

October, 2009

# maine townsman

The Magazine of the Maine Municipal Association



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# MMA Takes Position on Ballot Questions

By Geoff Herman, Director, State and Federal Relations, MMA

For this year's General Election on Tuesday, November 3, Maine's voters will be formally presented with seven statewide ballot questions, five of which have direct impacts on local government. As it does each year during its meeting in early October, the Executive Committee of the Maine Municipal Association identified its position on each of those five questions.

**Strongly Oppose Question 2 and Question 4.** Question 2 is the initiative that would slash the motor vehicle excise tax rates for newer vehicles, create sales tax and excise tax exemptions for hybrid-type vehicles, and thereby cut \$84 million in revenue each year that Maine's towns and cities use to maintain and repair local roads and bridges.

Question 4 is the newest version of the Taxpayers' Bill of Rights (TABOR II) system that steps on municipal home rule authority by telling voters in all municipalities exactly how they can make certain budget decisions, caps the municipal and county budget growth allowance according to somebody's guess on future inflation rates, and seriously constricts the capacity of state government to properly fund K-12 public education and the state's transportation system.

Both MMA's Legislative Policy Committee and its Executive Committee have voted to strongly oppose both of these initiatives.

**Strong Support for Question 6 and Question 7.** Question 6 proposes the issuance of a \$71.25 million transportation bond for highway, bridge, and airport construction as well as capital improvements to public transit, ferry and port facilities. The revenue generated by this transportation bond is expected make an additional \$148 million in federal and other matching funds available for the same purposes.

Question 7 seeks voter ratification of a constitutional amendment designed to provide municipal election clerks with a little more time to verify petitioners' signatures on proposed citizen initiatives being advanced on a statewide basis. The problem this amendment is trying to address is the "crunch-time" that occurs when multiple statewide petitions loaded with thousands of signatures are presented to municipal clerks for signature verification within the narrow 5-day window provided under current constitutional law. This amendment would expand that review period to 10 days.

Both MMA's Legislative Policy Committee and now the Executive Committee have voted to strongly support both Question 6 and Question 7.

**Question 3, A House Divided.** If adopted by the voters, Question 3 would repeal the 2007 school consolidation law and return the body of law governing the organizational structures of Maine's public schools to where it was in January 2007. By the respective actions of both the Association's Legislative Policy Committee and its Executive Committee, it is obvious that the municipal community is split on this subject.

In December 2008, when "Question 3" was still in its petition form, MMA's 70-member Legislative Policy Committee was almost evenly split on the topic and has remained there ever since. After a thorough debate on that December afternoon, the motion to support the repeal effort failed by a margin of just two votes. From the tenor of the debate, it was clear that very few of the municipal officials opposed to the repeal efforts were enamored of the school consolidation law. Most municipal officials believe that however well intended the school consolidation law might have

been, it was hastily enacted, haphazardly constructed, and poorly and inconsistently implemented. The prevailing argument made by those LPC members opposed to repealing the law was that although the school consolidation law left a lot to be desired, its enactment in 2007 is water over the dam, and at this stage of its implementation it should be repaired rather than repealed.

After the LPC vote rejecting support of the repeal effort, a motion to take a "neither for nor against position" on the question was adopted.

That discussion occurred 10 months ago, but the same debate was revived when the Executive Committee took up the subject earlier this month. The arguments were almost exactly the same. Some members around the table strongly supported repeal. The other Executive Committee members acknowledged that the school consolidation law is unnecessarily punitive and lacks the flexibility to be workable for many communities, but believe that it would be less complicated to repair a complex law enacted three years ago than overturn it, which would put a lot of local decisions made over that time in limbo. Those Executive Committee members also expressed an interest in working in parallel with the previous "neither for nor against" decision of the Legislative Policy Committee.

When the votes were taken, however, there were 6 votes in support of Question 3 and 5 votes in opposition, and so the official vote of MMA's Executive Committee is to support Question 3. The entire Executive Committee agreed, however, that the most important communication to MMA's membership was not as much the vote itself, but rather the discussion and debate that preceded it. [\[m\]](#)



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# Innovative Approaches to ‘Building Community’

By Lee Burnett

Downtown Millinocket bustled with crowds for three days in September. The gathering known as the “Trails End Festival” featured a parade of Appalachian Trail “through-hikers” led by Gene Espy, a writer and the second person to ever finish the 2,200 mile hike. There was also live music, poetry, exhibitions, food vendors and street dances.

It was the second year of the festival that was organized as a morale booster for a community demoralized by the unremitting decline of the local paper industry, says Marsha Donahue, a festival organizer.

“Whoever had a bad time at a festival?” observed Donahue, owner of a downtown art gallery. “The festival came along at a time when people really needed something to smile about.”

Putting smiles on people’s faces, believe it or not, is quietly becoming a widespread activity of local governments. It’s not often stated that way. But smiles abound when local governments facilitate festivals, farmers markets, community gardens, bike paths, Main Street organizations, public art, and other quality of life improvements. And all those smiles pay civic dividends. They foster pride, volunteerism and cooperation, which are valuable ingredients in making things happen in an era of tight budgets and limited government.

The Trails End Festival grew out of a sense of inertia over the town’s future, explained Donahue, an artist from the Portland area who moved to town five years ago. While she opened an art gallery, her husband and a partner took over ownership of a down-

town restaurant. Quickly immersing herself in community affairs, Donahue served on many committees about the town’s future and became frustrated that endless brainstorming seemed to produce no consensus about how to move forward.

“When I first got here, we had meeting after meeting. We’d break into smaller groups and report back to a larger group and do it again. For the first four years, all it seemed like we did was hold meetings. We couldn’t get up out of the muck,” she said. “The festival was an easy way to lurch people out of the doldrums.” Last year’s inaugural festival drew 2,000 people and organizers hope for more this year. Donahue admits the festival is but a small step toward rebuilding the local economy but it projects a good image of the town and gets people working together so they can tackle larger problems, she said.

Donahue’s frustration with the traditional forms of civic engagement is shared by many. Low participation on boards, committees and town meetings is a chronic problem for several Maine communities and it is usually blamed on citizen apathy. The response to low participation has traditionally focused on ways to make municipal government more accessible and understandable. These efforts have evolved tremendously. Back in 1998, the TOWNSMAN ran an article headlined “*Citizen Education: Trying to inform and positively engage people*”. The article chronicled the gamut of initiatives, from developing websites and newsletters to live cable broadcast of meetings. All of those communication tools are now routinely used. Still, there’s a perception – reinforced by recurring anti-tax campaigns – that the

citizenry is disengaged, suspicious of government or even actively opposed.

But the picture brightens if you look beyond the anti-government rhetoric and pessimism. Citizens are expending a huge effort on all manner of community improvements: roadside cleanup campaigns, neighborhood crime watches, literacy programs, and more. These initiatives are almost entirely grassroots efforts of volunteers, although municipal officials often assist with in-kind labor from town employees and sometimes town funding.

While some initiatives may seem like feel-good projects that are short-lived, others are more ambitious. They all reflect a new approach to civic pride and engagement.

The traditional approach focuses on a problem, a community deficit, something that’s not working, then seeks a solution through expert advice, resources, incentives, information.

A newer approach focuses on what is already working and building from it. The pioneers of this approach are professors John L. McKnight and John P. Kretzmann at Northwestern University. They have dubbed it an “asset-based” approach to community development. It first took root in entrepreneurial non-profit organizations, but has since spread to businesses and government.

A fresh example is the Baldacci administration’s “Mobilize Maine” economic development strategy intended to “foster locally-driven development strategies that are based on the indigenous strengths and authentic assets of the region,” according to a description on the Maine State Planning Office website. Much is already going on at the local level. What follows is a survey

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of the variety of community building activities.

### **KENNEBUNK COMMUNITY GARDEN**

There is no complete roster of community gardens in Maine, but there are probably dozens – if not more. Until R.J. Mere got involved with spearheading a community garden in Kennebunk, he was often at odds with the powers that be in local government.

“I’ve been involved with town politics for a long time,” explained Mere, a member of the Kennebunk Conservation Commission and Kennebunk Shellfish Committee. “They know me. When I start speaking, their eyes roll. I’m a conservationist, they already know my game plan. They know I’m not liking something, that’s why I’m at the meeting.”

But Mere got an entirely different reception when he proposed creating a community garden. Not only did he get 10 volunteers right off the bat, but \$2,080 in town funding as well as in-kind donations of labor to drill a well and extend power to a three-quarter acre site on the grounds of the West Kennebunk Animal Welfare Society shelter.

“This was an easy sell; it appeals to everyone,” he said.

All 43 plots (10’ x 10’) were snapped up. Each gardener is obligated to donate six hours of labor to the Plant-a-Row-for-the-Hungry program. Thirty percent of the produce goes to food pantries in Wells, Kennebunkport, Alfred and Saco.

Mere says the benefits go well beyond the food grown.

“It makes people feel good about the town. It brings out the social aspect. People talk to people they never met before. I don’t see any frowns even with all this bad weather. I think the social aspect of this cannot be overlooked.”

Mere is not sure where it will all lead. He plans additional plots next year and even some education programs to help connect people to local agriculture. “We’re just scratching the surface,” said Mere.

### **WAYNE FARMERS’ MARKET**

Of the 29 farmers’ markets in Maine with websites linked to the Maine Federation of Farmers’ Mar-

kets, 15 of them were started in the last three years. Wayne’s Farmers’ Market was started this summer by Emily Perkins, a 2009 graduate of Maranacook Community High School.

“I started it as a senior project for credit,” Perkins explained. “My mom suggested it. It seemed like something pretty tangible. At the end of year, I would feel like I had done something worthwhile. I, by no means, did it by myself. I got help.”

Maine Initiatives provided \$500 in start-up funding for postcards, bumper stickers and canvas bags. Perkins said she was prepared for obstacles at Town Hall, but has been pleasantly surprised that the town readily extended its liability insurance policy to cover the market.

The market attracts six to eight vendors and is held Sunday morning to take advantage of the church-going crowd. “We have a good amount of vendors, a good variety and ratio of vendors to customers. We have musicians that are semi-organized and that works out pretty well.

“I think it’s a good thing for everyone. We put out a survey and have gotten real positive feedback. People say they love coming, ‘it’s a beautiful spot’ and ‘keep up the good work.’”

Perkins said the town’s support sends a message to others thinking of undertaking initiatives.

“I can imagine if I were starting something new in Wayne, I would be inspired to do something similar. People would get a good feeling that it’s not so hard to start something.”

Perkins plans to work in the Dominican Republic in the fall and hopes there is enough momentum that the farmers’ market will continue next year with or without her.

