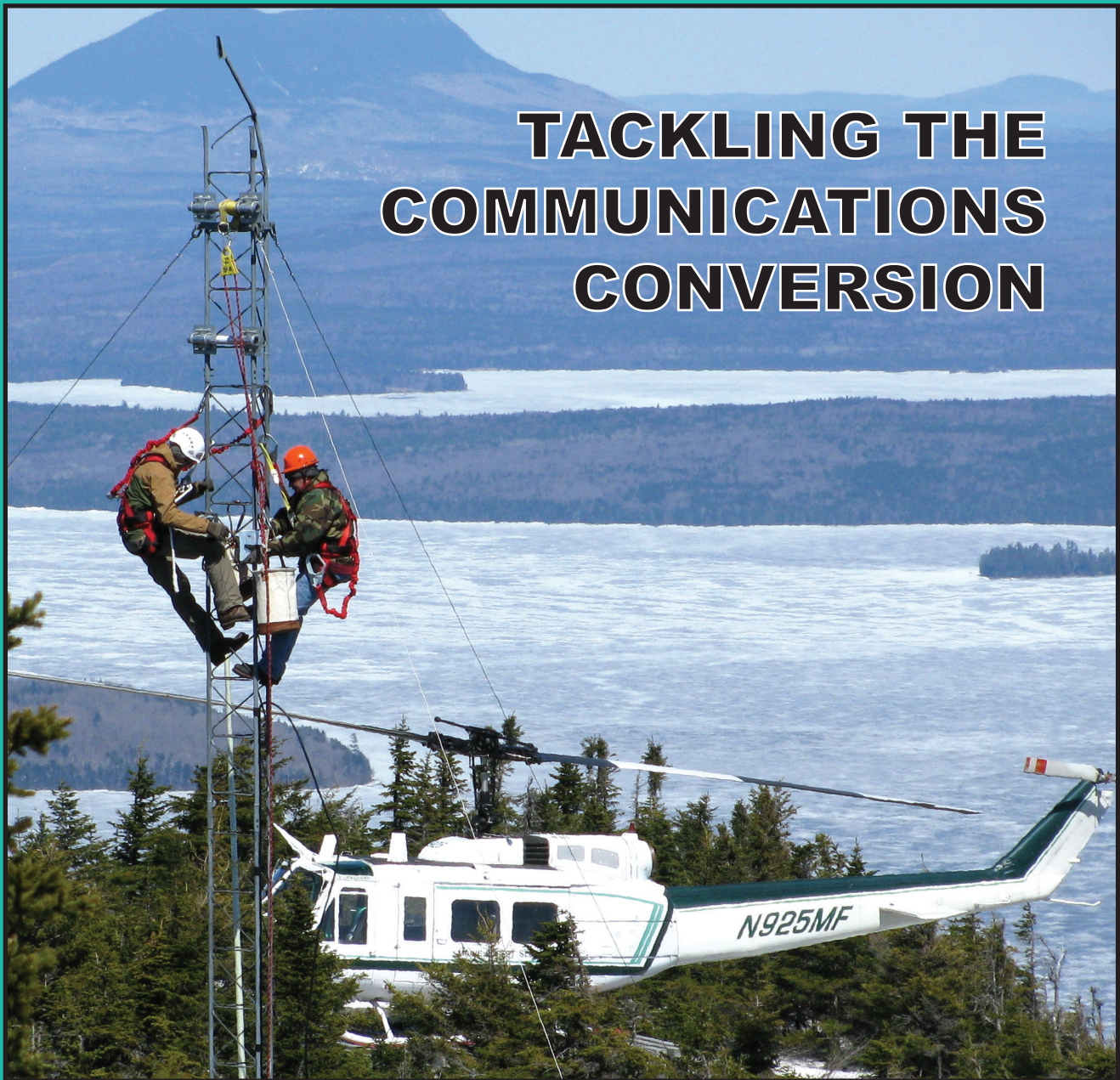


March, 2010

maine townsman

The Magazine of the Maine Municipal Association



TACKLING THE COMMUNICATIONS CONVERSION

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Harnessing the Wind • Power Through Pellets

The Best Approach to Recycling?

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recycled paper

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COVER PHOTO: State radio repair technicians Travis Swaim, who now works for Jacobs Telecommunications, and Mike Clary climb a tower to repair a storm-damaged antenna. The photo was taken in 2009 on Moose Mountain, near Greenville.

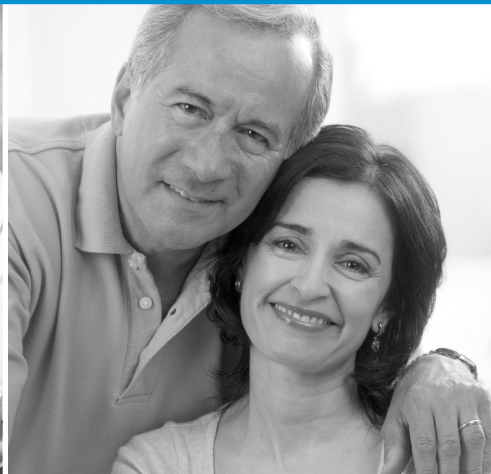


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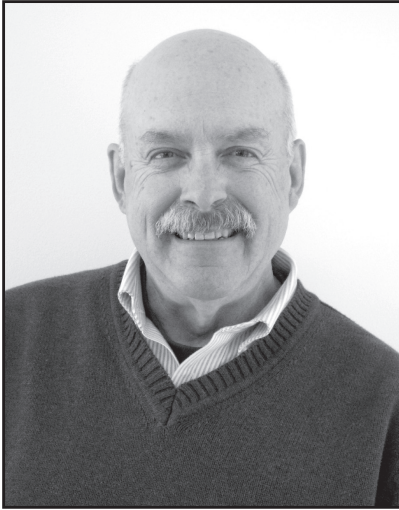
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“We Have An Important Story To Tell”

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



John Sylvester, MMA President

I believe in municipal government.

Those of us who serve as elected officials, municipal employees or volunteers know what we do can be difficult. But we do it because we believe in the value of providing municipal services that people need. We do it because local government can help provide a sense of community that our citizens and

businesses rely upon, and even come to cherish.

Our calling is getting even tougher these days. The deep and prolonged economic downturn and the State budget situation make these particularly challenging times. But as municipal officials we will do what local leaders in Maine have done for years: Our very best to get the job done, and get it done well.

In a way, high expectations are one of the hurdles we face. Our citizens expect us to serve them quickly and well – to plow the roads when it snows, to respond to fire and ambulance calls, to keep their municipal services available, while also keeping their tax rates in check.

We perform our services with great transparency. Citizens have access to many of our meetings, documents, discussions and even e-mails. As an example, the Maine Municipal Association – like many of our member municipalities – recently received and complied with a Freedom of Access request from the Maine Heritage Policy Center, a conservative think tank that has analyzed state government salaries, among many other items.

The MMA wants to work with municipal officials to help us tell our stories. After all, we have an important stories to tell – to citizens, to businesses, to civic organizations, to our legislators, to our Governor (and to those who aspire to that office) and to the media.


- We are resourceful, accountable and thrifty. There are numerous and long-standing examples of collaboration and cooperation among municipalities.

- We know that one size does not fit all. What works in an urban or suburban area might be very different from what’s best in a sparsely populated, rural area. Over the

years, we’ve examined our tasks, such as maintaining roads or assessing properties, and we have made choices that make sense for the communities that we serve.

- Sometimes, we maintain these services with municipal employees. But often, when it makes more sense, we contract with private firms or we team up with other towns.

During these difficult economic times, we’ll continue to look for efficiencies, but we need to point out what we’ve already done. That’s where you come in. Starting now, we’re asking you to share your stories and provide examples. Please share your examples and stories with Eric Conrad, our Director of Communication and Educational Services, at econrad@memun.org. Or you can call: 207-623-8428.

I believe in local government and I know you do, too. It’s important to let our citizens know that the government that’s closest to the people – municipal government – provides critical services, tailored to our communities and often in the most cost-effective way. 



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COUNSELORS AT LAW

Towering Issue

By Lee Burnett

Three days before the start of last year's Can-Am Sled Dog race, a radio repeater on top of Deboullie Mountain failed, knocking out emergency radio communications all along the 250-mile course and throwing into doubt one of Fort Kent's biggest events of the year.

"That put us in an awkward situation," said Rita Cannan, president of Can-Am Crown. "You need to have communications in case something happens along the way. I don't know what we would have done. I don't think we would have jeopardized the mushers."

A repair was made in the nick of time and the sled dog race went on as planned. But outages caused by worn out equipment, extreme weather or outright vandalism are hobbling the state's antiquated two-way radio system. Every other week, a tower goes down, precipitating a scramble to maintain links with state troopers, game wardens, forest rangers and others.

"It's almost become routine, and that's absolutely unacceptable in a public safety environment," said Shawn Romanoski, director of radio services for Maine Office of Information Technology.

Disabled communications haven't compromised public safety in a big way, but the risk is growing, said Romanoski.

"It's just the luck of the draw that something worse hasn't happened," he said. "It's a numbers game. Eventually, we're going to have [public safety compromised]. It's only a matter of time. That's why we're trying to get things repaired as quickly as we can."

Lee Burnett is a freelance writer from Sanford, leeburnett_maine@hotmail.com

The good news is that the state is making a multi-year, \$50 million investment to bring its communications system into the modern age. It goes by the unwieldy name MSCommNet, which stands for Maine State Communications Network (www.maine.gov/mscommnet).

Towers will be consolidated and replaced by sturdier, more strategically located ones. Tower sites will have additional auxiliary power backup, security and remote monitoring. Signals will be digitized, narrow-banded, encrypted, and trunked to allow for more simultaneous and secure communications and more efficient use of bandwidth. In the end, it will be possible to drive from Kittery to Madawaska and maintain clear, uninterrupted radio contact with any or all of the 4,500 state employees with radios.

"MSCommNet will replace an aging state communications infrastructure that was, and is, in danger of catastrophic failure," Robert McAleer, director of the Maine Emergency Management Agency, told the Kennebec Journal newspaper.

