

**MINUTES OF MEETING**  
**Board of Selectmen**  
**December 23, 2008**  
**SOUTHWEST HARBOR FIRE STATION MEETING ROOM**

- I. Call to Order/Roll Call:  
Present: Bert Willey, Ralph Dunbar, Jr., Kristin Hutchins, Trudy Bickford (excused), Dorr Wilson (excused), Town Manager, Robin M. Bennett; Guests: Senator Dennis Damon, Commissioner MDOT, David Cole arrived at 7:15 p.m..  
Visitors: David Chapais, Police Chief; Douglas Monson, Public Works Director, Weldon Leonard, Dennis Dever, Harbormaster; Cheryl Harper; Mark Good, Meredith Hutchins, Kenneth Hutchins, Elsie Flemings, Jim Snow.
- II. Visitors to be heard not on the agenda: none
- III. Approval of Minutes: November 25, 2008 & December 9, 2008: the minutes were tabled to the next meeting.
- IV. Warrants: Administration 45-52 Water 25 Sewer 15
- V. Old Business
- a. Facilities update:
- i. Police Station RFP: Bennett informed the Board that two responses received, one from Woodward Architects and James Sewell Company, Architects & Engineers. Woodward's proposal was incomplete and did not provide a "not to exceed" lump sum price as required in the RFP. Of the two proposals, Bennett recommended Sewall. Dunbar asked about Woodward not being a licensed engineer. Bennett said an engineer was required in the RFP. Dunbar preferred the costing approach of Woodward to that of Sewall. Dunbar and Hutchins discussed the differences in the approaches to pricing undertaken by both Sewall and Woodward. Willey expressed his satisfaction with prior Sewall work. Woodward would have to sub-contract the engineering services. Bennett said at this point in time the bid could be awarded to Sewall and then the Town could negotiate

the percentage fee, if that was what was needed. Dunbar suggested putting this decision off until the next meeting and making a decision whether or not there are five members present. Dunbar and Willey will agree to Sewall but not at the current fee stated. Bennett will discuss this with Sewall. Moved Hutchins and to go with Sewall as engineers and ask them to negotiate the price. Motion withdrawn. It was Moved (Dunbar) and Seconded (Hutchins) to accept Sewall as the engineer on the basis of the proposed project with the stipulation that the price will be re-negotiated. Vote: 3 – 0 in favor.

ii. USDA Funding Application : Bennett: told the Board it was highly recommended to move on to the actual application pending voter approval in May. By doing this there is no obligation on the part of the Town, but will ear-mark the money for Southwest Harbor. It is in the Town's best interest to move forward as soon as possible to guarantee the funds will be available. It was Moved (Dunbar) and Seconded (Willey) that the Town of Southwest Harbor apply for the USDA Rural Development Loan. Vote in favor: 3 - 0

VI. New Business

a. Senator Damon & M.DOT Commissioner Cole : deferred to a later part of the meeting.

b. Dock Permit Application: Harbormaster Dever said the representative from RDR Lobster had not arrived at the meeting, and he offered to brief the Board on the application. The Harbor Committee quoted the Harbor Ordinance and indicated their desire to clarify the permit process before moving on. That Committee is recommending the Board of Selectmen retroactively approve a permit for RDR Lobster to do business on the Town Dock, and charge the maximum \$1000/year for the 2008 year. Ken Hutchins said the Committee has been trying to put parameters on who should be charged. The amounts of money involved are not great; he suggested additional input from the Board on the amount that should be charged for the use of the docks. Related to this problem, he suggested sending a letter to the Planning Board asking them to re-visit the zoning restrictions in the areas around the Town Dock. It appears there is a big burden on the people who own the properties in that area by restricting what they can do with their property. The Chairman reminded the visitors that a citizen could petition the Town to change use, but the Planning Board is a logical place to start. Harper said that the \$1,000 user fee was making it difficult for the two commercial properties in the Harbor, citing her cost of taxes, electricity, maintenance, liability insurance that RDR does not have in the present situation. Leonard spoke regarding the fee structure, saying 120