### **LISBON MAIN STREET**

Seventeen Maine communities have launched volunteer-driven campaigns to revitalize their downtowns according to the model developed by the National Trust for Historic Preservation. Ten communities have committed to full-time efforts: Biddeford, Saco, Bath, Gardiner, Waterville, Skowhegan, Van Buren, Eastport, Rockland and Sanford. A less ambitious program was started this year and attracted seven more communities: Presque Isle, Millinocket, Bucksport, Farmington, Augusta, Lisbon and Norway.

In Lisbon, at first it was a tough sell.

“We started over a year ago with community visioning sessions. It was like pulling teeth. It was really hard to get people involved. People are so busy with their daily lives, kids and school and work,” explained Rosie Bradley, the town’s economic and community development director.

“I had been looking at the Main Street [program] for a while. It’s proven itself. I’ve watched it work in Waterville, Bath and Skowhegan. Their downtowns have been dramatically transformed.”

Bradley wondered if Lisbon had the necessary ingredients. “For it to work, you need very engaged citizens and businesses. They have to be on board to make it work.” This summer, Bradley was pleasantly surprised that nine people attended a Promotions Committee meeting.

“I was so psyched. That’s not a lot but when you’re used to getting three or four [people], that’s great. And now we’re starting to get calls,” she said.

Already, fresh flowers have been planted and flags have been hung in the downtown. A concert program was put together in a week and a half.

“People can actually see things happening,” said Bradley. “They’re going out talking about it. They’re excited about it. It’s not coming from local government although we’re behind the scenes working the program. It’s the people that create the excitement.”

### **KENNEBEC MESSALONSKEE TRAILS**

Maine is a hotbed of trail development with perhaps hundreds of trail organizations, committees and clubs, according to Mick Rogers, manager of trail funding for Maine’s Department of Conservation. The City of Waterville had only a few unmarked trails when Kennebec Messalonskee Trails incorporated as a charitable non-profit organization in 2003. Since then, the organization has developed seven miles throughout Waterville and surrounding communities. The organization relies on volunteers and state grant money applied for through the City of Waterville. President Peter Garrett said trails are friendly, sociable places that seem to bring out the best in people.

“My experience is that more people talk to each other on a trail than in a supermarket, parking lot or walking down a sidewalk. It builds community that way. We don’t meet our neighbors, but we see them on a trail, we’re relaxed, they’re walking, we’re walking and we talk.”

Garrett said he is continually impressed by spontaneous volunteerism – whether it’s local college students helping out on National Trails Day, neighbors building a connecting trail, Inland Hospital developing a trail on its own campus, or walkers clearing downed branches.

“Sometimes a tree falls and someone cuts it up without me knowing about it at all,” he said. “We never seem to find trash on the trails. Trail users pick up.”

Waterville Recreation Director Matt Skehan said Garrett’s organization has increased recreational opportunities for residents without much help from the city.

“Before they came along, Waterville just had some bootleg trails. There was no signage, no connectivity,” explained Skehan. “Peter and his group are just amazing – not just what they do in Waterville but in surrounding communities,” said Skehan, who sits on the Kennebec Messalonskee Trails board of directors. Unfortunately, the city can’t help much, said Skehan. “The city just can’t afford to put money into trails. My employees and my time, there’s just not enough hours in the day . . . we’re so busy with programs, clinics, facilities. We just can’t take on any more.”

**LUBEC ARTS ALIVE**

Some communities are sponsoring public art installations to stimulate community involvement. The fanciful “Eco-Motion” bicycle art installations on the downtown streets of Belfast, and the stone sculptures of Schoodic Peninsula are perhaps the best-known examples. Two public arts projects are planned further downeast. The communities of Calais, Dennysville, Lubec, Pembroke and St. Andrews, N.B., are planning a “parish mapping” project. While separately, Lubec has a visiting-artists-in-residence program. Lubec sought funding for it and when funding was denied, they pressed on anyway. Eleven artists have voluntarily agreed to spend a week in town as

visiting-artists-in-residence. Planned projects include: a mural project, a series of portraits and others, according to organizer Shanna Wheelock, a potter and elementary school art teacher.

“We’re a very small community on the outskirts. This is a pretty big deal. Lubec has gotten a lot of bad press. We’re kind of forgotten about. This is a chance to see a positive side.”

Wheelock wasn’t sure what the reaction would be.

“The feedback we’re getting is great,” she said. “I’ve been here eight years. Some people they don’t want anything to change. I thought I would see resistance, but everyone is very excited about it.”

Wheelock said the art project operates on many levels. She says it will further unite the area’s arts community as well as “bridge some of the newer parts

with the long-time locals.”

“Something needs to happen here. People are out of work, struggling. All the natives that make this area so rich we don’t want them to not be able to stay here. Certainly, art brings hope to a town, and beauty.”

She also hopes it inspires children.

“I want my kids to be proud of their town. Kids are excited about this. I want them to feel proud. A lot think ‘there’s nothing here for me.’ I hope this changes that view.”

Back in Millinocket, local folks have quickly embraced the Trail’s End Festival, although attendance was down this year due to conflicts with four other festivals in northern Maine that same weekend. “There are so many festivals in this state now,” says Donahue. “We have to be more careful about planning.” 

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# Why Municipalities Should Support Local Farms

By Sarah Curran

Governor Baldacci's Quality of Place Council found that future economic development in Maine will need to build on our "quality of place." Maine is unique. Our sense of place is defined by our history and our culture, by our village centers and downtowns, and by our open spaces and scenic landscapes. Agriculture is critical to our quality of place. It is part of our heritage. It is part of our landscape. Agriculture is a source of Maine's great, fresh foods. It is a source of income and jobs.

The common perception is that agriculture in Maine is dying. This is not true. Agriculture in Maine is alive and well. According to the U.S. Census of Agriculture, the number of farms in Maine increased 13% between 2002 and 2007, from 7,196 to 8,136. The market value of products sold rose even more, from \$463,603,000 to \$617,190,000, a 33% increase; more than the State Gross Domestic Product increased during that same time (24%). Despite conservation efforts, the loss of farmland continues to be a threat to Maine agriculture. At the same time, increased interest in buying local food has created a new opportunity for farmers in Maine, particularly those who want to sell directly to consumers.

Agriculture contributes tremendously to our communities. Economically, it is an important industry. Maine's farms produce a wide variety of goods, including fruits, vegetables, grains, eggs, milk, meat, maple syrup, fibers, nursery stock and Christmas trees. Maine farms purchase local products and services. They provide jobs. Maine's farms are critically important to tourism, providing hundreds of thousands of acres of open space that make scenic Maine such an attractive tourist destination. They create opportunities for recreation (ac-

tivities such as apple-picking and cross-country skiing) for both residents and visitors. Farms demand less in services than they pay in local property taxes. They help offset the expense of residential development which requires infrastructure, education, and emergency services.

The rural landscape appreciated by Maine's tourists is important to Maine residents. Maine's open spaces contribute to our sense of community character. Historic farmhouses and barns remind us of our heritage. Maine's farms are beneficial to our environment. Fields and forests filter and protect groundwater. They provide habitat for wildlife.

The farmers who live and work on Maine's farms today are important members of our communities. They are our neighbors and our friends. They volunteer on town boards and organizations, bringing valuable perspectives and diversity. They provide our families with food that is healthy, fresh and delicious.

Although it is true that Maine agriculture is alive and well, farmers in Maine today face many challenges. There are many things Maine municipalities can do to support local agriculture. They can review existing regulations for those that unintentionally discourage agriculture, and be willing to make changes that support local farms. They can buy local products from farms in their community. Conducting an agricultural assessment can help the community as a whole better understand how and where agriculture exists in their community today, and what can be done to support it.

**Review local regulations.** A community that wants to preserve rural character and support local agriculture may not be aware of the impact that certain land use ordinances are having. Often, the negative impacts of regulations for farmers are unintended. It's important to talk to the farmers in your community, and ask them

what the rules and regulations are that they would like to see changed.

One type of ordinance often identified by farmers as problematic is a sign ordinance. Many sign ordinances don't allow farms to put up temporary, off-site signs for seasonal events such as pick-your-apple harvesting. Farm stand regulations are another example of ordinances that may unintentionally make business more difficult for local farms. Many towns require that a certain percentage of farm stand produce be grown on the farm. But customer demands for variety and consistency in what is available may make purchasing from other local farmers necessary. A town's definition of agriculture may be in need of updating, for example to include the local Christmas tree farm or landscape nursery.

**Buy local.** Municipalities can support their local farms directly, by buying from them. Consider providing for the purchase of local products in the school lunch budget. Buy local products to serve at committee meetings and community gatherings. Many areas in Maine have a growing season that is longer than you might expect. From radishes and peas in early spring through broccoli and spinach well into the fall, local farms provide a wide variety of products.

**Community Food Assessment.** A Community Food Assessment identifies a broad range of community food assets (such as farms and other related businesses). It explores local food issues as well as considers the connections between food and community goals. A community food assessment is a collaborative process involving a wide variety of community members, from farmers and residents to local government, businesses and organizations. It helps a community to better understand its food system, from farm to table, and is research-based. A community food assessment is action-oriented, producing recommendations that lead to actions. Cape Elizabeth recently conducted a community food assessment. The process helped the community identify new ways to support local farmers, and encouraged community members to get involved.

Agriculture in Maine is alive and well. It faces numerous opportunities and challenges. With support from Maine municipalities, it will continue to be an integral and invaluable part of our communities. 

*Sarah Curran is a researcher for Planning Decisions, sarahcurran@maine.rr.com*

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The MRRRA would like to hear how we can better serve you. *Please photocopy this page and take a few moments to fill it out. Fax the survey to \*67-942-4017 by November 16th. (The \*67 makes your fax anonymous.)* Thank You for your time!

The mission of the MRRRA is to:

- Foster professional solid waste management practices;
- Further the development of recycling and other forms of resource recovery as cost-effective components of environmentally sound solid waste management in Maine communities; and
- Assist with the marketing of recyclable and reuse materials.