On the downside, the new system will complicate communications with local public safety agencies. The digital trunked system does not mesh perfectly with the analog system that most locals use. How exactly local fire, police and rescue departments will monitor state radio traffic and talk with their counterparts in state agencies is still being worked out. State officials have made every effort to reassure local folks of their commitment to "interoperability." Skeptics aren't convinced it will be as smooth as state officials have assured people and they wonder why the upgrade had to create a problem that doesn't exist today

HISTORY

The state's system is not really a system at all, but five separate networks each with its own set of towers and operated by a different public safety agency. Much of the equipment dates from 1974 and is four or five generations obsolete. An analysis of Maine's networks by Macro Corp. documented the following deficiencies:

- Coverage within networks is not uniform or complementary, resulting in "significant overlap" in some regions and "no coverage" in others.
- Communications between agencies is "cumbersome and time-consuming ... particularly during significant emergencies" when multiple agencies respond.
- Sensitive law-enforcement communications are vulnerable to public eavesdropping via inexpensive frequency scanners.
- Much of the equipment is no longer supported by the manufacturer. Spare parts are scarce, expensive or not available at all. (Replacement parts are now bought almost exclusively through eBay auctions.)

Major Raymond Bessette of the Maine State Police estimates that due to interference, dead zones, overloaded frequencies and downed equipment, only 20 percent of radio calls go through. More than just state agencies are affected when communications fail. A power failure at Ossipee Hill tower in Waterboro Dec. 16 caused a five-hour blackout that disrupted communications in a 50-mile region in York and Oxford Counties, affecting 15 local agencies and seven state agencies, according to Maine Office of Information Technology Web site. (<http://www.maine.gov/oit/services/radio/mscommnet/news/index.html>)

(The cause of the outage was attributed to delayed-effect vandalism: someone tampered with the primary power supply, which caused a back-up generator to run for 12 days straight, until a 250-gallon propane tank was drained.)

Communication problems during high-speed chases can endanger the public in multiple towns, as Maj. Besette demonstrated. He replayed over the telephone the radio traffic of a high-speed chase on I-95 near Bangor, in an area prone to a distortion effect in radio transmissions. The excited voices of the dispatcher and troopers were audible only as undecipherable sound effects. It was unsettling to realize the noises were the same ones heard by every local officer monitoring the chase and every state trooper trying to bring the chase to a safe conclusion.

The folks who depend on the system cope as best they can. When a remote tower goes down in the middle of winter, there's no alternative but to send technicians out on snowmobiles (or in a helicopter, at \$1,300 an hour).

"The last thing I want to do is send our people to a mountain top in winter. It's a harsh climate, difficult and

expensive," said Richard Thompson, the state's chief information officer. In the meantime, radio calls are relayed through alternate routes if possible. Officers in the field often resort to cell phones, although at the scene of major emergencies, cell phone channels are quickly clogged.

"We've learned to cope," said Thompson. "We've operated this way for a long time."

An upgrade has been a long time coming. Maine State Police first sought funding to upgrade its system in 1999. At about the same time, exploding cell-phone use began crowding the airwaves and the Federal Communications Commission began pushing public safety agencies to narrow their signals to make more efficient use of scarce bandwidth. State officials soon realized it didn't make sense to hang brand new antennas and repeaters (for narrowband transmission) on antiquated towers that were already seriously overloaded.

In 2003, state officials sought a comprehensive solution – consolidating all networks in a single upgrade while migrating the entire system from the 150 MHz band to the much less

congested 800 MHz band. But building a new system that relied on higher frequency (and thus shorter-range) signals would have entailed building 300 towers statewide at an overall cost of \$202 million, which proved prohibitively expensive. Since then, the state has opted to upgrade and narrow-band with the lower frequency (longer-range) signals, which can be built with just 40 towers.

DIGITAL VS. ANALOG

The most controversial issue is whether conversion to digital transmission was necessary to the upgrade. Although, big city departments across the country are moving in that direction, most Maine police, fire and rescue departments still rely on analog signals. Digital's advantages include encryption, a clearer signal and trunking capability, which creates many more channel options. But digital is expensive. Portland spent \$3 million to upgrade to digital in 1999. Biddeford, Augusta and Kittery have also gone digital. The state had originally planned to stay with its analog system, but has since decided to go digital.

Last summer, the state signed a \$50

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million contract with Harris Corporation to build out and integrate the system.

"Originally we thought digital was too expensive for the money we could afford, but the price has come down substantially," said Thompson. "The technology has improved. We think it is prudent."

The digital trunked system will not only unite all agencies under a single communications umbrella, but it will enable users to create small and large "talk groups" at will. For example, a tactical team converging on an incident from all parts of the state will be able to communicate amongst themselves without having to relay messages to each other through a dispatcher.

But digital conversion makes life more difficult for analog users. Separate frequencies and protocols have to be established so people in each system can talk to each other.

"Right now, we can monitor all the

state police channels," explains Jim Ryan, director of Penobscot Regional Communications Center. "We can hear that traffic -- a high-speed chase, bank robbery, assault. But once they go to digital -- unless they do something -- that's going to go away."

Ryan is concerned the state has unnecessarily complicated communication with locals. Penobscot Communications Center went ahead with a \$500,000 to upgrade of its analog system (financed largely through Homeland Security grants) at a time when the state was saying it would remain analog.

"I'm not saying digital isn't the way to go, but it's expensive," says Ryan. "They've built a Cadillac. They've said we can ride with them if we want to, but the only seat is the trunk or the hood. We can't get inside."

State officials have gone to great lengths to assure local officials that access to the state system will be main-

tained with some modifications. They have promised to rebroadcast the Maine State Police primary channel on a conventional channel, which would allow locals to monitor some but not all state radio traffic after they've reprogrammed. Locals will continue to be able to contact state agencies through a separate regional communications network called the RegionNet, which already exists, they say.

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vice involve other agencies,” said Maj. Bessette of the State Police. “How could I buy into a system that does not allow me to talk to the people I work with?”

In spite of the assurances, doubts remain. State Rep. Patsy Crockett, D-Augusta, has submitted legislation to redirect \$28 million of the \$50 million upgrade to reimburse locals to convert to a digital trunked system, which is the surest – and most expensive – way to access the state’s system.

Robert Howe, executive director of Maine County Commissioners Association, wonders if the promises about MSCommNet are more than can be delivered.

“I have no doubt they [state officials] are very sincere wanting to make sure the system has maximum interoperability,” said Howe, whose association supports Crockett’s legislation. “I question the technology and whether Harris can deliver it. I’m yet to be convinced.”

Crockett said she is unsure how her bill will fare, but the state’s towers should be made available to local departments for free or at no cost.

Digital is not without problems. Some complain that digital software is

not yet sophisticated enough to distinguish between the human voice and background noise, making it difficult, for example to understand a firefighter using a portable digital radio while standing next to an engine pump.

Portland was forced to spend extra money to fix problems with its digital system (which included conversion to 800 MHz). The system still does not support data transmission from in-cruiser laptops as originally planned. And firefighters have complained about losing radio contact inside some buildings because of the weaker UHF signals. The city has since re-established a ring of VHF frequencies and made other adjustments to remedy shortcomings, according to the Office of Information Technology.

And in Augusta, Firefighters Local 1650 has asked the city to abandon its brand-new digital system altogether and return to analog, according to the Kennebec Journal. Augusta switched to digital last year at a cost of \$1 million (all but \$250,000 of which was paid for through grants), but has experienced problems with consoles failing to dispatch firefighters on three separate occasions. “These events are unac-

ceptable. Local 1650 is recommending that we return to the analog system ASAP,” according to a letter from union president Randall Gordon. City officials acknowledged the system “has bugs that need to be worked out” and that repairs are being made. Additional improvements will be made “as funding and grants come through,” according to Ralph St. Pierre, Augusta’s assistant city manager.

David Libby, a Falmouth town councilor with a broad background in radio communications, said digital conversion was unnecessary and will become even more costly in ways that are yet to be known.

“I’m afraid the state is going to be looking at paying to fix a mistake,” he said. The “saddest part” is that the state probably could have created a reasonably priced, “viable, user-friendly” analog system uniting state, county and local agencies had it acted five or 10 years ago, he said. “We will never see that opportunity again” he said. Regional communications centers in Penobscot, Cumberland, Waldo, Sagadahoc and Oxford Counties have upgraded on their own, he noted. “They couldn’t wait any longer.” ME



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Municipal Regulation of Wind Power

By James N. Katsiaficas, Esq., Perkins Thompson

The combination of volatile oil prices and the need to reduce greenhouse gas emissions is leading consumers, business and government to seek alternatives to fossil fuels to generate electricity. One resource Maine has as an alternative to fossil fuels to generate electricity is wind. The Governor's Task Force on Wind Power issued a report in 2008 identifying the significant land and offshore wind resources in the state. This report notes that wind power will be an important contributor to the state's energy mix, and establishes wind-energy generation goals of 2,000 megawatts of installed capacity by 2015 and 3,000 megawatts of installed capacity by 2020, with approximately 300 megawatts from offshore wind and coastal waters. (By comparison, an average nuclear power plant generates about 1,000 megawatts.)

While the greater use of wind power to generate electricity may seem a viable alternative to fossil fuel electrical generation in Maine, as with any use, commercial wind power energy presents issues for Maine municipalities to address. The term "commercial wind power project" as used in this article means what the Governor's Task Force Report refers to as "grid-scale" wind power development -- development that is large enough to trigger review under Maine's Site Location of Development Act ("Site Law"), because it is a development that occupies 20 or more acres or has disturbed area, including structures, of three acres or more. Another definition of "commercial wind power project" would be a project that generates 100 kilowatts or more of electricity for sale or use by another party.

Some issues, such as whether commercial wind power is a desirable use at all, whether it is a cost-effective alterna-

tive to oil and to other alternative energy sources (such as hydropower) and whether the location of wind power projects near scenic vistas in western and eastern Maine is consistent with the preservation of Maine's natural environment and surroundings and with the branding of Maine's "sense of place," are more global policy issues that are better addressed at the state and federal government levels.

Other, more site-specific issues are appropriately addressed at the municipal level. Assuming that wind power is a lawful use that has its place among the various land uses that might occur in Maine communities, this article focuses upon the more site-specific issues that are within the scope of municipal land-use review. For example, the movement of the sun through rotating turbine blades as seen from a nearby dwelling or business can produce the effect of alternating sunlight and darkness -- the phenomenon called "shadow flicker" -- for a period of time each day. Rotating turbine blades and the turbines themselves generate noise, both audible and low frequency (which may be felt as vibration). Snow and ice can be thrown from rotating turbine blades. In the unlikely event that a tower would fall, the site would need to accommodate its length in order to avoid harm to adjoining users, structures and properties. Also, there are impacts on the environment, from the development of large land areas for commercial wind power systems and from the effects of turbine blades on birds and bats. In addition, there is the impact of commercial wind power development on adjoining scenic and recreational resources.