uses has not been approved by the Harbor Committee. Hutchins said the former Harbormaster brought the proposal to the Board of Selectmen and it was approved. Leonard disagreed. He said the fee was originally set for the barges. He also said there are a lot of people using the dock that don't pay their way. Fees should encompass more. Harper asked who would monitor the number of uses from anyone using the docks, and asked what would encompass a "use" time-wise. Dever said the Committee would like to come to the Board in the future with a proposed fee structure. Board Chairman said it would be reasonable to expect the fees to pay for the Harbor Budget, and perhaps capital improvements. Harper re-stated the problem. Dunbar suggested moving forward stating the Board needs to have a workshop to discuss this in more detail. For this meeting, the Board should at least approve the \$1000 fee for 2008. Dever said it is not clear whether it is calendar year, or fiscal year and thinks it should be calendar year and would like to take that discussion to the Harbor Committee. Bennett said calendar year is the more logical. It was Moved (Dunbar) and Seconded (Willey) to approve the \$1000 permit fee charge for RDR Lobster for the 2008 calendar year, and continue with work on fee structures. Vote in favor: 3 – 0.

c. Winter Road Maintenance Policy: Monson said this is a work in process and would appreciate any input. Hutchins discussed Item III. 1. B; and Other roads and parking lots, Item B. Monson discussed the fact that the Highway is using salt first, and then putting sand down as needed. Dunbar thinks the policy is good. It was Moved (Dunbar) and Seconded (Willey) to accept the Draft Winter Highway Maintenance Policy. Approved 3 – 0 Bennett told the Board that she and Monson will continue to work towards a final policy.

d. Curfew Ordinance: Chapais presented material on the Ordinance and asked the Board if they wanted to refine the fines listed. He explained the methodology that will be used. Warnings will be issued and repeat offenders will be ticketed. Bennett explained that there are some constitutionality issues with curfew ordinances in general. MMA has indicated that there is a burden of proof required. For example: what types of issues have been documented that requires the curfew ordinance during certain hours. If we adopt this, there should be statistics to back up the Ordinance. Dunbar said Wilson had suggested a public meeting on this issue and Dunbar would like to move on in that manner. Bennett suggested the Board provide input on the wording of the Ordinance, then schedule a public hearing the sooner the better. Hutchins and Willey thought the ordinance was good except that the weekend hours might be a later time.

Chapais stressed the need for public opinion. Dunbar suggested changing the time to 10pm straight across and a warning be issued first. Bennett will get the final draft to the Selectmen and a date will be set for the public meeting.

e. Parking Ordinance: Chapais and Bennett said there are parts of the Ordinance that need change, including the proposed Loitering clause on page 14 of the draft Ordinance: Parking Lot Closure. Leonard said there should be spots reserved for fishermen since they are usually parked in the lot more than 8 hours. Page 12, item A, needs to be clarified. The Board agreed that Page 14, Parking Lot Closure was a good addition to the ordinance. Chapais told the Board that all of the cameras at the docks are working properly. It was Moved (Dunbar) and Seconded (Hutchins) to accept the Traffic & Parking Ordinance of 12/23/08. Discussion: Bennett said there will be changes, and the revisions to the Ordinance will be brought back to the Board. Dunbar withdrew the Motion; Hutchins withdrew the Second.

f. Letter from Mt. Desert Board of Selectmen: Hutchins feels the wording of this letter is more of an ultimatum and not what was expected from the Mt. Desert Board. Dunbar agreed. Bennett agreed. Dunbar suggested replying that this Board does not support the letter as written. Bennett thought that was a fair response. Willey agreed and the Board asked Bennett to draft a letter. She will bring that draft back to the Board.

g. Senator Dennis Damon and Commissioner Cole, MDOT: Hutchins spoke to Damon and Cole about Route 102 from the center of Southwest Harbor to the Manset corner. Damon said road repair is a concern all over the State. Hutchins asked what the Town had to do to get on the MDOT road list. Damon discussed the Transportation Committee and the highway budget as it currently stands with mandated financial cuts looming. The transportation infrastructure is at the top of the priority list, and the whole situation is in dire need through out the state, and probably won't be fixed in the next 10 years without a consistent funding stream which hasn't been possible. Damon has received a petition regarding Route 102 and that has been forwarded to MDOT. Cole said MDOT could step up a paving schedule to put a new surface on it, but that just puts new shingles on an old roof. There needs to be a re-build of Route 102. Commissioner Cole asked the specific portion of Route 102 and Hutchins said from the center of Town to Manset Corner adding that the sidewalks are a disaster, plus the wish for more room for bicycles. Cole asked about drainage issues, and said it was probably an old county road. Monson said the drainage was