1. Are you currently a member of MRRRA?

- Yes For how many years? \_\_\_\_\_
- No Why not? \_\_\_\_\_

## Optional

Name of person completing survey: \_\_\_\_\_

Community/Business/Facility: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone/E-mail: \_\_\_\_\_

2. MRRRA currently provides these services. On a scale from 1-4 please rate (by circling your preference) the following for each category:

Service	Very Important	Somewhat Important	Not Important	Non-Applicable
Cooperative marketing of recyclables	1	2	3	4
Cooperative Purchasing (baling wire, strapping)	1	2	3	4
Workshops & conferences	1	2	3	4
Technical assistance/consulting	1	2	3	4
Newsletter	1	2	3	4
Website	1	2	3	4
Sales of materials/items (compost & recycle bins, etc.)	1	2	3	4
Arranging Freon removal	1	2	3	4
Other (please specify)	1	2	3	4

3. In the following space, please suggest new MRRRA services that would be helpful to you and your organization. \_\_\_\_\_

4. Do employees and/or members of your municipality, business, or organization regularly attend any of the following MRRRA sponsored events? (check all that apply and rate quality accordingly)

Event	Attendance			Overall Quality		
	Regularly Attend	Occasionally Attend	Never Attend	Excellent	Fair	Poor
Workshops						
Tours						
Annual Conference						

5. If *not* in regular attendance, we are interested in the reason (i.e. Too busy? Travel distance? Cost?) and your suggestions for topics that may be of interest. Please provide comments here: \_\_\_\_\_

6. I am willing to travel the this distance for a one-day workshop or tour:

- Less than 30 miles
- 31-60 miles
- 61-100 miles
- Any distance if the subject is important

Preferred time (i.e. mornings, evenings, day of week):

7. Single stream (SS) recycling is gaining in popularity, especially in the southern Maine region. This community service invites residents to place all recyclables into one bin instead of sorting according to the type of packaging (cans, PET, mixed paper, etc.) What is the current status of your community?

- Already Accepting SS      ➔       Curbside only     Facility only
- Strongly Considering SS
- Would Like More Information.

Specifically what type of SS information might MRRRA provide to your community?

# Wind Power & Municipalities

By Douglas Rooks

Imagine what might happen if your town of 700 residents in a rural part of Maine was suddenly presented with a huge development proposal worth at least \$75 million.

That scenario became reality for the town of Oakfield in southern Aroostook County when First Wind (formerly UPC) came calling with plans for a 34-turbine, 51 megawatt wind farm for the Oakfield Hills ridge that bisects the township, from southwest to northeast.

Town Manager Dale Morris says Oakfield was determined to avoid the lengthy controversies that have attended wind development in Mars Hill, where the first industrial-sized wind farm in New England was completed in 2006, and in northern Penobscot County, where the Rollins Mountain project (40 turbines, 60 megawatts) runs through Burlington, Lee, Lincoln and Winn.

In Mars Hill, residents have complained about noise and vibration from the turbines, and in July one family and 16 neighbors filed suit against First Wind, owner of that 28 turbine, 42 megawatt project.

In Lincoln, town and state approvals of the Rollins Mountain plan have prompted appeals from the Friends of Lincoln Lakes group.

Oakfield's response was to create a technical subcommittee, which includes two independent experts, to evaluate the project. After the panel filed its report in September, recommending approval with conditions and changes, a special town meeting approved the project. Approval by the Maine Department of Environmental

Protection is pending, with a decision required by November 2.

## WIND POWER TAKES OFF

As wind power has quickly developed into a major Maine industry, proposals have sprung up on a wide variety of fronts. Since 2006, projects valued at \$500 million and producing 235 megawatts have been completed or are under construction, and another 86 megawatts has been approved and is in the pre-construction stage.

While land-based wind power is already a reality, Maine's ocean resources are also attracting intense interest. The state is now reviewing sites for testing in the immediate offshore area, where fixed platforms are possible in the relatively shallow ocean waters. A University of Maine research effort is also targeting the 8-10 mile zone further offshore, out of sight of land, where floating platforms would be required – with technology still to be proven – where Maine could generate 8 gigawatts of electricity, the equivalent of nearly 10 Maine Yankee plants.

But the major interest for towns will continue to be the land-based sites within their borders. And despite the cavalcade of proposals across the landscape, the type of projects being planned and built seem to fall into three categories – municipal, small commercial, and industrial.

## ON-LINE IN PITTSFIELD

The first, and least problematic, are wind turbines built by municipalities themselves. Perhaps the first of many such units was unveiled in Pittsfield in September. A single turbine was installed at the town recycling and transfer station, and won im-

mediate praise from station manager Don Chute for its contribution to energy independence and sustainability. "It's definitely a dream," he told the *Central Maine Morning Sentinel*. "It's showing you can't shut us out. We're a resilient race."

The transfer station turbine is mounted on a 100-foot tower – about a third of the height of those used in the industrial scale-projects – and produces 10 kilowatts. The \$63,000 cost was covered largely through a \$50,000 grant from Maine's Voluntary Renewable Resources Fund, which funds demonstration projects aimed at showing the practicality of alternative energy.

The turbine has already generated a lot of local interest, with school groups taking field trips to learn about this application of science and technology.

## DEMONSTRATION IN KENNEBUNKPORT

Another enthusiast for small municipal applications of wind power is Kennebunkport Town Manager Larry Mead. When the town Conservation Commission began discussing alternative energy for municipal uses, he stepped right in. "I had my eye on the municipal pier as a great place to spotlight the alternative energy resource, and the wind blows all the time there," he said.

But after looking at the site with the code enforcement officer, it was clear that a tower high enough to hold a small turbine would not meet setback requirement from adjacent properties.

So when a new federal stimulus grant deadline came up for a program administered by the Maine Public

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

Utilities Commission, attention focused elsewhere in town.

"The consultant we found decided the police station had the best potential," Mead said. Selectmen voted on September 24 to pursue the grant, along with a proposal that would locate solar panels at the elementary school. If the wind application is successful, the town will erect two small turbines to power the police department's building. At a price of \$48,000, the project would require a 20% town match, or \$9,200, money Mead said is available. For the small turbines, Mead said, noise is not a problem.

Police Chief Joe Bruni strongly supports wind turbines, pointing out that with its computers, radios and air conditioning units, his department is probably the largest municipal user of electricity.

Mead said that the grant deadline was "a little awkward" for the town, in that there was no time for extensive testing of any site. "They say you should test for a year before building, but we don't have that luxury," he said.

### **SMALL-SCALE COMMERCIAL PROJECT IN BUCKFIELD**

In a middle category of wind power are smaller-scale commercial projects, often being proposed by Maine entrepreneurs rather than companies with access to international financing like First Wind. These projects are usually in the 1-3 megawatt range. One of them, proposed by Kean Project Engineering, would put three turbines on Streaked Mountain in Buckfield, producing 1.5 megawatts for local use.

Buckfield Town Manager Glen Holmes said that the proposal could have been prompted as a result of discussions three neighboring towns were having about wind power in an ad hoc committee. Buckfield, Hartford and Sumner already share a school district, SAD 39 that recently became part of RSU 10 in a three-SAD consolidation. Since they were used to cooperating on school issues, a regional discussion of the wind resource representing by the mountain ridges in the area seemed a natural fit.

Kean president Kirk Nadeau ended up proposing two separate projects, one in Buckfield and the other on a town-owned parcel in Sumner.

The Sumner project produced two town meeting votes on a plan that included clearing a road into the site. That idea proved controversial, and both times the plan failed by a handful of votes.

In Buckfield, the reception has been more positive, but not without its quirks. A retired MIT-trained engineer, for instance, asked at a public meeting whether anyone had studied the effects of removing wind energy from the environment through turbines. Apparently no one had. And while noise seemed to be the biggest concern, the possibility of ice being

thrown long distances from the turbine blades also came up.

Nadeau first floated his idea for a wind farm in Buckfield last summer but delayed pursuing it so the town could prepare. When he decided to move ahead this year, opposition began to develop, particularly from residents who lived near the project site. One landowner who would sell or lease land for the project allowed test turbines to go up, and the results showed that the site is viable, Holmes said.

The most concerted opposition comes from a landowner closest to

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the nearest turbine location, which is 2,000 feet away. Holmes notes that the State Planning Office guidelines call for a 600-foot setback, but added that, "For some people, even a mile is going to be too close."

He suggested that towns might want to simply set a noise standard based on decibel readings. "I think we should let engineers be engineers," he said. "If they can meet the standard, then they should be able to build" – emphasizing that, in this case, he's speaking for himself rather than the town.

After hearing both sides, the planning board has asked selectmen to consider a six-month moratorium on wind power projects, which Holmes said could be problematic. There have been ordinances developed elsewhere in Maine, and using them makes more sense to him than relying on the Wisconsin ordinance the planning board has studied. That ordinance, for instance, does require a mile setback – almost 10 times the distance set by the SPO guidelines.

There's also the question whether, with a six-month delay, Kean Engi-

neering might just take its business elsewhere, since many potential sites are available, Holmes said.

Selectmen have decided to hold off, for the moment, on scheduling a special town meeting that would consider the six-month moratorium on development. A group of citizens is collecting signatures – 85 are needed – on a petition to selectmen that would request a special meeting. "It makes sense to the board to wait," Holmes said. "If they can't meet the signature requirement, then there wouldn't be enough support to carry a town meeting vote."

There are also outspoken supporters of the project in Buckfield. Some focus on the potential benefits for local users if the wind project led to formation of a municipal or regional electric cooperative. "I want to see Maine folks benefit from Maine wind projects," Nadeau told a public meeting. He noted that larger projects, such as Mars Hill and Rollins Mountain, sell power wholesale to the New England market, not locally.

Also attractive to townspeople are the economic spin-offs from the con-

struction of a \$10 million project and the continuing property tax benefits, an estimated \$45,000 a year. "Some people say that's not much," Holmes said, "but they'd certainly notice if we raised taxes by \$45,000 to keep from cutting services."

## DIXFIELD CALLS A HALT

In Dixfield, a larger project that's more in the industrial class has convinced selectmen that a development moratorium is needed. Town Manager Gene Skibitsky points out that Dixfield has minimal land use controls – just shoreland zoning and subdivision regulations, without any site review or designated commercial zones. "We don't really have a framework to deal with this," he said. Selectmen scheduled a special town meeting for later in October, and Skibitsky said there was little doubt it would be approved.

"This will allow us to take a deep breath and consider out options," he said. Wind power projects have been popping up throughout the area, with First Wind proposing one in Rumford and Patriot Renewables of Quincy, Massachusetts, targeting Carthage as

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well as Dixfield. Patriot already has one project operating in Maine, a three-turbine wind farm in Freedom, completed in 2008, that produces 4.5 megawatts.

The size of the Dixfield project has yet to be determined, but it is likely to have between eight and 20 turbines on Colonel Holman Mountain, with a two-mile ridgeline considered suitable for development. The project would then produce a rated capacity of between 12 and 30 megawatts, since each turbine produces 1.5 megawatts.

Dixfield called on the Androscoggin Valley Council of Government to write the moratorium question, which would take effect immediately.

Skibitsky said that townspeople have certainly been talking about the wind project, with opponents a bit more vocal though not necessarily more numerous than supporters. "People want to see us get to work on this," he said, "whichever side they happen to be on."