As with the potential adverse impacts of any use, these are not reasons to prohibit commercial wind power de-

velopment entirely from a community, but instead are reasons to responsibly regulate this use to ensure that it is compatible with other land use activities and uses in the municipality. This article reviews current federal and state regulation of commercial wind power and, as to municipal regulation, outlines potential local concerns, municipal regulatory authority and the planning, zoning and land use tools that can be implemented by exercising that municipal regulatory authority.

FEDERAL AND STATE REGULATION

Before discussing the details of municipal regulation of commercial wind power, it may be helpful to review regulation at the federal and state level.

There are several ways in which a commercial wind power development might be subject to federal regulation. Wind power projects on federal lands (and perhaps offshore projects) may require U.S. Environmental Protection Agency National Environmental Policy Act review, in the form of an environmental assessment or impact statement. Concerns about endangered species and migratory birds may require a U.S. Fish & Wildlife Service review; this agency has issued interim guidelines to protect wildlife resources and to streamline permitting. The Federal Aviation Administration requires approval for structures greater than 200 feet in height above ground level in order to avoid or minimize obstruction to navigable air space; its regulations also require appropriate lighting. If fill or dredging is necessary as part of a project, a U.S. Army Corps of Engineers permit may be required.

Please note that at present, nothing in federal law preempts or limits municipal regulation of wind power

development. This is an important consideration. In many ways, the land use concerns regarding wind power are similar to those associated with cellular telephone towers but, while federal law bans municipal regulation of wireless facilities that prohibits or has the effect of prohibiting wireless communications, there is no such federal prohibition or restriction on municipal regulation of wind power development.

On the state level, several statutes and regulations might come into play with regard to commercial wind power projects. The Site Law most likely would be triggered by such a project. This would require an applicant to comply with the Site Law and the corresponding Maine Department of Environmental Protection (DEP) rules, including Chapters 375(10) ("Control of Noise"), 375(14), ("No Unreasonable Impact on Scenic Character") and 375(15) ("Protection of Wildlife and Fisheries"). The Natural Resources Protection Act (NRPA) also can be triggered by development in fragile mountain areas, over or abutting stream crossings and abutting or near wetlands. In addition, if an area of an acre to more is disturbed by a project, a stormwater management permit may be necessary.

Also, Maine's Legislature enacted a bill in 2008 implementing recommendations of the Governor's Wind Power Task Force (P.L. 2007, c. 661) which streamlines review of wind power projects. In particular, it creates "expedited permit zones" which include virtually all of the organized areas of the State and that area of the unorganized and deorganized territories which LURC has zoned (approximately 1/4 to 1/3 of the townships in the unorganized and deorganized territories). Decisions by DEP and/or LURC generally are issued within 185 days of application (270 days if a public hearing is held). In these expedited permit zones, LURC and DEP review standards are amended, particularly with regard to protection of scenic resources and fitting harmoniously into the existing natural environment. This law explicitly provides that "This act is not intended to limit a municipality's authority to regulate wind energy development."

MUNICIPAL REGULATION

What concerns does a commercial

wind energy project raise that a municipality might want to regulate?

Many potential local concerns involve the location of commercial wind power projects. These include safety of uses and activities on the same and on adjacent property, fall-down zones, shadow flicker, wind access and conflicts between incompatible uses. Failure to appropriately site projects and to provide adequate setbacks from adjoining buildings and properties may result in adverse impacts on neighbors. Here are some of the local concerns that may arise:

Turbine blades can be up to 100 feet in length. Therefore, moving blades can throw ice great distances. Also, severe weather conditions may cause catastrophic turbine failure and in the event of turbine failure, blades may be thrown great distances. Therefore, turbines should be equipped with automatic and manual emergency shut-offs, grounded to avoid lightning damage. Turbines should have appropriate ground clearance and, because they may be attractive to would-be climbers, they should not be climbable. Turbine doors should be locked and fencing or other measures should be considered to limit access to the site. Certification of safety of structural, electrical and rotor components by a qualified engineer may be required before operations can commence.

A falling tower could cause damage to the same or adjoining property, thus requiring "fall down zones" equal to or greater than the combined length of tower and blades.

A municipality may require tower owners/operators to obtain and maintain general liability insurance.

Regulations may specify tower structure type, such as monopoles.

Shadow flicker can be disorienting to neighbors. DEP is working with a nationally recognized limit of no more 30 hours of shadow flicker per year (assuming the same period of sunlight and shadow flicker occurs each day). Shadow flicker also may be minimized by specifying minimum distances between turbines and dwellings.

Wind access is necessary to the proper operation of a wind tower and turbine, but may be impaired by buildings and structures constructed by adjacent landowners.

There also are concerns about the aesthetics of towers, turbines and

blades. Turbines may impair scenic views if improperly located.

Regulations may require towers, turbines and turbine blades to be painted a non-obtrusive, non-reflective color such as white or gray to avoid or mitigate negative visual impacts.

Wind tower projects can generate noise as well as power. Some of this is audible noise, and some is low-frequency noise that is felt as vibrations. Many variables can affect noise impacts on nearby residents; impacts may affect areas for several thousand feet or even several miles.

Regulatory limits might address general audible noise as well as "low frequency" or "infrasound" noise and might set noise limits at the boundary of adjoining properties. Turbine noise may be minimized by specifying minimum distances between turbines and dwellings

Possible solutions include: noise modeling in advance and/or post-construction impact studies; establishing a noise complaint-resolution program; shutdown of turbines or restrictions on maximum turbine speeds during certain times; or, other mitigating measures, if post-construction noise studies show unreasonable adverse impacts.

Municipalities might seek to avoid unreasonable adverse impact on wildlife.

To minimize bird collisions, projects may be sited to avoid nesting, feeding and roosting areas and located away from migratory bat and bird habitat.

Applicants may agree to post-construction impact studies to monitor any negative impacts on wildlife and follow up actions, such as operational changes, to address these negative impacts.

Towers may be abandoned at some time in the future. Municipalities may wish to require turbine removal and site restoration upon facility abandonment, and may require a tower owner/operator to post a performance guaranty (bond, cash escrow or irrevocable letter of credit) to ensure funds for the same.

Local regulation could prohibit the location of signs and lights on towers (except as required by the FAA).

The cost of municipal project review of these projects may be substantial. Therefore, any municipal regulations should include appropriate application fees, as well as the standard

engineering/consulting/legal peer review escrows to ensure sufficient funding for adequate expert review of applications.

Finally, a proposed commercial wind power project may raise the same land use issues and concerns as any other commercial or industrial land use, including: vehicular access; buildings and accessory structures; stormwater; solid waste; septic; and, general compliance with municipal zoning and shoreland zoning ordinances.

What regulatory authority does a city or town have to address these commercial wind power project concerns?

Three basic sources of municipal authority in Maine permit local regulation of commercial wind power development: zoning ordinance authority, police power authority and home rule ordinance authority. State law specifically authorizes a municipality to enact zoning ordinances, which allow it to divide the municipality into districts and to prescribe and apply different regulations in each district. Such ordinances must be consistent with the comprehensive plan. In addition,

municipalities have the inherent police power authority to regulate activities to protect the public health, safety and welfare. Finally, Maine municipalities enjoy statutory home rule authority to enact ordinances to “exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law, or charter.” The typical municipal “Site Plan Review” ordinance is an example of a common home rule land use ordinance.

How can municipalities address their concerns?

Comprehensive Plan Zoning/Planning Ordinance Enactment or Amendment. A municipality can take the proactive step of locating appropriate areas where commercial wind power projects fit in the community by amending the comprehensive plan, zoning ordinance and zoning map accordingly. It then can enact reasonable regulations in the zoning ordinance to allow commercial wind power project review, either by

performance standards to be applied in site plan review or by a separate wind power section. This is a complete approach that would give the municipality the greatest latitude in regulating the location of and standards for such development.

As part of this complete approach, a municipality could amend its comprehensive plan and zoning ordinance to provide for the use as: (1) a permitted use within specific zoning districts; (2) a conditional use or special exception use within certain zoning district(s); or (3) within overlay district(s), which would allow the municipality to designate places in municipality where development of wind projects is deemed appropriate, regardless of existing zoning district boundaries. Because existing zoning ordinance height limits may prohibit all wind power turbines within the municipality; ordinance height restrictions may need to be amended for wind projects.

In addition to addressing the location of wind power projects, a municipality also could amend its zoning ordinance to include performance

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standards for commercial wind power uses and facilities in order to address specific land use concerns. The ordinance might require these performance standards to be addressed through site-plan review or special exception/conditional use review, or might include these standards as part of a commercial wind power review section.

Also, whether the commercial wind power use is a permitted use, a special exception or conditional use or one allowed only in overlay districts, a municipality can amend its zoning ordinance to require site plan review for wind energy development, to address general development concerns that might apply to any development. These general concerns may be vehicular access, stormwater management, solid waste disposal, septic systems and compliance with general zoning dimensional standards.

Stand-Alone Site Plan Ordinance. Alternatively, a municipality simply can enact a stand-alone site plan ordinance or commercial wind power ordinance to regulate such projects without having to enact a comprehensive plan, zoning ordinance and zoning map. The Maine State Planning

Office has prepared a Model Wind Energy Facility Ordinance (available online at <http://www.maine.gov/spo/landuse/docs/ModelWindEnergyFacilityOrdinance.doc>) that may be enacted on its own or may be integrated into an existing zoning ordinance. However, enactment of a stand-alone wind power ordinance without also enacting a comprehensive plan, zoning ordinance and zoning map means that a commercial wind power project could be located anywhere within the municipality, so long as it meets the standards in the wind power ordinance. Thus, this form of regulation may not provide the desired level of local control over the location of a wind power project.

Moratorium. Finally, in the absence of any land use ordinances to regulate a commercial wind power project, a municipality can enact a temporary moratorium ordinance if it finds that the municipality's current ordinances are inadequate to protect the public from serious public harm from such development. However, this is only a temporary remedy that allows the municipality time to develop and enact the necessary ordinances, and a moratorium ordinance should not be used to prohibit or indefinitely delay a proposed commercial wind power project.

(This article is based on a presentation made by the author at Androscoggin Valley Council of Government's Planning Day, Nov. 5, 2009.) 