stone. Cole estimated that that repair job on that short area would be anywhere from \$3,000,000 to \$5,000,000. Cole will check to see if this is in the six year plan. Bennett told Cole she had spoken to Bill Croce and he confirmed that the Town was not on the current plan. Bennett said the Town had been on the MDOT's six year plan, and why it went off the radar, is a concern for the Town. The biggest and most immediate need is the sidewalk. This is a big issue for the Town. Mr. Cole does agree that the need is there. Hutchins asked if there were partnering opportunities. Cole said opportunities that offered challenge funding had been done, and there is some flexibility. He said Southwest Harbor is in the position of many communities. Currently the proposed budget for MDOT will make \$39,000,000 in financial cuts. Dunbar asked for a realistic time frame for repair to that section of Route 102. Cole said at this point with the funding available MDOT will be lucky to continue the maintenance package only. He said he will talk with Bill Croce and the MDOT planning group and get back to the Town so that they may frame a response to citizen. Damon asked where the sidewalk ended at the head of the Harbor. Monson said it is 3100 feet of sidewalk of varying width, and the hope would be to extend that sidewalk all the way to Manset corner. Bennett said there is an immediate need to get something done for safety sake. Damon summarized that the Commissioner will go back and get a better answer. Fleming asked if the safety issues referred to were mostly the sidewalks and could that be isolated. Bennett said ideally the road and sidewalks would be done together, but failing that the sidewalk must be done. Cole suggested Dale Dowdy, he, Bennett and Monson get together to look over the situation. Monson said that in 2004 and in 2005 the project was looked at, and a preliminary plan was drawn up.

Bennett opened the subject of winter road maintenance and in particular Long Hill. Monson said there are no shoulders on that road, and the response time during storms is slow because of the amount of roads to be cared for. Monson said that over the past few years MDOT's road clearing has deteriorated. Cole will bring Dowdy in to view this problem as well. Willey told Damon and Cole that there needs to be sanding on Long Hill and Manset Corner. Damon said whatever issues come up, please contact him or Elsie Fleming.

h. Tax Agreement: Bennett said there was an inquiry concerning a recent foreclosure; the one option available in this situation is

an installment agreement (MMA discourages use of this), and would be in excess of \$10,000 within a year, plus fees that are incurred. Bennett asked the Board if they want to entertain this option. If the property owner defaults within that year, there is a lengthy bank-type foreclosure process with legal fees included that would have to be undertaken. Does the board want to go that route, as it appears, given the fact that the Owners did not pay the 2006 taxes over a three year period, it is likely they would default on \$10,000 and costs over a one year period. Bennett said it appears to have been a chronic problem. Willey, Dunbar and Hutchins all would prefer not to foreclose. Leonard asked if it was possible to know what the cost would be if the contract was entered into and foreclosure took place eventually anyway. Bennett said it was not known. Leonard's general feeling was that immediate foreclosure is not the way the Town should go. Bennett said the Board of Selectmen should give guidance. The Board asked Bennett to attempt to put together an installment agreement.

VII. Manager's Report: Acadia Disposal District negotiations are on going Army Corps of Engineers approval is expected, but not yet received for the Lower Town Dock. Bennett asked the Board to meet on January 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 12<sup>th</sup> for Budget meetings. Meetings would be at the Town Office at 6:00 pm. The Board agreed. The Rhodes House roof is completed. E-911, the Town and the Park Service are in agreement on roads. Issues with Bangor Hydro on street lights is still being pursued by Chief Chapais and CEO Lagrange; CES has been working on a survey for the Harbormaster's office property lines at the Manset Town Dock. Bennett has some water and sewer commitments that must be voted on.

Sewer \$95,381.71; Water \$126,770.03; Sewer: \$76,693.20;  
Water: \$27,128.20; Water: \$114,947.09.

Moved (Hutchins) and Seconded (Dunbar) to accept the Water and Sewer commitments as presented. Vote in favor: 3 – 0.

VIII. Other Business: Leonard and Bennett discussed the Army Corp permit. Bennett told Leonard approval from DEP was received 3 weeks ago, but that process can take 6 plus months to get through DEP. Bennett expects to get out to bid by March or April at this point.

IX. Sign Warrants: It was Moved (Dunbar) and Seconded (Willey) to accept the warrants as presented. Vote in favor: 3 - 0

X. It was Moved (Willey) and Seconded (Hutchins) to adjourn at 8:17 p.m. Vote in favor: 3 - 0