### AIMING FOR CONSENSUS IN OAKFIELD

Back in Oakfield, Dale Morris is figuratively breathing a sigh of relief since the town's approval, by a 9-1 margin, of the First Wind project on September 28, which was immediately hailed by Gov. John Baldacci in his weekly radio address. The special meeting could have placed a six-month moratorium on the project, but instead approved the technical subcommittee's guidelines, which in turn allowed the project to move forward to the state level.

Morris said the subcommittee was the right way to go, particularly for a small town with few resources or planning expertise. First Wind has agreed to reimburse Oakfield for the cost of hiring the experts – Ken Kaliski of Resource Systems Group in White River Junction, Vermont, an acoustical engineer, and John Edgerton of Wright-Pierce in Topsham, a civil engineer. But Morris emphasized that the town made it own choice of consultants, and that the subcommittee, which included both selectmen and planning board members, worked well together.

Oakfield did have the benefit of having known, for years, that First Wind might be pursuing the project.

The first test instruments were installed in 2003, and another, more sophisticated set, came online in 2007. The 45-page subcommittee report answered many questions and gave assurances on such subjects as property setbacks, ice throw, and wildlife impacts.

Part of the guarantees First Wind provided to the town includes a Sound Complaint Response and Resolution Protocol – a forum for handling any complaints that arise from operations, which the company has agreed to make a condition of approval by DEP. It also sets cumulative noise limits for any projects First Wind might build in Oakfield. The daytime limit would be 45 decibels, and 35 decibels at night.

Morris said that no project of this size and complexity will ever gain unanimous approval, but he thinks townspeople have been able to understand the important points. "It's all about comfort level," he said. "If you understand something, you can live with it. We tried not to leave any questions unanswered."

Oakfield will benefit substantially from the project. A TIF agreement will provide \$10 million to the town coffers, along with a \$5 million "common fund" that will produce annual checks to each resident taxpayer. Following expiration of the TIF in 20 years, the town will continue to receive property tax revenues.

For towns that do attract the attention of wind developers, Morris offers the following advice:

"First, see if the selectmen and towns manager think this is something they want to pursue. If it's not, or they're not sure, propose a moratorium and draft an ordinance that meets the town's needs."

And he strongly recommends the technical committee approach, in part because wind power projects are relatively new and so much disagreement exists about their effects.

He also suggests that town officials take the time, and have the patience, to understand the state and federal regulatory processes. This need not take forever – Oakfield's committee formed, did its work, and filed its report all within three months.

First Wind apparently intends to go full speed ahead on the Oakfield project, possibly beginning construction in the first quarter of 2010. The haste is due to a federal deadline – if it's built soon, the project is eligible for American Recovery and Reinvestment Act (federal stimulus) funding of up to 30 to 40% of project costs.

Morris thinks the town got a fair deal from First Wind. "In Alaska, everyone benefits from the energy resources they have," Morris said. "We can have the same kind of benefits here." Plus, he might have added, the energy involved isn't petroleum, but renewable and climate friendly wind. 

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# The Municipal RISK MANAGER

FALL 2009

A Publication of the Maine Municipal Association

**Giving Back:** *"Since 1997 more than \$13.2 million in dividends have been delivered by Risk Management Services to participating members."*

The Maine Municipal Association offers three insurance related self-funded pools for municipal and quasi-public entities in the State of Maine: the Workers Compensation Fund and the Unemployment Compensation Fund, both formed in 1978, and the Property & Casualty Pool formed in 1987. The programs are overseen by governing boards of elected and appointed municipal officials. Each year the boards review each individual program's overall loss experience to determine if dividends may be paid.



Cynthia Hanscom, Town of Greenville

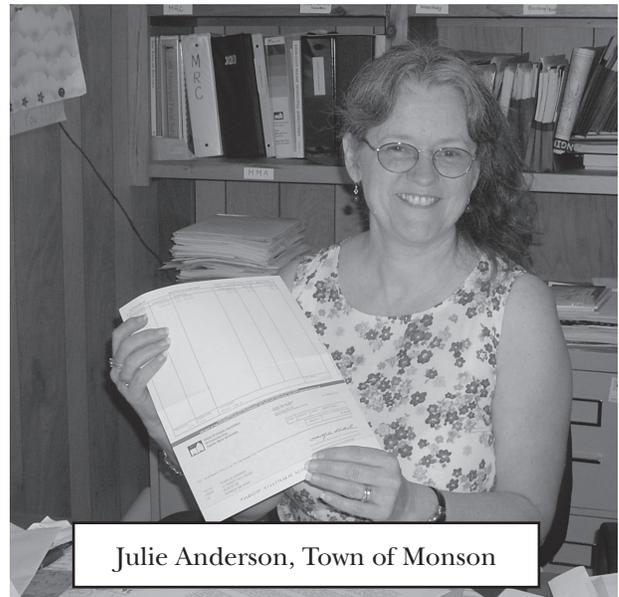
Patricia Kablitz, Director of Risk Management Services for MMA, advises that more than 90% of program participants have received dividends this year because of their good risk management practices. This year the three pools are returning in excess of **\$1.3 Million** to their members.

- The Property & Casualty Pool distributed **\$349,653** in dividends to **94%** of its Members.
- The Workers Compensation Fund distributed **\$499,276** in dividends to **91%** of its Members.
- The Unemployment Compensation Fund distributed **\$489,024** in dividends to **94%** of its Members.

To qualify for a dividend, the Member must be a current participant of the Workers Compensation Fund, Property & Casualty Pool or the Unemployment Compensation Fund and must have been a participant for three full consecutive years. If a member participates in both the Workers Compensation Fund and

the Property & Casualty Pool, they earn an additional 1% dividend in each program. Dividends are not guaranteed from year to year, and each award depends not only on the claims experience of the individual member but also on the overall claims experience of the Pool and the Fund(s).

Everyone in MMA Risk Management Services would like to take this moment to congratulate the Members who earned dividends. For more information about any of the MMA Risk Management Services programs, including online training programs and other services, please check the offerings on our website at [www.memun.org](http://www.memun.org) and click on the Risk Management Services link, or call 1 800-590-5583. 🏠



Julie Anderson, Town of Monson

# Preventing Roof Collapse

## *Ice & Snow Accumulations on Roofs*

All properly designed and constructed roofs are built to withstand a “design” ice and snow load. The design considers factors such as the type of structure, its construction and the risk to human life and safety. The “snow load” design is based on the expected frequency and severity of snowstorms. This is critical in New England where design loads can range from 40 to 70 pounds per square foot. Snow load is only a portion of the total design load which must also consider wind and the “dead load” or weight of the roof structure itself.

Municipally-owned properties have the same risk of collapse as all structures. Poor materials, construction and lack of post-construction maintenance can result in a weakened



structure. Lack of proper design or design to standards lower than today’s is not uncommon. Newer building codes provide better guidance for estimating snow loads. There are many structures in Maine built by volunteers whose enthusiasm for volunteerism far outweighed their engineering and construction abilities. Older roofs can suffer from corrosion of metal members and connectors which can reduce their ability to resist high snow loads. After construction, proper maintenance is important and any damage or leakage should be immediately repaired.

Snow and ice on a roof exerts vertical loads that can cause a roof to sag or bow downward. This loading also transfers horizontal forces that can cause walls to deflect outward at either the top or bottom of the wall. Minor sagging or deflection that occurs in a properly constructed roof usually goes unnoticed, is temporary and disappears after the load is removed. When sagging and deflection becomes permanent, there is structural deficiency and in extreme cases, the roof may collapse.

The weight of accumulated snow and ice, not the depth, is key to assessing a roof’s vulnerability. The weight of snow is determined by its water content. An inch of water depth weighs 5.2 pounds per square foot. Three to five inches of “old” snow is equal to one inch of water, so anything more than two feet of “old” snow could be dangerous. This is especially true if the roof has been previously compromised or damaged by heavy loading.

Before removing snow from a roof, you must determine what is at risk and what is the level of risk? What additional damage might be done to



the roof? Is it possible and practical with the available equipment to safely remove snow and ice? What about the safety of the person who is working on the roof? The liability of having someone else remove the snow must be considered before taking action. Removal of snow and ice

should be an infrequent, situational activity to address a singular circumstance. If a roof is in such condition that frequent snow/ice removal is required, then an engineering study should be conducted and long-term remedial action taken.



### Buildings at greater risk:

- Buildings with lightweight roofs, such as metal buildings or built-up roofs, on bar joists.
- Roof overhangs that project several feet beyond the horizontal support, if there is substantial ice buildup.
- Multilevel roofs where a lower roof is subject to an accumulation of sliding or drifting snow.
- Valleys that allow an accumulation of drifting, sliding or melting snow.
- Buildings constructed with no consideration to design load.
- Buildings with multiple additions, modification done by non-professionals.

### How to do a visual inspection:

- Look for sagging or bowing of roof rafters or purlins. Start by sighting along the ridge line and eave line. Note “dishing” of the roof.

## ROOF COLLAPSE *(cont'd)*

- Look for deflection at the top and bottom of walls. Note outward bowing.
- Look for bowing of roof truss, bottom cords or web members.
- Look for separation of ceiling joists and/or trusses from wall plates.
- Look for bowing of headers or columns.
- Look for movement of flashing around chimneys, door trims, ceiling moldings, staircases, etc.
- Investigate attic and overhead

areas for decay, rotting, insect infestation, etc.

If any of the conditions outlined above exist, the structure should be analyzed by a qualified individual such as a professional structural engineer. Remember, wood structures will usually show stress before they fail, unlike metal structures that usually



will not. Creaking or moaning in a building, observed movement, severe deflection or bowing are indicators of pending collapse. If there is any doubt about roof integrity, evacuate the area until the situation can be analyzed. 🏠

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The program provides coverage for claims when a land owner's private water supply has been destroyed or rendered unfit for human consumption because of the application of salt or other chemicals to public roadways during winter salting and sanding operations. The limit is \$25,000 for any one claim and a \$100,000 annual aggregate or cap. Defense costs are included in these limits.

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

# Still a 'Fighter' After All These Years

By Liz Chapman Mockler



*Kathy Littlefield*

Few elected officials in Maine have fought harder or longer to protect municipal local control and independence than Kathy Littlefield, the tenacious, outspoken lead selectman for the town of Waldo for nearly 40 years.

And anyone who thinks that might change soon should be warned: Think again.

"To be honest, it was a way to earn a little extra money to pay the taxes on the farm," Littlefield said in explaining why she made her first run for selectman in 1972. Thirty-seven years later, the Camden native smiles and adds, "But then, I kind of got hooked on working with people and trying to make a difference."

Littlefield could tell a thousand stories about running a small municipality in Maine. About the headaches and heartaches, the challenges and victories, the potholes and pitfalls.