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Renewable Wood Energy

By Liz Chapman Mockler

If necessity is the motherhood of invention, then municipalities in Maine are finding it necessary to explore alternative sources to fossil fuel, in particular finding inventions that use renewable wood energy in the nation's most forested state.

Two years ago, heating oil, gasoline and diesel fuel cost over \$4 a gallon in Maine. The energy crisis had everyone's attention.

In the fall of 2008, the global economy went into a tailspin and oil prices dropped precipitously. During the past two years, the price of oil has been volatile; the current average is about \$2.60 a gallon for heating oil in Maine.

The lessons learned from the energy crisis of the late 1970s and early 1980s are spurring government leaders at all levels to keep the country's focus on energy conservation and the use of alternative fuels.

In Maine, renewable wood energy is particularly targeted.

The financial support of the Obama administration and Gov. John Baldacci is giving new hope to supporters of wood-based energy. In late February, the Maine Forest Service announced six grants for oil-to-wood projects, although all of the winners were either schools or universities.

In fact, more schools than municipalities have taken the leap and have either converted some of their oil-fired boilers to wood or are heading in that direction.

In addition to "going green" to reduce oil reliance and costs, a key criterion for the state grants is reducing carbon emissions. The grants also are

meant to create new-technology jobs and produce successful projects that can be sustainable in the long term and replicated by others.

The state also is looking for ways to boost wood harvesting in Maine by improving management and more aggressively harvesting Maine's vast forests, according to senior planner Joe Boucher.

"We were looking for good projects that were going to be successful and could show they could work with sustainable technology," said Boucher, who was one of six panel members to rank the grant applications. "... there was no sort of effort to say 'no' to municipalities and 'yes' to schools."

OPEN FOR BUSINESS

The new wood-pellet boiler at the City of Gardiner's Public Works garage is a showcase for the quality and reliability of alternative energy, according to boosters of the technology. Long used to heat homes and businesses in Europe, Gardiner is the first municipality in Maine to use a wood-pellet boiler system.

During an open house on March 1, Mayor Andrew MacLean acknowledged that the decision to make the conversion entailed several discussions among councilors and city staff, many of them "robust" and "vigorous."

In the end, "it was the very strong feeling of the majority of the council that it really would be irresponsible not to look for alternatives" to replacing the public works garage heating system, MacLean told the small gathering.

The oil-fired boiler at the garage had sparked for the last time a year ago. The crew worked through much of the winter without central heating.

Many people stress the benefits of

a wood-pellet system. They include:

- Job creation.
- Less reliance on foreign oil.
- Refueling the forest economy.
- Financial gains that increase as the price of oil rises.
- Keeping the profits from this potential billion-dollar industry in Maine.

Public Works Director Chuck Applebee said many people in the community were asking about ways the city could use less energy, or become more energy efficient. At the same time, some of the public buildings, including city hall, needed new heating systems.

The questions led to a study by Integrated Energy Systems of Falmouth, a report Applebee praised for its clarity and depth.

The report included all of the city's alternative options for boiler replacement, and the wood-pellet system emerged as the strongest alternative, Applebee said.

The project cost \$75,000, far more than a simple replacement of the old oil-fired system, officials said. But as oil becomes more expensive, the payback could be reached within a decade.

The new boiler system was installed by a Lewiston company, which buys wood pellets from a manufacturer in Corinth and then distributes them to both residential and industrial customers.

"I think it's great technology," said Public Works Supervisor Reggie Grant. "It's a Maine thing. Hopefully it will employ a lot of people."

PROJECT PRAISED

The Gardiner open house on March 1 attracted only a few curious residents. Most who attended were

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from Maine Energy Systems of Bethel, which sells the wood-pellet boilers, Heutz Oil of Lewiston, which put together the boiler system, or were city employees and elected officials.

Eliza Townsend, commissioner of the Department of Conservation, congratulated city officials for their “courageous” decision to invest in the wood-pellet technology, which initially costs more but has the promise of future savings.

Gardiner officials showed people the new pellet bins, made of breathable material, and two new boilers that are automated and can moderate their output by computer.

Applebee said the boilers have produced about a gallon and a half of ash since being fired up, on Jan. 15.

The Gardiner project was among the 11 municipal applications submitted for DOC grant funding, but the project was not chosen. Both Applebee and MacLean said the town will submit the project again with hopes of getting some financing in the second round of grants later in the spring.

“These are challenging economic times for municipalities,” Townsend told the *Townsmen*, during the open house. In the second round of grants to be awarded later this spring, the DOC will make “a concerted effort to reach out” to municipalities to ensure they know the criteria for the grants, she said.

Townsend said the Gardiner project was a “pilot” effort that would hopefully lead to many others around Maine.

Mitch Poulin, the lead technician who built the wood-pellet boiler system for Gardiner, said “sink or swim” time has arrived for Maine homeowners, businesses and communities.

He thinks when people and businesses realize the wood-pellet systems are proven, save money, help the environment and take little maintenance, they will be sold.

Huetz has several smaller boiler systems to offer homeowners and the company intends to be part of any discussion of large-scale conversions, such as in Gardiner.

“This time I honestly believe it’s going to swim,” Poulin said, in part because the oil-to-wood projects will employ Maine people and burn Maine wood. He said wood, whether it rots in the forest or is burned, produces the

same amount of carbon emissions.

BIRTH OF AN INDUSTRY

Maine Energy Systems of Bethel, co-owned by gubernatorial candidate

Les Otten, has partnered with the Austrian firm of OkoFEN to become the sole distributor of OkoFEN wood-pellet boilers in the U.S. The company’s focus is on the Northeast, however,



Tim Heutz, owner of Heutz Oil Co. of Lewiston, opens the new Maine Energy Systems boiler during an open house this month to unveil the new wood-pellet technology. Huetz is the only oil company in Maine that installs the MES system and supplies wood pellets in bulk to both home and businesses. The Gardiner council agreed to pay more for the wood-fired system with the expectation that the city would save significantly in future fuel costs.

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where 80 percent of all No. 2 heating fuel in the nation is consumed.

Maine Energy Systems, also known as MESys, also partners with Huetz. Huetz is the only major oil company in Maine to diversify into the wood-pellet market.

According to Harry "Dutch" Dresser, who attended the Gardiner open house with Otten, an estimated 70 percent of all new homes and businesses built in Austria are heated with wood pellets.

He thinks it's time for Mainers to get serious about weaning themselves off foreign oil.

An MESys boiler is being installed at Gould Academy in Bethel, said Dresser, who served 12 years on the Bethel Board of Selectmen, including eight as chairman.

The firm plans to aggressively seek new projects, he said.

Dresser said Maine Energy Systems has trained more than 300 Maine contractors to install and maintain the OkoFEN systems

"I'm delighted," Dresser told the open house in Gardiner. "This is the first time ... a European system has been used in the nation."

Dresser often wears a pin on his suit jacket or sweater. It says, "October 2047," which is the estimated year when the Earth will exhaust fossil fuel, according to multiple European studies.

NOTHING NEW

The Turner-area school district outside Lewiston is another showcase for a successful conversion from No. 2 heating oil to wood in a large public building - and this conversion occurred more than 10 years ago.

Installed in 1999, when the Leavitt Area High School was rehabbed, a wood-chip boiler system heats the high school and its water for most of the year, saving more money as the years pass and oil becomes more costly.

The system has run smoothly, notwithstanding the usual hiccups in any new system. There has been one major repair, for \$1,500, over the 10-year period.

"Our oil burner is at 100 percent capacity only three percent of the time," said Dana Hood, who recently gave up responsibility for the wood operation.

Hood said the district gets one load of wood chips delivered into a 60-ton bin once a week. The chips must be evened out in the bin and cleaning takes about an hour a day, he said.

"I would absolutely recommend (wood chip/pellet boilers) to any municipality or school, Hood said. "We've

had a really good experience. It has to be maintained, but everything needs to be maintained."

Hood said officials from a dozen high schools in Maine and New Hampshire have visited the operation over time as they, too, look to reduce costs and fossil fuel emissions.



Mitch Poulin of Heutz Oil Co. of Lewiston, right, shows Gardiner public works Supervisor Reggie Grant the two new fabric "bins" where the city will store wood pellets for its new Maine Energy Systems boiler system at the public works garage. Poulin helped build and install the system - the first of its kind being used by a Maine municipality.

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The school board's subcommittee that gave its approval to the project more than a decade ago also insisted on installing an oil boiler big enough to meet 100 percent of the high school's heating needs, as backup. The oil boiler also operates as the primary heating source during time of the year (summer) when it makes sense to switch to it.

The Turner high school boiler uses green hardwood mill chips from New Vineyard. From school year 2003-04 to 2006-07, the district saved an estimated \$215,000 in heating costs, according to Hood. The wood-fired boiler provided 84 percent of the school's heat and hot water needs.

MORE SUPPORT

Cities and towns are competing for green-technology grants now available because of federal stimulus money channeled through DOC and the (state, national?) forest service. Another energy effort is offered through the Maine Public Utilities Commission's Efficiency Maine program.

There are large and small projects

being studied or planned throughout Maine. A 10-town consortium along the Mid-Coast recently won a \$500,000 grant to develop a "green workforce training program" that could help convert more municipal buildings to alternative-fuel systems, especially wood-based ones.

Also in late February, the Baldacci administration showed more support for green technology by awarding \$4.8 million to 87 municipal projects, most of which involve either retrofitting existing oil-fired boilers to wood; weatherizing Maine's old housing stock; or, installing solar or wind technology.

The Town of China was among the grant winners and will get \$60,000 to convert its oil boilers to wood-pellet boilers at the transfer station and town office. The grant also promises to save money by improving recycling, and using passive solar air to augment the wood-pellet system at the town office.

"We absolutely need to be proactive (with alternative energy) to reduce costs and increase revenue," said China Town Manager Daniel L'Heureux. "Every dollar counts." **mt**

Maine's oil dependence

80 percent of the No. 2 heating oil burned in the U.S. is burned in New England and New York.

Maine is the most oil-dependent state in the nation.

80 percent of Maine homes are heated with No. 2 fuel oil.

Twenty-two cents of every \$1 spent on heating oil stays in the local economy.

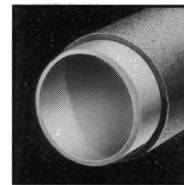
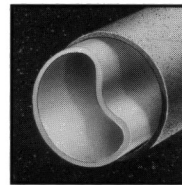
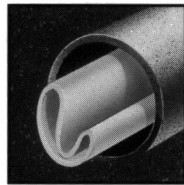
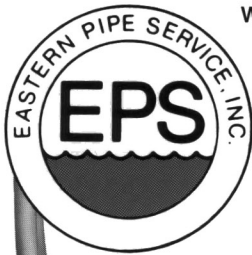
For every 1,000 gallons of fuel oil displaced with wood pellets or solar heat, greenhouse gases are reduced by 14 tons.