*Liz Chapman Mockler is a freelance writer and media advisor from Augusta, [lizmockler@hotmail.com](mailto:lizmockler@hotmail.com)*

The good times and bad.

She still writes out the annual property tax bills by hand and only this year stopped hand-delivering the town report to all 150 households -- and only because the Post Office finally got her to stop using mailboxes as a depository for the annual report.

"I make mistakes," she said in her direct, no-nonsense way of speaking. "I just try not to make them twice."

## FREE TO FIGHT

Littlefield happened to seek office shortly before the state imposed a "uniform property tax" (UPT) for education and just as the state was trying to set up mandatory assessing districts and impose new municipal assessing standards. Littlefield saw the assessing laws as an insult to local government and an implication that selectmen and councilors could not run their municipal government without oversight or the help of the state.

Incensed by the paternalistic nature of the new education and assessing laws, Littlefield became a "Freedom Fighter" not long after her first swearing-in ceremony. The Freedom Fighters were a vocal band of local government officials -- who were mostly from the Waldo County area, who gained statewide prominence for their strong opposition to both the UPT and the mandatory assessing districts, and who were strong advocates for local control. After many meetings across the state and in Augusta, and an exhaustive public education effort, Littlefield and her Freedom Fighter friends prevailed and the UPT was repealed. The Freedom Fighters were also successful in making the assessment districting law voluntary (and it should be noted that no lasting,

voluntary districts were ever formed).

She still savors these victories as some of the most important efforts she has ever been involved with as a municipal official.

"The state wanted to create assessment districts," she said, where municipalities would be forced to consolidate for property assessment purposes and hire professional full-time assessors (as opposed to part-time selectmen), instead of letting each town make its own choice about what would work best in their community.

It was a classic "one size fits all" philosophy that Littlefield still disdains.

"If that had happened," she asserts, "then we would have no small towns in Maine today."

Then came the Freedom Fighters II effort in the late 1980s when some state lawmakers started talking about changing the Maine Constitution to remove the "just value" approach to establishing property values. In the 1980s, property values, particularly along the Maine coast, were skyrocketing as out-of-state real estate buyers were paying inflated prices for Maine waterfront property, according to Littlefield.

That phenomenon, which still persists today, was causing values to rise rapidly even for people who were staying put. People -- who called Maine home -- were finding out that their property values had sharply increased without them doing anything and were having difficulty paying their taxes.

The Freedom Fighters of Waldo County decided that they should be weighing in on this important issue. Just like they did in the 1970s fighting mandatory assessing districts, the

Freedom Fighters wanted to maintain and strengthen local government's role and voice regarding this important assessing issue.

"During the Freedom Fighter II effort, we met twice a week," Littlefield said of the group of resisters who were again successful in getting the state to butt out of local government. "We were sort of a rebellious group at the time," she recalled. "That was fun."

### SMOKE, NO MIRRORS

What Littlefield does not consider fun is working hard all year and then not getting healthy and heartfelt participation from town residents. During many town meetings, Littlefield has sought feedback and questions from the people who pay the bills, but often without success.

Although she interprets the silence as the public's general satisfaction in the way the town's three selectmen are handling matters, given her assertive personality and penchant for directness, she openly urges Waldo residents to hold her and the board just as accountable as they do state officials.

"At every town meeting I get after them (and say) 'there are questions you should be asking,'" she said.

"I want them to question me," she continued. "I want them to ask, 'What are you planning to do?' That makes everyone think more. To me, that's important. And I would much rather have questions before, instead of after, a problem takes root and festers."

She put her foot down, literally, when taxpayers wanted to merge the entire municipal budget into one question so they could vote on the individual warrant articles en masse.

"I refused," she said without a hint of regret. "They need to go through every item so they can understand."

The need to cajole taxpayers into being more engaged in local government was not a problem when Littlefield was first elected, she said. At that time, selectmen meetings were held in the first selectman's kitchen because the town had not built a municipal office. Littlefield remembered how some residents began to complain and intimate the board was keeping secrets or cooking up trouble around the woodstove.

The board had one faithful gadfly who followed them from the kitchen

to the smelly, cramped fire station, where the board began meeting despite the station's condition, size and the "stinky trucks" that were parked in the same space.

Littlefield said the man got angry the first time the board called for an executive session and asked him for privacy.

"I'll leave," the man huffed, Littlefield recalled with a laugh, and then he climbed into the cab of a firetruck, and revved the engine good and hard, leaving the selectmen shrouded in a fog of blue fumes (in case you're wondering, he didn't drive the truck out of the station).

The incident was the impetus for building the town's first business of-

fice, Littlefield said.

"The people of Waldo are good," she said. "They don't give me a hard time about much."

### LOCAL CONTROL RULES

The same cannot be said about Littlefield's relationship with state legislators and bureaucrats. She admits having no patience for red tape, unformed laws and the party politics that seem to her to take precedence over resolving problems by looking at the facts and protecting local control.

Littlefield said many of the state's laws and policies "make people weak, not independent."

"Pretty soon, they should get a basket and get to the delivery room and

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catch 'em when they come out," she said, only half-joking.

She thinks municipal officials, whether elected or appointed, must be diligent in keeping track of what's happening in Augusta. She even refuses to ignore the little decisions that bother her and believes strongly that problems need to be fixed while there's still time.

Not long ago, Littlefield appealed the state's interpretation of an assessment rule that arguably would not have a great impact on one municipality, but in the aggregate could cost local government a great deal, indeed.

"If you don't stop the small stuff, you can't stop it when it gets big," she said. "If you're not vigilant, (a bad idea) will disappear and then pop up again when you're not expecting it."

Littlefield is well-known in some state circles. OK, sometimes even notorious. For example, after being outraged -- "livid" would be a better word -- over a new law requiring the state to conduct annual audits of the town's books, she flatly refused to cooperate with state officials. She did not prevent the tax collector from cooperating, since the state was most interested in excise tax revenue collections, but she did not welcome them or help them.

"They think we can't do it (right)," she lamented. "I tried to shut my mouth, but in the end, I could not. State law already required that towns have an annual independent audit. The law also already included a provision that if taxpayers were suspicious or concerned, they could call the state department of audit.

"From the start," she continued, "I had the attitude that 'you should clean your own house before you come to clean my house.' We didn't need the state -- and we didn't need the state spending its precious resources duplicating what was already being done.

"What better way than town meeting to control expenses and hold local officials accountable?" she asked.

Littlefield said she learned patience from being a municipal advocate and becoming more well-versed in state politics.

The Legislature ultimately created a study committee, and named her to it, to find out whether the audits were necessary.

After their investigation, they came to the same conclusion Littlefield had reached without a study committee. "The (audit) program disappeared. I love it," she said, unable to suppress a wide smile and a deep laugh.

Littlefield fights more than the state and its rules and policies. Every year, she shows up at the school budget hearing to protest spending -- not that a lot of others do. She fought the need for a new \$40 million high school for the 11-town school district in which Waldo belongs; a fight she lost.

She fights excessive county spending and wants to be part of ongoing discussions regarding jail consolidation. She fights budget caps. She fights misinformation. Most especially, she fights anything that dilutes the town meeting or threatens local control.

### BUSY IS AS BUSY DOES

To say that Littlefield has been busy is a quintessential understatement. Never mind raising a family and helping her husband raise animals and run a farm, she accepted responsibility for the day-to-day town operations nearly from Day One.

In 2003, she founded the Waldo County Selectmen's Association. She said that even today, she calls meetings only when there is real trouble -- whether it's another state effort to infringe on local governance rights or a single town experiencing a dire problem and needing help.

Everyone can learn something from other people, she said.

"I don't call a meeting unless it's essential," she said. "(Elected officials) know that when I call, they need to come."

She added, "You cannot govern in a vacuum. You need to know what is going on at the state government level, as well as what's happening to your neighbors."

Littlefield served on the state Board of Environmental Protection for eight years, nominated twice by former Gov. Angus King; worked 12 years as a member of the county budget committee; served two years as a member of the MMA Legislative Policy Committee; and accepted a stint on the county jail committee in addition to other temporary study panels.

She has traveled countless times to the State House in Augusta to support or help defeat bills aimed at local government. She and her counterparts have not always been victors, but she believes they defeated the worst of state proposals over the past four decades.

Despite her reputation for challenging state policies, Littlefield said she has often been broached to run for the Legislature. Although she is openly a Democrat, she said partisan politics gets left at home when selectmen hold their meetings. She winced while thinking of what municipal government might be like if party politics influenced town decisions and functions.

As for running for a legislative seat, Littlefield isn't big on the idea. After all, she's a fighter for everyone, not just people enrolled as Democrats.

"I've been approached to run, but they would not like me because I'm not going to be told how to think," she said. "I wouldn't last. They'd eat me alive up there." **mf**

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# Deciding Whether To Accept Credit Cards

By Chad Snow

The ability to accept credit and debit card payments for local government services is increasing in demand and becoming more widely available. A new state law (*see article on page 27*) has given more flexibility and choices to Maine municipalities for deciding whether or not to accept credit card payments, either directly with a credit card company or through a third party service provider. While some municipalities in the state already accept credit card payments, others are evaluating the new choices they have before offering customers the ability to pay for services using a credit card.

## CREDIT CARD TYPES

Most Maine municipalities that do accept credit card payments today accept MasterCard, Visa and Discover. As the municipality develops a policy which addresses credit card payments, it will need to decide the types of credit cards it will accept. Credit card vendors in the market have reported that the types of transactions that can be paid for and the amount of fees charged to the municipality can vary based on card type. If a municipality decides to accept credit card payments, it will be important to talk with the vendor to understand the fee structure that will either be paid by the municipality or passed on to the customer.

## INTERNAL CONTROLS

If a municipality decides to accept credit card payments, a review of internal controls will need to be conducted to ensure processes are acceptable to audit standards and in line with industry best practices. For example, the process of making adjustments, refunds, and voids will need to be documented and potentially ad-

justed to accommodate credit cards.

On the surface, the process of accepting credit card payments would seem to potentially create additional reconciliation and internal control issues for municipalities. The reality, however, is that accepting credit card payments can create fewer internal control issues compared to processing cash or checks.

Credit cards are validated at the time the transaction is processed, as opposed to a check which will not be reconciled until 1-2 days after the transaction and may be returned to the municipality for insufficient funds, which can generate additional work for the municipality attempting to recover the funds. However, by this time, the license, permit, registration etc, has already been issued to the customer. A detailed audit log from the credit card vendor (usually provided on a daily or weekly basis) can be compared to register transactions for ease of reconciliation as opposed to cash which is sometimes a one-sided reconciliation process to a cash register log.

A municipality should consider that adding credit cards as a payment type available to customers will not necessarily create increased work for staff, and may, in some cases, actually help to streamline internal processes.