Source: Maine Energy Systems

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Once you register with MRTA to participate, a sample of everything can be sent to you, to assist with sales!



Residents will also receive a "how to" guide for FREE with each compost bin!

How the Program Works

1 CONTACT the Maine Resource Recovery Association (MRTA) at (207-942-6772) or email victor.horton@mrta.net for a Participation Packet.

2 REGISTER with the MRTA to participate in the sale.

3 PROMOTE the sale of bins and/or pails (a poster with an attached order form will be provided for easy copying) and accept orders until **April 30, 2010**, keeping track of who orders.

4 RETURN the Final Order Form and checks made payable to MRTA by **MAY 4, 2010**. Bins and wingdigger orders must be made in exact multiples of 20 ONLY, Rain barrels are in lots of 15 and kitchen pails are in lots of 26. Team up with a neighbor if you need to meet the minimum quantities.

5 ACCEPT delivery of compost bins/pails sometime during the week of **May 10, 2010**.

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Tough Decisions on Local Law Enforcement

By Douglas Rooks

Like many municipal services, police departments have been greatly affected by the economic downturn, with a resulting squeeze on budgets and staffing. And for the first time since the early 1990s, a town's voters have approved dismantling a municipal police department – although that decision in Bethel will now be subject to a second vote in June.

In Monmouth, it took five tries to finally pass a police budget, with approval not coming until months after the town budget went into effect. The police chief resigned shortly after the budget was passed, and the town briefly entertained discussions of what alternative policing arrangements could be made.

But economics are only part of the decision on whether towns should retain their police department. Equally important are concerns about coverage, expertise, retention of officers and even the style of policing.

"Some people say that consolidation will always produce better service, but I don't see that," said Robert Schwartz, long-time executive director of the Maine Chiefs of Police Association. "A lot of towns want local service. It's very important to townspeople. You can lose a lot through consolidation."

That point of view remains popular across Maine. There are 117 municipal police departments, nearly all with designated chiefs (though Gouldsboro has recently operated without one), along with the 16 county sheriff's departments and State Police. Despite concerns that the small

departments that prevail in many communities are less effective at investigating crimes, municipalities that have police departments generally retain them.

The only recent example found, before the Bethel vote, of a town disbanding a full-time police department goes back to 1991, when Lebanon voted to do so. A subsequent special town meeting rejected an attempt to reinstate the local force. Lebanon, though relatively populous (5,705), retains a selectmen/town meeting form of government, and has neither a town manager nor an administrative assistant.

Some fairly small municipalities (Frye Island, Carrabassett Valley, Swan's Island) have municipal police departments while some relatively large ones (China, Gray) do not and rely on county and state coverage. Gray, with a population of 7,266, is one of the larger towns without a municipal police department. It has a State Police barracks and a county patrol center, and voters have repeatedly

shot down attempts to provide local law enforcement officers.

Some mid-sized and larger communities contract with the county for police services. Standish, which began growing rapidly in the 1970s and now has nearly 10,000 residents, pays Cumberland County to provide six full-time officers. Harrison (pop. 2,436) also contracts with Cumberland County for one officer, plus two more during the summer season.

But in Oxford County, replacing Bethel's department with county patrols would be a first.

The drama began last fall, when, on behalf of selectmen, Town Manager Jim Doar asked Oxford County Sheriff Wayne Gallant to prepare a plan that would allow the county to assume policing responsibilities. Police Chief Alan Carr had resigned in September, and the department was short-handed, relying heavily on seven part-time officers. Only one full-time officer was still on the payroll, though Bethel normally staffs with four full-time officers and eight part-time, or

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



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reserve, officers.

Bethel, where the population swells both in summer and in winter – thanks to ski resorts – has had trouble keeping certified officers on patrol. Doar said that these concerns have been recurring for at least the last 10 years.

“We rely a lot on the reserves, and we may push the envelope,” he said. By law, part-time officers can work only an average of 20 hours a week, and have less training than full-time officers, who must be certified.

“The average length of service for a full-time officer during that time has been about 18 months,” he said. The difficulty in keeping officers on the job has several causes, including a declining talent pool overall. “It doesn’t seem like as many people want to be police officers in the first place,” Doar said.

Small departments do have greater turnover, he said. And since all full-time officers must graduate from the Maine Criminal Justice Academy in Vassalboro, towns must not only pay staffing costs during the course, but provide backup coverage as well.

After officers gain experience, “They often want to move to a bigger department where there’s better pay and benefits and more opportunities to advance,” Doar said. In Bethel, even the police chief is out regularly on patrol.

OXFORD COUNTY PLAN

The approach to Oxford County was designed to address several factors. One was to save money, but even more important was to gain continuity in staffing and to provide reliable 24-hour coverage, a high priority for residents, he said.

Sheriff Gallant came up a budget that was about \$20,000 less than the \$295,000 Bethel is currently paying for a municipal department, and the county price would stay the same for three years. It included 24-hour coverage, something the town insisted on even though there are short gaps in the county’s (and state’s) patrols at night. Three full-time deputies would be assigned to the town, and the other 12 deputies at Oxford County would be on call, he said.

“There would be other benefits to the town that people may not have noticed,” Gallant said. The county

would take over administrative duties, “meaning that officers would be out on patrol, not in the office processing paperwork.” And the three-member investigative team would do the detective work, providing improved crime-solving for the town.

Hearings on the plan included discussion of response times, which some saw as more important than how well officers were trained. The relatively small difference in cost – 7 percent for the first year – meant that the debate played out mostly around what services the town would receive from keeping the department or transferring that responsibility to the county.

At a Feb. 9 special town meeting, the county option prevailed on a vote of 104-89.

The next day, some voters who were unhappy with the result talked about petitioning selectmen for another vote. The petition was later presented to selectmen, but they decided a new vote wasn’t necessary.

“It wasn’t as if the town didn’t have the chance to decide. There was no new information in the petition,” Doar said. Instead, it was a legal issue that delayed the planned transfer to the county scheduled for March.

Town Attorney Geoffrey Hole advised that, because the previous town meeting had appropriated funds for a municipal department, paying the county by contract might face a legal challenge.

Not all the selectmen were convinced. Some argued that it is their

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responsibility to assign police coverage under state law, which they can meet by funding a municipal department, contracting for the service, or simply allowing the county and state to patrol, as many towns do. But at their Feb. 19 meeting, selectmen failed to ratify the county contract on a 3-2 vote, meaning that the June town meeting will have to take up the issue again.

Doar said that although interest remains high regarding the police issue, he hasn't heard anything that would suggest townspeople will reach a different conclusion in June. "If we were ever going to do this, now would be the best time." With only one full-time officer on board, there would be relatively little disruption, and Doar said there was a good chance Oxford County might be willing to hire the officer.

LOCAL DEPARTMENT RETAINED

In Monmouth, the issues over the police department were longer running, but resolved more definitively, at least for now.

When voters first started rejecting the police budget, selectmen weren't sure what the objections were, according to Town Manager Curtis Lunt.

"What did the voters want? Was it about the money, or was it something else about the way the department was run?" he said.

Selectmen tinkered with the budget, and each time voters considered it there were big turnouts and close margins, but four times it was defeated. Then, on Nov. 27, a fifth ballot produced a 482-410 margin in favor.

Shortly thereafter, Police Chief Robert Annese resigned, though Lunt said that the reason, while not publicly disclosed, did not involve the budget stalemate.

Selectmen then turned their attention to what kind of policing the town might want. One option discussed was contracting with another town for administrative services while retaining local officers. In neighboring Winthrop, Police Chief Joe Young, said his town could do that – but he wouldn't encourage an arrangement that involved only administration and not staffing.

This was the fourth time in his 24-year tenure in Winthrop that Mon-

mouth had made a similar inquiry, Young said. "I didn't draw up a detailed proposal this time, but we did offer a concept draft."

The idea Monmouth had of simply contracting for administrative services wouldn't have worked, in Young's view. "I can't really take responsibility for officers I hadn't hired and whose qualifications we'd never reviewed."

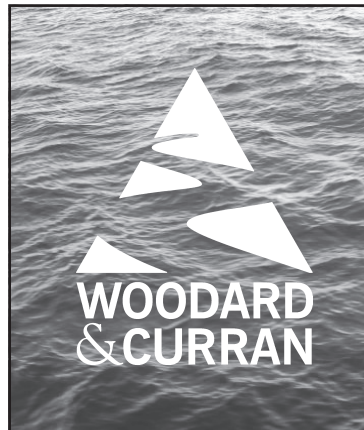
Young was willing to be flexible about details, and said Winthrop could have purchased Monmouth's existing patrol cars and equipment, with the understanding that it would be transferred back to Monmouth at

the same price if the arrangement didn't work out.

He thinks there would be significant advantages for Monmouth, and for Winthrop, to put together a larger joint department. "They would have gained 24-hour, seven days a week coverage and be relieved of the administrative overhead."

Officers in a joint department would become familiar with the entire territory, so "Everyone would be familiar with the work we have to do."

The two neighboring towns do not have a long history of cooperation. Monmouth joined a new regional



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school district, RSU 2. Winthrop remains on its own, although it is close to partnering with Fayette. Still, there have been joint ventures between the towns. "Yes, there's some rivalry," Young said. But, he added, "There's been a joint adult education program for years and, from what I can see, there's no reason it couldn't work elsewhere."

Monmouth's reaction, Lunt said, was essentially "thanks, but no thanks." Selectmen decided to go ahead with interviews for a new chief and received 18 applications. A hiring is expected shortly.

"We've been through this before," he said, noting that Monmouth is "just large enough to have its own department" but small enough to keep asking, "Why do we need this?"

Retention is definitely an issue, he said, with three departures in the last three years. While some departing officers join county forces or State Police, one decided to become a game warden. "It was apparently what he'd always want to do."

Looking Ahead

Even though most municipal departments will probably remain intact, that doesn't mean there won't be changes, particularly this year, said Robert Schwartz of the Chiefs Association.

"Budgets have been under pressure for the last few years," he said, with municipal department delaying

purchases of new cruises, cutting back on new equipment and limiting hours.

"This year it may start cutting into personnel, since there's nowhere else to go," he said.