## CUSTOMER CONSIDERATIONS

The new state law allowing municipalities to pass on the “merchant fee” to the customer who uses a credit card to conduct municipal business gives Maine municipalities alternatives when it comes to deciding whether or not to accept credit cards. While some Maine municipalities, in the past, have used online “convenience fees” to get around the standard policy of credit card issuers that requires the merchant to absorb the credit card transaction fees, this new law provides more flexibility for municipalities. However, with this flexibility comes customer considerations. Mu-

nicipalities should be prepared for increased customer inquiries as to the nature of the fees, the fee structure and reasoning behind any fees passed onto the customer.

## CREDIT CARD FEE MODELS

For governmental entities, there are two options to be considered in how credit card fees are handled – the Convenience Fee Model and the Absorption Fee Model.

### Convenience Fee Model

This model assesses a fee to the customer for the “convenience” of paying by credit card. In this model, the customer is assessed an additional fee above the transaction amount, in the form of either a flat fee or a percentage of the overall transaction amount. [While “convenience fee” is the common term used for this fee payment model, some questions have been raised regarding its application to all electronic payments under Maine’s Consumer Credit Code.]

### Advantages of Convenience Fee

- 1) Gives customers the ability to pay by credit card.
- 2) The municipality does not incur any additional expense for allowing a customer to pay by credit card.
- 3) Reconciliation is done at the end of the day since the transactions are treated the same as a check.
- 4) In most cases, hardware is supplied and supported by the credit card vendor.

### Disadvantages of Convenience Fees

- 1) Increased cost to the customer for use of their credit card.
- 2) Decreased customer “satisfaction” levels. Many municipalities accepting credit cards reported customer complaints related to the convenience fee.

## ABSORPTION FEE MODEL

This model charges the municipality a “merchant fee”, typically based on the volume and value of the business being transacted. This model is used almost exclusively in private sector business transactions. The fees associated with processing credit card payments – merchant fees – are “absorbed” by the company that accepts credit cards, not by the customer. Monthly fees are negotiated between the credit card issuer or “third party service provider” and the credit card

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merchant. An average sized business (or perhaps a mid-sized municipality) could expect to pay 1.5 to 2.0% or more of the total average transactions for the month. While this model assumes the “merchant” will absorb all the fees associated with the credit card transaction, the new state law does permit a municipality to pass on some, or all, of these costs to the customer (see article on page 27).

**Advantages of Absorption Fees**

- 1) Gives customers the ability to pay by credit card.
- 2) Vendor supports all hardware with no cost to merchant.
- 3) Increased customer satisfaction.

**Disadvantages of Absorption Fees**

- 1) Municipality pays the monthly fee to a credit card issuer to give customers the flexibility to pay by credit card.
- 2) Since the municipality covers the fee for each credit card transaction, they are not receiving 100% of the revenues being charging the customer.

As a municipality begins to consider accepting credit card payments, it will be important to develop a strat-

egy for implementing credit card payments that will allow the municipality to consider all of the pros and cons associated with credit card payments. Documented and agreed upon policies and procedures that address internal control, reconciliation and business process changes will assist in mitigating some of the issues a municipality may encounter as it implements a credit card program.

Based on industry trends, lessons learned from other municipalities nationwide that have implemented credit card processing, the following “next steps” could be considered by your town/city prior to implementing credit card processing. The experi-

ences of other municipalities across the country that have implemented credit card processing have shown that there is more to accepting credit card payments than signing a contract with a vendor and plugging in the credit card hardware.

**Decide on the fee model to be used, the credit card types and the transaction types that will be accepted.** It is important for the municipality to decide on a credit card fee model to be used, convenience or absorption model (or partial absorption fee). In addition, the municipality should determine the types of credit cards and transaction types that will be accepted, i.e. American

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Express, Discover, Master Card, Visa, etc. Making the decision on the fee model and credit card and transaction types accepted is the first critical step the municipality must make as part of implementing credit card payments. This decision will dictate many of the future decisions that must be made and serve as the foundation for the credit card strategy.

**Develop documented policy and procedures to address credit card issues.** Once the municipality determines the fee models and credit card types accepted, it should begin the process of developing documented policies and procedures that describe the decisions made, and create the framework for implementing credit card functionality. The policies and procedures should be reviewed and agreed upon by all stakeholders, including finance staff, managers and elected officials.

**Develop requirements for credit card processing functionality.** The municipality should develop technical requirements related to the credit card process. For example, the municipality should document any unique features required, such as the ability to process credit card payments online, allow reporting on transactions, security logs, etc. The extent of the requirements will largely depend on guidance provided by existing finance, IT and auditor policies.

**Decide how the credit card processing will interface with other systems.** The municipality should decide how the overall credit card processing functionality will interface with existing systems. For example, if the town allows payment by credit card at the counter, will they also allow credit card payments through the town's website for tax bills, motor vehicle registrations, etc?

**Conduct an evaluation process to select a credit card vendor.** The municipality needs to conduct an evaluation process to select a credit card vendor that supports the policies and procedures, and requirements of the municipality's credit card business processes. A formal procurement and selection process will allow the municipality to compare multiple credit card vendors and evaluate them against the municipality's requirements. A formal procurement process will also allow the municipality to in-

volve appropriate stakeholders from the town and could include citizen input as well.

**Develop a strategy for reconciliation based on the functionality and restrictions of the credit card vendor chosen.** Once the municipality has selected a credit card vendor the municipality should develop a strategy for how reconciliation will be completed based on the functionality available from the credit card vendor. The process for developing a reconciliation policy will need to address the frequency in which reconciliation will be completed, and the information available from the credit card vendor as well as the municipality's bank.

**Redesign business processes as a result of credit card functionality.** In

conjunction with the implementation of the credit card processing, the municipality should conduct a business process redesign to accommodate the new credit card processes. The business process redesign should be focused on streamlining the cashiering process related to credit card processing, end of day balancing, reconciliation, and reporting.

As the municipality develops a credit card strategy and addresses the considerations, described here, it will be important to ensure that newly developed policies and procedures regarding credit card payments support town processes and mitigate the issues associated with credit card processing (protecting credit card data, reconciliation, etc). 



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# Q&A on New Credit Card Law

By Suzanne Pilgrim, Staff Attorney, MMA

**M**aine's Legislature recently enacted a law allowing municipalities to pass some transaction fees associated with credit/debit card usage to the consumer. When did the law become effective?

The Legislature added a new section to Maine's Consumer Credit Code (9-A M.R.S.A. § 8-303(2-A)) to allow some government entities to charge consumers a fee when accepting a payment via credit/debit card. The law, PL 2009, c.113, became effective September 12, 2009.

**Can any municipality take advantage of the new law?**

The law applies to "governmental entities," which are defined to include counties, most quasi-municipal corporations, the state Judicial Department and "municipalities as defined in 30-A M.R.S.A. § 2001(8)." The law's definition of "municipality" includes only cities and towns. Plantations are *not* "municipalities" under this law.

**What were the major changes in the law and how do these changes affect a municipality's ability to accept credit card payments?**

Every credit card transaction involves transaction fees that are usually absorbed by the merchant. Before the new law was passed, Maine's Consumer Credit Code arguably prevented government merchants from passing such fees along to consumers. Absorbing the transaction fees raised issues for governments because the costs can be substantial and absorbing the fees requires all taxpayers to bear the costs of the service. Existing law had been interpreted to allow municipalities that accepted payments electronically to impose a single "convenience fee" on all electronic payments (including credit, debit and ACH transactions) based on the added convenience to the consumer. However, a "convenience fee" could not apply to credit card payments made by non-electronic means (e.g. over the counter, by mail).

The new law attempts to provide more flexibility to governments to accept credit/debit cards because it authorizes transaction fees to be charged to consumers for credit/debit card payments made via any payment channel.

However, municipalities that plan to begin accepting credit/debit card payments based on the new law should proceed cautiously. There are a number of practical and legal issues that to be carefully considered before implementing this new authority

**Do municipalities have to accept credit/debit cards under the new law?**

No. Nothing in the law requires a municipality to accept payments via credit or debit card.

**If a municipality chooses to accept credit/debit card payments, must they be accepted as payment for all municipal services?**

No. A municipality may choose to accept credit/debit cards for some types of payments and not others. Likewise, a municipality may choose to accept credit/debit cards through some payment channels and not others (e.g., via a website, by mail, etc.).

**Are there limits on the fees that can be charged to the consumer?**

Yes, there are important limits on any fee charged to the consumer. First, the law authorizes transaction fees only for payments made for taxes, fines, charges, utility fees, regulatory fees, license or permit fees or for specific services provided by the governmental entity.

Second, the fee may not exceed the costs associated with providing the credit/debit card service that are "directly incurred" by the municipality or are assessed by an "authorized 3rd-party payment service provider" for a credit/debit card transaction. If there is no cost imposed on the municipality for a debit card transaction, no fee may be charged in that transaction. What this language means in practice is one of the difficulties in applying

the law. Based on our information, the transaction fee incurred by a municipality may not be the same in every customer transaction and may not be easily calculated in advance. As a result, it may be difficult to comply with the law's disclosure requirements (see below). It is not clear whether the law would allow a municipality to charge a single transaction fee equal to the "average" fee it incurs. Because of this uncertainty, we recommend that unless a municipality is able to calculate individual transaction fees in advance, the municipality charge no more than the lowest fee that might apply in the transaction. See the Legal Services Information Packet on the subject for more information.

**Does the law add any other requirements?**

Yes. The amount of any fee must be disclosed clearly to the consumer prior to payment, and the municipality must disclose to the consumer that the fee may be avoided if the consumer makes payment by cash, check or other means not a credit card or debit card.

**The new law identifies a "third party payment service provider." What is it and how might a community use one of these companies to process credit card payments?**

This term is not defined in the new law, although the industry generally seems to use the term "payment service provider" to mean a third party that offers merchants a range of online payment processing services. A municipality might contract with a third party to provide some or all processing services on its behalf. Some entities offer a complete package of services including collection of the transaction fee directly from the consumer. The new law appears to authorize such third parties to impose a fee directly on consumers as part of a government payment transaction. A municipality that chooses to engage a third party payment service provider should carefully examine the provider's services and fees and should request clear assurance that the provider's program complies in all respects with Maine law. A written agreement with the provider that specifically requires compliance with all applicable laws is recommended, as is a provision requiring the provider to indemnify the municipality and hold it harmless in the event of any legal violation.

**What options does a municipality have under the new law for accepting credit/debit card payments?**

Municipalities have a wide range of choices in this area, including whether to accept credit/debit cards at all, for which services to allow payment via credit/debit card, and via which payment channels cards would be accepted (e.g. over the counter, via website). There are several municipal options for financing the program, including absorbing some or all transaction fees in the municipal budget, passing some fees to the consumer, or use of a third party for some or all payment and processing functions.

**Will town meeting or council approval be needed to implement a credit card program?**

It may be. As noted above, there are many ways to structure credit card programs and there are several options regarding fees. The municipal legislative body (town meeting or council) may need to appropriate funds, authorize fees, establish policy and/or authorize the execution of third party contracts. A list of basic options and steps for implementation of each can

be found in the Legal Services Information Packet on this subject.

**Are there additional issues that municipalities should consider ?**

Credit card association and/or service provider agreements often impose additional restrictions and obligations on merchants. The terms of such agreements should be reviewed carefully, with particular attention to provisions dealing with liability/indemnification for legal violations, data loss, and security breaches. Additional factors to consider when structuring a credit card program include administrative costs/benefits, consumer convenience, equipment or security

upgrades, coordination of financial software, the form and content of financial reports, timing of payment to the municipality and procedures relating to disputed charges.

**Where can we find more information on acceptance of credit/debit card payments by governments, so we can evaluate whether or not it makes sense for our community?**

A more detailed analysis of the new law, as well as links to additional resources may be found in a Legal Services Information Packet on Municipal Acceptance of Credit Cards, available on MMA's website ( [www.memun.org](http://www.memun.org)) or by request. 



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# People

Sabattus selectmen have hired former Lewiston city administrator, **Jim Bennett** as the town's interim manager. Bennett, who will work three days a week, temporarily replaces **Gregory Gill**, who resigned in early September as the town's first manager.

**Elwyn Brewer** retired in July after serving 45 years as a Hampden firefighter. Brewer, 77, has worked as assistant fire chief for the past 34 years.

**Michael Bussiere** has been named Lewiston police chief, replacing longtime chief **William "Bill" Welch**. Bussiere, a 19-year department veteran, has served as acting chief since Welch's retirement in May. He worked as assistant chief for six years before winning the top job.

Lincoln Town Councilor **Samuel Clay** lost his home to fire in late August, despite a quick and concerted effort by firefighters from Lincoln, Howland and Lee. The fire, which is not suspicious, according to fire officials, awoke Clay and his son, Jonathan, and both escaped without injury.

Wells selectmen honored two municipal employees in September for their successful effort to rescue a teenager from Wells Harbor. Assistant Harbor Master **Doug Knox** and Assistant Highway Commissioner **Edgar Moore** likely saved the teen's life, according to the police chief. In a second rescue effort, reserve police officer **Mathew Leach** borrowed a boggie board on August 30 to save two women who were pulled far offshore by a riptide.

Jonesboro Fire Chief **John Geel** is

retiring after working for 23 years for the town. Geel was honored for his service during the annual town meeting in late July.

Sanford Town Manager **Mark Green** has been named Manager of the Year by the Maine Town and City Management Association (MTCMA). The group's highest annual award looks for integrity, leadership skills, the ability to inspire people, personal growth and efforts to improve the image of the community in its selection process. Green, 51, has worked as Sanford town manager since June 2004 and previously managed the towns of York, Windham and Buckfield, as well as working as Portland assistant city manager.

Waterville Mayor **Paul LePage** has announced he will run for governor as a Republican in 2010. LePage, 60, was elected mayor in 2004. He works as general manager of Marden's Surplus & Salvage retail stores statewide.

York Planning Board member **Barrie Munro** has resigned after serving the town for 16 years. Munro, 83, said "it's time" to step aside. Selectmen will appoint someone to finish Munro's term, which expires next June.

**Louise Reid** has been named interim manager of the town of Old Orchard Beach, temporarily replacing **Stephen Gunty**, who resigned this summer. Reid was acting town manager in 2008, in-between manager James Thomas' resignation and Gunty's hiring. The town council hopes to hire a new manager by November.

Kittery Public Works Director **Richard**

**Rossiter** retired in September after 34 years with the department – the past 31 as the top administrator. **Norman Albert** has been named interim director.

Kittery Town Councilor **Glenn Shwaery** has resigned after five years because he is moving to New Hampshire.

**Rosemarie Webster** has been named Pittston tax collector/treasurer, replacing **Debra Dawson** who took a medical leave and ultimately resigned.

In East Millinocket, Town Clerk/Tax Collector **Laura R. Ferguson** has retired effective August 1, 2009 after 27 years of dedicated service to the town. **Angela Cote**, who has been the deputy town clerk/tax collector, has been named as her replacement.

East Machais voters elected **Will Tuell** to a seat on the board of selectmen in late September. In his first run for public office, Tuell defeated a second first-time candidate by a vote of 59-1. Tuell replaces **Robert Chase**, who died in August. 

**Michael Starn**, editor of the Maine Townsman for the past 34 years, and Director of Communications & Educational Services for MMA, announced in September that he will be retiring in April of 2010. Starn will officially end his employment with MMA at the end of this month, but will continue to work for MMA as an independent contractor through March of next year. Starn will continue to edit the Townsman during his contract work.



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TRUCK FOR SALE BY SEALED BID — The Town of Monmouth has for sale, a 1990 GMC Top Kick dump truck with a 7 cubic yard body. The truck is powered by a Caterpillar 3116 engine, 215 horsepower, and a fuller FS6105A, 5 and 2 transmission. The truck includes a dustpan and wing for plowing and all running lights. Mileage is 143,350, current sticker and is being used most every day. Any questions or if you would like to look at the truck, please call Herb Whittier, Public Works Director, at 592-2324. All bids must be in a sealed envelope and marked "Truck Bid". The closing date is November 3, 2009 at 2:00pm.

**Arundel:** Fire department officials have asked selectmen for the “okay” to hire a consultant to assess the department’s personnel needs and develop a five-year management plan. The town has been served by six fire chiefs in the past 10 years. Changes to the town charter are being discussed that would bring the existing independent fire department under the town’s full jurisdiction, as a municipal department. Chiefs presently are elected by department members and are not directly accountable to the town manager or selectmen.

**Augusta:** Although unable earlier this year to find a company to buy the naming rights to the Augusta Civic Center, the city council in September authorized a nonprofit group to raise funds for some of the city’s recreation trails by selling the naming rights for kiosks and bridges within the Bond Brook trail complex. Officials said the entire complex could be named for a single donor. Any bidder names must be approved by the nonprofit governing board.

**Bridgton:** Voters will be asked in November to approve spending as much as \$400,000 to rehabilitate the Town Hall, which was built in 1851 and accommodates municipal offices as well as recreation programs. An engineer who volunteered to assess the building, told selectmen in late September that the building is in remarkably good condition for its age.

**Cutler:** The town’s state valuation increased this year from \$43 million to \$73 million, resulting in a loss of \$94,000 in state education funding. When combined with the delay in developing housing on the former Navy base, unpaid taxes have escalated to \$171,000, with the base developers responsible for \$50,000 of the revenue shortfall. Still, annual town meeting voters in September approved all spending requests, which represented a 10.9 percent increase in the amount to be raised by taxation for the new fiscal year.

**Fryeburg:** Special town meeting voters in August approved allowing the town’s administration department to spend 65 percent of the \$374,000 it requested on the regular town meeting warrant in June. At that time, voters decided they wanted more information

before approving the entire amount, so they authorized only 35 percent of the request in June.

**Jefferson:** Special town meeting voters in September decided by a margin of 193-5 to allow an Internet company to build a tower on town-owned property. The new tower will improve residents’ access to high-speed service.

**Jonesport:** Selectmen will ask voters to consider changing to a selectmen/manager form of government because of the increased workload and complexity of running the town of 1,400. The three-member board hopes a manager could save or raise enough money to pay his or her own salary. Selectmen will put the issue on next spring’s annual town meeting warrant.

**Kennebunkport:** While their neighbors continue pondering how to address increasing complaints about motorcycle noise, selectmen gave police approval in September to post signs asking cyclists to lower the volume of noise they create – a growing frustration for several communities in Maine. Police Chief Joseph Bruni told selectmen the signs apparently have been effective in other communities outside of Maine.

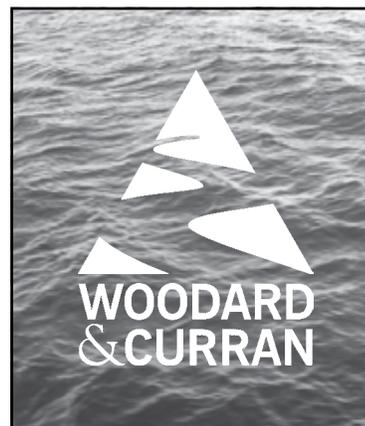
**Old Orchard Beach:** Money generated by town ambulance fees after August 4 can be used toward the cost of building a new public safety facility, the council decided in August. Ambulance fees generates \$350,000-\$400,000 a year.

**Scarborough:** Local police used a public works truck rather than a cruiser to conduct an 8-hour speeding detail in mid-September and identified nearly

100 drivers who were going 5-35 mph over the speed limit. Two officers in the truck cab radioed the license plate numbers of speeders to other officers in cop cars and on motorcycle. The effort took place in the area that gets the most complaints from the public, police said. Although some people characterized the effort as a “sting,” police leaders said it was effective and they plan to use other non-cruisers in the future.

**Waterboro:** The town’s phone system was breached by a hacker in June, a problem realized when town officials got a \$15,000 bill in July. Municipal staff are working with the Maine Public Utilities Commission to resolve the bill, while the FBI and the federal Department of Homeland Security are investigating the crime. The calls are believed to have been made from overseas.

**Mapleton/Chapman/Castle Hill:** These three Aroostook County towns were recently successful in ratifying a new Interlocal Agreement, thereby continuing a long standing tradition of cooperation by effectively and efficiently sharing services. At a combined town meeting on September 9, all three towns separately confirmed the agreement with unanimous votes. The Interlocal Agreement is a cost sharing arrangement that provides significant savings to residents of all three towns, and high quality services. All three towns share ownership in buildings, equipment, and administrative costs. In addition to sharing a town manager, these towns also share a town clerk, a road commissioner and a fire chief. **mt**



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# Municipal Bulletin Board

## MMA CONVENTION PHOTOS

If you are interested in seeing photos from the 2009 MMA Convention, go to the MMA website, [www.memun.org](http://www.memun.org). Hundreds of photos were taken this year and rather than run a few of them in the Townsman as black & white photos, we've decided this year to put them on the website.

## INCOMING MMA PRESIDENT

John Sylvester, selectman in the Town of Alfred, was sworn in as the incoming president of Maine Municipal Association on October 8 at the MMA Convention held at the Augusta Civic Center. Sylvester will begin his term as MMA President in January, 2010.