In Oxford County, Sheriff Gallant said he had "tons" of inquiries about the proposed arrangement with Bethel, and said he could have more "when they see how it works out."

The biggest factor for preserving local departments, even the smaller ones, may boil down the sense of local control, both chiefs and sheriffs say.


But for Chief Young, that may not be the right way of looking at the issue. "Local control isn't the same for police as it might be for another municipal service," he said. "You don't want local officials to be telling police what cases to investigate and when they should

make arrests."

"Naturally, if the council says they want us to patrol more on Main Street and stay away from Route 202, we'll listen. But law enforcement is a different kind of responsibility."

Jim Doar agrees. "Local control of police is in many ways a myth," he said. "They work for the DA at least as much as they do for the town."

That reality, he said, was enough to shift his own position on the issue. When the selectmen first asked him to explore an arrangement with Oxford County, "I wasn't for it, personally," he said.

But after considering the pros and cons, he changed his mind. "We wouldn't be giving up a lot, and we can make sure we have well-qualified officers on the job around the clock." 

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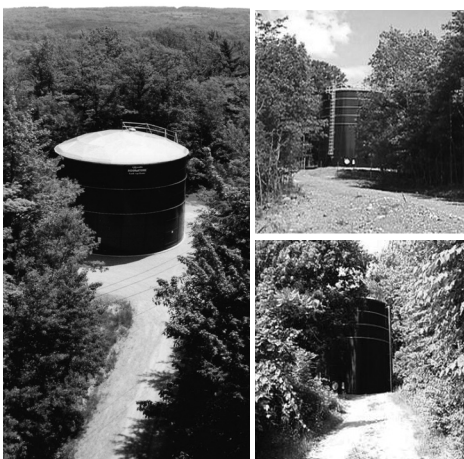


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Is Single Stream the Answer?

By Victor Horton, Executive Director, Maine Resource Recovery Association

Over the last few years, there have been many articles in the local and national media regarding single-stream, or no-sort, recycling. Under the proper circumstances the benefits can be many but in other situations it may be the wrong decision. Let's look at what single sort can mean for your community from both an economic and an environmental angle.

MRRA has not taken a position either for or against single stream recycling. Our purpose is to make sure that all factors are considered.

Many factors affect your solid waste and recycling costs: collection, warehouse and storage requirements, processing equipment and staff, freight expenses, material revenues, tipping fees and avoided costs. Each of these factors will come into play when you conduct a thorough analysis of your options.

COLLECTION

Do you offer your residents curbside service? This really is not a recycling expense, but rather an expense of providing a convenience service. Many communities, especially in more rural areas, do not provide this service. In those cases, residents either contract with a private hauler for this service or take their recyclables to a drop-off location on their own. The same rationale can apply to their garbage (MSW) equally. The choice to provide municipally paid pick up is just that – a choice – and quite an expensive one. Whether the municipality or the resident does the hiring, the service will probably run in the range of \$2 to \$4 per stop. Should this expense fall entirely on the property

taxpayer or should those who generate the material pay for this service?

STORAGE AND HAULING

Another expense of collection is how to consolidate the material for processing and/or hauling. If you do not offer curbside collection, then a transfer station and/or recycling center is often needed to provide a drop off location. Even with curbside collection, a transfer station or recycling center could be of benefit. Some towns have formed cooperative entities, similar to hospital or school districts, for this purpose. Others have the hauler take material directly to disposal sites.

Transfer stations require land, equipment and staff but can greatly reduce the cost and environmental impact of hauling by reducing the number of trips needed for final disposal and offering you some degree of control over what is tipped on your dime. Whether your hauler takes it directly or you have it hauled from the transfer station you are paying for the freight one way or another. Conversely, a recycling center that bales & stores truckload quantities of recyclables may be able to retain more of the value of the materials, since most mills cover the freight cost from the center to their facility.

TIPPING FEES AND AVOIDED COSTS

Once trash is picked up and delivered to the final disposal site, such as a landfill or incinerator, what does it cost to dispose or "tip" the material? When your garbage arrives at the landfill/incinerator you incur a fee which

can range from \$50 to over \$100 per ton. This is the single largest expense of solid waste management, approaching 50%, or more, of your solid waste budget. The cost of hauling that material to the disposal site can also be significant. One of the major benefits of recycling is that every ton recycled avoids these tipping fees and freight costs. This is known as avoided cost and is the primary benefit of single stream.

By reducing the sorting burden, residents generally will recycle more material. How much more? Studies vary and many factors can have an impact. A 15% increase in the number of tons recycled is a good estimate for planning. Higher percentages can be realized by further changes in programs; such as starting pay-per-bag or pay-as-you-throw (PAYT), adding significantly to the list of items accepted, or changing from drop-off to curbside collection. These changes all have their own effects. The challenge is to gauge the results from any one or more of the various program modifications. A 15 percent increase could result in significant avoided cost savings and should be considered valuable.

BUILDINGS, EQUIPMENT AND STAFF

The larger a community or group of towns working together, the more it can make sense to operate a transfer station and full service recycling center. This is why large cities have material recovery facilities or MRFs (pronounced "murfs"). When you have large numbers of residents creating tens or hundreds of thousands

of tons of recyclables, you can justify spending many millions on plant, equipment and payroll.

Recently, a group of Maine communities invested \$3.7 million to convert a two-sort MRF to single-sort. They process about 30,000 tons of material a year. Larger MRFs can cost several multiples of this. But for the vast majority of smaller, rural communities far from large population centers, even 10,000 people generating 1,000 tons a year of recyclables can justify a local or regional recycling center.

One scenario: Borrowing \$500,000 on a USDA low-interest loan over 30 years would cost \$25,000 to \$30,000 per year and would pay for an adequate building with quality equipment. Add staff and miscellaneous other expenses and you could be looking at maybe \$100,000 per year for a per ton cost of \$100. The larger the center and the more tons processed, the better the efficiency and cost per ton should be. Capital, operation and marketing expenses for a large central Maine facility which has large efficiencies of scale is in the \$60 per ton range.

MATERIAL REVENUE

Long-term historical data covering 16-plus years shows recyclables to be worth about \$70 per ton, on average. Like the stock market, this number will vary wildly at times and move over a wide range. We've seen corrugated cardboard and newspaper anywhere from \$10 to \$200 per ton! It has swung that far and back again in a matter of a few months time. HDPE #2 Natural (plastic milk bottles) have been anywhere from \$100 to \$900 per ton. Planning on any single price point is difficult if not impossible. It is best to be extremely conservative when budgeting as a means of avoiding major problems if prices stay low for any extended period. Using the \$70 historical average; we would recommend using \$50 for budgeting, giving you a \$20 cushion.

THE BOTTOM LINE

In the end, it should cost between \$60 and \$120 per ton, maybe more when efficiencies are lacking, to process and market your recyclables to

the mills. This results in operating margins of +\$10 to -\$50 per ton. Add in the avoided costs saved of \$50 to \$100 per ton and the real return on recycling comes to \$0 to \$110 per ton. From data supplied from one facility, the cost to operate is closer to \$80 per ton. Many out-of-state MRFs post higher operation costs.

MRFs typically offer more than one pricing structure. A cost-sharing approach is where the operation costs are taken out and then revenue paid on the balance or at a locked-in price which varies from a few years to more long term periods. Averages for recycling cost sharing show prices may be between \$35 in a great market and negative \$75 in a poor market. These are extremes and generally do not move this drastically up or down. Some of the current offerings are in the \$0 to negative \$30 range.

There are several deals being offered to towns for their recycling. Some are definitely better than others. If a proposal seems too good to be true it may need a second look. Some of the early deals offered by the waste-to-energy facilities in Maine involved tipping fees at less than \$20 per ton. Those deals were short-lived and could not be sustained.

THE ENVIRONMENT: RESOURCES & GREENHOUSE GASES


The cost of hauling uncompressed or minimally compressed light loads over long distances can be higher. Where populations are dense so haul-

ing distance is short this is minimized. Un-baled material might be hauled to a processing center at 6-12 tons a load. Here it gets sorted and baled before going on to the mill. On this trip the weight might be 20-23 tons. Minimizing that first light haul reduces costs and environmental impacts associated with additional truck miles traveled. Increased tons collected for recycling do reduce pollution and resource waste so there is a balance to be considered.

CONCLUSION

Every situation is different. Cookie cutter solutions won't apply. It is incumbent upon every municipal leader considering changes to analyze their unique conditions. Your results *will* vary. Do a thorough study based on full cost accounting to determine what results are reasonable to expect in *your* community.

The challenge that municipal officials face in making decisions regarding single-stream recycling and managing MSW is that these systems are more than just a service; decisions involve long-term infrastructure and public education. For instance, once you eliminate sorting of recyclables, it will be very difficult to go back. A "Let's try it for awhile" approach is not realistic. Any changes to your system should be carefully considered, as they will be long-term.

(MRRRA is willing and able to provide technical assistance with this process. Recycling does pay. Doing it the best way will take careful study.) 



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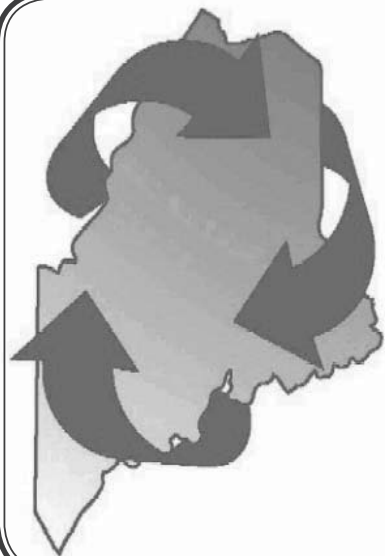
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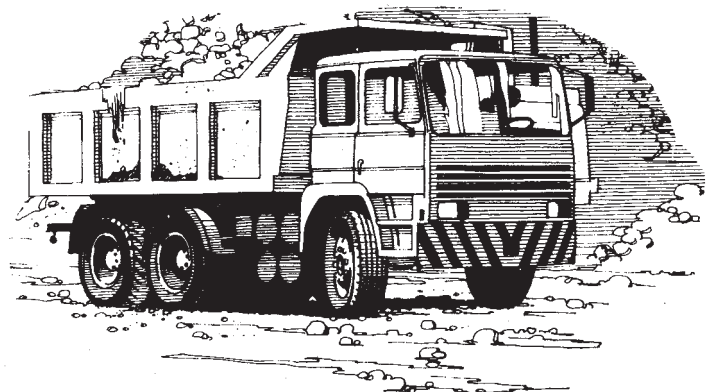
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People

Sabattus selectmen have hired **Rick Bates** as the town's new administrator. Bates works for Municipal Resources Inc. of New Hampshire and has signed a one-year contract to serve as part-time administrator for the town. Bates worked for the town of Milton, New Hampshire, for 30 years, ending his career after a long run as Milton's parks and recreation director.

The city of Brunswick has hired away neighboring Topsham's fire chief, **Ken Brilliant**, replacing **Clark Labbe**, who is retiring after almost 40 years of service to Brunswick. Brilliant, Topsham fire chief since January 2004, will start his new duties across the Androscoggin River on April 26.

Northport Town Administrator **Jack Driscoll** agreed to a severance package in early March to leave his job before the end of his contract on June 30. Once selectmen voted not to renew Driscoll's contract, he asked the board to be released early from his agreement with the town so he could look for a new position. Driscoll was hired as the town's first administrator in October 2007.

Longtime Oxford County commissioner and state legislator **Norman "Norm" Ferguson Jr.** of Hanover died February 22 at a long-term care facility in Auburn. He was in his mid-70s. Ferguson served for 26 years as a county commissioner, as well as state senator throughout the 1990s. One of his last acts before dying was to sign the nomination petition for Sen. Peter Mills, a candidate for governor and close friend for decades. Ferguson was congenial but committed to a decision once made and was a staunch proud Republican.

Augusta Mayor **Roger Katz** announced in February he will run for the Republican nomination for the Maine Senate District 24 seat being vacated by veteran state lawmaker and Vassalboro Selectman **Libby Mitchell**, who is running in the Democratic primary for governor in June. Katz, a lawyer by profession, is serving his second term as mayor of the capital city.

Paul Leeman Jr. was named Bristol

fire chief in January, replacing **Ronald Pendleton**, who served the Lincoln County town of about 2,800 for 55 years and whom Leeman called a "legend" in Maine firefighting circles. Leeman is the department's former safety officer and both his son and Pendleton's son are longtime Bristol firefighters. The two families are related through marriage. Leeman has served the town since he signed up as a volunteer firefighter at the age of 16.

Mount Desert selectmen have named **Durlin Lunt Jr.** as interim town manager after choosing not to renew the contract of **Michael MacDonald**, leading to his resignation in late February. Selectmen plan to wait until after a new budget is ready for town meeting before starting their search for a permanent town manager. Durlin has the option of applying for the full-time job, officials said.

Lewiston Finance Director **Richard "Dick" Metivier** retired on February 19 after 41 years with the city of Lewiston. Metivier, 62, plans to work as a consultant for the law firm Eaton Peabody, specializing in economic development and job creation. The Lewiston council has hired Deputy Finance Director **Heather Hunter** as the new finance director.

Scott Morelli of New Gloucester has been named the new Gardiner city manager, effective March 8. Morelli, 34, succeeds longtime manager **Jeffrey Kobrock**, who resigned in May 2009. Morelli earned a master's degree in public administration from Syracuse University, where he was honored as the graduate student of the year in 2005. He has worked in municipal government in Maine and New Hampshire.

Andover Town Clerk **Elaine Morton** and Treasurer **Sandy Conrad** have announced they will resign their elected positions in March after completing some unfinished work. Morton has worked as Andover clerk for nine years, plus another seven as deputy town clerk. Conrad, who also serves as deputy clerk, is completing her eighth year with the town.

Edwin Nickerson, chairman of the Presque Isle City Council, died in Boston of cancer on March 1 at the age of 64. Nickerson served the city in various volunteer positions over many years. His professional career was in banking and economic development. He was first elected to a one-year term in 2005; reelected to a four-year term in 2006 and elected council chairman in 2009 and 2010.

Brewer Fire Department Cpt. **Gary Parent** has been promoted to chief, effective in early March. Parent is a 25-year Brewer firefighter and will replace **Richard "Rick" Bronson Jr.**, who has resigned after 35 years with the department, the last 11 as fire chief.

St. Agatha Town Manager **Ryan Pelletier** has resigned after 11 years to accept the job of director of workforce development in Aroostook and Washington counties under the Workforce Investment Act. In departing comments, Pelletier said he would miss managing the town, but that the town would benefit from having a new person bring new ideas and philosophies to town government. Pelletier was named the Maine Town & City Management Association's "Rookie of the Year" in 2001 and served as president of the Maine Municipal Association in 2006, among other career accomplishments. Pelletier said he will help selectmen through the transition to a new manager.

Brad Reed, chief of the Tremont Volunteer Fire Department, retired in March, but will continue serving the town as a firefighter. Reed has been chief for 21 years.

West Forks Plantation Fire Chief **Brian Rowe** died while driving to the scene of a snowmobile crash late on March 5. Rowe, 66, died of apparent natural causes. The snowmobiler, a 37-year-old West Gardiner man, died of his injuries.

Former longtime Topsham Police Detective **Talbert "Sonny" Williams** died February 9 at the age of 77. Williams was popular and well-known throughout his 27-year career with the town. He resigned in 1996. [ml](#)

Anson: A group of about 40 women and men are participating in a 75-hour firefighting training course that has attracted candidates from nine rural towns in Somerset County. The course is sponsored by Southern Maine Community College and is believed to be the first-of-its kind in the county. The participants will get five straight week-ends of hands-on training in an effort fire officials hope will become a model to help address a shortage of volunteer firefighters across Maine.

Bangor: An effort to recall five of the city's nine city councilors failed in early March when the petitioner failed to make the deadline for submitting the paperwork, as well as getting only about 400 of the 2,236 signatures needed to make the ballot, according to city officials. The petitioner wanted to oust the councilors who upheld a vote in November to remove the city manager.

Bath: Officials might consider buying some of the Park Street area properties that flood when the city's sewage system overflows, as it did during a torrential rain storm in February. City councilors are consulting with engineers about other options for resolving water problems in the area, as well as others in the coast-side community. The public works director said the city has experienced four so-called "25-year storms" in five years.

Columbia Falls: The annual town audit was completed recently and showed that "every penny is in every account, as it always has been," according to Treasurer Lenora Weaver. Late last year, a resident collected enough signatures to call for a vote on whether the town should have a special audit conducted because the relatively-new resident said the town was not keeping its records in a professional way, Weaver said. Residents of the Washington County town of about 600 voted 53-3 against the petition during a special town meeting on January 13, showing obvious satisfaction with the annual town audit process.

Damariscotta: The Lincoln County News announced in early March it would feature some of its news on Facebook, the popular social networking website, and warned people to remember what they write possibly could be

posted and read by anyone.

Emden: A run-off election will be held April 13 after Ruth Blake and Amanda Morrill each received 58 votes for tax collector during town meeting in early March.

Farmington: Selectmen voted in February to ban town employees from talking or texting on their cell phones or using their computers while driving municipal vehicles.

Greenville: Selectmen plan to craft the town's first municipal ethics policy to avoid conflicts of interest and other tricky issues that often face elected officials and public sector professionals.

Hampden: Budget deficits in the Bangor suburbs of Hampden and Hermon have compelled municipal officials to again discuss sharing services and even personnel, especially because of the expected retirement later this year of long-time Fire Chief Larry Willis. Hampden is home to about 6,700 residents and bordering Hermon has an estimated population of about 4,900.

New Gloucester: The town will hire a private property assessor or firm rather than keep an assessor on staff to save the town about \$40,000 a year. After a lengthy debate, the board also voted to hire an assistant planner.

Norway-Paris: Selectmen from the twin towns in western Maine voted in February to remove the entire joint solid waste board of directors for allegedly adopting bylaws that conflicted with the interlocal agreement that governed the board. Selectmen from both towns appointed their town managers to serve on the board temporarily and took other action to ensure the operation would continue functioning normally until a new board could be seated.

Penobscot: Annual town meeting voters on March 6 approved moratoriums on construction of new commercial cell towers or wind turbines to allow time for the town to develop rules for placement and operation of the structures. The six-month moratoriums could be extended. There has been interest from a business in erecting a cell tower, but there is no known proposal for a wind power project. Residents decided they didn't want to wait until there was a plan and then have to scramble to develop

an ordinance.

Portland: While city teachers are bracing for the elimination of as many as 100 jobs, municipal officials have started reviewing the city budget and talking about how to fill a budget hole of \$8 million. The school department has lower-than-expected state revenues to blame for a \$6 million budget deficit. The city of Portland cut 90 positions to balance the present budget; the city manager said mending the new budget problem will require cuts in both positions and services.

Winthrop: The town's police department is among only a dozen Maine employers nominated by employees for a national Freedom Award, presented since 1996 by the U.S. Department of Defense for outstanding support of National Guard members and their families. The awards will be presented in September in Washington, D.C. Also among the nominees are the Maine Turnpike Authority and the Greater Portland Transit District.

Brownville: The town is considering creating a tax club to help property owners more easily budget for and pay their annual assessment. The plan would be modeled after a Christmas Club program, with monthly rather than semi-annual payments, according to the town manager. The idea will be discussed during the March town meeting.

Weld: Town meeting voters on March 8 rejected a proposed six-month moratorium on wind development, but agreed to create an advisory committee to investigate what options are available to the town to set rules on commercial wind power facilities.

York: Selectmen in early March authorized the town's energy efficiency committee to begin searching for a firm to conduct an official energy audit to identify the 15 worst-polluting municipal buildings. Residents last May agreed to set aside \$100,000 for upgrades to town-owned facilities to save energy and costs. The committee has analyzed 36 buildings and listed its top 15 building concerns. According to the preliminary findings, town hall has the largest so-called carbon footprint of all municipal buildings. [\[mc\]](#)

Municipal Bulletin Board

ASSESSMENT APPEALS

A seminar to focus on the roles of people who serve on Board of Assessment Review panels will be held on April 7 at the Maine Municipal Association building in Augusta, from 4 p.m. to 7 p.m.

While the seminar focuses on the responsibilities of BAR members, assessors and other municipal officials who receive assessing questions could benefit from it as well. The seminar counts two hours toward Maine Town & City Managers Association Certification and Assessors' education hours.

The cost is \$35. To register, go to the MMA website at www.memun.org or contact MMA Educational & Affiliate Services at 1-800-452-8786.

LEGAL WORKSHOP

Instructors from the MMA Legal Services Department will offer a course on legal rules governing decisions made by local planning boards and land use appeals boards. While the course is aimed at new or less experienced board members, long-time board members may find it beneficial as well.