## ETHEL KELLEY AWARD

Breaking with tradition, MMA's 2009 Ethel N. Kelley Memorial Award was presented to two individuals, a husband and wife from the Town of Manchester. Lionel and Betty Gilbert have collectively devoted over 120 years of public service to their hometown. This June, Lionel resigned from his seat on the Manchester Planning Board, which he has held for the past 35 years. He also worked 35 years as the town's tax collector and treasurer, spent one term as selectman, and was a founding member of the local fire department. In total, Lionel has logged more than 70 years of service as a municipal official and employee in the Town of Manchester. Betty Gilbert has been an election worker for 50 years and served as town clerk for over 30 years.

## ENVIRONMENTAL LEADERSHIP

Experienced Mainers (50 years of age or older) are currently being recruited to serve as volunteers in the Encore Environmental Leadership Corps (ENCORPS). The ENCORPS is a program of the University of Maine Center on Aging in partnership with the Maine Community Foundation and with the cooperation of many other local, state, and national organizations. Initial funding for this project comes from the U.S. Environmental Protection Administration's Aging Initiative and The Atlantic Philanthropies, Inc.

Approximately 150 to 200 older

adults will be chosen to participate in ENCORPS each year. Volunteers will be invited to attend a training summit on April 12-13, 2010 which will prepare them to take on volunteer opportunities in their communities that are focused on preserving Maine's environment and making the best use of the state's natural resources. There is no cost to participate in the summit or ENCORPS activities, and transportation assistance is available if needed.

Applications must be received by January 2, 2010 in order to be considered for the 2010 Encore Leadership Corps program. Applications are available online at [www.encoreleaders.org](http://www.encoreleaders.org) or request by email [info@encoreleaders.org](mailto:info@encoreleaders.org)

For more information contact: UMaine Center on Aging, Camden Hall, 25 Texas Ave, Bangor, ME 04401; 207-262-7923.

## TOWN REPORT COMPETITION

For over 50 years, Maine Municipal Association has conducted an annual "Municipal Report Competition". Winners of the 2009 Municipal Report Competition, by population category and in the order placement - Supreme, Superior and Excellence, were as follows:

Pop.	Municipality
0-499	Cranberry Isles Carrabassett Valley Portage Lake
500-999	Jackman Alna Southport
1,000-2,499	Phippsburg Hope West Bath
2,500-4,999	Madison Vassalboro China
5,000 and over	South Portland Waldoboro Freeport

The judges for this year's competition included Douglas Rooks, Lee Burnett, and Liz Mockler, all freelance journalists and regular contributors to the Maine Townsman.

## PERSONNEL PRACTICES

MMA will be offering its Personnel Practices Workshop on November 6 at the Holiday Inn by the Bay in Portland. Larry Winger, Esq., will conduct the workshop.

This workshop is for public managers and supervisors and will cover such topics as discipline and discharge, Family Medical Leave, disability discrimination, handling difficult employee situations, and collective bargaining.

For more information, contact MMA's Educational & Affiliate Services office, 1-800-452-8786, or go online at [www.memun.org](http://www.memun.org) 

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	Avg. No. Copies Each Issue During Preceding 12 Months	No. Copies Single Issue Nearest to Filing Date
Total no. copies printed	4,600	4,600
Paid circulation		
Mailed Outside-County	3,852	3,842
Mailed In-County	309	309
Distribution outside the mail	0	0
Distribution by other classes of mail	0	0
Total paid distribution	4,161	4,151
Free or nominal rate distribution		
Outside County	320	327
In-County	34	30
Mailed at other classes through USPS	5	5
Outside the mail	35	35
Total free distribution or nominal rate distribution	394	397
Total distribution	4,555	4,548
Copies not distributed	45	52
Total	4,600	4,600
Percent Paid	91.35%	91.27%

I certify that the statements made by me above are correct and complete.

Michael L. Starn, Editor

## COMPREHENSIVE PLAN NOT 'REGULATORY' DOCUMENT

According to the Maine Law Court, a comprehensive plan is “visionary, not regulatory.” A comp plan provides goals and objectives and an implementation strategy for achieving them. But the plan itself does not constitute an ordinance or furnish additional criteria for determining whether a land use permit should be issued.

In *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, the corporate parent of Poland Spring sought a permit from the Planning Board for a water “loadout” facility. The ordinance required, among other things, that businesses in rural areas be “non-intensive.” The board found that Poland Spring met this and all other ordinance requirements and approved the permit. But on appeal by a concerned citizens group, the superior court remanded the case, instructing the board to make findings on whether the project also satisfied the comprehensive plan’s call for businesses in rural areas to be “low impact,” meaning “limited in size or amount of traffic.” Since the project included an extensive trucking operation, this time the permit was denied, and Poland Spring appealed.

At the Law Court, Poland Spring argued that the lower court erred in imposing an extra requirement from the comprehensive plan, and the high court agreed. “[T]he comprehensive plan is just that – a plan – and ordinances adopted pursuant to the plan are its regulatory teeth.” The Court said the comp plan and the ordinance were complementary but not interchangeable. The ordinance translates the comp plan’s goals into measurable requirements, but the plan itself is not a standard and should not have been imported into the permit review.

Previously, the Law Court reached a similar conclusion with an ordinance’s statement of purposes (see “Ordinance’s General Purposes Are Not Standards or Criteria,” *Maine Townsman*, “Legal Notes,” June 2002). (By R.P.F.)

## NEW DISABILITY VARIANCE

The law authorizing appeals boards to grant “disability variances” for access to dwellings has been expanded, but only narrowly.

Historically, disability variances have been limited to equipment or structures necessary for access to or egress from a dwelling (e.g., wheelchair ramps, lifts, etc.). However, PL 2009, c. 342 (eff. Sep. 12, 2009) now authorizes a disability variance for a garage accessory to a dwelling as well.

This variance may be granted only if the zoning ordinance authorizes it. It is also limited to a non-commercial automobile with disability plates and owned by a person with a permanent disability who owns and resides in the dwelling. The garage also cannot be larger than twice the width and length of the vehicle.

The disability variance law as amended is located at 30-A M.R.S.A. § 4353(4-A). For more on variances generally, see our “Information Pack-

et” on the subject at [www.memun.org](http://www.memun.org). (By R.P.F.)

## OFFENSIVE PLACE NAMES 2.0

The list of offensive geographic place names under Maine’s nine-year old law prohibiting them has gotten longer. The original law prohibited place names containing “nigger” or “squaw” as a separate word or as part of a word or “squa” as a separate word. The new version also bars place names with any derivation of “squaw” or “squa” or with “squa” as a separate syllable in a word.

The revision was prompted in part by residents of Squaw Point in Stockton Springs, who cynically tried to circumvent the original ban by renaming their neighborhood “Squapoint.” The new law also appears to prohibit Squapan, however, which is the name of a well-known lake in Aroostook County. Squapan (or “Scapan” on early maps) is said to be Abenaki for “bear’s den.”

# Municipal Calendar

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

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

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

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

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

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

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

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

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

The new law (PL 2009, c. 284) amends 1 M.R.S.A. § 1101(1) and took effect September 12, 2009. Neither the new version nor the old applies to private businesses or private properties named by their owners.

For details on the duties of municipal officials under the offensive place name law, see "Offensive Place Names," *Maine Townsman*, "Legal Notes," March 2005. (By R.P.F.)

### RENTAL HOUSING & HEATING EMERGENCIES – A NEW LAW

A new law gives municipalities the option of helping with heating fuel emergencies in rental housing where a landlord has neglected to provide adequate fuel supplies.

The new law (PL 2009, c. 135, eff. Sep. 12, 2009) authorizes municipalities to provide for delivery of heating fuel and any associated heating system repairs to rental housing where it is out of or nearly out of fuel such that an imminent threat to continued habitability exists. The municipality, however, must first make a good faith attempt to contact the landlord in person, by phone or by certified mail. If the landlord cannot be contacted or does not cause delivery of an adequate fuel supply by the deadline given, the municipality may provide for it and recover its expenses, including related administrative costs, by placing a lien on the property.

The new law does not require that tenants be eligible for general assistance, nor does it obligate municipalities to act. (This law is entirely separate from the general assistance laws.) The law also does not address the issue of funding for fuel purchases, which is dependent on available local budget resources, if any (see "Budget Overdrafts," *Maine Townsman*, "Legal

Notes," May 2008).

For all the particulars, see 14 M.R.S.A. § 6026-A. (By R.P.F.)

### ROAD BUDGET OVERDRAFTS FOR MAINTENANCE NOW OK

The law authorizing up to a 15% overdraft in municipal road budgets has been revised to include road maintenance.

Title 23 M.R.S.A. § 2705 formerly authorized the road commissioner, with the consent of the selectmen, to spend up to 15% more than what was appropriated for roads if that amount was insufficient for repairs. Budget overdrafts were not authorized for road maintenance, including snow re-

moval. But now, with the enactment of PL 2009, c. 7 (eff. Mar. 17, 2009), a road budget may be overspent for either or both repairs and maintenance.

This is an enlightened change in view of Maine's long and usually unpredictable winters and was, frankly, long overdue (the old distinction between maintenance and repairs was often simply ignored). The 15% cap on road budget overdrafts has not changed, however, nor has the requirement for written consent from the municipal officers.

For more on this topic, see "Winter Roads Overdrafts," *Maine Townsman*, "Legal Notes," January 2008. (By R.P.F.) 

## MMA Personnel Services and On-site Consulting Services

MMA Personnel Services offers a wide range of specialized on-site consulting services for our members. Personnel management and labor relations expertise is available for direct assistance or general inquiries through a toll-free telephone line. Direct on-site assistance is available in the following areas:

**Labor Relations** — Representation of the municipality in labor negotiations, mediation, arbitration and grievance processes.

**Executive Search** — Assistance with the recruitment of a new city or town manager or department head.

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For more information on all Personnel Services programs, or general personnel management information, contact David Barrett, Director of Personnel Services and Labor Relations at 1-800-452-8786.

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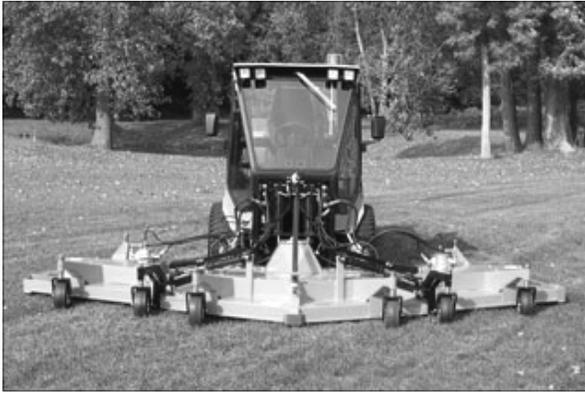
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