The course will be held at the Shiretown Motor Inn in Houlton on April 8. It runs from 5:30 p.m. to 9 p.m. and a light meal will be provided.

The cost is \$40 for members and \$60 for non-members. Please register online at www.memun.org.

TRAINING FOR NEW CLERKS

Newly elected and appointed clerks can learn more about their new responsibilities by attending a workshop sponsored by the Maine Town & City Clerks' Association at Hollywood Slots Hotel & Raceway in Bangor on April 12.

This course is designed to help clerks from both small and large municipalities. Topics include: elections; marriage licenses; monthly reporting procedures; and, maintaining agendas and minutes.

The cost is \$50 for MTCCA members and \$60 for non-members. The course runs from 8:30 a.m. to 4 p.m. People must be present for the full

day in order to receive a certificate. To register, visit the MMA website at www.memun.org or call Educational & Affiliate Services at 1-800-452-8786.

ELECTED OFFICIALS WORKSHOP

The MMA will host a workshop offering training on a variety of subjects – from liability concerns to what constitutes a conflict of interest – at the Shiretown Motor Inn in Houlton on April 13.

It's a "must" for newly elected officials, and experienced officeholders will get value from it too. Plus, it's an opportunity to network with local government officials from around the state.

The workshop runs from 4 p.m. to 8:30 p.m. To register, go to the MMA website at www.memun.org.

MWWCA SPRING CONFERENCE

The spring conference of the Maine WasteWater Control Association is scheduled for April 23 at Hollywood Slots Hotel & Raceway in Bangor. Registration begins at 7:45 a.m. and the conference runs until 3:15 p.m.

The keynote is a presentation from the U.S. Department of Agriculture about Rural Development Funding programs.

Registration information can be obtained from the MMA Affiliate Services office at 1-800-452-8786. People can register at the door, but the cost is \$20 higher.


MAINEDOT CERTIFICATION

The Maine Department of Transportation will sponsor a Local Project Administration (LPA) Certification Course April 27 and 29. LPA certification is a requirement for municipal officials to locally administer (develop, design and construct) MaineDOT funded projects. For more information visit the web site at: <http://www.maine.gov/mdot/lap/lpa.php>. To view the Training Registration Brochure go to: <http://www.maine.gov/mdot/lap/documents/LPA10flyer.pdf>.

TWO-DAY FINANCE WORKSHOP

Heather Hunter, Finance Director for the City of Lewiston, will hold a program designed to introduce municipal officials on government accounting and internal control procedures.

The workshop will be held April 29-30 at the MMA office in Augusta. Registration on April 29 starts at 8:30 a.m. The workshop runs from 9 a.m. to 4 p.m. both days. The cost is \$85 for Maine Municipal Tax Collectors' & Treasurers' Association members and \$100 for non-members. The cost to join MMTCTA is \$15. The workshop fees include coffee breaks, materials and lunch both days.

Please register online at www.memun.org. 

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.

MMA's services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: www.memun.org



60 Community Dr., Augusta, ME 04330

Legal

ANNUAL AUDIT REQUIRED

Several municipalities have asked recently whether they could skip their annual audit to save money, so let's make it absolutely clear: Every municipality is required by law, at its own expense, to have an annual audit ("postaudit") made of its accounts for the last complete fiscal year (see 30-A M.R.S.A. § 5823).

The audit must be performed by a qualified public accountant (the State Department of Audit no longer routinely does so) and on the basis of standards and procedures prescribed by the State Auditor. The municipal officers must notify the State Auditor of the name and address of their auditor within 30 days after the auditor has been engaged.

Within 30 days after the audit is completed, the auditor must send a certified copy of the audit report to the State Auditor. The complete audit report must be kept in the municipal office (as a public record, in perpetuity).

The municipality's annual report must include a statement that the complete audit report for the last fiscal year is on file at the municipal office. The annual report must also include the following excerpts from the audit report: name and address of the auditor; auditor's comments and suggestions for improvements; comparative balance sheet; and statement of departmental operations (see 30-A M.R.S.A. § 2801(3)).

To help ensure compliance with municipal accounting and audit requirements, the State Auditor has broad investigative and subpoena powers (see 30-A M.R.S.A. §§ 5822, 5824).

Any public official who neglects or refuses to perform any duty imposed by these laws is subject to a \$100 fine and forfeits his office (see 30-A M.R.S.A. § 5826). (*By R.P.F.*)

SCHOOL WARRANT ORDER AFFIRMED BY LAW COURT

Last year the Washington County Superior Court ruled that selectmen have no discretion to refuse to

countersign school district election warrants (see "Court Orders Selectmen to Sign School Warrants," *Maine Townsman*, "Legal Notes," June 2009). The Maine Supreme Court has now upheld the lower court decision.

In *Maine School Administrative District No. 37 v. Pineo*, 2010 ME 11, the Law Court agreed to hear the selectmen's appeal even though by then the case was technically moot – the disputed elections had already occurred. The Court reasoned that the broader issue – whether municipal officers have the discretion to refuse to sign a school warrant they believe is legally deficient – is likely to arise again, so it is in the public interest to have a definitive ruling.

On the merits the Court apparently had no difficulty reaching the same conclusion as the lower court: Where the statutes direct that a school district election warrant "shall" or "must" be countersigned by the municipal officers, their duty is ministerial – they have no discretion not to.

As we noted here last year, the same holds for several other matters where municipalities and school districts intersect, including the commitment of school tax assessments. (*By R.P.F.*)

STUDENT APARTMENTS NOT 'BOARDING HOUSE'

The Maine Supreme Court has reaffirmed the principle that in land use regulation, it's the living arrangement – not the relationship between co-habitants – that determines whether a use is residential.

In *Adams v. Town of Brunswick*, 2010 ME 7, neighbors of a two-unit apartment building leased, respectively, to five and six Bowdoin College students challenged the Code Enforcement Officer's decision that the building was a permitted residential use. They argued essentially that a group of unrelated students cannot constitute a household unit and that the use was therefore a prohibited boarding house. The ordinance, however, defined "household" as simply a person or persons living together in the same dwelling unit as a single housekeeping entity. And according to the record, in each of the two units the students did indeed live as a single household because they shared the same kitchen and bathroom facilities and were collectively responsible for rent.

The Court noted several times (apparently with approval) that the ordinance's definition of household

Municipal Calendar

BY APRIL 1 — Municipal officers shall issue warrants for collection of fees on unlicensed dogs (7 MRSA §3943).

DURING APRIL — Municipal officers of municipalities over 2,000 population, and of any other town so voting at town meeting, shall appoint an inspector of buildings (25 MRSA §2351).

APRIL 1 — Municipal assessments are controlled by this date (36 MRSA §502).

— Monthly/Quarterly expenditure statement and claim for General Assistance

reimbursement to be sent to Department of Human Services, General Assistance Unit, DHS #11, Augusta, ME 04333 (22 MRSA §4311).

APRIL 19 — Patriot's Day, third Monday in April, a court holiday (4 MRSA §1051).

ON OR BEFORE APRIL 21 — Every employer required to deduct and withhold tax shall, for each calendar quarter, file a withholding return and remit payment as prescribed by the State Tax Assessor (36 MRSA §5253).

was not restricted by relationship, but rather by living arrangement. It thus refused to import a more traditional definition of “family,” which it warned would “open an inquiry into what is of no concern to the Town” (e.g., are they related, married, engaged, seriously committed or what?).

As noted above, this is not the first time the Law Court has recognized a non-traditional household as a legitimate residential use for land use purposes (see *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 96). (By R.P.F.)

VOTER PETITIONS: WHAT'S A 'REASONABLE' REFUSAL?

As we noted here last month, if petitioners believe the selectmen have unreasonably refused to call a town meeting, they may petition a notary public to call the meeting (see “Voter Petitions: A Primer,” *Maine Townsman*, “Legal Notes,” February 2010). The legality of that meeting and any action taken there will depend, however, on whether the selectmen’s refusal was, in fact, unreasonable. Here are some illustrations of what would constitute a “reasonable” refusal to call a meeting:

Petition is incomplete. Where a petition lacks the requisite number of signatures or fails to request a meeting or include a proposed warrant article, it is incomplete and may be refused. (But otherwise, no particular form or wording is required, nor is a circulator required to witness signatures or sign any statement, unless by charter.)

Petition is unintelligible. Where the warrant article on its face is unintelligible – that is, where it is impossible, due to vagueness, ambiguity or other drafting defect, to determine with any reasonable certainty what question is being proposed – the petition may be refused.


Petition calls for illegal action. Where a petition proposes an article that is beyond the power of the voters (“ultra vires”) or which conflicts with other law, it may be refused. Among many examples of this would be an article to enact an ordinance only the selectmen may adopt, an article to spend public funds for illegal purposes (such as plowing private driveways), and an article to grant a tax exemption or tax abatement.

Petition calls for reconsideration. Where a petition proposes to revisit or rescind a prior vote and a third party has acquired vested rights, for example, under a contract or bond, the original vote cannot be reconsidered, and the petition may be refused. Even if no vested rights have attached, absent evidence of fraud or irregularity in the original vote, the petition may still be refused.

Petition can wait. Where a petition demands a special meeting or a special election but the proposed article is not an emergency and the petition-

ers’ objectives would not be completely frustrated by waiting until the next warrant or ballot, the demand for an immediate vote may be refused.

Because the legal issues in this field are often nuanced, and the decision to either honor or refuse a petition can have substantial repercussions, we encourage local officials to consult with legal counsel before acting.

For more on voter petitions, see MMA’s *Town Meetings & Elections Manual*, available to members online at www.memun.org. (By R.P.F.) 

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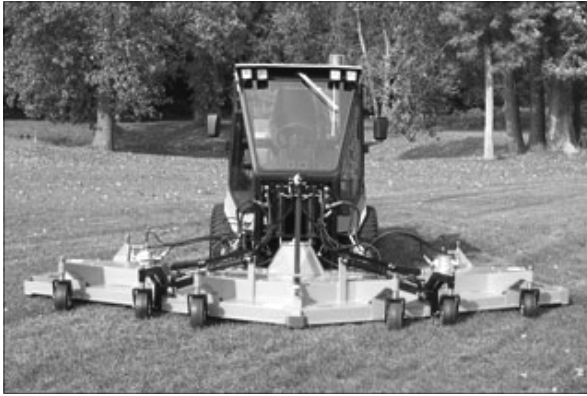
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